

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

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSION HEARING - AGENDA AND DOCKET

March 12, 2015

Santa Fe, New Mexico

BEFORE: DAVID CATANACH, CHAIRPERSON  
AUBREY DUNN, COMMISSIONER  
ROBERT S. BALCH, COMMISSIONER  
BILL BRANCARD, ESQ.

Also Present: Michael Feldewert, Esq.  
Gabriel Wade, Esq.  
Brandon Powell

This matter came on for hearing before the  
New Mexico Oil Conservation Commission on Thursday,  
March 12, 2015, at the New Mexico Energy, Minerals and  
Natural Resources Department, Wendell Chino Building,  
1220 South St. Francis Drive, Porter Hall, Room 102,  
Santa Fe, New Mexico.

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1 (9:00 a.m.)

2 CHAIRPERSON CATANACH: Good morning. We'll  
3 call the hearing to order this morning. This is the  
4 meeting of the New Mexico Oil Conservation Division.  
5 Today's date is Thursday, March 12th, 2015, and it's  
6 approximately 9:00.

7 I am David Catanach, the Acting Chairman of  
8 the Oil Conservation Commission, and with us today is  
9 general counsel for the department, Mr. Bill Brancard.  
10 And if I could have the other Commissioners introduce  
11 themselves.

12 COMMISSIONER DUNN: Aubrey Dunn, State Land  
13 Commissioner.

14 COMMISSIONER BALCH: Dr. Robert Balch,  
15 designee of the Secretary of Energy.

16 CHAIRPERSON CATANACH: Commissioners, I  
17 believe you have before you an agenda for today's  
18 meeting. Have you had a chance to review that, and is  
19 there a motion to adopt the agenda this morning?

20 COMMISSIONER BALCH: I'll make the motion  
21 to adopt the agenda.

22 COMMISSIONER DUNN: Second.

23 CHAIRPERSON CATANACH: The motion to adopt  
24 the agenda is hereby passed.

25 MR. BRANCARD: Mr. Chairman, I would just

1     note two things. Number one, you may notice that we  
2     have sort of a different format of the agenda. We've  
3     always sort of -- we had a docket previously, so now we  
4     have an agenda and a docket. That will allow us to  
5     better comply with the Open Meetings Resolution and the  
6     Open Meetings Act that requires a formal agenda at a  
7     certain point. We sort of used the docket to comply  
8     with that, so this just sort of does two things at once,  
9     an agenda and a docket.

10                   CHAIRPERSON CATANACH: Thank you.

11                   MR. BRANCARD: And I thought, also, just at  
12     the end of meeting, if you want, I can give a brief  
13     discussion of what's going on at the Legislature in  
14     terms of legislature that may be affecting the  
15     Commission.

16                   CHAIRPERSON CATANACH: That would be a good  
17     idea, Mr. Brancard.

18                   Commissioners, also before you are the  
19     minutes from the February 13th Commission hearing. If  
20     you've had a chance to review those, do you,  
21     Commissioners, have any changes to the minutes that  
22     you'd like to discuss?

23                   COMMISSIONER DUNN: No changes.

24                   COMMISSIONER BALCH: No changes here.

25                   CHAIRPERSON CATANACH: Do I have a motion

1 to adopt the minutes from that meeting?

2 COMMISSIONER DUNN: So moved.

3 COMMISSIONER BALCH: Seconded.

4 CHAIRPERSON CATANACH: The minutes from the  
5 February 13th, 2015 meeting are hereby adopted.

6 The next order of business this morning is  
7 the election of the chairman of the Oil Conservation  
8 Commission. Do I have any nominations?

9 COMMISSIONER BALCH: I would nominate David  
10 Catanach. It's most easy for the Chair to work with  
11 Florene Davidson, the Commission clerk, if you're in the  
12 office next door to her.

13 COMMISSIONER DUNN: I second the  
14 motion -- or the nomination.

15 CHAIRPERSON CATANACH: Okay. That motion  
16 is approved, and I accept the chairmanship of the Oil  
17 Conservation Commission.

18 Thank you, Commissioners.

19 The next order of business is to approve  
20 and adopt an order in Case Number 15239, which was heard  
21 back in February. This is the application of New Mexico  
22 Oil & Gas Association to repeal and replace Title 19,  
23 Chapter 15, Part 34 of the New Mexico Administrative  
24 Code addressing produced water, drilling fluids and  
25 other liquid oil field waste and to amend the definition

1 of produced water in Title 19, Chapter 15, Part 2 of the  
2 New Mexico Administrative Code.

3 MR. BRANCARD: Mr. Chair, at the request of  
4 the Commission, you actually have three items in front  
5 of you. You should have. One is the final rule that  
6 was prepared. And I sent out a version -- and I don't  
7 know if all of you got it -- again, that has the  
8 changes. This is not the final version, but instead it  
9 has the changes that the Commission made during the  
10 hearing highlighted in yellow.

