

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4 IN THE MATTER OF THE HEARING CALLED
5 BY THE OIL CONSERVATION DIVISION FOR
6 THE PURPOSE OF CONSIDERING:

CASE 15432

7 APPLICATION OF THE NEW MEXICO OIL
8 CONSERVATION DIVISION COMPLIANCE AND
9 ENFORCEMENT BUREAU FOR A COMPLIANCE
10 ORDER AGAINST DC ENERGY, LLC, FOR WELLS
11 OPERATED IN LEA COUNTY, NEW MEXICO.

12 REPORTER'S TRANSCRIPT OF PROCEEDINGS
13 EXAMINER HEARING
14 January 21, 2016
15 Santa Fe, New Mexico

16 BEFORE: MICHAEL McMILLAN, CHIEF EXAMINER
17 SCOTT DAWSON, EXAMINER
18 DAVID BROOKS, LEGAL COUNSEL

19 This matter came on for hearing before the
20 New Mexico Oil Conservation Division, MICHAEL MCMILLAN,
21 Chief Examiner, SCOTT DAWSON, Examiner, and DAVID
22 BROOKS, Legal Counsel, on January 21, 2016, at the New
23 Mexico Energy, Minerals, and Natural Resources
24 Department, Wendell Chino Building, 1220 South St.
25 Francis Drive, Porter Hall, Room 102, Santa Fe, New
Mexico.

26 REPORTED BY: ELLEN H. ALLANIC
27 NEW MEXICO CCR 100
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A P P E A R A N C E S

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A P P E A R A N C E S (cont'd)

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1 I N D E X

2 CASE NUMBER 15432 CALLED
 New Mexico OCD Compliance and Enforcement Bureau
 3 CASE-IN-CHIEF

4
 WITNESS MARK WHITAKER

5		Direct	Redirect	Further
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7		Cross	Recross	Further
8	By Mr. Robert Feuille	20		
9		Cross	Recross	Further
10	By Mr. Jacobsen	22		
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14

WITNESS DR. TOMAS OBERDING

15

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WITNESS J. DANIEL SANCHEZ

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10 WITNESS CALLED BY MR. JACOBSEN:

11	WITNESS JENNIFER PRUETT			
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1 (Time noted 8:32 a.m.)

2 EXAMINER McMILLAN: The next case that will
3 be heard today will be case No. 15432, Application of
4 the New Mexico Oil Conservation Division Compliance and
5 Enforcement Bureau for a Compliance Order against DC
6 Energy, LLC, for Wells Operated in Lea County, New
7 Mexico.

8 Call for appearances.

9 MR. HERRMANN: Keith Herrmann, representing
10 the Oil Conservation Division Compliance and Enforcement
11 Bureau.

12 MR. JACOBSEN: James C. Jacobsen with the
13 Attorney General's Office on behalf of the Oil
14 Conservation Division.

15 EXAMINER McMILLAN: Okay. Any other
16 appearances.

17 MR. JAMES FEUILLE: Good morning, Your
18 Honor. James Feuille and Robert Feuille are on the
19 phone appearing for the Johnsons.

20 EXAMINER McMILLAN: Thank you.

21 MR. ROBERT FEUILLE: We have a GoToMeeting
22 link. I am on the computer screen. Is there supposed
23 to be any video or not?

24 MR. BROOKS: We have no video facilities
25 here.

1 MR. HERRMANN: We have video for --

2 MR. BROOKS: I'm sorry. Mr. Herrmann.

3 MR. HERRMANN: Yes, we have video for our
4 witness and in the hearing room. It should be there --

5 MR. BROOKS: My apologies. I was
6 misinformed.

7 MR. HERRMANN: Mr. Feuille, we're not
8 requesting that you appear by video necessarily, unless
9 you have the capability.

10 MR. ROBERT FEUILLE: Well, I got a link for
11 GoToMeeting on a screen that says it's waiting for
12 Marlene (inaudible), so I'm just wondering if I am
13 supposed to be waiting for this thing to turn on or not.

14 If it's not going to turn on, that's okay.
15 I am just wondering.

16 MR. BROOKS: Well, Mr. Herrmann is working
17 on it.

18 MR. HERRMANN: Unless you gentlemen
19 necessarily need to see what is going on, would it be
20 all right if you just appeared by audio?

21 MR. BROOKS: Can you hear Mr. Herrmann?

22 MR. ROBERT FEUILLE: Yes.

23 MR. JAMES FEUILLE: Yes.

24 EXAMINER McMILLAN: Would the two gentlemen
25 on the phone please identify yourselves before you

1 speak.

2 MR. ROBERT FEUILLE: Robert Feuille, yes,
3 Your Honor.

4 MR. JAMES FEUILLE: This is James Feuille,
5 and, yes, I will. Thank you.

6 EXAMINER McMILLAN: Thank you.

7 MR. HERRMANN: I believe they meant that
8 every time --

9 MR. BROOKS: For the benefit of the record.

10 MR. JAMES FEUILLE: Understood.

11 EXAMINER McMILLAN: Thank you.

12 MR. ROBERT FEUILLE: Robert Feuille, yes, we
13 understand.

14 EXAMINER McMILLAN: Okay. What I would like
15 to do now is give the opportunity to make opening
16 statements.

17 MR. HERRMANN: Yes. Mr. Examiner, this is
18 Keith Herrmann for the OCD Compliance and Enforcement
19 Bureau. Good morning.

20 Today the Enforcement and Compliance Bureau
21 of the Oil Conservation Division will present evidence
22 of multiple instances of noncompliance with OCD rules
23 governing the production in oil and gas by operator DC
24 Energy, LLC.

25 The violations include failure to report

1 releases of hydrocarbons and oil field waste, failure to
2 repair an injection well after a failed mechanical
3 integrity test, and allowing half the wells they operate
4 to slip in inactive status without any attempt to
5 properly abandon the wells temporarily or otherwise.

6 MR. JACOBSEN: Good morning. On behalf of
7 the Attorney General's Office and the Oil Conservation
8 Division, DC Energy, the operator of the wells in
9 question, has filed for bankruptcy and is currently a
10 debtor out of possession in a Chapter 7 bankruptcy.

11 Clarke Coll of Roswell, New Mexico, is the
12 trustee for DC Energy, LLC, the only entity which has
13 authority to act on behalf of DC Energy.

14 I'm here to answer any questions and respond
15 regarding the bankruptcy and the interplay of that and
16 the Division's rules and regulations.

17 EXAMINER McMILLAN: Thank you.

18 MR. ROBERT FEUILLE: Robert Feuille. The
19 Johnsons will waive an opening.

20 EXAMINER McMILLAN: The Oil Conservation
21 Division may proceed.

22 MR. HERRMANN: Yes. I have three witnesses
23 today, Mark Whitaker, who will be appearing from our
24 Hobbs District Office via video; Dr. Tomas Oberding, our
25 senior hydrologist at the OCD, and Mr. Daniel Sanchez, a

1 compliance and enforcement bureau manager.

2 EXAMINER McMILLAN: I would like to have the
3 two Oil Conservation Division individuals in Santa Fe
4 please stand up and be sworn in.

5 (WHEREUPON, the presenting witnesses
6 were administered the oath.)

7 EXAMINER McMILLAN: And I am requesting the
8 same for Mark Whitaker. Would you please stand up and
9 be sworn in.

10 (WHEREUPON, the presenting witness
11 was administered the oath.)

12 THE COURT REPORTER: Mr. Whitaker is not
13 loud enough.

14 MR. HERRMANN: Please speak up a little,
15 Mark.

16 THE WITNESS: Yes.

17 MR. HERRMANN: Thank you.

18 MR. HERRMANN: As my first witness, I am
19 going to call Mr. Mark Whitaker.

20 MARK WHITAKER
21 having been first duly sworn, was examined and testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. HERRMANN:

25 Q. Mr. Whitaker, please state your name, title, and

1 place of employment for the record.

2 A. Mark Whitaker, petroleum engineering specialist,
3 OCD, District 1, Hobbs, New Mexico.

4 Q. Have you previously testified in an expert
5 capacity before the OCD hearing?

6 A. No.

7 Q. Could you please provide the Examiner with a
8 brief summary of your qualifications.

9 A. Yes, sir. I have a bachelor of science degree in
10 mechanical engineering from New Mexico State University.
11 I have eight years with the Oil Conservation Division,
12 and 20-plus years in the industry prior to that.

13 Q. Can you briefly describe the duties you perform
14 for the OCD?

15 A. Well, I do field inspections. I do -- I will
16 also write letters of violations when I find problems in
17 the field. I am in charge of the P and A program in the
18 Hobbs District Office, which includes restoration after
19 the wells are plugged.

20 And I also have assisted the environmental staff
21 with field visits when requested.

22 MR. HERRMANN: At this moment, I would like
23 to move Mr. Whitaker -- to admit his testimony as an
24 expert in oil and gas operations and compliance with OCD
25 rules and as a fact witness who has personal knowledge

1 of the well sites.

2 EXAMINER McMILLAN: Are there any
3 objections?

4 MR. ROBERT FEUILLE: Would you repeat the
5 categories upon which you wish to treat this witness as
6 an expert. Robert Feuille speaking.

7 MR. HERRMANN: Oil and gas operations in the
8 state of New Mexico and compliance with the Oil
9 Conservation Division rules in the state of New Mexico.

10 MR. ROBERT FEUILLE: With all the rules?
11 Robert Feuille speaking.

12 MR. HERRMANN: Rules regarding production
13 and operations.

14 MR. ROBERT FEUILLE: No objections. Robert
15 Feuille speaking.

16 EXAMINER McMILLAN: So qualified. You may
17 proceed.

18 BY MR. HERRMANN (cont'd):

19 Q. Mr. Whitaker, in the last two months how many
20 times have you visited the sites operated by DC Energy,
21 LLC?

22 A. I have been to their sites on three occasions.
23 I've been to the Mexico U site on two occasions. And
24 was also at the Gregory El Paso Federal No. 2 SWD on one
25 occasion.

1 Q. Let's start with the Gregory El Paso sites.
2 Could you please identify what I produced to you as OCD
3 Exhibit No. 3.

4 A. That would be the letter of violation; is that
5 correct?

6 Q. Yes.

7 A. That is just a copy of a letter of violation that
8 was sent on the 4th of December 2014. That was for --
9 it was sent for MIT failure on the Gregory El Paso
10 Federal Well Number 4.

11 And I instructed them at the deadline to complete
12 the work of March 8th of 2015. I also instructed them
13 to shut the well in.

14 Q. When you last inspected the site, was it shut in
15 properly per this letter of violation?

16 A. Say it one more time. I am sorry.

17 Q. Was this a well shut in pursuant to this letter
18 of violation?

19 A. Well, my visit in December, yes, it was shut
20 in.

21 Q. To your knowledge, has any remedial action been
22 performed by that March 8th deadline?

23 A. No.

24 Q. Has any remedial action been performed
25 irrespective of any deadline?

1 A. Not to my knowledge.

2 Q. What could be the possible reason for the MIT
3 failure?

4 A. Well --

5 MR. ROBERT FEUILLE: It's all right, go
6 ahead I am sorry.

7 A. The one that would concern me the most would be a
8 case or a cementing problem, defective casing or
9 cementing. That would be my biggest concern.

10 Q. And, Mr. Whitaker, why would that be your biggest
11 concern?

12 A. Well, the defective casing could allow your
13 different strata to communicate and commingle and/or
14 damage -- essentially damage ground water.

15 Q. And when were you last at this site?

16 A. I was at that site on December 15th of 2015.

17 Q. And what did you observe on your visit on
18 December 15th?

19 A. As I stated, the well was shut in -- pardon me.

20 MR. ROBERT FEUILLE: This is Robert Feuille
21 speaking. May I ask a favor at this point.

22 This phone I am on really doesn't work very
23 well. Can I walk -- can I take two minutes to walk to
24 another phone that my IT guys have set up for me?

25 EXAMINER McMILLAN: Yes.

1 MR. DAWSON: We can take a two-minute break
2 for you to do that, Mr. Feuille.

3 MR. ROBERT FEUILLE: Robert Feuille
4 speaking. I'd certainly appreciate it.

5 MR. DAWSON: You're welcome. This is Scott
6 Dawson by the way. I'm sorry.

7 (Pause.)

