

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. 13,142

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AN ORDER)
REQUIRING MARALO, LLC, TO REMEDIATE)
HYDROCARBON CONTAMINATION AT AN)
ABANDONED WELL AND BATTERY SITE,)
LEA COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN
JAMI BAILEY, COMMISSIONER
FRANK T. CHAVEZ, COMMISSIONER

November 10th, 2004
Santa Fe, New Mexico

2004 NOV 30 PM 2 42

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Wednesday, November 10th, 2004, 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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A P P E A R A N C E S

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* * *

(Continued...)

A P P E A R A N C E S (Continued)

ALSO PRESENT:

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* * *

1 WHEREUPON, the following proceedings were had at
2 10:33 a.m.:

3 CHAIRMAN FESMIRE: The next cause before the
4 Commission is Cause Number 13,142, it's a *de novo* case
5 continued from the October 14th, 2000 [*sic*], Commission
6 Hearing. It's the Application of the New Mexico Oil
7 Conservation Division for an order requiring Maralo, LLC,
8 to remediate hydrocarbon contamination at an abandoned well
9 and battery site in Lea County, New Mexico.

10 Can I get the attorneys' appearances for that
11 case, please?

12 MS. MacQUESTEN: May it please the Commission, my
13 name is Gail MacQuesten. I'm the attorney for the Oil
14 Conservation Division.

15 MR. ROBINS: Bill Robins, Heard Robins firm, here
16 on behalf of Jay Anthony.

17 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
18 the Santa Fe law firm of Kellahin and Kellahin. Mr. Rick
19 Strange is lead counsel in this matter, and he and I are
20 appearing on behalf of Maralo, LLC. Mr. Strange is a
21 member of the Texas bar.

22 CHAIRMAN FESMIRE: Ms. MacQuesten, do you have an
23 opening statement?

24 MS. MacQUESTEN: Yes, I do.

25 Mr. Chairman, members of the Commission, this is

1 a case about responsibility. The evidence will show that
2 there is hydrocarbon contamination in the soil at the site
3 of a tank battery and its associated pits. The
4 contamination has not yet reached the groundwater, but it
5 needs to be cleaned up so that it will not do so. It has
6 damaged and is damaging the surface in the area. Plants
7 will not grow and the surface can't be used for grazing,
8 which was its original purpose.

9 The cause of this contamination must be
10 determined from the circumstances: hydrocarbon
11 contamination at the site of a tank battery and pits. It
12 is evident that the cause was related to oil and gas
13 operations. Precisely which operations? Our experts will
14 testify the contamination was caused by releases from the
15 tanks, the disposal of emulsions or tank bottoms into the
16 pits and/or overflow from the pits.

17 So that gets us to the original question, who is
18 responsible?

19 The evidence will show that operations started in
20 1945 by an individual named Ralph Lowe. After he died, the
21 operator became Maralo, Inc. Maralo, Inc. later went under
22 a name change and became Maralo, LLC, the name used in the
23 Application in this case.

24 Maralo eventually plugged and abandoned two of
25 the wells and converted other wells to other uses and

1 cleaned the site. Later, they transferred operations of
2 some but not all of the wells formerly associated with the
3 tank battery to other operators, but Maralo remains the
4 operator of record for two of the wells at the site and the
5 site itself.

6 The problem is that the cleanup Maralo did was
7 not sufficient. They left the contamination that exists
8 today and continues to contaminate the site.

9 This Application seeks an order requiring Maralo
10 to clean up the surface contamination at the site. We seek
11 this order under the authority of two rules, Rule 310 and
12 Rule 313. 310 prohibits storing or retaining oil in
13 earthen reservoirs or open receptacles. Rule 313 prohibits
14 allowing emulsions, basic sediments and tank bottoms from
15 contaminating the surface. We will show that these
16 prohibitions have been in our Rules since 1935.

17 Maralo will point to Mr. Lowe and say that the
18 contamination occurred when he was the operator. That may
19 be true; but even if they prove that, that does not end our
20 case against Maralo, because the problem is, the
21 contamination did not stop with Mr. Lowe. The
22 contamination is ongoing. It is still there, it still
23 poses a threat to the surface, to the groundwater, to human
24 health and the environment. And when Maralo became
25 operator, they allowed that contamination to continue.

1 That is a violation of Rule 313 and 310. That violation
2 will continue until the contamination is removed. The only
3 remedy to the violation is to order remediation.

4 Maralo has challenged our authority to order
5 cleanup. Because of that challenge, I filed an amended
6 Application that added alternative grounds for requiring
7 the cleanup. We can discuss those grounds in closing.

8 But our request to the Commission remains the
9 same, to clean up the existing contamination at the site,
10 to protect groundwater, human health and the environment.

11 CHAIRMAN FESMIRE: Mr. Robins, do you have an
12 opening statement?

13 MR. ROBINS: Commissioners, I'm Bill Robins. I'm
14 here on behalf of Jay Anthony. Jay Anthony is a rancher in
15 Lea County near Jal.

16 This is a critically important case because, at
17 least in the ranching community, this kind of problem
18 exists all through the county, problems where operators
19 come in, they exploit natural resources, they make profit,
20 they leave, they don't clean up, and they leave the problem
21 for the rancher.

22 We're going to have some brief testimony probably
23 today from Mr. Anthony, who's going to tell you about his
24 efforts to try to get this problem addressed.

25 You're going to hear that at one point Maralo

1 essentially recognized that it had some responsibility for
2 cleanup because it did some minor cleanup on this site. It
3 happened in the sort of mid-1990s time period. Mr. Anthony
4 was hopeful that the limited cleanup would solve the
5 problem for him, that he would be able to use this acreage.
6 He's a rancher, and frankly, in Lea County where we don't
7 get a lot of rain, every bit of acreage is important to us,
8 every bit that we use is important to us.

9 He didn't really appreciate at the time how
10 extensive this problem was and is, but he was hopeful that
11 when Maralo came in and disked the area that he'd be able
12 to use this site. It didn't work. He went on trying to
13 get Maralo to do something, and in fact you'll hear him
14 talk about a meeting, sort of a pickup-side meeting,
15 truckside meeting, that he had with one of his
16 representatives -- one of the Maralo representatives --
17 where he said, you know, I need you to solve this problem
18 for me.

19 Their response was, How about if we pay you five
20 thousand bucks?

21 That wasn't acceptable to Mr. Anthony. And so
22 after trying and trying and trying again to get Maralo to
23 do something with this problem, he finally decided that he
24 had no choice but to seek the State's help, the OCD's help.
25 And he filed a complaint in 1999 asking for that help.

1 Maralo thumbed their nose at Mr. Anthony, and all
2 they've done ever since is thumb their nose against the
3 OCD. They've taken the position that, Well, since we left
4 in 1988 and that, you know, we may have used these pits
5 back in the 1960s, or we didn't really, or the founder of
6 our company -- her dad used them.

7 This company -- I think it's important to
8 understand that this lease came through an estate into
9 Maralo, and Maralo was formed by the daughter, essentially,
10 of Ralph Lowe. So it's not as if these are two completely
11 unrelated entities. We're not here saying they're the same
12 entity, but they certainly have got a relationship.

13 But in event, the OCD has gotten the same
14 response that Mr. Anthony has gotten: We don't have to do
15 anything, it's not our problem.

16 And essentially what they're saying to you is
17 that we're not going to do anything and nobody's going to
18 do anything, and it's just up to the rancher to deal with
19 this problem. And that's not just right.

20 This is a problem that permeates Lea County. If
21 you say to oil and gas companies that it's okay to leave
22 high levels of contamination -- And we're not talking about
23 a situation that's minor. I think the evidence is going to
24 show that we have findings out here that are well in excess
25 of the minimum standard that the OCD applies. And I think

1 it's important for the Commission to understand that
2 notwithstanding there's support in the regulations, because
3 there's a water well within 1000 feet of this feet of this
4 site, to apply a 100-part-per-million standard, that the
5 OCD has only been asking for 5000 parts per million, and
6 they won't even do that. They're saying, We don't have the
7 responsibility.

8 And we have findings that are well in excess of
9 that, and we have findings that go down 40 feet. So the
10 idea that this is not an emergency, as they say in some of
11 their pleadings, well, you know what? For us, where water
12 is important, it is an emergency, because if this is not
13 dealt with and we keep having the kind of rain -- We were
14 lucky this year, we had a lot of rain. We have another
15 good year, and those contaminants are going to continue to
16 be driven down, and it's not going to be long before we've
17 got contaminated water from this site, we're going to have
18 TPH and BTEX in the water.

19 It's a critically important issue, and it's a
20 critically important issue from the standpoint of ranchers,
21 not only Jay Anthony but every rancher in Lea County and,
22 for that matter, in this state, that an oil and gas company
23 can't just come in and say, You know what? We made money,
24 we plugged it, and you can't come get us anymore. And we
25 sure hope that's not the end result today, because we think

1 it would be a terrible precedent to set, with all the
2 problems that we have with these kind of historic pits all
3 over this community.

4 Thank you very much.

5 CHAIRMAN FESMIRE: Mr. Kellahin, do you have an
6 opening statement?

7 MR. KELLAHIN: Defer to Mr. Strange.

8 CHAIRMAN FESMIRE: Mr. Strange?

9 MR. STRANGE: Yes, sir, Mr. Chairman, we agree
10 this is a very important case, and there's a lot more at
11 stake than may appear at the beginning. I'd like for the
12 Commission to understand and appreciate that this is not a
13 water case. If you look at the prehearing statement,
14 you'll see that this is not a water case.

15 When this was originally started there were
16 allegations of water contamination, but those were dropped.
17 And there's no request in the prehearing statement, there
18 was no request at the last hearing that we had to do any
19 water remediation, because there is no water contamination.
20 So this is not a water case. This is a soil-contamination
21 case.

22 I think it's also important to realize that
23 what's happening here, for whatever motivation, whatever
24 reason, we're trying to take a square peg and force it into
25 a round hole. I don't get to write the rules, but we're

1 all supposed to live by the same rules. Not the rules that
2 perhaps someone with the motivation today would like them
3 to say, but the way that they have been written and been
4 enforced for several years. And we're taking the rules and
5 we're stretching them beyond any rational, reasonable,
6 logical interpretation.

7 You're going to hear testimony about Rule 310 and
8 Rule 313, and it's important to look at what those rules
9 say. And you contrast that with the Application that's
10 been put forward and to appreciate -- if the Application is
11 being put forward today, to appreciate the consequence -- I
12 mean, the wholesale rewriting of the rules without
13 following the rulemaking process, and do so in a way that
14 would impose retroactively new requirements.

15 No different than me driving up and down the
16 street 45 miles in a 45-mile-an-hour speed limit and then
17 deciding tomorrow, well, it really ought to be 35, and
18 because you've been driving 45 for years we're going to
19 punish you.

20 And that's what's at stake here. This is a penal
21 action. If we are forced to do what's been put forward,
22 this is going to cost several hundred thousand dollars.
23 This is a penal action, and therefore under Constitutional
24 principles these rules need to be interpreted and applied
25 strictly, not the way that might be more convenient for

1 someone with the motivation today, but the way those rules
2 have been written.

3 And the testimony, I believe, will show this
4 Commission is that Ralph Lowe, as a sole proprietor,
5 operated several wells. And if you look at the paperwork,
6 he was a sole proprietor. He had some surface disposal
7 pits, and he used those pits to dispose of produced fluids.
8 And when he did it, it was legal to do so. There was no
9 rule, requirement or otherwise that prohibited oil
10 companies from using surface disposal pits until the no-pit
11 order came out in the mid-1960s.

12 Now obviously if you use a surface disposal pit,
13 there are going to be residual effects; there's going to be
14 some hydrocarbons in those old pits. But it was legal to
15 do that.

16 Mr. Lowe died in the mid-1960s. His company was
17 taken over and operated by his estate.

18 Subsequently, several years later, a new company
19 was formed, Maralo, Inc. Maralo, Inc., was a new company,
20 and the proof of that is in the record before you. Maralo
21 was required to re-qualify. And this isn't a name change,
22 this isn't the same entity; this was a new company. And
23 it's no different than if Texaco, Exxon, Mobil, someone
24 like that had, had come in and bought the assets out of the
25 estate.

1 And the company was formed, new management, new
2 operation, and they took over these assets, were required
3 to re-qualify, and they did, in fact, operate some of these
4 properties. And there'll be no testimony that Maralo,
5 Inc., ever used any of these pits. There'll be no
6 testimony because they didn't use any of these pits. They
7 never disposed of a single drop of water or otherwise into
8 these pits.

9 There are some tank-battery sites, and if you
10 look at the rule, we're not allowed to dispose of tank
11 bottoms, for example. There will be no testimony that we
12 ever disposed of any tank bottoms anywhere, because it
13 didn't happen.

14 What you're going to hear is, there's still
15 evidence of TPH in the soil. If we adopt what has been
16 requested -- and the standard is that if there's any TPH in
17 the soil and you were at any point in the chain of custody,
18 you ever operated some of that property, you've got to go
19 back and clean it up, it could cost us several hundred
20 thousands of dollars. The consequences are very, very
21 real.

22 There are -- Who knows how many pits were
23 lawfully used for several years? And some other oil
24 company at some point has operated property where those
25 pits were. If that's the new rule, the way it's been

1 interpreted, retroactively every oil company is going to
2 have to go out there and clean up these pits.

3 Maralo plugged the well, assigned operations in
4 the 1980s. And it's easy to gloss over and say, Well, you
5 didn't assign operations for this particular well and this
6 tank battery. That's not correct. The lease, the lease
7 covers the whole kit and caboodle. The lease was assigned
8 in the 1980s to Rasmussen. So we're talking about a
9 company that hasn't been out there in almost 20 years.

10 And there's not going to be any evidence, I
11 submit, that Maralo did anything that was against the
12 written rule. It's simply a strict liability, because you
13 were in the chain of title, and because there's TPH out in
14 the soil, because we want it cleaned up, regardless of what
15 the rule said when you were out there, we're interpreting
16 that rule in a new way and we're going to apply it
17 retroactively.

18 Ladies and gentlemen, I would respectfully submit
19 that's what's at stake here. Do we live by the way the
20 rule is written, or can we come up with a new
21 interpretation in 2004 and go back and say something that
22 you did in the 1980s subjects you to liability under the
23 new definition of the rule. And that's why we're here.

24 We're -- consistently tried to take the same
25 position, and we've been successful in at least focusing

1 this case away from water on the soil. And I don't believe
2 we're violating any moral, ethical, legal, Constitutional
3 provision being here today, defending ourself, saying,
4 please enforce the rule as written, fairly and equally
5 across the board.

6 Thank you.

7 CHAIRMAN FESMIRE: Ms. MacQuesten, before you
8 begin, I need to put one thing on the record.

9 The Commission today is being represented by the
10 general counsel of the Energy, Minerals and Natural
11 Resources Department, Carol Leach.

12 Call your first witness.

13 MS. MacQUESTEN: I would call Wayne Price.

14 WAYNE PRICE,

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

17 DIRECT EXAMINATION

18 BY MS. MacQUESTEN:

19 Q. Good morning.

20 A. Good morning.

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

22 A. My name is Wayne Price.

23 Q. And where are you employed?

24 A. With the Oil Conservation Division, Santa Fe,

25 Environmental Bureau.

1 Q. What is your title?

2 A. I'm a senior environmental engineer.

3 Q. How long have you been with the OCD in total?

4 A. Approximately 10 years.

5 Q. How long with the Environmental Bureau?

6 A. Approximately five to six years.

7 Q. What did you do before joining the Environmental
8 Bureau?

9 A. I was with the -- I was an environmental
10 specialist in the Hobbs OCD District Office.

11 Q. What were your duties as an environmental
12 specialist?

13 A. Duties as an environmental specialist in the
14 Hobbs Office was to make field inspections of contaminated
15 sites, have oversight of spill cleanups, maintaining
16 records, spill reports, discharge plan facilities,
17 witnessing, you know, various procedures for cleanup,
18 approving waste manifests, et cetera.

19 Q. Do your current duties in the Environmental
20 Bureau include investigation of contaminated sites and
21 oversight of remediation?

22 A. Yes, they do.

23 Q. When you're speaking of contamination, does that
24 include both water contamination and surface contamination?

25 A. Yes, it does.

1 Q. Are you also the EPA quality assurance/quality
2 control person for the Environmental Bureau?

3 A. I am the QAQC officer for the Oil Conservation
4 Division and for the EPA quality assurance/quality control
5 programs.

6 Q. What does that mean?

7 A. EPA requires all agencies to have a quality
8 assurance and quality control program to ensure that all
9 data collection from sampling and analyses are performed
10 pursuant to EPA methods and procedures.

11 Q. Could you estimate for us how many contaminated
12 sites you have worked on since joining the OCD, both in the
13 Environmental Bureau and in the Hobbs Office?

14 A. I can tell you how many I'm working on presently.
15 That I'm responsible for is probably 300 to 400 at the
16 moment. In the past, it would probably be well into the
17 thousands, or a thousand.

18 Q. Did you have occasion to investigate
19 contamination at tank battery sites?

20 A. Yes.

21 Q. How many would you estimate involved tank battery
22 sites?

23 A. Several hundred.

24 Q. Could you give the Commission some information on
25 your relevant education and work experience?

1 A. Right, I'm a degreed engineer from New Mexico
2 State University, graduated in 1969 with an electrical
3 engineering degree, went to work for the Goodyear Tire and
4 Rubber Company up in Akron, Ohio, where I -- my first
5 environmental assignment a number of years ago was to -- I
6 was part of a team that we actually -- in those days they
7 were putting contaminants into the Cuyahoga River, the
8 river caught on fire, and so there was a big move in that
9 whole area to -- all of these type of large manufacturing
10 industries to build controls, and I was part of that team,
11 and I actually designed the controls to help separate oil
12 and water so we wouldn't have oil products going directly
13 into the river.

14 After that, I was a plant superintendent for a
15 power plant for a number of years, then I worked for a
16 chemical company as their environmental compliance officer
17 for approximately 10 years.

18 Q. So how many years total have you been involved
19 with environmental issues?

20 A. Well over 20, 25.

21 Q. Have you previously testified before the
22 Commission?

23 A. Yes, I have.

24 Q. At that time were you accepted by the Commission
25 as an expert in oilfield contamination and remediation?

1 A. Yes, I was.

2 MS. MacQUESTEN: I tender Mr. Price as an expert
3 in investigation of oilfield contamination and remediation.

4 CHAIRMAN FESMIRE: Is there any objection?

5 MR. STRANGE: No objection.

6 MR. ROBINS: No, sir.

7 CHAIRMAN FESMIRE: From the Commission?

8 COMMISSIONER CHAVEZ: No objection.

9 CHAIRMAN FESMIRE: Mr. Price's expertise is so
10 accepted.

11 MS. MacQUESTEN: Thank you.

12 Q. (By Ms. MacQuesten) Mr. Price, were you involved
13 in the investigation of contamination at a former tank
14 battery site near the Humble State Well Number 3 in Lea
15 County?

16 A. Yes, I was.

17 Q. And that is what we've been referring to as the
18 Maralo site?

19 A. Yes.

20 Q. Is that site in the Hobbs District, where you
21 used to work as an environmental specialist?

22 A. Yes.

23 Q. How did this site come to the attention of the
24 OCD?

25 A. Actually, I had left the District and came up

1 here, and shortly thereafter the person who took my place
2 made an investigation on the site and had sent some -- a
3 complaint form and so forth up to our Bureau.

4 Q. So by moving up to the Environmental Bureau, you
5 just missed being the actual investigator of this site --

6 A. Probably so.

7 Q. -- in the Hobbs Office?

8 A. Probably.

9 Q. All right. So the person who replaced you
10 received a complaint?

11 A. Yes.

12 Q. Would you please look at what has been marked as
13 OCD Exhibit Number 1?

14 A. Okay.

15 Q. Is this a copy of the complaint that was filed in
16 the District Office?

17 A. Yes, it is.

18 Q. And who is the complainant?

19 A. Mr. Jay Anthony.

20 Q. Do you know who Mr. Anthony is?

21 A. Yes, I do.

22 Q. What is his relationship to the site?

23 A. It's my understanding Mr. Anthony is the surface
24 owner and is a rancher in that area.

25 Q. All right, what is the date of this complaint?

1 A. It looks like it's October the 6th, 1999.

2 Q. And who took the complaint?

3 A. Donna Williams.

4 Q. She's the person who replaced you in the Hobbs
5 Office?

6 A. Yes, yes, she was.

7 Q. And how does she -- just briefly, how does she
8 describe the nature of the complaint?

9 A. She writes in here that -- "Old Historical
10 Contamination that covered a large area - There is standing
11 <abandoned> possible -- Water Flood Station" what she
12 called it, "<system> Old Rusty Tank with Rotted Bottoms.
13 Asphaltic Material Allover Location/Lease" she says for one
14 half to one mile. "Wells Humble State #3", and she gives a
15 location of that particular well site. It's in Section 36,
16 Township 25 South, Range 36 East. She said "Contamination
17 Follows Flowlines Running to Lease. Also Shell 'A' State
18 #1 Old Maralo Lease Plugged & Abandoned in 1988
19 Contamination Around Well" head "<Historical
20 Contamination>".

21 Q. Okay. Now, what you're summarizing appears to be
22 the section of this form under the heading "Investigation"?

23 A. Yes.

24 Q. So is this her report of what she saw during the
25 site investigation?

1 A. Yes.

2 Q. And when was that site investigation conducted?

3 A. Looks like it was October the 6th of 1999.

4 Q. The same day the complaint was received?

5 A. Uh-huh, right.

6 Q. And if you look down to the bottom of that
7 complaint form, what does that describe?

8 A. It looks like she sent a letter requesting a
9 remediation plan for the vertical and horizontal extent of
10 the contamination. She requested a site assessment be
11 performed, and that was her actions taken. Looks like she
12 received a call from Maralo, December 1st, 1999, looks like
13 they held a conference with some people, with possibly
14 Maralo, it looks like. And she basically said Maralo
15 indicated "Rule was not in effect yet & they didn't feel
16 the need to do anything - The Rule is not Retroactive."
17 She went and said, "After discussion I said I would get
18 back w/them."

19 Q. All right. Would you turn to what's been marked
20 as Exhibit Number 2?

21 A. Okay.

22 Q. Is this a copy of the letter that Ms. Williams
23 mentions in her complaint form that was sent to Maralo?

24 A. Yes.

25 Q. And on the complaint form she made a notation

1 that Maralo said the rule was not in effect. What rule or
2 rules does this letter refer to?

3 A. Well, this particular letter here, she mentions
4 Rule 202.B. She also mentions Rule 19.B.

5 Q. Okay. Now, what -- Just to give the Commission
6 some general idea, what does Rule 19 refer to?

7 A. Rule 19 is our abatement rule for abatement of
8 groundwater in the vadose zone.

9 Q. All right.

10 A. Above groundwater.

11 MS. MacQUESTEN: And I'd like the Commission to
12 take administrative notice that that rule came into effect
13 in 1997.

14 CHAIRMAN FESMIRE: The Commission will take
15 administrative notice.

16 Q. (By Ms. MacQuesten) Thank you.

17 And what does Rule 202 deal with?

18 A. Rule 202 is a completion of plugging and
19 abandonment operations that an operator is required to
20 take.

21 Q. Cleanup activities after plugging?

22 A. Right, right, to return the location to a safe
23 and clean location.

24 MS. MacQUESTEN: All right, I would ask the
25 Commission to take administrative notice that Rule 202 came

1 into effect under Order R-9210 in 1990.

2 CHAIRMAN FESMIRE: The Commission will take
3 notice.

4 Q. (By Ms. MacQuesten) Mr. Price, at what point did
5 you become involved in the investigation?

6 A. In the year 2000.

7 Q. Why?

8 A. Actually, I was on a field trip with Bill Olson,
9 who was one of our hydrologists, and he since has left this
10 organization; he's over at the Environment Department. We
11 were in the area, and I understand -- I'll call him Bill --
12 Bill was responding to this complain that Donna Williams
13 had sent up. And so we went out there and actually met Mr.
14 Anthony, and we collected a water sample from the on-site
15 water well.

16 Q. Why were you collecting a water sample?

17 A. Well, Mr. Anthony had indicated that the water
18 was salty, and so that was the original complaint, plus the
19 fact that there was a lot of contamination on site, and he
20 was concerned about his water well being further
21 contaminated.

22 Q. What did you find when you took the water sample?

23 A. The analysis showed that the water was
24 contaminated with salts or chlorides.

25 Q. Did you find hydrocarbons in the water?

1 A. We did not.

2 Q. Did you then begin a series of investigations on
3 the soil at the site?

4 A. Yes, we did.

5 Q. Before we go into detail on the results of those
6 investigations, I'd like to set out a time line for the
7 Commission on those investigations. When was the first
8 soil investigation of the site done by the OCD?

9 A. The first soil investigation was May of 2001.

10 Q. All right, and was there a second investigation?

11 A. There was, and that was in May of 2002.

12 Q. That was also by the OCD?

13 A. Yes.

14 Q. Was there a third soil investigation?

15 A. Yes, there was.

16 Q. And when was that?

17 A. That was in 2003.

18 Q. Was the OCD involved in the third investigation?

19 A. No.

20 Q. Who did the third investigation?

21 A. The landowner had a consultant Eddie Seay.

22 Q. All right, for convenience, I'm going to refer to
23 those three examinations as the 2001, 2002 and 2003
24 investigations?

25 Mr. Price, you visited the site for the two OCD

1 soil investigations?

2 A. Yes.

3 Q. But you were not present during the third
4 investigation?

5 A. That is correct.

6 Q. All right. Have you prepared a PowerPoint for us
7 to illustrate the site and help explain your
8 investigations?

9 A. Yes, I have.

10 Q. And that is -- We have a hard copy in your packet
11 as Exhibit 3.

12 Mr. Price, if you could show us slide 1 of the
13 PowerPoint --

14 A. Okay.

15 Q. -- what does this show?

16 A. This is the layout of the old tank battery site
17 where I met Mr. Anthony the first time.

18 Q. Did you prepare this drawing for the hearing
19 today?

20 A. Yes, I did.

21 Q. And what did you base the drawing on?

22 A. Actually, I based it on Bill Olson's and our
23 first trip out there that we took, Mr. Olson had some field
24 notes and I did too on some footages, approximate footages,
25 of where and how long and how big the pits were and so

1 forth.

2 Q. I notice you have a GPS location for the water
3 well.

4 A. Right there, yes.

5 Q. What were you using that for?

6 A. We took a GPS location to identify a bench mark,
7 as you might want to say, so then we could measure
8 everything off of a known bench mark, and so we used a
9 water well since it was a stationary object out there.

10 Q. All right, and then you stepped off the other
11 locations?

12 A. Yes, I did.

13 Q. Is this drawn to scale?

14 A. Yes, I scaled this at one inch equals 100 feet.

15 Q. And what were you showing with this plat?

16 A. I was just basically showing the overall site,
17 different areas of the site that we had observed. There
18 was the -- what we call the old battery area north, the old
19 battery area south, the pit area south, and a couple pits
20 to the west of the old battery area south, middle pit and
21 west pit.

22 Q. Could you describe what you saw when you went to
23 the site, starting with describing the battery sites?

24 A. Battery sites were pretty typical of old,
25 abandoned batteries, lots of oily-type contamination that

1 had weathered in asphaltine-type materials.

2 Q. Was it asphaltine materials all across the
3 surface, or were there chunks, or what did it look like?

4 A. There were several chunks, anywhere from the size
5 of a thumbnail to three or four inches long or five or six
6 inches long, that were solidified with soils and so forth.

7 Q. Other than those chunks, was there any visible
8 contamination on the surface?

9 A. Yes, there was.

10 Q. Could you describe that?

11 A. Typical -- that's in a dune-sand area, typical --
12 you can pick up the soil in different areas, and you could
13 actually get a little bit of oil on your hand, and the soil
14 grains were obviously stained with oil.

15 Q. How large an area is covered by the old battery
16 sites, the old battery north and old battery south?

17 A. Well, the old battery north is approximately 300
18 to 400 feet north and south and about 200 feet wide.

19 The south battery area is about the same width as
20 the north area, and about -- a couple hundred feet, 150
21 feet to the south. There's a pit area there that looks
22 like around -- it was around 200 to about probably 75 to
23 100 feet, and then you had a couple pit areas over here
24 that were probably 200 by 100, 150.

25 Q. What did you see at the pit areas?

1 A. Well, in the pit areas, with the exception for
2 along the berm areas, from about the middle of the middle
3 pit area out, the soil was -- basically looked like clean
4 dune-sand soil. It's sandy material, a little bit of
5 vegetation but not much.

6 The visual contamination started just about where
7 I have the pointer right there, on the berm area.

8 Q. That's the upper right-hand corner of the pit
9 area west?

10 A. Yes, and then it came around like this, and we
11 have another drawing that shows it, into this area and all
12 the way up in this area here.

13 Q. So other than the west side of pit area west, you
14 were able to see visible contamination?

15 A. That's correct.

16 Q. Could you describe the contamination that you saw
17 in the pit areas?

18 A. The contamination that I saw in the pit areas,
19 this contamination that was in the middle pit, from here
20 back, was the same as the old battery area, surface
21 contamination.

22 However, the contamination which I saw over on
23 the west pit, which -- Actually, I didn't hardly see any
24 contamination out here. I did see some along this berm
25 area here, and there was some visual, oily contamination

1 right on that berm area.

2 And then on out in this area here and around
3 these berms was a white, powdery-looking substance which I
4 have not identified.

5 Q. At the time did you have a theory as to what that
6 substance was?

7 A. I thought it was salt.

8 Q. Not to jump too far ahead, but when you tested
9 it, did it turn out to be salt?

10 A. No, it did not.

11 Q. So do you know what it is?

12 A. No, I don't.

13 Q. Was there any equipment at the site?

14 A. Actually, when -- the first time I went through,
15 there was nothing on site except for this water well; it's
16 still there.

17 Q. And that's the water well that you had taken the
18 water samples from?

19 A. That is correct.

20 Q. And those samples showed chlorides but no
21 hydrocarbons?

22 A. There were some elevated chlorides in that well.

23 Q. All right. Let's turn to slide number 2. Now,
24 this is a topographical map that we'd like to use to help
25 us get oriented. Where did this map come from, Mr. Price?

1 A. Actually, I got a copy of this map out of the
2 file. I went through when I knew that I was going to kind
3 of go ahead and finish up on this case, since Mr. Olson had
4 left, I went through the file and I found this in one of
5 the reports in the case file.

6 Q. All right. Is it accurate, as far as you can
7 tell, from your knowledge of that area?

8 A. As far as I can tell. It looks like a typical
9 USGS topo map.

10 Q. All right. What is that item that's marked "M&A
11 Site"?

12 A. Right there?

13 Q. Right.

14 A. I can make that bigger, if you want it.

15 Q. Okay, could you enlarge this a bit?

16 A. Sure. Go down. Hang on just a second. Okay,
17 the M&A site was a -- and actually I called the consultant
18 that prepared that report. He said that -- he noted that
19 as an annotation that he noted that as Maralo and Anthony
20 site.

21 Q. All right, so this was on the map when you
22 received it?

23 A. Yes, it was.

24 Q. And that is to indicate the site of this tank
25 battery --

1 A. Yes.

2 Q. -- that we've been talking about?

3 How far is the location of the tank battery from
4 the town of Jal?

5 A. Well, each one of these squares that you see here
6 is a section, which they're one mile, so you can see that
7 we're about a mile from the city limits of the City of Jal.

8 Q. All right. There's a broken blue line that
9 passes just next to the M&A site?

10 A. Right.

11 Q. Do you know what that is?

12 A. Yes, that is the City of Jal's freshwater supply.
13 They call it an aqueduct. It's actually a buried pipeline.

14 Q. Is that of an concern to your in your
15 investigating contamination that is close to a waterline?

16 A. It goes right through the site, it is a concern
17 of mine.

18 Q. Why would you worry about that?

19 A. Well, a lot of these city water lines,
20 particularly long lines that can at different times go
21 under an actual vacuum, and if that line has any sort of
22 deterioration or leaks in this area, it actually could suck
23 in contaminants into that and go into the City of Jal's
24 freshwater supply.

25 Q. Okay. Is there any evidence that that has

1 happened?

2 A. No, there's no evidence, and it's not a high
3 probability either.

4 Q. All right, but you -- it is something that you're
5 concerned about when you're looking at contamination?

6 A. Any time we have a city water supply that could
7 be impacted we are certainly concerned about it.

8 Q. Is there surface water in the area?

9 A. There are some features of watercourses, nothing
10 that I would say that is significant that could be impacted
11 from this site. There is the well-known Monument Draw that
12 comes down this side, goes back into Texas. This is kind
13 of an exten- -- a lateral of that. There's actually a
14 little draw that goes through that called Doggie Draw, but
15 none of those are significant watercourses that I would say
16 that this site would impact.

17 Q. The Doggie Draw area is where the --

18 A. The Doggie Draw area comes up through here, comes
19 down through here like this.

20 Q. Okay, where on the map it --

21 A. It actually --

22 Q. -- says Monument?

23 A. It actually comes through here and ties into this
24 area right here.

25 Q. Okay.

1 A. Now, if you go out there and take a look, it's --
2 once again, the features of the surface out there is fairly
3 flat.

4 Q. Okay. There's a blue rectangle next to the M&A
5 site.

6 A. Right there.

7 Q. What is that?

8 A. Well, on these topo maps they -- when they take
9 these, they re-do these, you know, I think once every ten
10 years, they show significant features. One of the things
11 -- and there's usually some sort of a ledger that shows --
12 This would be a water -- some sort of water feature, as
13 like this right here. These are some lakes that are at the
14 Jal area. That's a lake, that's a large playa lake.

15 But this is -- You notice how square that is.
16 And they're showing that as a very large water body.

17 Q. Now, you were out there yourself. Did you see a
18 large water body?

19 A. No, I didn't.

20 Q. What is at the location that's marked by the blue
21 rectangle?

22 A. Right there are tanks.

23 Q. So that's part of the tank battery and pits?

24 A. I assume that that's what that was.

25 Q. Okay. What is the depth to groundwater in this

1 area?

2 A. It's about 200 feet.

3 Q. What do we know about the soil in the area?

4 A. The Ogallala formation is eroded out in that
5 area, and so we're -- it's basically a dune sand and
6 alluvium-type soil, that area, all the way down to
7 groundwater.

8 Q. How permeable is it?

9 A. It's very permeable.

10 Q. If the groundwater is at a depth of 200 feet and
11 you have permeable soil, do you have a concern that the
12 contamination in the soil could move to the groundwater?

13 A. Yes, I do.

14 Q. If you could move to slide 3, please, what does
15 this slide show?

16 A. This is the -- This basically shows Section 36.
17 This is RBDMS. This is from our -- OCD's RBDMS database
18 management system that has GIS capability, and basically we
19 have -- this is an aerial photo in which the GIS -- then
20 you have the overlays. Our system will go in there, and
21 I'm not a guru on this system, but we have specialists that
22 know how to do this, and they lay these things out. And
23 they can superimpose all the wells that are in the area and
24 any significant features.

25 Q. What is that circle in the center?

1 A. This is an annotation that I made that identifies
2 the location of the Maralo battery. And we had given Ben
3 Stone the GPS location of the water well, which is as you
4 saw from the previous slides, and by that location he was
5 able to use the RBDMS GIS system to print out all the wells
6 in the area and to pinpoint the water well.

7 Q. All right. Now, I see one well is marked the
8 Humble State Number 3?

9 A. That's right there.

10 Q. And that was the well that was mentioned in Donna
11 Williams' letter?

12 A. Yes.

13 Q. Have you checked to see which of these wells were
14 ever operated by Maralo?

15 A. I did.

16 Q. And which wells were operated by Maralo?

17 A. I just did a quick review of the electronic well
18 file system. I used these API numbers, and from my search
19 it looked like this well, this well here, this well -- this
20 well here, this well, this well and this well here.

21 Q. So you're saying that the four wells immediately
22 surrounding the tank battery site area were Maralo wells?

23 A. Right, let me get my pointer there. It was this
24 well, this well, this one, this well and this well down
25 here.

1 Q. And the fifth well is the one that -- I can
2 barely make out the numbers, but the last numbers are 832?

3 A. It's 9832, that's correct.

4 Q. And that's in the southwest area?

5 A. That's southwest of the site. North is at the
6 top of the page.

7 Q. Now, we're probably going to hear about a Maralo
8 well that was converted to a water disposal well. Which
9 one is that?

10 A. That is this well, the 9829 well.

11 Q. All right, and that's otherwise known as the
12 Humble State Number 1?

13 A. That is the Humble State Number 1, that's
14 correct.

15 Q. Do you know when it wa converted to a water
16 disposal well?

17 A. I would have to look in the paperwork that I
18 have, which I'll do.

19 Q. That's all right, I'm sure we're going to hear
20 plenty about it later.

21 A. Okay.

22 Q. Would you turn to slide -- I need to jump ahead
23 now to slide 13.

24 A. Slide 13, okay. All right.

25 Q. And what does this show?

1 A. This is a 19- -- 1955 aerial photograph of the
2 area.

3 Q. Where did you get it?

4 A. I got this from the Earth Data Analysis Center,
5 which is a service organization for the University of New
6 Mexico. They have GIS capabilities, aerial photographs,
7 historical aerial photographs and so forth.

8 Q. Can you point out for us the site of the tank
9 battery?

10 A. Yes, it looks as though this right here is the
11 Maralo tank battery, and you can see there's a well,
12 there's a well, there's a well and there's a well.

13 Q. So those would be the four Maralo wells that
14 surrounded the tank battery?

15 A. Yes. I can make that larger if you want to see
16 it.

17 Q. Well, for now let's move to slide 14.

18 A. Slide 14, okay.

19 Q. And what is this slide?

20 A. This slide is of the same area, and it is an
21 aerial photograph taken in 1968.

22 Q. Is this from the same source?

23 A. Yes.

24 Q. Could you show us where the Maralo site is?

25 A. Yes, the Maralo site is this site right here,

1 where I'm drawing the circle, and I'll make it bigger for
2 you. Let me move it over.

3 CHAIRMAN FESMIRE: Mr. Price, what was the date
4 on this photograph?

5 THE WITNESS: This was 1968. Okay, there you go.

6 Q. (By Ms. MacQuesten) Now, judging from what you
7 saw when you had your site visit, can you identify some of
8 these features?

9 A. Yes, this looks like the tank-battery area.

10 Q. The tank battery south?

11 A. This is the tank battery south, this is the tank
12 battery north, this is the pits out to the west. However,
13 I didn't realize there was something out here. I only
14 thought there were two pits, but it looks like there were
15 more. It also looks like there's a pit there and a pit
16 there.

17 Q. A pit up north of the north tank battery?

18 A. Right.

19 Q. What is the line that goes just to the south of
20 the site?

21 A. This is the freshwater line for the City of Jal,
22 the aqueduct we talked about. Goes right through there.

23 Q. Could you turn to slide 15?

24 A. Okay. Let me go back to -- Okay.

25 Q. Is this another aerial photo from the same

1 source?

2 A. Yes, it is. This was taken in 19- -- this is an
3 aerial photograph -- 1977. And here is the location again.
4 You can see a well there, a well there, a well there, a
5 well there. And let me make that bigger so we can see it a
6 little bit better, enlarge it. And I'll have to center it
7 for you.

8 Let me go back so I can find it again. Okay.
9 Now, I need to make it a bit larger.

10 CHAIRMAN FESMIRE: Go along the road going
11 northwest.

12 THE WITNESS: Okay, now let me center it. Okay,
13 this is the area right here. And I can make it larger.
14 The reason I'm -- I have to center this first, so we'll get
15 it right. Now, let's try that, see what happens there.
16 Now I've got to see which way I went.

17 CHAIRMAN FESMIRE: The other way.

18 THE WITNESS: The other way?

19 CHAIRMAN FESMIRE: The other way.

20 COMMISSIONER CHAVEZ: The aqueduct road is --

21 THE WITNESS: Oh, there it is, yeah. Okay.
22 There it is, sorry about that. All right, that's a little
23 bigger.

24 Q. (By Ms. MacQuesten) What changes do you see from
25 this 1968 photo to this 1977 photo?

1 A. Well, it looks like everything -- all the
2 equipment is basically gone. You do see -- The pits are
3 gone, that pit's gone, this pit looks like it's gone. You
4 see the contamination there, though, see it right in there.

5 Q. You're --

6 A. And it looks like there might be a --

7 Q. -- looking at the dark areas?

8 A. -- looks like maybe a portion of -- looks like
9 part of the tank battery might still be there too.

10 Q. All right, when you said you can see
11 contamination, are you referring to the dark area --

12 A. I'm just referring to the --

13 Q. -- to the south?

14 A. -- you know, it just coincides with what I saw
15 out there. See the -- looks like some existing -- some
16 sort of contamination there, it's just real dark.

17 Q. All right. Let's talk about the first soil
18 investigation that you did, and that was in 2001.

19 A. Okay.

20 Q. And turn to slide number 4, please. Did you
21 prepare this slide for the hearing to illustrate the 2001
22 investigation?

23 A. Yes, I did.

24 Q. What do the X's indicate?

25 A. That's where we took our -- those are sample

1 points, that's where we actually collected -- approximate
2 location where we collected the samples.

3 Q. So you took one sample in old battery area south?

4 A. Took one sample right there, and that was zero to
5 12 inches composite.

6 Q. All right, and then you took samples in the three
7 different pit areas?

8 A. Yes, I did, I took a sample there, which was
9 zero- to 12-inch composite, took a sample there on the berm
10 area.

11 Q. That's in the pit area west?

12 A. That's on the pit area west, that was on the berm
13 area. And took a sample there, and took two samples in
14 this approximate location here.

15 Q. So this little diagram will show us the
16 locations, it will show us the depth of the samples?

17 A. That's correct.

18 Q. And it will also show the TPH results for each
19 sample?

20 A. Yes, it will.

21 Q. All right.

22 A. It does.

23 Q. Now, this first investigation was at relatively
24 shallow depths; is that right?

25 A. Well, yes, it was.

1 Q. What was the range of depth?

2 A. From the surface down to about six to eight feet.

3 Q. And there were some locations where you took
4 samples at multiple depths?

5 A. Actually just one, in the middle pit area we took
6 two samples, took sample number 5 three to four feet deep
7 and took another sample at six to eight feet deep.

8 Q. All right. You indicated that the diagram also
9 shows the level of TPH at each sampling. What is TPH?

10 A. That's total petroleum hydrocarbons. It's a
11 broad range of hydrocarbons, anywhere from low-chain to
12 long-chain hydrocarbons.

13 Q. Is TPH an environmental hazard?

14 A. It can be.

15 Q. Why?

16 A. Well, primarily at certain levels TPH can be very
17 detrimental to plant and animal life. It also is -- we use
18 TPH as a primary indicator to chase it down to see if
19 groundwater has been contaminated.

20 Q. So if you see TPH, that raises some concerns for
21 you --

22 A. It does.

23 Q. -- that the groundwater is contaminated?

24 A. Yes, it does.

25 Q. Is there a standard for an acceptable level of

1 TPH in soil?

2 A. We have guidance levels for TPH in soils.

3 Q. And what are they?

4 A. We have leak and spill cleanup guidelines, and
5 those guidelines -- I have a copy of them here, and
6 basically it's on a tiered system. In those guidelines we
7 look at benzene, which is the carcinogen that is a natural
8 constituent of crude oil. We also look at what we call
9 BTEX, which is an acronym for benzene, toluene, ethyl
10 benzene and m-, p- and o-xylenes, and also we look at total
11 petroleum hydrocarbons.

12 Q. Okay. Considering the TPH, what are the tiered
13 standards for TPH?

14 A. The tier standards is a tiered-structured system,
15 and we use basically three different criterias.

16 We use distance from the lowermost contaminants
17 that are in the vadose zone, down to the top of the
18 capillary fringe, to determine cleanup standards. In other
19 words, that measures the distance between the contaminants
20 to groundwater.

21 We measure contaminants, how far they are from a
22 domestic or municipal water supply or water wells.

23 And we also look at watercourses.

24 Q. All right. How long has this guidance been in
25 effect?

1 A. Approximately 1993.

2 Q. Since 1993 you've been applying these standards?

3 A. Yes.

4 Q. What are the three tiers of the standards?

5 A. Well, the three tiers is for a water well, depth
6 to -- I'm sorry, for depth to groundwater. If you have
7 contamination here and you're looking at depth to
8 groundwater, then if it's less than 50 feet from the
9 lowermost contaminants to groundwater, then the cleanup
10 standard would be 100 parts per million of TPH. If it's
11 basically between 50 and 100, it's 1000 parts per million.
12 If it's over 100 feet to groundwater, then we usually allow
13 much less stringent cleanup level, 5000 parts per million.

14 For water wells we go from zero to 200 feet. If
15 it's between zero and 200 feet, it's 100 parts per million.
16 If it's between 200 to 1000, it's 1000 parts per million.
17 If it's between -- if it's greater than 1000 feet from a
18 water well, then we would have a 5000-part-per-million
19 cleanup standard.

20 Q. Okay, so the three --

21 A. And we have similar tiers for surface waters too.

22 Q. So the three tiers are 100, 1000 and 5000?

23 A. That is correct.

24 Q. Which tier will you apply to this situation?

25 A. Well, going by the guidelines, it would be a 100-

1 part-per-million.

