

## STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

**RECEIVED**

JUL 24 2003

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

Oil Conservation Division

APPLICATION OF THE NEW MEXICO OIL )  
 CONSERVATION DIVISION THROUGH THE )  
 ENVIRONMENTAL BUREAU CHIEF FOR AN )  
 ORDER DETERMINING THE RESPONSIBLE )  
 PARTY OR PARTIES AND ORDERING THE )  
 RESPONSIBLE PARTY OR PARTIES TO )  
 COMPLETE AND PERFORM AN ABATEMENT )  
 PLAN PURSUANT TO OCD RULE 19, LEA )  
 COUNTY, NEW MEXICO )

CASE NO. 13,061

**ORIGINAL**REPORTER'S TRANSCRIPT OF PROCEEDINGSEXAMINER HEARING

BEFORE: WILLIAM V. JONES, JR., Hearing Examiner

July 15th, 2003

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, JR., Hearing Examiner, on Tuesday, July 15th, 2003, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

STEVEN T. BRENNER, CCR  
 (505) 989-9317

## I N D E X

July 15th, 2003  
Examiner Hearing  
CASE NO. 13,061

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## A P P E A R A N C E S

## FOR THE DIVISION:

CHERYL BADA  
Assistant General Counsel  
Energy, Minerals and Natural Resources Department  
2040 South Pacheco  
Santa Fe, New Mexico 87505

DAVID K. BROOKS, JR.  
Attorney at Law  
Energy, Minerals and Natural Resources Department  
Assistant General Counsel  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

## FOR SMITH AND MARRS:

PADILLA LAW FIRM, P.A.  
1512 South St. Francis Drive  
P.O. Box 2523  
Santa Fe, New Mexico 87504-2523  
By: ERNEST L. PADILLA

## FOR CHAPARRAL ENERGY, L.L.C.:

HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.  
218 Montezuma  
P.O. Box 2068  
Santa Fe, New Mexico 87504  
By: GARY W. LARSON

\* \* \*

1 WHEREUPON, the following proceedings were had at  
2 9:40 a.m.:

3 EXAMINER JONES: Okay, let's call to order Docket  
4 Number 21-03, and my name is William Jones, I'm be the  
5 Hearing Examiner today, and my attorney is Cheryl Bada.

6 So with that, we'll call the first case, which is  
7 the only case in this hearing, is Case 13,061, Application  
8 of the New Mexico Oil Conservation Division through the  
9 Environmental Bureau Chief for an order determining the  
10 responsible party or parties and ordering the responsible  
11 party or parties to complete and perform an abatement plan  
12 pursuant to OCD Rule 19, Lea County, New Mexico.

13 Call for appearances in this case.

14 MR. BROOKS: Mr. Examiner, I'm David Brooks,  
15 Assistant General Counsel, Energy, Minerals and Natural  
16 Resources Department of the State of New Mexico, for the  
17 Oil Conservation Division.

18 EXAMINER JONES: Any other appearances?

19 MR. PADILLA: Mr. Examiner, my name is Ernest  
20 Padilla. I'm attorney for Smith and Marrs in this case.

21 EXAMINER JONES: Other appearances?

22 MR. LARSON: Good morning, Mr. Examiner. My  
23 name's Gary Larson. I'm appearing on behalf of Chaparral  
24 Energy, L.L.C.

25 EXAMINER JONES: Any witnesses in this case?

1 MR. BROOKS: Well, each of us has witnesses. I  
2 believe that in view of the fact that we have reached an  
3 agreement that it will not be necessary to swear the  
4 witnesses, and indeed one of the parties has requested that  
5 it be stated on the record after the settlement agreement  
6 is read that the witnesses are excused, and I have no  
7 objection to that, although it's probably not necessary  
8 since they haven't been sworn.

9 The parties have entered into settlement  
10 discussions this morning, and we propose at this point to  
11 settle this matter upon the following terms. Now, Mr.  
12 Padilla, what is the exact and correct name of your client?  
13 I want to be sure to get that on the record.

14 MR. PADILLA: Smith and Marrs, Inc.

15 MR. BROOKS: There is some correspondence in the  
16 file referring to another entity which I believe is not  
17 involved in this proceeding.

18 Okay, Smith and Marrs, Inc., which I will  
19 hereafter refer to as Smith and Marrs, will be primarily  
20 liable -- I won't use the word "liable" -- will be the  
21 primary responsible party as to the Phase 1 abatement of  
22 the pollution allegedly arising from the South Langlie-Jal  
23 Unit and as to the Phase 2 abatement, which may be shown to  
24 be necessary by reason of pollution arising from the South  
25 Langlie-Jal Unit, if any, when the Phase 1 is completed.

1           Smith and Marrs will have 60 days from the date  
2 of entry of an order to file the Stage 1 abatement plan.

3           MR. PADILLA: Report.

4           MR. BROOKS: Report, I'm sorry. The plan has  
5 already been filed. To file the Stage 1 report.

6           In the event that Smith and Marrs is not able to  
7 resolve the excess issues by agreement with the surface  
8 owner, they will pursue litigation in good faith to obtain  
9 access and will communicate with OCD and enable OCD to  
10 appear in that litigation, should it choose to do so.

11           Chaparral is absolved from responsibility to the  
12 extent that Smith and Marrs performs, but only to that  
13 extent. OCD and Chaparral agree to disagree on whether or  
14 not -- Well, let's put it differently. As to the Stage 1  
15 abatement plan, Chaparral agrees that they may be  
16 designated as a responsible party for the Stage 1 abatement  
17 plan in the event -- or that they will be designated as a  
18 responsible party for the Stage 1 abatement plan if Smith  
19 and Marrs fails to perform, if and to the extent that Smith  
20 and Marrs fails to perform.

