

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. 12,757

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AN ORDER)
REQUIRING MARKS AND GARNER PRODUCTION,)
LTD., CO. TO PROPERLY PLUG 17 WELLS,)
AUTHORIZING THE DIVISION TO PLUG SAID)
WELLS IN DEFAULT OF COMPLIANCE BY MARKS)
AND GARNER, LTD., CO., ORDERING A)
FORFEITURE OF APPLICABLE PLUGGING BOND)
AND ASSESSING CIVIL PENALTIES FOR FALSE)
PRODUCTION REPORTING, EDDY COUNTY,)
NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

January 10th, 2002

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, January 10th, 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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OIL CONSERVATION DIV.

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A P P E A R A N C E S

FOR THE DIVISION:

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* * *

1 WHEREUPON, the following proceedings were had at
2 3:17 p.m.:

3 EXAMINER CATANACH: Okay, let's call the hearing
4 back to order, and at this time I will call Case 12,757,
5 Application of the New Mexico Oil Conservation Division for
6 an order requiring Marks and Garner Production, Ltd., Co.
7 to properly plug 17 wells, authorizing the Division to plug
8 said wells in default of compliance by Marks and Garner,
9 Ltd., Co., ordering a forfeiture of applicable plugging
10 bond and assessing civil penalties for false production
11 reporting, Eddy County, New Mexico.

12 Call for appearances in this case.

13 MR. BROOKS: David Brooks, Energy, Minerals and
14 Natural Resources Department of the State of New Mexico,
15 appearing for the New Mexico Oil Conservation Division.

16 MR. BRUCE: Mr. Examiner, Jim Bruce of Santa Fe,
17 representing Marks and Garner Production, Ltd., Company.

18 MR. BROOKS: Mr. Examiner, I'd like to make a
19 very brief opening statement.

20 As you correctly read, it is styled an
21 Application to plug 17 wells. We're now down to five wells
22 that have not been plugged, and while we currently
23 anticipate that Marks and Garner will take care of those as
24 they have of the others, we will ask for an order to plug
25 those remaining five wells.

1 However, the main focus of this proceeding at
2 this point is Marks and Garner's production reports, which
3 the Division contends are false, and we believe
4 intentionally so, and we will be asking for significant
5 penalties, based on the evidence we wish to offer.

6 Thank you.

7 EXAMINER CATANACH: Mr. Bruce, any response?

8 MR. BRUCE: I have no opening statement.

9 EXAMINER CATANACH: Okay, Mr. Brooks?

10 MR. BROOKS: I have three witnesses.

11 EXAMINER CATANACH: Will the witnesses please
12 stand to be sworn in?

13 (Thereupon, the witnesses were sworn.)

14 MR. BROOKS: Call Ms. Prouty.

15 JANE E. PROUTY,

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

18 DIRECT EXAMINATION

19 BY MR. BROOKS:

20 Q. State your name for the record, please.

21 A. Jane Prouty.

22 Q. And by whom are you employed?

23 A. The Oil Conservation of the State.

24 Q. In what capacity?

25 A. As a computer -- My title is Computer Operations

1 Specialist. I manage the group that works with the C-115s
2 here, the production reporting, I manage the data in our
3 ONGARD system and work with permitting.

4 Q. And you are the person that is in charge of that
5 aspect of the Division's operations, that is, the
6 production reporting and the maintenance of records
7 concerning production reporting?

8 A. Yes.

9 Q. I will ask you to look at the exhibit folder. I
10 see you've removed the exhibits as we normally do, and I
11 will ask you to look at Exhibits 1 through 12, and I will
12 ask you to tell us what they are.

13 A. These are C-115 production reports from Marks and
14 Garner for the months of September, 2000, tthrough August
15 of 2001.

16 Q. And were these copied and prepared by you or
17 persons acting under your direction?

18 A. Yes.

19 Q. When I say prepared, the copies were prepared.
20 Now, these were sent to the Division by others; they were
21 not prepared by the Division, correct?

22 A. Correct.

23 Q. Now, there is an exception to the normal manner
24 of preparation in the case of Exhibit Number 6. Let me
25 call your attention to Exhibit Number 6, and can you tell

1 us about Exhibit Number 6, why that is different from all
2 the others?

3 A. Yes, Devin Garner from Marks and Garner was
4 working with sending his files electronically and sent us
5 several test files and then some real files. And this one,
6 this month's, February, 2001, we did not key the C-115; we
7 received the file that he sent us in electronic format and
8 processed that successfully, and that left us with no C-115
9 to look at.

10 So he had faxed us a copy, it's my understanding,
11 for different purposes: to compare the values to make sure
12 that they were accurate -- and they were at the time it got
13 through our testing procedure -- but also since we had this
14 copy, I compared it against the actual data we have in our
15 system, and it's 100-percent accurate.

16 So this one is not one we keep. All of the
17 others we did keep.

18 Q. Now, the Examiner will probably appreciate your
19 preparing it in this format rather than asking him to read
20 it.

21 A. He didn't see what you guys saw.

22 Q. Okay. Now, these are copies of the actual --
23 with the exception of Exhibit Number 6, which is a
24 facsimile transmission, Exhibits 1 through 5 and Exhibits 7
25 through 12, are those copies of actual reports that were

1 sent to the Division, presumably by Marks and Garner?

2 A. Yes.

3 Q. And did those have a signature on them that
4 appears to be the signature of Devin Garner, correct?

5 A. Yes, I see Exhibit 5 doesn't appear to be
6 signed --

7 Q. Correct.

8 A. -- but the others do. And I believe the reason
9 for that -- as I mentioned, I believe he sent two
10 unsuccessfully. I believe the January one was one where it
11 may have been received electronically and on paper. Based
12 on the initials at the top, it looks like we keyed it, but
13 I believe his intention was to use a printout representing
14 the file he sent. But I think they had some problems with
15 it, so we keyed it.

16 Q. Very good. I will now call your attention to
17 Exhibit Number 13 and ask you to identify it.

18 A. That's a report of the production of Marks and
19 Garner for the well that you asked me to show the
20 production in the system.

21 Q. Is Exhibit Number 13 a summary prepared by the
22 ONGARD system of the data that is recorded on Exhibits 1
23 through 12?

24 A. Yes.

25 Q. Now, the operators in the state submit this data

1 to the OCD in the normal course of business, do they not?

2 A. Yes.

3 Q. And in fact, they are required by OCD rules to do
4 so --

5 A. Yes.

6 Q. -- correct?

7 And that's the only source from which the OCD
8 gets information about production on wells?

9 A. Yes.

10 Q. Have you had contacts with people at Marks and
11 Garner about these reports, Exhibits 1 through 12?

12 A. Not me personally. I know that one staff member
13 worked with them to help them file electronically.

14 MR. BROOKS: Correct. Okay, I believe that's all
15 I have to offer from this witness. I'll pass the witness.

16 MR. BRUCE: I just have a couple of questions.

17 EXAMINATION

18 BY MR. BRUCE:

19 Q. You said the only one you've spoken with at Marks
20 and Garner is Devin Garner?

21 A. And I believe I had a conversation with him about
22 electronic filing, but I couldn't even really recall. It
23 would be more than a year ago. I know Andrea Wheeler on
24 our staff worked with him quite a bit, yes.

25 Q. Okay.

1 A. And it was Devin Garner, yes.

2 MR. BRUCE: Thank you, that's all I have.

3 EXAMINER CATANACH: Just for clarification, Mr.
4 Brooks, which five wells are we seeking to be plugged in
5 this case?

6 MR. BROOKS: That would be the Cave Pool Unit
7 Number 3, 14, 16, 32 and 53.

8 EXAMINER CATANACH: Now --

9 MR. GUM: Mr. Examiner, there has been a C-103
10 approved for these five wells.

11 EXAMINER CATANACH: An intent to P-and-A?

12 MR. GUM: Intent to P-and-A.

13 EXAMINER CATANACH: Okay. Before we get into
14 that, I just want a little bit of background here.

15 With regards to the production reporting, Mr.
16 Brooks, are we dealing with all of these wells?

17 MR. BROOKS: All of the wells, yes. I believe --
18 There is one exception, however, because there is one well
19 in which no production was reported, and we assume that to
20 be correct. I believe that's the Mosley Spring. As to all
21 of the wells that are shown on these C-115s, we are dealing
22 with all those wells.

23 EXAMINER CATANACH: And what is the significance
24 of the period that you've chosen to show me here, the
25 September, 2000, through the August, 2001, period?

