

NEW MEXICO OIL CONSERVATION COMMISSION

EXAMINER HEARING

SANTA FE, NEW MEXICOHearing Date JUNE 12, 1986 Time: 8:15 A.M.

NAME	REPRESENTING	LOCATION
Robert Williams	Self	Amarillo, Texas
Paul S. Kuntz	NM OCD	Hobbs
Les Clement	NMOCIS	Artesia
E. L. Pailla	Pailla + Snyder	ST
H. L. Kerdish	El Paso Natural Gas	El Paso
George Abraham	JTW	Artesia
Jack Case	I & W INC.	-
William Bell	Idex Inc	-
Mike Williams	NMOCIS	Artesia
Jeff Beemer	Bayram	Santa Fe
Mark Hahn		
Evelyn Downs	OCD	Hobbs
Dave Boreau	Yates Petroleum	Artesia
Jody Rhoad	Yates Drilling	Artesia
James R. Bartol	Exxon Co, USA	Andrews, TX
William T. Duncan, Jr.	" Corporation	Midland, TX
John Jordan	"	Andrews, TX

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NAME	REPRESENTING	LOCATION
Jim Bruce	Hinkle Law Firm	S.F.
Clyde Mote	Amoco	Houston
William L. Jan	Campbell and Clark	Santa Fe
Harold Baker	OCD	S.F.
Ken Baleman	Gay Bermer et al	White Knoll City/Mid City
Boballa	Chase Energy, Inc	Farmington

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

12 June 1986

EXAMINER HEARING

IN THE MATTER OF:

The hearing called by the Oil Con- CASE
servation Division on its own motion 8911
to permit I & W, Inc. to appear and
show cause why its Form C-133, Author-
ization to Haul Water, should not be
cancelled for non-compliance with
Oil Conservation Division's regulations.

BEFORE: David R. Catanach, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Oil Conservation Division: Charles Roybal and
Jeff Taylor
Legal Counsel to the Division
Oil Conservation Division
State Land Office Bldg.
Santa Fe, New Mexico 87501

For the Applicant: George A. Graham, Jr.
Attorney at Law
SIEGENTHALER & GRAHAM
P. O. Drawer Z
Artesia, New Mexico 88211-0657

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MR. CATANACH: Call next Case 8911.

MR. ROYBAL: Case 8911. In the matter of the hearing called by the Oil Conservation Division on its own motion to permit I & W, Inc., to appear and show cause why its Form C-133, Authorization to Haul Water, should not be cancelled for noncompliance with Oil Conservation Division regulations.

MR. CATANACH: Are there appearances in this case?

MR. TAYLOR: Yes, may it please the Examiner, my name is Jeff Taylor, Counsel for the Division, and I have one witness to be sworn.

MR. CATANACH: Are there other appearances?

MR. GRAHAM: I'm George Graham, attorney for I & W, and I may have a witness or two.

MR. CATANACH: Will all the witnesses please stand and be sworn in at this time?

(Witnesses sworn.)

MR. GRAHAM: Well, I think, Mr. Taylor, and Mr. Hearing Officer, is this what we call you?

1 I think we can save some time here in as far as Mr. Williams
2 is concerned, and that is that the water was there on the
3 ground, there's no denying that part of it.

4 I think possibly, more or less
5 in accord with our conversations preceding this, the water
6 was there. It's really up to us to -- to tell you why, what
7 our -- what the excuse is.

8 MR. TAYLOR: So you want to
9 forego us putting on our case first and just give us an ex-
10 planation --

11 MR. GRAHAM: Well --

12 MR. TAYLOR: -- and see if we
13 want to --

14 MR. GRAHAM: -- I guess this is
15 the first case of this kind ever.

16 MR. TAYLOR: That would be
17 great with me, Mr. Examiner.

18 What we could do is --

19 MR. GRAHAM: But -- excuse me.

20 MR. TAYLOR: We could just go
21 ahead and if they're going to admit the allegations that are
22 contained in the letter, just hold these and I suppose we
23 could just put those into evidence and -- so they'd be in
24 the record and then you can go ahead and have your witnes-
25 ses, or put on your case as to why, you know, give us your

