

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:)
APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AN ORDER)
REQUIRING PLATINUM EXPLORATION, INC.,)
TO PROPERLY PLUG ONE WELL, IMPOSING)
CIVIL PENALTIES, AUTHORIZING THE)
DIVISION TO PLUG SAID WELL IN DEFAULT)
OF COMPLIANCE BY THE OPERATOR, AND)
ORDERING A FORFEITURE OF THE APPLICABLE)
FINANCIAL ASSURANCE, LEA COUNTY,)
NEW MEXICO)

CASE NO. 13,728

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Hearing Examiner

July 6th, 2006

Santa Fe, New Mexico

2006 JUL 13 PM 4 09

This matter came on for hearing before the New Mexico Oil Conservation Division, RICHARD EZEANYIM, Hearing Examiner, on Thursday, July 6th, 2006, 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

July 6th, 2006
Examiner Hearing
CASE NO. 13,728

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* * *

A P P E A R A N C E S

FOR THE DIVISION:

GAIL MacQUESTEN
Deputy General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR PLATINUM EXPLORATION, INC.:

JAMES G. BRUCE
Attorney at Law
P.O. Box 1056
Santa Fe, New Mexico 87504

* * *

1 WHEREUPON, the following proceedings were had at
2 9:43 a.m.:

3 EXAMINER EZEANYIM: Again, we continue at this
4 point and go on the record.

5 At this point I call Case Number 13,728. This
6 case was continued from June 22nd, 2006, and this is the
7 Application of the New Mexico Oil Conservation Division for
8 an order requiring Platinum Exploration, Inc., to properly
9 plug one well, imposing civil penalties, authorizing the
10 Division to plug said well in default of compliance by the
11 operator, and ordering a forfeiture of applicable financial
12 assurance, Lea County, New Mexico.

13 Call for appearances.

14 MS. MacQUESTEN: Gail MacQuesten, appearing for
15 the Oil Conservation Division. I have one witness.

16 EXAMINER EZEANYIM: Any other appearances?

17 MR. BRUCE: Jim Bruce representing Platinum
18 Exploration, Inc. I do not have any witnesses.

19 EXAMINER EZEANYIM: No other appearances?

20 May the witness stand to be sworn, please?

21 (Thereupon, the witness was sworn.)

22 EXAMINER EZEANYIM: Go ahead, Ms. MacQuesten.

23 MS. MacQUESTEN: Mr. Examiner, before we begin,
24 I'd like to read a brief statement to outline what we are
25 asking for in this case.

1 EXAMINER EZEANYIM: Go ahead.

2 MS. MacQUESTEN: This is a compliance action. It
3 has a long history. This well was drilled in 1981 and
4 never produced. The OCD has been trying to get the well
5 plugged since 2003, when I started working at the OCD.
6 This is the second case the Division has brought regarding
7 this well.

8 The first case was brought in 2003 against a
9 prior operator, EnergyPro, Inc.

10 Platinum stepped forward and agreed to take over
11 the well and bring it to compliance. Their plan was to
12 convert it into an injection well, and if that wasn't
13 possible, to plug the well. They also agreed to pay a
14 penalty if they didn't bring the well into compliance.

15 At the time we filed this Application, which was
16 some two and a half years later, the well had not been
17 converted to an injection well and it had not been plugged.

18 After we filed the Application, Platinum filed a
19 notice of intent to plug. And yesterday we received a fax,
20 a subsequent report of plugging. That report has not yet
21 been approved by the District Office, and we will hear
22 evidence today that we are not able to approve it at this
23 time.

24 What we are seeking today is an order requiring
25 Platinum to plug by a date certain and allowing us to plug

1 the well and forfeit the financial assurance if they fail
2 to do so. The reason we are still seeking that order is
3 that we don't yet have a completed plugging of the
4 wellbore. We hope to have one soon, but at this point we
5 don't.

6 But we are also here for penalties, and we would
7 be here for penalties even if the wellbore had been
8 plugged. Penalties apply for knowing and willful violation
9 of Division Rules, and there is nothing more knowing and
10 willful than the circumstance here. Platinum knew the well
11 was out of compliance when they acquired it, it was the
12 subject of a compliance action. They agreed to take on the
13 well and bring it into compliance, and pay a penalty if
14 they didn't. They entered into a negotiated agreement to
15 that effect.

