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

APPLICATION OF GANDY MARLEY, INC.
TO MODIFY THEIR EXISTING NMOCD RULE 711
PERMIT NO. NM-01-019 SO THEY MAY ACCEPT
SALT-CONTAMINATED OILFIELD WASTES

APPEAL OF ORDER NO. R-12306-B **CASE NO. 13480 *de novo***

2005 SEP 29 AM 9 33

EMERGENCY MOTION TO ENFORCE AND FOR PRESENTMENT OF ORDER

COMES NOW Gandy Marley, Inc. (GMI), by and through undersigned counsel of record, and requests that the Commission enforce the Commission's September 15, 2005 decision to grant GMI's Request for Partial Stay by signing the attached Order of the Oil Conservation Commission. The proposed order, attached hereto, accurately reflects the decision of the Commission reached on September 15, 2005. GMI requests that the Commission hold an emergency hearing on this motion.

This matter came before the Commission on GMI's Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B. The Commission met in executive session to discuss GMI's motion. Following the executive session, the Commission went back on the record. Commissioner Chavez made the following motion:

> COMMISSIONER CHAVEZ: I move that the Commission grant the stay requested by the operator until the October 13 meeting, where the Commission will review the operator's progress, the Applicant's progress, in preparing and publishing in accordance with Rule 711 their application for modification of their permit. At the October 13th meeting, the Commission will determine whether to extend this date, based on GMI's progress in application and notice.

(Exhibit A, Reporter's Transcript of Proceedings Commission Hearing, September 15, 2005, at 10/lns25-25 to 11/ln1). Commissioner Chavez's motion was seconded and the Commission

voted, 2 to 1, in favor. The motion carried and Counsel for the Commission was directed to draft an order reflecting the Commission's decision. (*Id.* at 11/lns2-9). At the conclusion of the hearing, the Commission held a discussion concerning the schedule for signing the order. It was determined that, in order to allow Counsel for the Commission time to draft the order and to accommodate the schedules of the Commissioners, the hearing would be adjourned until September 23, 2005, at which time the Commissioners would reconvene to sign the order. (*Id.* at 14/lns 24-25 to 22/lns1-16).

The Commission reconvened on September 23, 2005. At that time it was announced that, on September 20, 2005, a new Commissioner, Mr. Bill Olson, was appointed to replace Frank Chavez. (Reporter's Transcript of Proceedings Commission Hearing, September 23, 2005, at 3/lns14-16). The Commissioners were provided with a proposed order that reflected the Commission's decision of September 15, 2005. (*Id.* at 4/lns15-20). Commissioner Olson stated that "I don't think it would be appropriate for me to vote on this matter" because he was not part of the discussions held during the executive session. (*Id.* at 5/lns2-15). Commissioner Bailey moved that the Commission accept the proposed order. Her motion did not receive a second and so died. Commissioner Bailey stated on the record that the proposed order "accurately represents the decision of the Commission that did hear this case the last time we were in session." (*Id.* at 6/lns3-5). No other Commissioner disputed or disagreed with Commissioner Bailey's statement. Commissioner Bailey then moved that the order be signed by the two Commissioners who were part of the September 15, 2005 hearing. Her motion did not receive a second and died. The Commission did not sign the order.

GMI has relied on the Commission's September 15, 2005 decision to grant GMI's request for partial stay. GMI has contacted customers, started testing the clay liner, started preparation

of engineering plans and undertaken pre-construction activities. GMI is therefore requesting that the Commission, based on the September 15, 2005 decision, sign and enter the proposed order.

The proposed order, attached hereto, is the same as that presented to the Commission on September 23, 2005, with two exceptions. First, the following language has been added:

> Page 2, ¶9: Gandy Marley's Request for Partial Stay stated that, prior to accepting any salt-contaminated oilfield waste, Gandy Marley will, as recommended in the technical section of Order R-12306-B, install a clay liner and a leachate system in the cell that will receive the waste. Prior to beginning construction, Gandy Marley will submit engineering designs to the Division, as required by the Rule 711 Guidelines.
>
> Page 4, ¶4: Prior to accepting any salt-contaminated oilfield waste, Gandy Marley is required to install a clay liner and a leachate system in the cell that will receive the waste. Prior to beginning construction, Gandy Marley is required to submit engineering designs to the Division for Division review and approval.

The additional language reflects the conditions that GMI stated it would agree to in its Request for Partial Stay.

