

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

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

CASE NO. 13,061

APPLICATION OF THE NEW MEXICO OIL )  
CONSERVATION DIVISION THROUGH THE )  
ENVIRONMENTAL BUREAU CHIEF FOR AN ORDER )  
DETERMINING THE RESPONSIBLE PARTY OR )  
PARTIES AND ORDERING THE RESPONSIBLE )  
PARTY OR PARTIES TO COMPLETE AND PERFORM )  
AN ABATEMENT PLAN PURSUANT TO OCD RULE )  
19, LEA COUNTY, NEW MEXICO )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

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

September 2nd, 2004

Santa Fe, New Mexico

This matter 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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Examiner Hearing  
CASE NO. 13,061

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\* \* \*

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

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By: ERNEST L. PADILLA

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   2:25 p.m.:

3           EXAMINER JONES: At this time let's call Case  
4   13,061, Application of the New Mexico Oil Conservation  
5   Division through the Environmental Bureau Chief for an  
6   order determining the responsible party or parties and  
7   ordering the responsible party or parties to complete and  
8   perform an abatement plan pursuant to OCD Rule 19, Lea  
9   County, New Mexico.

10           Call for appearances.

11           MR. BROOKS: Your Honor, I'm David Brooks, Energy  
12   Minerals and Natural Resources Department, appearing for  
13   the Oil Conservation Division.

14           EXAMINER JONES: Other appearances?

15           MR. LARSON: Mr. Hearing Examiner, my name is  
16   Gary Larson. I'm appearing on behalf of Chaparral Energy,  
17   L.L.C.

18           EXAMINER JONES: Other appearances?

19           MR. PADILLA: Yes, Ernest L. Padilla for Smith &  
20   Marrs, Inc.

21           MR. BROOKS: I have three witnesses. I'll  
22   probably only call two of them, but we'll have them all  
23   sworn.

24           EXAMINER JONES: Any other witnesses?

25           MR. PADILLA: I don't have any.

1 MR. LARSON: (Shakes head)

2 EXAMINER JONES: No witnesses?

3 Will the witnesses please stand to be sworn?

4 (Thereupon, the witnesses were sworn.)

5 MR. BROOKS: Mr. Examiner, I made a brief  
6 statement in connection with a motion for continuance this  
7 morning about what this case was about, so with your  
8 permission, I'll let that substitute for an opening  
9 statement.

10 EXAMINER JONES: Okay.

11 MR. BROOKS: I'll proceed to call Mr. Olson.

12 EXAMINER JONES: Okay.

13 WILLIAM C. OLSON,

14 the witness herein, after having been first duly sworn upon  
15 his oath, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. BROOKS:

18 Q. Would you state your name for the record, please?

19 A. My name is William C. Olson.

20 Q. By whom are you employed?

21 A. I'm employed by the Oil Conservation Division of  
22 the Energy, Minerals and Natural Resources Department.

23 Q. And in what capacity?

24 A. I'm senior hydrologist for the Environmental  
25 Bureau.

1 Q. Okay, I don't really plan to ask you any  
2 hydrology questions today, but for the record have you  
3 testified as a hydrologist before the Division Hearing  
4 Examiners before?

5 A. Yes, I have.

6 Q. And have your credentials been made part of the  
7 record?

8 A. Yes, they have.

9 MR. BROOKS: Mr. Examiner, as I said, I don't  
10 intend to ask any opinion questions, but just in case  
11 anything comes up I ask that the witness be accepted as an  
12 expert hydrologist.

13 EXAMINER JONES: Mr. Olson is qualified as an  
14 expert hydrologist.

15 Q. (By Mr. Brooks) Very good. Mr. Olson, are you  
16 familiar with the South Langlie Jal Unit?

17 A. Yes, I am. I've been working on this for  
18 approximately five years.

19 Q. And is there a -- what the OCD regards as either  
20 a potential or an actual groundwater contamination problem  
21 in that area?

22 A. Yes, we have actual contamination of groundwater  
23 in this area.

24 Q. Okay, I'll call your attention to what's been  
25 marked as OCD Exhibit Number 1, two pages. Is that a

1 summary of the events that have occurred in this file with  
2 regard to the South Langlie Jal Unit?

3 A. Yes, it's an overall summary. It's not a step-  
4 by-step of every document in the file, but it's an overall  
5 summary of major actions that have occurred at the site.

6 Q. How did this matter first come to your attention?

7 A. Actually, it first came to the attention of our  
8 District Office in response to a spill that had occurred at  
9 the site. Subsequent investigations had shown that there  
10 was groundwater contamination, and the case was then  
11 referred to the Santa Fe Office.

12 Q. And would this have been in the year 2000?

13 A. Approximately. I believe the District began  
14 working on it around -- sometime in the spring of 1999, I  
15 believe.

16 Q. Who was the operator of the South Langlie Jal  
17 Unit at that time?

18 A. At that point it was Bristol Resources.

19 Q. Call your attention to what's been marked as OCD  
20 Exhibit Number 2. Is that a map of the South Langlie Jal  
21 Unit?

22 A. Yes, this is a map that was provided by Chaparral  
23 as part of the Stage 1 abatement plan.

24 Q. Okay, there is a spot on there that's cross-  
25 hatched, right about the middle, and there's a label that

1 says "'Bristol' Saltwater Release". Was that where the  
2 original release was that was the subject of this -- that  
3 started this investigation?

4 A. Yes, that appears to be the location of that  
5 initial release that started this.

6 Q. Now, I don't intend to go into the details of the  
7 water contamination problem because it's not really before  
8 us, but could you just generally describe what you know  
9 about the situation where the contamination has been  
10 discovered and anything else that's pertinent in terms of  
11 the general situation there?

12 A. Well, as a result of the investigations that  
13 occurred related to the saltwater release, we identified  
14 saltwater contamination, brine contamination from produced  
15 water release there in the soils, and it continued down  
16 into groundwater at the site. The groundwater was found to  
17 be contaminated with chlorides.

18 We also have information that had been provided  
19 to us by some hydrogeologic studies that the landowner, Mr.  
20 Osborn, had performed, which showed that he had  
21 contamination of several water wells on his ranch,  
22 including the wells that they use for domestic use.

23 Q. Now, during this period of time that you've been  
24 -- the five years that you've been involved with this  
25 property, have you been in conversations with Mr. Osborn

1 from time to time about this situation?

2 A. Yes, I've been in contact with all parties at  
3 various times.

4 Q. And has Mr. Osborn reported to you that his wells  
5 have evidenced contamination?

6 A. Yes, he has provided to us sampling results from  
7 those wells that show that they're contaminated.

8 Q. Okay. Is the outline on here, is that an outline  
9 of the South Langlie Jal Unit?

10 A. Yes, this is an outline that Chaparral Energy had  
11 provided as to what was -- comprised the South Langlie Jal  
12 Unit.

13 Q. Okay. And do you know where Mr. Osborn's  
14 property is? Does it coincide with the South Langlie Jal  
15 Unit or --

16 A. Yes, it's approximately in the middle of that.  
17 It's north of the golf course, I'd say approximately east  
18 of that dot to the north. It's listed as the Winters "E"  
19 abandoned battery oil release site. It's probably east and  
20 a little bit north of that.

21 Q. And for the purpose of orienting the Examiner, is  
22 this the city -- this area at the bottom that looks like a  
23 bunch of streets, is that the City of Jal?

24 A. Yes, it is.

25 Q. So this area is immediately adjacent to the City

1 of Jal?

2 A. To the city, and then directly north of that is  
3 the golf course, and then directly north of that is the  
4 Osborn's residences.

5 Q. Very good. Now, I'm going to move very quickly  
6 here through this paperwork. Is Exhibit 3 a copy of your  
7 original demand letter to Bristol Resources that they  
8 provide an abatement plan for this contamination?

9 A. Yes, it is.

10 Q. Now then, is Exhibit 4 the notice that you  
11 received from Chaparral Oil that they had declared the  
12 unit?

13 A. Yes, this is actually -- was not submitted  
14 directly to the OCD. We'd received this from Mr. Osborn on  
15 October 30th of 2000. It was submitted to the interest  
16 owners by Chaparral.

17 Q. Okay, and following up on that is Exhibit 5,  
18 which is dated October 31, 2000, your demand letter to  
19 Chaparral?

20 A. Yes, it is, requiring them to submit a Stage 1  
21 abatement plan as the current owner.

22 Q. Now, when I say your letter, most of the letters  
23 in this file were signed by Roger C. Anderson, correct?

24 A. Yes.

25 Q. And who is Roger C. Anderson?

1           A.    Roger C. Anderson is the Environmental Bureau  
2 Chief.

3           Q.    And were these letters that Mr. Anderson prepared  
4 drafted by you?

5           A.    Yes, they were.

6           Q.    Very good.  And are you familiar with Mr.  
7 Anderson's signature?

8           A.    Yes, I am.

9           Q.    And is this signature on each of these documents,  
10 is that his signature?

11          A.    Yes, it is.

12          Q.    Very good.  Okay.  Now, the next exhibits, 6  
13 through 19 inclusive, is that all correspondence back and  
14 forth between the OCD, as represented by you, having --  
15 being the draftsman of the correspondence, and Chaparral?

