

1 questions I have, so...

2 Do you have any questions?

3 EXAMINER BROOKS: Nothing.

4 EXAMINER JONES: Thank you very much.

5 MS. MacQUESTEN: That concludes the OCD's case.

6 EXAMINER JONES: Okay, we'll probably break at

7 12:00?

8 EXAMINER BROOKS: 12:00, yeah, about 12:00.

9 EXAMINER JONES: Do you want to go ahead and --

10 EXAMINER BROOKS: I'd say about 10 till 12:00,
11 that will give us 25 minutes.

12 EXAMINER JONES: 25 minutes or so, to -- before
13 lunch, at least. Okay.

14 MR. PADILLA: We can put on our case.

15 EXAMINER JONES: Okay.

16 MR. PADILLA: We'll call Mr. Baber at this time.

17 GUY A. BABER, III,

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

20 DIRECT EXAMINATION

21 BY MR. PADILLA:

22 Q. Mr. Baber, please state your full name, please.

23 A. My name is Guy Allen Baber, III.

24 Q. Mr. Baber, what is your connection with Pronghorn
25 Management Corporation?

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

*Oil Conservation Commission
Cases 13859 & 14052 De Novo
Pronghorn Management Corp
OCD Exhibit 33*

1 A. I'm president of Pronghorn Management
2 Corporation.

3 Q. Mr. Baber, you've been in trouble with the OCD
4 for quite a while, haven't you?

5 A. I guess you could say that.

6 Q. Okay. Tell us generally where you have been in
7 relation to your regulatory requirements and your oil and
8 gas operations, say in the last two years.

9 A. Well, it's been an ongoing situation. I've had,
10 obviously, some problems, financial situations being the
11 main one, and been trying to move forward and be positive
12 about everything. I have made some progress the last few
13 months, I have been able to bring an investor -- investment
14 group, in, and prepared to do some work on our leases.

15 Q. When did that happen?

16 A. We started working around -- seems like around
17 the first part of October. But it's been -- I've been, you
18 know, attempting to raise money or find an investment group
19 or a partner for several months now, end of years, and at
20 times I thought I might have had something together, and
21 every time it seemed to fall through and not work out.

22 Q. Give us a type of -- OCD had an Exhibit 4, which
23 is highlighted with the multi-colors on it. What kind of
24 wells generally are those that are in that exhibit? Are
25 they old wells, new wells? What kind of wells are they?

1 A. Most of them are old wells. They're shallow
2 wells, all except the Gila 4 that we mentioned, from the
3 Delaware, Ramsey Sand, Bell Canyon zone, which is about
4 5200 feet; up to the Jalmat, Yates zone, which is around
5 2200, 2300 feet.

6 Q. In terms of fresh water, are there any wells that
7 you know of that have encountered fresh water in the area
8 of the wells?

9 A. There are not. The wells we have are -- surface
10 is set through the freshwater and cemented, and the
11 production string.

12 Q. Now, in August of 2007, we had a meeting with the
13 OCD in the midst of applying for *de novo* hearings on some
14 of the cases that have been filed against you. What was
15 your consensus of the meeting, as far as what you were
16 trying to do and achieve with the OCD?

17 A. What I was trying to -- is get within -- maybe
18 not total compliance, but with a -- you know, make some
19 major steps in compliance and try to -- these wells on this
20 list, all the wells, either return them to production or
21 injection, as the case may be.

22 Q. Why is injection -- why are the injection wells
23 relevant?

24 A. Well, just take for instance, oh my, New Mexico
25 State DL and EF lease, and the well that we talked about I

1 put on, the DL Number 4.

2 In addition to that, we have the New Mexico State
3 EF Number 3 that we did some work on also for -- it's an
4 SWD injection well that we've -- we returned it back to
5 injection status and did the necessary work to bring it
6 back, mechanical integrity test and so forth.

7 But the reason I need -- the injection well is
8 important is, with this we don't have to haul our water
9 off, which water hauling in today's market is costing you
10 about \$3 a barrel to haul off. We have this injection well
11 that we can -- that's been approved for the lease -- for
12 lease water to go -- inject into it.

13 The -- well, of course, the DL Number 4 only was
14 doing -- it was making about -- oh, somewhere about 11 to
15 15 barrels of oil initially, but it's down to -- now, the
16 last few weeks, it's been doing about 5 1/2 barrels and
17 105, 108 barrels of water. So you can see with that type
18 of ratio what -- how important it is for us to have an
19 injection well to go to with our water.

20 Q. Now you've prepared an exhibit, Exhibit 1, for
21 introduction at this hearing. Tell us what that is.

22 A. Well, what I tried to do is, I went down the list
23 that we had, working off the list we've been talking about,
24 and tried to give a -- a projected expenditure of what we
25 feel like it would take for us to bring the well back into

1 production or back into -- return to injection, whatever
2 the status may be.

3 And then --

4 Q. Let's start off at the top, with the Atlantic
5 State Number 1. You have \$7500. Is that an actual or
6 projected expense?

7 A. That's projected. Basically, everything's in
8 place on this well with the pumping unit, the tubing, the
9 rods and the pump. Apparently there's something wrong
10 downhole with either the pump or the tubing. That may have
11 a hole in it, something of that nature, that we feel like we
12 can get this well back in production for this projected
13 amount of money.

14 Q. Take us across. You have the API number, the
15 well name, the projected expense, rig days, then you have a
16 number, IQ -- 1Q.

17 A. What I was trying to do was come up with a
18 reasonable time frame and a realistic time frame that I
19 feel like, with -- certainly with approval, that we could
20 get these wells back in compliance.

21 Of course, 1Q '08 means first quarter '08, 2Q '08
22 second quarter '08, 3Q '08 third quarter '08. What I tried
23 to do is -- my focus right now would be on the DL lease and
24 the EF lease and the Marshall leases where we could go
25 and --

1 (Off the record)

2 Q. (By Mr. Padilla) Let me ask you, we're talking
3 about the first line, how you were explaining the projected
4 expenditure, \$7500. Let me ask you, how did you arrive at
5 that projected expenditure?

6 A. Just estimated what I thought it would cost us
7 with rig time, rental tools, and any additional contracted
8 work we might -- might be necessary, connections,
9 miscellaneous connections, possibly pressure testing, that
10 type of situation, keel truck, transport.

11 Came up with -- basically just an authority for
12 expenditure, an AFE, and --

13 Q. Well, let's talk about that.

14 A. -- that's about what the number is.

15 Q. There's been a lot said here that you've made a
16 lot of promises and you haven't complied with them. How
17 can you assure the Division that \$7500 is not pie in the
18 sky or some other type of figure that you're pulling out of
19 the -- somewhere?

20 A. Well, just from experience and -- I don't know if
21 I've made a bunch of promises, but I've been told what was
22 represented to me and things haven't worked out like I
23 would hoped they would, certainly not. I mean, I've been
24 having to live with this thing every day too, and it's been
25 difficult at times.

1 But I believe I have some money put together, as
2 shown, getting tack to DL lease, you're asking me about --

3 Q. Is that on the second page?

4 A. Yes, sir.

5 Q. Okay. Okay, go ahead and tell us about DL lease.

6 A. The DL 4, we have projected it would take us
7 about \$36,500 to put it back together and back on, which to
8 date we've spent right at the \$35,000 number, and the well
9 is producing and has been producing.

10 We did do pressure testing on our casing above
11 the perfs and below the perfs to make sure the mechanical
12 integrity is okay. We're doing a base test on the
13 production now, and maybe down the road we might be looking
14 at a frac job, and that's one of the reasons we wanted to
15 know if the, you know, casing is in good shape.

