

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4

5 IN THE MATTER OF THE HEARING CALLED
6 BY THE OIL CONSERVATION DIVISION FOR
7 THE PURPOSE OF CONSIDERING:

CASE NO. 14135

8 APPLICATION OF THE NEW MEXICO OIL
9 CONSERVATION DIVISION FOR A COMPLIANCE
10 ORDER AGAINST SOUTHWESTERN, INC.

ORIGINAL

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

13

EXAMINER HEARING

14

15

BEFORE: CAROL LEACH, Legal Examiner
16 WILLIAM V. JONES, Technical Examiner
17 TERRY WARNELL, Technical Examiner

18

June 12, 2008

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Santa Fe, New Mexico

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This matter came for hearing before the New Mexico Oil
21 Conservation Division, CAROL LEACH, Legal Examiner, WILLIAM V.
22 JONES, Technical Examiner, and TERRY WARNELL, Technical
23 Examiner, on June 12, 2008, at the New Mexico Energy, Minerals
and Natural Resources Department, 1220 South St. Francis Drive,
Room 102, Santa Fe, New Mexico.

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A P P E A R A N C E S

FOR THE APPLICANT,

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FOR THE RESPONDENT,

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1 MR. JONES: Okay. Let's get back to Page Two and
2 let's call Case No. 14135, Application of New Mexico Oil
3 Conservation Division for Compliance Order Against Southwestern
4 Incorporated.

5 Call for appearances.

6 MS. MACQUESTEN: Mr. Hearing Examiner, Gail
7 MacQuesten representing the OCD. I have one witness.

8 MR. JONES: Other appearances?

9 MR. HOUSTON: Glen Houston and Ricky L. Houston.

10 MR. JONES: Mr. Houston, are you the attorney
11 representing Mr. Houston?

12 MR. HOUSTON: Yes. I'm representing Southwestern
13 Inc., and he's the president.

14 MR. JONES: Okay. And you have one witness?

15 MR. HOUSTON: Yes.

16 MR. JONES: Any other appearances? Will the
17 witnesses that intend to testify today stand and be sworn and
18 state your name?

19 MR. HOUSTON: Rick Houston.

20 MR. SANCHEZ: Daniel Sanchez.

21 [Witnesses sworn.]

22 MR. JONES: I think in our files we got a notice on
23 June the 6th, which was Friday, from you, Mr. Houston, about
24 your intent to -- you can be called an intervenor or an
25 opposition party to this case. But, basically, I think you

1 were supposed to file your paperwork on the Thursday before the
2 hearing on this Thursday.

3 So is there any controversy about whether Mr. Houston
4 should be allowed to -- does the applicant have any objection
5 to whether the --

6 MS. MACQUESTEN: We don't object. We would prefer to
7 go forward with the case today.

8 MR. JONES: Okay.

9 MR. HOUSTON: If we may make a brief statement, and
10 remain seated?

11 MR. JONES: Sure.

12 MR. HOUSTON: I'm Glen Houston. I've talked with
13 Ms. MacQuesten and, basically, this matter was being handled
14 for Southwestern by the comptroller, and he quit recently, and
15 this thing got dropped in the process, along with a lot of
16 other things that he wasn't taking care of. I don't want to
17 blame him particularly, except that when you have somebody
18 that's doing things and he's not there anymore, then you're
19 behind the eight ball.

20 We have not complied with the order that has been
21 issued by the Division. However, he was negotiating with --
22 let me give you a little background. There was a certificate
23 filed that the well wasn't being produced. He talked to the
24 Division about it. And it was suggested to him, and he
25 submitted an application that the well be put up for sale,

1 because he was told by somebody -- and I don't know who -- that
2 you could bid it back in at \$5,000 or something like that.

3 Well, of course, it goes up under the sale with bids
4 being accepted, and Yates bid 90,000 for this lease, which is,
5 you know, quite a bit different. And so then he began
6 negotiating with Yates to take over the well or have a farmout
7 on it or something like that. We would prefer a farmout.

8 Then Yates wanted time to look at it. He submitted
9 logs and other data to Yates. And Yates had not made the
10 decision as to what to do, although I understand that Yates has
11 told the commission that they're not interested in this well.
12 The people of Yates are working on what to do with it.

13 We are prepared to plug the well, if necessary, at a
14 reasonable time -- not necessarily next week or something like
15 that. But we'd need time to plug the well. We do not want to
16 plug the well, because this well would be profitable if it is,
17 you know, somebody works on it.

18 I have not had time to talk to Yates. We have not
19 found his file where he was talking to Yates, although I know
20 that he was talking to Yates. We know that he was talking to
21 Yates, but we don't know who in the Yates organization he was
22 taking to. It was in the Artesia office that he was talking to
23 them. And we're not able to talk to him because of his change
24 of jobs.

25 But basically, I don't know what evidence is

1 proposed -- what is proposed to put on, but there is no problem
2 on that. Southwestern has made substantial improvements in the
3 leases that it's operating. They are not a very large
4 operation, but for the number of leases, I can assert that the
5 efforts that have been made are very substantial.

6 Ms. MacQuesten's questions are that there are things
7 that aren't in compliance and have been raised. But the
8 Southwestern leases are in better shape than 50 percent of the
9 leases in that area. That's in that Loco Hills area. The
10 description in here is incorrect. This well is not seven miles
11 from Humble City. It's probably 25 or 30 miles from Humble
12 City.

13 And I don't know who prepares these papers, but if
14 you tried to find it based on the layman's description of seven
15 miles from Humble City, New Mexico, you'd never find it. It's
16 out by Buckeye, which is on the road to Loco Hills and
17 Maljamar. Basically that's it.

18 I don't know if this would solve a lot of the
19 problems of the testimony, but what I'd like is time to get
20 back in the negotiations with Yates and find out what Yates
21 wants to do. If we're not able to work a deal with Yates, then
22 we would go ahead and plan on plugging the well.

23 MR. JONES: Thank you. Ms. MacQuesten, would you
24 like to make a statement?

25 MS. MACQUESTEN: Yes, thank you. Mr. Examiner, the

1 OCD is seeking a compliance order against Southwestern, Inc.,
2 regarding the State VC No. 1 Well. We already went to hearing
3 on this well back last November and obtained a plugging order
4 that will allow the state to plug the well.

5 Now, Mr. Houston has just told you that he wants
6 additional time so he can negotiate with Yates and see if some
7 arrangement can be made and if that is not possible, he will
8 plug the well at some time. Mr. Examiner, that train has left
9 the station. We already have a plugging order on this well.
10 The State can go out tomorrow and plug it. That is not at
11 issue today.

12 What is at issue today is the enforcement of other
13 provisions in that order. That prior case is No. 14007, and
14 the order issued in that case is No. R-12909. You'll find a
15 copy of that order in your evidence packet.

16 In this follow-up case, we are trying to enforce that
17 order, and we are asking for three things:

18 The first thing we're asking for is an order finding
19 Southwestern, Inc., in violation of an order requiring
20 corrective action. You see, that prior order required
21 Southwestern to return the State VC No. 1 Well to compliance
22 with the inactive well rule by April 30th, 2008. They haven't
23 done that. We're asking for an order finding them in violation
24 of the order requiring corrective action so that they will be
25 in violation of Rule 40 until the corrective action is taken.

1 Under Rule 40, if there's an order finding an
2 operator in violation of an order requiring corrective action,
3 we can deny certain privileges to the operator until that
4 corrective action is taken. So it's important that we have a
5 formal order finding him in violation of the prior rule.

6 The second thing we're asking for is an order
7 formally assessing the penalties that were provided for in that
8 order R-12909. That order stated that if Southwestern didn't
9 meet that April 30th deadline, the Division would be authorized
10 to collect a \$6,000 penalty. Now, notice that provision was
11 conditional. If they didn't plug the well by the deadline,
12 then the penalty would apply.

13 We're back here today to tell you that they failed to
14 meet the deadline and to ask for an order formally assessing
15 the penalty and finding it due and owing now. With such an
16 order, we will be able to go to district court to collect that
17 penalty. Also, if the operator doesn't pay the penalty, that
18 will be another way the operator is in violation of Rule 40,
19 and again, we will be able to deny certain privileges to the
20 operator until the penalty is paid.

21 The third thing we're asking for is that the order
22 require Southwestern to post a financial assurance for the well
23 in the appropriate amount. You see, Southwestern posted its
24 single well bond for this well some time ago before the rule
25 changes took effect regarding the amount of the financial

1 assurance that would be due.

2 Because Southwestern didn't comply with the order and
3 didn't plug the well, we fully expect that the State will be
4 plugging this well. So it's important that Southwestern post
5 the amount of financial assurance required by the rules so that
6 the State has access to that amount.

7 Mr. Examiner, there's an evidence packet in front of
8 you. The first exhibit is the Affidavit of Notice. The second
9 exhibit is an Affidavit of Financial Assurance from Dorothy
10 Phillips. It shows that Southwestern chose to post single
11 wells -- single well bonds for its three wells instead of a
12 blanket financial assurance.

13 The well at issue in this case, State VC No. 1 has a
14 \$7,500 bond in place. Under the new financial assurance rules,
15 it needs a financial assurance in the \$14,074.

16 Exhibit 3 is the order that was issued in
17 Case No. 14007 that we're trying to enforce through this
18 proceeding today.

19 MR. HOUSTON: Are these exhibits marked?

20 MS. MACQUESTEN: Well, yes. If you look in the lower
21 right-hand corner, there should be exhibit labels.

22 MR. HOUSTON: Exhibit 1.

23 MR. WARNELL: It's back probably five, six pages.

24 MS. MACQUESTEN: The first couple of exhibits have
25 some attachments to them, so you need to page through past

1 those to get to Exhibit 3.

2 MR. HOUSTON: All right. Thank you.

3 MS. MACQUESTEN: On Exhibit 3 if you turn to the
4 third page, that would bring you to the terms of the order, and
5 those are the terms we are going to be talking about today.

6 And with that, I would like to call Mr. Sanchez.

7 MR. JONES: Okay.

8 DANIEL SANCHEZ

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

11 DIRECT EXAMINATION

12 BY MS. MACQUESTEN:

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

14 A. Daniel Sanchez.

15 Q. And what is your title?

16 A. I'm the Compliance and Enforcement Manager.

17 Q. Where?

18 A. With the Oil Conservation Division.

19 Q. Are you familiar with the enforcement and
20 compliance efforts taken by the OCD against Southwestern, Inc.?

21 A. Yes, I am.

22 Q. In particular, are you familiar with Case
23 No. 14007?

24 A. Yes.

25 Q. Did you testify as the OCD witness in that case?

1 A. Yes, I did.

2 Q. I would like to go through the terms of the order
3 that was issued in that case and ask you whether Southwestern
4 has complied with those terms. If you would look at Exhibit --

5 MR. HOUSTON: I will object. The terms are stated
6 here. There's no necessity of repeating the terms.

7 MR. JONES: I don't think it's a problem to repeat
8 the terms. Go ahead.

9 Q. (By Ms. MacQuesten): Mr. Sanchez, if you would
10 turn to Page 3 of Exhibit 3, the bottom of the page, the
11 ordering paragraph. In ordering paragraph number one, did the
12 order give the operator a deadline for returning the State VC
13 Well No. 1 to compliance with the inactive well rule?

14 A. Yes. It gave them until April 30th, 2008 to
15 comply.

16 Q. If you turn to the next page, ordering paragraph
17 three, did the order allow the operator an opportunity to apply
18 for an extension of that deadline?

19 A. Yes, it did. It reads, "In the event the
20 operator fails to bring this well into compliance as directed
21 above or obtain, prior to April 1, 2008 from the Division
22 director, approval of a schedule to bring this well into
23 compliance, then" -- and then it lays out the conditions.

24 Q. So the operator had the opportunity to apply to
25 the Division director for an extension if the April 30th

1 deadline was --

2 A. It was April 1st, yes. And they didn't take that
3 action.

4 Q. Okay. So there was no request for an extension
5 of the April 30th deadline?

6 A. No.

7 Q. Is the State VC Well No. 1 still inactive?

8 A. Yes, it is.

9 Q. Has it been placed on temporary abandonment
10 status?

11 A. No.

12 Q. Has it been plugged and abandoned?

13 A. No.

14 Q. So has Southwestern returned the well to
15 compliance as required under the terms of the order?

16 A. Not as of today.

17 Q. Have you reviewed the well file for the State VC
18 No. 1?

19 A. Yes, I have.

20 Q. Have any documents been filed since the hearing
21 in Case No. 14007 proposing any work on the well?

22 A. No.

23 MS. MACQUESTEN: I would ask the Hearing Examiner to
24 turn to Exhibit No. 4 and take administrative notice of this
25 exhibit. It is an Entry of Appearance, Answer and Request for

1 a Continuance filed by the attorney for Southwestern in the
2 original case, and it is part of the case file in that case.
3 You'll note that the hearing was schedule for October 18 and
4 the request states that the attorney for Southwestern will not
5 be available and he seeks a continuance.

6 I'd also draw your attention to the second page,
7 paragraph eight, discusses, as Mr. Houston did today, that
8 Southwestern's lease was cancelled and the State sold the lease
9 to Yates Petroleum.

10 Q. (By Ms. MacQuesten): Mr. Sanchez, did
11 Southwestern get a continuance of that original case?

12 A. Yes, they did.

13 Q. After getting the continuance, did Southwestern
14 appear at the hearing that was held in the case?

15 A. No, they didn't.

16 Q. So we don't have any testimony or statements in
17 evidence at a hearing from Southwestern in this case about why
18 this well was out of compliance or what they plan to do with
19 it?

20 A. No, we did not.

21 Q. All we have is what was provided by the attorney
22 in the Entry of Appearance and Answer?

23 A. That's correct.

24 Q. Now, he referred to possibly working with Yates
25 on this well. Does the well file contain any information on

1 whether Yates wants this well?

2 A. Yes, it does, Exhibit No. 5.

3 Q. Can you tell us what Exhibit No. 5 is?

4 A. Exhibit No. 5 is a letter from Yates Petroleum to
5 Southwestern, Inc., and basically it states that they
6 respectfully decline their offer to take the well bore and
7 Yates Petroleum Corporation hereby requests that Southwestern
8 proceed with the plugging of the well bore as soon as possible.
9 And that was dated back in October 29th, 2007.