16          A.    Through 19, you said?

17          Q.    Through 19.

18          A.    Yes, it is.

19          Q.    Now, in that correspondence, without having to go  
20 through each item, did you give Chaparral various deadlines  
21 for submitting paperwork in regard to this abatement plan?

22          A.    Yes, we have.

23          Q.    And you extended it various times, correct?

24          A.    It was extended several times and worked through  
25 some deficiencies, as well as I believe we had some

1 violations that did occur through there for failure to  
2 provide information.

3 Q. Some of their submissions were late, correct?

4 A. That's correct.

5 Q. And several extensions were granted?

6 A. That's correct.

7 Q. Okay. Now, on February 28th, 2002, did they  
8 finally file an abatement plan?

9 A. Yes, they did. I believe it was received by the  
10 Environmental Bureau on March 1st of 2002.

11 Q. Okay. Is Exhibit 20 a copy of the abatement plan  
12 that was filed?

13 A. Yes, it is.

14 Q. Now then, Exhibit 21, is that some supplemental  
15 information that they provided to supplement the abatement  
16 plan, pursuant to your request?

17 A. Yes, this was information that was received from  
18 Chaparral on April the 12th of 2002, and it was in response  
19 to the OCD's March 21st, 2002, notice of some deficiencies  
20 in the plan and requests for additional information.

21 Q. Okay. Now, going back to Exhibit 19 -- which is  
22 a four-page letter signed by Roger Anderson, but again it  
23 was drafted by you, correct?

24 A. That's correct.

25 Q. Does Exhibit 19 approve the abatement plan which

1 is Exhibits 20 and 21, subject to certain conditions  
2 therein stated?

3 A. That is correct.

4 Q. Okay. Now, Exhibits 22, 23, 24, 25, 26, are  
5 these all correspondence -- 25, I'm going to stop -- Well,  
6 no, let me go back. Exhibits 22, 23 and 24, are these all  
7 correspondence between Chaparral and the Oil Conservation  
8 Division subsequent to the approval of the abatement plan  
9 that had to do with the implementation of the abatement  
10 plan?

11 A. Yes, this is after the approval of the Stage 1  
12 abatement plan.

13 Q. Now, looking at Exhibit 24, I notice that the  
14 third paragraph there states, the OCD grants an extension  
15 to Chaparral "...of the Stage 1 report submission deadline.  
16 Chaparral shall complete the necessary field work and  
17 submit the Stage 1 investigation report to the OCD by  
18 October 31, 2002." Correct?

19 A. That's correct.

20 Q. Did that happen?

21 A. No, it did not.

22 Q. Okay. Then I call your attention to Exhibit  
23 Number 25, which is a letter from Chaparral directed to the  
24 New Mexico Oil Conservation Division. Did they advise you,  
25 then, that they had sold the property?

1 A. Yes, they did.

2 Q. To whom did they say they sold it in this letter?

3 A. In this letter they stated that they sold it to  
4 Rickey Smith Oil and Gas Corporation.

5 Q. Okay. Now, Exhibits 26 and 27 are copies of  
6 Exhibit 25, correct? Copies of the same letter, addressed  
7 to different people?

8 A. Yes, they are.

9 Q. And Exhibit 27 is addressed to Rickey Smith Oil  
10 and Gas Corporation, correct?

11 A. That's correct.

12 Q. Now, what does -- Abatement plans are covered by  
13 Rule 19, correct?

14 A. That's correct.

15 Q. And what does Rule 19 provide when the property  
16 subject to an abatement plan is sold or transferred?

17 A. It requires that the current operator notify the  
18 new owner or the purchaser of the existence of the  
19 abatement plan, and to provide proof of notice to the  
20 Division.

21 Q. And Exhibit 27 would indicate that Chaparral did  
22 that, correct?

23 A. Yes, I believe that we had sent them a letter,  
24 though, because they did not provide proof that these  
25 documents had been received. We had sent them a letter

1 requesting us to -- requesting Chaparral to provide proof  
2 of notice of -- for Rickey Smith Oil and Gas Corporation.

3 Q. Now, that would be Exhibit 28, would it not?

4 A. That's correct.

5 Q. Okay, then Exhibit 29 appears to be a letter from  
6 Smith & Marrs, Inc., to Chaparral. Do you know that  
7 exhibit came to the -- It says cc: Director, NMOCD. Do you  
8 know how that came into the Division's possession?

9 A. Yes, in response to the OCD's December 6th, 2002,  
10 request for proof of notification, Chaparral provided  
11 correspondence on December 9th of 2002 to this document,  
12 and it was part of their proof of the transfer notification  
13 request from OCD.

14 Q. Okay, Exhibit 29, the last sentence, I'm reading,  
15 says, "Smith & Marrs, Inc., shall assume those  
16 responsibilities effective December 1, 2002, the day this  
17 corporation accepts...ownership, operations and control of  
18 the unit", correct?

19 A. That's correct.

20 Q. Now, I'll ask you to look at Exhibit Number 30.  
21 That is directed to Mr. Rickey Smith of Smith & Marrs, as  
22 well as to Chaparral. Is this also a copy of the letter  
23 that you drafted and that Mr. Anderson signed?

24 A. Yes, it is.

25 Q. And looking at the second page, this says "...the

1    OCD requires that Chaparral and Smith & Marrs submit the  
2    required State 1 investigation report by February 17,  
3    2002", correct?

4           A.    That's what it states.

5           Q.    Did that happen?

6           A.    No, it did not.  Actually, that's also a typo.  
7    That should be February 17th of 2003.

8           Q.    And that makes a lot of sense, because the letter  
9    was written on January 13th of 2003, correct?

10          A.    That's correct.

11          Q.    Probably would be kind of unreasonable for us to  
12   write to them in January of 2003 and request that they  
13   submit a report by February of 2002?

14          A.    Yes.

15          Q.    Call your attention to -- Well, no, before that,  
16   following the nonreceipt of an investigative report in  
17   February, 2003, did we at some point in 2003, the Oil  
18   Conservation Division, file an application for enforcement?

19          A.    Yes, we'd received no response by the deadline in  
20   this letter, and we at that point had filed an application  
21   for hearing in this matter.

22          Q.    And did this come up for a hearing before Mr.  
23   Catanach in July of 2003?

24          A.    Yes, I believe we filed the Application March  
25   20th of 2003, and it was -- came for hearing July 15th of

1 2003.

2 Q. Now, what happened at that hearing?

3 A. At the hearing, prior to actually conducting the  
4 hearing, the parties wished to attempt to settle this  
5 matter, and we reached an agreement at that point, prior to  
6 the hearing.

7 Q. Okay, I'll ask you to look at Exhibit Number 23  
8 -- I mean 31. Is that the settlement agreement that was  
9 entered into by the parties?

10 A. Yes, this is a copy of the settlement agreement.

11 Q. Okay, then looking at Exhibit Number 23 -- I mean  
12 31, I don't know why I keep calling it 23 -- paragraph B on  
13 page 2 states, "Smith & Marrs agrees to fully perform the  
14 approved Stage 1 Abatement Plan as submitted by Chaparral  
15 and approved by OCD, and to file the Stage 1 investigative  
16 Report not later than 90 days after the execution of this  
17 Agreement by the last party to execute same." Correct?

18 A. That's correct.

19 Q. Now, looking at page 3, the signatures on page 3,  
20 it appears it was signed by Chaparral Energy, L.L.C., on  
21 10-27 of '03, correct?

22 A. That's correct.

23 Q. And it was signed by Smith & Marrs, Inc., on 11-3  
24 of '03?

25 A. That's correct.

1 Q. And it was signed by the Energy, Minerals and  
2 Natural Resources Department on 11-17 of '03, correct?

3 A. That's correct.

4 Q. And if I'm counting correctly, 30 days from 11-17  
5 would be 12-17, and 60 days would be 1-16 of '04, because  
6 December has 31 days --

7 A. Uh-huh.

8 Q. -- and 90 days would be 2-15 of '04, because  
9 January has 31 days?

10 A. That's correct.

11 Q. Okay, has an investigative report ever been  
12 filed?

13 A. No, it has not been filed, and we've received no  
14 correspondence or information from Smith & Marris in this  
15 matter.

16 Q. Okay. Have there been -- Well, I'm going to go  
17 through these letters with Mr. Osborn, because it's not  
18 totally clear from the dates exactly what was sent or  
19 received, when, but did we receive sometime in December of  
20 2003 copies of some correspondence sent by Smith & Marris to  
21 Mr. Osborn?

22 A. I'm not sure of the exact date that we received  
23 those, I don't see a received stamp on it from us. But I  
24 had discussions with Mr. Osborn about this in December  
25 where he told me that he'd been contacted by Smith & Marris.

1 Q. Okay. And I think the testimony will show that  
2 Mr. Osborn received some further correspondence from Smith  
3 & Marrs in July of '04?

4 A. That's correct.

5 Q. And can you tell me if anything occurred in July  
6 of '04 prior to Mr. Osborn receiving that correspondence,  
7 so far as OCD was concerned?

8 A. No, no actions had been taken at the site for  
9 investigation of contamination under the Stage 1 plan, nor  
10 had a Stage 1 report been filed with the OCD.

11 Q. Did OCD undertake to contact Smith & Marrs at  
12 that point in time?

13 A. At several times through the spring it contacted  
14 its consultant, asking him what was going on, and he said  
15 as far as he knew they had not got access and had not  
16 started work on the property.

