

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

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

IN RE. CROSS BORDER RESOURCES, INC. Case No. 22224

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, DECEMBER 1, 2021

EXAMINER HEARING

This matter came on for hearing before the New Mexico Oil Conservation Division before Hearing Examiner, Ripley Harwood, Esq. on Wednesday, December 1, 2021, via Webex Virtual Conferencing Platform hosted by the New Mexico Department of Energy, Minerals and Natural Resources

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A P P E A R A N C E S

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1 (Time noted 9:04 a.m.)

2 EXAMINER HARWOOD: All right. So let me  
3 proceed. We will call Case 22224, and that's a Notice of  
4 Violation issued on Cross Border Resources, Incorporated.

5 Mr. Tremaine, I understand you are counsel  
6 for OCD in that case.

7 Mr. Padilla, are you counsel for Cross  
8 Border Resources?

9 MR. PADILLA: Yes, I am.

10 EXAMINER HARWOOD: All right. And I notice -- I  
11 guess before we get to any merits issues in this case, I  
12 notice that there was a Motion to Continue filed yesterday  
13 by Mr. Padilla, and that's opposed.

14 Mr. Padilla, it's your motion, let's  
15 proceed with your motion before we get into any of the  
16 merits.

17 MR. PADILLA: Mr. Examiner, the motion basically  
18 speaks for itself. I had little time to prepare for this  
19 case. I'm only asking to continue to the next hearing,  
20 next available hearing. I don't know when that would be,  
21 whether it would be later December or early January.

22 The reason for the motion is basically that  
23 I don't have any information as to, for example, whether  
24 state leases, fee leases, federal leases are at issue. I  
25 have been retained by Cross Border to represent them in a

1 trial by the State Land Office. I'm not familiar with  
2 those issues. I know they have been defaulted in that  
3 litigation.

4 I have litigated against State Land Office,  
5 and there's basically no room for negotiation there, but  
6 here, if we go back to the second case, the Smith and  
7 Marrs case that is listed here, Mr. Tremaine and I have  
8 essentially worked that case out. And that's what I  
9 propose to do here is to be able to somehow get my client  
10 moving and educated, essentially, to comply with the OCD  
11 requirements.

12 I don't know of any environmental urgent  
13 matters that could be there. I do know that having  
14 represented another client in that general area of  
15 Northern Travis County, that the operator there lost the  
16 ability to sell natural gas, and that eventually you need  
17 to get rid of the gas. You can't vent it, you can't do  
18 anything. And that particular gas has hydrogen sulfide,  
19 which you certainly can't vent that, stuff because it's  
20 deadly.

21 But it's those factors that I'm trying to  
22 put together. In addition to that, I have another  
23 potential client that wants to buy the Cross Border  
24 Resources interests, and I don't know whether they even  
25 exist or not -- probably not as far as the State Land

1 Office is concerned.

2 But I just need to be able to see what the  
3 lay of the land is in order to participate in some kind of  
4 negotiated settlement with the OCD.

5 I know Mr. Tremaine, he's going to contend  
6 that Cross Border hasn't responded to Notices and that  
7 kind of thing, but I think that was the situation with the  
8 Smith and Marrs case, and we worked that out, and I think  
9 we are down to almost the final resolution for doing it.

10 And he's been very good about continuing  
11 that case, as well.

12 So that's my position as far as the Motion  
13 to Continue. I don't think that it would prejudice the  
14 OCD to hear this case two weeks from now or whenever we  
15 can schedule it.

16 EXAMINER HARWOOD: Okay, Mr. Padilla. Thank  
17 you.

18 Mr. Tremaine, would you weigh in, please.

19 MR. TREMAINE: Yes, sir. Thank you, Mr. Hearing  
20 Examiner.

21 Well, first of all I'm sympathetic to  
22 Mr. Padilla. I understand that he entered into this case  
23 late, he was retained quite late, and so the reason for my  
24 opposition to the continuance, in order to explain that, I  
25 need to differentiate Mr. Padilla's request and the fact

1 that Cross Border Resources' conduct created the need for  
2 the request.

3           You know, as he entered into the case late,  
4 I do think that to the extent that he hasn't had the  
5 opportunity to prepare for the hearing, and that's his  
6 representation, that it is a reasonable request. I think  
7 at this time my opposition would be to any kind of  
8 continuance beyond a couple of weeks.