1 MR. BROOKS: Mr. Examiner, Marks and Garner began
2 reporting wells, or production on wells, in September of
3 2000, on which they had not previously reported production,
4 and that will be shown by Exhibit Number 13, which carries
5 it back to 1997. They reported production on those wells
6 from September, 2000, through August of 2001. We believe
7 that those reports were incorrect and that in fact there
8 was no production from those wells during that period.
9 That's the reason we have presented all of these C-115s, is
10 to show that they, in fact, did report that production.

11 EXAMINER CATANACH: Okay, that's what I needed
12 clarification on.

13 MR. BROOKS: This is the unusual situation.
14 Usually we're showing the production reports to show that
15 they reported that there was no production. In this case
16 we're attempting to show that they did report production.

17 EXAMINER CATANACH: Okay.

18 EXAMINATION

19 BY EXAMINER CATANACH:

20 Q. Now, Ms. Prouty, your Exhibits 1 through 12,
21 these are inclusive of all of the wells that this operator
22 operates?

23 A. Yes.

24 Q. So -- Okay.

25 A. And the report -- The last Exhibit, 13, is only

1 the wells that were, I believe, on the exhibit.

2 EXAMINER CATANACH: Got it all straight now.

3 Thank you, no more questions.

4 MR. BROOKS: You may step down.

5 Call Jerry Guy.

6 JERRY GUY,

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. BROOKS:

11 Q. Would you state your name, please, for the
12 record?

13 A. Jerry Guy.

14 Q. By whom are you employed?

15 A. The Oil Conservation Division.

16 Q. And in what office?

17 A. I'm a compliance officer and field inspector for
18 the Artesia District.

19 Q. And what is the nature of your duties in that
20 capacity?

21 A. I inspect the wells in the field to maintain
22 compliance.

23 Q. And if you found that a well is not in
24 compliance, do you file a report?

25 A. Yes, sir, I file a report and follow through to

1 bring the well back into compliance.

2 Q. Is there now a procedure in the OCD where those
3 reports are entered into a computer database?

4 A. Yes, sir.

5 Q. I'll call your attention to what's been marked as
6 Exhibit Number 14, a copy of which should be in front of
7 you.

8 EXAMINER CATANACH: Mr. Brooks -- I'm sorry, Mr.
9 Brooks, has Mr. Guy testified before the Division before?

10 MR. BROOKS: I believe he has not.

11 EXAMINER CATANACH: Can we qualify him in terms
12 of his work experience?

13 Q. (By Mr. Brooks) Okay, would you please review
14 your work history, Mr. Guy?

15 A. I've been in the oilfield for roughly 30 years,
16 I've worked in several different capacities as a contract
17 pumper, as a pumper for Enron Oil and Gas, as the field
18 manager of a trucking firm, Rowland Trucking Company, in
19 Carlsbad. And I worked for Byron Jackson as a well
20 cementer and field representative and foreman.

21 Q. And are you personally familiar with the nature
22 of the equipment, surface equipment, that is used in oil
23 and gas wells?

24 A. I am.

25 Q. And would you be able to tell from looking at an

1 oil and gas well whether or not it is equipped so that it
2 can produce?

3 A. I am.

4 Q. And have you inspected the wells that are the
5 subject matter of this proceeding?

6 A. I have.

7 MR. BROOKS: We tender Mr. Guy as an expert field
8 inspector.

9 EXAMINER CATANACH: Mr. Guy is so qualified.

10 MR. BROOKS: Very good. Call your attention to
11 what's been marked as Exhibit Number 14, which appears --
12 Well, before I do that, we'll offer in evidence Exhibits 1
13 through 13 based on Ms. Prouty's testimony.

14 EXAMINER CATANACH: Exhibits Number 1 through 13
15 will be admitted as evidence.

16 Q. (By Mr. Brooks) Okay, would you identify for us,
17 Mr. Guy, Exhibit Number 14?

18 A. It's a well-status from the RBDMS database,
19 showing well inspections and the findings of those well
20 inspections.

21 Q. There is a column labeled "Comments" on that
22 report.

23 A. Yes, sir.

24 Q. The comments placed on there, are those your
25 comments?

1 A. They are.

2 Q. Were those made at or about the date of the
3 inspection as indicated on Exhibit Number 14?

4 A. Yes, sir.

5 Q. And those are reported by the computer, and they
6 are printed out with the dates that those comments were
7 entered into the system?

8 A. That's true.

9 Q. Because I'm going to ask you to compare this
10 exhibit with the other exhibits that will be offered, I
11 will now ask you to look at Exhibits Numbers 15 through 30,
12 and I will ask you -- Those all appear to be photographs,
13 and I believe the Examiner has for the most part color
14 copies, and Mr. Bruce and myself have xerox copies that are
15 not real distinct, and I believe, Mr. Guy, you have the
16 black-and-white printouts which are somewhere in between,
17 but they're all the same photographs.

18 Were these photographs which you took?

19 A. Yes, sir.

20 Q. Well, I'll give you a chance to look through them
21 all before you respond.

22 Okay, in a minute I'm going to ask you which
23 specific wells they relate to, but I have some coverall
24 questions to ask you. In each of these cases, were you at
25 the location of the well?

1 A. I was.

2 Q. And you personally took these photographs?

3 A. Yes, sir.

4 Q. And do each of the photographs accurately and
5 fully depict the conditions that you observed when you were
6 at the wells on the date on which you took those
7 photographs?

8 A. Yes, sir.

9 Q. Now, we'll go through them individually.

10 First of all let me ask you, some of these wells
11 have signs that will enable you to refresh your
12 recollection as to what well they were on. The others, I
13 believe, have some printout information on the bottom of
14 the picture. Now, did you enter these pictures into a
15 computer and send those pictures to me by e-mail?

16 A. I did, sir.

17 Q. And did you give each of those pictures at the
18 time you entered them into the computer an identification
19 code, file name?

20 A. I did.

21 Q. And on most of these, I think you will find those
22 identification codes are either printed out or written on
23 the photograph to enable you to refresh your recollection
24 as to which specific well is depicted.

25 A. That's correct.

1 Q. I will ask you first to look at Exhibit Number
2 15. On my copy, the well name is not very distinct on
3 there. Can you read it on your copy?

4 A. It's the Cave Pool Unit Number 1.

5 Q. That's what I thought, but it wasn't real clear.
6 And did you visit the Cave Pool Unit Number 1 location on
7 January 30, 2001?

8 A. Yes, sir.

9 Q. And was this picture taken on January 30, 2001,
10 at the Cave Pool Unit location?

11 A. Yes, sir.

12 Q. In looking at this picture, what does this
13 indicate about the condition of the well?

14 A. It indicates that the well is not capable of
15 producing, since it has no motor on the pumping unit.

16 Q. If there were a motor, it would be on those three
17 metal flat pieces back behind the pumping unit, correct?

18 A. There are two braces on the rear of the pumping
19 unit, that's where they go.

20 Q. You also have a note here, "Tubing out of hole."
21 Is that depicted on this picture?

22 A. No, sir, it is not.

23 Q. Okay. But that was a condition you observed at
24 the well?

25 A. Yes, sir.

1 Q. Now, are you familiar with the wells in this
2 area?

3 A. Yes, I am.

4 Q. And do they flow or do they have to be pumped?

5 A. No, they have to be pumped.

6 Q. So that it would be a fair inference, then, that
7 if the pump is not capable of operating, the well is not
8 capable of producing?

9 A. That is correct.

10 Q. I call your attention to what has been marked as
11 Exhibit Number 16, and this does not have a well sign, or
12 not one that can be read, but there is a notation on the
13 exhibit up in the upper left-hand corner. Does that
14 indicate to you what -- Does that refresh your recollection
15 as to what well this is a picture of?

16 A. Yes, sir, it is the CPU or the Cave Pool Unit
17 Number 3.

18 Q. Okay. And does that depict a wellhead with a
19 piece of tubing sticking up out of it, not connected to
20 anything?

21 A. That's correct, sir.

22 Q. Could a well be produced in that condition?

23 A. No, sir.

24 Q. Now, your Exhibit Number 14 indicates that you
25 visited the Cave Pool Unit for inspection on January 30,

1 2001, and again on June 15, 2001, correct?

2 A. That's correct.

3 Q. And was the condition of the well as depicted in
4 this photograph basically the same on both of those
5 occasions, or was it different?

6 A. No, it was the same.

7 Q. And do you recall on which occasion you took this
8 photograph?

9 A. No, sir, I don't recall.

10 Q. But the color picture shows the foliage to be
11 rather green, so that would lead to the inference that
12 perhaps it was taken at an inspection in June, correct?

