

**GTLT - \_\_\_\_\_ 3 \_\_\_\_\_**

**ENFORCEMENT**

**YEAR(S):**

(Brass cap)  
T255, R19W

69  
Turn Pt. 3; So. east of 2 posts

Inst. set Pt. 4

Rod Turn Pt. 4

6 5  
7 8

Access Roadway

house  
Well A-45-5

Well A-393  
Green boxes

Inst. set Pt. 5

Cattle yard

Inst. set Pt. 7

dike

Well "Prod. #2"

A-36-AB-S-3

March 28-83  
no permits

Well A-36-B  
Power pole  
Reser.

Green  
Houses

Metal reser.  
Well 8-12  
A-36-AB-S-4  
Power pole

R-5-9

Push up dike

A-36-AB-S-5

Cooler bld.

Power pole + line

AMEX Well  
Rod, Turn Pt. 7+8

A-36-AB-S-6  
Inst. set Pt. 8

Well A-36-A

Well A-384  
A-36-AB-S

A-36-AB-S-7

□ or □ = houses or mobil homes

A-36-AB-S-8

Push up dike

Inst. set Pt. 6

Well A-385  
A-36-AB-S-2

IN THE DISTRICT COURT  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO

COUNTY OF SANTA FE

STATE OF NEW MEXICO, ex rel.,  
DALE BURGETT,

Petitioner,

vs.

No. \_\_\_\_\_

PAUL BIDERMAN, Secretary  
of Energy & Minerals,  
a Department of the  
State of New Mexico,

Respondent.

PETITION FOR WRIT OF MANDAMUS

Petitioner alleges:

1. Petitioner is a citizen and resident of Hidalgo County, New Mexico.
2. Respondent is the Secretary of the Department of Energy and Minerals, a Department of the State of New Mexico.
3. Petitioner is engaged in the greenhouse business in Animas, New Mexico, employing a geothermal water source to raise roses and other flowers.
4. Respondent is required by law to administer funds granted by the New Mexico Legislature, Laws of New Mexico, 1980, Chap. 134, for the purpose of funding "geothermal demonstration projects" (emphasis supplied).
5. Respondent's predecessor in office issued a Request for Proposals and Administrative Policies and Procedures

governing the applications for geothermal demonstration funds, attached to this petition as Exhibits "A" and "B".

6. Dona Ana Co., Inc., purporting to be a corporation qualified to do business in New Mexico, applied for a grant by application dated April 15, 1982, seeking to "[U]tilize existing geothermal wells either drilled by Hunt in the Radium Springs area or from tested wells in an unnamed area of New Mexico" to grow roses.

7. On April 29, 1982, Dona Ana Co., Inc., filed an amended grant application which deleted the words "or from tested wells in an unnamed area of New Mexico," thereby limiting its proposal to the utilization of "existing geothermal wells drilled by Hunt in the Radium Springs Area".

8. On or about June 24, 1982 the Respondent's predecessor awarded a grant and signed a contract with Dona Ana Co., Inc., a copy of which is attached to this petition as Exhibit "C".

9. Said proposal and contract were not in conformity with the Respondent's Request for Proposals and Administrative Policies and Procedures in a number of major respects, including, but not limited to, the following:

- a) The Contract negotiations were not completed by May 28, 1982.
- b) The proposal contained no justification that the project could not be undertaken without state

funding.

- c) The contract did not require that purchase of equipment funded by the grant would be governed by the procedures set forth in the New Mexico State Purchasing Act, §13-1-1 et. seq., NMSA (1978).

10. In October of 1983, Tom Beall (hereinafter, the contractor) advised the Respondent that it wished to abandon its project for the Radium Springs area (Dona Ana County, New Mexico) and utilize the grant funds previously awarded it to develop a new project right next to the Petitioner's greenhouses near Animas, New Mexico (Hidalgo County). This project would duplicate the Petitioner's business operation, utilizing the same geothermal well field and putting the resource to the same beneficial use, namely the greenhouse production of roses.

