

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

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

CASE NO. 11,812

APPLICATION OF THE OIL CONSERVATION)
DIVISION FOR AN ORDER REQUIRING POLARIS)
PRODUCTION CORPORATION TO PLUG 19 WELLS)
IN LEA COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

RECEIVED

August 21st, 1997

SEP 11 1997

Santa Fe, New Mexico Oil Conservation Division

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, August 21st, 1997, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
(505) 989-9317

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August 21st, 1997
 Examiner Hearing
 CASE NO. 11,812

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A P P E A R A N C E S

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* * *

STEVEN T. BRENNER, CCR
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1 WHEREUPON, the following proceedings were had at
2 1:45 p.m.:

3
4 EXAMINER STOGNER: This hearing will come to
5 order.

6 At this time I'll call Case Number 11,838, which
7 is the Application of the Oil Conservation Division for an
8 order requiring Polaris Production Corporation to plug 19
9 wells in Lea County, New Mexico.

10 At this time I'll call for appearances.

11 MR. CARROLL: Mr. Examiner, my name is Rand
12 Carroll, appearing on behalf of the Oil Conservation
13 Division.

14 I have two witnesses to be sworn.

15 And I believe you called the wrong case number?

16 EXAMINER STOGNER: Yes, I should have said
17 11,812, as opposed to 11,838. My apologies on that. Is
18 that correct, Mr. Carroll?

19 MR. CARROLL: Yes.

20 EXAMINER STOGNER: Okay. Any other appearances?

21 MR. BRUCE: Mr. Examiner, Jim Bruce representing
22 Polaris Production Corporation. I have one witness.

23 EXAMINER STOGNER: Any other appearances?

24 I'd like all witnesses to stand at this time and
25 be sworn.

1 (Thereupon, the witnesses were sworn.)

2 EXAMINER STOGNER: Is there a need for opening
3 remarks at this time, gentleman?

4 MR. CARROLL: Not on my part.

5 MR. BRUCE: I don't think so.

6 EXAMINER STOGNER: All right. Mr. Carroll?

7 MR. CARROLL: I call Gary Wink to the stand.

8 Mr. Examiner, what has been marked Exhibit 1A is
9 copies of the well files for each of the 30 wells operated
10 by Polaris. That includes 11 wells besides the 19 wells
11 that are the subject matter of this case.

12 And we also have OCD Exhibit 1B, which includes
13 some photographs, and 2 and 3.

14 EXAMINER STOGNER: Has Mr. Bruce been provided a
15 copy of these?

16 MR. CARROLL: Not of everything. Do you have
17 copies of the well files, Jim?

18 MR. BRUCE: I have copies of the well files. I
19 have some of the photos, I'm not sure which ones.

20 EXAMINER STOGNER: Mr. Carroll, the Application
21 is for 19 certain wells, but you said that there are 30
22 here?

23 MR. CARROLL: We will explain that, Mr. Examiner.

24 EXAMINER STOGNER: Okay, I'm sorry, getting ahead
25 of myself there.

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GARY W. WINK,

the witness herein, after having been first duly sworn upon
his oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARROLL:

Q. Mr. Wink, will you please state your name and
your place of residence?

A. Gary Webster Wink, 1814 North Cielo, Hobbs, New
Mexico.

Q. Mr. Wink, who are you employed by?

A. Energy and Minerals Department, Oil Conservation
Division.

Q. In the Hobbs District Office?

A. Hobbs District Office.

Q. And what's your position with the Hobbs District
Office?

A. I'm a Field Rep II.

Q. And what are the duties of a Field Rep II?

A. Well, I oversee plugging operations and
mechanical integrity tests and answer complaints to
ranchers and from ranchers and the oil industry.

Q. Have you testified before the Oil Conservation
Division before?

A. No, I haven't.

Q. Would you please give the Examiner a brief

1 background of your education and oilfield experience?

2 A. Well, I attended New Mexico Junior College and
3 Eastern New Mexico University, and I worked for ARCO Oil
4 and Gas for seventeen and a half years. I was -- When I
5 took early retirement I was a senior production foreman.

6 Q. Mr. Wink, are you familiar with the operations of
7 Polaris Production Corporation in your district and the
8 wells involved in this case?

9 A. Yes, I am.

10 MR. CARROLL: Mr. Examiner, are the witness's
11 qualifications acceptable?

12 EXAMINER STOGNER: Are there any objections?

13 Mr. Wink is so qualified.

14 Q. (By Mr. Carroll) Mr. Wink, will you please give
15 the Examiner a brief history of the 19 wells we're asking
16 be plugged?

17 A. A brief history, you mean --

18 Q. When they were drilled, how --

19 A. Okay, they -- The wells were drilled from 1951 to
20 around 1957, and they're all from -- They're Devonian wells
21 from the Denton-Devonian, from about twelve -- 12,900 feet
22 to down to -- down to 12,200 feet. They vary.

23 Q. And all these wells produced at one time?

24 A. Yes, they did.

25 Q. Do you know the dates of the last production of

1 these wells?

2 A. Do you want me to name each one of them?

3 Q. Sure, if that's what it takes.

4 A. Okay. There's a shut-in/TA well list report,
5 Form 44. This is according to our records.

6 The Argo was -- Last production date was
7 11-30-1988. The Buckley -- And that was the Argo Number 3.

8 The Buckley A Number 4 was 9-30-1979.

9 The Buckley B Number 1 was 9-30-1976.

10 Q. Maybe you can just name the years.

11 A. Okay. T.D. Pope, 1983 -- The T.D. Pope Number 1,
12 1983; and the T.D. Pope Number 6, 1973. T.D. Pope Number
13 9, 1976.

14 The Priest Number 1, 1976.

15 Buckley A 1, 1994.

16 Shelton Number 1, 1994. The Shelton Number 4,
17 1994.

18 T.D. Pope Number 5, 1994.

19 State A Number 1, 1994.

20 The Argo Number 2, January of 1994.

21 Buckley A Number 3, 1981. Buckley B Number 2,
22 1994.

23 Argo Number 4, 1973. Argo Number 5, 1973.

24 Priest Number 4, 1980. And the Priest Number 5,
25 1980.

1 Q. Now, the latest date I heard you say was 1994 --

2 A. Right.

3 Q. -- for some of the wells?

4 A. Right.

5 Q. So it's been three years since at least the last
6 producers last produced?

7 A. As to our records, yeah.

8 Q. And what's required of wells that no longer
9 produce?

10 A. Well, they either need to be brought back on
11 production, temporarily -- tested for temporary
12 abandonment, or plugged.

13 Q. Has any of those three options been exercised by
14 Polaris?

15 A. No.

16 Q. Have we tried to contact Polaris to get some
17 response?

18 A. Yeah, I've contacted Mr. Payne several times, and
19 we've corresponded with letters.

20 Q. Okay, we'll get into that in a little bit.

21 A. Okay.

22 Q. How were these wells completed?

23 A. Well, you mean -- they're cemented at -- The 13
24 5/8 is cemented to surface, and then the 8 5/8, most of
25 them were -- You mean how many sacks of cement or --

1 They're all cemented --

2 Q. Uh-huh.

3 A. -- you know, not the entire string.

4 Q. Okay. Mr. Wink, what's the current condition of
5 these wellbores?

6 A. Well, the -- for the most part, they're just --
7 What I can tell in the files back in 1974 on some of them
8 it says that they were accepted for TA status. But they're
9 not actually TA'd; they're just shut in. TA status, you
10 know, you go down a hundred feet above the topmost
11 perforation and set a plug, and I don't believe these have
12 been TA'd that way.

13 Back then, in 1974, it may not have been
14 required. I don't know, I'm not -- Nowadays, this date in
15 time, we require them to pressure test them 500 pounds, and
16 if they'll hold for 30 minutes, and then we'll give them
17 five-year exemption on it.

18 Q. And has that been done with any of these wells?

19 A. No.

20 Q. Mr. Wink, why did the Division provide the
21 Examiner with well files from 30 wells when we're only
22 asking that 19 wells be plugged during this hearing?

23 A. We just pulled all of them out. There's three of
24 them from Pacific Royalty lease, were plugged back in March
25 of last year. But the -- in order to release the leases,

1 they have to be brought back to the -- as close as possible
2 to the original -- the land has to be brought back as close
3 to the original as possible, and there's still a tank -- a
4 tank on one and some bases with bolts sticking up.

5 And the Number 5 Pacific has a -- still has a
6 pumping unit on it. And so we're still keeping those.
7 They haven't been released.

8 And I don't know why the others were -- We just
9 had them all together.

10 Q. So we have well files on every well that
11 Polaris --

12 A. Yes.

13 Q. -- operates in --

14 A. Yes.

15 Q. -- the Hobbs District?

16 A. Right.

17 Q. Mr. Wink, what's the condition of the surface and
18 equipment in the lines on these leases where these wells
19 are located?

20 A. Well, there aren't but three wells producing up
21 in the Denton field right now, and that's the Priest and
22 the Shelton Number 6 and the State A Number 2.

23 The State A Number 2 is a rod-pumping well, and
24 as of, oh, a week or so ago, the cellar was full of fluid.
25 The day before yesterday I was up there, and it had been

1 dirt thrown around it, and apparently somebody come by and
2 sucked the fluid out of the cellar.

3 And that was same on the Priest lease. It was --
4 they had thrown -- Someone had thrown dirt all around to
5 cover up the liquids.

6 And the Shelton -- And it was already coming back
7 up out of the sump that comes off the triplex pump at the
8 Shelton. That's not -- you know, that's -- Outside the
9 fence at the Shelton there's a load line that carries
10 outside the fence, and there's a five-gallon bucket that
11 stands full with fluid and runs over. It had been covered
12 up. And there's -- In my pictures you can see there's
13 cattle in the area. Sometimes the gates are left open.

14 Q. Well, Mr. Wink, let's go to your pictures.

15 A. Okay.

16 MR. CARROLL: Mr. Examiner, as you can see, the
17 30 well files have been marked OCD Exhibit Number 1A, and
18 that's for your information.

19 OCD Exhibit Number 1B includes six different
20 packets of documents. And also included in Exhibit 1B are
21 58 pictures. So if we could go to the pictures now, and
22 Mr. Wink can lead you through them.

23 Q. (By Mr. Carroll) When were these pictures taken?

24 A. Well, various times. I don't have the dates on
25 all of them.

1 These -- This first one was taken probably two
2 months ago.

3 Q. And what does this picture show?

4 A. This is an abandoned -- or a shut-in well at the
5 Priest lease. I don't know the exact number of it. There
6 isn't any sign.

