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

**ORIGINAL**

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSION MEETING  
DOCKET NO. 25-09

July 16, 2009  
Santa Fe, New Mexico

BEFORE: MARK E. FESMIRE: Commission Chair  
JAMI BAILEY: Commissioner  
WILLIAM C. OLSON: COMMISSIONER

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This matter came for hearing before the New Mexico Oil Conservation Commission on July 16, 2009, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis Drive, Room 102, Santa Fe, New Mexico.

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1 CHAIRMAN FESMIRE: Good morning. The record  
2 should reflect that this is the regular monthly meeting of  
3 the New Mexico Oil Conservation Division.

4 The record should also reflect that it's  
5 9:00 a.m. on Thursday, July 16, 2009. We're located in  
6 Porter Hall in the Wendell Chino building in the offices  
7 of the Energy, Minerals and Natural Resources Department.

8 The record should also reflect that  
9 Commissioners Bailey, Olson and Fesmire are all present.  
10 We therefore have a quorum.

11 And the first order of business before the  
12 Commission today is the minutes of the June 18, 2009  
13 Commission meeting. Have the Commissioners had a chance  
14 to review the minutes as presented by the secretary?

15 COMMISSIONER BAILEY: Yes, I have, and I move we  
16 adopt them.

17 CHAIRMAN FESMIRE: Is there a second?

18 COMMISSIONER OLSON: Second.

19 CHAIRMAN FESMIRE: All those in favor of  
20 adopting the minutes as presented by the secretary for the  
21 June 18, 2009 meeting, signify by saying "aye."

22 COMMISSIONER BAILEY: Aye.

23 MR. OLSON: Aye.

24 CHAIRMAN FESMIRE: The record should reflect  
25 that the minutes were unanimously adopted, signed by the

1 Chairman, and conveyed to the secretary.

2 The next item before the Commission is final  
3 action in Case No. 13957, the De Novo Application of  
4 Energen Resources Corporation to amend the cost recovery  
5 provisions of the Compulsory Pooling Order No. R-1960 to  
6 determine the reasonable costs and the authorization to  
7 recover costs from the production of pooled mineral  
8 interests in Rio Arriba County, New Mexico.

9 Counsel is still working on that order. It  
10 hasn't been presented to the Commission yet, so we'll take  
11 it up later in the meeting.

12 The next item before the Commission is Case  
13 No. 14055, the Application of the New Mexico Oil  
14 Conservation Division for a Compliance Order against C&D  
15 Management Company doing business as Freedom Ventures.  
16 The attorneys are present and I presume ready. Mr. Swazo,  
17 are you ready today?

18 MR. SWAZO: That's correct, Mr. Chair, I am  
19 ready.

20 CHAIRMAN FESMIRE: Okay. Mr. Padilla?

21 MR. PADILLA: We're ready.

22 CHAIRMAN FESMIRE: Okay. At this time we will  
23 take the entry by the attorneys and proceed with the case.  
24 Mr. Swazo?

25 MR. SWAZO: Sonny Swazo on behalf of the Oil

1 Conservation Division. I've already tendered exhibits and  
2 I'd like to tender another exhibit which will be helpful  
3 for purposes of this presentation.

4 The exhibit that I would tender to you folks is  
5 the Order of the Commission, and I'd ask you to take  
6 administrative notice of the Order. And with that, may I  
7 approach?

8 CHAIRMAN FESMIRE: Mr. Padilla, do you have any  
9 objection?

10 MR. PADILLA: No.

11 CHAIRMAN FESMIRE: Mr. Swazo, you may approach.  
12 Mr. Padilla, do you have an entry?

13 MR. PADILLA: Your Honor, we tendered exhibits  
14 prior to today, but I have an exhibit.

15 MR. SWAZO: Mr. Chair, I never got any exhibits  
16 that were supposedly tendered last Friday.

17 CHAIRMAN FESMIRE: Mr. Padilla?

18 MR. PADILLA: We delivered a copy of the portion  
19 of the pretrial statement and exhibit for Mr. Swazo and  
20 three others for the Commission.

21 MR. SWAZO: Well, the rules require exhibits to  
22 be tendered seven days in advance, no later than 4:00 on  
23 Thursday for Commission hearings. It also requires that  
24 there be six copies tendered at that time.

25 CHAIRMAN FESMIRE: Okay. Mr. Padilla?

1 MR. PADILLA: Mr. Chairman, most of these are  
2 copies of what was included in the OCD's exhibit list  
3 anyway. As well, plug-in reports are either plug-in  
4 reports that were -- well, they were submitted by C&D  
5 Management tendered to the BLM, and most of them are  
6 exhibits offered by OCD.

7 The first page of this is simply a demonstrative  
8 type of check list that C&D Management submitted. Again,  
9 I thought it would be easier for the Commission to follow  
10 as we present our testimony.

11 CHAIRMAN FESMIRE: Okay. Do you have any  
12 response to the untimely filing?

13 MR. PADILLA: Your Honor, I just didn't get  
14 those in time from C&D Management as to what we had. But  
15 in terms of even a prehearing statement, it's basically  
16 very clear cut as to what the issues are.

17 There's no mystery in this case. Our case is  
18 simply one where on August 14th of last year, the  
19 Commission issued an Order that compliance was supposed to  
20 be completed one month later, September 14th. We're here  
21 to argue that.

22 CHAIRMAN FESMIRE: Okay. Mr. Padilla, to the  
23 extent your exhibits are demonstrative, we'll go ahead and  
24 accept them, but when it comes to entering them into the  
25 record, if they're not a duplicate of what was already

1 filed by the OCD, I would expect Mr. Swazo to object at  
2 that point.

3 MR. PADILLA: I have no problem. I think  
4 they're matters of public record. We're not submitting  
5 anything that is not of public record, they're in the  
6 OCD's files.

7 CHAIRMAN FESMIRE: Okay. Mr. Swazo, do you  
8 object to handling it that way?

9 MR. SWAZO: Well, I've had a chance to review  
10 his exhibit list. I know that C&D Management had filed  
11 some documents earlier. But I haven't had a chance to  
12 review these exhibits, so I would object to them.

13 And, you know, to the extent that some of the  
14 exhibits are duplicates, I have no problems with those  
15 exhibits being admitted, but with regard to the other  
16 exhibits, I do have issue with that, because C&D  
17 Management is operated by an attorney.

18 I'm sure he's familiar with the time limits that  
19 are required for filings when you're here before  
20 administrative agencies or courts or other public bodies.

21 In addition, he's represented by an attorney who  
22 has also appeared several times before this Commission.  
23 So I do object to the untimeliness of the exhibits.

24 CHAIRMAN FESMIRE: Okay. Well, Mr. Swazo,  
25 barring a showing of undue prejudice by nonadmission, I

1 don't intend to admit anything that isn't duplicative of  
2 the OCD exhibits. I'll tell you that up front.

3 So, to that extent, I'll allow Mr. Padilla to  
4 provide demonstrative exhibits, but they won't be admitted  
5 unless he can show that it would drastically unduly  
6 prejudice his client, okay?

7 MR. SWAZO: Okay.

8 CHAIRMAN FESMIRE: Mr. Padilla, proceed. I want  
9 to make sure the record has your name and information on  
10 the entry.

11 MR. PADILLA: Ernest L. Padilla for C&D  
12 Management.

13 CHAIRMAN FESMIRE: Mr. Swazo, do you have an  
14 opening statement?

15 MR. SWAZO: I do, Mr. Chair. I want to touch  
16 upon my prehearing statement real briefly. I'm not  
17 calling Richard Inge who is listed as a witness. I'm not  
18 going to call Richard Inge. And right now I'm not sure if  
19 I'm going to call Dorothy Phillips.

20 Last year we were here before the Commission  
21 because C&D Management had failed to file C-115s and  
22 failed to bring inactive files into compliance with Rule  
23 201, the Inactive File Rule.

24 At that time, Mr. Kizer testified that, quote,  
25 "I've never told you people I was going to do something

1 and not do it," While the Commission has issued an Order  
2 in this case and Mr. Kizer did not -- C&D Management did  
3 not do what the Commission had ordered C&D Management to  
4 do.

5 And so we reopened the case because Operator has  
6 continued noncompliance with C-115 reporting, and also  
7 noncompliance with the Order in this case.

8 The absence of the language in the Order which  
9 would have required Operator to plug wells for  
10 noncompliance is another reason why we're here. Had the  
11 language been included in the Order, then this would have  
12 allowed OCD to plug the wells in the event of Operator's  
13 noncompliance as provided for in the Order in Paragraph  
14 No. 4.

15 As I stated, since we were here last July,  
16 Operator has continued to not file C-115s. OCD has sent  
17 several compliance letters to Operator over the last  
18 several months to try to get Operator to file C-115s. And  
19 there was no response, so OCD had to reopen this case.

20 Additionally, Operator has not filed the  
21 additional financial assurance that he testified he would  
22 file for the Schneider No. 1. And this was also addressed  
23 at last year's hearing.

24 Paragraph 3 of the Commission's Order ordered  
25 Operator to comply with OCD's production reporting rule

1 and file true and accurate reports electronically on Form  
2 C-115 for all its wells for all months from January 2008  
3 through and including May 2008 which were then the current  
4 due reporting periods.

5 The Order required Operator to file those  
6 reports no later than September 14, 2008. Operator  
7 testified that the person it had hired to file its C-115s  
8 had all the necessary information and would be filing the  
9 C-115s once she got back from vacation.

10 C-115s for January 2008 were filed on August 4,  
11 2008, however, no C-115s were filed for the other  
12 reporting periods as provided for in the Order or  
13 subsequent periods.

14 In November 2008, OCD began sending Operator  
15 letters notifying Operator of OCD's intent to revoke  
16 operator's authority to transport from or inject into  
17 wells Operator's -- into Operator's wells for Operator's  
18 failure to file C-115s.

19 OCD sent a total of nine letters over several  
20 months during that time, and Operator did not file any  
21 C-115s. So on February 20, 2009, OCD moved to reopen this  
22 case.

23 On March 26, 2009, Operator began filing C-115s,  
24 however, by Operator's owned admission to OCD personnel,  
25 the C-115s were incorrect.

1 Operator failed to comply with the Order in  
2 Paragraph No. 3. Ordering Paragraph 4 of the Commission's  
3 Order states:

4 "In the event that C&D Management  
5 fails to comply with the Order in Para-  
6 graphs 1, 2, and 3 within the time  
7 period provided, the Division may proceed  
8 to plug and abandon any or all of C&D  
9 Management Company's wells and restore  
10 the well sites, and any applicable assurance  
11 shall be forfeited to the Division."

12 This language authorizes OCD to plug and abandon  
13 Operator's wells and forfeit any applicable financial  
14 assurance in the event that Operator fails to comply with  
15 the order and file the C-115s within the time provided by  
16 the Order.

17 However, Section 70-2-14(B) of the Oil and Gas  
18 Act states:

19 "If any of the requirements of the  
20 Oil and Gas Act or the rules promulgated  
21 to that Act have not been complied with,  
22 the Oil Conservation Division, after notice  
23 and hearing, may order any well plugged  
24 and abandoned by the operator or surety,  
25 or both, in accordance with Division rules.

1                    "If the order is not complied with  
2                    in the time period set out in the Order,  
3                    the financial assurance shall be forfeited."

4                    Section 72-14(B) indicates that when an operator  
5                    has not plugged and abandoned a well and is in  
6                    noncompliance, an Order of the OCD may apply and abandon  
7                    the well and forfeit any applicable financial assurance.

8                    And because the Order does not contain that  
9                    language requiring Operator to plug and abandon the wells  
10                    for noncompliance, OCD cannot plug and abandon the wells  
11                    as provided for in Ordering Paragraph No. 4.

12                    As stated, Section 72-14 provides that if any of  
13                    the requirements of the Oil and Gas Act or other rules  
14                    promulgated to that act have not been complied with, the  
15                    OCD, after notice and hearing, may order any well plugged  
16                    and abandoned by the operator or surety, or both, in  
17                    accordance with the Division rules.

18                    As stated, Operator was not in compliance when  
19                    we first filed this application. Operator was not in  
20                    compliance when we went to hearing last July. Operator  
21                    did not comply with the Order and has continued to be in  
22                    noncompliance, and therefore, pursuant to this section, we  
23                    are asking for an order requiring Operator to plug and  
24                    abandon its wells by the date inserted, and in the event  
25                    of noncompliance, authorization to plug and abandon the

1 wells and forfeit the applicable financial assurance.

2           You will hear testimony about Operator's  
3 noncompliance with the Order and OCD's rules. You will  
4 hear how the State was stuck with plugging five inactive  
5 wells when Operator failed to bring them into compliance  
6 with OCD's inactive rule required in the Order.

7           Plugging did not start until more than six  
8 months after the compliance deadline in the Order. The  
9 cost to the State was a little over \$179,000 to plug the  
10 wells.

11           Operator has not reimbursed the State for these  
12 plugging costs. And Rule 19.15.5.9 states that when an  
13 operator is in compliance with Subsection A of Rule  
14 19.15.5.9, that the operator is not subject to a Division  
15 or Commission order issued after notice and hearing  
16 finding the operator to be in violation of an order  
17 requiring corrective action.

18           Because Operator did not bring these five  
19 inactive wells into compliance, it is in violation of the  
20 Order requiring it to bring the five wells into  
21 compliance.

22           Therefore, we are asking for an Order finding  
23 Operator to be in violation of the Order requiring  
24 corrective action. Once Operator has reimbursed the State  
25 for the plugging cost, it can file a motion under Rule

1 19.15.5.9, Subsection D, Subsection 3, for an Order  
2 declaring the Order satisfied.

3 I would also note that last year we had asked  
4 you to impose penalties for the time that C&D Management  
5 knowingly and willfully violated OCD rules.

6 Mr. Kizer asked you not to impose penalties for  
7 the time that he was not in control of the corporation.  
8 Mr. Kizer said he was taking full responsibility for the  
9 time he was in control of the corporation.

10 The Commission gave Mr. Kizer a break and  
11 limited the civil penalties only to the time Mr. Kizer was  
12 in control of the corporation. However, Mr. Kizer failed  
13 to pay those civil penalties.

14 And I just want to make it -- When the civil  
15 penalties were issued, at that time there was no issue  
16 regarding the validity of -- there was no issue with  
17 regard to the civil penalty validity. The Supreme Court  
18 decision regarding civil penalties wasn't issued until  
19 several months later.

20 And I would just point out that we are not  
21 pursuing the civil penalties, but I think it goes to show  
22 Mr. Kizer's unwillingness to comply with Division rules or  
23 Commission orders. And that's the conclusion of my  
24 opening statement.

25 CHAIRMAN FESMIRE: Okay. Mr. Padilla, would you

1 like to make an opening statement or reserve it?

2 MR. PADILLA: I'll reserve it.

3 CHAIRMAN FESMIRE: Mr. Swazo, do you have a  
4 witness to begin with?

5 MR. SWAZO: I have three witnesses. And can we  
6 have them all sworn in? I plan to call Mr. Brooks for  
7 just short testimony, but I don't want to keep him down  
8 here.

9 CHAIRMAN FESMIRE: Okay. Who are those  
10 witnesses?

11 MR. SWAZO: Mr. Daniel Sanchez, Ms. Jane Prouty,  
12 and Mr. David Brooks.

13 CHAIRMAN FESMIRE: Would those three please  
14 stand and be sworn?

15 (Note: The witnesses were sworn in by  
16 the court reporter.)

17 CHAIRMAN FESMIRE: Mr. Swazo, your first  
18 witness?

19 MR. SWAZO: My first witness is Daniel Sanchez.  
20 May I approach the witness?

21 CHAIRMAN FESMIRE: For what purpose, Mr. Swazo?

22 MR. SWAZO: To give him the witness book.

23 CHAIRMAN FESMIRE: You may, sir.

24 MR. SWAZO: Before I proceed, I just want to  
25 point out that Exhibit No. 41 in my exhibit packet is just

1 my affidavit providing notice and publication for this  
2 case just showing that we did republish this case to  
3 provide notice to interested parties.

