

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. 13,589

APPLICATION OF DUKE ENERGY FIELD)
SERVICES, LP, FOR APPROVAL OF AN)
ACID GAS INJECTION WELL, LEA COUNTY,)
NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

February 9th, 2006

Santa Fe, New Mexico

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This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, February 9th, 2006, 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. 13,589

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By: J. SCOTT HALL

* * *

1 WHEREUPON, the following proceedings were had at
2 9:08 a.m.:

3 CHAIRMAN FESMIRE: The next cause before the
4 Commission is Case Number 13,589, continued from the
5 January 12th, 2006, Commission meeting. This case is the
6 Application of Duke Energy Field Services for approval of
7 an acid gas injection well in Lea County, New Mexico.

8 Are the attorneys present?

9 MR. CARR: May it please the Examiner, my name is
10 William F. Carr with the Santa Fe office of Holland and
11 Hart, L.L.P. We represent Duke Energy Field Services in
12 this matter.

13 MR. HALL: Mr. Chairman, Scott Hall, Miller
14 Stratvert law firm, Santa Fe, appearing on behalf of AC
15 Ranch Partnership, Beach Snyder and Randall Smith.

16 Also, Mr. Chairman, the Division through Ms.
17 O'Connor has moved to intervene in this proceeding. I
18 don't believe she's present this morning.

19 CHAIRMAN FESMIRE: Okay. Mr. Carr, I understand
20 that there is an agreed motion for continuance in this
21 case, but there are some matters that we have to take up
22 before that can be granted?

23 MR. CARR: May it please the Commission, last
24 Friday we had -- there was a prehearing conference in this
25 matter. And following that, we requested that the case be

1 continued and have also asked that the Commission consider
2 setting the matter for hearing on a special hearing date.
3 I requested an opportunity to address the Commission
4 concerning a special hearing date.

5 MR. BROOKS: I would note, Mr. Chairman, for the
6 record, that after we were advised that the Applicant's
7 request for continuance, which we had thought was not
8 contested -- or I had thought that, perhaps erroneously,
9 however -- we received a motion to dismiss from the parties
10 represented by Mr. Hall, and I was unsure if Mr. Hall was
11 urging his motion to dismiss and wants it heard prior to
12 considering whether or not to continue the case.

13 CHAIRMAN FESMIRE: Mr. Hall?

14 MR. HALL: Mr. Chairman, we would agree to the
15 continuance. I think the Applicant ought to have the
16 opportunity to respond to our motion to dismiss, so we'll
17 work with Mr. Carr to see if we can't find a date to carry
18 the case to.

19 CHAIRMAN FESMIRE: Okay. So the Commission will
20 not address the motion to dismiss this morning.

21 I do understand that prior to the continuance
22 being granted, that there were some statements that the
23 parties wanted to enter into the record. Is that okay with
24 both parties? Mr. Carr?

25 MR. CARR: May it please the Commission, Duke

1 Energy Field Services in this case is seeking authorization
2 to drill its Linam AG well Number 1 for the purpose of
3 injecting acid gas into the lower Bone Springs formation in
4 Lea County, New Mexico.

5 We are seeking approval of our C-108 Application
6 that was filed before the Division last September. When we
7 get to hearing, we will show you that it is environmentally
8 sound, that there is no down side to what we're proposing,
9 and that it is something that can be and is safely done.

10 This is the fourth application for an acid gas
11 injection well that I'm aware of that has come before the
12 Division. Prior applications were for high-pressure lines;
13 Duke's is a low-pressure line. And the prior applications
14 were approved through an administrative process; this case
15 has been set for hearing.

16 Duke's Application, as I noted, was filed
17 September the 12th, and the Oil Conservation Division
18 responded to that Application four days later with a letter
19 that set out 12 questions for Duke concerning what we were
20 proposing.

21 The letter also advised us that the Application
22 would not be approved administratively but would be set for
23 hearing before the Oil Conservation Commission, not the
24 Division. And that, as we all know, just as a practical
25 matter, has limited our opportunity to get the matter to

1 hearing.

2 Duke responded to each of the 12 points on
3 October the 7th. We believe and -- in communications with
4 the Division, believe we have fully responded to each of
5 those 12 points. Because of the additional notice, we now
6 have parties who are objecting to the Application.

