

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

CASE NO. 13,153

(Closing of Session for Deliberation)

2004 OCT 21 AM 10 58

TRANSCRIPT OF PROCEEDINGS

ORIGINAL

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

October 14th, 2004

Santa Fe, New Mexico

These matters came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, October 14th, 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.

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I N D E X

October 14th, 2004
Commission Hearing
CASE NO. 13,153 (Closing of Session for Deliberation)

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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

* * *

1 WHEREUPON, the following proceedings were had at
2 9:15 a.m.:

3 CHAIRMAN FESMIRE: That concludes the items on
4 the docket, with one exception. Yates Petroleum has filed
5 an application -- well, it's actually a motion in Cause
6 Number 13,153, the Motion of Yates Petroleum Corporation
7 for a stay of Commission Order Number R-12,108-A and for an
8 emergency order.

9 At this time I would recommend for the
10 Commissioners that we go into executive session to discuss
11 the Yates motion. Is there any objection to that?

12 COMMISSIONER CHAVEZ: No, I just wanted to
13 clarify, was this a motion for a stay or a motion for re-
14 hearing? Is there a difference there? I may be hung up on
15 the terminology, but does the re-hearing also include
16 within it a stay? Is this what this is about?

17 MR. BROOKS: There were separate motions filed.
18 There was a motion for re-hearing filed, and there's a
19 motion for stay. Now, I'm unclear, actually, on what
20 exactly actions have gone on. I was on vacation when all
21 this occurred.

22 The docket states that the Commission will
23 discuss the Application of Yates Petroleum Corporation for
24 re-hearing, Application of Pride Energy for cancellation of
25 a drilling permit and reinstatement, an emergency order

1 halting the operations and compulsory pooling. That's just
2 the style of the original Application.

3 However, subsequent to the time when the docket
4 was made up, Yates filed a motion of Yates Petroleum
5 Corporation for a stay of Commission Order Number R-12,108
6 and for emergency order. That was filed on October the
7 12th. The motion for re-hearing was filed on September the
8 29th.

9 CHAIRMAN FESMIRE: Right, the Commission needs to
10 discuss both that motion and the Application for re-hearing
11 filed by Yates, and I believe Pride's response to that
12 motion for re-hearing, to the Application for re-hearing.

13 MR. BROOKS: Right.

14 CHAIRMAN FESMIRE: Does that answer your
15 question, Commissioner Chavez?

16 COMMISSIONER CHAVEZ: Yes, it does.

17 CHAIRMAN FESMIRE: Do I hear a motion to go into
18 executive session to discuss these related motions and
19 Applications?

20 COMMISSIONER BAILEY: I so move.

21 COMMISSIONER CHAVEZ: I second.

22 CHAIRMAN FESMIRE: All those in favor?

23 COMMISSIONER BAILEY: Aye.

24 COMMISSIONER CHAVEZ: Aye.

25 CHAIRMAN FESMIRE: The motion carries.

1 At this time the Commission will go into
2 executive session to discuss the motion of Yates Petroleum
3 Corporation for a stay, the Application for re-hearing and
4 the response to the Application for re-hearing. Thank you.

5 COMMISSIONER CHAVEZ: Okay. Florene, are you
6 there?

7 MS. DAVIDSON: Yes.

8 COMMISSIONER CHAVEZ: Well, on my -- all I have
9 is a copy of the Application for re-hearing. I don't have
10 a -- appear to have a copy of the document of Brian's reply
11 or, if I need to, the Motion for Stay.

12 MS. DAVIDSON: Okay, I faxed them, and I thought
13 they went through, but I'll re-fax them.

14 COMMISSIONER CHAVEZ: Oh, okay, when it you faxed
15 them?

16 MS. DAVIDSON: The dates they came in, yesterday
17 for the response, and I guess it was the 12th for the
18 motion.

19 COMMISSIONER CHAVEZ: Okay.

20 MS. DAVIDSON: But I'll re-fax them.

21 COMMISSIONER CHAVEZ: Well, I may have those
22 popping up recently. Let me take a look, and I'll have
23 Monica give you a call or something --

24 MS. DAVIDSON: Okay.

25 COMMISSIONER CHAVEZ: -- if I don't have those,

1 because she usually receives the faxes by now.

