

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION

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

APPLICATION OF THE NEW MEXICO  
OIL CONSERVATION DIVISION, THROUGH  
THE ENFORCEMENT AND COMPLIANCE  
MANAGER, FOR A COMPLIANCE ORDER  
AGAINST MARKS AND GARNER PRODUCTION  
LTD. COMPANY; (1) FINDING THAT OPERATOR  
VIOLATED 19.15.4.201 NMAC AS TO TWENTY-  
THREE WELLS OR ALTERNATIVELY IS IN  
VIOLATION OF 19.15.13.1115 NMAC; (2) REQUIRING  
OPERATOR TO BRING SAID WELLS INTO  
COMPLIANCE WITH 19.15.14.201 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 SAID WELLS AND  
FORFEIT THE APPLICABLE FINANCIAL ASSURANCE; LEA  
COUNTY, NEW MEXICO.

CASE NO. 14041 (De Novo)  
ORDER NO. R-12963-A

**ORDER OF THE COMMISSION**

THIS MATTER, having come before the New Mexico Oil Conservation Commission (Commission) on August 14, 2008 at Santa Fe, New Mexico, on the application of the New Mexico Oil Conservation Division (Division), through its enforcement and compliance manager, for a compliance order against Marks and Garner Production Ltd. Company (Marks and Garner) finding that the operator knowingly and willfully violated 19.15.4.201 NMAC as to 23 wells or alternatively is in violation of 19.15.13.1115 NMAC; assessing penalties; requiring the operator to bring its wells into compliance with 19.15.13.1115 NMAC or 19.15.4.201 NMAC by a date certain; and in the event of non-compliance, declaring the wells abandoned and authorizing the Division to plug the wells and forfeit the applicable financial assurance, and the Commission, having carefully considered the evidence and other materials the parties submitted, now, on this 11th day of September 2008,

**FINDS THAT:**

1. Due public notice has been given, and the Commission has jurisdiction of this case and its subject matter.

2. The Division filed an application on November 13, 2007 seeking an order directing Marks and Garner to bring 23 wells into compliance with 19.15.4.201 NMAC or 19.15.13.1115 NMAC within a date certain by either plugging and abandoning the wells in accordance with 19.15.4.202 NMAC, or securing approved temporary abandonment status in accordance with 19.15.4.203 NMAC, or returning the wells to Division approved beneficial use by a date certain. The Division further seeks assessment of civil penalties in the amount of \$23,000 by reason of Marks and Garner's failure to bring 23 of its wells into compliance with 19.15.4.201 NMAC. This is \$1,000 for each of the 23 wells that were on the inactive list on November 13, 2007 when the Division filed its Application for Compliance Order. In event of Marks and Garner's failure to bring its wells into compliance, the Division seeks authorization to plug the wells and forfeit Marks and Garner's applicable financial assurance.

3. The Division also seeks an order requiring Marks and Garner to post additional plugging bonds in accordance with Subsection B of 19.15.3.101 NMAC within a date certain for the following wells because they have been inactive for two years or more:

<u>Name</u>	<u>API No.</u>
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coquina State #001	30-025-27992
Julia Culp #001	30-025-24979
Lea/UA/State #001	30-025-28484
Northeast Maljamar Unit #001	30-025-21291
Red Twelve State #006	30-015-25055
State #001	30-015-02888
Theos State #001	30-015-24732
Wm Snyder #001	30-025-02703

4. Marks and Garner is a corporation operating wells in New Mexico under OGRID 14070.

5. Paragraph (3) of Subsection B of 19.15.4.201 NMAC requires that the operator of a well that has been continuously inactive for a period of one year and 90 days to plug and abandon the well or place the well in Division-approved temporary abandonment status.

6. On April 7, 2005, Buddy Hill, a compliance officer with the Division's Hobbs District Office, notified Marks and Garner that the Coquina State #001, API No.