16 We acted in good faith, dismissed the original
17 case on the basis of that agreement, and the problem is
18 that two and a half years later Platinum had not returned
19 the well to compliance.

20 And with that, I would like to call my first
21 witness.

22 EXAMINER EZEANYIM: Do you have anything?

23 MR. BRUCE: I'll hold my comments for the end,
24 Mr. Examiner.

25 MS. MacQUESTEN: Before we begin on the

1 testimony, I would like to draw your attention to the
2 exhibit packet that you should have in front of you.

3 The first exhibit is a copy of the agreement
4 signed by Platinum. This was also attached to the
5 Application. I put it in your packet so that you could
6 have the original, with the original signature of Mr.
7 Rasmussen.

8 EXAMINER EZEANYIM: Okay.

9 MS. MacQUESTEN: Exhibit 2 is an affidavit of
10 service, showing notice to Platinum and to its surety. We
11 did receive green card receipts from both entities.

12 And the third exhibit is an affidavit from Ms.
13 Dorothy Phillips regarding the \$50,000 letter of credit
14 that is on file for Platinum.

15 And with that, I would call Mr. Daniel Sanchez.

16 DANIEL SANCHEZ,

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

19 DIRECT EXAMINATION

20 BY MS. MacQUESTEN:

21 Q. Mr. Sanchez, could you state your full name for
22 the record, please?

23 A. My name is José Daniel Sanchez.

24 Q. And where do you work?

25 A. I work for the Oil Conservation Division.

1 Q. What is your title?

2 A. Compliance and Enforcement Manager.

3 Q. Do your duties include enforcement of the Oil and
4 Gas Act and OCD Rules?

5 A. Yes, they do.

6 Q. Do you also supervise the District Offices?

7 A. Yes, I do.

8 Q. Have you reviewed the well file in this case?

9 A. Yes, I have.

10 Q. And the enforcement actions that have been taken
11 regarding this well?

12 A. Yes, I have.

13 Q. Can you tell us when this well was drilled?

14 A. It was in February -- I'm sorry, June of 1981.

15 Q. And is that reflected on Exhibit 4?

16 A. Yes, it is.

17 Q. And what is Exhibit 4?

18 A. It's a sundry notice submitted by V-F Petroleum,
19 Incorporated.

20 Q. They're the entity that originally drilled the
21 well?

22 A. Yes.

23 Q. When did Platinum acquire the well?

24 A. They acquired it in February of 2004. Or the
25 effective date was February of 2004.

1 Q. And is Exhibit 5 the change of operator showing
2 the acquisition of the well by Platinum?

3 A. Yes, it is.

4 Q. Platinum acquired it from whom?

5 A. EnergyPro, Inc.

6 Q. And does the well at issue, the Huber State
7 Number 1, appear on Platinum's current well list?

8 A. Yes, it does.

9 Q. And is that Exhibit Number 6?

10 A. Yes, it is.

11 Q. There's a column on Exhibit Number 6, on the
12 right-hand side, that's titled Last Production/Injection.
13 What does that column indicate?

14 A. It indicates that the Huber State Number 1 has
15 never been produced or injected into.

16 Q. And is that because there's nothing in that
17 column for that well?

18 A. Yes, it is.

19 Q. In your review of the well file, did you notice
20 any attempts at recompletion for this well?

21 A. Yes, there were several attempts at recompletion.

22 Q. But --

23 A. None of them --

24 Q. -- were any of them successful?

25 A. No, none of them were successful.

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1 Q. Did you confirm through GO-TECH that there has
2 been no production from this well?

3 A. Yes, I have. GO-TECH has information going back
4 to 2001, which shows no production at all in the Huber
5 State Number 1.

6 Q. And is Exhibit Number 7 a printout of the GO-TECH
7 information?

8 A. Yes, it is.

9 Q. Let me ask about the enforcement efforts
10 regarding this well. Has the Division -- Did the Division
11 file a previous application for hearing regarding this
12 well?

13 A. Yes, it did.

14 Q. And is that Exhibit Number 8?

15 A. Yes, it is.

16 Q. Who was that filed against?

17 A. It was filed against EnergyPro, Inc.

18 Q. And why was that?

19 A. For not plugging the well. It was meant to get
20 them to plug the well.

21 Q. And EnergyPro was the operator at the time that
22 application was filed?

23 A. Yes.

24 Q. When was this application filed?

25 A. In September of 2003.

1 Q. What happened as a result of this application?
2 Was it ever resolved?

3 A. It was resolved to some extent in that after the
4 transfer from EnergyPro to Platinum, the case was dismissed
5 against EnergyPro.

