

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BLDG.
SANTA FE, NEW MEXICO

3 June 1987

EXAMINER HEARING

IN THE MATTER OF:

Case 8878 being reopened pursuant to
the provisions of Division Order No.
R-8235.

CASE
8878

BEFORE: David R. Catanach, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Division:

Jeff Taylor
Attorney at Law
Legal Counsel to the Division
State Land Office Bldg.
Santa Fe, New Mexico 87501

For the Applicant:

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MR. CATANACH: We'll call this hearing to order this morning for Docket No. 18-87.

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Call the first case, Number 8878.

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In the matter of Case 8878 being reopened pursuant to the provisions of Division Order No. R-8235, which order amended Rule 101 of the Division Rules to provide for the acceptance of cash bonds as well as surety bonds.

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Said rules will be reviewed to determine whether it is appropriate in meeting the needs of industry.

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Are there appearances in this case?

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MR. TAYLOR: May it please the Examiner, I'm Jeff Taylor, counsel for the Division.

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I don't have any witnesses today and we don't have any testimony or evidence on this matter.

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I would like to submit for the record a letter we got from P. R. Patton and Associates of Roswell regarding the cash bonds. They support continuation of cash bonds and they make a recommendation that the requirement of an affidavit stating the operator's inability

1 to obtain a surety bond be done away with, and I would agree
2 with that.

3 When we wrote the original rule
4 we required -- we were trying to have cash bonds as a back-
5 up to surety bonds, but it's turned into a situation now
6 where there's hardly surety bonds available and I think it's
7 just an added paperwork to have people have to file an affi-
8 davit, and I don't think we've been enforcing that recently,
9 so I would recommend that the cash bond rule be continued
10 except insofar as the requirement for an affidavit and that
11 be made discretionary with the Director as to whether an af-
12 fidavit would need to be filed.

13 MR. CATANACH: What's the pur-
14 pose of the affidavit?

15 MR. TAYLOR: Just to show that
16 you were -- you tried to get a surety bond and you were un-
17 able to, and we're pretty convinced that at least in the
18 last six months it's been fairly difficult to get a new
19 surety bond.

20 I don't know if anybody here
21 has any other comments. This is the only letter we've got
22 on it and I'd like to make it part of the record.

23 MR. CATANACH: Are there any
24 comments or questions concerning this case?

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1 If not, this will be taken un-
2 der advisement.

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4 (Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO
HEREBY CERTIFY the foregoing Transcript of Hearing before
the Oil Conservation Division (Commission) was reported by
me; that the said transcript is a full, true, and correct
record of the hearing, prepared by me to the best of my
ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 8878,
heard by me on June 3 1987.

David R. Catant, Examiner
Oil Conservation Division

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BLDG.
SANTA FE, NEW MEXICO

28 May 1986

EXAMINER HEARING

IN THE MATTER OF:

The hearing called by the Oil Con- CASES
servation Division on its own motion 8878
to consider the amendment of Rule
101 relating to bonds.

BEFORE: Michael E. Stogner, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Division: Jeff Taylor
 Attorney at Law
 Legal Counsel to the Division
 State Land Office Bldg.
 Santa Fe, New Mexico 87501

1
2 MR. STOGNER: We will now call
3 Case Number 8878, which is in the matter of the hearing
4 called by the Oil Conservation Division on its own motion to
5 consider the amendment of Rule 101 relating to bonds.

6 This case was heard on April
7 30th, 1986, and was continued to Examiner's Hearing on May
8 14th, 1986, for any additional comment. At that time it was
9 also continued to today's hearing to allow a little more
10 time for any additional comments on this issue.

11 We will now call for any ap-
12 pearances or additional testimony or any comments at this
13 time.

14 MR. TAYLOR: May it please the
15 Examiner, my name is Jeff Taylor, Counsel for the Oil Con-
16 servation Division.

17 We've put on testimony at least
18 two times in this case and I guess it's not necessary to do
19 it again today unless there's someone here that's interested
20 in the case.

21 We've proposed that, essential-
22 ly that our bonds, bond rule be amended to allow the posting
23 of cash bonds both for one well and for blanket bonds, and
24 the proposed rules and forms to go along with that.

25 MR. STOGNER: At this time I'll

1 open up the floor for any comments.

2 Mr. Taylor, there appear there
3 is none. Do you have anything additional in this case?

4 MR. TAYLOR: No, I'd just re-
5 quest that you take it under advisement and because the
6 statute has now become effective, I would request that we
7 expedite the order on this so that cash bonds can be posted
8 as soon as possible.

9 MR. STOGNER: Thank you, Mr.
10 Taylor, and I'll also ask that you submit to me a rough
11 draft order on that and we'll try to expedite that thing.

12 If there is no additional com-
13 ments for Case Number 8878 it will now be taken under ad-
14 visement.

15

16 (Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY
CERTIFY the foregoing Transcript of Hearing before the Oil
Conservation Division (Commission) was reported by me; that
the said transcript is a full, true, and correct record of
the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 8878,
heard by me on 28 May 1986.
Michael E. Stegner, Examiner
Oil Conservation Division

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

14 May 1986

EXAMINER HEARING

IN THE MATTER OF:

The hearing called by the Oil Conser- CASE
vation Divison on its own motion to 8878
consider the amendment of Rule 101
relating to bonds.

BEFORE: David R. Catanach, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation
Division:

Jeff Taylor
Legal Counsel to the Division
Oil Conservation Division
State Land Office Bldg.
Santa Fe, New Mexico 87501

For Zia, Bravo, and
Natural Resources:

W. Thomas Kellahin
Attorney at Law
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87501

A P P E A R A N C E S

For Chevron USA: Karen Aubrey
Attorney at Law
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87501

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1
2 MR. CATANACH: Call next Case
3 8878, in the matter of the hearing called by the Oil Conser-
4 vation Division on its own motion to consider the amendment
5 of Rule 101, relating to bonds.

6 Are there appearances in this
7 case?

8 MR. TAYLOR: Mr. Examiner, my
9 name is Jeff Taylor, Counsel for the Oil Conservation Divi-
10 sion and I'm presenting -- representing the Division this
11 morning and I think you ought to swear me in and I will ex-
12 plain what we're doing in this matter.

13
14 (Mr. Taylor sworn.)
15

16 MR. TAYLOR: Mr. Examiner, this
17 case --

18 MR. KELLAHIN: Excuse me, Mr.
19 Examiner, are you going to call for other appearances?

20 MR. CATANACH: Yes, Mr. Kella-
21 hin.

22 Are there other appearances in
23 this case?

24 MR. KELLAHIN: Mr. Examiner,
25 I'm Tom Kellahin of Santa Fe, New Mexico, appearing on be-

1 half of Zia Energy, Natural Resources Engineering, Bravo En-
2 gineering, and at the request of Mr. Chad Dickerson, I'm ap-
3 pearing on behalf of his client, Bliss Petroleum. Inc.

4 MR. CATANACH: Are there other
5 appearances in this case?

6 MS. AUBREY: Mr. Examiner, my
7 name is Karen Aubrey with the law firm of Kellahin & Kella-
8 hin.

9 I'm appearing on behalf of
10 Chevron USA.

11 MR. CATANACH: Are there other
12 appearances?

13 Are you ready to proceed, Mr.
14 Taylor?

15 MR. TAYLOR: Mr. Examiner, this
16 case on bonds was first heard, I believe, at the last exam-
17 iner hearing and since that time we've revised it and so
18 we're bringing it up again just so we can go through the
19 changes we've made in the proposal.

20 The new draft rule, which re-
21 places or amends Rule 101 on plugging is available at the --
22 at the entrance to the room.

23 What the rule essentially pro-
24 vides for is for cash bonds as a supplement to existing
25 surety bonds.

1 Under our new rule, since the
2 last hearing we've changed our proposal to also allow for
3 blanket cash bonds to be posted. So this well would have
4 one-well bonds and blanket bonds, although we have increased
5 the amount of discretion the Director would have in whether
6 he would accept bonds, and that discretion is -- is in the
7 language in Rule 101-C where it provides that a cash bond
8 will not be authorized by the Director unless the applicant
9 is in good standing with the Division and that we require
10 the filing of financial statements or other information ne-
11 cessary to determine whether an applicant is in good stand-
12 ing; whether they're in violation of any rules; whether
13 they're financially able to perform on the bond.

14 The primary requirement of a
15 cash bond is that you must make a showing that you can't get
16 a surety bond, and what we've provided for in the rule is
17 that you file an affidavit stating that you've made an ef-
18 fort to get a surety bond and are unable to do so.

19 For either bond, blanket or
20 one-well bond, cash equal to the face amount of the bond
21 must be deposited in account in trust of the Oil Conserva-
22 tion Division.

23 We have received several tele-
24 phone calls and correspondence and I've got a letter here
25 from a Mr. John Moore, who's an insurance agent in Las

1 Cruces, and he is recommending that in addition to cash we
2 accepte irrevocable letters of credit from financial insti-
3 tutions.

4 And I'll mark this as an exhi-
5 bit and offer it for your consideration.

6 My knowledge of a letter of
7 credit is that the company desiring to have the bond has an
8 account in the bank and I don't know if the account has to
9 cover the amount of the letter of credit, but the bank is-
10 sues an irrevocable letter of credit which promises that
11 they will pay that amount of a bond at the happening of a
12 certain event, which in this case, I suppose, would be the
13 value to plug the wells or the entry of an order by the Di-
14 vision that the bond should be forfeited.

15 One other proposal that I would
16 like to offer, I think, would that in Part G of this I think
17 we would like to add to the language of the forms we're
18 going to use and also, too, Part G of the rule, that also
19 that if the cost of plugging the well is any greater than
20 the amount of the bond, that the difference would be liqui-
21 dated damages payable to the Division, which I think would
22 make it easier for us to recover that amount and might also
23 give us higher priority in bankruptcy proceedings or other
24 things, that if -- if the amount of the bond did not cover
25 the plugging cost, and that certainly would be true if we

1 had any forfeitures of blanket bonds, because normally the
2 liability on a blanket bond is much greater than the amount
3 of the bond.

