

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:)

APPLICATION OF THE NEW MEXICO OIL)
 CONSERVATION DIVISION FOR A COMPLIANCE)
 ORDER AGAINST SOUTHWESTERN, INC.)

CASE NO. 14, 2007

ORIGINAL

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: WILLIAM V. JONES, Jr., Hearing Examiner

November 1st, 2007

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, Jr., Hearing Examiner, Legal Examiner, on Thursday, November 1st, 2007, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
 (505) 989-9317

I N D E X

November 1st, 2007
Examiner Hearing
CASE NO. 14,007

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A P P E A R A N C E S

FOR THE APPLICANT:

GAIL MacQUESTEN
 Deputy General Counsel
 Energy, Minerals and Natural Resources Department
 1220 South St. Francis Drive
 Santa Fe, New Mexico 87505

* * *

STEVEN T. BRENNER, CCR
 (505) 989-9317

1 WHEREUPON, the following proceedings were had at
2 8:19 a.m.:

3
4 EXAMINER JONES: Okay, with that let's call the
5 first case of the day, Case 14,007, Application of the New
6 Mexico Oil Conservation Division for a compliance order
7 against Southwestern, Incorporated.

8 Call for appearances.

9 MS. MacQUESTEN: Mr. Examiner, I'm Gail
10 MacQuesten. I'm here on behalf of the Oil Conservation
11 Division.

12 EXAMINER JONES: Any other appearances?

13 I saw in this case where -- case file, that some
14 -- there was another appearance. I guess let the record
15 show that there was an entry of appearance by Glen L.
16 Houston, who was representing Southwestern.

17 MS. MacQUESTEN: That's right, Mr. Examiner, and
18 Mr. Houston had requested a continuance to this date.

19 EXAMINER JONES: And I don't -- he's not here,
20 so...

21 Any other appearances? Okay, go ahead.

22 MS. MacQUESTEN: Mr. Examiner, if I may explain
23 what we're asking for in this case, this is a plugging case
24 on an inactive well that has contamination at the site.
25 The Application was filed seeking an order determining that

Southwestern, Inc., violated four OCD rules:

Rule 201, because the well has not reported activity since October, 2002, and is not properly plugged and abandoned or on approved temporary abandonment status.

Rule 13.B, because the operator did not conduct its operations to prevent waste of oil, and it allowed oil to leak from its equipment.

Rule 116.D, because the well site showed leakage and contamination that had not been remediated.

And Rule 100, because the operator had not provided appropriate contact information.

We ask for penalties for the violation and an order requiring operator to return the well to compliance and remediate the site, with authority for the State to plug the well and forfeit the applicable financial insurance if the operator failed to return the well to compliance.

After we filed the Application, and after the first hearing setting in this case, the operator cleaned up the contamination at the site and provided the required contact information. The operator has indicated to us that it intends to plug the well.

We are here before you today asking for an order setting a deadline for that plugging of the well.

We are still asking for a penalty in this case in

1 the amount of \$6000, but because the operator has cleaned
2 up the contamination and provided the contact information,
3 we are asking that the Examiner go ahead and waive the
4 \$6000 penalty if the operator plugs the well within a time
5 acceptable to the Examiner.

6 EXAMINER JONES: Now can you say that one more
7 time, that last part?

8 MS. MacQUESTEN: Sure. We will be asking for a
9 penalty in the amount of \$6000, but we are asking that the
10 order provide that the penalty be waived if the operator
11 plugs the well within a time acceptable to the Examiner.

12 EXAMINER JONES: Okay. Didn't sleep much last
13 night, so I might ask you to --

14 MS. MacQUESTEN: You should have an evidence
15 packet in front of you. The first exhibit is the affidavit
16 of notice. We were able to get a return receipt for the
17 operator, Southwestern, Inc., and also to the surety in
18 this case.

19 Exhibit 2 is an affidavit from Dorothy Phillips
20 showing the financial assurance information. This well has
21 a \$7500 single-well cash bond.

22 And with that, I would call Daniel Sanchez.

23 EXAMINER JONES: Will the witness please stand to
24 be sworn?

25 (Thereupon, the witness was sworn.)

1 DANIEL SANCHEZ,
2 the witness herein, after having been first duly sworn upon
3 his oath, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MacQUESTEN:

6 Q. Would you please state your name for the record?

7 A. Daniel Sanchez.

8 Q. By whom are you employed?

9 A. The Oil Conservation Division.

10 Q. What is your title there?

11 A. The compliance and enforcement manager.

12 Q. Do your duties as compliance and enforcement
13 manager include supervising enforcement actions and
14 supervising the district offices?