11 Do you have that, Commissioner Dunn?

12 COMMISSIONER BALCH: Mr. Brancard, I appear  
13 to be missing those documents.

14 CHAIRPERSON CATANACH: I don't have them  
15 either.

16 MR. BRANCARD: Okay. I e-mailed those out  
17 yesterday.

18 COMMISSIONER BALCH: I have them on my  
19 computer.

20 CHAIRPERSON CATANACH: I have them on my  
21 desk.

22 MR. BRANCARD: Okay. I just wanted you-all  
23 to see the changes that you-all approved to make sure I  
24 got the wording right.

25 CHAIRPERSON CATANACH: Do the Commissioners

1 want to go over just the changes that we adopted at the  
2 last meeting and make sure that those are correct? We  
3 can start on page 1. And these are highlighted in  
4 yellow?

5 MR. BRANCARD: Yeah. And some of them are  
6 cross-references that were left blank in the original  
7 proposal that we just filled in. So that's what the  
8 first -- one of the first pages is. We just left it  
9 blank, and it got filled in.

10 And the other thing that's added to this  
11 version that you hadn't seen before is that each of  
12 these -- under the New Mexico Administrative Code, each  
13 of the sections in the rule gets what's called a history  
14 note, and that just simply lets people know when the  
15 rule becomes effective. And so under the State Rules  
16 Act, our rules become effective after they are filed  
17 with the records administrator and then published in the  
18 "New Mexico Register." The next -- if we get them in  
19 quickly, the next publication date is the end of the  
20 month, so that's why it's March 31, 2015. So that would  
21 be the publication date of the "New Mexico Register,"  
22 and that would become the effective date of the rule.

23 So the second page is two changes that the  
24 Commission requested, the first in 9E, about the  
25 recording of fresh water, along with the total volume of

1 water received for recycling.

2 And then 10A is the request the Commission  
3 made to specify what the contents of the C-147 form is.

4 CHAIRPERSON CATANACH: Commissioners, do  
5 you have any issues with those changes, page 2?

6 COMMISSIONER DUNN: It would have been nice  
7 to get it ahead of time.

8 COMMISSIONER BALCH: Do we have the C-148  
9 form available, as well as the C-147?

10 MR. WADE: Gabriel Wade representing the  
11 OCD.

12 The C-148 would be the last page. And what  
13 the concept will be is for it to be electronic, so what  
14 you have in front of you is basically like a diagram and  
15 all of the conceptual parameters that are going to go  
16 into it. But it'll be a fully electronic form.

17 COMMISSIONER BALCH: Okay. Maybe this  
18 would be the time to go through the C-147.

19 CHAIRPERSON CATANACH: Why don't we finish  
20 going through the order itself, and then we'll go  
21 through the forms?

22 COMMISSIONER BALCH: Sure.

23 MR. BRANCARD: The next change is a little  
24 wording change on page 4, the two words the Commission  
25 requested there.



1                   CHAIRPERSON CATANACH: Okay. Any comments  
2 on that change?

3                   COMMISSIONER BALCH: No.

4                   MR. BRANCARD: Top of page 5, the  
5 Commission requested that this d/b -- this language here  
6 is different than what was in Rule 17, and the  
7 Commission requested we use the language in Rule 17,  
8 which was in an exhibit that you-all saw during the  
9 hearing. So we simply took the wording that was in that  
10 exhibit that the Commission referenced and inserted that  
11 instead, page 5.

12                  CHAIRPERSON CATANACH: Okay. Any comments?

13                  MR. BRANCARD: The bottom of page 5 is the  
14 State Trust Land reference that was requested.

15                  COMMISSIONER DUNN: There were two  
16 references requested. One was that, you know, we be  
17 notified if there is one to be built on State Trust  
18 Lands. And I know it's not incorporated, so, I mean,  
19 one way to get around it, if you don't want to put it in  
20 this, is to put it in the form. Otherwise, I'll vote no  
21 on it again. So --

22                  COMMISSIONER BALCH: You're specifically  
23 interested in notice to the State Land Office?

24                  COMMISSIONER DUNN: If it's on the trust  
25 lands.

1                   COMMISSIONER BALCH: Right. Okay. I mean,  
2 I certainly have no issue with that personally. Is  
3 there a reason why the State Land Office wouldn't know  
4 already?

5                   COMMISSIONER DUNN: Well, if it's part of  
6 the mineral lease and -- you know, there are easements  
7 and other things that are part of the mineral lease we  
8 don't get notified on because it's contained in the  
9 mineral lease. So my concern would be if somebody puts  
10 a big recycling pond on, that they might consider it  
11 part of the mineral lease, which I wouldn't view it that  
12 way, because I think it would be a different -- separate  
13 from the mineral lease. But it could be construed that  
14 way, and so if it -- I just think it would be nice if we  
15 were notified. And you could do it through the form if  
16 you wanted rather than through the rule.

