

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

CASE NOS. 13,402 (Continued) and 13,357 (Dismissed)

CONTINUED AND DISMISSED CASES

TRANSCRIPT OF PROCEEDINGS

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

2005 MAR 21 PM 2 23

March 8th, 2005

Santa Fe, New Mexico

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

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I N D E X

March 8th, 2005
 Commission Hearing
 CASE NOS. 13,402 (Continued) and 13,357 (Dismissed)

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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

* * *

ALSO PRESENT:

Richard Ezeanyim
Chief Engineer, NMOCD

* * *

1 WHEREUPON, the following proceedings were had at
2 9:00 a.m.:

3 CHAIRMAN FESMIRE: Good morning, at this time
4 we'll call the Oil Conservation Commission meeting to
5 order. Let the record reflect that it's 9:00 a.m. on
6 Tuesday, March 8th, 2005. We're located in Porter Hall, at
7 the OCD Office in Santa Fe, New Mexico.

8 My name is Mark Fesmire.

9 To my right is Commissioner Jami Bailey.
10 Commissioner Bailey is the designee of the Commission of
11 State Lands Commissioner Patrick Lyons.

12 To my left is Mr. Frank Chavez. Mr. Chavez is
13 the former OCD supervisor in Aztec and the appointee of the
14 New Mexico Energy, Minerals and Natural Resources
15 Department Secretary, Joanna Prukop.

16 To Mr. Chavez's left is Commission Counsel David
17 Brooks, and to Commissioner Bailey's right is Commission
18 Secretary Florene Davidson. The court reporter today, as
19 almost always, is Steve Brenner.

20 And let the record reflect that all
21 Commissioners, in spite of severe health problems, are
22 present.

23 * * *

1 CHAIRMAN FESMIRE: The first matter of business
2 today is the adoption of the minutes of the previous
3 meeting held on February 10th, 2005.

4 Have the Commissioners had a chance to review the
5 minutes?

6 COMMISSIONER BAILEY: Yes, I have, and I move
7 that we adopt them.

8 COMMISSIONER CHAVEZ: Yes, I have. There's just
9 one small correction on the last page. The date of the
10 April meeting that was referenced should be April 14th, not
11 April 7th.

12 CHAIRMAN FESMIRE: Is there a motion to correct
13 the minutes for that date?

14 COMMISSIONER BAILEY: I move we correct them.

15 COMMISSIONER CHAVEZ: I second the motion.

16 CHAIRMAN FESMIRE: Motion having been made and
17 seconded, the minutes will be corrected to show on the
18 second-to-last line, the paragraph should read,
19 "Commissioner Chavez announced that he will be unable to
20 attend the Commission meeting scheduled for April 14th.
21 Another date for the April meeting will be decided upon at
22 a future date."

23 COMMISSIONER CHAVEZ: I move adoption of these --
24 approval of these minutes, with that correction.

25 CHAIRMAN FESMIRE: As amended?

1 COMMISSIONER CHAVEZ: As amended.

2 CHAIRMAN FESMIRE: Second?

3 COMMISSIONER BAILEY: I second.

4 CHAIRMAN FESMIRE: Having been moved and
5 seconded, all those in favor?

6 COMMISSIONER BAILEY: Aye.

7 COMMISSIONER CHAVEZ: Aye.

8 CHAIRMAN FESMIRE: All those opposed?

9 The Commission will adopt the minutes as amended.

10 * * *

11

12 CHAIRMAN FESMIRE: The first order of business
13 before the Commission today is a proposed order instituting
14 rulemaking and an amendment of OCD Rules 104 and 701.

15 Counsel Brooks, would you bring the Commission up
16 to speed on this issue?

17 MR. BROOKS: Yes, Mr. Chairman, honorable
18 Commissioners.

19 The proposed amendments -- the order instituting
20 rulemaking that I drafted for the Commission implements the
21 proposal to amend Rules 104 and 701 to permit operation of
22 infill wells in a spacing unit by an operator different
23 from the operator of the existing well or wells in the
24 spacing unit, under certain conditions and with certain
25 restrictions.