15 A. Yes, it does.

16 Q. Would you turn to what has been marked as Exhibit
17 Number 3, please?

18 A. Okay.

19 Q. Is this the general well list for Southwestern,
20 Inc.?

21 A. Yes, it is.

22 Q. Does list show all the wells for which
23 Southwestern, Inc., is operator of record in New Mexico?

24 A. Yes, it does, there's three wells on the list.

25 Q. Which well is the well at issue in this case?

1 A. The State VC Number 1.

2 Q. Does the list indicate the last date of reported
3 production or injection for the wells?

4 A. Yes, it does.

5 Q. What is the last date of reported production or
6 injection for the State VC Number 1?

7 A. October of 2002.

8 Q. Have you reviewed the well file for the State VC
9 Number 1?

10 A. Yes, I have.

11 Q. According to the well file, is that well plugged
12 and abandoned?

13 A. No.

14 Q. According to the well file, is that well on
15 approved temporary abandonment status?

16 A. No.

17 Q. When did Southwestern, Inc., become operator of
18 record for this well?

19 A. In 1972.

20 Q. Is Exhibit 4 a copy of the authorization to
21 transport, showing that change of operator to Southwestern,
22 Inc.?

23 A. Yes, it is.

24 Q. What documents appear in the well file after
25 Southwestern, Inc., became operator of record for the well?

1 A. There are two: A C-103, a sundry, which was back
2 in 1981; it concerned a Bradenhead test. And in February
3 of 2003 another sundry was filed to perform remedial work
4 on the well. None of that work was actually performed.

5 Q. So the last record of activity on the well is in
6 2003?

7 A. Yes.

8 Q. Are those two sundries the documents marked
9 Exhibits Number 5 and 6?

10 A. Yes, they are.

11 Q. Could you turn to what's been marked as Exhibit
12 7?

13 A. Okay.

14 Q. What is this document?

15 A. It's an inspection well history for the State VC
16 1.

17 Q. How are inspection histories kept?

18 A. They're entered by the inspector into RBDMS, our
19 database system, and they're done either the day that the
20 inspection was done or shortly thereafter.

21 Q. Could you look at the entry for May 16, 2007, at
22 about the middle of the page?

23 A. Okay.

24 Q. Could you summarize what the inspector reported
25 for that date?

1 A. He reported a violation of Rule 201. The well
2 was out of production for more than one year and three
3 months. There was Rule 115, equipment leaking, needed to
4 repair that. There was also a well-sign violation. He was
5 unable to read the old sign.

6 Q. Does the inspection history show the inspector's
7 attempts to contact the operator regarding the
8 contamination at the site?

9 A. Yes, it does. A couple days after that
10 inspection the inspector, Maxey Brown, attempted to call
11 three times the number that was given to him, or that we
12 had on record. There was also a letter of violation that
13 was sent out to Southwestern at that time.

14 Q. If you could turn to what has been marked as
15 Exhibit Number 8, are those the photos that the inspector
16 took during his inspection, showing the contamination at
17 the site?

18 A. Yes, they are.

19 Q. And if you could turn to Exhibit Number 9, is
20 that the letter of violation that the inspector attempted
21 to serve on the operator, that was returned?

22 A. Yes, it is.

23 Q. And is the last page of Exhibit Number 9 a copy
24 of the returned envelope showing that the post office was
25 unable to deliver it?

1 A. Yes.

2 Q. Where do inspectors go to look for information on
3 contacting an operator?

4 A. They go to RBDMS.

5 Q. Is Exhibit 10 a copy of the RBDMS contact
6 information screen for this operator as it appeared at the
7 time the operator made this inspection?

8 A. Yes, it is.

9 Q. And is the address shown on Exhibit Number 10 the
10 address the inspector tried to use to contact this
11 operator?

12 A. Yes, it is.

13 Q. Where does the information on this screen come
14 from? Who provides it?

15 A. It comes from the operator.

16 Q. Is there a rule requiring the operator to provide
17 such information to the OCD?

18 A. Yes, that's Rule 100.E.

19 Q. What action did the OCD take after its attempts
20 to contact the operator about the contamination failed?

21 A. Well, they did try a number of things. They
22 tried a local phone book, they tried the utility company
23 records, and they also tried back here in Santa Fe. And
24 when all those attempts failed, we went ahead and filed an
25 Application for hearing.

