

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

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

ORIGINAL

APPLICATION OF THE NEW MEXICO OIL Case No. 14055
CONSERVATION DIVISION FOR A COMPLIANCE
ORDER AGAINST C&D MANAGEMENT, d/b/a FREEDOM VENTURES
COMPANY

DE NOVO APPLICATION OF THE NEW MEXICO Case No. 14041
OIL CONSERVATION DIVISION FOR A COMPLIANCE
ORDER AGAINST MARKS & GARNER PRODUCTION LTD. CO.,
AND A REQUEST FOR DETERMINATION OF NON-COMPLIANCE WITH
OCD RULE 19.15.5.9 NMAC FOR VIOLATION OF AN ORDER
REQUIRING CORRECTIVE ACTION.

Case No. 14326; Case No. 14365; Case No. 14366; Case No.
14382; and Case No. 14323: Continued to January 14, 2010

REPORTER'S TRANSCRIPT OF PROCEEDING
COMMISSIONER HEARING

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BEFORE: MARK E. FESMIRE, Chairman
JAMI BAILEY, Commissioner
WILLIAM C. OLSON, Commissioner

December 16, 2009
Santa Fe, New Mexico

This matter came on for hearing before the New
Mexico Oil Conservation Commission, MARK E. FESMIRE,
Chairman, on Wednesday, December 16, 2009, at the New
Mexico Energy, Minerals and Natural Resources Department,
1220 South Saint Francis Drive, Room 102, Santa Fe, New
Mexico.

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A P P E A R A N C E S

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ALSO PRESENT:

Florene Davidson

WITNESSES: PAGE

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1 CHAIRMAN FESMIRE: At this time we'll go
2 on the record. The record should reflect that this is
3 the Wednesday, December 16th, 2009 meeting of the New
4 Mexico Oil Conservation Commission, and that all three
5 Commissioners are present, Commissioner Bailey,
6 Commissioner Olson and Commissioner Fesmire.

7 The record should also reflect that the first
8 order of business before the Commission this morning is
9 the adoption of the minutes from the November 4th, 2009
10 regulary-scheduled meeting. Have the Commissioners had
11 the opportunity to review the minutes?

12 COMMISSIONER BAILEY: Yes, I have, and I
13 move that we adopt them.

14 COMMISSIONER OLSON: I'll second that.

15 CHAIRMAN FESMIRE: All those in favor of
16 adopting the minutes as submitted by the secretary
17 signify by saying aye. Let the record reflect that the
18 minutes were unanimously adopted, signed by the Chairman
19 and transmitted to the secretary for recording.

20 The next order of business before the
21 Commission is Case Number 14055, the application of the
22 New Mexico Oil Conservation Division for a compliance
23 order against C&D Management d/b/a as Freedom Ventures
24 Company. Counsel has been asked to draft two orders.
25 The first is the order in the case. Have the

1 Commissioners had a chance to review that order?

2 COMMISSIONER BAILEY: Yes, I have, and I
3 intend to sign that order.

4 CHAIRMAN FESMIRE: Commissioner Olson,
5 have you had a chance to review it?

6 COMMISSIONER OLSON: Yes, I've also
7 reviewed that and I'm ready to sign it, as well.

8 CHAIRMAN FESMIRE: Let the record reflect
9 that I, too, have reviewed the order, and it correctly
10 memorializes the decision of the Commission in this case.
11 At this time the Chair would entertain a motion to adopt
12 the order as presented.

13 COMMISSIONER BAILEY: I move we adopt the
14 order.

15 COMMISSIONER OLSON: I'll second that.

16 CHAIRMAN FESMIRE: All those in favor
17 signify by saying aye. Let the record reflect that the
18 order was unanimously adopted, signed by the members of
19 the Commission and transmitted to the secretary for
20 recording.

21 The next order of business is also in that
22 case. It's the evaluation of the order denying in part
23 and granting in part C&D Management Company d/b/a
24 Freedom Ventures' motion for a continuance, and in the
25 alternative, for an extension of time within which to

1 file requests for findings of fact and conclusions of
2 law. Have the Commissioners had the opportunity to
3 review this order?

4 COMMISSIONER BAILEY: Yes, I have, and I
5 move that we also adopt this order.

6 COMMISSIONER OLSON: I've reviewed that,
7 as well. I'll second that motion.

8 CHAIRMAN FESMIRE: All those in favor of
9 adopting this order as presented, signify by saying aye.
10 Let the record reflect that the motion was unanimously
11 adopted and that the order has been signed by the
12 Commissioners and transmitted to the secretary.

13 The next order of business before the
14 Commission is Case Number 14041, the de novo application
15 of the New Mexico Oil Conservation Division for a
16 compliance order against Marks & Garner Production
17 Limited Company and a request for a determination of
18 noncompliance with OCD Rule 19.15.5.9 NMAC for violation
19 of an order requiring corrective action. Are counsel in
20 this case present?

21 MS. ALTOMARE: Yes.

22 MR. PADILLA: Yes.

23 CHAIRMAN FESMIRE: We'll take the entry of
24 appearance of counsel.

25 MS. ALTOMARE: Mikal Altomare on behalf of

1 the Oil Conservation Division, and I have one witness
2 today.

3 MR. PADILLA: Ernest Padilla for Marks &
4 Garner. I have one witness.

5 CHAIRMAN FESMIRE: Thank you. Are you
6 ready to begin, Ms. Altomare?

7 MS. ALTOMARE: We are.

8 CHAIRMAN FESMIRE: Do you have an opening
9 statement?

10 MS. ALTOMARE: Yes. Thank you, Mr.
11 Commissioner. May it please the Commission, we are here
12 today merely only on one single issue. This case has
13 already come to hearing twice on the merits, once before
14 the Division Hearing Examiner and then also before this
15 Commission.

16 An order was issued by this Commission back in
17 September of 2008, directing the Respondent Marks &
18 Garner to do a laundry list of very specific things to
19 bring its wells into compliance. It failed to do so, and
20 at this time we are moving under what is commonly known
21 as Rule 5.9 for an order simply finding that it failed to
22 comply with that order issued by this Commission.

23 The evidence and the testimony that we are
24 presenting today is strictly limited in scope to that
25 singular issue today. What we are asking for is, in

1 keeping with what we have submitted as Exhibit F, which
2 is what we see as precedent in this matter, which was an
3 order that was issued in a matter involving Saba,
4 operator, and it is a very straightforward order, and we
5 think it would be instructive to the Commission in this
6 matter. And at this point in time, I think the rest of
7 the evidence will speak for itself.

8 CHAIRMAN FESMIRE: Mr. Padilla, do you
9 have an opening statement, or would you like to reserve
10 it?

11 MR. PADILLA: I'll reserve. I also object
12 to the introduction of the Saba order. I think while it
13 may be an example, it doesn't necessary comply with the
14 evidence that's going to be here. I think an order that
15 the Commission issues as a result of this hearing would
16 be appropriate, and I suppose that they could -- the
17 Commission could take into consideration the Saba order
18 as an example, but it has nothing to do with the merits
19 of this case.

20 MS. ALTOMARE: I would argue that it is
21 legal precedent. It is public record. We are asking
22 that the Commission take administrative notice that it is
23 a previously-issued order on an identical issue that we
24 are presenting before it today, and that it is an order
25 upon which our primary witness is relying in explaining

1 to the Commission what we are asking for in this matter.

2 CHAIRMAN FESMIRE: Ms. Altomare, are you
3 moving for adoption of the exhibit now?

4 MS. ALTOMARE: No. In the course of our
5 presentation of evidence, I will have my witness
6 reference it as an example of what we are asking for in
7 this case and ask that the Commission take administrative
8 notice that it is the legal precedent in this case.

9 CHAIRMAN FESMIRE: Mr. Padilla, we'll go
10 ahead and, after she's laid a foundation for the exhibit,
11 we'll rule on your objection.

12 Mr. Sanchez, please raise your right hand and
13 be sworn?

14 (The witness was sworn.)

15 J. DANIEL SANCHEZ

16 Having been first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MS. ALTOMARE:

19 Q. Mr. Sanchez, can you please state your full
20 name for the record, please?

21 A. Daniel Sanchez.

22 Q. And what is your title with the Division?

23 A. I'm the compliance and enforcement manager.

24 Q. And you testified in that capacity at the
25 hearing that was previously held on the merits of this

1 matter; is that correct?

2 A. Yes, I did.

3 Q. At this time, I'd like to direct your
4 attention to what has been labeled Exhibit A for the Oil
5 Conservation Division. Do you have that in front of you?

6 A. Yes.

7 Q. Can you identify this document for the record?

8 A. Exhibit A is the order of the Commission in
9 Case Number 14041.

10 Q. That is Order Number R-12963-A?

11 A. Yes.

12 Q. What was the date of issuance of this order?

13 A. September 11, 2008.

14 Q. Before we get into the specifics of that
15 order, just to go ahead and identify a couple of these
16 exhibits for the record so that we can refer to them
17 throughout your testimony, I'd like to go ahead and refer
18 your attention to Exhibits B, B1, C and C1.

19 CHAIRMAN FESMIRE: Ms. Altomare, we're
20 having a little bit of trouble finding Exhibit A.

21 MS. ALTOMARE: There was some confusion in
22 this case because this case has been reset so many times.
23 There were two packets of exhibits that were filed in
24 this matter, so you should have been provided with
25 exhibits back in September, as well as a packet of

1 exhibits recently given you -- due to budgetary
2 constraints, I did not recopy the entire set of exhibits
3 that were supplied.

4 CHAIRMAN FESMIRE: Exhibit A is going to
5 be our 12963-A?

6 MS. ALTOMARE: Correct. That was supplied
7 back on September 30th, 2009, when I filed my original
8 pre-hearing statement in this matter. I apologize. I
9 appreciate your patience. I simply did not want to
10 recopy -- duplicate efforts and paper unnecessarily in
11 this matter.

12 It might behoove everyone maybe to pull out
13 the previous set and combine them, because what I've done
14 is, basically, update Exhibits B, C, D and E, rather than
15 adding voluminous exhibits. Then there's an additional F
16 and G exhibit.

17 CHAIRMAN FESMIRE: For some reason
18 Commissioner Olson didn't get his.

19 MS. ALTOMARE: He didn't get the September
20 set, or the --

21 CHAIRMAN FESMIRE: He didn't get Exhibit
22 A. We'll proceed.

23 MS. ALTOMARE: I apologize. I was simply
24 trying to keep the copying to a minimum. I'm sure the
25 Commission can understand.

1 CHAIRMAN FESMIRE: Believe me, as the guy
2 who signs those invoices, I understand.

3 MS. ALTOMARE: Is everyone situated? I
4 apologize.

5 CHAIRMAN FESMIRE: Yes.

6 Q. (By Ms. Altomare) If I could direct your
7 attention to Exhibits B, B1, C and C1. Can you identify
8 what these documents are?

9 A. Exhibit B is the inactive well additional
10 financial assurance report which was printed September
11 30th, 2009. B1 is the same report, but updated as of
12 December 8, 2009. Exhibit C is the inactive well list,
13 once again printed on September 30th, 2009, and Exhibit
14 C1 is that updated list as of December 8, 2009.

15 Q. So Exhibits B and C represent the status of
16 Marks & Garner as of the original filing of the
17 pre-hearing statement as to financial assurance and
18 inactive wells, and B1 and C1 are the updates thereto
19 printed recently for the recently filed pre-hearing
20 statement?