1 explanation --

2 MR. GRAHAM: All right.

3 MR. TAYLOR: -- and then we
4 wouldn't have Mr. Williams testify unless we thought it was
5 necessary.

6 MR. GRAHAM: I think that would
7 probably move us along just about as fast.

8 MR. WILLIAMS: That would be
9 fine with me. Go ahead and do that.

10 MR. GRAHAM: I'd like to call
11 Mr. Carl Bell, please.

12 MR. TAYLOR: If I might just
13 explain so the record will be clear, the Division is in --
14 in April 7th of 1986 wrote I & W alleging that they had --
15 that we'd received claims that they had illegally dumped
16 some produced water and this hearing is held in response to
17 the letter and the follow-up letter in which we asked them
18 to come in for a hearing on their hauling permit.

19 MR. GRAHAM: That's basically
20 -- we hope they have evidence to show that this is true,
21 that there was water dumped out on -- in front of Mr. Bell's
22 house.

23 We want to show you that it
24 wasn't I & W; this was basically Mr. -- Mr. Bell took some
25 water home because he wanted to kill the weeds and grass

1 around his house there north of Artesia and that he did it
2 without authority or knowledge of I & W, and that then
3 thereafter, after all of this came about, I & W has insti-
4 tuted new policies in connection with this written policy;
5 has notified all its employees of the seriousness of this
6 type of situation.

7

8

CARL BELL,

9 being called as a witness and being duly sworn upon his
10 oath, testified as followed, to-wit:

11

12

DIRECT EXAMINATION

13

BY MR. GRAHAM:

14

Q All right, Mr. Bell, will you state your
15 name for the record, please?

16

A Carl Bell.

17

Q All right, now where do you live, Mr.
18 Bell?

19

A Four miles of Artesia. It's on 67 East
20 Compress Road.

21

Q Okay, that's a county road north --

22

A Yes.

23

Q -- of Artesia?

24

A Yes, it is.

25

Q And where do you work?

1 A I & W, Incorporated.

2 Q Okay. What's your job?

3 A I'm a truck driver.

4 Q And you were a truck driver on March 24th
5 and 25th of this year?

6 A Yes, sir.

7 Q You were employed by I & W?

8 A Yes, sir.

9 Q All right, sir, you were, during that
10 particular period of time, what job were you working on?

11 A I was hauling produced water from H & S
12 Oil Company.

13 Q Okay, now where -- where is H & S Oil
14 Company?

15 A H & S Oil Company is south of Artesia.
16 It's, oh, I'd say about fifteen or twenty miles, maybe not
17 quite that far, from Artesia.

18 Q Okay, south of Artesia.

19 A Yes, yes.

20 Q And you live north of Artesia?

21 A Right.

22 Q And where were you taking the produced
23 water?

24 A To Loco Hills. We have two designated
25 places to put water.

1 Q Okay, where is that, the Wooley Disposal?

2 A At the Wooley Disposal, which belongs to
3 I & W, and then the Loco Hills Salt Water Disposal.

4 Q Okay, that's another one?

5 A Yes, sir, that's another one.

6 Q Belongs to another outfit.

7 A Yes, sir.

8 Q Okay. On the -- essentially on the 24th
9 or 25th the same thing happened; I mean you did the same
10 thing?

11 A Yes.

12 Q Okay. Would you take, in that particular
13 instance, why were you taking a truck home at night?

14 A We was, like I said, we was working south
15 of Artesia and the company's located in Loco Hills, which is
16 23/24 miles to drive there, and saving a lot of driving
17 time, whenever we'd finish up I'd just take the truck home,
18 which is shorter, so I can get up that morning and just go
19 from the house to the site --

20 Q Go straight to --

21 A -- straight to the site and then start
22 hauling water, rather than have to drive all the way back to
23 Loco Hills and turn around and drive all the way back down.

24 Q Okay. Now, on -- on the 20, well, the
25 24th, that's as good a day as any, you were hauling water

1 back and forth from H & S down south of Artesia, across the
2 Wooley at Loco Hills.

