

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

ORIGINAL

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

APPLICATION OF THE NEW MEXICO OIL Case No. 14055
CONSERVATION DIVISION FOR A COMPLIANCE ORDER
AGAINST C&D MANAGEMENT COMPANY, D/B/A FREEDOM
VENTURES COMPANY, EDDY COUNTY, NEW MEXICO

Case No. 14116: Continued to July 8, 2010

Case No. 13812; Case No. 14365; Case No. 14366;
Case No. 14323; Case No. 14382; Case No. 14418:
Continued to June 17, 2010

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

BEFORE: MARK E. FESMIRE, Chairman
JAMI BAILEY, Commissioner
WILLIAM C. OLSON, Commissioner

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May 20, 2010
Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, May 20, 2010, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91
Paul Baca Professional Court Reporters
500 Fourth Street, N.W., Suite 105
Albuquerque, NM 87103 505-843-9241

A P P E A R A N C E S

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FOR THE OIL CONSERVATION COMMISSION:

Cheryl Bada, Esq.
Assistant General Counsel
1220 S. St. Francis Drive
Santa Fe, New Mexico 87504

FOR FASKEN OIL AND RANCH, LTD.:

Michael H. Feldewert, Esq.
Holland & Hart
110 North Guadalupe, Suite 1
Santa Fe, New Mexico 87501

FOR THE OIL CONSERVATION DIVISION:

Sonny Swazo, Esq.
Assistant General Counsel
1220 S. St. Francis Drive
Santa Fe, New Mexico 87504

FOR C&D MANAGEMENT COMPANY:

Ernest L. Padilla, Esq.
Padilla Law Firm, P.A.
1512 S. St. Francis Drive
Santa Fe, New Mexico 87504

ALSO PRESENT:

Florene Davidson

REPORTERS CERTIFICATE

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1 CHAIRMAN FESMIRE: The record should
2 reflect that this is the Thursday, May 20th, 2010,
3 regularly-scheduled meeting of the New Mexico Oil
4 Conservation Commission. The record should also reflect
5 that Commissioners Bailey, Olson, and Fesmire are all
6 present. We, therefore, have a quorum.

7 The first order of business on the docket
8 today is the minutes of the April 21st through 23rd
9 Special Commission Meeting. Have the Commissioners had
10 the opportunity to review those minutes?

11 COMMISSIONER BAILEY: Yes, I have, and I
12 move that we adopt them.

13 COMMISSIONER OLSON: Second.

14 CHAIRMAN FESMIRE: All those in favor,
15 signify by saying aye. Let the record reflect that the
16 minutes were unanimously adopted by the Commission,
17 signed by the Chairman, and conveyed to the secretary.

18 COMMISSIONER OLSON: I might say that that
19 was a good job by our administrator to get all that
20 together in a good fashion. So thank you.

21 CHAIRMAN FESMIRE: As usual.

22 The next item before the Commission is the
23 scheduling issues in the De Novo case, 14116, the
24 application of Fasken Oil and Ranch, Limited, for an
25 order authorizing the drilling of an additional well at

1 an unorthodox location in the potash area in Lea County,
2 New Mexico, which was continued from the April 21st
3 through 23rd, 2010, Special Commission Meeting for
4 further scheduling.

5 Mr. Feldewert, you're here representing
6 Fasken?

7 MR. FELDEWERT: Yes, Mr. Chairman.

8 CHAIRMAN FESMIRE: The record should
9 reflect that, apparently, nobody has shown up
10 representing the potash company. We will go ahead and
11 schedule it and hope they don't have a conflict.

12 How long do you think -- do the Commissioners
13 have any idea how long we think it will take us to
14 deliberate on this case?

15 COMMISSIONER BAILEY: Either a very short
16 time or a very long time.

17 COMMISSIONER OLSON: I second that.

18 CHAIRMAN FESMIRE: Should we try it day by
19 day and schedule a day?

20 COMMISSIONER BAILEY: I'm sure one day
21 will be fine.

22 CHAIRMAN FESMIRE: Commissioner Olson,
23 you've probably got the busiest schedule.

24 COMMISSIONER OLSON: I've got some
25 problems in June, because we have two weeks scheduled for

1 dairy hearings in mid-June. I don't know what our date
2 is for our next meeting at the moment. Yeah, I may not
3 be there depending on what happens with those hearings.
4 I wouldn't have time to prepare for it anyway. I think
5 the July meeting might be --