8 MR. JAMES FEUILLE: This is James Feuille.
9 We have moved and I believe we're ready if you can hear
10 us.

11 MR. DAWSON: We can hear you fine. This is
12 Scott Dawson.

13 EXAMINER McMILLAN: I got a question for
14 you. I need a clarification. Is Mr. Whitaker a fact or
15 an expert?

16 MR. HERRMANN: Both. He has been to the
17 sites and he also --

18 EXAMINER McMILLAN: But, for the record, you
19 said he was a fact witness.

20 MR. HERRMANN: I moved to admit him as an
21 expert but he also has factual knowledge of the --

22 EXAMINER McMILLAN: Okay. But the Feuilles
23 have to approve that.

24 Do you have an objection to this?

25 MR. BROOKS: Well, they may object if they

1 wish to object. But it is not improper for an expert
2 witness to also testify to facts if he has personal
3 knowledge of them.

4 If there is an objection to the witness's
5 qualifications to give an expert opinion that he's asked
6 to give, then, of course, present counsel may object at
7 the time that he's asked to give such an opinion.

8 EXAMINER McMILLAN: Okay.

9 MR. ROBERT FEUILLE: Robert Feuille
10 speaking. I am not -- if this witness has facts that
11 you wish for him to testify to from personal
12 observation, I am not going to object to that.

13 EXAMINER McMILLAN: Thank you.

14 MR. DAWSON: Mr. Feuille, you don't know who
15 is speaking, so, on this end, I would ask everyone,
16 before they speak, to say their name on this end also,
17 please.

18 MR. BROOKS: Okay.

19 MR. DAWSON: Thank you.

20 EXAMINER McMILLAN: This is Mr. McMillan.
21 Please proceed.

22 MR. HERRMANN: All right.

23 BY MR. HERRMANN (cont'd):

24 Q. I believe we finished our testimony for
25 Mr. Whitaker on the Gregory El Paso units. We will move

1 on to the Mexico units next.

2 Mr. Whitaker, when were you last -- what were the
3 dates of your site visits to the Mexico U wells and site
4 batteries?

5 A. This is Mark Whitaker. I was at the Mexico U on
6 January the 5th and again on January the 20th of 2016.

7 Q. Were you also there on December 15th?

8 A. No, I was not.

9 Q. What did you witness on January 5th?

10 A. January 5th, I drove up onto the -- I was at the
11 battery site for the Mexico U 3 and a transfer pump was
12 leaking produced water.

13 Q. Well, what actions did you take when you saw that
14 leak?

15 A. I contacted the Santa Fe Office trying to get a
16 contact to notify someone to shut the pump off.
17 Subsequently, we found a -- got ahold of I guess their
18 lease operators, DC's lease operators. And they came
19 and shut the pump off and stopped the leak.

20 Q. And when you revisited the site on January 20th,
21 what did you witness?

22 A. On the visit that day, I did not drive to the
23 battery, but I did note that both wells were active,
24 they were pumping.

25 Q. At the battery, did you witness any releases of

1 hydrocarbon or produced water?

2 A. On January 5th, yes. It was -- the releases were
3 pooling in a low area by the battery.

4 EXAMINER McMILLAN: And this is
5 Mr. McMillan. Please repeat the first statement,
6 "batteries" were what?

7 THE WITNESS: On my second -- I mean on my
8 visit on January 5th, is that what you're asking, sir?

9 EXAMINER McMILLAN: Yes.

10 THE WITNESS: On January 5th, when I found
11 the pump leaking, I also noticed -- or noted that the
12 fluids were pooling in an area near the battery. And
13 there was produced water and a very slight skim of
14 oil.

15 Q. Were any of these releases reported to the OCD
16 district office?

17 A. To my knowledge, no, sir.

18 Q. Let's move on to the two Crosby wells. Oh, can
19 you estimate a volume of those releases?

20 A. On the two Mexico wells?

21 Q. Yes.

22 A. I cannot. There was fluid standing there, but I
23 would not try to estimate the volume, no.

24 Q. Okay.

25 A. It looked like it was -- in my estimation, it

1 looked like it was somewhere between six inches and a
2 foot deep where it was pooled.

3 Q. Let's move on to the remaining well sites, the
4 Crosby wells. What was the condition of those well
5 sites?

6 A. When I was on the Crosby well sites in December,
7 they were both inactive. There were no flow lines from
8 the well to any type of a battery. There was no pumping
9 unit, though in my estimation they were -- and the
10 valves were closed on the wellheads, so they were not
11 capable of producing.

12 MR. HERRMANN: I have no further questions
13 for this witness. Thank you, Mark.

14 EXAMINER McMILLAN: This is Mr. McMillan.
15 Cross-examination.

16 MR. DAWSON: I have a few questions.

17 EXAMINER McMILLAN: Go ahead.

18 MR. ROBERT FEUILLE: I --

19 MR. DAWSON: Go ahead, Mr. Feuille. This is
20 Scott Dawson. I'm sorry.

21 MR. ROBERT FEUILLE: Thank you. Robert
22 Feuille speaking.

23 CROSS-EXAMINATION

24 BY MR. ROBERT FEUILLE:

25 Q. And in connection with the last answer that you

1 gave, you said there was some water pooling. You didn't
2 measure -- you didn't do anything to measure the
3 pooling, did you?

4 A. No, sir, I did not.

5 Q. Robert Feuille speaking. You didn't do anything
6 to sample the pooled water, did you?

7 A. No, sir, I did not.

8 Q. And why were you visiting -- excuse me. Robert
9 Feuille speaking.

10 Why were you visiting that well on January 5th or
11 those two wells on January 5th of 2016?

12 A. I was -- I had been requested to -- let me think.
13 Hold on. Okay. I had been there on the 5th. I think I
14 mentioned I had been there on the 5th of January.

15 Q. Yes, sir.

16 A. That was the day that -- okay.

17 I think my supervisor had asked me to follow up
18 on this. We had some really bad weather. I was in some
19 wells north of this at an Oxy location.

20 And it was right there, so I drove over to do an
21 additional inspection, to follow up on his. He had been
22 out there on December 15th.

23 Q. My understanding is that somebody called the
24 Hobbs office of the -- strike that. Let me start again.
25 This is Robert Feuille speaking.

1 My understanding is that someone had called the
2 Hobbs Office of the OCD prior to your January 5th, 2016,
3 visit, to report a leak. And do you know if that is why
4 you were out there on January 5th, was to go inspect the
5 leak?

6 A. I'm not certain if that was -- I am not certain
7 if that was the only reason I was out there.

8 Q. Robert Feuille speaking. Could that be a reason
9 you were out there?

10 A. Yes, sir, it could be.

11 Q. So, in fact -- strike that. Robert Feuille
12 speaking.

13 So, in fact, there may have been a report of the
14 leak to the OCD?

15 A. I don't know if there was or wasn't. I was not
16 contacted directly to go inspect for a leak to my
17 knowledge.

18 Q. Okay. Thank you.

19 MR. ROBERT FEUILLE: Robert Feuille
20 speaking. I pass the witness.

21 CROSS-EXAMINATION

22 BY MR. JACOBSEN:

23 Q. James Jacobsen from the Attorney General's Office
24 for the OCD. I have a couple of quick follow-up
25 questions.

1 Mr. Whitaker, you had looked at the property in
2 December and you had looked at it again in January. Was
3 the leak expanding at that time -- between your visits,
4 was it increasing in volume?

5 A. At which location?

6 Q. At the Mexico --

7 A. At Mexico U?

8 Q. Yes.

9 A. I was not at the site in December. I had been to
10 the Gregory on that day, and my supervisor was at the
11 Mexico U. And he noted on that day that the centrifugal
12 was running but it wasn't leaking.

13 So on December 15th, there was no record of that
14 pump leaking on that day.

15 Q. On your January 5th visit, you indicated that the
16 depth -- you estimated depth at 6 to 12 inches. What
17 was the area of that?

18 A. It was probably 12 foot by 12 foot, maybe a
19 little larger. I didn't get too close to it. There is
20 a gas problem at the battery.

21 I noted a strong odor. My H2S monitor was not
22 working that day. It wasn't in operation, and so I
23 tried to stay my distance away from it.

24 MR. ROBERT FEUILLE: Robert Feuille
25 speaking. I would object. The witness has already

1 testified that he didn't measure the pool.

2 MR. JACOBSEN: I would point out there is a
3 distinction between measuring and observing and making
4 an estimate.

5 MR. ROBERT FEUILLE: Or guessing.

6 Q. (By Mr. Jacobsen) With respect to the Crosby
7 wells, would there have been any indication whether they
8 had been active within the last year?

9 A. No, sir.

10 Q. And how about the Gregory El Paso Number 1?

11 A. No, sir.

12 MR. JACOBSEN: Nothing further.

13 EXAMINER McMILLAN: This is Mr. McMillan --

14 MR. ROBERT FEUILLE: Robert Feuille --

15 EXAMINER McMILLAN: Well, go ahead,
16 Mr. Feuille.

17 MR. ROBERT FEUILLE: Robert Feuille
18 speaking. Just one more question.

19 Mr. Whitaker you are not here today to
20 testify as an expert on how to eyeball measurements, are
21 you?

22 THE WITNESS: No, sir.

23 MR. ROBERT FEUILLE: Thank you. I pass the
24 witness.

25 EXAMINATION BY EXAMINER McMILLAN

1 EXAMINER McMILLAN: This is Mr. McMillan.
2 This question relates to your January 20th visit. You
3 said both wells were active; is that correct?

4 THE WITNESS: That is correct.

5 EXAMINER McMILLAN: Be more descriptive.
6 What do you mean they're active? What did you see?

7 THE WITNESS: On the Mexico U Number 2 and
8 the Mexico U Number 1, they both have pumping units on
9 them.

10 EXAMINER McMILLAN: And electrical lines and
11 things of that nature, they were -- you saw the
12 electrical -- the pumping units were hooked up and
13 active?

14 THE WITNESS: The pumping units were
15 running. They were going up and down. They were
16 pumping the wells, yes, sir.

17 EXAMINATION BY MR. DAWSON

18 MR. DAWSON: Scott Dawson here.

19 Mark, on January 5th when you witnessed the
20 leaking of the well, that was at the pump, correct?

21 THE WITNESS: It's a transfer pump that they
22 use to take their produced water from their battery and
23 they send it over to an Oxy site.

24 MR. DAWSON: So the pooling was beneath the
25 transfer pumping that was transferring the water from

1 the well to the salt water disposal tank?

2 THE WITNESS: It was around it, and it had
3 run down to -- you'll notice spots right by the
4 batteries.

5 MR. DAWSON: Okay. And when you went back
6 to the Mexico U wells on January 20th, those wells were
7 active. That transfer pump, did it appear to be
8 repaired or was it still leaking at the transfer pump?

9 THE WITNESS: Scott, I did not stop at the
10 battery.

11 MR. DAWSON: Okay. Those are all the
12 questions I have. Thank you, Mark.

13 EXAMINER McMILLAN: Do you have any
14 questions, Mr. Brooks?

15 MR. BROOKS: No questions.

16 EXAMINER McMILLAN: Okay.

17 MR. HERRMANN: With your permission, I will
18 call my next witness, Dr. Tomas Oberding.

19 EXAMINER McMILLAN: Please proceed.

20 MR. ROBERT FEUILLE: Robert Feuille
21 speaking. I'm sorry. The witness's name?

22 MR. HERRMANN: Tomas Oberding.

23 MR. DAWSON: Mr. Feuille, this is Scott
24 Dawson. His name is Tomas Oberding. And he is an
25 employee of the New Mexico OCD Santa Fe Office. He also

1 works in Hobbs.

