

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

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

CASE NO. 12,862

APPLICATION OF THE NEW MEXICO OIL)
 CONSERVATION DIVISION FOR AN ORDER)
 REQUIRING N. DALE NICHOLS TO BRING)
 EIGHT WELLS INTO COMPLIANCE WITH RULE)
 201.B AND ASSESSING APPROPRIATE CIVIL)
 PENALTIES, CHAVES COUNTY, NEW MEXICO)

**ORIGINAL
 RECEIVED**

APR 3 2003

Oil Conservation Division

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
 JAMI BAILEY, COMMISSIONER
 ROBERT LEE, COMMISSIONER

March 20th, 2003

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, March 20th, 2003, 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.

* * *

I N D E X

March 20th, 2003
 Commission Hearing
 CASE NO. 12,862

	PAGE
EXHIBITS	3
APPEARANCES	4
APPLICANT'S WITNESS:	
<u>TIM W. GUM</u> (District Supervisor, Artesia District Office, District 2, NMOCD) Direct Examination by Mr. Brooks	7
NICHOLS WITNESS:	
<u>JIM L. PIERCE</u> (Landman) Direct Examination by Mr. Bruce	17
Cross-Examination by Mr. Brooks	22
APPLICANT'S WITNESS (Recalled):	
<u>TIM W. GUM</u> (District Supervisor, Artesia District Office, District 2, NMOCD) Direct Examination by Mr. Brooks	26
REPORTER'S CERTIFICATE	30

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 10	8	16
Exhibit 11	14	16

* * *

Nichols	Identified	Admitted
Exhibit N-1	20	22
Exhibit N-2	23	24

* * *

A P P E A R A N C E S

FOR THE COMMISSION:

STEPHEN C. ROSS
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 South Saint Francis Drive
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

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

FOR N. DALE NICHOLS:

JAMES G. BRUCE
Attorney at Law
P.O. Box 1056
Santa Fe, New Mexico 87504
369 Montezuma, No. 213
Santa Fe, New Mexico 87501

* * *

1 WHEREUPON, the following proceedings were had at
2 1:03 p.m.:

3
4 CHAIRMAN WROTENBERY: I'll go ahead and call Case
5 12,862. This is the Application of the New Mexico Oil
6 Conservation Division for an order requiring N. Dale
7 Nichols to bring eight wells into compliance with Rule
8 201.B and assessing appropriate civil penalties, in Chaves
9 County, New Mexico.

10 And this case was continued from the Commission's
11 hearing on February 27th. And I believe we heard the
12 Division's case in this matter, but Mr. Brooks, you've
13 handed me some additional exhibits. Do you want to
14 supplement?

15 MR. BROOKS: Yes, ma'am. And I see my witness
16 has come in.

17 Madame Chairman, honorable Commissioners, I'm
18 David Brooks, Energy, Minerals and Natural Resources
19 Department of the State of New Mexico, appearing for the
20 New Mexico Oil Conservation Division.

21 We did present our case at the previous hearing.
22 Mr. Gum has requested to present some additional
23 information, partly by way of response to some questions
24 that were raised by the Commissioners at the previous
25 hearing.

1 We will either supplement at the beginning or
2 present our material together with any rebuttal at the
3 conclusion of the Respondent's presentation, as the
4 Commission pleases.

5 CHAIRMAN WROTENBERY: Mr. Bruce, do you have any
6 objection if we go ahead and hear --

7 MR. BRUCE: None at all --

8 CHAIRMAN WROTENBERY: -- additional evidence from
9 Mr. Gum?

10 MR. BRUCE: -- no.

11 CHAIRMAN WROTENBERY: Mr. Gum, would you please
12 come to the witness stand?

13 And --

14 MR. BRUCE: Oh, I do have one witness, madame
15 Chair, I'm sorry.

16 CHAIRMAN WROTENBERY: Okay, thank you.

17 Can we consider Mr. Gum still sworn? We're in
18 the same proceeding. What's the usual procedure?

19 COURT REPORTER: Usually it's done anew each
20 meeting.

21 CHAIRMAN WROTENBERY: Okay. Well, let's do that
22 again.

23 And Mr. Bruce, if your witness could stand, we'll
24 swear both in at the same time.

25 (Thereupon, the witnesses were sworn.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TIM W. GUM,