16 Again, continuing work on the -- we've done some
17 work on the EF Number 3, which is a saltwater
18 disposal/injection well. We had to -- we spent -- our
19 packer -- we did a pressure test in the backside. The
20 casing didn't -- the backside didn't hold, so we suspected
21 a packer leak and a hole in the tubing, and that's what we
22 found.

23 And we did our pressure testing, and the well --
24 we got it back on and everything back in the hole, and we
25 passed the mechanical integrity test.

1 And hopefully in the next couple of weeks -- I've
2 set pumping units on the DL Number 3, the DL Number 5, and
3 also on the EF Number 1, and we will be putting those wells
4 back on production.

5 Q: How soon are they going to be back on production?

6 A: I've been -- they should be back on production in
7 the next couple weeks. I've got -- I have electricity now
8 to these wells. I've been back and forth to electricians
9 and, you know, getting electricity, motors installed and
10 transformers and so forth, for about three weeks now.

11 But as you can see, for the overall DL lease and
12 EF lease I've -- we spent right at \$300,000. If you add --

13 Q: You have --

14 A: -- all that up, it comes right close to
15 \$300,000.

16 Q: You have a figure down here, actual expenditures
17 of \$298,400. Is that --

18 A: Okay, that's rounded off, that's probably --
19 yeah, that's -- yes, that's --

20 Q: Okay, where are you going next? Where's your
21 next focus?

22 A: Well, of course our focus is to get the -- as I
23 mentioned, the DL 3, the DL 5 and the EF Number 1 on
24 production.

25 And then we will move up to the New Mexico State

1 DL Number 1, and we think there's some lower Delaware that
2 we're interested in testing and evaluating that situation,
3 that wellbore. It's -- this -- the DL Number 1 is the only
4 wellbore out there in this area or on our lease that
5 penetrated the lower Delaware. It's cased to 9000 feet,
6 and the rest of these DL and EF wells are cased basically
7 around 5200 feet. So we're going to attempt a recompletion
8 in the lower Delaware wells.

9 Q. You have that slated for the second quarter of
10 2008?

11 A. That's -- that's correct.

12 What I was trying to do is where our focus would
13 be, and of course always where we could go for cash flow to
14 help us out, to help us to pay for these -- some of these
15 projects. And, you know, some of these we may move to, you
16 know, third quarter that were scheduled for second quarter,
17 or some of them, you know, may be -- that we had in the
18 fourth quarter, that we may try to get on in the second
19 quarter. I was just trying to get an overall view of what
20 we would try to do.

21 Q. I asked you earlier about the projected
22 expenditure. How did you arrive at those, and what
23 assurance can you give the Division that you have the money
24 to do this?

25 A. Well, I don't -- all the assurance I have is, I

1 have spent \$300,000, and the investment group has committed
2 to over a million, or right at a million dollars right now,
3 and we've signed a letter agreement and have -- and they're
4 ready to proceed --

5 Q. How --

6 A. -- as well as we are.

7 Q. Okay, let me ask you now, how do they -- how do
8 they fund a particular project?

9 A. What we do on our end is, we talk about what a
10 particular project would be. I submit an AFE, which is
11 broken down on your contract and expenses with your --
12 whatever you're going to have to spend out on a well, your
13 pulling unit time, rental tools, water, you know, whatever
14 the situation might be, whatever -- you know, possibly acid
15 work, stimulation for cleaning the wellbore and then
16 putting the well back on production.

17 Q. How did you arrive at the AFE numbers?

18 A. Just knowing what the costs are --

19 Q. Yeah, I unders- --

20 A. -- in today's market.

21 Q. I understand that. But I mean, how did you
22 assess what you had to do, say, for the Atlantic State
23 Number 1 well to spend \$7500?

24 A. Just knowing the history of the well and knowing
25 the depth of the well and knowing what's in the wellbore

1 itself, tubing and rods, and knowing I'm not going to have
2 to purchase tubing and rods, I've got the tubing and rods
3 in the well, and knowing the pumping unit is all set.

4 Q. How did you know you had a hole in the tubing?

5 A. We -- I said we suspect a hole in the tubing,
6 just the way the thing -- it won't pressure-test, and
7 that's what we suspect, the way the pressure test acted.
8 It'll pressure up a little bit, but then it'll bleed right
9 back off. It'll hold, but it won't hold, and then it'll
10 bleed -- slowly bleed back off.

11 Q. But you've done this assessment on the well
12 itself already?

13 A. That's correct.

14 Q. All right. So let's take the next well, the
15 Fields Number 4. You have that slated for the second
16 quarter. Let me ask you, how did you evaluate that well to
17 do work on it, on the second quarter of '08?

18 A. We felt like this well had a chance of being
19 productive, and it has -- we'd have to install a pumping
20 unit on it, but besides that everything else is in place,
21 tubing and rods and pump. We'll probably have to,
22 obviously, change the rod and pump in it -- rods and pump,
23 or the pump, but with a pumping unit I believe we can bring
24 it back into production.

25 Q. What other wells are you projecting the first

1 quarter of '08?

2 A. Well, we had the Atlantic State, New Mexico State
3 DL 3. DL 4 is -- we put it in fourth quarter, '07. DL 5,
4 and then of course the EF Number 3 and the EF Number 1
5 would be first quarter.

6 And then we have another shallow well over in
7 Eddy County also, the Sivley State Number 1, that we feel
8 like we can put on production fairly economical in the
9 first quarter of '08.

10 Q. What do you have to do to that well?

11 A. That would be -- we'd have to install a pumping
12 unit there, and we bought a string of tubing that we would
13 need, and we'll have some additional rods, and we'll have
14 to buy a rod pump.

15 Q. Is that expenditure included in the \$300,000?

16 A. No, it is not. We've had that, basically -- our
17 tubing, we've had it in our inventory, that we haven't been
18 using.

19 Q. Can you tell the Examiner what kind of
20 engineering and geologic evaluations you have made on these
21 wells?

22 A. The big -- where I had my major engineering
23 evaluation done in a geologic study was on that Cruz-
24 Delaware area, which takes into play the DL and EF leases
25 on the state side, and then the Marshall Fields lease on

1 the federal side. I had to put something together from an
2 engineering standpoint and a geological standpoint to have
3 a professional and a -- and a -- reserve figures put
4 together and -- to present to investors or an investment
5 group, to show them that -- not only what we suspected
6 might be the situation out on these leases in this zone,
7 that it's backed up with engineering and geology reporting.

8 Q. How much did you spend on that geologic and
9 engineering study?

10 A. Oh, the number is probably going to be --
11 probably \$4000 or \$5000, but -- It would probably have been
12 more than that, but the engineer I had working with me is
13 interested in possibly taking an interest or -- a working
14 interest or maybe even an override, some type of interest
15 in the project itself. And that's the case of the
16 geologist also.

17 Q. I notice that the Marshall wells are slated to --
18 for work on the second quarter.

19 A. Yes, sir.

20 Q. How sure are you of doing that work?

21 A. Well, I feel pretty confident with what we've
22 established already on the -- I'll probably know more about
23 it -- well, I say that, that's not right. The investment
24 group is committed to this work, and they feel good about
25 the project just with the little work we've done already

1 and some of the results we've seen, so I feel fairly
2 confident we can get it done.