7 Q. But does it show a leak?

8 A. It's -- There's a valve leaking. If you can look
9 there to the right, that sort of wave there that's bubbling
10 up. It's hard to tell, but I would think that it's a valve
11 leaking. And the other day when I went by there it had
12 been sucked out, and it was leaking again.

13 Q. Uh-huh. And these following pictures show how
14 many different lease sites?

15 A. There's -- I think there's five or six different
16 lease sites. This next picture is a picture of the pump --

17 EXAMINER STOGNER: If you'll refer to the number,
18 I think we'll have it straighter --

19 THE WITNESS: Okay.

20 EXAMINER STOGNER: -- that way.

21 THE WITNESS: Okay. The Number 2 picture is
22 Polaris' Priest lease, the tank battery. And as you can
23 see, it hasn't been too long before that they had covered
24 it up with sand, and it already -- the sump's already
25 running over again and running out in the road.

1 And the next picture is just one of the same from
2 a different angle.

3 A. The Number 4 picture is the one producing well on
4 the Priest, the Number 2 well. And as you can see, this
5 was probably -- I probably took this picture back last
6 October or something, sometime in there. And it's just --
7 it's oil and water mixed, rain water, the first, one thing
8 and another.

9 The Number 5 picture, this was taken
10 approximately a month, a month and a half ago. This is a
11 picture of the first one you looked at, the whole area
12 around it.

13 And the Number 6 is a picture of the same well
14 before the incident happened.

15 Q. (By Mr. Carroll) Mr. Examiner, we have 58
16 pictures. Do you want Mr. Wink to go through every one?

17 A. The Number 7 picture shows you that bucket I was
18 talking about on the Shelton lease, with the cattle in the
19 background.

20 EXAMINER STOGNER: Okay, let's -- Mr. Carroll,
21 how would you propose that he continue? Do you want to go
22 through each picture or --

23 MR. CARROLL: If the Examiner believes it's
24 necessary, we're willing to go through -- These pictures
25 overall show the general condition of the leases.

1 THE WITNESS: You might look at Number 14.

2 EXAMINER STOGNER: As opposed to going through
3 all of them, Mr. Wink, why don't you pick out the ones that
4 you think are pertinent?

5 THE WITNESS: Okay.

6 EXAMINER STOGNER: You said Number 14 --

7 THE WITNESS: Number 14.

8 EXAMINER STOGNER: -- as one you think is
9 pertinent?

10 THE WITNESS: Yeah, because these others are ones
11 I've already talked about.

12 This was, oh, last October or -- It's been a year
13 ago, I imagine. And the entire battery yard was -- Between
14 rain water and oil and chemical, it would -- pretty much
15 covered the entire battery there in front of the tanks.

16 The Number 15 picture is of the same battery
17 after it's been -- after it's been covered up. But as you
18 can see, the plungers are still leaking with the co-pump,
19 and it's just ongoing like that. It's like that right now
20 again.

21 Number 17 shows the Shelton Number 6 with the
22 cattle in the background and a few puddles around it.

23 And Number 20 shows the -- on the north side of
24 the fence at the Shelton battery. As you can see in
25 between these flow lines in the fence, there's saturated

1 ground and liquid still present.

2 Number 22 is a picture of the circulating pump at
3 the Shelton battery.

4 Number 24, you can see the cattle in the
5 background and the gate standing open, and the fence is
6 in -- is not up all the way. You can't see it real good
7 right there, but there's cattle tracks inside that battery.

8 Number 25 sort of shows you the area, how much
9 area the spills have covered from time to time.

10 And Number 26 and 27 are the -- is the Pacific
11 Royalty lease that they plugged last year, but it's -- the
12 equipment hasn't been taken -- It hasn't been hauled off,
13 and the ground hasn't been restored back -- the contour of
14 the land hasn't been put back to as close as it can.

15 Number 29 is the State A Number 2. It shows the
16 cellar sort of fell in there, and there's fluid in the
17 cellar, standing in the cellar.

18 And the State A battery where the fence is all
19 down, and there's been a few small leaks around the heater
20 and evidence that there's been some in the past.

21 Number 33 and 34 are pictures of the T.D. Pope
22 lease that is -- There isn't anything producing on it right
23 now. Everything is shut in or plugged. And it shows the
24 heater treaters, where the fence is down in places, but
25 there's puddles all around the heaters and saturated soil

1 there.

2 And the -- Number 35 is the Argo battery where
3 evidently the tank's leaking at the bottom chime -- out of
4 the bottom chime or somewhere there.

5 Did you get copies of the pictures I took Tuesday
6 -- or the day before yesterday?

7 MR. BRUCE: No, I didn't, Gary.

8 MR. CARROLL: Yeah, I -- They're in the back.

9 MR. BRUCE: Oh, they're here.

10 THE WITNESS: Okay.

11 Q. (By Mr. Carroll) Gary, if you can show the last
12 pictures that aren't marked on the back with a label, what
13 do they show? They show the same leases with what has been
14 done to the property?

15 A. Okay, this -- The 36 ad 37 is the T.D. Pope
16 lease, and nothing has been done there.

17 And -- Let's see, I believe this is the State A
18 Battery. This is Number 38.

19 And 39, it's just showing that, you know, that
20 it's been -- the liquids have been covered up.

21 Q. Covered up with what?

22 A. Covered up with -- Well, it looks like dirt,
23 caliche fine, or it may have some -- It may have fertilizer
24 mixed in with it. I don't know. But that's --

25 Q. Is that --

1 A. That's not --

2 Q. Is that required by OCD rules? Or is that what
3 is required by OCD rules?

4 A. No, it isn't. The liquids need to be picked up,
5 and they need to check the vertical extent of the leak and
6 bring it, my understanding, into compliance, into 5000
7 parts -- below 5000 parts a million.

8 The groundwater depth out here, the Ogallala is
9 anywhere from 88 feet to 42 feet in this entire area.
10 There's a copy of the State Engineer's report on that.

11 Q. Which is marked as 1 --

12 A. Exhibit 1.

13 Q. -- Exhibit 1B?

14 A. Uh-huh.

15 MR. CARROLL: Mr. Examiner, this is a fax from
16 the State Engineer Office with a listing of the wells. And
17 at the end of each line is a notation as to the depth to
18 groundwater.

19 MR. BRUCE: Which number is it?

20 MR. CARROLL: Number 1. It's 1B.

21 Q. (By Mr. Carroll) Mr. Wink, what good does it do
22 to cover these spills with fresh dirt?

23 A. Well, it really doesn't do any good except that
24 at least you dry up the liquid so the livestock can't --
25 are not as likely to get in it. But as far as that being

1 their remediation, that's not the way we remediate.

2 Q. It does nothing to protect the groundwater?

3 A. The groundwater, no.

4 Q. Mr. Wink, if you'll refer to the document marked
5 2 of Exhibit 1B, which is a copy of a C-115, does this show
6 the production from these wells?

7 A. Yes, it does.

8 Q. And it shows what? Production from -- How many
9 wells?

10 A. Well, there are three wells, active wells, the
11 Priest Number 2 and the Shelton Number 6 and the State A
12 Number 2. The rest of them are shut-in status, as you can
13 see.

14 Q. Mr. Wink, if you'll refer to what has been marked
15 3 of Exhibit 1B, is this a copy of your field trip reports
16 from March 4th, 1994, up until August 19th of 1997?

17 A. Yes, it is.

18 Q. And in general, what do these field reports tell
19 us?

20 A. Well, they tell us what the extent of the leaks
21 -- or what -- Like on the Priest lease, they have down
22 there, Leaks have been covered up inside and out of battery
23 fence. And it tells you sort of the condition of the
24 ground around.

25 Q. So it's pretty much a written description of what

1 is found in the photographs?

2 A. Yes.

3 Q. And these field trips -- There's a number of
4 them, and the first one is from 1994, like I said, all the
5 way through two days ago?

6 A. Yes.

7 Q. It looks like it's every few months?

8 A. That's correct.

9 Q. During these field trip reports, did you ever
10 have the occasion to meet Mr. Payne?

11 A. I can't remember exact date. The one time I met
12 up -- The first time I remember meeting him, we met up at
13 the Priest lease, where I was going to talk to him about
14 all the different leaks and how they needed to be handled.
15 And it didn't go real well, just --

16 EXAMINER STOGNER: Sorry, what? I didn't hear
17 that?

18 THE WITNESS: Well, I met with him. Jerry Sexton
19 sent me up there to meet with him at the Priest lease, and
20 the oil was running out from under the fence. And he said,
21 Well, that -- He told me that he didn't see where that was
22 too big a problem.

23 And I said, Well, you know, it can affect the
24 groundwater and the environment. And he didn't really
25 agree with me on that, that it was detrimental to the

1 health and environment.

2 And so we ended up, he told me that I had all the
3 authority.

4 And I said, Well, I'm not up here for that. I
5 really came up here, to begin with, to just help you --
6 show you what needed to be done.

7 And he said, Well, I don't think I'll be able to
8 do all this.

9 And I said, Well, then maybe you need to talk to
10 Jerry Sexton.

11 Q. (By Mr. Carroll) Mr. Wink, was that your only
12 face-to-face meeting with Mr. Payne?

13 A. I had met with him one other time, with Jerry.

14 Q. Was that before or after --

15 A. Before that time. I wasn't really involved with
16 it, Jerry was. And he had -- Jerry had talked to him and
17 asked him to be sure and pick the liquids up and to start
18 plugging or TA'ing one well every quarter, and if that
19 didn't happen, that he would up it to one a month. And --

20 Q. Was that directive ever complied with?

21 A. Well, last year they plugged three wells at
22 the -- like I said, at the Pacific Royalty lease.

23 Q. Did you witness those pluggings?

24 A. No, I went up there to try to catch Gary Payne,
25 and I never did catch him.

1 I watched -- One my inspectors were watching the
2 pluggings, witnessing the pluggings.

3 Q. So they were plugged to the OCD's satisfaction?

4 A. Yes.

5 Q. Besides these face-to-face meetings, Mr. Wink,
6 have you had -- have you written correspondence to Mr.
7 Payne and received responses?

8 A. Yes, I have.

9 MR. CARROLL: Mr. Examiner, Exhibit 4 -- or
10 Exhibit 1B, what has been marked 4, are copies of letters
11 dated June 25th and June 20th giving notice of this
12 hearing, and then a follow-up letter, what has been marked
13 5, is a copy of the correspondence from the Hobbs District
14 Office to both myself and to Mr. Payne, along with copies
15 of the correspondence received in response from Mr. Payne.

16 Q. (By Mr. Carroll) So Mr. Wink, if you can go to
17 what has been marked 5 and --

18 A. Okay.

19 Q. -- probably go to the third page, which is the
20 letter dated October 1st, 1996, from Mr. Payne --

21 A. Uh-huh. He had -- I had written him a letter
22 prior to this, and he was answering my letter.

23 Q. And how did he answer your letter? What is
24 contained in the October 1st letter from him? What has he
25 done to comply with your directive?

