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July 31, 2009

Mr. Lindil C. Fowler, Jr.
General Counsel
Office of the General Counsel
Railroad Commission of Texas
12th Floor, Room 155F
1701 N. Congress Avenue
Austin, Texas 78701

Re: Case Nos. 05-0729; *Exxon Corp., et al. v. Emerald Oil & Gas Co., et al.* and 05-1076; *Exxon Corp. v. Laurie T. Miesch, et al.*, in the Supreme Court of Texas, Austin

Dear Mr. Fowler:

Exxon Mobil Corporation ("ExxonMobil") respectfully submits this letter to the Railroad Commission of Texas ("the Commission") in response to the July 15, 2009 letter from Mr. Jerry Patterson, Commissioner of the General Land Office,[1] requesting a show-cause hearing in connection with the allegations in the two referenced lawsuits. Please bring this response to the attention of Chairman Carrillo, Commissioner Williams, and Commissioner Jones, as appropriate under the Commission's procedures.

Mr. Patterson has apparently been gravely misinformed, and, as a result, his letter is rife with false statements, exaggerations, misrepresentations about court actions in the referenced lawsuits, and baseless allegations contradicted by the evidence in the pending litigation. Had Mr. Patterson been more familiar with the actual facts of the cases, he would not have demanded a show-cause hearing about legal and factual issues that have already been in litigation for more than ten years and that are currently pending in the Texas Supreme Court. ExxonMobil respectfully submits that there is no basis for a show-cause hearing and Mr. Patterson's complaint should be rejected.

Exxon's Efforts to Accommodate the Royalty Owners and The Plugging Of The Wells. Exxon (then Humble Oil & Refining Company) began producing oil and gas wells on the O'Connor leases in the early 1950's. Almost four decades later, after paying the royalty owners

[1] No state lands are included in the leases or fields that are the subject of Mr. Patterson's complaint; consequently, Mr. Patterson's complaint concerns the plugging of wells for which the General Land Office has no responsibility.

more than $40 million, Exxon determined that, despite efforts to repair and workover wells, it was no longer economically feasible to continue operating the nearly depleted fields. During the period from 1985 to 1989, for example, Exxon had completed 17 workovers, but only one was successful. By that point, the wells were producing a disproportionately high volume of saltwater, much of the equipment on the leases was old and needed frequent repairs, and, if operations were to continue, Exxon would have been required to make a significant capital expenditure to replace the main saltwater disposal line. A 50% royalty burden also made the economic viability of these leases extremely difficult to maintain. Appendix Tab A, pp. 74-76.

When informed of Exxon's decision to plug and abandon the leases, the royalty owners demanded that Exxon continue operating the leases and threatened to sue if Exxon proceeded with its plan to plug and abandon the remaining active wells. The royalty owners were unwilling, however, to extend the lives of the leases by reducing their royalty to make continued production economically feasible.

As an alternative to terminating the leases, Exxon actively sought a third party operator to take over its interest in the leases, but was unsuccessful. Two potential assignees initially showed interest in the property, but ultimately concluded that the economics were unworkable.

The royalty owners also looked for someone to take over at least some of Exxon's operations. Exxon was willing to negotiate with a potential purchaser that the royalty owners had found (from whom they expected only a 25% royalty) and agreed to postpone plugging the six active wells that the potential purchaser wanted. Ultimately, the proposed assignment failed because the royalty owners refused to release Exxon from liability for the purchaser's operation of those six wells. Exxon then plugged the last wells on the leases, completing all of its plugging and abandonment work by August 16, 1991.

Emerald's Attempts to Re-enter Wells on the O'Connor Leases. More than two years after Exxon finished plugging and abandoning the wells on the O'Connor leases, Emerald acquired its lease on a portion of the O'Connor land and agreed to a 30% royalty obligation. At the time, Emerald had virtually no experience in the oil and gas business and no experience at all with leasing depleted properties or re-entering abandoned wells.

Once it discovered that it could not profitably operate its lease, Emerald targeted and ultimately sued Exxon. In the lawsuit,[2] Emerald alleged that it had tried to re-enter 32 wells. Emerald complained about problems with 27 of the 32 wells on grounds that Exxon's plugging reports allegedly failed to reflect either junk in the wellbores or casing that had been cut and left in the well. Of these 27 wells, 14 had been plugged for many years, some even for decades. Thus, more than half of the wells Emerald complained about had been plugged long before the royalty owners refused Exxon's request to reduce their royalty and long before Emerald came

[2] The Supreme Court issued its opinions in these cases on March 27, 2009; **all of the parties have filed motions for rehearing, which remain pending.**

into being, dispelling any notion that Exxon had the motive that Emerald and the royalty owners claim Exxon had for the alleged sabotage.[3]

Response to Mr. Patterson's Allegations. As noted above, Mr. Patterson's complaint suffers from several significant defects, each of which is dealt with in turn below.

1. *The Alleged "Sabotage."* Mr. Patterson's complaint mimics Emerald's allegations in the pending litigation about casings being cut but not pulled and about unreported junk in the wells. Mr. Patterson also repeats Emerald's allegations that Exxon pumped tank bottoms into wellbores. Based on these unproven claims, Mr. Patterson concludes that Exxon "deliberately sabotaged" the wells. The facts, however, show that no Exxon employee sabotaged the wells or the leased property, and no Exxon employee tried to impede re-entry by cutting casing or leaving junk in any well.

In making his "sabotage" allegations, Mr. Patterson misrepresents the findings in the pending lawsuits. One particularly egregious inaccuracy is his statement that the trial court found that Exxon had intentionally damaged wellbores on the O'Connor leases and had hidden its actions by intentionally filing false W-3 plugging records with the Commission. ***Mr. Patterson's statement is wrong.*** Neither the jury, the trial judge, nor the appellate courts reviewing the trial court's judgment made any such findings.

Most of the trial testimony about Exxon's alleged intent to deter re-entry came from an Emerald employee, Lonnie Vickery, who had once applied for a position with Exxon that he ultimately did not get. Mr. Vickery testified that, in addition to working for Emerald during the re-entry of some of the wells on the Emerald lease, he had also worked for Pool Company, a company Exxon had hired to plug wells on the leases. Mr. Vickery estimated that he had helped Exxon plug 20 to 30 of the wells on the O'Connor leases. Despite witnessing all these pluggings, Mr. Vickery never testified that Exxon left junk in the wells during the plugging operations. He did, however, testify that the primary purpose of plugging is to protect the fresh water sands and other reservoirs and that Exxon took every precaution to do that. Appendix Tab B, p. 169.

Mr. Vickery did testify that he was instructed to cut the casing to plug the wells and that he asked Joe Gilpin, one of the ExxonMobil field foremen, about this instruction. Mr. Vickery reported that Mr. Gilpin told him that the casing was being cut as a "deterrent" to anyone else re-entering the wells later. Mr. Gilpin, however, denied that he had ever said such a thing. Appendix Tab C, pp. 116-117. In fact, Mr. Gilpin – who was no longer employed by Exxon at the time of trial – testified that he never talked with Mr. Vickery about why the wells were being plugged or why the casing was being cut to achieve circulation. Appendix Tab C, pp. 155-156.

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[3] Echoing complaints made by Emerald and the royalty owners, Mr. Patterson asserts that another possible motivation for Exxon's alleged "deliberate sabotage" was its purported desire to produce the remaining reserves from an adjoining tract. Emerald and the royalty owners had the opportunity to prove this allegation at trial, but they did not even try to do so.

In addition, Mr. Vickery admitted that, while working for a well services company on a nearby Exxon lease, he had been instructed to use the same technique of cutting the casing and leaving it in the wellbore when plugging and abandoning a well. In fact, when he varied from that practice on a well on the other lease by merely perforating the casing, the Exxon employee in charge of the plugging and abandonment operations on that lease chastised him, reminding him that Exxon did not plug wells by perforating the casing, but by cutting it and leaving it in the well. Appendix Tab B, p. 152-153.

Mr. Vickery further testified that Jerry Schave, an Exxon field supervisor, told Mr. Vickery to inject tank bottoms and salt water into a producing well, the Mary Ellen O'Connor B-11, and that Mr. Vickery did so. This testimony is directly counter to that of Paul Bezoni, an Exxon field foreman, who testified that he knew that tank bottoms were disposed of only in disposal wells ***as authorized by the Railroad Commission.*** Appendix Tab D, pp. 251-252. Mr. Vickery's testimony is also belied by the fact that Emerald has since re-entered and produced from the B-11 well, despite the supposed injection of tank bottoms into the well. Appendix Tab E.

Mr. Patterson's complaint also parrots Emerald's allegation at trial that it allegedly found unexpected junk in the wells that Exxon should have disclosed in its plugging reports, but that it deliberately failed to disclose. This contention is not supported by the testimony of the expert consultant Emerald hired after experiencing difficulty in re-entering the wells on its lease. J.L. "Rock" Thomas, founder of The Re-Entry People, Inc., testified that he had personally overseen the re-entry of thousands of plugged wells. Concerning the wells at issue, he testified that other Emerald witnesses had mistakenly confused casing or tubing left in the well with what is commonly referred to as junk, demonstrating that much of what Emerald complained about was not actually junk. Although he was critical of the method that Exxon had used to plug the wells, Mr. Thomas did not believe that any of the junk he encountered on re-entry or that Emerald had encountered on re-entry before hiring him had been left in the wells intentionally or indicated vandalism. Appendix Tab F, pp. 85-86. There is also no evidence that the cement company that actively participated in the plugging of the wells and swore to the accuracy of a portion of the W-3 plugging reports had concerns about Exxon's having left junk in the wells.

