

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:)

CASE NO. 13,153

APPLICATION OF PRIDE ENERGY COMPANY)
FOR CANCELLATION OF A DRILLING PERMIT)
AND REINSTATEMENT OF A DRILLING PERMIT,)
AN EMERGENCY ORDER HALTING OPERATIONS,)
AND COMPULSORY POOLING, LEA COUNTY,)
NEW MEXICO)

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSION HEARING

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

February 10th, 2005
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, February 10th, 2005, 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
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I N D E X

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Commission Hearing
CASE NO. 13,153

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A P P E A R A N C E S

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By: WILLIAM F. CARR
and
OCEAN MUNDS-DRY

* * *

1 WHEREUPON, the following proceedings were had at
2 9:05 a.m.:

3 CHAIRMAN FESMIRE: The next case before the
4 Commission is Case Number 13,153, the Application of Pride
5 Energy Company for cancellation of a drilling permit and
6 reinstatement of a drilling permit, an emergency order
7 halting operations, and compulsory pooling, Lea County, New
8 Mexico.

9 I understand that there's been a development come
10 to light recently that the Commission needs to address, and
11 at this time I'll ask that the attorneys enter their
12 appearances and give us a brief synopsis of what we're
13 going to hear and what the dispute is this morning, please.

14 MR. BRUCE: Mr. Chairman, Jim Bruce of Santa Fe
15 representing Pride Energy Company.

16 MR. CARR: May it please the Commission, William
17 F. Carr and Ocean Munds-Dry with Holland and Hart in Santa
18 Fe. We represent Yates Petroleum Corporation.

19 CHAIRMAN FESMIRE: Okay. Mr. Bruce, I understand
20 that you made a motion concerning a -- or made application
21 to the Commission concerning an order the Commission had
22 previously introduced or had previously adopted?

23 MR. BRUCE: Yes, Mr. Chairman, if I could make a
24 short statement and then let Mr. Carr respond.

25 CHAIRMAN FESMIRE: Okay, please do.

1 MR. BRUCE: As a preliminary matter, Mr.
2 Chairman, when I filed this motion I told Ms. Davidson that
3 this appears to be one of those cases that never stops
4 giving.

5 (Laughter)

6 MR. BRUCE: But as you know, the Commission
7 approved Pride's order, Pride's pooling Application, and
8 under the terms of the order, the well, which is an
9 existing well, is to be re-entered by March 9th.

10 Yates has appealed the Commission's order to
11 Santa Fe County District Court.

12 Pride has now filed its motion to extend or stay
13 the re-entry deadline in the Commission's order to some
14 time after March 9th.

15 Now please note, Yates does have a lease which
16 expires on July 1st -- or June 30th, probably, is more
17 accurate -- so Pride asks for an extension not past June 1
18 of 2005, so that Yates' lease will not terminate.

19 Also note that I filed a motion both before the
20 Commission and before the District Court because I'm
21 uncertain of which body has the authority to grant a stay.

22 Mr. Carr's response says that jurisdiction is
23 before the District Court, and he cites District Court Rule
24 74. Unfortunately, if you look at that rule, it applies
25 strictly only to stays requested by an appellate, and in

1 this matter, Pride is an appellee, as is the Commission.

2 I've handed you a copy of a case, Tenneco Oil
3 Company, vs. Water Quality Commission, and simply for the
4 purpose -- if you'll turn to page 2, I've highlighted a
5 sentence which -- and this was, of course -- Tenneco vs.
6 Water Quality Commission was an appeal of an administrative
7 decision, and it says, "In cases where a stay is sought of
8 agency action during the pendency of the...appeal, in
9 accord with the general rule requiring a party to
10 exhaust...administrative remedies, the party seeking the
11 relief should first apply for a stay from the agency
12 involved."

13 Which is why I filed here, as well as with the
14 District Court. Now, even if it's decided that the
15 District Court does have some jurisdiction -- I'm sorry,
16 David, I forgot to --

17 MR. BROOKS: I've got a copy. Did anybody not
18 get a copy?

19 CHAIRMAN FESMIRE: I think everybody got one.

20 MR. BRUCE: But even if it's decided that the
21 District Court does have jurisdiction, at least Pride will
22 have satisfied the court that it came before the
23 Commission, which I would presume is one of the questions I
24 would receive if I simply moved before the District Court.

25 As to the merits of the stay, Pride's position is

1 that Yates' appeal is basically a substantial evidence
2 appeal with no significant legal issues, and I believe that
3 Yates' appeal will be unsuccessful.

4 However, if lightning strikes and Yates wins, I
5 would think that Yates would rather conduct the operations
6 itself, rather than having Pride conduct the operations.

7 In addition, if Pride re-enters the well and
8 later Yates decides that it didn't like how Pride conducted
9 it, that could lead to problems.

10 I'd also note that at Yates' verbal request,
11 Pride has refrained from entering the well up until this
12 time, during the pendency of the proceedings. Therefore,
13 Pride merely seeks to maintain the status quo, pending a
14 District Court decision. And Mr. Carr has informed me that
15 once the record is finally filed, it will immediately file
16 its brief, and he and I have both discussed getting a
17 hearing before District Court as soon as possible.