4 CHAIRMAN FESMIRE: Okay.

5 MR. SWAZO: Notice was also provided to the  
6 sureties in this for the ones that we do have.

7 CHAIRMAN FESMIRE: And we're starting with  
8 Exhibit 41 because --

9 MR. SWAZO: That's the Affidavit of Notice and  
10 Publication.

11 CHAIRMAN FESMIRE: But, I mean --

12 MR. SWAZO: I'm sorry. Because we had already  
13 admitted Exhibits 1 through 40 at last year's hearing.

14 CHAIRMAN FESMIRE: Okay. I just wanted the  
15 record to reflect that.

16 MR. SWAZO: Thank you.

17 DANIEL SANCHEZ,  
18 the witness herein, after first being duly sworn  
19 upon his oath, was examined and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. SWAZO:

22 Q. Mr. Sanchez, would you please state your name  
23 for the record?

24 A. Daniel Sanchez.

25 Q. And you testified last year?

1 A. Yes, I did.

2 Q. And you're still employed by the Oil  
3 Conservation Division?

4 A. Yes, I am.

5 Q. And your title is still Oil Conservation  
6 Division Enforcement and Compliance Manager?

7 A. Yes, it is.

8 Q. And your duties remain the same?

9 A. Yes, they do.

10 Q. And your duties include overseeing enforcement  
11 of compliance orders?

12 A. Yes.

13 Q. And that duty includes coordinating plugging of  
14 wells under plugging orders?

15 A. It does now, yes.

16 Q. I want to talk to you about the Operator's  
17 compliance with the Order. And I gave you a copy of the  
18 Commission's Order in this case, right?

19 A. Yes.

20 Q. And that's been marked as Exhibit 94, I believe.  
21 Would you look at Exhibit No. 42?

22 A. Okay.

23 Q. Does this summarize what was ordered in the  
24 Commission's Order?

25 A. Yes, it does. It requires that the operator

1 plug and abandon four wells, the Shearn Becky Federal  
2 No. 1, Shearn Freedom Federal No. 2, Shearn Samantha  
3 Federal No. 1, and the Shearn Shilo Federal No. 1 as of  
4 September 14, 2008.

5 It requires Operator to bring the following  
6 wells into compliance with Rule 201 by September 14, 2008  
7 by plugging and abandoning, placing in approved temporary  
8 abandonment status, or returning to production by that  
9 date. Those are Muncy Federal No. 1, Muncy Federal No. 2,  
10 Saunders No. 12, Schneider No. 1, Scott Federal No. 1.

11 It also requires that Operator file C-115s for  
12 all those wells from January 2008 to the current due  
13 reporting period of May 2008 by September 14, 2008.

14 It required a payment of \$16,000 civil penalty  
15 by September 14, 2008. It also required the payment of a  
16 \$5,000 civil penalty if the five wells mentioned above  
17 were not plugged, and also Muncy Federal No. 2 by  
18 September 14, 2008.

19 Q. So going to the first requirement of the Order  
20 which was to plug and abandon the following Shearn wells  
21 by September 14, 2008, did Operator comply with that  
22 condition?

23 A. Partially. They plugged the Shearn Becky  
24 Federal and the Shearn Samantha wells prior to the  
25 required deadline.

1           The third well, Shearn Freedom Federal, was  
2 plugged but it wasn't plugged until after that deadline.  
3 And the Shearn Shilo Federal had not been plugged, and as  
4 far as I can tell, has not been plugged.

5           Q.    And if you look at Exhibit No. 76, that's a  
6 document that Operator had sent you?

7           A.    Yes, it is.

8           Q.    And it concerns the plugging of the Shearn  
9 wells?

10          A.    Yes, it does.

11          Q.    And in that report, Operator admits that it did  
12 not plug the Shearn Shilo within the time limits provided  
13 by the Order?

14          A.    Yes, it does.

15          Q.    And it also admits that it did not plug the  
16 Shearn Freedom Federal within the time limits provided by  
17 the Order?

18          A.    Yes, it does. It also shows that they did plug  
19 a fourth well, the Shearn Saranda Federal, and that well  
20 is not showing up in the OCD records as C&D Management  
21 being the operator of record for that well.

22          Q.    And if you look at Exhibit No. 79, would you  
23 identify that exhibit?

24          A.    This is the well list for JKM Energy, LLC. This  
25 was pulled on July 8, 2009. And this shows that the

1 Shearn Saranda Federal No. 1 is operated by JKM Energy.

2 Q. I want to ask you a few more questions about  
3 Exhibit No. 76. That was sent to you in regard to the  
4 April 9, 2009 period date?

5 A. Yes, it was.

6 Q. And it was sent to you by Operator?

7 A. Yes.

8 Q. And would you identify Exhibit No. 80 through  
9 82?

10 A. Exhibit No. 80 is a federal sundry. This is a  
11 Notice of Intent to Plug and Abandon the Shearn Saranda  
12 Federal No. 2. And that was submitted by C&D Management  
13 on March 12, '07 and approved by the BLM on March 21,  
14 2007.

15 Exhibit 81 is a C-144 OCD form. And this is a  
16 Pit, Closed-Loop System, Below-Grade Tank, or Proposed  
17 Alternative Method Permit or Closure Plan Application.

18 And the type of action is a permit of a pit,  
19 close-looped system, proposed alternative method. This  
20 too was submitted -- or this one was submitted, actually,  
21 by Mr. Kizer of C&D Management on September 13, 2008 and  
22 was approved by the OCD on September 16, 2008.

23 CHAIRMAN FESMIRE: Mr. Sanchez, I hate to  
24 interrupt you here, but I'm getting a little confused.  
25 Are we going to find out why C&D plugged the well that

1 belonged to JKM Energy here in the near future?

2 THE WITNESS: Yes.

3 CHAIRMAN FESMIRE: Okay.

4 A. Finally, Exhibit 82 is a BLM sundry. This was a  
5 final abandonment of Shearn Saranda Federal No. 1. And  
6 this one was submitted on March 6, 2009, approved  
7 March 14, 2009.

8 Q. So these three documents show that as far back  
9 as March 2007, Operator was claiming C&D Management was  
10 filing documents for the Shearn Saranda Federal No. 1 well  
11 indicating that it was the operator of the well?

12 A. That's correct.

13 Q. Who is responsible for the change of operator?

14 A. The operator taking over the well.

15 Q. And unless that happens, how do we treat the  
16 well?

17 A. It is still the operator of record who is  
18 responsible for that well.

19 Q. Do you know why C&D Management plugged this  
20 well?

21 A. Mr. Kizer gave an explanation that the BLM had  
22 requested that well be plugged. And there is an  
23 indication that the BLM did ask them to plug that well.

24 They believed that C&D Management was the  
25 operator of record because there was Change of Operator

1 Form filed with the BLM but it was never followed through  
2 with the OCD.

3 Q. Are you familiar with our chain of operator  
4 process?

5 A. To some extent, yes.

6 Q. OCD's process requires operators to file -- even  
7 if they're federal wells, OCD's procedures require  
8 operators to file a change of operator --

9 MR. PADILLA: Objection, Mr. Chairman. It's a  
10 leading question. He said that he was familiar to some  
11 extent. He can testify about that, but it's not up to  
12 Mr. Swazo to testify about procedures for who is the  
13 operator.

14 CHAIRMAN FESMIRE: Mr. Swazo, would you clarify  
15 the question and make sure that the witness knows the  
16 answer?

17 Q. To what extent are you familiar with the OCD's  
18 change of operator procedures?

19 A. To the extent that -- I'm not sure of the actual  
20 form, there is a change of operator form. I'm not sure  
21 about the number. But on that form, the current operator  
22 of record signs off on it, and the operator intending to  
23 take over the operation of that well signs off on it.

24 That document is then sent to the OCD for  
25 approval. It goes through our system and it's checked to

1 make sure that the operator taking over is in compliance  
2 with the rules.

3 Q. Would you look at Exhibit 43?

4 A. Okay.

5 Q. Would you identify that exhibit?

6 A. This is the well list for C&D Management  
7 Company. This was brought up on July 6, 2009. It shows  
8 13 wells that are currently operated by C&D Management.

9 Q. Does the Shearn Saranda Federal No. 1 appear on  
10 that list?

11 A. No, it does not.

12 Q. Did you get a chance to review the operator's  
13 report?

14 A. Operator report?

15 Q. I'm sorry, Exhibit No. 76, did you get a chance  
16 to review that document?

17 A. Yes, I did.

18 Q. Did you get a chance to review the final  
19 document attached which relates to plugging five wells and  
20 has a picture of a well being plugged?

21 A. Yes, I did. This -- well, it states in part  
22 that we attempted to plug and mark five wells on the  
23 Shearn lease since we had the equipment on site. The BLM  
24 and OCD expedited the plugging permit and temporary  
25 permit.

1           This extra hold continued to cause overruns.  
2     The BLM supervisor recommended that we plug the additional  
3     well. And this was the Shearn Saranda that got plugged  
4     and was the reason for the cost overruns, apparently.

5           And since that well wasn't a well that C&D  
6     Management is operator of record on, they would have been  
7     better off plugging the fourth well that was part of the  
8     Commission Order.

9           Q.     Were there other reasons for -- You indicated  
10    that the operator had indicated cost issues?

11          A.     Yes.

12          Q.     Were there other reasons why there were cost  
13    issues? Did the operator indicate any other issues as to  
14    why there were cost issues related to plugging of the  
15    Shearn wells?

16          A.     Yes. On the same document, second page of  
17    Exhibit 76, "Funding Circumstances."

18                    "We did not budget for the extra  
19                    well plugging nor did we anticipate the  
20                    extraordinary expenses for the backhoe,  
21                    excavator, drilling rig, welder, and other  
22                    ancillary services required. Frankly, we  
23                    were caught short and when combined with  
24                    the price of oil plummeting and the current  
25                    national economic circumstances as it

1           pertained to obtaining financing from lending  
2           institutions and private firms and individuals,  
3           CDM encountered difficulty accessing capital  
4           to complete our tasks.

5                        "We have learned that capital will be  
6           available in the next 10 to 14 days to plug  
7           and begin the reworking of wells on CDM's  
8           lease."

9           Q.    Would you turn to the last attachment which is  
10          part of this document where there's a picture of a  
11          gentleman plugging a well?

12          A.    Yes.

13          Q.    And turn to the second page where there is a  
14          picture with arrows pointing to various items.

15          A.    Yes.

16          Q.    Does Operator indicate on that page any cost  
17          issues related to the plugging of the Shearn wells?

18          A.    Not on this part, only on the previous page  
19          where it explains that a permit is required from both the  
20          Bureau of Land Management and the Oil Conservation  
21          Division.

22                        Our deadline date that we complete plugging is  
23          September 15, 2008. Plugging of four wells was complete  
24          on September 19, 2008, but they don't explain that one of  
25          the four wells wasn't on the Commission's Order, it was

1 actually that Shearn Saranda well that's in question.

2 Q. Okay, I think we're a little -- I think we're  
3 not in sync. I'm actually referring to the page with the  
4 picture on it.

5 A. Okay. I was going to get to that, too, I'm  
6 sorry, where it goes:

7 "Each hole required approximately  
8 160 sacks of cement. This was nearly  
9 six times more than estimated by Chris  
10 Jeffries. The wells Shearn Becky and  
11 Shearn Freedom were not cased wells.  
12 These were open holes. There, the water  
13 in the holes had caused the well to  
14 enlarge at the lower levels.

15 "Due to the time delay in plugging  
16 the wells, the water in the wells required  
17 that more cement be deposited in the holes  
18 for plugging. This increased the cost  
19 estimate at \$800 of cement to be nearly  
20 \$2,000 to \$3,000 per hole."

21 Q. So Operator's delay in plugging these wells  
22 contributed to the cost?

23 A. Yes, it did.

24 Q. I want to go to the second requirement which is  
25 to bring the five listed wells into compliance with Rule

1 201 by September 14. Did Operator comply with the second  
2 requirement of the Order?

3 A. No, it did not.

4 Q. And just for purposes of the record, Rule 201  
5 has since been renumbered to 19.15.25.8?

6 A. That's correct.

7 Q. And although it has been renumbered, the  
8 substance remains the same, correct?

9 A. Yes, that's correct.

10 Q. Now, Paragraph 3 of the Order authorized OCD to  
11 plug and abandon the five listed wells and forfeit any  
12 applicable financial assurance in the event the operator  
13 fails to bring the five wells into compliance with Rule  
14 201 by September 14, 2008. Did OCD plug and abandon the  
15 five wells?

16 A. Yes, we did.

17 Q. When did that start?

18 A. It was late March, early April, that time frame.

19 Q. And I'll have you identify Exhibits 64, 65, 66  
20 and 67. Those are sundry notices associated with the  
21 plugging and abandonment of Muncy Federal 1 and 2 wells?

22 A. Yes, they are.

23 Q. And who filed them?

24 A. These were filed by OCD's contractor who was  
25 plugging those wells.

1 Q. And were they approved?

2 A. Yes, they were.

3 Q. Approved by who?

4 A. By the BLM. Exhibit 64 is a BLM sundry, and  
5 this was the Notice of Intent to Plug and Abandon the  
6 Muncy Federal No. 1. It was submitted March 17, 2009 and  
7 approved on March 26 of '09. Of course, the BLM attached  
8 its conditions on that approval.

9 Exhibit 65, also a BLM sundry, is a subsequent  
10 report of plugging and abandoning of Muncy Federal No. 1  
11 that was submitted on April 24 and approved May 21 by the  
12 BLM.

13 Exhibit 66 is a BLM sundry and it's a notice of  
14 intent to plug and abandon Muncy Federal No. 2 submitted  
15 on March 17, '09, approved March 26, '09 with conditions.

16 Exhibit No. 67 is a BLM sundry subsequent report  
17 of plugging and abandonment of the Muncy Federal No. 2  
18 submitted April 24, 2009 and approved by the BLM May 1,  
19 2009.

20 MR. SWAZO: I want to bring to the Commission's  
21 attention real briefly that Exhibit 65, it was a one-page  
22 document, and the second page that has been stapled to it  
23 was accidentally included.

24 So, it was only supposed to be the first page,  
25 which was the sundry filed by Operator's company by the

1 contractor. The second page filed by Thomas Kaiser, that  
2 wasn't intended to be part of that exhibit. So I'd like  
3 to --

4 CHAIRMAN FESMIRE: Strike the page?

5 MR. SWAZO: Strike the page.

6 CHAIRMAN FESMIRE: Mr. Padilla, do you have any  
7 objection to striking the page on Exhibit 65?

8 MR. PADILLA: Your Honor, this has already been  
9 admitted into evidence. I don't see what it matters if  
10 it's included.

11 CHAIRMAN FESMIRE: Okay.

12 MR. SWAZO: You know, I have no problem with it  
13 being included, I just want to make sure that it's a  
14 separate document. I don't know if we can number it maybe  
15 65-A or something or some other way to --

16 CHAIRMAN FESMIRE: The record will reflect your  
17 statement concerning it, but we're going to go ahead and  
18 leave it because it's already been admitted.

19 MR. PADILLA: It's OCD's exhibit. We didn't  
20 have an objection to their exhibits.

21 CHAIRMAN FESMIRE: Their exhibits haven't been  
22 admitted yet.

23 MR. PADILLA: That's true.

24 CHAIRMAN FESMIRE: But if you have an objection,  
25 we'll leave them as proposed given Mr. Swazo's --

1 MR. PADILLA: Mr. Chairman, that's one of the  
2 exhibits that we have. It's part of our exhibit package.  
3 So I don't have a problem whether it stays or goes or  
4 whether he labels it 65-A or whatever. I just think it's  
5 part of what he tendered and it ought to stay.

6 CHAIRMAN FESMIRE: Mr. Swazo, it's actually up  
7 to you to move for admission of the exhibits. If you move  
8 this not be admitted, that this second page not be  
9 admitted, we can again take up the objections at that  
10 time. But like I said, it's up to you to move for the  
11 admission.

12 MR. SWAZO: I'll address that issue once I come  
13 to it.

14 CHAIRMAN FESMIRE: Okay.

15 Q. You testified that there were some conditions  
16 that were attached to the approved sundry notice?

17 A. Yes.

18 Q. What were some of the conditions that the BLM  
19 required with regard to the timing of the plugging?

20 A. They have the applicant to plug and abandon the  
21 well; it has a certain time frame to plug a well. It's 90  
22 days. If they don't plug that well within that time  
23 frame, then they need to reapply to the BLM to continue  
24 with that plugging.

