

STATE OF NEW MEXICO  
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION

IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION DIVISION FOR  
THE PURPOSE OF CONSIDERING:

ORIGINAL

CASE 15432  
(cont'd from  
1/21/16)

APPLICATION OF THE NEW MEXICO OIL  
CONSERVATION DIVISION COMPLIANCE AND  
ENFORCEMENT BUREAU FOR A COMPLIANCE  
ORDER AGAINST DC ENERGY, LLC, FOR WELLS  
OPERATED IN LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

February 4, 2016

Santa Fe, New Mexico

RECEIVED OOD  
2016 FEB 22 P 2:27

BEFORE: MICHAEL McMILLAN, CHIEF EXAMINER  
WILLIAM V. JONES, EXAMINER  
SCOTT DAWSON, EXAMINER  
DAVID BROOKS, LEGAL COUNSEL

This matter came on for hearing before the  
New Mexico Oil Conservation Division, MICHAEL MCMILLAN,  
Chief Examiner, William V. Jones, Examiner, SCOTT  
DAWSON, Examiner, and DAVID BROOKS, Legal Counsel, on  
February 4, 2016, at the New Mexico Energy, Minerals,  
and Natural Resources Department, Wendell Chino  
Building, 1220 South St. Francis Drive, Porter Hall,  
Room 102, Santa Fe, New Mexico.

REPORTED BY: ELLEN H. ALLANIC  
NEW MEXICO CCR 100  
CALIFORNIA CSR 8670  
PAUL BACA COURT REPORTERS  
500 Fourth Street, NW  
Suite 105  
Albuquerque, New Mexico 87102

A P P E A R A N C E S

1  
2 For the Applicant, Oil Conservation Division  
3 Compliance and Enforcement Bureau:

4 KEITH HERRMANN, Assistant General Counsel  
5 State of New Mexico  
6 Oil Conservation Division  
7 Energy, Minerals & Natural Resources  
8 Department  
9 1220 South St. Francis Drive  
10 Santa Fe, New Mexico 87505  
11 (505) 476-3463  
12 keith.herrmann@state.nm.us

13  
14 For The Oil Conservation Division for  
15 the Bankruptcy Case:

16 JAMES C. JACOBSEN  
17 Assistant Attorney General  
18 Litigation Division  
19 111 Lomas Boulevard, NW  
20 Suite 300  
21 Albuquerque, New Mexico 87102  
22 (505) 222-9085  
23 jjacobsen@nmag.gov

24 For Dan Johnson and Colleen Johnson  
25 (Via telephone):

ROBERT R. FEUILLE, ESQ.  
and  
JAMES M.H. FEUILLE, ESQ.  
ScottHulse PC  
201 East Main Drive  
1100 Chase Tower  
El Paso, Texas 79901  
(915) 546-8213  
bfeu@scotthulse.com  
jfeu@scotthulse.com

A P P E A R A N C E S (cont'd)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

For Clarke C. Coll, Chapter 7 Trustee for the DC  
Energy, LLC, Bankruptcy Estate  
(Via telephone):

STEPHANIE L. SCHAEFFER, ESQ.  
Walker & Associates, P.C.  
500 Marquette, NW  
Suite 650  
Albuquerque, New Mexico 87102  
(505) 766-9272  
sschaeffer@walkerlawpc.com

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

CASE NUMBER 15432 CALLED

CLOSING STATEMENTS  
Page 9

Reporter's Certificate

PAGE

15

I N D E X O F E X H I B I T S

OCD COMPLIANCE AND ENFORCEMENT BUREAU  
EXHIBITS 4 and 5 WERE OFFERED AT THE  
1/21/16 HEARING AND HEREIN ADMITTED

OCD COMPLIANCE AND ENFORCEMENT BUREAU  
EXHIBIT 8 HEREIN OFFERED AND ADMITTED

PAGE

6

6

1 (Time noted 8:17 a.m.)

2 EXAMINER McMILLAN: Case 15432, Application  
3 of the New Mexico Oil Conservation Division Compliance  
4 and Enforcement Bureau For a Compliance Order Against  
5 DC Energy, LLC, for Wells Operated in Lea County, New  
6 Mexico.

