STATE OF NEW MEXICO RECEIVED
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION 2007 DEC 7 PM 3 53

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST <u>MARKS AND GARNER PRODUCTION LTD. CO.,</u> (1) FINDING THAT THE OPERATOR IS IN VIOLATION OF 19.15.4.201 NMAC AS TO TWENTY THREE WELLS, OR ALTERNATIVELY IS IN VIOLATION OF 19.15.13.1115; (2) REQUIRING THE OPERATOR TO BRING SAID WELLS INTO COMPLIANCE WITH 19.15.4.201 NMAC AND/OR 19.15.13.1115 NMAC BY A DATE CERTAIN AND (3) REQUIRING THAT THE OPERATOR PAY PENALTIES, AND IN THE EVENT OF NON-COMPLIANCE, DECLARING THE WELLS ABANDONED AND AUTHORIZING THE DIVISION TO PLUG THE WELLS -- LEA AND SAN JUAN COUNTIES, NEW MEXICO.

CASE NO. 14041

<u>APPLICANT'S RESPONSE TO OPERATOR MARKS AND GARNER'S MOTION FOR CONTINUANCE</u>

COMES NOW the Oil Conservation Division in response to Respondent Operator' Marks and Garner Production Ltd. Co.'s ("Marks & Garner" or "Operator") Motion for Continuance and states as follows:

1.   The issues raised in the Application have been longstanding and ongoing for a period of years. The OCD's most recent series of efforts to bring Operator into compliance began in 2005, with efforts continuing through the present and culminating with the filing of the subject Application.

2.   Operator had ample opportunity to retain and consult with counsel regarding these issues over the course of the last two years as repeated efforts were made by the OCD to gain the Operator's cooperation. Operator never responded to any of these efforts, either through counsel or independently, and it was only after the fourth

such attempt by the OCD yielded no response that the OCD filed the subject Application.
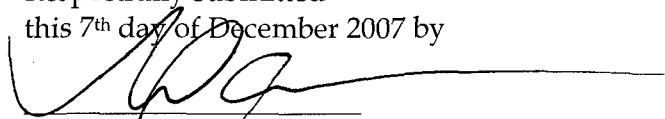
3.   The Application was filed on November 19, 2007, and the Application and the corresponding Notice of Hearing were sent to Mr. Welborn via certified mail. Mr. Welborn personally signed for the packet of materials as is evidenced by the return receipt attached as **Exhibit A.** Although Mr. Welborn failed to fully complete the return receipt by indicating the date of delivery, the United States Postal Service Website tracking system indicates that delivery was first attempted, and a notice was left informing Mr. Welborn that he had a certified letter from the OCD, on November 23, 2007, three days prior to the date of his surgery. **Exhibit B.** Mr. Welborn chose to wait until after the date of his surgery to retrieve/accept delivery of the letter.

4.   Mr. Welborn had personal notice of the pending action with ample time to retain counsel in time for said counsel to prepare for the upcoming hearing. Mr. Welborn simply put off the task of seeking out legal counsel for this matter, and any delay in counsel becoming involved in the case and/or being able to "meaningfully inform himself of the issues involved" are the fault of the Respondent.

5.   The OCD properly filed the Application after engaging in exhaustive efforts to obtain compliance from Operator informally, and has already prepared for the upcoming hearing. The OCD should not now be penalized, and the resolution of this matter, which has been long-awaited, should not be delayed simply because the Respondent has failed to promptly and timely address his business obligations.

WHEREFORE, for the foregoing reasons, Applicant Oil Conservation Division respectfully requests that the presently scheduled hearing date of December 13, 2007 be maintained, and that Respondent's Motion to Continue this matter be denied.

Respectfully submitted
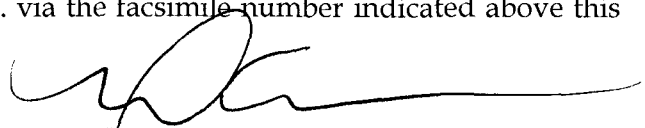this 7th day of December 2007 by

Mikal Altomare
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3480

Attorney for the Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon counsel for Marks & Garner Production Ltd., Co. via the facsimile number indicated above this 7th day of December, 2007.

Mikal Altomare

1. Article Addressed to:

Quinton Welborn
Marks and Garner Production LTD Company
P.O. Box 1089
Hobbs, NM 88241

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X _(signature)_   ☐ Agent
                        ☐ Addressee

B. Received by (Printed Name)   C. Date of Delivery
Quinton Welborn

D. Is delivery address different from item 1?   ☐ Yes
   If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail   ☐ Express Mail
☐ Registered   ☒ Return Receipt for Merchandise
☐ Insured Mail   ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)   ☐ Yes

2. Article Number
   (Transfer from service label)   7005 3110 0002 2085 0103

PS Form 3811, August 2001   Domestic Return Receipt   102595-02-M-1540

Case No. 14041
Response Mtn to Compel
OCD –Exhibit A

UNITED STATES POSTAL SERVICE®

Track & Confirm   FAQs

Track & Confirm

Search Results

Label/Receipt Number: **7005 3110 0002 2085 0103**
Detailed Results:

- **Delivered, November 30, 2007, 8:52 am, HOBBS, NM 88240**
- **Notice Left, November 28, 2007, 12:36 pm, HOBBS, NM 88240**
- **Notice Left, November 23, 2007, 1:21 pm, HOBBS, NM 88240**

(< Back)   (Return to USPS.com Home >)

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Case No. 14041
Response Mtn to Compel
OCD –Exhibit B

http://trkcnfrm1.smi.usps.com/PTSInternetWeb/InterLabelDetail.do   12/7/2007