30-025-27992, was not in compliance with 19.15.4.201 NMAC and that corrective action was required by May 18, 2005.

7. On November 21, 2005, Buddy Hill again notified Marks and Garner that the Coquina State #001, API No. 30-025-27992, was not in compliance with 19.15.4.201 NMAC and that corrective action was required by February 18, 2006.

8. On December 7, 2005, Chris Beadle of the Division's Artesia District Office notified Marks and Garner that seven wells including the Red Twelve Levers Federal #012, API No. 30-015-25152; Red Twelve Levers Federal #008Q, API No. 30-015-25090; Red Twelve State #006, API No. 30-015-25055; Theos State #001, API No. 30-015-24732; and State #001, API No. 30-015-02888, were not in compliance with 19.15.4.201 NMAC and that corrective action was required by March 11, 2006. The five wells named are still not in compliance with 19.5.4.201 NMAC.

9. On June 19, 2006, Buddy Hill sent a third notice to Marks and Garner, notifying it that the Coquina State #001, API No. 30-025-27992, was not in compliance with 19.15.4.201 NMAC and that corrective action was required by July 6, 2006. This well is still not in compliance with 19.15.4.201 NMAC.

10. On August 30, 2007, Gail MacQuesten, Counsel for the Division, sent a letter to Marks and Garner notifying it that it had 24 wells that were not in compliance with 19.15.4.201 NMAC and that the Division intended to file an application for a compliance order and encouraging Marks and Garner to bring the wells into compliance in order to avoid the enforcement action. The 24 wells included the 23 wells listed below in paragraph 11.

11. On November 13, 2007 when the Division filed its Application for Compliance Order, according to the records that Marks and Garner had submitted to the Division the following 23 wells, which Marks and Garner operates, had been inactive for a continuous period exceeding one year plus 90 days and were not plugged and abandoned in accordance with 19.15.4.202 NMAC or on approved temporary abandonment status in accordance with 19.15.4.203 NMAC and therefore were not in compliance with Subsection B of 19.15.4.201 NMAC:

<u>Name</u>	<u>API No.</u>
Bradley Federal #001	30-025-08154
Bradley Federal #003	30-025-08156
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Cities Service State #001	30-025-23551
Coquina State #001	30-025-27992
Ernest Federal #001	30-025-08163
Graham Federal #003	30-025-28655
Jennings Federal #002	30-025-08149
Julia Culp #001	30-025-24979

Wm Snyder #001	30-025-02703
Theos State #001	30-015-24732
Kemnitz 17 State #001	30-025-28767
Lea/UA/State #001	30-025-28484
Levers #003Y	30-015-02787
Northeast Maljamar Unit #001	30-025-21291
Red Twelve Federal #002	30-015-25059
Red Twelve Levers Federal #008Q	30-015-25090
Red Twelve Levers Federal #012	30-015-25152
Red Twelve State #003	30-015-24989
Red Twelve State #006	30-015-25055
State #001	30-015-02888
State #002	30-015-20889.

12. A hearing on the Division's application was held before a Division hearing examiner on January 10, 2008.

13. The Division Director issued an order on June 19, 2008, ordering Marks and Garner to plug and abandon the 19 wells listed below, place them in approved temporary abandonment status, or return them to Division approved beneficial use by August 30, 2008. The Division Director also ordered Marks and Garner to post additional single well plugging bonds on the wells on or before July 30, 2008 and to pay \$19,000 in penalties on or before July 30, 2008.