The second change is to ¶5, page 5, which has been revised to state as follows:

> 5. If applicant fails to appear as directed in paragraph 3 above, or if applicant fails, at such time, to demonstrate, as a minimum, that it has then filed a permit modification application in accordance with Order R-12306-B, has provided written notice of the application to surface owners within one mile of the facility and to the Chaves County Commission, as required by Rule 711(B)(2)(a), and is diligently pursuing such application, the stay granted by this Order shall terminate.

Paragraph 5 accurately reflects the Commission's ruling on September 15, 2005. In granting the stay, the Commission ruled that the stay would be granted until the October 13, 2005 Commission meeting, at which time the Commission "will review the operator's progress, the Applicant's progress, in preparing and publishing in accordance with Rule 711 their application for modification of their permit. At the October 13th meeting, the Commission will determine whether to extend this date, based on GMI's progress in application and notice." (Exhibit A at 10/lns 20-25 to 11/ln1).

The Commission voted to review GMI's progress on October 13. The Commission did not vote to require that GMI demonstrate that the application has been deemed administratively complete and that all notices have been given. Although GMI will submit the permit modification application to the Division before October 13, there is not sufficient time for the Division to review the application to determine if it is administratively complete before October 13. Additionally, public notice is not issued until after the application is deemed administratively complete. 19.15.9.711(B)(2); *see* Order R-12306-B, at p.9, §F (Public Notice Requirements). The 30-day public comment period begins with the issuance of the public notice. *Id.* At the time the application is filed with the Division, GMI will provide written notice of the application to surface owners within one mile of the facility and to the Chaves County Commission, as required by Rule 711(B)(2)(a).

The proposed order accurately reflects the September 15, 2005 decision of the Commission to grant GMI's request for a partial stay and the contents of GMI's Request for Partial Stay.

WHEREFORE, Gandy Marley, Inc. respectfully requests that the Commission hold an emergency hearing on this matter and sign the attached Order of the Oil Conservation Commission.

Respectfully Submitted,

Pete V. Domenici, Jr. Esq.
Attorney for Gandy Marley Inc.
6100 Seagull Street NE, Suite 205
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(505) 883-6250

I hereby certify that a true and correct copy of the foregoing was served on all parties of record on the 27 day of September, 2005.

Pete V. Domenici, Jr., Esq.

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

APPLICATION OF GANDY MARLEY, INC. TO MODIFY THEIR EXISTING NMOCD RULE 711 PERMIT NO. NM-01-019 SO THEY MAY ACCEPT SALT-CONTAMINATED OILFIELD WASTES

CASE NO. 13480 *de novo*
ORDER NO. R-12306-D

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (the Commission) for hearing on September 15, 2005 at Santa Fe, New Mexico on Gandy Marley Inc.'s Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B, and the Commission, having carefully considered the same, now, on this 23rd day of September, 2005,

FINDS:

Application and Procedural History

1. The application in this case was filed by Gandy Marley, Inc. ("Gandy Marley" or "applicant") on April 8, 2005, seeking a modification of its permit to operate a surface waste management facility ("the facility") under OCD Rule 711 [19.15.9.711 NMAC] to allow it to accept salt-contaminated wastes.

2. The Division has entered four previous orders in this matter:

(a) Order R-12306, entered on March 11, 2005 in Case No. 13454, was an emergency order, entered without a hearing, that authorized Gandy Marley to accept salt contaminated oilfield wastes pending a decision on its application for a permit modification.

(b) Order R-12306-A, entered on March 25, 2005 in Case No. 13454, subsequent to an emergency hearing conducted before a Division examiner on March 25, 2005, extended the emergency ordering provision of Order R-12306 on conditions there stated.

(c) Order R-12306-B, entered on August 5, 2005 in Case No. 13480 pursuant to a hearing conducted before a Division examiner on May 23, 2005, rescinded the emergency order extension granted by Order R-12306-A, directed Gandy Marley to immediately comply with the Division's March 4, 2005 letter prohibiting further acceptance of salt-contaminated waste, and indicated that if a further application were filed it would be heard by the Commission.

(d) Order R-12306-C, entered on August 31, 2005 in Case No. 13480, refused Gandy Marley's Request for Partial Stay of Order R-12306-B pending *de novo* review of that order by the Commission.

3. Order No. R-12306-B, though it did not finally dispose of the application, denied applicant's request that a permit application be granted on the existing record and ordered applicant to submit a new application and give new public notice.

4. Within the time provided by Section 70-2-13 NMSA 1978, as amended, applicant filed an application for *de novo* review of Order No. R-12306-B with the Commission.

5. The background of this case is described in Section A of Part I of Order No. R-12306-B.

6. As described above, the Division, on March 11, 2005 and March 25, 2005 entered Orders R-12306 and 12306-A, pursuant to the emergency powers provided in Section 70-2-23 NMSA 1978 and in OCD Rule 1202, authorizing Gandy Marley an extension of time to continue to accept salt-contaminated waste at the facility until the Division heard the application on its merits and ruled thereon.

