

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

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

**APPLICATION OF THE NEW MEXICO
OIL CONSERVATION DIVISION FOR AN
ORDER REQUIRING MARKS AND GARNER
PRODUCTION LTD. CO. TO PROPERLY
PLUG AND ABANDON SEVENTEEN (17) WELLS,
AUTHORIZING THE DIVISION TO PLUG
SAID WELLS IN DEFAULT OF COMPLIANCE
BY MARKS AND GARNER PRODUCTION LTD. CO.,
ORDERING FORFEITURE OF APPLICABLE
PLUGGING BOND
AND ASSESSING CIVIL PENALTIES FOR
FALSE PRODUCTION REPORTING,
EDDY COUNTY, NEW MEXICO.**

CASE NO. 12757, *de novo*

ORDER NO. R-11753-A

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER, having come before the Oil Conservation Commission (hereinafter referred to as "the Commission") on July 19, 2002, at Santa Fe, New Mexico on the application of the Oil Conservation Division (hereinafter referred to as "the Division") for an order requiring Marks and Garner Production Ltd. Co. (hereinafter referred to as "Marks and Garner") to properly plug and abandon inactive wells in Eddy County, for an order authorizing the Division to plug the wells in the event the operator or its surety fails to do so, providing for forfeiture of the plugging bond if necessary, and requesting the assessment of civil penalties for false production reporting, and the Commission, having carefully considered the evidence, the pleadings and other materials submitted by the parties hereto, now, on this 27th day of September, 2002,

FINDS,

1. Notice has been given of the application and the hearing on this matter, and the Commission has jurisdiction of the parties and the subject matter herein.

2. This matter concerns nineteen (19) inactive wells in Eddy County, New Mexico operated by Marks and Garner described below:

<u>API Number</u>	<u>Well Name & Number</u>	<u>Well Location</u>
30-015-02784	Cave Pool Unit No. 1	660' FSL & 1780' FEL, Unit O, 33-16S-29E
30-015-02892	Cave Pool Unit No. 3	985' FNL & 987' FEL, Unit A, 4-17S-29E
30-015-02880	Cave Pool Unit No. 12	1980' FNL & 660' FEL, Unit H, 4-17S-29E
30-015-02881	Cave Pool Unit No. 14	1980' FNL & 1980' FEL, Unit G, 4-17S-29E
30-015-02875	Cave Pool Unit No. 16	1973' FNL & 330' FWL, Unit E, 3-17S-29E
30-015-02893	Cave Pool Unit No. 17	2310' FSL & 660' FEL, Unit I, 4-17S-29E
30-015-02886	Cave Pool Unit No. 19	1980' FSL & 1880' FWL, Unit K, 4-17S-29E
30-015-02906	Cave Pool Unit No. 22	1980' FSL & 1980' FEL, Unit J, 5-17S-29E
30-015-02891	Cave Pool Unit No. 30	990' FSL & 2310' FEL, Unit O, 4-17S-29E
30-015-02927	Cave Pool Unit No. 32	660' FNL & 660' FEL, Unit A, 9-17S-29E
30-015-02926	Cave Pool Unit No. 41	1650' FNL & 330' FWL, Unit E, 8-17S-29E
30-015-02903	Cave Pool Unit No. 51	1650' FSL & 990' FWL, Unit L, 5-17S-29E
30-015-02912	Cave Pool Unit No. 53	1650' FNL & 330' FEL, Unit H, 7-17S-29E
30-015-25090	Red Twelve Levers Federal No. 8Q	1980' FSL & 990' FEL, Unit I, 33-16S,29E
30-015-25152	Red Twelve Levers Federal No. 12	660' FNL & 660' FWL, Unit D, 33-16S-29E
30-015-24991	Red Twelve St. No. 4	990' FSL & 2310' FEL, Unit O, 5-17S-29E
30-015-25055	Red Twelve St. No. 6	2310' FSL & 1650' FEL, Unit J, 5-17S-29E
30-015-02889	State No. 2	990' FNL & 1980' FWL, Unit C, 4-17S-29E
30-015-24732	Theos State No. 1	1650' FNL & 1650' FEL, Unit G, 5-17S-29E