10 Q. Is this the most recent document in the well file
11 for this well?

12 A. Yes, it is.

13 Q. Did the application in the original case seek a
14 penalty?

15 A. Yes, it did.

16 Q. How much?

17 A. \$6,000.

18 Q. When the original case was brought, were there
19 any other issues involved besides the inactive well issue?

20 A. Yeah, there were a couple. I believe there was a
21 sign issue. I can't remember exactly what the other one was.

22 Q. Were there any environmental issues at the well?

23 A. Yeah. There was a cleanup that was necessary.

24 Q. Okay. Did Southwestern do the cleanup that was
25 the subject of the application?

1 A. Yes, they did.

2 Q. And when did they do that?

3 A. They did it prior to the second hearing, or the
4 continued hearing.

5 Q. Was it done before they requested the continuance
6 or after they requested the continuance?

7 A. After.

8 Q. So after the continuance, but before the hearing
9 that they didn't appear at?

10 A. That's right.

11 Q. So by the time of the hearing, the only issue
12 left was the inactive well issue?

13 A. Yes.

14 Q. Who suggested that the \$6,000 penalty requested
15 in the application be waived if Southwestern brought the well
16 into compliance by the April 30th deadline?

17 A. I did.

18 Q. Why?

19 A. I felt if we waived the penalty that they would
20 be more willing to work towards compliance.

21 Q. I'd like to ask you what you are seeking in this
22 case. First, the application asks for an order finding
23 Southwestern in violation of the order requiring corrective
24 action. What is the corrective action that they failed to
25 take?

1 A. Plug the well.

2 Q. Okay. Why are you asking for an order saying
3 they're in violation of an order requiring corrective action?
4 What will that do for us?

5 A. It'll actually put the company under Rule 40, in
6 violation of Rule 40, which will allow us to take several
7 actions, which you have already described.

8 Q. If we get such an order, what will the operator
9 be able to do to get that order lifted?

10 A. They could come back to the Hearing Examiner and
11 go ahead and plug the well, come back and request that that
12 order be lifted.

13 Q. What happens if the State beats them to it and
14 goes out and plugs the well before they can plug it?

15 A. They would still have the opportunity to come and
16 ask that that order be lifted, but the OCD would request that
17 they, you know -- the reimbursement of that well above the bond
18 amount would be paid by the company.

19 Q. So if an order finds them in violation and an
20 order requiring corrective action is issued, they could take
21 care of it either by taking the corrective action or by
22 compensating the State by taking that corrective action.

23 A. That's right.

24 Q. Now, the second thing you're asking for in the
25 application is the order formally assessing the \$6,000 penalty

1 as due and owing. Why are you asking for that?

2 A. We're asking for that to go ahead and collect the
3 \$6,000 penalty because they did fail to meet the terms of that
4 order, and it would allow us, if the operator did not pay the
5 penalty, to go to district court for collection.

6 Q. And the third thing you're asking for is an order
7 requiring them to post the financial assurance in the current
8 amount; is that right?

9 A. Yes, that's correct.

10 Q. Does Southwestern operate any other wells?

11 A. Yes. They have a total of three wells.

12 Q. Is Exhibit 6 the well list showing those three
13 wells?

14 A. Yes, it is.

15 Q. Are the other two wells producing wells?

16 A. They are producing wells. They showed the last
17 production back in January of 2008, though.

18 Q. All right. Is Exhibit 7 a summary balancing
19 report showing the total oil production for Southwestern?

20 A. Yes, it is. And it shows production all the way
21 through January of 2008, a small amount of production on those
22 wells, overall.

23 Q. Now, the case today only involves one of those
24 wells, the State VC No. 1; is that right?

25 A. Yes.

1 Q. Are there any compliance issues the OCD is
2 looking at on the other wells?

3 A. Yes. There's lack or insufficient bonding on
4 both those wells.

5 MR. HOUSTON: I'm going to object to bringing up
6 other wells that are not at issue today. We have not had
7 notice of that, I don't believe, although the man that was
8 doing it, as I said, is no longer with us.

9 But to bring that up today is simply an effort on the
10 part of counsel to prejudice the hearing officers, and I submit
11 it's improper.

12 MS. MACQUESTEN: Mr. Examiner, one of the issues in
13 this case may be whether Southwestern, Inc., has acted in good
14 faith, because that may have a bearing on whether you choose to
15 impose that penalty.

16 Now, Mr. Houston has already brought his other wells
17 into issue by describing the efforts Southwestern has taken on
18 these and stating that they are a good operator because they
19 have taken such good care of their other leases. What I'm
20 using this testimony to point out is that of the three wells
21 they have, we have multiple compliance issues.

22 MR. JONES: Okay. I'm going to defer to Carol on
23 this one.

24 MS. LEACH: Are you going to go into like detailed
25 compliance issues on each of those wells?

1 MS. MACQUESTEN: No, ma'am. But I did want to point
2 out there are other issues that we are looking at with
3 Southwestern.

4 MS. LEACH: If you're not going any further than
5 that, I think it's okay. But I do think you opened the door in
6 talking about the condition down there, in general. But this
7 is not a compliance hearing on those other wells.

8 MS. MACQUESTEN: It is definitely not a compliance
9 hearing on the other wells. If we choose to take compliance
10 action on these other wells, it will have to be through a
11 different proceeding. This would only go to the general good
12 faith of Southwestern.

13 MR. HOUSTON: Let me go ahead and qualify my
14 objection. Counsel has said that they may be. Now, "may" is a
15 possibility, and I don't think even this commission deals in
16 possibilities. You deal with probabilities. And for her to
17 use the term "may" I think puts this in an improper manner.

18 With that, I'll go ahead and acquiesce with your
19 comments.

20 MS. MACQUESTEN: Mr. Examiner, the "may" only goes to
21 what action we may take. The facts are the noncompliance, and
22 that's what the testimony will be on.

23 MR. JONES: Okay. Go ahead.

24 Q. (By Ms. MacQuesten): Mr. Sanchez, are there any
25 reporting issues on those other wells?

1 A. Yes. Both wells are late in reporting that they
2 are still active at this time.

3 Q. And are there any contamination issues on the
4 other wells?

5 A. On the Humble State No. 2 we do have a letter of
6 violation issued to the company involving -- that it needs to
7 be cleaned up.

8 Q. So on the three wells, we have financial
9 assurance issues, reporting issues, and a contamination issue
10 outstanding?

11 A. Yes.

12 Q. As Compliance and Enforcement Manager, what is
13 OCD's next step, then, on Southwestern?

14 A. It's to go ahead and get an order out showing
15 these issues of noncompliance and to try to get compliance out
16 of the operator.

17 MS. MACQUESTEN: Mr. Examiner, that concludes the
18 direct examination of Mr. Sanchez. I move for admission of
19 Exhibits 1 through 7.

20 MR. JONES: Any objection?

21 MR. HOUSTON: No objection.

22 MR. JONES: Exhibits 1 through 7 will be admitted.
23 And we'll take administrative notice, actually, by admitting
24 Exhibit 4 of Case No. 14007.

25 Mr. Houston? Do you have cross-examination?

1 MR. HOUSTON: Yes.

2 CROSS-EXAMINATION

3 BY MR. HOUSTON:

4 Q. Mr. Sanchez, counsel asked you what happens if
5 the State beats Southwestern to plugging off the well. Is this
6 a contest? Is the State in -- by that question, what happens
7 if the State beats Southwestern in plugging the well? You're
8 not implying that the State seeks to race to plug a well to
9 penalize an operator, are you?

10 A. No, sir, I'm not.

11 Q. That characterization is not a part of what
12 you're trying to do?

13 A. No, sir.

14 Q. And what you're trying to do is to get a
15 cooperative action on the part of an operator?

16 A. That's correct, yes.

17 Q. Are you familiar with the State -- with the
18 Humble State Wells 1 and 2? Do you know those locations? Have
19 you looked at them or do you know what's around those wells?

20 A. I haven't been to the locations myself.

21 Q. Would it surprise you to know that there are
22 numerous violations around those wells, and that those wells
23 are not the worst violators in that particular area?

24 A. No, that would not surprise me.

25 Q. Because there are a lot of violations in that

1 area, aren't there?

2 A. Since I'm not familiar with the area, I can't say
3 for sure. But I'm familiar with the districts and the types of
4 violations that are out there, so it would not surprise me that
5 there are additional operators with violations.

6 Q. And by -- you're saying two other wells, isn't it
7 true that Southwestern only has three state leases? That's
8 what you're saying, isn't it?

9 A. Yes, sir.

10 Q. And you're not -- are you also testifying that
11 you're not familiar with all the federal leases that
12 Southwestern works on or operates and has made improvements on?
13 Is that what you're saying, or not? Are you familiar with the
14 actions taken on federal leases?

15 A. By Southwestern?

16 Q. Yes, sir.

17 A. No, sir. I am not.

18 Q. So you're not suggesting that this is a pattern
19 of the company on all of its leases that it has, state and
20 federal, are you?

21 You're looking at Ms. MacQuesten. I'm asking you
22 these questions. I'm not asking Ms. MacQuesten.

23 A. I understand that, sir. I understand that.

24 Q. What is your --

25 A. What I'm saying is of the three wells that

1 Southwestern does have on our well list that there are other
2 violations involved with those wells.

3 Q. And the first thing you said was reporting
4 violations?

5 A. Yes, sir.

6 Q. That some of the reports aren't up to date?

7 A. That's correct.

8 Q. Is that right?

9 A. Yes, sir.

10 Q. And I'm not familiar -- have you ever talked to
11 Mr. Burris who was formally handling these matters for
12 Southwestern?

13 A. I believe I did speak to him one time, probably
14 before the first hearing. But I don't recall what those
15 conversations involved.

16 Q. Okay. But you were in contact with him seeking
17 to get these things remedied or rather that he was in contact
18 with you -- one or the other; is that right?

19 A. At some point, yes.

20 Q. And my purpose in that is to show that there had
21 been an effort to do things at one time by him.

22 A. And I believe that was why I suggested the
23 waiving of the 6,000 penalty on the original case.

24 Q. Have you looked at the current reports?

25 A. The current reports filed by Southwestern?

1 Q. By Southwestern, yes.

2 A. I reviewed the well files this morning on the
3 three wells.

4 Q. Did you notice that Dwyane Burris is no longer on
5 the reports and Ricky L. Houston's name is on them now?

6 A. I haven't seen those reports. Like I said, the
7 last update we have is January if you are speaking of the
8 production reports. I haven't seen those.

9 Q. Did you notice who signed the January reports?

10 A. No, I didn't.

11 MR. HOUSTON: That's all the questions I have,
12 Mr. Examiner.

13 EXAMINATION

14 BY MR. JONES:

15 Q. Okay. Mr. Sanchez, what was the date that we had
16 the first hearing in this case? Wasn't it November the 1st of
17 2007?

18 A. I believe it was.

19 Q. And at that time, the hearing was held and the
20 order I notice asks Southwestern to bring this one well into
21 compliance with Rule 201. What would that -- how do you become
22 in compliance with Rule 201?

23 A. You can either put the well back into production
24 or injection, if it were an injection well. You can get it
25 properly TA'd by approval through the OCD, or you can plug it.

1 Q. Okay. So it looks like the order was issued in
2 February of '08 and the deadline was April 30th of this year to
3 come back into compliance. So there was basically six months
4 between the date of the hearing and the date -- the deadline
5 date -- to either put the well back on.

6 A. Yes.

7 Q. Now, what would be involved with temporarily
8 abandoning the well?

9 A. They would have to run a mechanical integrity
10 test on the well, have it witnessed by the OCD district office
11 and file the proper paperwork.

12 Q. So they would have to pull the rods out and the
13 tubing and put plug in and run an MIT on the well?

14 A. I'm not an expert on how MITs are run, but you
15 know, whatever the district office would have them do to
16 perform that MIT as well is what they would have had to have
17 done.

18 Q. When you have an operator in violation of
19 Rule 201, what is the most -- of those three options, what is
20 the most common option that you see them do? Well, I guess
21 there's four. Just not doing anything, right?

22 A. The fourth is not to do anything. It's been -- I
23 have seen a mix of all of them. Some have chosen to plug them.
24 Some have TA'd them and others have gone back into production.
25 It's been a pretty good mix of all of them.

1 Q. Okay. Do you think that six months was not long
2 enough for them?

3 A. I believe that was plenty of time.

4 Q. Okay. And this well is located close to Buckeye,
5 somewhere close to Buckeye?

6 A. According to Mr. Houston, yes.

7 Q. You waived the penalty. This order said there
8 was supposed to be in the event -- after the six-month period
9 that the well is not temporarily abandoned or put back on or
10 plugged, the Division be authorized to plug the well. So
11 basically, right now the Division could go out and plug the
12 well?

13 A. That's correct.

14 Q. Okay. Would you rather the Division do it or
15 would you rather Southwestern take care of the well?

16 A. I would prefer that Southwestern take care of the
17 well.

18 Q. Okay. And right now the penalty is basically
19 \$6,000, right, because of the six months deadline was not met?

20 A. That's correct.

21 Q. Okay. Can you think of any other reason why,
22 before we hear testimony from Mr. Houston's witness, about why
23 this would not have happened in six months?

24 A. All I can think of is that they were relying on
25 coming to an agreement with Yates, which Exhibit 5 shows that

1 that wasn't going to happen. And that would have still allowed
2 them more than enough time to go ahead and take care of the
3 well.

4 Q. Okay. And what was the date of the letter on
5 Exhibit 5?

6 MR. WARNELL: October 29th --

7 MR. JONES: October 29th.

8 MR. WARNELL: -- of last year.

9 MR. JONES: Okay.

10 A. And I think the letter was clear in stating that
11 Yates did not want the well, and it should be plugged by
12 Southwestern.

13 Q. (By Mr. Jones): Do you think they could have
14 been looking for somebody else to maybe take over this well?

15 A. According to Mr. Houston's statement, they were
16 still looking at speaking with Yates. So I don't see that
17 anything would have changed between now and then.

