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

**ORIGINAL**

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

CASE NO. 14078

APPLICATION OF THE NEW MEXICO OIL  
CONSERVATION DIVISION FOR A COMPLIANCE  
ORDER AGAINST ERS RESOURCES, LLC

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
EXAMINER HEARING

BEFORE: David K. Brooks, Legal Examiner  
Richard Ezeanyim, Technical Examiner  
Terry Warnell, Technical Examiner

June 26, 2008

Santa Fe, New Mexico

This matter came for hearing before the New Mexico Oil  
Conservation Division, David K. Brooks, Legal Examiner, Richard  
Ezeanyim, Technical Examiner, and Terry Warnell, Technical  
Examiner, on June 26, 2008, at the New Mexico Energy, Minerals  
and Natural Resources Department, 1220 South St. Francis Drive,  
Room 102, Santa Fe, New Mexico.

REPORTED BY: JOYCE D. CALVERT, P-03  
Paul Baca Court Reporters  
500 Fourth Street, NW, Suite 105  
Albuquerque, New Mexico 87102

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Examiner Hearing  
CASE NO. 14078

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DANIEL SANCHEZ

DIRECT EXAMINATION BY MS. MACQUESTEN  
EXAMINATION BY MR. WARNELL

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APPLICANT'S EXHIBITS 1 - 7

11

A P P E A R A N C E S

FOR THE APPLICANT:

Gail MacQuesten  
OIL CONSERVATION DIVISION  
Assistant General Counsel  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

1 MR. EZEANYIM: At this point, I call Case No. 14078.  
2 This is the Application of the New Mexico Oil Conservation  
3 Division for a Compliance Order Against ERS Resources, LLC.

4 Call for appearances.

5 MS. MACQUESTEN: Mr. Examiner, my name is Gail  
6 MacQuesten. I'll be representing the OCD today. I'm standing  
7 in for OCD attorney Sonny Swazo, who brought the application,  
8 but is not available today.

9 MR. EZEANYIM: Thank you very much.

10 Any other appearances?

11 Do you have a witness?

12 MS. MACQUESTEN: I do. I have one witness,  
13 Mr. Daniel Sanchez.

14 MR. EZEANYIM: May the witness stand to be sworn,  
15 please?

16 [Witness sworn.]

17 MR. EZEANYIM: Go ahead.

18 MS. MACQUESTEN: Mr. Examiner, this is a plugging  
19 case against ERS Resources, LLC, on 32 wells. The wells are in  
20 violation of Rule 201 because they have been inactive for more  
21 than one year plus 90 days and are neither plugged nor  
22 abandoned, or on approved temporary abandonment status. The  
23 operator has posted a \$50,000 blanket surety bond, and many of  
24 the wells also have single well surety bonds.

25 We are requesting an order finding the operator in

1 violation of Rule 201, and ordering the operator to return the  
2 wells to compliance with Rule 201 by a date certain. If the  
3 operator fails to comply, we are also requesting authority for  
4 the OCD to plug the wells and forfeit the applicable financial  
5 assurance. We are not asking for penalties in this case.

6           You have an exhibit packet in front of you.  
7 Exhibit No. 1 is the Affidavit of Notice. This case was  
8 originally set for February 7th. You'll see we sent notice to  
9 the operator in surety, and published an advertisement of the  
10 hearing in a relevant newspaper.

11           The case has been continued a number of times. In  
12 part, that is because we are contacted by Orbit Petroleum, and  
13 we were told that Orbit has acquired ERS and wanted to  
14 participate in the hearing. There was some uncertainty as to  
15 whether Orbit was going to become operator of record of these  
16 wells, or whether it was going to keep ERS as operator of  
17 record, and ERS would be a subsidiary of Orbit. We waited for  
18 that to settle down. We re-noticed the case to the revised  
19 address of record, which was to Orbit Petroleum.

20           Exhibit 2 is the affidavit of Dorothy Phillips, the  
21 financial assurance administrator, and you'll see the operator  
22 has the \$50,000 blanket bond and the single well bonds.