7 Call for appearances.

8 MR. HERRMANN: Keith Herrmann representing  
9 the OCD Compliance and Enforcement Bureau.

10 MR. JACOBSEN: James C. Jacobsen, New Mexico  
11 Attorney General's Office on behalf of the Oil  
12 Conservation Division.

13 EXAMINER McMILLAN: Are there any other  
14 appearances?

15 MS. SCHAEFFER: Stephanie Schaeffer for  
16 Clarke C. Coll, the Chapter 7 Trustee in the DC Energy  
17 Bankruptcy Case.

18 MR. ROBERT FEUILLE: James Feuille and  
19 Robert Feuille for Dan and Colleen Johnson.

20 EXAMINER McMILLAN: If the New Mexico Oil  
21 Conservation Division would proceed.

22 MR. HERRMANN: Mr. Examiner, this case was  
23 continued from January 21st, the last hearing docket,  
24 after the OCD presented evidence that the subject wells  
25 in this compliance order that we are seeking had

1 evidence of a failed MIT with no corrective action,  
2 numerous releases that have yet to be reported and  
3 inactive wells in exceedance of the allowable under OCD  
4 Rule 5.9.

5 We were asked to present affidavits to  
6 authenticate some of the photographs used in OCD  
7 Exhibits 4 and 5.

8 If I may present some affidavits from Mark  
9 Whitaker, Maxey Brown, and Jamie Keyes, all OCD District  
10 1 staff, in what I have marked as OCD Exhibit 8.

11 If there are no objections at this time, I  
12 would move to admit OCD Exhibits 4, 5 and 8.

13 EXAMINER McMILLAN: Are there any objections  
14 to this?

15 MR. ROBERT FEUILLE: This is Robert Feuille.  
16 Mr. Examiner, we don't have any objection. We reviewed  
17 the affidavits. They are fine. Thank you.

18 EXAMINER McMILLAN: Exhibits 4, 5 and 8 may  
19 now be accepted as part of the record.

20 (New Mexico OCD Compliance and Enforcement  
21 Bureau Exhibits 4 and 5 were offered at the 1/21/16  
22 hearing and admitted on 2/4/16.)

23 (New Mexico OCD Compliance and Enforcement  
24 Bureau Exhibit 8 was offered and admitted.)

25 MR. HERRMANN: The OCD Compliance and

1 Enforcement Bureau has nothing additional to submit at  
2 this time.

3 EXAMINER McMILLAN: Okay. The question I  
4 got is did the attorney for Dan and Colleen Johnson get  
5 a photograph copy of the exhibits?

6 MR. ROBERT FEUILLE: Robert Feuille.  
7 Mr. Examiner, we did get color photos from Mr. Herrmann  
8 of the snow photos of Exhibit 5. So I believe we have a  
9 complete set of color photos. And I believe that now  
10 our Exhibit 5 matches what I was told you all were  
11 looking at in the hearing room.

12 (Pause.)

13 MR. ROBERT FEUILLE: Robert Feuille again.  
14 At an appropriate time, I would like to make a comment.  
15 But right now, I think the question you asked is whether  
16 I have the photos.

17 EXAMINER McMILLAN: Then please make your  
18 comment for the record, Mr. Feuille.

19 MR. ROBERT FEUILLE: Thank you. Robert  
20 Feuille again.

21 Mr. Examiner, I would point out that in  
22 looking at the color photos, I certainly do see a  
23 reflection on the water, but the witness testified about  
24 a sheen on the water and there is no sheen on the water  
25 other than the simple reflected light that you would

1 normally see on a pond of water. I think that's pretty  
2 obvious.

3 And I would like to make some wrap-up  
4 comments at some point in time. And I don't know  
5 whether this is the appropriate time or not.

6 So that's my comment on the photos.

7 EXAMINER McMILLAN: At this time, I would  
8 like to give the Oil Conservation Division the  
9 opportunity for rebuttal for...

10 MR. HERRMANN: I don't think the OCD has to  
11 respond to that. That is testimony from an attorney,  
12 not any expert witness, and neither of the Johnsons have  
13 offered to submit it at either this hearing or the last  
14 hearing.

