

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

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION COMMISSION FOR THE )  
PURPOSE OF CONSIDERING: ) CASE NO. 12,757  
)  
APPLICATION OF THE NEW MEXICO OIL )  
CONSERVATION DIVISION FOR AN ORDER )  
REQUIRING MARKS AND GARNER PRODUCTION )  
LTD. COMPANY TO PROPERLY PLUG 17 WELLS, )  
AUTHORIZING THE DIVISION TO PLUG SAID )  
WELLS IN DEFAULT OF COMPLIANCE BY MARKS )  
AND GARNER, ORDERING A FORFEITURE OF )  
APPLICABLE PLUGGING BOND AND ASSESSING )  
CIVIL PENALTIES FOR FALSE PRODUCTION )  
REPORTING, EDDY COUNTY, NEW MEXICO )  
\_\_\_\_\_ )

02 JUL 30 6:12:55  
STEVEN T. BRENNER

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

July 19th, 2002

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Friday, July 19th, 2002, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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 Commission Hearing  
 CASE NO. 12,757

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\* \* \*

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\* \* \*

1           WHEREUPON, the following proceedings were had at  
2           1:30 p.m.:

3           CHAIRMAN WROTENBERY: We'll go back on the  
4           record, and at this time we'll call Case 12,757. This is  
5           the Application of the New Mexico Oil Conservation Division  
6           for an order requiring Marks and Garner Production Ltd.  
7           Company to properly plug 17 wells, authorizing the  
8           Division to plug said wells in default of compliance by  
9           Marks and Garner, ordering a forfeiture of applicable  
10          plugging bond and assessing civil penalties for false  
11          production reporting, Eddy County, New Mexico.

12                  And this case is being heard *de novo* by the  
13          Commission upon the Application of Marks and Garner.

14                  Call for appearances.

15           MR. BROOKS: Madame Chairman, honorable  
16          Commissioners, I'm David Brooks, Energy, Minerals and  
17          Natural Resources Department of the State of New Mexico,  
18          appearing for the Oil Conservation Division. I have two  
19          witnesses.

20           MR. BRUCE: May it please the Commission, Jim  
21          Bruce of Santa Fe. I'm representing Marks and Garner  
22          Production Ltd. Company. I have two witnesses.

23           CHAIRMAN WROTENBERY: At this point I'll ask the  
24          witnesses who are going to testify here today to stand and  
25          be sworn.

1 (Thereupon, the witnesses were sworn.)

2 CHAIRMAN WROTENBERY: Okay, Mr. Brooks?

3 MR. BROOKS: Madame Chairman, honorable  
4 Commissioners, I would like to make a statement.

5 I believe that Mr. Bruce and I have an agreement,  
6 and Mr. Bruce can confirm or correct my statement to this  
7 effect, that in lieu of presenting its case-in-chief, the  
8 Division may ask the Commission to take judicial notice or  
9 administrative notice of the record of the hearing at the  
10 Division level in this case, at which both of the witnesses  
11 that we have here present testified, and a large number of  
12 exhibits were admitted; is that correct?

13 MR. BRUCE: That's correct, Mr. Brooks.

14 MR. BROOKS: Very good. With that understanding,  
15 I will review briefly with the Commission what we did prove  
16 at the Division -- or what we did demonstrate at the  
17 Division Hearing, and I have both of the witnesses who  
18 testified at the Division Hearing here, so that Mr. Bruce  
19 if he chooses may call them for cross-examination, or the  
20 Division may call them in rebuttal after Mr. Bruce has  
21 presented his case.

22 However, for the purpose of presenting the  
23 Division's case-in-chief, we will rely on the record of the  
24 administrative hearing.

25 At that hearing Mr. Jerry Guye, who is a well

1 inspector with the Artesia District Office of the Division,  
2 testified to inspections of the Marks and Garner wells that  
3 are the subject of this proceeding in the January and  
4 February time frame of 2001, in the June-July time frame of  
5 2001, and in the October-November time frame of 2001.

6 Not all of the wells were inspected on each  
7 occasion, however there is detailed testimony as to the  
8 inspections and the dates that particular wells were  
9 inspected, and some of them were inspected -- several of  
10 them were inspected more than once.

11 These were wells which had been reported in May  
12 of 2000 on our -- as a part of our inactive well project,  
13 at that time were inactive.

14 Beginning in September of 2000, Marks and Garner  
15 commenced reporting production of very small volumes of oil  
16 from these wells each month, and the production reports  
17 that were filed by Marks and Garner are exhibits that were  
18 admitted at the Division Hearing and are part of the  
19 administrative record.

20 The Division, the Artesia Office, was somewhat  
21 skeptical of these reports, and this triggered these  
22 inspections, with regard to which there is testimony.

23 Now, among the exhibits that were introduced at  
24 the Division level, there are a large number of photographs  
25 that were taken by the inspector. Those were Exhibits 15

1 through 31, inclusive, of the exhibits introduced in the  
2 Division record. Most of those -- Well, I'll say all of  
3 those photographs, with the exception of two particular  
4 wells, show that the wells were not equipped to produce.

5 There are various deficiencies in the equipment  
6 which range from the motor being missing or the lack of  
7 electrical connection at the lower end to some of the wells  
8 where there simply was no installation of any kind of  
9 surface equipment, and in many instances there were no flow  
10 lines to which the wells were connected.

11 Based on the evidence that we presented, and as  
12 the Chairman read in the title, this was originally to plug  
13 17 wells and to assess penalties for false reporting.

14 Now, two of those wells -- and I'm not sure if  
15 those are the 17 or in addition to the 17 -- two of the  
16 wells in which the production reports were filed had  
17 actually been plugged and abandoned, so there was no way  
18 that there could have been production from those wells.  
19 That's the Number 17, and which was the other one?

20 MR. GUM: Twenty-two.

21 MR. BROOKS: Seventeen and the 22 had actually  
22 been plugged and abandoned, and the pictures -- the  
23 photographs introduced in evidence at the Division Hearing  
24 show plugging markers for those wells.

25 For the other wells, we did ask that they be



1 plugged.

2 Now, as of the time of the Division Hearing, all  
3 but five of the wells had, in fact, been plugged. We had  
4 -- the Division Order that is being appealed in this case  
5 does direct Marks and Garner to plug those other five  
6 wells.

7 Now, I understood from Mr. Bruce's prehearing  
8 statement that as of now those have still not yet been  
9 plugged, although because of that prehearing statement we  
10 did not order another inspection of those wells at this  
11 time.

12 But any of those wells that have not been  
13 plugged, the Division asks that they be plugged, and the  
14 Division also asks for an affirmance of the civil penalties  
15 that were assessed in the Division's Order for incorrect --  
16 or improper production reporting on the remaining wells.

17 (Off the record)

18 MR. BROOKS: Mr. Gum has corrected me. There  
19 were some of those wells that were temporarily abandoned in  
20 lieu of being plugged, and we do not ask that those that  
21 were actually temporarily abandoned -- we do not ask that  
22 those be plugged.

23 Thank you.

24 CHAIRMAN WROTENBERY: Thank you.

25 Mr. Bruce?

1 MR. BRUCE: I really don't have an opening  
2 statement, madame Chair, other than -- I would rather  
3 present the testimony and let my witnesses state their  
4 position.

5 CHAIRMAN WROTENBERY: Okay.

6 Mr. Brooks, did you have anything else that you  
7 were going to present?

8 MR. BROOKS: No, your Honor, we rest on the  
9 Division record.

10 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

11 Then Mr. Bruce, your witnesses.

12 MR. BRUCE: Madame Chair, before I introduce the  
13 first witness, who is Mr. Marks, the materials he will be  
14 testifying about initially would probably be mainly the  
15 contacts between the Division and the company, which in  
16 letter form are Exhibit 3. So you might want to keep  
17 Exhibit 3 set aside for a while, while Mr. Marks speaks.

18 ERNEST L. MARKS,

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

21 DIRECT EXAMINATION

22 BY MR. BRUCE:

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

24 A. My name is Ernest Lyndley Marks. I'm better  
25 known as Link Marks.

1 Q. Where do you reside?

2 A. Lovington, New Mexico.

3 Q. What is your relationship to Marks and Garner  
4 Production?

5 A. I'm a partner.

6 Q. And who is the other partner in that?

7 A. James H. "Buddy" Garner.

8 Q. Okay, and Mr. Garner is in the audience?

9 A. Yes, he is.

10 Q. How long have you been in the oil and gas  
11 business?

12 A. I have been in the oil and gas business since  
13 1967.

14 Q. Could you summarize what you've done during that  
15 period?

16 A. Well, first let me say that after I graduated  
17 from the University of North Texas I came back to my home  
18 town Lovington, and my father and I started Mark's Engine  
19 Service. And then in 1967 Buddy and I started what's now  
20 Marks and Garner.

21 And we've done everything -- We got into the  
22 drilling business in the mid-1980s, early 1980s. We've  
23 been in the well-servicing business since 1983.

24 I'm sorry, this is my first time to be in this  
25 spot, so I'm just a little nervous.

1           But anyway, we've done just practically all the  
2 means and ends of the oil and gas business from one end to  
3 the other. And we're still in the oilfield-equipment  
4 business, by the way.

5           Q.    Okay, so you buy and sell equipment?

6           A.    Yes, we do.

7           Q.    And do you buy and sell oil and gas leases?

8           A.    We do that also.

9           Q.    And you are also an operator and a producer?

10          A.    Yes, we are, and we still have well-servicing  
11 equipment.

12          Q.    Okay. And so what you're saying is, for about 35  
13 years you and Mr. Garner have been doing this?

14          A.    That's right.

15          Q.    And as a small operator you're familiar with most  
16 aspects of the operational side of the business?

17          A.    Yes, we are.

18          Q.    Okay, and we will have another witness testify  
19 about certain aspects of the operations?

20          A.    I think so, yes.

21          Q.    Let's talk about the wells today. Approximately  
22 when did you acquire these wells?

23          A.    We bought them in 1994. The company was  
24 bankrupt, and we bought them from a bankrupt referee on the  
25 courthouse steps in Carlsbad.

1 Q. Okay. And is the court order under which you  
2 purchased these properties and other properties marked as  
3 Marks and Garner Exhibit 1?

4 A. Yes, it is.

5 Q. Okay. It didn't cover just these wells we're  
6 here for today?

7 A. Pardon?

8 Q. It covered these wells and a number of --

9 A. Yes.

10 Q. -- other properties?

11 A. Yes, there were 53 total wells in that company  
12 when we bought them.

13 Q. Okay, and is it fair to say at the time that  
14 proper care hadn't been taken of those leases because of  
15 financial problems that --

16 A. Well, the investors had taken that company over,  
17 from the investors -- what their lawyer told us. And the  
18 two guys that had owned it previously was Diamondback, and  
19 I think that they had sold a lot of equipment off that  
20 thing illegally. It was mortgaged.

21 So when we bought it -- We've installed lots of  
22 pumping units and flow lines and tank batteries and made  
23 necessary repairs. And we were in the process of doing  
24 that when we got this first letter here in September,  
25 September the 8th of 2000.

1 Q. Now, when you buy and sell properties, you don't  
2 buy them just to let them sit there, do you?

3 A. No, we don't. We're not what's referred to as a  
4 vulture company in the oilfield. We buy them to produce  
5 them.

6 Q. You want to make some money on them?

7 A. That's right, that's our purpose.

8 Q. Okay.

9 A. We will -- We do have the equipment to plug and  
10 abandon any well, and --

11 Q. Your own company has the equipment?

12 A. We -- Yes, we've got cementing equipment, we've  
13 got everything it takes to -- required to plug and abandon  
14 the well.

15 Q. So it's not really expensive --

16 A. No problem --

17 Q. -- for you --

18 A. -- for us to plug and abandon wells.

19 Q. Okay.

20 A. But that's not our purpose. We try to buy them,  
21 and we think that with the equipment that we've got, that  
22 we can produce these things, where larger companies  
23 couldn't do it --

24 Q. Okay.

25 A. -- and make a little profit out of it.

1 Q. Okay. Now, let's first address -- Mr. Brooks in  
2 his opening statement, Mr. Marks, said that there are still  
3 what? Is it four or five wells that are --

4 A. We found five wells out of these 17 that probably  
5 need plugged and abandoned, and we turned in 103s -- I made  
6 them myself, and Mr. Gum's office has approved them -- to  
7 plug and abandon five wells. That's no problem.

8 But before we got to that, we got this notice  
9 that we were going to have this January hearing, which I  
10 apologize for not being here. I had a death in the family  
11 and Buddy's had health reasons that kept him from being  
12 here.

13 Q. Okay. But you are willing to plug those well?

14 A. We certainly are.

15 Q. And you have the wherewithal to do it?

16 A. We can, yes.

17 Q. Okay. Well, let's start, then, going over just  
18 the timeline of the letters you got from the OCD. And I  
19 don't think you need to go through each letter, but why  
20 don't you just summarize your contacts with the OCD  
21 starting in September of 2000, the meetings you had with  
22 the Artesia Office, et cetera.

23 A. Okay. We first got -- The first letter, it had  
24 21 wells on it that were out of compliance. And as they  
25 mentioned, there were two of them over here that was

1 plugged.

2 Q. Okay. Now, is that listing of 21 wells marked as  
3 Exhibit 2, Mr. Marks?

4 A. It's not marked on mine. Oh, I'm sorry. Yes, it  
5 is. Yes, it is.

6 Q. And those are your handwritten notes on that --

7 A. Yes. Yes, they are.

8 Q. Okay, so two of those had already been plugged,  
9 and there's one on there --

10 A. One was transferred to Yates Petroleum, One had -  
11 - the number on it is wrong.

12 Q. Okay.

13 A. And I'm -- There's been confusion about those  
14 wells, because we didn't get but very few well records from  
15 the bankrupt judge. They just didn't have any available --

16 Q. Okay.

17 A. -- to speak of.

18 Q. Okay, so --

19 A. But anyway, we've done everything -- We are  
20 trying and still probably in the process of getting those  
21 well numbers straight. But we think that one was  
22 misnumbered.

23 Q. Okay. Anyway, that is the list of the wells that  
24 they initially contacted you about, the Division?

25 A. Yes.



1 Q. Okay, go ahead.

2 A. So I wrote a letter to the Artesia OCD and  
3 explained to them what we plan to do, and we plan to plug  
4 the one well.

5 And on October the 9th of 2000 I sent in -103s  
6 that we were going to swab production out of these wells,  
7 if it was possible, meaning that we rig up on it with our  
8 pulling unit and run a tool in the hole, and not  
9 necessarily have a pumpjack on that well or electricity or  
10 anything else. We just rig up and swab into it, run the  
11 swab into the well and pull the fluid out of it. We don't  
12 have to have a flow line, we've got portable flow lines  
13 that we can use for this process.

14 And anyway, they were sent back to us as not  
15 acceptable. I've forgot exactly what the reason was.

16 So Buddy Garner and Devin Garner went to Artesia  
17 to speak to somebody in that office in regards to swabbing  
18 those wells and seeing if we couldn't make that work to  
19 suit everybody. And they reported to me that they said no.

20 So I went to Artesia. The office was still out  
21 on the Carlsbad highway.

22 Q. Approximately what date was that?

23 A. That was on October the -- No, November the 3rd.

24 Q. Of 2000?

25 A. Of 2000. And I spoke to Tim Gum. And it was my

1 understanding that if I put for test-and-evaluate purposes,  
2 that that would work for up to a year.

3 So I turned in some more 103s with test-and-  
4 evaluate on them and sent them over there. I didn't get  
5 them back, approved or disapproved.

6 Like -- Well, anyway, I assumed that we were  
7 doing what was appropriate, but apparently we weren't.

8 So on January the 22nd of 2001, I got another  
9 letter from the Artesia OCD, and on the 25th I sent them a  
10 letter. And on the 29th I got another letter from the  
11 Artesia OCD with an attachment of what wells were in  
12 violation.

13 And then I sent a letter to the Artesia OCD  
14 showing these correct small amounts of production because  
15 that's what we're swabbing out of these wells. And I asked  
16 Mr. Gum if he was going to plug every well in New Mexico  
17 that made three or four barrels a month.