17                  MR. BRANCARD: Is there a way to create a  
18 process for these forms to be submitted -- I mean to be  
19 transmitted to the Land Office, because there is  
20 something right on the front that says "Surface Owner"?

21                  COMMISSIONER BALCH: Right.

22                  MR. BRANCARD: So you would know it was  
23 State Trust Land right away.

24                  MR. WADE: And for the Commission's  
25 benefit, Brandon Powell is from the Aztec District with

1 the OCD, and he's been instrumental in helping with and  
2 looking at the rule and making these forms, so he's here  
3 to answer questions directly.

4 COMMISSIONER DUNN: I'm just saying if  
5 whoever the applicant is, if they notified us and they  
6 told you that they had been notified if there was  
7 approval of notification.

8 MR. POWELL: If there is going to be a  
9 notification requirement, it might be a lot easier to  
10 put it in the rule as far as enforceability and make  
11 sure something doesn't get missed as far as putting it  
12 in the form.

13 CHAIRPERSON CATANACH: Well, I think the  
14 problem with putting it in the rule is I think we've  
15 already finalized the rule, to a large extent.

16 Mr. Brancard, do you see an issue with  
17 actually putting the notice requirement on the form at  
18 this point?

19 MR. BRANCARD: No. That would put the  
20 burden on the Division to send the notice, I would  
21 think --

22 COMMISSIONER BALCH: Rather than the --

23 MR. BRANCARD: -- than the applicant, which  
24 I think is what is being requested.

25 COMMISSIONER BALCH: And I believe, also,

1 Chair Catanach, we left deliberations open, so --

2 MR. BRANCARD: Yeah. I mean, we can't be  
3 taking testimony about -- about this. We're sort of in  
4 a gray area because we're discussing the form here and  
5 we've asked OCD to prepare the form, which is separate  
6 from the rule, but if you'd like to go -- but we're also  
7 looking -- the Commission itself is looking at the rule.  
8 So I think you have not formally submitted the rule at  
9 this point and it's still open. If you want to --

10 MR. WADE: If I may state something on  
11 behalf of the OCD, I think that there would be problems  
12 with enforceability if you don't have a provision in the  
13 rule itself, so I would like the Commission to consider  
14 that. And I think it would be cleaner if it was in the  
15 rule and the applicant had the burden to give notice.

16 COMMISSIONER DUNN: I guess, you know, my  
17 question would be: Do you think our current lease would  
18 be -- recycling ponds, would they -- someone be able to  
19 construct those in our current lease, the State Land  
20 Office, statutorily?

21 MR. BRANCARD: You know, Commissioner, I  
22 don't know what's all in the oil and gas lease, but I  
23 think this -- you know, this seems like a significant  
24 surface use that if the Land Office wanted to consider  
25 that, you would have to require a surface lease for to

1 do these kind of ponds.

2 COMMISSIONER DUNN: Then in turn we'd want  
3 to have a commercial lease on the pond versus the  
4 regular mineral lease, which, you know, a mineral lease  
5 would change it.

6 CHAIRPERSON CATANACH: I don't have an  
7 issue with the State Land Office being provided notice,  
8 but that opens up the question of then do we require  
9 notification to the Bureau of Land Management for  
10 federal acreage, and do we require notification for a  
11 fee acreage? I mean, it's not -- I don't think it's  
12 right just the Land Office should --

13 COMMISSIONER DUNN: That sounds good to me.

14 COMMISSIONER BALCH: Yeah. But the BLM is  
15 probably going to have their own permitting process  
16 anyway. But the fee holders, why would they be  
17 different than the State Land Office?

18 CHAIRPERSON CATANACH: Right. So, I mean,  
19 if we decided to go that way, I think we need to go all  
20 the way and require notification to any surface owner.

21 COMMISSIONER BALCH: So the discussion we  
22 had in the hearing last month was how to go about that  
23 and whether it's enforceable, binding, what happens if  
24 they don't do it, penalties, et cetera.

25 CHAIRPERSON CATANACH: And the other thing

1 we discussed at that meeting was do they have the right  
2 to object at that point, and then do we --

3 COMMISSIONER BALCH: Exactly. What if they  
4 don't want that?

5 CHAIRPERSON CATANACH: Right.

6 COMMISSIONER BALCH: If it's just the  
7 notification, you know, in the form of a memo or  
8 something, that's fine, but it's what follows from that  
9 that makes it challenging.

10 CHAIRPERSON CATANACH: Because typically  
11 the way we do a notification in a lot of the other forms  
12 and rules is we require them to provide notice and then  
13 we give them 15 or 20 days to object. And if they  
14 object, we typically set it to hearing before an  
15 examiner. So, I mean, do we want to go that way on  
16 that, also?

