

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

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*Oil Conservation Division*

February 27th, 2003

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, February 27th, 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.

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 Commission Hearing  
 CASE NO. 12,862

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\* \* \*

## 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 DIVISION:

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

\* \* \*

## ALSO PRESENT:

JOANNA PRUKOP  
Secretary  
Department of Energy, Minerals and Natural Resources  
State of New Mexico

PATRICK LYONS  
Land Commissioner  
State of New Mexico

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   9:22 a.m.:

3  
4  
5           CHAIRMAN WROTENBERY: Okay, the next case, then,  
6   is Case 12,862, the Application of the New Mexico Oil  
7   Conservation Division for an order requiring N. Dale  
8   Nichols to bring eight wells into compliance with Rule  
9   201.B and assessing appropriate civil penalties, Chaves  
10   County, New Mexico.

11           Appearances?

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

16           I have three witnesses. Two of them are up in  
17   the office, one of them is here in the room.

18           CHAIRMAN WROTENBERY: Okay, how are we going to  
19   get the two up in the office down here?

20           MR. BROOKS: If I may send Mr. Gum up to request  
21   that Ms. Prouty -- No, we don't need Ms. Phillips on this,  
22   I have only two witnesses. That would be Ms. Prouty and  
23   Mr. Gum.

24           I would ask Mr. Gum to go upstairs. I believe  
25   she is in a meeting, but she can be interrupted to give her

1 testimony.

2 MR. GUM: In the conference room?

3 MR. BROOKS: I think probably so, if you could  
4 ask her to come down here, please.

5 CHAIRMAN WROTENBERY: Thank you, Mr. Gum.

6 Okay, Mr. Brooks, anything that you wanted to say  
7 as a preliminary matter?

8 MR. BROOKS: Well, I believe that Mr. Baxter, who  
9 is here -- Well, do you want to go ahead and enter your  
10 appearance, Jim?

11 MR. BRUCE: Sure.

12 Madame Chair, James Bruce of Santa Fe,  
13 representing the *de novo* Applicant, N. Dale Nichols.

14 I understand Mr. Brooks is going to put on his  
15 case and I, of course, have no objection to that.

16 I would at the end of the hearing request that  
17 the matter be continued to the next Commission hearing. I  
18 had fully intended to present my side of the case, and I  
19 have been in touch with my witness, but over the last few  
20 days I have been -- I'm throwing myself on the mercy of the  
21 Commission.

22 I found out that he is in the early throes of a  
23 divorce, and he has been very difficult to get hold of.  
24 And so I would request at the end of the case that it be  
25 continued for four weeks or to the next docket, so that I

1 can present my witness.

2 CHAIRMAN WROTENBERY: Okay, thank you, Mr. Bruce.

3 MR. BROOKS: Madame Chairman, subject to the fact  
4 that we brought our witness up here from Artesia and would  
5 like to present his testimony today, we would have no  
6 objection to continuing the hearing to receive testimony  
7 from Mr. Nichols at a subsequent date.

8 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

9 Do you have opening statements?

10 MR. BROOKS: Well, since we have some time here,  
11 I can make a very brief one to explain what the situation  
12 is.

13 This is going to be a little bit complicated  
14 because there has been a number of changes of situation in  
15 this case since the Division hearing. This case was  
16 originally brought to secure the plugging and abandonment  
17 of eight wells -- actually not the plugging and abandonment  
18 necessarily.

19 This is not a plugging case, this is an inactive  
20 well case, and it's to get Mr. Nichols to bring these wells  
21 into compliance either by plugging, temporarily abandoning  
22 or placing wells back on production.

23 Of those eight wells, one was -- there was a  
24 mistake in the name of that well on the notice, and  
25 therefore the Division dismissed that Application. So that

1 well is not before us.

2 That leaves seven wells. Six of those seven are  
3 now in compliance, which leaves only one well which is not  
4 in compliance.

5 Now, there is a discrepancy here that's of a  
6 procedural character. The well that is still not in  
7 compliance, according to our records, is the Lynx Number 1.  
8 Now, at the Division hearing, the Hearing Officer found  
9 that the Lynx Number 1 was in compliance, was back on  
10 production, and dismissed the case as to the Lynx Number 1.

11 I do not recall the hearing, and I do not recall  
12 exactly why that occurred, but according to the information  
13 we have at this time, that was incorrect. The Lynx Number  
14 1 is not on production and is still out of compliance.  
15 Subject to that, the remaining wells in the proceeding are  
16 all now in compliance.

17 However, there was a civil penalty of \$11,000 set  
18 in the Order entered by the Division, and I assume that is  
19 the principal focus of the *de novo* appeal, so we intend to  
20 offer evidence in support of that portion of the order.

21 Thank you.

22 CHAIRMAN WROTENBERY: Mr. Bruce, would you like  
23 to --

24 MR. BRUCE: Just very briefly, madame Chair.

25 CHAIRMAN WROTENBERY: -- make a statement?



1 MR. BRUCE: I was not involved in the original  
2 Division case, so I'm kind of handicapped having not been  
3 -- I might have been physically present, but I was not  
4 representing N. Dale Nichols in this matter, and because of  
5 the unavailability of my witness I'm kind of short-handed,  
6 so I would like to see what Mr. Gum and the other witness  
7 present.