11. Dona Ana Co., Inc., was never incorporated in New Mexico, either as a domestic or foreign corporation, and therefore cannot legally do business in the state of New Mexico. Tom Beall, the principal incorporator of said company, is a resident of the state of Washington.

12. The contract between Dona Co., Inc., is a nullity, since the contractor was never qualified to do business in the state of New Mexico nor does it have a gross receipts tax number registered with the Department of Taxation and Revenue, a requirement of said contract.

13. The Respondent cannot legally transfer funds

contracted for by Dona Ana Co., Inc., to the Beall Co. of N.M., Inc., and/or Tom Beall or allow the new contractor to utilize such funds for a new project in Animas, New Mexico.

14. Since the new project proposed for funding would be a duplication of the Petitioner's existing business operation, it is not a "demonstration" project, and the transfer of funds under the contract to the proposed new project would be contrary to the express statutory language limiting funding to geothermal "demonstration" projects.

15. If the Beall Co. of N.M., Inc., is permitted to receive funds previously contracted for by Dona Ana Co., Inc., to develop the Radium Springs project, which was the only project presented in its final proposal of March 29, 1982, the Petitioner will be denied equal protection and due process of law, since he was advised in June of 1982 that he could not submit a proposal for a geothermal greenhouse in Animas, New Mexico because the deadline for proposals had expired as of April 30, 1982.

16. The Respondent has a non-discretionary duty to administer state funds in a manner which does not violate the laws and constitution of the State of New Mexico, and if he is not restrained by a writ of mandamus he will violate both those laws and constitutional provisions cited herein.

17. Petitioner is a person "beneficially interested" in the issues raised by this petition, namely the proposed

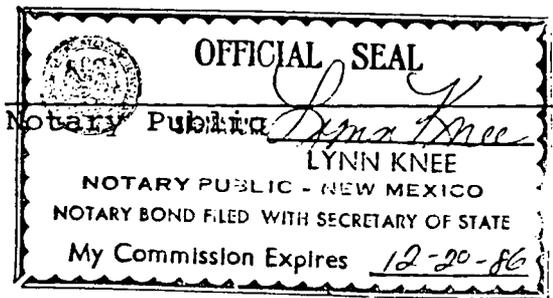


deposes and says: that he is the Petitioner in the foregoing action; that he has read, knows and understands the contents of the foregoing Petition for Writ of Mandamus; and that the matters and things therein contained are true and correct according to his best knowledge, information and belief.

  
DALE BURGETT

Subscribed and sworn to before me this 17th  
day of January, 1984.

My commission expires:  
12-20-86



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FIRST JUDICIAL DISTRICT

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COUNTY OF SANTA FE

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DALE BURGETT,

Petitioner,

vs.

No. \_\_\_\_\_

PAUL BIDERMAN, Secretary  
of Energy & Minerals,  
a Department of the  
State of New Mexico,

Respondent.

ALTERNATIVE WRIT OF MANDAMUS

TO: Paul Biderman  
Secretary of Energy & Minerals

GREETINGS: Whereas, it appears to the Court as follows:

1. Petitioner is a citizen and resident of Hidalgo County, New Mexico.
2. Respondent is the Secretary of the Department of Energy and Minerals, a Department of the State of New Mexico.
3. Petitioner is engaged in the greenhouse business in Animas, New Mexico, employing a geothermal water source to raise roses and other flowers.
4. Respondent is required by law to administer funds granted by the New Mexico Legislature, Laws of New Mexico, 1980, Chap. 134, for the purpose of funding "geothermal demonstration projects" (emphasis supplied).

5. Respondent's predecessor in office issued a Request

for Proposals and Administrative Policies and Procedures governing the applications for geothermal demonstration funds, attached to this petition as Exhibits "A" and "B".

6. Dona Ana Co., Inc., purporting to be a corporation qualified to do business in New Mexico, applied for a grant by application dated April 15, 1982, seeking to "[U]tilize existing geothermal wells either drilled by Hunt in the Radium Springs area or from tested wells in an unnamed area of New Mexico" to grow roses.