17 MR. BRANCARD: Well, again, we're doing  
18 this as a permit by rule, so, in fact, there is really  
19 not a permitting process even going on with the OCD,  
20 right? I mean, the OCD is simply getting the form in to  
21 review. So if you want to require that at the same time  
22 that they submit the notice to us -- the form to us,  
23 that the form will also be submitted to the surface  
24 owner, I think you could do that, but it doesn't trigger  
25 any process with us because we don't actually have an

1 approval process.

2 COMMISSIONER DUNN: I think that would  
3 suffice for us, if we just give notice.

4 COMMISSIONER BALCH: So that's the largest  
5 landowner in the state, probably, I think maybe after  
6 the BLM. What would you do with it if you received that  
7 C-147?

8 COMMISSIONER DUNN: Well, it would be in  
9 hopes that they had already contacted us before they go  
10 to this -- to lease the area to the recycling facility.

11 COMMISSIONER BALCH: Right.

12 COMMISSIONER DUNN: And I would think they  
13 would do the same with any other surface owner.

14 COMMISSIONER BALCH: And then to the  
15 Division, if Commissioner Dunn had a complaint with a  
16 C-147, what would happen then?

17 CHAIRPERSON CATANACH: Well, that's what  
18 I'm trying to determine, which way we want to go on  
19 this. Do we want to provide the objecting party the  
20 opportunity to present at a hearing?

21 MR. BRANCARD: But again, you're not going  
22 to be approving --

23 COMMISSIONER BALCH: It's not a permanent  
24 rule. That's the problem.

25 MR. BRANCARD: Yeah. But you would be

1 following up on the facility to see whether they've  
2 complied with, you know, all the requirements as they  
3 have indicated in the form and whether the form  
4 indicates they're going to comply with the requirements.  
5 So if somebody comes in and says, Well, I don't think  
6 they're complying with your requirements, that would be  
7 something that, you know, the Division would follow up  
8 with any citizen complaint about, you know, an operator  
9 not complying with the requirements.

10 COMMISSIONER BALCH: Maybe -- I want to try  
11 and simplify this a little bit because I don't  
12 understand a lot of surface law. But if you have the  
13 mineral rights, do you have the right to build a road to  
14 get to that facility --

15 COMMISSIONER DUNN: You have to lease. You  
16 have to give right-of-way to the --

17 COMMISSIONER BALCH: Right-of-way.

18 COMMISSIONER DUNN: -- because it's on --  
19 you have the right to build, but you still have to pay  
20 for the damages to the surface.

21 COMMISSIONER BALCH: Sure. And recover the  
22 road -- that's covered already -- recovering the pit is  
23 already covered in this rule.

24 COMMISSIONER DUNN: Right. But there's a  
25 huge recycling facility. I don't care if it was



1 intended originally under the mineral lease for that  
2 purpose.

3 COMMISSIONER BALCH: Right.

4 I think if Commissioner Dunn feels that  
5 simply transmitting the form to the surface owner would  
6 be sufficient, that might be the simplest solution.

7 MR. BRANCARD: I think that's really all we  
8 can do.

9 COMMISSIONER DUNN: That would be a start.

10 COMMISSIONER BALCH: Okay.

11 CHAIRPERSON CATANACH: Well, I have no  
12 objection to that. We do need to include the Bureau of  
13 Land Management, or we can simply say surface owner.

14 COMMISSIONER BALCH: Surface owner.  
15 Surface owner.

16 CHAIRPERSON CATANACH: I guess -- if  
17 somebody actually just flat-out objects to the facility  
18 being there, I guess -- I'm not sure how we handle that.

19 COMMISSIONER DUNN: Go to the company  
20 directly or go after the --

21 MR. BRANCARD: Because the company's  
22 following the rules that we provide. The relationship  
23 between the surface owner and the mineral lessee is --  
24 that's an entirely different relationship that we don't  
25 get involved in.

1 CHAIRPERSON CATANACH: Okay.

2 MR. BRANCARD: And, you know, I'm not  
3 really up on the Surface Owners Protection Act and how  
4 much that would trigger notice. You know, that's  
5 supposed to deal with these kind of situations. I don't  
6 really know how that would cover adding a facility like  
7 this.

8 But if you simply wanted to add into, you  
9 know, 10A, where we discussed the C-147, and we can say  
10 at the time the C-147 is submitted to the Division, a  
11 copy shall also be provided to the surface owner.

12 CHAIRPERSON CATANACH: I'd be all for that.

13 COMMISSIONER BALCH: No reason to not be  
14 transparent. Can you make that A(1)?

15 MR. BRANCARD: Well, I never do a one  
16 without a two.

17 COMMISSIONER BALCH: You'll be the new me,  
18 though.

19 MR. BRANCARD: I can just include it in  
20 that paragraph.

21 COMMISSIONER BALCH: Okay.

22 MR. BRANCARD: You know, I'll just say  
23 "provided," which means, you know, they can hand-deliver  
24 it; they can mail it.

25 COMMISSIONER BALCH: As long as they get

1 it.