15 MR. JACOBSEN: Mr. Examiner, the Oil  
16 Conservation Division will also point out that there was  
17 testimony from people who were present and did observe  
18 it and what Mr. Feuille is commenting, his impression of  
19 a photograph versus presenting testimony from persons  
20 with firsthand knowledge regarding the spill, the  
21 discharge and the extent of the discharge, it's opinion  
22 from an attorney and should be disregarded.

23 MR. ROBERT FEUILLE: Mr. Examiner, Robert  
24 Feuille. Just to point out that there actually was no  
25 testimony from any person who took the photos about any

1 sheen on the water. That testimony came from the expert  
2 who simply observed the photos in his office  
3 and Dr. Oberding.

4 And my comments are not testimony. They are  
5 simply observations of the photos that anyone could make  
6 including yourself. Thank you.

7 EXAMINER McMILLAN: At this point, let's  
8 have closing statements.

9 CLOSING STATEMENTS

10 MR. HERRMANN: Mr. Examiner, the Compliance  
11 and Enforcement Bureau has presented evidence of active  
12 releases going on at all these sites. None have been  
13 reported in violation of OCD rules.

14 So for that, we are requesting that the  
15 operator or record, which we have also presented  
16 evidence as DC Energy, LLC, report these releases and  
17 provide all the documentation that our Environmental  
18 Bureau will require to address the hazards they pose.

19 We've also presented evidence that this  
20 operator has a number of inactive wells that they need  
21 to address to come into compliance with OCD rule 5.9.

22 And we presented evidence that they have a  
23 failed mechanical integrity test on one of their  
24 saltwater injection wells. This is highly concerning  
25 because it can pose a risk to groundwater and other oil

1 pools and oil-bearing strata that could impact other  
2 operators correlative rights.

3 We believe the relief we've requested is in  
4 accordance with OCD rules and request an order declaring  
5 compliance.

6 MR. JACOBSEN: Mr. Examiner, Mr. Jacobsen  
7 for the Oil Conservation Division. I would echo the  
8 comments of the enforcement bureau. We have three wells  
9 which testimony was have been inactive for -- in excess  
10 of one year. We have a saltwater disposal well for  
11 which a compliance order was entered in December of 2014  
12 where no action has been taken to remediate the problems  
13 with the integrity of that operation.

14 We have expert testimony from OCD's  
15 witnesses regarding spills. We have photographic  
16 evidence of spills and releases of contaminants on the  
17 surface of the property.

18 We have a dispute between the lay  
19 observations of the attorney and the expert testimony of  
20 OCD's personnel. We have people who were on the site,  
21 took the pictures, observed what is going on, and  
22 observed that the wells are being operated by somebody.

23 Ms. Schaeffer is on the line. She is the  
24 attorney for the Chapter 7 trustee, Clark C. Coll. And  
25 as we have pointed out, Mr. Coll is not operating these

1 wells. DC Energy as a Chapter 7 debtor in Bankruptcy is  
2 not operating these wells.

3 We had testimony two weeks ago and evidence  
4 that DC Energy was served in its capacity as the  
5 operator itself at its address in California. It is not  
6 here. Ms. Schaeffer can correct me, but the trustee is  
7 not operating these wells and at this point is taking no  
8 action to remediate these wells.

9 We will have to deal with the situation in  
10 the Bankruptcy Court. But what we have is evidence,  
11 which I believe is clear despite a difference of opinion  
12 among the attorneys, that there are significant  
13 problems, major releases at these sites, which need to  
14 be remediated, and action needs to be taken.

15 We have the Johnsons appearing in this case;  
16 but as the testimony was earlier from Ms. Pruett of the  
17 State Land Office, they're not the lessees on this  
18 property. DC Energy is the lessee of this property.

19 So, basically, we have strangers, as we  
20 pointed out from the outset of this, we have strangers  
21 who are claiming an interest in this property, possibly  
22 operating these wells. That still needs to be  
23 determined.

24 But the testimony is clear, that there  
25 are -- the conditions necessary for the issuance of the

1 compliance order as requested in the application have  
2 been demonstrated and the compliance order should  
3 issue. Thank you.

4 EXAMINER McMILLAN: Mr. Feuille.

5 MR. ROBERT FEUILLE: Thank you. Robert  
6 Feuille speaking.

7 My focus right now is the Mexico U wells,  
8 Mr. Examiner. And it's pretty clear from Dr. Oberding's  
9 testimony that he was not testifying about the volume of  
10 any release. He, in fact, said so. So there is no  
11 evidence of a reportable release at the Mexico U wells  
12 that needs any reporting or any action or is out of  
13 compliance in any way.