21 A. That's correct.

22 MS. ALTOMARE: Have all the Commissioners
23 been able to locate those?

24 CHAIRMAN FESMIRE: Yes.

25 Q. (By Ms. Altomare) Referring back to Exhibit

1 A, which is the order, did that order require Marks &
2 Garner to return certain wells to compliance either by
3 plugging and abandoning, obtaining a temporary
4 abandonment status approval or returning them to
5 beneficial use by a certain deadline?

6 A. Yes. Item 1 of the ordering paragraphs does
7 give them until December 10, 2008, to bring 13 wells into
8 compliance, or a list of wells. It's on -- the list is
9 on page 10 of that order.

10 Q. It begins on page 9; is that right?

11 A. Yes.

12 Q. And we'll go over that in a little further
13 detail in a moment. But, in general, did they meet that
14 deadline?

15 A. No.

16 Q. And was a deadline set for Marks & Garner to
17 post additional financial assurances for outstanding
18 bonding that was due?

19 A. Yes, there was.

20 Q. And what was Marks & Garner ordered to do in
21 that capacity?

22 A. That was Paragraph 5 of the order, on page 11.
23 "Marks & Garner shall post additional single well
24 plugging bonds on or before September 25, 2008, for the
25 following wells," and there's a list of wells on that

1 order that required that additional bonding.

2 Q. Again, we'll go through that in more detail in
3 a moment. But to your knowledge, did Marks & Garner meet
4 that deadline?

5 A. Not for all the wells, no.

6 Q. Finally, was Marks & Garner required to file
7 additional C-103 subsequent report sundries documenting
8 additional reworking and repairs performed on a number of
9 its wells by a particular date certain?

10 A. Yes, they were.

11 Q. And what was it ordered to do in that
12 capacity?

13 A. To provide those Form C-103s by October 10th,
14 2008, for another list of wells that is on page 10 under
15 Paragraph 2 of that order.

16 Q. To your knowledge, did Marks & Garner meet
17 that deadline?

18 A. Not for all of the wells, no.

19 Q. Just quickly referring back to the exhibits
20 that we just touched on, the status of Marks & Garner as
21 of the original filing of the pre-hearing statement and
22 now for inactive well and financial assurances, what is
23 the current status of Marks & Garner in terms of
24 additional bonding that is currently owed?

25 A. They now owe additional bonding on six wells.

1 Q. And, in fact, that's even one more than was
2 owed when the original pre-hearing statement was filed in
3 September?

4 A. Yes. That's correct.

5 Q. And what is the current status of -- how many
6 inactive wells does Marks & Garner currently have listed
7 on the Oil Conservation Division inactive well list?

8 A. On the September 30th, 2009 report, they
9 listed nine -- or there were nine wells listed as
10 inactive. On the December 8, 2009 report, it doubled to
11 18.

12 Q. So they currently have 18 wells out of
13 compliance with Oil Conservation Division rules for
14 inactivity?

15 A. Yes.

16 Q. These documents are derived from Oil
17 Conservation Division's online system; is that correct?

18 A. Yes.

19 Q. And they're kept in the ordinary course of
20 business?

21 A. Yes, they are.

22 Q. Where is the information for inactivity or
23 last date of production derived from?

24 A. From operator information that's submitted.

25 Q. And these documents are publicly available

1 online?

2 A. Yes, they are.

3 Q. I'd like to go through the specifics in terms
4 of the current status, understanding that they didn't
5 meet the specific deadlines. But rather than talk about
6 what the status was as of the deadlines as they passed,
7 I'd rather look at what the status is at this point in
8 time. With regard to the financial assurance, you
9 mentioned that there are six wells on which Marks &
10 Garner currently owes additional bonding.

11 A. Yes.

12 Q. Ordering Paragraph 5 of Exhibit 11, itemized a
13 number of wells that they were specifically ordered to
14 pay additional bonding for; is that right?

15 A. That's correct.

16 Q. Are any of those wells that are specifically
17 named in Exhibit A, the Commission's order, on the
18 Exhibit B1, additional financial assurance report, as
19 currently having outstanding bonding owed?

20 A. Yes. Those are the Cave Pool Unit 27, the
21 Cave Pool Unit 36, the Northeast Maljamar Unit Number 1,
22 and the Red Twelve State Number 6.

23 Q. So since the issuance of the Commission's
24 order in September of 2008, those four wells -- Marks &
25 Garner has still not posted the additional bonding on

1 those four wells?

2 A. No, they have not.

3 Q. And they have two additional wells that now
4 require financial assurance, as well?

5 A. Yes, they do.

6 Q. And, again, the deadline for the posting of
7 that financial assurance, according to Exhibit A ordering
8 paragraph 5, was September 25th, 2008?

9 A. That's correct.

10 Q. What are the two additional wells that Marks &
11 Garner now owes additional bonding for?

12 A. The Cities Service Number 1, and the Red
13 Twelve State Number 2.

14 Q. I'd like to direct your attention on Exhibit
15 A, ordering Paragraph Number 2 at page 10, where they
16 were ordered to submit accurate subsequent report Form
17 C-103 sundries documenting remedial work performed.
18 Again, what was the deadline for submission of those
19 C-103s?

20 A. October 10th, 2008.

21 Q. At this time, has Marks & Garner now submitted
22 those required C-103s as ordered by the Commission in
23 that document?

24 A. No. There are still four wells that Marks &
25 Garner still has not done this for.

1 Q. And what are those four wells?

2 A. They are the Cities Service State Number 1,
3 the Graham Federal Number 3, the Jennings Federal Number
4 2, and the Kimnitz 17 State Number 1.

5 Q. Okay. I'd like to direct your attention, at
6 this time, to Exhibits D, D1, E and E1, and, again, D and
7 E were the original packet submitted to the Commission
8 with the original pre-hearing statement in September, and
9 E1 and D1 are the updates thereto filed with the recent
10 pre-hearing statement update.

11 A. Okay.

12 Q. Can you identify what these packets of
13 materials are for the Commission, please?

14 A. These show the general information for various
15 wells. They all have some inspection history on these,
16 it will have production history, general information as
17 to who owns the wellbores, contact information, that kind
18 of information.

19 Q. From where are these documents pulled?

20 A. They are pulled out of the OCD system.

21 Q. And they're publicly available?

22 A. Yes, they are.

23 Q. And they're kept in the ordinary course of
24 business for the Oil Conservation Division?

25 A. Yes, they are.

1 Q. And from where is the data derived for these
2 documents?

3 A. Some of the data is provided by the operators,
4 and some of the data comes from our inspectors on
5 inspections that they performed, and some input into the
6 system.

7 Q. With regard to the Cities Service State Number
8 1, I'd like to direct your attention to the first entry
9 on both packets, D and D1. And, again, D is from
10 September 30th, and D1 is the recent update, and both of
11 these are -- the top page should be for the Cities
12 Service. Hopefully that is the case.

13 A. Yes.

14 Q. You indicated that Marks & Garner had not yet
15 submitted a C-103 for subsequent report documenting any
16 remedial work performed. Flipping through the pages for
17 the Cities Service Number 1 on these packets, what do
18 these documents show?

19 A. Well, last production injection for the well
20 was back in November of 2005. It shows that there's an
21 inactive additional bond due date of September, shows
22 they are in violation, shows last production data, a few
23 other things, compliance. There's some inspection
24 history showing that there was a problem with a stuffing
25 box. Various information like that is scattered

1 throughout the report.

2 Q. And the page following the data printout from
3 the OCD online system is a filing. What is that document
4 in Exhibit D?

5 A. This is a C-104, and this is a Request for
6 Allowable and Authorization to Transport, and this was
7 dated February 20th, 1995.

8 Q. What is the significance of this document?

9 A. This is the last document submitted by the
10 operator that we found in our well file.

11 Q. For this well?

12 A. For this well.

13 Q. Indicating that there has been, again, no
14 C-103 subsequent report submitted pursuant to the
15 directive of this order?

16 A. That's correct.

17 Q. Again, this is pulled from the Oil
18 Conservation Division online system?

19 A. Yes.

20 Q. The next well in both packets should be the
21 Graham Federal. Actually, I think in D1 there are only
22 updates for the Cities Service and the Kemnitzs. It's in
23 packet D. The next well is the Graham Federal?

24 A. Yes.

25 Q. And what information were you able to obtain

1 regarding the Graham Federal and Marks & Garner's failure
2 to comply with the directive of the order?

3 A. Again, this shows the production data and
4 various failings on this particular well. It shows the
5 last production to be in 2008, September, and there was a
6 filing into the well file of BLM Form 3160-S. This is a
7 sundry notice report on wells, and this is a production
8 sundry, and this was dated July 28 of 2005. This is the
9 last entry by the operator for this particular well.

10 Q. So, again, this simply indicates that the well
11 was placed back on production, but doesn't indicate what
12 reworking or repairs were done to the well to enable them
13 to put it back on production?

14 A. That's correct.

15 Q. And nothing subsequent to this document has
16 been filed for this well?

17 A. No.

18 Q. The next well in the packet is the Jennings
19 Federal Number 2. What is the OCD system showing with
20 regard to the well file for that?

21 A. Once again, pretty much the same type of
22 information, last production -- there was a violation
23 issued for an idle well, third notice, back in March of
24 2007, and it shows the last production of May of 2009.
25 Also, there is a C-104 that was submitted, and this was

1 back in September of 2001. I believe that's the last
2 that we've had in the well file for this well by the
3 operator.

4 Q. Even though they're reporting some minimal
5 production as of May 2009, they still haven't updated
6 their sundries to show what has been done to the well to
7 enable them to produce the well?

8 A. No. There's nothing in the well file to
9 indicate that they've submitted any additional paperwork.

10 Q. Again, this sundry is the last thing in the
11 well file for this well that they submitted?

12 A. Yes.

13 Q. The next well is the Kemnitz 17 State Number
14 1. I believe this is the last one in the list.

15 A. This one shows last production in March of
16 2008. Just like the other reports, various information
17 regarding the well, contact information, and then there
18 is another C-104 filed for this one that was in the well
19 file. This was dated back in 1994.

20 Q. So even though there's somewhat recent
21 production, we've got nothing since 1994 submitted by the
22 operator for this well?

23 A. That's correct.

24 MS. ALTOMARE: And I apologize to the
25 Commission. The State Number 2 actually was

1 inadvertently included, and that was an error on my part.
2 That well actually does appear to have a sundry
3 documenting subsequent remedial work done.

4 Q. (By Ms. Altomare) So in conclusion, did Marks
5 & Garner appear to have complied with ordering Paragraph
6 Number 2 requiring it to submit subsequent reports Form
7 C-103 sundries for the designated wells?

8 A. Some of the wells did have additional
9 paperwork filed, but four of those on that list still
10 require the additional paperwork, so, no, they did not
11 meet deadline.

12 Q. So they certainly didn't meet the deadline,
13 and even today, over a year later, they're still in
14 violation?

15 A. That's correct.

16 Q. The next paragraph I'd like to direct your
17 attention to is ordering Paragraph Number 1, which I
18 think is probably the most significant one, which is the
19 paragraph requiring them to plug and abandon or otherwise
20 bring into compliance a number of wells. What was the
21 deadline that was set for Marks & Garner to perform this
22 task?

