

NEW MEXICO OIL CONSERVATION DIVISION

EXAMINER HEARING

SANTA FE, NEW MEXICO

Hearing Date AUGUST 9, 2001 Time 8:15 A.M.

Time 8:15 A.M.

NAME	REPRESENTING	LOCATION
W. Kellahin	Kellahin + Kellahin	Santa Fe
Mike Feldewert	Holland + Hart + and Campbell + Carr	Santa Fe
James B. Bue	—	Santa Fe
Mich. Muhlinghaus	Devon Energy	OKC, OK
Joe + Nellie Helm		
Scott Germann	Nadel + Gussman Permian LLC	MIDLAND TX
Sam Jolliffe	"	"
William J. McCaw	SELF	Albuquerque, NM

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. 12,704

APPLICATION OF TIFFANY GAS COMPANY)
APPEALING ORDER ASSESSING A CIVIL)
PENALTY, SAN JUAN COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

August 9th, 2001

Santa Fe, New Mexico

01 AUG 23 AM 7:52

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, August 9th, 2001, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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 Examiner Hearing
 CASE NO. 12,704

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* * *

A P P E A R A N C E S

FOR THE DIVISION:

DAVID BROOKS
Attorney at Law
Energy, Minerals and Natural Resources Department
Assistant General Counsel
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR TIFFANY GAS COMPANY:

BURR & COOLEY
2901 East 20th Street
Farmington, New Mexico 87402
By: JOEL BURR (Present by telephone)

* * *

1 WHEREUPON, the following proceedings were had at
2 8:25 a.m.:

3 EXAMINER CATANACH: Call the hearing to order
4 this morning for Docket Number 26-06. I will call the
5 continuances and dismissals at this time.

6 (Off the record)

7 EXAMINER CATANACH: At this time I will call Case
8 12,704, which is the -- Maybe we should get Mr. Burr on the
9 phone before I call the case.

10 (Off the record)

11 EXAMINER CATANACH: With that, we'll proceed with
12 the case. Let me call the case, Case 12,704, which is the
13 Application of Tiffany Gas Company appealing order
14 assessing a civil penalty, San Juan County, New Mexico.

15 Call for appearances in this case.

16 MR. BROOKS: May it please the Examiner, I'm
17 David Brooks with the Department of Energy, Minerals and
18 Natural Resources appearing on behalf of the New Mexico Oil
19 Conservation Division.

20 EXAMINER CATANACH: Call for additional
21 appearances.

22 MR. BURR: Mr. Examiner, my name is Joel Burr,
23 J-o-e-l B-u-r-r. I am a licensed attorney in the State of
24 New Mexico. My offices are at 2901 East 20th Street,
25 Farmington, New Mexico, and I appear on behalf of the

1 Respondent, Tiffany Gas Company.

2 EXAMINER CATANACH: Okay.

3 MR. BROOKS: I have one witness, Mr. Examiner.

4 EXAMINER CATANACH: Mr. Burr, do you have any
5 witnesses today?

6 MR. BURR: Yes, I have one witness, depending --
7 on direct. His name is Jimmy Hicks, who is an officer at
8 Hicks Oil and Gas Company, and Hicks Oil and Gas was
9 contracted by Tiffany to pump the subject well and to
10 submit all the reports required in connection with
11 operating that well. And we have filed an affidavit of Mr.
12 Hicks with the exhibits, which is part of our appeal, and
13 it's in the record.

14 And we would hope in good faith that perhaps with
15 the affidavit we would be able to -- it might form the
16 basis of some type of equitable settlement between the
17 staff, the Division and the Respondent.

18 But that hasn't occurred, so in the interest of
19 time I would like to introduce that affidavit with the
20 exhibits into evidence, in lieu of taking the testimony on
21 direct of Mr. Hicks. All of this, of course, would be
22 subject to the right of Mr. Brooks to cross-examine Mr.
23 Hicks concerning the affidavit.

24 EXAMINER CATANACH: Okay. Mr. Brooks, have you
25 examined the affidavit?

1 MR. BROOKS: I have.

2 EXAMINER CATANACH: Do you have a copy of that?

3 MR. BROOKS: No, I don't have a copy. I have
4 examined the one that's in the case file.

5 EXAMINER CATANACH: Okay. Do you need a copy for
6 any purpose today?

7 MR. BROOKS: I don't think so for the hearing, if
8 can refer to the copy from the case file if it's necessary.

9 EXAMINER CATANACH: Okay. So as I understand it,
10 Mr. Burr, you would just submit your affidavit as evidence
11 in this case, and you would not have Mr. Hicks testify; is
12 that correct?

13 MR. BURR: Yes, I would save the time of the
14 Commission in taking the direct testimony of Mr. Hicks and
15 just rely on his affidavit and the exhibits attached
16 thereto, and would offer them into evidence. Mr. Brooks is
17 free to cross-examine Mr. Hicks. It appears to me this
18 would save some time.

19 EXAMINER CATANACH: Okay, we will admit Mr.
20 Hicks' affidavit as evidence in this case. I don't know if
21 you want to -- Mr. Brooks, I don't know if you want to wait
22 to cross-examine Mr. Hicks at a later time or --

23 MR. BROOKS: Yes, sir, I would like to put on the
24 Division's case first.

25 EXAMINER CATANACH: Okay. Is that okay, Mr.

1 Burr?

2 MR. BURR: I missed that. What did Mr. Brooks
3 want to do?

4 EXAMINER CATANACH: Mr. Brooks is going to put on
5 the Division witness at this time.

6 MR. BURR: Okay. All right, so if the affidavit
7 is accepted into evidence, together with the exhibits, then
8 we will rest our case and he may proceed with the
9 Commission case.

10 EXAMINER CATANACH: And you understand we may
11 call Mr. Hicks for cross-examination at a later time.

12 MR. BURR: Yes.

13 EXAMINER CATANACH: Okay. Can you hear
14 everything okay, Mr. Burr?

15 MR. BURR: I hear you just fine, and I hear Mr.
16 Brooks. I only missed one statement he made.

17 EXAMINER CATANACH: Okay, just want to make sure.
18 Will the witness please stand to be sworn in at
19 this time?

20 (Thereupon, the witness was sworn.)

21 MR. BROOKS: Okay, I have the exhibits, tender
22 the originals to the Examiner. The pictures are Xerox
23 copies on the others. We actually do have additional
24 copies of the pictures, however I wasn't aware of that when
25 I marked the exhibits, so the additional color copies are

1 not marked.

2 At this time, if it please the Examiner, the
3 Division will call Bruce Martin.

4 EXAMINER CATANACH: Okay.

5 MR. BROOKS: You've already been sworn. If
6 you'll take the witness stand --

7 EXAMINER CATANACH: Mr. Martin, why don't you sit
8 up here?

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

12 DIRECT EXAMINATION

13 BY MR. BROOKS:

14 Q. Mr. Martin, will you state your name for the
15 record, please?

16 A. Yes, Bruce Martin. I'm Deputy Oil and Gas
17 Inspector out of the Aztec District Office for the OCD.

18 Q. And do you reside in San Juan County?

19 A. Yes, sir, I do.

20 Q. Mr. Martin, are you familiar with Tiffany's
21 Navajo Number 3 well that -- I'm sorry, Navajo Number 18
22 well that is the subject of this proceeding?

23 A. Yes, sir.

24 Q. And I want to show you the exhibits here, Exhibit
25 Number 1, and would you state what that is, please?

1 A. Exhibit 1 is an application to drill the said
2 Navajo Tribal 18 Number 3 well. Their intent was to drill
3 surface hole with cable tools.

4 Q. Okay, before you go into what's in the exhibit,
5 was this Exhibit 1 a copy of an official record from the
6 well file maintained in the Aztec office of the OCD?

7 A. Yes, sir, it is.

8 Q. Okay. And what does that reflect about the
9 manner in which this well was intended to be drilled?

10 A. It indicates that they drilled a -- they set
11 7-inch casing at 96 feet, they went in and drilled a 5-5/8
12 hole to 825 feet and ran 4-1/2-inch casing.