4 And I think that's all I have
5 in this case. We, last week we had some exhibits which were
6 the forms that we intend to use and those have not been
7 changed substantially yet, although they may be if some of
8 the proposals are adopted.

9 But essentially all the re-
10 quirements and conditions are found in Rule 101.

11 MR. CATANACH: Are there any
12 questions of Mr. Taylor?

13 MR. KELLAHIN: Mr. Taylor, is
14 the language you just mentioned about the deficiency in the
15 funding bond, is that language that's standard --

16 MR. TAYLOR: No, that's not in
17 there. We're just proposing that and it would be, probably
18 most likely would be in the form that would be signed by the
19 company to get the bond, and it just depends on whether we
20 get any comment on it as to actually whether we do it.

21 I think it would be a good idea
22 because of the fact that most of the time when we're plug-
23 ging wells the companies are bankrupt and it might help us
24 if we had that, that language in there. It might give us
25 better priority.

1 Essentially we've never gone
2 after that money because we'd be at the bottom of the list
3 of any -- any claimants.

4 MR. KELLAHIN: When you antici-
5 pate having all the forms and the final proposed language of
6 the rule available for review?

7 MR. TAYLOR: Probably later in
8 the week and I would hope we would send them out -- I think
9 I'd like to request that we continue this one more time, un-
10 til the, I believe it's the May 28th hearing, or the next
11 examiner hearing, so that this can get in the mail to peo-
12 ple. I think we're going to have some other comments, pos-
13 sibly, on letters of credit and we need to decide within the
14 Division what we're going to do with them and put that in
15 the mail.

16 MR. KELLAHIN: Are you satis-
17 fied that a provision for letters of credit is encompassed
18 within the language of the statute?

19 MR. TAYLOR: I think, you know,
20 if cash bonds are acceptable, I think a letter of credit
21 really wouldn't be any different from what we're proposing.
22 Apparently it is a guarantee by the bank to pay that amount
23 of money, and I don't see any difference between that and a
24 cash bond.

25 MR. KELLAHIN: Or a surety

1 bond.

2 MR. TAYLOR: Right. Any other
3 questions?

4 Why don't you see if anybody
5 else has comments or statements to make?

6 MR. CATANACH: Are there any
7 statements to be made by anyone at this time?

8 MR. KELLAHIN: Mr. Catanach, we
9 appreciate the Division agreeing to address our concerns
10 about a blanket cash bond. We believe the language in the
11 proposed order goes a long way to satisfying that concern.

12 We would like to have the addi-
13 tional opportunity between now and the next hearing to re-
14 view the exact language of the proposed forms and the order
15 itself among our clients and among the industry to see if we
16 have any further suggestions but we do thank the Division
17 for changing its position on the cash blanket bond and ac-
18 commodating the small operators.

19 MR. CATANACH: We'll try to get
20 that out to you, Mr. Kellahin, and anyone else who wants it.

21 MR. TAYLOR: I'd like to enter
22 this as Exhibit One in this case, this letter from Mr. John
23 Wood.

24 MR. CATANACH: Exhibit Number
25 One will be admitted into evidence.

1 If there isn't anything further
2 at this time, Case 8878 will be continued till the next
3 examiner hearing.

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6 (Hearing concluded.)
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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY
CERTIFY that the foregoing Transcript of Hearing before the
Oil Conservation Division (Commission) was reported by me;
that the said transcript is a full, true, and correct record
of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 8878,
heard by me on May 14, 1986.
David R. Catamant, Examiner
Oil Conservation Division

NEW MEXICO OIL CONSERVATION COMMISSION

EXAMINER HEARING

SANTA FE, NEW MEXICOHearing Date APRIL 30, 1986 Time: 8:15 A.M.

NAME	REPRESENTING	LOCATION
Bob Fisher	Byram	Santa Fe
Les Clements	N.M.O.C.D.	ARTESIA
Florene Davidson	N.M.O.C.D.	Santa Fe
Karen Decker	Kellahan + Kellahan	Santa Fe
Chad Dickerson	Dukens, Fisk, Vandiver	Midland
Ray Bob	Yates	"
Ray Graham		Santa Fe
Darris Nelson	Zia Energy, Inc.	Hobbs
W. J. Kellahan	Kellahan & Kellahan	Santa Fe
Diane Richardson	OCD	Santa Fe
J. Gordon E. Tate	MEM	Midland
William L. Tate	Campbell + Black, P.A.	Santa Fe
Ray Stall	Yates Petr Corp	Artesia
Eddie Mahfood	Yates Petr Corp	Artesia
William E. Hunsicker	Model Producing TEXAS + NM	Midland, TX
Glen M. Bankson	model Producing Texas & NM	Midland, TX
Joe Stamey	" " " "	Hobbs, NM
Luis G. Zambrano	" " " "	Midland, Tx.

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

30 April 1986

EXAMINER HEARING

IN THE MATTER OF:

The hearing called by the Oil Conser- CASE 8898
vation Divison on its own motion to
consider the amendment of Rule 101
relating to bonds.

BEFORE: Michael E. Stogner, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation
Division:

Jeff Taylor
Legal Counsel to the Division
Oil Conservation Division
State Land Office Bldg.
Santa Fe, New Mexico 87501

For Zia, Bravo, and
Natural Resources:

W. Thomas Kellahin
Attorney at Law
KELLAHIN & KELLAHIN
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Santa Fe, New Mexico 87501

A P P E A R A N C E S

For Bliss Petroleum: Chad Dickerson
Attorney at Law
DICKERSON, FISK, & VANDIVER
Seventh & Mahone/Suite E
Artesia, New Mexico 88210

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E X H I B I T S

Division Exhibit One, Document 7

Division Exhibit Two, Assignment 7

1 MR. STOGNER: Call Case Number
2 8878, which is in the matter of the hearing called by the
3 Oil Conservation Division on its own motion to consider the
4 amendment of Rule 101 relating to bonds.

5 We will now call for appear-
6 ances in this matter.

7 MR. TAYLOR: May it please the
8 Examiner, my name is Jeff Taylor, Counsel for the Oil Con-
9 servation Division, and I will present testimony myself on
10 this matter.

11 MR. STOGNER: Are there any
12 other appearances in this matter?

13 MR. KELLAHIN: If the Examiner
14 please, I am Tom Kellahin of Santa Fe, New Mexico, appearing
15 on behalf of Zia Energy, Bravo Energy, and Natural Resources
16 Engineering.

17 I have one witness.

18 MR. STOGNER: Are there any
19 other appearances?

20 MR. DICKERSON: Mr. Examiner,
21 I'm Chad Dickerson of Artesia, New Mexico, appearing on be-
22 half of Bliss Petroleum, Incorporated.

23 MR. STOGNER: Mr. Dickerson, do
24 you have any witnesses?

25 MR. DICKERSON: No, Mr. Stog-

1 ner.

2 MR. STOGNER: Are there any
3 other appearances?

4 There being none, will the two
5 witnesses please stand at this time?

6

7 (Witnesses sworn.)

8

9 MR. STOGNER: Okay, Mr. Taylor,
10 would you please continue?

11 MR. TAYLOR: Thank you, Mr.
12 Examiner.

13 In Case 8878 I just wish to
14 present essentially an outline of what's lead up to this
15 case and what we are proposing.

16 This case involves our consid-
17 eration of amendments to our rules to provide in Rule 101
18 for the posting of a cash bond for well plugging purposes in
19 addition to the existing rule, which allows for the posting
20 of a surety bond.

21 We have proposed language on an
22 attachment to the docket today, and I would like to, in
23 looking at that language, recommend that in the first para-
24 graph in the fifth line where it says that the account shall
25 irrevocably name the Division as the sole owner, that that

1 language should somehow be changed so that Division is not
2 necessarily the sole owner but is the beneficiary of the ac-
3 count, or somehow that it is held in trust to be payable to
4 the Division.

5 Essentially what lead up to the proposal
6 to amend Rule 101 was the difficulty that operators were
7 having in obtaining bonds. Many bonding companies are now
8 not selling surety bonds for well plugging purposes and we
9 decided that the only way to remedy this would be to allow
10 for the posting of cash bonds.

11 The Legislature passed in January House
12 Bill 223, which amended Section 70-2-14 of New Mexico Stat-
13 utes Annotated, to allow the Division to accept cash bonds.

14 Our purpose here is essentially to find
15 out what the industry may think about our proposal. We are
16 proposing that the bonds be for one-well bonds only, mainly,
17 I think, for ease of administration and to make sure that
18 the financial resources of the Division are sufficient to
19 cover the plugging costs, because if we had a lot of blanket
20 bonds secured by cash it might be insufficient to cover
21 those were difficulties to arise in the industry.

22 We are proposing that the one-well bonds
23 have the same values as the existing one-well plugging
24 bonds; that they be evaluated by depth.

25 I have two exhibits today, which are

1 available at the door. One is -- Exhibit One is labeled
2 Single Well Cash Bond and that is essentially a document be-
3 tween the Division and the operator that sets out the obli-
4 gations of posting the bond.

5 The second exhibit is titled Assignment
6 of Cash Collateral Deposit and this is an agreement between
7 the operator and a financial institution whereby they depo-
8 sit, either in a certificate of deposit or savings account,
9 or some other appropriate type of account, the amount of
10 money to cover the cash bond and this sets out the terms by
11 which the financial institution agrees to pay the money
12 from the bond to the State if the well is not properly plug-
13 ged.

14 I think the -- about the only questions
15 that we really have to answer yet are what showing should be
16 needed to forfeit the bond, and we are proposing that at the
17 hearing on whether or not the well should be plugged that at
18 that same time an order be entered to forfeit the bond if
19 the wells are not plugged and that way we would just have to
20 have one hearing at that time. The same order could be sent
21 to the financial institution as is sent to the operator and
22 if the well is not plugged within 30 days, or so, of the
23 order issuing from that hearing, the bond would at that time
24 be forfeited.