25 Q. And so this condition requires the operator --

1 Provision No. 1 states, "Plugging operations will commence  
2 within 90 days from the approval date of this Notice of  
3 Intent to Abandon"?

4 A. That's correct. And it also continues,  
5 "If you are unable to plug the well  
6 by the 90th day, notify this office prior  
7 to the 90th day with the reason for not  
8 meeting the deadline and the date when we  
9 can expect the well to be plugged. Failure  
10 to do so will result in enforcement action."

11 Q. Does it also indicate what type of document  
12 should be filed after a well has been plugged?

13 A. Yes. It's going to be the BLM sundry -- same  
14 sundry that was on the Notice of Intent. There is a type  
15 of submission, and under that, after the well has been  
16 plugged, they would make a subsequent report on plugging  
17 and abandonment.

18 Q. And is that indicated in this condition of  
19 approvals in Exhibit 64?

20 A. Yes. It's in Paragraph 7.

21 Q. Okay. Now, going to Exhibits 69 through 72,  
22 those are sundry notices that are essentially with the  
23 plugging and abandonment of the Saunders No. 12 and  
24 Schneider No. 1?

25 A. Yes, they are.

1 Q. And they were filed by OCD?

2 A. OCD's contractor, yes.

3 Q. Going to the first document, when was that  
4 document filed?

5 A. Okay, Exhibit 69 is a BLM sundry of Notice to  
6 Intend to Plug and it was submitted on March 30, '09, and  
7 approved on April 2, '09. And once again, it has the  
8 standard BLM conditions for approval.

9 Exhibit 70, BLM sundry subsequent Report of Plug  
10 and Abandon submitted by OCD May 15, 2009, approved  
11 May 31, 2009.

12 Exhibit 71 is an OCD Form C-103, basically the  
13 same type of submission. It's a Notice of Intent to Plug  
14 and Abandon the Schneider No. 1. And this was submitted  
15 on March 17th, and approved on March 24th.

16 Exhibit 72 is also a Form C-103 which is the  
17 subsequent Report of Plug and Abandonment of the Schneider  
18 No. 1 well. This was submitted on April 24, 2009, and  
19 approved on April 30, 2009.

20 Q. And would you identify Exhibits 74 and 75?

21 A. Exhibit 74 is a BLM sundry. It's a notice of  
22 intent to plug the Scott Federal No. 1 submitted by the  
23 OCD on March 30, '09, approved by the BLM April 2009 with  
24 conditions.

25 And Exhibit 75 is a BLM sundry subsequent Report

1 of Plug and Abandonment of the Scott Federal No. 1  
2 submitted by the OCD on May 15, 2009, approved by the BLM  
3 May 31, 2009.

4 Q. While these wells were being plugged, did you  
5 ever hear from Operator, from C&D Management?

6 A. I had a phone message from Mr. Kizer and he had  
7 requested that the plugging be stopped on those wells.

8 Q. Would you identify Exhibits 77 and 78?

9 A. Exhibit 77 is a an e-mail from  
10 oilfreedom@aol.com. That's C&D Management doing business  
11 as Oil Freedom. And it is a request to the OCD to stop  
12 the plugging, basically, of those wells.

13 It also explains that since the BLM issue for an  
14 extension of time from March 23rd -- or the March 26th  
15 plugging approval, that it has precedence over our permit.  
16 And I believe he's talking about our order to plug.

17 Q. And so Exhibits 77 and 78 are e-mails that were  
18 sent to you?

19 A. Yes.

20 Q. And the -- I guess the last part of 77 were  
21 e-mails from oilfreedom@aol.com dated Wednesday, April 1,  
22 at 4:38 p.m. Is that the same e-mail that is identified  
23 in Exhibit No. 78?

24 A. Yes, it is.

25 Q. And the only difference is that Exhibit 78 has

1 the attachments that were included in that e-mail?

2 A. Yes.

3 Q. Now, going to Exhibit No. 78, that was sent to  
4 you on April 1, 2009?

5 A. Yes.

6 Q. And the BLM was copied on that?

7 A. Yes, they were. It was Jerry Blakey, who has  
8 been the inspector on those wells.

9 Q. Did Operator have any complaints regarding not  
10 being notified of the plugging of these wells?

11 A. Yes, he did mention that he was not notified  
12 that the wells were going to be plugged.

13 Q. And what does he state with regard to the Muncy  
14 wells?

15 A. That the Muncy wells were dormant and they were  
16 scheduled to pull the tubing and rework the wells.

17 Q. What does he indicate about production?

18 A. He did mention that -- the reason for his  
19 request to stop plugging was that some of these wells were  
20 producing at the time.

21 Q. And we were here last year; wasn't it explained  
22 to Operator what needed to be done in order to bring them  
23 into compliance with production requirements?

24 A. Yes, it was, it was explained that once a well  
25 was put back into production, that C-115's showing

1 production would have to be filed with the OCD in order  
2 for that to show up.

3 Q. And wasn't that stated in the Order?

4 A. Yes, it was.

5 Q. He states that the BLM extended the date to get  
6 certain wells into production, correct?

7 A. That's correct.

8 Q. And then he offered some documents in support of  
9 that assertion, right?

10 A. That's correct.

11 Q. And the documents he presented, were these  
12 Notices of Written Orders?

13 A. Yes. The Notice of Written Order which was  
14 issued to the operator on March 20, 2009, is pretty  
15 specific. And under the remarks section, it has,

16 "The definition of a temporarily  
17 abandoned well is a completion that is  
18 not capable of production in paying  
19 quantities but which may have value as  
20 a service completion.

21 "According to our records, the well  
22 referenced above has been shut-in or has  
23 been temporarily abandoned without  
24 authorization. 43 CFR 3162.3-4(C) requires  
25 that wells incapable of production in paying

1 quantities be promptly plugged and abandoned  
2 and requires approval for any well temp-  
3 orarily abandoned for more than 30 days."

4 So what Operator is claiming as an extension to  
5 April 30th, is actually a time frame for compliance with  
6 the Notice of Written Order issued by the BLM.

7 Q. And these Notices of Written Orders were based  
8 on inspections that happened on March 20, 2009?

9 A. I believe that's the correct date.

10 Q. Now, going to Exhibit No. 77, that's dated  
11 April 2, 2009?

12 A. Yes.

13 Q. In both exhibits, he asked OCD to stop plugging  
14 the wells. Did you stop plugging the wells?

15 A. No, we did not.

16 Q. And why did you not?

17 A. As OCD staff, I do not have the authority to  
18 countermand a Commission order. I was acting on a  
19 Commission order.

20 Q. And in this exhibit, Operator claims that  
21 Saunders 12 and Scott Federal 1 are producing, and again,  
22 all he had to do was file a C-115 to show that the well  
23 was producing?

24 A. That's correct. And it probably wouldn't have  
25 been plugged at that point.

1 Q. And again, he makes the claim that the BLM's  
2 extension to get wells in production supercedes OCD's  
3 order, correct?

4 A. That is what his statement is. That is an  
5 incorrect statement. This morning, I got a call from  
6 Jerry Blakey from the BLM. And he e-mailed me a letter.  
7 And this was regarding a request after the first day after  
8 this April date, and basically, C&D felt it was an  
9 extension to continue working on the wells.

10 And the gist of that e-mail that Mr. Blakey sent  
11 to C&D Management states:

12 "Tom, your issues at this point  
13 are strictly with OCD and the Commission.  
14 My orders are a completely separate issue  
15 and by no means have any bearings on the  
16 State's actions.

17 "I have issued written orders on the  
18 wells we show no production on since last  
19 April. When the abatement date of these  
20 orders expires, I will issue a Notice of  
21 Noncompliance as I've already done on the  
22 Shearn Shilo. I've made a field inspection  
23 of these leases and have found no significant  
24 production on any of these wells. I found  
25 no electrical service to any of these wells.

1 Most are not capable of producing as they  
2 are now.

3 "Although we work as closely as possible  
4 with the OCD, our actions are separate. If  
5 I can help you on BLM issues, let me  
6 know. Jerry."

7 And this was sent originally April 2, 2009.

8 Q. Did Operator indicate to the BLM why plugging  
9 should stop in that e-mail?

10 A. There was an attachment to that e-mail. And I  
11 didn't read it thoroughly, I didn't have this morning  
12 after he had sent it. But I believe what he was  
13 requesting was that since there was a stay in the hearing,  
14 that he be allowed to continue through the OCD stay until,  
15 I guess, the time of this hearing.

16 Q. There was a stay in this case?

17 A. Yes, there was.

18 Q. There was?

19 A. There was a hearing originally set for April  
20 9th, I believe -- Well, it was continued. I'm sorry, it  
21 was continued to today's date.

22 Q. Okay, so I'm a little confused. Can you clarify  
23 your testimony? Because you're saying there was a stay  
24 issued and then you're talking about continuances.

25 A. What I meant to say is there was a continuation

1 in the case. It was originally supposed to be heard on  
2 April 9th by the Commission. It was continued to today's  
3 date. There was no stay involved, it was a continuation.

4 Q. So how does that relate to Operator telling the  
5 BLM that the plugging should stop?

6 A. It has no bearing on that.

7 Q. But I mean, how does it relate based on what the  
8 Operator told Mr. Blakey in that e-mail --

9 A. Okay. My understanding from talking to  
10 Mr. Blakey and reading the e-mails was that any issues  
11 that the BLM had with C&D Management needed to be  
12 corrected in the time frame that the BLM was talking  
13 about. Any continuance of a hearing had nothing to do  
14 with their deadlines for being in compliance with the BLM.

15 Q. I want to get this correct, there was no stay  
16 issued in this case?

17 A. There was no stay issued in this case.

18 Q. And with regard to C&D Management's continuance  
19 of this case, what did Operator say that impact had upon  
20 this case, did it claim that motion had an impact on this  
21 case?

22 A. Like I said, I didn't read the motion  
23 thoroughly, but from speaking with Mr. Blakey, he felt  
24 that any continuance also meant that that time frame would  
25 allow him additional time to meet compliance issues.

1 Q. Okay. Going back to the Notice of Written  
2 Orders, written orders were issued on March 23, 2009?

3 A. Yes.

4 Q. The sundry notices that OCD's contractor filed,  
5 the Notices of Intent to Plug and Abandon those wells that  
6 were filed with the BLM, when were those approved, you  
7 said that those were approved after March 23, 2009?

8 A. Let me refresh my memory on the exhibits. Yes,  
9 they were approved on March 26th for the Muncy Federal  
10 No. 2 and for the Muncy Federal No. 1. And then the  
11 Saunders No. 12 was approved on April 2nd. And the  
12 Schneider No. 1 was approved by the State on March 24th.

13 Q. So those permits were approved after the  
14 March 23, 2009 date?

15 A. Yes.

16 Q. I wasn't clear on that. Have you since spoken  
17 with BLM personnel regarding OCD's plugging of the wells?

18 A. On several occasions, yes.

19 Q. And what's their position?

20 A. They support what the OCD is doing at this  
21 point.

22 Q. And with regard to the plugging of those wells?

23 A. They have absolutely no problem with the  
24 plugging of the wells.

25 Q. And in this e-mail, Operator indicates that the

1 C-115s that it did file were incorrect; is that right?

2 A. I believe that's correct.

3 Q. And at the bottom there, Operator states, "I am  
4 willing to abide by the Commission's determination after a  
5 review of the facts"?

6 A. That's true.

7 Q. When the Commission issued the Order in this  
8 case after the July hearing, wasn't it already making a  
9 determination after a review of the facts?

10 A. That's my understanding of the Order, yes.

11 Q. And did Operator abide by the Commission's  
12 determination?

13 A. No, he did not.

14 Q. Now, what about oil stock associated with the  
15 plugging of the wells, was there any oil stock associated  
16 with the plugging of the wells?

17 A. No, there wasn't.

18 Q. What was there?

19 A. There was a claim by the operator that when  
20 those wells were plugged and the equipment removed, that  
21 there was oil stock in those tanks and that the OCD  
22 confiscated that oil stock.

23 Speaking with the OCD office in Artesia who is  
24 overseeing the plugging and the contractor doing the  
25 plugging, there was no oil stock in those tanks at the

1 time, they were cleaned out, dismantled, and sent off for  
2 salvage.

3 Q. What did it cost the OCD to plug and abandon the  
4 five wells?

5 A. \$179,061.78.

6 Q. And has Operator reimbursed the State for those  
7 plugging costs?

8 A. No, he has not.

9 Q. Now, in going to the document that Operator  
10 tendered, what does he state at the bottom on the first  
11 page about the plugging with regard to the plugging costs?

12 A. Which exhibit again, I'm sorry?

13 Q. Did you get the copy of his demonstrative  
14 prehearing exhibit, the one for the witness?

15 CHAIRMAN FESMIRE: Mr. Swazo, why don't you  
16 approach counsel and get that document and take it to the  
17 witness?

18 A. Okay, this is a document from C&D Management  
19 Company, and it says that it is Exhibit No. 1 for C&D  
20 Management. And at the very bottom of that first page, it  
21 states, "Can we work an arrangement to maintain the  
22 \$25,000 bond and for C&D Management to make payments on  
23 the plugging expenses occurred by the OCD?"

24 Q. So that indicates Operator's willingness to pay  
25 the plugging costs?

1 A. Yes.

2 MR. PADILLA: Objection. Speculation.

3 CHAIRMAN FESMIRE: Sustained.

4 MR. SWAZO: I'll move on.

5 Q. Rule 19.15.5.9 states:

6 "An operator is in compliance with  
7 Subsection A of Rule 19.15.9 if the operator  
8 is not subject to a Division or Commission  
9 order issued after notice of hearing finding  
10 the operator to be in violation of an order  
11 requiring corrective action."

12 Is Operator in violation of the Commission's  
13 Order requiring him to bring the five wells into  
14 compliance by September 14, 2008?

15 A. Yes, they are.

16 Q. And how is Operator in noncompliance with that  
17 provision?

18 A. The Order had specific items that the operator  
19 was to take care of by a date certain, and the majority of  
20 those orders were -- the time limits were either not met  
21 or they were -- So that means they're in violation of the  
22 Commission's Order, therefore, being in violation of  
23 Rule 19.5.9.

24 Q. And who paid the cost for plugging the wells?

25 A. The Oil Conservation Division.

1 Q. Now, I want to go to the -- well, stepping back.  
2 Are you asking for a 5.9 Order in this case?

3 A. Yes, I am, I'm asking that the Commission find  
4 C&D Management in violation of 15.5.9 due to the fact that  
5 they did not meet the conditions of the Order that was  
6 issued last year.

7 Q. I'm going to skip over the third condition  
8 because that pertains to filing C-115s and I'm going to  
9 have Ms. Prouty testify on that.

10 With regard to the production, how was the Amoco  
11 well set up with regard to the meter?

12 CHAIRMAN FESMIRE: Mr. Swazo, would you clarify  
13 Amoco well? Which well are you talking about?

14 Q. Going to Exhibit No. 43, that exhibit lists the  
15 Amoco No. 1 well as being operated by Operator; is that  
16 correct?

17 A. Yes, it does. And it also shows a last  
18 production date of March 2009.

19 Q. Are you familiar with how that is metered?

20 A. To some extent, yes. On -- I believe it was  
21 July 14th, I spoke with the field inspector for the OCD in  
22 Artesia, Richard Inge, and he did an inspection of several  
23 of the wells operated by C&D Management to verify whether  
24 they were capable of production.

25 And notes I took on the Amoco, it shows evidence

1 of recent activity with a flow line to the tank. There  
2 was another flow line from the Amoco 1 to a meter, and  
3 this meter was tagged as being for the Schneider State  
4 No. 1.

5 And that tag was dated on January 23, '06, and  
6 it had the flow line entering directly into the pipeline  
7 at that point, a pipeline.

8 Q. And in looking at the well list, what's the date  
9 of last reported production for the Schneider No. 1?

10 A. It would be November 2001.

11 Q. And did you speak with BLM regarding the  
12 production for these wells, for Operator's wells?

13 A. Yes, we did, we spoke on that.

14 Q. And what did they tell you?

15 A. That they also had issues with whether or not  
16 certain wells were being produced and they were going to  
17 be requiring C&D Management to prove up the production on  
18 each of those wells.