18 And he said no, it wasn't necessary to plug those  
19 wells.

20 So I thought that we were doing what was making  
21 everybody happy.

22 And then on October the 24th, well, I got notice  
23 that the OCD was going to have a hearing. So on the 24th I  
24 called Mr. Gum, and he was out of town and on vacation, I  
25 think on October 24th.

1           And so I mailed him a letter, which you have a  
2 copy of -- I think the Commission has a copy of that letter  
3 that I sent, explaining to him that in the process of  
4 swabbing these wells and what have you, we had found nine  
5 of them, out of the 17, the problem with them -- and we  
6 either had them producing or we had a cast-iron bridge plug  
7 set in them, we had casing integrity tested. Out of the 17  
8 we already had nine on October done.

9           And when Mr. Gum came back off of vacation, well,  
10 I got a former OCD employee, Eddie Seay, to go over to  
11 Artesia with me to make sure that I had witness to do  
12 whatever it was required to get everybody happy in this  
13 matter. And we talked to Mr. Gum for a couple hours and  
14 talked about what we was going to do, and any of them that  
15 we couldn't put back on or get a cast-iron bridge plug in,  
16 we'd plug and abandon.

17           So out of the 17 we found five that we could not  
18 get a cast-iron bridge plug in, and we feel like they  
19 probably do need plugged at this point.

20           But I would still say that that's not our  
21 business. We'd rather produce them if we can get them to  
22 produce. But under the urgency of this we decided we would  
23 plug those wells, and maybe that would get everybody happy.

24           And at that meeting I did ask Mr. Gum, if we got  
25 those wells in compliance, would there be any need for a

1 hearing up here in Santa Fe? And he said no. As a matter  
2 of fact, I asked Mr. Gum twice, and both times he told that  
3 there wouldn't be a need for hearing if we got them in  
4 compliance.

5 So we worked right up, and we got a continuance  
6 from the OCD on the 15th of November through December the  
7 6th, and then on the 4th we got another one to January the  
8 10th from Mr. Brooks, because I remember faxing you a copy  
9 of the letter that I had written to Mr. Gum, and also faxed  
10 you a letter explaining what we were trying to get done out  
11 there and tried to make everybody happy.

12 And then on January the 10th, we got word that  
13 everything was going to be done out there. We were just in  
14 limbo, we didn't know what to do to make folks happy.

15 Q. You are willing to do whatever is necessary?

16 A. We certainly are.

17 Q. And again, you intended to be present at the  
18 hearing on January 10th, but you couldn't make it because  
19 of the death?

20 A. That's exactly right, and Buddy had health  
21 problems. Buddy suffers from Parkinson's disease that was  
22 diagnosed in 1992, so he has a little bit of problem  
23 getting around sometimes.

24 Q. Okay.

25 A. But we're fortunate to have Buddy's son Devin,

1 now, as our field person, and he does practically  
2 everything that Buddy has done in the past.

3 Q. And again, Exhibit 2 simply shows the wells that  
4 were an initial list, and these handwritten comments are  
5 yours --

6 A. Right.

7 Q. -- about their status? Okay.

8 Do you have Exhibit 4 in front of you there, Mr.  
9 Marks? It's pictures.

10 A. Pictures? Oh, yeah, here they are, right.

11 Q. Now, does this just simply show the status of  
12 some of the wells that you have on production?

13 A. Right, these are wells that were on the list  
14 that's all been put back to producing. And of course I  
15 think 103s have been approved by the Artesia OCD, if I'm  
16 not mistaken, on all those wells.

17 Q. Well, now, there's one that's not quite back on  
18 production, the last page of this exhibit, the Red Twelve  
19 Levers Number 12? The final page of the exhibit, Mr.  
20 Marks?

21 A. Yeah.

22 Q. What is that a picture of?

23 A. That's a gas flare. We perforated -- Those were  
24 two wells that -- that Diamondback bunch that caused the  
25 bankruptcy, they drilled those wells and cased them. When

1 we bought it, they had never been perforated. I don't know  
2 how that happened, unless they made more money out of  
3 drilling and casing the well than -- I don't know. And  
4 these are the people that sold all the equipment out there  
5 that was owned by the investors. By the way, Buddy and I  
6 don't have any investors, it's just he and I.

7 Q. Okay. Now, that well is flaring so it is capable  
8 of producing gas?

9 A. Yeah, we would have had it hooked up, but we  
10 don't know exactly what we need to do out here. We tried  
11 to produce those things, and they said don't do that.

12 Q. Like you said, you bought these to produce them,  
13 not to let them sit there?

14 A. That's what our purpose in life is, is to try to  
15 make oil or gas, one, out of them.

16 Q. Sometimes things don't move along as fast as they  
17 should, perhaps, for budgetary reasons?

18 A. That's right. We've plugged eight wells in New  
19 Mexico this year, Marks and Garner has.

20 Q. Of your own wells?

21 A. Right, we're plenty capable of plugging wells if  
22 that's what needs to be done. But we were hesitant to even  
23 set cast-iron bridge plugs in those wells until we knew the  
24 predicament of them, because once you do that it costs lots  
25 of money to knock those bridge plugs out, and everybody

1 knows that. And you also don't have to have tubing in  
2 those wells to swab them. There's casing swabs.

3 Q. Now, you understand that the Division -- Mr. Gum  
4 has told you he doesn't like swabbing wells; is that  
5 correct?

6 A. That's my understanding, and that's fine, and I  
7 won't do that anymore. I'll put a pumpjack on them one way  
8 or the other.

9 Q. Okay.

10 A. If that's what he wants, that's what we'll do.

11 Q. But except for those one or two wells that were  
12 plugged where errors were made, it is your contention that  
13 the wells were producing a barrel or two or three a month,  
14 via swabbing?

15 A. Yeah, yes, we were in the process of testing them  
16 and producing. And it was my understanding that Mr. Gum  
17 and I had that agreement in his office when he was still  
18 out on the Carlsbad highway.

19 Q. Do you have anything further to say at this  
20 point, Mr. Marks?

21 A. Probably, but I don't know what it is.

22 Q. Were Exhibits 1 through 4 prepared by you or  
23 compiled from your company's records?

24 A. Sir?

25 Q. Were Exhibits 1 through 4 compiled from your

1 company --

2 A. No, huh-uh.

3 Q. Were they compiled from your company business  
4 records?

5 A. Oh, yeah, yes, they were sent to me. Is that  
6 what you're saying?

7 Q. Yeah --

8 A. Yes, and I did all this note-making over here.

9 Q. Okay. And do you ask that the penalty assessed  
10 against Marks and Garner be reversed?

11 A. Yes, I do. And I might also add that the wells  
12 that they wanted plugged -- I'm not saying that we haven't  
13 made mistakes at all. I'm not trying to say that. We're  
14 human and flawed, and I understand that. But everybody  
15 does. I don't think you all wanted us to plug these things  
16 by May the 15th, 2001, and that's what that order says, and  
17 I didn't get it till May 1st, 2002.

18 MR. BRUCE: With that, madame Chair, I'd move the  
19 admission of Marks and Garner's Exhibits 1 through 4, and I  
20 would pass the witness.

21 CHAIRMAN WROTENBERY: Any objection, Mr. Brooks?

22 MR. BROOKS: No objection to Exhibits 1 through  
23 4.

24 CHAIRMAN WROTENBERY: Okay, Marks and Garner  
25 Exhibits 1 through 4 are admitted into the record.



1 Mr. Brooks?

2 MR. BROOKS: Yes, good afternoon, Mr. Garner.

3 THE WITNESS: Mr. Marks.

4 MR. BROOKS: Mr. Marks, I'm sorry. Calling you  
5 by your partner's name. I'll try to keep that straight.

6 THE WITNESS: I've been called worse.

7 CROSS-EXAMINATION

8 BY MR. BROOKS:

9 Q. Mr. Marks, what is your role with Marks and  
10 Garner?

11 A. Well, I try to do what's done in the office, and  
12 Buddy tries to get done what's done out in the field.  
13 That's the way that we try to --

14 Q. So basically, you're not normally the field  
15 man --

16 A. No, sir.

17 Q. -- in the organization?

18 During the swabbing operations that were  
19 conducted on these wells, according to your testimony, were  
20 you present or are you reporting that based on what's  
21 reported to by someone else?

22 A. It's reported to me.

23 Q. Okay. So then I won't ask you any details about  
24 those operations, but I will ask you about these exhibits.

25 When Mr. Bruce was asking you, he asked his

1 global question about were these exhibits compiled from  
2 company records, and your response was something to the  
3 effect that they had been sent to you, and I understand  
4 that that was in the nature of a form question to establish  
5 a predicate for admissibility, but I do want to establish a  
6 little bit more about some of these exhibits.

7 I don't believe he -- Did he provide you a set of  
8 exhibits up there?

9 A. I guess.

10 MR. BRUCE: Yes.

11 THE WITNESS: Yeah.

12 MR. BROOKS: Okay.

13 THE WITNESS: Exhibit 1?

14 Q. (By Mr. Brooks) Well, Exhibit 1 is a public  
15 record, right? That's the deed by which you acquired these  
16 properties?

17 A. Yes, sir.

18 Q. And that's going to be a copy of something that's  
19 on file --

20 A. I think so.

21 Q. -- in the county clerk's office down there in  
22 Artesia, right?

23 A. I think so.

24 Q. Okay. Exhibit Number 2 is the one you were  
25 talking about when you said the notes made on there were

1 yours; is that correct?

2 A. That's right.

3 Q. And that is a copy of a computer run that was  
4 sent to you by the OCD; is that right?

5 A. Yes, it is.

6 Q. Now, Exhibit Number 3 is a compilation of  
7 letters, and some of them are letters that were sent to you  
8 by the OCD, and some of them are letters that were sent  
9 by --

10 A. Okay.

11 Q. -- by the OCD to you; is that --

12 A. Right.

13 Q. -- correct?

14 Now, looking at Exhibit -- looking at the fifth  
15 page, there's a letter dated January 25, 2001, that's  
16 signed by Link Marks, member-partner. Is that you?

17 A. Yes, that would be me, yes.

18 Q. And is that a letter --

19 A. I'm trying to find it.

20 Q. Oh, you haven't found it?

21 A. I haven't found anything signed by Link Marks.

22 Q. Oh, well, I think it's in that package that you  
23 just put your hand on right here.

24 A. Okay, that's what I've been looking for.

25 Q. Move over to the fifth page --

1 A. Okay, yeah.

2 Q. -- and is that a letter that you sent to Tim Gum  
3 approximately --

4 A. Right.

5 Q. -- January 25th, 2001?

6 A. Yes, sir.

7 Q. Okay. And then three more pages -- well, no,  
8 that was January 25th. Then the next two pages are a  
9 letter from OCD.

10 And then the next page is a letter marked  
11 February 5th, 2001. Is that again a letter that you wrote  
12 to OCD, you sent to OCD?

13 A. Which one, now?

14 Q. February 5th, 2001.

15 A. Yeah.

16 Q. And then there --

17 A. Oh, that's a -- No, I guess it's not.

18 Q. I believe --

19 A. No. No, you're right.

20 Q. -- different.

21 A. Okay.

22 Q. Now, then on October 24th, 2001, there's a letter  
23 dated October 24th, 2002, consists of two pages. Is that a  
24 letter you wrote?

25 A. Right, it is.

1 Q. Okay.

2 A. There's a list of the nine wells that were  
3 brought into compliance --

4 Q. Okay.

5 A. -- out of the 17.

6 Q. And --

7 A. That was in October.

8 Q. And then page over another page, October 25th,  
9 2001, that's the letter you sent to me, correct?

10 A. Yes, sir.

11 Q. Then there's two copies -- No, these are  
12 different copies. October 30, that's a letter you sent to  
13 me.

14 A. Right.

15 Q. And then there's also a letter you sent to Tim  
16 Gum on October 30th, correct?

17 A. Right, that's after our meeting.

18 Q. Okay. Now, do you have a copy of Exhibit 4 there  
19 in your folder? That's the pictures.

20 A. Yes, sir.

21 Q. And did you take these pictures, Mr. Marks?

22 A. No, sir.

23 Q. Who did?

24 A. I think Devin took them.

25 Q. Were you present when they were taken?

1 A. No.

2 Q. Okay. Well, I will ask Mr. Garner about those  
3 pictures then.

4 I'm going to ask you first off here about an  
5 exhibit that was introduced into evidence at the Division  
6 hearing, while I find it here.

7 I will show you what was marked at the Division  
8 Hearing as OCD Exhibit Number 32, and it's a part of the  
9 Division record, and ask you if you remember seeing -- if  
10 you have seen or remember seeing that correspondence.

11 A. What is it?

12 Q. It's a letter from the Division, it's addressed  
13 to Marks and Garner. It's a form letter dated May 15th of  
14 2000.

15 A. I don't think I've ever seen it. I don't recall  
16 it.

17 Q. Very good.

18 MR. BRUCE: Which exhibit number was that, Mr.  
19 Brooks?

20 MR. BROOKS: It's Exhibit Number 32 at the  
21 Division Hearing. And let the record stand corrected. I  
22 said May 15 of 2000. It was dated May 11 of 2000. And for  
23 the benefit of the Commissioners, this is the form letter  
24 that was sent out as part of the inactive well project.

25 Q. (By Mr. Brooks) Now, there appear to be quite a

1 number of marks on here that were not made by OCD because  
2 of the nature of this form, but since you say you haven't  
3 seen it --

4 A. I'm not positive --

5 Q. -- I don't suppose --

6 A. -- sir --

7 Q. -- you --

8 A. -- that I haven't seen it, but I don't recall it.

9 If it was sent out a couple years ago, it's possible that I  
10 just don't remember it.

11 MR. BROOKS: Okay, very good.

12 CHAIRMAN WROTENBERY: Mr. Brooks, just out of  
13 curiosity, how many wells were on that list --

14 MR. BROOKS: Well, I'll have to count --

15 CHAIRMAN WROTENBERY: -- that was attached to  
16 the --

17 MR. BROOKS: -- it looked like --

18 CHAIRMAN WROTENBERY: -- May, 2000 --

19 MR. BROOKS: -- one, two, three, four, five, six,  
20 seven, eight, nine, ten, eleven, twelve, thirteen,  
21 fourteen, fifteen, sixteen, seventeen.

22 Q. (By Mr. Brooks) Okay. Now, you said five wells  
23 needed to be plugged. Do you have the information as to  
24 which five wells those are that you concede need to be  
25 plugged?

1 A. Yes, sir.

2 Q. And what are they?

3 A. We've got approval to plug and abandon them, and  
4 they probably would already be done if we'd had the -- I  
5 mean, we didn't -- now we don't -- Well, anyway, it's 14,  
6 Cave Pool Unit 14, Cave Pool Unit 16, Cave Pool Unit 3,  
7 Cave -- let's see, Cave Pool Unit 53, and I'm missing one.

8 Q. Was it the Cave Pool Unit 32, by any chance?

9 A. Well, I don't think so. I don't have 32 on here.  
10 Thirty-two is right.

11 Q. Okay.

12 A. Thirty-two is right.

13 Q. Okay. Now, this is probably taking things out of  
14 order, because I want to go back and discuss these  
15 conversations with Mr. Gum.

16 But before I do, you have testified that you  
17 didn't know what the Division expected of you and that you  
18 were having trouble understanding what the Division  
19 expected of you, and I want to show you here what has been  
20 marked -- This has not been marked, this is a copy. This  
21 is a copy of Order Number R-11,753, entered by the Director  
22 of the Division on January 10th, 2002, the original of  
23 which is a part of the Division record. And I'll ask you  
24 to look at paragraph 3 of that order, and you don't have to  
25 read the locations and API numbers, but would you read for



1 the record what that paragraph 3 of that order states?

2 A. Marks and Garner is hereby ordered to plug and  
3 abandon the following five wells in Eddy County, New  
4 Mexico, on or before May 15th, 2002.

5 Well, the copy I've got of this says 2001.

6 CHAIRMAN WROTENBERY: Well, to clarify that, I'm  
7 wondering if I could take a look at the record there, to  
8 see what the copy in the file -- in the case file shows.

