

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. 13,870

APPLICATION OF QUEST CHEROKEE, LLC, FOR)
APPROVAL OF AN APPLICATION FOR A PERMIT)
TO DRILL, LEA COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

March 13th, 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, March 13th, 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.

* * *

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I N D E X

March 13th, 2008
Commission Hearing
CASE NO. 13,870

PAGE

REPORTER'S CERTIFICATE

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By: MICHAEL T. NEWELL

* * *

1 WHEREUPON, the following proceedings were had at
2 9:09 a.m.:

3 CHAIRMAN FESMIRE: The next case before the
4 Commission is Case Number 13,870. It was continued from
5 the January 22nd, 2008, Commission meeting. It's the
6 Application of Quest Cherokee, LLC, for approval of an
7 application for a permit to drill in Lea County, New
8 Mexico.

9 Could we get the appearance of the attorneys in
10 that case, please?

11 MR. BRUCE: Mr. Chairman, Jim Bruce of Santa Fe.
12 I represent the Applicant, Quest Cherokee, LLC.

13 MR. NEWELL: Your Honor, Michael Newell of
14 Heidel, Samberson, Newell, Cox, in Lovington, New Mexico,
15 representing the Intervenor, also referred to as the Cox
16 group, I think, in the documents.

17 CHAIRMAN FESMIRE: Thank you.

18 Mr. Newell, since --

19 MR. NEWELL: I think it's my motion.

20 CHAIRMAN FESMIRE: It's your motion, yeah, I
21 guess we're going to start -- Are you prepared to present
22 your case today?

23 MR. NEWELL: Yes, Mr. Chairman, I am.

24 And basically all the evidence I need to present
25 in my argument is derived on the documents that is present

1 in the Oil Conservation Division's record in this matter.
2 The case is Case Number 13,870.

3 And I would call to Commission's attention Orders
4 Number R-12,754 and Order Number R-12,754-A. And the
5 relevant parts of those orders I'll lay out for you all
6 now.

7 In Order Number R-12,754 the OCD made specific
8 and detailed findings, and there's some of those I want to
9 point out.

10 Finding Number 25, the OCD found that the Cox
11 group presented sufficient evidence to demonstrate that due
12 to the proximity of the well to houses, schools and other
13 facilities, Quest should be required to take special
14 precautions during the drilling and production operations.

15 And then the Division also found that Quest
16 presented little if any engineering evidence relating to
17 the proposed drilling and production operations.
18 Consequently, there's insufficient evidence to impose
19 specific requirements at this time -- at that time.

20 And then in Finding 28 the Division indicated
21 that there were other issues that needed to be addressed
22 because of this incomplete record, if you will, and they
23 said the issues that need to be addressed include, but were
24 not limited to, blowout prevention, closed-loop technology,
25 fencing and production facilities, flaring and venting of

1 H₂S and VOCs, pipeline and production facilities, and
2 lightning protection.

3 And then the Division went on and ordered that no
4 drilling would be allowed until five days after the
5 issuance of a conditional APD which was supposed to address
6 these issues.

7 First, I would say, with respect to the first
8 items that I identified in Finding 28, the blowout
9 prevention and closed-loop technology, this well has been
10 drilled, so that's really -- we don't -- that's already
11 something that's happened and -- whether they were in
12 compliance or not in compliance. And we would submit that
13 they did put blowout prevention in place, and they did
14 employ closed-loop technology.

15 What we would call to the Commission's attention
16 at this time is the failure to follow or address any of the
17 other issues that were identified in item number 28, and
18 specifically the issue of fencing and production
19 facilities.

20 The fencing issue wasn't even addressed again
21 until approximately two weeks ago when someone from Quest
22 Cherokee came down to Hobbs and met with local
23 representatives of the NMOC and some members of the
24 community.

25 And the production facilities haven't been

1 addressed in any meaningful manner. The production
2 facilities are exactly what Quest decided they wanted to
3 put in out there. And as far as I can tell, there was no
4 engineering presented to the Division saying, Okay, given
5 the fact that your findings said that due to the proximity
6 of the well to houses, schools and other facilities, we
7 need to take special precautions during production
8 operations -- they didn't come in and say, Okay, here's how
9 we can produce oil effectively around this urban interface
10 area, which is where they're producing this oil and gas.

