

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

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

ORIGINAL

APPLICATION OF THE NEW MEXICO OIL CASE NO. 14326
CONSERVATION DIVISION FOR A COMPLIANCE
ORDER AGAINST NACOGDOCHES OIL AND GAS, INC.,
NEW MEXICO

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Presiding Examiner
TERRY G. WARNELL, Technical Examiner
DAVID K. BROOKS, Legal Examiner

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July 9, 2009

Santa Fe, New Mexico

This matter came on for hearing before the
New Mexico Oil Conservation Division, RICHARD EZEANYIM,
Presiding Examiner, DAVID K. BROOKS, Legal Examiner, and
TERRY G. WARNELL, Technical Examiner, on Thursday,
July 9, 2009; at the New Mexico Energy, Minerals and
Natural Resources Department, 1220 South St. Francis
Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91
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1 A P P E A R A N C E S

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7

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1 MR. EZEANYIM: Let us go on the record
2 again and call Case Number 14326, Application of
3 New Mexico Oil Conservation Division for a Compliance
4 Order Against Nacogdoches Oil and Gas, Inc. Call for
5 appearances.

6 MS. ALTOMARE: Mikal Altomare on behalf of
7 the Oil Conservation Division. I have two witnesses here
8 today and one by affidavit.

9 MR. EZEANYIM: Any other appearances?

10 MR. BRUCE: Mr. Examiner, Jim Bruce of
11 Santa Fe representing Nacogdoches Oil and Gas, Inc. I
12 have three witnesses.

13 MR. EZEANYIM: Any other appearances?
14 Okay.

15 May all the witnesses stand up, state your
16 names to be sworn at the same time.

17 MR. SANCHEZ: Daniel Sanchez.

18 MS. KUEHLING: Monica Kuehling.

19 MR. FINLEY: Mike Finley.

20 MR. DEHNISCH: Mike Dehnisch.

21 MR. ALLEN: Mike Allen.

22 (The witnesses were sworn.)

23 MR. EZEANYIM: Do you have any opening
24 statements?

25 MR. BRUCE: I do.

1 MS. ALTOMARE: I do.

2 MR. EZEANYIM: May the attorneys -- well,
3 Mikal.

4 MS. ALTOMARE: Thank you, Mr. Examiner.
5 What we have is not only a case of an operator who is
6 currently grossly out of compliance with multiple Oil
7 Conservation Division rules, but an operator that has
8 exhibited a blatant disregard for the rules and a pattern
9 and practice of knowingly choosing to ignore those rules.

10 This is an operator that the Oil Conservation
11 Division has bent over backwards to pool access to
12 resources and personnel, both in the Santa Fe office and
13 in the district office, in the administrative capacity.

14 The legal team, the environmental group, the
15 enforcement group, and our bonding administrator have all
16 made themselves available to this operator, trying to
17 facilitate the transition of these wells from the
18 previous operator and assist them over the past year into
19 getting these wells into compliance and allowing them to
20 become a productive operator in New Mexico.

21 Over the course of over a year, however, the
22 operator has not only failed to bring the wells into
23 compliance, but it's come to our attention and the
24 evidence will show that they have basically decided to
25 make up their own rules. They have refused to properly

1 report. It's come to our attention that they have been
2 injecting and not reporting that injection.

3 In some of these wells they're injecting --
4 the Bradenhead tests have been failed. They've been
5 injecting almost twice the pressure that they've been
6 approved for. Therefore, we don't even know if some of
7 the wells that are on the inactive list are actually
8 inactive. All four of the wells that we've discovered
9 this injection that has been occurring as recently as May
10 all appear on this inactive well list. So we don't even
11 know for sure whether the inactive well list is accurate
12 because it is based on operator data.

13 We have given them a very specific road map.
14 We've introduced them to all the personnel they needed to
15 interact with in order to make sure that they were able
16 to affectuate the transfer, enter into an agreed
17 compliance order for the inactive wells to come into full
18 compliance with what is now known as Rule 5.9 in order to
19 be able to proceed with any kind of injection well
20 permitting that they needed to proceed with in order to
21 get the rest of their wells into compliance. We've even
22 introduced them to the former chief of our Environmental
23 Bureau to facilitate that process.

24 Everything was in place for them to proceed.
25 Over the course of the last year they have failed to

1 follow this roadmap and failed to use the resources in
2 front of them and have blatantly disregarded all the
3 rules and are now still consistently grossly out of
4 compliance with OCD rules and still owe an excessive
5 amount of money in single well bonding.

6 On that basis at this point in time the OCD is
7 requesting that pursuant to New Mexico statute this
8 operator be required to plug or transfer all of their
9 wells by a date certain. At this point in time we would
10 like to proceed with our case in chief unless opposing
11 counsel would like to proceed with his opening.

12 MR. EZEANYIM: Mr. Bruce?

13 MR. BRUCE: Mr. Examiner, Nacogdoches
14 simply disputes virtually everything the Division is
15 asserting. Nacogdoches bought this property in September
16 2007. It was not finally certified as operator until 9
17 months or maybe 12 months ago. All of the problems out
18 there were caused by prior operators who did not take
19 care of this property.

20 In the Division's own application, paragraph
21 30, it says, "Per OCD records and based upon operator
22 submitted production records, a number of above
23 identified wells have not been productive for in excess
24 of 10 years and some have not reported production for
25 more than 20 years."

1 They have taken over a mess, and all of these
2 problems were caused by prior operators. They have spent
3 millions of dollars cleaning well sites, remediating well
4 sites, remediating tank batteries, putting wells on line.

5
6 Now, the Division asserts there's 183 wells.
7 Actually, we're uncertain of the exact number, but when
8 they took over operations last year, there were
9 approximately, I believe, 130 wells which were not on
10 production. That is now down to approximately 20 wells,
11 and many of those are ready to produce but for one thing.
12 We need a water disposal well, and we will go into this
13 in more detail on the steps they have taken to try to
14 obtain water disposal authority.

15 They have put up -- I think the state bond is
16 \$141,000. They've also put up a federal bond of more
17 than half a million bucks. They have worked with the
18 BLM, the Navajo Nation, the EPA, and satisfied all of
19 their requirements, and they continue to work with the
20 federal authorities, and the federal authorities are
21 content with Nacogdoches' work on these leases. They
22 have also worked with the OCD.

23 Now, I will say this. Were there some reports
24 that should have been filed but weren't? I don't doubt
25 that. And it's partly due to the fact that

1 Nacogdoches -- this is its first operation in the state.
2 We will submit substantial data showing that we did
3 report. It might have been on the incorrect form, but
4 the fact of the matter is, after you look at all this
5 stuff, there is an issue as to whether Nacogdoches is out
6 of compliance, and it should and must be allowed to bring
7 these wells back on line.

8 The fact that it's brought a hundred on line
9 in the past year and yet you want us to plug all of these
10 wells is ridiculous. As I said, in order to put
11 everything back on compliance, it needs a water disposal
12 well, which is the subject of Case 14337. If it gets the
13 water disposal approval, all of these other problems will
14 go away.

15 As I said, there might be some misfilings, but
16 as you will see, there are substantial filings that
17 Nacogdoches made that aren't reflected on the Division's
18 website. Why is that? I don't know. But they made
19 filings, and they complied with everything that
20 Ms. Altomare and the other people in the Division asked
21 it to do.

22 The applications -- frankly, if you order
23 plugging and abandonment of all these wells, you'll be
24 causing waste and, therefore, violating the Division's
25 principal statutory mandate. The Division's application

1 must be denied.

2 Two things: If, after hearing this evidence,
3 there is an issue as to whether or not Nacogdoches is out
4 of compliance, I believe we are ready, willing and able
5 today to put on a very brief case on its disposal
6 application. As I said in response to the motion to
7 continue or dismiss filed by the Division, it's part and
8 parcel of this case. It's kind of a Catch-22. If they
9 are out of compliance, they need a water disposal well to
10 come into compliance. But if they don't get the water
11 disposal well, they can't come into compliance.

12 Finally, I would say that if you deny the
13 plugging and abandonment that the Division is requesting
14 but you think additional bonds are required, I would
15 request that time be given for the water disposal well to
16 be put on line before any additional bonding is required
17 because that will obviate any additional bonding. Thank
18 you.

19 MR. BROOKS: The Division entered an order
20 continuing the case, the saltwater disposal or disposal
21 application, until after the resolution of this matter --
22 until this matter was resolved and could be set again.
23 So we -- that order was issued and signed by the
24 Director, so we do not have jurisdiction here to consider
25 the disposal application today.

1 MS. ALTOMARE: Further, for the record, I
2 would object to that pursuant to 5.9 on the basis that
3 the Oil Conservation Division has no authority to grant
4 any kind of water disposal well application unless and
5 until all bonding is posted by an operator.

6 MR. BROOKS: Since we're not considering
7 the issue today, we don't need to rule on that at this
8 point.

9 MR. EZEANYIM: Again, before I continue,
10 because the two of you brought certain things that
11 continue to -- this puts a number of wells in question.
12 I know during the testimony we are going to get a handle
13 on that. I'd like to know how many wells are involved
14 and how many wells have complied and everything. But
15 nothing should be done now, but I want to make sure, as
16 we go through the testimony, I will get a handle on those
17 wells, how many wells and what is going on. Is that
18 okay? Can we handle it before we start testimony?
19 Because I want to know how many wells are actually
20 involved because there's a dispute between the two
21 attorneys of how many wells are involved in this case.
22 Can I discover that information from testimony, or do we
23 need to --

24 MS. ALTOMARE: It should be fleshed out in
25 testimony, and it's also, at least in my prehearing

1 statements, specifically articulated for your reference.

2 MR. EZEANYIM: Okay. Go ahead.

3 MS. ALTOMARE: At this time I'd like to
4 call my first witness, Mr. Daniel Sanchez.

5 DANIEL SANCHEZ

6 Having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ALTOMARE:

9 Q. Can you please state your name for the record.

10 A. Daniel Sanchez.

11 Q. And by whom are you employed?

12 A. The Oil Conservation Division.

13 Q. What is your title?

14 A. Compliance and enforcement manager.

15 Q. And what are your duties as the compliance and
16 enforcement manager, generally?

17 A. I oversee the four district offices and the
18 Environmental Bureau and all of the Division's compliance
19 and enforcement efforts.

20 Q. Are you familiar with the requirements of
21 Rule 19.15.5.9? At this point I'm probably going to
22 refer to it as Rule 5.9.

23 A. Yes, I am. That rule states that an operator
24 must properly plug and abandon, obtain an approved OCD TA
25 status or return to production or injection a well after

1 one year of inactivity.

2 Q. By "TA," you mean Temporary Abandonment?

3 A. Yes.

4 Q. Are you familiar with the requirements of
5 Rule 19.15.8.9(C)?

6 A. Yes, I am. And that rule requires that any
7 state or fee well that has been inactive for more than
8 two years that those wells would require additional
9 single well financial assurance, and that fee would be
10 posted with the Division until it is either returned to
11 production or properly plugged and released.

12 Q. And, finally, are you familiar with the
13 requirements of Rule 19.5.7.24?

14 A. Yes, I am. That rule states that operators
15 must report production on a monthly basis for all
16 completed wells.

17 Q. There's a specific means by which operators
18 report that production; is that right?

19 A. On C-115s, yes.

20 Q. At the time that our initial application was
21 filed on April 23rd, what was the status out of the total
22 number of 183 wells with regard to inactivity under
23 Rule 5.9?

24 A. There were 121 out of 183 wells showing up as
25 inactive at the time of that filing that was April 20th,

1 2009.

2 Q. I'm going to direct your attention at this
3 point in time to what's marked Exhibit A -- and I
4 apologize to the Hearing Examiners. I should have marked
5 it OCD Exhibit A, but it's simply marked as Exhibit A.

6 Can you identify this document for the record?

7 A. This document is the inactive well list for
8 Nacogdoches.

9 Q. Can you explain to the Hearing Examiners from
10 where this document is obtained?

11 A. This is obtained from the OCD website.

12 Q. Is it maintained in the ordinary course of
13 business for the public retrieval?

14 A. Yes, it is.

15 Q. The list under last production, the dates that
16 are included in that list, from where is that data
17 derived from?

18 A. From the operator.

19 Q. So that information is derived from the
20 reporting that's done by the operator to the OCD?

21 A. Yes.

22 Q. This particular inactive well list is for the
23 operator known as Nacogdoches?

24 A. Yes, it is.

25 Q. What is the date on this document?

1 A. April 20th, 2009.

2 Q. Can you describe for the record what this
3 particular document indicates to you?

4 A. It indicates that as of that date, Nacogdoches
5 was the operator of record for 183 wells. Out of those
6 183 wells, 121 are inactive.

7 Q. Meaning that they violated Rule 5.9 at that
8 point in time?

9 A. Yes.

10 Q. I'd like to direct your attention at this time
11 to Exhibit B. What is this document?

12 A. Exhibit B is also from the OCD website and
13 updated on a daily basis. It's the inactive well
14 additional financial assurance report. This, too, was
15 dated April 20th, 2009.

16 Q. And, again, this is for Nacogdoches Oil and
17 Gas?

18 A. Yes.

19 Q. And this is kept in the ordinary course of
20 business on OCD Online?

21 A. Yes, it is.

22 Q. And the data for the last production or
23 injection is, likewise, derived from information provided
24 by the operator?

25 A. Yes, it is.

1 Q. As of October 20th, 2009, what was the status
2 for the Nacogdoches wells?

3 A. April 20th, 2009?

4 Q. Yes.

5 A. There were, I believe, 39 wells that still
6 required additional financial assurance.

7 Q. Approximately, what was the total amount due
8 in additional bonding at that point in time?

9 A. Approximately \$264,000.

10 Q. And regarding the wells that are listed on
11 Exhibit A, these are the 121 wells that are specifically
12 identified at Section 4, Paragraph 28 of the OCD's
13 amended application as being in violation of Rule 5.9
14 and/or Rule 7.24?

15 A. Yes.

16 Q. Regarding Exhibit B, the wells that are listed
17 as in violation, meaning they have a Y in the final
18 column, those 39 wells are the wells specifically
19 identified at Section 3, Paragraph 17 of the OCD's
20 amended application as being in violation of Rule 8.9(C)?

21 A. Yes, they are.

22 Q. Prior to Nacogdoches, who operated the wells?

23 A. Mountain States Petroleum.

24 Q. Do you recall that Nacogdoches contacted the
25 Oil Conservation Division back in March 2008 to inquire

1 regarding transferring the wells to Nacogdoches and to
2 discuss the outstanding financial assurance issue?

3 A. Yes. Nacogdoches, NOG for short, attempted to
4 transfer those wells. Their request was denied back at
5 that time. There was approximately \$576,000 owed in
6 additional bonding.

7 Q. And at that time Nacogdoches was advised by,
8 actually, our bonding administrator initially, that it
9 would have to post all then due outstanding financial
10 assurances on the subject wells prior to being approved
11 for the transfer?

12 A. Yes, they were.

13 Q. It's departmental policy or pursuant to rules
14 that additional bonding pursuant to Rule 8.9(C) is
15 required for all state or fee wells that have not
16 reported production for two or more years prior to any
17 kind of a transfer being affected; is that right?

18 A. That's correct.

19 Q. Did Nacogdoches indicate that some of the
20 wells included on the list, as they reviewed it, were
21 actually not inactive as indicated?

22 A. Yes, they did. They planned to submit
23 additional documentation to the Division for review
24 reflecting recent activity for a number of the wells
25 listed as owing additional bonding.

1 Q. Was the OCD receptive to this?

2 A. Yes, they were.

3 Q. Was Nacogdoches eventually able to rebut the
4 presumption of inactivity in this fashion by submitting
5 these documents and show that some of the wells were not
6 actually out of compliance with financial assurance
7 requirements?

8 A. Yes. They were able to send documentation to
9 the Division that approximately 47 of those wells were
10 active.

11 Q. So this served as a temporary rebuttment of
12 this -- a rebuttal of this presumption of inactivity?

13 A. Yes, it did.

14 Q. Did Nacogdoches need to do anything further to
15 follow up, however, with regard to the 47 wells for which
16 it had submitted this initial documentation?

17 A. Yes. They were asked at the time that the
18 transfer occur to update on C-115s officially under the
19 NOG name all the wells that had been documented as a
20 presumption of inactivity.

21 MR. BRUCE: Mr. Examiner, I want to --
22 before Mr. Sanchez goes any further, I do have to ask one
23 question regarding the basis of his testimony.

24 Did you ever speak directly with NOG
25 personnel?

1 THE WITNESS: I personally didn't. I was
2 kept informed by the staff.

3 MS. ALTOMARE: Mr. Sanchez is testifying
4 via his knowledge as the compliance and enforcement
5 manager. His knowledge is based on his general function
6 within our division. He's kept apprised of everything
7 that goes on as far as compliance and enforcement, his
8 role in our division.

9 MR. BROOKS: Mr. Bruce, first off, it's
10 customary, I believe, when you want to take a witness on
11 voir dire to request the presiding officer's permission
12 to do that.

13 MR. BRUCE: I apologize.

14 MR. BROOKS: Are you through asking him
15 everything you want to ask him?

16 MR. BRUCE: I have asked him everything I
17 wanted to ask him.

18 MR. BROOKS: Do you want to make an
19 objection?

20 MR. BRUCE: I would make an objection that
21 this is all hearsay.

22 MR. BROOKS: Well, this is an
23 administrative tribunal, and we generally receive hearsay
24 evidence for whatever value it has subject, of course, to
25 the -- what is it they call it in New Mexico -- the Legal

1 Residual Rule.

2 MR. BRUCE: I looked at it two days ago.

3 I'm sorry.

4 MR. BROOKS: The Legal Residual Rule, I
5 believe, or something like that. Anyway --

6 MR. EZEANYIM: Objection overruled.

7 MR. BROOKS: The objection is overruled --
8 yes, that would be my advice -- as the Examiner has so
9 stated.

10 Q. (By Ms. Altomare) Is it the normal course of
11 business that the regular procedure to inform operators
12 upon submitting the initial documentation to rebut
13 presumption of inactivity that the next step is to follow
14 up by submitting additional documentation to support that
15 so that the wells are formally and finally removed from
16 the financial assurance noncompliance list?

17 A. Yes, it is.

18 Q. At this time I'd like to direct your attention
19 to the very last exhibit in your packet, which is
20 Exhibit -- marked as Exhibit F. Have you had an
21 opportunity to review this?

22 A. Yes, I have.

23 Q. And you've seen this document before?

24 A. Yes.

25 Q. Does this document reflect what you know to be

1 the routine approach taken by the Division in informing
2 an operator following the submission of documents to
3 rebut the presumption of inactivity?

4 A. Yes, it is.

5 Q. Does it summarize what you were apprised
6 occurred in this instance with regard to Nacogdoches?

7 A. Yes, it does.

8 Q. And can you summarize for the Hearing
9 Examiners what Nacogdoches was informed with regard to
10 how they were to proceed following the submission of
11 their documents to rebut the presumption of inactivity
12 for those 47 wells?

13 A. Yes. This was an email sent by the attorney,
14 Mikal Altomare, and it was to Mike Allen and Mike Finley.
15 And it just basically stated that we had accepted their
16 presumption of inactivity with -- to rebut the
17 presumption of inactivity, and they would have to now go
18 ahead and file the C-115s to make it formal.

19 And there was also an additional step for --
20 since they were obtaining so many inactive wells, it
21 asked that they contact Sonny Swazo, another OCD
22 attorney, and work with him to enter into an agreed
23 compliance order for inactive wells, which would have
24 brought them into compliance at the time that they took
25 over those wells, and giving them sufficient time to

1 evaluate those wells and bring those into compliance.

2 Q. And that program is known as the Agreed
3 Compliance Order for Inactive Well Program; is that
4 right?

5 A. Yes.

6 Q. And that's something that you are actually
7 directly involved in working on with Mr. Swazo?

8 A. Yes, I am.

9 Q. What is the normal procedure for when an
10 operator takes over a large amount of inactive wells and
11 comes to you and Mr. Swazo and wants to discuss entering
12 into an agreed compliance order for inactive wells?

13 A. What we do is we'll go ahead and sit down with
14 an operator. We'll look at the number of inactive wells
15 that they have. We work out an agreement. The
16 agreements are two-year agreements. We ask that the
17 operator let us know how many wells that they believe
18 they're capable of bringing into compliance within that
19 period, and we put together an agreement giving deadlines
20 of when reports are due, when the wells have to be
21 brought into compliance.

22 The agreement, if it is entered into, takes
23 into account all those inactive wells that are agreed
24 upon at that time, and it gets them off the inactive well
25 list and, basically, brings them into compliance. And as

1 long as the terms of that agreement are met over those
2 six-month periods, the wells continue to be showing up in
3 compliance and off of the inactive well list.

4 Q. Is an operator eligible to enter into agreed
5 compliance order of that nature if it is still out of
6 compliance with financial assurances?

7 A. No.

8 Q. So a prerequisite for that is to post the
9 bonding first?

10 A. Yes.

11 Q. To your knowledge, did Nacogdoches Oil and Gas
12 ever contact Mr. Swazo or yourself with regard to
13 entering into an agreed compliance order for their
14 inactive wells?

15 A. No, they did not.

16 Q. Once the presumption was rebutted with regard
17 to the 47 wells, what was the benefit of -- what did the
18 OCD do in return for having that presumption rebutted on
19 those wells?

20 A. The transfer from Mountain States to NOG was
21 approved.

22 Q. So the OCD agreed to consider those wells as
23 not being in violation of the financial assurance rule
24 for purposes of the transfer?

25 A. Yes.

1 Q. Do you know if NOG posted the remaining bonds
2 due beyond the 47 to effect the transfer?

3 A. No. They still owed bonding for those
4 remaining 28 wells.

5 Q. Didn't they post an additional 20 --

6 A. They did, for 21 wells, I believe it is.

7 Q. And they completed the transfer of wells from
8 the previous operator on November 6th, 2008; correct?

9 A. Yes.

10 Q. Did NOG follow up as instructed with regard to
11 the submission of the production reports for the wells
12 for which it had temporarily rebutted the presumption of
13 inactivity, those 47 wells?

14 A. Partially. They submitted about half of those
15 reports.

16 Q. How many wells does NOG still owe additional
17 bonding for that are still showing up as being out of
18 compliance on the financial assurance noncompliance list?

19 A. There are still 28 wells, and the amount is
20 about \$189,000 that's still owed.

21 Q. How many wells are still showing as out of
22 compliance with either Rule 5.9 or 7.24, meaning either
23 they have not produced for a year plus 90 days or they've
24 just not reported the production in violation of
25 reporting requirements?

1 A. Eighty-six wells.

2 Q. Okay. I'd like to direct your attention at
3 this time to Exhibits C and D. Can you identify these
4 two exhibits for the record?

5 A. Exhibit C is the inactive well list for NOG,
6 and this list was produced on July 8th, yesterday, 2009,
7 that shows that NOG is the operator of record of 183
8 wells, and currently 86 of those wells are out of
9 compliance -- inactive, showing up as inactive. That's
10 Exhibit C.

11 Exhibit D, once again, is the inactive well
12 additional financial assurance report, and that's for
13 NOG, and that was also printed out on July 8th, 2009.

14 Q. This document shows that 86 wells are
15 currently in violation?

16 A. Yes, the inactive well list does show that.

17 Q. The inactive well additional -- I'm sorry.
18 Twenty-eight wells are currently in violation for
19 additional financial assurance?

20 A. Yes.

21 Q. You talked a little bit about how an operator
22 that entered into an ACOI would have the benefit of
23 having their wells not appear on the inactive well list
24 and, therefore, would seem as being in compliance.

25 Without entering into ACOI, would an operator

1 that was out of compliance with Rule 5.9 by having too
2 many inactive wells be eligible for consideration of a
3 permit to drill and inject, such as what would be needed
4 for a water disposal well?

5 A. No, it would not.

6 Q. Is the Division permitted to grant such
7 applications for operators who are out of compliance with
8 Rule 5.9?

9 A. No, it is not.

10 Q. If an operator is eligible to enter into ACOI,
11 however, even if they do have a lot of inactive wells,
12 once those wells are covered by an ACOI and are no longer
13 listed on that inactive well list under Rule 5.9, would
14 that operator then be permitted to enter into -- to file
15 an application for a water disposal well and be approved
16 for that application --

17 A. Yes, they would be.

18 Q. -- barring any other noncompliance issues?

19 A. Yes.

20 Q. Okay. The OCD has pled its application in
21 what's known as pleading in the alternative, arguing that
22 either NOG is out of compliance because of its wells that
23 have been inactive for too long or that it's failed to
24 report production or injection as required by the rules.

25 With the understanding that this is a little

1 bit of a legal nuance, do you have an understanding of
2 why the OCD has decided to take this approach in this
3 case, arguing an either/or kind of approach?

4 A. Yes. What we're concerned with at this point
5 is if that list is actually accurate. If it's accurate,
6 then, yes, 86 wells are still inactive. But if it's a
7 matter of reports not being filed or misfiled or
8 whatever, then a number of those wells could come off
9 that inactive well list.

10 Q. I'd like to draw your attention back to
11 Exhibit C, the inactive well list that was recently
12 printed yesterday, in particular, to the wells designated
13 as South Hospah Unit 17, South Hospah Unit 54, South
14 Hospah Unit 39 and Hospah Sand Unit 93.

15 MR. BRUCE: Excuse me. What were those
16 numbers again?

17 MS. ALTOMARE: South Hospah Units 17, 54
18 and 39 and Hospah Sand Unit 93.

19 Q. (By Ms. Altomare) These are all injection
20 wells; is that right?

21 A. Yes, they are.

22 Q. What is the last date of production as
23 reported to the OCD for each of these wells according to
24 the list?

25 A. The South Hospah Unit 17 was last injected

1 into October of 2005; the South Hospah Unit 54 in May of
2 '05; South Hospah Unit 39, October of '05; and the Hospah
3 Unit 93 in December of '05.

4 MR. EZEANYIM: How do I locate this? I'm
5 trying to locate those wells.

6 THE WITNESS: On Exhibit C, page 1, sixth
7 from the bottom, the sixth one up from the bottom is
8 Hospah Sand Unit 93. If you go across there, you'll see
9 that it's an injection well, and the last injection date
10 is 2005.

11 If you go to page 3, the third from the bottom
12 is South Hospah Unit Number 39, showing it's an injection
13 well, last injection, October 2005. Nine wells above
14 that is the South Hospah Unit 17, injection well, last
15 injection reported October 2005.

16 And on the last page, the third well down is
17 the South Hospah Unit 54, showing it's an injection, and
18 the last injection date was May of 2005.

19 Q. This will obviously be addressed in further
20 detail by the next witness. But has your staff advised
21 you of activity involving any of these four wells that
22 contradicts the dates reflected on the inactive well
23 list?

24 A. Yes. After recent inspections of those four
25 wells, they have been reported as injecting.

1 Q. All four wells have been reported as --

2 A. All four wells have been reported as
3 injecting.

4 Q. What is the OCD seeking in this case?

5 A. At this time we're seeking an order requiring
6 that NOG plug and abandon all of its wells or transfer
7 them to another affiliated operator by a date certain and
8 providing if it does not do so that the OCD be permitted
9 to plug the wells and forfeit any bonding that has been
10 posted.

11 MS. ALTOMARE: I think that's all I have.
12 I'll pass the witness.

13 MR. EZEANYIM: Do you want to --

14 MS. ALTOMARE: I'd like to move Exhibits
15 A, B, C, D -- and, actually, Exhibit E is the affidavit
16 of Dorothy Phillips. At this time I'd like to also move
17 that into evidence, and Exhibit F.

18 MR. EZEANYIM: So Exhibits A through F
19 should be admitted.

20 (Exhibits A through F were admitted.)

21 CROSS-EXAMINATION

22 BY MR. BRUCE:

23 Q. Mr. Sanchez, do you have a copy of the
24 Division's application in front of you? What I have is
25 the latest version of it.

1 A. The amended application?

2 Q. Yes.

3 A. Yes, I do.

4 Q. I'm just trying to get a handle on numbers
5 here. And I would ask you to look at paragraph 17 on
6 page 6 and paragraph 28 on page 9, starting on page 9.

7 A. Okay.

8 Q. And it might take you a little while to go
9 through, but in going through and comparing the two
10 paragraphs, all of the 39 wells -- I didn't count them,
11 but it says 39 wells -- in paragraph 17, except for the
12 Santa Fe Number 29, they are also listed in paragraph 28.
13 Could you verify -- maybe you know off the top of your
14 head. If not, take your time to verify that.

15 A. Okay. Yeah. They're both the Santa Fe on
16 both lists.

17 Q. What I mean, are all of the wells, other than
18 the Santa Fe 29, in paragraph 17 also in paragraph 29?

19 A. I understand what you mean now.

20 Q. Okay. I'm sorry.

21 MR. EZEANYIM: Mr. Bruce, what are we
22 doing? I think this is your time to cross-examine.
23 What's going on?

24 MR. BRUCE: Well, Mr. Examiner, you asked
25 up front what wells are we here for today, and I'm trying

1 to figure that out.