6 COMMISSIONER BAILEY: Early July would be
7 better for me.

8 CHAIRMAN FESMIRE: Do you have a date
9 preference?

10 COMMISSIONER BAILEY: Anywhere between the
11 1st and the 9th.

12 COMMISSIONER OLSON: What's our regularly
13 scheduled meeting right now?

14 COMMISSIONER BAILEY: The 15th.

15 CHAIRMAN FESMIRE: I am clear Friday the
16 2nd.

17 COMMISSIONER BAILEY: I'm clear.

18 CHAIRMAN FESMIRE: Commissioner Olson?

19 COMMISSIONER OLSON: I was thinking maybe
20 the 8th, and if we do go into the 9th --

21 CHAIRMAN FESMIRE: The 8th is a Thursday.

22 COMMISSIONER OLSON: Right. The regular
23 meeting will be the following week, the following
24 Thursday.

25 CHAIRMAN FESMIRE: The secretary informs

1 us that that conflicts with the Examiner hearing, but we
2 could meet in the secretary's conference room.

3 Mr. Feldewert, I realize you don't have to be
4 there, but you might want to hang around. Is Thursday
5 the 8th satisfactory to you?

6 MR. FELDEWERT: We will make that work,
7 Mr. Chairman. I'm assuming that deliberations will be in
8 closed session. Are you anticipating rendering a
9 decision on the 8th?

10 CHAIRMAN FESMIRE: I'm anticipating at
11 least announcing the decision and asking -- yeah. We
12 probably won't have it drafted, but announcing the
13 decision.

14 COMMISSIONER OLSON: Okay. That would be
15 helpful. Thank you.

16 CHAIRMAN FESMIRE: We will, therefore,
17 continue Case Number 14116 from today until Thursday,
18 July 8th, 2010, 9:00 a.m., in the Oil Conservation
19 Division conference room on the third floor of this
20 building.

21 With that, the next issue before the
22 Commission is Case Number 14055, the application of the
23 New Mexico Oil Conservation Division for a compliance
24 order against C&D Management, doing business as Freedom
25 Ventures. I believe the attorneys are present and ready

1 to make their appearance?

2 MR. SWAZO: Sonny Swazo for the Oil
3 Conservation Division.

4 MR. PADILLA: Carlos Padilla for C&D
5 Management Company.

6 CHAIRMAN FESMIRE: Mr. Swazo, would you
7 remind the Commission where we are in this case?

8 MR. SWAZO: Sure. May I approach? What I
9 just handed out to the Commission and Counsel is a copy
10 of the Commission's order. I think it will be very
11 helpful as I explain what the situation currently is in
12 this case.

13 I also want to say on the record that I did
14 file an affidavit of notice and publication with the
15 hearing clerk. I just provided Mr. Padilla a copy. I
16 have an extra copy if the Commission would like one right
17 now. That affidavit just substantiates that I complied
18 with the 20-day notice requirements required for the
19 Commission hearing.

20 The reason why I move to reopen this case is
21 to resolve an ambiguity that exists in the Commission's
22 order. Last year I had filed a motion to reopen this
23 case, asking the Commission to issue a plugging order for
24 the remainder of C&D's noncompliant wells. The reason
25 being was because C&D had not complied with the reporting

1 requirements.

2 We had plugged all of their noncompliant
3 inactive wells, and C&D, I believe, plugged one or two of
4 those wells. But in any event, the reason why I came
5 before the Commission last year was to get a plugging
6 order for the remainder of the wells due to C&D's
7 noncompliance with the reporting rules.

8 We went through a hearing last summer, July
9 and August, and the Commission issued a decision in this
10 order in December. And if you look at the Commission's
11 order, ordering Paragraph Number IV states, "If, on or
12 before January 16, 2010, C&D has not fully complied with
13 Paragraphs II and III of this order for each well that
14 C&D now operates, the Division shall be and hereby is
15 authorized to plug all wells now operated by C&D."

16 If you look at Paragraph II, Paragraph II
17 states, "Pursuant to 19.15.5.9, C&D shall bring all wells
18 it operates into full compliance with the reporting
19 obligations under the 2008 order and 19.15.7.24 and the
20 financial assurance requirements in the rules promulgated
21 pursuant to the act."

22 If you read the order, the order purports to
23 give the OCD the authority to plug wells if C&D hasn't
24 come into compliance, hasn't complied with the reporting
25 requirements of the rule and the order. C&D has not

1 complied with the -- to date, C&D is still not in
2 compliance with the reporting requirements or the rule --
3 well, the reporting requirements of the order and the
4 rule.