13 A. Yes, sir.

14 Q. I ask you to look at what's been marked as OCD
15 Exhibit Number 17 and ask you to identify that.

16 A. This is the Cave Pool Unit Number 12.

17 Q. The sign is real distinct here.

18 A. Very.

19 Q. And what does that photograph indicate about the
20 Cave Pool Unit Number 12?

21 A. The well is capable of producing, however there's
22 no electrical hookup to the engine. Therefore the engine
23 cannot run.

24 Q. Now, that little box that appears right above the
25 sign, right above the word "Marks" --

1 A. Yes, sir.

2 Q. Is that the electrical box?

3 A. That's the electrical connection box, yes, sir.

4 Q. Okay. And the circular cable that goes around
5 it, if the well were hooked up, would that be connected to
6 the engine --

7 A. Yes, sir.

8 Q. -- I mean the motor?

9 A. It would be connected to the electrical
10 connection box on the engine, and that's just a flexible
11 conduit for the wire.

12 Q. But in this case it was not?

13 A. No, sir.

14 Q. Now, what is that rod that appears to go from the
15 box appearing above the word "Marks" off to the left?

16 A. That's normally the conduit where the wires run
17 through it to the electrical connection box.

18 Q. And if --

19 A. Under normal circumstances that would be in the
20 ground, and it would run to the poles where the electricity
21 initiates.

22 Q. Looking at this picture, does that indicate that
23 there was no hookup of this? Not only was this not hooked
24 up to the well, but it wasn't hooked up to the electric
25 line also?

1 A. That's what it appears, yes, sir.

2 Q. Now, you inspected this on two separate dates six
3 months apart. Did you observe these conditions to exist on
4 both dates?

5 A. I did.

6 Q. Do you recall on which date this picture was
7 taken?

8 A. No, sir, I do not.

9 Q. Thank you. I call your attention to what's been
10 marked as Exhibit Number 18, and it's fairly clear on the
11 picture, but what well is that a picture of?

12 A. That picture is a little dark, but I -- Cave Pool
13 Unit Number 14.

14 Q. Now, this picture has a date, does it not?

15 A. Yes, sir.

16 Q. And that date is 2-13 of 2001?

17 A. Yes, sir.

18 Q. This picture was taken with a camera that records
19 the date?

20 A. Yes, sir.

21 Q. Your inspection report indicates that you
22 inspected on 1-30 of '01 and again on 10-16 of '01?

23 A. Yes, sir.

24 Q. Now, neither of those dates is 2-13 of '01. How
25 do you explain that?

1 A. January 30th was my initial inspection of the
2 entire area. After initially inspecting it, I found out
3 additional information that I needed in order to generate
4 the noncompliance report, and I went back in February and
5 took pictures to make sure to document how I saw the well.
6 I did not document that on this report, because it was in
7 the same condition as I found it on January the 30th.

8 Q. Was it still in the same condition on October the
9 16th?

10 A. Yes, sir, it was.

11 Q. What does this picture depict?

12 A. Just a wellhead with a piece of 2-7/8 pipe
13 sticking out of it with a 2-inch ball valve on the top, no
14 flow lines connected to it, a platform which it would be
15 possible to set a pumping unit on, but there's no pumping
16 unit available.

17 Q. And that was the condition of this well on both
18 January 30 -- well, on all three dates, January 30, 2001,
19 February 13, 2001, and October 16th?

20 A. That's correct.

21 Q. Call your attention to OCD Exhibit Number 19 and
22 ask you to identify it.

23 A. That particular well I cannot identify from the
24 picture.

25 Q. Can you identify it by the code written in the

1 upper left-hand corner of the exhibit?

2 A. Yes, sir, it's the Cave Pool Unit Number 16.

3 Q. And once again, this picture bears a date which
4 is not the same as any of the inspections. Did you return
5 and make a photograph on a date when you did not make an
6 inspection?

7 A. That is correct, yes, sir. I went back to verify
8 the status of the well on that date that I had initially
9 established.

10 Q. How many times did you inspect the Cave Pool Unit
11 Number 16?

12 A. Three times.

13 Q. And was there any difference in the condition on
14 those three dates of inspection reflected on Exhibit Number
15 14?

16 A. No, sir.

17 Q. That would have been January 30th, 2001; June
18 12th, 2001; and October 16th, 2001; is that right?

19 A. That's correct.

20 Q. Now, this depicts what, as far as this wellhead
21 is concerned?

22 A. Casinghead, which is buried in the ground, a
23 2-3/8-inch tubing coming out of it, a 2-inch ball valve on
24 top, no flow lines attached, no equipment available for
25 production.

1 Q. What is that box that appears in the picture?

2 A. That's an electrical connection box for a pumping
3 unit. Normally it's attached to an electrical pole, and
4 it's not attached.

5 Q. Was there any pumping unit on the location?

6 A. No, sir.

7 Q. I call your attention to what's been marked as
8 OCD Exhibit Number 20 and ask you to identify it.

9 A. It's the Cave Pool Unit Number 19.

10 Q. And this does not have a date on it. You
11 inspected that twice, correct?

12 A. Yes, sir.

13 Q. Was there any difference in the condition -- Does
14 this picture accurately reflect the condition of that well
15 at the time that you inspected -- both times you inspected
16 it?

17 A. Yes, sir.

18 Q. And the dates of your inspection are reflected on
19 Exhibit Number 14?

20 A. If I can rephrase that, sir --

21 Q. Yes, sir.

22 A. -- the first time I looked at the well, which was
23 on January the 30th, there was a pumping unit available at
24 that time, but there was no engine on that pumping unit.

25 The second time I inspected it, on June the 12th,

1 which is when I would have taken this picture, the pumping
2 unit had been removed and there was nothing there but the
3 rod sticking straight up.

4 Q. When the pumping unit was there, though, it did
5 not have a motor?

6 A. It had no motor.

7 Q. Okay. Call your attention to what's been marked
8 as OCD Exhibit 21 and ask you to identify it.

9 A. I can't read the sign very good on mine.

10 Q. Is there a legend on the lower left-hand corner
11 by which you can identify it?

12 A. Yes, sir, that's the Cave Pool Unit Number 30.

13 Q. And on what dates did you inspect the Cave Pool
14 Unit Number 30?

15 A. The Number 30 was inspected on January the 30th
16 and June the 15th.

17 Q. Now, while that legend enables you to identify
18 it, does the date August 1, '01, appearing in the lower
19 right-hand corner of Exhibit Number 21 have any
20 significance?

21 A. No, sir.

22 Q. That would have been the date that you
23 transmitted it to me by e-mail; is that correct?

24 A. That's correct.

25 Q. Okay, what does Exhibit Number 21 show about the

1 Cave Pool Unit Number 30 well?

2 A. It's not capable of producing. It has a pumping
3 unit, but there is no engine or motor on the unit itself.

4 Q. Was that the same condition in which it existed
5 on both of the occasions when you inspected that well?

6 A. Yes, sir.

7 Q. Thank you. Call your attention to what's been
8 marked as OCD Exhibit Number 22. I ask you to identify it.

9 A. This is the Cave Pool Unit Number 32.

10 Q. And what does OCD Exhibit Number -- Well, first
11 of all, on what dates did you inspect the Cave Pool Unit
12 Well Number 32?

13 A. On January the 30th and again on October the
14 16th, 2001.

15 Q. And is there any indication -- anything to
16 refresh your recollection as to when this -- Well, now,
17 wait, let's see. Do you know when you took this
18 photograph?

19 A. Yes, sir, it was on February the 13th, 2001.

20 Q. Okay, and you went back after your January
21 inspection, just to make a photograph, and did not make a
22 notation of that inspection?

23 A. That's correct.

24 Q. What does Exhibit Number 22 show about the Cave
25 Pool Unit Number 32 well?

1 A. It shows the casinghead, tubing sticking out of
2 the casinghead, I can't verify what size, and I cannot
3 verify whether it has a valve on top or not. But it is not
4 capable of production, there are no flow lines attached to
5 it.

6 Q. Was there a pumping unit on the location?

7 A. No, sir.

8 Q. And you re-inspected this well on October 16,
9 2001. Was its condition unchanged?

10 A. Unchanged.

11 Q. Call your attention to what's been marked as OCD
12 Exhibit Number 23 and ask you to identify it.

13 A. It's the Cave Pool Unit Number 41.

14 Q. Now, the copy I have here is really indistinct.
15 I can't really tell much of anything from the copy that I
16 have in front of me. What does that picture depict about
17 the Cave Pool Unit Number 41?