Mr. Patterson finally recites as a fact that the manner in which Exxon plugged and abandoned these leases—its alleged "sabotage"—rendered the remaining reserves "irrevocably unrecoverable." This is demonstrably untrue. Exxon's plugging method ensured that any remaining reserves did not migrate in the wellbores, contaminate the property, or escape in the air or to the surface. Thus, any remaining reserves were left in the ground to be produced if and when it later became economically beneficial to do so. Those remaining reserves have been and still are being produced by Emerald today, conclusively demonstrating that the remaining reserves are not "irrevocably unrecoverable."

Significantly, Emerald's production also validates Exxon's determination that the leases' wells were essentially depleted and uneconomic under the circumstances existing at that time. Emerald's consulting petroleum engineer, George Hite, admitted that Emerald's operations on

the lease were not profitable, even with a "reduced" 30% royalty and disregarding the extra expenses Emerald claims it incurred during its re-entries of the wells. Appendix Tab G, p. 152. The real cause of Emerald's problems was its miscalculation in agreeing to pay an unusually high royalty for a largely depleted lease. Exxon did nothing to render any oil or gas in these fields "irrevocably unrecoverable," and Mr. Patterson's assertions to the contrary ignore the evidence from the trial.

2. *Cut Casing.* Mr. Patterson's letter also echoes the principal complaint in the pending lawsuit: that ExxonMobil improperly plugged the wells on the O'Connor leases because, in some instances, it cut the well casing to obtain circulation for a cement plug but did not pull the cut casing out of the wellbore before setting the plug.

Cutting well casing (rather than merely perforating it) is a long-accepted petroleum engineering technique designed to ensure that competent cement plugs are positioned in a wellbore during plugging and abandonment operations. The extra expense and effort required to set such a plug provides a measure of added protection for ground water resources, which is particularly important in areas like those around the O'Connor leases, where the water table is quite close to the surface. In recognition of the potential for environmental hazards on the property, the leases governing Exxon's operations required it to "take all possible precautions to prevent pollution or other injury to the leased premises . . ., including, but without limitation by enumeration, injury or pollution resulting from escaping salt water or oil or gas . . .."

During the trial of the pending lawsuit, several witnesses testified that cutting the casing to set a plug provided one of the best means for ensuring that cement reached all areas necessary to secure the zone and protect against contamination of the fresh water sands. Mr. Willis Steed, a respected Railroad Commission engineer who served from 1964 to 1993, further testified that there was nothing nefarious about Exxon's decision to cut but not pull the casing.[4] Mr. Steed not only confirmed that plugging wells by cutting casing protected against contamination of the fresh water and communication of hydrocarbons between reservoirs, he also explained that ***the Commission itself plugs wells by cutting the casing and leaving it in the wellbores.*** Appendix Tab H, pp. 52-53. This explains why Railroad Commission employees who were on-site during plugging operations on wells Emerald later claimed were sabotaged did not halt the plugging process when they learned that casing had been cut and would be left in the wells. Appendix Tab G, pp. 68-74. Obviously, they would have intervened had cementing the cut casing in the well been a violation of the Commission's rules or a problem of any kind.

In fact, there has never been a Commission rule that forbids an operator from plugging a well by cutting and cementing the casing in the wellbore. As Mr. Steed testified, leaving cut

[4] Mr. Steed steadily rose through the ranks of the Commission's staff, serving as Assistant District Director in the Houston District, and as Director of Field Operations and Director of Technical Hearings in Austin. These positions included responsibility for oversight of well plugging and abandonment under the Commission's rules and procedures.

casing in a wellbore during final plugging and abandonment operations violated no Railroad Commission rule. Appendix Tab H, p. 49.

Effect of the Pending Litigation. Mr. Patterson urges the Commission to take enforcement action against ExxonMobil because, according to him, the Texas Supreme Court reversed the Court of Appeals "on what a layman would call a 'technicality.'" The Court, however, did not summarily dispose of Emerald's and the royalty owners' claims as Mr. Patterson suggests. The Court received hundreds of pages of briefing from the parties and several amici (including Mr. Patterson), heard oral argument, and studied the numerous issues in the two companion cases for three and one-half years before issuing its decisions. The Court applied long-standing statute of limitations law promulgated by the Legislature to hold that Emerald and the royalty owners had raised certain claims far too long after learning of the purported injury to the wells.[5] The Supreme Court analyzed and disposed of Emerald's and the royalty owners' other claims on their merits.[6]

Suggested Penalty. Although Mr. Patterson's complaint does not specify the regulations that he contends Exxon violated or assert that a penalty in any particular sum should be imposed on Exxon, on the day Mr. Patterson submitted his complaint to the Commission, he issued a press release stating that the Commission could impose penalties "in an amount that could exceed $1 billion." This claim is so utterly lacking in foundation that it is offensive. As detailed above, there is no basis for ***any*** penalty, much less the penalty Mr. Patterson has proposed. In the dozen years that have elapsed since Emerald and the royalty owners first asserted their claims, there has been no evidence whatsoever that Exxon's plugging of the wells polluted the ground water or property or caused any oil or gas to escape or to be irrevocably lost.[7] In fact, as noted above, Emerald continues to produce reserves from its lease today.

Moreover, the very plugging method about which Mr. Patterson complains is a recognized plugging method that Exxon used to assure that no pollution occurred. Ensuring a well is plugged securely is always important, particularly in areas like the property at issue here, where escape of salt water would threaten pollution of surface or ground water resources. Premising the imposition of any penalty on the use of this plugging method would be particularly inappropriate when, as shown above, the Commission itself has plugged wells exactly this way, and the method is designed to prevent pollution and waste. Accordingly, once all of the

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[5] Mr. Patterson's claim that the Supreme Court decided these cases on a "technicality" blatantly disregards the Legislature's decision that parties must assert their claims while the conduct on which those claims are based is recent and evidence to defend against them has not grown stale or disappeared.

[6] The Texas Supreme Court issued its opinions in the related cases, Case Nos. 05-0729 and 05-1076, on March 27, 2009. In those opinions, the Court finally disposed of all of the claims except the fraud claims, which the Court remanded for further action. As noted earlier, ExxonMobil's motion for rehearing seeking reconsideration of the Court's disposition of the fraud claims remains pending.

[7] *See* TEX. NAT. RES. CODE §§ 81.053, 85.321, 89.121, and 91.143.

falsehoods and misimpressions that Mr. Patterson repeats are corrected, nothing remains to support his proposed penalty.

Conclusion. Mr. Patterson's unsupported, non-specific complaint provides no basis for Commission action. Coming almost a decade after the parties tried their disputes to a jury and mischaracterizing the evidence admitted in that trial, Mr. Patterson's complaint shows no genuine public concern about conservation or stewardship of natural resources. Mr. Patterson has had ample opportunity in the last 2 ½ years[8] to share his concerns with the Commission, yet he has done so only after the Texas Supreme Court issued decisions adverse to Emerald and the royalty owners. The Commission should not allow itself to be misled or misused in an on-going private dispute. ExxonMobil stands ready to demonstrate the falsity of Mr. Patterson's allegations in the event the Commission believes that a show-cause hearing is appropriate. Under the actual, provable circumstances, however, there is no need for a show-cause hearing, and Mr. Patterson's complaint should be dismissed.

Sincerely,

W. Timothy George
Counsel for Exxon Mobil Corporation

WTG/klw

c: Mr. Jerry E. Patterson, Commissioner, General Land Office
Mr. Charles W. Matthews, Jr., Vice President and General Counsel, Exxon Mobil Corporation
Mr. Shannon H. Ratliff, Counsel for Exxon Mobil Corporation

[8] It is not known when Mr. Patterson learned of Emerald's allegations about the wells and Exxon's plugging filings; certainly he must have known of them when he filed an amicus brief with the Supreme Court of Texas in late March, 2007, urging the Court to rule for Emerald and the royalty owners.

APPENDIX TO EXXON MOBIL CORPORATION'S

JULY 31, 2009 LETTER RESPONDING TO

MR. JERRY PATTERSON'S JULY 15, 2009 COMPLAINT LETTER

TO THE

RAILROAD COMMISSION OF TEXAS

INDEX OF APPENDICES

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on the witness stand, and you'll find that the mike is live and you can use that. It may assist you in being heard.

JOEL WYLIE,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOCHRIDGE.

Q Good morning, Mr. Wylie.

A Good morning.

Q Could you introduce yourself to the ladies and gentlemen of the jury, please.

A Okay. My name is Joel Wylie. I work for Exxon. I'm a reservoir engineer. I have about 12 years of experience with the company.

