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FAX COVER SHEET

DELIVER TO: Stephen C. Ross

COMPANY: Oil Conservation Commission

CITY: Santa Fe, New Mexico

FAX NUMBER: (505) 476-3220

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DATE SENT: 7/16/02

MEMO:

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

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

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR AN ORDER
REQUIRING MARKS AND GARNER PRODUCTION,
LTD. CO. TO PROPERLY PLUG SEVENTEEN (17)
WELLS, ETC., EDDY COUNTY, NEW MEXICO.

Case No. 12757 (*de novo*)
Order No. R-11753

PRE-HEARING STATEMENT

This pre-hearing statement is submitted by Marks and Garner
Production, Ltd. Co. as required by the Oil Conservation Division.

APPEARANCES

APPLICANT

Oil Conservation Division

APPLICANT'S ATTORNEY

David K. Brooks

OPPONENT

Marks and Garner Production, Ltd. Co.
P.O. Box 70
Lovington, New Mexico 88260
(505) 396-5326

OPPONENT'S ATTORNEY

James Bruce
Post Office Box 1056
Santa Fe, New Mexico 87504
(505) 982-2043

STATEMENT OF THE CASE

APPLICANT

Applicant seeks an order authorizing the Division to plug certain
wells, and assessing a penalty for false production reporting.

OPPONENT

Marks and Garner Production, Ltd. Co. asserts that (1) all wells
have been brought into compliance but five, and it will plug those
wells if the Division so desires, and (2) most of the subject wells
were produced by swabbing, and therefore a penalty is not
warranted.

PROPOSED EVIDENCE

APPLICANT

WITNESSES

EST. TIME

EXHIBITS

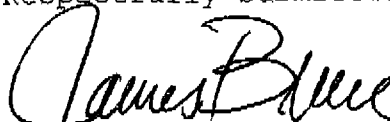
OPPONENT

<u>WITNESSES</u>	<u>EST. TIME</u>	<u>EXHIBITS</u>
Link Marks	25 min.	Four
Buddy Garner	10 min.	Two

PROCEDURAL MATTERS

-None-

Respectfully submitted,



James Bruce
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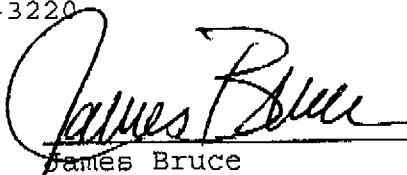
Attorney for Marks and Garner
Production, Ltd. Co.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following counsel of record via facsimile transmission this 16th day of July, 2002:

David K. Brooks
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
Fax No. (505) 476-3462

Stephen C. Ross
Oil Conservation Commission
1220 South St. Francis Drive
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July 16, 2002

Via Fax and U.S. Mail.

Florene Davidson
Oil Conservation Division
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Dear Florene:

Enclosed for filing is a pre-hearing statement in Case No. 12757 *de novo*.

Very truly yours,



James Bruce

Attorney for Marks and Garner Production, Ltd. Co.

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
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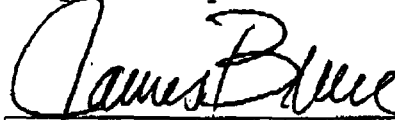
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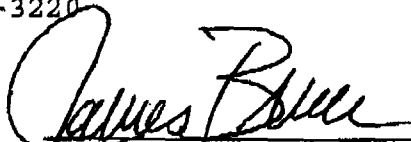
Attorney for Marks and Garner
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David K. Brooks
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Fax No. (505) 476-3462

Stephan C. Ross
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James Bruce

**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. 12757
ORDER NO. R-11753**

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR AN ORDER REQUIRING MARKS AND GARNER PRODUCTION LTD. CO. TO PROPERLY PLUG AND ABANDON SEVENTEEN (17) WELLS, AUTHORIZING THE DIVISION TO PLUG SAID WELLS IN DEFAULT OF COMPLIANCE BY MARKS AND GARNER PRODUCTION LTD. CO., ORDERING FORFEITURE OF APPLICABLE PLUGGING BOND AND ASSESSING CIVIL PENALTIES FOR FALSE PRODUCTION REPORTING, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on January 10, 2002, at Santa Fe, New Mexico, before Examiner David R. Catanach.

