

STATE OF NEW MEXICO  
BEFORE THE WATER QUALITY CONTROL COMMISSION

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NEW MEXICO OIL CONSERVATION DIVISION,

Complainant,

v.

WQA 07-01

MACK ENERGY CORPORATION,

Respondent.

**SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER**

The New Mexico Oil Conservation Division ("OCD") and Mack Energy Corporation ("Mack") agree to resolve the Administrative Compliance Order issued to Mack on November 19, 2007 based on the terms and conditions specified in this Settlement Agreement and Stipulated Final Order ("Final Order"). For purposes of this Final Order, Mack admits the jurisdictional allegations of this Final Order and consents to the relief specified herein.

**I. BACKGROUND OF DISPUTE**

**A. Parties**

1. The OCD is a division of the New Mexico Energy, Minerals and Natural Resources Department charged with enforcing the Oil and Gas Act ("OGA"), Chapter 70 Article 2 NMSA 1978. See NMSA 1978, Section 70-2-6(A). In addition to its duties under the OGA, the OCD is authorized to make rules, regulations and orders with respect to the WQA. NMSA 1978, Section 70-2-12(B)(22).

2. The Oil Conservation Commission ("OCC") is an entity created by NMSA 1978,

Section 70-2-4 to enforce the OGA, and has concurrent jurisdiction and authority with the OCD.

See NMSA 1978, Section 70-2-6(B). In addition to its duties under the OGA, the OCC is a “constituent agency” under the WQA. NMSA 1978, Section 74-6-2(J)(4).

3. The Environmental Protection Agency has granted primacy to the New Mexico Water Quality Control Commission, the Environmental Improvement Division and the OCD over the underground injection control program for Class III wells in the State of New Mexico. 40 CFR Section 147.1601.

4. Mack operates oil and gas wells and related service wells in New Mexico under OGRID 13837.

5. On November 19, 2007, OCD issued Compliance Order WQA 07-01 (“Compliance Order”) to Mack alleging violations of 20.6.2.5102.B NMAC and assessing a civil penalty of \$30,000.00.

**B. Violations Alleged**

6. By letter dated February 9, 2007, the OCD notified Mack that it had received a report that Mack was operating a Class III brine well at 1775 FNL and 930 FWL in Section 20, Township 17 South, Range 30 East, in Eddy County, New Mexico. The letter stated that the OCD had been unable to find any record or permit for the brine well, and ordered Mack to cease and desist operations at the site until it obtained an approved discharge permit pursuant to 20.6.2 NMAC.

7. Mack immediately ceased operations of the brine well.

8. During telephone calls and meetings after the February 9, 2007 letter, Mack acknowledged the following:
- a. Mack drilled the brine well, called the “Berry A Brine Well,” on a federal lease in 1998.
  - b. Mack did not obtain a drilling permit or a discharge permit from the OCD for the Berry A Brine Well because it believed it had obtained authorization for the well through Sodium Lease # NMNM-100443 with the Bureau of Land Management.
  - c. Mack began use of the Berry A Brine Well in 1999, injecting fresh water into the well, allowing the fresh water to circulate in the salt zone, and removing the resulting brine for use in Mack’s drilling operations.
  - d. Mack used the well intermittently until it received the February 9, 2007 letter from the OCD. Mack estimates that the Berry A Brine Well produced 300,000 barrels of brine.
  - e. Mack drilled the Berry A Brine Well approximately 58 feet from a producing well drilled by Mack at approximately the same time: the Berry A Federal #009, API 30-015-29566. In 2006 Mack transferred the Berry A Federal #009 to COG Operating LLC, OGRID 229137. The Berry A Federal #009 is currently producing.
  - f. The tubing on the Berry A Brine Well is set at 590 feet.
  - g. The Berry A Brine Well is constructed so that fresh water is pumped into the well through the tubing, and brine water is pumped out of the well through the casing.
9. Mack submitted a plugging procedure for the Berry A Brine Well dated August 31, 2007; the OCD approved the procedure on September 24, 2007.
10. Mack submitted a sundry notice, Form C-103, reporting that the Berry A Brine Well has been plugged and abandoned; the OCD approved the plugging and abandonment on

November 1, 2007.

11. The WQA provides that the Water Quality Commission may require persons to obtain discharge permits from a constituent agency. NMSA 1978, Section 74-6-5.

12. Brine wells are classified as Class III underground injection control wells pursuant to 20.6.7.5002.B(3) NMAC: "Class III wells inject fluids for extraction of minerals or other natural resources, including sulfur, uranium, metals, salts or potash by in situ extraction."

13. A discharge permit is required for a Class III well before commencing drilling or operations. 20.6.2.5102.B NMAC.

14. Operation of a Class III well must be pursuant to a discharge permit meeting the requirements of Sections 20.6.2.3000 through 20.6.2.3999 NMAC and Sections 20.6.2.5000 through 20.6.2.5299 NMAC. See 20.6.2.5101.B NMAC. Sections 20.6.2.3000 through 20.6.2.399 NMAC include requirements for obtaining a discharge permit; monitoring, reporting and other requirements; public notice and participation; and fees. Sections 20.6.2.5000 through 20.6.2.5299 NMAC include notification requirements, discharge permit requirements, pre-construction requirements and closure requirements for underground injection control wells.

15. When a constituent agency determines that a person violated or is violating a requirement, regulation or water quality standard adopted pursuant to the WQA or a condition of a permit issued pursuant to that act, the constituent agency may issue a compliance order requiring compliance immediately or within a specific time period or issue a compliance order assessing a civil penalty or both. NMSA 1978, Section 74-6-10(A)(1).

