

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

CONTINUED AND DISMISSED CASES

2004 SEP 16 PM 12:57

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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

September 2nd, 2004

Santa Fe, New Mexico

These matters came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, JR., Hearing Examiner, on Thursday, September 2nd, 2004, 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.

10/9/04  
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## I N D E X

September 2nd, 2004  
Continued and Dismissed Cases

PAGE

REPORTER'S CERTIFICATE

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## A P P E A R A N C E S

FOR THE DIVISION:

DAVID K. BROOKS, JR.  
Assistant General Counsel  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

1           WHEREUPON, the following proceedings were had at  
2   8:15 a.m.:

3           EXAMINER JONES: Okay, let's call to order Docket  
4   Number 24-04 of the Oil Conservation Division. This is the  
5   Examiner Hearing. My name is Jones, I'm the appointed  
6   Hearing Examiner for today. My attorney is going to be  
7   Gail MacQuesten, she'll be here shortly.

8           What we'll do now is go ahead and call the  
9   continuances and dismissals, and let me call the ones I  
10  have, and then we'll talk about it after that.

11           On the first page of the docket, on the bottom of  
12  the page, Case 13,323 is dismissed.

13           The second page, Case 1334 -- that's 13,334 -- is  
14  continued to September the 16th; Case 13,335 is continued  
15  to September 16th; Case 13,330 is continued to September  
16  16th; Case 13,317 is continued to September 16th.

17           On the third page, Case 13,304 is dismissed and  
18  Case 13,315 is dismissed.

19           On the fourth page, Case 13,271 is dismissed.

20           And that's all I have. Any other continuances or  
21  dismissals?

22           MR. KELLAHIN: Mr. Examiner, Tom Kellahin for  
23  Richardson Operating Company. On the third page, the very  
24  first case, for Richardson, my witness is in the hospital,  
25  so would you continue that for two weeks?

1 EXAMINER JONES: Okay, let's continue Case 13,322  
2 till September 16th. That case is unopposed, right?

3 MR. KELLAHIN: Yes, sir.

4 EXAMINER JONES: Any other continuances or  
5 dismissals?

6 MR. PADILLA: Your Honor, at this time I would  
7 like to request the last case, 13,061, be continued for two  
8 weeks, the reason being that I do not have a witness here  
9 today, and also an action has been filed in Lea County on a  
10 petition for permanent injunction to allow my client, Smith  
11 and Marrs, to enter the ranch on which the abatement plan  
12 has to be performed. There's been a dispute over use of  
13 the surface for the -- to comply with the Commission -- or  
14 the Division's Order, and so we request a continuance of  
15 two weeks.

16 EXAMINER JONES: Can you say a little bit more  
17 about that, about the Lea County --

18 MR. PADILLA: I have a copy of the action, which  
19 primarily -- that has been filed --

20 MR. OSBORN: Can we get a microphone where I can  
21 hear this? We can't hear what you're saying.

22 MR. BROOKS: We don't have a microphone here,  
23 unfortunately.

24 EXAMINER JONES: These microphones are for the  
25 court reporter and -- Mr. Padilla --

1 MR. PADILLA: Let me speak a little louder --

2 EXAMINER JONES: Okay.

3 MR. PADILLA: -- if I can.

4 The reason that we have asked for a continuance  
5 of two weeks is that my clients have filed on August 31st a  
6 petition for permanent injunction.

7 EXAMINER JONES: August 31st?

8 MR. PADILLA: On August 31st. As I understand,  
9 they're asking for a restraining order, which would require  
10 hearing within 10 days. The reason that they -- and the  
11 allegations of the complaint are essentially that they need  
12 to comply with the compliance Order issued by the Division  
13 so that they can perform the abatement plan.

14 I don't know whether this lawsuit has been served  
15 on Mr. Osborn who is the ranch owner. But by the same  
16 token, I think we're at the district court level in terms  
17 of trying to get access in order to perform and comply with  
18 the Division's Order.

19 In addition to that, I don't have a witness here  
20 to go forward today, but in two weeks I would have more  
21 information as to whether or not my client can comply with  
22 the abatement Order in terms of getting injunctive relief.

23 EXAMINER JONES: Okay, Mr. Brooks?

24 MR. BROOKS: Mr. Examiner, I'm David Brooks,  
25 assistant general counsel, Energy, Minerals and Natural

1 Resources Department. I'm appearing in this case for the  
2 Oil Conservation Division.

3 This case has a long history, and there was a  
4 previous hearing scheduled before a Division Examiner in  
5 July of 2003, and at that time Mr. Padilla appeared for his  
6 present client, Smith and Marrs, and Mr. Larson, Gary  
7 Larson from Albuquerque, appeared for Chaparral, which was  
8 a former owner of this property. The case is about an  
9 abatement plan for water contamination.