Q Now, Mr. Wylie, the jury has already met you on the big screen and listened to your testimony for about an hour or so, I think. And I'm not going to try to go back over a lot of that, but just want to hit some of the high points with you here in person.

You've indicated that you've worked for Exxon for 12 years, but tell us a little bit about yourself. Are you married, and where did you grow up; that sort of thing? Give us an idea of who you are.

A Okay. I grew up in Dallas, Texas. I went to high school in Dallas, Texas. I went to college at Texas

contractors and field personnel know what to do on the well.

So, it's basically -- the subsurface engineers were always to write, you know, to research the well file, do all the necessary checks and basically let the contractors know what needs to be done to the well to carry out the work.

Q When you're doing that analysis, do you look at the economics of any particular workover?

A I'm sorry?

Q Do you look at the economics, whether or not, how much it's going to cost, what you could expect to recover and so forth?

A Yes.

Q Now, in looking here at this Exhibit 29, walk through it briefly, field status of October of '89, you've listed the active leases, correct?

A Right.

Q All right. Then you've gone through the various active wells. Looks like you've got 10 oil wells and 8 gas wells that are actually producing at that time; is that correct?

A Correct.

Q And then three disposal wells. Those saltwater disposal wells?

was to look at the existing wellbores' current production, and I also had access to the recent workover history. We have a database where we capture the results of the workovers, and you can look at the economics of those workovers and the actual production of those workovers. And so that from this database, I had pulled the 1985 to 1989 jobs. There were 17. And only one of those 17 jobs were economically successful.

Q All right. And when you're talking about workovers, as the jury's heard a lot about workovers, but does that include, you know, going up the hole and recompleting in another zone, for example?

Would that be an example of a workover?

This is just a schematic that we've used before, where you might come up and recomplete in another sand?

A Yes.

Q Okay. Would it include in trying to work on an existing production to try to get more production out of it?

A Yes.

Q Okay. And what you had showed is that, over the last several years, Exxon had tried 17 times to increase the production out there, but had only one, one successful, one successful workover?

I don't want to go over this because we've gone over it some, but you point out the key issue. Let's walk through these key issues. What were some of the key issues facing Exxon at this point in time, the first part of 1990?

A Okay. At this time, we were making a minimal cash profit, so that the revenue minus the expenses, you know, was very marginal at the time. Actually, it had dipped to negative in some of the months and years prior to this time so that it was pretty much hovering at break even for some period of time. So, it was a very marginal field. And that's what the first summary there highlights.

The second thing is, we had a high future facilities well abandonment cost liability in front of us. We -- it was, you know, the field was about 40 years old; and it's making a lot of water. And there were several upgrades that needed to be done to keep it a sound operation. And also, obviously, there was still quite a few, you know, a number of wellbores and facilities that would have to be abandoned at some -- some point down the road.

Q What kind of facilities needed to be upgraded, in your view, or maybe Mr. Soulant, or some of the operational people's view; do you recall?

A From what I recall -- okay, the major issue at the time was that there was a saltwater disposal line. It was the main line. I believe it was called the Transite, Transite water. Transite, T-r-a-n-s-i-t-e, I believe. I don't even know what that means, but that's the way it was referred to me by the facility engineers. But it was essentially the main disposal line that -- that all the wells aggregate into and then make their way to the disposal system and this line was -- had a history of leaks. And we had determined, in order to continue to operate, that this line would essentially just have to be replaced and a brand new line was going to have to be installed. And that was going to be a significant investment.

Q Okay. And the third point is -- and this is all plotted out -- but I think it's "high royalty burden of 50 percent" --

A Correct.

Q -- and I guess that was pretty unusual?

A Yeah. I mean, well, most of the fields that I had worked, and still up to this day, and, you know, that I've seen here in Texas is much less than that.

Q Okay. And then it's hard to read. I think that refers to the possible unexpected future liabilities and costs. What was that referring to; do you recall?

A Well, yeah. I mean, we had seen some things kind of break down, you know, as I mentioned this disposal line. And we could see that the field was aging and, you know, it was 40 years old, and there was some things out there that, you know, obviously, would probably either have to be replaced or repaired in the near future. So those are the kind of things that we were looking at.

Q Okay. The second page, also prepared by you, and it says, "Objective. Determine remaining recoverable reserves in field for economic analysis of continued operations." Were you in the process of doing that?

A Yes. From what I recall, I started the detailed analysis in the latter part of 1989. And this was simply an update here at this -- this juncture.

Q Okay. Under the methodology performed, you say, "Performed decline curve analysis and performed an approximate volumetric calculations." Can you describe to the jury what that -- what that is?

This is what a reservoir engineer does?

A That's right. This particular summary page here refers to my first pass analysis. And, basically, the volumetric calculations is simply one of many or several methods that can be used where it's simply like a tank, a tank of oil, and you extract a certain amount of

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Q. Or Mr. Dunn?

A. No, sir.

Q. Or any of the plaintiffs that have been sitting in here listening to the testimony, have you had a chance to hear what some of the other people have said?

A. No, sir.

MR. LOCHRIDGE: No further questions.

THE COURT: Okay. Sheriff, would you please bring the jury.

(In the presence of the jury)

THE COURT: Be seated. Ladies and gentlemen of the jury, the witness has previously been sworn.

You may proceed.

MS. EINDORF: Your Honor, we call Lonnie Vickery.

LONNIE LESLIE VICKERY, JR.,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. EINDORF:

Q. Good afternoon, Mr. Vickery.

A. Good afternoon.

Q. Would you state your full name for the record and for the jury?

A. Lonnie Leslie Vickery, Jr.

Q. And where did you grow up, Mr. Vickery?

The only person at Exxon that ever said the casing was cut and left in the hole as a deterrent is Mr. Joe Gilpin?

A. That is correct, yes, sir.

Q. Okay. Well, then I may have had a misimpression, because you never talked to Mr. Schave about it?

A. No, sir.

Q. You never went to Mr. Schave and said, why are we cutting and leaving the casing, did you?

A. Well, you know, Mr. Schave and I had a different relationship --

Q. I understand.

A. -- than Mr. Gilpin and I.

Q. I understand.

A. I didn't want to question Mr. Schave's authority.

Q. I understand. I just want to find out exactly who you were talking to and who was saying these things.

A. Okay.

Q. Now, the other thing that you said is that you ran into a guy named Hamilton who works for Exxon?

A. That is correct.

Q. And that was after you plugged a well over on a completely different field that didn't have anything to do with the O'Connors. Is that right?

A. That is correct.

Q. And that y'all had perfed and left the casing in the

hole in that case?

A. Yes, sir, that is correct.

Q. And as I understand it, he jumped on you and said, "No, at Exxon, we cut and leave the casing in the hole," right?

A. Yes, sir, he directed his anger at me to pass it on to Mr. Bezoni.

Q. That doesn't have anything to do with the O'Connors, did it?

A. No, sir, it didn't.

Q. This apparently was Exxon's system of writing the procedures where you could cut the casing and leave it in the hole?

A. Yes, sir, that is what it was.

Q. Okay. I wanted to make sure I understood that.

Now, the -- Mr. Gilpin, he wasn't writing the procedures, was he? He was just carrying out the procedures that had been written by someone else. Is that what you understand?

A. Yes, sir.

Q. And these procedures that you would get, they would come in a package, wouldn't they?

A. Yes, sir.

Q. And you picked those up and followed the procedures. Is that right?

doing it, is to protect the fresh water zone, you understand that?

A. Yes, sir, I understand that.

Q. And you understand that's the primary purpose when you're out there plugging these wells is to make darn sure that you seal off those formations so that none of it can go up and into fresh water or up onto the ground, right?

A. I understand that, yes, sir.

Q. And did you see Exxon making every precaution to do that, using all the cement necessary, and so forth?

A. Yes, sir.

Q. Okay. You never saw them do anything unsafe in any respect whatsoever insofar as protecting that fresh water zone, did you?

A. I never saw it done, no, sir.

Q. And you were out there on 25 or 30 of these, and you were doing your job making dadgum sure that none of this was gonna get up and protect -- get in the fresh water or get up on the O'Connor surface, right?

A. Correct.

Q. And you did a good job of that, didn't you?

A. I done exactly what I was told.

Q. And Exxon didn't do anything to scrimp on expenses in any way whatsoever to protect those fresh water sands and the surface, did it?

A. They made an attempt to protect the sands.

Q. In fact, some of those wells, they were out there as much as a month working on those -- that abandonment procedure to make certain that they got a good seal to make certain that no salt water or anything was gonna come up that well bore, didn't they?

A. There were some wells we were on for a lengthy amount of time.

Q. Do you remember the B-6 well?

A. Vaguely, yes, sir.

Q. That was a pretty tough job, wasn't it?

A. On the plug-in?

Q. Yes.

A. Yes, sir.

Q. Let me show you Exhibit 460. Are those your drilling data -- drilling reports --

A. Yes, they are.

Q. -- for the B-6?

A. Yes, sir.

MR. LOCHRIDGE: Your Honor, we offer Defendant's 460.

MS. EINDORF: No objection.

THE COURT: Be admitted; 460?

MR. LOCHRIDGE: Yes, sir, 460.

