

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

CASE NOS. 13,226 (Dismissed); 13,345 13,142,  
13,142, *de novo* and amended, and 13,048 (Continued)

CONTINUED AND DISMISSED CASES

TRANSCRIPT OF PROCEEDINGS

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

October 14th, 2004

Santa Fe, New Mexico

2004 OCT 21 AM 10 58

These matters came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, October 14th, 2004, 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

October 14th, 2004  
 Commission Hearing  
 CASE NOS. 12,459 and 12,601 (Continued)

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## A P P E A R A N C E S

FOR THE COMMISSION:

DAVID K. BROOKS, JR.  
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 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   9:00 a.m.:

3           CHAIRMAN FESMIRE: At this time we're going to  
4   call the October 14th, 2004, meeting of the New Mexico Oil  
5   Conservation Commission to order. Let the record reflect  
6   that it's nine o'clock, October 14th, 2004, that we're  
7   located in Porter Hall, in the OCD office, at 1220 South  
8   St. Francis, in Santa Fe, New Mexico.

9           My name is Mark Fesmire.

10          To my right and present is Jami Bailey. Ms.  
11   Bailey is the designee to the Commission by the  
12   Commissioner of State Lands, Mr. Patrick Lyons.

13          Attending by teleconference is Commissioner Frank  
14   Chavez. Mr. Chavez is the OCD supervisor in Aztec and  
15   appointee of the New Mexico Energy, Minerals and Natural  
16   Resources Department Secretary, Joanna Prukop.

17          Commission Counsel, Mr. David Brooks, is present.

18          Commission Secretary, Ms. Florene Davidson, is  
19   present.

20          The court reporter today is Mr. Steve Brenner.

21          Let the record reflect that two Commissioners are  
22   physically present and the third Commissioner is present by  
23   teleconference.

24          At this time we'll take up the business matters  
25   of the Commission. The first will be the adoption of the

1 minutes of the last meeting held on September 9th, 2004.

2 Let me ask the Commissioners if they've had a  
3 chance to review the minutes?

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

6 CHAIRMAN FESMIRE: Is there a second?

7 COMMISSIONER CHAVEZ: I have reviewed them, and I  
8 second the motion.

9 CHAIRMAN FESMIRE: All those in favor?

10 COMMISSIONER BAILEY: Aye.

11 COMMISSIONER CHAVEZ: Aye.

12 CHAIRMAN FESMIRE: All those opposed?

13 The minutes of the September 9th, 2004, meeting  
14 are hereby adopted by the Commission. Let the record  
15 reflect that I've signed those minutes.

16 \* \* \*

17

18 CHAIRMAN FESMIRE: There's one other order that  
19 we need to address. It's Cause Number 13,226, the *de novo*  
20 Application of OXY USA WTP Limited Partnership for  
21 rescission of the approval of an application for permit to  
22 drill and for compulsory pooling in Eddy County, New  
23 Mexico.

24 Mr. Brooks, would you have anything to say about  
25 that?

1 MR. BROOKS: No, the Applicant has requested this  
2 be dismissed without qualification, and accordingly we've  
3 prepared a generic form of order of dismissal.

4 CHAIRMAN FESMIRE: Okay. Commissioner Chavez,  
5 would you have any objection to that dismissal?

6 COMMISSIONER CHAVEZ: No, I don't.

7 CHAIRMAN FESMIRE: Commissioner Bailey?

8 COMMISSIONER BAILEY: No, I don't.

9 CHAIRMAN FESMIRE: Is there a motion?

10 COMMISSIONER BAILEY: I move we dismiss it.

11 COMMISSIONER CHAVEZ: I second.

12 CHAIRMAN FESMIRE: With that, we'll sign the  
13 order dismissing that cause.

14 Let the record reflect that the order was signed  
15 by two Commissioners, the third Commissioner appearing by  
16 teleconference, agreeing in the decision but has not  
17 physically signed the order.

18 \* \* \*

19  
20 CHAIRMAN FESMIRE: The next cause before the  
21 Commission is Cause Number 13,345, the Application of the  
22 New Mexico Oil Conservation Division through the Supervisor  
23 of District 1 for an emergency order requiring Maralo, LLC,  
24 to properly plug one well in Lea County, New Mexico, and  
25 authorizing the Division to plug said well and ordering a

1 forfeiture of applicable plugging bond.