6 Q. And is that Exhibit Number -- Well, no, let me
7 back up.

8 Why did the Division agree to dismiss the case?

9 A. They agreed to it because in the transfer
10 Platinum had agreed to go ahead and take responsibility for
11 that well and plug it if it was unable to recomplete or get
12 it ready for injection.

13 Q. And is that agreement Exhibit Number 1?

14 A. Yes, it is.

15 Q. And who signed Exhibit Number 1 for Platinum?

16 A. I believe it was Hal Rasmussen, the president of
17 Platinum.

18 Q. And when was this dated?

19 A. February 9th, 2004.

20 Q. Did Platinum, in fact, become operator of the
21 well?

22 A. Yes, they did.

23 Q. And did they file an application for saltwater
24 disposal?

25 A. Yes.

1 Q. And did the Division then dismiss the case
2 against EnergyPro?

3 A. Yes, it did.

4 Q. What happened to Platinum's application for
5 saltwater disposal?

6 A. It was protested by Yates Petroleum Corporation.
7 Eventually they went ahead and withdrew their application,
8 and the application was dismissed.

9 Q. Is Exhibit Number 9 a copy of the objection that
10 was filed by Yates?

11 A. Yes, it is.

12 Q. And what is Exhibit Number 10?

13 A. Number 10 is an e-mail from William Jones, one of
14 the Hearing Examiners, requesting from Platinum whether or
15 not they wanted to go to hearing on this, based on the
16 Yates letter.

17 Q. And what is Exhibit Number 11?

18 A. It is the dismissal of the applicant's request
19 for injection by the Division.

20 Q. When was it dismissed?

21 A. It shows July 22nd, 2004.

22 Q. So at that point, July 22nd, 2004, Platinum had a
23 well that had been inactive for over 20 years, and at that
24 point they abandoned their attempt to convert it to a
25 disposal well. Between that time, when they dismissed

1 their application for a disposal well, and the time we
2 filed the current Application for hearing, did they take
3 any action on this well?

4 A. No.

5 Q. After we filed the Application -- When did we
6 file the Application, the current Application?

7 A. I believe it was in -- in June of 2006.

8 Q. Was it that late?

9 A. 13th?

10 Q. I'll take your word for it, because I don't have
11 it --

12 MR. BRUCE: I think it's a little earlier than
13 that.

14 MS. MacQUESTEN: -- but I thought it was a little
15 earlier.

16 THE WITNESS: Okay, I've just got the --

17 Q. (By Ms. MacQuesten) Is that the letter?

18 A. Yeah, the Application.

19 MS. MacQUESTEN: Let's see if we can find the --

20 MR. BRUCE: I think it would have been in May, in
21 order to meet the June 22nd --

22 MS. MacQUESTEN: Right.

23 MR. BRUCE: -- deadline.

24 MS. MacQUESTEN: Right, here's the Application
25 itself. The Examiner can take notice from the legal file

1 that it was date-stamped May 9th --

2 EXAMINER EZEANYIM: Okay.

3 MS. MacQUESTEN: -- of 2006.

4 Q. (By Ms. MacQuesten) So after we filed the
5 Application, May 9th of 2006, did Platinum take any action
6 regarding this well?

7 A. Yes, they have taken action. They've gone and
8 actually plugged the well.

9 Q. Okay. Did they file the notice of intent to plug
10 the well?

11 A. Yes, they did.

12 Q. And is that Exhibit Number 12?

13 A. Yes.

14 Q. When is that dated?

15 A. That's dated June 16th, 2006.

16 Q. All right, that was when the approval was given?

17 A. Yes.

18 Q. On this notice of intent, did the Division
19 indicate that they needed to be notified before the
20 plugging of the well?

21 A. Yes.

22 Q. And where is that notification?

23 A. It's stamped on the Application, "The Oil
24 Conservation Must be notified 24 hours prior to the
25 beginning of plugging operations".