NOW, on this 12th day of April, 2002, the Division Director, having considered the testimony, the record, and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given and the Division has jurisdiction of this case and its subject matter.

(2) The applicant, the New Mexico Oil Conservation Division ("the Division"), seeks an order requiring Marks and Garner Production Ltd. Co. ("Marks and Garner") to properly plug and abandon the following-described seventeen (17) inactive wells in Eddy County, New Mexico, authorizing the Division to plug these wells in the event the operator or its surety fails to do so, providing for forfeiture of Marks and Garner's plugging bond, and assessing civil penalties for false production reporting:

<u>API Number</u>	<u>Well Name & Number</u>	<u>Well Location</u>
30-015-02784	Cave Pool Unit No. 1	660' FSL & 1780' FEL, Unit O, 33-16S-29E
30-015-02892	Cave Pool Unit No. 3	985' FNL & 987' FEL, Unit A, 4-17S-29E
30-015-02880	Cave Pool Unit No. 12	1980' FNL & 660' FEL, Unit H, 4-17S-29E
30-015-02881	Cave Pool Unit No. 14	1980' FNL & 1980' FEL, Unit G, 4-17S-29E
30-015-02875	Cave Pool Unit No. 16	1973' FNL & 330' FWL, Unit E, 3-17S-29E
30-015-02886	Cave Pool Unit No. 19	1980' FSL & 1880' FWL, Unit K, 4-17S-29E
30-015-02891	Cave Pool Unit No. 30	990' FSL & 2310' FEL, Unit O, 4-17S-29E
30-015-02927	Cave Pool Unit No. 32	660' FNL & 660' FEL, Unit A, 9-17S-29E
30-015-02926	Cave Pool Unit No. 41	1650' FNL & 330' FWL, Unit E, 8-17S-29E
30-015-02903	Cave Pool Unit No. 51	1650' FSL & 990' FWL, Unit L, 5-17S-29E
30-015-02912	Cave Pool Unit No. 53	1650' FNL & 330' FEL, Unit H, 7-17S-29E
30-015-25090	Red Twelve Levers Federal No. 8Q	1980' FSL & 990' FEL, Unit I, 33-16S,29E
30-015-25152	Red Twelve Levers Federal No. 12	660' FNL & 660' FWL, Unit D, 33-16S-29E
30-015-24991	Red Twelve St. No. 4	990' FSL & 2310' FEL, Unit O, 5-17S-29E
30-015-25055	Red Twelve St. No. 6	2310' FSL & 1650' FEL, Unit J, 5-17S-29E
30-015-02889	State No. 2	990' FNL & 1980' FWL, Unit C, 4-17S-29E
30-015-24732	Theos State No. 1	1650' FNL & 1650' FEL, Unit G, 5-17S-29E

(3) Although the advertisement for this case lists seventeen (17) wells, there are actually nineteen (19) wells on which the Division seeks compliance. The additional wells are described as follows:

<u>API Number</u>	<u>Well Name & Number</u>	<u>Well Location</u>
30-015-02893	Cave Pool Unit No. 17	2310' FSL & 660' FEL, Unit I, 4-17S-29E
30-015-02906	Cave Pool Unit No. 22	1980' FSL & 1980' FEL, Unit J, 5-17S-29E

(4) The Division appeared and presented evidence in this case. Marks and Garner appeared at the hearing through legal counsel.

(5) At the hearing, the Division testified that with the exception of the Cave Pool Unit Wells No. 3, 14, 16, 32 and 53, the wells described above are now in compliance with Division rules and returned to production or temporarily abandoned.

