

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:)

CASE NO. 13,004

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 CONDUCT DIVISION-)
APPROVED CORRECTIVE ACTION WITH RESPECT)
TO A HYDROCARBON RELEASE IN LEA COUNTY,)
NEW MEXICO)

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Oil Conservation Division

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: MICHAEL E. STOGNER, Hearing Examiner

March 13th, 2003

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, MICHAEL E. STOGNER, Hearing Examiner, on Thursday, March 13th, 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.

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I N D E X

March 13th, 2003
 Examiner Hearing
 CASE NO. 13,004

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REPORTER'S CERTIFICATE

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A P P E A R A N C E S

FOR THE DIVISION:

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 By: J. SCOTT HALL

(Continued...)

A P P E A R A N C E S (Continued)

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By: JOHN G. SOULE, Esq.

* * *

1 WHEREUPON, the following proceedings were had at
2 8:20 a.m.:

3 EXAMINER STOGNER: At this time I'm going to call
4 Case Number 13,004. This is the Application of the New
5 Mexico Oil Conservation Division through the Environmental
6 Bureau Chief for an order determining the responsible party
7 or parties and ordering the responsible party or parties to
8 conduct Division-approved corrective action with respect to
9 a hydrocarbon release in Lea County, New Mexico.

10 We're calling this case today to hear some
11 motions and make some determinations on the procedure in
12 this case.

13 At this time I'll call for appearances.

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

18 I don't know if you have -- if you're asking for
19 witnesses now, or asking to state witnesses now, given that
20 it's being called only on motions at this time.

21 EXAMINER STOGNER: At this time I'm not prepared
22 to swear in the witnesses.

23 MR. BROOKS: Okay, thank you.

24 EXAMINER STOGNER: Other appearances?

25 MR. HALL: Mr. Examiner, Scott Hall, Miller

1 Stratvert law firm, Santa Fe, on behalf of Shell
2 Exploration and Production Company.

3 MR. OWEN: Mr. Examiner, Paul R. Owen with the
4 Santa Fe law firm of Montgomery and Andrews, appearing on
5 behalf of Samedan Oil Corporation.

6 MR. KELLAHIN: Mr. Examiner, I'm Tom Kellahin of
7 the Santa Fe law firm of Kellahin and Kellahin. I'm
8 appearing today on behalf of Occidental Permian, Ltd., in
9 association with Carolyn Tillman, an attorney with
10 Occidental in Houston, and Mr. John Soule, an attorney with
11 Scott Douglas in Austin, Texas.

12 EXAMINER STOGNER: Thank you. Are there any
13 other appearances in this matter?

14 Yesterday was a prehearing conference, and at
15 this time I'm prepared to make some rulings. Please
16 restate any motions at this time. Who would like to go
17 first?

18 MR. HALL: Mr. Examiner, if I might, at the
19 prehearing conference you asked counsel for all the parties
20 to confer to see what we could do with this case, short of
21 going forward with the motions, short of going forward with
22 the proof on the facts today, to see if there's some way to
23 resolve the problems that OXY and Shell have with the form
24 of relief requested in the Application, and also Samedan's
25 problems with their desire to go out onto the site and

1 formulate a site investigation plan and perform that plan.

2 We met for well over three hours after five
3 o'clock in the evening. Unfortunately, Mr. Brooks had to
4 go to the Legislature and wasn't able to attend throughout
5 the duration of that meeting. The remainder of the counsel
6 did, and we discussed at length every possible scenario for
7 moving this case forward, bearing in mind at all times that
8 the Division and the public and the surface owner out there
9 has an interest in getting some sort of action to address
10 the possible contamination on the site in Lea County.

11 What we came up with was this: We decided in
12 essence that we need more time, Mr. Examiner, we need to
13 negotiate further. And what we would propose to do is to
14 continue this case until the April 10th docket. I
15 understand that may not be your docket, but we might
16 prevail upon you to come downstairs and address, so we can
17 report to you what we've accomplished by that time.

18 What we would propose to do in the interim, Mr.
19 Examiner, is to allow Samedan to enter into additional
20 discussions with the Environmental Bureau to further refine
21 the terms that will allow it to go out onto the site and
22 formulate an investigation and site plan, and do it in such
23 a way that OXY and Shell are at least cognizant of it,
24 they're in the loop on the plan, but also structure the
25 plan and the Environmental Bureau's approval of the plan so

1 that it's not binding at this time on any of the parties,
2 but at least it's a step forward.

3 In the meantime, it will also allow OXY, Shell
4 and Samedan to discuss further with Mr. Brooks the problems
5 we perceive with the Application, and perhaps we can
6 resolve those before April 10th. If not, what I propose we
7 would do, we would try to give you some advance notice
8 before April 10th if it appears that we haven't been
9 successful in those negotiations, and then at that point I
10 think we would come back with a proposal that the
11 Application be dismissed without prejudice, or an amended
12 Application filed, or a new Application filed anew to try
13 to address the concerns. If that's not possible, I think
14 at that time we would go forward on the motions to dismiss.

15 I feel like we're springing this on Mr. Brooks.
16 He wasn't available yesterday afternoon, so we haven't been
17 able to brief him on this, and he may have some comments on
18 it. But that's what the remainder of the parties are
19 proposing at this point.