7. In Ordering paragraph 1 of Order No. R-12306-B, the Division rescinded the emergency order extension granted by Order No. R-12306-A. Ordering paragraph 2 of Order R-12306-B ordered that Gandy Marley immediately comply with the Division's March 4, 2005 letter that had directed it not to accept any further salt-contaminated waste at the facility.

8. On August 25, 2005, Gandy Marley Inc. filed with the Division a Request for Partial Stay of Order R-12306-B wherein it asked that the Director stay the portion of Order R-12306-B that rescinds the emergency order extension granted by Order R-12306-A, thereby continuing the emergency order extension in effect, and allowing Gandy Marley to resume accepting salt-contaminated wastes at the facility pending the Commission's *de novo* review of Order R-12306-B.

9. Gandy Marley's Request for Partial Stay stated that, prior to accepting any salt-contaminated oilfield waste, Gandy Marley will, as recommended in the technical

section of Order R-12306-B, establish a clay liner and a leachate system in the cell that will receive the waste. Prior to accepting salt-contaminated waste, Gandy Marley will submit engineering designs to the Division, as required by the Rule 711 Guidelines.

10. Gandy Marley's Request for Partial Stay invoked the power of the Division Director, under OCD Rule 1220.B, to stay orders of the Division pending *de novo* consideration by the Commission.

11. On August 31, 2005 the Division Director issued Order R-12306-C, denying Gandy Marley's Request for Partial Stay.

12. On September 2, 2005 Gandy Marley filed its Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B, requesting the full Commission to review and reverse the action of the Division Director in denying the Request for Partial Stay.

Findings of Fact

The following findings of fact are based on evidence admitted at earlier hearings before division hearing examiners and/or findings of the Division in previous orders entered in this case:

13. Gandy Marley received its original permit from the Division on January 27, 1995, for operation of the facility, and the facility was accepting salt-contaminated drill cuttings and drilling mud prior to the Division's issuance, on March 4, 2005, of letter instructions directing Gandy Marley and other land farms to cease accepting such wastes.

14. The language of the permit issued to Gandy Marley was sufficiently broad to authorize it to accept salt-contaminated oil field wastes for remediation at the facility. Order R-12306-A, finding paragraph 9(d). The permit has undergone periodic review by the Division.

15. The issuance of the March 4, 2005 letter by the Division Director terminating the authority of land farms to accept salt-contaminated drilling fluids and drill cuttings led to a reasonable concern about the availability of adequate facilities for the disposition of such waste materials generated by the oil and gas activity in southeastern New Mexico

16. A significant part of the public comment received by the division concerning this application prior to the May 23 hearing that resulted in the issuance of Order R-12306-B consisted of letters from operators concerned about a critical shortage of available facilities for disposal of salt-contaminated wastes being generated from intensive oil and gas activity.

17. While there are substantial reasons for concern that water and/or soil pollution could occur at some time in the future if the facility continues to receive salt-contaminated wastes and manage such wastes as it has done in the past, there is no finding, and that any water pollution has occurred as a result of the operation of the facility.

18. The testimony offered by Gandy Marley at the hearing before the Division examiner indicates that Gandy Marley, at the time of that hearing, was proceeding diligently to design and secure approval for modifications to the facility which would enable it to receive and manage salt-contaminated wastes in accordance with Division rules and standards.

Conclusions

1. OCD Rule 1220.B indicates that stays of Division order are appropriate, *inter alia,* when necessary to prevent waste or to prevent gross negative consequence to any affected party.

2. In Order R-12306-B, the Division described evidence indicating Gandy Marley is proceeding with diligence to revise and correct its treatment facilities and procedures, and that there is a reasonable probability that Gandy Marely's application for permit modification will be either approved or approved with conditions.

3. The majority of the Commission concludes that negative consequences could occur for oil and gas operators in southeastern New Mexico if applicant is denied the ability to continue to receive salt-contaminated drilling fluids and drill cuttings at the facility at this time.

IT IS THEREFORE ORDERED THAT:

1. Applicant's Request for Review of Denial of Request for Partial Stay of Division Order R-12306-B is granted to the extent and subject to the conditions herein provided.