7 It was set for hearing, and we have continued the
8 case while we have been attempting to get from the
9 Commissioner of Public Lands a right-of-way easement for
10 this project. We got last week to the point where we
11 request- -- We got to the point where we had the prehearing
12 statements filed by the Division. It indicated it wasn't
13 opposing the Application but that it might impose
14 additional conditions. And so we requested a prehearing
15 conference basically to -- so we could determine what those
16 were, so we could be fully prepared to respond here today.

17 I want you to know, we were ready to go to
18 hearing, we are ready to go to hearing. We prefiled our
19 exhibits, as did Mr. Hall, last Thursday. We filed our
20 prehearing statements. My witnesses are here today, and we
21 are prepared to review our C-108 Application, discuss the
22 geology in the subject area and to fully review the safety
23 issues.

24 At the prehearing conference, three issues came
25 up. First, it was agreed that we needed to have a right-

1 of-way easement before we could come before you. We needed
2 to have a right to be on those properties to do what we
3 were proposing to do.

4 We were also told that before we could go to
5 hearing we needed to have a Rule 118 H₂S contingency plan
6 before the Division.

7 And we were also advised that we needed to obtain
8 modifications of our current -- the current permits, Water
9 Quality Control Commission permits.

10 These last two considerations had never been
11 raised with us. They were not included in the 12 points in
12 the letter we received last fall, and for the first time we
13 were aware that the Division was going to require these,
14 for the first time, six days before the hearing.

15 I would note that if you look at your Rules on
16 the C-108 application, neither of these are required. They
17 were not required in the prior applications for acid gas
18 injection wells, in the Agave case. Agave said after their
19 facility was completed and operating, they would come back
20 and make whatever proposals were appropriate to their
21 existing modifications, and the Division required none.

22 But we are now -- those have been made conditions
23 precedent to even getting to a hearing on our C-108
24 Application. And what we really feel like we need is a
25 fair hearing on what we have filed, and that if there are

1 other permits with other permits with other boards and
2 other agencies, they're obviously a condition that we must
3 meet before we go forward, but they shouldn't be a
4 condition precedent to a hearing before this body.

5 Following the prehearing conference, we continued
6 the case.

7 Now, I told the Division at the prehearing
8 conference that I would not come before the Commission
9 unless I had a right to be on the lands to do what we were
10 proposing to do. I can tell you, we have that right. Duke
11 has leased the mineral rights under the subject land, and
12 we obtained yesterday evening a right-of-way easement from
13 the Commissioner of Public Lands, so we do have the right
14 to come before you. We have the property rights needed to
15 bring this Application to hearing, and now we are seeking
16 authorization to go forward with the well pursuant to our
17 C-108 Application, and we need a hearing, and we really
18 need it soon. And we're proposing approximately a 30-day
19 delay.

20 During that time period, we can prepare and will
21 submit the C-118 H₂S contingency plan. We did file an
22 independent risk analysis with our exhibits that contains
23 significant information on H₂S and how it will be handled,
24 and I submit it goes far beyond in many ways the Rule 118
25 requirements. But within the next month we will prepare

1 the formal Rule 118 H₂S contingency plan and get it to your
2 staff and to Mr. Hall and his clients so they have ample
3 time to review it before the hearing.

4 As to the Water Quality Control Commission
5 permit, we don't know if we need a modification until we
6 design and get this facility in. It wasn't required of
7 Agave, it wasn't required of others, and we don't think it
8 should be a condition precedent to a hearing on an
9 application where the Rules don't require that. Everything
10 we're going to do is consistent with existing permits.

11 And we would like to go forward, because it
12 creates sort of an impasse. We don't know what we need
13 until we do this, and we can't do this until we get what
14 we're going to need approved. We think it should simply be
15 a condition, the approval order from the Commission.

16 And so for that reason, we believe that we can
17 have the concerns that were raised last Friday, all issues
18 resolved, by the week of March the 13th. And we know that
19 there -- your problems trying to get a quorum and get to
20 hearing, but we are asking that a special hearing be set to
21 hear this case during that week.

