

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION COMPLIANCE AND ENFORCEMENT BUREAU FOR A COMPLIANCE ORDER AGAINST CANO PETRO OF NEW MEXICO, INC., FOR WELLS OPERATED IN CHAVES AND ROOSEVELT COUNTIES, NEW MEXICO.	CASE NO. 16040 (De novo) and CASE NO. 16359
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

August 20, 2018

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN
ED MARTIN, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the
New Mexico Oil Conservation Commission on Monday, August
20, 2018, at the New Mexico Energy, Minerals and Natural
Resources Department, Wendell Chino Building, 1220 South
St. Francis Drive, Porter Hall, Room 102, Santa Fe,
New Mexico.

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1 (9:53 a.m.)

2 CHAIRWOMAN RILEY: Case Number 16040, de
3 novo, application of the New Mexico Oil Conservation
4 Division Compliance and Enforcement Bureau for a
5 compliance order against Cano Petro of New Mexico for
6 wells operated in Chaves and Roosevelt Counties,
7 New Mexico.

8 So who do we have here representing the
9 parties?

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

13 CHAIRWOMAN RILEY: All right. Do we have
14 anyone here for Cano Petro?

15 MR. HERRMANN: No, we do not.

16 CHAIRWOMAN RILEY: Mr. Herrmann, you have
17 two cases, do you not, 16040 and 16359?

18 MR. HERRMANN: Yes, Commissioner.

19 CHAIRWOMAN RILEY: Please describe those to
20 us.

21 MR. HERRMANN: Initially, Case Number 16040
22 was brought in front of the Division. An order was
23 issued, and Cano appealed the order de novo, and that
24 was calendared for today.

25 In light of their appeal, we filed an

1 additional case, 16359, bringing other allegations of
2 noncompliance on the part of Cano, and we requested at
3 the last Commission meeting that that case be directed
4 to be heard by the Commission and be joined with 16040.
5 So as all of our exhibits are marked today, we do intend
6 to present both cases concurrently.

7 CHAIRWOMAN RILEY: I also see here there
8 was a request for continuance from the U.S. Specialty
9 Insurance Company. The surety company requested a
10 continuance, and it looks like the Division -- or the
11 bureau has submitted a brief on that and opposed it.

12 Do we need to deal with that first,
13 Mr. Brancard?

14 MR. BRANCARD: Yes.

15 CHAIRWOMAN RILEY: Okay. Do you want to
16 tell us about that, Mr. Herrmann?

17 MR. HERRMANN: Yes. So there were a couple
18 of filings done for U.S. Specialty Insurance Company on
19 behalf of Cano. U.S. Specialty Insurance Company is a
20 surety with the majority, if not all, of Cano's
21 financial assurance. And they had entered an appearance
22 in Case Number 16040 and pursuant to rule are required
23 notice when the Division may call upon an operator's
24 financial assurance.

25 They brought up the fact that the day after

1 Cano filed for their de novo appeal, they submitted an
2 application for relief in bankruptcy court from their
3 debtors.

4 We have opposed the request for continuance
5 partly because this was Cano's application de novo, and,
6 further, the bankruptcy filing does not necessarily
7 require a stay of administrative proceedings.
8 Regardless of their bankruptcy status, an operator is
9 required to comply with the laws and rules of the State
10 of New Mexico.

11 In anticipation of any bankruptcy issues
12 coming up today, I have one witness ready to answer any
13 questions regarding those issues, Mr. Jim Jacobsen. He
14 is the special -- he is the assistant attorney general
15 representing the State in the bankruptcy proceeding.

16 CHAIRWOMAN RILEY: Do we need to ask
17 Mr. Jacobsen specifically about this, whether it's
18 appropriate for --

19 MR. BRANCARD: Yeah. That might be a good
20 idea to have that on the record.

21 MR. HERRMANN: I have one more item I
22 wanted to bring up. I'm sorry.

23 The surety, U.S. Specialty Insurance
24 Company, does not have standing in Case 16359. It has
25 not entered an appearance.

1 MR. JACOBSEN: Commission, I'm James
2 Jacobsen. I'm an assistant attorney general in
3 Albuquerque for --

4 MR. BRANCARD: So why don't we get this
5 procedurally correct? I believe at this point
6 Mr. Jacobsen is basically acting as co-counsel as
7 opposed to being a witness, which is perfectly fine, in
8 order to get these -- since we're arguing about the
9 request for continuance.

10 MR. JACOBSEN: That's right. I view my
11 role as more of an expert witness.

12 But just by way of background, I started my
13 career -- legal career back in '83 clerking for Judge
14 Stewart Rose, U.S. Bankruptcy Court in Albuquerque.
15 Subsequently, I have about 40 years of private practice
16 representing debtors and creditors in bankruptcy.

17 In 19- -- I'm sorry. In 2002, Attorney
18 General Patricia Madrid was concerned that the State had
19 never really had a bankruptcy attorney and asked me to
20 come aboard with her agency, and I have been there ever
21 since representing the State since 2002.

22 Oil Conservation Division, my first role
23 was with the -- for the Division, I think, was with the
24 Carlsbad brine well situation. I also represented the
25 Taxation and Revenue Department and other state agencies

1 as is required with matters coming up pertaining to
2 those.

3 I am not -- have not paid to be certified
4 by the various agencies as a bankruptcy expert because I
5 never needed it for my practice.

6 I have been a member for a number of years
7 of the state's Bankruptcy Section Board and chaired that
8 board. I'm also a member of the state's association of
9 bankruptcy attorneys, which is a national organization,
10 and an associate with the National Association of
11 Attorneys General on bankruptcy matters. I've appeared
12 in courts throughout the country. I am currently on the
13 board of directors of the state's association of
14 bankruptcy attorneys. I've served two terms as its
15 president.

16 And my experience in bankruptcy matters is
17 broad and lengthy, and I think I have a pretty good
18 grasp of these matters. They come up from time to time.
19 Bankruptcy is often the last refuge of a scoundrel. I'm
20 not casting any aspersions on it, but there are some
21 misconceptions in the community as to exactly what
22 happens with bankruptcy.

23 Under Section 362 of the bankruptcy code,
24 an automatic stay comes into effect when a bankruptcy is
25 filed, and it comes in just because a stamp hits the

1 petition, and it stops all collection activity. It
2 prohibits anybody from taking control of a debtor's
3 property. It prohibits anybody from continuing or
4 initiating actions based on pre-petition claims against
5 the debtor. And a claim, by definition of the
6 bankruptcy code, is a right to payment. So all claims
7 get channeled into the bankruptcy court for convenience,
8 and that's one of the effects of the automatic stay, is
9 that you have to come to bankruptcy court to protect
10 your rights to whatever claims you as a creditor has.

11 There are exceptions to the automatic stay.
12 Those are set forth in Section 362(b)(4) -- I'm sorry --
13 362(b). At last count, there are approximately 29, if
14 I'm remembering correctly, exceptions to it. The one
15 that's appropriate here -- or implicated here is the
16 362(b)(4) exception. That's the police and regulatory
17 power exception to the automatic stay. It provides that
18 any governmental agency, governmental unit pursuing its
19 regulatory responsibilities may continue with those up
20 to the point of a dollar amount of damages being
21 imposed, at which time the agency's rights to collect
22 that money -- to collect on its dollar claim is
23 channeled into the bankruptcy court.

24 The Congressional Record makes clear that
25 the reason for the 362(b) automatic stay is to prevent

1 improper or overbearing import from the bankruptcy
2 courts themselves on important government functions.
3 The 362(b)(4) exception is just as automatic as a 362(a)
4 stay. The Tenth Circuit in the Eddelman case, 1991
5 case, says it's self-implementing. You don't have to go
6 to bankruptcy court and ask for permission. It is what
7 it is. And if the agency is pursuing its police and
8 regulatory power, the agency continues with that
9 activity, as I said, up and to the point of imposing a
10 dollar judgment. There are also limitations on taking
11 control of property of the estate, but -- but enforcing
12 the agency's regulatory powers and authority is well
13 within the bounds of the -- of the exemption to the
14 automatic stay.

15 I reviewed the U.S. surety's -- Specialty
16 Insurance Company's application. I think it's mistaken.
17 There is no automatic stay to these activities under
18 this context with this agency and this governmental
19 regulatory body.

20 So I think any continuance based on the
21 filing of the bankruptcy is inappropriate and not
22 required, and this Commission should continue to enforce
23 its police and regulatory powers to the extent -- up and
24 to the extent of determining if there is an actual
25 dollar claim that the Commission seeks to impose. But

1 this matter should not be stayed simply because Cano
2 Petro of New Mexico filed a Chapter 11 bankruptcy in
3 Tulsa.

4 Any questions, I'd be happy to try to
5 answer them.

6 CHAIRWOMAN RILEY: So when you say we can't
7 impose an actual dollar amount, we can --

8 MR. JACOBSEN: I'm sorry. If I said that,
9 I misspoke. You can impose a dollar amount. You can't
10 collect it other than through the bankruptcy
11 proceedings.

12 COMMISSIONER BALCH: Other than through the
13 bankruptcy process.

14 MR. JACOBSEN: Yes.

15 COMMISSIONER BALCH: Do you know what level
16 of priority that claim would have compared to other
17 creditors?

18 MR. JACOBSEN: General unsecured claim,
19 although there are some courts and at least bankruptcy
20 lawyers who attempt to use -- there is a provision in
21 Chapter 7, Liquidations, that penalties are subordinated
22 to, you know, run-of-the-mill claims, you know, in
23 preference -- in favor of the private parties as against
24 the governmental agencies with respect to that. So
25 you'll see some arguments from time to time in Chapter

1 11 cases that they ought to be subordinated as well.

2 The Tenth Circuit is clear. The CFI case out of Utah,

3 they are not. The Fifth Circuit's a little bit iffy on

4 that stuff. But I think the case law of the Tenth

5 Circuit -- and the Tulsa court is in the Tenth

6 Circuit -- is clear that it would be a general unsecured

7 claim to take pro rata.

8 COMMISSIONER BALCH: So a share of the

9 OCD -- or a share of whatever?

10 MR. JACOBSEN: Of whatever it is.

11 CHAIRWOMAN RILEY: So that's on

12 penalties --

13 MR. JACOBSEN: That's on penalties.

14 CHAIRWOMAN RILEY: -- but not on actual

15 damages for --

16 MR. JACOBSEN: Well, actual damages, as

17 well -- actual damages. But, you know, injunctive

18 actions, you know, compelling an agency -- there is a

19 couple of cases, and the Mark Ford case in Southern

20 District of New York, which was actually took part with

21 the Environmental Department. And there is a case out

22 of Illinois that -- the name does not stick in my head.

23 It'll come back as soon as I sit down. But a claim is a

24 right to a dollar payment. Injunctive relief is not a

25 claim, and that -- the mere fact that it may cost money

1 to obey an injunction or to comply with an order does
2 not make it a dollar claim. You can't buy the right to
3 something. If you fix it, yeah, it's going to cost you
4 money to fix it up, but that's not out of bounds with
5 respect to the bankruptcy court. It's something that
6 you as a business person have to deal with. And I think
7 Mr. Herrmann mentioned other federal law on that.

8 But 28 U.S.C. 959 is express on that, that
9 any debtors in the bankruptcy, including trustees have
10 to comply with applicable state law. Bankruptcy is not
11 a refuge. You know, it allows you some breathing space
12 to reorganize your financial affairs, but you still have
13 responsibilities to the community as a whole. You have
14 to meet those responsibilities.

15 COMMISSIONER MARTIN: In your opinion, does
16 the surety company in this case have standing to even
17 request a continuance?

18 MR. JACOBSEN: Yeah. I was -- from my
19 perspective, I was a little bit surprised that the
20 Division affords that interest -- or that -- that
21 standing for a surety lender. You know, they have a
22 contingent claim against debtor, and the financial
23 surety is out there. I do not know what their
24 collateral position is. I don't know what it is, but I
25 think -- my personal view with respect to their motion

1 is it's not well-taken.

2 COMMISSIONER BALCH: I'm glad you brought
3 up standing because standing has been such an issue for
4 us recently. Would they -- would they qualify for
5 standing under the "or" clause, or would that only be
6 after the order is --

7 MR. BRANCARD: It would be after the order
8 in court.

9 COMMISSIONER BALCH: Yeah. So they
10 don't -- they don't actually have standing under our
11 rules right now.

12 MR. BRANCARD: The point that Mr. Herrmann
13 made is that the case that's appealed de novo, they have
14 entered an appearance below, so, therefore --

15 COMMISSIONER BALCH: Okay.

16 MR. BRANCARD: -- in that case, 040, I
17 believe you said they have standing. But in this
18 current case, they have not entered -- the new case,
19 they have not entered an appearance.

20 MR. HERRMANN: And as I noted in my
21 response to their request for continuance, the surety's
22 role is somewhat limited. I assume the thought process
23 when notifying sureties was give to them an opportunity
24 to do the work rather than pay on the bonds. And Cano
25 has not disputed that these wells are in violation nor

1 that anything needs to be done, and I think the surety
2 is overstepping their actual role and acting more as
3 another creditor to Cano rather than the surety itself.

4 COMMISSIONER BALCH: I think they're
5 actually in better shape than other creditors because
6 they have a bond. They'll at least get that part of it.

7 MR. JACOBSEN: I would be shocked if they
8 did not have collateral.

9 MR. BRANCARD: So just for the record,
10 then, Mr. Jacobsen, you are representing the Division in
11 the Cano Petro bankruptcy?

12 MR. JACOBSEN: Yes, I am. I have entered
13 my appearance for the Division in the bankruptcy. I've
14 been in contact with bankruptcy counsel. I've been in
15 contact with the Texas Railroad Commission. I'm also
16 representing the Taxation and Revenue Department, which
17 has an approximately \$50,000 claim that an audit has not
18 yet been completed.

19 MR. BRANCARD: So in the event that
20 anything spins off from this proceeding that may trigger
21 a motion in bankruptcy court for the stay or may result
22 in a dollar amount that we would need to try to impart,
23 you would be the one who would be having to deal with
24 those situations?

25 MR. JACOBSEN: I would be dealing with it

1 in Tulsa. Yes.

2 MR. BRANCARD: And so I guess -- I think
3 you've already answered this, but basically you've
4 reviewed the remedies that the Division is seeking in
5 these two cases, and you don't see any of that as being
6 a violation of the automatic stay?

7 MR. JACOBSEN: No, I do not.

8 COMMISSIONER BALCH: With regards to the
9 continuance, I think the motion should be denied.

10 COMMISSIONER MARTIN: I second.

11 CHAIRWOMAN RILEY: So moved.

12 Mr. Herrmann, you can go forward with the
13 presentation.

14 OPENING STATEMENT

15 MR. HERRMANN: Thank you.

16 Good morning, Commissioners. Today the OCD
17 Compliance and Enforcement Bureau will be presenting a
18 case seeking a compliance order against Cano Petro of
19 New Mexico. They're an operator of 323 wells in Chaves
20 and Roosevelt Counties.

21 Today we'll be presenting evidence
22 displaying Cano's violations of the following rules:
23 Failure to operate its wells in a productive manner and
24 having a majority of them going inactive. That was the
25 original violation contained in OCD Case 16040. Then

1 additionally, we brought additional claims for failure
2 to maintain adequate bonding, failure to address
3 releases of crude oil-field waste and produced water,
4 and failure to properly close pits and remove stockpiles
5 of waste.

6 Cano does not dispute the violations. They
7 have not submitted a plan of development for its fields
8 and has not provided the Division any plan to return to
9 compliance.

10 Because we've had difficulty addressing
11 this with Cano, we are going to be seeking a compliance
12 order directing a return to compliance within 45 days,
13 and should they fail, that Cano be found in violation of
14 a Commission order, a declaration that the wells are
15 abandoned and that the Division be authorized to plug
16 and abandon the associated wells in a Division-approved
17 plugging program. And additionally, if that should
18 happen, if we do plug Cano's wells on their behalf, that
19 their financial assurance be forfeited pursuant to the
20 provisions of 19.15.8 NMAC, Statute 70-2-14 NMAC.

21 I have three witnesses today, Mr. Daniel
22 Sanchez with the Oil Conservation Compliance and
23 Enforcement manager; Mr. Jim Griswold, the OCD
24 Environmental Bureau chief; and a representative from
25 the State Land Office, Ms. Marilyn Gruebel, who will

1 provide some testimony on one of the interested mineral
2 owners.

3 At this time I would request they be sworn
4 in.

5 CHAIRWOMAN RILEY: That would be great.
6 Why don't we swear all three at the same time?

7 (Mr. Sanchez, Mr. Griswold and Dr. Gruebel
8 sworn.)