THE COURT: Can I ask a question? Was 452

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you the rule of witnesses has been invoked in this case, and that rule requires that no witness may sit in the courtroom and listen to other witnesses testify or nor may a witness leave the courtroom after they've testified and talk with other witnesses about what they've testified to or what other witnesses have testified to. This rule is enforceable by contempt of court, which carries with it a punishment of a $500 fine and/or up to six months in jail. And I'm not telling you this to frighten you or anything like that; I'm telling you this so that you understand it's a very serious rule and you know that you need to follow it.

THE WITNESS: Yes, sir.

THE COURT: You'll be under the rule until we conclude the trial.

THE WITNESS: Yes, sir.

THE COURT: Would you please make yourself comfortable; and please, sir, utilize the microphone to make yourself be heard.

JOE GILPIN,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. WATKINS:

Q Good afternoon, Mr. Gilpin.

A Good afternoon.

Q Mr. Gilpin, how are you currently employed?
A I'm a drilling consultant.
Q And for whom do you work?
A Headington Oil, Headington, H-e-a-d-i-n-g-t-o-n, Oil Company.
Q You use to work for Exxon, didn't you?
A For 18 years.
Q And when did you last work for Exxon?
A 1992.
Q And why don't you work for Exxon anymore?
A Kept cutting people. They closed the Corpus office, and then I was let go.
Q Okay. Now, Mr. Gilpin, the jury has heard your name in the testimony in this case, and they have seen some documents either that you signed or that have your name in them because you made a call to somebody else. And you and I had a chance to meet and talk with one another yesterday, didn't we?
A Yes.
Q Do you now understand -- well, let me ask you first.

Do you know who Lonnie Vickery is?

A Yes, I do.
Q Did you use to work with Mr. Vickery?
A Yes.

Q And do you now understand that Mr. Vickery has testified that when he asked you why Exxon was cutting wellbores to plug them, that you told him it was as a deterrent so no one else could get back into those wells. Do you understand that?

A I understand what you're saying, but it's not right.

Q Did you ever tell him that?

A No.

Q Do you also understand that Mr. Vickery has told the jury that if the Railroad Commission wrote down exactly what you said when you called in about a couple of wells that you must have lied to them. Do you understand that?

A I understand that.

Q Is that right?

A No, I did not lie to them.

Q Did you ever lie to the Railroad Commission?

A No, I haven't.

Q Okay. Let's talk about the specifics of this. I want to show you a couple of documents, and you're going to need to look at them in books that we've got here. Or you may have to look on with me on the screen. I don't know if we're going to be able to find all of the pieces of paper that we've got in the case. And I need

whatever they say is okay. Or if he's on location, he can authorize it.

Q Do you remember any instance when you didn't do what the Railroad Commission told you to do?

A No. Once you call the Railroad Commission, if you got problems, you call them. Can't circulate, or something like that, from that point on, you have to do, exactly that point on, whatever they -- they suggest you do till they say go back to, you know, the regular procedure, the regular permit there.

Q Do you remember anytime when you might have told Mr. Vickery that Exxon was cutting the wellbores as a deterrent to somebody reentering them?

A No.

Q Was that why Exxon was cutting the wellbores?

A What?

Q Was Exxon cutting the wellbores to deter somebody else from reentering them?

A No, it wasn't.

Q Why were they cutting the wellbores?

A Well, basically, it was just, I guess, cheaper, because, well, we had the cutters versus the wire line out there. And like Lonnie said, he could do it -- he could make more cuts, you know, you know, for that tool, by renting that tool and making the cuts. As long as he

didn't wear the blades out, it would be cheaper to cut them than it would be to perf them; but if he wore the blades out, you know, kept breaking blades, it would be cheaper to get them out there and perf them.

MS. WATKINS: Pass the witness, Your Honor.

THE COURT: Cross-examination, Counsel, when you're ready.

MR. BROWN: Yes, Your Honor.

May it please the Court?

THE COURT: It does, Counsel.

CROSS-EXAMINATION

BY MR. BROWN:

Q Mr. Gilpin, you said that Lonnie Vickery told you that it was cheaper to cut the casing than to perforate the casing?

A Well, that's what he was telling Jerry Schave in there, that's what, he thought the simple idea that it would be better for, you know, and save money if he could rent the cutter, so he can get a lot of cuts per blade. He all -- he bragged about how many he could get without breaking the blade or damaging, break the chip in the end, you have to buy new blades. And it cost more than they're worth.

Q My question was very simple, sir. Are you

A I wasn't there involved in it, so I can't determine the policy. And I'm not -- wasn't into Exxon's policy, that area there.

Q I know that, Mr. Gilpin, but based on your experience, you can't offer us an explanation as to why they changed the way they were going to plug this well in only three years, can you?

A I don't remember Exxon ever really having a policy on that.

MR. JOSEPH: Pass the witness.

REDIRECT EXAMINATION

BY MS. WATKINS:

Q Mr. Gilpin, did you ever decide what procedure to use to plug a well?

A Come again?

Q Did you -- were you the one for Exxon, whoever decided how a well was going to be plugged?

A No.

Q Did you ever decide why a well was going to be plugged?

A No, I did not.

Q Do you know why the wells that you plugged or that you supervised the plugging of on the M.E. O'Connor field, do you know why those wells were plugged?

A Plugged because I was told to plug them. I

don't know why they chose to plug them. No.

Q Did you tell anybody else, including Mr. Vickery, why those wells were supposed to be plugged?

A No, I did not.

Q Did you tell anybody else, including Mr. Vickery, why they were supposed to be plugged the way they were plugged?

A No, I did not.

Q Did you have any authority ever, when you were working on the M.E. O'Connor and T.J. O'Connor field, to decide how a well was going to be plugged?

A No.

Q Did you do what the procedures told you or call the Railroad Commission if you couldn't?

A Did what procedure said. For some reason I couldn't, I'd either call the engineer or call the Railroad Commission to get a change in it. I wasn't authorized to change none of it.

MS. WATKINS: Pass the witness, Your Honor.

MR. BROWN: No further questions, Your Honor.

MR. JOSEPH: No questions, Your Honor.

THE COURT: May this witness be excused back to his home or his duties?

anyone doing that?"

MR. YOUNG: "No."

MR. LOCHRIDGE: "Have you heard of tank bottoms being disposed into a disposal well?"

MR. YOUNG: "No."

MR. LOCHRIDGE: Down to page 55, line 25.

"Do you know Mr. Lonnie Vickery?"

MR. YOUNG: "Yes."

MR. LOCHRIDGE: "Did you ever work with Mr. Vickery?"

MR. YOUNG: "A lot."

MR. LOCHRIDGE: "Did you ever have any conversations with Mr. Vickery about cutting casing?"

MR. YOUNG: "No."

MR. LOCHRIDGE: That concludes our portion, Your Honor.

THE COURT: Anything further from the Intervenors or the Plaintiffs?

MS. EINDORF: Nothing further.

MR. WILSON: Nothing, Your Honor.

MS. EINDORF: Plaintiffs will call Paul Bezoni. It'll be played by videotape.

THE COURT: How long will this take?

MS. EINDORF: 31 minutes.

(Excerpts of videotaped deposition of

John Paul Bezoni are played as follows)

QUESTION: "Good afternoon, Mr. Bezoni. Let me introduce myself to you for the record. My name is Bill Joseph. I'm here today with my co-counsel, Candace Eindorf. And we have asked the folks at Exxon to take your deposition in a lawsuit under Cause No. 97-7-8148, Emerald Oil & Gas and others against Exxon Corporation and others; and you've been kind enough to appear and talk with us here today. You and I have not met before, have we?"

ANSWER: "No, sir.

QUESTION: "Mr. Bezoni, what age man are you?"

ANSWER: "Well, I'll be 67 tomorrow."

QUESTION: "Happy birthday in advance."

ANSWER: "Thank you."

QUESTION: "How long have you been retired from Exxon?"

ANSWER: "July, '92."

QUESTION: "Where do you reside now?"

ANSWER: "In Edna, Texas."

QUESTION: "Where did you grow up?"

ANSWER: "Well, I was born out of Driscoll and then went to high school in Kingsville."

QUESTION: "Did you finish high school in

go out this far (indicating)."

QUESTION: "Okay."

ANSWER: "And to get a good plug is probably -- they wanted to make sure they was across this water table to get a good plug, and that's probably why they do one below and the top, and they've got them together, I'm assuming."

QUESTION: "So you're thinking that they did not want to penetrate the surface casing but only the production casing?"

ANSWER: "Yes, which is -- that's normal."

QUESTION: "Okay. Mr. Bezoni, have you -- do you have any knowledge of any tank bottoms ever having been pumped into one or more of the M.E. O'Connor wells to dispose of the tank bottoms prior to the plugging?"

ANSWER: "I can't tell you the wells, but it was wells that Railroad Commission and the water people says that we could do that."

QUESTION: "But there were tank bottoms pumped into --"

ANSWER: "I think so, yes."

QUESTION: "And it's your understanding that there was both water -- water what? What regulatory agency did you mention?"

ANSWER: "The Railroad Commission and

the -- I'm not sure. Water -- the regulatory environmentalist, whoever takes care of that. I can't remember now."