3. The Division originally sought plugging and abandonment of all the wells listed in paragraph 2. The Division now seeks plugging and abandonment of the Cave Pool Unit Wells No. 3, 14, 16, 32 and 53 only, as the remaining wells have now been brought into compliance with the rules and regulations of the Division. The Division seeks forfeiture of the relevant financial assurance of Marks and Garner in the event Marks and Garner fails to plug and abandon these five wells.

4. The Division also seeks assessment of civil penalties for false production reporting for false production reports submitted by Marks and Garner on seventeen (17) wells: the Cave Pool Unit Wells No. 1, 3, 12, 14, 16, 17, 19, 22, 30, 32, 41 and 53, the Red Twelve Levers Federal Wells No. 8Q and 12, the Red State Well No. 6, the State No. 2 and the Theos State No. 1. During the Division proceedings, the Division requested a penalty in the amount of \$1,000 per month for each well that was reported falsely.

5. The Division no longer seeks any relief with respect to the Cave Pool Unit No. 51, from which no production was reported, and the Red Twelve State No. 4, which is apparently an injection well.

6. The Division appeared through its counsel and presented evidence. Marks and Garner appeared through its counsel and presented evidence.

7. During the hearing, the parties stipulated that the record of the Division in this matter should also be considered. Therefore, administrative notice is taken of the record of proceedings before the Division, including the transcript of the hearing of January 10, 2002, the exhibits submitted during that hearing, and the other papers of the Division in this matter.

8. The Division's filing in this matter originates from a project of the Oil Conservation Division referred to as the "Inactive Well Project." This project seeks to identify wells that have not produced for two years or more and have not complied with the requirements for temporary abandonment or plugging and abandonment. The operator is notified of the discrepancy by letter and is requested to bring the wells into compliance with the rules and regulations of the Division.

9. Marks and Garner received a letter in connection with the Inactive Well Project in September 2000. The letter identified the wells that are the subject of this hearing as inactive and informed Marks and Garner of its obligation to submit a plan to correct the situation within thirty days.

10. Immediately following receipt of the letter referred to in the previous paragraph, Marks and Garner began reporting production from 16 wells, each of which had not reported production since at least 1997. The wells which suddenly commenced production in September 2000 are the Cave Pool Unit Wells No. 1, 3, 12, 14, 16, 17, 19, 22, 30, 32, 41, 53, the Red Twelve Levers Federal No. 8Q and 12, the Red Twelve State No. 6 and the Theos State No. 1. Another well, the State No. 2, reported production during 1997 and 1998, but ceased production from 1998 until September, 2000, when it too began reporting production.

11. The amounts of production reported were always very small, often as little as one barrel of crude oil per month. The greatest reported amount of monthly production from any well was 18 barrels. Marks and Garner reported these small amounts of production each month from September 2000 through August 2001.

12. Division inspectors visited the wells on numerous occasions in the year 2000 and 2001. In most cases, inspections disclosed that the wells in question were incapable of production.

13. For example, Division witnesses testified that during an inspection on January 30, 2001 the Cave Pool Unit No. 1 was not capable of production; no motor was present on the pump jack and there was no production tubing in the well.

14. Division inspections of the Cave Pool Unit No. 3 revealed that the wellhead had a piece of tubing sticking out of it, no pumping unit was present, and the well was not capable of production. The inspection also disclosed a large mesquite bush growing on the side of the wellhead. The condition of the well was unchanged during inspections on January 30, 2001 and June 15, 2001.

15. Similarly, an inspector found the Cave Pool Unit No. 12 incapable of production because there was no electrical connection to the motor. The same condition existed at the well during inspections of January 30, 2001 and June 15, 2001.