22 We have opposition in this case, it makes it
23 different than the other applications. And I want you to
24 know, and I want to make it clear, that Duke Energy Field
25 Services, along with the State Land Office, the OCD, Mr.

1 Hall's client and the public, are concerned about the
2 safety issues involved with any acid gas injection well.
3 That's why we went out and had an independent group do a
4 risk analysis.

5 For us, what we're proposing is a simple process.
6 And if we haven't communicated to Mr. Hall's clients or the
7 public well enough the details of what we're doing, we
8 regret that, because we believe when the information is out
9 we'll be able to deal with any reasonable concern or
10 objection.

11 And for that purpose, during the next 30 days, we
12 are also inviting the OCD, the Land Office, Mr. Hall, his
13 clients, any member of the public, to come to our Artesia
14 facility. You see, we open -- we operate safely a facility
15 in Artesia, and the facility at Linam will be virtually
16 identical to what we do at Artesia. We would like to do
17 that within the next 30 days. Our schedules are flexible,
18 anyone can coordinate that activity with me. If you'll
19 come to Artesia, we'll review our facility and our plans,
20 we'll go over the independent risk assessment that we have
21 had prepared, and we can generally review the design and
22 the safety features of this type of facility.

23 And once we do that, get the H₂S plan to you, we
24 really need a hearing, we need a fair hearing, on the
25 issues that are appropriate to a C-108 application.

1 CHAIRMAN FESMIRE: Mr. Hall, could you -- You
2 represent AC Ranch Partnership. Could you identify who
3 that is with respect to the location of the injection well
4 and the pipeline?

5 MR. HALL: AC Ranch Partnership is a partnership
6 comprised of Mr. S.G. Cobb and Mr. Ben Alexander. My other
7 client, Randall Smith, is the owner of a ranch unit to the
8 immediate north of the proposed injection facility. Beach
9 Snyder is Mr. Alexander's son-in-law and the general
10 managing partner of AC Ranch Partnerships.

11 CHAIRMAN FESMIRE: Go ahead, sir, I apologize for
12 that interruption.

13 MR. HALL: It's -- and it's on their behalf that
14 I did file the motion to dismiss. And I raised two primary
15 points, and at the time the first was that Duke Energy did
16 not have the right to go upon the lands and utilize the
17 lands for injection purposes. I was unaware until now that
18 they've apparently obtained a right-of-way permit for the
19 pipeline right-of-way segment only of the facility. I'm
20 not sure whether that permit would include the compression
21 facility, the surface installation, or whether the Land
22 Office has undertaken any sort of review or permitting for
23 the injection well itself. I just don't know that.

24 I will tell you that in view of this news on
25 behalf of my clients, I plan on initiating an

1 administrative appeal contest with the State Land Office
2 over the issuance of that permit.

3 The other issue I raised in the motion to dismiss
4 was the apparent inadequacy of notice. And by doing that,
5 I believe in the motion I touched on, really, a larger
6 issue here, and that is the adequacy of the process for the
7 Division's review and consideration and approval of
8 projects like this at all.

9 I think a good starting point for the
10 Commission's review of the Application ought to be the
11 statute. If you go back to the statutory charge to the
12 Division under 70-2-12.B.21 and 22, those are the statutory
13 subparts that regulate -- or charge the agency with
14 regulating the underground injection and disposal of gas
15 and fluids. In each of those subparts, the agency is
16 charged with acting to ensure that public health, safety
17 and the environment are protected.

18 Now, when I first delved into the process here,
19 I'd never been exposed to an acid gas injection well
20 before. But it was apparent to me that historically the
21 Division had treated applications like this -- and there've
22 only been a handful, not much different than an application
23 for a Class II saltwater disposal well under the C-108
24 application form.

25 That struck me as inadequate, given that in this

1 case we're dealing with carbon dioxide and hydrogen
2 sulfide. With respect to H₂S, it is, as you know, a RCRA-
3 exempt waste, but it is still a hazardous waste, and on
4 some EPA and OSHA lists it is classified as an
5 ultrahazardous waste.

6 So it seemed to me that treating this as a
7 saltwater disposal well and the limited notice and review
8 process in place for those types of facilities didn't seem
9 to fit the bill. In this case the Division, I think,
10 became aware of that and had some additional concerns and
11 posed some additional requirements on Duke.