1 Q. All right. Do you know if Platinum has taken any
2 action to plug the well?

3 A. Yes, I verified with the District 1 Supervisor,
4 Chris Williams, yesterday that the well had been plugged.

5 Q. Why did you check with him yesterday?

6 A. We received a fax yesterday from Platinum stating
7 that the well had been plugged, giving us an application
8 for permanent plugging and abandonment.

9 Q. When you checked with Mr. Williams, did you ask
10 whether Platinum had notified the Division before --

11 A. Yes.

12 Q. -- plugging the well?

13 A. Yes, I did, and they had not.

14 Q. Who did Mr. Williams check with on that?

15 A. E.L. Gonzales, one of our inspectors.

16 Q. Any of the other inspectors?

17 A. E.L. Gonzales is the inspector that they would
18 have notified in this case.

19 Q. Okay, so they didn't notify him before they took
20 the action on the well?

21 A. No, they didn't.

22 Q. Did Mr. Williams check the well site?

23 A. Yes, he did.

24 Q. And what did he find?

25 A. That the well had been plugged, but the PA marker

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25 hearing, that they could request additional penalties on

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1 at this point is wrong. It has the wrong operator name on
2 it, and the legal location on the marker is wrong. It's
3 also the wrong size tubing for a dryhole marker.

4 Q. So is Mr. Williams in a position right now to
5 approve the plugging of the wellbore?

6 A. Not at this point.

7 Q. If Platinum were able to correct the problems
8 with the plugging and complete the plugging of the
9 wellbore, would you drop this case?

10 A. No, I think we need to move forward on the
11 finding before we could close out this case.

12 Q. Why do you want to pursue a penalty?

13 A. The original agreement signed by Platinum back in
14 2004 agreed to a penalty, and their lack of good faith in
15 meeting those obligations, I believe, warrants a penalty as
16 well.

17 Q. Let me look at the agreement that they signed
18 when they wanted to take over the well. What did it state
19 regarding penalties?

20 A. That if they were unable to meet the deadline
21 that they agreed to, that they would pay a \$1000 penalty.

22 Q. And was there any further discussion of penalties
23 beyond the \$1000?

24 A. Yes, that if the OCD did bring the case to
25 hearing, that they could request additional penalties on

1 top of the \$1000.

2 Q. In the Application filed in this case, the OCD
3 requested \$5000 as a penalty. Are you still asking for
4 \$5000?

5 A. Yes, we are.

6 Q. And why did you -- Why \$5000?

7 A. Well, the original \$1000, and we went with \$1000
8 for every six-month period they failed to act on the
9 original agreement.

10 Q. And is that every six months after the dismissal
11 of the Application for saltwater disposal?

12 A. Yes.

13 Q. If OCD had followed the letter of the statute
14 regarding penalties, how much could they have asked for?

15 A. They could have asked for \$1000 per day from the
16 time of the infraction.

17 MS. MacQUESTEN: I would move for the admission
18 of Exhibits 1 through 12.

19 EXAMINER EZEANYIM: Before I admit those into
20 evidence, I want to say that Mr. Daniel Sanchez is so
21 qualified to give the testimony that he has given today, so
22 let's have that in the record.

23 Do you have any objection to the --

24 MR. BRUCE: I have no objection to the exhibits,
25 Mr. Examiner.

1 EXAMINER EZEANYIM: At this point Exhibits 1
2 through 12 will be admitted into evidence.

3 MR. BRUCE: I do have a couple of questions, Mr.
4 Examiner.

5 EXAMINER EZEANYIM: Okay, go ahead.

6 CROSS-EXAMINATION

7 BY MR. BRUCE:

8 Q. Exhibit 9 is a letter from Yates Petroleum, Mr.
9 Sanchez, objecting to the saltwater disposal request. Do
10 you know why Yates objected to Platinum's request to
11 convert this well to saltwater disposal?

12 A. No, I was not here at that time. I didn't have a
13 chance to check that out.

14 Q. Did you look at the OCD's -- the Division's well
15 file on the Huber State well?

16 A. Yes, I reviewed it.

17 Q. Do you recall when EnergyPro became operator of
18 the well?

19 A. Not off the top of my head, no, I didn't.

20 Q. Had it been operator of record for a couple of
21 years before you filed the plugging case, back in -- before
22 the Division filed the plugging case?