18 MR. JONES: Okay. Terry?

19 MR. WARNELL: I have one question, I guess, that
20 comes up about plugging this well. If we were to P & A this
21 well, either the State or Mr. Houston, what would the cost be?

22 THE WITNESS: The last average cost for plugging
23 wells in that area that I saw, which was last week through
24 Mr. Brooks, was about \$47,000.

25 MR. WARNELL: 47,000, and we have a bond of 7500?

1 THE WITNESS: Yes.

2 MR. WARNELL: That's all I have. Thank you.

3 MR. JONES: Thank you.

4 MS. LEACH: Just a couple of questions. You talked
5 about the other two wells that you had concerns about for
6 reporting or contamination, but there hasn't been any kind of
7 hearing on those wells, has there?

8 THE WITNESS: No.

9 MS. LEACH: Okay. Thanks.

10 MR. JONES: Okay.

11 MS. MACQUESTEN: May I ask a few followup questions?

12 MR. JONES: Sure.

13 REDIRECT EXAMINATION

14 BY MS. MACQUESTEN:

15 Q. Mr. Sanchez, the Examiner asked you some
16 questions and said that Southwestern basically had been given
17 six months to plug the well from the beginning of this process
18 until the April 30th deadline. If Southwestern had needed more
19 time, they could have asked for it, right?

20 A. Yes.

21 Q. And that provision in the order that allowed them
22 the opportunity to ask for an extension, whose idea was that?

23 A. That was mine.

24 Q. So you were willing to work with the operator if
25 they needed additional time to take action?

1 A. Yes.

2 Q. But they never asked for that additional time?

3 A. No, they did not.

4 Q. We also have some questions about all of the
5 state and federal leases that Southwestern operates. Could we
6 look at Exhibit 6? According to OCD records, are these the
7 only wells that Southwestern, Inc., is operator of record for?

8 A. Yes.

9 Q. So if Southwestern, Inc., is doing work for other
10 operators on other leases, we would not have any way of knowing
11 about that?

12 A. No. Not necessarily.

13 Q. But these are the wells that we would hold
14 Southwestern, Inc., responsible for?

15 A. Yes.

16 Q. And there are only three wells that they are
17 directly responsible for to the OCD?

18 A. That's correct.

19 Q. Mr. Houston also asked you questions about other
20 violations in the area where these wells are located and
21 suggested that there are plenty of other violators out there.

22 Is that any reason not to expect compliance from
23 Southwestern?

24 A. No.

25 Q. Is that any reason to allow an operator to

1 disregard an order that's been issued by the Division
2 examiners?

3 A. No.

4 MS. MACQUESTEN: That's all. Thank you.

5 MR. JONES: Okay. Thank you, Mr. Sanchez.

6 MR. HOUSTON: May I follow up on Mr. Sanchez?

7 MR. JONES: I'll have to ask Carol what kind of
8 questions you can follow up with.

9 MS. LEACH: Just additional questions that
10 Ms. MacQuesten had asked.

11 RE CROSS-EXAMINATION

12 BY MR. HOUSTON:

13 Q. What other violations do you have in that
14 immediate area that are up for consideration for penalties?

15 A. Off the top of my head, I can't really think.
16 But we have several operators there that we've already brought
17 to hearing. And we have several notices of violations that
18 we've issued. We've sent out letters of violation to various
19 operators in those areas. But right off the top of my head, I
20 couldn't tell you who they are or what the violations might be.
21 We have several.

22 Q. Would it be several or many?

23 A. Probably more many than several.

24 Q. That was my -- the gist of what I was trying to
25 get at. And that's what you're trying to work out. You're

1 trying to get solutions to those problems --

2 A. Yes, sir.

3 Q. -- is that right?

4 A. Yes, sir.

5 MR. HOUSTON: That's all the questions I have.

6 MR. JONES: Thank you.

7 Is the applicant finished with their case?

8 MS. MACQUESTEN: Yes. Thank you.

9 MR. HOUSTON: If I may, Mr. Examiner?

10 RICKY L. HOUSTON

11 after having been first duly sworn under oath,

12 was questioned and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. HOUSTON:

15 Q. Your name is Ricky L. Houston?

16 A. Yes.

17 Q. And you're the president of Southwestern, Inc.?

18 A. Yes, sir.

19 Q. The person who was operating Southwestern, Inc.,

20 is it not true that three years ago he died of diabetes in his

21 sleep and you were -- you came in to take over those wells --

22 A. Yes, sir.

23 Q. -- its operations?

24 A. Yes, sir.

25 Q. Are these three wells the state leases that you

1 operate?

2 A. Yes, sir.

3 Q. Are the rest of your wells federal BLM leases?

4 A. Yes, sir, they are.

5 Q. And the question was asked: Were you relying on
6 Dwayne Burris? Was he the comptroller when you came to work
7 for Southwestern, Inc.?

8 A. Yes, he was.

9 Q. And were you relying on him to handle these
10 administrative, matters?

11 A. Yes, sir, I was.

12 Q. Were you under the impression that he was
13 handling them?

14 A. Yes, sir.

15 Q. Had he represented to you that all of his reports
16 were current?

17 A. Yes, he had.

18 Q. And when he left the employ of the company, he
19 represented to you at that time that all of his reports were
20 current; is that right?

21 A. Yes, sir.

22 Q. And what did you discover after he left?

23 A. They were six months behind.

24 Q. And have you retained a new lady to start working
25 on those reports and bring them up to date?

1 A. Yes, I have.

2 Q. And what have you done? What reports have you
3 got up to date on them?

4 A. I've done the reports that you have the exhibit
5 on for the BLM for the OCD. I did not know some of the stuff
6 that's been brought up here as far as -- Dwayne didn't -- every
7 time you asked Dwayne if something was done; yes. It was done.
8 And then I found out that it's not done. It's no excuse that I
9 didn't know.

10 Q. Well, you handled the field operation; did you
11 not?.

12 A. Yes. Yes, I did.

13 Q. And he handled the reporting --

14 A. Yes.

15 Q. -- information. And is it not true that he had a
16 Bachelor's degree in business and accounting and business
17 administration from Eastern New Mexico University?

18 A. Yes, he did.

19 Q. And he had worked for CPAs?

20 A. Yes, he did.

21 Q. And for Gandy Corporation?

22 A. Yes.

23 Q. Which is a large service company?

24 A. Yes, sir.

25 Q. In handling their reports and matters of that

1 nature?

2 A. Yes, sir.

3 Q. Is it not true that he went to work for the
4 prison in Hobbs?

5 A. Yes.

6 Q. When he's in that prison environment, are you
7 able to communicate with him?

8 A. No, I'm not.

9 Q. Because he can't receive calls or anything else,
10 can he?

11 A. No, sir.

12 Q. Has he been cooperative in trying to help get any
13 of these reports done?

14 A. No.

15 Q. Were you aware of the opportunity that was
16 presented by the commission of the three choices of plugging,
17 temporary abandoning, or the other condition -- I've forgotten
18 what it was -- had he ever brought those to your attention?

19 A. No, sir, not until today.

20 Q. And have you been able to find his files on his
21 communications with Mr. Sanchez and Yates and people like that?

22 A. No, sir.

23 Q. Had he told you that he was working with Yates
24 attempting to do this?

25 A. He told me he was working with Yates. I did not

1 know -- I didn't know that Yates had turned down --

2 Q. The proposal?

3 A. You know, didn't want the well bore. I
4 understood that we were pursuing either Yates taking that well
5 or us trying to go ahead and produce that well.

6 Q. And paying Yates an override or something like
7 that?

8 A. Yes, sir.

9 Q. And were those negotiations represented by Burris
10 to be going on with Yates after the October letter that's been
11 presented here today?

12 A. Yes, sir.

13 Q. Up until during this year?

14 A. Yeah. As far as I know, every time you would ask
15 Dwayne; yes. I'm doing that.

16 Q. That he was talking to --

17 A. Yates.

18 Q. -- Yates personnel?

19 A. Yes, sir.

20 Q. Did you know who he was talking to?

21 A. No, sir. I did not. I worked in the field and I
22 stayed in the field.

23 Q. Are you prepared to plug this well if you're not
24 able to -- you do want to proceed with attempting to work out
25 something with Yates, do you not?

1 A. Yes. I'd like to produce the well if at all
2 possible. If I had the time, you know. I didn't know that I
3 had six months to either TA it or to plug it or put it in
4 production. I thought that all of that -- you know, everything
5 was being taken care of. I would like to produce that well.

6 Q. Do you think it would be an economical
7 production?

8 A. Yes, I do.

9 Q. And you would make a profit for the company and
10 for the State?

11 A. Yes, I do.

12 Q. Did you ask the commission to permit a late
13 filing of an application for additional time? Were you aware
14 there could have been an application made for additional time?

15 A. No, sir. I was not aware of it. I was not aware
16 of it. I was not.

17 Q. What -- just outline to the commission, briefly,
18 what you've done during the three years that you've been
19 operating Southwestern in the way of remedial action.

20 A. We started cleaning up the leases. They were
21 terrible. And we've done the federals, and we're just -- we've
22 started at one end of the lease and we're working to the other
23 end of the leases. And we're complying with the BLM.

24 Q. Now, when you say complying with the BLM, the
25 State also -- the OCD also has certain regulatory and

1 supervisory functions on some of those leases; does it not?

2 A. Yes.

3 Q. And not only the state leases, but also the
4 federal leases?

5 A. Yes.

6 Q. And you've worked with -- in Eddy County, you've
7 worked with the OCD personnel there?

8 A. Yes, sir.

9 Q. Have they had problems on certain leases that
10 they had leaks and were not able to solve those problems and
11 you sent our crew out and went out yourself and remedied the
12 problem?

13 A. Yes, sir. The Freece lease. I went out and
14 replaced some valves for them and cleaned up some messes for
15 them. I do have on the two Humble wells, we are in the process
16 of trying to get somebody to clean up and come in compliance on
17 the two Humbles. We've got another tank to set.

18 And all that I ask is I'm worked with in order to
19 come into compliance on those wells instead of just jumping on
20 me and, you know, not fixing it to where I'm not able to. I
21 want to come into compliance. I want to cooperate. But, you
22 know, a small operator needs time, and I want to do what I have
23 to do.

24 Q. How many wells do you operate?

25 A. Approximately 36, 37.

1 Q. And did you participate in drilling another well,
2 not Southwestern, but another entity that you're involved with
3 and participating in drilling another well?

4 A. Yes, sir.

5 Q. Where was it located?

6 A. It is just west of 222.

7 Q. Highway 222?

8 A. Yes, sir.

9 Q. There are shallow wells in that area --

10 A. Yes, sir.

11 Q. -- that you operate --

12 A. Yes, sir.

13 Q. -- on the Featherstone.

14 A. Yes, sir.

15 Q. And the well that we're talking about was drilled
16 by COG --

17 A. Yes, sir.

18 Q. -- 50 percent interest; Yates petroleum,
19 25 percent; and you a 25 percent interest?

20 A. Yes, sir.

21 Q. What's the depth of that well?

22 A. 13,500.

23 Q. And when was that well put on line?

24 A. December of '07.

25 Q. And is that a gas well mainly?

1 A. Yes, sir.

2 Q. And profitable?

3 A. Yes, sir.

4 Q. Did you clean up all leases around that that you
5 acquired that were federal leases there?

6 A. Yes, sir.

7 Q. And you put them into compliance?

8 A. Yes, sir.

9 Q. So is your testimony that you're not an
10 intentional violator of the OCD rules or BLM rules?

11 A. No, sir. I'm not. If I would have known about
12 the six-month period, I would have done something. But I
13 thought all that was being taken care of.

14 Q. You ask the commission to -- or the Division
15 to -- take that into consideration and grant permission for you
16 to file for an order to allow you additional time to comply?

17 A. Yes, I do.

18 Q. Dated back order?

19 A. Yes, sir.

20 MR. HOUSTON: That's all I have.

21 MR. JONES: Ms. MacQuesten?

22 CROSS-EXAMINATION

23 BY MS. MACQUESTEN:

24 Q. Mr. Houston?

25 A. Yes.

1 Q. Dwayne Burris, who was your comptroller, it's
2 your position that he should have taken care of this and
3 didn't?

4 A. I really have no excuse for this. It's as much
5 my fault -- well, more my fault than it is his, because I
6 should have checked his paperwork, and I didn't. I stayed out
7 in the field trying to get these wells back up into compliance.

8 And I'm not arguing the point that we don't have
9 violations. We do have violations. I know. All I'm saying is
10 I want to work with you all. I don't want you to cut my throat
11 before I have a chance to do it.

12 Q. Mr. Burris was an employee?

13 A. Yes.

14 Q. How many employees does Southwestern, Inc., have?

15 A. There is four of us that go in the field that
16 stay in the field. There's one that stays in the shop and then
17 Dwyane -- was Dwayne. I'm sorry.

18 Q. When did Dwayne Burris leave?

19 MR. HOUSTON: March the 1st, I believe.

20 Q. (By Ms. MacQuesten): So you have four field
21 people and one person in the office and then you had Dwyane at
22 one point?

23 A. Well, Dwyane was in the office. He did that
24 part. I did as much as I could at night. And then go out in
25 the field and work out in the field.

1 Q. Okay. Now, we've heard talk about other leases
2 and federal leases. Are those leases that you work under
3 contract for other operators?

4 A. I don't understand what you're asking. I -- do I
5 operate them for other people that own them?

6 Q. Right. I'm asking because we only show you as
7 operator of record for three wells. I'm trying to figure out
8 how you are involved in these other wells.

9 MR. HOUSTON: If I may assist, that calls for a legal
10 conclusion. There are wells that are owned by different
11 entities that we operate. And I say "we" because I'm involved.
12 But I don't think -- he's not aware of the paperwork and
13 doesn't work on the paperwork on those wells, on any of the
14 wells -- or until Mr. Burris left.