2 CHAIRPERSON CATANACH: Can you please read  
3 that language, Mr. Brancard?

4 MR. BRANCARD: Okay. So at the end of 10A,  
5 at the bottom of page -- is that page 2 -- add to 10A:  
6 "At the time the C-147 is submitted to the Division, a  
7 copy shall be provided to the surface owner."

8 CHAIRPERSON CATANACH: That works.

9 COMMISSIONER BALCH: Okay.

10 COMMISSIONER DUNN: I don't have any other  
11 problems with any changes to the form.

12 CHAIRPERSON CATANACH: I think I'm fine  
13 with everything else as far as the rule. I think we're  
14 still on the rule.

15 MR. BRANCARD: Right.

16 COMMISSIONER BALCH: We're on the top of  
17 page 5. I think we're okay with that. No. We were on  
18 the bottom of page 5.

19 COMMISSIONER DUNN: Right.

20 MR. BRANCARD: And the next changes, then,  
21 are at the bottom of page 7. Again, this was a -- the  
22 Commission thought that the standard that had been used  
23 previously for variances should be applied to this rule,  
24 so -- you saw that language in the -- in the exhibits,  
25 so that's the language that is inserted here.

1                   In 16C, we got rid of the cross-reference  
2 just because these numbers change, and every time the  
3 numbers change, you've got to change the rule. So it's  
4 just better, I think, just to refer to the rule.

5                   I think the last change is at the top of  
6 page 8, where the Commission wanted Division approval  
7 rather than Division district office approval for  
8 variances.

9                   CHAIRPERSON CATANACH: I have no additional  
10 comments on the rule.

11                  Commissioners, any additional comments on  
12 the proposed rule?

13                  COMMISSIONER BALCH: Besides maybe a quick  
14 run-through on the C-147, make sure it incorporates the  
15 intent.

16                  CHAIRPERSON CATANACH: If the notice  
17 requirement is in the rule, do we also need to put it on  
18 the form, do you think, Mr. Brancard?

19                  MR. BRANCARD: You can simply restate  
20 the --

21                  MR. WADE: That part of the rule, I have a  
22 check box, would be simple enough.

23                  CHAIRPERSON CATANACH: I'm sorry?

24                  MR. WADE: Mr. Brancard was saying we could  
25 simply restate that this section of the rule was just

1 recently added, and if we could just have a check box  
2 that they have complied with that, that would not be a  
3 problem.

4 MR. BRANCARD: Where it says "beneath the  
5 surface owner," in box one?

6 CHAIRPERSON CATANACH: Okay. So we're  
7 going to just go through the C-147. We can just go  
8 through it and if you guys -- if the Commissioners have  
9 any issues with any of the -- anything on the form, we  
10 can bring it up.

11 COMMISSIONER DUNN: This is the same as the  
12 other form pretty much, the existing form.

13 CHAIRPERSON CATANACH: I believe they made  
14 changes to the 147.

15 MR. BRANCARD: It's expanded to include all  
16 the requirements that are in the rule. So specifically,  
17 it was Sections 11 through 15 in the rule that had to be  
18 connected in here. So a lot of that -- most of that is  
19 in 8 and 9. And then 15, which is the financial  
20 assurance, goes back under 4 -- Section 4 of the form.

21 COMMISSIONER BALCH: Anyway, the Division,  
22 if they need to, can change the form.

23 MR. BRANCARD: Right. They don't need to  
24 come back -- the forms are the Divisions forms, so they  
25 can make modifications and updates without coming back

1 to the Commission. It's just simply in this situation,  
2 because the form was sort of integral to the rule, that  
3 Commissioner Balch asked that we look at the form prior  
4 to giving final approval to the rule.

5 CHAIRPERSON CATANACH: Okay. Commissioner  
6 Dunn, do you see any issues with the form?

7 COMMISSIONER DUNN: No.

8 CHAIRPERSON CATANACH: So we're not  
9 adopting the form today. We're just reviewing it, and  
10 we don't seem to have any issues with the form at this  
11 point.

12 MR. BRANCARD: Right.

13 CHAIRPERSON CATANACH: So do we move on to  
14 the order?

15 MR. BRANCARD: The order at this point,  
16 yeah.

17 CHAIRPERSON CATANACH: Mr. Brancard, I've  
18 reviewed the order.

19 Have the Commissioners reviewed the order  
20 in this case?

21 MR. BRANCARD: Do you want to take time  
22 right now to do that?

23 COMMISSIONER BALCH: I had a chance to look  
24 at it last night about 9:00.

25 MR. BRANCARD: And, Commissioner Dunn, just

1 so you get a sense that, since time immemorial, the  
2 Commission has acted through orders. So if you hear an  
3 adjudicatory case or a rule-making case, there will  
4 always be an order.

5 And essentially what the courts look for in  
6 a rule-making is that the Commission will sort of  
7 explain its reasoning in making a decision on a rule.  
8 It doesn't have to address every comment made at a  
9 hearing. It's just to give the Court a sense of what  
10 you based your decision on.