23 A. December 10th of 2008.

24 Q. And, again, you stated that to your knowledge
25 they did not meet this deadline?

1 A. No, they did not.

2 Q. What is the current status regarding Marks &
3 Garner's compliance with bringing that particular list of
4 wells into compliance?

5 A. There are still six wells left unaddressed on
6 that list, and there were five remaining. However, two
7 of those wells that came off the list, came off the list
8 because the state ended up plugging them.

9 Q. So originally there were 13 wells they were
10 ordered to plug and abandon or otherwise bring into
11 compliance?

12 A. Yes.

13 Q. There are currently five remaining, but two of
14 the wells that have basically fallen off the list have
15 done so through the actions only of the state?

16 A. That's correct.

17 Q. And let's go through the list of wells that
18 are remaining. One of them apparently, as of the filing
19 of the pre-hearing statement, was still on the list, and
20 that was the Theos State Number 1?

21 A. Yes.

22 Q. What was the status of that well as of
23 September 30th, when we originally filed our pre-hearing
24 statement?

25 A. This well has been plugged and abandoned, and

1 the site has been released by the OCD District Office.

2 Q. On September 30th, to your knowledge, was that
3 the case?

4 A. No. It had not been released as of the 30th,
5 but it is now.

6 Q. I'd like to direct your attention to Exhibits
7 E and E1. I believe the Theos State Number 1 is the very
8 first well listed on Exhibit E.

9 A. Okay.

10 Q. Is that what is indicated for the status of
11 that well as of September 30th?

12 A. As of September 30th, it shows it was plugged
13 but not released.

14 Q. Again, to your knowledge, that well has now
15 been released so it is in compliance?

16 A. Yes, it is now in compliance.

17 Q. However, as you just said, there are five
18 remaining wells that have not been brought into
19 compliance that were on that original list?

20 A. Yes.

21 Q. What is the next well?

22 A. The Lee/UA State Number 1.

23 Q. That should be the next well in packet E, as
24 well as the first well in the updated E1. What was the
25 status on September 30th and what is the current status

1 of that well?

2 A. Current status is -- well, on Exhibit E, it
3 showed it as plugged but not released.

4 Q. And that is the current status, as well?

5 A. Yes.

6 Q. So even though Marks & Garner was given again
7 notice back in September that these were an ongoing
8 problem, in the last couple of months they have not
9 corrected this well?

10 A. Not yet. The next well is Northeast Maljamar
11 Unit Number 1. Its current status is plugged, not
12 released, same as it was September 30th of '09.

13 Q. Is there a specific reason why this well --
14 that we know that this well has not been released?

15 A. Yeah. There were notes from one of the
16 inspectors, Maxi Brown, out of the Hobbs District Office,
17 and the note basically reads, "Do not release. Remove
18 northwest anchor, two tanks, and miscellaneous junk."

19 Q. This was from back in February 2009?

20 A. Yes.

21 Q. So the operator was advised almost a year ago
22 that there was remaining junk on the site that was
23 keeping the site from being released, and that has not
24 been corrected today?

25 A. It has not.

1 Q. What is the next well that is still out of
2 compliance?

3 A. The Red Twelve Levers Federal 8Q. Its status
4 is unchanged since the order was issued in September of
5 '08, and --

6 Q. What was the last date of production for that
7 well as reported?

8 A. June of 2005.

9 Q. And nothing further has been reported as being
10 addressed to bring this well into compliance; is that
11 correct?

12 A. Yes. The next well is the State Number 1.
13 Current status is plugged but not released. That's the
14 same as it was on September 30th. The release was denied
15 on October 5th of 2009, and that was due to separated and
16 miscellaneous pipe and junk being on the location, and no
17 further records indicate that the well has been further
18 addressed or the site has been cleaned up since the
19 denial, so as of today, it's still not released.

20 The last well on that list was the Gulf
21 Hanagan Federal Number 1. The status is unchanged since
22 9/08. Last production was June of 2005, and the well
23 remains not addressed.

24 Q. So no production since June of 2005, order was
25 issued in September of 2008 to bring it into compliance,

1 and nothing in our file indicates any efforts that were
2 made to move that well into compliance?

3 A. That's correct.

4 Q. Do you recall at the last hearing that the
5 operator indicated that this well had actually been
6 plugged and abandoned through the BLM and that Marks &
7 Garner only need to submit federal paperwork to confirm
8 this for Oil Conservation Division records?

9 A. That's correct.

10 Q. Has anything been submitted in this way that
11 you know of to date?

12 A. Nothing in our file shows up as being
13 submitted on this well.

14 Q. What is the last document that the Oil
15 Conservation Division file reflects has been submitted
16 for this well? I don't think it's in the packet.

17 A. Let's see if I have it in my notes. No, I
18 don't have --

19 Q. Do you recall a discussion about them having a
20 federal sundry submitted in April of 2008 requesting an
21 extension for reclamation?

22 A. Yes. And that deadline was extended, I
23 believe, to May of 2008.

24 Q. And do you recall anything else being
25 submitted to confirm that they actually met the deadline

1 or the reclamation was completed, that the BLM had
2 approved the final release of that site or anything of
3 that nature?

4 A. No. There's nothing in our records to
5 indicate anything was submitted.

6 Q. As far as we know, this site -- we have
7 nothing to indicate that the well has been brought into
8 compliance?

9 A. That's correct.

10 Q. With regard to the Cave Pool Unit Number 27
11 and 36, I'd like to direct your attention to Exhibit G.
12 Can you identify this document for the record? It's
13 actually a number of documents on one.

14 A. These documents are C-103s showing intents to
15 plug and then the actual completion of the plugging. And
16 these were -- at least this is for the Cave Pool Unit
17 Number 27. This shows that the state is the one who
18 submitted the C-103, and that the state ended up plugging
19 that well. On the back side of that sheet is for the
20 Cave Pool Unit Number 36, and once again, this is one of
21 the wells that the state plugged and submitted the
22 paperwork for.

23 Q. Did the state -- is there anything indicating
24 anything about the surface remediation or anything of
25 that nature on any of those sundries?

1 A. For the Cave Pool 36, it's approved for
2 plugging of the wellbore only. The site still needs to
3 be cleaned up. And the same for the 27.

4 Q. So the state has, at the state's expense, gone
5 ahead and plugged these two wells pursuant to the order
6 issued by the Commission, but the site has not yet been
7 cleaned up and released?

8 A. That's correct.

9 Q. Based on your review of the records, has Marks
10 & Garner complied with the terms of ordering Paragraph
11 Number 1, with regard to its obligations to plug and
12 abandon or otherwise bring into compliance that list of
13 wells as ordered by the Commission?

14 A. No, they did not meet that requirement.

15 Q. I don't think I asked you this specifically,
16 but based on your review of the records, did Marks &
17 Garner comply with its obligations under the order to
18 come into compliance with financial assurance obligations
19 by the deadline set by the order in Paragraph Number 5?

20 A. No, they did not.

21 Q. What is the Division asking for in this
22 matter?

23 A. That the Commission issue an order finding
24 Marks & Garner in violation of a Commission order,
25 therefore in violation of Rule 5.9.

1 Q. I'd like to direct your attention to Exhibit F
2 at this time.

3 A. Okay.

4 Q. Have you reviewed this document?

5 A. Yes.

6 Q. Are you familiar with the matter that led to
7 the issuance of this order?

8 A. Yes, I am.

9 Q. And are the issues involved in this case the
10 same issues that were involved in the Saba matter, Case
11 Number 13163, out of which this order arose?

12 A. Yes --

13 MR. PADILLA: Objection. At this time, I
14 object to the introduction or testimony regarding another
15 operator -- the same objection I raised before.

16 CHAIRMAN FESMIRE: Okay. Ms. Altomare,
17 are you in any way claiming that the facts in the order
18 are relevant to this case?

19 MS. ALTOMARE: I'm simply arguing that
20 this is precedent for how this kind of issue should be
21 handled and submitting it as guidance for the Commission
22 in its deliberations in this matter. And I'm asking my
23 witness to, basically, describe what it is that we're
24 asking for in this case.

25 CHAIRMAN FESMIRE: What you're proposing

1 is an example order; right?

2 MS. ALTOMARE: Exactly.

3 CHAIRMAN FESMIRE: And in no way are you
4 claiming that the facts in the two cases are --

5 MS. ALTOMARE: No. Simply that the legal
6 issues are comparable, that the issues involved are
7 comparable.

8 CHAIRMAN FESMIRE: Okay. Mr. Padilla,
9 we'll go ahead and --

10 MR. PADILLA: I realize that the facts may
11 be comparable as represented by counsel. I think this is
12 just a different case. I think the Commission can take
13 administrative notice of that hearing and that order and
14 say this is an example of what we did before. I don't
15 think this has to be -- this order has to be part of the
16 record in this hearing such that there is some type of
17 precedence in terms of the Commission following
18 precedence as it did in the Saba case.

19 CHAIRMAN FESMIRE: Ms. Altomare, I think
20 at the end of this case you'll be given a chance to
21 provide a proposed order, and I think that's probably the
22 proper place to do this. I'm going to have to agree with
23 Mr. Padilla about admitting that order as part of this
24 record.

25 MS. ALTOMARE: There simply seems to have

1 been some confusion over how to handle this particular
2 rule, and I simply want it to be very clear through my
3 witness that this is what we're asking for and why.

4 CHAIRMAN FESMIRE: Like I said, you could
5 do that in the proposed orders.

6 MS. ALTOMARE: Okay.

7 Q. (By Ms. Altomare) Without moving the exhibit
8 into evidence, simply for demonstrative purposes, have
9 you had a chance to review the Saba order?

10 A. Yes.

11 Q. Does it represent what the Oil Conservation
12 Division is asking for, in general, the kind of order
13 that we are asking to be generated in this case?

14 A. Yes.

15 Q. Simply stated, a finding that Marks & Garner
16 was ordered by the Commission to do certain things, that
17 it failed to do so, and we're asking for an order that
18 simply states that that is the case?

19 A. That's correct.

20 MS. ALTOMARE: I'll go ahead and pass the
21 witness.

22 CHAIRMAN FESMIRE: Mr. Padilla?

23 CROSS-EXAMINATION

24 BY MR. PADILLA:

25 Q. Mr. Sanchez, let me summarize, if I can with

1 you, the -- we're talking here about 13 wells; is that
2 correct?

3 A. There were 13 wells on Part 1 of the
4 Commission's order, yes.

5 Q. And then we're talking about another six
6 wells?

7 A. It depends on which part of the order we're
8 looking at, and some of those wells may overlap, but I
9 believe 13 would be the appropriate number to look at.

10 Q. Let's refer to your Exhibit 1 so that I can
11 understand what you're trying to tell the Commission
12 here.

13 MS. ALTOMARE: There isn't an Exhibit 1.

14 MR. PADILLA: Which is the order? Is that
15 Exhibit 2?

16 MS. ALTOMARE: Exhibit A.

17 Q. (By Mr. Padilla) That's the order that the
18 Commission issued back on September 11 of 2008; right?

19 A. Yes.

20 Q. And Ms. Altomare called your attention to
21 ordering paragraphs on pages 9 and 10; right?

22 A. Yes.

23 Q. Okay. Let's start out with ordering Paragraph
24 Number 2. And my count is there are eight wells there;
25 right?

1 A. Yes, sir.

2 Q. As I understand your testimony, the State
3 Number 2 is off that list now; right?

4 A. Yes, it is.

5 Q. Are there any other wells on that list for
6 which there has been compliance?

7 A. Yes. The Red Twelve State Number 3, the Red
8 Twelve State Number 2, and the Levers 3Y.

9 Q. All right.

10 CHAIRMAN FESMIRE: Can I clarify your
11 response on that, please? Those four out of the eight
12 have come into compliance? The other four are out of
13 compliance; right?