1 A. Well, he just covered up the liquids. And he's
2 showing the cost. He had a vacuum truck out there and
3 sucked the liquids out of the cellars, and then -- and he
4 repaired the stuffing box leak. And then whenever it says,
5 Clean around battery and equipment, that's where they
6 shoveled the dirt, spread it around.

7 Q. If you go to the next page, the letter from you
8 dated October 7th --

9 A. Uh-huh.

10 Q. -- what does this letter state?

11 A. Well, that's -- Oh, let's see. Well, I'm
12 acknowledging receiving his letter that I'd sent on October
13 1st, recommending there be a fine levied or imposing a
14 \$1000-a-day fine, and I had sent it to you and Bill LeMay.

15 Q. And also with this October 7th letter, you
16 enclosed pictures that were taken October 1st, 1996,
17 indicating that the cleanup done by Polaris was
18 insufficient?

19 A. That's correct.

20 Q. And in this letter you're telling Mr. Payne that
21 you're recommending that this matter be referred to the OCD
22 legal for bringing to hearing?

23 A. That's correct.

24 Q. The following letter is dated October 9th. This
25 is the response from Polaris to your October 7th letter?

1 A. Uh-huh.

2 Q. In it, Mr. Payne indicates -- has indicated
3 further efforts to comply with the OCD --

4 A. He says --

5 Q. -- rules?

6 A. Well, he says here, "We immediately tried to
7 dispatch Carpenter Construction to cover the oil spill but
8 they were unable to get fresh dirt to cover from their
9 usual sources, hence the delay."

10 Q. Well, is that what you directed him to do --

11 A. No.

12 Q. -- to cover the spills --

13 A. No.

14 Q. -- with fresh dirt?

15 A. No. No, I don't tell them how to clean it up.
16 But that -- we can make -- suggest to them, you know. Like
17 I say, the spill -- checked vertical extent and horizontal
18 extent and bring it into compliance with the guidelines for
19 leaks and spills.

20 Q. Referring to the last paragraph of that letter,
21 there's a statement made that "...it will not be possible
22 for [Polaris] to sustain the \$1,000.00 per day fine..."?

23 A. Yes, it says, "In the meantime, it will not be
24 possible...to sustain the...fine..." and "Moreover, we do
25 not feel that there is a public health problem which

1 demands such action."

2 Q. Do you agree with that statement?

3 A. No, I don't.

4 Q. And why is that?

5 A. Well, because of the depth of groundwater to the
6 Ogallala, for one thing. We don't have any way to
7 determine that yet, but that should have been determined by
8 Polaris.

9 Q. And did you direct Polaris to determine that?

10 A. No, I did not.

11 Q. What were you directing Polaris to do?

12 A. I was directing them just to fix their leak where
13 it wouldn't happen again, and clean up what was there.

14 Q. And how would they perform this clean-up?

15 A. Well, they'd have to determine the vertical
16 extent of the contamination first, and then go from there.
17 There are several different ways you can do it.

18 There was never -- there's also -- you know, was
19 supposed to report leaks, spills and releases, and I've
20 never received anything. I've always --

21 Q. Not one spill or leak report --

22 A. No.

23 Q. -- from Polaris?

24 A. No.

25 Q. Mr. Wink, if you'll look at what has been marked

1 6 of Exhibit 1B, what does this show? This is the map?

2 A. I don't think -- Maybe I gave them all away,
3 Rand.

4 This shows the area. This is just marking the
5 area out in the Denton field where these leases are
6 located, and Sections 1, 2, 3, 10, 25, 26, 35 -- or 36 of
7 Township 14 South, Range 37 East.

8 Q. And what are the nearest towns to this --

9 A. Lovington is approximately nine miles to the
10 west.

11 Q. To the west. This is pretty close to the Texas
12 border?

13 A. It's probably three or four miles from the Texas
14 border.

15 Q. Besides the face-to-face meetings and the
16 correspondence with Polaris, were there telephone
17 conversations?

18 A. I spoke -- I've spoke with them twice, I think,
19 when I was going to meet -- excuse me, when I was going to
20 meet Davis up there, and then when I was going to meet his
21 son Gary, up at the Denton field. And then Jerry Sexton
22 went with me at that time.

23 And Jerry -- They have spoke with Jerry several
24 times, but I wasn't in on that.

25 Q. So has the response of Polaris been to your

1 continuing efforts to have these leases cleaned up been
2 inadequate, in your opinion?

3 A. Yes.

4 Q. Do you believe the Division needs an order from
5 an Examiner, ordering Polaris to clean up this mess?

6 A. Yes, I do.

7 Q. Do you recommend that these 19 wells be plugged
8 and the well sites be cleaned up in order to protect fresh
9 water and the environment?

10 A. Yes, I do.

11 Q. And that should be done at this time?

12 A. That's right.

13 Q. Do you believe that fines should be assessed if
14 there is noncompliance with the order to plug the wells and
15 clean up the sites?

16 A. Yes.

17 Q. And is your current recommendation the same as
18 you stated in earlier letters of \$1000 per day?

19 A. Well, that's what I'd sent it up here, to see
20 what -- I don't know, I've never levied -- or never had to
21 do this before.

22 Q. Mr. Wink, are you aware of any plugging bond on
23 these wells that's available to the Division to use to plug
24 the wells and clean up the sites?

25 A. There's a \$50,000 plugging bond.

1 MR. CARROLL: Mr. Examiner, if I could refer you
2 to what has been marked Exhibit Number 2, which is a copy
3 of the well bond file, which shows that there is currently
4 a \$50,000 blanket bond issued by -- I believe it's United
5 States Fidelity and Guaranty Company, that is available to
6 be foreclosed upon to plug the wells of Polaris and clean
7 up the well sites associated with those wells.

8 And at this time, if I could also refer the
9 Examiner to what has been marked OCD Exhibit Number 3,
10 which is the affidavit of notice and the letter sent out
11 with the Application for hearing, with the return receipts
12 received by both Polaris and United States Fidelity and
13 Guaranty Company.

14 Q. (By Mr. Carroll) Mr. Wink, do you have anything
15 else to add at this time?

16 A. No.

17 MR. CARROLL: Mr. Examiner, the witness is
18 available for cross.

19 EXAMINER STOGNER: Thank you, Mr. Carroll.

20 Mr. Bruce, your witness.

21 MR. BRUCE: I think I really just have one
22 question of Mr. Wink.

23 CROSS-EXAMINATION

24 BY MR. BRUCE:

25 Q. Did I understand you to say that at this point

1 you don't have any evidence of groundwater pollution?

2 A. No, I don't.

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

4 EXAMINATION

5 BY EXAMINER STOGNER:

6 Q. The 19 subject wells are covered in your
7 Application and several other documents here. The other
8 wells, though, are they part of the clean-up that you
9 referred to?

10 A. The --

11 Q. You had 33 well files you had given; is that
12 correct?

13 A. Yeah, that's correct.

14 Q. And 19 --

15 A. I just got their entire deal. There is one, the
16 Lee Carter, a rancher had called me, and they had cleaned
17 it up, and I went and looked at it and then told Gary that
18 I would ask the rancher if that was suitable with him.
19 They had mixed cottonseed hulls in with the dirt in an old
20 pit area, and it's sort of mounded up. I don't have a
21 picture of it with me.

22 But the rancher called me back and said
23 everything looked fine, except he'd like for that pit to be
24 leveled more.

25 And, you know, there's several -- On Argo,

1 there's an abandoned or shut-in well that's got a cellar
2 just -- It's Picture Number 45, and it's standing in fluid.
3 And that was the day before yesterday.

4 All of the -- you know, the abandoned batteries,
5 they all need to be -- we need to plug the wells and -- or,
6 like I say, TA them or produce them and clean up the -- all
7 the batteries.

8 Q. How many batteries are we talking about?

9 A. About eight. It may not be that many. Off the
10 top of my head I can't -- they're on this -- I think
11 there's eight -- one, two, three, four, five, six, seven --
12 eight of them, I think. I might have miscounted, might be
13 seven.

14 Q. Well, how are you referring to this? I believe
15 you're looking at Part 2 of Exhibit 1B?

16 A. I'm looking at the C-115.

17 Q. Okay. How can you tell -- How is a battery
18 indicated on this form?

19 A. On that form?

20 Q. Yes.

21 A. It's not.

22 Q. Oh --

23 A. I'm just -- There's a battery for every group of
24 wells there.

25 Q. When you say "group", for every pool or for every

1 lease?

2 A. No, for every lease.

3 Q. Every lease. So --

4 A. Buckley -- There's a Buckley A, and there's a
5 Buckley B.

6 Q. So there would be a battery corresponding to each
7 one of those?

8 A. Yeah, there should be.

9 EXAMINER STOGNER: Mr. Carroll, subsequent to
10 this hearing today, could I have a more detailed map,
11 perhaps, pinpointing on a quarter-quarter section where
12 these batteries are?

13 MR. CARROLL: Yes, we can supply that, Mr.
14 Examiner.

15 Q. (By Examiner Stogner) So at this point, other
16 than the 19 wells that need to be plugged and abandoned and
17 brought into accordance with the rules and regs and the
18 statutes of the State of New Mexico, there are other wells,
19 batteries, equipment on these leases that also need to be
20 brought up to their appropriate standards pursuant to the
21 rules and regs --

22 A. Yes.

23 Q. -- and statutes?

24 EXAMINER STOGNER: Okay. I don't have any other
25 questions of Mr. Wink.

1 Does anybody else have any questions of this
2 witness?

3 You may be excused.

4 Mr. Carroll?

5 MR. CARROLL: Call Roger Anderson to the stand.

6 ROGER C. ANDERSON,
7 the witness herein, after having been first duly sworn upon
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CARROLL:

11 Q. Mr. Anderson, will you please state your name and
12 residence for the record?

13 A. Roger Anderson, Santa Fe, New Mexico.

14 Q. Mr. Anderson, who's your employer and what's your
15 position with that employer?

16 A. I'm the Environmental Bureau Chief for the
17 Environmental Bureau of the Oil Conservation Division,
18 Energy, Minerals and Natural Resources Division -- or
19 Department.

20 Q. And what do your duties include as Environmental
21 Bureau Chief?

22 A. The supervision of the Environmental Bureau
23 staff, the permitting, environmental permitting in the oil
24 and gas industry, the remediation of spills and leaks and
25 remediation and investigation of groundwater contamination.

1 Q. So the last two duties you listed would apply to
2 this case where there's spills and leaks on the lease site
3 and there's groundwater in the area?