9 CHAIRMAN WROTENBERY: Certainly.

10 MR. BRUCE: Let the record state that the copy  
11 that was sent to me by the Division has a 2001 date, and I  
12 can submit that to the Division if necessary.

13 THE WITNESS: I never got anything from the  
14 Division, I -- Mr. Bruce, I believe, is the only -- I  
15 believe that's the only place I got any --

16 MR. BRUCE: I forwarded the order to Mr. Marks.

17 MR. BROOKS: Let the record reflect that the copy  
18 in the case file shows 2002.

19 May I see your copy, Mr. Bruce?

20 Very good, I will stipulate that Mr. Bruce's copy  
21 says 2001.

22 Q. (By Mr. Brooks) Well, what I was going to ask  
23 you was if there was anything confusing about what that  
24 order directs you to do, and I can see that if the date, in  
25 fact, said 2001, that might be some confusion, but --

1 A. No, I just wanted that out --

2 Q. -- apart from that --

3 A. I'm sorry, sir, I just wanted that out to -- you  
4 know, mistakes are made by everybody, that's all I meant to  
5 say --

6 Q. Okay --

7 A. -- and I knew exactly what you wanted.

8 Q. Okay.

9 A. We already had those five wells on 103s filled  
10 out and approved to plug and abandon, and we were going to  
11 plug and abandon them.

12 Q. So you're not in any uncertainty now that the  
13 Division wants those wells plugged; is that correct?

14 A. Well, they shouldn't be that -- We were going to  
15 plug them. We sent in 103s stating that fact, and they  
16 approved them, sent them back to us.

17 Q. But it hasn't been done as of this date; is that  
18 correct?

19 A. Well, after January the 10th we didn't know  
20 exactly where to go.

21 Q. Well, I think that -- Pardon me, I don't to be  
22 impolite, but I think my question is a yes or no question.  
23 If I'm to ask the Commission to order you to plug those  
24 wells, I have to establish that they haven't already been  
25 plugged, so --

1 A. Yes, sir.

2 Q. -- have they been plugged?

3 A. No, sir.

4 Q. Thank you. Now let me go back over the  
5 correspondence between you and Mr. Gum. You received a  
6 letter from Mr. Gum that was dated September the 8th, 2000,  
7 which is the first page of what has been marked as Exhibit  
8 3; is that correct?

9 A. Right.

10 Q. And would you have received that on or -- soon  
11 after -- within a few days after September 8th, 2000? Is  
12 that a safe assumption?

13 A. Uh-huh.

14 Q. Now, you said that soon after that you sent in  
15 103s saying you were going to produce these wells by  
16 swabbing? Is that correct? Is that what you testified?

17 A. I sent those 103s in on October the 9th.

18 Q. Okay, very good. Do you have copies of those  
19 103s?

20 A. Yes, I do.

21 Q. Did you bring them with you today?

22 A. Yes, I did.

23 Q. Okay. We may ask you to produce them.

24 And did I correctly understand you that those  
25 were returned disapproved?

1           A.    Right, does not meet the criteria, that's what it  
2   says.

3           Q.    Now, do you understand that when a C-103 sundry  
4   notice is sent in proposing an operation and it is not  
5   approved by the Division, that that means you're not  
6   authorized to proceed with that --

7           A.    Yes, sir.

8           Q.    -- operation?   Very good.

9                   Now, did you send these in before the first time  
10   you met with Mr. Gum?   Is that accurate?   You sent in these  
11   C-103s first, and then later you talked to Mr. Gum?

12           A.    We sent them in, and when we got them back  
13   rejected, then Buddy and Devin went by and spoke to Mr.  
14   Gum.

15           Q.    But you didn't --

16           A.    I didn't.

17           Q.    -- speak to Mr. Gum?   Not at that time?

18           A.    Not at that time.

19           Q.    Okay.   Now, you filed subsequent C-103s?

20           A.    After I went over to Artesia and talked to Mr.  
21   Gum.

22           Q.    And that was in November of 2000 that you filed  
23   those --

24           A.    That was November 3rd that I went to Artesia to  
25   talk to Mr. Gum.

1 Q. And that was you, not --

2 A. That was me.

3 Q. And did you talk to Mr. Gum --

4 A. Yes, I did.

5 Q. -- on that -- Okay. Then it was after that that  
6 you filed the second set --

7 A. It was --

8 Q. -- of C-103s?

9 A. Yes, sir.

10 Q. And that was, according to your testimony, based  
11 on your understanding that Mr. Gum said they would be  
12 approved; is that correct?

13 A. As long as I included test-and-evaluate.

14 Q. Okay. Were they approved?

15 A. Well, I didn't get them back one way or the  
16 other.

17 Q. Do you have files copies of those --

18 A. I've got my copy.

19 Q. Okay. Now, you said something about you took  
20 Eddie Seay with you to talk to the people at the Artesia  
21 District Office. When did that occur?

22 A. In October of -- October twenty- -- October the  
23 30th of 2001.

24 Q. So that was before November 3rd when you talked  
25 to Mr. Gum?

1           A.    No, this is -- After I talked to Mr. Gum about  
2 those 103s and turned them in, and then I didn't get them  
3 back, I just assumed that they were approved. I realize  
4 that's a mistake.

5           Q.    Oh, well, I'm sorry, we're getting -- I'm  
6 getting --

7           A.    We've moved way ahead --

8           Q.    -- things mixed up.

9           A.    -- after the last 103s were sent in.

10          Q.    Now --

11          A.    And then when we got notice from you that there  
12 was going to be a hearing up here in this matter, that's  
13 when I called over there, and Mr. Gum was on vacation. And  
14 I wrote the letter to Mr. Gum stating that I had nine of  
15 these 17 wells already in a state of repair, or -- you  
16 know, you can look on my letter and see what I've got  
17 there, and -- but nine of them had already been attended  
18 to.

19                   And I think I called -- I don't recall exactly  
20 whether I called you and you said to wait till Mr. Gum got  
21 back, that -- and to fax you a copy of that letter, and I  
22 did, I'm fairly certain, along with another letter.

23          Q.    Okay.

24          A.    And then when Mr. Gum got back off his vacation,  
25 well that's when I took Eddie Seay that's a consultant and

1 a former OCD employee to Artesia with me, and we visited  
2 with Mr. Gum for a long time about what we needed -- what  
3 needed to be done to get these things in compliance to suit  
4 the Artesia OCD.

5 And we started on those wells immediately. That  
6 was November the 1st, we moved our rig down there, and we  
7 worked right up until January the 10th or 9th, whenever we  
8 got information that this hearing was going to be anyway,  
9 so -- It was our understanding with Mr. Gum that there  
10 wouldn't be a hearing if we got all the wells in  
11 compliance, and we did do that.

12 Q. Okay. I understand where I'm getting confused,  
13 Mr. Marks. I'm getting 2000 and 2001 confused.

14 Now, the first time you spoke with Mr. Gum was on  
15 November the 3rd, 2000; is that correct? First  
16 conversation?

17 A. That's right, that's correct.

18 Q. And the conversation that Eddie Seay was party to  
19 was in October of 2001?

20 A. Yes, sir.

21 Q. And that was after the original Division  
22 complaint, or Application, had actually been filed and you  
23 had been served with it?

24 A. We got notice of that on October the 24th.

25 Q. Okay. Now, it was in September of 2000 according

1 to your -- No, it was in October of 2000, according to your  
2 testimony, that you filed this first set of C-103s; is that  
3 correct? That was in 2000?

4 A. Yes, sir.

5 Q. And after that -- That was the first thing that  
6 happened. Let's get this chronology -- I'll write it up  
7 here on the board.

8 September, 2000, Received letter from Tim.

9 A. Right.

10 Q. October, 2000, Filed C-103s.

11 A. Right.

12 Q. November 3rd, 2000 --

13 A. Well, on October the 30th -- sometime between the  
14 9th and the 30th, we got them back rejected.

15 Q. Okay.

16 A. They said that did not meet the criteria --

17 Q. October 30th --

18 A. -- to swab those wells. So Buddy and Devin went  
19 to Artesia.

20 Q. -- 2000, C-103s rejected, Buddy and Devin went to  
21 Artesia.

22 A. Right.

23 Q. Then 11-3 of 2000, Marks went to Artesia --

24 A. Yes, sir.

25 Q. -- and talked to Tim Gum?



1 A. Right.

2 Q. So that's when you contended you talked to Tim  
3 Gum about swabbing?

4 A. That's what the conversation was all about.

5 Q. And he told you, you said, that it would be okay  
6 as long as you put test-and-evaluate on your C-103s?

7 A. Well, that was my understanding, that if I put  
8 test-and-evaluate, went in there and tested those wells --  
9 and he said -- I also remember having up to a year to get  
10 pumping units put on those things, on these wells that  
11 would pump.

12 You know, it takes about \$20,000 or \$30,000 to  
13 put one of these things on, and they were -- I explained  
14 that the equipment had been sold off these things illegally  
15 when we bought them. And so we figured if we could swab  
16 them and they looked like good wells, that, you know, we  
17 would eventually put them on the rod pump. I told Mr. Gum  
18 that's what our plan was.

19 Q. And Mr. Gum told you that would be all right?

20 A. Well, that was my understanding.

21 Q. Okay. And that occurred in November of 2000?

22 A. Yes, it did.

23 Q. Okay. And then January 22nd of 2000, Mr. Gum  
24 sent you another letter, correct?

25 A. 2001.

1 Q. 2001, I'm sorry. January 22nd, 2001, second  
2 letter.

3 A. Yeah, he said he'd like to know what the status  
4 was, so I sent him a letter saying that we were making  
5 small amounts of production out of them.

6 Q. And that was a letter dated January 25th, 2001,  
7 which is also in the package?

8 A. Yes.

9 Q. And that letter states, "...all the listed wells,  
10 except the Mosley Spring, are currently producing."  
11 Correct?

12 A. Right.

13 Q. And the listed wells, you're talking about the  
14 wells on the exhibit attached to the January 22nd letter?

15 A. Right.

16 Q. Which is the preceding page in your package,  
17 immediately before your January 25th letter?

18 A. Wait just a second. January the 25th. Excuse  
19 me, say that again, Mr. Brooks. What about immediately  
20 before the January 25th?

21 Q. Well, in your January 25th letter, you say all  
22 the wells listed.

23 A. Yes.

24 Q. So I was --

25 A. Except the Mosley Spring.

1 Q. -- I was assuming that the list you're referring  
2 to is the list which was attached to the January -- to  
3 Tim's January 22nd letter; is that correct?

4 A. I suppose so.

5 Q. Okay. Now the way this package is put together,  
6 it would appear that the page of the package immediately  
7 preceding your January 25th letter was the exhibit that was  
8 attached to Tim's January 22nd letter, and I'm asking you  
9 to confirm that that's the list that you refer to --

10 A. Right?

11 Q. -- in your January 25th letter. Thank you.

12 Then January 29th, Tim wrote you another letter,  
13 and this one was a personal letter, not a form like the  
14 other ones, correct?

15 A. Right.

16 MR. BROOKS: And I apologize for my handwriting,  
17 it's not real good. Okay.

18 MR. BRUCE: That should be 01, Mr. Brooks.

19 MR. BROOKS: You're right.

20 Q. (By Mr. Brooks) Well, Mr. Gum says here, "It was  
21 discussed per our meeting of December 13th, 2000 on how you  
22 could bring your inactive wells into compliance."

23 Do you recall a meeting on December 13, 2000,  
24 with Mr. Gum?

25 A. No, I don't.

1 Q. Okay. And he asked you to furnish copies of the  
2 C-115s that support the contention that these wells were on  
3 production, correct?

4 A. That's right.

5 Q. And that's what you sent him with your February  
6 5th, 2001, letter, which is the next item in the package,  
7 correct?

8 A. That's correct.

9 Q. Okay. And then you don't have any further  
10 exhibits indicating any more activity until after this  
11 proceeding was filed. Now, I'm not sure I understood your  
12 testimony. Did any of these other meetings you talked  
13 about occur before September 24th, 2001?

14 A. On February the 5th, I sent a letter along with  
15 those 115s and stated that we would plug that Mosley Spring  
16 well by March 15th, is what I've got written down here.  
17 And I don't think I heard anything else until I got the  
18 thing from you in October that there was going to be a  
19 hearing.

20 Q. Very good, that's what I was trying to find out.  
21 Thank you.

22 Now, Mr. Marks, at any time prior to September  
23 the 24th, 2001, when the Division filed this Application --  
24 between September the 8th, 2000, when we wrote our first  
25 letter, and prior to September 24th, 2001, when this

1 Application filed, at any time during that period of time  
2 were you on location at any of these wells?

3 A. Yes.

4 Q. And did you ever observe any of the swabbing  
5 procedures that --

6 A. Yes --

7 Q. -- resulted in --

8 A. -- I did.

9 Q. -- these production reports?

10 A. And I make the payroll over there, so -- Those  
11 guys get paid for doing that too, you know.

12 Q. And do you have any notes or records that show  
13 dates when you were on location and what occurred there?

14 A. Well, other than what we provided, I'm not sure  
15 about that.

16 MR. BROOKS: Thank you.

17 (Off the record)

18 Q. (By Mr. Brooks) Mr. Marks, one of these listed  
19 wells from which the Division has production reports from  
20 you, I believe, is the Red Twelve Levers Number 12; is that  
21 correct?

22 A. Yes, sir.

23 Q. I believe your testimony was, was it not, that  
24 the Red Twelve Levers Number 12 was one of the wells that  
25 had never been perforated; is that correct?

1 A. That's correct.

2 Q. And how did you swab a well that had never been  
3 perforated?

4 A. Well, you -- I just heard what Mr. Gum replied to  
5 there, and that's absolutely right. The production in that  
6 thing was made after we perforated it.

7 Q. So you perforated it sometime before September of  
8 2000?

9 A. I'd have to look at the perforation report, I'm  
10 not positive when we did that.

11 Q. And would there be a completion report from the  
12 OCD files that would reflect that?

13 A. I don't see why there wouldn't be.

14 Q. Thank you.

15 A. Unless we failed to file it --

16 Q. Thank you.

17 A. -- which could be.

18 Q. Now, did you and Mr. Gum have a conversation at  
19 some point, or were you otherwise aware that Mr. Gum  
20 approved the use of packers on temporary abandonment of  
21 these wells in lieu of cast-iron bridge plugs?

22 A. That's right, but it's about the same difference.  
23 The time you buy a packer and an on-off tool, you've got  
24 the same situation. You might as well go ahead and plug  
25 them.

1 Q. Very good.

2 A. But the fact is that all I wanted to do was test  
3 and evaluate the wells before that we put a packer or a  
4 bridge plug in them. I know about putting packers in them,  
5 that's no big deal in the oil patch.

6 MR. BROOKS: Very good. Pass the witness.

7 CHAIRMAN WROTENBERY: Commissioners?

8 COMMISSIONER BAILEY: I have a few.

9 EXAMINATION

10 BY COMMISSIONER BAILEY:

11 Q. I have not seen the OCD previous testimony or  
12 exhibits or anything, so --

13 A. Yes, ma'am.

14 Q. -- I'm going to ask you some questions that may  
15 be a little repetitious of what's already on record, but I  
16 don't know.

17 A. Okay.

18 Q. Is the Cave Pool Unit still an operating unit?

19 A. Yes, it is.

20 Q. It's still approved by the BLM?

21 A. Yes, it is.

22 Q. Okay. Are you the approved unit operator?

23 A. Yes, ma'am.

24 Q. The OCD Order discusses 19 wells. I've heard you  
25 talk about 17 wells, and your Exhibit 2 has 21 wells. I

1 would like to go through these 21 wells in Exhibit 2 so you  
2 can explain to me what your handwritten notes mean over in  
3 that right-hand area.

4 A. Okay.

5 Q. Okay, let's go one by one. Cave Pool Unit Number  
6 1?

7 A. Okay, that says that's got a pumpjack on it, and  
8 it's pumping into a test tank that's on the location.

9 Q. What size is that test tank?

10 A. I'd just have to guess that it's about a 200-  
11 barrel.

12 Q. Are you selling it from that barrel -- from that  
13 tank?

14 A. I'm not -- Oh, that's the Cave Pool Unit, I'm  
15 sorry. Yes, we sell from that. But what happens is that  
16 we transfer that oil to the central battery in any of those  
17 unit wells.