17 Q. Okay. Ask you to look at Exhibit Number 36. OCD  
18 Exhibit Number 36 is captioned "Petition for Permanent  
19 Injunction", correct?

20 A. Yes, it is.

21 Q. Now, did we receive a copy of this -- did OCD  
22 receive a copy of this exhibit?

23 A. Yes, they did. I believe they received it  
24 yesterday.

25 Q. Okay. And the file stamp -- I'll call attention

1 to the file stamp on this exhibit, which states "Fifth  
2 Judicial District Court, Lea County, Texas [sic], 2004,  
3 August 31, PM 4:30", would indicate that this was filed  
4 with the Court the day before yesterday, correct?

5 A. That's correct.

6 Q. Very good.

7 MR. PADILLA: You mean Lea County, New Mexico.

8 MR. BROOKS: I'm sorry. I used to spend a lot of  
9 time in Giddings, Texas, back during the -- days, so I get  
10 those two confused sometimes.

11 Q. (By Mr. Brooks) Just recapping, this has been  
12 going on for a long time, correct?

13 A. Yes, it's been going on for over five years.

14 Q. And a Stage 1 abatement plan is where you  
15 investigate to see what needs to be done, correct?

16 A. Yes, it's used to determine the magnitude and  
17 extent of contamination in order to design a remedial plan,  
18 which would be submitted under a Stage 2 plan.

19 Q. So you've got to get past the Stage 1, get it  
20 completed, and get to the Stage 2 before anything gets done  
21 about the contamination, correct?

22 A. Not necessarily. It can be submitted  
23 concurrently. Stage 1 and Stage 2 plans were -- a company  
24 may start some remediation at the site while they're doing  
25 investigations with the -- Rule 19 does allow for that. It

1 does not require that it occur that way, and this process  
2 has been following through the step process of submitting a  
3 Stage 1 plan and then determining the sources of  
4 contamination, and then to submit a Stage 2 plan after  
5 that.

6 Q. The plan of rolling the two together was not  
7 followed in this case?

8 A. No, that option was not used in this case.

9 Q. So, so far as we're aware, nothing has been done  
10 about the contamination at this point?

11 A. As far as we know.

12 Q. That's all my questions -- Well, no.

13 Are Exhibits through -- and I didn't ask you to  
14 identify the correspondence specifically, because I'll go  
15 through it with Mr. Osborn, but I will include it in this  
16 question. Are Exhibits 1 through 36, inclusive, from the  
17 files of the Oil Conservation Division?

18 A. Yes, they are.

19 MR. BROOKS: At this time I will tender into  
20 evidence Exhibits 1 through 21 -- I'm sorry, Exhibits 1  
21 through 31 and Exhibit 36.

22 EXAMINER JONES: Okay, Mr. Larson and Mr.  
23 Padilla, any objection?

24 MR. PADILLA: I don't have any.

25 MR. LARSON: I have no objections.

1 MR. BROOKS: Pass the witness.

2 EXAMINER JONES: Okay, with that we'll take  
3 Exhibits 1 through 36 into evidence and open the floor to  
4 Mr. Larson.

5 MR. LARSON: I have no questions.

6 EXAMINER JONES: Mr. Padilla?

7 MR. PADILLA: I have a few questions.

8 CROSS-EXAMINATION

9 BY MR. PADILLA:

10 Q. Mr. Olson, do you know whether Chaparral  
11 encountered any problems on gaining access on the land in  
12 order to do its abatement plan?

13 A. I know they had discussions with the land owner  
14 and they could not reach agreement on how they would gain  
15 access to the property. I wasn't party to those  
16 discussions, so I'm not really sure exactly the details of  
17 it, but I know that they did have difficulty reaching  
18 agreement.

19 Q. Did the OCD intervene in any way in terms of  
20 dealing with access on the surface of the land?

21 A. No, we did not. I've had discussions with both  
22 parties at various times about -- both Chaparral and with  
23 Mr. Osborn, about the site, but that was about it. We did  
24 not force, should I say, anybody access to their property.

25 Q. The OCD took no action to force either the

1 surface owner or the oil company, at that time Chaparral,  
2 to seek some kind of injunctive action to get on the land?

3 A. We did not, but I'm not an attorney so I don't  
4 know what abilities we have in that matter to be able to do  
5 that.

6 Q. Do you know for how long Chaparral dealt with the  
7 surface owners, trying to get access?

8 A. I believe it was -- the abatement plan was  
9 approved in April of two thousand and -- let's see, April  
10 of 2002. I know they were negotiating access through that  
11 summer, and they requested an extension, and the next thing  
12 we knew the property was sold at that point, so...

13 Q. How long would you say, if you know, that these  
14 negotiations went on with Chaparral trying to get on?

15 A. I don't know to what extent they had contacted  
16 Mr. Osborn, but I would say just based upon when we  
17 approved the plan, to -- when the property was sold by  
18 Chaparral, that's a period of -- I don't know,  
19 approximately six months.

20 Q. Before that, when Bristol had the property, do  
21 you know whether there were any negotiations for surface  
22 access onto the land?

23 A. They may have had some. I'm not really aware of  
24 what they had going on at that point.

25 Q. Do you know whether there was an access problem

1 at that time?

2 A. I'm not really sure, to tell you the truth.

3 Q. Is there anything in your records that would  
4 indicate that there had been an access problem then?

5 A. I don't recall. There may be. I just don't  
6 remember, to tell you the truth.

7 Q. In your discussions with Chaparral, were you  
8 told that Bristol had problems getting access on the land?

9 A. Yes, I believe Chaparral had said that, that they  
10 were -- I think they said that once they took over the  
11 property, they had some problems.

12 Q. Bristol had problems?

13 A. Yes, I don't know to what extent. That's what  
14 Chaparral had told me.

15 Q. Do you know any -- Do you have any knowledge  
16 about what the surface owner -- and I take it that the  
17 surface owners that we're talking about are the Osborns,  
18 right?

19 A. That's correct.

20 Q. Do you know what kind of money they were asking  
21 to get on the land?

22 A. No, all I know, I think that they were at one  
23 point asking for actually a source of water, because their  
24 water at the house that they're using for domestic water is  
25 contaminated. I know they were asking for a replacement

1 source of water, and I believe they were asking for some  
2 type of fee for monitor wells, which is essentially the  
3 same amount that the State Land Office requires for access  
4 on state lands, which is I believe \$300 per monitor well  
5 per year.

6 Q. You're not aware that they were requiring over  
7 \$10,000 a well at some point?

8 A. No, I do not -- not aware of that, no.

9 Q. You're not aware?

10 A. No.

11 Q. You're not aware that over -- Are you aware  
12 whether they were asking for yearly rentals on the monitor  
13 wells?

14 A. Yeah, I believe that's the \$300 per year, I  
15 believe that they were asking. That's what I understood is  
16 part of the -- the same as what the State Land Office  
17 requires.

18 Q. Over a period of time, were you aware that they  
19 were asking over \$400,000?

20 A. No, I'm not aware of that.

21 Q. Are you aware of the prehearing report that was  
22 filed by Chaparral Energy in this case for the hearing in  
23 July, '03?

24 A. I don't think that's at least in our Division  
25 files. That may be -- at least not in the Environmental

1 Bureau file. It may be part of the hearing record, but I  
2 don't believe I ever saw that at that point.

3 Q. Would you have any reason to dispute the fact  
4 that they were asking in the neighborhood of \$400,000 over  
5 a period of time?

6 A. I have no way to confirm or not confirm that, to  
7 tell you the truth. I wasn't party to that.

8 Q. What do the hydrology reports show that -- the  
9 hydrology reports that were prepared by Mr. Osborn's  
10 experts say?

11 A. They showed that there was -- they did a survey  
12 of wells in the area, and they looked at not just Mr.  
13 Osborn's wells, but they also had sample wells on the  
14 country club, and I believe several other wells in that  
15 area, and they showed groundwater contamination from  
16 chlorides, of the groundwater, and they also showed the  
17 magnitude and direction of the groundwater gradient at that  
18 point.

19 Q. Do those hydrology reports show that  
20 contamination was coming from adjoining properties?

21 A. They show that there was contamination on the  
22 South Langlie Jal Unit and some of the areas around that as  
23 well, so...

24 Q. Have you made a determination whether or not the  
25 contamination on the Osborn water would have been

1 contaminated by production from the South Langlie Mattix  
2 Unit or from adjoining lands?

3 A. Well --

4 MR. BROOKS: For the record, Mr. Examiner, I  
5 don't mind them asking this for your edification on this,  
6 but I object as irrelevant on the ground that Rule 19  
7 contemplates that the responsible party will be determined  
8 at an initial stage and that once a person is accepted as a  
9 responsible party, then the actual cause of the pollution  
10 is not relevant to their obligation to complete the  
11 abatement plan, and Smith & Marrs has already accepted the  
12 responsibility for this and therefore cannot take the  
13 position that they're not a responsible party at this  
14 point.

15 EXAMINER JONES: Okay.

16 MR. PADILLA: Mr. Jones, in the settlement  
17 agreement Smith & Marrs, as well as Chaparral, denied  
18 having any responsibility with contamination. In addition,  
19 Mr. Olson testified concerning hydrology reports, so I  
20 think it's a fair question that I ask where the source of  
21 contamination is coming from.