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

DIRECT EXAMINATION

BY MR. BROOKS:

Q. Good afternoon, Mr. Gum.

A. Good afternoon.

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

A. Tim W. Gum.

Q. And by whom are you employed?

A. The State of New Mexico, the Oil Conservation Division.

Q. In what office?

A. The Artesia District Office.

Q. And what is your capacity?

A. District Supervisor.

Q. Now, did you testify at the previous hearing in this case?

A. I did.

Q. And I believe your credentials were accepted and made a matter of record at that time?

A. That's correct.

Q. Mr. Gum, I have called you this afternoon again in this case for the purpose of presenting some additional evidence that is not -- I think is really just a little bit

1 more graphic or clearer presentation of what we presented
2 at the previous hearing. I will first call your attention
3 to what has been marked as OCD Exhibit Number 10, a copy of
4 which is in front of you --

5 A. Yes, sir.

6 Q. -- and ask you to describe what that exhibit
7 depicts.

8 A. This is a spreadsheet listing of the wells that
9 were actually included as Exhibit Number 6 in the hearing
10 last month. The only additions that were made to this
11 particular attachment was the two rightmost columns. These
12 two columns indicate the date that the wells actually came
13 into compliance and the type of work that was performed to
14 bring the wells into compliance.

15 And from this particular attachment or exhibit,
16 you might note that the next column to the left was the
17 operator's work plan as when he had projected that he would
18 have the wells into compliance. And all of those dates
19 were in the year 2001, whereas actual wells were actually
20 brought into compliance -- the majority of the wells were
21 not brought into compliance until much later than the
22 January 1, '02, deadline.

23 Q. Very good. This exhibit lists a number of wells
24 in addition to the wells that are actually at issue in this
25 proceeding, correct?

1 A. That's correct.

2 Q. But it is correct and complete as to the wells
3 that are at issue in this proceeding?

4 A. That is correct.

5 Q. I'll call your attention to one thing because
6 it's something of a discrepancy between what I had
7 presented and what I presented last month. In connection
8 with the Standard State Number 6Y, the date resolved is
9 stated as being 12-17 of '02?

10 A. That's correct.

11 Q. Now, I believe we established, did we not, at the
12 last hearing that actually the physical plugging of that
13 well occurred in June of '02; is that correct?

14 A. That's correct. But perhaps, if I may take a
15 moment, Mr. Brooks --

16 Q. Yes, please do.

17 A. -- and madame Chairman, to kind of clarify the
18 process which we have undertaken in the inactive well
19 project.

20 Once a well is determined to be inactive from our
21 run against the ONGARD system, it is the District 2's
22 policy and procedure that a physical field inspection is
23 made on every well on that list prior to the time that it
24 is brought to hearing. If the operator has documentation
25 to show that that well has been brought into compliance

1 prior to the hearing date, that well particularly is
2 stricken from the list that's brought to hearing.

3 Also, once the inactive wells are brought to
4 hearing, Mr. Brooks and/or the Hearing Examiner will ask us
5 to verify again what the status is of those particular
6 wells which are on the list. And if they are in
7 compliance, they are also stricken from the order or so
8 noted in the order itself before it's finally drafted and
9 signed.

10 For example, the initial inactive well hearing
11 that we had back last year, there were several wells that
12 were stricken from the original list as I was walking from
13 the seats in the back, coming to the witness stand to be
14 sworn in.

15 Again, the process was, as long as an operator
16 would provide us documentation that the well was in
17 compliance, we would strike it from the hearing list.

18 And also that goes back to the question that the
19 Chairman had last month about the findings in Number 9, the
20 October 29th date. At that point in time, all of those
21 wells listed were still in noncompliance, because we had no
22 additional documentation to state that they were in
23 compliance.

24 Q. Okay.

25 A. Now, back to your particular question on the

1 Standard 6Y, the well was physically plugged in June, as I
2 recall. But we did not receive any notification that the
3 well had been plugged until much later than that time, and
4 it was past this October 28th or 29th date. No
5 documentation.