1 The proposed rule is the result of a work group
2 -- first an internal work group that developed some
3 proposals and then a stakeholder work group that worked
4 over those proposals rather substantially. There's been a
5 good deal of input both within and without the OCD at this
6 point, and we believe that the rule will not be extremely
7 controversial, but of course it is necessary to follow the
8 public-hearing requirements and the rule can only be
9 adopted after those requirements have been followed.

10 I believe that Mr. Ezeanyim, the Chief Engineer
11 for the Division, was the lead person in formulating these
12 rules, and I see that he's in the hearing room this
13 afternoon, so if the Commission has any questions they can
14 address them to Mr. Ezeanyim. Of course, the details will
15 be worked out at a public hearing that will be scheduled in
16 accordance with the order, but if you have any questions at
17 this stage, I think, of this proceeding, he could probably
18 address them better than I can.

19 CHAIRMAN FESMIRE: Counsel Brooks, what exactly
20 are notice requirements for this order?

21 MR. BROOKS: Well, it sets a hearing for April
22 the 14th on the proposed rule. That means that a notice
23 must be published in *The New Mexico Register* at least 10
24 days prior to that. *The New Mexico Register* is published
25 twice a month. It's published on the 1st and the 15th of

1 each month, and the notice has to be in the issue that's
2 published on the 1st, which means it has to be to the
3 Records and Archives by March the 16th, and I believe that
4 the Commission Secretary is working with Sally on getting
5 that done.

6 CHAIRMAN FESMIRE: Okay.

7 MR. BROOKS: Second, there is a necessity to
8 publish notice in the newspaper at least 20 days prior to
9 the hearing. Twenty days prior to the hearing, if I'm not
10 mistaken, would be March the 25th, so that also is
11 susceptible to being done.

12 It also has to be put on the website at that time
13 and distributed to our mailing list at that time. And I
14 believe the Commission Secretary is going to be taking
15 responsibility for that, and if anything needs to be
16 drafted in that connection, then that will be my
17 responsibility.

18 CHAIRMAN FESMIRE: Commissioners, have you had a
19 chance to examine the proposed order adopting rulemaking?

20 COMMISSIONER BAILEY: Yes, I have.

21 COMMISSIONER CHAVEZ: I have too.

22 CHAIRMAN FESMIRE: The Chair would entertain a
23 motion as to the disposition of that order.

24 COMMISSIONER BAILEY: I move that we sign that
25 order.

1 COMMISSIONER CHAVEZ: I second the motion.

2 CHAIRMAN FESMIRE: The adoption of the order has
3 been moved and seconded. All those in favor?

4 COMMISSIONER BAILEY: Aye.

5 COMMISSIONER CHAVEZ: Aye.

6 CHAIRMAN FESMIRE: Opposed?

7 The Commission will sign the order and draft it,
8 instituting rulemaking concerning modification of Division
9 Order Rules 104 and 701 and proceed with the notice for
10 public hearing on April 14th, 2005.

11 MR. BROOKS: We need to get the order signed, I
12 believe.

13 CHAIRMAN FESMIRE: Do we have a copy of the rule?

14 MR. BROOKS: Did we prepare an original? Okay,
15 well, we can do that later in the meeting, so the
16 Commission Secretary and I will work on that during a
17 break.

18 CHAIRMAN FESMIRE: Okay.

19 (Off the record at 9:05 a.m.)

20

21 * * *

22

23 (The following proceedings had at 1:15 p.m.)

24 CHAIRMAN FESMIRE: Okay, let's go back on the
25 record. For the record, it is now 1:15, and we're going to

1 reconvene.

2 In just a minute, we're going to go back into
3 Cause Number 13,351. Before we do that, we have one piece
4 of unfinished business that we need to come up to speed on.

5 In Cause Number 13,453, we now have an order
6 requiring signature that -- the ruling on this order took
7 place earlier this morning. We just hadn't drafted the
8 order in proper form.