2 Q. And why is that?

3 A. Well, because of the location of this water well.

4 Q. Now, you're aware of the testimony at the prior
5 hearing?

6 A. Yes.

7 Q. And Mr. Olson testified that he would apply a
8 standard of 5000?

9 A. I understand that.

10 Q. Was he off the mark?

11 A. No, I don't think Bill was off the mark there. I
12 think depending upon whether the material that remains is
13 leachable, and that has yet to really be determined,
14 because there's some tests out there that EPA has that we
15 could use to determine if this material is leachable or
16 not.

17 Q. So if tests showed that it was not leachable, you
18 would also accept the 5000 standard?

19 A. I would.

20 Q. What tests can be done to determine whether it's
21 leachable?

22 A. EPA has what's called a synthetic precipitation
23 leaching procedure test, method 1312, that we could
24 actually analyze the soils in that area to determine if
25 they are leachable.

1 Q. Now, you said before that these standards have
2 been in place since 1993?

3 A. Yes, they have been.

4 Q. What standards applied before 1993?

5 A. Actually, it's my understanding that there was
6 100 parts per million.

7 Q. Just a flat 100 parts per million --

8 A. That's my --

9 Q. -- regardless of --

10 A. That's my understanding --

11 Q. -- the circumstance?

12 A. -- yeah.

13 Q. So the old standards are stricter than those that
14 have been applied since 1993?

15 A. That is correct.

16 Q. Are you aware that in its pleadings Maralo
17 complained that OCD is applying standards that were not in
18 effect at the time Maralo abandoned the site in the 1980s?

19 A. Repeat the question.

20 Q. Are you aware that in its pleadings Maralo has
21 complained that OCD is applying standards that were not in
22 effect at the time they abandoned this site back in the
23 1980s?

24 A. Yes.

25 Q. If we apply the standards from that time period,

1 they would not be allowed to exceed 100 parts per million;
2 is that right?

3 A. That's correct.

4 Q. So if Maralo wants to that 100-parts-per-million
5 standard, that would be okay by you?

6 A. If they want to.

7 Q. Okay, but you might be willing to accept a 5000
8 standard, if you can prove that it's not going to leach
9 into groundwater?

10 A. Yeah, we would make sure that the contaminants
11 that are there -- number one is, Mr. Anthony can get
12 something growing again there so he can graze his cattle
13 again and recreate without having any sort of contaminants
14 that's going to harm him, public health and the
15 environment, and to make sure groundwater is not going to
16 be contaminated.

17 Q. Using slide number 4, could you tell us whether
18 the levels of TPH were acceptable?

19 A. Well, you just look at the drawings here, you can
20 see that all of them, with the exception of this point
21 right here, exceed our guidance levels. I'll just read
22 them off. This was 7500 --

23 Q. That's in the pit area south?

24 A. This is in the pit area south, is 7500 parts per
25 million TPH. In the old battery south area you can see it

1 was 35,700. In this area right here, in the middle pit
2 area, we had 20,900 at three to four feet. At six to eight
3 feet we had 16,000 parts per million. I might also add,
4 too, this was pretty volatile -- this was probably the most
5 volatile of the organics that we experienced.

6 There's some really high TPH on this berm here,
7 which was 23,900, right along this berm area here.

8 And this area right here was clean.

9 Q. So looking at pit area west, you had very high
10 TPH on the berm but low TPH in the middle of the pit?

11 A. It looks like this pit is clean.

12 Q. Do you have an opinion on what caused the high
13 levels of TPH at the berm on pit area west?

14 A. You know, I actually do. I've got a lot of
15 experience in the oilfield, and I know how a lot of these
16 companies used to operate. You know, in some of these
17 freshwater-producing zones where they have oil, it's very
18 hard to break these emulsions.

19 I used to work for Unichem, and we'd sell, I
20 know, a lot of chemicals to people who were in this
21 situation. And emulsions basically sometimes just simply
22 couldn't be broken if they didn't have enough residence
23 time in their tanks, oil would actually come out into these
24 pits and oil would be in the pits, and then they would go
25 out there and they would skim that oil back off from time

1 to time and put it back in the tanks because it's a viable
2 product.

3 And then also what they'd do, they'd have siphons
4 underneath the oil layers because those pits that had the
5 oil on them simply could not evaporate water. It's a very
6 common practice, they always have what they call a skim pit
7 in which one pit was used where the emulsions that couldn't
8 be broken went into those pits, would gravity into the last
9 pit where they would get more or less clean water.

10 So the pit systems were typically used for
11 separation systems, and that was a common practice for
12 many, many years.

13 Q. So are you saying that the pit area middle would
14 have been used for that separation purpose?

15 A. It certainly could have.

16 Q. And then the pit area west could have been the
17 relatively clean water?

18 A. It could have. You know, that -- we obviously
19 found oil on top of that berm there, and actually on all of
20 these berms we found oil.

21 Another common practice was -- unfortunately, we
22 still have a few operators that are doing it, but -- is,
23 they would take their tank bottoms, and they would -- in
24 order to -- since, particularly in these sandy areas here,
25 these tank -- these berms were basically sand berms, and so

1 they would dump their tank bottoms on the berms to solidify
2 the berm areas, to make sure they have a good firewall, so
3 they wouldn't deteriorate over time.

4 Q. So --

5 A. That's a common practice, that was a common
6 practice.

7 Q. So if that was happening, that could explain why
8 you had a very high TPH level on the berm but a relatively
9 low TPH level in the body of the pit?

10 A. It very well could have. It also could have been
11 overflows. If this pit had enough oil on it and it
12 actually overflowed, it actually could have got into the
13 berm area.

14 Q. And the overflow could have left the high TPH on
15 the berm?

16 A. That's pretty common.

17 Q. In the testimony from the first hearing, a Maralo
18 employee testified that these pits were used for produced
19 water. Is that consistent with your opinion?

20 A. Well, I have no doubt that they weren't used for
21 produced water. I'm sure they were. If they didn't have a
22 disposal well, they weren't trucking the water off, which
23 I'm sure they weren't -- back in those days, they dug pits,
24 and in a lot of cases they dynamited the pits so they would
25 actually take a lot of water. In this particular case in

1 this area here, I don't think they'd have to do any
2 dynamiting because the infiltration rates would be
3 extremely high.

4 And so yeah, I'm sure that that's what the pits
5 were used for, is to dispose of water.

6 Q. So if they were being used to dispose of water,
7 what caused the hydrocarbon contamination?

8 A. Well, once again it's a common practice that a
9 lot of emulsions just -- they just wouldn't break, and the
10 pits would build up with oil.

11 Q. Could you go back to slide 14?

12 A. 14.

13 Q. And this is the aerial shot from 1968?

14 A. That's correct.

15 Q. Looking at the Maralo site area, are the pits in
16 different colors?

17 A. Do you want me to make that -- enlarge that, so
18 that --

19 Q. If you can.

20 A. If I can get it on the same spot. Go a little
21 bit --

22 Q. That's fine.

23 A. Okay. Yeah, you know, obviously that's real
24 dark, a little bit lighter, and that looks like maybe
25 clear.

1 Q. And the light area corresponds to the west pit?

2 A. This is the very west pit, right here.

3 Q. That's the one you said was, in your opinion,
4 used for the relatively clean water?

5 A. Right. However, I will say this: This pit's a
6 lot bigger than what I thought when I was out there.

7 Q. Uh-huh. Is it consistent with your opinion that
8 this was -- this site used skim pits to see results with
9 pits with a lot of dark color showing contamination --

10 A. It's a common --

11 Q. -- lighter color --

12 A. It was a common practice back then.

13 Q. Was it consistent with the rules in effect at the
14 time to have this practice?

15 A. It was consistent with my understanding of the
16 rules to be able to use open, unlined pits for disposal of
17 produced water. However, I don't think it was truly -- it
18 probably did violate one of those rules, if they had
19 continuous oil out there all the time.

20 Q. So if you had --

21 A. I -- Okay.

22 Q. If you had oil, you could put emulsions into the
23 pit, but if the pit ended up retaining oil, that would be a
24 violation of Rule 310?

25 A. That would be.

1 Q. And Rule 313 provides that you cannot allow
2 emulsions or tank bottoms to contaminate the surface; is
3 that right?

4 A. That's my understanding.

5 Q. So you could put emulsions into a pit, but you
6 couldn't allow them to contaminate?

7 A. That's right.

8 Q. At that point there would be a violation of the
9 rule?

10 A. Yes, it would have been.

11 Q. So in other words, the practice was acceptable at
12 that time period, but the operator was responsible for the
13 results of that practice?

14 A. He was responsible for the results.

15 Q. Was there any way for the operator to minimize
16 those results?

17 A. Sure, you could increase tankage to increase your
18 residence time, you could use emulsion breakers. There are
19 a lot of things. You could use heat for separation and
20 cooling.

21 However, I will say back in those days, I mean,
22 it was a common practice for people to have pits, it's a
23 very common practice for them to try to, you know, get the
24 cream of the crop that -- the best oil they could get out
25 of their production. That oil would be sold off. And then

1 to keep recycling the water and oil that would come out
2 into their skim pit, then they would just recycle that and
3 put it back in the tank. And so it's very, very common.
4 I've seen many, many pits that had skim pits where they
5 actually used the pit to retain oil.

6 Q. When you conducted our investigation in 2001, you
7 looked for substances other than TPH; is that right?

8 A. That is correct.

9 Q. Let's look at those results. If you could turn
10 to Exhibit Number 4 --

11 A. Okay.

12 Q. -- the first two pages of Exhibit Number 4 are a
13 summary of the results; is that right?

14 A. That's correct.

15 Q. And then behind those two pages are the detailed
16 results?

17 A. The detailed results and the QAQC results.

18 Q. All right, and the very last page of Exhibit
19 Number 4 is a map?

20 A. Yes, it is.

21 Q. Is that a map that you made showing locations of
22 samples and depths?

23 A. Yes, I made this for Bill Olson.

24 Q. All right, it's similar to the slide that we were
25 looking at earlier today, but without the results?

1 A. That's correct, and its orientation is different.

2 Q. All right, you oriented our slide with north at
3 the top and south at the bottom?

4 A. Yes, I did.

5 Q. For those of us who got confused with south at
6 the top and north at the bottom?

7 A. Right, that's correct.

8 Q. Did you find any substances that posed an
9 environmental hazard?

10 A. Actually, I did. There were some levels of
11 benzene that exceeded the groundwater standards.

12 Q. Why are you concerned about benzene?

13 A. Benzene is a toxic pollutant as defined under
14 WQCC. We have standards for benzene for groundwater, and
15 it's also a known carcinogen, causes cancer.

16 Q. All right. Where did you find the benzene?

17 A. The highest level of benzene that I found -- Can
18 I go back to that one slide?

19 Q. Sure. Slide 4?

20 A. I think so. And let me -- The highest level of
21 benzene that I found was in this area right here at the
22 six-foot, the eight-foot area, in the middle of this pit.

23 Q. Did you test for chlorides?

24 A. I did test for chlorides.

25 Q. What were the results?

1 A. Either background or nondetect for the whole
2 site.

3 Q. If you could turn to slide 5, please. Now,
4 slides 5, 6 and 7 are photographs. Who took these
5 photographs and when?

6 A. Well, these photographs were either taken by me
7 or by Mr. Anthony. I didn't have a camera -- well,
8 actually I had a camera but the batteries had gone out. I
9 think I borrowed his camera to take these pictures.

10 Q. Were these taken during your 2001 site
11 investigation?

12 A. 2001. Yes, they were.

13 Q. Who did the titles and annotations on these
14 photographs?

15 A. I did all the annotations on these.

16 Q. What does slide number 5 show?

17 A. Well, this is a picture of the old battery area
18 south, south of the access road, looking south. And you
19 see the water well right here, and then this is the
20 contaminated area of the battery. And you see visual
21 hydrocarbon-stained soils.

22 Q. How close are those hydrocarbon-stained soils to
23 the water well?

24 A. Well, you can actually see right there, they come
25 right up against it there.

1 Q. Can you see those asphaltine chunks that you were
2 talking about?

3 A. Yeah, you can see them, they're all through here.
4 There's some there, there's some there. I mean, this whole
5 area is stained with oil. You can see there's very little
6 vegetation out here. There is some right in this area
7 right here, though.

8 Q. Right next to the water well?

9 A. Yes, uh-huh.

10 Q. If you could turn to slide number 6 --

11 A. Okay.

12 Q. -- what does this show?

13 A. This is the sample point number 3. It's one of
14 the old berm areas of the west pit, looking east. You can
15 see where the berms were at at one time. They're fairly
16 well defined. And that is myself taking a sample, along
17 with Paul Sheeley, our district environmental specialist.
18 We took a sample right there. We did see some really high
19 hydrocarbons on that berm right there.

20 Q. That's the sample that you referred to before on
21 the edge of the pit that otherwise did not show high levels
22 of TPH?

23 A. That is correct.

24 Q. What is that white substance?

25 A. That's the substance that at first I thought

1 would have been salt. It was not. I do not know what that
2 substance is

3 Q. If you could turn to slide 7, what does this
4 show?

5 A. This is the sample point number 5 and 6 in the
6 middle of the pit area. This is where we had sampled --
7 actually the same sample point but two different areas.
8 This is saturated hydrocarbons. And I know they're
9 saturated, we have a field that you just take a paper towel
10 and you put it on there and squeeze it, and if you get
11 liquid stain on it, then we consider that saturated.

12 This soil was saturated. This is the highest
13 benzene level that we had, which is 100 times more than the
14 groundwater standard. This had a very, very strong
15 olfactory-type hydrocarbon smell.

16 Q. Now, it looks like the soil that you pulled out
17 of the sample area was very dark compared to the surface
18 soil.

19 A. This looks like dune-sand soil or some sort of
20 sandy soil. I can only assume it didn't blow in there, it
21 probably was put in there.

22 Q. So you think this pit was covered with clean
23 soil?

24 A. It was covered.

25 Q. If someone had covered the pit, would that assist

1 in remediation?

2 A. No. I mean, we have been -- we've had several
3 training sessions with industry, and as far back as ever
4 since I've been with the OCD -- and I don't know -- our
5 Bureau Chief has always stressed this, is that one of the
6 things that we really try to stress to operators is, do not
7 cover contamination. The worst thing you can do is cover
8 the contamination. It's just like taking a canning jar, if
9 you put some gasoline in it, if you set it out there,
10 Mother Nature is going to take care of it and it's going to
11 go away. If you put a lid on it, then it's going to be
12 there forever.

13 And this is exactly what's happened here, is that
14 this contamination -- you can -- the number of years this
15 has been in here -- when you see benzene levels that high,
16 it -- you know, they basically just shot themselves in the
17 foot. If they would have just left it open, let Mother
18 Nature take care of it, go in there and maybe dig up some
19 of the worst stuff out and haul that off, we would have --
20 just wouldn't have an issue here.

21 Q. Let's talk about the results of the second soil
22 investigation in 2002. If you could turn to slide 8,
23 please, now, this is similar to slide 4 in that it shows
24 the location of the samples --

25 A. That's correct.

1 Q. -- and the depths at which the samples were taken
2 and the TPH results?

3 A. That is correct. We -- There were several
4 samples taken, but they were taken out of two boreholes.
5 There was a -- borehole number north was taken just about
6 in this location here, in the old battery area.

7 Q. Now, you hadn't previously tested the old battery
8 area; is that right?

9 A. To the north, no, we had not.

10 Q. Okay.

11 A. And this was a borehole that we went down to 27
12 feet, and the reason we stopped there was the physical
13 limits of the machine that we had out there. And you can
14 see that we have hydrocarbon -- I mean, from the surface
15 all the way down, it's -- you know, if you'd average those
16 it would probably be 12,000, 13,000 parts per million all
17 the way down.

18 Q. Now, why would you think that you would have
19 hydrocarbon contamination at that sort of depth under a
20 tank battery, rather than a pit?

21 A. Well, the tanks could have been leaking.
22 Obviously, there was probably -- I mean, we know from the
23 aerial photographs there was a pit located up in that -- on
24 the north side.

25 Q. Where was the other borehole?

1 A. The other borehole was in the middle pit area in
2 this area right in here.

3 Q. Now, that's the area where you found the benzene
4 before, in that --

5 A. Yeah, actually we had dug just about where the
6 light is, but this is moved over a little bit.

7 Q. Okay, what did you find there?

8 A. Well, in this particular borehole we went down --
9 at the five-foot level we had 18,000 -- approximately
10 18,000-parts-per-million hydrocarbon, 10-foot level. They
11 increased to 25,000, which is a pretty good indication,
12 that was probably -- possibly at the bottom of the pit. If
13 it was the bottom of the pit and it had much oil in it --
14 you know, the pit obviously had oil in it, and then we went
15 down to 15 feet, 13,000; down to 20 feet, begin to clean
16 up. So we were probably getting out of it. Down to 27
17 feet, and it did clean up. Both 20 and 27 feet were
18 beginning to clean up.

19 Q. All right, if you could turn to slide 9,
20 please --

21 A. Okay.

22 Q. -- did you take this picture?

23 A. Yes, I did.

24 Q. And this was taken during that second
25 investigation?

1 A. Second investigation.

2 Q. This is the north area borehole?

3 A. Yes, it is. That's a small hollow-stem augur rig
4 that we used, and like I say, it had a physical limitation
5 of about 30 feet.

6 Q. Okay, if you could turn to slide 10, please --

7 A. All right.

8 Q. -- what does this show?

9 A. This is the borehole in the southwest area of the
10 middle pit. I'm sorry, southwest area of middle pit. And
11 this is showing contaminated soil coming out of the hole.
12 And it had a pretty strong hydrocarbon odor.

13 Q. If you could turn to what has been marked as
14 Exhibit Number 5 --

15 A. 5, in the slides?

16 Q. No, in the hard copy.

17 A. Oh, okay, I've got it.

18 COMMISSIONER CHAVEZ: Exhibit or slide, excuse
19 me?

20 MS. MacQUESTEN: The exhibit.

21 Q. (By Ms. MacQuesten) Exhibit Number 5 is the
22 results of that 2002 investigation?

23 A. Yes, it is.

24 Q. And again, it starts with a summary and follows
25 up with the details?

1 A. That is correct.

2 Q. We've gone through the TPH results using your
3 slide. Were there any other results of environmental
4 concern to you?

5 A. There was some BTEX and some benzene. I will
6 admit, though, they were at lower levels.

7 Q. Where were they found?

8 A. In the north area at 15 to 17 feet -- Let's see,
9 the highest BTEX was actually found in the southwest area
10 around 10 feet. This was the area where the highest BTEX
11 was found, in this particular -- over here. It was around
12 -- the highest BTEX reading was around 10 feet on this
13 particular sampling event.

14 The other sampling event, we had higher benzene
15 levels than we found here.

16 Q. The other sampling event for this particular
17 area, the middle pit?

18 A. Yes.

19 Q. Did you test for chlorides?

20 A. We did.

21 Q. What were the results?

22 A. Once again, nondetect and/or background.

23 Q. Now, there was a third soil investigation. That
24 was in 2003?

25 A. That's my understanding, there was.

1 Q. And that was done by Eddie Seay on behalf of the
2 surface owner?

3 A. Yes.

4 Q. If you could turn to what's been marked Exhibit
5 Number 6, is this a copy of the report from that
6 investigation?

7 A. This exhibit here, Number 6, yes.

8 Q. And we have numbered the pages of the exhibit.
9 How did the OCD acquire this report?

10 A. It was in the -- actually, it looks like it was
11 sent to Bill Olson from Eddie Seay. It was in our files.

12 Q. Did the OCD consider the results from this report
13 in determining what to request of Maralo?

14 A. We did.

15 Q. How did the testing in this third investigation
16 differ from the tests that the OCD had performed?

17 A. Not a whole lot of difference. I guess the
18 biggest difference that I saw is, they went down to 80 feet
19 and was the depth that the contamination had actually gone
20 down. Our rig that was out there could only go down 27, 30
21 feet. They had an air rig out there that went down to 80
22 feet.

23 Q. And if you look at pages 3 and 4 of the report,
24 do they show the depth of the samples --

25 A. They do --

1 Q. -- at the two locations?

2 A. -- page 3 shows their MA 1 sample, which I think
3 is on the south side, it was. And then you can see that
4 they did -- they logged -- they made notes on logging of
5 the hole where they noted 8 to 10 feet, strong odor; 20
6 feet, strong odor; down to 80 feet, slight odor. And they
7 did the same -- and they also made -- they logged the hole
8 from a geology standpoint. They noted what type of
9 material they were running into.

10 Once again, it looks like typical dune-sand area
11 with some caliche, all the way down to groundwater.

12 Q. And if you look at page 7, will that show us the
13 rough locations of those two boreholes?

14 A. I assume so, it looks that way.

15 Q. And behind the map we have an analysis of the
16 results?

17 A. Yes, page 8.

18 Q. Do those results show unacceptable levels of TPH?

19 A. They did. MA 1 ranged from 5480 down to 2860,
20 and there was a high point at MA 1-3 of 8000 parts per
21 million, and that correlates to -- MA 1-3 -- that's 40
22 feet. So at 40 feet they had TPH of 8000 parts per million
23 on MA 1.

24 On MA 2 it looks like it was more at the surface.
25 MA 2-1 was 8 to 10 feet, and that's 16,000, which is almost

1 -- just about the same numbers that we found. And then
2 they go down to 80 feet, and there's still some
3 contamination down at 80 feet, 1370 parts per million.

4 So you can see this material has migrated quite
5 far, down to 80 feet.

6 CHAIRMAN FESMIRE: Ms. MacQuesten, would this be
7 a good place to break?

8 MS. MacQUESTEN: Sure.

9 CHAIRMAN FESMIRE: Why don't we go ahead an break
10 for lunch? Why don't we reconvene at one o'clock by that
11 clock, which I think is pretty accurate.

12 Thank you.

13 (Thereupon, noon recess was taken at 11:58 a.m.)

14 (The following proceedings had at 1:01 p.m.)

15 CHAIRMAN FESMIRE: Okay, let's reconvene. Ms.
16 MacQuesten, I believe you and Mr. Price were in the middle
17 of a conversation.

18 MS. MacQUESTEN: Yes, thank you.

19 Q. (By Ms. MacQuesten) Mr. Price, we were
20 discussing the various investigations that OCD and the
21 surface owner had conducted at the site, and to summarize,
22 the OCD investigated the water and found chlorides in the
23 water, but not significant hydrocarbons?

24 A. That's correct.

25 Q. And during the course of three soil

1 investigations, two by the OCD and one by the land owner,
2 we found hydrocarbons in the soil but not significant
3 chlorides?

4 A. That is correct.

5 Q. Is it fair to say that the focus of the
6 investigation shifted from a concern that chlorides from
7 oil and gas operations were contaminating groundwater to a
8 concern about hydrocarbons in the soil?

9 A. Yes.

10 Q. Could you turn to slide 11, please? Did you
11 prepare this slide for today's presentation?

12 A. Yes, I did.

13 Q. And what does it show?

14 A. It's just -- it's the same plot plan, in which I
15 made an identical graphical representation of the visual
16 hydrocarbons that we saw on the site.

17 Q. So during your site visit, this is what you could
18 see on the surface?

19 A. You could.

20 Q. What is that blue line that goes from A to A'?

21 A. It's going to be a profile of the next drawing,
22 of a side profile.

23 Q. All right, let's go to that drawing, and this
24 should be slide 12.

25 A. There it is, right there.

1 Q. What are you trying to show with this soil
2 profile?

3 A. Well, on the previous drawing I showed an A-A'
4 soil profile. It's just a graphical way of showing the
5 depth of the contamination. In other words, if you take a
6 cutaway view, it will show you the depth of the
7 contamination. And what I did is, I took all the data that
8 was in the file and basically just did a real rough sketch,
9 and I had a contamination index. It's -- you know, it just
10 gives you a good idea of what we're talking about, the top
11 -- and oh, on the right-hand side -- actually, let me show
12 you, on the right-hand side I had -- I've got a scale here.
13 Each one of those marks is 10 feet.

14 And you can see that the majority of the
15 contamination is really shallow. It's mostly up in the top
16 10 feet, in that area there. There's a little pocket right
17 there.

18 And then the next contamination level is down to
19 about 20, 30 feet, is in the range of 10,000 parts per
20 million.

21 And then less than 10,000 is the yellow, and then
22 we get on down to less than 5000 in this area here.

23 Now, remember this is just a one-shot view of a
24 cross-section. It only represents the depth profile across
25 that profile line that I had on there.

1 But all in all, I think it gives us a pretty good
2 idea of what we're dealing with here. We know that the
3 contamination has come down to roughly 80 feet, and -- but
4 the heaviest contamination is still in this upper area, up
5 here. And that probably explains why there's no vegetation
6 growing up in that area.

7 Q. Now, I notice you put the water well on this
8 profile. What does this show regarding --

9 A. That was just a reference -- the water well is
10 just the reference point. This drawing does not
11 necessarily represent that the contamination is going down
12 around the water well.

13 Q. Okay.

14 A. Yeah, it's just on there to reference where the
15 contamination is on the site.

16 Q. Mr. Price, did you have an opportunity to review
17 the invoices that Maralo produced on Friday as part of your
18 exhibit packet?

19 A. On Friday.

20 Q. I think I showed them to you yesterday or the day
21 before.

22 A. Yes, let's see. Okay, are you talking about
23 these invoices here?

24 Q. Yes.

25 A. Okay. Yes, I did look at them.

1 Q. According to those invoices, from what you can
2 tell looking at those invoices, what did Maralo do to try
3 to clean up this --

4 A. Well, there's four invoices here, and I'll just
5 start with the one --

6 Q. Just please summarize, just --

7 A. Oh, just summarize? Oh, okay. The invoices show
8 there was a company called JTG Construction Company,
9 performed services for Maralo, Incorporated, and basically
10 they show here invoices of doing some restoration and
11 cleanup at the abandoned battery.

12 Q. Okay, and for the Commission, this is Exhibit 20
13 in Maralo's exhibit book.

14 Mr. Price, you've gone through the well files on
15 the wells that were Maralo wells near the site of this tank
16 battery, haven't you?

17 A. Yes, I have.

18 Q. And did you see any mention of cleanup of the
19 tank battery site in those well files?

20 A. I did not.

21 Q. Did you see any indication that the OCD had
22 approved cleanup at the Maralo tank battery site?

23 A. No, I did not.

24 Q. What is your opinion regarding the cleanup that
25 Maralo did according to those invoices? Was it sufficient

1 to clean up the site?

2 A. No, it was a substandard cleanup. Basically,
3 from what I can tell, all they did was go in there and they
4 did some breaking of the dirt, and it looks like they put
5 some more dirt in with it, and that's it.

6 Q. Based on the information that you have today,
7 what would it take to remediate this site?

8 A. Well, first of all, I think it's important that
9 we know what the total extent of the contamination is. The
10 next thing is, I hope we could come to a win-win situation
11 where Jay Anthony could get his property back where it
12 would grow grass and not be a threat to him out there
13 working or recreation, and then also that we could get it
14 to a point where it wouldn't contaminate groundwater.

15 And so my opinion is is that -- and I remember
16 reading in Mr. Olson's testimony that we were asking them
17 to do additional delineation, so forth -- I think we need
18 to also find -- I think we need to do that. I also think
19 we need to determine the material that's deeper, see if
20 that's leachable, so see if that is going to be an impact
21 to groundwater.

22 And then I think that this site could be
23 restored. I mean, there are -- You know, if it's done
24 properly, if you use the right bio-remediation tools, if
25 you work it, if you water the site, if you put nutrients

1 there, this site can really come back.

2 But it can't come back the way it is now, and it
3 won't.

4 Q. Well, what would it take to bring it back?

5 A. Well, I think they're going to have to go in
6 there and remove some of the -- the hot spots, is what I
7 call, the material that's really high in TPH has the
8 volatile organics still in it. I think they're going to
9 have to get that out of the ground, let that aerate and
10 work it and so forth.

11 Now, I will say this, that if the material is not
12 leachable, then I think it might be a disservice to a small
13 company like this to have them go in there and put a
14 barrier down that's going to cost a half a million dollars.
15 I mean, to me that's just not practical or feasible.

16 But on the other hand, we need to make sure that
17 that surface is restored properly and that it will not
18 contaminate groundwater in the future.

19 And so where I'm going to deviate a little bit
20 from Mr. Olson's testimony is that this can be restored, we
21 can bring it back, it can be brought back. I'm not so sure
22 if we need to have this company put a half-million-dollar
23 liner in there if the material is not leachable. If it's
24 leachable, it's a different story. I just think it would
25 be a tremendous impact on a small company to have to do

1 something like that.

2 But on the other hand, I understand -- Mr.
3 Anthony is a landowner, and he wants his land restored the
4 way it was. And so it's something I think the parties are
5 going to have to work together and try to come out with a
6 win-win on this thing.

7 Q. What would it take to show you that a liner was
8 not required?

9 A. I think we would have to go in there and do some
10 soil borings, and we would have to run the synthetic
11 precipitation and leaching procedure. That would be one
12 method that I think we could utilize to determine it.

13 MS. MacQUESTEN: I move for the admission of
14 Exhibits 1 through 6.

15 CHAIRMAN FESMIRE: Any objection, Mr. Robins?

16 MR. ROBINS: No objection.

17 CHAIRMAN FESMIRE: Mr. Strange?

18 MR. STRANGE: Yes, sir. Exhibit 6 is a report by
19 Eddy Seay. He hasn't been here to explain his analysis or
20 his methodology. Matter of fact, somebody looked at it, it
21 doesn't lend credence to it. We're talking about a
22 diagram. The diagram right there, slide 12, purports to be
23 based upon where he drilled, and we're making all kinds of
24 speculative guesses as to what's being -- look like. We
25 don't have a clue where he drilled. We have no clue where

1 he drilled.

2 And yet Eddie is not here to be cross-examined,
3 there's no way for us to ask him these questions to find
4 out -- to test the credibility of this. We're just being
5 asked to assume this is all credible, and when it's -- that
6 proof hasn't been made.

7 So we're objecting to Exhibit 6 on the basis of
8 hearsay.

9 MR. ROBINS: May I respond?

10 CHAIRMAN FESMIRE: Mr. Robins?

11 MR. ROBINS: Since he's my expert. Your Honor,
12 Mr. Price has been qualified as an expert witness. And I
13 realize the rules of evidence may not strictly apply here,
14 but it's a well settled principle, at least in the rules of
15 evidence of this state, that experts can rely upon hearsay
16 and can rely upon data that's reasonably relied upon them
17 in their field. There's no suggestion that the lab results
18 are somehow not authentic. Mr. Price has already discussed
19 his familiarity with this site, the location, reviewed this
20 data, and this is the type of data that would be reasonably
21 relied upon by an expert. And therefore, for the purposes
22 of his opinion, which he's offered to you today, I think it
23 would be admissible for your consideration.

24 CHAIRMAN FESMIRE: Mr. Price, where -- I think
25 you testified to it. Where did this report come from?

1 THE WITNESS: This report was in the Maralo file
2 that's one of our case files.

3 CHAIRMAN FESMIRE: It was in an OCD case file?

4 THE WITNESS: Yes, it was.

5 CHAIRMAN FESMIRE: And it's been there since
6 1994?

7 THE WITNESS: I don't know the answer to that
8 question, how long it's been there --

9 CHAIRMAN FESMIRE: It's --

10 THE WITNESS: -- because I did not

11 MR. STRANGE: It's dated --

12 THE WITNESS: -- I did not work on this case --

13 MR. STRANGE: It's dated 2003.

14 MR. ROBINS: 2003.

15 CHAIRMAN FESMIRE: 2003.

16 THE WITNESS: Yeah.

17 MR. ROBINS: 2003 data that was run, that he
18 talked about as the third sampling of that.

19 CHAIRMAN FESMIRE: Oh, okay. But it was in the
20 OCD case file?

21 THE WITNESS: Yes, it was.

22 CHAIRMAN FESMIRE: Mr. Strange, based on that and
23 Mr. Robins' argument, I'm going to go ahead and admit all
24 six of the exhibits.

25 Any objection from the Commission?

1 COMMISSIONER BAILEY: No.

2 MS. MacQUESTEN: I would pass the witness.

3 CHAIRMAN FESMIRE: Mr. Robins, do you have a
4 direct examination?

5 MR. ROBINS: Yes, sir, I do, if I may.

6 DIRECT EXAMINATION

7 BY MR. ROBINS:

8 Q. Good afternoon, Mr. Price. I'm Bill Robins and
9 I'm here on behalf of Jay Anthony, landowner. I'm going to
10 start with the subject that you just talked about, which is
11 addressing the problem.

12 You'd have to agree with me, wouldn't you, sir,
13 that before you can come to any decision about how to
14 address this problem, you've got to know what the full
15 extent of the problem is?

16 A. That is correct.

17 Q. And there has been some limited work done in
18 terms of borings that representatives of the OCD performed
19 and Mr. Seay performed, but this site has by no means been
20 fully delineated, correct?

21 A. That is correct.

22 Q. And in terms of just looking at the information,
23 just for a minute, you've covered some of this, and I'm
24 going to try to work with your slides to the extent I
25 can --

1 A. Okay.

2 Q. -- but I may just jump around a little bit to the
3 actual results, but the first round of sampling -- I
4 believe it's Exhibit 4 -- is the raw data that was
5 performed. There's no question that this data shows that
6 we have a contaminated site, correct?

7 A. That is correct.

8 Q. Now, you have listed the information from this,
9 if I'm interpreting this correctly, on your slide number 4;
10 is that right?

11 A. Correct.

12 Q. Could we put that back up? Do you have that back
13 up there? Okay.

14 A. Yes.

15 Q. Now, what we don't have on this slide is any
16 information where the old battery area north is, correct?

17 A. Well, the old battery area north is -- this is
18 the general area, but we don't have any sort of test
19 results on this particular slide, because this was the
20 first sampling event that we performed in 2000 --

21 Q. 2001?

22 A. 2001, right.

23 Q. Are there highly saturated soils in that area?

24 A. Yes.

25 Q. Okay. So we know that in all probability, there

1 are soils there that go below depth, we just don't know how
2 deep, right?

3 A. That's correct.

4 Q. Okay. Now, if we look at the second --

5 A. Well now, according to the -- we do know that in
6 this area here, that -- in this general area where Mr. Seay
7 had put a boring in, that it does go down to approximately
8 80 feet.

9 Q. Yeah, I'm going to get to that, I was --

10 A. Oh, okay.

11 Q. -- and I probably -- I probably didn't ask the
12 question exactly right. At this point in time, when we did
13 this sampling, we didn't know how deep it went?

14 A. That is correct.

15 Q. Okay. Then if we go look at your slide 8, we see
16 some data where there was some borings done --

17 A. Slide number what?

18 Q. Slide 8.

19 A. Oh, okay. All right.

20 Q. We see some data where you guys did some borings
21 in 2002, and we see at least in your boring data it goes
22 all the way down to 27 feet, at least in that old battery
23 area, correct?

24 A. That's correct.

25 Q. And then you've also studied the pit area middle,

1 and your results are shown there for that area?

2 A. That is correct.

3 Q. Now, we know -- and I'm going to jump to Mr.
4 Seay's results in just a second, but we know Mr. Seay only
5 studied the battery area, not the pit areas, correct?

6 A. That is correct.

7 Q. So if we sort of combine what the OCD did in its
8 two sampling events, what we know is, the pit area west and
9 the pit area middle was sampled, but the pit area south has
10 never been sampled, has it?

11 A. Except for a surface sample.

12 Q. Except for a surface sample?

13 A. That's correct.

14 Q. Yeah, but I mean, there's been no boring deep
15 there, right?

16 A. No.

17 Q. So we have no idea as we sit here how deep it
18 goes there, do we?

19 A. No, we don't.

20 Q. Okay. Now, would you agree with me that it's
21 important that the OCD, to the extent feasible, require
22 operators to follow the Guidelines for Remediation of
23 Leaks, Spills and Releases, 1993?

24 A. Yes.

25 Q. These are important guidelines, aren't they?

1 A. Yes, they are.

2 Q. They're designed to protect the groundwater?

3 A. Yes.

4 Q. They're designed to protect the surface?

5 A. Yes, they are.

6 Q. There have been instances, have there not, when
7 an operator has chosen not to follow these guidelines and
8 what's ended up over time is contaminated groundwater?

9 A. Many cases.

10 Q. Many cases, correct?

11 A. Yes.

12 Q. And although the OCD is trying to do the dead-
13 level best that it can, you mentioned when you started that
14 you've got 300-some-odd pending cases right now, correct?

15 A. That is correct.

16 Q. The OCD necessarily has to rely upon the oil and
17 gas industry to police itself to some extent, correct?

18 A. That is correct.

19 Q. It's a relationship of trust, isn't it?

20 A. Yes, it is.

21 Q. Now, in 1993 these guidelines were in effect,
22 weren't they?

23 A. In 1993, yes.

24 Q. I want to turn back, if we may, for just a
25 minute, to Exhibit Number 20, which is the J.G.T.

1 Construction Services invoices, showing the work performed
2 by Maralo on this site, March 2, 1994. Those are the
3 results -- or the invoices that you had talked about a few
4 minutes ago toward the end of your testimony. Do you have
5 those in front of you?

6 A. March 2, 1994, there's two of them, right?

7 Q. Yes, sir, and there's actually a whole group.

8 Some of them are 23rd -- February 23rd, 1994 --

9 A. -- and February 24th, 1994.

10 Q. Right.

11 A. That's the four I have.

12 Q. Yeah, this group is what I'm talking about.

13 A. Okay.

14 Q. Now, does it appear to you, notwithstanding
15 Maralo's position in this case in front of the OCD, now
16 that we know how significant this problem is, that at least
17 in 1994 Maralo as the operator recognized it had an
18 obligation to clean up this site?

19 A. Well, they --

20 MR. STRANGE: Object. That is so speculative.

21 CHAIRMAN FESMIRE: I'll sustain that objection.

22 Q. (By Mr. Robins) Well, did Maralo appear to do
23 some cleanup in 1994?

24 A. According to this, they did.

25 Q. All right. So at least they took action that

1 would seem to be consistent with an oil and gas operator
2 that recognized it had a cleanup responsibility at this
3 site, true?

4 A. True.

5 Q. Yet now today -- And by the way, this well was
6 plugged in 1988, right?

7 A. The Humble Number -- which one?

8 Q. The Humble Number 3, I think the data suggests
9 that Maralo, Inc., plugged and abandoned the HS Number 3
10 10-15 of 1988, and I can show you --

11 A. I think I can find that, but if --

12 Q. Well, assume with me that's what the --

13 A. Yes, I -- I know it was in that area --

14 Q. Okay.

15 A. -- sometime.

16 Q. Now, it looks like it took them about six years
17 after that plugging to get around to addressing the battery
18 site? Right?

19 A. Looks that way.

20 Q. Now, in 1999 Jay Anthony filed his complaint,
21 correct?

22 A. Correct.

23 Q. It's now been five years since Jay Anthony filed
24 his complaint?

25 A. That is correct.

1 Q. Does that seem a little long to you for a rancher
2 to have to deal with this problem?

3 A. Yes, it does.

4 Q. Now, we can define what constitutes an emergency,
5 and the OCD has filed this as sort of an emergency action,
6 and at least applying the OCD's definition of what an
7 emergency is, is this an emergency?

8 A. Well, by the way I think the OCD actually looks
9 at an emergency, I would say it's not an emergency. We
10 would look at an emergency like there's an immediate --
11 there's a spill and there was an immediate threat to public
12 health and something has to be done immediately.

13 Obviously, this contamination has been here a
14 long time. It's a concern, but I'm not sure if we could
15 define it as an emergency.

16 Q. Okay, is this one of the positions Maralo has
17 sort of taken in some of the pleadings, is that the OCD is
18 somehow now trying to treat this as an emergency by -- make
19 them follow the rules and regulations of the OCD?

20 A. I think --

21 Q. That's not what you're trying to do, you're just
22 trying to get them to comply, right?

23 A. Just trying to get them to comply and clean it
24 up.

25 Q. And they've had ten years so far, at least, to

1 try to do that, right?

2 A. It appears so.

3 Q. Now, I don't know if you were here when I talked
4 about -- in opening statement, the fact that -- and I
5 appreciate your comments about the 100-part-per-million,
6 but we had some other testimony earlier, in the other
7 proceeding, suggesting that a 5000-part-per-million would
8 be acceptable to this site. You're aware of that
9 testimony --

10 A. Yes --

11 Q. -- are you not?

12 A. -- yes, I am, right.

13 Q. That's sort of the minimum standard, right?

14 A. Yes.

15 Q. Now, if we go to the regulations or to the
16 guidelines, however you want to talk about it, the
17 guidelines are pretty darn clear, aren't they, that if
18 you're less than 1000 feet from a water source or less than
19 200 feet from a private domestic water source, that it's
20 not 5000 that applies, it's 100, right?

21 A. That is correct, but those are just guidelines.

22 Q. Okay, guidelines that you've already told me you
23 thought were important to be followed?

24 A. They are.

25 Q. Okay. So in this particular -- If we go back to

1 your drawing --

2 A. Which one do you want me to go to?

3 Q. I want the one -- the cross-section one, that had
4 the --

5 A. Oh, okay.

6 Q. -- had the sort of --

7 CHAIRMAN FESMIRE: It's slide 8, I think.

8 Q. (By Mr. Robins) Slide 8, maybe? Yeah, let's
9 see. I apologize.

10 A. Had the cross-section? Oh, the cross- --

11 Q. Well --

12 A. -- this one?

13 Q. Yeah, this one.

14 A. Okay.

15 Q. We've got a water well right in the middle of
16 this -- at least in this picture here, right?

17 A. That's correct.

18 Q. Now, certainly you recognize, don't you, that
19 water wells have casing?

20 A. Yes.

21 Q. Casing can act -- potentially act as a conduit?

22 A. That is correct.

23 Q. That's one of the reasons why, because if you're
24 near a water well, generally speaking, this organization,
25 this Division, says we want 100 parts, right?

1 A. That's correct.

2 Q. Because we have a mechanism in place whereby if
3 it's not dealt with, we have a pathway where it can go on
4 the back side of that casing and get to groundwater
5 potentially, correct?

6 A. Potentially.

7 Q. Right. And it's safe to say that there are two
8 issues that are important in your analysis. One is making
9 sure the surface is going to be okay, right?

10 A. That's correct.

11 Q. And the standard of care that you expect of oil
12 companies is to clean up to a level where regrowth will
13 occur, right?

14 A. Yes, yes.

15 Q. And that's what a reasonably prudent operator
16 should do, correct?

17 A. That is correct.

18 Q. And Maralo clearly did not do that in this case?

19 A. Have not done that.

20 Q. The second issue is, we want to make sure that
21 we're protective of groundwater, right?

22 A. Yes.

23 Q. And there's been instances, sort of over the last
24 five or ten years, where the OCD has allowed oil companies
25 to deviate from these guidelines, and what's happened is,

1 groundwater has become contaminated, true?

2 A. I think what you're -- I think what you're saying
3 is is that the oil companies have deviated from the
4 guidelines and groundwater has been contaminated.

5 Q. No, what I'm saying is -- let me be clear about
6 this --

7 A. Okay.

8 Q. -- what I'm saying is that oil companies have
9 submitted plans to the OCD where the OCD has approved those
10 plans under an exception to these guidelines, under some
11 feasibility-type of argument that an oil company has made,
12 and what you've found out later was, contamination got to
13 groundwater. Isn't that true?

14 A. I don't think that's quite true. I don't know of
15 any cases that I'm handling that we have approved closures
16 -- that I'm handling. Now, I'm not saying for all the OCD
17 or the districts, but I don't know of any cases that I have
18 handled where the TPH levels that we have approved, TPH
19 levels to be left in place, without delineating that TPH
20 first. That's a normal course of action for us.

21 Q. Oh, I'm not suggesting that you're not making
22 them delineate the TPH. We're talking about two different
23 issues. A, you want to delineate and figure out how high
24 it is, right?

25 A. How deep it is.

1 Q. And how deep it is.

2 A. Right.

3 Q. But generally your guidelines would say, unless
4 otherwise approved by the OCD, if you have, say,
5 contamination that's at 5000 parts next to a water supply,
6 we would want that cleaned up to 100 parts?

7 A. That is true.

8 Q. And there have been instances where the OCD has
9 said to an oil company, Okay, we know there's 5000 parts
10 here, and we know the guidelines would generally say 100,
11 but because you've submitted some alternative remediation
12 plan, we're going to let you go ahead and do that, because
13 we think you've convinced us that there's not a threat to
14 groundwater. That's happened many times, hasn't it?

15 A. That -- Yes, we have approved alternate plans
16 that deviate from the guidelines, but we have always, to
17 the best of my knowledge, asked for some sort of proof that
18 the remaining contaminants will not impact public health or
19 the environment.

20 Q. Well, you've got to rely upon the data that --
21 generally speaking, rely upon the data that the oil
22 companies give you, right?

23 A. That is true, that's true.

24 Q. And for instance, are you familiar with all the
25 Tex-New Mex sites that are all over Lea County?

1 A. Yes, I'm very familiar.

2 Q. And what's ended up getting turned over to EOTT?

3 A. Yes.

4 Q. And you remember the DRIZ system that was being
5 used for a while?

6 A. Vaguely, yes.

7 Q. And do you remember that that system was approved
8 in some instances by the OCD?

9 A. That is correct.

10 Q. And do you remember that that system was approved
11 by the OCD and didn't work in a lot of sites?

12 A. I -- You know, honestly, I don't have the results
13 of those. I know that they performed some of those
14 systems, and I never -- to the best of my knowledge, I was
15 never on the receiving end of the closures of those things.