6 Now, the process that is followed in a P-and-A
7 well is, once the well is plugged and abandoned the
8 operator notifies us that it has been plugged. We send out
9 another letter that says, well, has the location been
10 completed and cleaned up?

11 Once that letter is received, a second inspection
12 is made of that well location. If it meets the
13 requirements of the regulation, then that wellbore is
14 released as being plugged and abandoned.

15 At that point, it is entered into ONGARD system
16 as being plugged and abandoned. Therefore you get the date
17 of December 17th, '02, as the official date that that well
18 was plugged. And the reason that this process is conducted
19 in this manner is that the bond is not released until the
20 final cleanup and the location is approved for P-and-A.

21 Q. The actual date of physical plugging of that well
22 was in June of '02, correct?

23 A. That's correct.

24 Q. Now, that well, the Standard State 6Y, was
25 included, I believe we established in the last hearing, in

1 the inactive well notice that was given on May the 11th of
2 '02; is that correct?

3 A. That's correct.

4 Q. So whether you look to June of '02 when it was
5 plugged, or December 17 of '02 when the location apparently
6 was finally released, it's still true that there was two
7 full years elapsed from the date that notification of the
8 inactive status of that well was given until it was
9 plugged, correct?

10 A. That is correct.

11 MR. BROOKS: And so if I inadvertently said that
12 it was only one year at the last hearing, which I believe I
13 may have said, that was incorrect; it was actually two-
14 years-plus, regardless of which date you use.

15 CHAIRMAN WROTENBERY: Because the notice was
16 originally given in May of 2000; is that right?

17 MR. BROOKS: Correct.

18 Q. (By Mr. Brooks) Okay, I'll now call your
19 attention to what has been marked as OCD Exhibit Number 11.

20 COMMISSIONER BAILEY: Before we leave this
21 exhibit could we have clarification, please?

22 MR. BROOKS: Okay.

23 COMMISSIONER BAILEY: Lewis Neff Number 3, the
24 date resolved, I'm assuming that's just a typo for the
25 year?

1 CHAIRMAN WROTENBERY: Uh-huh.

2 THE WITNESS: Lewis Neff Number 3 was a typo for
3 which now?

4 COMMISSIONER BAILEY: The date resolved.

5 CHAIRMAN WROTENBERY: It says December 3rd of
6 '03, which we haven't reached yet, so --

7 THE WITNESS: That definitely is a typo.

8 CHAIRMAN WROTENBERY: Yeah.

9 COMMISSIONER BAILEY: Okay, so we'll put '02 for
10 that one?

11 THE WITNESS: That is correct.

12 COMMISSIONER BAILEY: Okay.

13 THE WITNESS: And I am the responsible party for
14 that typo.

15 CHAIRMAN WROTENBERY: And then let me just ask
16 one more question, since we're talking about discrepancies
17 here.

18 I believe you had testified that all of the
19 operators' proposed actions were in '01, but the very first
20 one has an '02 date. Is that --

21 THE WITNESS: That is correct, yes.

22 CHAIRMAN WROTENBERY: The '02 date is correct?

23 THE WITNESS: Yes, ma'am.

24 CHAIRMAN WROTENBERY: Okay.

25 MR. BROOKS: Are we ready to move on to Exhibit

1 11?

2 CHAIRMAN WROTENBERY: (Nods)

3 Q. (By Mr. Brooks) Okay. Is Exhibit 11 a summary
4 with respect to certain of these wells of the discrepancies
5 in the dates and the reason why the Examiner might have
6 concluded that these were not resolved at the date of the
7 issuance of the Division Order?

8 A. Yes, Mr. Brooks, and one primary purpose of this
9 exhibit was to help the Chairman understand why wells were
10 listed in Finding Number 9 as being inactive when, in fact,
11 that they were in compliance.

12 Q. Now, the Division Hearing took place on May 2nd
13 of '02, correct?

14 A. That's correct.

15 Q. And the Division Order was actually signed on
16 November 5 of '02?

17 A. That's correct.

18 Q. But it appears that some of the information that
19 the Examiner had, the Director had, may have been a few
20 days old at the time that that was signed?