25 I believe that the proposed rule, along

1 with the two forms we have here, cover most of the questions
2 and essentially we're having this hearing to invite comments
3 from the industry on our proposals and if they would recom-
4 mend changes or if they have any other ideas.

5 I think that's all I have un-
6 less you have some questions or other people in the audience
7 have questions.

8 MR. STOGNER: I'll open it up
9 to the other questions for the other two attorneys at this
10 time.

11 Mr. Kellahin?

12 MR. KELLAHIN: Thank you, Mr.
13 Stogner.

14
15 QUESTIONS BY MR. KELLAHIN - ANSWERS BY MR. TAYLOR:

16 Q Mr. Taylor, in your opinion is the lan-
17 guage adopted by the Legislature in House Bill 223 broad
18 enough to allow the Division to implement a rule that would
19 provide for cash blanket bonds?

20 A I believe so. I don't believe that I
21 have the language with me, but --

22 Q I show you a copy of the statute as adop-
23 ted in the session laws and again ask you to review that for
24 me and let me know in your opinion whether or not there's
25 any language in there that would cause you as a lawyer to

1 believe that the Commission is restricted or precluded from
2 adopting a rule that would provide for a cash blanket bond.

3 A I suppose not, Mr. Kellahin, because all
4 we did in the amendment was add the word "cash" in front of
5 surety in the law, and we at the time, I don't think, had
6 really determined whether or not we would propose one-well
7 or blanket bonds.

8 Q You said awhile ago that there was two
9 basic reasons why the Division staff is proposing a well-by-
10 well cash bond, and the first reason was an ease in adminis-
11 tration.

12 Could you explain more specifically what
13 you meant when you said that that was one of the reasons?

14 A Well, essentially, the ease of adminis-
15 tration is probably not to encourage use of cash bonds be-
16 cause it does require us to do more work than we do when we
17 accept another bond and we're just doing it for the benefit
18 of the industry.

19 If there is a huge need and the industry
20 demonstrates it at the hearing, certainly I don't see any
21 problem why we couldn't have some kind of blanket bonds.

22 The real, I suppose the real problem I
23 have with blanket bonds is -- is the potential liability of
24 the State and the reclamation fund due to the fact that most
25 blanket bonds would never cover the plugging expenses of the

1 number of wells they cover.

2 Q Currently under a surety blanket bond the
3 ceiling on that bond limit is \$50,000, is it not?

4 A Yes, sir.

5 Q And that \$50,000 limit is the plugging
6 limit required if there is one well or fifty wells to be
7 plugged.

8 A Yes, sir.

9 Q Have you experienced instances before the
10 Division in which the surety bond on a blanket basis has
11 been inadequate to plug the wells necessarily to be plugged?

12 A Since I've been here I don't recall that
13 we've had any forfeitures of blanket bonds, but certainly
14 even in a situation of one-well bonds, the bonds are not
15 normally adequate to cover the cost of plugging a well, and
16 if, for instance, we had a well awhile back which cost us at
17 least \$50,000 to plug. I think our bond was less than \$5000
18 on it, and we're just trying to protect, essentially, the
19 reclamation fund, although because both the reclamation fund
20 and the plugging bonds themselves would come from companies
21 in the industry, I don't know that it really matters, except
22 for the fact that the industry generally seems to be
23 against the imposition of the tax for the plugging fund and
24 whenever it's re-imposed there's some grumbling, and I sup-
25 pose that requiring one-well bonds is -- is more proper in

1 that the company that drills the wells is directly respon-
2 sible for them rather than the industry as a whole.

3 Q If the cash blanke bond ceiling is the
4 same \$50,000 ceiling as a surety bond, then in terms of
5 amount they would both be treated the same.

6 A Correct. The State's liability, or the
7 plugging fund's liability would not increase due to the --
8 if we would adopt blanket cash bonds.

9 Q The concern you've expressed to me ap-
10 parently is one in terms of the ceiling limitation of
11 \$50,000 in all instances not necessarily being adequate.

12 A Correct.

13 Q And you are limited by the statute to the
14 \$50,000 ceiling on the blanket bonds.

15 A Yes, sir. At the time that we introduced
16 this in the Legislature this year we did consider increasing
17 the amounts of the bonds but decided that, because of the
18 confusion of the Legislature and other problems they were
19 dealing with and the controversy that might raise, that we
20 would opt at this time just to allow for cash bonds and not
21 get into the question of whether the amounts of the bonds
22 should be increased.

23 Q Thank you. I have nothing further.

24 MR. STOGNER: Thank you, Mr.
25 Kellahin.

1 Mr. Dickerson, your witness.

2
3 QUESTIONS BY MR. DICKERSON - ANSWERS BY MR. TAYLOR:

4 Q Mr. Taylor, I'm a little bit confused
5 about the administrative burden in the case of a cash bond
6 as opposed to a surety bond.

7 If the cash bond varies only as to amount
8 whether it's a single well bond or a blanket bond, and it's
9 deposited in a single account in a Federally insured insiti-
10 tution, why would the administrative burden differ between
11 those two?

12 A Well, it certainly depends on how we --
13 the final rule that's adopted and how it's set up.

14 As we -- in the last few days we've de-
15 cided how to do this. We've looked more at requiring the
16 operator and the financial institution to bear most of the
17 burden, which is filling out all the paperwork and making
18 sure everything's done, in which case there would be no
19 money deposited with the State. We wouldn't have to account
20 for that money. All we'd have would be these forms and may-
21 be another piece of paper in the file, and the administra-
22 tive burden under that situation would not be nearly as
23 great as when we originally thought about accepting cash, in
24 which case we would have to have accountants and people to
25 deal with all these, all the paperwork and all the problems

1 that accepting cash causes to any State agency, and certain-
2 ly the amount of cash that we were looking at, if the insur-
3 ance industry gets out of well plugging bonds completely,
4 which certainly, I suppose is possible, given the present
5 condition in the industry, would cause huge burdens to the
6 OCD, given our personnel and the fact that we don't have any
7 accounting personnel or cash bond actions really going on
8 here at all.

9 Q Thank you.

10 A As posed right now, however, as we
11 limited it in the last few days, I suppose the administra-
12 tive burden would be fairly minimal, the difference be-
13 tween--

14 Q So it wouldn't make any difference
15 whether it were a one-well plugging bond or a blanket bond,
16 the only thing that would change would be the amount of cash
17 deposited and if the State is not handling directly that
18 amount of cash, the burden on the State is exactly the same,
19 isn't it?

20 A I don't know if I'd say that for sure,
21 because I'm not sure of all the operations that are under-
22 taken when we take blanket bonds. Certainly we'd have to
23 keep track of all the wells that are covered by a blanket
24 bond and the paperwork on all those wells.

25 Q But you have to do that anyway with the

1 sureties.

2 A To some extent we do but it certainly de-
3 pends on how we finally come up with a rule on this.

4 But, yeah, it's not substantially dif-
5 ferent, I'll agree.

6 Q So assuming that the problem to the in-
7 dustry which you're attempting to address here, not only
8 affects the availability of single well plugging bonds, but
9 also applies to the availability of blanket plugging bonds,
10 wouldn't it further your express purpose to simply permit
11 the blanket plugging bonds to be deposited in cash as well?

12 A Well, it would certainly, I suppose, fur-
13 ther the purpose of aiding industry and development but the
14 problem of the liability of the plugging fund, if any number
15 of those operators were to forfeit their bond, would be sub-
16 stantial.

17 In fact, if any one operator would for-
18 feit under a blanket bond, the liability of the plugging
19 fund would be substantial.

20 Q But it's no different whether the plug-
21 ging bond be in cash or surety, is it?

22 A That's correct.

23 Q The liability to the fund is the same
24 whether it's cash or surety.

25 A Although we are not -- in accepting this

1 bond we are not undertaking a financial investigation of the
2 operator as would a bonding company --

3 Q Okay.

4 A -- in looking up the financial statement,
5 and other things, of the company.

6 Q Now, in -- would it not be true that a
7 cash surety bond would have the advantage in a Federally in-
8 sured institution that it would not run the risk, as does a
9 surety bond company, the company liable on that bond, the
10 insurance company liable on that bond -- I'm sure in your
11 experience you have seen cases in which the surety company
12 liable on a bond is no longer in business or insolvent,
13 something of that nature.

14 A Well, certainly we've tried to structure
15 it to limit any loss of monies through any institution.

16 Q But all things other being equal,
17 wouldn't it be more advantageous to the State to have a cash
18 security fund which could be reached rather than a surety
19 bond in the form only of a piece of paper?

20 A It's really difficult for me to say be-
21 cause of the -- especially because of the current situation
22 in the industry whether it would be advantageous to us to
23 undertake cash blanket bonds or not.

24 The potential liability because of the
25 shake-out in the industry right now is certainly much

1 greater than it would have been in the past, and it's really
2 up to the industry to tell us today whether that's necessary
3 or not.

4 I'm not really -- I have not talked to
5 that many insurance companies. I'm sure, though, that they
6 are -- fewer and fewer are offering bonds, but the differ-
7 ence is that they undertake to make sure that when they --
8 when they bond a company that that company is financially
9 stable, and that's an undertaking that we are not proposing
10 under this rule and that I'm not even sure we could because
11 of the -- the personnel that would be required.

12 Q But the company's ability to post a sur-
13 ety bond offers some security on that feature, doesn't it?

14 A You mean a cash bond, their ability to
15 post a cash bond?

16 I would certainly be more at ease if on
17 -- under blanket bonds if the amount of the bond were
18 greater. If there were twenty or forty or a hundred wells
19 under a \$50,000 blanket cash bond and we undertook no scru-
20 tiny of the financial situation of the company, our liabil-
21 ity, or the liability of the plugging fund, I think, cer-
22 tainly would be increased, just by the fact that we did
23 that.