10 At that time, the Division, Smith and Marrs, and  
11 Chaparral entered into a settlement agreement. The  
12 settlement agreement was actually signed in November of  
13 2003, and the settlement agreement obligated Smith and  
14 Marrs to use their best efforts to obtain an agreement for  
15 access to this property with the surface owner and to  
16 proceed with the abatement plan, and it gave them 90 days  
17 from the date of the settlement agreement -- that was till  
18 February 15th, 2004 -- to file a report on their Stage 1  
19 abatement plan.

20 Well, what we perceive from the Division's point  
21 of view is that it's now the 2nd of September, and no  
22 action was taken, so far as we're aware, except one letter  
23 which was sent to the surface owner on one occasion and  
24 then re-sent in identical form some months later -- no  
25 action was taken until the Division filed this Application

1 for enforcement.

2 And then they filed this lawsuit, which they did,  
3 I think, earlier this week. They requested the Division  
4 for continuance. We told them that we would consider that  
5 once the lawsuit was filed, but we made no commitment that  
6 we would agree to it.

7 Now, because of their witness problems, the  
8 Division would not have a problem with a two-week  
9 continuance at this point to enable them to have their  
10 witness, except that Mr. Osborn, the surface owner, has  
11 come up here at his own expense, to be present for this  
12 hearing, and he did not know that they were filing suit  
13 against him, I do not believe, prior to this week.

14 And so because of Mr. Osborn's situation, the  
15 Division feels we are constrained to go forward with our  
16 hearing if the Examiner would allow us to do so.

17 The issue, of course, that we're presenting, that  
18 we propose to present, is the issue of whether or not Smith  
19 and Marrs has complied with the settlement agreement. We  
20 would love for them to proceed now and bring this suit to  
21 fruition or do whatever they need to do to bring this -- to  
22 comply with the settlement agreement, but that doesn't get  
23 around the fact that it has been several months, and not  
24 just the months since this settlement agreement was  
25 entered, but the years that this situation has gone

1 unremedied, and we believe that some penalties are in order  
2 for the delay that has occurred.

3 So that's our position, and like I say, because  
4 of Mr. Osborn's presence, we feel constrained to oppose the  
5 settlement agreement -- I mean, I'm sorry, to oppose the  
6 continuance at this time.

7 EXAMINER JONES: Mr. Padilla?

8 MR. PADILLA: If I may respond, the surface owner  
9 has never been a party to any prior proceeding regarding  
10 this matter, and I don't think that the surface owner at  
11 this time has standing to -- in terms of oil and gas  
12 production, to be in this hearing, in terms of abatement or  
13 that sort of thing.

14 The party that has to comply is Smith and Marrs.  
15 And my request is simple, I don't have a witness, I cannot  
16 go forward, and it would -- my ability to present a case  
17 would be impaired today. But I don't think that the  
18 surface owner has any standing to be here and be involved  
19 in this hearing.

20 The case involves Smith and Marrs, and the  
21 compliance of this case has been reopened in order to bring  
22 Smith and Marrs, and not Mr. Osborn, to this hearing.

23 EXAMINER JONES: Okay.

24 (Off the record)

25 EXAMINER JONES: Mr. Osborn, do you have anything

1 to say? Would you like to stand up and -- State your  
2 name --

3 MR. OSBORN: I'm very much involved in this.  
4 This is pertaining to our groundwater. We're without  
5 groundwater on our ranch. This has drug on. I feel like  
6 Mr. Smith of Smith and Marrs has had 700 days to get in  
7 contact with us, he has refused to so.

8 As far as access, they have a man on our  
9 property every day. We have never denied him access.

10 And under all these situations -- and the  
11 situation is only getting worse -- I think we should  
12 proceed with this.

13 EXAMINER JONES: Okay, thank you.

14 MS. MacQUESTEN: Could I ask --

15 EXAMINER JONES: Go ahead.

16 MS. MacQUESTEN: -- Mr. Padilla a couple of  
17 questions?

18 Mr. Padilla, who is the witness that you need to  
19 have at this hearing who's unavailable?

20 MR. PADILLA: Well, I need a technical witness.  
21 Eddy Seay would be one, and Smith and Marrs -- or Rickey  
22 Smith would be the other. But essentially the technical  
23 witness is the problem that I have.

24 MS. MacQUESTEN: That's the witness who is not  
25 available today?

1 MR. PADILLA: Who is not available today. And  
2 actually, I was not authorized to come before the Division  
3 until yesterday. I had understood that the law firm in  
4 Hobbs that filed the lawsuit was handling the matter, and  
5 they called me yesterday if I could do the hearing.