22 EXAMINER JONES: I'll just take it in mind, what  
23 you said --

24 MR. BROOKS: Okay.

25 EXAMINER JONES: -- Mr. Brooks, and go ahead and

1 ask him.

2 THE WITNESS: Can you repeat the question,  
3 please?

4 Q. (By Mr. Padilla) I believe the question was,  
5 where is the contamination coming from, adjoining  
6 properties or from the lands -- or the wells on the unit in  
7 question?

8 A. Well, we know one source of contamination was the  
9 produced water, Langlie, that Bristol had. The  
10 investigations that they had conducted showed that the  
11 chloride contamination moved vertically down through the  
12 soil and contaminated the groundwater.

13 We also know that we have a number of other  
14 source areas on the site where there have been leaks or  
15 spills or prior pits. The purpose of the Stage 1 plan was  
16 to determine what the contributions were from the South  
17 Langlie Jal Unit. It did not assume that the South Langlie  
18 Jal Unit is the sole source of contamination at that site.

19 Q. Okay. But to do an investigative report, the one  
20 that you're looking for, you have to get on the land,  
21 right?

22 A. That's correct.

23 Q. And you have to get on the land with major  
24 equipment and drill wells, right?

25 A. That's correct.

1 Q. How many wells are involved in the Stage 1  
2 abatement plan?

3 A. I don't remember the exact number. I believe we  
4 had requested that they install a well at each -- source  
5 areas, and I believe Chaparral had proposed to install a  
6 couple of wells on the upgradient boundary to see what  
7 contributions they had as well that might be coming in from  
8 upgradient sources.

9 Q. So the investigative report requires major access  
10 on the land, right?

11 A. It requires access for doing soil borings and  
12 installation of groundwater monitoring wells, yes.

13 Q. If you don't have permission from the landowner,  
14 what happens? Surface owner?

15 A. Then you're going to have difficulty installing  
16 them at that point because you need to get on there with,  
17 like I said -- I think as you just mentioned, with heavy  
18 equipment and a drill rig and get in there, and there's an  
19 actual disturbance to the surface at that point. You're  
20 essentially creating a road to get to the monitor well or  
21 to the soil boring.

22 Q. Did you yourself contact Smith & Marrs about  
23 their efforts to get on the land?

24 A. No, I did not.

25 Q. Now, the settlement agreement that's in the

1 packet here, of exhibits, that contemplates even injunctive  
2 relief as far as getting on the land, right?

3 A. It does.

4 Q. Why do you think that was put in there?

5 A. I believe that was put in there because Smith &  
6 Marrs and Chaparral indicated that they believe there might  
7 be some difficulty getting on the site. I'm not sure  
8 whether that's for, you know, payment or whatever you're  
9 mentioning or for what reason, but they had difficulty  
10 negotiating access, is what they had informed us at that  
11 point.

12 Q. Prior to commencing this action here today, you  
13 didn't independently call Smith & Marrs and find out what  
14 the problem was, right?

15 A. No, I have regularly talked with their consultant  
16 on occasion, and I've questioned him because he had  
17 indicated that he had met with Mr. Osborn at one point and  
18 was asked to by Smith & Marrs, and -- but that was the only  
19 contact that I knew of, outside of them sending the letter  
20 to them that Mr. Osborn provided to us. Smith & Marrs  
21 never contacted us to indicate what was occurring at the  
22 site, what the problems were.

23 Q. Did you have your District Office in Hobbs get  
24 involved with Smith & Marrs and try to find out what the  
25 delay was in not meeting the 90-day deadline?

1 A. No, we did not.

2 Q. Were the Osborns parties to the settlement  
3 agreement here in July of 2003?

4 A. No, they were not. They were planning on, I  
5 believe, attending one of the earlier sessions of the  
6 hearing, but the hearing had been continued a couple times.  
7 I believe they weren't able to be here for that meeting, so  
8 they were not party to that agreement.

9 Q. Have they ever entered an appearance in any of  
10 the proceedings involving this matter here in terms of  
11 getting the abatement plan, either with Bristol, with  
12 Chaparral or with Smith & Marrs, other than today?

13 A. They have been a participant in the abatement  
14 plan process and provided public comment as is allowed  
15 through the public participation process of Rule 19.

16 Q. In terms of appearing at a hearing here today  
17 before the OCD, have they ever been a party?

18 A. No, this is the first time we've actually gotten  
19 to conduct a hearing at that point, so I believe this is  
20 the first actual hearing we've had on this matter.

21 Q. Do you know when you first received a request for  
22 a continuance of this hearing, other than this morning when  
23 I asked for one?

24 A. I believe my counsel had received a call prior to  
25 today -- I believe it was -- I don't know if it was

1 yesterday, I'm not sure of the exact date; I believe it was  
2 yesterday -- requesting a continuance.

3 Q. You don't recall that it was a few days ago?

4 A. I know it was either yesterday or the day before.  
5 I don't know the exact time. It wasn't my conversation at  
6 that point.

7 Q. I understand that the Environmental Bureau had a  
8 problem with the continuance in this case for a two-week  
9 period; is that right?

10 A. We had a problem because the land owner was  
11 already scheduled to be here and actually arrived here  
12 yesterday at that point.

13 Q. If the request for a continuance had been a few  
14 days ago -- and I'm not trying to say that it was or wasn't  
15 -- could the landowner have been advised earlier of the  
16 request for a two-week continuance?

17 A. It's possible, but I'm not sure what arrangements  
18 he had. I know he did take vacation time to come. I'm not  
19 sure whether he could have rescheduled that or not. I'm  
20 not aware of how his schedule works.

21 Q. You've read -- You're familiar with the petition  
22 for permanent injunction, which is your last exhibit,  
23 right?

24 A. Yes, I believe this is the document we had  
25 received yesterday, I believe.

1 Q. Attached to that petition is a settlement  
2 agreement reached in July of 2003, right?

3 A. Not on the -- I don't have the attachment here on  
4 the document that I have. I just have the actual petition  
5 that's -- The attachment is not part of that I have here.

6 Q. I have one that is. Do you have any reason to  
7 say that -- I'd like to mark --

8 MR. BROOKS: I will stipulate that the settlement  
9 agreement was attached to the original, but I have no  
10 objection to their admitting a copy of the settlement  
11 agreement attached to it.

12 EXAMINER JONES: Okay, Exhibit Number 1.

13 MR. PADILLA: Exhibit Number 1.

14 EXAMINER JONES: Exhibit Number 1.

15 MR. BROOKS: Revise that, I will stipulate that  
16 the settlement agreement was attached to the copy that was  
17 faxed to the Oil Conservation Division. I don't know if it  
18 was attached to the original or not. I have not seen the  
19 original.

20 EXAMINER JONES: Okay, we'll admit Exhibit Number  
21 1, Chaparral Exhibit Number 1 into evidence.

22 MR. LARSON: Excuse me, Mr. Hearing Examiner, I  
23 think that would be Smith & Marrs Exhibit Number 1.

24 EXAMINER JONES: Pardon?

25 MR. LARSON: I believe you said Chaparral Exhibit

1 Number 1?

2 EXAMINER JONES: I'm sorry, Smith & Marrs.

3 MR. PADILLA: Those are all the questions I have,  
4 Mr. Examiner.

5 EXAMINER JONES: Mr. Larson is trying to stay out  
6 of this.

7 Okay, I want to take a 10-minute recess and go  
8 off the record and be back in 10 minutes, at 3:15.

9 (Thereupon, a recess was taken at 3:07 p.m.)

10 (The following proceedings had at 3:21 p.m.)

11 EXAMINER JONES: Okay, let's go back on the  
12 record, and we'll continue asking Mr. Olson some questions  
13 here.

14 EXAMINATION

15 BY EXAMINER JONES:

16 Q. I think the -- this Application asks for -- let's  
17 see here -- it asks for submitting a Stage 1 investigation  
18 report, and Mr. Olson, can you say exactly what this  
19 investigation report consists of? These are required going  
20 out on the property and doing some tests, and what all does  
21 it entail?

22 A. The plan itself that they submitted, the  
23 proposal, is to go out and install monitor wells,  
24 groundwater monitoring wells, at various points on the  
25 unit, as well as looking at the extent of soil

1 contamination in areas of known contamination that's  
2 observed at the surface.

3 When all that work is completed -- That involves  
4 going out and actually drilling the holes, installing the  
5 wells for the boreholes, it would be drilling them and  
6 sampling soils with depth, and then there will be samples  
7 that they'll be submitting from both the soils and  
8 groundwater to a laboratory for analysis.

9 And then once they're done, the report is a  
10 compilation of all the work, investigation work, that they  
11 conducted. So it would include the results of the borings,  
12 the monitor well results, the soil results. They'd be  
13 providing a map of the water table across the site so we  
14 can look at what the gradient is, and also the quality of  
15 groundwater across the site.

16 So they'd be summarizing the -- overall,  
17 summarizing the hydrology and geology that were observed,  
18 as well as the water quality that was observed during the  
19 investigation of the site.

20 EXAMINER JONES: Okay. Go ahead.

21 EXAMINATION

22 BY MS. MacQUESTEN:

23 Q. Mr. Olson, the settlement agreement that required  
24 Smith & Marris to file the Stage 1 investigative report was  
25 signed back in November 17th of '03; is that right?