24 If industry does propose that we accept
25 blanket cash bonds, I suppose we could amend the rule to al-

1 so provide that in that situation that we do somehow scruti-
2 nize the financial integrity of the company offering the
3 bond.

4 Q Mr. Taylor, in the first sentence of your
5 proposed rule change you have required a showing by the
6 operator that it cannot acquire a surety bond.

7 What's the purpose of requiring a showing
8 as opposed to simply permitting as an alternative the post-
9 ing of a fair share of the cash bond?

10 A I'm glad you raised that because I forgot
11 about it.

12 It's -- it's mainly to limit cash bonds
13 to those situations when a surety bond can't be obtained.

14 We don't want to transfer all the bonding
15 business to ourselves. We just want to undertake to bond
16 those companies who are unable to secure bonds through a
17 private insurance company, and certainly if the insurance
18 industry quits selling bonds, I suppose we would change this
19 program to do all bonds, but it certainly would be an in-
20 creased burden on the Division and would require more per-
21 sonnel if we were to do that.

22 Q My concern is what kind of a showing is
23 required.

24 A We -- actually, we should have probably
25 put something in the rule about that.

1 I was thinking about an affidavit, that
2 they just send us an affidavit, notarized, that said they
3 were unable to, after reasonable effort to get a bond. We
4 do know of the only two or three companies in the State now
5 offering bonds and certainly could check to see if they had
6 made inquiry with those companies to get a bond.

7 We require in bonding situations now that
8 the bond be gotten by a company that's authorized to do bus-
9 iness in the State and that the insurance company posting
10 the bond be authorized to do business in the State, so that
11 somewhat has limited the number, anyway, and since many of
12 them are getting out of the business, it's a fairly narrow
13 group that we'd have to check with now.

14 But I would propose on the record now
15 that we require an affidavit signed by an officer of the
16 company stating that they were, after due diligence, were
17 unable to obtain a bond.

18 Q I'm still a little unclear, Mr. Taylor,
19 as to why the State -- it appears to me, and there must be
20 something I don't understand, that it would be preferable,
21 from the State's standpoint, to have a cash bond posted
22 rather than merely a surety bond, and in the absence of any
23 real administrative burden increase about those cash bonds,
24 it seems to me that it would be more advantageous to the
25 State to have cash bonds deposited.

1 A I suppose if you would not consider the
2 administrative burden that we'd have to undertake of having
3 staff to look through all this paperwork and keep track of
4 it, you know, there might not be any difference.

5 We have not had any problems, however, on
6 collecting on surety bonds. Normally a letter to the insur-
7 ance company results in a check to us and therefore, I don't
8 know that cash bonds would be any real advantage over surety
9 bonds.

10 If it were difficult, became difficult to
11 collect on the surety bonds, certainly cash bonds might be
12 more preferable, but we have not found that to be the case.

13 Q Assuming that the Division were to amend
14 its rules so as to permit cash blanket bonds in addition to
15 cash single well bonds, would you have any problem with
16 changing the word in the first sentence of the last para-
17 graph instead to properly plug and abandon the well to
18 change the word "the" to "any" well?

19 A No, sir. And any other changes. If we
20 were to change it to a blanket bond, I would also recommend
21 that we undertake some financial scrutiny of the operator
22 just because of the fact that we would want to be assured
23 that it was a company in sound financial condition before we
24 would undertake to pledge, essentially, the plugging fund to
25 plug any wells that -- that the bond might not cover.

1 Q Did you draft this proposed language, Mr.
2 Taylor?

3 A In the rule?

4 Q Yes.

5 A I think the language in the rule, as well
6 as the exhibits, was a joint effort among several people in
7 the department.

8 Q In your opinion is there anything in the
9 language of this proposed rule change which of itself prohi-
10 bits the posting of a cash blanket bond or limits this pro-
11 posed rule change to a single well?

12 A Other than the fact that it might say
13 well, or something like that, I don't know that we specifi-
14 cally considered only single well bonds.

15 When the -- when the -- when we first
16 proposed the bill we did not, I think, have in mind neces-
17 sarily to limit it to -- to single wells, but it's -- it's
18 worked out that just the problems that we foresee in the
19 blanket bond, the liability and other things, made us just
20 think that was a preferable idea at this time.

21 Q But I'm unable to see any language in
22 this specific rule change which limits this to a single well
23 as opposed to still permitting a blanket cash bond to be
24 posted.

25 A Other than the fact that it refers to a

1 well rather than wells, I don't think there is.

2 Q Do you propose to revise this rule and
3 recirculate it for comments prior to final adoption at one
4 point or another?

5 A I don't think that we'd recirculate it.
6 We would probably readvertise it. In fact, we may be read-
7 vertising it anyway, but it would just state that it's for
8 one-well bonds only, although the purpose of this hearing
9 really was to get comment. We were -- at the time we pro-
10 posed the hearing we didn't have the situation and the con-
11 ditions of what we were proposing that solidified and we
12 were more looking for information and comments from the in-
13 dustry on how to do that.

14 Since that time we've talked to several
15 banks, financial institutions, and other State agencies that
16 deal with bonds, and have come up with a more specific idea
17 of what we're going to do.

18 Q Mr. Taylor, let's assume an operator de-
19 sires to drill twenty wells, but if your rule does not per-
20 mit him to post a blanket bond, he therefore has to post, if
21 he cannot obtain the surety bond, twenty separate cash, well
22 by well bonds. Isn't the administrative burden caused by
23 that twenty times greater, at least, than would be caused
24 by a single blanket cash bond?

25 A I suppose it is. At this time I'm not

1 sure, we'd have to ask Diane how much administrative work
2 there is on these. I don't know the breakdown right now be-
3 tween one-well bonds and blanket bonds. I know we have
4 quite a few operators who get well by well bonds. For what
5 reason, I don't know, but maybe the insurance companies, you
6 know, require that of certain companies. I don't know.

7 As far as I know most of our blanket
8 bonds are bigger companies but I certainly, you know, have
9 not ever looked through the files to verify the breakdown on
10 that.

11 But I do know that at this time many com-
12 panies do -- do single well bonds as they drill wells.

13 Q But the administrative paperwork of hand-
14 ling the separate bond, even if it's a surety bond, on every
15 well is obviously greater than handling one blanket bond and
16 then merely keeping up with how many wells that operator has
17 in the State of New Mexico, doesn't it?

18 A I think you're correct.

19 Q So if that's true, I'm totally confused
20 as to why it is an advantage to the State and it's obviously
21 not an advantage to the operator to make him post separate
22 bonds on each well. It would be easier and cheaper for all
23 concerned to post a cash blanket bond.

24 A Well, it might be easier and cheaper un-
25 less there were defaults and forfeitures and that's when

1 problems, the main problems are caused, because the State
2 then has to undergo to plug those wells.

3 Q Right, but there's no difference whether
4 it's a cash bond or a surety bond as to that problem.

5 A Well, on a well by well -- on a paperwork
6 basis you're correct, but on a well by well bond, financial-
7 ly we're covered on those wells whereas on a blanket bond we
8 certainly not even be close in many situations, and that,
9 you know, that is the main reason why we did it, is the fact
10 that we wanted to limit our liability as much as possible.

11 Q Well, has the decision actually been made
12 to limit the posting of cash bonds to a single well and not
13 --

14 A No, this is a proposal for comment. I
15 mean, we were hoping today actually that most of the hearing
16 was people telling us what they thought about it and bring-
17 ing in ideas.

18 I don't know that that many companies are
19 coming in with ideas but I certainly expect that there will
20 be some testimony on why we need to have blanket bonds, but
21 -- and, you know, I don't know that it, as an administra-
22 tive body, to us I don't know that it matters that much but
23 in overseeing the plugging fund and knowing the complaints
24 that we sometimes receive when the plugging fund is reinsti-
25 tuted, you know how the plugging fund works, when it rises

1 to a million dollars the tax on that cuts off and until it's
2 depleted down, I believe, to half a million there's no tax
3 and then the tax is reinstituted.

4 And certainly I've -- I've heard concern
5 within the industry about the fact that, you know, when the
6 tax is reinstituted why do we do this, and I think the in-
7 dustry may feel that it's a burden that's placed on every-
8 body when in fact it should be the burden of single opera-
9 tors to pay for those pluggings and a single well idea is
10 certainly going along with the fact that each operator
11 should be responsible for their own wells and the plugging
12 of those wells.

13 MR. DICKERSON: I have no fur-
14 ther questions of Mr. Taylor.

15 MR. STOGNER: Are there any
16 other questions?

17 MR. CARR: I have just one
18 question.

19 Are you talking about doing
20 away with the blanket surety bond or just not having a
21 blanket cash bond?

22 MR. TAYLOR: No, sir, we're
23 just recommending that as far as the adoption of a rule on
24 cash bonds, that at this time it only be for one well at a
25 time.

1 MR. CARR: And you'd still al-
2 low blanket surety bonds?

3 MR. TAYLOR: Yes.

4 MR. CARR: Thank you.

5 MR. STOGNER: Thank you, Mr.
6 Carr.

7 Mr. Stamets?

8
9 QUESTIONS BY MR. STAMETS - ANSWERS BY MR. TAYLOR:

10 Q Mr. Taylor, could these two forms, the
11 single well cash bond or the bond form and the cash col-
12 lateral form be combined into a single piece of paper that
13 would be a little more clear as to exactly what operation we
14 had and which well was covered by which deposit?

15 A I think they could. I came -- we came up
16 with the single well cash bond, which is Exhibit One, a
17 couple weeks ago, and Exhibit Two, which is an assignment of
18 cash collateral deposit, we only finalized yesterday, and it
19 is really a take off on a form used by the Construction In-
20 dustries Division for the posting of contractor bonds, and I
21 really haven't tried to put them together, but I think it
22 certainly should be possible.