16 Q. Do you remember the J.C. Turner case?

17 A. I remember the case, but I don't believe I was
18 the one handling that case.

19 Q. Okay. Would it be fair to say that from a
20 landowner's perspective, that it would be reasonable that
21 he might want the OCT to not take unreasonable risks
22 concerning a cleanup?

23 A. Sure.

24 Q. Would it be fair to say that it would be
25 reasonable for the landowner to say, You know, what I'd

1 really like is for the oil company to follow these
2 guidelines?

3 A. Absolutely.

4 Q. I mean, that's pretty reasonable, isn't it,
5 because these are --

6 A. If I owned a piece of property, I would.

7 Q. Yeah. Now, do we apply different guidelines
8 because it's a small oil company versus a big one?

9 A. No.

10 Q. Does the fact that Maralo is not Exxon, does that
11 mean Maralo gets a break that Exxon wouldn't?

12 A. No.

13 Q. Because I was a little confused by your testimony
14 earlier about how we -- it doesn't seem like maybe we want
15 to have a small company have to spend half a million
16 dollars, and I thought that you were suggesting maybe the
17 fact that they were a small company should somehow go into
18 that equation.

19 A. Well, I think you have to look at, since they are
20 a small company, and if whatever we ask them to do puts
21 them out of business, then the State of New Mexico is going
22 to end up cleaning that up.

23 Q. Well, what about all the money that they
24 collected already from the oil and gas that they got?

25 A. Nowhere that we can find it, I guess.

1 Q. Yeah. Well, but I mean, isn't that -- I mean, if
2 we're going to talk about it in those terms, I mean, do we
3 want to go back and look at the production history and say,
4 Well gosh, I mean, for instance, there was some data that
5 was in the order that talked about the total volume of oil
6 that was produced from this lease. Do you remember seeing
7 that data?

8 A. I do not.

9 Q. The data was suggesting, and --

10 MR. STRANGE: Mr. Chairman, he doesn't know, and
11 we -- most of what we're hearing has no relevance to our
12 case.

13 MR. ROBINS: Well, actually it does, because
14 we're getting into questions of remediation, and the door
15 was opened to that, and I want to -- I think I'm entitled
16 to develop a record on --

17 MR. STRANGE: Mr. Chairman, I couldn't have
18 opened the door; I haven't been allowed to ask a question
19 yet with this 30-minute witness. We've gotten so far
20 beyond relevance --

21 CHAIRMAN FESMIRE: Mr. Robins, if you've got a
22 point to make, you'd better make it pretty quick --

23 MR. ROBINS: I will, I --

24 CHAIRMAN FESMIRE: -- I'm getting tired of
25 watching you beat up on him.

1 MR. ROBINS: I'm not meaning to beat up on him,
2 I'm just trying to make a record, your Honor. And it's
3 just a couple more questions, I promise.

4 All I'm trying to figure out, in terms of -- and
5 I've got the number here, I found it, just a second. The
6 data that was at least in the order by the Director is that
7 the calculation is that they were producing -- at least
8 from 1948 time frame, that in 1948 they produced 16,055
9 barrels of oil.

10 CHAIRMAN FESMIRE: Mr. Robins, what is the
11 relevance of that to the issue before the Commission now?

12 MR. ROBINS: It's the feasibility issue of the --
13 the economic feasibility of the cleanup, which he mentioned
14 that -- in his direct testimony, that in terms of economic
15 feasibility, that it seemed like he was going to -- based
16 on a small oil company, that we might not make them do a
17 full-blown cleanup because they're small. I think that the
18 amount of production and profit that came out of this might
19 be relevant. I just want to establish a couple questions
20 on this, and then I'll move on.

21 CHAIRMAN FESMIRE: Okay, I don't see the
22 relevance of that, Mr. Robins.

23 MR. ROBINS: Okay.

24 CHAIRMAN FESMIRE: Let's go to your next point.

25 Q. (By Mr. Robins) All right. Well, let me go at

1 it this way. Is it -- In evaluating the study and what
2 you're going to require of somebody, is it important to you
3 at all how much revenue has been generated from that oil
4 and gas lease?

5 A. No.

6 Q. Okay. Is it important to you at all as to how
7 big that company is?

8 A. No.

9 Q. Is it fair to say that the procedure that should
10 be followed should be what is protective of the
11 environment?

12 A. That is correct.

13 Q. Okay, and that's really the analysis that needs
14 to take place?

15 A. Yes.

16 Q. Okay. With respect anything that you've said
17 today about remediation technique, can we be clear about
18 the fact that you don't know what remediation technique is
19 appropriate until more delineation is done?

20 A. That is absolutely correct.

21 Q. Okay. So any opinions that you gave today about
22 maybe the possibility of not using a liner or a cap or
23 whatever, you're just saying that might be a possibility,
24 but I can't say for sure until I get the data, right?

25 A. Yeah, and I apologize if I didn't make that

1 clear. I thought I did, but that's true.

2 Q. Okay. With respect to the importance of this
3 question, is it critically important to the environment on
4 this ranch that there be more data obtained?

5 A. Yes.

6 Q. Is it critically important that that date
7 adequately delineate both the vertical and horizontal
8 extent of this site?

9 A. That is correct.

10 Q. Let's talk about chlorides for a minute. We have
11 some data showing chlorides are elevated in this well,
12 right?

13 A. That's correct.

14 Q. We also have some information suggesting that
15 there is a large volume of produced water disposed of in
16 these pits, correct?

17 A. I don't think I've seen volume numbers in all the
18 data. I just know that the pits were there by the aerial
19 photographs and so forth.

20 Q. Okay. Was it a little surprising to you to not
21 see chlorides at this site?

22 A. Yes, it was.

23 Q. It's certainly conceivable, isn't it, that when
24 the site gets more delineated, that we may find pockets of
25 chlorides out there?

1 A. That is absolutely correct.

2 Q. And so as you sit here today, you cannot rule out
3 the fact that the elevated chlorides that are right now in
4 that well were caused by this site, can you?

5 A. That's right, I can't.

6 Q. Were you able to observe anything in the
7 immediate area that could explain the elevated chlorides
8 other than this site?

9 A. No. But in all fairness, I didn't really do a
10 search --

11 Q. Okay.

12 A. -- because I wasn't working on the case at the
13 time.

14 Q. All right. I just want to be clear, though, that
15 as we sit here today -- I mean, this issue has been bounced
16 around about, well, we've switched from chlorides to
17 hydrocarbons, but we haven't completely, have we? Because
18 we still want to figure out, is there any potential that
19 chlorides have gone to the groundwater?

20 A. When delineation is done, chlorides will be part
21 of that.

22 Q. That's right. And so it's certainly possible
23 that a further delineation may show a connection of this
24 site to the elevated chlorides; is that correct?

25 A. That's possible.

1 Q. And then likewise, you would expect Maralo to
2 address that as well, true?

3 A. Yes.

4 Q. You're at a disadvantage as you sit here right
5 now, because Maralo has abjectly refused to do what you've
6 asked them to do, correct?

7 A. Well, I can't make a decision until we get some
8 delineation done.

9 Q. And they've refused to do that?

10 A. It's my understanding they have.

11 Q. All right. Now, with respect to -- Last area I
12 want to get into is just the violation questions and the
13 authority of the OCD. Is it critically important to the
14 OCD to be able to look to current operators to address
15 environmental problems?

16 A. Yes.

17 Q. Why is that critically important?

18 A. Well, I'm not an attorney, I'm an engineer and
19 I'm an environmental-scientist-type person, but the burden
20 -- the way I see it, if you don't go to the current
21 operator, who are you going to go to? The records may not
22 be there or whatever. And so -- and it's always been our
23 procedure to do that.

24 Q. And has it been pretty well generally understood
25 in the oil and gas industry among operators --

1 A. Yes.

2 Q. -- that if they're the current operator, they're
3 responsible for the situation out there?

4 A. Absolutely, because when they buy properties,
5 they do due diligence, environmental due diligence. Or
6 they're supposed to.

7 Q. And so --

8 A. Or they should, I'm sorry, they should.

9 Q. -- so should it come as a surprise to Maralo and
10 therefore be a violation of, somehow, their due process,
11 that the OCD is today asking them to deal with this
12 problem?

13 A. I can't answer that question. You said due
14 process --

15 Q. Let me take that out.

16 A. I think that's a legal question.

17 Q. I don't want to make you a lawyer, but let me ask
18 you from the perspective -- I think you're doing a great
19 job being an engineer, but let me ask it this way: Based
20 on the industry understanding -- and you're familiar with
21 it, you've dealt with hundred of sites?

22 A. Yes.

23 Q. -- should it come as any surprise to Maralo that
24 if they cover up a site, they cover up contamination, they
25 don't deal with it, and you find out about it at whatever

1 point in time, whether it's a day after they cover it up
2 and don't deal with it or it's 10 years later, that they're
3 going to be on the hook for that?

4 A. Yeah, because we've had literally hundreds of
5 companies that have stepped up and taken care of their
6 problem. The current operator, taking care of past
7 problems from somebody else.

8 Q. And that's what a reasonably prudent operator
9 should do?

10 A. That's correct.

11 MR. ROBINS: Pass the witness.

12 CHAIRMAN FESMIRE: Mr. Strange?

13 MR. STRANGE: Thank you.

14 CROSS-EXAMINATION

15 BY MR. STRANGE:

16 Q. Your degree was in electrical engineering, was it
17 not?

18 A. That's correct.

19 Q. Mr. Olson was a hydrologist, wasn't he?

20 A. He had his master's degree in hydrology.

21 Q. Yeah, both a bachelor's and a master's degree in
22 hydrology --

23 A. That's correct.

24 Q. -- which is the study of water?

25 A. Right.

1 Q. You have a bachelor's degree in electrical
2 engineering?

3 A. A bachelor's yes.

4 Q. You have a bachelor's degree in electrical
5 engineering. Is it fair to say Mr. Olson knows a little
6 more about hydrology and hydrology issues than you do?

7 A. I don't know. I might take exception to that.

8 Q. Well, all that time he spent getting a master's
9 in hydrology, did that have any impact on his knowledge?

10 A. I think he seemed to think so, so yes, yes --

11 Q. But you would --

12 A. -- yes, yes, he was a very good hydrologist.

13 Q. All right, and he worked for the OCD for quite
14 some time, didn't he?

15 A. Yes, he did.

16 Q. And he was involved in the investigation and work
17 upon this case, wasn't he?

18 A. Yes, he was.

19 Q. Let me show you -- To be honest, from time to
20 time we've been a little confused. Go back to your Exhibit
21 -- I believe it's Exhibit Number 1. Let me be double-sure.
22 Look at Exhibit Number 2. My fault.

23 A. A letter?

24 Q. A letter.

25 A. Okay.

1 Q. All right. Now, when --

2 A. That's -- We're talking about a letter dated
3 November the 15th, 1999.

4 Q. -- 1999.

5 A. Yes.

6 Q. Have you found that letter?

7 A. Yes, I've got it.

8 Q. Now, back in 1999 what rule was the OCD relying
9 upon?

10 A. Well, according to this letter it was Rule 19 and
11 202.

12 Q. Now, Donna Williams, is she still employed by the
13 OCD?

14 A. No, she's not.

15 Q. Was she an employee of the OCD in 1999?

16 A. Yes.

17 Q. Was she an environmental engineer specialist in
18 1999?

19 A. Yes, she was.

20 Q. What were some of her job duties back in 1999?

21 A. Well, same job duties that I had when I was in
22 the District, primarily investigating leaks, spills,
23 oversight of -- you know, of boring and drilling
24 operations, general environmental compliance, waste
25 approvals, et cetera.

1 Q. Okay. Now, 19.B, if my notes are correct, that
2 rule was adopted in 1997; is that correct?

3 A. I think that's correct.

4 Q. Assume with me that Maralo plugged the last well
5 it operated in 1988. So we're talking about a rule adopted
6 nine years after Maralo plugged and abandoned that last
7 well, aren't we?

8 A. Yes.

9 Q. So that would be taking a rule and applying it
10 retroactively, wouldn't it?

11 MS. MacQUESTEN: Objection, he's asking for a
12 legal conclusion from the witness.

13 CHAIRMAN FESMIRE: Sustained.

14 Q. (By Mr. Strange) All right, we're talking about
15 taking a rule adopted in 1997 and applying it to a site
16 that was plugged in 1988, correct?

17 A. Yes.

18 Q. Now, the other rule that she cited was Rule
19 202.B; is that correct?

20 A. Right.

21 Q. That rule was adopted in 1990?

22 A. Actually, I thought it was 1935, the original
23 202, but maybe you're right.

24 Q. Okay, according to my notes, we were asked to
25 assume it was adopted in 1990. If my assumption is

1 correct, that's a rule that was adopted after the last well
2 was plugged and abandoned, correct?

3 A. I'm not familiar exactly when that rule was
4 adopted.

5 Q. I'm asking you to assume --

6 A. Yeah.

7 Q. -- if Rule 202.B was adopted in 1990, then that's
8 a rule that was adopted two years after the last well was
9 plugged and abandoned?

10 A. Yes.

11 Q. Now, in Exhibit Number 2, one of the things we've
12 talked about is, this dealt with groundwater contamination.
13 Effort was requested on Maralo's part in connection with
14 groundwater, correct?

15 A. The original investigation was concerning
16 groundwater contamination.

17 Q. Okay. And at least in the last hearing that we
18 had, groundwater contamination wasn't an issue, the OCD
19 wasn't taking the position that Maralo had contaminated the
20 groundwater; is that --

21 A. That's my understanding.

22 MR. ROBINS: Excuse me, I'm going to object to
23 that question. What was said was, it hadn't been
24 determined yet, there wasn't enough data to make a
25 connection. They didn't say -- There was no testimony that

1 they weren't considering it, it was that there was not
2 sufficient data in the record to make a direct connection.

3 MR. STRANGE: Mr. Chairman, that's not correct.

4 CHAIRMAN FESMIRE: I think the record will speak
5 for itself, so I'll overrule the objection.

6 Q. (By Mr. Strange) Okay. It's your understanding
7 that as of the last hearing, the OCD -- we'll go over Mr.
8 Olson's testimony to see if you disagree with it, but the
9 OCD was not taking the position that there was any
10 connection between Maralo's activity and any possible
11 contamination in the groundwater on Mr. Anthony's ranch?

12 A. I think your question is answered generally yes.
13 I have to say that if and when we get additional --

14 Q. Mr. Price, with respect, you've had two hours or
15 better to testify, and I'd like to ask my questions.

16 A. Okay.

17 Q. I'm going to try to keep my questions short and
18 simple.

19 A. Right.

20 Q. And I think it's a legitimate inquiry on our
21 part. We're trying to find out, because there have been
22 some differences. I mean, you and I can agree the rules
23 that are cited have varied from the beginning to end of
24 this, correct?

25 A. That's correct.

1 Q. And in 1999, if I'm reading this, it looks like
2 Ms. Williams' concern was groundwater contamination.

3 A. Well, her report also had mentioned the surface
4 contamination too.

5 Q. Okay.

6 A. Yeah.

7 Q. As of at least the last hearing that we had here
8 in Santa Fe, am I not correct when I say Mr. Olson's
9 position was that he had no evidence of a direct link
10 between Maralo's activities and any groundwater
11 contamination on Mr. Anthony's ranch?

12 A. That -- Yes.

13 Q. Now, if I look at the prehearing statement that
14 was filed by the OCD in this case, am I missing something
15 or does this statement appear to be limited to alleged
16 surface contamination?

17 A. It's for surface contamination.

18 Q. Nothing about groundwater contamination, correct?
19 Would you like to look at this?

20 A. I did look at it and --

21 Q. Would you look at it again?

22 A. No, that's okay. You're correct in that it is
23 primarily surface contamination.

24 Q. So do we have another change, are we going back
25 to something, or can I go by what the OCD told me in the

1 prehearing statement?

2 A. Well, I think you can go by that, but then
3 notwithstanding the fact that if we do find a problem out
4 there, then we have some sort of obligation to go forth
5 with that.

6 Q. Mr. Price, we're here today because you're asking
7 for an order directing us to do something, and I'm trying
8 to find out what's at risk. And you're aware that we've
9 been critical that we don't know what the rules are, and so
10 I think this is part of that process.

11 I'm looking at this prehearing statement. Do I
12 see any allegation in the prehearing statement that we've
13 contaminated groundwater?

14 A. No.

15 Q. But are you telling me that we have?

16 A. I'm sorry?

17 Q. Are you trying to tell me today that Maralo,
18 despite what we heard at the last hearing, despite what's
19 in the prehearing statement, despite the water tests, are
20 you trying to tell me that you're alleging that Maralo has
21 contaminated the groundwater?

22 A. No, I didn't say that.

23 Q. Okay. If I look at the water tests that have
24 been done, was any TPH ever found in any water on that
25 ranch?

1 A. No.

2 Q. Was any BTEX --

3 A. Well, wait a minute. I don't know -- You said
4 ranch.

5 Q. On the water well that we're talking about at
6 this particular location --

7 A. No, we did not find any.

8 Q. -- did you find any BTEX --

9 A. No, we did not.

10 Q. -- or any of its constituents?

11 A. No, we did not.

12 Q. Now, you keep talking about elevated chlorides.
13 Doesn't it sort of beg the question, elevated as compared
14 to what?

15 A. To the groundwater standard.

16 Q. Well, do you have any analysis of the water from
17 that well to indicate that at any point in time it met
18 groundwater standards?

19 A. Actually, I do not.

20 Q. Mr. Price, if we just went to that area of the
21 country and started taking water samples from wells that
22 are out there that are being used to build cattle troughs
23 or, you know, what have you, surely you're not telling me
24 that every one of those wells is going to meet applicable
25 groundwater standards?

1 A. I haven't made a study of that area, so I have no
2 way to know how to answer your question.

3 Q. Okay, fair enough, fair enough. So based on what
4 you do know, scientific evidence that you do know, you
5 can't tell us today that the chlorides in that water are
6 any higher today than they were at any point prior in time?

7 A. That is correct.

8 Q. So when we say elevated, that doesn't -- you
9 don't want to leave the impression that it's actually been
10 raised by any activity Maralo is taking out there on there
11 property, do you?

12 A. I'd have to agree with you.

13 Q. All right. Now, can we go to your pictures, and
14 -- the aerial photos, and I'd like to take those in order
15 starting with number 13.

16 A. Okay.

17 Q. Now --

18 A. Do you want me to make tat larger if I can?

19 Q. Yes, sir, please do.

20 MR. STRANGE: Mr. Chairman, can I -- I didn't
21 bring a laser pointer to the --

22 THE WITNESS: Here, I have one. Do you want to
23 use this?

24 MR. STRANGE: Yes, sir. Can I approach the
25 witness, Mr. Chair?

1 CHAIRMAN FESMIRE: You may.

2 THE WITNESS: There's a warning on the bottom of
3 it.

4 MR. STRANGE: I won't point it at anybody.

5 THE WITNESS: At me particularly.

6 MR. STRANGE: I promise.

7 (Laughter)

8 THE WITNESS: Let me get it where we can -- This
9 is the -- oops, sorry.

10 CHAIRMAN FESMIRE: You realize the "oops" shows
11 up in the record.

12 THE WITNESS: Cancel the "oops". I'm going to
13 try to make this a little bit larger, so we can try to go
14 up to 200 percent, then go back over thisaway. Okay, try
15 that.

16 Q. (By Mr. Strange) Okay. Now, the tank battery
17 site is right up there, isn't it?

18 A. Oh, I need to go -- Hang on just a second.

19 MR. ANDERSON: Wrong way.

20 THE WITNESS: There you go.

21 MR. STRANGE: There we go. All right.

22 THE WITNESS: Okay.

23 Q. (By Mr. Strange) Now, those are where the tanks
24 themselves were located, correct?

25 CHAIRMAN FESMIRE: For the record, would you tell

1 us which slide we're on?

2 MR. STRANGE: Oh, this is the 1955, slide number
3 13.

4 If you need to blow that up some, can you and
5 I --

6 THE WITNESS: Do you want me to try?

7 COMMISSIONER BAILEY: Please.

8 MR. STRANGE: Those are where the four tanks are.

9 THE WITNESS: All right, let me see if I -- I'll
10 go the maximum here.

11 MR. STRANGE: We're going to have to up and right
12 when this happens.

13 THE WITNESS: Okay.

14 MR. STRANGE: Okay.

15 THE WITNESS: To the right. There we go. I
16 think that's the best I can do on that one.

17 MR. STRANGE: That's fine, that's fine. That's
18 fine.

19 Q. (By Mr. Strange) Okay, can you see four white
20 dots?

21 A. Yes.

22 Q. All right, assume with me there will be some
23 testimony that there were four tanks out there. Does that
24 look like how you might arrange, if I have a tank battery
25 site with four tanks?

1 A. Yes.

2 Q. Now, you see there's a square --

3 A. Uh-huh.

4 Q. -- right there, and there's a square right there?

5 A. Right.

6 Q. Looks like surface disposal pits to you?

7 A. It does.

8 Q. Now, in 1955 it was legal in the State of New
9 Mexico to operate a surface disposal pit, correct?

10 A. 1955, yes, that's correct.

11 Q. Now, we can go through -- you've attached copies
12 of some of the relevant well files, but can you and I agree
13 that in 1955 the wells that were out here were being
14 operated by Ralph Lowe individually?

15 A. I assume so, yes.

16 Q. All right, let's just assume that that's what the
17 well files show --

18 A. Okay.

19 Q. -- that Ralph Lowe was operating these four
20 wells, Ralph Lowe individually was operating these tank
21 batteries, and it looks like he may have been using a
22 surface disposal pit north and south of that tank battery
23 location, correct?

24 A. Right.

25 Q. Has it been your experience that as you operate a

1 property, sometimes the produced water, the amount of
2 produced water, tends to go up?

3 A. Yes.

4 Q. Let's go to slide number 14, the 1968 slide, and
5 see if we can find that same area. There you go. You just
6 need to go up, just a little.

7 A. Yeah, okay. Over to the right.

8 Q. We need to go down and to the left.

9 A. Oh, yeah, okay, I'm over to -- let me --

10 Q. We can just follow that --

11 A. Follow the pipeline, yeah. Now we go down.

12 CHAIRMAN FESMIRE: Now go south.

13 THE WITNESS: Yeah, go straight down. There's a
14 big pit. There we go.

15 Q. (By Mr. Strange) All right. Now, in 1968 we've
16 got these surface disposal pits, north, south and west,
17 correct?

18 A. Right.

19 Q. Looks like we've still got four tanks.

20 A. Looks that way.

21 Q. Now, we've got two white dots on the north side
22 of the road, correct?

23 A. That's correct.

24 Q. Those are going to be heater treaters, probably?

25 A. I think you're probably right.

1 Q. And a heater treater is used to do what?

2 A. Knock out the oil and water.

3 Q. Now, in nineteen sixty- --

4 A. And separate gas, if there was gas --

5 CHAIRMAN FESMIRE: Mr. Strange, are you offering
6 testimony to the fact that there are heater treaters out
7 there or are you going to put on a --

8 MR. STRANGE: I'm asking. I'll put a witness on
9 to tell you that they are, but --

10 Q. (By Mr. Strange) Can you and I agree that would
11 be consistent?

12 A. Yes.

13 Q. If you compare the size of those two dots with
14 the size of those dots, would that be -- if I had a heater
15 treater setup and those are tanks, is that about consistent
16 for scale?

17 A. Yes.

18 Q. And as far as location, fairly consistent with
19 the way things were set up?

20 A. (Nods)

21 Q. Now, in 1968, do you know who was operating these
22 wells?

23 A. 1968?

24 Q. 1968, when this photograph was taken.

25 A. Okay, I'd have to go to my files here. It will

1 take me a little bit to find it, if I can. What I did is,
2 I went through the well files and just pulled some records.
3 Okay, pick a well, and I'll -- Do you want to do the Humble
4 State Number 3?

5 Q. Sure, that would be -- In 1968, who was operating
6 the Humble?

7 A. Okay, it looks like Maralo -- No, I'm sorry,
8 that's 1986. Actually, I didn't pull enough records to
9 determine that.

10 Q. Okay. Can you and I agree that if Maralo was
11 formed in 1973-74, assuming that my assumption is correct,
12 that Maralo would have been operating those properties in
13 the 1960s?

14 A. I'd have to agree with you, if they didn't take
15 over until -- What did you say, in the 1970s?

16 Q. Yes, sir. In fact, let me show you one of your
17 exhibits. This may help out.

18 MR. ROBINS: We can stipulate they took over in
19 1973 if this is an issue.

20 MR. STRANGE: Okay.

21 CHAIRMAN FESMIRE: Ms. MacQuesten, would you be
22 so interested in stipulating?

23 MS. MacQUESTEN: I'd have to double-check my
24 records to tell you when Maralo filed documents assuming
25 the operation of this facility. It's interesting to me

1 that Mr. Strange is pursuing this line of questioning
2 trying to show that Mr. Lowe was operating the facility in
3 1968, when his own documents show that Mr. Lowe died in
4 1965. I don't know who was actually operating the facility
5 at that time, because our records would still indicate Mr.
6 Lowe, because they did not notify us.

7 CHAIRMAN FESMIRE: Mr. Strange, I'd ask that you
8 ask these questions hypothetically and then put on your
9 witnesses to prove what you're -- the statements you're --

10 MR. STRANGE: If I could show the witness one of
11 his own exhibits. Mr. Chairman, just in case there's any
12 dispute, I'm not saying that Ralph Lowe operated that
13 property in 1968. I am saying that Maralo didn't operate.

14 Q. (By Mr. Strange) But let me show you what the
15 OCD has marked as Exhibit 8, or -- Do you have all the OCD
16 exhibits in front of you?

17 A. I don't think I have all of those. No, I do not.

18 MR. STRANGE: May I approach?

19 CHAIRMAN FESMIRE: You may.

20 Q. (By Mr. Strange) This is OCD Exhibit 8. Do you
21 recognize that document?

22 A. No, I don't. I haven't seen it before.

23 Q. Okay, but you know what a plugging bond is --

24 A. Yes, right.

25 Q. -- a blanket plugging bond?

1 A. Yes, uh-huh.

2 Q. And what's the date of that blanket plugging
3 bond?

4 A. Looks like February the 1st of 1993. Is that
5 right? Right here.

6 Q. That's an acknowledgement.

7 A. An acknowledgement, and then this is June 4th,
8 1993. 28th of January, 1993.

9 Q. Okay.

10 A. So I would say somewhere in 1993.

11 Q. All right.

12 A. Yeah, I was looking for a date there; I didn't
13 see it.

14 Q. All right. Well, let me -- Assume with me that
15 Maralo didn't exist or take over operations until 1973-74.
16 If my assumption is correct, can we agree whatever is
17 reflected out there was occurring before they became --
18 before they were even a company?

19 A. Yes, I guess so.

20 Q. And you have no personal knowledge who in 1968
21 was actually operating these properties?

22 A. I do not.

23 Q. All right. But let's go to the next aerial photo
24 that you have --

25 A. Okay.

1 Q. -- slide 15, which I believe is 1977.

2 A. Right.

3 Q. Okay. Now, you've got -- It looks like that's
4 the area where the four tanks were?

5 A. Right.

6 Q. Can you enlarge -- No, we've got it as large as
7 we can. Can you tell if there's any surface equipment
8 north of the road?

9 A. I can't see any from that photograph.

10 Q. Okay. In the prior photograph we had evidence
11 that looked like there was a surface disposal pit --

12 A. Yeah.

13 Q. -- in the north -- in this area, correct?

14 A. Right.

15 Q. Can you and I agree that there's no indication of
16 any active surface disposal pit?

17 A. I don't see any from the aerial photo.

18 Q. The aerial photo, prior photo, showed what looked
19 like a surface disposal pit in 1968 in this area, correct?

20 A. That's correct.

21 Q. Can you and I agree that there's no aerial
22 evidence of active use of a surface disposal pit here in
23 1977?

24 A. I agree.

25 Q. And the same here, this is that west area. The

1 1968 photograph appeared to show some active operations?

2 A. Right.

3 Q. Can you and I agree that there doesn't appear to
4 be active use of any surface disposal pit in that area?

5 A. It appears to be not active now.

6 Q. In fact, on these areas to the north, to the west
7 and to the south or southeast, can you and I agree that
8 from the aerial photograph it doesn't look like Maralo is
9 using this acreage for any purpose at all?

10 A. I agree with that --

11 Q. Okay. Now, do you have --

12 A. -- from the photos, right.

13 Q. -- do you have any evidence to show the
14 Commission that Maralo itself -- I'm not talking about
15 Ralph Lowe or his estate or anybody else -- that Maralo
16 itself ever put any substance -- produced fluids, oil, you
17 name it -- put any substance in any of the old surface
18 disposal pits?

19 A. The only evidence I have is what was provided
20 about the JGJT [sic] cleanup, the invoices, and on the
21 March 2nd, 1994, one --

22 Q. Right.

23 A. -- it says -- this is Maralo, Incorporated, it
24 says, "Use backhole to clean up spill oil around battery
25 area."

1 Q. So they disked that surface?

2 A. Well, they didn't say disk, it says clean up --
3 "Use backhole to clean up spill oil around battery area."

4 Q. Right.

5 A. And then in 1994 it says, "Use backhole to pull
6 out all lines from underground from old battery site and
7 load them on trailer. Also loaded on trailer tank bottoms
8 that were left on location and haul them to stock yard and
9 unloaded. Use backhole and dump truck to haul contaminated
10 dirt to disposal site and rebuild firewall inside fence on
11 disposal tanks. Also build firewall around heater on
12 battery Use disc tractor to disc old battery site south
13 and north of road."

14 Here's another one, "Use dozer to spread the dirt
15 on the old battery site south of the road and use the
16 rippers to break up contaminated dirt 36" deep. Also diged
17 a pit to bury cement blocks six feet deep."

18 "Use dozer to finish breaking up dirt on the
19 south side and started leveling the old battery site on the
20 north side of the road and breaking it up 36" deep."

21 Q. Mr. Price, perhaps I didn't ask what I thought I
22 did. Do you have any evidence that Maralo, as opposed to
23 any other entity, that Maralo ever put one barrel of
24 produced fluid in any surface disposal pit?

25 A. Well, what did they -- I don't understand, what

1 did they do all this cleanup for if they didn't put
2 something there?

3 Q. Don't you understand that there are lots of time
4 when oil companies do things with land owners trying to buy
5 peace, trying to reach some accord that perhaps they don't
6 feel like legally they're required to do? Have you never
7 seen that happen in your career?

8 A. Oh, I've seen that happen.

9 Q. All right, so let's go back to my question, and
10 let me ask you in a different -- Do you have any evidence
11 -- let's take the water, that it was legal to put out in
12 surface disposal pits -- do you have any evidence that
13 Maralo ever dumped any water in any surface disposal pit?

14 A. I have to say this is evidence. That's what I
15 say.

16 Q. That Exhibit Number 20 is all you can point to
17 that Maralo put water in those surface disposal pits?

18 A. Well, that's --

19 Q. The fact that somebody went out there in 1994
20 with a bulldozer and a backhoe?

21 A. You asked if I had any evidence, that's what I'm
22 saying, is --

23 Q. But I -- maybe I'm not hearing you. My question
24 -- and I was trying to break it up -- is water, I mean
25 saltwater -- you're telling me these four invoices

1 constitute the only evidence you've got that Maralo put
2 saltwater in any of those surface disposal pits?

3 A. That's the only evidence I have, you're correct.

4 Q. And if someone looks at this and says, well, Mr.
5 Price, with respect, this doesn't show that Maralo put any
6 water out there, you can't point to any other evidence, can
7 you?

8 A. That's correct.

9 Q. And you told us a little while ago you've seen
10 instances where one operator cleaned up something that
11 another operator had done?

12 A. That's correct.

13 Q. And the fact that they cleaned it up didn't mean
14 they admitted, well, yeah, we did it? For whatever reason,
15 they cleaned it up?

16 A. Yes, that's correct.

17 Q. And you understand that when one company sells
18 something to another company, sometime cleanup obligations
19 and indemnity, things like that, are part of the trade?

20 A. I understand that.

21 Q. All right. So as far as taking oil and using any
22 of those surface disposal pits -- you know how you use tank
23 batteries to store oil until you can sell it --

24 A. Yes.

25 Q. -- do you have any evidence that Maralo used any

1 of those old surface disposal pits to store oil?

2 A. You're talking about Maralo?

3 Q. I'm talking about Maralo.

4 A. From the time -- when was the time that they --

5 Q. 1974.

6 A. 1974.

7 Q. Do you have any evidence that Maralo used any of
8 those surface disposal pits to store oil?

9 CHAIRMAN FESMIRE: Mr. Strange, your Exhibit 21,
10 Certificate of Incorporation of Maralo, Inc., is dated May
11 31st, 1973.

12 MR. STRANGE: I think we may have taken it over
13 in 1974, but let's use the 1973 date so that we're all
14 clear.

15 Q. (By Mr. Strange) From May 31st of 1973 till
16 1988, do you have any evidence that Maralo used any of
17 those pits to store oil?

18 A. No.

19 Q. Do you have any evidence that from May 31st,
20 1973, until 1988, that Maralo physically took any tank
21 bottoms, bottom sediments, BS&W, that Maralo took any of
22 those substances and physically placed them in any of those
23 old surface disposal pits?

24 A. I don't have any direct evidence of that, that's
25 correct.

1 Q. Now, we know -- and I don't remember the exact
2 date, but sometime in the 1960s the State of New Mexico
3 outlawed the use of surface disposal pits?

4 A. That's my understanding, that's correct.

5 Q. And is it also correct that when they did that,
6 the OCD told all the operators to fill in those old surface
7 disposal pits?

8 A. I don't know, I wasn't around, actually, with OCD
9 when they did that.

10 Q. If one of the witnesses who was around and who
11 was involved in the operation of this property testifies
12 that they were instructed by the OCD to fill in those
13 surface disposal pits, would you have any reason to
14 disagree with that testimony?

15 A. Was it documented?

16 Q. My question to you, sir, is if one of the
17 witnesses in this case testifies under oath and says they
18 were instructed by the OCD to fill in the old surface
19 disposal pits, do you have any evidence to contradict that
20 or to take issue with that?

21 A. He hasn't said it yet, so I don't know. I mean,
22 I don't know how to answer that question until he gets up
23 here and says it. But hypothetically, if he gets up and
24 says the OCD told us to fill those pits in, I would be
25 neutral on that, because I have absolutely no way to know

1 whether that's correct or not.

2 Q. Well, certainly you're not -- you wouldn't take
3 the position today, would you, that if an oil company did
4 exactly what the OCD told them to, whether it was in the
5 1960s or the 1940s or the 1950s, that they should be
6 punished today for following instructions from the OCD?

7 A. The word "punish" --

8 Q. Well --

9 A. -- doesn't come across good with me. I would
10 rather use the word -- they should be responsible for their
11 actions. If they were allowed to put water in the pits, I
12 don't think there was anything in there that said that OCD
13 was going to relieve them of any responsibility of
14 contamination. I don't think I've ever seen that.

15 Q. Okay, Mr. Price, that wasn't my question, sir.
16 You talked about the problems created when an oil company
17 takes and puts something on top of an old spill, and you
18 told us you don't see like to see that happen because of
19 the problems it --

20 A. It's not a good practice, because you're just
21 hurting yourself when you do that.

22 Q. Well, but in the 1960s -- and obviously standards
23 and practices change with time, correct?

24 A. Sure.

25 Q. We operate properties in 2004 differently than we

1 operated them in 1964?

2 A. That's correct.

3 Q. You're not blaming -- If an oil company was in
4 fact told to fill in the pit, you're not telling us that
5 they shouldn't have followed those instructions back in
6 nineteen-sixty-whatever? Or are you? Are you saying they
7 should have disregarded what the OCD told them to do?

8 A. Well, no, I don't think so, but then -- I think
9 there's more to it if they said fill in the pits. I mean,
10 I think there's probably a safe and clean way of doing
11 that, I --

12 Q. Right.

13 A. I don't think they ever -- I don't think the OCD
14 has ever told anyone to cover contamination. I don't think
15 I've ever seen that, in any old documentation or anywhere.

16 Q. You don't know what the practice was back in the
17 1960s when they outlawed the use -- the continued use of
18 unlined surface disposal pits?

19 A. They used to put water --

20 Q. I'm sorry?

21 A. -- into pits.

22 Q. But what I'm saying is, when they outlawed that,
23 you don't know what the OCD told oil companies to do with
24 those old locations?

25 A. I actually do not.

1 Q. Okay. Now, if we look at Rule 310 -- that's one
2 of the rules that's been cited -- and look at Rule 310.A,
3 are you familiar with that rule?

4 A. Somewhat, yes.

5 Q. And you and I agree, it says oil shall not be
6 stored or retained in earthen reservoirs or in open
7 receptacles. Does that sound --

8 A. Correct.

9 Q. And you told us a little while ago that you have
10 no evidence that Maralo used any of those old pits to store
11 oil?

12 A. That's correct.

13 Q. Now, those old surface disposal pits, it's
14 impossible -- if I'm producing oil, I'm going to get some
15 water, typically?

16 A. Sure.

17 Q. And I try to separate the oil and the water?

18 A. Right.

19 Q. It's impossible, isn't it, at least as a
20 practical matter, it's impossible to get all of the oil out
21 of that water?

22 A. In those days and times, there probably wasn't a
23 lot of incentive for them to get most of the oil out of the
24 water. I don't say it was totally impossible. I think
25 there are a lot of operations out there that did a better

1 job than other operations.

2 Q. My question, though, is, if I'm producing oil,
3 I'm going to get some water. You agree with that?

4 A. Yes.

5 Q. Now, I try to knock the oil out of that water.

6 A. You try to, yes.

7 Q. Because I can sell that oil?

8 A. Yes.

9 Q. I can't sell that water? I mean, I can use it
10 for a waterflood or something, but the oil is --

11 A. Right.

12 Q. -- has more value?

13 A. Right.

14 Q. So I do have an incentive to try to take the oil
15 out of the water?

16 A. Sure, it's product.

17 Q. But I cannot, within reason, eliminate 100
18 percent of the hydrocarbons in that water?

19 A. In today's time?

20 Q. In today's timing, can I eliminate 100 percent of
21 the hydrocarbons in that water?

22 A. Well, you certainly could, but you probably
23 couldn't afford to --

24 Q. That's why I said within reason.

25 A. Yeah, that's true.

1 Q. Now, back in the 1960s, back in the -- when they
2 were using these pits, the 1940s and the 1950s and the
3 1960s --

4 A. Right.

5 Q. The ability to knock all that oil out wasn't as
6 good as it is today?

7 A. No, that is correct.

8 Q. So if I'm using those surface disposal pits
9 legally, there's going to be some hydrocarbons in that
10 water?

11 A. That's right, and that's why they used skim pits
12 back in -- small skim pits that always had oil in them.

13 Q. And that was to further try to separate the oil
14 from the water?

15 A. That's correct.

16 Q. But even in all those pits, there's going to be
17 some amount of oil, correct?

18 A. Yes, that's correct.

19 Q. That water -- I think the water was supposed to
20 evaporate --

21 A. Or infiltrate.

22 Q. -- infiltrate, and it was going to leave the
23 hydrocarbons behind?

24 A. Actually, the infiltration would have taken the
25 hydrocarbons, the small amount of hydrocarbons you're

1 talking about, with it. That's why we have hydrocarbons at
2 the depth that we have.

3 Q. All right, so on any -- If I was to go back to
4 any old location that had been used as a surface disposal
5 pit --

6 A. Right.

7 Q. -- I'm going to find some amount of hydrocarbons
8 in that soil?

9 A. Generally, yes.

10 Q. And if the standard is, I've got to go back to
11 all those old pits and reduce that to 100 or whatever parts
12 per million, then potentially hundreds and hundreds of old
13 surface disposal sites, somebody's going to have to go back
14 and clean up, if that's the current standard?

15 A. That's true.

16 Q. And that's what you're asking in this case,
17 you're asking the Commission to order Maralo to go back and
18 clean up some old surface disposal pits that, at least at
19 this point, there's no evidence they used, because there's
20 the presence of -- there's TPH in the soil on those sites?

21 A. That's right.

22 Q. And if we were to go back all across southeast
23 New Mexico where these oilfields are and to pull out these
24 aerial photos and go back to those old surface disposal pit
25 sites, we're going to find some level of TPH on the surface

1 or beneath the surface, correct?

2 A. That's correct.

3 Q. And if the standard that you're asking for is
4 adopted, all those operators are going to have to go back
5 and clean up all those old sites?

6 A. If they're a threat to public health, environment
7 and groundwater, that's correct.

8 Q. Well, now, let's talk about that. That waterline
9 -- Do you know how long that waterline has been present
10 that runs in that vicinity?

11 A. Well, it wasn't in the 1955 picture. It was in
12 the 1968 and 1977. You're talking about the Jal city
13 waterline?

14 Q. Yes. It's been there at least 40 years?

15 A. It's been there a long time.

16 Q. Do you have any evidence that any oil from this
17 location, any TPH or any other substance had gotten into
18 that pipeline?

19 A. No, I do not.

20 Q. And I didn't write your exact words down, but
21 didn't you say that the odds of that happening at this
22 particular location are pretty low?

23 A. It is a low probability.

24 Q. There are a number of things that would have to
25 happen?

1 A. That's correct.

2 Q. And for the City of Jal, you'd probably have some
3 idea there was a problem in your line for all those things
4 to come into place?

5 A. That's true.

6 Q. How much pressure is in that waterline, do you
7 suppose?

8 A. I don't know.

9 Q. But if there's pressure in that waterline and
10 there's a break, you're not going to have things seeping
11 in, you're going to have water coming out?

12 A. You have water coming out.

13 Q. All right. Now --

14 A. However, those lines do go underneath the vacuum,
15 and when they do, that water gets sucked right back in, and
16 that water is contaminated, and that's how those lines can
17 become contaminated.

18 Q. Okay, but the City of Jal would have a pretty
19 good idea that had happened?

20 A. Not -- probably not until after it hits their
21 system.

22 Q. Which they do monitor the water quality in their
23 system?

24 A. Yes, they do.

25 Q. All right. And we're not talking about some

1 immediate threat, we're talking about something that's a
2 pretty low probability?

3 A. A concern, but not an immediate threat.

4 Q. All right. Now, how do you know how long have
5 oil and gas operations taken place out in the vicinity of
6 the tank battery site that we're talking about?

7 A. Since the early 1920s.

8 Q. So in over 80-plus years of operations, based on
9 the water tests that have been taken at that water well,
10 there's no hydrocarbons that have entered into the
11 groundwater in that area?

12 A. From that well, that's correct, we didn't show
13 any hydrocarbons.

14 Q. Even in spite of 80-plus years?

15 A. Right, we just didn't find any hydrocarbons in
16 that well.

17 Q. All right, so we can draw some comfort from that
18 fact, can't we?

19 A. I can't, because time is against us on a lot of
20 these things.

21 Q. But you're not here today to tell the Commission
22 that you have any evidence that hydrocarbons, BTEX or any
23 of its constituents have reached the groundwater there?

24 A. That's correct.

25 Q. Now --

1 A. However, there's no evidence to say that it
2 hasn't gotten close.

3 Q. Well, you've got the burden of proof, don't you,
4 in this case?

5 A. I don't think so. I think the burden of proof
6 should be upon the company who --

7 Q. So all you have to do -- all you have to do is
8 file some application, and the oil company has to come and
9 prove that it's innocent --

10 Q. It --

11 A. -- and it doesn't matter what the standards or
12 the rules are?

13 MS. MacQUESTEN: Objection. He asked for a legal
14 conclusion from the witness. He got it. It may not be --

15 THE WITNESS: No, I'm talking about --

16 MS. MacQUESTEN: -- a correct legal conclusion,
17 but that's what he asked for.

18 (Laughter)

19 CHAIRMAN FESMIRE: I'll sustain that objection
20 sort of retroactively.

21 Q. (By Mr. Strange) All right, I'm looking -- We
22 talked about Rule 310. Let's move to Rule 313, and let me
23 read from you. If you want to look at my copy I'd be happy
24 to bring it over, but it says, wells producing oil shall be
25 operated in such a manner as will reduce as much as

1 practicable the formation of emulsion and basic sediments.

2 A. Right.

3 Q. Let's take that sentence.

4 A. Right.

5 Q. Can you and I agree that if you're operating a
6 well for any length of time, you're going to have some
7 emulsion and some basic sediments?

8 A. That's correct.

9 Q. And the rule doesn't say that you've got to
10 operate it so that there are none, it says reduce as much
11 as practicable the formation of emulsion and basic
12 sediments?

13 A. Right.

14 Q. And I've not heard any criticism, so tell me, do
15 you have any criticism of the way Maralo was actually
16 operating the well? I'm not talking about the tank
17 batteries, but I'm talking about operation of the wells.