18 A. There was nothing but a piece of casing extending
19 above the surface of the ground.

20 Q. No flow lines?

21 A. No flow lines, no casinghead.

22 Q. No pumping unit?

23 A. No pumping unit.

24 Q. And on what dates did you inspect that well?

25 A. That was inspected on February the 12th, 2001,

1 October the 16th, 2001, and again on December the 3rd,
2 2001.

3 Q. Now, on October the 16th, was its condition
4 unchanged compared to what was shown in this photograph?

5 A. Yes, sir.

6 Q. And on December 3rd its condition had changed,
7 correct?

8 A. Yes, sir.

9 Q. As noted in your report?

10 A. Yes, sir, they were attempting to temporarily
11 abandon the well.

12 Q. I call your attention to what's been marked as
13 OCD Exhibit Number 24 and ask you to identify it.

14 A. That's the Cave Pool Unit Number 51.

15 Q. And on what dates did you inspect the Cave Pool
16 Unit Number 51?

17 A. I inspected it on January the 31st, 2001; March
18 the 6th, 2001; and again on November the 16th, 2001.

19 Q. Now, on March the 6th -- Well, is this picture a
20 reflection of its condition, accurate reflection of its
21 condition on January 31 and March 6th, 2001?

22 A. Yes, sir.

23 Q. Do you know on what date you took this picture?

24 A. No, sir.

25 Q. And what --

1 A. I would assume it would be after January 31st,
2 since I took no pictures on that day, I would have taken
3 it, then, in March.

4 Q. What does this picture reflect about the
5 condition of the Cave Pool Unit Well Number 51?

6 A. An existing wellhead, tubing coming out of the
7 wellhead, no flow lines, no pumping units, you'd be unable
8 to produce the well in that condition.

9 Q. Call your attention to what's been marked as OCD
10 Exhibit Number 25, ask you to identify it.

11 A. This is the Cave Pool Unit Number 53.

12 Q. And on what dates did you inspect the Cave Pool
13 Unit Number 53?

14 A. On January the 31st, 2001; March 6th, 2001;
15 October the 16th, 2001; and then it was inspected again on
16 November 16th of 2001.

17 Q. With the exception of November 16th, 2001, would
18 this picture be an accurate reflection of the condition of
19 that well on the dates that you inspected it?

20 A. Yes, sir, it would.

21 Q. And what does this picture depict?

22 A. It's incapable of production, it shows a piece of
23 casing sticking out of the hole with a bell nipple in the
24 top and a 2-inch ball valve on the top, no flow lines, no
25 pumping unit.

1 Q. Call your attention to what's been marked as OCD
2 Exhibit Number 26 and ask you to identify it.

3 A. This would be the Red Twelve Levers Federal
4 Number 8.

5 Q. And to refer to this well you're going to have to
6 need to move over to page number 10, Exhibit Number 14,
7 correct?

8 A. That's correct.

9 Q. On what dates did you inspect the Red Twelve
10 Levers Number 8?

11 A. On January 31st, 2001; October 16th, 2001; and
12 then it was inspected again on November 30th, 2001.

13 Q. Now, with the exception of November 30th, 2001,
14 does this accurately reflect the condition of the Red
15 Twelve Levers Number 8 well on the dates that you inspected
16 it?

17 A. Yes, it does.

18 Q. Can you describe, then, what Exhibit Number 26
19 depicts?

20 A. The well is incapable of production. On the date
21 of inspection it has a piece of casing coming out of the
22 ground with a bell nipple on top, a small 2-inch gate valve
23 on top, and a nipple, and there's no flow lines and pumping
24 unit.

25 Q. I ask you to identify OCD Exhibit Number 27.

1 A. This is the Red Twelve Levers Federal Number 12.

2 Q. And what dates did you inspect the Red Twelve
3 Levers Federal Well Number 12?

4 A. On January the 31st, 2001, and again on October
5 16th, 2001.

6 Q. Now, the inspection on October 16th, 2001, is
7 reported over on page 11, correct?

8 A. Yes, sir.

9 Q. Does Exhibit Number 27 fairly and accurately
10 depict the condition of the Red Twelve Levers Number 12 on
11 the two dates that you inspected it?

12 A. Yes, sir, it does.

13 Q. And was it taken on February, 2001, as indicated
14 on the photograph?

15 A. Yes, sir, it was.

16 Q. And what does Exhibit Number 27 depict about the
17 Red Twelve Levers Number 12?

18 A. A piece of casing coming out of the ground with a
19 bell nipple, 2-inch valve, no flow lines, no pumping unit.
20 It would be incapable of production.

21 Q. Call your attention to OCD Exhibit Number 28 and
22 ask you to identify it.

23 A. It's the Red Twelve State Number 6.

24 Q. And was that picture taken on or about February
25 13th of 2001, as is indicated on the Exhibit?

1 A. Let me find my page exhibit here.

2 Q. I believe it's on page 12.

3 A. I inspected it on January the 31st, on June the
4 17th of 2001, again on October 16th, 2001, and then it was
5 inspected twice in November, 2001.

6 Q. Okay. Was the picture that is Exhibit 28 taken
7 on February 13th, 2001, as indicated?

8 A. Yes, sir.

9 Q. Does Exhibit Number 28 fairly and accurately
10 reflect the condition of the Red Twelve State Number 6 well
11 on January 31st, 2001; June 17th, 2001; and October 16th,
12 2001?

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

14 Q. Was the condition unchanged on all three of those
15 dates?

16 A. Unchanged.

17 Q. And what does Exhibit Number 28 depict about the
18 Red Twelve State Number 6 will?

19 A. It has a wellhead, the 2-inch pipe coming out of
20 the top of the wellhead with the ball valve on top, no flow
21 lines, no pumping unit. It would be incapable of
22 production.

23 Q. Call your attention to what's been marked as OCD
24 Exhibit Number 29 and ask you to identify it.

25 A. It's the State Number 2.

1 Q. And on what dates did you inspect the State
2 Number 2 well?

3 A. On January the 30th, 2001, and again on June
4 15th, 2001.

5 Q. And was the condition of the well unchanged from
6 January 30th, 2001, to June 15th, 2001?

7 A. Yes, sir.

8 Q. Does Exhibit Number 29 fairly and accurately
9 depict the condition of the well on those two dates?

10 A. Yes, it does.

11 Q. And what does Exhibit Number 29 show about the
12 State Number 2 well?

13 A. The pumping unit is there, but the engine or
14 motor on the back to run it is missing.

15 Q. Could the well produce in that --

16 A. No, sir.

17 Q. -- condition?

18 Very good. Now, I will call your attention to
19 what has been marked as OCD Exhibit Number 30, and that's
20 real hard to read on my copy, but I believe it's readable
21 on the original. And what does that depict?

22 A. It's very hard to read on my copy also.

23 MR. BROOKS: Let's see, could we borrow the
24 original and allow the witness to look at it?

25 EXAMINER CATANACH: I don't think this is an

1 original.

2 MR. BROOKS: Oh, well, we've got the wrong --
3 Let's get the copy from the court reporter here.

4 Q. (By Mr. Brooks) I'll ask you to look at the
5 original of that exhibit and ask you to identify it.

6 A. It's the Cave Pool Unit Number 17.

7 Q. And what is that?

8 A. That's a dryhole marker for a well that's been
9 plugged and abandoned.

10 Q. Okay. Does that indicate to you that on the date
11 that picture was taken, the Cave Pool Unit Number 17 was
12 plugged and abandoned?

13 A. Yes, sir, it does.

14 Q. And would you look at page 2 of Exhibit Number
15 14?

16 A. All right, sir.

17 Q. And what does that indicate? Did you inspect the
18 Cave Pool Unit Number 17?

19 A. I did, on January the 30th, 2001, and again on
20 October the 16th, 2001.

21 Q. Now, would it have been on January the 30th,
22 2001, or soon after that, that Exhibit Number 30 was taken?

23 A. Yes, sir.

24 Q. And again, did you take that picture?

25 A. I did take the picture, on February the 13th,

1 2001, and the condition had not changed.

2 Q. Okay, let me return that photograph to the court
3 reporter, and we'll again borrow the original of Exhibit
4 Number 30, since the writing on these pipes is hard to
5 see -- 31. I'll ask you to look at OCD Exhibit Number 31
6 and tell me if you can identify it.