18 This matter has been going on now since September
19 of 2003, and I don't think a couple extra months would hurt
20 without re-entering that well.

21 And again, I note that Pride is not asking for an
22 indefinite time period. The time it's asking for would be
23 well before Yates' lease expires, and therefore there's no
24 harm to Yates.

25 Finally, Mr. Chairman, I'd note that the

1 Commission's order itself grants the Division Director the
2 authority to issue an order extending the re-entry
3 deadline, and therefore I don't think the full Commission
4 would need to meet again on this request, although it may
5 want to.

6 But there is one matter I'd like to bring up.
7 I'd ask that any decision be withheld until a week from
8 Monday. I believe that -- for two reasons. That is the
9 deadline for Mr. Carr to file his response, I believe, in
10 District Court to my stay motion. And perhaps more
11 importantly, the parties are discussing settlement, and I
12 think by that time we will know for certain whether or not
13 this matter will settle.

14 And therefore I would simply like to conduct the
15 settlement discussions, and I will be talking today with
16 Mr. Carr about that without any additional order entered in
17 this matter at this time.

18 Thank you.

19 CHAIRMAN FESMIRE: Mr. Carr?

20 MR. CARR: May it please the Commission, I think
21 it's interesting to note when you look at cases involving
22 the issuance of stay orders, almost without exception they
23 assume that the stay will be sought by the party who did
24 not prevail below, not like the case we have before us
25 today where the prevailing party is seeking a stay so it

1 won't have to do what it has been telling you and us that
2 it has been trying to do for four or five years. And I
3 think that's a unique aspect of what we're addressing here
4 today.

5 And I think if you look at Rule 74, the Rules of
6 Civil Procedure for District Courts of New Mexico, it is
7 couched in terms of what the appellant can do to stay the
8 order, assuming they lost below. But I don't think there's
9 anything you can find that says different standards would
10 apply in determining whether or not a stay should issue.

11 Last Friday Pride filed its motion for stay, and
12 in that motion it sought a stay, and it said, until the
13 District Court rules on this appeal today they're
14 shortening that time-frame. The basis they stated for
15 their motion was that if a stay is granted, they may --
16 remember that word, "may" -- be harmed.

17 They may be harmed if Pride is required to re-
18 enter the well under the current order, if they are
19 required to incur substantial expense where it could
20 ultimately own no interest in the well. They are here
21 because they are concerned that something might happen.

22 When Pride filed, it knew that the Yates lease
23 was going to expire in June of 2005. And Mr. Bruce was
24 correct that the parties on both sides, as this case has
25 lumbered along, have agreed not to drill the well, but no

1 one agreed that the well shouldn't be drilled after the
2 final Commission order was entered and was appealed by
3 Yates to the District Court.

4 And while Pride says they're willing to
5 accommodate Yates, they want to have a month to get the
6 well drilled, they know how hard it is to get a case
7 through the District Court and get a ruling, and they also
8 know -- and the one thing I can tell you is absolutely
9 true, that it is impossible to get this case through the
10 appellate courts by June the 30th.

11 I submit to you the argument that they need a
12 stay because they might be harmed is a specious argument.
13 Pride is simply, unless we settle, going to have to drill,
14 not knowing the outcome of the appeal. They're going to
15 have to do that, or they're going to have to breach their
16 duties as operator and be faced with a damage suit, and
17 that's the position they are in.

18 But they seek something else today, but it
19 doesn't change the underlying question, why after all this
20 time, why after all these hearings, now that they have the
21 right to drill, why can't they go forward and perform the
22 duties of the operator of this property?

23 I submit to you, and I think you know this, that
24 Yates has done really all that it can to protect its
25 interest in this lease and develop the property. We were

1 on the well, re-entering it, when this dispute popped up,
2 and we stepped down.

3 Since that time, we received, pursuant to your
4 order, an AFE from Pride, and on October the 13th of 2004
5 we paid to Pride \$376,647.43, our half of the re-entry cost
6 as set by the AFE.

7 On December the 7th we contacted Agave Energy
8 Company to secure the installation of the gathering
9 facilities for the well. We think we've done what we can
10 to protect the property and to maintain our lease.

11 And now for what we find an incomprehensible
12 reason, they want to run right back up on the lease
13 expiration date, when we all know the facts will be no
14 different then than they are as we come before you today.

15 We oppose the motion for stay. Pride is the
16 operator of the well and the spacing unit, and we think it
17 must perform its obligations. And we think by failing to
18 do so, our lease is being called into question, being put
19 at risk.

20 If you look at the motion they filed, Pride
21 didn't cite any authority. And I would submit to you the
22 reason is that all relevant rules require that their motion
23 must be denied.