18 Q. So you have a flow line from this 200-barrel  
19 tank?

20 A. This tank is portable, and we just haul it up  
21 there from the well.

22 Q. So you haul this 200-barrel tank to --

23 A. It's --

24 Q. -- the central --

25 A. -- I'm sorry, this test tank, I'm thinking, is



1 probably not a 200-barrel, unless it's the one on the back  
2 of our truck. We use that one too. But that's actually  
3 not my writing, that's Devin's writing, and I'm not just  
4 real sure what he's got right there.

5 But all the unit wells -- If they don't have a  
6 flow line, we pump them into a test tank that we have out  
7 there, and one of them is about a -- oh, a 12-barrel, I  
8 think, and it's on wheels, it's on tandem-axle trailer.  
9 And the other one is 140-barrel, and it's on behind a  
10 truck.

11 Q. I would like to know the details on these. The  
12 Cave Pool Unit Number 1 has a pumpjack --

13 A. Yes, ma'am.

14 Q. -- which runs production to either a 12-barrel or  
15 a 140-barrel tank; is that what you're saying?

16 A. Well, we've got test tank on location, and I'm  
17 not sure. I didn't write that in there. I'm sorry about  
18 that.

19 Q. I'm still not getting to what I need to know. Is  
20 there -- Well, maybe another way to put it is, how often  
21 does that pumpjack operate? How many days of the month do  
22 you produce that pumpjack -- with that pumpjack?

23 A. Commissioner Bailey, I'm more in the office than  
24 I am out in the field, and I'm not absolutely certain about  
25 how often they run that thing, but it is rigged up to

1 produce. And I'm not sure if it has -- with Devin's  
2 writing there, I guess he's got it going into the -- We've  
3 got a tank out there that we can pump into that's on a  
4 tandem-axle trailer, that we can take to the central  
5 battery. And this is in lieu of laying flow lines that  
6 have been taken up. But we are in the process of putting  
7 back flow lines on all those wells that we've got pumpjacks  
8 on. And I'm not just real sure which test tank he's got  
9 there.

10 CHAIRMAN WROTENBERY: May I ask one other  
11 question, just to kind of clarify what we're talking about?

12 This particular chart was filled out at some  
13 point in time, I take it, but I don't know that we  
14 established when these notes were entered on this list of  
15 wells. Can you tell me when --

16 THE WITNESS: Well --

17 CHAIRMAN WROTENBERY: -- this would have been --

18 THE WITNESS: -- this has been done since that we  
19 made the deal with Mr. Gum in his office in -- right about  
20 November the 1st.

21 CHAIRMAN WROTENBERY: Of two thousand --

22 THE WITNESS: Of 2001.

23 CHAIRMAN WROTENBERY: -- one.

24 THE WITNESS: And -- So we could keep up with  
25 what exactly we were doing with the 17 wells, we just hand-

1 wrote in here. As people go out in the patch -- it's  
2 either be me or Buddy or Devin, one. And so that first one  
3 is pumping. It's got a pumpjack on it. The Cave Pool Unit  
4 Number 1 has got tubing and rods and a pump in the hole.

5 And rather than a flow line he's got test tank  
6 there. I'm not just real certain. If it is the test tank,  
7 then what we would do is pump it into that tank and then  
8 take it to the Cave Pool Unit battery and put it in there  
9 and sell it. And there's been oil sold from these wells.

10 Q. (By Commissioner Bailey) But we can assume that  
11 this pumpjack is not in operation continuously?

12 A. Well, these wells are all stripper. So you don't  
13 pump them constantly, if that's what you're asking. We've  
14 got some of them on time clock that will come on for three  
15 hours and off for ten hours. And I'm not in charge of  
16 that, I'd say that Buddy or Devin would know more about  
17 that than I would. But none of these stripper wells are --  
18 You can't pump them constantly, you just wear out  
19 everything, you know.

20 MR. BRUCE: Commissioner Bailey, our next witness  
21 can answer some of these questions if Mr. Marks cannot  
22 answer your questions.

23 THE WITNESS: I'm sorry, Commissioners, that I  
24 don't know more about exactly what you're asking, but...

25 CHAIRMAN WROTENBERY: Could I also ask a couple

1 questions of counsel here, just to clarify what's at issue  
2 in this hearing? Because I know even at the time of the  
3 Division Hearing all but five of the wells had been  
4 returned to compliance with the Division's Rules --

5 MR. BROOKS: And that appears to be --

6 CHAIRMAN WROTENBERY: -- is that correct?

7 MR. BROOKS: Yes.

8 CHAIRMAN WROTENBERY: Okay.

9 MR. BRUCE: Madame Chair, the ones that Mr.  
10 Brooks asked Mr. Marks about, which are the Cave Pool Unit  
11 3, 14, 16, 32 and 53 are the ones that have not been P-and-  
12 A'd, and they're the ones that Mr. Marks said they would  
13 take care of.

14 CHAIRMAN WROTENBERY: Okay, so --

15 MR. BRUCE: The other wells on this list, and I  
16 forget exactly, but I -- at the Division, and I don't think  
17 it's in the Division's Order, but the -- I believe because  
18 of some mistake regarding well numbering, et cetera, the  
19 Cave Pool Unit Number 51 at the hearing was removed from  
20 this list, at the Division Hearing, and then the Red Twelve  
21 State Number 4 was an injection well which was conducting  
22 operations, and that was taken off of this list.

23 CHAIRMAN WROTENBERY: Okay.

24 MR. BRUCE: And then the Mosley Spring well that  
25 you see on there is apparently operated by Yates at this

1 point. There's a --

2 THE WITNESS: That's right.

3 MR. BRUCE: But anyway, it was removed from this  
4 list also.

5 CHAIRMAN WROTENBERY: Okay, but --

6 MR. BRUCE: So the other wells should be in  
7 compliance. And then the question comes down to the  
8 production reporting.

9 CHAIRMAN WROTENBERY: Right. Okay, that's what I  
10 was trying to get and hoping we could focus our questions  
11 and answers --

12 MR. BROOKS: Yes, it appears.

13 CHAIRMAN WROTENBERY: -- that particular  
14 question, the -- all of the other wells are currently in  
15 compliance --

16 MR. BROOKS: Except the --

17 CHAIRMAN WROTENBERY: -- besides these five?

18 MR. BROOKS: -- five wells that are identified in  
19 the Order that are ordered to be plugged. And it's --  
20 Based on Mr. Marks' testimony and also on what I've been  
21 told previously, these are not yet plugged.

22 There does not appear to be any controversy,  
23 based on what Mr. Bruce is saying, though, that they should  
24 be plugged.

25 CHAIRMAN WROTENBERY: And so the --

1 MR. BROOKS: The question at issue --

2 CHAIRMAN WROTENBERY: -- question --

3 MR. BROOKS: -- is the penalties that the  
4 Division assessed for the production reporting that was  
5 found to be in error.

6 CHAIRMAN WROTENBERY: Okay, and that is for the  
7 wells that are listed in ordering paragraph 1 of the  
8 Division's Order, since we don't have another table to show  
9 those?

10 MR. BROOKS: I believe that is correct, but let  
11 me be sure I'm in the right part of the -- Yeah, it's in  
12 finding paragraph number 9, and it's actually -- yes, it's  
13 in ordering paragraph number 1 of the Division's Order.

14 COMMISSIONER BAILEY: All right, so the well that  
15 we were discussing is at question whether or not production  
16 has been reported correctly?

17 MR. BROOKS: That is the issue, yes.

18 Now, there are -- as Mr. Bruce was pointing out  
19 on this list that Marks and Garner offered in evidence as  
20 Marks and Garner's Exhibit Number 2, there are some  
21 additional wells that we are not contesting the production  
22 reporting on.

23 I know the Mosley Spring State Com Number 2 is  
24 not at issue, but I would have to go through this list and  
25 check individually against the list in the order to be sure

1 -- to tell you with absolute accuracy which ones on this  
2 list are on Marks and Garner Exhibit 2 that are not  
3 included for erroneous production reporting in the  
4 Division's Order.

5           However, the Division's Order is the one --  
6 states the ones that are at issue.

7           COMMISSIONER BAILEY: Okay. So I think we could  
8 go through the Division ordering paragraph 1 and compare it  
9 with Marks and Garner Exhibit Number 2 to see the status of  
10 those wells and whether or not there's actual production in  
11 those wells, correct?

12           MR. BROOKS: Well, that would tell you whether or  
13 not they're -- The question is at issue as to whether that  
14 production is accurately reported, because the Division  
15 Order lists the ones on which the Division contended and  
16 offered evidence that they actually had not produced --

17           COMMISSIONER BAILEY: Right.

18           MR. BROOKS: -- whereas Marks and Garner is  
19 contending that they did.

20           COMMISSIONER BAILEY: And my question is going to  
21 the heart of the matter of how are you measuring production  
22 from this Cave Pool Unit Well Number 1?

23           MR. BROOKS: Okay, and your question is addressed  
24 to the witness, then?

25           COMMISSIONER BAILEY: Right.

1 MR. BROOKS: Okay, I was attempting to answer the  
2 Chairman's question. If I have completed my answer I'll  
3 let you resume your examination.

4 CHAIRMAN WROTENBERY: Yes, and I'm sorry to  
5 interrupt, I was just trying to make sure --

6 COMMISSIONER BAILEY: Well, there was confusion  
7 because you didn't understand what I was getting at --

8 CHAIRMAN WROTENBERY: Uh-huh.

9 Q. (By Commissioner Bailey) -- and my point is to  
10 get at whether or not there is actual production, if that  
11 pumpjack is pumping into a tank that is there sometimes and  
12 not sometimes.

13 A. Yes. I mean, we have the tank there. And it's  
14 gauged. I mean, it's a tank with measurements like any of  
15 them, so we know exactly what's gone into it. And  
16 regardless of the size of it, we know exactly what we put  
17 into it.

18 Q. And Mr. Devin would have the -- or Mr. Garner --

19 A. Yes, Devin Garner --

20 Q. -- would have records on --

21 A. -- is his name, yes, ma'am.

22 Q. -- how many days that well actually was on  
23 production?

24 A. Right. Back when we were swabbing them, we'd  
25 only do that one day, you know, I mean just rig up and swab



1 them and see how much we could get out of them and make  
2 sure that we could go all the way to the bottom if there  
3 were any casing problems or this or that, you know. And if  
4 we did find problems like that, those are the ones that we  
5 elected to plug and abandon.

6 And they probably would already have been plugged  
7 and abandoned if we had continued out there like we were  
8 working up until the first hearing.

9 Q. Do you swab more than once?

10 A. Yes, all of them.

11 Q. I'm not talking about once in a period that -- on  
12 a periodic basis?

13 A. Yeah, you just run the swab in the hole and it  
14 brings fluid out with it on a cable.

15 Q. How often do you do that?

16 A. You mean how often do you trip it?

17 Q. How many days out of the month --

18 A. Oh --

19 Q. -- do you go in to swab the well?

20 A. -- just like one day.

21 Q. And do you go every month, or is it just --

22 A. Well, we --

23 Q. -- time for that well?

24 A. Well, you'd go every month if that was the  
25 program. There's people in Lea County that do it every

1 day, make 200 barrels a day doing this.

2 Q. I'm talking about your wells --

3 A. Yes, ma'am, I understand. But I'm just saying  
4 that on ours we were just trying to make sure that they  
5 stayed active --

6 Q. So if you --

7 A. -- and so that we'd have plenty of time to rig up  
8 pumping units and tubing and rods and -- it's quite  
9 expensive to do that -- and just give us time to get all  
10 that done.

11 And it was my understanding with Mr. Gum, but  
12 apparently I missed the boat somewhere, that we had within  
13 a year to do that.

14 Q. If you test and evaluate for a year, how many  
15 times would you go into that well to swab it?

16 A. Well, we'd probably -- If we went into one and  
17 found that everything was fine and it looked like it would  
18 make three or four barrels a day, that would be one that we  
19 would want to put on the pumpjack. That one right there,  
20 that's one, I'm sure.

21 By the time in October that we found out we were  
22 going to have this hearing, we already had nine of them  
23 tested, either on rod pumps or temporary abandonment, and  
24 had the casing tested for integrity, which Mr. Gum said  
25 that's what the OCD would require now, so that's what we're

1 getting done, as fast as we can get done.

2 But I -- not as fast as we can get it done,  
3 because after the hearing date was set, well, we really got  
4 in here, and we worked from November the 1st till January  
5 the 9th out there, and we got all of them in compliance.

6 We haven't got the wells plugged, because that's  
7 going to be the last thing on the agenda. We didn't think  
8 there was any big hurry to get them plugged. I think the  
9 OCD lets you have a year after you get a 103 approved to  
10 plug and abandon a well. I realize that this hearing said  
11 get them plugged in 15 days, but that would have been  
12 impossible anyway.

13 COMMISSIONER BAILEY: I don't have any other  
14 questions.

15 CHAIRMAN WROTENBERY: Commissioner Lee?

16 EXAMINATION

17 BY COMMISSIONER LEE:

18 Q. Do you produce any water?

19 A. Yes, sir. We've got five injection wells out on  
20 this lease.

21 Q. And so your tank is how much -- How big is your  
22 tank?

23 A. We've got one 140-barrel tank portable behind the  
24 truck, and --

25 Q. So you haul the water --

1           A.    Right.  But Commissioner Lee, swabbing, a lot of  
2 times you can just take what's off the top of the -- you  
3 know, and keep from getting any water.  That's what we try  
4 to do.  But if we do, it's easy to get rid of it, drain it  
5 off the bottom of the tank and put the good oil in the --  
6 Or you can run it through the heater treater.  Buddy and  
7 some of his guys out there and Devin do that operation for  
8 us.

9                   COMMISSIONER LEE:  Okay, thanks.

10                  CHAIRMAN WROTENBERY:  I just have a couple  
11 questions, Mr. Marks.

12                                   EXAMINATION

13 BY CHAIRMAN WROTENBERY:

14           Q.    Who completes your C-115s?

15           A.    Devin.

16           Q.    And what information does he use as the basis for  
17 completing those?

18           A.    Well, he's got pumper reports and -- I guess  
19 you'd just have to ask him, I'm not just real sure.

20           Q.    And do I understand he'll be testifying here?

21           A.    Yes, ma'am.

22                  CHAIRMAN WROTENBERY:  Okay, that's all I have,  
23 then.  Thank you.

24                  Mr. Bruce, did you have anything else?

25                  MR. BRUCE:  I don't have any follow-up with Mr.

1 Marks.

2 MR. BROOKS: Neither do we.

3 CHAIRMAN WROTENBERY: Thank you for your  
4 testimony, Mr. Marks.

5 THE WITNESS: Thank you.

6 DEVIN GARNER,

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

9 DIRECT EXAMINATION

10 BY MR. BRUCE:

11 Q. Would you please state your name?

12 A. Devin Garner.

13 Q. And where do you reside?

14 A. In Lovington, New Mexico.

15 Q. And who do you work for?

16 A. Marks and Garner Production.

17 Q. Are you the son of one of the partners?

18 A. I'm the son of Buddy Garner.

19 Q. And how long have you been employed as a paid  
20 employee of Marks and Garner?

21 A. Since March of 2000.

22 Q. Have you pretty much been around the business all  
23 your life?

24 A. Ever since I was able to go out with my dad.

25 Q. And how old are you right now?

1 A. I'm 21.

2 Q. So as long as you can remember, you've been out  
3 in the field with your dad?

4 A. Yes. Yes, sir.

5 Q. And you sat here listening to the testimony of  
6 Mr. Marks and the questions of him, haven't you?

7 A. Yes, sir.

8 Q. And so when you're going through your testimony,  
9 if you think of something that might answer one of the  
10 questions of Mr. Brooks or the Commissioners, please go  
11 ahead.

12 Could you describe your duties at Marks and  
13 Garner?

14 A. Well, I'm a supervisor. We have a pulling-unit  
15 crew of five guys and I supervise them. Also I supervise  
16 all of Marks and Garner's production.