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8. On or about June 24, 1982 the Respondent's predecessor awarded a grant and signed a contract with Dona Ana Co., Inc., a copy of which is attached to this petition as Exhibit "C".

9. Said proposal and contract were not in conformity with the Respondent's Request for Proposals and Administrative Policies and Procedures in a number of major respects, including, but not limited to, the following:

- a) The Contract negotiations were not completed by May 28, 1982.
- b) The proposal contained no justification that

the project could not be undertaken without state funding.

- c) The contract did not require that purchase of equipment funded by the grant would be governed by the procedures set forth in the New Mexico State Purchasing Act, §13-1-1 et. seq., NMSA (1978).

10. In October of 1983, Tom Beall (hereinafter, the contractor) advised the Respondent that it wished to abandon its project for the Radium Springs area (Dona Ana County, New Mexico) and utilize the grant funds previously awarded it to develop a new project right next to the Petitioner's greenhouses near Animas, New Mexico (Hidalgo County). This project would duplicate the Petitioner's business operation, utilizing the same geothermal well field and putting the resource to the same beneficial use, namely the greenhouse production of roses.

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12. The contract between Dona Co., Inc., is a nullity, since the contractor was never qualified to do business in the state of New Mexico nor does it have a gross receipts tax number registered with the Department of Taxation and Revenue, a requirement of said contract.

13. The Respondent cannot legally transfer funds contracted for by Dona Ana Co., Inc., to the Beall Co. of N.M., Inc., and/or Tom Beall or allow the new contractor to utilize such funds for a new project in Animas, New Mexico.

14. Since the new project proposed for funding would be a duplication of the Petitioner's existing business operation, it is not a "demonstration" project, and the transfer of funds under the contract to the proposed new project would be contrary to the express statutory language limiting funding to geothermal "demonstration" projects.

15. If the Beall Co. of N.M., Inc., is permitted to receive funds previously contracted for by Dona Ana Co., Inc., to develop the Radium Springs project, which was the only project presented in its final proposal of March 29, 1982, the Petitioner will be denied equal protection and due process of law, since he was advised in June of 1982 that he could not submit a proposal for a geothermal greenhouse in Animas, New Mexico because the deadline for proposals had expired as of April 30, 1982.

16. The Respondent has a non-discretionary duty to administer state funds in a manner which does not violate the laws and constitution of the State of New Mexico, and if he is not restrained by a writ of mandamus he will violate both those laws and constitutional provisions cited herein.

17. Petitioner is a person "beneficially interested"

in the issues raised by this petition, namely the proposed illegal and unconstitutional expenditure of state funds, generally as a citizen of this state and specifically as a person who will be economically damaged by the grant of state funds to an out-of-state competitor who intends to establish a state-subsidized business of the same type and location as the Petitioner's business.

18. Petitioner has no plain, speedy and adequate remedy at law.

THEREFORE, you are commanded forthwith to:

1. Comply with your mandatory non-discretionary duty to withhold the granting or releasing of funds to Dona Ana Co., Inc., or to Tom Beall or Beall Co. of N.M., Inc., of New Mexico, Inc., for the purpose of building a geothermal greenhouse in Animas, New Mexico.

2. Pay to the Petitioner the damages sustained as a result of the unlawful and unconstitutional conduct of the Respondent together with costs and disbursements; or show cause before this Court at \_\_\_\_\_ o'clock in the \_\_\_\_\_ on \_\_\_\_\_, 1984, why you should not do so.

\_\_\_\_\_  
DISTRICT JUDGE

IN THE DISTRICT COURT  
FIRST JUDICIAL DISTRICT

STATE OF NEW MEXICO

COUNTY OF SANTA FE

STATE OF NEW MEXICO, ex rel.,  
DALE BURGETT,

Petitioner,

vs.

No. \_\_\_\_\_

PAUL BIDERMAN, Secretary  
of Energy & Minerals,  
a Department of the  
State of New Mexico,

Respondent.