15 Q. (By Ms. MacQuesten): Are you compensated by the
16 other operators for operating these wells?

17 A. Yes. No, I am not.

18 Q. You just get your share of the production, or how
19 does it work?

20 A. Yes.

21 Q. So you have some interest in these wells, but
22 you're not the operator of record for them?

23 A. Yes, ma'am.

24 Q. As I understand it, you weren't aware of the --
25 were you aware of the order that was issued in this case in

1 February -- the first case?

2 A. No.

3 Q. Were you aware that there was a hearing held and
4 an application filed for compliance?

5 A. I was not aware of any of the paperwork on it.
6 On this -- Dwyane was handling this -- supposedly handling
7 this.

8 Q. Okay. But did you know that an application for a
9 compliance order was filed last fall? Did you know anything
10 about that?

11 A. No, ma'am.

12 Q. And you didn't know that there was a hearing
13 conducted on that application?

14 A. I did not know. Dwyane -- like I say, Dwyane was
15 handling this. If -- you know, if Dwayne -- there was a lot of
16 times Dwyane would give me a piece of paper and say, "Sign
17 this. I'm taking care of this."

18 And I did not know -- and like I'm saying, I don't
19 want to shirk my responsibility. I'm responsible for it. I'm
20 not saying I'm not.

21 Q. Okay.

22 A. If you're trying to say that I'm trying to keep
23 from doing something, I will do whatever it takes.

24 Q. So you weren't aware that there was a compliance
25 application filed. You weren't aware that there was a hearing

1 held. Did you become aware of it when the order was issued?

2 Did you know about the order?

3 A. I become aware of it when I got this -- what you
4 all have just shown me, that it was not being taken care of, or
5 had not been taken care of.

6 Q. So that would have been a month or so ago maybe?

7 A. Yes.

8 Q. A few weeks ago?

9 A. Yes.

10 Q. But until then you didn't know anything about
11 this?

12 A. Not really.

13 Q. And you're the president of the company that has
14 five employees?

15 A. Yes.

16 Q. And you didn't know that there was a compliance
17 action and an order against you?

18 A. I did not know because I did not -- I stayed out
19 in the field. I do all of the field work. I do all of the
20 field work, and I let Dwyane do the paperwork.

21 Q. Now, Mr. Glen Houston is your attorney; is that
22 right?

23 A. Yes.

24 Q. And he was your attorney in that original action,
25 also, right?

1 A. I hadn't needed an attorney up until now.

2 Q. Okay. But you have seen --

3 A. I did not know that I needed an attorney until
4 now, until this.

5 Q. Okay. Now, Mr. Glen Houston, is he related to
6 you?

7 A. Yes.

8 Q. How?

9 A. He's my uncle.

10 Q. Okay. And the address that we have for
11 Southwestern Inc., is 1304 West Broadway Place?

12 A. Yes, ma'am.

13 Q. And isn't that also Mr. Glen Houston's address as
14 an attorney?

15 A. Yes, it is.

16 Q. And your uncle, who represented Southwestern in
17 the first case did not tell you that an order had been issued?

18 A. Now, wait a minute. Wait a minute. I don't know
19 if he -- if he represented -- this is the first time that I've
20 needed a lawyer, as far as I know -- is what I'm saying. I did
21 not know if he represented -- are you saying that he
22 represented us in the first case?

23 Q. Well --

24 A. Yes or no?

25 Q. Yes, I am. Because we have an Exhibit No. 4 an

1 entry of appearance that he filed in that first case that has
2 already been admitted into evidence.

3 A. When was this? What was the date on it?

4 Q. Well, you can take a look at Exhibit No. 4. It's
5 misdated in 2006 before this case was even brought, but it was
6 filed to get a continuance for a case that was scheduled for --

7 A. Okay. I was aware of that because we were
8 trying -- you all were trying to take the well away from us.

9 Q. Okay. So you were aware of that.

10 A. And we were trying to save the well.

11 Q. Okay. So you were aware last fall that there was
12 a problem with this well and that the State was taking some
13 action against you?

14 A. Yeah. But I understood that it had been taken
15 care of by Dwayne Burris. Everything was being taken care of.
16 And then I get all of this and I know nothing about it. As far
17 as it not being taken care of and stuff done that was supposed
18 to be done.

19 You know, I'm not saying that there isn't violations.
20 What I'm saying is don't cut my throat because I didn't know.
21 I'm not trying to be smart with you or anything. I'm trying to
22 work with you. I'm one of the few people out there that do as
23 far as little operators go. If I have a problem, you know, I
24 work with you to correct it. And I'll try to correct it
25 before, you know, you even find any problems and tell you.

1 Q. Are you aware that the well that we're trying to
2 get action on today, the State VC No. 2 has been inactive since
3 2002?

4 A. No. I didn't know -- no.

5 Q. Well, now you've been the field person for three
6 years now, right?

7 A. Yeah.

8 Q. And only have three well, and you would have been
9 aware that one of those wells had been inactive for those three
10 years.

11 A. Yeah. As far as -- okay. I'm aware of it. But
12 like I say, I thought everything was being taken care of. I
13 did not handle the paperwork on some of this stuff. I know
14 it's no excuse. I'm not trying to get out of my
15 responsibilities or anything. All I'm trying to do is work
16 with you right now and try to make -- try to get a solution to
17 this problem and not make it any worse than it is.

18 Q. Mr. Houston, you testified about doing some work
19 on the Humble State Well. Are you aware of the letter of
20 violation --

21 A. Yes. I am aware of the letter of violation. I'm
22 aware that I have to take care of it. I'm aware that I'm going
23 to do it. I've already filed part of the paperwork. I'm
24 fixing to file the rest of it and ask for an extension. I'm
25 going to go ahead and clean both the No. 1 and No. 2 and

1 come into -- do whatever you all want done to it.

2 Q. Do you remember that that letter of violation was
3 issued back in April of this year?

4 A. Uh-huh.

5 Q. And that the letter of violation required the
6 action to be taken by April 29th?

7 A. Yes, I am. But it takes time to do something,
8 doesn't it?

9 Q. Well, let's just look at how long it's taken to
10 get action on the State VC No. 1.

11 A. I was not aware of the State CV No. 1. I'm aware
12 of the Humble No. 1. There's a lot of difference.

13 Q. Well, now wait a minute. We just spent a lot of
14 time going through --

15 MR. HOUSTON: I'm going to object to cutting off the
16 witness and not allowing him to answer.

17 A. I'm aware of the problems with the Humble No. 1.
18 I was not aware with the problems of the State CV. I'm not
19 arguing the point that I need to do some stuff. But I, you
20 know -- it will be done. Every -- you know, the BLM in
21 Carlsbad has always worked with me, and I've always done what
22 they've asked. And that's all I'm asking right now, you know,
23 to work with me, and I will do it. I'm not saying that I won't
24 do it. I'm saying I would do whatever I have to do to the
25 State VC. I'm just saying that you work with me, I will do

1 what has to be done. If you don't -- you don't work with me,
2 I'll still do what has to be done.

3 Q. You were made aware of this action, though?

4 A. Yes. Which action? Which action are we talking
5 about?

6 Q. This case that we're here on today, the
7 application that was filed --

8 A. Yeah. I was aware of it when I saw this
9 paperwork that I just got.

10 Q. And were you aware that the order was asking you
11 to update your financial assurance for the State VC No. 1?

12 A. Yes.

13 Q. And have you done that?

14 A. No, I have not done that.

15 Q. Why not?

16 A. If you're going to take the well and plug it, why
17 should I?

18 Q. Are you aware that the operator remains
19 responsible for the costs of plugging the well?

20 A. Yes, I'm responsible for it. I am responsible
21 for it. I don't deny that. You keep trying to say that I'm
22 denying that I have responsibilities. I'm not denying I have
23 the responsibility. I've never walked away from something that
24 I was responsible for. And, you know, I'll do what I've got to
25 do. I've been trying to tell you that. And you keep arguing

1 that I won't do it.

2 Q. Have you put any procedures in place with your
3 company so that you are aware of compliance actions that are
4 taken or orders that are issued against you?

5 A. Yes, yes.

6 Q. And what is that?

7 A. I've come out of the field in order to look at
8 this and try to straighten this out. And I'm going -- I'm
9 trying to do all the reports. I've hired another girl to do
10 some other stuff in the office -- that comes in and she takes
11 care of the payroll part. And I'm looking at everything I get
12 from the BLM and the OCD now.

13 And if you'll look at the reports that you all have,
14 my name is on -- I think starting six months back I had to go
15 back and catch up -- and I'm still trying to catch things up to
16 make you all happy.

17 And like I say, all I'm asking is just time. You
18 help me, and I'll do everything I can. And I've done it in the
19 past.

20 Q. Getting back to the financial assurance, is it
21 your position you are not going to post it?

22 A. Yes. I will have to post it.

23 Q. Okay.

24 A. I will have to. That's my responsibility.

25 Q. Okay.

1 A. My responsibility is if I have to plug the well,
2 I'll plug it. But if there is any way you all can work with me
3 in order to produce this well, I would rather make money with
4 you if I possibly could.

5 MS. MACQUESTEN: Okay. I don't have any other
6 questions. Thank you.

7 MR. JONES: Okay.

8 MR. HOUSTON: May I ask a question in response to her
9 questions?

10 MS. LEACH: Sure.

11 MR. HOUSTON: Did you know until today what the
12 amount requested for additional financial responsibility was?

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

14 MR. HOUSTON: And were you aware -- do you know where
15 these exhibits that were produced today are in Mr. Burris'
16 records?

17 THE WITNESS: No.

18 MR. HOUSTON: You did not know about these until
19 today?

20 THE WITNESS: No. I did not.

21 MR. HOUSTON: And for the record, I might add that I
22 filed an entry of appearance in that request for extension
23 pursuant to Mr. Burris' request as the attorney. Mr. Burris
24 never brought any of this to my attention again, and we've been
25 trying to catch up with --

1 MS. LEACH: Do you want to be sworn as a witness?

2 MR. HOUSTON: I listed myself as a witness.

3 MS. LEACH: Okay. Why don't you make those
4 statements in a witness capacity after we're through with this.

5 MR. HOUSTON: All right. That's all.

6 EXAMINATION

7 BY MR. JONES:

8 Q. Okay. First of all, Mr. Houston -- I guess both
9 of you Mr. Houstons, I do appreciate you coming up here,
10 because sometimes nobody shows up, and they don't come up here.
11 And if they do, they don't even show up with an attorney. So
12 we do appreciate that.

13 But the scope of this application that we're looking
14 at here, the way I read it is all we're trying to do is make
15 sure that the well was not brought into compliance by April 30.

16 A. Well, I'm not -- I'm not denying it. I was not
17 aware of all of this and I apologize for it. It's my
18 responsibility. I should have made him show me everything.
19 But if you do not know that you've even got it, then -- you
20 know, it's no excuse. It's no excuse. It's my responsibility.
21 I understand. I'm not denying it.

22 Q. Well --

23 A. I will do whatever I've got to do to come into
24 compliance. And I just ask please work with me, and I'll do
25 it.

1 Q. Well, you've got an attorney and he can read you
2 the application that is -- but basically, Mr. Sanchez has
3 testified that the well was -- that nothing else has happened
4 to the well as of April 30th. In other words, it's still
5 inactive. Is that your testimony?

6 A. Yes, sir. Yes, sir, it is.

7 Q. Okay.

8 A. I do not deny that, but I have bought a new pump
9 for it. I bought a new tension packer for it, new seat
10 nipple -- just stuff that I needed to where if I could pull it,
11 I could put it back into production.

12 Q. So what's the status -- what's on the well right
13 now? Does it have tubing and casing and packer?

14 A. Yeah. It's got tension packer. It's got the pump
15 and the rods --

16 Q. Okay.

17 A. -- the pumping unit and everything.

18 Q. What zone is it produced from?

19 A. Abo.

20 Q. Okay. Is it -- when did it go on line?

21 A. I'd have to look at the records when it was put
22 on line.

23 Q. Was it a long time ago? Did you guys buy the
24 well from someone else or did you drill it?

25 MR. HOUSTON: The well was actually drilled by

1 Southwestern, Inc., but the owners of it at that time were
2 different people. But it was drilled by Southwestern, Inc., I
3 believe.

4 MR. JONES: Okay. And you ended up buying the well?

5 MR. HOUSTON: No. The corporation.

6 Q. (By Mr. Jones): Okay. Well, as far as what --
7 what is it capable of producing if you got it back on?

8 A. I did not look at the production reports before I
9 came. I know it does make gas and I know it will produce, you
10 know, some oil.

11 Q. Is the gas -- is there a gas line hooked up to
12 it?

13 A. Yes, there is. It was hooked into the gas line
14 before. So I'm assuming that it can be hooked back in.

15 Q. But if it hadn't been produced since 2002 and the
16 prices have changed quite a bit since then, why hasn't it been
17 hooked up since then? Or why hasn't--

18 A. Well, what I understood -- well, the well was
19 worked over several times between the time that I came and
20 2002. They didn't know what they were doing. They pulled --
21 they run pumps in the hole, but if it's not the pump, it's got
22 to be the tubing. The tubing's got a hole in it.

23 I bought 3,000 foot of 2 7/8 tubing. And, you
24 know -- I've just been accumulating stuff. They didn't know
25 what they were doing.

1 Q. Why was Yates interested in it?

2 A. Why did Yates buy the lease?

3 Q. Oh, they bought the lease?

4 A. They bought the lease.

5 Q. That the well is on?

6 A. Uh-huh.

7 Q. That covers that zone that the well is completed
8 in?

9 A. My understanding is they bought the lease, the
10 whole lease. Dwayne said that we would be able -- Dwayne said
11 we would be able to put the lease up for sale because you all
12 had said -- the way I understood, you all had taken the lease
13 away from us. Because the well hadn't been, you know, anything
14 done prior from 2002 until I came in, and that you all had
15 taken the lease.

16 Well, that was wrong because they had had rigs out
17 there to pull that well, and they run pumps in the well. But
18 they just did not pull the tubing on it to find the hole in the
19 tubing. And we were supposedly -- somebody told him \$5,000 and
20 we could buy it back if we put it up for sale. I wanted the
21 well. Because looking at the production back then -- I forget
22 what it was, what it is now -- but it would be profitable.
23 Yates bid \$90,000 on it, and I couldn't do that at that time.

