

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 THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR REPEAL OF)
EXISTING RULE 50 CONCERNING PITS AND)
BELOW GRADE TANKS AND ADOPTION OF A)
NEW RULE GOVERNING PITS, BELOW GRADE)
TANKS, CLOSED LOOP SYSTEMS AND OTHER)
ALTERNATIVE METHODS TO THE FOREGOING,)
AND AMENDING OTHER RULES TO MAKE)
CONFORMING CHANGES; STATEWIDE)

CASE NO. 14,015

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

Volume XX - February 14th, 2008

Santa Fe, New Mexico

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This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, February 14th, 2008, 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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Commission Hearing
CASE NO. 14,015

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A P P E A R A N C E S

FOR THE COMMISSION:

CHERYL BADA
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR THE DIVISION:

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

FOR NEW MEXICO OIL AND GAS ASSOCIATION; CONOCOPHILLIPS COMPANY; DUGAN PRODUCTION CORPORATION; and ENERGEN RESOURCES CORPORATION; and an INDUSTRY COMMITTEE comprised of BP America Production Company, Inc.; Benson-Montin-Greer Drilling Corporation; Boling Enterprises, Ltd.; Burlington Resources Oil and Gas Company; Chesapeake Energy Corporation; Chevron USA, Inc.; ConocoPhillips Company; Devon Production Company; Dugan Production Corporation; Energen Resources Corporation; Marathon Oil Company; Marbob Energy Corporation; Merrion Oil & Gas Corporation; Occidental Permian, which includes OXY USA, Inc., and OXY USA WTP Limited Partnership; Samson Resources Company; J.D. Simmons, Inc.; Williams Production Company, LLC; XTO Energy, Inc.; and Yates Petroleum Corporation:

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

(Continued)

A P P E A R A N C E S (Continued)

FOR INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO:

KARIN V. FOSTER
Independent Petroleum Association of New Mexico
Director of Governmental Affairs
17 Misty Mesa Ct.
Placitas, NM 87043

FOR CONTROLLED RECOVERY, INC.:

HUFFAKER & MOFFETT, L.L.C.
155 Grant
Santa Fe, New Mexico 87501
P.O. Box 1868
Santa Fe, New Mexico 87504-1868
By: GREGORY D. HUFFAKER, Jr.

* * *

1 Have the Commissioners had the opportunity to
2 review those minutes?

3 COMMISSIONER BAILEY: Yes, I have, and I move we
4 adopt them.

5 CHAIRMAN FESMIRE: Is there a second?

6 COMMISSIONER OLSON: Yes, there is.

7 CHAIRMAN FESMIRE: All those in --

8 COMMISSIONER OLSON: -- some edits, but I'm
9 assuming they got folded into the new documents.

10 CHAIRMAN FESMIRE: Would you like to review it
11 before we --

12 COMMISSIONER OLSON: No, it was actually quite a
13 few, so I'm assuming that they were put in there as Florene
14 stated, so...

15 CHAIRMAN FESMIRE: Okay. And the Commission
16 secretary has indicated that Commissioner Olson's edits
17 were adopted?

18 MS. DAVIDSON: Yes.

19 CHAIRMAN FESMIRE: And the same edits you showed
20 me this morning?

21 MS. DAVIDSON: Yes.

22 CHAIRMAN FESMIRE: Okay. Let the record -- All
23 those in favor of adopting the minutes as amended -- or as
24 edited, signify by saying aye.

25 COMMISSIONER BAILEY: Aye.

1 COMMISSIONER OLSON: Aye.

2 CHAIRMAN FESMIRE: Aye.

3 Let the record reflect that the minutes were
4 adopted, and they will be signed and conveyed to the
5 Commission secretary.

6 My goodness, there are a lot of minutes here.

7 COMMISSIONER OLSON: Uh-huh.

8 * * *

9

10 CHAIRMAN FESMIRE: The next order of business
11 before the Commission is the adoption of the minutes of the
12 January 22nd, 2008, meeting in Porter Hall, other than
13 those associated with the pit rule hearing, Case Number
14 14,015.

15 Have the Commissioners had the opportunity to
16 review these minutes?

17 COMMISSIONER BAILEY: Yes, I have, and I move we
18 adopt them.

19 CHAIRMAN FESMIRE: Is there a second?

20 COMMISSIONER OLSON: Well, I was going to abstain
21 from the -- just because I wasn't at the -- at this
22 meeting.

23 CHAIRMAN FESMIRE: Okay, the Chair will second
24 the motion.

25 All those in favor signify by saying aye.

1 COMMISSIONER BAILEY: Aye.

2 CHAIRMAN FESMIRE: Aye.

3 Let the record reflect that Commissioners Bailey
4 and Fesmire, who were the Commissioners present at the
5 meeting, voted to adopt the meeting -- adopt the minutes.
6 The minutes will be signed and conveyed to the Commission
7 secretary.