ORDER FOR ALTERNATIVE WRIT OF MANDAMUS

This matter having come before the Court upon the verified Petition of Petitioner; it appearing to the satisfaction of the Court from the Petition that the Petitioner is entitled to the relief requested in the Petition; it further appearing that an Alternative Writ should issue; that Petitioner has no plain, speedy and adequate remedy in the ordinary course of law, and that this remedy is prescribed by statute.

IT IS ORDERED that an Alternative Writ of Mandamus in due form of law be issued by the Clerk of this Court commanding Respondent to:

1. Comply with its mandatory non-discretionary duty to withhold the granting or releasing of funds to Dona Ana Co., Inc., or Tom Beall or Beall Co. of N.M., Inc., for the purpose of building a geothermal greenhouse in

Animas, New Mexico.

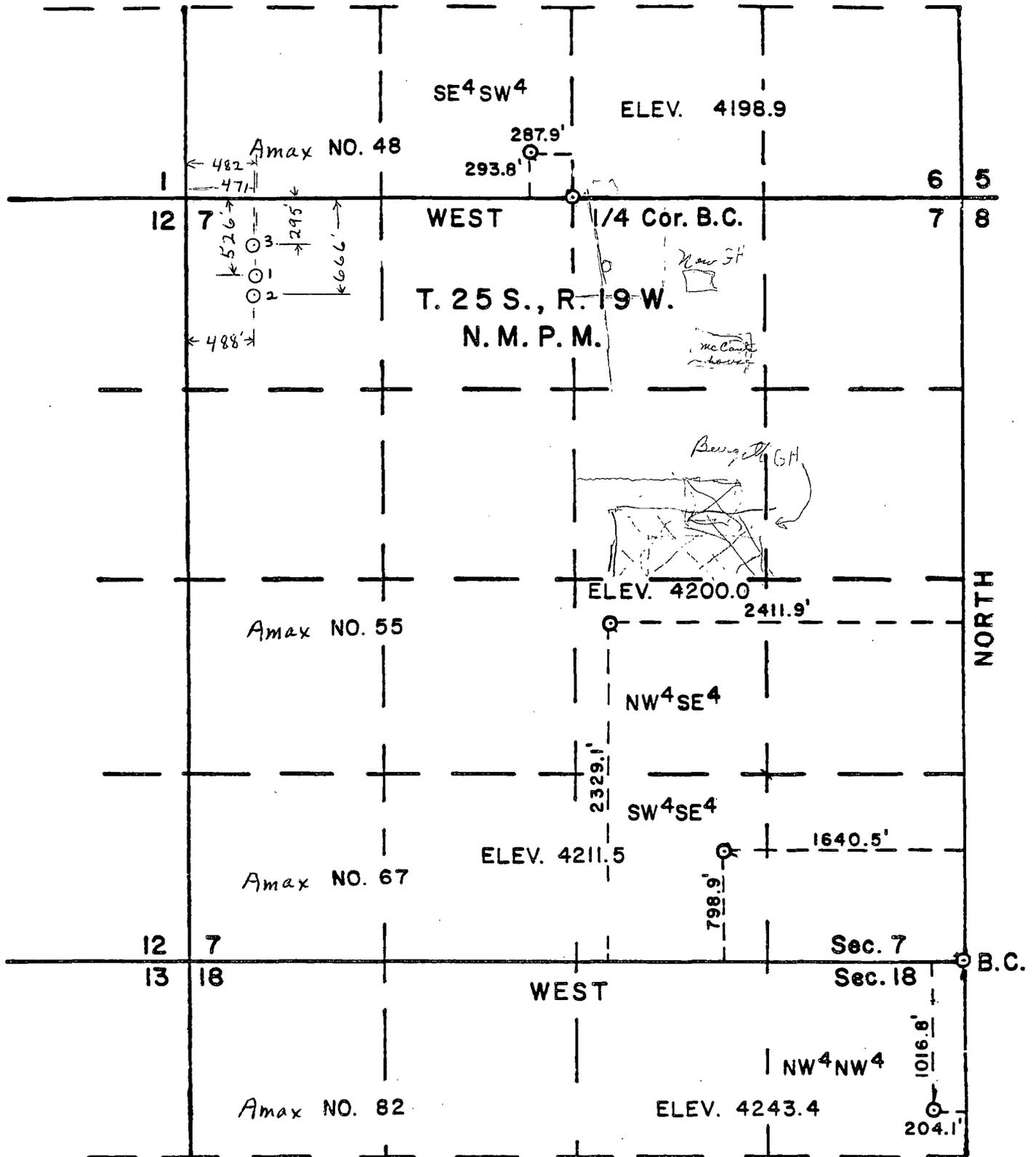
2. Pay to Petitioner the damages sustained as a result of the unlawful conduct of Respondent together with costs and disbursements; or show cause before this Court at \_\_\_\_\_ o'clock in the \_\_\_\_\_ on \_\_\_\_\_, 1984, why you should not do so.