21 A. That's correct, the information that we received
22 that these wells were in compliance was received after the
23 October 29th date.

24 Q. Okay. Is there anything else you would like to
25 comment on about Exhibit 11, or just let it speak for

1 itself?

2 A. Just to answer a previous question that Mr. Bruce
3 had last month was, the last paragraph on the last page --
4 I made the comment that seven of the wells out of 14 had
5 been brought into compliance during this particular time,
6 and I was in error. It was only five, five wells out of
7 the 14, for 36 percent of the total wells.

8 Q. Were brought into compliance prior to January 1
9 of '02?

10 A. Yes.

11 Q. And that is material to you because you had in
12 previous correspondence indicated that that was the
13 deadline that this operator had to bring his wells into
14 compliance?

15 A. That is correct, and it is also in line with his
16 proposed work plan that he presented.

17 Q. Okay. Now, it remains true, I take it, as it was
18 last month, that all of the wells that are now in
19 compliance except for the Lynx Number 1?

20 A. That is correct.

21 Q. Okay.

22 A. I have one additional comment I would like to
23 offer --

24 Q. Proceed.

25 A. -- on the Lynx, and this is for Commissioner

1 Bailey's benefit. She posed a question about the
2 mechanical condition last month. Additional review of the
3 well file indicates that the well does not have casing
4 collapsed, so therefore it's not as severe a problem as I
5 had indicated at that time.

6 The information in the file now states that there
7 is a packer stuck with 31 joints of tubing cut off above
8 the packer. This is still a problem, but it is much easier
9 to deal with than having a casing collapse that you have to
10 repair before you get down to your fish. And it is very
11 important that this fish be removed at least down to the
12 packer, in order that the well can be properly plugged to
13 protect the environment and meet our guidelines.

14 Q. Mr. Gum, is there anything further you feel the
15 Commissioners should be advised about this case?

16 A. Not at this point.

17 Q. Very good. Were Exhibits 10 and 11 prepared by
18 you in the ordinary course of business?

19 A. Yes.

20 MR. BROOKS: We'll offer Exhibits 10 and 11 at
21 this time.

22 CHAIRMAN WROTENBERY: Any objection, Mr. Bruce?

23 MR. BRUCE: No objection.

24 CHAIRMAN WROTENBERY: Okay, Exhibits 10 and 11
25 for the OCD are admitted into evidence.

1 MR. BROOKS: Pass the witness.

2 MR. BRUCE: I don't have any questions.

3 CHAIRMAN WROTENBERY: Commissioners?

4 Thank you for your testimony, Mr. Gum.

5 MR. BROOKS: That concludes our presentation at
6 this time, madame Chairman.

7 CHAIRMAN WROTENBERY: Thank you.

8 Mr. Bruce?

9 JIM L. PIERCE,

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. BRUCE:

14 Q. Would you please state your name and city of
15 residence for the record?

16 A. Jim Lee Pierce, Roswell, New Mexico.

17 Q. What's your occupation?

18 A. I'm an oil and gas landman.

19 Q. Okay. Have you worked for Mr. Nichols on and off
20 for a number of years?

21 A. Yes.

22 Q. What has been your experience with Mr. Nichols?

23 A. He's hired me -- we've known each other about ten
24 years -- to clean up title and problems that he has that
25 come up from time to time on these leases and whatnot that

1 he owns and operates north of Roswell.

2 Q. Okay. And have you been familiar with the
3 matters related to bringing these wells into compliance
4 with the OCD?

5 A. Somewhat.

6 Q. Now, Mr. Nichols did try to get these wells in
7 compliance, did he not?

8 A. Yes, has been since before the hearings last
9 year, this time last year.

10 Q. And he was admittedly late on getting some of
11 these?

12 A. Yes, he -- It's a father-son outfit. The two of
13 them do this by themselves, with some hired help from time
14 to time. They've run into some health problems the last
15 year and a half, which has been the major reason for not
16 being able to get things done as they intended, which has
17 been provided as part of the testimony and the exhibits
18 today, I believe.

19 Q. I haven't submitted the testimony yet --

20 A. Oh.

21 Q. -- but we'll get into that.

22 A. All right.

23 Q. Is there another matter that you've worked on for
24 Mr. Nichols that has slowed him down in getting some of
25 these wells in compliance?