16. A Division inspector visited the Cave Pool Unit No. 14 on January 30, 2001, February 13, 2001 and October 16, 2001 and on each occasion observed the well was incapable of production. The well had a wellhead, a piece of 2 7/8 tubing and a 2-inch ball valve, but it had no flow lines, no pump jack and no platform for a pumping unit.

17. A Division inspector visited the Cave Pool Unit No. 16 on January 30, 2001, June 12, 2001 and October 16, 2001. The inspector observed that the casing head was buried in the ground, with 2 7/8 inch tubing sticking out of the ground, and a 2-inch ball valve. The well had no flow lines or production equipment, and electrical lines were not hooked up. The inspector also observed that foliage was growing around the wellhead, and an electrical box and a piece of wood standing where they would have been disturbed by any activity. On each occasion, the inspector found the well in the same condition.

18. The Cave Pool Unit No. 19 was inspected on January 30, 2001 and June 12, 2001. On the first inspection, there was a pumping unit at the well but no motor to operate the unit. When the well was inspected in June, 2001 the pumping unit had been removed and all that was left was a rod sticking up out of the hole.

19. The Cave Pool Unit No. 30 was inspected on January 30, February 13, and June 15, 2001. During each inspection, the well had a pumping unit but lacked a motor and the inspector observed that the well therefore was not capable of production.

20. The Cave Pool Unit No. 32 was inspected on January 30 and October 16, 2001. That well also had foliage and large boards within proximity of the well head. The well was not capable of production, and the site was unchanged between inspections.

21. The Cave Pool Unit No. 41 was inspected on February 12, 2001, October 16, 2001 and December 3, 2001. On those occasions, the inspector observed that the well had only "a piece of casing" extending above the surface of the ground and that the well had no casing head, no flow lines and no pumping unit. The well was unchanged in the

first two inspections. During the third inspection, the operator was attempting to temporarily abandon the well.

22. The Cave Pool Unit No. 51 was inspected on January 31, March 6 and November 16, 2001. It was incapable of production during each visit, and the inspector noted tubing coming out of the well head, but no flow lines or pumping unit were present.

23. An inspector visited the Cave Pool Unit No. 53 on January 31, March 6, October 16 and November 16, 2001. The well was incapable of production during each visit, and the inspector observed a piece of casing sticking out of the ground with a bell nipple and a 2-inch ball valve, and no flow lines or pumping unit were present.

24. The Red Twelve Levers Federal No. 8Q was inspected on January 31, October 16 and November 30, 2001. The inspector observed that the well was incapable of production; it had only a piece of casing sticking out of the ground with a bell nipple in the top with a small 2-inch gate valve and a nipple, and lacked flow lines and a pumping unit.

25. The Red Twelve Levers Federal No. 12 was inspected on January 31 and October 16, 2001. The inspector observed that the well was incapable of production; it had only a piece of casing sticking out of the ground with a bell nipple and a 2-inch valve, but lacked flow lines and a pumping unit.

26. An inspector visited the Red Twelve Levers State No. 6 on January 31, June 17, October 16 and twice in November 2001. The well was incapable of production on those occasions. The inspector noted its condition was unchanged on each occasion and the well had a well head and a 2-inch pipe with a ball valve, but no flow lines and no pumping unit.

27. The State No. 2 was inspected on January 30 and June 15, 2001. The inspector noted its condition was unchanged on each occasion and while the well was theoretically capable of production, it had no pumping unit and no motor.

28. The Theos State No. 1 was inspected on January 30, 2001. The inspector found that the well was incapable of production on each visit; it had no rods in the hole, and no motor on the pumping unit.

29. Finally, inspections revealed that two wells from which production was reported, the Cave Pool Unit No. 17 and the Cave Pool Unit No. 22, are in fact plugged and abandoned and not capable of production by any means.

30. Marks and Garner's witnesses contended during the hearing that production had been reported accurately. Marks and Garner claimed that the wells had been

produced using portable production equipment or through an unconventional means called "swabbing."