9 DANIEL SANCHEZ,
10 after having been first duly sworn under oath, was
11 questioned and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HERRMANN:

14 Q. Mr. Sanchez, could you please identify
15 yourself, your title and place of employment?

16 A. My name is Daniel Sanchez. I am the compliance
17 and enforcement manager for the Oil Conservation
18 Division. My responsibilities include managing the
19 district offices, running the EPA UIC Program, the
20 Underground Injection Control Program, and working with
21 the BLM and the State Land Office on co-jurisdictional
22 issues on enforcement and compliance.

23 Q. And of the compliance and enforcement matters,
24 do you deal with every operator in the state on their
25 compliance and enforcement matters?

1 A. Yes, I do.

2 **Q. How long have you served in that capacity?**

3 A. Almost 14 years.

4 MR. HERRMANN: At this time I would like to
5 ask the Commission to qualify Daniel as an expert in
6 compliance and enforcement matters in the state of New
7 Mexico. This is generally something we have done at the
8 Commission level. I don't know if that's an actual -- I
9 don't want to give his testimony undue weight, but I
10 think in light of his experience, Mr. Sanchez could
11 provide some valuable opinions related to this operator
12 as well.

13 CHAIRWOMAN RILEY: Mr. Brancard, do you see
14 that as appropriate?

15 MR. BRANCARD: Yes.

16 CHAIRWOMAN RILEY: All right. Mr. Sanchez
17 is recognized by the Commission as an expert in his
18 field.

19 **Q. (BY MR. HERRMANN) Okay. Mr. Sanchez, let's**
20 **start with Rule 5.9. Could you briefly give the**
21 **Commission an overview of how an operator maintains**
22 **compliance with 5.9 and what potentially are the**
23 **ramifications if they do not comply with 5.9?**

24 A. Okay. Under Rule 5.9, an operator is required
25 to maintain compliance with their inactive -- with the

1 inactive well bonding rule and any orders by the
2 Commission that may have been imposed against that
3 particular operator.

4 For inactive wells, an operator can carry a
5 certain number of inactive wells depending on the number
6 of wells that they actually operate, and the goal of 5.9
7 is to help them maintain that list.

8 Same with bonding, bonding is required. A
9 typical blanket bond is required when a state or a fee
10 well goes inactive for more than two years. Single well
11 bonds are required. And, of course, any order by the
12 Commission must be dealt with by that operator as well
13 in order to maintain the compliance.

14 If they do fall out of compliance for any
15 one of those three reasons, when they apply for an
16 application for permit to drill or a C-108 for an
17 injection well or other types of applications, they can
18 be rejected under 5.9.

19 **Q. And if a -- if a well is not properly plugged**
20 **and abandoned, the Division is also authorized, after**
21 **notice and hearing, to seek an order declaring those**
22 **wells -- or requiring those wells to be plugged and**
23 **abandoned and, if not, be plugged and abandoned by the**
24 **Commission -- or by the Division?**

25 **A. Yes, that's correct.**

1 **Q. So let's start with Cano. Could you provide a**
2 **brief overview of their operations in New Mexico?**

3 A. Cano is a corporation run out of Tulsa,
4 Oklahoma, and they operate 323 wells in the state of New
5 Mexico. Currently, they have on the inactive well list,
6 that is showing as of this morning, 281 inactive wells.
7 If you look at this slide up here, you'll see on the
8 very bottom, right-hand side showing 291 wells inactive.
9 Ten of those wells aren't showing up on the inactive
10 well list even though they are inactive. Seven of them
11 have shown no production or don't have a last production
12 data on those. So they should be on there, but they
13 just don't show up for that reason. And three other
14 wells on their active well list are coming up as plugged
15 but not released. Those wells will not come off that
16 well list until the site has been released after
17 plugging.

18 **Q. Do you have those wells available? Could you**
19 **please identify them for the record?**

20 A. They are Cato San Andres wells, and the seven
21 that haven't shown production are the 171, 172, 200,
22 400-D, 410-O and 548 and the 762. The plugged, not
23 released wells are the 557, 562 and the 827.

24 **Q. And just to clarify for the record, those are**
25 **all Cato San Andres unit wells?**

1 A. Yes, they are.

2 **Q. Could you please identify Exhibit 2? And let**
3 **me apologize in advance. Could you also identify where**
4 **that exhibit is located -- or the identifier is located**
5 **because I used a tiny font that was not evident to me**
6 **until after printing?**

7 A. Okay. The microscopic font is on the upper,
8 right-hand corner. It's Exhibit 2, "Operator
9 Information." And this is a combination of two
10 different documents, one from the Office of the
11 Secretary of State, and the other one is from OCD
12 Permitting identifying Cato -- Cano Petro of New Mexico
13 as the operator.

14 **Q. Could you identify the officers of record?**

15 A. The president is Richard Nichols. The
16 secretary is Orville Nichols, and the chief financial
17 officer is Phillip Burch. And then the central
18 contract -- contact we've been using during this case
19 has been Rick Harris.

20 **Q. And there was a president?**

21 A. The second individual listed as the president
22 is John Archer.

23 **Q. And moving to page 3 -- or page 4 -- excuse**
24 **me -- of Exhibit 2, is that a copy of the Division**
25 **contact information?**

1 A. Yes, it is.

2 Q. And moving onward to page 5 and all the
3 subsequent pages, is that a list of the bonding -- the
4 bond and the applicable wells that applies to --

5 A. Yes, it is.

6 Q. Do they also have a \$50,000 blanket bond in
7 place?

8 A. Yes, they do.

9 Q. Could you please identify Exhibit 3, and,
10 again, where the exhibit is identified?

11 A. Exhibit 3, identified in the upper, right-hand
12 corner, it is the inactive well list for Cano Petro of
13 New Mexico indicating 281 inactive wells and 323. This
14 was pulled from the OCD's online file, ePermitting
15 operator data compliance.

16 Q. And proceeding through this slide, could you
17 identify where the information for this slide came from
18 and what it displays?

19 A. Yes. This is the number of inactive wells that
20 was showing up on a year-by-year basis from 2012 to the
21 current date. And this was pulled off of that inactive
22 well list. There is a feature in there that allows you
23 to go back and pull up the number of wells that were
24 actually inactive during that time frame. So back in
25 2012, there were 147 inactive wells under Cano. It

1 rose, then, for the next year by about 50 wells. It
2 maintained a pretty steady line there for a while, for a
3 few years, and it's gone up ever since 2016. It went up
4 to 224, and currently it's at 281.

5 **Q. And we have another slide here. Could you**
6 **please identify the source of the information here and**
7 **what it's showing?**

8 A. Yeah. The source of this information came
9 from, again, from the OCD's Web site, the production
10 data, and it shows the production for Cano Petro from
11 2007 to 2017. And what we're trying to show here is
12 just the reduction in production, very dramatic
13 production drop in the last three years, given the
14 number of inactive wells that they have. And just to
15 check it out, I went pulled the 2018 numbers, and to
16 date, they have 730 barrels of oil produced, zero gas.

17 **Q. So just to reiterate, on Exhibit 3, what's the**
18 **total number of inactive wells, their total number of**
19 **wells, and how many are they allowed under Rule 5.9?**

20 A. They have 281 inactive wells out of 323. With
21 323 wells, an operator can have five wells out of
22 compliance and be in compliance with 5.9.

23 **Q. And 281 is just based on the production data,**
24 **and there are still ten additional wells?**

25 A. That's correct.

1 Q. And Exhibit 3 is an identification of them.
2 For purposes of a Division order, these are the wells we
3 would seek either a return to production or plug and
4 abandon?

5 A. Yes.

6 Q. One last question. We might jump around
7 exhibits briefly, and I apologize. But is Exhibit 6 a
8 reproduction of this slide?

9 A. Yes, it is.

10 Q. I don't think we will need Exhibit 6 after
11 that.

12 And I'd like to -- I'd like you to identify
13 Exhibit 7 as well.

14 A. Exhibit 7 is a letter that I sent out back on
15 June 20th of 2017 informing Cano that they were in
16 violation of 5.9, the inactive well rule, and explained
17 to them that they had 323 wells. They can have five on
18 that list without being in violation. And at that time,
19 a little over a year ago, they had 229 wells inactive.

20 Q. And that was sent as required by the notice
21 provisions of Rule 5.9 when we seek enforcement action?

22 A. Yes.

23 Q. Was it sent at least 60 days prior to the
24 commencement of hearing?

25 A. Yes, it was.

1 **Q. Could you please identify OCD -- our Exhibit 8**
2 **for the Compliance and Enforcement Bureau?**

3 A. Exhibit 8 is a Commission order from Case
4 Number 9944. This was signed July 9th of 1990. And the
5 main point -- what we're trying to get out of this is
6 that the proposed rules for plugging and abandonment
7 were done to prevent migration of fluids, to prevent
8 waste and protect correlative rights and to protect
9 fresh waters.

10 **Q. And this was one of the findings by the**
11 **Commission when it adopted the well plugging rule?**

12 A. Yes.

13 **Q. So I apologize for jumping around to those two**
14 **exhibits, but I thought it would go in line with your**
15 **testimony.**

16 So the added violation we brought in Case
17 **16359 is for bonding violations, correct?**

18 A. Yes.

19 **Q. Could you please identify OCD Exhibit 4?**

20 A. Exhibit 4 is marked up in the upper, right-hand
21 corner. It's a copy of Cano Petro's inactive well
22 additional financial assurance report, and this is
23 generated from the OCD's Web site on permitting. And
24 what it's showing is that they still, as of today,
25 require 14 more single well bonds in order to be in

1 compliance. That total amount on the single well bonds
2 is \$120,200.

3 **Q. And could you identify OCD Exhibit 5?**

4 A. Exhibit 5 is an exhibit I put together mainly
5 to show what the current financial assurance requirement
6 is for each of the state and fee wells that have been
7 inactive. This actually shows quite a bit. This was
8 also meant to kind of show what the State's liability
9 would be to plug wells if they remain in this condition
10 or under these -- in this state.

11 Cost to plug, I estimated at the new
12 financial assurance rule numbers, which haven't gone
13 into effect yet, but we wanted to kind of get an idea of
14 what it would cost down the road, and that's -- cost to
15 plug is 25,000, plus \$2 per foot on the well depth. And
16 if we -- if the State of New Mexico had to plug each one
17 of those wells, which I believe is 150, it would run
18 around \$4.8 million. Currently, Cano has \$671,000 in
19 bonding.

20 **Q. You saw this morning that the new financial**
21 **assurance rules adopted, correct?**

22 A. Yes.

23 **Q. So that will also significantly increase Cano's**
24 **bonding requirements?**

25 A. Yes. Just based on their single well bond

1 right now, that would raise their requirement, I
2 believe, to 2.5 million, somewhere in that number.

3 **Q. And just to clarify, some of these wells are**
4 **highlighted in yellow. Could you --**

5 A. Yeah. The numbers highlighted in yellow are
6 wells that require that additional bonding right now.
7 And if they were to come in under the new financial
8 assurance rules, just those 14 alone would go from
9 120,200 to \$450,370.

10 **Q. Is there anything else you would like to add?**

11 A. I did a couple of just real quick calculations
12 on the average total depth of this well field and what
13 it might cost based on the new FA rule, and it came out
14 to \$8.83 per foot to plug or about \$32,000 per well to
15 plug.

16 **Q. And just to restate, what relief is the**
17 **Compliance and Enforcement Bureau requesting regarding**
18 **inactive wells and financial assurance?**

19 A. We're asking that the Commission require Cano
20 to come into compliance with 5.9, both bonding and
21 inactive wells, within 45 days from the issuance of an
22 order.

23 **Q. And if they fail to plug and abandon their**
24 **wells or return to production?**

25 A. To allow the Division to do that, plug the

1 wells and then go after the financial assurance.

2 Q. Okay.

3 MR. HERRMANN: I have no additional
4 questions for Daniel.

5 CHAIRWOMAN RILEY: Do you want to submit
6 these exhibits?

7 MR. HERRMANN: Thank you, Commissioner.

8 Q. (BY MR. HERRMANN) Were Exhibits 1 through 8
9 prepared by you or under your direction?

10 A. Yes.

11 MR. HERRMANN: I'll save moving to admit
12 them on the record until the end of our presentation.

13 CHAIRWOMAN RILEY: Okay.

14 We don't have anyone to question other than
15 those of us up here, so I have a question for you.

16 CROSS-EXAMINATION

17 BY CHAIRWOMAN RILEY:

18 Q. On the three wells that were plugged, do you
19 know when those were plugged? And were those plugged by
20 the operator, the ones that show plugged --

21 A. Plugged, not released?

22 Q. -- plugged, not released?

23 Were those a while ago?

24 A. I didn't check the dates on those.

25 Q. But it's not a recent --

1 A. I don't believe it's recent. No.

2 Q. That was all I had.

3 CROSS-EXAMINATION

4 BY COMMISSIONER MARTIN:

5 Q. On your Exhibit 1, page 3, the seven wells that
6 are showing no production, are those included in that
7 291 total inactive wells?

8 A. Yes.

9 Q. So they were added to inactive well list for
10 this purpose?

11 A. Yeah. We wanted to show where that difference
12 was in what we came up with on total inactive wells
13 based on the inactive well list.

14 Q. Do you know when Cano became operator of these
15 wells, operator of record? Was it 2007?

16 A. I believe it was 2007. If not '7, it was 2009.
17 The exact date doesn't --

18 Q. So your page 5 that goes back to 2007, Cano was
19 the operator in all these wells?

20 A. Yes.

21 Q. And all the bonds that you show in effect, do
22 you -- well, is it common practice to verify the
23 validity of those bonds, or does the OCD operate on a
24 basis where you have -- cancel the bonds, they're still
25 active?

1 A. As far as I know, they're active until there is
2 a request for release.

3 Q. And one more: In your opinion, how would
4 bankruptcy affect OCD's capability of plugging the wells
5 at that time? Would that -- would that work be allowed?

6 A. Not being an expert in bankruptcy, I'm not
7 really sure I can answer that.

8 Q. I understand. That's all I've got.

9 CHAIRWOMAN RILEY: Dr. Balch?

10 COMMISSIONER BALCH: Sure.

11 CROSS-EXAMINATION

12 BY COMMISSIONER BALCH:

13 Q. Going back to your -- I think it was your first
14 slide -- this one (indicating). I have a couple of
15 questions about how OCD verifies inactive status. It
16 says you visited 21 wells on July 9th?

17 A. Yes.

18 Q. Only one of which had a meter?

19 A. Yes.

20 Q. Certainly a well could pump fluid without a
21 meter on it. Is there any sign of production at all at
22 these wells?

23 A. There was no indication that those sites had
24 been active for some time.

25 Q. Okay. And of the 291 wells, over what time

1 span would OCD have visited all of them to verify their
2 status?

3 A. Probably over the last three years, that I'm
4 aware of. We've done multiple inspections on the
5 different units out there or the district office has.

6 Q. And the inactive list is generally formed from
7 a review of production numbers?

8 A. Yes.

9 Q. That are reported by the operators?

10 A. That's correct.

11 Q. I guess I would ask the same question that the
12 Commissioners added. So I may want to ask that of
13 Mr. Jacobsen instead.

14 So it seems like there is
15 600-and-some-thousand-dollars of bond out there. In a
16 normal -- in a normal procedure where there is not a
17 bankruptcy, they would, first of all, collect those
18 bonds. Then they would go after the operator for the
19 remainder of the closure costs?

20 A. Yes.

21 Q. All right. So in this case, it seems like to
22 me -- and perhaps Mr. Jacobsen can weigh in -- that you
23 would get that 600-some-thousand-dollars, and the rest
24 of it, you would have to go after in bankruptcy court?

25 MR. JACOBSEN: That is true. And just to

1 preface it, before any work was done, we would need to
2 get authority from the bankruptcy court to go on and
3 take control of that property. So it's a multiple-step
4 process. If this Commission, you know, authorizes OCD
5 to do that and then, you know, with the other relief
6 requested and then Cano, for whatever reason, is unable
7 to perform or unable to find somebody to take over its
8 responsibilities and OCD decides it's in the State's
9 interest to proceed with plugging the wells itself, if
10 the bankruptcy is still pending, we would have to get
11 relief from the 362(a) stay to take control of those
12 wells.

13 COMMISSIONER BALCH: So to close the wells,
14 we would have to get permission from the bankruptcy
15 court?

16 MR. JACOBSEN: Correct. Correct.

17 COMMISSIONER BALCH: I thought earlier you
18 mentioned that the regulatory and police powers were not
19 impacted by bankruptcy.