4 A. That's correct.

5 Q. Mr. Anderson, have you had a chance to testify
6 before this Division before?

7 A. Yes, I have.

8 Q. And have you had your qualifications accepted at
9 that time?

10 A. Yes, sir.

11 MR. CARROLL: Mr. Examiner, are Mr. Anderson's
12 qualifications acceptable for purposes of this hearing?

13 EXAMINER STOGNER: Any objections?

14 MR. BRUCE: No, sir.

15 EXAMINER STOGNER: Mr. Anderson --

16 Q. (By Mr. Carroll) Mr. Anderson, have you had a
17 chance to review the photos that Mr. Wink took of the
18 Polaris facilities?

19 A. Some of them I have, yes.

20 Q. And I've called you to the stand to familiarize
21 the Examiner with what the OCD requires in determining the
22 extent of contamination and the remediation of this type of
23 contamination.

24 By looking at those photos, what in your opinion
25 needs to be done by the operator to determine the extent of

1 contamination?

2 A. The first couple of photos, Photo Number 1 and
3 specifically, just grabbing some, Photo Number 6, show
4 extensive oil, hydrocarbons on the surface of the ground.

5 What -- The policy of the Division has been that
6 whenever there's this much oil spilled, that the actual
7 vertical and horizontal extent of the contamination will be
8 determined.

9 Q. How is that done?

10 A. Generally it's by boreholes, drilling boreholes.
11 You can determine the vertical extent by looking at it,
12 generally. Vertical extent is by drilling boreholes till
13 you come up with no contamination.

14 With the extent of this type of contam- -- this
15 contamination, shown in these pictures -- and you have to
16 keep in mind that I have not seen the site; I'm only
17 looking at the pictures -- the contamination would be
18 required and under Rule 116 requires to be remediated,
19 which would --

20 Q. What does that entail?

21 A. -- which would either -- There area number of
22 methods that could be used. *In situ* remediation if it's
23 not too deep, and that's where vertical extent comes in.
24 Or removal and remediation, either removal and remediation
25 on a site somewhere else or removal and disposal.

1 If vertical contam- -- if vertical -- If the
2 vertical investigation determines that groundwater is
3 impacted, then groundwater would have to be remediated
4 also.

5 Q. How is that done?

6 A. There are a number of different methods. There
7 also, there can be a pump-and-treat method, there can be
8 some type of *in situ* bioremediation possible. It depends
9 on the circumstances of the contamination and the hydrology
10 of the aquifer and everything.

11 And since this is a sole source aquifer,
12 something -- it's required by law to be remediated.

13 Q. And by *in situ* remediation, what do you mean? Is
14 that covering the spill with dirt?

15 A. No, covering the spill with dirt is an
16 unacceptable method of remediation, because all that does
17 is cover it up and keep oxygen from it. Even with
18 fertilizer in it, the oxygen will not necessarily get to
19 the spilled area, to the contamination, and could prevent
20 biodegradation of the contaminants. Covering is not
21 acceptable.

22 If the soils -- If it doesn't get to groundwater
23 and it's not that deep and it can be remediated within,
24 say, a year, about a year, then just a remediation plan is
25 required.

1 If it will take longer than one year, or
2 groundwater is impacted, which would be determined by
3 determining the vertical extent of contamination, then an
4 abatement plan pursuant to Rule 19 is required.

5 Q. Mr. Anderson, all this sounds like it could be
6 very expensive; is that correct?

7 A. Yes, it can be.

8 Q. How expensive is it just to determine the extent
9 of contamination?

10 A. Well, it's getting a rig out there and coring
11 holes down to the extent of the contamination, and right
12 now I don't know what the going price in Hobbs is for a
13 core rig.

14 Q. Mr. Anderson, in your opinion, do you believe
15 that an order is necessary from the Division at this time
16 in order to require Polaris Production Corporation to plug
17 these wells and clean up the well sites associated with the
18 wells?

19 A. Yes, I do.

20 Q. And that's in order to protect fresh water and
21 the environment?

22 A. That's correct. Based on the pictures and the
23 extent of contamination, the depth of groundwater, knowing
24 that the caliche is fractured in the area, that there is a
25 high probability or a good possibility the ground water

1 could be contaminated, and that can only be determined by
2 determining the extent of the contamination.

3 Q. Do you have anything else to add at this time,
4 Mr. Anderson?

5 A. The Bureau up here receives all spill reports,
6 and I do not ever recall seeing a spill report submitted by
7 Polaris. It's my opinion that Polaris has violated two
8 rules that I know of, not counting the plugging rules and
9 stuff: Rule 13, conducting their operations in a way to
10 prevent waste, protect public health and the environment;
11 and Rule 116, failure to report a spill and leak, and
12 failure to remediate that spill and leak.

13 MR. CARROLL: Mr. Examiner, that's all I have of
14 Mr. Anderson at this time.

15 EXAMINER STOGNER: Thank you, Mr. Carroll.
16 Mr. Bruce, your witness.

17 MR. BRUCE: I don't think I have any questions at
18 this time, Mr. Examiner.

19 EXAMINATION

20 BY EXAMINER STOGNER:

21 Q. Mr. Anderson, what -- You've heard the testimony
22 from Mr. Wink about the source of groundwater out there.
23 Could you elaborate a little bit more what aquifer that
24 affects?

25 A. Mr. Examiner, that's the Ogallala aquifer. It is

1 a sole-source aquifer. At one time I believe the State
2 Engineer said it was a nonrechargeable -- an aquifer that
3 is not being recharged, and determined that water
4 withdrawals from that aquifer is actually mining the
5 aquifer. But it is the Ogallala, and the State Engineer's
6 report shows that, from water wells in the area, anywhere
7 from 43 feet to 88 feet deep.

8 Q. Are you aware or made aware of any of the water
9 wells within this area or within this lease or within that
10 map?

11 A. No, I'm not aware. I do not know of them. We
12 have not sampled those water wells to determine if the
13 aquifer is contaminated.

14 EXAMINER STOGNER: Mr. Wink, are there any
15 windmills or water wells out in that area?

16 MR. WINK: Yes, there is.

17 EXAMINER STOGNER: How many?

18 MR. WINK: I don't know. I know where one is --

19 EXAMINER STOGNER: Okay.

20 MR. WINK: -- out by the Shelton lease.

21 Q. (By Examiner Stogner) Mr. Anderson, is that
22 information readily available from the State, the
23 Engineer's Office?

24 A. Mr. Examiner, it is. It's all computerized in
25 the State Engineer's Office.

1 EXAMINER STOGNER: Mr. Carroll, I'm going to
2 request that information be provided within the area marked
3 in yellow on part 3 of Exhibit 1B.

4 MR. CARROLL: We will provide that information,
5 Mr. Examiner.

6 MR. BRUCE: Could I get a copy of that too --

7 MR. CARROLL: Sure.

8 MR. BRUCE: -- Mr. Carroll?

9 Q. (By Examiner Stogner) Could you pull out Picture
10 Number 44, Mr. Anderson? Now, this appears to be, to me,
11 water as opposed to oil.

12 A. Actually, it appears to be -- Yes, water with
13 some kind of scum on the bottom, not necessarily oil. The
14 stuff that's on the upper right-hand corner of it, I --
15 that's yellow in color, I couldn't determine what that is.

16 But you're right, it does just look like water to
17 me, with some algae scum on the bottom.

18 Q. Can this be a potential for --

19 A. This --

20 Q. -- any violations or hazardous to the cattle or
21 stock out in that area?

22 A. If there -- Mr. Examiner, this looks like some --
23 a pit of some kind, constructed in the caliche. And if it
24 does, in fact, contain -- and it looks like there's a -- at
25 the top of the pit it looks like there's a PVC pipe going

1 into it.

2 If this could be produ- -- If this is produced
3 water without oil, it could be a source of -- depending on
4 how the pit was constructed. If it was blasted, then it's
5 creating fractures in the caliche. It could be a source of
6 contamination due to groundwater.

7 I do not -- I don't know if this is in the -- an
8 exempted area, but it would be covered under 3221,
9 depending on the volume that's -- Order R-3221, depending
10 on the volume that's gone into this pit. And I'd have to
11 look at the records to see if this was a specifically
12 exempted area or not.

13 Q. On Picture Number 1, that shows to be quite a
14 large pool of oil?

15 A. Yes, sir. It looks like the oil over the cellar.

16 Q. Would you care to venture a guess at a volume?

17 A. Not knowing how deep that cellar is, I wouldn't
18 want to hazard a guess. But it looks like it could be a
19 significant volume that would fall under the wasted
20 resource rule.

21 Q. Okay, with that in mind, have you had a chance to
22 review Polaris's October 9th, 1996, letter as part of --
23 Part 5 of Exhibit 1B?

24 A. No, sir, I have not seen any of their letters.

25 Q. Let me read you some excerpts, because I want

1 your opinion on some environmental issues.

2 Down at the bottom of that particular letter he
3 adds, "Moreover, we do not feel that there is a public
4 health problem which demands such action." And this action
5 is that -- He referred to Mr. Gary Wink's request to clean
6 up and plug and abandon.

7 Could you elaborate on what public health
8 problems such as this, what you've seen, can happen or
9 occur? Is it in an area -- even if it's in an area that is
10 not inhabited by very many people.

11 A. Using this Picture 1 as an example; is that what
12 you mean?

13 Q. Or any of them, just your general opinion.

14 A. Any of the pictures that have crude oil, standing
15 crude oil, the public health issues associated with crude
16 oil is the inhalation of benzene, which is naturally
17 occurring in crude oil. I do not have any tests to see
18 what the concentration of the benzene is in this crude oil,
19 but it's in all crude oil. It's a natural constituent of
20 crude oil.

21 Benzene is a known, declared carcinogen by EPA.
22 It's also a standard in our groundwater standards. And
23 that's just one known health effect. If it's in an area
24 where there are children, children playing in the crude
25 oil, that can cause health problems.

1 Q. Well, if there's nobody out there, what problem
2 is it going to hurt?

3 A. Well, if there's no one out there, the actual
4 health effects come into play when it gets into
5 groundwater, because the groundwater does move.

6 And if it moves to a point of withdrawal in the
7 foreseeable future -- and the foreseeable future is defined
8 as no less than 6000 years and could extend into
9 thousands -- and a family withdraws that groundwater and it
10 has benzene in it, there is your health effect, right
11 there.

12 Q. Does public health also take into consideration
13 stock, livestock? Does it go that far, to that extent?

14 A. The actual definition, I don't know that I've
15 ever seen a definition of "public health". I don't know
16 that it would include stock. But that is included in the
17 definition of "environment". It is wildlife, stock, all of
18 those included.

