

1 STATE OF NEW MEXICO  
2 ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT  
3 OIL CONSERVATION COMMISSION

4 IN THE MATTER OF THE HEARING CALLED  
5 BY THE OIL CONSERVATION COMMISSION FOR  
6 THE PURPOSE OF CONSIDERING:

CASE NOS: 21281

7 APPLICATION OF THE NEW MEXICO OIL CONSERVATION  
8 DIVISION TO AMEND THE COMMISSION'S RULES FOR  
9 PRODUCED WATER IN 19.15.2, 19.15.16 AND 19.15.34  
10 NMAC; STATEWIDE.

11 REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS  
12 COMMISSIONER HEARING  
13 Agenda Item 4  
14 May 21, 2020  
15 Santa Fe, New Mexico

16 BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN  
17 JORDAN KESSLER, COMMISSIONER  
18 DR. THOMAS ENGLER, COMMISSIONER  
19 MIGUEL LOZANO, ESQ.

20 This matter came on for virtual hearing through  
21 the New Mexico Oil Conservation Commission on Thursday, May  
22 21, 2020, at the New Mexico Energy, Minerals, and Natural  
23 Resources Department, Wendell Chino Building, 1220 South St.  
24 Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

25 Reported by: Irene Delgado, NMCCR 253  
PAUL BACA PROFESSIONAL COURT REPORTERS  
500 Fourth Street, NW, Suite 105  
Albuquerque, NM 87102  
505-843-9241

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Case No. 21281 Called  
Reporter Certificate

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EXHIBITS

None.

1 CHAIRWOMAN SANDOVAL: Agenda Item Number 4, Case  
2 Number 21281, the Commission will discuss and determine  
3 whether it will move forward with the rulemaking proposed by  
4 the Division to amend Rule 19.15.2, Rule 19.15.16 and  
5 19.15.34 of the New Mexico Administrative Code.

6 Have the Commissioners had an opportunity to  
7 review the proposed rules, the proposed draft of the rule  
8 changes?

9 COMMISSIONER KESSLER: Yes, Director, I reviewed  
10 the proposed draft changes to the rules.

11 COMMISSIONER ENGLER: This is Tom Engler. I have  
12 also read the draft.

13 CHAIRWOMAN SANDOVAL: Do the Commissioners have  
14 any questions, comments or concerns for the applicant  
15 regarding the proposed draft?

16 MR. LOZANO: Madam Chair, just so you're aware, I  
17 believe Ms. Bada is here on behalf of the Division to answer  
18 questions for the Division on this application.

19 MS. BADA: I am.

20 COMMISSIONER KESSLER: Madam Director, I do not  
21 have any questions at this time. I believe our counsel has  
22 also is reviewing them separately, and he may have questions  
23 as we approach civil rulemaking, but not at this time.

24 COMMISSIONER ENGLER: Yes. Madam Chair, this is  
25 Tom. I also agree.

1 CHAIRWOMAN SANDOVAL: Thank you. Due to the  
2 current public health emergency related to the Covid 19  
3 outbreak, this rules hearing will have to be held virtually  
4 and by telephone.

5 This Commission may need wish to consider special  
6 rules to implement for the purposes of this virtual hearing.  
7 We can now discuss possible special rules, if any, to  
8 include as part of the procedural order and notice related  
9 to this hearing.

10 For this hearing I recommend that we have -- we  
11 schedule a special date to hold the hearing, would be my  
12 recommendation, I would also recommend that we allow for an  
13 extended comment period, 30 to 45 days to ensure that there  
14 is adequate time for public comment and engagement.

15 In addition, I propose that the parties submit  
16 written testimony so that the Commissioners can review  
17 testimony, written testimony. I think this will provide for  
18 the most public and transparent process.

19 COMMISSIONER KESSLER: Madam Chair, is the  
20 proposal that we use the same Webex platform as we are  
21 currently using today?

22 CHAIRWOMAN SANDOVAL: Yes.

23 COMMISSIONER KESSLER: Do you know there is a  
24 limit of people that can join? I know that's been an issue  
25 in a couple of the public hearings that I have participated

1 in. They are capped like at 150.

2 CHAIRWOMAN SANDOVAL: I believe it is higher than  
3 that, but that's something that we can confirm prior to  
4 putting a notice out, and if there are any issues that arise  
5 with the cap, we can look at using a separate platform or  
6 potentially upgrading our membership so that we can allow a  
7 large number of participants, but that's the recommendation  
8 to ensure there is a large cap for the meeting.