31. Marks and Garner's witnesses contended that a portable pump jack was used to produce wells that had rods and a pump. The oil was produced into a portable tanks or through a flow line to a central tank battery. Marks and Garner's witnesses contended that it would install motors on a temporary basis to produce wells that had a pump jack, rods and a pump but lacked a motor. The crude oil was produced into a portable tank or through a flow line to a central tank battery. Marks and Garner witnesses testified that other wells would be produced using a casing swab. The witnesses testified that this production technique involved bringing a rig to the well, removing the well head and swabbing the casing with a tool. The fluids recovered by this method were placed into a portable tank and transported to the central tank battery. When swabbing was complete, the well head would be replaced.

32. Marks and Garner testified at length to its conversations with employees in the Division's Artesia Office concerning the proposed operation. After receiving the Division's letter in September of 2000, Marks and Garner testified that it submitted a form C-103 on each well, proposing to produce many of the wells by casing swabbing. After the submissions were rejected by the District Office, several conversations with employees of the Artesia office ensued, and Marks and Garner believed that the upshot of those conversations was that they could swab wells so long as they submitted C-103s and wrote on the form that the swabbing was for the purpose of "testing and evaluating" the wells. The amended submissions that described operations in this manner were never approved by the District Office. Marks and Garner took this inaction as approval of the proposed operation.

33. It is very evident that the wells operated by Marks and Garner described above are not capable of production in the conventional sense. Many wells have no production equipment at all. Most lack flow lines to carry the product to the central tank battery. Many wells lack a down hole pump or rods. Some wells even lack production tubing. Those wells that have rods sometimes lack a pump jack to operate the pump. Those wells with a pump jack lack a motor or are not connected to an electrical supply.

34. Nor is Marks and Garner's contention that the wells were produced either with portable production equipment or by swabbing supported by the evidence. It is thus evident that Marks' and Garner submitted false production reports as alleged by the Division.

35. Many reasons for this finding exist. First, there is the coincidence of production from wells that had been inactive since at least 1997 with receipt of a letter of the Inactive Well Project imposing a thirty-day deadline to submit a plan to bring the wells into compliance. Then, there is reported production from two wells that had been plugged and abandoned. A plugged well cannot produce crude oil or natural gas, even

through the unorthodox methods described by Marks and Garner. Reporting such production suggests that Marks and Garner didn't know the wells were plugged and abandoned and supports the Division's theory that the production reports were filed to relieve Marks and Garner of the obligation to service the wells, bring them back into compliance with rules and regulations by producing them, temporarily abandoning them, or plugging and abandoning them. Then there is the reporting of *de minimus* amounts of production, and the fact in several cases that amounts reported are the same in successive months. There is the extremely poor condition of the wells and well sites, evident from the testimony and the photographs.

36. Next, there is the matter of the Red Twelve Levers Well No. 12. A Marks and Garner witness testified that the No. 12 had been recently perforated and that once perforated, it produced natural gas. A photograph was shown to verify this fact. The well file on this particular well indicates that the well was perforated on September 12, 2000 (administrative notice is taken of the well file). However, Marks and Garner persistently submitted production reports beginning in September 2000 (the month it was perforated and first produced gas) and continuing through August 2001 stating that the well produced "oil" and "water." However, the well, in the words of the witness, was "not hooked up to a gas-flow line at this point ..." No explanation was provided why a gas well was reported as producing oil and water and how the production was even obtained. Since being drilled in 1984, Division records show the Red Twelve Levers Well No. 12 had never produced anything (and could not, since it was not perforated).

37. Then there is Marks and Garner's contention that some wells were produced by swabbing. This contention is not plausible given the physical evidence. Removal of a well head to facilitate swabbing involves use of a large rig, which would have to be driven to the site and mounted over the well head. The well head is removed with wrenches or a chain tool. Then the well is swabbed into a portable tank or existing flow lines, the well head is remounted and the operation proceeds to the next well.

