

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:

ORIGINAL

APPLICATION OF THE NEW MEXICO
OIL CONSERVATION DIVISION,
THROUGH THE ENFORCEMENT AND
COMPLIANCE BUREAU, BY AND
THROUGH ITS ATTORNEY, FOR A
COMPLIANCE ORDER AGAINST DESERT
ROSE RESORT, LLC DBA KOA KAMPGROUND.

CASE NO. 15186

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

August 21, 2014

Santa Fe, New Mexico

BEFORE: MICHAEL McMILLAN, CHIEF EXAMINER
GABRIEL WADE, LEGAL EXAMINER

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This matter came on for hearing before the
New Mexico Oil Conservation Division, Michael McMillan,
Chief Examiner, and Gabriel Wade, Legal Examiner, on
Thursday, August 21, 2014, at the New Mexico Energy,
Minerals and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR
New Mexico CCR #20
Paul Baca Professional Court Reporters
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102
(505) 843-9241

APPEARANCES

FOR APPLICANT THE NEW MEXICO OIL CONSERVATION DIVISION,
ENFORCEMENT AND COMPLIANCE BUREAU:

KEITH HERRMANN, ESQ.
STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
Office of General Counsel
Wendell Chino Building
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 476-3210
keith.herrmann@state.nm.us

FOR DESERT ROSE RESORT, LLC DBA KOA KAMPGROUND:

JOHNNY L. BAGWELL
Pro Se
Desert Rose Resort, KOA Kampground
1900 East Blanco Boulevard
Bloomfield, New Mexico 87413
(505) 632-8339
(505) 350-7832
jbagwell124@gmail.com

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1 (8:24 a.m.)

2 EXAMINER McMILLAN: Okay. This is what
3 we're going to do today. We're going to hear case one
4 and case two -- actually, we're just going to follow the
5 docket now. So with that in mind, I'd like to get
6 started on Case 15186, application of the New Mexico Oil
7 Conservation Division, through the Enforcement and
8 Compliance Bureau, by and through its attorney, for a
9 compliance order against Desert Rose Resort, LLC DBA KOA
10 Kampground.

11 Call for appearances.

12 MR. HERRMANN: Keith Herrmann, Assistant
13 General Counsel for the OCD.

14 EXAMINER McMILLAN: Any other appearances?

15 MR. BAGWELL: John Bagwell, Desert Rose
16 Resort.

17 EXAMINER McMILLAN: Okay. Let's see. Go
18 ahead.

19 MR. HERRMANN: Yeah. I brought the case,
20 so I'll start. I have one witness to call, Mr. Brandon
21 Powell.

22 EXAMINER McMILLAN: Opening statement?

23 OPENING STATEMENT

24 MR. HERRMANN: We have one well operated by
25 Desert Rose that has a defective casing, and we're

1 seeking an order to plug and abandon the well.

2 OPENING STATEMENT

3 MR. BAGWELL: The Hare #1 is on the
4 premises of Desert Rose. It has been -- it has been
5 designated. They have filed compliances against --
6 against us. We are in the process of acquiring funds to
7 cap said well and become in compliance with the State of
8 New Mexico.

9 EXAMINER McMILLAN: Okay.

10 MR. HERRMANN: I'll call Brandon Powell to
11 the stand.

12 EXAMINER McMILLAN: You need to be sworn
13 in.

14 BRANDON POWELL,
15 after having been first duly sworn under oath, was
16 questioned and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. HERRMANN:

19 Q. Would you please state your name and title and
20 place of employment for the record?

21 A. My name is Brandon Powell. My title is
22 inspection and enforcement supervisor, and I work in
23 District 3, Oil Conservation Division.