11 They didn't come in and say, Okay, here's what
12 API proposes with respect to how you produce oil in an
13 urban environment, or here's what the latest standards are,
14 or here's how we would intend to approach these specific,
15 you know, concerns that may be raised by the proximity of
16 these production facilities to these homes and schools --
17 schools, that's not a -- it's one school, I shouldn't
18 overstate that, I didn't mean to overstate that.

19 But anyway, they did not do any of that. The
20 record is -- you can check the record. Your record is
21 completely void of anything that would indicate that there
22 was a review of what type of production facilities would be
23 appropriate for this particular location, and that review
24 still hasn't been done.

25 The next item would be the flaring or venting of

1 H₂S and VOCs, and I can represent to you -- and I think the
2 Commission is aware of this from that meeting, because
3 these issues came up, and that's the fact that they are
4 flaring right now gas, and the homes in the area have been
5 exposed to both carbon monoxide and H₂S gas, and at various
6 times the Hobbs Fire Department has had to come out and
7 make registered showings of either H₂S gas -- Luckily, it
8 was under the threshold limit for significant negative
9 exposures.

10 You know, obviously I think we all know that the
11 science is probably not there on what chronic low-level
12 exposures do to us one way or another, but it certainly
13 didn't reach the 500-parts-per-million threshold or 200-
14 parts-per-million threshold, whatever would be appropriate
15 for specific action at the time.

16 But the carbon monoxide was a particular problem
17 that was also found in a different house. And it depends
18 on which way the wind is blowing, as to which homes are
19 affected by this flaring and venting.

20 And as I can -- as best I can tell, there's
21 nothing again in the record that says, Here's where Quest
22 came in and said, Here's what we're going to do, and here's
23 the science behind it, here's why it's appropriate in this
24 urban area. And so OCD was never given the opportunity by
25 Quest to exercise its own regulatory oversight which it

1 directed itself to do in Order 12,754. So that has not
2 been addressed.

3 Right now there are -- item B, pipelines and
4 production facilities. Again, I don't know that there's
5 been anything in the record -- the record is again
6 completely devoid of any information that would say here's
7 the appropriate way to put the pipelines in with respect to
8 the community.

9 And again, you know, the order was redundant, it
10 addressed production facilities. And again, there's
11 nothing that appears to have been done to address the
12 production facilities.

13 The fencing is still a three-strand or four-
14 strand barbed-wire fence that would not keep a motivated
15 elementary school kid from going out there and exploring
16 around the facilities.

17 And then finally the last item is lightning
18 protection. And again, I think the record is devoid of any
19 lightning protection.

20 After that order was entered, the Intervenor, s,
21 after a period of time of not having any of these issues
22 addressed, found out that Quest was going ahead and
23 drilling and filed what is technically the motion that's
24 presently before this Commission here today, and that's the
25 motion for emergency order suspending the approval to

1 drill.

2 And what's notable about that second order is
3 that in that second order -- and that's R-12,754-A -- the
4 Applicant -- and I'll just read it -- was ordered -- and
5 this is order number 3 -- Applicant shall identify all
6 water wells within 15 [sic] feet of the well location and
7 drill a monitor well between the oil well and the water
8 well used.

9 Unless they've just done it in the last couple of
10 days, those monitor wells still have not been drilled. I
11 understand from looking at the Applicant's evidence that
12 was submitted, there are some water-testing samples that
13 have been done, but I think those have been done from the
14 water wells that they were supposed to drill the monitor
15 wells in the middle of, between the well location and the
16 water well.

17 And the whole reason the order was entered was
18 because they had represented -- and this is reflected in a
19 letter from Chris Williams to Mike Whitehead, who's a Lea
20 County Commissioner -- that Quest had agreed that they
21 wouldn't locate this oil well within 1500 feet of any water
22 well. Well, they came back in and did that anyway.