24 Q. So you don't own the rights to the production
25 anymore; you just own the well?

1 A. I own the well itself.

2 Q. Okay.

3 A. And what I wanted to do is -- I thought what was
4 happening was to partner with Yates to operate it, produce it
5 and let Yates get a percentage of the profit out of the well.

6 Q. So you sold the minerals, control of the
7 minerals, but you didn't sell the well at the same time?

8 A. I did not know what he did, to tell you the
9 honest to God truth.

10 Q. Okay.

11 A. You know, I wish I did know. You know,
12 Ms. MacQuesten, if she knows, I'd like to know what's going on.

13 Q. But you know the well. I mean, you drop by there
14 all the time.

15 A. I know where the well is. Yes. I go by it. I
16 know where it is, what's on it. I've had the tubing anchors
17 tested and I had tubing out there. And, you know,
18 everything -- and then I was stopped and told that I couldn't
19 do it. I could not work it over without getting permission
20 from Yates to do whatever I wanted to do.

21 Q. Okay. But you still have the -- you own the
22 well, but you also have the liability of the well?

23 A. Yes. Yes, sir.

24 Q. Okay.

25 A. I don't deny that. I have the liability.

1 MR. JONES: Okay. Terry?

2 MR. WARNELL: Yeah. I've got a few questions, I
3 think.

4 EXAMINATION

5 BY MR. WARNELL:

6 Q. Mr. Houston, how long have you been in the oil
7 business?

8 A. How long have I worked for oil companies? Since
9 I was 18 years old. I'm 56 years old the 16th of this month.
10 My grandad was a production engineer for Burt Fields, Jr. When
11 I was able to go with him, that's when I started.

12 Q. And you testified that three years ago you became
13 president of Southwestern?

14 A. Yes, sir.

15 Q. Give or take about three years ago?

16 A. Yes, sir. Yes, sir.

17 Q. Prior to becoming president, what was your job?

18 A. I worked for a company called Burk Royalty out of
19 Wichita Falls. My territory -- I worked over -- I was company
20 man on location. My territory stretched from Marathon Road
21 west of Hobbs, New Mexico, to Kilgore to Sealy, Oklahoma to
22 Seguin south of San Antone and everywhere in between. Wherever
23 I was needed, that's where I went, and I stayed until I was
24 done.

25 Q. So then you didn't really become an employee of

1 Southwestern until three years ago when you became president?

2 A. Yes, sir.

3 Q. How did your day-to-day life change at that time
4 when you went from working for -- did you say Burke?

5 A. Yeah, Burke Royalties.

6 Q. Burke Royalties to being president for
7 Southwestern?

8 A. I worked a lot harder for Southwestern than I did
9 for Burke because I run a rig for Southwestern. I lay flow
10 lines. I do whatever it takes to keep the wells going. I move
11 tanks, run a winch truck. With Burke, I didn't have to do all
12 that. I could point and say, you know, I need this done, this
13 done. But now I work harder now. And I enjoy it.

14 Q. So you're a hands on guy that enjoys working in
15 the field?

16 A. Yes.

17 Q. Had you ever prior to today seen Exhibit No. 5,
18 the letter here from Yates?

19 A. Yes. I saw that. I glanced at that letter, but
20 there's supposed to have been another letter written asking
21 them permission for us to -- that's the letter that states that
22 Yates doesn't want the well?

23 Q. Yes, sir.

24 MR. HOUSTON: When did you see it, was his question.

25 A. When did I see it? I can't give you a date on

1 it. I'm sorry. I'm sorry. Because --

2 Q. (By Mr. Warnell): But you had read the letter?

3 A. Yes. They did not want to buy the well. My
4 understanding there would be another letter going out asking
5 them if we could go ahead and fix the well and operate the well
6 and they share in the profits. But I don't even know if that
7 was done now. Because I cannot find any of that.

8 Q. This letter is from a landman with Yates, Robert
9 Bullock. Do you know a Mr. Bullock?

10 A. No, sir.

11 Q. He states in his letter that the well bore has
12 been evaluated by a Yates completion engineer, and Yates must
13 respectfully decline your offer to take the well bore.

14 A. Uh-huh.

15 Q. So that Yates engineer feels that it's not --

16 A. It's not profitable for Yates to operate it, but
17 their lifting cost is way more than mine. I would have to have
18 a different rig than the one I have over the well. But my
19 costs for operating is not near what Yates is. That's just
20 like Burke Royalty. Anything under seven barrels a day they
21 would plug. And, you know, two to three barrels a day, I can
22 operate where Yates -- I don't know what their operating cost
23 is.

24 Q. You went on to testify, Mr. Houston, that you
25 were 25 percent partner in a recently drilled COG well?

1 A. Yes, sir.

2 Q. And Yates was also a 25 percent partner?

3 A. Yes, sir.

4 Q. So you spent some time on the well with Yates
5 people or --

6 A. No. Yates people never came out. I would go by
7 the well on the way to the Featherstone and stop and talk to
8 the company man on location COG, Concho Oil and Gas, and I
9 would talk to the mud man.

10 MR. WARNELL: I have no further questions. Thank
11 you, Mr. Houston.

12 THE WITNESS: Thank you. Like I say, I'm sorry for
13 all of this, and I just want to get it right. And I'm not
14 trying to say, you know, I'm not trying to shirk my
15 responsibility.

16 EXAMINATION

17 BY MS. LEACH:

18 Q. I have a couple of questions for you. You became
19 the president of Southwestern three years ago; is that correct?

20 A. Yes, ma'am.

21 Q. And if I understood your attorney correctly, that
22 was at the time that there was a purchase of Southwestern from
23 someone else?

24 A. Southwestern --

25 MR. HOUSTON: May I answer that question?

1 MS. LEACH: No. We'll come to you when you testify,
2 okay?

3 MR. HOUSTON: Those are legal questions he is not
4 aware of.

5 Q. (By Ms. Leach): Other than Southwestern, do you
6 own stock in this company?

7 A. I work for the company.

8 Q. You work. So you're an employee.

9 A. Yes.

10 Q. Do you know who the owners of the company are?

11 A. Um -- you'll have to ask my attorney.

12 Q. Okay. Is he one of the owners of the company?
13 You keep looking at him.

14 A. You're asking me legal questions I do not know.
15 I'm not going to deny, I do not know the legal --

16 Q. Who do you report to?

17 A. As president, who I do report to? I report to
18 myself. I do what has to be done in order --

19 Q. Is there a board of directors of the company?

20 A. Yes, there is. There is a secretary -- there was
21 a secretary. Dwyane was one of them.

22 Q. Who's the secretary now?

23 A. There is none.

24 Q. Okay. Are there any officers besides you in the
25 company?

1 A. No. Not at this time.

2 Q. And someone must own this company, but you have
3 no idea who that is?

4 A. You're asking legal questions that --

5 Q. No. I'm really trying to find out who you report
6 to. If you have to make a decision on whether to spend a
7 substantial sum of money, who do you talk that over with?

8 A. I spend what I have to spend.

9 Q. Unlimited amount of money?

10 A. No. There is a limit.

11 Q. Who sets the limit?

12 A. Who sets the limit? I set the limit.

13 Q. Okay.

14 A. I pay my bills, take care of my financial
15 responsibilities, and pay everybody's salary, pay my salary,
16 and do what I'm supposed to do.

17 Q. Is there --

18 A. But you asked me legal questions I'm not sure
19 about. I'm not going to deny, and I'm not trying to -- what
20 would you -- I'm not trying to deny my responsibilities.

21 Q. If I understood correctly, Southwestern operates
22 in the same office as does your attorney, Mr. Houston; is that
23 correct?

24 A. In the same building.

25 Q. In the same building? You have a different

1 office number or office suite?

2 A. I have a different office.

3 Q. You have a different office?

4 A. Yes. In the same buildings.

5 Q. Are there office numbers or letters or anything
6 to distinguish between one office and another?

7 A. You're saying if I have a number on my door?

8 Q. Yes.

9 A. No, I don't.

10 Q. Does it have a common entrance with Mr. Houston,
11 the attorney?

12 A. There's two entrances. There are three
13 entrances. He has his own door from the outside in. I come in
14 a back door to my office because I -- you know, I do not come
15 in the front door. Now, I may unlock the front door for them,
16 but I will come in the back door.

17 Q. Who's in the Southwestern office besides you?

18 A. I have a girl that comes in now and does all the
19 taxes and everything that weren't being done before Dwyane
20 left.

21 Q. And how much of the time of a day does she spend
22 there?

23 A. She'll spend four hours.

24 Q. Four hours every weekday?

25 A. Twice a week.

1 Q. Twice a week. Okay. Is there anyone else in the
2 office for Southwestern?

3 A. No.

4 Q. Who answers the phone if someone calls there?

5 A. We have a common person in front that does. She
6 will answer the phone if there is -- I have a cell phone.
7 Everybody has my cell number; the OCD and the BLM have my cell
8 number.

9 Q. But if someone calls the land line at that office
10 and you're not there, someone up front answers that phone; is
11 that correct?

12 A. Yes.

13 Q. And that's a common employee of --

14 A. Southwestern.

15 Q. Of Southwestern and who else?

16 A. Glen Houston.

17 Q. So you share at least one employee?

18 A. Yeah, I share her. I share the CPA now -- share
19 now, too. But I pay for time and he pays for his time.

20 Q. Is mail delivered to that office?

21 A. Yes.

22 Q. And who opens the mail regularly?

23 A. Any mail that goes to Southwestern now comes to
24 me.

25 Q. Is it open when it comes to you?

1 A. No, it's not. It's my mail. They do not open
2 it. Before Dwyane got the mail, and half the time I never saw
3 the mail. I never saw any of the bills, either, until now.

4 Q. I'm sorry. I didn't mean to cut you off.

5 A. I'm sorry, too. But I did not see any of the
6 bills until now. I take care of the bills too. I'm trying to
7 go out in the field three, four days a week and spend one day
8 in the office and look at everything. If I have to work
9 Saturday, that's just my job. I've done it for years anyway,
10 so why change now?

11 Q. Okay. A while ago I think I heard your attorney
12 say something about "we" operate Southwestern, indicating he
13 had some sort of interest. Do you remember that statement he
14 made?

15 A. No, I don't.

16 Q. Does he have an interest in Southwestern?

17 A. He helps me, yes.

18 Q. He helps you?

19 A. Yes.

20 Q. Because he's your relative?

21 A. Yes.

22 Q. Does he receive a financial benefit from
23 Southwestern?

24 A. No.

25 Q. You don't pay him anything?

1 A. No.

2 Q. And he doesn't own stock and participate in the
3 profits?

4 A. No.

5 Q. So who gets the profits from Southwestern?

6 A. Right now there is no profits because we're
7 putting everything right back into it.

8 Q. If there were a profit, who would get that?

9 A. Assuming if there was a profit, I would benefit
10 from it. I do not benefit from anything from COG except for my
11 salary on that well. Everything goes back into the company.
12 Everything that we can put back into it, goes back into it.

13 Q. Do you sign the tax returns for Southwestern?

14 A. Now I do.

15 Q. Do you know what kind of tax form you file?

16 A. No, ma'am, I do not. That's the reason I have a
17 CPA now. Dwyane was supposed to be doing it and he was not
18 doing it.

19 Q. Okay. We'll wait for the rest of the answers
20 when your attorney testifies. Thank you.

21 A. Thank you.

22 MR. JONES: Okay. Thank you, Mr. Houston. Mr. Glen
23 Houston, would you please come to the other table? Let's take
24 a break first.

25 [Recess taken from 9:59 a.m. to 10:12 a.m., and

1 testimony continued as follows:]

2 MR. JONES: Let's go back on the record this morning.
3 Mr. Glen Houston, would you please stand and state your name
4 and be sworn?

5 GLEN HOUSTON

6 after having been first duly sworn under oath,
7 was questioned and testified as follows:

8 MS. LEACH: Mr. Houston.

9 MR. HOUSTON: If I may make a brief statement?

10 MS. LEACH: Sure.

11 MR. HOUSTON: As I said in my opening remarks -- and
12 what I was trying to do is set the stage that we don't look on
13 this as an adversary proceeding. And I realize that Ms.
14 MacQuesten and I make our living fighting, but I'm not here in
15 that capacity. This is an administrative hearing and
16 Southwestern is not coming in here to fight the OCD or anything
17 else, but rather trying to work out a problem.

18 Southwestern was started in -- as I understand it --
19 and I don't have personal knowledge of this, but historical
20 knowledge -- in 1957 by an oil man from Lovington. And this
21 particular lease, I understand, was drilled by him, you know,
22 many years ago. And I don't know exactly when.

23 MR. JONES: Do you know his name?

24 THE WITNESS: Yes. His name was Cone, Gordon Cone,
25 C-o-n-e. And Gordon Cone was a lawyer. By way of interest, he

1 got a job when he graduated from the University of Texas Law
2 School which he worked his way through delivering papers in
3 Amarillo as a prosecutor, except that because of their budget,
4 he didn't get to go to work until the next fiscal year. So he,
5 trying to make some money, went out and did land work. And
6 there was work going on in Lea County, so he went to Lea County
7 and he started doing land work there, and recognized an
8 opportunity.

9 He organized an abstract company and he called it
10 Lovington Abstract Company. And then he watched what the
11 landman did, the books they were working on and established a
12 rapport with them. And then he started buying leases. When he
13 died, he was probably the richest man in Lea County.

14 In addition to owning Lovington Abstract Company, he
15 owned all sorts of things. When I got through law school and
16 through the service, I was appointed guardian ad litem for some
17 orphans. Their father had been killed in a plane crash and
18 they owned ranches.

19 And one of the local wealthy people in Lovington who
20 owned the insurance agency was the guardian of these children,
21 and he wanted to make a lease to H.L. Hunt, an oil and gas
22 lease of their property. And the district judge had known me
23 since I was a kid. He had appointed me guardian ad litem for
24 that lease. And not knowing any better, I thought a guardian
25 ad litem was supposed to make an independent evaluation and

1 make an honest complete report. I wasn't aware at that time
2 that what a guardian ad litem was supposed to do was kiss the
3 deal and draw \$50 and shut up.