24 Q. Could you briefly described the duties you
25 perform for the OCD?

1 A. I am a field inspection supervisor. I also
2 review wellbore work.

3 Q. Do you have direct knowledge of the compliance
4 actions against Desert Rose?

5 A. I do.

6 EXAMINER McMILLAN: Excuse me. Have you
7 ever previously testified before the Oil Conservation
8 Division?

9 THE WITNESS: I have.

10 EXAMINER McMILLAN: And have you been sworn
11 in as an expert witness?

12 THE WITNESS: I believe so.

13 EXAMINER McMILLAN: Okay. You may proceed.

14 Q. (BY MR. HERRMANN) Could you describe how this
15 investigation began?

16 A. On --

17 Q. This is looking at Exhibit A?

18 A. On March 18th, 2013 --

19 Q. Will you say what page you're on?

20 A. I'm on page 2 of Exhibit A.

21 Q. Of the well inspection history?

22 A. Yes, sir.

23 On March 18th, 2013, the Oil Conservation
24 Division in Aztec received a complaint or concern from a
25 concerned citizen. We went out to the well and

1 identified an active leak from around the base of the
2 wellhead. We contacted the existing owners and followed
3 up on April 9th. One of our inspectors went out and
4 observed as an employee for Desert Rose dug out around
5 the casing and found a hole in the casing 2 feet from
6 the surface.

7 And we worked with the operator several
8 times. We issued two letters requiring the well be
9 fixed. One was a demand letter, which was --

10 Q. Would you identify this, the date?

11 A. It was October 29th, 2013.

12 Q. And who was it sent to?

13 A. It was sent to Thomas Sikorski, Desert Rose
14 Resources [sic], LLC d/b/a KOA Kampground. And in the
15 October 29th letter, we went over the process that was
16 found, the determination, and that there was a defective
17 casing in the cement violation, and we gave until
18 December 29th, 2013 for remedial activity to be
19 initiated.

20 Back to page 2 of Exhibit A, on April 1st,
21 2014, we received another complaint from a concerned
22 citizen. This one was through the U.S. EPA. We went
23 back out to the Hare #1 and found that it was still
24 leaking. While on site, we met with a Mr. Jeff [sic]
25 Bagwell, and he stated he did not receive the October

1 letter and ask that we e-mail that to him. We did that.
2 And at that time, on April 2nd, 2014, we issued a letter
3 of violation. And in the letter of violation, we
4 request that a sundry be submitted by May 1st to plug
5 the well and that remedial activity be started by July
6 1st, 2014.

7 Q. And what activity happened before July 1st,
8 2014?

9 A. We received a plug-in sundry to go ahead and
10 move forward on the plugging, but we have not seen any
11 remedial activity.

12 Q. Nothing since July 1st?

13 A. Nothing since July 1st.

14 Q. Does this spill pose any potential hazards to
15 the environment -- excuse me -- leak?

16 A. The water is coming out from the casing. It
17 could be produced water. And viewing the area, it could
18 have shallow groundwater, so the water coming from the
19 casing could be flowing into the groundwater.

20 Q. Have there been any inspections since July 1st?

21 A. There have.

22 Q. And to your knowledge, has any more remedial
23 activity been taken?

24 A. There has not. The most recent inspection was
25 August 2014 -- or August 14th, 2014. And while on site,

1 there has been no remedial activity.

2 Q. Could you turn to Exhibit 2 and describe the
3 steps you took to give notice to the operator? Or
4 excuse me. Exhibit B. I'm using letters instead of
5 numbers.

6 A. Exhibit B is the Notice of Hearing that we
7 sent. We sent one to Desert Rose, and we sent one to
8 the bank. And Exhibit B shows the tracking number and
9 signatures for receipt.

10 Q. Could you turn to Exhibit C and identify the
11 officers of Desert Rose?

12 A. The officers are identified as Adele E. Eckert
13 and William Eckert and Thomas R. Sikorski.

14 Q. And in summary, could you describe the OCD
15 rules that this well has violated?

16 A. As laid out in the letter of violation, the
17 rule that they are in violation of is Rule 19.15.16.11
18 NMAC, which is defective casing or cementing,
19 specifically the part that says "operator shall give
20 written notice to the Division within five working days
21 and proceed with diligence to use the appropriate method
22 and means to eliminate the hazard."