2. Order No. R-12306-C denying the requested partial stay is hereby rescinded.

3. The portion of Order R-12306-B rescinding the emergency order extension granted by Order R-12306-A, and ordering applicant to forthwith cease accepting salt contaminated wastes at the facility is hereby stayed until the Commission enters an order disposing of applicant's applicantion for *de novo* review of Order R-12306-B; *provided however,* that applicant shall appear before the Commission at its next regular meeting on October 13, 2005, and shall then and there demonstrate that it is

diligently pursuing its application for permit modification in accordance with the other terms and provisions of Order R-12306-B.

4. Prior to accepting any salt-contaminated oilfield waste, Gandy Marley is required to establish a clay liner and a leachate system in the cell that will receive the waste. Prior to accepting salt-contaminated waste, Gandy Marley is required to submit engineering designs to the Division for Division review and approval.

5. If applicant fails to appear as directed in paragraph 3 above, or if applicant fails, at such time, to demonstrate, as a minimum, that it has then filed a permit modification application in accordance with Order R-12306-B, has provided written notice of the application to surface owners within one mile of the facility and to the Chaves County Commission, as required by Rule 711(B)(2)(a), and is diligently pursuing such application, the stay granted by this Order shall terminate.

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

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

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

MARK E. FESMIRE, P.E., CHAIR

JAMI BAILEY, CPG, MEMBER

WILLIAM C. OLSON, MEMBER

S E A L

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

CONSIDERATION OF GANDY MARLEY, INC.'S,
REQUEST FOR REVIEW OF DENIAL OF REQUEST
FOR PARTIAL STAY OF DIVISION ORDER
NO. R-12,306-B IN CASE NO. 13,480

CASE NO. 13,482
AWAITING FINAL COMMISSION ACTION
NO EVIDENCE OR TESTIMONY TAKEN

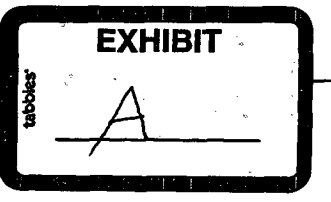
REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSION HEARING

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

September 15th, 2005
Santa Fe, New Mexico

These matters came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, September 15th, 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
(505) 989-9317

I N D E X

September 15th, 2005
Commission Hearing

* * *

A P P E A R A N C E S

FOR THE COMMISSION:

CAROL LEACH
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and
DAVID K. BROOKS, JR.
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FOR THE DIVISION:

CHERYL BADA
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

* * *

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

CHAIRMAN FESMIRE: Let's to call the September 15th, 2005, meeting of the New Mexico Oil Conservation Commission to order.

Let the record reflect that it's 9:00 a.m., that we are meeting at the New Mexico Oil Conservation Commission hearing room, Porter Hall, at 1220 South Saint Francis, in Santa Fe, New Mexico.

To begin with, I'm going to introduce myself. My name is Mark Fesmire, I'm the Chairman of the Commission.

To my right is Commissioner Jami Bailey. Commissioner Bailey is the designee of the State Land Commissioner.

To my left is Commissioner Frank Chavez. Commissioner Chavez is the appointee of the Energy, Minerals and Natural Resources Secretary.

Also present is Commission secretary Florene Davidson.

And acting at least for part of the meeting this morning as Commission secretary will be -- I mean Commission counsel, will be Carol Leach.

And the record is being made by our court reporter, Mr. Steve Brennen [*sic*].

* * *

CHAIRMAN FESMIRE: I guess the first order of business is the reading of the minutes. Have the Commissioners had the chance to review the minutes as presented?

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

COMMISSIONER CHAVEZ: I second the motion.

CHAIRMAN FESMIRE: The motion having been made and seconded to adopt the minutes, all those in favor?

COMMISSIONER BAILEY: Aye.

COMMISSIONER CHAVEZ: Aye.

CHAIRMAN FESMIRE: Opposed?

Let the record reflect that the minutes as presented by the Commission secretary will be adopted and signed.

* * *

CHAIRMAN FESMIRE: The first matter to be considered today is the request of Gandy Marley, Inc., a request for review of the denial of the request for partial stay of Division Order R-12,306-B in Case Number 13,480. At this time no evidence or arguments will be received -- are planned to be received by the Commission. Is that the understanding of the parties present?

MR. FELDEWERT: Yes.

CHAIRMAN FESMIRE: Okay. And at this time I'm going to ask Counselor Brooks to give us a procedural history of that case, if he would, please.

MR. BROOKS: Okay, thank you, Mr. Chairman, honorable Commissioners. I am acting -- I have been acting as Commission counsel with respect to this case, and so I will give the Commission the usual briefing on this matter.

I do not have the dates assembled but I recall them in general terms, and I believe that the proceedings in this matter began in March of 2005. It seems that the Division raised a question about whether Gandy Marley, Inc., had the authority under its existing Rule 711 waste management facility permit to accept certain types of wastes, that being salt-contaminated drilling fluids, that it was accepting. And the Division sent a letter indicating that they should cease doing so.