38. No sign of any of this activity was observed by Division inspectors. Indeed, inspectors testified to the presence of mesquite bushes near several well heads, and the bushes can be clearly seen in the photos. Several wells had boards or other objects that would have restricted access to the well head. No signs of the movement of a large drill rig or supporting vehicles was observed by Division inspectors, who had difficulty driving to some of the wells. Similarly absent was any sign that any well heads had been removed (scratches, marks, gouges) and no such evidence can be observed in the photographs. Indeed, some of the well heads appear to be severely rusted. Many sites lacked any evidence of the "dead men" needed to secure a rig during the operation, and several of the sites lacked any discernable roads. Marks and Garner's description of their

swabbing activity during the time period in question simply cannot be squared with this evidence.¹

39. Finally, there is the matter of the log book. At the invitation of the Chair, Marks and Garner presented the largely illegible book to the Commission after the hearing in this matter was concluded. One Marks and Garner employee referred to the log book during his testimony, yet the log book was not produced during the hearing, and the witness was not examined concerning its preparation.

40. Even assuming the document is admissible under these circumstances (the Division has objected to its admission), its contents do not support Marks and Garner's contentions. For one, the log begins on September 1, 2000 and concludes on December 21, 2000, only a fraction of the relevant period at issue here. The log book contains no references concerning four of the seventeen wells that are the subject of this proceeding: the Red Twelve Levers Federal No. 8Q, the Red Twelve Levers No. 12, the Red Twelve Levers State No. 6 and the Theos State No. 1. A great deal of the reported production detailed in the log cannot be correlated with the production reports submitted by Marks and Garner. The Division's observation concerning the uniform writing style and the obvious alterations are also well taken, and it seems reasonable to conclude that, at a minimum, the log book was either altered to correlate with production reporting or may even have been reconstructed from other documents. In any event, it is not the highly comprehensive document that this body was led to believe it was, and certainly does not corroborate Marks and Garner's contentions in this matter.

41. Rule 1115 [19 NMAC 15.M.1115] of the Rules and Regulations of the Oil Conservation Division requires each operator of a crude oil or natural gas well in the State of New Mexico to report each month the actual production from each well.

42. The Oil and Gas Act, NMSA 1978 Section 70-2-31(B)(2)(a), makes it unlawful for any person to knowingly and willfully, for the purpose of evading or violating the Oil or Gas Act or any rule, regulation or order of the Division or the Commission to:

"make any false entry or statement in a report required by the Oil and Gas Act [NMSA 1978 Sections 70-2-1 through 70-2-38, as amended] or by any rule, regulation or order of the commission or division issued pursuant to that act[.]"

¹ It should also be noted that approval to produce the wells by swabbing had not been granted by the Division's Artesia office. It is not reasonable, as Marks and Garner testified it did, to treat the silence of the District Office on its applications as "approval" of the operation.

43. The Oil and Gas Act, NMSA Section 70-2-31(A), provides for a civil penalty up to \$1,000 per violation for knowingly or willfully violating any provision of the Oil and Gas Act or regulations of the Oil Conservation Division:

Any person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation.

44. The evidence described above demonstrates that Marks and Garner falsely reported production from fourteen (14) wells that were not capable of production for each of twelve (12) consecutive months during the period from September, 2000 through August, 2001. The evidence described above demonstrates that Marks and Garner falsely reported production of oil and water from one (1) well that had been completed as a gas well but was not capable of production of gas, water or oil during the period from September 2000 through August 2001, and falsely reported production from two (2) wells that had previously been plugged and abandoned for each of nine (9) consecutive months during the period from September, 2000 through May, 2001.

45. Marks and Garner's false production reports were knowingly and willfully made and made for the purpose of evading the Oil and Gas Act and rules and regulations of the Commission and/or Division in that the operator either intentionally filed false production reports knowing that the reported production did not occur, or the operator filed reports concerning matters that it had a duty to report truthfully to the division, knowing that it had no knowledge whether such reports were true or false.

