STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

CASE NO. 13,269

AWAITING FINAL COMMISSION ACTION

NO EVIDENCE OR TESTIMONY TAKEN



REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING



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

July 15th, 2004

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, July 15th, 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

July 15th, 2004
Commission Hearing
CASE NO. 13,269 (Awaiting final Commission Action - No evidence or testimony taken)



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

FOR THE COMMISSION:

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

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WHEREUPON, the following proceedings were had at 9:07 a.m.:

CHAIRMAN FESMIRE: Good morning, we're going to go ahead and call this meeting of the Oil Conservation Commission to order.

Let the record reflect it's 9:07 on July 15th, 2004. The meeting is being held in Porter Hall at the New Mexico Oil Conservation Division office in Santa Fe, New Mexico.

My name is Mark Fesmire, I'm the Chairman.

To my left is Mr. Frank Chavez, a member of the Commission.

To my right is Ms. Jami Bailey, she's also a member of the Commission, she's the designee member of the State Land Commissioner, Mr. Patrick Lyons.

On the far right is Florene Davidson, she's the Commission secretary.

On the far left with the court-reporter equipment is Mr. Steve Brenner. He's our official court reporter.

And let the record reflect that all Commissioners or their designees are present.

At this time we're going to review the minutes of the last meeting. Have the Commissioners had an opportunity to review the minutes?

COMMISSIONER BAILEY: Yes, I have --

COMMISSIONER CHAVEZ: Yes.

COMMISSIONER BAILEY: -- and I move we accept them.

COMMISSIONER CHAVEZ: I second the motion.

CHAIRMAN FESMIRE: The acceptance of the minutes has been moved and seconded. All in favor?

COMMISSIONER BAILEY: Aye.

COMMISSIONER CHAVEZ: Aye.

CHAIRMAN FESMIRE: Opposed?

The minutes are hereby adopted for the June 17th and 18th meeting of the New Mexico Oil Conservation Commission.

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CHAIRMAN FESMIRE: The first item on the agenda today is Cause Number 13,269, the Oil Conservation Commission will consider a proposed amendment to 19.15.1 NMAC adopting a new section to be codified as 19.15.1.21 NMAC concerning development in special portions of the Chihuahuan Desert in southern New Mexico, in Otero and Sierra Counties.

At this time we're going to have to take a quick break. The Commission counsel has run up to get a copy of the final Order and the amendment to the Order, and he will be right back.

I didn't realize we would be done before he got back, so if you want to take a quick break until he gets back, I apologize, but feel free to stand up and stretch, it's been so long.

(Off the record at 9:10 a.m.:)

(The following proceedings had at 9:23 a.m.:)

CHAIRMAN FESMIRE: Let's go back into session.

The Commission calls Cause Number 13,269, the Oil Conservation Commission motion to adopt a new section of 19.15.1 NMAC, specifically to be codified as 19.15.1.21.

I have before me a draft order, and I'm going to call on counsel Brooks to explain the draft order and the addendum and the status of the case, please.

MR. BROOKS: Okay, may I see the Order? Thank you.

Honorable Commissioners, Mr. Chairman, you will recall the Commission deliberated at the conclusion of the session on June the 18th and made certain changes in the proposed Rule on the record.

The draft has been prepared to incorporate those changes that were made on the record. I have the record of the hearing here, in case any of the Commissioners would like to refer to the record, in making sure that the changes that were made in the rule were made in accordance with the instructions given to counsel on the record at

previous hearing.

The only other thing which I believe requires comment, since all of the Commissioners, or each of the Commissioners separately, has had an opportunity to review the draft order, I believe, prior to this hearing in accordance with the Open Meetings Act; there have been no discussions between the Commissioners, however -- as I said, each of the Commissioners, I believe, has had an opportunity to review this draft order -- the only other thing that needs to be mentioned is with regard to the -- in my opinion at this point, and certainly I'll be glad to respond to any questions that counsel may have -- but the legal description of the area to which the Rule will apply. There was some question about it raised at the previous hearing, and the Commission instructed counsel to undertake to review the matter, not for the purpose of determining to what the Rule should apply, which of course is for the Commission to determine, but inasmuch as there did not appear to be any controversy about the area to which the Rule should apply, then counsel was instructed to make a study to determine -- to ascertain how that area could be correctly described.

I have done that, and I have reviewed the matter with the staff of the -- I have reviewed the maps, the official maps prepared by the New Mexico State Land Office,

of which we have copies here in this Department, which I have brought with me this morning in case any of the Commissioners wants to look at them.

I have also reviewed plats of this area in the office of the Bureau of Land Management down on Rodeo Road, and I have discussed this issue with Mr. Joe Mraz at the State Land Office and Mr. Glaze at the Bureau of Land Management, and based on that review it is my professional opinion that the area described in the proposed draft order is the same area that is depicted in crosshach on Exhibit 4, which was introduced in evidence at the June 17th-18th hearing, and I do not believe there was any other evidence introduced on the issue of the particular area to which the Rule should apply.