8 CHAIRMAN WROTENBERY: Okay, thank you, Mr. Bruce.

9 MR. BRUCE: Off the record, madame Chair.

10 (Off the record)

11 CHAIRMAN WROTENBERY: Okay, back on the record,  
12 then.

13 MR. BROOKS: Madame Chairman, honorable  
14 Commissioners, I have two witnesses to be sworn at this  
15 time.

16 (Thereupon, the witnesses were sworn.)

17 CHAIRMAN WROTENBERY: Who would you like to call  
18 first?

19 MR. BROOKS: I would like to call Ms. Prouty.

20 MR. BRUCE: David, is there another set?

21 MR. BROOKS: Oh, okay. Yeah, let me -- I will  
22 give you this set and I will take the set I gave to Steve  
23 and give it to him at the conclusion of the hearing.

24 May I proceed?

25 CHAIRMAN WROTENBERY: Yes, sir.

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JANE E. PROUTY,

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

DIRECT EXAMINATION

BY MR. BROOKS:

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

A. Jane Prouty.

Q. Ms. Prouty, by whom are you employed?

A. The Oil Conservation Division.

Q. And at what location?

A. Santa Fe.

Q. And in what capacity?

A. I manage the group that processes the monthly  
production reports.

Q. Did you at my request prepare a summary of the  
monthly production reports related to the wells operated by  
N. Dale Nichols covering the last five years of reports?

A. Yes.

Q. Call your attention to what has been marked as  
OCD Exhibit Number 1 in this case and ask you, is that the  
report that you prepared?

A. Yes.

Q. Ms. Prouty, is this a true summary or true  
reflection of what is shown in the ONGARD system with  
regard to the production reports on the wells operated by

1 N. Dale Nichols?

2 A. Yes, by these specific wells, yes.

3 Q. Okay. The only one of these wells which I want  
4 to call your attention to specifically, because it's the  
5 only one the status of which may be in controversy, I  
6 believe, at this time in this proceeding, and that would be  
7 on page number 6, the Lynx Number 1 well --

8 A. Yes.

9 Q. -- and does that -- up through November of 2002,  
10 does that reflect that there's been any production from the  
11 Lynx Number 1 well?

12 A. No, nor injection.

13 Q. Does it indicate, in fact, that there has not  
14 been any production reported on that well, up through and  
15 including November of 2002?

16 A. Right, it indicates that the operator sent us a  
17 C-115 with this well on it, with a zero for production or  
18 injection.

19 MR. BROOKS: Okay, thank you.

20 We'll tender in evidence OCD Exhibit Number 1.

21 CHAIRMAN WROTENBERY: Any objection?

22 MR. BRUCE: No objection.

23 CHAIRMAN WROTENBERY: Okay, OCD Exhibit Number 1  
24 is admitted into the record.

25 Any questions, Commissioners?

1 COMMISSIONER BAILEY: No.

2 CHAIRMAN WROTENBERY: Mr. Bruce?

3 MR. BRUCE: No, I do not have any questions.

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

6 CHAIRMAN WROTENBERY: Thank you for your  
7 testimony, Ms. Prouty.

8 MR. BROOKS: Now, we will need Ms. Prouty for the  
9 next case. Do you want --

10 CHAIRMAN WROTENBERY: She should stay here, yes.  
11 Thank you.

12 MR. BROOKS: Call Tim Gum.

13 CHAIRMAN WROTENBERY: While Mr. Gum is making his  
14 way up here, I'd like to note that Secretary Prukop joined  
15 us. Very pleased to have you.

16 SECRETARY PRUKOP: Thank you. Good morning,  
17 everyone. I wanted to come down and say hello to everyone  
18 and let you know that I am very interested in the work that  
19 you all do here and keep me very well informed of what the  
20 Commission is involved in. So very glad to meet you all.

21 CHAIRMAN WROTENBERY: Thank you. A great day,  
22 because we've got our Secretary and our Land Commissioner  
23 both attending the Commission. Very pleased to have you  
24 all.

25 Okay, Mr. Brooks?

1 MR. BROOKS: Good morning, Mr. Gum.

2 MR. GUM: Good morning.

3 TIM W. GUM,

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

6 DIRECT EXAMINATION

7 BY MR. BROOKS:

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

9 A. Tim W. Gum.

10 Q. Mr. Gum, by whom are you employed?

11 A. The New Mexico Oil Conservation Division.

12 Q. At what location?

13 A. Artesia, New Mexico.

14 Q. And in what capacity?

15 A. My official title is Chief Oil and Gas Inspector  
16 and Manager of District 2, however my working title is  
17 District Supervisor.

18 Q. And how long have you occupied that position?

19 A. Approximately nine years.

20 Q. In that position, have you had a role in the  
21 inactive well program that's been conducted by the  
22 Division?

