

SEAN REYES (7969)
UTAH ATTORNEY GENERAL
Thomas E. Kessinger (16868)
Steven F. Alder (0033)
Assistant Attorneys General
Attorneys for Division of Oil, Gas & Mining
1594 West North Temple, #300
SALT LAKE CITY UT 84116
Telephone (801) 538-7227

FILED

DEC 20 2018

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS & MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE REQUEST FOR
AGENCY ACTION OF UTAH DIVISION OF
OIL, GAS, AND MINING FOR A
CESSATION ORDER AND CIVIL
PENALTIES AGAINST MONTEZUMA
WELL SERVICE, INC., AND EARL
MARTINEZ, OWNER AND OPERATOR OF
THE MONTEZUMA CREEK WASTE
DISPOSAL FACILITY, SECTION 14, T 40
SO., R. 22 EAST, SAN JUAN COUNTY,
UTAH.

**[PROPOSED] FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER**

Docket No. 2009-015

Cause No. WD-04-2009

This matter came before the Utah Board of Oil, Gas, and Mining (“Board”) for hearing on October, 24, 2018 at approximately 10:05 a.m. in the Auditorium of the Utah Department of Natural Resources Building in Salt Lake City, Utah.

The following Board Members were present and participated in the hearing: Chairman Ruland J. Gill, Jr., Carl F. Kendell, Gordon L. Moon, Chris D. Hansen, Susan S. Davis, Richard K.

Borden, and Michael R. Brown. The Board was represented by Michael Begley, Assistant Attorney General.

Mel Capitan participated and testified on behalf of Montezuma Well Service Inc., (“MWS”) in his capacity as operator of MWS’s E&P waste disposal facility (the “Facility”) in Southeastern Utah near Montezuma Creek, San Juan County, Utah. Mel Capitan was not represented by counsel.

Jim Davis, lease administrator for the Utah School and Institutional Trust Lands Administration (“SITLA”), testified on behalf of SITLA.

Participating and testifying on behalf of the Division of Oil, Gas, and Mining (“Division”) were Bart Kettle, Field Operations Manager, Ammon McDonald, Permitting - Environmental Scientist/Geologist, John Rogers, Associate Director - Oil & Gas, and Dayne Doucet, Oil and Gas Permitting Manager. Mr. McDonald was recognized as an expert in determining the presence of groundwater in the stratigraphy underlying the Facility. Thomas E. Kessinger of the Utah Office of the Attorney General appeared on behalf of the Division.

This matter began in 2009 when the Division filed a Notice of Agency Action (“NOAA”) against MWS’s Facility citing a lack of progress in remediation of the Facility and inadequate bonding. After some progress was made, the Division entered into a stipulation with MWS, allowing them to continue to operate and post incremental bonding. Since entering into the stipulation, the Board requested the Division report annually on the progress at the Facility. On October 24, 2018, the Division delivered their annual report. The Division requested the Board remand this Cause to the Division for their internal administration in their memorandum accompanying the annual report and reiterated their request for remand at the hearing.

The Board, based upon the evidence and argument presented, being fully advised, and for good cause shown, makes the following findings of fact, conclusions of law and order in this Cause.

FINDINGS OF FACT

1. The Facility is located in a remote part of southeastern Utah, roughly 10 miles west of Montezuma Creek, San Juan County, Utah. The Facility is owned and operated by MWS and Earl Martinez (“Martinez”). Mel Capitan has taken charge over the remediation efforts at the Facility. The Facility is approximately 36 acres in size and sits entirely on land administered by SITLA.
2. The Utah Health Department first permitted the Facility in 1985. The permit was then transferred to the Division in 1987. In 1992, the previous operator, Hay Hot Oil Inc., sold the Facility to MWS.
3. The Facility is an oil exploration and production waste facility accepting RCRA-exempt oil and gas wastes (“E&P Waste”).¹ The Facility consists of three evaporation ponds (“Pit A,” “Pit B,” and “Pit C;” collectively “Pits”) and 17 cells where hydrocarbons decompose in land farms (collectively “Cells”). The Facility’s original permit only allowed for the operation of the Pits. The Cells came later to facilitate remediation of the Pits.
4. Beginning in 2005, the Division agreed to four separate land farm expansions with SITLA concurring each time. The first expansion created Cells 1-6² and were filled with oily

¹ E&P Waste is exploration and production waste associated with production of oil and gas. Under federal law, E&P Waste is exempt from solid and hazardous waste disposal regulations. *See* 40 CFR 246.1(b)(5) (excluding “[d]rilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy[.]” from the definition of hazardous waste).

² Approved by the Division on 06/08/05.

material from Pit A. The second expansion created Cells 7-8³ and were also filled with oily material from Pit A. The third expansion created Cells 9-11⁴ and accepted material from a historic oil burning pit located onsite. The fourth expansion created Cells 11-17⁵ also filled with oily material from Pit A. Pit C no longer contains any liquid waste, containing only salt left from the evaporation of high-salinity produced water.