3 As you can see, the big capital expenditure on
4 getting these wells back going is purchasing pumping units.

5 Q. How difficult is it to get pumping units today?

6 A. It's -- the pumping units are -- there's -- it's
7 not a problem, you've probably got maybe a week to 10 days
8 delay time. The pumping units themselves are not a
9 problem, the problem is scheduling setting the pumping
10 units with the contracting people, having trucks available.

11 Q. What's your experience been to date with regard
12 to contract work?

13 A. About a two- to three-week lag time, from when
14 you -- when you want -- when you -- when you like to have
15 them -- when you're ready to move the pumping unit out
16 there and get it set to when they could fit it into your
17 schedule. It's been running about two weeks, maybe two and
18 a half weeks.

19 Q. How many people are employed by you?

20 A. Nobody, zero.

21 Q. How many employees do you have?

22 A. I don't have any employees.

23 Q. You're Pronghorn?

24 A. I'm Pronghorn.

25 Q. So you need to get contractors; is that --

1 A. That's correct.

2 Q. How -- I can't emphasize the answers strongly
3 enough, these assurance questions I'm asking you about,
4 your commitment or your investors' commitment to assure the
5 Division that this work is going to occur. Can you comment
6 on that?

7 A. It just -- with what I think I've done already,
8 with the almost \$300,000. And just like I believe Mr.
9 Sanchez said, in today's market, you know, there's an
10 opportunity, which I've finally been able to put some
11 investment money together to go out and do this type of
12 work.

13 I mean, now's the time -- good faith on my part
14 -- I've been fighting it every day. I know, obviously, it
15 doesn't look like, but I've been fighting it every day, and
16 there's been some confusion on where we were and so forth.

17 But anyway, I mean, it's -- even this is an
18 aggressive plan, but I think we can, you know, put it
19 together and get the majority of this work done.

20 Q. All right. Let me ask you about your thoughts
21 and comments on the Division's case in terms of shutting
22 you down completely.

23 EXAMINER JONES: Mr. Padilla, I hate to
24 interrupt, but is that a place we could break for lunch?

25 MR. PADILLA: Sure.

1 EXAMINER BROOKS: Okay, thank you.

2 EXAMINER JONES: Come back at around 1:15.

3 MR. PADILLA: All right.

4 THE WITNESS: Thank you.

5 (Thereupon, noon recess was taken at 11:52 a.m.)

6 (The following proceedings had at 1:18 p.m.)

7 EXAMINER JONES: Okay, let's go back on the
8 record and continue the testimony of Mr. Baber.

9 Q. (By Mr. Padilla) Okay, Mr. Baber, before the
10 lunch break I believe I had asked you whether you had heard
11 the presentation of the Division's case here today, and I
12 asked you what your -- whether you had a comment about --
13 or reaction to the case and the Division's requests.

14 A. Well, certainly it's very -- confusing, I guess,
15 would be one word. And I mean, like I've stated before, I
16 know this has been a long time in coming, or in the
17 process, but I feel like I finally can make some progress
18 and am ready to do so, ready to move forward positively and
19 get some of this work done.

20 Like was stated earlier, market conditions have
21 changed, and it's freed up some investment money, and I
22 believe I can move forward and get these -- some of these
23 situations corrected, and I don't see any need for the --
24 right now for the plug and abandonment when we can possibly
25 return several of these to -- in compliance and production.

1 and generate the royalties for the State and move forward
2 in that manner.

3 Q. Mr. Baber, on Exhibit 1, your Exhibit 1, the last
4 two wells on that exhibit, on page 2, what is the status of
5 those? One of them says that for the State HL Number 1
6 that the lease has expired. What's the condition of --

7 A. That lease has expired, and -- I don't know, it
8 was put up for -- as a sealed bid in December, and I
9 haven't seen the results of that and don't know who bought
10 the lease or who put it up for sealed bid. But the
11 wellbore is still there, and I will talk to the new lease
12 owner and try to work something out with them on that.

13 And then the State M, there's a question whether
14 -- I don't believe I own that, I believe it's -- that's
15 Aspen Oil Company's well and lease. I don't believe it's
16 mine.

17 Q. Have you done any investigation as to whether
18 you're the actual operator of the well?

19 A. Again, it looks like to me, from my paperwork,
20 that it was transferred to Aspen Oil Company.

21 Q. Have you done any work on that recently?

22 A. I have not.

23 Q. If you are the operator -- Well, how soon can you
24 find out whether you are the actual operator or not?

25 A. I can find out in the next few days. I certainly

1 ought to know something by next week.

2 Q. Okay. Mr. Baber, did you prepare Exhibit Number
3 1?

4 A. Yes.

5 Q. Do you have anything further to -- Well, let me
6 ask you this. Would plugging and abandoning these wells as
7 required -- as requested by the OCD, in your opinion, cause
8 waste?

9 A. It looks like to me at this point in time it
10 would be unnecessarily -- unnecessary. Obviously to plug
11 and abandon them is quite expensive, and I'm here offering
12 to do some work and to -- to be able to go back to go back
13 to work and, you know, use my money towards trying to
14 establish production and cash flow and being able to work
15 with the leases from there.

16 Q. Where are you with regard to -- to the penalty
17 assessment of \$72,000 that has been made against you?

18 A. Well, I mean, I don't have the money and, you
19 know, the investment group is not going to pay that kind of
20 money, you know. They'll put money into an opportunity to
21 rework the wells and so forth, but -- I mean, if I'd of had
22 the money, I wouldn't be in this situation where I am now.

23 Q. Mr. Baber, do you have an opinion as to whether
24 any of the wells listed on Exhibit Number 1 is a threat to
25 the environment or human welfare?

1 A. I don't think so, no.

2 MR. PADILLA: I'll pass the witness. Ask the
3 introduction of Exhibit Number 1 first.

4 EXAMINER JONES: Any objection?

5 MS. MacQUESTEN: No objection.

6 EXAMINER JONES: Okay, Exhibit Number 1 will be
7 admitted.

8 Go ahead, Ms. MacQuesten.

9 MS. MacQUESTEN: Mr. Examiner, I'd like to ask
10 Mr. Baber some questions using the OCD's exhibits. May I
11 approach the witness and give him a copy of the exhibits?

12 EXAMINER JONES: (Nods)

13 THE WITNESS: Thank you.

14 CROSS-EXAMINATION

15 BY MS. MacQUESTEN:

16 Q. Mr. Baber, how did you become aware of the
17 hearings today?

18 A. I think the first I heard of it was a friend of
19 mine in Artesia called me up and said we were in the legal
20 notices in the Artesia paper on a Sunday morning.

21 And then of course I'm sure I -- Ernie and I have
22 been talking, so...

23 Q. Okay. Is the address we've been using to contact
24 Pronghorn correct? P.O. Box 1772, Hobbs, New Mexico,
25 88241?

1 A. Yes, ma'am.

2 Q. And that's the address of record with the PRC for
3 the corporation also?

4 A. I'd just have to check on that. I don't know if
5 it is or not.

6 Q. But it is the right address for us to use?

7 A. Yes, ma'am.

8 Q. Could you explain why the notice of the hearing
9 that was sent to that address was returned from the post
10 office unclaimed after three attempts to deliver?

11 A. I don't know.

12 Q. Are you checking your mailbox?

13 A. Apparently we didn't. I've been gone a few days,
14 and I mean, I don't know -- Apparently I didn't get
15 notified on some of these other items also.

16 Q. Okay. Well, if you look at Exhibit Number 3,
17 there's a copy of that envelope, and it shows attempts to
18 deliver on December 10th, December 19th and December 25th,
19 and it was returned to us unclaimed. Had you not checked
20 your box during that time period?