20 EXAMINER STOGNER: Mr. Hall, thank you.

21 Mr. Brooks?

22 MR. BROOKS: May I have a few moments to confer
23 with my clients?

24 EXAMINER STOGNER: Okay. Would you like me to
25 leave the room?

1 MR. BROOKS: Well, we'll step out.

2 EXAMINER STOGNER: Okay, we stand in recess.

3 (Thereupon, a recess was taken at 8:29 a.m.)

4 (The following proceedings had at 8:31 a.m.)

5 EXAMINER STOGNER: Hearing will come to order.

6 MR. BROOKS: Mr. Examiner, we're agreeable to the
7 proposal made by Mr. Hall that the matter be continued
8 until April the 10th, with the understanding that during
9 the period of time the parties, including the Division,
10 will conduct negotiations with regard to how a site
11 investigation can be done. It's my understanding there's
12 no commitment to start any work during that period of time
13 by anyone, but merely to negotiate, presumably in good
14 faith, with all the parties, including the Division.

15 We would put this qualification on our agreement
16 to that, which would be that we would oppose at the end of
17 that time, regardless of what happens, we would oppose any
18 motion to dismiss. We would want this case to remain on
19 the docket until we have an investigation completed and a
20 commitment by someone to conduct remedial work. But
21 subject to that qualification, we're agreeable to what's
22 been proposed.

23 EXAMINER STOGNER: Thank you. Anything further?

24 MR. OWEN: Yes, Mr. Examiner, I would like to
25 emphasize on behalf of Samedan that Samedan is at this time

1 not assuming any responsibility for the contamination, and
2 it is my understanding that the Division, either through
3 the Bureau staff or through the Examiner, is not assigning
4 any responsibility in terms of determination of a
5 responsible person for this contamination.

6 The effort that is being proposed is purely a
7 cooperative effort at this point, and the commitment, if
8 any is to be made, the commitment will be to investigate
9 the alleged contamination. And the second step of
10 remediation will be determined after the investigation is
11 complete. Samedan is taking -- assuming no responsibility
12 and is not making any representations that it will conduct
13 that remediation at this point, Mr. Examiner.

14 EXAMINER STOGNER: Anything further?

15 MR. BROOKS: Just the Division understands that
16 the commitment to negotiate on this matter is on the part
17 of all parties without admission of liability. The
18 Division has taken the position in its Application, and if,
19 as and when this case goes to hearing, we expect to offer
20 evidence in support of it. But at this time we understand
21 that no one has admitted liability. All our negotiations
22 have been expressly without any admission of liability.

23 For the benefit of the Examiner, I would like to
24 place in the record at this time for the purpose of
25 orienting the Examiner about this project what would have

1 been Exhibit Number 2, had we gone to hearing, and this is
2 just a map of the City of Hobbs that's taken off the
3 Internet with a plat that shows the location of this
4 trailer home that is the subject of this proceeding. Since
5 I'm just offering it for the Examiner's information, I
6 don't think it's necessary to have a witness authenticate
7 at this point.

8 EXAMINER STOGNER: Any objections to the map?

9 MR. KELLAHIN: No objection.

10 MR. OWEN: We'd just like to get a copy of it,
11 Mr. Examiner.

12 MR. BROOKS: We'll be glad to supply that.

13 EXAMINER STOGNER: At this time this map will be
14 made part of the record. What it is is a copy, like he
15 said, off the Internet, and the address is 1831 Mobile,
16 M-o-b-i-l-e, Hobbs, New Mexico.

17 Anything further from the attorneys today?

18 MR. KELLAHIN: Just a statement, Mr. Stogner,
19 that Mr. Hall has correctly summarized the activity
20 yesterday in what I understand is the joint agreement of
21 the operators, and we support continuing the case till
22 April 10th.

23 EXAMINER STOGNER: Just for the record, is there
24 anybody present from the Gary Johnson property here today?
25 I just wanted to recognize if there's anybody in the

1 audience.

2 Okay, this case will be continued to the
3 Examiner's Hearing on April 10th. Be aware that I will
4 make myself available at that time for this hearing.
5 However, that is between the date of my birthday and tax
6 day. I'll be reminded how much poorer and older I'm
7 getting. I'll be crying to hear that case.

8 With that, Case Number 13,004 will be continued
9 to April 10th.

10 MR. OWEN: Thank you for the warning, Mr.
11 Examiner.

12 EXAMINER STOGNER: Stand in recess for about
13 three to five minutes.

14 (Thereupon, these proceedings were concluded at
15 8:35 a.m.)

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19 13004
20 13 March 2003
21 Michael P. Stogner, Examiner
22 Oil Conservation Division
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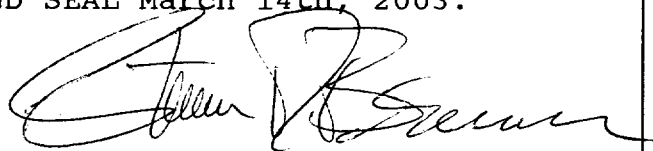
CERTIFICATE OF REPORTER

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 March 14th, 2003.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006