

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 MARBOB ENERGY CORPORATION)
FOR COMPULSORY POOLING, EDDY COUNTY,)
NEW MEXICO)
)

CASE NO. 13,348

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

March 8th, 2005

Santa Fe, New Mexico

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This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Tuesday, March 8th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

I N D E X

March 8th, 2005
 Commission Hearing
 CASE NO. 13,348

| | PAGE |
|------------------------|------|
| APPEARANCES | 3 |
| STATEMENTS: | |
| By Mr. Bruce | 5 |
| By Mr. Carr | 7 |
| REPORTER'S CERTIFICATE | 13 |

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E X H I B I T

| Applicant's | Identified | Admitted |
|-------------|------------|----------|
| Exhibit A | 5 | 6 |

* * *

A P P E A R A N C E S

FOR THE DIVISION:

DAVID K. BROOKS, JR.
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR MARBOB ENERGY CORPORATION
and HUDSON OIL COMPANY OF TEXAS:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
110 N. Guadalupe, Suite 1
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

FOR ARD ENERGY GROUP, LTD., SUCCESSOR IN INTEREST TO MARY
T. ARD; and ARD OIL, LTD., SUCCESSOR IN INTEREST TO MARY T.
ARD, TRUSTEE OF THE EDWARD R. HUDSON TRUST 4:

JAMES G. BRUCE
Attorney at Law
P.O. Box 1056
Santa Fe, New Mexico 87504

* * *

1 WHEREUPON, the following proceedings were had at
2 10:44 a.m.:

3 CHAIRMAN FESMIRE: Okay, let's go back on the
4 record.

5 During the break Mr. Bruce indicated that we
6 could dispose of the case on the docket today, 13,348 in
7 very little time and has asked permission to take it
8 slightly out of order on the docket.

9 So at this time we will call for entries of
10 appearance on Cause Number 13,348, the Application of
11 Marbob Energy Company for compulsory pooling in Eddy
12 County, New Mexico.

13 Mr. Bruce?

14 MR. BRUCE: Excuse me, Mr. Chairman, I'm also
15 partially sick, so everybody in this room will have it
16 after today.

17 Jim Bruce of Santa Fe, representing the Ard
18 interests. I have no witnesses, I just have a short
19 statement.

20 MR. CARR: May it please the Examiner [sic], I'd
21 like to enter my appearance in the case also for the
22 Applicant, Marbob Energy Corporation, and also for Hudson
23 Oil Company of Texas, the party who Marbob and other
24 working interest owners are seeking to be designated
25 operator of the well.

1 CHAIRMAN FESMIRE: Mr. Carr, do you have any
2 objection to taking this statement on the record?

3 MR. CARR: No, I do not.

4 CHAIRMAN FESMIRE: Mr. Bruce, proceed.

5 MR. BRUCE: Mr. Chairman, as you know, this is a
6 compulsory pooling case, and there was a motion for stay
7 heard last week in order to stay the running of the time
8 deadlines set forth in the original Division Order.

9 Today the long and the short of it is -- and I've
10 spoken with Mr. Carr about this -- we'd just ask that you
11 take the record below, that was presented before the
12 Division, and enter your order in this matter.

13 The Ard interests would like to thank you for
14 considering their stay, which was denied, and I think most
15 of the reasons why we wanted the stay were set forth in the
16 record. Mr. Brenner was there and took the record before
17 this.

18 As you know, the stay was denied. The Ard
19 interests own 11 or 12 percent of this well, of which their
20 cost would be about \$175,000.

21 They have written a letter to you marked as
22 Exhibit A. I am not going to read it into the record. The
23 long and the short of it is this, Mr. Chairman: Since the
24 stay was only put into effect until actually 9:00 a.m.
25 today, we feel that the operator would remain in place.

1 And first and foremost, this was a case to dispute the
2 operatorship of Hudson Oil Company of Texas.

3 Since the stay was not put in place, my clients
4 would have to make their election by this morning and
5 submit their money with an operator, frankly, that they do
6 not trust. I would refer you to the record and to the
7 letter for the reasons set forth therein.

