

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: )  
 )

APPLICATION OF THE NEW MEXICO OIL )  
 CONSERVATION DIVISION FOR REPEAL OF )  
 EXISTING RULE 50 CONCERNING PITS AND )  
 BELOW GRADE TANKS AND ADOPTION OF A )  
 NEW RULE GOVERNING PITS, BELOW GRADE )  
 TANKS, CLOSED LOOP SYSTEMS AND OTHER )  
 ALTERNATIVE METHODS TO THE FOREGOING, )  
 AND AMENDING OTHER RULES TO MAKE )  
 CONFORMING CHANGES; STATEWIDE )

CASE NO. 14,015

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

Volume XX - February 14th, 2008

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 14th, 2008, 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.

\* \* \*

## I N D E X

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Commission Hearing  
CASE NO. 14,015

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(Continued)

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\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   9:00 a.m.:

3           CHAIRMAN FESMIRE: Let's go on the record, then.

4           Let the record reflect that this is the Thursday,  
5   February 14th, 2008, meeting of the New Mexico Oil  
6   Conservation Commission.

7           Let the record also reflect that Commissioners  
8   Bailey, Olson and Fesmire are all present.

9           The major piece of business on today's agenda is  
10   to begin the deliberations on Case Number 14,015, the pit  
11   rule.

12           The record should reflect that many of the people  
13   involved today had made a request that we begin our  
14   deliberations after the Legislative session ends so that  
15   they can be here, and we've agreed to do that.

16           We do have some work that we need to address  
17   before that, so we're going to take care of that, and then  
18   we're going to adjourn for a long lunch and reconvene to  
19   begin the deliberations at one o'clock.

20                           \* \* \*

21  
22           CHAIRMAN FESMIRE: The first order of business on  
23   the agenda today is to address the minutes of the November  
24   5th through December 15th and January 22nd, 2008,  
25   Commission meeting, and we have a copy of those minutes.

1 Have the Commissioners had the opportunity to  
2 review those minutes?

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

5 CHAIRMAN FESMIRE: Is there a second?

6 COMMISSIONER OLSON: Yes, there is.

7 CHAIRMAN FESMIRE: All those in --

8 COMMISSIONER OLSON: -- some edits, but I'm  
9 assuming they got folded into the new documents.

10 CHAIRMAN FESMIRE: Would you like to review it  
11 before we --

12 COMMISSIONER OLSON: No, it was actually quite a  
13 few, so I'm assuming that they were put in there as Florene  
14 stated, so...

15 CHAIRMAN FESMIRE: Okay. And the Commission  
16 secretary has indicated that Commissioner Olson's edits  
17 were adopted?

18 MS. DAVIDSON: Yes.

19 CHAIRMAN FESMIRE: And the same edits you showed  
20 me this morning?

21 MS. DAVIDSON: Yes.

22 CHAIRMAN FESMIRE: Okay. Let the record -- All  
23 those in favor of adopting the minutes as amended -- or as  
24 edited, signify by saying aye.

25 COMMISSIONER BAILEY: Aye.

1 COMMISSIONER OLSON: Aye.

2 CHAIRMAN FESMIRE: Aye.

3 Let the record reflect that the minutes were  
4 adopted, and they will be signed and conveyed to the  
5 Commission secretary.

6 My goodness, there are a lot of minutes here.

7 COMMISSIONER OLSON: Uh-huh.

8 \* \* \*

9  
10 CHAIRMAN FESMIRE: The next order of business  
11 before the Commission is the adoption of the minutes of the  
12 January 22nd, 2008, meeting in Porter Hall, other than  
13 those associated with the pit rule hearing, Case Number  
14 14,015.

15 Have the Commissioners had the opportunity to  
16 review these minutes?

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

19 CHAIRMAN FESMIRE: Is there a second?

20 COMMISSIONER OLSON: Well, I was going to abstain  
21 from the -- just because I wasn't at the -- at this  
22 meeting.

23 CHAIRMAN FESMIRE: Okay, the Chair will second  
24 the motion.

25 All those in favor signify by saying aye.

1 COMMISSIONER BAILEY: Aye.

2 CHAIRMAN FESMIRE: Aye.

3 Let the record reflect that Commissioners Bailey  
4 and Fesmire, who were the Commissioners present at the  
5 meeting, voted to adopt the meeting -- adopt the minutes.  
6 The minutes will be signed and conveyed to the Commission  
7 secretary.