21 A. I'm sure I have checked it during that time
22 period. I don't know why --

23 Q. What is the --

24 A. -- I don't have that --

25 Q. -- best place for us to get in touch with you

1 then?

2 A. Well, phone numbers and -- this is -- this is as
3 good as any.

4 Q. Okay. Let's talk first about Case 13,859, the
5 false-reporting case that is the subject of the motion for
6 the order to show cause.

7 If you could turn to Exhibit Number 6, the copy
8 of the order that was issued in that case --

9 A. Okay.

10 Q. -- now you didn't testify in that hearing, did
11 you, Mr. Baber?

12 A. I don't believe so.

13 Q. Were you even present at the hearing?

14 A. No, ma'am.

15 Q. But you were represented by counsel who appeared
16 at the hearing; is that correct?

17 A. Yes, ma'am.

18 Q. Have you read the order that was issued?

19 A. Yes, ma'am.

20 Q. Now you understand that in that case the OCD
21 found that you had knowingly and willingly filed false
22 reports of production on some of the 11 wells over a period
23 of some years; do you understand that?

24 A. I understand it now.

25 Q. Well, at what point did you understand that?

1 A. Probably back in August, our meeting in August.

2 Q. Before our meeting in August you had not read the
3 order?

4 A. Ma'am, I don't know when I read the order and
5 when I haven't read the order.

6 Q. Okay. If you could take out Exhibit Number 4,
7 our list of wells with the color-coding, and if you could
8 look at the blue wells, those are the wells that are the
9 subject of the false-reporting case.

10 If you'd look at, for example, the J.F. Black
11 properties, there are a number of wells but there's only
12 well with the false reporting, one well coded in blue. And
13 in the Marshall Properties, again just one well coded in
14 blue.

15 A. (Nods)

16 Q. A couple of wells coded in blue for the New
17 Mexico BZ State, two on the DL State, one on the EF State.

18 The other wells for those properties were not
19 reporting any production; is that correct, Mr. Baber?

20 A. Yes, ma'am.

21 Q. So really, those properties had no production at
22 all; isn't that right?

23 A. I believe the BZ had production and the DL had
24 production.

25 Q. Well, let me put it this way. The Hearing

1 Examiner found that the reports were false for periods of
2 time on those wells; isn't that right?

3 A. I think that's correct.

4 Q. Mr. Baber, isn't it true you were filing false
5 reports of production on one or two wells for each property
6 so that you could keep the lease alive on those properties?

7 A. No, ma'am, that's not correct.

8 Q. So you're saying that you were filing reports of
9 one barrel of oil per well, and that's what that well was
10 producing?

11 A. I don't know what I'm saying at this point in
12 time. I don't really understand the --

13 Q. Well, why were you filing production reports --

14 A. -- line of questioning.

15 A. Why were you filing production reports on those
16 wells?

17 A. Because that's what you're supposed to --
18 supposed to file production reports monthly.

19 Q. But you were filing reports showing production on
20 wells that the examiners found were incapable of producing.

21 A. Well, that's what I'm trying to say, I think
22 they're capable of producing, and we're here to correct
23 this situation and make the amendments and move forward.

24 Q. But at the time you were filing reports of
25 production when they were not, in fact, producing?

1 A. Apparently so.

2 Q. Were you paying taxes on those -- on that
3 production that you were reporting?

4 A. We hadn't sold anything, so I don't imagine we
5 paid taxes at that point in time. We pay taxes when we
6 sell the -- sell the oil or sell the gas --

7 Q. Well, the time --

8 A. -- I believe.

9 Q. -- period on one of those wells spans six years
10 of false reporting, so you weren't selling any of that oil
11 that you -- I mean, if you're reporting production and --
12 you're telling me that you falsely report production, but
13 you're not selling it -- you're not telling the Tax
14 Department that any of this is being sold, it was just
15 supposedly sitting on the lease? I'm trying to understand
16 what the story is.

17 A. I don't guess I understand, really, what your
18 question is.

19 Q. Okay, I just want to make clear. You're
20 reporting production that isn't there, you're saying you
21 don't have to pay taxes on it because it wasn't actually
22 sold, which is true, oil that's not sold doesn't have to --
23 isn't subject to tax.

24 Q. What was the royalty situation? Were you paying
25 royalties or not?

1 A. If we hadn't sold anything, I wouldn't think we'd
2 pay royalties.

3 Q. Okay, so the only thing that you were doing was
4 reporting to us production that wasn't there.

5 A. The reports were filed, yes.

6 Q. Okay. Now once the order came out and once we
7 had the meeting about trying to bring you into compliance,
8 did you take any action to correct the false reports?

9 A. Yes, ma'am, I've tried to take some correction
10 action and haven't been successful in finding someone that
11 understands what we're trying to do. And my focus in the
12 last few months has been with putting my deal together on
13 my investment money and getting some work done there, and
14 now at this point in time I've visited with the oil and gas
15 report people there in Hobbs, New Mexico, and I think we
16 can -- she's not familiar with what we're trying to do, but
17 I think we can -- if I -- if I need to bring them up here
18 and meet with somebody and get these reports amended,
19 that's what we'll do.

20 I did talk to Jane one time right after our
21 meeting, and she was very helpful and said, you know, go
22 through the computer, go through this and that, and we --
23 we talked about, or I talked about that, you know, it looks
24 like -- bulky and a lot of material.

25 And I asked her, you know, could I make the

1 changes with one report?

2 And she said, No, we'd rather not. But she said
3 it would be easy -- something to do with -- you could do --
4 key in a couple of items where you might be able to change
5 30 months at a time or 30 items at a time. I didn't really
6 understand what she was talking about.

7 But I have found the oil and gas reporting that
8 will help me out in this situation.

9 Q. Is that how you filed reports, through a
10 reporting service?

11 A. We have not been, but we are going to start.

12 Q. Okay, so you used to file your own reports?

13 A. We filed -- I had some other people filing
14 reports for me.

15 Q. And now you're using a professional reporting
16 service?

17 A. That's -- yes, ma'am.

18 Q. And the professional reporting service doesn't
19 know how to file an amended report?

20 A. Now, I don't know if the whole service knows it
21 or -- this individual that I talked to said she hadn't done
22 it before.

23 Q. When did you talk to them?

24 A. Well, right after our meeting in August, in
25 October or so.

1 Q. Okay, now the deadline in the order was July 30th
2 to get those corrected reports in. Did you take any action
3 before July 30th?

4 A. I don't remember if I did or not.

5 Q. When can we expect to have corrected reports?

6 A. I would say with some of the knowledge I found
7 out today, I bet we could get it done in two or three
8 weeks. I'll get on it and get it done. Now like I say,
9 I'll get on it. If I've got to bring somebody from oil and
10 gas reports or, you know, contract somebody here, I'll
11 certainly be glad to do it.

12 Q. Now you have -- you testified you have investors
13 who are willing to put approximately a million dollars into
14 your properties to bring them into production?

15 A. Yes, ma'am.

16 Q. Did you tell those investors that the reports
17 that were on file with the OCD were incorrect?

18 A. I haven't. No, ma'am, I haven't.

19 Q. Did you tell them anything about the status of
20 your wells?

21 A. Yes, ma'am, I have.

22 Q. Did you tell them anything about your compliance
23 issues?

24 A. Yes, ma'am, I have.

25 Q. What did you share with them?

1 A. I told them that I need to get some work done,
2 and that's why I'm -- I told them I needed to get some work
3 done and get the wells in compliance.

