

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

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

APPLICATION OF BASS ENTERPRISES)
 PRODUCTION COMPANY FOR AN ORDER)
 AUTHORIZING THE DRILLING OF A WELL)
 IN THE POTASH AREA, EDDY COUNTY,)
 NEW MEXICO)

CASE NOS. 13,367

APPLICATION OF DEVON ENERGY PRODUCTION)
 COMPANY, L.P., FOR AN ORDER AUTHORIZING)
 THE DRILLING OF A WELL IN THE POTASH)
 AREA, EDDY COUNTY, NEW MEXICO)

13,368

APPLICATION OF DEVON ENERGY PRODUCTION)
 COMPANY, L.P., FOR APPROVAL OF AN)
 UNORTHODOX WELL LOCATION AND)
 AUTHORIZATION TO DRILL A WELL IN THE)
 POTASH AREA, EDDY COUNTY, NEW MEXICO)

2006 FEB 23 PM 2 43

and 13,372

(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN
 JAMI BAILEY, COMMISSIONER
 WILLIAM C. OLSON, COMMISSIONER

ORIGINAL

February 9th, 2006
 Santa Fe, New Mexico

These matters came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, February 9th, 2006, 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.

* * *

STEVEN T. BRENNER, CCR
 (505) 989-9317

I N D E X

February 9th, 2006
Commission Hearing
CASE NOS. 13,367, 13,368 and 13,372 (Consolidated)

PAGE

REPORTER'S CERTIFICATE

14

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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

FOR BASS ENTERPRISES PRODUCTION COMPANY
and DEVON ENERGY PRODUCTION COMPANY, L.P.:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
110 N. Guadalupe, Suite 1
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

FOR AN UNKNOWN MINERAL OWNER IN THE DEVON ENERGY CASES:

JAMES G. BRUCE
Attorney at Law
P.O. Box 1056
Santa Fe, New Mexico 87504

* * *

1 WHEREUPON, the following proceedings were had at
2 9:55 a.m.:

3 CHAIRMAN FESMIRE: The next case on the docket is
4 Cause Number 13,367. For purposes of our discussion today,
5 I think that can be consolidated with 13,368 and 13,372.

6 The attorneys of record are present. Would you
7 like to enter your appearance, please?

8 MR. CARR: May it please the Examiner, my name is
9 William F. Carr with the Santa Fe office of Holland and
10 Hart, L.L.P. We represent the Applicants in these cases,
11 Bass Enterprises Production Company and Devon Energy
12 Production Company, L.P.

13 CHAIRMAN FESMIRE: Mr. Bruce?

14 MR. BRUCE: And Mr. Chairman, I'm going to be
15 embarrassed twice today. This is the first time. I've
16 entered an appearance on behalf of a mineral owner in the
17 Devon Energy cases, and on my way here this morning I
18 forgot to look up his name. It's in the record below, but
19 I apologize. This is the first time I've ever represented
20 an unknown person.

21 CHAIRMAN FESMIRE: Unknown only to you, not to
22 the Commission.

23 (Laughter)

24 MR. BRUCE: Not to the Commission, just --

25 MR. CARR: Do you think you'll discover his name

1 before you go?

2 (Laughter)

3 CHAIRMAN FESMIRE: Mr. Bruce, not by way of
4 criticism but by way of support, there's a young man in the
5 Texas State Penitentiary that I did the same thing to
6 before you.

7 (Laughter)

8 CHAIRMAN FESMIRE: Mr. Brooks --

9 MR. CARR: May it also please the Commission,
10 Charles C. High with Kemp Smith represents Mosaic Potash,
11 and Mr. Kemp asked me to be here today for him. He has a
12 conflict in his schedule that required him to be in Dallas
13 today.

14 CHAIRMAN FESMIRE: And the interests of your
15 clients and Mr. High's clients are --

16 MR. CARR: -- are absolutely diametrically
17 opposed.

18 (Laughter)

19 CHAIRMAN FESMIRE: But that having appeared on
20 the record, Mr. High has granted you permission

21 MR. CARR: Yes, he does, I have an e-mail if you
22 want to --

23 MR. BRUCE: And in line with Mr. Carr's comments,
24 I want to see if he sends a bill to Mr. Potash.

25 (Laughter)

1 CHAIRMAN FESMIRE: Counsel Brooks, would you like
2 to bring us up to speed on these three cases, please?

3 MR. BROOKS: Well, only on the procedural status
4 of it. I have not informed myself about the substance of
5 the cases at all.

6 But these cases have been -- were decided by the
7 Division quite some time ago, I think getting close to a
8 year ago now, and they were -- *de novo* applications were
9 filed, and they have been continued numerous times.

10 Counsel has contacted me and indicated that the
11 parties are in agreement that the Commission should
12 either -- the parties would be agreeable to the Commission
13 reviewing this matter on the record that was the record of
14 the Division Examiner Hearing, without holding a hearing.