2 MR. BROOKS: I believe we're waiting for a
3 response from the witness.

4 MR. BRUCE: Yes, I'm waiting for a
5 response.

6 A. I'm seeing Santa Fe 16 and 17 are not on the
7 list.

8 MS. ALTOMARE: They're at the very end.

9 Q. (By Mr. Bruce) Yeah. They're at the very
10 end, I believe, Mr. Sanchez.

11 A. Okay. They are, yeah. It looks like all of
12 them are on the same --

13 Q. I said, "Other than the Santa Fe 29." I do
14 not see the Santa Fe 29.

15 A. Santa Fe 29 is --

16 Q. I didn't see that.

17 A. -- on the very top left-hand corner, page 11.

18 Q. Okay. I'm sorry. Okay. So they're all --
19 and then just one more question on the numbers. I need
20 to verify something.

21 And then if you turn up to paragraph 10 on
22 page 4 of the amended application, you mention three
23 wells; the Santa Fe Railroad A 74, which I believe is on
24 your list, and the Hospah Sand Unit 28, which is on your
25 list. I didn't see the Hospah Sand Unit 50, and maybe I

1 was looking at the wrong page. Is that listed in
2 paragraph 28?

3 MS. ALTOMARE: I think that's part of the
4 chronology. I don't think that's necessarily on the list
5 of wells.

6 Q. (By Mr. Bruce) That's fine if Ms. Altomare is
7 correct. What I'm getting at is --

8 A. It is on there, if you want to know.

9 Q. Okay. I'm sorry.

10 A. It's on page 12, third to the last.

11 Q. Oh, okay. For the most part, they went in
12 order of leases, and I just didn't see them.

13 Okay. What I'm getting at is in paragraph 17
14 you list 39 wells that the Division claims are out of
15 compliance?

16 A. Yes.

17 Q. And paragraph 28, the Division listed 121
18 wells, all of which are included in paragraph 17. So
19 what we -- are we really here today looking at 121
20 wells --

21 MS. ALTOMARE: Um-hum.

22 Q. -- not 183? I know on the Division records
23 that you're listing 183, but what we're really here today
24 about is 121 wells?

25 A. That's correct.

1 Q. Out of which the Division claims 39 are out of
2 compliance for one reason or another?

3 A. Thirty-nine are out of compliance for the
4 financial assurance, yes.

5 Q. Now, how many of these 121 wells listed in
6 paragraph 28 were out of compliance when NOG took over
7 operations?

8 A. Of that specific list?

9 Q. Yes.

10 A. I couldn't tell you right now without going
11 through each one of them back at that time frame. Some
12 of them may have fallen off recently. Some could have
13 been put back on production and are reporting now. Just
14 at the time, I'd have to go through each one of those and
15 look back at that time frame before I could answer that.

16 Q. Could you get, by going through your
17 exhibits -- maybe I don't have Exhibit A in front of me.
18 Is Exhibit A the exhibit that lists when the wells -- I
19 guess most of them do at some point list when the last
20 production was; correct?

21 A. Yes.

22 Q. So you could take the amended application at
23 page 28 and compare it with your first three or four
24 exhibits and figure out what the Division asserted was
25 noncompliant as of the date that NOG took over

1 operations?

2 A. We'd have to go back to the time period
3 that -- I believe it was November 8th -- let me see --
4 November 6 of 2008, pull up that and look and try to
5 compare that list to the list in Exhibit C. Exhibit C is
6 current as of yesterday. And if we wanted to see which
7 wells were similarly inactive at the time NOG took over,
8 we would have to see a list from November 6th, 2008.

9 Q. In looking at this and what the Division has
10 stated in its application and looking at these lists, you
11 said Mountain States was the prior operator, I believe?

12 A. Correct.

13 Q. How long had Mountain States been the
14 operator?

15 A. Off the top of my head, I don't recall.

16 Q. Do you know who the operator was prior to
17 that?

18 A. No, I don't.

19 Q. Does BC&D Operating ring a bell?

20 A. Yes, it does.

21 Q. The Division's own complaint application
22 states that these wells were out of compliance for some
23 time, a number of years. Did the Division ever take any
24 compliance action against Mountain States or against BC&D
25 Operating?

1 A. I'd have to go back and look. We have so many
2 cases that off the top of my head I could not tell you
3 whether we've gone after them at one point or another.
4 Mountain States is familiar, and I believe there was some
5 case, but I'd have to double-check that. Without doing
6 that -- or verifying it -- I might be wrong.

7 Q. Now, NOG will present testimony -- I've looked
8 at Dorothy's affidavit, and it states that NOG has a
9 \$50,000 blanket plugging bond. Didn't they subsequently
10 submit some single well bonds on a number of wells?

11 A. Yes.

12 Q. So the bonding is actually more than the
13 50,000 that is reflected in the affidavit?

14 A. Yes, it is.

15 Q. How many of the 121 wells listed in
16 paragraph 28 of the application are on federal leases?

17 A. I'd have to review that to tell you. I don't
18 know off the top --

19 Q. But a number of them are?

20 A. Yes, a number of them are.

21 Q. I apologize if I just asked this question,
22 Mr. Sanchez, but what type of -- do you know what type of
23 bonding Mountain States Petroleum had --

24 A. No.

25 Q. -- or BC&D Operating?

1 A. No, I don't.

2 Q. Again, I just want to verify for my own -- of
3 the 121 wells, you're claiming that 39 need additional
4 financial assurance?

5 A. Yes, sir.

6 Q. And that -- I don't care about the number, but
7 you're also claiming that if there is production from
8 certain wells, that needs to be documented under the
9 C-115s; correct?

10 A. Yes.

11 Q. Do you know or are you aware of what the
12 Division's plugging costs would be per well in this area?

13 A. Approximately \$35,000 a well, depending on the
14 depth.

15 Q. For your information, that's about what
16 Mr. Fesmire told me a couple of months ago on another
17 matter, so I was just wondering.

18 MR. BRUCE: Mr. Examiner, if I could
19 approach the witness and submit to him what I've marked
20 as Nacogdoches Exhibit 9, which is a copy of Rule 5.9.

21 Q. (By Mr. Bruce) Mr. Sanchez, I've highlighted
22 a portion of 5.9(B). Rather than have you read it, it
23 basically says that when, according to the Division's
24 records, a well has been inactive or shows no production
25 or injection for the past 12 months, the Division is

1 supposed to send a letter by first-class mail to the
2 operator. Did the Division do that?

3 A. I do not know.

4 Q. You don't have any records -- you don't have
5 any letters in your file?

6 A. Not in my file, no.

7 Q. Whose file would they be in?

8 A. That would be our records manager, Jane
9 Prouty.

10 Q. Have you had any discussions with the BLM
11 regarding the wells located on federal leases?

12 A. Not personally, no.

13 Q. Has anybody at the Division; do you know?

14 A. Probably out of the district office they have.
15 I'm not certain about that, but the next witness may be
16 able to answer that question.

17 Q. But certainly with respect to Exhibit 9, you
18 didn't send any letters to Nacogdoches?

19 A. Personally I did not.

20 Q. And, again, you've never contacted personally
21 Nacogdoches regarding any of the matters in this action?

22 A. No, I did not.

23 MR. BRUCE: Mr. Examiner, I think that's
24 all I have. I'd move the admission of NOG Exhibit 9.

25 MR. EZEANYIM: Any objection?

1 MS. ALTOMARE: No.

2 MR. EZEANYIM: Nacogdoches Exhibit 9 will
3 be admitted.

4 (Exhibit 9 was admitted.)

5 MR. EZEANYIM: Ms. Altomare, cross?

6 MS. ALTOMARE: Yeah, I have a couple of
7 clarification questions.

8 REDIRECT EXAMINATION

9 BY MS. ALTOMARE:

10 Q. There was reference to when NOG took over
11 operations and there was allusion to the date that the
12 operator transfer occurred in November. But, in fact,
13 that's only for our records; isn't that right?

14 A. Yes.

15 Q. But, in fact, we rely on the dates that are
16 provided on the C-145 Operator Transfer Form as far as
17 when an operator actually takes over operations; isn't
18 that right?

19 A. That's correct.

20 MS. ALTOMARE: Okay. If I could approach
21 the witness? I only have one copy. It's the C-145 that
22 was filed.

23 MR. BRUCE: That's fine. We have a copy
24 of that.

25 Q. (By Ms. Altomare) I'm handing you the C-145

1 that was submitted in this case for the transfer of
2 operatorship from Mountain States to NOG.

3 Could you describe for the record what dates
4 are reflected as to the date it was signed and the
5 effective date for when NOG took over operations of the
6 wells?

7 A. The effective date is 8/31/2007, and it was
8 signed on March 18th, '07.

9 Q. So the effective date that NOG took over
10 operations of the Mountain States wells was August 31st
11 of 2007?

12 A. Yes.

13 Q. Just to clarify, we're actually here about all
14 183 wells of Nacogdoches; isn't that right?

15 A. Yes, the 136 wells that were alluded to
16 earlier or those that were out of compliance at one point
17 or another.

18 Q. The 121?

19 A. The original 136 off Exhibit A is what I was
20 looking at.

21 Q. In fact, the 121 wells on the second list
22 referenced by counsel are in violation of one rule;
23 specifically, the inactive well rule or the reporting
24 rule, whereas the 39 wells that are also included within
25 that 121 are actually in violation of a second rule, as

1 well?

2 A. That's correct.

3 MS. ALTOMARE: Okay. I think that is all
4 I wanted to clarify. Pass the witness.

5 MR. EZEANYIM: Anything further,
6 Mr. Bruce?

7 MR. BRUCE: No, sir.

8 EXAMINATION

9 BY MR. BROOKS:

10 Q. I wanted to get the numbers straight. It's
11 pretty confusing here. You said there are 39 wells that
12 require additional financial assurance?

13 A. Yes, sir.

14 Q. Now, you aslo said that some financial
15 assurances has been filed --

16 A. Yes.

17 Q. -- some single well financial assurances have
18 been filed?

19 A. Yes.

20 Q. The 39 are -- is that wells that -- is that
21 the number of wells that still require additional
22 financial assurances after all that you're aware of that
23 have been filed?

24 A. Yes.

25 MS. ALTOMARE: No. Actually -- I

1 apologize for interrupting. The 39 was actually what was
2 in existence at the time we filed the application. As of
3 yesterday, there are 28 wells remaining that owe
4 financial assurances.

5 MR. BROOKS: Is that the original
6 application or the amended application?

7 MS. ALTOMARE: The original application.
8 Rather than muddy the waters with the amended application
9 with a third set of numbers, I just referenced back to
10 the original --

11 MR. BROOKS: So 29 as of today?

12 MS. ALTOMARE: Twenty-eight as of
13 yesterday, with a total amount due of 189,214, and those
14 are the figures that are reflected in Dorothy's
15 affidavit.

16 Q. (By Mr. Brooks) Now, on this inactive well
17 list that is Exhibit A, it says, "Printed on April 20,
18 2009," and it shows 121 wells that have been inactive for
19 a prescribed period of time. Have you run a more recent
20 number on that?

21 A. Exhibit C that was run yesterday.

22 Q. That is 86 wells?

23 A. Yes.

24 Q. So there have been 35 wells restored to
25 compliance between April 20 and July the 8th; is that

1 correct?

2 A. That's correct.

3 Q. And you made the qualification that you are
4 not certain that all of the production that has actually
5 occurred has been reported?

6 A. That's correct.

7 Q. Would it be also accurate to -- would it also
8 be accurate to say you're not certain if all the
9 production that has been reported has actually occurred,
10 or is that involved in this at all?

11 A. That is correct. Without a C-115, we're not
12 sure exactly whether or not they were producing that well
13 or if it should have been reporting. There could be the
14 situation where a well is reporting to reduce that
15 number, but it actually isn't. In this case I'm not sure
16 that that's occurred.

17 Q. But do you know if the Division is going to
18 offer any evidence that that has occurred or might have
19 occurred in this case?

20 A. No, we are not.

21 Q. So then as far as the evidence in this case is
22 concerned, we can assume that 35 wells have been brought
23 into compliance in the last three months?

24 A. Yes.

25 MR. BROOKS: Okay. I believe that is all

1 the questions I have at this time.

2 EXAMINATION

3 BY MR. EZEANYIM:

4 Q. Actually, the question has been run through by
5 Mr. Brooks. Let me get the number of wells now right.
6 He did a good job.

7 April 20th, there were 121 wells; right?

8 A. That's right.

9 Q. Now, as of yesterday -- first of all, before
10 April 20th, there are 62 wells that are active that are
11 not involved. If I take off 121 from 183 -- because NOG
12 has 183 in this case, 121 is for this action, if I take
13 it off -- to be 62 wells that are in compliance; right?

14 A. Yes.

15 Q. As of April 20th, 121 out of compliance. As
16 of yesterday, 31 came into compliance?

17 A. Yes.

18 Q. From yesterday to -- I think it's Order D, 28
19 wells are still needing financial assurance?

20 A. Yes.

21 Q. So I'm trying to get the wells because when
22 you give me the testimony, I can see how it is. Because
23 I had been confused on the wells. You are asking that
24 the -- what you are asking here -- that NOG plug and
25 abandonment of all the wells --

1 A. That's correct.

2 Q. -- all 183? Okay. Or transfer all the wells
3 to another operator --

4 A. That's correct.

5 Q. -- or have OCD plug them? There's one thing
6 that brought in the testimony that I need to explore that
7 the opposing counsel mentioned about when actually NOG
8 got possession of these wells. And before I even go
9 further, if you acquire a well that is inactive --
10 correct me if I'm wrong legally here -- if you acquire a
11 well and you know it's inactive and you acquire it, the
12 present operator is really responsible for that, you
13 know, for remediating that well and doing everything with
14 that well. So what I'm saying here is there are people
15 who make a living by doing the property evaluation.
16 Before you buy a property, you know what you are buying.

17 So I want to say this and see if it plays into
18 what we are going to be talking about today. I know from
19 your testimony you said the transfer was finally made on
20 August 31, 2007. There was testimony -- you said that
21 Mountain States wanted to transfer these wells to NOG and
22 OCD refused. What was the basis for refusing NOG getting
23 those wells from Mountain States?

24 A. At that time there were a number of wells that
25 had been inactive for more than two years that fell under

1 the rule for additional financial assurance, and that was
2 over \$500,000. So that amount had to be put up in order
3 to be in compliance and for that transfer to occur.

4 Q. So OCD -- you refused it because that money
5 had not been paid?

6 A. That's correct.

7 Q. NOG knew that these were inactive?

8 A. Yes.

9 Q. So your testimony today is that you refused it
10 because they are inactive and, therefore, the wells
11 should not be transferred?

12 A. That's correct.

13 Q. However, NOG still went ahead and got the
14 wells? Is that what your testimony is?

15 A. Yes.

16 Q. And the effective date of this transfer was
17 August 31, 2007 --

18 A. Yes.

19 Q. -- after all is said and done?

20 A. Yes.

21 MR. EZEANYIM: I just want to understand
22 the case. That's why I'm asking all these questions to
23 be able to know what's going on. So when the testimony
24 comes, I know my business, and then from there, we can
25 work. Any other person have any question for this

1 witness?

2 MR. BROOKS: Mr. Examiner, I'm sorry. I
3 do have additional questions. Is that okay?

4 MR. EZEANYIM: Sure.

5 EXAMINATION

6 BY MR. BROOKS:

7 Q. There is this letter, this Exhibit F, about
8 agreed compliance orders for inactive wells. Has there
9 ever been an agreed compliance order entered into between
10 the Division and Nacogdoches?

11 A. No.

12 Q. Why was that?

13 A. They never approached us after they were
14 informed that they should do so.

15 Q. If that had occurred, would compliance with
16 the financial assurance requirements have been a
17 prerequisite to entering into such an agreement from the
18 Division's perspective?

19 A. Yes.

20 MR. BROOKS: Thank you. That's all I
21 have.

22 MR. BRUCE: Mr. Examiner, if I could ask
23 one question.

24

25

1 RE-CROSS EXAMINATION

2 BY MR. BRUCE:

3 Q. Under the Division regulations, Mr. Sanchez,
4 at what point is a well to be plugged and abandoned or at
5 least temporarily abandoned with the Division's
6 approval --

7 A. After it's been inactive for a year plus 90
8 days.

9 Q. So if there was actual production within the
10 last year, then a well is not out of compliance --

11 A. That's correct.

12 Q. -- subject to the other reporting
13 requirements?

14 A. Yes.

15 MR. BRUCE: Thank you.

16 MR. EZEANYIM: Now, are you done with the
17 witness?

18 MR. BRUCE: Yes, sir.

19 MR. EZEANYIM: Any more questions for this
20 witness? You may be excused. Call your next witness.

21 MS. ALTOMARE: I have one additional
22 witness. We do have a brief PowerPoint, so we need a
23 minute to set up the computer.

24 MR. EZEANYIM: How many do you need?

25 MS. ALTOMARE: Five minutes or so.

1 MR. EZEANYIM: Okay. Ten minutes.

2 (A recess was taken.)

3 MR. EZEANYIM: Let's go back on the record
4 and continue Case 14326.

5 Ms. Altomare, call your next witness.

6 MS. ALTOMARE: Thank you, Mr. Examiner.
7 At this time I'd like to call Monica Kuehling.

8 MR. EZEANYIM: Monica, you've been sworn.

9 THE WITNESS: Yes.

10 MONICA KUEHLING

11 Having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. ALTOMARE:

14 Q. Can you state your name for the record.

15 A. I'm Monica Kuehling.

16 Q. And can you spell your last name for the court
17 reporter.

18 A. K-u-e-h-l-i-n-g.

19 Q. By whom are you employed?

20 A. By the Oil Conservation Division.

21 Q. And what is your title?

22 A. Compliance officer.

23 Q. How long have you been in that position?

24 A. Four years.

25 Q. What are your duties generally in that

1 position?

2 A. I inspect well sites for surface contamination
3 and witnessing of MITs, Mechanical Integrity Tests,
4 Bradenhead tests, and plugging.

5 Q. And you are working out of the Aztec field
6 office; is that right?

7 A. Yes.

8 Q. Are you familiar with the operator that we've
9 been discussing today known as Nacogdoches?

10 A. Yes.

11 Q. Under what circumstances have you generally
12 had the opportunity to interact with Nacogdoches or its
13 representatives?

14 A. During inspections at random we go out into
15 the field to different areas to check well sites, and
16 I've done that also during spills. Brandon has sent me
17 to the area to take pictures.

18 Q. By Brandon, do you mean Brandon Powell?

19 A. Powell.

20 Q. What is his position with the OCD?

21 A. Environmental specialist is his title.

22 Q. With the Aztec district office?

23 A. Yes.

24 Q. Who from Nacogdoches do you primarily deal
25 with in the field?

1 A. Terry Hughes.

2 Q. Is there anybody else?

3 A. There was a gentleman named Lindy.

4 Q. Do you happen to know what either of their
5 titles are with Nacogdoches?

6 A. Production foreman, I think, is Terry Hughes'
7 title.

8 Q. You were present for the testimony of
9 Mr. Sanchez earlier?

10 A. Yes.

11 Q. So you're aware of the ongoing issues of
12 inactive wells and overdue bonding that we've been
13 dealing with with Nacogdoches?

14 A. Yes.

15 Q. And you heard the testimony that since the
16 filing of the application Nacogdoches has submitted
17 production reports indicating that a number of their
18 wells have been returned to production?

19 A. Yes.

20 Q. I'd like to direct your attention to the
21 screen in front of you. Can you describe for the record
22 what this screen is?

23 A. It shows what I put down in my inspections for
24 each well.

25 Q. On the screen at the top it says, "SFRR,"

1 which is my abbreviation for Santa Fe Railroad Number 42,
2 with an API number, "Well inspection history." The two
3 highlighted entries I have, "Inspected by," under there
4 is "312." Is that your inspection number?

5 A. Yes.

6 Q. So those are entries that are made by you?

7 A. Right.

8 Q. What do those two entries starting with the
9 March 12th, 2009 entry indicate?

10 A. That the well is not producing or able to --
11 or not running, able to produce.

12 Q. So the March 12th, 2009 entry indicates that
13 there was a pump jack, but it wasn't running?

14 A. It wasn't running. And the one before, there
15 wasn't a pump jack on it on the 11th, it looks like.

16 Q. And the well was shut in?

17 A. Yes. Rods were still in it, but it wasn't
18 able to produce.

19 Q. This next slide, what is this a picture of?

20 A. The well sign.

21 Q. For that same well?

22 A. Yes.

23 Q. And what is this a picture of?

24 A. The well itself.

25 Q. A picture taken by you on May 11th, 2009?

1 A. Yes.

2 Q. Does this picture accurately represent what
3 you saw on the date of inspection on May 11th?

4 A. Yes.

5 Q. What does this picture depict?

6 A. That it's unable to produce. There's no pump
7 jack on it.

8 Q. So according to your records in March it was
9 able to produce, but as of May 11, 2009, there was no
10 pump jack, and it wasn't able to produce?

11 A. Right.

12 Q. This slide, Santa Fe Railroad 004, another
13 well inspection history. Again, two highlighted entries,
14 these are both your entries?

15 A. Yes.

16 Q. The March 12th, 2009 entry, what have you
17 indicated there?

18 A. That it must have a pump jack on it. Well, it
19 must have been running for me to put "producing."

20 Q. What did you indicate when you returned on
21 5/11/2009?

22 A. That there's no pump jack on it, no pumping
23 unit, so it wasn't producing.

24 Q. What is this slide?

25 A. The well sign.

1 Q. So on May 11th, 2009, this was the picture of
2 the well sign that you took?

3 A. Yes.

4 Q. And this picture on May 11th, 2009, another
5 one taken by you?

6 A. Yes.

7 Q. What does this picture represent?

8 A. There's no pumping unit. It's unable to
9 produce.

10 Q. And, again, this accurately reflects what you
11 observed on that date?

12 A. Um-hum. Yes.

13 Q. So, again, in March when you were there, it
14 was a producing well, but as of May 2009, there was no
15 longer equipment on site that would have allowed it to
16 produce?

17 A. Right.

18 Q. This slide is another well inspection history
19 for the State Hospah Unit 54. The two top highlighted
20 entries, again, those are your entries?

21 A. Yes.

22 Q. Can you read the 5/13/2009 entry from where
23 you're sitting?

24 A. From afar I saw this well opened up on 5/11.
25 This is just -- I seen it on 5/11, but I didn't go to the

1 well. But I went to the well on 5/13, and I seen a
2 couple of people open the well, so that made me think to
3 go check it in two days when I returned.

4 Q. What does the rest of the entry say?

5 A. Able to inject and the MIT passed in 2006.
6 The well was injecting, and the well had -- gauge read
7 600 pounds. And I told Lindy, who I don't know what his
8 title is. And I ran into Terry and Jerry at the office
9 and told them about the overpressure, because this well
10 is limited to 320.

11 Q. So the well was limited to 320, but it was at
12 that point observed by you to be injecting at 600 pounds?

13 A. Yes.

14 Q. What does your entry on 5/15/2009 indicate?

15 A. Injecting at 475 pounds.

16 Q. So two days later, after telling them it was
17 injecting overpressure at 600, you observed that it was
18 still injecting overpressure at 475?

19 A. Yes.

20 Q. What does that reflect?

21 A. The well sign.

22 Q. On May 13th, 2009, you took this picture?

23 A. Yes.

24 Q. What is wrong with this picture?

25 A. It doesn't have the right operator on it.

1 It's like two operators back.

2 Q. This is another picture taken by you on
3 May 13, 2009?

4 A. It's the gauge on the wellhead.

5 Q. Does it accurately reflect what you saw on
6 2009?

7 A. On May 13th, 600 pounds.

8 Q. It's a little blurry.

9 A. Yes. I didn't get good focus on it.

10 Q. To your recollection, the gauge read 600
11 pounds at that time?

12 A. Yes.

13 Q. What does this picture represent?

14 A. That's the whole well, a view of the well with
15 a sign in the background.

16 Q. Again, this was taken by you on May 13th,
17 2009?

18 A. Yes.

19 Q. This picture was taken by you on May 15th,
20 2009?

21 A. Yes.

22 Q. What does the gauge indicate at this time?

23 A. It's over 400 pounds.

24 Q. This is a well inspection history for the
25 Hospah Sand Unit 93. The highlighted entries on this one

1 begin at March 11th, 2009. Can you read what that entry
2 says?

3 A. This well should not be injecting. MIT failed
4 in 2006. Found injecting with 500 pounds on gauge.
5 Terry Hughes shut it down while I was on the site. This
6 well's injection limit is 300 pounds if it had passed its
7 MIT.

8 Q. So this well had not only previously failed
9 the MIT, but it had a limit of 300 pounds, and you
10 discovered it was injecting at 500 pounds?

11 A. Right.

12 Q. So you observed them shut it in on that date?

13 A. Yes. Terry Hughes shut it in that day.

14 Q. It looks like you returned on April 30th,
15 2009?

16 A. Yes.

17 Q. And can you read that entry describing what
18 you observed?

19 A. The well turned on again with 500 pounds on
20 gauge. I asked Lindy -- I don't know how his name is
21 spelled, so it's two different ways -- who, I don't know
22 what his title is, to turn it off and requested that they
23 disconnect this well. Called Terry Hughes on May 1st
24 because Terry was somewhere else, and I was out of
25 range -- the reason I didn't call him on 4/30 -- and also

1 requested this well be disconnected, and he told me they
2 had done it on April 30th. Also requested an MIT, and
3 limit on this well was 300 pounds, and I got the order,
4 485.

5 Q. Again, you returned after having personally
6 observed them shut in the well after injecting improperly
7 and returned to find them injecting again improperly?

8 A. Yeah.

9 Q. On 5/6/2009, what does that entry indicate?

10 A. There was a bull plug in the line, but it
11 wasn't disconnected. I gave the order for the limit on
12 the well to Shelly, who is the secretary. Terry was out
13 of the office that day, so I gave the order to Shelly so
14 they'd know.

15 Q. To your knowledge, is this well now finally
16 disconnected?

17 A. Yes, it is.

18 Q. This picture was taken by you on April 30th,
19 2009?

20 A. Yes.

21 Q. Does it accurately reflect what you observed
22 on that day?

23 A. Yes.

24 Q. What does that gauge reflect?

25 A. Over 400 pounds.

1 Q. And what do these pictures reflect?

2 A. That's the well connected. There's no well
3 sign on this site, but there is a 93 on the wellhead.

4 Q. This picture was taken at your inspection on
5 April 30th, 2009?

6 A. Yes.

7 Q. And are these two wells that we just discussed
8 regarding issues with injection the only two wells that
9 you came across that were either injecting overpressure
10 or injecting when they had previously failed MITs for
11 this particular company?

12 A. I did MITs in October on the federal site,
13 which is that South Hospah Unit, and two of the wells
14 were the Number 39 and the Number 17, and both of them
15 failed their MITs. And I found them injecting at one
16 time or another on several -- on inspections later on.

17 MS. ALTOMARE: I think that's all the
18 questions that I have for this witness. I'll pass the
19 witness.

20 MR. EZEANYIM: Mr. Bruce?

21 CROSS-EXAMINATION

22 BY MR. BRUCE:

23 Q. How often did you visit these -- NOG's leases?

24 A. At random. You mean through the years?

25 Q. Well, I mean -- let's just say in the last

1 year, rather than going back to prior operators.

2 A. In the last year -- at least four times in the
3 last year. In the last six months, probably four. I
4 don't know times -- how many times I was down there last
5 fall with Terry.

6 Q. So NOG did conduct MIT tests on a number of
7 wells?

8 A. Yes.

9 Q. When you're out there, whether for the MIT
10 tests or the inspections, did you see NOG crews working
11 on these wells?

12 A. Yes.

13 Q. And I know you talked about some of the wells
14 that didn't have pumps. Do a number of the wells have
15 pumps and are they producing?

16 A. Yes.

17 Q. You don't have any specific number, do you?

18 A. No. You have to go through my inspections on
19 what had the pump jack at the time and what didn't.

20 Q. You don't have anything to do with production
21 reporting, do you?

22 A. No.

23 Q. You haven't sent any correspondence to NOG,
24 have you?

25 A. No.

1 Q. When you raised a problem like that -- I'm
2 looking, but I don't think we need to put it on the
3 screen. But the South Hospah Unit 54, which was
4 injection well, when you raised your objection, they did
5 disconnect it?

6 A. The 54 is not disconnected. This time it is,
7 because on 7/1 it was still injecting overpressure, and I
8 told Terry to disconnect, to shut it in, the 54. That
9 was Monday or whenever the 1st was.

10 Q. Was it injecting below the 320 psi level?

11 A. No. 600 pounds.

12 Q. You mentioned the Santa Fe Railroad Number 4.
13 I think your slide show shows that it was producing in
14 March of '09; correct?

15 A. Right. It was not producing later on.

16 Q. But it still would be considered in compliance
17 if it produced in March '09?

18 A. I don't take care of that so I can't answer
19 that. I would say compliance. I don't know.

20 Q. Have you ever had any discussions with BLM
21 personnel regarding the wells on the federal leases?

22 A. Yes.

23 Q. And could you tell me what they were about?

24 A. I don't remember what the conversations were
25 about. I just asked how the Hospah was doing of Val

1 Jameson, who I think is the BLM personnel that handles --

2 Q. Handles inspections?

3 A. Yeah. I'm not sure exactly what Val does, but
4 anyway, I think he tests pipelines and things like that.
5 But he works a lot with Terry.