4 Q. But you didn't talk to them about the false
5 reporting?

6 A. I don't think so.

7 Q. And if someone who was interested in investing in
8 your properties and went to the OCD reports, they would
9 have been under the impression that there were some
10 producing wells on those properties?

11 A. The production that was reported is on the scale
12 of what these wells have accumulated in the past is -- is
13 -- you know, less than half of one percent, I think. So it
14 wouldn't make any decision-making process on an -- from an
15 economic issue.

16 Q. But at least they would have thought those --
17 there wasn't a problem with those wells, that they were
18 capable of producing something?

19 A. Pardon me?

20 Q. That they were capable of producing something?

21 A. Yes, they are capable of producing something.
22 That's why I presented this sheet here, that I do feel like
23 they're capable of production.

24 Q. Now, if we go back to the order in that false-
25 reporting case, there's a provision on the very last page,

1 paragraph (4), it says, Should Pronghorn Management
2 Corporation fail to correct the false production reports as
3 to the 11 wells by July 30th, 2007, no further Form C-104
4 shall be issued for any well Pronghorn operates until it
5 has corrected those false production reports.

6 Q. Were your investors aware that you were going to
7 have problems getting C-104 reports done?

8 A. No, ma'am.

9 Q. So -- Were you even aware of this provision that
10 you had no authority to transport to get allowables --

11 A. No, I didn't understand that.

12 Q. Uh-huh. Now the order also tells you you were
13 supposed to provide contact information for the lessors
14 that you filed the false reports on. I didn't hear
15 anything in your testimony about what you plan to do about
16 that.

17 A. I'll have to talk with Ernie about that. I don't
18 know what we plan to do. I don't understand that, so we'd
19 have to figure that out and --

20 Q. Okay. Well, maybe I can help you with that. The
21 properties that are at issue with the false reporting, some
22 of them are state and some of them are federal, and we know
23 how to get in touch with those folks, but we had a problem
24 finding out who the private lessor was on the J.F. Black
25 property. Do you know who the lessor is there?

1 A. No, ma'am, I don't.

2 Q. Can you find out?

3 A. I'll find out.

4 Q. Where are you going to get that information?

5 A. Well, as soon as I find out, I'll do my good
6 faith effort and due diligence and make a note of it and
7 see if we can't find out.

8 Q. Okay, now that information was due on July 30th,
9 2007. You've made no effort to give us that information
10 until today; is that right?

11 A. That's probably right.

12 Q. Now bringing the wells back into compliance, the
13 11 wells that are the subject of this order, did I
14 understand you correctly, there's only one well that you've
15 taken action on so far, and that's the State EF 1. You've
16 put a pumping unit on that?

17 A. No, ma'am, I have -- I have the -- the DL 4 is
18 producing. I've set a pumping unit on the DL Number 3 --

19 Q. Well now, wait a minute. I'm asking you about
20 the wells that are the subject of this particular order --

21 A. Oh, I'm --

22 Q. -- the show --

23 A. -- well, I thought we were talking about --

24 Q. -- cause order.

25 A. I thought we were talking about the whole deal.

1 Okay --

2 Q. Yeah.

3 A. -- go ahead.

4 Q. If it's just this one -- the only one I saw was
5 the State EF 1 and that you were putting a pumping unit on
6 it but it wasn't producing yet. Is that the current
7 status?

8 A. That's right, waiting on electricity to run the
9 rods and pump in the hole.

10 Q. Okay. Are you going to have to request an
11 allowable for that well?

12 A. I wouldn't think so.

13 Q. When we met to talk about complying with these
14 orders, we told you that if you couldn't meet the schedule
15 set in the orders that you should contact the Examiners and
16 ask them for a different schedule, but you haven't done
17 that, have you?

18 A. I don't remember that being part of our
19 conversation.

20 Q. Well, it's part of the letter. Do you want to
21 look at that letter?

22 A. No, that's okay. If that's what the letter says,
23 that's fine.

24 Q. Okay. Let me ask you about the penalty that was
25 assessed in that case. What is your intention with regard

1 to the penalty?

2 A. Well, ma'am, I don't have the money now, but I'll
3 pay the penalty if that's what you want -- what -- do.

4 Maybe we could work something out, you know, let me get
5 some of these wells back going and try to generate some
6 cash flow, and maybe we can work something out or -- I'd
7 like to work something out.

8 Q. So you don't intend to pay it?

9 A. Yeah, I -- would say so, if that's what I need to
10 do to -- to get this situation straightened out.

11 Q. What kind of schedule would be reasonable?

12 A. I don't have any ideas. I mean, I'd like to --
13 you know, if -- give me the opportunity to get focused on
14 this work and get some wells going, and with the market the
15 way it is, you know, monitor my progress, and I'll check
16 back with you in six months or whatever the situation might
17 be, and, you know, maybe we can address it now.

18 I don't -- I haven't talked to anybody, you know.
19 I heard somebody mention that, you know, a payout schedule,
20 you know, something like that, would be amenable.

21 Q. Well, what schedule would work for you?

22 A. I -- ma'am, I don't know, I don't know what --
23 the way I'm going to be on my production and what my
24 monthly cash flow is going to be. Of course, certainly
25 generating cash flow, I'd like to put it back into these

1 projects, these wells, to help the overall situation there.

2 Q. Now, you said that your investors weren't willing
3 to have any of their money used for the penalty; is that
4 right? Did you discuss it with them?

5 A. I haven't discussed the penalties with them, no,
6 ma'am.

7 Q. Oh, so they don't know that you're subject to a
8 penalty?

9 A. I don't know what they know, I don't know if they
10 are or not. I really haven't -- We've had other focus,
11 other than this penalty.

12 Q. Okay. I'd like to ask you a few questions about
13 Pronghorn's status with regard to Rule 40, and if I may,
14 I'd like to give the witness a copy of that rule.

15 Mr. Baber, are you familiar with Rule 40 at all?

16 A. No, ma'am.

17 Q. Okay. Do you understand that operators who are
18 out of compliance with Rule 40, the OCD may, and in some
19 circumstances must, deny certain privileges to that
20 operator? Are you familiar with that concept at all?

21 A. I've heard that concept --

22 Q. Okay.

23 A. -- before.

24 Q. Well, I've given you a copy of Rule 40, and if
25 you look at that first paragraph it lists the ways that an

1 operator can be out of compliance, and I just wanted to go
2 through those with you.

3 The first way would be if the operator doesn't
4 meet the financial assurance requirements. And you
5 understand right now that Pronghorn is out of compliance on
6 financial assurances to the tune of about \$225,000? Are
7 you aware of that?

8 A. I wasn't aware of that, no, ma'am.

9 Q. Okay. Why don't you take a look at what's been
10 marked as Exhibit Number 1, and that's the affidavit of
11 Dorothy Phillips. And the very last page of that affidavit
12 lists the financial assurance status of all Pronghorn's
13 wells, and I don't know if you've seen this before, Mr.
14 Baber, but this is something you can see on our website.
15 Do you see all of those Y's in the very far right-hand
16 column?

17 A. Yes, ma'am.

18 Q. And those are the wells that the computer tells
19 us have been inactive for more than two years and are state
20 or fee wells, so they are subject to single-well bonding
21 requirements. And the amounts of those bonds are in the
22 column marked Bond -- Required Bond Amount.