20 MR. JACOBSEN: Up to the point of doing it,
21 but this is seizing property in effect, and that's where
22 bankruptcy courts get a little parochial. Now, if it
23 was contraband, that's one thing, you know, in a
24 criminal matter. Then that's a different thing
25 entirely. But this is a civil matter at this point.

1 COMMISSIONER BALCH: So from your
2 experience in these kind of issues, what would the
3 bankruptcy court typically respond with?

4 MR. JACOBSEN: You know, the bankruptcy
5 courts, as I said, are parochial. The system is biased
6 in favor of reorganization. I think in this instance,
7 all the indications are that the Nichols brothers will
8 not effectively be able to reorganize Cano Petro and is
9 seeking some way to buy their interest and take over as
10 operator. Then they'd have to meet OCD's requirements
11 with respect to that. But if -- if they just failed,
12 the case would probably just be dismissed, and it would
13 be out of bankruptcy, and then we may be looking at just
14 a hulk. And the third-party bonds, the automatic stay
15 does not apply to that. The automatic stay applies to
16 collections of the debtor. So if the elements required
17 for calling the bond were met, there is nothing in the
18 bankruptcy to stop that.

19 Now, having said that, I was representing
20 the Worker's Compensation Commission some years ago in
21 the Mississippi Chemical case where the Worker's
22 Compensation wanted to call their bonds, and the judge
23 granted a discretionary stay on the theory that if
24 New Mexico [sic] called its bond, it would create a
25 cascade effect, and it would then cause the entire

1 operation to crater.

2 The institutional biases for reorganization
3 in -- in -- if reorganization is not possible, then sale
4 of operations as an economic unit is preferred. And
5 then if nothing is happening, it can either go to
6 Chapter 7 where a liquidating trustee can attempt the
7 same thing, or the case can be dismissed.

8 But as somewhat of an aside, Texas is
9 facing similar problems with the entity operating close
10 to 1,000 wells in Texas, WO Operating, which is not
11 operating at all. And Texas is hoping to force the case
12 into a Chapter 7 and then having trustees seek
13 contribution from any working interest owners.

14 COMMISSIONER BALCH: So I think you also
15 mentioned earlier during your direct -- maybe not
16 direct -- as co-counsel, during your opening statement,
17 that bankruptcy doesn't protect you from having to clean
18 up your mess.

19 MR. JACOBSEN: Correct.

20 COMMISSIONER BALCH: Maybe in some of these
21 wells that Daniel's been talking about, have
22 environmental issues associated with them --

23 MR. JACOBSEN: Yes.

24 COMMISSIONER BALCH: -- really need to be
25 closed and -- seized before they can be closed, and

1 seized really before you can even collect the bond,
2 right?

3 MR. JACOBSEN: Well, as I understand the
4 process, Cano needs to fail to comply.

5 COMMISSIONER BALCH: Fail to comply with
6 the order?

7 MR. JACOBSEN: Yes, and then you take it to
8 the next step.

9 And the bankruptcy courts, like I said, are
10 parochial. You know, they're biased institutionally,
11 and they need -- you know, some of them -- there is a
12 Venoco case out of Cali- -- part of the weirdness of
13 bankruptcy. A Delaware court dealing with a California
14 operator next to the Beverly Hills High School said
15 that, Well, you know, the wells are in good shape so
16 there is no evidence of any ongoing environmental
17 issues, so we're not going to force you to do anything
18 while you're in bankruptcy. That's not the situation as
19 I've seen from the evidence here. There are releases
20 that need to be remediated, and there is a hazard to the
21 public, to the well-being --

22 COMMISSIONER BALCH: Health and safety,
23 water.

24 MR. JACOBSEN: -- health and safety. And
25 that's the sort of thing that the bankruptcy courts

1 latch on to and say, Debtor, you need to deal with this,
2 and if you don't, then we'll do what's appropriate for
3 making sure that the public health and safety and that
4 of, you know, the flora and fauna in the area is not
5 adversely impacted by this case. I am not the
6 bankruptcy judge that's going to be the one responsible
7 for dumping oil.

8 COMMISSIONER BALCH: Thank you for that
9 clarification.

10 CROSS-EXAMINATION

11 BY COMMISSIONER BALCH:

12 **Q. Out of these wells, are any of them federal?**

13 A. A total of about 171 are federal. Probably a
14 little more, but quite a few.

15 **Q. So how is that going to impact collection on**
16 **these bonds?**

17 A. Well, the federal wells, we don't require
18 bonds.

19 **Q. Yeah. The \$50,000 -- or \$25,000 blanket bond?**

20 A. No. Those aren't required. But we do have an
21 agreement right now with the BLM, a plugging contract,
22 that goes for another two years, I guess, and they've
23 been providing us funds to go after just specifically
24 federal wells for plugging. So this is one of the --
25 one of the operators that they were very serious about

1 as well, and they've accompanied us on these inspections
2 of those sites. And they are definitely looking at
3 getting more funding for us to start plugging up that
4 field if we get to that point.

5 Q. So it seems like from their bankruptcy, a
6 couple of things could happen. One is that they
7 reorganize somehow, where they sell off. In those two
8 cases, then the new company would have to have OCD
9 approval to bring the wells into compliance, get the
10 correct bonding, et cetera. The case where the company
11 is just dissolved through bankruptcy and liquidated,
12 presumably most of these wells aren't going to be
13 desirable to anybody else. Maybe Mr. Marker. But what
14 does the OCD do in that case? Do they try and market
15 those wells, or are they just going to close them out of
16 the, you know, reclamation fund?

17 A. We're not a marketer. If another operator were
18 to ask about them, yeah, then I would push them, Yeah,
19 take a look at them. At least I'm not going to say
20 they're good or they're bad. You know, it's entirely up
21 to another operator to make that determination. In
22 other cases, I have brought to someone else's attention
23 that there are wells out there when I was asked, and
24 some of those have gone to other operators. This is a
25 pretty heavy field. It's -- they have not taken care of

1 it like they should have, and it would be a hard sell, I
2 think.

3 **Q. Especially with environmental issues and --**

4 **A. And that's coming up next.**

5 **Q. All right. Thank you very much.**

6 **CHAIRWOMAN RILEY: Ed?**

7 **RECROSS EXAMINATION**

8 BY COMMISSIONER MARTIN:

9 **Q. Given the fact that -- at least I believe most,**
10 **if not all of these wells are vertical wells.**

11 **A. (Indicating.)**

12 **Q. Do you have any sense of the capabilities of**
13 **this field for horizontal development?**

14 **A. We have another operator operating in that**
15 **general area, and they took over a field that was pretty**
16 **similar to this one, maybe not as many wells, and the**
17 **majority of them -- well, all of them, actually, were**
18 **vertical wells. And they've been plugging them out as**
19 **they go, but they're also going back in with horizontal**
20 **wells. And it's not great production, but it's good**
21 **enough for them to continue drilling. So it's a**
22 **possibility.**

23 **RECROSS EXAMINATION**

24 BY COMMISSIONER BALCH:

25 **Q. These are just primary production wells?**

1 A. Yes.

2 Q. No secondary?

3 A. On these ones, there is some secondary
4 recovery -- or there was some on these ones.

5 Q. Where they had their own waterflood?

6 A. Uh-huh. Yeah. There are quite a few injection
7 wells associated with this.

8 Q. What is the average depth of these wells?

9 A. 3,659 feet.

10 Q. So it may be a little hard to get a tertiary
11 flood in there. They might just be done.

12 A. Yeah, could be.

13 COMMISSIONER MARTIN: One more.

14 RECROSS EXAMINATION

15 BY COMMISSIONER MARTIN:

16 Q. Of the 20 wells that don't have meters that you
17 guys looked at, how many -- was there some investigation
18 done after the fact to see if those wells were reporting
19 production on those meters?

20 A. No. I didn't follow up on that.

21 Q. Okay. That's all I've got.

22 CHAIRWOMAN RILEY: Mr. Brancard, did you
23 have anything?

24 MR. BRANCARD: Yes, I do. Thank you.

25

1 CROSS-EXAMINATION

2 BY MR. BRANCARD:

3 Q. Exhibit 3, the inactive well list, just to
4 clarify for the record, to land a well on this list,
5 it's not just inactive for one day? It's inactive for
6 15 months?

7 A. 15 months.

8 Q. 15 months.

9 So on Exhibit 4, the Financial Assurance
10 Report, I assume you're working under the existing rule
11 because we haven't filed the new rule yet. So to
12 have -- on that column, "Bond Required Now," that would
13 require a well to be inactive for 24 months?

14 A. That's correct.

15 Q. Okay. And judging from this list, if I look at
16 the column that says, "Additional Bond Due," it looks
17 like there are a fair number of wells that will have
18 more bonds due come next month?

19 A. Yes.

20 Q. So a number of wells require bonding -- single
21 well bonding will go up?

22 A. It's going to go up, as will the inactive well
23 list in another six months.

24 Q. Oh, I have one other question. I noticed on
25 Exhibit 1, page 5, with the production, that the last

1 column says "Water Injection." Are a number of these
2 wells now injection wells?

3 A. Yeah. There are quite a few injection wells in
4 that field.

5 Q. Okay. And that's just disposal?

6 A. It's been used for secondary recovery.

7 Q. Okay. And so if they're injecting, you'd
8 include these as active?

9 A. Yes.

10 CHAIRWOMAN RILEY: Do you have any
11 redirect?

12 MR. HERRMANN: No, I don't believe I do.

13 CHAIRWOMAN RILEY: Do we want to hold this
14 witness for any questioning?

15 COMMISSIONER BALCH: Absent an objection.

16 CHAIRWOMAN RILEY: The Commission could
17 have a question later. So --

18 THE WITNESS: I'll hang out.

19 CHAIRWOMAN RILEY: Thank you.

20 MR. HERRMANN: Thank you, Daniel.

21 I'll call my second witness, Mr. Jim
22 Griswold.

23 Let the record note that he's been
24 previously sworn in.

25 (The court reporter requested all parties

1 speak louder.)

2 JIM GRISWOLD,

3 after having been previously sworn under oath, was
4 questioned and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HERRMANN:

7 Q. Mr. Griswold, would you please -- who should
8 not have any trouble speaking louder. Would you please
9 identify yourself, your title and your place of
10 employment for the record?

11 A. My name is Jim Griswold. I'm the Environmental
12 Bureau chief for the Oil Conservation Division.

13 Q. And what duties do you perform for the Oil
14 Conservation Division?

15 A. Well, currently as bureau chief, I oversee
16 compliance by oil and gas operators in New Mexico with
17 environmental regulations both of the Division and the
18 Water Quality Control Commission.

19 Q. And you also have extensive experience in
20 environmental cleanup and remediation activities?

21 A. Yes, sir. I've been involved in the
22 investigation and cleanup of environmental contamination
23 problems for -- I hate to say it now -- about 35 years.

24 Q. Have you been qualified as an expert before the
25 Commission prior to today?

1 A. Yes, and prior to rulemaking.

2 MR. HERRMANN: I would move at this time to
3 admit Mr. Griswold as an expert in environmental best
4 management practices.

5 CHAIRWOMAN RILEY: Do you have any comments
6 or concerns from up here?

7 Dr. Balch, you look like --

8 COMMISSIONER BALCH: I was going to ask him
9 where he went to school.

10 THE WITNESS: You were going to ask, or are
11 you asking?

12 COMMISSIONER BALCH: Just for the record.

13 THE WITNESS: New Mexico Tech.

14 COMMISSIONER BALCH: There you go.
15 He's qualified.

16 (Laughter.)

17 CHAIRWOMAN RILEY: The Commission
18 recognizes Jim Griswold as an expert in his field.

19 MR. HERRMANN: Thank you.

20 **Q. (BY MR. HERRMANN) So, Mr. Griswold, Daniel had**
21 **testified earlier that he had gone out to the site. Was**
22 **it on June 9th?**

23 A. Actually, I believe it was -- I'm referring to
24 Exhibit 9 -- July 9th.

25 **Q. Thank you.**

1 **And you accompanied him as well?**

2 A. Yes, sir.

3 **Q. Who else was there?**

4 A. Maxey Brown, the OCD's District 1 supervisor
5 out of Hobbs; Bob Hoskinson, who is out of the BLM's
6 Roswell field office; and Beth Wojahn who is our PIO
7 [sic]. She just happened to be along on that trip doing
8 several things over several days down there.

9 **Q. So for the remaining portion of your testimony,**
10 **we'll just refer to Exhibit 9, if you would identify**
11 **that.**

12 A. Yes. Exhibit 9 is a write-up that I prepared
13 based on a desk study of Cano and a field inspection of
14 July of this year.

15 **Q. And these slides will show as well -- I guess**
16 **to clarify my earlier question to Daniel, he prepared**
17 **the slides prior to this point, and you prepared these**
18 **slides?**

19 A. Yes, sir. These slides in Exhibit 1 are based
20 on what's in Exhibit 9.

21 **Q. So when you visited the Cano sites --**

22 MR. HERRMANN: And actually I have a map
23 that might provide the Commission some insight as to
24 where these are located, if I may present them. They
25 were not submitted with my earlier exhibits. I have

1 labeled it as Exhibit 13. However, if there is
2 objection, we would not admit it to the record and just
3 use this as a demonstrative.

4 **Q. (BY MR. HERRMANN) So, Jim, what did you --**
5 **where is this field located?**

6 A. And we're kind of goofy with the names here
7 sometimes. The name of the operator is Cano Petro of
8 New Mexico. The field that we're talking is actually
9 the Cato Field, C-A-T-O. It's located out in the
10 eastern extent, a little nose in Chaves County that kind
11 of sticks into Lea and Roosevelt Counties. To get
12 there, you would head due east out of Roswell on
13 U.S. 380, oh, about 20, 25 miles, and then turn north
14 and proceed another 10 to 15 miles into the field.

15 **Q. And what did you find when you went there?**

16 A. Well, prior to our trip out there, I had
17 actually been approached several months back by the
18 OCD's deputy director to start looking at potential
19 environmental situations with Cano Petro and the Cato
20 Field, perhaps in response to some bankruptcy issues
21 that maybe Mr. Jacobsen had brought to the Division's
22 attention. And so I relied on various resources in that
23 office study, OCD's online database or online imaging
24 system, Google Earth to look at some areas -- I like to
25 see things -- and then some USGS data pertaining to

1 where groundwater may be in the area.

2 And based on that review, there were a
3 number of releases historically reported for the field,
4 ten of them that I could find, three of which occurred
5 at the same location, a large tank battery; a
6 significant number, eight, of what appeared to be drill
7 pits from the aerials. And then, actually, when we got
8 into the field, I identified a couple of soil piles that
9 were out there as well.

10 So when we visited the field, we had
11 somewhat of a time constraint on it, but one of my
12 primary considerations was to visit the tank battery --
13 or one of the tank batteries. There's a total of about
14 20 batteries across the field. You know, with
15 300-some-odd wells, you can kind of imagine how much
16 that covers, hundreds and hundreds of acres, thousands
17 of acres.

18 And what you see here is just a Google
19 aerial of what's known as the Cato San Andres Unit,
20 battery number six. Just to give you a sense of scale,
21 east-west across that berm area is about 500 feet;
22 north-south, approximately 200 feet. There is a total
23 of 13 tanks on there of various configurations, but
24 you'll see mainly there are eight large 500-barrel tanks
25 lined up in that. Now, these ten reported releases --

1 and, again, I think it's important to note that when you
2 look at OCD's data, these are reported releases usually
3 by the operator or an inspector that finds it. It's not
4 necessarily all the releases that may have occurred out
5 there. The three that occurred are associated with this
6 tank battery. And it wouldn't be unusual, in my
7 opinion, for that to be the case where you tend to
8 accumulate fluids. In the infrastructure is where
9 problems happen. Things get old, there's head behind
10 it, so those liquids move. And so we proceeded on.
11 Like I said, the first stop was to visit the battery.

12 In the subsequent photographs and you'll
13 find them in Exhibit 9 as well are just some photographs
14 I took around the battery. And some of the things I
15 want you to note, the upper, left-hand photograph is
16 just the sign at the battery to tell you where we're at.
17 And then the slide in the lower right is standing on the
18 southwest looking to the northeast at the battery. And
19 you'll note, across each of those eight tanks, there is
20 a significant staining. You see it across every one of
21 the eight (indicating). What that is is that's crude
22 oil and produced water that's flowed out of what we call
23 the widow's hatch at the top of the tank. So it's
24 indication of overfill.

