

SMITH & MARRS INC.  
BOX 863  
KERMIT, TEXAS 79745

December 23, 2003

ROCKY TOP RANCH  
Mr. & Mrs. Clay Osborn  
Box 1285  
JAL, N.M. 88252

Dear Mr. & Mrs. Osborn

I appreciate your meeting with Eddie Seay on January 12, 2004. As you know we have agreed to perform the Phase I abatement Plan which was approved by the OCD. At this time we cannot agree to any payment for the implementation of this plan. Any test results will be furnished to ROCKY TOP RANCH. I would hope in the future some type of agreement could be reached with the companies that caused damage to your ranch. As we stated in our meeting with the OCD, no underground damage was or has been the result of Smith & Marrs Inc. operations.

We request you provide us with written permission to enter the land covered by the Stage I Abatement plan in order to drill the abatement wells (10 wells +/-). I am enclosing a release for your signature, so that this work can proceed ASAP.

If I do not receive a response by February 25, 2004 I assume you are denying us permission to drill the abatement wells.

Thank you, for your consideration on this matter and I look forward to hearing from you in the near future.

Sincerely,

Rickey Smith

cc: Chad Smith  
GREAK & SMITH PC

OCD Exhibit No. 37  
Case No. 13061  
September 2, 2004