1           A.    I believe that's the last signature date, that's  
2 correct.

3           Q.    And they were supposed to provide the report by  
4 February 15th of 2004?

5           A.    Yes, within 90 days of the execution of the  
6 agreement by the last party, which I believe was the Oil  
7 Conservation Division.

8           Q.    Has there been any indication from Smith & Marrs  
9 since the signing of this agreement in November of '03 that  
10 they had any difficulty in providing the report?

11          A.    No, we've had no contact from them one way or the  
12 other, whether they've had a problem or not at the site.

13          Q.    Did they request an extension of time of that 90-  
14 day deadline?

15          A.    No, they did not.

16          Q.    Did they request any assistance from the OCD in  
17 obtaining access to the surface?

18          A.    No, they did not.

19          Q.    Were you in contact with the surface owners  
20 during this time period?

21          A.    At various points the surface owners would  
22 contact me, yes.

23          Q.    Were they aware of the settlement agreement?

24          A.    Yes, they were.

25          Q.    Did they lodge any objection with the OCD to the

1 terms of the settlement agreement or indicate that they did  
2 not want Smith & Marris to come on their property?

3 A. They did back -- when we had done the agreement,  
4 they did -- Mr. Osborn did voice an objection to the  
5 provision about the -- instituting legal proceedings to get  
6 access to their property. They see that possibly as the  
7 State potentially joining with them to enforce access onto  
8 their property, so they were uncomfortable with that  
9 provision of the settlement agreement.

10 Q. Were they indicating they didn't want Smith &  
11 Marris on their property?

12 A. No, actually during discussions I had with Mr.  
13 Osborn back, I guess -- I believe that was during December  
14 and probably -- maybe January or February -- was that he  
15 said he would be willing to meet with them to discuss it,  
16 and he provided us letters that stated that he would be  
17 willing to meet with them to discuss the matter.

18 Q. You used the term "responsible party", and I  
19 believe -- Is that a special term under Rule 19, or does it  
20 have a special meaning?

21 A. Yes, that is a term that's used within the  
22 meaning of Rule 19.

23 Q. And what does that mean?

24 A. There is a -- I believe there's a definition  
25 here. It's -- Excuse me, it's not responsible party, it's

1 responsible person --

2 Q. Person?

3 A. -- and it's -- in the rules and the definitions,  
4 there's a definition for responsible person, shall mean the  
5 owner or operator who must complete Division-approved  
6 corrective action for pollution from releases.

7 That's the OCD definition of a responsible  
8 person.

9 Q. Does it require that that person acknowledge  
10 responsibility for causing the contamination?

11 A. Not necessarily, it does not read that way. It's  
12 that they are the ones that were determined to be  
13 responsible for conducting corrective actions.

14 MS. MacQUESTEN: Okay, I don't have any other  
15 questions of Mr. Olson.

16 EXAMINER JONES: Okay, I don't have any more.

17 MR. BROOKS: I have one follow-up question. I  
18 had two, but Ms. MacQuesten asked one of them, so I'll only  
19 ask one.

20 MS. MacQUESTEN: I'm sorry I pre-empted you  
21 from --

22 MR. BROOKS: No, it's quite all right.

23 FURTHER EXAMINATION

24 BY MR. BROOKS:

25 Q. Were there any reasons, other than Mr. Osborn's

1 presence here, projected presence here today, why the  
2 Environmental Bureau was unwilling to consent to a  
3 continuance of this hearing?

4 A. Well, the other reason would be that this has  
5 been an ongoing case for five years, and we have had --  
6 over this whole period, we have had a loss of use of  
7 domestic water wells at the Osborn property. There's  
8 contamination of private domestic water wells that are used  
9 for domestic purposes at their household.

10 So it's been a problem on our side. We've been  
11 quite frustrated with this for years just because of the  
12 need for that to be corrected.

13 MR. BROOKS: Okay, thank you. I think that's all  
14 I have.

15 MS. MacQUESTEN: If I may, I have a couple of  
16 questions for Mr. Padilla, just so that I could understand  
17 better what your position is on this matter.

18 Is your client taking the position that they are  
19 not the responsible person under Rule 19?

20 MR. PADILLA: No, I believe that under the  
21 settlement agreement they have the obligation of being the  
22 responsible party under Rule 19. Our contention is lack of  
23 access, and that's strictly where we perceive the problem  
24 to be at this point.

25 MS. MacQUESTEN: And I have one question on

1 the --

2 MR. PADILLA: I mean, in terms of admitting that  
3 they polluted the groundwater, they're not going to go  
4 there. In terms of abating the condition, I think they've  
5 agreed to do that.

6 MS. MacQUESTEN: Okay, thank you. I wasn't quite  
7 sure I understood what your position was. Thank you.

8 On the continuance, did you ever request a  
9 continuance from the Hearing Examiner? At what point was a  
10 continuance requested?

11 MR. PADILLA: Well, yesterday I was retained by  
12 the Maddox law firm, and I came here immediately to ask  
13 because I knew that I didn't -- Mr. Brooks' hands were tied  
14 at that point because of the Environmental Bureau, also  
15 because I understood the Osborns were coming up here.

16 But my understanding from talking to a lawyer  
17 with the Maddox law firm, Lee Kirkley [sic], was that she  
18 had asked for continuance a few days ago and was denied the  
19 continuance.

20 Now, that's my understanding. It could be that  
21 Mr. Brooks can speak to that, because --

22 MR. BROOKS: I believe it was first requested on  
23 Monday, and the reason that no prompt response was given  
24 was because the statement was made that an injunction  
25 petition was going to be filed, and we waited to respond to

1 see if it, in fact, would be. And it was filed on the  
2 31st, but late in the afternoon. We didn't become aware of  
3 it until yesterday morning.

4 MS. MacQUESTEN: Do you know who the attorney  
5 filed this request with or -- We don't have a copy of this,  
6 we don't have any indication that a request was made.

7 MR. PADILLA: I think it was just by telephone.

8 MR. BROOKS: Yes, an oral request to me --

9 MS. MacQUESTEN: To you --

10 MR. BROOKS: -- to place it on file --

11 MS. MacQUESTEN: -- and not to the Examiner?

12 MR. BROOKS: Correct.

13 MS. MacQUESTEN: So the first time the Examiner  
14 was asked to continue this case was this morning?

15 MR. PADILLA: Probably yesterday, I saw him  
16 making copies yesterday, and I -- but he took -- I think --  
17 I knew I had to speak with counsel rather than with the  
18 Hearing Examiner. If counsel had said yes, then I'd have  
19 gone and said give me a continuance.

20 MS. MacQUESTEN: Okay, thank you. I just wanted  
21 to get that cleared up.

22 EXAMINER JONES: I wanted to ask about the  
23 injunction in the District 5 court. Can you explain that  
24 to me? What's that intended to do?

25 MR. PADILLA: All that, as I understand, is that

1 they're filing -- they've filed a lawsuit seeking  
2 essentially to force -- well no, essentially, on the basis  
3 of the settlement agreement, to get on the surface of the  
4 land. I can't speak because I have not had anything to do  
5 with anything that happened after November, other than  
6 follow-up things with Mr. Larson in terms of, no, we have  
7 another contract that we need to finalize, and apparently  
8 it's lost, I'm not sure. That's strictly between Chaparral  
9 and Smith & Marris and some of the subsidiary companies that  
10 Smith & Marris operates with, or with their affiliated  
11 entities anyway.

12 But in terms of the settlement agreement, Smith &  
13 Marris, as far as I know, has no problem with going forward  
14 to doing the abatement plan and proceeding, other than  
15 having access and reaching some kind of accommodation with  
16 the Osborns. That's been a problem not only with Smith &  
17 Marris, and I can't speak to that because I haven't had any  
18 -- I haven't been at the wheel on that. But in terms of  
19 the problems with Chaparral and Bristol, it's a continuing  
20 problem.

21 Now, I know when we were negotiating the  
22 settlement agreement we were trying to get the OCD to  
23 intervene at some point, and that was not -- Mr. Brooks  
24 didn't want to be involved in that, and I think correctly  
25 so, in terms of it's a dispute between -- a severed estate

1 problem that arises in oil and gas operations where a  
2 surface owner said, no, you're not coming on, or there's an  
3 issue as to the amount of damages.

4 But certainly in terms of -- no, there had been a  
5 lawsuit, as I understand, filed by the Osborns against  
6 Bristol. Bristol filed bankruptcy at some point, so that  
7 threw that lawsuit.

8 And in terms of liability for contamination, I  
9 think that both Chaparral and Mr. Larson can speak to that,  
10 and certainly Smith & Marris are going to deny any liability  
11 with regard to having contaminated the groundwater. And  
12 again, Smith & Marris is willing to go forward with the  
13 abatement plan, but it's also -- a problem.

14 My understanding is that they have sent the  
15 release, and it's in this exhibit, and that release has not  
16 been signed by the Osborns until some other monetary thing  
17 or something is done in terms of satisfying their  
18 requirements, and I can't speak to that.

19 EXAMINER JONES: Okay, thank you. That's --

20 MR. BROOKS: No further questions of this  
21 witness.

22 At this time I'll call Clay Osborn.

23 Mr. Examiner, I would state in connection with my  
24 calling Mr. Osborn, Mr. Osborn's testimony, as indicated,  
25 is as a party in interest in this matter in his own right,

1 and I am calling him for the purpose of establishing some  
2 facts.