5 If you remember, last year I had David Brooks
6 testify concerning what is required under the statute in
7 order for the OCD to have the ability to plug these
8 wells. And in my motion, that statute states -- the
9 statute is 70-2-14(B), and it states, "If any of the
10 requirements of the Oil and Gas Act or the rules
11 promulgated to that act have not been complied with, the
12 Oil Conservation Division, after notice and hearing, may
13 order any well plugged and abandoned by the operator or
14 surety or both in accordance with Division rules. If the
15 order is not complied with in the time period set out in
16 the order, the financial assurance shall be forfeited."

17 What the Commission's order is missing that
18 magic language. It's missing the requirement that --
19 it's missing the portion that requires there to be an
20 order ordering the operator to plug the wells. Only
21 after the operator has not complied with that provision
22 of the order, then, under the statute, the OCD would have
23 the authority to plug the wells, and that's the ambiguity
24 that exists in this order.

25 Now, I think it's perfectly clear that the

1 Commission's intent was to give the OCD the authority to
2 plug these wells. I mean, we have express language
3 stating that if the operator -- I mean, we have Provision
4 Number IV, which states that if the operator hasn't
5 complied with the reporting requirements, that the OCD
6 shall have the authority to plug the wells.

7 In addition, the order cites the basis for the
8 motion to reopen this case last year, which was to get a
9 plugging order for C&D's wells due to its noncompliance.

10 In addition, the order cites the statute,
11 70-2-14(B), which is the statute that gives the OCD the
12 authority to plug noncompliant wells for -- to plug wells
13 for an operator's noncompliance with an order requiring
14 that operator to plug wells for compliance with OCD
15 rules.

16 The Commission had also come to the decision
17 that the operator was in violation of the reporting
18 requirements and also the financial assurance
19 requirements.

20 I don't know if it was a mistake or an
21 oversight on the part of the Commission, but I think the
22 intent is clearly there. All I'm asking for is that the
23 Commission clear up the ambiguity and clarify the order
24 and insert the magical language necessary which would
25 give the OCD the authority to plug these wells.

1 I would also note that as of today, the
2 operator still has not complied with the financial
3 assurance requirements for one well. The operator still
4 has not filed the reports, hasn't cleared up any of the
5 inaccurate reports that he testified that he filed
6 inaccurately. He hasn't cleared that up. In addition,
7 he hasn't filed the C-115 for March of this year, which
8 is due.

9 I would also note that your order states that
10 "C&D's authority to transport or inject for all wells
11 that it now operates is hereby, as of the date of this
12 order, suspended. Such suspension shall continue until
13 C&D is in full compliance with this order."

14 According to operator C-115 reports for February and
15 January, he had been transporting, so he has disregarded
16 this Commission's order. I would also note that our
17 inspectors indicate that there are leaks and spills
18 around some of the tank batteries at the site. It
19 doesn't appear that the operator has been taking care of
20 business with regard to these well sites.

21 So what I'm asking for, again, is, I'm asking
22 the Commission to clear up the ambiguity in the order and
23 to direct an order to the operator requiring him to plug
24 and abandon his wells by a date certain, and if operator
25 does not plug and abandon the wells by the date set, then

1 to authorize the OCD to plug the wells and forfeit any
2 applicable financial assurance.

3 I'm asking for a very short time period for
4 compliance, because this case has been dragging on for
5 nearly three years, and the compliance issues have been
6 dragging on for much longer than that. The operator has
7 had plenty of time to remedy the situation, and we still
8 are no closer to getting this resolved than we were
9 several years ago.

10 CHAIRMAN FESMIRE: Mr. Swazo, it seems to
11 me that we have the authority to clear up the ambiguity
12 on the previous testimony, but aren't you asking us to
13 extend the order somewhat?

14 MR. SWAZO: Well, actually, I would prefer
15 that it wouldn't be extended, but we do need to have that
16 magic language in the order, in order for us to plug
17 these wells.

18 CHAIRMAN FESMIRE: Mr. Padilla?

19 MR. PADILLA: I'm not sure where to start,
20 and I'm not sure that I fully understand the motion
21 itself, frankly. Earlier this week, I was prepared to
22 stipulate to an entry of an order amending the prior
23 order. But it seems to me that if Mr. Swazo wants to
24 have and what the Division wants to have is this magical
25 language included, then I think it would have to start

1 all over again and ask that, after notice and hearing,
2 that the wells be plugged and abandoned by the operator
3 or, thereafter, if he failed to do that, by the Oil
4 Conservation Division.