13 Q. Okay. And I will now show you what's been marked
14 as Exhibit Number 2 and ask you to identify it.

15 A. This is a well completion report received by our
16 office and also out of our well file, and it reiterates
17 everything that the APD had, with the exception that they
18 have an open hole from 816 to 824 feet.

19 Q. And is this again a copy of a document that is
20 maintained in the official files of the Aztec Office of the
21 OCD?

22 A. Yes, sir.

23 Q. Okay. Now I will show you what has been marked
24 Exhibit Number 3 and ask you to identify it.

25 A. This is a sundry notice on the same well. It

1 indicates the spudded the well 6-18 of 1968. The drilled
2 an 8-inch hole to 96 feet, set three joints of 7-inch pipe,
3 cemented with ten sacks of cement. They went in and
4 drilled a 5-5/8 hole to 816 feet, ran 26 joints of 4-1/2-
5 inch casing, cemented with 50 sacks of cement, and they
6 drilled a 4-3/4-inch hole with air to 824 feet.

7 Q. Okay. And is Exhibit Number 3 also a copy of an
8 official record maintained in the Aztec Office of the OCD?

9 A. Yes, sir.

10 Q. Now, there is no Exhibit 4, because the document
11 that was marked is not going to be offered, so I will show
12 you what's been marked as Exhibit Number 5 and ask if you
13 can identify it.

14 A. Yes, this is a sundry notice dated 8-25 of 1988.
15 The comments are, "Unable to produce in paying quantities
16 under existing market conditions" and that they have
17 "removed the pump jack do to [sic]" vandalism.

18 Q. Okay. Well, we'll get into the significance of
19 that statement in a little bit, but once again is Exhibit
20 Number 5 a copy of an official document that's maintained
21 in the Aztec Office of the OCD?

22 A. Yes, it is.

23 Q. I have so far been asking you only about facts,
24 so I haven't gone into your experience, but could you
25 briefly state your experience in working with oilfield

1 equipment and gas wells?

2 A. Yes, I've got a chemistry degree from Colorado
3 State University. I worked 19 years in management with
4 City of Farmington; I worked two years as an oil and gas
5 production operator for Holcomb Oil and Gas in Farmington,
6 New Mexico; I worked four years for Williams Field Service
7 at an amine treating plant in Bloomfield, New Mexico; and
8 for the past three years I've been an OCD inspector.

9 MR. BROOKS: Okay, Mr. Examiner, I ask that the
10 witness's credentials as an expert in oilfield operations
11 be accepted.

12 EXAMINER CATANACH: Any objection, Mr. Burr?

13 MR. BURR: No.

14 EXAMINER CATANACH: Mr. Martin is considered
15 qualified.

16 MR. BROOKS: Very good. Thank you, Mr. Examiner.

17 Q. (By Mr. Brooks) Would you explain to the
18 Examiner what -- Well, for the purpose of the record,
19 because I'm sure the Examiner understands it very well,
20 much better than I do, but would you explain what the
21 purpose of a Bradenhead test is?

22 A. Yes, the purpose of the Bradenhead test is to
23 assure the mechanical integrity of the well casing, to
24 prevent the waste of oil and gas and prevent contamination
25 of the environment and protect health.

1 Q. And what physically is a Bradenhead test?

2 A. The Bradenhead test is a valve on the annulus of
3 the surface casing and the casing string.

4 Q. And if the well were correctly equipped, the way
5 wells normally are, that annulus would be closed off with a
6 valve at the top of the casing --

7 A. Yes, sir, that's correct.

8 Q. -- is that correct?

9 And what does the test person do when they take a
10 Bradenhead test?

11 A. The requirements of the OCD is that the well be
12 shut in 24 hours prior to the test, that the valve be dug
13 up and the operation of the valves inspected to make sure
14 they're operable, and after that 24-hour shut-in the
15 operator will attach a pressure gauge to the Bradenhead
16 valve, open it up, note any pressures or fluids and note it
17 on the Bradenhead test report. If there's any fluid, then
18 the test will continue for 30 minutes. All pressures,
19 casing strings, will be noted on the Bradenhead test
20 report.

21 Q. And is this a routine procedure that is required
22 to be conducted from time to time by the regulations of the
23 New Mexico Oil and Gas -- Oil Conservation Division?

24 A. Yes, sir, OCD rules require that this be
25 performed every three years, whether or not the well is

1 producing or not.

2 Q. Okay. In addition to that I'm going to show you
3 what's been marked as Exhibit Number 6. I ask you to
4 identify it.

5 A. This is a memorandum sent by Charlie T. Perrin,
6 Deputy Oil and Gas Inspector for District 3. It's a
7 schedule for the Bradenhead tests that are required
8 December -- the date of this memorandum is December 15th,
9 1999.

10 It indicates the method by which the Bradenhead
11 test will be conducted, spelling out basically what I just
12 told you, indicate whether the well is shut in or
13 producing, record pressures measured on the tubing in each
14 casing string, including the intermediate casing, using a
15 deadweight test or a calibrated pressure gauge, open valve
16 to atmosphere, record pressures at each five-minute
17 interval, describe any discharge.

18 And at the bottom of page 2 it says, "All buried
19 valves MUST be dug out and checked BEFORE testing begins."

20 Q. Okay, was Exhibit Number 6 disseminated to all of
21 the operators in the San Juan area of which the OCD has
22 records?

23 A. Yes, sir.

24 Q. But that was not done by certified mail, was it?

25 A. I don't believe it was.

1 Q. Okay, so we don't have a receipt to prove that
2 Tiffany actually received it?

3 A. No, sir.

4 Q. Okay. I'm now going to show you what's been
5 marked as Exhibit Number 7, ask you to identify it.

6 A. This is the actual Bradenhead test report
7 submitted on the day of the test, 6-13 of 2000, and our
8 office received it, it appears, on June 23rd, 2000, signed
9 by agent Jim Hicks. In this test Mr. Hicks notes the
10 pressures that he obtained when he did the Bradenhead test.

11 Q. Okay, and in your experience as an examiner for
12 the OCD, would the receipt of that document cause you to
13 conclude that Mr. Hicks or someone acting under his
14 direction had gone out to the well, dug out the Bradenhead
15 valve, opened it and conducted the test --

16 A. Yes, sir.

17 Q. -- as prescribed?

18 A. Yes, sir, that's correct.

19 Q. Does his signature on that document reflect, in
20 your opinion, your familiarity with OCD records, does that
21 reflect a certification that that was, in fact, done?

22 A. Yes, sir.

23 Q. Now, did you have occasion to examine the
24 location at the Navajo Number 18 sometime within a short
25 period of time after June the 23rd of 2000?

1 A. Yes, sir, on July 18th of 2000 I had occasion to
2 visit the Tiffany Gas Navajo 18 Well Number 3. I took a
3 copy of the Bradenhead test with me to verify the accuracy
4 of the test. Please note that the well indicates that it
5 was a producing well. He indicated he obtained a pressure
6 of 20 pounds on the tubing, the intermediate casing string
7 was not applicable, he obtained a pressure of 45 pounds on
8 the casing string, and he obtained a Bradenhead pressure of
9 zero.

10 Also note below the "intermediate flowed", he's
11 got an arrow drawn through it that says not applicable.
12 Under the "Bradenhead flowed" he's got checked "nothing".

13 Upon examination of the well, I could not locate
14 a Bradenhead valve. A Bradenhead pressure of zero
15 indicates to me that he's done the test correctly, he's put
16 the gauge on the Bradenhead valve, opened it, he obtained
17 zero pressure, he took the gauge off, opened the valve, and
18 it had nothing on it.

19 Also, he indicates he had a tubing pressure of 20
20 pounds, and if you'll examine your photographs, which have
21 not --

22 Q. -- been offered yet.

23 A. -- been offered yet, do you want to --

24 Q. Well, we will. Let me first ask you, what is the
25 significance of the different casing pressures and tubing

1 pressures shown on the -- reflected on the exhibit?