23 A. I believe it was a couple years at least.

24 Q. Okay. What was the amount of EnergyPro's bond?

25 Do you know?

1 A. If I remember, I think it was \$40,000.

2 Q. Okay.

3 A. That's subject to check, but I believe it was
4 \$40,000.

5 Q. Okay. Isn't it typical that if you got a blanket
6 bond, it's in that range, \$40,000 to \$50,000 --

7 A. Yes.

8 Q. -- for an operator to get a bond like that?

9 A. Yes, sir.

10 Q. Did you or anyone else at the Division ever go
11 out and get estimates for the cost of plugging and
12 abandoning this particular well?

13 A. Not that I'm aware of.

14 Q. Just one final question. If -- Let's say I was
15 the operator of the well, and I drilled it and it wasn't
16 producing. How long would I have to get the well in
17 compliance with Rule 201.B, either through plugging or
18 trying to bring it on production or put it on disposal?

19 A. I believe --

20 MS. MacQUESTEN: I would just object. We can
21 point to the Rule itself and answer that question.

22 Q. (By Mr. Bruce) I'm just looking for an answer.
23 I mean, whatever it is. And what is the time- -- I mean --

24 A. I believe it's 15 months.

25 MR. BRUCE: 15 months. I'm not -- I just don't

1 recall the number, that's all.

2 That's all the questions I have, Mr. Examiner.

3 EXAMINER EZEANYIM: Thank you, Mr. Bruce.

4 EXAMINATION

5 BY EXAMINER EZEANYIM:

6 Q. So it's evident that Platinum is the last
7 operator of this well, right?

8 A. Yes, sir.

9 Q. Now, you think we'll have \$40,000 in the bond?
10 \$40,000, \$50,000?

11 A. That was for EnergyPro, we have --

12 MS. MacQUESTEN: Exhibit Number 3, I believe, we
13 have a copy of the letter of credit for \$50,000.

14 EXAMINER EZEANYIM: Okay.

15 MR. BRUCE: That's the Platinum bond.

16 MS. MacQUESTEN: The Platinum.

17 MR. BRUCE: Yeah.

18 EXAMINER EZEANYIM: \$50,000?

19 MS. MacQUESTEN: Yeah. I don't recall how much
20 the EnergyPro was, but it should be in the application that
21 was filed, and we can certainly look it up.

22 EXAMINER EZEANYIM: I'm interested in Platinum.

23 Q. Okay. And the well has been inactive since 1981,
24 at least since Platinum acquired this in 2004, it has been
25 inactive, right?

1 A. Yes, sir.

2 Q. It's not in temporary abandonment status, it's
3 not plugged and abandoned, and so -- today?

4 A. No, sir.

5 Q. Now let's go back, how much you are seeking. You
6 know, under the statutes you say -- you testified today
7 that you could seek \$1000 a day, and then maybe from the
8 day of the inactive well to this point.

9 And you mentioned an agreement that you made with
10 Platinum, agreement to pay penalties. Is that part of this
11 package here, so I can look at the agreement that you made?
12 Because you have an agreement with Platinum that if they
13 don't plug the well or are using it for beneficial
14 purposes, they will pay it. Is this part of this?

15 A. Yes, sir, it's Exhibit 1.

16 Q. Exhibit 1, okay. And that way you arrived at
17 maybe \$5000 a day -- I mean, \$5000 as an agreement between
18 the Division and Platinum that if they don't comply they
19 will pay \$5000?

20 A. Within that agreement they had agreed to pay
21 \$1000. The additional \$4000 was established during this
22 case.

23 Q. Oh, okay. Is that for willful --

24 A. Yes, sir.

25 Q. So I know, let me ask you this. If we ask for

1 \$1000 a day regardless of this agreement, we will be
2 talking about several thousands of dollars here, if we
3 start from 2004, whenever you want, even if you start from
4 this year, thousands of dollars, if you -- ?

5 A. Yes, over \$700,000, I believe it would be.

6 Q. Okay, but you are only asking for \$5000?

7 A. Yes, sir.

8 Q. By this agreement -- It seems to me that you've
9 made a lot of attempts to have this well plugged and
10 abandoned?