<u>Name</u>	<u>API No.</u>
Bradley Federal #003	30-025-08156
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coquina State #001	30-025-27992
Ernest Federal #001	30-025-08163
Graham Federal #003	30-025-28655
Jennings Federal #002	30-025-08149
Julia Culp #001	30-025-24979
Wm Snyder #001	30-025-02703
Theos State #001	30-015-24732
Lea/UA/State #001	30-025-28484
Levers #003Y	30-015-02787
Red Twelve Federal #002	30-015-25059
Red Twelve Levers Federal #008Q	30-015-25090
Red Twelve Levers Federal #012	30-015-25152
Red Twelve State #003	30-015-24989
Red Twelve State #006	30-015-25055
State #001	30-015-02888
State #002	30-015-20889

14. On July 17, 2008, Marks and Garner filed a request for de novo hearing before the Commission.

15. At the hearing before the Commission on August 14, 2008, witnesses for both the Division and Marks and Garner testified that the following wells have been inactive for a continuous period exceeding one year plus 90 days and are not plugged and abandoned in accordance with 19.15.4.202 NMAC or on approved temporary abandonment status in accordance with 19.15.4.203 NMAC.

<u>Name</u>	<u>API No.</u>
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coquina State #001	30-025-27992
Northeast Maljamar Unit #001	30-025-21291
Red Twelve Levers Federal #008Q	30-015-25090
Red Twelve Levers Federal #012	30-015-25152
Red Twelve State #006	30-015-25055
State #001	30-015-02888
Theos State #001	30-015-24732
Wm Snyder #001	30-025-02703

16. At the August 14, 2008 hearing, the witness for Marks and Garner, Quinton Welborn, testified that while the wells had been plugged and abandoned as of January 10, 2008 the required surface restoration of the well sites for the Bradley Federal #001, API No. 30-025-08154, and the Bradley Federal #003, API No. 30-025-08156, had not been completed. Surface restoration is required by 19.15.4.202 NMAC. Marks and Garner's witness testified that the surface restoration is now complete and that the required documents have been filed with the United States Department of the Interior, Bureau of Land Management.

17. Daniel Sanchez, the Division's Compliance and Enforcement Manager, testified the Division had not received copies of these documents from the United States Department of the Interior, Bureau of Land Management showing that the well sites for the Bradley Federal #001, API No. 30-025-08154, and the Bradley Federal #003, API No. 30-025-08156, have been restored and that the Bureau of Land Management has released the wells.

18. At the August 14, 2008 hearing, the witness for Marks and Garner testified that the Ernest Federal #001, API No. 30-025-08163, had not been plugged and abandoned and the surface restored as of November 13, 2007 when the Division filed its application. Marks and Garner's witness testified that the well has now been plugged and abandoned and that the surface restoration is complete and that the required documents have been filed with the United States Department of the Interior, Bureau of Land Management.

19. Daniel Sanchez testified that the Division had not received copies of the documents from the United States Department of the Interior, Bureau of Land Management showing that the well site for Ernest Federal #001, API No. 30-025-08163, has been restored and that the Bureau of Land Management has released the well.

20. Daniel Sanchez testified that as of August 11, 2008 the surface restoration of the Julia Culp #001, API No. 30-025-24979, had not been completed.

21. NMSA 1978, Section 70-2-12 gives the Division the authority to collect data, and to provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports.

22. Subsection B of 19.15.13.1103 NMAC requires an operator to file a sundry notice, Form C-103, as a subsequent report when it performs remedial work on a well.

23. Daniel Sanchez testified that as of August 14, 2008, the wells listed below are reporting production, but that Marks and Garner has not complied with Subsection B of 19.15.13.1103 NMAC and submitted the required Form C-103s showing the remedial work that Marks and Garner performed to bring the wells back into production. Marks and Garner's witness also testified that the wells are currently producing.

<u>Name</u>	<u>API No.</u>
Cities Service State #001	30-025-23551
Graham Federal #003	30-025-28655
Levers #003Y	30-015-02787
Jennings Federal #002	30-025-08149
Kemnitz 17 State #001	30-025-28767
Red Twelve Federal #002	30-015-25059
Red Twelve State #003	30-015-24989

24. Marks and Garner's witness testified that Marks and Garner filed the sundry notices for the Graham Federal #003, API No. 30-025-28655, and the Jennings Federal #002, API No. 30-025-08149, with the United States Department of the Interior, Bureau of Land Management. Daniel Sanchez testified that the Division had not received copies of these sundries.