11 So Mr. Feldewert prepared a draft order.  
12 I'm sorry. With the demands of the legislative session,  
13 I didn't finish up until yesterday reviewing it. I'm  
14 primarily concerned that it sort of meets all the legal  
15 requirements. Mr. Feldewert did a pretty good job in  
16 summarizing all the evidence that was presented in the  
17 hearing. I wanted to make sure -- because part of  
18 the -- if there is ever a challenge to the rule, it's  
19 most important that you follow the process that's  
20 required. So I want to make sure the process for notice  
21 is laid out in the order. It needs to know the process  
22 was followed. So that's often what I'm looking for, and  
23 also, you know, identifying, which Mr. Feldewert did to  
24 a certain extent, what the statutory authority was for  
25 the Commission to adopt the rule. In this case, we had

1 very specific authority under the Oil and Gas Act under  
2 the rules on produced water.

3 COMMISSIONER BALCH: My other question  
4 was -- it's at the bottom of page 3. And this comes up  
5 several times, I think four or five times, in the  
6 document, where we provide a reasonable level of  
7 protection. I just thought it should say "provides  
8 protection to" instead of "reasonable level of" and  
9 similar language in a few other spots.

10 MR. BRANCARD: Okay.

11 COMMISSIONER BALCH: I don't know if using  
12 the word "reasonable" --

13 MR. BRANCARD: Some of that comes from the  
14 act itself.

15 COMMISSIONER BALCH: Right. So if it's  
16 critical --

17 MR. BRANCARD: I don't think so.  
18 "Protection" is reasonable. If you think it provides  
19 PROVIDES, that's --

20 COMMISSIONER BALCH: Well, that's the  
21 purpose of it, is to provide PROVIDES.

22 MR. BRANCARD: Right.

23 COMMISSIONER BALCH: Reasonableness is to  
24 be determined by somebody else, or perhaps us later on.

25 Same thing in Section B. Same thing on



1 page 5, Section 18, and 21, 26 on page 6, and 30 on page  
2 6. And again, it's not -- I'm just curious as to why we  
3 used that terminology.

4 MR. BRANCARD: I don't have the act right  
5 in front of me, but I think that may be a phrase or term  
6 used in the act.

7 COMMISSIONER BALCH: "Reasonable level of  
8 PROVIDES." So if you feel it's --

9 MR. BRANCARD: Well, if you think you've  
10 protected fresh water, then you've protected fresh  
11 water.

12 COMMISSIONER DUNN: To me, without  
13 "reasonable," it would be better.

14 MR. BRANCARD: Okay. Go with that then.

15 COMMISSIONER BALCH: Search for  
16 "reasonable" and --

17 MR. BRANCARD: So your position is that  
18 you're unreasonable? Just kidding.

19 COMMISSIONER BALCH: That's for somebody  
20 else to think.

21 CHAIRPERSON CATANACH: Any other changes,  
22 Commissioner?

23 COMMISSIONER BALCH: No, I don't have any  
24 others.

25 CHAIRPERSON CATANACH: Commissioner Dunn?

1 COMMISSIONER DUNN: No.

2 CHAIRPERSON CATANACH: The only thing I'm  
3 concerned with, Mr. Brancard, the notice in the new  
4 rule, does that impact the order in any way? Do we need  
5 to add a finding in there or --

6 MR. BRANCARD: I think Mr. Feldewert  
7 drafted this, so I'll sort of generically refer to the  
8 changes the Commission made during deliberations about  
9 the details about each of those changes. But if you  
10 want to have a specific finding -- because I think it's  
11 a pretty important issue -- that's fine. I can have a  
12 specific finding about providing notice.

13 CHAIRPERSON CATANACH: Okay. I think it  
14 would be important, and I think it's probably  
15 appropriate to add something in there.

16 MR. BRANCARD: Sure.

17 CHAIRPERSON CATANACH: I don't know what  
18 the procedure would be at this point.

19 MR. BRANCARD: If you give me authority to  
20 amend and the Chair gives me authority to approve and  
21 sign --

22 COMMISSIONER BALCH: Minor amendments --

23 MR. BRANCARD: Got to get that word  
24 "reasonable."

25 COMMISSIONER BALCH: Appropriate use of the

1 word "reasonable."

2 We could recess for a short period of time  
3 and allow Mr. Brancard to make the changes.

4 CHAIRPERSON CATANACH: Is that acceptable?  
5 Can we do that, Mr. Brancard?

6 MR. BRANCARD: Yeah. Now you're going to  
7 put me under pressure here. Yeah, I can do that.

8 CHAIRPERSON CATANACH: Can we prepare the  
9 actual order for signature at this point?

10 MS. DAVIDSON: (Indicating.)

11 MR. BRANCARD: Oh, yeah.

12 CHAIRPERSON CATANACH: Let's do that.

13 Recess for 15 minutes.

14 COMMISSIONER BALCH: Is that a reasonable  
15 enough amount of time?

16 CHAIRPERSON CATANACH: Let's stand in  
17 recess for 15 minutes and allow Mr. Brancard to amend  
18 the order.

19 (Break taken, 9:36 a.m. to 10:03 a.m.)