2 MS. DAVIDSON: Okay.

3 COMMISSIONER CHAVEZ: I can check very, very
4 quickly, on the fax, just a second.

5 MS. DAVIDSON: Okay.

6 COMMISSIONER CHAVEZ: See if I have that. About
7 what time of day would this be faxed, the response?

8 MS. DAVIDSON: It would have been late yesterday
9 for the response. The motion itself, I'm not sure what
10 time of day it was.

11 COMMISSIONER BAILEY: Morning.

12 MS. DAVIDSON: Morning, okay.

13 COMMISSIONER CHAVEZ: Okay, I'm sorry, no, I
14 don't have any faxes for yesterday afternoon.

15 MS. DAVIDSON: Okay, I'll re-fax it.

16 COMMISSIONER CHAVEZ: Thank you.

17 MS. DAVIDSON: Uh-huh.

18 CHAIRMAN FESMIRE: Frank, at this time why don't
19 we just take about a five-minute break and allow Florene to
20 fax that to you?

21 COMMISSIONER CHAVEZ: Okay, do you want me to
22 just leave the phone on, or call me back?

23 CHAIRMAN FESMIRE: Nah, we'll leave it on.

24 COMMISSIONER CHAVEZ: Okay.

25 (Off the record at 9:20 a.m.)

1 (The following proceedings had at 10:23 a.m.)

2 CHAIRMAN FESMIRE: Let the record reflect that
3 the Commission came out of executive session at 10:23. We
4 are going to take a one-hour-and-seven-minute break and
5 reconvene at 11:30.

6 (Off the record at 10:23 a.m.)

7 (The following proceedings had at 11:39 a.m.)

8 CHAIRMAN FESMIRE: Let the record reflect it is
9 11:39. At this time we will go back on the record with
10 respect to Cause Number 13,153.

11 The Commission has met in executive session and
12 made a decision. We've instructed Mr. Brooks to draft an
13 order. Mr. Brooks has drafted that order, and we are in
14 the process of sending a fax copy to the Aztec Office for
15 Mr. Chavez to be able to look at, and as soon as that's
16 done, we will look at it here.

17 Mr. Brooks, would you like to -- without a copy
18 of it in front of you?

19 MR. BROOKS: Well, since I just wrote it just a
20 few minutes ago, I think I can discuss it without a copy in
21 front of me.

22 Basically, the Order does what the Commission
23 indicated was their pleasure in the matter, which is that
24 the Motion for re-hearing in the case will be granted but
25 will be limited to the issue of the costs for which

1 reimbursement will be allowed to Yates.

2 I attempted to make clear in the order that this
3 would be not just the reasonableness of the amounts of
4 costs but the period of time during which those costs will
5 be incurred, will be reconsidered. And in all other
6 respects -- Well, the motion for re-hearing is granted, but
7 a re-hearing will be limited to that issue, because that
8 issue does not affect -- and also the correction of
9 clerical errors in the order, of which one was discovered.

10 Since that issue does not affect the right to
11 operation of the subject well, the order provides that the
12 emergency Motion for stay by Yates will be overruled.

13 CHAIRMAN FESMIRE: Commissioner Chavez, do you
14 have any questions?

15 COMMISSIONER CHAVEZ: No, that sounds right to
16 me. This is considered a ruling on a motion?

17 MR. BROOKS: Yes.

18 COMMISSIONER CHAVEZ: Okay. So that sounds
19 right, yeah, that's what I agree with.

20 MR. BROOKS: I contemplate -- Based on the way
21 the Statute is worded, I contemplate that when the matter
22 is finally determined -- this being the -B Order; the
23 original Order was 12,108, then the Commission's Order was
24 12,108-A, and this will be 12,108-B, and then when the
25 matter is finalized, I contemplate that we will enter Order

1 Number 12,108-C, which will include all the provisions of
2 Order Number 12,108-A, will be a republication of Order
3 Number 12,108-A with only those provisions changed which
4 will be changed by the determination made at the hearing.

5 COMMISSIONER CHAVEZ: That's very good, I don't
6 have any problem with that.

7 MR. BROOKS: Okay, that appears to me to be what
8 the Statute contemplates, and then if they take it to
9 District Court they can challenge any provision of the
10 Order.

11 CHAIRMAN FESMIRE: Frank, would you let us know
12 when the fax gets there?

13 COMMISSIONER CHAVEZ: Okay. It hasn't shown up
14 yet, but...

15 CHAIRMAN FESMIRE: David, how will we handle
16 the -- assuming that the Order, you know, is okay with each
17 of the Commissioners, how will we handle getting it signed
18 by Frank? Can we --

19 MR. BROOKS: I don't believe that's actually
20 essential. I think it -- we have a quorum of the
21 Commission present, and we can have two Commissioners sign
22 it. We could, however, send the original to Frank and have
23 him sign it.