5 So I think -- not only that, but the order
6 that the Commission issued last year, issued a 5.9 order,
7 as I understand it, and it clearly states in ordering
8 Paragraph II that it's up to the operator to get that 5.9
9 effect lifted, to file a motion saying that he has
10 complied. Otherwise, he's essentially suspended from
11 operations.

12 So I think that with what the Commission
13 decided last year did not make a mistake. I think the
14 order is very clear and there is no ambiguity. I agree
15 with the Chairman's comment about extension of this
16 order, but I -- even if you extend the order, based on
17 prior testimony and evidence, I don't know where we are
18 in terms of procedural defects, in terms of whether this
19 order and what is sought by the motion -- whether or not
20 you have to start all over again, amend the complaint,
21 amend the original petition, and ask that the wells be
22 plugged and abandoned in accordance with the rules of the
23 OCD.

24 CHAIRMAN FESMIRE: Based on the evidence
25 at the prior hearing, the sworn evidence, and not on Mr.

1 Swazo's statements today, do you think the Commission has
2 the authority to make the clarification that he's asking
3 for?

4 MR. PADILLA: After notice and hearing.
5 As I understand this motion, it says, "Let's reopen this
6 case," because it says, "Motion to reopen case to clarify
7 order." So I don't think that this order is ambiguous in
8 any manner.

9 The Commission issued a decision, and the
10 decision was, "Here's a 5.9 order, as you requested," and
11 I think we argued against the 5.9 order last year that
12 there was a defect in the petition itself.

13 The Commission determined that the OCD was
14 entitled to a 5.9 order based on the evidence and
15 effectively amended the application because of testimony
16 that was presented. But the decision the Commission made
17 was saying, "Hey, here's a 5.9 order." Therefore, unless
18 the operator comes in with a motion saying it has now
19 complied, then the Commission lifts the order.

20 So up until that time, you know, the operator
21 has to come here and say, "I've complied, therefore, lift
22 this 5.9 order," and I don't see any ambiguity in that.
23 That decision was made. C&D Management did not appeal
24 the order of the Commission, and I think this order
25 stands where it is, unless a new proceeding is brought

1 and the scope of -- if the Commission is going to grant
2 this motion, then we have to start all over again with
3 respect to plugging and abandoning these particular
4 wells.

5 COMMISSIONER OLSON: Maybe this is for
6 both parties. But I guess I don't understand why there's
7 any ambiguity, because on the Commission order, it
8 says -- I'm looking at Item Number II, the last sentence.
9 It gives -- well, Number II gives the option to C&D to
10 bring these wells into compliance. It says, "In the
11 alternative, if they don't do that, they shall plug
12 them."

13 If I come to Paragraph IV, if they don't
14 comply by January 16th, the Division is authorized to
15 plug all the wells. We have notice and hearing on that,
16 so I guess I'm confused why the Commission order doesn't
17 already authorize the Division to plug the wells.

18 MR. SWAZO: My answer is that under the
19 statute, there has to be an order requiring the operator
20 to plug the wells before the OCD can be authorized to
21 plug the wells, and that language does not exist in this
22 order.

23 There's no order that states that C&D shall
24 be -- if I can just give an example from another case,
25 this case involves a remediation issue. It states that

1 should the operator fail to remediate the well sites by
2 the date set, then the operator shall plug and abandon
3 the subject wells. And if the operator fails to plug and
4 abandon the well, then the Division shall be authorized
5 to plug and abandon the subject wells and declare
6 forfeiture of any applicable financial assurance.

7

8 We don't have language requiring the operator
9 to plug and abandon the wells for not complying with the
10 reporting requirements.

11 COMMISSIONER OLSON: I guess I read that
12 differently. The order says in Paragraph IV, "If, on or
13 before January 16, 2010, C&D has not fully complied with
14 Paragraphs II and III," which relate to the reporting
15 obligations and the temporary abandonment status, "then
16 the Division shall be and hereby is authorized to plug
17 all wells now operated by C&D."

18 MR. SWAZO: But it doesn't have the
19 language that requires C&D to plug the wells first.

20 COMMISSIONER OLSON: It does in the last
21 sentence of Paragraph III. It says that they'll either
22 do this or plug and abandon the wells pursuant to the
23 rules. And then Paragraph IV gives the time frame for
24 when that's to occur. So I guess the way I read the
25 order, it seems to me that we've already fully authorized

1 that. We gave them the option to come into compliance or
2 plug them, and we gave them a deadline or for that to
3 occur.