25 We'll proceed on to the next slide. Here

1 (indicating), we're getting a little bit closer. In
2 fact, on the easternmost tank, which is the picture here
3 in this lower right area (indicating), you can kind of
4 see it in the picture. This overtopping, overfilling of
5 these tanks has been going on long enough that it
6 appears that the pumper out there -- to try to identify
7 which tank it is coming from, I picked up a rag and
8 simply wiped off the crude oil so you could see the
9 number on the tank. You can also see -- well, in this
10 slide here liquids on the ground, and in the following
11 slide, identification of liquids there as well. There's
12 an ongoing release at this facility, and it hasn't been
13 reported.

14 So based on my review of the information at
15 hand and the field inspection of the battery, I made a
16 series of recommendations of what I think needs to
17 happen out there.

18 First, the tanks have to be drained. Fluid
19 flow to the tanks needs to be stopped and the tanks
20 drained of all their liquids. And then those liquids --
21 their crude oil can be sold off. If it's produced
22 water, it needs to go to disposal. Then to remove and
23 relocate the tanks and other infrastructure there,
24 because though the facility is lined and -- significant
25 portions of it -- I don't know the integrity of the

1 liner. It doesn't look so good from a visual
2 inspection, and there seems to be a history of fluids
3 sitting in that liner for a long period of time. So we
4 need to roll that liner up and look underneath it. And
5 that would be that fourth step there: Investigate the
6 vadose zone beneath the battery for any hazard or
7 absorbed contamination.

8 If the soils are found to be contaminated,
9 the easiest way to clean them up is to simply excavate
10 them and take them to the landfill. If that soil
11 contamination has progressed deep enough that it may
12 have impacted groundwater, which I think it does,
13 actually, given the history of it -- the search of the
14 USGS database identifies a significant number of wells
15 over a large area, granted, that I looked at. But depth
16 to water range, shallow is 30 feet in some areas to as
17 deep as over 200 feet in other areas. But in the area
18 of the battery itself, it appears that water's probably
19 80 or 90 feet. And given my experience with these kinds
20 of releases, there's a high probability that this tank
21 battery has adversely affected groundwater out there.

22 And so I think it's probably -- given the
23 extensive effort it's going to take to drain the tanks,
24 if there continues to be production from the field, they
25 would need to be relocated someplace else, to the

1 liners, that kind of stuff. It's my opinion that we
2 should go ahead and undertake a hydrogeologic
3 investigation now to see if indeed the groundwater has
4 been adversely impacted by releases at this battery.

5 **Q. You also testified in the recent rulemaking for**
6 **the spill rule, correct?**

7 A. Yes, I did.

8 **Q. Is this relief requested in line with the new**
9 **spill rule?**

10 A. It's consistent with standard environmental
11 practice and the rule as well.

12 Excuse me. I alluded to this earlier,
13 another issue out there, and this one is not -- releases
14 of the tank battery are violations of Part 29 of our
15 rules, which the Commission graciously sat through those
16 hearings a while back in that report on that part.

17 Under Part 17, which is most generally
18 known as the Pit Rule, there is a defined period of time
19 of only weeks or months after a rig is released from a
20 location that a reserve pit has to be closed. There
21 hasn't been any new drills out in this field in quite
22 some time that I could find, but I still found eight
23 unclosed reserve pits out there. We visited half those
24 pits while we were there. There's material in the pits.
25 The liner's in poor shape. They need to be closed. And

1 in conformance with the closure parameter of Part 17:
2 Remove the pit contents, roll up the liner, sample
3 beneath it, run specific tests on it, chloride and
4 hydrocarbon, V-Tests. If they're found to have
5 contamination from a leaking liner there, then that
6 needs to be addressed, if the concentrations that are
7 found are actually above the parameters in Part 17, the
8 Pit Rule table. And even if they're not found to have
9 leaked, the area needs to be properly back-filled and
10 the surface restored.

11 And so one of the things the Division is
12 asking for now is that Cano Petro come to compliance
13 with Part 17 for those eight pits, close them out.

14 And then the third issue that I'd like to
15 speak with the Commission about was -- well, when you
16 drive around the field -- and the field dates back to
17 probably the 1960s, first production out there -- there
18 are significant areas with what I refer to asphaltenes on
19 the surface, which is crude oil that's been spilled and
20 sat out in the sun long enough that most of the -- have
21 actually dissipated off, and it appears like asphalt.
22 That is part of where the term "asphaltene" comes from.
23 Widespread across the field.

24 And it appears Cano Petro at some point was
25 trying to address some of these items, so they must have

1 done some surface scraping of those asphaltene layers.
2 But they went ahead -- they laid a liner down in the
3 area out there and just started stockpiling some
4 material on top of it. In essence, they've created a
5 surface waste management facility that's now unpermitted
6 under Part 36 of our rules, which is the surface waste
7 management facility regs. There is a significant amount
8 of soil out there.

9 I did some rule-of-thumb calculations, and
10 you'll actually find them -- there is a costing portion
11 of Exhibit 9, which I won't go into too much detail
12 about at least in terms of costs, but the larger of the
13 two soil piles appears to have over 2,000 cubic yards of
14 material stockpiled on it. The smaller of the two, an
15 additional maybe 130-some-odd yards. That material
16 needs to get removed from the field and taken to a
17 proper -- properly permitted Part 36 facility. So the
18 nearest one to here -- the nearest OCD-permitted
19 facility is Gandy Marley. And then, similarly, roll up
20 that liner material, dispose of it and check underneath
21 it to see if there was any leaching from these
22 contaminate soil piles that may have breached the liner
23 and go forward from there.

24 And so that's basically what we're asking
25 Cano Petro to do with dispatch to initiate this process,

1 properly dispose of the soil, roll up the liners,
2 investigate underneath, and then we'll go from there.

3 I think that's probably the last of my
4 slides and testimony.

5 **Q. So just briefly touching on those cost**
6 **estimates, those were based on your site visit and**
7 **estimated volumes and prices you've seen in that area?**

8 A. Right. The prices I'm familiar with, correct.
9 And I did do some confirmation, and some of it comes
10 from my own experience doing this kind of work in the
11 private sector.

12 **Q. And the relief we've requested here, is that in**
13 **line with Division rules?**

14 A. Yes, with regards to Part 29 and Part 17.
15 Regarding these contaminated soil piles, we need to
16 probably take a closer look at Part 35 of our rules.
17 That deals with waste in itself. But in my opinion,
18 they're operating an unpermitted surface waste
19 management facility out there and have for some time.

20 **Q. Just so we're clear, what -- what rule under**
21 **here? Is that 35 or 36?**

22 A. Contaminated soil piles would be under 35 for
23 just dealing with waste disposal. 36 has to do with
24 permitting of such a facility.

25 **Q. Were -- was Exhibit 9 and slides 8 through 20**

1 **of Exhibit 1 prepared by you or under your direction?**

2 A. They were prepared by me.

3 MR. HERRMANN: I have no further questions.

4 CHAIRWOMAN RILEY: Do you want to go first?

5 COMMISSIONER MARTIN: Sure.

6 CROSS-EXAMINATION

7 BY COMMISSIONER MARTIN:

8 **Q. Battery number six was singled out. Was it the**
9 **worst one out there, or are there other tank batteries**
10 **within the unit?**

11 A. There are other tank batteries within the unit.
12 I singled it out going ahead because of the number of
13 releases associated with it. And it was also the most
14 recent-reported release as well.

15 While we were out there -- because it's a
16 mix of fee -- land office -- or state and federal
17 surface out there. Bob Hoskinson from the BLM took us
18 to a former tank-battery site on federal surface out
19 there that the BLM had undertaken cleanup efforts on
20 their own and removed all the tanks from out there, with
21 the exception of one that only holds fresh water at this
22 point. And it was basically a parking lot of this
23 asphaltene, like a parking lot or basketball court out
24 there. And I think that was as far as they had been
25 able to go at that point from a monitoring point of

1 view, was the removal of the tanks. But -- so I visited
2 those two tank batteries, so there are still another 19
3 batteries that need to be looked at.

4 Q. Would you recommend eliminating the source at
5 tank battery number six, i.e., shutting in the wells
6 feeding that tank battery?

7 A. Well, I don't know if it means shutting the
8 wells in, but we need to work at that location, which
9 means the tanks have to come out. So either they'd set
10 up an additional battery someplace else to take that
11 flow or shut off the flow from the well.

12 COMMISSIONER MARTIN: That's all I've got.

13 CROSS-EXAMINATION

14 BY CHAIRWOMAN RILEY:

15 Q. Just a follow-up on that. You just sampled
16 some of their locations when you went for the site
17 visit?

18 A. Yes, ma'am.

19 Q. I doubt you were able to look at every well
20 that they had or every tank battery.

21 A. Oh, I'd probably still be out there (laughter).

22 Q. Yeah.

23 So based on that, I mean, do you have an
24 idea of what it would take to remediate their field?

25 A. I'd be really leery at this point to say what

1 it would take to remediate the field. And you'll see in
2 my cost write-up. I usually stop at that point where we
3 get -- especially the groundwater abatement. That is an
4 extremely costly undertaking. Just rolling up the tank
5 battery and taking out the uppermost 4 feet across half
6 that footprint -- I'm not saying it's all contaminated;
7 I'm saying part of it is -- that's over a million bucks
8 just in soil excavation out there. And groundwater
9 cleanup problems take a lot of the infrastructure, a lot
10 of time to get them done. I could easily see annual
11 operating costs on the ground with the abatement system
12 being in the hundreds of thousands of dollars.

13 CROSS-EXAMINATION

14 BY COMMISSIONER BALCH:

15 **Q. And you're estimating down to the water table?**

16 A. Yeah. And that's just associated with the
17 tank -- with battery number six. And that's why I
18 think -- I think it's wise now that the Division -- you
19 know, I mean, I'm more than 50 percent confident there
20 is a groundwater issue out there, and we should start
21 having Cato -- or Cano -- excuse me -- look at it.

22 **Q. I'm going to ask you a fun question first.**

23 A. Just one?

24 **Q. Looking at this 1990 order, and under Rule**
25 **202.B.1. for plugging, C, it says, "remove deadman and**

1 **all other junk." What's a deadman?**

2 A. It's a concrete anchor --

3 **Q. Okay.**

4 A. -- where you tie the guy-wires coming off
5 the --

6 **Q. All right?**

7 A. -- unit. That's a dead man.

8 **Q. I've never heard of that before.**

9 A. I thought you'd catch me on the widow's hatch.

10 **Q. No, no. I've heard of that.**

11 A. You'd heard of that (laughter).

12 **Q. Deadman, I hadn't seen before.**

13 **What's the nearest freshwater well that you**
14 **can sample downdip?**

15 A. Well, I'm not sure of which direction
16 groundwater flows there at this point. And given the
17 wide disparity in reported groundwater depths, there are
18 probably multiple groundwater zones out there. And --
19 but there is a ranch located -- a ranch house, oh,
20 probably less than a half a mile from battery number six
21 to the north. And based on what I just said, my guess
22 is groundwater flows to the southeast, but it's just a
23 guess. So the house may not have been impacted by
24 anything from battery six.

25 **Q. It may have been impacted by another battery?**

1 A. By another battery or -- I mean, there are
2 flowlines flowing out there like spaghetti. We need to
3 take a look. I haven't had any -- or I'm not aware of
4 any complaints from the ranchers out there about
5 contamination in their water wells.

6 **Q. Do you know if they have a freshwater source**
7 **within the field for oil-field activities? Do they have**
8 **a well?**

9 A. Not that I'm aware of.

10 **Q. So they're --**

11 A. More than likely, they're probably pumping
12 groundwater from right there in the field. They've
13 probably got something worked out with the rancher,
14 whoever holds those diversion rights.

15 **Q. Perhaps.**

16 **On the unclosed reserve pits, before you**
17 **visited, did any of them show sign of water flowing in**
18 **and out?**

19 A. Nothing other than it appeared to be, you know,
20 rainfall, just regular drainage.

21 **Q. Pooling and dehydration?**

22 A. Uh-huh.

23 **Q. All right. No standing fluids in those four?**

24 A. One of the -- one of the four did have standing
25 fluids in it, and I think we've actually got a

1 photograph of it.

2 **Q. Right there (indicating)?**

3 A. Yeah. Go forward there. That one on the
4 right.

5 I need my glasses.

6 Definitely one of the pictures in Exhibit 9
7 will show it.

8 I don't know the depth because I didn't
9 wade into it, but one of the ponds did have -- but,
10 again, it was of a greenish nature. It had algae on it.
11 It probably wasn't produced water in there. It was
12 probably rain falling into it.

13 **Q. There was still plenty of testimony in Rule 17**
14 **about, you know, that downward force.**

15 A. Yeah. Even if I pump fresh water in it, there
16 was contaminated material in the pit. Now I have to
17 push it deeper.

18 **Q. Just for your -- for your samples, almost**
19 **everything was a couple hundred thousand dollars,**
20 **\$300,000 to start to look at the problem, not even**
21 **resolve it?**

22 A. Yes.

23 **Q. And you looked at four out of eight of the**
24 **reserve pits and two out of 20 or so of the batteries?**

25 A. Batteries, yes. The costs are potentially

1 staggering in a worst-case scenario.

2 **Q. So to the best of your knowledge, is there any**
3 **part of the Oil and Gas Act that Cano is in compliance**
4 **with?**

5 **A. You'll probably find something. There were**
6 **well signs out there.**

7 (Laughter.)

8 CHAIRWOMAN RILEY: Mr. Brancard, do you
9 have anything?

10 MR. BRANCARD: No, other than I assume --
11 and maybe counsel can --

12 What your testimony is related to is to the
13 new case?

14 MR. HERRMANN: Yes.

15 MR. BRANCARD: Okay.

16 COMMISSIONER BALCH: Okay. I'd like to
17 refer back to Mr. Jacobsen real quick.

18 In order to receive one of these exemptions
19 in the case of environmental hazard, what sort of
20 evidence are the judges going to be looking for?

21 MR. JACOBSEN: You know, if there is
22 evidence on the record from this hearing, specific
23 findings, I think they generally have a res judicata
24 effect. So I -- you know, for my selfish purposes, the
25 more specificity in this Commission's findings, so --

1 COMMISSIONER BALCH: Nice color pictures?

2 MR. JACOBSEN: -- nice color pictures, that
3 sort of thing, res judicata. There is always the
4 argument, Well, we couldn't appear, but having lost that
5 argument in the past, they haven't had -- it's their
6 hearing, and they had a free and fair opportunity to
7 appear and chose not to.

8 COMMISSIONER BALCH: Well, I would suggest
9 that there is a history and a record of failure to
10 comply, particularly in reserve pits.

11 When was the last well drilled out there,
12 Mr. Griswold?

13 THE WITNESS: I'm not aware,
14 Commissioner Balch, when the last well was drilled. We
15 could certainly find that information.

16 COMMISSIONER BALCH: Yeah. Those reserve
17 pits have been out of compliance for --

18 THE WITNESS: For quite some time.

19 COMMISSIONER BALCH: Yeah. That could be
20 documented.

21 I think that it might help, for the record,
22 Mr. Griswold, if we could get some sort of estimate of a
23 dollar amount of environmental damages.

24 THE WITNESS: Well, that was my intent when
25 I -- because part of the reason behind the effort behind

1 Exhibit 9 was not just for the Commission. It was also
2 to provide information to the bankruptcy court.

3 COMMISSIONER BALCH: Right.

4 THE WITNESS: And I took it about as far as
5 I felt comfortable in taking it.

6 COMMISSIONER BALCH: Well, what I didn't
7 really see was a summation at the end of Exhibit 9
8 saying: This times 20 batteries; this times eight
9 reserve pits; this times --

10 THE WITNESS: And I'm leery of doing that
11 because I haven't visited all 20 batteries. I only saw
12 two of them.

13 MR. JACOBSEN: Just for -- when we file a
14 proof of claim, it'll be reported as an unliquidated
15 deal, that you cannot mathematically -- you can't put a
16 number on it at this time, but estimated at. And I
17 would just -- you know, for whatever it's worth, the
18 Texas Railroad Commission estimates \$20 million to
19 remediate their areas. That was on 1,000 wells.

