

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:) CASE NO. 13,030
)
APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR AMENDMENT)
OF RULE 1209 [CONTINUANCE OF HEARING)
WITHOUT NEW SERVICE])
_____)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

RECEIVED
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April 17th, 2003

Oil Conservation Division

Santa Fe, New Mexico

This matter came on for hearing before the Oil
Conservation Commission, LORI WROTENBERY, Chairman, on
Thursday, April 17th, 2003, 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.

* * *

I N D E X

April 17th, 2003
Commission Hearing
CASE NO. 13,030

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* * *

A P P E A R A N C E S

FOR THE COMMISSION:

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Santa Fe, New Mexico 87505

FOR THE DIVISION:

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Energy, Minerals and Natural Resources Department
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* * *

1 WHEREUPON, the following proceedings were had at
2 9:03 a.m.:

3
4 CHAIRMAN WROTENBERY: Okay, we'll call this
5 hearing to order, Steve, if you're ready.

6 It's Thursday, April 17th, 2003, shortly after
7 9:00 a.m. We're here in Porter Hall for a meeting of the
8 Oil Conservation Commission.

9 We've got an intimate group here today, just the
10 Commission members and supporting staff and representatives
11 from the Division, so we'll forego all the introductions
12 today. We'll just note for the record that all three
13 Commissioners are in attendance.

14 We'll take care of the minutes of the last
15 meeting first. Florene has prepared minutes of the Oil
16 Conservation Commission meeting held on March 20th, 2003.

17 Commissioners, have you had a chance to review
18 those minutes?

19 COMMISSIONER BAILEY: Yes, I have, and I move
20 that we adopt them.

21 COMMISSIONER LEE: Second.

22 CHAIRMAN WROTENBERY: All in favor say aye.

23 COMMISSIONER BAILEY: Aye.

24 COMMISSIONER LEE: Aye.

25 CHAIRMAN WROTENBERY: Aye, and I will sign on

1 behalf of the Commission.

2 Thank you, Florene.

3 And Mr. Brooks --

4 MR. BROOKS: Yes, ma'am.

5 CHAIRMAN WROTENBERY: -- you would like to do
6 Case 13,030 first; is that right?

7 MR. BROOKS: Well, we have both witnesses now,
8 but the one for 13,030 is already in the witness chair,
9 so --

10 CHAIRMAN WROTENBERY: Well, then I think we'll go
11 ahead and take that one first.

12 This is the Application of the New Mexico Oil
13 Conservation Division for an amendment of Rule 1209
14 concerning continuance of hearing without new service. The
15 Division applies to amend the Rule to delete references to
16 the record. And the application of the proposed rule
17 amendment is statewide.

18 Enter appearances?

19 MR. BROOKS: Madame Chairman, Honorable
20 Commissioners, I'm David Brooks, Energy, Minerals and
21 Natural Resources Department of the State of New Mexico,
22 assistant general counsel, appearing for the Oil
23 Conservation Division, and I have one witness.

24 CHAIRMAN WROTENBERY: Okay, thank you.

25 Mr. Catanach, would you stand and be sworn,

1 please?

2 (Thereupon, the witness was sworn.)

3 MR. BROOKS: Okay, with the permission of the
4 Commission I will make a preliminary statement.

5 CHAIRMAN WROTENBERY: Please do.

6 MR. BROOKS: Madame Chairman, honorable
7 Commissioners, this is a technical procedural amendment to
8 the OCD Rules. Rule 1209 of the OCD Rules authorizes the
9 Commission or a Division Examiner to continue a hearing by
10 announcement at the time and place of the hearing that the
11 hearing will be continued to a subsequent specified time
12 and place without the necessity of republication. In other
13 words, Rule 1209 in effect dispenses with the need for
14 published notice of the new hearing, or to serve notice
15 upon the people who've already been served notice of the
16 original hearing.