8 CHAIRMAN FESMIRE: The next order of business --

9 COMMISSIONER OLSON: Just a note that I abstained
10 from that because I wasn't here, so...

11 CHAIRMAN FESMIRE: Let the record reflect that
12 Commissioner Olson abstained.

13 * * *

14

15 CHAIRMAN FESMIRE: The next order of business
16 before the Commission is the adoption of the points of
17 understanding. These are the notes indicating the
18 preliminary agreements of the Commissioners in Case Number
19 14,015, the pit rule hearings.

20 Commissioner Bailey, did you get a chance to
21 review these points of understanding?

22 COMMISSIONER BAILEY: Yes, I did, and I believe
23 that they accurately reflect the agreements that we reached
24 in open session during the last meeting concerning the pit
25 rule.

1 CHAIRMAN FESMIRE: Commissioner Olson, did you
2 get a chance to review it?

3 COMMISSIONER OLSON: Yes, I did, and I concur
4 with Commissioner Bailey.

5 CHAIRMAN FESMIRE: Okay. The Chair will
6 entertain a motion to adopt these points of understanding
7 and that they be signed by the Commissioners and conveyed
8 to the secretary.

9 COMMISSIONER BAILEY: I so move.

10 CHAIRMAN FESMIRE: Is there a second?

11 COMMISSIONER OLSON: There's a second.

12 CHAIRMAN FESMIRE: All those in favor signify by
13 saying aye.

14 COMMISSIONER BAILEY: Aye.

15 COMMISSIONER OLSON: Aye.

16 CHAIRMAN FESMIRE: Aye.

17 Let the record reflect that the points of
18 understanding were adopted by the Commissioners. They will
19 be signed by each one of the Commissioners and conveyed to
20 the secretary.

21 * * *

22

23 CHAIRMAN FESMIRE: At this time the chair would
24 entertain a motion to adjourn for lunch and reconvene at
25 one o'clock, at which time we will begin the deliberations

1 in Case Number 14,015. Is there such a motion?

2 COMMISSIONER OLSON: So move.

3 CHAIRMAN FESMIRE: The Chair will second.

4 All those in favor, signify by saying aye.

5 COMMISSIONER OLSON: Aye.

6 CHAIRMAN FESMIRE: Aye.

7 Let the record reflect that by a vote of two to
8 one the motion to adjourn until one o'clock, at which time
9 we will address the -- we will begin the deliberations in
10 Case Number 14,015.

11 Thank you very much.

12 (Thereupon, recess was taken at 9:06 a.m.)

13 (The following proceedings had at 1:00 p.m.)

14 CHAIRMAN FESMIRE: At this time we will reconvene
15 the Thursday, February 14th, 2008, regularly scheduled New
16 Mexico Oil Conservation Commission meeting.

17 The order of business remaining on the docket is
18 the deliberations in Case Number 14,015.

19 At this time the record should reflect that all
20 three Commissioners are present and prepared, somewhat, to
21 deliberate.

22 I do need to make sure that the observers
23 understand that the record is closed and that the purpose
24 of this meeting is for deliberations, it's not to receive
25 evidence, and that the Commissioners and their counsel are

1 the ones who should be doing the discussion. I guess
2 that's a nice way of saying, remember, the record is
3 closed. Okay?

4 The record has again reflected that all three
5 Commissioners are present.

6 I do need to inform the Commissioners that all of
7 the transcripts have not been completed, in spite of a
8 heroic effort by our court reporter. We're still two,
9 maybe three transcripts short; is that correct?

10 COURT REPORTER: Two short.

11 CHAIRMAN FESMIRE: Two short. He delivered two
12 this morning. I have not had the chance to look at them.

13 But not including those two, some of the
14 testimony that is not present for us to evaluate at this
15 time is the last testimony, consisting of the testimony of
16 the Conoco witnesses. Some of the statements and testimony
17 of, for instance, Mr. Gallagher, is not available to us.

18 And I'm going to be pretty honest, I have not had
19 a chance to go through all of the testimony that I would
20 like to have gone through and to review in preparation for
21 our meeting today. Before we come to a final decision I
22 will have reviewed all of the transcripts.

23 So at this time I wanted to discuss with the
24 Commission the way to proceed.

25 One of the things that I asked counsel to

1 distribute to the Commissioners was a summary of parties'
2 objections to the pit rule.

3 This is the document that we generated at our
4 last meeting when we began. It's a list of the sections of
5 the proposed rule, the proposed rule as proposed by the Oil
6 Conservation Division, and the comments that we received
7 from each party concerning that.