23 And so at the Division level, I think -- and it's
24 reflected in the order, the Division was grappling with how
25 to balance the fact that they did not do what they said

1 they were going to do, but they were already out there,
2 ready to drill. And I think that's why in R-12,754-A the
3 Division ordered, then, those monitor wells to go ahead and
4 be drilled. And the order is real specific. It says --
5 you know, it provides a specific time to do that. Let me
6 make sure that -- I don't want to misstate that date.

7 It says not less than -- and this is order number
8 3, Applicant shall as soon as practical but not less than
9 15 days after the issuance of this order, unless extended
10 by Division Director -- and again, there's no evidence in
11 the record that this order was ever extended -- shall
12 identify each active water well within 1500 feet of the
13 location of the West Bishop State Well Number 1, and for
14 each such water well drill a monitor well to be located
15 between said well and such water well on a direct line
16 between the oil well and the water well, or as close
17 thereto as practical, not more than halfway from the oil
18 well to the water well.

19 What we have here -- and here's our problem --
20 is, we have just a basic lack of -- noncompliance, and it's
21 gone on for a year. And we need to do something about it
22 from our standpoint, and we hope you all concur with that.

23 And I will tell you, in this regulatory scheme
24 that New Mexico employs, you all know it's a voluntary
25 compliance scheme with the OCD. And the best way -- or one

1 way that someone could frustrate a voluntary compliance
2 scheme is to be passive-aggressive -- yeah, we'll do it,
3 we'll do it, we'll do it -- and never do it. And that's
4 exactly what's occurred here.

5 We have had, as these Intervenors have had to
6 bear my cost of coming up here now on -- this is least the
7 fourth different occasion, to try to get these issues
8 addressed. So far, you know, they haven't been addressed.

9 They went ahead and drilled in violation of the
10 first order. And OCD said, Okay, you can because you kind
11 of just did it and you left us in a bad spot because you
12 didn't do what you said you were going to do.

13 And, you know, OCD is not charged with shutting
14 down oil and gas operations in the state. The charge is
15 quite the contrary; they're supposed to promote the
16 development of minerals within the State of New Mexico.
17 And I understand that's the role of this Commission as
18 well.

19 However, when you have a pattern of noncompliance
20 like this company does, and the noncompliance appears to be
21 systemic, it's not being corrected, I think something needs
22 to be done.

23 And what I would suggest is, at the very least,
24 those items that were identified in the original order that
25 need to be addressed relating to fencing and production

1 facilities, flaring and venting and pipelines -- the
2 engineering behind those should be submitted to the OCD.
3 It should then be subject to review, for which the
4 Intervenors should be given at least five days, like was
5 originally ordered, to review that. And if they have
6 reason to believe that that's not appropriate, then they
7 can petition the OCD to review it.

8 And ideally, we would like the opportunity to
9 have input when those engineering presentations are made,
10 or at least the opportunity to review it and say, you know,
11 there are different things here, there are different
12 facilities that can be utilized, low-profile pumping
13 facilities, you know, piping to remote battery locations to
14 avoid having a tank battery -- it's a huge tank battery,
15 it's four at least 500-barrel tanks, as best I can tell,
16 and in a production facility that's just -- you know, takes
17 up the whole landscape.

18 And it's ruined, if nothing else, it's impacted
19 the neighborhood in the way, you know, it's taller than
20 many of the homes. It stands out, it just is an eyesore,
21 separate and apart from the fact that it stinks. They're
22 not controlling their vapors, they're letting these vapors
23 escape so that they end up in people's homes and their
24 garages and things of this nature.

25 These things have not been addressed. And if

1 they can't produce in a way that protects the rights and
2 interests of the neighborhood consistent with finding
3 number 25 which says they have to take special precautions
4 in the production of this well, then they should be shut
5 down.

6 And I'm not recommending that you do that yet,
7 but I do think it's appropriate for this order -- or this
8 Commission to issue an order, such as a show-cause order
9 saying -- asking them why they haven't done this, and
10 having a hearing and making them do the things that they
11 were originally ordered to do.