6 MR. BRUCE: That's all I have,
7 Mr. Examiner.

8 MR. EZEANYIM: Thank you.

9 Cross-examination?

10 MS. ALTOMARE: I don't think so.

11 MR. EZEANYIM: Okay. Any questions?

12 MR. BROOKS: I don't believe we've
13 received any evidence that's been brought up here.
14 anyway, are your inspection records going to be put in
15 evidence; do you know?

16 MS. ALTOMARE: I have copies of the slide
17 show that have copies of the inspections, if the Hearing
18 Examiners would like that to be made an exhibit, but
19 because there were other nonevidentiary aspects --

20 MR. BROOKS: It would seem to me that
21 those matters should be made part of the record and
22 presented to the Hearing Examiners.

23 EXAMINATION

24 BY MR. BROOKS:

25 Q. Those are not all the wells you inspected;

1 right?

2 A. Right.

3 Q. So there are other inspection reports that you
4 have done on Nacogdoches' wells that are filed in the
5 records of the OCD that have not been presented today?

6 A. Yes.

7 Q. And I'm not sure I am clear on how many wells
8 you documented or you talked about. It seemed to me
9 there were several injection wells that you said were
10 injecting overpressure, but I'm not clear on how many --
11 how many wells that was.

12 A. Overpressure was -- the 54 was overpressure.

13 Q. Was that the only one that you talked about
14 this morning?

15 A. Yes. The others were injecting when they
16 didn't have authority to inject, which was the 93 and the
17 17 and the 39.

18 Q. Were those wells that had been permitted for
19 injection at one time but the permit expired?

20 A. Permits don't expire on those waterfloods as
21 far as --

22 Q. So these are in waterflood units?

23 A. Right. These are wells that failed their
24 MITs. They shouldn't have been injecting.

25 Q. They were permitted at one time, but they were

1 not currently permitted because they had filed the MITs?

2 A. Right.

3 Q. How many wells did you bring to our attention
4 in that category?

5 A. Three.

6 Q. Okay. Now, did you -- okay. So you're right
7 about the expiration, because the only -- the waterflood
8 permit would only expire if there was no injection, as I
9 understand it.

10 A. I don't understand waterflood too well.

11 Q. There are some wells that have been injecting
12 continuously in these units; is that correct?

13 A. On that South Hospah, they just turned that
14 on. That's the federal site. And I don't know how long
15 those wells laid there without injecting.

16 Q. So you haven't researched that issue, whether
17 the waterfloods --

18 A. No, I haven't had that brought up because I
19 didn't know the waterfloods would -- I don't know if they
20 end or what happens with them because they're not like a
21 disposal.

22 Q. I'm sorry. I don't want to talk over you. My
23 understanding is that the waterflood -- the permit
24 for -- injection permits for waterfloods expire if
25 there's no injection into any well in the project for a

1 one-year period.

2 A. For one year? I didn't know that.

3 Q. That's not an issue you're raising here today?

4 A. No.

5 Q. Now, there are two wells that I noticed that
6 you said pump jacks had been removed from. Are you aware
7 of any others?

8 A. That's the ones that Mikal did the research
9 on. I don't go back and forth on -- I'd have to go
10 through every one of my inspections to find out if there
11 was a pump jack sitting on it or not.

12 Q. Are you suggesting that there's a pattern of
13 removal of equipment from these leases?

14 A. By someone else looking at that, yeah, there's
15 a possibility of that happening. But, personally, me
16 walking up on the site, no, I didn't.

17 Q. You haven't made enough observations or
18 reviewed your observations carefully enough to say one
19 way or another?

20 A. Right. When I walk on the site it's just to
21 look if there's a spill, if there's something
22 contaminating the ground, if the pump jack is running, if
23 there's a stuffing box leak. I looked a lot on the
24 injection side, if they're injecting or not injecting,
25 because I've taken care of the disposal wells and we're

1 looking into the waterfloods now.

2 Q. This may seem strange for me to ask you a
3 question about the roles or job assignments at the Oil
4 Conservation Division, but I'm really not all that aware
5 in detail about the district offices. You said you were
6 a compliance officer?

7 A. Yes.

8 Q. Now, is that different from an inspector?

9 A. They're the same. I think they used to be
10 titled deputy inspector.

11 Q. Yeah. My understanding was that they were --
12 the chief inspector was the district supervisor, and the
13 others were deputy inspectors. I don't know if they were
14 called deputy chief inspectors.

15 A. I don't know if we're still called deputies or
16 not.

17 Q. But you're compliance officers, and your
18 function is not any different from the other inspectors?

19 A. Right.

20 Q. Whereas the environmental officer is a
21 separate title; right?

22 A. Right. Yeah. He handles -- he doesn't go out
23 and check well sites like --

24 Q. You identified him earlier. Who is that?

25 A. Brandon Powell.

1 MR. BROOKS: That's all I have, I believe,
2 Mr. Examiner.

3 MR. EZEANYIM: Thank you. He asked all my
4 questions.

5 MS. ALTOMARE: Based on the comments of
6 the legal advisor, I would move a copy of the PowerPoint
7 presentation as OCD Exhibit G.

8 MR. EZEANYIM: Any objection?

9 MR. BRUCE: I have no objection, but we
10 obviously don't have a copy, so I just ask that we be
11 mailed a copy.

12 MS. ALTOMARE: I made copies just in case.

13 MR. EZEANYIM: Let the record reflect that
14 the PowerPoint presentation will be admitted as an OCD
15 exhibit.

16 Do you have anything further for this witness?

17 (Exhibit G was admitted.)

18 MS. ALTOMARE: I don't believe so,
19 Mr. Examiner.

20 MR. BRUCE: I don't have any further
21 questions.

22 MS. ALTOMARE: At this time the OCD rests.

23 MR. EZEANYIM: Mr. Bruce, call your first
24 witness.

25 MR. BRUCE: Mr. Examiner, I have a number

1 of exhibits, but to avoid any confusion, at this point
2 I'm just going to start with the first exhibit.

3 MIKE DEHNISCH

4 Having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BRUCE:

7 Q. Would you please state your name for the
8 record.

9 A. My name is Mike Dehnisch, D-e-h-n-i-s-c-h.

10 MR. EZEANYIM: When I was reading your
11 application, it appears to me that if your name is Mike,
12 you go work at NOG.

13 MR. BRUCE: That's made it so easy because
14 I've got three Mikes and Mikal to deal with.

15 MR. EZEANYIM: I'm sorry.

16 THE WITNESS: Wait until you see the
17 timelines.

18 Q. (By Mr. Bruce) Where do you reside,
19 Mr. Dehnisch?

20 A. I reside in Nacogdoches, Texas, at the
21 corporate office.

22 Q. What is your job for Nacogdoches?

23 A. VP of operations. I oversee operations,
24 information flow into the office and to the field.

25 Q. And how long have you worked for Nacogdoches?

1 A. I've worked for Mr. Finley for over
2 two-and-a-half years in one capacity or another.

3 Q. Mr. Finley is the president of Nacogdoches?

4 A. Yes.

5 MR. BRUCE: Mr. Examiner, I'm not
6 qualifying Mr. Dehnisch as an expert, so --

7 MR. EZEANYIM: Okay.

8 Q. (By Mr. Bruce) And just in a few words, what
9 is Exhibit 1, Mr. Dehnisch?

10 A. Exhibit 1 is a timeline that I constructed
11 based on correspondence that we received and also some
12 actions that we've taken that agencies have requested.

13 Q. So in preparing this timeline, did you go
14 through, like you said, Nacogdoches correspondence,
15 filings made by Nacogdoches with the government
16 authorities?

17 A. Yes, sir. I went through email
18 correspondence. I went to correspondence of different
19 filings from our office. I've also gone to the Oil
20 Conservation Division website for correspondence.

21 Q. In preparing this, this is all from documents
22 maintained in the normal course of business in
23 Nacogdoches Oil and Gas; correct?

24 A. Exactly.

25 Q. Did you also discuss with our next two

1 witnesses, Mr. Allen and Mr. Finley, the elements of
2 this, the timeline?

3 A. Yes, sir, most definitely.

4 Q. Let's -- I don't think we need to go through
5 line by line, but let's go through this. I'll have you
6 go through this and talk about some of the primary dates
7 involved in Nacogdoches taking over operations and
8 operating its properties.

9 Before we do that, on some of these -- after
10 some of these entries there is -- like, for instance,
11 after March 18th, '08, there's an Item A, and then you go
12 down to the next entry, and in parentheses there's an
13 "Item 1." Are the documents that back it up being
14 provided to the Division?

15 A. Yes, sir, in Exhibit 2.

16 Q. And that will all be in Exhibit 2?

17 A. (Witness nods head.)

18 Q. Let me hand that out just in case Ms. Altomare
19 and others want to look at that.

20 MS. ALTOMARE: Just as a preliminary
21 matter, I would object to Exhibit Number 1 being admitted
22 for the truth of the matter asserted, especially because
23 some of the statements include summarizing statements.
24 If there are documents supporting them, I would expect
25 that the documents, themselves, would speak for

1 themselves.

2 MR. BROOKS: Well, I would make the same
3 recommendation that I made to Mr. Bruce's objection that
4 as an administrative tribunal, we admit hearsay evidence
5 for whatever value it has, subject to the qualification
6 that it may be of less value than direct evidence and
7 that any conclusions are subject to the Legal Residual
8 Rules. So I would recommend the Examiner overrule the
9 objection.

10 MR. EZEANYIM: Objection overruled.

11 Q. (By Mr. Bruce) And, again, Mr. Dehnisch, the
12 documents that are referred in Exhibit 1 are contained in
13 Exhibit 2?

14 A. Yes. And where there was a summary of an
15 email, the actual email is in here.

16 Q. You're not trying to alter the subject of --

17 A. I'm not trying to alter the connotation of it.
18 I'm just trying to show the flow of everything.

19 Q. Let's start with September 1 of '07. Is that
20 when Nacogdoches purchased these properties?

21 A. Yes, sir.

22 Q. And there are state, federal and fee leases
23 involved in these properties; correct?

24 A. Yes, sir.

25 Q. At the same time, did Nacogdoches purchase

1 other properties in some other states?

2 A. We did. We purchased properties in Arizona
3 and Utah, as well.

4 Q. So you have been operating all of this --

5 A. And some other portions of New Mexico.

6 Q. Let's start with it. I won't interrupt you
7 much. As I said, don't go through everything, but hit
8 the timelines, and I might interrupt you here and there.

9 A. I put in there the date that we actually
10 acquired the leases as of 9/1/07, the bonds that were
11 posted on the South Hospah federal lease. During the
12 Fall, there are several notes on the timeline suggesting
13 different items that took place; as far as, we were given
14 a letter from the BLM listing things that they mandated
15 that we correct by taking over this lease. And
16 throughout this, the timeline, some of them are directly
17 following that letter as far as remediation of some of
18 the structures on South Hospah, laying new flow lines and
19 so forth.

20 Q. Now, in your first initial items here you talk
21 about your dealing with the BLM with respect to the
22 federal leases. Did NOG inform the OCD that it had
23 acquired the properties?

24 A. You'll have to ask one of the other witnesses.

25 Q. A change of operator wasn't approved

1 immediately; is that correct?

2 A. That is correct.

3 Q. Okay. Go ahead.

4 A. But we did submit a change of operator form.
5 It's the same one that I think we have as an exhibit
6 already, with both parties dating it March 18th. That's
7 why I threw it in there. I'm not saying it was approved
8 at that time. That's when both parties signed it is why
9 I put it there.

10 The first contact that I'm aware of that NOG
11 had with the OCD and, specifically, Ms. Altomare is on
12 April 11th, and this was showing exactly what we've all
13 been made aware of, and there's no contest that
14 additional bonding was needed on the said wells. It's
15 all listed in there, as well.

16 She took an opportunity to review the summary
17 that Nacogdoches provided on 5/19.

18 MR. EZEANYIM: Excuse me. On 4/11/08,
19 that's the first time you knew anything about OCD? Is
20 that what you're saying?

21 THE WITNESS: I'm not saying that's the
22 first time in my timeline that I have any knowledge of
23 OCD.

24 MR. EZEANYIM: What is MSPC?

25 THE WITNESS: I'm sorry about that. That

1 is Mountain States Petroleum Corporation, the two
2 operators that were signing.

3 MR. EZEANYIM: Okay. Go ahead.

4 Q. (By Mr. Bruce) Mr. Dehnisch, some of the
5 other witnesses have more familiarity with contacts with
6 the Division; correct?

7 A. Exactly. As a matter of fact, my job was just
8 to compile this information. I was not involved in any
9 of the emails that are represented in this timeline
10 between the OCD.

11 On May 19th, Mike Finley stated that he had
12 received the information from Ms. Altomare's office and
13 that he would review it with his engineer, Mike Allen,
14 and -- there's the response to that, that he forwarded
15 that on to Mike Allen, as well -- some other emails going
16 back and forth of minor corrections on what's going on.

17 Meanwhile, in May, while all this was going
18 on, we also had --we acquired other leases besides the
19 Hospah field. We acquired a lease in Arizona on the BDK,
20 and it is part of the Navajo Nation. There was quite a
21 cleanup of accounting reporting that needed to happen
22 there, and we entered an audit with Navajo Nation and
23 pretty much had to take everything and reconstruct from
24 production records that were never -- basically, we had
25 to reconstruct everything from scratch.

1 Q. Of course, Mr. Dehnisch, your problems with
2 the Navajo Nation aren't the Division's problems, of
3 course?

4 A. No.

5 Q. But you had a lot of problems out there that
6 you had to take care of --

7 A. Yes, sir.

8 Q. -- on an ongoing basis?

9 A. Yes.

10 Q. And Nacogdoches did try to take care of these
11 problems as they came up?

12 A. As they were made aware.

13 Q. Go ahead.

14 A. At the end of May, May 30th, it's the fifth
15 one down, Ms. Altomare emails Mr. Finley. Mr. Allen
16 informs them that NOG currently has 72 wells out of
17 compliance. She categorized them by dates, and nothing
18 stated that they would have those wells back on line.

19 Mike Allen emailed 18 C-103s to Ms. Altomare
20 from various wells on both HSU and Santa Fe Railroad
21 leases and also reported that swabbing had begun on these
22 wells to help rebut inactivity.

23 Q. The swabbing of the wells was done -- did the
24 Division suggest that to show that at least there's
25 activity on the leases?

1 A. That is what I concurred from the emails.

2 Q. Go ahead.

3 A. Again, other things happened during that time
4 besides the swabbing. Also in the summer we did some MIT
5 on injection wells on the South Hospah lease, strapped
6 tanks, continued different remediation projects that
7 needed to be attended to and tried to get things -- to
8 get the infrastructure -- because that was the problem.
9 The infrastructure wasn't ready for production in some
10 instances.

11 On 8/5 Mr. Allen notified Ms. Altomare by
12 email that swabbing was almost finished, and we would
13 have the information and the remaining C-103s to her
14 soon. Again, other remediation and testing of the Loan
15 Pine Dakota gas wells was done at that time, and a sample
16 was taken.

17 MR. EZEANYIM: What are we trying to get
18 to with this timeline?

19 MR. BRUCE: Well, Mr. Examiner, I think
20 there's a couple of things; number one, I think primarily
21 just to show Nacogdoches just didn't take over these
22 properties and sit on them. They did a lot of work out
23 there. And part of the complaint is that they have
24 massive noncompliance with the Division's rules. They
25 did what the Division asked them. Were some of the

1 reports not filed or were they maybe filed a little late?

2 Yes. But all these reports were filed and all the work
3 was done.

4 And Mr. Allen, our next witness, can go into
5 what he thinks are the wells that are at issue today.

6 But if you want Mr. Dehnisch to go through it a little
7 more quickly, fine. But we're just trying to hit some of
8 the highlights to show that, number one, they did a lot
9 of work out there. Number two, they contacted government
10 agencies. And number three, they filed what they thought
11 was needed with the Division.

12 MR. EZEANYIM: Okay. Proceed.

13 A. So after that, after the C-103s, you know,
14 back and forth, making sure that they confirmed bonding
15 prices, meetings and so forth.

16 Let me draw your attention to -- I think this
17 is the same email that was also presented by opposing
18 counsel. On 9/24 of '08, Ms. Altomare was informed that
19 the bonds had been posted and that Sonny Swazo and NOG
20 should connect from there.

21 Q. (By Mr. Bruce) Let's take a step back. Right
22 above that, September 12th, additional bonds were
23 required. Approximately how much in additional bonding
24 was filed; do you know?

25 A. That was around 140-something dollars. I

1 don't remember the exact --

2 Q. So in addition to the \$50,000 blanket bond,
3 additional bonds were filed by NOG?

4 A. Yes. The actual amount is in Exhibit 2.

5 Q. Okay. Let's move to September 24th. Here is
6 one -- you mentioned that in Exhibit Package 2, there's
7 an Item 26, the email, and that's the same email that the
8 Division presented as their Exhibit F, I believe.
9 Unfortunately, there was no contact between NOG and Sonny
10 Swazo to the best of your knowledge?

11 A. Not to my knowledge, but I don't know. I
12 don't have any record in here of it. That's all I can
13 tell you.

14 Q. Now, we move on to some stuff -- and I'll have
15 Mr. Finley talk about this a little bit more. One of the
16 issues out here is water disposal; is it not?

17 A. Yes, sir.

18 Q. And there's an entry September 26th, '08,
19 about Mike Finley contacting Wayne Price of the Division
20 about building a lake at Hospah. We're dealing with
21 fresh water that is produced from these Hospah wells?

22 A. Yes, sir.

23 Q. So one of NOG's thoughts was to build a lake,
24 if they could, in compliance with any other regulations,
25 state or federal, to take care of water disposal

1 requirements?

2 A. Yes, sir.

3 Q. The long and the short of it is -- and I'll
4 have Mr. Finley go into this a little bit more -- nothing
5 ever occurred; correct?

6 A. No. I mean there was some emails exchanged
7 back and forth. They gave us some information to supply.
8 We supplied the information and got back an email, "I'm
9 too busy."

10 Q. From Mr. Price?

11 A. From Mr. Price. It stated that he was too
12 busy, and we have not heard back from him since.

13 Q. So, as a result, eventually the water disposal
14 application that was continued today was filed by NOG?

15 A. What was that?

16 Q. The water disposal application was filed as a
17 result --

18 A. As a result.

19 Q. -- of no progress of building a lake?

20 A. As another way to dispose of water, yes, sir.

21 Q. Okay. Let's move on to the next page and try
22 to keep on going.

23 A. I think something that was -- if I can draw
24 your attention -- and I'll allow Mr. Finley to go into
25 more detail on this, as well.

1 But on December 4th we finished a -- completed
2 a project that was mandated by -- and I've listed seven
3 or so agencies that requested something be done with
4 this -- a huge project over in Arizona that was caused by
5 a landslide, where the Navajo Nation's water supply was
6 possibly in jeopardy, and it was, to them, a state of
7 emergency, something they wanted attended to. A lot of
8 resources and manpower went to that, and we got it
9 completed under budget and in a very timely manner.

10 Q. Was this something that Navajos and others
11 have been trying to solve for a number of years?

12 A. A number of years. Probably at least several
13 years before that the operators that had that before,
14 they had pressed, you know, on them to get it done and
15 nothing occurred.

16 Q. Okay. And, again, that's not the Division's
17 problem, but you were out there spending money and
18 applying manpower to a number of issues on the leases?

19 A. Yes, sir. On February 19th, the BLM approved
20 off-lease measurement applications submitted by NOG,
21 which allowed us to actually start selling our oil that
22 was produced from South Hospah and to be able to start
23 producing that lease. None of that was going to happen
24 until we had the property to their satisfaction.

25 I did make just a couple of notations in here,

1 and, again, these were -- and I could be wrong on the
2 dates, but I apologize if I am. I'm just recommending
3 there -- but I did note some of the visits that
4 Ms. Kuehling made out to Hospah and talked about the
5 injection pressures and that some of the wells had been
6 on line, so just confirming that that was there.

7 On the last page -- actually, there was -- on
8 6/9 Mike Finley tried to get in contact with Ms. Altomare
9 to explain and try to gain an understanding of what was
10 going on, and there was -- to get some clarification.
11 And then on 6/24 he made a second attempt to request to
12 talk to her.

13 Q. So based on the documents, there have been
14 numerous events out in the field, either Nacogdoches
15 taking care of issues out on these leases, putting wells
16 on production, or otherwise taking care of problems as
17 they arose?

18 A. (Witness nods head.)

19 Q. You have to say yes or no for the court
20 reporter.

21 A. Yes, sir. That's correct.

22 Q. Now, there is a dispute -- and I'll have our
23 next witness talk about certain things as to the number
24 of wells now out of compliance. But you have reviewed
25 the applications filed by the OCD, haven't you?

1 A. Yes.

2 Q. And the first application showed that there
3 were 100 -- I think 121 wells out of compliance?

4 A. That is correct.

5 Q. And that number we believe is substantially
6 less than that. It's down around what number?

7 A. Twenty-one or some -- for the record here,
8 it's down to 83 or whatever.

9 Q. Is it Nacogdoches' contention that it's
10 probably down around 20 wells that are still at issue?

11 A. Yes, sir.

12 Q. Does the fact that over a number of -- a short
13 number of months, the number has gone down from 121 down
14 to 20 show that work is being done on these wells?

15 A. Yes, sir.

16 Q. And that Nacogdoches is complying with the
17 Division's requirements?

18 A. Yes, sir.

19 Q. As well as the requirements of the BLM and
20 other agencies?

21 A. Yes, sir.

22 Q. Mr. Dehnisch, what is contained in Exhibit 3?

23 A. Exhibit 3 is a collection of various C-103s
24 that have been either submitted -- some of them I
25 received from emails where they were submitted. Others I

1 obtained off of OCD's website. Others were emailed to
2 me, as well.

3 Q. Do these pertain to the swabbing done on the
4 wells that was requested by the Division?

5 A. Yes, sir. Some of them in there are. There's
6 more than just the swabbing ones in there, but, yes.

7 Q. As well as other C-103s regarding work done on
8 the leases or done on the wells?

9 A. Yes, sir.

10 MS. ALTOMARE: I'm sorry. Are these filed
11 documents?

12 MR. BRUCE: That is the next question.

13 Q. (By Mr. Bruce) Mr. Dehnisch, were all of
14 these documents filed?

15 A. I have no way of knowing. Some of them I
16 received off of OCD's website, and then I went to OCD's
17 website later to gain more and couldn't find some of them
18 again. I didn't understand. I don't know if there was
19 something wrong with their --

20 Q. But were they submitted to the Division?

21 A. Yes.

22 Q. Do your records show that they were submitted?

23 A. Yes. My records show that they were emailed
24 to the OCD.

25 Q. Are the emails -- are they in Exhibit 2?

1 A. Yes.

2 Q. Okay. So everything -- all of these C-103s,
3 there are emails in Exhibit 2 showing that they were
4 submitted to the Division --

5 A. Yes.

6 Q. -- or the BLM?

7 A. Yes, sir.

8 Q. And going through these I see that some of
9 them are approved by the OCD district office. Some of
10 them show that they were filed. Some of them are federal
11 forms?

12 A. Some of them are federal forms.

13 Q. And some of them show that they were received
14 by the BLM Farmington office?

15 A. Yes.

16 Q. And, in addition, by the Oil Conservation
17 District 3, but not all of these show up on the
18 Division's website?

19 A. That is correct.

20 Q. And you don't know why?

21 A. I don't know why. Again, the ones that are
22 received, the ones that are stamped were off the website.
23 The ones that aren't, I received from them.

24 Q. But, again, these were prepared for
25 Nacogdoches, and they were submitted to the Division?

1 A. It's my understanding.

2 Q. In short, NOG attempted to comply with
3 whatever filing requirements were necessary but as
4 pertain to the Division rules?

5 A. From the information I gathered, I got that
6 impression.

7 Q. What is Exhibit 4, Mr. Dehnisch?

8 A. Exhibit 4 is a sample of the royalties that
9 were paid to the State of New Mexico for the -- just
10 another example of compliance and reporting that took
11 place.

12 Q. And that the wells that --

13 MS. ALTOMARE: I'm going to object to this
14 exhibit. It's not relevant. It has nothing to do with
15 compliance with OCD rules.

16 MR. BRUCE: I'm not showing it to show
17 compliance with OCD rules. I'm just showing it to show
18 that there is production out there.

19 MR. BROOKS: Are you suggesting that it
20 shows that there's production that was not reported to
21 OCD?

22 MR. BRUCE: I think, Mr. Examiner -- and
23 I'll let the next witness handle the production
24 reporting. I think this would pertain to any of the
25 production which was out there.

1 MR. BROOKS: I guess I'll advise the
2 Examiner to admit it for that limited purpose. The fact
3 that you complied with the State Land Office's
4 requirements, if you have, is irrelevant to any issue at
5 the present.

6 MR. BRUCE: I understand. I'm just
7 showing that -- there's allegations that there just
8 wasn't any production from these wells.

9 MR. BROOKS: Okay. Well, I will advise
10 the Examiner to admit this for the limited purpose of
11 showing the production, if, indeed, it does show that.

12 MR. EZEANYIM: This is overruled for the
13 limited purpose to show production.

14 MR. BRUCE: That's fine, Mr. Examiner.

15 Q. (By Mr. Bruce) And the same thing, what is
16 Exhibit 5, Mr. Dehnisch?

17 A. Exhibit 5 is New Mexico Taxation and Revenue
18 information on severance taxes.

19 MS. ALTOMARE: Same objection,
20 Mr. Examiner.

21 MR. BRUCE: Mr. Examiner, on this one, at
22 least, let me -- I think what you have here is production
23 unit numbers which could be tracked back to -- these are
24 production and severance taxes, and production unit
25 numbers are used by the Taxation and Revenue

1 Department -- like a unit would have one production unit
2 number, and these can be traced back to that. Again,
3 it's for the same purpose, just to show that Nacogdoches
4 was not sitting on these wells. That's all.

5 MR. BROOKS: It would be very difficult to
6 trace, but I will, again, advise that it be admitted for
7 the limited purpose.

8 MR. EZEANYIM: Objection overruled.

9 Q. (By Mr. Bruce) Mr. Dehnisch, on some of
10 these, if you look at the beginning, the company name is
11 BC&D Oil and Gas, the prior operator; correct?

12 A. Yes, sir.

13 Q. Did it have to be reported that way because
14 Nacogdoches had not yet become operator of record?

15 A. I would believe so.

16 MR. BRUCE: Give me a second. I think
17 that's all I have for Mr. Dehnisch.

18 MR. EZEANYIM: Ms. Altomare?

19 MR. BRUCE: I think that's all I have of
20 Mr. Dehnisch. I would move the admission of Exhibits 1
21 through -- NOG Exhibits 1 through 5.

22 MR. EZEANYIM: Any objection?

23 MS. ALTOMARE: None, other than already
24 stated.

25 MR. EZEANYIM: Okay. NOG Exhibits 1

1 through 5 will be admitted. You may proceed with your
2 cross-examination.

3 (Exhibits 1 through 5 were admitted.)

4 MS. ALTOMARE: Thank you, Mr. Examiner.

5 CROSS-EXAMINATION

6 BY MS. ALTOMARE:

7 Q. Regarding the contact that was made with
8 Mr. Wayne Price, referring back to, I think, what's
9 marked in the exhibit as Number 29, in fact, there wasn't
10 an email received from Mr. Price. It's an internal email
11 that's referencing a conversation that was had with Mr.
12 Price; is that right?

13 A. Yes, ma'am.

14 Q. According to that, it looks like -- actually,
15 what he said was that he was very busy that week and that
16 there was additional testing and additional -- what he
17 called "hoops," but additional requirements that needed
18 to be met?

19 A. Yes, ma'am.

20 Q. This occurred in October of 2008 --

21 A. Yes, ma'am.

22 Q. -- according to the email? What was done by
23 Nacogdoches at that point -- from that point forward to
24 follow up on that issue with Mr. Price or with anybody
25 else with the Division?

1 A. I did on the -- on Number 30, I did send him
2 written information, emailed him information. He said he
3 would look through it. It included water quality testing
4 and some of the information that he stated that he was
5 looking for. That's when I didn't get a response.

6 If you look on Number 32 on the next page,
7 that's where he said, "Sorry, Mike. I have an emergency
8 in Southeastern New Mexico. Please do not expect a quick
9 review of the project."

10 Q. Are you aware of what that emergency was?

11 A. He said something with mining or something.

12 Q. Are you aware of what happened with the
13 sinkhole in Southern New Mexico, pretty big deal?

14 A. No. I just know that -- all I'm just stating
15 is that's the last time I heard from him.

16 Q. Was any additional follow-up made by your
17 company with --

18 A. Yes. And I also tried to contact other
19 agencies to see if there's other ways, and we're even
20 actively seeking someone to help us. We have other
21 people that we talked to. We're still trying to -- it's
22 not dead in the water.

23 Q. Okay. In the email, Number 32, he also
24 indicates -- he does indicate that he has to respond to
25 an emergency, but he does give you some things to run

1 with in that email, doesn't he?

2 A. Yes. Some of them I tried to hit on and got
3 to dead ends, as well.

4 Q. Specifically, he says that he thinks that
5 you're misunderstanding the process, that you need to
6 prove that there's no shallow groundwater, that your last
7 proposal wasn't acceptable, that he recommends that you
8 hire a consultant that fully understands the rules and
9 regulations, the analytical is insufficient for the
10 proper evaluation, and he suggested that you consult with
11 Game & Fish. Did you hire a consultant, consult with
12 Game & Fish, do any of those things?