11 A. Yes, sir.

12 EXAMINER EZEANYIM: Gail, do you have anything
13 more to say?

14 MS. MacQUESTEN: I have nothing else of this
15 witness.

16 MR. BRUCE: I have just a couple of things,
17 basically.

18 EXAMINER EZEANYIM: Okay. Thank you.

19 MR. BRUCE: Mr. Examiner, I've submitted several
20 things marked as exhibits, and I know I don't have a
21 witness.

22 The first is a sundry notice dated yesterday. I
23 think Mr. Sanchez said he received a fax. I don't know if
24 he received that fax, but it is a sundry notice describing
25 the plugging operations on this well, together with a well

1 schematic, as plugged. And I would simply ask that the
2 Examiner take administrative notice of whatever is in the
3 well file for this well. And I've marked that as Exhibit
4 A.

5 Marked as Exhibit B is an affidavit from Michael
6 Reeves, who is the operations manager for Platinum
7 Exploration. And attached to that are the daily drilling
8 reports for the plugging, showing that as of June 28th --
9 and the plugging is not quite done yet -- Platinum expended
10 about \$120,000 plugging the well.

11 And then submitted as Exhibit C is a page of
12 State Land Office data taken off the New Mexico Tech
13 website, and this simply shows information -- what it shows
14 is that the northeast quarter of this Section 5, 16 South,
15 38 East, is subject to State of New Mexico Lease V-6930,
16 which is owned by Yates Petroleum Corporation, and that
17 lease was dated October 1, 2003, which precedes the date
18 that Platinum became operator of the well.

19 I must say that in looking through the file, that
20 the case that was dismissed by -- at the Division, Case
21 13,292, which is the Division's Exhibit 11, I had filed, I
22 think, on behalf of Platinum that case seeking to convert
23 this well to saltwater disposal. I didn't remember that
24 until Ms. MacQuesten showed me the exhibit this morning,
25 and I'll let Ms. MacQuesten respond to me.

1 The reason I show these, Mr. Examiner -- And then
2 looking at Exhibit 8, Ms. MacQuesten showed me the
3 application for plugging that was filed against EnergyPro,
4 and it states that the bond that EnergyPro had was \$10,000.

5 So if the Division had continued against
6 EnergyPro -- and I forget what you call it, but called that
7 bond in order to do the plugging, that bond would have been
8 woefully inadequate to plug this well. And as a matter of
9 fact, Platinum's bond of \$50,000 would be inadequate to
10 plug the well. They've spent about \$120,000.

11 And I know Ms. MacQuesten spends way too much of
12 her time going on these plugging cases, and I understand
13 that, and action should have been taken.

14 But as you can see, what happened is -- and I
15 conformed this with my client, and I had forgotten about
16 this case -- they agreed to buy it from EnergyPro, but
17 EnergyPro's lease had expired, and Yates Petroleum had
18 taken a new lease on this tract. Which is why Yates
19 objected to the saltwater disposal well: They didn't want
20 anybody operating on their lease.

21 Frankly, Platinum should never have filed to be
22 operator of this well with the Division, then they would be
23 off the hook right now. That's neither here nor there,
24 because they did become the Division-recognized operator of
25 the well, and I understand that it's Division policy to go

1 after the Division-recognized operator for plugging. But
2 they never owned that well, they never owned the wellbore.
3 It was either the State of New Mexico or Yates. But they
4 were obligated to go forward with plugging the well,
5 unfortunately, and they have spent about \$120,000 doing
6 that.

7 I merely point this out to say that by their
8 actions in plugging the well they have spent considerable
9 amount of money, they have saved the State from having to
10 go expend its own money, because EnergyPro only had a
11 \$10,000 bond. And I bring this up by saying, I know the
12 agreement does state that there is a civil penalty of
13 \$1000, and an agreement is an agreement, but I think that
14 should be the maximum penalty. They have already expended,
15 probably by the time they get done, well in excess of
16 \$120,000. I don't think it gets anybody anywhere to fine
17 them an excessive amount after spending that money in
18 putting the well in a P-and-A status.

19 So I would just ask that the Division, if they
20 are going to fine Platinum, simply assess the \$1000 fine
21 under Exhibit 1 and leave it at that.

22 MS. MacQUESTEN: If I may respond?

23 EXAMINER EZEANYIM: Yeah, sure, go ahead.

24 MS. MacQUESTEN: The OCD doesn't want to
25 disparage the efforts of platinum. We are very pleased

1 that they are taking the action now that they've taken to
2 plug the well, and we appreciate that that is a costly
3 plugging.