12 And I think -- I believe Duke has proceeded in
13 good faith in its Application here. If you put yourself in
14 their shoes and you look at the Division's rules you're
15 supposed to follow in processing an application like that,
16 I think they found that the rules are somewhat vague,
17 they're a little disjointed. In this case, I think it's
18 apparent that Duke initially didn't go beyond the C-108
19 permitting process. Then it became clear to the Division
20 that they ought to do a little bit more.

21 And I think they ought to do even more than that.
22 Given the disjointed nature of the Division's Rules and
23 Regulations, I would suggest that the Commission and the
24 Division take the delay as an opportunity to review and
25 rethink the process for handling applications for

1 hazardous-waste injection wells like this.

2 And so that's a suggestion at this point, Mr.
3 Chairman.

4 CHAIRMAN FESMIRE: I think the first issue that
5 needs to be addressed is the motion for continuance. The
6 Chairman will -- we got that -- was it -- When did you
7 deliver that, Monday?

8 MR. CARR: Monday --

9 CHAIRMAN FESMIRE: In our --

10 MR. CARR: -- Tuesday morning, at exactly nine
11 o'clock, which is the deadline under the Rule.

12 CHAIRMAN FESMIRE: Yeah. And we have how long to
13 respond, Counsel Brooks?

14 MR. BROOKS: What --

15 CHAIRMAN FESMIRE: The Chairman has a limited
16 amount of time to respond to the motion. Do you know what
17 that time is off the top of your head?

18 MR. BROOKS: I thought that the motion could be
19 addressed by the Commission at the meeting.

20 CHAIRMAN FESMIRE: Can it?

21 MR. BROOKS: I believe it can be. A motion for
22 continuance can be presented to the Chairman as a
23 prehearing matter, but that hasn't been the way it's
24 customarily been done. It -- unless the parties needed to
25 know in advance whether they were going to hearing or not,

1 there was some particular reason why a motion should be
2 presented. I think that certainly the Commission can act
3 on it --

4 CHAIRMAN FESMIRE: Okay.

5 MR. BROOKS: -- because there has been no action
6 on it today.

7 CHAIRMAN FESMIRE: I have not had the chance to
8 review the motion. Have any of the Commissioners?

9 COMMISSIONER BAILEY: No.

10 CHAIRMAN FESMIRE: And it's a pretty significant
11 motion. I mean, just weighing it is -- including the
12 attachments, is, I think, something that we need to pay
13 attention to, and I would hate to rule on it hastily.

14 MR. BROOKS: You're speaking of the motion to
15 dismiss, right?

16 CHAIRMAN FESMIRE: Yes.

17 MR. BROOKS: Okay, yeah. I thought you said that
18 the first matter you were going to address was the motion
19 for continuance.

20 CHAIRMAN FESMIRE: I'm sorry, the motion for --
21 motion to dismiss. Then I think we'd need to address the
22 motion for continuance and special setting.

23 The Commission does not have to rule on the
24 motion to dismiss, does it?

25 MR. BROOKS: I think it -- probably that the

1 Commission should rule on it. Arguably, it would be a
2 preliminary matter that the Chairman could -- the Director
3 of the Division could rule on, but since this motion would
4 be dispositive, and since there's nothing specifically in
5 the Rule that says the Chairman can act on a motion to
6 dismiss, I would think it would be appropriate for the
7 Commission to act on the motion to dismiss.

8 And of course, I believe the parties have agreed
9 that they do not want to submit it to the Commission today,
10 was my understanding of the statements of counsel.

11 MR. CARR: May it please the Chairman, I have not
12 read the motion to dismiss. That was served yesterday.
13 And it would seem to me that the case could be continued.
14 If it's dismissed, of course, then the continuance is of no
15 meaning.

16 CHAIRMAN FESMIRE: Okay. So the next time that
17 we could address the motion to dismiss would be at the next
18 regularly scheduled Commission meeting, which is not until
19 the 23rd of next month. If the motion to continue is not
20 -- I mean, if the motion to dismiss is not granted, that
21 puts us a month down the road, which I understand would be
22 a problem if we're going to proceed.