24 In our response that we filed yesterday we told
25 you why you cannot consider the issue, and the answer is

1 one word; it is jurisdiction. And it is our position now,
2 and it will be if we're back here again on this, and it
3 will be before the District Court, that once a case is
4 appealed, jurisdiction rests with the District Court, their
5 jurisdiction is complete, and that this Commission, once
6 the appeal is filed, lacks jurisdiction to deal with the
7 order below in any way, changing any date, doing anything,
8 until the day when and if that case is remanded to you.

9 And we cite Rule 74, the Rules of Civil Procedure
10 for the District Courts, because this sets the standards
11 governing states. And that rule clearly provides that the
12 appellant -- or the appellee, if somebody doesn't want to
13 perform -- files a petition for stay with the District
14 Court.

15 Now, Pride also filed with the District Court
16 their petition, and we believe that is the place where this
17 issue must properly be decided.

18 Mr. Bruce gave you *New Mexico Water Quality*
19 *Control Commission vs. Navajo Refining*. The date on that
20 is March 25th, 1986. That is the day that they entered --
21 this decision is what we refer to as the Tenneco case, but
22 this is a 1986 decision.

23 And following that, the court discussed this
24 decision. And in that follow-up case, which is *Nora Siegel*
25 *vs. Lynn Goodman*, they discussed the Tenneco decision, and

1 they said that it was -- that the Tenneco test may be
2 helpful in evaluating requests for stays, but it went on
3 and it said, We choose to rely instead on a more flexible
4 balancing of the parties' respective interests.

5 So when this decision was entered in 1993, there
6 was some question as to what the standard actually was.
7 Rule 74 that I cite to you was adopted after that. It was
8 adopted in 1996. It has been interpreted, to the best of
9 my research, only once, but it sets the standard, the
10 standard that governs the appeal here today, and we intend
11 to argue to the court that that is the standard, that
12 jurisdiction is with the court and that jurisdiction is not
13 here. And for that reason we submit that you cannot enter
14 a stay.

15 We then went beyond that and we said, if you
16 determine that you do have the jurisdiction, you should not
17 enter a stay. And the reason is that Rule 74 announces
18 three standards, three preconditions that must be met
19 before a stay can be issued, and you have to meet all
20 three.

21 The first one is that the moving party makes a
22 showing that it is likely it will prevail on appeal. Mr.
23 Bruce says, We're going to win. And maybe this is the
24 reason the court ought to decide this instead of you,
25 because I suspect you and Mr. Bruce all think and believe

1 that your order will be sustained just as much as I think
2 it cannot be. But the court is the place where you decide
3 that.

4 But even though Mr. Bruce just says, We're going
5 to win, if you read his motion, the reason he states in
6 support of the motion is that, and I quote, If -- "If" --
7 Yates is successful in its appeal, Pride will own no
8 interest in the well. Thus, requiring Pride to re-enter
9 the well by March 9th will require it to incur substantial
10 expense, even though it could ultimately own no interest in
11 the well.

12 You could change this statement, you could put
13 June the 1st or June the 30th, or June the 30th, 2006, and
14 you probably would find that Pride is in the same position.
15 And the reason they want this case and this order stayed
16 is, they could ultimately suffer some damage.

17 Pride must show as the second condition set by
18 Rule 74 that it will suffer irreparable harm. That is
19 actually the threshold issue anytime you're trying to issue
20 a stay. Will there be irreparable harm.

21 What is irreparable harm?

22 Well, our Court of Appeals, in May of 2000, after
23 Rule 74 was adopted, in *Highway and Transportation*
24 *Department vs. Sunland Park*, defined irreparable harm. It
25 said it is an injury that cannot be measured by any certain

1 pecuniary standard. That's what irreparable harm is.

2 In this case, when Yates prevails on appeal,
3 Pride would be entitled to recover the costs and expenses
4 it incurred. That is a certain pecuniary standard. There
5 is no irreparable harm in this case to Pride. Pride cannot
6 show irreparable harm, and I submit to you that is the
7 reason that term does not appear anywhere in Pride's
8 motion.

9 The Court of Appeals also, in *Highway and*
10 *Transportation Department vs. Sunland Park*, analyzed Rule
11 74. It said, For a stay to be appropriate, the injury must
12 be actual and substantial, quoting, not a mere possibility
13 of harm.

14 Pride hasn't shown an actual or substantial
15 injury. They only assert, and I quote, We may be harmed.
16 They have not, they cannot meet the threshold test to
17 entitle them to a stay, and the stay simply must be denied.

18 The third thing is that there will be no
19 substantial harm to other interested parties. The other
20 interested party is Yates. We can't -- We seem to be here
21 with no real reason seeking a delay, a delay which we
22 believe moves us dangerously close to the expiration date
23 on our lease, and it puts us at risk.

24 The loss of this lease is irreparable harm to
25 Yates, because there is no pecuniary standard by which you

1 can judge that loss. We don't know what the well would
2 have produced, we don't know what the gain would have been.
3 There is irreparable harm there if this lease expires.

4 And Pride will say, Oh, well, you know, if the
5 lease goes out then your order is not applicable anymore,
6 we have to start over.