8 But since the denial of the stay, we feel that
9 the hearing that we are granted under Section 70-2-13 would
10 not grant us any substantial relief, and as a result my
11 clients have been forced to make a decision to go
12 nonconsent in the well, which they would have participated
13 in with another operator.

14 I would ask that Exhibit A be made part of the
15 record and, as I said, take the record from the case below
16 into evidence and enter your order on that record.

17 CHAIRMAN FESMIRE: Exhibit A will be admitted as
18 part of the record.

19 Commissioner Bailey, do you have any comment?

20 COMMISSIONER BAILEY: I do not have access,
21 unless somebody gives me your copy of the previous hearing.
22 I have no basis to participate in an order based simply on
23 the previous testimony. I need to have a copy one way or
24 the other.

25 CHAIRMAN FESMIRE: Okay --

1 MR. CARR: May it please the Commission --

2 CHAIRMAN FESMIRE: -- Mr. Carr?

3 MR. CARR: -- we filed a prehearing statement and
4 exhibits in this case and were advised that Mary T. Ard was
5 not going to go forward, would enter a written statement in
6 the record, and then I think the matter would be handled at
7 that time.

8 What we request is that the order below be
9 affirmed, because this is not a *de novo* appeal. That would
10 require the presentation of evidence and a new record. And
11 we believe it's appropriate that the order below be entered
12 and that this letter be included in the record as a
13 decision by the pooled parties, Mary T. Ard and the various
14 entities that she's involved in, to remain nonconsent.

15 CHAIRMAN FESMIRE: Mr. Bruce, what would be the
16 advantage to this procedure, as opposed to simply
17 withdrawing your appeal of the lower order?

18 MR. BRUCE: Well, there may not be much of an
19 advantage, Mr. Chairman, although it would incorporate -- I
20 think the final order would incorporate the records with
21 respect to -- I think you'd have two things, one of which
22 may benefit Marbob: You would have the prior orders
23 incorporated extending the deadline to today, and you would
24 have on the record the Ard interests' nonconsent in the
25 election, nonconsent in joining the well.

1 CHAIRMAN FESMIRE: Okay, I think that
2 Commissioner Bailey is absolutely correct, that since we
3 don't have the record before us, and if we are going to
4 enter an order on this, we at least need to as a Commission
5 be able to review the record below. And as such, I would
6 ask you and Mr. Carr to consent to us placing this on the
7 docket for the April meeting for the purpose of reviewing
8 the record and issuing an order at that time.

9 MR. BRUCE: I have no objection.

10 CHAIRMAN FESMIRE: Mr. Carr?

11 MR. CARR: May it please the Chairman, we have a
12 pooling order that has not been stayed and we now have one
13 party, Mrs. Ard, who is not coming in today. We have the
14 other parties who have either voluntarily committed or
15 pursuant to the pooling order paid their share. We have a
16 rig ready, are building a location, I believe by the 14th
17 of April may be drilling the well.

18 And so I think that -- I appreciate the dilemma
19 this presents to you. It would seem to me that instead of
20 having to write an order and discuss all of this and hold
21 to old deadlines and do all of that, the appropriate thing
22 would be to withdraw the appeal, and we would stipulate
23 that this letter and the record made at the hearing where
24 we argued the stay be incorporated into the final record in
25 this case, that we would agree that that should be included

1 in the record, but the pooling order that now is in place
2 and that everyone is operating under and we're getting
3 ready to drill pursuant to would be the order, and that if
4 anything happened, that we would request that with the
5 inclusion of this new material in the record, that the
6 Commission would only have to enter an order affirming the
7 lower order, because that's the order we're proceeding
8 under, and it's in place today.

9 MR. BRUCE: I have no objection to that. I would
10 just like a new order entered, just affirming it and
11 perhaps referencing the stay order, which is the key order,
12 I think, in this case.