23 Q Do you suppose there should be some sort
24 of identification on here, such as operator name and a bond
25 number that would facilitate collection of these things so

1 the banks would know whether to -- what we were talking
2 about when we went and asked them for the money?

3 A We could do that. One problem I have
4 with this is that until we actually get into the practice,
5 it may be hard for us to tell what's going to be needed.
6 We're trying to kind of foresee problems before we've done
7 any of this type bonding, but I think these forms do need
8 some changes before they can be adopted, especially a single
9 well cash bond, for instance, we need to set out what the
10 cost of the bond is going to be. If we do it as recommended
11 by the depth of the well, as we now do single well surety
12 bonds, we should -- we should have that information at the
13 top of the form.

14 And these forms are not intended to be
15 complete representations of what we expect to adopt, but
16 they are the ideas we have now and certainly we're solicit-
17 ing comments from operators and the industry in general on
18 what they may have encountered in other states and other
19 ideas they may have that would aid us in adopting this rule.

20 Q If these were to be converted into blan-
21 ket bonds it would just be a matter of revising the forms.

22 A Yes, sir. I, as I understand it, our
23 blanket bonds are actually kept track of by a computer. The
24 operator would have a bond and any wells he operated, I be-
25 lieve, would be covered by that, but I'm -- because I don't

1 actually work with the mechanics of them, I'm not positive
2 that's how it works, but that's how I understand it.

3 Q Mr. Taylor, in your position as the at-
4 torney for the Division, I presume you've listened to a num-
5 ber of cases relative to compulsory pooling. What kind of
6 well costs are usually discussed in relation to wells drill-
7 led in the state?

8 A You mean --

9 Q Are we talking about \$10,000 wells or are
10 we talking about \$200,000 wells?

11 A Well, it's -- I would estimate that the
12 average cost of drilling a well, just in the compulsory
13 poolings, is probably over half a million dollars.

14 Q And with one-well bonds we're looking at
15 bonds of, what, 5000 to 12,500?

16 A Yes, sir.

17 Q A relatively small amount compared to the
18 total well cost.

19 A Yes, sir, it certainly is.

20 Q Your concern relative to the blanket bond
21 would be whether or not we, as an agency, the Oil Conserva-
22 tion Division, could properly protect the State by -- by not
23 being able to devote the time and energy that a surety com-
24 pany might to investigating the health of a company.

25 A That's correct. We, as I understand it,

1 when an operator applies for a surety bond there is a --
2 they have to file a financial statement and other financial
3 disclosure forms in order, I suppose, the guarantee the in-
4 surance company that should they -- should the bond be for-
5 feited that they would make good that to the insurance com-
6 pany and if we were to undertake to do very many blanket
7 bonds and we did undertake to do financial statement exam-
8 inations or something similar under this, it would certainly
9 -- it would be very difficult because we currently have on
10 staff no people with that kind of experience.

11 Q As I recall, too, under the geothermal
12 bond, I'm not sure if this is in the law or just in the reg-
13 ulations, but there's a maximum number of wells which can be
14 covered under a blanket bond. Would that be some sort of a
15 possibility here if it would prove to be a legal thing to
16 do?

17 A I don't know, because I suppose the prob-
18 lem that the industry has with the single well is that they
19 may have twenty or forty or a hundred wells they need
20 covered and I don't know how we could remedy that. We --
21 if, if it were such that generally there was a need for a
22 blanket cash bond, I suppose if it's determined to adopt
23 that, that we could go to the Legislature next year and seek
24 to have the amount of a cash blanket bond increased or some
25 other protection given, or the industry might undertake to

1 determine whether because of the conditions of the insurance
2 business, that they weren't willing to pay everybody in gen-
3 eral, to pay the tax to keep the plugging fund at its statu-
4 tory amount that -- I mean -- what I'm saying is that it
5 would cost more, we'd have to have more money in the plug-
6 ging fund if we were to have blanket cash bonds and there
7 were any defaults.

8 Certainly if the industry were willing to
9 pay that increased tax or the tax that would be imposed more
10 of the time than it is imposed now, I don't suppose we have
11 -- I don't have any problem with that. It's just a question
12 of who's going to bear the costs associated with this.

13 MR. STAMETS: That's all I
14 have.

15 MR. STOGNER: Are there any
16 other questions?

17
18 QUESTIONS BY MR. SEXTON - ANSWERS BY MR. TAYLOR:

19 Q Jeff, do you feel like if you're going to
20 have blanket bonds (not clearly understood) will the Divi-
21 sion have guidelines or is this going to be individual judg-
22 ment or -- since the law just says 50,000, how do we inter-
23 pret the next step of evaluating who can get the blanket
24 bonds?

25 A I don't know, Jerry. I certainly have no

1 experience in that kind of thing, but I suppose if there is
2 a need for blanket cash bonds because of the inability of
3 the industry to get bonds, and if it gets any worse than it
4 is now, certainly that might be a real need. We would just
5 have to adopt some kind of general guidelines or some way of
6 looking at an operator's finances to make sure that -- that
7 were they not to plug these wells that there was a likeli-
8 hood that they would have the money that we could get them
9 through legal action to pay for the pluggings, but certainly
10 our backup is that the reclamation fund, the plugging fund
11 is there and we can always rely on that.

12 Certainly, though, the liability posed by
13 -- by blanket bonds without any investigation of the com-
14 pany's financial status I think is greater than it is right
15 now, and I'm not sure how we get around that. It really de-
16 pends on whether the industry really wants us to adopt cash
17 blanket bonds and what they're willing to do to help us deal
18 with that, and whether we need to have, you know, I don't
19 know that we would require another person to look through
20 those financial statements because I really don't know if
21 there's much demand, but certainly there's some burden there
22 that we're going to have to look at undertaking if we're
23 going to start doing blanket cash bonds, and I'm really not
24
25

1 that familiar with the financing and those situations to
2 know what the problems might be that we'd be looking at.

3 Q This is where I have a question, that it
4 seems to me the reason we're not getting any surety bonds
5 now is because half our wells that were ten years old, the
6 bonding company didn't look into them that well, and now
7 they're looking into them (not understood) that I'm not sure
8 any of your old ones would be covered under today's
9 standards.

10 A Although I can't really understand why
11 companies are having trouble getting the bonds, I understand
12 the insurance companies aren't selling them, but the fact
13 is, we've had, as far as I know, few forfeitures of bonds
14 compared, certainly, to the premiums that are being paid, at
15 least as far as I understand it.

16 I think, I've been here close to two
17 years and we've only forfeited one or two bonds and those
18 didn't even come close to paying the costs of plugging the
19 wells.

20 I really don't understand why the indus-
21 try is not willing to bond any more than maybe the general
22 problem with the insurance business. I'm not sure, but cer-
23 tainly in the past we have not forfeited so many bonds that
24 -- that it's a problem.

25 Normally, in good times, some other

1 operator has come in and taken over those wells. In the
2 current situation, with the slump in the industry, whether
3 you've have operators coming in to take over abandoned wells
4 that had not been plugged, I really don't know. It certainly
5 could look more difficult.

6 Is that it?

7 MR. STOGNER: Thank you, Mr.
8 Jerry Sexton, of our Hobbs District Office for those ques-
9 tions.

10 I'm going to -- I'd like to
11 open this up for questions of anybody for Mr. Taylor, and if
12 you have questions, if you would state your name and your
13 affiliation.

14 Are there any other questions
15 of Mr. Taylor at this time?

16 MR. TAYLOR: I've told them
17 everything I know twice.

18 MR. STOGNER: Would you like to
19 submit as evidence your Exhibits One and Two at this time,
20 Mr. Taylor?

21 MR. TAYLOR: Oh, yes, sir, I'd
22 like to offer Exhibits One and Two.

23 MR. STOGNER: Are there any ob-
24 jections?

25 There being none, Exhibits One

1 and Two will be admitted into evidence.

2 Mr. Kellahin, your witness.

3 MR. KELLAHIN: Thank you.

4

5 FARRIS NELSON,

6 being called as a witness and being duly sworn upon his
7 oath, testified as follows, to-wit:

8

9 DIRECT EXAMINATION

10 BY MR. KELLAHIN:

11 Q Mr. Nelson, would you please state your
12 name and occupation?

13 A Farris Nelson. I'm a petroleum engineer
14 for Zia Energy.

15 Q What's your relationship with Zia Energy,
16 Mr. Nelson?

17 A I'm a major stockholder.

18 Q Have you appeared before the Oil Conser-
19 vation Division as an expert petroleum engineer?

20 A Yes, I have.

21 MR. KELLAHIN: We tender Mr.
22 Nelson as an expert petroleum engineer.

23 MR. STOGNER: Are there any ob-
24 jections?

25 Mr. Nelson is so qualified.

1 Q Mr. Nelson, for the Examiner, would you
2 describe and summarize for us what is the current situation
3 between you and your surety company with regards to your
4 statewide blanket \$50,000 surety bond that covers your cur-
5 rent operations?

6 A Yes. We've had a blanket bond with an
7 insurance group called the Kemper Group since 1977. The
8 Kemper Group is made up of Lumberman's Mutual Casualty Com-
9 pany, American Motorists Insurance Company, American Manu-
10 facturers Mutual Insurance Company, American Protection In-
11 surance Company. There are four companies involved in this
12 group.

13 And November the 7th of 1985 we received
14 a notice from the independent agency, who is Ferguson Insur-
15 ance Agency in Artesia, that the Kemper Group would like to
16 cancel our bond. Of course they can't cancel our bond but
17 they are limiting the blanket bond to what we had in opera-
18 tion thirty days after November the 7th, so that in effect
19 anything that we develop or acquire after that date, they
20 are not bonding that.

