

Davidson, Florene, EMNRD

From: Goetze, Phillip, EMNRD
Sent: Monday, March 28, 2016 12:03 PM
To: Davidson, Florene, EMNRD
Subject: FW: Case 15397; Application of Devon Energy Company to Revoke Injection Permit, etc

Importance: High

Florene:

Please include this e-mail in the case file for the record. Thanks. PRG

Phillip R. Goetze, PG

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From: Brooks, David K, EMNRD
Sent: Monday, March 28, 2016 10:04 AM
To: Michael Feldewert <MFeldewert@hollandhart.com>; jamesbruc@aol.com
Cc: Goetze, Phillip, EMNRD <Phillip.Goetze@state.nm.us>; Jordan L. Kessler <JLKessler@hollandhart.com>
Subject: Case 15397; Application of Devon Energy Company to Revoke Injection Permit, etc
Importance: High

Good morning Gentlemen:

Phillip Goetz and I have completed our *in camera* review of the documents submitted by OXXY. We have concluded that the following documents are privileged:

File No. 1

Items numbered 36, 37, 39, 40, 51, 55, 56, 58 through 66 inclusive, 68 (except for the paragraphs of the Clifford to Webster email captioned "First Temperature Survey" and "Second Temperature Survey"), 69, 80, 88, 89 & 90 (except for included copies of emails from Devon), 93, 98, and 109.

File No. 3

Third Sub-file (entitled URGENT RESPONSE REQUIRED)

9TH through 12th items (beginning with email from Millan to Barton 9/17/15 4:39 pm)

19th item – Sevin to Havins 9/23 10:05 am,
20th item - Havins to Sevin & Millan 9/23 10:22 am
Last item to extent it includes some of the above emails identified as privileged

File No. 4

4th item – Millan to Brent 9-27 7:32 am, text is privileged, but not attachments.
20th item – Clifford to Gaudian 9/29 7:40 pm
Next to last item – Vangolin to Millan 9/29 8:30 pm

File No. 5

5th item – email from Clifford to Guadian 9/30 5:41 am (Paragraph captioned “Future Injection” only.

As to the remaining materials, we determined either that they were not privileged, or that there was insufficient evidence to establish the privilege claimed. The motion to compel is therefore granted as to those remaining items. Due to setting tomorrow, the non-privilege information should be produced no later than 2 PM this afternoon.

We note that much of this evidence is prima facie available only from OXY and therefore the unavailability requisite for obtaining such information, to the extent that requisite applies, is thereby demonstrated. Though a different result might obtain in court proceedings where interrogatories and depositions would be contemplated, we concluded the “hardship” requisite was also apparent as to some of these items, given the customarily limited practice of discovery in OCD proceedings, a practice we are reluctant to encourage counsel to abandon.

CAVEAT: This review was conducted quickly and by two examiners working independently. Many emails are embedded in multiple email chains. Items specifically identified as privileged may appear in other items not so identified. Of course, a privileged item is privileged wherever it appears. To the extent such errors are identified by counsel for OXY, these items may be withheld and presented for consideration at the hearing. If such errors are detected by counsel for Devon, these items should NOT be further examined until the error can be called to the attention of counsel for Oxy and the examiners.

Sincerely

David K. Brooks
Assistant General Counsel

Counsel for Examiner, Phillip Goetz