

FIFTH JUDICIAL DISTRICT
LEA COUNTY NM
FILED IN MY OFFICE

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

2004 AUG 31 PM 4:30

JANIE G. HERNANDEZ
DISTRICT COURT CLERK

SMITH & MARRS, INC.,

Plaintiff,

vs.

No. CV-2004- 386mc Lee

CLAY OSBORN AND JERI OSBORN,

Defendants.

PETITION FOR PERMANENT INJUNCTION

COMES NOW, Smith & Marrs, Inc. ("Plaintiff"), by and through its attorneys Maddox & Holloman, P.C. (Lee A. Kirksey, Esq.) and states:

1. The Plaintiff is a Texas Corporation, owning and operating oil and gas properties.
2. Clay & Jeri Osborn ("Defendants") are the property owners of the surface estate of Sections 7, 8, 17 and 18, Township 25 South, Range 37 East, Lea County, New Mexico.
3. Plaintiff operates the South Langlie Jal Unit ("Unit"), which encompasses mineral rights at locations in which Defendants own the surface estate.
4. Bristol Resources Corporation ("Bristol") was the operator of the Unit when an investigation as to soil and ground water contamination began in 1999.
5. On August 2, 2000, the Oil Conservation Division of the New Mexico Energy Minerals and Natural Resources Department ("OCD") required

Handwritten:
EXHIBIT #1
Coe 13061
SMITH & MARRS

- that Bristol submit an "Abatement Plan" for the Unit to investigate and abate ground water pollution.
6. On September 15, 2000, Chaparral Energy, LLC ("Chaparral") purchased Bristol's assets at a bankruptcy auction and assumed operation of the Unit. Subsequently, the OCD notified Chaparral that Chaparral was required to submit an "Abatement Plan" to investigate and abate ground water pollution.
 7. Chaparral submitted a Stage 1 Abatement Plan Proposal in order to comply with OCD requirements. The Plan Proposal was approved by OCD on April 25, 2002.
 8. On November 7, 2002, Chaparral notified the OCD that operation of the Unit had been assumed by Plaintiff when the Unit was sold to a related entity.
 9. On January 13, 2003, OCD notified both Defendant and Chaparral to submit a Stage 1 Investigation Report by February 1, 2003.
 10. When the reports were not filed, OCD filed an administrative application in Case No. 13061.
 13. On November 17, 2003, Plaintiff entered into a Settlement Agreement with OCD and with Chaparral, agreeing to perform the approved State 1 Abatement Plan as submitted by Chaparral and approved by OCD ("Settlement Agreement"). (See Exhibit A, Settlement Agreement.)

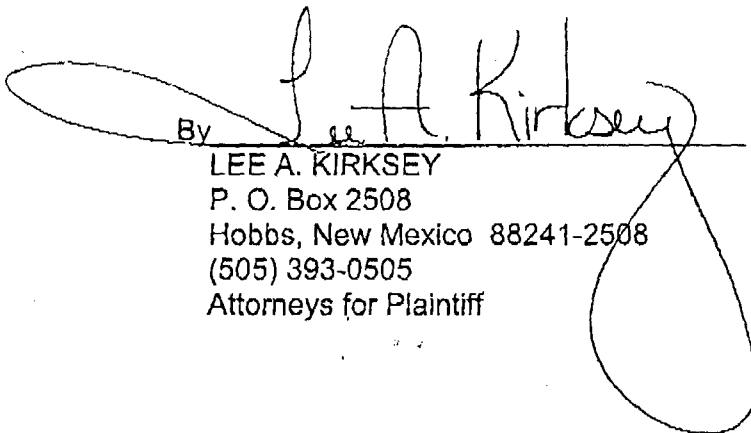
14. Plaintiff has made a good faith effort to negotiate an Access Agreement with the surface landowners, Defendants, in order to implement the Stage 1 Abatement Plan.
15. Plaintiff has sent several letters to Defendants regarding obtaining access to the property in order to commence the Abatement Plan and has had representatives meet with Defendants. (See Exhibit B, letters from Plaintiff to Defendants.)
16. Defendants have, to date, refused to allow Plaintiff access to the property.
17. Plaintiff has made several efforts to reach an agreement to gain access to the property. Defendants have refused to reach a reasonable agreement.
18. In the Settlement Agreement, Plaintiff agreed to, "make a good faith effort to negotiate an access agreement with the surface landowner(s) as necessary for implementation of the Stage 1 Abatement Plan." (See Exhibit A, at Section C of the Settlement Agreement.)
19. The Settlement Agreement also provides that, "In the event that Smith & Marrs is unable to obtain an access agreement from the surface owner(s) and institutes legal proceedings to secure an injunction authorizing such access for the purpose of performing the Stage 1 Abatement Plan, Smith & Marrs will notify OCD of such filing and of the date, time and place of any hearing." (See Exhibit A, at Section C of the Settlement Agreement.)
21. Pursuant to Rule 1-066 of the New Mexico rules of Civil Procedure, Plaintiff seeks a Permanent Injunction against Defendant from interfering with Plaintiff's rights related to the Unit, and immediate and reasonable

