

FIFTH JUDICIAL DISTRICT
LEA COUNTY NM
FILED IN MY OFFICE

STATE OF NEW MEXICO
COUNTY OF LEA
FIFTH JUDICIAL DISTRICT

2004 AUG 31 PM 4: 30

JANIE C. HERNANDEZ
DISTRICT COURT CLERK

SMITH & MARRS, INC.,

Plaintiff,

vs.

No. CV-2004- 396 mc Bee

CLAY OSBORN AND JERI OSBORN,

Defendants.

PETITION FOR PERMANENT INJUNCTION

COMES NOW, Smith & Marrs, Inc. ("Plaintiff"), by and through its attorneys Maddox & Holloman, P.C. (Lee A. Kirksey, Esq.) and states:

1. The Plaintiff is a Texas Corporation, owning and operating oil and gas properties.
2. Clay & Jeri Osborn ("Defendants") are the property owners of the surface estate of Sections 7, 8, 17 and 18, Township 25 South, Range 37 East, Lea County, New Mexico.
3. Plaintiff operates the South Langlie Jal Unit ("Unit"), which encompasses mineral rights at locations in which Defendants own the surface estate.
4. Bristol Resources Corporation ("Bristol") was the operator of the Unit when an investigation as to soil and ground water contamination began in 1999.
5. On August 2, 2000, the Oil Conservation Division of the New Mexico Energy Minerals and Natural Resources Department ("OCD") required

OCD Exhibit No. 36

Case No. 13061

~~September 2, 2004~~

May 12, 2005

that Bristol submit an "Abatement Plan" for the Unit to investigate and abate ground water pollution.

6. On September 15, 2000, Chaparral Energy, LLC ("Chaparral") purchased Bristol's assets at a bankruptcy auction and assumed operation of the Unit. Subsequently, the OCD notified Chaparral that Chaparral was required to submit an "Abatement Plan" to investigate and abate ground water pollution.
7. Chaparral submitted a Stage 1 Abatement Plan Proposal in order to comply with OCD requirements. The Plan Proposal was approved by OCD on April 25, 2002.
8. On November 7, 2002, Chaparral notified the OCD that operation of the Unit had been assumed by Plaintiff when the Unit was sold to a related entity.
9. On January 13, 2003, OCD notified both Defendant and Chaparral to submit a Stage 1 Investigation Report by February 1, 2003.
10. When the reports were not filed, OCD filed an administrative application in Case No. 13061.
13. On November 17, 2003, Plaintiff entered into a Settlement Agreement with OCD and with Chaparral, agreeing to perform the approved State 1 Abatement Plan as submitted by Chaparral and approved by OCD ("Settlement Agreement"). (See Exhibit A, Settlement Agreement.)

14. Plaintiff has made a good faith effort to negotiate an Access Agreement with the surface landowners, Defendants, in order to implement the Stage 1 Abatement Plan.
15. Plaintiff has sent several letters to Defendants regarding obtaining access to the property in order to commence the Abatement Plan and has had representatives meet with Defendants. (See Exhibit B, letters from Plaintiff to Defendants.)
16. Defendants have, to date, refused to allow Plaintiff access to the property.
17. Plaintiff has made several efforts to reach an agreement to gain access to the property. Defendants have refused to reach a reasonable agreement.
18. In the Settlement Agreement, Plaintiff agreed to, "make a good faith effort to negotiate an access agreement with the surface landowner(s) as necessary for implementation of the Stage 1 Abatement Plan." (See Exhibit A, at Section C of the Settlement Agreement.)
19. The Settlement Agreement also provides that, "In the event that Smith & Marris is unable to obtain an access agreement from the surface owner(s) and institutes legal proceedings to secure an Injunction authorizing such access for the purpose of performing the Stage 1 Abatement Plan, Smith & Marris will notify OCD of such filing and of the date, time and place of any hearing." (See Exhibit A, at Section C of the Settlement Agreement.)
21. Pursuant to Rule 1-066 of the New Mexico rules of Civil Procedure, Plaintiff seeks a Permanent Injunction against Defendant from interfering with Plaintiff's rights related to the Unit, and immediate and reasonable

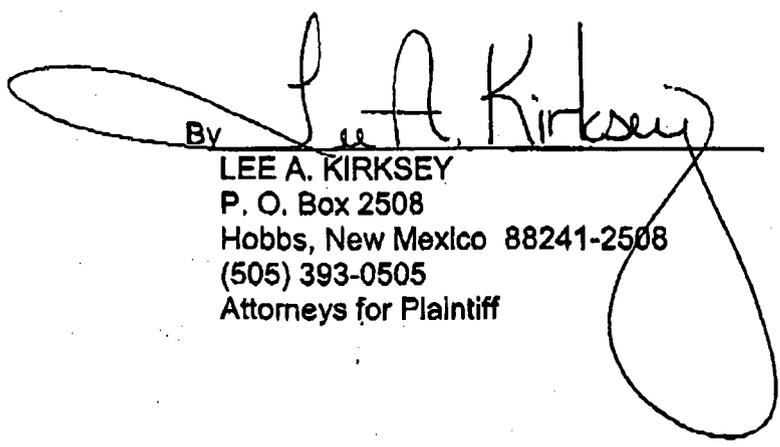
access to the property at issue in order to exercise those rights.

18. Defendant should be given notice of this proceeding.
19. Due to the nature of this case, no security should be required from Plaintiff.
20. A hearing should be set immediately to consider this petition.

WHEREFORE, Plaintiff requests a Permanent Injunction pursuant to Rule 1-066 of the New Mexico Rules of Civil Procedure directed at the Defendants which prohibits Defendants from interfering in any way with Plaintiff's rights as operator of the South Langlie Jal Unit and grants Plaintiff immediate and reasonable access to the property at issue to conduct the required testing and for such other and further relief as the Court deems proper and just.

MADDOX & HOLLOMAN, P.C.

By


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