21           Chaparral and OCD agree to disagree on the extent  
22 of Chaparral's responsibility for the Phase 2 abatement  
23 plan, and in the event a Phase 2 abatement plan becomes  
24 necessary, it is not -- and Phase 2 obligations are not  
25 performed by Smith and Marrs, then the parties as between

1     OCD and Chaparral will return to the status quo, as they  
2     were before today.

3             OCD will not seek any penalties based on what has  
4     occurred prior to today, and if Smith and Marrs fails to  
5     perform, however, OCD will seek penalties for their failure  
6     to perform. If Smith and Marrs fails to perform, OCD will  
7     notify Chaparral and give them a time deadline by which to  
8     perform and will pursue penalties against Chaparral only in  
9     the event Chaparral then and thereafter fails to perform.

10            I believe that -- And the undersigned, or the --  
11     I, as counsel for OCD, will undertake to prepare a proposed  
12     order which will be entered as an agreed order if it's  
13     agreed to by all parties. Of course, in the unlikely event  
14     that we're unable to reach an agreement on the text, then  
15     we may be back before your Honor, but hopefully that will  
16     not occur. When we get an agreed order, which hopefully  
17     will be within the next week, I will submit that order to  
18     you and you can submit it through the system.

19            Any Counsel want to add anything?

20            EXAMINER JONES: Mr. Padilla?

21            MR. PADILLA: The only thing that I have to add  
22     is that the 60-day deadline for filing this Phase 1 report  
23     can be extended for good cause, and I think that was what  
24     we agreed. And there may be some delays associated with  
25     equipment or lab reports and that kind of thing, but we

1 would have to request an extension before the expiration of  
2 60 days.

3 Secondly, I believe Mr. Brooks said that if we,  
4 Smith and Marrs, were required to get injunctive relief in  
5 Lea County against the surface owner, we definitely want  
6 the OCD to participate. It does not have to be a party,  
7 but we want some participation by the OCD in order to do --  
8 and I think Mr. Brooks' wording of, should it choose to do  
9 so -- we want more participation from the OCD. We want a  
10 lawyer there saying -- supporting our Application for  
11 injunctive relief.

12 MR. BROOKS: Well, I'm hesitant to commit  
13 anything that involves the OCD spending money without the  
14 consent of the Director, so I will say the OCD will do what  
15 it can under those circumstances. Believe me, the OCD  
16 wants that to happen and we will not be remiss. But what  
17 we can actually do, you know, it's very difficult for me to  
18 make that kind of commitment without going through the  
19 process here.

20 I guess that's good enough. But I also forgot to  
21 mention that on the record we want to state that Smith and  
22 Marrs has not caused any pollution out there in the time  
23 that it's been there, so I needed to say that for the  
24 record.

25 EXAMINER JONES: Okay, this Phase 1, does it



1 define when Phase 1 will be over and when Phase 2 will --  
2 if Phase 2 is necessary, it would start?

3 MR. BROOKS: We believe that's defined by the  
4 regulations --

5 EXAMINER JONES: Okay.

6 MR. BROOKS: -- Mr. Examiner, that I think the  
7 parties all have an understanding of what a Phase 1  
8 abatement plan is versus what a Phase 2 abatement plan is.

9 EXAMINER JONES: Okay. And who is the surface  
10 owner?

11 MR. BROOKS: His name is Clay Osborn, as I  
12 understand it. I'm not sure exactly what -- does he own --  
13 I'm not sure exactly what he owns, whether he owns all  
14 parts of the unit or just some part of the unit, but he is  
15 the one with whom there have been negotiations in the past,  
16 which have been unsuccessful.

17 EXAMINER JONES: How do you spell his last name?

18 MR. BROOKS: O-s-b-o-r-n-e?

19 MR. OLSON: Just "n".

20 MR. BROOKS: No "e"? Okay.

21 EXAMINER JONES: Okay, Mr. Larson?

22 MR. LARSON: I believe Mr. Brooks has accurately  
23 stated the terms of the agreement that we've all come to.  
24 Late in the day yesterday, we negotiated a resolution of  
25 our issues with Smith and Marrs, which put us in a position

1 to jointly come to Mr. Brooks and offer a settlement, and  
2 we were able to reach an agreement that is acceptable to  
3 all the parties.

4 I appreciate Mr. Brooks also making the record  
5 that Chaparral is not waiving any future right to contest  
6 issues relating to its being a responsible party for Phase  
7 2, because as we stated in the prehearing statement,  
8 Chaparral has not been responsible for any groundwater  
9 contamination at the South Langlie-Jal Unit, and I think we  
10 will be able to enter into a stipulated order that resolves  
11 all the issues in the Application.

12 EXAMINER JONES: Okay, thank you.

13 Ms. Bada, do you have --

14 MS. BADA: I have no questions.

15 EXAMINER JONES: Anything further in this case?

16 MR. BROOKS: No, sir.

17 EXAMINER JONES: So with that, we will take Case  
18 13,061 under advisement, and Docket Number 21-03 is  
19 adjourned.

20 (Thereupon, these proceedings were concluded at  
21 9:52 a.m.)

22 \* \* \*

23 I hereby certify that the foregoing is a complete record of the proceedings of the Examiner hearing of Case No. 13061 heard by me on 7/15/03  
24 *[Signature]*  
25 Oil Conservation Division

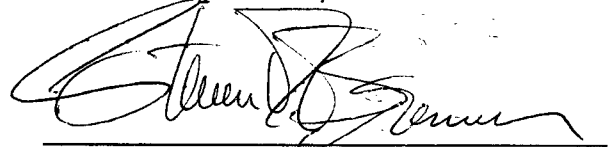
## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO    )  
                                  )   ss.  
COUNTY OF SANTA FE    )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL July 15th, 2003.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006