2 A. Okay, the tubing pressure and the casing pressure
3 indicate pressures on those casing strings located within
4 the wellbore, and this particular Bradenhead test would
5 indicate that there were two production strings inside the
6 surface casing bore.

7 Q. Okay. If -- Assuming that no test was actually
8 taken, would you say that somebody had to show a certain
9 amount of imagination in order to make up those figures and
10 put them on that report?

11 MR. BURR: Objection --

12 THE WITNESS: Yes.

13 MR. BURR: -- we do not need that description
14 from counsel.

15 EXAMINER CATANACH: Mr. Brooks, can you rephrase
16 that question?

17 MR. BURR: The Hearing Examiner will have to
18 conclude --

19 EXAMINER CATANACH: I've asked Mr. Brooks to
20 rephrase his question.

21 Q. (By Mr. Brooks) Okay, I will rephrase the
22 question.

23 Mr. Martin, is there any way that a person could
24 have come to the conclusions that those pressures actually
25 existed on the casing and the tubing as specified in that

1 report without taking a test?

2 A. No, sir.

3 MR. BURR: Objection, calls for a conclusion of
4 the witness. There hasn't been sufficient predicate laid
5 that he is an expert on psychiatry as to what somebody
6 would conclude and what somebody would not conclude.

7 EXAMINER CATANACH: Mr. Burr, I'm going to allow
8 that question.

9 Q. (By Mr. Brooks) Okay, go ahead and answer the
10 question, please, Mr. Martin.

11 A. No, sir, I don't believe so. Upon examination of
12 the photographs, please note that there is no tubing
13 string, so --

14 Q. We'll go ahead to the photographs now, Mr.
15 Martin. I'm going to show you photographs that have been
16 marked as Exhibits 8, 9, 10 and 11 and ask you if you can
17 identify them.

18 A. Yes, sir, these are photographs that I took on
19 four separate occasions upon visiting the Tiffany Gas
20 Navajo 18 Number 3.

21 Q. And are there dates on those photographs?

22 A. Yes, sir, there is.

23 Q. And would you read those dates, please, giving
24 the exhibit number and the date?

25 A. Exhibit Number 8 is dated 7-18 of 2000, Exhibit

1 Number 9 is dated 8-17 of 2000, Exhibit Number 10 is dated
2 8-18 of 2000, and Exhibit 11 is dated 8-23 of 2000.

3 Q. Are the dates that appear on the originals of
4 those photographs the dates on which those photographs were
5 taken?

6 A. Yes, sir, these dates are imprinted with -- We've
7 got a digital camera, the dates are imprinted by the camera
8 and they also match the dates that I was -- visited the
9 site.

10 Q. And did you personally take those photographs?

11 A. Yes, sir, I did.

12 Q. And is each of those photographs, Exhibits 8, 9,
13 10 and 11, a true and accurate representation of the
14 equipment on the Navajo 18 site --

15 A. Yes --

16 Q. -- at the time that you examined it?

17 A. Yes, sir.

18 Q. Okay, could you characterize what those
19 photographs show?

20 A. Okay, Exhibit Number 8 is the initial visit I
21 made to the site on 7-18 of 2000, and it shows the wellbore
22 in question. My initial field trip report was that the
23 Bradenhead valve was not plumb to the surface and that the
24 well sign has the wrong operator name on it.

25 At that time I contacted Tiffany Oil and Gas, and

1 they said they would correct the sign, and --

2 Q. Which they subsequently did?

3 A. Which they subsequently did, yes, sir. I
4 informed them that we needed to retest the Bradenhead, and
5 Mr. Hicks was out of the office -- apparently he was in
6 Colorado -- and I was given the phone number of a Mr.
7 Wendell Webb, who I contacted. He said he would go out
8 there and attempt to locate the Bradenhead valve.

9 Exhibit Number 9, dated 8-17 of 2000, I went out
10 and the note I put on my trip report was, I checked the
11 progress. The Tiffany 18 Number 3 well sign is okay, and
12 he's digging up the Bradenhead valve.

13 Exhibit Number 10, dated 8-18 of 2000, I talked
14 to Mr. Wendell Webb with Tiffany, and he's indicated that
15 the dirt was packed so hard around the casing string that
16 he was having trouble digging it out and that he was going
17 to get some water and bring it back the same day and he was
18 going to dig some more.

19 He called me back and said that he was unable to
20 locate a Bradenhead valve.

21 The final exhibit, Number 11, dated 8-23-2000,
22 just shows basically the same condition of the valve as
23 when I was there on the previous week before that, on the
24 17th.

25 Q. Do any of those exhibits, 8 through 11, reflect

1 that the top of the casing was ever reached in their
2 digging around there, top of the 7-inch casing?

3 A. No, sir.

4 Q. Does the condition of the dirt around the top of
5 the well indicate anything to you about the probability
6 that there was a Bradenhead test actually conducted on that
7 well in June of 2000?

8 A. No, sir.

9 MR. BURR: Objection, speculation.

10 MR. BROOKS: Well, I believe the witness answered
11 that it did not indicate anything; is that --

12 THE WITNESS: No, sir, it did not.

13 Q. (By Mr. Brooks) Okay. Is there any indication
14 that you found on the site that led you to conclude that
15 there was not a Bradenhead test taken on June 23rd?

16 A. Yes, sir, there was no Bradenhead valve. Also
17 there was no tubing valve, so a pressure on the tubing
18 could not have been obtained. Yet there was one on the
19 test, there's an indication that he obtained a 20-pound
20 test on the tubing string.

21 Q. Okay, I call your attention to Exhibit Number 5.
22 I believe that was the one that had the observation about
23 the pumpjack?

24 A. Yes.

25 Q. Could you tell me what, in your opinion, is

1 significant about that statement about the pumpjack?

2 A. Well, it appears to be that at one time there was
3 a pumpjack on location, which would have indicated that
4 there was another rod string and a pump downhole, and at
5 some time it was removed.

6 Q. Okay. In what sense is that relevant to the
7 present situation? Or is it?

8 A. I don't believe it is.

9 MR. BROOKS: Okay, very good.

10 We tender Exhibits Numbers 1, 2, 3, 5, 6, 7, 8,
11 9, 10 and 11, Mr. Examiner.

12 MR. BURR: Mr. Examiner, I have no objection to
13 the exhibits, which are the records of the Division on file
14 with the Division. I withhold my acceptance of the
15 introduction of the exhibits which are the photographs till
16 I've had an opportunity to question the witness on voir
17 dire with respect to those pictures. I do not have copies
18 of them that I can clearly see here, so I'd like to ask him
19 a few questions before I would be ready to --

20 MR. BROOKS: Okay, well, I'm going to pass the
21 witness, so it will not be necessary to take them on voir
22 dire.

23 EXAMINER CATANACH: All right, let me admit
24 Exhibits 1, 2, 3, 5, 6 and 7 at this time, and we will hold
25 off on admitting the other exhibits until you've had a

1 chance to cross-examine the witness, Mr. Burr.

2 MR. BROOKS: Very good, I'll pass the witness.

3 EXAMINER CATANACH: Go ahead, Mr. Burr.

4 CROSS-EXAMINATION

5 BY MR. BURR:

6 Q. Okay, Mr. Martin, I would like for you to look at
7 Respondent's Exhibit 2 -- G-1, -2, -3 and -4, which are in
8 the file, which purport to be colored pictures --

9 EXAMINER CATANACH: Hold on, Mr. Burr. Mr. Burr,
10 could you hold on for a second?

11 MR. BURR: Yes.

12 EXAMINER CATANACH: Please. All right, Mr. Burr,
13 you may proceed.

14 Q. (By Mr. Burr) Okay, I would like for you to look
15 at Exhibits G, G-1, G-2 and G-3, which purport to be
16 pictures of the well location and well sign taken by
17 Respondent and filed in this case. Would you please get
18 those and look at them?

19 A. Yes, sir, I've got them in front of me.

20 Q. All right, I'd like for you to tell me what
21 differences there are between those pictures and the
22 pictures that you took, that I am not able to read.