- (6) The Division now seeks:
- (a) an order requiring Marks and Garner to properly plug the Cave Pool Unit Wells No. 3, 14, 16, 32 and 53 in accordance with a Division-approved plugging program, and, if the operator or its surety fails to do so, authorizing the Division to plug and abandon these wells and to declare forfeiture pursuant to NMSA 1978 Section 70-2-14.B, of Marks and Garner's \$50,000 blanket plugging bond on which the United States Fidelity and Guaranty Company is the surety (Bond No. 01-0130-920-77);
 - (b) an order authorizing the Division to take such steps as may be necessary to recover from the operator, pursuant to NMSA 1978 Section 70-2-14.E or Section 70-2-38.A, as applicable, the costs of plugging these wells and remediating the well sites in excess of the amount of the plugging bond;
 - (c) a civil penalty against Marks and Garner in the amount of \$180,000 for falsely reporting production from the Cave Pool Unit Wells No. 1, 3, 12, 14, 16, 19, 30, 32, 41 and 53, the Red Twelve Levers Federal Wells No. 8Q and 12, the Red Twelve State No. 6, the Theos State No. 1, and the State Well No. 2 during the period from September, 2000 through August, 2001 (\$1,000 per well/month of false reporting); and
 - (d) a civil penalty against Marks and Garner in the amount of \$18,000 for falsely reporting production from the Cave Pool Unit Wells No. 17 and 22 during the period from September, 2000 through May, 2001 (\$1,000 per well/month of false reporting).

(7) Prior to the hearing, Marks and Garner filed Notices of Intention to Plug (Division Form C-103s) declaring its intention to plug and abandon the Cave Pool Unit Wells No. 3, 14, 16, 32 and 53, which C-103s have been approved by the Division.

- (8) The Division presented evidence that demonstrates:

- (a) Marks and Garner reported no production from the Cave Pool Unit Wells No. 1, 3, 12, 14, 16, 19, 30, 32, 41 and 53, the Red Twelve Levers Federal Wells No. 8Q and 12, the Red Twelve State Well No. 6, or the Theos State Well No. 1 during the years of 1997, 1998 and 1999, and during the months of January through August, 2000. Beginning in September, 2000, Marks and Garner began reporting production of small volumes of oil and water from each of the referenced wells, and continued reporting production of oil from each of these wells for each month through the month of August, 2001;
 - (b) Marks and Garner reported no production from the State Well No. 2 for the months of December, 1998 through August, 2000. Beginning in September, 2000, Marks and Garner began reporting production of small volumes of oil from this well, and continued reporting production of oil therefrom for each month through the month of August, 2001; and
 - (c) Marks and Garner reported no production from the Cave Pool Unit Wells No. 17 and 22 during the years of 1997, 1998, 1999 and during the months of January through August, 2000. Beginning in September, 2000, Marks and Garner began reporting production of small volumes of oil and water from each of these wells, and continued reporting production of oil from each of these wells for each month through the month of May, 2001.
- (9) The Division presented testimony that demonstrates:
- (a) the Cave Pool Unit Well No. 1 was inspected by the Division on January 30, 2001, and was found not to be equipped to produce in that there was no motor on the pumping unit, and the tubing was out of the hole;
 - (b) the Cave Pool Unit Well No. 3 was inspected by the Division on January 30, 2001 and again on June 15, 2001, and on both

- occasions was found not to be equipped to produce in that there was no pumping unit installed on the well;
- (c) the Cave Pool Unit Well No. 12 was inspected by the Division on January 30, 2001 and again on June 12, 2001, and on both occasions was found not to be equipped to produce in that the pump motor was not hooked up to a power source;
 - (d) the Cave Pool Unit Well No. 14 was inspected by the Division on January 30, 2001 and again on October 16, 2001, and on both occasions was found not to be equipped to produce in that there was no pumping unit installed on the well, and the well was not connected to a flow line;
 - (e) the Cave Pool Unit Well No. 16 was inspected by the Division on January 30, 2001, on June 12, 2001 and on October 16, 2001, and on each occasion was found not to be equipped to produce in that there was no pumping unit installed on the well, and the well was not connected to a flow line;
 - (f) the Cave Pool Unit Well No. 19 was inspected by the Division on January 30, 2001 and again on June 12, 2001, and on both occasions was found not to be equipped to produce, in that there was no operational pumping unit installed on the well. On the first inspection, there was a pumping unit that had no motor. On the subsequent inspection, the pumping unit was absent;
 - (g) the Cave Pool Unit Well No. 30 was inspected by the Division on January 30, 2001 and again on June 15, 2001, and on both occasions was found not to be equipped to produce in that there was no motor on the pumping unit;
 - (h) the Cave Pool Unit Well No. 32 was inspected by the Division on January 30, 2001 and again on October 16, 2001, and on both occasions was found not to be equipped to produce in that there was no pumping unit installed on the well, and the well was not connected to a flow line;
 - (i) the Cave Pool Unit Well No. 41 was inspected by the Division on February 12, 2001 and again on October 16, 2001, and on each occasion was found not to be equipped to produce in that there was