15 And in the alternative, if the Commission is
16 unwilling to do that -- and I advised them that the
17 Commission had at a former time made a determination that
18 it would no longer do that procedure, but that
19 determination was made at a time when two members of the
20 Commission were -- when there were two persons on the
21 Commission who are no longer on the Commission, and two of
22 the present members were not on the Commission. And I did
23 not know what position the Commission would take on that
24 now.

25 In the alternative, if the Commission is

1 unwilling to consider the matter submitted on the Division
2 Examiner record, the alternative would be that the parties
3 would request a special setting of these cases.

4 So the parties -- it was represented to me that
5 the parties were in agreement that that was the way they
6 wanted the matter presented, and I indicated to them that
7 they should appear and present that request to the
8 Commission at this hearing, although no one wants to have a
9 substantive hearing today.

10 CHAIRMAN FESMIRE: Okay. Mr. Carr?

11 MR. CARR: Mr. Chairman, in late 2004 these three
12 Applications were presented to Examiner Stogner, and they
13 were presented on the same day. The hearing took the
14 better part of a day, as I recall. And then it was last
15 fall that the orders were actually entered. There was a
16 nine-, ten-month delay in getting those orders. Since that
17 time, we've been pretty much embroiled in one little
18 hearing after another. Even when we don't get to hearing,
19 we do have them blocked out for a docket.

20 Charles High represents Mosaic Potash, and Mr.
21 High contacted me several months ago and suggested that
22 these cases could be disposed of, if the Commission was
23 willing, simply by asking you to let the parties submit a
24 brief and then ask you to rule. And I recognize the
25 concern that has been expressed in the past about wanting

1 to have live witnesses before you so you can really
2 evaluate the testimony in that fashion.

3 In this case, these cases, they all basically
4 present the same question. And the question really is a
5 legal question -- I believe we could even stipulate the
6 facts if you asked us to -- and it is that there are tracts
7 within the R-111 area on which there is no oil and gas
8 lease and that the holder of the mineral estate or the oil
9 and gas lessee have proposed to drill a well, and the
10 potash company believes that even without a lease on that
11 property they are still taken out of play. That's the
12 question, and it's a legal question.

13 COMMISSIONER BAILEY: Didn't I hear you just say
14 that there was no oil and gas lease on the property?

15 MR. CARR: Commissioner Bailey, there are three.
16 And as I recall, there's one where it is an unleased
17 mineral interest owner and the landowner, who -- the person
18 who owns that tract came -- and that's Mr. Bruce's client
19 -- and testified. And my recollection is is that there
20 is -- one of the other tracts -- I'm trying to remember
21 back two years -- had an oil and gas lease, and the oil and
22 gas lessee --

23 MR. BRUCE: Let me interject. It's partly this:
24 At least with Devon acreage, there is fee acreage inside
25 the R-111 area --

1 MR. CARR: Yes.

2 MR. BRUCE: -- that has never been leased for
3 potash.

4 MR. CARR: That's right, and these are tracts
5 that are all in that posture.

6 MR. BRUCE: And the mineral owner, my client, who
7 shall remain nameless, wants to -- desires oil and gas
8 development, and Mosaic Potash is saying it's within their
9 LMR and are therefore resisting drilling.

10 MR. CARR: It just boils down to this: We had a
11 legal question we think could be submitted on a page of
12 facts, probably, that we could all stipulate to. Or, if
13 you don't want to do that, we really do need a full-day
14 hearing, at which we would propose, you know, occur early
15 April. But I have talked with Devon and with Bass. We all
16 agree the issue is fairly narrow and fairly defined, and
17 everyone would prefer to submit it that way, but we
18 understand that you may want these people to come in and
19 again take the stand and testify.

20 CHAIRMAN FESMIRE: Commissioner Bailey,
21 apparently there was a prior decision by the Commission not
22 to proceed like that. Can you remember what the reasons
23 were for that?

24 COMMISSIONER BAILEY: Number one was access to
25 all the information that had all of the transcripts, the

1 exhibits, everything given to each of the three
2 Commissioners, because apparently there was a problem with
3 -- only one Commissioner had all of the information. So
4 that was one of the major issues, was that all three of us
5 needed all of the information there was.

6 And the second issue was that we would each have
7 our own questions because it is, after all, a *de novo*
8 hearing. So we needed to have that access to witnesses to
9 be able to ask the questions that we felt were not asked or
10 addressed during the Division Hearing.

11 CHAIRMAN FESMIRE: Do you have any -- Those seem
12 like valid arguments, and they're still valid, aren't they?

13 COMMISSIONER BAILEY: I believe so.

14 CHAIRMAN FESMIRE: Commissioner Olson, do you
15 have any thoughts on the prospect of live hearings versus
16 submitted -- legal issues submitted on the record?

17 COMMISSIONER OLSON: I guess I'd agree with
18 Commissioner Bailey, I do like -- I've always -- one would
19 like to ask questions too. So I don't know, this same
20 issue has come up recently with changes to the Water
21 Quality Act, where appeals now to the Water Quality Control
22 Commission go on the record of review.