2 It's my understanding that this case is to be  
3 dismissed; is that correct, Mr. Brooks?

4 MR. BROOKS: That is correct. Now, in this case,  
5 of course, I was acting as counsel for the Division, and we  
6 did request that this case be dismissed, the Division  
7 requested the case be dismissed. The Division requested  
8 the case be dismissed without prejudice. I don't know --  
9 When I was on vacation, Mr. Kellahin, the attorney for the  
10 respondent, filed a -- or didn't file anything, but he left  
11 a call for me and said he wanted to discuss this. I don't  
12 know what he wanted to discuss, I don't know whether it was  
13 the "without prejudice" language or not. But whatever he  
14 wanted to discuss, I've been unable to contact him since  
15 his return. Therefore, I recommend the Commission carry  
16 this on its docket to the next meeting for action. And I  
17 am confident it will be dismissed, but perhaps we need to  
18 work out the exact language in the order.

19 CHAIRMAN FESMIRE: Commissioner Chavez, would you  
20 have any objection to continuing this to the next docket?

21 COMMISSIONER CHAVEZ: No, not at all.

22 CHAIRMAN FESMIRE: Commissioner Bailey?

23 COMMISSIONER BAILEY: No, I have no objection,  
24 but I also have a question whether or not any spill report  
25 has been filed with the OCD in accordance with OCD Rules

1 for unplanned release of natural gas.

2 MR. BROOKS: I doubt that it has been. I have no  
3 knowledge of that subject specifically, but I have no  
4 reason to believe it has been.

5 COMMISSIONER BAILEY: Is that something that  
6 should be under the jurisdiction of OCD? I'm referring to  
7 a September 10th letter from Maralo to Mr. Fesmire saying  
8 that there was a flow of gas to the surface from this well.

9 MR. BROOKS: Yeah, this has been a question that  
10 has arisen before, and perhaps it's something that the  
11 Division would want to look into.

12 But should we take action to require a spill  
13 report to be filed or require reporting by the operator  
14 when we have full knowledge of all the facts and what  
15 action is appropriate for the Division to take in that  
16 circumstance, actually since we were out there on the  
17 location, we probably have more knowledge of what actually  
18 went on than the operator does, although they were on  
19 location part of the time also, I believe.

20 But I believe that's a matter which perhaps the  
21 Director might want to look into. I'm not sure that the  
22 Commission is in a position to take notice up to this time.

23 CHAIRMAN FESMIRE: Commissioner Bailey, this well  
24 has been plugged. This is the one that was flowing gas to  
25 the surface and has been for about -- between 30 and 40

1 years.

2           During the Labor Day holiday, there were some  
3 kids out there that apparently ignited the gas and were  
4 hanging around, for lack of a better term. There were some  
5 lights come over the hill. They decided to leave the  
6 location in a hurry. When they did, they caused an  
7 automobile accident. The next day the property owner got  
8 out and dug around and found this well. In so doing, he  
9 opened up what dirt had been covering it.

10           We, in an emergency, used an emergency order to  
11 re-enter and plug that well, but it turned out to be a  
12 water well -- at least that's every indication that we can  
13 find now -- a water well that was leaking gas to the  
14 surface.

15           At this time we have another case against Maralo  
16 with similar circumstances, except they weren't a water  
17 well, and it appears that that well did belong to Maralo.  
18 Maralo argues that they are not responsible for this well  
19 in that they didn't drill it, and it does appear to be a  
20 water well when we plugged it. So we decided not to pursue  
21 this case against them for that reason.

22           MR. BROOKS: Yes, this would appear to be -- from  
23 what we were told, would appear to be a water well, and we  
24 do not have any record as to when or by whom it was  
25 drilled, so we were not in a position to prove that it was



1 a service well. If it was a service well, we would take  
2 the position that they -- the Division would take the  
3 position that they would be responsible, but we did not  
4 have any evidence that it was drilled as a service well.

5 COMMISSIONER BAILEY: Then there's no violation  
6 of OCD Rules on spill reporting?

7 MR. BROOKS: Well, there may be a violation of  
8 Rules on spill reporting. That was not brought up in the  
9 case and therefore is not before the Commission at this  
10 time. But I think arguably there is.