17 Q. Okay.

18 A. Along with my dad, Buddy Garner.

19 Q. And have you assumed the duties of filling out  
20 the Form C-114?

21 A. Yes, sir.

22 Q. That was something you hadn't done until --

23 A. Until March of 2000.

24 Q. Okay.

25 A. I had no -- you know.

1 Q. Let's go over some of the wells, and you've seen  
2 some of the data that was previously submitted by the  
3 Division, have you not, in the original hearing?

4 A. Yes, sir.

5 Q. Some of the pictures and some of the other stuff.

6 A. Yes, sir.

7 Q. And there's a question about production from some  
8 of these wells. How were they produced?

9 A. Well, according to some of these pictures here in  
10 front of me -- I don't know, this is Exhibit 15 -- this  
11 well that has a pumpjack is capable of producing rod pump.  
12 And the picture shows it has no motor. Sometimes out in  
13 the field we transport the motors from different pumpjacks,  
14 because there's no reason to run this pumpjack but maybe  
15 one to five days a month.

16 Q. Okay. And this gets to one of the questions.  
17 These are all low-production wells?

18 A. Yes, sir.

19 Q. And so you're not going to be pumping them 30  
20 days a month?

21 A. No, sir, there's no --

22 Q. And so there's not a need to have -- If you can  
23 switch around the motors, it would save you money from  
24 having a motor on every pumpjack?

25 A. Yes, sir, because the motor is very expensive.

1 Q. Okay. And so even if you go out on one day, like  
2 you say, these wells might only produce one, two, three,  
3 four days a month?

4 A. Yes, sir.

5 Q. And you do move equipment around to --

6 A. Yes, sir, we do --

7 Q. -- keep the wells on a producing status?

8 A. -- we're capable of moving equipment around  
9 ourselves.

10 Q. Okay. Now -- And we'll get to a couple of the  
11 wells in the end, the Cave Pool Unit 17 and 22. Were all  
12 of the other wells that were discussed capable of being  
13 swabbed at the time that these pictures were taken?

14 A. The ones that had pumpjacks and rods in the hole  
15 were capable of pumping, because they was capable of having  
16 an electric motor put on them, and the rest of the wells  
17 were capable of being swabbed.

18 Q. Okay.

19 A. The ones that don't have pumpjacks?

20 Q. And it was your job to supervise that?

21 A. Yes, sir.

22 Q. Along with your father?

23 A. Yes, sir, both of us.

24 Q. Okay. Do you have -- It was this listing. Yours  
25 -- Is it marked Exhibit 2, I think? Yes, that's your



1 listing. And maybe answer some of these questions that are  
2 in your handwriting. Some of these are Mr. Marks'  
3 handwriting, are they not?

4 A. Yes, sir, and some of them --

5 Q. And like the P-and-A --

6 A. Yes, sir.

7 Q. -- whether they were P-and-A'd or there's an  
8 approved P-and-A?

9 A. Yes, sir.

10 Q. But then there's some lighter handwriting; is  
11 that your handwriting?

12 A. Yes, sir, sure is.

13 Q. Could you go down on some of these, like the Cave  
14 Pool Unit Number 1, and what they're produced and, if  
15 they're produced into a smaller tank, how that is  
16 transferred to the central tank battery?

17 A. Okay. Well, as Mr. Marks was saying, we do have  
18 a transport truck that's capable of hauling 140 barrels of  
19 fluid. And when I put this pumpjack with the test tank on  
20 location, there is a test tank on location. What we did  
21 is, we produced the fluid into this test tank, and from  
22 this test tank sucked it out of that test tank and took it  
23 to the central battery, the Cave Pool Unit Battery, where  
24 it was shown, you know, that we took it up to the unit.

25 Q. And all of that oil from the Cave Pool Unit is

1 eventually just sold as a unit production?

2 A. As a -- It's unitized, yes, sir, it's sold as a  
3 unit.

4 MR. BRUCE: Okay.

5 CHAIRMAN WROTENBERY: Mr. Bruce, could you talk  
6 about the time frames a little bit more? I'm still --

7 MR. BRUCE: Okay.

8 CHAIRMAN WROTENBERY: -- confused about --

9 MR. BRUCE: Okay, sure, sure.

10 CHAIRMAN WROTENBERY: -- the status that's  
11 indicated here and when that was recorded and whether it  
12 reflected the status during the period of -- I guess it was  
13 September, 2000, through August, 2001, where most of the  
14 production was reported that's at issue here.

15 Q. (By Mr. Bruce) Yeah. Mr. Garner, you have, like  
16 I said, in front of you the pictures that the Division  
17 took, and one of them is -- the first one you have was  
18 Division Exhibit 15, which is the Cave Pool Unit --

19 A. Yes, sir.

20 Q. -- 15 well?

21 What is shown on that? Was there a pumpjack on  
22 that well?

23 A. Yes, sir, there is a pumpjack here --

24 Q. Okay.

25 A. -- along with rods and a pump in the hole.

1 Q. Okay. So -- And that's one of the ones that  
2 might not have had motor on it at the time but --

3 A. Yes, sir.

4 Q. -- you transfer that around? Okay.

5 So what you're talking about here when you're  
6 talking about that it was capable of producing, you are  
7 talking about the time frame -- And let me get a date for  
8 the Commission. The production at issue here was from  
9 September, 2000, I believe, through August of 2001, Madame  
10 Chair.

11 And the pictures that I'm discussing with Mr.  
12 Garner are Division Exhibits 16 through 31 that were  
13 submitted by the Division at the original hearing. And  
14 these are pictures that were taken by the Division, Mr.  
15 Guye, the Division's employee. So what we will be talking  
16 about is, you know, were they capable of producing at the  
17 time?

18 CHAIRMAN WROTENBERY: We've got a little  
19 difficulty here because we don't have copies of those  
20 pictures for the Commissioners.

21 MR. BROOKS: Well, I have a set, some of which  
22 are black and white.

23 CHAIRMAN WROTENBERY: Mr. Gum, could you find  
24 those in here and --

25 MR. BROOKS: Okay, here's one set, and here's

1 another set. There's the color set, right there.

2 CHAIRMAN WROTENBERY: Okay, got it? I think  
3 we've got it. Thank you.

4 MR. BRUCE: Do you have the pictures now?

5 CHAIRMAN WROTENBERY: Yes, thank you.

6 MR. BRUCE: Okay. And so I'm starting off with  
7 Exhibit 15, and I think Mr. Garner just talked about that.

8 Q. (By Mr. Bruce) Move on to Exhibit 16, Mr.  
9 Garner, which is the Cave Pool Unit Number 3. Again, could  
10 you describe what that shows, and was that well capable of  
11 being swabbed at that time?

12 A. Yes, sir, this is a wellhead, and you are capable  
13 of running a casing swab in this well to pull production  
14 out of this hole.

15 Q. Okay, and again --

16 A. Go ahead. Go ahead.

17 Q. I was going to say, and again, Marks and Garner  
18 does have the ability to transport the produced oil and any  
19 produced water?

20 A. Yes, sir, that's back to the transport truck that  
21 we do own.

22 Q. Okay. And then Exhibit 17?

23 A. This is also another wellhead which can be  
24 disassembled, and a casing swab run into it and production  
25 pulled out of it, and the production can be put into a

1 transport truck and transported to the CPU tank battery,  
2 the Cave Pool Unit tank battery.

3 Q. Now, later this one -- on Exhibit 2 -- The well  
4 listing that I'm referring to is Exhibit 2. It says a  
5 pumpjack -- a pumpjack has been put on that well, I  
6 believe?

7 A. That's the Cave Pool Number 12?

8 Q. Yeah.

9 A. That would be Exhibit Number 17.

10 Q. Well, what I'm saying is -- Yeah, Exhibit 17.

11 A. Okay, I was off one, I'm sorry.

12 Q. Okay.

13 A. Yes, sir, there is a pumpjack on the CPU 12, and  
14 it has been hooked up to electricity, and it always has,  
15 ever since I have known of them buying these wells.

16 Q. Okay.

17 A. It's never been taken off electricity.

18 Q. Okay. Then move on to your Exhibit 18, or their  
19 Exhibit 18, excuse me. And our pictures are a little --  
20 not quite as sharp as the ones --

21 A. I'm showing Exhibit Number 19 here in front of  
22 me.

23 Q. Do you have Exhibit 18?

24 A. I don't show it in front of me.

25 Q. Okay, it might not have run through the copy

1 machine.

2 A. Okay, the Exhibit Number 18, the Cave Pool Unit  
3 Number 14, there is a wellhead on it. You can disassemble  
4 this wellhead, run a casing swab in the hole, pull  
5 production out of the hole into the transport tank,  
6 transport tank truck, and transport that up to the CPU tank  
7 battery like we have been doing.

8 Q. Okay. Do you have Exhibit 19?

9 A. Yes, sir.

10 Q. And that's the Cave Pool Unit 16 well?

11 A. Yes, sir.

12 Q. Okay.

13 A. Basically the same way. It has a wellhead on it.  
14 It can be disassembled, a casing swab run in the hole and  
15 the production pulled out of it into the transport truck  
16 and transported to the CPU tank battery.

17 Q. Uh-huh.

18 A. And it can't be measured in this transport truck,  
19 the amount pulled out of the well.

20 Q. Okay. Now, I don't think I'm going to run down  
21 all of these, but the next one is the Cave Pool Unit Number  
22 19.

23 A. Yes, sir.

24 Q. Now, since this picture has been taken, has a  
25 pumpjack been put on?

1 A. Yes, sir.

2 Q. Okay. But it was capable of being swabbed at the  
3 time?

4 A. No, sir, this well has rods and a pump in the  
5 hole and a portable pumpjack with an engine on it has been  
6 set on it.

7 Q. Oh, okay.

8 A. And was set on it. This is the pumpjack we moved  
9 around to test wells that did have rods and pump in the  
10 hole.

11 Q. Okay. Going through the exhibits -- and I won't  
12 have you go through every one -- you might get asked  
13 questions on some of these.

14 Up through Exhibit 29, they were capable of being  
15 produced at the time?

16 A. Yes, sir.

17 Q. Or, I know one or two of them were injection  
18 wells, I believe. There might not be a picture of it.  
19 There was a -- what, the Red Twelve State Number 4 was a  
20 water-injection well --

21 A. Yes, sir, that well was a water-injection well,  
22 still is.

23 Q. Okay, and capable of operation?

24 A. Yes, sir.

25 Q. Okay. Next, Mr. Garner, pull out -- Well, wait a

1 second here. Then you did prepare the Form C-115s, right?

2 A. Yes, sir, I sure did.

3 Q. Okay. And you reported the data that you had  
4 acquired -- Now, there were some mistakes made, were there  
5 not?

6 A. Yes, sir, there was some mistakes, and I did call  
7 with the State Office up here and got with some of the  
8 women up here, and we corrected some of them, sometimes --  
9 we just went over them to see what mistakes we've made.

10 Q. Okay.

11 A. And some of them were corrected, some of them  
12 weren't, because sometimes they missed them too.

13 Q. Okay. For instance, you don't dispute that the  
14 Cave Pool Unit Number 17 and 22 wells were P-and-A'd  
15 previous to this?

16 A. No, because then again, there were so many wells  
17 and I was just barely starting on doing the C-115s. There  
18 could have been confusion.

19 Q. Okay, so production reported for those, that is  
20 incorrect; you don't dispute that?

21 A. No, not at all.

22 Q. Okay. Finally, do you have what I had previously  
23 marked Marks and Garner Exhibit 4 in front of you, the  
24 pictures that were taken?

25 A. Yes, sir.



1 Q. Did you take those pictures?

2 A. Yes, sir, I took these pictures.

3 Q. Okay. And what time frame, just so the  
4 Commission is aware?

5 A. Oh, it's hard to say. I don't know, I mean --

6 Q. They weren't just taken yesterday?

7 A. No, no, they weren't taken recently. These  
8 pictures were not taken recently, no.

9 Q. Okay. And again they do show more or less -- but  
10 they do show, more or less, the current condition of these  
11 wells?

12 A. Yes, sir. Yes, sir.

13 Q. They've been maintained since then?

14 A. Yes, sir.

15 Q. And on the third page the -- I forget which  
16 number well that is --

17 A. The Red Twelve Number 12 --

18 Q. -- it's not hooked up to a gas-flow line at this  
19 point, is it?

20 A. No, sir.

21 Q. But it is capable of producing gas?

22 A. Yes, sir, it is capable of producing gas.

23 MR. BRUCE: Okay. I think that's all I have at  
24 this point, madame Chair. I pass the witness to Mr.  
25 Brooks.

## CROSS-EXAMINATION

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BY MR. BROOKS:

Q. Good afternoon, Mr. Garner. I understand, Mr. Garner, that you are the field person for Marks and Garner?

A. Yes, sir, along with my dad.

Q. Okay. And everything you've testified to about what went on with these wells, you're testifying to from your own personal knowledge; is that correct?

A. Yes, sir, from the time that I was out there.

Q. Now, the equipment that you say was used in swabbing these wells, is that equipment that belongs to Marks and Garner?

A. Yes, sir.

Q. And could you describe the rig that you use?

A. Do you want me to go into detail?

Q. Well --

A. I mean, I --

Q. -- I don't know anything about rigs, but Mr. Gum does and the Commissioners do, so --

A. It's a pulling unit and it has a swab line on it, 12,000 foot of swab line on it, and it is capable of casing and tubing swabbing. We do have the tools for that.

Q. When did you begin these swabbing operations?

A. We began -- Me, Link and Dad discussed it, and we started as soon as we got that letter saying that they was

1 not in compliance, and we started showing production on  
2 them to think it was going to be brung into compliance.

3 Q. Do you keep a log or any kind of records as to  
4 when you did each of these -- when you made each of these  
5 production --

6 A. Yes, sir --

7 Q. -- swabs?

8 A. -- but I don't have them with me.

9 Q. And are you here prepared to testify that each of  
10 these wells, except for the two that -- coincidentally  
11 except for the two that happen to be plugged and abandoned,  
12 that each of the other 15 wells on this list was actually  
13 produced in each and every month from September of 2000  
14 through July of 2001?

15 A. Yes, sir. Yes, sir.

16 Q. And you can testify to that from your own  
17 personal knowledge?

18 A. Yes, sir.

19 Q. And you don't have to have your records to review  
20 to testify?

21 A. No, sir.

22 Q. Okay. Let me see if there's anything else I need  
23 to ask you about this.

24 Oh, yeah, you said that you had a portable  
25 pumpjack?

1 A. Yes, sir.

2 Q. Would you describe that unit please?

3 A. If you look on Exhibit 4, the CPU 19 --

4 Q. Right.

5 A. -- this pumpjack has a gas engine on it, and it  
6 has a pumpjack mounted onto a skid, and the skid makes it  
7 more easy to load up onto a transport, low-boy float, and  
8 put it on each well that has rods and a pumper. That makes  
9 it easier to set.

10 Q. Were there any wells out there that you used this  
11 portable pumpjack on, other than the Cave Pool Unit Number  
12 19?

13 A. No, sir, not that I know of. I mean, there was,  
14 but it's not in this hearing.

15 Q. So you brought that unit out there every month,  
16 pumped the well and then you took it away?

17 A. Well, the unit was out there.

18 Q. Where was it?

19 A. It was on another well.

20 Q. It wasn't on the Cave Pool Unit Number 19?

21 A. Not on the Cave Pool Unit -- on the Cave Pool  
22 State, which is not any concern.

23 Q. Yeah, it's not in the proceeding?

24 A. Yes, sir.

25 Q. But it wasn't on the Cave Pool Unit Number 19?

1 A. Well, when it -- it was.

2 Q. It wasn't continuously, it was moved away --

3 A. Oh --

4 Q. -- every time you got through producing?

5 A. Yes, sir.

6 Q. Each month you moved it away, and then you moved  
7 it back the next month?

8 A. (Nods)

9 Q. Now, you made reference to the Red State Twelve  
10 Number 4, which is an injection well?

11 A. Yes, sir.

12 Q. And that well is not on this list, is it? Not a  
13 part of this controversy, correct?

14 A. Onto this list right here in front of me?

15 Q. No, it's not -- Well, you don't have a copy of  
16 this order?

17 A. No, sir.

18 Q. Have you ever seen a copy of this order?

19 A. No, sir.

20 Q. Okay, so you wouldn't know if the Red State  
21 Number 4 is on this order or not?

22 A. I'm just going by what -- this right here in  
23 front of me.

24 Q. Okay. Well, I think the record will reflect that  
25 the Red State Number 4 is not a subject of this order.

1           Now, you were asked some questions about when  
2 these photographs were taken, and you said they weren't  
3 taken yesterday, but you didn't come up with any kind of  
4 date range as to when they were taken.