21 Q Have you inquired of your insurance car-
22 rier as to the reasons behind the issuance of the notice of
23 termination on your blanket bond to determine whether or not
24 that notice was triggered as a result of your company's
25 financial ability or claims that your company has filed

1 against the insured?

2 A Yes, we asked them why and the group is
3 just trying to pull out of New Mexico as a bonding company.
4 We have had no claims on our bond and I feel like that our
5 financial situation is -- is certainly not the key question
6 from the company's point of view.

7 We have been submitting annual financial
8 statements to them and I don't feel like we've had any prob-
9 lem with that.

10 It -- the Ferguson Insurance Agency has
11 shopped rather extensively trying to acquire another bonding
12 company for us and as of yesterday their comment was that
13 they just couldn't offer us any hope.

14 Q If you're unable to replace your existing
15 blanket surety bond with another blanket surety bond and if
16 the Division adopts only a well by well cash bond arrange-
17 ment, what is the impact upon you as an oil and gas opera-
18 tor?

19 A We'll have to commence getting the single
20 well cash bonds depending on the cost -- the cost would de-
21 pend, of course, on the depth, but a minimum would be \$5000
22 per cash -- per well, and if we add another ten wells we've
23 again equalled the \$50,000 surety bond that we presently
24 have as a blanket bond.

25 That would, of course, impose some finan-

1 cial burden, not an impossible one, but it will be an addi-
2 tional burden. We'll be in effect having to carry the equi-
3 valent of two bonds.

4 Q To refresh everyone's recollection will
5 you run through for us the existing bonding limits required
6 based upon the foot of depth of the wells?

7 A As I understand it, from zero to 5000
8 feet is a \$5000 bond.

9 Then from 5-to-1000 is 7,500 per well.

10 Below 10,000 it's a \$10,000 bond, either
11 cash or surety.

12 Q What recommendations do you have to the
13 Examiner with regards to the implementation of a blanket
14 cash bond at a \$50,000 limit?

15 A That would be from Zia Energy's point of
16 view, we would like to see that as an option to the indus-
17 try.

18 If a person is fortunate enough to obtain
19 a surety bond, that's fine, but at least that does give the
20 operator an opportunity to post a cash bond to replace the
21 surety bond. It would -- it appears from the information
22 we've received that bonding companies are trying very hard
23 to just pull out of the bonding market in New Mexico.

24 Q Let's assume that you had to go out and
25 get a new surety bond on a blanket basis to cover all your

1 wells. How many wells do you approximately operate right
2 now?

3 A We're presently operating twenty wells.

4 Q All right. If you were unable to obtain
5 a surety bond for those twenty wells and had to utilize a
6 cash well by well basis in order to meet the plugging re-
7 quirements of the Division, what amount of cash do you es-
8 timate you would have to post to cover your operations?

9 A It would be a little in excess of
10 \$100,000.

11 Q Conversely, if you could obtain a surety
12 bond for a \$50,000 limit, then that would cover all your
13 operations.

14 A That's correct.

15 Q Have you discussed this with other oil
16 and gas operators that are known to you to determine whether
17 or not they share a similar predicament to you?

18 A Yes. I've had comments from several
19 operators that they've received basically the same notice
20 that we have, limiting the number of wells that the bonding
21 company will continue on the blanket bond to where they pre-
22 sently are operating at this time.

23 Q Can you narrate for us generally what
24 companies you've contacted that share a similar predicament
25 that you have with regards to a cash well by well basis

1 bond?

2 A Yes. I visited with Bliss Petroleum Com-
3 pany, all of these are in Hobbs, Natural Resources Engineer-
4 ing, Bravo Energy, Trio Oil. There's a couple of other guys
5 but I'm not even sure what their company names are.

6 Q I believe you indicated to me you'd
7 talked to -- you'd spoken to Mohammed Merchant?

8 A Yes, that's correct, who -- who operates
9 for Apollo Energy and Warriar Corporation.

10 Q Let's take Mr. Merchant's situation for
11 an example.

12 To your knowledge, approximately how many
13 wells are under operation and control by these various com-
14 panies that he represents?

15 A In the conversation with him he indicated
16 that as Apollo he's operating approximately 400 wells. Then
17 Warriar, Incorporated, he's operating four of those, but I
18 think those wells are carried in Warriar's name. There
19 would be probably 50 or 60 wells that Warriar operates.

20 But for Apollo, with their 400 wells, you
21 can begin to see where the minimum of \$5000 per well will
22 lead Apollo Energy.

23 Q In your opinion, Mr. Nelson, would a cash
24 blanket bond equal to the limits of the surety bond be one
25 that is fair and equitable and allow you to continue to ful-

1 fill the bonding requirements of the Division?

2 A Yes. I see no difference between the
3 \$50,000 cash blanket bond versus the \$50,000 surety bond.
4 It -- it does impose a greater financial burden on the oper-
5 ator. The surety bonds are costing us, perhaps, \$500 a year,
6 where we'll be having to post \$50,000 in cash, which we
7 can't use in any fashion. We can't -- we can't touch that
8 money; we can't use it for collateral or anything.

9 As far as protection to the Oil Commis-
10 sion is concerned, I can't see that there's any basic dif-
11 ference because the surety bond only provides for \$50,000;
12 that's as far as the bonding company would go if the forfei-
13 ture was made.

14 So from the Commission's point of view I
15 really can't see any difference between a \$50,000 cash blan-
16 ket bond versus a \$50,000 surety blanket bond.

17 Q If the Commission were to fail to adopt a
18 cash blanket bond and require you either to have a surety
19 bond or a cash bond on a well by well basis, in your opin-
20 ion, Mr. Nelson, would that unfairly discriminate against
21 you?

22 A In visiting with Mr. Lewis Latham, I
23 realize this is hearsay evidence, but in visiting with him
24 concerning this, he said, "Well, I have several wells that
25 are not economical. I'm operating them solely to hold the

1 lease. If I have to post a \$5,000 cash bond for each of
2 those, I'll plug them."

3 I think it would impose an undue burden
4 on the industry.

5 MR. KELLAHIN: No further ques-
6 tions of Mr. Nelson. Thank you.

7 MR. STOGNER: Thank you, Mr.
8 Kellahin.

9 Mr. Taylor?

10 MR. TAYLOR: I don't think I
11 have any questions.

12 MR. STOGNER: Mr. Dickerson?

13

14 CROSS EXAMINATION

15 BY MR. DICKERSON:

16 Q Mr. Nelson, what was the cost of the
17 premium to you for your blanket bond annually, do you re-
18 call?

19 A Yes, I asked Ferguson Insurance yesterday
20 and it's costing us approximately \$500 per year, if you can
21 get it.

22 MR. STOGNER: Are there any
23 other questions of Mr. Nelson?

24 MR. STAMETS: I've got some.

25 MR. STOGNER: Mr. Stamets.

CROSS EXAMINATION

BY MR. STAMETS:

Q Mr. Nelson, I believe you indicated that you currently have a blanket bond that's been cancelled as to future liability, is that correct?

A That's correct. They -- they will continue it because they don't have the option of cancelling it until we have another bond or another situation which is acceptable to the Division.

Q So the wells that you currently have are covered and unless you drill some new wells or acquire some new wells, you would not need to take advantage of this cash bond.

A Yes, that's a correct statement.

Q I would assume that the same thing is probably true of Apollo and Warriar, and other situations.

A That's true, with --

Q So we would not have Warriar or Apollo having to go out and put down, what, \$200,000 to cover their 400 wells?

A Well, \$5,000 times 400 is not \$200,000, is it?

Q Well, my math's not all that good.

A It's more like \$2,000,000.

1 Q Okay, they're not going to have to do
2 that tomorrow.

3 A No, but now there is another point to
4 consider.

5 I feel like that if the Commission, if
6 the Division doesn't enact blanket cash bond, that the
7 insurance companies will take this as a white flag for them
8 to go ahead and continue to increase their premiums and the
9 premiums can be increased to the point where it would be a
10 lot less financial burden on the operator to put up the cash
11 than it is to continue the surety bond, and I feel like if
12 the Commission adopts the one-well cash bond only, that
13 that's what we can look for in the future. We'll see dras-
14 tically increased surety bond premiums.

15 Q When you applied for your bond, what sort
16 of information did you have to give the surety company?

17 A We have to supply annually a financial
18 statement for Zia Energy, Incorporated, plus the two princi-
19 pals, which are myself and my partner, Virgil Henry, we have
20 to submit our own personal financial statements on an annual
21 basis.

22 Q And was that basically the same informa-
23 tion you had to submit when you got the bond originally?

24 A Yes, it is.

25 Q And do you know roughly how many opera-

1 tors there are in the state at the present time?

2 A I have no idea. Well, let's see.

3 Q If I said there were 7-or-800, would you

4 --

5 A I agree.

6 Q Okay. Have you examined the staff of the
7 Oil Conservation Division to determine whether they've got
8 the time and expertise to examine 7-to-800 financial state-
9 ments a year?

10 A I see the problem that you're getting to,
11 Mr. Stamets, but I feel like that by adopting the one-well
12 cash bond only rule, that the Division is going to be plac-
13 ing the industry at the mercy of the insurance companies,
14 and it might be very well that the industry would be better
15 served by paying the Division a little more and allowing
16 them to have the personnel to do the financial checks on the
17 700 companies.

18 Q Mr. Nelson, what would you think about a
19 sort of interim procedure where the Division might adopt
20 cash bonds for the present time and see what happens in the
21 next Legislative session relative to taking on the duty of
22 handling (not understood) bonds?

23 A When you said cash bond, you meant one-
24 well cash bonds?

25 Q One-well cash bonds, right.

1 A I would oppose that because once estab-
2 lished it's much more difficult to change it.

3 MR. STAMETS: I believe that's
4 all the questions I have.

5 MR. STOGNER: Thank you, Mr.
6 Stamets.

7 Is there any other questions of
8 Mr. Nelson?

9 MR. TAYLOR: Yeah, I do, Mike.

10 MR. STOGNER: Mr. Taylor.

11

12 CROSS EXAMINATION

13 BY MR. TAYLOR:

14 Q Mr. Nelson, on your bond that's been can-
15 celled for future liability, I assume you continue to pay
16 premiums on that.