3           The Oil Conservation Division is not taking a  
4 position as to what Mr. Osborn's rights may or may not be,  
5 and he probably wants to make a statement on his own  
6 behalf. We have no objection to that, but I want to make  
7 clear that the scope of my examination of Mr. Osborn will  
8 be limited to the factual matters that I want to present in  
9 evidence as pertinent to the Division's case.

10           EXAMINER JONES: Has Mr. Osborn been sworn?

11           MR. BROOKS: He has.

12                           CLAY OSBORN,

13 the witness herein, after having been first duly sworn upon  
14 his oath, was examined and testified as follows:

15                           DIRECT EXAMINATION

16 BY MR. BROOKS:

17           Q. I'm going to show you some documents here, Mr.  
18 Osborn, and since I didn't make another set of copies for y  
19 you, I will stand over here, if that's acceptable to the  
20 Examiner, and hand them to the witness.

21                           First show you what's been marked as Exhibit 33.  
22 Is that a copy of a letter that you received from Smith &  
23 Marrs?

24           A. Yes, it is.

25           Q. Now, I notice that on this copy it has a

1 notation, "Received 12.27.03". Did you make that notation?

2 A. My wife made this notation on this one.

3 Q. Okay. And did you furnish this -- I mean, I ask  
4 you about all these exhibits, but did you furnish the OCD  
5 with copies of some correspondence between you and Smith &  
6 Marrs?

7 A. Yes, I did.

8 Q. And this is a copy --

9 A. That's just one of the --

10 Q. -- that you furnished to the OCD?

11 Okay. Now, Exhibit 33 is dated December 23rd,  
12 2003, correct?

13 A. That is correct.

14 Q. Now, let me show you what has been marked as  
15 Exhibit 33A. Is that also a copy of a letter you received  
16 from Smith & Marrs?

17 A. Yes, it is.

18 Q. Now, this says up here in the upper right-hand  
19 corner, "Received 7/14/04"; is that correct?

20 A. That is correct.

21 Q. Now, looking at those two exhibits, 33 and 33A,  
22 the letter appears to be identical?

23 A. Yes, it was.

24 Q. And both are dated December 23rd, '03?

25 A. That is correct.

- 1 Q. Did you receive that letter twice?
- 2 A. Yes, I did.
- 3 Q. Same letter?
- 4 A. Same letter.
- 5 Q. Okay. Now, I'm going to show you here what has  
6 been marked as Exhibits 33B and 33C and ask you if those  
7 were received by you from Smith & Marrs, Inc.
- 8 A. 33C was not received by me, but 33B was received  
9 by me.
- 10 Q. Okay, 33B is dated December 23rd, 2003, correct?
- 11 A. That is correct.
- 12 Q. And it has a notation on it, "Received 7/14".
- 13 A. That must have been '04.
- 14 Q. Yes.
- 15 A. Evidently the copying machine cut off a side  
16 there.
- 17 Q. Now Exhibit 33B, was that attached to Exhibit 33A  
18 that you received in July of '04?
- 19 A. That is correct.
- 20 Q. Now, had you received that previously?
- 21 A. No, sir, I had not.
- 22 Q. It was not attached to Exhibit 33?
- 23 A. Was not attached.
- 24 Q. Okay, and you did not furnish us this exhibit?
- 25 A. No, I did not furnish that one.

1 Q. Okay, very good. Is this -- This copy of this  
2 form of release, now is this a form of release that they  
3 apparently are asking you to sign?

4 A. Yes, sir.

5 Q. Okay, is that the only form of release that's  
6 been tendered to you?

7 A. No, there was one more that was sent at the same  
8 time as this and dated, I believe, in July.

9 Q. Exhibit 33C appears to be a copy of one that you  
10 did receive --

11 A. Yes.

12 Q. -- although you didn't furnish that to us?

13 A. No, but I did not furnish this one to you.

14 Q. Okay, very good. Now, let me show you what has  
15 been marked as Exhibit 34 and ask you if that was a letter  
16 you wrote to Smith & Marrs.

17 A. Yes, it is.

18 Q. And what is the date on that?

19 A. The date on this is December the 27th.

20 Q. Of '03?

21 A. Of '03.

22 Q. Was it written and mailed out at about that time?

23 A. Yes, it was.

24 Q. And I will show you a copy of a letter that  
25 apparently bears your signature dated July 18th of '04. Is

1 that a copy of a letter you sent to Smith & Marrs?

2 A. Yes, it is.

3 Q. Okay. And was that mailed to Smith & Marrs at or  
4 about July 18th of '04?

5 A. Yes, it was.

6 Q. Okay. Finally I will show you what's been marked  
7 Exhibit Number 37, which appears to be a copy of a letter  
8 to you from Rickey Smith, dated December 23rd of '03, but  
9 it's a different letter from Exhibit 33A, and I will  
10 represent to you that Exhibit 37 was an attachment to the  
11 petition that was filed in court recently, and I will ask  
12 you if you have received that letter previous to the filing  
13 of the suit and, if so, can you remember when?

14 A. No, sir, I have not received this letter.

15 Q. Okay, and fairly clearly, like the screw-up that  
16 we get -- you don't recall having received this letter,  
17 then, prior to the time --

18 A. No, I have not received it.

19 Q. Now, have you been served with a petition,  
20 Exhibit Number 36?

21 A. Officially served, no, but I did receive a -- had  
22 my son go by and take it off our front door and fax me a  
23 copy.

24 Q. But prior to your receiving Exhibit Number 36,  
25 you do not recall ever receiving Exhibit Number 37?

1 A. No.

2 Q. Okay. Now, I would point out in connection with  
3 Exhibit Number 37 that, like one of our exhibits,  
4 apparently there is a problem with the dating because it's  
5 dated December 23rd of '03, and it starts out, "I  
6 appreciate your meeting with Eddie Seay on January 12th" of  
7 '04, so apparently it was not prepared at the time it was  
8 dated.

9 Mr. Osborn, are you a landowner and surface owner  
10 of the land that's included in the South Langlie Jal Unit?

11 A. I'm a landowner of part of the property, not all.

12 Q. Okay. And do you own any of the mineral estate,  
13 or just the surface?

14 A. No, we do own some minerals.

15 Q. Okay. And you have had dealings with the oil and  
16 gas operators of South Langlie Jal Unit over a number of  
17 years, have you not?

18 A. Yes, sir, I have.

19 Q. Now, are you willing to enter into negotiations  
20 with Smith & Marrs, Inc., for giving them whatever access  
21 rights they need to complete this abatement plan?

22 A. Yes, sir, I think I indicated that in my letter  
23 to them.

24 Q. Okay, but you're not necessarily willing to sign  
25 the form of release they have tendered?

1           A.    No, not this release as it stands.

2           Q.    Okay.  I believe that is all the questions I have  
3 of you -- Well, no, one other thing.

4                    Pursuant to their letters, has anyone from Smith  
5 & Marrs, Inc., contacted you to institute negotiations  
6 about surface access?

7           A.    No, sir, the only one that contacted me was Mr.  
8 Eddie Seay.  I asked Mr. Eddie Seay if he was authorized to  
9 negotiate with me.  He informed me that he was not, and I  
10 told him at that time, I said, Well, we're just sitting  
11 here talking about this then.

12                   And he said, Yes, Mr. Smith wanted me to come by  
13 and see what you wanted.

14                   And I iterated to him that I would like to have  
15 my water replaced -- we've been out of water now for  
16 several years; we've been hauling our water -- and that I  
17 wanted a copy of everything that happened out there, all  
18 the analyticals, whatever, and I expect to be paid for the  
19 monitor wells, the same as what the State charges.

20           Q.    Okay, and you're willing to negotiate with Smith  
21 & Marrs about these matters?

22           A.    Yes, sir, I am.

23                   MR. BROOKS:  Okay, I believe that concludes my  
24 questions of the witness.  If Mr. Osborn wants to make a  
25 statement on his own behalf, that's acceptable to us.

1 EXAMINER JONES: Yes, Mr. Osborn?

2 THE WITNESS: The only thing I wanted to set the  
3 record straight, I think it's on this Exhibit 36 that you  
4 have, Sections 8 and 17 do not belong to me in paragraph 2.  
5 Sections 7 and 18 are part of our property.

6 I think I'd also like to make a comment about  
7 paragraph 14. It states here that the "Plaintiff has made  
8 a good faith effort..." He's never sat down and talked to  
9 me and only sent me one letter, and I do not consider that  
10 good faith negotiation.

11 And in Number 15, well, we have received one  
12 letter and the same letter twice, and with the second  
13 letter he sent me two releases which, as stated, I cannot  
14 sign.

15 And in Number 17 where it says "Plaintiff has  
16 made several efforts to reach an agreement to gain access  
17 to the property", Defendants haven't refused. We've never  
18 been contacted other than by Mr. Eddie Seay, who not  
19 authorized to negotiate.