23 A. Yes, sir, I've had a very active role.

24 Q. Can you describe to us how the inactive well  
25 program well program has been conducted?

1           A.   Basically, it was initiated March 11th in 2000,  
2   in which a statewide mailout was made to all operators  
3   within the State of New Mexico. On this mailout it  
4   indicated what our records indicated to be inactive wells.  
5   In this mailout it asks for the operators to respond to  
6   this mailout, if they had records to indicate a different  
7   status of the wells, to provide documentation for that.

8           Also in this mailout it was indicated that the  
9   inactive well program was governed by the 200-series Rules  
10   and that we would be pursuing this particular Rule, and it  
11   indicated that any well that was inactive more than one  
12   year would be considered inactive.

13           Following this major mailout, approximately in  
14   September --

15           Q.   Well, let me ask you to hold right there. Would  
16   you look at what's been marked as OCD Exhibit Number 3 in  
17   this proceeding, in the exhibit stack in front of you?

18           A.   Let's see, Exhibit Number 3. Okay, Exhibit  
19   Number 3 is that particular mailout I was referring to.

20           Q.   Okay. You may continue then.

21           A.   Then in September following this mailout, a  
22   second mailout was made depending on how the operators  
23   responded to this original mailout. This mailout asks for  
24   an operator to provide the OCD offices with a work plan,  
25   how they would -- to address their current inactive wells.

1 Q. And this was the letter dated September the 8th,  
2 2000; is that correct?

3 A. Yes, I believe that's correct.

4 Q. Okay, would you look at OCD Exhibit Number 4?

5 A. This is the letter, yes.

6 Q. And this is the letter addressed to N. Dale  
7 Nichols?

8 A. That's correct.

9 Q. You may continue.

10 A. And then depending on how the operators responded  
11 to that original mailout was the type of letter that they  
12 received. And they were asked to provide a work plan. If  
13 they did not provide the work plan, they were given 60 days  
14 in order to bring the well into compliance.

15 Q. Okay. Now, look at OCD Exhibit Number 5, and ask  
16 you to identify it.

17 A. This is a letter that I received from Mr. Nichols  
18 regarding our discussions about how he was going to bring  
19 his wells into compliance.

20 And I believe at this particular point in time,  
21 based on the information he provided, we did extend his  
22 time in order to bring the wells into compliance, another  
23 six months.

24 Q. Okay, and then we'll look at OCD Exhibit Number  
25 6, which appears to be a copy of a letter that you sent to

1 Mr. Nichols in response to his letter to you?

2 A. Yes, this is a letter that I did send to Mr.  
3 Nichols confirming our timetable and extension up to an  
4 additional six months, which would end at the first of the  
5 year 2002.

6 Q. Okay. Now, let me go back here and look again at  
7 OCD Exhibit Number 2. I want to verify -- point out to the  
8 Commission that each of the wells listed in this case is  
9 also listed on OCD Exhibit Number 2.

10 Now, let me add one thing. Is there anything on  
11 this copy of the May 11, 2000, letter that has been offered  
12 as OCD -- or will be offered -- I'm sorry, I said OCD  
13 Exhibit Number 2. Looking at OCD Exhibit Number 3, OCD  
14 Exhibit Number 3 is a copy of the May 11th, 2000, letter  
15 that you've discussed, correct?

16 A. Yes.

17 Q. Now, is there anything on this copy that  
18 indicates to you that, in fact, Mr. Nichols did receive and  
19 give some attention to this letter, a copy of which is OCD  
20 Exhibit Number 3?

21 A. Yes, he did make a typewritten note on the first  
22 page referencing his comments on each of the wells, so he  
23 did receive the notice and did respond.

24 Q. And that was the way that this notice was  
25 designed, that the operators were to fill out the



1 information about the wells and return it to OCD, correct?

2 A. That's correct.

3 Q. Now, I want to point out to the Commission that  
4 each of the wells that's the subject of this proceeding is  
5 shown on this notice. If you will look at the second page  
6 of the notice, the first well there, is that the Avalanche  
7 Journal State Number 4?

8 A. Yes.

9 Q. Okay. Now, the next well that's on the notice  
10 list for this proceeding was the Lewis Neff Well Number 3.  
11 It appears, does it not, that that well is on page 2 of  
12 this notice, Exhibit 3, about halfway down the middle of  
13 the page?

14 A. Yes.

15 Q. And right above it is the Lewis Neff Number 4,  
16 correct?

17 A. Yes.

18 Q. Now, the Lynx Number 1 appears right below the  
19 Lewis Neff Number 3 on page 2 of Exhibit 3, correct?

20 A. Yes.

21 Q. The Standard State Number 3 appears directly  
22 below the Lynx Number 1, correct?

23 A. Yes.

24 Q. And the Standard State Number 6Y appears at the  
25 bottom of that page, correct?

1           A.    Yes.

2           Q.    And the State A Number 2 appears at the bottom of  
3 the third page of Exhibit Number 3, correct?

4           A.    Yes.

5           Q.    Okay.  So each one of those seven wells was  
6 specifically referenced in the notice sent to Mr. Nichols  
7 on May 11th, 2000, as being out of compliance?