2 MR. ROBERT FEUILLE: Thank you.

3 MR. DAWSON: You're welcome.

4 TOMAS OBERDING

5 having been first duly sworn, was examined and testified
6 as follows:

7 DIRECT EXAMINATION

8 By MR. HERRMANN:

9 Q. Dr. Oberding, please state your name, title, and
10 place of employment for the record.

11 A. Dr. Tomas Oberding. I work for the New Mexico
12 Oil Conservation Division, Environmental Bureau. And I
13 am the hydrologist for District 1 with direct oversight
14 of the environmental issues down there.

15 MR. HERRMANN: Can you gentlemen hear
16 Dr. Oberding all right?

17 MR. DAWSON: Mr. Feuille, this is Scott
18 Dawson. Can you hear Dr. Oberding?

19 MR. ROBERT FEUILLE: I can. If he speaks at
20 the level he was just speaking, I can hear him.

21 MR. DAWSON: Thank you.

22 BY MR. HERRMANN (cont'd):

23 Q. Dr. Oberding, have you previously testified in an
24 expert capacity in an Oil Conservation Division
25 Hearing?

1 A. No.

2 Q. Could you please describe your education and work
3 experience.

4 A. I hold a doctorate in natural resource and
5 environmental management, a master's in marine
6 aquaculture, and a bachelor's in desert ecology. I have
7 worked for the New Mexico Oil Conservation Division for
8 one and a half years.

9 Q. Can you briefly describe the duties you perform
10 for the OCD.

11 A. I review permits for remediation for both soil
12 and ground water impacts. And, so far, I've reviewed
13 greater than 500 instances of releases.

14 MR. HERRMANN: At this point, I would like
15 to move to admit Dr. Oberding as an expert in
16 environmental assessment.

17 EXAMINER McMILLAN: This is Mr. McMillan.
18 Any objections?

19 MR. ROBERT FEUILLE: No.

20 EXAMINER McMILLAN: So qualified.

21 Q. Dr. Oberding, have you researched the releases
22 reported by OCD staff?

23 A. Yes.

24 Q. Could you please identify what is listed as
25 Exhibit 4?

1 A. Exhibit 4 is the Gregory El Paso battery.

2 MR. ROBERT FEUILLE: Robert Feuille
3 speaking. May I interrupt.

4 There's a bunch of papers shuffling next to
5 the microphone, and I missed the question and the
6 answer. I apologize.

7 Q. Could you please identify Exhibit 4. This is
8 Keith Herrmann speaking.

9 A. This is -- Exhibit Number 4 is the Gregory El
10 Paso site, the El Paso Number 4 salt water disposal
11 battery.

12 Q. Could you please describe the site.

13 A. In an environmental capacity, there are numerous
14 tanks on the site with evidence of contamination in the
15 soil and on the tanks themselves. There's pooling of
16 hydrocarbons or apparent hydrocarbons between the tanks
17 and on the berms as well, on the soils in the --

18 Q. If I can stop you right there.

19 A. Yes, sir.

20 Q. Why don't we just go through picture by picture
21 of Exhibit 4.

22 A. Okay. Yes, sir.

23 So the first image is a series of tanks that are
24 the battery itself. There's a berm surrounding them,
25 and on the lower right-hand corner, nearby the large

1 tank, there is evidence -- well, apparent evidence of
2 some staining of the berm itself, which is evidence of
3 hydrocarbons.

4 Q. Next.

5 A. Next image. It's a little bit dark on the image;
6 however, on the computer, it lightens up. There is
7 evidence of pooling. You can see the reflection in the
8 center of the image. And the pooling appears to have a
9 dark color; the soil appears to have a dark
10 discoloration to it as well.

11 Q. Next.

12 A. Next image. Again, you see discolored, dark
13 colored soil, discolored soil. There is evidence that
14 one of the tanks in the center of it has a leak hole or
15 a weep hole potentially.

16 And the bottom of the right-hand tank is stained
17 several inches above the soil.

18 Q. Staying on this picture --

19 A. Yes, sir.

20 Q. -- do you also see some white discoloration?

21 A. There is evidence also of white discoloration,
22 which is evidence of a chloride release or it's
23 basically chlorides, which would be indicative of salt
24 water, produced water that has dried leaving the resin
25 or residue.

1 Q. The next photo.

2 A. The next photo you see again discoloration and
3 pooling of hydrocarbons along with elevated levels on
4 the tank sides and some splash over as well as the berm
5 being impacted.

6 Q. What do you estimate the height on that
7 discoloration on the outside of the tanks is?

8 A. Outside of the tanks, about less than six inches,
9 around six inches for the majority of the stain.

10 Q. Next photo.

11 A. The next photo, again you see the extent of the
12 discolored soil continuing along the way; the pipeline,
13 one of the feed lines appears to be discolored with
14 white, again indicative of a produced water release; and
15 the berm itself.

16 Q. And how does the condition of these feed lines
17 look?

18 A. The feed lines look like they've been covered
19 with a release at some point in time that has dried to
20 some extent.

21 Q. The next photo.

22 A. The next photo are two outside batteries. I'm
23 unsure if they are currently in use. However, they do
24 not look to be -- they do look to have some
25 contamination on them, including what would potentially

1 be a flow over from the top at some point in time.

2 Q. Continuing on.

3 A. The next image, you see significant pooling in
4 several areas along with holes in the side of the tank
5 that have had spills coming down them, including the
6 white stain that you see on the left-hand side. Again,
7 indicative of chlorides and produced water.

8 Q. And do you see additional weep holes on the tanks
9 there?

10 A. Yes, sir. There are at least three large weep
11 holes plus several others.

12 Q. And to the frac tank.

13 A. To the frac tank, there appears to be flow over
14 of a dark material, which is potentially hydrocarbon in
15 the frac tank. So that's -- and around there are
16 some -- there appears to be some staining on the ground
17 around it.

18 Q. And then the last two photos, if you see anything
19 of note that you would like to...

20 A. Again, on the one where you see the pump, which
21 would be the second -- which would be the last photo for
22 this series, there is significant white, indicative,
23 again, of chlorides around this area, chlorides that
24 have dried. And, again, you can see some damage to the
25 tanks in the center of the line as well as darkened

1 soil.

2 Q. Have any of these releases been reported to the
3 OCD?

4 A. Not to my knowledge.

5 Q. What sort of reporting would be required?

6 A. Well, a -- for a minor release which is greater
7 than five barrels, the notification is written and oral
8 within 15 days, including a submission of a C-141 and a
9 plan to delineate and remediate the site which must be
10 approved by the OCD staff, either the staff in Hobbs or
11 myself.

12 If it is greater than 25 barrels, it is
13 considered a major release which requires immediate
14 notification as well as the submission of a 141 form
15 along with the delineation and remediation reports.

16 Q. What do you estimate -- strike that. Do you
17 estimate this release to be greater than 25 barrels?

18 A. Cumulatively, yes.

19 Q. Would a cumulative release of 25 barrels be
20 classified as a major release?

21 A. Yes.

22 Q. How do you estimate these volumes?

23 A. One would look at the surface area that the
24 staining -- upon which the staining has occurred, as
25 well as any height -- and we can see that on the sides

1 of the tanks -- and from that a volume can be estimated,
2 if one also takes into consideration the soil itself.
3 The A proper estimate would occur via delineation,
4 whereby samples are taken at various depths until a
5 clean point or a background sample is obtained.

6 Q. And you would require those samples if the
7 operator had reported these releases?

8 A. Yes.

9 Q. Will the impact from these releases get better as
10 time goes on?

11 A. For a hydrocarbon release alone over time, there
12 is natural biodegradation; however, it is a lengthy
13 process. For produced water releases, no.

14 Q. And will the costs of cleanup increase over time?

15 A. Yes.

16 Q. Based on your experience and knowledge, do you
17 believe that these releases will require a remediation
18 plan?

19 A. Yes.

20 Q. Let's move on to the Mexico battery.

21 A. Okay.

22 Q. Would you please identify Exhibit No. 5.

23 A. Exhibit 5 are a series of images from the Mexico
24 sites. The first is an image of a well sign. The
25 second is an image of the well itself. And near the

1 bottom of the well or at the well head and to the right
2 there is discoloration of the soil indicative of
3 releases.

4 Q. Slow down one second. What were the dates these
5 photos were taken and by whom?

6 A. The dates on these photos appear to be
7 December 15th, and they would be by the field staff in
8 Hobbs.

9 MR. ROBERT FEUILLE: This is Robert Feuille
10 speaking. May I voir dire the witness briefly?

11 MR. BROOKS: You want to examine the
12 witness's qualifications to give testimony, Mr. Feuille?
13 This is David Brooks.

14 MR. ROBERT FEUILLE: Yes, regarding these
15 photos specifically. Robert Feuille speaking.

16 MR. BROOKS: I think it would be
17 appropriate, Mr. Examiner, to allow that at this time.

18 EXAMINER McMILLAN: Please proceed.

19 VOIR DIRE EXAMINATION OF DR. OBERDING

20 BY MR. ROBERT FEUILLE:

21 Q. This is Robert Feuille speaking. You did not
22 take these photos yourself, did you?

23 A. No, sir.

24 Q. And so, consequently, you cannot testify here
25 today that these photos do accurately represent what

1 they purport to represent or depict what they purport to
2 depict, can you?

3 A. I have -- after -- during my time at the OCD, I
4 have visited numerous sites that have had releases, and
5 so I do have experience in initial field visualization
6 as well as image characterization, because I do take
7 pictures when I do visit and I also request that
8 operators and the consultants provide imagery of sites
9 upon which remediations are occurring. And, hence, I do
10 have experience in examining imagery.

11 MR. ROBERT FEUILLE: Robert Feuille
12 speaking. I would object.

13 Q. That answer is nonresponse, Dr. Oberding. The
14 question was, specifically, because you did not take
15 these photos you do not know whether they were altered
16 in any way --

17 MR. HERRMANN: I would like to object to
18 this question. These are admissible as government
19 records taken in the ordinary course of business. And
20 the field staff taking these photos were under the
21 direct supervision of Dr. Oberding and were -- and
22 ordinarily perform inspections in this manner.

23 MR. ROBERT FEUILLE: This is Robert Feuille.
24 I would suggest that that doesn't overcome the
25 requirement that the witness be able to testify that the

1 photos do accurately depict that which they purport to
2 depict which requires him to have personal knowledge of
3 when they were -- of their taking of the photographic
4 incident in which they were taken.

5 MR. BROOKS: Robert Feuille, this is David
6 Brooks speaking. Mr. Examiner, may I ask some questions
7 of the witness to clarify this situation?

8 EXAMINER McMILLAN: This is Mr. McMillan.
9 Please proceed.

10 EXAMINATION BY MR. BROOKS

11 MR. BROOKS: Dr. Oberding, have you visited
12 these sites yourself?

13 THE WITNESS: No, sir, I have not.

14 MR. BROOKS: So you have no personal
15 knowledge of the conditions on the sites, only of the
16 conditions depicted in the pictures?

17 THE WITNESS: As well as oral reports from
18 the field staff in Hobbs.

19 MR. BROOKS: The opinions you have given
20 here relating to the pictures, on what exactly are they
21 based?

22 THE WITNESS: They are based on the
23 experience that I have accumulated at the New Mexico Oil
24 Conservation Division by visiting similar sites, such as
25 salt water disposals, such as wells themselves that have

1 had reported releases.

2 MR. BROOKS: Very good. I believe the
3 witness is competent to give these opinions -- well, one
4 more question.

5 THE WITNESS: Yes, sir.

6 MR. BROOKS: Is the -- and you based it in
7 part on the oral -- not testimony but the hearsay
8 statements --

9 THE WITNESS: The oral reports from the
10 field staff as they -- as part of the procedure is that
11 they send the pictures and then we discuss it on the
12 phone and they describe what they saw as we both look at
13 the pictures.

14 MR. BROOKS: Is basing a conclusion on the
15 photographs and the oral reports that you have received
16 something that an expert in your discipline would
17 reasonably rely upon in making an opinion on the
18 subject?

19 THE WITNESS: Yes, sir.

20 MR. BROOKS: Very well. I think that the
21 witness is entitled to give his expert opinion, so I
22 would advise the Examiner to overrule the objection.

23 However, although it has been stated that
24 these photographs are government records, there has been
25 no authentication, so the admission to testimony would

1 be subject to connecting that up.