14 THE WITNESS: Yes, sir. If I can clarify
15 even further, these are in compliance with that part of
16 the order, Part 2 of the order. There may be some
17 overlap on some of the other ones. I will have to check
18 as we go.

19 Q. (By Mr. Padilla) Start out with the Cities
20 Service State Number 1. You say that's not in
21 compliance; right?

22 A. Yes, sir.

23 Q. At the hearing for the issuance of this order,
24 Marks & Garner testified that that was not their well and
25 submitted conveyance documents indicating that that well

1 had not been assigned to Marks & Garner. Do you recall
2 that?

3 MS. ALTOMARE: I'm going to object. That
4 misstates prior testimony. There were no conveyance
5 documents submitted.

6 CHAIRMAN FESMIRE: That should be part of
7 the testimony. I'll overrule the objection.

8 A. I honestly don't remember that part of the
9 testimony.

10 Q. (By Mr. Padilla) How about the Kemnitz 17
11 State Number 1?

12 A. I don't recall that, no.

13 Q. Your records show, however, that because these
14 wells are here is that Marks & Garner is the operator?

15 A. Yeah. Our records do show they are operator
16 of record.

17 Q. And in preparation for this hearing or any
18 other hearings on this matter, did you investigate
19 whether or not these wells were part of the old Marks &
20 Garner ownership or the new Marks & Garner ownership?

21 A. These wells are currently shown on our well
22 list under the current operator, Marks & Garner. So
23 unless those wells are properly transferred to another
24 operator, then they will remain -- Marks & Garner -- the
25 current Marks & Garner will remain operator of record of

1 those wells.

2 Q. Let's talk about the Graham Federal Number 3.
3 Clarify for me your testimony on that. Has it been put
4 back on production?

5 A. According to our well files, it doesn't
6 indicate that it has.

7 Q. And what well files are you talking about?

8 A. The well files in the Division system. Any
9 person can get into the well file, look up that well and
10 see what has been submitted into that well, that
11 particular well.

12 MS. ALTOMARE: Which well? I'm sorry.

13 MR. PADILLA: The Graham Federal Number 3.

14 THE WITNESS: Right.

15 Q. (By Mr. Padilla) So did you check in
16 preparation for your testimony here whether or not
17 there's been any production records submitted on that
18 well?

19 A. What I checked was whether or not these
20 particular wells actually came into compliance with this
21 specific portion of the order. I didn't do any other
22 additional checking on what was going on. I just
23 verified that they either met or did not meet the order.

24 Q. Did you check that -- is this one of the wells
25 that's missing the sundry reports?

1 A. Yes. This is the one that was requiring
2 additional C-103s or applicable BLM forms.

3 Q. Do you know whether there is a report
4 indicating that the well has been put back in production?

5 A. According to our review of the well files,
6 there isn't anything in the well file showing that.

7 Q. Now, this is a federal well. It's located on
8 a federal lease; right?

9 A. Yes.

10 Q. Did you check the BLM files on whether or not
11 there had been some type of report filed with the BLM in
12 preparation for this hearing?

13 A. If there was a BLM -- if there was paperwork
14 issued to the BLM, that same paperwork should have been
15 forwarded to the OCD, which would have put that into our
16 well files. If there wasn't one or there was a failure
17 of the operator to follow through to make sure there was
18 something submitted to the BLM and it didn't go through
19 to the OCD, it is still out of our files.

20 Q. How about the Jennings Federal Number 2?

21 A. My review was whether or not they complied
22 with that part of the order. They did not.

23 Q. And that is to get it back into production or
24 plug it?

25 A. It was to submit additional C-103s on any work

1 that was done on that well or appropriate BLM paperwork.

2 Q. All right. Let's go back now to -- I think
3 it's the ordering Paragraph Number 1 of Exhibit A. Can
4 you tell me which wells in that list are not in
5 compliance?

6 A. Okay.

7 CHAIRMAN FESMIRE: At what point, Mr.
8 Padilla?

9 MR. PADILLA: Today.

10 MS. ALTOMARE: I'm going to object, asked
11 and answered. He just went through the list of which
12 ones weren't in compliance. Do you want him to go
13 through them again?

14 MR. PADILLA: Mr. Chairman, I'm just
15 trying to figure out which of those wells are out of
16 compliance.

17 CHAIRMAN FESMIRE: At the current time?

18 MR. PADILLA: At the current time. I
19 asked the same questions that I have with ordering
20 Paragraph Number 2. I think even the Commission got some
21 clarification on my questions as to how these wells were
22 in compliance or out of compliance.

23 CHAIRMAN FESMIRE: We'll go ahead and
24 overrule. Go ahead and answer, Mr. Sanchez?

25 A. They are the Lea/UA State Number 1, the

1 Northeast Maljamar Unit Number 1, the Red Twelve Levers
2 Federal 8Q, the State Number 1, and the Gulf Hanagan
3 Federal Number 1.

4 Q. (By Mr. Padilla) So there are only five
5 wells?

6 A. Yes.

7 Q. And the other ones have either been plugged or
8 they're in compliance as far as that Paragraph Number 1?

9 A. Yes. But two of those wells, the Cave Pool
10 Unit Number 36 and the Cave Pool Number 27, were plugged
11 by the state, so it's not like the operator brought those
12 wells into compliance. The state brought them into
13 compliance --

14 Q. I understand.

15 A. -- partial compliance at this point.

16 CHAIRMAN FESMIRE: What were those two
17 wells that the state plugged again? The Cave Pool Number
18 27, and what was the other one?

19 THE WITNESS: 36.

20 Q. (By Mr. Padilla) In that regard, with the
21 plugging of the 27 and the 36 Cave Pool Unit wells, you
22 did take Marks & Garner's bonds and there's some money
23 owing to the Commission or the Division as a result; is
24 that right?

25 A. I believe that's correct.

1 Q. And do you know whether it's a matter of
2 somewhere around \$1,500?

3 A. I am unaware of the actual costs that are
4 involved here.

5 Q. The Theos State Number 1, as I understand your
6 testimony, is that it's okay? It's complied with; right?

7 A. Yes, sir.

8 Q. Who plugged that?

9 A. Right offhand, I don't remember if it was
10 operator. I know the state didn't plug it, so if it's
11 plugged, the operator plugged it.

12 Q. And the Lea/UA State Number 1, your testimony
13 is it was plugged, but it has not been released?

14 A. Yes.

15 Q. And the reason for it not being released, it's
16 your testimony that there's junk on the surface?

17 A. I believe that's correct.

18 Q. And is that the same thing for the Northeast
19 Maljamar Unit Number 1?

20 A. Yes. There's still -- the site has not been
21 cleaned up.

22 Q. And the State Number 1 -- well, the Red Twelve
23 Levers Federal 8Q, is that the same reason, it's been
24 plugged or --

25 A. I don't believe it has been plugged. I think

1 we're still looking at that one as being out of
2 compliance.

3 Q. Okay. And the State Number 1, it has been
4 plugged, but there's some problems with the surface
5 again?

6 A. Yes.

7 Q. When was the last time that you had anyone
8 check the well sites to see whether there was compliance
9 with surface cleanup?

10 A. I'm not sure of the exact dates that they went
11 out, but it was around the time that we would have gone
12 to hearing previously, so in September, I think. I'd
13 have to check on that, but I believe it was in that time
14 frame.

15 Q. You don't know?

16 A. Right offhand, no, I don't.

17 Q. And the Gulf Hanagan Federal Number 1, what --

18 A. Mr. Welborn had indicated that it was plugged
19 and abandoned through the BLM, and he was going to go
20 ahead and provide the OCD with the paperwork. That never
21 happened, so it's still out of compliance.

22 MR. PADILLA: That's all I have, Mr.
23 Chairman.

24 CHAIRMAN FESMIRE: Redirect?

25 MS. ALTOMARE: Yeah, I just want to

1 clarify a couple of things because I think there was some
2 confusion as we were crossing over different kinds of
3 compliance.

4 REDIRECT EXAMINATION

5 BY MS. ALTOMARE:

6 Q. With regard to the Graham Federal, which has
7 failed to comply with the submission of the C-103
8 sundries, referring to Exhibit Number D, if you look at
9 the last -- right after the data entries for that, the
10 sundry, it does look like it was returned to production;
11 is that right? There was a sundry filed for that
12 indicating it was returned to production? That's the
13 last sundry that we received in 2005?

14 A. Yes.

15 Q. Which is the whole point of us not receiving
16 the C-103 indicating how they managed to return it to
17 production, that they had not submitted anything
18 indicating what repairs were done?

19 A. That's correct.

20 Q. So the noncompliance for the Graham Federal is
21 that even though they have returned it to production and
22 even have started reporting somewhat recent minimal
23 production on that well, we still haven't received
24 anything to show what they've been doing down hole or
25 what kind of repairs they have done on it?

1 A. No, we have not.

2 Q. With regard to the old Marks & Garner versus
3 the new Marks & Garner, regardless of who Mr. Welborn
4 thinks owns the well, the Commission ordered him to do
5 these things with regard to these wells, so they deemed
6 him the operator of record; is that right?

7 A. That's right.

8 Q. So we're looking at these lists, saying, this
9 is what was on the order, he was ordered to do it and he
10 didn't do it?

11 A. That's correct.

12 Q. So that's our primary concern; right?

13 A. Correct.

14 Q. You were asked when the last time we went out
15 to check surfaces. The operator is required to submit a
16 specific C-103 once the surface is ready for inspection;
17 is that right?

18 A. Yes.

19 Q. With regard to the State Number 1, it looks
20 like the release request was denied October 5th, 2009, so
21 apparently our staff went out and checked that surface,
22 at least, as recently as October?

23 A. Yes.

24 Q. So they were out in the field, then?

25 A. Yes. That's what it would indicate.

1 Q. And as far as the ones -- we did already plug
2 two cave pool units we mentioned. Is the state getting
3 ready to plug any other Marks & Garner wells that have
4 been sitting out there? Have we filed notices of
5 intents?

6 A. Off the top of my head, I believe there are a
7 few wells on a list. I'm not quite sure if they are on
8 the current bid list, but they are on a list to be
9 plugged.

10 Q. We've actually filed notice of intents to plug
11 and abandon at the state expense for the Cities Service;
12 is that right -- Cities Service, State Number 1 and the
13 Kemnitz 17 State Number 1; is that right?

14 A. I'd have to double check, but they could be,
15 yes.

16 Q. Okay. Again, given the very limited scope of
17 today's hearing, we didn't do a full survey of what the
18 compliance of Marks & Garner was. We simply were looking
19 at what they were ordered to do back in 2008 and whether
20 or not they were in compliance as of today; is that
21 correct?