19 Q. Now, I want to go to No. 4, the No. 4  
20 requirement of the Order. And with the understanding that  
21 we're not pursuing penalties at this time based on the  
22 Supreme Court ruling, but did Operator pay the penalties  
23 that were imposed in this case?

24 MR. PADILLA: Objection. That's a moot issue at  
25 this point, Mr. Chairman.

1 MR. SWAZO: It's not a moot issue, Mr. Chair.  
2 The issue goes to his willingness to comply with this  
3 Commission's orders.

4 CHAIRMAN FESMIRE: The Supreme Court decision  
5 didn't come down until after the compliance date in that  
6 Order had passed; is that correct?

7 MR. SWAZO: That's correct.

8 CHAIRMAN FESMIRE: So Mr. Padilla, wouldn't it  
9 be a pertinent issue if they had not complied by that  
10 point?

11 MR. PADILLA: Mr. Chairman, if the Commission's  
12 Order was in violation of the law, then it violated -- the  
13 Order was invalid as to penalties, so it shouldn't apply.  
14 Whether or not he paid the penalties doesn't go to the  
15 Operator's intent not to comply because that was an  
16 invalid order.

17 MR. SWAZO: Well, I think it also goes to  
18 credibility issues because Mr. Kizer was testifying that  
19 he was taking responsibility for matters that occurred on  
20 his watch.

21 CHAIRMAN FESMIRE: He did say he would pay the  
22 penalty, didn't he?

23 MR. SWAZO: That's correct.

24 CHAIRMAN FESMIRE: Okay. On that basis I'll  
25 overrule the objection.

1 MR. SWAZO: Thank you.

2 Q. The fourth requirement of the Order required  
3 Operator to pay a \$16,000 civil penalty by September 14,  
4 2009, correct?

5 A. Yes.

6 Q. Did Operator comply with that provision?

7 A. No, he did not.

8 Q. And going on to the fifth Order requirement, the  
9 fifth Order requirement required Operator to bring certain  
10 wells into compliance with Rule 201 by September 14, 2008.  
11 If Operator did not, the operator would have to pay a  
12 \$5,000 civil penalty.

13 And you have already testified that Operator did  
14 not bring the wells into compliance by the deadline. Did  
15 Operator comply with this requirement concerning the civil  
16 penalty and pay the \$5,000 in civil penalties?

17 A. No, he did not, but I would like to clarify  
18 that. I wrote in my opinion \$1,000 per well. They did  
19 come into compliance with two wells, so the penalty would  
20 have been \$3,000 as I read it.

21 But in any case, no, he did not pay the penalty  
22 or come into compliance with that part of the Order.

23 Q. Is Operator pursuing additional wells at this  
24 time?

25 A. Yes, he is. There were five APDs filed with BLM

1 on May 14, 2009. Of those five, four of those were  
2 withdrawn. C&D Management was unaware of the current  
3 requirement of the \$4,000 fee for each APD.

4 The BLM did review those APDs prior to their  
5 being withdrawn and they would have been rejected for  
6 numerous deficiencies anyway. The BLM tendered a  
7 letter --

8 MR. PADILLA: Objection. Hearsay. He's talking  
9 about something the BLM said. And I think there's some  
10 leniency here, but there's nothing in writing, nothing  
11 that suggests that they would have been denied or anything  
12 else. So we don't know. There's no one from the BLM to  
13 testify about that.

14 CHAIRMAN FESMIRE: I'll sustain that objection,  
15 Mr. Swazo.

16 MR. SWAZO: So does that mean that I can't ask  
17 him questions about the APDs?

18 CHAIRMAN FESMIRE: No, to the extent the APDs  
19 exist, which you can ask him questions about, is what the  
20 BLM said and what the BLM maintained and things like that.

21 MR. SWAZO: Okay.

22 Q. So Operator has filed four or five APDs?

23 A. Five.

24 Q. And the requirement -- they've been filed since  
25 this last July's hearing?

1 A. Yes.

2 Q. Would you identify Exhibit No. 44?

3 A. Exhibit 44 is the Inactive Wells Additional  
4 Financial Assurance Report. This was for July 6, 2009 and  
5 it was filed with the OCD online.

6 Q. And what does it indicate?

7 A. It indicates that C&D Management is in violation  
8 of this Order. It owes \$6,725 of additional financial  
9 assurance on the Schneider No. 1.

10 Q. And wasn't the additional financial assurance  
11 issued for this well discussed at last July's hearing?

12 A. Yes, it was.

13 Q. So Mr. Sanchez, what are you asking for in this  
14 case?

15 A. The OCD is asking that the Commission find C&D  
16 Management in violation of 19.15.5.9 in that it failed to  
17 meet the conditions of its Order that was issued in August  
18 of 2008.

19 We are asking that the Commission also in that  
20 Order have C&D Management plug the remainder of its wells  
21 by date certain. If that date is not complied with, we're  
22 asking that the OCD be given permission to go ahead and  
23 plug those wells and go ahead and obtain any additional  
24 financial assurances that are available for those wells.

25 Q. Is there anything else that you would like to

1 add about this case?

2 A. Just that there is, I think, a clear indication  
3 that C&D Management, even given leeway at the last hearing  
4 by the Commission, that they continued to act in a fashion  
5 that is noncompliant with OCD's rules and requirements and  
6 Commission Orders.

7 And we believe at this time, C&D Management had  
8 their opportunity to show their good faith and come into  
9 compliance with these issues and they were given plenty of  
10 time to do so and they were unable to, if not unwilling,  
11 to be in compliance with those issues.

12 MR. SWAZO: I don't have anything else,  
13 Mr. Chair.

14 CHAIRMAN FESMIRE: Why don't we take a ten  
15 minute break and reconvene at 10:30, at which time,  
16 Mr. Padilla, you can begin your cross-examination.

17 (Note: A break was taken.)

18 CHAIRMAN FESMIRE: Back on the record. This is  
19 the continuation of Cause No. 14055. The record should  
20 reflect that all three Commissioners are present. We have  
21 a quorum and we will therefore begin with the  
22 cross-examination of Mr. Sanchez by Mr. Padilla.

23 CROSS-EXAMINATION

24 BY MR. PADILLA:

25 Q. Mr. Sanchez, you testified about some of the

1 directives that the BLM gave to C&D Management and you've  
2 also testified concerning the Order of the Commission in  
3 August of 2008.

4 The question I have with regard to that is, as  
5 far as plugging and abandoning the wells, who has  
6 controlling authority over plugging and abandoning wells  
7 on federal leases, the OCD or the BLM?

8 A. I believe that the OCD still has the authority  
9 on those wells. One of the requirements that we meet with  
10 the BLM when we do plug a well on federal land, is that  
11 they be given the opportunity to review the plugging  
12 procedure and actually approve the procedure.

13 Q. Does the BLM get notices of hearings for  
14 enforcement efforts as in this case in C&D Management --  
15 well first, with regard to the Order issued on August 14,  
16 2008 and today's hearing?

17 MR. SWAZO: I'm going to object. I think that's  
18 speculative, because he doesn't know if --

19 CHAIRMAN FESMIRE: It may be outside the  
20 witness's knowledge. If he doesn't know, he can make that  
21 statement.

22 A. I don't know if they get it officially. I know  
23 that I -- In talking with the BLM on a regular basis,  
24 which we do, they are aware of all the compliance issues  
25 that we are working on that may affect the BLM and our

1 properties. They have been helpful with providing us with  
2 information on this case.

3 We are working on a couple of other cases with  
4 the BLM where plugging on federal lands is going to be  
5 done and we have had no indication other than they are  
6 willing to work with us in any way, shape, or form as long  
7 as we are willing to work with them.

8 Q. Let me direct your attention to Exhibit 64  
9 concerning the Muncy Federal No. 1 well.

10 A. Okay.

11 Q. The second page of that was also attached to the  
12 other sundry notices for plugging and abandoning the  
13 wells. And my question regards Item No. 1 on the second  
14 page of Exhibit 64.

15 The question I have is, do you know what that 90  
16 day requirement there, or the commencement date for the  
17 plugging and abandoning, is that in the form of a  
18 regulation?

19 A. This is a BLM requirement, so I can only  
20 speculate, but I think it would be, yes.

21 Q. And that's just for commencement of plugging  
22 operations, right?

23 A. That's my understanding, yes.

24 Q. And that is not for completion of plugging  
25 operations?

1 A. That's my understanding, yes.

2 Q. Do you know whether this form was submitted for  
3 the wells that C&D Management actually plugged and  
4 abandoned?

5 A. I would think that it -- I haven't seen it in my  
6 packet, but I would think that if they did a plug-in on  
7 federal wells, for BLM approval they would have had to  
8 file the paperwork.

9 Q. Okay. And the second page also refers to  
10 43 CFR 3163.1?

11 A. Yes.

12 Q. That's cited in the first line of that second  
13 page, correct?

14 A. Yes, that's correct.

15 Q. Now, let's go up to Exhibit 42. The first four  
16 wells listed on Exhibit 42 are all federal wells, right?

17 A. Yes, they are.

18 Q. And then Item No. 2, you have the Muncy Federal  
19 No. 1, and then you also have the Scott Federal No. 1, and  
20 those are federal wells?

21 A. Yes, they are.

22 Q. Now, do you know what kind of a lease there is  
23 in terms of state or private fee land where the Saunders  
24 No. 12 is located?

25 A. I am not aware of that.

1 Q. How about the Schneider No. 1?

2 A. I'm not aware of that one either.

3 Q. Now, let's go through this list. Your testimony  
4 was that C&D Management plugged and abandoned the Shearn  
5 Becky Federal No. 1, right?

6 A. That's correct.

7 Q. And then also plugged the Shearn Freedom Federal  
8 No. 2?

9 A. That's correct.

10 Q. And the Shearn Samantha Federal No. 1?

11 A. That's correct.

12 Q. And the Shearn Shilo Federal No. 1 is the one  
13 that, as I understood from your testimony, when they dug  
14 it out, they ran into some costs that were not expected?

15 A. Yes.

16 Q. Okay. And you also testified about another well  
17 that was not required to be plugged by the OCD but that  
18 the BLM had indicated to C&D Management that it should  
19 also be plugged?

20 A. That's correct.

21 Q. And is that other well in the vicinity of this  
22 first well?

23 A. I do not know where the location is.

24 Q. All right. Can you elaborate on what happened  
25 at the Shearn Shilo Federal No. 1, what was wrong, why

1 they didn't plug that well, C&D?

2 A. I did not see the report, what actually went  
3 down when they went in to plug it, just that they had  
4 problems with the plugging and it was going to run into  
5 more time and costs.

6 Q. Now, the OCD went and plugged the five wells  
7 listed on Item No. 2, right?

8 A. Yes.

9 Q. And when did it commence plugging those wells?

10 A. The initial reports for plugging and abandonment  
11 were submitted in late March for most of them. I think  
12 there were a couple of them that were submitted in April.

13 Q. And that sundry notice had to be filed with the  
14 BLM, and those were done sometime in March?

15 A. Yes, the 17th of March.

16 Q. Who plugged the wells for the OCD?

17 A. Mayo Marrs.

18 Q. And what kind of a contract do you have to plug  
19 those wells?

20 A. I'm not sure exactly what --

21 Q. Do you have to follow the procurement code in  
22 order to have Mayo Marrs plug those?

23 A. Yes, we do. It's a contract that's been  
24 approved by the State.

25 Q. Do you know whether that contract is required

1 for each well that is plugged, or is it a blanket kind of  
2 contract?

3 A. It's pretty much a blanket contract.

4 Q. So how do you determine whether or not the  
5 plugging fee is appropriate for individual wells as you go  
6 along?

7 A. The actual cost to plug that well?

8 Q. Yes.

9 A. That's actually on a well-by-well basis. It's  
10 evaluated by the contractor, plugger, and those costs are  
11 submitted to the OCD. At that time, we review those  
12 costs, a purchase order is put into place, and approval is  
13 given to go ahead and plug the wells.

14 Q. Does Mayo Marrs have an exclusive contract to  
15 plug and abandon wells for the OCD?

16 A. No, we have a second contractor, as well, B, C  
17 and D, I believe are -- B, C and something, I can't  
18 remember the last letter, but we have two that are under  
19 contract with us.

20 Q. Did that second contractor submit a bid on these  
21 five wells that the OCD plugged?

22 A. No, they did not.

23 Q. How is the well equipment appraised when you  
24 have a well plugged?

25 A. I have no idea about that. One of our other

1 witnesses may be more familiar with that than I am, but I  
2 don't know.

3 Q. Assuming there's a pump jack on the well, would  
4 you agree with me that would have some value?

5 A. It depends on whether or not there are also flow  
6 lines to that well, whether there's electricity to that  
7 well, whether there's a pipeline. I mean, there's a  
8 number of factors that would go into that. Pump jack  
9 alone would not necessarily mean that it's capable of  
10 producing.

11 Q. I'm not asking about capability of the well to  
12 produce, I'm asking about the value of the personal  
13 property located on the well, and my example is a pump  
14 jack. And my question is how you appraise or how you give  
15 credit to the operator for the value of the pump jack if  
16 the pump jack is taken by the OCD?

17 A. I'm not familiar with that process.

18 Q. Who is familiar with that process at the OCD?

19 A. I believe David Brooks may be familiar with it.  
20 Or if it's not Mr. Brooks, it would be someone from the  
21 field office, one of the field offices where the well is  
22 being plugged.

23 Q. Do you know whether any value is given to the  
24 operator for portable well equipment if there is any well  
25 equipment on the well that has some value?

1           A.    Like I said, I'm not aware of that process, so I  
2    couldn't say.

3           Q.    In evaluating bids or -- Well, let me ask you,  
4    what process would you take in terms of plugging, say, the  
5    Muncy Federal No. 1 well, what do you do in order to get  
6    it plugged and abandoned?

7           A.    Okay, for, say, a single well, we already have  
8    contractors in place based on the bids that were put out.  
9    They are State approved contractors.

10                  At that time, Mr. Brooks determines whether a  
11    specific well is eligible to be plugged by the State. He  
12    ensures that all legal issues have been resolved and that  
13    that well is definitely allowed to be plugged.

14                  At that time, it goes on a list. At this time,  
15    we prioritize the list. If there are wells that may cause  
16    issues with the environment, we prioritize those wells at  
17    the top and try to take care of those types of wells  
18    first.

19                  If there are wells under specific orders, those  
20    wells are put into place. But my first specific well --  
21    Muncy wells like one of these, it was part of an order, so  
22    there was a grouping of wells that we went with and tried  
23    to get those plugged.

24           Q.    Were there any environmental issues involving  
25    any of these private wells that were plugged by the OCD?

1 A. Not that I'm aware of.

2 Q. At the time that the OCD started plugging the  
3 wells, was C&D Management out there working on other wells  
4 that complied with the Order?

5 A. I do not know that.

6 Q. You don't know?

7 A. I know that they were in the area but I don't  
8 know whether they were working on any of the wells that  
9 would need to come into compliance.

10 Q. Do you know whether any of these wells listed on  
11 No. 2 were plugged to a depth of 450 feet, more or less?

12 A. I'm not familiar with exactly how deep those  
13 wells were when they were plugged. I know they were  
14 shallow wells, but exact depth, I'm not familiar with.

15 Q. Do you know how this \$179,000 that is claimed by  
16 the Oil Conservation Division as having been paid for  
17 plugging and abandoning the wells, how that breaks down in  
18 terms of well costs as shown this No. 2?

19 A. Yes, I do.

20 Q. For the Muncy Federal No. 2, the final cost to  
21 the State for plugging was \$17,259.13. For the Muncy  
22 Federal No. 1, \$32,948.64.

23 MR. SWAZO: Can I interrupt you real quickly?  
24 The first, one you said Muncy Federal No. 2.

25 A. Muncy Federal No. 1 was \$17,259.13. Muncy

1 Federal No. 2, \$32,948.64. The Saunders No. 12,  
2 \$34,296.68. Schneider No. 1, \$43,256.07. Scott Federal  
3 No. 1 was \$26,066.25.

4 And then there was an additional bonding fee of  
5 \$25,235.01 charged to the State for the grouping of the  
6 ten wells plugged. There were other wells on this.