23 MR. CARR: We have known a motion to dismiss was
24 going to be filed, Mr. Hall advised us of that last week.
25 To again cause another delay, simply because we didn't get

1 the motion till the afternoon before the hearing, seems to
2 work another hardship on Duke. I mean, all we've wanted to
3 do from the beginning was be treated like other people
4 before this Division and Commission and have an application
5 heard.

6 And from what Mr. Hall said, there were two
7 issues. One is the motion to dismiss on the grounds that
8 we don't have a right to be there. I have copies of the
9 right-of-way easement that shows we do have a right to be
10 there. There are additional notice requirements in the
11 letter of April the 12th, and we complied with those.

12 And we would hope that our Application would be
13 treated like an application on the Form C-108 for a Class
14 II injection well, which it is, and would be heard by the
15 Commission, and at some reasonable time we'd get some sort
16 of a decision on that.

17 You know, we have plans to go forward, we've got
18 tremendous investment in the effort. For us, it's not a
19 complicated thing. And our problem is, we're seemingly
20 bogged down in an administrative process which is being
21 applied to us, not to others, and is making it impossible
22 for us to go forward with something that we would think
23 makes very good sense, both from a business point of view
24 and the benefits to the State.

25 And if the issue is, do we have a right to be

1 there, I will mark and tender a right-of-way easement from
2 the Commissioner of Public Lands. If the issue is that we
3 haven't provided proper notice, I can submit receipts
4 showing that we complied with your letter of the 12th. We
5 would like to go to hearing.

6 And you can set the matter for hearing, and if
7 the motion to dismiss takes this case out between now and
8 then, then of course the setting is of no import.

9 Now as to motions before the Commission, Mr.
10 Brooks knows the Rule better than I, but it would appear to
11 me that it wouldn't require a full Commission Hearing to
12 rule on a motion. But if it does, then again we would ask
13 that you set it for hearing and rule on that as the first
14 order of business when we come in to present our case.

15 CHAIRMAN FESMIRE: Mr. Hall, would you have a
16 response?

17 MR. HALL: If the Commission is inclined today to
18 grant the motion to dismiss, I'm not going to stand in your
19 way.

20 Again, bear in mind it was Duke Energy that
21 sought the continuance today. We were prepared to go to
22 hearing today in any event.

23 I think the motion is significant. I think it
24 raises important issues for the Commission and the
25 Division, frankly. It ought to be fully briefed and

1 considered. I hate to rush into it and argue the motion
2 the same day we have a hearing on the merits.

3 If in fact, some hardship is caused to Duke
4 Energy, it's not been made apparent. They continue to have
5 an air quality permit that allows them to dispose of H₂S
6 now. I gather from what I've heard that the only
7 motivation to charge forward here is an economic one, but
8 there is no problem disposing -- no physical problem
9 disposing of H₂S currently.

10 So given all that, given the importance of, I
11 think, what is, in my view, an inadequate process, perhaps
12 a process in need of some reform, I think it ought to be
13 given full consideration over the long term.

14 CHAIRMAN FESMIRE: Ms. O'Connor, do you have a
15 comment?

16 MS. O'CONNOR: Yes, thank you, Mr. Chairman. My
17 apologies to the Commission for being late. I thought we
18 were starting at 9:30, so my apologies.

19 But having walked in late, it seems to be the
20 Commission's approach to not consider the motion to
21 dismiss, although I've heard Mr. Carr make comments, and
22 also Mr. Hall, make comments. And the Division would have
23 no comment regarding whether or not there is the legal
24 issue as to the adequacy of the lease; I believe the
25 parties can address that better.

1 But we would have a comment to put before the
2 Commission regarding the notice issue, and that would be
3 that we have heard the parties, Mr. Hall and Mr. Carr,
4 refer to it as a requirement that additional notice be
5 given. There was a letter that was sent out by the OCD
6 employee Will Jones, that made a suggestion that some
7 additional notice be given. That was not a requirement, it
8 was a suggestion, that the Commission may want some
9 additional notice to be given.

10 Although there is some question from Mr. Hall's
11 standpoint that the full notice requirements were met, we
12 believe that all of the parties or all of the entities that
13 were going to be included in that notice do have notice at
14 this point in time, and therefore we believe it is from the
15 OCD's perspective, a moot point.

