

NEW MEXICO OIL CONSERVATION DIVISION

EXAMINER HEARING

SANTA FE, NEW MEXICO

Hearing Date NOVEMBER 4, 1999 Time 8:15 A.M.

NAME	REPRESENTING	LOCATION
William F. San	Empire San, Tays + Leason	Santa Fe
DALE DOUGLAS	DAVID H. ALLENWOOD OIL & GAS	MIDLAND TX
R. J. Hillier	Kellner + Kellner	Santa Fe
James Bruce	-	" "
Jul Carson	Loce Carson Hart Caswell - Houston	

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 NAVAJO REFINING COMPANY)
 TO MODIFY ITS DISCHARGE PLAN TO CHANGE)
 THE LOCATION OF AN INJECTION WELL,)
 EDDY COUNTY, NEW MEXICO)

CASE NO. 12,249

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

November 4th, 1999

Santa Fe, New Mexico

99 NOV 17 AM 8:39
 OIL CONSERVATION DIV.

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, November 4th, 1999, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

I N D E X

November 4th, 1999
 Examiner Hearing
 CASE NO. 12,249

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APPLICANT'S WITNESS:	
<u>WILLIAM F. CARR</u> (Lawyer)	
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* * *

A P P E A R A N C E S

FOR THE DIVISION:

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FOR THE APPLICANT:

LOSEE, CARSON, HAAS & CARROLL, P.A.
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Artesia, New Mexico 88211-1720
By: ERNEST L. CARROLL

* * *

1 WHEREUPON, the following proceedings were had at
2 8:25 a.m.:

3 EXAMINER CATANACH: At this time I will call Case
4 12,249, which is the Application of Navajo Refining Company
5 to modify its discharge plan to change the location of an
6 injection well, Eddy County, New Mexico.

7 Call for appearances in this case.

8 MR. CARSON: Mr. Examiner, my name is Joel
9 Carson, Losee, Carson, Haas and Carroll, Artesia, New
10 Mexico, appearing on behalf of the Applicant. I have one
11 witness.

12 EXAMINER CATANACH: Okay. Call for additional
13 appearances.

14 Will the witness please stand to be sworn in?
15 (Thereupon, the witness was sworn.)

16 EXAMINER CATANACH: Mr. Carson?

17 Mr. Carson, do we only have one set of these?

18 MR. CARSON: I brought several sets. I just gave
19 you one for the time being, because I got kind of behind
20 while we were back there talking.

21 EXAMINER CATANACH: Okay.

22 MR. CARSON: You want three sets, don't you?
23 I've got another set right here. One second, if you don't
24 mind, and I'll just give you another set here.

25 Mr. Catanach, this is an application of Navajo

1 refining company, which is pretty much self-explanatory.
2 As we understand, the state of the record was that we
3 have -- "we" meaning Navajo, have submitted all of the
4 necessary scientific evidence and so forth to justify the
5 issuance of a permit to dispose of waste water through this
6 WDW Number 2, but the only issue today, as we understand
7 it, with the Department, is the right of Navajo to dispose
8 of this water through this particular well and the question
9 of who owns the wellbore.

10 It was our -- If you look at the file you can see
11 that everybody was properly notified, and a Mr. Binscotter
12 has protested back sometime ago to that on the grounds that
13 he had a right to the use of this wellbore. So that's what
14 we'll direct our testimony to unless there are other
15 questions. I mean, that was my understanding from Mr.
16 Anderson, that that would be the sole question we would
17 take up today.

18 If it please the Division, I brought one witness.
19 You'll have to be patient, he's a nervous witness. He is
20 worried about his credentials and various other things, so
21 if you'll bear with me, we'll try to deal with the legal
22 issues involved in this case.

23 And I might say that we filed a motion to dismiss
24 in this case, based on the theory that the OCD did not have
25 jurisdiction to determine the ownership of the wellbore,

1 number one.

2 And number two, even if it did, it was probably
3 poor policy to start getting into the area of determining
4 ownership leases and production equipment, as well as the
5 wellbore.

6 And having said that and having raised that
7 issue, we're nevertheless prepared to hopefully show you
8 that we do own the wellbore.

9 So I would call my one witness, Mr. Carr.

10 Have you been sworn, Bill, or --

11 MR. CARR: Yes, I have.

12 WILLIAM F. CARR,

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. CARSON:

17 Q. For the purpose of the record, would you state
18 your name?

19 A. My name is William F. Carr.

20 Q. And Mr. Carr, are you an attorney located here in
21 Santa Fe?

22 A. I am. I'm a partner in the law firm Campbell,
23 Carr, Berge and Sheridan.

24 Q. And are you an oil and gas specialist?

25 A. I am a State Bar Board Certified expert in oil

1 and gas law.