2 EXAMINER McMILLAN: Mr. Feuille's objection
3 is overruled.

4 MR. ROBERT FEUILLE: Robert Feuille again
5 speaking. May I request a limitation on the use of
6 these photographs in that as stated they have not been
7 authenticated and the witness's testimony should be
8 limited to whether or not these photos could be
9 authenticated; in other words, while he may be qualified
10 to testify about what these photos may show if they are
11 indeed accurate, there is so far no testimony that these
12 photos are indeed accurate.

13 MR. BROOKS: This is David Brooks speaking.
14 I believe -- so far as I am aware, your observation is
15 correct, Mr. Feuille. But in the interest of allowing
16 counsel to present his case in the order that's most
17 suitable, this witness is an expert witness; and as I
18 interpret his testimony as an expert witness only, he
19 does not have actual facts -- I mean personal knowledge
20 of facts having not visited these sites. Therefore, my
21 advice would be that the Examiner allow the testimony of
22 the expert subject to the photographs being
23 authenticated at a proper time and in a proper way.

24 Thank you.

25 MR. ROBERT FEUILLE: Robert Feuille

1 speaking. Thank you.

2 EXAMINER McMILLAN: This is Mr. McMillan.
3 We shall allow the testimony subject to the photos being
4 authenticated.

5 MR. HERRMANN: Okay.

6 BY MR. HERRMANN (cont'd):

7 Q. Let's just go through photos and then you can
8 tell us what you see in them.

9 A. Okay.

10 Q. Starting with this second one after the well sign
11 with the pump jack.

12 A. With the first pump jack image, you see a pump
13 jack, and around the well head, there is dark staining,
14 which is indicative of hydrocarbon release. And
15 directly to the right of that, there is further
16 indication of dark soil.

17 The next image is a pump jack that does not
18 appear to have a rod or a hole or well hole.

19 The next image is a section of two pump jacks
20 along with an electrical outlet. The further away pump
21 jack again does not appear to have a polishing rod or a
22 well hole associated with it.

23 The next image is a pump jack with a well and
24 there is evidence of release near the well hole itself
25 indicated by the darkening of soil in that area.

1 The next image is a well sign.

2 Q. Okay. Let's move on to the battery.

3 A. Okay. At the battery, you can see a darkened
4 colored soil around some of the equipment, including the
5 tank. That would be indicative of the release.

6 On the next image where there is three tanks,
7 again you see darkened soil. On the computer it is more
8 evident, but the darkened soil is actually not the
9 shadow. There are two distinctly different colors
10 there.

11 The bottom of the tanks appear to have some holes
12 near the darkened soil, which potentially is the source
13 of the releases.

14 Q. These next photos are at a different date?

15 A. Yes, sir.

16 Q. You can tell by the evidence of the snowfall?

17 A. Yes, sir.

18 Again, we see some well signs on the next photo.
19 Behind the snow and the fence line, there is pooling of
20 liquid. What was reported was that there was a sheen on
21 that liquid as is slightly evident on some of the
22 photos.

23 The next image shows the extent of the pooling in
24 what appears to be a low area within the berm section.

25 And the next image again looks towards the right

1 from the previous image and shows again the lateral
2 extent of the pooling. And on a color image, there is
3 evidence of staining the ground in areas where the
4 liquid is not covered.

5 Q. Do you see a lot of snow on the well pad or the
6 battery pad itself?

7 A. On the battery pad itself, there is not much snow
8 as compared to what is outside of the pad or outside of
9 the bermed area. This would indicate that that liquid
10 that we are seeing is either a current release of
11 produced water or that there is contamination within the
12 soil that has lowered the melting point of the snow
13 itself, just like we put salt on roads when it snows.
14 And, hence, if the outside of the berm is snowed in and
15 the inside has liquid, there's potential contaminated
16 soil there.

17 Q. Of chlorides?

18 A. Of chlorides, yes, sir.

19 Q. Could you identify OCD Exhibit 6.

20 A. OCD Exhibit 6 are a series of maps describing the
21 area and indicating the area of the wells for Mexico
22 sites.

23 The colored map to the right is just the
24 districts. The lengthy map or the elongated rectangular
25 map is a ground water map of the area of District 1, of

1 the majority of the area of District 1.

2 And then the enlarged area is the section that --
3 the section township and range that are in question here
4 for the Mexico site.

5 The different colors that you see are the depths
6 to ground water in these areas. And the map was
7 developed based on New Mexico State Office of the
8 Engineer data.

9 The pink area is an area where ground water is at
10 a depth of less than 25 feet, estimated to be less than
11 25 feet to ground water. And then as the gradient lines
12 continue, it's in 25-foot increments.

13 Q. It is a little small, but could you identify
14 where the Mexico U wells are on this?

15 A. The Mexico U wells are located in the
16 northwestern quadrant of the enlarged map in the lower
17 left-hand corner. They are indicated by a triangle and
18 a star. And it would be 19 South, 38 East, Section 8.

19 And Section 8, the majority of the ground water
20 is indicated to be less than 25 feet. The darkened area
21 is the southern extent of the City of Hobbs itself.

22 And each of those squares is one mile. So the
23 wells are ostensibly within a mile of the City of Hobbs.

24 Q. Are there any drinking water wells within a mile
25 of the site as well?

1 A. There are two wells that are recorded for this
2 area that are within a mile of these sites.

3 Q. Will the impact from these releases get better
4 with time?

5 A. They will not get better with time, no.

6 Q. Is that because once hydrocarbon hits ground
7 water -- please elaborate.

8 A. If it's a hydrocarbon that encounters water, it
9 tends to spread with the ground water as the ground
10 water itself moves. So it will move out. And there is
11 some natural attenuation or degradation by microbes in
12 both the soil and the ground water; however, it is a
13 very slow process. For any chlorides from produced
14 water, that simply does not get better. There is no
15 natural attenuation for chloride.

16 Q. Will the cost of cleanup increase over time?

17 A. Yes.

18 Q. Specifically regarding the Mexico and Gregory
19 batteries, what corrective action is the Bureau
20 requesting?

21 A. The Bureau is requesting samples as from a
22 complete delineation horizontally and vertically.

23 At the Mexico site, due to the proximity to the
24 City of Hobbs as well as the depth to the ground water,
25 a water sample is also requested or required.

1 Based on the results of those delineations, a
2 remediation plan must be submitted for review by the
3 Bureau, upon which, after its approval, the plan can go
4 forward for the remediation.

5 Q. Were Exhibits 4 through 6 prepared by you or
6 under your direction?

7 A. Yes.

8 MR. HERRMANN: At this point, I would like
9 to move to admit OCD Exhibits 4 through 6 into the
10 record.

11 EXAMINER McMILLAN: Okay. Let's do this.
12 Are there any objections to Exhibit 6?

13 MR. ROBERT FEUILLE: Robert Feuille
14 speaking. No.

15 EXAMINER McMILLAN: Exhibit 6 may now be
16 accepted as part of the record.

17 (Oil Conservation Division Compliance and
18 Enforcement Bureau Exhibit 6 was offered and admitted.)

19 EXAMINER McMILLAN: Now going back to
20 Exhibits 4 and 5, are there any objections to those --

21 MR. ROBERT FEUILLE: Robert Feuille
22 speaking. Yes.

23 EXAMINER McMILLAN: Allow me to finish.
24 (Continuing) -- subject to the photos being
25 authenticated; any objection to that?

1 MR. ROBERT FEUILLE: Robert Feuille
2 speaking. I am not sure I understand. I don't think
3 these photos can be admitted unless they are
4 authenticated.

5 MR. BROOKS: Well, that would be true --
6 this is David Brooks speaking -- that would be true in
7 court. We are not in court. We are in an
8 administrative hearing. And the Oil Conservation
9 Division is not bound -- not necessarily bound by the
10 rules of evidence.

11 It does however follow the rules of
12 evidence -- use the rules of evidence as a guideline.
13 And I agree, therefore, that the Division cannot rely on
14 these photographs as being depictions of the well site
15 unless it is at some point authenticated.

16 However, in the interest of administering
17 the hearing in a practical manner, which is
18 characteristic of the flexibility of administrative
19 proceedings, I believe the Examiner's ruling is -- while
20 the Examiner hasn't ruled, I believe that what the
21 Examiner is asking you, Mr. Feuille, is is there any
22 objection to the admission of these exhibits except as
23 to authentication, which I would advise the Examiner to
24 postpone to allow the Division to qualify -- to
25 authenticate in a manner permitted by the rules at a

1 subsequent time by supplementation of the record with
2 notice to all counsel, if necessary.

3 So on that basis, Mr. Feuille, do you have
4 any objections to these exhibits -- which exhibit
5 numbers are we talking about?

6 EXAMINER McMILLAN: Number 4 and Number 5.

7 MR. BROOKS: Do you have any objections to
8 Exhibits Number 4 or Number 5 other than your objection
9 regarding authentication?

10 MR. ROBERT FEUILLE: No. This is Robert
11 Feuille speaking.

12 MR. BROOKS: Thank you.

13 Mr. Examiner, I believe that Exhibits 4 and
14 5 can be made a part of the record subject to
15 authentication.

16 EXAMINER McMILLAN: Exhibits 4 and 5 may now
17 be accepted as part of the record subject to
18 authentication.

19 (Oil Conservation Division Compliance and
20 Enforcement Bureau Exhibits 4 and 5 were offered and
21 admitted.)

22 MR. HERRMANN: Just a couple of final
23 follow-up questions.

24 REDIRECT EXAMINATION

25 BY MR. HERRMANN:

1 Q. Are there are any differences in the recording
2 requirements regarding the different El Paso and Mexico
3 sites?

4 A. No.

5 Q. The reporting requirements are the same?

6 A. Yes, sir.

7 Q. And do you estimate the release at the Mexico
8 battery to be greater than five barrels?

9 A. Yes, sir.

10 MR. HERRMANN: Okay. I have no further
11 questions.

12 MR. ROBERT FEUILLE: Robert Feuille
13 speaking. May I ask some questions?

14 EXAMINER McMILLAN: This is Mr. McMillan.
15 Please proceed.

16 CROSS-EXAMINATION

17 BY ROBERT FEUILLE:

18 Q. I would like to -- Dr. Oberding, I would like to
19 focus on the Mexico U units for a moment. And I would
20 like to draw your attention to Exhibit 5 if I may.

21 A. Okay. Yes, sir.

22 Q. Exhibit 5 -- well, with respect to the Mexico U
23 units there is no -- there's been no sampling of the
24 soil out there at this juncture as far as you know; is
25 that correct?

1 A. That is correct.

2 Q. And you've not -- strike that.

3 When we turn to the 5th page of Exhibit 4 -- or
4 5 -- Robert Feuille again for the record -- there's been
5 no measurements in relation to that particular darkened
6 area of soil that you pointed out as evidence of a
7 release, correct?

8 A. That is true.

9 Q. And the same would hold true for the next
10 following page -- not page -- I think we are on page 5
11 and I'm turning now to page 7, where you have another
12 area that's darkened soil that you called evidence of
13 release. And there has been no evidence there either,
14 correct?

15 A. There have been no samples to my knowledge, no.

16 Q. And no measurements of the area depicted,
17 correct?

18 A. Are you referring to the size of the area, sir?

19 Q. Yes, sir.

20 A. No. As far as I know there have been no
21 measurements to the size of that area.

22 Q. And those measurements would be, in your
23 testimony, essential to determining or estimating the
24 value of a release, correct?

25 A. That's correct.

1 Q. So -- and you brought forward actually for the
2 Mexico U units today -- Robert Feuille again for the
3 record -- you brought forward no calculations by which
4 you measure the volume of the release through
5 measurements of surface area or other measurements,
6 correct?

7 A. That is correct.

8 Q. In relation to what I'm going to call the snow
9 photos -- this is Robert Feuille again for the record --
10 if we look at the first snow photo which is in color, we
11 will see quite a bit of area in which there's not much
12 snow coverage, correct?

13 A. Within the fence line, yes.

14 Q. Well, within and without the fence line, correct?

15 A. It is difficult to determine the extent past the
16 fence line, but the fence -- from my understanding, the
17 fence is the extent of the pad or the bermed area.