25. Marks and Garner's witness testified that the Gulf Hanagan Federal #001, API No. 30-025-08144, has been plugged and abandoned, but according to Division records it is still listed as inactive and not in compliance with 19.15.4.201 NMAC.

26. Marks and Garner's witness testified that pursuant to a settlement agreement with one of Marks and Garner's prior owners, Buddy Garner, that Buddy Garner was to receive control of the Kemnitz 17 State #001, API No. 30-025-28767; the Cities Service State #001, API No. 30-025-23551; and the Northeast Maljamar Unit #001, API No. 30-025-21291. Marks and Garner has not received the Division's

approval for change of operator for these wells to Buddy Garner, so Marks and Garner remains responsible for them.

27. The Kemnitz 17 State #001, API No. 30-025-28767, is located on state trust land, which has not been under lease since March 2007. Therefore, there should be no production since March 2007. The Division's witnesses testified that Marks and Garner has reported production since March 2007.

28. NMSA 1978, Section 70-2-14, as amended, provides that if any of the requirements of the Oil and Gas Act or the rules promulgated pursuant to the act have not been complied with, the Division Director may order that the operator plug and abandon the well in accordance with Division rules, and if the operator fails to comply with the order, authorize the Division to plug the well and decree forfeiture of applicable financial assurance.

29. NMSA 1978, Section 70-2-12(B)(18) and NMSA 1978, Section 70-2-38 authorize the Division to plug and abandon wells, and restore and remediate the location of abandoned wells.

30. Subsection H of 19.15.3.101 NMAC authorizes the Division Director to order the operator of wells that are not in compliance with 19.15.4.201 NMAC to plug and abandon the wells and to restore the locations. It also authorizes the Division Director to forfeit the operator's financial assurance upon the operator's failure to comply.

31. Marks and Garner has posted a \$50,000 blanket cash plugging bond, number OCD-782, to secure its obligation to plug and abandon the wells. The bond has been deposited with the Western Commerce Bank, 1515 Calle Sur, P.O. Box 700, Hobbs, New Mexico 88240.

32. NMSA 1978, Section 70-2-6(B) provides that the Commission shall have concurrent jurisdiction or authority with the Division to the extent necessary for the Commission to perform its duties.

33. Because of Marks and Garner's failure to bring the following wells into compliance with 19.15.4.201 NMAC, Marks and Garner should be ordered to properly plug and abandon the wells in accordance with 19.15.4.202 NMAC and with a plugging procedure approved by the Division's Artesia District Office, or otherwise bring them into compliance with 19.15.4.201 NMAC by placing them in approved temporary abandonment status, 19.15.4.203 NMAC, or returning them to production.

<u>Name</u>	<u>API No.</u>
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coquina State #001	30-025-27992
Julia Culp #001	30-025-24979

Wm Snyder #001	30-025-02703
Theos State #001	30-015-24732
Lea/UA/State #001	30-025-28484
Northeast Maljamar Unit #001	30-025-21291
Red Twelve Levers Federal #008Q	30-015-25090
Red Twelve Levers Federal #012	30-015-25152
Red Twelve State #006	30-015-25055
State #001	30-015-02888
Gulf Hanagan Federal #001	30-025-08144

34. Because of Marks and Garner's failure to file the sundry notices required by 19.15.13.1103 NMAC, Marks and Garner should be ordered to file Form C-103s or ensure that the Division receives copies of the sundry notices that Marks and Garner filed with the United States Department of the Interior, Bureau of Indian Affairs for the remedial work it performed on the following wells:

<u>Name</u>	<u>API No.</u>
Cities Service State #001	30-025-23551
Graham Federal #003	30-025-28655
Levers #003Y	30-015-02787
Jennings Federal #002	30-025-08149
Kemnitz 17 State #001	30-025-28767
Red Twelve Federal #002	30-015-25059
Red Twelve State #003	30-015-24989.

