

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

CASE NOS. 13,153 and 13,142
AWAITING FINAL COMMISSION ACTION
NO EVIDENCE OR TESTIMONY TAKEN

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

2004 DEC 13 AM 10:48
ORIGINAL

BEFORE: MARK E. FESMIRE, CHAIRMAN
JAMI BAILEY, COMMISSIONER
FRANK T. CHAVEZ: COMMISSIONER

December 9th, 2004

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, December 9th, 2004, 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

December 9th, 2004
 Commission Hearing
 CASE NOS. 13,153 and 13,142 (Awaiting final Commission
 Action - No evidence or testimony taken)

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A P P E A R A N C E S

FOR THE COMMISSION:

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

CAROL LEACH
 General Counsel
 Energy, Minerals and Natural Resources Department
 1220 South Saint Francis Drive
 Santa Fe, New Mexico 87505

* * *

1 WHEREUPON, the following proceedings were had at
2 9:00 a.m.:

3 CHAIRMAN FESMIRE: I'd like to call the December
4 9th, 2004, meeting of the Oil Conservation Commission to
5 order.

6 I'd like the record reflect the time, it's 9:00
7 a.m.. The date is December 9th, 2004. The meeting is
8 taking place in Porter Hall in the Oil Conservation
9 Division office in Santa Fe, New Mexico.

10 My name is Mark Fesmire.

11 To my right is Commissioner Jami Bailey.
12 Commissioner Bailey is the designee of Commissioner Patrick
13 Lyons of the State Land Commission.

14 To my left is Mr. Frank Chavez. He's the former
15 OCD supervisor in Aztec and the appointee of the Energy and
16 Minerals Secretary, Joanna Prukop, to the Commission.

17 To his left is Mr. David Brooks. Mr. Brooks is
18 the Commission counsel.

19 To Commissioner Bailey's right is Florene
20 Davidson. Ms. Davidson is the Commission secretary.

21 Mr. Steve Brenner is the court reporter today.

22 Let the record reflect that all Commissioners or
23 their designees are present.

24 * * *

25

1 CHAIRMAN FESMIRE: The first matter of business
2 today is the adoption of the minutes of the November 8th
3 meeting -- I'm sorry, November 10th meeting of the
4 Commission. I'm going to ask Commissioner Bailey and
5 Commissioner Chavez if they've had a chance to review the
6 minutes?

7 COMMISSIONER BAILEY: Yes, I have and I move that
8 we adopt them.

9 CHAIRMAN FESMIRE: Commissioner Chavez?

10 COMMISSIONER CHAVEZ: Yes, I have, and I had just
11 one question for clarity that I hadn't caught earlier, was,
12 at the beginning we mentioned that David Brooks is the
13 Commission counsel in the first paragraph, and in the last
14 paragraph we mentioned Ms. Leach was directed to draft the
15 proposed order.

16 Just put it up to the rest of the Commission to
17 see if there's no transition in there, if that's
18 significant or not, if it's not a significant issue to
19 point out that Ms. Leach was Commission counsel for the
20 Maralo case.

21 MR. BROOKS: I don't remember if there was
22 anything said on the record about the reasons for the
23 transition at the time. Probably should have been noted
24 that I was disqualified due to conflict of interest to act
25 as counsel on the Maralo matter, and Ms. Leach acted as

1 counsel on that matter.

2 CHAIRMAN FESMIRE: The third paragraph on the
3 second page of the minutes states that Carol Leach served
4 as counsel for the Commission in this case.

5 COMMISSIONER CHAVEZ: Oh, I'm sorry, I didn't
6 catch that.

7 MR. BROOKS: Okay, that should be adequate.

8 COMMISSIONER CHAVEZ: I'm sorry, I missed that
9 reference. Then I move the minutes be accepted.

10 CHAIRMAN FESMIRE: I've read the minutes, and we
11 have a motion and a second to adopt the minutes. At this
12 time let's take a vote on the matter. All those in favor
13 of adopting the minutes?

14 COMMISSIONER BAILEY: Aye.

15 COMMISSIONER CHAVEZ: Aye.

16 CHAIRMAN FESMIRE: Opposed?

17 The minutes will be adopted and signed.

18 * * *

19

20 CHAIRMAN FESMIRE: The first cause before the
21 Commission today is Case Number 13,153, the rehearing and
22 Application of Pride Energy Company for cancellation of a
23 drilling permit and reinstatement of a drilling permit and
24 an emergency order halting operations and compulsory
25 pooling in Lea County, New Mexico.