8 CHAIRMAN FESMIRE: The next order of business --

9 COMMISSIONER OLSON: Just a note that I abstained  
10 from that because I wasn't here, so...

11 CHAIRMAN FESMIRE: Let the record reflect that  
12 Commissioner Olson abstained.

13 \* \* \*

14

15 CHAIRMAN FESMIRE: The next order of business  
16 before the Commission is the adoption of the points of  
17 understanding. These are the notes indicating the  
18 preliminary agreements of the Commissioners in Case Number  
19 14,015, the pit rule hearings.

20 Commissioner Bailey, did you get a chance to  
21 review these points of understanding?

22 COMMISSIONER BAILEY: Yes, I did, and I believe  
23 that they accurately reflect the agreements that we reached  
24 in open session during the last meeting concerning the pit  
25 rule.



1           CHAIRMAN FESMIRE: Commissioner Olson, did you  
2 get a chance to review it?

3           COMMISSIONER OLSON: Yes, I did, and I concur  
4 with Commissioner Bailey.

5           CHAIRMAN FESMIRE: Okay. The Chair will  
6 entertain a motion to adopt these points of understanding  
7 and that they be signed by the Commissioners and conveyed  
8 to the secretary.

9           COMMISSIONER BAILEY: I so move.

10          CHAIRMAN FESMIRE: Is there a second?

11          COMMISSIONER OLSON: There's a second.

12          CHAIRMAN FESMIRE: All those in favor signify by  
13 saying aye.

14          COMMISSIONER BAILEY: Aye.

15          COMMISSIONER OLSON: Aye.

16          CHAIRMAN FESMIRE: Aye.

17                Let the record reflect that the points of  
18 understanding were adopted by the Commissioners. They will  
19 be signed by each one of the Commissioners and conveyed to  
20 the secretary.

21                               \* \* \*

22

23          CHAIRMAN FESMIRE: At this time the chair would  
24 entertain a motion to adjourn for lunch and reconvene at  
25 one o'clock, at which time we will begin the deliberations

1 in Case Number 14,015. Is there such a motion?

2 COMMISSIONER OLSON: So move.

3 CHAIRMAN FESMIRE: The Chair will second.

4 All those in favor, signify by saying aye.

5 COMMISSIONER OLSON: Aye.

6 CHAIRMAN FESMIRE: Aye.

7 Let the record reflect that by a vote of two to  
8 one the motion to adjourn until one o'clock, at which time  
9 we will address the -- we will begin the deliberations in  
10 Case Number 14,015.

11 Thank you very much.

12 (Thereupon, recess was taken at 9:06 a.m.)

13 (The following proceedings had at 1:00 p.m.)

14 CHAIRMAN FESMIRE: At this time we will reconvene  
15 the Thursday, February 14th, 2008, regularly scheduled New  
16 Mexico Oil Conservation Commission meeting.

17 The order of business remaining on the docket is  
18 the deliberations in Case Number 14,015.

19 At this time the record should reflect that all  
20 three Commissioners are present and prepared, somewhat, to  
21 deliberate.

22 I do need to make sure that the observers  
23 understand that the record is closed and that the purpose  
24 of this meeting is for deliberations, it's not to receive  
25 evidence, and that the Commissioners and their counsel are

1 the ones who should be doing the discussion. I guess  
2 that's a nice way of saying, remember, the record is  
3 closed. Okay?

4 The record has again reflected that all three  
5 Commissioners are present.

6 I do need to inform the Commissioners that all of  
7 the transcripts have not been completed, in spite of a  
8 heroic effort by our court reporter. We're still two,  
9 maybe three transcripts short; is that correct?

10 COURT REPORTER: Two short.

11 CHAIRMAN FESMIRE: Two short. He delivered two  
12 this morning. I have not had the chance to look at them.

13 But not including those two, some of the  
14 testimony that is not present for us to evaluate at this  
15 time is the last testimony, consisting of the testimony of  
16 the Conoco witnesses. Some of the statements and testimony  
17 of, for instance, Mr. Gallagher, is not available to us.

18 And I'm going to be pretty honest, I have not had  
19 a chance to go through all of the testimony that I would  
20 like to have gone through and to review in preparation for  
21 our meeting today. Before we come to a final decision I  
22 will have reviewed all of the transcripts.

23 So at this time I wanted to discuss with the  
24 Commission the way to proceed.

25 One of the things that I asked counsel to

1 distribute to the Commissioners was a summary of parties'  
2 objections to the pit rule.

3 This is the document that we generated at our  
4 last meeting when we began. It's a list of the sections of  
5 the proposed rule, the proposed rule as proposed by the Oil  
6 Conservation Division, and the comments that we received  
7 from each party concerning that.