23 MR. HERRMANN: No further questions.

24

25

1 CROSS-EXAMINATION

2 BY EXAMINER McMILLAN:

3 Q. The first question I have is: Do you have the
4 October 29th letter that you sent on file?

5 A. Yes, we do. It's in the well file, and it was
6 included with the exhibits.

7 MR. HERRMANN: Exhibit A.

8 THE WITNESS: It's in Exhibit A.

9 EXAMINER McMILLAN: Excuse me?

10 MR. HERRMANN: It's towards the back end of
11 Exhibit A.

12 Q. (BY EXAMINER McMILLAN) Okay. This October
13 29th, did they sign for it, the certified mail?

14 A. We sent it certified mail. I did not bring the
15 receipt with me.

16 Q. But you would be willing to supply that?

17 A. We can supply that.

18 Q. Good.

19 A. My understanding is ownership has also changed
20 with Desert Rose since that letter was issued.

21 Q. I want that as part of the record.

22 A. Okay. And the letter of violation was also
23 sent certified mail. It was on April 2nd.

24 Q. That will also be part of the record.

25 A. Yes, sir.

1 Q. Now, you said you visited the site on August
2 the 14th, correct?

3 A. Yes, sir.

4 Q. Who did that?

5 A. I did that myself, along with our plugging
6 contractor, A Plus, to gather a quote to plug the well
7 if necessary.

8 Q. And you still saw evidence of a casing problem?

9 A. Yes. The well still had fluid coming out from
10 around the casing.

11 Q. Okay.

12 MR. BAGWELL: I personally have not seen
13 any fluids out of it, but I'm told there is.

14 EXAMINER McMILLAN: You now have the
15 opportunity to ask questions.

16 MR. BAGWELL: I really have no questions.
17 Mr. Powell, what he has stated so far, the questions he
18 has been asked and answered, are true to the best of my
19 knowledge, so I really have no questions for him.

20 MR. HERRMANN: Actually, I have a couple of
21 questions I would like to re-address.

22 REDIRECT EXAMINATION

23 BY MR. HERRMANN:

24 Q. Towards the end of Exhibit A, there are a
25 couple of e-mails. Could you describe those, Brandon?

1 A. Those e-mails -- the first one was to
2 Mr. Bagwell on June 10th, 2014. I had his e-mail
3 address. And I knew the deadline was coming up, and I
4 sent an e-mail to him to give him notification that
5 remedial activity was to commence by July 1st.

6 Q. And the e-mail -- the e-mail after that?

7 A. Was on Friday, June 13th, which was an e-mail
8 that was sent out after I talked with Desert Rose's
9 contractor for plugging, Mr. John Thompson. And he
10 included me, Mr. Nick Herman and Mr. Bagwell in an
11 e-mail to notify him as well that the deadline of July
12 1st was coming.

13 Q. Was any response received?

14 A. We did not receive any response to the e-mails.

15 MR. BAGWELL: I beg to differ, because as I
16 recall, did you not receive e-mail verification of --

17 EXAMINER McMILLAN: Excuse me, sir. You
18 can testify later.

19 MR. WADE: Are you asking a question at
20 this point?

21 MR. BAGWELL: Well, I thought I did.

22 CROSS-EXAMINATION

23 BY MR. BAGWELL:

24 Q. Did you not receive any e-mail from Mr. Walsh
25 in reference to the cost of the said process, because I

1 do have the forwarded things?

2 A. On June 13th, I did not receive an e-mail reply
3 back from any of the personnel from Desert Rose.

4 I did make another e-mail, that was not
5 included, to notify everybody of the hearing coming up,
6 make sure everybody was notified, and I did get a return
7 receipt notification for that.

8 EXAMINER McMILLAN: If there are no further
9 questions, you will be excused at this time.

10 MR. BAGWELL: (Indicating.)

11 MR. WADE: Will you be giving testimony at
12 this point?

13 MR. BAGWELL: If anyone -- yes.

14 EXAMINER McMILLAN: You can be sworn in.
15 Thank you.

16 MR. WADE: You have no witnesses, right?

17 MR. BAGWELL: No.

18 JOHNNY L. BAGWELL,
19 after having been first duly sworn under oath, was
20 questioned and testified as follows in narrative
21 form:

22 MR. BAGWELL: For the record, my name is
23 Johnny L. Bagwell. I reside 1900 East Blanco Boulevard,
24 which is the site of Desert Rose.