2 Q. And how long have you been practicing law in this
3 area?

4 A. I've been practicing since 1972 in the area of
5 oil and gas law. At that time I went to work for the Oil
6 Conservation Commission as their in-house attorney. I was
7 there for approximately four years.

8 Since that time I've been in private practice.
9 My practice is generally confined to the area of oil and
10 gas law.

11 Q. And if I understand correctly, you also
12 specialize in regulatory matters?

13 A. Yes, sir, I do.

14 Q. And particularly regulatory matters concerning
15 oil and gas?

16 A. That's correct.

17 Q. And that you are -- If I remember correctly,
18 Martindale-Hubbell rates you as an A-rated lawyer?

19 A. Yes, sir, they do.

20 Q. Which is their highest rating?

21 A. Yes, it is.

22 Q. And you're also rated as one of the best lawyers
23 in America?

24 A. I've been listed for the last ten years in the
25 book published, entitled *Best Lawyers in America, Natural*

1 Resources Law.

2 MR. CARSON: Are his qualifications acceptable,
3 Mr. Catanach?

4 EXAMINER CATANACH: Yes, they are.

5 Q. (By Mr. Carson) Mr. Carr, I've submitted various
6 things to you for your review in this case, some of which
7 I'm going to put in the record, and some of which I'll just
8 ask for your recitation of what you -- Let me go through
9 these and get these out of the way right off the bat.

10 If you'll look at Applicant's Exhibit Number 1,
11 which you should have someplace up there, I think I gave
12 you a set, didn't I?

13 A. No, sir, you did not.

14 Q. I'll just give you a set right now then.

15 Would you identify that and tell the Examiner
16 what that is?

17 A. Mr. Examiner, this is a wellbore assignment from
18 the Eastland Oil Company and Polo Oil and Gas Company,
19 assigning the well in question, the Chucka Federal Number
20 2, which previously was called or named the Amoco Diamond
21 Federal Gas Com Number 1 well, and this is an assignment of
22 the wellbore by Eastland and Polo to Navajo Refining
23 Company.

24 Q. And Mr. Carr, as you recall from looking at the
25 records, this was a producing at the time that Navajo --

1 A. It is my understanding it was a producing well at
2 the time it was assigned to Navajo.

3 Q. And not a plugged and abandoned well?

4 A. No, sir, it was not.

5 Q. And Mr. Carr, do you recall approximately the
6 depths that Polo and Eastland were producing from?

7 A. I don't recall the depths. They were producing
8 from the Queen-Grayburg-San Andres interval, is my
9 recollection, the Artesia-Queen-Grayburg-San Andres Pool.

10 Q. Now I'm going to refer you to Applicant's Exhibit
11 Number 2 and ask if you would identify that.

12 A. This is a letter from Mewbourne Oil Company,
13 dated March 16, 1999, to Holly Petroleum, Inc. Holly was
14 representing, it's my understanding, Navajo in this matter.
15 And this is a letter from Mewbourne who had the rights by
16 assignment to produce below the Abo to 100 feet below the
17 base of the Morrow formation. And this is a waiver letter
18 expressing no objection to the use of this wellbore in the
19 injection in these intervals of wastewater.

20 Q. And then, Mr. Carr, would it be correct to say
21 that this is the interval in which the Application proposes
22 to dispose of water?

23 A. Yes, that's correct. It includes the Wolfcamp an
24 the Canyon.

25 Q. I'm going to refer you to Applicant's Exhibit

1 Number 3 and ask you to identify that and explain it.

2 A. This is a copy of Oil Conservation Division Form
3 C-101. It's an application for a permit to drill, re-
4 enter, deepen, plug back or add a zone. This is a Navajo
5 application concerning the re-entry of the subject well to
6 convert it to a Class 1 injection well, and it was approved
7 by the Oil Conservation Division in May of this year.

8 Q. I refer you to Applicant's Exhibit Number 4.

9 A. Exhibit Number 4 is a copy of the BLM Application
10 for Permit to Drill. And again, this is the approved form
11 authorizing the re-entry of this well for conversion to
12 wastewater disposal. It was approved by the BLM on April
13 27, 1999. The properties involved are federal. They're
14 not separate estates. The surface and the minerals are
15 federal.

