

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST MARKS AND GARNER PRODUCTION LTD. CO: REQUEST FOR DETERMINATION OF NON-COMPLIANCE WITH OCD RULE 19.15.5.9 NMAC FOR VIOLATION OF AN ORDER REQUIRING CORRECTIVE ACTION.

De Novo CASE NO. 14041

MOVANT'S UPDATED PRE- HEARING STATEMENT

The Oil Conservation Division submits this pre-hearing statement pursuant to OCD Rule 19.15.4.13 NMAC.

**On 9/30/09 the Division filed the following
STATEMENT OF THE CASE**

The Applicant has requested this Motion Hearing for the sole purpose of reopening this case to obtain an order determining that operator Marks & Garner Production Ltd. Co. (Marks & Garner) is in violation of an order requiring corrective action as to the below-listed 11 wells, and is therefore in violation of OCD Rule 19.15.5.9 NMAC:

▪	<u>Cities Service State #001</u>	<u>30-025-23551</u>
▪	<u>Graham Federal #003</u>	<u>30-025-28655</u>
▪	<u>Jennings Federal #002</u>	<u>30-025-08149</u>
▪	<u>Kemnitz 17 State #001</u>	<u>30-025-28767</u>
▪	<u>State #002</u>	<u>30-015-02889</u>
▪	<u>Theos State #001</u>	<u>30-015-24732</u>
▪	<u>Lea/UA/State #001</u>	<u>30-025-28484</u>
▪	<u>Northeast Maljamar Unit #001</u>	<u>30-025-21291</u>
▪	<u>Red Twelve Levers Fed #008Q</u>	<u>30-015-25090</u>
▪	<u>State #001</u>	<u>30-015-02888</u>
▪	<u>Gulf Hanagan Fed #001</u>	<u>30-025-08144</u>

On 9/11/09 this Commission issued an Order directed to respondent, Marks & Garner, requiring corrective action. The Order articulated the corrective action that the Commission was requiring that Marks & Garner perform, and imposed specific deadlines upon Marks & Garner for the performance. All such deadlines have now long since past, as has any time period for appeal and the order is now final. Marks & Garner has failed and refused to fully perform the required corrective action mandated by the Order. In particular, included among the

actions ordered by the Commission, Marks & Garner was to have performed the following corrective actions:

- a. Post additional financial assurance for the Northeast Maljamar Unit #001, (30-025-21291). (*Ordering Paragraph 5*).
- b. Submit accurate subsequent-report, Form C-103 sundries (documenting remedial work performed) for the following five (5) wells (*Ordering Paragraph 2*):
 - Cities Service State #001 30-025-23551
 - Graham Federal #003 30-025-28655
 - Jennings Federal #002 30-025-08149
 - Kemnitz 17 State #001 30-025-28767
 - State #002 30-015-02889
- c. Plug and abandon or otherwise bring into compliance by bringing back into production or obtaining approval for temporary abandonment the following six (6) inactive wells (*Ordering Paragraph 1*):
 - Theos State #001 30-015-24732
 - Lea/UA/State #001 30-025-28484
 - Northeast Maljamar Unit #001 30-025-21291
 - Red Twelve Levers Fed #008Q 30-015-25090
 - State #001 30-015-02888
 - Gulf Hanagan Fed #001 30-025-08144

Marks & Garner failed to perform the corrective action ordered by the Commission and is therefore now **in violation of an Order requiring corrective action**. Rule 19.15.5.9.A(2) provides that an operator is not in compliance with Rule 5.9 if, Order is **“issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action....”** *Emphasis Added*.

The OCD is therefore asking that the Commission now issue an Order pursuant to OCD Rule 19.15.5.9A(2) formally reflecting this fact - determining that Marks & Garner is in violation of an Order requiring corrective action and is therefore not in compliance with OCD Rule 5.9.

UPDATE as of DECEMBER 9, 2009:

Despite the Respondent having received the above-cited Statement of Case on September 30, 2009, with only one exception, all of the above-referenced wells remain in violation now, over two months later. The sole exception is that the Theos State #001 has now been plugged and abandoned and the site has been released by the OCD District Office. Three other wells (State #002, Graham Federal #003 and Jennings Federal #002) have reported minimal amounts of production, removing them from the “inactive well list.” However, these same three wells still have outstanding subsequent-report C103s that Respondent was specifically ordered to file and has still failed and refused to submit, and thus the wells are still not in compliance.

Additionally, the Division would like to note that two of the wells Respondent was originally ordered to plug and abandon or otherwise bring into compliance, the Cave Pool Unit #27 and the Cave Pool Unit #36, which have now been plugged and abandoned *but not released* (and additional financial assurance is still therefore owed), were plugged **by the state and at the state's expense**, and if these are considered to now no longer be "inactive," it is only due to the efforts and expense of the OCD, not the Respondent.

The Division has now filed Notice of Intent sundries to plug the Kemnitz 17 State #001 and the Cities Service State #001.

APPLICANT'S PROPOSED EVIDENCE

WITNESSES

Daniel Sanchez, Enforcement & Compliance Manager

ESTIMATED TIME:

45 minutes

PROCEDURAL MATTERS

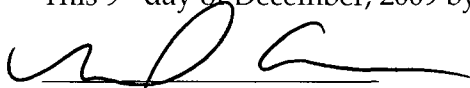
None.

EXHIBITS

- A. *Oil Conservation Commission Order No. 12963-A issued in Case No. 14041, de novo, on September 11, 2009. Previously submitted with original prehearing statement on September 30, 2009.*
- B. *Inactive Well List from OCD Online for Operator Marks & Garner, OGRID 14070, printed September 30, 2009. Previously submitted with original prehearing statement on September 30, 2009.*
 - B.1. Updated *Inactive Well List* printed on December 8, 2009.
- C. *Inactive Well Additional Financial Assurance Report from OCD Online for Operator Marks & Garner, OGRID 14070, printed on September 30, 2009. Previously submitted with original prehearing statement on September 30, 2009.*
 - C.1 Updated *Inactive Well Additional Financial Assurance Report* printed on December 8, 2009.
- D. *OCD Online records regarding Marks & Garner wells: Cities Service State #001, Graham Federal #003, Jennings Federal #002 , 30-025-08149, Kemnitz 17 State #001, and State #002 . Previously submitted with original prehearing statement on September 30, 2009.*
 - D.1 Updated OCD Online records for *Cities Service State #001* and *Kemnitz 17 State #001* obtained from OCD Online 12/8/09.
- E. *OCD Online records regarding Marks & Garner wells: Theos State #001, Lea/UA/State #001, Northeast Maljamar Unit #001, Red Twelve Levers Fed #008Q, State #001 and Gulf Hanagan Fed #001. Previously submitted with original prehearing statement on September 30, 2009.*

- E.1 Updated OCD Online records for *Lea/UA/State #001, Northeast Maljamar Unit #001, Red Twelve Levers Fed #008Q, State #001 and Gulf Hanagan Fed #001* obtained from OCD Online 12/8/09.
- F. Commission Order No. R-12132-B (Case No. 13163).
- G. Sundries filed for the Marks and Garner Cave State #027 and Cave State #036 wells reflecting plugging performed by the NMOCD.

Respectfully submitted
This 9th day of December, 2009 by



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Energy, Minerals and Natural
Resources Department
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Attorney for the Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon counsel for Marks & Garner Production Ltd., Co. via email at epadillaplf@qwestoffice.net and upon Quinton Wellborn, manager of Marks & Garner, via email at Qwelborn@valornet.com this 9th day of December, 2009.



Mikal Altomare