16. Any person who does not comply with the provisions of NMSA 1978, Section 74-6-5, including any regulation adopted pursuant to that section, or any permit issued pursuant to that section, shall be assessed civil penalties up to the amount of fifteen thousand dollars per day of noncompliance for each violation. NMSA 1978, Section 74-6-10.1(A).

17. Any person who violates any provision of the WQA other than Section 74-6-5 NMSA 1978 or any person who violates any regulation, water quality standard or compliance order adopted pursuant to that act shall be assessed civil penalties up to the amount of ten thousand dollars per day for each violation. NMSA 1978, Section 74-6-10.1(B).

18. For purposes of the WQA, “person” is defined to include corporations. NMSA 1978, Section 74-6-2(I).

**C. Mitigating Facts**

19. Mack believed the Berry A Brine Well was properly permitted through the Bureau of Land Management, and was not aware it needed a permit under the Water Quality Act.

20. Mack promptly ceased operations at the Berry A Brine Well when it learned that it needed a permit under the Water Quality Act.

21. Mack’s operation of the Berry A Brine Well has not damaged the nearby Berry A Federal #009 producing well.

22. Mack has plugged the Berry A Brine Well according to an OCD-approved plugging plan.

**II. COMPROMISE AND SETTLEMENT**

23. OCD has jurisdiction pursuant to the Water Quality Act, WQCC Regulations and NMSA 1978, Section 70-2-12(B)(22) to issue the Compliance Order and to enter into this Final Order.

24. The parties have engaged in settlement discussions to resolve the Compliance Order without further proceedings.

25. The parties agree to this Final Order for the sole purpose of settling the violations alleged in the Compliance Order.

26. Mack denies the violations alleged in the Compliance Order and does not admit any liability, fact, or legal conclusion by agreeing to this Final Order.

27. Mack agrees to a civil penalty of \$30,000.00 (thirty thousand dollars).

28. Mack shall pay the penalty amount in a lump sum by corporate or certified check payable to the Oil Conservation Division at the time this Final Order is executed. The payment shall be sent to:

Wayne Price  
EMNRD-OCD  
1220 S. St. Francis Drive  
Santa Fe, NM 87505

29. If Mack fails to pay the civil penalty as specified by Paragraphs 27 and 28, Mack shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, §56-8-4 (1993).

30. Mack agrees to waive all rights and claims to challenge the allegations in the Compliance Order and acknowledges that it may not file a Petition for Review challenging the

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allegations in the Compliance Order.

### **III. OTHER TERMS AND CONDITIONS**

31. Enforcement. OCD retains the right to pursue any relief authorized by the Water Quality Act or WQCC Regulations for any violation not addressed herein. The OCD currently has no pending Water Quality Act enforcement actions or investigations against Mack. OCD retains the right to enforce the Final Order by administrative or judicial action, which decision shall be in its sole discretion. In the event that the OCD elects to file a judicial action to enforce the Final Order, the parties agree that the action shall be heard by the district court for Santa Fe County, which shall have exclusive jurisdiction over the parties and the Final Order, and they waive any right to challenge such jurisdiction in any forum. The laws of New Mexico shall govern the construction and interpretation of the Final Order.

32. Binding Effect. The Final Order shall be binding on the parties and their officers, directors, employees, agents, subsidiaries, successors, assigns, trustees, or receivers.

33. Duration. The Final Order shall remain in effect until Mack complies with its terms and conditions or it is terminated by written agreement of the parties.

34. Integration. The Final Order merges all prior written and oral communications between the parties concerning the subject matter of the Final Order, and contains the entire agreement between the parties. The Final Order shall not be modified without the express written consent of the parties.

35. Reservation of Rights and Defenses. The Final Order shall not be construed to

prohibit or limit in any way OCD from requiring Mack to comply with any applicable state or federal requirement. The Final Order shall not be construed to prohibit or limit in any way the OCD from seeking any relief authorized by the Water Quality Act for violation of any state or federal requirement applicable to Mack not resolved herein. The Final Order shall not be construed to prohibit or limit in any way Mack from raising any defense to an OCD action seeking such relief.

36. Mutual Release. The parties mutually release each other from all claims that each party raised or could have raised against the other regarding the facts and legal conclusions alleged above.

37. Waiver of State Liability. Mack shall assume all costs and liabilities incurred in performing any obligation under the Final Order. OCD, on its own behalf or on behalf of the New Mexico Environment Department or the State of New Mexico, shall not assume any liability for Mack's performance of any obligation under the Final Order.

38. Authority to Bind. The person executing this Final Order on behalf of Mack represents that s/he has the authority to execute this Final Agreement on behalf of Mack.

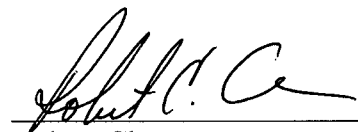
39. Disclosure to Successors-in-Interest. Mack shall disclose the Final Order to any successor-in-interest and shall advise such successor-in-interest that the Final Order is binding on the successor-in-interest until such time as Mack complies with its terms and conditions or it is terminated by written agreement of the parties.

40. Effective Date. The Final Order shall become effective upon execution by the



duly authorized representatives of both parties.

MACK ENERGY CORPORATION

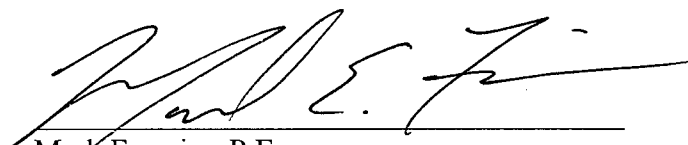


Robert Chase

~~President~~, Mack Energy Corporation  
Vice President

11/26/07

Date



Mark Fesmire, P.E.

Director

New Mexico Oil Conservation Division

11/28/07

Date

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