9 COMMISSIONER KESSLER: Just my other suggestion  
10 would just be that people somehow indicate, preferably in  
11 advance of the hearing, if they are making public comments  
12 so that we can accommodate the technology. One of the last  
13 hearings I was involved with, half of the people that signed  
14 up for public comment weren't able to figure out how to mute  
15 or unmute themselves, so that's just a thought going  
16 forward.

17 CHAIRWOMAN SANDOVAL: Thank you. That could be  
18 indicated to the Commission clerk prior to the rulemaking  
19 hearing.

20 Are there any concerns about having an extended  
21 public comment period or doing testimony in written form?

22 COMMISSIONER KESSLER: So then if there is  
23 written testimony, would there also be an opportunity to  
24 examine or to ask questions related to that testimony?

25 MR. LOZANO: Commissioner Kessler, to be clear, I

1 believe the Director means technical testimony, which at  
2 this point would be the Division and any other parties that  
3 file prehearing statements, yes, they would file their  
4 initial testimony in writing, but the Commission and the  
5 other party would be able to examine the person providing  
6 that testimony.

7 COMMISSIONER KESSLER: All right. Thank you for  
8 that clarification.

9 CHAIRWOMAN SANDOVAL: Do the Commissioners have  
10 any, any preference on a 45- versus a 30-day public comment  
11 period? My inclination is to provide a 45-day comment  
12 period to just give as much opportunity as possible.

13 COMMISSIONER ENGLER: This is Tom. I have no  
14 problem with the extra time.

15 COMMISSIONER KESSLER: Nor do I, but what about  
16 in terms of the -- or a special special session?

17 MR. LOZANO: Let me look. I believe the date  
18 that we would be published in the Register would be June 9,  
19 and I will count off the 45 days right now. So 45 days out  
20 from June 9 would be July 24. And that would --

21 CHAIRWOMAN SANDOVAL: Can you --

22 (Overtalk.)

23 MR. LOZANO: Go ahead. I'm sorry.

24 CHAIRWOMAN SANDOVAL: Do you have the date for  
25 August hearings?

1 MR. LOZANO: Yes. The August hearings -- the  
2 July hearing is the 16th and the August hearing is the 13th.

3 COMMISSIONER KESSLER: I would prefer a July  
4 hearing date to an August hearing date, but other than that,  
5 I'm certainly supportive of extra time for public comment.

6 CHAIRWOMAN SANDOVAL: I'm sorry, I'm just looking  
7 at the calendar. Mr. Lozano, are we going to be setting the  
8 date now; correct?

9 MR. LOZANO: Yeah, we would need to set the date  
10 now so that we can make sure the notice is issued to the  
11 Register and the other portal by May 28.

12 CHAIRWOMAN SANDOVAL: Okay. Does -- let's see.  
13 So the earliest date would be July 24. Would the next week,  
14 the week of July 27, work for the Commissioners and counsel?

15 MR. LOZANO: I'm open that week.

16 COMMISSIONER ENGLER: This is Tom. I'm fine.

17 CHAIRWOMAN SANDOVAL: How many days do we  
18 recommend having this run?

19 MR. LOZANO: I don't -- I don't know how much  
20 participation there will be. We can certainly plan for two  
21 days. Based on the last rulemaking, I suspect we can  
22 probably get it done in a day, but you know better than me,  
23 Madam Chair, whether you expect a lot of participation. And  
24 given that we are doing technical testimony in writing, that  
25 will certainly cut a lot of time out.

1 CHAIRWOMAN SANDOVAL: My recommendation would be  
2 the 30th and 31st, so that Thursday and Friday. It does not  
3 appear there is an OCC hearing on the 30th.

4 COMMISSIONER KESSLER: That works for me.

5 COMMISSIONER ENGLER: Works for me.

6 COMMISSIONER ENGLER: When is the -- we are going  
7 to ask for written technical testimony before that; is that  
8 correct?

9 MR. LOZANO: Correct, Professor Engler. We can  
10 set a deadline with one week or two weeks in advance of the  
11 meeting for that testimony.

12 COMMISSIONER ENGLER: I guess that would be my  
13 question, when would that be due so that would be available?

14 MR. LOZANO: Basically up to the Commission how  
15 long they think they need to review that testimony. I --  
16 it escapes me when prehearing statements are due.