18 A. I don't know enough about their operations to
19 answer that.

20 Q. All right, continuing, These substance and tank
21 bottoms -- and I think you told me you have no evidence
22 that Maralo was putting tank bottoms in any of these old
23 surface disposal pits --

24 A. No direct evidence.

25 Q. -- shall not be allowed to pollute fresh waters

1 -- we don't have any evidence of freshwater contamination
2 -- or cause surface damage, correct?

3 A. Well, we do have evidence of water that exceeds
4 the standards.

5 Q. But we have no evidence that the water from that
6 particular well has ever met groundwater -- drinking water
7 standards, do we?

8 A. That's true.

9 Q. Yeah. It says, If tank bottoms are removed to
10 surface pits -- and you have no evidence that Maralo ever
11 did that?

12 A. That's true.

13 Q. It says the pit shall be fenced and kept in good
14 repair. And then it talks about migratory birds, and I
15 assume that's not --

16 A. Wait a minute, but back up on your question about
17 the evidence of tank bottoms.

18 Q. It says if tank bottoms are removed to surface
19 pits.

20 A. Well, there is something here that's on the
21 J.G.T. that says, "Also loaded on trailer tank bottoms that
22 were left on location and haul them to stock yard and
23 unloaded." So --

24 Q. Okay, that's talking about the actual metal tank
25 bottom, correct?

1 A. It doesn't say that. It says tank bottoms.

2 Q. And so you're going to read that to mean that the
3 substances, the bottom sediments --

4 A. Well, you asked me about tank bottoms, and that's
5 what it says, tank bottoms.

6 Q. Okay, you told me earlier you had no evidence
7 that Maralo had ever taken a tank bottom and put it in a
8 surface disposal pit. Now, isn't the rule talking about --
9 when the rule says emulsion based sediments and tank
10 bottoms, do you understand the rule to be worried about the
11 metal part or to be worried about the --

12 A. It doesn't say. I'm sorry, but that doesn't
13 say --

14 Q. Mr. Price, please let me finish my question.
15 Please.

16 A. Okay.

17 Q. And I will let you finish your answer.

18 A. All right.

19 Q. Is that fair enough?

20 A. You bet.

21 Q. The rule says emulsion, basic sediments and tank
22 bottoms; is that correct?

23 A. That's correct.

24 Q. Now, do you understand the rule to be worried
25 about the metal tank bottom or the material that tends to

1 congregate at the bottom of a tank?

2 A. Tank bottoms are tank bottoms. If you go out
3 there and you've got three feet of tank bottoms in a tank
4 and you whack the tank off and the tank bottoms go all over
5 the place, that's tank bottoms. I don't care if the metal
6 is left there or not, that's tank bottoms.

7 CHAIRMAN FESMIRE: We're kind of getting a little
8 far afield. Would you please make your point, Mr. Strange,
9 and move on?

10 MR. STRANGE: Well, yes, sir, I think -- Sorry if
11 we're getting in the field. The rule talks about various
12 substances, and I've heard conflicting answers, and I'm
13 trying to find out what we're being charged with. Did we
14 take any tank bottoms and put it into surface disposal
15 pits?

16 CHAIRMAN FESMIRE: Okay, make your point and move
17 on, please.

18 Q. (By Mr. Strange) All right. Do you have any
19 evidence that when the top of that tank was cut off, that
20 Maralo took anything that was left and put it in any of the
21 surface disposal pits?

22 A. That I do not.

23 Q. Okay, and even if we look at this note, doesn't
24 it look like they took and picked it up and put it on a
25 trailer and hauled it away?

1 A. I --

2 Q. Isn't that what you're supposed to do?

3 A. Well --

4 CHAIRMAN FESMIRE: Mr. Strange, you're asking the
5 witness to interpret your exhibit, are you not?

6 MR. STRANGE: Which he just pointed to as
7 evidence --

8 CHAIRMAN FESMIRE: Yeah.

9 MR. STRANGE: -- for what he's beating me up
10 with.

11 CHAIRMAN FESMIRE: In response to a question that
12 you asked --

13 MR. STRANGE: Yes, sir.

14 CHAIRMAN FESMIRE: -- you're going to bring your
15 own witnesses to interpret --

16 MR. STRANGE: Yes.

17 CHAIRMAN FESMIRE: -- these exhibits? Why don't
18 you make that point --

19 MR. STRANGE: All right.

20 CHAIRMAN FESMIRE: -- with those witnesses?

21 MR. STRANGE: Will do.

22 Q. (By Mr. Strange) When I look at the soil
23 analysis, at least the first round, five of six samples
24 didn't show any BTEX, did they?

25 A. I think that's correct.

1 Q. Now, BTEX is volatile?

2 A. Yes, it is.

3 Q. And if I had TPH but not BTEX, that would tend to
4 suggest that that material has been out there for some
5 amount of time, correct?

6 A. That's correct.

7 Q. So if I'm looking at your 2001 and these soil
8 samples, whatever was put out there that resulted in these
9 TPH -- if I've got TPH without BTEX, without anything else,
10 it would tend to suggest whatever that was, it had been out
11 there for some period of time?

12 A. Not necessarily.

13 Q. Been there long enough for the BTEX to dissipate?

14 A. Not necessarily.

15 Q. So what happened to the BTEX could evaporate or
16 infiltrate rather quickly. Bugs -- There are some real
17 aggressive natural bugs that can really go after the BTEX
18 and leave the TPH behind I've seen it both ways. I've
19 seen it where you have basically not very old batteries
20 that have high BTEX and high TPH, I've seen just the
21 opposite happen.

22 So you can't really technically say that just
23 because the TPH doesn't have any BTEX that it's really
24 historical, old. You can't -- There's no way you can say
25 that.

1 Q. Do you have anything that dates what was in the
2 soil? Any way the date can tell us when that material was
3 dumped?

4 A. We did not date the soil.

5 Q. So you can't tell us when it was put in there?

6 A. I cannot at this time.

7 Q. But at least on five of the six there was no --
8 there was no benzene on five of the six, correct?

9 A. I think that's correct, I agree with that.

10 Q. Okay. You would agree that when I'm operating a
11 well, I'm going to produce oil, I'm going to produce water
12 and some various other substances?

13 A. Correct.

14 Q. And in addition to oil and water, it's possible
15 I'll have emulsion, basic sediments and that stuff that
16 congregates at the bottom of the tank battery?

17 A. Not all basic sediments go to the bottom of a
18 tank. Some of them are carried over into the water. There
19 are a lot of chemicals out there nowadays that causes these
20 things to go one way or the other. So there's called
21 reverse emulsions, and that's just from my chemical
22 industry experience. I mean, you can have emulsions that
23 will go either to the top or to the bottom.

24 Q. But in terms of what comes out of that well,
25 there are a lot of things that come out of that well

1 besides emulsion, BS and the tank bottoms?

2 A. Okay.

3 Q. Is that a fair statement?

4 A. Yes.

5 Q. Can you point me to a rule that in black and
6 white says that you've got the authority to go and take an
7 operator and force that operator to clean up a site that
8 they didn't use or that they didn't contaminate?

9 MS. MacQUESTEN: Objection, I think this should
10 be left for the attorneys to argue.

11 CHAIRMAN FESMIRE: I think it calls for a legal
12 conclusion, Mr. Strange. I'll sustain the objection.

13 Q. (By Mr. Strange) Well, without getting into what
14 you understand, is it your understanding that this is based
15 primarily on Rule 310 and Rule 313?

16 A. Yes.

17 MS. MacQUESTEN: Objection, we have an
18 Application and an amended Application that speak for
19 themselves.

20 CHAIRMAN FESMIRE: I think he can answer with
21 respect to his understanding, so I'm going to overrule that
22 objection.

23 Q. (By Mr. Strange) Is that your understanding?

24 A. It's my understanding that's based on those two
25 rules plus our latest Application, what's additionally in

1 there.

2 Q. And if I was to look at the Application, is it
3 your understanding if I look at the Application that would
4 specify what rules this is based on?

5 A. I'd have to look at it again, I'm sorry. I've
6 read it one time before we came here, and...

7 Q. Do you know if you've ever asked for an order
8 directing one oil company to clean up a site that they
9 didn't use or clean up contamination that they didn't
10 cause?

11 A. Well, we generally don't have to. They -- Most
12 companies step forward and do it.

13 Q. Do you know of any instance where you've asked
14 for an order to force one company to clean up a site they
15 didn't use or to clean up contamination they didn't cause?

16 A. I have not done that.

17 Q. All right. Do you know if Maralo was ever cited
18 for doing anything prior to this procedure that we're here
19 on today, these proceedings, or -- was Maralo ever cited
20 for violating any rule in connection with any of the wells
21 that fed into that tank battery?

22 A. I don't have any knowledge if they were cited for
23 anything.

24 Q. Do you know if Maralo was ever cited for anything
25 it did in connection with that tank battery?

1 A. It did or did not?

2 Q. Did or did not do in connection with that tank
3 battery, excluding this particular proceeding?

4 A. I know that when I was in the District we had
5 some issues with Maralo, but it was not at this site.

6 Q. Have you not tested this soil to see if it's --
7 would "leachable" be the correct word?

8 A. No, I have not.

9 Q. And so you're not offering any testimony today on
10 how leachable this soil is?

11 A. I am not.

12 Q. Or how likely it is that whatever is there will
13 move, if so, how far, how fast?

14 A. I am not.

15 Q. And you obviously have access to that site,
16 correct?

17 A. Yes.

18 Q. And you can run any type of test that you want
19 to?

20 A. Probably so.

21 Q. And you know how to run those tests, that you
22 could run a test to determine how leachable the soil is?

23 A. That's correct.

24 Q. Now, the test on the TPH you all run, is that
25 418.1?

1 A. 418.1.

2 Q. For closure purposes, don't you all also accept
3 8015?

4 A. DRO, GRO, yes, we do.

5 Q. And your experience has been with 8015, hasn't
6 it? If I run -- use that test, the TPH levels are
7 typically a lot lower than for 418?

8 A. That is correct.

9 Q. Usually they're about half?

10 A. It varies. It varies anywhere from 40 to 80
11 percent. It really does vary, depending upon if it's more
12 GRO, DRO.

13 Q. Okay, so anywhere from 40 to 80 percent?

14 A. Yeah.

15 Q. And if we -- You accept that test, and if we were
16 running that test on these soil samples, you'd expect these
17 TPH readings to be quite a bit less than what you
18 presented?

19 A. That is correct.

20 Q. And if we were to use a 5000 standard -- I mean,
21 on some of these analyses, several of these are already
22 below 5000 if you use an 8015 test?

23 A. Once again, you can't make that determination
24 unless you run the test. It's not conclusive that the DRO,
25 GRO will always be less.

1 Q. But it's been your experience it typically is?

2 A. In my experience it typically is.

3 Q. Now, when you said 40 to 80 percent, is that --

4 A. That's just my experience that it typically will
5 range less than what you normally -- the 418.1.

6 Q. What I'm trying to find out is, what number do I
7 multiply? Is it 40 to 80 percent less, or is it 40 to 80
8 percent of?

9 A. Of.

10 Q. Okay.

11 A. Of.

12 Q. So a reduction of anywhere from 20 to 60 percent
13 of the numbers that you've --

14 A. That is correct.

15 Q. You talked about the current operator. Do you
16 know when Maralo assigned this lease?

17 A. No.

18 Q. Do you know if Maralo even has any rights under
19 the lease?

20 A. Actually, I think I was looking at some
21 information that our attorney had, and I did see a document
22 -- I didn't get to study it. I did see a document that
23 showed that Maralo did have a lease in that area.

24 Q. Do you know if the wells that we're talking about
25 in this area, this lease, as far as like the shallow --

1 we're talking about the shallow rights and those operations
2 -- do you know if Maralo has any rights in that regard?

3 A. I'm not familiar with that.

4 Q. Do you know who is out there now --

5 A. No.

6 Q. -- who is operating that property?

7 A. No, I don't.

8 Q. Well, if we're going after the current operator,
9 wouldn't it have been important to find out exactly who the
10 current operator is?

11 A. It was my understanding it was Maralo, but --

12 Q. Well, if Maralo assigned its rights in 1994 --
13 assume that to be correct -- then Maralo wouldn't be the
14 current operator, would it?

15 MS. MacQUESTEN: Again, he's asking for a legal
16 conclusion. Is he asking for a factual --

17 CHAIRMAN FESMIRE: Rephrase the question and ask
18 him if he knows it, and if he does, he can answer.

19 Q. (By Mr. Strange) Yes, sir. Assume with me that
20 Maralo assigned its rights in 1994 to Rasmussen. You're
21 familiar with Rasmussen?

22 A. Okay.

23 Q. Would Maralo be the current operator?

24 A. It doesn't seem like it would be.

25 Q. Why then has there been a change in policy? If

1 Maralo -- Assume with me that's true. When did you change
2 the policy from going after the current operator to going
3 after somebody in the chain of title?

4 A. We haven't changed or policy there. It's just in
5 this particular case I'm not familiar. I just -- I took
6 the case over when Mr. Olson left, and so --

7 Q. If Maralo --

8 A. -- I haven't had an opportunity to research that.

9 Q. And I'm sorry, I stepped on you. If Maralo is
10 not the current operator, then your policy would not be to
11 go after Maralo but to go after the current operator,
12 wouldn't it?

13 A. That's generally the case, yes.

14 Q. Do you know of any reason why there would be an
15 exception in this instance?

16 A. I don't know of any reason.

17 MR. STRANGE: Thank you. Pass the witness.

18 CHAIRMAN FESMIRE: Commissioner Bailey, do you
19 have any questions?

20 COMMISSIONER BAILEY: Yes, I do. But first a
21 question to Ms. MacQuesten.

22 Will there be testimony from anyone on your side
23 concerning the assignment pages that are found in this
24 packet of information, the lease assignment pages going
25 back to Mr. Strange's just recent questions of

1 operatorship?

2 MS. MacQUESTEN: We won't have -- Well, let me
3 back up. We won't have testimony on the lease documents
4 that were a part of our exhibit packet. I was going to ask
5 the Commission to accept those. They're certified copies
6 of documents from the State Land Office.

7 COMMISSIONER BAILEY: Okay, because I have very
8 specific questions, including -- Carol, is now an
9 appropriate time to --

10 MS. LEACH: Sure.

11 COMMISSIONER BAILEY: -- introduce that?

12 MS. LEACH: Sure.

13 COMMISSIONER BAILEY: Because I'm with the Land
14 Office, I have access to this oil and gas lease, and these
15 assignment pages that were offered as OCD exhibits were
16 assignments from a base lease, and they reference the base
17 lease. And so I have provided copies of that base lease
18 for consideration in this.

19 I'd like to have some testimony concerning that
20 lease and the assignments, not as conclusions of law, but
21 just to read portions of those assignment pages into the
22 record.

23 MS. MacQUESTEN: I wouldn't have any objection to
24 that.

25 COMMISSIONER BAILEY: Okay. Is Mr. Price the

1 appropriate person to do that, or any subsequent witness --

2 MS. MacQUESTEN: Well, I'm not sure that we have
3 any OCD witnesses who are familiar with oil and gas leases,
4 but if we want to introduce the documents themselves or
5 read from the documents, any of the witnesses would be
6 appropriate. I just don't have anyone who can answer
7 questions about the leases.

8 COMMISSIONER BAILEY: Right, I would not expect
9 you to.

10 Can we distribute them?

11 MR. KELLAHIN: Do you have another copy of those?

12 MS. LEACH: Commissioner Bailey, why don't -- At
13 this time we've provided all counsel with copies of the
14 document that you want the Commission to basically take
15 administrative notice of that comes from the State Land
16 Office file that you've provided that you thought needed to
17 be included in considering the other lease-related
18 documents that have been proposed as exhibits.

19 And I'm not aware, because I've talked to counsel
20 -- with the exception of Mr. Strange, and I've talked to
21 Mr. Kellahin -- that anyone has any objections to this
22 document coming into evidence.

23 So it's -- hoping there's still no objection; I
24 think -- should give another chance -- Does anybody have
25 any objections to the documents?

1 It's really, I think, two documents that have
2 been stapled together, from the New Mexico State Land
3 Office referencing an oil and gas lease dated June 6th,
4 1932, from the Land Office to Humble Oil and Refining
5 Company.

6 So are there any objections to the admission of
7 this document?

8 MR. STRANGE: No objection from me.

9 MR. KELLAHIN: May we defer until after the break
10 so we can see --

11 MS. LEACH: Well, that's why I gave it out to you
12 this morning, Mr. Kellahin --

13 MR. KELLAHIN: I haven't read it, ma'am.

14 MS. LEACH: -- because -- Mr. Kellahin, because
15 you're coming up at some time, so that's why I gave it to
16 you earlier.

17 So it's really not my place to say. I don't know
18 whether you want to wait for a break and let them look at
19 it, because they've had it since --

20 COMMISSIONER BAILEY: I have other questions that
21 I can ask Mr. Price.

22 MS. LEACH: Okay.

23 COMMISSIONER BAILEY: Shall I go ahead with
24 those?

25 MS. LEACH: That's probably a good idea.

EXAMINATION

1
2 BY COMMISSIONER BAILEY:

3 Q. You described the material on the surface as
4 asphaltting material, solidified. It sounds like clods of
5 asphalt-type material on the surface.

6 A. It was. It is.

7 Q. How amenable are those to bioremediation?

8 A. Not very. From my experience, when it gets into
9 that form, unless it's really broken up and nutrients put
10 on it, it's going to be there forever.

11 Q. So the only --

12 A. Let me give you an example. We've got several
13 cases, but one particularly. We had a large pipeline leak
14 where this -- you could take pictures, and it would be
15 almost identical. And the spill was over 40 years ago, and
16 nothing has ever come back, because it was left in this
17 same condition.

18 Q. Which leads to another question I have. If we
19 could go back to some of those aerial photos --

20 A. Okay.

21 Q. Take the first -- That one's fine.

22 A. Is that one all right?

23 Q. It does not appear to me that there's a great
24 deal of vegetation in any of that area, as a lay person and
25 not as a range specialist. Is it heavily grassed? Is

1 there a lot of vegetation in that entire area?

2 A. Well, from my experience from living in that part
3 of the country, yes, there is vegetation around there.
4 There's enough vegetation to support habitat of quail and
5 so forth. And so from my perspective, yes, there is
6 adequate vegetation. For ranching operations, I don't know
7 how to answer that, but yes, there is vegetation in that
8 area.

9 CHAIRMAN FESMIRE: Mr. Robins, are you going to
10 put Mr. Anthony on the stand?

11 MR. ROBINS: I am.

12 CHAIRMAN FESMIRE: Would he talk about that?

13 MR. ROBINS: Sure, he can certainly describe
14 what's out there, and I think there's a -- You may get a
15 certain sense of it from some of the pictures, but he can
16 certainly talk about the yields in the grass area out
17 there --

18 COMMISSIONER BAILEY: Good, thank you.

19 MR. ROBINS: -- and why this grass is important.

20 Q. (By Commissioner Bailey) Did you ever see a cow
21 when you were out there?

22 A. Yes.

23 Q. Okay.

24 A. Yes.

25 Q. Did you ever see stock tanks?

1 A. I'm trying to -- Yes, I did see a stock tank.
2 you're talking about a water tank?

3 Q. Yes.

4 A. Yes.

5 Q. Okay. The tiered guidance standards --

6 A. Yes.

7 Q. -- that you have --

8 A. Guidelines.

9 Q. -- as guidelines, they were developed and
10 designed for protection of specifically groundwater.
11 They're not specifically to support vegetation, were they?

12 A. No, it's my understanding that they were designed
13 to support vegetation. That's what the 5000-part-per-
14 million level come in, is that there is -- and I didn't do
15 that study -- or that was done back -- and I think Mr.
16 Olson, actually, and Mr. Anderson performed that study, and
17 they considered a level that would be supportive of
18 vegetation.

19 You'll have to ask them how that came about. I'm
20 not familiar with that process. I just know that that 5000
21 parts per million is for protection of the surface.

22 Q. And so it's your understanding that if plant
23 cleanup is done to the 5000 standard, then that should
24 support vegetation comparable to the surrounding area?

25 A. Yes, that's my understanding.

1 Q. Okay. Is it common practice to drill water wells
2 in the vicinity of where oil wells will be drilled so that
3 they have that water available?

4 A. Yes, it was.

5 Q. And that water is not necessarily considered
6 potable, that chlorides would not have too detrimental an
7 effect on drilling the oil wells?

8 A. No, most of the wells that are drilled, from my
9 experience, are all freshwater wells that they use for --
10 they use during the spudding in and freshwater portion of
11 drilling of the well. If -- They're not drilling that well
12 for a saltwater well, if that's what you're asking.

13 Q. So it is probable that that well may have been
14 fresh water at the time that these wells were drilled, the
15 oil wells were drilled?

16 A. Yes, because the Jal or Javalina Basin, Jal
17 Basin, is just to the southwest of there, and that's where
18 they get all their fresh water for the city. So it's in
19 the same basin.

20 Q. Okay. If bio-remediation really would not be
21 very effective for this site because of the age and the
22 asphaltlike material, what is the potential cost to clean
23 up that we're asking to be performed here?

24 A. I haven't put a number to it but I can tell you,
25 if a substantial amount of soil is actually removed and if

1 a -- say a two- or three-foot barrier is put down and clean
2 soil put back on top of it, you're looking, I'd say, a
3 minimum of half a million dollars.

4 Q. All right, let's go to OCD Exhibit Number 17.

5 A. Seventeen. I don't think I have that one, do I?

6 Q. Could you read to us what that title is, so that
7 we'll understand what this exhibit is?

8 A. Assignment of Oil and Gas Lease.

9 MS. LEACH: Commissioner Bailey, maybe before we
10 talk about this we might have an offer into evidence on
11 this document or where it came from, that kind of thing,
12 just to clarify for the record, please.

13 MS. MacQUESTEN: I would ask the Commission to
14 admit these next three documents, 17, 18 and 19. They are
15 all certified copies of documents obtained from the State
16 Land Office regarding the lease that includes the Humble
17 State Number 3, and I believe includes several of the other
18 wells at issue in this case.

19 CHAIRMAN FESMIRE: Okay. Mr. Robins, do you have
20 any objection?

21 MR. ROBINS: No objection.

22 CHAIRMAN FESMIRE: Mr. Strange?

23 MR. STRANGE: No objection.

24 CHAIRMAN FESMIRE: Commissioner Chavez?

25 COMMISSIONER CHAVEZ: No objection.

1 CHAIRMAN FESMIRE: They'll be so admitted.

2 Q. (By Commissioner Bailey) Down in the bottom
3 portion of that front page, below all the stars, is a
4 printed paragraph that begins, "The Assignee..." Do you
5 see that, Mr. Price?

6 A. Yes, I see it.

7 Q. Could you read us that paragraph, please, for the
8 record?

9 A. "The Assignee assumes and agrees to perform all
10 obligations -- " well, I'm not sure, of " -- the State of
11 New Mexico -- " and then it gets a little bit where I can't
12 -- other stuff has overwritten it " -- described lands" as
13 "affected, and to pay such rentals and royalties and to do
14 such...acts as are by said lease required as to the above
15 described subdivisions, to the same extent and in the same
16 manner as if the provisions of said lease were fully set
17 out herein."

18 Q. So this says that this assignment from Humble Oil
19 Company, Humble Oil and Refining Company to Ralph Lowe,
20 that Ralph Lowe agrees to assume what this paragraph says
21 as part of --

22 A. Commissioner Bailey, I'm an engineer, and this is
23 to me legalese.

24 Q. Okay, I understand.

25 A. I really hesitate to even attempt to tell you

1 what this really says.

2 Q. Okay, but it does -- You have read the record --
3 into the record that paragraph.

4 The next exhibit, OCD Exhibit 18, is an
5 Assignment of Oil and Gas Lease?

6 A. Yes.

7 Q. And it's from Erma Lowe as independent Executrix
8 and Trustee of the Estate of Ralph Lowe, Deceased --

9 A. Right.

10 Q. -- to Erma Lowe individually and Maralo, Inc., a
11 Texas corporation?

12 A. Yes.

13 Q. Okay. Below the large gap that has the
14 description of the lands, there's another paragraph printed
15 as part of the form that begins, "Assignee...?"

16 A. Right.

17 Q. Would you read that paragraph to us?

18 A. "Assignee assumes and agrees to perform all
19 obligations to the State of New Mexico insofar as said
20 described land is affected, and to pay such rentals and
21 royalties, and to do such other acts as are by said lease
22 required as to said land, to the same extent and in the
23 same manner as if the provisions of said lease were fully
24 set out herein. It is agreed that Assignee shall succeed
25 to all the rights, benefits and privileges granted the

1 Lessee by the terms of said lease, as to said land."

2 Keep going?

3 Q. No, that's fine. Now, if we go to the next
4 exhibit --

5 A. I need to say, I don't have a clue what I just
6 read.

7 Q. That's all right, that's all right. The lawyers
8 do.

9 All right, and here we have Assignment of Oil and
10 Gas Lease from the Estate of Erma Lowe and Maralo Merging
11 Corporation to Lowe Partners, LP, a Texas limited
12 partnership.

13 A. Yes.

14 Q. And underneath that typed-in land description
15 there is a paragraph that begins, "Assignee assumes..."

16 A. Yes.

17 Q. Would you read that for us?

18 A. "Assignee assumes and agrees to perform all
19 obligations to the State of New Mexico insofar as said
20 described land is affected, and to pay such rentals and
21 royalties, and to do such other acts as are by said lease
22 required as to said land, to the same extent and in the
23 same manner as if the provisions of said lease were fully
24 set out herein."

25 Q. And the next line, please?

1 A. "It is agreed that Assignee shall succeed to all
2 the rights, benefits and privileges granted the Lessee by
3 the terms of said lease, as to said lands."

4 COMMISSIONER BAILEY: Now, this is where we come
5 in with the original base lease, because all three of these
6 assignments that are part of the OCD package reference the
7 base lease, and each assignment carries forth saying that
8 the assignee has agreed to the terms of the base lease. So
9 if I put -- will you accept --

10 MR. KELLAHIN: Yes, ma'am, there's no objection.

11 COMMISSIONER BAILEY: -- the new exhibit? Thank
12 you.

13 Q. (By Commissioner Bailey) If you will look at
14 that new exhibit, it's the base lease, the original oil and
15 gas lease, to Humble Oil and Refining Company, which we saw
16 was the first assignor. If we go to the third page --
17 well, go to the second page, and midway down we'll see that
18 this particular section, township, range was included in
19 this base lease.

20 If we go to the third page, Mr. Price, would you
21 read to us the paragraph numbered 11 on the third page?

22 A. Where it starts with Lessee --

23 Q. Yes.

24 A. -- or "Lessee"? "Lessee shall be -- " this is
25 number 11 -- "Lessee shall be liable and agrees to pay for

1 all damages to the range, livestock, growing crops or
2 improvements caused by lessee's operations on said lands.
3 When requested by lessor, the lessee shall bury pipelines
4 below plow depth."

5 Q. All right. And the last time I'll ask you to
6 read something, paragraph 7 --

7 A. Okay.

8 Q. -- the last three lines. It's a little
9 difficult, because there's a fold, a crease, in that base
10 lease, but the last three lines it says, "...and the
11 assignee..." Do you see where that is at the bottom of
12 that paragraph 7?

13 A. I'm not --

14 Q. The third line up from the --

15 A. Oh, yes, okay. "...and the assignee shall
16 succeed to all of the rights and privileges of the assignor
17 with respect to such..."

18 Q. And I'll help you here, "...tracts..."

19 A. "...tracts and..."

20 Q. "...shall be held..."

21 A. "...shall be held..."

22 Q. "...to have assumed..."

23 A. I can't get it from here.

24 Q. I know. "...to have assumed all of the
25 duties..."

1 A. "...and obligations..."

2 Q. "...and obligations..."

3 A. "...of the assignor to the" lease "as to such
4 tracts."

5 Q. Thank you very much.

6 MS. LEACH: Mr. Chairman, I know there were no
7 objections. Did you formally take judicial notice of this
8 document, I believe that the Commission took into evidence?

9 CHAIRMAN FESMIRE: We admitted it as evidence. I
10 don't know that we took judicial notice. Do we need to do
11 that?

12 MS. LEACH: I think you're fine. It's from
13 Commissioner Bailey from the State Land Office, which I'm
14 now going to mark as Commission Exhibit Number 1 in this
15 case.

16 CHAIRMAN FESMIRE: Okay. Just in case we missed
17 it, we will formally admit into evidence Commission Exhibit
18 Number 1. Is there any objection?

19 MR. STRANGE: No objection.

20 CHAIRMAN FESMIRE: Okay.

21 MR. ROBINS: No objection.

22 MS. MacQUESTEN: No objection.

23 CHAIRMAN FESMIRE: There being no objection, it
24 will be so admitted.

25 Q. (By Commissioner Bailey) That gave us a chain of

1 title, a clean chain of record title from the original
2 lease issuance to the current lessee of record.

3 The other small page that was part of what I
4 brought in is titled, "New Mexico State Land Office, Oil
5 and Gas Miscellaneous Instrument Record Sheet".

6 A. Right.

7 Q. This is a form that's put in all of our leases to
8 indicate what miscellaneous instruments are attached to any
9 of our oil and gas leases.

10 If you'll look at the two miscellaneous
11 instruments that are associated with this particular oil
12 and gas lease and this assignment, do you see the name
13 Rasmussen anywhere on those two lines?

14 MR. ROBINS: First page?

15 MS. MacQUESTEN: The short page.

16 THE WITNESS: Oh, this one here.

17 CHAIRMAN FESMIRE: The other first page.

18 THE WITNESS: Oh, I'm sorry.

19 MS. LEACH: I probably confused them in stapling
20 them together when I gave them --

21 THE WITNESS: Yeah.

22 MS. LEACH: -- They're not in the same order we
23 had from Commissioner Bailey --

24 COMMISSIONER BAILEY: Oh, okay.

25 MS. LEACH: -- so I apologize for that.

1 THE WITNESS: If you'd wrote "engineering
2 document" on top of this I think I could have -- a little
3 better. Okay, here we go. Kirby Exploration Company of
4 Texas and the Bank of Houston -- I do not see that name.

5 Q. (By Commissioner Bailey) So you see nothing in
6 the Land Office records to indicate that there's been any
7 assignment of any rights from the current lessee of record
8 to anybody else?

9 A. That's correct.

10 COMMISSIONER BAILEY: Thank you.

11 MS. LEACH: Commissioner Bailey, do you want to
12 have this single sheet regarding the Miscellaneous
13 Instrument Record Sheet treated as a separate exhibit or as
14 -- both of them together as exhibits?

15 COMMISSIONER BAILEY: It makes no difference to
16 me.

17 MS. LEACH: Okay, as long as everyone is clear,
18 that's fine. We'll just keep it as part of Exhibit 1.

19 CHAIRMAN FESMIRE: All right, unless there's an
20 objection. Is there any objection to that?

21 MR. ROBINS: No objection.

22 MS. MacQUESTEN: No objection.

23 CHAIRMAN FESMIRE: There being no objection,
24 we're clear on the extent of Exhibit 1, then.

25 COMMISSIONER BAILEY: Those are all the questions

1 I have for you, Mr. Price.

2 THE WITNESS: Thank you.

3 CHAIRMAN FESMIRE: Commissioner Chavez?

4 COMMISSIONER CHAVEZ: I've just got a few here.

5 EXAMINATION

6 BY COMMISSIONER CHAVEZ:

7 Q. Mr. Price, the Exhibit Number 1 is a complaint
8 form that you testified to that was filled out by Donna
9 Williams or by somebody there in the office on the original
10 complaint. It says the complaint is classified as
11 historical contamination. What does that mean to you, to
12 the OCD?

13 A. What that means to me is contamination that has
14 been there for quite some time and has not been addressed
15 by the OCD through some sort of closure plan or -- It's
16 just contamination that's remaining outside.

17 Q. Okay, it appears that --

18 A. It doesn't necessarily mean it's 50 years old or
19 10 years old, it's just contamination that's remaining on
20 site. And generally the operations -- maybe there are no
21 more operations there.

22 Q. Okay. Following that upper section entitled
23 "Investigation", and according to this, Ms. Williams went
24 to the site the afternoon that she took the complaint, and
25 she described that there was an old rusty tank there with

1 rotted bottoms. And she also says that, Asphaltic Material
2 Allover Location/Lease for -- " it says one and a half --
3 Does that read one and a half to one mile, or --

4 A. It reads one half to one mile, is the way I'm
5 reading it.

6 Q. Okay. Further down on the report here, it says,
7 on the November 5th section, it said that the letter was
8 sent, and at the bottom of that --

9 A. November 15th.

10 Q. I'm sorry, November 15th, thank you.

11 A. Okay.

12 Q. -- it said that a letter was sent to Maralo.
13 There's a period of time here of about a month, a little
14 over a month, from the time the report was received and
15 this letter was sent. Were you involved in any
16 communication during that period of time concerning this --

17 A. No, I was not.

18 Q. At the bottom of the page it says, "waiting for
19 Santa Fe", and I'm sorry, my copy appears -- has something
20 cut off on the bottom, but apparently Ms. Williams was
21 waiting for something from Santa Fe to occur. Do you know
22 what that was?

23 A. No, I can't remember.

24 Q. Okay, the letter that she sent is Exhibit Number
25 2. At the bottom it says that a copy went to you.

1 A. That's certainly possible. And I probably can
2 explain that, because remember, I had just trained her and
3 had just accepted a position up here, and so she was -- it
4 was not unusual for her to go ahead and copy me on things
5 like this.

6 Q. Okay, would this require any -- you to -- you
7 receiving a copy of this, would that require you to do
8 anything or just basically to note that she has started
9 some type of enforcement action?

10 A. Just to make notation of it and assist her -- you
11 know, if she needed help, we would try to help her in any
12 way we possibly could.

13 Q. Okay.

14 A. Which we ended up, I guess, doing, because we did
15 take the case here, and we also went down and performed
16 sampling and so forth.

17 Q. You mentioned that you went with Mr. Olson to
18 basically accompany him because he was taking the lead in
19 this investigation; is that the way -- am I understanding
20 that correctly?

21 A. Yes, that is correct. However, the -- if I'm not
22 mistaken, we were doing many other things. We were doing
23 our usual field inspections of discharge plans and so
24 forth, and this just happened to be one of many sites that
25 we went to. But he was the lead person at that time.

1 Q. Okay, and that was done at the beginning of the
2 year 2000; is that right? That you went down there?

3 A. Yes, that is correct.

4 Q. Did Ms. Williams accompany you on the trip to
5 this site?

6 A. You know, I honestly cannot remember that.

7 Q. Okay. Did you find the site to be pretty much as
8 she described it, with an old rusty tank with rotted
9 bottoms and asphalt material for about one and a half
10 miles?

11 A. When I first got there, I do not remember seeing
12 any of these rotted-bottom tanks, old rusty tanks. I do
13 not remember seeing that. What I do remember seeing was
14 what's in the photographs, is the extensive amount of
15 contamination that was on the surface.

16 Q. Okay. When we describe or characterize it as
17 asphalt material, it's not really asphaltic oil, is it, or
18 is it a paraffin-based oil that's produced from these
19 wells, or do you have knowledge of that?

20 A. I do not have knowledge of that.

21 Q. Okay. You testified that the water from the
22 water well was salty. Is that -- and later on you said had
23 elevated chlorides in it. Was that from samples obtained
24 on that first trip?

25 A. Yes.

1 Q. How did you extract water from that water well?

2 A. Mr. Anthony actually has a portable device that
3 he lowers the pump into that hole and he has a portable
4 generator, and he actually -- he pumped it. We had him
5 pump it for a minimum, I think, of 10 minutes before we
6 took our sample.

7 Q. Okay. And the question has come up about the
8 level of what you term as elevated chlorides. You have --
9 working for the OCD and with the experience -- some, as you
10 said, in hydrology and over your work, do you anticipate
11 certain levels of chlorides in water in certain areas of
12 the state that you work?

13 A. In that particular area, primarily -- this is not
14 in the Ogallala, but just north of there in the Ogallala,
15 we typically see chlorides in the range of 50 parts per
16 million and less. And I don't have a whole lot of
17 experience for sampling in the Jal Basin, or Javalina
18 Basin, they call it. I just know that the City of Jal
19 obtains its fresh water in that area.

20 Q. Okay. So when you see what you think are
21 elevated levels of chlorides, that's an indication to you
22 that something should be investigated; is this what you're
23 looking at?

24 A. Yes, that's correct.

25 Q. So it's not that you're placing blame, it's just

1 a trigger for saying it's something to look at because you
2 wouldn't anticipate those levels of chlorides --

3 A. That's correct.

4 Q. -- in groundwater?

5 A. That's correct.

6 Q. Okay. And that's a normal regulatory action to
7 take, isn't it?

8 A. Yes, anytime we find contaminants that exceed the
9 groundwater standards, then that is kind of a red flag for
10 us.

11 Q. Okay, and what it is now that you're asking for
12 is testing to determine whether or not there might be a
13 localized source for those chlorides; is that basically
14 what you're asking for?

15 A. Well, that would be included in the delineation
16 plan.

17 Q. Oh, okay. On your Exhibit Number 3, if you go to
18 slide 2, the topographic map, when the USGS puts these
19 topographic maps together, that indication that's -- where
20 you label "M&A Site" that shows a square with blue, what
21 does that indicate?

22 A. Well, the M&A site with the little red flag, I
23 did not put that there. That was put there by the
24 consultant.

25 Q. Okay, did the consultant put the bluing in, or

1 was that part of the --

2 A. No, that's part of the map.

3 Q. Okay, what does that blue usually indicate?

4 A. Some sort of water body.

5 Q. Okay. So at the last time that this map was
6 indicated, the people who put this together said that there
7 was a body of water there; is that the way you understand
8 that?

9 A. That's the way I read that.

10 Q. And that's what you understand to the north of
11 there on this map, that there are other bodies of water?

12 A. Yes.

13 Q. So you said that there was some updating of this
14 map done over time; is that correct?

15 A. USGS service, they do update their maps over
16 time.

17 Q. Okay. Do you have an idea when the last update
18 for this map?

19 A. No, I did not -- I do not.

20 Q. Okay. Would it be helpful to know that in order
21 to indicate when the USGS indicated that there was a body
22 of water there?

23 A. It probably would; I just didn't have time to
24 actually find that particular map. We can certainly do
25 that.

1 Q. As we go to slide number 7, you have an
2 italicized and underscored statement at the bottom, noting
3 about the benzene levels, that the benzene levels in the
4 soil would exceed the groundwater standard. But you
5 weren't testing groundwater, you were testing soil; is that
6 correct?

7 A. That is correct.

8 Q. And so why is this significant that it's this
9 high in the soil?

10 A. Okay, first of all, we do not have what's called
11 SSL soil screening levels. We use some EPA guidance on
12 that, but what we do is, we use groundwater standards as
13 our default soil standards for investigation. Anytime we
14 see levels like that, benzene levels as high as that, then
15 we know that there is a high probability that groundwater
16 may be contaminated, or maybe it has been contaminated from
17 contamination like this.

18 Q. Okay, and these high-benzene levels, as you
19 testified earlier, really, they can stay for a long time,
20 or might indicate that that contamination has not been
21 there for that long, depending on --

22 A. That's right, I had testified earlier that you
23 can't really tell. It could be either way. It could just
24 recently have been put there, or it could have been there
25 for quite some time. The problem is, it's there, and it's

1 a threat.

2 Q. Okay, you had stated earlier that you thought
3 that the infiltration rates were high in this particular
4 soil in this area.

5 A. Yes.

6 Q. What do you base that on?

7 A. Just on the observation of the soil borings and
8 also of the logs that Mr. Seay had made for the borings
9 that went down to 80 feet.

10 Q. So that would indicate that there's a greater
11 potential for these high benzene levels to move down; is
12 that what we're supposed to gain from what your exhibit is
13 saying?

14 A. Yes, that is correct.

15 Q. As an OCD inspector, do you have to find that
16 there's actually been contamination or there's a potential
17 for contamination in order to take enforcement action?

18 A. Potential.

19 Q. So whether or not there are benzene levels in the
20 water, based on your assumption -- or your understanding of
21 the infiltration rates and high benzene levels, to you
22 there's a high potential for groundwater contamination in
23 this area; is that correct?

24 A. That is correct.

25 Q. As part of your qualifications, you've had

1 experience in dealing with contaminations under a lot of
2 different issues; is that correct?

3 A. That is correct.

4 Q. Have you been responsible for cleanups that the
5 company you worked for had not caused?

6 A. Repeat the question, I'm sorry.

7 Q. I'm trying to get back to the issue that had come
8 up about taking responsibility.

9 A. Yes.

10 Q. And you had stated earlier that one of the things
11 you had worked on, one of your first, I guess,
12 environmental jobs, was the cleanup of contamination of a
13 river that had caught fire.

14 A. Actually, I think what I said is that I was on a
15 design team that prevented further degradation of the
16 river.

17 Q. Okay. Were some of those actions that caused
18 degradation of the river legal at the time that they were
19 performed?

20 A. That was just about the beginning of some of the
21 EPA enforcement regulations, the Clean Water Act and so
22 forth. At that point in time I wasn't an expert in
23 environmental law and regulation, so I don't know if I can
24 really answer that without going back and researching.

25 Q. Okay. Well, instead of that very specific one,

1 in your experience, in your cleanup history, have you been
2 responsible for cleanups, or involved in them, where the
3 contamination occurred under activities that were lawful at
4 the time that they occurred?

5 A. Well, I can tell you that it was my experience in
6 industry, is that -- particularly with the company called
7 Unichem International, we had purchased many properties and
8 found that those properties had been contaminated, and we
9 were held responsible for the cleanup.

10 Q. Okay. Is the -- taking responsibility for
11 cleanup punitive in the OCD? Is it considered a punitive
12 action?

13 A. No, it is not.

14 Q. From your understanding of the operation of this
15 particular site, was this more of a centralized type of
16 disposal facility for the lease?

17 A. It certainly looked that way, looked like a
18 centralized facility. I mean, it more or less sat right in
19 the middle of it.

20 Q. Was there any policies or procedures in place for
21 cleanup of centralized facilities as wells were being
22 plugged on a lease, that you're aware of, in the Hobbs
23 District?

24 A. Repeat the question, so I can --

25 Q. Were you aware of any policies or procedures that

1 the Hobbs District used for closure of centralized
2 facilities as wells were plugged on a lease?

3 A. Generally, these facilities -- if there was one
4 well that was still producing, they were generally not
5 cleaned up at that point in time, but it was after all of
6 the wells had been plugged, then they were required to go
7 in there and clean up.

8 Q. So it wasn't until, say, the last well?

9 A. Generally it was the last well.

10 Q. Only when the last well was plugged, then, would
11 all the operations required for a lease be required, all
12 the centralized tank batteries, lines, things like that?

13 A. Yes, generally that's true.

14 Q. Has the OCD previously penalized operators for
15 violation of Rule 310 when oil has accumulated on pits that
16 were used to --

17 A. I don't have a knowledge of that.

18 Q. No? In your experience as -- in enforcement in
19 OCD, determining the responsible party, does the OCD
20 generally hold the operator of record, in OCD, as the
21 responsible party?

22 A. Yes, that's correct.

23 Q. Might there be other times when the OCD has to
24 look at other documentation, determine whether there might
25 be another person or more than one responsible party for

1 taking some kind of action?

2 A. That's correct.

3 COMMISSIONER CHAVEZ: That's all I have. Thank
4 you.

5 EXAMINATION

6 BY CHAIRMAN FESMIRE:

7 Q. Mr. Price, my questions have to do, at least to
8 start with, with the water well that we were talking about
9 on the edge of the southern pit area, or the old battery
10 area south.

11 Slide number 12, that cross-section, how deep is
12 the well represented in there?

13 A. Okay, I -- if you will look where my pointer is,
14 I have 100 feet here --

15 Q. Yes.

16 A. -- and actually, this well goes on down another
17 100 -- approximately 100 feet, before it hits water.

18 Q. Okay, so it's approximately 200 feet to water
19 there?

20 A. From the surface to water, yes, that's correct.

21 Q. Okay. And how did you describe the soils there?
22 Very sandy, high permeability --

23 A. Yes.

24 Q. -- high transmissivity?

25 A. Yes.

1 Q. Now, you said you didn't know whether or not the
2 materials were leachable, yet the samples that you've taken
3 from depth have shown some pretty high concentrations at
4 significant depths. What does that tell you about the
5 leachability of the material in the soil?

6 A. Well, it really doesn't tell me that it's going
7 to continue to leach. What it does tell me is that it has
8 migrated down or leached down, and I don't know which
9 process that happened. It could -- I mean, if there was a
10 source, a source area up there such as a leaky tank, an
11 unlined pit, and then that would be an infiltration and
12 migration of the contaminants themselves.

13 Once that's removed, then you have an
14 infiltration from rainwater that can actually go through
15 there and pick up those contaminants and move it on down.

16 And so it really doesn't tell me a whole lot
17 right now, just from what I'm seeing here, unless we
18 actually go in there and sample that soil to see if it's
19 leachable.

20 Q. Okay. Do we know anything about the completion
21 of that water well?

22 A. No, we do not.

23 Q. Okay. We don't know whether it's cemented?

24 A. We do not know that, and I also checked the well
25 records in the State Engineer's Office, and I could not

1 find that particular well in their records.

2 Q. Okay, so that well -- granted, it's not exactly
3 where it's located in the horizontal plane in this diagram,
4 but that well could easily provide a conduit from our
5 contaminated area to the groundwater?