12 And that's, you know, the long and the short of
13 my presentation. Just make them do what they were told to
14 do and make them do it right, and at least have some
15 cognizance of the fact that this isn't an oil and gas
16 facility five miles northwest of Hobbs like your notice
17 says. It's right there. Hobbs has city limits -- and this
18 is part of the record -- that are checkerboarded. And this
19 is actually both to the north, the west and the south of
20 the Hobbs city limits, all within a few hundred feet.

21 But that issue about notice was addressed in the
22 Division. We're not raising that issue here.

23 But I just want you all to know, when you look at
24 your notice and you're saying, Well, this is five miles
25 northwest of Hobbs, it's really not. It's really right

1 there. There's an elementary school, a retired --
2 assisted-living home, and homes that are being -- that are
3 lived in and other homes being constructed right in this
4 immediate area, all within this area that was close enough
5 in the record for the Division to recognize that special
6 precautions needed to be taken.

7 So thank you very much for your time, and thank
8 you for allowing me to make this presentation.

9 Do any of you all have any questions?

10 CHAIRMAN FESMIRE: Commissioner Bailey?

11 COMMISSIONER BAILEY: All due respect, I have
12 nothing other than the OCD orders to understand your case.

13 MR. NEWELL: Sure.

14 COMMISSIONER BAILEY: You haven't given me
15 anything more than just what these orders state. So I
16 can't judge the reasonableness of them or the real impact
17 that is being perpetrated on those residents.

18 MR. NEWELL: May I address that?

19 COMMISSIONER BAILEY: Yes.

20 MR. NEWELL: Okay, first of all, I don't think
21 you even have to understand the reasonableness. We're not
22 asking you -- we're not asking you to overturn the Division
23 order here. We're not asking you to do anything other than
24 enforce the Division order. So all you have to do is read
25 the order.

1 And then -- and I would just ask the Commission
2 to take administrative notice of the record in this case.
3 It's like the court record, if you will. And I didn't
4 think I needed to present a pleading that's part of the --
5 I'll be more than happy to do that, I'll be more than happy
6 to.

7 But part of what I'm asking you to look at is,
8 here's what the order says, and you have the two orders in
9 front of you. Now look at the file in the Division and see
10 if that's what was ordered. It wasn't. The file is absent
11 of the documents that would reflect that these orders were
12 complied with. Does that make sense?

13 COMMISSIONER BAILEY: Well, I understand this is
14 not a *de novo* case.

15 MR. NEWELL: No. And what I'm saying is, all you
16 have to do is look at -- The Division file doesn't reflect
17 these things have been done, so therefore they haven't been
18 done. Does that make sense?

19 COMMISSIONER BAILEY: I understand what you're
20 trying to tell me, yes.

21 MR. NEWELL: Okay, okay. And so that's the
22 reason I didn't feel it was necessary to come up here and
23 present evidence that they haven't complied, when the
24 evidence that they haven't complied is the lack of the
25 appropriate regulatory filings that would indicate that

1 they had gone through with what's presented in -- or what
2 they were ordered to do in those orders.

3 COMMISSIONER BAILEY: I don't have any other
4 questions.

5 CHAIRMAN FESMIRE: Commissioner Olson?

6 COMMISSIONER OLSON: Yeah, I guess I'm a little
7 confused too, because when I look at our docket and it's
8 saying that our hearings on the Applicant seeking approval
9 of an APD --

10 MR. NEWELL: And I think it was technically --
11 Their APD was granted, that's the first order. That's
12 the --

13 COMMISSIONER OLSON: Right.

14 MR. NEWELL: -- that's the R-12,754. And then
15 they didn't comply with that order, and we filed the motion
16 for emergency order, suspending the approval to drill.

17 And the second, R-12,754-A order then said, Okay,
18 they can go ahead and drill, but they have to drill these
19 monitor wells, and you still have to go comply with
20 R-12,754.

