

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

THE COMMISSION WILL MEET FOR THE PURPOSE  
OF SIGNING AN ORDER IN 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  
AND ANY RELATED BUSINESS

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSION HEARING

2005 SEP 27 PM 12 49

BEFORE: MARK E. FESMIRE, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
WILLIAM C. OLSON, COMMISSIONER

September 23rd, 2005  
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Friday, September 23rd, 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.

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September 23rd, 2005  
Commission Hearing

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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 10:00 a.m.:

3           CHAIRMAN FESMIRE: Let the record reflect that  
4 it's 10:00 o'clock a.m., on Friday, September 23rd, 2005.  
5 The New Mexico Oil Conservation Commission is reconvening  
6 and is hereby in session to discuss Cause Number 13,480 and  
7 to review Division's proposed Order R-12,306-B.

8           MR. BROOKS: Mr. Chairman, I suggest that the  
9 record should reflect that the Commission meeting was  
10 convened this morning pursuant to adjournment announced on  
11 September 15th.

12           CHAIRMAN FESMIRE: Right, it was continued until  
13 this morning from the September 15th meeting.

14           The first order of business is to introduce a new  
15 Commissioner. Mr. Bill Olson was appointed to replace Mr.  
16 Frank Chavez on September 20th, 2005. He is the appointee  
17 of Secretary Joanna Prukop, and we have a letter to that  
18 effect. I'm going to read that letter into the record.

19

20           Dear Mr. Olson:

21           Pursuant to the authority vested in me by NMSA  
22 1978 Section 70-2-4 as amended, I hereby appoint you  
23 to serve as the designee of the Secretary of the  
24 Energy, Minerals and Natural Resources Department on  
25 the Oil Conservation Commission. It is my belief that

1 your appointment will increase the Commission and  
2 Division's ties to the Environment Department as we  
3 work together to protect groundwater. Your  
4 appointment is effective immediately. It will be  
5 good to have you back with us in this capacity.

6 Sincerely,

7 (signed)

8 Joanna Prukop

9 Cabinet Secretary

10

11 I'm going to ask the OCC secretary to make sure  
12 that this becomes part of the record.

13

\* \* \*

14

15 CHAIRMAN FESMIRE: We will now continue with  
16 Cause Number 13,480. Counsel Brooks, I believe the last  
17 thing that the Commission did was ask you to draft an order  
18 that reflected the counsel -- the Commission's decision in  
19 that case. Have you done so?

20

MR. BROOKS: I have.

21

22

CHAIRMAN FESMIRE: Have the Commissioners had a  
chance to review that order?

23

COMMISSIONER BAILEY: Not completely.

24

25

CHAIRMAN FESMIRE: Okay, we'll take a few minutes  
while that's done.

1 COMMISSIONER BAILEY: Thank you.

2 COMMISSIONER OLSON: And Mr. Chair, I guess maybe  
3 I'll need to state for the record that I wasn't a party to  
4 the prior discussions that went on with this item, so I  
5 think -- I don't think it would be appropriate for me to  
6 vote on this matter since I wasn't part of those executive  
7 discussions on that.

8 CHAIRMAN FESMIRE: Okay. Commissioner Olson,  
9 what would it take to get you up to speed on this case?

10 COMMISSIONER OLSON: Well, I guess I'd -- I think  
11 we'd probably have to have, I guess, a discussion of this.  
12 This is not on the agenda for the meeting at this point,  
13 but I would think I'd probably have to be part of some kind  
14 of discussion that was going on with this in order to be  
15 able to participate in a vote on it.

16 COMMISSIONER BAILEY: Okay.

17 CHAIRMAN FESMIRE: Is there a motion to accept  
18 the order?

19 COMMISSIONER BAILEY: I so move that we accept  
20 this order.

21 CHAIRMAN FESMIRE: Is there a second?

22 The motion dies for lack of a second.

23 Is there a motion to continue this case to a  
24 regularly scheduled hearing date and --

25 COMMISSIONER BAILEY: I would like to make a

1 comment.

2 CHAIRMAN FESMIRE: Sure.

3 COMMISSIONER BAILEY: This order accurately  
4 represents the decision of the Commission that did hear  
5 this case the last time we were in session. We discussed  
6 the order in closed session and then we came back on the  
7 record and announced what the Commission's decision was at  
8 that point.