7 Q. I'm sorry, what was that for, the last figure?

8 A. It was a bonding fee, gross receipts tax, that  
9 kind of thing.

10 Q. And the bonding fee is required for what?

11 A. I'm not familiar with what that's required for.

12 Q. Do you know the depths of any of those wells?

13 A. That's not given on this particular document,  
14 no.

15 Q. Do you know why there's some disparity between,  
16 say, the drilling costs for the Muncy Federal No. 1 well  
17 at \$17,279 and the Schneider well at \$43,000 plus?

18 A. No, I'm not aware of that.

19 Q. Most of these wells were shallow wells, weren't  
20 they?

21 A. If I remember correctly, yes, most of them' are  
22 shallow.

23 Q. Going back to the second page on Exhibit 64, the  
24 OCD's Order requires plugging and abandoning to occur  
25 within 30 days of issuance of the order, right?

1 A. Right.

2 Q. C&D Management had to comply by September 14,  
3 2008 following the issuance of the Order on August 14th,  
4 right?

5 A. Yes.

6 Q. How do you reconcile this 90 day requirement as  
7 shown on Exhibit 64 with the Commission's Order of 30  
8 days?

9 A. The 90 day requirement is a BLM requirement that  
10 once a Notice of Intent to Abandon has been issued, that  
11 an operator has up to 90 days to commence operations.

12 It's not meant to say that they have to -- or  
13 that it's going to take 90 days to complete that  
14 operation. Most of the wells we've been able to plug  
15 within three or four days.

16 So there would have been plenty of time for C&D  
17 to go ahead and plug the wells based on the schedule given  
18 by the Commission's Order.

19 Q. In 30 days?

20 A. In 30 days, yes.

21 Q. And how do you know that?

22 A. Well, for one, they met the requirement on two  
23 of them; the second one was only a couple days late. And  
24 then they did meet the plugging of a fourth well, which  
25 they do not operate under our records, within a couple

1 days of that time frame, too.

2 Q. Exhibit 46 is a federal sundry notice form,  
3 right?

4 A. Yes, it is.

5 Q. The OCD doesn't approve that sundry notice,  
6 right?

7 A. No. We actually get a copy of that after it's  
8 been approved and we receive it for our records.

9 Q. Would the OCD approve -- order if that sundry  
10 notice is submitted, would the OCD approve it or would it  
11 reject it because it should have been filed with the BLM?

12 A. If the OCD were to receive a sundry that has  
13 been approved by the BLM, we would just hold it until we  
14 actually got a copy from the BLM that shows it was  
15 approved.

16 Q. So it has to be approved by the BLM first,  
17 right?

18 A. Yes.

19 Q. Okay. Now, you also testified about the Notices  
20 of Written Orders there on Exhibit 78.

21 A. Okay.

22 Q. Those are issued by the Bureau of Land  
23 Management, right?

24 A. Yes.

25 Q. And do you know what the import of the notice of

1 an order is?

2 A. It is a document that is issued to an operator  
3 when they are found to be out of compliance with an issue,  
4 a BLM issue, and they are given a time frame to meet  
5 compliance with that issue.

6 Q. And do you know what that time frame is?

7 A. I think that is dependant upon the type of  
8 violation.

9 Q. On those Notices of Written Orders, do you see  
10 any time limitations or deadlines in those?

11 A. Yes, I do. The date that it was issued was for  
12 March 20, 2009, and two boxes over, the corrective action  
13 to be completed by April 30, 2009.

14 Q. Okay. And that's right about the middle of the  
15 page, right?

16 A. Yes.

17 Q. Now, how do you reconcile that deadline with the  
18 Commission's deadline?

19 A. I don't. That was a deadline issued by the BLM.

20 Q. Now, those notices of written orders also apply  
21 to the same wells that are contained in Exhibit No. 42,  
22 right, the five wells that the OCD plugged?

23 A. It appears to be so, yes.

24 Q. Now, you're asking for a 5.9 Order; is that  
25 correct?

1 A. Yes.

2 Q. And that 5.9 is short for a long rule starting  
3 15 point something, right?

4 A. It's 19.15.5.9.

5 Q. Okay. And what are the sanctions that you're  
6 seeking under that Order?

7 A. We're asking the Commission to find that they  
8 were in violation of this rule here as to their compliance  
9 with that Commission Order.

10 At that time, we're asking that they also issue  
11 an Order having the operator plug their remaining wells by  
12 a date certain. And if they're unable to meet that  
13 deadline, that the OCD be allowed to go ahead and plug  
14 those wells.

15 Q. Okay. Let me direct your attention to  
16 Exhibit 79. Those were for the JKM Energy, LLC wells?

17 A. Yes.

18 Q. You have an exhibit listing the wells that are  
19 operated by C&D Management. I think it's Exhibit No. 43.  
20 The Amoco No. 1 well starting at the top, is that  
21 producing anything?

22 A. It shows as producing now, yes.

23 Q. Okay. Is the Hasties No. 16 producing?

24 A. Yes, it is.

25 Q. Is the Hasties No. 17 producing?

1 A. Yes, it is.

2 Q. How about the Hasties No. 18?

3 A. Yes.

4 Q. And the Hasties No. 19?

5 A. Yes.

6 Q. The Hasties 20?

7 A. Yes.

8 Q. And the Hasties 21?

9 A. Yes.

10 Q. And you're asking that those wells be plugged  
11 and abandoned; is that what you're asking?

12 A. Yes, that's our recommendation.

13 Q. Those are the only other wells that C&D  
14 Management operates; is that right?

15 A. According to this list, yes.

16 Q. All the other wells on that list have been  
17 plugged and abandoned, right?

18 A. They have been plugged but they have not been  
19 released yet, a second remediation is required before they  
20 can be taken off this list.

21 Q. I understand that, but generally, they've been  
22 plugged such that they cannot produce oil or gas, right?

23 A. At this time, yes.

24 Q. So you want to plug wells that are producing  
25 now, right?

1 A. In this case, yes.

2 Q. Now, you testified about the Amoco No. 1 having  
3 some kind of pipeline connection that wasn't approved, or  
4 something to that nature; is that right?

5 A. I didn't say that it wasn't approved, I just  
6 explained what was explained to us as far as what was  
7 found out in the field for that.

8 What I described was, the Amoco No. 1 had a flow  
9 line going from it, and a second flow line which would be  
10 going into a meter that was actually a meter from the  
11 Schneider No 1. And then from that meter, was going to  
12 another pipeline. I mentioned nothing about it not being  
13 approved.

14 Q. Correct me if I'm wrong, as I understand your  
15 testimony, the Amoco production was going to the Schneider  
16 meter and then to the pipeline?

17 A. Yes.

18 Q. Was there any production coming from the  
19 Schneider well?

20 A. We show no production since 2001 from the  
21 Schneider.

22 Q. So would the Schneider meter be metering  
23 correctly for the Amoco production?

24 A. I can't say that one way or the other until that  
25 meter has been tested. It may not be operable, for all I

1 know.

2 Q. But if it were operable?

3 A. Yes.

4 Q. Are you saying there's commingling? Or what's  
5 the violation there, is what I'm trying to understand.

6 A. I didn't insinuate that there was a violation, I  
7 was just describing what was found out in the field by our  
8 inspector. And if there is an appearance of commingling,  
9 then maybe that's the case.

10 Q. Okay, but right now there's no violation?

11 A. No, not that I'm aware of.

12 Q. Okay.

13 MR. PADILLA: I don't have anything else,  
14 Mr. Chairman.

15 CHAIRMAN FESMIRE: Before we go to Commissioner  
16 Bailey, Mr. Swazo, do you want to admit any of these  
17 exhibits?

18 MR. SWAZO: Yes. I'll move for the admission of  
19 all the exhibits with the caveat that Exhibit No. 65, the  
20 second page, these documents were separate documents in  
21 the well files and were not filed with the appropriate  
22 agencies together. It was a mistake on my part that they  
23 ended up being stapled together.

24 CHAIRMAN FESMIRE: Okay. Mr. Padilla, would you  
25 have an objection to either the admission or the

1 nonadmission --

2 MR. PADILLA: I think it ought to be admitted.  
3 I don't care whether it's 65-A or -- I mean, he submitted  
4 them, so -- It's part of the well record.

5 CHAIRMAN FESMIRE: Okay. At this time, we'll go  
6 ahead and admit all of the Exhibits 41 through 94,  
7 including the second page of 65 since it was filed. And  
8 Mr. Padilla -- It may be the only exhibit that Mr. Padilla  
9 had filed in a timely manner, so we'll go ahead and accept  
10 it.

11 MR. SWAZO: I'll go ahead and state for the  
12 record that it's my understanding that these documents  
13 were not together, they were filed at separate times. And  
14 they made their way into the well file.

15 One was filed by the OCD -- the first page was  
16 filed by the OCD, the second was filed by Mr. Kizer. And  
17 so there's separate documents which accidentally got  
18 stapled together and --

19 CHAIRMAN FESMIRE: And I understand that, but  
20 Mr. Padilla has the right to rely on your filings. So  
21 with that having been said, we'll go ahead and accept the  
22 entire exhibit packet as filed, okay?

23 MR. SWAZO: Okay.

24 CHAIRMAN FESMIRE: Commissioner Bailey, do you  
25 have any questions?

1 COMMISSIONER BAILEY: A couple.

2 MR. SWAZO: Do I get to do redirect?

3 CHAIRMAN FESMIRE: When we get all done.

4 MR. SWAZO: Okay.

5 COMMISSIONER BAILEY: If you turn to OCD  
6 Exhibit 43, it's the listing of the wells.

7 THE WITNESS: Yes, ma'am.

8 COMMISSIONER BAILEY: There are several columns  
9 on the right-hand side, the oil POD and the gas POD.

10 THE WITNESS: Yes, ma'am.

11 COMMISSIONER BAILEY: Could you explain what POD  
12 stands for?

13 THE WITNESS: The question has come up before  
14 and I asked it, and at this time, I cannot remember  
15 exactly what POD stands for.

16 COMMISSIONER BAILEY: But it's not production?

17 THE WITNESS: No. My understanding of it at the  
18 time, it is not production. I may be wrong, but I believe  
19 that's something that could be verified by Ms. Prouty.

20 COMMISSIONER BAILEY: Then we will ask her to  
21 clarify that. But as far as your knowledge goes, there's  
22 no value indicated on this well list for production from  
23 any of the wells?

24 THE WITNESS: Not that I'm aware of.

25 COMMISSIONER BAILEY: Okay. Then let's go to

1 Exhibit 78 which has "Notice of Written Orders" from the  
2 BLM.

3 THE WITNESS: Okay.

4 COMMISSIONER BAILEY: Within the remarks section  
5 in the middle of the page, there's a definition of a  
6 temporarily abandoned well.

7 THE WITNESS: Yes.

8 COMMISSIONER BAILEY: Could you read that  
9 definition into the record, please?

10 THE WITNESS: "The definition of a temporarily  
11 abandoned well is a completion that is not capable of  
12 production in paying quantities but which may have value  
13 as a service completion."

14 COMMISSIONER BAILEY: I'd like to key in on that  
15 phrase "in paying quantities." Does that have definition  
16 for OCD, or do you have an understanding of what  
17 production in paying quantities might entail?

18 THE WITNESS: My understanding is that as long  
19 as that well is actually capable of producing either oil  
20 or gas, that it would be a viable well.

21 COMMISSIONER BAILEY: In paying quantities?

22 THE WITNESS: In paying quantities.

23 COMMISSIONER BAILEY: That's the key I'm trying  
24 to zero in on.

25 THE WITNESS: Yes. I am aware of several

1 instances where an operator may be moving oil into a tank  
2 but not selling it because there's not enough in it to  
3 sell but just to keep up a lease or to keep the site  
4 active, and very small quantities of oil in that case or  
5 gas production are shown.

6 COMMISSIONER BAILEY: So in your estimation,  
7 would one MFC of gas that's currently selling at less than  
8 -- around \$3 be considered production in paying quantities  
9 for a month?

10 THE WITNESS: No.

11 COMMISSIONER BAILEY: But yet we don't have any  
12 indication on Exhibits 63 or 68 -- if you'll turn to those  
13 exhibits.

14 THE WITNESS: Exhibit 68?

15 COMMISSIONER BAILEY: Yes, 68, the second  
16 paragraph of Section 13 where it says the Saunders Federal  
17 No. 12 is a producing national gas well.

18 THE WITNESS: Yes, ma'am.

19 COMMISSIONER BAILEY: Without production  
20 reports, we have no idea if that producing gas well is  
21 producing at paying quantities, do we?

22 THE WITNESS: We do not know that, no.

23 COMMISSIONER BAILEY: So the OCD has no ability  
24 to say that this is a well that's producing in paying  
25 quantities without having C-115s filed?

1 THE WITNESS: We do not. That's correct.

2 COMMISSIONER BAILEY: And look at Exhibit 63.

3 THE WITNESS: Okay.

4 COMMISSIONER BAILEY: Under that same Section  
5 13, No. 1, it says that the Hasties 16, 17, 28, 19 and 21  
6 are wells that are currently producing oil and/or gas; is  
7 that correct?

8 THE WITNESS: That's correct.

9 COMMISSIONER BAILEY: But it doesn't say that  
10 they are producing oil or gas in paying quantities, does  
11 it?

12 THE WITNESS: No, it does not.

13 COMMISSIONER BAILEY: So as far as OCD knows,  
14 this may be one MFC per month?

15 THE WITNESS: That's correct.

16 COMMISSIONER BAILEY: And until and unless  
17 accurate C-115s are ever submitted, then the assumption  
18 can be that we don't know that these wells are actually  
19 producing in paying quantities in order to qualify under  
20 the BLM definition of temporarily abandon wells, right?

21 THE WITNESS: That's correct.

22 COMMISSIONER BAILEY: That's all I have.

23 CHAIRMAN FESMIRE: Commissioner Olson?

24 COMMISSIONER OLSON: I have no questions.

25 CHAIRMAN FESMIRE: Commissioner Bailey asked

1 most of the questions that I had, but I, too, want to  
2 elaborate and perhaps just make sure.

3 The five wells that Mr. Padilla asked you about  
4 whether or not they were producing, which exhibit was  
5 that?

6 THE WITNESS: Exhibit 43, I believe.

7 CHAIRMAN FESMIRE: The Amoco No. 1, do you know  
8 what amount of production Amoco No. 1 was making, what  
9 rate?

10 THE WITNESS: No, I don't.

11 CHAIRMAN FESMIRE: Okay. And there are no  
12 C-115s filed for Amoco No. 1?

13 THE WITNESS: Not that I'm aware of.

14 CHAIRMAN FESMIRE: Okay. And the Hasties  
15 No. 16, do you know what the production rate on that was?

16 THE WITNESS: No, sir.

17 CHAIRMAN FESMIRE: Are these gas or oil wells?

18 THE WITNESS: The Hasties 16 shows up as an oil  
19 well, and the Hasties 17 through 21 show up as gas.

20 CHAIRMAN FESMIRE: Okay. Yet they're completed  
21 in the same intervals?

22 THE WITNESS: I'm not sure.

23 CHAIRMAN FESMIRE: Okay. So OCD at the time  
24 they ordered these wells plugged to the time they were out  
25 there plugging these wells, while these wells may have

1 been capable of producing, we have no idea what rate they  
2 were producing at?

3 THE WITNESS: We had no indication that they  
4 were producing since we had no C-115s to show that, so  
5 that's correct.

6 CHAIRMAN FESMIRE: And these wells have not been  
7 plugged yet?

8 THE WITNESS: The Hasties wells?

9 CHAIRMAN FESMIRE: The Amoco and the Hasties  
10 wells.

11 THE WITNESS: No, they have not.

12 CHAIRMAN FESMIRE: Okay. Do we have current  
13 production rates on those, have current C-115s -- I guess  
14 the ones on the gas wells, they all would have a C-115 due  
15 after March; is that correct?

16 THE WITNESS: That's correct.

17 CHAIRMAN FESMIRE: And yet the date of last  
18 reported production was March?

19 THE WITNESS: Yes.

20 CHAIRMAN FESMIRE: And this was printed on  
21 July 6th, and at that point, at least the April production  
22 would be due on all of them, right?

23 THE WITNESS: That's correct.

24 CHAIRMAN FESMIRE: Now, Mr. Padilla asked you a  
25 couple of questions about the contract to plug; is that a

1 contract or is it a pricing agreement?