16 MR. CARSON: Mr. Catanach, I would ask that
17 Applicant's Exhibit Numbers 1 through 4 be admitted.

18 EXAMINER CATANACH: Exhibits 1 through 4 will be
19 admitted as evidence.

20 Q. (By Mr. Carson) Mr. Carr, in the course of
21 trying to determine the ownership of this wellbore, or, I
22 might better say, to exclude Mr. Binscotter's ownership of
23 the wellbore, would you tell the Examiner in some -- I was
24 going to say some detail, but I was going to say briefly
25 rather than in some detail, as to what you had available

1 for you to look at and what you did look at?

2 A. I reviewed various items of correspondence
3 between Mr. Binscotter, Mr. Carson, correspondence between
4 Navajo and Holly and Mewbourne concerning the use of the
5 subject wellbore. I have looked at various BLM and OCD
6 forms that are on file with both of those agencies. I have
7 also reviewed two Division Order title opinions concerning
8 the ownership of the tract and the wellbore, and I have had
9 available to me and have reviewed three supplemental
10 abstracts of title, bringing the title current, or at least
11 the records go through September 30th of this year. And
12 that's what I have reviewed.

13 Q. Mr. Carr, based on your review of these records,
14 were you able to -- First let me back up and ask you, this
15 is a federal lease that we're dealing with?

16 A. Yes, it is.

17 Q. And there are no private lands or private
18 horizons or state lands or state horizons involved in this
19 at all?

20 A. No, sir, there are not.

21 Q. And based on your examination of the documents
22 that you have outlined to the Hearing Officer, were you
23 able to decide or form an opinion as to the ownership of
24 that wellbore and the right of Navajo to use it as an
25 injection well for injection of produced water?

1 A. Yes, I have, and my opinion is that Navajo has
2 the right to use this well as a wastewater injection well.

3 Q. Without asking you to go into great detail, would
4 you give the reasons, or some of the reasons for your
5 opinion?

6 A. Navajo has acquired through assignment and bill
7 of sale the ownership of the wellbore. The well was
8 originally drilled on the tract by Amoco, and the well was
9 plugged and abandoned, and thereafter the property
10 including the wellbore was assigned to Mr. Binscotter.

11 There after, looking at just the wellbore, Mr.
12 Binscotter assigned the wellbore to a certain depth to Fred
13 Poole. Fred Poole went in and reworked the well and was
14 able to establish production in this shallow interval, the
15 Grayburg-San Andres-Queen interval. It was never plugged
16 and abandoned.

17 It was subsequently assigned to the Eastland
18 Company and to Polo Oil and Gas Company, who in return
19 assigned this to Navajo Refining. I think it's important
20 to remember that a wellbore is personal property. The
21 casing, the equipment, that is personal property. And that
22 property belongs to the person, it's the fruits of the
23 labor of the individual who goes out and develops the
24 tract. And whoever owns the casing, the equipment, has the
25 right by assignment or sale to convey that to someone else.

1 And that's what's happened here.

2 So Navajo is, in fact, the owner of this
3 wellbore, in my opinion.

4 Q. Mr. Carr, would you say a little bit about the
5 interval in which the produced water will be disposed?

6 A. The produced water is to be disposed of in the
7 Wolfcamp and Canyon, in lower zones. This interval -- The
8 interval itself was assigned by Mr. Binscotter to
9 Mewbourne. Mewbourne drilled and has completed a well,
10 another well, on the property, and thereby acquired the
11 rights. Mewbourne stands in the position of Mr. Binscotter
12 as to those rights. They are the one who has the right to
13 develop those minerals, and they have waived objection to
14 the use of that interval for the purposes of disposal.

15 And so there is no interference with the rights
16 conveyed by the original oil and gas lease, because the
17 person who through that lease has a right to develop has
18 waived objection to the use of that interval.

19 MR. CARSON: I have no further questions on this
20 issue, Mr. Catanach.

21 EXAMINATION

22 BY EXAMINER CATANACH:

23 Q. Mr. Carr, Mr. Binscotter, I believe you said,
24 assigned those rights to Mewbourne?

25 A. There is an assignment of rights of the rights,

1 the operating rights in the oil and gas lease, from the
2 base of the Abo to 100 feet below the base of the Morrow.
3 And that was assigned to Mewbourne.

4 Q. Well, what rights is Mr. Binscotter suggesting
5 that he has in that wellbore? Do you know?

6 A. No. As I look at it, Mr. Binscotter, one, first
7 thought it was a plugged and abandoned well. It is not.
8 He -- All I can glean is, he thinks at some point there is
9 a reversion to him.