7 But there is no irreparable harm to Pride,
8 because they still have their lease in the southwest
9 quarter, they have what they've always had, they have the
10 right to develop their property.

11 I think you must remember that they must meet all
12 three of these tests. And I submit on this record they can
13 meet none of them, and they are not entitled to a stay.

14 Now, if you determine that you have jurisdiction,
15 if you determine that you should grant a stay, there is one
16 other matter that I think it's imperative that you address,
17 because if you don't do it here today, if you grant the
18 stay, we will be here a month from now with a motion for an
19 order directing Pride to return to Yates the money, Yates'
20 money, that it is holding.

21 We still have a dispute on actual well costs,
22 costs that you said we should be able to recoup, of
23 approximately \$84,000. And although there has been an
24 objection and offers to meet, nothing is happening on that.
25 It still sits in Mr. Pride's possession.

1 We also paid them on October the 13th, \$376,647.
2 If you grant this stay to June the 1st, they will be
3 allowed to hold in excess -- with the estimated well cost,
4 in excess of \$400,000 of Yates' money, and we think seven
5 and a half months is too long.

6 If you grant the stay, direct them to return the
7 funds to us until they decide to perform as operator.
8 They're happy to take our money. We think it is time they
9 perform under the order.

10 And finally, I think I've got to tell you one
11 other thing that we intend to argue in the District Court
12 because the time is dangerously short on this matter, and I
13 don't want later to be accused of having sort of been lying
14 in wait on this issue, but we will contend there, and it is
15 our position here, that once the appeal was filed, under
16 Rule 74 the Commission completely lost jurisdiction and may
17 not change that March date. And we're going to before the
18 court state that there is but one remedy: Drill by March
19 the 9th, or meet the three-pronged standard that we have
20 just discussed.

21 And if we go beyond March the 9th and neither of
22 these has occurred, it will be our position that the order
23 is null and void and that we will then be coming back to
24 you to see if you won't reinstate our permit so we can at
25 least act to protect our property interest.

1 So that's where we are. If we don't -- If you
2 grant the stay, we think you should refund our money until
3 somebody decides to go forward with the well.

4 We have one other thing we are doing, and we may
5 have that before you next month if jurisdiction is here, we
6 have rights to -- under other agreements to audit Mr.
7 Pride. That will commence the first part of March, and
8 based on what we find there, we suspect we'll be asking you
9 to also order that all production proceeds are escrowed
10 until this matter is finally resolved.

11 Pride stands before you today in the wrong forum,
12 having not shown they're entitled to a stay, and we ask you
13 immediately to deny that motion.

14 CHAIRMAN FESMIRE: Commissioner Bailey, do you
15 have any questions of the attorneys?

16 COMMISSIONER BAILEY: Has Pride contracted with
17 a drilling rig?

18 MR. BRUCE: I do not know that, Commissioner. I
19 believe they have drilling rigs in the area, but I do not
20 know. I can check and -- after the hearing and notify Mr.
21 Fesmire.

22 COMMISSIONER BAILEY: Okay, that's all I had.

23 CHAIRMAN FESMIRE: Commissioner Chavez?

24 COMMISSIONER CHAVEZ: Mr. Bruce, why is a stay
25 more appropriate to Pride than asking for an extension of

1 the time under the provisions of the order as it exists?

2 MR. BRUCE: Basically, that's what I'm asking
3 for, Commissioner. The ordering Paragraph 3 says, In the
4 even the operator does not commence re-entry operations
5 within the time provided by Paragraph 2, which is March
6 9th, the Order shall be of no further effect unless the
7 operator obtains a time extension from the Division
8 Director for good cause.

9 That's what I'm asking, an extension at least
10 until the parties can at least get through District Court.

11 The second thing is, I would note that the terms
12 of the order itself say for good cause, not for the reasons
13 set forth in Rule 74 of the District Court's Civil
14 Procedure Rules. It says good cause, and I think there's
15 good cause. We've been sitting here for over a year and a
16 half fighting this battle. I don't know why we need to
17 commence the well by March 9th if it could be put off for a
18 month or two to determine what the District Court is going
19 to say on the appeal if the parties don't settle.

20 COMMISSIONER CHAVEZ: If Yates should prevail in
21 the District Court, aren't there other remedies for Pride
22 to recover the expenses that they have incurred in the
23 drilling of the well, should they comply with a date in the
24 order?

25 MR. BRUCE: I do agree with Mr. Carr that there

1 could be monetary recovery at that point. But on the other
2 hand, if -- what I was getting at before is that this is
3 merely maintaining the status quo, pending a District Court
4 decision.

5 Furthermore, what about in the situation where --
6 I mentioned, where -- Like we all know, Yates would rather
7 re-enter this well itself. What if it didn't like
8 something that Pride did during the re-entry? That could
9 cause problems down the road for Pride. I think Pride is a
10 good operator, but nonetheless, two operators don't always
11 see eye to eye on matters like that.

12 COMMISSIONER CHAVEZ: Couldn't that matter be
13 settled in some type of an agreement as part of -- outside
14 of a forum, the court, as to how that could be done,
15 without having to appeal to the Commission?