9 This order does accurately reflect that decision  
10 that was made by the appointed Commission at that time.

11 CHAIRMAN FESMIRE: Well, without a motion to -- I  
12 mean, without an adoption and signed order, what is the  
13 recommendation of the Commission? How do we proceed from  
14 here?

15 COMMISSIONER BAILEY: A majority of the  
16 Commission that was a part of that hearing is here and  
17 present, and I move that the two parties who are here sign  
18 this order.

19 CHAIRMAN FESMIRE: Is there a second?

20 Motion dies for lack of a second.

21 Is there a motion that we continue this case, or  
22 Commissioner Olson, what would it take to get a decision in  
23 this cause?

24 COMMISSIONER OLSON: Well, I would think that in  
25 order for me to vote, I guess I would suggest that we

1 reopen the record on this and properly notice it for a  
2 future meeting of the Commission.

3 CHAIRMAN FESMIRE: Would we need a -- Counsel  
4 Brooks, would we need a notice if we could continue it to  
5 the next regularly scheduled counsel meeting -- Commission  
6 meeting?

7 MR. BROOKS: The next regularly scheduled counsel  
8 [sic] meeting is on October the --

9 CHAIRMAN FESMIRE: -- 13th.

10 MR. BROOKS: -- 13th. This is September the 22nd  
11 [sic]. If we could give notice today, yes, we could -- to  
12 the affected parties, we could hold that -- the published  
13 notice on Commission Hearings doesn't -- where they're not  
14 rule-making, does not have to have the 20-day lead time,  
15 only the notice to the parties. So we could give the  
16 notice to the parties. If we gave the notice to the  
17 parties by tomorrow, this could be scheduled -- no, I  
18 believe -- if we gave it today, this could be scheduled for  
19 the October 13th meeting.

20 CHAIRMAN FESMIRE: Do we need notice if we  
21 continue it?

22 MR. BROOKS: Yes, because it was never set for  
23 hearing. If we're going to set it for hearing, we do.  
24 Now, if we're simply going to set it for discussion by the  
25 Commissioners, no, because that's the way it was set

1 originally.

2           The reason it was set that way -- or one of the  
3 reasons it was set that way was that at the time the motion  
4 was filed there was not time to give an appropriate notice  
5 for hearing, unless an emergency had been -- unless it had  
6 been treated as an emergency.

7           But there is time now. If the Commission wishes  
8 to have a hearing on it, they can set a hearing for October  
9 13th.

10           CHAIRMAN FESMIRE: October 13th has --

11           MS. DAVIDSON: Excuse me --

12           COMMISSIONER OLSON: There's a whole series of  
13 hearings.

14           MS. DAVIDSON: -- the Gandy Marley *de novo* case  
15 is already set for October 13th, but that --

16           MR. BROOKS: For hearing on the merits; is that  
17 correct?

18           MS. DAVIDSON: That's the *de novo* case. It was  
19 just advertised as a *de novo*.

20           CHAIRMAN FESMIRE: So any decision we'd make at  
21 the next Commission Hearing would be moot, right?

22           MR. BROOKS: Well, if we hear it. Now of course,  
23 it may not -- although it's set for the October 13th, it  
24 might not be reached.

25           But there's no need to -- in view of what the

1 Commission Secretary has said, which I was unaware, there's  
2 no need for any notice, because it being set for hearing on  
3 the merits, the Commission can hear any matter pertaining  
4 to that case at the October 13th meeting, without any  
5 further notice.

6 CHAIRMAN FESMIRE: So this decision would  
7 basically be mooted by a decision in the Gandy Marley *de*  
8 *novo* hearing, correct?

9 MR. BROOKS: Yes, I think it would, because the  
10 motion -- the request was to stay the Order 12,306-B until  
11 such time as the Commission had an opportunity to hear the  
12 Application for *de novo* review of that order.

13 So if the Commission hears the *de novo* case and  
14 enters an order disposing of the case, then the question of  
15 whether to continue -- whether to stay the Order 12,306-B  
16 until the Commission enters such a decision would then  
17 become moot.

18 CHAIRMAN FESMIRE: Okay. So the proper  
19 procedural avenue would probably be to stay this until  
20 there's a motion in the *de novo* case -- I mean a decision  
21 in the *de novo* case, at which time it would probably be  
22 moot and dismissed?