20 THE WITNESS: And Mr. Jacobsen and I, as he
21 mentioned before, had been involved in the Carlsbad
22 brine well situation and the bankruptcy there and we
23 filed administrative claims, but that was always
24 reimbursement after the State had spent the money. We
25 didn't --

1 COMMISSIONER BALCH: Which would be similar
2 to this case. It would be the reclamation fund.

3 MR. JACOBSEN: Yeah. Yeah. And, you know,
4 the Supreme Court in the Midlantic case said that the
5 debtor just can't walk away or the trustee just can't
6 walk away from environmental problems. But if you
7 follow Midlantic all the way down the rabbit hole, at
8 the end of the day, there wasn't any money to deal with
9 it, and that's what we end up here with.

10 CHAIRWOMAN RILEY: Mr. Herrmann, do you
11 have any additional questions?

12 MR. HERRMANN: Yes.

13 REDIRECT EXAMINATION

14 BY MR. HERRMANN:

15 Q. Mr. Griswold, among the relief we've requested,
16 we've asked for a groundwater study?

17 A. Yes, sir.

18 Q. Is it your intention that that be performed by
19 that number six battery?

20 A. Yes. We're going to start there.

21 Q. Okay. And you would also note that these plans
22 would require Division approval before and during the
23 operation?

24 A. To be in compliance with Part 29, yes, they
25 would.

1 Q. Among the relief requested, would you like to
2 ask the Commission for some other relief requiring Cano
3 to perform its own site visits and report all other
4 releases or other violations of this nature?

5 A. That's the nature of Part 29. It really is on
6 the operators to identify and report their releases to
7 the Division. We would spend less time going into the
8 manpower issues and things like that that it would take
9 the Division to try to undertake this, but we could.
10 But it would be far preferable to have Cano Petro take a
11 review of their field and approach the Division and work
12 with us on their compliance agreement, if we could, to
13 get them on a schedule. I understand this is a very
14 large undertaking. But it's indicative of years of lack
15 of compliance at least with the environmental aspects of
16 the rules.

17 RECROSS EXAMINATION

18 BY COMMISSIONER BALCH:

19 Q. Well, it sort of implies to me that some the
20 lack of compliance is deliberate. So in the case of
21 potentially -- no judgment has been made -- on a bad
22 actor, when does the Division step in to make sure it's
23 done right?

24 A. Well, I think that's part of why we're here
25 today, actually, is us stepping in and asking the

1 Commission to issue an order that puts defined timelines
2 on Cano Petro to start initiating these things.

3 RECROSS EXAMINATION

4 BY COMMISSIONER MARTIN:

5 Q. Does the Division have the resources to at
6 least spot-check Cano's diligence in their reporting?

7 A. Yes.

8 Q. Kind of --

9 A. And we team up with the land office and the BLM
10 to try to help each other out in these regards.

11 RECROSS EXAMINATION

12 BY COMMISSIONER BALCH:

13 Q. So I'll ask the question for you in regards to
14 some of these compliance issues. Has there been any
15 dialogue at all with Cano, and when was the last
16 effective communication?

17 A. Prior to my time at the Division.

18 MR. SANCHEZ: Three years ago.

19 COMMISSIONER BALCH: Three years ago.

20 THE WITNESS: On the plugging side. But on
21 the environmental side, nothing.

22 Q. (BY COMMISSIONER BALCH) Nothing on the
23 environmental side?

24 A. No.

25 Q. I'm sorry. When was the last spill reported?

1 **They did report some spills.**

2 A. It would be the highest LRP number in the list
3 here, and I think I've got them sequentially. Oops. I
4 didn't put the date on there. Excuse me. But given
5 that number, it's probably been within the last year,
6 almost 5,000-and-something. And you can even see there.
7 That's 1R4779, an injection land unit. When Cano
8 estimated their area of impact -- basically, when they
9 filed their C-141, they estimated the impact at 150 feet
10 by 1 foot. Whereas, the discussion with the BLM was --
11 so that's only 150 square feet. The BLM's addition --
12 they found different areas -- over 26,000 square feet.

13 **Q. Cubic?**

14 A. No. Just -- this is surface foot. We haven't
15 investigated it yet -- or they haven't investigated it
16 yet. So there is a potential issue with Cano Petro
17 being truthful with the Division.

18 **Q. But you have had dollar -- sometime around a**
19 **year or so.**

20 COMMISSIONER BALCH: And on the plugging
21 and compliance, Mr. Sanchez?

22 MR. SANCHEZ: We met with them about three
23 years ago, and then we tried to follow up with them over
24 a year period where we had agreed for them to submit a
25 plan. The plan that they submitted was really

1 inefficient. They wanted to plug one well per year.

2 COMMISSIONER BALCH: So for the next 291
3 years?

4 THE WITNESS: It was a plan (laughter).

5 MR. SANCHEZ: And then when we tried to
6 contact them again through the letter process, we never
7 got any responses from them. So it's been a little over
8 a year.

9 COMMISSIONER BALCH: So it's safe to say
10 you've exhausted all of your other remedies.

11 MR. SANCHEZ: Yeah.

12 CHAIRWOMAN RILEY: Any further questions
13 for this witness?

14 MR. HERRMANN: No.

15 If I may supplement the record with another
16 compliance case we did bring against Cano. If the
17 Commission would like to take administrative notice of
18 Case Number 15646, that was brought for financial
19 assurance violations by Cano. And the Division has been
20 working diligently to make sure their bonding remains
21 adequate, and we have made substantial progress there.
22 They're down to only 14 violations as of today, when
23 originally they had -- I think now they have over 116
24 single well bonds on file.

25 CHAIRWOMAN RILEY: Thank you.

1 MR. HERRMANN: I will call my last witness,
2 Ms. Gruebel, and if the record will show that she was
3 also previously sworn in.

4 MARILYN GRUEBEL, Ph.D.,
5 after having been previously sworn under oath, was
6 questioned and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HERRMANN:

9 Q. Ms. Gruebel, thank you for coming today --

10 A. Yes.

11 Q. -- and sitting through the rest of -- or the
12 earlier testimony.

13 Could you please state your name and place
14 of employment and title for the record?

15 A. Yes. My name is Marilyn Gruebel. I am the
16 Units manager for the Oil, Gas and Minerals Division of
17 the New Mexico State Land Office.

18 Q. Now, you've provided three exhibits today,
19 what's marked as OCD Exhibits 10 and 11 and the map
20 that's provided as OCD Exhibit 13.

21 A. That's correct.

22 Q. And they were prepared by you or under your
23 direction?

24 A. That's correct.

25 Q. Could you please provide the -- or identify

1 **these exhibits and why we included them?**

2 A. Exhibit 10 is, first of all, the approval
3 page -- or approval letter that was sent to Cano
4 approving them as the successor operator for the Cato
5 San Andres Unit. And behind that, on Exhibit 10, is
6 also the letter requesting from BLM the approval and
7 their subsequent approval of this unit. Behind that,
8 where you start with page 1, titled "Unit Agreement,"
9 and that unit agreement goes to 29 pages.

10 **Q. Could you just identify the date that Cano was**
11 **authorized to take over this unit?**

12 A. Although the letter from the State Land Office
13 is dated November the 3rd, Cano asked for the effective
14 date of their change to operator as February 1st of
15 2007.

16 **Q. What else would you like to show us in Exhibit**
17 **10?**

18 A. Okay. Let me start by explaining a little bit
19 of what's going on with Exhibit 10 here, starting with
20 page 1 of the unit agreement. A unit agreement is a
21 specific entity for the State Land Office. The
22 New Mexico statutes allow the land commissioner to enter
23 cooperative agreements between the lessees and others
24 for developing and operating oil and gas pools. So what
25 you see here is a unit agreement for the Cato Unit, or

1 the Cato San Andres Unit, as the OCD has referred to it.

2 What a unit agreement does is combine,
3 essentially, a number of leases together, and that
4 combination allows the unit operator to essentially
5 operate all of those leases as one single entity, with
6 the exceptions of things like OCD's requirements for
7 setbacks from the unit boundaries of the lease. So
8 essentially what we're looking at here is a unit
9 agreement that has combined a number of leases together
10 to allow Cano Petro to operate all of these leases as,
11 essentially, a single entity.

12 So a little background perhaps on the Cato
13 San Andres Unit: We've got the Cato Field, and now I'm
14 going to talk about the Cato Unit. Cato Unit is not
15 necessarily the entire field. It could be. I have not
16 looked to see whether the entire field is part of the
17 unit.

18 But the unit itself is about 1,500 --
19 15,300 acres, a little less. It was formed in 1989.
20 It's had a succession of unit operators, with Cano
21 Petro, as I said, taking over in 2007. The acreage
22 breakdown of the unit is 58 percent federal, 35 percent
23 fee and 7 percent state trust. Now, this is a
24 waterflood unit, so the tract percentages in terms of
25 the way that waterflood units are set up has determined

1 that based on primary recovery from these tracts and the
2 acreage representation of each one of the tracts, the
3 state trust percentage actually decreased to 4.2
4 percent. So it's based on a communication of primary
5 recovery, plus the amount of acreage that's in a unit.
6 So either the fee acreage or the federal -- either the
7 fee tracts or the federal tracts have a little more
8 percentage representation in the unit.

9 What happens with these units is all the
10 oil and gas that's produced from the unit is essentially
11 put into kind of a pool -- a combined pool, and each one
12 of the tracts takes its percentage of that pool based on
13 the tract percentage that's specified in the unit
14 agreement. So as I said, the state trust then gets 4.2
15 percent of that total pool of oil that is produced in
16 terms of the royalties that are paid to the state trust.

17 Okay. So I'd like you to take a look now
18 at Exhibit 10 and starting with page 2 of the unit
19 agreement. On page 2, there are three "whereas," and
20 the third one deals with one of the requirements that is
21 directly related to the previous testimony has hit upon.
22 "Whereas, it is the purpose of the parties hereto to
23 conserve natural resources, prevent waste and secure
24 other benefits obtainable through development and
25 operation of the area subject to this Agreement under

1 the terms, conditions and limitations herein set forth."

2 And then if we move on to page 9 of this
3 unit agreement, under Section 11, there is some
4 information here about the requirements of the operator
5 and the parties that are in this agreement. But Section
6 11, "Plan of Operations" says, "It is recognized and
7 agreed by the parties hereto that all of the land
8 subject to this Agreement is reasonably proved to be
9 productive of Unitized Substances and that the object
10 and purpose of this Agreement is to formulate and to put
11 into effect an improved recovery project in order to
12 effect additional recovery of Unitized Substances,
13 prevent waste and conserve natural resources."

14 We go on with another section of
15 requirements on page 19. Section 19 on page 19 talks
16 about conservation. "Operations hereunder and
17 production of Unitized Substances shall be conducted to
18 provide for the most economical and efficient recovery
19 of said substances without waste, as defined by or
20 pursuant to Federal and State laws and regulations."

21 Then the following section, Section 20,
22 talks about drainage. "The Unit Operator shall take all
23 reasonable and prudent measures to prevent drainage
24 Unitized Substances from unitized land by wells on land
25 not subject to this Agreement."

1 So with that in mind, I want to turn back
2 then to page 10 of this unit agreement and talk again
3 about the plan of operations. This is the section
4 titled "Section 11. Plan of Operations." On page 10,
5 the first full paragraph there talks about a plan of
6 operations that "shall be filed with the A.O., the Land
7 Commissioner and the Division concurrently with the
8 filing of this Unit Agreement for final approval. Said
9 initial plan of operation and all revisions thereof
10 shall be as complete and adequate as the A.O., the Land
11 Commissioner and the Division may determine to be
12 necessary for timely operation consistent herewith.
13 Upon approval of this Agreement and the initial plan by
14 the A.O. and Commissioner, said plan, and all
15 subsequently approved plans, shall constitute the
16 operating obligations of the Unit Operator under this
17 Agreement for the period specified therein. Thereafter,
18 from time to time before the expiration of any existing
19 plan, the Unit Operator shall submit for like approval a
20 plan for an additional specified period of operations.
21 After such operations are commenced, reasonable
22 diligence shall be exercised by the Unit Operator in
23 complying with the obligations of the approved Plan of
24 Operation."

25 Cano Petro submitted a plan of operations

1 in 2007 when they became operator of this unit. They
2 have not submitted another plan since. This is the only
3 way that the State Land Office has some idea of what's
4 going on with that unit in terms of the continued
5 operations. Without -- so without this plan of
6 operation, we have no idea whether Cano plans to bring
7 this unit back into production, and we have no idea
8 whether Cano is taking a look at the boundaries of this
9 unit in relationship to any wells that might be drilled
10 around the edges for drainage purposes. So we have a
11 couple of issues in terms of the plan of operation. Not
12 having had one for more than ten years, we don't know
13 what's going on with this unit except in terms of
14 production.

15 And that brings me to Exhibit 11, once
16 again annotated at the upper, right-hand corner. This
17 is a query that was developed from our database based on
18 OCD information. It shows that of the approximately 100
19 wells that are listed as oil producers in the Cato
20 Field -- or in the Cato Unit -- excuse me -- only 11 of
21 them have produced in 2018. Of those 11, none of them
22 have produced for the month of April and May. And for
23 the month of March, we only have production of two
24 barrels of oil from all 11 of those wells. So we have
25 no indication of what's going to happen with production

1 in this unit, and we have no idea what operations are
2 being done based on the fact that we have no plan of
3 operation.

4 Q. Is there anything else you'd like to add?

5 A. No.

6 Q. And you were authorized by the State Land
7 Office to speak in your capacity as the commingling and
8 units manager?

9 A. Yes.

10 Q. And do you support the relief requested by
11 the -- or you, in your capacity, do you support the
12 relief requested by the Oil Conservation Division?

13 A. I can't speak for the Land Commissioner on
14 that.

15 Q. Okay.

16 A. What we would do -- with the fact that this
17 unit has not produced in a number of months, I would
18 present the facts to the Land Commissioner, along with
19 what I consider the possible options. And there is also
20 a possibility that the Land Commissioner would come up
21 with an option of his own. So I have no idea what the
22 Commissioner would want to do with this unit.

23 Q. Okay. Thank you very much.

24 You may sit here in case any of the
25 Commissioners have questions.

1 A. Oh, yes. That's right. Sorry.

2 CHAIRWOMAN RILEY: That's okay.

3 COMMISSIONER MARTIN: I don't have any
4 questions.

5 CHAIRWOMAN RILEY: I don't have any
6 questions.

7 CROSS-EXAMINATION

8 BY COMMISSIONER BALCH:

9 Q. So a potential option for the State Land Office
10 would be to cancel the unit?

11 A. Because this has federal acreage in it, we
12 cannot unilaterally terminate the unit. One of the
13 options is we could take our acreage out of the unit,
14 and, therefore, we would no longer be involved with the
15 unit operations.

16 Q. Well, eleven wells produced in 2018, a total of
17 730 barrels of oil. You don't have a total for the
18 water, but the water production --

19 A. Water is tremendous.

20 Q. -- is dramatically higher.

21 A. Yes.

22 Q. Is there evidence that that's being put back
23 into injection wells?

24 A. We have no idea.

25 Q. No idea?

1 A. No idea.

2 **Q. You don't have a plan.**

3 A. Don't have a plan.

4 CHAIRWOMAN RILEY: Mr. Brancard?

5 MR. BRANCARD: Thank you.

6 CROSS-EXAMINATION

7 BY MR. BRANCARD:

8 **Q. So if I understand it, a plan was submitted in**
9 **2007. So it would be the land office's expectation that**
10 **that plan be regularly updated?**

11 A. Once a year is our expectation. And in the
12 last few years, we have really started working to get
13 plans of operation. We have not received one from Cano
14 Petro.

15 CHAIRWOMAN RILEY: Do you have any more
16 questions for your witness?

17 MR. HERRMANN: No.

18 And unless the Commission has any questions
19 remaining for Mr. Jacobsen, that will conclude our
20 presentation, aside from some administrative measures
21 I'd like to address.

22 CHAIRWOMAN RILEY: Okay.

23 MR. HERRMANN: So we had previously stated
24 that Mr. Sanchez had prepared portions of Exhibit 1 and
25 Exhibits 2 through 8. Mr. Griswold had finished the

1 preparation of Exhibit 1, slides 8 through 20, and
2 Exhibit 9. Ms. Gruebel had testified that she has
3 presented OCD -- or prepared Exhibits 10, 11 and 13,
4 which leaves a gap for Exhibit 12 that I prepared just
5 in case it came up. It's an Affidavit of Notice of
6 OCD -- or OCC Case 16359. At this time I would move to
7 admit Exhibits 1 through 13 to the record.

8 I expected the notice provisions of Case
9 16040 to be moot since Cano has entered an appearance
10 and submitted a de novo appeal.

11 (NMOCD Compliance and Enforcement Bureau
12 Exhibit Numbers 1 through 13 are offered
13 into evidence.)