1 I'm going to ask Counselor Brooks to brief the
2 Commission on the status of this Order and the disposition
3 of the case to date.

4 MR. BROOKS: Okay, the Commission will recall
5 that this matter was heard in August, and I prepared an
6 order which was reviewed and adopted by the Commission in
7 September.

8 The Applicant, Yates Petroleum Corporation, filed
9 a motion for rehearing.

10 At the October meeting the Commission decided to
11 grant that motion for rehearing, because the Commission
12 wished further elucidation of one particular matter.

13 And then there was another hearing at the
14 November meeting, and the Chairman requested counsel for
15 the parties to draft a proposed order, which they did, and
16 it was submitted to me. I reworked that order and
17 submitted it to the Commissioners and it is now before us.

18 I don't think I need to review the facts of the
19 underlying case in any detail, because I believe the
20 Commissioners are familiar with it. But so far as the
21 motion for rehearing, the issue in the rehearing was the
22 right of Yates, which had commenced the re-entry of this
23 well on the compulsory pooled unit which the Commission
24 decided to appoint Pride Energy as operator of.

25 Yates had commenced this well, the re-entry of

1 this well, prior to the filing of the case, and the
2 question involved the right of Yates to reimbursement for
3 the costs that it had incurred for its operations of the
4 well.

5 The Order, as originally entered, had provided
6 that Yates would be entitled to recovery of only such costs
7 as were incurred up to the date that the Application was
8 filed by Pride.

9 Yates pointed out that it had incurred additional
10 costs after that and that there had been no order at any
11 time directing them not to continue their operations, but
12 rather that, to avoid the necessity of a hearing on that
13 matter, specifically what interim relief, that they had
14 desisted from operations at a point which was some weeks
15 subsequent to the filing of the Application, and Yates had
16 requested that they be reimbursed for all of their expenses
17 that they had incurred.

18 The Commission felt that not to do would be to
19 give Yates -- would be to give Pride a free ride for some
20 expenses that had been incurred, of which Pride would get
21 the benefit, and accordingly the Commission granted the
22 motion for rehearing.

23 At the rehearing Yates presented detailed
24 evidence concerning their expenses. Pride presented no
25 evidence but requested further time to review the evidence

1 presented by Yates, and that procedure was acceptable to
2 Yates.

3 Then counsel for the parties, pursuant to the
4 Chairman's direction, prepared and submitted a proposed
5 order. The proposed order submitted to me was somewhat
6 unclear in that, in reading the proposed order, it appeared
7 to me that the parties contemplated that Yates would be --
8 that we would go back to square one, and Yates would again
9 be given an opportunity whether or not to participate in
10 this well, be given a second election under the rehearing
11 order, and further that Yates would be given another
12 opportunity to submit a schedule of expenses.

13 However, the proposed order did not follow
14 through, in my view, sufficiently to explain how all these
15 various elections and submissions were going to work. And
16 because I believe that the Commission wanted to enter a
17 final order which would dispose of these matters, I have
18 attempted to draft an order which would provide the manner
19 in which these elections are going to work, as nearly as I
20 could, the way the proposed order indicated that the
21 parties had agreed that it should work, and that is the
22 order that has been submitted.

23 The order is a *nunc pro tunc* order in the sense
24 that it -- in the last paragraph, before the retention of
25 jurisdiction paragraph, it directs that the previous order,

1 which was Number 1- --

2 CHAIRMAN FESMIRE: -- -2,108 Alpha.

3 MR. BROOKS: -- 12,108-A --

4 CHAIRMAN FESMIRE: Uh-huh.

5 MR. BROOKS: -- be rescinded in its entirety, and
6 this order, which carries forward all the material
7 provisions, be substituted therefor.

8 CHAIRMAN FESMIRE: Okay. Commissioner Bailey,
9 have you had a chance to review this order as drafted?

10 COMMISSIONER BAILEY: Yes, I have, and I expect
11 to sign it.

12 CHAIRMAN FESMIRE: Commissioner Chavez, have you
13 had a chance to review it?

14 COMMISSIONER CHAVEZ: Yes, I have, and I will
15 sign it.

16 CHAIRMAN FESMIRE: Okay. The record should
17 reflect that I too have reviewed the order, and I agree
18 that it sets out the thinking of the Commission in this
19 matter. At this time we'll sign the order.

20 (Off the record)

21 CHAIRMAN FESMIRE: At this time the Chair would
22 entertain a motion to adopt the order.

23 COMMISSIONER BAILEY: I move we adopt the order.

24 COMMISSIONER CHAVEZ: I second the motion.

25 CHAIRMAN FESMIRE: The motion has been moved and

1 seconded. All in favor?

