

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

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 THROUGH THE SUPERVISOR OF DISTRICT II FOR AN EMERGENCY ORDER SUSPENDING CERTAIN APPROVED APPLICATIONS FOR PERMITS TO DRILL, AND FOR ADOPTION OF SPECIAL RULES FOR DRILLING IN CERTAIN AREAS FOR THE PROTECTION OF FRESH WATER, CHAVES AND EDDY COUNTIES, NEW MEXICO. CASE NO. 15487

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

April 4, 2017

Santa Fe, New Mexico

BEFORE: DAVID R. CATANACH, CHAIRPERSON
PATRICK PADILLA, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Tuesday, April 4, 2017, 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.

REPORTED BY: Mary C. Hankins, CCR, RPR
New Mexico CCR #20
Paul Baca Professional Court Reporters
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102
(505) 843-9241

1 (9:11 a.m.)

2 CHAIRMAN CATANACH: Okay. The next order
3 of business this morning is disposition of Case Number
4 15487.

5 Commissioners, this is the application of
6 New Mexico Oil Conservation Division through the
7 supervisor of District II for an emergency order
8 suspending certain approved applications for permits to
9 drill and for adoption of special rules for certain --
10 for drilling in certain areas for the protection of
11 fresh water, Chaves and Eddy Counties, New Mexico.

12 By way of background, this case was heard
13 by the Commission on December 5th through the 7th, 2016.
14 As a result of that hearing, the Commission approved
15 Order Number R-14164-D on February 8th, 2017.

16 On February 28th, 2017, a joint application
17 for rehearing was filed by Pecos Valley Artesia
18 Conservancy District; Lime Rock Resources II-A, L.P.;
19 COG Operating, LLC; Fasken Oil & Ranch, Limited; OXY
20 USA, Inc.; Mack Energy Corporation; Devon Energy
21 Production Company, L.P.; and the Independent Petroleum
22 Association of New Mexico.

23 Subsequently to receiving this joint
24 application, I made the decision to grant the
25 application for rehearing and schedule Case Number 15487

1 for Commission hearing on today's date, April 4th.

2 Also, subsequent to that time, on March
3 10th, 2017, the Division filed a response to the joint
4 application for rehearing also requesting that Case
5 Number 15487 be reheard.

6 There is some question as to whether the
7 Commission Chairman has the authority to grant a request
8 for rehearing without consulting the full Commission.
9 Also, the issue of inadequate notice for the hearing
10 originally scheduled for today has been brought up by an
11 affected party.

12 With that, I will let Mr. Brancard go into
13 more detail on this situation and what the options are
14 at this point.

15 Mr. Brancard.

16 MR. BRANCARD: Thank you, Mr. Chairman.

17 This is kind of the first time this has
18 been dealt with by the Commission, this issue, which is
19 who has the authority to grant, approve an application
20 for rehearing. The statute in the Oil and Gas Act
21 provides that a party may request -- within 20 days
22 after an order, request for an application -- file an
23 application for rehearing. The statute simply says,
24 "The Commission shall grant or refuse the application in
25 whole or in part within ten days after the application

1 is filed, and failure to act on the application within
2 that period shall be deemed a refusal and final
3 disposition of that application."

4 In this case the Chair granted the
5 application and directed Commission staff to set this
6 for hearing, so what is before the Commission is
7 essentially what I see as two options.

8 One is to either decide that only the
9 Commission can grant an application for rehearing, and
10 that would likely have to be at a special meeting by the
11 Commission telephonically, unless you had a meeting set
12 up during that ten-day time frame. If you decide that,
13 then essentially the actions of the Chair are void, and,
14 therefore, the application is denied and the order is
15 final.

16 The other option is to decide that the
17 Chair had the ability to set a hearing -- set this for a
18 hearing and grant the application for a rehearing. If
19 you go that way, I think what we need, though, is an
20 order from the Commission deciding what the rehearing is
21 about, because simply granting a rehearing and setting
22 notice for it just sort of starts the deal with a series
23 of questions about what the nature of the rehearing is
24 about.

25 In this case we had an application that

1 identified two issues that it wanted addressed in the
2 rehearing. First, the Commission decides on the scope
3 of the rehearing. Are you just going to deal with those
4 two issues, or are you going to deal with the whole
5 order that you have.

6 The next question then is: What's the
7 nature of your rehearing? Are you simply going to look
8 at the record that exists already in the case and sort
9 of rethink your decision based on the existing record,
10 or are you going to allow for an opportunity for
11 additional evidence to be taken in this matter? And if
12 so, again, what's the scope of that evidence? Is it
13 just, say, the issues identified in the application?