17 A Yes, we do.

18 Q If the Division were to permit blanket
19 bonds, cash blanket bonds to be posted with this, do you see
20 any problem with requiring before we allow that, that that
21 existing bond be continued so that the cash blanket bond we
22 accept would not automatically take over the liability of
23 those existing 400 wells you have so that, for instance a
24 cash blanket bond would only apply to wells drilled or pur-
25 chased after the date it's effective, so that -- you can un-

1 derstand the liability that we'd be undertaking here if we
2 undertook to accept a cash blanket bond and automatically
3 400 wells the first day went on it.

4 A Well, Mr. Taylor --

5 Q Do you think that the insurance company
6 and the rules that you're operating under would provide --
7 would allow that?

8 A Mr. Taylor, the -- what you're proposing
9 would be that we in the industry will actually have to have
10 two blanket bonds, which is in effect doubling what the Com-
11 mission requirements currently are.

12 Currently you're requiring a maximum of
13 \$50,000 surety bond.

14 Now, what you just said to me, I inter-
15 pret that to say that we can be required to maintain a
16 \$50,000 surety bond in addition to a possible \$50,000 cash
17 bond, which is doubling the requirements, it seems to me.

18 Q Well, it is. Obviously, the only reason
19 the Division is undertaking this is because of problems of
20 the industry securing bonds. I mean, we're not in the bon-
21 ding business and I understand a lot of people probably
22 wouldn't want us to be in the bonding business, but certain-
23 ly the real problem I have is liability and the liability of
24 the plugging fund and our inability to -- to make sure that
25 somebody that we accept a bond for is financially stable.

1 And I assume that one of the reasons we
2 have not had a lot of forfeitures of bonds that are surety
3 bonds is because the insurance industry probably doesn't
4 (not clearly understood) bonds to people that they don't
5 find financially suitable for that, and if we were to under-
6 take to start a bonding program without the same safeguards,
7 I think our liability would be greatly increased over that
8 of the existing insurers who are selling those bonds, and --
9 and my concern is that we do not undertake to, I don't
10 know, either bail out the insurance industry or the opera-
11 tors, and greatly increase the potential liability over what
12 it already is because of our -- our inability to determine
13 the financial qualifications of the people we're bonding.

14 A The only -- in -- in whichever case that
15 you're discussing, surety versus cash, all the Commission
16 has available to them is the \$50,000 if the question comes
17 up concerning plugging a well. That's -- that's all you
18 have available.

19 It it costs more than that, then you have
20 to turn to the fund which has been established to do that.

21 The only way that I see that there is a
22 difference is that I grant you that it will be putting some
23 responsibility on the Commission concerning the financial
24 responsibility of the operator, and I think you have to weigh
25 that against the position that single well cash bonds will

1 place the operator in. That will place the operator almost
2 entirely at the mercy of the insurance companies. Ten
3 wells, ten wells above 5000 feet will equal the \$50,000 cash
4 bond and I just -- the only point where I can see that
5 there's an additional burden on the Commission -- on the Di-
6 vision, is that you may need to review the financial condi-
7 tions of the companies as they apply for bonds.

8 Q My point was more or less that I did not
9 want to shift the insuring function of those existing wells
10 that are already blanket -- covered by blanket bonds from a
11 private insurer to the State. Certainly I understand that
12 it would be a double burden on the industry but certainly it
13 also might -- I'm not -- not being in the industry myself I
14 really don't know what the financial situation is, but cer-
15 tainly I would -- I would think it might be a fair tradeoff
16 to -- to undertake to pay for two separate bonds rather than
17 not being able to get a bond at all, and certainly I have a
18 problem with the State undertaking to more or less bail out
19 the insurance industry by saying we're going to let you
20 transfer all the existing blanket bonds you have now to the
21 State, whereby I don't -- I don't have nearly as much prob-
22 lem with saying in the future new wells, or if you purchase
23 existing wells, those can be covered by a cash blanket bond
24 to the State, but all those that are already drilled, be-
25 cause they're insured and because that liability is with

1 private insurance companies. I'd sure like to see that stay
2 there.

3 I know the double burden is there but
4 don't you see it as somewhat of a fair tradeout in that it
5 is encouraging and allowing drilling to go on without
6 requiring the State to just be the insurer of all wells in
7 the state, which, I mean we could become if insurance
8 companies totally get out of the bonding, I suppose, but
9 certainly I don't think it's something we want to try to
10 encourage.

11 A Well, I see your point; however, I still
12 see it as doubling your requirements for plugging bonds.

13 Q Well, certainly if anybody comes up with
14 any alternatives, we're open to them.

15 MR. TAYLOR: That's all the
16 questions I have.

17 MR. STOGNER: Thank you, Mr.
18 Taylor. Any further questions of Mr. Nelson?

19 Mr. Kellahin, do you have any
20 redirect?

21 MR. KELLAHIN: No, thank you.

22

23 CROSS EXAMINATION

24 BY MR. STOGNER:

25 Q Mr. Nelson, when did Kemper notify you

1 that they were going to stop any future liability?

2 A This letter is dated November the 7th,
3 1985.

4 Q What has Zia done since September 7th,
5 1985, or the date that you received that letter to obtain
6 another blanket plugging bond from another company to
7 replace Kemper?

8 A We have the Ferguson Insurance Agency in
9 Artesia currently is looking and we have another insurance
10 company there in Hobbs, New Mexico, who is also shopping for
11 a bonding company. I'm sorry, but their name slips my mind
12 right now.

13 Q When you said they are looking, what's
14 the procedure?

15 A It -- well, they are both independent
16 insurance agencies. They have a list of companies that they
17 can shop to see if any of the companies will agree to accept
18 the blanket surety bond.

19 Q In your -- getting back to Ferguson
20 Insurance and the other independent in Hobbs, what have they
21 explained to you are some of the problems that they have
22 come across?

23 A The insurance companies just don't want
24 to issue them. They're -- they're even reluctant to issue
25 single wells.

1 Q Did they say why?

2 A As I understand it, now this is an opin-
 3 ion, but as I understand it, the insurance companies see
 4 this as a situation where once they accept the responsibil-
 5 ity there's no way for them to get out of it, just -- our
 6 policy is through the Kemper Group but it's actually with
 7 the American Manufacturers Mutual Insurance Company. They
 8 can -- they can limit us to what we were operating in Novem-
 9 ber. The State blanket bond provides a paragraph that does
 10 that, but they can't cancel us. They can insure -- they can
 11 increase the premiums. There's no limit set on what they
 12 can charge for the premiums, but they can't cancel us, and
 13 one of their problem is that -- that point right there, that
 14 once they accept the responsibility, they have that respon-
 15 sibility forever unless -- the only way that a company can
 16 be released of their responsibility is we were to sell all
 17 of our wells or if we were to successfully plug all of our
 18 wells, then they can be taken off the hook, or if we, a
 19 third alternative would be if we got another bonding com-
 20 pany.

21 Q So the insurance companies haven't been
 22 turning you down because of Zio's financial situation or
 23 anything like that.

24 A I don't believe that's the case, Mr.
 25 Stogner.

1 Q Okay.

2 MR. STOGNER: Are there any
3 other questions of Mr. Nelson?

4 MR. LYON: Let me ask a ques-
5 tion, if I may.

6 MR. STOGNER: Mr. Lyon, would
7 you please identify yourself?

8

9 QUESTIONS BY MR. LYON:

10 Q I'm Vic Lyon, Chief Engineer for the Div-
11 ision.

12 Mr. Nelson, do I understand you to say
13 that there are no circumstances under which the insurer can
14 deny you the bond?

15 A No, that's not what I said. I said they
16 can't cancel the bond. Once they've accepted the liability,
17 it's my understanding they cannot cancel that bond.

18 Q Well I --

19 A Now they can deny it initially.

20 Q Yeah, I used a poor choice of words. I
21 didn't mean to deny you bond but to -- they have no right
22 to cancel the bond.

23 A That's my understanding.

24 Q If your financial circumstances would be
25 such that they didn't consider you reliable any more, they

1 still cannot cancel the bond, is that correct?

2 A Well, you're getting a legal point that
3 I'm not really qualified to answer, but I don't believe they
4 can, because they accepted the bonding liability after hav-
5 ing inspected our financial situation in 1977, and at that
6 time they decided we were financially responsible, and if
7 that deteriorates between 1977 and this present time, I
8 don't believe that the Division would allow them to cancel
9 the bond.

10 Mr. Taylor might could answer that ques-
11 tion better than I can.

12 MR. TAYLOR: I think you're
13 correct. The way our bonds work are that once a well is
14 bonded the only way that bond is released is if the wells
15 are plugged or someone else gets a new bond on it, and ac-
16 tually that's, you know, you might think that's kind of
17 harsh but it's the only way it can work because that way
18 companies would just be cancelling their bonds all the time
19 and nobody else would undertake them, so the way the bond is
20 set out is once it's signed and delivered it's -- it cannot
21 be cancelled until we approved that cancellation. Our rule
22 is we do not approve the cancellation of a bond until a well
23 is plugged pursuant to our rules, or another bond is in its
24 place.

25 Q There is an annual premium, you pay the

1 premium on the bond annually?

2 A Yes.

3 Q And they do have the right to change that
4 premium.

5 A Unless there's some state regulation con-
6 cerning the rate the premiums can be set at, yes, they can
7 change it at their will.

8 Q And then did I understand that you said
9 that the -- currently the annual premium is \$500 per year
10 for --

11 A That was the information that Ferguson
12 gave me, yes, sir.

13 Q Is this an increase over last years?

14 A I'm sorry, I can't answer that. I don't
15 know.

16 Q But, essentially, subject to whatever
17 state controls there are on such bonds, they could continue
18 to increase the premiums to where it might be almost more
19 expensive than it's worth.