21 And so that's the reason we're here, is they
22 still have not complied with R-12,754. Obviously, we can't
23 stop them from drilling, the drilling has already occurred.
24 However, you know, everything else that was raised in that
25 motion is still relevant because we pointed out that they

1 were in noncompliance at that time. That was the purpose
2 of the motion.

3 So the remedy that we're seeking may be
4 different, because we can't stop them from drilling because
5 the drilling has already taken place. But we can -- and I
6 guess the purpose of this is to bring to your attention the
7 fact that the balance of the orders have not been complied
8 with, particularly with respect to the production
9 facilities, because that's now the phase that we're in.
10 And we're almost getting the same kind of -- we're needing
11 the same kind of action.

12 They're going to go do it the way they want to,
13 and then they're going to try to, you know, get the
14 Commission -- they're like thumbing their nose at the
15 Commission and OCD, saying, Well, you know, you told us to
16 do this, we're going to do it the way we want to.

17 And you know, just like with the order telling us
18 not to drill until we've established certain circumstances,
19 and we -- one of the things, we said we wouldn't drill
20 within 1500 feet of water wells, but we're going to do it
21 anyway because -- you know, again, this Commission and the
22 Division is not geared to stopping oil and gas production.
23 That's not, I guess, how it's designed to operate, and kind
24 of understandably so.

25 At the same time, this passive-aggressive

1 noncompliance -- we're going to -- you can tell us how we
2 should do it, but we're going to do it how we're going to
3 do it anyway, because this is what we think, and we don't
4 feel like we need to be regulated, I guess. I don't know,
5 I can't speak for them. But for whatever reason, there's
6 noncompliance.

7 And you know, that's the reason I wanted to have
8 this hearing before this Commission is, you know, at some
9 point in time we either need to say, Okay, they don't have
10 to comply, you know, what we put down on paper, ahh, it
11 really doesn't matter, you all are cool, just go about your
12 business; or we've got to say, You've got to comply, and if
13 you don't we're going to take action.

14 So -- you know, and I don't know where to go.
15 I'm supposed to utilize the administrative process, and
16 this is my next hearing up the rung, and I'm sorry if I'm a
17 little frustrated, but that's where I am, so...

18 COMMISSIONER OLSON: Well, I guess -- I mean, you
19 know, that's where I'm confused, because the OCD is the one
20 that enforces the Commission rules and regulations, as well
21 as this is an order of the Division. I would expect that
22 the OCD would be enforcing the terms of this. And have you
23 made a request of them to enforce these?

24 MR. NEWELL: Well, the motion that is presently
25 before. I mean, there's not anything subsequent to the

1 motion that we filed, because we felt like -- it was our
2 understanding that the motion still had these issues in
3 play and that after the R-12,754-A order was entered, the
4 -- which was the Division addressing this issue, that the
5 next step was the Commission.

6 And procedurally -- if I'm wrong, I have no
7 problems with the Commission remanding it back down to the
8 Division because it's not ripe or germane.

9 And I see -- I kind of see your point there, and
10 so if there's a -- you know, if there's another step that
11 needs to be taken at the Division level, I can certainly
12 understand that. We're not trying to short-circuit the
13 process. But this was just the hearing that we thought was
14 administratively next in line on that motion.

15 COMMISSIONER OLSON: But I guess -- seems to me
16 you don't have an objection to the requirements in Order
17 R-12,754, your objection is that they haven't been done --

18 MR. NEWELL: Correct.

19 COMMISSIONER OLSON: -- it hasn't been enforced.
20 It seems to me that should be done through the Division,
21 because the Division is the enforcement arm for the
22 Commission rules and regulations, as well as their own
23 orders -- I mean, the Division is. And the Commission is
24 the adjudicatory body if there's a problem.

25 And so that's why I'm -- I'm not seeing that --

1 when you were talking about following the administrative
2 process, it seems to me like maybe that hasn't been
3 completed at this point, that if you haven't asked and
4 actually got maybe a refusal from the Division or something
5 that's happened at the Division level to appeal up to us --

6 MR. NEWELL: Yeah.

7 COMMISSIONER OLSON: -- that's why I'm confused.

8 MR. NEWELL: No, no, and I think that point is
9 well made in this sense: I see where you're coming from,
10 but let me just say from my perspective, we filed the
11 motion with the Division. We were not aggrieved by the
12 order that came out of it, but we were aggrieved that there
13 was a continued noncompliance. And so I guess the Division
14 addressed our motion, and this was the next hearing -- the
15 next level of review for that.