5           A.    It was taken over a period of time.

6           Q.    Well, can you tell me -- can give me any idea  
7 over what period of time?

8           A.    I'm going to say anywhere from the time we  
9 started swabbing up till yesterday -- well, not yesterday,  
10 but...

11          Q.    So these pictures might have been taken anytime  
12 between September, 2000, and July of 2002, and you just  
13 don't remember -- have any recollection of when they were  
14 taken?

15          A.    No, because there's so many wells out there.

16          Q.    And do you take a lot of pictures of your wells?

17          A.    Well, pending this case, no.

18          Q.    Okay. Now, you testified that you swabbed each  
19 of these wells each month. Can you tell us -- Do you just  
20 know from memory which wells you swabbed?

21          A.    No, sir, because there's too many.

22          Q.    Can you just give us a list of them?

23          A.    I can't give you a list off the top of my head.

24          Q.    But yet you can tell us that all the wells on  
25 this list were swabbed, and you don't have to look at your

1 records to tell us that, correct?

2 A. Well, I can look on here and tell the ones -- and  
3 look at the pictures of the ones, the wellheads.

4 Q. There aren't pictures of all these wells, though,  
5 are there?

6 A. I'm going by this Exhibit 15 through -- so and  
7 so.

8 Q. Okay. Could you describe to us the swabbing  
9 procedures that you used?

10 A. Well, what they do is disassemble the wellhead.  
11 And when they do that, they take everything off the  
12 wellhead and you have just casing sticking up out of the  
13 hole.

14 Q. Yeah.

15 A. And then this -- the pulling unit is rigged up --

16 Q. Yes.

17 A. -- before this. They go in the hole with the  
18 casing swab, run down there to where they tag the bottom,  
19 pull out of the hole. And whenever they do pull out of the  
20 hole, that's when the production is put into the test tank,  
21 or the transport, either one.

22 Q. And in each of these cases you used this test  
23 tank, this mobile tank --

24 A. Transport truck, yes, sir.

25 Q. Okay. And then you put the wellhead back

1 together when you get through?

2 A. Put the wellhead back together, so...

3 Q. Okay. Now, if each of these -- I'm sorry, excuse  
4 me. Now, how do you mount this pulling unit? Do you use  
5 guy wires?

6 A. Yes, sir.

7 Q. And are there deadmen on each of those locations?

8 A. There should be, yes, sir.

9 Q. And each time you hook this unit up, you mounted  
10 those guy wires to those deadmen?

11 A. Yes, sir, and if we couldn't find a deadman, then  
12 we hooked them onto another anchor.

13 Q. Do you remember any of these wells which didn't  
14 have deadmen?

15 A. There was a few of them, but I don't --

16 Q. You remember which ones?

17 A. -- remember specifications of which one, which  
18 ones did not and which ones did. Some of them were covered  
19 up because of the dirt --

20 Q. Right.

21 A. -- and everything.

22 Q. Where there is any kind valve or assembly on the  
23 wellhead, you would have to disconnect that in order to  
24 swab it?

25 A. We would disassemble it, yes, sir.



1 Q. And then you'd have to reassemble it?

2 A. Yes, sir, reassemble.

3 Q. And so you would imagine that if you look to  
4 those wellheads and looked at the bolts, that they would  
5 show some evidence of having been disconnected and  
6 reconnected; is that right?

7 A. Yes, sir.

8 (Off the record)

9 MR. BROOKS: I apologize to the members of the  
10 Commission for having to communicate with my client  
11 continuously, but we, of course, have not had the  
12 opportunity to take Mr. Garner's deposition prior to this  
13 day, so we have to respond to what we hear as we hear it.

14 Q. (By Mr. Brooks) Okay, you bring this equipment  
15 in to the location. Each time you do this operation you  
16 have to bring in the rig --

17 A. Uh-huh.

18 Q. -- you have to bring in the test tank, the  
19 production --

20 A. Transport truck.

21 Q. Okay, whatever you're going to empty the oil  
22 into, because you don't have flow lines on most of these  
23 wells; is that correct?

24 A. Some of them they do, some of them they don't.

25 Q. And on these where you use this mobile pumping

1 units that's on a skid, you have to bring that in, don't  
2 you?

3 A. Uh-huh.

4 Q. Do you need roads to the location to bring those  
5 things in?

6 A. Yes, sir.

7 Q. So that would be evidence, those roads would show  
8 evidence of having been traveled, would they not?

9 A. Yes, sir.

10 (Off the record)

11 CHAIRMAN WROTENBERY: Do you need this back?

12 MR. BROOKS: Yes, we probably do for purpose of  
13 examination. Thank you, madame Chairman.

14 Q. (By Mr. Brooks) Okay, do you have a copy up  
15 there of OCD Exhibit Number 25 --

16 A. Yes, sir.

17 Q. -- Mr. Garner?

18 A. Yes, sir.

19 Q. Can you tell us the procedure that was used to  
20 disassemble the wellhead that's shown there, which is the  
21 Cave Pool Unit Number -- I'm not sure which -- Number 51?

22 A. 51 or 53?

23 Q. It says 53 there. Okay, this is the Cave Pool  
24 Unit Number 53. Could you describe to us the procedure  
25 that was used to disassemble this wellhead?

1           A.    Of course.  This right here where it looks like  
2 an oval shape --

3           Q.    Yes, sir.

4           A.    -- it's called a casing switch.  It switches from  
5 7 inches to 2-inch.  That valve on there is to shut the  
6 well in, in case it -- get a kick and blow fluid out of it,  
7 and it screws into this wellhead.

8           Q.    Okay.  Would you come up here and point where  
9 you're saying "this"?  Tell us which part is which and what  
10 you did with each part.

11          A.    From here --

12               MR. BROOKS:  They can't see it.  I'll hold it up  
13 like this.

14               CHAIRMAN WROTENBERY:  Thank you.

15               THE WITNESS:  Let me borrow your pen real quick.  
16 From here down to here, that's called a casing switch.  And  
17 it has threads in here, and these threads are screwed into  
18 this well casing sticking up out of the ground.  And this  
19 is a two-inch valve put on top of there and closed in case  
20 that well does happen to get intake of gas and blow fluid  
21 out the hole.  But yes, this way it is screwed into that  
22 collar right there.  That is the casing collar.

23          Q.    (By Mr. Brooks)  So you unscrewed that --

24          A.    Yes, sir, we --

25          Q.    -- that whole --

1 A. -- unscrewed that --

2 Q. -- apparatus --

3 A. This right here was unscrewed out of that collar,  
4 our tool is screwed in, and we go in-hole with our casing  
5 swab.

6 (Off the record)

7 Q. (By Mr. Brooks) Okay, do you recall the  
8 condition of the roads at the Cave Pool Unit Number 53?

9 A. The roads were bladed.

10 Q. They were what?

11 A. They were bladed, they were fixed.

12 Q. And as of what date was that?

13 A. I'm not sure.

14 Q. But you went in there every month for a period of  
15 nine, ten months, correct?

16 A. Yes, sir.

17 Q. And they were the same the whole time?

18 A. Yes, sir -- well, Marks and Garner hired a  
19 backhoe to come in there and fix those roads.

20 MR. BROOKS: Okay, I believe that's all we have  
21 from this witness.

22 (Off the record)

23 MR. BROOKS: Oh, excuse me.

24 (Off the record)

25 MR. BROOKS: Okay, I believe that's all our

1 questions --

2 THE WITNESS: Okay.

3 MR. BROOKS: -- of this witness.

4 CHAIRMAN WROTENBERY: The Commissioners may have  
5 some, Mr. Garner. Would you wait just a minute?

6 Commissioner Bailey?

7 EXAMINATION

8 BY COMMISSIONER BAILEY:

9 Q. What's your favorite product for breaking rusted-  
10 out pipe?

11 A. We use either a 36-inch pipe wrench or a chain  
12 tongs.

13 Q. Now, on a serious note, how many wells do you  
14 operate on a swabbing or portable-pumping-unit basis?

15 A. Per month?

16 Q. Yeah.

17 A. Well, we operate --

18 Q. Or all total, I'd like to know all total.

19 A. All total?

20 Q. Uh-huh, that you --

21 A. We have --

22 Q. -- don't have permanent --

23 A. Are you talking about permanent or a portable  
24 swab -- pulling unit?

25 Q. Where you don't have a permanent equipment on the

1 well and each month you go around and pull -- and rig up to  
2 swab or have that portable pumping unit that you haul  
3 around?

4 A. How many wells total?

5 Q. How many wells do you service that way?

6 A. Right offhand I couldn't tell you, there's so  
7 many of them. I'm going to say over ten. But some of  
8 those wells are gas wells, they're natural-flowing gas  
9 wells, and we do use that swab unit to pull fluid out of  
10 them to produce more gas. I'm including those wells too.

11 MR. BROOKS: I'm sorry, I didn't hear your  
12 answer. What was the number you gave?

13 THE WITNESS: I'm going to say ten --

14 MR. BROOKS: Thank you.

15 THE WITNESS: -- fifteen, something like that.

16 MR. BROOKS: Continue.

17 Q. (By Commissioner Bailey) So your portable  
18 production tanks and your portable pumpjack unit is in  
19 constant motion?

20 A. Yes, ma'am.

21 COMMISSIONER BAILEY: That's all.

22 CHAIRMAN WROTENBERY: Commissioner Lee?

23 COMMISSIONER LEE: What is the production you're  
24 talking about, production of this well?

25 CHAIRMAN WROTENBERY: How much was reported?

1 COMMISSIONER LEE: Yes.

2 MR. BROOKS: That is reflected in the C-115s,  
3 which are in evidence that were offered by the Division,  
4 the production that was reported. That would be OCD  
5 Exhibit Number 1, which summarizes the --

6 COMMISSIONER LEE: Just give me the ballpark.

7 MR. GUM: One to two barrels, total fluid.

8 CHAIRMAN WROTENBERY: Per month?

9 MR. BROOKS: Per month.

10 THE WITNESS: Per month.

11 EXAMINATION

12 BY COMMISSIONER LEE:

13 Q. So you are talking about evaluating this well,  
14 right?

15 A. Yes, sir.

16 Q. And you don't keep records of that, you mix it  
17 up, right?

18 A. Are you talking about keeping records --

19 Q. The log.

20 A. When I go on swabbing -- I keep records, but I  
21 didn't bring them with me.

22 Q. That's the most important evidence. Why didn't  
23 you bring it here?

24 A. I don't know.

25 Q. Okay. How about -- How much time to put a motor

1 in do you need?

2 A. How much time do you take --

3 Q. Yeah.

4 A. -- to put a motor on?

5 Q. Right.

6 A. An hour to two hours.

7 Q. An hour, two hours. How much time do you put  
8 into disassembling the wellhead?

9 A. Like again, an hour to two hours. It just  
10 depends on how tight that wellhead is.

11 Q. Okay. And why do you need -- Did you inject  
12 water also?

13 A. Yes, sir. Yes, sir, it was separated there at  
14 the battery.

15 Q. You injected it there --

16 A. The water was separated from the oil, yes, sir.

17 Q. And for the gas well, what's your reporting?

18 What's the gas well reporting, the one they didn't  
19 perforate? What is the reporting of that well?

20 MR. GUM: I do not have any up-to-date or later  
21 C-115. That's a recent well. It is not on line at this  
22 point in time.

23 COMMISSIONER LEE: Yeah, but do they have a  
24 production?

25 MR. GUM: No.



1 Q. (By Commissioner Lee) But I just say one or two  
2 barrels, then you have to bring the rig down, so your  
3 transportation cost -- What's your transportation cost?

4 A. I don't know, I'm not in the financial part of  
5 the business. I wouldn't know. I'm just --

6 Q. How far away from the base of your truck to your  
7 well?

8 A. How far away is -- From what to what, now?

9 Q. Your rig -- You need to bring your rig there,  
10 right?

11 A. Yes, sir.

12 Q. So how far away --

13 A. Well, whenever we work on this whole unit there's  
14 more wells besides this cable unit. It is inside the unit,  
15 yes, sir, it's inside --

16 Q. Ten wells, right?

17 A. How many?

18 Q. Ten wells?

19 A. I'm not quite sure.

20 Q. You just told me it's ten --

21 A. The ten wells? Whenever we swab these wells.

22 Q. So ten wells. Every well is how many barrels a  
23 day?

24 A. Well, if you swab the Cave Pool Unit, which is a  
25 unit inside -- and it's just a unit inside itself. And the

1 rig is right there beside each well, no more than half a  
2 mile.

3 Q. So you're putting four hours of labor plus your  
4 transportation to evaluate your well?

5 A. Yes, sir.

6 Q. Without recording it?

7 A. Without recording the swabbing procedure?

8 Q. I don't see your log.

9 A. I don't have my log with me.

10 Q. So are you breaking even for this kind of  
11 operation?

12 A. I don't know, I don't see the financial part of  
13 this.

14 COMMISSIONER LEE: Well, no more questions.

15 EXAMINATION

16 BY CHAIRMAN WROTENBERY:

17 Q. Mr. Garner, I guess I want to try to understand a  
18 little better what I think you were telling us was  
19 happening there. Beginning in May of 2000, the Division  
20 started sending you some correspondence with lists of wells  
21 that Division records indicated were out of compliance with  
22 the rules and were inactive.

23 A. Yeah, so I was told.

24 Q. Okay. Do I understand correctly that in response  
25 to that correspondence you made an effort to begin

1 producing the wells on that list, to restore them to  
2 production and bring the back into compliance with the  
3 Rules?

4 A. Yes, ma'am.

5 Q. And I don't have a copy of the exhibits that were  
6 submitted at the Division Hearing, but based on the  
7 findings in the Division Order, Finding Number 8, it  
8 appears that there were -- I guess -- Well, I'll just read  
9 the well numbers: Cave Pool Unit Wells Number 1, 3, 12,  
10 14, 16, 19, 30, 32, 41 and 53, also the Red Twelve Levers  
11 Federal Wells Number 8Q and 12, the Red Twelve State Well  
12 Number 6, and the Theos State Well Number 1. You reported  
13 production from those wells beginning in September of 2000  
14 and continuing through August of 2001?

15 A. Yes, ma'am.

16 Q. And each month, this finding indicates, you  
17 reported small volumes of production of oil and water --

18 A. Yes, ma'am.

19 Q. -- from each of those wells?

20 A. Yes, ma'am.

21 Q. You filed those production reports, those C-115s?

22 A. Yes, ma'am.

23 Q. Is that I understand? And what information did  
24 you use as a basis for compiling those reports?

25 A. I used information from my dad, Buddy Garner, and

1 also information from me. Sometimes I was out in the  
2 field, sometimes he was out in the field.

3 Q. Okay, when you were out in the field, how did you  
4 record that information about how much was produced from  
5 each well?

6 A. I had a notebook I kept with me. And we gauged  
7 -- used a gauge, gauge line, to measure how much oil was in  
8 the transport tank on each of those wells that was swabbed.

9 Q. And then you recorded that in your notebook?

10 A. Yes, ma'am.

11 Q. Can you provide us copies of --

12 A. I don't have them with me.

13 Q. You don't have them with you, but after the  
14 hearing would you be able to provide us copies --

15 A. Yes, ma'am, I sure can.

16 Q. -- of those memos?

17 A. Yes, ma'am.

18 Q. Also I note -- I guess there was one well, the  
19 State Well Number 2, that was mentioned in a different  
20 subparagraph of this finding number 8, but it also began to  
21 report production in September of 2000 and continued to  
22 report production to August, 2001.