23           And with that, I would call Mr. Sanchez.

24           MR. EZEANYIM: Go ahead.

25

1 DANIEL SANCHEZ

2 after having been first duly sworn under oath,  
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MS. MACQUESTEN:

6 Q. Would you state your name for the record, please.

7 A. Daniel Sanchez.

8 Q. And where are you employed?

9 A. With the New Mexico Oil Conservation Division.

10 Q. What is your title there?

11 A. Compliance and Enforcement Manager.

12 Q. Do your duties include supervising enforcement  
13 and compliance efforts?

14 A. Yes, they do.

15 Q. Are you familiar with Rule 201, the inactive well  
16 rule?

17 A. Yes, I am.

18 Q. Would you please summarize the basic requirements  
19 of that rule?

20 A. Yes. Well, after a full year and 90 days of  
21 being inactive, and in violation of the rule, and if it hasn't  
22 been temporarily abandoned, plugged, or put back into  
23 production.

24 Q. Would you turn to what has been marked as  
25 Exhibit No. 3?

1 A. Okay.

2 Q. Can you tell us what this is?

3 A. This is the inactive well list for ERS.

4 Q. What search terms were used to generate this  
5 list?

6 A. Inactive for one year plus 90 days well bore not  
7 plugged, and the well not TA'd.

8 Q. In other words, wells that are in violation of  
9 Rule 201 according to the OCD records.

10 A. Yes.

11 Q. Is this list generated using OCD records?

12 A. Yes, it is.

13 Q. And is it available on the OCD's website?

14 A. Yes, it is.

15 Q. When was this list generated?

16 A. On June 20, 2008.

17 Q. Have you reviewed the list more recently?

18 A. Yes, Monday morning.

19 Q. And has anything changed?

20 A. No.

21 Q. Why couldn't you review it more recently than  
22 that?

23 A. Our internet was down this morning. I was going  
24 to review it again this morning, but it was down, so I didn't  
25 have a chance.

1 Q. How many wells appear on the inactive well list  
2 for ERS?

3 A. Four.

4 Q. And what is the significance of the pink  
5 highlighting on the list?

6 A. The pink highlighting indicates the 32 wells that  
7 are in question for this case.

8 Q. So are all 32 wells named in the application  
9 still on the inactive well list for ERS?

10 A. Yes, they are.

11 Q. Now, there are some wells that aren't coded pink.  
12 Why are they not coded pink?

13 A. Those wells came onto the list after the  
14 application, the original application, was finished.

15 Q. Would you turn to what's been marked as  
16 Exhibit 4, please?

17 A. Okay.

18 Q. What is this?

19 A. This is the total well list for ERS Resources.

20 Q. And how many wells is ERS operator of record for  
21 in New Mexico?

22 A. 64.

23 Q. When was this list generated?

24 A. Also on June 20th, 2008.

25 Q. Have you checked the list more recently?

1 A. One day later.

2 Q. Had anything changed?

3 A. No.

4 Q. I'd like to direct your attention to the column  
5 titled "Last Production Injection." Can you tell us what the  
6 most recent date of reported production on injection is for any  
7 ERS well?