2 THE WITNESS: I'm not sure of the difference  
3 between the two, I guess. I call it a contract.

4 CHAIRMAN FESMIRE: Okay. And the cost that you  
5 quoted, the \$175,000 for the five wells, that was what it  
6 cost -- it cost the OCD less to salvage the equipment on  
7 the wells; is that correct?

8 THE WITNESS: I believe that's true. It's  
9 \$179,000.

10 CHAIRMAN FESMIRE: \$179,000, I'm sorry. Okay.  
11 I have no further questions. Mr. Swazo, did you have  
12 redirect?

13 MR. SWAZO: I do, Mr. Chair.

14 REDIRECT EXAMINATION

15 BY MR. SWAZO:

16 Q. Now, Mr. Padilla asked you regarding controlling  
17 authority over federal wells and who has controlling  
18 authority regarding plugging wells on federal lands; you  
19 spoke with BLM in this case?

20 A. Yes.

21 Q. And what was their position with regard to  
22 plugging wells that occur on federal lands?

23 MR. PADILLA: Objection. Hearsay. I think  
24 that's been ruled on already. He's testifying for  
25 somebody at the BLM who is not testifying here. We're

1 just getting opinion from Mr. Sanchez.

2 CHAIRMAN FESMIRE: I'll sustain the objection,  
3 Mr. Swazo, but I think you can rephrase it.

4 MR. SWAZO: Well, my response to that would be  
5 that Mr. Sanchez already testified to that. There was no  
6 objection at that time. I think it's untimely because he  
7 previously testified that the BLM was okay with the  
8 position -- their position was okay with us plugging the  
9 wells on federal lands.

10 CHAIRMAN FESMIRE: And a person in his position  
11 would know that, but the question would have to be  
12 rephrased.

13 Q. Going back to these sundry notices that were  
14 submitted by the OCD contractor to plug the wells on the  
15 BLM -- to plug the federal wells, those wells were -- I  
16 mean, BLM approved those sundry notices after it had  
17 issued those Written Notices of Orders?

18 A. I believe on a couple of them they did.

19 Q. And are you familiar with the process of  
20 plugging wells on federal land?

21 A. Yes.

22 Q. And in order to plug wells on federal land, what  
23 does an operator have to do?

24 A. To begin the process, they have to file a  
25 sundry. And that sundry is an intent to plug a well that

1 is submitted with a plugging procedure. Once the BLM  
2 approves that procedure, they'll accept it, approve it.  
3 The operator can then plug the well.

4 Once the well is plugged, then another sundry is  
5 submitted, a subsequent report of plugging. Once that's  
6 approved by the BLM, then certain requirements are made by  
7 the BLM to remediate the site and final notice is given on  
8 that same sundry to show that has been completed.

9 Once the BLM signs off on that, then the  
10 operator is free from that well.

11 Q. Turning to No. 74, just to use this as an  
12 example, turn to the conditions of approval that were  
13 submitted with the sundry notice.

14 A. Okay.

15 Q. Now, the final conditions of approval for the  
16 sundry notice was that the plugging be done within 90  
17 days?

18 A. Yes.

19 Q. And what happens if plugging isn't done within  
20 90 days?

21 A. Then the operator is required to refile for a  
22 time period to go ahead and do that. An enforcement  
23 action can be filed by the BLM against an operator for not  
24 beginning or for filing the paperwork for plugging that  
25 within that 90 day period.

1 Q. So the plugging of a federal well -- I mean,  
2 using this as an example, the approval to plug this well  
3 was valid for 90 days?

4 A. Yes.

5 Q. Mr. Padilla asked you about whether or not  
6 Operator filed the appropriate plugging documents with  
7 regard to the wells that it plugged. Do you know that for  
8 a fact?

9 A. In and of itself, that the BLM actually approved  
10 the plugging on those sites, and they wouldn't have been  
11 plugging without BLM approval.

12 Q. Well, let me clarify my question., Do you know  
13 if Operator filed the appropriate documents?

14 A. I'm assuming that they did.

15 Q. That's an assumption?

16 A. Yes, given the approval by the BLM.

17 Q. But you don't know?

18 A. But I don't know for a fact, no.

19 Q. And do you know if Operator filed the documents  
20 correctly? If you know.

21 A. I don't know if they filed them correctly or  
22 not.

23 Q. And if you'll turn to Exhibit 43, Mr. Padilla  
24 asked you some questions concerning the type of leases for  
25 those properties. Does this document indicate the type of

1 lease for each well?

2 A. Yes, it does.

3 Q. And I can't remember which wells Mr. Padilla was  
4 talking about specifically, but all the wells except for  
5 the Michael State and Schneider No. 1 are federal wells?

6 A. That's correct.

7 Q. And the Michael State No. 1 and the Schneider  
8 No. 1 are state wells?

9 A. Yes.

10 Q. And with regard to your testimony concerning the  
11 problems that Operator encountered for the Shearn Shilo  
12 well, that was based on information that Operator provided  
13 you, correct?

14 A. Yes.

15 MR. SWAZO: I don't have any other questions,  
16 Mr. Chair.

17 CHAIRMAN FESMIRE: Okay. Mr. Padilla, do you  
18 have any recross on the subjects of the questions raised  
19 on redirect?

20 MR. PADILLA: I do only with regard to some of  
21 the questions asked by Commissioner Bailey.

22 RE-CROSS-EXAMINATION

23 BY MR. PADILLA:

24 Q. Mr. Sanchez, Commissioner Bailey asked you about  
25 the standard of payment and the wells capable of producing

1 in paying quantities. Does the OCD typically decide  
2 whether or not a well is capable of producing in paying  
3 quantities?

4 A. I guess that would be on a case-by-case basis,  
5 but not as a practice that I'm aware of aware.

6 MR. PADILLA: I don't have any other questions.

7 CHAIRMAN FESMIRE: Mr. Swazo, I guess you can  
8 release this witness.

9 MR. SWAZO: I have no further questions, and I'd  
10 like to call my second witness.

11 CHAIRMAN FESMIRE: Okay, who would that be?

12 MR. SWAZO: That would be Ms. Jane Prouty.

13 CHAIRMAN FESMIRE: Ms. Prouty, you've been  
14 previously sworn in this case, have you not?

15 MS. PROUTY: Yes.

16 JANE PROUTY,  
17 the witness herein, after first being duly sworn.  
18 upon her oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 By MR. SWAZO:

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

22 A. Jane Prouty.

23 Q. Ms. Prouty, you testified at the hearing that we  
24 had last year in this matter, correct?

25 A. Yes.

1 Q. Are you still employed with the Oil Conservation  
2 Division?

3 A. Yes.

4 Q. Your title is the same?

5 A. Yes.

6 Q. And your duties are the same?

7 A. Yes.

8 Q. Now, I want to talk about Operator's compliance  
9 with the Commission's Orders. Paragraph 3 of the  
10 Commission's Order ordered Operator to comply with OCD's  
11 production reporting rules and file true and accurate  
12 reports electronically, Form C-115s for all its wells from  
13 January 2008 through and including May 2008.

14 The Order required Operator to file reports no  
15 later than September 14, 2009. Did Operator comply with  
16 this provision?

17 A. No.

18 Q. And if you look at Exhibit No. 45, would you  
19 identify that exhibit?

20 A. That's what we call a Sundry Balancing Report.  
21 This one was printed in March of 2009, and it shows all  
22 the C-115s that the OCD had received from C&D since  
23 January of 2006.

24 And it shows that as of March 24th, we had  
25 received the January 2008 C-115, but no later C-115s, and

1 it shows the total volumes for the company.

2 Q. And do you recall Operator's testimony that  
3 Debbie McKelvey had all the necessary information and  
4 would bring the filing of C-115s up to date when she  
5 returned from vacation?

6 A. Yes, I do.

7 Q. And if I remember correctly, you testified at  
8 the last hearing that Debbie McKelvey e-mailed you on the  
9 day before the July 30, 2008 hearing and said she was  
10 filing the C-115s for the operator, but Operator e-mailed  
11 her telling her that it had sent the necessary records to  
12 get the C-115s caught up but that she was on vacation and  
13 unable to work on them. And Debbie said that the  
14 necessary records should have been sent to Operator and  
15 she would work on getting them caught up when she  
16 returned, correct?

17 A. Yes.

18 Q. Did Operator ever contact you or your staff  
19 regarding not filing the C-115s by the September 14, 2008  
20 deadline?

21 A. No.

22 Q. And you had testified that ever since Operator  
23 acquired these wells, it routinely does not file C-115s  
24 until a case goes to hearing. Did that change after the  
25 July 2008 hearing?

1 A. No.

2 Q. Would you describe your efforts to obtain  
3 compliance following the July 2008 hearing?

4 A. Yes. We sent the normal letters that we do  
5 within 60 days when an operator doesn't file, and --

6 Q. Would you look at Exhibits 85 through 88?

7 A. Okay.

8 Q. Are those the letters that you're referring to?

9 A. Yes. And there were more, but I couldn't give  
10 you all of them.

11 Q. And those other letters that you talk about that  
12 aren't included in this packet, they're essentially the  
13 same as these letters?

14 A. They were earlier, so I have a full set here.  
15 What the issue was, was the letters go out within 60 days  
16 of the reporting, which is already 45 days after the time  
17 period, so they were sent earlier. But --

18 Q. Okay, let's go ahead and talk about -- When did  
19 you send your first letter?

20 A. First letter since when, ever?

21 Q. Okay, we're talking about your efforts to obtain  
22 compliance following the July --

23 A. Since the hearing?

24 Q. Yes.

25 A. Okay. So let me get all my copies of the

1 letters. So since that hearing, on November 17th, I sent  
2 a letter for the May C-115 that we hadn't received. On  
3 November 17th, I sent a letter for the July C-115, and the  
4 August C-115. And then in December, I sent a second  
5 letter for the August C-115. And in December, I sent a  
6 letter for the September C-115. In January, I sent a  
7 letter for the September C-115. In February, I sent a  
8 letter for the October C-115. And in February, I sent a  
9 letter for the November C-115.

10 Q. The December letters that you sent out, is one  
11 of them Exhibit 85?

12 A. Yes.

13 Q. And the letter that was sent out on  
14 January 15th, is that Exhibit 86?

15 A. Yes.

16 Q. And the letter that you sent out on February 12,  
17 is that Exhibit No. 87?

18 A. Yes. And there were -- I think on -- some of  
19 these mailings had multiple letters on the same day.

20 Q. Okay. And Exhibit 88, that's the letter you had  
21 sent out on February 12, 2009?

22 A. Yes.

23 Q. Now, you had testified that the Rule requires  
24 C-115s to be filed on the 15th day of the second month of  
25 production unless the 15th day falls on a weekend or

1 holiday, then it's the first business day, correct?

2 A. Yes.

3 Q. Are the letters that you issue, are they issued  
4 once the time frame for filing is past?

5 A. Yes.

6 Q. Would you turn to Exhibits 89 and 90?

7 A. Yes.

8 Q. Do you know if Operator received any of your  
9 letters?

10 A. Yes. We received on March 16, Exhibit 89. It  
11 doesn't refer to specific correspondence, it just says,  
12 "Acknowledgement of receipt of your notices." And I don't  
13 know when we received Exhibit 90. Did you want me to go  
14 on to that?

15 Q. Are these letters the same?

16 A. They look like it.

17 Q. But Exhibit No. 90 is not dated?

18 A. Correct. It has a fax date on it, but sometimes  
19 that fax date is wrong. So I don't know what month it  
20 refers to, but it acknowledges receipt in February.

21 Q. Now, the letters that you had sent out directed  
22 the operator to call your bureau. Did Operator ever call  
23 your bureau?

24 A. I don't believe so. It's not recorded -- during  
25 this time frame.

1 Q. Did Operator ever call your bureau?

2 A. Yes. March 13th, I think we had the first  
3 call -- March 6th through the 13th, I think there were  
4 several calls.

5 Q. Okay. And would you identify Exhibit No. 91?

6 A. Yes. This is -- we keep a file of all the  
7 letters -- all the compliance issues, all the letters we  
8 mail out. And we keep a file documenting all the phone  
9 calls or e-mails that come back so that we just have it  
10 all together in one place. And this is an example of the  
11 way that some of the documentation is kept.

12 Usually when the call is closed out, something  
13 is written and put in the file. So that's what this  
14 represents, that we received a call from Tom Kizer.

15 The call went on for several days in  
16 back-and-forth questions, and the issue was that he was  
17 going to begin filing for himself and needed some  
18 assistance.

19 Q. So you log telephone calls from the operators?

20 A. Related to compliance issues.

21 Q. And this is that log for the compliance for the  
22 C-115 issues related to this case?

23 A. Yes.

24 Q. And according to this document, the first time  
25 that there was telephone contact was March 6, 2009?

1 A. Yes.

2 Q. Would you turn to Exhibit No. 92? What is this  
3 exhibit?

4 A. This is a report of all the C-115s that have  
5 been submitted by any operator. It's just a query. And I  
6 just started it in January 2006 for -- to get recent  
7 information.

8 What it shows is when every C-115 -- for  
9 example, if you look at the top, there's a month, No. 1,  
10 year, 2006, and the first line is the initial filing of  
11 the January 2006 C-115.

12 It was filed under the user ID for Debbie  
13 McKelvey, who is an agent, and it was submitted on April  
14 17, 2007 at 11:32 a.m. And then the second line shows you  
15 that the same reporting month was amended on March 25,  
16 2008.

17 Q. Okay, before we go into that further, I want to  
18 talk about how this document was created. You said that  
19 this document was for any operator; is it for any operator  
20 or was it for C&D Management?

21 A. This particular report is for C&D.

22 Q. Okay. And who created this document?

23 A. I did.

24 Q. And where did you compile your information from?

25 A. It's in our data base. The system that accepts

1 C-115s online saves all the data related to the C-115s.

2 Q. So this information comes from the C-115s that  
3 C&D filed?

4 A. Yes.

5 Q. And what does the system do when a C-115 is  
6 filed?

7 A. First, the operator -- Do you want me to just  
8 start at the point where --

9 Q. Let me clarify the question. Once we receive a  
10 C-115, what does our system do?

11 A. Okay. When we sign on to review it, the system  
12 automatically checks for any errors. And an error might  
13 be something like if C&D were reporting a well that's  
14 operated by ConocoPhillips or something like that, the  
15 system would edit against all our data.

16 Does this well completion exist? Does this  
17 operator operate the well that is on the C-115? Does the  
18 production balance to the disposition? So it measures all  
19 those things. Was every well completion reported? Were  
20 more completions reported than are in our system.

21 And any kind of -- there are about 40 things  
22 that it checks for along that line. And then it returns  
23 to the person reviewing the C-115 whether there were any  
24 errors or omissions or out-of-bounds conditions.

25 Q. And you said it checks for errors; if the system

1 accepts a C-115, does that necessarily mean that it's  
2 accurate?

3 A. No, not at all, because we don't know what the  
4 wells are producing, we don't have any way of knowing  
5 that. We don't know -- If zeroes were reported but really  
6 there was production, we wouldn't know that. If there was  
7 production reported and the well wasn't producing, we  
8 wouldn't know that.

9 If gas was reported but not oil, we would have  
10 no idea. If the wrong transporter was reported, we  
11 wouldn't know that.

12 So what we do, though, is the application asks  
13 the operator to certify if the information is correct and  
14 they -- to the best of their knowledge before they -- part  
15 of submitting is certifying that that is correct.

16 Q. Okay. So in looking at this -- Well, I wanted  
17 to talk real briefly about the -- the reporting issues  
18 that we're talking about in this case are from January  
19 2008 forward, and you include reporting periods for  
20 January 2008. You are including reporting periods for  
21 periods before January 2008; why did you do that?

22 A. I just picked a representative time frame. The  
23 balancing reports start with January 2006, so I just  
24 picked that time period.

25 Q. Okay. Now, looking at this document, the

1 January 2008 C-115 was filed August 2, 2008?

2 A. Yes.

3 Q. February 2008 through May 2008, and August 2008  
4 through February 2009, those C-115s were filed March 26,  
5 2009?