QUESTION: "But it was your --"

ANSWER: "We -- Exxon had the authority to do it through the proper people there, yes.

MR. BALAGIA: His question was: In connection with a plugging of a well, did you dispose of tank bottoms in a well?"

THE WITNESS: "Down --"

MR. BALAGIA: "Yes."

THE WITNESS: "-- in the plugging of a well?"

MR. BALAGIA: "Yes, sir."

ANSWER: "No, not to my knowledge, no. We had certain wells we did that with."

QUESTION: "You had disposal wells on this tract?"

ANSWER: "Yes."

QUESTION: "And as far as you know, there was not any pumping of tank bottoms in anything other than a disposal well?"

ANSWER: "Not to my knowledge."

(End of videotape)

THE COURT: Anything further to be

E

RRC ONLINE SYSTEM

Oil & Gas Production Data Query

Production Data FAQs PDQ Help

General Production Query Specific Lease Query

General Production Query Results

Query Path:	Search Criteria > Field MARY ELLEN OCONNOR (5000), Operator: EMERALD OIL & GAS LC
Date Range:	Jan 1997 to Jan 2009 Submit

Related Links
O&G Directory
O&G Proration Schedule
Offshore County Map

View by: Monthly Totals Annual Totals County Field Lease District

Operator Name: EMERALD OIL & GAS LC, Operator No: 250964
Field MARY ELLEN OCONNOR (5000)
Lease, Jan 1997 - Jan 2009

Lease name	Lease No.	District No.	Well No.	Oil (BBL)	Casinghead (MCF)	GW Gas (MCF)	Condensate (BBL)
OCONNOR, MARY ELLEN - EXXON	164716	02	B11	0	0	61,713	0
Total				0	0	61,713	0

F

we will call Mr. Rock Thomas by deposition. I have the starts and stops for the court reporter.

THE COURT: Thank you very much.

When you're ready.

J. L. THOMAS,

having been first duly sworn, testified by way of written deposition as follows:

DIRECT EXAMINATION

BY MR. GEORGE:

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

A. My name is J.L. Thomas. I'm known all over the oil field as Rock Thomas.

Q. Tell me what you do for a living.

A. I'm retired. If you want to get -- I still work as a consultant basis on the Re-Entry People, and we have Susanna Corporation, which is -- produces oil and gas, but turned that pretty well over to my girl and two boys that pretty well run that. I just do more consulting and figure the jobs and this that, and if they have a problem, do that over the telephone unless they really have a bad problem, then I go to the field.

Q. What year were you born, sir?

A. 1930, 9th and 15th of '30.

Q. When I asked you what you did for a living, you said you were retired?

A. Okay. What I did for a living, all this time, I've

nearly all of the time been self-employed. I started out pushing tools when I was 20. I bought my first rig when I was 21 or 2. I went up through and up and down and around, and finally, in 19, I guess it was '62 or 3, I started doing re-entries. In 1976, I got into it in a big way.

Q. When you say, "it in a big way," do you mean re-entries?

A. Re-entries, re-entries and bad workover things, junk down the hole, hole in the casing, packers, stuff left in the hole, this sort of thing. I tease and say I do the stuff nobody else can't do or don't want to do.

Q. Tell me what your relationship with Emerald Oil & Gas, L.C. is.

A. Just a client relationship. That's it. I have no other ties to them whatsoever.

Q. Okay. When did they first -- when did Emerald Oil & Gas, L.C. first become a client?

A. You've got the invoices. I think it was just back, oh, I think it was probably '94, about Christmas or something like that. They came to my office and talked about their problems and that they were having in Refugio, and I sent a rig down there.

Q. So after that, two, three, four months of involvement with Emerald Oil & Gas, L.C. down in Refugio County, what other work have you done for Emerald?

A. None.

Q. The Re-Entry People, is that company, am I -- is it correct that that company focuses on work to re-enter plugged and abandoned wells?

A. That's all we do, day after day, is re-entry work, holes in the casing, downhole trouble. It's just a big pulling unit with big mud pumps and swivels and such. We don't even do our own well service work.

Q. Okay. Let me make sure I understand the different kinds of work that the Re-Entry People focuses on.

A. Okay.

Q. Part of it is re-entering plugged and abandoned wells. Is that right?

A. The majority.

Q. Okay. And then there is another portion that you mentioned, downhole trouble?

A. If they've got problems, if the casing collapses or they've got holes in the casing, or they've got a packer stuck in the hole and nobody else can get it out, we go get it. We do it.

Q. Now, you said in your letter that you had re-entered several thousands wells, and then, I guess, I thought I heard you say this morning, it was even more than that?

A. I figured that we've been -- that I've been involved in my lifetime between 6 and 7,000. I'd cut it back to five

and be for absolute sure. Be hard to document because all my records back have been destroyed and gone way on back.

Q. Okay. Now, the work that you were involved in, the Re-Entry People were involved in for Emerald at the M. E. O'Connor field, did some of that work involve tiebacks?

A. It was all basically going to be tiebacks. The one that we could not tieback was the one that they cut the casing and they did not pull it. They just cemented it, and when they did, then you couldn't get back over the -- you couldn't get in there with something big enough to go over this, because you couldn't get through the piece up above.

Q. Okay. Is there a different name or different procedure different than the tieback where the casing has been left in the hole?

A. If the well has been just perforated, then the casing, the integrity of the casing is the same, and you can go back and just drill out the inside. It's a much simpler operation than the tieback or any of this stuff.

Q. Okay. Now, some of the wells in the M. E. O'Connor field that Emerald re-entered had the casing cut, but left in the hole. Are you familiar with that?

A. (Witness nods.)

Q. You need to answer out loud for me.

A. The only place I've ever heard of it happening.

Q. So in your many years of experience, you have not

Q. Is re-entering an abandoned well a difficult operation for the oil and gas drilling area?

A. Yes, it's a difficult -- it's -- you got two things that you're talking about here. You're talking about the abandonment of a well that's never had any pipe in it. Now that's a re-entry. That's what you do. You go re-enter an old well that's just plugged when they drilled it. That's a re-entry. And what we call a tieback, we have to go in and physically tie the old pipe that's sticking up in the well to some new pipe that's coming down, and go in and clean it out where the pipe has enough integrity that they can go in and complete the well.

Q. And you and your company do both re-entries and tiebacks?

A. That's right, and other things.

Q. Which is more difficult a re-entry?

A. Tieback.

Q. Tieback. A Tieback is more difficult than a re-entry?

A. (Witness nods.)

Q. Why is that?

A. Well, years ago, when you go back into these things, well, they -- when they plug the well, they're through with it. They're ready to go, and they shot these things with nitroglycerin, and they blowed up the top of the pipe so it

feet long. It was quite difficult to get out of the hole, and as a matter of fact, there are few, very few of them that got out of the hole because that stuff is real hard, and if they couldn't run it down to get it below where they're going to perforate, they would just have to abandoned the hole or produce around it.

MR. LOCHRIDGE: Page 107, line 7. You there?

MR. CORTEZ: Yes.

Q. In your work on these wells at the Mary Ellen O'Connor field, did you identify any situations where you thought junk had been put in the hole during the plugging and abandonment of the well?

A. You mean intentionally put in the hole?

Q. Yes, sir.

A. To plug it and so forth?

Q. During the plugging and abandonment of the well.

A. I can't honestly say that there was anything that I could determine that there was any junk put in the wells on the deal. I cannot -- I cannot -- there's not a case that I can remember that I can say, yes, whoever plugged the well put this in the well as vandalism or whatever. I cannot say that.

Q. Now, you did encounter and work on some junk in some of the well bores. Is that right?

A. Well, again, you've got junk as unknown material, and we did run into junk. A lot of these things that you're

looking at, where they're talking about the junk and so forth, actually that's kind of a misnomer, nomer, or whatever. But anyhow, they're talking about the top of that casing sticking up. That's what they're talking about is junk. But as far as down the hole and such, and again, we've did -- we did so many that I could tell you, but I don't remember any packers or any tubing or anything left in the wells that I thought were left in there intentionally.

MR. LOCHRIDGE: Okay, 109, Line 5.

Q. Now, have you re-entered wells that have had leaky plugs?

A. Define plugs.

Q. The cement plugs that are placed in the well as part of the plugging and abandoning of the well.

A. Oh, you're talking about the well come back and have the leak back into it?

Q. Yes, sir.

A. Yes. There's a lot of them. Nearly all of the wells that were drilled and plugged up in Runnels County, they have a Coleman Junction flow. And unless you take a little extra special precaution, it will flow a hole back up through it about the size of a tooth pick before it sets up, so you will have a leaky plug.

Q. Is that a situation that can be harmful to have a leaky plug in an abandoned well?

G

GEORGE C. HITE,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JOSEPH:

Q Mr. Hite, would you state your name for the record, please, sir.

A It's George C. Hite.

Q And Mr. Hite, how are you employed?

A I am the president of Hite, McNichol & Associates.

Q What is Hite, McNichol & Associates, please?

A We are a petroleum engineering consulting firm in Houston.

Q And as a petroleum engineering consulting firm, what type of work do you do?