1 A. He was involved with -- It's called the Ard lease
2 or the Acme lease. In fact, the Commission issued an order
3 against Julian Ard, or the operator, out of Fort Worth, on
4 an offsetting lease that Mr. Nichols was involved with. He
5 got saddled with this problem. He has taken it upon
6 himself to clean up that matter, which he has done, and it
7 had to do with some noncompliant wells.

8 And the State had contended, I believe, that
9 there was an expired lease. Again it went to hearing. The
10 State made a decision and issued an order that there was an
11 increase in royalty and a timetable that Mr. Ard was
12 supposed to adhere to, which he wasn't. Mr. Nichols, being
13 involved with the lease and so forth, took it upon himself
14 to do this and has complied, and I believe the State's very
15 happy with him in this scenario.

16 Q. Okay, so that -- He took on a problem that the
17 State was aware of --

18 A. Yes.

19 Q. -- and satisfied the Division with cleaning up
20 that lease?

21 A. That's correct.

22 Q. Now, regarding the Lynx Number 1 there were some
23 problems. Have you informed Mr. Nichols that he has to
24 deal with the State on that matter?

25 A. Yes. As Mr. Gum mentioned, there's very bad

1 mechanical problems downhole which made them unable,
2 especially with the problems that they've incurred over the
3 last year or whatnot, to get in there and do it as they had
4 scheduled to plug and abandon this well.

5 But all the work has been done, and I believe a
6 C-103 has been provided to the OCD District Office in
7 Artesia, that all that they're waiting for on this Lynx
8 well is a dryhole marker, and they've made arrangements
9 with the surface owner for cleanup.

10 Q. Okay. Now, you don't dispute Mr. Gum that Mr.
11 Nichols was given an extension until January 1 of 2002 and
12 did start working on those wells to bring them into
13 compliance?

14 A. Yes, again he started bringing -- I believe it
15 was a total of 15 wells, as I recall -- he started bringing
16 those wells into compliance in 2001, prior to the hearings
17 that we had at this time last year.

18 Q. And has he been slowed down by health problems in
19 getting this done?

20 A. Yes.

21 Q. I've handed you what's been marked Nichols
22 Exhibit 1 -- or 2 -- yeah, Nichols Exhibit 1, excuse me.
23 Could you just briefly describe the health problems? You
24 do know Mr. Nichols fairly well, do you not?

25 A. Well enough. He's been in the hospital three

1 times in the last year and some odd months, and when he
2 hasn't been thrown in the hospital he's been out on this
3 lease work. His most recent visit was the end of last
4 week, he was rushed by air ambulance and whatnot for health
5 problems.

6 Q. Okay. What is Mr. Nichols here for today? He
7 will bring the final well into compliance, will he not?

8 A. Yes. Again, I think I've provided you with a
9 copy of the C-103 that he provided me before I came up here
10 to Santa Fe yesterday. I was told that that was being
11 provided to the OCD District Office in Artesia. And again,
12 I've read that, and it said that all that they're waiting
13 for is a dryhole marker and surface cleanup.

14 Q. Would Mr. Nichols like either the penalty
15 eliminated or reduced, based on his circumstances?

16 A. Yes, they can't afford \$11,000 again. It's a
17 father-and-son outfit like -- There are hundreds of those
18 in the State of New Mexico that handle these small,
19 marginal leases. They have been out there working
20 diligently. And again, they had 15 wells in noncompliance
21 and at this point they have not -- and as Mr. Gum alluded,
22 they had most of the wells, or a good portion of the wells,
23 in compliance in June of last year.

24 Q. Which was later than the hearing?

25 A. Yes.

1 Q. It wasn't by deliberate aim that he missed the
2 deadline?

3 A. No.

4 Q. What is Exhibit 2, briefly, Mr. -- excuse me,
5 Exhibit 1, Mr. Pierce?

6 A. I called and asked -- And that's one reason I'm
7 here, is because neither he nor his son could be here
8 because of health problems. He faxed me this information
9 and I told him to get everything in order as far as his
10 hospital visits and hospital stays over the last year and
11 some odd months. This is what he's sent to me. The
12 physician dated this one 7-3-02, and it has to do with a
13 Stent implant in his heart, or someplace. This is Greek to
14 me.