7 A. It's the Cave Pool Unit Number 22.

8 Q. And does that again indicate that the Cave Pool
9 Unit Number 22 has been plugged and abandoned?

10 A. Yes, sir, it does.

11 Q. Did you inspect the Cave Pool Unit Number 22 on
12 January 30, 2001?

13 A. Yes, sir, I did, and again on October the 16th.

14 Q. Now, was this picture on Exhibit Number 31 taken
15 on February 13th, 2001, as indicated?

16 A. Yes, sir, it was.

17 Q. Very good. Let's return the original exhibit
18 here to the court reporter.

19 Okay, Mr. Guy, in your opinion, in January of
20 2001 and in June of 2001, were the wells that you have
21 testified about in a condition such that they would have
22 been capable of production?

23 A. No, sir.

24 Q. Since most of these wells were inspected more
25 than once and the condition appeared to be essentially the

1 same, in your opinion as a well inspector, is it at all
2 likely that somebody came in and fitted these wells out to
3 produce and then returned them to the same dilapidated
4 condition in which they appear in these photographs?

5 A. No, sir.

6 Q. So would it be a reasonable assumption that these
7 wells did not produce from January, 2000, through and
8 including June of 2000, and in the case of the ones you
9 inspected in October, through and including October of
10 2001?

11 A. Yes, sir.

12 Q. And looking at the condition of these wells as
13 you found them in January of 2001, did appear that they had
14 been in condition to produce recently?

15 A. No, sir, they did not.

16 Q. So would it then be a fair inference in your
17 opinion -- Would you have an opinion as to whether or not
18 they had produced in the last few months before January,
19 2000 -- 2001?

20 A. No, sir, I would assume that they had not
21 produced in a good while, several years.

22 Q. And would that be your opinion based on your
23 observation of the condition of the wells as they existed
24 in January, 2001?

25 A. Yes, sir, it would be my opinion.

1 MR. BROOKS: Pass the witness.

2 Oh, sorry, offer Exhibits Numbers 14 through 31,
3 inclusive.

4 EXAMINER CATANACH: Any objection?

5 MR. BRUCE: No objection, Mr. Examiner.

6 MR. BROOKS: Pass the witness.

7 EXAMINER CATANACH: 14 through 31 will be
8 admitted.

9 EXAMINATION

10 BY MR. BRUCE:

11 Q. Just a couple of uquestions, Mr. Guy, and I'm --
12 First, your Exhibit 14 I'm referring to, and move to page
13 10 of that, please.

14 A. Yes, sir.

15 Q. Excuse me, page 11, page 11. Is one of the wells
16 that we're talking about here today the Red Twelve State
17 Number 4?

18 A. Yes.

19 Q. That's one of them?

20 A. Yes, sir.

21 Q. Okay. And I just want to clear this up, because
22 I was going through a bunch of stuff when you were
23 testifying. That well is in adequate shape; is that what
24 you're saying? Is that an injection well, by the way, or
25 is it a producing well?

1 A. It doesn't indicate on my report.

2 Q. Okay.

3 A. I couldn't tell you from looking at this.

4 Q. Okay, but apparently that is one well that was in
5 good shape even before this Application was filed?

6 A. Yes, sir.

7 MR. BRUCE: The reason I'm asking this, Mr.
8 Examiner, I'm looking at Exhibit 1, which Ms. Prouty -- and
9 maybe this question should be directed at her. I'm just
10 making an observation here.

11 Q. (By Mr. Bruce) If you would turn to page 6 of
12 Exhibit 1. I think that's the same well, the Red Twelve
13 State Number 4, I think that matches up with the API
14 number. I know we're here today talking about false
15 production reporting. It doesn't appear that there's any
16 production reports on that well and that the well is
17 otherwise in compliance. And maybe Ms. Prouty can answer
18 that, or Mr. Brooks. I'm just trying to clarify some of
19 the things we're --

20 MR. GUM: Again, in Exhibit --

21 MR. BRUCE: Yeah, page 6.

22 MR. GUM: Okay, page 6. What month are we on?

23 MR. BRUCE: Okay, this is the --

24 MR. GUM: Okay, page 6.

25 MR. BRUCE: Looks like there's several pages.

1 Oh, I see --

2 MR. GUM: 6 of 13?

3 MR. BRUCE: It says of 6 of -- Excuse me, Mr.
4 Examiner. Six, seven -- It would actually be the eighth
5 page down. I guess it says -- Oh, I see, it says page 8 on
6 mine. There's a 6 in front of it that I was
7 misinterpreting as a page number.

8 MR. GUM: Okay. Based on this report -- but it
9 says it's a water disposal well --

10 MR. BROOKS: Yeah they -- injection, not in
11 January, which this is --

12 MR. BRUCE: My question to Mr. Guy, Mr. Examiner,
13 was simply that the well, from his examination of the
14 premises, looked okay, and I'm just saying it is one of the
15 wells on here for production reporting, but it doesn't show
16 any production on these C- --

17 MR. GUM: Well, in the records it is listed as a
18 disposal well.

19 MR. BRUCE: Okay.

20 MR. GUM: So it would have production report, it
21 should have injection --

22 MR. BRUCE: Injection --

23 MR. GUM: -- volumes.

24 MR. BRUCE: Okay.

25 MR. GUM: Right.

1 MR. BRUCE: Okay, it should have injection
2 volumes, but there is no injection listed; would that be
3 correct, Mr. Gum?

4 MR. BROOKS: If you will look at page 18 of
5 Exhibit Number 13, it will show that injection volumes were
6 reported for two months.

7 MR. BRUCE: Oh, okay. I had made it through 11
8 of these.

9 (Laughter)

10 MR. BRUCE: Okay. Okay, I just wanted to clarify
11 that.

12 Q. (By Mr. Bruce) And again I'll ask this to Mr.
13 Guy, although if Mr. Gum or Mr. Brooks could clarify this
14 for me, one of the wells we're here today for is the Cave
15 Pool Unit Number 51, which is on page 5 of Mr. Guy's
16 Exhibit 14. And I just want to be clear.

17 Over on the right-hand side you have the API
18 number listed, and that's the API number according to the
19 Division's files; is that correct?

20 A. That's correct.

21 MR. BRUCE: Okay. Mr. Examiner, there's -- I
22 haven't gone through every single report yet, and maybe
23 they could fill me in.

24 In going through a lot of the C-115s, I don't see
25 that API number.

1 EXAMINER CATANACH: Which well are we talking
2 about, Mr. Bruce?

3 MR. BRUCE: The Cave Pool Unit Number 51.

4 EXAMINER CATANACH: Okay.

5 MR. BRUCE: And maybe it's on the most recent --
6 that Mr. Brooks just pointed out to me. But that
7 particular API number I don't see -- I didn't find, at
8 least in going through the first 11 or 12 production
9 reports.

10 MR. BROOKS: A different API number is shown on
11 the production reports from what is shown on the inspection
12 report.

13 MR. BRUCE: Okay. And what I'm just looking for
14 is some clarification, Mr. Examiner.

15 MR. GUM: Well, as -- If I may. As reported by
16 the operator, his well Number 51 he reports that one API
17 number, 30-015-02908 --

18 MR. BRUCE: 908.

19 MR. GUM: -- but on our reports they are a
20 different API number. And why the difference is --

21 MR. BROOKS: A different API number --

22 MS. PROUTY: He has -- We had this problem
23 ourselves, David. That's the one where you take this 2903
24 and that said the C-115 filed. But there is a 2908 and a
25 2903, and the -- both of the -- both -- I believe the 2903

1 one was the one, David, that showed up as your C-115 file,
2 so you came to me yesterday and said, Oh, that should have
3 been 2908.

4 MR. GUM: Right, okay.

5 MS. PROUTY: So there are two wells --

6 MR. BRUCE: Okay, I'm just trying to get clear on
7 which wells are which.

8 MS. PROUTY: Yeah.

9 MR. GUM: It's the same well, but it's different
10 API numbers; is that correct?

11 MS. PROUTY: Well, we have two wells in our
12 system.

13 MR. GUM: Okay.

14 MS. PROUTY: I can't tell you whether we should,
15 but we do. But they have never reported 2903, and -- or I
16 say "never": not during that period. So then we took 2903
17 off the exhibit --

18 MR. BROOKS: Yes, it would appear that there's
19 not a production report on the Cave Pool Unit Number 51.

20 MS. PROUTY: Which there was -- If that's 2903,
21 there was yesterday, and that's the one that said "no C-115
22 filed".