A We do primarily evaluation or reservoir type engineering. That's our primary source of business.

Q And by evaluation, are you talking about matters that permit folks to decide what an oil and gas field is worth, make decisions about whether to buy one or sell one, rework one, all that type of stuff?

A It's economic evaluation of oil and gas interests primarily.

Q All right. What's your education, sir?

A I have a Bachelor of Science in mechanical

engineering from Texas Tech University.

Q Is that in Lubbock?

A It is.

Q It's still in Lubbock?

A Still there.

Q And with respect to your work experience, I want to walk you through just very briefly your career, and I'd like for you to tell us what you did after you graduated from college. What year did you get your engineering degree?

A I got my degree in 1964.

Q What did you do next?

A Went to work for Humble Oil & Refining Company, which was the predecessor of Exxon, in Kingsville, Texas.

Q How long did you work for Humble Oil & Refining Company and later Exxon?

A Ten years.

Q When you completed -- was it engineering work you were doing?

A Yes, it was.

Q When you completed your work for Humble Oil & Refining Company, what position did you hold?

A I believe at that time that I was a business analyst for SO Eastern Corporation, which is an affiliate of Exxon Corp.

Q Did you ever have any involvement with the Exxon operations down here in this part of the country?

A Yes, I did.

Q Tell us about what involvement you had with the Exxon operations down here.

A I was district chief engineer in the Corpus Christi district, I believe from somewhere in 1970 to middle of '72.

Q Now, was that at least -- were you the head engineer for the Corpus Christi division at that time?

A Yes, I was the district supervising engineer, correct.

Q So all the other engineers would report to you; is that correct?

A That's correct.

Q Is that the same job you understand that Mr. Cortez had for Exxon before he left in 1990 to go back -- or to go to Houston?

A Assuming the structure is still the same, I would say that if he was the supervising engineer or the head engineer, the chief engineer, that was the same job I had.

Q All right, sir. I think now -- that's right, I think I got the dates right.

Now, Mr. Hite, you've been working on

behalf of both Emerald as subsequent operator and royalty holders in assessing the behavior in this case, have you not?

A Yes, I have.

Q Been working at that for quite a long time; isn't that right?

A That's right.

Q Are you being compensated for your engineering labors?

A Yes.

Q And at what rate are you being compensated?

A My rate is $200 an hour, and one of the gentlemen in our office I believe is probably 50 to $60 an hour, who has also spent some time working on this project.

Q Okay. Is that the kind of engineering charges that you make for regular engineering work?

A No, it's higher than regular engineering work.

Q Why is that?

A There's generally a great deal of stress involved with litigation, and your schedule is never your own, and it's just -- it takes more effort to do a litigation project than it does an engineering project.

Q Are you feeling stressful right now?

A Well, not yet, but I'm sure I will.

The preceding testimony of George C. Hite was excerpted from Volume 8 of the Reporter's Record from the trial; the following Hite testimony was excerpted from Volume 11.

Railroad Commission has the ability to enforce their own rules, correct?

A I assume that they can.

Q And there are provisions where they can go to the Attorney General to enforce their own rules, correct?

A If you say so. I don't know how they do that.

Q You have been -- have you been told that some of the wells out here that Exxon plugged in the 1990 time frame where they cut the casing and left it in the hole, that those pluggings were actually witnessed by the Railroad Commission and no objection was raised? Anybody tell you that?

A No, I don't think I've heard that.

Q Okay. Now, the A-5 is one of the wells -- the A-5 is one of the wells on your chart here -- you might get in front of me, I want to find how much damages you're charging Exxon for the A-5. Can you tell me how much that is?

A Well, this fax copy looks like 57,316. Does that match with your number?

Q I think so.

Okay. Now, the A-5 was witnessed by the Railroad Commission, if you look at Exhibit 379. Are you familiar with what's known as a D-5?

A Yes.

Q That's something filed with the Railroad Commission, isn't it?

A It's one of their forms, yes.

Q Right. And if you wanted to find out everything to know about how these wells were plugged, you'd want to look at the D-5, wouldn't you?

A Well, I wouldn't think I'd need to. W-3 is filed after the D-5.

Q Right.

A And should contain summary information since it's filed after the plugging. The D-5 is kind of a running, as I understand it, form that goes along with the plugging.

Q Okay. Let's look at the W-3 then. Still in Exhibit 379. This is for the A-5, correct? Are you with me?

A Yes.

Q All right. And we can see that from looking at the A-5, that all the casing is still in the hole, right?

A Okay.

Q Okay. So we know anybody looking at this, knows that all the casing's in the hole?

A What you say, anyway.

Q Well, it's what the form shows.

A It's what it says, that's right.

Q Okay. This was filed in October of 1990, right?

A That's what it says, yes.

Q All right. Let's look at the D-5. Now, these you know to be the notes of, I believe it's Mr. Zambrano who was out there from the Railroad Commission witnessing this well be plugged, correct?

A I probably haven't seen this form before, but I see his name down there.

Q They didn't show you all the various different Railroad Commission forms that showed the inspections and so forth when you arrived at your opinion?

A I probably had those in my files.

Q But you didn't look at them?

A No, I didn't say that. There's so much paper, I probably looked at it, but I couldn't tell you about -- can't remember what's on each one of these forms.

Q All right. It's like they're going to try to find a casing leak, correct?

A Yes, that's what it says, right.

Q Okay. And let's look at the next page. It says they didn't find the casing leak, and then it goes on to say that the operator is going to cut the five and a half casing at 1400 feet with a mechanical cutter. You see that?

A Uh-huh.

Q So -- and then they also point out that they're going to cut it again at 1300 feet, right?

A Is that 'cause they didn't get circulation the first time?

Q Apparently so.

A Okay.

Q You know that there are a lot of people that believe you get a better plug by cutting it because you get better circulation. You know that, don't you?

A I know some people believe that. I don't believe it, and I think this is a pretty good example of it not being true.

Q Do you think the people that believe that are acting in bad faith?

A I don't know if they're acting in bad faith or not. I just think that that's just -- from the plugging procedures I've seen, they had failed to circulate probably as many times perforating as they did cutting. So I don't know that it's -- you know, that really gives you a big leg up on circulating it by cutting it.

I also don't know on this particular well, I don't have my information in front of me, as to whether or not the intent was to cut it from day one, or whether the intent was to perforate it on the job sheet.

Q Either way, you know that once you get out on the job, that things change, correct?

A Yeah, they can change.

Q All right. And the procedure is, and you were here to listen to some of that testimony, you pick up the telephone, call the Railroad Commission, tell them what you're doing and get an okay, right?

A You can do that.

Q Or they might be there on the site and you can say, "We're going to cut this casing instead of perforate it, do you have a problem with that?" And they can sign off on it right there, can't they?

A Maybe they're good old boys and good friends and they say, "Sure, go ahead." I don't know.

Q And you think Exxon can rely on the people at the Railroad Commission, don't you?

A Well, they apparently interface with them on a regular basis, yes.

Q All right. And so you'll agree with me then that in this specific instance, in the A-5 where you've charged $50,000 to Exxon, that the Railroad Commission witnessed the cutting of the casing, correct?

A Can you show me his form where he witnessed it? You said he was out there.

Q Let's see. I believe this signature right

here --

A Okay.

Q -- would show that?

A Said the operator will then cut the casing.

Q All right. So you'd agree with me that the Railroad Commission is out there on site, correct?

A And they knew it.

Q And Exxon cuts the casing, leaves it in the hole, right?

A Okay.

Q You agree with me there?

A That's what it appears happened.

Q All right. And anybody that wanted to go to the Railroad Commission and do a thorough search of the records, would have this and be able to tell, number one, that the casing has been cut, correct?

A Yes.

Q And number two, that it's all been left in the hole, right?

A Right.

Q Okay. Now, you're not here to tell the jury, are you, that it is against the rules of the Railroad Commission to cut casing and leave it in the hole?

A I'm here to tell you that's not industry standard.

Q Okay. So this has not been a profitable enterprise for Emerald, even if you take out these overruns that you've attributed to Exxon's conduct?

A That would be right.

Q Not a proposition in paying quantities, correct?

A Well, they're losing money.

Q Right?

A But -- from an investment.

Q A Reasonably prudent operator would not go out and drill those wells and produce that oil and that gas that you've catalogued here and lose $2.4 million?

A Certainly that was not their intent to do that.

Q Okay. So you can see then a clear example here of $6 million worth of production that probably should have never been produced because you're going to lose $2 million trying to get it out of the ground; isn't that right?

A Well, it's the fact that they've lost $2.4 million is the result of their operations. That certainly wasn't their intent.

Q Well, I understand that they didn't go in there meaning to lose $2.4 million. I'm certain of that. But this is a classic example of why, just because there's $6 million worth of hydrocarbons to recover, doesn't make

WILLIS C. STEED,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOCHRIDGE:

Q Good morning, Mr. Steed.

A Good morning, Mr. Lochridge.

Q To get started this morning, why don't you just introduce yourself to the ladies and gentlemen of the jury; tell them who you are and where you come from.

A Good morning. My name is Willis, middle initial C, last name is Steed. And I am -- I reside in Austin, Texas.