23 MR. BROOKS: I think the Commission can do what  
24 it wishes to do. I'm simply pointing out that there is no  
25 -- anything can be heard. There's no necessity to make a

1 decision at this point, because since the Commission --  
2 since the case is on the docket for the October 13th  
3 meeting, anything pertaining to that case can be heard at  
4 that time without any further notice.

5 CHAIRMAN FESMIRE: Okay. So the best procedure,  
6 then, would be to just continue this until that docket?

7 MR. BROOKS: That would be one appropriate option  
8 the Commission could take.

9 CHAIRMAN FESMIRE: Okay, the --

10 MR. BROOKS: I would point out, however, that  
11 from a parliamentary standpoint I believe that -- of course  
12 there was a prior vote of the Commission, but so far as the  
13 order is concerned, the tie vote creates a situation where  
14 the order is negated. So the Commission has, in effect,  
15 voted not to adopt that order.

16 I guess because there was a prior motion -- vote  
17 on the Application itself, the Commission has not actually  
18 terminated the Application -- has not actually ruled on the  
19 Application at this point, perhaps. It's a little bit  
20 confusing from a parliamentary standpoint.

21 CHAIRMAN FESMIRE: Okay.

22 MR. BROOKS: But I believe that the matter can be  
23 -- whatever the current status is -- and perhaps by October  
24 13th I would be in a position to advise the Commission of  
25 my opinion as to where that leaves us, which I'm not now --

1 but whatever it is, whatever the current status of the  
2 decision is, the Commission can reopen it either way at  
3 that meeting, since that case is noticed for that  
4 meeting --

5 CHAIRMAN FESMIRE: Okay.

6 MR. BROOKS: -- that hearing, and do whatever the  
7 Commission feels is appropriate.

8 CHAIRMAN FESMIRE: Okay. Well, I think the --  
9 like I said, the proper procedure, then, is just to  
10 continue this matter, this case, to the *de novo* hearing and  
11 determine it as basically an appendage to the *de novo*  
12 hearing. Is that --

13 MR. BROOKS: That would be an appropriate course  
14 that the Commission could choose to follow.

15 CHAIRMAN FESMIRE: Okay. The Chair would  
16 entertain a motion to that effect if --

17 COMMISSIONER BAILEY: No.

18 COMMISSIONER OLSON: I'd move we continue it to  
19 the October 13th meeting.

20 CHAIRMAN FESMIRE: Second. Let the record  
21 reflect -- All those in favor?

22 CHAIRMAN FESMIRE: Aye.

23 COMMISSIONER OLSON: Aye.

24 CHAIRMAN FESMIRE: Opposed?

25 COMMISSIONER BAILEY: Me.

1           CHAIRMAN FESMIRE: Let the record reflect that on  
2 a two-to-one vote this matter was continued till the  
3 October 13th hearing, and the orders now in place will  
4 remain in place until that hearing.

5           MR. BROOKS: That being Order R-12,306-B, which  
6 rescinds the emergency order extension in Order R-12,306-C,  
7 which denied the motion to stay Order R-12,306-B. Those  
8 orders will continue in force.

9           CHAIRMAN FESMIRE: Is there any further business  
10 before the Commission this morning? Anything that anybody  
11 wants to put on the record?

12           COMMISSIONER BAILEY: I strongly object to the  
13 situation that has arisen and the actions that have been  
14 taken.

15           CHAIRMAN FESMIRE: Commissioner Olson, do you  
16 have anything to add?

17           COMMISSIONER OLSON: I don't think I do.

18           CHAIRMAN FESMIRE: At this point the Chair would  
19 entertain a motion to adjourn.

20           COMMISSIONER OLSON: So move.

21           COMMISSIONER BAILEY: Second.

22           CHAIRMAN FESMIRE: All those in favor?

23           COMMISSIONER BAILEY: Aye.

24           COMMISSIONER OLSON: Aye.

25           CHAIRMAN FESMIRE: Opposed?

1           The motion to adjourn carries, and the meeting is  
2 adjourned at 10:18 p.m. [*sic*].

3           (Thereupon, these proceedings were concluded at  
4 10:18 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 September 23rd, 2005.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006