23 A. Okay, Exhibit G-1 is identical to our Exhibit
24 Number 9. It shows the Tiffany Gas Company sign has
25 replaced the previous well sign, and it is -- it's at a

1 different angle, but the photo is essentially exactly the
2 same.

3 Q. Okay, let's just stop right there. Now, with
4 respect to that well sign, that well sign is identical with
5 the well sign that you found on location --

6 A. Yes, sir.

7 Q. -- except -- you say except for the name of the
8 operator?

9 A. When I was there on 7-18 of 2000, the well sign
10 had an operator of J.M. Richardson.

11 Q. Okay. All right. And what makes you -- Do you
12 have a picture that shows the Richardson --

13 A. Yes, sir, I do. I do.

14 Q. And one of the pictures that you want to
15 introduce as evidence shows Richardson as the operator?

16 A. Yes, sir, it's Exhibit Number 8.

17 Q. Okay. Let's go then to Exhibit G, Respondent's
18 Exhibit G --

19 A. G what?

20 Q. -- a picture that --

21 A. G -- G which number?

22 Q. It's just G, and then there's G-1, G-2 and G-3.

23 A. Okay, I -- Well, I've just got 1 through 4. Do
24 you have G?

25 Q. You don't have Exhibit G-1?

1 A. I've got G-1 through 4 but not just G.

2 Q. Okay, does G-1 purport to be the wellhead with a
3 green valve handle?

4 A. Right, and it shows the Tiffany Gas Company sign
5 in the foreground?

6 Q. No, that's G-1.

7 A. Yeah, that's all I have. I've got G-1 through
8 G-4.

9 Q. Okay, do any of those pictures differ from the
10 pictures you took in any material respect?

11 A. No, sir.

12 Q. Did the pictures you took -- were they before or
13 after the hole was dug out around the wellhead?

14 A. The sign that has the Richardson Oil Company on
15 it was taken prior to any digging.

16 Q. Okay, and the other pictures are taken after a
17 cellar was dug around the wellhead?

18 A. Yes, sir.

19 Q. Okay. All right, in looking at those pictures,
20 then, can you see a Bradenhead?

21 A. No, sir.

22 Q. All right. So I gather, then, that you will
23 agree with me that there is no Bradenhead on this well.

24 A. After looking at it after they've dug it up, I
25 will agree.

1 Q. Okay. Do you see a conductor pipe?

2 A. Yes, sir.

3 Q. Okay, and do you see the production string inside
4 the conductor pipe?

5 A. Yes, sir, I do.

6 Q. Do you see a valve on the production string?

7 A. No.

8 Q. What is the green handle?

9 A. That's the ball valve on the casing string.

10 Q. Okay, I'm calling the production string the
11 casing string.

12 A. Okay.

13 Q. So there is a valve on it, then, isn't there?

14 A. That's correct.

15 Q. Okay, do you know the size of that valve --

16 A. It appears to be --

17 Q. -- the pressures it was intended to withstand?

18 A. It appears to be a 2-inch valve, and I don't know
19 what the working pressure is.

20 Q. Would you deny that it's a 2000-pound ball valve?

21 A. No, sir.

22 Q. Okay. All right, in looking at these pictures,
23 these colored pictures, do you maintain that the well is
24 all corroded up and incapable of producing?

25 A. Are you done?

1 Q. Yeah, how would you describe -- Strike that
2 previous question. How would you describe the condition of
3 that wellhead and valve?

4 A. Well, it looks like a typical wellhead that's
5 been buried for several years. I didn't try the operation
6 of the ball valve to see if it was operable or not.

7 Q. Uh-huh. Just a minute, I'm going to try to find
8 something in my file here.

9 Okay, in paragraph 6 of the Commission's order it
10 is alleged that the well was -- let's see, that on July the
11 18th Bruce Martin inspected the well in question and found
12 the wellhead in a corroded and unusable condition.

13 After looking at these pictures, do you still
14 maintain that that wellhead is in a corroded and unusable
15 condition?

16 A. I did not have anything to do with the wording of
17 that. I read you what I had in my field notes. I didn't
18 indicate anything about corrosion.

19 Q. Okay. Well then, looking at it, what is your
20 testimony? Is it corroded and in an unusable condition?

21 A. Again, I don't know the condition of the valve.
22 It's not our -- It's not the OCD's procedure to go
23 operating valves that don't belong to us.

24 Q. Well, does the wellhead appear any different from
25 any other wellhead that's been in the area, been in service

1 for 10 or 12 years?

2 A. No, sir.

3 Q. Is it corroded?

4 A. Not any more than any of the others, I would say.

5 Q. Okay, let's go on, then, to your examination of
6 the wellhead at the time. If there is no Bradenhead on
7 this well, how is Mr. Hicks supposed to conduct a
8 Bradenhead test?

9 A. The value that he put on the Bradenhead is zero.
10 Zero indicates to me that he did do a test and he obtained
11 a pressure of zero. You'll note on the Bradenhead test
12 report that under the intermediate he put N/A, not
13 applicable, however on the Bradenhead he put zero. Why
14 would he not put N/A if there was no Bradenhead valve?

15 Q. Well, we'll have to ask him that in a minute.
16 But if there is clearly no Bradenhead on this well -- is
17 that correct?

18 A. Well, that's unable to determine without digging
19 it up, which they did after I went out and did my initial
20 inspection.

21 Q. But since they dug it up, you were able to
22 determine that there was no Bradenhead on this well?

23 A. That appears to be the case, yes.

24 Q. And isn't it the case that there are numerous
25 wells in the Basin in which there is no Bradenhead?

1 A. That's probably true, but I don't know.
2 Speculation on my part.

3 Q. You have not been advised by other operators that
4 there are no Bradenheads on some of their wells?

5 A. Yes, I have.

6 Q. You have been advised?

7 A. Yes.

8 Q. So you do know, then, there are other wells in
9 the area that do not have Bradenheads.

10 A. But those have been dug up --

11 Q. Okay.

12 A. -- and shown to be -- they didn't have
13 Bradenheads.

14 Q. My question is, are there other wells in the
15 Basin in a similar condition as the Tiffany gas well, which
16 is the subject of these proceedings, in that they do not
17 have Bradenheads?

18 A. I imagine that is the case.

19 Q. Well, do you know, or do you imagine?

20 A. Well, there's 22,000 wells that we've got out
21 there, and I imagine that of those 22,000 there's probably
22 several that don't have Bradenheads. But without going
23 through the well files, I have no idea.

24 Q. Have you ever witnessed any other wellhead in the
25 area, other than the one in question, that did not have a

1 Bradenhead?

2 A. Yes, sir, I have.

3 Q. You have or you haven't?

4 A. I have, yes, sir.

5 Q. You have. So you are aware of other wells in the
6 area that do not have Bradenheads?

7 A. That's correct, but on the Bradenhead test report
8 they put N/A; they didn't put down a pressure.

9 Q. Have you had any conversations with Mr. Hicks
10 prior to his submitting the report in question?

11 A. No, sir.

12 Q. You have never talked to Mr. Hicks about this
13 particular well and the fact that there was no Bradenhead
14 on this well? Is that your testimony?

15 A. I do recall calling him and asking him about
16 witnessing some wells, yes.

17 Q. Okay. And at that time he told you there's no
18 Bradenhead on many of these wells that you were going to
19 witness?

20 A. I don't recall that.

21 Q. You just recall a conversation with Mr. Hicks,
22 but you don't recall the subject of it?

23 A. I don't recall him saying that there's no
24 Bradenhead tests -- or Bradenhead valves on some of the
25 wells.

1 Q. Well, why did he call you for?

2 A. I called him, to ask him when he was going to be
3 doing some tests so that I could witness them.

4 Q. So the subject of your call was Bradenhead tests,
5 was it not?

6 A. That's correct.

7 Q. But you don't recall the substance of those
8 conversations with Mr. Hicks?

9 A. Only in the fact that I called him to ask him
10 when he would be conducting his Bradenhead tests so that I
11 could arrange my schedule to witness the tests.

12 Q. And you deny that at any time he mentioned to you
13 that some of the wells that you had call for Bradenhead
14 tests on did not have a Bradenhead?