6 So that is my constraint, is that I did receive  
7 the notice, I forwarded it to the client, and I did not get  
8 authorization until yesterday to appear before the  
9 Division.

10 MS. MacQUESTEN: But there was another law firm  
11 representing your client until yesterday when you were  
12 contacted?

13 MR. PADILLA: Well, as far as the Lea County  
14 action is concerned, and that was Lee Kirksey with the law  
15 firm of Maddox and Holloman from Hobbs.

16 MS. MacQUESTEN: Were they aware of the action  
17 today before the Division?

18 MR. PADILLA: I'm sure they were. I can't say  
19 that they weren't.

20 MR. BROOKS: They undoubtedly were. I had  
21 telephone conversations with them about it last week and  
22 this week.

23 MS. MacQUESTEN: Okay. Why is Mr. Seay not  
24 available to testify?

25 MR. PADILLA: He had other commitments today that

1 he had to be out in the field.

2 MS. MacQUESTEN: Were these long-standing  
3 commitments or a sudden emergency?

4 MR. PADILLA: I don't think it was an emergency,  
5 I think it was just something he had to set in a well today  
6 and that kind of thing.

7 EXAMINER JONES: Okay --

8 MR. OSBORN: May I say something else?

9 EXAMINER JONES: Yes, Mr. Osborn. Can you stand  
10 up and state your name for the record?

11 MR. OSBORN: Yes, my name is Clay Osborn, I'm  
12 from Jal, New Mexico, and my wife and I are the owners of  
13 the land that's in discussion here today.

14 EXAMINER JONES: Thank you.

15 MR. OSBORN: Their representative has said that  
16 they had filed an injunction on me. I have yet to be  
17 served with that injunction, so I don't see any reason for  
18 this not to continue on, to have our hearing today.

19 MRS. OSBORN: And they had ample time to get  
20 their people --

21 MR. OSBORN: Yes, I feel that they've had ample  
22 time to do everything they want to do.

23 EXAMINER JONES: Okay, thank you, Mr. Osborn.

24 MR. PADILLA: If I may say something and add  
25 something, I think the action down in Eddy County is going

1 to turn into a damage suit. That was the history with  
2 Chaparral, and Bristol Energy before that, in terms of  
3 contamination and the dispute between the Osborns and the  
4 oil and gas operators, and certainly now with my client.  
5 I'm sure that is what the dispute is, about damages  
6 concerning contamination.

7 Certainly the Division does not have authority to  
8 award damages for that type of damage, if that's what the  
9 case is about. But in terms of the compliance order,  
10 certainly Smith and Marrs has to appear here today, and  
11 that's what I'm doing here, and I'm just simply asking for  
12 a two-week continuance to certainly be able to get me lined  
13 up to present a case.

14 EXAMINER JONES: Okay, can you please stand up  
15 and state your name?

16 MRS. OSBORN: Yes, my name is Jeri Osborn. My  
17 husband and I own the ranch in Lea County, and we have gone  
18 on five years without water. And this is not just about  
19 damages, it's about our water. And also, this is getting  
20 worse. This has gone around 40 and 50 -- we've had -- we  
21 have spent all my husband's retirement and getting  
22 hydrology studies and getting all of the coring and all of  
23 this done.

24 And we have tried to contact Mr. Smith, and he  
25 has never returned. We've written him letters, and all

1 he's done is send us a release thing saying release -- to  
2 sign this release so they can come on without any -- I  
3 mean, and do what they want, I mean, just to sign  
4 everything over to them and let them do what they want.  
5 That's all he has ever done.

6 And the OCD has let this go by for five years and  
7 done -- finally they are starting to do something. And we  
8 have missed -- They called off one continuance, and we had  
9 a vacation -- he has to take a vacation every time we come  
10 up here. And we have spent five years of vacations trying  
11 to work with these -- on our way back from the people that  
12 had it before, and these people keep buying it, knowing  
13 what they're buying, and then they try to get out of it.

14 And just about the time something happens, they  
15 put it in bankruptcy or they put it up for auction, and  
16 they buy it and they say, Well, we didn't know what we were  
17 getting. Well pardon me, but if they're stupid enough to  
18 buy something in the condition this is in and not check it  
19 out, then they deserve to have to take care of it.

20 EXAMINER JONES: We're just talking about the  
21 continuance. Thank you very much, Mrs. Osborn.

22 (Off the record)

23 EXAMINER JONES: Okay, Mr. Padilla, we're going  
24 to go ahead and hear the case. But these cases -- first of  
25 all, any other continuances or dismissals?



## 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 September 2nd, 2004.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006