8 I have read all of the comments that were made by  
9 people presenting either comments or evidence, or written  
10 comment or evidence, and the summary that I had distributed  
11 to the members of the Commission is, like I said, a summary  
12 of the notes that we generated last time we met.

13 Do the Commissioners have any comment before we  
14 start?

15 COMMISSIONER BAILEY: Let's go.

16 CHAIRMAN FESMIRE: Commissioner?

17 Okay, the way I would like to proceed and hope to  
18 proceed is to follow this summary of parties' objections to  
19 the pit rule.

20 Two of the parties did exactly as we requested  
21 and provided their objections in one document, or one part  
22 of the document, and their reasons for those objections in  
23 the second part of the document. Those are going to be  
24 very easy to follow.

25 Some of the other parties were a little more

1 general and didn't exactly follow the process that we asked  
2 them to, but I think it's fairly well organized and laid  
3 out.

4 Again, Commissioner Bailey, you had some things  
5 especially with respect to re-vegetation. Would you like  
6 to visit that before we start, or --

7 COMMISSIONER BAILEY: Okay.

8 CHAIRMAN FESMIRE: -- or do you just want to go  
9 in the order of the proposal?

10 COMMISSIONER BAILEY: Well, I think it all links  
11 together if we go in order, rather than taking things out  
12 of context or out of order.

13 I think we would be able to maintain our stream  
14 of thought a little bit more coherently if we just start at  
15 the top and go on through.

16 CHAIRMAN FESMIRE: Okay. And do you think that  
17 you have covered the transcripts well enough and that we  
18 can proceed without the final version of the transcripts,  
19 especially the Conoco- --

20 COMMISSIONER BAILEY: I believe so, if the other  
21 Commissioners feel so.

22 CHAIRMAN FESMIRE: I'm a little hesitant to  
23 continue, for the major reason that I think that we need to  
24 cover those transcripts.

25 Mr. Bremer [sic] has indicated that he's got at

1 least two and perhaps three weeks more of work to get those  
2 done.

3 Would the Commission be interested in putting off  
4 the deliberations until at or near the March regularly  
5 scheduled meeting?

6 COMMISSIONER BAILEY: That would be fine with me.

7 COMMISSIONER OLSON: Actually, I would, because I  
8 was -- there was a couple of points, I know, that I had  
9 picked up in here, I haven't had a chance to check against  
10 the transcripts. I was wondering whether they were  
11 supported by evidence that was in the record at that point,  
12 and some of them were some of -- issues that OCD brought on  
13 the latest version that I wasn't sure about myself.

14 So I actually -- I would kind of like that,  
15 because one thing I haven't been able to do as well is,  
16 I've kind of gone through and piecemealed a lot of this,  
17 but I haven't been able to put it into one comprehensive  
18 set for my own purposes to look at, you know.

19 Is there some way, I guess, that -- I don't know  
20 if that's -- that we could get the electronic version, like  
21 a Word document, of what people's actual proposed rule is?

22 CHAIRMAN FESMIRE: The final filings by the  
23 parties --

24 COMMISSIONER OLSON: Yeah.

25 CHAIRMAN FESMIRE: -- is that what you're talking

1 about?

2 COMMISSIONER OLSON: So that we could actually --  
3 because I would love to take it and kind of be able to cut  
4 and paste stuff into more -- something that I can  
5 understand better.

6 CHAIRMAN FESMIRE: Counsel Bada, can we do that?  
7 Since they were not filed electronically --

8 MS. BADA: We could ask. I don't know if all the  
9 parties are here today.

10 COMMISSIONER BAILEY: There's another idea on how  
11 to fix that, is, we've signed off on a few items of general  
12 agreement.

13 COMMISSIONER OLSON: Uh-huh.

14 COMMISSIONER BAILEY: If counsel could  
15 incorporate that into another draft that we would then work  
16 further from, that would probably save us a lot of time. I  
17 know it would take counsel quite some time, but I mean we  
18 do have items of agreement that could be worked into the  
19 draft that we're working from?

20 CHAIRMAN FESMIRE: Counsel?

21 MS. BADA: I can try. I don't promise anything  
22 before March.

23 CHAIRMAN FESMIRE: Okay. Would it be proper for  
24 you to contact the parties and ask for an electronic  
25 version -- an identical electronic version of the documents

1 filed?

2 MS. BADA: I can call and ask, if not --

3 CHAIRMAN FESMIRE: Okay.

4 COMMISSIONER OLSON: Because I kind have taken  
5 mine now and it's all, you know, redlined at various places  
6 and --

7 COMMISSIONER BAILEY: Yeah, I've got three  
8 separate --

9 COMMISSIONER OLSON: I've got multiples, right,  
10 right.

11 COMMISSIONER BAILEY: So --

12 COMMISSIONER OLSON: I'd love to get it --  
13 because I'd love to even get my own into one version if I  
14 could, you know? So...