no pumping unit installed on the well, and the well was not connected to a flow line;

- (j) the Cave Pool Unit Well No. 53 was inspected by the Division on January 31, 2001, March 6, 2001, and October 16, 2001, and on each occasion was found not to be equipped to produce in that there was no pumping unit installed on the well, and the well was not connected to a flow line.
- (k) the Red Twelve Levers Federal Well No. 8Q was inspected by the Division on January 31, 2001 and on October 16, 2001, and on each occasion was found not to be equipped to produce in that there was no pumping unit installed on the well, and the well was not connected to a flow line;
- (l) the Red Twelve Levers Federal Well No. 12 was inspected by the Division on January 31, 2001 and on October 16, 2001, and on each occasion was found not to be equipped to produce in that there was no pumping unit installed on the well, and the well was not connected to a flow line;
- (m) the Red Twelve State Well No. 6 was inspected by the Division on January 31, 2001, June 17, 2001 and October 16, 2001, and on each occasion was found not to be equipped to produce in that there was no pumping unit installed on the well, and the well was not connected to a flow line;
- (n) the State Well No. 2 was inspected by the Division on January 30, 2001 and June 15, 2001, and on both occasions was found not to be equipped to produce in that there was no motor on the pumping unit; and
- (o) the Cave State Wells No. 17 and 22 were inspected on January 30, 2001 and October 16, 2001 and were found to have been previously plugged and abandoned. All equipment had been removed, the locations had been cleaned, and abandoned well markers were in place.

(10) The Division testified that no reporting violation occurred on Marks and Garner's Cave Pool Unit Well No. 5, nor on the Red Twelve State Well No. 4, and accordingly does not seek a civil penalty in this case with regards to these wells.

(11) Marks and Garner appeared at the hearing by counsel, but offered no evidence in this case.

(12) Division Rule 1115 [19 NMAC 15.M.1115] requires each operator of wells in the State of New Mexico to report each month the actual production from each well.

(13) NMSA 1978 Section 70-2-31.B(2)(a) makes it unlawful for any person to knowingly and willfully, for the purpose of evading or violating the Oil or Gas Act or any rule, regulation or order of the Division or the Commission to:

“make any false entry or statement in a report required by the Oil and Gas Act [NMSA 1978 Sections 70-2-1 through 70-2-38, as amended] or by any rule, regulation or order of the commission or division issues pursuant to that act[.]”

(14) NMSA Section 70-2-31.A provides that:

Any person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars (\$1,000) for each violation.

(15) The evidence presented demonstrates that Marks and Garner falsely reported production from fifteen (15) wells that were not capable of production for each of twelve (12) consecutive months during the period from September, 2000 through August, 2001, and falsely reported production from two (2) wells that had previously been plugged and abandoned for each of nine (9) consecutive months during the period from September, 2000 through May, 2001.

(16) Marks and Garner's false production reports were knowingly and willfully made and made for the purpose of evading the Oil and Gas Act and rules and regulations of the Commission and/or Division in that the operator either intentionally filed false production reports knowing that the reported production did not occur, or the operator filed reports concerning matters which it had a duty to report truthfully to the division, knowing that it had no knowledge whether such reports were true or false.