15 A. I don't recall that.

16 Q. So you can't say whether he told you that or not;
17 is that correct? Or you definitely remember he didn't tell
18 you --

19 A. I do not remember any conversation about the lack
20 of Bradenheads on any of his wells.

21 Q. Okay. Did you subsequently find out that there
22 wasn't a Bradenhead on this well?

23 A. I'm sorry?

24 Q. You subsequently found out that there wasn't a
25 Bradenhead on this well, did you not?

1 A. Yes, sir.

2 Q. Okay. Did you talk to Mr. Hicks after that fact?

3 A. No, I did not.

4 Q. Did anyone in the Division talk to Mr. Hicks,
5 that you were aware of, about this well not having a
6 Bradenhead?

7 A. I don't believe anybody's talked to him about it.
8 My conversations were with Mr. Wendell Webb, who I called
9 several times.

10 Q. Did he tell you there wasn't a Bradenhead on this
11 well?

12 A. I asked him what he knew about that and he said
13 that Jim Hicks did all the Bradenhead testing and he didn't
14 know anything about it.

15 Q. Who is Mr. Perrin? Do you know that person?

16 A. Yes, sir, he's my supervisor.

17 Q. Have you had any conversations with him about
18 this well and the Bradenhead test that was filed?

19 A. Only copies of the reports that I've sent to him
20 regarding the -- what I've found, and also photographs that
21 I've taken.

22 Q. Did you ever tell him that you'd had a
23 conversation with Mr. Hicks about this well and about
24 taking a Bradenhead test?

25 A. The only conversation I had was the fact that I

1 had visited the well after the Bradenhead test was
2 submitted, and I could not find a Bradenhead valve.

3 Q. So Mr. Perrin knew that there wasn't a Bradenhead
4 on this particular well?

5 A. Yes, sir. In fact, he's the one that wanted me
6 to call and reschedule a test that I could witness.

7 Q. Do you know whether Mr. Perrin ever talked to Mr.
8 Hicks about there not being a Bradenhead on this well?

9 A. No, sir.

10 Q. You never had any conversations with him about
11 that?

12 A. No, sir.

13 Q. After you examined the well in question, did you
14 arrive at any conclusion as to whether or not the well was
15 a danger to the environment?

16 A. No, sir.

17 Q. Is it or isn't it?

18 A. I would say that it's not.

19 Q. All right. Did you notice any waste of petroleum
20 or natural gas from this wellhead?

21 A. I did notice a small drip. There's a half-inch
22 valve on the bottom of that just before the check valve,
23 and there was a small drip underneath there, but that's all
24 I noticed. And I think you can probably see it -- yes you
25 can -- on our photograph, when I did the initial inspection

1 on 7-18, you can see a small stain underneath the valve.

2 Q. Did you advise Tiffany that this should be
3 cleaned up?

4 A. No, sir.

5 Q. So you didn't consider it a threat to the surface
6 or the environment?

7 A. No, sir.

8 Q. Is this a pumping well or a flowing well?

9 A. It's a flowing well.

10 Q. Okay, so a pumpjack isn't necessary in a flowing
11 well, is it?

12 A. That's correct.

13 Q. Okay. Now, I assume that you witness hundreds of
14 Bradenhead tests during the year; is that correct?

15 A. Yes, sir.

16 Q. And are records kept of these Bradenhead tests --

17 A. Yes, sir.

18 Q. -- in the office?

19 A. Yes, sir.

20 Q. How many do you suppose there are? Is it in the
21 thousands or in the hundreds?

22 A. Approximately 22,000.

23 Q. How long are these records kept?

24 A. We keep -- They're on a three-year rotation, so
25 that every three years there's approximately 7000 wells

1 tested, and we keep the last five years, and I believe we
2 sent a copy to Santa Fe, which I'm sure they've got boxes
3 somewhere that go back farther than that.

4 Q. So you would have records of all Bradenhead tests
5 in the Basin for the last five years?

6 A. Yes, sir.

7 Q. In your office in Aztec?

8 A. Yes, sir.

9 Q. And what part of the office are they kept in?
10 Are they kept in your office or --

11 A. Yes, sir.

12 Q. -- are they kept in the well files? Where are
13 they kept?

14 A. They're kept in my office.

15 Q. In your personal office?

16 A. I share with another inspector.

17 Q. How many file cabinets of records would you say
18 there are in your office?

19 A. Just -- I've got a file cabinet with the
20 Bradenhead test results and also mechanical integrity tests
21 on injection wells.

22 Q. Well, what would you think if I told you that we
23 sent an engineer over to your office yesterday to check for
24 Bradenhead reports and they couldn't find anything past
25 1971 in your office?

1 A. Well, we only keep the last five years.

2 MR. BROOKS: I'm sorry, I need to interpose an
3 interjection to attempting to inject testimony into the
4 record other than by a witness, by the form of the
5 question.

6 EXAMINER CATANACH: Sustain that, Mr. Burr.

7 MR. BURR: Well, if they can't verify that the
8 records are kept, why should an operator be fined for
9 failing to file one when the records aren't even kept?

10 EXAMINER CATANACH: Well, I'm not sure what
11 bearing that has on the case, Mr. Burr.

12 THE WITNESS: We have records --

13 MR. BROOKS: Excuse me, there's no question.

14 Q. (By Mr. Burr) Well, where can I find these
15 records, say for 1970 and nineteen sixty- -- and
16 nineteen -- I mean 1999 and 1998?

17 A. In my office.

18 Q. In your office?

19 A. In the file cabinet.

20 MR. BURR: Fine. Well, we'll have to go back
21 over there and look again.

22 Okay, if I could just have a minute to confer
23 with my client before I release this witness.

24 EXAMINER CATANACH: Okay.

25 MR. BURR: Okay, just a couple of questions here,

1 Mr. Examiner.

2 Q. (By Mr. Burr) Mr. Martin, when you observed the
3 wellhead and the annulus, the conductor pipe, did you
4 notice any flow coming out of there, of gas or oil or
5 water?

6 A. Notice flow from where?

7 Q. Coming out of the annulus, which would be between
8 the conductor pipe and the production string, which is the
9 casing.

10 A. No, sir.

11 Q. Okay. So when Mr. Hicks put on the report there
12 was no flow, that was correct, wasn't it?

13 A. Well, there was nothing. Did you hear me?

14 Q. Yes, is that the end of your answer?

15 A. Yeah, he put nothing on there, and that is
16 correct, there was nothing on there.

17 Q. Very good, thank you. Now, with respect to this
18 notice you sent out to all the operators that you were
19 going to conduct these Bradenhead tests, you said that you
20 require that the well be shut in for 24 hours?

21 A. Yes, sir.

22 Q. Shut in? Is that required now, or has that been
23 changed.

24 A. It's required now.

25 Q. I understand that in the last year that's been

1 changed and is not required --

2 A. No, it is required. It's required to see if the
3 pressure builds up.

4 Q. Yeah, just a minute. I have to leave the phone a
5 minute.

6 Okay, Mr. Martin, looking at your memorandum,
7 which is one of your exhibits, where you tell everybody how
8 to conduct these tests, I can't find anything on that that
9 says that the annulus has to be shut in for 24 hours.
10 Could you show me where it says that?

11 A. No, sir, I can't.

12 MR. BURR: All right, thank you.

13 THE WITNESS: Uh-huh.

14 MR. BURR: I don't have any further questions of
15 this witness.

16 EXAMINER CATANACH: Mr. Brooks, anything further
17 of this witness?

18 MR. BROOKS: No, thank you.

19 EXAMINER CATANACH: Just a couple of questions,
20 Mr. Martin.

21 EXAMINATION

22 BY EXAMINER CATANACH:

23 Q. On your picture dated 7-18-2000, you testified
24 that you observed a drip at the wellhead?

25 A. Yes, sir. It appears -- It's right in front of

1 that rock. Can you see that?