4 CHAIRMAN FESMIRE: Mr. Padilla, you're not
5 raising this issue? You're satisfied that the order is
6 sufficient to go ahead and allow the Commission to --

7 MR. PADILLA: Yeah. I think the order
8 speaks for itself. I mean, the order says what it says.
9 It was all clear to us at the point that once compliance
10 was complied with, then it was up to the operator to
11 bring the motion and satisfy the Commission that it had
12 completed the work.

13 CHAIRMAN FESMIRE: And that motion is not
14 forthcoming?

15 MR. PADILLA: It may be sooner than later
16 because of this hearing today.

17 MR. SWAZO: Commissioner Olson, may I --
18 I'm sorry to interrupt. I was going to speak about your
19 opinion on Paragraph III. If you recall, this was a
20 multi-month, multi-day hearing. I think that given
21 everything that was testified to in the whole case, I
22 think it led to some confusion on the part of the
23 Commission.

24 My motion for reopening the case the first
25 time wasn't to deal with any inactive well issues. Those

1 inactive well issues were dealt with when we first heard
2 the case a couple of years ago, and those issues were
3 resolved. So I was a little confused as far as how
4 language about inactive wells could be inserted into the
5 order.

6 I believe that Paragraph III addresses the
7 inactive wells and not the reporting requirements. If
8 we're going to plug wells for an operator's noncompliance
9 with reporting requirements, the operator would have to
10 be ordered to plug the well for that particular purpose,
11 for the noncompliance with the reporting requirements,
12 and then the OCD would have the authority -- then the
13 Commission would have to authorize the OCD to have the
14 authority to plug the wells for the operator's
15 noncompliance with that portion of the order. And I
16 don't think that clearly states that in Paragraph III.

17 COMMISSIONER OLSON: You're saying that
18 the direction for C&D to plug and abandon the wells only
19 applies to the inactive wells and not the reporting
20 obligations? I guess -- so that part of the direction is
21 not given to C&D? Is that --

22 MR. SWAZO: That's correct. Yes, sir.
23 Again, inactive wells were not an issue at last year's
24 hearing.

25 CHAIRMAN FESMIRE: And an order -- an

1 additional paragraph to that effect would rely entirely
2 on the evidence presented at the original hearing and not
3 this hearing today?

4 MR. SWAZO: That's correct. I mean, Mr.
5 Padilla would like to re-litigate this case and, frankly,
6 we've already litigated this case for several years, many
7 days. The operator has already had notice and hearing of
8 the proceedings against him and has had the opportunity
9 to present a case. All we're asking for is that the
10 Commission clarify the ambiguity that exists in this
11 order.

12 We think the Commission's intent all along was
13 to have these wells plugged. And in order to authorize
14 the OCD to plug these wells in the event of the
15 operator's noncompliance -- the operator hasn't complied
16 with the reporting requirements or financial assurance
17 requirements. Mr. Padilla is mixing 5.9 with a plugging
18 order. They're completely separate entities. They're
19 apples and oranges, and --

20 CHAIRMAN FESMIRE: It's your position that
21 the order, as written, is not broad enough to allow the
22 plugging of the wells for the purpose because of the
23 reporting?

24 MR. SWAZO: It does not contain the
25 necessary language. The reporting, yes.

1 COMMISSIONER OLSON: So if there was a
2 similar language, like there is at the end of III, that
3 gave them that direction, that would be sufficient and
4 the rest of the order could stand?

5 MR. SWAZO: Yes. And I would point out
6 that David Brooks testified to this last year, and the
7 Commission is free to re-visit his testimony.

8 CHAIRMAN FESMIRE: Should we deliberate?

9 COMMISSIONER BAILEY: If we have to have
10 an order to do that, then let's do the order to do that.
11 I don't see that it's required, but --

12 MR. SWAZO: The order needs to comport
13 with the statute, and the statute does require that there
14 has to be an order ordering the operator to plug the
15 wells for noncompliance with OCD rules. And then there
16 has to be language that gives -- that authorizes the OCD
17 to plug the wells for the operator's noncompliance with
18 that order.

19 COMMISSIONER BAILEY: You're saying the
20 last sentence of Paragraph III does not apply to
21 Paragraph II also, even though Paragraph IV cites both of
22 them?

23 MR. SWAZO: Right. My contention is that
24 Paragraph III only relates to the inactive well issues
25 that were -- it only pertains to inactive well issues,

1 because these wells -- there were no inactive well issues
2 with the remainder of the wells that we were seeking a
3 plugging order for. Paragraph III talks about bringing
4 the wells into or back into production.