8 I have read all of the comments that were made by
9 people presenting either comments or evidence, or written
10 comment or evidence, and the summary that I had distributed
11 to the members of the Commission is, like I said, a summary
12 of the notes that we generated last time we met.

13 Do the Commissioners have any comment before we
14 start?

15 COMMISSIONER BAILEY: Let's go.

16 CHAIRMAN FESMIRE: Commissioner?

17 Okay, the way I would like to proceed and hope to
18 proceed is to follow this summary of parties' objections to
19 the pit rule.

20 Two of the parties did exactly as we requested
21 and provided their objections in one document, or one part
22 of the document, and their reasons for those objections in
23 the second part of the document. Those are going to be
24 very easy to follow.

25 Some of the other parties were a little more

1 general and didn't exactly follow the process that we asked
2 them to, but I think it's fairly well organized and laid
3 out.

4 Again, Commissioner Bailey, you had some things
5 especially with respect to re-vegetation. Would you like
6 to visit that before we start, or --

7 COMMISSIONER BAILEY: Okay.

8 CHAIRMAN FESMIRE: -- or do you just want to go
9 in the order of the proposal?

10 COMMISSIONER BAILEY: Well, I think it all links
11 together if we go in order, rather than taking things out
12 of context or out of order.

13 I think we would be able to maintain our stream
14 of thought a little bit more coherently if we just start at
15 the top and go on through.

16 CHAIRMAN FESMIRE: Okay. And do you think that
17 you have covered the transcripts well enough and that we
18 can proceed without the final version of the transcripts,
19 especially the Conoco- --

20 COMMISSIONER BAILEY: I believe so, if the other
21 Commissioners feel so.

22 CHAIRMAN FESMIRE: I'm a little hesitant to
23 continue, for the major reason that I think that we need to
24 cover those transcripts.

25 Mr. Bremer [sic] has indicated that he's got at

1 least two and perhaps three weeks more of work to get those
2 done.

3 Would the Commission be interested in putting off
4 the deliberations until at or near the March regularly
5 scheduled meeting?

6 COMMISSIONER BAILEY: That would be fine with me.

7 COMMISSIONER OLSON: Actually, I would, because I
8 was -- there was a couple of points, I know, that I had
9 picked up in here, I haven't had a chance to check against
10 the transcripts. I was wondering whether they were
11 supported by evidence that was in the record at that point,
12 and some of them were some of -- issues that OCD brought on
13 the latest version that I wasn't sure about myself.

14 So I actually -- I would kind of like that,
15 because one thing I haven't been able to do as well is,
16 I've kind of gone through and piecemealed a lot of this,
17 but I haven't been able to put it into one comprehensive
18 set for my own purposes to look at, you know.

19 Is there some way, I guess, that -- I don't know
20 if that's -- that we could get the electronic version, like
21 a Word document, of what people's actual proposed rule is?

22 CHAIRMAN FESMIRE: The final filings by the
23 parties --

24 COMMISSIONER OLSON: Yeah.

25 CHAIRMAN FESMIRE: -- is that what you're talking

1 about?

2 COMMISSIONER OLSON: So that we could actually --
3 because I would love to take it and kind of be able to cut
4 and paste stuff into more -- something that I can
5 understand better.

6 CHAIRMAN FESMIRE: Counsel Bada, can we do that?
7 Since they were not filed electronically --

8 MS. BADA: We could ask. I don't know if all the
9 parties are here today.

10 COMMISSIONER BAILEY: There's another idea on how
11 to fix that, is, we've signed off on a few items of general
12 agreement.

13 COMMISSIONER OLSON: Uh-huh.

14 COMMISSIONER BAILEY: If counsel could
15 incorporate that into another draft that we would then work
16 further from, that would probably save us a lot of time. I
17 know it would take counsel quite some time, but I mean we
18 do have items of agreement that could be worked into the
19 draft that we're working from?

20 CHAIRMAN FESMIRE: Counsel?

21 MS. BADA: I can try. I don't promise anything
22 before March.

23 CHAIRMAN FESMIRE: Okay. Would it be proper for
24 you to contact the parties and ask for an electronic
25 version -- an identical electronic version of the documents

1 filed?

2 MS. BADA: I can call and ask, if not --

3 CHAIRMAN FESMIRE: Okay.

4 COMMISSIONER OLSON: Because I kind have taken
5 mine now and it's all, you know, redlined at various places
6 and --

7 COMMISSIONER BAILEY: Yeah, I've got three
8 separate --

9 COMMISSIONER OLSON: I've got multiples, right,
10 right.

11 COMMISSIONER BAILEY: So --

12 COMMISSIONER OLSON: I'd love to get it --
13 because I'd love to even get my own into one version if I
14 could, you know? So...