6 A. Yes, it could.

7 Q. Now, your degree is in electrical engineering,
8 right?

9 A. That's correct.

10 Q. And that's a very technical degree. I know I
11 couldn't pass the courses. And you've got -- and you've
12 taken that technical education and spent the last 20 to 25
13 years in the environmental field; is that correct?

14 A. That is correct.

15 Q. Your experience in the last 20 to 25 years -- and
16 I'm going to ask you a public policy question, to give me
17 an opinion. What kind of policy would we be establishing
18 if we were to allow an operator to come in here, plug the
19 wells and run off without taking care of the contamination
20 caused on that site?

21 A. Well, we're just opening the door for massive
22 contamination to remain there and contaminate our future
23 groundwater supply.

24 Q. And who would have to pay for cleaning that up,
25 if it were cleaned up?

1 A. People of New Mexico.

2 CHAIRMAN FESMIRE: I have no further questions.

3 Ms. MacQuesten, do you have any redirect examination?

4 MS. MacQUESTEN: Yes.

5 REDIRECT EXAMINATION

6 BY MS. MacQUESTEN:

7 Q. Mr. Price, I'd like you to go back to slide
8 number 15, and this is the aerial photograph from 1977.

9 A. Okay, let's see, let me -- All right.

10 Q. Could you show us the site again and, if you
11 could, get a close-up view?

12 A. I always forget which way I've got to go on these
13 things. Wrong way?

14 MR. BROOKS: Along the waterline.

15 MR. ANDERSON: Go up, Wayne.

16 THE WITNESS: Go up. I see the waterline now.

17 Ah, there it is.

18 Q. (By Ms. MacQuesten) All right. Now, this photo
19 was taken in 1977?

20 A. Yes, it was.

21 Q. And Mr. Strange had asked you to assume that
22 Maralo became operator in 1974, and I'm going to ask you to
23 make the same assumption. So if that's true, this is a
24 photograph of what the site looked like about three years
25 after Maralo became operator of the site?

1 A. Yes.

2 Q. And at that time you can see from the photo a
3 dead area to the left where there's no vegetation?

4 A. Right there?

5 Q. Yes.

6 A. Okay.

7 Q. And then to the right you have the tank battery
8 area north and south, and you can see in this photo it's a
9 dark area.

10 A. Right.

11 Q. Anyone who was at that site in 1977 would be
12 aware that there was a problem there?

13 A. I would think so.

14 Q. There was obvious contamination at the site. And
15 this is the same area that you went to and visited in 2001
16 and 2002?

17 A. Correct.

18 Q. And at that time, that was after Maralo had
19 supposedly done its cleanup efforts, disking the site and
20 whatever else they did to --

21 A. Correct.

22 Q. -- to clean up the site? And when you were there
23 -- and now we're talking about 17 years or so into Maralo's
24 operation of this area --

25 A. Uh-huh.

1 Q. -- when you were there, you could still, just by
2 walking out on the site, visibly see hydrocarbon
3 contamination at the north and south battery areas?

4 A. Yes.

5 Q. You could see dark soil from that contamination?

6 A. Yes.

7 Q. You could see chunks of what you've described as
8 asphaltine material in the soil?

9 A. That's correct.

10 Q. And still no vegetation in any of these areas?

11 A. That's correct.

12 Q. And in fact, you could pick up soil from the
13 ground and have oil residue on your hand?

14 A. That is correct.

15 Q. You could smell the oil from that soil?

16 A. That's correct.

17 Q. So oil was still retained in this area?

18 A. Yes.

19 Q. If the operations that we have described at this
20 site occurred and emulsions were being put into those pits,
21 those emulsions were still causing contamination of the
22 surface of the area?

23 A. Yes.

24 Q. Seventeen years into Maralo's operation of that
25 site?

1 A. Yes, that's correct.

2 Q. And now we're past 17 years, and it's still
3 there?

4 A. Still there.

5 Q. When you -- After you prepared your presentation,
6 did I ask you to burn a CD that would have the PowerPoint
7 on it?

8 A. Yes.

9 Q. And is this CD that's marked "Maralo, OCD,
10 11-10-04" that --

11 A. Yes.

12 Q. -- CD?

13 MS. MacQUESTEN: I would ask the Commission if we
14 could make this CD part of the record. If this case goes
15 on review, I would like the reviewing body to have the same
16 opportunity we've had to look at close-up views of the
17 aerial photos.

18 CHAIRMAN FESMIRE: Is there any objection?

19 MR. STRANGE: No objection.

20 MR. ROBINS: No, sir.

21 CHAIRMAN FESMIRE: Commissioners?

22 COMMISSIONER BAILEY: No.

23 COMMISSIONER CHAVEZ: No objection.

24 CHAIRMAN FESMIRE: We'll make it part of the
25 record, then. It's admitted.

1 MS. MacQUESTEN: Thank you.

2 COMMISSIONER CHAVEZ: Can I ask one question,
3 though? Now, that's part of the PowerPoint presentation?

4 MS. MacQUESTEN: It is the entire PowerPoint
5 presentation. It would be as if we had burned a CD of Mr.
6 Price's presentation.

7 CHAIRMAN FESMIRE: It is Exhibit 3, an electronic
8 copy?

9 MS. MacQUESTEN: Exactly, exactly.

10 I don't have any further questions of Mr. Price.

11 CHAIRMAN FESMIRE: Mr. Robins, I think
12 theoretically I ought to give you the chance to redirect
13 this witness with respect to questions asked by Mr.
14 Strange, but I'm assuming that you have no questions?

15 MR. ROBINS: I have no questions.

16 (Laughter)

17 MR. ROBINS: I'm slowly learning.

18 CHAIRMAN FESMIRE: Why don't we go ahead and take
19 a 10-minute break, then, and reconvene at 3:30?

20 (Thereupon, a recess was taken at 3:20 p.m.)

21 (The following proceedings had at 3:32 p.m.)

22 CHAIRMAN FESMIRE: Let's go back on the record.
23 We will reconvene this hearing. And Ms. MacQuesten, I
24 think you're ready for your next witness?

25 MS. MacQUESTEN: I had intended to call Dorothy

1 Phillips, and I understand she's on her way downstairs.

2 MR. ANDERSON: She's on her way down now.

3 CHAIRMAN FESMIRE: Okay.

4 (Off the record)

5 DOROTHY L. PHILLIPS,

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

8 CHAIRMAN FESMIRE: Ms. MacQuesten, you may
9 approach the witness.

10 MS. MacQUESTEN: Thank you.

11 DIRECT EXAMINATION

12 BY MS. MacQUESTEN:

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

14 A. Dorothy Phillips.

15 Q. Where do you work?

16 A. New Mexico Oil Conservation Division in Santa Fe.

17 Q. What is your title?

18 A. I'm the plugging bond administrator.

19 Q. How long have you been in that position?

20 A. About four years.

21 Q. And how long total with the OCD?

22 A. Oh, I started in 1981, and then I quit for four
23 years, and then I came back in 1989.

24 Q. Now, do your current duties include researching
25 records of operators to determine who is the operator of

1 the wells and whether they have the necessary financial
2 assurances in place?

3 A. That's correct.

4 Q. To prepare for this case, I asked you to print
5 out a list of wells operated by Maralo, LLC, according to
6 OCD records. Would you take a look at what's been marked
7 as OCD Exhibit Number 7? Is that a copy of the printout
8 that you did?

9 A. Yes.

10 Q. And it shows on the top that this is from RBDMS.
11 What is that?

12 A. That's a risk based data management system.

13 Q. And what is it used for?

14 A. It's a comprehensive database. It's used
15 internally by OCD, and it captures well inspection data,
16 compliance data, environmental data, hearing and
17 administrative order data.

18 Q. All right. Now, this particular printout, you
19 put in the name Maralo, LLC, as operator, and it printed
20 out a list of all the wells that are either currently
21 active or wells that have been plugged and abandoned under
22 Maralo, LLC?

23 A. That's correct.

24 Q. All right. It would not include wells that used
25 to be Maralo wells but had been properly transferred to

1 another operator; is that right?

2 A. That's correct.

3 Q. Does it include the Humble State Number 3 well?

4 A. Yes, it does, it's on the second to the last
5 page, almost to the bottom of the page.

6 Q. Now, we checked before the hearing to see if it
7 also included the Shell State A Number 1 well, and we
8 couldn't find that well on the list, although when we
9 looked at the well file it still showed Maralo as the
10 operator of the well that's now plugged. Do you know why
11 it didn't show up on this list?

12 A. No, I have no idea. I don't input the
13 information into this system.

14 Q. All right. I also asked you to research the
15 financial assurance files for Maralo, LLC. According to
16 those files, has Maralo, LLC, operated under a different
17 name?

18 A. Yes, it used to be Maralo, Inc.

19 Q. All right, and I'd like to just trace that
20 through the bond file to show how that change happened. If
21 you could take a look at Exhibit Number 8, is that the bond
22 we have on file for Maralo, Inc.?

23 A. That's correct.

24 Q. And is the date 1993?

25 A. Yes, it was approved by Mr. LeMay on February

1 10th, 1993.

2 Q. All right, if you could turn to Exhibit Number 9,
3 is this a letter from Maralo, LLC, dated February 8th of
4 1999?

5 A. Yes, it is.

6 Q. And are they asking us to accept a rider that
7 would change the principal on the bond from Maralo, Inc.,
8 to Maralo, LLC?

9 A. That's correct.

10 Q. All right, and if you could turn to Exhibit
11 Number 10, is that a letter from the OCD dated 6-1-99,
12 approving that rider changing the principal from Maralo,
13 Inc., to Maralo, LLC?

14 A. That's correct.

15 Q. All right. Turn to the next exhibit, which is
16 Exhibit Number 11. Is this a letter from Maralo, LLC,
17 dated 3-1-2000 with documentation supporting that change of
18 name?

19 A. Yes.

20 Q. Do you know why this was filed after we had
21 already accepted the rider changing the name?

22 A. I don't know for sure, but I would think that
23 maybe the attorney wanted it as part of the record.

24 Q. Okay. Now, I won't ask you the legal
25 ramifications of what they were asking, but the cover

1 letter indicates that Maralo, Inc., changed its name to
2 Maralo Merging Corporation and was then acquired by Maralo,
3 LLC; is that right?

4 A. That's correct.

5 Q. And Maralo itself treated this as a name change
6 and asked us to treat it as a name change; is that right?

7 A. That's correct.

8 Q. And that's how we treated it?

9 A. Yes.

10 Q. By accepting that rider?

11 A. Yes.

12 Q. If you could turn to Exhibit Number 12, just to
13 bring us up to date, this is a letter from Maralo, LLC,
14 dated 7-24-2000, and it's asking us to accept a rider
15 adding additional principals to the bond, and is that
16 additional principal Lowe Partners, LP?

17 A. Correct.

18 Q. And turn to the next exhibit, Number 13. Is this
19 a letter from the OCD dated 8-15-2000 approving that rider
20 changing the principals?

21 A. That's correct.

22 Q. Now you say that first rider, we treated that
23 first rider from Maralo, Inc., to Maralo, LLC, as a change
24 of name, rather than as a change of operator; is that true?

25 A. That's correct.

1 Q. If it's a change of name, all that happens is,
2 the name changes?

3 A. Right.

4 Q. The identification numbers used by the OCD remain
5 the same?

6 A. Exactly.

7 Q. If it had been a change of operator --

8 A. -- it's considered a new entity, and a new OGRID
9 or ID number is issued to that company.

10 Q. And we did not treat it as a change of operator?

11 A. That's correct.

12 Q. So every time when we look at the files and
13 records in this case, when we see Maralo, Inc., it is the
14 same as Maralo, LLC, as far as the OCD records are
15 concerned?

16 A. That's correct.

17 Q. All right. And did the OCD treat that second
18 rider that added Lowe Partners as a principal on the bond
19 as a change of operator?

20 A. No.

21 Q. We just added an additional principal who could
22 be held responsible under the bond?

23 A. Right.

24 Q. If you could turn to Exhibit 14, please, and this
25 appears to be a printout from ONGARD. What is ONGARD?

1 A. That's an Oil and Natural Gas Administration and
2 Revenue Database. It's a tri-agency database used by the
3 State Land Office, OCD, and Taxation and Revenue.

4 Q. Does this document show that the change from
5 Maralo, Inc., to Maralo, LLC, was treated as a name change
6 by those agencies?

7 A. Yes.

8 Q. And where does it show that?

9 A. Right underneath where it says the OGRID number,
10 which is the number issued to Maralo, LLC, and then it's --
11 under the OMID it was Maralo, Inc.

12 Q. So Maralo, Inc., and Maralo, LLC, kept the same
13 identifying number and are treated as the same entity as
14 far as those three agencies are concerned?

15 A. That's correct.

16 Q. Now we've seen three different names here,
17 Maralo, Inc.; Maralo, LLC; and then Lowe Partners, LP being
18 added as a principal on the bond. Did you check the PRC
19 website for listings for Maralo, Inc., and Maralo, LLC?

20 A. Yes.

21 Q. Did you find any listing at all for Maralo,
22 Inc. --

23 A. No.

24 Q. -- the original entity?

25 A. No, all --

1 Q. You didn't find anything?

2 A. I show Maralo, LLC.

3 Q. Okay, and if you turn to Exhibit 15, is that what
4 you found at the PRC website for Maralo, LLC?

5 A. Yes.

6 Q. Did you check the Secretary of State's website
7 for any listings on Lowe Partners, LP?

8 A. Yes.

9 Q. And is Exhibit 16 a printout of what you found at
10 that website?

11 A. That's correct.

12 Q. Who are listed as the general partners of Lowe
13 Partners, LP?

14 A. Maralo, Inc.

15 Q. And there's a second one below that?

16 A. Erma Lowe.

17 MS. MacQUESTEN: Erma Lowe, all right.

18 I would move for admission of OCD Exhibits 7
19 through 16.

20 CHAIRMAN FESMIRE: Any objection, Mr. Robins?

21 MR. ROBINS: No objection.

22 MR. STRANGE: No objection.

23 CHAIRMAN FESMIRE: Any objection from the
24 Commission?

25 Exhibits -- what was the first?

1 MS. MacQUESTEN: 7, I believe.

2 CHAIRMAN FESMIRE: -- 7 through 16 are hereby
3 admitted.

4 MS. MacQUESTEN: I would pass the witness.

5 CHAIRMAN FESMIRE: Mr. Robins?

6 MR. ROBINS: I just have a couple of questions.

7 DIRECT EXAMINATION

8 BY MR. ROBINS:

9 Q. In terms of the bonding requirement in your
10 department, every operator has to have a bond related to
11 plugging; is that what it's about?

12 A. Yes, sir.

13 Q. And how much does that bond have to be?

14 A. Well, it depends. If you're going with a blanket
15 bond it's \$50,000. If you're going with a one-well bond,
16 the cost is determined by the depth and the county. And it
17 can range from \$5000, \$7500 or \$10,000.

18 Q. As far as you now, are there any other financial
19 assurances that an oil and gas operator has to give to the
20 State, to the OCD, in order to operate an oil and gas well?

21 A. No, not for the Oil Conservation Division.

22 Q. Okay. Is there any distinction in the bonding
23 requirement between whether it's a large corporation such
24 as ChevronTexaco or a small corporation, sole proprietor,
25 or any other type of oil and gas operator?

1 A. No, sir.

2 Q. So it's a uniform rule that would apply to any
3 operator; is that correct?

4 A. That's correct.

5 MR. ROBINS: Pass the witness.

6 CROSS-EXAMINATION

7 BY MR. STRANGE:

8 Q. Do you know what Ralph Lowe individually -- what
9 his identification number was?

10 A. I believe I had that. I believe it was 205770.
11 That's what's entered in our ONGARD database.

12 Q. So that is a different number from what Maralo
13 was using? You all treated them as different entities?

14 A. Right.

15 MR. STRANGE: No further questions.

16 CHAIRMAN FESMIRE: Commissioner Bailey?

17 COMMISSIONER BAILEY: I have none.

18 CHAIRMAN FESMIRE: Commissioner Chavez?

19 COMMISSIONER CHAVEZ: None.

20 CHAIRMAN FESMIRE: I have no questions either.

21 MS. MacQUESTEN: Just one short question to
22 clarify.

23 REDIRECT EXAMINATION

24 BY MS. MacQUESTEN:

25 Q. You deal only with plugging bonds; is that right?

1 A. That's correct.

2 Q. Are there other people in the OCD who deal with
3 different kinds of bonds?

4 A. I believe the Environmental Bureau has their own
5 bonding.

6 Q. So just to clarify, there are other bonds that we
7 deal with, but Ms. Phillips deals strictly with the
8 plugging bonds?

9 A. That's correct.

10 MS. MacQUESTEN: No other questions.

11 CHAIRMAN FESMIRE: Dorothy you're excuse, and
12 that was easy, wasn't it?

13 THE WITNESS: Yes, thank you.

14 (Laughter)

15 MS. MacQUESTEN: Mr. Chairman, we had already
16 admitted the OCD exhibits regarding the lease, and I just
17 wanted to point out to the Commission, the reason I was
18 asking questions about Lowe Partners was, that was the last
19 entity that appeared on the lease documents that we have.

20 CHAIRMAN FESMIRE: Okay. Ms. MacQuesten, you can
21 call your next witness.

22 MS. MacQUESTEN: Did Ms. Bailey have a question
23 on that?

24 COMMISSIONER BAILEY: No, that's --

25 MS. MacQUESTEN: I'd call Roger Anderson

1 CHAIRMAN FESMIRE: Mr. Anderson, would you stand
2 to be sworn?

3 ROGER C. ANDERSON,
4 the witness herein, after having been first duly sworn upon
5 his oath, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. MacQUESTEN:

8 Q. Would you state your name for the record?

9 A. My name is Roger C. Anderson.

10 Q. And where do you work?

11 A. I am the Environmental Bureau Chief for the Oil
12 Conservation Division in Santa Fe, New Mexico.

13 Q. Would you give the Commission some information
14 about your education and background?

15 A. I have a bachelor of science in chemical
16 engineering in 1975 from New Mexico State University, and
17 I've been employed by the Oil Conservation Division since
18 1986.

19 Q. How long have you been Environmental Bureau
20 Chief?

21 A. Since 1991.

22 Q. Do your duties as Environmental Bureau Chief
23 include reviewing investigations of contamination and
24 remediation of contamination?

25 A. Yes, they do.

1 Q. Have you testified before the Commission in other
2 cases?

3 A. Yes, I have.

4 Q. And in those cases did the Commission accept your
5 qualifications as an expert in contamination caused by oil
6 and gas industry and remediation of that contamination?

7 A. Yes, they have.

8 MS. MacQUESTEN: I would tender Mr. Anderson as
9 an expert in oilfield contamination and remediation of such
10 contamination.

11 CHAIRMAN FESMIRE: Any objections?

12 MR. ROBINS: No objection.

13 MR. STRANGE: No objection.

14 Q. (By Ms. MacQuesten) Mr. Anderson, before we get
15 into questions involving the contamination at the Maralo
16 site, I want to ask you about why we are linking Maralo to
17 this site at all. Does the OCD keep files on tank battery
18 sites?

19 A. No, we do not.

20 Q. Does the OCD require operators to register tank
21 batteries?

22 A. No, we do not.

23 Q. How about pits?

24 A. Up until April of this year we did not require
25 the registration of most pits. Some pits we started

1 requiring registration in 1967, but for the majority of the
2 pits it wasn't until April of this year.

3 Q. So --

4 CHAIRMAN FESMIRE: Ms. MacQuesten, can I break in
5 here just real quick?

6 MS. MacQUESTEN: Sure.

7 CHAIRMAN FESMIRE: I'm not sure we got on the
8 record that Mr. Anderson was accepted as an expert.

9 MS. MacQUESTEN: Oh, I'm sorry.

10 CHAIRMAN FESMIRE: Let the record reflect that he
11 was, and he can continue his testimony now.

12 MS. MacQUESTEN: Thank you. I'm trying to move
13 this a little faster --

14 CHAIRMAN FESMIRE: And I appreciate it.

15 MS. MacQUESTEN: -- and I apologize if we skipped
16 some things.

17 Q. (By Ms. MacQuesten) So Mr. Anderson, if we
18 wanted to look for information on activity surrounding a
19 particular tank battery site, where would we look?

20 A. There are a number of locations we could look.
21 Primarily we'd look at the well files for the wells in the
22 area, and we could look at aerial photos, topo maps, things
23 like that, for historical sites.

24 Q. Could you look at what has been marked as OCD
25 Exhibit Number 20?

1 A. Yes.

2 Q. Is this the complete well file for the Humble
3 State Number 3?

4 A. As far as I know, it is the complete well file.

5 Q. All right. And we have added page numbers at the
6 bottom of each page, at the center. These well files are
7 arranged in reverse chronological order, is that true, with
8 the newest entries on top and the oldest filings on the
9 bottom?

10 A. That's correct.

11 Q. Let us look at page 26, which is the last page of
12 this exhibit. Is this a Notice of Intention to Drill filed
13 by Ralph Lowe --

14 A. Yes, it is.

15 Q. -- as operator?

16 A. Yes, it is, it was filed May 28th, 1945.

17 Q. All right. Let's now turn to page 16. Is this a
18 Certification of Compliance and Authorization to Transport
19 Oil?

20 A. That's correct.

21 Q. And who filed as operator?

22 A. Ralph Lowe was filed as operator as -- for the
23 Humble State Number 3, with Texaco-New Mexico Pipeline as
24 the transporter.

25 Q. And what is the date on this?

1 A. It's dated July, 1945.

2 Q. Does it reference the location of the tanks for
3 this well?

4 A. This states that all -- the location of tanks are
5 on lease.

6 Q. All right, and where do you find that?

7 A. That's on the fourth line down from the top,
8 "Location of Tanks, On Lease".

9 Q. Please turn to page 12. This is a letter from
10 the New Mexico Oil Conservation Commission dated August 8th
11 of 1955?

12 A. That's correct.

13 Q. And it is to whom?

14 A. It is to Ralph Lowe in Midland, Texas.

15 Q. And does this reference the production from that
16 well?

17 A. Yes, it does. It states that the well is
18 producing from the Yates, and it's simply changing the
19 pool, the classification for that well, from the pool it's
20 in to the Jalmat Pool.

21 Q. Does it give any instructions to the operator on
22 what the operator should do if they want to produce the
23 well into common tankage with other wells and another pool?

24 A. Yes, they -- It's stated that if they desire to
25 produce the well into common tankage with other wells in

1 another pool located on the same basic lease, they have to
2 incorporate a statement on the C-110 that says "Permission
3 is hereby requested to produce this well into common
4 storage with wells on the same lease currently prorated in
5 the Cooper Jal pool."

6 Q. Turn one page up to page 11. Is this the C-110
7 filed by Mr. Lowe?

8 A. That's correct, it's the C-110 required by the
9 Commission.

10 Q. And did he ask for permission to produce into
11 common tankage?

12 A. Not on this form, he did not.

13 Q. Please turn one more page to page 10. Is this a
14 Miscellaneous Notice dated July 10th, 1962?

15 A. Yes, it is.

16 Q. And what does it say about the production from
17 the well?

18 A. That it was -- where it was completed as an oil
19 well, from 2915 to 2945 feet, and -- but it is now making
20 100-percent water. And they propose to squeeze it off and
21 attempt to complete it as a gas well in the Yates
22 formation.

23 Q. And who's making this proposal?

24 A. This proposal was made by Ralph Lowe.

25 Q. Turn one more page to page 9. Is this a Request

1 for Allowable and Authorization to Transport filed by
2 someone on April 19th of 1974?

3 A. That's correct.

4 Q. And does this indicate a change of operator?

5 A. Yes, it does, it indicates a change of operator
6 from Ralph Lowe to Maralo, Inc.

7 Q. Looking at the addresses for Maralo, Inc., and
8 the address for Ralph Lowe, are they the same?

9 A. They're identical.

10 Q. Please turn one more page to page 8. Is this a
11 document filed by Maralo, Inc., as operator in 1981?

12 A. That's correct.

13 Q. And they are still looking to evaluate the Yates
14 for gas?

15 A. That's correct.

16 Q. If you could turn to page 5, please, is this is a
17 Sundry Notice filed by Maralo, Inc., in 1986?

18 A. It is.

19 Q. And they are notifying the OCD of their intention
20 to -- it appears to be either to temporarily abandon or
21 plug and abandon. They've checked both boxes.

22 A. They have checked both boxes, and they had a
23 plugging proposal in the description.

24 Q. Turn one page to page 4. Is this a revised
25 Sundry Notice from Maralo?

1 A. Yes, it is, it has a different procedure, and the
2 only box checked is to plug and abandon.

3 Q. All right, and this proposal to plug and abandon
4 was submitted when?

5 A. October 16th, 1987.

6 Q. Now, I notice that in their description of what
7 they want to do, the second to last item is "Clean up
8 location."

9 A. That's correct.

10 Q. Is there any other description of what sort of
11 cleanup they plan to do in connection with the Humble State
12 Number 3 well?

13 A. No, there is not.

14 Q. A plugging notice filed for an individual well,
15 would that necessarily include cleanup of a tank battery
16 that was used by that well and other wells?

17 A. Not if it wasn't the last well to use that tank
18 battery or the last well on that lease.

19 Q. If you could turn to page 2, please, is this a
20 subsequent report on the plug-and-abandonment for the
21 Humble State Number 3?

22 A. Yes, it is.

23 Q. Was it filed in October 28th of 1988?

24 A. Yes, it was.

25 Q. And this was approved by the OCD?

1 A. Correct.

2 Q. I know this is difficult to read the description
3 on this document, but can you see any indication that the
4 plugging and abandonment included any cleanup of the tank
5 battery and its related pits?

6 A. No, there's nothing related to any cleanup. This
7 is just purely plugging of the well.

8 Q. Would the fact that the OCD signed off on this
9 sundry notice indicate in any way that we had approved the
10 cleanup of a battery site related to this well?

11 A. No, this is signed off approving the plugging of
12 the well itself.

13 Q. If it had turned out -- just hypothetically, if
14 it had turned out that a well that we signed off on the
15 plugging demonstrated some contamination, would signing off
16 on the plugging mean that we could not look to the operator
17 to clean up the contamination at that site?

18 A. Not in my opinion, no.

19 Q. Now, all of the documents that we've looked at so
20 far from this well file -- and we're up to the top page now
21 -- there they all either show Ralph Lowe as the operator or
22 Maralo, Inc.; is that right?

23 A. That's correct.

24 Q. Was there any indication in the well file of Hal
25 J. Rasmussen Operating, Inc., becoming the operator?

1 A. The name of Rasmussen appears nowhere in the well
2 file.

3 Q. Does the name Southwest Royalties appear anywhere
4 in the well file?

5 A. Not in this well file, no, it does not.

6 Q. Let me turn to some questions on responsibility
7 and who the OCD looks to for cleanup of contamination.

8 If we were to have a contamination at a tank
9 battery site, who would we look to for cleanup, normally?

10 A. The lease operator or the operator of that tank
11 battery.

12 Q. What if that lease operator were not a viable
13 entity?

14 A. At that time we would start researching past
15 operators and just go back in order of past operators.

16 Q. Now, in this case who is the operator of record
17 for this?

18 A. The operator of record in our files is Maralo.

19 Q. If the OCD wanted to go back to a prior operator,
20 is there any prior operator still in existence?

21 A. There's -- The current operator would be Maralo,
22 LLC. The next previous one, Maralo, Inc. And that was
23 just a name change, so they're the same to us. The next
24 previous operator would be Ralph Lowe, who was deceased.

25 Q. Who has the OCD been dealing with regarding the

1 cleanup of this site since Ms. Williams' letter in 1999?

2 A. Maralo, LLC.

3 Q. Are there occasions when they would look to the
4 holder of the lease for cleanup?

5 A. If the holder of the lease and the operator --
6 were the operator of it, yes. Or if the operator is not a
7 viable entity.

8 Q. The definition of operator in the OCD Rules
9 includes the entity who has control over the lease? I may
10 not have the words exactly right.

11 A. I'd have to read it to get the words exactly
12 right.

13 Q. I'm reading from our Rules, 19.15.1.705, Operator
14 shall mean any person who duly authorized is in charge of
15 the development of the lease or the operation of the
16 producing property or who is in charge of the operation or
17 management of the facility.

18 So would the holder of a lease be in charge of
19 the development of a lease?

20 A. Based on that definition, I would say yes.

21 Q. So it's conceivable we could look to the holder
22 of the lease?

23 A. Yes.

24 Q. And in this case, based on the testimony we've
25 had so far, that would be Lowe Partners, LP?

1 A. I would assume so, yes.

2 Q. And Ms. Phillips had previously testified that
3 the partners that we have shown listed for Lowe Partners,
4 LP, are Maralo and Erma Lowe?

5 A. Yes.

6 Q. Is the OCD required by statute or rule to look
7 for the operator at the time the contamination first
8 occurred?

9 MR. STRANGE: Objection, conclusion of law.

10 CHAIRMAN FESMIRE: I'll sustain the objection.

11 Q. (By Ms. MacQuesten) Can you tell from the
12 evidence of contamination at a site, in the normal course
13 of events, exactly when a spill or release happened or when
14 contamination first started?

15 A. No, unless we see the spill, we cannot tell
16 exactly when it happened.

17 Q. So if OCD rules or statutes required us to make a
18 distinction -- Say an operator took operation on April 10th
19 of this year. It would be very difficult for us to say
20 that -- if we found contamination today, whether it
21 happened on April 9th or April 11th?

22 A. That's correct.

23 Q. Does contamination stop once a spill hits the
24 ground?

25 A. No, it does not. It does not stop until the

1 contaminants are cleaned up.

2 Q. How does it still pose a threat?

3 A. The contaminants are still available for
4 migration, either to groundwater or back to the surface, or
5 to a water of the US, or through to a water well.

6 Q. Now, you heard Mr. Price's testimony this
7 morning, right?

8 A. Yes, I did.

9 Q. And he described contamination at the Humble
10 State Number 3 battery site?

11 A. Yes.

12 Q. Is that contamination still a threat?

13 A. It is still there, and in my opinion it is still
14 a threat.

15 Q. Has the OCD ever decided to look to a prior
16 operator for cleanup, rather than the current operator?

17 A. No, we have not.

18 Q. Has the OCD ever split responsibility among the
19 parties it felt was responsible?

20 A. Are you talking about this site or any other --

21 Q. I'm talking about any site, in general.

22 A. Oh, yes. Then back to your past question, yes.
23 Well, we've had one case where we held the current operator
24 responsible with full knowledge that the tank battery was
25 closed and moved before they took it. And that one almost

1 went to hearing but it was settled by the three companies
2 together, and the current operator volunteered to do the
3 remediation.

4 Q. Has the OCD ever split responsibility among a
5 number of parties it felt might be responsible?

6 A. Yes, there was a Commission case of Burlington
7 and PNM Resources, and I don't know the details of that
8 one.

9 Q. Are you aware that Maralo says that Hal J.
10 Rasmussen has accepted responsibility for this site, and
11 they've given us a legal document that purports to show
12 that Rasmussen has accepted that responsibility? Assuming
13 that's the case, would that have any effect on your
14 decision to look to Maralo for cleanup?

15 A. No, it would not.

16 Q. Why not?

17 A. Because we still hold the operator responsible if
18 there -- and since Rasmussen is not anywhere in our files
19 as an operator, he's not identified anywhere, we would
20 still look to Maralo. And now if Rasmussen was going to
21 clean it up, it would be a civil matter between Rasmussen
22 and Maralo.

23 Q. So if those two parties want to assign
24 responsibility between the two of them, that's their
25 business?

1 A. That's their business, just as long as we get it
2 cleaned up.

3 Q. But we will still look to the operator of record?

4 A. Yes.

5 Q. I'd like now to go to the contacts that we've had
6 with Maralo regarding this site and its cleanup. We
7 already saw the initial letter from Donna Williams back in
8 1999. Have we been in touch with Maralo since then?

9 A. Yes, we have, and I will bring out the -- I
10 believe there was a question asked on the Donna Williams
11 one where it says they were waiting on Santa Fe.

12 Q. Uh-huh.

13 A. That was waiting on me to assign somebody to go
14 out there and look at it, that's all. I'll take
15 responsibility for that waiting on Santa Fe.

16 The next time that we have correspondence is a
17 letter from Bill Olson on April 11th, 2001, specifically
18 asking for a work plan to determine the extent of the
19 contamination at the Humble State Number 3 tank battery.

20 Q. Okay, let me back you up and ask you to take a
21 look at Exhibit Number 21.

22 A. Number 21. Did you give me Exhibit Number 21?

23 Q. It should be the first exhibit after the well
24 file.

25 A. I don't have Exhibit 21.

1 MS. MacQUESTEN: May I approach the witness?

2 CHAIRMAN FESMIRE: You may.

3 THE WITNESS: Oh, yes, I do. Here it is, I'm
4 sorry.

5 MS. MacQUESTEN: Okay.

6 THE WITNESS: It was at the bottom of the well
7 file.

8 MS. MacQUESTEN: Okay.

9 THE WITNESS: Okay, you're right.

10 Q. (By Ms. MacQuesten) Now, is this a letter from
11 Bill Olson, the OCD hydrologist, to Maralo, LLC, dated
12 11-22 of 2000?

13 A. Yes, it is.

14 Q. And what is he asking for in this letter?

15 A. A work plan to determine the extent of
16 contamination, defining that we have found chlorides in the
17 water well, and asking for a work plan to determine the
18 extent of contamination at the site.

19 Q. How does he identify the site?

20 A. As the Humble State Number 3 tank battery.

21 Q. If you could turn to Exhibit Number 22, is this a
22 letter from Maralo, LLC, responding to Mr. Olson's letter,
23 dated December 15th, 2000?

24 A. Yes, it is.

25 Q. And could you summarize what their response was?

1 A. Basically, they're acknowledging that they
2 operated two wells in the area, and they're plugged -- the
3 wells are plugged -- and that they had already remediated
4 the tank battery, that the chlorides in the water was not
5 their fault and not caused by oil and gas operations, and
6 stating that the Rule 19 can't be applied retroactively.

7 Q. What is Rule 19?

8 A. Rule 19 is abatement regulations to abate
9 pollution of groundwater in the vadose zone.

10 Q. Is it the position of the Environmental Bureau
11 that it can apply Rule 19 cleanup requirements to existing
12 contamination?

13 A. Yes, the Rule 19 we apply -- it's our position
14 that we apply Rule 19 to contamination that migrate and
15 cause groundwater to exceed standards. Whenever that
16 contamination was deposited on the ground is irrelevant to
17 us. It's there, and it can migrate and cause groundwater
18 to exceed standards.

19 Q. If you could turn to Exhibit Number 23, is this a
20 letter from you to Maralo, LLC, dated April 11th, 2001?

21 A. Yes, it is.

22 Q. And what are you asking for in this letter?

23 A. This is the letter that is requiring the
24 submission of a Stage 1 abatement plan, which is the
25 investigation of the site to determine the extent of

1 contamination and come up with recommendations for
2 remediation, and this letter was sent out based on the
3 chlorides that were in the water, the groundwater.

4 Q. And at this time you were still proceeding under
5 Rule 19?

6 A. That's correct.

7 Q. Please turn to Exhibit Number 24. Is this a
8 letter from Maralo's attorney dated April 23, 2001?

9 A. Yes, it is.

10 Q. And what -- could you summarize what response you
11 had in this letter?

12 A. It again says that the area -- it repeats that
13 the area was remediated in 1993 and that Rule 19 would be a
14 retroactive application of the rule.

15 Q. Please turn to Exhibit Number 25. Is this a
16 letter from you to Maralo, dated April 22nd, 2003?

17 A. Yes, it is.

18 Q. And did you change what you are requesting from
19 Maralo?

20 A. Yes, this letter followed the two site
21 investigations and -- where we took soil samples and made
22 the determination that since chlorides were not -- we could
23 not discover chlorides in the soils, they were not there,
24 we did not have a positive link with this site to the
25 chlorides in the groundwater contamination and felt that at

1 this time application of Rule 19 would not be proper.

2 But it was -- still based on the investigations,
3 there was surface contamination which prevent the use of
4 the land for its original intended use, and we went under
5 Rule 313 and 310 to clean up the surface contamination.

6 Q. So this letter rescinded your request for an
7 abatement plan under Rule 19?

8 A. That's correct.

9 Q. But it did ask if a cleanup plan for the surface
10 soil surface contamination?

11 A. That's correct.

12 Q. Did you rescind your request for abatement under
13 Rule 19 because you finally agreed with Maralo that an
14 abatement plan would be an improper retroactive application
15 of the rule?

16 A. No, we did not.

17 Q. It was based on your findings?

18 A. That's correct.

19 Q. Does the letter give a basis for requesting a
20 work plan for soil contamination?

21 A. Yes, it does. It -- The letter basically states
22 that there was several backfilled pits that remain at the
23 surface of the site and asphaltic-type oil is present at
24 the surface and had been used -- we made the determination
25 it had been used for the disposal of emulsions, basic

1 sediments and tank bottoms. And Rule 313, although it did
2 allow for the disposal of those items, and I am not
3 disputing that, it does not allow for the disposal in a
4 manner that it causes surface damage. And at this site it
5 was determined that it caused surface damage.

6 Q. So your letter was not complaining that they used
7 those pits for disposal; it was complaining that the
8 disposal caused contamination?

9 A. That's correct.

10 Q. Let's define some of those terms. What is the
11 meaning of emulsion?

12 A. Based on the *McGraw Hill Dictionary of Scientific*
13 *Terms*, an emulsion is a stable dispersion of one liquid in
14 a second immiscible liquid, such as oil dispersed in water.

15 Q. Why do you say emulsions were disposed of in the
16 pits at the site?

17 A. Well, just as the other testimony that -- when
18 you produce an oil well, there's enough turbulence to cause
19 the mixing of oil and water, and based on the -- with
20 certain salt concentrations within the water itself, you
21 can cause a mixture of oil in water that does not break out
22 very easily. And it takes -- it can be broken out with
23 heat, chemicals and time.

24 And as Mr. Price testified, residence time in the
25 tank takes care of a lot of that. But there's always going

1 to be some emulsions that are carried over into a disposal
2 pit that were authorized at the time, and separated at that
3 point.

4 Now, when the emulsion separates after time, and
5 heat -- you know, the unmerciful hot sun -- it will form a
6 layer of oil on the top. And now that's the oil that is
7 retained in the pit and allowed to contaminate if it's not
8 removed properly and continuously.

9 Q. Now, I understand that it was typical practice,
10 though, to skim that oil off the top --

11 A. That's correct.

12 Q. -- is that true?

13 A. That's correct. Certainly the oil has value.

14 Q. Is it possible to skim all of the oil off the
15 top?

16 A. No, it is not. But when the pit is closed, any
17 oil that remains must be treated or addressed so that it
18 does not cause surface damage.

19 Q. Have you reviewed the testimony from the Division
20 hearing in this case?

21 A. Yes, I have.

22 Q. And did you review Mr. Hunt's testimony that the
23 pits were used for produced water?

24 A. Yes, I have.

25 Q. Is that consistent with your theory that

1 emulsions caused contamination at this site?

2 A. Yes.

3 Q. Another term used in Rule 313 is basic sediments.
4 What is that?

5 A. We'll go back to the *Dictionary of Technical*
6 *Terms* here. Basic sediment in water is oil, water and
7 foreign matter that collects in the bottom of petroleum
8 storage tanks, also known as bottoms, bottom settlings,
9 sediment and water.

10 Q. Is that different from tank bottoms?

11 A. It's -- They're the same thing. Tank bottoms and
12 BS&W are interchangeable terms.

13 Q. In your letter you said that that may be a cause
14 of the contamination at this site?

15 A. That's correct.

16 Q. Why do you believe that?

17 A. It's common -- it was common practice, and you
18 know, reading through the previous testimony, there was a
19 lot of common practice brought up, and it was common
20 practice that the bottom sediment off tanks, since it's not
21 merchantable oil, was just drained out on site.

22 Mixed with the sands -- perfect -- sand-dune
23 country is a perfect place to mix bottom sediment with the
24 sand to stabilize the area around your tank battery.

25 Q. I'd like to take a look at the second paragraph

1 in this letter. About halfway through that paragraph
2 there's a sentence that says, "Since these pits are causing
3 surface damage, the OCD" requests "that Maralo submit a
4 work plan..."

5 A. Yes.

6 Q. You used the present tense in that sentence.

7 A. That's correct. The contamination, the
8 hydrocarbons are still there and still causing surface
9 contamination, which is obvious from the pictures that
10 there's no vegetation growing.

11 Q. So is it your position that even if Mr. Lowe was
12 the party who initially put the emulsions into the pits,
13 that Maralo today is in violation of Rule 313?

14 A. They are the leaseholder, and the hydrocarbons
15 are still there causing contamination of the surface, so
16 yes, it's my opinion that they are in violation of Rule
17 313.

18 Q. Now, there was some question whether Mr. Lowe was
19 in violation of any of our rules. If he put the emulsions
20 in the pits, you're not complaining about that, are you?

21 A. No, I am not.

22 Q. Do you have a complaint against Mr. Lowe's
23 operations?

24 A. Actually since -- when he stopped operating them,
25 the pits were still being used at that time, that's my

1 understanding. And they were not causing surface damage,
2 they were disposal pits. It's when they were closed, that
3 they were not closed properly, and they are causing the
4 surface damage.

5 Q. Okay, if the testimony turns out that the pits
6 were closed while Mr. Lowe was operating this site --

7 A. Uh-huh.

8 Q. -- would Mr. Lowe be in violation of 313?

9 A. He would have been, yes.

10 Q. But that wouldn't keep Maralo from also being in
11 violation of 313 because of the current contamination?

12 A. That's correct.

13 Q. Now, this letter finishes by requesting a work
14 plan?

15 A. That's correct.

16 Q. Let's turn to the next exhibit, Number 26. Is
17 this a letter from Maralo, dated May 5th, 2003?

18 A. Yes, it is.

19 Q. And how did they respond to your request for a
20 work plan for surface cleanup?

21 A. They still -- Well, let's see. They're still
22 saying that Rule 19 is not applicable, even though we
23 didn't -- we already rescinded the Rule 19 requirement, and
24 that's basically all they say. They just don't -- they say
25 Rule 19 is not applicable.

1 Q. And it's still citing Humble State Number 3 tank
2 battery site as the relevant location?

3 A. That's correct.

4 Q. And there's no mention in this letter or any of
5 the other letters we've seen so far from Maralo that says
6 don't talk to us, talk to somebody else, the other operator
7 of the site?

8 A. No, there is nothing.

9 Q. There has been no claim in these letters that we
10 are talking to the wrong entity?

11 A. None.

12 Q. Have they ever mentioned Rasmussen?

13 A. None -- no.

14 Q. Southwest Royalties?

15 A. No.

16 Q. Turn to Exhibit Number 27. Is this a letter from
17 an OCD attorney to a Maralo attorney dated July 9th, 2003?

18 A. Yes, it is, it's a letter from David Brooks, the
19 Commission attorney.

20 Q. And does he explain that we are not pursuing Rule
21 19 at this time, but that we are asking for remediation
22 under Rule 313?

23 A. That's correct.

24 MS. MacQUESTEN: Now, this letter states that
25 Rule 313 was originally adopted in 1950. I would ask the

1 Commission to take administrative notice that although the
2 rule number was adopted in 1950, the language in 313 has
3 been in place since 1935.

4 If you would, I would ask you to take
5 administrative notice of Exhibit Number 30, which shows the
6 rule taking effect as Number 313 in 1950, and Exhibit 31
7 shows the language that was in place in 1935, which is
8 virtually identical.

9 CHAIRMAN FESMIRE: The Commission is always able
10 to take administrative notice of its own rules.

11 MS. MacQUESTEN: Thank you.

12 CHAIRMAN FESMIRE: We'll do that.

13 Q. (By Ms. MacQuesten) I'd like to skip one letter
14 because I put them in the packet out of order, so I'd like
15 to go to Exhibit Number 29, and is this a letter from a
16 Maralo attorney back to the OCD attorney?

17 A. Yes, it is.

18 Q. And it's dated July 16th, 2003?

19 A. That's correct.

20 Q. And he is contesting whether the rule language
21 was the same in 1950 as it is today?

22 A. That's correct.

23 Q. And he also is still refusing to submit a work
24 plan?

25 A. That's correct.

1 Q. Now, the next step after that exchange of letters
2 was the hearing before the Division Examiner; is that
3 right?

4 A. That's correct.

5 Q. When we went to hearing, what was the authority
6 cited for requesting the cleanup?

7 A. Rule 313 and Rule 310.

8 Q. All right, we've already talked about 313. What
9 does 310 provide?

10 A. 310 is the -- and I don't have a rule book with
11 me, but it's the -- basically, it says that oil shall not
12 be stored or retained in earthen reservoirs.

13 Q. How does that apply to this situation, in your
14 opinion?

15 A. Well, with the breakout of oil in the pit, to us
16 that's being retained in that pit. Now, you know, if they
17 continually skim it and remove it, we would probably admit
18 that it's not being retained there. But you know, even
19 weekly skimming could be considered retaining oil in an
20 earthen reservoir.

21 MS. MacQUESTEN: I would draw the Commission's
22 attention again to Exhibits 30 and 31. Just like Rule 313,
23 this rule has been in effect since 1950 under its current
24 numbering, but the language has been in place since 1935.