3 A Yes.

4 Q Now, did you toward the end of the haul,
5 did you put water some place else besides the Wooley Dispo-
6 sal?

7 Did you put your last tank of water in
8 the Loco Hills Disposal?

9 A Yes. We -- we first go to the Wooley,
10 which belongs to I & W.

11 Q Okay.

12 A We naturally take all the water there
13 first, the produced water; we take it to the Wooley Dispo-
14 sal. The Wooley belongs to I & W. We take it there first.

15 When the tanks there gets full, then we
16 take it to the Loco Hills Disposal.

17 Q Okay, after -- basically the run was from
18 H & S south of Artesia to Loco Hills, 25 miles east of Ar-
19 tesia, and disposed of in the Wooley?

20 A Right.

21 Q All right, now will the Wooley be full at
22 one -- on one trip and then by the time you come back from H
23 & S will it have taken enough water so that you can put your
24 tankload of water in it?

25 A Yes, yes.

1 Q All right, on the 20 -- okay, Mr. Bell,
2 I'm showing you Exhibit Number One, which is a series of
3 documents here.

4 These I & W tickets here, are these the
5 ones that you filled out on the -- on the 24th?

6 A Yeah.

7 Q Okay, and you hauled a full load to
8 either the Wooley or to the Loco Hills Disposal.

9 A Yes.

10 Q Okay, now the last haul of the day was
11 to Loco Hills Disposal.

12 A Right.

13 Q That was a full load.

14 A Oh, yeah, uh-huh.

15 Q Okay, now all of those were full loads?

16 A Yeah, these were all full loads.

17 Q Okay. Now, I show you the Loco Hills
18 Water Disposal ticket. Did you make that out?

19 A Yes.

20 Q Okay, that -- what does that mean?

21 A What does this ticket mean?

22 Q Yeah.

23 A This ticket means I brought a whole load
24 of produced water from the H & S Oil Company and the lease
25 number, and it was from the battery.

1 Q Okay, and you dumped the whole load --
2 A I dumped the whole 150 barrels, yes.
3 Q And I & W paid -- paid that --
4 A Yes, sir.
5 Q -- disposal.
6 A Yes, that's right.
7 Q Now why did you take it there rather than
8 the Wooley?
9 A The Wooley was full.
10 Q Okay. And then after -- okay, we're on
11 the 24th. What did you do after you dumped that last load?
12 A After I dumped the last load I went over
13 to the Wooley.
14 Q You what, now?
15 A Went to the Wooley.
16 Q Okay.
17 A And I pulled about up to just under 30
18 barrels.
19 Q Okay, how do you arrive at that?
20 A The -- on the front of my tank on the
21 truck there on the trailer, we have what we call a sight
22 gauge, which is a plastic tube that you can see through, and
23 it's up off the bottom of the tank and you get about thirty
24 barrels before you can see the fluid in there.
25 Q Okay, and it's to show you how many bar-

1 rels, approximately, you have in -- in the tank.

2 A Right. And I put on -- it did not get
3 within the sight gauge, so I know I was under thirty bar-
4 rels.

5 Q But you could have had at least thirty
6 barrels.

7 A I could have, yes.

8 Q Of produced water.

9 A Right.

10 Q Okay, who did you -- did you ask anybody
11 if you could take that?

12 A No. No.

13 Q What were you doing with it?

14 A Took it home and I took it to kill the
15 weeds and the brush and the grass around the house there.

16 Q Okay. Now where did you dump it?

17 A In the "bar ditch", right there in front
18 of my house.

19 Q Okay, in front of your house.

20 A In front of the house, yes.

21 Q Okay, and you did that to kill at your
22 place?

23 A That's right.

24 Q Now, when did you -- you didn't ask any-
25 body's permission to do this?

1 A No, huh-uh.

2 Q You just went down there and took the
3 produced water from the Wooley and took it down to kill the
4 weeds in front of your house.