9 It's now been drafted and is ready for signature,
10 and I'll let the record reflect that I'm going to sign it,
11 and ask Commissioner Bailey, if it's satisfactory with her,
12 if she would sign it.

13 COMMISSIONER BAILEY: It is satisfactory, I will
14 sign it.

15 CHAIRMAN FESMIRE: And to Commissioner Chavez for
16 his signature and review.

17 COMMISSIONER CHAVEZ: It's satisfactory, I will
18 sign it.

19 (Off the record at 1:16 p.m.)

20 * * *

21
22 (The following proceedings had at 2:17 p.m.)

23 CHAIRMAN FESMIRE: The next case on the agenda is
24 13,357. It's the Application of Matrix New Mexico Holdings
25 for compulsory pooling in Lea County, New Mexico.

1 CHAIRMAN FESMIRE: And Cause Number 13,402 has
2 been continued to the April meeting; is that correct?

3 MR. CARR: That is correct, and I would like to
4 know if Commissioner Chavez heard about that before he
5 decided to --

6 (Laughter)

7 CHAIRMAN FESMIRE: That's a surprise.

8 MR. BROOKS: With regard to the case that was
9 dismissed, I will prepare dismissal order for the
10 Commission to sign.

11 (Off the record at 2:19 p.m.)

12 * * *

13

14 (The following proceedings had at 2:56 p.m.)

15 CHAIRMAN FESMIRE: There's one other item that we
16 need to take into account or to handle today. The
17 Committee appointed to study the rules of procedure before
18 the Division and Commission has a report to present.

19 Counsel Brooks?

20 MR. BROOKS: Thank you. Let me get the copy of
21 my draft in front of me. I will note what happened.

22 The Committee has not met any further. However,
23 I did prepare a proposed draft.

24 Madame Secretary, can you tell me under what --
25 Oh, I see it here. I was going to say under what tab it

1 is, but I found it.

2 I did prepare a proposed draft. It circulated to
3 the other members of the Committee. I received no comments
4 from Mr. Carr, and I received no comments from Ms.
5 MacQuesten. I did receive comments from Ms. Davidson, I
6 did receive comments from Mr. Kellahin. Both of them
7 approved it with -- subject only to some typographical
8 corrections which have now been made.

9 Mr. Kellahin, I will note, did suggest that the
10 -- perhaps not an unreasonable suggestion, but I will leave
11 it to the Commission's discretion, that the Rules should be
12 reviewed by the Examiners, and I do not believe that has
13 actually been done, but -- and in case they had any
14 comments on them. But that's...

15 Now, so far as the changes that have been made
16 since the last Committee report, they are shown in blue on
17 the draft, and generally speaking, I think they are based
18 on specific instructions that the Commissioners made on the
19 record at the previous hearing.

20 The one that probably requires a bit of comment
21 is Rule 1212, because that required a significant amount of
22 drafting to do what I understood the Commission wanted to
23 do. That is the rule with regard to who can appear before
24 the Commission and what they can do when they appear.

25 The rule, basically, as I have intended to draft

1 it, unless I simply made a mistake, which has been known to
2 happen, is this, that in an adjudicatory hearing the
3 parties must have standing in order to appear. Persons
4 without standing would not be allowed to appear in an
5 adjudicatory hearing, and anyone must be represented by
6 counsel except an individual. An individual who has
7 standing to be a party can appear *pro se*.

8 There is one exception to that, however, and this
9 was not discussed in the last Commission meeting, but it
10 seemed to me to be appropriate, and I will -- no one on the
11 Committee objected, but I will throw it out to the
12 Commission to consider that.

13 One sentence in here would allow a representative
14 of a governmental agency, federal, state, tribal, or a
15 political subdivision, to appear even in an adjudicatory
16 hearing for the purpose of making a comment. I think there
17 have been a number of adjudicatory hearings in which
18 representatives of the BLM and occasionally representatives
19 of political subdivisions have appeared and made statements
20 of their position on a particular matter, and usually the
21 people that have done that have not been attorneys. And it
22 would seem to me that that is a practice we would want to
23 permit. Other than that, we don't have a provision for
24 appearances to make statements in adjudicatory proceedings.