35. Subsection B of 19.15.3.101 NMAC requires that "[a]ny well that has been in temporary abandonment for more than two years must be covered by a one-well financial assurance".

36. The wells listed in paragraph 3 have not been active for more than two years and therefore must be covered by a one-well financial assurance.

37. Subsections A and C of 19.15.3.100 NMAC, which became effective on December 15, 2005, require that operators inform the Division through its Financial Assurance Administrator of their address of record, which is to be used for notice.

38. The Division's witness, Jane Prouty, testified that prior to the adoption of 19.15.3.100 NMAC, the Division relied on the address provided on the Operator Administrator Registration Form as the operator's address of record.

39. On or about November 29, 2004, Mickey Welborn, Manager, submitted a Change of Operator to the Division that listed Marks and Garner's address as P.O. Box 70, Lovington, New Mexico 88260.



40. On or about March 1, 2005, Quinton Welborn, Controller, submitted an Operator Administrator Registration Form to the Division that listed Marks and Garner's mailing address as P.O. Box 70, Lovington, NM 88560.

41. Marks and Garner's witness testified that he sent a letter to the Division's Hobbs and Artesia District Offices in approximately April or May 2005 that his address had changed to P.O. Box 1089, Hobbs, New Mexico 88241. According to Division records he did not update the Operator Administrator Registration Form.

42. Despite the requirements of 19.15.3.100 NMAC, Marks and Garner did not advise the Division's Financial Assurance Administrator until July 8, 2008 that its address of record was P.O. Box 1089, Hobbs, New Mexico 88241.

43. Therefore, the Division continued to treat P.O. Box 70, Lovington, NM 88560 as Marks and Garner's address of record.

44. Marks and Garner's witness testified that he received notice of the Division's application for an enforcement order filed on November 13, 2007 and Marks and Garner appeared at the January 10, 2008 hearing before the Division hearing examiner.

45. Therefore, since at least January 10, 2008, Marks and Garner has had notice that 23 of its wells were not in compliance with 19.15.4.201 NMAC.

46. NMSA 1978, Section 70-2-31(A) provides that any person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars for each violation, and that, in the case of a continuing violation, each day of violation shall constitute a separate violation.

47. The evidence in this case demonstrates that Marks and Garners' failure to bring the wells listed in paragraph 11 into compliance with 19.15.4.201 NMAC and failure to timely file sundry notices in compliance with 19.15.13.1103 NMAC were knowing and willful violations of the applicable Division rules. Therefore, civil penalties should be assessed against Marks and Garner.

**IT IS THEREFORE ORDERED THAT:**

1. Marks and Garner shall properly plug and abandon the wells listed below in accordance with 19.15.4.202 NMAC and with a plugging procedure approved by the Division's Artesia or Hobbs District Office, as applicable, or shall otherwise bring each such well into compliance with 19.15.4.201 NMAC by placing them in approved temporary abandonment status pursuant to 19.15.4.203 NMAC or returning them to production, on or before December 10, 2008.

Name \_\_\_\_\_ API No. \_\_\_\_\_

Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coquina State #001	30-025-27992
Julia Culp #001	30-025-24979
Wm Snyder #001	30-025-02703
Theos State #001	30-015-24732
Lea/UA/State #001	30-025-28484
Northeast Maljamar Unit #001	30-025-21291
Red Twelve Levers Federal #008Q	30-015-25090
Red Twelve Levers Federal #012	30-015-25152
Red Twelve State #006	30-015-25055
State #001	30-015-02888
Gulf Hanagan Federal #001	30-025-08144

If the Gulf Hanagan Federal #001, API No. 30-205-08144, has previously been plugged and abandoned as Marks and Garner's witness testified, Marks and Garner shall ensure that the Division receives copies of the documents filed with the United States Department of the Interior, Bureau of Land Management that show that the Bureau of Land Management has approved the plugging and abandonment and the surface restoration and has released the well on or before October 10, 2008.