23 What are your plans for posting the single-well
24 financial assurances?

25 A. I've been working with the -- with a local

1 insurance company on the bonding requirements, not -- well,
2 I didn't realize on, of course, these wells, but on some of
3 the BLM wells, and apparently that bonding market is freed
4 up a little bit, so there's a good chance that we would
5 have the opportunity to be able to post that bond, and I'd
6 have to come up with the cash -- cash bonds --

7 Q. Okay.

8 A. -- as being kind of the --

9 Q. And speaking of the BLM bonds, the BLM required
10 you to post additional financial assurances recently,
11 didn't they?

12 A. Well, on these wells, these Marshall Fields
13 wells --

14 Q. Okay --

15 A. -- yeah.

16 Q. -- how much did they require?

17 A. I believe the number was \$125,000.

18 Q. Was that -- were you able to find a surety for
19 that, or did you have to post the bond?

20 A. I'm working on that.

21 Q. So that --

22 A. That's what I've been working on, not the state
23 wells, which I'll have to add to that.

24 Q. Okay, but they have not yet been posted?

25 A. That's correct.

1 Q. And I'm not sure I understood. Are you working
2 with a surety right now on the state bonds, or just the
3 federal ones?

4 A. The federal.

5 Q. Okay.

6 A. I'll be working with the state bonds in the
7 morning when I get back into town.

8 Q. Okay. You understand it's not just the wells
9 with the Y in the far right column that require bonding,
10 but also the false-reporting wells if they were state and
11 fee wells?

12 A. I'll get all that addressed, I certainly will.

13 Q. How are you going to be able to come up with the
14 money for the bonding? Is that something the investors
15 would be able to --

16 A. We've talked about that, yes, ma'am.

17 Q. When are you going to be able to get those bonds
18 posted?

19 A. It's been a little slow. I know that sounds like
20 that's my answer to everything, but if you would like I
21 could keep you updated. I don't have a time frame.
22 Hopefully within, you know -- well, it's -- hopefully
23 within the month, month and a half.

24 Q. Let's go back to Rule 40 and look at the second
25 way an operator can be out of compliance, and that is if

1 they're subject to a Division or Commission order issued
2 after notice and hearing finding the operator in violation
3 of an order requiring corrective action. Do you understand
4 that's the type of order we're asking for today?

5 A. Yes, ma'am, I do now.

6 Q. And that if such an order is issued and you don't
7 complete the corrective action that was required in the
8 case of 13,859, you'll be out of compliance with Rule 40?

9 A. Yes, ma'am.

10 Q. Okay, let's go to the third one, the penalty
11 assessment. An operator would be out of compliance with
12 Rule 40 if a penalty assessment is unpaid more than 70 days
13 after the issuance of the order.

14 Now, you understand, even if we enter into a
15 payment plan you're still going to be out of compliance
16 under Rule 40 until that penalty is paid?

17 A. Okay.

18 Q. And the last one is, it can have no more than the
19 following number of wells out of compliance with the
20 inactive well rule; and for an operator of Pronghorn's
21 size, with 39 wells, it can have no more than two inactive
22 wells.

23 So you also understand that with all the inactive
24 wells that you have, you're going to be out of compliance
25 with Rule 40?

1 A. I do now.

2 Q. Do you understand that while you're out of
3 compliance with Rule 40, the OCD may deny APDs, may deny
4 well transfers to Pronghorn, must deny allowables and
5 authorization to transport, must deny injection permits?

6 A. Ma'am, I'm sure you can do exactly what you say
7 you're going to do, and if that's what you want to do -- I
8 mean, it's not the answer to the problems, but if that's
9 what you'd like to do, I guess you can -- can do it,
10 obviously.

11 I'm here trying to -- you know, I guess -- I
12 guess I could just let you have the \$50,000 bond and walk
13 away from the whole deal. I don't think that's the answer.

14 Q. There was a --

15 A. If --

16 Q. Go ahead.

17 A. Well, I mean, it's --

18 Q. Well, I'm just asking you these questions because
19 you're proposing certain actions with regard to these
20 wells, and I want to understand whether you know what
21 roadblocks are in your way, so I can understand how you
22 propose to deal with them.

23 A. Well, if you keep throwing roadblocks at me, I
24 don't guess I can deal with them. If one proposal leads to
25 something else that I can't do or -- you know, taking away

1 the transporting of the oil and gas, I mean, that's --
2 that's just -- I mean, to me -- you ask to be realistic and
3 reasonable. You know, please, let's be realistic and
4 reasonable. You take away the cash flow that I do have and
5 turn it into zero, if you lock me down, how can I do
6 anything?

7 Q. Uh-huh.

8 A. Is that where we want to head, or -- it doesn't
9 seem like that's the best for the State of New Mexico, and
10 it doesn't seem like it's best for me either, or for
11 Pronghorn.

12 Q. Well, Mr. Baber --

13 A. What's done is done, and obviously there's been
14 some mistakes made, and I'm here to say I'm willing to give
15 it a good faith effort and get this situation corrected and
16 move forward.

17 Q. And I'm trying to figure out how you're proposing
18 to --

19 A. And I appreciate that.

20 Q. But isn't it -- what you've been -- what I'm
21 hearing, Mr. Baber, and correct me if I'm wrong, is that
22 you're choosing to work on the wells you and your investors
23 want to work on, and you have not done anything about
24 correcting false reporting, about alerting the private
25 lessor, have disregarded the schedule sent out in the

1 orders, so how do you propose to deal with this?

2 A. Well, I guess that's where we had our
3 misunderstanding, that I was looking at the deal from an
4 overall view to try to get it -- get something done, not
5 necessarily what my focus would be, like you said, but to
6 satisfy you and looking at the whole picture instead of
7 just through these orders, and trying to come up with a
8 realistic time frame where I can get something done.

9 I don't think with what I have seen here that
10 trying to get 11 wells back in compliance, or 15 wells,
11 whatever the situation is, in, you know, 30 days or 60 days
12 is realistic.

13 Q. Well, Mr. Baber, you were here for Mr. Sanchez's
14 testimony. He testified about inactive well agreed
15 compliance orders dating back to 2005 when we were trying
16 to work with you to have you bring your wells into
17 compliance, and so we aren't saying suddenly everything has
18 to be done in 30 days. This has been a project of years.

19 A. I agree. I don't -- I don't -- I -- issues have
20 been -- presented themselves. I've had some medical
21 problems, personal problems, and I'm here today and want to
22 try to work something out.

23 It looks like I have the opportunity here, and
24 market conditions have improved with, you know, most of
25 this production that would be stripper production at best,

1 but there's some opportunity there now with the market
2 conditions they are, with the price of the product being
3 what it is.

4 Q. That opportunity could be available to a
5 different operator, though, it wouldn't have to necessarily
6 be you; is that right?

7 A. Ma'am, I don't understand your line of
8 questioning. You say a different operator and then we talk
9 about that, and I can't transfer it because I owe this
10 penalty. So I'm a little confused on, you know, where we
11 are and where you want to head and what you want to do.

12 Q. Well, I'm sorry if that was confusing. Rule 40
13 would prohibit Pronghorn from acquiring additional wells
14 itself, but it wouldn't prohibit Pronghorn from
15 transferring them to someone else.

16 A. Is that a statement or a question, or --

17 MS. MacQUESTEN: I just -- you had indicated that
18 you were under a different impression, and I wanted to tell
19 you that wasn't what I was trying to tell you.