2 COMMISSIONER BAILEY: Aye.

3 COMMISSIONER CHAVEZ: Aye.

4 CHAIRMAN FESMIRE: Opposed? Let the record
5 reflect that the motion was unanimously adopted.

6 And let the record reflect that the Order has
7 been signed.

8 * * *

9
10 CHAIRMAN FESMIRE: The next matter on the docket
11 is Cause Number 13,142. It's *de novo* and amended,
12 Application of the New Mexico Oil Conservation Division for
13 an order requiring Maralo, LLC, to remediate hydrocarbon
14 contamination at an abandoned well and battery site in Lea
15 County, New Mexico.

16 At this time the record should reflect that
17 Counsel Brooks was recused from this matter and that the
18 Commission was represented by Counsel Leach, who is the
19 General Counsel for the New Mexico Energy, Minerals and
20 Natural Resources Department.

21 Counsel Leach, would you be so kind as to brief
22 the Commission on this Order?

23 MS. LEACH: Mr. Chairman, I'd be happy to do
24 that. You heard this at your last meeting on November
25 10th, it was a case brought on behalf of the Bureau Chief

1 of the Environmental Bureau of the Oil Conservation
2 Division, alleging that there had been noncompliance with
3 several rules.

4 In your executive session you decided you really
5 wanted to look at Rule 313. The Maralo, LLC, Corporation,
6 had basically not agreed to clean up this area because they
7 felt like the rule was being applied retroactively and
8 cleanup standards were being applied retroactively, and
9 besides that they'd assigned the lease. So they didn't do
10 it, and they weren't the right party, and nothing wrong had
11 ever happened. So that was kind of the defense of the
12 case.

13 What the Commission expressed to me in their
14 executive session is that they felt like there had not been
15 compliance with Rule 313 because there had been emulsions
16 and possibly sediments and other -- you know, tank bottoms
17 and those kind of things. It may have been, while we're
18 not real sure what happened on that site, because what
19 happened was not witnessed by any of the Oil Conservation
20 witnesses, it was clear that oily substances had been
21 spilled or deposited somehow on the site, and therefore
22 they were responsible for the cleaning up.

23 The Order basically has a requirement and a time
24 frame in which they need to delineate the extent of the
25 contamination, propose a plan to the Environmental Bureau

1 for cleaning up and then execute that plan.

2 As far as like -- the we're-not-the-right-party
3 defense, basically what we looked at is, while they may
4 have assigned their interest and that that assignment was
5 not made known to either the Division or to the State Land
6 Office in any kind of public manner, so we're consistent
7 with our usual operating procedure of going after the
8 current operator of record to be responsible for the
9 cleanup, so...

10 And as for the retroactivity defense, we felt
11 like the contamination was continuing, that migration was
12 still possible, so it wasn't like it was an old case and
13 not a -- you know, not a continuing problem. So we really
14 feel like there's a retroactivity problem, and so we
15 drafted the order and circulated it to the Commission so
16 that hopefully it reflects the wishes you expressed in
17 executive session.

18 CHAIRMAN FESMIRE: Thank you, Counsel.

19 Commissioner Bailey, have you had a chance to
20 look over the proposed order?

21 COMMISSIONER BAILEY: Yes, I have, and I move
22 that we adopt it.

23 COMMISSIONER CHAVEZ: I have, and I second the
24 motion.

25 CHAIRMAN FESMIRE: Let the record reflect that I

1 too have reviewed the proposed order. All those in favor
2 of adopting the order as drafted, signify by saying aye.

3 COMMISSIONER BAILEY: Aye.

4 COMMISSIONER CHAVEZ: Aye.

5 CHAIRMAN FESMIRE: All those opposed? Let the
6 record reflect that the motion carried unanimously and the
7 order will be signed.

8 And again let the record reflect that in Cause
9 Number 13,142 the Order Number R-12,152-Alpha has been
10 signed.

11 (Thereupon, these proceedings were concluded at
12 9:16 a.m.)

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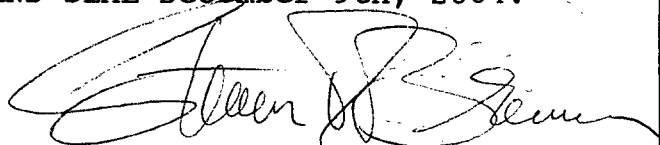
CERTIFICATE OF REPORTER

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 Commission 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 December 9th, 2004.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006