14 The release, as you know, would have to be  
15 at least five barrels. And Dr. Oberding specifically  
16 said he was not here to testify about the volume of any  
17 release and didn't know about the volume of any release.  
18 And so I think that much -- that much is very clear.

19 Dr. Oberding testified about indications in  
20 the photographs that there had been a release and his  
21 indications boiled down really to a sheen on the water  
22 that you could observe in the photographs. And, as I  
23 said, if his testimony was that there was a sheen that  
24 could be observed in the photographs, then it should be  
25 observable by anybody, not just an expert. And you and

1 I -- at least I could not see the sheen.

2 The second thing he boiled down to was a  
3 snow melt, a differential pattern of snow melt near the  
4 two tanks, the two -- yes, the two storage tanks on the  
5 Mexico U lease.

6 And it's obvious that there was no -- there  
7 was no background information sufficient to determine  
8 why there would be a differential snow melt in one part  
9 as compared to another. There are many factors,  
10 obviously, that could affect snow melt, including the  
11 depth of the snow, how much snow had blown away from one  
12 time to another, reflected heat from tanks.

13 You can see in the photographs themselves  
14 that there is a differential snow melt around a sign, a  
15 fact that Dr. Oberding didn't mention as an issue at  
16 all.

17 So, you know, those two -- his testimony on  
18 those two points is, frankly, not supported and not  
19 really credible. So as to the Mexico U wells, I don't  
20 think there's any compliance that's necessary. I think  
21 the court is -- I mean the Hearing Examiner has already  
22 found that the Johnsons have standing.

23 And so we would ask that as to the Mexico U  
24 wells, that the relief requested be denied. As to the  
25 other wells, we don't have any comment.

1 But we would like for the -- whatever orders  
2 are produced from this hearing, that they would be  
3 specific as to which wells -- what the findings are with  
4 respect to each particular well. That's all I have at  
5 this moment.

6 EXAMINER McMILLAN: Okay. Ms. Schaeffer, do  
7 you want to make a comment at this time?

8 MS. SCHAEFFER: No, Your Honor. Thank you.

9 EXAMINER McMILLAN: With that in mind, case  
10 15432 shall be taken under advisement. Thank you.

11 MR. ROBERT FEUILLE: This is Robert Feuille.  
12 Are we excused, Mr. Examiner?

13 EXAMINER McMILLAN: Yes.

14 MR. ROBERT FEUILLE: Thank you very much.  
15 We appreciate it. Thank you for letting us attend by  
16 phone.

17 EXAMINER McMILLAN: Thank you.

18

19

20 (Time noted 8:35 a.m.)

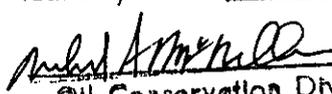
21

22

23

24

25

I do hereby certify that the foregoing is  
a complete record of the proceedings in  
the examiner hearing of Case No. 1502  
heard by me on February 4, 2016.  
 , Examiner  
Oil Conservation Division

1 STATE OF NEW MEXICO )  
 2 ) ss.  
 3 COUNTY OF BERNALILLO )  
 4  
 5  
 6

7 REPORTER'S CERTIFICATE

8  
 9 I, ELLEN H. ALLANIC, New Mexico Reporter CCR  
 10 No. 100, DO HEREBY CERTIFY that on Thursday, February 4,  
 11 2016, the proceedings in the above-captioned matter were  
 12 taken before me, that I did report in stenographic  
 13 shorthand the proceedings set forth herein, and the  
 14 foregoing pages are a true and correct transcription to  
 15 the best of my ability and control.

16  
 17 I FURTHER CERTIFY that I am neither employed by  
 18 nor related to nor contracted with (unless excepted by  
 19 the rules) any of the parties or attorneys in this case,  
 20 and that I have no interest whatsoever in the final  
 21 disposition of this case in any court.

22  
 23  
 24  
 25  


---

ELLEN H. ALLANIC, CSR  
 NM Certified Court Reporter No. 100  
 License Expires: 12/31/16