6 A. Yes.

7 Q. And February 2008 through May 2008, those C-115s  
8 were submitted in April and May of this year?

9 A. Yes, they were.

10 Q. And August 2008 to February 2009, those C-115s  
11 were amended in May of this year?

12 A. Yes.

13 Q. The July 2008 C-115 was filed March 27, 2009 and  
14 amended twice in May 2009?

15 A. Yes.

16 Q. The March 2009 C-115 was filed 5/20. That was  
17 filed May 20, 2009?

18 A. Yes.

19 Q. The April 2009 C-115 was filed on May 20, 2009?

20 A. Yes.

21 Q. And it indicates that it has not been approved  
22 yet?

23 A. Right.

24 Q. Okay. What about the C-115 from May 2009 that  
25 would have been due, what, yesterday?

1 A. Two days ago. Yeah, yesterday, sorry, the 15th.

2 Q. Have those been filed?

3 A. No. I checked this morning.

4 Q. Would you explain the asterisks that appear --  
5 Well, going over this document, it shows the initial time  
6 the C-115 was filed, correct?

7 A. Yes.

8 Q. And it shows amendments?

9 A. Yes.

10 Q. Could you explain the asterisks that appear in  
11 some of the boxes?

12 A. Yes. They were just never accepted. I put a  
13 footnote in that might do a better job in explaining it.  
14 The ones with asterisks, these were all submitted by the  
15 operator but they were returned for either of two reasons.

16 One, some had errors. And in this case, when  
17 C&D resolved the error, they created and submitted a new  
18 C-115 rather than addressing the C-115 that was initially  
19 submitted. So it just is an extra C-115 that we received.

20 The second reason for it being submitted but  
21 never approved is that if a C-115 for the same reporting  
22 month had already been approved on the same day, our  
23 system only accepts one C-115 per day per reporting month,  
24 not because -- They can't amend, but because at night all  
25 of our files are sent everywhere and other systems can't

1 necessarily accept multiple C-115s.

2           So we have a practice of just approving or  
3 accepting one C-115 per day per operator per month  
4 thinking that if they sent in the same C-115 on the same  
5 day more than once, they might have been confused.

6           So we reject the second one that comes across in  
7 our queue, but we send a note saying, "We're returning  
8 this because we've already approved a C-115 for this month  
9 today. We think we picked the right one to accept, but if  
10 we didn't, let us know and they can resubmit the next  
11 day."

12           But that's -- so either of those -- the  
13 asterisks on this report indicate that either of those two  
14 conditions happened on those particular C-115s.

15           Q.    Okay, so let's go to the February 2008 report as  
16 an example. According to this document, it shows that  
17 there were -- C-115s were submitted for February 2008 --  
18 two C-115s were submitted -- well, C-115s for the February  
19 2008 period were submitted at -- were submitted on  
20 March 26, 2009 at 4:39 p.m., and again at 4:41 p.m.,  
21 right?

22           A.    Yes.

23           Q.    And why was the 4:41 submission not accepted?

24           A.    Based on what came in here, it certainly looks  
25 like when the 4:39 one came in -- It's like with your

1 e-mail, it's like opening an e-mail when it comes in. And  
2 that one was reviewed, and then when the 4:41 one came in,  
3 already we had accepted one for the same month for that  
4 day.

5 So we would have rejected it and said, "If you  
6 meant for us to take the later one you submitted, send it  
7 back in tomorrow, but right now I already approved one for  
8 this day so I'm not real sure what you're doing." So we  
9 returned it.

10 And in this case, so we accepted the first one,  
11 and another one was sent in on April 3rd -- another one  
12 was created and sent in on April 3rd. So I can't say if  
13 that has any relation to the second one on March 26th.

14 Q. Okay. Now I want to go to the second page, the  
15 March 2008 reporting period. C-115s for that period were  
16 submitted on March 26, 2009 at 4:41 p m. C-115s for the  
17 same reporting period were submitted the next day at 7:35  
18 p.m. There's an asterisk for the first submission and it  
19 looks like the second submission was accepted; is that  
20 correct?

21 A. Yes. It may have been that the one submitted on  
22 the 26th -- since some e-mail correspondence indicates  
23 this might have been the case, it might have been  
24 submitted and had an error so was rejected, and then when  
25 the error was resolved, another C-115 was created the next

1 day. That's why it has a different permit number on it  
2 and submitted. So that's what it looks like happened.

3 Q. Okay. You testified that Operator routinely  
4 does not file C-115s until a case goes to hearing. Is  
5 that reflected in this document?

6 A. It is. There were hearings within a few days of  
7 each of the submissions. One, you can see that the very  
8 first submissions were right before the hearing where we  
9 all met last -- the July 31st hearing.

10 That was originally scheduled for June, I  
11 believe, and they were all submitted on June 17th. So,  
12 you can see that's maybe 14 or months so. I'm not  
13 counting that. But that's a large number.

14 And then that pattern continued. Then the Order  
15 came in to place to send in all the C-115s by September of  
16 2008, but a large number were -- 13 of them were  
17 submitted -- excuse me, maybe it's nine. I believe it's  
18 13 were submitted on March 26th.

19 And you'll see they were submitted within tenish  
20 minutes of each other, so they came in real fast. But  
21 that also coincided with a planned hearing date. And then  
22 it was continued.

23 So before the May flurry that came in, that was  
24 also right before a hearing date. But that was continued.  
25 And that's been the pattern, that we get the C-115s right

1 before hearings. And that leads to the problem of not  
2 knowing whether there's any production.

3 Q. Now, the Order requires true and accurate C-115s  
4 to be filed. The Rule requires complete and accurate  
5 C-115s. Did Operator give you a reason to question the  
6 accuracy of the C-115s that it had filed?

7 A. Yes.

8 Q. Could you explain?

9 A. Are you talking about the initial filings, or  
10 the amendments, or both, or my concerns about them now, or  
11 what?

12 Q. Well, what did Operator say that gave you cause  
13 to question the accuracy of the C-115s?

14 A. Well, within a couple of days of filing the  
15 March 26th C-115s, we received a note from Tom Kizer  
16 saying that they were incorrect.

17 Q. Did Operator ever indicate which C-115s were  
18 incorrect?

19 A. No.

20 Q. Did Operator ever indicate why the C-115s were  
21 incorrect?

22 A. No.

23 Q. What about the amendments, did that raise any  
24 red flags with you?

25 A. It did. When the well -- for example, February

1 2008 was not submitted until basically a year after it was  
2 due. So everything should be settled. If it was due in  
3 April and it was submitted a year later, or almost a year  
4 later in March of 2009 -- But the usual reason an operator  
5 amends is because information came in from the transporter  
6 late and they're adjusting it based on that.

7 But that generally doesn't happen 11 months  
8 later. Everything related to that month should have been  
9 settled since it wasn't reported on the C-115 until about  
10 11 months later.

11 But when the amendments came in, there were  
12 major adjustments. And the first thing I noticed was that  
13 three of the Hasties wells had been reported as zero  
14 production.

15 And then when they were amended, the production  
16 was reduced on other producing wells and applied to those  
17 three Hasties wells and taken from other properties and  
18 applied to the Hasties property.

19 And there were some adjustments like that that  
20 made it look like how could you certify that the data was  
21 correct before you sent the first C-115s so much after the  
22 fact when the second C-115s all of a sudden show  
23 production on wells that hadn't produced for a very long  
24 period of time? So that was one concern.

25 Another concern was that the amounts that the

1 transporter picked up in gas differed from the initial  
2 filing to the amended filing. And again, the initial  
3 filings were so long after the fact that the information  
4 from the transporter should have been settled by that time  
5 and yet they changed. So that certainly was an issue.

6 Then --

7 Q. I want to interrupt you there.

8 A. Okay.

9 Q. You had testified that some of the materials  
10 were happening across properties. Was it also happening  
11 across leases?

12 A. I don't -- usually to me a property is a lease.  
13 So I don't know that -- we don't work with leases as much  
14 as the land office does, so I can't -- I can't address  
15 that.

16 In general, a property is the name of a lease,  
17 but that's a loose definition. But yes, it was occurring  
18 across properties. And let me be specific with a name.  
19 It was moving from the Amoco to the Hasties. Does that  
20 answer your question?

21 Q. The Hastings or Hasties? There are several  
22 Hasties.

23 A. I'm sorry. It was moving from the Amoco  
24 property to the Hasties property.

25 Q. Okay. You indicated there was a change in

1 transporter amounts that was another red flag. That  
2 information is to be found on the C-115s?

3 A. Yes. You report the production of a well and  
4 then how the production was disposed.

5 Q. And there was only one transporter company?

6 A. Yes. Throughout all of C&D's filings, they've  
7 shown one gas transporter and one oil transporter.

8 Q. Anything else with regard to the transporter  
9 change that raised red flags with you?

10 A. Well, yes. The company that's being reported as  
11 the transporter is GPM, and they don't exist. They were  
12 changed over to DCP. So the correct transporter has never  
13 been reported.

14 Q. What about water, did that raise any concerns?

15 A. It did. C&D reported produced water up through  
16 February 2008. And then the C-115s have had no produced  
17 water ever since then. Which is very unusual and hard to  
18 miss, because it's a column on the C-115 just like oil and  
19 gas. But there's been no water reported since February  
20 2008 produced.

21 Q. Now, you testified about changes taking place.  
22 Is there a reporting period that you can use as an example  
23 for the Commission?

24 A. Sure. The month of July 2008 is representative,  
25 and what I did was, in the exhibits -- and I don't know

1 the number, there is a report for July 2008.

2 Q. Is that Exhibit 52?

3 A. Thank you. Now, this is what they show -- No,  
4 that's June 2008, and July 2008 is Exhibit 53.

5 Q. Okay, before you go any further, I just want to  
6 clarify, this is a detailed balancing report for July  
7 2008?

8 A. Yes.

9 Q. And this was printed on July 6, 2008?

10 A. Yes.

11 Q. And so it only captures the information that was  
12 at that time?

13 A. Right.

14 Q. So we don't have the documents to compare  
15 showing these; is that correct?

16 A. We do, not as exhibits.

17 Q. Not as exhibits but --

18 A. Yes. We keep all the data we ever receive. And  
19 I took a current report, which if you look at the Hasties  
20 property as an example, it shows all of the wells  
21 producing in that month. Let me just explain the report.

22 If you go to about the middle of the page, it  
23 shows the Hasties property, and then it shows the date  
24 that the production was reported. And this is May 20,  
25 2009, and it shows all the APIs.

1           And this is just a working report for everyone  
2 with the intention of showing whether the production  
3 balanced to the disposition. So it doesn't show the well  
4 names, but it -- just for your information, if you go down  
5 the row, they're in the same order as they are on the well  
6 list.

7           So the first API listed is the Hasties No. 16.  
8 The next one is the 18. The next one is the 17. The next  
9 one is the 19, and 20, and 21.

10          Q. Let me ask you a real quick question. Do you  
11 know what POD stands for?

12          A. That's the point of disposition. And as  
13 Commissioner Bailey said, it's not related to volumes.

14          Q. Okay. So Exhibit No. 53 was the detailed  
15 balancing report for 2008. Would this have been before or  
16 after the amendments had been done?

17          A. After.

18          Q. Okay. So why don't you go ahead and show us  
19 your example as far as the change of that?

20          A. Okay. So to look at -- I just compared the data  
21 before the amendment -- the first submission on March 26th  
22 to the second submission in May.

23                 And if you look at the Hasties wells, initially,  
24 those first three wells reported zero, and they were  
25 reported zero for many, many months, all the months that

1 were entered on the gas side.

2 Q. So the column that has "Gas Produced," that  
3 would have all been zero?

4 A. Right. Yes. And so for some months, gas  
5 changed some months, oil changed some months, both  
6 changed. It's just that it changed, you know.

7 And then -- For example -- So the -- At first  
8 they had zero for the first well, zero for the second  
9 well, zero for the third. They had 98 for the third well  
10 that now has 35. They had 115 for the second well that  
11 now has 35. They had 100 for the well that now shows 55.  
12 The total gas produced was listed as 313 on the initial  
13 filing, and it's 148 on the second filing.

14 And then the oil changed a little bit. The  
15 amount transported for that month, as you see, it shows  
16 152 transported, but initially zero was reported  
17 transported for oil to the right there. So nothing had  
18 been shown to -- although transported.

19 And then in the Amoco property, that had  
20 originally been reported as gas produced as 552. And then  
21 they subsequently reported it at 158. So then the total  
22 was lower.

23 So these were the kind of adjustments that were  
24 made. And I had looked at all the reports and -- As I  
25 say, it's just unusual to have reporting be that far off

1 so late after the fact.

2 Q. And did that happen with other reporting  
3 periods, as well?

4 A. All of them. Now, all of them had a change, but  
5 different types of changes, yes.

6 Q. And some of the concerns that you talked about  
7 with regard to the amendments with this particular  
8 reporting period, did that also happen with other  
9 reporting periods?

10 A. Yes.

11 Q. Did you get a chance to review the -- Well,  
12 Operator's prehearing statement indicates that it realized  
13 in February of 2009 that some of the reporting production  
14 may have been inaccurate and voluntarily asked that the  
15 reports be withdrawn until corrected reports could be  
16 filed.

17 In this case, Operator did not begin filing  
18 C-115s for February 2008 and subsequent reporting periods  
19 until March 26, 2009. Doesn't Operator's prehearing  
20 statement refer to production that Operator had already  
21 reported prior to March 26, 2009.

22 A. Yes.

23 Q. And does this cause you to question the accuracy  
24 of the C-115s that Operator had filed for prior reporting  
25 periods?

1           A.    Right.  Maybe if we could look at that list of  
2 when they were all filed.

3           Q.    Okay.  I want to ask you a few more questions on  
4 this.

5           A.    Okay.

6           Q.    Did Operator ever inform you that these other  
7 C-115s might be inaccurate?

8           A.    No.

9           Q.    Did Operator ever ask to withdraw already filed  
10 C-115s?

11          A.    No.

12          Q.    Have any C-115 for these other reporting periods  
13 that Operator is speaking about been amended?

14          A.    No.

15          Q.    And I'm sorry, you were going to say --

16          A.    Well, I was just going to try to help myself  
17 with a time line by looking at that list of the C-115s,  
18 but that's my own...

19          Q.    And your document indicates -- Exhibit No. 92  
20 indicates that the April 2009 C-115 has not been approved.  
21 Could you explain why that is?

22          A.    Yes.  It first came in with a note from Debbie  
23 McKelvey that said,

24                         "Per Tom Kizer of C&D, the  
25                         out-of-balance errors occurred on two wells

1           that were plugged by order of the OCD, and  
2           possession of all oil stock on the two  
3           leases was taken and disposed of by the OCD."

4           So the initial report had the balances in the  
5           two tanks at zero. And then at 5:35 the next morning --  
6           I'm not sure I have quite the time, but it was somewhere  
7           during the hour of 5:00 a.m. -- a second report came in  
8           that now shows a balance of 26 in one property in the  
9           tank, and 78 in the other property in the tank.

10           And Daniel this morning mentioned that there was  
11           no storage in one of the tanks. I don't know which one.  
12           So all it was, was at the time that these C-115s came  
13           in, the hearing was set for within a few days, and I  
14           thought I would ask about it at the hearing. I don't know  
15           what's correct or anything. I mean, maybe we'll find that  
16           out today.

17           Q.    What information would you want Operator to  
18           provide you with in order to substantiate accurate C-115s?

19           A.    It would be helpful, just given the large  
20           discrepancies, to see -- well, to have an explanation for  
21           the discrepancies.

22           And then it would be helpful in addition to the  
23           explanation to see some of the documentation that resulted  
24           in coming up with the numbers from the second set of  
25           filings. We also need water to be reported on all the

1 C-115s, and we need the transporter to be changed.

2 Q. Would it help if Operator would provide you with  
3 documents?

4 A. Yeah, of -- just an understanding of what  
5 substantiated a change. In other words, what could have  
6 caused there to be the impression that nothing was  
7 produced when they first were filed and certified compared  
8 to changes when they were filed the second time.

9 Q. In this case, have you spent a lot of time  
10 trying to get Operator into compliance?

11 A. Yes.

12 Q. And why don't you describe your efforts to get  
13 Operator to come into compliance with the C-115 reporting  
14 rule?

15 A. Well, it affects me and my staff, and Daniel is  
16 involved. Throughout the history of C&D, we've always --  
17 we've made a lot of telephone contact. We had telephone  
18 conferences. We wrote letters. We wrote certified  
19 letters. We researched everything, such as the research  
20 of comparing the C-115s, which is more difficult than it  
21 sounds because we don't generally have to compare a lot of  
22 different filings.