16 Regarding additional notice that Mr. Hall would
17 like to go into where he suggests that we in essence adopt
18 the Environment Department's notice requirements regarding
19 the hydrogen sulfide injection well, the OCD would point
20 out, one, that we can't adopt rules without going through a
21 rule enactment, but also that there is a contingency plan
22 that would require public notice, and when that hydrogen
23 sulfide contingency plan is put forth by Duke, we believe
24 that the requirement notices that Mr. Hall is concerned
25 about will be met in that matter.

1 CHAIRMAN FESMIRE: Mr. Carr, you say that your
2 client is basically prepared now?

3 MR. CARR: Yes.

4 CHAIRMAN FESMIRE: Mr. Hall, your client is
5 prepared now?

6 MR. HALL: Not this morning --

7 CHAIRMAN FESMIRE: Not this morning.

8 MR. HALL: -- I didn't have him come up, but --

9 CHAIRMAN FESMIRE: You know, with a short notice
10 they are prepared? What I'm thinking is that perhaps we
11 ought to go ahead and specially set this cause, and the
12 first issue that we'll address on the day of the special
13 setting will be the motion to dismiss.

14 MR. BROOKS: Mr. Chairman, honorable
15 Commissioners, while you all were talking I reviewed the
16 Rule, and I believe the Rule is broad enough to allow even
17 dispositive preliminary motions to be heard by the Chair.

18 Of course, it creates a certain practical
19 difficulty if the dispositive motion is granted because
20 arguably that order in itself would be subject to the *de*
21 *novo* hearing Rule, so it could then be appealed to the
22 Commission, the order dismissing the case. But I believe
23 the Rule is broad enough to allow that if the Chairman
24 should decide to do that.

25 CHAIRMAN FESMIRE: I think we will -- with the

1 permission of the Commission, we'll go ahead and set it
2 that way, and try now -- I think now is the best time to
3 try to come up with a date for that special setting, and
4 I'll probably start with Commissioner Olson, who seems to
5 be the busiest of the three of us. Do you have some dates
6 prior to the 23rd of March?

7 MR. CARR: We would like to do it the week of the
8 13th, if that's possible.

9 CHAIRMAN FESMIRE: Commissioner Olson, would you
10 have any time available? First of all, do we think this
11 will take more than day?

12 MR. CARR: No.

13 MR. HALL: I don't think so.

14 COMMISSIONER OLSON: Anything other than the 14th
15 and 15th, I think, is okay with me.

16 CHAIRMAN FESMIRE: The 13th, the 16th and the
17 17th?

18 COMMISSIONER OLSON: Uh-huh.

19 CHAIRMAN FESMIRE: The 13th or the 17th, Monday
20 or Friday? Commissioner Bailey?

21 COMMISSIONER BAILEY: Monday works for me.

22 CHAIRMAN FESMIRE: The 13th?

23 MS. O'CONNOR: Mr. Chairman?

24 CHAIRMAN FESMIRE: Yes, ma'am?

25 MS. O'CONNOR: I'm actually tied up on the 13th,

1 out of town on the 13th.

2 CHAIRMAN FESMIRE: That's with one of Mr. Carr's
3 clients. Do you suppose we could change that trip?

4 MS. O'CONNOR: We can attempt to do that, yes.
5 We will do that.

6 CHAIRMAN FESMIRE: Okay. Secretary Davidson,
7 would we -- Is there anything coming up on the 13th that
8 you --

9 MS. DAVIDSON: Not that I know of.

10 CHAIRMAN FESMIRE: Commissioner, is that --

11 COMMISSIONER BAILEY: I think the 13th is good
12 for me.

13 CHAIRMAN FESMIRE: Mr. Brenner?

14 COURT REPORTER: Yes.

15 CHAIRMAN FESMIRE: Okay, we will go ahead and --

16 MR. HALL: I don't know but I'll look.

17 CHAIRMAN FESMIRE: Okay, I wasn't even going to
18 ask, I'm sorry.

19 MR. HALL: Thank you anyway.

20 CHAIRMAN FESMIRE: Do you think there's anything
21 that you can't change coming up on the 13th?

22 MR. HALL: I just don't know, I was hit with this
23 this morning. But I'll certainly look, and I'll let you
24 know today.