13 A. I talked with Game & Fish. They didn't feel
14 like they could help in this situation.

15 Q. Was an additional consultant hired by NOG?

16 A. At this point we do have someone that we got
17 in contact with who is helping us.

18 Q. When was that person retained?

19 A. This past, you know, Spring.

20 Q. So between October and Spring, what was the
21 delay in retaining that person between the recommendation
22 -- or November --

23 A. The contact -- trying some of the other
24 avenues that he sent me down.

25 Q. In October, when you were initially trying to

1 iron out these details with Mr. Price, was NOG in
2 compliance with bonding requirements, which would have
3 been a prerequisite to proceed with this project?

4 A. Again, I don't think so, but I -- I don't
5 know.

6 Q. You reference the email that I had previously
7 talked about with Mr. Sanchez when he was on the stand,
8 September 24th, 2008, indicating that -- it had suggested
9 that Sonny Swazo and Nacogdoches should connect at some
10 point. There was no contact between Nacogdoches and
11 Mr. Swazo; isn't that right?

12 A. Nothing was presented to me on that.

13 Q. Do you have any further information as to why
14 that didn't ensue?

15 A. You have to ask some of the other witnesses.

16 Q. Okay. You also reference some June contacts
17 that were initiated by other members of your company
18 directed to me. That was after Nacogdoches had obtained
19 legal representation; isn't that right?

20 A. Where are you referring to?

21 Q. The two emails that were sent June 9th by Mike
22 Finley and June 24th to my attention.

23 A. Um-hum.

24 Q. That was subsequent to Nacogdoches obtaining
25 legal counsel; is that correct? You already had an

1 attorney at that point?

2 A. I don't know what the date was, but I heard
3 that was the case.

4 Q. Were you at any point advised by counsel as to
5 why it was that I was not -- I did not feel at liberty to
6 return those calls?

7 A. I didn't directly. Maybe one of the other --

8 Q. Okay. You reference that, in your mind,
9 there's been a significant reduction in the number of
10 wells on the inactive well list since the filing of this
11 application due to the work that NOG has done in the
12 field?

13 A. Yes, ma'am.

14 Q. However, a lot of that work and a lot of the
15 production that has been done over the last year has been
16 made possible in part by injecting at least into some
17 wells that shouldn't be injecting -- receiving injection;
18 isn't that right?

19 A. You have to bring that up with the engineer.
20 I was really just compiling the information.

21 Q. You reference some sundries that were mailed
22 to the Division for filing. In fact, that's not a proper
23 way of submitting sundries; isn't that right?

24 A. I'm not sure. I just compiled all the
25 information. Some of it I got from emails that were

1 sent. Some of them were done off your website.

2 Q. Do you routinely file reports or filings with
3 the Division? Are you responsible for that?

4 A. I have not been up to this point, but in the
5 future will be.

6 Q. Did you personally submit any of those
7 sundries referenced in that exhibit or oversee their
8 submission?

9 A. No, ma'am.

10 Q. Do you know to whom they were directed by
11 email? To whom in the Division?

12 A. I did reference them -- a lot of them went to
13 two individuals in the Aztec office.

14 Q. In fact, they were directed within the last
15 week to Brandon Powell, who's the environmental
16 specialist; isn't that right?

17 A. Yes, ma'am.

18 Q. Are you under the impression that he's the
19 appropriate person to send these filings to?

20 A. I'm not sure.

21 Q. Okay. Are you aware of how the OCD obtains
22 the federal forms that you found online on the OCD Online
23 system?

24 A. The BLM, I believe, sends them to the OCD, and
25 then they put them -- they send a copy to them to be

1 posted.

2 MS. ALTOMARE: Okay. I think that's it.
3 I'll pass the witness.

4 MR. EZEANYIM: Cross?

5 MR. BRUCE: Just one question.

6 REDIRECT EXAMINATION

7 BY MR. BRUCE:

8 Q. I mean, Mr. Dehnisch, you're not a biologist,
9 are you, or a water hydrologist?

10 A. I'm not a water hydrologist. I am a plant
11 biologist. Water is not my forte.

12 Q. With respect to Wayne Price, you tried to
13 respond to him as best you could?

14 A. I tried as best as I could.

15 MR. BRUCE: That's all I have,
16 Mr. Examiner.

17 MR. EZEANYIM: Thank you. Do you have any
18 questions?

19 MR. BROOKS: Yeah.

20 EXAMINATION

21 BY MR. BROOKS:

22 Q. Your name is Mike Dennis?

23 A. Dehnisch.

24 Q. The same as the Lieutenant Governor?

25 A. It's spelled differently. I get asked that

1 every time I'm here. Those are the only people that ask
2 me.

3 Q. And what is your job title?

4 A. Technically, VP of operations, but I'm going
5 to start overseeing compliance.

6 Q. You have not been doing so heretofore, I
7 understand?

8 A. During this thing, no.

9 Q. Who has been responsible for regulatory
10 compliance at Nacogdoches up to now?

11 A. We had a third party that was -- did a lot of
12 our reporting. Is that what you mean by reporting?

13 Q. Well, a lot of companies have a regulatory
14 specialist who does both reporting and oversees
15 compliance. I understand production reporting is often
16 done by contractors. Tell me all you know about the
17 people who are responsible for dealing with regulatory
18 compliance at Nacogdoches, who they were and what they
19 did.

20 A. I think various portions were probably from
21 various individuals in our office.

22 Q. So there's no one person that was responsible
23 for that?

24 A. For everything, no, sir, not that I'm aware
25 of. You might be able to --

1 Q. Who would have been the people that would have
2 been dealing with the Oil Conservation Division?

3 A. I believe Mr. Allen had more contact with --
4 Mr. Finley with the OCD than I ever did.

5 Q. Are those people going to testify?

6 A. Yes, sir.

7 Q. Okay. I'll ask questions about that to them.

8 Are you familiar with the concept of due
9 diligence in corporate acquisitions?

10 A. No, sir.

11 Q. Well, would it make sense to you that if a
12 company is going to acquire a property, that they would
13 investigate that property to try to determine if there
14 are any unwelcome surprises that they might run into when
15 they acquire that property?

16 A. Sure.

17 Q. I think that's a summary of what lawyers
18 usually mean when they talk about due diligence.
19 Assuming that to be the concept, when you acquired
20 these -- when Nacogdoches acquired these properties in
21 New Mexico, who in your company was responsible for doing
22 due diligence with respect to those acquisitions?

23 A. I believe it would be one of our later
24 witnesses.

25 Q. So it wouldn't be you?

1 A. I had no part --

2 Q. Then I'm not going to ask you any questions
3 about that.

4 A. I was just compiling the information.

5 MR. BROOKS: That's all I have.

6 MR. EZEANYIM: If the attorneys don't have
7 any other thing, you may be excused.

8 THE WITNESS: Thank you.

9 MR. EZEANYIM: Mr. Bruce, who's your next
10 witness?

11 MR. BRUCE: I'm calling Mr. Allen.

12 MR. EZEANYIM: Mr. Allen, you have been
13 sworn. You're still under oath.

14 MR. ALLEN: Okay.

15 BARRY MICHAEL ALLEN

16 Having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BRUCE:

19 Q. Mr. Allen, would you please state your full
20 name and city of residence for the court reporter?

21 A. Barry Michael Allen, and I'm from Broken
22 Arrow, Oklahoma.

23 Q. Who do you work for and in what capacity?

24 A. Nacogdoches Oil and Gas as a production
25 engineer.

1 Q. Have you previously testified before the Oil
2 Conservation Division?

3 A. In New Mexico?

4 Q. In New Mexico.

5 A. No, sir.

6 Q. Would you summarize your educational and
7 employment background for the Examiner?

8 A. I have a degree in Petroleum Engineering and
9 Technology from Rogers State University in Oklahoma; 25
10 years of operational experience through various -- mostly
11 in Oklahoma -- coal bed methane, stripper wells, and so
12 on.

13 Q. How long have you worked for Nacogdoches?

14 A. Approximately two years.

15 Q. And does your area of responsibility include
16 the leases at issue today?

17 A. Sorry?

18 Q. Does your area of responsibility at
19 Nacogdoches include the leases here at issue today?

20 A. Yes, sir.

21 Q. And are you familiar with operations on those
22 leases?

23 A. Yes, sir.

24 MR. BRUCE: Mr. Examiner, I tender
25 Mr. Allen as an expert production engineer.

1 MR. EZEANYIM: Mr. Allen is so accepted.

2 Q. (By Mr. Bruce) I'm going to ask you some
3 questions on what some of the other witnesses said, but
4 before we do that let's run through the exhibits that I
5 handed you. What is Exhibit 6, Mr. Allen?

6 A. It's a copy of our production reporting on
7 Hospah.

8 Q. Does this include all of the wells that we're
9 here for today?

10 A. Yes.

11 Q. Okay. So I noticed -- why does it start in
12 May '08, rather than earlier?

13 A. That's a good question.

14 Q. Is that the only date that you pulled up for
15 preparation of this data?

16 A. Was this not printed off the website? I don't
17 know where this --

18 Q. Okay. It was printed off the OCD's website,
19 and that's shown by the subsequent attachments; isn't it,
20 subsequent pages? This comes from the Division?

21 A. Okay. Yes, sir.

22 Q. And, of course, the reason I mention the May
23 '08 date, until March or April of '08, Nacogdoches was
24 not recognized by the Division as operator; right?

25 A. Right. Correct

1 MR. EZEANYIM: To make that clear, what
2 did you just say?

3 MR. BRUCE: That Nacogdoches was not
4 recognized as operator of record until March or April of
5 '08. If you pull up their production data, it doesn't go
6 back.

7 MR. EZEANYIM: Okay. Just a moment. This
8 effective date of August 31, 2007, what is that date?
9 Are you aware of that date, August 31, 2007?

10 MR. BRUCE: Mr. Examiner, Nacogdoches
11 bought this, as the prior witness testified, in November
12 of '07 -- or September of '07. Excuse me. But until
13 they were recognized as operator -- they weren't
14 recognized as operator until April or so of '08.

15 MR. EZEANYIM: The effective date --

16 MR. BRUCE: That was effective as between
17 the parties, of course, the prior operators. But I'm
18 saying the Division did not recognize them as operator
19 until '08.

20 MR. EZEANYIM: What was that date they
21 were recognized?

22 MR. BRUCE: Well, I think it was
23 March 18th or something like that. But when you go to
24 the Division's records and look at production by
25 Nacogdoches, it just goes back to April or May of '08.

1 Probably May '08 would be April production.

2 MR. EZEANYIM: Okay.

3 MR. BRUCE: So production before that date
4 had to be accepted under the prior operator's name. It
5 might be that we should go back and reform the C-115s,
6 but I'm just saying that that's why it only goes back to
7 '08.

8 MR. EZEANYIM: The wells were acquired on
9 August 31 as the effective date -- I mean, from the
10 effective date, every production goes to Nacogdoches?

11 MR. BRUCE: Well, you'd have to go back
12 and change the C-115s.

13 MR. EZEANYIM: I'm sorry I'm interrupting.
14 Let me understand what's going on.

15 MR. BRUCE: Maybe Mr. Finley, the next
16 witness, can testify, but production was ongoing, and you
17 had to report it from September 1, '07, forward. But
18 because the OCD didn't recognize Nacogdoches as operator,
19 it couldn't be reported under their name.

20 MR. EZEANYIM: Okay.

21 MR. BRUCE: Even though it was their
22 production, it couldn't be reported under their name.

23 MR. EZEANYIM: Okay. I understand now. Go
24 ahead.

25 Q. (By Mr. Bruce) Mr. Allen, the long and the

1 short of it is production is being reported on these
2 leases?

3 A. Yes, sir.

4 Q. What is Exhibit 7?

5 A. This is a report from the database of
6 production that was pulled off of, I'm assuming, a state
7 website. It doesn't say. But it's broken down by year
8 for the Hospah leases back in 1971.

9 Q. So there has been a substantial amount of oil
10 and gas produced on these leases?

11 A. Yes, sir.

12 Q. I notice that starting right at the end of
13 2004, production drops dramatically.

14 A. Yes, sir.

15 Q. You have been out there on these leases, and
16 you've been in charge of production from them, have you
17 not?

18 A. Not in that time period, no.

19 Q. Not in that time period. But I'm saying
20 you've been out recently?

21 A. Yes, sir.

22 Q. In your opinion, are these leases still
23 capable of producing substantial amounts of oil?

24 A. Absolutely.

25 Q. If there were problems with prior operators

1 keeping these leases maintained, would you expect to be
2 able to increase production from these leases in the
3 future?

4 A. Yes, sir.

5 Q. The fact that production, especially the oil
6 production, declined so precipitously, would that
7 indicate to you that the operator just wasn't taking care
8 of the leases?

9 A. That's what I understand. That's what --
10 eventually, I believe he walked away.

11 Q. Just wasn't doing nothing out there?

12 A. Correct.

13 Q. Because production in a two-year period, from
14 2004 to 2006, production declined by about 90 percent?

15 A. Yes, sir.

16 Q. Usually, when you have -- now, these wells
17 don't produce a lot of oil per day?

18 A. That's correct.

19 Q. But when they get to this stage is decline
20 usually fairly flat?

21 A. Flat.

22 Q. If the decline is flat on these producing
23 wells, you would expect production to at least stay at
24 that 40,000 barrels per year or something similar, rather
25 than decreasing to 4,000 barrels per year?

1 A. (Witness nods head.)

2 Q. Do you have an estimate that if you can get
3 the remaining wells back on line, an estimate of how much
4 production could be increased per day?

5 A. We are currently ready. Right now it's off
6 line because of water issues. And we tested these wells
7 to know this. We have an additional hundred barrels a
8 day that's sitting idle that we cannot produce.

9 Q. That's just an initial figure?

10 A. That does not include the other wells that are
11 not ready to go on line. There's other wells that are
12 still capable of producing, too, so we can add to that,
13 as well. It's approximately about three barrels per well
14 is what we've averaged out.

15 MR. EZEANYIM: Before you continue, to get
16 this well count that you have on production here -- I'm
17 just trying to understand the testimony. Could you
18 explain, if you go down from the year, you will see the
19 well count, 201 wells. Are all these in New Mexico? 201
20 wells, is that in New Mexico?

21 THE WITNESS: I believe so.

22 MR. EZEANYIM: Why I'm asking is that from
23 what we have, I took from the 183. Have you drilled
24 additional wells?

25 THE WITNESS: No, sir.

1 MR. EZEANYIM: Because I'm getting
2 confused.

3 THE WITNESS: I understand. I see the
4 difference.

5 MS. ALTOMARE: If I could actually
6 interrupt, Mr. Examiner. If counsel and this witness
7 could lay a better foundation for Exhibit 7, and I
8 anticipate Exhibit 8, as well, these -- especially
9 Number 7, there are absolutely no definitive labels on
10 this, and I'm really confused as to where this data is
11 coming from. They look to me to be summaries. I'm
12 wondering if the witness compiled them or counsel
13 compiled them. Could you lay a foundation for them?

14 Q. (By Mr. Bruce) Where did you come up with
15 this exhibit, Mr. Allen?

16 A. I believe this was sent to us from our
17 contract regulatory specialist. I have no idea where she
18 got it, and I thought I made that clear when I first
19 testified. If I did not, I apologize.

20 Q. Would that be Angela Velasquez?

21 A. That's correct.

22 MR. EZEANYIM: So to continue with my
23 question, because I'm trying to understand something.
24 When she says that in 2005 there are 201 wells, do you
25 have 201 wells or 183? How many wells do you have? Do

1 you have any idea how many wells you have?

2 THE WITNESS: Well, it's a floating
3 number. It's around, we're figuring, 121 wells based on
4 information off the state website. This 201 wells, there
5 was no way there was 201 wells producing at that time.

6 MR. EZEANYIM: There's no production for
7 2007 and 2008?

8 THE WITNESS: We don't -- it's not on
9 here. Because this was actually a previous document that
10 was put together.

11 MR. EZEANYIM: I'm sorry I'm asking these
12 questions.

13 THE WITNESS: We have that information,
14 but I don't have it here.

15 Q. (Mr. Bruce) Now, there is one other lease out
16 there that we're not here for today, the Hanson lease; is
17 that correct?

18 A. That's correct.

19 Q. There are wells there that have been plugged
20 and abandoned and are no longer productive?

21 A. It's under federal mandate to be plugged, yes,
22 sir. I think it was on that count. I'm sorry. I
23 forgot. I'm glad you --

24 Q. And, finally, what does Exhibit 8 reflect?

25 A. This is the wells that we currently have, and

1 it lists each well individually, shows which wells are
2 pumping or how often and are ready to go, just sitting,
3 waiting to -- because, like I said, we cannot produce
4 several of the wells for water issues.

5 Q. When it says, "Ready to produce," like the
6 Santa Fe Railroad Number 50 down at the very right-hand
7 column --

8 A. Yes, sir.

9 Q. -- down at the bottom, it's ready to produce,
10 but you need water disposal --

11 A. That's correct. The Santa Fe Railroad has no
12 injection wells available to us at all that I am aware
13 of, at least. We're actually having to transfer water
14 over to the South Hospah.

15 Q. And the other ones show various dates as to
16 when the wells were producing. Not all wells are
17 producing every day; is that correct?

18 A. That's correct.

19 Q. And I may as well get into that. Ms. Kuehling
20 testified there is one, the Santa Fe Railroad 42 well,
21 that was producing -- it was pumping in March '09 but not
22 in May '09. At times have pumping units been moved from
23 one well to another?

24 A. Yes, sir, they have.

25 Q. They remained on the lease?

1 A. That's correct.

2 Q. But they've been moved from one well to the
3 other to keep them producing?

4 A. That is correct. There's no sense in having
5 equipment sitting on a well that we cannot produce. We
6 can't produce them. We're just moving them.

7 MR. EZEANYIM: Take, for example, Well
8 Number 15 on the right-hand side. It was ready
9 9/18/2008. It's pumping?

10 THE WITNESS: I'm sorry. Which one?

11 MR. EZEANYIM: Number 15.

12 MR. BRUCE: South Hospah.

13 MR. EZEANYIM: It says it was ready
14 9/18/2008, and it's pumping. And what is happening that
15 it's ready? What do you mean by ready? Is it producing
16 or not producing?

17 THE WITNESS: I don't know why that's like
18 that. The field actually prepared this. But I would
19 assume, based on what I know, that it is pumping off and
20 on. It is capable of producing. It's off and on. I
21 would say it's off and on.

22 MR. EZEANYIM: It's not shut in?

23 THE WITNESS: No, sir.

24 MR. BROOKS: Mr. Examiner, I think you're
25 reading two different entries on different tables.

1 THE WITNESS: Oh, I did, too.

2 MR. EZEANYIM: It's very confusing. Okay.

3 Go ahead.

4 Q. (By Mr. Bruce) Mr. Allen, Exhibit 3, which
5 was previously submitted, contains all the C-103s.
6 There's an Angela Velasquez. What is her relationship to
7 NOG?

8 A. She's a contract regulatory specialist for
9 NOG.

10 Q. Was it her job to take care of filing
11 production reports?

12 A. Yes, sir.

13 Q. And was it her job to take care of filing any
14 other type -- like C-103s, sundry notices --

15 A. The sundry notices were submitted from the
16 field and sent to her for official -- wherever it needed
17 to go, and she took care of it from there.

18 Q. And was she a carryover from the prior
19 operators?

20 A. Yes, sir.

21 Q. And to the best of your knowledge, has she
22 informed you that all of the lease documents were filed
23 with the Division?

24 A. The sundries or the 103s or --

25 Q. Yes, sir.

1 A. As far as I know, all of them have been
2 submitted.

3 Q. To the Division?

4 A. Yes, sir.

5 Q. She would know where they need to be filed
6 with the Division, not just with Ms. Altomare or
7 Mr. Sanchez or anything like that?

8 A. She would.

9 Q. Another person who has signed some of these is
10 Terry Hughes. Who is Mr. Hughes?

11 A. Terry is our production foreman for the
12 Hospah.

13 Q. Out in the field?

14 A. Yes, sir.

15 Q. I see a lot of the ones -- and you might not
16 have this in front of you -- were federal forms filed
17 with the BLM, and they are stamped as being filed with
18 the BLM, so, obviously, Mr. Hughes knows how to file
19 these reports?

20 A. That's correct. They are generated from the
21 field, some of them.

22 Q. Let me go through a few things regarding
23 Ms. Kuehling's testimony. You've already addressed the
24 Santa Fe Railroad Number 4. That well is capable of
25 producing and paying quantity --

1 A. Yes, sir.

2 Q. Then the Santa Fe Railroad 42, she reported
3 that there was no pumping unit on it, and I think there
4 was another one in March and another one in May. What is
5 the status of that well?

6 A. I believe they moved the pumping unit off to
7 another well that we could actually produce, that we
8 could actually dispose of the water on some of the other
9 wells. It didn't leave the lease. It's still there.
10 It's the Hospah field. I'll put it that way.

11 Q. Then the two injection wells, the 54 and the
12 93, they were over pressure?

13 A. (Witness nods head.)

14 Q. Did you tell your field people to shut those
15 in?

16 A. Yes, sir, I did.

17 Q. Is there a problem with injection out there?

18 A. Yes, sir.

19 Q. With respect to these two wells, what are the
20 problems?

21 A. Just the two wells?

22 Q. In general.

23 A. Primarily, there's -- we have a major sand
24 problem, and sand continually stacks up over the
25 perforations, and we continuously have to wash these

1 wells out. As fast as we can get them washed out,
2 they're back in the same situation again. We have fought
3 this problem from the very beginning taking over this
4 lease, and we just -- we have nothing -- we can't do
5 anything else. That's all we can do is wash them out.

6 Q. So they're not capable of taking much water?

7 A. No. They take the water after we wash them
8 out for a short period of the time, and they're right
9 back in the same situation.

10 Q. Would that lead to the injection pressure
11 increasing?

12 A. Absolutely. The sand itself takes the water
13 fine. I mean we found gloves, rags, all kinds of things
14 that have went down the hole from previous operators, and
15 we've had to go in and replace -- this has just been an
16 ongoing problem.

17 Q. But you're not out there intentionally or
18 consistently injecting above the Division mandated
19 injection --

20 A. No, sir. I tried to make sure that we keep
21 everything under control. And like I said, it's not a
22 formation issue. It's external from that.

23 Q. But, again, if you inject for a while, the
24 sand builds up, the pressure goes up, and you have to
25 shut the well down and clean it out again?

1 A. That is correct.

2 Q. And there was some testimony -- for instance,
3 the well -- I think she said the South Hospah Unit Well
4 Numbers 17 and 39, they failed their MITs, so you're
5 going to have to take correction action on those wells?

6 A. Correct.

7 Q. These are not wells you -- none of them you
8 drilled?

9 A. No, sir, we did not drill any of them.

10 Q. It is in your work program to eventually take
11 care of these wells?

12 A. Yes, sir.

13 Q. Put them back on where they will satisfy the
14 Division's requirements with respect to casing and
15 injection?

16 A. That is correct.

17 Q. If you get a new water disposal well approved
18 by the Division, can you do away with some of these
19 existing injection wells?

20 A. Yes, sir, we can.

21 Q. Let's discuss just briefly what Nacogdoches
22 did when it took over operations on these leases. When
23 it did, how many field personnel were out there for the
24 prior operator; do you know?

25 A. Field? Three, four, maybe.

1 Q. And did you subsequently hire additional
2 people?

3 A. Yes, sir. Well, the foreman did. But, yes,
4 we have approximately 17 people.

5 Q. On Nacogdoches payroll?

6 A. For just Hospah only.

7 Q. For Hospah only?

8 A. Yes, sir.

9 Q. So you have to pay those people on an ongoing
10 basis?

11 A. Yes, sir.

12 Q. They are out there trying to maintain the
13 leases and get them back on production?

14 A. Yes, sir.

15 Q. In capital costs, equipment, et cetera, do you
16 have an idea of how much you've spent on the Hospah
17 lease?

18 A. Inclusive?

19 Q. Yes.

20 A. Over \$3 million.

21 Q. That includes -- does that include equipment?
22 You had to lay new lines out there?

23 A. We had to replace all lines. We had to repair
24 all -- everything. Installing injection pumps is very
25 expensive to do. We had to completely redo everything,

1 tanks. We haven't had to replace the tanks, necessarily,
2 but we had to completely go through knockouts, replacing
3 all the pneumatic controls. Everything was having to be
4 replaced. We've had to go through and redo everything,
5 especially on the South Hospah, which is federally
6 mandated anyway. We had to do that.

7 Q. Surface remediation?

8 A. We did surface remediation continuously.

9 Q. Out of this \$3 million, that doesn't include
10 the monthly payroll for the 17 people, does it?

11 A. I believe there might have been a little bit
12 of that in there on some instances. But it would be
13 excluded from that for the most part. Mr. Finley would
14 need to answer that question.

15 Q. Besides the 17 men, have you also had rigs
16 on-site?

17 A. Yes, sir.

18 Q. Doing what?

19 A. They're continually working in the wells.
20 Continually.

21 Q. Last July and August at the Division's
22 suggestion, were the wells swabbed, the ones that weren't
23 producing?

24 A. Yes, they were.

25 Q. And that is contained in the C-103s that were

1 submitted?

2 A. That is the results of it, yes.

3 Q. Were they recently swabbed again?

4 A. Yes, sir.

5 Q. That's contained in these reports also? The
6 sundry notices?

7 A. I believe they did do those, yes.

8 Q. So looking at the Division's exhibits and
9 everything else, most of these wells were out of
10 compliance when you took them over?

11 A. That is correct.

12 Q. And Mr. Brooks asked some questions, and maybe
13 it should go better to Mr. Finley, the president of the
14 company, but Nacogdoches was aware there were problems
15 out there when it took over?

16 A. Yes, sir, we were.

17 Q. And you still thought it was a viable project
18 because of the historical production reports?

19 A. Yes, sir.

20 Q. Have you been out there every day, every week,
21 every month, trying to bring these wells back on line?

22 A. I personally have not, but the field operation
23 guys have, yes, sir.

24 Q. Have you kept in touch with the BLM regarding
25 the federal leases?

1 A. Yes, I have.

2 Q. Are they satisfied with the progress?

3 A. Yes, they are.

4 Q. When did you first go out to these leases to
5 start supervising the operations out there?

6 A. I was actually out there a few months with
7 Mountain States. They hired me as a consultant. But
8 when I got there, there was nothing producing. Nothing
9 was on.

10 Q. Not a thing?

11 A. Nothing.

12 Q. And under Mr. Dehnisch's timeline, there's
13 the takeover, the official approval of operations in
14 March '08. Had you contacted the Oil Conservation
15 Division in the Fall of '07 informing them that
16 Nacogdoches was taking over operations?

17 A. Personally?

18 Q. Yeah.

19 A. I talked to Charley Perrin several times, but
20 it was just over certain little issues that I was asking
21 questions to find out about. But he was definitely aware
22 because I was bugging him quite a bit, because I was just
23 trying to learn and understand what I needed to do to get
24 going here.

25 Q. Did Mr. Perrin ever say that he'd really

1 prefer until the final transfer was approved until he
2 talked with you?

3 A. That is correct.

4 Q. During the first seven months out there,
5 Mr. Perrin really didn't want to deal with Nacogdoches
6 because the transfer of operations had not yet been
7 approved?

8 A. That is correct. He would not.

9 Q. Mr. Allen, do you have that list of the 39
10 wells that the Division --

11 A. Yes.

12 Q. Could you go through those and, first of all,
13 just go down column by column and note --

14 MR. WARNELL: What exhibit is that?

15 MR. BRUCE: What I'm looking at is -- and
16 I don't know what better way to do it -- but paragraph 17
17 of the amended application or any other listing --

18 MR. BROOKS: We have exhibits before us.
19 we don't have the application. We have only one copy
20 that would be in the file, but we don't have that.

21 MR. BRUCE: What I want to do -- and maybe
22 I can mark it now and maybe later today fax over the
23 Division a list of these wells, rather than taking time
24 now.

25 But in the application -- maybe I can give you

1 the application here. This is the first amended
2 application, but it does list all the same wells.

3 MS. ALTOMARE: Yeah, it should be the same
4 list.

5 MR. BRUCE: Here's the list I'm looking
6 at, Mr. Examiner. You can keep that. I want Mr. Allen
7 to go through and --

8 Q. (By Mr. Bruce) Let's start, Mr. Allen.

9 A. I'm actually reading from a different one.

10 Q. I think you've got the original application.

11 A. I do, on page 5.

12 Q. It's the same wells.

13 A. Okay.

14 Q. Let's go down that list starting in the
15 left-hand column and then to the right-hand column.

16 A. What would you like me to do?

17 Q. Which of these wells are producing or capable
18 of producing at this time?

19 A. I think all of them are capable of producing,
20 but they would be swabbed. Is that what you're asking
21 me?

22 Q. So they are all capable of producing?

23 A. Yes.

24 Q. They have all been swabbed as the Division
25 required you to do last year?

1 A. Yes, sir.

2 Q. Are there some that have been placed on
3 production even though they've been swabbed?

4 A. There is 20 of them that are either on or
5 ready to produce of the 39. Do you want me to give you
6 the numbers?

7 Q. Yeah. And make sure you say, "Hospah Sand
8 Unit Number 59," et cetera. List the ones that are
9 producing or are ready to put on line if you have water
10 disposal capability.