9           But I do think I need to speak to the rest  
10 of the bullets in Mr. Padilla's motion. Specifically, I  
11 understood the request for clarification on Bullets 5  
12 and 6, the basis for OCD's opposition to this.

13           You know, based on the -- this is all laid  
14 out in the Prehearing Statement, so I don't want to  
15 belabor it here, but the timeline here is, is Cross Border  
16 Resources did in fact receive Notice of the -- Notice Of  
17 Violation back in August, and at that time -- both by  
18 email and by Certified Mail that we've confirmed with the  
19 tracking.

20           There have been subsequent Notices. OCD  
21 has gone to great length to try to contact them.

22           I noticed, in filing some C-103s,  
23 indirectly that Mr. Barksdale used a different email  
24 address, so I started copying multiple different emails  
25 there.

1                   We heard no response.

2                   So, you know, if they are waiting until the  
3 date of the Prehearing to retain counsel in this case  
4 while not responding to a regulating agency for almost  
5 four months, if that's not intentional, it's at least  
6 negligent.

7                   So the issue that we have is the conduct of  
8 the operator.

9                   And I want to speak to the prejudice  
10 component. There is actually quite a possibility of  
11 prejudice here. OCD doesn't have the information  
12 necessary to know what kind of state Cross Border  
13 Resources is currently in, but my suspicions were  
14 confirmed by Mr. Padilla just now that they are talking  
15 about a sale, because they certainly look like they are  
16 considering sale or bankruptcy. So further delay could  
17 significantly prejudice the OCD, because a delay while  
18 they work on whatever it is they are working on could mean  
19 there is a significant further delay down the road, which  
20 delays OCD being able to plug and abandon these wells, if  
21 Cross Border Resources is not able to do it.

22                   I don't want to get too far into the weeds  
23 but we have -- in the exhibits you'll see a number of  
24 C-103s for Notice of Intent to Plug and Abandon Wells.  
25 Those were managed through basically back channel. The

1 other operator who was dealing with the matter with the  
2 State Land Office was able to make contact with Mr.  
3 Barksdale and get those C-103s submitted so that that  
4 other operator could plug and abandon the wells. During  
5 that period of time Cross Border completely ignored the  
6 Division and made no contact.

7           There's other factors, as well. I mean,  
8 they are a Registered Agent in New Mexico that resigned  
9 four years ago. They don't seem to have any presence  
10 here, and complete lack of communication.

11           So I can't -- based on there being no  
12 justification for why they waited until the last minute to  
13 bring on counsel, I couldn't simply agree to postpone this  
14 for any period of time.

15           The other factor is that -- and this is an  
16 administrative burden that OCD will likely have to bear,  
17 but if we moved this case to a regular hearing date then  
18 we are tying up our bond administrator for probably an  
19 entire day as a witness, because he will be the witness in  
20 that case, and he will have to be available while those  
21 other cases move forward, depending on where this comes up  
22 on the docket.

23           So there is an administrative burden to the  
24 OCD, as well.

25           So with that, Mr. Examiner, I have said my

1 piece.

2                   And I do understand that Mr. Padilla hasn't  
3 had the opportunity to get up to speed, so if you do  
4 decide to continue this matter, I ask for it to be no more  
5 than two weeks or the next available hearing date.

6                   EXAMINER HARWOOD: Do you know when the next  
7 available hearing date is on these? I mean, I assume that  
8 these violation hearings are set separately from other OCD  
9 hearings. Do we know when the next date is?

10                   MR. TREMAINE: Well, there's not another  
11 currently scheduled docket date. At any given time  
12 there's, you know, 5 to 10 Notices of Violation that are  
13 docketed, so we tend -- what we have been doing is  
14 scheduling one Special Docket date.

15                   So the way things are stacking up right now  
16 I don't expect one until probably February. So there's  
17 not one scheduled. That's why I'm saying we'd have to --  
18 if it's a shorter continuance it would have to go on a  
19 regular docket date.