20 I just wanted to make those statements clear for  
21 this court.

22 MR. BROOKS: Is that -- Are you through?

23 THE WITNESS: Sir?

24 MR. BROOKS: Is that all?

25 THE WITNESS: That's all I have right now.

1 MR. BROOKS: Okay. I will offer into evidence  
2 Exhibits 33, 33A, 33B, 33C, 35, 34 and 37.

3 EXAMINER JONES: Any objection?

4 MR. PADILLA: No.

5 MR. LARSON: No objection.

6 MR. BROOKS: Pass the witness.

7 EXAMINER JONES: Let's put into evidence Exhibits  
8 -- Say those again?

9 MR. BROOKS: 33 --

10 EXAMINER JONES: Okay.

11 MR. BROOKS: -- 33A, 33B, 33C, 35, 34 -- I guess  
12 I should have put those two in the opposite order -- 37.

13 EXAMINER JONES: Exhibits 33, 33A, 33B, 33C, 34,  
14 35 and 37 will be admitted into evidence.

15 MR. BROOKS: Pass the witness.

16 MR. LARSON: I have no questions for Mr. Osborn.

17 EXAMINER JONES: Mr. Padilla?

18 MR. PADILLA: I have some questions.

19 CROSS-EXAMINATION

20 BY MR. PADILLA:

21 Q. Mr. Osborn, have you had a chance to review the  
22 Stage 1 abatement plan?

23 A. Yes, I have.

24 Q. Do you have any objections to that?

25 A. There was a few of them that I would have liked

1 to have seen changed. I think some of the monitor wells  
2 that they had requested in here I think probably need to be  
3 moved, one way or another, a little bit. I think they  
4 would serve a better purpose and cover a whole lot more  
5 area. But we're not talking about every monitor well out  
6 there.

7 Q. How many wells would you say needed to be moved?

8 A. One I can think, maybe two right off the top of  
9 my head. There was one that was up on the north end -- I  
10 think they had it set for being Section -- or in Tract 1 --  
11 could probably be moved back down to the south and a little  
12 bit to the west, which would cover a bigger -- I think a  
13 larger area of more ongoing production upstream from it.

14 Q. Have you made those -- your feelings -- well, let  
15 me -- Have you communicated that to the Oil Conservation  
16 Division?

17 A. Not in writing or anything like that. These had  
18 passed through conversation, but it was not an item that we  
19 just set down and really discussed. This is something I  
20 wanted to sit down and discuss with whoever determined this  
21 abatement plan and do this Stage 1.

22 Q. Have you ever talked to anybody in the District  
23 about that, changing the well locations?

24 A. No, sir, I haven't.

25 Q. Have you ever talked to Mr. Anderson or Mr. Olson

1 about changing those well locations?

2 A. Mr. Anderson -- not Mr. Anderson, but Mr. and I  
3 had discussed this before, yes.

4 Q. What did he tell you in relation -- or in  
5 response to your request?

6 A. Well, that was something that needed to be  
7 discussed, and I think it's something that needs to be  
8 discussed among everybody that's going to be involved out  
9 there, not just one.

10 Q. Is there any specific reason about the location  
11 of that well on the surface that you're opposed to?

12 A. No, there's no --

13 Q. So --

14 A. I mean, if they want to put it in and they think  
15 that's vital to their investigation, that would be fine. I  
16 think we need to add some more to cover a little bit bigger  
17 area.

18 Q. You want the abatement investigation to be made,  
19 don't you?

20 A. Yes, sir, I do.

21 Q. So why haven't you told Smith & Marrs or Mr. Seay  
22 to go ahead and do it?

23 A. I told Mr. Seay that he could start doing all of  
24 his soil borings anytime he wanted to start. The only  
25 objection I had to this is through the monitor wells. I

1 expect to be paid for those the same as the New Mexico  
2 State Land Office gets paid for. That's all I've asked out  
3 of this.

4 Q. Did you -- Going back, did you have negotiations  
5 with Bristol over any kind of abatement plan?

6 A. No, sir, I didn't have no negotiation, they  
7 didn't ask, they just went out there and did what they  
8 wanted to.

9 Q. How about with Chaparral?

10 A. Chaparral and I tried to negotiate this and was  
11 unable to reach anything that we could put into writing.

12 Q. You didn't ask Chaparral for \$10,000 a well?

13 A. No, sir, I did not, and I didn't ask them for any  
14 \$400,000.

15 Q. Now, you required payments over a 20-year period,  
16 didn't you?

17 A. No, sir.

18 Q. Never?

19 A. No, sir. The statement was made that this could  
20 go on for 20 years, but I never asked for 20 years.

21 Q. You didn't ask for rentals --

22 A. No, sir.

23 Q. -- per well, per year.

24 A. I asked for rentals per well, per year, according  
25 to the state OCD -- or the State Land Office rates, which

1 is \$300 a year annually per well.

2 Q. And they offered a lump sum at some point, right?

3 A. Chaparral?

4 Q. Chaparral.

5 A. No, we never could come to an agreement. They  
6 put in their agreement that they sent to me, one of them  
7 had a clause in it that I would allow Chaparral to bury  
8 contaminated soil on my property, and I couldn't sign that  
9 agreement.

10 The second one they sent to me, I put a clause in  
11 it that I would not sue them for any past, present or  
12 future contamination of soil or groundwater.

13 Q. And you didn't want to sign that?

14 A. No, sir, I didn't want to sign it.

15 Q. If Smith & Marrs went out there, could you sue  
16 Smith & Marrs if they damage any of your property?

17 A. I think that if Smith & Marrs will come and talk  
18 to me, we can reach some sort of a settlement to pay me for  
19 the monitor wells, and that would include the use of the  
20 surface and the damages that they're going to do to put  
21 those in, is what I've asked for the \$300 annually that the  
22 State Land Office gets. I don't have a problem with that,  
23 and they shouldn't either.

24 Q. But you won't let them on the land until that  
25 agreement is done, right?

1           A.    I've never denied them access to the land.  
2 They're out there every day.

3           Q.    Well, they're operating oil and gas wells out  
4 there --

5           Q.    That's correct.

6           Q.    -- but they're not putting in monitor wells,  
7 right?

8           A.    I have asked for that, and that's all I've asked  
9 them for.

10          Q.    But it's your position, isn't it, that unless you  
11 reach agreement they can't put in the monitor wells or  
12 essentially start the abatement process?

13          A.    Well, I think what we're talking about here is  
14 putting a permanent structure on my land without  
15 compensation, and I have asked for that compensation. Now,  
16 if they want to do that or try to take my land and do it, I  
17 think we need to sit down and talk, and negotiate this.

18          Q.    Have you ever called Smith & Marrs yourself?

19          A.    I've talked to Mr. Rickey Smith on one occasion  
20 about our royalty, and this was not discussed in that  
21 conversation.

22          Q.    Since November of last year, have you called  
23 Smith & Marrs about settling up on surface damages?

24          A.    No, sir, I have not.

25          Q.    Did you respond to the July, 2004, letter?

1 A. Yes, sir, I did.

2 Q. And you didn't say what it would take to get on  
3 the land at that point, right?

4 A. No, sir. I asked for a meeting with Smith &  
5 Marrs.

6 Q. You never have stated what you require to get on  
7 the land in terms of compensation in any correspondence  
8 that you have had with Smith & Marrs, correct?

9 A. No, not through correspondence, no, I have not.

10 Q. You want to negotiate some settlement before they  
11 go on the land, right?

12 A. That is correct.

13 Q. Did you give Chaparral verbal approval at some  
14 point to go do the abatement plan?

15 A. No, sir, I did not.

16 Q. You never gave them verbal approval?

17 A. No. It's been known to Chaparral and to the  
18 others that they could do all the core work they wanted to  
19 do. I don't know if they ever did one core.

20 Q. I understand that, but core work is different  
21 from drilling a number of wells out there?

22 A. Monitor wells.

23 Q. Monitor wells.

24 A. Right.

25 Q. Isn't it in your best interest to get drinking

1 water out there first and argue about damages --

2 A. Yes, sir, I do, and that was part of what I asked  
3 Chaparral to help me with, being as that was the pollution,  
4 the water contamination, I asked Chaparral to replace my  
5 water. And I don't care how they replaced it. They could  
6 set tanks, hook me up to the city or drill me a well to  
7 deeper water, which they refused to do.

8 Q. And is that the reason you never agreed with  
9 Chaparral?

10 A. That's one of the reasons we've never got to  
11 agree. That and what they put in their agreements is  
12 burying contaminated soil on my property or not ever being  
13 able to sue them for something that they might do out  
14 there.

15 Q. Did you ever agree on compensation with  
16 Chaparral?

17 A. No, I have not.

18 Q. There was some testimony here today that you were  
19 displeased about the settlement agreement in terms of  
20 whether or not Smith & Marrs could seek injunctive relief  
21 against you, right?

22 A. Yes, sir, I think --

23 Q. You didn't like that?

24 A. Well, I think they should come to make an effort  
25 to negotiate with us before they go through this to get an

1 injunction.

2 Q. Have you sued Bristol?

3 A. Yes, sir, I did sue Bristol.

4 Q. What happened to that?

5 A. They declared bankruptcy.

6 Q. Did you negotiate with Bristol about surface  
7 damages out there?

8 A. No, sir.

9 Q. Before you filed suit, did you negotiate with  
10 them?

11 A. No, sir. They went out there and did what they  
12 wanted to and filed their plan with the OCD, and then they  
13 left and we never got anything else -- got anything else  
14 from them.

15 Q. Okay, let me see this. Bristol went out there  
16 and did what they thought they were doing, and you didn't  
17 like that, right?