25 CHAIRMAN FESMIRE: We'll take administrative

1 notice.

2 Q. (By Ms. MacQuesten) Mr. Anderson, how do you get
3 from these alleged rule violations to requesting cleanup of
4 the site?

5 A. The contamination still remains, and it is still
6 contaminating and causing the surface to not be used for
7 its intended use and is available for migration to
8 groundwater and can cause groundwater to exceed standards.

9 The continuing -- if it's not cleaned up, the
10 rules will be continued to be violated. So the requirement
11 to clean it up -- once it's cleaned up, the violation of
12 the rule ends.

13 Q. So it is your position that Maralo is violating
14 these rules and will continue to violate these rules until
15 the site is cleaned up and the contamination is removed?

16 A. That's correct.

17 Q. At the hearing before the Division Examiner, was
18 there any argument that Maralo was not the current
19 operator?

20 A. Not that I could see.

21 Q. Did they ever mention Rasmussen?

22 A. Not at the hearing.

23 Q. Or Southwest Royalties?

24 A. I don't believe they did at the hearing.

25 MS. MACQUESTEN: I would ask the Commission to

1 take administrative notice of the transcript of the hearing
2 and also to consider Maralo's motion for stay, which was
3 filed with the Commission on June 29th, 2004, after the
4 hearing. That is the first mention that I can find of any
5 claim that Rasmussen was involved in this case at all.

6 CHAIRMAN FESMIRE: The Commission will take
7 administrative notice of documents filed.

8 Q. (By Ms. MacQuesten) In that motion for stay, it
9 says that Rasmussen became the Division-designated operator
10 of the site. Mr. Anderson, do you see anything in our
11 records that Rasmussen is the Division-designated operator?

12 A. No, I don't know what that term means, and
13 there's nothing in the file that indicates that.

14 Q. And for the past four to five years, you've been
15 dealing exclusively with Maralo, LLC?

16 A. That's correct.

17 Q. And Maralo, LLC, never told us that they felt
18 they were not the appropriate operator?

19 A. That's correct.

20 Q. Did Maralo ever submit a plan for cleaning up the
21 site?

22 A. They submitted a plan after the hearing in about
23 July, 2004.

24 Q. Okay, is that Exhibit Number 28?

25 A. Yes, it is.

1 Q. What -- just if you could summarize what their
2 proposal was?

3 A. Basically to remediate the top couple -- top two
4 feet of visually impacted, TPH-impacted soil. They stated
5 that no further delineation is warranted or needed, and in
6 this proposal they say it's consistent with Mr. Olson's
7 request at the hearing, which --

8 Q. Is it consistent with what Mr. Olson asked for at
9 the hearing?

10 A. No, I don't believe it is.

11 Q. How is it different?

12 A. I believe Mr. Olson wanted the top three feet
13 removed, not remediated, and some kind of a cap, and then
14 topsoil put on top of it.

15 Now, Mr. Olson did agree at the hearing to the
16 5000 TPH level.

17 Q. Did Mr. Olson ask for any further delineation of
18 the contamination at the site?

19 A. Yes, he wanted full delineation.

20 Q. Have we approved or disapproved of the plan
21 submitted by Maralo on July 9th, 2004?

22 A. We have done neither.

23 Q. Why not?

24 A. We were waiting for the hearing, because the plan
25 said that they would not -- that Maralo would not conduct

1 this unless they lost the hearing, basically.

2 Q. Would you have approved this plan?

3 A. I would not.

4 MR. STRANGE: Object, I mean, we're not to the
5 propriety of any particular plan, so I fail to see the
6 relevance. We're still on liability. Whether he would
7 have approved this plan or not is immaterial, because we're
8 not here today to decide on a particular remediation.
9 We're here at the threshold to decide liability, and so
10 we've got the cart before the horse. And I would
11 respectfully object and say this is immaterial or
12 irrelevant at this point in time.

13 CHAIRMAN FESMIRE: I think I'll overrule that
14 objection. Go ahead, Ms. MacQuesten.

15 Q. (By Ms. MacQuesten) Well, let me ask it in a
16 slightly different way. What would you want to see in a
17 plan in order to approve it?

18 A. First of all, I'd want complete delineation of
19 the contamination, both vertical and horizontal extent of
20 the contamination.

21 I would want to see a demonstration that what the
22 operator proposes to leave behind -- and if it's 5000,
23 that's -- so be it -- what they propose to leave behind
24 will not migrate and cause groundwater to exceed standards,
25 and that can be done in a number of different ways.

1 And then I would like to see the top three feet
2 of soil as some -- either remediated clean soil or -- but
3 clean soil that can support vegetation.

4 Q. Now, Mr. Olson had talked about putting some sort
5 of cap or liner on the site. What is your position on
6 that?

7 A. If the remaining contaminants will not migrate,
8 and if it's demonstrated the remaining contaminants will
9 not migrate and cause groundwater to exceed standards, then
10 I don't really see a need for a cap. If it can't be
11 demonstrated, then there may be a need for a cap.

12 MS. MacQUESTEN: I would move for admission of
13 Exhibits 20 through 31.

14 CHAIRMAN FESMIRE: Any objection, Mr. Robins?

15 MR. ROBINS: No objection.

16 CHAIRMAN FESMIRE: Mr. Strange?

17 MR. STRANGE: No, sir.

18 CHAIRMAN FESMIRE: From the Commission?

19 COMMISSIONER BAILEY: No.

20 COMMISSIONER CHAVEZ: Did I miss something about
21 Number 28?

22 CHAIRMAN FESMIRE: She took it out of order.

23 COMMISSIONER CHAVEZ: I'm sorry?

24 CHAIRMAN FESMIRE: She took it out of order.

25 COMMISSIONER CHAVEZ: Oh, okay. Okay.

1 MS. MacQUESTEN: I was looking at the months
2 rather than the years, and I put it out of chronological
3 order.

4 COMMISSIONER CHAVEZ: Okay, thanks.

5 CHAIRMAN FESMIRE: What was the first -- 20?

6 MS. MacQUESTEN: Twenty.

7 CHAIRMAN FESMIRE: Exhibits 20 through 31 are
8 admitted.

9 MS. MacQUESTEN: Pass the witness.

10 CHAIRMAN FESMIRE: Mr. Robins?

11 DIRECT EXAMINATION

12 BY MR. ROBINS:

13 Q. Do you know what the root zone is on this
14 particular ranch?

15 A. No, I don't, but --

16 Q. Wouldn't you need to know the root zones before
17 you could decide whether three feet would be adequate?

18 A. Generally, we have made it kind of a rule of
19 thumb that we go three feet. If there's indication that
20 the root zone in that area would be deeper, based on the
21 plants that are down there, then, you know, we would
22 consider that for going deeper.

23 Q. That would be a factor you'd have to take into
24 consideration --

25 A. Yes.

1 Q. -- given the --

2 A. Yes.

3 Q. -- the type of material that's at the surface?

4 A. That's correct.

5 Q. You agree with Mr. Price that before you can
6 really talk seriously about what an adequate -- you've got
7 to have complete delineation?

8 A. That's correct, right.

9 Q. And certainly there have been a number of
10 situations very much like this one where the Commission, or
11 rather the OCD, has required an operator to put in a clay
12 cap, correct?

13 A. That's correct.

14 Q. In fact, are you familiar -- do you recall the
15 Lockhart A 27 site?

16 A. Yes, I do.

17 Q. That's a site that was over on a ranch not too
18 far from here, correct?

19 A. Correct.

20 Q. And a site that was a historic pit, correct?

21 A. That's correct.

22 Q. A site which had contamination that looked a
23 whole lot like this, right? Went down to about 25, 30
24 feet?

25 A. Yes, it did.

1 Q. And on that particular site the Commission -- or,
2 I'm sorry, I keep saying the Commission, the OCD required a
3 cap, correct?

4 A. Yes, yes, we did.

5 Q. And are you aware of the fact that even after the
6 OCD required a cap, it turned out that there was
7 contamination that went much deeper because it had not been
8 fully delineated? Do you recall that?

9 A. I don't recall that, but that's highly possible.

10 Q. Okay. And that's why -- I mean, if that's the
11 case, if, in fact, you don't require an operator to do a
12 full delineation and you let him put a cap in, and then it
13 turns out later that there actually turned out to be
14 delineation real deep, that could be a potential problem.
15 That's why a full delineation is real important, right?

16 A. That's correct, and I agree that a full
17 delineation needs to be undertaken.

18 Q. Now, in that particular case ConocoPhillips was
19 involved; do you remember that?

20 A. Right.

21 Q. Do you apply a different standard to a major than
22 you would to a Maralo?

23 A. No, we would not.

24 Q. Okay, so if it's a very similar situation, you
25 would generally apply a very similar remedy, correct?

1 A. We probably would, yes.

2 Q. Okay. Now, we haven't crossed that bridge yet
3 because we don't have full delineation?

4 A. That's correct.

5 Q. Now, this has been touched on, and I don't mean
6 to be repetitive, but I do -- for the record I want to
7 establish a point that I think is very important. Maralo
8 has a continuing duty to remediate this site under the
9 regulations, doesn't it?

10 A. That's my opinion, yes.

11 Q. And every day that there is not remediation,
12 there is either the potential or there may very well be the
13 actual occurrence of additional damage to this ranch,
14 correct?

15 A. That's correct.

16 Q. And it's contingent upon things such as --
17 irregular forces such as rain, correct?

18 A. That's correct.

19 Q. For instance, if it rains on a particular day,
20 that can drive the contamination down and cause new and
21 different damage at this site, correct?

22 A. That's possible, yes.

23 Q. And that's why it's so darned important that it
24 get addressed, correct?

25 A. It is important to get addressed, yes.

1 Q. You were in here when I asked questions of the --
2 and I apologize, it's late in the date and I forget the
3 prior witness's name, but she was a bond --

4 A. Ms. Phillips.

5 Q. Yes, okay. I had asked her a question about
6 financial responsibility --

7 A. Yes.

8 Q. -- and the bonding issues. As far as you know,
9 is there any other available bond that the OCD can look to
10 if -- for the cleanup here, if Maralo doesn't do the
11 cleanup?

12 A. No, not at this site.

13 Q. Okay.

14 A. The only other bonds that the Division has are
15 bonds on commercial and centralized disposal facilities.

16 Q. So if this Commission decides not to hold Maralo
17 accountable for this site -- We don't have a prior
18 operator, correct?

19 A. Correct.

20 Q. Because he's dead, right?

21 A. Correct.

22 Q. We don't have any record -- Although they've
23 apparently produced some sort of assignment of Hal J.
24 Rasmussen, we don't have any record within your file that
25 Hal J. Rasmussen ever was an operator of this site?

1 A. That's correct.

2 Q. And in fact, the way that would typically happen
3 is, the form would be filed -- is it a C-102 that is
4 typically --

5 A. C-104.

6 Q. I never can get those straight. -- C-104 where
7 there -- and what -- that allows the new operator to sell
8 oil and gas, correct?

9 A. That's correct.

10 Q. And without that changeover, they may be able to
11 get out there to operate, but they can't make any money
12 because they can't sell oil and gas, right?

13 A. That's correct.

14 Q. And that form has never been filed by Rasmussen
15 taking over operation from Maralo, as far as you know,
16 correct?

17 A. We have no record of it being filed, no.

18 Q. So from the standpoint of the public policy issue
19 here, if the Commission chooses not to hold Maralo liable,
20 we will be left with a site on our ranch that is a threat
21 to groundwater, correct?

22 A. That could potentially be a threat to
23 groundwater, yes.

24 Q. That we can't grow anything on?

25 A. That's -- from the pictures, that's -- yes, I

1 would say so.

2 Q. And who with the State would we call to get it
3 cleaned up? There was a discussion that if Maralo wasn't
4 financially able to handle it or whatever -- what I'm
5 wondering is, who's the landowner -- who's Mr. Anthony
6 supposed to call with the State to ask for the cleanup to
7 take place?

8 A. Well, first of all, I don't make public policy.
9 The Governor does that.

10 Q. So stipulated.

11 A. Thank you.

12 CHAIRMAN FESMIRE: You betcha.

13 (Laughter)

14 THE WITNESS: And if there is an abandoned site,
15 if it is determined that it's an abandoned site, with no
16 viable responsible party, the Oil Conservation Division,
17 through its reclamation fund, would put it on their
18 priority list and clean it up when they have the funds
19 available to do it.

20 Q. (By Mr. Robins) How many of those sites are you
21 all working on right now?

22 A. Well, we have 10 -- we have top 10 priority
23 sites, and then I believe we have 24 below it that, as we
24 finish one of the top 10, we move it up.

25 Q. Are you currently working on 10 sites, 10 cleanup

1 sites?

2 A. Actually, we're working on about eight right now.

3 Q. About eight, and that's the funding that you have
4 available?

5 A. That's correct.

6 Q. And so we would have to basically stand in line
7 and hope we're not in a worse situation than the other
8 folks that are already there?

9 A. We prioritize them based on threat to public
10 health.

11 Q. How long would your list grow if everybody took
12 the position that Maralo does?

13 A. I couldn't say. I have no idea. It would grow.

14 Q. I mean, you're pretty familiar with Lea County,
15 right?

16 A. Yes.

17 Q. You've been handling a lot of those cases down
18 there over the years, correct?

19 A. Yes.

20 Q. There's a ton of these old historic pits in Lea
21 County, correct?

22 A. That's correct.

23 Q. There's a ton of operators who are addressing
24 them, right?

25 A. That's correct.

1 Q. In fact, there's programs all over the county
2 where operators have stepped up to the plate and are
3 addressing these problems, correct?

4 A. That's correct.

5 Q. If that stopped because the Commission decided
6 that there shouldn't be responsibility, it would be a
7 pretty bad situation, wouldn't it?

8 A. We'd have a bunch of sites.

9 Q. That's why this is a real serious issue that's in
10 front of this Commission today, correct?

11 A. Yes.

12 MR. ROBINS: Pass the witness.

13 CHAIRMAN FESMIRE: Mr. Strange?

14 CROSS-EXAMINATION

15 BY MR. STRANGE:

16 Q. Give the witness these exhibits, this is our
17 exhibit notebook. I've turned to tab number 6, Exhibit 6.
18 We've got some others we can look at if we need to identify
19 the location of this, but you indicated that the Commission
20 has never heard of Rasmussen, at least out in this area.

21 A. No, I indicated that Rasmussen was not in this
22 file, in

23 Q. Well, but I want --

24 A. -- the Humble State Number 3.

25 Q. -- to clarify this thing, and then we'll get to

1 that point. Do you know where -- this particular saltwater
2 disposal well, the well file number 6, do you know where
3 that is in relationship to the tank battery?

4 A. Yes, I do.

5 Q. Pretty close, isn't it?

6 A. It's one of the four -- the southwest of the four
7 wells --

8 Q. Okay, and --

9 A. -- that we've been looking at.

10 Q. -- let's go one, two, three, four -- four pages
11 into this particular file. Do you see a Request for
12 Allowable and Authorization to Transport?

13 A. One, two, three -- No, I see a blank page.

14 Q. Sorry. Well, one, two, three -- go -- four,
15 five, six. Go one or two pages before or after, but do you
16 see a Request for Allowable and Authorization to Transport?

17 A. Six, dated -- effective 4-1-94?

18 Q. And who was this submitted by?

19 A. This was by Hal J. Rasmussen for the Humble State
20 Saltwater Disposal Well Number 1.

21 Q. Now, I'm going to back up a little bit --

22 A. Uh-huh.

23 Q. -- and let's see, I've never worked for the OCD,
24 but I'm assuming the way that you'll work your files, I've
25 got a lease, and it's the State A Number 1 lease, and

1 during the course of time I drill wells and I plug wells,
2 and I plug a well on that lease, and you would have a file
3 for that particular well --

4 A. That's correct.

5 Q. -- assuming I filed my reporting, correct?

6 A. That's correct.

7 Q. But once I've plugged the well and I submit all
8 the paperwork for plugging, ordinarily you're going to
9 close that particular well file?

10 A. That's correct.

11 Q. Now, I've drilled and I've -- some are good, some
12 are bad, I've plugged some, and I sell that lease to Bravo
13 Oil Company. With me so far? You wouldn't go back into
14 any of the files that you had closed to make a notation on
15 any of the old wells that I had plugged, that I had
16 assigned that lease to Bravo, would you?

17 A. No, we could go back to -- if it's a State lease,
18 back to the State Land Office.

19 Q. Perhaps I'm not being clear in my question. What
20 I'm talking about is this lease that I've had, and I've
21 drilled a couple wells that were dogs, and I've plugged
22 them and abandoned them and I've filed all the paperwork,
23 okay?

24 A. Okay.

25 Q. And years after I've plugged and abandoned it, I

1 sign the lease, Bravo Oil Company.

2 A. Okay.

3 Q. I'm assuming -- I want you to tell me if my
4 assumption is correct or not -- that you would ordinarily
5 go back into those files on those wells that I've plugged
6 to make a notation that I had assigned that lease to Bravo
7 Oil Company.

8 A. No, we wouldn't.

9 Q. So the mere fact that wells that were plugged
10 before the assignment, the mere fact that those files have
11 no reference to Bravo Oil Company doesn't mean that at some
12 point in time I didn't assign my rights to Bravo Oil
13 Company?

14 A. No.

15 Q. You would look at the files of wells in that
16 lease that are still active --

17 A. That's correct.

18 Q. -- and if Bravo Oil Company is doing something,
19 you'd look in those active well files?

20 A. Uh-huh, uh-huh.

21 Q. In this instance, at least, in 1994 it looks like
22 Al Rasmussen was filing documentation with the OCD on a
23 well that was located on this particular lease, correct?

24 A. He filed one document, yes.

25 Q. And that was approved by the OCD?

1 A. That's correct.

2 Q. We also, if we go down at the bottom of that
3 page, it looks like Dorothea Owens, who's a regulatory
4 analyst for --

5 A. -- for Maralo.

6 Q. -- Maralo, okay. Her name, there's a note to
7 her. But if we keep working our way back up to the top, in
8 my set it's page 2, Request for Allowable and Authorization
9 to Transport. Do you see one dated -- Looks like that's
10 just a copy.

11 Let me go to the very first page of Exhibit 6. I
12 think this is a different document. Do you see a form C-
13 -- I think that's C-103, the very first page of Exhibit 6?

14 A. Yes.

15 Q. What do you call this particular form, other than
16 a C-103?

17 A. It's a Sundry Notice and Reports on Wells.

18 Q. Who was this filed by?

19 A. Southwest Royalties.

20 Q. And the date of that is -- ? Looks like
21 September 23rd?

22 A. September 23rd --

23 Q. And is that --

24 A. -- 2003.

25 Q. Is that approved by your agency?

1 A. Yes.

2 Q. September 25, 2003?

3 A. That's correct.

4 Q. And so we've got at least two documents on a well
5 on this particular lease where you have -- one you have
6 Rasmussen and one you had Southwest Royalties, correct?

7 A. Okay, yeah.

8 Q. So there is some record, at least for wells on
9 this lease, there is some record in you all's -- notation
10 in you all's records of Rasmussen and Southwest Royalties;
11 is that fair?

12 A. That's been brought to my attention now --

13 Q. Okay.

14 A. -- and not during the last five years.

15 Q. Right, but today --

16 A. Okay.

17 Q. -- can you and I agree that if you had looked at
18 other well files for wells on this particular lease, you
19 would have seen Rasmussen's name and Southwest Royalties'
20 name?

21 A. Well, we probably wouldn't have looked at the
22 Humble State Number 1 if it came in conjunction with those
23 four billings for their 1994 work, because that indicated
24 -- that billing indicated that this saltwater disposal well
25 had its own tank battery and did not use that common tank

1 battery.

2 Q. Sir, that really wasn't my question. My question
3 was, there are files in your office -- not your personal
4 office, but your agency's office -- for wells on this lease
5 that do, in fact, have Rasmussen's name and Southwest
6 Royalties' name?

7 A. That's been brought to my attention now, yes.

8 Q. And your office approved two different forms that
9 were submitted, one by Rasmussen and one by Southwest
10 Royalties, on this lease?

11 A. The Division approved, yes.

12 Q. Yes. Now, is it your position that if we go back
13 to any old surface disposal pit and we find TPH and,
14 depending on what level we want to use, we find TPH in
15 excess of that level, that there's a violation of Rule 313?

16 A. If it is causing surface damage or if it is --
17 you know, it can migrate and cause groundwater to exceed
18 standards.

19 Q. Well, if it's over 100 parts per million, is that
20 causing surface damage?

21 A. Not necessarily, no. If it's over 100 parts per
22 million, I wouldn't make the assumption that it could ever
23 cause surface damage.

24 Q. Okay, if the TPH is reduced so that you have
25 vegetation growing --

1 A. Uh-huh, then it's not --

2 Q. -- isn't it in compliance?

3 A. That's correct, as long as it's not available and
4 cannot migrate and cause groundwater to exceed standards.

5 Q. Can you and I agree that there have been oil
6 wells in the immediate vicinity, in operation since the
7 1920s?

8 A. That's correct.

9 Q. And that surface disposal pits were used up until
10 the 1960s?

11 A. That's correct.

12 Q. And that you've had opportunity to do any kind of
13 water sampling or water analysis that you wanted to do?

14 A. Okay.

15 Q. Can we agree that there's no BTEX, there's no
16 hydrocarbons in the water from that particular water well?

17 A. There is no BTEX or hydrocarbons in the testing
18 that we did at that water well, that's correct.

19 Q. To your knowledge, has that water well ever been
20 used for human consumption?

21 A. No, it has not, as far as I know.

22 Q. Okay, I know we keep using the word "elevated",
23 but do you have any evidence that water from that water
24 well had ever, at any point in time, met --

25 A. I have not ever used the word "elevated". I

1 would use the term "exceeded standards".

2 Q. Okay. Well, do you have any evidence that the
3 water from that particular water well ever would satisfy
4 safe drinking water standards that are in effect today?

5 A. It does satisfy safe drinking water standards,
6 it's just above standards. Safe drinking water standards
7 and the chloride standards are not necessarily the same.

8 Q. Okay, so this water does meet safe drinking water
9 standards?

10 A. It meets EPA safe drinking water standards, sure.

11 Q. Okay.

12 A. But it still exceeds the State standards for
13 chloride.

14 Q. We've talked a little bit -- or you talked
15 earlier or Mr. Robins asked you earlier about irregular
16 forces can have impact on migration?

17 A. Correct.

18 Q. Can we agree that over the last 80 years we've
19 seen a lot of different forces, wet years, dry years, all
20 kinds of weather?

21 A. Yes.

22 Q. And that for one reason or another, no
23 hydrocarbons have gone down 200 feet to get in this
24 particular water well?

25 A. That's -- as far as we know, they have not, no.

1 Q. And if we were trying to quantify the threat,
2 based on what we know right now, this isn't a water well
3 that anybody's using for drinking water, or this isn't a
4 water well that's ever been used, so far as we know, for
5 irrigation purposes or cattle or anything like that. This
6 isn't a real high threat?

7 A. Okay, first of all, whether it's being used for
8 drinking water or not is not relevant to me.

9 Q. Okay.

10 A. If it has a TDS of less than 10,000 parts per
11 million, of total dissolved solids, it is protectible by
12 State statutes.

13 Q. Sure.

14 A. We will protect, whether cattle can drink it or
15 not. If it's under 10,000 TDS, it is protectible water.

16 Q. And what's the TDS --

17 A. Total dissolved solids.

18 Q. No, I know what it means, but what was the TDS
19 out there the last time you checked it?

20 A. I don't recall what the TDS is. If chlorides are
21 at 400, I would guess the TDS to be around 1300, 1400.

22 Q. But if we were trying to establish, quantify
23 various risks, wouldn't you take into account, what is this
24 water being used for?

25 You talked about public health. Let me phrase it

1 -- Let me ask my question in a better light. You talked
2 about public health. This isn't a water well that's
3 providing drinking water, as far as you know, for anybody
4 in the immediate area?

5 A. No.

6 Q. We know that -- Well, I'm sorry. We know you're
7 relying on for this water in the abatement, remediation is
8 Rule 19?

9 A. If there was abatement -- if there was
10 contamination due from this site that we could link to this
11 site, we would be relying on Rule 19 to abate that water
12 contamination.

13 Q. But you're the individual with the Division who
14 wrote and rescinded that requirement?

15 A. That's correct.

16 Q. So this is really a surface contamination case
17 and not a water case?

18 A. It is primarily a surface contamination case.
19 And that's not to say that it would not develop into a
20 groundwater case again if in the future we find water
21 contamination that we link to this site.

22 Q. Okay, but right now, based on the record -- The
23 decision we need to make is based on the record. Right
24 now, based on the record, there is no groundwater
25 contamination?

1 A. No --

2 MR. ROBINS: Object to the form of the question.

3 THE WITNESS: -- I'm not saying that.

4 MR. STRANGE: Are you saying --

5 CHAIRMAN FESMIRE: We've got an objection.

6 MR. ROBINS: Yeah, I'm going to object, because
7 that misstates his prior testimony and the prior record,
8 that he's saying as a fact we don't have groundwater
9 contamination. The only thing that's been established so
10 far is, there hasn't been a link, and that's a big
11 distinction there.

12 CHAIRMAN FESMIRE: Okay.

13 MR. STRANGE: I'll rephrase the question.

14 CHAIRMAN FESMIRE: I appreciate it.

15 Q. (By Mr. Strange) Based on the record right now,
16 there's no link between anything Maralo has done and the
17 current condition with groundwater from that particular
18 water well?

19 A. That's correct.

20 Q. And you understand that whatever decisions we
21 make need to be based on the record?

22 A. They need -- I'm not sure what decisions. What
23 decisions?

24 Q. What we're talking about today. Do you know if
25 the decisions that are being made need to be based on the

1 evidence in the record?

2 A. You mean the decisions by the Commission --

3 Q. Yes.

4 A. -- or decision I do in approving --

5 Q. By the Commission, sir.

6 A. Oh, certainly by them, certainly on the record.

7 Q. All right. And right now the record is
8 developed, there's no link between Maralo and the current
9 condition of that water?

10 A. That's correct.

11 Q. And you're not telling the Commission that you
12 have any indication that Maralo ever physically used any of
13 those old surface disposal pits?

14 A. I'm not saying who used those surface pits.

15 Q. Now, Rule 313 refers to emulsion, basic sediments
16 and tank bottoms?

17 A. That's correct.

18 Q. Are you telling us -- did I -- my notes -- I had
19 to take one contact out, and between that and glasses, it's
20 kind of hard to read.

21 A. That's okay --

22 Q. Are you saying basic sediments and tank bottoms
23 as used by Rule 313 -- are they synonymous or fairly close
24 to being synonymous?

25 A. They're fairly close.

1 Q. Okay. Do you have any evidence that Maralo ever
2 put any emulsions, BS&W, tank bottom materials in any of
3 those surface disposal pits?

4 A. I don't have any evidence either way, whether
5 they did or didn't.

6 Q. Do you have any evidence that Maralo ever
7 physically removed the BS&W from the bottom of those tank
8 barrels at any point in time and dumped them out on the
9 ground?

10 A. I have no evidence either way.

11 Q. Now the evidence that you're pointing to, to
12 support Rule 313, is the presence of TPH in the soil?

13 A. That's correct.

14 Q. Can we agree that if oil, just standard oil,
15 comes in contact with the soil, it will leave TPH?

16 A. Over an extended period of time, yes.

17 Q. And obviously Rule 313 says what it says, but it
18 does limit itself to emulsion, basic sediments and tank
19 bottoms, correct?

20 A. That's correct. I'm going by the previous
21 testimony that was testified by Maralo's employee that they
22 put emulsions in there.

23 Q. Well, did they not say that the put produced
24 water out in the pits?

25 A. I believe it was termed emulsions too.

1 Q. Did Mr. Hunt use the word emulsions?

2 A. I'd have to go back and read.

3 Q. You'd agree the record will say what it says?

4 A. I'm getting old and I'm -- Yeah, if it's in the
5 record, it said it.

6 Q. Okay, and the only witness that Maralo called
7 last time was Mr. Hunt, correct?

8 A. I wasn't here for the Commission -- for the
9 hearing, but I read the transcript. And if producing
10 produced water, I guarantee you, you know, from experience
11 in the oilfield -- and that includes 11 years with Dow Well
12 servicing oil wells -- you put produced water in a pit,
13 you're going to have some oil in it, some emulsion.

14 Q. And I think you told us there was nothing illegal
15 about using surface disposal pits in the 1960s?

16 A. That's correct, nothing at all.

17 Q. Do you know if, when the Commission issued the
18 no-pit order, if it required operators, formally or
19 informally, required operators to go back in and fill in
20 those old surface disposal pits?

21 A. I have no idea how they ordered that.

22 Q. Do you know if there were any published rules on
23 cleanup or remediation of these old surface disposal pits?

24 A. The R-3221 -- and I don't have a copy of it here
25 and don't recall if it had any specifics in the cleanup or

1 not.

2 Q. And what rule was that again, sir?

3 A. R-3221-A through -D, I think inclusive.

4 Q. Okay. If it existed, is that your -- as you sit
5 here today, would that be where I'd look to see what it
6 said back in the 1960s?

7 A. That would be the basic order that prohibited
8 disposal of produced water in unlined pits in southeast New
9 Mexico, and the -A, -B, -C and -D were amendments to that
10 order, making -- exempting certain areas and things like
11 that. Now -- whether that would be the blanket Division
12 requirement for what they had to do to register pits, go to
13 hearing, that kind of thing.

14 Now for the closure of each individual one, it
15 may have been up to the individual District Supervisors.

16 Q. Are you aware of any published rules that were
17 ever issued that would have covered this particular site,
18 that specifically gave directions to people like Ralph Lowe
19 when they told them, you can't use those pits for surface
20 disposal anymore, here's what you've got to do with them?

21 A. Published rules, no, I'm not aware of any.

22 Q. According to my notes, you said that you can't
23 always tell when a leak or a spill occurred, correct?

24 A. We can't always tell when contamination occurred.

25 Q. Right.

1 A. We can't tell the exact date for a leak and
2 spill, that's correct.

3 Q. If you look at a site that is contaminated --

4 A. Uh-huh.

5 Q. -- and you can tell, okay, this party used that
6 particular site, subsequent party didn't use that site,
7 wouldn't that help you pinpoint that whatever leak or spill
8 or event occurred, it occurred while the party that was
9 using the site was in possession of the site?

10 A. I would say -- I'm not sure what your question
11 was.

12 Q. Let me try it again. If we go out and we've got
13 -- on a particular lease, and we've got an old, abandoned
14 surface disposal pit, and it has the presence of TPH --
15 okay? --

16 A. Okay.

17 Q. -- and we know that several different companies
18 have operated this particular lease, but only one company
19 used its surface disposal pit, wouldn't that be a tool or a
20 method to allow you to say, maybe I can't tell you the day
21 or the month, but I can tell you it would have occurred
22 while this company was operating the lease, because they're
23 the only ones that used the surface disposal pit?

24 A. I wouldn't necessarily say that. I would say for
25 this lease, the 19- -- I believe the last topo map or the

1 last aerial photo was 1977. I'd say whoever operated the
2 lease after that did not dispose of anything in those pits.

3 MR. STRANGE: Thank you.

4 THE WITNESS: Now, before that, I couldn't say
5 who did it.

6 MR. STRANGE: All right. No further questions.

7 CHAIRMAN FESMIRE: Commissioner Bailey?

8 EXAMINATION

9 BY COMMISSIONER BAILEY:

10 Q. Just to clarify, spills or leaks may not only
11 have come from -- or contamination may not have only come
12 from the pits, it could have also come from the tank
13 battery itself?

14 A. Spills, leaks, overflows, intentional draining of
15 the tank battery onto location, yeah --

16 COMMISSIONER BAILEY: Thank you.

17 THE WITNESS: -- which was common practice back
18 in those days.

19 COMMISSIONER BAILEY: Just wanted that
20 clarification. That's all.

21 CHAIRMAN FESMIRE: Commissioner Chavez?

22 EXAMINATION

23 BY COMMISSIONER CHAVEZ:

24 Q. Yes, I want to be clear here because of what Mr.
25 Strange was asking you to look at in his Tab Number 6 that

1 the OCD -- you're associating your Application for this
2 site to Well Number 3; is that correct?

3 A. That's correct.

4 Q. Okay, not to Well Number 1?

5 A. That's correct.

6 Q. Okay, because Well Number 3 was -- Tell me why
7 you're making specifically that association.

8 A. Well Number 3 was the site that Donna Williams
9 went out to look at from the complaint, to begin with. And
10 from the very beginning we associated this tank battery
11 with Well Number 3. And throughout most of our
12 correspondence with Maralo, it was never disputed that this
13 is the Well Number 3 tank battery, the Humble State Number
14 3 tank battery. And you know, if it was used by -- if it
15 was a common tank battery for all four wells, you know, we
16 didn't know that until the hearing, the Examiner Hearing.

17 Q. There's no other record that associates this tank
18 battery with any other well, no other record you've read or
19 anything with OCD --

20 A. No.

21 Q. Okay.

22 A. And the well file for the Humble State Number 3
23 placed the tank battery on lease.

24 Q. Okay. When we're talking about this facility,
25 the discussions lots of times have been centered on just

1 the pits, but your Application isn't just for the pit, is
2 it?

3 A. No, it --

4 Q. It's for the entire facility, including the tank
5 battery sites?

6 A. That's correct, that's correct. The tank battery
7 site is where the heavy asphaltine hydrocarbons are spread
8 all over the ground, yes.

9 Q. So actually what you've seen is that the surface
10 contamination is much stronger on the tank battery site
11 rather than on the pits?

12 A. It's much stronger on the surface of the tank
13 battery sites. It goes deeper at the pit area.

14 Q. So it's all one area that we're looking at in
15 referring Mr. Price's Exhibit Number 3, when he's looking
16 at the -- he has slide number 11 --

17 A. Okay, let me --

18 Q. Well --

19 A. Oh, okay, yes.

20 Q. Okay, if you recall slide number 11, actually the
21 majority of the area of visual contamination there is on
22 the tank battery site --

23 A. -- tank battery site and not on the pits, that's
24 correct. The pits have a covering of sand, which was
25 probably the way that they were closed. They were covered

1 with about a foot of sand in there before they came to the
2 contamination.

3 Q. Okay, and an issue has come up about what is
4 sediment oil, and you had a definition of sediment oil, but
5 -- that you read from the book, but the OCD also defines
6 sediment oil under Rule 311, doesn't it?

7 A. I believe you're right, yeah. It's defined as
8 tank bottoms and any other accumulations of liquid
9 hydrocarbons on an oil and gas lease, which hydrocarbons
10 are not merchantable through normal channels.

11 Q. So a tank overflow where the oil gets on the
12 ground and can't be separated and therefore is not
13 merchantable, that would create sediment --

14 A. -- sediment oil, yes, but not necessarily -- if
15 you're equating tank bottoms and sediment oil, I would say
16 tank bottoms is a subcategory of sediment oil. Sediment
17 oil is a larger universe than tank bottoms.

18 Q. Okay, but according to that -- to the definition
19 there, if we look at the activities in the operation of a
20 well site, tank battery and pits, when oil accumulations
21 are mixed with bottoms or spilled or otherwise then the oil
22 can't be sold, it's a sediment oil, right --

23 A. That's correct.

24 Q. -- under Rule 313?

25 A. That's correct.

1 COMMISSIONER CHAVEZ: Okay, that's all I have.

2 EXAMINATION

3 BY CHAIRMAN FESMIRE:

4 Q. Roger, I'm going to reiterate a point that
5 Commissioner Chavez made that just dawned on me. If we use
6 Wayne's slide 11 and 12, we look at the majority of the
7 contamination when we talk about high costs, deeper
8 contamination, it doesn't under the pits; it occurs under
9 the battery locations, both of the battery locations near
10 the water well; is that correct?

11 A. Let me see.

12 Q. Slides 11 and 12.

13 A. Okay, I wanted to look and see where -- okay,
14 that -- All right, the deepest contamination appears
15 right --

16 Q. Do you see that cross-section?

17 A. -- basically about right here, just at the edge
18 of the road, is where that cross-section shows the deepest
19 contamination.

20 Q. Right, and those are under the battery locations,
21 aren't they?

22 A. Well, I think it appears under the road.

23 MR. PRICE: No, the battery location.

24 THE WITNESS: It is farther south --

25 Q. (By Chairman Fesmire) Go to slide --

1 A. -- which would be overflows and spills.

2 Q. Yeah, go on to slide 12.

3 A. Okay.

4 Q. So --

5 A. The deepest contamination from the Seay report
6 shows -- and we would have to verify that -- shows that it
7 is under the battery itself. The deepest hydrocarbon
8 contamination.

9 A. The deepest hydrocarbon contamination.

10 Q. That's correct.

11 CHAIRMAN FESMIRE: I have no further questions.

12 COMMISSIONER CHAVEZ: Could I go back with one --

13 CHAIRMAN FESMIRE: Sure.

14 COMMISSIONER CHAVEZ: -- more question?

15 FURTHER EXAMINATION

16 BY COMMISSIONER CHAVEZ:

17 Q. Would you turn back then again to slide number
18 15, if you could do that infamous zoom-in on that site.

19 A. All right.

20 Q. Okay, the darkest coloration that we see at the
21 tank battery sites on that photo, might that indicate what
22 is still shown in the previous slide, that the oil
23 contamination is greatest at the tank battery site?

24 A. And at the surface we expect that to be the
25 surface contamination. I would expect the deepest

1 hydrocarbon contamination to be at the separator pit, which
2 -- based on the cross-section, it's a little bit farther to
3 the northeast from the separator pit, and actually under
4 the tank battery, which would indicate to me that there
5 have been a lot of spills, leaks, and I'm assuming that
6 there -- since we haven't seen this tank battery, that
7 there was a berm around the tank battery, and when oil
8 spills are retained in that bermed area it has a tendency
9 to go down.

10 FURTHER EXAMINATION

11 BY CHAIRMAN FESMIRE:

12 Q. Roger, I think I'm going to disagree with you on
13 a statement there. We have seen that tank battery. Go to
14 the 1968 photo.

15 COMMISSIONER CHAVEZ: It's number 14.

16 CHAIRMAN FESMIRE: In fact, Mr. Strange pointed
17 it out.

18 COMMISSIONER CHAVEZ: I think we're way too far.
19 If you click on the left, number 14. There we go.

20 CHAIRMAN FESMIRE: Where the heck are you?
21 You're way up -- You've got to go south and east --
22 southwest, I'm sorry, down and that way.

23 THE WITNESS: There's the pipeline.

24 CHAIRMAN FESMIRE: Okay, now go that way.

25 COMMISSIONER CHAVEZ: There we go.

1 CHAIRMAN FESMIRE: There we go, just a little bit
2 down.

3 THE WITNESS: There it is.

4 Q. (By Chairman Fesmire) Those four dots down to
5 the south, just to the south of the road?

6 A. It appears there's a berm there. I've seen the
7 tank batteries, but I can't tell how high that berm is,
8 or -- and it appears to have dark-stained soil, and north
9 of the road appears to have dark-stained soil, even at this
10 time.

11 Q. Can you zoom in any?

12 A. No, this is the most we can get.

13 Q. Okay. But just to the right of the two pits,
14 south of the road, a berm, and that was in 1968?

15 A. That's correct.

16 Q. And according to our cross-section, that's under
17 the deepest contamination.

18 It may not be the highest concentration, but it
19 is the deepest contamination?

20 A. Deepest contamination is right up there.

21 Q. Yeah, and where is the tank battery?

22 A. There's the tank battery, and it appears to be a
23 berm around the tank battery.

24 CHAIRMAN FESMIRE: Okay, Commissioner Chavez, go
25 ahead.

FURTHER EXAMINATION

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BY COMMISSIONER CHAVEZ:

Q. Well then, actually what -- if we concentrate on the pits exclusively, we might be missing the boat on what you're requesting; is that correct?

A. That's correct, and I don't believe that we are just concentrating on the pits when we ask for remediation, not just -- but this was an area we were concentrating on for the remediation, because this had surface soils. Now, we wanted -- we were going to require an investigation for the extent of the whole site, but the surface, since this was the main surface, and that was from his slide -- that one with the red stuff on it -- showed that surface that needed remediation.

Q. Well, I just didn't want to get distracted by the idea that we're thinking about when somebody has put something into the pit, when actually we're looking at a much bigger area than just the pit area --

A. That's correct.

Q. -- where the concentrations are higher outside the pit?

A. That's correct.

COMMISSIONER CHAVEZ: Okay, thanks. That's all I have.

CHAIRMAN FESMIRE: Ms. MacQuesten, do you have a

1 redirect?

2 REDIRECT EXAMINATION

3 BY MS. MacQUESTEN:

4 Q. I wanted to get back to the question of the
5 appearances of Rasmussen and Southwest Royalties in the
6 files.

7 A. I lost it.

8 COMMISSIONER CHAVEZ: Tab 6.

9 THE WITNESS: Six?

10 Q. (By Ms. MacQuesten) Do you recall Mr. Price's
11 testimony earlier this morning when he showed us slide
12 number 3 and it showed the tank battery site in the middle
13 and four wells surrounding that tank battery?

14 A. Yes.

15 Q. And he identified those four wells, from his
16 review of the well files, to have some connection to either
17 Ralph Lowe or Maralo; is that right?

18 A. That's correct.

19 Q. And then there was a fifth well that also had a
20 connection to Ralph Lowe or Maralo, that was down in the
21 southwest of the site?

22 A. That's correct.

23 Q. And you had testified that we don't keep records
24 on tank batteries themselves?

25 A. That's correct.

1 Q. We have to go and look at the well files of wells
2 we think might be associated with that site and see what we
3 can find out?

4 A. That's correct.

5 Q. And in this case, we went to the well file for
6 the Humble Number 3?

7 A. Correct.

8 Q. And we found a reference to this well being
9 associated with the tank battery on the lease?

10 A. That's correct.

11 Q. And from that time forward, we associated this
12 tank battery with the Humble 3 in our correspondence with
13 Maralo?

14 A. That's correct.

15 Q. And in fact, Maralo never claimed that they were
16 not the operator of that tank battery facility?

17 A. No, they did not.

18 Q. And in fact, they actually cleaned up the site
19 after a fashion, back in the mid-1990s?

20 A. That's correct.

21 Q. Now, these other wells that were associated with
22 Ralph Lowe or Maralo, we don't know for sure if they were
23 connected to this tank battery?

24 A. No, we don't.

25 Q. They may have been, because logically they were

1 in close proximity and this tank battery probably served
2 more than one well?

3 A. That's correct, and I would assume that they were
4 connected to this tank battery.

5 Q. Okay. Well, if -- the problem was, we couldn't
6 link it from our documents?

7 A. No, we could not.

8 Q. We would have to find out from Maralo what they
9 had to say about the use of those wells?

10 A. That's correct.

11 Q. Now, the well he was drawing your attention to
12 was the Humble State Number 1 well, and if you could turn
13 to Maralo Exhibit Number 6, that's the well file for that
14 well --

15 A. Yes.

16 Q. -- and one of the pages he directed your
17 attention to was the page showing the change of ownership
18 from Ralph Lowe to Maralo, Inc., back in 1974. Can you
19 find that page? I think it's the seventh page.

20 A. Right, I've got that.

21 Q. All right. So this was transferred to Maralo,
22 Inc., in 1974, from Ralph Lowe?

23 A. That's correct.

24 Q. And there's a notation, if you look in Section 2,
25 Designation of Transporter --

1 A. Correct.

2 Q. -- there's a -- someone has typed in, "Converted
3 to Saltwater Disposal Well, 2/26/68"?

4 A. That's correct.

5 Q. If you turn to the next page in the well file,
6 that's the conversion to the saltwater disposal well.

7 A. Okay.

8 Q. And that was by Ralph Lowe?

9 A. Right.

10 Q. Back in 1968?

11 A. That's correct.

12 Q. So they're now trying to hang responsibility on
13 Southwest Royalties, Inc., who acquired this well from
14 Rasmussen, who acquired it from Maralo, Inc., but this well
15 didn't have anything to do with this tank battery since at
16 least 1968, as far as we can tell?

17 A. As far as we can tell, no.

18 Q. In fact, from the testimony at the prior hearing,
19 the indication was, this well was converted to saltwater
20 disposal in order to replace using the pits at this
21 facility?

22 A. That's correct.

23 Q. So the facility wouldn't have to be used?

24 A. That's correct.

25 Q. Now, if you have a tank battery that we know is

1 associated with the Humble State Number 3, and that Maralo
2 is the operator of record of that well, and that well we
3 have tied to the tank batter --

4 A. Right.

5 Q. -- would you look to Maralo in the first
6 instance, or would you look to someone who's three
7 operators removed on a well that has been converted to a
8 different use since 1968?

9 A. We probably wouldn't look at the Number 1 well.

10 MS. MacQUESTEN: All right, thank you.

11 RE-CROSS-EXAMINATION

12 BY MR. STRANGE:

13 Q. The water has got to come from somewhere, doesn't
14 it?

15 A. Pardon?

16 Q. The water that you inject into that saltwater
17 disposal well has to come from somewhere?

18 A. It does.

19 Q. It has to be separated from the oil before it can
20 be injected, correct?

21 A. That's correct.

22 Q. And you would typically do that at a tank battery
23 site?

24 A. That's correct.

25 Q. Okay, so if this saltwater disposal well is in

1 close proximity to that tank battery site -- in fact, if we
2 just scoot down a little bit on your drawing, can you go
3 down just a little bit?