25 In a rulemaking proceeding, basically it's wide

1 open for making statements. Any citizen can appear either
2 *pro se* or as a representative of any group and make a
3 statement in a rulemaking proceeding. However, a person
4 who wants to present testimony must be represented by
5 counsel, and a person making a statement can neither
6 examine witnesses -- neither sponsor witnesses nor cross-
7 examine other witnesses.

8 Now, I did not attempt to address the issue of
9 whether persons can appear as parties *pro se* in rulemaking
10 proceedings, because I think that's -- I just really don't
11 know how to address that in determining whether somebody is
12 a party or not a party and the propriety of a *pro se*
13 appearance in a rulemaking proceeding.

14 Okay, thank you.

15 CHAIRMAN FESMIRE: What's the next step in this,
16 Mr. Brooks?

17 MR. BROOKS: I believe if the Commission is
18 satisfied with the draft, then we would want to, at the
19 next meeting, enter an order instituting rulemaking, just
20 as we did on the Rule 104, and then post it for public
21 notice for a later meeting.

22 I believe that perhaps the Commissioners have not
23 seen that draft before today. They may want to study it in
24 the time between now and the next meeting, and if we can
25 get it on the docket again for an order instituting

1 rulemaking at the April meeting, then at that point we
2 could enter such an order, and if the Commissioners want to
3 change -- want some changes, then we can do that at that
4 time, and then we can go from there into the public hearing
5 process.

6 CHAIRMAN FESMIRE: Okay. I would like to take
7 the time to study it. I've read it once. So do we need a
8 motion to put it on the --

9 MR. BROOKS: It wouldn't hurt.

10 CHAIRMAN FESMIRE: Okay.

11 MR. BROOKS: I'm not sure if we need a motion or
12 not, but it wouldn't hurt.

13 CHAIRMAN FESMIRE: All right. So we'll need a
14 motion to put it on the agenda for April.

15 COMMISSIONER BAILEY: I so move.

16 COMMISSIONER CHAVEZ: I second.

17 CHAIRMAN FESMIRE: And all those in favor?

18 COMMISSIONER BAILEY: Aye.

19 COMMISSIONER CHAVEZ: Aye.

20 CHAIRMAN FESMIRE: The ayes have it. And that
21 should be all we need to do with it at this time.

22 MR. BROOKS: I believe so.

23 COMMISSIONER CHAVEZ: Except that I -- in the
24 meantime, can't the Examiners --

25 MR. BROOKS: Yeah, I think Mr. Kellahin's point

1 is appropriate, that we should submit it to the Examiners,
2 and at the next meeting we'll report their comments --

3 CHAIRMAN FESMIRE: That's a good idea.

4 MR. BROOKS: --as well.

5 CHAIRMAN FESMIRE: That's a good idea.

6 In order to avoid having to call an ambulance for
7 Commissioner Bailey, is there any further business before
8 the Commission?

9 Hearing none, is there a motion to adjourn?

10 COMMISSIONER CHAVEZ: So move.

11 COMMISSIONER BAILEY: Second.

12 CHAIRMAN FESMIRE: All those in favor?

13 COMMISSIONER BAILEY: Aye.

14 COMMISSIONER CHAVEZ: Aye.

15 CHAIRMAN FESMIRE: We're officially adjourned at

16 3:02 p.m.

17 (Thereupon, these proceedings were concluded at
18 3:02 p.m.)

19 * * *

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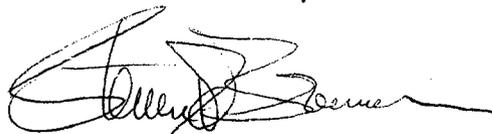
CERTIFICATE OF REPORTER

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 March 12th, 2005.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006