23 MR. BROOKS: I remember seeing that, but --

24 MS. PROUTY: But then you asked me to change it.
25 You thought it was a typo --

1 MR. BROOKS: Changed it to 2908 --

2 MS. PROUTY: Correct, which didn't have
3 production filed.

4 MR. BROOKS: And that shows the Cave Pool Unit
5 Number 99.

6 MS. PROUTY: Yes, so maybe we should have left it
7 at 2903, do you think?

8 MR. BROOKS: Well, there seems to be some
9 confusion here --

10 MS. PROUTY: Yes.

11 MR. BROOKS: -- because -- 2903 does appear to be
12 correct, but it does appear that there was, in fact, no
13 production reporting from the Number 51.

14 MS. PROUTY: Ever, right.

15 MR. BROOKS: Not that I'm able to see here.

16 MR. BRUCE: I'm just trying to match up the
17 numbers, that's all.

18 Q. (By Mr. Bruce) Just one final question for Mr.
19 Guy.

20 Mr. Guy, other than the wells that you have
21 specifically responded to questions from Mr. Brooks
22 regarding this list of wells, the other wells were not -- I
23 mean, they're in your list, but we're not here today for
24 those other wells; is that correct?

25 A. That's the way I understand it, sir.

1 MR. BRUCE: Okay. That's all I have of Mr. Guy,
2 Mr. Examiner.

3 Just one final thing regarding two of the wells
4 that Mr. Guy was questioned about, which are the Cave Pool
5 Unit Number 17 and Number 22, those are not listed in the
6 Application, or in the advertisement, I should say. And I
7 haven't gone through the other final exhibits to see if
8 they were in the letters, but they -- I think they are, but
9 they weren't in the advertisement.

10 MR. BROOKS: I believe they are in the text of
11 the Application --

12 MR. BRUCE: Okay, I have not seen --

13 MR. BROOKS: -- paragraph 11 --

14 MR. BRUCE: I haven't seen the Application, Mr.
15 Brooks, so I'll take your word for that.

16 MR. BROOKS: Okay. I believe they were not in
17 the published notice, but since Marks and Garner had actual
18 notice and there's no other party involved, I would believe
19 that to be harmless error.

20 EXAMINER CATANACH: They are in the Application,
21 Mr. Brooks.

22 MR. BROOKS: They are in the text of the
23 Application, they're referred to in Paragraph Number 11 of
24 the Application itself.

25 EXAMINER CATANACH: Okay.

1 MR. BROOKS: I have one question on redirect for
2 Mr. Guy.

3 EXAMINER CATANACH: Go ahead.

4 REDIRECT EXAMINATION

5 BY MR. BROOKS:

6 Q. There was one well I forgot to ask you about
7 because we didn't have a picture of it, but I will call
8 your attention to page 12 and 13 of your report. That is
9 the Theos State Number 1. Did you inspect that well on
10 January 30, 2001?

11 A. Yes, sir, I did.

12 Q. And was that well in condition to produce on that
13 date?

14 A. No, sir, there were no rods in the hole, and
15 there was no motor on the pumping head.

16 MR. BROOKS: Okay. That's all my questions.

17 EXAMINER CATANACH: Mr. Brooks, for clarification
18 again, the wells -- I know the wells that you're seeking to
19 have plugged. The wells that we're seeking to have
20 penalties imposed for nonreporting are all of the wells
21 you've got in the advertisement for this case, plus the
22 additional that are not shown, the 17 and the 22?

23 MR. BROOKS: Yes, plus the two plugged ones, with
24 the exception of -- Well, there are two that go off, I
25 believe Mr. Bruce is correct, the Cave Pool Unit Number 51

1 and the Red Twelve State Number 4. It does not appear that
2 there were any production reports filed on those.

3 But that leaves all of these wells on Exhibit A,
4 the Cave Pool Unit Number 1, 3, 12, 14, 16, 19, 30, 32, 41,
5 53, the Red Twelve Levers Federal Number 8 and 12, the Red
6 Twelve State Number 6, the State Number 2, and the Theos
7 State Number 1, plus the Cave Pool Unit Number 17 and 22.

8 EXAMINER CATANACH: Okay, and what are we doing
9 with the Cave Pool Unit Number 51?

10 MR. BROOKS: Apparently nothing. I believe that
11 that was on the list to be plugged and abandoned
12 originally, but it does not appear to be on the list of
13 ones that has not yet been plugged, so I assume -- Let's
14 see, where is that list? No, it's not on the list of wells
15 remaining to be plugged. So I assume it's either been
16 returned to production or has been plugged at this point.

17 EXAMINER CATANACH: Okay, my question is on that
18 particular well, are we seeking penalties for non-
19 reporting?

20 MR. BROOKS: No, I believe Mr. Bruce is correct
21 that no production was reported from that well.

22 EXAMINER CATANACH: And --

23 MR. BROOKS: That was a confusion on my part
24 between different API numbers.

25 EXAMINER CATANACH: Okay. And then on the Red

1 Twelve State Number 4, same situation?

2 MR. BROOKS: Again, I believe no production was
3 reported from that well. We didn't offer any evidence of
4 condition as to that well either.

5 EXAMINER CATANACH: So no penalty on that well.

6 MR. BROOKS: No penalty on that well.

7 EXAMINER CATANACH: Okay, further clarification.
8 Is the Division seeking a penalty be imposed on each of
9 these wells that we just discussed for the period from
10 September of 2000 through August of 2001?

11 MR. BROOKS: What we will be asking for, Mr.
12 Examiner, is a penalty, and this will amount to a very
13 substantial penalty, and your honor may wish to remit some
14 of it due to extenuating circumstances, of which there are
15 some, but -- and we'll but Mr. Gum on the stand here in a
16 minute -- but what we're asking for is \$1000 per month for
17 each month -- \$1000 per month, per well, for each month in
18 which they reported production in which we believe there
19 was no production.

20 EXAMINER CATANACH: My question to you, Mr.
21 Brooks, is, does that include the period, the entire period
22 that I just described to you from September of 2000,
23 through August of 2001?

24 MR. BROOKS: I believe that it does. I have not
25 gone through these and tallied to be sure that every well

1 is reported for every month, but basically they are
2 reported for -- most of them are reported for each one of
3 those months, and if there are exceptions they would be
4 anecdotal.

5 EXAMINER CATANACH: Okay.

6 EXAMINATION

7 BY EXAMINER CATANACH:

8 Q. Mr. Guy, generally the date of first inspection
9 on these wells was January 30th, 2001?

10 A. Yes, sir.

11 Q. Can you recall there was -- Was there any other
12 earlier inspections than that, or did they -- is that when
13 they all started?

14 A. That particular round of inspections, that's the
15 day that they started. You'll see on the report there, it
16 indicates prior wells. Under normal conditions, those are
17 injection wells, and those are normal, routine inspections
18 that are pulled on an annual basis for those injection
19 wells.

20 But the round of inspections that we're dealing
21 with here, we started on January the 30th.

22 Q. Okay. Now, I believe Mr. Brooks asked you
23 something about whether or not it was your opinion if --
24 whether or not these wells had produced in the months prior
25 to your first inspection of January 30th, 2001, and I

1 believe you testified that it was your opinion that they
2 had not produced?

3 A. That's correct.

4 Q. In fact, from the evidence that we have, can we
5 say that for sure?

6 A. Yes, sir.

7 Q. You can?

8 A. Yes, sir.

9 Q. But you cannot tell me -- You can tell me that
10 those wells did not produce from September until the first
11 time you made the first inspection in January?

12 A. Not from a specific date. I said that they had
13 not produced in several months. Now, the wells that
14 reflect the 2000 inspection date on this report, those are
15 Bradenhead tests, which do not require that the well be in
16 production. There's no way of telling from that specific
17 inspection report whether that well was producing or
18 injecting at the time. However, the inspection itself, the
19 pressure test, showed the well to be static on both of
20 those inspections, which indicated that there was no hookup
21 for injection available.

22 Q. You're talking about inspections that we don't
23 have listed here?

24 A. No, sir, they're listed, but they're back in the
25 year 2000.

1 Q. They're not on this report, though?

2 A. There are a couple of instances where they appear
3 on here. I noticed one of them...

4 What led me to make that statement that I did not
5 believe they had produced in several months was the
6 condition of the casing and the condition of the threads in
7 the top of the casing where there was no valve or
8 casinghead on the top of it. The threads were not shiny,
9 which it would take several months for those threads to
10 become rusted in the condition that I saw them in. So
11 there had been nothing plugged into the top of that well
12 that would have made the threads shiny and would indicate
13 that any wellhead or anything else had been screwed into
14 it.