5 A Right.

6 Q Did you have any -- did you know or do
7 you know what you're supposed to do with produced water?

8 A Oh, yeah.

9 Q What are you supposed to do?

10 A Take it to a designated area to get rid of
11 it. In other words, take it to a disposal --

12 Q Okay.

13 A -- which is recommended for salt water.

14 Q Okay, and in your -- how long have you
15 been there at I & W?

16 A Be going on eight years.

17 Q Okay. Did anyone ever tell you that
18 you're supposed to -- what you're supposed to do with pro-
19 duced water?

20 A Oh, yeah.

21 Q Okay, what did they --

22 A That's constantly preached to us every
23 day.

24 Q Okay.

25 A You take the salt water to the disposal.

1 Q Okay. And you just on your own take
2 this load of water, or these loads, because I guess we have
3 another one the next day, don't we?

4 A Uh-huh, yes.

5 Q Okay. After I & W was notified, Mr. Case
6 asked you about this.

7 A Yes, sir.

8 Q Okay, what did you tell him? What did
9 you tell him why you did this or what you did with the
10 water?

11 A I told him I took it home to get rid of
12 the weeds, grass, there at the house.

13 Q That's for your own personal purposes.

14 A Yeah, this is my own personal, yeah.

15 Q And you -- you actually didn't put it --
16 what did you -- well, what did you tell Mr. Case?

17 A Well, he said, "Carl, what are you doing
18 with the produced water?"

19 I said, "I took it home there to kill the
20 grass and weeds there around the house."

21 Q Well, where did you tell him you dumped
22 it?

23 A I just told him around the house. I
24 didn't -- I didn't specifically say I dumped it in the "bar
25 ditch" because it was later brought up that I didn't tell

1 there.

2 A Yes, uh-huh.

3 Q And at that particular time you took two
4 -- two loads, two complete loads, and dumped them at Loco
5 Hills Disposal rather than the Wooley.

6 A Yes, right. You can see what happened
7 here. I was going to take it to the Wooley but it was full,
8 so I took it to the Loco Hills.

9 Q Okay, and then the next trip?

10 A There at the next trip, you can see that
11 the Wooley was down enough to where I could put a load in.

12 Q Okay, and then your last load, you took
13 to Loco Hills.

14 A Right.

15 Q And these are the Loco Hills disposal
16 tickets.

17 A Right.

18 Q And you made those out, too.

19 A Right.

20 Q And after -- after you finished dumping
21 that last load on the 25th at the Loco Hills Disposal, what
22 did you do?

23 A I just repeated what I did the first day.
24 I went --

25 Q Did you ask anybody?

1 A No, I didn't.

2 Q You're still telling --

3 A I didn't ask nobody. I just went over
4 there and got it.

5 Q Okay. Now, since -- okay, you explained
6 to Mr. Case what you'd done and why, in other words, you
7 told him you'd taken this down to dump in your yard, around
8 the house, but not in the yard.

9 A Right.

10 Q Okay, and once again, as far as the 25th,
11 did you have permission?

12 A No.

13 Q Did you tell anybody?

14 A No.

15 Q Was this a usual thing?

16 A No, no.

17 Q Okay. Do you ordinarily take your truck
18 home?

19 A No, no, huh-uh.

20 Q You'd just in this particular instance
21 that you had to take it home.

22 A Right.

23 Q No one gave you authority or that sort of
24 thing to -- to haul this water.

25 A No, not there at the house, no.

1 Q Oh, you mean to haul it to the house.

2 A Right.

3 Q Okay. Why didn't you take water from
4 Loco Hills Disposal as opposed to the Wooley?

5 A They've got -- they've got what you call
6 a check valve. Once the water is put into it, you cannot
7 receive it back out. The valve -- they -- it's kind of hard
8 to explain. It's a valve that water can only go one way,
9 into, it cannot be brought back out.

10 Q Okay, so you couldn't take anything out
11 of Loco Hills but how about Wooley?

12 A There at the Wooley is just an open
13 valve. You just open the valve and the water you can put
14 again in your trailer; both ways.