17 COMMISSIONER KESSLER: They are typically due a  
18 week in advance, so I would suggest something like ten days  
19 when there is technical testimony, and I would feel more  
20 comfortable given just a little bit more time to review  
21 that.

22 CHAIRWOMAN SANDOVAL: That makes sense to me.

23 COMMISSIONER ENGLER: Works for me. I just  
24 wanted to know when, you know, when that would be available,  
25 because we are supposed to -- we're not going to be going

1 through all of that in the hearing itself; is that correct?

2 MR. LOZANO: That's correct, Professor Engler.  
3 You will be able to review them, and then you can present  
4 any questions you have to the particular individual  
5 providing the testimony.

6 COMMISSIONER ENGLER: Okay, thank you.

7 CHAIRWOMAN SANDOVAL: Okay. So it looks like we  
8 are going to a 45-day comment public period prior to the  
9 rulemaking hearing; require testimony, technical testimony  
10 in writing to be provided ten days prior to the hearing;  
11 require indication prior to the hearing if members of the  
12 public would like to participate and provide testimony.

13 Was that your intent, Commissioner Kessler?

14 COMMISSIONER KESSLER: Correct.

15 CHAIRWOMAN SANDOVAL: All right.

16 MR. LOZANO: Madam Chair, I believe that creates  
17 a longer comment period -- I'll count it out, but -- which  
18 is fine, I just want to be clear in the notice or the order.  
19 That's a 51-day comment period, that's from publication in  
20 the Register.

21 CHAIRWOMAN SANDOVAL: Okay. So instead of 45  
22 days, 51 days?

23 MR. LOZANO: Correct.

24 CHAIRWOMAN SANDOVAL: Based on the date of the  
25 hearing?

1 MR. LOZANO: That is if you are wanting to accept  
2 written comments up to the date of the hearing.

3 CHAIRWOMAN SANDOVAL: Is that traditionally what  
4 has been done?

5 MR. LOZANO: It is, but usually we do all 30 days  
6 and then we take it all the way up and in fact you can take  
7 it after that as well.

8 CHAIRWOMAN SANDOVAL: Understood. Okay.

9 All right. If there are no more questions or  
10 further discussion, we can handle this in two separate  
11 motions. First, to approve the application and move forward  
12 with a rules hearing on a specific date; and then, second,  
13 to determine the special rules that will work best for this  
14 virtual hearing.

15 COMMISSIONER KESSLER: Madam Director, I would  
16 move that we approve the application and set it for a  
17 special hearing.

18 COMMISSIONER ENGLER: Madam Chair, this is Tom  
19 Engler, I second.

20 MR. LOZANO: Just a point of clarification, can  
21 we indicate the date as part of the motion, July 30 and 31.

22 COMMISSIONER KESSLER: I forgot the dates, yes.  
23 I would move that the special hearing be set for July 30 and  
24 31 of 2020.

25 MR. LOZANO: Professor Engler, do you accept the

1 amendment, sir?

2 COMMISSIONER ENGLER: Yes, I do accept the  
3 friendly amendment.

4 MR. LOZANO: I will conduct a roll call, Madam  
5 Chair, on that motion. Commissioner Kessler?

6 COMMISSIONER KESSLER: Approve.

7 MR. LOZANO: Commissioner Engler?

8 COMMISSIONER ENGLER: Approve.

9 MR. LOZANO: Chair Sandoval?

10 CHAIRWOMAN SANDOVAL: Approve.

11 MR. LOZANO: Motion passes unanimously.

12 (Agenda Item 4, motion to approve application and  
13 set for hearing passes unanimously.)

14 CHAIRWOMAN SANDOVAL: Second, to determine -- we  
15 need to have a motion to determine the special rules that  
16 will exist in this virtual hearing. Is there a motion  
17 regarding special rules?

18 MR. LOZANO: Chair Sandoval, since you appear to  
19 have a list in hand, you are welcome to make that motion.

20 CHAIRWOMAN SANDOVAL: I will make that motion. I  
21 move that there is a 51-day public comment period prior to  
22 the rulemaking hearing, that technical testimony is provided  
23 in writing ten days prior to the hearing. In addition, I  
24 move that members of the public indicate prior to the  
25 hearing if they would wish to participate and provide

1 testimony so that we can ensure we will be able to  
2 accommodate that.