10 And the problem is, he has conveyed away is
11 ownership of the wellbore, and by doing that he has
12 effectively precluded himself from being able to utilize
13 that wellbore. It's not his property anymore. It belongs
14 to, through this chain of assignments, now to Navajo, but
15 it belonged to these other people.

16 And the ownership, I believe, will remain there.
17 It's my opinion, remains there until the lease ultimately
18 terminates. When that happens, there isn't a reversion to
19 Binscotter, there is a reversion to the federal government.
20 And the federal government is the owner of the surface and
21 the minerals.

22 By our Exhibit 4, it shows they have approved the
23 use of the wellbore. So at that time, even though there
24 would be, I guess, technically a shift in how Navajo's
25 rights were acquired or the source of those rights, it

1 wouldn't change their right to continue to use the well for
2 injection of wastewater into this interval.

3 And so I -- If Mr. Binscotter thinks he has an
4 interest, I can't see it.

5 Q. So injection into the well is going to be into
6 the Wolfcamp and upper Canyon; is that correct?

7 A. That's my understanding.

8 FROM THE FLOOR: Lower Wolfcamp, Cisco and
9 Canyon.

10 THE WITNESS: Okay, Lower Wolfcamp, Cisco and
11 Canyon.

12 Q. (By Examiner Catanach) And those rights are
13 currently owned by Mewbourne; is that correct?

14 A. Right, that is right.

15 Q. And they were assigned to Mewbourne by Mr.
16 Binscotter?

17 A. Yes, yes. When these issues have been looked at
18 in the past, the question becomes whether or not the use of
19 a well for injection interferes with the rights of the
20 person who -- as to the right to go out and explore and
21 develop the minerals, whether this subsequent use
22 interferes with those. But see, that isn't an issue here
23 when the person who has those rights has waived objection.

24 EXAMINER CATANACH: Mr. Carson, do you know if
25 Mr. Binscotter was aware of this hearing today?

1 MR. CARSON: I'm assuming that he was, because we
2 were scheduled to be here in -- Mr. Anderson will have to
3 tell me what date, but I'm going to say early October, the
4 October hearing, your regular October hearing.

5 I came up here before that hearing and talked to
6 Mr. Anderson and Mr. Carroll, and Mr. Binscotter had not
7 been notified of that hearing. But they assured me that he
8 would be notified of this hearing.

9 EXAMINER CATANACH: Unfortunately, Mr. Carroll is
10 not here today.

11 MR. CARSON: I have no knowledge as to whether
12 he, in fact, did that. I mean, that's what I was told by
13 him, that he was going to do, and I had no reason to
14 suspect differently.

15 EXAMINER CATANACH: Mr. Carson, what is the
16 status of -- Did you ever get a ruling on your motion to
17 dismiss this case?

18 MR. CARSON: No. I have to say that Mr. Anderson
19 is here to -- if I say this incorrectly, that Mr. Carroll
20 said that I would get a favorable ruling on my motion to
21 dismiss, assuming Mr. Binscotter was not here today or did
22 not file a prehearing statement as required by the rules,
23 and he didn't do either.

24 What I was hoping to do with Mr. Carr, since I
25 already had him here, was simply make myself a record.

1 EXAMINER CATANACH: Well, unfortunately in the
2 file I don't find where Mr. Binscotter was notified of this
3 hearing.

4 Let me take a five-minute break at this point.

5 (Thereupon, a recess was taken at 8:50 a.m.)

6 (The following proceedings had at 8:53 a.m.)

7 EXAMINER CATANACH: Mr. Carson, you didn't give
8 any notice to Mr. Binscotter; is that correct?

9 MR. CARSON: No, I did not. I think your staff
10 will say that we had this meeting and that Mr. Carroll said
11 that he would give notice.

12 EXAMINER CATANACH: Okay. Unfortunately, Mr.
13 Carroll is not here and we don't have any record of Mr.
14 Carroll giving notice to Mr. Binscotter.

15 What I'm going to do is, I'm going to continue
16 this case for four weeks and have -- check with Mr. Carroll
17 when he comes back. I think he'll be back in Monday, and
18 I'm going to check with him and see if he did. If he did
19 and he can provide proof that he did provide notice to Mr.
20 Binscotter, we'll -- at the hearing in four weeks we'll
21 just take the case under advisement.

22 If not, if he did not give notice, we will again
23 give notice to Mr. Binscotter and give him the opportunity
24 to appear at the December 2nd hearing if he so chooses.