22 A. That's correct.

23 MS. ALTOMARE: That's all I have.

24 CHAIRMAN FESMIRE: Commissioner Bailey?

25 COMMISSIONER BAILEY: I have no questions.

1 CHAIRMAN FESMIRE: Commissioner Olson?

2 COMMISSIONER OLSON: I have no questions.

3 CHAIRMAN FESMIRE: Mr. Sanchez, just real
4 quick as a recap.

5 EXAMINATION

6 BY CHAIRMAN FESMIRE:

7 Q. Of the 13 wells that Marks & Garner were
8 ordered to plug, two have been plugged by the state, one
9 has been released, and the Lea/UA State Number 1, the
10 Northeast Maljamar Number 1, the Red Twelve Levers
11 Federal 8Q, the State Number 1 and the Gulf Hanagan
12 Federal Number 1 have not been plugged yet; is that
13 correct?

14 A. They have either not been plugged or they have
15 been plugged, but the sites have not been released.

16 Q. Of the eight wells they were required to file
17 C-103s on, four of them have not yet been filed? That
18 would be the Cities Service State Number 1, the Graham
19 Federal Number 3, the Jennings Federal Number 2 and the
20 Kemnitz 17 State Number 1; is that correct?

21 A. That's correct.

22 Q. And of the 10 wells that required additional
23 bonding, two have been plugged by the state, the Cave
24 Pool Number 27 and the Cave Pool Number 36, and the
25 remaining -- I'm sorry. And six of the remaining eight,

1 being the Coquina State Number 1, the Julia Culp Number
2 1, the Lea/UA State Number, the State Number 1, the Theos
3 State Number 1 and the William Snyder Number 1, still
4 require bonding; is that correct?

5 A. No. Those ones there did not require the
6 additional bonding. What was required was, of course,
7 were the Cave Pool 27 and 36, which are already plugged,
8 the Northeast Maljamar Unit Number 1 and the Red Twelve
9 State Number 1. There were also two additional wells
10 that came on to that list since this has occurred, and --

11 Q. So I had it backwards. The ones that have not
12 yet had the additional bonding are the Northeast Maljamar
13 Unit Number 1, the Red Twelve State Number 6, and these
14 two additional wells that are not subject of this
15 hearing; correct?

16 A. That's correct.

17 Q. So they have complied or the state has
18 plugged, of those 10 wells, eight of them, and two remain
19 to have additional bonding?

20 A. Yes.

21 MS. ALTOMARE: Mr. Chairman, just for
22 clarification, Cave Pool Unit 27 and 36 still require
23 bonding until the surfaces are released, so the operator
24 is still responsible for that bonding and is still out of
25 compliance with the order until that bonding is posted.

1 CHAIRMAN FESMIRE: Okay. So while the
2 Cave Pool wells have been plugged, they haven't been
3 released.

4 MS. ALTOMARE: Right.

5 CHAIRMAN FESMIRE: No further questions.
6 Mr. Padilla, do you have anything on those subjects?

7 MR. PADILLA: No.

8 CHAIRMAN FESMIRE: Thank you, Mr. Sanchez.
9 Ms. Altomare, you have no further witnesses?

10 MS. ALTOMARE: I don't. And I'm pretty
11 sure you did most of my closing for me.

12 CHAIRMAN FESMIRE: Mr. Padilla, I
13 understand you have a witness. Would you like to begin
14 with an opening statement?

15 MS. ALTOMARE: At this time, just for the
16 record, I understand you're probably going to overrule
17 me, but I would object to the presentation of the
18 witness, given that counsel did not submit a pre-hearing
19 statement of any kind and did not disclose his witness,
20 just for the matter of the record.

21 CHAIRMAN FESMIRE: Ms. Altomare, didn't we
22 get a pre-hearing statement --

23 MS. ALTOMARE: I never received one.

24 CHAIRMAN FESMIRE: -- on the 9th? Mr.
25 Padilla, did you --

1 MR. PADILLA: I have one that's date
2 stamped on -- I submitted an amended one for this
3 hearing, and --

4 MS. ALTOMARE: Did you submit it to --

5 MR. PADILLA: -- I submitted one on
6 October 1st.

7 MS. ALTOMARE: Was it forwarded to me, as
8 well?

9 MR. PADILLA: It was hand delivered.

10 MS. ALTOMARE: Okay. On the
11 representation of counsel -- I haven't received anything,
12 so --

13 CHAIRMAN FESMIRE: Okay. Would you like
14 to take a few minutes to review the --

15 MS. ALTOMARE: No. I'm pretty sure I
16 expect I know what it says, so we can probably proceed.

17 CHAIRMAN FESMIRE: Mr. Padilla, are you
18 ready to proceed?

19 MR. PADILLA: Yes.

20 CHAIRMAN FESMIRE: You said you don't have
21 an opening statement?

22 MR. PADILLA: I did not. I think the
23 issues are clear enough. I understand what is the
24 purpose of this hearing. The same thing as what we said
25 in the pre-hearing statement and all along, is that we've

1 complied or the wells have been sold or they're not in
2 the ownership of Marks & Garner. That's basically it.

3 CHAIRMAN FESMIRE: Are you going to
4 present Mr. Welborn as a witness?

5 MR. PADILLA: Yes.

6 MS. ALTOMARE: Are there any exhibits to
7 be presented? Because that I haven't been provided with.

8
9 CHAIRMAN FESMIRE: There are none listed,
10 are there?

11 MR. PADILLA: I have submitted exhibits on
12 December -- well, for this hearing last week, on
13 Wednesday, one exhibit with 13 well records.

14 CHAIRMAN FESMIRE: They're all OCD forms,
15 though, aren't they?

16 MR. PADILLA: Yes.

17 CHAIRMAN FESMIRE: Have they been filed
18 with the OCD?

19 MR. PADILLA: Yes.

20 CHAIRMAN FESMIRE: And signed and accepted
21 by the OCD?

22 MR. PADILLA: They took them off the
23 Website, so I imagine they would have been.

24 MS. ALTOMARE: To whom did you hand
25 deliver it?

1 MR. PADILLA: Florene's office.

2 MS. ALTOMARE: That's not service on me,
3 just for the record, so -- that's service to the
4 Commission. That's not exhausting your responsibility to
5 serve counsel. I would like a moment to look at the
6 exhibits, at least.

7 CHAIRMAN FESMIRE: Okay. Why don't we go
8 ahead and take a 15-minute break, during which time
9 counsel can look at the exhibits. Do you have a spare
10 copy?

11 MR. PADILLA: I have a spare copy.

12 (A recess was taken.)

13 CHAIRMAN FESMIRE: The record should
14 reflect that this is the continuation of Cause Number
15 14041. The record should also reflect that Commissioners
16 Bailey, Olson and Fesmire are present. We therefore have
17 a quorum. I believe, Mr. Padilla, you were about to
18 begin your direct examination of the witness.

19 Mr. Welborn, would you raise your right hand
20 and be sworn?

21 (The witness was sworn.)

22 QUINTON WELBORN

23 Having been first duly sworn, testified as follows:
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DIRECT EXAMINATION

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BY MR. PADILLA:

Q. Mr. Welborn, please state your name.

A. Quinton Welborn.

Q. Where do you live?

A. In Hobbs, New Mexico.

Q. And what is your connection with Marks & Garner?

A. Manager.

Q. And are you also an owner?

A. Yes. Part owner, yes.

Q. And is it fair to say that you're the person in charge of seeing that compliance is made with regard to the Commission's orders?

A. Yes.

Q. Let me direct your attention to what we had marked as Exhibit Number 1. Can you identify what Exhibit Number 1 is?

A. It's some State of New Mexico forms, BLM forms. The first one says, "Cities Service."

Q. It's a compilation of --

A. Yes, sir.

Q. -- a number of wells here?

A. Correct.

Q. Precisely, it's a compilation of well records

1 on 13 wells?

2 A. Yes. Correct.

3 Q. Start out with page 1 of that Exhibit 1. What
4 is that?

5 A. This is Cities Service State.

6 Q. You've contended that this is not your well;
7 right?

8 A. Correct.

9 Q. Do you understand the Division's reason for
10 coming after you?

11 A. Yes.

12 Q. Because you're the listed operator on this
13 well?

14 A. That's correct.

15 Q. What are you trying to do with regard to
16 having this well come into compliance?

17 A. I have -- since our conflict of interest, I
18 have another attorney in Hobbs trying to get something
19 done with Buddy Garner the one that -- he is -- the
20 conveyance was to this well to somehow get it transferred
21 or get it transferred to somebody else. I mean, it's
22 just -- that's what we're in the process of.

23 Q. Being that you're on the hook here, what are
24 you going to do precisely with regard to this well? You
25 can have a lawyer out there and go after Mr. Garner, but

1 how are you going to meet the requirements of the
2 Commission?

3 A. Well, I think this one that -- I'd like to
4 transfer it to somebody or -- I guess -- I'm trying to
5 think if this is one that the land lease has been lost on
6 and I'm trying to -- I'd like to -- I need to really get
7 rid of it.

8 Q. Well, short of that, what can you do?

9 A. I can put up a plugging bond for it.

10 Q. Okay. When are you going to do that?

11 A. I could have that done next week.

12 Q. Do you know the amount of the bonding?

13 A. I think this one is around 15,000, I believe.

14 Q. You've been delinquent on bonding, so what
15 have you done in terms of correcting that?

16 A. Well, I've --

17 Q. In general, Marks & Garner, you've been
18 delinquent on -- some of your bonds got used up or
19 called?

20 A. Yes. We've gotten a new blanket bond and just
21 getting money in to get the rest of these done.

22 Q. Is that a financial problem at this time?

23 A. Not as of now. It was in the past.

24 Q. How recent in the past?

25 A. Just real recently.

1 Q. So you're now prepared to correct that
2 problem?

3 A. Yes.

4 Q. And you've started correcting it by obtaining
5 a \$15,000 bond?

6 A. Yes.

7 Q. Have you filed that yet?

8 A. No. I brought it with me here today.

9 Q. Now, as part of this hearing, are you trying
10 to educate yourself exactly where you're not in
11 compliance, or have you talked to Ms. Phillips regarding
12 where you're not in compliance as far as bonding?

13 A. I have not talked to her yet.

14 CHAIRMAN FESMIRE: Mr. Padilla, who's Ms.
15 Phillips?

16 MR. PADILLA: Dorothy Phillips.

17 A. Yeah. I plan to speak with her very soon.

18 Q. Today?

19 A. Yes, sir. I'd like to get that dropped off
20 anyway.

21 Q. What form of bond is that?

22 A. That's an umbrella bond, \$15,000 cash bond.

23 Q. That will not cover the Cities Service well;
24 right?

25 A. That's correct.

1 Q. Do you know what the status of that well is?

2 A. I do not, no. I mean, other than -- no, sir,
3 I don't.

4 Q. Let's go on to the next page, to the Graham
5 Federal Number 3 well.

6 A. Yes.

7 Q. What is the status of that well?

8 A. It produces gas.

9 Q. When did you get it back on production?

10 A. Back in July of '05.

11 Q. And has it produced gas ever since?

12 A. Yes. I mean, it could have been down, you
13 know, for a little bit, but, yeah for -- it is.

14 Q. Have you submitted production reports on that
15 well?

16 A. Yes.

17 Q. What did you have to do to get it back on
18 production?

19 A. I think what we did on this was just replace a
20 flow line.

21 Q. And do you know why this well was included in
22 the order of last year?

23 A. I do not, because we had had it -- I thought
24 that this was through the BLM and forwarded to the state
25 on the sundry notice about it being on production.

1 Q. To your knowledge, have you been called by the
2 Hobbs District Office of the Oil Conservation Division
3 with regard to any noncompliance issues?