23 And a tremendous amount of time in working with  
24 Tom Kizer on how to file his C-115s. A long time mailing  
25 the letters, following up on the letters, maintaining

1 files of the correspondence, responding to questions, and  
2 preparing for hearings.

3 Q. And what is the cost -- Well, let me ask you  
4 this. In calculating your -- Well, what does it cost  
5 to -- in your efforts to get Operator to come into  
6 compliance?

7 A. I did an informal assessment of all the people  
8 involved, and it came to \$6,000 before the July hearing,  
9 and another \$6,000 on different types of activities after  
10 the July hearing, some of the same activities, some  
11 different.

12 Q. \$6,000 before the July hearing, and \$6,000  
13 after?

14 A. Yes.

15 Q. Does that include the efforts of the Legal  
16 Bureau to bring Operator into compliance?

17 A. No.

18 Q. Does did that include the time that Chairman  
19 Fesmire prepared for the case?

20 A. No.

21 Q. Or heard the case?

22 A. No.

23 Q. Does that include the services of administrative  
24 staff related to trying get C&D in compliance?

25 A. In sending the letters, yes, in other activities

1 related to hearings, no.

2 Q. And does that include the office supplies?

3 A. No.

4 Q. Use of equipment?

5 A. No. It was just employees' time.

6 Q. You had mentioned something about working with  
7 Operator to get him into compliance. Telephone calls; is  
8 that correct?

9 A. Yes. Not myself, my staff.

10 Q. Could you explain that?

11 A. You mean the sort of things that the calls were  
12 about?

13 Q. Yes, the telephone calls.

14 A. Mr. Kizer requested a lot of assistance relating  
15 to how to file a C-115. And then once he -- at every  
16 stage he requested a lot of help.

17 This is unusual. Usually my staff spends an  
18 hour a day on all C-115 activities for up to 700  
19 operators. We generally have in the 600 range. But  
20 there's always changeover from one established operator to  
21 a new one. So by the time a year goes by, we've received  
22 C-115s from 700 operators, usually.

23 And because we don't have time to spend on the  
24 phone, we publish very detailed and I think very good  
25 C-115 instructions. And I just brought copies. We have

1 frequently asked questions. These are all the things that  
2 we have available on the web.

3 There are manuals, there are flow charts, there  
4 are sample C-115s, sample instructions. We have a list of  
5 all the error codes and what you do when you get each type  
6 of error and who to call.

7 We have a quick sheet for once you do it one  
8 time, you have just a little follow through afterwards.  
9 We have all the print screens involved. We have steps on  
10 how you download this one little macro that helps you.

11 So generally, we don't get any phone calls on  
12 how to file a C-115. And if we do, we can usually refer  
13 them to the page in the instructions that tells them what  
14 they need and helps them anticipate the next phone call.

15 So the time that we spent with C&D was  
16 exponentially higher than the time spent with any other  
17 company that I'm aware of.

18 Q. And the telephone calls happened after March 6,  
19 2008?

20 A. That's what was recorded in our log, yes.

21 Q. And did Mr. Kaiser indicate that he was having  
22 any kind of problems with filing C-115s?

23 A. From reading the e-mails, yes. And it seemed  
24 like each time a problem was encountered, you know, a new  
25 e-mail came. And maybe the e-mail came before any attempt

1 was made.

2 Even without all of these manuals, you know, the  
3 error will tell you your reporting production or -- you  
4 have a plugged well on your C-115. They are as intuitive  
5 as we can make them.

6 And so even there, there were e-mails on, you  
7 know, "I'm getting an error about a plugged well," and  
8 there was just a lot of that sort of question. So it was  
9 a very interactive process.

10 Q. Why was Operator getting errors?

11 A. Well, in that example, because a plugged well  
12 was included on the C-115. And errors are fine, they just  
13 help the operator zero down to what you should be  
14 reporting.

15 But the ones I saw were that -- One time the  
16 transporter -- a value wasn't put in for the transporter.  
17 And one time there was a plugged well. And I don't know  
18 the others, I only know the ones that were mentioned in  
19 e-mails.

20 Q. What were they?

21 A. That's what I mean, those were the ones that  
22 were mentioned in e-mails.

23 Q. Well, what were the errors, were there any  
24 additional errors?

25 A. Not that I remember. I have all the e-mails, if

1 you want me to look at them.

2 Q. Yes.

3 A. Okay. Well, there were errors related to being  
4 able to use the facility in the first place. It looked  
5 like maybe the instructions were not -- maybe things  
6 weren't done quite in sequence to be able to even store  
7 the C-115s -- to get to the point where you could get  
8 C-115 errors.

9 Let me see. All these e-mails reflect phone  
10 help. So an extra well was on there. An API number was  
11 incorrect. It ended up where my staff created a C-115 for  
12 him because keying it into Excel didn't follow the  
13 samples, and so we submitted that, as best I can tell.  
14 There were installation problems. There were --

15 Q. Were these errors on the part of Operator? I  
16 mean, was -- Do you understand my question?

17 A. The errors simply mean that the data being filed  
18 on the C-115 doesn't match our data base. So, you know --  
19 Or the production doesn't match the disposition, or that  
20 sort of thing.

21 So yes, they were errors on the part of the  
22 operator, and there were some errors just related to  
23 PC-type errors. So yes, they were all on the part of the  
24 operator.

25 Q. Who is reasonable for the PC errors?

1 A. The operator.

2 Q. So Operator was responsible for PC errors?

3 A. Yes. Because it's an uncontrolled environment  
4 for us, yes.

5 Q. Okay. So we have incorrect APIs entered. Who  
6 enters that information?

7 A. The person filling out the C-115.

8 Q. You said there were problems with an extra well  
9 being entered?

10 A. Yes.

11 Q. Who entered that information?

12 A. The person filling out the C-115.

13 Q. What other information was being entered  
14 incorrectly?

15 A. Well, as I mentioned, the transporter number.  
16 But that's not caught by the system because you don't know  
17 which one the right one is, it's just an invalid one. But  
18 initially, I think an invalid one was being entered.  
19 That's done by the operator. And if you don't report a  
20 well, that's being done by the operator.

21 Q. So these errors were the result of the  
22 operator's errors?

23 A. Yes. Right.

24 Q. Entering incorrect information?

25 A. Right. They don't have anything to do with the

1 values being entered, just the API numbers and everything  
2 else.

3 Q. And you said your staff created a C-115; does  
4 that normally happen?

5 A. No.

6 Q. Should that have happened?

7 A. We try not to do it so that they'll know how to  
8 do them in the future. And that's why we published a  
9 sample C-115 so someone knows pretty much every instance  
10 that could happen.

11 So we try not to, because then there could be a  
12 perception that we did something wrong or that we filed  
13 it. So we try not to do that.

14 Q. The person who did that, was she your employee?

15 A. Yes.

16 Q. So she wasn't dealing with that?

17 A. Yes.

18 Q. What about when OCD was working with Operator  
19 explaining the instructions to him to get him to file a  
20 proper C-115, were there any issues with that?

21 A. Yes, there were. Do you mean on how to download  
22 the software or -- I'm sorry. Just a lot of questions.  
23 And I don't think this information was read. And also, as  
24 the calls came in --

25 Q. Read by who?

1 A. By the operator.

2 Q. What information?

3 A. The instructions. And then also, as the calls  
4 came in -- It was very sporadic. I think there was maybe  
5 just a few minutes every six hours applied to listening to  
6 what he was asked to do and doing it.

7 It just seemed to be very hard to get a hold of  
8 the situation and say, "Now, when I ask you to do this,  
9 please do this. Are you looking at this on your screen?"  
10 There was maybe a lot of other activities going on at the  
11 time, and --

12 Q. With who?

13 A. With the operator. So it was real hard to have  
14 a -- abnormal and hard to have an easy conversation about  
15 how to file.

16 Q. Operator inattentiveness?

17 A. Yes.

18 Q. Anything else?

19 A. Well, I think inattentiveness might sum it up.  
20 The other thing was, that in March of 2008, Tom Kizer had  
21 sent in forms for Debbie McKelvey to file for C&D and  
22 Debbie McKelvey had previously filed for C&D.

23 So that was certainly an option to be pursued  
24 rather than taking such a great amount of time to get  
25 these C-115s in was to utilize the services that had been

1 utilized before by a professional.

2 Q. You're the bureau chief for the automation of  
3 records system?

4 A. Yes.

5 Q. And so you oversee the OCD's computer system?

6 A. Yes.

7 Q. Are you familiar with the change of operator?

8 A. Yes.

9 Q. Would you turn to Exhibit No. 93?

10 A. Yes.

11 Q. Would you identify this exhibit?

12 A. This is a Permit Status List for C&D, and it  
13 shows the three permits that have been filed  
14 electronically. And they are all operator change permits,  
15 but they go in reserve date order.

16 So C&D acquired some wells from Finney that was  
17 approved by the OCD in June of 2006, and twice it acquired  
18 wells from JKM Energy, one set approved in June of 2005,  
19 and another set in April of 2005.

20 Q. So these are permits that pertain to a change of  
21 operator?

22 A. Yes.

23 Q. And what's the process for an operator to  
24 effectuate a change of operator?

25 A. Both the "from" and the "to" operators get users

1 IDs. And then you sign on and you select the properties  
2 that have wells in them that are being transferred. And  
3 then a list of all the wells in those properties comes up  
4 and you select the wells that you want. So you just click  
5 your mouse for the wells that you want to transfer.

6 The additional bonding is displayed, so if any  
7 additional bonding is required based on lack of -- for  
8 production of the well, some other items, then that's  
9 listed also on the scene. So if additional bonding is  
10 required, that has to be paid.

11 And then after the operator has selected the  
12 wells that they want, they certify it, they sign the C-145  
13 and submit it to the OCD. Both operators do that. And  
14 then the OCD sees whether the bonding exists and sees  
15 whether they are in compliance with the rules, and accepts  
16 the change.

17 Q. Okay. So the first page, it shows that two  
18 change of operators -- actually, two change of operator  
19 permits actually were submitted by JKM transferring wells  
20 from JKM Energy to C&D Management Company, D/B/A Freedom  
21 Ventures. Are those permits Page 2 and 3 of this exhibit?

22 A. They are.

23 Q. And those permits show the wells that were  
24 transferred?

25 A. Yes. The first page is the first set of wells

1 that were transferred in April, and the second page shows  
2 an additional well transferred in June of 2005.

3 Q. What would you like to see done in this case?

4 A. Since C&D repeatedly has not filed C-115s, I  
5 would like to see an order that includes -- I'm not  
6 expressing my opinion on the whole scope of the order, but  
7 related to C-115s, I would like to see an order that the  
8 operator file C-115s by the due date for every month.

9 And if the operator doesn't file a C-115 by the  
10 due date, that within a month, the wells be transferred to  
11 a responsible operator who can let us know what the  
12 production is.

13 And the reason I'm so strong on that is, when  
14 that many months go by without a C-115, they all look like  
15 inactive wells. We're issuing orders to plug wells. It  
16 it's just a very important rule to have adhered to.

17 And there is a very -- not even a pattern. The  
18 only C-115s we've ever received have been related to  
19 upcoming hearings or -- the January 2008 one came in as  
20 promised a week after the hearing the last time, but that  
21 was the only one.

22 So just because of that strong pattern, that's  
23 what I recommend. I don't see any sign that that would  
24 change.

25 Q. Is there anything else that you would like to

1 see in this case?

2 A. I don't believe so.

3 MR. SWAZO: I don't have any other questions at  
4 this time.

5 CHAIRMAN FESMIRE: Mr. Padilla, I hate to break  
6 the news to you, but Mr. Sanchez and I have to be in  
7 Carlsbad this afternoon -- this evening. So we have to  
8 leave.

9 We're going to have to continue this case. I  
10 thought we'd be done, but we're going to have to continue  
11 it until the next regularly scheduled Commission meeting,  
12 which is August 20th, or the next regularly scheduled  
13 Commission meeting.

14 So I'm going to delay your cross-examination of  
15 this witness until August 20. That gives you plenty of  
16 time to prepare.

17 The other thing I need to make sure that the  
18 attorneys in this case know, the transcript of this  
19 portion of the hearing be available in two weeks. Right?  
20 Okay. And we will put it on the record.

21 The attorneys, at the end of the testimony,  
22 we're going to ask for proposed findings and conclusions  
23 from the attorneys. So you might be able to use this time  
24 to at least prepare the first part of your proposed  
25 findings and conclusions.

1           And with that, we're going to go ahead and  
2 address the other issues before the Commission today.  
3 David, did you have a question?

4           MR. BROOKS: Yes. I just wanted to ask the  
5 Commission's administrator to verify the date of the  
6 Commission hearing, because I'm very well aware of the  
7 fact that there is an Examiner hearing scheduled on the  
8 20th, which of course, a Commission hearing would preempt,  
9 but normally, they're not scheduled --

10           CHAIRMAN FESMIRE: Yeah, they're not scheduled  
11 on the same date. It's August 13th, not the 20th. So  
12 with that, we'll go ahead and continue this matter until  
13 the August 13th regularly scheduled Commission meeting.

14           And we will take up the cases remaining on the  
15 docket. The first will be Case No. 13957. Counsel has  
16 not yet finished the order in that, so we will continue it  
17 to the August 13th regularly scheduled meeting.

18           Case No. 14149, the De Novo Application of  
19 El Paso Exploration and Production Company to Abolish the  
20 Van Bremmer Canyon-Vermejo Gas Pool, expand the Castle  
21 Rock Park-Vermejo Gas Pool, and to establish special rules  
22 and regulations for the Castle Rock Park-Vermejo Gas Pool,  
23 Colfax County, that will be continued to the August 13,  
24 2009 meeting.

25           Case No. 14150 is a related case, the

1 application of El Paso Exploration and Exploration  
2 Company, LP to expand the Stubblefield Canyon  
3 Raton-Vermejo Gas Pool, and to establish special rules and  
4 regulations for the pool, Colfax County, New Mexico. It  
5 too will be continued to the August 13, 2009 Commission  
6 meeting.

7 Case No. 14134, the Application of the Board of  
8 County Commissioners of Rio Arriba County for cancellation  
9 or suspension of Applications for Permits to Drill filed  
10 by Approach Operating, LLC, Rio Arriba County, New Mexico,  
11 that also will be continued to the September 10, 2009  
12 Commission meeting.

13 Case No. 14141, the Application of Approach  
14 Operating, LLC, for approval of six Applications for  
15 Permits to Drill in Rio Arriba County, New Mexico, will be  
16 continued to the September 10th, 2009 Commission meeting.

17 And lastly, Case No. 14278, the Application of  
18 Approach Operating, LLC, for approval of 14 Applications  
19 for Permits to Drill in Rio Arriba County, New Mexico,  
20 will also be continued to the September 10, 2009  
21 Commission meeting.

22 I believe the last three may settle, but I can't  
23 say that for sure. But anyway, they are continued to the  
24 September 10th hearing date.

25 Is there any other business before the

1 Commission today? And I look over and apologize to  
2 Ms. Prouty for splitting her testimony here, but that will  
3 give you time to prepare for Mr. Padilla's questions.

4 Is there any other business before the  
5 Commission? Counsel? With that, the Chair would  
6 entertain a motion to adjourn.

7 COMMISSIONER BAILEY: I move we adjourn.

8 COMMISSIONER OLSON: Second.

9 CHAIRMAN FESMIRE: All those in favor signify by  
10 saying aye.

11 COMMISSIONER BAILEY: Aye.

12 COMMISSIONER OLSON: Aye.

13 CHAIRMAN FESMIRE: Aye. Let the record reflect  
14 that the Commission meeting was adjourned at 12:30 p.m. on  
15 June 18th. Thank you all.

16 (Whereupon, the proceedings concluded.)

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1 STATE OF NEW MEXICO )  
2 COUNTY OF BERNALILLO ) ss.

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REPORTER'S CERTIFICATE

I, PEGGY A. SEDILLO, Certified Court Reporter of the firm Paul Baca Professional Court Reporters do hereby certify that the foregoing transcript is a complete and accurate record of said proceedings as the same were recorded by me or under my supervision.

Dated at Albuquerque, New Mexico this 21st day of July, 2009.

  
PEGGY A. SEDILLO, CCR NO. 88  
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