However, there was a feeling at that time that there was a shortage of available facilities, and Gandy Marley undertook to cooperate. I don't know the terms, but in any event the Division decided to petition the Director, or file an Application with the Director for an emergency order to allow Gandy Marley to continue to accept salt-contaminated drilling fluids as wastes, pending a hearing. That application was granted in March of 2005.

Then in May of 2005 there was an Examiner Hearing

on Gandy Marley, Inc.'s, Application to have its permit amended so that it would have proper and permanent authority to accept salt-contaminated waste.

In -- sometime this summer, and I don't remember the date -- I believe it was in June, but I may be a little bit off on that -- but anyway, the Division entered an order pursuant to the hearing in May, and the terms -- I think it was in August, actually, early August. The Division entered an order. The order denied Gandy Marley's permit without prejudice to refiling because of defects in notice and I believe some other defects in the Application itself.

The Division also at that time determined that the emergency order should terminate and be superseded by the Division's order pursuant to the full hearing that was held in May.

Following the entry of that order, Gandy Marley, Inc., filed a *de novo* application -- or an application for *de novo* review by this Commission. At the same time or shortly thereafter, Gandy Marley, Inc., also filed a motion for stay of the order of the Commission. Now, Gandy -- or the order of the Division pending action before the Commission.

A reading of the entire text of Gandy Marley's Application for a stay indicates that they are suggesting

that the matter be stayed until their new Application is filed and heard by the Commission, although their actual prayer for relief only asks, I believe, that it be postponed until the Commission's *de novo* review of the Division's order, and I do not believe there is actually before the Commission at this time an application to stay the *de novo* proceeding pending the new application, although they've indicated that that's the course that they would like to pursue.

I'm describing the documents somewhat carefully, because I'm not totally sure of how they would be interpreted in that regard, but that's my interpretation.

You, Mr. Chairman, in your capacity as Director of the Division, entered an order, as you will doubtless recall, a few weeks ago denying Gandy Marley's request for a stay pending the *de novo* hearing.

Gandy Marley filed an Application for review of that issue before the Commission. I do not know, Mr. Chairman, honorable Commissioners, if you wish me to give you my advice concerning the legal aspects of such a petition now or in executive session, so I will abide your pleasure on that. I've reviewed the facts, and what is before you now is the Application for stay pending the *de novo* hearing, which is in effect an application for the Commission to overrule the Director on that issue.

I believe you have three options. One would be to grant it and grant stay, the other would be to overrule the motion and uphold the Director's denial of the stay, and the third would be to set a hearing at some subsequent time. I believe the matter cannot be heard today because it was not on the docket for a hearing.

So thank you. I will be happy to give you my legal view, either in public or in executive session at your convenience.

CHAIRMAN FESMIRE: Mr. Brooks, I would appreciate legal advice to the Commission, probably be given in executive session.

MR. BROOKS: Very well.

CHAIRMAN FESMIRE: Counsel Leach, would this be a good time to go into executive session and make that decision?

MS. LEACH: Sure.

CHAIRMAN FESMIRE: Okay. At this time we will go into executive session for the purposes of discussing the motion before the Commission and for no other purposes. Is there anything else that we need to put on the record before we go into executive session?

MS. LEACH: As long as the other -- as long as you have two out of three votes --

CHAIRMAN FESMIRE: Okay.

MS. LEACH: -- you can go into executive session.

CHAIRMAN FESMIRE: The Chair would entertain a motion to go into executive session.

COMMISSIONER BAILEY: I so move.

COMMISSIONER CHAVEZ: I second.

CHAIRMAN FESMIRE: All those in favor?

COMMISSIONER BAILEY: Aye.

COMMISSIONER CHAVEZ: Aye.

CHAIRMAN FESMIRE: At this time the Commission will go into executive session to discuss this motion.

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

(The following proceedings had at 10:35 a.m.)

CHAIRMAN FESMIRE: At this point we'll go back on the record. Let the record reflect that the Commission came out of executive session at 10:35 on the date of the meeting, and at this point the Chair would entertain a motion concerning the deliberations on Cause Number 13,480.

COMMISSIONER CHAVEZ: I move that the Commission grant the stay requested by the operator until the October 13th meeting, where the Commission will review the operator's progress, the Applicant's progress, in preparing and publishing in accordance with Rule 711 their application for modification of their permit. At the October 13th meeting, the Commission will determine whether to extend this date, based on GMI's progress in application

and notice.