1 Q. Did you expect to get a response from the
2 operator when you filed the Application?

3 A. No. At that time, not being able to get ahold of
4 him, we kind of figured that they may no longer be doing
5 business in New Mexico and that the wells may be orphan
6 wells.

7 Q. Had you -- Had the OCD received production
8 reports for wells recently from this operator?

9 A. There have been some for the two other wells on
10 that list, but not since February.

11 Q. Not since February?

12 A. Huh-uh.

13 Q. Okay. In the Application for hearing we stated
14 that we could not find the operator even registered on the
15 PRC website. Could you cast any light on that?

16 A. Yeah, well, while we were looking for them we
17 were looking under Southwestern, Inc., and no such name
18 came up. After further investigation we tried SW, Inc.,
19 and that brought up the company.

20 Q. Okay, so they are registered?

21 A. They are registered, yes.

22 Q. But at the time we filed the Application it
23 appeared to us that they weren't, and that was another
24 piece of information that led us to conclude we might be
25 dealing with an orphan well situation?

1 A. That's right.

2 Q. Did the OCD hear from the operator after filing
3 the Application?

4 A. Yes, after we filed it we got an e-mail from a
5 Mr. Dwayne Burris on October 12th, I believe.

6 Q. Is Exhibit 11 a copy of that e-mail?

7 A. Yes, it is.

8 Q. What was Mr. Burris's initial response to the
9 Application?

10 A. He was wondering if we really needed to go to
11 hearing. He wanted to enter into an agreed compliance
12 order rather than go to hearing, and he also explained that
13 they were no longer the leaseholder on that well.

14 Q. If they are no longer the leaseholder, why pursue
15 this Application?

16 A. They're not the leaseholder, but they're still
17 the operator of record for that well.

18 Q. If they're not able to plug the well, what action
19 would we take?

20 A. We would request that the State be able to go
21 ahead and go in and plug the well.

22 Q. And for that we'd need to go to hearing --

23 A. Yes.

24 Q. -- the hearing today?

25 Did the operator in fact take action on the well?

1 A. Yes, they did, they went ahead and cleaned up the
2 contamination that was brought up, and they also completed
3 the contact information.

4 Q. How did we find out that they had cleaned up the
5 site and provided the contact information?

6 A. Once again, they e-mailed us, Mr. Dwayne Burris,
7 and --

8 Q. Is that Exhibit Number 12?

9 A. Yes, it is.

10 Q. And the date on that e-mail?

11 A. Was October 30th, this past Tuesday.

12 Q. So Tuesday we learned that they had taken action?

13 A. Yes.

14 Q. Did we send an inspector out to verify that the
15 well had been cleaned up?

16 A. Yes, we did, on that same day.

17 Q. Is Exhibit Number 13 the "after" pictures,
18 showing the cleanup of the site?

19 A. Yes, it is.

20 Q. Is the inspector satisfied that this site is now
21 cleaned up?

22 A. Yes, he was.

23 Q. Has the operator -- did you verify that the
24 operator did register its contact information?

25 A. Yes, Exhibit Number 14 is that RBDMS that shows

1 the address as current.

2 Q. Has the operator indicated how it plans to
3 address the inactive well?

4 A. Yes, a follow-up e-mail on October 30th from Mr.
5 Burris stated that they wanted to go ahead and plug the
6 well.

7 Q. Does he indicate -- is Exhibit Number 15 a copy
8 of that e-mail?

9 A. Yes, it is.

10 Q. Did the operator indicate how much time it would
11 need to plug the well?

12 A. No, he was just asking for a reasonable amount of
13 time.

14 Q. Did the operator indicate how it will obtain
15 access to plug the well if it no longer has the lease?

16 A. No.

17 Q. What are you asking for from the Examiner today?

18 A. Well, we're requiring the operator -- or we're
19 asking the Hearing Examiner to require the operator to get
20 on a plugging list and provide the Examiner with a copy of
21 a letter from a plugger stating when they can get that
22 plugged within 30 days of an order from the Hearing
23 Examiner. We're asking that a date certain be set for
24 plugging, and that date we're looking at is six months from
25 now, April 30th.