17 After making that provision, the Rule contains a
18 sentence that says, "In the event of any continuance, a
19 statement thereof shall be made in the record of the
20 hearing that is continued." And that seems a reasonable
21 enough requirement except that we have a provision of the
22 Oil and Gas Act which specifically requires that a
23 transcript be made of every hearing. And of course we
24 would normally not make a transcript of hearings in which
25 the only action was to continue them to a subsequent

1 docket.

2 And there is a concern -- I guess I was the one
3 that raised this concern, so I'm responsible for this
4 proceeding being brought -- there is a concern in my mind
5 that since there is well-established authority that orders
6 of the Commission are void as to parties who did not have
7 notice if they were required to have notice, and there's at
8 least some sense that that means they can be collaterally
9 attacked.

10 My concern is that a party who received notice of
11 the first hearing but chose not to attend and did not
12 receive notice of the second hearing, who then never
13 appeared in the case, did not appeal, could come back later
14 and claim that that order was invalid as to him, that was
15 entered at the second hearing, because he did not have
16 notice of the second hearing and could claim that no
17 effective notice was given under Rule 1209 because there is
18 no statement in the record which appears in a transcript
19 which was prepared pursuant to the Oil and Gas Act.

20 Because that's the kind of argument that lawyers
21 like, it occurred to me that it's a good idea to foil it at
22 the start, if possible.

23 So with that, I am ready to present my witness.

24 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

25 Please go ahead.

1 DAVID R. CATANACH,
2 the witness herein, after having been first duly sworn upon
3 his oath, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BROOKS:

6 Q. Would you state your name for the record, please?

7 A. David Catanach.

8 Q. And by whom are you employed?

9 A. The New Mexico Oil Conservation Division, Santa
10 Fe Office, as a petroleum engineer.

11 Q. And do you act as a Hearing Examiner on a regular
12 basis for the Oil Conservation Division?

13 A. I do. I had my first hearing in November of
14 1985.

15 Q. So you've been there a while?

16 A. A while.

17 Q. You are familiar with the Division's practice
18 over a substantial period of time?

19 A. Substantial period of time, that's correct.

20 Q. What do the Hearing Examiners do in the hearing
21 dockets when there are cases on the published docket that
22 are being continued to a subsequent time? What is the
23 practice?

24 A. What the practice is, what I do, Mr. Brooks, is,
25 I -- on the record I call the hearing to order and I

1 announce all of the continuances and all of the dismissals
2 at the same time, before the start of the hearing.

3 Q. And you and Mr. Stogner have been working
4 together for quite a while, right?

5 A. Yes, sir.

6 Q. He follows basically the same procedure?

7 A. I believe that's correct.

8 Q. Now, does the court reporter make a record in the
9 sense that he -- Are those announcements made on the
10 record?

11 A. They are made on the record, yes.

12 Q. Is a transcript -- Well, when you first came
13 here, was it the practice to prepare a transcript of the
14 continuances?

15 A. Yeah, for the first -- I believe up until
16 approximately 1990, we used to make a transcript for every
17 continued case and dismissed case.

18 Q. So in the file on that case, there would be a
19 transcript which was essentially just one page, the
20 announcement of the continuance?

21 A. That's correct.

22 Q. And at some point in time that was discontinued?

23 A. I believe, again, around 1990 that was
24 discontinued, I believe to save money.

25 Q. Okay. And the present practice, do you announce

1 the continuance -- Well, we've already gone there. You
2 announce the continuances on the record, but a transcript
3 is not prepared?

4 A. My understanding of the current practice, and
5 this may have been just for the past several months, is,
6 there is a transcript made which contains all of the
7 continuances --

8 Q. Okay.

9 A. -- and in talking to Florene Davidson, the staff
10 specialist, I believe that she makes a copy of the one
11 official transcript and puts it in each individual case.

12 Q. Okay. Does the Commission administrator, Ms.
13 Davidson, does she make a note on each -- on the file
14 jacket of each file of the continuance that's been ordered
15 in the case?