8           A.    That's correct.

9           Q.    Now I will take you back to what's been marked as  
10 OCD Exhibit Number 2.  It bears the date at the top  
11 November 5th, 1997.  Is this a copy of a letter that you  
12 sent to Mr. Nichols at or about the date of that letter?

13          A.    That is correct.

14          Q.    Now, this letter points out that certain wells  
15 are inactive, correct?

16          A.    That's correct.

17          Q.    Now, one of the wells listed on this letter is  
18 the Lewis Neff Number 3, correct?

19          A.    Correct.

20          Q.    And the Lewis Neff Number 3 is one of the wells  
21 that was noticed in this proceeding?

22          A.    That is correct.

23          Q.    Now, none of the other wells listed on Exhibit 2  
24 is at issue in this proceeding, correct?

25          A.    That's correct.

1           Q.    Okay.  Now, I want to go over with you the  
2   current status of each of the wells in this proceeding, and  
3   we don't have documentation of this, other than OCD Exhibit  
4   Number 1 for the wells that are on production, so I will be  
5   asking you to state what you have ascertained from an  
6   inspection of the Division's records.

7           A.    If I may, I need to get --

8           Q.    Okay.  Going down the list in the same order I  
9   did previously, beginning with the Avalanche Journal State  
10   Number 4, I would first point out to the Commission that  
11   OCD Exhibit Number 1 previously admitted, on page 3 thereof  
12   reflects that the Avalanche Journal State Number 4 well was  
13   placed back on production in July of 2002.

14                Now, Mr. Gum, I will ask you about the Lewis Neff  
15   Number 3.  What is the current status of that well?

16           A.    That well is currently TA'd.  It was TA'd  
17   officially December the 3rd, '02.

18           Q.    And by "TA'd", that means temporarily abandoned  
19   pursuant to OCD Rule 203.  Remember which was 202 and which  
20   was 203.

21                Okay.  And it was as of what date?

22           A.    December the 3rd, '02.

23                CHAIRMAN WROTENBERY:  And I'm sorry, which well  
24   was that?

25                MR. BROOKS:  The Lewis Neff Number 3.

1           Q.    (By Mr. Brooks) Okay. Now, the Lewis Neff  
2   Number 4, I would call the Commission's attention to page 6  
3   of OCD Exhibit Number 1, which reflects that the Lewis Neff  
4   Well Number 4 was placed on production in April of 2002.

5                   Now, the Lynx Number 1, we pointed out previously  
6   that OCD Exhibit Number 1 shows that well is not on  
7   production. Do you have any information as to compliance  
8   status of the Lynx Number 1?

9           A.    Research of the well file indicated that that  
10   well had an attempt to P-and-A November 28th, '01. A  
11   follow-up C-103 indicated that there were well problems,  
12   and that was in December of '01. The well is in an  
13   unofficial TA status.

14          Q.    What do you mean by an unofficial TA status, Mr.  
15   Gum?

16          A.    It was not mechanically tested, pressure-tested  
17   with a proper chart and recording.

18          Q.    In your opinion -- and I apologize to the  
19   Commission for this, but we investigated this just this  
20   morning and I've not had a chance to go over these  
21   questions with Mr. Gum since he looked at the file. In  
22   your opinion, is this well in compliance now?

23          A.    No, it is not.

24          Q.    Okay, that's what I thought but I wanted to  
25   verify. Okay.

1           Now, I will then go to the Standard State Number  
2   3 and will call the Commission's attention to page number 9  
3   of Exhibit -- of OCD Exhibit Number 1, which reflects that  
4   the Standard State Number 3 is on production as of August  
5   of 2002.

6           Next one is the Standard State Number 6Y, and can  
7   you tell me, Mr. Gum, what is the current status of the  
8   Standard State Number 6Y?

9           A.   That is plugged and abandoned.

10          Q.   As of what date?

11          A.   I do not have that date.

12          Q.   Okay.  Someone has written on here 12-17 of '02,  
13   but I don't know --

14          A.   That's probably the correct time.

15          Q.   I don't have information to verify that.  I think  
16   I may have to recall Ms. Prouty for that testimony.

17               Now, we had some confusion about the State A  
18   Number 2, and I believe it does not appear anywhere on  
19   Exhibit A, and I do not know the reason for that.  I have a  
20   note that it is on production, but that's my own note and I  
21   don't know why I put that there.  So I will have to say  
22   that I just got confused here.