15 Q Okay.

16 MR. GRAHAM: I believe that's
17 everything we have. I might say, at least as near as I can
18 tell from the rules, that you will accept into the record a
19 statement of interested parties and I would like to say that
20 I prepared for I & W some policies which all of the
21 employees are to sign, which tracks along Rule 710 pretty
22 well and also advises that this type of thing is grounds for
23 dismissal, termination.

24 In this particular instance I
25 think that Mr. Bell himself was under a misapprehension as

1 far as produced water is concerned, but he was using it for
2 his own purposes. It was not an I & W operation except to
3 the extent that he had -- he had the truck so that he could
4 be close to his work.

5 I believe that's all we have
6 right at this time.

7 MR. CATANACH: Mr. Graham,
8 would you like to admit these exhibits into evidence?

9 MR. GRAHAM: Oh, please, may I
10 move these two -- these are merely to show that we did --
11 that was dumping along the way; that we took all of the
12 water and picked up some water.

13 MR. CATANACH: Exhibits One and
14 Two will be admitted into evidence.

15 Mr. Taylor, do you have any
16 questions?

17 MR. TAYLOR: No, I guess we
18 don't.

19 MR. GRAHAM: I believe that
20 this is what we have, Mr. Examiner. This is why it hap-
21 pened. We would certainly appreciate your consideration on
22 our C-133.

23 MR. TAYLOR: Why don't we have
24 -- why don't you put on Mr. Case and have him explain the
25 policy that you've written? Would you do that?

1 MR. GRAHAM: All right.

2 MR. TAYLOR: And did you want
3 to admit that policy -- a copy into the record?

4 MR. GRAHAM: Well, don't have
5 it with me.

6 MR. TAYLOR: You don't have one
7 with you?

8 MR. GRAHAM: Don't have one
9 with me but --

10

11 JACK CASE,

12 being called as a witness and being duly sworn upon his
13 oath, testified as follows, to-wit:

14

15 DIRECT EXAMINATION

16 BY MR. GRAHAM:

17 Q All right, will you state your full name,
18 please, sir?

19 A Jack Case.

20 Q And do you work for I & W?

21 A Yes.

22 Q What's your position there?

23 A I'm Manager.

24 Q Okay. Does I & W have a policy in con-
25 nection with disposal of produced water?

1 A Yes, we do. It's --

2 Q What is it?

3 A It's a pretty serious one. It's automa-
4 tic discharge if they are caught doing this.

5 Q Okay.

6 A And it's something we've had for years.

7 Q Okay, but you didn't dismiss Mr. Bell.

8 A No.

9 Q Okay. Is it because of his family situa-
10 tion?

11 A Well, that, plus the fact that I don't
12 think Mr. Bell really realized he was doing a whole lot
13 wrong.

14 Q Does he now?

15 A Yeah, he understands it now.

16 Q Okay, has he signed -- I guess I could
17 have asked him -- has he signed this policy statement that
18 states that any disposal of produced water in other than
19 authorized places is grounds for dismissal?

20 A Right, he has signed it.

21 Q And the other employees?

22 A Right.

23 MR. TAYLOR: Did any other --
24 Dick, did you have any questions?

25 MR. STAMETS: I'd like to see

1 that we get a copy of the typed statement.

2 MR. GRAHAM: We'll sure send
3 you one, yes, sir. Sure will.

4 MR. TAYLOR: I'd like to --
5 yeah, I'd like to have that put in the record, but I don't
6 think I have any questions.

7 MR. GRAHAM: Okay, well, I'll
8 be -- I'll be happy to write it because each one was put on
9 an I & W letterhead and then signed and a copy put in the
10 file, so I'll send you what these people have signed.

11 MR. TAYLOR: For purposes of
12 the record, I think we'd like to have admitted, and I guess
13 we can just stipulate it, if that's all right with you --

14 MR. GRAHAM: Fine.

15 MR. TAYLOR: -- our Exhibits
16 One through Six, which I give you a copy of, and show our --
17 and show the -- and let me just go through them for the re-
18 cord.

19 Exhibit One is a copy of the
20 Oil Conservation Division Field Report made by Mike Williams
21 upon investigating the reports of this unauthorized disposal.