25 MR. CARSON: Well, would I need to have Mr. Carr

1 back and start over again? What would be your preference?

2 EXAMINER CATANACH: If we become aware that Mr.
3 Binscotter is going to be here on the 2nd to present any
4 evidence or testimony, I would probably suggest that Mr.
5 Carr be here.

6 MR. CARSON: Okay.

7 EXAMINER CATANACH: And if, in fact, he is here
8 that day, you may, in fact, want to review the testimony
9 that Mr. Carr has already given, so...

10 It's my understanding also that this change to
11 the permit, to the discharge plan, has already been
12 incorporated into the discharge plan contingent upon this
13 hearing; is that your understanding?

14 MR. CARSON: Yes, sir, at the time that I came up
15 here in, I'm going to say September or early October, it
16 became apparent to us that we couldn't just wait around on
17 Mr. Binscotter, and frankly Mr. Carroll's vacation, because
18 there is a potential \$10,000-a-day fine for Navajo if this
19 was -- you know, if, for example, the WDW Number 1 would
20 not take water, which we didn't know at that time.

21 And I have to thank your staff and Mr. Carroll
22 because they did give us a conditional permit to discharge
23 into this -- through this well. And, knock on wood, the
24 first well is taking the water right now, but that doesn't
25 mean that there may be some breakdown at any minute that

1 MR. CARSON: That is my understanding. I mean,
2 you have to -- we have -- They just brought me an approval
3 of the discharge plan.

4 EXAMINER CATANACH: So if we continue this case
5 for four weeks, it's not going to put you in a hardship?

6 MR. CARSON: No, it's not going to hurt, it's not
7 going to hurt us. I mean, the only thing I'm asking you to
8 do -- It hurts us in no way, because we have a discharge
9 plan in place right now. If WDW Number 1 breaks down and
10 Navajo has to go into this well, I mean, it's my
11 understanding what this document says is, we have absolute
12 authority to do that, contingent upon, if it turned out
13 that this well, in fact, belonged to Mr. Binscotter, then a
14 civil court will have to determine what we owe him if
15 anything.

16 But we have the right to use the well right now.
17 So four weeks doesn't bother us. I was just trying to get
18 together the mechanics of how this is going to work,
19 because Mr. Binscotter, as you can see from your files, has
20 never come up with any reasons why he owns this, he just
21 says he does, which is easy to say and hard to prove, and I
22 just didn't want to have to go through the same exercise
23 again if it wasn't necessary.

24 EXAMINER CATANACH: Well, I just think that Mr.
25 Binscotter certainly should have been afforded the

1 opportunity to be here --

2 MR. CARSON: Well, surely.

3 EXAMINER CATANACH: -- and I don't know if he --
4 I just don't know if he was or not, whether he knew about
5 this hearing today or not.

6 MR. CARSON: Well, possibly Mr. Carroll can solve
7 that problem because --

8 EXAMINER CATANACH: Hopefully --

9 MR. CARSON: -- because that was the agreement,
10 that he would notify him.

11 EXAMINER CATANACH: We'll certainly talk to Mr.
12 Carroll when he gets back.

13 MR. CARSON: And if it's necessary, I mean, we of
14 course, can come back and bring Mr. Carr back and the whole
15 works, because it's not that big a deal. But we'd just
16 like to know that Binscatter is coming or not coming, which
17 I think Carroll could do better than we could.

18 EXAMINER CATANACH: Well, let me tell you this:
19 If Mr. Carroll did notify him of this hearing and we just
20 don't have anything in the file, we're not going to notify
21 him again.

22 MR. CARSON: Yeah.

23 EXAMINER CATANACH: So there's very little chance
24 that he's going to be here on December 2nd. He wouldn't
25 have any reason to be here on that date.

1 MR. CARSON: Sure.

2 EXAMINER CATANACH: So I would venture to say
3 you'd be pretty safe, if we've given him notice.

4 MR. CARSON: Okay.

5 EXAMINER CATANACH: So we'll just leave it at
6 that, and again continue the case till December 2nd.

7 MR. CARSON: Appreciate your time and patience.

8 EXAMINER CATANACH: Thank you.

9 (Thereupon, these proceedings were concluded at
10 9:00 a.m.)

11 * * *

12
13
14
15 I do hereby certify that the foregoing is a
16 correct record of the proceedings of the
17 hearing held on H-4 12/18/83
18 David Catanach, Director
19 of Conservation Division
20
21
22
23
24
25

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 November 4th, 1999.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002