4 And I talked to J. High Moore, who was a geologist in
5 Hobbs, an independent geologist, super rich, Roy G. Bartman,
6 independent oil man, and Gordon Cone, because I had been told
7 that these people knew more about it than anyone else. They
8 didn't think H.R. Hunt was offering a good price, and I
9 reported that to the judge. The guardian and Mr. Brown, his
10 attorney from Roswell, informed the judge that I didn't know
11 what I was doing. That I was, you know, new in the game and
12 the guardian said I have leased my land adjoining this ranch to
13 H.L. Hunt and, you know, so this is a good deal because this is
14 what I got.

15 And the judge said, "Mr. Houston, what do you base
16 your opinion on?"

17 And I told him those three people. And he said,
18 "Well, Gordon Cone's office is Lovington Abstract Company
19 across the street. We'll get him to come over here and we'll
20 just ask him what he thinks."

21 And I remember -- this was in the late '50s. He came
22 over in shirt sleeves and said, "Hello, Judge."

23 And the judge said, "Hello, Gordon."

24 I didn't know it but Gordon Cone had rented the
25 judge's house in Lovington, so they knew each other very, very

1 well, because the judge had moved to Hobbs.

2 And he said, "No. I don't think that's a fair price.
3 The lease is worth more than that, and H.L. is just trying to
4 take advantage."

5 So the judge thanked him and he left. And the judge
6 said, "Well, I'm not going to approve the lease."

7 And the guardian said, "What are you going to do if
8 H.L. Hunt drills on my land and drains these minors."

9 And the judge says, "You have a lot of money in these
10 minors' accounts. You'll just have to drill your own well and
11 stop the drainage."

12 And so -- this shows the kind of vindictive person I
13 am, after the guardian had ridiculed me in front of the judge,
14 I dropped by the clerk's office and checked the bond and sure
15 enough the guardian had written his own bond and collected the
16 commission off of it. And I brought that to the judge's
17 attention and the judge gave the guardian an option of
18 refunding the bond to the children or withdrawing his guardian.
19 That didn't set a good taste.

20 Several months later, six months later maybe, the
21 judge called me on a Saturday and says, "Glen, can you run by
22 my house?"

23 And I said, "Yes." So I went by the district judge's
24 house and there sat the guardian and his attorney. And it
25 turned out that Mr. Hunt was willing to double his bonus and

1 increase his royalties substantially and the judge says, "What
2 do you have to say about that now, Mr. Houston?"

3 And I said, "I think that's fair."

4 And Ms. MacQuesten will appreciate this. The judge
5 says, "What do you want in the way of a fee?"

6 I said, "I think \$750."

7 And the standard fee was \$50 for a guardian ad litem.
8 The guardian just exploded. He said, "\$50 is all we ever pay
9 any guardian ad litem."

10 And the judge said, "He has gotten these children
11 several thousand dollars as a result of his work compared with
12 what you were doing. I would have allowed him \$1,500 if he had
13 wanted it."

14 That was my first acquaintance with Gordon Cone and
15 Southwestern, Inc. Later on I had heard about the north slope.
16 I went by Gordon Cone's office and told him I've heard about
17 the north slope, but I don't know anything about it. What's
18 the deal? And he pulls out maps and he's bidding on federal
19 leases on the north slope. So Gordon Cone wasn't a genuine oil
20 operator and a person who was interested.

21 This property, this corporation -- Gordon Cone died.
22 The children split up. The corporation was acquired. The
23 person who was working on it, I was doing the legal work for
24 him. And he then operated the company and he had diabetes and
25 he died in his sleep. And before that I had taken him to

1 Abilene to meet Ricky because his health was impaired and he
2 needed help and I was recommending Ricky.

3 And I'm not sure, I think Ricky had come out on
4 weekends maybe and helped. I'm not sure if it was immediately
5 after he died or right before he died. But he died in his
6 sleep. Then after he died, there was a period of time when the
7 thing lay dormant. This well was -- the operation of it was
8 they were working on the well and had hired different oil
9 service companies that had -- this well requires a large rig,
10 what we call a double-triple in the oil fields because of the
11 depth.

12 I wasn't aware of what was done or anything else.
13 But what Ricky says here is obviously true. It never was --
14 they weren't able to produce it. And I didn't know why they
15 couldn't produce it and wasn't involved in any of that, because
16 I work on paperwork, not on other things, not on operations.

17 At any rate, Ricky is the ultimate beneficiary of
18 Southwestern, Inc., and is the person that will receive the --
19 does receive the benefit, although there are no profits because
20 everything is poured back into the operations.

21 The -- Dwyane Burris, as I stated earlier, was a
22 graduate of Eastern New Mexico University in accounting. Has
23 worked for CPAs. Does not have his CPA certificate, but worked
24 for Dandy Corporation, which is one of the largest -- larger,
25 not largest -- locally owned well servicing support companies

1 in our area. And you may be aware that Dandy is one of the
2 partners in the proposed atomic waste disposal project in
3 Chaves County and a significant operator. And he was a part of
4 their staff of bookkeeping and -- in other words, came highly
5 recommended and well qualified.

6 He had represented in the things that he was doing
7 for me that he was keeping everything up to date. I know that
8 represented to Ricky that he was keeping all of his reports up
9 to date. When he quit and went to work for the correctional
10 facility, he represented that he had everything up to date. He
11 didn't have anything up to date.

12 And, of course, you know, as Harry Truman says -- you
13 know, the buck stops in the wrong place, but that doesn't alter
14 the fact that you have to hire people that do things. I didn't
15 remember this -- signing this application for an extension of
16 time. And this would have been prepared by Burris. And I do
17 that sort of thing, you know, ask for the time.

18 My understanding was listening to what was just being
19 said that he was negotiating. I know that he -- it was
20 represented to him later, I found out, that if he would
21 surrender the lease, the state lease, that then he could --

22 MS. MACQUESTEN: Objection. We're getting complete
23 hearsay here.

24 THE WITNESS: As I understand it, hearsay is
25 admissible in administrative hearings.

1 MS. LEACH: It is admissible, but you can't base a
2 decision based on nothing but hearsay.

3 THE WITNESS: I'm not asking you to. This is
4 background information.

5 His statement was that someone in the state
6 represented -- and I assume there's a minimum bid, is what I
7 would assume, of \$5,000. Well, I'm aware that it's the high
8 bidder, not the minimum bid that buys it.

9 MS. LEACH: Mr. Houston, you need to know we have
10 nothing to do with state leases.

11 THE WITNESS: I know that. I'm just telling you what
12 happened.

13 MS. LEACH: I think maybe it would be helpful if you
14 move on down to the points related to this case and the
15 predecessor case.

16 THE WITNESS: In that connection, Yates bought the
17 lease; acquired all of the rights to the lease. And your
18 question, Mr. Examiner, was in my opinion, Southwestern does
19 not own this hole. Yates owns this hole. Because Yates is the
20 owner of the lease, and that's from the mineral interests that
21 the State of New Mexico owned from the grant from the
22 establishment of the State when the federal government assigned
23 certain interests to the State.

24 MS. LEACH: Is that your legal opinion?

25 THE WITNESS: Yes.

1 MS. LEACH: Okay. Right now you're supposed to be
2 testifying about facts.

3 THE WITNESS: I think these are facts.

4 MS. LEACH: Legal opinions are not facts.

5 THE WITNESS: I am aware that the United States of
6 America granted to the State of New Mexico approximately one
7 third of the State of New Mexico, and --

8 MS. LEACH: Mr. Houston, you're also stating things
9 like Yates owns the hole, and that kind of thing. And that's
10 your legal opinion, which you clearly said was opinion, and
11 you've not been qualified as an expert to offer opinion
12 testimony.

13 So you're testifying in a very unusual situation
14 where you're the attorney and the witness, which is not
15 something that should be happening here. As you well know,
16 that's not a particularly appropriate way to do business as a
17 lawyer. So I wish you would try to stick to the facts, please.

18 THE WITNESS: It is acceptable under the rules of
19 ethics that a lawyer can be a witness if he has knowledge that
20 is helpful. And I listed myself as a witness, because I know
21 for a fact that Dwyane Burris was negotiating with Yates to
22 take over -- to re-enter this hole and work on this and get it
23 on. And that was after the October date. I was not aware of
24 the Yates letter of October, but I knew that Yates had
25 originally had said -- but I thought it was orally -- that they

1 were not interested. And I know that he was representing that
2 they was negotiating with them. I know that Ricky's gone
3 through his files trying to find these records and has not been
4 able to find them.

5 At any rate, my understanding is maybe Mr. Bullock is
6 who he was talking to, but my understanding is he had sent logs
7 and things of that nature to them to reevaluate during this
8 calendar year, since January 1st. At any rate, the -- I was
9 not aware of the option. I was not aware of the November 1st
10 hearing.

11 I notice that there's a certified -- there are
12 certified letters in here which were signed for. And if I had
13 known about it, I would have been here or I would have
14 contacted counsel and arranged -- made arrangements to get a
15 continuance or whatever is appropriate.

16 I was not aware of the different options that were
17 given. And I did not convey that to Ricky or anyone else
18 because I wasn't aware of it. Mr. Burris did not advise me of
19 that. And I'm sure that he was aware of it because this was
20 something that he took care of.

21 I'll be happy to answer any questions that you may
22 have in the light of that statement.

23 MS. LEACH: Ms. MacQuesten?

24

25

DIRECT EXAMINATION

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BY MS. MACQUESTEN:

Q. Mr. Houston, you say you weren't aware of the November 1st hearing?

A. No. Yes, I was not aware.

Q. You were aware of the application filed in that case though, weren't you?

A. I was told that there needed to be a continuance to give Mr. Burris time to work the things out, yes.

Q. Right. And you, in fact, signed the motion for continuance?

A. Yes, I did.

Q. That is Exhibit No. 4. So they were aware that there was a hearing set in that matter?

A. Yes.

Q. And you represented Southwestern, Inc., as their attorney in that matter?

A. I did the entry of appearance. That's all I did.

Q. The entry of appearance answer and request for continuance document that's Exhibit No. 4?

A. Yes. And I did not prepare that. That was prepared by Mr. Burris.

Q. But you signed it?

A. I signed it.

Q. Did you read it?

1 A. Yes, I read it.

2 Q. Did you read the application for hearing?

3 A. No.

4 Q. You requested extension of time without even
5 reading the application for hearing?

6 A. Yes.

7 Q. And you were representing Southwestern, Inc., as
8 their counsel then?

9 A. I filed an entry of appearance. I did not do
10 anything other than sign the entry of appearance.

11 Q. Now, in the entry of appearance answer and
12 request for continuance, a representation is made that you are
13 not available on the scheduled hearing date and you are asking
14 for a continuance. Are you aware of that?

15 A. I read that in here and I'm sure if I looked back
16 at my calendar, I had a conflict.

17 Q. Do you recall a telephone conference call between
18 Hearing Examiner Richard Ezeanyim, OCD, David Brooks, myself,
19 and you regarding that motion for continuance?

20 A. I do not recall it. I don't deny that there
21 probably was one, but I don't recall it.

22 Q. Well, having filed a motion for continuance, did
23 you do anything to follow up to find out when the hearing would
24 be scheduled?

25 A. No. Those are things that are posted to a

1 calendar and then when there's a hearing, I prepare for that
2 hearing. To my knowledge, there was nothing posted to calendar
3 about a November 1st hearing.

4 Q. What calendar are you talking about? OCD
5 calendar or --

6 A. No. I have a calendar, my law firm's calendar.

7 Q. So if it doesn't appear on your calendar, then
8 you don't deal with it?

9 A. I do not -- in answer to your question, at that
10 time I had six people working for me. And I don't have time to
11 check every item. I have to rely on people that post things to
12 the calendar, and I don't do that posting myself. I don't
13 maintain my calendar. I have people that maintain the
14 calendar. We maintain two calendars. We maintain a computer
15 calendar and a paper calendar.

16 MS. MACQUESTEN: I would ask the Examiners to take
17 administrative notice of the record in the original case. It
18 will show a written objection to Mr. Houston's motion for
19 continuance. This was a contested issue.

20 Q. (By Ms. MacQuesten): You never followed up to
21 find out whether your motion had been granted, denied, a new
22 hearing set, nothing?

23 A. I relied on Mr. Burris to tell me if there were.
24 And that's my standard practice. I do not maintain a calendar
25 nor check those things personally.

1 Q. Were you aware that an order was issued in the
2 case?

3 A. No.

4 Q. You would agree with me that the address of your
5 law office as shown in the State Bar Bulletin, the State Bar
6 Directory for attorneys is 1304 West Broadway Place, Hobbs,
7 New Mexico, 88240?

8 A. Yes.

9 Q. The same address that we have as address of
10 record for Southwestern, Inc.?

11 A. Yes. And let me qualify that. Southwestern,
12 Inc., before the death of the other people, had an address in
13 Lovington, New Mexico, a box number. And they also had a box
14 number in Loco Hills. And those -- an effort was made to get
15 those changed so that Mr. Burris would have access to those and
16 not have to work those boxes in Loco Hills and Lovington. And
17 they were switched to my law office address so that this sort
18 of thing would not -- there wouldn't be anything missed.
19 Southwestern mail attempts to be made -- to the same address as
20 my law office address.

21 Q. When did you become aware of the order in this
22 case?

23 A. I became aware of the order when I got -- when
24 this was called to my attention, this hearing today.

25 Q. And how did you find out about this hearing?

1 A. My office manager told me I had this hearing.
2 And to be frank with you, I didn't know we had this hearing
3 until last Friday, I think it was. Or last Thursday, whatever
4 day I filed the witness list.

5 Q. In that witness list, you represented that -- let
6 me see if I can find it.

7 A. I think I have -- it's one of these exhibits.

8 Q. Well, I recall, and correct me if I'm wrong, you
9 represented that Southwestern had complied with the terms of
10 the order.

11 A. I did not know what the order was. I thought the
12 order, frankly, was to clean up a contamination thing. And
13 Ricky told me that he had cleaned that up after being notified
14 of it.