22 Exhibit Two is a supplemental
23 report by the Eddy County Sheriff's Department from Artesia,
24 which, I suppose, was made the following day by --

25 MR. GRAHAM: Well, let's see,

1 it says report date 3-25.

2 MR. TAYLOR: And it was for the
3 purpose of information only to the Oil Conservation Divi-
4 sion, made by Sergeant Noel Childress?

5 MR. GRAHAM: Childress. Pat
6 Childress.

7 MR. TAYLOR: Exhibit Three is
8 photographs of the truck that were taken by Mr. Childress of
9 the Eddy County Sheriff's Department.

10 MR. GRAHAM: On the 25th, yeah.

11 MR. TAYLOR: On the second
12 night.

13 Exhibit Four is a letter of Ap-
14 ril 7th from the Division to I & W notifying them of viola-
15 tion of the rules, of our rules.

16 Exhibit Five is a copy of a
17 letter from I & W to the Division explaining why the illegal
18 dumping occurred and Exhibit Six is a letter of May 6th from
19 us stating that the explanation in the letter from I & W was
20 insufficient and therefore we would require a hearing on the
21 matter, and I suppose for -- and can we stipulate to the ad-
22 mission of all those things?

23 MR. GRAHAM: Sure.

24 MR. TAYLOR: Okay. Mr. Exam-
25 iner, since the -- since the company has essentially come in

1 and tried to explain and admitted what they've done, I would
2 recommend that we fine them and I suppose I'll leave that up
3 to the discretion, that the potential fine for a civil pen-
4 alty before the Division is \$1000 a day, which is collec-
5 tible legally upon initiation of lawsuit, unless the party
6 that we're complaining of agrees to pay a fine, and I'd also
7 like to recommend that an order state that if the -- if I &
8 W is found to be violating this rule and illegally dumping
9 within the next, say, two years, that when that's proven,
10 that their permit be automatically revoked at that time.

11 MR. GRAHAM: Mr. Examiner, I
12 would like for you to take into consideration the fact that
13 everything, and this is all the evidence shows, is that I &
14 W was an innocent party here. One of their employees took
15 it upon himself to kill the weeds. He just -- and without
16 any knowledge on the part of I & W. He exceeded any author-
17 ity that he might have had, and as far as I can tell, I &
18 W's culpability, if any, was letting him take a truck home
19 for a couple of nights.

20 So if you would take that into
21 consideration, we have tightened up our policies. This man
22 knew that he was not supposed to, I think. I think really
23 that I & W is not at fault in this particular case and we
24 would certainly request that you take it easy on us, parti-
25 cularly when we start talking about automatic suspension,

1 we'd at least, if we get caught, like to explain as we have
2 here, and I think our explanation shows that this is not an
3 I & W policy and never has been.

4 That's the only evidence we
5 have is that our man took -- took some water to do something
6 personal and it's not as though he took a load and dumped it
7 out there somewhere just to keep from having to go all the
8 way to dump it.

9 And we would appreciate your
10 taking those things into consideration.

11 MR. CATANACH: Mr. Graham,
12 should the Division decide to institute a fine against I &
13 W, would they be willing to pay it?

14 MR. GRAHAM: Yeah, we'll --
15 we'll pay it. I want you to be easy on us. There's not as
16 much water to be hauled now as there was, but yes.

17 MR. TAYLOR: Mr. Examiner, I
18 didn't mean to imply that upon another violation there
19 wouldn't be a hearing. There would. We would call a hear-
20 ing but if it were found to be an intentional violation of
21 the rules, that -- within two years, that the permit at that
22 time be pulled after hearing.

23 Thank you. That's all we have
24 in this matter.

25 MR. CATANACH: Is there any-

1 thing further in Case 8911?

2 MR. GRAHAM: No, sir.

3 MR. CATANACH: If not, it will
4 be taken under advisement.

5

6 (Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY
CERTIFY that the foregoing Transcript of Hearing before the
Oil Conservation Division (Commission) was reported by me;
that the said transcript is a full, true, and correct record
of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 8941,
heard by me on June 12, 1986.

David R. Catarach, Examiner
Oil Conservation Division