5 CHAIRMAN FESMIRE: Mr. Padilla, do you
6 have anything to add?

7 MR. PADILLA: Well, the only thing I have
8 to add is that all of these wells are producing wells.

9 CHAIRMAN FESMIRE: How could that be?
10 Your client is ordered not to produce until he's --

11 MR. PADILLA: Let me put it this way:
12 They're capable of production.

13 MR. SWAZO: The C-115 reports indicate
14 that there is production occurring.

15 COMMISSIONER BAILEY: Presently?

16 MR. SWAZO: Presently, after the
17 Commission's order.

18 COMMISSIONER BAILEY: They are reporting?

19 MR. SWAZO: They are reporting, yes, in
20 violation of the Commission's order. But, again, the
21 operator has not filed the reports for March 2010. And,
22 again, if you remember the testimony, Mr. Kaiser
23 testified that the reports that he filed were inaccurate.
24 Those inaccuracies have not been cleared up. So until
25 those inaccuracies have been cleared up, there are no

1 C-115s filed.

2 COMMISSIONER OLSON: I guess I just have
3 one more question. If there was to be a change to Order
4 Number II, would there need to be some time frame for C&D
5 to comply? Because right now there's a time frame that's
6 already passed in ordering Paragraph IV. If they're
7 supposed to be given an opportunity, as you are
8 suggesting, there seems like there would have to be some
9 time frame.

10 MR. SWAZO: I would argue that they've
11 already been given a time frame to bring these wells into
12 compliance.

13 COMMISSIONER OLSON: Is that, then,
14 the same -- since you're saying they weren't ordered to
15 plug -- your interpretation of our order is that they
16 were not ordered to plug for the reporting requirements.
17 Wouldn't they be given an opportunity, then, to plug
18 those in some time frame?

19 MR. SWAZO: Yes. I would order them to
20 plug the wells. I would give them a very short time
21 frame, because they've had sufficient time up to now.

22 CHAIRMAN FESMIRE: Based on the testimony
23 at the prior hearing?

24 MR. SWAZO: Prior hearings. Yes.

25 COMMISSIONER OLSON: One more question.

1 You mentioned the language from the statute about the
2 forfeiture of the financial assurance. That language is
3 not in here. Is that language necessary for the Division
4 to be able to collect that forfeiture financial
5 assurance?

6 MR. SWAZO: Yes, it would be. And most of
7 these wells are federal wells, so there really is no
8 financial assurance posted with the OCD, since operators
9 don't have to post state bonds for federal wells.

10 COMMISSIONER OLSON: That's all the
11 questions I have.

12 CHAIRMAN FESMIRE: At this time, if it's
13 the will of the Commission, the Chair would entertain a
14 motion to go into executive session to deliberate on the
15 motion before it in this case in Cause 14055.

16 COMMISSIONER OLSON: So moved.

17 COMMISSIONER BAILEY: Second.

18 CHAIRMAN FESMIRE: All those in favor,
19 signify by saying aye. At this time, the Commission will
20 go into executive session to consider the motion before
21 it in Case Number 14055.

22 (The Commission went into executive session.)

23 CHAIRMAN FESMIRE: Let's go back on the
24 record in Case Number 14055. The record should reflect
25 that during the executive session, the Commission

1 addressed that case, specifically, the motion for an
2 amended order in that case. The Commission has reached a
3 decision, and all three Commissioners are present, and
4 the decision is by a quorum.

5 It is the decision of the Commission that Mr.
6 Swazo's motion is well received. The Commission will
7 enter an amended order clarifying its intent that the
8 order should have been subject to the deadline, but we
9 understand that we need the language to make sure it
10 does.

11 The order would not be something that we
12 should issue, unless we have given a new deadline. So
13 with Mr. Padilla here, Mr. Padilla, we're going to give
14 your client 30 days additional to comply with that
15 portion of the order from today's date. The order itself
16 will not be signed until the next regularly-scheduled
17 meeting on the 17th of June, but your client should be on
18 notice from this point forward.

19 MR. PADILLA: Very well.

20 COMMISSIONER OLSON: Mr. Chairman, I'm not
21 sure if we need to make that in the form of a motion to
22 clarify the order.