18 So distant from the photographer on the other
19 side of the fence line there is a lack of snow,
20 correct -- as compared to what's closer to the
21 photographer.

22 Q. Robert Feuille speaking. Do you know when these
23 photos were taken?

24 A. To my knowledge, these photos were taken on
25 January 5th of this year.

1 Q. That is what was reported to you?

2 A. Yes, sir.

3 Q. Correct?

4 A. Yes, sir.

5 Q. If we turn to the black and white snow photos --
6 Robert Feuille speaking -- we also see areas in the
7 background where there's not -- where there is very
8 little or no snow coverage, correct?

9 A. It is difficult to determine on the photos at a
10 distance. There is some shrub cover out there. And the
11 areas of the shrubs as is evidenced by the shrub that is
12 proximal to the photographer, the shrubs do not retain
13 snow on themselves. So the darker areas outside of the
14 fence line, there is some vegetation out there that is
15 not retaining its snow. So I cannot determine outside
16 of that fence line at a distance how much snow cover
17 there is.

18 Q. Yes. And there is also some vegetation or
19 lack of snow coverage over to the right side of the
20 photo in the first of the black and white snow photos,
21 correct?

22 A. There is some vegetation on the proximal side of
23 the fence line as well as -- when we see a berm which
24 the berm itself does not appear to usually retain snow
25 on it, but we see larger stones there, so...

1 Q. Well, one of the things that -- Robert Feuille
2 speaking -- one of the things that's going to cause the
3 difference in accumulation of snow is going to be when
4 during the snowstorm, low spots, high spots in the soil,
5 correct?

6 MR. HERRMANN: Objection. Is the attorney
7 giving testimony here?

8 MR. ROBERT FEUILLE: That was a question.

9 MR. BROOKS: This is David Brooks speaking.
10 This is cross-examination. He is entitled to ask
11 leading questions. So I believe the objection should be
12 overruled.

13 EXAMINER McMILLAN: Objection overruled.

14 A. Wind does have an impact upon snow accumulation
15 as well topography.

16 MR. HERRMANN: I am going to object --

17 MR. FEUILLE: I can --

18 Mr. HERRMANN: -- that this is outside of
19 the scope of his testimony.

20 MR. BROOKS: Excuse me. One at a time
21 please. Go ahead.

22 MR. HERRMANN: I am objecting that weather
23 and snowfall patterns is outside the extent of my
24 witness's testimony.

25 MR. BROOKS: Well, he's given some opinions

1 that -- David Brooks speaking -- he has given some
2 opinions and I believe counsel should be allowed the
3 scope to cross-examine. I recommend the objection be
4 overruled.

5 EXAMINER McMILLAN: Objection overruled.

6 MR. ROBERT FEUILLE: Thank you. Robert
7 Feuille speaking.

8 BY ROBERT FEUILLE (cont'd):

9 Q. And you are not any kind of expert in snow
10 accumulations and snow melting patterns and topography,
11 are you, Dr. Oberding?

12 A. No, sir. My dissertation was in the analysis of
13 remote sensing data, including imagery.

14 Q. Okay. So whether -- Robert Feuille speaking
15 again -- so whether or not snow is melting at one
16 location more than another may result from a multiple --
17 from a variety of factors, correct?

18 A. At this point the accumulation -- the prior
19 question was about accumulation and that is in regards
20 to multiple variables. The melting of snow, which is
21 what I had indicated on this image, that is indicative
22 of -- because there is no pooling and melted snow in
23 other areas of that image, the extent of the pooling
24 over that large of an area, that's indicative that
25 there are chlorides present in the soil, because salt

1 will lower the melting point -- sorry -- or the freezing
2 point.

3 Q. To be fair -- Robert Feuille speaking -- to be
4 fair, Dr. Oberding, you have made an assumption which
5 you are not qualified to make, which is that there is
6 salt in the soil based on a fact that there is less
7 snow in one area than there is in another; is that
8 correct?

9 A. Incorrect. I am basing this assumption upon --

10 Q. Okay. So --

11 EXAMINER McMILLAN: This is Mr. McMillan.
12 Excuse me, sir. Allow him to answer the question.
13 Please proceed.

14 THE WITNESS: Thank you.

15 A. The assumption is based upon an understanding of
16 basic chemistry and the evidence that there have been
17 prior releases at this cite, as is evidenced in the
18 other images; and, also, on the colored image, there is
19 a line going to the top of one of the distal tanks where
20 there is discoloration coming from the top hatch, which
21 is indicated by the overflow release.

22 And so based on the understanding -- or based on
23 those, that's where the analysis is that there's
24 contamination in the soil causing the snow to melt at
25 that area.

1 Q. Dr. Oberding -- Robert Feuille speaking -- to be
2 fair, nobody went and examined the depth of the snow at
3 any location close to these batteries before the melting
4 occurred, did they?

5 A. Not to my knowledge.

6 Q. And so we don't know whether there was a lesser
7 accumulation of snow in the area in these photos where
8 the snow is melted off in the snow photos, do we,
9 Dr. Oberding?

10 A. No, we do not.

11 Q. Robert Feuille speaking -- consequently, we don't
12 know why snow would have melted more in one area than
13 another because it could simply have been from a lesser
14 accumulation of snow in the areas where there is no snow
15 in these photos, correct?

16 A. Partially correct. Based on the extent of the
17 pooling, that is indicative that there was an extensive
18 amount of snow in that area or that snow had melted and
19 flowed into that low spot, because if it was simply --
20 or potentially if it was a smaller amount of snow, as is
21 indicative of areas that are not covered in snow but
22 also don't have pooling, the water may have been
23 absorbed by the soil.

24 But due to the fact that we have a pool with
25 sheen on it that is indicative -- and the rest is snow

1 covered that is indicative that there is contamination
2 in the area.

3 Q. Robert Feuille speaking.

4 Let's look at the pool then. In these photos,
5 there is no sheen on the pool that I can see; is that
6 correct?

7 A. When I examined the images, there was the sheen
8 that is evident and based on --

9 MR. HERRMANN: Objection. Is the attorney
10 asking the doctor what the attorney sees?

11 MR. BROOKS: David Brooks speaking.
12 Literally that was his question. But I would recommend
13 we allow the witness to respond based on his observation
14 of the photographs.

15 A. Based upon my observation of the photos, there is
16 a sheen present.

17 Q. Robert Feuille speaking.

18 These photos, Dr. Oberding, are not in color;
19 these are black and white photos that show the pools
20 you're talking about, correct?

21 A. Incorrect -- partially correct. The first image
22 is in color. The subsequent images are black and
23 white.

24 MR. HERRMANN: Sorry. I must have run out
25 of -- I have them in color.

1 THE WITNESS: That's fine.

2 Q. This is Robert Feuille.

3 I appreciate you're trying to draw fine lines,
4 Dr. Oberding, but the first color photo doesn't have any
5 pooling in it, does it?

6 A. Sorry. The second photo -- the first photo is
7 what you referred to as the snow photos is an image of a
8 well sign and part of a tank.

9 The second image is from a different area on the
10 location that shows in the image four tanks to the
11 center and right and a low spot with pooling of
12 liquid to the left behind the denuded tree -- or denuded
13 shrub.

14 MR. ROBERT FEUILLE: Robert Feuille
15 speaking. I object. The answer is nonresponsive.

16 Q. I just asked you, Doctor, whether the first color
17 snow photo had any pooling in it. And it doesn't, does
18 it?

19 A. I want to make sure that we are discussing the
20 same image, sir. So I would like a clarification in
21 what you're calling --

22 Q. The first color photo --

23 A. Please describe what you see as the first snow
24 photo.

25 Q. It is the first color photo with snow in it.

1 That's the image I am referring to.

2 MR. BROOKS: Excuse me. This is David
3 Brooks speaking. Could you say what page number in
4 the -- could you count the pages and see what page
5 number in the sequence this is, is being referred to.

6 MR. FEUILLE: Robert Feuille speaking.
7 Sure. Let me do that.

8 Q. (By Robert Feuille) I think it's page 9 -- is a
9 color photo with snow and a sign that says "danger"
10 three times.

11 A. Yes.

12 Q. Robert Feuille speaking.

13 A. On page 9, there is a color photo of a sign with
14 "danger" written three times -- that is correct -- and
15 there is no pooling in that image.

16 Q. Robert Feuille speaking.

17 Dr. Oberding, so when we look at the photos that
18 follow, that are in black and white, I can't see any
19 sheen on the water. Where do you see sheen on the
20 water?

21 A. Page 10 on my packet, page 10 of this exhibit, I
22 have in color.

23 MR. HERRMANN: Sorry. Some of these photos
24 came in color and some have not. I have a full color
25 packet if that would aid anyone.

1 EXAMINER McMILLAN: I think we have to
2 accept what we have since it's being contested.

3 MR. BROOKS: This is David Brooks. That's
4 what has been tendered. So is it a situation where the
5 copies that we have here are in color, but those that
6 have been furnished to Mr. Feuille may be in black and
7 white? Things like that sometimes happen. I am asking
8 a question. I don't know.

9 MR. ROBERT FEUILLE: Robert Feuille
10 speaking. Well, the last color photo I have is the one
11 with snow and "danger." The balance of the photos are
12 all in black and white.

13 MR. JACOBSEN: If I may, this is James
14 Jacobsen. The packet I have is different from
15 Mr. Feuille's. I am looking at what he's seeing as a
16 black and white photograph and it is clearly a color
17 photograph. It says "Evidence of Release" in blue and
18 there are red lines going to the tank. And I certainly
19 see the sheen behind the bush.

20 MR. DAWSON: This is Scott Dawson.

21 Mr. Jacobsen, are you referring to photo
22 number 10 of Exhibit 5?

23 MR. JACOBSEN: If I am following the way
24 that people counted, absolutely. It is the one in my
25 packet which follows the picture of the red sign with

1 the three danger signs with a white tank on the right
2 side with the ladder in the foreground and a fence.

3 The one immediately after that shows two
4 large storage tanks and two smaller storage tanks. I
5 used to be able to give you the volumes, but I can't
6 anymore.

7 But if you look, just below the center of
8 the photograph, it says, "Evidence of release." That is
9 blue in my photograph. And there are red lines going
10 from those words to the tank on the left where I think
11 Dr. Oberding testified that there was evidence of
12 overflow of the spill, and to the right where there's a
13 reflection of the tank off what appears to be a liquid
14 substance that Mr. Feuille, apparently, if he has a
15 black and white photograph, is not picking up on.

16 MR. HERRMANN: I can also put these on the
17 video screen as well.

18 EXAMINER McMILLAN: Just allow Mr. Feuille
19 to respond. Mr. Feuille.

20 MR. ROBERT FEUILLE: Robert Feuille
21 speaking. Go ahead. I am sorry.

22 EXAMINER McMILLAN: I requested that you
23 proceed with your answer. Proceed.

24 MR. ROBERT FEUILLE: Mr. Examiner --

25 MR. BROOKS: Proceed, Mr. Feuille.

1 MR. ROBERT FEUILLE: Thank you. Robert
2 Feuille speaking.

3 I would object to all of Mr. Jacobsen's
4 testimony.

5 Q. (By Mr. Robert Feuille:) But I only have black
6 and white photos; nevertheless, Dr. Oberding, in
7 connection with these black and white photos of the
8 well -- well, in connection with the photos that you
9 have in front of you -- I'm specifically referring to
10 pages 10, 11, 12, and 13 of Exhibit 5. I don't see
11 any evidence of white accumulation of minerals as I
12 saw in the photos that have been marked as
13 Exhibit Number 4.

14 Do you see any such accumulations of white
15 deposits?

16 A. On those images -- on those pages that you just
17 described in this exhibit, no, I do not.

18 Q. Robert Feuille speaking. And it was the
19 accumulations of white crust that you referred to as the
20 "chlorides," correct?