16 But again, if it needs to be remanded, if it
17 needs to be sent back, I certainly understand what you're
18 saying. So I'm not -- I'm not going to quibble with that,
19 because it may be that then the OCD would have to come out
20 with some finding one way or another, either they are in
21 compliance or they are not in compliance before the
22 Commission and can deal with it.

23 And I think that's what your suggestion is.
24 There's not a Division decision that you all have to
25 adjudicate right here. Is that kind of where you're

1 headed?

2 COMMISSIONER OLSON: Well, that's kind of what
3 I'm thinking. There's not been an action in the Division
4 that -- being appealed up to us at this point. You're
5 asking us to enforce the order, versus asking OCD to
6 enforce their own order.

7 MR. NEWELL: Well, we did ask them to do that in
8 the motion. You see -- I mean, I don't know that we have
9 to go back and do that again at the same time. Maybe when
10 they address the motion, maybe Order 12,754-A is not
11 complete, and maybe that's how it needs to be done. Again,
12 I don't know.

13 I would be more than happy to sit down with
14 counsel for the Applicant and counsel for the -- either the
15 Commission or the Division and figure out what would be the
16 appropriate approach at this point procedurally.

17 COMMISSIONER OLSON: Well, is part of the problem
18 possibly that in the original order under finding 48 there
19 isn't a specific time frame for those issues to be
20 addressed?

21 MR. NEWELL: I think so. Some -- you know, the
22 one issue certainly does have a time frame, and that's the
23 drilling of the monitor wells. But I don't think there's
24 any kind of time frame set out on the -- the other -- you
25 can see -- what we did is, we requested the hearing.

1 If you look on -- paragraph 7 of the order part
2 of Order 12,754-A, it states that it'll remain in effect as
3 an emergency order for 15 days and shall continue in effect
4 thereafter unless on or before October 16th, 2007,
5 Applicant or Intervenors file a request for hearing. And I
6 think that's what we did, and this is the hearing we ended
7 up with. Whether that's appropriate or not, I don't know,
8 but that's how we -- that's the process that we followed.

9 And again, I certainly understand what you're
10 saying about the process, and if it needs to be remanded
11 back I certainly do not have a problem doing that.

12 And maybe that goes to Commissioner Bailey's
13 position too that the record is incomplete. I mean, you
14 all kind of maybe are saying the same thing two different
15 ways. And if that's what we need to do, if we need to go
16 make a complete record, that's find with me. That's
17 something we're more than happy to go do.

18 COMMISSIONER OLSON: Well, I almost wonder
19 whether you even need a record, whether you just need to be
20 requesting that OCD enforce the order. That seems to me to
21 be -- and then OCD is given that opportunity to respond to,
22 you know, your request and try to get it enforced. And if
23 it's not, I think then there's something that can be
24 appealed up ask us, you know, well, how come this has to
25 happen, and what your position is, versus what Quest's

1 position is --

2 MR. NEWELL: Sure.

3 COMMISSIONER OLSON: -- so...

4 MR. NEWELL: May I ask you a question?

5 COMMISSIONER OLSON: Sure.

6 MR. NEWELL: Are you suggesting, then, that what
7 we should do is file a second motion saying the order has
8 not been complied with, and start another track on this
9 thing? Is that what maybe the suggestion is? I mean, if
10 there's something on my end that I need to do, I don't have
11 any problem doing it, I just need to know what it is I need
12 to do. Because again, we filed the motion, the order was
13 entered, the 12,754-A order was entered, and they -- and
14 then it had to -- if you request a hearing, that's what we
15 did, and so here we are, and this is the hearing, so...