access to the property at issue in order to exercise those rights.

18. Defendant should be given notice of this proceeding.
19. Due to the nature of this case, no security should be required from Plaintiff.
20. A hearing should be set immediately to consider this petition.

WHEREFORE, Plaintiff requests a Permanent Injunction pursuant to Rule 1-066 of the New Mexico Rules of Civil Procedure directed at the Defendants which prohibits Defendants from interfering in any way with Plaintiff's rights as operator of the South Langlie Jal Unit and grants Plaintiff immediate and reasonable access to the property at issue to conduct the required testing and for such other and further relief as the Court deems proper and just.

MADDOX & HOLLOMAN, P.C.

By 
LEE A. KIRKSEY
P. O. Box 2508
Hobbs, New Mexico 88241-2508
(505) 393-0505
Attorneys for Plaintiff

VERIFICATION

STATE OF NEW MEXICO))ss.
COUNTY OF LEA)

I, Ricky Smith, being first duly sworn, state:

I am an officer of Smith & Marrs, Inc., a Texas corporation, Plaintiff in the above-styled and numbered cause; I have read and understand the contents of the foregoing Petition for Injunction and the facts therein are true and correct to the best of my knowledge and belief.

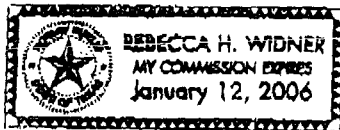
SMITH & MARRS, INC.

By: Ricky Smith, President

SUBSCRIBED AND SWORN TO before me this 31st day of August, 2004 by
Ricky Smith, an officer of Smith & Marrs, Inc., a Texas corporation, on behalf of said
corporation.

Rebecca H. Widner
Notary Public

My Commission Expires: 01-12-2006



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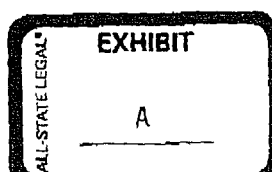
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SETTLEMENT AGREEMENT

This agreement is entered into between and among the OIL CONSERVATION Division DIVISION of the NEW MEXICO ENERGY MINERALS AND NATURAL RESOURCES DEPARTMENT ("OCD"), CHAPARRAL ENERGY, L.L.C. ("Chaparral") and SMITH & MARRS, INC. ("Smith & Marrs").

WHEREAS:

1. In January of 1999, OCD began an investigation of salt contamination of soils from a produced-water-line leak within the South Langlie Jal Unit, located in Sections 7, 8, 17 and 18, Township 25 South, Range 37 East, Lea County, New Mexico. The surface owner, Mr. Clay Osborn, reported that the drinking water well at his residence was contaminated with salts. Additional soil and ground water contamination investigations were conducted through March 20, 2000. As a result of these investigations, OCD developed evidence that it believes indicates the presence of contamination that most likely originated from operations in the South Langlie Jal Unit.
2. Bristol Resources Corporation (Bristol) was the operator of the South Langlie Jal Unit when the investigations commenced in 1999. Pursuant to OCD Rule 19.C, on August 2, 2000, the OCD required that Bristol submit an "Abatement Plan" for the South Langlie Jal Unit to investigate and abate ground water pollution.
3. On September 15, 2000, Chaparral purchased Bristol's assets at a bankruptcy auction and assumed operation of the South Langlie Jal Unit. On October 31, 2000, the OCD notified Chaparral that, as the current operator, Chaparral was required to submit an "Abatement Plan" for the South Langlie Jal Unit to investigate and abate ground water pollution.
4. Chaparral submitted a Stage 1 Abatement Plan Proposal pursuant to OCD's notification, and subsequently modified and supplemented the same to comply with additional OCD requirements. On April 25, 2002, OCD administratively approved the Stage 1 Abatement Plan Proposal. At Chaparral's request, in order to allow Chaparral time to negotiate access to conduct the required investigations, OCD issued an extension of the deadline for submission of the Stage 1 Investigation Report from July 31, 2002 to October 31, 2002. Chaparral did not submit the Stage 1 Investigation Report prior to October 31, 2002, nor subsequently.
6. On November 7, 2002, Chaparral notified the OCD that the South Langlie Jal Unit had been sold to Ricky Smith Oil & Gas Corporation. The unit was actually conveyed to Smith & Marrs, which is an affiliate of Ricky Smith Oil & Gas Corporation; and Smith & Marrs assumed operation of the unit. On January 13, 2003, OCD notified both Chaparral and Smith & Marrs to submit a Stage 1 Investigation Report by February