16 A. Actually, in the cases that I hear, I write that
17 on the case jacket --

18 Q. Okay.

19 A. -- on the case file jacket, of the continuance.
20 I do that, and I suppose she does some of them too.

21 Q. Yeah, and then when the docket for the next
22 hearing at which that case is to be heard is prepared, is
23 there a notation included on the published docket
24 indicating the hearing from which that case was continued?

25 A. That's correct.

1 Q. Okay. So that if somebody comes in and looks at
2 the case file, they can trace that case through by the
3 notations on the jacket and on the subsequent dockets as to
4 when it was continued from, when it was continued to, on up
5 to whenever it's heard?

6 A. That's correct.

7 Q. And because the court reporter makes a record, if
8 anybody disagrees with that or thinks it didn't actually
9 happen that way, there's somewhere we can go back to and
10 have a reference to correct whatever --

11 A. Yeah, that's correct.

12 Q. -- the situation with the record?

13 A. That would be the case. And also, internally we
14 use RBDMS, the Risk-Based Data Management System, and we
15 note continuances on that database. Although that database
16 is not available for public inspection, we have that
17 internally.

18 Q. So we can check -- that gives us another double-
19 check on whatever's in the file?

20 A. That would be correct.

21 Q. The preparing of a transcript in every case,
22 would that give everybody any better notice than they're
23 now getting of hearings?

24 A. You mean for continuances?

25 Q. Yes.

1 A. No, I don't believe it would serve any useful
2 purpose.

3 Q. Because if they look at the file they'll know
4 when it's continued to anyway, and if they don't look at
5 the file they wouldn't see the transcript?

6 A. That's correct.

7 Q. So really there's no reason to have those
8 transcripts?

9 A. I don't believe that there is any reason.

10 MR. BROOKS: Thank you, pass the witness.

11 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

12 Any questions, Commissioners?

13 COMMISSIONER BAILEY: I have none.

14 COMMISSIONER LEE: (Shakes head)

15 CHAIRMAN WROTENBERY: Thank you for your
16 testimony, Mr. Catanach.

17 THE WITNESS: Okay.

18 CHAIRMAN WROTENBERY: Nice job.

19 MR. BROOKS: Forgot to pass these out. This is
20 the proposed amendment.

21 MR. BROOKS: And Mr. Ross has suggested that I
22 furnish the Commission with a proposed order.

23 CHAIRMAN WROTENBERY: That would be great. I was
24 going to ask that. I'm glad you brought it up.

25 So you would please furnish Mr. Ross a copy of

1 your draft order in the case.

2 MR. BROOKS: Yes, I will furnish a proposed order
3 to Mr. Ross prior to the next Commission meeting.

4 CHAIRMAN WROTENBERY: Thank you.

5 Anything else on this particular matter?

6 MR. BROOKS: Nothing further.

7 CHAIRMAN WROTENBERY: Okay, then we'll take this
8 case under advisement.

9 (Thereupon, these proceedings were concluded at
10 9:14 a.m.)

11 * * *

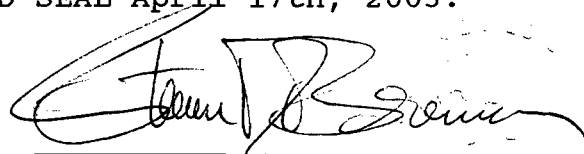
CERTIFICATE OF REPORTER

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 April 17th, 2003.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006

EXHIBIT A to APPLICATION for AMENDMENT OF RULE 1209

19.15.14.1209 CONTINUANCE OF HEARING WITHOUT NEW SERVICE: Any hearing before the commission or a division examiner held after due notice may be continued by the person presiding at such hearing to a specified time and place without the necessity of notice of the same being again served or published. ~~In the event of any continuance, a statement thereof shall be made in the record of the hearing that is continued.~~