14 COMMISSIONER BALCH: I have a question for
15 Mr. Griswold, actually.

16 MR. GRISWOLD: Yes.

17 COMMISSIONER BALCH: Would it be
18 possible -- I know you don't want to put a big number on
19 the overall potential environmental damage, but could
20 you come up with a reasonable number to evaluate the
21 field?

22 MR. GRISWOLD: Yeah. I can compile it.
23 I think it's actually contained in Exhibit 9 right now,
24 but I could sum it up.

25 COMMISSIONER BALCH: Well, that's just for

1 the sites you visited. It's not for the other 19
2 batteries and four other pits and things like that.

3 MR. GRISWOLD: Well, I'd rather stand on
4 what's in front of you now. Really the liabilities are
5 the other batteries, sands, any flowline releases that
6 we come across out there, and that's -- just the amount
7 of time it's going to take to sweep across this field --

8 COMMISSIONER BALCH: Well, time is money,
9 right? That's part of the process. Even to find out
10 what the problem is, you need to spend a certain amount
11 of money. That's my question? Can you -- can you pin a
12 number on how much it's going to cost to find out how
13 big the problem is?

14 MR. GRISWOLD: I can probably do it sitting
15 here right now, if I think about it.

16 COMMISSIONER BALCH: Would you be willing
17 to prepare just a short memo or exhibit?

18 MR. GRISWOLD: For just the evaluation of
19 the field?

20 COMMISSIONER BALCH: Just to do the
21 evaluation, just to figure out how big the problem is.

22 MR. GRISWOLD: Yes. I can do that for the
23 Commission.

24 COMMISSIONER BALCH: Is that something
25 everybody else is interested in?

1 CHAIRWOMAN RILEY: Yes.

2 COMMISSIONER BALCH: I think that might
3 help the record, perhaps.

4 COMMISSIONER MARTIN: I agree that it
5 should be done. But for what it's worth, even if it
6 comes up to a nominal amount, Cano doesn't have the
7 money to reimburse us for that, correct?

8 MR. GRISWOLD: I don't know how much money
9 Cano has.

10 COMMISSIONER MARTIN: I mean, is it a
11 legitimate claim in the bankruptcy court?

12 MR. JACOBSEN: It's a legitimate claim in
13 the bankruptcy court. There is also the question of
14 whether it would be an administrative liability or we'd
15 be entitled to be reimbursed.

16 There is also -- you know, in the overlap
17 of the cases themselves, there is a secured lender -- or
18 several secured lenders, including one that's described
19 as a hedge fund, who have an interest in these fields
20 having value. And so, you know, we have some leverage,
21 but, you know, we are attempting to get blood out of a
22 stone. And, you know, with all the typical bankruptcy
23 cliches about pushing a wet noodle and that sort of
24 thing, you know, we have to guide them and make it in
25 everybody's interest. And in order for the lenders to

1 recover their money, their collateral has to have value,
2 and so they have some interest. And Cano's bankruptcy
3 attorney is going to take the numbers -- and we've
4 provided them with some of the evidence here -- and go
5 to the bank and say, You need to allow us -- or you need
6 to advance funds to allow us to do this work.

7 COMMISSIONER MARTIN: Okay.

8 COMMISSIONER BALCH: Yeah.

9 CHAIRWOMAN RILEY: So maybe this afternoon
10 we could get that, you think, after lunch?

11 MR. GRISWOLD: (Indicating.)

12 COMMISSIONER BALCH: Ballpark.

13 COMMISSIONER MARTIN: Ballpark.

14 COMMISSIONER BALCH: Ballpark, I think
15 would be useful just to have on the record for future
16 cases, anyway.

17 MR. GRISWOLD: It'll be based on
18 third-party environmental hourly rates that I'm familiar
19 with.

20 COMMISSIONER BALCH: That's perfectly fine.
21 Just -- just to -- just to figure out how big the
22 problem is, how much it's going to cost. That's --
23 that's the starting point.

24 MR. GRISWOLD: This is a cost just to
25 really wrap our arms around.

1 COMMISSIONER BALCH: Yup. That really has
2 to be -- that's something I'm hoping we might be able to
3 address. As far as blood from a stone, we don't know
4 what their assets are. Doesn't look like they're an
5 LLC, so --

6 MR. JACOBSEN: This is Cano Petro's second
7 bankruptcy that I know of. There was another one in
8 2012. The Nichols brothers bought this -- Cano Petro
9 out of the bankruptcy, the stock sale, which is unusual,
10 you know, so that they didn't have to go out there and
11 get new operators, new stuff. I know OCD was involved
12 in that. I was involved in the case. And the Nichols
13 brothers came up with what they needed to do to satisfy
14 OCD at the time, but, you know, it's just gotten worse,
15 obviously.

16 CHAIRWOMAN RILEY: There is a request from
17 Mr. Herrmann to accept Exhibits 1 through 13 into the
18 record. So barring any objections, I say those exhibits
19 are accepted by the Commission into the record.

20 (NMOCD Compliance and Enforcement Bureau
21 Exhibit Numbers 1 through 13 are admitted
22 into evidence.)

23 MR. HERRMANN: And just so I'm clear, you
24 would like Mr. Griswold to prepare another exhibit on
25 the estimated costs to begin analysis of the hazards

1 that exist on-site?

2 COMMISSIONER BALCH: We want a cost of --
3 an estimate of what it's going to cost to determine how
4 big the problem really is.

5 MR. HERRMANN: Okay.

6 COMMISSIONER BALCH: And there is ample
7 evidence there is a problem. We just need to have a
8 dollar amount on what it's going to take to even study
9 the problem.

10 COMMISSIONER MARTIN: To include all the
11 wells or just the state, fee?

12 MR. GRISWOLD: Well, it can include
13 anything the Commission wants.

14 COMMISSIONER MARTIN: What did you have in
15 mind, Bob?

16 COMMISSIONER BALCH: Whatever we are
17 responsible for cleaning up. I think that's everything,
18 right? Doesn't matter if it's federal.

19 MR. GRISWOLD: Well, the BLM has got funds
20 to do surface restoration, but groundwater issues -- the
21 groundwater is the property of the State of New Mexico.

22 COMMISSIONER BALCH: Yeah. So it's going
23 to have to be all those.

24 COMMISSIONER MARTIN: Yeah.

25 CHAIRWOMAN RILEY: I think that the BLM

1 would prefer that we make an opinion on it here because
2 that helps them going forward with their case --

3 COMMISSIONER BALCH: Yeah.

4 CHAIRWOMAN RILEY: -- so we might as well
5 have it all.

6 COMMISSIONER BALCH: Aside from that,
7 Mr. Jacobsen, are there any timelines or other
8 considerations that we ought to be keeping in mind?

9 MR. JACOBSEN: Well, in the bankruptcy
10 scheme of things, the case is at its early stages, but
11 the -- what we want to do and what the Railroad
12 Commission is doing is coming forward fast and -- you
13 know, fast in the legal sense of fast and letting the
14 Court know that it's got a situation on its hands.

15 COMMISSIONER BALCH: Seems to me, at least
16 from my point of view, the largest issue here is the
17 environmental liability. We really want to get that in
18 front of the Court as quickly as possible.

19 MR. JACOBSEN: Right. And if there are
20 things that need to be done, we need to, you know, press
21 the debtor. The United States Trustee's Office is the
22 arm of the Department of Justice that has oversight on
23 all bankruptcy cases. They need to be informed and
24 brought into this. And so to answer your question
25 directly, the sooner the better. You know, if we can

1 have something, you know, in the next couple of weeks or
2 month or so, that would help us.

3 On the timeline for proof of claim, we've
4 still got about four months to go on that.

5 COMMISSIONER BALCH: So in the case of
6 this, where we don't know how big the problem is, when
7 would the interplay of doing the evaluation of how big
8 the problem is versus what the problem is -- that's four
9 months? Four months for everything?

10 MR. JACOBSEN: No. No. You know, the
11 case -- cases go on for years. And particularly we've
12 got a situation here where there's not a buyer lined up,
13 you know, and Chapter 11 cases, over the years, are more
14 of reorganization to turning -- turning the operations
15 over to a new entity and cashing people out. There is
16 not presently anybody identified who is interested in
17 these fields or great interest. There has been some
18 expressions of interest, but how far they go --

19 And generally my experience in these cases
20 has been that it is better for the debtor to do the work
21 and commit to doing the work. And so, you know, over
22 the years, we've developed, you know, sort of a
23 standardized statement to attach to the proof of claim
24 explaining what the problems are and pointing out for
25 everybody that their obligation to clean up their mess

1 is not a claim, and that's not something they can get
2 rid of in the bankruptcy.

3 And working with DOJ's environmental people
4 and the EPA out of Washington, we've developed some
5 standard language going to plans and disclosure
6 statements making that point very clear. But where
7 you've got a marginal operator here who doesn't seem to
8 have the wherewithal to do much on its own, the best for
9 the State is typically getting some new operator in and
10 making sure that they're aware of the problems and get
11 them working with OCD from day one to make sure there
12 are no surprises, and they can do what they need to do.

13 COMMISSIONER BALCH: That's not so -- that
14 doesn't look so good for the Cato Field, but maybe some
15 of their other properties have potential down further in
16 the section or something.

17 MR. JACOBSEN: Yeah. Could be. Could be.

18 COMMISSIONER BALCH: It's hard to determine
19 the value.

20 MR. JACOBSEN: Yeah. And there may be
21 other operators in the area who would find it useful to
22 consolidate. But right now nobody has been identified
23 to me as a potential purchaser. To the best of my
24 knowledge, speaking to the debtor's counsel, it hasn't
25 even gotten to the point of a letter of interest. But

1 there are people out there who are at least -- if they
2 can pick it up cheap, even with the environmental
3 issues, might be willing to take it on.

4 COMMISSIONER BALCH: A \$20 million plugging
5 liability.

6 MR. JACOBSEN: There are people out there,
7 for good purposes or bad, who are willing to acquire
8 wells.

9 MR. GRISWOLD: I guess I would just kind of
10 point out to the Commissioner, if I may, if you look at
11 this production data, as recently as 2009, they made
12 100,000 barrels in the field.

13 COMMISSIONER BALCH: Almost to 2013.

14 (The court reporter requested Mr. Griswold
15 speak louder.)

16 MR. GRISWOLD: Well, I think that kind of
17 rapid decline is probably not indicative of field
18 depletion. It's operations.

19 COMMISSIONER BALCH: I would be inclined to
20 agree.

21 COMMISSIONER MARTIN: I agree. Lack of
22 interest on the operator more than likely.

23 MR. HERRMANN: Is the Commission
24 reconvening today for some of the other cases on the
25 docket or --

1 CHAIRWOMAN RILEY: Let's look. So case
2 number nine, which is Chisholm -- oh, wait. This is a
3 de novo on a nonstandard spacing and proration unit.

4 MR. HERRMANN: Either that or if the
5 Commission's reconvening tomorrow so I know just how
6 much time we have to prepare the additional exhibit and
7 when the Commission will be here.

8 MR. BRANCARD: Yeah. I think the parties
9 in that case requested that they be able to go tomorrow.

10 CHAIRWOMAN RILEY: Yeah. This is the one
11 for tomorrow.

12 And then the other three?

13 MR. BRANCARD: Everything else is being
14 continued.

15 COMMISSIONER BALCH: This is the case for
16 tomorrow.

17 Maybe have lunch and deliberate.

18 CHAIRWOMAN RILEY: Uh-huh.

19 COMMISSIONER BALCH: So I don't want to
20 ruin your lunch, Mr. Griswold --

21 MR. GRISWOLD: Too late (laughter).

22 COMMISSIONER BALCH: I owe you lunch.

23 CHAIRWOMAN RILEY: We could take a break
24 until 1:15, come back at 1:15.

25 MR. BRANCARD: And I guess I would just

1 request that there be sort of a closing statement from
2 counsel identifying specifically what, in each of these
3 cases, remedy you're requesting from the Commission.

4 MR. HERRMANN: Right now or after --

5 MR. BRANCARD: After lunch.

6 CHAIRWOMAN RILEY: After lunch.

7 MR. HERRMANN: Okay. Thank you.

8 CHAIRWOMAN RILEY: We're off the record.
9 We'll see you-all at 1:15.

10 (Recess, 11:55 a.m. to 1:23 p.m.)

11 MR. HERRMANN: Commissioners, at this time
12 we've recalled Jim.

13 MR. GRISWOLD: I have presented to you
14 copies of Exhibit 14 per Commissioner Balch's question.

15 JIM GRISWOLD,
16 after having been previously sworn under oath, was
17 recalled, questioned and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HERRMANN:

20 Q. Mr. Griswold, would you please walk us through
21 your process?

22 A. Okay. I've broken it down into three basic
23 categories. One's just an overall field survey. And
24 this is all of Cano Petro's assets, the 323 wells and 21
25 tank batteries.

1 The estimate just to do a drive-by and a
2 preliminary assessment on each of those 354 sites, it's
3 about two hours per site for two people at a typical
4 field staff rate from an environmental consultant of
5 about \$85 an hour. So to do all 344 sites -- if I'm
6 doing the math correctly -- \$116,960.

7 CHAIRWOMAN RILEY: That's different than
8 what we're looking at.

9 THE WITNESS: Excuse me?

10 CHAIRWOMAN RILEY: That looks different
11 from --

12 THE WITNESS: Are you looking under that
13 first dot, under Field Survey?

14 CHAIRWOMAN RILEY: Right. 323 wells is
15 what this says. 323 wells --

16 THE WITNESS: 323 wells, and then the
17 second line is the 21 tank batteries as well.

18 CHAIRWOMAN RILEY: Oh, okay. Sorry. I
19 thought you were reading the first line.

20 THE WITNESS: Yeah. So it should be the
21 sum of those two, the 109,820 and the 7,140.

22 Now we'll go to the second item. If,
23 during that gross field survey, you came across a
24 problem, you would likely grab five at-or-near surface
25 soil samples, do laboratory assays of each of those

1 samples for chloride, BTX, which is shorthand for
2 benzene, toluene, ethylbenzene, xylene and TPH, which is
3 an acronym for total petroleum hydrocarbons. The lab
4 costs for those three tests per sample is \$175 a sample.
5 So if you grab five samples at the site, there is \$875
6 in lab costs.

7 The labor associated, again, that would be
8 about 20 hours, ten hours for each of two people, at \$85
9 an hour. So at each site -- and that's \$1,700. So at
10 each site, if you took five samples, that would be
11 \$2,575 per site.

12 Now comes a real big piece of conjecture.
13 Of the 344 sites, what percentage of them do you think
14 have a problem? On the low end, let's just say 10
15 percent. So at 2,575 per site times 10 percent of the
16 total number of sites, that's another \$88,580. Worst
17 case -- and some folks may say it's maybe not worse
18 enough. But say half of them had a problem, given the
19 history of the field out there and what we're seeing at
20 this point, that would rise that up to \$442,900. So
21 it's somewhere in between those two numbers, is my guess
22 for just that portion.

23 CROSS-EXAMINATION

24 BY COMMISSIONER BALCH:

25 Q. So you went out there and you visited 21 wells,

1 two batteries and four unrecovered pits?

2 A. Right. Yeah. Anything we see, we stop and
3 take samples.

4 Q. Right.

5 But it's something you did when you went
6 out there. So you did a little bit of a survey?

7 A. A bit.

8 Q. So you sampled maybe -- well, it doesn't
9 matter.

10 A. No. We didn't sample anything -- excuse me --
11 when we were out there.

12 Q. I mean, you visually studied it?

13 A. Visually assessed it, yes.

14 Q. But out of that number -- it would be 27 sites
15 you visited at that location. How many -- what
16 percentage would need to have some kind of study?

17 A. 80 percent of what I saw.

18 Q. Yeah. And, granted, you were targeting
19 probably the worst end. So that 50 percent number,
20 probably really not all that conservative?

21 A. Define conservative. Worst case or best case?

22 Q. Well, it's probably not a worst case.

23 A. It's probably not a worst case.

24 Q. And if you go look at one of those tank
25 batteries -- you have 13 tanks there -- you're not going

1 to pull just five grab samples from -- from that site.

2 You're going to grab --

3 A. Well, preliminarily, yes, we would, just to
4 identify if there really was a near surface -- now,
5 we're not bringing a drill rig out there. We're doing
6 it with a shovel or hand, kind of work.