23               MR. ROSS:  The State A Number 2, Mr. Brooks?

24               MR. BROOKS:  The State A Number 2, yes.

25               MR. ROSS:  Look at page pages 9 and 10 --

1 CHAIRMAN WROTENBERY: Page 11 is where --

2 MR. BROOKS: Oh, I'm sorry, I have a copy that  
3 doesn't have page 11.

4 MR. BRUCE: Neither do I.

5 THE WITNESS: It does show that there is  
6 production as of March, 2002.

7 MR. BROOKS: Okay, that's what my note indicates,  
8 and I must have been looking at a copy when I made that,  
9 so --

10 CHAIRMAN WROTENBERY: Or April, 2002?

11 THE WITNESS: March.

12 MR. BROOKS: Now, I had April, 2002.

13 THE WITNESS: Okay, yes, it is, I believe my  
14 slant eyes --

15 CHAIRMAN WROTENBERY: Okay.

16 MR. BROOKS: Okay, very good.

17 CHAIRMAN WROTENBERY: Now, excuse me, I may have  
18 missed this. For the Standard State Well Number 6Y, what  
19 was the date of the plugging?

20 MR. BROOKS: I have a note here on -- I don't  
21 believe I have any admissible evidence of that at this  
22 time. I think I can recall Ms. Prouty and get that  
23 evidence, because Mr. Gum said he didn't know, and I have a  
24 note on my cheat sheet here which is in Jane's handwriting,  
25 so I assume she can verify.

1 THE WITNESS: Based on my -- My note here, it  
2 says it was 8-3rd-02.

3 CHAIRMAN WROTENBERY: The third day of August,  
4 2002?

5 THE WITNESS: Yes. Well, maybe -- The typing is  
6 very poor here. Let's make that 6: June 3rd, '02, pardon  
7 me.

8 MR. BROOKS: Okay, that covers all the wells that  
9 Mr. Nichols had that are in this proceeding. I will now  
10 call the Commissioners' attention to OCD Exhibit Number 9,  
11 and I did not have all the data I now have at the time I  
12 constructed OCD Exhibit Number 9.

13 COMMISSIONER BAILEY: Mr. Brooks, before you go  
14 on --

15 MR. BROOKS: Yes, ma'am.

16 COMMISSIONER BAILEY: -- the docket lists Alma  
17 Shields Number 4.

18 MR. BROOKS: Yes, that was the proceeding,  
19 Commissioner Bailey that -- that was the well as to which I  
20 made a mistake in the notice that I had published for this  
21 proceeding when we filed it at the Division level. It  
22 listed the Alma Shields Number 4 but included the API  
23 number for the Alma Shields Number 7. And because the  
24 notice was defective, the Division Examiner dismissed that  
25 well from the proceeding, and in my opinion that was a

1 correct decision by the Division Examiner and I don't ask  
2 the Commission to review it.

3           Going on to Exhibit Number 9, Exhibit Number 9  
4 was prepared to give a summary for purposes of determining  
5 the propriety of the penalty of \$11,000 which was assessed  
6 by the Examiner in this case. I did not have all of the  
7 information I now have at the time that I filled this out.  
8 However, I do not believe it makes any difference.

9           The formula which the Division has been urging in  
10 previous cases has been that for each year from the date  
11 that the operator was -- Well, I'm sorry, I probably should  
12 -- Let me ask the Commission's pleasure. Should I submit  
13 Mr. Gum for examination now and then go through this?  
14 Because this is just essentially argument?

15           CHAIRMAN WROTENBERY: Yes, let's go ahead and do  
16 that.

17           MR. BROOKS: Okay.

18           CHAIRMAN WROTENBERY: And Mr. Bruce --

19           THE WITNESS: I would like to make one comment --

20           CHAIRMAN WROTENBERY: Let -- Mr. Bruce has an  
21 opportunity here to cross-examine you.

22           THE WITNESS: Well, but I want to correct a date  
23 here, is all I want to --

24           CHAIRMAN WROTENBERY: Oh.

25           MR. BROOKS: Okay.



1 CHAIRMAN WROTENBERY: Okay, go ahead.

2 THE WITNESS: Okay, on Exhibit Number 9 for the  
3 Standard State 6Y the PA date of 12-17-02, that's the date  
4 that it was actually officially P-and-A'd, in other words  
5 that the well site was inspected and it was finally  
6 released. The well physically was plugged 6-3-02.