Q All right, sir. Give us a little bit about your educational background.

A I attended the University of Texas in Austin. Started to school in 1951. I went two-and-a-half years and had a two-year stint in the Army. Came back and finished my education at the University of Texas. I got a Bachelor of Science Degree in petroleum engineering. I received this degree in 1958. I went to one semester of graduate school in the Graduate School of Petroleum Engineering.

I left school in February, 1959, to start my work career. My first job was with Dow-Well, a division of Dow Chemical, which is a oil field service

company. I started out in the West Texas area as a service engineer. I was later in Colorado City, Texas. I was later promoted to an area engineer, which was a little more technical-type position. And resided in Hobbs, New Mexico. I stayed in Hobbs, New Mexico until 1964, where I transferred to Alice, Texas, as a sales engineer. And I stayed in Alice as a sales engineer for approximately six months.

At that time, I applied for and was accepted for a engineering position with the Texas Railroad Commission, Oil and Gas Division; and I became an engineer in the Houston District Office of the Railroad Commission of Texas.

Q Now, Mr. Steed, about when did you start to work for the Railroad Commission?

A I began my career with the Railroad Commission in December of 1964.

Q And what was your first job with the Commission?

A My official title was Engineer 2, which was a technical position in the Houston District Office.

Q And what did you do in that position?

A I did a little of everything that the Commission regulated. That would include witnessing well tests, witnessing plugging operations, reviewing forms

that were filed with the Railroad Commission in the District Office. I made lease, routine lease inspections. I made pollution inspections, wrote reports and reported directly to the Assistant Director or the Director of the Houston District Office.

Q Now, how long did you stay in that position over there in Houston?

A I was in that position as an Engineer 2 until sometime in mid '68, I believe, 1968. At that time I was promoted to the Assistant Director in the Houston District Office.

Q Before you became Assistant Director, did you actually go out and perform inspections of well plugging operations for the Railroad Commission?

A Yes, I did, sir.

Q Okay. All right. Now, in '98 -- excuse me -- '68, you became Assistant Director; is that right?

A That is correct.

Q For what period of time were you an assistant director out of the Houston District?

A I was Assistant Director in the Houston district from 1968 until January 1, 1976. And in January 1st, 1976, I transferred to the Railroad Commission, Austin office, and the position title was a Technical Hearings Examiner.

Q Okay. Let's talk about what you did; and I'm really specifically interested in knowing what you did for the Railroad Commission involving, you know, the plugging of wells, because that's what this lawsuit has a lot to do with, while you were still in Houston in that '68, '76 time frame when you were -- and you were the Assistant District Director?

A That's correct.

Q Okay. What were your responsibilities during that eight-year period?

A As the Assistant Director, I received more manager responsibilities of overseeing the technicians who went to the field every day. I did some actual witnessing myself. I would go out to -- with technicians to inspect the wells, to witness pluggings. Also, part of their job was to review the plugging procedures that were presented by operators prior to plugging wells. These were looked at to see if they complied with the plugging rules that were in existence at that particular time for these operators. And receiving calls from operators when plugging commenced, was to start on the wells. After the wells were plugged, the proper forms were filed with the Commission. These were reviewed for to see if the wells were plugged in accordance with the rules that were in effect at that time with the

Commission.

Q Now, the jury has seen some forms that are called D-5s and D-8s that apparently the Railroad Commission people fill out maybe when they're actually inspecting a well being plugged. Are you familiar with those forms?

A Yes, I am, sir.

Q All right. And you say that those are then reviewed, not just by the inspector who filled them out, by someone up the chain?

A Not at that period of time. The D forms, as they were called, were originated at a later period, mid-1980s.

Q Okay.

A The forms were not available at that time. The technicians' worksheets were normally done on a pad and attached with their work reports giving their time, mileage, and with a summary of the jobs that they had performed that particular day. But there were no numbered D forms at that time.

Q Okay. Now, in 1976, you were in Austin working as a Technical Hearing Examiner; is that correct?

A Yes, sir.

I would like to, on the plugging part of it, mention one other thing. While I was Assistant

Director in Houston, at that time the State, through the Railroad Commission, got into the actual plugging of abandoned wells where there was no responsible party. When it started in the '64, '65, there was a very small amount of money available for these plugged wells. I think the first appropriation was $50,000 for the whole State of Texas. But what it entailed were, when a problem well, a well, a leaking well or a well that was causing or likely to cause pollution, came to the attention of the Commission and there was no one responsible to plug it, the Railroad Commission actually hired the service companies, went out and oversaw the plugging of the well, wrote the procedures for plugging these particular wells. There weren't too many done, as I said, because of the limited amount of money that the Commission had available for plugging wells.

Q And what involvement did you personally have in that State-funded plugging of wells?

A At that time as Assistant District Director, I was primarily responsible for writing up the plugging procedures for these State wells. And I actually would go on all the wells, that I recall, that were plugged during this tenure, I was on location during the entire plugging operation.

Q Make sure that they followed your procedures?

A That's correct. There would have been a technician that was actually hands-on, but I was there to help the technician and supervise the plugging as his supervisor.

Q All right. Now, going again through your career with the Railroad Commission, in '76, you were an examiner; how long did you hold that position?

A I was the Technical Hearings Examiner from January 1, 1976 until March 1981.

Q All right. And what did you do as a Technical Hearing Examiner?

A It would be, another title another agency had would have been an Administrative Judge. We actually sit, as the judge does here, and hear testimony from operators, who are requesting certain field rules or any type hearing that went before the Commission. We would hear these cases, write up a proposal, and then present it to the actual Railroad Commissioners for their approval or denial of these recommendations.

Q All right, sir. Now, what did you do in 1981?

A In March of 1981, I was, I guess, promoted to a position at that time called the Director of Field Operations. The field operations would be where I started in Houston in one district office. The Director of Field Operations was responsible for the 10 District

Offices that were located throughout the State of Texas to oversee the oil and gas industry on the regulation of the Commission.

Q So, you were in charge, then, on the -- of the enforcement side of all the various districts on the oil and gas side of the Railroad Commission; is that what your position was?

A That's correct. Being in charge would mean the staffing, budget work, overseeing assistant directors that I had, worked directly with district offices, and visiting districts to insure uniformity of enforcement of the regulations and training of field persons and other things related.

Q Now, we've heard from a witness by the name -- a gentleman by the name of John Hayes, who testified he served at the Railroad Commission, but in the Gas Utilities Division. Is that a separate division from the Oil and Gas Division of the Railroad Commission?

A It is a separate division.

Q All right. And does that division have anything to do with the plugging of wells and the rules and regulations regarding the plugging of wells?

A No, it does not.

Q Okay. Now, how long did you have the position as Director of Regulatory Enforcement or what was it you

called it?

A Director of Field Operations.

Q Field operations.

A The title later changed to Regulatory Enforcement. But I understand now the title has been changed to Compliance.

Q Okay. So, how long did you have that position with the Commission?

A I held the Director of Regulatory Enforcement from -- until June of 1990. And at that time, I had a lateral move from Director of Field Operations to what was called the Director of the Technical Hearing Section, which is the section that I'd started out in when I first came to Austin. But at this time, I was the Director of that section.

Q And how long did you stay there in that position with the Commission?

A I stayed in that position approximately three years, a little over, and I retired from the Railroad Commission of Texas at the end of September 1993.

Q Okay. That's about six years ago. What have you been doing the last six years?

A I call myself retired. I do part-time consulting work, but on a very, very limited basis.

Q Okay. I should have given this to you at the

at the base of the fresh water or at the base of the surface casing.

Q All right. Now, there's evidence in this case that when Exxon went out there to plug these wells, that it cut the casing in two on some of these wells and made no attempt whatsoever to pull that casing. Okay? I want you to assume that?

A All right.

Q Now, from your experience in the Commission, is there anything wrong with plugging these wells in that fashion?

A The Commission has -- does not require an operator to pull casing out of a well or try and attempt to salvage, neither do they say you have to leave it in there. That's left to the discretion of the operator whether he'd want to remove casing from the well during plugging operations.

As far as the cutting of the casing to set a plug, this is not a violation of the Commission's rules and regulations. It's done by various means of getting cement pumped from the production casing into the back side of your surface casing.

Q Now, to make sure we're clear on that, when you've got wells set up like this, such as these Exxon wells were, with the surface casing going all the way

down below the base of the usable water, so far as the Commission was concerned during this whole period of time, did you care one way or the other whether or not it was cut with a mechanical casing cutter or holes shot into it with a perforation gun or blown apart by a dynamite charge?

A No.

Q Did the Commission require if you cut it by whichever means, require you to try to pull that casing?

A No.

Q Now, during the 80s, you talked earlier -- you talked early about the State plugging program. You recall testifying about that earlier?

A Yes, it initially started in the early -- in the mid-60s and extended into the time that I was a Director of Field Operations. In fact, I was, during the period that I was Director of Field Operations, I was directly responsible for the State plugging fund and the plugging of wells with State funds at that time.

Q Okay. Now, I think you talked about earlier you started out with only a very limited amount of money in the 60s. Did that plugging fund change at all, the scope of it, into the 70s and 80s?