15 Q. So when you filed your document representing that
16 Southwestern had complied with the order, you didn't really
17 know what the order required?

18 A. My understanding was it was the clean-up. That
19 was what I was thinking.

20 Q. Now, you stated that it's your understanding
21 Yates has taken over the lease. What do you believe can be
22 done to resolve this issue? What are you asking additional
23 time for?

24 A. I think that with Ricky going into Yates, there's
25 a reasonable chance that Yates would like to make a profit off

1 this bore, and Ricky can make a profit off the bore and pay a
2 net royalty to Yates where they have no operating costs.

3 I don't believe Yates is in the business of turning
4 down royalty money. They don't want to operate a lease that's
5 going to cost them money, but they would take a royalty if they
6 got it. I think if that was explained to them, that they would
7 make that decision. If they -- after it being explained to
8 them, I don't think Southwestern has any choice but to go ahead
9 and plug the well and salvage the pipe and the pumping unit and
10 the electric box and the connections and flowlines and whatever
11 else there is there. And that's what Ricky proposes to do.

12 Q. Has anything been done to accomplish this since
13 the order was issued in February?

14 A. No. Not after -- I say no. Mr. Burris
15 represented that he was working on it with Yates. And I assume
16 that he was still working on it in February, because he left
17 March the 1st. Nothing has been done since March the 1st,
18 because that was when it was discovered that he had not done
19 the things that he had represented he had been doing.

20 I don't know what had been done in February. But
21 nothing has been done since March the 1st, except trying to
22 find out where things stand.

23 Q. And nothing was done after the application was
24 filed in this matter?

25 A. Are you talking about here?

1 Q. Right.

2 A. As I said, I was not aware that this hearing was
3 set until June the 6th.

4 Q. And nothing has been done to obtain financial
5 assurance for the well in the correct dollar amount?

6 A. No. Until today, we didn't know what it was.

7 Q. You didn't know what the dollar amount would be?

8 A. Yes.

9 Q. Did you call?

10 A. No.

11 Q. Did you read the rules to find out how we
12 calculated the dollar amount?

13 A. No.

14 Q. Did you check the website that has the financial
15 assurance requirements listed for each well?

16 A. No. Are you telling me that there is a financial
17 assurance on every well on state lands?

18 Q. For single well bonds, yes.

19 A. But not per well, then.

20 Q. Per well.

21 A. Are you telling me that there is -- on the
22 website there is a bond listed on State VC No. 1?

23 Q. Yes. We have a financial assurance report on the
24 website --

25 A. On State VC No. 1?

1 Q. -- that lists for every state and fee well the
2 dollar amount required for a single well bond, which is based
3 on the depth of the well and calculated according to the
4 financial assurance rules.

5 A. So that's a general thing, not on this particular
6 well?

7 Q. So I'm saying this well. Every well that
8 requires single well bonds is listed on the financial assurance
9 report. You can look it up for every well. If you look up
10 Southwestern, Inc., you will see the three wells and how much
11 the single well financial assurance should be for each well.

12 A. I'm not aware of that.

13 Q. Okay, and you did nothing to find out what would
14 be required?

15 A. I was -- I had not seen the order. I had not
16 until today. And I haven't read the order today. But I had
17 not seen the order.

18 Q. When you became aware of this hearing, did you
19 read the application of hearing?

20 A. I scanned it and tried to file a -- if you'll
21 notice, this was fax filed -- fax filed at 1752, which is
22 5:52 p.m. And that was on -- I think that was on a Friday
23 afternoon, I'm not sure. But I think it was a Friday
24 afternoon. And what I was trying to do was get something in
25 the record to permit testimony here today.

1 Q. Okay. Well, after Friday, did you read the
2 application to prepare for the hearing today?

3 A. I called you, is what I did, and tried to talk to
4 you. And you were very courteous, but you brought up none of
5 these matters, that I recall particularly, that afternoon. You
6 simply said that there was a hearing. And what I was trying to
7 do was get more time to prepare.

8 Q. Did you ask for time or did you --

9 A. Yes, I did ask you.

10 Q. -- file a motion?

11 A. No. I asked you for time and you said that you
12 would oppose it. And I did not file it because it would not
13 have been timely. And I told Ricky it was important for us to
14 come up here so we could start establishing a relation with the
15 OCD to work with the people here, like Mr. Sanchez, so that
16 there can be a communication like that.

17 I have talked with the Artesia office of the OCD a
18 great deal, and I'm acquainted with the people there. And when
19 the OCD had problems, they have called me to get Ricky or
20 someone to help them with their problems. And through -- all I
21 do is act as a liaison. But we've helped the OCD on serious
22 problems where they had hired a contractor, for example -- two
23 contractors, as I recall, -- and they weren't able to solve the
24 problem. Ricky took his crew out and replaced the valves and
25 something and solved the problem that was there. It was on a

1 federal lease, the OCD was working with them.

2 So we've been cooperative. I wanted to get that
3 across to the commission, that we are not renegade violators.
4 That we are not interested in a situation such as you
5 suggested, that we have a race to see who can incur the most
6 costs or something like that. But rather we want to cooperate.
7 And I use the generic terms "we" because I am his
8 representative. And I'm not trying to say that this is my
9 responsibility, but it's my responsibility inasmuch as the ball
10 was dropped. Just as he says it was his responsibility that
11 the ball was dropped.

12 Q. Let me understand you --

13 A. If you had told me that you would not object to
14 my asking for a continuance in this hearing today, I would have
15 requested it. As I made the comment during the -- off the
16 record, we left at 2 o'clock this morning. Because I was in
17 court yesterday. Ricky was in the field yesterday, as I said,
18 in 104-degree weather on a well and got in about 5 o'clock. He
19 stopped by and said, "Are we going to Santa Fe tonight or in
20 the morning?"

21 I said, "I suggest we leave early in the morning."
22 Because I still had people in my office wanting to see me on
23 legal business.

24 Q. Let me ask you this: If I had agreed to a
25 continuance, would you have shown up at the hearing?

1 A. Today?

2 Q. At a continued date?

3 A. Yes. No. If you had advised me that you were
4 consenting, I would have prepared a continuance and sent it to
5 you for your approval and presentation to the Examiner. I do
6 not attend hearings that I'm not supposed to attend.

7 If there is not a continuance, then I'm here like I
8 am here today, even if I have to leave in the middle of the
9 night to get here.

10 Q. My question is: When you posed the continuance
11 in the first case, you got the continuance and you didn't
12 appear for that hearing.

13 A. All I did was sign that entry. I did not follow
14 up on whether it was continued or not. I was not told that I
15 needed to be here. When I'm told that I need to be at a
16 hearing -- I've been doing this for 53 years. And I do not
17 skip hearings. I attend.

18 Q. Now, you filed the entry of appearance in this
19 case after skimming the application. You talked to me and you
20 still had not read the application? Is that what you testified
21 to?

22 A. I don't know where the application -- which
23 application are you talking about now?

24 Q. For the hearing today.

25 A. Yes, I've read it.

1 Q. Did you read it before you spoke to me?

2 A. I had scanned it, is all.

3 Q. Did you read it in detail before coming to the
4 hearing today?

5 A. I read it.

6 Q. Okay. Did you understand that it was to enforce
7 a prior order?

8 A. You told me that, but I did not know what the
9 order was. And I didn't have a copy until you furnished the
10 exhibits today.

11 Q. Did you make any effort to find the order?

12 A. Yes.

13 Q. Did you find it?

14 A. No.

15 Q. Where did you look?

16 A. I had my staff look. I did not personally look.

17 Q. Did you ask anyone at OCD if they could provide
18 you with a copy of the order?

19 A. No.

20 Q. Did you ask whether it was available on the
21 website?

22 A. No.

23 Q. So you came in today not knowing what the order
24 said?

25 A. Not knowing the details, that's correct.

1 MS. MACQUESTEN: I have no other questions. Thank
2 you.

3 MR. JONES: Ms. Leach?

4 EXAMINATION

5 BY MS. LEACH:

6 Q. Mr. Houston, do you own part of Southwestern?

7 A. No.

8 Q. Who does?

9 A. Ricky Houston owns it.

10 Q. Ricky doesn't know he owns it. He says he's the
11 president.

12 A. I know that.

13 Q. Don't you think it's unusual to have bought
14 something, purchased it and not know you own it?

15 A. He did not buy it. It was his because of his
16 coming in and taking over and -- the thing was worth -- it had
17 problems when he came in. What it is, he made it, and he is
18 making it.

19 Q. And he met the people who were the former owners
20 because of you; is that correct?

21 A. Yes, yes.

22 Q. And was there a purchase agreement?

23 A. There is a transfer, but not a purchase
24 agreement.

25 Q. And did you help create the transfer --

1 A. Yes.

2 Q. -- documents?

3 A. Yes, yes.

4 Q. And is there a board of directors for this
5 corporation?

6 A. He and Dwyane Burris were the officers and
7 directors.

8 Q. And has Mr. Burris been replaced?

9 A. He has not resigned. Mr. Burris -- I jokingly
10 told Mr. Burris we generally try to keep people out of prison.
11 And this is the first time I've ever had anybody volunteer to
12 go to prison. And it's a most unusual circumstance. And I
13 think I now know why he wanted to do that. Because he was not
14 doing his work.

15 Q. But he is on the board of Southwestern still; is
16 that correct?

17 A. Yes. He has to be replaced.

18 Q. Okay. So in some ways he still has some
19 responsibilities to this corporation?

20 A. We probably will -- as they were pointing out,
21 Ms. MacQuesten said this is something the District Court may
22 very well determine. I have never sued an employee or an
23 associate or anything like that, but this is gross dereliction
24 of duty in my opinion, and this is not the only one. The
25 failure to file reports and to do things that a person is

1 supposed to do and has had the experience and everything -- and
2 I have not been able to talk to him, as I said, and get an
3 explanation from him as to why he didn't do it and why he
4 misrepresented the fact that he was doing it.

5 Q. And if I understand correctly, he worked for your
6 law firm too in some capacity?

7 A. Yes, yes. He took care of our books and records
8 also and Southwestern's books and records.

9 Q. And you had some problems with him as a law firm
10 employee?

11 A. I do now. I didn't know it at the time. Yes.
12 And he was not keeping -- he did not file gross receipts tax
13 reports. He did not file all of the other reports that are
14 supposed to be done. What happened to him, I don't know.

15 And I understand he's gotten a promotion since he
16 went to work for the prison. They've promoted him into a
17 position of more responsibility. So I'm wondering what's going
18 to happen to the correction system now that -- if the pattern
19 follows.

20 Q. Did he open the mail for your law office?

21 A. No.

22 Q. Who did that?

23 A. The lady has retired who was in charge. Her name
24 was Judy Blackerby.

25 Q. And when did she retire?

1 A. She retired for health reasons, oh, maybe a month
2 or so before he quit.

3 Q. Okay. So like last fall she was working?

4 A. Yes.

5 Q. So if the mail came and there was a notice of a
6 hearing, she would have put that into the appropriate file and
7 marked it on your calendar according to what you testified?

8 A. No. He would have done that. He took care of
9 Southwestern.

10 Q. But if the notice came to you as the attorney for
11 Southwestern --

12 A. She probably would have opened it. She would
13 have opened it if it were addressed to me, but she would have
14 turned it over to him because it involves Southwestern for him
15 to process.

16 Q. And he was an employee of both businesses?

17 A. Yes.

18 Q. Okay.

19 A. He was, by our standards, highly qualified. You
20 don't get many business administration accountant graduates on
21 our level of operation, frankly. You know, a person that has
22 those credentials we regard as well qualified.

23 Q. You had sort of, apparently, knowledge of
24 Southwestern prior to Ricky becoming president three years ago?

25 A. Yes, yes.

1 Q. How did you learn that? What did you know about
2 it? I mean, I know you talked about when it started back with
3 Mr. Cone. I'm not looking for that. I'm looking for post
4 Mr. Cone's death.

5 A. I represented the Clemens. I represented one of
6 the Cones. In other words, Hobbs is a smaller town where you
7 do know a lot of people and you do work for them and work with
8 them. So I had a knowledge and had been invited and had gone
9 out to the field and visited and looked at things and picked up
10 the mail. If I were going through Loco Hills or Lovington, I'd
11 get the key and pick up the mail and deliver it to who needed
12 the mail after Mr. Clemens died. I would do that sort of
13 thing.

14 Q. Do you know why there was a Dripping Spring,
15 Texas address for Southwestern?

16 A. That's a lady that's a Cone. She's one of the
17 former owners. And why that would still be on there, I have no
18 idea. Efforts have been made to change all those addresses.
19 Because there was a period -- there was a period when, you
20 know, people weren't getting the mail. That's the reason that
21 I started picking it up.

22 As a lawyer, I'd go to Artesia and Roswell and
23 Lovington more often than other people do. And I would stop by
24 with the post office keys for those addresses, for the
25 addresses of the box numbers in those towns. But it was a

1 burden for me. And I, you know, said, "Why don't you use 1304
2 instead?"

3 Southwestern has the building 1300 West Broadway
4 Place, but there's nobody there except in the shop that is
5 there, and so the mail is used at the next door address.

6 Q. Okay. And so then Kathy McCowan, her maiden name
7 was Cone?

8 A. Her maiden name was Cone, yes.

9 Q. So if she said that she contacted you about this
10 hearing, would that be correct? Do you recall her contacting
11 you?

12 A. About this hearing?

13 Q. Uh-huh.

14 A. She mailed me a -- she forwarded me a letter that
15 she had written, and I received it either Friday or Monday --
16 last Friday or this Monday. She did not contact me except
17 forwarding that letter to me.