25 To the best of my recollection, Mr. Powell

1 is correct issuing statements, save for the e-mails that
2 he did send via me and are on these exhibits. Those
3 were requested via myself, and in order to do so -- I
4 had no -- I had no confirmation of the original citation
5 issued to Mr. Sikorski, who is not present, and become
6 aware of said violations.

7 At said time, we also -- as soon as Desert
8 Rose, LLC -- the new pending -- the pending owners of
9 the property commenced the processes of trying to come
10 in compliance with the violations for Mr. Sikorski. And
11 as I recall, I do not have the e-mails. I have the
12 e-mails, just not printed.

13 But Walsh Engineering did send -- and I
14 have a copy of that in my e-mails that were forwarded --
15 that were forwarded to myself, of said reclamations --
16 complete reclamations making a producing, productive
17 well again and capping said well. That was sent to me
18 and also Mr. Powell and his division chief in Aztec.

19 And at one point in time -- I forget now
20 exactly who it was. I don't have that e-mail in front
21 of me -- Mr. Powell's supervisor e-mailed another letter
22 of noncompliance, and at that point in time, Walsh
23 Engineering did send them. And I have a verification
24 via Mr. John Walsh that Mr. Powell and them had been
25 notified of what the prices and fees -- we had started

1 it. We had started the process of that and was notified
2 that we were in the process of trying to gain the loans
3 via financial institutions to cap said well. I think
4 the capping plug is 36,000, and I believe we have a
5 \$5,000 bond on the property. Mr. Sikorski does. And
6 the reclamation to make it a producing well again comes
7 to the sum of about 42,000, and we are in process of
8 trying to get said funds to do so. We are not going to
9 make it a producing well again. Even though it is --
10 Hare #1 is the first producing well in San Juan County.
11 It has a historic marker. We choose not to do so. It's
12 more valuable as a capped historic well than a producing
13 well.

14 EXAMINER McMILLAN: So let me be clear
15 about this. You're going to P&A the well, right?

16 MR. BAGWELL: Yes.

17 EXAMINER McMILLAN: Okay. There were
18 questions about that.

19 MR. BAGWELL: It seems the only problem
20 with the P&A -- the well has not pumped a lick in four
21 months. It hasn't -- it hasn't moved. I've reviewed
22 the pump, the well with the issues that we have.
23 Mr. Powell says that it's stated on the 14th, they could
24 hear gas moving through the regulator. I'm curious, if
25 there is gas moving through the regulator, why it's

1 still sitting at 195 psi, which is irrelevant. We still
2 want to cap the well. We do want to cap the well.

3 EXAMINER McMILLAN: Would counsel like to
4 ask questions?

5 CROSS-EXAMINATION

6 BY MR. HERRMANN:

7 Q. How long have you been trying to get funding to
8 P&A the well?

9 A. Currently, we've been trying to get funding for
10 the last six months.

11 Q. And when do you expect to receive funding?

12 A. At last -- at last return from Independence
13 Bank, they requested financials for a year and a half's
14 operations for us as the new owners of Desert Rose, so
15 we're expecting to have some sort of -- we sent the
16 financials to the bank. Our CPA sent the financials to
17 them -- I believe it was yesterday -- the new financial
18 pack to see where they stood. So basically we're just
19 waiting.

20 As a matter of fact, I did -- on the 14th,
21 I believe, I told Mr. Powell at that time that we do
22 plan on P&A-ing the well and that if it was not to come
23 into compliance quick enough for his division, that we
24 would -- we would allow and seek said capping via the
25 State of New Mexico with Mr. Walsh -- Walsh Engineering

1 Firm to supervise that P&A, and he really didn't have
2 any reply to that other than he'd see me here today.

3 Q. Would Desert Rose be willing to work with the
4 Division to coordinate plugging?

5 A. Yes. As long as the finances and funds were --
6 were compliable [sic] to our finances and financials
7 with the bank, yes.