A It changed dramatically in the early 80s due to some legislation that the Commission introduced where a

fee was charged for drilling permits, a hundred dollars for every drilling or plug back application fee. And the fund went from hundreds of thousand dollars up to two to $3 million for this particular operation.

Q Now, what does the State do with State monies and the plugging of wells? I mean, do they do it themselves or do they hire it done? What was the system?

A The Commission, there was some talk of Commission buying rigs and actually hands-on hiring pluggers; and it was determined this would not be cost effective. So in all of the Commission plugging operations, it's done by third-party people supervised by Railroad Commission personnel.

Q And are the people that are supervising this plugging, do they fall under your -- your duties, your job responsibilities?

A They do during -- during the period of time 1981 to 1990.

Q Okay. And would you review the plugging procedures and check to see how these people that were plugging these wells for the State were doing it?

A Yes. This was done by -- really by a group. When a District Office had a problem well or a well that had been improperly plugged -- but when the District would do the basic work of finding the wells, making the

investigation and recommending to the Austin office that the wells be plugged using State funds, part of the procedure, that when they sent it in, they had a proposed plugging procedure, which was reviewed by myself, our Division Director and some of the Assistant Directors on a technical basis to see if it met the requirements for to insure that it would be properly plugged.

Q Now, when the State is out there -- and this happened, I guess, when you've got an old well and the operator has disappeared, you can't find them or don't have enough money to do it. Is that when this -- when the State has to step in and plug these wells?

A That's, a lot of them are that way. Some of them are wells that aren't even been able to identify who the operator was. There is no records available to determine who was the operator.

Q All right, sir. Now, let me ask you this question. When the State is out there seeing that these wells be plugged and abandoned properly and using State money to do it, do they pull the casing?

A No. For a couple of reasons.

Q Well, how do they generally -- how do they generally plug these wells? Do they cut the casing or blow it apart?

A They're done in various ways. The casing can

be cut. If there needs to be a plug set at that point, it can be blown apart by dynamite or plastic explosives or it can be gun perforated or jet perforated in order to be able to pump fluids outside of the production casing.

Q Now, when the State is doing this and it's cutting the casing, is it making any attempt to pull the casing, or is it leaving it in the hole just as Exxon did?

A In rare instances, early on, there was an attempt made to salvage casing and sell it and defer part of the plugging costs. It was determined by our legal section that the Railroad Commission of the State of Texas had no right to this casing, so we could not sell it. And so from that point on, when this type of operation was done, the casing was perforated by jet gun, blown off by plastic explosives or cut, cement plugs were placed in the well at that time, and the production casing left in place.

Q Just the way Exxon plugged some of these wells; is that right?

A Similar to that, yes, sir. Or, I'm not sure of the depths and things, but, would have been different.

Q Okay. Now, wasn't the Commission worried about some other operator wanting to come back later on to try to reexplore and try to search out more hydrocarbons?

A I don't recall being worried about it. Our main worry was to insure that the wells were plugged so that they would not be, continue to be a pollution problem or in the future be a problem.

Q Now, if while you were there in charge of enforcement and in charge of all these plugging responsibilities, I want you to assume that Matt Soulant or Joe Gilpin or Jerry Schave or any of these Exxon people had called you, as head of the whole shooting match, and said, look, we're going to be plugging these wells out there and what we intend to do is to cut the casing and just leave the casing in the hole, would you have had a problem with that?

A Not if he also included it place a cement plug where the casing was set.

Q Wouldn't you have been worried about a subsequent operator trying to get back into that hole?

A It wasn't a worry of the Commission. As I said, the primary concern of the Commission was that the wells be plugged in a manner that they would not be a pollution hazard in the future.

Q What if this Exxon guy said, you know, Willis, if we do this, we'll cut this casing, it may shift down the road a little bit. It's going to be harder if someone wants to get in there and try to go 4,000 feet to

recomplete some zone. Is it still okay? What would you have told them?

A If I'd ever been asked, I would have said go ahead with your operation. It falls within the limits of the rule. It's not prohibited.

Q And, in fact, that's the way the State does it with State monies when it's out there plugging wells today; is that right?

A They do it in many cases that way. That's correct.

Q Now, there's been some testimony about what the word "perforate" means in Railroad Commission parlance. And we saw a glossary of terms, I think, when Mr. Hayes was here, that says, perforations are holes through casing and cement into the production formation. And this was a glossary, I'm not sure the date of this one, maybe you can tell by the -- by who the Commissioners were, but first of all, do you recall how that glossary was put together?

A I never have seen this particular version of it, but I was aware that some of the attorneys in the legal section, in order to help new attorneys in different divisions, not only the Oil and Gas Division, but Transportation, Gas Utilities, Surface Mining section, put together some type of manual to help with

Coast, in my experience in the Houston District Office and then when I was District Director in other districts, salvage companies never attempt to salvage more pipe from a well than the amount of surface casing set in the well. They have attempted it, but it's normally stuck and will not pull out.

Q When you say where the surface casing is, using this chart over here, you're talking that the only part they might ever try to salvage down in this part of the world, would be in this top 1200 feet?

A That's correct. And there are instances when they can't even salvage that much. It's still stuck at the bottom part of the surface casing, to make it clear.

Q Now, I want you to assume that Matt Soulant, and the jury saw Mr. Soulant testify in a deposition on the screen up here on the television, and that his testimony was something along the lines of, that his only concern in plugging these wells was to make sure you got a good cement plug in there to protect the fresh water sands and protect the oil and gas or fresh -- or saltwater to escape up the hole, and that he was really not concerned with whether or not how he did it would make it harder on someone years down the way to come back and try to reenter into a lower zone and make it back into a oil and gas well, because that really didn't

concern him much. His only concern was the integrity of that plug and worrying about protecting the fresh water and the surface. As head of enforcement for 10 years, would you have any trouble with that attitude?

A I think it's a very good attitude to have.

Q And why is that?

A Because he's prevented a possible pollution of usable quality water in that particular area if you go to extra efforts to insure that these plugs are in place.

Q Now, have you had experience with what happens when you have a bad plug and these sands get polluted with either fresh -- with either saltwater or gas or something like that, do you have any of that experience?

A Quite a few.

Q Give the jury an idea of the problems that can create.

A If you have an uncontrolled flow of saltwater into fresh water zones, if it goes on for a long period of time, it can actually destroy that particular water for drinking or any use. And it's something that cannot be remedied very easily. It usually only over time by dilution of fresh water moving through the particular reservoir or leaching down from the surface to get the water where it's actually drinkable or usable again. This has happened on individual wells. It's happened in

North Texas. One that I'm very familiar with, it's an area-wide where the water sands down about a hundred-and-thirty feet have all been contaminated by saltwater and gas from leaking wells.

Q And is that why when you go back to the introduction of this manual that's given to people in the business that it states, "The objective of the technical requirements is to protect fresh water from pollution and to prevent the uncontrolled escape of oil gas or other fluids to the surface or other strata?"

A That's the primary purpose of the technical part of that rule to insure that the plugs are placed to prevent this from happening.

Q And in your review in this case, did you see any evidence that Exxon had failed to satisfy those technical requirements and protect the fresh water?

A If I recall, in my review of these, it indicated that all the wells were plugged in accordance with the Commission rules and regulations in effect at that particular time of plugging.

MR. LOCHRIDGE: Your Honor, we'd pass the witness.

THE COURT: Cross-examination when you're ready.

and purposely leaving the casing in the hole and putting a cement plug up the outside of the casing; is that correct?

A That's correct.

MR. WILSON: Objection, leading. Mr. Lochridge is testifying.

THE COURT: Sustained.

Rephrase, Counsel.

Q (BY MR. LOCHRIDGE) Would you describe one more time for the jury the method that the State used to plug wells when it was plugging wells with State funds.

A We used a number of methods, depending on the condition the well was in, but wells that where casing, production casing existed, many times the production casing was not removed from the well. And if a plug was required, either at the fresh water depth or at the base of the surface pipe, this production casing was either bullet perforated, jet gun perforated, cut, blasted with explosives in order to rupture the pipe to get cement outside of the production casing into the surface pipe or across the fresh water.

Q Now, when the State is doing it by cutting the casing or blowing the casing apart, how does that compare to how you understand Exxon plugged some of these wells?

A The methods were very similar. I think in

there's, I believe, you always used a mechanical casing cutter. And where the State may have used a mechanical cutter or shot it off with explosives.

Q And given all your experience in working with the Railroad Commission for all those years, do you see anything wrong with that method of plugging the wells that Exxon used in this case?

A No, sir, I don't.

MR. LOCHRIDGE: Pass the witness, Your Honor.

THE COURT: Further cross-examination, Counsel?

MS. EINDORF: Yes, Your Honor.

THE COURT: Proceed when you're ready.

RECROSS-EXAMINATION

BY MS. EINDORF:

Q This is the same page that Mr. Lochridge was showing you earlier where he read about the policy, Chapter 89. Now let's look at Section 89.011. "The operator of a well shall properly plug the well when required in accordance with the Commission's rules that are in effect at the time of plugging."

Is that what that section states?

A That's what it says, yes.

MS. EINDORF: Pass the witness.