20 All right, I have no other questions. Thank you.

21 MR. PADILLA: Nothing further.

22 EXAMINATION

23 BY EXAMINER JONES:

24 Q. Mr. Baber, what is the price of oil right now?

25 A. We sold some oil last month, some sweet oil,

1 Delaware oil, for like \$95.50.

2 Q. What was it about a year ago?

3 A. Oh, I'd just be speculating, Mr. Jones. I think
4 it was maybe \$45 or \$50.

5 Q. Big jump in a year.

6 A. Yeah, it obviously has been significant.

7 Q. How old are these wells?

8 A. Oh, gosh, probably the majority of them are late
9 '70s. Middle '70s, late '70s, early '80s.

10 Q. They were -- in other words, they were drilled
11 during the last boom where oil was going to go to \$100?

12 A. Yeah, that's how I was so lucky to get in the
13 business, is when it went to eight -- six and eight dollars
14 in '86 and '87.

15 Q. This Cruz-Delaware, is that -- what zone of the
16 Delaware is that?

17 A. That's Bell Canyon, Ramsey sand.

18 Q. Oh, so it's -- it was here yesterday but not
19 today, I take it.

20 Is it any good still?

21 A. Yeah, I think that's -- we've got a good chance
22 of reworking these wells and putting them on pump, and then
23 this is where the engineering -- we feel like even though
24 we are moving a lot of water, the majority of these wells
25 were completed naturally --

1 Q. Oh.

2 A. -- but we're still maintaining a high fluid
3 level, and it looks like possibly the original pressures
4 are still there. So we're looking at -- with new
5 technology and frac work, we're looking at fracturing these
6 wells.

7 Q. And getting rid of a bunch of water --

8 A. Yes --

9 Q. -- and --

10 A. -- play the water game, so to speak.

11 Q. Yeah.

12 A. That's why the injection wells are imported

13 and --

14 Q. Is that what this consultant engineer you had and
15 geologist told you too, or -- you probably already knew
16 that, but --

17 A. Yeah, it was kind of an idea I had and threw it
18 at them. And apparently some of this work has been done in
19 other areas. I believe the Paduca- Delaware. And then of
20 course, even -- the guys were talking about even with this
21 that -- possible -- potential waterflood, or pressure-
22 maintenance, I guess, would probably be a better
23 terminology -- that is right south of us in the North Elmar
24 Unit. I think the North Elmar's even been from -- even
25 from waterflood on into tertiary.

1 Q. Geraldine Ford stuff.

2 A. Yeah. And then the --

3 Q. -- Ramsey --

4 A. -- I think Yates has an Avalon-Delaware that

5 they're attempting to --

6 Q. Did these consultants -- did you look at

7 everything on a payout basis, about how much it would cost

8 and what you could and -- in other words, did you

9 prioritize your work and -- how long ago did you do all

10 that?

11 A. It's been a work in progress, Mr. Jones, but

12 really I got -- started getting people interested in it

13 this summer, the guys I've been -- and it's -- well, it was

14 -- well, this summer, June, 1st of June.

15 And it's been a long process with these guys too.

16 It's been a little bit slower than we would like for it to

17 be, because we've been waiting on lawyers to make sure the

18 title is clear and some legal things of that nature, and I

19 just got word a couple of days ago that it looks like the

20 title is in good shape, and they feel comfortable with what

21 all they're doing. And obviously they feel comfortable,

22 we've already put \$300,000 into the deal.

23 Q. The -- but they -- you project it's going to need

24 -- for this -- all this -- actually getting the wells back

25 on line, \$2 million, but you've only got \$1 million

1 promised?

2 A. Well, it's -- it'll be an ongoing deal. And what
3 we might do after today's meeting is, obviously, with the
4 OCD's signing off is -- is -- you know, I don't know what
5 I'll try to do, maybe sell the wells or -- you know, try to
6 get something done.

7 And of course, Mr. Jones, with the commitment on
8 the \$1 million -- with that comes the cash flow. And I
9 haven't run the economics on that, on where we think we'll
10 -- we could be, but, you know, we could very easily be at
11 -- on the DL lease and the EF lease, you know, we could be
12 at 7500 barrels a day in three months. So, you know, that
13 would generate some fairly significant cash flow for us.

14 Q. Where would you get all those pumping units that
15 -- used ones?

16 A. We're -- no, we've been buying new. We bought
17 new ones. Yeah, sure have. New ones -- it surprised me
18 also, new ones -- we bought the size 228 pumping units, and
19 they were -- new ones were within \$4000 of used ones. What
20 you've seen is -- oh, Weatherford's designing a good
21 pumping unit now and --

22 Q. Really?

23 A. -- some of these other major public companies are
24 national, coming out with -- well, they've, of course, been
25 making units, but they're gearing up to build equipment

1 again.

2 EXAMINER JONES: Well -- David?

3 EXAMINER BROOKS: Okay, thank you.

4 EXAMINATION

5 BY EXAMINER BROOKS: 303

6 Q. Mr. Baber, do you remember that there was a
7 compliance proceeding brought back in -- I think it was
8 probably '02 -- that involved a whole bunch of operators,
9 of which Pronghorn was one, to get inactive wells plugged?

10 A. I don't remember exactly the time, but I remember
11 the meeting, yes, sir.

12 Q. Were -- some of the wells that were involved in
13 that proceeding, weren't they some of the same wells that
14 are on these -- that are in this list now?

15 A. I don't believe so. Well, that State M is. I
16 don't believe the -- Well, the State M, and then we
17 mentioned the Hastie, that lease was.

18 Q. Well, we go back and look here -- I don't
19 remember which ones were involved, but we go back and look
20 here on this list and we've got wells that have been
21 inactive since 1985, 1993, 1987 -- a whole bunch of them.
22 Not -- a lot of them weren't, but a lot of them are 2000's
23 and something, but there's a bunch of them that date back
24 to the 1990s.

25 But anyway, this order -- Number 13,859, and then

1 Number 13,858 -- I'm trying to -- give me a minute to find
2 13,858, I've lost it here.

3 Okay, that's Exhibit Number 9. No, I've got de
4 novo here. That's Exhibit Number 9, 13,858. If you look
5 at this -- pages -- the third and fourth pages of Exhibit
6 9, there's a list of wells there, (a) through (p), and then
7 if you look at Exhibit 2 -- at paragraph (2) and follow
8 along with me there, I'll read that, Should Pronghorn
9 Management fail to comply with ordering paragraph (1), the
10 Division shall be authorized to plug and abandon the
11 subject wells.

12 Now if you look at paragraph (1), which is on the
13 third page of that order, it says that you're to plug and
14 abandon or restore to or otherwise bring into compliance
15 those wells by October 2, 2007, correct? Is that what it
16 says?

17 A. Yes, sir.

18 Q. And you didn't do that, did you? For any of
19 those wells?

20 A. No, sir.

21 Q. And so under the terms of this order, the
22 Division is authorized to plug and abandon those wells?

23 A. Mr. Brooks, if you want to plug and abandon the
24 wells, I guess that's your discretion.

25 Q. Did you disclose to the investors that you've

1 recruited to put money into these wells, that there's an
 2 order in place that says that the Division can come in any
 3 day and plug and abandon those wells?

4 A: Not specifically, no, sir. The investors know
 5 that we need to get the work done and are committed and
 6 willing to get the work done also.

7 EXAMINER BROOKS: Thank you. That's all I have.

8 EXAMINER JONES: Mr. Padilla?

9 MR. PADILLA: Nothing further.

10 EXAMINER JONES: Okay. Do you guys want to do
 11 closing statements?

12 Thanks.

13 THE WITNESS: Is that it for me?

14 EXAMINER JONES: -- Mr. Baber.

15 THE WITNESS: Thank you.

16 MS. MacQUESTEN: Mr. Examiner, I think the
 17 evidence speaks for itself.

18 The question of waste has come up. I did want to
 19 say that we're proceeding under a particular statute. The
 20 Legislature has given us the power to issue orders

21 requiring any well to be plugged and abandoned if the
 22 operator is in violation.