15 CHAIRMAN FESMIRE: Okay. So I think the  
16 consensus among the Commission is that we've got some more  
17 homework to do, that we would like to have an electronic  
18 version of the filings, that electronic version, that  
19 counsel should contact the parties and see if they're able  
20 to give us an electronic version of the final filings,  
21 which included their proposed changes and the reasons for  
22 their proposed changes, and that those be provided to the  
23 Commissioners by counsel, if available.

24 And if not, we'll have to live with the hard  
25 copy, but I'll bet that all of the parties can provide an



1 electronic copy.

2 And that we ought to finish that work and finish  
3 evaluation of the transcripts and finish receiving the  
4 transcripts before we proceed, that it's going to be about  
5 two to three weeks before we get the final version of the  
6 transcripts, and we'll need some time. That will put the  
7 next potential meeting sometime around our regularly  
8 scheduled meeting.

9 Do we want to attempt -- The docket for the March  
10 13th meeting is extremely crowded. My first inclination  
11 would be to put it off until the regularly scheduled  
12 meeting, but with that -- a lot of the cases on that docket  
13 were put off because of the work that we were going to be  
14 doing on this meeting and continued until the March  
15 meeting.

16 Would there be -- I think once we get our  
17 homework done, that this ought to go relatively quickly.  
18 I'm thinking maybe a couple of days.

19 What if we were to meet the Tuesday before the  
20 regularly scheduled meeting?

21 COMMISSIONER BAILEY: As long as that's not sale  
22 day for me.

23 CHAIRMAN FESMIRE: Okay, do you know when your  
24 March sale is?

25 COMMISSIONER BAILEY: Third Tuesday of every

1 month.

2 CHAIRMAN FESMIRE: Okay.

3 COMMISSIONER OLSON: The 11th is the regularly  
4 scheduled meeting on the Water Quality Control Commission.  
5 I may need to be at that.

6 CHAIRMAN FESMIRE: Okay, so what about Wednesday  
7 the 12th.

8 COMMISSIONER OLSON: Wednesday is fine.

9 CHAIRMAN FESMIRE: Wednesday the 12th --

10 COMMISSIONER OLSON: Uh-huh.

11 CHAIRMAN FESMIRE: -- and then the regularly  
12 scheduled meeting on the 13th, and we'd have Friday the --  
13 any remaining time on the 13th, and then Friday the 14th.

14 And at that point if we're not -- you know, we  
15 may have to re-address scheduling on Friday, but would  
16 there be support to the idea of putting this off until  
17 Wednesday the 13th?

18 COMMISSIONER BAILEY: That would be fine with me.

19 COMMISSIONER OLSON: Or Wednesday the 12th.

20 CHAIRMAN FESMIRE: Wednesday the 12th, I'm sorry.

21 COMMISSIONER OLSON: Uh-huh.

22 CHAIRMAN FESMIRE: And we will continue it after  
23 the regularly scheduled meeting on the 13th and potentially  
24 plan on the 14th.

25 COMMISSIONER BAILEY: Thank you.

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER OLSON: I like that. I think this  
3 is going to help the deliberations a lot, just because if  
4 we can start getting this into more of a framework that  
5 makes some sense, instead of scattered through various  
6 documents, I think it's going to make it a lot simpler for  
7 us to get through it too.

8 CHAIRMAN FESMIRE: Okay. The Chair would  
9 entertain a motion to -- I'll be very careful how I pick  
10 this word -- to adjourn and reconvene on March the 12th --

11 COMMISSIONER OLSON: Uh-huh.

12 CHAIRMAN FESMIRE: -- nine o'clock a.m. in this  
13 room.

14 COMMISSIONER BAILEY: I so move.

15 COMMISSIONER OLSON: Second.

16 CHAIRMAN FESMIRE: All those in favor, signify by  
17 saying aye.

18 COMMISSIONER BAILEY: Aye.

19 COMMISSIONER OLSON: Aye.

20 CHAIRMAN FESMIRE: Aye.

21 Let the record reflect that the Commission  
22 unanimously decided to adjourn Case Number 14,015 and  
23 reconvene on March 12th --

24 COMMISSIONER OLSON: -- 12th.

25 CHAIRMAN FESMIRE: -- 2008, in this room.

1 COMMISSIONER BAILEY: Okay.

2 CHAIRMAN FESMIRE: Thank you all, very much.

3 (Thereupon, these proceedings were continued at  
4 1:13 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 20th, 2008.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2010