15 CHAIRMAN FESMIRE: Okay. So I think the
16 consensus among the Commission is that we've got some more
17 homework to do, that we would like to have an electronic
18 version of the filings, that electronic version, that
19 counsel should contact the parties and see if they're able
20 to give us an electronic version of the final filings,
21 which included their proposed changes and the reasons for
22 their proposed changes, and that those be provided to the
23 Commissioners by counsel, if available.

24 And if not, we'll have to live with the hard
25 copy, but I'll bet that all of the parties can provide an

1 electronic copy.

2 And that we ought to finish that work and finish
3 evaluation of the transcripts and finish receiving the
4 transcripts before we proceed, that it's going to be about
5 two to three weeks before we get the final version of the
6 transcripts, and we'll need some time. That will put the
7 next potential meeting sometime around our regularly
8 scheduled meeting.

9 Do we want to attempt -- The docket for the March
10 13th meeting is extremely crowded. My first inclination
11 would be to put it off until the regularly scheduled
12 meeting, but with that -- a lot of the cases on that docket
13 were put off because of the work that we were going to be
14 doing on this meeting and continued until the March
15 meeting.

16 Would there be -- I think once we get our
17 homework done, that this ought to go relatively quickly.
18 I'm thinking maybe a couple of days.

19 What if we were to meet the Tuesday before the
20 regularly scheduled meeting?

21 COMMISSIONER BAILEY: As long as that's not sale
22 day for me.

23 CHAIRMAN FESMIRE: Okay, do you know when your
24 March sale is?

25 COMMISSIONER BAILEY: Third Tuesday of every

1 month.

2 CHAIRMAN FESMIRE: Okay.

3 COMMISSIONER OLSON: The 11th is the regularly
4 scheduled meeting on the Water Quality Control Commission.
5 I may need to be at that.

6 CHAIRMAN FESMIRE: Okay, so what about Wednesday
7 the 12th.

8 COMMISSIONER OLSON: Wednesday is fine.

9 CHAIRMAN FESMIRE: Wednesday the 12th --

10 COMMISSIONER OLSON: Uh-huh.

11 CHAIRMAN FESMIRE: -- and then the regularly
12 scheduled meeting on the 13th, and we'd have Friday the --
13 any remaining time on the 13th, and then Friday the 14th.

14 And at that point if we're not -- you know, we
15 may have to re-address scheduling on Friday, but would
16 there be support to the idea of putting this off until
17 Wednesday the 13th?

18 COMMISSIONER BAILEY: That would be fine with me.

19 COMMISSIONER OLSON: Or Wednesday the 12th.

20 CHAIRMAN FESMIRE: Wednesday the 12th, I'm sorry.

21 COMMISSIONER OLSON: Uh-huh.

22 CHAIRMAN FESMIRE: And we will continue it after
23 the regularly scheduled meeting on the 13th and potentially
24 plan on the 14th.

25 COMMISSIONER BAILEY: Thank you.

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER OLSON: I like that. I think this
3 is going to help the deliberations a lot, just because if
4 we can start getting this into more of a framework that
5 makes some sense, instead of scattered through various
6 documents, I think it's going to make it a lot simpler for
7 us to get through it too.

8 CHAIRMAN FESMIRE: Okay. The Chair would
9 entertain a motion to -- I'll be very careful how I pick
10 this word -- to adjourn and reconvene on March the 12th --

11 COMMISSIONER OLSON: Uh-huh.

12 CHAIRMAN FESMIRE: -- nine o'clock a.m. in this
13 room.

14 COMMISSIONER BAILEY: I so move.

15 COMMISSIONER OLSON: Second.

16 CHAIRMAN FESMIRE: All those in favor, signify by
17 saying aye.

18 COMMISSIONER BAILEY: Aye.

19 COMMISSIONER OLSON: Aye.

20 CHAIRMAN FESMIRE: Aye.

21 Let the record reflect that the Commission
22 unanimously decided to adjourn Case Number 14,015 and
23 reconvene on March 12th --

24 COMMISSIONER OLSON: -- 12th.

25 CHAIRMAN FESMIRE: -- 2008, in this room.

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COMMISSIONER BAILEY: Okay.

CHAIRMAN FESMIRE: Thank you all, very much.

(Thereupon, these proceedings were continued at
1:13 p.m.)

* * *

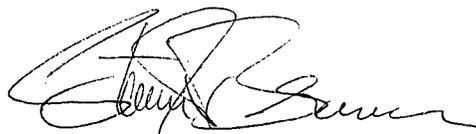
CERTIFICATE OF REPORTER

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 20th, 2008.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2010