16 And maybe the hearing should have been at the
17 Division level first, and maybe that's simply what we need
18 to do.

19 COMMISSIONER OLSON: I'm not sure if it's the
20 matter of requesting a hearing or actually just asking them
21 to enforce the order that's actually out there and
22 enforceable and should be followed. I don't know that that
23 necessarily takes a hearing request, other than maybe a
24 letter. I'm not sure what the proper answer is.

25 If there's a letter to the OCD, asking them to

1 enforce the order, then if they don't I think that's
2 something that can be -- you know, taken to hearing from
3 there, if they don't enforce it, but...

4 But the order says this is what they'll do, and
5 there may -- you know, some of it may be done, some may
6 not, I guess. I understand we're going to hear some of
7 that from Quest as to what's been done.

8 But the -- one of the problems I just saw in it,
9 just that there wasn't any real time frame for when some of
10 that was going to be accomplished so that it'll be done.

11 MR. NEWELL: Sure.

12 COMMISSIONER OLSON: So -- and --

13 CHAIRMAN FESMIRE: But --

14 COMMISSIONER OLSON: -- you -- and I understand
15 they are operating, so you would think at this point some
16 of these issues would be addressed if they're currently
17 operating, but there's no time frame under Finding 28 to --
18 or under order number 2, to say when that's going to occur.
19 But that's --

20 MR. NEWELL: Right.

21 COMMISSIONER OLSON: -- I guess I'm just thinking
22 that this is really kind of not a germane thing for us to
23 be hearing at the moment, that -- without going through OCD
24 first. We'll await to see what Quest has got to say first.

25 MR. NEWELL: Well, I'll tell you this. I mean,

1 if that's the issue -- Well, first of all, let me address
2 one point.

3 I think that if they're talking about production
4 facilities need to be addressed, it almost presupposes they
5 need to be addressed before you start production.

6 But separate and apart from that issue, the -- if
7 what I need to do, then, is withdraw my request for hearing
8 and -- if that's procedurally what we need to do to kick it
9 back, I'll be more than happy to do that right now. And I
10 guess what I would ask is, maybe some input from either
11 Commission counsel or Division counsel as to what would be
12 the appropriate procedural mechanism at this point.

13 CHAIRMAN FESMIRE: Mr. Newell, I'm going to make
14 a recommendation, and it's going to require the
15 acquiescence and cooperation of Mr. Bruce, which I want him
16 to understand, is not required of the Commission, it's...

17 The proper motion, I think -- the proper vehicle
18 to hear this is a motion to enforce Orders 12,387 -- I
19 mean, 12,754 and 12,754-A. Given the cost to your client
20 and the cost to Mr. Bruce's clients and the fact that I
21 think Mr. Bruce and his clients are prepared today to
22 respond to that, it would require a waiver of any notice
23 provision if they were to make that motion today.

24 So Mr. Bruce, if you'd like to consult with your
25 clients for a minute, what I'm going to ask is, if they

1 make that motion would you waive any required notice and
2 proceed with the hearing today on the motion to enforce?

3 MR. BRUCE: What -- Okay, but what is the
4 alternative? That it goes back to the Division?

5 CHAIRMAN FESMIRE: That it will go -- No, that it
6 will be reset, either at a Division or Commission hearing.
7 Once that motion is received, the Chairman can set it
8 either at a Division or a Commission hearing.

9 And what I'm thinking is that if Mr. Newell were
10 to make that motion, I were to accept that motion and
11 direct that it be set for a Division hearing, the next step
12 would be notice to you and your clients, and that's what I
13 would be asking you if you're prepared to proceed today.

14 MR. BRUCE: If I could speak with my client --

15 CHAIRMAN FESMIRE: Surely, sir.

16 MR. BRUCE: -- out in the hall?

17 (Off the record)

18 MR. BRUCE: Mr. Chairman, on behalf of Quest, I'd
19 rather have the Commission Chairman set it for hearing
20 before the Division and notice to be given, because he's
21 raising things here that I know have been complied with and
22 things that I've never heard before.