4 A. No, sir, not on this one.

5 Q. Let's go on to the next page, which deals with
6 the Jennings Federal Number 2 well.

7 A. Yes.

8 Q. What's the status of that well?

9 A. Yeah. It produces gas.

10 Q. Today?

11 A. Yes.

12 Q. Do you know why this well was placed on the
13 Commission's order of September of --

14 A. Yeah. Same as the previous one, the Graham
15 Federal Number 3. We filled out a sundry report and just
16 have had it producing since.

17 Q. What did you do to this well to get it back on
18 production?

19 A. It was also another flow line and probably we
20 replaced a lot of valves and stuff on the wellhead.

21 Q. Did you -- are you required to file sundry
22 notices to do that after you do that work?

23 A. With the BLM?

24 Q. With anyone.

25 A. I'm not sure about on just surface equipment.

1 I don't know.

2 Q. But it's back on production today?

3 A. Yes, sir.

4 Q. How about the next well, which is the Kemnitz
5 17 State --

6 A. Same as the Cities Service.

7 Q. That's a well that you contend that you do not
8 own?

9 A. Correct.

10 Q. And what are your intentions with regard to
11 this well, since you're the guy the Commission is looking
12 at?

13 A. Same as the Cities Service.

14 Q. Are you going to file a bond, or what are you
15 going to --

16 A. Yeah. Bond, yes.

17 Q. Or plug it?

18 A. Or plug it, yes.

19 Q. You've heard testimony here today that this
20 well and the Cities Service well are slated for plugging?

21 A. Yes, sir.

22 Q. Are you going to plug it soon, or what are you
23 going to do?

24 A. Yeah. We need to do something. I would
25 suggest plug it as quick as we could.

1 Q. Do you have the financial ability to plug
2 these wells?

3 A. Yes, sir.

4 Q. And then deal with Mr. Garner somewhere down
5 the --

6 A. Yes, correct.

7 Q. Let's go on to the next page, which deals with
8 the State Number 2 well.

9 A. Yes.

10 Q. Apparently, this well was back on production;
11 right?

12 A. Yes.

13 Q. According to the testimony here today, you're
14 under compliance with that well?

15 A. Correct.

16 CHAIRMAN FESMIRE: Mr. Padilla, I don't
17 think the OCD is contesting the State Number 2 well, are
18 they?

19 MR. PADILLA: No.

20 MS. ALTOMARE: Not with regard to the
21 filing of sundries.

22 CHAIRMAN FESMIRE: Okay.

23 Q. (By Mr. Padilla) Let's go on to the next
24 well, which deals with the Theos State Number 1 well.
25 The Commission's testimony today has been that this is

1 back on production?

2 A. No. The Theos State has been plugged and
3 released.

4 Q. Okay. And you plugged that well?

5 A. Yes. Correct.

6 Q. How about the next well, which is the Lea/UA
7 State Number 1. What is the status as far as you're
8 concerned with that well?

9 A. It has been plugged. We do have a few loads
10 of caliche to haul off, and we have taken everything else
11 off location.

12 Q. When was that done?

13 A. It's been done -- I think we've had that done
14 the last -- I think we had all that around September,
15 maybe October, somewhere in there.

16 Q. Let me ask you, what's been your availability
17 with regard to dealing with this compliance issue?

18 A. In September and October, in both months, I
19 had spent some time in the hospital with my bleeding
20 ulcer, and it was hard for me to get -- I mean, I was
21 unavailable there for a period of time.

22 Q. You're back on the beam now?

23 A. Yes.

24 Q. What are you telling the Commission here today
25 with regard to the surface problems on this well?

1 A. We get the caliche hauled off, which they
2 should be doing today, and have that done next week and
3 it should be ready for release.

4 Q. Why do you have to haul off caliche?

5 A. Because this is a one-well site. There was a
6 tank battery there, and when we removed it, we had the
7 tank battery stuff there, so it needs to be -- we've had
8 it back-drug and everything. We just need to get the
9 excessive caliche.

10 Q. How about the tank battery and --

11 A. Everything is gone.

12 Q. When do you call for an inspection from the
13 OCD office to get this well released?

14 A. Whenever we have that caliche done, we will
15 submit the form for them to go out there and look at it.

16 Q. Let's look at the next well, Northeast
17 Maljamar Unit Number 1.

18 A. Yes.

19 Q. What's the status on this well?

20 A. It's been plugged, wellbore has been plugged.

21 Q. Do you have any surface problems on this well?

22 A. I don't remember if they -- I believe they
23 moved the tanks. I'm not quite sure. I do know that
24 some of that stuff has got to be removed off there.

25 Q. But you agree with Commission's testimony that

1 it has not been released --

2 A. Right.

3 Q. -- except for the surface?

4 A. Right. Just the wellbore only.

5 Q. How soon will you complete work on this thing
6 where you can get it released?

7 A. I would think it would be -- I know on the UA
8 well, that shouldn't be no problem. On this one, I'm not
9 sure. I wouldn't think no longer than a week.

10 Q. Are you doing this work because this hearing
11 is coming up? Why are you doing it now?

12 A. I'm trying to -- it needs to be done and,
13 also -- but, no, we're not doing it just because of the
14 hearing. It needs -- one reason is on the Northeast
15 Maljamar, was another one that Buddy and them had owned
16 or thought they owned on those conveyances. That's why
17 this one has taken longer to do. We had started in Eddy
18 County on most of the plugging and then moved over to Lea
19 County, and that's where --

20 Q. This well is further away from --

21 A. Yes. This well is all by itself. It's not in
22 one of our leases. It's one well.

23 Q. How about the Red Twelve Levers Federal Number
24 8?

25 A. It has been plugged through the BLM.

1 Q. Do you have any surface problems with this?

2 A. No, sir.

3 Q. How about the next well, the State Number 1
4 well?

5 A. State Number 1 is plugged. This is one I
6 believe we got turned down on the inspection. Since
7 we've been turned down, we have gone back and cleaned
8 everything up, as it is said. I have not submitted --
9 re-submitted the form for them to go back out and look,
10 but it has been -- it should be ready to release. I
11 think we left a separator on there or something else, but
12 it has been removed.

13 Q. What do you have to do for these federal
14 wells? Do you have to restore the surface?

15 A. Yes. You have to do that on the federals.

16 Q. Have you done that on the federal wells?

17 A. Yeah. Yes, sir, it should all be done.

18 Q. Let's look at the last well, the Gulf Hanagan
19 Federal Number 1.

20 A. Yes.

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

22 A. It should be -- it's been plugged and -- this
23 was an extension due a long time ago. As far as I know,
24 we have got that. Everything should be -- everything is
25 done on this well.

1 Q. Have you submitted the paperwork?

2 A. To the BLM, yes.

3 Q. Can you provide that? Do you know whether
4 that paperwork has been submitted to the OCD?

5 A. I do not know if it has or not.

6 CHAIRMAN FESMIRE: Quick question. You
7 said you got these off of the OCD Website?

8 MR. PADILLA: To my knowledge.

9 THE WITNESS: Most of them.

10 CHAIRMAN FESMIRE: But you didn't get this
11 one off the OCD Website.

12 THE WITNESS: Which one, sir?

13 CHAIRMAN FESMIRE: The Gulf Hanagan Number
14 1.

15 THE WITNESS: Yes, sir. That was on
16 the -- see, it says, "OCD Hobbs" on the very top.

17 MS. ALTOMARE: It's attached as part of
18 one of our exhibits, as well.

19 MR. PADILLA: It's also date stamped at
20 the bottom of this by the OCD.

21 CHAIRMAN FESMIRE: Okay.

22 Q. (By Mr. Padilla) Mr. Welborn, do you have
23 anything else to add to your testimony here today as far
24 as compliance issues with regard to the Commission's
25 order issued last September?

1 A. I think that we've got everything pretty
2 close, other than the Cities Service and Kemnitz are the
3 ones that we got -- the rest of them at least had the
4 wellbores plugged or actually released, other than the
5 Cities Service and the Kemnitz well.

6 Q. That's because of the time problems?

7 A. Yeah, that, and the issue of ownership.

8 Q. Do you realize that you have to do something
9 now?

10 A. Yes, sir, I do.

11 MR. PADILLA: Pass the witness.

12 CHAIRMAN FESMIRE: Ms. Altomare?

13 MS. ALTOMARE: Thank you.

14 CROSS-EXAMINATION

15 BY MS. ALTOMARE:

16 Q. Mr. Welborn, we're here really to answer just
17 one question, and that is whether or not Marks & Garner
18 complied with the order that was issued in September of
19 2008. Did Marks & Garner meet the deadlines that were
20 established by the order issued by this Commission in
21 September of 2008?

22 A. Probably, no.

23 Q. And as of today, has Marks & Garner brought,
24 you know, after the fact, brought the wells that were
25 listed in that order into compliance with the terms of

1 that order?

2 A. I'd say all except for the Kemnitz and Cities
3 Service.

4 Q. But the answer is no; right?

5 A. Yeah.

6 Q. Okay. You've indicated that you are ready to
7 post a new blanket bond, but you have not yet done so?

8 A. Correct.

9 Q. You've known that this hearing has been coming
10 up. Why didn't you post it prior to today and walk in
11 today ready to show us that you had posted a new blanket
12 bond?

13 A. I had to get the funds.

14 Q. Okay. I'd like to walk through your packet,
15 Exhibit Number 1. Is the Cities Service State -- this is
16 a notice of intention. That document is executed by OCD
17 District Office personnel, notice of intention to plug
18 and abandon that well; correct?

19 A. Correct.

20 Q. You understand that Marks & Garner will be
21 responsible to reimburse the state for that plugging if
22 that occurs?

23 A. Yes.

24 Q. And that you, as Marks & Garner, not any other
25 incarnation of Marks & Garner; correct?

1 A. Correct.

2 Q. The next well that you addressed was the
3 Graham Federal Number 3. This sundry was the same sundry
4 that was used as an exhibit in the de novo hearing prior
5 to the September 2008 hearing. Do you recall that?

6 A. Yes.

7 Q. And you talked about how it was placed back on
8 production?

9 A. Uh-huh.

10 Q. Do you recall a discussion after that about
11 how it was important that we also have C-103s documenting
12 what it was that Marks & Garner did to fix the well or
13 bring it back on production?

14 A. I don't recall exactly what was said. We had
15 to do some sundry notices, but --

16 Q. Did you understand that that was why the
17 Commission ordered you to file those C-103 sundries on
18 this well and other wells like it, to document the repair
19 work that was done on the well to bring it back on line?

20 A. I thought we were clear on what was going on
21 with these two wells in particular, the Graham and
22 Jennings.

23 Q. Do you have our Exhibit A in front of you?

24 A. No, I do not.

25 MS. ALTOMARE: Counsel, do you have the

1 Exhibit A?

2 MR. PADILLA: I don't.

3 Q. I'd like to direct your attention to pages 9
4 through 11, starting at ordering Paragraph Number 2 on
5 page 10.

6 A. Which page?

7 Q. Page 10 of the order, and it's ordering
8 paragraph 2.

9 A. Page 10?

10 MR. PADILLA: I have a copy of the order,
11 if that's what you're looking for. It's not Exhibit A.

12 Q. (By Ms. Altomare) I apologize. This is what
13 happens when you try to minimize the amount of copies you
14 make. I'm going to go ahead -- just disregard the notes
15 that are on that.