7 MR. BROOKS: Okay.

8 THE WITNESS: I wanted to correct that difference  
9 in the --

10 MR. BROOKS: Yeah, thank you. Okay, because that  
11 is testimony.

12 THE WITNESS: Yes.

13 MR. BROOKS: Okay. With that, I will offer into  
14 evidence Exhibits 2 through 8 inclusive.

15 MR. BRUCE: No objection.

16 Mr. Gum, just --

17 CHAIRMAN WROTENBERY: Just one second here, I  
18 just -- make sure I had those in order myself. Okay, yes.

19 OCD Exhibits Number 2 through 8 are admitted into  
20 evidence.

21 MR. BROOKS: Pass the witness.

22 CHAIRMAN WROTENBERY: Mr. Bruce?

23 CROSS-EXAMINATION

24 BY MR. BRUCE:

25 Q. Just a couple of questions, Mr. Gum. On your

1 Exhibit -- Let's get Exhibits 3 and 6 in front of you  
2 there.

3 A. Okay.

4 Q. My review shows that the wells listed on your  
5 Exhibit 3 and Exhibit 6 are the same wells; is that  
6 correct?

7 A. Yes.

8 Q. Okay. And we're here today for -- regarding  
9 seven wells, I believe?

10 A. I believe that those are being resolved on, yes,  
11 sir.

12 Q. Okay. So before the hearing was filed in this  
13 case, Mr. Nichols did bring into compliance seven wells?

14 A. No, the wells actually were brought into  
15 compliance after the hearing order.

16 Q. No, no, no, no. I mean, we're here today for  
17 seven wells, but there's 14 --

18 A. Oh, okay, yes --

19 Q. -- on your --

20 A. -- yes --

21 Q. -- list?

22 A. -- yes.

23 Q. Okay. So from the time -- let's just start --  
24 you know, May, 2000, is when you began this --

25 A. Yes.

1           Q.    -- process.  And so -- But before Mr. Brooks  
2   filed this case, seven wells were brought into  
3   compliance --

4           A.    Yes.

5           Q.    -- I presume.  Okay.  So we don't have to worry  
6   about the other seven wells on these listings?

7           A.    No.

8           Q.    And then on Exhibit 3, going through your  
9   testimony, at this point the only well that is not in  
10  compliance is the Lynx Number 1?

11          A.    That's correct.

12          Q.    At this time?

13          A.    At this time, yes.

14          Q.    And am I correct in reading your testimony or  
15  interpreting your testimony that that well needs to be  
16  mechanically pressure-tested with a chart to show that it's  
17  in compliance?

18          A.    No, sir, I believe it was the operator's plan to  
19  P-and-A the well, but he ran into mechanical problems with  
20  the well, and no further work was done.

21          Q.    So it would either need to be fully P-and-A'd or  
22  properly TA'd --

23          A.    That's correct.

24          Q.    -- at this time?

25          A.    Yes.

1 Q. Okay. And did Mr. Nichols meet with you, or Mr.  
2 Nichols' representative, ever?

3 A. Yes.

4 Q. Okay. So they were doing the work, but they  
5 always said they needed more time; is that in essence what  
6 they told you?

7 A. That's what they told me. And based on his  
8 comments at the time of our conversation I did agree to  
9 allow an additional six-month extension for him to do that.  
10 And based on his comments that he would pursue that kind of  
11 activity, I felt in my own opinion that that additional  
12 six-month time would be more than sufficient time in order  
13 to allow him to accomplish the work.

14 Q. The seven wells that we're not here for today,  
15 the ones that were brought into compliance before the case  
16 was filed, were they taken care of during that six-month  
17 time frame?

18 A. The first six-month time frame.

19 MR. BRUCE: Okay, that's all I have, madame  
20 Chair.

21 CHAIRMAN WROTENBERY: Thank you.

22 Commissioner Bailey?

23 EXAMINATION

24 BY COMMISSIONER BAILEY:

25 Q. You said that he attempted to plug the well but

1 ran into mechanical problems, and so that plugging attempt  
2 was incomplete. Now he needs to do certain remedial work  
3 in order to either have it withstand the pressure test or  
4 to plug it again. Could you please give me a better feel  
5 on exactly what needs to be done to that wellbore?

6 A. Madame Commissioner, this is a situation in which  
7 you always get involved with when you have old wellbores in  
8 which you try to re-enter that has casing problems. In  
9 other words, the casing there is in such a shape that you  
10 cannot get down to the bottom, to where you need to start  
11 setting your first plugs.

12 So an attempt was made to pull the tubing. That  
13 was not successful, and it indicates that casing collapses  
14 around the tubing. It is a serious mechanical situation,  
15 in order to have the well properly plugged.

16 After the attempt was made to enter the wellbore,  
17 to get to the TD, they ran into additional mechanical  
18 difficulty, submitted an additional C-103 and it said this  
19 well was TA'd.

20 So no, the well is not in compliance. It will  
21 take a significant amount of work in order to get it into  
22 condition to properly plug.

23 Q. Just for my own information, what kind of work  
24 will they need to do in order to get that tubing from the  
25 collapsed casing?

1           A.    First of all, they'll have to have proper tools  
2   in order to be able to recover the tubing. Then depending  
3   on what kind of situation the casing is in, it will have to  
4   be milled, it will have to be swaged or anything in order  
5   to extend it back to its original size so they can go in  
6   and get proper tools to the bottom.

7           Q.    Is that going to require specialized equipment  
8   for rigs? See, I'm trying to get to the time frame that's  
9   reasonable here.

10          A.    Okay. It will require equipment that Mr. Nichols  
11   does not have in his own operations. Mr. Nichols does  
12   prefer to do as much of the well work with his own  
13   equipment and crews that he has on occasion.