16 MR. BRUCE: Don't know.

17 COMMISSIONER CHAVEZ: Okay. Mr. Carr, if the
18 matter goes completely before the District Court, then the
19 Commission has lost any jurisdiction over the matter, that
20 means that an operator who opposes a force-pooling that has
21 a time line here basically can appeal to District Court and
22 cut off the Commission's appeal at any time, the
23 Commission's ability to change the date that's required
24 under the force-pooling order.

25 MR. CARR: Mr. Chavez, you have to exhaust

1 administrative remedies, and there are time-frames. And
2 there are also time-frames during which you're authorized
3 to file an appeal. And if I had pooled these lands and was
4 concerned I couldn't perform under the order, I would think
5 it would be incumbent upon me to be aware of those and be
6 here before jurisdiction moved to the District Court. Once
7 that has happened, that's the arena. And the idea is not
8 to have an issue being decided in two forums. Once it
9 isn't here, it isn't here. And you go to the District
10 Court, and they can seek a stay or they can drill. And
11 that is the position of this case as I understand it right
12 now.

13 And so filing the appeal, yes, could be used to
14 close the door here. But that's after a Division hearing,
15 a Commission hearing, an application for re-hearing, and
16 you would presume the other side would have an idea where
17 you were going when you got to the end of that road and
18 filed your appeal in accordance with District Court rule.

19 COMMISSIONER CHAVEZ: If the Commission decides
20 that it has jurisdiction in the case for this stay, the
21 Commission is not really tied to the three criteria that
22 the District Court is tied to, would it be?

23 MR. CARR: Well, we will challenge your
24 jurisdiction in the court, and we will challenge the
25 decision, and we will attempt to get the court to apply

1 these criteria.

2 I just don't think this Commission, when it comes
3 to issues affecting property rights, just sails out into
4 the world to do good. I think there are rules and
5 procedures that govern how you act, and I think these are
6 the rules that apply.

7 COMMISSIONER CHAVEZ: Mr. Bruce, one last
8 question. Now, you've highlighted in your copy you
9 presented to the Commission of this Tenneco case -- in
10 there it says, the highlighted portion on page 2, the sixth
11 paragraph that starts "In cases", one of the criteria says
12 "...during the pendency of an administrative appeal". Do
13 you consider --

14 MR. BRUCE: I did see that, Mr. Commissioner,
15 yes.

16 COMMISSIONER CHAVEZ: Do you consider that that
17 -- what you're asking for, even if this would prevail over
18 the Rule 74 for whatever reason, that what you're looking
19 at is a pendency of administrative appeal right now?

20 MR. BRUCE: I thought of that exact issue a
21 couple days ago when I filed that, Mr. Commissioner. I
22 would note that if you turn to the very first page of this
23 case, right under the heading of the case it says
24 "Administrative Appeal", and the only thing I can figure
25 out is that the court views this case as an administrative

1 appeal. In other words, even though it's in District
2 Court, it is an administrative appeal, or an appeal of an
3 administrative decision.

4 So I think the request before the Commission
5 today meets what you're looking at in that paragraph or
6 that sentence of the Court's decision.

7 COMMISSIONER CHAVEZ: Okay, I don't have anything
8 else.

9 CHAIRMAN FESMIRE: Mr. Carr, you cited the case
10 of *Siegel v. Goodman*. Do you have the citation on that?

11 MR. CARR: Yes, sir, I do.

12 MR. BRUCE: Mr. Chairman, I have it right here.
13 It's 115 New Mexico 349.

14 CHAIRMAN FESMIRE: Do you have the P. 2nd?

15 MR. CARR: 851 P. 2nd 471.

16 CHAIRMAN FESMIRE: Mr. Carr, is it your position
17 that *Siegel v. Goodman* reverses the Tenneco holding?

18 MR. CARR: I think it confused it. And I think
19 it was clarified when the court adopted the new Rules for
20 Civil Procedure that went back and adopted three of the
21 four standards announced in Tenneco and declared that those
22 issues are decided in the District Court.

23 CHAIRMAN FESMIRE: Mr. Carr, if we deny the stay
24 and the court rules in Yates' favor, what happens to the
25 Pride expenditures, the money that they spend drilling this

1 well?

2 MR. CARR: I don't think we are unjustly enriched
3 because of their effort, pursuant to a Division order, and
4 I think clearly we would be required to pay them and
5 reimburse them all costs and expenses incurred. I mean, I
6 think that's a simple matter.

7 CHAIRMAN FESMIRE: Mr. Bruce, if -- that having
8 been established, and those words may come back, what is
9 Pride's risk going ahead and complying with the order and
10 drilling by March 9th?

11 MR. BRUCE: Well, I think twofold. Yes, there is
12 monetary liability, first and foremost. And I guess my way
13 of looking at it is that there is no need to incur the
14 expenses, at least until it's gone through the District
15 Court proceeding.