23 A. Yes.

24 Q. You would have the records on that well --

25 A. Yes, ma'am.

1 Q. -- as well?

2 And if I understand correctly, some of these  
3 wells the production was by swabbing?

4 A. Yes, ma'am.

5 Q. Others you actually pumped?

6 A. Yes, some of them did have pumpjacks, rods and  
7 pumping on them, some of them were swabbed.

8 Q. And would your records reflect the status of each  
9 of those wells?

10 A. Yes, ma'am. Yes, ma'am.

11 Q. Okay. Then I think it would be very helpful to  
12 have a copy --

13 A. Okay.

14 Q. -- of those records.

15 A. Okay.

16 CHAIRMAN WROTENBERY: That's all I have. Mr.  
17 Brooks, did you have --

18 MR. BRUCE: I just had a follow-up question, and  
19 this goes to something Commissioner Lee was asking.

20 FURTHER EXAMINATION

21 BY MR. BRUCE:

22 Q. The Cave Pool Unit, there's a number of wells out  
23 in that unit?

24 A. Yes, sir.

25 Q. But Marks and Garner also operates a number of

1 other wells in that area, the Cave State wells and others?

2 A. Yes, sir. Yes, sir.

3 Q. So it's not just these --

4 A. No, it's not just the Cave Pool --

5 Q. -- however many active wells there are at this  
6 time in the unit; there are a number of other wells that  
7 you go out on a regular basis, whether that's weekly or  
8 monthly --

9 A. Yes, sir, there's many more wells --

10 Q. -- to work on and maintain?

11 A. Yes, sir.

12 MR. BRUCE: Okay. Thank you, that's all I have.

13 MR. BROOKS: Could I --

14 CHAIRMAN WROTENBERY: Mr. Brooks?

15 MR. BROOKS: -- ask a couple follow-up questions?

16 CHAIRMAN WROTENBERY: Uh-huh.

17 FURTHER EXAMINATION

18 BY MR. BROOKS:

19 Q. The Commission has expressed some interest in  
20 accounting for the various wells on here. Now, there are  
21 21 wells on Exhibit Number 2. One of those is the Mosley  
22 Spring 32 State Com Number 2, and I believe that that well  
23 -- there is a note here in Mr. Marks's handwriting that is  
24 his note, that says Yates. Is that not a Marks and Garner  
25 well? Am I correct on that?

1 A. Mosley Springs 32 State Com Number 2?

2 Q. Yeah.

3 A. Yes, sir, it is a Marks and Garner.

4 Q. Okay.

5 A. I don't know why he has Yates on there.

6 (Off the record)

7 Q. (By Mr. Brooks) Okay. Now, I believe the record  
8 will reflect, actually, that there was no production  
9 reported on any of the production reports from that Mosley  
10 Springs 32 State Com Number 2. Are you familiar with that?

11 A. The 32 State Com Number 2?

12 Q. Yes.

13 A. Yes, sir.

14 Q. Was there any production from that well within  
15 the period --

16 A. We just barely put that well on production here,  
17 February, 2001.

18 Q. Was there any production from that well within  
19 the period from September, 2000, to --

20 A. I'm not aware of it.

21 Q. -- July, 2001?

22 Okay. I believe the record will reflect that  
23 none was reported, so that's why that well is not on this  
24 list.

25 Now, the Red 12 State Number 4, you testified, is

1 an injector, correct?

2 A. Yes, sir.

3 Q. Now, is the Cave Pool Unit Number 51, is that  
4 also an injector?

5 A. I believe it was an injection well --

6 Q. Okay.

7 A. -- at one time.

8 Q. Okay. Now, the Cave Pool Unit Number 27, is that  
9 a producing well that has pumping equipment on it?

10 A. I'm not sure.

11 Q. Okay, so that wouldn't be something you would  
12 personally know?

13 A. No, sir.

14 MR. BROOKS: Okay, thank you. Let's see, is  
15 there any other -- No, that's all. Thank you.

16 MR. BRUCE: Just for the record, I was going  
17 through the documents, and I don't think the -- for some  
18 reason, I don't know why it was on this list, which I think  
19 is Mr. Gum's original list, but it wasn't involved in the  
20 hearing in January, Mr. Brooks.

21 MR. BROOKS: Yeah, I believe that the explanation  
22 of these is -- and I think we can establish it by another  
23 witness if it's relevant -- I believe that the Cave Pool  
24 Unit Number 51 and the Red State Number 4 were not  
25 production-reported because those are injection wells. And



1 I believe that the Cave Pool Unit Number 27 we didn't have  
2 any problem with. It appears to be a producing well, and  
3 consequently we didn't include it in the proceeding. And  
4 the Mosley State Com Number 2 they didn't report any  
5 production on.

6 And that's four that go off. That gets down to  
7 the 17, and I believe that accounts for all the wells.

8 Okay, I have no further questions for this  
9 witness.

10 MR. BRUCE: I have nothing further.

11 CHAIRMAN WROTENBERY: Anything else? Thank you,  
12 Mr. Garner, for your testimony.

13 Mr. Bruce?

14 MR. BRUCE: I have nothing further, madame Chair.

15 CHAIRMAN WROTENBERY: Okay, Mr. Brooks?

16 MR. BROOKS: Madame Chairman, honorable  
17 Commissioners, at this moment -- at this moment, Mr. Bruce  
18 having rested, we would respectfully request a ten-minute  
19 recess, have an opportunity to confer with my witnesses,  
20 and then we would like to put on some rebuttal.

21 CHAIRMAN WROTENBERY: Okay, we'll do that. Ten  
22 minutes. What do you need? Do you need more than ten?  
23 Ten minutes then.

24 (Thereupon, a recess was taken at 3:10 p.m.)

25 (The following proceedings had at 3:20 p.m.)

1 CHAIRMAN WROTENBERY: Okay, Mr. Brooks?

2 MR. BROOKS: Okay, madame Chairman, we'll call  
3 Mr. Tim Gum.

4 TIM W. GUM,

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

7 DIRECT EXAMINATION

8 BY MR. BROOKS:

9 Q. State your name for the record, please.

10 A. Tim W. Gum.

11 Q. And Mr. Gum, by whom are you employed?

12 A. The Oil Conservation Division.

13 Q. And in what capacity?

14 A. District Supervisor of District 2 in Artesia, New  
15 Mexico.

16 Q. And you have previously testified before the Oil  
17 Conservation Commission, have you not?

18 A. I have.

19 Q. Now, your District in Artesia, New Mexico,  
20 includes the area in which the wells that we've been  
21 discussing this afternoon are located; is that correct?

22 A. That's correct.

23 Q. Okay. It's late in the afternoon, I'm going to  
24 try to be very -- as brief as possible with this rebuttal  
25 examination.

1           But first of all, you heard Mr. Marks's testimony  
2 as to the conversations and communications that he had with  
3 you over the period from September, 2000, through January,  
4 2001, that I put up there on the turnover sheet, correct?

5           A.    Yes.

6           Q.    Do you recall receiving the first set of C-103s  
7 that Mr. Marks testified about?

8           A.    Yes, I did.

9           Q.    And did you cause those to be disapproved?

10          A.    Yes, because the way the C-103s were prepared,  
11 they said that they wanted to swab the wells to bring the  
12 wells into compliance. I rejected those and said that that  
13 would not be an acceptable method of bringing the wells  
14 into compliance.

15          Q.    And do you recall the conversation with Mr. Marks  
16 that he testified occurred on November the 3rd of 2000?

17          A.    I've had several conversations, but that  
18 particular -- no.

19          Q.    Do you recall having a conversation where you and  
20 he discussed the subject of swabbing these wells?

21          A.    Yes.

22          Q.    And what was said?

23          A.    Basically, it was my understanding, the way that  
24 the conversation was, that he would be allowed to swab-test  
25 the wells to evaluate the potential, what type of

1 production they would have from those wells, which would  
2 therefore allow him to better size whatever artificial-lift  
3 equipment he needed to use.

4 Q. Did you make clear to him that swabbing was not  
5 considered to be bringing these wells into compliance?

6 A. Yes, and that was reflected in the returned  
7 C-103s.

8 Q. Did you ever tell him that he could have one year  
9 to bring these wells into compliance?

10 A. Not to my recollection, no, because this was an  
11 ongoing project. It had been going on since May of 2000,  
12 and the time frame was running short and had several  
13 different correspondences.

14 Q. Now, most of these inspections were conducted by  
15 Mr. Guy, but you accompanied him on some of these  
16 inspections, didn't you?

17 A. On a few of these I did, yes.

18 Q. Okay. Those pictures are in front of you, and  
19 they may refresh your recollection as to what you  
20 encountered on the well site. Would you take a few minutes  
21 to look through those pictures and tell me if you recall  
22 anything that you would like to comment on about any of  
23 these wells, and then I will ask you specifically about the  
24 ones that you may recall something about?

25 A. Okay.

1 Q. Okay, which ones --

2 A. Well, I would just like to generally say, in all  
3 of the pictures, based on my recollections what I  
4 physically observed, there was no evidence that there had  
5 been any heavy traffic into these locations that were  
6 supposed to have been swab-tested. And there again, the  
7 evidence that I saw, there was no indication that the  
8 wellheads had been broken loose or any activity in which  
9 that -- would indicate that those had actually been broken  
10 down to run a swab in.

11 And in particular, I recall the Exhibit Number  
12 25, which is the Cave Pool Unit Number 53. The times --

13 CHAIRMAN WROTENBERY: Could you give us just a  
14 minute to find that, Mr. Gum?

15 THE WITNESS: The times that I was at this  
16 particular location --

17 MR. BROOKS: Have you located it?

18 CHAIRMAN WROTENBERY: Yes, thank you.

19 THE WITNESS: -- there definitely was no road  
20 into this particular location.

21 Q. (By Mr. Brooks) And what time frame are we  
22 talking about, you were on location?

23 A. This was prior to the hearing in January.

24 Q. Well, now, January of what year? This was done  
25 in January of 2001?

1 A. Yes, 2001, and up through July of 2001.

2 Q. Yeah, you were back there in July of 2001?

3 A. Yeah.

4 Q. Well now, you told me, did you not, that at some  
5 point in time that road was bladed?

6 A. Yes, now, and I was just trying to say that the  
7 way that we had to get to this location was down a fence  
8 row which was on the opposite side of the fence to this  
9 location.

10 Now, in recent months there has been a road  
11 that's been semi-graded, that's coming in from what I say  
12 is the east, into this location.

13 Q. Now, when you say in recent months, what time  
14 frame would that have been?

15 A. That would be the last three or four months.

16 Q. Okay. Now, you heard Mr. Garner's testimony  
17 about how they removed this bell nipple or whatever it is,  
18 the bell-shaped device --

19 A. Yes.

20 Q. -- from the top of the wellhead that's depicted  
21 on Exhibit Number 25. Did you see any evidence on that --  
22 When you were out there and inspected, did you see any  
23 evidence that somebody used a chain wrench or some kind of  
24 equipment to loosen that bell nipple?

25 A. No, I did not, and I would imagine that you

1 definitely would have to have some kind of indications that  
2 would have to be removed, because it is rusted up and it's  
3 not going to come free.

4 Q. Now, is there anything else you can tell us that  
5 would -- based on your inspections and what you personally  
6 saw out there in the field that would tend to confirm or  
7 rebut the accounts that have been given by the witnesses  
8 from Marks and Garner about how the production was  
9 accomplished in these wells?

10 A. Just basically the fact that it did not look that  
11 the wellheads had been removed or any attempt had -- there  
12 had been no traffic into these wells, and also that there  
13 were no deadmen evident at that particular point in time.

14 Q. And were you looking for deadmen when you were  
15 out there?

16 A. Yes, basically that was one of the things that  
17 you wanted to look at to see if a pulling unit was going to  
18 be in to the location.

19 MR. BROOKS: Okay, very good. I'll pass the  
20 witness.

21 CROSS-EXAMINATION

22 BY MR. BRUCE:

23 Q. How many times were you to each of these well  
24 sites, Mr. Gum?

25 A. A minimum of three, probably a maximum of five.

1 Q. And I forget. Again, when were the pictures  
2 taken? 2000? 2001?

3 A. It was February and June, I believe, is the time  
4 frame.

5 Q. February and June. Now, we've had a pretty dry  
6 year this year, but wasn't the year -- the winter and the  
7 summer of 2000-2001 fairly wet?

8 A. But that's kind of rocky country there anyhow, so  
9 that -- don't have any mudholes or anything.

10 But basically, you would not see any signs of  
11 traffic into the -- or even any spills -- or any spills or  
12 anything like when you break a connection from one tank to  
13 your valve or anything, there's no indication that there's  
14 anything -- spillage of any oil or water.

15 Q. But the weather could cover up tracks, could it  
16 not?

17 A. If it's heavy enough, I suppose it could.

18 Q. But Marks and Garner has additional wells in this  
19 area, do they not?

20 A. Yes, they do.

21 Q. Yeah. And they're out there on a regular basis  
22 servicing their wells, are they not?

23 A. That's right.

24 That's why I say that there's no indication that  
25 there's traffic to the wells in question.



1 MR. BRUCE: That's all I have, madame Chair.

2 THE WITNESS: Could I make one --

3 MR. BROOKS: Is there something else you would  
4 like to say that bears on --

5 THE WITNESS: Yes, just basically, I understand  
6 that mistakes are made, everybody makes mistakes.

7 But to have something that is obvious from a  
8 person that is in the field on a routine basis, is  
9 responsible for not only the production and supervising the  
10 pumpers, but also preparing the reports in which you use  
11 gauge sheets and everything from -- to generate these  
12 reports, to show a plugged and abandoned well as being  
13 produced not only for one month but for 13 months, and also  
14 a second well, I find that a little hard for me to believe.

15 Now, granted, mistakes can be made.

16 But these two wells were reported by a person  
17 that was in charge of the operation, not only the field but  
18 the bookkeeping, and he did show production from these  
19 wells, which definitely was obviously not capable of  
20 producing.

21 MR. BROOKS: Thank you. Nothing further from  
22 this witness.

23 CHAIRMAN WROTENBERY: Commissioners?

24 COMMISSIONER BAILEY: No questions.

25 COMMISSIONER LEE: (Shakes head)

## EXAMINATION

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BY CHAIRMAN WROTENBERY:

Q. I have a question about swabbing and what the Division's Rules say about swabbing, what the Division's criteria are for swabbing. Could you comment on that, Mr. Gum?

A. There are no rules one way or the other for swabbing.

Q. Do we have circumstances where we have approved swabbing as a production technique?

A. Yes, and we're currently paying the price for that approval. I'll remind the Chairman that Secondary Oil -- they were big swabbers. We are currently in the process of plugging some 100 wells of theirs, because they have more or less vanished.

CHAIRMAN WROTENBERY: Okay, that's all I had.

Mr. Bruce, did you have anything to follow up?

## FURTHER EXAMINATION

BY MR. BRUCE:

Q. Just -- you haven't had -- the Division hasn't had to plug any of Marks and Garner's wells, have they?

A. No, not at this point in time, no.

MR. BRUCE: That's all.

MR. BROOKS: Thank you, Mr. Gum.

CHAIRMAN WROTENBERY: Thank you for your

1 testimony.

2 MR. BROOKS: Madame Chairman, we'd call Jerry  
3 Guye.

4 JERRY GUYE,

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

7 DIRECT EXAMINATION

8 BY MR. BROOKS:

9 Q. Good afternoon, Mr. Guye.

10 A. Good afternoon, Mr. Brooks.

11 Q. State your name for the record, please.

12 A. Jerry Guye.

13 Q. And by whom are you employed?

14 A. By the New Mexico Oil Conservation Division.

15 Q. In what office?

16 A. Artesia, District 2.

17 Q. And in what capacity?

18 A. I'm the field inspector/compliance officer.

19 Q. Have you testified before the New Oil

20 Conservation Commission before?

21 A. Yes, I have.

22 Q. Okay, have your credentials as a field inspector  
23 been recognized by the Commission?

24 A. Yes, they have.

25 MR. BROOKS: We tender Mr. Guye as an expert in

1 oil and gas well field inspection.