14                But in this particular case, yes, it will take  
15   different equipment and different personnel.

16                COMMISSIONER BAILEY: Thank you.

17                CHAIRMAN WROTENBERY: Commissioner Lee?

18                COMMISSIONER LEE: (Shakes head)

19                               EXAMINATION

20   BY CHAIRMAN WROTENBERY:

21           Q.    Mr. Gum, I just wanted to make sure I had some  
22   dates right. I was referring back to the Division Order in  
23   this matter, which contained Finding Number 9 that stated,  
24   As of October 29th, 2002, the above-described Lewis Neff  
25   Well Number 3, Avalanche Journal State Well Number 4 and

1 Standard State Wells Number 3 and 6Y are still not in  
2 compliance with Division Rule Number 201.B.

3 And then in the next finding there was a  
4 statement that penalties should be assessed against the  
5 operator because of the noncompliance of those wells.

6 The Lewis Neff Well Number 1 was brought into  
7 compliance -- I mean, sorry, Lewis Neff Well Number 3 was  
8 brought into compliance on December 3rd, 2002 --

9 A. Yes.

10 Q. -- if I recall your testimony correctly --

11 A. That's correct.

12 Q. -- and that was by --

13 A. Properly --

14 Q. -- testing and properly --

15 A. Yes.

16 Q. -- temporarily abandoning --

17 A. Right.

18 Q. -- the well?

19 So it is true that that well was not in  
20 compliance as of October 29th, 2002?

21 A. That's correct.

22 Q. The Avalanche Journal State Well Number 4,  
23 though, I believe, was put back on production in July of  
24 2002?

25 A. That's what the production reports indicate, yes.

1           Q.    So in fact, that well was in compliance as of  
2   October 29th, 2002?

3           A.    As of the statement on Finding Number 9, that's  
4   correct.

5           Q.    Okay. And then the Standard State Well Number 3  
6   was brought back into production in August of 2002; is that  
7   correct?

8           A.    That's based on the production reports, yes.

9           Q.    So again, the finding in Number 9 about the  
10   status of the well as of October 29th, 2002, was  
11   incorrect --

12          A.    That's correct.

13          Q.    -- for that well?

14                And then finally the Standard State Well Number  
15   6Y was P-and-A'd in June of 2002?

16          A.    That was physically, but it's not officially  
17   until December.

18          Q.    Okay, explain to me again what you mean by --

19          A.    Okay, the --

20          Q.    -- physically but not officially.

21          A.    -- the official -- Physically plugging a well is  
22   when the dryhole marker is finally installed. Now, from  
23   the time that that work is done, there's a period of time  
24   in which inspections have to be made to see whether or not  
25   the location is cleaned up and the final work is done.



1           So it's my opinion at this point in time that the  
2 well was physically plugged in June, but because of some  
3 reason it was not officially plugged until December, when  
4 the --

5           Q.    Okay, isn't it true that once you plug a well you  
6 have up to a year at that point to complete the surface  
7 remediation work?

8           A.    That's correct.

9           Q.    So at the time that the well was actually  
10 plugged, isn't it fair to say that the well was brought  
11 back into compliance with our Rules at that point?

12          A.    Yes.

13          Q.    Thank you.

14          A.    But now, I believe that our assessment of the  
15 penalties -- and you correct me if I'm wrong -- is based on  
16 the fact that the wells were not brought into compliance  
17 January 1, '02, all of these wells had not been brought  
18 into compliance at that point in time, not --

19          Q.    Okay.

20          A.    -- after January '02.

21               CHAIRMAN WROTENBERY:   Thank you, Mr. Gum.

22               And then the information available to the  
23 Examiner at the time of the Division Hearing led the  
24 Examiner to believe that the Lynx Well Number 1 was in  
25 compliance at the time the Division Order was issued, but

1 what we're hearing today is that's not the case.

2 Okay. Thank you, I just wanted to make sure I  
3 understood.

4 Okay, Mr. Brooks?

5 MR. BROOKS: One correction in what was said a  
6 moment ago with regard to the Standard State Number 3. I  
7 believe that you indicated that it was put on production in  
8 August of 2002. Unless I have an incorrect exhibit here,  
9 it appears that it was actually September, on page 9 of  
10 Exhibit Number 1.

11 The Standard State Number 3. I don't think it's  
12 a material difference.

13 MR. BRUCE: Could I ask --

14 CHAIRMAN WROTENBERY: Yes.

15 MR. BRUCE: -- a couple of follow-up questions,  
16 madame Chair?

17 CHAIRMAN WROTENBERY: Certainly, Mr. Bruce.

18 FURTHER EXAMINATION

19 BY MR. BRUCE:

20 Q. Mr. Gum, since I wasn't there at the original,  
21 when was the original hearing in this matter,  
22 approximately?

23 A. May the 2nd, '02, I believe --

24 Q. Okay, so it was a --

25 A. -- if my memory serves. But the order did not

1     come out until November -- is that the date on the -- I  
2     believe November is when the --

3           Q.     I believe that's correct, Mr. Gum.

4           A.     -- order was actually issued.

5           Q.     And again, I just wanted to get the date on the  
6     Lynx well. The P-and-A attempt on the Lynx well was in  
7     November of 2001, not 2002; is that correct?