24 COMMISSIONER CHAVEZ: I'm supposed to be there --

25 MR. BROOKS: Yeah, you're supposed to sign it at

1 the time of the -- during the Commission Hearing, though.
2 I think it would probably be best just to have those
3 Commissioners who are present sign the order, and --

4 COMMISSIONER CHAVEZ: Well, the record will show
5 that I agree to it.

6 MR. BROOKS: Right.

7 COMMISSIONER CHAVEZ: So I don't think that's a
8 problem.

9 MR. BROOKS: I think that's acceptable.

10 CHAIRMAN FESMIRE: Commissioner Bailey, did you
11 have any thoughts on what's been said so far?

12 COMMISSIONER BAILEY: No, I think that that is
13 the sense of our agreement.

14 COMMISSIONER CHAVEZ: The fax hasn't showed up
15 yet, but -- we're still waiting here.

16 CHAIRMAN FESMIRE: I hope she's not having
17 problems upstairs.

18 (Off the record)

19 MR. BROOKS: Maybe I should go and check on --
20 because that could be done now. Let me go and check and
21 see what's -- where we are.

22 COMMISSIONER CHAVEZ: Okay, here it is.

23 MR. BROOKS: Oh, okay, good, we've got it. Now,
24 the only problem is, we don't have it, but I assume Florene
25 is on her way back down. Here she is.

1 CHAIRMAN FESMIRE: You assume correct. And from
2 the look on her face, it doesn't look like it was a good
3 deal.

4 COMMISSIONER CHAVEZ: I'm reading through it
5 right now.

6 Looks good to me. Does that look okay to you,
7 Frank?

8 COMMISSIONER CHAVEZ: Yes, but it says limited to
9 the determination under the Order portion, the second part,
10 of -- limited determination and costs for which Yates
11 should be allowed reimbursement.

12 Do you want to limit that to that time period?

13 CHAIRMAN FESMIRE: Well, that's what --

14 COMMISSIONER CHAVEZ: Otherwise, for the whole
15 period, including the future...

16 MR. BROOKS: Okay, let's see what is the point
17 that is being raised here.

18 COMMISSIONER CHAVEZ: I think the point was only
19 for the expenses incurred during the first efforts to re-
20 enter the well. Otherwise, it seems to open up all other
21 costs in the future associated.

22 MR. BROOKS: Well, I would -- I think that's
23 true. I don't think the intent was to allow Yates to incur
24 additional expenses. I think that -- I don't think that
25 it's likely to be subject to that interpretation, simply

1 because Yates is not appointed operator under the
2 agreement, so there's no particular reason to assume they
3 would be incurring any other expenses for which --

4 COMMISSIONER CHAVEZ: Okay, I see.

5 MR. BROOKS: -- they would be allowed
6 reimbursement.

7 COMMISSIONER CHAVEZ: Yeah, you're exactly right,
8 okay. That looks good, then, I'm in agreement.

9 CHAIRMAN FESMIRE: Okay, at this time let the
10 record reflect that Commissioner Chavez is in agreement but
11 that Commissioner Chavez is not present to sign the Order.
12 Therefore, the two Commissioners who are present will sign
13 the Order.

14 COMMISSIONER BAILEY: I intend to.

15 CHAIRMAN FESMIRE: Is there any other business
16 before the Commission today?

17 COMMISSIONER CHAVEZ: None for me.

18 COMMISSIONER BAILEY: No.

19 CHAIRMAN FESMIRE: Okay. The Chair would
20 entertain a motion to adjourn.

21 COMMISSIONER BAILEY: I move we adjourn.

22 COMMISSIONER CHAVEZ: Second.

23 CHAIRMAN FESMIRE: It's been moved and seconded.
24 All those in favor?

25 COMMISSIONER BAILEY: Aye.

1 COMMISSIONER CHAVEZ: Aye.

2 CHAIRMAN FESMIRE: Opposed?

3 The October meeting of the New Mexico Oil
4 Conservation Commission is adjourned at 11:59 a.m.

5 MR. BROOKS: 11:49.

6 CHAIRMAN FESMIRE: 11:49 a.m., thank you. We're
7 hereby adjourned. Thank you.

8 (Thereupon, these proceedings were concluded at
9 11:49 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 October 14th, 2004.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006