4 A. I can try.

5 Q. Okay, that's close enough. And that's the well
6 we're talking about, isn't it?

7 A. Yes.

8 Q. Okay, don't you know the water that was injected
9 in this saltwater disposal well came from the heater
10 treater over here?

11 A. No, I don't know that, and I would never --

12 Q. Isn't that the most logical --

13 A. I would not assume that, no.

14 Q. Well, you're assuming a lot of things in this
15 case, aren't you?

16 A. Yes.

17 Q. That various people have done various things over
18 the years, basically, industry standards. What you know,
19 isn't the most logical assumption that the water that went
20 into that saltwater disposal well came from the heater
21 treater that we're talking about in this tank battery
22 location?

23 A. No, I would assume that the water for that
24 disposal well came from the site that in 1994 there was a
25 backhoe -- used a backhoe and dumptruck to haul

1 contaminated dirt to a disposal site and rebuild firewall
2 inside the fence on disposal tanks, which would be -- and I
3 don't know if it will show it.

4 CHAIRMAN FESMIRE: This is a 1997 photograph, I
5 think.

6 THE WITNESS: This one? Well, this is too late
7 too. I don't even know if that disposal well is still
8 active, but it looks like there's something right here.

9 Q. (By Mr. Strange) Okay. You know that the wells
10 that went into that particular tank battery probably
11 produced some amount of saltwater?

12 A. That went into --

13 Q. -- the tank battery site, probably produced some
14 amount of saltwater?

15 A. Certainly.

16 Q. And it looks like, from the photographs, that
17 they stopped using surface disposal pits sometime prior to
18 1977?

19 A. That's correct.

20 Q. And the most logical place to take that water,
21 since it's all in the same lease, is that particular
22 saltwater disposal well?

23 A. Okay.

24 Q. Correct?

25 A. Correct.

1 Q. Now, you may have a tank on location to store
2 water as water is coming in, but that doesn't mean that
3 you're not going to be separating that water someplace else
4 and then transporting it?

5 A. That's true.

6 Q. So any water that was separated at that tank
7 battery site probably went to that saltwater disposal well?

8 A. Okay.

9 CHAIRMAN FESMIRE: Mr. Strange, are you going to
10 present some evidence to this, or are we making this up?

11 MR. STRANGE: Well, Mr. Chairman, I think in
12 fairness the witnesses today have been allowed to talk
13 about industry custom, and they've made certain connections
14 based on what they understand, industry custom and
15 practice.

16 CHAIRMAN FESMIRE: That's true, but I think we're
17 getting to the point now where we're not basing it on facts
18 before the Commission. If you're going to provide
19 testimony to that effect, or if you want your witnesses --
20 you know, if your witnesses are capable of making those
21 assumptions, I'd be glad to hear it, but I think you're
22 leading the witness here through a series of facts that we
23 have no evidence to support.

24 MR. STRANGE: Well, Mr. Chairman, I can't concede
25 the point. I'm not going to argue with you, I'll move on.

1 But I don't want that taken as a waiver of our rights or
2 arguments, but I'm not going to argue with you.

3 CHAIRMAN FESMIRE: Okay, I just -- I have seen,
4 you know, no evidence to support this, and I think you're
5 asking the witness to make these assumptions that aren't
6 based on what I would consider facts before the Commission.

7 MR. STRANGE: Yes, sir, but with respect, we do
8 know the proximity, and we do know water is produced, and
9 we do know that something has to happen to that water. And
10 with respect, Mr. Chairman, I don't think I'm asking any --
11 take any great leap of imagination to say that under what
12 we do know, more likely than not -- in fact, it's probable,
13 water produced right there, a quarter mile away, was, in
14 fact, disposed of in that saltwater disposal well.

15 CHAIRMAN FESMIRE: Do we know when that well was
16 converted to saltwater disposal?

17 MR. STRANGE: Yes, sir, 1968.

18 CHAIRMAN FESMIRE: 1968?

19 MR. STRANGE: Yes, sir.

20 CHAIRMAN FESMIRE: Okay, go ahead with your --

21 MR. STRANGE: Actually, I don't have any further
22 questions.

23 MR. ROBINS: I'm just going to respond. The mere
24 fact of proximity in an oilfield like this means nothing.

25 CHAIRMAN FESMIRE: Mr. Robins, I think this is a

1 question of -- you know, to be determined by the triers of
2 fact, and --

3 MR. ROBINS: Well, I was just responding to his
4 assumption about proximity. Obviously his people either
5 know or they don't, so I would just say to the extent that
6 he's asking the Commission to assume something based truly
7 on proximity, I think that's something that we would object
8 to, just because we know in the oilfield you can have a
9 saltwater disposal well within one place, and it takes
10 water from somewhere half a mile away, or it may not. So
11 that's the only point I'm trying to make.

12 CHAIRMAN FESMIRE: Well, I think it's pretty much
13 a moot point since he's finished his line.

14 MR. STRANGE: No further questions.

15 CHAIRMAN FESMIRE: No further questions?

16 Commissioner Bailey?

17 COMMISSIONER BAILEY: I have not further
18 questions.

19 CHAIRMAN FESMIRE: Ms. MacQuesten?

20 MS. MacQUESTEN: No questions, and this concludes
21 the OCD presentation.

22 CHAIRMAN FESMIRE: Okay, Mr. Robins, do you have
23 a case-in-chief?

24 MR. ROBINS: Your Honor, I was going to call Mr.
25 Anthony. He's my only witness. And I can do it now or

1 after they put their witnesses, whatever the --

2 CHAIRMAN FESMIRE: I would prefer you go ahead
3 and do it now --

4 MR. ROBINS: All right.

5 CHAIRMAN FESMIRE: -- and they go later.

6 MR. ROBINS: Sure. Can we indulge you for maybe
7 a five-minute break?

8 CHAIRMAN FESMIRE: Commissioner Chavez winced
9 when he asked for a five-minute break, so we're going to
10 take a break until 5:30.

11 MR. ROBINS: Thank you.

12 (Thereupon, a recess was taken at 5:23 p.m.)

13 (The following proceedings had at 5:31 p.m.)

14 CHAIRMAN FESMIRE: Okay, let's go back on the
15 record. We need to swear Mr. Anthony.

16 (Thereupon, the witness was sworn.)

17 MR. ROBINS: May I proceed, Mr. Chairman?

18 CHAIRMAN FESMIRE: You bet.

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

22 DIRECT EXAMINATION

23 BY MR. ROBINS:

24 Q. Could you tell us your full name for the record?

25 A. Jay Sean Anthony.

1 Q. Where do you live, Mr. Anthony?

2 A. Jal, New Mexico.

3 Q. Mr. Anthony, you and your wife are the ranchers
4 that filed the complaint concerning this Maralo site that
5 we've been talking about; is that correct?

6 A. That's correct.

7 Q. Before we get into the substance of the complaint
8 and the issues, I want the Commission to just know a little
9 bit about you. Can you tell them where you grew up?

10 A. I grew up in Monahans, Texas. And it was a
11 family-owned ranch. I moved up there in 1985.

12 Q. Moved up to the Jal area?

13 A. Yes.

14 Q. How long has your family, be it your dad or your
15 granddad, been in the ranching business?

16 A. I'm a third-generation, right, sir.

17 Q. Now, the ranch that we're -- and your family
18 owns, not just you, own the ranch in the Jal area, correct?

19 A. That's correct.

20 Q. And your family owns a number of different
21 ranches throughout New Mexico and Texas, correct?

22 A. And Texas.

23 Q. The ranch that we're specifically going to talk
24 about where Maralo's site is, does that ranch have a
25 specific name, or do you refer to it as a specific ranch?

1 A. We call it the Beckham place. That's -- the
2 Beckham.

3 Q. Okay. And how much acreage is there at the
4 Beckham place?

5 A. A little over 20,000 acres.

6 Q. And what type of ranching are you involved in?

7 A. I'm in a cow-calf operation.

8 Q. And just briefly, what does that mean, to
9 somebody who doesn't know anything about ranching?

10 A. That means we raise mother cows and we raise the
11 calves off of them and send them to market, or we can feed
12 them out ourself.

13 Q. And in terms of that type of operation, how
14 important is grass to your operation?

15 A. It's very important.

16 Q. And why is that?

17 A. The less grass we have, the less cattle we can
18 run.

19 Q. How important is water to your operation?

20 A. If we don't have good water, we can't have
21 cattle.

22 Q. Now, you mentioned that you've been at that ranch
23 since, you said, 1985; is that --

24 A. Yes.

25 Q. And at that time were you the owner of the ranch?

1 A. No, I was part-owner.

2 Q. And with who else?

3 A. My brother.

4 Q. And how long have you and your wife been the sole
5 owners of that Beckham place?

6 A. Since 1993.

7 Q. Now, you're generally familiar with Maralo; is
8 that correct?

9 A. Yes, I am.

10 Q. And I just went ahead and had Mr. Anderson sort
11 of leave up this area so we can talk about it. I'm not
12 going to try and make you flip through that computer there,
13 but I wanted to at least have a little bit of a vantage
14 point on this location so we can put it in some context.

15 You recognized at some point along the way that
16 you had a problem with this Maralo site; is that correct?

17 A. Yes, I did.

18 Q. And there's been some discussion about the
19 activities that took place around the 1993-94 time period,
20 and I think we had looked at some exhibits earlier, Exhibit
21 20, that has some invoices related to some work that was
22 done back in February and March of 1994. Do you remember
23 that work being done?

24 A. Yes, I do.

25 Q. And how did that come up? How is it that that

1 work was done out there, as you recall it?

2 A. The OCD had a meeting with Maralo at that time,
3 and there were still things to be tended to.

4 Q. And did Maralo come out and do some work on the
5 site?

6 A. Yes, they did.

7 Q. Were you hopeful when that work was done that you
8 would be able to use this area of the ranch?

9 A. Yes, I was.

10 Q. Did that turn out to be the case?

11 A. No, sir.

12 Q. Did the limited work that they did out there, did
13 that allow revegetation to occur?

14 A. No.

15 Q. Can you sort of summarize what efforts you took
16 after 1994 and before you filed a complaint in 1999, to try
17 to get this problem addressed out there?

18 A. I talked to employees of Maralo and tried to get
19 them to do something about it.

20 Q. And did you, in fact, have a meeting with one of
21 the Maralo people about this site, on site?

22 A. Yes, I did.

23 Q. Tell the Commission about that meeting.

24 A. I phoned Mr. Pulido and had a meeting with him
25 and walked him over the site, all of it, and we walked back

1 to the pickup, and he says, Now, what can I help you with?
2 After showing him the contamination. You know, he was
3 thinking there was nothing that he needed to do.

4 Q. Did he at some point along the way offer you some
5 type of cash settlement to make you quit complaining?

6 A. Yes, he did.

7 Q. And what did he offer you?

8 A. We were on the phone, and -- about this
9 situation, and he offered me \$5000.

10 Q. Was that sufficient for you in dealing with this
11 problem?

12 A. No, sir.

13 Q. Why not?

14 A. I don't want to live with that.

15 Q. Why don't you want to live with it?

16 A. Well, it's -- it's -- I can't use the property,
17 can't use it.

18 Q. Commissioner Bailey had asked some questions
19 earlier about the extent of grass out in this country and
20 sort of what the area is like. Could you try to just kind
21 of give the Commissioners a sense of what this country is
22 like, what kind of grass we've got out there in areas that
23 are not contaminated like where Maralo's been?

24 A. Okay. In that area, it's a loamy soil, it's a
25 tighter loamy soil, and we have about, oh, I'd say, 11 or

1 12 different types of grasses, and there's also sage and
2 other plants that are palatable to cattle.

3 Q. Have you made efforts through -- in terms of
4 cultivation of this ranch to try to increase your grass
5 population through programs that are available?

6 A. Yes, I have had EQUIP programs to remove the
7 mesquite, to better help my grasses grow and where I can
8 operate and run more cattle.

9 Q. Have you done that in the general vicinity of
10 where this particular location is?

11 A. Yes.

12 Q. Tell us about the program that you're involved in
13 right now, to try to increase your capacity on this ranch.

14 Q. We're trying to increase the production on this
15 property right now in Section 36 and going south, we are
16 doing an EQUIP program through the federal government.
17 It's a cost-share program, and we're doing -- we are
18 grubbing or removing the mesquite on 750 acres.

19 Q. What type of wildlife is natural to this area?

20 A. Rabbits, coyotes, deer, quail, rodents.

21 Q. What about the dove?

22 A. And dove.

23 Q. Is there a large dove population?

24 A. There's a large dove population.

25 Q. So in terms of the type of wildlife there, from

1 your perspective as a rancher, is it good to have cancer-
2 causing agents on the ground?

3 A. No.

4 Q. Is it good for your cattle to be exposed to
5 hydrocarbons?

6 A. No, sir.

7 Q. Now, there's been some discussions about the
8 water quality in that area. Are you familiar generally
9 with the concept of chloride levels?

10 A. Yes.

11 Q. And do you from time to time test your water
12 wells?

13 A. Yes, I do.

14 Q. In areas where there's not contamination in this
15 ranch out here, what is generally your chloride levels on
16 your water wells?

17 A. Less than 50.

18 Q. Less than -- ?

19 A. -- 50.

20 Q. Now, there's been some discussion about, well,
21 this well over here wasn't being actively used. Does that
22 mean that you won't ever need to use this water on this
23 ranch, in this area?

24 A. No, I'd like to put it into use.

25 Q. And why would it be helpful to you to be able to

1 put this water in this area into use as your operation
2 unfolds into the future?

3 A. Since we're doing that work in there, the closest
4 water would be about a mile away, and if I can get water
5 with a certain proximity, I can utilize that part of the
6 pasture better and use it for grazing, and my cattle won't
7 have to walk as far. What we try to do is, we try to put
8 as many waters in there, together, that a cow doesn't have
9 to walk, you know, half a day to get there.

10 Q. Now.

11 A. We're walking off pounds, and that's -- We sell
12 pounds, and we walk off pounds if we don't have the water.

13 Q. Is it a concern to you about the elevated
14 chlorides that you've come to find about in this particular
15 well here?

16 A. Yes, it does.

17 Q. As far as you now, are there any other potential
18 causes for the elevated chlorides, other than this
19 particular site here?

20 A. No.

21 Q. Now, you mentioned that you had hoped in 1993-94
22 to get this problem solved, and did you over time monitor
23 this area to see if the efforts that had been made by
24 Maralo in 1993-94 were going to allow grass to grow once
25 they chose to abandon and break down this tank battery

1 area?

2 A. Yes, I gave it several years, as a matter of
3 fact, to see what it would do, to see what their work would
4 do, and I didn't get any results.

5 Q. Based on the reaction you ultimately got from Mr.
6 Pulido, was that what led you to filing the complaint with
7 the OCD?

8 A. Yes.

9 Q. By the way, have you had -- I mean, there's other
10 oil and gas operations on this ranch, correct?

11 A. That's right.

12 Q. Have you approached other operators, you know, at
13 the time that they're leaving, to ask them to do
14 reclamation or to address historic sites?

15 A. Yes, I have.

16 Q. And for instance, one site I'm familiar with
17 anyway is the former ExxonMobil site; is that correct?

18 A. That's correct.

19 Q. Just briefly, can you tell the Commission what
20 ExxonMobil has done in reclaiming that site and what kind
21 of success it's had?

22 A. Last year we -- ExxonMobil remediated one site
23 they had. It was an old pump station site that was
24 approximately -- I think they used it back in the 1930s and
25 abandoned the old tank battery and just left the asphaltine

1 contamination out there. It was approximately a 3-1/2-acre
2 area, and they dug it up and cleaned it up to 100 parts per
3 million, because there is a water well in that area, and
4 backfilled with fresh dirt, clean dirt and I re-seeded it,
5 and they came back and put a layer of cotton burrs on top,
6 and this year I have a stand of grass on it. Over -- I'd
7 say over 75 percent of that is grassed over, in that area.

8 Q. And are you now able to utilize that area in
9 your --

10 A. Yes.

11 Q. -- cow-calf operation?

12 A. Yes.

13 Q. Have you had other experiences on your ranch
14 where oil companies have done a limited cleanup that didn't
15 work?

16 A. Yes, I have.

17 Q. In fact, a limited cleanup that was approved by
18 the OCD?

19 A. Yes, I have.

20 Q. For instance, I know I'm familiar with one
21 involving ChevronTexaco; is that correct?

22 A. That's correct.

23 Q. Can you briefly describe for the Commission what
24 your experience has been when an oil company comes in and
25 just scrapes the surface and doesn't fully address the

1 problem?

2 A. In that certain area, the well had blown out and
3 it was old asphaltic material. They come in and scraped it
4 off. They took off approximately one foot, and the heavy
5 ends of the paraffins were still there, and I cannot grow
6 anything on it today either.

7 Q. So you've seen situations where if the problem is
8 not dealt with and it comes back up to surface, you can't
9 grow anything; is that correct?

10 A. That's correct.

11 Q. In terms -- I mentioned earlier the concept of
12 root depth out there. From your perspective as a rancher,
13 what is the minimum in terms of what you need cleaned up,
14 you know, setting aside the question of stuff coming back
15 from even deeper, but just to be able to sufficiently grow
16 the kind of grass and other plant life in that area to feel
17 comfortable with?

18 A. In that area, in that loamy soil, there is grass
19 types that grow there that can root down to eight feet.

20 Q. So if somebody were to say -- like an instance
21 where we've seen some examples, Well, we're going to come
22 in and just clean two feet up and call it good, do you
23 think that's going to be successful for your ranch in this
24 country out there?

25 A. I don't agree with that.

1 Q. Now, when you first were sort of getting involved
2 in this issue -- and you weren't there back in the 1970s or
3 the 1960s, or even prior to 1985, to really observe what
4 had happened; is that right?

5 A. That's right.

6 Q. But is it fair to say -- Well, let me just ask
7 you. From that point on, while Maralo was there and you
8 were either with your brothers or individually running this
9 cow-calf operation, did you observe spills that had
10 occurred at the tank battery from overflows or leaks or
11 things of that nature?

12 A. I don't recall. You know, I knew that there were
13 some. I can't put a date on it.

14 Q. Okay, and I'm not asking you to say it happened
15 in 1987 or 1993 or 1997, but is it fair to say over that
16 period of time before they broke -- well, I said 1997,
17 breakdown 1993, 1994, but is it fair to say up to that
18 period of time there were times periodically where you
19 observed fresh oil on the ground in the tank battery area
20 while Maralo was an operator?

21 A. I had seen backholes out behind the battery, on
22 the south side of the battery, digging, so I assumed that
23 there was a problem.

24 Q. Okay. Did you have any understanding of the
25 magnitude of the problem before all of this delineation

1 started taking place?

2 A. No, sir.

3 Q. Did you have any idea that this contamination
4 could go as deep as 40 feet or deeper, based on what Eddie
5 Seay did?

6 A. No.

7 Q. By the way, did you hire Eddie Seay yourself and
8 incur those costs?

9 A. Yes, I did.

10 Q. And why did you hire him and why did you do the
11 limited delineation that you had him do out there?

12 A. Because Maralo would not come out and do their
13 delineation, and I'm concerned about the site and the
14 environment and that water there.

15 Q. Why is it critically important to you as a
16 rancher that this Commission follow the lead of the OCD and
17 order Maralo to delineate this site and then ultimately
18 order a cleanup?

19 A. Well, you know, I'd like to use the property
20 again, I'd like to use it for any of my use. We own the
21 property. I don't think it's right for an oil company to
22 come in there and get what they want -- they have the right
23 to come in and produce the oil well, but they do -- I don't
24 feel like they have the right to come in there and produce
25 the oil well, plug and abandon the wells and leave without

1 cleaning anything up. I don't think that's right.

2 Q. Are you concerned about your water in this area
3 if a cleanup does not take place?

4 A. I'm real concerned about it. You know, I'd like
5 to use that well. I'm just waiting to see when we can get
6 this cleaned up, because when clean this up, or if we do,
7 I'd like to use that well to put up a windmill. Until then
8 I can't, because I'll just have to take it back down so
9 they can get in there to get their work done.

10 And another thing, I don't want my cows laying
11 around that oily dirt, because when those cows come in to
12 water they're going to get a drink of water, they're full,
13 they're going to go over there and find a place to lay
14 down. I don't want them in it.

15 And they can go over as of today. You know, it's
16 not fenced off, they can go over. But it's less likely
17 that they would lay down or stay in that area for very
18 long.

19 Q. Because there's not water active right now?

20 A. Because there's no water there.

21 MR. ROBINS: I believe that's all the questions I
22 have at this time. Thank you.

23 CHAIRMAN FESMIRE: Mr. Strange, I feel a little
24 awkward about sandwiching you between --

25 MR. STRANGE: That's fine.

1 CHAIRMAN FESMIRE: -- two people -- You'd rather
2 go now?

3 MR. STRANGE: That's fine.

4 CROSS-EXAMINATION

5 BY MR. STRANGE:

6 Q. Last time you talked, you told us you were
7 running about 250 head on your 20,000 acres; is that still
8 the case?

9 A. No, sir.

10 Q. How many head are you running now?

11 A. Oh, I was running -- right now I'm running about
12 125 cows.

13 Q. Okay. If my math is correct, if you're running
14 250 head that's about 80 acres a head, and 125 cows on
15 20,000 acres is well over 100 acres?

16 A. Yes, sir, and that's because of the drought that
17 we've been in the last 12 years, and I've tried to take
18 care of my country --

19 Q. Sure.

20 A. -- and I had to sell off cows to keep my country.
21 It was dry, and we didn't have the grass to feed all of
22 them.

23 Q. All right. The point I guess we're trying to
24 make here is, we're talking two, three acres out there on
25 that particular location?

1 A. Yes, sir.

2 Q. Two or three acres is just a tiny fraction of the
3 amount of grass it would take --

4 A. I know that's a -- I know --

5 Q. Mr. Anthony, I'm not finished --

6 A. -- that's a tiny fraction --

7 Q. Mr. Anthony, I wasn't finished. I promise to let
8 you answer if you'll let me finish the question.

9 But isn't it a fact that two or three acres is a
10 tiny fraction of the amount of grass it would take to raise
11 one head of cow out there?

12 A. Yeah, but I need every bit of it I can utilize
13 right there.

14 Q. But an additional --

15 A. That's part of my livelihood. If I can't run
16 that one head because that's messed up, over a certain
17 period of years how much is that? A lot.

18 Q. An additional two to three acres would not allow
19 you to run an additional head of cow though? You need 100
20 acres to increase your ranch. If you wanted to go to
21 another head of cattle right now, you would need about 100,
22 200 acres of grass?

23 A. Say that again.

24 Q. If you wanted to increase your herd by one head,
25 an additional two to three acres of grass wouldn't cut it.

1 You need 100 to 200 acres of grass to increase your herd by
2 one head?

3 A. Not necessarily, not 100 to 200 acres, no, sir.

4 Q. Okay, you'd need --

5 A. But it --

6 Q. -- a whole lot more than two acres?

7 A. Yeah.

8 Q. Okay. Now, you've had dealings with other oil
9 companies out on this particular ranch, haven't you?

10 A. Yes, sir.

11 Q. And you've got a lawsuit pending against those
12 oil companies?

13 A. Yes, sir, I do.

14 Q. How many oil companies are you currently suing
15 just for operations on this ranch?

16 A. I think there's nine or 11, I'm not --

17 Q. Okay, now that project that you talked about with
18 ExxonMobil, how much money did you get in connection with
19 that?

20 MR. ROBINS: Are you talking about a settlement?

21 Q. (By Mr. Strange) Yes, sir, how much in
22 settlement, how much money did you get in connection with
23 that cleanup?

24 A. I did not get any money for settlement.

25 Q. Okay, what did you get money for?

1 A. For dirt that the put back in.

2 Q. And how much money did you get for the dirt that
3 they put back in?

4 A. Approximately \$50,000.

5 Q. Okay. And in this instance, there are several
6 strains of grass that will grow out there that have a root
7 depth of three foot or less, aren't there?

8 A. Yes, there are.

9 Q. Okay, so you could grow any number of strains of
10 grass if you had soil down to three foot?

11 A. But why settle for just a few when I could grow
12 anything, if I wanted?

13 Q. Sure, and why settle unless part of this involves
14 some financial compensation as well, correct?

15 A. I don't think this is about financial...

16 Q. But if they went out and remediated this, you
17 would want to be compensated for any dirt that was hauled
18 off or any dirt that was hauled on?

19 A. I think they have an obligation to purchase the
20 dirt that goes back in.

21 Q. Okay, so this does involve some financial
22 consideration, doesn't it?

23 A. I guess it does.

24 MR. STRANGE: Okay. No further questions.

25 CHAIRMAN FESMIRE: Ms. MacQuesten?

DIRECT EXAMINATION

1
2 BY MS. MacQUESTEN:

3 Q. If your groundwater becomes contaminated because
4 of the contamination at this site, what will that do to
5 your ranching operation?

6 A. To this particular site, you mean, or -- Well,
7 you know, I just won't be able to use that well. And
8 anytime that groundwater is impaired with chlorides or
9 anything where you can't use the water, you know, it has an
10 impact on the value of the property.

11 Q. When we looked at the aerial photos of the ranch,
12 it looked as though it's just criss-crossed with oil and
13 gas development throughout the area; is that accurate?

14 A. Yes, ma'am.

15 Q. And if each of the operators of each of those
16 sites said, I'm not going to clean it up, would that
17 represent a substantial amount of your property?

18 A. That would be a substantial amount of acres, yes,
19 ma'am.

20 MS. MacQUESTEN: No other questions.

21 CHAIRMAN FESMIRE: Commissioner Bailey?

EXAMINATION

22
23 BY COMMISSIONER BAILEY:

24 Q. I wasn't sure of the year. What was the year
25 that you moved to the Beckham place?

1 A. 1985, October of 1985.

2 Q. Was this particular water well in existence when
3 you moved there?

4 A. Yes, ma'am, but I wasn't aware that it was a
5 water well until 1994. It was capped and it has a piece of
6 pipe on top of it.

7 Q. So you've never used it in your operations?

8 A. I've never used it in my operations.

9 Q. Okay, are you also a mineral estate owner, or
10 just a surface owner?

11 A. I do have some minerals in that area, not --

12 Q. Do you lease --

13 A. -- several miles from there. No, it is non-
14 producing.

15 Q. So you don't have any active leases on your
16 property at all that you have leased out?

17 A. No, ma'am.

18 Q. Okay. Can you put this particular portion of
19 Section 36 in context of your ranch? Is it smack-dab in
20 the middle or is it on the western edge, or how does it fit
21 in there?

22 A. It'll be on the eastern side, about in the middle
23 on the eastern side of the ranch.

24 Q. So pretty close to your eastern border; is
25 that --

1 A. Yes.

2 Q. Okay.

3 A. Section 36 will be -- east of 36 will be my
4 border.

5 Q. So those aerial photos that we saw, most of that
6 land to the west on those aerial photos was your property?

7 A. Yes, ma'am.

8 Q. Okay, that will help in our review of this.

9 You have quite a few oil and gas operations on
10 that property?

11 A. I used to. Most of them are plugged and
12 abandoned at this time.

13 Q. Have you ever been paid surface damages for them?

14 A. Yes, ma'am.

15 Q. Did you use that surface damage money to
16 remediate or clean up a site or --

17 A. No, ma'am, if we used that damage money it was
18 for conservation of other property, of, you know, other
19 lands or to put up a windmill or for operations.

20 Q. Okay, but it never was put back into that
21 location for remediation of that location?

22 A. No, ma'am.

23 Q. Okay. Did Maralo come back to you with any
24 surface damage offer other than the \$5000?

25 A. No, they haven't.

1 Q. So you have not accepted any surface damage money
2 from them for this site?

3 A. No, no.

4 COMMISSIONER BAILEY: That's all I have.

5 CHAIRMAN FESMIRE: Commissioner Chavez?

6 EXAMINATION

7 BY COMMISSIONER CHAVEZ:

8 Q. Yes, sir, Mr. Anthony, in dealing with Maralo on
9 this site, have they ever told you you need to go talk to
10 Mr. Hal Rasmussen or Southwest Production?

11 A. No, not on this particular battery, no, sir.

12 Q. Have you dealt with Southwest Production, Hal
13 Rasmussen, on other sites?

14 A. Yes.

15 COMMISSIONER CHAVEZ: That's all I have.

16 EXAMINATION

17 BY CHAIRMAN FESMIRE:

18 Q. Mr. Anthony, I'm not meaning to sound mean on
19 this, but they offered you \$5000 basically to forget about
20 remediating two to three acres of your ranch; is that
21 correct?

22 A. Yeah.

23 Q. And the land is worth a whole lot less than \$5000
24 for three acres, isn't it?

25 A. That's true.

1 Q. But even if they'd done that, they would still
2 have been liable for protecting the groundwater; is that
3 your understanding?

4 A. I wasn't aware of that at the time.

5 Q. Okay, but you are aware of it now?

6 A. I'm aware of that, yes, sir.

7 Q. Okay. And if I understand correctly, you're
8 suing nine to 11 other oil companies?

9 A. Yes, sir, I am.

10 Q. What exactly are you suing them for?

11 A. Basically the same thing.

12 Q. Are you suing Maralo?

13 A. Yes, I am.

14 Q. Okay. Did you go through an OCD hearing on the
15 other nine to 11 sites?

16 A. No, sir.

17 Q. Did you complain to the OCD?

18 A. I don't recall how many I've -- on all of them.

19 Q. Have there been any other settlements than the
20 one \$50,000? And I understand that wasn't a settlement but
21 that you were paid \$50,000 for materials that were used to
22 remediate the site.

23 A. On one site -- on ChevronTexaco -- before it was
24 ChevronTexaco, it was just straight Texaco, they attempted
25 to clean up a site, and they bought X amount of dirt. But

1 there was no settlement, but they did buy X amount of dirt
2 to put back on the site.

3 Q. And when was that?

4 A. 1999.

5 Q. And when was the \$50,000 settlement?

6 A. In --

7 Q. Or \$50,000 payment?

8 A. It was paid to me in 2004.

9 Q. Are the other nine to 11 suits involving larger
10 sites, smaller sites, about the same, or a mix?

11 A. It's a mix of smaller, about the same, uh-huh.

12 CHAIRMAN FESMIRE: I have no further questions.

13 Do you have a redirect?

14 MR. ROBINS: Yeah, let me just follow up with a
15 couple of questions in response to the questions concerning
16 the lawsuit that's pending.

17 REDIRECT EXAMINATION

18 BY MR. ROBINS:

19 Q. First off, with respect to ExxonMobil, they
20 agreed to clean up that site, correct?

21 A. Yes.

22 Q. But they did purchase dirt from you on a per-
23 cubic-yard basis; is that right?

24 A. Yes, sir, they did.

25 Q. Is it customary in Lea County for ranchers to

1 sell dirt from the ranch for cleanup operations?

2 A. Yes, sir, it is.

3 Q. Did you -- in relation to that particular site,
4 was there any other money that changed hands, other than
5 what they paid you in terms of the fair market value of
6 dirt that they took from your ranch to do the remediation
7 itself?

8 A. No.

9 Q. Why is it important for a rancher in Lea County
10 to use dirt from your own ranch, as opposed to letting them
11 bring it in from somewhere else?

12 A. When they -- when you bring it in from somewhere
13 else, you may have a seed, a weed that is toxic to cattle,
14 and they can spray it, and it can be outrageous, you know,
15 it just -- it can get out of control. So it's always been
16 our practice to sell, like if we're selling caliche for the
17 road, they use it off the ranch, and -- because it's -- you
18 know it.

19 And it's the same way with dirt, you know where
20 it's coming from and you know what's in it, and you don't
21 have to take any -- if they brought it in from outside, you
22 really don't know what could be in that dirt.

23 Q. With respect to the question about surface damage
24 that was asked of you --

25 A. Uh-huh.

1 Q. -- sometimes people use surface damages a certain
2 way, and I want to make sure we're describing what surface
3 damages is to a rancher, separate and apart from what may
4 be, quote, unquote, environmental damages.

5 A. Uh-huh.

6 Q. Do you understand the distinction between the
7 two?

8 A. Uh-huh.

9 Q. And when you're asked about surface damages, what
10 do you mean by surface damages? What are those payments
11 for?

12 A. Surface damage could be for a new location or for
13 a tank battery. There are several -- or for a -- it's kind
14 of a broad --

15 Q. It would include things like if an oil company
16 wants to come in and lay a flow line, they'll pay you on a
17 per-square-foot basis for --

18 A. Or a per-rod.

19 Q. -- or a per-rod basis --

20 A. Yes.

21 Q. -- for a highline or a location if they're going
22 to drill an oil well, that kind of thing?

23 A. Yes, or an easement.

24 Q. Have you settled any cases where an oil company
25 has come to you and said, We're going to pay you X number

1 of dollars for contamination, and you have said, Okay, I'm
2 going to take this money, but I'm not going to clean up the
3 contamination?

4 Has that ever happened on your ranch?

5 A. No.

6 Q. Okay, so there's not ever been a situation where
7 you've said give me some cash and then I'll just take it
8 and not worry about the contamination there; is that
9 correct?

10 A. No, I have not.

11 Q. Okay. So I just wanted to make sure we didn't
12 leave an impression that when you use the term "surface
13 damages" that that would include a situation like this
14 where we have a contaminated site.

15 With respect to the contaminated sites that you
16 have on the ranch and the companies that are involved in
17 your lawsuit in San Miguel County, Maralo is one of those
18 people; is that correct?

19 A. That's right.

20 Q. And they were named in that lawsuit because of
21 the past damages that you've sustained up to this point in
22 time; is that right?

23 A. That's right.

24 Q. We mentioned the ChevronTexaco situation. You
25 have a huge site there that ChevronTexaco has refused to

1 address; is that correct?

2 A. That's correct.

3 Q. Did you make a number of efforts to try to
4 resolve that with ChevronTexaco without having to file a
5 lawsuit?

6 A. Several times.

7 Q. Is that true of the other sites that you're in
8 the process of litigating in that lawsuit? Did you make an
9 effort with each and every one of those operators to try to
10 get those cases resolved?

11 A. Yes, I did.

12 Q. And just so we're clear, it's not 9 or 10
13 lawsuits, it's one lawsuit where a number of defendants are
14 named; is that correct?

15 A. That's correct.

16 Q. Has the value of your ranch -- and by the way,
17 it's a 20,000-acre ranch, correct?

18 A. That's right.

19 Q. Has the value of your ranch been diminished
20 because of the contamination that exists out there that's
21 caused by the operators that you've named in that lawsuit?

22 A. I would said it impairs it.

23 Q. And is that why you brought that lawsuit?

24 A. Yes.

25 MR. ROBINS: That's all I have, thank you.

FURTHER EXAMINATION

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BY CHAIRMAN FESMIRE:

Q. Was the -- When did you buy the Beckham place?

A. It's been in my family since the mid-1950s.

Q. About the time these wells were drilled out there?

A. I don't recall -- I wasn't around when these wells were drilled, so I don't know when they were drilled.

Q. Okay, and you bought it from your brother? You bought, I assume, an interest in it from your brother?

A. We had an undivided half interest in it, and I bought him out.

Q. And that was in 1994?

A. I don't recall the date. It's 1993 or 1994, in that area.

CHAIRMAN FESMIRE: I have no further questions.

RE-CROSS-EXAMINATION

BY MR. STRANGE:

Q. What did you pay your brother for a half -- undivided half interest in the ranch?

A. I don't recall what I had to pay.

Q. Do you have any idea? Isn't land out there about \$50 an acre?

A. It used to be, a long time ago.

Q. Do you have any idea what it's worth today?

1 A. I couldn't say.

2 Q. Half a million dollars would buy a fair chunk of
3 that ranch, wouldn't it?

4 A. I wouldn't sell it.

5 Q. I understand, because got personal value, but if
6 we were just appraising it, half a million dollars would
7 cover a fair chunk of that ranch?

8 A. That's -- it's possible.

9 Q. And it's not enough, really, that someone gets
10 grass growing out there. Part of this has got to be to pay
11 you for whatever dirt is removed, you need to be paid for,
12 and then someone has got to buy dirt from you from on the
13 ranch, we've got to take dirt that's doing something out
14 there on that ranch from elsewhere and all over here, and
15 pay for that dirt as well, correct?

16 A. If they want to do it --

17 Q. Yeah.

18 A. -- I usually -- that's what I usually --

19 MR. STRANGE: No further questions, Mr. Chairman.

20 FURTHER EXAMINATION

21 BY CHAIRMAN FESMIRE:

22 Q. Mr. Anthony, concerning the well, your family has
23 had it since 1955 --

24 A. Yes, sir.

25 Q. -- and you didn't know that well was there, the

1 water well?

2 A. That water well? You know, my granddad might
3 have known it was there, but I didn't really know it was
4 there. It looked like a post because they had a cap on it,
5 and they had another post welded to the top of it.

6 Q. It looked like a dryhole marker?

7 A. I didn't know what it was. You know, I assumed
8 that -- when I found out it was a water well, there was a
9 well there, that was out there, that they had dug up the
10 pipe, some of the pipe that they loaded on the trailer,
11 that was presented before. And he had dug around this, he
12 had cut it off, he cut the post off, and he had dug around
13 this.

14 And I said -- And I just happened to pull up
15 there and I said, What are you doing?

16 He says, Well, I'm cutting this casing off.

17 I said, Casing for what?

18 He said, A water well.

19 They were going to cut it off about two feet
20 below the surface and cap it and cover it back up.

21 I said, Just leave it there, and he left it
22 sticking up out of the ground.

23 CHAIRMAN FESMIRE: Okay, I think that's all the
24 questions I have.

25 COMMISSIONER BAILEY: I have --

1 CHAIRMAN FESMIRE: Oh, I'm sorry.

2 FURTHER EXAMINATION

3 BY COMMISSIONER BAILEY:

4 Q. So who owns the water rights to that well?

5 A. I guess it's -- I haven't checked into that, but
6 I would think that the surface owner would. I think it was
7 probably grandfathered in.

8 COMMISSIONER BAILEY: That's all I have.

9 CHAIRMAN FESMIRE: Commissioner Chavez?

10 COMMISSIONER CHAVEZ: Nothing else.

11 CHAIRMAN FESMIRE: All right, that's all we have,
12 I believe.

13 MR. ROBINS: I don't have anything further.

14 CHAIRMAN FESMIRE: Well, Mr. Strange, what's the
15 verdict?

16 MR. STRANGE: I was going to call Mr. Hunt on the
17 limited purpose of putting evidence the record that there
18 was a heater treater.

19 I'd like to offer Exhibit 6 and Exhibit 9, and if
20 I need to I can put a witness on to authenticate Exhibit 9.

21 Otherwise, that's all I'm going to do, is put Mr.
22 Hunt on very briefly to put in the record that there was a
23 heater treater.

24 CHAIRMAN FESMIRE: Well, I think, then, we can at
25 least finish the testimony portion tonight.

1 MR. STRANGE: Exhibits 6 and 9, are they
2 admitted?

3 CHAIRMAN FESMIRE: Just establish a foundation, I
4 think.

5 MR. STRANGE: Exhibit 6 is the Humble State
6 Number 1 well file that we've talked about with the prior
7 witness.

8 CHAIRMAN FESMIRE: And that's part of our OCD
9 records, I mean --

10 MR. STRANGE: Yes, sir.

11 CHAIRMAN FESMIRE: -- this has been filed with
12 the OCD?

13 MR. STRANGE: Exhibit 9 in the assignment into
14 Maralo and in the assignment from Maralo to Rasmussen.
15 That's 1973 and 1994.

16 CHAIRMAN FESMIRE: Okay, those -- That's not an
17 OCD record.

18 MR. STRANGE: No, it's not. What I'm saying is
19 that if there's an objection I can call a witness to
20 authenticate the two documents. If there's no objection,
21 then I don't need to call a witness to authenticate those
22 two documents.

23 MR. ROBINS: I don't have any objection to it.

24 CHAIRMAN FESMIRE: Ms. MacQuesten?

25 MS. MacQUESTEN: I don't have any objection to

1 introducing the evidence of -- those documents into
2 evidence.

3 I will be disappointed if I have no one to
4 question about the various transfers.

5 (Off the record)

6 CHAIRMAN FESMIRE: So, Ms. MacQuesten, do I
7 understand that to be an objection?

8 MS. MacQUESTEN: Well, it's 6:15. If this were
9 three o'clock, there would be an objection. But I won't
10 object to the admission of those two documents.

11 CHAIRMAN FESMIRE: As far as document 6 is, is
12 the memo from Bonnie Prichard part of the OCD file, or is
13 that --

14 MR. STRANGE: That's a response to the form that
15 was filed immediately preceding.

16 Those documents were electronically downloaded
17 from the OCD website.

18 CHAIRMAN FESMIRE: Okay, I would like you, for
19 the record, to catalog those documents and make sure -- let
20 the record reflect exactly what documents in -- I guess I
21 want some sort of statement on the record that these came
22 from the OCD records; is that --

23 MR. KELLAHIN: Mr. Chairman, I took them off the
24 website --

25 CHAIRMAN FESMIRE: Okay.

1 MR. KELLAHIN: -- for all the well files --

2 CHAIRMAN FESMIRE: Okay.

3 MR. KELLAHIN: -- and the rest of the documents I
4 think were largely taken from the Examiner transcript,
5 including the exhibits and letters that you've already
6 seen.

7 CHAIRMAN FESMIRE: Okay, what I'm saying is, this
8 is not the entire well file, is it?

9 MR. KELLAHIN: Well, I'm not sure, but I took it
10 off the website page, and I presumed it was all the well
11 file.

12 I did not go to the hard copy and make a direct
13 comparison.

14 CHAIRMAN FESMIRE: Okay, so this is the entire
15 well file of the Humble State Number 1 off the web?

16 MR. KELLAHIN: That's right.

17 CHAIRMAN FESMIRE: Okay, and that's Exhibit 6?

18 MR. KELLAHIN: Yes, sir.

19 CHAIRMAN FESMIRE: And Exhibit 9 is basically the
20 transaction documents that transferred to Rasmussen --

21 MR. KELLAHIN: Yes, sir.

22 CHAIRMAN FESMIRE: -- the -- exactly what does it
23 transfer?

24 MR. STRANGE: All the wells on that lease, the
25 shallow rights.

1 CHAIRMAN FESMIRE: The shallow rights, but not
2 the entire lease?

3 MR. STRANGE: Right, they retain the right to do
4 some deep drilling.

5 CHAIRMAN FESMIRE: So they retain the lease, part
6 of the lease?

7 MR. STRANGE: Part of the lease. They retain
8 deep rights. They assigned all of the wells that were out
9 there, and all of the shallow rights.

10 CHAIRMAN FESMIRE: Okay.

11 COMMISSIONER BAILEY: But this assignment was not
12 record title assignment; it was simply shallow rights?

13 MR. STRANGE: Record title, I believe it was
14 record title.

15 CHAIRMAN FESMIRE: Record title for the shallow
16 rights, but it's not the entire lease.

17 MR. STRANGE: Right.

18 CHAIRMAN FESMIRE: This is an assignment of the
19 shallow portion of the lease, and Maralo retained the deep
20 rights?

21 MR. STRANGE: It was a -- two things. It
22 assigned all of the wells that were out there, and it
23 assigned the shallow. There are no deep wells out there,
24 so surface equipment -- I mean, anything that's involved in
25 operations went with Rasmussen because they're all shallow,

1 but Maralo retained the right to go back at some point in
2 time and drill a deep well. There are no deep wells out
3 there, but that was the transaction. You get all the
4 surface equipment, you get all the wells, and you get the
5 shallow rights.

6 CHAIRMAN FESMIRE: Okay.

7 COMMISSIONER BAILEY: But this was never approved
8 by the Commissioner of Public Lands or even recorded in the
9 State Land Office files?

10 MR. STRANGE: That I can't say. I know the
11 transaction, I understand it was filed of record in the
12 county, but I cannot tell you -- It was filed in Lea
13 County, it was filed of record in Lea County. The rest of
14 the question I cannot answer because I do not have personal
15 knowledge.

16 CHAIRMAN FESMIRE: Okay, I think we're going to
17 have to explore this, and you're going to have to put your
18 witness on to -- I can agree to Exhibit 6, but Exhibit 9, I
19 think Ms. MacQuesten is -- we have a lot of questions to
20 answer about that one.

21 MR. STRANGE: If I can go ahead, I'll give you
22 the opportunity, but let me -- because the night's drawing
23 near, let me ask Mr. Hunt just these few questions.

24 MR. STRANGE: Would you please state your name?

25 CHAIRMAN FESMIRE: Let's swear him in first.

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WILLIAM P. HUNT,

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

DIRECT EXAMINATION

BY MR. STRANGE:

Q. Could you tell us your name, sir?

A. William P. Hunt. They had B. on it before; it was P.

Q. P as in Paul?

A. Paul.

Q. And Mr. Hunt, you testified in the last proceeding, did you not?

A. That's right.

Q. And I believe the Commission said they're taking judicial notice of that transcript?

A. Yes.

Q. With the Commission's permission, I won't go through all those same questions. I'd like to go straight to this one particular point.