15 MR. BRUCE: That's all I have, madame Chair. I
16 move the admission of Nichols Exhibit 1.

17 CHAIRMAN WROTENBERY: Any objection?

18 MR. BROOKS: No objection.

19 CHAIRMAN WROTENBERY: Okay, Nichols Exhibit 1 is
20 introduced into evidence.

21 Mr. Brooks, do you have any questions?

22 CROSS-EXAMINATION

23 BY MR. BROOKS:

24 Q. Mr. Pierce, this C-103 that was allegedly filed
25 with the OCD, do you have a copy of it?

1 MR. BRUCE: Yes, we do.

2 THE WITNESS: Yes, sir, I do.

3 Q. (By Mr. Brooks) Okay, are you familiar with the
4 way a C-103 form -- with how it's constructed?

5 A. I'm not really -- I know how to fill one out to a
6 point.

7 MR. BROOKS: Okay, I would like to mark this as
8 an exhibit. And since Mr. Bruce did not mark it --

9 MR. BRUCE: I've marked it Exhibit N-2, Mr.
10 Brooks.

11 MR. BROOKS: Oh, okay. N-2, very good. We will
12 then -- I will leave it marked in that manner, then.

13 Q. (By Mr. Brooks) If you will look at the middle
14 portion of that C-103 you will notice there are two
15 parallel boxes. One reads in all cap letters above the
16 box, "NOTICE OF INTENTION TO:", and the other one to the
17 right reads in capital letters, "SUBSEQUENT REPORT OF:"
18 Correct?

19 A. Yes, sir.

20 Q. Now, under which one of those titles is there a
21 checkmark or an X?

22 A. Under "NOTICE OF INTENTION TO:", "PLUG AND
23 ABANDON" is marked.

24 Q. Okay. Now, would you construe that as meaning
25 that this work has actually been done, or simply that he

1 has notified the OCD that he intends to do this work?

2 A. Well, moving on down further into "Described
3 Proposed or Completed Operations", the dates indicate to me
4 that this is still ongoing, on into the first week of April
5 of this year.

6 Q. Okay. Now, I notice that this says the well is
7 currently plugged. However, it says it's a notice of
8 intent and it does not say it's a subsequent report,
9 correct?

10 A. Yes, sir.

11 Q. So there seems to be some degree about whether
12 this is something that they actually have done or something
13 they intend to do. At least it would seem that way to me.

14 A. Well, it states that he just only needs to "Clean
15 up location" and "Install dry hole marker".

16 MR. BROOKS: Okay, thank you. I think the
17 exhibit will speak for itself, though, so I will offer
18 Exhibit Number 2 at this time, Nichols 2.

19 CHAIRMAN WROTENBERY: Any objection to Exhibit
20 N-2?

21 MR. BRUCE: No objection.

22 CHAIRMAN WROTENBERY: It's admitted into
23 evidence.

24 MR. BROOKS: Okay, very good. Thank you.

25 Q. (By Mr. Brooks) Mr. Pierce, are you familiar

1 with the correspondence that's gone back and forth between
2 the OCD's Artesia District Office and Mr. Nichols and his
3 son previous to the previous hearing?

4 A. No, sir, not really. I did vaguely or briefly
5 look at a file that Mr. Bruce has that had copies of that,
6 and that was just this morning.

7 Q. Yeah, so --

8 A. I did not get involved with this. Like I said,
9 the only reason I'm here has been impromptu, because of
10 their health.

11 Q. You don't propose, then, to offer any further
12 evidence of anything in rebuttal to or in supplementation
13 of the notice of the evidence concerning notices that were
14 sent and Mr. Nichols' previous responses to those notices?

15 A. Apparently he didn't file an outline, prior to
16 the hearings last year from what I understand thus far,
17 of what he was going to get done and the time frame in
18 which he was going to try to do it.

19 Q. Okay. Very good. I notice that this Nichols
20 Exhibit Number 2 does not have a file stamp on it. Do you
21 know on what date it was filed with the OCD?