20                   EXAMINER HARWOOD: I see. Okay.

21                   Well, let me just say that I'm sympathetic,  
22 as well, with Mr. Padilla's plight, because I've been  
23 there myself on numerous prior occasions. But, you know,  
24 I also am sympathetic to the argument that Cross Border  
25 Resources waited till the last minute to hire counsel.

1 You know, I think probably the last unsophisticated owner  
2 of oil wells was probably the Beverly Hillbillies, and so  
3 if the Notice of Violation was correctly addressed and if  
4 Notice was timely received, I don't think it's reasonable  
5 for a sophisticated operator to wait till the last minute  
6 to hire counsel. You know, that puts everybody in a  
7 difficult position, and the blame rests squarely with the  
8 operator.

9                   Let me ask you this, Mr. Tremaine: If we  
10 were to continue this to the February docket, or, you  
11 know, a future docket, and if the agency were to prevail  
12 on the merits of its claim, could it retroactively adjust  
13 penalties from today's hearing date? Would there be a  
14 way, in other words, to, you know, undo and compensate for  
15 the harm that results from the delay?

16                   MR. TREMAINE: I'm not sure how to answer that.

17                   I think in preparation of the next hearing  
18 date you will likely see updated civil penalties based on  
19 the ongoing violation.

20                   I'll be perfectly transparent in that,  
21 because of what I could dig up about Cross Border  
22 Resources, at least their presence in New Mexico and the  
23 fact that they were completely unresponsive, I have  
24 suspected that they were basically not operational. And  
25 so going into this hearing there wasn't much efficacy in

1 updating the civil penalties. That's why you see the  
2 request to revoke authorization to transport rather than  
3 an updated civil penalty of ongoing violation.

4           So long-form answer of, you know: If they  
5 are around and kicking that may be appropriate, and I  
6 would do that in advance of the next hearing. Uhm,  
7 however, you know, I think that the primary concern is  
8 going to be what happens with these wells. This is  
9 suspicion, because we don't have their financials, and  
10 based on their bonding situation OCD is pretty concerned  
11 that they are going to have to plug the wells. If that's  
12 the case, we want them on our list sooner rather than  
13 later. And, you know, the civil penalties I think are an  
14 appropriate compliance tool, but in terms of plugging the  
15 wells for operators in trouble, they're not -- the civil  
16 penalties are not going to benefit that.

17           You know, what's ultimately important here  
18 is either getting a commitment from Cross Border to put  
19 those on an expedited plugging plan or get them on OCD's  
20 list to plug with the reclamation plugs, in which case OCD  
21 would be seeking reimbursement for any differences in the  
22 cost.

23           EXAMINER HARWOOD: Mr. Padilla, I'm going to  
24 give you the last word on this.

25           MR. PADILLA: I don't think there is any issue

1 that somebody's wells definitely need to get plugged, and  
2 done correctly. I think it's a lot cheaper to -- I do  
3 know in discussions with the potential buyer who had  
4 simply called me, that they are able to plug these wells  
5 that are required. And given the depth of the wells.

6 The wells are in the upthrust basin, or  
7 they are shallow wells, in other words. I think they are  
8 about 3,000 feet deep, and that's a pretty easy project to  
9 do in terms of plugging and abandoning.

10 I believe -- and I'm -- that Cross Border  
11 understands that some of these wells have to be plugged,  
12 but there are issues like well equipment, all this sort of  
13 stuff, what you do with that. And so that's what I would  
14 like to figure out before I agree to a Stipulated Order.  
15 I think we could do that. And we're doing it in the Smith  
16 and Mars case. We have two wells that -- I think Mr.  
17 Tremaine and I have to figure out how we're going to  
18 handle that. But otherwise, I would like to have Cross  
19 Border somehow arrange to have those wells plugged, the  
20 ones that need to be plugged. The ones that are, say, on  
21 fee leases, private leases or federal leases, some of  
22 those can still be salvaged, because no action has been  
23 taken on the position of those leases like the Land Office  
24 has done.

25 So I think the Land Office leases are

1 probably dead, and I don't think a court is going to  
2 reinstate those leases, because, you know, one, you can't  
3 revive an oil and gas lease. But I think -- I know one of  
4 these operators is seeking ratification of oil and gas  
5 leases on the fee lands, and given the price of oil today  
6 it makes economic sense to produce them, and that's all we  
7 are trying to do.