(17) A civil penalty for false production reporting in the amount of \$34,000 should be assessed against Marks and Garner.

(18) The remaining five (5) wells, being the Cave Pool Unit Wells No. 3, 14, 16, 32 and 53, have not produced hydrocarbons and have been inactive for a period in excess of one year, and no permit for temporary abandonment has been requested by Marks and Garner or approved by the Division.

(19) The current condition of these wells is such that if action is not taken to properly plug and abandon these wells, waste will probably occur, correlative rights may be violated, and the public health and safety and fresh water may be endangered.

(20) Marks and Garner should be ordered to plug and abandon the Cave Pool Unit Wells No. 3, 14, 16, 32 and 53 in accordance with a Division-approved plugging program.

IT IS THEREFORE ORDERED THAT:

(1) A civil penalty is hereby assessed against Marks and Garner Production Ltd. Co. in the amount of \$34,000, being \$2,000 for each well for which false production reports were filed by the operator (Cave Pool Unit Wells No. 1, 3, 12, 14, 16, 17, 19, 22, 30, 32, 41 and 53, the Red Twelve Levers Federal Wells No. 8Q and 12, the Red Twelve State No. 6, the Theos State No. 1, and the State Well No. 2).

(2) The civil penalty herein assessed shall be paid within thirty days of receipt of this order, by certified or cashier's check made payable to the order of the New Mexico Oil Conservation Division and mailed or delivered to the New Mexico Oil Conservation Division, Attention: Lori Wrottenbery, Director, 1220 South St. Francis Drive, Santa Fe, New Mexico 87505, unless a timely application is filed for *de novo* review of this order by the New Mexico Oil Conservation Commission.

(3) Marks and Garner Production Ltd. Co. is hereby ordered to plug and abandon the following five wells located in Eddy County, New Mexico on or before May 15, 2002, in accordance with a plugging procedure approved by the supervisor of the Division's Artesia District Office:

- (a) Cave Pool Unit Well No. 3 (API No. 30-015-02892), located 985 feet from the North line and 987 feet from the East line (Unit A) of Section 4, Township 17 South, Range 29 East;
- (b) Cave Pool Unit Well No. 14 (API No. 30-015-02881), located 1980 feet from the North and East lines (Unit G) of Section 4, Township 17 South, Range 29 East;

- (c) Cave Pool Unit Well No. 16 (API No. 30-015-02875), located 1973 feet from the North line and 330 feet from the West line (Unit E) of Section 3, Township 17 South, Range 29 East;
- (d) Cave Pool Unit Well No. 32 (API No. 30-015-02927), located 660 feet from the North and East lines (Unit A) of Section 9, Township 17 South, Range 29 East; and
- (e) Cave Pool Unit Well No. 53 (API No. 30-015-02912), located 1650 feet from the North line and 330 feet from the East line (Unit H) of Section 7, Township 17 South, Range 29 East.

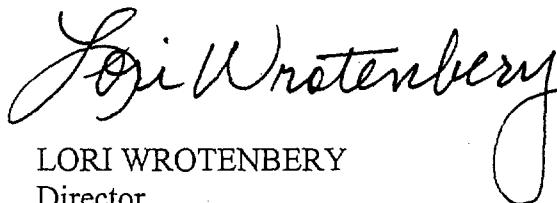
(4) Prior to commencing plugging operations on the above-described wells, the operator shall notify the Artesia District Office of the date and time this work is to commence, so that the Division may witness the work.

(5) Should Marks and Garner Production Ltd. Co. or its surety fail or refuse to carry out the provisions of Ordering Paragraphs (3) through (5), the Division is authorized to take such action as may be necessary to cause such wells to be properly plugged and abandoned. Further, the Division is authorized to take such action as may be necessary to forfeit the \$50,000 blanket plugging bond herein described (United States Fidelity and Guaranty Company Bond No. 01-0130-920-77) and to recover from the operator any costs in excess of the amount of the bond incurred by the Division in effecting the plugging and abandonment of these wells.

(6) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION DIVISION


LORI WROTENBERY
Director