11 A. Well, I've just got them categorized as ready,
12 ready to produce or producing.

13 Q. Tell the ones that are producing.

14 A. Producing? Hospah Sand Unit 28; Hospah Sand
15 Unit 52; Santa Fe 17; Santa Fe Railroad Number 4; Santa
16 Fe Railroad Number 7; Santa Fe Railroad 8; Santa Fe
17 Railroad 9; Santa Fe Railroad 13; Santa Fe Railroad 14;
18 Santa Fe Railroad 15; Santa Fe Railroad 19; Santa Fe
19 Railroad 20; Santa Fe Railroad 21; Santa Fe Railroad 39;
20 Santa Fe Railroad 42.

21 Q. 42?

22 A. Yes, sir. Again, these are capable of
23 producing or ready to produce. Santa Fe Railroad 43;
24 Santa Fe Railroad 45; Santa Fe Railroad 48; Santa Fe
25 Railroad 49; Santa Fe Railroad 50.

1 MR. EZEANYIM: All these are producing
2 now?

3 THE WITNESS: They're either producing or
4 they're in a position to produce.

5 MR. EZEANYIM: And the rest are not yet
6 swabbed?

7 THE WITNESS: I'm sorry?

8 MR. EZEANYIM: The rest are not yet
9 swabbed?

10 THE WITNESS: No. The other ones have
11 been swabbed.

12 MR. EZEANYIM: But they're not producing?

13 THE WITNESS: That is correct.

14 MR. EZEANYIM: Are they ready to produce?

15 THE WITNESS: They could -- some of them
16 could produce if we had water disposal, and some of them
17 could produce -- we'll have to put equipment on some of
18 them still.

19 Q. (By Mr. Bruce) Anyway, you've listed 20
20 wells, and they're ready to produce or they are
21 producing?

22 A. Correct.

23 Q. The other 19 have been swabbed per the
24 instructions of the OCD?

25 A. That is correct.

1 Q. And they can produce, but they either need --
2 some of them need equipment?

3 A. They need equipment.

4 Q. Is it -- how should I say this? Until you get
5 ready to produce them, do you want to buy the pumping
6 unit, et cetera, to install on-site until you have the
7 ability to dispose of the fresh water?

8 A. No, sir.

9 Q. Are there any wells not necessarily on this
10 list that have been shut in due to lack of a pipeline?

11 A. Yes, sir. Not on this 39.

12 Q. On the list of 121?

13 A. Yes, sir. The South -- there actually is
14 several wells, but it's the Lone Pine Dakota wells, 12,
15 14 --

16 Q. 23?

17 A. I don't see that on this list.

18 Q. It's on the very --

19 A. Okay. But it's the Lone Pine Dakota wells.
20 They're gas.

21 Q. They are gas wells. They're not oil?

22 A. They make more gas than oil.

23 Q. They are awaiting a pipeline connection?

24 A. That is correct.

25 Q. Were they nonproducing when you took over the

1 lease?

2 A. Yes, they were.

3 Q. Mr. Allen, just as a final matter, you
4 personally, have you tried to comply with the Division's
5 requirements?

6 A. I have.

7 Q. In your mind, has there been some confusion
8 out there as to what you're supposed to do?

9 A. Yes, sir, I believe there has been.

10 Q. From your viewpoint, what is the confusion?

11 A. Well, in relationship to the wells that were
12 swabbed, my understanding was that if we swabbed them,
13 that that would prove that they were viable to produce,
14 and we would fill out a C-103. And I personally sent
15 that to the -- at least the information -- to our
16 contract regulatory, and I know it was presented to the
17 OCD because I saw the follow-up emails.

18 Now, as far as the -- I was not aware of
19 having to fill out anything else on the swabbed wells
20 because that was, to me, just a presumption of the fact
21 that they were capable of producing and not actually
22 producing. So I did not understand that I had to do
23 anything else. I thought we were done.

24 And I also understood that at that point that
25 it started over as far as the lock or whatever you would

1 like to call it, time frame, to start to put the wells
2 back into production, because I thought that's what we
3 were trying to prove was that they were capable of
4 producing. Then we started running into water issues,
5 and that's where we're at.

6 But as far as filing goes, I will tell you
7 this unequivocally, that Mr. Finley will ride anybody as
8 hard as anyone about complying -- we are operators in
9 five states, and we comply in every state. If we don't,
10 it's our head. So he makes sure that we do what we say
11 we will do. And we have fulfilled all of our obligations
12 with the BLM, at least to my knowledge, all of our
13 requirements with the Navajo Nation, and all of our
14 requirements in the other states that we operate in.

15 And it's just -- and as far as my personal
16 problem, I do not understand the follow-through on the
17 paperwork. If I understood what we were supposed to do,
18 we would have been in compliance, if we are out of
19 compliance. As far as I'm concerned, we're not. But if
20 we are, I would have taken care of that. I just don't
21 understand the follow through on the paperwork.

22 Q. Okay. With respect to the swabbing and the
23 C-103s, you thought that was sufficient to file that?

24 A. That's what I believed.

25 Q. And that should take care of it for a year;

1 correct?

2 A. I understood it for two years, but that's just
3 my understanding.

4 Q. Okay. If there are any additional filing
5 requirements, filing requirements assessed by the OCD,
6 will you take care of that filing?

7 A. Immediately, if I know what to do. Somebody
8 has to tell me what I'm supposed to fill out.

9 Q. And in your understanding of the C-103s,
10 swabbing, the C-103s, et cetera, where did you obtain
11 that information?

12 A. Ms. Altomare and I had several conversations
13 mostly through email, and that's what I understood I was
14 supposed to do.

15 Q. Okay. In your opinion, Mr. Allen, if the
16 Division's request is granted to plug and abandon all of
17 your wells in the state, will that cause waste?

18 A. Yes, sir.

19 Q. Were Exhibits 6, 7 and 8 compiled from
20 Nacogdoches' business records?

21 A. I'm sorry?

22 Q. Were Exhibits 6, 7 and 8 compiled from
23 Nacogdoches' business records or the files of the OCD?

24 A. On 7, I'm not positive on.

25 Q. Six and 8?

1 A. Six and 8? That came from our field. And 6,
2 I'm assuming that came off the state website.

3 MR. BRUCE: Mr. Examiner, I move the
4 admission of Exhibit 8. If you need more testimony on
5 Exhibit 6, I believe Mr. Dehnisch prepared that exhibit
6 off the OCD's website. And I would move the admission of
7 6 and 8. I'd move the admission of Exhibit 7, but if
8 Ms. Altomare objects, that's fine.

9 MS. ALTOMARE: I actually object to both
10 the admission of Exhibit 7 and Exhibit 8. Exhibit 8 has
11 several errors on it. As discussed, I think in his
12 testimony, at the very least, Santa Fe Railroad Number 4,
13 we've already discussed that recent production was in
14 March. It's listed as being active in November of 2008.
15 There are several other wells I've gone through, and the
16 dates listed are not current. There's been no foundation
17 laid at all for how this data was compiled. The other
18 one, Number 7, doesn't even identify what the wells are,
19 even what the operator is, so I would object to them
20 being part of the record.

21 MR. BROOKS: I think Exhibit 7, as I
22 recall, was the one where the witness testified that
23 someone gave him these figures, and he doesn't know where
24 they're from. You, in fact, conceded that that's not
25 admissible.

1 MR. BRUCE: That's fine.

2 MR. BROOKS: Number 8, could you get the
3 witness to tell us a little more specifically -- did he
4 personally prepare this?

5 MR. BRUCE: He didn't personally prepare
6 it.

7 Mr. Allen, can you tell us?

8 THE WITNESS: No, sir, I did not. This
9 came from our field operation.

10 MR. BROOKS: Who would that be?

11 THE WITNESS: Probably Terry Hughes, which
12 is the production foreman there.

13 MR. BROOKS: This is not an exhibit that
14 you personally can vouch for?

15 THE WITNESS: No, sir, I do not.

16 MR. BROOKS: Okay. I think it's probably
17 not admissible, either.

18 MR. EZEANYIM: So we have only 6 to admit?

19 MR. BROOKS: Yeah. That's what I would
20 advise we do. I don't believe there's an objection to 6.

21 MR. EZEANYIM: At this point only Exhibit
22 6 will be admitted into evidence.

23 Ms. Altomare, if you don't mind, let's go for
24 lunch. Do you mind?

25 (Exhibit 6 was admitted.)

1 MS. ALTOMARE: No.

2 MR. EZEANYIM: Let's take a lunch break
3 now and come back at 1:30.

4 (A lunch recess was taken.)

5 MR. EZEANYIM: Let us go back into the
6 record and continue with the testimony of Mr. Allen. And
7 as I understand it, Mikal is cross-examining.

8 MR. BRUCE: You're confused with the three
9 Michaels -- four Michaels.

10 MR. EZEANYIM: Yeah, Mr. Allen.

11 THE WITNESS: You got it.

12 MR. EZEANYIM: Okay. Ms. Altomare?

13 MS. ALTOMARE: Thank you, Mr. Examiner.

14 CROSS-EXAMINATION

15 BY MS. ALTOMARE:

16 Q. I know we've been over this, but, Mr. Allen,
17 tell me again what your official title is with
18 Nacogdoches Oil and Gas.

19 A. Production engineer.

20 Q. Do you hold an officer position with the
21 company?

22 A. Not that I'm aware of.

23 Q. And you've been there two years, you said?

24 A. Yes.

25 Q. You were talking a little bit about -- with

1 your counsel during direct about the time period between
2 the effective date of acquisition of Nacogdoches and the
3 date that Nacogdoches actually became operator of record
4 pursuant to actual OCD records. But, in fact, the delay
5 was actually caused by the fact that Nacogdoches hadn't
6 yet posted the bonds for the wells that were due; isn't
7 that right?

8 A. I remember us going back and forth quite a bit
9 on which wells were -- we were swabbing, but I don't
10 remember why it was delayed. I don't remember it taking
11 an excessive amount of time, but --

12 Q. Right. But when you initially tried to do the
13 well transfer from Mountain States Petroleum online prior
14 to actually contacting my office, you were told by the
15 bond administrator that the hold up was that there was
16 outstanding financial assurances?

17 A. Well, I wouldn't have had that discussion with
18 anybody, because it would have been Mountain -- was it --
19 NOG?

20 Q. Correct. That the hurdle that you had to
21 overcome before you could transfer was the posting of
22 financial assurances.

23 A. I guess I'm confused. Are you talking about
24 after we did the swabbing of the wells and all that stuff
25 or before?

1 Q. No. I'm talking about the prerequisite to
2 transfer the wells according to OCD so that you were
3 officially the operator of record on OCD records, the
4 hurdle that you had to overcome was to post the
5 outstanding single well financial assurances?

6 A. Actually, I think your office contacted us is
7 the way I understand to begin with about that. But what
8 I'm getting at -- yes. I mean there was some bonding
9 that needed to be put in place.

10 Q. But the delay that occurred between the time
11 that you all actually acquired the wells and the time
12 that you actually transferred with wells on OCD Online
13 was caused by negotiating and dealing with the financial
14 assurances that were due on those wells?

15 A. You're going to have to refer that to
16 Mr. Finley because I cannot answer that. That's a
17 financial issue. If it has something to do with the
18 wells, I can answer it, but --

19 Q. You talked about that there were issues with
20 sand that caused an increase in pressure for the
21 injection wells.

22 A. Yes.

23 Q. Have you looked into any kind of a pressure
24 limiting device for any of your injection wells that
25 would cause the injection well to shut off once it hit a

1 particular pressure?

2 A. No, I have not.

3 Q. Have you looked into any kind of a filter that
4 would assist you in filtering out the sands?

5 A. We tried the filtering system. The one we had
6 was inadequate, and we couldn't change the filters fast
7 enough. So it was just -- this is a continual problem on
8 a daily basis.

9 Q. But having known that the problem existed,
10 particularly on the well where you had been basically
11 caught red-handed, so to speak, with a well that was
12 almost twice the pressure it was authorized for, what
13 steps did you take to make sure that that well didn't
14 reach that limit again or exceed the limit again after
15 having been put on notice that it was a problem?

16 A. We washed the sand out. That's what we
17 normally do once we get a pressure increase or we shut
18 them off. That's about the only choice we have.

19 Q. Did you station anybody at that well to check
20 it on a regular basis with any kind of frequency to make
21 sure that the well didn't shoot up over the limit that
22 was authorized?

23 A. We have pumpers out there every day. They
24 watch all that stuff. But, you know, being personally
25 involved in it, no. The guys are out there watching it.

1 Q. What explanation do you have for the fact that
2 NOG was injecting in wells that it was not authorized to
3 be injecting for because it had not passed MITs?

4 A. I questioned the field about it. And, again,
5 I found out about it after the fact. But I questioned
6 the field about it, and they said that they had some
7 problems on the field that day, and they had to shut down
8 a bunch of other injection wells. It just so happened
9 that Monica was out there, and she found it. But, as I
10 said, as soon as I find out about these things, we try to
11 respond as quick as possible. And when it comes to me, I
12 told them to shut them off and disconnect the lines.
13 Because once you do that, there's no question of whether
14 the wells are taking water or not.

15 Q. What explanation do you have for the fact that
16 it happened not once but twice on the wells?

17 A. I don't have an explanation. I do not know
18 what happened. And, you know, they get -- and they get
19 their instructions from me specifically. When they shut
20 off the well, they were to shut them off.

21 Q. You are out there injecting in at least a
22 couple of these wells. You've got wells that you're
23 injecting into?

24 A. Yes, yes.

25 Q. And we've heard testimony that four of them

1 have had -- observed injections occurring and yet the --
2 all four of these wells are appearing on the inactive
3 well list. What explanation do you have that there's
4 been no injection reported for these four wells?

5 A. Can you tell me which ones they are?

6 Q. Yeah.

7 A. Are these wells that passed MITs, or are
8 they --

9 Q. These are the four wells that were noted by
10 Ms. Kuehling. I need to find -- I apologize. My notes
11 got all shuffled. It's South Hospah Unit 17, South
12 Hospah Unit 54, South Hospah Unit 39, and the Hospah Sand
13 Unit 93.

14 A. Hospah Unit 39?

15 Q. South Hospah Unit 39.

16 A. That won't be on this list because of the --
17 I'm sorry. 17 and you said 39. What was the other two?

18 Q. South Hospah Units 17, 54 and 39 and the
19 Hospah Sand Unit 93.

20 A. Well, Hospah Sand Unit 93, that was the one
21 that when I found out about it, that I told them to
22 disconnect the line, plug the line, completely remove
23 everything so there was never any question whether or not
24 it could have been opened again.

25 Now, I called Aztec's office and I talked to

1 Kelly Roberts, and I specifically asked him -- I was
2 actually asking him if he could help me to figure out on
3 this water disposal who I needed to talk to in the UIC
4 department to help me figure this out.

5 And I specifically asked Kelly Roberts, I
6 said, "Are we doing okay at Hospah? Have you heard any
7 complaints?"

8 He said, "I have not heard any complaints.
9 You guys have taken over a tremendous operation there as
10 far as liabilities," and so on and so forth, "And you
11 guys are doing a really good job bringing everything up,
12 trying to get everything in compliance."

13 He did say that Monica had mentioned to him
14 that the well had been opened, and I told him -- I said,
15 "It's been disconnected. The line is plugged."

16 Q. But what I'm asking you is whether or not --
17 why the production that was actually observed by Monica
18 on the Hospah Sand Unit and the other three has never
19 been reported?

20 A. The injection? It's not supposed to be, is
21 it? It's supposed to be off line.

22 Q. Well, they're not supposed to be injecting.
23 The 93 isn't. But if you are injecting, you're required
24 to report it.

25 A. Yeah. But that well failed the MIT, so it

1 wasn't supposed to be on anyway. That's what I'm saying.
 2 When I found out about that, I disconnected the line.
 3 There was no question that would ever happen again.

4 Q. But do you deny the fact that despite the fact
 5 that it shouldn't have been, it did, in fact, inject?

6 A. Yes. It was a mistake. I admit to that.

7 Q. But you never reported that injection?

8 A. No.

9 Q. Okay. Was the injection ever reported for the
 10 other three, South Hospah Units 17, 54 and 39?

11 A. If they are wells that have passed MITs, then
 12 they should have been -- it should have been reported
 13 that they were on line.

14 Q. Regardless of whether or not they passed MITs,
 15 if they've been injecting, why haven't you been
 16 reporting?

17 A. Again, I didn't know they were even on. If
 18 they were on, I told them to disconnect the wells. So if
 19 they're legal wells and they're supposed to be on, they
 20 are being reported on.

21 Q. Okay. What are your duties as production
 22 engineer out in the field?

23 A. I oversee the production operations.

24 Q. You're responsible for overseeing all of the
 25 wells in the field?

1 A. Um-hum. Yes.

2 Q. You don't really know what's going on with
3 regard to these injection wells?

4 A. Like I said, just those particular ones, I
5 told them to disconnect the wells. They weren't supposed
6 to be on.

7 Q. Are any of them supposed to be on injecting at
8 all? The 17, the 54 or the 39?

9 A. I couldn't tell you specifically on specific
10 wells. I can tell you if they passed the MITs and we
11 were told we could inject, then the production
12 information should have been filed on them.

13 Q. And if that information hasn't been filed,
14 what explanation would you have for that?

15 A. I would say that I have a contract regulatory
16 specialist, and it was her job to take care of that, and
17 I did not stay on top of that because she's been doing
18 this for 17 years, and we never had any problems with her
19 not filing anything. In fact, she's very religious about
20 making sure that stuff is filed.

21 Q. Who is that individual?

22 A. Angela -- I can't pronounce her last name.

23 THE WITNESS: Jim, you pronounced it --
24 Valero?

25 MR. BRUCE: It's on the first page of

1 Exhibit 3. Angela Velasquez.

2 Q. (By Ms. Altomare) How did she come into your
3 employ?

4 A. She's not our employee. She's a contract
5 regulatory --

6 Q. How did she come to do the work for NOG?

7 A. She was actually with Mountain States as their
8 regulatory specialists. We just brought her.

9 Q. We heard testimony earlier that Mountain
10 States was not that great of an operator and didn't do
11 such a great job of managing these wells. Would you
12 agree?

13 A. I would.

14 Q. Why would NOG then decide to retain a
15 contractor who was responsible for filings for an
16 operator that NOG considered not to have done such a
17 great job with these sites?

18 A. I don't think -- she didn't have anything to
19 do with that. She just filed whatever she was supposed
20 to file. She didn't have anything to do with the
21 operations at all.

22 Q. Have you had anyone review her work to make
23 sure that she was being consistent and adhering to the
24 Oil Conservation Division's rules for filings?

25 A. No.

1 Q. Do you have any idea how much of the water
2 being disposed of through the production that you have
3 been doing over the last year has been disposed of in
4 injection wells like the four that we've been talking
5 about that's not being reported that maybe shouldn't
6 be -- that the wells shouldn't be being used?

7 A. I'm sorry. I don't have that information.

8 Q. Is Angela the person that you consider in
9 charge of regulatory and compliance issues for NOG at
10 this point?

11 A. She, actually, I think is resigned effectively
12 as a contractor to us effective July 1st. So to answer
13 the question, she was in charge of all the filings. I
14 don't know what else to say. She was in charge of taking
15 care of it.

16 Q. Was she the person that you -- up until
17 July 1st -- would have considered to have been in charge
18 in making sure that NOG stayed in compliance with OCD
19 regulations?

20 A. Yes.

21 Q. To whom did she report?

22 A. To me, initially. Then later on, to
23 Mr. Dehnisch.

24 Q. Your counsel had reviewed a proposed exhibit
25 that had a list of wells indicating a number of them were

1 "ready." I'm assuming by that indication it means that
2 they're ready to go on line for production?

3 A. No.

4 Q. It's marked as proposed Exhibit Number 8.

5 A. Okay. Yes, that is correct.

6 Q. According to OCD records, a number of these
7 wells as of May 11th were unable to produce, and several
8 of them had no pumping unit on them. Has Nacogdoches
9 done a lot in the last month and a half?

10 A. Are we talking about the testimony earlier,
11 or --

12 Q. Yeah. Specifically, I guess I'm referring to
13 the Santa Fe Railroad Unit Wells Number 9, 14, 15 and 49,
14 and the Hospah Sand Unit Number 13. Actually, it's
15 indicated to be pumping. The other ones are indicated to
16 be ready. My records indicate that all of these wells as
17 of mid-May were either unable to produce or did not have
18 a pumping unit on them.

19 A. Some of the wells that were swabbed probably
20 don't have pumping units on them.

21 Q. So when you say that the wells are ready, that
22 doesn't necessarily mean that they actually have a motor,
23 they have a pumping unit, they have tubing, they're
24 actually ready to --

25 A. I'm sorry. I misunderstood. When we were

1 talking about the earlier testimony, I was talking about
2 what she testified that didn't have pumping units when
3 you did your PowerPoint. I verified that those have
4 pumping units on them. So I don't know if they moved
5 them back on there. And the ones that say that they're
6 ready, they should be -- when they say "ready," that
7 means they have pumping units, rods, tubing. Now,
8 recently we've had to remove some motors and move them
9 around, things like that, so there will be some that
10 don't have motors on them, but that's just a one-hour
11 operation.

12 Q. So if it indicates "ready," it means that it
13 actually has all the equipment?

14 A. Yeah, except maybe minus a motor in some
15 cases, but, yes.

16 Q. You testified earlier that you did not realize
17 after submitting the sundries to rebut the presumption of
18 inactivity for purposes of transferring the wells from
19 Mountain States that you didn't realize that you had to
20 do anything beyond that?

21 A. That is correct. I did not understand that.

22 MS. ALTOMARE: May I approach the witness?

23 MR. BROOKS: It's up to you to respond to
24 that. I am not the presiding officer.

25 MR. EZEANYIM: No cross-examination?

1 MS. ALTOMARE: No. May I approach the
2 witness, please?

3 MR. EZEANYIM: I thought you were passing
4 the witness.

5 MS. ALTOMARE: No, no.

6 MR. EZEANYIM: Go ahead.

7 Q. (By Ms. Altomare) I'm showing you a part
8 of -- I can't remember which exhibit it is. It's
9 Exhibit F, and it's marked as Number 26. This is the
10 email that was sent to you and Mike Finley by myself on
11 September 24th, following up after the initial tentative
12 rebuttal of presumption of inactivity. Can you please
13 read the highlighted portion?

14 A. "Once you have done so, it is very important
15 that you take steps to then formally submit (submit
16 C-115s for) the production for the wells that you have
17 rebutted the presumption on.

18 In other words, as soon as feasible, report
19 the production under NOG's ogrid for those wells that you
20 have indicated to me are back in production, and report
21 the production that resulted from the swabbing no matter
22 how minimal that was conducted on those wells for which
23 you submitted documentation of swabbing as a showing of
24 activity/production."

25 Q. Does that refresh your memory regarding what

1 was expected of Nacogdoches following the submission of
2 the sundries for the rebuttal of presumption of
3 inactivity?

4 A. I did not see that email until I was pulling
5 the emails for this hearing, and I completely missed it.
6 Because I operate five states, and I was extremely busy,
7 and I completely missed it. I apologize.

8 Q. Do you recall having a conversation with me at
9 one point in which I did express to you and Mr. Finley
10 that even though you had rebutted the presumption of
11 inactivity that the wells would remain on the financial
12 assurance list with a Y indicating that they were in
13 violation until production was reported through our
14 normal C-115 production reporting process?

15 A. I don't remember that, but I -- the actual
16 conversation. But I'll tell you the way I understood was
17 the C-103s for swabbing wells -- and I know what that
18 says. The C-115, in my assumption of it, was that that
19 was for production wells. I did not understand that we
20 had to do it on 103s. That's my mistake. I made a
21 mistake.

22 Q. You heard Mr. Sanchez's testimony earlier
23 today about the agreed compliance inactivity -- inactive
24 well agreements that our division frequently enters into
25 with operators?

1 A. Um-hum.

2 Q. Do you recall having discussions with myself
3 and other individuals in the Division about the
4 possibility of entering into one of those with the
5 Division?

6 A. An agreed compliance? Is that what you said?

7 Q. An agreed compliance order regarding the
8 inactive wells that you had acquired from Mountain
9 States.

10 A. I don't remember having that conversation. I
11 know Mountain States had an agreed compliance order, but
12 we never had that conversation. The only thing I
13 remember talking about was the single well bonding for
14 the presumption of activity.

15 Q. Do you recall being introduced to a gentleman
16 by the name of Sonny Swazo at one of the meetings that we
17 held in late August of last year?

18 A. No, ma'am, I sure do not. I met one person
19 here, and that was Wayne Price, and that was it, besides
20 you.

21 MS. ALTOMARE: Okay. May I approach the
22 witness again?

23 MR. EZEANYIM: Yeah.

24 Q. (By Ms. Altomare) I'm going to show you the
25 same email, the next paragraph.

1 A. Okay.

2 Q. It begins, "The next step." If you could --

3 A. I can already answer it if it's okay with you.
4 It was on the same email. I'm sorry. I missed it. I
5 completely missed it. I'm sorry.

6 Q. Could you read the first sentence of that,
7 please?

8 A. "The next step, once you have everything
9 officially transferred over to NOG, is to contact Sonny
10 Swazo here at the OCD."

11 Q. And you still don't remember discussing the
12 possibility of entering an agreed compliance order to the
13 inactive wells removed from the inactive well list to
14 facilitate Nacogdoches' efforts to come into compliance
15 with OCD rules?

16 A. I thought that's why we did the swabbing
17 operation. I thought that's what that was for. But I do
18 not remember having a conversation. I'm sorry.

19 Q. Just to confirm, Nacogdoches never did contact
20 Sonny Swazo or anyone else at the Oil Conservation
21 Division to enter into an agreed compliance order?

22 A. I did not. I missed it.

23 Q. And regarding your involvement with Mr. Price,
24 there was testimony earlier that due to an emergency
25 elsewhere in the state, Mr. Price wasn't able to respond

1 as immediately to Mr. Dehnisch, but that he, Mr. Price,
2 had given kind of a laundry list of things for
3 Nacogdoches to look into regarding following up on some
4 testing and some additional things to do regarding the
5 project that it was working on?

6 A. Sure. Yes.

7 Q. Do you have any knowledge regarding what
8 Nacogdoches did at that point? I think it was in October
9 or November.

10 A. Mr. Dehnisch is a biologist. It was all given
11 to him. Mr. Dehnisch and Mr. Finley took care of all
12 that.

13 Q. So Mr. Finley would have more information on
14 that?

15 A. Yes, ma'am.

16 MS. ALTOMARE: Okay. Then I think at this
17 point I don't have any further questions.

18 MR. EZEANYIM: Mr. Bruce?

19 REDIRECT EXAMINATION

20 BY MR. BRUCE:

21 Q. Mr. Allen, regarding communications to and
22 from Mr. Price, you understood from those memos that
23 Mr. Price was extremely busy; did you not?

24 A. That's what I was told, yes.

25 Q. You can't blame him. The same happens to you,

1 doesn't it?

2 A. Exactly.

3 Q. Again, I want to emphasize -- and even though
4 Angela Velasquez worked for Mountain States, she was not
5 an operations person; correct?

6 A. That's correct.

7 Q. She was just in charge of filing whatever
8 Mountain States gave her with the Division?

9 A. That's correct, yes.

10 Q. With regard to the wells that Ms. Kuehling
11 talked about and some of the other wells that
12 Ms. Altomare talked about, am I correct that your answer
13 was that a well may have a pumping unit on for a few
14 months, and then it might be taken and moved elsewhere
15 for a couple of months?

16 A. Correct. They're moving them around, testing
17 wells and stuff like that.

18 Q. So the wells will be in compliance because
19 they've produced at various periods of a year --

20 A. Yes, sir.

21 Q. -- but they might not be producing
22 continuously 30 days a month, 12 months a year?

23 A. That is correct.

24 Q. And, again, on these injection wells where
25 they failed an MIT test, you ordered that nothing be done

1 on them?

2 A. That is correct.

3 Q. And if Nacogdoches can get -- let's take a
4 step back. Are these wells, when they were injecting or
5 capable of injecting, injecting back into the producing
6 formation?

7 A. Yes, they are.

8 Q. As part of a waterflood?

9 A. Yes.

10 Q. And the problem is with the sand building up,
11 and you can no longer inject?

12 A. Well, the pressures build up, and we have to
13 clean them out, yes.

14 Q. So you have to clean them out?

15 A. Right.

16 Q. We talked about the water disposal well that
17 NOG would like to get. That's not going to be injecting
18 into the same formation?

19 A. No.

20 Q. What will be the injection formation?

21 A. The Entrada.

22 Q. You don't anticipate those same injection
23 problems with the Entrada?

24 A. No.

25 MR. BRUCE: That's all I have,

1 Mr. Examiner.

2 MR. EZEANYIM: Ms. Altomare?

3 MS. ALTOMARE: No.

4 MR. EZEANYIM: Okay.

5 EXAMINATION

6 BY MR. BROOKS:

7 Q. Okay. You're Mr. Allen?

8 A. Yes, sir.

9 Q. I need to get the Mikes straightened out.

10 A. As long as you get Mike, you're okay.

11 Q. I should just call all of you Mike.

12 A. We hear it all the time.

13 Q. You've been with Nacogdoches for two years?

14 A. Approximately. I think August will be two
15 years.

16 Q. Were you involved in the original acquisition
17 of these New Mexico properties, or was that before you
18 came?

19 A. No. I was involved in it.

20 Q. Okay. I asked a question earlier of
21 Mr. Dehnisch about due diligence. Did you investigate
22 these properties at the time Nacogdoches acquired them?