19 Now, wildlife and stock -- stock-watering, yes,
20 they can be impacted by this. If there is some --

21 Q. Is there any rules and regulations protecting
22 such livestock or wildlife from this kind of contamination?

23 A. We have sections in our rules that require the
24 netting, screening or otherwise rendering nonhazardous to
25 nonmigratory waterfowl, pits and ponds, lagoons and tanks

1 over 16 feet in diameter. If you consider the bermed area
2 within a tank battery as a pit and it has oil in it, then
3 it would need to be netted also.

4 Q. Could this be an attractive nuisance to such
5 waterfowl or --

6 A. Yes, it could.

7 Q. -- wildlife?

8 A. According to information from the US Fish and
9 Wildlife Service, that from the air, to migratory
10 waterfowl, the sheen in sunlight coming off of oil looks
11 just like water to them.

12 I have --

13 Q. -- does the US Wildlife Service take of such --

14 A. They --

15 Q. -- loss of wildlife?

16 A. They are at the present time out of El Paso
17 conducting flyovers in southern New Mexico to determine
18 which pits have oil on them and are not netted right now
19 and levying fines, when they go to inspect, if they find
20 any migratory waterfowl in the pit.

21 Q. How much are those fines?

22 A. \$10,000 a bird.

23 EXAMINER STOGNER: That \$1000 a day don't look so
24 bad in some instances, compared to about ten ducks. That's
25 not a question.

1 Anything else of this witness?

2 MR. CARROLL: I have nothing further, Mr.
3 Examiner.

4 EXAMINER STOGNER: Thank you, Mr. Anderson.
5 Mr. Carroll, do you have anything further?

6 MR. CARROLL: No, Mr. Examiner.

7 At this time, however, I move the admission of
8 Exhibit 1A, which is 30 well files governing -- copies of
9 the 30 wells operated by Polaris;

10 Exhibit 1B, which includes the documents marked 1
11 through 6, and then also 58 photographs marked 1 through
12 58;

13 Exhibit 2, which is a copy of the bond file;
14 and Exhibit 3, which is the notice.

15 And I would move the admission of those into
16 evidence.

17 EXAMINER STOGNER: All exhibits, including the 54
18 [sic] highly glossy pictures, will be admitted into
19 evidence at this time.

20 Mr. Bruce?

21 MR. BRUCE: Mr. Examiner, could I have just five
22 minutes, just to kind of mark a few things?

23 EXAMINER STOGNER: Yes, sure. We're going to
24 call a five- to ten-minute recess at this time. Five
25 minutes for Mr. Bruce, five minutes for me.

1 (Thereupon, a recess was taken at 2:50 p.m.)

2 (The following proceedings had at 3:02 p.m.)

3 DAVIS PAYNE,

4 the witness herein, after having been first duly sworn upon
5 his oath, was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BRUCE:

8 Q. Sir, will you state your name and city of
9 residence for the record?

10 A. I'm Davis Payne from Midland, Texas.

11 Q. And what is your relationship to Polaris
12 Production Corporation?

13 A. I'm the President of Polaris.

14 Q. Have you previously testified before the
15 Division?

16 A. No, I have not.

17 Q. Would you briefly summarize your educational and
18 employment background?

19 A. I'm a graduate petroleum engineer of the
20 University of Texas, and I have been engaged in the oil
21 business since the early 1950s, and I have worked in
22 engineering and production positions since that time.

23 Q. Primarily in the Permian Basin?

24 A. Correct.

25 Q. And how long have you been with Polaris?

1 A. I started Polaris in 1972. Twenty-five years,
2 approximately.

3 Q. Okay. And for the 20 years before that you
4 worked with various other companies in the business?

5 A. Yes.

6 Q. In both engineering and production positions?

7 A. Right.

8 Q. And are you familiar with the matters involved in
9 this case?

10 A. Yes, I am.

11 MR. BRUCE: Mr. Examiner, I tender Mr. Payne as
12 an expert in production practices.

13 EXAMINER STOGNER: Mr. Payne is so qualified.

14 Q. (By Mr. Bruce) Mr. Payne, what is Polaris' basic
15 position in this case?

16 A. Well, we would like that the wells not have to be
17 plugged. We have hopes and aspirations that other zones,
18 as well as some extensive recompletion efforts, can be
19 accomplished.

20 Q. So the wells would be useful either for
21 production or for monitoring the reservoirs in this area?

22 A. That's correct.

23 Q. Could you look at what's been marked Polaris
24 Exhibit 1 and identify that for the Examiner, please?

25 A. That's a plat showing our leases in the Denton

1 field of Lea County, New Mexico.

2 Q. Okay. And the one -- I believe the one I gave to
3 the Examiner has your leases shaded in yellow; is that
4 correct? Mr. Payne, the one I gave to the Examiner has
5 your leases shaded in yellow?

6 A. Yes.

7 Q. Okay. On some of the others it's marked in
8 green.

9 How many wells, Devonian or otherwise, are in
10 this immediate area?

11 A. Approximately 65 wells.

12 Q. And that includes the one the Division seeks to
13 have plugged?

14 A. That's correct.

15 Q. What -- Do you have any just short comments on
16 production in the Devonian, in the Denton field?

17 A. Yes. We have recovered about 26 percent of the
18 original oil in place.

19 And according to many of the statisticians, the
20 best way to increase reserve situations at this day and
21 time is to work in known large accumulations of oil. And
22 that's what we have attempted to do in trying to exploit
23 the Denton-Devonian reservoir.

24 Plus, there are many zones up the hole that have
25 never been tested. There's approximately 14 to 1400 feet

1 of closure in the Devonian, and most of it, though, is
2 around 800 feet. So it's a sizeable reservoir, and, you
3 know, there is still a lot that needs to be done to
4 completely deplete it.

5 Q. In the last three years, how many Devonian wells
6 have been drilled in this immediate area?

7 A. Well, drilled and horizontal laterals, there have
8 been six --

9 Q. Okay.

10 A. -- in the past 36 months.

11 Q. Is there the chance for additional drilling in
12 this area?

13 A. There certainly is.

14 Q. What is Exhibit 2, Mr. Payne?

15 A. Exhibit 2 is a diagrammatic sketch showing the
16 typical casing program.

17 Q. No, Exhibit 2, the -- does Exhibit 2 -- Yeah,
18 that next one, Mr. Payne.

19 A. Is this Exhibit 2?

20 Q. Yeah.

21 A. Okay, this shows the location of the wells that
22 have been either redrilled from top to bottom or have had
23 horizontal laterals in which Polaris was the instigator and
24 the prime mover in getting these projects undertaken.

25 Q. And is Exhibit -- The second page of that exhibit

1 is merely a brief summary of each well; is that correct?

2 A. That's correct. And it's -- I'd also like to
3 point out that, you know, we have caused about \$5.7 million
4 to be spent in this area, and the State is receiving around
5 \$9000 to \$10,000 a month from the revenues off the taxes
6 off of it.

7 Q. Now, in your opinion, would plugging the
8 wellbores create economic hardship and cause waste?

9 A. It certainly would, because these wells would
10 probably never be re-entered, or they would be completely
11 lost for all times. And, you know, the time to recoup
12 these reserves is right now.

13 Q. Is it the cost -- just looking at plugging the
14 wells, is it that cost that's keeping you from plugging
15 them yourself?

16 A. No, due to the fact that there is a long
17 intermediate string here, the recoveries of the production
18 string are quite good, and the out-of-pocket expenses in
19 plugging wells is not expensive at all.

20 Q. Okay. So what you're saying is, they're much
21 more valuable if they're left temporarily abandoned?

22 A. That's true.

23 Q. Now, what is Exhibit 3?

24 A. Exhibit 3? I guess I picked up the wrong thing,
25 but --

1 Q. Yes.

2 A. -- it's a diagrammatic sketch of a typical casing
3 program of wells in the Denton field.

4 And you will note that, as Gary Wink pointed out,
5 that there's 350 to 380 feet of surface pipe with cement
6 circulated. There's approximately 4600 to 4800 feet of
7 intermediate casing with cement circulated. And then the
8 long strings are various cement jobs and -- but they're not
9 important as far as the surface water is concerned.

10 Q. Just looking at the wellbores, if these wells are
11 produced is there any danger of contaminating the
12 groundwater just because of the condition of these
13 wellbores?

14 A. There is no way that groundwater could be
15 contaminated from these wellbores.

16 Q. Now, what is -- and as a follow-up, you know, I
17 think Mr. Wink said these wells were mostly drilled 40, 45
18 years ago; is that correct?

19 A. That is correct.

20 Q. Now, are the wells in good mechanical condition?

21 A. They are. There's very little corrosion in this
22 area. The oil is sweet crude, and the produced water is
23 low in chlorides. And consequently after some 40 years you
24 find that a lot of the tubing strings still have the milled
25 stamps on them.

1 And the tank batteries that you see here are
2 original batteries, you know. There has been very little
3 corrosion from this production, both oil and water.

4 And by the way, the produced water has been
5 reinjected since many years back. And none of this water
6 that you see in these pictures is produced water; it's all
7 rainwater.

8 Q. Okay. Well, let's get to the next issue, then.
9 What about cleaning up the well sites and tank batteries as
10 the OCD's witness has discussed? Could you discuss that
11 for the Examiner?

12 A. We are more than happy to clean these things up
13 as time goes by. We're limited only by funds. And, you
14 know, we do not think that any of this surface is going to
15 reach any kind of a contaminating source.

16 Our best information tells us that crude oil is a
17 biodegradable medium and that in the presence of certain
18 bacteria and high nitrogen that it will eat itself up. And
19 we have seen that happen in a lot of places where the
20 vegetation is more lush after crude oil spills of this type
21 than it is -- than it was before.

22 Q. Now, you have been putting -- I think Mr. Wink
23 said you've covered up some of the spills with sand; is
24 that correct?

25 A. Our normal procedure has been to use gin trash

1 and sand and high-nitrogen fertilizer with a chemical that
2 promotes bacterial growth.

3 Q. Have you tried to respond every time the OCD has
4 had a problem with these?

5 A. We have responded every time that they have
6 called us, and immediately. And the instance that Mr. Wink
7 referred to, there was a rainstorm at that time, and our
8 contractor couldn't get any materials to take care of that,
9 and consequently these pictures were made that makes it
10 look like, you know, we're floating in oil.

11 Q. Picture 1 that the OCD submitted, Mr. Davis
12 [sic], could you comment on that?

13 A. That is a temporarily abandoned well, and there
14 was some oil accumulation in the cellar, and rainwater
15 flowed in and floated that up to the top, and we got the
16 cellar pumped out in pretty short order.

