

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

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IN THE MATTER OF THE HEARING CALLED BY THE
OIL CONSERVATION COMMISSION FOR THE PURPOSES
OF CONSIDERING:

CASE NO. 14106 De Novo

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR A
COMPLIANCE ORDER AGAINST XERIC OIL & GAS CORPORATION ("XERIC").

MOTION TO EXCLUDE TESTIMONY OF DANIEL SANCHEZ

Xeric Oil & Gas Corporation ("Xeric") moves the Oil Conservation Commission ("Commission") for an order excluding in whole or in part the testimony of Mr. Daniel Sanchez. In its Pre-Hearing Statement, the Oil Conservation Division ("Division") indicates it plans to call Mr. Sanchez, the Enforcement & Compliance Manager for the Division. The Division also has presented a timeline of events in its Statement of the Case. Mr. Sanchez was not present for the phone calls or meetings with Xeric – nor did he ever have any direct contact with Xeric -- as discussed in the timeline. Accordingly, anything Mr. Sanchez testifies about regarding the timeline will not be from his own personal knowledge and will be based on at least one level, if not more, of hearsay. Therefore, Mr. Sanchez's testimony should be excluded.

The Division's Pre-Hearing Statement includes a timeline to show the "OCD's rationale for filing an application in this case." *See* Pre-Hearing Statement, attached as Exhibit 1. From 2000 to 2008, the timeline indicates that "numerous letters **by District** as well as informal notification **made by District Office** to Xeric" occurred (emphasis added). On April 15, 2008, a

conference call took place between Xeric and OCD counsel¹. On June 13, 2008, a conference was held in Santa Fe with members of Xeric, Xeric's counsel and OCD counsel. On July 1, July 30, August 15 and August 21, 2008 various communications took place between counsel for the OCD and Xeric.

Mr. Sanchez has previously admitted that he has had no contact with anyone at Xeric. **See Exhibit 2**, Page 23. Mr. Sanchez further stated that all contact with Xeric has been through his staff and through counsel. *Id.* When asked if he was present at the April 2008 conference call, he responded: "No, I wasn't." *Id.* at p. 22. Mr. Sanchez was asked about the basis for his understanding of what took place during that call, and he answered: "The attorney took notes during that meeting, which I reviewed when I got back." *Id.* Mr. Sanchez similarly stated that he was not present for the June meeting. *Id.* at p. 23.

New Mexico Rule of Evidence 11-602 requires a witness to have personal knowledge of a matter in order to testify. The rules of evidence also do not allow hearsay if offered to prove the truth of the matter asserted. NMRA 11-801 & 11-802. Since Mr. Sanchez has no personal knowledge of the meetings and contacts that have taken place between the OCD and Xeric, his testimony is improper. The Pre-Hearing Statement does not indicate any other witnesses (besides Dorothy Phillips who is testifying by affidavit) who have personal knowledge of this matter and the history with Xeric. Mr. Sanchez's testimony is based on statements he heard from his district staff, his counsel and his counsel's notes (which may be hearsay within hearsay). Mr. Sanchez's testimony is unquestionably being offered for the truth of the matter, and is classic hearsay.

¹ The current owners of Xeric were not present and therefore cannot confirm if others were on the phone.

Because the Division may improperly attempt to introduce testimony not based on personal knowledge and inadmissible hearsay, Xeric respectfully requests that the Commission exclude all such hearsay testimony.

Dated February 23, 2009.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that on February 23, 2009, I served a copy of the foregoing document to the following by Hand-Delivery:

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