16 The second thing I'd note is, in this *Siegel*
17 case, when it talks about -- the *Siegel* case specifically
18 talked about money judgments or monetary effect, rather
19 than specifically just staying an order in its entirety and
20 does say that there's a much more flexible approach to be
21 taken in granting a stay or extending a deadline when money
22 is involved, rather than some irreparable harm, which Mr.
23 Carr refers to.

24 So I think there is flexibility in -- rather than
25 just looking at money. Yes, money may be involved. Mr.

1 Carr, on behalf of Yates, may ask for their money back if
2 there's a stay and the parties don't settle.

3 On the other hand, why incur these expenses now
4 if the facts as to the well unit ownership may change in
5 the future? And Pride would view the loss of its 50-
6 percent interest in that well as irreparable harm itself,
7 so...

8 But you know, that's neither here nor there at
9 this point. As I said, I think -- why not maintain the
10 status quo for a couple of months until the parties know
11 for sure?

12 CHAIRMAN FESMIRE: Mr. Bruce, that argument is
13 bordering on irreparable harm due to the court's ultimate
14 decision in this case. I don't think we can sustain that
15 argument, can we?

16 MR. BRUCE: I know what you're saying, Mr.
17 Chairman, yes.

18 CHAIRMAN FESMIRE: So it would seem to me that --
19 while I disagree with Mr. Carr's jurisdiction argument, it
20 would seem to me that we're still bound by the three
21 criteria set out in Rule 74 and that we -- that Pride's
22 argument doesn't satisfy any one of those three criteria.

23 If the Commission were to go that way, how would
24 each of these criteria apply to the facts in this case?

25 MR. BRUCE: Well, just let me mention a couple of

1 these issues. No substantial harm will result if a stay is
2 granted. As we've said, we're not requesting to make that
3 stay up to July 1 or thereafter; therefore Yates is not
4 harmed, certainly the Commission is not harmed. And as I
5 said, I believe that appellee, not appellant will prevail.

6 So what you're really looking at, I think Pride
7 meets clearly two of those three standards in Rule 74.

8 And then you get to the irreparable harm, and I
9 think based on the *Siegel* case where you're looking at more
10 of a balancing than just the irreparable harm issue. And
11 once again I get to, why not just maintain the status quo?

12 CHAIRMAN FESMIRE: Well, maintaining the status
13 quo puts Yates' lease on -- I have no idea how big a tract
14 in that drilling unit, but that -- we're asking Yates to --
15 on this order to delay until basically the beginning of
16 June; is that correct?

17 MR. BRUCE: Well, my thought is no later than May
18 31st.

19 CHAIRMAN FESMIRE: Okay. And do you could put
20 together a drilling program in 30 days that would satisfy
21 Yates' lease requirements?

22 MR. BRUCE: I believe so, yes.

23 CHAIRMAN FESMIRE: Do you all have a rig under
24 contract?

25 MR. BRUCE: That's what I -- Commissioner Bailey

1 asked that, and I will have to find that out for you.

2 CHAIRMAN FESMIRE: Yeah, rigs are a little hard
3 to come by on 30 days' notice. And I think that we would
4 run the risk of Yates losing their lease on this. And I
5 don't see the irreparable harm -- or I don't see a
6 disadvantage to your client to go ahead and drill this
7 well. They're going to be paid overhead, they've had the
8 use of this money for, by my quick calculation, about nine
9 months, since October, when they were paid.

10 MR. BRUCE: 2004.

11 CHAIRMAN FESMIRE: 2004, okay, math was -- sorry
12 about that. But about five months to date, and by the time
13 they drill this well they're going to have had it for a
14 significant amount of time.

15 If the case were to go against them, basically,
16 Mr. Carr has told us, Yates will essentially buy them out.

17 So given those reasons, it's -- I'm leaning
18 towards not granting the stay because I think that -- I
19 don't see the harm to your client to go ahead and drill
20 this well.

21 MR. BRUCE: And I would simply ask that you
22 withhold issuing a written order, so that the parties can
23 pursue negotiation over the next week.

24 CHAIRMAN FESMIRE: Well, the Commission hasn't
25 agreed to that. I don't understand the need to do that.

1 How does that disadvantage your client?

2 MR. BRUCE: Well, Mr. Examiner -- "Mr. Examiner".
3 Sorry, I'm too used to being before Dave and Mike.

4 Once again, this is an odd situation -- well,
5 maybe not so odd, where Pride does not own an interest in
6 the lease in which the wellbore is -- on which the wellbore
7 is located. And although that is proper under the pooling
8 statutes, it gets back to the point, any deadlines in an
9 order, if it's appealed, causes complications in operating
10 under that order, because the parties are in limbo, pending
11 -- I mean, if it went up to the Supreme Court, I would
12 imagine that it would take another year and a half to
13 resolve. The District Court, I think, could be quite quick
14 in its decision. It's in front of Judge Hall, who's pretty
15 good about ruling on these issues. But the Supreme Court,
16 who knows what's happened? And so the parties would be in
17 limbo for a year and a half, not knowing what might occur
18 in the end.