2 Q. I can see in your photograph --

3 A. A dark spot --

4 Q. -- a spot.

5 A. -- that's it, that's all there was.

6 Q. Now, would that indicate to you that there was
7 some sort of fluid at the surface of that well?

8 A. It would indicate to me that either there's a
9 real small drip from that valve, or perhaps if Mr. Hicks
10 had tested it the month before, when he put his gauge on
11 there he might have got just a small drip. It's very
12 small, just a couple of ounces.

13 Q. But the fact that there's a drop there, would
14 that indicate to you that there may be fluid present at the
15 surface or some type of pressure present at the surface of
16 that well?

17 A. Yes, sir.

18 Q. Mr. Martin, do you know if there's any -- In this
19 area, do you know if there's any fresh water?

20 A. I do not. The well is located probably less than
21 a mile from the San Juan River, and I don't know what the
22 water table would be, but there are also some ditches in
23 the area.

24 Q. With respect to the elevation, is it near the
25 same elevation as the San Juan River?

1 A. Yes, sir, it is.

2 Q. So there's possibly some water sands present at
3 the well site?

4 A. Yes, sir.

5 Q. You just don't know that for sure?

6 A. Yes, sir.

7 EXAMINER CATANACH: Okay.

8 MR. BURR: Mr. Examiner, in Mr. Hicks' testimony
9 and exhibits he goes into that question, and there are no
10 water-bearing sands or oil-and-gas-producing zones between
11 the surface and the production zone in this well.

12 EXAMINER CATANACH: Thank you, Mr. Burr, I will
13 review that evidence.

14 MR. BURR: Thank you.

15 EXAMINER CATANACH: I believe that's all I have
16 of this witness. Is there anything further of this
17 witness? If not, he may be excused.

18 Mr. Brooks?

19 MR. BROOKS: Thank you. We again tender Exhibits
20 8 through 11 inclusive.

21 EXAMINER CATANACH: Mr. Burr, any objection?

22 MR. BURR: Well, I'm hard pressed not to object
23 because I haven't seen them, but I don't want to hold up
24 this matter, and the witness has testified that there
25 doesn't appear to be any difference between the two sets of

1 pictures, and if that's the case then I have no objection.

2 MR. BROOKS: Mr. Burr, if the Examiner determines
3 to take this matter under advisement, we will immediately
4 forward color copies of these pictures to you, and if you
5 wish to submit anything further in response to the
6 Examiner, you may do so with the Examiner's permission.

7 MR. BURR: Well, thank you very much. That's a
8 reasonable offer and I'll accept.

9 EXAMINER CATANACH: Okay, Exhibits 8, 9, 10 and
10 11 will be admitted as evidence in this case.

11 MR. BROOKS: Very good, that concludes the
12 presentation. I would like to make a brief statement, with
13 the Examiner's permission.

14 EXAMINER CATANACH: Okay.

15 MR. BURR: Okay, well, I would like to -- In view
16 of this witness's testimony, I would like to put Mr. Hicks
17 on the stand in rebuttal.

18 EXAMINER CATANACH: Certainly. Is Mr. Hicks
19 present?

20 MR. BURR: Fine. Yes, he is present. Mr. Hicks,
21 would you please state your full name --

22 EXAMINER CATANACH: Hold it, Mr. Burr. Mr. Burr,
23 excuse me. Mr. Burr --

24 MR. BURR: Yes.

25 EXAMINER CATANACH: -- excuse me. I don't

1 believe that Mr. Hicks has been sworn in. Would you please
2 have him stand up to be sworn?

3 MR. BURR: Yes, please stand.

4 (Thereupon, Mr. Hicks was sworn.)

5 JIMMY D. HICKS,

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

8 DIRECT EXAMINATION

9 BY MR. BURR:

10 Q. Please state your full name for the record.

11 A. It's Jimmy D. Hicks.

12 Q. And where do you reside, Mr. Hicks?

13 A. In Farmington.

14 Q. In Farmington, New Mexico?

15 A. Yes, Farmington, New Mexico.

16 Q. Okay. And are you in business in the Farmington
17 area, Mr. Hicks?

18 A. Yes, I am.

19 Q. And what is that business?

20 A. Oil and gas pumping.

21 Q. Oil and gas pumping. And what is the name of
22 your company?

23 A. Hicks Oil and Gas.

24 Q. Okay. Could you please tell us what your
25 education has been in this area? Do you hold any degrees

1 from any institutions of higher learning?

2 A. Mechanical engineer, BS, Oklahoma State
3 University.

4 Q. Okay, and how much experience have you had
5 pumping wells in New Mexico?

6 A. Since 1980.

7 Q. Okay, and is Tiffany one of your customers?

8 A. Yes.

9 Q. And how long have you pumped wells for Tiffany
10 Gas Company?

11 A. Since 1986.

12 Q. Okay. And how long the well in question here
13 today in these proceedings?

14 A. Oh, since 1986.

15 Q. Did Tiffany Gas Company drill the subject well?

16 A. No.

17 Q. Who drilled the well?

18 A. Imbt, I-m-b- -- -t, I think. Yeah.

19 Q. Mr. Bill Imbt?

20 A. Bill Imbt, right.

21 Q. And when did Tiffany acquire the well, if you
22 know?

23 A. I'm not real positive. I think it was like 1989
24 or so, something like that.

25 Q. Have you pumped it continuously since Tiffany

1 acquired it?

2 A. Yes, I have.

3 Q. Have you had the occasion to file this report
4 that the Commission calls Bradenhead test reports in the
5 past?

6 A. Yes, I have.

7 Q. How many does your file reflect of these reports
8 that you have filed for Tiffany?

9 A. Four.

10 Q. And what years were those?

11 A. It would be 1991, 1994, 1997 and 2000.

12 Q. And have all the reports -- Have you filled them
13 all out substantially the same for all those years?

14 A. Yes.

15 Q. Okay. And in the report do you show that there's
16 no flow of the Bradenhead?

17 A. That's what I've reported.

18 Q. Okay. Would you please tell us what
19 conversations, if any, you've had with the Commission over
20 the last ten years regarding this well or similar wells in
21 the field that have no Bradenhead?

22 A. Well, back in the early 1980s I happened to come
23 upon a well, we had a backhoe out, we dug up the Bradenhead
24 on it, and it didn't have a Bradenhead; it had a conductor
25 pipe like these wells have. And I contacted Mr. Gholson,

1 who's a Deputy Oil and Gas Inspector with the Commission,
2 and I told him about it. And he said, Well, just file a
3 report there's no flow and zero pressure. So that's what
4 I've done.

5 And I don't remember what year it was, but I had
6 another conversation with a Mr. Cordova, and -- with the
7 Oil and Gas Commission. We were doing a mechanical
8 integrity test on a well, and I asked him about that. He
9 said he didn't see any problem with that.

10 So -- And then Mr. Martin called me this year,
11 prior to the test scheduled, and I advised him that these
12 wells had no Bradenhead and that I would like to have his
13 reading on how to report these, and I never heard back from
14 him. And that's the reason we never went out and did the
15 test. I told him, you know, we could go out and dig them
16 all up, but I was pretty familiar with the wells out there
17 because I drilled five of them and I knew how they were
18 completed. And they have no Bradenhead, we observe the
19 wells daily, and if there's no flow out of them there's no
20 flow.

21 Q. Did you tell Mr. Martin about your previous
22 conversations with Mr. Gholson and how you had filed this
23 report in the past?

24 A. I told him how I had been filing in the past. I
25 didn't get any conversations with Charlie Gholson, no.

1 Q. Do you know whether or not this well has a water
2 drive?

3 A. The Dakota formation has a natural water drive,
4 yes.

5 Q. Is this well completed in the Dakota?

6 A. Yes, it is.

7 Q. Do you have any opinion as to what would happen
8 at the surface of this well if there was a leak in the
9 production string, based upon the fact that it is a water
10 drive?

11 A. If it was up in the surface pipe, of course the
12 surface pipe, they pretty much well cemented the long
13 string, the 4-1/2 casing.