23 A. Well, I would like to refer that question --
24 we keep passing the buck. But Mr. Finley was involved in
25 the financial operations of it.

1 Q. Yeah, but you're the production engineer. Did
2 you go out and look at the properties? Did you do any
3 testing on them to require that they demonstrate anything
4 about the properties?

5 A. We knew that there was issues, and we knew we
6 were going to have to address them as far as wells that
7 needed to be put on line and things like that. But we
8 weren't having water issues because there was only 22
9 wells pumping when we took over.

10 Q. You knew you were buying a work-out situation?

11 A. We knew it definitely had some work to be
12 done, yes, sir.

13 Q. This may be a question for Mr. Finley, but --
14 in fact, it probably is, but I'll ask you and let you
15 tell me. Did anybody with Nacogdoches, to your
16 knowledge, undertake any investigation of the New Mexico
17 Oil Conservation Division's requirements that you would
18 have to comply with when you acquired this property?

19 A. Well, I didn't spend as much time as I,
20 obviously, needed to, but we had a regulatory person that
21 took care of most everything, and so --

22 Q. Is this person knowledgeable about the OCD's
23 rules or just about the paperwork?

24 A. Mainly just the paperwork.

25 Q. That's been my -- this is a comment, and,

1 perhaps, I shouldn't make comments, but that's been my
2 experience with contractors. They don't really know
3 anything about what's supposed to be done as far as the
4 paperwork.

5 A. She knew what needed to be filed about the
6 forms.

7 Q. As far as knowing what you're required to do
8 and what the consequences are for not doing it, that's
9 not something that I found that these contract filers are
10 generally very knowledgeable about.

11 A. Yes, sir.

12 Q. Okay. So your answer is, other than
13 Ms. Velasquez, nobody was consulted about New Mexico
14 rules, laws, et cetera, when you acquired this property?

15 A. The only thing I can tell you is that I knew
16 Mountain States was under an agreed compliance order to
17 bring certain wells on line in a certain period of time.
18 I mean, I knew that was the case, and I knew that was
19 already in place. And we -- NOG knew that, too. I mean,
20 but it had changed as we went forward, you know, when
21 they took over.

22 Q. Now, I'm not being sarcastic. I'm just trying
23 to establish the facts here. The reason why you didn't
24 pursue the option of an agreed compliance order was just
25 because you didn't read the email that said that; is that

1 correct?

2 A. I did not. I missed it.

3 Q. So you didn't know that was an option?

4 A. I can't say. I missed it.

5 Q. You didn't know that was an option?

6 A. I didn't see it until I started preparing for
7 this hearing.

8 Q. Like I say, I'm not being sarcastic. I know
9 there's a TV commercial where somebody says, "My inbox is
10 out of control, and I haven't had a day off since the
11 third grade."

12 A. I'm just stating how it is. I'm sorry.

13 Q. Okay. In your opinion, are all of the wells
14 that Nacogdoches is operator of capable of economic
15 production, or are there any that need to be plugged?

16 A. I believe there's going to be some wells that
17 are going to be a little in question because they were
18 injection wells, and they had holes in the upper end of
19 the pod because it was not cemented to the surface. I
20 think there's going to be a question about that, whether
21 they need to be plugged or we might be able to put lines
22 in them, and we can fix them that way. I think there's
23 definitely a possibility of that. And it's difficult to
24 say right now with the fluid level -- with the producers
25 like they are. I mean, a lot of them are making just

1 water, so we cannot produce them. Obviously, we can't.

2 Q. Is the production -- in your opinion, is the
3 production potential of these units sufficient to pay the
4 costs that would have to be incurred to repair wells that
5 need to be repaired and plug wells that need to be
6 plugged?

7 A. Based on being able to bring additional
8 production on?

9 Q. Yeah.

10 A. Yes, sir, I do. Three- to 400 barrels a day
11 is what we anticipate. Well, there's significant upside
12 to the property, significant gas and condensate
13 production that we were really looking into anyway, so
14 there's obviously a lot more opportunities out there than
15 just what is there now, too.

16 Q. The reason I'm asking this question is there
17 was some discussion among our staff about another unit
18 that's totally unrelated to this proceeding recently, in
19 which the observation was made by one of our engineers
20 that while the unit was capable of production but there
21 were so many bad wells on it, that unless and until those
22 wells were plugged, it was uneconomic for anybody to take
23 it over because they took on more liability.

24 A. No, sir, I don't believe that. Because we
25 have tested wells that we have that are sitting idle that

1 we've tested at a hundred barrels a day, plus what we're
2 doing now, which is 150, 170 barrels a day.

3 Q. Now, I go back to this Exhibit 8 that was not
4 admitted. The reason it was not admitted was that you
5 didn't prepare it, and you didn't know who did or how --

6 A. I know who did it. It was done under my
7 supervision, it's just that I didn't personally do it.

8 Q. Okay. You were asked some questions about
9 these wells in the Santa Fe Railroad unit that are marked
10 as ready. Are you personally familiar with the status of
11 those wells?

12 A. I can't tell you if pumping units have been
13 moved back and forth or whatever for the last few months,
14 but I know --

15 Q. So you --

16 A. I'm sorry.

17 Q. You don't know which ones have pumping units
18 and which ones don't?

19 A. I had them review it again to make sure. And
20 if it says "ready" by it, the pumping unit should be on
21 the wells; rods and tubing should be in the holes.

22 Q. But you haven't verified that?

23 A. Not specific on the wells.

24 MR. BROOKS: I guess that's all the
25 questions I have.

EXAMINATION

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BY MR. WARNELL:

Q. Mr. Allen, I heard a lot of different production numbers. I think earlier today you testified -- you gave us a ball-park figure of about three barrels of oil per day per well?

A. That just depends on what lease we're on. Some of them are a little better. Some of them are a little bit less. I have it broken down by lease, but I don't have it here in front of me. Roughly, about three barrels per well is what we figured the average was across the field.

Q. You just mentioned there are some wells out there that are capable of making over 100 barrels a day?

A. No. I'm sorry. It was -- there's wells that are ready to go on line that we cannot produce because we can't deal with the water that will make 100 barrels combined.

Q. That gets me to question number 2. We talked a lot about water production, but I don't have any idea what your average water per day per well is.

A. Probably 300.

Q. So for every barrel of oil you're making a hundred barrels of water?

A. Roughly.

1 Q. You mentioned the screen out or the sand out
2 on the injection wells?

3 A. Yes, sir.

4 Q. That's caused because the water you're
5 injecting has all the sand in it?

6 A. Yes, and -- well, I am assuming that's where
7 it's coming from.

8 Q. But your producing wells, are they giving up
9 sand?

10 A. Yes, I believe they are.

11 Q. So do you have to go and clean them out?

12 A. The wells? We've cleaned out some of the
13 producing wells. We primarily see it in our tanks and
14 our vessels and in our injection wells that we continue
15 to deal with.

16 Q. And in the injection water, I believe you
17 mentioned earlier that that's fairly fresh water?

18 A. It is fresh. We've had it analyzed multiple
19 times.

20 Q. What do you find in that analysis? How fresh
21 is it?

22 A. I believe it's 400 chloride.

23 Q. That's fresh water.

24 A. I think that's right.

25 Q. You had mentioned something earlier this

1 morning about -- correct me if I'm wrong -- but I believe
2 it was the Hanson lease under the BLM, feds?

3 A. Yes, sir.

4 Q. That the feds mandated that that lease be
5 plugged?

6 A. Yes.

7 Q. Can you tell me why that is or --

8 A. It was actually mandated prior to NOG even
9 taking over. It was already set out, and they just -- I
10 guess they just -- I don't really know. They didn't
11 really say. They just said it needed to be plugged.

12 Q. Has it been plugged?

13 A. There's been 10 wells plugged on it.

14 Q. Ten wells out of how many more?

15 A. I'm trying to remember the number. Because I
16 filed sundries on all of them with the BLM. I think
17 there's 15 wells left to be plugged, and NOG has just
18 spent a significant amount of money just shooting squeeze
19 holes in the wells so they can be plugged, so --

20 Q. That Hanson lease, that was part of the
21 acquisition?

22 A. No. No, it was not.

23 Q. Okay.

24 A. It was gone. The lease was gone before we
25 ever even got involved in it.

1 Q. So the 10 wells that have been plugged you had
2 nothing to do with them?

3 A. NOG didn't. Mountain States plugged them.

4 Q. When you were with Mountain States?

5 A. Yes. But I really didn't have that much to do
6 with it.

7 Q. Who at BLM were you working with? Can you
8 give me a name?

9 A. I sure can. Val Jameson, Steve Mason and Jim
10 Lovato. I deal with them frequently.

11 MR. WARNELL: That's all the questions I
12 have.

13 MR. EZEANYIM: Thank you.

14 EXAMINATION

15 BY MR EZEANYIM:

16 Q. Mr. Allen, NOG has operations in Arizona and
17 Utah?

18 A. Yes, sir.

19 Q. You comply with their rules?

20 A. Yes, we do.

21 Q. So you know there are state rules and
22 regulations; right?

23 A. Primarily it's Navajo Nation and BLM.

24 Q. Yeah. Whatever.

25 A. Yeah. But I do everything they tell me to do.

1 Q. So when you stepped over into New Mexico, you
2 should expect there should be rules and regulations;
3 right?

4 A. Right. But I know Val Jameson. I know I
5 drive him probably nuts because I ask so many questions,
6 but that's the only way I know how to stay on top of
7 things. So I am continually calling Steve Mason and Val
8 and asking questions to make sure that we are staying --
9 and if we don't, they will let me know. They let me
10 know. They tell me, "You're in trouble here. Fix it."
11 And we fix it.

12 Q. BLM, you're talking about -- Jameson is BLM;
13 right?

14 A. BLM, yes.

15 Q. BLM, they have maybe different issues than we
16 may have. Even if it's owned by BLM, it's still in the
17 State of New Mexico so we are still responsible.

18 A. Sure.

19 Q. Regardless of what you did with the BLM, I'm
20 concerned with OCD, whether you tried to find out what it
21 would require, what OCD and the State of New Mexico
22 require, like you told me you comply with Utah and
23 Arizona.

24 A. Yes, sir.

25 Q. Of course, you've been operating there.

1 Again, the testimony was presented this morning that
2 before you acquired the wells, you were refused the
3 authority to acquire them because of bonding, so you
4 should know there's a problem there. You know there's a
5 problem acquiring those wells.

6 A. A problem with what now?

7 Q. Acquiring the wells.

8 A. Right. Right. Yes, sir.

9 Q. Now, but you went ahead and acquired them?

10 A. We did.

11 Q. So in that case, there's no excuse not to say
12 it was done by the previous operator because you know
13 what is involved before you acquired them. You know that
14 they have to -- at this point have to be placed on
15 whatever corrective action to be taken before you acquire
16 them?

17 A. Sure.

18 Q. So you're not ignorant of what's going on?

19 A. No. I mean, I knew we were going to have to
20 put wells on. We knew that.

21 Q. But you're ignorant as to what it would
22 require?

23 A. As far as the forms are concerned, yes, I'm
24 ignorant of that, yes.

25 Q. But ignorance of the law is no excuse.

1 A. I'm sorry. I know that. I'm just --

2 Q. I'm trying to tell you the basics here. As
3 you know, I'm not an attorney. I'm just trying to
4 understand the case.

5 A. I understand. I'm just -- I mean, I'm just
6 being as honest as I can be.

7 Q. So my question is that, does NOG know what
8 it's getting into when you acquired the well? You knew
9 what you were getting into when you acquired the wells;
10 right?

11 A. Yes. We knew we were going to have to put the
12 wells on line, yes.

13 Q. Who is this Angela that filed all these forms?
14 Because I have a lot of questions on these C-103s. But I
15 was told it was not by you. It's by --

16 A. She actually filed the forms.

17 Q. And then who is Angelina Well Service? Is
18 that the same Angela?

19 A. That's actually one of our contractors through
20 us that does our well work and roustabout work, stuff
21 like that.

22 Q. It's not this Angela? It's a different
23 company; right?

24 A. It's a subsidiary of Nacogdoches Oil and Gas.

25 Q. Okay. What is the current relationship

1 between NOG and Mountain States?

2 A. None that I know of. You'd have to ask Mike
3 Finley that, please.

4 Q. Most of these forms say, "Swabbed by Mountain
5 States."

6 A. I think we had to put that on there to begin
7 with, I think, because they were not officially
8 transferred, is what I understood.

9 Q. They say, "Swabbed by Mountain States."

10 A. Yes, sir. That's right.

11 Q. This is after the effective date?

12 A. That's right.

13 Q. So you don't have anything to do with them?

14 A. No, sir.

15 Q. Okay. Let's go back to what you are
16 suggesting about how many wells now. Let me recount what
17 I know. In New Mexico -- I'm talking about New Mexico --
18 you have a total of 183 wells that the records show. You
19 have 183 wells; right?

20 A. I think that includes everything, Navajo
21 Nation --

22 Q. Yes. I'm talking about New Mexico.

23 A. Yeah.

24 Q. If I look at that now -- and the case was
25 brought that out of 183, 121 at the time was out of

1 compliance. Then I saw yesterday 86 were still inactive.
2 Also included, 39 that needed single well financial
3 assurance. So I think there's a disparity between what I
4 have here and how many of them you say you have now, what
5 you took on. I need to know, how many of them out of
6 this 86 were brought into compliance?

7 A. Well, I counted 20 wells that we are still
8 lacking to put equipment on, and that does not count the
9 wells that we already bonded, that we already put single
10 well bonds on.

11 Q. So there are other wells, 20 wells. You'll be
12 saying that you have 66 that were brought into
13 compliance?

14 A. I was actually going off the 39 wells they
15 said were out of compliance, and I counted off that there
16 was 20 of those. So there's 19 wells that are still not
17 ready to go on production or are on production.

18 Q. So all those wells are listed here, and they
19 are not back in production?

20 A. No, sir, they're not. There's 19 of them that
21 are still not on.

22 Q. But these ones are now back to production? Is
23 that what you're saying

24 A. Correct. That's what I'm saying.

25 Q. Who filed these C-103s? Who filed this?

1 Angela?

2 A. Yes, Angela filed those.

3 Q. To who?

4 A. To the OCD.

5 Q. Who in the OCD? It would have to be filed to
6 somebody.

7 A. I understand. I believe the email on some of
8 the C-103s was directed to Ms. Altomare. And after that,
9 I'm not sure, because they might have been different. I
10 know the swabbing C-103s went to her.

11 Q. I don't think C-103s are filed by email.
12 Correct me if I'm wrong.

13 A. I think what we did was, for the sake of time,
14 I think we emailed them to her so she could review them.
15 And I think, as far as I know, Angela stuck them in the
16 mail, because I knew there was probably a custody
17 transfer. So I'm pretty sure she backed it up in the
18 mail.

19 Q. Because if they were properly filed, we'd have
20 the records. So if we had the records, then we could
21 take it out of the inactive well list. If they're not
22 properly filed, then there's no way. If you don't give
23 it to anybody, there's no way we can have a record.

24 A. I understand. I think that that's what
25 happened. They weren't filed by email. I think they

1 were -- but they were sent in for review, though. And as
2 far as I know, she mailed them. I told her to mail them.
3 As far as I know, everything was done because the
4 transfer went through, so --

5 Q. I can see most of them were filed and signed.
6 I haven't seen anybody from OCD that signed them to
7 approve them. They have not been approved if they are
8 correct. That's why I'm looking through. They have not
9 been approved. The only signature I see on these C-103s
10 is Angela Velasquez, and there's no approval anywhere.

11 A. I asked her to file those on our behalf
12 because she was familiar with the protocol and all that.
13 So that's why.

14 Q. I mean, the question still remains whether we
15 have these, and if we have them, who has them in the OCD?
16 That's my point.

17 A. I understand, and I need to do some more
18 investigation to find that out for you.

19 Q. Okay. Do you know where to find them? Or, I
20 mean, do you know who to file it to or where to file
21 them, or how is it handled? I don't understand. I mean
22 you come in here with these. They are not signed. If
23 they were signed by somebody, I would say, "Okay." If
24 they were sent in by Angela and some person at OCD
25 approved it -- I mean, how am I sure these are producing

1 or doing anything because it's incomplete? I mean, do
2 you see my point?

3 A. Sure. I'll have to go back and review
4 everything because I haven't seen it in a while.

5 Q. Okay. Do you still agree that the paperwork
6 still require financial assurance? There are 28 wells
7 that still requires financial assurance?

8 A. Again, I thought that we were -- I
9 misunderstood. I thought we were in compliance with the
10 swabbing. I guess that's where we really got off track.

11 Q. Swabbing is not enough. When you swab, you
12 have -- you have to put back into production. You have
13 to report that you swab this is what's happening and that
14 the action is complete at that point. Right now, the
15 action is not complete.

16 A. I thought we had completed all those, and
17 those were approved on the swabbing. That's what I
18 understood because the transfer went through, so I don't
19 know how -- I hope I'm answering your question.

20 Q. Yeah, you're trying. To repeat the question
21 that you don't know -- your company doesn't know that we
22 have an agreed compliance order? You didn't know that
23 until today, agreed compliance order?

24 A. We do not have one.

25 Q. I know you don't have one. You don't know we

1 do that? You don't know that 'OCD enters into agreed
2 compliance order with operators? You don't know that?

3 A. They did with Mountain States prior to us
4 taking over. They did have one.

5 Q. So you know?

6 A. I knew that they had one with them. And then
7 when we came in here and started working out the deal
8 with the bonding, I thought when we posted the single
9 well financial assurance that that took care of that.
10 That's the why I understood it.

11 MR. EZEANYIM: Anything further from any
12 of the attorneys? Anything further?

13 MS. ALTOMARE: No.

14 MR. EZEANYIM: Jim?

15 MR. BRUCE: No, sir.

16 MR. EZEANYIM: Okay. You may be excused.

17 Call your next witness.

18 MR. BRUCE: I call Mr. Finley to the
19 stand.

20 MR. FINLEY: I'm fat, old, and ugly Mike,
21 where the buck stops.

22 MR. EZEANYIM: Mr. Finley, you have been
23 sworn.

24 MICHAEL FINLEY

25 Having been first duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MR. BRUCE:

Q. Would you please state your name and city of residence?

A. Michael Finley, Nacogdoches, Texas.

Q. And what is your relationship to Nacogdoches?

A. I'm the CEO and president.

Q. In general terms, how big is Nacogdoches? How many employees? How many wells do you operate roughly?

A. Probably 500 wells in six states.

Q. And as you said, the buck stops with you?

A. (Witness nods head.)

Q. You have to say yes or no.

A. Yes. You can't record a head shake. I know.

Q. How long have you been in the oil and gas business, Mr. Finley?

A. Twenty-five years.

Q. In what type of capacities?

A. Most all capacities. Least roustabout. I didn't like that much.

Q. But as CEO and president, you're the one who runs the company?

A. Yes, sir.

Q. And so let's go over some of this stuff, and maybe first get into Mr. Brook's question.

1 Were you the one who oversaw the due diligence
2 on acquiring these properties?

3 A. Yes, I did.

4 MR. EZEANYIM: Mr. Bruce, before you
5 continue, are you presenting Mr. Finley as a fact witness
6 or an expert?

7 MR. BRUCE: As a fact witness. I'm not
8 qualifying him as an expert in any one field. I think
9 he's had a lot of contact with all the people.

10 MR. EZEANYIM: Okay.

11 Q. (By Mr. Bruce) And you've done acquisitions
12 before this prospect, haven't you?

13 A. I've done many acquisitions, none quite as
14 difficult as this one.

15 Q. And I'll let Mr. Brooks ask you other
16 questions.

17 Generally, what do you look at when you're
18 acquiring a property?

19 A. You look at the feasibility, the economics,
20 the underlying issues, and underlying economics. I mean,
21 at the end of the day, does it make economic sense to
22 take the property and operate it.

23 Q. Based on your review, you thought this
24 property was economic? These properties?

25 A. I thought the property was economic. We knew

1 they were very encumbered properties with -- especially
2 with environmental issues and with immediate, major
3 environmental issues. This property wasn't purchased in
4 a vacuum. It was purchased as a bundle of properties.
5 We knew we would have a regulatory learning curve. It
6 doesn't sound like we did a great job with it, but I
7 think I can explain some of those issues. But we weren't
8 ignorant of what we were getting into. I think in my 34
9 years of being self-employed, this is the most difficult
10 project I've ever gotten into.

11 Q. Would you agree with Mr. Allen that when the
12 properties were taken over -- you thought you saw a
13 benefit in taking them over -- they were in poor shape?

14 A. They were all disasters. I'd go beyond poor.
15 Hospah, as a whole -- and, again, Hospah had tremendous
16 environmental issues.

17 Q. Surface problems?

18 A. Surface problems, we had to -- we have a
19 biological dirt farm, and originally -- Mike originally
20 came with us. He has a master's in biology. We needed
21 someone that had an environmental background,
22 environmental biology, actually. We turned him into an
23 oil person.

24 But Hospah had -- and we talked to the BLM
25 extensively prior to taking the property on. And

1 probably, my bad, not to have spent more time with the
2 OCD. But when we were looking at it, the first bond we
3 put up prior to picking up any state properties was with
4 the BLM on South Hospah, which had major environmental
5 issues. We put a \$525,000 bond and entered into a
6 mandated letter of what we would do.

7 I'd also say these properties had never
8 historically been under one umbrella. They had been
9 several severed properties, and we purchased these
10 properties and put them under one umbrella. At this
11 point we -- probably in the history of the properties,
12 the first time they're all under -- 100 percent of the
13 working interest is contained under one umbrella.

14 We took a very long approach to these
15 properties. Our approach on this was not haphazard. I
16 think analytically, or should I say from an engineering
17 point of view, we started at the basement and worked our
18 way up on dealing with these properties, and I think
19 we've done a yeoman-like job in this area. I don't know
20 where to stop and start.

21 Q. That's fine. As part of this, once again,
22 could you -- I know Mr. Allen testified about \$3 million
23 was spent just on the Hospah wells, themselves, the
24 Hospah properties. Could you confirm that?

25 A. Well, the 3 million Mr. Allen is referring to

1 is on hardware, pipe, flow lines, remediation work, dirt
2 farms, reworking the wells. That does not include
3 Mr. Allen's salary or any administrative salary. It
4 doesn't include the \$3 million worth of equipment we
5 purchased and moved out there, including our own plugging
6 equipment, acid trucks, pooling units, bulldozers.

7 We came into this property knowing from BLM
8 that we had massive work to do. We had to map the
9 properties. We had to lay out all the roads. We had to
10 do environmental studies. We had to do new FONSI's on the
11 property. The logistics of what we had to do was
12 something we understood, but in our operational history,
13 I had never worked with multi-cross-layered jurisdictions
14 that we ran into here. And this is part of our failing.

15 Mike's honest to a T, and he fell on his
16 sword. I don't think it's as simple as he put it as far
17 as who was responsible and not responsible. We work very
18 diligently.

19 I can tell you exactly how many times she was
20 on our field that we knew about because I have a daily
21 report, and every visitor there -- it was several more
22 than the four times. But we keep good records, and we --
23 anyway, the investment in South Hospah at this point,
24 probably the capital investment is closer to 7 or 8
25 million, excluding purchase price. And also when we

1 bought it there were several million dollars worth of
2 unpaid bills that we had to resolve. It was a total
3 disaster.

4 It hadn't been in compliance to the best we
5 could tell for years, and probably we assumed if we came
6 in and tried to do a good job there would be some ability
7 to work things out. Certainly that's been the case with
8 the BLM and the Navajo Nation. Anyway, I'll stop it
9 there.

10 Q. And this has already been mentioned, but you
11 need additional water disposal capability out there,
12 don't you?

13 A. Yes.

14 Q. Could you summarize -- well, let's take a step
15 back. There is a lot of water produced from the wells
16 out there?

17 A. (Witness nods head.)

18 Q. A lot of water?

19 A. Yes.

20 Q. And water produced from that zone is quite
21 fresh, isn't it?

22 A. Yes. We -- I'll take a step back. One of the
23 other companies we own -- we're a small company. We've
24 never been -- we're operators. We buy something. We
25 selectively buy, and we operate. We've never sold

1 anything. We also have an engineering company. It's a
2 very green engineering company. We hold over a dozen
3 patents, and we deal a lot with water technology, and we
4 have multiple patents and water management, water
5 technology.

6 When we took over Hospah, the thing that just
7 jumped out at me was it was fresh water. This was the
8 first time in my life I'd ever produced oil out of fresh
9 water. I had Mike do the analysis. We came back. We
10 compared it. It would sustain marine life. It would
11 sustain plant life and most everything except some types
12 of snails, which we felt, you know, that's pretty good.
13 Historically, the water at Hospah had been pumped down a
14 creek after a couple of holding ponds, and the local
15 ranchers and so forth used the water. That had been
16 going on for many, many years.

17 When we took the property over, there had been
18 a large supply well, and the ranchers were literally
19 coming up and filling up tanker trucks out of our supply
20 well. That supply well went down. We found this
21 waterflood to be overpressurized already, so we -- we
22 didn't repair it, and the ranchers said, "Where are we
23 going to get our water?" We said, "Well, we don't know.
24 That's an issue we'll have to resolve." But it got us
25 thinking in terms of the water.

1 So I immediately, as I said -- not
2 immediately. There's so much going on. But over the
3 course of as fast as we get to it, I'd say over 90 to 120
4 days, we developed an approach that we wanted to salvage
5 the fresh water. Frankly, I thought it was irresponsible
6 to dispose that water. I thought it could be used. We
7 had people wanting it. I thought it was an irresponsible
8 use of power to force it back down ground.

9 And I approached Mr. Price -- I asked
10 Ms. Altomare to introduce me to Mr. Price, and she did.
11 We talked. He was very encouraging. He gave us a
12 laundry list of what to do. And at that point we knew
13 that this property would produce between 10 and 20,000
14 barrels a day once developed. There was never any
15 question about that we'd have a water issue out there.
16 That was part of our due diligence.

17 So my first approach on resolving this was
18 that we would build impoundments. We would clean,
19 filter, do whatever was necessary, and then allow the
20 local ranchers to come pump water out. We were told the
21 reason the water was not allowed to go down the streams
22 was because there were too many local arguments over who
23 had rights to the water. And, eventually, the EPA got
24 tired of the arguments -- or the State EPA. I never got
25 an answer on that. But somewhere along the lines some

1 level of government -- at some point there had been a
2 spill, and they cut off the water, the fresh water
3 injection.

4 So, anyway, then we worked with Mr. Price, and
5 that's been brought up. He gave us a laundry list. We
6 immediately went out. We got all the information in. We
7 contacted the engineers. Mike and I did this. I did
8 quite a bit of this myself. We contacted a hydrologist
9 that worked for the State of New Mexico. We checked. We
10 did a survey of every well in the area. We did
11 everything he asked. We submitted it back. We didn't
12 get a response. Then you have Mike's emails. Then we
13 were told he was dealing with an emergency, it would take
14 a while.

15 We gathered more information he asked us to
16 gather. We submitted that, and then we finally got a
17 letter that was kind of -- I considered it a bit of a
18 blow off. "I'm too busy. You don't understand what
19 you're doing. Go hire a professional and get them to
20 permit it." That's how I took it. At that point we
21 started looking at it ourselves. Is there other ways we
22 can build the lake? Can we go through Fish & Wildlife?
23 Can we go through BLM? But we also came to the
24 conclusion that we had to put a disposal well, so we
25 shifted gears, and we started towards a disposal well.

1 Then we ran into the fact we can't get a disposal well
2 because we now have a compliance issue. So we're in a
3 Catch-22 on the water. That's as quick a summation of
4 that as I can give you.

5 Q. You're still looking at potential holding
6 ponds, et cetera; are you not?

7 A. I will look at it as long as we own property
8 because I believe it's a fundamental waste of good
9 resources to inject that water.

10 Q. You mentioned discussions -- you've had a
11 number of -- when you go through the timeline, you or
12 Mike Allen had a number of discussions with the Division
13 or emails, et cetera, et cetera, and there have been a
14 couple of issues that you have not -- not you -- that
15 Nacogdoches has not followed through on. Have you had
16 continuous discussions with the BLM, Navajo Nation, and
17 other people who are out there governing your operation?

18 A. I think predominant difference or the primary
19 difference between our personal experience in dealing
20 with the New Mexico Oil Conservation Division and our
21 experience in dealing with BLM and Navajo isn't the level
22 of compliance. It has been the communication.

23 It was said that we -- for example, it was
24 implied that we knew that we had a bonding issue when we
25 submitted our application. That's not true. When we

1 bought this property, there wasn't a bonding issue. The
2 bonding issue resulted of a rule change that took place
3 January 1st that required any wells that hadn't been in
4 production for two years to be bonded -- required
5 additional bonding. We weren't aware of that rule
6 change. That's our bad. But we were new kids on the
7 block. So it wasn't an issue.