21 A. In the prior exhibit, that is correct. However,
22 accumulation --

23 Q. But you don't see --

24 EXAMINER McMILLAN: Excuse me, sir. Allow
25 the individual to respond.

1 THE WITNESS: Thank you.

2 MR. ROBERT FEUILLE: I am sorry. Thank you.

3 A. The white residue of chlorides is evidence of a
4 concentration of chloride; however, soils may appear
5 visibly clean. However, upon testing within a lab the
6 results of those tests of apparently clean soils which
7 do not carry any white residue have been provided to the
8 OCD on different occasions from different sites 'to'
9 exceed our standards of -- our soil standards for
10 clean.

11 So white residue is indicative of a higher
12 concentration of chloride, but a lack of white residue
13 is not indicative of no chlorides or a clean,
14 chloride-free clean soil.

15 Q. Okay. So the soil out in the Mexico U -- Robert
16 Feuille speaking -- has not been actually tested in the
17 lab, has it?

18 A. No, sir.

19 Q. So we don't really know at this juncture whether
20 there is chloride in the soil or not.

21 A. Based upon the lack of lab samples, we do not.
22 Based upon the evidence on the tanks of an overflow and
23 on subsequent images, which you have in black and white
24 but which are in color originally, there are darkened
25 areas which are indicative of hydrocarbons/produced

1 water releases, and the basic chemistry of sodium
2 chloride plus snow leads to water.

3 Q. And that water that you are referring to --
4 Robert Feuille speaking -- is also water that has not
5 been tested for chlorides, correct?

6 A. That is correct.

7 MR. BROOKS: Excuse me. David Brooks
8 speaking. Mr. Feuille, do you anticipate -- do you have
9 any estimate of how long your cross-examination of this
10 witness is likely to continue.

11 MR. ROBERT FEUILLE: Yes, just a couple of
12 more questions.

13 MR. BROOKS: Thank you.

14 Q. Robert Feuille speaking. So is it your testimony
15 today that you see in these photos evidence of a
16 release?

17 A. Yes, sir.

18 Q. And it's not your testimony today that you know
19 how much was released, correct?

20 A. That is correct.

21 MR. ROBERT FEUILLE: I pass the witness.
22 Thank you.

23 EXAMINER McMILLAN: Let's do it this way.
24 We are going to take a ten-minute recess and then we
25 will proceed from there.

1 MR. ROBERT FEUILLE: Thank you.

2 (Brief recess.)

3 EXAMINER McMILLAN: Okay. This is
4 Mr. McMillan. I am going back to order case 15432.
5 Please proceed.

6 MR. JACOBSEN: Is Mr. Feuille finished with
7 his cross-examination?

8 MR. ROBERT FEUILLE: Yes.

9 MR. JACOBSEN: James Jacobsen for the
10 Attorney General's Office. I have a few questions.

11 CROSS-EXAMINATION

12 BY MR. JACOBSEN:

13 Q. Dr. Oberding, who is the operator of the Mexico U
14 2 and 4 wells?

15 A. DC Energy.

16 Q. And how do you know that?

17 A. The database records indicate.

18 Q. Are you familiar with the regulations of the Oil
19 Conservation Division, specifically 19.15.29 release
20 notifications?

21 A. Yes, sir.

22 MR. ROBERT FEUILLE: This is Robert Feuille
23 speaking. I would object. I think we are outside the
24 scope of direct and cross.

25 MR. BROOKS: Mr. Jacobsen, for whom are you

1 appearing exactly?

2 MR. JACOBSEN: I represent the Division for
3 the bankruptcy case, Your Honor.

4 MR. BROOKS: That is my understanding. Now,
5 normally we only allow one counsel to examine a witness.
6 However, because of your expertise, if you are
7 examining the witness in regard to matters that have to
8 do with bankruptcy, I think it would be appropriate for
9 the Examiner in his discretion to allow you to examine
10 the witness. I'll just leave it at at that.
11 Please do not cover matters already covered by your
12 co-counsel.

13 MR. JACOBSEN: I will attempt to comply.
14 And I will try to be brief here.

15 CROSS-EXAMINATION (cont'd)

16 BY MR. JACOBSEN:

17 Q. DC Energy, LLC, is the operator. And that is the
18 entity that is in bankruptcy.

19 A. Yes.

20 Q. The definitions in 19.15.29.7 define the major
21 release as one which is in excess of 25 barrels.

22 In your opinion, based on the information
23 available to you, is the release here in excess of
24 25 barrels?

25 A. Yes.

1 MR. ROBERT FEUILLE: Robert Feuille
2 speaking. Objection. We are covering old territory
3 here.

4 MR. BROOKS: I believe he has already so
5 testified -- has he not? -- I don't recall --

6 MR. JACOBSEN: I will move on then.

7 Q. (By Mr. Jacobsen:) With respect to 15.29.9,
8 reporting requirements, do you receive reports in your
9 district?

10 A. Yes, I do.

11 Q. Did you receive any reports regarding release at
12 the Mexico --

13 A. No, I did not.

14 Q. Written or verbal?

15 A. Neither written or verbal.

16 MR. ROBERT FEUILLE: Objection. We are
17 beyond the scope of direct and cross. This is Robert
18 Feuille. And we are -- I'm not sure what the question
19 is because I couldn't hear part of it.

20 EXAMINER McMILLAN: Please repeat the
21 question.

22 Q. The question was that -- and if I might rephrase
23 it -- 29.10 and 29.9 in conjunction require the operator
24 to make the reports; is that correct?

25 A. That is correct.

1 Q. And you would know if a report had been made?

2 A. Yes.

3 Q. And no report was made?

4 A. Not to my knowledge.

5 MR. ROBERT FEUILLE: Objection. We are
6 still beyond the scope of direct. And this witness has
7 appeared here as an expert witness, not as a fact
8 witness. My name is Robert Feuille.

9 MR. BROOKS: Okay. Mr. Feuille, thank you.

10 This is David Brooks. I believe that this
11 objection is addressed to the sound discretion of the
12 Examiner who may determine whether or not to allow this
13 line of questioning.

14 EXAMINER McMILLAN: Okay. Your objection is
15 overruled because the release of water or hydrocarbons
16 affects the ground water; therefore, I say it is
17 overruled. Please proceed.

18 Q. (By Mr. Jacobsen:) And one final question.
19 There was a discussion of sampling. Who is responsible
20 for doing the sampling, providing the sampling?

21 A. The operators.

22 MR. JACOBSEN: Thank you. No further
23 questions.

24 MR. HERRMANN: I have no further questions
25 for this witness either.

1 EXAMINER McMILLAN: Thank you.

2 MR. HERRMANN: Thank you, Dr. Oberding.

3 At this moment, I would offer to recall
4 Mr. Whitaker and Maxey Brown to authenticate these
5 exhibits or, if it would please the Examiner, we could
6 supplement the record at a later date with an affidavit
7 to --

8 EXAMINER McMILLAN: There will have to be an
9 affidavit.

10 MR. HERRMANN: All right.

11 EXAMINER McMILLAN: And the affidavit will
12 have to be submitted to every party.

13 Any questions?

14 (No response.)

15 EXAMINER McMILLAN: Please proceed.

16 J. DANIEL SANCHEZ
17 having been first duly sworn, was examined and testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. HERRMANN:

21 Q. Mr. Sanchez, would you please state your name,
22 title, and place of employment for the record.

23 A. I'm Daniel Sanchez. I am the compliance
24 enforcement manager for the Oil Conservation Division in
25 Santa Fe.

1 Q. Have you previously testified in expert capacity
2 before the OCD in oil and gas operations under
3 compliance with OCD rules?

4 A. Yes, I have.

5 MR. HERRMANN: At this moment I would like
6 to move to admit Mr. Sanchez as an expert in this
7 field.

8 EXAMINER McMILLAN: Any objections?

9 MR. ROBERT FEUILLE: Robert Feuille
10 speaking. A question if I may. In compliance with all
11 the rules or compliance with a particular portion of the
12 rules? What are we talking about as an expert in
13 compliance?

14 MR. HERRMANN: With the section of the New
15 Mexico Administrative Code governing operator
16 registration, oil and gas production, and remediation in
17 the state of New Mexico.

18 MR. ROBERT FEUILLE: And what are the
19 witnesses qualifications with respect to those issues?

20 BY MR. HERRMANN (cont'd):

21 Q. Could you briefly describe the duties you perform
22 for the OCD and how long you have been doing them?

23 A. Yes. I have been the compliance and enforcement
24 manager for over eleven years with the Oil Conservation
25 Division. I oversee the four district offices, Artesia,

1 Hobbs, Aztec, Santa Fe.

2 I oversee the EPA's -- the Environmental
3 Protection Agency's underground injection control
4 program. I work with the BLM on a number of issues
5 concerning compliance and enforcement, on code
6 jurisdictional issues.

7 I have been a witness for compliance and
8 enforcement cases for those 11 years plus.

9 MR. ROBERT FEUILLE: Then no objection.
10 Robert Feuille speaking.

11 EXAMINER McMILLAN: So qualified.

12 Q. Please identify Exhibit 1.

13 A. Exhibit 1 is certain rules from the OCD, 19.15
14 NMAC.

15 Q. And could you also identify Exhibit 2.

16 A. Exhibit 2 is a list of DC Energy's wells that
17 they are on record as being the operator of record
18 for.

19 Q. Could you identify those wells.

20 A. They are the Crosby Deep Number 2, the Crosby
21 Deep Number 4, Gregory El Paso Federal Number 1, Gregory
22 El Paso Federal Number 4, the Mexico U Number 2 and the
23 Mexico U Number 4.

24 Q. Regarding the Gregory El Paso Number 4, when was
25 its last reported injection?

1 A. That was in November of 2014.

2 Q. Going back to Exhibit 1, could you please find
3 rule 19.15.26.12C, and tell us what that says regarding
4 injection operations.

5 A. It reads, Abandonment of Injection Operations, 1,
6 Whenever there is a continuous one-year period of
7 noninjection into all wells, an injection or storage
8 project or into a salt water disposal well or special
9 purpose well, the Division shall consider the project or
10 well abandoned and the authority for that injection
11 shall automatically terminate ipso facto.

12 Q. So pursuant to this rule, does the Gregory El
13 Paso Federal Number 4 have injection authority as far as
14 the Division is concerned?

15 A. No, it does not.

16 Q. Does this operator have any financial assurance
17 on file with the Division?

18 A. Yes, they do. They have a standard \$50,000
19 blanket bond.

20 Q. From Wells Fargo Bank?

21 A. Yes.

22 Q. Referring back to Exhibit 2, can you tell me how
23 many inactive wells this is showing the operator
24 currently has?

25 A. Four of them, four out of the six are inactive.

1 Q. I believe -- are you sure it is not three?

2 A. Okay. They are on the cusp with the Gregory El
3 Paso Number 4. In another month, it will be considered
4 inactive.

5 Q. What wells are inactive?

6 A. The Crosby Deep Number 2, Crosby Deep Number 4,
7 and the Gregory El Paso Federal Number 1.

8 Q. Please reference OCD rule 5.9. Could you tell me
9 how many wells an operator is allowed to have out of
10 compliance with rule 25.8?

11 A. As an operator of six wells for DC Energy, they
12 can have two or, in some cases, with fewer wells, it's
13 50 percent of that number of wells or their greater
14 amount.

15 Q. Whichever is fewer?

16 A. Yes, whichever is fewer.

17 Q. And let's see. How is a well out of compliance
18 with 25.8? If you can refer to the rule 25.8(B). It's
19 on page 4.

20 A. 25.8 states that wells be properly abandoned and,
21 A, The operator of wells drilled for oil or gas or
22 service wells including the seismic, core, exploration
23 or injection wells, whether cased or uncased, shall plug
24 the wells as subsection B of 19.15.25.8 NMAC requires.

25 And part B of that is, The operator shall either

1 properly plug and abandon a well or replace the well and
2 approve temporary abandonment in accordance with
3 19.15.25 NMAC within 90 days after one of the following,
4 (1), A 60-day period following suspension of drilling
5 operations; (2), A determination that a well is no
6 longer usable for beneficial purposes; (3) A period of
7 one year in which a well has been continuously
8 inactive.