14 Q. What do the records reflect the cement job was in
15 the long string?

16 A. Well, they show they used 50 sacks, and that
17 would be 16-percent excess in a 5-5/8 hole.

18 Q. And the conductor pipe was also cemented?

19 A. Yes, it had 10 sacks, and it's a 49-percent
20 excess cement.

21 Q. Okay, go on then. You said that if a leak was in
22 the -- above the production string, what would happen?

23 A. Well, if it was up in the surface pipe, if it was
24 cemented, I don't think you'd see it. It would just, you
25 know, continue to flow out the casing.

1 Q. Onto the ground?

2 A. No, no.

3 Q. Okay, out the casing into the --

4 A. It would go -- It wouldn't leak, because it's got
5 cement there. But below the surface pipe, I don't know if
6 we -- That's cemented too, so it's hard to say. You can't
7 see down there.

8 Q. Are you aware of the lithology or the -- under
9 the surface of this well, between it and the Dakota where
10 it's producing from?

11 A. I'm very aware of it. We air-drilled five wells
12 in this area, within a half a mile of this well, as a
13 matter of fact, and they all -- Well, first we drove our
14 surface pipe, our conductor pipe, in, cemented it back to
15 surface, then we air-drilled them and they dusted all the
16 way to bottom.

17 Q. So --

18 A. We had a geologist with us, and all he reported
19 was shale.

20 Q. To the top of the Dakota?

21 A. Well, it was actually to the top of the
22 Greenhorn, which is a limestone formation, and right below
23 that is where we set the long-string casing, cemented it
24 back to surface. And then we air-drill out open hole,
25 drilled an open --

1 Q. So is it the Mancos shale on the surface at this
2 location?

3 A. That's what the geologist called it, the Mancos
4 shale.

5 Q. Are there any interwater sands or oil and gas
6 production zones between the surface and the Dakota?

7 A. No.

8 Q. Okay. Why was the conductor pipe used in
9 drilling these wells?

10 A. Well, we attempted to drill the first well
11 without using conductor pipe, and we were on the hole 47
12 days, getting stuck in boulders and sloughing off sand and
13 stuff like that, and we decided it was better to come in
14 with a cable-tool rig and set a conductor pipe so we could
15 drill.

16 Q. That's to keep the boulders from sloughing into
17 the hole?

18 A. Correct.

19 Q. Okay. Do you know whether the Commission has
20 ever required that wells drilled to the Dakota in this area
21 require that surface pipe be set and a Bradenhead
22 installed?

23 A. I'm not familiar with what the Commission
24 requires. We had a BLM man -- these five wells we drilled,
25 he was a constant witness at the well site. He was there

1 with us, you know, from the time we started drilling in the
2 morning till the evening -- it was a daylight rig -- and he
3 never said anything about it.

4 Q. Do you know anything in the rules that would
5 require that a Bradenhead be installed?

6 MR. BROOKS: Objection, I think that the
7 Commission -- or the Examiner can take notice of the
8 Commission's rules and would not require testimony from
9 this witness.

10 EXAMINER CATANACH: I would --

11 MR. BURR: -- for the -- Mr. Examiner, to take
12 official notice of Rule 107, which is casing and tubing
13 requirements. It clearly shows that no surface casing may
14 be set where there's no water, oil or gas-bearing strata to
15 be encountered in the drilling of any well. And also Rule
16 107.C, which provides that conductor pipe need not be
17 tested or cemented.

18 EXAMINER CATANACH: Mr. Burr, Rule 107.C will
19 be -- I'm sorry, Rule 107 in its entirety will --

20 MR. BURR: 107.A, casing and tubing requirements,
21 and 107.B, which talks about conductor pipe and how it's to
22 be handled.

23 EXAMINER CATANACH: Rule 107 in its entirety will
24 be reviewed by the Division in analyzing this case.

25 MR. BURR: Thank you. Okay. Well, I will pass

1 the witness, then, to --

2 THE WITNESS: Mr. Burr?

3 MR. BURR: Yes.

4 THE WITNESS: May I mention one more thing?

5 MR. BURR: Of course.

6 THE WITNESS: When we were drilling these wells,
7 Ernie Busch with the Commission did call me up and ask me
8 to get samples of the Fruitland in this area. And he was
9 not aware that there was no Fruitland. He wanted me to get
10 samples of the coal that we were drilling, and he was not
11 aware that that was nonexistent in these wells.

12 So that was one of my conversations with people
13 about, you know, if there were any water-bearing or gas-
14 bearing formations above this Dakota.

15 And Mr. Busch called me back and confirmed that
16 there was no formation like that. This was all verbal,
17 though.

18 Q. (By Mr. Burr) So the surface is the Mancos
19 shale, as far as you know, in this area?

20 A. That is correct.

21 Q. And the first productive zone is the Dakota --

22 A. That's correct.

23 Q. -- at approximately 800 feet?

24 A. In this well it's 800 feet.

25 Q. And all other formations above the Mancos shale

1 have eroded away in this area?

2 A. Yes, they are. They're in a heavily upthrust
3 area around the hogback Dakota, around the hogback.

4 MR. BURR: Thank you. Mr. Brooks, would you like
5 to cross-examine?

6 MR. BROOKS: Yes, briefly.

7 CROSS-EXAMINATION

8 BY MR. BROOKS:

9 Q. Mr. Hicks, would you again review your
10 background? I'm not sure I remember exactly what is your
11 area of expertise?

12 A. Well, I was a mechanical engineer at Ford Motor
13 Company for nine years in Detroit, Michigan. I was an
14 automatic-transmission engineer, a supervisor as a matter
15 of fact. And I didn't like Detroit because of the crime
16 rate and stuff, so I came back to the oil field. I had
17 worked in the oil field prior to that, working for Ford.
18 And I've been back here since 1980 working as a pumper, and
19 now I own my own business, oil and gas wells.

20 Q. Do you have any training in geology?

21 A. I've worked with geologists, side by side with
22 them, but no, I am not a qualified geologist. I --

23 Q. Okay -- I'm sorry.

24 A. In my testimony that we sent, I did send a
25 geology report on one of the wells we drilled that's .6 of

1 a mile from this well.

2 Q. Okay, I will call your attention to -- Do you
3 have a copy of the Bradenhead test that was dated June 13th
4 of 2000?

5 A. Yes, sir.

6 Q. And that is Exhibit 7 in this proceeding.

7 A. Right.

8 Q. Is that your signature on that report?

9 A. Yes, sir.

10 Q. Okay. You have filled in on the line pressure,
11 "Tubing 20" and "Casing 45". Can you explain how those
12 figures were arrived at?

13 A. Well, the tubing was not in the well at that
14 time. You know, I don't know why I put that down there. I
15 may -- I just go out and take field notes, and it may have
16 been off another well.

17 Q. Okay, so that would not have been an accurate
18 statement since --

19 A. That is an inaccurate statement, that's correct.

20 Q. Okay, what about the casing pressure, how was
21 that determined?

22 A. The casing pressure is accurate, I recently
23 tested it.

24 Q. Okay, and -- Well, we'll let the exhibit speak
25 for itself, I think.

1 You're talking about the distinction between
2 shell pipe and surface casing, and that -- what you call
3 the shell pipe, is that what's referred to as the 7-inch
4 casing on the well reports?

5 A. That was the conductor pipe, the 7-inch.

6 Q. Oh, the conductor pipe, I'm sorry.

7 A. Right.

8 Q. And that was cemented in place, was it not?

9 A. I didn't hear the question?

10 Q. That was submitted according to the well reports,
11 was it not?

12 A. Cemented in place?

13 Q. Yes, just like you would with casing?

14 A. Right.

15 Q. Okay, and it's referred to as casing in the well
16 reports, correct?

17 A. That's correct.

18 MR. BROOKS: Okay. I don't think I have any
19 other questions of this witness, Mr. Examiner.

20 EXAMINER CATANACH: Okay, just a couple.

21 EXAMINATION

22 BY EXAMINER CATANACH:

23 Q. Mr. Hicks, the conductor pipe was not circulated
24 in this well; is that correct?

25 A. It should have been. They used almost 50-percent

1 excess. It calculates out to be 49-percent excess.