5. Currently, the Facility may only accept liquid E&P Waste into Pit B. From 2010 to 2018 the Facility accepted an average of 58,000 barrels of waste per year into Pit B. As of July 2018, the Facility had accepted just under 50,000 barrels of waste for the 2018 calendar year.
6. The Facility received its first Notice of Violation (“NOV”) from the Division in 2001. Since then, the Division has worked with MWS to maintain and reclaim the Facility. In 2005 the Division entered into a 15-year cleanup plan for the Facility. After a number of years, work did not progress in a timely fashion and the Division brought this matter to the Board in 2009 citing a lack of progress and inadequate bonding. At that time the Division sought MWS’s compliance with Division orders, or in the alternative, civil penalties.
7. In 2011 the Division entered into a stipulation (the “2011 Stipulation”) with MWS. The 2011 Stipulation allowed the Facility to continue accepting E&P Waste into Pit B and established an incremental bonding scheme.
8. Since 2011, Martinez continued to work in good faith with the Division to remediate and reclaim the Facility.

³ Approved by the Division on 09/29/10.

⁴ Approved by the Division on 05/25/11, "Cells 9-13", amended 06/28/11 "Cells 9-11."

⁵ Approved by the Division on 02/07/13

9. In 2018, the Division determined the Facility does not present an imminent threat to groundwater, which is estimated to be more than 200 feet underground, and determined no waste has migrated offsite.
10. Although the site has not been fully remediated, since Mel Capitan has taken control of operations, the Cells have continued to make acceptable progress toward full remediation.
11. The Division has worked with the MWS to encourage remediation efforts.
12. The Division, in partnership with MWS, created a plan to continue remediation and reclamation into the future.
13. Based on the progress and the more willing and cooperative attitude of the operator, the Division requested this matter be remanded back to the Division (the "Request").
14. Jim Davis, on behalf of SITLA, testified in support of the Division and concurred with the Division's Request.

CONCLUSIONS OF LAW

1. Notice of the hearing action was provided by the Division pursuant to its authority to enforce the provisions of the Utah Oil and Gas Conservation Act ("Act"), Utah Code §§ 40-6-1 to -21, and the provisions of Utah Administrative Code R649 ("Rules"). Pursuant to Utah Code §§ 63G-4-204 to -209, the hearing before the Board was conducted formally.
2. Utah Code § 40-6-5(1) confers jurisdiction over this matter to the Board and empowers the Board to enforce the provisions of the Act and the Rules.
3. The Board has authority to remand this Cause under Utah Code § 40-6-5 *et. seq.*, specifically the Board has authority to regulate E&P waste disposal facilities under Utah Code Ann. § 40-6-5(3)(d).

4. The Division has authority to manage the Facility under Utah Admin. Code R645-9-9 *et. seq.* Specifically, Utah Admin. Code R649-9-13 permits the Division to issue variance requests. As part of a granting a variance the Division can impose conditions of approval which the operator must abide.
5. Allowing the Division to manage the Facility through the variance process as opposed to coming before the Board annually will benefit all involved. First, granting the request will not reduce the obligation or efforts of MWS to remediate the Facility, which reduces the total cost of reclamation if MWS were ever to go defunct. Second, the Board's oversight is no longer required to assure MWS's attention and compliance with the remediation requirements for the Facility. Remand to the Division will allow the Board to spend its time on more pressing matters. The Division can re-file for Board oversight if it becomes necessary again.
6. The Division has demonstrated good cause for remanding this Cause because of their successful work with MWS to maintain and accelerate remediation and reclamation of the Facility.

ORDER

1. The Division's Request in this Cause is **GRANTED**.
2. This Cause is **REMANDED** to the Division for continued oversight of the efforts to bring the facility into full compliance with the rules for disposal facilities.
3. As part of its development of an acceptable long-term reclamation plan and adequate surety, the Division will require that a formal environmental risk assessment be conducted to

evaluate the risks of residual contamination and confirm that the reclamation plans for the Facility will not pose a danger to human health and the environment.

DATED this ____ day of December, 2018.

BOARD OF OIL, GAS AND MINING

By Ruland Gill, Chair

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing [PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER, for Docket No. 2009-015, Cause No. WD-04-2009 to be mailed with postage prepaid to the address shown and emailed, this 20th day of December 2018, to the following:

Earl Martinez
Personally and as President
Montezuma Well Service, Inc.
P.O. Box 540
Montezuma Creek, UT 84534

Trust Lands Resource Specialist
Utah School and Institutional Trust Lands
Administration (SITLA)
675 East 500 South
Salt Lake City, UT 84102

Eugene Chief
Montezuma Well Service, Inc.
P.O. Box 540
Montezuma Creek, UT 84534

Michael Begley
Assistant Attorney General
Counsel for the Utah Board of Oil, Gas, and
Mining (hand-delivered)

Environmental Compliance Manager
Utah School and Institutional Trust Lands
Administration (SITLA)
675 East 500 South
Salt Lake City, UT 84102