2. Marks and Garner shall comply with Subsection B of 19.15.13.1103 NMAC and file with the Division true and accurate sundry notices on Form C-103 for the remedial work performed or ensure that the Division receives copies of the sundry notices filed with the United States Department of the Interior, Bureau of Land Management on the following wells by October 10, 2008:

<u>Name</u>	<u>API No.</u>
Cities Service State #001	30-025-23551
Graham Federal #003	30-025-28655
Levers #003Y	30-015-02787
Jennings Federal #002	30-025-08149
Kemnitz 17 State #001	30-025-28767
Red Twelve Federal #002	30-015-25059
Red Twelve State #003	30-015-24989
State #002	30-015-20889

Given that there has been no lease since March 2007 for the state trust lands on which the Kemnitz 17 State #001, API No. 30-025-28767, is located no production should be occurring from that well.

3. Marks and Garner shall ensure that copies of the documents filed with the United States Department of the Interior, Bureau of Land Management showing that the Bradley Federal #001, API No. 30-025-08154; the Bradley Federal #003, API No. 30-025-08156; and the Ernest Federal #001, API No. 30-025-08163, have been properly

plugged and abandoned and the surface restored are provided to the Division by October 10, 2008.

4. Marks and Garner shall file on or by October 10, 2008 amended Form C-115s showing that the Red Twelve Levers Federal #008Q, API No. 30-015-25090; the Red Twelve Levers Federal #012, API No. 30-015-25152; and the Theos State #001, API No. 30-015-24732, have not produced oil, gas, or water.

5. Marks and Garner shall post additional single well plugging bonds on or before September 25, 2008 for the following wells:

<u>Name</u>	<u>API No.</u>
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coquina State #001	30-025-27992
Julia Culp #001	30-025-24979
Lea/UA/State #001	30-025-24979
Northeast Maljamar Unit #001	30-025-21291
Red Twelve State #006	30-015-25055
State #001	30-015-02888
Theos State #001	30-015-24732
Wm Snyder #001	30-025-02703

6. In the event that Marks and Garner fails to comply with Ordering Paragraphs 1 through 5 within the times provided, the Division may proceed to plug and abandon any or all of Marks and Garner's wells, and to restore the well sites, and any applicable financial assurance shall be forfeited to the Division. If the Division incurs costs in plugging the wells or restoring the well sites exceeding the amount recoverable from applicable financial assurance, the Division may bring suit to recover the excess costs incurred from Marks and Garner.

7. A civil penalty is assessed against Marks and Garner in the amount of \$23,000 because of its knowing and willful failure to comply with 19.15.4.201 NMAC and 19.15.13.1103 NMAC. Marks and Garner shall pay the \$23,000 civil penalty on or before 5:00 p.m. on September 25, 2008. Should Marks and Garner fail to pay this penalty on or before September 25, 2008, additional penalties of \$1,000 per day shall be assessed until Marks and Garner pays the penalties in full.

8. Marks and Garner shall pay the penalties provided in Ordering Paragraph 7 by delivery of certified check or cashier's check to the Division's Santa Fe Office.

9. At the Commission's December 11, 2008 hearing, Marks and Garner shall report to the Commission regarding the status of its compliance with Ordering Paragraphs 1 through 5, 7, and 8.

10. If Marks and Garner fails to comply with this order, the Division may request that the Commission cancel or suspend Marks and Garner's authority to transport pursuant to 19.15.4.14.1227 NMAC.

11. Jurisdiction of this case is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico on the 11th of September 2008.



STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION

A handwritten signature in cursive script, appearing to read "Jami Bailey".

JAMI BAILEY, CPG, Member

A handwritten signature in cursive script, appearing to read "William Olson".

WILLIAM OLSON, Member

A handwritten signature in cursive script, appearing to read "Mark E. Fesmire".

MARK E. FESMIRE, PE, Chair

SEAL