I have also discussed this with Commission counsel, and I have provided my views to other counsel who appeared in the case and asked for their comment but have received none.

Otherwise, I think unless the honorable Commissioners have any questions, to which I'm prepared to respond, I believe that the draft order as it now exists adopts the Rule in accordance with the changes made by the Commission on June 18th.

CHAIRMAN FESMIRE: Commissioner Bailey, do you have any comment?

COMMISSIONER BAILEY: My only comment is that I will sign the Order, although I believe it's a shame that the school children of New Mexico will be denied about $40 million and that the economic development of a poor part of a poor state will be -- will not occur.

CHAIRMAN FESMIRE: Commissioner Chavez?

COMMISSIONER CHAVEZ: I just had one question on C.(8), the insertion of the "or" I think was a discussion that we've had in looking over the drafts, the way it's worded on this particular order.

I think we perhaps need to drop the word "or" from that, because the way it reads it says, Operators shall report injection pressures and volumes daily or in a manner acceptable to the Division.

MR. BROOKS: Okay, this was a question that I raised in an e-mail to each of the Commissioners. It's not been previously discussed by the Commission, and Commissioner Chavez is entirely correct, I had recommended dropping the "or". However, I do not feel at liberty to do so in view of a -- in the absence of a vote by the Commission, because I had felt that might be a substantive change.

My view of the matter was, from a drafting standpoint -- and this specific language was dictated on the record at the June 18th hearing -- my view from a

drafting standpoint is that the frequency of reporting is one thing, the manner of reporting is conceptually something else.

And to say they will -- when it says, Operator shall report injection pressures and volumes daily or in a manner acceptable to the Division, that suggests that the Division might approve some manner other than daily, which might be less frequently than daily, which I did not think was the Commission's intent.

My view was that -- There was a lot of talk on the record about continuous recording, and my view was that continuous recording is, in effect, the same thing as daily recording -- that continuous includes daily, since it's more frequently. If you have a continuous record, you have a daily record, was my view, and that the question is just in how -- in what manner you will make the daily record.

So my view was that the overall intent that I understood from the last meeting would be more correctly stated if the "or" were dropped from that sentence. However, as I said, I did not want to make that change without the Commission having a chance to vote on it, because it seemed to me that it could be interpreted as a substantive change.

COMMISSIONER CHAVEZ: I think it's ambiguous with the "or", as whether it means daily or instantaneous or

continuous, and I'd rather not be ambiguous. And I think our intent was to have daily recording.

And we discussed the manner. The discussion included, and I think even there was some testimony, that instantaneous daily pressures or continuous reporting would both be acceptable to the Division when asked about those specifically.

So I don't know what the process is, and I would move to strike the "or" from the Order and clear up that ambiguity and allow the Division the latitude to determine the manner of daily recording.

CHAIRMAN FESMIRE: Commissioner Bailey?

COMMISSIONER BAILEY: I'll agree with Mr. Chavez.

CHAIRMAN FESMIRE: Can I get that in the form of a motion?

COMMISSIONER CHAVEZ: I move that the "or" be struck from the Section C.(8), I guess it is, of the proposed Rule.

COMMISSIONER BAILEY: I'll second that.

CHAIRMAN FESMIRE: All those in favor?

COMMISSIONER CHAVEZ: Aye.

COMMISSIONER BAILEY: Aye.

CHAIRMAN FESMIRE: Opposed?

We will strike the "or" from Section C.(8).

Are there any other comments on the proposed

Order and addendum?

MR. BROOKS: I have no further comments.

CHAIRMAN FESMIRE: At this point I would entertain a motion to adopt the Order, with the one subsequent -- with the one correction just entered on the record.

COMMISSIONER CHAVEZ: I so move.

CHAIRMAN FESMIRE: Is there a second?

COMMISSIONER BAILEY: I'll second.

CHAIRMAN FESMIRE: All those in favor?

COMMISSIONER CHAVEZ: Aye.

COMMISSIONER BAILEY: Aye.

CHAIRMAN FESMIRE: Opposed?

The order is adopted as amended in this meeting, and we'll go on to the next case on the docket.

Let the record reflect that the Order is being signed.

MR. BROOKS: Is it the pleasure of the Commission -- Mr. Chairman, honorable Commissioners, is it the pleasure of the Commission, then, that the actual physical change in the Order be made at the next break?

CHAIRMAN FESMIRE: I think it's such a small change, can we just strike it on this copy and adopt it?

MR. BROOKS: Okay.

COMMISSIONER CHAVEZ: Just as a clarification, my

initial is T.

MR. BROOKS: My apologies, Mr. Chavez.

COMMISSIONER CHAVEZ: But that will be fine.

MR. BROOKS: Initial that, is that what you want to --

CHAIRMAN FESMIRE: Please.

(Thereupon, these proceedings were concluded at 9:32 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 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 July 17th, 2004.

STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006