17 Q. And then Picture 44 that the OCD used, it shows
18 standing water. Is that --

19 A. That's rainwater with a rainbow of oil on top of
20 it.

21 Q. Did you have discussions with Jerry Sexton about
22 the issues that came up today?

23 A. We've been in continual conferences and talks
24 with Jerry Sexton over the years about the possibilities
25 and the potential in the Denton field, and that we were

1 trying to hang on until we could get a lot of these
2 projects done.

3 You know, there's a problem in capital formation
4 and capital attraction, and, you know, some of these things
5 don't happen as fast as you'd like for them to, but we've
6 been moving along as fast as we can, and I think we've made
7 significant efforts here. You know, I think we've made a
8 significant showing here in the fact that we've gotten two
9 new Devonian wells drilled from top to bottom, and we have
10 the possibilities of many more.

11 Q. Mr. Payne, I'm just going to show you a few
12 photos. Unfortunately, Rand, we only have one set.

13 If you could just briefly identify. Those are
14 marked 4A and 4B. What are those from?

15 A. Okay, this is the Priest triplex, and this is the
16 Priest tank battery.

17 Q. And all of these pictures I'm showing, when were
18 the pictures taken?

19 A. These were taken on the 19th of -- or the 18th of
20 August.

21 And I might add that, you know, with a triplex
22 and hydraulics it's almost impossible to keep from having
23 some weeping from your plunger action, and we pump those
24 sumps out on a regular basis and keep them pumped out
25 and --

1 Q. Okay. Rather than have you identify them, I'm
2 going to run through them.

3 Picture Number 5 is the Priest Number 4.

4 Picture Number -- or Exhibit Number 6 is the
5 Priest Number 2.

6 Exhibit 7A through 7G are the Shelton tank
7 battery.

8 And Exhibit 8 is the Shelton Number 6.

9 Could you just briefly look at them and make sure
10 that those pictures were taken yesterday? And then I'll
11 pass them around for the other folks to see.

12 And were these pictures taken under your -- by
13 you or under your direction?

14 A. They were under my direction, yes. They are, and
15 I might add that these batteries are in a -- just about the
16 same condition that the other batteries in this field are
17 in.

18 MR. BRUCE: Sorry about the lack of copies, Mr.
19 Examiner.

20 Q. (By Mr. Bruce) And it's your opinion,
21 considering the age of these wells and tank batteries, that
22 they're in good condition?

23 A. Yes, I think that they are.

24 Q. And again, you are willing to work with the
25 Division on these matters?

1 A. We certainly are. We have been in business for a
2 long time, and we don't want to get out of business anytime
3 soon, and we're not a fly-by-night operator, and the
4 Commission is not going to be left with these wells to plug
5 on their own. We're going to take care of these.

6 We just need a little more time to -- Basically
7 what we're asking for time for is to continue the
8 development and try to improve our reserve situation and
9 our cash-flow situation and our producing capacities.

10 Q. Were Exhibits 1 through 8 prepared by you or
11 under your direction or compiled from company business
12 records?

13 A. Yes, they were.

14 Q. And in your opinion, should the Application of
15 the Division in this case be denied?

16 A. Yes, it should.

17 MR. BRUCE: Mr. Examiner, at this time I'd move
18 the admission of Polaris Exhibits 1 through 8.

19 EXAMINER STOGNER: Exhibits 1 through 8 by
20 Polaris will be admitted into evidence at this time.

21 Mr. Carroll, your witness.

22 MR. CARROLL: Thank you, Mr. Examiner.

23 CROSS-EXAMINATION

24 BY MR. CARROLL:

25 Q. Mr. Payne, I take it from your last statement

1 that it's your position the Division should allow you to
2 spend your money developing additional reserves, rather
3 than cleaning up any contamination that has occurred
4 because of past activities; is that a fair characterization
5 of your statement?

6 A. No, sir, it is not. I don't know how you're --
7 if you're aware of how independents attract capital, but it
8 is not our capital that will be put into these projects; it
9 will be those of others.

10 We're earning a carried interest and various
11 different trades that come about, but we do end up with an
12 interest in these wells, and it will enhance our cash-flow
13 position and help us to get our current assets in better
14 position.

15 And currently, you know, we cannot stand a
16 \$10,000- to \$20,000-a-month fee for remediation.

17 Q. Do you allocate any portion of this investor
18 capital you attract to clean-up activities, or does it all
19 go to finding new reserves?

20 A. It's all for finding new reserves.

21 Q. You don't set aside a separate fund for the
22 eventual cleanup or plugging of the wells?

23 A. No, the only thing that would come out of that
24 would be what our part would be from production of these
25 wells.

1 Q. Mr. Payne, if you could direct your attention to
2 what is Marked Polaris Exhibit Number 2, it's in the second
3 page, you make the statement that "The following projects
4 have been undertaken as a result of Polaris' activities in
5 attempting to recover...Devonian reserves." You list a
6 number of projects and then you state at the end that
7 "Polaris has caused to be spent \$5.7 million..."; is that
8 correct?

9 A. That's correct.

10 Q. How much has Polaris spent?

11 A. On those projects, nothing.

12 Q. Polaris has caused them to be spent, but Polaris
13 has spent nothing.

14 Okay, do you have a similar list of activities
15 where -- that would say the following cleanups have taken
16 place as a result of Polaris' activities, attempting to
17 clean up its prior activities?

18 A. We've been -- We've been attempting in the best
19 way that we could to follow the directions that we've been
20 given. We got the Pacific Royalty lease with three wells
21 plugged last year. We're continuing to do those.

22 But we don't want to see the wells, that you're
23 asking to be plugged and abandoned now, plugged, because
24 there are too many things that are a potential in them that
25 we really need to work with.

1 There's five or six different zones up the hole
2 that have good log characteristics and should be producing
3 wells, and we need those wellbores, and we need those
4 wellbores for the -- to attract somebody else to do the
5 work on them.

6 Q. Well, Mr. Payne, you're aware that the Division
7 does not want any wells plugged prematurely either. The
8 Division does want the surface cleaned up, and it appears
9 that although you state you've been working with the
10 Division in cleaning up the surfaces, in fact, that has not
11 been the case. We have had no contact from you since --
12 when?

13 A. Not since about a week ago. One of your men
14 called us and told us about the gas leak on the Priest
15 Number 4, and we immediately took care of it.

16 Q. And you're --

17 A. So we're in constant contact with your people.

18 Q. And they told you to just cover the space with
19 dirt --

20 A. They -- yes.

21 Q. -- is that correct?

22 A. They told -- They said everything was all right,
23 you know. We didn't get any kind of feedback that they
24 were dissatisfied, that that was not going to...

25 Q. Did you read those letters that were contained in

1 OCD Exhibit Number 1B?

2 A. Yes, I read those.

3 Q. Particularly the packet marked 5 --

4 A. But we --

5 Q. -- the letter from Mr. --

6 A. -- we have been out every time that we were told
7 to come out, and we have attempted to clean everything up,
8 and we have --

9 Q. And what have you done --

10 A. -- we have vacuumed --

11 Q. -- in your attempts to --

12 A. We have vacuumed the standing oil up and, as I
13 said, we have added sand and gin trash and chemicals to --

14 Q. And what is gin trash?

15 A. What?

16 Q. What is gin trash?

17 A. Well, it's the residue out of the cotton gins
18 that has absorptive qualities. It's a -- It absorbs a lot.
19 It's the bolls and cotton.

20 Q. And then what do you do with the sand and gin
21 trash after it's absorbed all the soil?

22 A. Well, we haven't hauled it off yet, but
23 eventually it will be hauled off.

24 Q. How soon?

25 A. As soon as we can get to it.

1 Q. When will that be?

2 A. Well, as I said, we're only limited by the cost,
3 and some of these things can cost a tremendous amount of
4 money.

5 Q. When will funds be available to pay that cost?

6 A. If I could tell you exactly -- I know what you're
7 driving at. You want a definite date that we're going to
8 haul off everything.

9 But in production operations, particularly with
10 old wells and marginal wells -- and we're doing our
11 damndest to keep marginal wells on production, and I think
12 everybody in the State of New Mexico benefits from keeping
13 those wells on production.

14 And if we weren't so tenacious -- You know, a lot
15 of people wouldn't be. They would go ahead and plug them
16 and move them out.

17 But you know, I've worked on this thing for a
18 long time, and it's about to come to fruition. And, you
19 know, I hate to see -- hate to walk away and see the
20 reserves that are in the Denton field left, you know,
21 because there -- as this has pointed out, you know, there's
22 been a considerable amount of money spent on independent
23 contractors and jobs provided and, you know, new reserves
24 found. And it benefits us all. And I hope that someday it
25 benefits me. It hasn't so far, I guarantee you.

1 Q. Well, do you believe oil- --

2 A. We haven't been all that successful.

3 Q. -- oilfield spills and leaks like what appear in
4 this picture, do they benefit us all?

5 A. Well, less than three percent of the surface is
6 involved. And you know, for that contamination to move
7 into the groundwater, it would be virtually impossible.
8 You'd have to have some hydraulic setup. You'd have to put
9 a tremendous amount of pressure on it and, you know,
10 there's a lot of -- in surface tension and everything to
11 get a material like that to move into the groundwater.

12 Q. Referring again to the second page of your
13 Exhibit Number 2, you say the result of Polaris' causing
14 all these additional development activities has been 360
15 barrels of oil produced per day with net revenues to the
16 State of \$9600 a month --

17 A. Right.

18 Q. -- is that correct?

19 What are the revenues to Polaris per month?

20 A. Oh, I'm ashamed to say about \$1000 a month.

21 Q. Have you determined the extent of contamination
22 at any of these sites?

23 A. We think it's minimal. We have not -- we have
24 not --

25 Q. You think, but have you determined it?

1 A. We have not drilled down below -- In many places
2 there, the surface soil is not over three or four inches.

3 Q. What? Have you dug down with a shovel --

4 A. Yes.

5 Q. -- to determine the --

6 A. Yeah.

7 Q. On what site was that?

8 A. Along the Pacific Royalty.

9 Q. What about the other sites?

10 A. Well, we --

11 Q. Have you dug down with a shovel or dug any
12 boreholes?

13 A. No, we have not dug any boreholes.

14 Q. So you've just dug a shovel into the one site to
15 determine it's only three to four inches deep?

16 A. That's correct.

17 Q. Can you give us some dates as to when you'll
18 determine the extent of the contamination at the other
19 sites?

20 A. Well, it will --

21 Q. It sounds like it would only take a shovel?

22 A. What?

23 Q. It sounds like it won't cost you anything but
24 going out there with a shovel?

25 A. Well, we have done that in a lot of places

1 outlying, and there is not -- there's not that much
2 contamination. I mean, there's not that much that is --
3 not contamination, but there's not coating of the sand
4 particles.