8 We also were under a compliance order that
9 existed when we purchased it. We didn't know if that
10 went forward or not. But I've got to say, in all
11 honesty, from Mike and all of us, of the 30-something
12 thousand acres of leases we've purchased and the several
13 hundred wells we purchased from an operator who everybody
14 wanted to lynch at that time, and I assume so did
15 New Mexico, the vast majority of it was Navajo and BLM,
16 even though I understand there's cross jurisdiction. But
17 we were being dictated -- we had a situation in Dinah Bi
18 Keyah in Arizona where the Navajo water supply was at
19 risk from a natural landslide that had never been
20 remediated because no one could do it, a very large
21 project -- Mike alluded to it -- a couple million dollar
22 project.

23 We had major environmental issues in South
24 Hospah. We hauled thousands of yards of dirt. We laid
25 miles and miles of new line, and before we could do that

1 to even operate these leases, we had to map and get
2 FONSI's done. We have been very busy beavers. But the
3 one thing that was different is everyone else contacted
4 us. And, yes, Mike missed that email. I even asked him,
5 "Hey, did you get with New Mexico?" He said, "Yeah. I
6 called Charlie Perrin." The silence from the other side
7 is deafening. We never received anything.

8 They talk about us over here that we were out
9 of compliance on injection wells, but does she tell you
10 they ever contacted us and told us? They mentioned one
11 thing to Terry Hughes, our field superintendant, and he
12 disconnected it that day. After we had our last email
13 from Mikal we received nothing. We thought, fall on our
14 swords. Ignorance is no excuse for the law, but we
15 thought we were in compliance.

16 We thought once we swabbed these wells
17 according to OCD regulations that we had two years before
18 they would be out of compliance. Now, we filed the
19 C-103s to a contract person we hired. And we only kept
20 two people on staff when we bought these properties. One
21 was an accountant that was doing reporting, and the other
22 one was this contract Angela because we knew we couldn't
23 assimilate this much information this fast.

24 Now, Angela swears to us -- she remarried and
25 she resigned -- and we're bringing this in-house because

1 we have to have a handle on it because this is the only
2 thing we don't have a handle on right now -- that all of
3 this stuff has been filed. But there's something going
4 on that we don't understand, and, frankly, we don't
5 because even the BLM says, "Your stuff is not showing
6 up." And they knew we were filing it, but it wasn't
7 showing up on the web.

8 Then here a few months ago or a month or so
9 ago, a bunch of it showed up. We talked to Minerals
10 Management Service, and they told us a lot of it was
11 because of our change of operator. We had several holds
12 on it. We had the hold because of OCD, but we also
13 had -- when we took over the Navajo stuff -- we had a
14 situation where the people had not filed anything since
15 2006, so we had to complete an audit for the Navajos, and
16 they wouldn't transfer the operator license. And I don't
17 know how those interfaced because BLM -- again, these
18 cross levels, I still don't understand it. I didn't
19 totally fall off the cabbage truck, but this complex
20 stuff when you start getting into all these levels of
21 regulatory authority --

22 But we had to finish that audit. We had
23 nothing -- we had to reconstruct two years. Now, that
24 kept our small staff very busy, but we reconstructed
25 Mountain States' operation for the Navajo 24,000 acres of

1 leases they had for two years, and we did that and then
2 paid all the back taxes, and then we were able to become
3 operators.

4 We think somehow between that and the holding
5 up of our transfer over here, somewhere this information
6 has become backlogged and logjammed. We don't know. We
7 contact -- and it's all filed online, so all we get --
8 what we were getting -- and, again, our bad, but it's a
9 little confirmation that your filings have been filed.
10 The lady had been filing for several years, and we heard
11 she was doing it for several companies. We assumed she's
12 good. But that's not an excuse. It's simply saying that
13 it is a sin of omission.

14 Wherever -- and the BLM will attest to this,
15 the Navajo will attest to this, Val Jameson. You can
16 talk to Steve Mason, Lovato, Jim Lovato. Any time they
17 have contacted us on any issue in the last 18 months, if
18 they told us, "Hey, you're messing up here," we
19 responded. That is categorically, as I'm a witness here
20 on my oath -- we heard nothing, nothing after the last
21 24th email that, unfortunately, we didn't reply to. No
22 excuse. We didn't get it. But it was an email. It
23 wasn't a certified letter. It wasn't a written
24 correspondence that came to my office, which would have
25 been filed and sent out. It was an email. That's what

1 we got.

2 Q. So you didn't get any letters regarding
3 noncompliance from the Division?

4 A. Nothing. And to this date we haven't been
5 told that we put water in an MITed well or an unMITed
6 well or whatever.

7 Q. This is what you're talking about on the
8 regulatory learning curve?

9 A. Yeah. I rambled. I apologize. Yeah.
10 Because we have now learned how to operate within the
11 BIA. We've learned how to operate within the Navajo
12 Nation. We've learned how to operate in the State of
13 Utah. We've learned how to operate in the State of
14 Arizona. But we have a problem operating in New Mexico.
15 We'll take responsibility for that. But I just want this
16 Board to know it was not intentional.

17 Q. You said that the filing is now being taken
18 over inhouse effective this month?

19 A. We have to, because it's obvious we didn't
20 have a handle on it. That was the only thing we didn't
21 do inhouse was the Hospah leases.

22 Q. Mr. Dehnisch is charged with making sure all
23 the filings --

24 A. He and our accounting department, and it will
25 be a learning curve still. I'll say one other thing. We

1 had a sit-to at our office last week because we've been
2 trying for about six months to map out every regulatory
3 issue that we have to respond to out here. It is very,
4 very complex. When I say "out here," I mean the Four
5 Corners area because, again, the intertangling of the
6 states and the agencies, but we're close.

7 Q. Is it fair to say that after the prior
8 operators have messed up these properties, Nacogdoches
9 Oil and Gas is the only one that's taken on the difficult
10 work of taking care of it?

11 A. I think that the leases that we purchased in
12 the state of Arizona are better for our ward. I think
13 the leases we purchased in Utah are better off under our
14 operation than they were prior, and I definitely believe
15 Hospah is in the best condition it's been in in 10 years,
16 and I challenge you guys to say that's not true.

17 MR. BRUCE: I pass the witness,
18 Mr. Examiner.

19 MR. EZEANYIM: Ms. Altomare?

20 MS. ALTOMARE: Thank you, Mr. Examiner.

21 CROSS-EXAMINATION

22 BY MS. ALTOMARE:

23 Q. You mentioned that you acknowledge that coming
24 into New Mexico and taking over these properties that
25 there would be some sort of a regulatory learning curve.

1 Did you consider contacting the Oil Conservation Division
2 prior to acquiring them to ask questions, review the
3 rules, make contacts, anything of that nature?

4 A. I asked Mike to contact the regional office,
5 which was out of Aztec because it was Aztec that
6 controlled us. Most of my contact, in all honesty, was
7 with the BLM. I felt they had the greatest working
8 relationship. We submitted a change of operatorship
9 and --

10 Q. You contacted the BLM, but you recognize that
11 the OCD is also an agency that you were going to have to
12 be dealing with?

13 A. Yeah. And I asked Mike Allen to contact the
14 Aztec office. Now, the first 90 days we had this
15 property -- realistically, the first 120 days was all
16 about just trying to mobilize, hire people, get feet on
17 the ground, and put out the biggest fires. And everybody
18 had a fire list.

19 Q. But you definitely prioritized the feds above
20 OCD and the OCD requirements; right?

21 A. I don't think -- I think that is a way to
22 characterize it. I don't think that's how I
23 characterized it.

24 Q. But you did post the \$525,000 bond
25 immediately?

1 A. Right. That was the first property we
2 purchased. That was the first. That was one in a
3 series, and that was South Hospah. And, frankly, at that
4 time my understanding is that was a federal lease.

5 Q. How much have you spent total in bonding for
6 the feds, for the BLM, ball-park?

7 A. I think the bond we put up on South Hospah was
8 525,000.

9 Q. Are there any other federal areas -- any other
10 federal bonds that you've had to post?

11 A. Yeah. There's quite a few. But they're now
12 being transferred -- like the EPA bonds are now under the
13 Navajo jurisdiction, so we're transferring all of the
14 U.S. EPA bonds over there.

15 Q. So Navajo and federal together, how much have
16 you spent in bonding, not including the OCD?

17 A. I'd say on the Navajo 24,000 acres, I think we
18 probably have -- my guess -- I can't answer that
19 question. It's a significant amount. We had to buy
20 bonds that were in place --

21 Q. Several million?

22 A. I don't think it's several. I think it may be
23 over two. We bought the bond, for example, that was in
24 place with OCD. We had to buy -- that was a cash bond.

25 Q. Not -- I'm just talking about the federal

1 bonds, federal and Navajo bonds.

2 A. I'm not prepared to answer that with
3 authority, but I would say probably a couple million
4 dollars.

5 Q. How much have you spent in bonding for OCD
6 financial assurances?

7 A. Well, I think you would know that. You helped
8 me figure it out. We sat down, and we talked
9 about -- the issue was that we had a blanket bond in
10 place. We were in compliance when we bought it.

11 Q. So the blanket bond is 50,000?

12 A. Right. But that had us in compliance at the
13 point we bought -- I can't ask you. I think in our
14 discussions, I understand when we purchased the property
15 9/1/07, we were in compliance. At the point --

16 Q. Is it fair to say that it's far less than a
17 million dollars you spent in total in bonding for the
18 OCD, just ball-park characterize --

19 A. Sure. I have no idea what that analogy is
20 about, but I'm sure it's fair to say.

21 Q. You mentioned some interactions with Mr.
22 Price, and you indicated that you saw Mr. Price's final
23 email as a blow off. However, you also indicated that
24 that email contained a laundry list of things for
25 Nacogdoches to follow up on.

1 A. That's correct. But if you read the prior
2 emails, you'd find out that we complied with everything
3 he asked us to give him prior.

4 Q. The email that I'm referring to is indicated
5 as Number 32 in that Exhibit F.

6 Did you hire a specialized -- I lost my place.
7 Did you hire a consultant? Consult with Game & Fish?
8 Follow up on the other things that he mentions in this
9 email dated November 6th, 2008?

10 A. We did. But I already had a man with an EPA
11 biology degree, with a master's. I thought we had
12 somebody pretty adequate on staff.

13 Q. This email was, in fact, directed to that
14 individual?

15 A. That's right. That's part of the reason I
16 felt like this was not a sincere response.

17 Q. Did you follow up with Mr. Price and indicate
18 to him that you didn't feel it was a sincere response or
19 follow up with anybody else in the agency to inquire
20 further regarding the recommendations that were being
21 made?

22 A. We did follow up.

23 Q. What kind of follow-up was made?

24 A. The last email.

25 Q. Where is that at? I don't see where you're

1 referencing.

2 A. Well, I may be wrong. The last email he said
3 that the analytical was insufficient for our evaluation.
4 I also mentioned you may want to check Game & Fish, but I
5 didn't see anything. We did check with Fish & Wildlife,
6 and we did -- if you go to the prior three emails where
7 there were requests, we sufficiently -- we supplied that
8 information. But we did hire somebody. That's your
9 question. Yes, we hired somebody. We met with
10 hydrologists.

11 Q. And that person, according to Mr. Dehnisch,
12 was hired recently; is that right?

13 A. Yeah.

14 Q. Why did you wait between the November date and
15 recently to hire somebody?

16 A. Well, that November date to now, that's seven
17 months, six months reality, seven -- I just guess that we
18 came to the conclusion that we were going to have to put
19 in another well. We started looking for alternatives.
20 We went to the Wildlife Foundation. We went to federal
21 Fish & Wildlife. We talked to BLM. BLM told us they
22 didn't think that should be an issue, that they would
23 help us with it. We got lots of support, lots of lip
24 service. But at the end of the day, no one came to lead
25 the parade, so we finally felt like this isn't going to

1 happen, and we better change directions. So that's the
2 point we started on Navajo Number 9, to turn that into a
3 disposal well.

4 Q. Were any further contacts initiated with the
5 Environmental Bureau or anyone else at the OCD beyond
6 that last November contact?

7 A. I think I answered that. Well, I can't answer
8 that. Mike may have addressed that. I'm not trying to
9 pass the buck, believe me. This is where it stops. But
10 I don't actually know if there were any other -- I would
11 think there would be in some of the other agencies, but I
12 can't speak to that specifically.

13 Q. Regarding the bonding issue, you indicated
14 that you didn't know at the time that you acquired the
15 wells, I guess the effective date was August or September
16 of 2007, of the upcoming rule change effective in January
17 2008?

18 A. No. We had -- our due diligence simply said
19 we were in compliance. I mean, I guess they didn't look
20 forward enough. The law firm we used said, "You're in
21 compliance."

22 Q. Had you acquired a copy of the Oil
23 Conservation Division rules anticipating that you were
24 going to be operators in this state and begin to
25 familiarize yourself with them?

1 A. I familiarized myself enough to know that it
2 says in there that if we're out of compliance, we will
3 get a letter -- which we never got -- certified -- no.
4 First class. I familiarized myself enough to know that
5 once we did swab tests, we brought ourselves in
6 compliance. We had two years, so I felt like we were in
7 compliance when we transferred the operator's license
8 over. In my opinion, we must have been in compliance
9 because you transferred it over. I mean, it's
10 simplistic, but that's how I viewed it. We were in
11 compliance. We've got some time here now to work things
12 out. You're in a fire fight. You don't have time to
13 count the dead. You just want to make sure that you've
14 got everything under control so you can start trying to
15 weed yourself out of it.

16 Q. The C-145 operator transfer form was signed in
17 March of 2008, and according to the OCD system, that was
18 the first attempt to file the operator transfer
19 officially with the OCD. Is that your recollection, as
20 well?

21 A. That's what the record states.

22 Q. Do you recall being informed by our bonding
23 administrator at that time that you were not in
24 compliance, and the transfer could not go forward because
25 you owed bonding at that time?

1 A. Right. And I think we immediately contacted
2 your office.

3 Q. Why did you not attempt to effect the transfer
4 closer to the effective date of the actual acquisition in
5 2007?

6 A. Ma'am, I can only tell you as I told you when
7 we met in person. There was a lot going on. We were
8 getting to these issues as fast as we could.

9 Q. You mentioned that, in your opinion, as soon
10 as NOG is told that something is wrong by the BLM or the
11 Navajo, which you viewed to be way more communicative
12 than the OCD, that you guys hop to it, and you get it
13 fixed. But your testimony today, that's not the case
14 with the OCD; that Terry and Lindy have both been
15 informed on multiple occasions by Monica of problems in
16 the field, and even though they might make corrections at
17 the time, that they go ahead, and they reconnect the
18 wells once Monica leaves the site.

19 Q. Ms. Altomare, are you positive of that?
20 Because I've seen nothing in writing stating that. I
21 have nothing in my daily reports stating that. So if it
22 happened --

23 Q. Mr. Finley, you've heard testimony under oath
24 today from --

25 A. I heard testimony she was out there four

1 times.

2 Q. -- from a Division inspection officer who has
3 personally witnessed your people shutting in a well that
4 was not supposed to be injecting and has gone back to
5 that same site a subsequent day and seen it injecting
6 again, after personally informing your people that they
7 were not to be injecting. Explain to me how --

8 A. Ma'am, what I heard --

9 Q. -- that is NOG being responsive to being
10 informed by the agency that they are not operating
11 according to rules.

12 A. You know, we're a little company. We're
13 pretty simple. We work in six states. We kind of do
14 things in writing. So it never made it to my desk.

15 Q. Okay.

16 A. If it had, I can assure you I would have
17 corrected the problem.

18 Q. You made some kind of a reference
19 indicating -- I just want to clarify -- that the
20 September 24th, 2008 email, it's not that you actually
21 didn't receive it, it's that it somehow didn't register
22 to your attention; isn't that right?

23 A. No. I asked Mike did he contact the OCD, and
24 he said he did. But I think he, in later conversations,
25 was referring to Charlie Perrin, not this particular

1 email. Because he had made multiple contacts with
2 Charlie Perrin.

3 Q. I'm talking about the September 24 --

4 A. I'm trying to explain that.

5 Q. I'm asking whether or not you actually -- you
6 or Mike, did either of you actually receive it?

7 A. Yes. We both received it.

8 Q. Okay. I just wanted to clarify because your
9 previous testimony was not --

10 A. My testimony is it was an email. It wasn't a
11 written correspondence. It was not something that went
12 through channels.

13 Q. Right.

14 A. It was an email.

15 Q. I'm simply clarifying that you actually
16 received it.

17 A. And I'm clarifying that we --

18 MR. BRUCE: Let him answer the question, I
19 request.

20 Q. (By Ms. Altomare) Mr. Finley, all of our
21 previous correspondence prior to that has been done via
22 email; isn't that right?

23 A. Your and my personal correspondence, yes.

24 Q. You indicated that after that last email you
25 had never again heard from me or anyone in my office

1 after that.

2 A. I don't believe after the 24th, no. I have no
3 record of anything.

4 Q. Do you recall in that email that you were
5 given specific instructions regarding what the next steps
6 were for Nacogdoches proceeding forward to come into
7 compliance?

8 A. Yes.

9 Q. Did Nacogdoches take any of those steps,
10 including contacting Sonny Swazo to pursue an AOCI and
11 filing C-115s to report their production?

12 A. I've answered that. Obviously, no. But we
13 never received a letter telling us that we didn't.

14 Q. Do you recall sitting with me in a meeting in
15 August and discussing the possibility of entering into an
16 ACOI and the fact that the individual who was responsible
17 for negotiating those and the person that you would be
18 dealing with would be Sonny Swazo?

19 A. No, I honestly don't. Mike and I talked about
20 that. Our recollection, both of our recollections is
21 that we were dealing with bonding on the wells that -- we
22 walked in there knowing that we were going to put the
23 vast majority of these wells on. We knew there were some
24 wells we wouldn't put on, and we agreed to bond those
25 wells. That was \$147,000 worth of bonding, we agreed

1 to -- "We're not going to put these wells on. We'll bond
2 them. These wells we want to put on." And you said,
3 "Well, you have to show proof that they're viable wells."

4 That's how I recall it. So we asked how we
5 could do that. You said we could swab them. We said,
6 "We'll do that." We swabbed them. We sent the C-103s
7 in, and that was really the extent of my relationship in
8 that because that's what I recall.

9 Q. At that point in time I indicated to you that
10 I would be willing to review those records and work with
11 you as a new operator in our state to see if the swabbing
12 indicated that the wells were viable so that we could
13 rebut the presumption of inactivity and allow the well
14 transfer to go forward; isn't that right?

15 A. Yeah. In all honesty, that's very right. And
16 I think that -- I thought when you transferred and put us
17 in operating status we had satisfied your needs, at least
18 for the short time. That's the honest truth. We thought
19 we were in compliance.

20 MS. ALTOMARE: I think that's everything I
21 have. I'll go ahead and pass the witness.

22 REDIRECT EXAMINATION

23 BY MR. BRUCE:

24 Q. Just one question. You mentioned contacts
25 with regulatory authorities. Have you personally visited

1 New Mexico quite a few times in connection with these
2 properties?

3 A. Yes. I personally come to these properties
4 every month. I usually have meetings -- I scheduled
5 meetings last month for this, and we didn't have a
6 hearing. I asked -- well, that's --

7 Q. But you were in a month ago to come to the
8 originally scheduled hearing?

9 A. Um-hum.

10 Q. And you do that on a monthly basis?

11 A. Yes.

12 Q. And, also, do you review well reports daily on
13 all the wells?

14 A. Yes. I review every lease, every well. I
15 can't say daily, but the vast majority of days.

16 Q. So all this information on the wells --
17 production data, what's been done on a well, people
18 visiting the lease -- is on your computer system,
19 Nacogdoches' computer system?

20 A. Right.

21 Q. And you review that on a regular basis?

22 A. Right. I'm considered anal.

23 MR. BRUCE: That's all the questions I
24 have.

25 MR. EZEANYIM: Ms. Altomare?

1 MS. ALTOMARE: I have no further
2 questions.

3 MR. EZEANYIM: Okay.

4 EXAMINATION

5 BY MR. BROOKS:

6 Q. You mentioned something about a law firm that
7 advised you prior to your retaining Mr. Bruce. Did you
8 have lawyers to advise you about New Mexico laws and
9 New Mexico compliance issues?

10 A. Let me answer this as honestly as I can. I
11 had Porter & Hedges out of Houston handling the
12 transaction. It was a very complex transaction.

13 Q. That's the acquisition?

14 A. The acquisition portion of it. I had --
15 Modrall Sperling was handling -- had done all the title
16 work.

17 Q. That's an Albuquerque law firm?

18 A. Albuquerque law firm. And I had been in --
19 and it was not a -- it's not been a slight to the OCD.
20 It was just the two powers that made themselves most
21 obvious to us during this process that we had to meet
22 with multiple times to even do this thing was the Navajo
23 Nation with Mr. Zaman and Mr. Lovato and Steve Mason.

24 So we had a pretty good idea, I think -- I
25 mean, we got some of this wrong because kind of thought

1 we were being knights on white horses in the sense that
2 we were really going to attempt to do this. But we
3 didn't do it based on Hospah production that's there.
4 It's what's not been produced that we're interested in on
5 those leases. There's tremendous undeveloped assets.

6 We knew we had to clean up the stuff that was
7 there, and we felt like if we made a yeoman-like effort
8 and we showed a good faith -- which I honestly believe we
9 have. I know we've done some things wrong, but I thought
10 we made a good effort. I know we've made a good effort
11 out there. That lease is better off than it's been in 10
12 years. That's just a fact. They don't deny it. Yeah, I
13 thought I had crossed the bases, and we thought we were
14 in compliance when we bought -- in compliance legally.

15 Q. Well, the bonding requirement that you
16 referred to that went into effect in January of '08, that
17 bonding requirement was adopted in '06. You are aware of
18 that now, I see.

19 A. I'm very aware of it. But, you know how
20 lawyers are. I got a snapshot in time, and it said,
21 "Here's where you are now." It didn't mention that the
22 rules were fixing to change on me.

23 Q. Now, the South Hospah, just looking over this
24 list of wells and the codes shown on it, it appears that
25 the South Hospah unit is federal, but the others appear

1 to be state or private; is that correct?

2 A. That's correct.

3 MR. BROOKS: I believe that's all the
4 questions I have.

5 MR. WARNELL: No questions.

6 EXAMINATION

7 BY MR. EZEANYIM:

8 Q. In your effort to comply, have you ever
9 plugged any well and abandoned it from this lease? Have
10 you plugged any well and abandoned it in this lease that
11 we are talking about since you took over?

12 A. We're in the process of plugging some wells
13 for the BLM on the Hanson lease, which now we own or are
14 in the process of releasing. But under the -- this is
15 complicated. Mountain States lost the lease prior to
16 us -- there was a plugging order issued prior to us
17 purchasing the leases. As part of our agreement with
18 BLM, we agreed we'd come in there and plug those wells
19 for them. And in doing that -- there was a method to
20 it -- we would keep -- the power lines and so forth would
21 stay in place because we would attempt to re-lease it.
22 So we're plugging those, and I think 10 of them Mike said
23 had been plugged prior to us. And we're in the process
24 of plugging. We have all the plugging equipment on site.
25 We own the equipment. We brought our own cement truck

1 and pump trucks and so forth.

2 Q. So what would be the turnaround time to plug a
3 well, since you have all the equipment?

4 A. If we were ordered to plug a well today, just
5 however long it took Mike to write a plugging order and
6 have it approved and assign the men. I think the
7 regulatory process takes longer than the actual plugging
8 process.

9 MR. EZEANYIM: I have no further
10 questions.

11 THE WITNESS: May I make a final
12 statement?

13 MR. EZEANYIM: Okay.

14 THE WITNESS: I just simply can't fathom
15 that we would plug \$6 million worth of wells. Plugging
16 cost alone -- when even right now, while we're an infant
17 into this project, we're producing a million dollars a
18 year for the State of New Mexico. That number will only
19 go up. We're not idiots. We wouldn't have bought this
20 mess if we didn't think it had a bright future. And we
21 do want to be good neighbors, and we want to be good
22 operators. And I would like to think in other areas
23 we've demonstrated that.

24 I apologize to Ms. Altomare. I don't know
25 where we got off. I really don't know what -- I

1 understand technically what we did wrong, but I don't
2 understand why our communication was so poor, and I take
3 all responsibility that is due us on that issue.

4 MR. EZEANYIM: Okay. You may be excused.

5 Ms. Altomare, do you have any other witness?

6 MR. BRUCE: Mr. Examiner, I'm through with
7 my case.

8 MS. ALTOMARE: At this time I'd like to
9 call a rebuttal witness briefly. I'd like to call Jane
10 Prouty to address one issue.

11 MR. EZEANYIM: Any objection?

12 MR. BRUCE: No objection.

13 MR. EZEANYIM: Go ahead. State your name
14 to be sworn.

15 MS. PROUTY: Jane Prouty, P-r-o-u-t-y.

16 (The witness was sworn.)

17 JANE PROUTY

18 Having been first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. ALTOMARE:

21 Q. Ms. Prouty, there's been testimony today that
22 Nacogdoches has not been sent any mailings by the Oil
23 Conservation Division regarding concerns that the OCD has
24 regarding any compliance issues. Do you have any
25 information to the contrary?

1 A. Right. Just the one I heard Mr. Finley
2 mention, so I went upstairs to get them. We mail out
3 letters for C-115s. They are delinquent.

4 THE WITNESS: And you had wells with us
5 for 12 months for which C-115s were due, and I have 12
6 letters for C-115s that were late.

7 A. I think one of these might be a duplicate
8 because one month we sent them twice because we weren't
9 getting them back. So we do notify operators of C-115s
10 that we haven't received.

11 Q. (By Ms. Altomare) And what form are these
12 letters sent?

13 A. The rule says we can send them any way we --
14 just -- we can do them via email or anything, and I think
15 several of the rules are probably that way. But these
16 happen to be a mailed hard copy. We send them in hard
17 copy, official letters.

18 Q. These were sent to Nacogdoches and not to the
19 prior operator, Mountain States?

20 A. That's correct.

21 Q. Have you received, to your knowledge, recent
22 filings for C-115s for production from Nacogdoches Oil
23 and Gas?

24 A. Yes. They reported sort of in waves. And in
25 June we received November of last year through April of

1 this year, and that -- actually that November was an
2 amendment. So the November report first came in in May,
3 and then it was amended in June. So their -- all of
4 their reports were filed sort of in waves. There was a
5 big group filed in February, the early months. May of
6 2008 -- like, for example, May of 2008, the due date is
7 July of 2008, so they were filed in February of this
8 year.

9 Q. They were not timely?

10 A. None of them are. That's why we sent so many
11 letters. We only send the letters within 60 days. We
12 try to make it as close to the 60th day as possible so
13 that we can -- do not mail them for people who are just
14 getting their things together, but we can still meet our
15 deadline of mailing them.

16 Q. Okay. So the filings that we received for
17 Nacogdoches have largely been recent and subsequent to,
18 basically, the filing of the application for this case,
19 which was done in April?

20 A. Okay. Since April 1st, there were 10 filings.
21 Oh, excuse me. Two of those were repeats. So there were
22 eight filings.

23 Q. So just in summary, we have sent, basically,
24 one letter per month since Nacogdoches has become
25 operator of record for these wells --

1 A. Right.

2 Q. -- regarding delinquent filings for C-115s?

3 A. Yes. And I haven't looked at these in detail,
4 but they could be for the same months. But the ones I'm
5 looking at right now are not. They're all for different
6 months.

7 Q. Based on your records, is Nacogdoches up to
8 date regarding their filings at this point in time?

9 A. Yes, they are. The May one will be due later
10 next week, and they filed through April.

11 Q. They have filed through April?

12 A. Yes. They did that on June 23rd.

13 Q. Was that one timely?

14 A. No. Slightly off. A week.

15 Q. Okay. Is there anything else that you wanted
16 to say about -- any other anomalies or any other things
17 that jump out at you about the filings received from
18 Nacogdoches?

19 A. No. I don't look at them myself, so I don't
20 know anything about them, other than the time of
21 printing. Many of the letters, we ask the operator to
22 contact us when they receive the letter, and we don't
23 have in our file any acknowledgment of receiving those,
24 any phone call or anything.

25 Q. Okay. There was some reference earlier, and I

1 don't know that you were in the room, regarding sending
2 letters when wells become inactive. Do you have any
3 information about why we wouldn't have sent letters
4 regarding inactive wells to Nacogdoches?

5 A. I can't say whether I did or didn't send them.

6 Q. Let me ask you this: When do we typically
7 send letters regarding inactive wells?

8 A. If they have a well that became inactive since
9 the last letter was sent. So if the wells have been
10 inactive for a long period of time, there wouldn't have
11 been an occasion to send one; otherwise, we would have
12 sent them. So I don't know what the rollout is of them.

13 Q. So when an operator acquires a company and, in
14 theory, already knows that they're inactive, they know
15 what they're getting. Then when new wells fall on the
16 list and become inactive, we proceed to send them
17 letters?

18 A. Yes. The letter simply says, "Please look at
19 our website, and look at the inactive well list, and if
20 you have any problem, if you need a list yourself, we
21 will get you one." That's what it tells them.