9 Q. Do you know when the last report of production
10 was on these wells or the last report was filed?

11 A. The last report was filed in March of 2015, and
12 that was for the Mexico U units.

13 Q. And how often are these reports due?

14 MR. ROBERT FEUILLE: Sorry. May I
15 interrupt just a minute. This is Robert Feuille
16 speaking.

17 I ask you to repeat this question. But if
18 the witness -- if Mr. Sanchez would speak up a bit, I
19 could hear his testimony. I am having trouble hearing.
20 I'd appreciate it.

21 MR. HERRMANN: We asked when was the last
22 production report from DC Energy submitted to the Oil
23 Conservation Division.

24 A. And that was in March of 2015.

25 Q. And how often are these production reports due?

1 A. They are done on a monthly basis.

2 Q. So is DC Energy current on their reporting?

3 A. No, they are not.

4 Q. Could you please identify Exhibit 7. And this
5 will be wrapping up my line of questioning.

6 A. Exhibit 7 is a letter to DC Energy, LLC, from the
7 Assistant General Counsel, Mr. Herrmann. And it is
8 regarding this case, No. 15432, Application of the New
9 Mexico Oil Conservation Division Compliance and
10 Enforcement Bureau for a Compliance Order against DC
11 Energy, LLC, for Wells Operated in Lea County, New
12 Mexico.

13 Q. Could you identify the parties that this was
14 served to?

15 A. This was served to DC Energy, Wells Fargo Bank,
16 Clarke C. Coll, DC Energy, LLC, and DC Energy, LLC, 483
17 Falcon View Circle, Palm Desert.

18 Q. And behind it do we have the green cards of
19 return?

20 A. Yes, we do.

21 Q. Were Exhibits 1 through 3 and Exhibit 7 prepared
22 by you or under your direction?

23 A. Yes, they were.

24 MR. HERRMANN: At this point, I move to
25 admit Exhibits 1, 2, and 3 and 7.

1 MR. ROBERT FEUILLE: What is Exhibit 3? I'm
2 sorry.

3 MR. HERRMANN: It is the failed MIT letter
4 of violation that was sent out as Daniel is the
5 administrator of the --

6 MR. ROBERT FEUILLE: Okay. No objection.

7 Actually -- this is Robert Feuille. There
8 is one objection. Exhibit 1 is not properly an
9 admissible exhibit. All it is a restatement of the
10 rules.

11 MR. BROOKS: Well, that of course is
12 correct. But it is harmless because the Examiner can
13 take administrative notice of the rules, so I think that
14 that's a purely academic objection in this context.
15 Which exhibits were tendered?

16 MR. HERRMANN: Exhibits 1 through 3, which
17 is production of the rules, a list of wells with some
18 other identifying information, and the last production
19 date. And Exhibit 3 is the letter of violation for the
20 failed mechanical integrity test. And Exhibit 7, which
21 is the notice of hearing.

22 EXAMINER McMILLAN: So are there any
23 objections to Exhibits 1, 2, and 3 being accepted as
24 part of the record?

25 MR. ROBERT FEUILLE: Robert Feuille

1 speaking. Only as stated. The objection as Mr. Brooks
2 noted to Exhibit 1 is, as he called it, "academic."

3 The other exhibits would be 2, 3, and 7. I
4 have no objection to those at all.

5 EXAMINER McMILLAN: Exhibits 1, 2, 3, and 7
6 may now be accepted as part of the record.

7 (Oil Conservation Division Compliance and
8 Enforcement Bureau Exhibits 1, 2, 3, and 7 were offered
9 and admitted.)

10 EXAMINER McMILLAN: Mr. Brooks will ask some
11 questions.

12 EXAMINATION BY MR. BROOKS

13 MR. BROOKS: I do have a question I need to
14 ask.

15 In looking at Exhibit 11, it appears that
16 the return receipt from DC Energy, LLC, was not signed
17 by anyone on behalf of DC Energy.

18 Do you have any knowledge if we have any
19 other proof that that was, in fact, delivered to anyone
20 or was it ever returned to the Division?

21 THE WITNESS: Just from what we got on the
22 return of the cards, but no --

23 MR. HERRMANN: There are two addresses for
24 DC Energy.

25 MR. BROOKS: Where is the other one here?

1 MR. HERRMANN: It's on the next page.

2 MR. DAWSON: This is Scott Dawson. On the
3 very last page, there's another DC Energy, LLC, return
4 receipt signed by DC Energy.

5 MR. BROOKS: This apparently was signed on
6 behalf of the addressee.

7 Thank you. I appreciate the clarification.

8 MR. JACOBSEN: If I may, I have a couple of
9 questions.

10 CROSS-EXAMINATION

11 BY MR. JACOBSEN:

12 Q. You testified that the Crosby Deep Number 2 and
13 the Crosby Deep Number 4 and the Gregory El Paso Federal
14 Number 1 had been inactive for more than a year?

15 A. Yes.

16 Q. What is the appropriate remedy under the
17 situation?

18 A. They can either produce those wells again, get
19 them back in operation. They can request a temporary
20 abandonment, prove temporary abandonment with the
21 district office, or they can plug and abandon the well.

22 Q. And DC Energy is the operator on those?

23 A. Yes.

24 Q. And have they done any of that?

25 A. No.

1 Q. So would plugging be appropriate if they're not
2 going to be used?

3 A. I believe so, yes.

4 Q. Are you familiar with the operators -- generally
5 familiar with operators under the OCD rules?

6 A. Yes.

7 Q. Do you know if Dan or Colleen Johnson is an
8 operator under OCD rules?

9 A. They are.

10 Q. They are?

11 A. Yes.

12 Q. On which wells?

13 A. For all six of those wells.

14 Q. I thought you testified that DC Energy, LLC, was
15 the operator.

16 A. I will clarify that. I know Dan and Colleen
17 Johnson were the owners of DC Energy, LLC.

18 Q. At one time?

19 A. At one time.

20 Q. But they are not individually operators --

21 A. No, they are not.

22 Q. I'm sorry. I talked on top of you.

23 Dan and Colleen Johnson are not operators under
24 OCD rules and regulations?

25 A. No. Only under DC Energy, LLC.

1 MR. BROOKS: Are you passing the witness,
2 Mr. Jacobsen?

3 MR. JACOBSEN: I'll pass the witness.

4 MS. SCHAEFFER: Excuse me. This is
5 Stephanie Schaeffer. I am having difficulty hearing
6 everybody. So I hate to ask, but if you could speak up,
7 please.

8 MR. BROOKS: Okay. This is David Brooks. I
9 simply asked Mr. Jacobsen if he had passed the witness.

10 MR. SCHAEFFER: Okay.

11 MR. BROOKS: And he responded in the
12 affirmative.

13 MR. JACOBSEN: In the affirmative, yes.

14 MR. BROOKS: Okay. Proceed.

15 EXAMINATION BY EXAMINER McMILLAN

16 EXAMINER McMILLAN: So these wells are
17 active, correct? The Mexico 2 and Mexico 4 are active,
18 right?

19 THE WITNESS: Yes, they are.

20 EXAMINER McMILLAN: And there has been no
21 reporting?

22 THE WITNESS: That is correct.

23 EXAMINER McMILLAN: Do you have an exhibit
24 that shows the last date of production, of reported
25 production.

1 THE WITNESS: Reported production. It is
2 Exhibit 2. And under Mexico U Number 2 and Number 4.

3 EXAMINER McMILLAN: Okay. I want more
4 proof -- I want to see more proof of that. I mean how
5 much oil and how much gas and how much water did it make
6 in March? And I want something that shows definitively
7 what it made in March and then what it's made through
8 November. Because isn't November the last reporting
9 date?

10 THE WITNESS: Yes.

11 EXAMINER McMILLAN: I want more proof of
12 that.

13 THE WITNESS: I would have to provide that
14 at a later time. I can go back and find out how much
15 was produced in March. From that point forward, I don't
16 keep records of those. It's the operator's
17 responsibility to record that and submit it.

18 EXAMINER McMILLAN: I understand that, but I
19 want more proof than that. And that will be a -- but I
20 want more proof than simply putting "March."

21 I want to know exactly from March through
22 November. I believe that's the reporting date.

23 THE WITNESS: And at least from March
24 through November, that information would have have to be
25 obtained from the operator.

1 EXAMINER McMILLAN: But I want it from your
2 records.

3 THE WITNESS: There are no records at this
4 time of production for that time period.

5 EXAMINER McMILLAN: But you'd have access to
6 these wells, right?

7 THE WITNESS: I have access to the wells in
8 terms of what is reported to us --

9 EXAMINER McMILLAN: That is what I want to
10 see.

11 MR. DAWSON: This is Scott Dawson for the
12 record. May I interject, Mr. Examiner.

13 Mr. Sanchez has done his assessment of the
14 production of the well. March 2015 was the last
15 reported production of oil from that well. And
16 according to Exhibit 2, the last production was
17 March 2015. And I believe -- may I ask you this.
18 Mr. Sanchez, you went through the records, and the last
19 reported production was for the month of March of 2015
20 and there has been no production reported since that
21 date, correct?

22 THE WITNESS: That is correct.

23 MR. DAWSON: Okay. Thank you.

24 MR. BROOKS: May I ask a question to follow
25 up on that.

1 Mr. Sanchez, does the Division have any
2 means of determining how much oil may have been produced
3 in a given past period from a well if the operator does
4 not report production from that well?

5 THE WITNESS: Well, not to my knowledge, no.

6 MR. BROOKS: Thank you.

7 EXAMINER McMILLAN: Okay. I guess I will
8 not request that. That's fine, if there's no
9 production. I have nothing further. Do you have
10 anything else?

11 MR. DAWSON: And I have no
12 further questions.

13 MR. BROOKS: I have no further questions.

14 MR. JACOBSEN: May I just clarify. You said
15 there's no production. For the record, let it be clear,
16 it's no production reports --

17 EXAMINER McMILLAN: Correct, no production
18 has been reported, because I believe that Mr. Whitaker
19 stated that two of the wells were active.

20 MR. JACOBSEN: Correct.

21 EXAMINER McMILLAN: Okay.

22 MR. BROOKS: If you have any questions, go
23 ahead.

24 EXAMINER McMILLAN: I don't. I am finished.

25 MR. BROOKS: Well, let me clarify here,

1 again. The two counsel for OCD represent the same
2 client; is that correct?

3 MR. HERRMANN: No. I represent the
4 Compliance and Enforcement Bureau, whereas Mr. Jacobsen
5 represents the Oil Conservation Division.

6 MR. BROOKS: Well, I think it would be
7 appropriate with future witnesses -- sorry to have been
8 done with the first -- but if you are going to present
9 other witnesses, I think it would be appropriate in the
10 interest of efficiency -- I recognize Mr. Jacobsen's
11 expertise and we do have a need for that expertise in
12 this case -- but I think it would be appropriate for
13 both counsel to examine the witness and then allow the
14 opposing counsel to cross-examine with the benefit of
15 the entire examination on behalf of all entities for the
16 Division. Now that's just a comment.

17 Does any counsel participating in this
18 proceeding desire to ask this witness any further
19 questions?

20 MR. FEUILLE: Robert Feuille speaking. Not
21 for me. Thank you.

22 EXAMINER McMILLAN: The witness may now be
23 dismissed. Thank you.

24 MR. JACOBSEN: If I might, I would like to
25 call Jennifer Pruett from the State Land Office to

1 address the issue just raised with the previous witness
2 regarding production at the Mexico U location.

3 (WHEREUPON, the presenting witness
4 was administered the oath.)

5 MR. BROOKS: I believe that the swearing of
6 the witness has probably not been heard, so I would like
7 the record to note that the witness has been sworn.

8 JENNIFER J. PRUETT
9 having been first duly sworn, was examined and testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MR. JACOBSEN:

13 Q. Would you state your name, please.

14 A. Jennifer Pruett.

15 Q. What is your occupation?

16 A. I am an attorney at the State Land Office.

17 Q. What do you do at the State Land Office?

18 A. I do a variety of things working with all the
19 divisions, oil and gas, surface, field, mining,
20 commercial leasing.