8                   But I think in terms of the penalties that  
9 Mr. Tremaine was talking about, it's an ongoing daily  
10 assessment of penalties, so I don't think there would be  
11 any prejudice, and I think it would be better to work it  
12 out to where OCD doesn't have to plug those wells and then  
13 seek reimbursement for whatever we have.

14                   In addition to that, if we go forward and  
15 an Order is issued today, I would probably, in order to  
16 educate myself, file a motion or an application for de  
17 novo hearing before the Commission, and I think that's a  
18 total waste of time.

19                   EXAMINER HARWOOD: All right.

20                   MR. TREMAINE: If I may very briefly.

21                   I just wanted to address the point that I  
22 don't believe that this case, the facts of this case are  
23 all that similar to Smith and Mars. We're talking about a  
24 different number of wells and a different status of the  
25 wells that we are talking about, and an entirely different

1 level of responsiveness. There were some issues in  
2 communication in that case, but I don't see it as similar.

3           You know, I realize these are shallow  
4 wells, but by a very quick napkin calculation, Cross  
5 Border Resources now has over half a million worth of  
6 plugging liabilities, and it's not -- like I said, it is  
7 an appropriate tool to address compliance through civil  
8 penalties, but those civil penalties revert to the general  
9 fund, they're not going to help OCD plug and abandon these  
10 wells. And the primary concern is that this can get  
11 kicked far enough down the road that we're in the same  
12 position three to six months from now.

13           I'm backing off on my opposition to the  
14 request for a continuance, but very strongly advocate that  
15 it's a short continuance, not to February. We don't  
16 actually have the Special Docket dates for February. We  
17 would have to talk to Marlene and get one today.

18           So I would ask that this be set for the  
19 next one in a matter of weeks, but I can't seem to find  
20 the 2022 docket dates on the website at the moment.

21           Thank you.

22           EXAMINER HARWOOD: Mr. Tremaine, I take it you  
23 and Mr. Padilla worked together before on various cases  
24 trying to resolve things.

25           MR. TREMAINE: We've talked about that one other

1 case. This has been my first opportunity to work with  
2 Mr. Padilla.

3 EXAMINER HARWOOD: All right. You know, this is  
4 not an easy motion. I'm going grant it only on the basis  
5 that, you know, generally it's favored that these get  
6 decided on the merits.

7 I'm not happy with the conduct of your  
8 client Cross Border Resources, Mr. Padilla, and I hope you  
9 will convey that to them.

10 And I would ask that you and Mr. Tremaine  
11 communicate about this case between now and when this  
12 matter is rescheduled, and see -- in good faith, I might  
13 add, and see if you can't work toward an amicable  
14 resolution of the well-plugging issues, if not more, in  
15 the interim.

16 So, Mr. Padilla, if you will submit an  
17 Order to that effect, we will go ahead and, you know,  
18 enter that, sign that Order and get it entered into the  
19 record.

20 And Mr. Tremaine, maybe you can, you know,  
21 work with Ms. Salvidrez to get this scheduled at the  
22 earliest possible next opportunity.

23 Does that sound okay to you guys?

24 MR. PADILLA: It does.

25 MR. TREMAINE: Yes. Thank you.

1                   EXAMINER HARWOOD: All right. So I guess that  
2 resolves Case No. 22224, at least for today.

3                   Mr. Padilla, if that's your only case, I  
4 guess you're excused.

5                   MR. PADILLA: Well, thank you.

6                   EXAMINER HARWOOD: Then if you'll prepare that  
7 Order and circulate it to Mr. Tremaine.

8                   MR. PADILLA: I'll get something out today.

9                   EXAMINER HARWOOD: Okay. Thank you.

10                  MR. PADILLA: Thank you.

11                  (Time noted 9:28 a.m.)

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1 STATE OF NEW MEXICO )  
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5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter  
7 CCR No. 122, DO HEREBY CERTIFY that on Thursday, August  
8 19, 2021, the proceedings in the above-captioned matter  
9 were taken before me; that I did report in stenographic  
10 shorthand the proceedings set forth herein, and the  
11 foregoing pages are a true and correct transcription to  
12 the best of my ability and control.

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

18 /s/ Mary MacFarlane  
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