13 MR. CARR: Correct, we would have no objection to
14 that, so that it's a complete record on what actually
15 transpired before the agency.

16 MR. BRUCE: And I would point out that the
17 original order is still in effect, and the Applicant can
18 proceed under that order with respect to the drilling of
19 the well.

20 CHAIRMAN FESMIRE: I wouldn't have a problem with
21 it, but like Commissioner Bailey said --

22 COMMISSIONER BAILEY: How can I sign an order for
23 something I don't know anything about?

24 MR. BROOKS: Mr. Chairman, Commissioner Bailey, I
25 believe that the Commission could enter an agreed order if

1 the parties requested for the Commission to do so. I don't
2 believe the Commission can do a summary affirmance, I agree
3 with you on that, because the Commission does not have the
4 power to act as an appellate tribunal; its power is to act
5 to conduct a *de novo* review and to make a decision based on
6 the evidence presented to it.

7 If, however, the parties want to agree on a
8 specific order that would terminate this case in a
9 particular manner, then I don't see any reason why the
10 Commission could not enter such an order.

11 COMMISSIONER BAILEY: That's fine with me.

12 COMMISSIONER CHAVEZ: Yes.

13 CHAIRMAN FESMIRE: Commissioner Chavez?

14 Why don't we go ahead and do it that way? I
15 guess you all will need some time to get that order to us,
16 and we need to do it in such a manner that we don't cause
17 any delay in the --

18 MR. CARR: I think we can --

19 MR. BRUCE: If I could -- Orders on the
20 Division's website are in PDF and I can't alter them. If I
21 could get a Word-formatted copy of the original order from
22 the Division Secretary, I could put that together and get
23 it over to Mr. Carr in a day or so, and we could move about
24 it in that fashion, e-mailed to me.

25 MR. BROOKS: Okay, the Commission could not sign

1 it until -- the Commissioners can't sign an order except at
2 a regular meeting, but --

3 MR. BRUCE: That's fine.

4 MR. BROOKS: -- it would be satisfactory just
5 that --

6 MR. BRUCE: But the order -- the order will
7 recognize that the original order is in effect, and Mr.
8 Carr's clients could proceed with the drilling of the well.

9 MR. CARR: That's great with us, and we'll do
10 that and get something to you so you're not put in this
11 position of acting on something that wasn't presented to
12 you.

13 CHAIRMAN FESMIRE: We'll sign it at the April
14 meeting. Okay.

15 MR. CARR: Mr. Chairman, is that meeting
16 scheduled now for the 14th? Is there a scheduling issue on
17 that? I think I heard Mr. Chavez might have a conflict.

18 COMMISSIONER CHAVEZ: I won't be available for
19 the meeting on the 14th, but I think it's been decided that
20 it will not be rescheduled, there will be a quorum with
21 Commissioner and the Chairman.

22 MR. CARR: That's the date we'll work off of, but
23 we'll have it to you in plenty of time so you can review
24 it.

25 COMMISSIONER BAILEY: The 14th is fine with me.

1 CHAIRMAN FESMIRE: We talked about that and
2 decided that it would probably be better to go ahead and
3 leave it on the date that it was scheduled.

4 So in this cause, 13,348, the parties have agreed
5 to an order, they will draft the order, present it to the
6 Commission, and the Commission will consider that order,
7 that agreed order at the April meeting. Okay?

8 MR. BRUCE: Yes.

9 (Thereupon, these proceedings were concluded at
10 10:55 a.m.)

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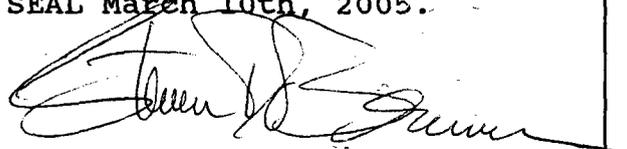
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division 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 10th, 2005.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006