25 CHAIRMAN FESMIRE: Okay. Can you call your

1 office before we --

2 MR. HALL: Sure.

3 CHAIRMAN FESMIRE: Okay, why don't we take a
4 five-minute recess and allow Mr. Hall to call his office
5 before we go ahead and set the date? Okay?

6 (Thereupon, a recess was taken at 9:37 a.m.)

7 (The following proceedings had at 9:40 a.m.)

8 CHAIRMAN FESMIRE: Let's go back on the record.
9 Mr. Hall, I believe you indicated that you're available
10 that day, and you think your witness is, but you haven't
11 checked yet?

12 MR. HALL: We're calling them right now. As soon
13 as we find out, we'll let you know. But subject to their
14 availability, I am available.

15 CHAIRMAN FESMIRE: Okay. Mr. Carr, you had a
16 comment?

17 MR. CARR: All I'd point out is that as we move
18 toward the hearing there is another matter that is -- for
19 which there is no precedent, and that is, we are asking for
20 a right to come to hearing, and the Division is -- we're
21 asking without having the final permit, and in that posture
22 hope to be treated like Agave and others. I mean, we don't
23 want to get to hearing on the 13th, only to be told we
24 can't be heard until we have modified Water Quality Control
25 Commission permits. It really cannot be modified until we

1 get out there and design and start constructing facilities.
2 So that is an important threshold question that we have.
3 By continuing it, it would be pointless to do that only to
4 tell us we can't come in.

5 And the other thing is, I mean, the motion to
6 dismiss is before you. There are two points. I can show
7 you that we have the right to be there, and I think based
8 on comments of Commission counsel and the fact that I think
9 it's hard to object to notice when you're here. We could
10 dispose of that today, but I would like a few minutes to
11 get a copy of the motion and read it.

12 CHAIRMAN FESMIRE: Okay. Well, I don't think Mr.
13 Hall is prepared to argue his motion today. And like I
14 said, we'll just treat it like a threshold issue the date
15 of the special setting.

16 With that, we will go ahead and specially set
17 this cause for February 13th --

18 MR. CARR: March --

19 CHAIRMAN FESMIRE: March 13th --

20 (Laughter)

21 CHAIRMAN FESMIRE: -- March 13th, at nine o'clock
22 a.m. in Porter Hall.

23 Are there any other comments on that cause?

24 Ms. O'Connor, I apologize for fouling up your
25 schedule, but --

1 MS. O'CONNOR: Actually, no, it worked out fine.
2 I thought that you were considering setting it for this
3 Monday, February 13th --

4 CHAIRMAN FESMIRE: No.

5 MS. O'CONNOR: -- so I'm perfectly fine.

6 MR. BROOKS: Mr. Chairman, since this involves
7 setting a special meeting of the Commission, I think it
8 would be appropriate for the commission to take a record
9 vote on the subject, so it will not be necessary for the
10 Chair to enter an order to call a special meeting.

11 CHAIRMAN FESMIRE: Okay. The Chair would
12 entertain a motion to that effect.

13 COMMISSIONER BAILEY: I move that we set a
14 special hearing for Monday, March 13th.

15 COMMISSIONER OLSON: Second.

16 CHAIRMAN FESMIRE: All those in favor?

17 COMMISSIONER BAILEY: Aye.

18 COMMISSIONER OLSON: Aye.

19 CHAIRMAN FESMIRE: Opposed? Let the record
20 reflect that the motion was adopted and that there will be
21 a special setting to hear Cause Number 13,589 on Monday,
22 March 13th, at nine o'clock a.m. in Porter Hall.

23 (Thereupon, these proceedings were concluded at
24 9:35 a.m.)

25 * * *

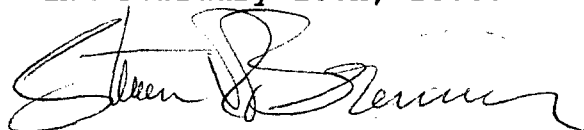
CERTIFICATE OF REPORTER

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 10th, 2006.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006