20 CHAIRPERSON CATANACH: Okay. Let's go back  
21 on the record, and we'll let Mr. Brancard explain the  
22 changes he made to the --

23 MR. BRANCARD: I was working off of  
24 Florene's final version, so the formatting looks  
25 different. That's Florene's final version, anyway.

1 I made Commissioner Balch's changes in 9A,  
2 9B and elsewhere.

3 Okay. So the change -- the new change is  
4 at the bottom of page 5. I've added language in Number  
5 15.

6 CHAIRPERSON CATANACH: So the change reads:  
7 "The Commission finds that providing notice of the  
8 proposed recycling containment to the surface owner is  
9 reasonable and amended, Section 19.15.34.10, to require  
10 a copy of the registration be provided to the surface  
11 owner at the time it is submitted to the Division." And  
12 I think that sounds fine.

13 Commissioners, do you have anything? Does  
14 that sound okay to everybody?

15 MR. BRANCARD: To clarify quickly, then,  
16 when we were referring to -- when Commissioner Balch was  
17 referring to in the act, there is a provision in the act  
18 that authorizes the rules on produced water, and it  
19 provides that you will have these -- do these rules "in  
20 a matter that will afford reasonable protection against  
21 the contamination of freshwater supplies designated by  
22 the State Engineer." So that's where the "reasonable"  
23 comes from.

24 We're also working under the part of the  
25 act that allows you to regulate the disposition of

1 wastes coming from the exploration and the production of  
2 crude oil. That requires that you regulate to protect  
3 public health and the environment. So that's why we  
4 tend to see sort of a conflation of those two, the  
5 protection of fresh water and protecting the health and  
6 the environment.

7 And you're right (indicating). It is  
8 public health and environment.

9 Do you want to make a motion to adopt the  
10 order and approve filing the rule?

11 CHAIRPERSON CATANACH: Commissioners, do I  
12 have a motion to adopt the order as amended?

13 COMMISSIONER BALCH: I make a motion to  
14 adopt the order as amended.

15 COMMISSIONER DUNN: Second.

16 CHAIRPERSON CATANACH: The motion is  
17 approved, and the order will be adopted as amended.

18 And I think that concludes that part of our  
19 business of the meeting.

20 Is there any other business we need to take  
21 care of besides your legislative update?

22 MR. BRANCARD: No, not that I can think of.

23 I'll forward my changes to Florene. She'll  
24 put it in the correct format because you do it on  
25 legal-size paper, the actual orders, in the Commission

1 tradition. You being the new Chair of the Commission,  
2 if you'd like to change that, you're welcome to.

3 CHAIRPERSON CATANACH: We better keep it  
4 up. I don't want to argue with Florene.

5 So we will forward that over to the other  
6 Commissioners for signature?

7 MS. DAVIDSON: Right. Right.

8 CHAIRPERSON CATANACH: We'll get it done,  
9 if you stick around.

10 MS. DAVIDSON: It won't take long.

11 CHAIRPERSON CATANACH: Go ahead.

12 MR. BRANCARD: I just want to update the  
13 Commission. Since we're in the middle of the  
14 legislative session, there are three pieces of  
15 legislation that are actually moving forward that  
16 either -- that amend the Oil and Gas Act in different  
17 ways. I'll start with the legislation that we have  
18 proposed, that the agency has proposed, and that is to  
19 deal with a gap in the act.

20 The act no longer provides, since 1999, for  
21 how to appeal a regulation, like you-all just adopted  
22 here, to the courts, and so people have had to go by  
23 filing a petition for a writ with the district court in  
24 order to appeal a rule.

25 We've also had the experience with several

1 Pit Rule cases that we've had in district court, that  
2 given the size of the record that the Commission  
3 develops and the complexity of the issues, that the  
4 district court just doesn't have the time to really rule  
5 on it. We had the 2008 Pit Rule decision that this  
6 Commission has never been ruled on by the district  
7 court, neither has the appeal of the 2009 changes to the  
8 Pit Rule.

9               So this statute -- this bill would change  
10 the statute to provide for a direct appeal of the rule  
11 from the Commission to the Court of Appeals. That fits  
12 with other statutes in this agency, the mining statutes.  
13 The Mining Department rules go directly to the Court of  
14 Appeals. They have clerks; they have panels of judges;  
15 they have a lot more resources to deal with that kind of  
16 complex issues and the size of the record. In fact, we  
17 have managed to get a district court now to certify all  
18 three of the pending Pit Rule appeals directly to the  
19 Court of Appeals so they're being bypassed by the  
20 district court anyway. So that's where those cases are.