2 CHAIRMAN WROTENBERY: We find Mr. Guye so  
3 qualified.

4 Q. (By Mr. Brooks) Mr. Guye, when you testified  
5 previously before the Division, Exhibit Number 14 was  
6 introduced, which I believe you testified is a summary of  
7 your inspection reports on the wells in question?

8 A. That's correct.

9 Q. Did you inspect each of these wells at some time  
10 during the months of January, February, March of 2001?

11 A. I would have to go by the inspection reports, and  
12 yes, I did.

13 Q. Did you inspect some or all of these wells again  
14 in June-July time frame of 2001?

15 A. Yes, I did.

16 Q. Now, did you and Mr. Gum inspect some of them  
17 again in the fall of 2001 at some point?

18 A. Yes, we did.

19 Q. Now, were you the person who took the pictures  
20 that have been -- that were admitted before the Division as  
21 Exhibits 15 through 25 inclusive, and of which you have  
22 copies in front of you?

23 A. Yes, sir.

24 Q. You testified, did you not, extensively about  
25 what you saw in those inspections before the Division,

1 correct?

2 A. Yes, I did.

3 Q. And as I recall your testimony -- and the record  
4 will reflect whether I recall it correctly or not, the  
5 transcript will reflect whether I recall it correctly or  
6 not -- you testified at that time that these wellheads did  
7 not appear to you as though they had been disturbed?

8 A. That's correct.

9 Q. And in your opinion as a well inspector, if  
10 somebody was coming out and swabbing those wells at least  
11 once each month, would there have been some appearance that  
12 they had been disturbed?

13 A. In my opinion, there would have. There would  
14 have been tracks. The unit that they are using to swab is  
15 a very large unit, and there would have been tracks or some  
16 other indication, indicating someone had been out there.

17 Q. And certainly if they came in with a portable  
18 pumping unit, that being a very large piece of equipment,  
19 there would be some kind of tracks --

20 A. Yes, sir.

21 Q. -- to indicate that, would there not?

22 A. Yes, sir.

23 Q. To refresh your recollection, because I know it's  
24 been a long time since you did these inspections, would you  
25 look over those photographs and call our attention to

1 anything you see that tends to either confirm or rebut the  
2 testimony that's been given by Mr. Garner about the  
3 production that was accomplished from these wells?

4 When you get to one you would like to comment on,  
5 tell me what the exhibit number is.

6 A. Well, the first one that generates a thought in  
7 my mind is Exhibit Number 16.

8 Q. And that one relates to the Cave Pool Unit Number  
9 3?

10 A. Yes, sir.

11 Q. Okay, tell us what you see in there that you  
12 think the Commission should be apprised of.

13 A. In the picture it shows a wellhead with 2-inch  
14 pipe stuck in it, and there's also a very large mesquite  
15 bush growing exactly right up the side of that wellhead.  
16 It indicates to me that since that bush is still there,  
17 that there's been no equipment used to remove that  
18 wellhead.

19 Q. I have a black-and-white copy and it doesn't  
20 appear very clearly. Yes, I see what you're saying.

21 Now, those bushes appear to be green in that  
22 picture; is that correct?

23 A. That's correct.

24 Q. Would that indicate to you that that picture was  
25 probably taken more likely in June and not in February?

1 A. Yes, it would.

2 Q. Okay, you may continue.

3 A. This picture was taken on February the 14th,  
4 Exhibit Number 19.

5 Q. Okay, that one relates to what well?

6 A. Cave Pool Unit Number 16.

7 Q. Okay.

8 A. There again, all of the foliage around the  
9 wellhead and the old electrical box and piece of wood  
10 that's standing there beside it, to me it would be  
11 extremely hard to pull an enormous piece of equipment in  
12 there without disturbing that. And it was the same way,  
13 both inspections. Nothing had changed on it.

14 Q. Continue.

15 A. There again, on Exhibit Number 22 --

16 Q. Yes.

17 A. -- Cave Pool Unit Number 32 --

18 Q. Yes, sir.

19 A. -- there again, I can see no indications.

20 Considering the large boards laying within reach of the  
21 wellhead and the area around it with foliage and  
22 everything, I can see no indication that there are any  
23 tracks of any large equipment being brought in.

24 Q. Okay.

25 A. Cave Pool Unit Number 53, Exhibit 25 --

1 Q. Yes, sir.

2 A. -- has what is referred to as a casing nipple or  
3 bell nipple in the top of it. There are no scratch marks  
4 on the side of that bell nipple, no indication at the top  
5 of it that any wrenches or casing tongs were used on it to  
6 remove it, no shiny places. So to me it looks like it has  
7 been undisturbed.

8 Q. Okay. Now, in regard, I believe, if I understood  
9 you correctly, to this Cave Pool Unit Number 53, what kind  
10 of equipment would Marks and Garner have had to have had to  
11 have swabbed this well in the manner in which they  
12 testified that they did?

13 A. Well, since there's no tubing in the hole, the  
14 casing or casing nipple would have to be removed. They  
15 would have to use a 7-inch swabbing cup, some kind of  
16 casing head would have to be put on top of this casing with  
17 a valve coming out of the side, hooked to some sort of hose  
18 or something in order to transmit the fluid that comes out  
19 of the hose to the truck that they put it into.

20 Q. Now, in all candor, it's not impossible that they  
21 had such a piece of equipment?

22 A. No, it's not impossible.

23 Q. But you would have considered -- based on your  
24 extensive experience in the oilfield, you would find --  
25 that would have been a very unusual piece of equipment,



1 wouldn't it?

2 A. I don't see people running around with that large  
3 equipment in order to do it. They could have removed the  
4 bell nipple, put the swab cup in, run their swab line  
5 through the 2-inch and then put the bell nipple back, but  
6 there's no sign of that ever being done in there.

7 Q. Very good, thank you. Is there anything else  
8 that you can recall that you observed on these locations or  
9 any of them specifically that would tend either to confirm  
10 or to rebut the testimony that's been given by the  
11 witnesses for Marks and Garner that you have attended?

12 A. I'm not sure I understand your question, Mr.  
13 Brooks.

14 Q. Well, is there anything that you observed that  
15 you haven't already testified to, that you could bring to  
16 the Commission's attention, that would tend either to  
17 support Mr. Devin Garner's testimony about what was done at  
18 these wellsites or to rebut his testimony?

19 A. Well, like I say, on each of my inspections in  
20 this area down here on all of these wells, I saw no  
21 indication whatsoever of activity.

22 MR. BROOKS: Okay, very good. Pass the witness.

23 CROSS-EXAMINATION

24 BY MR. BRUCE:

25 Q. How many times did you visit the wellsite, Mr.

1 Guye?

2 A. During what time period? I started this in May  
3 of 2000. I am also the UIC officer, and I'm required to  
4 perform mechanical integrity tests on these wells on an  
5 annual basis. I first failed these wells -- the injection  
6 wells in this field, which instituted my complete  
7 inspection of the field, in May of 2000. Since that time  
8 I've been back five times.

9 Q. Okay, since May of 2000 --

10 A. Since May of 2000 --

11 Q. -- you've been back five times?

12 A. -- yes, sir.

13 Q. Okay.

14 A. The last time I was there was in June, 2001. I  
15 guess that's 2001. Yeah.

16 Q. Okay. So if they were performing work out there,  
17 you necessarily wouldn't have been out there on the day  
18 that they were performing work?

19 A. Not necessarily on the day.

20 MR. BRUCE: Okay, that's all I have.

21 MR. BROOKS: Nothing further.

22 CHAIRMAN WROTENBERY: Commissioners?

23 COMMISSIONER BAILEY: Nothing.

24 COMMISSIONER LEE: Nothing.

25 CHAIRMAN WROTENBERY: Thank you for your

1 testimony, Mr. Guye. Appreciate it.

2 MR. BROOKS: That will conclude our rebuttal  
3 examination, and I would like a very brief opportunity for  
4 closing statement.

5 CHAIRMAN WROTENBERY: Okay, and I think Mr.  
6 Bruce --

7 MR. BRUCE: I have an extremely short closing  
8 statement also.

9 CHAIRMAN WROTENBERY: Okay.

10 MR. BRUCE: Before I do that, madame Chair, I did  
11 speak with Devin Garner about his logs, and he will copy  
12 those. If I could get a time frame -- I'm going to be out  
13 all next week, if I could submit those the week following?

14 CHAIRMAN WROTENBERY: Okay, that sounds fine.

15 MR. BRUCE: And I will of course submit copies.

16 MR. BROOKS: Okay. And we would like for the  
17 record to be kept open to give us the opportunity to  
18 respond to that if we feel there's something in it that we  
19 feel the need to respond to, if that would be acceptable to  
20 the Commission?

21 CHAIRMAN WROTENBERY: We will do that as well.  
22 Would you be able to respond within a week after --

23 MR. BROOKS: That would be two weeks from now.  
24 Would you be available, Tim, to evaluate it? Okay, then I  
25 would be. Like Mr. Bruce, I will be out all next week.

1 MR. BRUCE: Yeah, so will I.

2 MR. BROOKS: I suspect we may be in the same  
3 place.

4 MR. BRUCE: I will try to get to them to you, I  
5 would hope, like ten days from now, madame Chair.

6 CHAIRMAN WROTENBERY: On the 31st, say?

7 MR. BRUCE: Let's say the 31st.

8 CHAIRMAN WROTENBERY: Or the 1st?

9 MR. BRUCE: Yeah, I think -- Yeah, I'm just going  
10 to be getting back into the office that Monday, so I'd like  
11 to have an additional day.

12 CHAIRMAN WROTENBERY: Okay, we'll give you till  
13 the 1st of August, then. It's a Thursday.

14 And then, Mr. Brooks, if you could respond within  
15 a week?

16 MR. BROOKS: That will be acceptable.

17 CHAIRMAN WROTENBERY: Okay.

18 MR. BRUCE: Madame Chair, I'd just simply like to  
19 state Marks and Garner has been a producer for 35 years in  
20 this state without problem. It performs, I believe, a  
21 service to the State by producing stripper wells and  
22 recovering these marginal reserves. It's doing the best it  
23 can and admits that mistakes were made. Five wells still  
24 need to be plugged. It's ready, willing and able to do so,  
25 as Mr. Marks testified.

1           And secondly, production was misreported on the  
2 Cave Pool Unit Well Number 17 and 22. We make no bones  
3 about that.

4           But we're not dealing with dishonest people here,  
5 and during the time period at issue it was simply  
6 conducting its usual business, which is producing oil and  
7 gas, and we don't believe it should be penalized for doing  
8 so.

9           Thank you.

10           CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

11           Mr. Brooks?

12           MR. BROOKS: Thank you. Madame Chairman,  
13 honorable Commissioners, I understand it's late in the  
14 afternoon, and I suspect that the most overvalued, in the  
15 estimation of attorneys, part of the legal profession is  
16 closing statements, so I will be very brief.

17           However, I believe at this point this case comes  
18 down to a question of credibility. Except for the two  
19 wells that have been plugged and abandoned, it will be  
20 very, very difficult to come up with any explanation of why  
21 wells that have been plugged and abandoned were producing.

22           They have come up with explanations that cannot  
23 be conclusively rebutted based on anything in the  
24 Division's records or in the inspection reports. But what  
25 I find reflects on the credibility of the testimony offered

1 by Marks and Garner is the matter that was pointed out by  
2 Mr. Gum.

3 First, the sequence of events: As indicated by  
4 Exhibit Number 32 in the Division records, Marks and Garner  
5 received and responded to the inactive well form list that  
6 was sent out in May of 2000. They also, by their own  
7 testimony, received the follow-up letters that Mr. Gum sent  
8 out in September of 2000 and were part of Marks and Garner  
9 Exhibit 3 that was introduced this afternoon. So they were  
10 advised that we were concerned about certain wells being  
11 brought into compliance.

12 And so what they did, apparently, was to start  
13 reporting production from those wells. And there's, I  
14 think, considerable basis for question, based on Mr. Guye's  
15 and Mr. Gum's testimony, as to whether or not that  
16 production even occurred at any time.

17 But if the C-115s are to be believed, there was  
18 production from each of these wells every month from  
19 September, 2000, to July, 2001. And except for the one  
20 well, the Cave Pool Unit Number 27, I believe, which was  
21 equipped, and we don't dispute that there was production,  
22 we have -- the universe of wells as to which they were told  
23 to bring them into compliance in May of 2000 and September  
24 10 of 2000 is identical to the universe of wells with which  
25 they started with the September, 2000, C-115s that were

1 filed after September, 2000, reporting production each  
2 month.

3 By their own admission, they were not approved to  
4 do this swabbing operation, at the earliest, until  
5 November. And yet they apparently did it in September and  
6 October. By Mr. Gum's testimony, they were never  
7 authorized to do it except maybe once or twice for purposes  
8 of testing, but they did continue to do it, according to  
9 their testimony, through 2001.

10 We believe that the most reflective thing is that  
11 the universe of wells that they produced, that they started  
12 reporting production on in September, 2000, that they  
13 hadn't reported production on before, is the same as the  
14 universe -- or essentially the same as the universe of  
15 wells they were told in May and September of 2000 to bring  
16 into compliance, including -- including -- those wells that  
17 were actually plugged and abandoned.

18 Now, that was the Division's mistake, that we  
19 told them to bring wells into compliance that actually were  
20 in compliance. But it's somewhat coincidental that they've  
21 made the same mistake and reported production on the same  
22 wells that we complained about, including the ones that  
23 actually were in compliance because they were plugged and  
24 they could not have produced. And I think those  
25 coincidences of date and the coincidence including those

1 two wells are factors that very strongly impact on the  
2 credibility of the testimony they've offered.

3 Anyway, I appreciate your kind consideration, and  
4 that's all I have.

5 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

6 Is there anything further, gentlemen?

7 In that case, we will leave the record open and  
8 we'll expect to receive the additional information from Mr.  
9 Bruce by August 1st and then the response from Mr. Brooks  
10 by August 8th, and we'll take the case under advisement at  
11 that point.

12 MR. BROOKS: Thank you.

13 CHAIRMAN WROTENBERY: And Commissioners, if  
14 you'll bear with me for just a few minutes, I would like to  
15 go into closed executive session to deliberate just briefly  
16 on this particular case, so I'll entertain a motion to do  
17 that.

18 COMMISSIONER BAILEY: I entertain -- I move that  
19 we do that.

20 COMMISSIONER LEE:

21 CHAIRMAN WROTENBERY: All in favor say aye.

22 COMMISSIONER BAILEY: Aye.

23 COMMISSIONER LEE: Aye.

24 CHAIRMAN WROTENBERY: Aye. Thank you.

25 (Off the record at 3:50 p.m.)



1 (The following proceedings had at 4:00 p.m.)

2 CHAIRMAN WROTENBERY: At this point I'll  
3 entertain a motion that we go back into open meeting.

4 COMMISSIONER BAILEY: I move we go back into open  
5 meeting.

6 COMMISSIONER LEE: Second.

7 CHAIRMAN WROTENBERY: All in favor say aye.

8 COMMISSIONER BAILEY: Aye.

9 COMMISSIONER LEE: Aye.

10 CHAIRMAN WROTENBERY: Aye. And just for the  
11 record, I'll note that the only thing that the Commission  
12 discussed while we were in closed executive session was  
13 Case Number 12,757, on which we just took evidence today  
14 and heard testimony today.

15 We did have one other item we needed to take care  
16 of, the minutes from the last Commission meeting, which was  
17 held on June 21st, 2002, and this was a meeting where we  
18 had -- We did have a quorum, but Commissioner Bailey was  
19 not here because of the birth of her new grandbaby.  
20 Congratulations on that.

21 But Commissioner Lee, have you had a chance to  
22 look over the minutes?

23 COMMISSIONER LEE: Yes.

24 CHAIRMAN WROTENBERY: Do they look okay to you?

25 COMMISSIONER LEE: Yes.

1 CHAIRMAN WROTENBERY: All in favor say aye.

2 COMMISSIONER LEE: Aye.

3 CHAIRMAN WROTENBERY: Aye. And I'll sign those  
4 minutes.

5 And I believe that's all for today, so I think  
6 we'll just declare this meeting adjourned.

7 (Thereupon, these proceedings were concluded at  
8 4:00 p.m.)

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