23 CHAIRMAN FESMIRE: Okay.

24 COMMISSIONER OLSON: I would make that
25 motion.

1 COMMISSIONER BAILEY: I second it.

2 CHAIRMAN FESMIRE: All those in favor,
3 signify by saying aye.

4 The record should reflect that the motion was
5 unanimously adopted by the Commission.

6 MR. SWAZO: Mr. Chairman, I just want a
7 point of clarification. You talk about 30 days. Are you
8 talking about 30 days to plug the wells?

9 CHAIRMAN FESMIRE: Yes, those that are
10 subject to the amended order.

11 MR. SWAZO: Thank you.

12 CHAIRMAN FESMIRE: And the order shall
13 also reflect if there is any financial assurance
14 available, it shall be forfeited, too.

15 MR. SWAZO: Thank you.

16 CHAIRMAN FESMIRE: Anything more in this
17 case before the Commission?

18 MR. SWAZO: No, not at this time.

19 MR. PADILLA: Just a point of
20 clarification, Mr. Chairman. If an order is not
21 forthcoming, a formal final order amending this order is
22 not forthcoming until the next Commission meeting, in
23 terms of an appeal -- my client is to be required, as I
24 understand your decision, he should plug and abandon
25 those wells in 30 days.

1 In terms of appealing that order, he would
2 have been required to plug and abandon the wells before
3 issuance of the formal order, so, therefore, an appeal
4 would be meaningless if the wells would have to be
5 plugged and abandoned. So I'm just trying to figure out
6 whether this order is going to be essentially moot and,
7 therefore, the right of appeal is going to be denied.

8 CHAIRMAN FESMIRE: So the order would have
9 to be 30 days from the date it was signed.

10 MS. BADA: Either that, or your verbal
11 order has to be a final order.

12 CHAIRMAN FESMIRE: On advice of Counsel,
13 we will make the verbal order that we've issued today the
14 final order, and it will be memorialized in the order
15 that's signed on the 17th. So your appeal --

16 MS. BADA: Either do that or wait until
17 the 15th.

18 COMMISSIONER BAILEY: In a sense, it's
19 giving them 60 days, rather than 30 days.

20 CHAIRMAN FESMIRE: On the other side, it's
21 giving them three days, instead of 30.

22 MR. PADILLA: You almost need a written
23 order in order to appeal.

24 MR. SWAZO: There's no way to expedite a
25 written order?

1 CHAIRMAN FESMIRE: There's no way to
2 expedite getting the Commission together to sign the
3 order with the dairy hearings and everything going on.

4 MR. SWAZO: Is it necessary for the
5 Commission to be together as a body in order to sign the
6 final order?

7 CHAIRMAN FESMIRE: We have to adopt the
8 order as drafted.

9 COMMISSIONER OLSON: Just do it for the
10 17th.

11 MR. SWAZO: Can we shorten the time
12 period, the 30-day time period for the operator to plug
13 the wells? Since, essentially, he's going to have more
14 than 30 days. He's known about this for quite some time,
15 so he's going to get more than 30 days.

16 CHAIRMAN FESMIRE: I'm afraid that due
17 process requires us to err on the side of giving him more
18 than the 30 days. So we're go going to change -- we will
19 draft the order and sign it on the 17th. Is that
20 acceptable?

21 COMMISSIONER BAILEY: Yes.

22 COMMISSIONER OLSON: Yes.

23 CHAIRMAN FESMIRE: And we will adopt that
24 order on the 17th, and it will become final on the 17th,
25 Mr. Padilla.

1 MR. PADILLA: Thank you, Mr. Chairman.

2 CHAIRMAN FESMIRE: Thank you for bringing
3 that up. Anything more in that case?

4 MR. SWAZO: I would like to bring up
5 something. You folks had ordered -- you folks had
6 suspended C&D's transportation, and that's occurring in
7 this case. What's going to happen with that?

8 CHAIRMAN FESMIRE: We would probably need
9 another case brought against them for violation of the
10 requirement. Is there any way it can be worked --
11 without further testimony, there's no way it can be
12 worked into this proceeding. But, Mr. Padilla, if your
13 client is transporting, that's is a violation.

14 MR. PADILLA: I'm not aware of that, so I
15 couldn't say whether he did or didn't. I know the BLM
16 had required some kind of testing on the wells, that it
17 was having a problem with oil in the tanks, but I don't
18 know. I don't know what may have happened.

19 MR. SWAZO: The reports show
20 transportation occurring in the months of February and
21 January.

22 CHAIRMAN FESMIRE: The good news is, we've
23 been trying to get them to report. The bad news is, he's
24 been transporting illegally.