17, 2003. Neither Chaparral nor Smith & Marrs complied within such time or subsequently.

7. On March 20, 2003, OCD filed its administrative application in Case No. 13061, citing both Chaparral and Smith & Marrs, asking that either or both be found to be responsible parties with respect to pollution found to have originated from the South Langlie Jal Unit, and seeking civil penalties against both Chaparral and Smith & Marrs, Inc., for failure to file a Stage 1 Investigation Report pursuant to the previously-approved Abatement Plan.

8. Following several continuances, a hearing was scheduled on OCD's administrative application before a Division Hearing Examiner on July 15, 2003. Prior to commencement of the hearing, the parties agreed to compromise and settle the matters at issue in the hearing upon the following terms and provisions.

IT IS THEREFORE NOW AGREED AS FOLLOWS:

A. All parties have entered into this compromise and settlement agreement solely for the purpose of avoiding further adversarial proceedings or litigation. Chaparral and Smith & Marrs do not admit, but rather each expressly denies, that any action or omission on its part caused any pollution that may have resulted from operations on the South Langlie Jal Unit, if any did so result, which neither admits. OCD reserves the right, in the event of any future adversarial proceedings, to assert any claim or position that it could have asserted at the hearing on July 15, 2003, and Chaparral and Smith & Marrs each reserve the right, in the event of any future adversarial proceedings, to assert any defense that either could have asserted on July 15, 2003, except that each agrees to perform the obligations which it expressly undertakes in this agreement.

B. Smith & Marrs agrees to fully perform the approved Stage 1 Abatement Plan as submitted by Chaparral and approved by OCD, and to file the Stage 1 Investigative Report not later than ninety (90) days after the execution of this Agreement by the last party to execute same.

C. Smith & Marrs shall make a good faith effort to negotiate an access agreement with the surface landowner(s) as necessary for implementation of the Stage 1 Abatement Plan. In the event that Smith & Marrs is unable to obtain an access agreement from the surface owner(s) and institutes legal proceedings to secure an injunction authorizing such access for the purpose of performing the Stage 1 Abatement Plan, Smith & Marrs will notify OCD of such filing and of the date, time and place of any hearing. OCD will use its best efforts to have a representative available at the hearing to explain to the court, if necessary or requested, the nature of the administrative proceedings conducted by OCD in this matter.

D. In the event that the Stage 1 investigation reveals the existence of contamination of which the South Langlie Jal Unit is determined to be the probable source, Smith & Marrs will submit a Stage 2 Abatement Plan as is required of a


responsible party under OCD Rule 19 [19.15.1.19 NMAC], and upon approval thereof, will fully perform such abatement plan, including any conditions imposed thereon by OCD. Smith & Marris reserves the right to contest any such conditions by administrative process and appeals allowed therefrom, but will perform the plan as finally approved.

E. OCD will not look to Chaparral for further filings or performance in connection with either the Stage 1 Abatement Plan or any future Stage 2 Abatement Plan regarding the contamination that is the subject of Case No. 13061, unless, and except to the extent that, Smith & Marris fails to perform its obligations hereunder. Prior to demanding performance hereunder from Chaparral, OCD will issue a notice of violation, and secure a compliance order directed to Smith & Marris, after notice and hearing.