22 A. Again, this was provided to me yesterday before I
23 left Roswell to come up here.

24 Q. And I notice it has a date in the lower right-
25 hand corner. It says 3-19 of '03.

1 A. Which was yesterday, yes, sir.

2 MR. BROOKS: Okay, thank you. I believe that's
3 all of my questions.

4 CHAIRMAN WROTENBERY: Thank you.

5 Commissioners, any questions?

6 Thank you, Mr. Pierce, for your testimony.

7 Do we have anything further in this matter,
8 gentlemen?

9 MR. BRUCE: I have nothing further, just a short
10 statement.

11 MR. BROOKS: Madame Chairman, honorable
12 Commissioners, I would like to recall Mr. Gum to ask him
13 one question.

14 CHAIRMAN WROTENBERY: Okay.

15 MR. BROOKS: Well, I guess two questions.

16 TIM W. GUM (Recalled),
17 the witness herein, having been previously duly sworn upon
18 his oath, was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q. Have you been notified that Mr. Nichols has
22 allegedly plugged this well?

23 A. No, I have not.

24 Q. Looking at Nichols Exhibit 2, can you tell if
25 that has been properly accomplished from the procedure set

1 forth there?

2 A. Based on the information I have on this C-103,
3 no, it was not properly accomplished. for two reasons. As
4 I recall what the data contained in the well file was,
5 prior to the hearing, to this hearing, there was an
6 approved P-and-A intent, approved by our office, of which
7 Mr. Nichols had a copy. That outlined the proper
8 procedure. He attempted to plug the well at that time,
9 utilizing that procedure, and it was determined that he had
10 this downhole mechanical problem with the stuck packer and
11 31 joints of tubing above the packer. We have had not
12 other documentation or notification that any additional
13 work has been done.

14 Now, based on this C-103, the normal procedure is
15 that he's asking for plugging approval because it is an
16 intention; it is not the subsequent report that says that
17 the work was done. Now, it could be that there was an
18 error in the fact that the X was in the wrong box on the
19 wrong side.

20 But however, if this work actually was done, it
21 was not done in accordance with the approved P-and-A
22 procedure, because the fish was not recovered. And as I
23 stated earlier, this fish needed to be removed and
24 recovered, at least down to the packer, because there was
25 at least one or two other plugs that needed to be set in

1 that interval.

2 MR. BROOKS: Pass the witness.

3 MR. BRUCE: I have nothing else, madame Chair.

4 CHAIRMAN WROTENBERY: Thank you, Mr. Gum.

5 Mr. Brooks, do you want to make a closing
6 statement?

7 MR. BROOKS: I think that will not be necessary.
8 I believe I made a closing statement at the time of last
9 hearing and accepted that one correction with regard to the
10 penalty recommendation on one well.

11 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.
12 Mr. Bruce?

13 MR. BRUCE: Madame Chair, I believe Mr. Brooks
14 did make a penalty recommendation. I think the final
15 number he came up with was \$14,000.

16 MR. BROOKS: That is correct, and with that
17 correction it would then be \$15,000.

18 MR. BRUCE: \$15,000. I recognize what the
19 Division is trying to do in these matters and provide a
20 deterrent effect so that when the Division asks these
21 operators to do something, they should go out and do that.
22 And I recognize what the Division is doing and why it is
23 doing it. They're asking for \$15,000 in this case.

24 We believe Mr. Nichols has worked in good faith
25 through his health problems to bring these wells into

1 compliance, and ask that if the Lynx Number 1 is properly
2 P-and-A'd the penalty be waived.

3 In the alternative, Mr. Nichols was granted until
4 January 1, 2002, to bring the wells into compliance. And
5 as to wells which were not in compliance by that date, we'd
6 ask that to be the starting date for the penalty, rather
7 than the May 11th, 2000, date.

8 CHAIRMAN WROTENBERY: Thank you, Mr. Bruce.

9 If there's nothing else at this point, we'll take
10 this case under advisement.

11 MR. BROOKS: Thank you.

12 (Thereupon, these proceedings were concluded at
13 1:35 p.m.)

14 * * *

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 Commission 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 March 24th, 2003.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006