19 CHAIRMAN FESMIRE: But isn't that telling us that
20 we would go past the end of May and that any further delay
21 would essentially not result in this well getting drilled
22 by the time Yates' lease expires?

23 MR. BRUCE: What I'm saying is, I think if it
24 does go beyond that period, Pride would have to regardless
25 re-enter the well, because it does not want to see Yates'

1 lease expire or to lose its APD. So the aim is not to go
2 beyond that deadline and have Yates' lease expire.

3 CHAIRMAN FESMIRE: And yet you've told us that
4 the case is likely to carry out past that deadline --

5 MR. BRUCE: Well, I don't know if it will. It's
6 possible.

7 But on the other hand, Mr. Chairman, if Yates had
8 not appealed to District Court, we wouldn't be here today
9 either.

10 CHAIRMAN FESMIRE: Commissioner Bailey, do you
11 have any --

12 COMMISSIONER BAILEY: No.

13 CHAIRMAN FESMIRE: Commissioner Chavez?

14 COMMISSIONER CHAVEZ: Nothing else.

15 CHAIRMAN FESMIRE: Mr. Bruce, would you have
16 anything to say in lieu of closing?

17 MR. BRUCE: No, I have nothing further.

18 CHAIRMAN FESMIRE: Mr. Carr?

19 MR. CARR: No, sir.

20 CHAIRMAN FESMIRE: Okay. At this time --

21 MR. BROOKS: Motion to go into executive session.

22 COMMISSIONER BAILEY: I so move.

23 COMMISSIONER CHAVEZ: Second.

24 MR. BROOKS: We need to state on the record the
25 purpose for which we're going into executive session.

1 CHAIRMAN FESMIRE: The purpose for going into
2 executive session is to consider the evidence before us in
3 Cause Number 13,153.

4 And all those in favor of going into executive
5 session?

6 COMMISSIONER BAILEY: Aye.

7 COMMISSIONER CHAVEZ: Aye.

8 CHAIRMAN FESMIRE: Opposed?

9 At this time we'll go into executive session to
10 consider the evidence in Cause Number 13,153.

11 (Off the record at 9:44 a.m.)

12 (The following proceedings had at 10:20 a.m.)

13 CHAIRMAN FESMIRE: At this time we'll go back on
14 the record. Let the record reflect it's 10:20 a.m.

15 The Chair would entertain a motion to recess
16 until 12 o'clock to give counsel Brooks time to draft the
17 Order. Is there a motion to that effect?

18 COMMISSIONER BAILEY: I so move.

19 COMMISSIONER CHAVEZ: I second.

20 CHAIRMAN FESMIRE: It having been moved and
21 seconded, all those in favor?

22 COMMISSIONER BAILEY: Aye.

23 COMMISSIONER CHAVEZ: Aye.

24 CHAIRMAN FESMIRE: Opposed?

25 The Commission will go into recess until 12 noon

1 today, and at that time we'll go back on the record for the
2 purpose of signing an order that counsel Brooks has
3 drafted.

4 Thank you.

5 MR. CARR: May it please the Commission, do you
6 request that we be present at 12 o'clock or --

7 CHAIRMAN FESMIRE: I don't think it would be
8 necessary unless you guys --

9 MR. CARR: We'll just send someone to get it, let
10 us know. Thank you very much.

11 (Off the record at 10:21 a.m.)

12 (The following proceedings had at 12:08 p.m.)

13 CHAIRMAN FESMIRE: At this time we'll reconvene
14 after a recess. The time is 12:08. Again, it's Thursday,
15 February 10th, and the Oil Conservation Commission is
16 considering Case Number 13,153. We're back on the record
17 after executive session.

18 After reading the order drafted by counsel
19 Brooks, Commissioner Bailey, you had some issues that we
20 need to address?

21 COMMISSIONER BAILEY: It was just the language in
22 one of the paragraphs, paragraph number -- Finding Number
23 10, why it did not offer any evidence that Yates or any of
24 the other Respondents. What other Respondents?

25 MR. BROOKS: Well, I believe there are a bunch of

1 Yates entities in this. That is the reason I used that
2 language. It's not just Yates Petroleum Corporation, and I
3 think that's on the record in the previous hearings,
4 although I don't believe it was on the record this morning,
5 that Carr was appearing for -- I forget who all, Myco and
6 some of the other Yates family entities.

7 CHAIRMAN FESMIRE: The original order does show
8 -- yes.

9 COMMISSIONER BAILEY: Okay. And then you go on
10 with that sentence, it says, Pride did not offer any
11 evidence that Yates or any of the other Respondents would
12 be unable to respond in damages, should Pride incur
13 monetary injury as it claimed.

14 Is "damages" the word to be used there?

15 MR. BROOKS: Well, I think so because if -- you
16 know, your legal remedy is damages, whatever the reason for
17 the cause of action. The cause of action in this case
18 would be quantum meruit or unjust enrichment, as Mr. Carr
19 mentioned. But I think still the remedy in court would be
20 that damages are an equitable remedy. In this case you're
21 recovering money and --

22 COMMISSIONER BAILEY: So they would be unable to
23 respond in damages, should Pride incur monetary injury as
24 it claimed? If that's good legal language, fine by me.