4 But it's important to recognize that they aren't
5 doing anything that they weren't legally obligated to do
6 the minute they became operator of that well. And as Mr.
7 Bruce points out, the bond that had been posted by
8 EnergyPro, if it was the \$10,000 bond, was woefully
9 inadequate. The \$50,000 bond that Platinum has posted was
10 woefully inadequate.

11 But it's important to remember that the process
12 the OCD takes if they have to plug a well is to first go
13 through the administrative hearing process, get approval to
14 plug the well and forfeit the bond, but that is only the
15 first step. We would then be seeking -- After we plug the
16 well and find out how much it costs, we would then be
17 seeking reimbursement from the operator, whether it be
18 EnergyPro or Platinum.

19 So if Platinum hadn't taken the efforts that they
20 did, hadn't plugged the well, we would be coming before you
21 today asking for authority to plug, asking for authority to
22 forfeit the bond. We would then plug the well, we would
23 forfeit the bond, and then we would sue Platinum for the
24 balance. So again, they are not doing anything that they
25 weren't obligated to do anyway. They are obligated to plug

1 the well or reimburse us for the cost.

2 Mr. Bruce argues that the penalty should be \$1000
3 instead of \$5000. \$1000 was what Platinum agreed to if
4 they didn't plug the well or return it to compliance in a
5 timely fashion after signing the agreement. We could have
6 simply asked for that \$1000. The reason we didn't was that
7 that \$1000 didn't seem to be adequate to get their
8 attention. Even after they signed an agreement to pay
9 \$1000 they apparently forgot about the entire deal, and it
10 wasn't until we filed an application for hearing that they
11 took any action on the well.

12 If \$1000 isn't enough to get their attention, we
13 need to raise it a little bit more. I would submit that
14 we're being very modest in asking for \$5000, particularly
15 when you look at the cost of the well. If it's costing
16 over \$100,000 to plug this well, we're asking for a very
17 small percentage of that as a penalty for taking several
18 years to get around to doing it.

19 One thing we rarely talk about in these cases is
20 the cost to the OCD. This is the second application that
21 was filed. Each application takes time to prepare, takes
22 time of OCD legal staff and technical staff to prepare it.
23 In this case we went forward. We had to take Mr. Sanchez's
24 time and my time for the hearing, the court reporter time,
25 the cost to the State to have this hearing transcribed, the

1 Examiner's time. This is simply to get some action on the
2 part of an operator. And this is one well that has taken
3 three years now to get action on.

4 So again, I don't think that the \$5000 is an
5 excessive amount to request in this case.

6 Thank you.

7 EXAMINER EZEANYIM: Thank you very much. Any
8 other --

9 MR. BRUCE: No, Mr. Examiner. I simply wish that
10 Platinum's landman had looked at the lease files before
11 agreeing to buy the well from EnergyPro.

12 EXAMINER EZEANYIM: Yeah, okay. In your
13 statement, Mr. Bruce, you stated that you never owned the
14 well. I mean, I didn't know what you mean by that.

15 MR. BRUCE: Because, Mr. Examiner, there's -- the
16 legal principle is this. And this land, the northeast
17 quarter of Section 5, is owned by the State of New Mexico,
18 minerals and surface, the Commissioner of Public Lands.

19 EXAMINER EZEANYIM: Uh-huh.

20 MR. BRUCE: When you drill a well, regardless of
21 the status of the surface and minerals, when you drill a
22 well, the -- and this was drilled by V-F Petroleum. When
23 they drilled the well, they owned it, they owned that well.

24 But once you abandon that well, and once a lease
25 expires, that well is owned by the surface owner, not by

1 the mineral owner.

2 So for instance, if Mr. Sanchez owned the surface
3 of the northeast quarter of Section 5, and V-F drilled that
4 well and didn't produce it, and that lease expired, the
5 State as the mineral owner did not own that well. Mr.
6 Sanchez, as surface owner, owned that well.

7 Now having said that, the lease expired, the
8 lease that Platinum thought they were getting had expired.
9 So that well reverted to the State of New Mexico, the
10 Commissioner of Public Lands, the ownership of that
11 wellbore. And now the State can do -- Fortunately, they
12 own both the surface and the minerals.

13 But when you lease it out again for minerals, the
14 mineral lessee does have the right to use that wellbore.
15 Even though the wellbore is owned by the surface owner, the
16 mineral lessee, in order to produce the well, et cetera,
17 has the right to use that wellbore.