14 And then we need to provide proper notice
15 indicating to the people participating, This is what's
16 coming up. In other words, you have a hearing. If
17 there is an additional chance for evidence, we need to
18 have deadlines for people to file, et cetera, which the
19 Commission rules would deal with.

20 So those are the two basic options. The
21 first option is to decide who has the authority to grant
22 this. As I said, the statute has simply one sentence
23 about this. This is a rulemaking, so in your rulemaking
24 regulations, there is really nothing that deals with
25 this issue. If you look at your adjudicatory

1 regulations, there is a provision in there, which we
2 have followed also in the rulemaking cases, which
3 provides that the Chair has the authority to act on
4 motions filed in the case and can decide those without
5 need of going to the full Commission on that. Those are
6 clearly not motions to, say, dismiss the case or to
7 decide the case. Those are preliminary motions often
8 about the nature of the hearing, about postponing the
9 hearing, et cetera, and the Chair does deal with those
10 issues without the need to call the full Commission into
11 a meeting and is authorized under the adjudicatory rules
12 to do so.

13 So the question is whether there is enough
14 in that authority to the Chair to also say that the
15 Chair was allowed in this case to grant the application
16 for rehearing and move forward.

17 And so I think the first question is: Does
18 the Chair have the authority to do that? Certainly, the
19 Commission, even if you say that you have the authority,
20 as a full Commission, since you're sitting here, you
21 can -- you can vote to reverse the Chair if you want but
22 issue an order.

23 I guess that is sort of the key issue here
24 right now, whether the Chair, in his right authority to
25 set this for hearing, under his authority to grant

1 motions.

2 COMMISSIONER BALCH: Sounds like it's
3 allowable, and I think probably advisable because of the
4 ten-day time limit. You're going to be able to act more
5 quickly if the Chair can respond without having to
6 corral us up from where we are in the room.

7 CHAIRMAN CATANACH: I guess on the
8 motions -- or on the applications for rehearing, I would
9 ask Ms. Davidson.

10 Copies of that filing are being provided to
11 the Commissioners --

12 MS. DAVIDSON: Right.

13 CHAIRMAN CATANACH: -- is that correct?

14 So, I mean, you guys have the time to
15 review the application as well as I can during that time
16 period. And if you have any objections for a rehearing,
17 then we can certainly get together at some -- you know,
18 and discuss it. If you don't have any issues with it,
19 we can generally go ahead and preempt it, I would think.

20 COMMISSIONER PADILLA: As long as there is
21 a method for objection, I think I'm fine with it as
22 well.

23 COMMISSIONER BALCH: And in the interest of
24 timely processing --

25 COMMISSIONER PADILLA: Right.

1 COMMISSIONER BALCH: -- I would be more
2 comfortable giving the Chair that ability.

3 MR. BRANCARD: Yeah. I mean, you have the
4 ability to call a special meeting, that either the Chair
5 can call or the two of you can ask the Chair to call.
6 But, you know, given the changes to the Open Meetings
7 Act a few years back, you now need to have a 72-hour
8 advance notice even for a special meeting. So that
9 condenses your ten-day time frame even further down.
10 And, I mean, as a result -- I think in the past we've
11 had a number of these applications that the Commission
12 simply had not acted on, which is provided for in the
13 statute, in fact, which is a denial.

14 But to actually approve one, if the
15 Commission is the one that has to do it, you would have
16 to get together -- unless you happen to have a meeting
17 in that ten-day time frame, you would have to call a
18 special meeting with 72 hours' notice, get that out to
19 everyone. Florene would have to come up with an agenda
20 and get that out to everyone. So it's a crunch to do
21 that. But if you think the Chair should have that
22 authority and has that authority and it has been
23 delegated under the rules, you can go with it.

24 COMMISSIONER PADILLA: For the sake of
25 expediency, I'd go with that.

1 COMMISSIONER BALCH: Seems like that makes
2 the most sense.

3 CHAIRMAN CATANACH: Okay.

4 MR. BRANCARD: All right. So then the next
5 question, then, is -- I guess, if you want, you could do
6 a motion to ratify.

7 COMMISSIONER BALCH: I would make a motion
8 to ratify that. Do you have language you would like us
9 to ratify?

10 MR. BRANCARD: That's fine.

11 CHAIRMAN CATANACH: Does that have to be
12 formalized in any form or fashion?

13 MR. BRANCARD: No. We're -- we're -- I
14 think we need to do an order. The primary purpose of
15 the order is to establish what the hearing's going to be
16 about.