16 If you can look at ordering Paragraph Number
17 2, please. It references the previous designation of the
18 OCD rule that requires the filing of C-103 sundries for
19 subsequent remedial work performed. You understand that
20 operators are required to file those sundries and that
21 that was what the Commission was ordering you to do?

22 A. When I read it here, it says, "file with the
23 Division true and accurate sundry notices on Form C-103
24 for the remedial work performed or ensure that the
25 Division receives copies of the sundry notices filed with

1 United States Department of the Interior, Bureau of Land
2 Management," which I felt like at that time those sundry
3 reports -- to me, when I read that, I felt like the
4 sundry reports from the BLM were --

5 Q. Can you show me where on that sundry report it
6 documents what remediation work was done?

7 A. There was really no -- I mean, maybe I'm --
8 remedial work is -- that's not just dirt work, is it?

9 Q. Remedial work is what you did to the well to
10 fix it.

11 A. Then I had messed up on not putting replaced
12 the flow lines on them two forms.

13 Q. That's what I was going to say. You just
14 testified that you replaced some stuff on them.

15 A. Right. Correct.

16 Q. And, again, you didn't do that for this well;
17 correct?

18 A. Correct. I did not put that on that form.

19 Q. The next well in your packet is the Jennings
20 Federal Number 2, and the same situation?

21 A. Correct.

22 Q. So you placed it back on production on
23 December 1st of 2007, and you did file a sundry
24 indicating that, but you haven't filed anything to
25 indicate what repairs were made, that you replaced any

1 equipment or anything like that?

2 A. No. This is all I have.

3 Q. I'm also showing that we don't have any
4 production reports since June.

5 A. Since June?

6 Q. Yeah. Have you --

7 A. Yes. I believe I had them all the way up
8 through September. It should --

9 Q. So you don't have an explanation for why we
10 would be showing delinquent production reports on that
11 well?

12 A. Not unless you did not receive them correctly,
13 but that should not be an issue.

14 Q. The next well listed in your packet is the
15 Kemnitz 17 State?

16 A. Yes.

17 Q. Again, as with the Cities Service, you
18 understand that you will be responsible for the
19 reimbursement to the state if this plugging does go
20 forward?

21 A. Correct.

22 Q. And that this document reflects that the state
23 OCD District Office personnel have filed a notice of
24 intention to plug this well?

25 A. Correct.

1 Q. The next sundry is for the State Number 2,
2 and, again, I indicated that this was an error on our
3 part in including this. Is this the kind of work that
4 you performed on the other two wells, the Jennings and
5 the Graham Federal?

6 A. Some of it would have been similar. We did
7 not put a motor on the other two.

8 Q. But replacing a flow line and things of that
9 nature?

10 A. Yes.

11 Q. So this is the kind of sundry that we would
12 expect to receive on those two?

13 A. Yes.

14 Q. I think we've already discussed that we
15 understand that Theos State has been released at this
16 point in time. I'd like to flip a couple of pages over
17 to the Northeast Maljamar. Do you recall hearing Mr.
18 Sanchez testify that OCD records reflect that district
19 personnel noted that they had been to the site and that
20 the site should not be released as of February 2009,
21 because there was significant things on the site?

22 A. Um-hum.

23 Q. Do you know anything about that?

24 A. I don't know -- I know there has been -- I
25 need to go look at the site again, too, but I know it's

1 not ready to be released.

2 Q. It looks like this well was plugged in
3 September of 2008, and as of early 2009, there was still
4 significant junk on the site that needed to be cleaned
5 up?

6 A. I'm sure, yeah.

7 Q. And it still has not been released; is that
8 right?

9 A. That's correct.

10 Q. You indicated with regard to the next one, the
11 Red Twelve Levers Federal Number 8, that this well has
12 been plugged and released?

13 A. It has been plugged through the BLM.

14 Q. However, the sundry that you've provided is a
15 notice of intent. If it's been plugged and abandoned,
16 where is the subsequent report documentation?

17 A. This must be a mistake, but it has been done.

18 Q. Do you know if this particular sundry was
19 obtained from the BLM or from the OCD Website?

20 A. This one was -- I believe was from the BLM.
21 This one did not come off your Website.

22 Q. Do you understand that you are required to
23 ensure that we're provided with copies of these documents
24 and that --

25 A. Right.

1 Q. -- this only indicates that your well has
2 been -- that there's notice that it's going to be
3 plugged?

4 A. Yeah. But I'll testify that I was there when
5 we plugged that well and actually done it.

6 Q. With regard to the very last well, again,
7 you're testifying today exactly as you testified prior to
8 the September 2008 hearing, that the well has been
9 plugged as far as you know, it should be, that the
10 documentation should be given to us, this kind of thing.
11 However, the only documentation we're showing is that you
12 were given an extension, but we don't have a subsequent
13 report showing that it has been completed. You assured
14 us, as you are today, back in the hearing prior to
15 September 2008 order, that you would ensure that the
16 documents got forwarded to us so that our records are
17 complete. However, we haven't received any of that.
18 What explanation do you have for that?

19 A. Just -- I know we've submitted stuff that --
20 submitted it where the wellbore had been plugged.

21 Q. Okay. But you were made aware at that last
22 hearing that the OCD -- our records indicated that this
23 well was still out of compliance. Even to the extent
24 that the Commission had ordered you to update this and
25 was considering it out of compliance and they were

1 ordering you to bring this well into compliance by either
2 returning it to production or plugging it or obtaining
3 approved TA status for it, and you still didn't provide
4 any further documentation. Why wasn't any further
5 documentation provided?

6 A. I do not know.

7 Q. You recognize that -- or you acknowledged that
8 the Commission has, by ordering you to do things for
9 wells like the Cities Service, the Kemnitz, the Northeast
10 Maljamar, they have recognized you as the responsible
11 party for those wells, and that you are, as your counsel
12 had indicated, on the hook, so to speak, for those wells?

13 A. Yes.

14 Q. The Cave Pool Unit wells, the 27 and the 36,
15 you are aware that both of those wells were plugged by
16 the state?

17 A. Yes.

18 Q. And you recognize that you are responsible for
19 reimbursing the state for anything that wasn't covered by
20 your original blanket bond?

21 A. Yes. We did have those -- there was
22 additional bonding on those that they have pulled from
23 me.

24 Q. Mr. Welborn, you were ordered to do a lot of
25 things to come into compliance back in September of 2008

1 and made a lot of assurances that you were trying to get
2 on track and whatnot. As recently as last week, we've
3 seen an increase in the number of inactive wells. I
4 believe we've got 18 inactive wells for Marks & Garner
5 according to OCD records.

6 A. Could be due to the reason that you all have
7 on the C-115s, but I don't believe we have anymore down
8 and I don't believe that's accurate. I need to, I guess,
9 look at that list and --

10 Q. All right.

11 A. And, of course, if some of them haven't been
12 plugged and released, I don't know if that's part of them
13 on there or not.

14 Q. Do you recognize that you also owe additional
15 financial bonding on six wells?

16 A. I don't believe it was six. I do know we had
17 a couple.

18 Q. Is Marks & Garner prepared to post the
19 additional bonding on those six wells?

20 A. We'll do what we've got to do.

21 Q. Do you understand that if Marks & Garner is
22 found out of compliance with an order issued by the
23 Commission ordering it to do things by a date certain
24 that in order to come back into compliance, you will have
25 to come back and establish that you have done these

1 things?

2 A. (Witness nods head.)

3 MS. ALTOMARE: I don't have any further
4 questions.

5 CHAIRMAN FESMIRE: Mr. Padilla, redirect?

6 MR. PADILLA: No. I don't have anything
7 further.

8 CHAIRMAN FESMIRE: Commissioner Bailey?

9 EXAMINATION

10 BY COMMISSIONER BAILEY:

11 Q. You made a comment that on the federal wells,
12 yes, you were going to restore and reseed the locations?

13 A. Um-hum.

14 Q. Are you going to do that on the state
15 locations, also?

16 A. Yeah. There's just a little bit different
17 guidelines as to what the state asks and what the BLM
18 asks you to do.

19 Q. But you do recognize that state locations do
20 need to be restored and reseeded?

21 A. Yes.

22 COMMISSIONER BAILEY: Thank you. That's
23 all I have.

24 CHAIRMAN FESMIRE: Commissioner Olson?

25

1 EXAMINATION

2 BY COMMISSIONER OLSON:

3 Q. I guess just one general question. This order
4 placed some deadlines out there last year.

5 A. Yes, sir.

6 Q. Why didn't Marks & Garner comply with them?

7 A. Like I said, we did the best we could under
8 financial strain and everything. We're striving to get
9 that done.

10 COMMISSIONER OLSON: That's all I have.

11 EXAMINATION

12 BY CHAIRMAN FESMIRE:

13 Q. Mr. Welborn, on the two wells that the state
14 has plugged, you are under an order to plug these, also;
15 is that correct?

16 A. Correct.

17 Q. And you didn't plug them?

18 A. Correct.

19 Q. Why?

20 A. We were plugging other wells, and then they --
21 I guess they -- it wasn't quick enough, and they plugged
22 them. They were going to plug more of them, but we
23 plugged -- we were plugging I think Theos State and a
24 couple of different wells out there, and then when I knew
25 they were plugging them, they were already rigged up and

1 working on them.

2 Q. Now, the Kemnitz and the other well that you
3 said you didn't own --

4 A. Cities Service.

5 Q. -- Cities Service well, you are a partner in
6 Marks & Garner now?

7 A. Yes.

8 Q. Did you purchase the company?

9 A. Yes.

10 Q. Were these wells leased to the company at the
11 time you purchased the wells?

12 A. Yes.

13 Q. And it's your contention at least on the
14 Kemnitz that the lease has lapsed; right?

15 A. Correct.

16 Q. Does that in any way relieve you of the
17 responsibility for plugging that well?

18 A. No, sir.

19 Q. And --

20 COMMISSIONER BAILEY: Restoring and
21 reseeding.

22 Q. -- restoring and reseeding?

23 A. No. I'm not saying that does that at all.

24 Q. And you have not filed the C-103s to tell us
25 what you've done on the Kemnitz or the Cities Service,

1 have you?

2 A. I have not done anything to them.

3 Q. And you understand that you were ordered to
4 under this order?

5 A. Yes. Well, yeah, that was -- I didn't know
6 exactly what it said on the C-103s on that, on those two
7 wells.

8 Q. Did you work on those wells?

9 A. No, I have not worked on those wells.

10 Q. You have not touched those wells since you
11 purchased the company?

12 A. We owned them for a period of time. And then
13 when we had our split up with our ex-partner, some of the
14 money we owed him, he was supposed to -- it's a long
15 story, but he was supposed to -- we conveyed the wells
16 over to him, and since that day, I have not done anything
17 to them.

18 Q. And you have not gotten the additional bonding
19 on the Red Twelve State Number 6?

20 A. We had a bond on the Red Twelve State Number
21 6, unless it got pulled. But I do remember posting one
22 for the Red Twelve State Number 6.

23 Q. What about the Northeast Maljamar Unit Number
24 1?

25 A. No, we never did do that. That was one of the

1 three wells that -- no, we did not do the Northeast
2 Maljamar Number 1.

3 Q. Why is that?

4 A. I don't know. I thought it had been released
5 and -- of course, we plugged the wellbore, which I know
6 we still have to have that on there, but we posted other
7 ones I knew we could work on, and financial strain.