21               So that's the -- that's the provision that  
22 we as an agency have proposed. It has now passed two  
23 Senate committees. There was a -- there was a minor  
24 amendment in the Senate judiciary last night, and so now  
25 it's headed to the Senate floor.

1           There is another amendment to the Oil and  
2 Gas Act dealing with financial assurance, dealing with  
3 the bonding requirements as proposed by one operator who  
4 has been very willing to let us work with him to make  
5 sure the language works for the agency. And the issue  
6 there is that we allow bonding when you have an initial  
7 well. It needs to be a single well bond or it can be a  
8 blanket bond of \$50,000.

9           But when you go -- when you go into  
10 inactive status or abandoned status, the statute now  
11 requires every well to have its own bond. For large  
12 operators, that's a lot of wells to keep track of and  
13 more for the agency to keep track of. So we're working  
14 with this operator to create a concept of a larger  
15 blanket bond for wells in an inactive status.

16           The initial legislation actually tried to  
17 put specific dollar amounts on groupings of numbers of  
18 wells. That just got too complicated for a lot of  
19 folks. So the current version of the bill now provides  
20 that they will have increased blanket bonding, and the  
21 Commission will adopt a rule and will set forth what  
22 that increased blanket bonding is for wells in the  
23 inactive status.

24           There are two versions -- there are two  
25 identical versions of that bill on the House and Senate



1 side. The House version, which has gotten all those  
2 changes, is now on the House floor. The Senate version  
3 passed Senate judiciary last night. Unfortunately, they  
4 did it through a consent calendar, which means that the  
5 last set of amendments that we needed to make to it --  
6 so it looks like the House version didn't get into  
7 the -- Senate floor. So the two bills will be  
8 identical.

9               So given those bills -- they're moving on  
10 parallel tractors. There is a pretty decent chance that  
11 that bill will go all the way through.

12               There are a whole series of bills out there  
13 that have tried to deal with the issue of local  
14 government authority over oil and gas regulation, and  
15 several bills were introduced trying to create some sort  
16 of notion of redemption of local government authority  
17 and giving authority for the statewide with the OCD and  
18 the OCC.

19               At this point, only one bill has moved  
20 forward, and it is the House Bill, House Bill 366, which  
21 passed the House the other night after a lengthy debate.  
22 It was far from an unanimous vote on that. There's been  
23 a lot of contention on that bill.

24               That bill amends the Oil and Gas Act to  
25 provide that the authority granted to the Commission and

1 the Division is exclusive authority. Okay? And so it's  
2 not, you know, very specific preemption language, but it  
3 creates more of a notion of a feel [sic] preemption.  
4 There is a lot of debate with that bill moving forward  
5 on what exactly that means and what exactly that does.

6 My opinion, you know, which I've been free  
7 to express with others, is if this becomes law, we'll  
8 find out when the courts get it, what it really means.  
9 And that's been true all across the country as states  
10 have tried to do preemption statutes. The courts in  
11 every state have gone in totally different directions.

12 In New Mexico, our courts have only  
13 recognized what's called conflict preemption, in which  
14 there is sort of a conflict between the state law and  
15 the regular local regulation that can't be resolved.  
16 Otherwise, they allow local regulation of oil and gas to  
17 continue unless it conflicts. And the recent case with  
18 Mora County, the federal court decided that basically if  
19 you disallow something, oil and gas drilling, that the  
20 state permits, that's a conflict. So they threw out the  
21 Mora County ordinance and said it was preempted by state  
22 law because there was a conflict.

23 So whether -- whether -- whether the  
24 Legislature can agree on a fix, I don't know. It's a  
25 fairly controversial topic. While the bill passes the

1 House, it's still got to get through the Senate, and I  
2 don't know what the prospects are for that.

3 So that's just to give you an update  
4 quickly on oil and gas legislation that's moving in the  
5 Roundhouse right now. We have a week to go.

6 CHAIRPERSON CATANACH: Okay. Thank you,  
7 Mr. Brancard. And we appreciate all your efforts. I  
8 know you're over there a lot.

9 I believe the next Commission meeting is  
10 scheduled for April 9th, 2015. I believe there is a  
11 case on that docket.

12 So is there any other business that we need  
13 to conduct today, Commissioners?

14 COMMISSIONER DUNN: No.

15 CHAIRPERSON CATANACH: Okay. So I guess I  
16 move that we adjourn the hearing.

17 COMMISSIONER BALCH: I'll second the  
18 motion.

19 CHAIRPERSON CATANACH: This meeting is  
20 adjourned.

21 (The proceedings conclude, 10:15 a.m.)  
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23  
24  
25

1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

3

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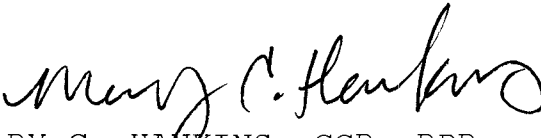
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