46. A civil penalty for false production reporting should be assessed in the amount of two hundred dollars (\$200) for each false report submitted. This equates to a total civil penalty in the amount of thirty-six thousand dollars (\$36,000) (15 wells falsely reported on 12 monthly reports). Two other wells were falsely reported on nine monthly reports, but those wells had been plugged and abandoned and were otherwise in compliance with the Rules and Regulations of the Division, so no fine should be assessed for the false production reporting from those wells.

47. Finally, five (5) wells, being the Cave Pool Unit Wells No. 3, 14, 16, 32 and 53, have not produced hydrocarbons and have been inactive for a period in excess of one year, and no permit for temporary abandonment has been requested by Marks and Garner or approved by the Division. The current condition of these wells is such that if action is not taken to properly plug and abandon these wells, waste may occur and correlative rights may be violated, and the public health and safety and fresh water may be endangered. Marks and Garner have agreed to plug these wells in accordance with a Division-approved plugging program, and received approval of the Division for plugging and abandonment. There being no dispute concerning the plugging and abandonment of these five (5) wells, they should be plugged and abandoned forthwith.

IT IS THEREFORE ORDERED THAT :

1. A civil penalty is hereby assessed against Marks and Garner Production Ltd. Co. in the amount of thirty-six thousand dollars (\$36,000). The civil penalty assessed herein shall be paid within thirty (30) days of receipt of this order by certified or cashier's check made payable to the order of the New Mexico Oil Conservation Division and mailed or delivered to the New Mexico Oil Conservation Division, Attention: Lori Wrotenbery, Director, 1220 South St. Francis Drive, Santa Fe, New Mexico, 87505.

2. Marks and Garner Production Ltd. Co. is hereby ordered to plug and abandon the following five (5) wells located in Eddy County, New Mexico forthwith in accordance with a plugging procedure approved by the supervisor of the Division's Artesia District Office:

- (a) Cave Pool Unit Well No. 3 (**API No. 30-015-02892**), located 985 feet from the North line and 987 feet from the East line (Unit A) of Section 4, Township 17 South, Range 29 East;
- (b) Cave Pool Unit Well No. 14 (**API No. 30-015-02881**), located 1980 feet from the North and East lines (Unit G) of Section 4, Township 17 South, Range 29 East;
- (c) Cave Pool Unit Well No. 16 (**API No. 30-015-02875**), located 1973 feet from the North line and 330 feet from the West line (Unit E) of Section 3, Township 17 South, Range 29 East;
- (d) Cave Pool Unit Well No. 32 (**API No. 30-015-02927**), located 660 feet from the North and East lines (Unit A) of Section 9, Township 17 South, Range 29 East; and
- (e) Cave Pool Unit Well No. 53 (**API No. 30-015-02912**), located 1650 feet from the North line and 330 feet from the East line (Unit H) of Section 7, Township 17 South, Range 29 East.

3. Prior to commencing plugging operations on the above-described wells, the operator shall notify the Artesia District Office of the date and time this work is to commence, so that the Division may witness the work.

4. Should Marks and Garner Production Ltd. Co. or its surety fail or refuse to carry out the provisions of Ordering Paragraphs 2 and 3 by March 31, 2003, the Division is authorized to take such action as may be necessary to cause such wells to be properly plugged and abandoned. Further, the Division is authorized to take such action as may be necessary to forfeit the \$50,000 blanket plugging bond (United States Fidelity and Guaranty Company Bond No. 01-0130-920-77) and to recover from the operator any

costs in excess of the amount of the bond incurred by the Division in effecting the plugging and abandonment of these wells.

5. Jurisdiction of this case is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

LORI WROTENBERY, CHAIR

JAMI BAILEY, MEMBER

ROBERT LEE, MEMBER

SEAL