CHAIRMAN FESMIRE: Since I wasn't here for the last transcript, why don't you tell me who he is and what he does.

Q. (By Mr. Strange) Okay, who are you and what is your affiliation with Maralo or this property?

A. Well, I'm William P. Hunt. I was an employee of

1 Ralph Lowe and Maralo, and I retired in 1996.

2 Q. What did you do for Mr. Lowe?

3 A. Well, I started out working on drilling rigs and
4 advanced on up to operations manager when I retired.

5 Q. What did you do for Maralo?

6 A. Well, for Maralo I was a drilling superintendent
7 and a production manager.

8 Q. Are you familiar with the property on the Anthony
9 ranch that we've been discussing all day?

10 A. Up until, I'd say, 1981. 1981 I didn't have any
11 more to do with it, after 1981.

12 Q. When did you first become involved with it?

13 A. I first become involved with it in 1958 when I
14 moved to Jal.

15 Q. All right. Now, that lease in the late 1950s,
16 was it producing water?

17 A. Yeah, it was producing water.

18 Q. What were you all doing with it?

19 A. We was at that time putting it in some pits out
20 there.

21 Q. How did you separate the water from the oil?

22 A. We had heater treaters with a fire going in them
23 and had chemical --

24 Q. Where on that particular area, where was the
25 heater treater?

1 A. Well, we had one setting on the north side of the
2 road, a big heater setting on the north side of the road,
3 then we had a smaller heater setting on the south side of
4 the road, that treated the water that come from the Shell
5 State, and it went down there also, Shell State Number 1.

6 Q. Now, the tanks, where were they located?

7 A. Well, the tanks were located on the south side of
8 the road. And you're always showing that water well. They
9 was just south of that water well, just inside the fence
10 there.

11 Q. How many tanks were there?

12 A. There were two 250-barrel tanks and there was two
13 500-barrel, all low tanks, weren't tall tanks.

14 Q. Do you remember the aerial photographs we've been
15 talking about?

16 A. Yeah.

17 Q. Those four white dots?

18 A. Yeah.

19 Q. Were those the tanks?

20 A. Those were the tanks, yes.

21 Q. But you had a heater treater on the south side of
22 the road and you had a heater treater on the north side?

23 A. That's right.

24 Q. How long -- Were those heater treaters in
25 operation right up to the point that you left?

1 A. They were operating to the point -- Well, let's
2 see now. I can't be sure of that because I ceased to be
3 out there and I was in the drilling department. 1981 -- I
4 don't remember whether they were still operating in 1981 or
5 not. I think they were, but I'm not going to say for sure,
6 though.

7 Q. When did you stop using the surface disposal
8 pits?

9 A. 1968.

10 Q. What did you do with those pits in 1968?

11 A. In 1968, the pits?

12 Q. Yes, sir.

13 A. Well, I was told that they needed this to be
14 cleaned up and close the pits up, and closing the pits up,
15 for me, was to push dirt in there, close the pits up.

16 Q. And who told you to close the pits up?

17 A. Huh?

18 Q. Who told you to close the pits up?

19 A. Well, I got that word from the office. I was
20 told at the office to close the pits.

21 Q. From that point forward, were those pits ever
22 used by Maralo?

23 A. (Shakes head)

24 Q. Did anybody -- did you ever see anybody take the
25 BS&W, tank bottoms, sediments like that, did you ever see

1 anybody dispose of any of those type of sediments in any of
2 the surface disposal pit sites?

3 A. No, I didn't.

4 Q. What was done with the sediments?

5 A. Sediments? When we had a tank bottom that built
6 up, why, we would call the roustabout outfit or tank-
7 cleaning outfit out of Hobbs, and they come down there and
8 cleaned the tanks and hauled it off.

9 Q. Did you ever see anyone take any of the bottom
10 sediments, BS&W, and put it out there on the ground
11 anywhere near the tank batteries?

12 A. No.

13 Q. Now, the water that was produced after the tank
14 batteries were closed, you continued to produce water.
15 What did you do with that water?

16 A. Tank battery -- ?

17 Q. I'm sorry, after the surface disposal pits were
18 closed, what did you do with that water?

19 A. It went down to that Number 1 SWD, the saltwater
20 disposal well.

21 Q. Okay, the one that was on the southwest --

22 A. Southwest corner, yes.

23 Q. All that water that was produced in that area
24 went to that one surface disposal?

25 A. That's right.

1 MR. STRANGE: No further questions, Mr. Chairman.

2 CHAIRMAN FESMIRE: Ms. MacQuesten?

3 MS. MacQUESTEN: No questions.

4 CHAIRMAN FESMIRE: Mr. Robinson [sic]?

5 CROSS-EXAMINATION

6 BY MR. ROBINS:

7 Q. Did you, when you were out working -- You said
8 you worked on this site through 1981; is that correct?

9 A. I moved from Jal in 1981, and I was not ever out
10 on that lease again.

11 Q. When you were in Jal, how often would you go to
12 this lease?

13 A. Well, I would -- was a foreman, and I had leases
14 all over the county and all over the state to go by, and
15 probably once a week, twice a week, I would go by there,
16 just to see how it was looking. I didn't stay out on that
17 lease. I didn't go out there because I had New Mexico --
18 all of New Mexico and Texas that I was looking after.

19 Q. Okay, so this was but one lease in a huge number
20 of leases that you --

21 A. That's right.

22 Q. -- were over at that time, correct?

23 A. That's right.

24 Q. And Maralo started in 1974, 1973, somewhere in
25 there?

1 A. I'm not sure of that date.

2 Q. What -- Now, when Mr. Lowe died you worked for
3 him, right?

4 A. That's right.

5 Q. And he died in what year?

6 A. Died in 1965.

7 Q. And between 1965 and 1973, who was managing those
8 leases?

9 A. It was an estate, it went into an estate.

10 Q. And so was there a trust bank that was managing
11 it, or was it --

12 A. It was several guys, I can't recall who all they
13 were.

14 Q. And then there was a company that was formed and
15 made up out of Mr. Lowe's children, correct?

16 A. Well, there was Maralo formed, and I can't
17 remember -- I was not involved with the legal issues of
18 when it was formed and when it was not.

19 Q. I'm not asking you that. Was Mr. Lowe's family
20 involved in Maralo, Inc.?

21 A. I don't remember.

22 Q. You don't remember?

23 A. I don't remember whether they was involved in
24 Maralo, Inc., or not. I know that -- all I remember them
25 being involved was in Maralo, Incorporated.

1 Q. Okay, that's Maralo, Inc.

2 A. Maralo, Inc., yeah.

3 Q. Maralo, Inc., okay. So what family members of
4 Mr. Lowe were involved in Maralo, Inc.?

5 A. Mary Ralph, mainly. That's the only one I knew
6 of.

7 Q. That's his daughter?

8 A. His daughter, yeah.

9 Q. Okay. So these leases have been sort of in the
10 Lowe family since the early 1950s, correct?

11 A. Yeah, I guess they have.

12 Q. Okay. And now, were there spills at the tank
13 battery?

14 A. Occasionally the tanks would run over, yes.

15 Q. And that occurred while Maralo, Inc., was the
16 operator, didn't it?

17 A. Yeah.

18 Q. Pardon?

19 A. Yeah, they were.

20 Q. Okay. So some of the contamination that was on
21 that tank battery occurred while Maralo, Inc., was
22 operator, correct?

23 A. Yeah, they run the tanks over a few times.

24 Q. And whatever existing contamination was there
25 while Ralph Lowe was operator or the estate was operator,

1 when the tank battery would overflow, it would commingle
2 with the contamination that was already there, wouldn't it?

3 A. I don't know about the commingling, I couldn't
4 answer that question.

5 Q. Well, I mean, did it fall in the same area?

6 A. It would fall -- it would fall over in -- we had
7 some berms around there, and it would collect in those, oil
8 would collect in those berms. When we got out there, we'd
9 try to pick it back up and put it back in the tanks.

10 Q. Did you ever remediate, dig out dirt and haul it
11 off?

12 A. No.

13 Q. Okay, so any contamination you would -- you'd set
14 up a pump, you would get a -- like one of those trucks that
15 you can hook up one of the hoses to and suck the oil off
16 the ground?

17 A. Well, that, and we had a little old pump that
18 we'd use ourselves out there to pick it up.

19 Q. But it wasn't possible to be able to get all of
20 the oil up, right?

21 A. Well, no, you know it wouldn't be able to pick it
22 all up like that.

23 Q. Okay, but -- so what sort of saturated the soil
24 you'd just leave there, right?

25 A. Yeah, that's right.

1 Q. You never remediated it?

2 A. No, I didn't.

3 Q. And that occurred on a number of occasions while
4 Maralo, Inc., was the operator, correct?

5 A. Right.

6 Q. Now, as far as -- isn't it true there were times
7 when there were pumpers out there that would bleed the BS&W
8 out on the tank battery?

9 A. I don't remember. They wasn't supposed to. I
10 didn't ever see them do it.

11 Q. So if there -- there was never anybody that was
12 told that the way they were supposed to get BS&W removed
13 was to open the back of the tank battery and just bleed it
14 out?

15 A. No.

16 Q. If somebody did that, that would be an absolute
17 conscious indifference to the environment, wouldn't it?

18 A. That's right.

19 Q. You don't dispute that Maralo, Inc., caused some
20 contamination on this site, do you?

21 A. Well, it's like I said, some tanks ran over, and
22 I remember one time that Shell -- it wasn't Shell, it was
23 Texas-New Mexico pipeline, they were tied onto our tanks.
24 So they put a tank on, put a tank of oil on, and there was
25 some tanks up above us, higher on the hill. I got out

1 there the next morning, and my tanks were running over,
2 running oil over. So I closed the valve and I called them.
3 They come out there and picked it up and opened it up. So
4 it wasn't altogether Maralo's fault a lot of times, because
5 Shell Oil Company -- I mean Texas-New Mexico pipeline
6 backed oil over on us there. So that's some --

7 Q. Sometimes contamination can be caused by more
8 than one person, right?

9 A. Yeah.

10 Q. I mean, for instance, you just gave an example of
11 that, right?

12 A. Yeah.

13 Q. You're not suggesting to this Commission that
14 Maralo doesn't bear some responsibility for the existing
15 contamination that is present there now, are you, sir?

16 A. I'm not in the legal end of it, I wouldn't want
17 to comment on that.

18 Q. Well, you're not suggesting that Maralo didn't at
19 least cause some of it, right?

20 A. Well, some of it happened while we were out
21 there, yes.

22 Q. All right. And in fact, you all were out there
23 operating that well for a long period of time, right?

24 A. That's right.

25 Q. Now, when did you say you left Maralo, Inc.?

1 A. I left in 1996.

2 Q. Okay, so you would have been with Maralo, Inc.,
3 in the 1993-1994 time period?

4 A. That's right.

5 MR. ROBINS: I don't think these have actually
6 been formally offered into evidence yet. I'd like to offer
7 Exhibit 20 from the Defendant's package, which are the
8 invoices showing the remediation -- quote, unquote,
9 remediation work that was done in 1994.

10 CHAIRMAN FESMIRE: Can you authenticate them
11 through this witness?

12 MR. ROBINS: I think they don't need to be
13 authenticated against a party, since they're the ones that
14 produced them as their own documents. Under the Rules they
15 would be self-authenticated as their documents.

16 CHAIRMAN FESMIRE: If Ms. MacQuesten agrees.

17 MS. MacQUESTEN: I have no objection.

18 MR. STRANGE: No objection.

19 CHAIRMAN FESMIRE: Okay. What was Maralo Exhibit
20 20, which consists of four pages of invoices from J.G.T.
21 Construction is admitted as -- Anthony Exhibit 1?

22 MR. ROBINS: We can call it Anthony Exhibit 1, I
23 guess. I assumed all of this was coming in, and since they
24 didn't offer it, I wanted to just go ahead, and we'll offer
25 it as Anthony 1.

1 CHAIRMAN FESMIRE: Okay.

2 MR. ROBINS: Could I approach the witness --

3 CHAIRMAN FESMIRE: You may.

4 MR. ROBINS: -- just so I can show him this
5 document.

6 Q. (By Mr. Robins) Mr. Hunt, I'm going to show you
7 what's now Anthony 1. Have you had a chance to see those
8 documents before?

9 A. No.

10 Q. It describes some work that was done out at the
11 Shell State and Humble State leases. Now, that would
12 include this lease that we've been talking about, correct?

13 A. Yeah.

14 Q. Now, in fact, we see there's -- one of the things
15 they're doing is abandoning battery here?

16 A. Uh-huh.

17 Q. Now, when you were with Maralo, Inc., were you
18 responsible for supervising the abandonment of facilities
19 like tank batteries?

20 A. I had some dealings with them, I had some people
21 worked out in the field. I wasn't out in the field at that
22 time.

23 Q. Well, before you took -- what did you -- what was
24 your position in -- you said left Jal -- I can't remember
25 when you told me.

1 A. 1981.

2 Q. What was your position from 1981 on?

3 A. 1981 on, for -- 1981 until sometime in the 1990s
4 I was a drilling superintendent and didn't have anything to
5 do with production.

6 Q. Okay, so you really don't have any personal
7 knowledge of what happened from 1981 on with respect to
8 Maralo, Inc.; is that true?

9 A. No.

10 Q. But as of 1981, was it -- at least while you were
11 there, was it -- was it Maralo's general practice when they
12 were reclaiming a tank battery site to just cover up the
13 site with dirt?

14 A. I couldn't answer that. I didn't know. I didn't
15 know about it because I was not involved in cleanups.

16 Q. I thought you were operations manager.

17 A. I had people working out in the field, and they
18 handled the cleanups out there, I didn't. I didn't --

19 Q. Okay. Now, you did tell me -- tell us, that the
20 office back in 1968 told you to close the pits?

21 A. Yeah, it was so -- you know, they had a ruling
22 that we couldn't put oil -- I mean water in the pits
23 anymore. So we made a disposal well out of the Number 1
24 well, and in the process the company told me to clean --
25 clear up those pits.

1 Q. Okay. You've been here most of the day?

2 A. Yeah.

3 Q. You heard Mr. Strange asking -- I can't remember
4 if it was Mr. Price or Mr. Anderson or both -- if they
5 remembered the OCD ever telling operators -- I can't
6 remember the exact phrase, but I think it was fill in the
7 pits. Do you remember that line of questions?

8 A. Well, yeah, but, you know, I didn't talk to OCD.
9 OCD doesn't talk to me.

10 Q. Okay. So you don't have any knowledge, do you,
11 sir, of there ever being any direct statement from OCD to
12 Maralo that the way that these pits were supposed to be
13 dealt with was just to fill them up? You never heard that,
14 did you? You just got that from your office, right?

15 A. I got it from the office that we were supposed to
16 -- wanted to close the pits, they didn't want to leave --
17 they said, Do not leave open pits out there.

18 CHAIRMAN FESMIRE: Mr. Robinson?

19 MR. ROBINS: Can I get my -- just my exhibits
20 back?

21 CHAIRMAN FESMIRE: You may.

22 MR. ROBINS: Thank you.

23 Q. (By Mr. Robins) As the operations manager and
24 being in the oil and gas industry for so many years, do you
25 think it's reasonable for a land owner to expect that when

1 you leave that you clean your mess up?

2 A. Well, a reasonable amount of cleanup, not to the
3 excess that -- you know, that you're going to make a
4 Cadillac out of a ranch, you know what I'm saying.

5 Q. Make a Cadillac out of a ranch?

6 A. What I'm talking about, you don't need to, you
7 know, spend a lot of extra money that -- you know, the
8 ranches are worth so much money, you know.

9 Q. So if it costs more than the ranch is worth, then
10 your theory is, it's okay to leave a bunch of contaminated
11 stuff there and --

12 A. No, I didn't say that, I didn't say that.

13 Q. Okay. So should they clean up their mess or not,
14 sir?

15 A. Maralo cleaned it up as -- you know, as far as I
16 was concerned, they had cleaned it up.

17 Q. Okay, so as far as you're concerned, the way that
18 -- what we have today is a good example of how Maralo
19 cleans up?

20 A. That's the way they'd always clean things up,
21 like that.

22 Q. Okay. That's all -- What we see in this case is
23 what they typically did, right?

24 A. Yeah.

25 MR. ROBINS: Okay, I don't have anything else.

1 CHAIRMAN FESMIRE: Commissioner Bailey?

2 EXAMINATION

3 BY COMMISSIONER BAILEY:

4 Q. It's always been pretty important to keep the
5 location weed-free, hasn't it?

6 A. I didn't understand that.

7 Q. It's always been real important to keep a
8 location weed-free, right?

9 A. I've got hearing aids, and I still don't hear
10 that well.

11 Q. It's always been very important to keep a
12 location weed-free?

13 A. That's right.

14 Q. You don't want thistle growing on the berms, you
15 don't want weeds growing in the middle of the site?

16 A. No, that's right.

17 Q. What did you use for weed killer?

18 A. Well, they had some chemical people who come
19 around with a weed killer and sprayed the tank battery
20 walls and stuff like that to keep the weeds down.

21 Q. Did you ever use BS&W for weed killer?

22 A. No.

23 Q. Did you use anything from that production
24 facility, or did you always import in chemicals from
25 someplace else?

1 shakeout was too high, the water -- the pipeline wouldn't
2 buy it, so they'd pump it back through the heater with heat
3 in there and chemical and treated it back out. The water
4 went on back to the disposal well, and the oil went back to
5 the tanks.

6 Q. Over time, did the tanks at this tank batter
7 collect tank bottoms?

8 A. Yeah, they would eventually -- you could get some
9 tank bottoms in them, yes.

10 Q. How did you handle the tank bottoms when they
11 accumulated?

12 A. I answered that question a while ago. I said
13 that they hired a trucking company or a tank cleaning
14 company out of Hobbs -- or south of Hobbs -- that they came
15 out there and taken the bottom out of the tank and carried
16 it out, and they remediated it. And what they did with
17 what they couldn't sell, I don't know.

18 Q. Okay. During your work -- I'm sorry, when was it
19 that you retired from Maralo or --

20 A. 1996.

21 Q. 1996? During your work there, were you ever
22 aware of any other time that anybody else operated this
23 particular tank battery facility, Southwest Production or
24 Hal Rasmussen operated this tank battery facility?

25 A. I never knew anybody else ever operated it, no.

1 I don't know.

2 COMMISSIONER CHAVEZ: Okay, thank you.

3 MS. LEACH: Mr. Chairman, I have a question,
4 please.

5 CHAIRMAN FESMIRE: Why don't you ask?

6 EXAMINATION

7 BY MS. LEACH:

8 Q. I believe they've taken away Exhibit 20 from you,
9 Mr. Hunt. Let me just show you a copy of it, and it has
10 the initials W.P.H. on it?

11 A. That's right.

12 Q. Did you see that document? Are those your
13 initials?

14 A. That's right.

15 Q. So then you approved that document --

16 A. I approved everything that went through the
17 Maralo office when I was over there, whoever did it.

18 MS. LEACH: Thank you.

19 EXAMINATION

20 BY CHAIRMAN FESMIRE:

21 Q. Mr. Hunt --

22 A. Yes, sir.

23 Q. -- do you remember, you at least had something to
24 do with this lease from 1958 through 1981, was it?

25 A. Yeah, that's right.

1 Q. Okay. When did you put the heater treaters out
2 there? Do you remember?

3 A. The heater treaters were setting out there when I
4 moved there in 1958.

5 Q. Okay, so they've been there from the beginning?

6 A. Yeah.

7 Q. Okay. You've been here all day and you've seen
8 the pictures of the site out there?

9 A. Yeah.

10 Q. What caused that? Why does it look like that?

11 A. I suppose it probably was some residue, got out
12 in the pits, you know, because just like I said, the heater
13 treater sometimes didn't always clean the oil as well as
14 you'd like it to, so sometimes residue oil would get out
15 there. When it collected up a certain amount, we'd get a
16 truck out there and pick it up and put it back through the
17 heater treater.

18 Q. Okay. So it wasn't just when the tanks had run
19 over. Sometimes you'd have a discharge from the heater
20 treaters?

21 A. Well, there was a little discharge going -- there
22 was water discharge all the time, and then it was just like
23 I said, there was a percentage of oil that went with the
24 water that couldn't be treated out. Eventually it would
25 build up in the pits to the point that we would decide that

1 we'd need to pick some of it up and put it back through the
2 heaters.

3 Q. Okay. So I guess what I'm saying is, we've got
4 the pits, we know that there's oil in the pits, right?
5 That's what you told us?

6 A. It was not deliberately put in there, no.

7 Q. But it would get there?

8 A. Yes.

9 Q. Okay. And we know that there's a berm around the
10 two 250s and the low 500s?

11 A. Yeah, that's right.

12 Q. But that doesn't explain how the asphaltine
13 residue got basically all over that location out there.

14 A. Well, just like I said, that pipeline company, I
15 don't know how much they run over. When I got out there
16 that morning, oil was running over the top of the berms.

17 Q. Do you remember about when that was?

18 A. I couldn't tell you when.

19 Q. It was before 1981, though?

20 A. Oh, yeah, it was before 1981. It was sometime in
21 the late -- early 1960s, I suppose. I can't document it.

22 Q. Okay.

23 A. So all I did was to call the pipeline company and
24 tell them they'd run my tank over and need to come pick it
25 up. So that's what they did.

1 Q. This is for my own edification and curiosity.
2 Did they pay you all for that oil, or did they pay the
3 uphill battery?

4 A. They paid us for it when they opened that valve
5 and took that oil. Now, what come back, I don't know about
6 that.

7 Q. Okay.

8 A. They run that tank of oil, they've got a seal on
9 it --

10 Q. Right.

11 A. -- and they break that seal, and when they sign
12 that ticket for so many feet or inches of oil out there,
13 that's what we get paid on. Now, what they did with the
14 rest of it, I don't know.

15 CHAIRMAN FESMIRE: That sounds like a great deal:
16 You sell your oil, it comes back, you sell it again.

17 (Laughter)

18 Q. (By Chairman Fesmire) But that particular
19 incident occurred when Ralph Lowe was apparently still
20 alive, and it was still Ralph Lowe, right?

21 A. I'm not sure of that, I don't know whether Ralph
22 was still alive then.

23 Q. Okay. Some of this contamination occurred,
24 though, during the time that Maralo operated it, and you've
25 told us?

1 A. Yeah.

2 Q. I guess what I'm worried about, except for that
3 one incident that shouldn't have been enough to contaminate
4 the three acres, to basically pave three acres. And that
5 may be a little bit of an exaggeration, but we've got oil
6 residue all over out there. How did that happen?

7 A. That I can't answer, other than what I've
8 testified to.

9 CHAIRMAN FESMIRE: Okay, I have no further
10 questions.

11 Mr. Strange, do you have a redirect?

12 MR. STRANGE: No, sir, no further questions.

13 MR. ROBINS: Can I follow up just a couple, just
14 real quick, two questions.

15 CHAIRMAN FESMIRE: Okay, two --

16 MR. STRANGE: I mean, I would object because I
17 haven't asked any other questions, and we are trying to
18 move along, and he's had plenty of opportunity to ask his
19 questions, so I would object.

20 CHAIRMAN FESMIRE: I agree with Mr. Strange, I'm
21 going to sustain his objection, because he hasn't asked any
22 new questions. There's nothing else for you to rebut that
23 wasn't already on the board before we started.

24 MR. STRANGE: My next witness will be Joe Pulido.

25 CHAIRMAN FESMIRE: Okay. Thank you very much,

1 Mr. Hunt.

2 MR. STRANGE: And I'm going to do something a
3 little unusual. I'm going to identify him and then I'm
4 going to pass him. Since you all had the questions about
5 the documents, I'm going to pass him. But I will identify
6 him for the record.

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

10 DIRECT EXAMINATION

11 BY MR. STRANGE:

12 Q. Could you tell us your name, please?

13 A. Joe Pulido.

14 Q. Mr. Pulido, what is your position with Maralo?

15 A. I am land manager for Maralo.

16 Q. Are you familiar with the title documents that
17 we've included in our exhibits as Exhibit 9?

18 A. May I see it, please, so I can verify?

19 Yes.

20 Q. Are you the one who either did it or corrected
21 the assembling of those particular documents?

22 A. I am.

23 MR. STRANGE: Mr. Chairman, I pass the witness.

24 Well, I'd offer Exhibit 9, and there's no
25 objection. You indicated that you had some questions. I

1 mean, I can formally go through and prove up the documents,
2 or, under the circumstances, allow you to ask the
3 questions, whichever you feel is more --

4 CHAIRMAN FESMIRE: Well, it will take about three
5 questions, but I'll ask.

6 MR. STRANGE: That will be fine.

7 EXAMINATION

8 BY CHAIRMAN FESMIRE:

9 Q. Mr. Pulido --

10 A. Yes, sir.

11 Q. -- these documents, you acquired them from the
12 Lea County Clerk?

13 A. The first document was acquired from our files.
14 And there were actually three documents -- this is one of
15 three -- all dated June 7th, 1973, I believe; is that
16 correct? That's correct.

17 The three documents were similar in nature. One
18 was Texas, one was New Mexico, and one was covering the
19 remainder, whatever additional ownership that Mr. Ralph
20 Lowe or his estate held.

21 Q. Okay, and these documents are out of your files,
22 and they're --

23 A. Yes, sir, that is correct, they're out of our
24 files.

25 CHAIRMAN FESMIRE: Okay, Ms. MacQuesten, do you

1 have any objection to admitting these three documents --

2 MS. MacQUESTEN: No.

3 CHAIRMAN FESMIRE: -- what has cumulatively been
4 marked as Maralo 9 --

5 MR. STRANGE: Yes, sir.

6 CHAIRMAN FESMIRE: -- and -- Mr. Robinson?

7 MR. ROBINS: I don't have an objection.

8 CHAIRMAN FESMIRE: We'll admit -- we'll just use
9 the numbering system that you've got on there -- Maralo 9
10 to the record.

11 MS. LEACH: Just to clarify, both 9-A and -B?

12 CHAIRMAN FESMIRE: Correct.

13 Commissioner Bailey?

14 EXAMINATION

15 BY COMMISSIONER BAILEY:

16 Q. Do you handle oil and gas leases issued by the
17 State of New Mexico through the Land Office?

18 A. Me personally, or our lease records group, or
19 what are you speaking of specifically? Our department?

20 Q. Yes, your department.

21 A. Yes, ma'am.

22 Q. And you oversee that department?

23 A. I do.

24 Q. Okay, so you are familiar with oil and gas
25 leasing --

1 A. Yes, ma'am.

2 Q. -- on state trust lands?

3 A. Yes, ma'am.

4 Q. Okay. The oil and gas lease over this portion of
5 Section 36 is currently held by Lowe Partners; is that
6 correct?

7 A. That is correct.

8 Q. Do you oversee that lease?

9 A. That's correct.

10 Q. Okay. Are you aware that an assignment of record
11 title ownership has to be approved by the Commissioner of
12 Public Lands?

13 A. I am and -- yes.

14 Q. And you have both given assignments and received
15 assignments of state trust lands through that process?

16 A. Yes.

17 Q. And that those assignments are undivided?

18 A. Yes.

19 Q. So the assignment that's part of this exhibit
20 would not qualify for record title change with the Land
21 Office, would it?

22 A. That's correct.

23 Q. And so this was never recorded or approved as a
24 change of record title ownership?

25 A. That is correct, it was only filed, apparently,

1 in the county records.

2 Q. Okay, and so the title to that lease is a very
3 clean title, going from Humble Oil to the different
4 entities and winding up with Lowe Partners?

5 A. Yes, ma'am.

6 Q. Okay. And so under the terms of the oil and gas
7 lease, and the assignments, you are responsible -- you have
8 the benefits and the responsibilities of all the lease
9 terms issued by the State Land Office?

10 A. As were read earlier, as I recall.

11 Q. Yes, you're aware of those?

12 A. I heard -- Yes.

13 Q. So you're not asking us to recognize this
14 assignment as record title, you're asking us to recognize
15 this assignment strictly and only of working interest for
16 certain properties?

17 A. Based upon the standard procedures of the State
18 of New Mexico.

19 Q. Okay, and this was never recorded, even as a
20 miscellaneous instrument, with the Land Office?

21 A. Apparently not. If your records do not reflect
22 it, then I cannot refute that.

23 Q. Okay. And neither was the -A portion of this
24 exhibit, the very first portion?

25 A. Apparently not.

1 Q. Okay. So according to the Land Office, Lowe
2 Partners would be responsible for activities on that lease?

3 A. As record title owner, is what you're saying, I
4 believe.

5 Q. With all the requirements that were given with
6 that lease?

7 A. Yes.

8 COMMISSIONER BAILEY: That's all I have.

9 THE WITNESS: Yes, ma'am.

10 CHAIRMAN FESMIRE: Commissioner Chavez?

11 EXAMINATION

12 BY COMMISSIONER CHAVEZ:

13 Q. Given the questions that Commissioner Bailey
14 asked, and the terms on these documents -- I'm looking
15 specifically at paragraph 5 on the second page of 9-B --
16 what is the effect of those indemnification -- that
17 indemnification have, the way you understand it as a
18 landman, given your responses to Ms. Bailey's questions as
19 concerns this particular contamination?

20 A. As my opinion, and rather than a legal
21 determination?

22 Q. As a landman.

23 A. Okay. Based upon the language, my opinion would
24 be that the assignee, which was Hal J. Rasmussen Operating,
25 Inc., would take on the responsibility, should there be any

1 call to question, whether it be any damages, anything
2 relative to demands, judgments, what have you, they would
3 have to step up and defend it or be responsible for any of
4 the ramifications associated therewith.

5 COMMISSIONER CHAVEZ: That's all the questions I
6 have.

7 FURTHER EXAMINATION

8 BY CHAIRMAN FESMIRE:

9 Q. Now, your lease was a -- this assignment is a
10 partial assignment. It reserves the deep rights; is that
11 correct?

12 A. That's correct, sir.

13 Q. So you have an agreement between Maralo and Hal
14 Rasmussen that the State was not aware of, it doesn't
15 involve the State, although --

16 A. That's correct, I understand, yes, sir.

17 Q. And you have a clause in here that basically --
18 "...and the failure to restore the surface." But that's an
19 agreement between you -- your entities, and Rasmussen. It
20 doesn't involve the State, it doesn't involve the surface
21 owner. As far as the State is concerned, the Maralo
22 entities are still responsible for the remediation of the
23 surface; is that not correct?

24 A. Is that not correct that that's your opinion or
25 your interpretation?

1 Q. No, I'm asking you if that is not correct.

2 A. You are correct, or Ms. Bailey is correct when
3 she advised that they have no record or any knowledge of
4 this having been filed as a memorandum or record title
5 having been conveyed directly to Hal J. Rasmussen
6 Operating, yes.

7 Insofar as there not being that recognition or
8 knowledge, if we are held accountable under the record
9 title and the lease, then this would be between us and Hal
10 Rasmussen. So that is the answer, sir.

11 Q. Okay. So -- I'm going to try to reiterate this,
12 because I think you answered it correctly and I think you
13 answered it accurately, but the fact is that between the
14 State, the surface owner and the Maralo entities, Maralo is
15 the responsible operator for this property, is it not?

16 A. Maralo, LLC?

17 Q. The Maralo entities, the two Maralo entities.

18 A. In so far as record title ownership is concerned,
19 you currently have it in Lowe Partners. That was
20 addressed. Is that not correct, Commissioner?

21 COMMISSIONER BAILEY: Yes.

22 THE WITNESS: Okay. So that's where record title
23 lies. Maralo, LLC, is the operating entity of Lowe
24 Partners, LP. That would be my answer, sir.

25 Q. (By Chairman Fesmire) Okay. So as far as the

1 issues before this Commission, the Maralo entities -- and
2 I'm not going to differentiate it any more than that --

3 A. Yes, sir.

4 Q. -- are the parties responsible for the
5 environmental remediation of that site?

6 A. May I answer the same way I just answered?

7 Q. You may.

8 A. All right. Lowe Partners is the record title
9 owner of this lease. We have a contractual or a county
10 assignment into Hal Rasmussen for our interest, fee
11 interest, down to 3500 feet, which is not filed with the
12 State or recognized by the State, and Maralo, LLC, is the
13 operating entity for Lowe Partners, LP. That's my answer,
14 sir.

15 CHAIRMAN FESMIRE: Okay. Ms. MacQuesten, do you
16 have any questions of this witness?

17 EXAMINATION

18 BY MS. MacQUESTEN:

19 Q. Who are the partners in Lowe Partners?

20 A. The partners. Lowe Partners -- I don't have the
21 structure. Maralo, LLC, is the managing partners of Lowe
22 Partners, LP. As far as a breakdown of the entities, I
23 would have to find that out, because I really don't know
24 the background. I do know that Mary Ralph Lowe is the
25 president of Maralo, LLC, managing partner. That's the way

1 many of our documents are executed, Maralo Partners, LP.
2 As far as the corporate structure, I don't have that
3 information with me at this moment.

4 Q. When Dorothy Phillips testified earlier, she
5 introduced a document from the Secretary of State's website
6 that showed the makeup of Maralo Partners, at least as far
7 as the Secretary of State of New Mexico is aware, and it
8 listed as partners Maralo, Inc., and Erma Lowe. Does
9 Maralo, Inc., even exist anymore?

10 A. No.

11 Q. Who is Erma Lowe?

12 A. Erma Lowe was the wife of Ralph Lowe, and she
13 passed away in 1998. I believe it was January of 1998, but
14 I'd have to verify that.

15 Q. Okay, so the partners on record from New Mexico
16 for Lowe Partners don't exist anymore?

17 A. Based upon what we've said, I guess that's
18 correct.

19 Q. And looking at document 9-A, the probate
20 proceedings document --

21 A. Yes, uh-huh.

22 Q. -- it appears that was signed in 1973?

23 A. Yes.

24 Q. And previously we heard that Mr. Lowe died in
25 1965?

1 A. That is correct, December of 1965, as I
2 understand it.

3 Q. Who was operating Mr. Lowe's properties from 1965
4 until 1973 when Maralo, Inc., came into being?

5 A. It was in the estate of Ralph Lowe, and there
6 were four trustees that were named to operate on his
7 behalf.

8 Q. Was any of this information shared with the OCD?

9 A. That I cannot answer.

10 Q. And Exhibit 9-B, the assignment, conveyance and
11 bill of sale, it appears that was executed in 1994?

12 A. Correct.

13 Q. This is the assignment to Rasmussen?

14 A. Hal J. Rasmussen, yes.

15 Q. Now in 1994, by that time the Shell State A 1 had
16 been plugged and abandoned, right?

17 A. Was that not in 1988 along with the others?

18 A. Right.

19 A. I'm just trying to go from memory.

20 Q. Sure. And we have all this in the record so we
21 can verify it, but the Shell State A 1 and the Humble 3
22 were both plugged and abandoned by Maralo, Inc., back in
23 the late 1980s?

24 A. That's correct.

25 Q. Before this document was executed?

1 A. That's correct.

2 Q. And so Maralo still appears as operator of record
3 for those wells as far as the OCD is concerned; is that
4 right?

5 A. Since they were plugged.

6 Q. And Rasmussen does not appear as operator of
7 record of those wells?

8 A. You've advised based upon the record.

9 Q. All right, and the other two wells we've heard
10 about are the Humble 1, and that was the one that was
11 converted to a saltwater disposal well?

12 A. That's what I understand, yes.

13 Q. Backed by Mr. Lowe himself or Mr. Lowe's estate
14 before it became Maralo, Inc.?

15 A. Correct, if it was 1968 it would have to have
16 been the estate, yes.

17 Q. And there was one other well we've heard about,
18 the Humble Number 2, and that was converted to a water
19 source well at some point in time, right?

20 A. That is correct.

21 Q. This 9-B, as Commissioner Fesmire was pointing
22 out, OCD was not a party to this agreement that transferred
23 rights to Rasmussen?

24 A. None of your records reflect that, so I would say
25 yes.

1 Q. And there was no notification to the OCD of this
2 agreement between Maralo and Hal J. Rasmussen?

3 A. Apparently not, no.

4 Q. And there was no notification to the State Land
5 Office either?

6 A. Apparently not.

7 MS. MacQUESTEN: Okay, thank you.

8 CHAIRMAN FESMIRE: I'm sorry, Mr. Robinson?

9 EXAMINATION

10 BY MR. ROBINS:

11 Q. Mr. Pulido, I'm Bill Robins. I just have a
12 couple of questions for you on follow-up.

13 I noticed on paragraph 4 that there's an assignor
14 language saying that you're actually -- your company was
15 actually agreeing "to indemnify and hold harmless ASSIGNEE,
16 ...employees, and agents, from any and all liability,
17 liens, demands, judgments, suits, and claims of any kind of
18 character arising out..." et cetera "... of ASSIGNOR'S
19 ownership and operation of the property...herein before the
20 effective date..." Do you see that?

21 So this seems to suggest that for anything that
22 happened before the effective date of this assignment, that
23 your company was, in fact, indemnifying Rasmussen, correct?

24 A. Yes, that is correct --

25 Q. And in fact --

1 A. -- before and after.

2 Q. And in fact, this document was signed less than
3 30 days after the work was done on the cleanup out on this
4 tank battery site, wasn't it?

5 A. Yes.

6 Q. Because we've got documents that were -- that I
7 think are now Anthony Number 1, that showed a cleanup was
8 done, 1994, March and February, and the last bit of it done
9 March the 2nd. So under the terms of this agreement, to
10 the extent that your company inadequately cleaned up that
11 site, under the terms of paragraph 4, you would be liable
12 for it, wouldn't you?

13 MR. STRANGE: Objection, that's a question of
14 law.

15 MR. ROBINS: I'm asking him his opinion as a
16 landman. He's been answering questions about the
17 interpretation of the document.

18 MR. STRANGE: Well, he can answer any questions
19 that you all have asked, but that's a conclusion of law
20 that's being provided by a party to this proceeding. I
21 would object.

22 MR. ROBINS: I can lay a foundation if I need to.

23 CHAIRMAN FESMIRE: I think a landman is qualified
24 to answer those questions. If he doesn't know the answer,
25 he can so state.

1 THE WITNESS: You're correct, sir.

2 Q. (By Mr. Robins) There's been some questions
3 raised at some point throughout the day about the financial
4 ability of your company to be able to handle the cleanup of
5 this site. Your company has the assets to be able to clean
6 up this site, doesn't it?

7 A. That would be a financial question that I would
8 have to follow up on.

9 Q. How many employees are there at Maralo, Inc., or
10 at Maralo, LLC?

11 A. Currently there's probably in excess of 25.

12 Q. And how many offices do they have?

13 A. Currently two.

14 Q. Where are they located?

15 A. Houston and Midland.

16 Q. How many oil and gas properties does Maralo, LLC,
17 currently own?

18 A. That I couldn't answer. I don't have a good
19 number.

20 Q. Aren't you a landman?

21 A. I am.

22 Q. Aren't you familiar with the holdings of Maralo?

23 A. I am. But to tell you exactly the number of
24 individual properties that we have, I would have to get a
25 -- some information to reflect that. I do not have the

1 number on it.

2 Q. More than a hundred?

3 A. Yes.

4 Q. More than a thousand?

5 A. Possibly.

6 Q. So you've got enough properties out there that if
7 for some reason the Commission were to say that you needed
8 to clean this thing up, and even if it cost a million
9 dollars, your company could handle that, couldn't it? It's
10 not going to put you in bankruptcy?

11 A. That's not a question I could answer
12 specifically. Bankruptcy, probably not, but I don't know
13 to what extent it would impact the company.

14 Q. Is it true that your company is in the process of
15 attempting to sell its assets?

16 A. We are in the process.

17 Q. And would that include whatever oil and gas
18 properties you currently have?

19 A. For the most part, yes.

20 Q. Are you familiar with the terms of that sale?

21 A. No.

22 Q. And are you familiar with who the company is
23 that's in the process of acquiring the assets of Maralo?

24 A. I have been told.

25 Q. And do you know who that is?

1 A. I know who it is.

2 Q. And who is it?

3 A. I'm not able to divulge that part of the -- I
4 have been told that I'm not able to formally divulge that,
5 because we're in the process.

6 CHAIRMAN FESMIRE: Mr. Robins, I don't think
7 that's relevant to this proceeding.

8 MR. ROBINS: Well, I'm just trying to establish
9 that -- since it's been raised by the OCD folks that
10 there's an issue concerning the solvency of these people
11 and there's been an issue raised about my client's
12 financial situation and settlements that he's received, et
13 cetera, I think it's relevant for the Commission to at
14 least understand whether or not -- I mean, to the extent
15 it's going to enter into the Commission's equation of
16 economic feasibility, I think it's relevant to put in the
17 record, you know, whether this company -- there is an
18 economic issue here.

19 CHAIRMAN FESMIRE: I think he's stated that in
20 his opinion that they would be able to do it, he didn't
21 know what it would do to the company, and I think that's
22 the limit of relevancy on this line of questioning.

23 MR. ROBINS: Okay. So --

24 CHAIRMAN FESMIRE: I'm going to object.

25 (Laughter)

1 MR. ROBINS: Okay, and I take it your -- I'm just
2 kidding -- I take it your objection is sustained.

3 (Laughter)

4 CHAIRMAN FESMIRE: Boy, you're getting good at
5 this.

6 MR. ROBINS: I'm getting smart. Sorry, I'm a
7 little slow. That's all the questions I have.

8 CHAIRMAN FESMIRE: Ms. MacQuesten, do you have
9 any rebuttal witnesses that you'd like to call?

10 MS. MacQUESTEN: No, thank you.

11 CHAIRMAN FESMIRE: Okay. I'm assuming that
12 everybody's through with their case?

13 MR. STRANGE: That's correct.

14 CHAIRMAN FESMIRE: Mr. Robins?

15 MR. ROBINS: Yes, sir.

16 CHAIRMAN FESMIRE: Okay. Do you guys want to
17 deliberate sometime next week?

18 COMMISSIONER BAILEY: Whatever.

19 COMMISSIONER CHAVEZ: Next week I'll be
20 traveling.

21 CHAIRMAN FESMIRE: That's fine. Counselor?

22 MS. LEACH: I'd say go for it, go into executive
23 session.

24 COMMISSIONER CHAVEZ: I don't have any problem
25 going tonight.

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER BAILEY: Sure.

3 CHAIRMAN FESMIRE: At this point we're going to
4 go into executive session, and --

5 MR. ROBINS: I had about a two-hour close I was
6 hoping to --

7 CHAIRMAN FESMIRE: Well --

8 (Laughter)

9 MR. ROBINS: I'm kidding.

10 CHAIRMAN FESMIRE: -- that is one thing I was
11 hoping to gloss over. Is there anybody that has a close
12 that they'd like to --

13 MR. ROBINS: I'm perfectly willing to waive mine.

14 CHAIRMAN FESMIRE: Ms. MacQuesten?

15 MS. MacQUESTEN: I'll forego the closing.

16 CHAIRMAN FESMIRE: Mr. Strange?

17 MR. STRANGE: Same.

18 CHAIRMAN FESMIRE: With that, we will go into
19 executive session, and I don't expect the rest of you to
20 hang around because I'm not sure when we'll be done. But
21 if you want to, you can. You've just got to hang around
22 outside.

23 At this point the Chair would entertain a motion
24 to go into executive session.

25 COMMISSIONER BAILEY: I so move.

1 COMMISSIONER CHAVEZ: Second.

2 CHAIRMAN FESMIRE: We'll have a roll-call vote.

3 Commissioner Bailey?

4 COMMISSIONER BAILEY: Aye.

5 CHAIRMAN FESMIRE: Commissioner Chavez?

6 COMMISSIONER CHAVEZ: Aye.

7 CHAIRMAN FESMIRE: And Commissioner Fesmire votes

8 aye. Thank you.

9 (Off the record at 6:45 p.m.)

10 (The following proceedings had at 7:29 p.m.)

11 CHAIRMAN FESMIRE: Okay, we're going back on the

12 record. It is 7:29 --

13 COMMISSIONER BAILEY: -- p.m.

14 CHAIRMAN FESMIRE: -- p.m. During the executive

15 session, the Commission, all three members of the

16 Commission present, considered Cause Number 13,142. We

17 have arrived at a decision. We have asked counsel Leach to

18 draft a proposed order for review by the Commission.

19 And that having been said, is there any other

20 business before the Commission?

21 COMMISSIONER BAILEY: No.

22 COMMISSIONER CHAVEZ: None here.

23 CHAIRMAN FESMIRE: At this point --

24 MS. LEACH: (Shakes head)

25 CHAIRMAN FESMIRE: -- I would entertain a motion

1 to adjourn.

2 COMMISSIONER CHAVEZ: So move.

3 COMMISSIONER BAILEY: Second.

4 CHAIRMAN FESMIRE: All in favor?

5 COMMISSIONER BAILEY: Aye.

6 COMMISSIONER CHAVEZ: Aye.

7 CHAIRMAN FESMIRE: Opposed? The motion to
8 adjourn passed unanimously. Thank you very much.

9 (Thereupon, these proceedings were concluded at
10 7:30 p.m.)

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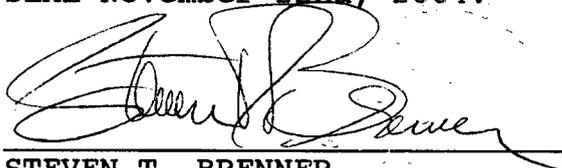
CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL November 22nd, 2004.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006