5 Q. At what sites again?

6 A. Of the Priest.

7 Q. And what other sites?

8 A. And the State A. The State A is another case
9 like Pacific Royalty where there's a very, very shallow
10 soil system.

11 Q. Can you give us a time where you will report to
12 the OCD as to each site and the extent of contamination at
13 each site?

14 A. Yes, I can.

15 Q. When will that date be?

16 A. Well, I can do it within a month.

17 Q. So today's August 21st, so you're saying by
18 September 21st you'll provide the OCD with a report as to
19 the extent of contamination of each of these sites?

20 A. (Nods)

21 Q. Thank you.

22 EXAMINER STOGNER: Mr. Bruce?

23 MR. CARROLL: Hold it, I'm not done.

24 EXAMINER STOGNER: Oh, I'm sorry, I --

25 MR. CARROLL: I was just thanking him for --

1 EXAMINER STOGNER: Oh, I'm sorry.

2 MR. CARROLL: -- pledging to provide that report.

3 EXAMINER STOGNER: Well, all right.

4 Q. (By Mr. Carroll) Mr. Payne, you stated that you
5 would like these wells left TA'd. It is my impression that
6 these wells haven't been TA'd in compliance with OCD
7 requirements. Have they been TA'd or not?

8 A. They probably have not. But there is no --
9 There's no corrosive materials here, there is no reason to
10 suspect that there is any kind of casing leaks here. And
11 furthermore, you know, you can't get any crossflow.

12 Q. Are you aware that there's an OCD rule requiring
13 that these wells be TA'd, brought back into production or
14 plugged?

15 A. Yes, I am.

16 Q. So you're admitting you're in violation of OCD
17 rules?

18 A. Well, we thought we were going to be able to get
19 some recompletion attempts started on them right away.

20 Q. You state, the wellbores --

21 A. We thought that the OCD would be as benefitted by
22 it as we would if we would put these wells to beneficial
23 use.

24 Q. The OCD would. But, you know, spills and
25 contamination do not benefit the OCD or the public. And

1 you could also help us out there.

2 A. If you demand that these wells be plugged, then
3 they will be gone forever.

4 Q. Mr. Payne, you state that there's no corrosion
5 and the wellbores are in fine shape, yet I see a lot of oil
6 spills and leaks. How do you account for the spills and
7 leaks?

8 A. Pressure and -- you know, extreme pressures when
9 you're working with the hydraulics where your pressures are
10 2000 to 3000 pounds. And you know, when you have a leak
11 it's a bad one. And you know, you'd have to take care --
12 take every piece of equipment that you had and replace it
13 every six months. You know, it would be economically
14 impossible.

15 Q. Did you report any of these spills and leaks to
16 the OCD?

17 A. I think we did.

18 Q. Which ones?

19 A. I can't recall.

20 Q. Do you remember at what times?

21 A. Well, I can't recall right offhand.

22 Q. Could you also provide me, within a month, copies
23 of your spill reports?

24 A. Maybe we could call first, because the ranchers
25 in close contact with Mr. Wink, and he calls --

1 MR. WINK: I haven't talked to him in a year.

2 Q. (By Mr. Carroll) Mr. Payne, could you also
3 provide us with a report of all these spill and leak
4 reports to us that you've made?

5 A. What?

6 Q. Could you provide us copies of all the spill
7 reports you've made to the OCD over the last years?

8 A. (Nods)

9 EXAMINER STOGNER: I'm sorry, I didn't hear the
10 answer to that one.

11 THE WITNESS: I said yes.

12 EXAMINER STOGNER: Okay, good.

13 Q. (By Mr. Carroll) Mr. Payne, you plugged three
14 wells last year?

15 A. Yes, sir.

16 Q. What was your agreement with the OCD regarding
17 how many wells you would plug and what cleanup efforts you
18 would make?

19 A. One well a quarter.

20 Q. So that takes care of three quarters of last
21 year. What about since that time?

22 A. We do not have any really good candidates. We
23 want to save those wellbores for the projects that we have
24 on tap right now.

25 And the material that is still left on the

1 Pacific Royalty, we had permission from the rancher to
2 leave that pumpjack there. You know, it costs quite a bit
3 of money to move those pumpjacks around, and he didn't have
4 any objection, and it's not much of an inconvenience or an
5 eyesore.

6 Q. On what site was that?

7 A. The Pacific Royalty Number 3.

8 Q. Mr. Payne, prior to providing the OCD with a
9 report on the extent of the contamination at these sites,
10 would you please contact the Environmental Bureau to get
11 their approval for your investigation plan first?

12 A. All right.

13 MR. CARROLL: Thank you.

14 Mr. Examiner, may I approach the witness and
15 direct the Examiner and Mr. Bruce to look at Pictures 1 and
16 5?

17 EXAMINER STOGNER: For that purpose, yes.

18 Q. (By Mr. Carroll) Mr. Payne, if you just look at
19 these pictures -- and we've looked at them before -- on the
20 lower right-hand side of this wellhead, there appears to be
21 a leak. Do you agree that in looking at the larger picture
22 there's --

23 A. Yes.

24 Q. What could be causing that leak?

25 A. There is a gulded thread in the wellhead, and we

1 pulled the bull plug out and replaced that, and it still --
2 The threads are bad, and it's a major thing to re-run the
3 threads.

4 But there's a very small amount of gas coming out
5 of there. And we don't feel like that it's doing that much
6 damage, but we will take care of it. We're going to try to
7 get that -- the threads cleaned out on that -- in that
8 head.

9 Q. How long has this condition existed?

10 A. It's existed for quite some time, I'll have to
11 admit. But again, it's just a small amount of gas, less
12 than one MCF a day.

13 Q. So you're saying just gas is escaping here, no
14 oil?

15 A. Yes, sir.

16 Q. And what have you done to clean up this site?

17 A. That's in our pictures, it's...

18 Q. That is the same wellhead?

19 A. Yes, sir.

20 MR. WINK: I have a picture of it too at that
21 time, around that time.

22 Q. (By Mr. Carroll) All right, Mr. Payne, when you
23 on September 21st provide the OCD with a report on the
24 extent of contamination at these sites and it is found that
25 there is contamination, what do you intend to do then to

1 remediate that contamination?

2 A. Well, of course, Mr. Wink has told us that, you
3 know, it costs \$100,000 or \$200,000, I believe was the
4 figure that he used, was \$100,000, and I don't have that
5 kind of money.

6 Q. What can you do with what you have at hand?

7 A. If you haul all of that dirt out and are forced
8 to put in new dirt, a lot of the environmental people are
9 saying that this is a biodegradable situation and it is
10 going to take care of itself and there is no -- it's not
11 going to move, it's not going to pollute anything.

12 And we are in hopes that we can leave it like it
13 is and -- for a few more years and add chemicals to it.
14 And places where tank batteries have been abandoned, the
15 grass is growing over the top of them. And one of the
16 tanks, one of the pits that we filled in under their
17 direction --

18 Q. What site is that?

19 A. It's on the State A. There is grass and weeds
20 growing in the middle of that pit.

21 Q. Okay, I'm not that familiar with *in situ*
22 remediation. Don't you -- You're right, you treat it and
23 you disk it sometimes, and --

24 A. Correct.

25 Q. -- you will commit to working with our

1 environmental group to see what can be done with --

2 A. Inside and around the battery proper, you know,
3 if you start disking, you know, your tanks are going to
4 settle, they're going to go out from under you. That would
5 call for abandoning the installation and starting over
6 again, removing all of that and disking it and starting
7 over again.

8 Q. What amount of money per month can Polaris commit
9 to cleaning up these sites?

10 A. We can commit \$2000 a month.

11 Q. Commencing immediately?

12 A. Yes.

13 Q. So I take it from your testimony that you believe
14 that the benefit of allowing you to pursue additional
15 reserves outweighs the cost of having contaminated sites at
16 present?

17 A. Tremendously, yes, because when you talk about
18 contaminated sites, you're talking about less than two to
19 three percent of the surface area. Out of a 320-acre
20 lease, for instance, there's less than three acres. That's
21 a one percent.

22 Q. Where else do you have operations, Mr. Payne?

23 A. In Crockett County, Texas, and Crane County,
24 Texas, and Nolan County, Texas, Upton County, Texas.

25 Q. Does the Railroad Commission have rules regarding

1 contamination at wellsites and remediation of those?

2 A. Yes, sir, they do. And they basically say that
3 the biodegradable situation is going to be good over the
4 long haul.

5 Q. Mr. Payne, why didn't you contact the OCD when
6 you received notice of that hearing, contact our Hobbs
7 Office and work out a plan with them to clean up these well
8 sites, rather than coming up here to Santa Fe?

9 A. Well, at the time I didn't think that there was
10 any option. And I contacted Mr. Bruce and he said that you
11 were on vacation. And I said, Well, should I go to Hobbs
12 or not? I haven't been to Hobbs since Jerry Sexton
13 retired.

14 And so you were gone approximately three or four
15 weeks. I don't remember the time schedule. But I didn't
16 know whether to go to Hobbs and -- you know, we're more
17 than -- We didn't intend for it to come to Santa Fe until
18 we were served with this notice.

19 Q. I have a return receipt from my letter sent to
20 you dated June 25th.

21 A. That's correct.

22 Q. And I state in that letter that, "At this point
23 you have the following options: Work with the Hobbs
24 District Office regarding a plan for bringing all its wells
25 into compliance", and, "Upon your request, with the Hobbs

1 Office's concurrence, we will then continue the hearing
2 date until the wells are brought into compliance, at which
3 time we will dismiss the case..."

4 I guess you didn't take that option, did you?

5 A. Yes, I took the option, but --

6 Q. You worked with the Hobbs Office to bring all
7 these wells into compliance?

8 A. We had been working with the Hobbs Office, and I
9 didn't -- I guess I overlooked that part of it.

10 Q. And how were you working with the Hobbs Office?

11 A. Well, I had made many trips up there to talk to
12 Jerry Sexton, and Jerry Sexton was always -- did me the
13 courtesy of calling before he was ever going to shut us
14 down, like this deal, you know, of sending out a notice
15 where this has been set for hearing, that we were going to
16 be demanded to plug 18 wells.

17 And of course you can imagine what kind of a
18 shock and -- you know, rigor mortis sets in because of the
19 enormity of that situation just coming all at one time.
20 You know, we were not called and told that you were going
21 to demand that these wells be plugged and abandoned.

22 And we had no forewarning, we had no time to get
23 ready and say, you know -- Jerry Sexton had only retired
24 about three weeks when we got this notice.

25 And, you know, I frankly didn't think that you

1 had intended to negotiate or give us any kind of a leeway
2 at all. I thought you were demanding that these wells were
3 going to be plugged.