21 Q. Are you familiar with the lease of the Mexico U
22 Number two and Number 4 wells?

23 A. Yes, I am. Those wells are both on state
24 trust land, and we do have a lease covering those two
25 wells.

1 Q. And who is the lessee on that?

2 A. The lessee of record with us, that is DC Energy.

3 Q. And, Ms. Pruet, how long have they been the
4 lessee of record?

5 A. Our records show that DC Energy received a full
6 assignment of those leases -- of that lease from Zurich
7 on May 11th, 2010. That was the date it was approved by
8 the Commissioner. No assignment is effective until and
9 unless it is signed by the Commissioner. And we do not
10 have any other records at the State Land Office.

11 MR. BROOKS: Is this witness testifying as a
12 -- is going to give any opinions or is she just simply a
13 fact witness.

14 MR. JACOBSEN: She is a fact witness.

15 MR. BROOKS: Okay. Then I think a
16 qualification is not necessary. You may proceed.

17 THE WITNESS: Thank you.

18 Q. (By Mr. Jacobsen) Has the lease been
19 subsequently assigned since 2010?

20 A. Not according to our records, no.

21 Q. What reports does the State Land Office get from
22 production from state leases?

23 A. Our lessees are required to report production and
24 royalties to us on a monthly basis.

25 Q. Do you know the last time when any production was

1 reported to the State Land Office?

2 A. I do. Our records show that the last time that
3 DC Energy reported production and paid royalties on the
4 Mexico U wells was in March of 2015.

5 Q. And that's consistent with the testimony that
6 that was the last production report to OCD?

7 A. Yes, it is.

8 MR. JACOBSEN: No further questions.

9 EXAMINER McMILLAN: Cross-examination.

10 MR. ROBERT FEUILLE: Robert Feuille
11 speaking. None from me. Thank you.

12 EXAMINER McMILLAN: I have no questions.
13 Thank you.

14 MR. DAWSON: I have a question.

15 EXAMINATION BY EXAMINER DAWSON

16 MR. DAWSON: Good morning, Ms. Pruett.

17 THE WITNESS: Good morning.

18 MR. DAWSON: My question to you is are the
19 Mexico U Number 2 and the Mexico U Number 4 wells the
20 only wells on that lease -- or do you know?

21 THE WITNESS: I don't know.

22 MR. DAWSON: Okay. I don't have any further
23 questions. Thank you.

24 EXAMINER McMILLAN: Thank you.

25 MR. HERRMANN: That concludes our

1 presentation.

2 EXAMINER McMILLAN: Okay.

3 MR. HERRMANN: I would like to reserve some
4 time for a closing statement.

5 MR. JACOBSEN: And the possibility of
6 rebuttal.

7 MR. BROOKS: Okay.

8 EXAMINER McMILLAN: Mr. Feuille, you may now
9 present your case at this time.

10 MR. ROBERT FEUILLE: I close my case, Your
11 Honor.

12 MR. BROOKS: You have no witnesses to offer
13 at this time, correct?

14 This is David Brooks. Mr. Feuille, you are
15 offering no testimony at this time, correct?

16 MR. ROBERT FEUILLE: This is Robert Feuille.
17 Yes, that is correct.

18 MR. BROOKS: Thank you.

19 MR. ROBERT FEUILLE: I mean I do reserve the
20 right to object to subsequent evidence that may be
21 offered but other than that -- I am not presenting --
22 affirmatively presenting any witnesses here today.
23 Thank you.

24 MR. BROOKS: Is there anyone else present
25 who desires to offer any testimony in this case?

1 (No response.)

2 EXAMINER McMILLAN: Okay. Proceed to
3 closing arguments.

4 CLOSING ARGUMENT BY MR. HERMANN

5 MR. HERRMANN: And I would like to clarify
6 that I have moved to admit all my exhibits, Exhibits 1
7 through 7, and only have objections pending on Exhibits
8 4 and 5 regarding authentication, which I will later
9 provide.

10 But today, Mr. Examiner, the Division has
11 presented evidence showing that the operator DC Energy
12 has multiple violations of OCD rules arising from
13 inattentiveness of their sites.

14 These violations, if left unchecked, have
15 the potential to irreparably harm the state of New
16 Mexico, both environmentally and financially.

17 We ask that the Division issue an order
18 finding them in violation of the OCD rules presented,
19 directing them to come into compliance with OCD rules by
20 a date certain, including repair or plugging and
21 abandoning of the Gregory El Paso Number 4 SWD,
22 returning to compliance with OCD rules 5.9 and 25.8
23 regarding their inactive wells by a date certain, and
24 reporting and cleaning up of their unreported releases
25 at the Gregory and Mexico well sites and batteries

1 pursuant to OCD rules 29 and 30.

2 And should the operator miss any of these
3 deadlines in this order, find that the operator is out
4 of compliance with the Division order and let the
5 Division declare the violating wells abandoned and
6 authorizing the OCD to plug and abandon the subject
7 wells and recover costs from DC Energy in accordance
8 with Division rule 19.15, 8.13 NMAC.

9 Thank you.

10 EXAMINER McMILLAN: Thank you.

11 CLOSING ARGUMENT BY MR. JACOBSEN

12 MR. JACOBSEN: Mr. Examiner, James Jacobsen.

13 We have an unusual situation here. We have an operator
14 which is in bankruptcy, which is a Chapter 7 Bankruptcy.
15 The law does not permit operation of a business, such as
16 the production of oil and gas, which we are seeing is
17 ongoing here. So we have a mystery operator.

18 But with respect to DC Energy, LLC, the
19 operator of record and the debtor in the bankruptcy
20 case, I think the evidence has been clear and convincing
21 that there have been discharges of a major nature which
22 have not been reported, which is a violation of the
23 rules of the Division.

24 There are wells which have not been operated
25 for an extended period of time which need to be plugged

1 for the protection of the environment and the people of
2 the state of New Mexico.

3 We have an injection well which failed a
4 test at this point a year and a half ago for which no
5 action has been taken to remediate the problem. The
6 remediation requirements need to be enforced to the
7 extent possible.

8 There has been no testimony to the contrary
9 on any of these matters. So I think the Hearing
10 Examiner would be well within the Hearing Examiner's
11 discretion to determine that all the matters for which
12 the application was lodged have been proven and that an
13 order should issue requiring the operator, DC Energy,
14 LLC, to take the necessary operations.

15 So there are other issues here. But before
16 you today is the application. And I think the evidence
17 is clear that the -- that there are significant problems
18 that need to be remediated. There's danger to the
19 water, there's danger to the personnel of the state of
20 New Mexico, and action needs to be taken.

21 We are lodged within the bankruptcy and have
22 to work within the bankruptcy context. But the issuance
23 of the order is the initial step, the initial required
24 step that will allow us to move forward to do what is
25 necessary in the bankruptcy case.

1 Unfortunately, being in bankruptcy, there
2 may not be the possibility of an immediate action by the
3 operator, but we have to take the steps to do what is
4 necessary to start the process and do what is necessary
5 to protect the people.

6 So I would ask the Examiner to determine
7 that the relief requested is appropriate and issue an
8 order accordingly.

9 EXAMINER McMILLAN: Thank you. Mr. Feuille.

10 CLOSING ARGUMENT BY MR. ROBERT FEUILLE

11 MR. ROBERT FEUILLE: Thank you. This is
12 Robert Feuille speaking. I think the fall down here,
13 Mr. Examiner, is in respect to the Mexico U wells.
14 There has actually been no evidence offered that there's
15 been releases that have been sufficient of the Mexico U
16 wells to be in violation of (inaudible) as alleged and
17 asserted in the application.

18 There has actually been no evidence of any
19 danger to ground water. And I say that because, though
20 the testimony was that these releases were within a mile
21 of reservoirs and drinking water, there's no evidence
22 presented about drainage patterns or underground
23 drainage patterns that would suggest in any way that any
24 drainage from the Mexico U wells would ultimately end up
25 in ground water if it drained far enough; nor was there

1 any evidence of the volume of drainage that would be
2 required to reach those ground water sources or the
3 volume of drainage that exists.

4 And so I think with respect to the Mexico U
5 wells, in particular, there really isn't evidence of a
6 violation or a reportable release. Thank you.

7 EXAMINER McMILLAN: Thank you.

8 MR. BROOKS: If there is nothing further,
9 then I would say the Examiner has two alternatives. He
10 can take the case under advisement now with extending a
11 "subject to" the tendered exhibits that were admitted
12 subject to authentication -- take the case under
13 advisement subject to subsequent authentication of
14 those exhibits, or he can continue the case to allow
15 the authentication to be presented at a subsequent
16 hearing.

17 If the Examiner elects to do the first
18 alternative, that is, to take the case under advisement
19 subject to authentication, he should fix the schedule as
20 to when the authentication should be filed and as to
21 when any objections to the authentication should be
22 filed.

23 EXAMINER McMILLAN: Okay. This is
24 Mr. McMillan. Case No. 15432 shall be continued with
25 the stipulation that the photos be authenticated, and

1 the photos -- I believe they are Exhibits 2 and 3 --
2 shall be submitted in color.

3 And I believe you should be able to have
4 these by -- is Wednesday reasonable?

5 MR. HERRMANN: Yes.

6 EXAMINER McMILLAN: Therefore, case No.
7 15432 shall be continued until --

8 MR. BROOKS: February the 4th would be the
9 next --

10 EXAMINER McMILLAN: Till February the 4th.
11 Any questions?

12 MR. HERRMANN: Are we continuing till
13 Wednesday or till February the 4th?

14 EXAMINER McMILLAN: February the 4th.

15 MR. BROOKS: You said Wednesday to file
16 certain things --

17 EXAMINER McMILLAN: Yes, Wednesday I want
18 pictures supplied to the parties and I want the
19 authentication.

20 MR. BROOKS: Mr. Examiner, you are speaking
21 there in terms of Wednesday, January the 27th, and not
22 Wednesday --

23 EXAMINER McMILLAN: Yes.

24 MR. BROOKS: -- and not Wednesday,
25 February 3rd?

1 EXAMINER McMILLAN: Right. I want it the
2 27th.

3 MR. BROOKS: Thank you.

4 EXAMINER McMILLAN: That should give
5 everyone ample opportunity to examine the data. And if
6 after that date -- okay. Those are the dates that are
7 going to be set forth.

8 MR. JACOBSEN: If I might ask a question.

9 EXAMINER McMILLAN: Yes.

10 MR. JACOBSEN: Will there be a deadline for
11 Mr. Feuille to proffer any objections to the
12 photographs?

13 EXAMINER McMILLAN: I mean we are continuing
14 the case.

15 MR. BROOKS: Yes, so he can proffer his
16 objections then --

17 MR. JACOBSEN: So we'll find out on the 4th?

18 EXAMINER McMILLAN: Yes.

19 MR. BROOKS: -- at the continued hearing.

20 EXAMINER McMILLAN: Yes. Thank you.

21 MR. ROBERT FEUILLE: Robert Feuille
22 speaking. Do we have a time at which we will reconvene
23 on February 4th?

24 EXAMINER McMILLAN: It will be during the
25 hearing.

1 MR. BROOKS: The docket starts at 8:15 a.m.
2 on that day.

3 MR. ROBERT FEUILLE: I understand. Thank
4 you.

5 EXAMINER McMILLAN: We are taking a
6 five-minute break.

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10 (Time noted 10:57 a.m.)

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1 STATE OF NEW MEXICO)
 2) ss.
 3 COUNTY OF BERNALILLO)
 4
 5
 6

7 REPORTER'S CERTIFICATE

8
 9 I, ELLEN H. ALLANIC, New Mexico Reporter CCR
 10 No. 100, DO HEREBY CERTIFY that on Thursday, January 21,
 11 2016, the proceedings in the above-captioned matter were
 12 taken before me, that I did report in stenographic
 13 shorthand the proceedings set forth herein, and the
 14 foregoing pages are a true and correct transcription to
 15 the best of my ability and control.

16
 17 I FURTHER CERTIFY that I am neither employed by
 18 nor related to nor contracted with (unless excepted by
 19 the rules) any of the parties or attorneys in this case,
 20 and that I have no interest whatsoever in the final
 21 disposition of this case in any court.

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