15 Q. On the wells that, say, didn't have a motor
16 connected --

17 A. Right, sir.

18 Q. -- can you tell me that those wells had not
19 produced for several months prior to January 1st?

20 A. What I used for a basis for that is the condition
21 of the bolts in the tie-downs where the motor or the engine
22 would normally fit on those two runners. Those bolts were
23 rusted -- welded shut from rust, they would have to be cut
24 off in order for the motor to be replaced onto the unit
25 itself. So I can safely assume that it took several months

1 for those nuts and bolts to become that rusted.

2 EXAMINER CATANACH: I have nothing further of
3 this witness.

4 MR. BROOKS: I have nothing further of this
5 witness.

6 EXAMINER CATANACH: This witness may be excused.

7 MR. BROOKS: Call Tim Gum.

8 TIM W. GUM,

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

11 DIRECT EXAMINATION

12 BY MR. BROOKS:

13 Q. Mr. Gum, would you state your name for the
14 record, please?

15 A. Tim W. Gum.

16 Q. And by whom are you employed?

17 A. State of New Mexico, with the Oil Conservation
18 Division.

19 Q. In what capacity?

20 A. District Supervisor of the Artesia District,
21 District 2.

22 Q. Are all of the wells we've been talking about
23 located in District 2?

24 A. Yes, they are.

25 Q. So you are the individual who's responsible for

1 the inspection and regulation of these wells?

2 A. I am.

3 Q. Call your attention to what's been marked as
4 Exhibit Number 32.

5 A. This is a copy of the May 11th, 2000, mass
6 mailout form requesting information on specific inactive
7 wells, and it happens to be that this is Marks and Garner's
8 response to that questionnaire.

9 Q. And I don't imagine that Mr. Catanach wants to
10 hear any more background testimony about the May, 2000,
11 mailing.

12 A. The major comment could be that all this form
13 indicates that all the wells are inactive.

14 Q. Okay. On most of these wells, the box labeled
15 "TA'd" is checked; is that correct?

16 A. That's correct.

17 Q. Now, do these well files actually reflect that
18 these wells were temporarily abandoned pursuant to Division
19 Rule 203?

20 A. No.

21 Q. In fact, they were not for the most part; is that
22 correct?

23 A. That's correct.

24 Q. And in fact, do you know if any of them was at
25 the time that this letter was sent out?

1 A. This does not reflect that any of them were.

2 Q. Okay, very good. The fact that this
3 questionnaire form of letter is filled out and has been
4 returned to and is in the records of the Artesia District
5 Office, does that indicate that it was received by Marks
6 and Garner?

7 A. Yes, and also you'll note that there's two
8 signatures here, or two names printed that -- they are the
9 principals of Marks and Garner.

10 Q. Okay. Call your attention to what's been marked
11 as Exhibit Number 33 and ask you to identify it.

12 A. This is a certified mail dated January 22nd,
13 2001, under my signature, attached with a list of wells
14 that were inactive at that point in time, asking for a
15 specific work plan to bring these wells into compliance.

16 Q. And was page 2 the list of wells attached to the
17 letter which is page 1 of Exhibit Number 33 at the time it
18 was sent?

19 A. Yes.

20 Q. Call your attention to page 3 of Exhibit Number
21 33, and is that a postal receipt?

22 A. Yes.

23 Q. Does that indicate that this Exhibit Number 33
24 was received by Marks and Garner?

25 A. Yes, sir.

1 Q. Call your attention to what's been marked as OCD
2 Exhibit Number 34.

3 A. This is a letter that the OCD office in Artesia
4 received on February the 6th, 2001, from Marks and Garner
5 -- it was dated February 5th, 2001 -- in response to the
6 previous correspondence.

7 Q. And would you read for the record the letter
8 that's the first page of Exhibit Number 34?

9 A. It says, "Dear Mr. Gum, Enclosed is our Dec. 2001
10 C-115 report. All wells shown on the attached list are
11 producing. We had hoped to..."

12 Q. Go ahead.

13 A. Is that --

14 Q. Go ahead.

15 A. "We had hoped to interest Yates Petroleum, the
16 current lease holder, in the well bore on the Mosley Spring
17 32-2. So far they have shown little interest, so we shall
18 commence P&A operations in the early spring (Mar. 15)."

19 Q. I call your attention to the remaining pages of
20 Exhibit Number 34, and does that appear to be a C-115 for
21 the month of December, 2000?

22 A. That's correct, it is a copy.

23 Q. In other words, this letter which Mr. Link Marks
24 signed, in which he said that all wells on your letter were
25 producing, related to one month before and was sent right

1 about the time that Mr. Guy made his inspections of these
2 wells --

3 A. That's correct.

4 Q. -- in which he showed the wells as depicted in
5 the photographs that have been admitted in evidence?

6 A. That's correct.

7 Q. What does that lead you to conclude about the
8 statement that is made in this letter?

9 A. My conclusion is that those wells listed in this
10 particular discussion could not be producing as shown on
11 the C-115.

12 Q. So whether or not Mr. Marks actually knew the
13 condition of these wells, obviously he didn't make any
14 effort to verify that this was correct before he sent you
15 this letter and told you this?

16 A. No, but the person that actually signed as agent
17 for Marks and Garner the C-115, Devin Garner, is also the
18 field person for Marks and Garner. So that person should
19 have known the actual condition.

20 Q. He's the person that's responsible for the day-
21 to-day operation of Marks and Garner's wells?

22 A. Right.

23 Q. Now, Marks and Garner does have some wells that
24 are operating; is that correct?

25 A. That's correct.

1 Q. These aren't all the wells that Marks and Garner
2 has in District 2?

3 A. No.

4 Q. Now, at some point you began to get some activity
5 out of Marks and Garner on these inactive wells. When was
6 that?

7 A. It was approximately October of 2001, as a result
8 of the previous scheduled hearing in which this hearing was
9 scheduled.

10 Q. Subsequent to the filing of the Application in
11 this Case Number 12,757?

12 A. That's correct. And they were given an extension
13 to December the 1st of 2001 to bring the wells into
14 compliance. They did make an effort to bring wells in, and
15 they have substantially reduced the number of wells that
16 were in noncompliance, plus have filed C-103s to plugged-
17 and-abandoned filed wells.

18 Q. And because of that activity, we are not asking
19 for any penalties for the noncompliance status of the
20 wells?

21 A. Not based on our previously indicated --

22 Q. But we are asking for penalties for the reporting
23 of production from those months in which we believe there
24 was not production?

25 A. That's correct.

1 MR. BROOKS: Mr. Examiner, we'll tender into
2 evidence Exhibits Numbers 32, 33 and 34.

3 EXAMINER CATANACH: Exhibits 32, 33 and 34 will
4 be admitted as evidence.

5 MR. BROOKS: Pass the witness.

6 EXAMINATION

7 BY MR. BRUCE:

8 Q. Just really one question. I think you said
9 earlier on, Mr. Gum, that the wells are now in compliance,
10 except that there's several that a C-103 has been approved
11 for; is that correct?

12 A. Yes, that's five wells. We gave the list
13 previously.

14 MR. BRUCE: Okay, I don't have anything else, Mr.
15 Gum.

16 EXAMINATION

17 BY EXAMINER CATANACH:

18 Q. Mr. Gum, on Exhibit Number 32 the notice that you
19 sent out in May of 2000 and the response that you got back
20 from Marks and Garner, are all of the wells that we're
21 talking about today on this list?

22 A. I believe that is correct, but I could not make a
23 definite statement that it is without making a comparison.

24 Q. Okay. Now, on that response, they indicated to
25 you that the wells were TA'd, correct?

1 A. That's correct.

2 Q. Again, your records, your well records don't
3 reflect that the wells were, in fact, temporarily
4 abandoned?

5 A. That's correct, not in any approved program.

6 Q. Now, would this response indicate to you in May
7 of 2000 that none of these wells were producing?

8 A. That would be my conclusion, yes.

9 Q. Do you have any reason to believe that after this
10 notice was sent back to you that any of the wells were
11 brought back on production?

12 A. No.

13 Q. Okay. I believe that Mr. Brooks' statement
14 requested that we order Marks and Garner to plug five
15 wells; is that your understanding?

16 A. Yes.

17 Q. They are proceeding, as I understand. They have
18 made some progress out there in plugging these wells?

19 A. The plugging has not started. They have an
20 approved C-103, intent to plug.

21 Q. For the five wells?

22 A. For the five wells, yeah.

23 Q. What about the other wells on the list today?
24 Have they plugged some of those wells?

25 A. No.

1 Q. They have not?

2 A. They have returned some to production, have TA'd
3 two, I believe, but none have been P-and-A'd.

4 Q. Okay, you're satisfied, with the exception of
5 these five wells that you're seeking to have plugged, that
6 everything else is in compliance now?