8 A. That would be March of 2007.

9 Q. So it's been over a year and two months since any  
10 well operated by ERS has reported production or injection?

11 A. Yes. That's correct.

12 Q. And in a matter of days, all of the wells on this  
13 list will be inactive for more than a year plus 90 days?

14 A. That's correct.

15 Q. Does the OCD intend to take any enforcement  
16 activity against ERS on these remaining wells?

17 A. Yes. We will put it onto that list.

18 Q. Do you know the status of ERS's ownership?

19 A. Right now they are owned -- they have been bought  
20 out by Orbit Petroleum.

21 Q. Would you turn to what's been marked as Exhibit  
22 No. 5, please?

23 A. Okay.

24 Q. Can you tell us what this exhibit is?

25 A. This is an e-mail from Jim Frazier from Orbit



1     Petroleum to you, Gail MacQuesten, and it was copied to Sonny  
2     Swazo.

3             Q.   And what's the date on this e-mail?

4             A.   This was February 5th of 2008.

5             Q.   Could you summarize what Mr. Frazier represents  
6     about the status of Orbit and ERS?

7             A.   He was letting us know that Orbit had acquired  
8     ERS Resources in September of 2007; that they acquired the  
9     liabilities related to the Artesia Metex Unit field, and they  
10    paid for the bonding related to the field; they understood that  
11    there would be a compliance order issued in February against  
12    them, and they were prepared to accept responsibility for  
13    compliance bonding fines and to -- they had planned to  
14    reactivate the field and were working on that plan with the  
15    OCD.

16            Q.   Are you aware of any plan with Orbit or ERS  
17    regarding this field?

18            A.   No, I'm not.

19            Q.   Was the hearing rescheduled after the OCD was  
20    contacted by Mr. Frazier?

21            A.   Yes, it was.

22            Q.   And if you could turn to what's been marked as  
23    Exhibit 6. Can you tell us what this exhibit is?

24            A.   It is the communication between Mr. Frazier and  
25    Sonny about the resetting of that hearing.

1 Q. Do you know the current status of Orbit  
2 Petroleum?

3 A. They are under bankruptcy at this time.

4 Q. Is Exhibit 7 a copy of the bankruptcy notice for  
5 Orbit?

6 A. Yes, it is.

7 Q. Now, ERS remains the operator of record of these  
8 wells; is that true?

9 A. That's right.

10 Q. If ERS is, in fact, a subsidiary of Orbit, and  
11 Orbit is in bankruptcy, does that affect the plugging case?

12 A. No, it doesn't.

13 Q. As far as you are aware, will the OCD still have  
14 access to the surety bonds?

15 A. Yes, it will.

16 Q. What are you asking for in this case?

17 A. Just a date certain for these wells to be plugged  
18 by ERS, that being within 90 days of the issuance of an order  
19 in this case, and that they come back into compliance by either  
20 TA'ing them, plugging them, or getting them back into  
21 production.

22 Q. Now, looking at that general well list, it  
23 appears that many of these wells have not reported anything for  
24 a very long time. What would happen if the operator suddenly  
25 reported production on some of these wells?

3 MS. MACQUESTEN: I move to admit Exhibits 1  
4 through 7.

6 [Applicant's Exhibits 1 through 7 admitted into  
7 evidence.]

8 MS. MACQUESTEN: I have no more questions of  
9 Mr. Sanchez on direct.

11 MR. BROOKS: No questions.

12 MR. WARNELL: I have a couple of questions, I guess,  
13 just to clarify.

14 EXAMINATION

15 BY MR. WARNELL:

16 Q. There are 32 wells here in question to be  
17 plugged?

18                   A.  Yes, sir.

19 Q. Does the OCD have bonding on those wells, or  
20 what?

21           A. There is bonding on those wells.

22 Q. What kind of bondings?

23                   A. There's the general bond, the blanket bond of  
24     \$50,000. And I believe most of them have individual well bonds  
25     on them.

1 MS. MACQUESTEN: Mr. Examiner, if I could help. The  
2 OCD Exhibit No. 2 is the affidavit of Dorothy Phillips and it  
3 will show the \$50,000 bond. And then on the second page in  
4 Paragraph 6, it lists wells that have single well bonds.

5 MR. WARNELL: Okay.

6 MS. MACQUESTEN: The ones that have the single well  
7 bonds only have \$5,000 bonds, but there is some additional  
8 bonding and the \$50,000 blanket.

9 Q. (By Mr. Warnell): Do you feel that ERS is going  
10 to go out and abandon these wells, T&A them?

11 A. Yes, I do.

12 Q. You think they will?

13 A. Yes.

14 Q. What would be your estimated cost to plug and  
15 abandon 32 wells -- at least 32 wells?

16 A. Thinking back to the memo that was sent out two  
17 weeks ago, I think the average cost down there is now about  
18 \$47,000 a well.

