

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.

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I N D E X

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Continued and Dismissed Cases

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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