7 A. As far as I know at this time, yes.

8 Q. Okay. And they have filed an intent to P-and-A
9 these five wells?

10 A. That's correct.

11 Q. And do you have any reason to believe that they
12 will not plug these wells?

13 A. I believe their intent would be to plug the
14 wells, but I'm not for sure the timeliness of the plugging.

15 Q. Now, we've asked them since -- Was it May of 2000
16 when we asked them to take some action with regards to
17 these wells?

18 A. Yes, sir.

19 Q. And they have not done so, with the exception of
20 filing the C-103s for these five wells?

21 A. The main portion of that action came after the
22 results of the first hearing that was in October.

23 Q. And you believe we've given them sufficient
24 opportunity to bring these five wells into compliance?

25 A. Yes.

1 EXAMINER CATANACH: That's all I have of this
2 witness, Mr. Brooks.

3 MR. BROOKS: Very good, I'm through except for
4 one housekeeping matter on notice.

5 EXAMINER CATANACH: Okay.

6 MR. BROOKS: Mr. Examiner, Marks and Garner has
7 made an appearance, so the notice issue is really moot so
8 far as they're concerned. However, I believe that if you
9 will take -- I will again ask you to take administrative
10 notice of the file, which reflects that they were served
11 and that they did receive the letter.

12 Now as to St. Paul Surety, the situation is a
13 little bit more complicated. I caused that notice to be
14 sent, and it was sent by certified mail, return receipt
15 requested. And a return receipt did come back, but I can't
16 find it either in the case file or in our file.

17 I do have a letter which probably should be in
18 the case file. It has an OCD receipt stamp on it, and it
19 is dated, the receipt, November 19th, 2001.

20 I don't know if you recall the sequence of
21 events, but we first attempted to notify the surety by
22 serving the agent, and the agent apparently has gone out of
23 business. It was returned undeliverable. So we deferred
24 the hearing -- I requested the continuance of the hearing.
25 I re-notified St. Paul.

1 This letter, which is a part of the Oil
2 Conservation Division's files, I will tender, not as an
3 exhibit but as something that should be in the case file,
4 and it's signed by Mr. Wayne Anderson with St. Paul Surety,
5 and it indicates that he has received my letter of October
6 24, 2001, which is in the case file and is a notice of this
7 proceeding to St. Paul.

8 So based on the fact that that should be in the
9 case file and has a received stamp on it, and on my letter,
10 I will ask you to take administrative notice that notice
11 has been given to St. Paul Surety.

12 MR. BRUCE: Mr. Examiner, I can simplify this for
13 Mr. Brooks. I was called by St. Paul, and I'm not sure --
14 He had told me the exact surety was USF&G Company. I'm not
15 sure -- It's a St. Paul company.

16 MR. BROOKS: That was part of the original
17 confusion. First notice was sent to USF&G. I wanted to
18 avoid saying things as to which I had to testify. I have
19 also talked with Mr. Ander- --

20 MR. BRUCE: But I had forgotten this, Mr.
21 Examiner. I am authorized to enter an appearance on behalf
22 of the bonding company. So that will take care of the
23 notice issue.

24 MR. BROOKS: Okay.

25 EXAMINER CATANACH: Very good.

1 MR. BRUCE: And I had forgotten to say that at
2 the beginning, so --

3 EXAMINER CATANACH: Okay.

4 MR. BRUCE: And I don't know -- I talked to --
5 St. Paul Insurance Company is what I believe one of their
6 subsidiaries is, USF&G Company, or United States Fidelity
7 and Guaranty Company.

8 MR. BROOKS: That was what was represented to me
9 by Mr. Anderson, as a matter of fact.

10 EXAMINER CATANACH: Okay.

11 MR. BROOKS: Okay, I'll rest. The OCD rests.

12 MR. BRUCE: Mr. Examiner, I just have a brief
13 statement and a brief request.

14 EXAMINER CATANACH: Before you do that -- Mr.
15 Brooks, the Division still hasn't proposed the amount of
16 penalty that they're seeking in this case with regards to
17 the production reporting?

18 MR. BROOKS: Only the formula which is going to
19 result in something close to \$150,000 -- it's not going to
20 be quite that -- the formula of \$1000 per well, per month
21 for erroneous production.

22 It can be computed exactly from the reports that
23 have been admitted in evidence, but I don't have that
24 figure computed at this time.

25 EXAMINER CATANACH: But you've got an estimate.

1 Is that a fair estimate?

2 MR. BROOKS: I think it probably is. Let's see,
3 there's one, two, three, four, five, six, seven, eight,
4 nine, ten, eleven, twelve, thirteen, fourteen, fifteen,
5 sixteen, seventeen, eighteen -- I count 18 wells, and most
6 of them will -- it's going to be a little higher than that,
7 because I count 18 wells, and I believe most of them were
8 reported for all 12 months, although there were a few that
9 were not reported for all months. If we had 18 wells for
10 12 months, that would be --

11 EXAMINER CATANACH: -- \$216,000.

12 MR. BROOKS: Right, thank for -- Your calculator
13 work is better than my head.

14 EXAMINER CATANACH: We will use that as an
15 estimate. That may or may not be the final figure.

16 MR. BROOKS: It will be a little less than that,
17 because some of the wells did not report for all months,
18 but it will be somewhere in that order of magnitude.

19 EXAMINER CATANACH: Okay, I just wanted to
20 clarify that.

21 Go ahead, Mr. Bruce.

22 MR. BRUCE: Mr. Examiner, my request is simple.
23 Obviously the Division has spent considerable time putting
24 this case together. This is the first time I've seen the
25 evidence that the Division has.

1 I was contacted very recently about this. I
2 tried to get -- I talked with Mr. Link Marks, whom Mr. Gum
3 knows.

4 He informed me that he had a funeral to attend
5 late yesterday in Texas, and I asked if Mr. Garner could
6 make it. He informed me that Mr. Garner has Parkinson's
7 disease and doesn't travel well, and therefore if I was
8 going to have a witness it should have been Mr. Marks
9 instead.

10 As I said, these are new cases before the
11 Division. I haven't had time to research issues such as
12 the penalty involved in this matter. And in order to
13 review this data and really get together with my client, I
14 would simply request that it be continued for four weeks so
15 if Marks and Garner does desire to present a witness, that
16 I have one available.

17 EXAMINER CATANACH: Okay. Mr. Brooks?

18 MR. BROOKS: Your Honor, we would object to such
19 a continuance. Mr. Bruce had the opportunity to request a
20 continuance prior to this hearing, and I think it's a
21 little bit unfair for him to hear our entire case and then
22 request four weeks to prepare his rebuttal evidence.

23 EXAMINER CATANACH: I would have to agree with
24 Mr. Brooks and deny the request to continue, although I
25 would allow you to present something in the form of a

1 defense if you wish, after the hearing.

2 MR. BRUCE: I would like to present something
3 regarding the penalties involved --

4 EXAMINER CATANACH: Okay.

5 MR. BRUCE: -- whether that's in the form of a
6 proposed order -- Maybe that might be the way to go. I'm
7 sure --

8 MR. BROOKS: That would be acceptable.

9 MR. BRUCE: I'm sure Mr. Brooks would be -- He's
10 presented some proposed orders in the other ones.

11 MR. BROOKS: Right, I have.

12 EXAMINER CATANACH: Okay. So you want to present
13 a draft order?

14 MR. BRUCE: A draft order or something along that
15 nature.

16 MR. BROOKS: Whatever your Honor would prefer.

17 EXAMINER CATANACH: Can you accomplish what you
18 want with a draft proposed order, Mr. Bruce?

19 MR. BRUCE: Yeah, and if, you know -- yeah, I
20 think I can.

21 EXAMINER CATANACH: Certainly if you disagree
22 with the decision, you always have the right to appeal it
23 to the Commission.

24 MR. BRUCE: Correct.

25 EXAMINER CATANACH: Okay.

1 MR. BROOKS: Thank you.

2 EXAMINER CATANACH: There being nothing further
3 in this case, Case 12,757 will be taken under advisement,
4 and this hearing is adjourned.

5 (Thereupon, these proceedings were concluded at
6 4:45 p.m.)

7 * * *

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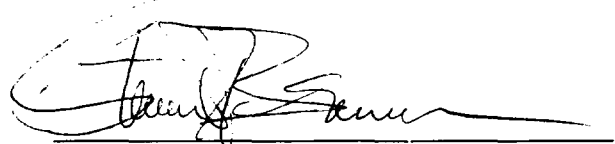
CERTIFICATE OF REPORTER

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 January 18th, 2002.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002