18 A. I didn't mind them doing what they were doing.  
19 It was the simple fact that they never came to us, talked  
20 to us about it. They just showed up out there and did  
21 their thing, drilled a bunch of core holes and a monitor  
22 well without even asking.

23 Q. And then you sued them?

24 A. No, the lawsuit had been filed about that same  
25 time that they did all this. I didn't look back and get

1 your exact dates; I do have them. But the original lawsuit  
2 with Bristol started out as nonpayment of royalties, and  
3 then the environmental issues got put in with the same  
4 suit.

5 Q. But you objected that they didn't come to you to  
6 do environmental work out there, right?

7 A. No, I did not object to it. In fact, I went and  
8 helped them get part of their information. They had  
9 sampled our water wells. The only one that I really had  
10 any objection to, and it was already too late to object to,  
11 is the one monitor well that they drilled.

12 Q. And you sued them for that, right?

13 A. Not for the monitor well, no.

14 Q. You didn't sue them for compensation on the  
15 monitor well?

16 A. No, sir, I did not.

17 Q. But Smith & Marrs can't get on there without  
18 negotiating with you; is that your position?

19 A. I think at this time Smith & Marrs are going to  
20 have to come to us to negotiate. They have not come to us  
21 to negotiate.

22 Q. And neither have you told them what it takes to  
23 negotiate?

24 A. It was passed on through Eddie Seay. But I  
25 expect that they pay me for the monitor wells and copies of

1 all of their analyticals.

2 Q. In any of your letters to Smith & Marrs, did you  
3 tell them you wanted \$300 per monitor well?

4 A. No, sir. We have not ever set down to negotiate  
5 anything. I've had nobody with Smith & Marrs that's  
6 authorized to negotiate, to even talk to you.

7 Q. I understand that, but you haven't told them what  
8 you want, whether it's \$10,000 or \$15,000, to get on the  
9 land and do their abatement plan, right?

10 A. Well, if you call Mr. Eddie Seay one of their  
11 agents, yes, he was told. Now, if he relayed it to them, I  
12 couldn't tell you. I don't know what he said to them.

13 Q. But in your correspondence to Smith & Marrs, you  
14 didn't start out high or anything like that --

15 A. No, sir, I --

16 Q. -- to negotiate down?

17 A. -- I haven't put anything in correspondence to  
18 Smith & Marrs on damages.

19 Q. Would you be willing to let Smith & Marrs in  
20 today to start their abatement plan?

21 A. If they would come and talk to me and we can  
22 reach an agreement and know what they're going to do, yes,  
23 we could probably come to that conclusion.

24 Q. How long have you been without water?

25 A. Since -- Potable water?

1 Q. Yes.

2 A. At the ranch house since back in 1999.

3 Q. And you haven't reached agreement with Bristol or  
4 Chaparral or Smith & Marris, right?

5 A. That is correct, because none of them would  
6 negotiate about this water, none of them.

7 MR. PADILLA: That's all I have.

8 MR. BROOKS: Nothing further from this witness.

9 EXAMINER JONES: Okay, no more questions. Thank  
10 you very much, Mr. Osborn.

11 MR. BROOKS: Mr. Examiner, Exhibit Number 32, I  
12 believe it is, which I did not offer into evidence, is my  
13 notice letter. I don't believe it's necessary, however,  
14 for me to tender that at this time, inasmuch as Smith &  
15 Marris has entered an appearance today.

16 So -- I don't intend to call Mr. Anderson. I  
17 believe it would be repetitious with what we've already put  
18 in through Mr. Olson.

19 So I have a very brief statement. Otherwise,  
20 I've concluded my presentation.

21 EXAMINER JONES: Okay, go ahead.

22 MR. BROOKS: Well, I'll just say that in my view  
23 the settlement agreement, Exhibit 31, required them to do  
24 two things, required them to negotiate in good faith with  
25 Mr. Osborn or whoever has the access rights and to -- if

1 they were unable to reach an agreement, to file a suit.

2 Smith & Marrs, I believe the evidence shows, was  
3 very lackadaisical in their efforts to negotiate with Mr.  
4 Osborn. The Examiner can judge for himself whether it  
5 constitutes good faith. They have filed a lawsuit. They  
6 did so at 4:59 p.m. or something like that, the second day  
7 before the hearing, after they had had approximately a  
8 month's notice that an enforcement hearing was going to  
9 occur down here.

10 I believe they've shown a distinct lack of zeal  
11 in complying with their obligations, and I believe that  
12 perhaps an enforcement order and a monetary penalty would  
13 indicate to them that the OCD is serious about this being  
14 done, and next time perhaps they will proceed a little bit  
15 more promptly.

16 So that's what we have to say on the subject.

17 EXAMINER JONES: Okay. Mr. Larson?

18 MR. LARSON: As Mr. Brooks alluded this morning,  
19 Chaparral is a party to the settlement agreement which is  
20 attached to the Application. My reading of the Application  
21 is that the Division is not seeking any relief against  
22 Chaparral --

23 MR. BROOKS: Not at this time.

24 MR. LARSON: Not at this time, based on this  
25 Application. Because of the terms of the settlement

1 agreement, this could have impact on Chaparral down the  
2 road, and that's why I've appeared today on behalf of  
3 Chaparral, basically as an interested party.

4 EXAMINER JONES: Mr. Padilla?

5 MR. PADILLA: Mr. Jones, I think the problem or  
6 the fault of Smith & Marrs here is, they probably should  
7 have asked for an extension of the 90-day period. I'll  
8 concede that.

9 In terms of the testimony of Mr. Osborn here,  
10 he's dealt with Bristol, he's dealt with Chaparral, he's  
11 dealt with Smith & Marrs to a limited extent. I'll give  
12 him what he testified about. Never has he given Smith &  
13 Marrs any kind of figure or anything in terms of saying, I  
14 want this amount.

15 You'll note his letters are ambiguous in the last  
16 paragraph where they say, I'd like to talk to you, kind of  
17 thing, so that -- I'm willing to talk to you. Well, people  
18 are willing to talk all the time. But, you know, when we  
19 got down there -- and the history in this case has been the  
20 same, especially with Chaparral, where he has not allowed  
21 them to go on, and his testimony is consistent with what  
22 the history is and has been, that unless he gets paid, no  
23 one is going to get on that land in terms of this abatement  
24 plan and implementing the investigative report.

25 You can't go over there and drill superficial

1 surface -- you know, start doing some investigation, when  
2 you have a contractor who's supposed to do the whole thing.  
3 That's really what this abatement contemplates, the monitor  
4 well, everything. You go on, you don't piecemeal it. You  
5 put in the monitor wells.

6 Today is the first time that I've heard that Mr.  
7 Osborn would have liked to change the location of some of  
8 those monitor wells. He didn't appear here in November of  
9 last year when we reached the settlement agreement, and we  
10 anticipated at that time that we were going to have a  
11 problem.

12 The OCD chose not to be a party to any kind of  
13 injunctive process that Rick & Marrs [*sic*] may have had to  
14 take, and I think rightly so, because you don't want to get  
15 into that battle if you don't have to. And I think the OCD  
16 didn't have to get into that battle.

17 But it is now, it is engaged. And I don't care  
18 whether Mr. Osborn doesn't agree with some of the  
19 paragraphs or the allegations in this petition for  
20 permanent injunction. The point is that he can deny or  
21 admit those allegations himself. He may disagree and state  
22 that in response to this petition, but I think finally  
23 we're getting to the point where we can get it done.

24 As I've stated before, Smith & Marrs, I think, is  
25 definitely bound in this thing, and I think they're willing

1 to do this investigative report to comply with the OCD's  
2 requirement.

3 But to get fined after having been since 1999 on  
4 this thing -- and we're into this thing, essentially, only  
5 through July, essentially, because at this point we have a  
6 hearing process to implement and enforce the settlement  
7 agreement that was entered in November of last year.

8 But I do think that to punish Smith & Marris at  
9 this point, considering the history behind the access, then  
10 I think the OCD needs to essentially give Smith & Marris the  
11 green light and say, Go on, get your injunction and go on  
12 and get this thing done. I think they can get it done, and  
13 that is problem that has been going on here forever, and I  
14 think ultimately, had I been at the wheel, I'd have  
15 probably filed something earlier. But I'm not at the wheel  
16 in terms of this injunction.

17 But the point is that all of Mr. Osborn's  
18 correspondence is ambiguous and you have to read between  
19 the lines of what he's really asking is for money,  
20 irrespective of the water. I can't believe that if you  
21 don't have potable water at the ranch and somebody's going  
22 to clean it up, that you don't allow that until you get  
23 your damages. I mean, to me it doesn't make any sense, is  
24 that the demand is there for damages before you clean up  
25 the water.

1           And that's what this is about, is that he wants  
2 money. That's what this case is about, money before you do  
3 the environmental work. That's it.

4           This request should be denied, especially with  
5 regard to any kind of assessment of penalties.

6           EXAMINER JONES: Okay, thank you all.

7           With that, we'll take Case 13,061 under  
8 advisement.

9           (Thereupon, these proceedings were concluded at  
10 4:12 p.m.)

11                           \* \* \*

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15                           I do hereby certify that the foregoing is  
16 a complete record of the proceedings in  
17 the Examiner hearing of Case No. \_\_\_\_\_  
18 heard by me on \_\_\_\_\_

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\_\_\_\_\_  
Oil Conservation Division, Examiner

## 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 5th, 2004.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006