7 Q. You won't lose any sleep over using the 50
8 percent number?

9 A. No.

10 And then the third item is just an overall
11 groundwater study of the area. Cano Petro's holdings in
12 that portion of the state cover a total of 43 sections.
13 And preliminarily, if we just put in one groundwater
14 monitor per section, which is a pretty high-level look
15 at it, at about \$10,000 per well -- and that's mobed,
16 drilled, developed, surveyed, sampled and reported;
17 that's a pretty good number, 10,000 a well -- there's
18 \$430,000 just to undertake that groundwater study. Then
19 you would have to focus in from there.

20 Q. Pretty cursory glance.

21 A. Very much so.

22 Q. That just tells you where you need to go and
23 focus.

24 A. Right.

25 Because, I mean, we bandied about upstairs

1 quickly over lunch that perhaps you would want to do
2 something as tight as one well every five acres. But
3 over 15,000 acres, that's 3,000 wells at \$10,000.
4 That's \$3 million right there to do that. And that
5 would be, in my opinion, one of the most
6 well-investigated hydrogeologic studies I've ever seen,
7 and this is a pretty remote part of central New Mexico.
8 So --

9 **Q. And you would build up towards it, if you**
10 **needed to?**

11 A. Correct.

12 Now, in Exhibit 9, though, we have those
13 items costed out in the latter portion of the exhibit,
14 which we know we need to do. We know we need to deal
15 with the Cato six battery. We know we need to close out
16 all eight of those pits. We know we need to get rid of
17 that soil contamination out there. So those costs are
18 inherent in there, but I didn't replicate those again.
19 They're already in Exhibit 9.

20 **Q. You don't really have a sum-up, though, for any**
21 **of the numbers in 9?**

22 A. I could do one for you right now as we sit
23 here.

24 **Q. Okay.**

25 A. If we turn to page 6 of Exhibit 9, that's the

1 estimated cost now for the unit six battery. Item one:
2 drain the tanks, sell the oil if you've got any, dispose
3 of the produced water. At eight tanks, 500 barrels a
4 tank, it's 4,000 barrels. Assuming a disposal cost for
5 about \$2.50 per barrel. That's for transportation.
6 Then the tipping charge for an SWD right now is about
7 75 cents. The bulk of that is transportation. There's
8 \$10,000 right there.

9 Step 2: Removal and either scrapping or
10 relocation of the battery itself. I just put in an
11 allowance of \$50,000 in there;

12 Removal of the liner, taking the footprint
13 of the facility, 500 by 200, estimate about half of that
14 is actually underliner. That's 50,000 square feet of
15 liner. If you're able to fold that under, actually,
16 quite well -- you would have a thickness of only half an
17 inch per layer when you fold it over. That's 77 yards,
18 at \$50 per yard disposal cost. That's an additional
19 38.50 -- \$3,850. I'm sorry.

20 Then to undertake a vadose zone -- a
21 shallow vadose zone investigation underneath the
22 battery, again starting with a 500-by-200 footprint and
23 taking a sample of 40-foot centers, that's 63 samples.
24 Running each of those samples for chloride, TPH and BTX,
25 as we talked earlier, that's an additional \$11,025 in

1 laboratory costs. Plus professional time, I'm guessing
2 about 40 hours, at 85 bucks an hour, plus \$300 in
3 expenses. Add that all up to do that vadose zone
4 investigation beneath the batteries would be another
5 \$14,725.

6 Now, after item four is when it becomes
7 speculative. So to get through item four, we've already
8 incurred on that tank battery a cost of \$78,575.

9 So now I return to item five on that same
10 page, 6. We assumed that there was contamination there,
11 but it only spread under half the battery, not the
12 entirety of the footprint, and that its average depth
13 was only 4 feet, so we removed it and disposed of it.
14 So you've got 500-foot-by-200-foot. Divide that by
15 half. Take a 4-foot excavation depth. Assume a 20
16 percent bulking factor. The in situ volume is always
17 less than the hauled volume is. That comes out to 8,889
18 cubic yards of material that would need to be replaced.
19 The average cost -- and I was speaking with contractors
20 over the last several weeks; they tend to be stuck on
21 this price -- is about \$100 per cubic yard. To
22 excavate, backfill, compact, restore the surface and
23 report on everything you've done, it's about \$100 per
24 yard. So to do this half excavation down to 4 feet,
25 it's another \$888,900. But again, that's speculative.

1 And then looking at item six, which is
2 supposition on my part, if there is an actual
3 groundwater problem underneath the battery, which I
4 think is fairly likely, to undertake that initial
5 hydrogeologic investigation would involve a total of six
6 groundwater monitoring wells each to a depth of about 90
7 feet. Water out there is 80-some-odd feet in that area.
8 And, again, mobed, installed, developed, surveyed,
9 sampled, reported, running about \$10,000 a well. So a
10 six-well investigation would be about \$60,000. And then
11 assuming you did identify the fact that -- you confirm
12 the groundwater is contaminated out there now and you
13 need to design an abatement process, just a lump-sum
14 allowance for somebody to design a system to work with
15 that, about \$30,000.

16 So that item number six, all told, about
17 \$90,000. The abatement cost thereafter, I really do not
18 want to speculate at this point.

19 So that being said, if you did the
20 investigation, half the soils were contaminated and you
21 dug them out and then you undertook this groundwater
22 study and designed an abatement for it, total cost on
23 the unit six battery right now is \$1,057,475. And all
24 we've accomplished -- well, we got the battery out.
25 We've got the bulk of the soil contamination removed,

1 but we still haven't undertaken groundwater cleanup.

2 And if you're ready to move on, then we'll
3 go to the next item, which is page 7 of Exhibit 9, which
4 would be closure of those pits -- of the eight pits.

5 And, again, this is laid out -- it's pretty much in the
6 process of Part 17, the Pit Rule, regulation
7 requirement. First thing, you've got to remove the
8 contents of the pit and properly dispose of it. Each
9 pit is about 90-by-70 feet in footprint. Assuming a
10 foot and a half of material in the bottom, it's about
11 350 cubic yards per pit. At \$50 per yard, that's 17,500
12 per pit, eight pits. \$140,000 for that one item.

13 Removal of the liners and properly dispose
14 of them, an additional \$4,000.

15 Item number three on page 7 is to grab the
16 sample beneath the pit. Okay? Run each of those
17 samples for chloride, TPH and BTX, as called out by the
18 rule, two samples per pit, \$175 per sample, \$350 in lab
19 costs per pit, at eight pits, there's another \$2,800.
20 The labor associated with doing that, my estimate, 24
21 hours at \$85 an hour, plus a couple hundred dollars'
22 worth of expense, another 2,240. So the total for
23 sub-item number three, the pit closure, is \$5,040. So
24 at that point -- well, no. Let me continue to item
25 four.

1 If you found contamination, you're going to
2 have to deal with it. But even if you didn't, you're
3 going to have to restore -- you're going to have to
4 backfill the area and make sure there is restoration
5 done on that. So I've kind of broken it down under item
6 four as excavation with contamination versus not. A
7 90-by-70-by-2-foot excavation depth, the same 20 percent
8 bulking factor, since you're simply going to disposal on
9 that -- we haven't gotten to the backfill portion of
10 it -- it's half that price. It's only \$50 per yard.
11 And assuming only half those pits were dirty, of the
12 eight, four of them, because you have to take out an
13 additional 2 feet, that's an additional \$112,000 in
14 excavation and disposal costs.

15 Regardless, all eight pits need to be
16 restored back to surface. Doing the volume calculations
17 on it and assuming only \$25 per yard to put clean soil
18 back in, that's another \$186,667. So for item number
19 four -- just sub-item for item number four, it's
20 \$298,667.

21 Item five, if one of those potentially
22 leaking pits did impact or got deep enough to
23 potentially impact groundwater, you're going to have to
24 go through this hydrogeo investigation again, and you're
25 about \$10,000 a well. So I haven't estimated that. So

1 that puts items one through four, in pit closures, at
2 \$447,770 -- 707. Excuse me.

3 So if you add that with the battery cleanup
4 just in those identified parts, we're just shy of
5 million and a half bucks on those two items.

6 Removal of the contaminated soil piles,
7 \$110,800 to remove that soil and dispose of it. Another
8 \$1,800 to take the liners up. Another \$2,335 to sample
9 underneath those liners. And, again, that's on 40-foot
10 centers over a larger lined area, actually. So those
11 are hard fixed costs there. There's \$114,935. Anything
12 beyond that, I'm not comfortable putting a price on it
13 at this point. But I know that needs to get done. So
14 those three items, \$1,620,117.

15 Q. If we broke it up into three categories, the
16 known, and that's including the entire field survey,
17 it's about 1.3 million; probable, based on your
18 experience and testimony, about another 1.5 million; and
19 then on the -- after that, the sky's the limit.

20 A. It's all contingent.

21 Q. The sky's the limit. It could be any number.
22 I think the numbers -- would you be comfortable with the
23 number of 1.3 million for known and 1.5 million for
24 probable --

25 A. Correct.

1 **Q. -- those numbers?**

2 A. About a \$3 million total.

3 COMMISSIONER BALCH: And if those kind of
4 numbers are in the order that we come up with, that
5 helps your case, Mr. Jacobsen?

6 MR. JACOBSEN: Yes and no. You know,
7 having -- having some measure of a scale I think is
8 useful. The claim is going to be on liquidated because,
9 you know, this is just scratching the surface of what
10 we've seen. But if we can take these numbers and say --
11 if -- if these are representative samples of what we've
12 done to date, then we're looking at immense
13 environmental costs.

14 COMMISSIONER BALCH: At least \$3 million.

15 MR. JACOBSEN: Yeah. And that's just for,
16 you know, the tank battery and the pits and the
17 contaminated dirt, and we've got 20 other batteries out
18 there.

19 THE WITNESS: Well, that included looking
20 at the 20 batteries.

21 COMMISSIONER BALCH: And 280 more wells.

22 THE WITNESS: So if you found me
23 \$3 million, I'd put it to good use.

24 MR. JACOBSEN: But yeah. But yes, you
25 know, to the extent we can quantify, give the Court some

1 figure, some grasp of what the scope of the problem is,
2 yes, it's useful.

3 COMMISSIONER BALCH: Then your lunch was
4 well spent.

5 THE WITNESS: (Laughter.)

6 MR. HERRMANN: I just have a couple of
7 questions to follow up on.

8 REDIRECT EXAMINATION

9 BY MR. HERRMANN:

10 Q. You had mentioned, on sampling the sites, that
11 they would not need a drill rig on-site?

12 A. Well, I'm not saying wouldn't need one, but the
13 estimate you asked me to put together did not include
14 that.

15 Q. Okay. No drill rig?

16 A. No.

17 Q. And when you mentioned something about mobed
18 wells, could you just spell that? You said the wells
19 would have to be mobed.

20 A. Oh. Mobilization.

21 Q. Okay.

22 A. It's getting the drill rig from where it is to
23 where you want to and back home, and they charge you for
24 that.

25 Q. Okay. And then the in situ, could you just

1 **spell that and define it?**

2 A. I spelled it two words: I-N; second word,
3 S-I-T-U. It means in place.

4 **Q. Okay. Was Exhibit 14 prepared by you**
5 **strenuously during your lunch hour?**

6 A. It was during my lunch hour (laughter).

7 MR. HERRMANN: At this time I would move to
8 admit Exhibit 14 to the record.

9 CHAIRWOMAN RILEY: If there are no
10 objections, I suggest that Exhibit 14 is accepted into
11 the record.

12 (NMOCD Compliance and Enforcement Bureau
13 Exhibit Number 14 is offered and admitted
14 into evidence.)

15 MR. HERRMANN: Unless there is anything
16 else the Commission would request us to address, I would
17 move on to my closing statement.

18 CHAIRWOMAN RILEY: Do you want to dismiss
19 your witness?

20 MR. HERRMANN: Yes.

21 Jim, you are dismissed.

22 CLOSING ARGUMENT

23 MR. HERRMANN: So thank you, Commission,
24 for listening to our presentation this morning.

25 Just to recap what we have heard, we

1 submitted evidence of numerous existing violations on
2 well sites operated by the operator, Cano Petro of New
3 Mexico, Incorporated, first covering the violations
4 alleged in 16040. That would be violations of
5 19.15.5.9, Subsection A(4) NMAC and 19.15.25.8 NMAC.
6 Those are the well plugging rules that state that a
7 well, when inactive, needs to be properly plugged and
8 abandoned. And we have demonstrated that a number of
9 wells have -- of Cano's have not produced for 15 months,
10 and they have not been plugged and abandoned properly,
11 in violation of that rule. That exceeds the numbers
12 allowed by 19.15.5.9 NMAC. And those wells were
13 identified in OCD Exhibit 3, and by testimony under
14 Daniel Sanchez, the additional ten wells that were
15 either plugged, yet not released and have never reported
16 any production.

17 We request in that case that Cano have 45
18 days to return to compliance with those rules, and if
19 they don't, that they be found out of compli- -- excuse
20 me -- that they be found in violation of a Commission
21 order and their financial assurance -- or those wells be
22 plugged and abandoned in accordance with a
23 Division-approved plugging program and their financial
24 assurance associated with those wells be forfeited. And
25 that financial assurance was identified under the

1 operator information in Exhibit 2.

2 Then we presented violations in the other
3 case, 16359, first, that they have not maintained
4 adequate bonding. And we would also request an order
5 stating that Cano needs to return to compliance within
6 45 days with our bonding requirements. The total
7 amounts there were -- bonding was required on 14 wells
8 for a total of \$120,200, and that information, again, is
9 contained in Exhibits 4 and 5 presented by the Division,
10 though we will note that those numbers may change with
11 the addition of the new financial provisions that went
12 into effect six days ago.

13 Then lastly, the environmental violations,
14 which we presented detailed testimony on what we would
15 require, including cost estimates and time frames, that
16 they address all known releases, properly close all pits
17 and dispose of all stockpiles of waste, in accordance
18 with Rules 19.15.29 and 30 for releases, Rule 19.15.17
19 regarding the pits, and 19.15.35 NMAC regarding the
20 surface waste. We feel a time frame of 45 days is
21 adequate there as well.

22 Additionally, we also request a groundwater
23 study on the Cato San Andres battery number six to
24 determine the extents of the impact.

25 We have not presented testimony on a

1 penalty for violation of the Oil and Gas Act, but
2 considering Mr. Jacobsen's testimony that a
3 determination here could be determined as res judicata
4 if decided, we would request -- and this was mentioned
5 in our application for hearing -- a finding that a
6 penalty may be warranted in this case and a penalty
7 amount the Division feels appropriate.

8 We feel we have shown all these violations
9 as existing and long-standing and require immediate
10 attention by Cano, and, therefore, we feel the relief
11 we've requested is adequate and will sufficiently
12 protect the Division and, more importantly, correlative
13 rights and the environment and eliminate waste, as found
14 by the Commission in its own order.

15 I'd like to again thank the Commission for
16 listening to our presentation. I'd like to thank
17 again -- or thank for the first time my witnesses who I
18 feel have done an excellent job in preparing and
19 presenting this case.

20 Thank you.

21 CHAIRWOMAN RILEY: And you may have said
22 this, but just for clarity, Cano has 323 wells, 281 of
23 which are inactive. So 42 wells are still producing?

24 MR. HERRMANN: Yes. Actually, we testified
25 to 291 wells. 281 were showing up on the inactive well

1 list, and the remaining ten were either plugged, not
2 released or had never had any production reported. And
3 those are some quirks that stop something from showing
4 up on our OCD-generated report.

5 CHAIRWOMAN RILEY: So 32 wells?

6 COMMISSIONER BALCH: I think eleven in this
7 year were reporting at one point or another?

8 CHAIRWOMAN RILEY: Those were state.

9 COMMISSIONER BALCH: Ten.

10 CHAIRWOMAN RILEY: So are you proposing
11 that the whole field be plugged?

12 MR. HERRMANN: No, I am not. We had
13 originally, in our relief requested, asked that
14 producing wells be shut in, but after consultation with
15 Mr. Jacobsen, we believe that stopping them from being
16 able to produce producing wells could just -- would
17 violate the automatic stay and propose a number of
18 complications with the bankruptcy court, so we are not
19 asking for that at this time.

20 CHAIRWOMAN RILEY: Okay. So you're just
21 asking for the ones that are inactive to be plugged?

22 MR. HERRMANN: Yes.

23 CHAIRWOMAN RILEY: Okay.

24 COMMISSIONER BALCH: Or brought back into
25 compliance within 45 days?

1 MR. HERRMANN: Yes. Correct.

2 CHAIRWOMAN RILEY: Do we have any other
3 questions?

4 COMMISSIONER MARTIN: I do not.

5 COMMISSIONER BALCH: Forty-five days,
6 that's the statutory requirement, or are you just being
7 nice?

8 MR. HERRMANN: Depends who you asked.
9 Forty-five days is on our standard relief that the
10 Compliance and Enforcement Bureau determined is an
11 appropriate time frame. Cano has not appeared to
12 present any timeline that they feel might be more
13 realistic for them, and I was not inclined to make that
14 argument for them. Going by their track record, I don't
15 know if the time -- we have to give them a time frame,
16 but at their current success rate, I don't think it
17 would matter if we gave them ten years.