23 By stating it that way, the Legislature has made
 24 the decision that this is an appropriate remedy for the
 25 OCD. It could have written it so that we had to have a

1 finding that no waste would occur or minimal waste would
2 occur, but they didn't. A separate provision that provides
3 for this remedy.

4 I think it's an appropriate remedy in this case,
5 given what we've heard today. And although we don't have
6 to prove that the waste would be minimal, I think we have
7 shown that.

8 Another operator could take over these wells.

9 Mr. Baber was the operator for many years. I think the
10 true waste was having him be the operator and sit on these
11 wells that are supposedly productive. A financially
12 viable, competent, compliant operator could operate these
13 wells, and now is the time to move to such an operator, and
14 not Mr. Baber.

15 EXAMINER JONES: Okay.

16 MR. PADILLA: Very briefly, Mr. Jones, I think
17 that -- there's no question that the Oil Conservation
18 Division has a remedy that it's proposing. I think that it
19 would be -- fly in the face of the Oil and Gas Act to plug
20 and abandon oil and gas wells that are producing or are
21 capable of producing oil and gas.

22 The testimony here has been that Mr. Baber has
23 finally got himself somewhat able to operate and these
24 wells back in production from a financial standpoint.

25 I think, sure, you can go out and do a fire sale

1 and sell these wells and have somebody else produce it. I
2 think Mr. Baber could have walked away and very frankly
3 said, if the Oil Conservation Division is going to
4 interpose and insist on having complete compliance with the
5 mandate of the orders, then he's in violation, and so
6 therefore there is no remedy.

7 I don't think that the Oil Conservation Division
8 has ever taken a posture like this in the past, in terms of
9 and I understand there's a new -- there's a new
10 atmosphere and there's new regulations that mandate some
11 better management of oil and gas wells.

12 The market now has changed a lot of practices and
13 has actually allowed resurrection of oil and gas fields
14 that have not been productive in the past due to economic
15 reasons. Mr. Baber's testimony today has been that the
16 price of oil today allows -- with the ability to inject oil
17 or produced water in the vicinity of the wells, to
18 produce the wells economically and with a financial reward.

19 Throwing \$72,000 at the Oil Conservation Division
20 doesn't solve any problems. Mr. Baber has testified he's
21 willing to pay the \$72,000, but right now needs to get this
22 well set up producing oil and gas.

23 So again, there's no question that the OCD has a
24 remedy available to put Mr. Baber out of business. It
25 doesn't make any sense, but -- especially when there's no

1 verification that waste is occurring due to maintenance or
2 that there's an environmental threat to anything out there.

3 The -- Mr. Sanchez's testimony has been that
4 since the last hearing there's been no inspections. Prior
5 to this hearing there's no update on the inspection, and
6 there's been no added testimony with regard to the
7 condition and status of the wells to verify whether or not
8 there's an environmental threat or whether there's waste
9 occurring there from the standpoint of mismanagement.

10 In addition to that, we could be in *de novo*
11 hearings. Mr. Baber chose not to be in *de novo* hearings,
12 and after issuance of the application -- after these
13 orders, we met with the Division trying to solve this
14 problem. And there was no agreement that we would dismiss
15 our *de novo* application, I agree that with counsel. But
16 Mr. Baber at that point decided that rather than spend his
17 time arguing about compliance issues in hearings that would
18 be unproductive as far as complying, he would rather spend
19 his time trying to get these wells under compliance.

20 Mr. Baber's testimony has been here, today, has
21 been that he has demonstrated effort, and it shows he has
22 had at least one well and one injection well ready and able
23 to operate, and very shortly he will have two additional
24 wells. And so I think in terms of the spirit of what he's
25 supposed to be doing, he has complied with that.

1 So we would ask that the Division not take a
2 severe action of putting Mr. Baber out of business and in
3 effect, confiscating his oil and gas production.

4 The issue of whether or not lessors are being
5 paid royalty or not is not for the Division to worry about.

6 I'm not saying that there isn't some concern there, but at
7 the same time the OCD is not -- or has no jurisdiction to
8 decide whether or not a lessor is being paid his or her
9 royalty.

10 We have dealt with the Land Office, the Land
11 Office is satisfied and has not canceled oil and gas
12 leases, and Mr. Baber has complied with the requests of the
13 State Land Office to deal with the DL leases, which he has
14 done.

15 One of the leases he did not fight, and that
16 lease did expire. The DL leases with the land office have
17 been -- they have not been canceled or expired in any other
18 way. So in terms of having somebody at least acquiesce to
19 Mr. Baber's request, the Land Office has done so.

20 So I think that while there are concerns with the
21 OCD, I think that Mr. Baber is moving along fairly
22 satisfactorily and has essentially complied with the spirit
23 of the orders. True, he hasn't paid the \$72,000, and he
24 has not done that timely, nor has he requested some stay
25 with regard to that. But in terms of -- we're here today

1 and we're responding, and I think that Mr. Baber ought to
2 be given additional time with which to comply and then
3 periodically report to the OCD as to what his status is,
4 and then at that time decide whether he should plug and
5 abandon wells, based on his continuing evaluation of oil
6 and gas wells as he goes through his resurrection of these
7 properties.

8 Thank you.

9 EXAMINER JONES: Thank you.

10 Do you want to say one more thing?

11 MS. MacQUESTEN: May I have a reply?

12 EXAMINER JONES: Sure.

13 MS. MacQUESTEN: On the issue of good faith,
14 we're talking about a history of noncompliance that goes
15 back many years. And as Mr. Brooks pointed out, it goes
16 back even further than the evidence that we've presented
17 today.

18 Mr. Baber has ignored letters of violation,
19 inactive well agreed compliance orders, two hearing orders,
20 a letter canceling authority to transport and inject.

21 If Mr. Padilla wants to talk about good faith,
22 what could Mr. Baber have done to show good faith? Well,
23 at a minimum, after those orders were issued, he could have
24 done the things that did not require a lot of money to do:
25 Correct the false reporting and provide the lessor

1 information.
2 Mr. Padilla is still arguing about whether we are
3 even entitled to ask for the lesser information. That is a
4 dead issue. The order is in place, it's a final order,
5 they need to provide it. It doesn't cost him any money to
6 do it, he could have done it. He could have filed those
7 reports.

8 Not only did he not take those actions when the
9 orders came out, he didn't take the action when we filed
10 the motion to show cause. He knew we would be pursuing
11 this and saying that he hadn't taken this corrective
12 action, and he still hasn't.

13 The conduct that he's taken has not been to
14 satisfy the OCD, it's been to satisfy his own business
15 interests and his investors, whom he apparently has not
16 told about all his compliance problems. He is ignoring
17 every roadblock that is going to be thrown in front of him
18 because of his own violations and continued noncompliance.

19 This is not something the OCD is doing to him, this is
20 something he has done to himself, and he is not recognizing
21 the reality of those things.

22 So I take exception to the concept that Mr. Baber
23 has shown good faith.

24 Thank you.

25 EXAMINER JONES: Okay, thank you both.

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With that, we'll take Case 13,859 and Case 14,052
under advisement.

And let's take a brief recess and come back at
2:30.

(Thereupon, these proceedings were concluded at
2:19 p.m.)

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

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 Division 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 April 3rd, 2008.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2010

STEVEN T. BRENNER, CCR
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