2 Q. The 10 sacks?

3 A. Yes, 7-inch pipe set in an 8-inch hole.

4 Q. Okay.

5 A. I've got the figures right here in front of me.

6 Q. Seven-inch pipe set in an 8-inch hole. Have you
7 had much experience with that type of wellbore
8 configuration?

9 A. Yes, I have.

10 Q. Does that provide much annular space for the
11 cement to occupy?

12 A. It's a half an inch on each side.

13 Q. Is that sufficient in your opinion to preclude
14 any fluid migration in that well?

15 A. I don't have any opinion on that, but that's --
16 The BLM requires a half-inch pipe-to-hole requirement.

17 Q. Uh-huh.

18 A. That's in their specifications.

19 Q. Do you know if that casing was centered in the
20 wellbore?

21 A. The long string or the --

22 Q. No, the 7-inch.

23 A. Yeah, that's standard.

24 Q. Did it have centralizers on it?

25 A. Not that I'm aware of. I didn't drill the well.

1 Q. Okay. Now, you say you did obtain a casing
2 pressure on this well?

3 A. Yes, I did. That's what we're producing. It's
4 flowing up the casing.

5 Q. Now, this well is currently producing; is that
6 correct?

7 A. Yes, sir.

8 Q. Okay, and where was that pressure reading taken?

9 A. On that quarter-inch needle valve that Bruce said
10 had a small drip on it.

11 Q. Okay, and that --

12 A. That's where we get samples of oil and check
13 pressures.

14 Q. Okay, and that was done at the time that the
15 Bradenhead test was conducted on the well?

16 A. Yes, sir.

17 Q. And that showed a casing pressure of 45 pounds?

18 A. Forty.

19 Q. Well, you show 45 on your report?

20 A. Oh, really?

21 Q. Yes, sir.

22 A. Well, I'm not looking at my report, but I'm
23 just -- I saw it this morning, I was just not real... This
24 well shuts in at approximately 110 pounds.

25 Q. Do you know how much this well produces, Mr.

1 Hicks? I think the affidavit shows a barrel a day,
2 approximately a barrel a day of oil. It's a very low
3 producer. All these wells are.

4 Q. Any gas production from this well?

5 A. These wells do not make any gas. We use strictly
6 gunbarrel equipment, no separation equipment at all.

7 Q. Any water production?

8 A. This particular well does not make water. There
9 are other wells in the area that do, there's a natural
10 water drive. But this well we're producing at such a low
11 rate the water's not coming up with it.

12 EXAMINER CATANACH: Okay, I have nothing further
13 of the witness.

14 MR. BROOKS: Nothing further, Mr. Examiner.

15 EXAMINER CATANACH: Mr. Burr, do you have
16 anything further of this witness?

17 MR. BURR: No, I don't.

18 EXAMINER CATANACH: Okay, this witness may be
19 excused.

20 Do you have anything further in your
21 presentation, Mr. Burr?

22 MR. BURR: No, I just want to reiterate that the
23 affidavit of Mr. Hicks is now in evidence, and it is more
24 complete testimony than I elicited here on rebuttal, and I
25 urge the Examiner to review that.

1 EXAMINER CATANACH: Certainly all the evidence
2 will be reviewed in this case, Mr. Burr.

3 Mr. Brooks, do you have anything further?

4 MR. BROOKS: Just briefly.

5 MR. BURR: I have final argument, but --

6 MR. BROOKS: Oh, okay. Well, I'm not sure who is
7 supposed to go first in this matter, Mr. Examiner.

8 EXAMINER CATANACH: We'll let you, Mr. Brooks,
9 you're already standing.

10 MR. BROOKS: Okay, very good, Mr. Examiner.

11 I will simply say that it is important to the
12 Division to be able to rely on the integrity of its records
13 in performing its functions in regulating the oil and gas
14 industry and protecting the environment, and it's clear
15 that the record that was submitted in the June 23rd Braden
16 tests is incorrect. It's clear that it was intentionally
17 done incorrectly for whatever reason, because you cannot
18 ascertain that there's no pressure on the Bradenhead when
19 there isn't even a Bradenhead and the casing was not dug
20 out to observe anything in the conduct of that test.

21 The tubing figure is also incorrect, and we
22 believe that the penalty that's been assessed is a small
23 one, it's essentially a token, and the purpose of it is to
24 maintain the integrity of the Commission's records and to
25 enforce the principle that accurate reporting is required.

1 Thank you.

2 EXAMINER CATANACH: Thank you, Mr. Brooks.

3 Mr. Burr?

4 MR. BURR: Yes. We feel that this whole thing
5 has been a matter of communication. The Respondent has
6 testified that he was unsure as to how to fill out the
7 subject report, in view of the fact that there was not a
8 Bradenhead on this well.

9 The evidence is disputed as to whether or not the
10 Commission staff was aware of the fact that there was no
11 Bradenhead test -- no Bradenhead on the well, and he
12 couldn't file the report that the Division requires of
13 other wells in the area.

14 It just seems inequitable and unfair for the
15 Division to assess such an onerous fine against Respondent
16 in view of the circumstances. It will take approximately
17 90 days for Tiffany, a small independent in the area, to
18 recover this \$1000 at one-barrel-a-day production.

19 The statute that the fine is based upon requires
20 that the Respondent or the person filing the report act in
21 an intentional and willful manner. Those are pretty strong
22 words, in view of the circumstances that have been adduced
23 -- the testimony that has been adduced here today. Clearly
24 Mr. Hicks had no motive to falsify a report. This well was
25 drilled 15 years ago, and the Commission did not require

1 that a Bradenhead be installed.

2 There's no problem with waste of vital resources,
3 there's no problem here with environmental damage. There
4 are wells in the area that have no Bradenhead, other than
5 those of Tiffany's. Rule 107.A does not require a
6 Bradenhead, does not require surface casing in a well such
7 as the one in question. There are no water-bearing, oil-
8 or gas-bearing formations above the production zone that
9 could be contaminated.

10 Previous employees of the Division have
11 complicated the matter with their not requiring Mr. Hicks
12 to file -- to -- well, to file -- by allowing him to go
13 ahead and file on the -- file the test, or file on the
14 report provided by the Division, when it's really not
15 applicable to this situation.

16 It would be better if the Commission would have a
17 conference with all these people in the area that have
18 wells without Bradenheads and give them some guidance on
19 how they are to report their particular well.

20 So I just don't feel that this is the type of
21 case that the statute was intended to apply to, and it's
22 just unfair to fine these people instead of getting them
23 together and saying, Listen, if you don't have a Bradenhead
24 write us a letter and tell us so, we're not going to
25 require you to file a report on a well you don't have a

1 Bradenhead on.

2 That's our position, and thank you very much for
3 your consideration.

4 EXAMINER CATANACH: Thank you, Mr. Burr.

5 Mr. Brooks, the only thing I would ask is, I
6 would like to obtain additional test records on this well
7 that may be present in the Aztec office from previous
8 years. I would like to examine those if possible, if there
9 are any.

10 MR. BROOKS: Yes, Mr. Examiner, we will furnish
11 those records to the Examiner and also to Mr. Burr.

12 EXAMINER CATANACH: Thank you, Mr. Brooks.

13 Is there anything further in this case?

14 MR. BURR: No.

15 EXAMINER CATANACH: Okay, there being nothing
16 further, Case 12,704 will be taken under advisement.

17 MR. BURR: Thank you.

18 MR. BROOKS: Thank you.

19 EXAMINER CATANACH: Thank you, Mr. Burr.

20 (Thereupon, these proceedings were concluded at
21 9:45 a.m.)

22 * * *

23 I do hereby certify that the foregoing is
24 a complete and correct transcript of the
25 the Examination held before me on 12/9/01
heard by me on 12/9/01
David [Signature]
Off Conservation Division

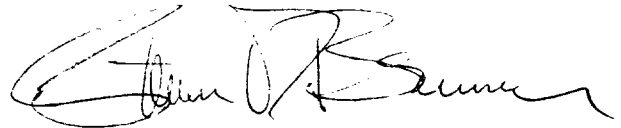
CERTIFICATE OF REPORTER

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 10th, 2001.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 2002