20 A Well, it could very, very easily get to
21 the point where it would be cheaper for us to provide the
22 \$50,000 cash bond because according to the way the proposed
23 language is, we can place the \$50,000 cash in the bank, ac-
24 cording to the regulations here, and we can actually draw
25 the interest on it, so we can be making the interest on the

1 \$50,000, so if the premiums go much above where they are
2 right now, it would be more financially reasonable for us to
3 put up the cash bond.

4 Q Right, so it could get to the point that
5 as to -- as to where you would get the best capital return
6 on your money, whether it would be to invest in a CD or
7 whatever, as opposed to paying the premium on the bond.

8 A It's almost there now.

9 Q That's all.

10 MR. SEXTON: This is to Farris,
11 I'd like to add one comment.

12 The only reason that bonding
13 companies do such a big financial statement is because the
14 operator doesn't have to put up any collateral, you know.
15 If, I feel like the industry eventually could, if we don't
16 go with the blanket bond, could go to an insurance company
17 and say, "I'll put up 50,000 and pay you 5000, 500 a year to
18 put in a bond," and I don't believe any insurance company
19 wouldn't take a deal like this, and this is all our rules
20 say, that if something happens we have -- they have the
21 \$50,000, but what's happened always before was the surety
22 bonds, they're putting up one or two percent of collateral
23 and they did the financial statements, but it's not a have
24 to case.

25 If they wanted to put up the

1 money to the insurance company, I think they'd be willing to
2 put out a bond.

3 A I would like to comment on that. I would
4 prefer to have the money in a bank drawing interest rather
5 than have it in the insurance company and them drawing the
6 interest, but --

7 MR. SEXTON: But it can be
8 done.

9 A It could be done.

10 MR. STOGNER: I'd like to cut
11 off on the comments at this time. If there are any -- is
12 there any further questions of this witness?

13 Okay, if there are no further
14 questions of Mr. Nelson, just to clarify one matter I'd like
15 to recall Mr. Taylor.

16 Just to clarify a certain mat-
17 ter, Mr. Taylor, have you previously testified as a witness
18 before the Oil Conservation Division or Commission?

19 MR. TAYLOR: I can't say
20 whether I have or not. I've made statements. I can't
21 remember if I've testified or not.

22 MR. STOGNER: All right, just
23 to clarify the record, would you please run through your
24 educational background and your work experience?

25 MR. TAYLOR: Well, let's see, I

1 got a law degree at the University of New Mexico in 1978 and
2 since that time I've worked for the Department of Interior
3 and Navajo Tribe and the State Land Office, and I've had
4 this position for almost two years, I believe.

5 MR. STOGNER: Are there any ob-
6 jections to Mr. Taylor's qualifications?

7 Mr. Stamets, can I qualify this
8 witness?

9 MR. STAMETS: You bet.

10 MR. STOGNER: Mr. Taylor,
11 you're so qualified.

12 That was all I had for Mr. Tay-
13 lor.

14 I would like to open the room
15 up for any additional comments at this time and then we'll
16 get to any statements that Mr. Dickerson, Mr. Kellahin, or
17 Mr. Taylor might have to close up for today.

18 So I'd like to start from this
19 side of the room, if you'd please stand, approach the front
20 there, and speak up and identify yourself and your affilia-
21 tion.

22 MR. STAMETS: I'm going to do
23 it from here, if I may.

24 MR. STOGNER: Would you please
25 identify yourself, Mr. Stamets?

1 MR. STAMETS: I'd like to com-
2 ment on the last exchange between Mr. Nelson and Mr. Sexton
3 relative to an insurance company taking the \$50,000 and giv-
4 ing a blanket bond, and there was indication that the State
5 ought to do the same thing, but I would point out that it
6 appears as though the State has a greater risk than the in-
7 surance company would. The insurance company would only be
8 at risk for \$50,000 no matter how many wells there were;
9 whereas the State is going to be at risk to plug whatever
10 number of wells that individual may have.

11 So I think that their concern
12 might be somewhat different.

13 MR. STOGNER: Thank you, Mr.
14 Stamets.

15 Ms. Richardson, I apologize for
16 cutting you off earlier. Would you please continue with
17 what you had --

18 MS. RICHARDSON: Well, I'm
19 Diane Richardson. I work for the Oil Conservation and I
20 handle the bonds.

21 One of the things I wanted to
22 mention, and Jerry Sexton brought up, about insurance com-
23 panies taking cash, I have been told that they won't, and
24 now I don't know what the rules are but I have had several
25 operators offer the insurance company the cash and they

1 won't take it and issue a bond. I don't know what their
2 rules are, I just thought I'd mention that.

3 MR. STOGNER: Thank you, Ms.
4 Richardson.

5 Anything further you'd like to
6 add?

7 MS. RICHARDSON: No.

8 MR. STOGNER: I think we're
9 ready for some closing statements.

10 Mr. Dickerson, do you have any
11 closing statement?

12 MR. DICKERSON: I'll be very
13 brief, Mr. Examiner.

14 I still, after hearing the tes-
15 timony and the comments of all the parties, am unable to un-
16 derstand any material difference between a cash bond being
17 posted and a surety bond. The risk to the State is all the
18 liability over and above the amount of the bond whether it
19 is cash or surety.

20 Many of the comments have been
21 directed to the fact that perhaps our current statutes are
22 too low. They're not realistic in terms of the actual cost
23 of plugging a well upon default of an operator or the suffi-
24 ciency of his security to do so, and that should be addres-
25 sed by the Legislature in your efforts next year, but for

1 our present purposes it just appears to me that limiting
2 cash bonds to a well by well basis would be unduly burden-
3 some and that burden would most likely fall on those who can
4 least afford it at the present time and that is th small
5 operators. We do not have the major oil companies here
6 speaking of their difficulties in obtaining bonds. I would
7 submit that they do not have any difficulty; that all the
8 current problems are directed to the small operators who
9 drill most of the wells (not understood) most of the produc-
10 tion, and that that is properly the function of the Oil Con-
11 servation Division to take that into account when implemen-
12 ting policy which would have a clear and direct impact at
13 the present time on parties who are independent operators
14 given the current economic conditions of this industry.

15 MR. STOGNER: Thank you, Mr.
16 Dickerson.

17 Mr. Kellahin?

18 MR. KELLAHIN: I join with Mr.
19 Dickerson in his comments. His observations are the same as
20 mine.

21 It's my recollection that the
22 representations and statements made to the Legislature about
23 supplying a cash bond mechanism in substitute for the surety
24 is precisely the point we're talking about today.

25 I do not recall that the Divi-

1 sion or anyone else sought before the Legislature to make a
2 distinction between a cash blanket bond and a cash well by
3 well base bond.

4 Mr. Taylor has concurred with
5 us that the statutory language is broad enough to include
6 the cash blanket bond and, in fact, I think the distinction
7 that the Division is attempting to make in terms of a cash
8 well by well bond versus a blanket surety bond is an
9 artificial distinction that will not survive a legal chal-
10 lenge. I think you have a very difficult problem in now
11 trying to limit cash bonds to a well by well bond basis.

12 The second thoughts I think I
13 feel from the Division staff about what we're doing seems to
14 be directed to whether or not the \$50,000 is going to be
15 enough or not. If that is the concern we'll have to go back
16 to the Legislature for a solution, but if it is not suffi-
17 ciently currently, then where does the money come from? It
18 doesn't come out of the general fund, it doesn't come out of
19 your pocket, it comes out of the operators' pocket. It is
20 regenerated money directly from the operator into the reclama-
21 tion fund. So if the funds are not adequate, it comes out
22 of the reclamation fund and when that fund is not adequate,
23 the tax kicks back in, and the operators refund the revenues
24 to plug the wells.

25 My conclusion is that I think

1 it's essential, necessary, provided for by the statute, that
2 you give the operators the flexibility and the opportunity
3 to post a cash collective bond, and we would request that
4 you do so.

5 MR. STOGNER: Thank you, Mr.
6 Kellahin.

7 Mr. Taylor?

8 MR. TAYLOR: Thank you, Mr.
9 Examiner.

10 I don't suppose I really have a
11 closing statement to make other than that the purpose that
12 we proposed this and went to the Legislature was to ease the
13 burdens on the industry and I'm not sure from the showing
14 today whether the whole industry concurs that the reclama-
15 tion fund should undertake to be the insurer of all the
16 operators, and to me personally it really doesn't matter,
17 but I do think that if we undertake to issue cash blanket
18 bonds, that we might want to make sure that the industry in
19 general is in support of the increased liabilities and
20 necessarily increased taxation through the plugging fund tax
21 that that might mean.

22 But personally, and actually as
23 an employee of the OCD, I do not have that much of a problem
24 with the blanket cash bond so long as the industry concurs
25 in that.

1 I don't really know whether the
2 representations today may not be half of those companies ap-
3 pearing are adequate to indicate that the whole industry is
4 in favor of undertaking that liability, but certainly I
5 haven't heard that much outpouring against cash blanket
6 bonds, so I leave it up to the examiner to make that deci-
7 sion.

8 MR. STOGNER: Thank you, Mr.
9 Taylor.

10 Is there any other comments or
11 additions to Case Number 8878 today?

12 Due to this case not being ad-
13 vertised in Sandoval County, this case is going to be con-
14 tinued to the May 14th, 1986 hearing, so we will hold the
15 record open for the May 14th, 1986 hearing.

16 That is all for this case and
17 we'll take a 10 minute recess at this time.

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19 (Hearing concluded.)
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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY
CERTIFY that the foregoing Transcript of Hearing before the
Oil Conservation Division (Commission) was reported by me;
that the said transcript is a full, true, and correct record
of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 8878.
heard by me on 30 April 1986.
Michael S. Stogers, Examiner
Oil Conservation Division