22 MS. ALTOMARE: I don't think I have any
23 further questions.

24 MR. EZEANYIM: Mr. Bruce?

25

1 CROSS-EXAMINATION

2 BY MR. BRUCE:

3 Q. Ms. Prouty, what you're saying is you don't
4 have any copies of letters in your file sent to
5 Nacogdoches saying, "These wells have been inactive for
6 more than a year"?

7 A. We don't do that for anyone. When they
8 acquire the letter -- the initial letters we sent out
9 when Rule 40 went in. I sent an inactive wells list.
10 That was quite difficult. So what we send now is a
11 notification that says, "You have a well that has become
12 inactive since the last time a letter was sent." It
13 doesn't list the wells.

14 Q. I understand that. But you don't have any
15 copies of such letters that were sent to Nacogdoches?

16 A. I keep copies of the labels. I don't keep
17 copies of the letters because they're just form letters.
18 I could look into that if you'd like.

19 Q. You don't have any to submit here today, do
20 you?

21 A. I had no idea -- I mean, these weren't ready
22 to submit either. I just heard him saying he never
23 received any letters, so I went to get these. But if
24 you'd like --

25 Q. But these letters that you sent were just to

1 say, "Hey, file C-115s," which they did.

2 A. Not -- yeah. Okay. That's not a question,
3 so --

4 Q. Didn't they file C-115s?

5 A. They filed C-115s long after the time where we
6 told them we would revoke their authority.

7 Q. But they did file C-115s?

8 A. Yes.

9 MR. BRUCE: That's all the questions I
10 have.

11 MR. EZEANYIM: Okay.

12 MR. BROOKS: No questions.

13 MR. WARNELL: No questions.

14 MR. EZEANYIM: You may be excused. No
15 questions.

16 MR. BRUCE: Mr. Examiner, I would like to
17 recall Mr. Dehnisch for a few minutes to address that
18 issue about filing late.

19 MR. EZEANYIM: Do you have any objection?

20 MS. ALTOMARE: No.

21 MR. BRUCE: You remember that you were
22 previously sworn, Mr. Dehnisch.

23 MIKE DEHNISCH

24 Having been first duly sworn, testified as follows:

25

1 FURTHER DIRECT EXAMINATION

2 BY MR. BRUCE:

3 Q. Nacogdoches did receive certain letters
4 requesting that C-115s be filed; correct?

5 A. Yes, sir.

6 Q. Those were in your files?

7 A. Um-hum.

8 Q. But those were going back for several months.
9 They didn't go back for inactive wells, did they?

10 A. No. They started like May 2008. There was
11 one for each month. I think some were dated in November,
12 and then there was another batch in February.

13 Q. Now, was there a problem -- we've already
14 talked about the bonding issues. Again, who was taking
15 care of filing the C-115s for Nacogdoches?

16 A. Angela Velasquez was.

17 Q. What was the issue -- was the Division
18 accepting her filings?

19 A. When we received the letters, my first call
20 was, "Are we not filing these?" And Angela contacted
21 Kimberly Romero with the OCD to find out what was going
22 on. And, apparently, she was recording them under the
23 wrong ogrid number for Mountain States.

24 Q. Who was recording them under the wrong ogrid
25 number?

1 A. Angela. And apparently did not have from our
2 office -- we didn't have anything on file saying that she
3 had the authority to report under our ogrid number or
4 under our account.

5 So I then submitted a letter for her to send
6 to the OCD stating that -- with Mike Finley's signature
7 stating that she did have our authorization to report.
8 And it just took a long time for that. We made it out
9 one time. We had to use her other name because that's
10 what she was in -- there was actually a couple of
11 attempts with the letter to try to get it to work.

12 Q. That letter was finally submitted when?

13 A. In January, I believe.

14 Q. Of this year?

15 A. Yes.

16 Q. Okay.

17 A. Between the two -- between the 11th, the
18 November ones, that's what sort of brought our attention
19 to them. But I don't recall or remember getting a letter
20 in May, June or July. They came in waves, too, to us.

21 Q. A couple of batches?

22 A. Yes.

23 Q. But production had been reported by Angela,
24 and she had another name other than Velasquez?

25 A. Um-hum.

1 Q. Is that correct?

2 A. Yes.

3 Q. Jaramillo?

4 A. Jaramillo. I think that's it.

5 Q. She was reporting production, but it was not
6 under Nacogdoches' name?

7 A. Exactly.

8 Q. So it wasn't accepted?

9 A. Exactly.

10 MR. BRUCE: That's all I have, Mr.
11 Examiner.

12 FURTHER RE-CROSS EXAMINATION

13 BY MS. ALTOMARE:

14 Q. Just to be clear, Angela was working on
15 behalf -- she was acting on behalf of Nacogdoches when
16 she was filing those.

17 A. (Witness nods head.)

18 MR. BROOKS: No questions.

19 MR. WARNELL: No questions.

20 MR. EZEANYIM: All right. Do the
21 attorneys have any closing statements?

22 MS. ALTOMARE: I would like to do a brief
23 closing to be clear about what it is the Oil Conservation
24 Division would like to see.

25 MR. EZEANYIM: Mr. Bruce, do you have a

1 closing statement?

2 MR. BRUCE: Yes.

3 MR. BROOKS: Is it possible we could take
4 a brief recess?

5 MR. EZEANYIM: Okay.

6 (A recess was taken.)

7 MR. EZEANYIM: Let's go back into the
8 record and hear closing statements. Let's start with
9 you, Ms. Altomare.

10 MS. ALTOMARE: Thank you, Mr. Examiner. I
11 think the big point that we'd like to make is that what
12 happened here -- what Nacogdoches sees as a Catch-22 and
13 being between a rock and a hard place is, basically, a
14 situation of their own creation. This did not have to
15 happen. This was something that they -- a situation that
16 they created themselves.

17 The timeline created by opposing counsel, I
18 think, proves this point. The OCD has gone to great
19 lengths to accomodate them. The communication that
20 ensued, which was almost exclusively by email if you read
21 the timeline, was very, very good. The final email that
22 was sent on the 24th, which gave very explicit
23 instructions for the steps that were to be accomplished
24 proceeding forward. was completely disregarded by
25 Nacogdoches. The ball was in their court. They dropped

1 it.

2 They were introduced to all of the parties
3 within the OCD that they needed to have contact with in
4 order to get everything done that they needed to get done
5 in order to tackle what is indisputably some very
6 difficult sites up in the Hospah. Had they read the
7 rules, had they read the email and actually followed up
8 with it, had they continued communicating with anybody in
9 this office, had they had better control, better
10 communication with their field people, perhaps, we
11 wouldn't be here today.

12 The Oil Conservation Division extended them a
13 courtesy by granting preliminary review of some sundries
14 regarding swabbing and considering that as a preliminary
15 rebuttal of presumption of inactivity so that we could
16 expedite the transfer of those wells without requiring a
17 posting of an exorbitant amount of bonding and requiring
18 them to go through the process of submitting C-115s for
19 each and every one of those swabbings prior to actually
20 getting that transfer to occur.

21 However, they never followed with the filing
22 of those C-115s documenting swabbing, even being
23 specifically told that no matter how small the amount was
24 of that swabbing, it is production, and it has to be
25 reported, and those Ys don't come off of that list on our

1 system. It's not considered in compliance until they
2 file those C-115s. This was discussed at length with
3 them. At this point in time, because of the
4 noncompliance, this is why we are asking for the drastic
5 remedy of plugging or transferring the wells.

6 In the alternative we would ask for -- that
7 the Hearing Examiners consider a slightly different
8 approach. It would require a little bit of extra work on
9 the Hearing Examiner's part because it would require an
10 expedited order, but we would ask that the Hearing
11 Examiner consider issuing an expedited order for
12 presentation to the Division director upon his return
13 next week to the office ordering that Nacogdoches'
14 allowables be cancelled up to either the August 30th or
15 September 3rd hearing date, at which time Nacogdoches
16 would be required to return and prove that they are up to
17 date on their C-115s, and that for any and all wells that
18 have not filed production reports showing activity,
19 regardless of whether it's swabbing or actual production
20 of an actual, you know, money-making amount, they have
21 also posted the remaining single well bonds.

22 And if they are in full compliance at that
23 point in time, the Oil Conservation Division would then
24 consider it appropriate to consider resetting the
25 application for a disposal well and would consider that

1 it may be appropriate to reinstate the allowables at that
2 time. But we would ask that their allowables be
3 cancelled in the interim so they can then focus on
4 getting these things done.

5 It was not expressly asked for in the
6 application. However, it is a lesser remedy, and it is
7 our effort at compromise. And we would ask that the
8 Hearing Examiner consider that as a possibility in this
9 hearing. I think everything else that needed to be said
10 has already been said, so I'll go ahead and finish.

11 MR. EZEANYIM: Okay. Mr. Bruce?

12 MR. BRUCE: Mr. Examiner, Nacogdoches and
13 I certainly recognize that the Division regulations need
14 to be complied with, and I'll get into that in a minute.
15 But, first, let's discuss the wells that are referenced
16 in this application.

17 The Division wants 183 NOG wells, all of them
18 in New Mexico, plugged. But what we are here today for,
19 when you get down to it, 121 wells that they claimed were
20 out of compliance. So there's 62 wells out there that,
21 sorry, there's nothing wrong. They're totally in
22 compliance with.

23 Then you get down to -- really, you're not
24 looking at 121 wells. You're looking at that 39 well
25 list. So there were 120 wells, which they said they

1 hadn't produced, et cetera, et cetera, but the evidence
2 is that the C-115s have been filed, except, perhaps, on
3 the injection wells. So really we're not talking about
4 121 wells. 82 have been removed from that list. Now
5 we're dealing with 39 wells, a subset of that 121.

6 But, as Mike Allen testified, 20 of those 39
7 are producing -- capable of producing. So what we're
8 here about is 19 wells. And all of those wells have been
9 swabbed. They were swabbed last July and August.
10 They've been swabbed again in June and July of this year.
11 So, really, are any of those wells out of compliance?

12 And I think if the Division would like a
13 listing of the wells and what's been done on them after
14 the hearing, that's fine, or at a reset hearing, that's
15 fine. We can provide that list. But based on
16 Mr. Allen's testimony, we're really here about 19 wells,
17 all of which have been swabbed twice to rebut the
18 presumption of inactivity.

19 Now, yes, C-115s were not timely filed. Part
20 of it had to do with getting the transfer of operations
21 approved into NOG. Some of it had to do with -- C-103s
22 were filed, and the testimony is, as far as people knew,
23 they were filed with the Division, with the appropriate
24 people, but C-115s weren't filed on the swabbing reports.
25 If that has to be done, it will certainly be done.

1 As the testimony shows, when Nacogdoches took
2 over this property, oh, you know, a year and a half ago
3 or whatever, there was almost zero production. There
4 were substantial problems on the lease caused by prior
5 operators. None of the problems were caused by
6 Nacogdoches. Of course, as per the questions of the
7 Hearing Examiners, yeah, you take these properties as you
8 find them. Mr. Finley admits that.

9 But my point is that Nacogdoches didn't sit on
10 their thumbs. They've been out there. They have been
11 working on these wells with crews. They've had, the
12 testimony was, 17 to 20 people. They've got two rigs out
13 there. They're not -- and I know how frustrated the
14 Division gets, Mr. Examiner. I've been sitting through
15 compliance hearings either when I have been involved or
16 not been involved. Operators have just sat on stuff for
17 10 years.

18 That's not the case here. The prior
19 operators, yeah, they sat on it for 5, 10, 15 years in
20 this case, but not Nacogdoches. It has spent millions
21 and millions of dollars reworking the wells, laying
22 lines, fixing tanks, remediating the surface. And there
23 was the one big part. It didn't follow up with Sonny
24 Swazo talking about an ACOI. My client admits that that
25 was their fault.

1 And as I said before in these hearings,
2 unfortunately, people aren't perfect. Nacogdoches isn't
3 perfect. However, as I pointed out under Rule 5.9(B),
4 the Division is required to notify Nacogdoches on a
5 monthly basis when it's out of compliance. It didn't do
6 so either.

7 So what we have is Nacogdoches not following
8 through and the Division not following through. Now, is
9 that a reason to plug 183 wells and lose currently 3,000
10 barrels a month and over 10,000 MCF of gas per day? I
11 don't think so. Is that a reason to hang Nacogdoches? I
12 don't think so. We just need to get these wells back in
13 compliance insofar as production goes, and I think we can
14 do that. The fact of the matter is if there are any
15 noncompliant wells, it can be done away with in a matter
16 of a few months if NOG obtains approval for the water
17 disposal well it has applied for.

18 As a result of these matters, it's NOG's
19 position that if additional bonding is necessary, it
20 should at least be allowed to try to get these wells back
21 on line. Obviously if the well is back on line and is
22 producing, it doesn't need to bond that well. Frankly,
23 approving the Division's application will cause waste,
24 and the application must be denied.

25 There's two final matters, certainly, with

1 respect to the federal leases and the federal wells. I
2 really haven't researched this, but I don't know legally
3 if the Division can order someone to plug a well on
4 federal land. The testimony is that the BLM doesn't want
5 them plugged. But if not as a matter of law, certainly
6 as a matter of the principle of comity, that should not
7 be done. The final matter is, Ms. Altomare said she
8 wants an emergency order.

9 MS. ALTOMARE: For clarification, it
10 wasn't an emergency order. It was an expedited order.

11 MR. BRUCE: An expedited order. Well, I
12 don't see how canceling allowables and restricting
13 Nacogdoches from producing any of these wells is a lesser
14 remedy. Furthermore, that's only going to hurt ongoing
15 efforts to remediate these leases and get them back on
16 production. And I just think you're harming Nacogdoches
17 unnecessarily by trying to restrict their -- actually,
18 cut off all their production on the lease. I don't see
19 that as a lesser remedy included within this application,
20 and I don't think that's before the Division.

21 The final matter is if -- I think Ms. Altomare
22 said something about resetting this matter at a docket to
23 see if they're in compliance insofar as filing forms.
24 That will be taken care of pretty soon, and I have no
25 problem with Nacogdoches filing or refiling all of these

1 forms and even setting a case or application -- a
2 hearing where they can show that all of these forms have
3 been filed, but I would like, at the same point, to be
4 able to move forward with this water disposal well,
5 which, frankly, is the only way to get everything back in
6 compliance. Thank you.

7 MR. EZEANYIM: Any more comments?

8 MS. ALTOMARE: Simply that if the Hearing
9 Examiners agree that our alternative request is not a
10 lesser included remedy, then we would withdraw it and
11 simply ask that you consider plugging -- order that the
12 wells be plugged and that they be required to plug or
13 transfer the wells because they, clearly, have not been
14 responsible in operating them.

15 MR. BROOKS: Mr. Examiner, may I ask
16 Mr. Bruce a question?

17 MR. EZEANYIM: Yes.

18 MR. BROOKS: I'm very confused over these
19 numbers. Given what you contend, if you filed all the
20 appropriate C-115s for production that's actually
21 occurred to date, how many wells, according to your
22 contention, would still remain inactive? I believe
23 Mr. Sanchez testified 86 wells remained inactive, but you
24 were saying 20 or so.

25 MR. BRUCE: Nineteen or 20. And it might

1 be useful to have a list for the Examiner to go by -- the
2 Examiners to go by, if we could submit one after the
3 hearing.

4 MR. BROOKS: Okay.

5 MR. EZEANYIM: Any more questions? Okay.
6 I haven't done this before. What I would like to be done
7 now is I want everybody to leave the room, including our
8 court reporter, and come back in about five minutes. I
9 want everybody to leave the room right now.

10 (The Examiners went into closed session.)

11 MR. BROOKS: Before we proceed, I want to
12 make a statement on the record just in case the matters
13 were ever raised in this or any other forum. The
14 Examiners are not sitting as a panel here today.
15 Mr. Ezeanyim is the Examiner assigned this case, and
16 Mr. Warnell and I are here as advisors. We were not
17 deliberating as a public body when we went into closed
18 session. But just in case there's any further question
19 about that, we did not discuss anything other than the
20 resolution of this case during the closed session.

21 MR. EZEANYIM: Thank you very much. It is
22 very good to have a legal examiner.

23 MR. BRUCE: Did you learn that language
24 representing the Commission?

25 MR. BROOKS: Yes, sir.

1 MR. EZEANYIM: So we'll come back. I
2 think I am going to pass it back to my legal examiner to
3 say what I just told him to on my behalf.

4 MR. BROOKS: The Examiners' determination
5 was that we wanted to recall Mr. Sanchez to ask one
6 question before we do anything further.

7 So could you take the stand, please, Mr.
8 Sanchez? And the record, of course, would reflect that
9 you're still under oath. I told you once I had a court
10 reporter who used to like to say, "I'm just waiting for a
11 witness to say, 'Darn. I thought I could lie.'"

12 DANIEL SANCHEZ

13 Having been first duly sworn, testified as follows:

14 EXAMINATION

15 BY MR. BROOKS:

16 Q. Okay. My question is this, because this
17 matter has come up in the testimony of several witnesses.
18 If, assuming nothing else occurred, if at this time the
19 disposition of the director on the recommendation of the
20 Examiner would be to give Nacogdoches an opportunity to
21 come into compliance, and if they did promptly cure all
22 paperwork violations and file any additional financial
23 assurance that's now required, would the OCD still be
24 willing to contemplate entering into an agreed compliance
25 order so that they could proceed with their saltwater

1 disposal application in order to get the remaining
2 inactive wells that would still show up as inactive back
3 into compliance?

4 A. I've always said we are always looking for
5 compliance. And as my attorney stated in her closing
6 statements, what we're asking for is that they do come
7 into compliance, and part of that was giving them a time
8 frame to do that, which included the financial assurance
9 which has to be paid before we can even consider --
10 before entering into an agreed compliance order and to
11 get all the paperwork filed so that we know what wells
12 are actually on the inactive well list. The only way we
13 know that isn't by a list that NOG can come up with and
14 say, "These are going," when they file the proper
15 paperwork, the C-115s, everything else that needs to be
16 filed, then they get into our system. And the system is
17 automated. It will determine which of those wells that
18 fall off that inactive well list.

19 Q. Now, for instruction for both of the Examiners
20 who don't deal with these matters on a day-to-basis, as
21 well as the operator and counsel, the C-115s are filed
22 electronically and only electronically; correct?

23 A. That's my understanding.

24 Q. Sundry notices can be filed either in hard
25 copy, paper or electronically; is that correct?

1 A. That also -- I'm not sure about.

2 MS. ALTOMARE: I don't believe that the
3 sundries can be filed electronically. I believe they
4 have to be filed in hard copy.

5 MR. BROOKS: So only the C-101s can be
6 filed electronically.

7 MS. ALTOMARE: C-115s are filed
8 electronically. The other ones aren't, I believe.

9 UNIDENTIFIED MALE SPEAKER: There are
10 various sundries that can be filed electronically.

11 MS. ALTOMARE: But the C-103s that we've
12 been referencing throughout the course of the hearing are
13 filed hard copy through the district office.

14 MR. BROOKS: Very good. Thank you for the
15 clarification. I believe that's all the Examiner wanted
16 me to ask.

17 MR. EZEANYIM: To make it clear now, if
18 they file all those, you would be willing to go into an
19 ACOI? If they do all you ask, you can go into the ACOI
20 with them? Is that what you're saying?

21 MR. SANCHEZ: That's exactly what I'm
22 saying.

23 MR. EZEANYIM: Okay. That's all.

24 MR. BROOKS: Thank you. I don't have
25 anything further. Do you want to ask counsel if they

1 want to ask anything?

2 MR. EZEANYIM: Yes. Based on our
3 questions, do you want to --

4 MR. BRUCE: I don't have any questions of
5 Mr. Sanchez, no.

6 EXAMINATION

7 BY MS. ALTOMARE:

8 Q. I just want to clarify. We would be willing
9 to consider going into an ACOI, but given the history of
10 this particular company, would we also consider imposing
11 additional conditions in that ACOI maybe that wouldn't be
12 routine?

13 A. Probably in those conditions -- I mean,
14 probably set around the injection wells. We had
15 discussed it a little bit earlier about putting pressure
16 limiting switches on the injection wells and upgrading
17 the sand filters so they that would relieve some of the
18 problems that they had on those.

19 Q. But, in general, we are willing to work with
20 Nacogdoches to move them forward into compliance and
21 productivity if they are willing to move forward?

22 A. If they meet all of the conditions that we
23 require of every other operator, yes.

24 MR. BRUCE: Maybe just one question,
25 Mr. Sanchez. Obviously, once the paperwork is filed,

1 then you will have a better idea of which wells are in
2 compliance?

3 MR. SANCHEZ: Yes. Like I said, the
4 system is automated. Once the paperwork gets through
5 that system, then wells fall off or come on as it may be,
6 and we have an accurate number of wells. That number is
7 what we would deal with in terms of an ACOI and getting
8 into compliance.

9 MR. BRUCE: For the Examiners, we've
10 already talked about that outside, and the paperwork will
11 be filed, so --

12 MR. EZEANYIM: Any other thing? Then, if
13 that is the case, then let me have my legal examiner tell
14 you exactly what I'm asking that we do today.

15 MR. BROOKS: Okay. The Examiner's
16 determination -- and he asked me to communicate it
17 because this is more a legal situation than it is a
18 petroleum engineering situation -- the Examiner's
19 determination is to continue this hearing, and before
20 making a recommendation for sanctions to the director, in
21 order to give Nacogdoches an opportunity to bring all
22 these properties into compliance. And the reason we
23 brought Mr. Sanchez back up to the stand was because we
24 understand that you cannot come into compliance at this
25 point in time, at least not economically, unless and

1 until you can get your saltwater disposal application
2 approved. So what we will do is we will continue this
3 case to the docket on August 20th, 2009.

4 Mr. Bruce, you, I believe, said you could
5 promptly furnish us with a list of those wells that
6 cannot be brought into -- that are not in compliance and
7 cannot be brought into compliance without a saltwater
8 disposal --

9 MR. BRUCE: We will do two things. Aside
10 from having Mr. Dehnisch, who will take care of filing
11 the paperwork with the Division so that Mr. Sanchez has
12 access to that, I will -- Mr. Allen and I will work --
13 and Mr. Dehnisch will work on a list of these 121 wells,
14 showing their status, including last production or
15 injection. And I think that would help with -- combined
16 with the paperwork that needs to be filed with the
17 Division.

18 MS. ALTOMARE: Including injection that
19 maybe should not have occurred, but did?

20 MR. BRUCE: Ms. Altomare, I said we will
21 file a list of all production, the last production and
22 injection, and the Division is welcome to say that it
23 should or shouldn't -- and I think we go into this --
24 they had authority to inject into certain wells. It was
25 above pressure. So if they were doing it, we will put

1 that into the report.

2 MR. BROOKS: What the Examiner wants on
3 that report -- and we'd like to have it by sometime next
4 week, by a week from today, I guess, is a reasonable
5 time -- we would like to know exactly what wells we are
6 looking at that you admit are now inactive, and are there
7 any that can be gotten active without the SWD, and if so,
8 what needs to be done to them. That's all we'll require
9 within one week.

10 By August 20th, we want you to be able to show
11 us that all the paperwork is filed, discrepancies have
12 been cured, that any financial assurance that remains
13 required has been filed and accepted, and that you have
14 entered into -- at least entered into negotiations with
15 the Division for an ACOI. If an ACOI has been agreed to,
16 that you have also requested a resetting of your
17 injection application because we won't reset it until an
18 ACOI is agreed to. Okay? I believe the Examiner may add
19 anything that I have misstated or that needs to be added.

20 MR. EZEANYIM: I have to refer to my legal
21 Examiner, but I think he said everything that I'm
22 supposed to say. But by August 20th is a hearing that we
23 want Nacogdoches to show up here and tell us why we
24 shouldn't order them to plug all their 183 wells that the
25 OCD is asking and show us why they shouldn't have to

1 transfer all those wells to somebody else or have the OCD
2 plug them, according to what the OCD is asking. We want
3 compliance by August 20th. And that's why, if some wells
4 could not be brought into compliance because of the
5 permit, injection permit, you can get that ACOI, and
6 that's why we ask the question. If you get that ACOI
7 like you are going to do when you get this, then when you
8 comply on August 20 then we may dismiss the case. If you
9 are totally in compliance, we dismiss it because you are
10 now in compliance with all OCD rules and regulations.

11 But on August 20 if you are still out of
12 compliance, then we have to, you know, make -- you know,
13 give them all they're asking for and give an order
14 that -- we make that recommendation to the director.

15 MR. BROOKS: Or at least a substantial
16 part of it. I do recognize at least one of the arguments
17 Mr. Bruce has made. But we would be prepared to issue a
18 sanctions order of the nature requested by the Division,
19 or we would be prepared to recommend that course of
20 action to the director if this has not been complied
21 with.

22 I want to make one thing a little more clear.
23 I'm not sure I was clear enough here. I do not know if
24 there's a category of wells, but I want to address this.
25 There are some wells, I gather -- and I'm so confused

1 about the numbers that I'm not going to make any
2 speculation as to what number -- but there's a body of
3 wells that is actually in compliance except for
4 reporting. And once you cure all the reporting
5 violations, those wells will go off the noncompliant
6 list. There is another body of wells that's probably
7 more than 10, so you can't get into compliance -- that
8 cannot be brought into compliance until after the
9 injection application is granted.

10 I still am not sure whether there's a third
11 group of wells that is not in compliance and will still
12 not be in compliance after the paperwork violation is
13 cured and can be brought into compliance without the
14 injection application. If there is, then I want to
15 know -- have those wells identified, and by August the
16 20th, I want you to either have those wells in compliance
17 or be able to put on testimony to explain, specifically,
18 why those wells cannot be brought into compliance by
19 August 20th or could not be brought into compliance by
20 August 20th.

21 MS. ALTOMARE: Just for clarification, the
22 second two categories, those wells that have to wait for
23 approval of the saltwater disposal well before they can
24 be brought on line and those wells that regardless of
25 whether or not they have a disposal well will not be able

1 to come into compliance, both of those will require
2 bonding?

3 MR. BROOKS: Yes. And all bonding that is
4 required under our rules will be filed prior to
5 August 20th.

6 MS. ALTOMARE: So when you say all
7 financial assurances owed must be posted by August 20th,
8 that's going to be pursuant to what comes up on OCD
9 Online for the financial assurance list?

10 MR. BROOKS: That is correct.

11 MS. ALTOMARE: So that's pursuant to our
12 database?

13 MR. BROOKS: Once the corrective filings
14 have been filed.

15 MS. ALTOMARE: The paperwork filing
16 discrepancies you're referring to, not only C-103
17 sundries, but also the C-115 reportings?

18 MR. BROOKS: Right. And it's my
19 understanding -- yes, Mr. Bruce?

20 MR. BRUCE: So when you say, "compliance,"
21 you're saying either they're producing or have produced
22 within a year?

23 MR. BROOKS: Producing, approved for
24 temporary abandonment or plugged and abandoned. That's
25 compliance.

1 MR. EZEANYIM: Okay.

2 MR. BROOKS: One other thing, when we get
3 the transcript for this case, I will not be here, but
4 would you see that the portion -- that a copy is made.
5 And I would recommend, Mr. Examiner, that you see that
6 you have a copy made of the portion of the transcript
7 where we've instructed the operator and counsel of what
8 needs to be done and deliver it to Mr. Bruce.

9 MS. ALTOMARE: I would like a copy, as
10 well, please.

11 MR. BROOKS: That should be done also.

12 MR. EZEANYIM: Continue with what I'm
13 saying, that this is dependent on August 20th. The
14 compliance enforcement manager will be certified with all
15 the efforts you have made to bring all these wells into
16 compliance. So at the hearing when we get all these
17 other wells and assure -- you know, including what they
18 call the financial assurance single well bonding, plug
19 and abandonment or bring them back to production or
20 agreed compliance order -- to make sure that this case,
21 Case Number 14326, is dismissed, depends on if you comply
22 by August 20th. This will be a condition.

23 Then on that day, if you comply, we may
24 dismiss the case. If not, then we make a recommendation
25 to the Division to grant all the remedies because you

1 didn't comply by August 20th. We chose August 20th to
2 give you time to come into that. And if we dismiss the
3 case, the application -- like I mentioned this morning,
4 you can enter the application.

5 With that, Case Number 14326 will be continued
6 to August 20th to allow the operator to comply with the
7 rules.

8 MR. BRUCE: I'm sorry, Mr. Examiner. My
9 client was talking to me.

10 MR. EZEANYIM: What I just said, Case
11 Number 14326 will be continued to August 20th to allow
12 the operator to comply with the rules as stated.

13 MR. BRUCE: Thank you.

14 MR. EZEANYIM: We're adjourned.

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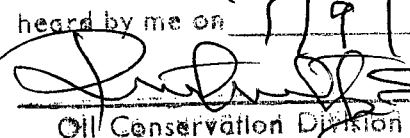
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I hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 14326
heard by me on 7/9/09.
 Examiner
Oil Conservation Division

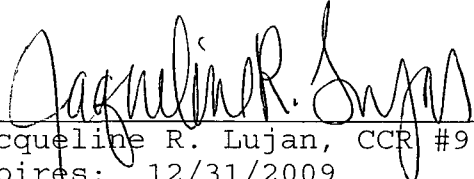
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on July 9, 2009, proceedings in the
above captioned case were taken before me and that I did
report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

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

WITNESS MY HAND this 22nd day of July, 2009.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2009