11 Now, we did have an issue, like I said, about a  
12 year ago, where we cited somebody for a violation of spill-  
13 reporting rules, where we had full knowledge of the facts,  
14 as we apparently do in this case, and there was some  
15 controversy about that. But you know, I would not  
16 represent that there was not a violation of the spill  
17 reporting rule, because that's a different rule and it has  
18 different standards from the plugging rule.

19 COMMISSIONER BAILEY: I just bring it up as an  
20 issue that may be important to take notice of.

21 MR. BROOKS: Okay, very good.

22 CHAIRMAN FESMIRE: Mr. Brooks, would you  
23 investigate that issue and report to us at the next  
24 hearing?

25 MR. BROOKS: I will do it.

1 CHAIRMAN FESMIRE: Thank you.

2 COMMISSIONER BAILEY: Thank you.

3 CHAIRMAN FESMIRE: So Cause Number 13,345 will be  
4 continued to the next hearing docket -- to the next  
5 Commission meeting.

6 \* \* \*

7  
8 CHAIRMAN FESMIRE: The next item before the  
9 Commission is Case Number 13,142, the *de novo* continued  
10 from the September 9th, 2004, Commission Hearing. It's the  
11 Application of the New Mexico Oil Conservation Division for  
12 an order requiring Maralo, LLC, to remediate hydrocarbon  
13 contamination at an abandoned well and battery site.

14 Mr. Brooks, I understand that this continuation  
15 has been agreed to by the Commission's attorney?

16 MR. BROOKS: It is my understanding that that is  
17 the case. Now, this -- because I represent the Division in  
18 this matter, I'm not the Commission attorney on that case.  
19 Carol Leach is acting as Commission attorney. But my  
20 understanding is that you are correct.

21 CHAIRMAN FESMIRE: Okay, so this cause will be  
22 continued to the next Commission meeting?

23 MR. BROOKS: That's correct.

24 \* \* \*

25

1           CHAIRMAN FESMIRE: The next case before the  
2 Commission is Case Number 13,142, *de novo* and amended,  
3 Application of the New Mexico Oil Conservation Division for  
4 an order requiring -- I'm sorry, is that the same case?  
5 Yes.

6           MR. BROOKS: Yeah.

7           CHAIRMAN FESMIRE: Why is it in the docket twice?

8           MR. BROOKS: Well, I believe because it was  
9 docketed both on a *de novo* application and on an amended  
10 application by the Division.

11          CHAIRMAN FESMIRE: Okay. So since this is a  
12 related case, the parties are asking that we continue this  
13 to the next Commission meeting?

14          MR. BROOKS: Correct.

15          CHAIRMAN FESMIRE: Okay. Case Number 13,142 will  
16 be continued to the next Commission meeting.

17                           \* \* \*

18  
19          CHAIRMAN FESMIRE: The next item on the docket is  
20 Case Number 13,048, continued from the August 12th, 2004,  
21 docket. It's an Application of Devon Energy Production  
22 Company, L.P., for compulsory pooling in Lea County, New  
23 Mexico.

24          Mr. Brooks, what's the status of that case?

25          MR. BROOKS: My understanding is that the parties

1 have requested that it be continued indefinitely to avoid  
2 the necessity of readvertising, if, as and when it is  
3 revived we had concluded -- by "we" I mean the Commission  
4 attorney and the Commission Secretary -- have concluded  
5 that it should be continued to the December Commission  
6 meeting, at which time we may further address it.

7 CHAIRMAN FESMIRE: Commissioner Chavez, would you  
8 have any objection to that?

9 COMMISSIONER CHAVEZ: No, I don't.

10 CHAIRMAN FESMIRE: Commissioner Bailey?

11 COMMISSIONER BAILEY: No, I don't.

12 CHAIRMAN FESMIRE: We will continue Cause Number  
13 13,048 indefinitely.

14 COMMISSIONER CHAVEZ: Excuse me, Commissioner  
15 Fesmire, I thought that Mr. Brooks said to December.

16 MR. BROOKS: That was my recommendation that it  
17 be continued to the December meeting.

18 CHAIRMAN FESMIRE: Okay, then let's correct that.  
19 We will continue Case Number 13,048 until the December  
20 meeting of the Oil Conservation Commission.

21 (Thereupon, these proceedings were concluded at  
22 9:15 a.m.)

23 \* \* \*

## 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 October 14th, 2004.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006