18 Q. Did she fax you a notice of the hearing in the
19 earlier case; do you recall that?

20 A. I don't recall. That would have been --
21 Mr. Burris would have handled that if it did come.

22 Q. So if it did come to you, Mr. Burris would have
23 taken it --

24 A. He would have handled it, yes.

25 Q. -- as a joint employee. So did you represent

1 Lucy Lee Clemens --

2 A. Yes.

3 Q. -- is that correct?

4 A. Yes.

5 Q. Do you know why nothing was done to this well
6 after Southwestern purchased it?

7 A. Southwestern did not purchase this well. That
8 was a wrong statement.

9 Q. I'm sorry?

10 A. Southwestern drilled it.

11 Q. After Southwestern becomes part under the
12 ownership of the other Mr. Houston, why nothing was done?

13 A. There were things done.

14 Q. What was done after --

15 A. He testified of the pipe that he bought, all the
16 other steps that were taken.

17 Q. Do you have copies of receipts for those things?

18 A. I'm sure he does. I'm sure he does.

19 Q. Wouldn't it have been good to bring those today
20 to show us that there were actual purchases?

21 A. There was not any time to prepare for this
22 hearing. And her statement -- questions of me are correct,
23 that we did not have time to prepare for this hearing and bring
24 things like that. In my opinion, those things are no longer
25 material unless Yates is willing to surrender or convey an

1 interest in this well back to Southwestern. Because in my
2 opinion, and I realize you think this is a legal conclusion, I
3 think Yates owns this well. Because they bought the well in an
4 open auction. And because the well was put up on the block by
5 a Southwestern agent, Mr. Burris, and once that's done, when
6 that hammer falls on the top bid, Yates owns this well.

7 Q. I guess I'm --

8 A. Southwestern now owns the obligation. I'm not
9 quarrelling about that. But Yates owns the well, and I don't
10 think Southwestern has the privilege of temporarily abandoning
11 this well as Mr. Sanchez suggested. With Yates owning it, I
12 don't think Southwestern can do that.

13 Q. What do you think Southwestern can do now?

14 A. I think Southwestern can negotiate with Yates.
15 And if Yates does not make a farmout, then Southwestern has to
16 plug and abandon -- plug the well.

17 Q. If I recall your opening statement correctly you
18 were trying to convince the hearing officers that basically
19 Southwestern was acting in a reasonable manner moving toward
20 closing the well, and I assume that's why you put on the
21 testimony --

22 A. I don't mean closing the well. I'm talking about
23 closing the problem, because hopefully the well will not be
24 closed. It will be produced.

25 Q. Okay. You're absolutely right.

1 A. Yes.

2 Q. And that basically -- that's the tubing that had
3 been purchased with the eye toward looking -- toward reopening
4 the well --

5 A. Yes.

6 Q. -- and the other purchases.

7 A. Yes.

8 Q. But you didn't bring any of those receipts or
9 have your client bring any of those receipts.

10 A. No. They can be furnished, but they were not dug
11 up.

12 MS. LEACH: I don't have any further questions.

13 MR. JONES: Okay. Can we have a real brief closing
14 statement from the two attorneys?

15 EXAMINATION

16 BY MR. WARNELL:

17 Q. I have a question first before we do that. If
18 you can help, Mr. Houston, clarify in this old boy's mind
19 what's going on here. Who owns this well?

20 A. In my -- you're asking my opinion? Yates owns
21 this well.

22 Q. Who owns Southwestern, Inc.?

23 A. It's a corporation that Ricky Houston is the
24 beneficiary -- sole beneficiary of this corporation.

25 Q. If I was to ask that question of Mrs. McCowan in

1 Dripping Springs?

2 A. At the time, she did not know him at all.

3 Q. Who does she feel owns the company?

4 A. She sold the company. She does not know who owns
5 it.

6 Q. Who did she sell the company to?

7 A. She sold it to Lucy Lee Clemens.

8 Q. And then who did Lucy sell the company to?

9 A. The company was then transferred to her son, and
10 then to Ricky Houston.

11 Q. So there is a legal document or something that
12 transfers the corporation to Ricky Houston?

13 A. Yes.

14 Q. Okay.

15 MR. WARNELL: That's all I have. Thanks.

16 FURTHER EXAMINATION

17 BY MS. LEACH:

18 Q. I just have one more followup. You are very
19 careful to say that the ultimate beneficiary is Mr. -- the
20 other Mr. Houston.

21 A. Yeah. Because of the fact that at this point
22 he's only drawing a salary because there's not -- there have
23 been no distributions or anything like that.

24 Q. Someone has to own the stock of this corporation.

25 A. He's the owner of the stock.

1 Q. He's the owner of the stock?

2 A. Yes.

3 Q. Why don't you answer that when they ask who owns
4 Southwestern?

5 A. Well, I can answer that. I just got through
6 answering that.

7 Q. I just find it strange that you answer it so
8 carefully saying he's the ultimate beneficiary instead of just
9 saying yes or no.

10 A. I don't intend to be evasive on it. There are no
11 profits going to him except to salary.

12 Q. I understand that. I'm not asking about profits.
13 I'm really asking as a matter of control.

14 A. He controls it.

15 Q. And he has controlled it since he became
16 president?

17 A. Yes.

18 MS. LEACH: Okay. Thank you.

19 EXAMINATION

20 BY MR. JONES:

21 Q. Okay. No change of operator from this well --
22 there's been no change of operator that -- from Southwestern to
23 Yates.

24 A. I don't think. In my opinion, Southwestern
25 doesn't have the authority to change the operator of this well

1 to Yates. And I'm not an expert on your procedures up here,
2 but I would assume the owner of it would have to change the
3 operator. And once Yates buys the lease, I think they own the
4 well.

5 Q. Okay.

6 MR. HOUSTON: I would waive closing arguments.
7 You've heard everything that we have to offer.

8 MR. JONES: Okay. That's fine.

9 MR. HOUSTON: I don't know anything else that I can
10 add, and I think --

11 MR. JONES: Do you mind if Ms. MacQuesten has a real
12 brief --

13 MR. HOUSTON: I have no objection.

14 MR. JONES: -- closing just to summarize --

15 MR. HOUSTON: And I might want to --

16 MR. JONES: -- the application in this case, the
17 three items, again, and what you think the facts as presented
18 here were for my benefit, if nothing else.

19 MS. MACQUESTEN: I'd be happy to. The issues in this
20 case today are very limited, and the answers to those issues
21 are very clear.

22 This case was brought to enforce a prior order. And
23 we've asked for three things: An order finding Southwestern,
24 Inc., in violation of an order requiring corrective action. In
25 other words, they didn't do what the prior order told them to

1 do which was return that well to compliance. That's clear.
2 We've heard no testimony today that they have done anything to
3 return that well to compliance and it remains out of
4 compliance. We should have an order to that effect.

5 The second thing we asked for is that the order
6 formally assess that \$6,000 penalty. The \$6,000 penalty was
7 contingent on if they were able to return the well to
8 compliance, we wouldn't assess a penalty. If they failed to
9 meet their deadline, the penalty would apply. We are asking
10 you to issue an order saying they failed to meet the deadline
11 and the penalty applies.

12 We need these two orders because they help us in our
13 enforcement action. With those orders in place under Rule 40,
14 we can deny certain privileges to the operator. It also
15 provides -- the penalty issue provides an additional hammer on
16 the operator. He can pay that penalty to remove the Rule 40
17 issues from himself. It also imposes an additional hammer on
18 bringing the well into compliance. Again, he can remove those
19 Rule 40 impediments by either returning the well to compliance
20 or paying the State for returning the well to compliance if
21 we're the ones having to do it. It saves us from having to go
22 to District Court on penalties and reimbursement.

23 And the final thing we asked for was that the
24 financial assurance be brought up to date because it is -- it
25 was filed at the time when the financial assurance was much

1 lower. Financial assurance requirements have gone up. We
2 would like to have that financial assurance in place so that
3 money is available if the State does have to plug the well.

4 Those are the three things that are at issue today.
5 Those are the only three things at issue today. Mr. Houston
6 has come in and asked you to expand this case into a brand new
7 area which is to reopen that order and give them more time to
8 work on the well. The OCD absolutely opposes any re-entry of
9 that order to change it at this point in time.

10 If Mr. Houston wants to file a separate application
11 to do that, that's fine. But we were not on notice that that
12 was going to be an issue raised today and Mr. Houston has not
13 presented any basis for reopening that original case.

14 Let's look at what he's talked about. They want more
15 time -- and Mr. Ricky Houston said we need more time because we
16 want to work with the OCD. Have the OCD work with us. But
17 what do we have here? We have a well that's been inactive
18 since 2002. Mr. Ricky Houston has been president of this
19 company for the past three years. The well has been out of
20 compliance during the entire time he was president of
21 Southwestern, Inc. Nothing has been accomplished.

22 It's a small company. It's only three wells. It's
23 not a situation where a well can fall through the cracks. In
24 order for us to get compliance on this well, we had to file a
25 hearing application, and we did that last fall. They were

1 aware of that hearing application because they requested a
2 continuance on it. They were granted a continuance motion. We
3 then had the hearing, but they failed to appear, not through
4 fault of the OCD. It appears that there may be difficulties
5 with Mr. Houston's lines of communication in his office. But
6 although they were aware that a hearing was scheduled and
7 requested a continuance, they did nothing to find out whether
8 that continuance was granted, when it was granted to, made no
9 attempt to show up at the hearing, did nothing.

10 Now beyond that, when we went to the hearing, we
11 could have just asked for that \$6,000 penalty. That was what
12 we asked for in the original application. But no, we tried to
13 work with the operator. Mr. Sanchez, instead of saying they
14 didn't show up, please impose that \$6,000 penalty. He said,
15 no, they did some of what we asked for in our application, so
16 we're willing to forego that penalty if they do the rest of the
17 things that need to be done. In other words, they need to
18 bring that well into compliance: Plug it, return it to
19 production, TA it, whatever they need to do, whatever they can
20 do. Just do it and we won't worry about a penalty. Nothing
21 happened.

22 We then had to file this application for hearing.
23 The application is sent to the address that is -- it's a unique
24 situation. The address is the same for both the operator and
25 the operator's attorney and yet -- it was received. Nothing

1 was done then. They've made no effort to file the financial
2 assurance. That would have been an easy thing. They made no
3 attempt to come into compliance on the well. We've heard no
4 testimony that they contacted Yates. They want to blame
5 Mr. Burris for what happened prior to March 1. I didn't hear
6 any testimony that anyone got on the phone when they got this
7 application said, what happened with that request that we had
8 that you take over this well? Nothing has been done.

9 In fact, neither Mr. Ricky Houston nor Mr. Glen
10 Houston seemed to have reviewed the application in any detail,
11 made no effort to find the order that they were being accused
12 of not complying with. Nothing is happening.

13 Yet they're asking for more time. They've had plenty
14 of time. They have not presented any case for giving them more
15 time or that more time would accomplish anything.

16 Southwestern, Inc., is still operator of this well. There is
17 no question about that. We're also not disputing that Yates is
18 the company that owns the lease. Yates, according to the
19 document in the well file, is not interested in doing anything
20 with this well and also does not object to plugging it, to
21 Southwestern plugging it. There's nothing standing in the way
22 of Southwestern plugging this well. And they could do that.
23 They have simply chosen not to.

24 This case is a good example of the sort of
25 frustration the OCD deals with in these cases. Plugging cases

1 should be relatively straight forward and cut and dried. They
2 are not complex cases. Yet we've had to go to hearing twice in
3 this case. And we have an operator who is simply not paying
4 attention, unaware of the status of the wells, unaware of
5 hearing applications, unaware of continuances, there is not
6 much more we can do after going to hearing twice on a case to
7 get an operator's attention.

8 They say work with us. We have done more than we can
9 possibly do to bring a single well into compliance.

10 Thank you.

11 MR. JONES: Okay. Thank you both.

12 MR. HOUSTON: May I make one rebuttal?

13 MR. JONES: I think you've already waived that,
14 Mr. Houston.

15 MR. HOUSTON: I think I'm entitled to rebut once she
16 makes --

17 MR. JONES: I'll leave that up to the attorney here.

18 MS. LEACH: How long do you want?

19 MR. HOUSTON: Very short.

20 MS. LEACH: Two minutes?

21 MR. HOUSTON: No. I won't use two minutes.

22 MS. LEACH: You can have two minutes, Mr. Houston.

23 MR. HOUSTON: I started off this things by saying
24 that I did not want an adversarial relationship, and we do not,
25 because we want -- we're up here today to be cooperative. And

1 we haven't been before -- and I would have been here I assure
2 you, had I realized that there was a hearing on November 1st
3 and whatever dates there were. Ms. MacQuesten -- and I don't
4 like to get into arguments with lawyers -- but in her opening
5 case, she asked Mr. Salazar what happens if the State beats
6 Southwestern and plugs this well. And I pointed out that it's
7 not a question of beating somebody.

8 In her closing remarks, I made an asterisk by her
9 comment that Southwestern can pay the penalty to remove the
10 hammer. Now, this is not what we're here for. We're not here
11 to be beaten and we're not here to be hammered. We're here to
12 be cooperative. And I will file a motion for an extension of
13 time. I did not do it after she told me earlier this week that
14 she would oppose it, because it would not have been timely.
15 And I thought it was important for us to come up here and try
16 to demonstrate to you that we're trying to be good citizens.
17 Because the record appears that we're not and that's not true.
18 That's all. And we appreciate your courtesy today.

19 MR. JONES: Thank you both.

20 With that, we'll take Case No. 14135 under
21 advisement.

22 [Hearing concluded.]

23 * * * * *

24 I do hereby certify that the foregoing is
25 a complete record of the proceedings in
the Examiner hearing of Case No. _____,
heard by me on _____.

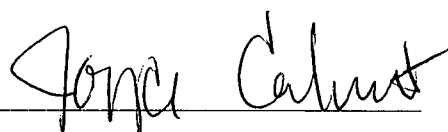
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Oil Conservation Division

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I, JOYCE D. CALVERT, Provisional Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

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

Signed this 12th day of June, 2008.

A handwritten signature in cursive script, reading "Joyce Calvert", is written over a horizontal line.

JOYCE D. CALVERT
New Mexico P-03
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1 STATE OF NEW MEXICO)
2 COUNTY OF BERNALILLO)

3

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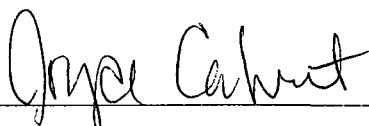
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