8 Q. So you did plug the Northeast Maljamar Unit
9 Number 1. It just hasn't been released?

10 A. Correct.

11 Q. Did you file a C-103 on that?

12 A. From how we plugged it?

13 Q. Yeah.

14 A. Yes, sir. It should be in this exhibit.

15 Q. Do you remember which one it was?

16 A. It's about right in the middle, page number 8.

17 Q. And did you do anything to it prior to
18 plugging it?

19 A. No.

20 Q. Are you required to file a C-103 when you
21 change out the flow line and put the well back on
22 production?

23 A. I'm sorry?

24 Q. Are you required to file a C-103 form with the
25 OCD or the equivalent, with the BLM, when you change out

1 a flow line and put a well back on production after it's
2 been off production for a significant length of time?

3 A. Yeah, I guess so. Yes, sir.

4 Q. The Red Twelve Levers Number 8, you said it
5 was plugged?

6 A. Yeah.

7 Q. Number 8Q, I guess?

8 A. Yeah. I don't know if they've inspected it,
9 but we do have -- the wellbore has been plugged for sure.
10 We've done the work. I don't know if it has been
11 released through the BLM.

12 CHAIRMAN FESMIRE: I have no further
13 questions.

14 COMMISSIONER OLSON: Can I follow up on
15 just one thing?

16 I was looking at the C-103 Form for the
17 Northeast Maljamar Unit Number 1, and I note on there
18 it's stamped by the OCD that this approved for the
19 plugging of the wellbore only and references that you
20 need to file a subsequent report, C-103, for the final
21 closure of the site. Have you filed that?

22 THE WITNESS: No, sir. That was the one
23 that she had asked about. They had been there in
24 February and said that it was not -- that there was still
25 some equipment on there.

1 COMMISSIONER OLSON: Okay. That's all.

2 CHAIRMAN FESMIRE: Mr. Padilla, do you
3 have any redirect on those subjects?

4 MR. PADILLA: No.

5 CHAIRMAN FESMIRE: Anything further, Ms.
6 Altomare?

7 MS. ALTOMARE: No.

8 CHAIRMAN FESMIRE: Thank you, Mr. Welborn.
9 Closing argument, Ms. Altomare?

10 MS. ALTOMARE: Just briefly. Again, I
11 just basically want to say that we're really here to
12 address one question, and that is, did Marks & Garner
13 comply with the order that was issued by this Commission
14 on September 11, 2008, and the answer to that is clearly
15 no. Mr. Welborn has himself acknowledged that even to
16 date, over a year later, they have still not brought
17 their wells into compliance with the terms of that order.

18 Rule 19.15.5.9(A) (2) provides an operator is
19 not in compliance with Rule 5.9 if an order issued after
20 notice of hearing finding the operator to be in violation
21 with an order requiring corrective action is issued. We
22 are asking in this case that such an order be issued,
23 simply stating that an order was issued by this
24 Commission setting clear dates for corrective action to
25 be done by Marks & Garner. They failed to abide by that,

1 and as such, they are currently in violation of an order
2 requiring corrective action.

3 If at such time Marks & Garner does come into
4 compliance and remedy the compliance issues that they
5 have, they can then certainly petition the Commission for
6 a hearing to enter an order stating that they have now
7 come into compliance and are no longer in violation of an
8 order requiring corrective action. But at this point in
9 time, we feel that this is exactly the kind of situation
10 that these rules are set up for, and we are asking for
11 the Commission to issue a very simple order finding that
12 they are in violation of an order requiring corrective
13 action.

14 CHAIRMAN FESMIRE: Thank you. Mr.
15 Welborn, you can go back to your seat.

16 Mr. Padilla, closing argument?

17 MR. PADILLA: Very briefly. I think the
18 testimony here shows here that with regard to the Cities
19 Service and the Kemnitz wells, there has been a problem,
20 title problem, that has been from the very beginning. I
21 think Mr. Welborn was pretty forth right in acknowledging
22 that he has responsibility or Marks & Garner has
23 responsibility for these wells and any of his wells.

24 I think, basically, the remainder of the
25 wells, there's been substantial compliance in terms of

1 plugging the wells and in terms of meeting financial
2 responsibilities with the OCD as far as bonding
3 requirements are concerned. It is difficult for -- in
4 terms of meeting those requirements when, you know,
5 there's compliance taking place and, all of a sudden, the
6 OCD comes from the other direction plugging wells. I'm
7 not making any excuses for Marks & Garner when they
8 failed to timely plug the wells, but they were plugging
9 the wells and their bonding was taken, especially the big
10 \$50,000 bond. My personal knowledge is that they owe the
11 Division about \$1,500 due to plugging requirements or for
12 the costs that the OCD incurred.

13 Mr. Welborn's testimony here today indicates
14 that his financial ability is satisfactory now to go
15 ahead and comply with the OCD's bonding requirements, and
16 we'll file the \$15,000 bond today and is prepared to do
17 any of the other bonding requirements. So we would ask,
18 because of that, and because of these other inspections,
19 that he be given some time to comply with whatever -- in
20 any order that the Commission orders, to finish
21 compliance.

22 I don't think that you have a total disregard
23 of the order here. I think there's been an effort to
24 comply, especially in view of the fact that Mr. Welborn
25 has been out pretty much the whole fall with medical

1 problems. But I think -- I'm not asking for leniency,
2 but I hope that the Commission would look into and
3 consider those problems and that effort has been made.
4 There has not been a total disregard here in terms of
5 trying to come into compliance with the Commission's
6 order.

7 CHAIRMAN FESMIRE: Thank you, Mr. Padilla.
8 At this time, the Commission will take the case under
9 advisement and go into executive session. We would ask
10 that the attorneys hang around until noon. If we haven't
11 made a decision by noon, we'll go ahead and break for
12 lunch. When we get done and announce our decision, we
13 will ask the attorneys to draft proposed findings and
14 conclusions. I'm going to ask that you hang around until
15 noon. If we go longer than that, we'll go ahead and have
16 lunch and come back. Thank you all.

17 (The Commission went into executive session.)

18 CHAIRMAN FESMIRE: At this time, we will
19 go back on the record in Case Number 14041. During the
20 executive session the Commission discussed that case and
21 nothing but that case. We have come to a decision.

22 We find that the Division is entitled to an
23 order finding Marks & Garner in violation of Rule 5.9.
24 We would ask that the counsel for the parties draft
25 proposed findings and conclusions and submit them to

1 Counsel Bada within two weeks. Is there anything further
2 from the Commission on this case?

3 COMMISSIONER BAILEY: No.

4 COMMISSIONER OLSON: No.

5 MS. ALTOMARE: One thing I forgot to do,
6 and this is way out of order, I forgot to move for the
7 admission of Exhibits A through G, without F, I guess,
8 since you ruled against F. I know it's after the fact,
9 but just to make the record clear.

10 CHAIRMAN FESMIRE: Mr. Padilla?

11 MR. PADILLA: No objection, and ditto.

12 MS. ALTOMARE: I think we all missed the
13 boat on that one, but I thought just to make sure the
14 record is clear speaking of exhibits.

15 CHAIRMAN FESMIRE: I guess at this time we
16 will admit Exhibits A through G, not including F, and
17 Exhibit 1 from Marks & Garner. Is there anything else in
18 this case, anything else we forgot to do?

19 (Exhibits A through G (omitting F) were admitted.)

20 (Exhibit 1 was admitted.)

21 MR. PADILLA: When you say, "findings and
22 conclusions," in the last hearing I did that. I actually
23 did findings and conclusions. Do you mean a proposed
24 order, instead, or --

25 CHAIRMAN FESMIRE: Findings and

1 conclusions would include a proposed order, yes. You
2 know, this is to help make sure counsel, when they draft
3 the order, doesn't miss any of the pertinent findings.

4 MR. PADILLA: So in other words, a
5 proposed order with the finding?

6 MS. BADA: That will be fine.

7 MR. PADILLA: The last time I was a little
8 confused, and I just did findings and conclusions like
9 you would in court.

10 MS. ALTOMARE: By two weeks from today?

11 CHAIRMAN FESMIRE: Two weeks from today,
12 which will be the 30th of December.

13 MS. ALTOMARE: Okay. New Year's Eve? The
14 31st?

15 CHAIRMAN FESMIRE: Yes. We are not going
16 to be on furlough that day, I understand, so we can go
17 ahead and do it.

18 MS. ALTOMARE: Could we possibly bump it
19 until after the new year, simply because with the
20 holidays and -- I'm going to be out that entire week, so
21 it would basically mean I'd have to do it next week,
22 which is fine if that's your preference.

23 CHAIRMAN FESMIRE: Since it's just dawned
24 on me that Florene isn't here, I think our next meeting
25 is the 14th of January.

1 MS. BADA: I'm out until then, so that
2 would be fine.

3 CHAIRMAN FESMIRE: Let's delay that. We
4 will require the Tuesday after New Year's for submission
5 of the findings and fact and conclusions of law and the
6 proposed order. And with that, is there anything else in
7 Case Number 14041? Thank you all. Would you be so kind,
8 when you go upstairs, to tell Florene we've still got the
9 rest of the meeting?

10 MS. ALTOMARE: Yes. Let's go off the
11 record until Florene gets here.

12 (A recess was taken.)

13 CHAIRMAN FESMIRE: At this time let's go
14 back on the record. The next case is Case Number 14326.
15 It's the de novo application of the New Mexico Oil
16 Conservation Division for a compliance order against
17 Nacogdoches Oil and Gas, Inc. That case has been
18 continued to the January 14th, 2010 Commission meeting.

19 The next case before the Commission is Case
20 Number 14365. It's the de novo application of COG
21 Operating LLC for designation of a non-standard spacing
22 unit and for compulsory pooling, Eddy County, New Mexico.
23 That case also has been continued to January 14th, 2010
24 docket.

25 The next case before the Commission is Case

1 14366, the application of COG Operating LLC for
2 designation of a non-standard spacing unit, unorthodox
3 well location, and for compulsory pooling in Eddy County,
4 New Mexico. That case will be continued to the January
5 14th, 2010 Commission docket.

6 The next case before the Commission is Case
7 14382, the application of Chesapeake Energy Corporation
8 for cancellation of a permit to drill issued to COG
9 Operating LLC, Eddy County, New Mexico. That case will
10 be continued to the January 14th, 2010 docket.

11 The next case before the Commission is Case
12 Number 14323, application of Chesapeake Energy
13 Corporation for cancellation of a permit to drill issued
14 to COG Operating LLC. That case has been continued to
15 the January 14th, 2010 docket.

16 Is there anything else before the Commission
17 today? At this time, the Chair would entertain a motion
18 to adjourn.

19 COMMISSIONER BAILEY: I so move.

20 COMMISSIONER OLSON: Second.

21 CHAIRMAN FESMIRE: All those in favor
22 signify by saying aye. Let the record reflect that the
23 Commission meeting was adjourned at 11:35 a.m. on
24 Wednesday, December 16, 2009.

25 * * *

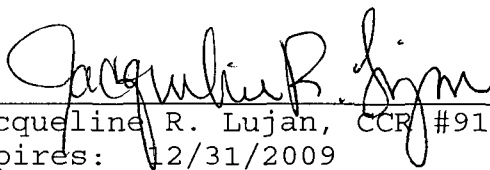
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on December 16, 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 29th day of December,
2009.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2009