23 And I could address everything he's saying, but I
24 don't want to waste any more of the Commission's time.
25 Lord knows, you've been sitting here long enough, not just

1 on this case but on other matters.

2 And I will say one thing, that this is obviously
3 a high-profile case in Hobbs. Mr. Marlin, the operations
4 engineer, has been in touch on a constant basis with the
5 Division office and has never been informed that it has
6 been out of compliance. And therefore I would like some
7 specificity and go forward on that basis, rather than just
8 having my witness get up and wing it today.

9 CHAIRMAN FESMIRE: Okay. Mr. Newell --

10 MR. NEWELL: I'll make such a motion, your Honor
11 -- or Mr. Chairman.

12 CHAIRMAN FESMIRE: Why don't we go ahead and make
13 that motion in writing, and we'll make notice and set it
14 for a Division hearing.

15 MR. NEWELL: Then for the record do you want me
16 to move to continue this hearing at this point, subject to
17 what we just discussed, or is that something that should
18 come from the Chair?

19 MS. BADA: Well, if you were going to send it
20 back to the Division recommending --

21 MR. BRUCE: I wouldn't think this would need to
22 remain on the Commission's docket until the Division
23 decides.

24 MR. NEWELL: Yeah, and I agree with that.

25 CHAIRMAN FESMIRE: The issue of the APD is

1 essentially moot, and what we need now is a motion to
2 enforce the conditions of the orders --

3 MR. NEWELL: Yes, Mr. Chairman.

4 CHAIRMAN FESMIRE: -- and have that hearing
5 before the Division. It probably should include witnesses
6 as to the noncompliance.

7 MR. NEWELL: Yes, Mr. Chairman. What's the --
8 Okay, and I will discuss with the Division procedurally
9 about how to -- some of the Division employees in Hobbs
10 will no doubt be witnesses in that regard, so we can
11 address how we need to do that, I suppose, because we've
12 been able to communicate pretty well, and I think, although
13 we have -- continue to have some differences, I don't think
14 it's been with counsel and procedurally how to do these
15 things. Is that --

16 CHAIRMAN FESMIRE: Mr. Newell -- Mr. Bruce, do
17 your witnesses live in Hobbs?

18 MR. BRUCE: No, my witnesses -- Well, one
19 potential witness in Roswell, and one or two potential
20 witnesses in Oklahoma City.

21 CHAIRMAN FESMIRE: Okay, so they're going to have
22 to travel wherever we set the hearing.

23 MR. BRUCE: That is correct.

24 MR. NEWELL: And Mr. Chairman, we have no
25 objection, for everyone's convenience, if for example,

1 you'll set it up here, if people appear by telephone,
2 including Division employees or people from Oklahoma City
3 or Tulsa.

4 MR. BRUCE: Mr. Newell and I can discuss that. I
5 don't think we'll have any problems with that.

6 CHAIRMAN FESMIRE: Okay. So what we're going to
7 do is dismiss the motion pending before the Commission and
8 leave it at that. And like I said, my suggestion and
9 procedure would be a motion to enforce to the Division.

10 MR. NEWELL: Okay. All right, my concern is,
11 it's going to be without prejudice. I don't want any
12 collateral estoppel or *res judicata* effect on anything that
13 was in the original motion that I might raise in this
14 motion.

15 CHAIRMAN FESMIRE: Right, the motion to dismiss
16 will be without prejudice.

17 MR. NEWELL: Thank you.

18 CHAIRMAN FESMIRE: Thank you, sir.

19 MR. BRUCE: Thank you, Mr. Chairman.

20 CHAIRMAN FESMIRE: Mr. Newell, thank you.

21 MR. NEWELL: Yes, thank you all.

22 (Thereupon, these proceedings were concluded at
23 9:49 a.m.)

24 * * *

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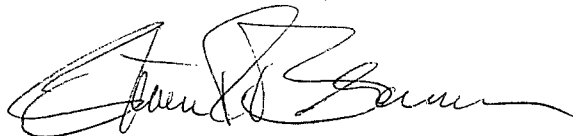
CERTIFICATE OF REPORTER

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 March 24th, 2008.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2010