17 CHAIRMAN CATANACH: But for the sake of
18 this -- for the sake of the particular motion, it grants
19 me the authority? We don't have to have any special
20 documentation?

21 MR. BRANCARD: No.

22 CHAIRMAN CATANACH: Okay.

23 COMMISSIONER PADILLA: So I second the
24 motion that's on the table then.

25 CHAIRMAN CATANACH: All in favor?

1 (Ayes are unanimous.)

2 CHAIRMAN CATANACH: Motion is granted.

3 So we'll discuss this particular
4 application --

5 MR. BRANCARD: And the nature of the
6 hearing.

7 CHAIRMAN CATANACH: Right.

8 And, you know, you've been provided --
9 Commissioners, you've been provided documentation of the
10 joint application for rehearing and also the Division's
11 response to the joint application.

12 It's my understanding that the -- the two
13 items that are in question are relatively simple items,
14 the resolution of which would not be that complicated.
15 One of the questions concerns the extent of the
16 designated area that we defined in that order, and the
17 other issue is some of the language that we used when
18 defining where the first surface casing was to be set.

19 My understanding was that the joint
20 application filed by Pecos Valley and the industry, that
21 that was agreed upon by those parties and that it was a
22 relatively simple thing that they were asking for. And
23 I'm not even sure if they were planning on putting on
24 any witnesses initially when that application was filed.

25 Subsequent to that time, the Division

1 issued a response to that, and I think that there is
2 some conflict between what the Division wants and what
3 the other parties want. So I think that there will
4 probably be an evidentiary hearing. I would think that
5 it would be relatively simple, maybe a few witnesses.
6 We're not going to be getting into the whole issue
7 again. We're just going to be dealing with these two
8 specific issues, is my understanding from reading the
9 applications.

10 COMMISSIONER BALCH: I think we need to
11 make sure that it doesn't go beyond that.

12 CHAIRMAN CATANACH: Okay.

13 COMMISSIONER PADILLA: I agree.

14 CHAIRMAN CATANACH: Mr. Brancard, what do
15 we do? Have a motion to --

16 MR. BRANCARD: Yeah.

17 CHAIRMAN CATANACH: We've got to set a
18 date?

19 MR. BRANCARD: To allow the hearing to be
20 set, whatever the date is, for the sole purpose of
21 addressing the two issues identified in the application
22 for rehearing.

23 CHAIRMAN CATANACH: So the next Commission
24 hearing is May 28th.

25 COMMISSIONER BALCH: May 18th.

1 CHAIRMAN CATANACH: May 18th. I'm sorry.
2 That would be the next available date.

3 And as far as any notice issues, we can
4 undertake that and take of care of all that at this
5 time.

6 MR. BRANCARD: Yes.

7 CHAIRMAN CATANACH: Okay. So I would ask
8 that you maybe work with Florene on that, Mr. Brancard,
9 to make sure we get this noticed up right.

10 And do I hear a motion, then, to allow this
11 case to be re-opened and to be heard on May 18th?

12 COMMISSIONER PADILLA: So moved.

13 COMMISSIONER BALCH: And seconded.

14 CHAIRMAN CATANACH: All in favor?

15 (Ayes are unanimous.)

16 MR. BRANCARD: And I'm assuming what you're
17 saying is you're re-opening it for the sole purpose of
18 allowing evidence on the two issues identified in the
19 application?

20 CHAIRMAN CATANACH: Correct. And there is
21 common -- both parties seek -- the two issues are common
22 with the two parties, so there shouldn't be any conflict
23 there.

24 I guess what we need is an order directing
25 time frames.

1 MR. BRANCARD: Yes.

2 CHAIRMAN CATANACH: So we'll issue -- issue
3 an order after this hearing.

4 COMMISSIONER BALCH: Do we all need to sign
5 that order, or do we authorize David?

6 MR. BRANCARD: You know what -- I mean,
7 that's the kind of order to do.

8 CHAIRMAN CATANACH: So it's just a
9 scheduling order.

10 MR. BRANCARD: Scheduling, basically.

11 CHAIRMAN CATANACH: So with that, that
12 hearing will be scheduled for May 18th. So we'll issue
13 an order on that and schedule pre-hearing statement
14 dates and all of that.

15 So that takes care of that.

16 (Case Number 15487 concludes, 9:25 a.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
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16 I FURTHER CERTIFY that I am neither
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19 the final disposition of this case.

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