8           A.     '01, yeah.

9           Q.     '01?

10          A.     Yeah.

11          Q.     The attempt?

12          A.     Yeah, the attempt. Yeah.

13                 MR. BRUCE: Okay, thank you, madame Chair.

14                 CHAIRMAN WROTENBERY: Mr. Brooks?

15                 MR. BROOKS: Do you have anything further from  
16     the witness?

17                 CHAIRMAN WROTENBERY: I don't believe so.

18                 Thank you, Mr. Gum, for your testimony.

19                 MR. BROOKS: We'd like to make a statement.

20                 CHAIRMAN WROTENBERY: Mr. Brooks?

21                 MR. BROOKS: Madame Chairman, honorable  
22     Commissioners, I will call your attention to what has been  
23     marked as OCD Exhibit Number 9. I did not offer this  
24     exhibit in evidence because it was prepared by me from the  
25     other evidence that's being offered and therefore it's not

1     evidentiary in nature, and there are going to be some  
2     changes on it in light of the testimony, but this is for  
3     the purpose of defending and computing the penalty that we  
4     propose in this case.

5             The Division has urged in these inactive well  
6     cases that penalties be assessed on those operators who  
7     have not promptly complied with the inactive well program  
8     based on the computation of \$1000 per year from the date  
9     the operator was notified that a particular well was  
10    inactive until the date that well was brought into  
11    compliance.

12            For the seven wells in this proceeding, the dates  
13    of the notice are shown in the first column, and it was  
14    Exhibit Number 3, the May 11th, 2000, letter for each of  
15    the wells, except for the Lewis Neff Number 3, which was  
16    the subject of Exhibit Number 2, the letter in 1997.

17            The dates that the wells were brought into  
18    compliance are shown on here. There will be a couple of  
19    changes, but only one of which is material to the  
20    computation, so I will take you through this.

21            The Avalanche Journal Number 4 was put on  
22    production 7 of '02. That is correct, per Exhibit 1. It  
23    was two years after the date of notice, so we propose a  
24    penalty of \$2000.

25            The Lewis Neff Number 3 is not shown as being

1 brought into compliance. Testimony today, however, shows  
2 that it was TA'd as of 12-3 of '02. That was, however,  
3 five years after the 1997 notice, so it does not change our  
4 proposal for the penalty for that well, remains \$5000.

5 The Lewis Neff Number 4 was placed on production  
6 in April of '02. While that's close to two years, it is  
7 actually less than two years, so we propose a penalty of  
8 \$1000.

9 The Lynx Number 1, the subject of the 5-11-00  
10 notice, is still not in compliance with the proposed  
11 penalty of \$2000.

12 The Standard State Number 3, you can see the  
13 dates. We propose a penalty of \$2000.

14 The Standard State Number 6Y, in view of Mr.  
15 Gum's testimony that the wellbore was actually plugged on  
16 6-3 of '02, we would modify our proposal as stated in  
17 Exhibit Number 9 and propose at this time a penalty of  
18 \$1000 as to that well.

19 The State A Number 2 was placed on production in  
20 4 of '02. And I did not have that information when I  
21 prepared this computation, so again we would modify the  
22 proposal to \$1000.

23 That would make the total \$14,000, if I haven't  
24 made a mistake in arithmetic here, and that would still be  
25 larger than the \$11,000 penalty that was assessed by the

1 Division Examiner.

2 We do not need an order of compliance in this  
3 case except for the Lynx Number 1. We believe that the  
4 Division Examiner must have misinterpreted the record, or  
5 the record was incomplete in some manner, but his  
6 conclusion that the Lynx Number 1 was in compliance at the  
7 time of the Division Hearing appears to be incorrect, so we  
8 would urge a compliance order to bring the Lynx Number 1  
9 into compliance.

10 Thank you.

11 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

12 Mr. Bruce?

13 MR. BRUCE: Madame Chair, again I would request  
14 that this matter be continued to the next Commission  
15 Hearing, and I would like to review this and reserve my  
16 statement for that time.

17 CHAIRMAN WROTENBERY: Okay, thank you, Mr. Bruce.

18 Commissioners, if you're amenable we will  
19 continue this case for one more month to the Commission's  
20 Hearing on March 20th, and at that time we would hope Mr.  
21 Nichols can be present.

22 MR. BROOKS: One more matter, madame Chairman.  
23 Although I did not offer Exhibit Number 9 into evidence,  
24 for purposes of completing the record I would request that  
25 it be made a part of the record as a demonstrative aid.

1 MR. BRUCE: No objection.

2 CHAIRMAN WROTENBERY: It will be done, then.

3 Thank you, Mr. Brooks, and we'll take this matter  
4 up again on March 20th.

5 (Thereupon, these proceedings were concluded at  
6 10:11 a.m.)

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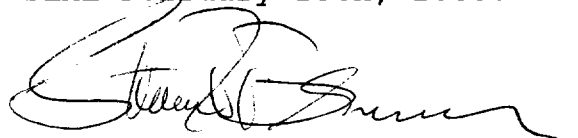
CERTIFICATE OF REPORTER

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 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 February 28th, 2003.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006