CHAIRMAN FESMIRE: Is there a second?

COMMISSIONER BAILEY: Second.

CHAIRMAN FESMIRE: All those in favor?

COMMISSIONER BAILEY: Aye.

COMMISSIONER CHAVEZ: Aye.

CHAIRMAN FESMIRE: All those opposed? Aye.

The motion carries. I'll direct Counsel to draft an order to that effect.

MR. BROOKS: Okay. Now, let me suggest in terms of timing that we probably want this order entered today, but we do have another matter to hear, so it would seem to me to be appropriate that the Commission go ahead and deal with the other matters and then take a recess to enable counsel to draft the order, and then convene later in the day for the purpose of formally adopting the order if the Commissioners' time and appointments permit.

CHAIRMAN FESMIRE: Okay, any objection?

COMMISSIONER BAILEY: No objection.

COMMISSIONER CHAVEZ: That's fine.

CHAIRMAN FESMIRE: The next --

MR. BROOKS: I would request a short break before I have to testify.

(Laughter)

* * *

CHAIRMAN FESMIRE: The next cause before the Commission is Case Number 13,482, in the matter of the proposal of the Oil Conservation Commission on its own motion to amend Oil Conservation Division Rules 1201, 1203 through 1205, 1207, 1208, 1211, 1212, 1214 and 1220.

We'll entertain appearances of counsel at this time.

Is that you, Cheryl?

MS. BADA: That's me. Cheryl Bada for the Energy, Minerals and Natural Resources Department, Oil Conservation Division.

CHAIRMAN FESMIRE: Okay, are there any other counsel present who are going to be involved today?

Ms. Bada, do you have any witnesses?

MS. BADA: No, we do not.

CHAIRMAN FESMIRE: Ms. Bada, I'll turn it over to you at this time.

MS. BADA: I believe counsel for the Commission has prepared an order for the Commission to adopt the proposed Rules and attached as exhibits the repeal of the current Rules and the replacement for those Rules, as well as amendments to 19.5.1.7, which would include the two new definitions, Commission clerk and Division clerk.

CHAIRMAN FESMIRE: Okay. And do you have a suggestion at this time of what you're --

MS. BADA: I would recommend the Commission adopt those rules as submitted.

CHAIRMAN FESMIRE: Have the Commissioners had the opportunity to review the Rules as drafted?

COMMISSIONER BAILEY: Yes, I have, and I intend to sign the order.

COMMISSIONER CHAVEZ: I have, and I will also sign the order.

CHAIRMAN FESMIRE: And the Chair has done the same, so at this time we'll entertain a motion to adopt the Rules as drafted.

COMMISSIONER BAILEY: I move.

COMMISSIONER CHAVEZ: I second.

CHAIRMAN FESMIRE: All those in favor?

COMMISSIONER BAILEY: Aye.

COMMISSIONER CHAVEZ: Aye.

CHAIRMAN FESMIRE: Opposed? Let the record reflect that the motion carried and that the Rules will be signed -- and that the Order adopting the Rules will be signed at this time.

That concludes the action that the Commission needs to take on Case Number 13,482.

(Off the record at 10:40 a.m.)

(The following proceedings had at 1:37 p.m.)

CHAIRMAN FESMIRE: We need to address a couple of

administrative issues with respect to Case Number 13,480.

In the past we have drafted -- where there has been a dissenting vote, we have drafted an order that represents to the record that a majority of the Commissioners have adopted this order, and I think that's a good tradition. Would the Commissioners like to do that, or would they rather have it drafted for the signature of the two Commissioners in the majority?

COMMISSIONER BAILEY: The reason why we originally put it as the majority was because there were several different issues that were addressed during that case, and the order was very specific that a majority agreed for certain portions, and the entire Commission agreed for other portions. So that's the history on that one.

This only deals with one issue, so it really doesn't make any difference to me. I just thought it was important to understand that it's critical in those areas where were have different factors, but for one factor it really doesn't matter.

CHAIRMAN FESMIRE: Okay. Counsel, is there any reason to draft it one way or the other?

MR. BROOKS: Not that I'm aware of.

CHAIRMAN FESMIRE: Okay. How long do you think it will take you to draft an order?

MR. BROOKS: Very difficult to really know. I could say maybe a couple of hours, but unfortunately when I get to drafting these things sometimes they take longer than I think, so I just -- you know, it's hard to say. I do have to first go back and refresh my recollection as to exactly what was in the Division Order, so I know what we're dealing with.

CHAIRMAN FESMIRE: Okay. Would the Commission rather bet that Counsel drafts it today or set up another procedure for getting it signed?