25 MR. BROOKS: I think it's appropriate, yes.

1 COMMISSIONER BAILEY: Okay, then I have no
2 problem with it.

3 MR. BROOKS: Okay.

4 CHAIRMAN FESMIRE: The order as drafted and as
5 reviewed by each one of the Commissioners, the Chair will
6 entertain a motion to adopt this order which denies Pride's
7 motion for a stay of Commission order.

8 COMMISSIONER CHAVEZ: I will.

9 CHAIRMAN FESMIRE: Is there a second?

10 COMMISSIONER BAILEY: I second.

11 CHAIRMAN FESMIRE: All those in favor?

12 COMMISSIONER BAILEY: Aye.

13 COMMISSIONER CHAVEZ: Aye.

14 CHAIRMAN FESMIRE: Let the record reflect that
15 the motion passed, and will now be signed by the members of
16 the Commission.

17 With that, is there any further business of the
18 Commission? Commissioner Bailey?

19 COMMISSIONER BAILEY: No, I have nothing more.

20 CHAIRMAN FESMIRE: Commissioner Chavez?

21 COMMISSIONER CHAVEZ: I don't have any other
22 business.

23 I don't know if this is a matter of the record.
24 I have a problem now with making an April scheduled
25 Commission meeting, and I don't -- right now it looks like

1 I will not be able to be present for the April meeting.

2 CHAIRMAN FESMIRE: Will you be someplace where
3 you can use the phone?

4 COMMISSIONER CHAVEZ: No. No, I will be out of
5 town. I was given a -- in my other job, was assigned some
6 duties which require me to attend a scheduled meeting in
7 New Orleans on that day.

8 CHAIRMAN FESMIRE: Counsel Brooks, the Commission
9 quorum is two members, is it not?

10 MR. BROOKS: That's correct.

11 CHAIRMAN FESMIRE: So we can go ahead and have
12 the meeting without Commissioner Chavez?

13 MR. BROOKS: We can indeed.

14 COMMISSIONER BAILEY: Or can we reschedule to --

15 MR. BROOKS: We can also reschedule --

16 COMMISSIONER BAILEY: -- accommodate?

17 CHAIRMAN FESMIRE: -- and that's just up to the
18 Commission as to what the Commission wants to do.

19 CHAIRMAN FESMIRE: We have notice requirements
20 that -- you know, we've already published a schedule --

21 MR. BROOKS: Yes, we would have to publish a
22 notice if we were to have a -- if we were to change the
23 date of the meeting. But don't we publish the notice for
24 each meeting anyway?

25 MS. DAVIDSON: For the Commission meetings we do,

1 yes.

2 MR. BROOKS: Yeah.

3 CHAIRMAN FESMIRE: We can just change the notice,
4 the schedule, on the Web.

5 MS. DAVIDSON: Uh-huh.

6 CHAIRMAN FESMIRE: Okay. Commissioner Chavez,
7 what would be your preference on that?

8 COMMISSIONER CHAVEZ: To be honest, I wasn't
9 prepared for one right now. I was just kind of
10 anticipating you want to keep the schedule and meet without
11 me. But what I can do when I get back home, if I could
12 send my dates of availability to -- Who should I send it
13 to? Florene?

14 CHAIRMAN FESMIRE: To Florene.

15 COMMISSIONER CHAVEZ: -- to Florene, and then she
16 can work out the schedule with the rest of you. Would that
17 be okay?

18 COMMISSIONER BAILEY: That's fine with me.

19 CHAIRMAN FESMIRE: It's fine with me too.

20 COMMISSIONER CHAVEZ: Okay, sounds good.

21 CHAIRMAN FESMIRE: Let's do that.

22 Okay, any other business before the Commission
23 today?

24 COMMISSIONER BAILEY: No.

25 CHAIRMAN FESMIRE: That having been said, the

1 Chair would entertain a motion to adjourn.

2 COMMISSIONER BAILEY: I move we adjourn.

3 COMMISSIONER CHAVEZ: I second.

4 CHAIRMAN FESMIRE: The motion having been made
5 and seconded to adjourn, all those in favor signify by
6 saying aye.

7 COMMISSIONER BAILEY: Aye.

8 COMMISSIONER CHAVEZ: Aye.

9 CHAIRMAN FESMIRE: Let the record reflect that
10 the meeting is adjourned at 12:14 p.m. on February 10th.

11 (Thereupon, these proceedings were concluded at
12 12:14 p.m.)

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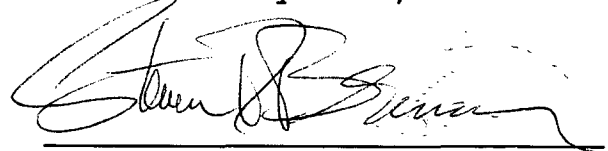
CERTIFICATE OF REPORTER

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 February 11th, 2005.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006