18 So in short, the State of New Mexico, as surface
19 owner, owned that wellbore subject to the right of Yates
20 Petroleum, the current lessee, to own that wellbore.

21 So that's why when -- The State could have
22 granted -- the Commissioner of Public Lands could have
23 granted an easement to Platinum to use that wellbore. But
24 as a practical matter, once the lessee, Yates Petroleum,
25 objected, it's the policy -- I know I have no backing for

1 this other than practical experience -- the Commissioner of
2 Public Lands won't approve that use of that wellbore for
3 injection, and so when Yates objected there was no recourse
4 but to dismiss that saltwater disposal application.

5 So Platinum never -- has never, ever owned that
6 wellbore, but it is the operator of record, as Mr. Sanchez
7 testified. It's kind of a weird legal position. But as
8 Ms. MacQuesten said, you know, the State -- the Division
9 does seek to go after the operator, to -- or the operator,
10 regardless of his status of ownership, to seek that -- to
11 seek plugging.

12 And furthermore, the Division -- if the operators
13 don't do that, then the Division -- And Platinum does
14 operate in the state. I don't know if EnergyPro does
15 anymore, but Platinum does operate in the state and of
16 course needs to keep -- to do what the Division says so it
17 can get other APDs approved.

18 I forget what the rule is, but if you -- the
19 number, but if you have so many out-of-compliance wells,
20 then the State won't issue APDs, and Platinum would
21 therefore not be able to drill any further wells in this
22 state.

23 But anyway, that's what I mean. Platinum never
24 has owned that wellbore because the State lease on -- which
25 it thought it was getting had expired, and it could never

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1 get approval from anyone to operate -- or to conduct
2 operations, other than it finally did get approval to
3 P-and-A the well.

4 EXAMINER EZEANYIM: Okay, and they are the last
5 operator, even though they don't own the well, they are the
6 last --

7 MR. BRUCE: Well, apparently Yates had no
8 objection -- I -- As I told Ms. MacQuesten, during the
9 course of the hearing I do remember this from a couple of
10 years ago, filing that application for Platinum to get
11 approval for saltwater disposal. But the letter in there
12 from Mr. Carr -- Mr. Carr did inform me that Yates may well
13 want to use that wellbore in its operations of the lease,
14 but apparently it decided never to do that, and therefore
15 the well is being plugged.

16 EXAMINER EZEANYIM: Gail?

17 MS. MacQUESTEN: Mr. Examiner, if I could just
18 briefly address the issue of ownership. I believe the
19 issue of ownership is not relevant in a plugging case. The
20 rule that we are applying in this case is Rule 201, which
21 speaks of the operator. The operator shall be responsible
22 for the plugging of the wells.

23 The Oil and Gas Act provides for financial
24 assurance to be held by the operator of the wells.

25 Both the Oil and Gas Act and OCD Rules are based

1 on who the operator of the well is. We don't commonly look
2 to ownership. If we were to look to ownership in each
3 case, we would have far different hearings than we do.
4 Instead, we leave that to the parties.

5 We are pursuing the operator because that is the
6 authority given to us under the Rule and under the Statute.
7 The only entity we can go after for the bond is the
8 operator, and that is -- once they became operator, whether
9 they truly own the well or not is not an issue for the OCD.

10 When they became operator of the well, that put
11 them in a position for the OCD to file a plugging action
12 against them and seek forfeiture of their financial
13 assurance.

14 MR. BRUCE: And Mr. Examiner, I'm not disputing
15 that. I mean, as I said during the course of my little
16 argument, I know it's the policy of the Division under its
17 Rules to go after the operator.

18 I'm merely pointing out that Platinum got stiffed
19 by EnergyPro, as the State of New Mexico may well have
20 been. That's all I was pointing out. But -- That's all I
21 have to say.

22 EXAMINER EZEANYIM: Very good. Anything further?

23 MS. MacQUESTEN: Nothing further, thank you.

24 EXAMINER EZEANYIM: Okay.

25 MR. BRUCE: Thank you, Mr. Examiner.

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EXAMINER EZEANYIM: Okay, thank you very much.

At this point, Case Number 13,728 will be taken under advisement.

And that concludes the hearing today.

(Thereupon, these proceedings were concluded at 10:25 a.m.)

* * *

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 13728 heard by me on 7/15/88.
[Signature], Examiner
Oil Conservation Division

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 July 8th, 2006.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006