23 But there is -- there would be, then, an oral
24 briefing, then, in front of the Commission so the
25 Commission at least has an opportunity to ask some

1 questions. So if we did it that way, so we still had that
2 opportunity, I don't know if I would have a problem. I
3 guess the question would be whether we'd have the right
4 people to answer the questions, whether the counsel would
5 be able to -- because they're kind of answering our
6 questions at that point. I don't know if that's really
7 appropriate, because they're not technically witnesses,
8 but...

9 And this is something that's going forward now, I
10 know, with the Water Quality Control Commission, trying to
11 change things from *de novo* hearings so they don't have
12 duplicative hearings, because the agency, I know, at some
13 point was looking at a couple of major hearings where
14 they'd have a two-week hearing in front of the agency, and
15 then they had the exact same hearing, two-week hearing, in
16 front of the Commission, and that was the purpose of that.

17 CHAIRMAN FESMIRE: One of the issues that we need
18 to address is, this was first heard in late 2004.

19 MR. CARR: Yes, sir.

20 CHAIRMAN FESMIRE: Are there any -- I guess
21 they're federal leases, so there probably are no lease-
22 expiration issues?

23 MR. CARR: No, I'm aware of no lease expiration.

24 CHAIRMAN FESMIRE: However, your clients are --
25 you know, everybody's clients are entitled to a decision in

1 a timely manner. But I'm -- I think I can address the
2 concerns of the Commission that I would be inclined towards
3 an actual hearing, recognizing, of course, the expense and
4 the time factor. But again, my opinion is that we ought to
5 have a *de novo* hearing, as I think the Rules call for and I
6 think both your clients and the Commission are entitled.

7 MR. CARR: We would like a special day for those.
8 I mean, there are three cases, and although they -- the
9 Devon cases were consolidated for hearing, it does -- I
10 mean, the facts are different enough that Bass wants to
11 present its case and Devon wants to present its cases.

12 CHAIRMAN FESMIRE: So it would be three hearings.

13 MR. CARR: Yeah, and we would hope that we didn't
14 have to wait until the May Commission hearing. That's the
15 concern here. There was a delay in getting the Examiner
16 Hearing out, and the parties have been trying to figure out
17 what to do with this, and it has been harder to get a
18 Commission Hearing. And I'm not complaining, don't hear it
19 that way. It's just practically trying to get these
20 people, whose names I know --

21 (Laughter)

22 MR. CARR: -- calling me. Is there any
23 possibility of early April? I mean, it would -- We'd
24 greatly appreciate it.

25 CHAIRMAN FESMIRE: I -- Would anybody have a

1 recommendation for -- realizing I have just committed
2 myself to a hearing on the 13th and a drive to Midland
3 thereafter, can we -- I think the best way to handle this
4 is to look at the calendars and then by e-mail spet a --
5 spet a secial session? -- set a special meeting, prior to
6 the May Commission meeting, because as you're aware, those
7 -- up until the May Commission meeting, we're going to be
8 pretty much tied up at the --

9 MR. CARR: And there would be a March hearing
10 where a definite date could be determined too.

11 CHAIRMAN FESMIRE: Okay. So would the
12 Commissioners be amenable to checking our calendars and
13 setting a special hearing sometime in early to mid-May?

14 MR. CARR: Or April?

15 CHAIRMAN FESMIRE: Or April? Okay.

16 COMMISSIONER BAILEY: That would be good with me.

17 CHAIRMAN FESMIRE: Okay.

18 COMMISSIONER OLSON: I'll have to look at the
19 calendar on that.

20 CHAIRMAN FESMIRE: So what we'll do in these
21 three cases, Case Number 13,367, 13,368 and 13,372, is to
22 continue them today, and we will set a special hearing
23 sometime prior to the May meeting.

24 MR. CARR: Thank you, sir.

25 MR. BROOKS: Mr. Chairman, honorable

1 Commissioners, to avoid the necessity of giving new
2 notices, which would be rather idle since everyone -- the
3 attorneys are all going to be personally notified, I would
4 recommend that the statement be made for the record that
5 they are continued till the March 23rd hearing, and by that
6 time we will have determined when the special hearing is,
7 and we can again continue it till that time.

8 CHAIRMAN FESMIRE: Absolutely correct. So for
9 the record, Cause Number 13,367, 13,368 and 13,372 will be
10 continued until the March 23rd meeting of the Oil
11 Conservation Commission, at which time a special setting
12 will be announced, I hope.

13 MR. CARR: Thank you, sir.

14 (Thereupon, these proceedings were concluded at
15 10:10 a.m.)

16 * * *

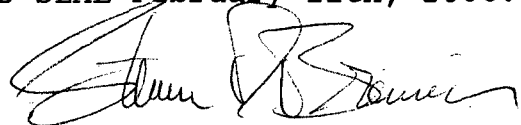
CERTIFICATE OF REPORTER

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 February 11th, 2006.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006