18 COMMISSIONER BALCH: Or ten days.

19 MR. HERRMANN: Yeah.

20 COMMISSIONER BALCH: On the penalty, are
21 there guidelines in the OCD that we could look at to
22 determine what penalty amount might be applied?

23 MR. HERRMANN: It has been a while since a
24 penalty has been issued, and those guidelines have not
25 been updated. But the statute itself authorizes a

1 penalty of up to \$1,000 per day per violation, and in
2 the event of a continuing violation, each day would be
3 treated as a separate violation.

4 COMMISSIONER BALCH: So after the 45
5 days -- or when does that violation start? From the
6 time that the pit was not closed appropriately or from
7 the time that you -- after the 45 days with this order?

8 MR. HERRMANN: It's difficult to determine.
9 As far as the order goes, that would be a very easy
10 timeline to establish, but the way the statute reads, I
11 believe it's from the time that that violation becomes
12 knowing and willful by the operator.

13 COMMISSIONER BALCH: So that would be after
14 the 45 days, or, as of this point, there could be a
15 determination --

16 MR. HERRMANN: Yes.

17 COMMISSIONER BALCH: -- in this order that
18 would then start that clock?

19 MR. HERRMANN: Yes.

20 COMMISSIONER BALCH: Okay. I don't have --

21 CHAIRWOMAN RILEY: Is it from now, or is it
22 from -- I mean, some of these spills have been
23 acknowledged. I mean, they either have been turned in
24 or have been reported by inspectors.

25 COMMISSIONER BALCH: A year ago for the

1 most recent tank battery --

2 MR. GRISWOLD: Given the old 29, there
3 wasn't a goal in the end zone there for you that you
4 could at least clean up, which prompted this two-year
5 path that led us to update 29. And given -- well, if I
6 recall in the transitional provisions in 29 correctly,
7 if you do not have an approved plan from the Division,
8 you have to comply with 29 as written today. So
9 there -- a 90-day clock started on each of those
10 releases on August 14th for them to get a
11 characterization report or a remediation in to the
12 Division.

13 COMMISSIONER BALCH: That's per location.

14 MR. GRISWOLD: Yes, sir.

15 COMMISSIONER BALCH: So that could
16 potentially be all of their wells, batteries, the two
17 piles and the eight pits.

18 MR. GRISWOLD: Well, that would be for what
19 we already know. If we come across a new one or they
20 come across a new one, the date of discovery, you know,
21 starts that 90-day clock rather than August 14th. They
22 would clearly be under the new rule, not under the
23 transitional rules.

24 COMMISSIONER BALCH: So for the purpose of
25 Mr. Jacobsen, I mean, the penalties could grow faster

1 than the other items that we've already enumerated?

2 MR. JACOBSEN: Yes. If the Commission
3 would indulge me a couple comments. Number one, any
4 penalties that are in effect now will be considered an
5 administrative expense of the estate and payable as a
6 first or second priority and would have to be paid in
7 full if a plan is confirmed. If a plan is confirmed may
8 be a big question mark here.

9 Just a conversation with the Texas Railroad
10 Commission, with the number of wells that they have, it
11 ran three times what we have here, they were thinking if
12 the penalty is \$10 a day, pretty soon it's an
13 astronomical figure.

14 And I would also -- from my perspective as
15 the bankruptcy attorney, not as a regulatory enforcer,
16 but I would have concerns presenting to the bankruptcy
17 court if an order to bring 300 wells and numerous tank
18 batteries within a 45-day period was reasonable rather
19 than being somewhat arbitrary. It strikes me, from my
20 perspective, as ordering the impossible, and I think
21 that could hurt us in a court of equity.

22 COMMISSIONER BALCH: For the penalty part?

23 MR. JACOBSEN: Well, for the penalty and
24 ordering compliance in a period that's just not
25 physically not capable of being performed. Even if they

1 brought on everybody in the Permian Basin to come and
2 work for them, whether it could be accomplished in 45
3 days, I have serious doubts.

4 COMMISSIONER BALCH: So realistically they
5 would need two or three years to --

6 MR. JACOBSEN: Realistically, yes.
7 And then, you know, Mr. Herrmann didn't want to make
8 their arguments, but you have to anticipate what the
9 other side will do. And, you know, bottom line, if it
10 was so terrible, how come you didn't get on us five
11 years ago?

12 As I said, in the bankruptcy court, we're
13 dealing with a court of equity, which prefers to give
14 money to the commercial interests, figuring I think --
15 that they can afford it less than a government can. So
16 there is some -- yeah, there is some priorities for
17 governmental claims of some sorts, and then there are
18 not in others. This is one of those that's not in the
19 other. And if the Court sees it as abusive, we may not
20 get the respect that we should get under the
21 circumstances.

22 COMMISSIONER BALCH: So putting a penalty
23 clause into the order may not be the best thing.

24 MR. JACOBSEN: Well, no. I think a penalty
25 is fine, but it needs to be taken into consideration the

1 amounts. As I said, Texas, just doing the numbers on
2 their fingers and toes, says, you know, \$10 a well per
3 day, pretty soon, you're talking government levels of
4 money.

5 CHAIRWOMAN RILEY: Can we -- would it be
6 appropriate to put in a finding what we could ask for in
7 a finding, but then in the order say --

8 COMMISSIONER BALCH: Not saying we're doing
9 it.

10 MR. JACOBSEN: Right, right, right. That
11 the Commission thinks that a penalty -- you know, given
12 the length of time that this has been going on and Cano
13 is not facing its problems responsibly, that the
14 Commission believes a fine per well, per battery of \$10
15 a day, \$50 a day, \$100 a day is appropriate to encourage
16 their compliance with state and federal law.

17 COMMISSIONER BALCH: That'll work.

18 CHAIRWOMAN RILEY: So I was just going to
19 comment on the 45 days. I know -- you know, the way
20 that OCD kind of deals with that currently --
21 understanding a short time frame is difficult, you know,
22 for rig availability and finances and all that, so one
23 of the ways that we've dealt with that is by entering
24 into an order with them that has a schedule that
25 everyone can agree to.

1 MR. JACOBSEN: Yeah. I think, you know,
2 something like that, you know, that they're required to
3 do within 45 days is --

4 COMMISSIONER BALCH: That would essentially
5 be meeting compliance, if you have an agreement to
6 proceed in a certain way. So I think the 45 days
7 would --

8 MR. JACOBSEN: Right. Forty-five days for
9 that, yes. I just want to make that -- and maybe it's
10 my understanding of what the Commission is leading up to
11 doing. But, you know, if it's clear that we're not
12 talking about 45 days to bring this back to the Garden
13 of Eden, we're talking about 45 days to get --

14 COMMISSIONER BALCH: To become compliant.

15 MR. JACOBSEN: Yeah. And to become
16 compliant by entering into a plan and an order on how
17 you're going to do this.

18 COMMISSIONER BALCH: That's one way to make
19 them compliant. The other way is to do everything that
20 you're told to do.

21 MR. JACOBSEN: I know the bankruptcy
22 courts -- you know, maybe Tulsa has a little bit more
23 experience with it, but most of the bankruptcy courts
24 don't -- don't deal with government regulations, and
25 it's just typically outside their area of experience.

1 MR. BRANCARD: Okay. Let's talk about the
2 time frame here. So 45 days would seem to work for
3 inactive well compliance issues, right? As we just
4 discussed, it could include an agreed compliance order
5 within that time frame. Financial assurance violations,
6 right? But then we have the environmental violations,
7 which you've put under -- Rule 17, pits; Rule 29,
8 releases; Rule 36, surface waste management. But really
9 compliance would have to come under Rule 29. Right? I
10 mean, it would be a Rule 29 cleanup for all of this,
11 right?

12 MR. GRISWOLD: Well, the pit clause is
13 clearly under 17.

14 COMMISSIONER BALCH: 17 and 20 mirror each
15 other.

16 MR. GRISWOLD: If you do identify a
17 release, it falls under 29.

18 MR. BRANCARD: But in either situation,
19 would it be best for the Commission, then, to, say,
20 order that they have an agreed characterization plan
21 within 90 days? What would be the next step?

22 MR. GRISWOLD: I'd like --

23 MR. HERRMANN: For the releases identified,
24 it would be starting -- or submitting a delineation plan
25 within 45 days and then following the deadlines that are

1 laid out in the rules and then also doing an assessment
2 of their remaining sites within 45 days.

3 COMMISSIONER BALCH: And that's feasible?
4 You can hire an environmental company to go out there
5 and do all that within 45 days?

6 MR. GRISWOLD: To at least initiate the
7 process, yeah, to give us the plan.

8 COMMISSIONER BALCH: Yeah, give you the
9 plan.

10 So then 45 days would then basically be for
11 them to come in, start a dialogue, set up a plan. If
12 they don't do that within 45 days, then it's pull the
13 financial assurance and start doing stuff.

14 MR. GRISWOLD: Well, the environmental
15 compliance doesn't tie that to financial assurance.
16 Maybe I'm wrong in that regard.

17 COMMISSIONER BALCH: Just the well plugging
18 unit.

19 MR. GRISWOLD: Under the rule -- the only
20 other provision of the rule that speaks to plugging
21 bonds is Part 34 for recycling facilities.

22 COMMISSIONER BALCH: In the case of
23 financial assurance for plugging, that process would
24 start in 45 days if they don't come in with a plan to
25 get into compliance?

1 MR. JACOBSEN: You know, my view is if they
2 don't come into compliance, then I need to go to court
3 and say: They're out of compliance; they've violated
4 this order; do we need to stay modified for us to do the
5 work ourselves?

6 COMMISSIONER BALCH: They don't have to do
7 it, but they have to come in and at least present a
8 plan.

9 MR. JACOBSEN: Right.

10 MR. GRISWOLD: And I would like to see with
11 that plan that there be a schedule. Once it's
12 incorporated into the plan and approved, we've got an
13 expectation of when it's going to be completed.

14 COMMISSIONER BALCH: I guess that would be
15 a condition of approval, wouldn't it?

16 MR. GRISWOLD: Yes, it would, a reasonable
17 one.

18 CHAIRWOMAN RILEY: And can we require that
19 they -- if they're going to do their own work, that they
20 start it before the bankruptcy's complete?

21 MR. JACOBSEN: This would be ordinary
22 course of business, so it's nothing that they should
23 require court approval for. The problem is the lender's
24 got them on a budget, and the lender's going to have to
25 loosen up on that. I've been told, accurately or not,

1 they're in the process of doing that with their lender,
2 but this -- whatever order emerges from this hearing
3 probably ought to be something that can be put in the
4 face of the lender.

5 COMMISSIONER BALCH: That's one of the
6 reasons I want all these numbers.

7 MR. JACOBSEN: Right.

8 COMMISSIONER BALCH: Besides morbid
9 curiosity.

10 CHAIRWOMAN RILEY: I'm disappointed that
11 they're not here to answer some of their own questions.
12 I'm just saying that as a statement.

13 COMMISSIONER MARTIN: I'm not surprised.
14 Disappointed, but not surprised.

15 COMMISSIONER BALCH: We should go into
16 executive session to deliberate.

17 CHAIRWOMAN RILEY: Okay. Mr. Herrmann, if
18 you're finished.

19 COMMISSIONER BALCH: I would make that
20 motion. I make a motion to go into closed session to
21 deliberate on this case.

22 COMMISSIONER MARTIN: Second.

23 CHAIRWOMAN RILEY: All right. We are now
24 in closed session.

25 (Executive session deliberations, 2:11 to

1 2:51 p.m.)

2 CHAIRWOMAN RILEY: Let's go back on the
3 record, please.

4 So we are done with our closed
5 deliberations, and we only discussed --

6 MR. BRANCARD: We need to vote to go back
7 into open session.

8 COMMISSIONER BALCH: I would definitely
9 propose that we go back into open session.

10 COMMISSIONER MARTIN: I second the motion.

11 CHAIRWOMAN RILEY: All right. We're in
12 open session now.

13 Do we need to do anything else for the
14 record?

15 MR. BRANCARD: Now make your statement.

16 CHAIRWOMAN RILEY: For the record, we did
17 not discuss anything in closed session other than
18 deliberation of this particular case -- two cases,
19 actually.

20 So in that deliberation, we discussed a
21 number of things, and I think Bill's captured that in
22 his notes for crafting an order that will capture what
23 it is that we are wanting to put in writing. But it
24 will include some of the things we discussed earlier,
25 which is --

1 Bill, why don't I just pass it to you for
2 capturing what was said?

3 MR. BRANCARD: Sure.

4 In Case 16040 and Case 16359 -- I will sort
5 of combine the findings here because they relate to both
6 cases -- based on the evidence presented, the Commission
7 finds that Cano is in violation of 19.15.25 and
8 19.15.5.9, related to inactive wells; 19.15.8, related
9 to financial assurance requirements; 19.15.17, related
10 to pits; 19.15.29, related to releases and release
11 reporting; 19.15.36, related to surface waste management
12 facilities.

13 The Commission finds that these violations
14 threaten public safety, the environment and fresh water
15 in New Mexico. The Commission finds that these
16 violations, particularly the environmental violations
17 that were reported years ago and not remediated, are
18 knowing and willful. The Commission finds that the
19 costs of remediating these remedies will be substantial
20 as was described in the evidence reported by the
21 Division witnesses.

22 The remedy then for -- the Commission
23 concludes for inactive wells and for financial assurance
24 violations, Cano is given 45 days to come into
25 compliance, including the possibility of entering into

1 an agreed compliance order with a specific schedule for
2 achieving compliance of those violations.

3 For the various reported environmental
4 contaminations at different locations such as tank
5 batteries, well site, pits, any other areas where waste
6 was deposited, Cano is given 45 days to provide a
7 delineation plan, which includes a schedule for
8 remediation and a plan to assess all other remaining
9 sites.

10 Failure to comply with the requirements for
11 inactive wells and financial assurance, OCD may seek
12 then to plug and abandon the wells and pursue recovery.

13 Failure to comply with the environmental
14 violations, OCD may pursue its own cleanup and seek
15 reimbursement, and the OCD, with the Attorney General's
16 Office, may pursue penalties as provided in the Oil and
17 Gas Act.

18 CHAIRWOMAN RILEY: So, Mr. Brancard, you'll
19 prepare an order for us to look at?

20 MR. BRANCARD: I can work with Mr. Herrmann
21 to prepare an order.

22 CHAIRWOMAN RILEY: Okay. We'll review that
23 again at the next Commission hearing.

24 MR. BRANCARD: September, yes.

25 CHAIRWOMAN RILEY: Not tomorrow, right, but

1 in September.

2 COMMISSIONER BALCH: September 13th.

3 You know, I think in a case like this, if
4 an order is ready, I would be willing to -- just have
5 the ability for me to sign it, so we don't have to wait
6 to start the process.

7 COMMISSIONER MARTIN: I'm okay with that.

8 CHAIRWOMAN RILEY: Okay. Because that's
9 something that I think Mr. Jacobsen mentioned, is the
10 quicker, the better with this.

11 MR. JACOBSEN: Yes.

12 COMMISSIONER BALCH: So I think if we can
13 get an order that we can agree with through email, that
14 Heather can just sign it.

15 MR. BRANCARD: Okay. And we can send the
16 order out to the Commissioners, and if any of the
17 Commissioners want to have it discussed at the meeting,
18 we can. Otherwise, the Chair is directed to sign.

19 COMMISSIONER MARTIN: Sounds good.

20 CHAIRWOMAN RILEY: I'm good with that.

21 Thank you, everybody, for the effort on
22 this one. I know it was difficult, but it needed to be
23 done.

24 So on our agenda, the next item is not
25 going to start until tomorrow. So I would say we should

1 adjourn for the afternoon and then show back up for
2 tomorrow at 9:00.

3 Do we have a motion for that?

4 COMMISSIONER BALCH: So moved.

5 COMMISSIONER MARTIN: Second.

6 CHAIRWOMAN RILEY: All right. We're off
7 the record. We'll see you back here at 9:00 in the
8 morning.

9 (The proceedings conclude, 2:51 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

20 DATED THIS 10th day of September 2018.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2018
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