COMMISSIONER BAILEY: Frank, do you have to go back this afternoon?

COMMISSIONER CHAVEZ: Yes, I do, I have to leave for Albuquerque tonight, because I'm leaving for Abilene first thing in the morning, so I won't be available.

COMMISSIONER BAILEY: I normally leave at 4:00, but that's immaterial.

CHAIRMAN FESMIRE: We're going to be gone from tomorrow.

COMMISSIONER BAILEY: It was all figured out John. We figured it all out.

MR. BEMIS: Oh, did you?

CHAIRMAN FESMIRE: If we'd a knowed we were going to have an audience, we'd have waited for you.

Why don't I get counsel to draft the order and

draft it in -- Well, I'm going to leave tomorrow morning.

COMMISSIONER BAILEY: So we need to sign it tonight then.

CHAIRMAN FESMIRE: Well, if it's just the two of you -- Are you going to be coming back through in the near future?

COMMISSIONER CHAVEZ: I wasn't intending to, no.

CHAIRMAN FESMIRE: Do we have to be in session to sign an order, or can the individual Commissioners --

MR. BROOKS: I believe that we do.

CHAIRMAN FESMIRE: Do we?

MR. BROOKS: Yes, that's my understanding.

COMMISSIONER CHAVEZ: We can convene just a quorum with Jami and myself, but we need a record.

MR. BROOKS: Yes, you could do that, two members of the Commission constitute a quorum.

COMMISSIONER CHAVEZ: And we do need a record on that. Do we need a record to sign the order?

MR. BROOKS: Yes.

COMMISSIONER CHAVEZ: Would that help, Mark?

CHAIRMAN FESMIRE: Yeah, I mean especially if we draft it so the -- that way.

When could you -- Can we do it next week sometime? Or you -- you're not coming back, are you?

COMMISSIONER CHAVEZ: No.

COMMISSIONER BAILEY: No, it has to be this afternoon or not for a long time, for Frank's schedule, right?

COMMISSIONER CHAVEZ: Pretty much. Monday, I may be -- I may be available, but I'm not sure that it would be Monday.

CHAIRMAN FESMIRE: Okay, could we overnight it to him wherever he's at?

MR. BROOKS: We could do that.

CHAIRMAN FESMIRE: But you said that they had to be --

COMMISSIONER BAILEY: It has to be in session.

CHAIRMAN FESMIRE: -- in session.

MR. BROOKS: Well --

COMMISSIONER CHAVEZ: Can we take the session -- now there are regulations that allow attendance by phone.

MR. BROOKS: Yes, there is a provision for that.

COMMISSIONER CHAVEZ: I can't physically sign it, however --

MR. BROOKS: Well, I suppose if you had to -- I don't know. It's possible if you had a counterpart you could sign it, if you were present by phone. I don't know. I don't think it's ever been done that way, and there's nothing that deals with it specifically.

CHAIRMAN FESMIRE: Well, we'd better dot the

i's --

MR. BEMIS: I hope the underlying decision wasn't this hard?

CHAIRMAN FESMIRE: Oh, it was harder.

(Laughter)

COMMISSIONER CHAVEZ: I'd be glad to --

COMMISSIONER BAILEY: We were in executive session --

COMMISSIONER CHAVEZ: -- do it by telephone --

COMMISSIONER BAILEY: -- for two hours.

COMMISSIONER CHAVEZ: -- except I physically can't sign the document. Now, I could approve it and then physically sign it with overnight mail, if that -- or does the signature have to be during the actual meeting?

MR. BROOKS: It says that -- I don't think that it's real specific, I don't think it gets down to that level of specificity. We have always interpreted it -- I don't remember the exact language, but we have always interpreted it that the order has to be signed during a Commission meeting.

CHAIRMAN FESMIRE: And can we hold Commission meetings by conference call?

MR. BROOKS: We can hold Commission meetings by telephone. That's specifically provided.

CHAIRMAN FESMIRE: Okay. Well then, why don't we

let you draft the order, and then we'll call a special meeting to sign it by conference call.

MR. BROOKS: Okay.

CHAIRMAN FESMIRE: And you're going to be around?

COMMISSIONER BAILEY: Yes, I'll be here --

CHAIRMAN FESMIRE: Well, we'll be in Wyoming if we don't get it done tomorrow.

COMMISSIONER BAILEY: Yeah.

CHAIRMAN FESMIRE: Okay.

COMMISSIONER BAILEY: But I don't get there till Saturday.

CHAIRMAN FESMIRE: Well, if we don't get it done tonight, I don't think we'll get it tomorrow, will we?