IT IS FURTHER ORDERED that true copies of the Petition, the Writ, and this Order be served upon Respondent in the same manner as a summons in a civil action.

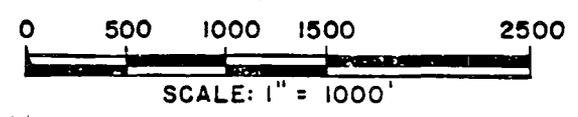
\_\_\_\_\_  
DISTRICT COURT JUDGE

GEOTHERMAL WELLS

SECTIONS 6-7 & 18, T.25S., R.19W., N.M.P.M.  
 HIDALGO COUNTY, NEW MEXICO



± 16 mi S-SW of Lordsburg  
 ± 5 mi. N-NE of Cotton City



LAND SURVEYOR'S CERTIFICATE

This Plat and the information hereon is the result of an actual field survey made by me or under my supervision and meets the accuracy requirements for this survey.



RANGE

20 WEST

RANGE

19 WEST

- CORA P. KEAR -  
79.20 ac.

A-58-A-D

- T.H. McCANTS -  
178.0 ac.

T.H. McCANTS  
80 ac

A-45-  
A-45-S-2  
A-45-S-3

A-45-S-4 A-45-S-5  
PROPOSED WELLS

A-45-S

- DALE BURGESS -  
150.252 ac.

A-65-A-S

A-36-A-S-3  
A-36-A-S-4  
A-36-A-S-5  
A-36-A-S-6

A-36-A (79.5 ac)  
A-36-B

A-36-A-S-6

40 ac.

- HARRIET GREEN -  
A-36-A-S-2

- HARRIET GREEN -  
260 ac.

A-64  
(A-64-ward, A-65-A-64-Cont. A)

A-65-A

A-13-S-2

A-13-S-3

A-13  
A-13-S-1  
A-13-S-5

A-59-A

- C.J. RUDIGER -  
320 ac.

C.J. RUDIGER

A-60

A-59

TOWNSHIP 25 SOUTH

TOWNSHIP 25 SOUTH

RANGE 20 WEST

RANGE 19 WEST

October 2, 1986

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. Dale Burgett  
Box 265A  
Animas, N.M. 88020

*Dick wants to  
talk to you  
about this*  


Dear Mr. Burgett:

On June 2, 1986, you received notice that New Mexico Water Quality Control Commission (WQCC) regulations require an approved discharge plan for your greenhouse operation discharging geothermal waters onto the surface of the ground.

Pursuant to Sections 3-104 and 3-106 of the WQCC regulations, you were required to file a discharge plan by September 30, 1986, or to request an extension of time for good cause. You are hereby notified that the regulations allow you to discharge without an approved discharge plan for an additional 120 days, or until January 28, 1987, at which time all discharges will cease. Continued discharge will result in legal action by the Oil Conservation Division.

Enclosed is another copy of discharge plan guidelines for the geothermal operation. <sup>This form needs to be submitted in order to approve a discharge plan for your operation.</sup> If you have any questions, contact Jami Bailey in Santa Fe at 827-5884.

Sincerely,

R. L. STAMETS

Director

RLS:dp JB:dp

Enc.

cc: Roy Johnson