25 MR. SWAZO: File accurate reports.

1 CHAIRMAN FESMIRE: Mr. Padilla, if you'd
2 be so kind as to warn your client, and we'll be looking
3 for that.

4 MR. PADILLA: All right.

5 CHAIRMAN FESMIRE: Anything else in this
6 case?

7 MR. SWAZO: Nothing else.

8 CHAIRMAN FESMIRE: Thank you very much.

9 The next cause is Case 13812, the application
10 of Coleman Oil & Gas for the rescission of De Novo Order
11 R-12820-A, in San Juan County, New Mexico. This case has
12 been continued to June 17th, 2010.

13 The next cause before the Commission is Case
14 Number 14365, the application of COG Operating, LLC, for
15 designation of a non-standard spacing unit and for
16 compulsory pooling in Eddy County, New Mexico. That case
17 has also been continued to the June 17th hearing.

18 The next case is Case Number 14366, the
19 application of COG Operating, LLC, for designation of
20 non-standard spacing unit, unorthodox well location, and
21 for compulsory pooling in Eddy County, New Mexico. That
22 case has also been continued to the June 17th hearing.

23 The next cause before the Commission is Case
24 Number 14323, the application of Chesapeake Energy
25 Corporation for cancellation of a permit to drill issued

1 to COG Operating, LLC, in Eddy County, New Mexico, also
2 continued to June 17th, 2010.

3 The next case is Case Number 14382, the
4 application of Chesapeake Energy Corporation for
5 cancellation of a permit to drill issued to COG Operating
6 in Eddy County, New Mexico. This case has also been
7 continued to June 17th.

8 And the last case before the Commission is
9 Case Number 14418, the application of Cimarex Energy
10 Company for a non-standard oil spacing and proration unit
11 and compulsory pooling in Eddy County, New Mexico, also
12 continued to the June 17th, 2010, Commission meeting.

13 There is one other scheduling issue that the
14 Commission probably needs to consider. Counsel, we had a
15 request to expedite a hearing on an issue involving the
16 pit rule. I have not scheduled it. I would like to ask
17 the Commission their opinion of it. Is that acceptable?

18 MS. BADA: You can. But I think, given
19 your notice requirement, that happening before your June
20 hearing is not very likely.

21 CHAIRMAN FESMIRE: We have an issue.
22 Williams Energy needs to drill a water disposal well, and
23 they would like to do it in an area where they cannot dig
24 a pit. Their issue is that the pit rule allows them, as
25 long as it's not a leased facility, that they can dig

1 that pit someplace else and dispose of the waste there
2 under the rules where it would qualify, depth of water
3 and things like that.

4 It's a pretty important issue, because it
5 considers some of the things in the pit rule that might
6 be counter to what the Commission believes the pit rule
7 says, but it is an arguable position. It might take a
8 couple of days. Williams would like to expedite it,
9 because they don't anticipate getting through the winter
10 with enough water disposal facilities in the northwest
11 and would like to get this drilled.

12 Does anybody have any feeling about whether or
13 not we can get it done before the 17th? I kind of told
14 them the same thing Counsel told us.

15 COMMISSIONER OLSON: The 17th of June?

16 CHAIRMAN FESMIRE: June.

17 COMMISSIONER OLSON: There's no way I can
18 do that.

19 CHAIRMAN FESMIRE: That moots out your
20 response, doesn't it?

21 COMMISSIONER BAILEY: Yeah. Early July is
22 the next one, but they are scheduled for the June 17th
23 hearing.

24 CHAIRMAN FESMIRE: They are currently
25 scheduled for the June 17th hearing.

1 COMMISSIONER BAILEY: If Commissioner
2 Olson is not available, he's not available.

3 CHAIRMAN FESMIRE: Okay. We'll leave it
4 on the June 17th hearing.

5 Are there any other issues before the
6 Commission today? Thank you all very much.

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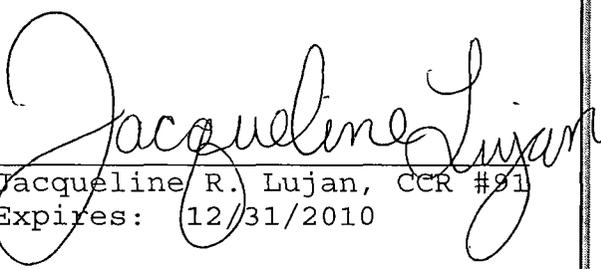
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on May 20, 2010, proceedings in the
above captioned case were taken before me and that I did
report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 28th day of May, 2010.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2010