4 Q. Mr. Payne, I'll point you to the June 25th letter
5 again, which is almost two months ago. Your first option
6 was working with the Hobbs District Office. If you worked
7 with the Hobbs District Office on a mutually agreeable
8 plan, we would continue this case till that plan was
9 completed, and then we would dismiss the case --

10 A. That's when I --

11 Q. -- isn't that correct?

12 A. That's when I contacted Jim and asked him what I
13 should do. And he said, well, I'll go talk to you. And he
14 came back and said you were on vacation and, you know, that
15 we should just leave it like it is until you got back.

16 Q. So my vacation prevented you from working with
17 the Hobbs District Office to bring these wells into
18 compliance? Is that what you're telling the Examiner?

19 A. I'm telling the Examiner that we took this
20 situation seriously, that, you know, it's -- it looks like
21 it's an attempt to put you out of business, in a business
22 that we've been in for 25 years, and we were given no
23 options other than to appear and defend ourselves, and
24 that's what we're trying to do, and to make our position
25 clear.

1 Because Jerry Sexton was made amply aware of what
2 we were trying to do in the Denton field, and he agreed.
3 You know, he agreed that there were -- that there was
4 tremendous reserves in the Denton field.

5 And, you know, the -- There's too much potential
6 and too much good stuff to allow the Denton field to be
7 left like it was. Of course, it's not going to be now,
8 because there have been two wells drilled that were
9 successful. And it will go on from here.

10 But I plead with you to leave our wells like they
11 are until we can finish getting the plans together for
12 recompleting in upper zones. There's the Abo and the Clear
13 Fork and there's a good Glorieta section in these wells.
14 And of course there's not going to be -- It's not uniformly
15 blanketed over the whole structure, but there's a
16 significant San Andres. And, you know, we want to pursue
17 all of those things.

18 Some of them we couldn't do back a few years ago
19 because they required a significant investment. And, you
20 know, today we have incorporated some other wells that were
21 in our package that won't require that kind of an
22 investment before these zones are tested. And, you know,
23 they will be tested, and it will be as a result of what
24 we've done in the Denton field.

25 And that is because we were allowed to stay and

1 produce what leases that we had and because we were not
2 foreclosed upon.

3 And I would plead with you to accept our
4 explanation, that we are attempting to do what we can do
5 within the rules of the Commission. And we're not a fly-
6 by-night operator, and we're not trying to get away with
7 anything. And we don't think that we're contaminating the
8 atmosphere and we're contaminating the groundwater.

9 You know, there's a lot of argument about how
10 much you can move hydrocarbons when they're laying on top
11 of the ground.

12 EXAMINER STOGNER: Mr. Carroll, have you got any
13 other questions?

14 MR. CARROLL: Yes, I think I have one more.

15 Q. (By Mr. Carroll) Mr. Payne, what's the amount of
16 fine you think the OCD should levy on Polaris if Polaris
17 does not spend the \$2000 it just pledged per month to clean
18 up its sites and provide the report on the extent of the
19 contamination by September 21st and then pledge to
20 remediate the contamination found through that
21 investigation? If Polaris doesn't follow through with the
22 agreement you just pledged, what should the OCD fine
23 Polaris?

24 A. Well, I would say zero because --

25 Q. And why?

1 A. -- we're doing the best that we can do. And if
2 you want to send us into bankruptcy by having us remediate
3 to the tune of \$100,000 a strip of Lea County land that's
4 50 feet wide and 300 feet land, that's bordering on the
5 ridiculous.

6 Q. Well, let's limit it to just what you pledged.
7 What if you ignore your agreement and you don't spend any
8 amount, let alone \$2000, on remediation in the next six
9 months? What should Polaris be fined?

10 A. My answer to you is zero, because we're doing the
11 best that we can do, I can assure you. Our profitability
12 has not been that great on these properties, and we're
13 looking forward to increasing our reserves and improving
14 our cash-flow position. And if our cash-flow position is
15 materially increased and improved, we will certainly do it
16 and give you a time schedule.

17 But as of this day, this 21st day of August, I
18 don't have that kind of guarantee, you know. Maybe you can
19 guarantee, but an oil producer that is subject to a lot of
20 variables, I don't think, has that capacity.

21 If I made a guarantee to you today --

22 Q. Mr. Payne, pardon me but I thought you just
23 pledged that you would spend at least \$2000 a month, and
24 you just said that within the last half hour.

25 A. I said I would, but you're dwelling on the --

1 what fine is going to be imposed if we don't --

2 Q. So there's no penalty for you following through
3 on that agreement.

4 And do you believe a fine should be assessed if
5 you don't provide the report next month on the extent of
6 the contamination at all these sites?

7 A. No, I don't.

8 MR. CARROLL: That's all the questions I have.

9 EXAMINER STOGNER: Mr. Bruce, redirect?

10 MR. BRUCE: No, sir.

11 EXAMINATION

12 BY EXAMINER STOGNER:

13 Q. How long has Polaris had the Denton field?

14 A. We bought Shell's interest in 1972 or 1973.

15 Q. And what percentage of the total production
16 attributed to the Denton field has Polaris been involved
17 in, on top of Shell's production?

18 A. On top of Shell's production?

19 Q. Yeah. Let's say 100 percent of the production
20 has come out of the Denton field. What percentage has
21 Polaris been involved in?

22 A. Oh, probably 15 percent. But that's a figure off
23 the top of my head.

24 Q. Have you had projects in this area on a tab for
25 that long, since 1972, as you mentioned?

1 A. No, sir, the projects have developed over the
2 period of years. We tried to put a secondary recovery
3 project together with Mobil in about 1986 or 1984, and
4 that's when most of the -- of my interest in the technique
5 that we were going to require to recover and when most of
6 the oil-in-place figures were delineated, was during that
7 time.

8 And of course, I had done quite a bit of work on
9 the Central Basin Platform and the Clear Fork, and that was
10 one of my goals when we purchased this package from Shell
11 in 1972.

12 Q. Has that goal been established yet?

13 A. What?

14 Q. Has that goal been --

15 A. No, sir, it hasn't, but we're --

16 Q. When is it going to be?

17 A. We think we're close.

18 Q. How long have you thought you were close, Mr.
19 Payne? Were you close in 1972, when the booms were on?
20 How about 1980? Were you close in 1980?

21 A. Yes, we were very close.

22 Q. I bet you were close in 1989, whenever we had a
23 resurge and during the Gulf War. Were you close then?

24 A. No, sir, we weren't. We had --

25 Q. Are you close now? How close are you?

1 A. (No response)

2 Q. Do you know the penalty of perjury? I ask that
3 question because I don't, but I thought you might know from
4 some past experience.

5 A. No, I've had no experience to -- I don't intend
6 to engage in perjury, but I don't --

7 Q. You went to the University of Texas for a
8 petroleum engineering degree?

9 A. Yes, sir.

10 Q. Uh-huh. Was it common practice to be taught to
11 store oil on the ground like this? Is that what the
12 University of Texas at the petroleum engineering --

13 A. No, sir.

14 Q. I didn't think so. Why do you do it?

15 A. We're not attempting to store oil on top of the
16 ground. We're trying to sell every drop that we can get to
17 the pipeline.

18 Q. Did you sell the oil that was on the ground?

19 A. No, sir, we were not able to.

20 Q. How much did you lose?

21 A. Over a period of years, I imagine we've lost 200
22 to 300 barrels.

23 Q. That's quite a significant amount to drop, isn't
24 it?

25 A. It is for a producer like we are.

1 Q. Uh-huh.

2 A. We -- but we're --

3 Q. You mentioned -- You used a term twice, "fly-by-
4 night". What is a fly-by-night organization? How would I
5 spot one? Describe to me a fly-by-night oil operator.

6 A. Well, somebody that's -- gets in and stays for
7 six weeks and leaves and...

8 Q. I've known some major companies that's come in
9 and been six months and then left, Fina for one. They
10 weren't here very long. Are they a fly-by-night? Should I
11 consider them a fly-by-night?

12 A. No, I wouldn't think so.

13 Q. All right.

14 A. They fulfill their obligations, and we intend to
15 fulfill our obligations.

16 Q. But they were only here six months. How --
17 What's some other parameters for a fly-by-night outfit?

18 A. Well, I don't have any specifics. However, the
19 oil business over the period of years has been full of
20 people that were not particularly responsible. And I don't
21 consider myself an irresponsible person.

22 EXAMINER STOGNER: Does anybody else have
23 anything further?

24 I don't think there's any need of any closing
25 arguments today; I'm not going to seek any.

1 At this time I'm going to take this matter --
2 I'll tell you what.

3 Mr. Bruce, would you get with Mr. Carroll and
4 come up with a plan of action pursuant to what Mr. Payne
5 talked about in his \$2000-a-month obligation?

6 MR. CARROLL: And the September 21st report?

7 EXAMINER STOGNER: Yes, September 21st report.

8 MR. BRUCE: I will get together with Mr. Carroll.

9 MR. CARROLL: Do you want that in a proposed
10 order?

11 EXAMINER STOGNER: Yes, I do.

12 You're a man of honor, Mr. Payne. I'm going to
13 hold you to that word. That's why I want a penalty put in
14 that provision, and hopefully it won't be applied.

15 With that, you have your assignment. It's been a
16 long --

17 MR. CARROLL: Mr. Examiner --

18 EXAMINER STOGNER: Uh-huh.

19 MR. CARROLL: -- so you're saying a fine should
20 be imposed if those conditions --

21 EXAMINER STOGNER: I want the fine to be in that
22 order if those obligations are not met.

23 MR. CARROLL: And the amount of the fine I'll
24 work out with Mr. Bruce --

25 EXAMINER STOGNER: Yes.

1 MR. CARROLL: -- and it will be in the proposed
2 order.

3 EXAMINER STOGNER: Yes.

4 And of course another provision in there that the
5 wells will be plugged and abandoned at that end of that
6 period if things are not done.

7 Okay?

8 MR. CARROLL: And -- Okay. And also provide for
9 TA?

10 EXAMINER STOGNER: Well, that stands to reason
11 because there's rules and regulations in this book that
12 have to be abided by.

13 MR. CARROLL: Yes, Mr. Examiner.

14 EXAMINER STOGNER: Okay. With that, hearing
15 adjourned.

16 (Thereupon, these proceedings were concluded at
17 4:02 p.m.)

18 * * *

19
20
21 I do hereby certify that the foregoing is
22 a complete record of the proceedings in
the Examiner hearing of Case No. 11812,
heard by me on 21 August 19 97.

23  Examiner
24 Oil Conservation Division
25

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL August 27th, 1997.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 1998