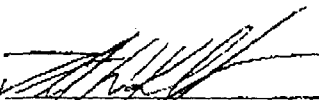
F. Case No. 13061 will be dismissed without prejudice. However, OCD will not, in any future proceeding, seek any civil penalties against either Chaparral or Smith & Marris for any act or omission of either with respect to the subject matter of its application in Case No. 13061, that occurred prior to July 15, 2003. OCD reserves the right to seek civil penalties against Smith & Marris for any breach of this Agreement. OCD will not seek civil penalties against Chaparral in connection with any matter that was the subject of Case No. 13061 unless OCD has first notified Chaparral that Smith & Marris has failed to perform hereunder and demanded performance by Chaparral within a definite time after such notice. Penalties may thereafter be sought against Chaparral if Chaparral fails to comply with such demand within the time provided.

IN WITNESS WHEREOF, all parties have signed below on the respective dates shown beside their signatures. The effective date of this agreement shall be the date of the last signature.


NEW MEXICO ENERGY MINERALS
AND NATURAL RESOURCES DEPARTMENT
(Oil Conservation Division)

By 
Its Administrative Services Director
Date 11/17/03

CHAPARRAL ENERGY, L.L.C.

By 
Its Susan Paul - General Counsel
Date 11-27-03

SMITH & MARRS, INC.

By 
Its President
Date 11-3-03

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.

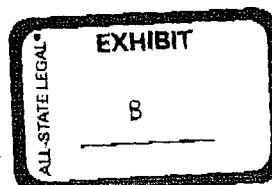
If I do not receive a response by February 25, 2004 I assume you are denying us permission to drill the abatement wells.

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

Sincerely,

Rickoy Smith

cc: Chad Smith
GREAK & SMITH PC



SMITH & MARRS INC.
BOX 863
KERMIT, TEXAS 79745

December 23, 2003

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

Dear Mr. & Mrs. Osborn

As you are aware BURRO LAKE LLC purchased from CHAPARRAL ENERGY, L.L.C. the South Langlie Jal Unit in Lea County, New Mexico in November, 2002. SMITH & MARRS INC. as the operator has entered into an agreement with the NMOCD and Chaparral to conduct the Stage 1 Abatement Plan that was agreed to by Chaparral & Bristol in 1999.

We request you provide us with written permission to enter the land covered by the Stage 1 Abatement plan in order to drill the abatement wells (10 wells +/-).

If I do not receive a response by January 9, 2004, I assume you are denying us permission to drill the abatement wells.

Thank you, for you 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

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

SMITH & MARRS, INC.,

Plaintiff,

vs.

No. CV-2004- 396

CLAY OSBORN and JERI OSBORN,

Defendants

SUMMONS

THE STATE OF NEW MEXICO

TO: Jeri Osborn
Rocky Top Ranch
Jal, NM 88252

GREETINGS:

You are hereby directed to serve a pleading or motion in response to the Complaint within thirty (30) days after service of this Summons, and file the same, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff:

Lee A. Kirksey, Esq.

Address of Attorneys for Plaintiff:

P. O. Box 2508
Hobbs, NM 88241-2508
(505) 393-0505

William A. McBee

WITNESS The Honorable _____, District Judge of the
Fifth Judicial District Court of the State of New Mexico, and the Seal of the District Court of said
County, this 31st day of August, 2004.

JANIE G. HERNANDEZ

CLERK OF THE DISTRICT COURT

By Vera L White
Deputy

ORIGINAL
RETURN TO DISTRICT COURT
AFTER SERVICE

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

SMITH & MARRS, INC.,

Plaintiff,

vs.

No. CV-2004-

396

CLAY OSBORN and JERI OSBORN,

Defendants

SUMMONS

THE STATE OF NEW MEXICO

TO: Clay Osborn
Rocky Top Ranch
Jal, NM 88252

GREETINGS:

You are hereby directed to serve a pleading or motion in response to the Complaint within thirty (30) days after service of this Summons, and file the same, all as provided by law.

You are notified that, unless you serve and file a responsive pleading or motion, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff:

Lee A. Kirksey, Esq.

Address of Attorneys for Plaintiff:

P. O. Box 2508
Hobbs, NM 88241-2508
(505) 393-0505

WITNESS The Honorable William A. McBee, District Judge of the Fifth Judicial District Court of the State of New Mexico, and the Seal of the District Court of said County, this 31st day of August, 2004.

JANIE G. HERNANDEZ

CLERK OF THE DISTRICT COURT

By

Vera L White
Deputy

ORIGINAL
RETURN TO DISTRICT COURT
AFTER SERVICE