3 COMMISSIONER KESSLER: Madam Chair, I would  
4 second that motion simply with a clarification that we say  
5 ten calendar days for the testimony so there is not  
6 confusion.

7 CHAIRWOMAN SANDOVAL: I agree with that change  
8 and clarification.

9 MR. FELDEWERT: Madam Chair, this is Michael  
10 Feldewert. Can you hear me?

11 CHAIRWOMAN SANDOVAL: Yes.

12 MR. FELDEWERT: I apologize for jumping in here,  
13 but I was just looking at the rules for rulemaking, and one  
14 of the things I know with respect to ten days is that the  
15 rulemaking talks about 10 business days of submission of a  
16 prehearing statement with exhibits. So you may want to take  
17 that into account when you are setting the time frame for  
18 submission of written technical testimony.

19 MR. LOZANO: That's a fair point, Madam Chair.  
20 Based on Commissioner Kessler's (inaudible) prehearing  
21 statements, you may want to go to 14 calendar days, or that  
22 was put them on probably around the same range.

23 CHAIRWOMAN SANDOVAL: Okay.

24 COMMISSIONER ENGLER: This is Tom. Look, ten  
25 business days would be Friday, July 17, is that correct,

1 for -- yeah. So we could specify the day. If you want ten  
2 business days, just say by Friday the 17th.

3 COMMISSIONER KESSLER: I think that's a good  
4 point, Professor Engler.

5 COMMISSIONER ENGLER: And actually we have a  
6 hearing that's set for Thursday the 16th.

7 CHAIRWOMAN SANDOVAL: Okay. Miguel, would it be  
8 best to revise the motion?

9 MR. LOZANO: Yeah, if you -- I mean, if we would  
10 prefer to have it before a prehearing statement, you  
11 definitely will want to move it out further. I think the  
12 17th, that would be -- the 17th would be prehearing  
13 statement days, so if you want to move it to the beginning  
14 of that week or on the same day, that gives you about two  
15 weeks prior to the hearing if you do it on the 17th.

16 CHAIRWOMAN SANDOVAL: Okay. So I need an amended  
17 motion to that, the special rules for the rulemaking hearing  
18 will be to have a 51-day public comment period prior to the  
19 rulemaking hearing, to have members of the public indicate  
20 before the hearing if they want to participate and provide  
21 testimony, and then that all technical testimony be provided  
22 in writing by Friday, July 17.

23 COMMISSIONER KESSLER: I accept the amended  
24 motion.

25 CHAIRWOMAN SANDOVAL: Mr. Lozano, would you do a

1 roll call vote?

2 MR. LOZANO: Yes, Madam Chair. Commissioner  
3 Kessler?

4 COMMISSIONER KESSLER: I approve.

5 MR. LOZANO: Commissioner Engler?

6 COMMISSIONER ENGLER: I approve.

7 MR. LOZANO: Chair Sandoval?

8 CHAIRWOMAN SANDOVAL: I approve.

9 MR. LOZANO: The motion passes unanimously.

10 (Agenda Item 4, motion determining special rules  
11 for virtual hearing passes unanimously.)

12 CHAIRWOMAN SANDOVAL: Thank you. Commission,  
13 Division and Staff are ordered to ensure that all provisions  
14 are included in the hearing notes, notice and procedural  
15 orders and that notice requirements are met to proceed on --

16 MR. LOZANO: July 30.

17 CHAIRWOMAN SANDOVAL: -- July 30. If for some  
18 reason the notice requirements cannot be met, please inform  
19 the Commission in writing as soon as possible.

20 We move on to Agenda Item Number 5.

21 (Agenda Item 4 concluded.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

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4 REPORTER'S CERTIFICATE

5

6 I, IRENE DELGADO, New Mexico Certified Court  
7 Reporter, CCR 253, do hereby certify that I reported the  
8 foregoing proceedings in stenographic shorthand and that the  
9 foregoing pages are a true and correct transcript of those  
10 proceedings that were reduced to printed form by me to the  
11 best of my ability.

12 I FURTHER CERTIFY that I am neither employed by  
13 nor related to any of the parties of attorneys in this case  
14 and that I have no interest in the final disposition of this  
15 case.

16 Dated this 21 day of May 2020.

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Irene Delgado, NMCCR 253  
License Expires: 12-31-20

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