8 Q. No further questions.

9 EXAMINER McMILLAN: Brandon, what is the
10 environmental impact of not doing anything?

11 MR. POWELL: The environmental impacts of
12 not doing anything will be to continue to let water from
13 the casing go down into the -- potentially go down into
14 the groundwater.

15 MR. BAGWELL: It is potential. However, is
16 it going to -- and I accept -- I don't mind if the State
17 goes ahead and caps it now for us, to help us
18 financially. We have no problems with that.

19 We do, however, believe that since it is
20 the first producing -- the Hare #1 is the first
21 producing well drilled in San Juan County, gas and oil.
22 We would like to seek that the State do help us nominate
23 it as a historical marker for the state of New Mexico
24 and San Juan County, the site.

25 MR. WADE: You're aware that the OCD

1 doesn't have that particular jurisdiction?

2 MR. BAGWELL: I understand that. But I
3 understand, also, that if it's noted in these records,
4 it helps me move forward with getting it nominated and
5 designated as a historic site.

6 MR. POWELL: You asked about the potential
7 impact. I would like to state that one of the
8 conditions if we move forward to plug the well would be
9 for us to go ahead and test the water and test around
10 the well head and clean up any contamination.

11 MR. HERRMANN: I just have a closing
12 statement.

13 EXAMINER McMILLAN: Okay. Go ahead.

14 CLOSING STATEMENT

15 MR. HERRMANN: Just because of the
16 timetable that we've been operating on -- it's been over
17 a year that we've been doling with this issue -- we
18 would like to seek an order declaring that Desert Rose
19 does plug and abandon the well by a certain date, which
20 the OCD would be willing to work with you-all to
21 accommodate. But if we do not get further cooperation,
22 then we would have to recover the costs from you in
23 compliance with Division Rule 19.15.8.13.

24 MR. BAGWELL: I see no problem with that as
25 long as it's reasonable.

1 EXAMINER McMILLAN: If there is nothing
2 else, Case 15186 will be taken under advisement.

3 Thank you very much.

4 At this time I actually want to re-open
5 Case 15186, application of the New Mexico Oil
6 Conservation Division, through the Enforcement and
7 Compliance Bureau, by and through its attorney, for
8 compliance against Desert Rose Resort, LLC DBA KOA
9 Kampground.

10 And we have OCD Exhibits A through C as
11 part of the record?

12 MR. HERRMANN: Yes. I would like to admit
13 those as part of the record.

14 EXAMINER McMILLAN: So accepted.
15 (NMOCD Exhibit Letters A, B and C
16 were offered and admitted into evidence.)

17 EXAMINER McMILLAN: And if you will prepare
18 an order within the next two weeks.

19 MR. HERRMANN: Yes.

20 EXAMINER McMILLAN: Thank you.

21 This will also be taken under advisement.

22 Thank you very much.

23 (Case Number 15186 concludes, 9:11 a.m.)

24 EXAMINER McMILLAN: Let's take a ten-minute
25 break. Come back at 9:20.

(Break taken, 9:11 a.m. to 9:20 a.m.)

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

_____, Examiner
Oil Conservation Division

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

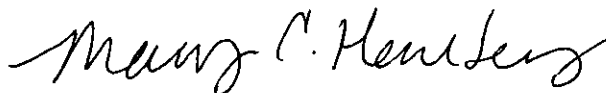
4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, New Mexico Certified
6 Court Reporter No. 20, and Registered Professional
7 Reporter, do hereby certify that I reported the
8 foregoing proceedings in stenographic shorthand and that
9 the foregoing pages are a true and correct transcript of
10 those proceedings that were reduced to printed form by
11 me to the best of my ability.

12 I FURTHER CERTIFY that the Reporter's
13 Record of the proceedings truly and accurately reflects
14 the exhibits, if any, offered by the respective parties.

15 I FURTHER CERTIFY that I am neither
16 employed by nor related to any of the parties or
17 attorneys in this case and that I have no interest in
18 the final disposition of this case.

19



20

21 MARY C. HANKINS, CCR, RPR
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