MR. BROOKS: Yeah, I think we can get it --

COMMISSIONER CHAVEZ: I'll be on the road tomorrow.

CHAIRMAN FESMIRE: So much for that.

MR. BROOKS: Yeah, so --

CHAIRMAN FESMIRE: But early next week we could do that?

MR. BROOKS: Well, yeah, I will be in Wyoming next week but, you know, I can get the order done by then, I would assume.

CHAIRMAN FESMIRE: Okay. Well, why don't we just -- Frank, do you have a phone number where you'll be

available early next week?

COMMISSIONER CHAVEZ: Yes.

CHAIRMAN FESMIRE: Why don't you leave it with Florene and we'll get the order done, and we may have to conduct most of the meeting from Wyoming and conference you in and --

MR. BROOKS: We'll have to figure out exactly how we go about noticing the meeting. I will undertake to do that.

CHAIRMAN FESMIRE: Okay, would we have to notice a meeting for sign- -- yeah, I guess --

MR. BROOKS: Whenever we have a meeting we have to give notice.

CHAIRMAN FESMIRE: Can we continue this meeting?

MR. BROOKS: We can continue this meeting, that's true.

CHAIRMAN FESMIRE: To a time certain --

MR. BROOKS: Yeah, that's the only trouble, it has to be to a date and place specified. Of course, we could deal with the place, I suppose, by having Florene here with a conference telephone and plugging everybody in, wherever they were, and then anybody that came here could hear what happened, but that -- we do have to have a date, time and place specified to continue this up to --

CHAIRMAN FESMIRE: Okay, Frank, are you going to

be someplace Friday where you'll be around a phone?

COMMISSIONER CHAVEZ: Tomorrow?

CHAIRMAN FESMIRE: No, a week from tomorrow.

COMMISSIONER CHAVEZ: Yes.

CHAIRMAN FESMIRE: Are you going to be --

COMMISSIONER BAILEY: I'll be in town.

CHAIRMAN FESMIRE: Why don't we just continue this meeting until Friday morning, nine o'clock, in Porter Hall --

COMMISSIONER CHAVEZ: Before we do that, would the order be much different than this particular one?

MR. BROOKS: It's going to have to be somewhat different from that. That's the one that refuses the stay, right?

COMMISSIONER CHAVEZ: That's right.

MR. BROOKS: It's going to have to be somewhat different than that because if you're going to have to -- in the first place, we grant the stay, but also, I assume, we want to give reasons, especially since the Commission is divided. And furthermore, we've got to put the conditions in.

COMMISSIONER CHAVEZ: Okay, very good.

MR. BROOKS: So it is going to be more complex.

COMMISSIONER CHAVEZ: I see, yeah, exactly. Continuing it to Friday would be fine.

CHAIRMAN FESMIRE: Okay, and you can conference in?

COMMISSIONER CHAVEZ: Yes.

CHAIRMAN FESMIRE: And Jami and I will be here.

COMMISSIONER BAILEY: Okay, Friday at 9:00.

CHAIRMAN FESMIRE: Friday at nine o'clock.

COMMISSIONER CHAVEZ: Could we make that -- sorry, Friday at 10:00?

CHAIRMAN FESMIRE: Friday at 10:00?

MR. BROOKS: That is Friday, September the 23rd?

COMMISSIONER BAILEY: Uh-huh.

CHAIRMAN FESMIRE: Okay, and we need to -- Anything else? Oh, we need to make sure that the Applicant understands that the new order doesn't take effect until signed, until the Commission's order is signed. So the stay will be in effect until the new order is signed.

Anything else?

COMMISSIONER BAILEY: That's it.

CHAIRMAN FESMIRE: The Chair would entertain a motion for -- dismissal is not the right word -- adjournment.

COMMISSIONER CHAVEZ: I so move.

COMMISSIONER BAILEY: Second.

CHAIRMAN FESMIRE: All those in favor?

COMMISSIONER BAILEY: Aye.

COMMISSIONER CHAVEZ: Aye.

CHAIRMAN FESMIRE: Opposed? The meeting is adjourned at 1:45 p.m.

(Thereupon, these proceedings were concluded at 1:45 p.m.)

* * *

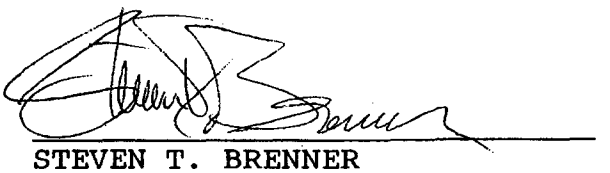
CERTIFICATE OF REPORTER

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 September 18th, 2005.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006