19 MR. WARNELL: That's all I have. Thank you.

20 MS. MACQUESTEN: Mr. Examiner, if I could, this is a  
21 strange situation because we have a bankruptcy involvement.  
22 And it is a difficult situation for the OCD because it is  
23 possible that we will end up plugging wells. There are some 65  
24 wells that we may have to plug eventually in this case. But by  
25 bringing this action, if we can get an order requiring ERS to

1 plug the wells, we may get the bankruptcy court to pay  
2 attention to the compliance in this matter. Right now, we're  
3 not even on the table.

4 Also, if we have an order in place, and the wells are  
5 transferred to another operator, under Rule 40 and the related  
6 provisions, we'll be able to tell that operator that they  
7 cannot become operator of record until they tell us how they  
8 intend to deal with these wells.

9 So it's a way for us to get compliance activity out  
10 there and in front of the bankruptcy and any potential  
11 operators out there. And hopefully with the plugging order we  
12 may get ERS and the bankruptcy court to move to get these wells  
13 into the hands of an operator who can actually take care of the  
14 wells.

15 MR. WARNELL: Okay.

16 MR. EZEANYIM: Okay. Thank you. Terry you asked two  
17 of my questions. Who do you want to take care of the wells,  
18 Orbit or ERS? Because ERS is out of business and I know that  
19 Orbit acquired ERS. Should this order be against Orbit or ERS?

20 MS. MACQUESTEN: I would ask that it be against ERS  
21 because ERS is still the operator of record. They may be a  
22 subsidiary of Orbit, but they still exist as a separate entity  
23 and they are the entity responsible for the wells.

24 MR. BROOKS: I would doubt that we would have the  
25 power of jurisdiction at this point to enter an order against

1 Orbit because they're not the operator, and it does really  
2 speak -- there's no evidentiary record of what we could  
3 disregard in the distinction between the two corporations.

4 MR. EZEANYIM: Well, why I asked the question, Mr.  
5 Examiner, is I see a letter here saying that Orbit acquired  
6 ERS.

7 MR. BROOKS: Yes.

8 MR. EZEANYIM: And is going to take ownership of the  
9 wells. So that's why -- I don't care either way.

10 MR. BROOKS: Well, many people questioned whether it  
11 should be the law or not, but I think it clearly is that a  
12 person who owns a corporation does not become liable to perform  
13 that corporation's obligations.

14 MR. EZEANYIM: Okay. And then you are requesting --  
15 I see there are some other wells that don't have -- that are  
16 supposed to be under that Rule 101 and are supposed to have  
17 single well bonds, but they don't. And it's not on that list  
18 that has \$5,000 well bonds. What do you intend to do on that  
19 part of this case today? But they don't have single well bonds  
20 because they are more than two years out of compliance.

21 MS. MACQUESTEN: This case was initiated last year  
22 before the new financial assurance rule took effect. So we  
23 didn't make the financial time assurance issue part of this  
24 case.

25 MR. EZEANYIM: Okay.

1 MS. MACQUESTEN: We may include that in the next  
2 case. You'll notice that the wells that are not the subject of  
3 this action today haven't hit the two-year mark yet.

4 MR. EZEANYIM: Okay. I have no further questions.

5 At this point, Case No. 14078 will be taken under  
6 advisement.

7 [Hearing concluded.]

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## REPORTER'S CERTIFICATE

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I, JOYCE D. CALVERT, Provisional Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

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

Signed this 26th day of June, 2008.



JOYCE D. CALVERT  
New Mexico P-03  
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1 STATE OF NEW MEXICO )  
 )  
 2 COUNTY OF BERNALILLO )

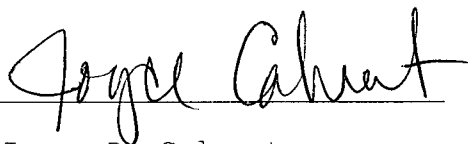
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7 Dated at Albuquerque, New Mexico, 26th day of  
 June, 2008.

8

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