1 We would ask that the operator be allowed to
2 request an extension if an issue arises, but that extension
3 must be requested within 30 days prior to the deadline.

4 And if the operator doesn't plug by April 30th,
5 or by an extension the Hearing Examiner might grant, then
6 the OCD would go ahead and request that we be allowed to
7 plug the well and forfeit the financial assurance on that
8 well.

9 Q. Are you seeking a penalty in this case?

10 A. Yes, we are. We're looking at \$6000. The \$6000
11 comes from a thousand dollars for each year that the well
12 was out of compliance and an additional \$1000 for the
13 contamination on the site.

14 We're also asking that the penalty be waived if
15 they meet the deadlines set for plugging.

16 MS. MacQUESTEN: Mr. Examiner, I'd move for
17 admission of Exhibits 1 through 15.

18 EXAMINER JONES: Exhibits 1 through 15 will be
19 admitted.

20 MS. MacQUESTEN: I have no other questions of
21 this witness.

22 EXAMINATION

23 BY EXAMINER JONES:

24 Q. That "after" picture, the sign on Exhibit Number
25 13, is that the same well?

1 A. Yes. They still need to replace the sign.

2 Q. Okay. It kind of looks like State WN Number 1
3 instead of WV Number 1 -- WC Number 1, I mean.

4 Okay, so you've got language now that says plug
5 within 30 -- six months, but they can get an extension, but
6 they have to ask for it 30 days before --

7 A. Before the end --

8 Q. -- the end of the six months?

9 A. Yes.

10 MS. MacQUESTEN: We'd prefer they not come in the
11 day before the six months ends.

12 Q. (By Examiner Jones) Okay. As long as they've
13 got a letter in here asking for that, though, right?

14 A. Yes.

15 MS. MacQUESTEN: And if it's granted.

16 EXAMINER JONES: And if it's granted.

17 MS. MacQUESTEN: We're asking basically that they
18 now deal with the Hearing Examiner on this --

19 EXAMINER JONES: Okay, so they --

20 MS. MacQUESTEN: -- that they work through you,
21 that you give them an order telling them to do it in six
22 months --

23 EXAMINER JONES: Okay.

24 MS. MacQUESTEN: -- and they need to report back
25 to you that they've done it --

1 EXAMINER JONES: Okay.

2 MS. MacQUESTEN: -- in which case we can waive
3 the penalty. Or if they're not able to get a plugging rig
4 by that time, they can ask for an extension. But they'll
5 need to get it from you, otherwise that penalty is going to
6 be due.

7 Q. (By Examiner Jones) Okay. How much will it cost
8 to plug it?

9 A. I have no idea.

10 Q. \$7500 is that the bond on this thing?

11 MS. MacQUESTEN: Yes.

12 EXAMINER JONES: Is that bond held by -- what I
13 mean is, you're not going -- you're not going after the
14 bonding company also in this case, you're going after just
15 the operator?

16 MS. MacQUESTEN: We are going after both. Both
17 were notified, and we are asking that if the operator fails
18 to plug the well, that the State be authorized to plug it
19 and forfeit that financial assurance.

20 EXAMINER JONES: Okay, which means you're going
21 after -- Okay.

22 Okay, that's -- The attorney's letter, I didn't
23 read all of that. What's the gist of that? They just
24 wanted a continuance; is that correct?

25 MS. MacQUESTEN: They had requested a

1 continuance. The operator didn't obtain counsel until the
2 last minute. Counsel had a prior hearing set in another
3 court and wasn't able to meet that first hearing date.

4 We had a telephonic conference with the attorney
5 and the Examiner, and at that point the Examiner gave him
6 until today, but told him that the hearing would proceed
7 today.

8 EXAMINER JONES: Okay. Okay, so that's all the
9 questions, I think.

10 THE WITNESS: Thank you.

11 EXAMINER JONES: With that, we'll take Case
12 14,007 under advisement.

13 (Thereupon, these proceedings were concluded at
14 8:38 a.m.)

15 * * *

16
17 I do hereby certify that the foregoing is
18 a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____.

19 _____, Examiner
20 Oil Conservation Division

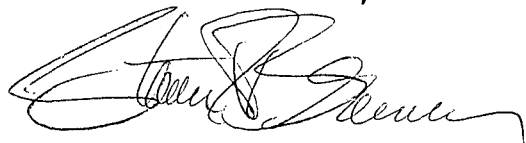
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL November 1st, 2007.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2010