

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:

ORIGINAL

APPLICATION OF C&D MANAGEMENT COMPANY Case No. 14055
TO REOPEN CASE NO. 14055, EDDY COUNTY,
NEW MEXICO

MOTION OF TARGA MIDSTREAM SERVICES, LLC, Case No. 14575
TO REOPEN CASE TO OFFER PROOF OF
COMPLETION AND RESULTS OF PRESSURE TESTING

OIL CONSERVATION DIVISION'S APPLICATION Case No. 14744
FOR REHEARING OF RULE AMENDMENT 19.15.14.8

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

BEFORE: JAMI BAILEY, Chairman
ROBERT BALCH, Commissioner
SCOTT DAWSON, Commissioner

February 23, 2012
Santa Fe, New Mexico

This matter came on for hearing before the New
Mexico Oil Conservation Commission, JAMI BAILEY,
Chairman, on Thursday, February 23, 2012, at the New
Mexico Energy, Minerals and Natural Resources Department,
1220 South St. Francis Drive, Room 102, Santa Fe, New
Mexico.

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P 1:25

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1 CHAIRMAN BAILEY: Ms. Gerholt?

2 MS. GERHOLT: The Division has applied for
3 re-hearing of the order issued in Case Number 14744 due
4 to an inadvertent error that occurred that --
5 unfortunately, Mr. Jones took off with my rule book, so I
6 don't have the statute before me. But -- thank you.

7 The rule that was promulgated, 19.15.14.8(A)
8 permit required, states in its amended form that an
9 operator shall obtain an approved application for a
10 permit to drill from the Division prior to commencing
11 drilling, re-entering, commencing a lateral, plugging
12 back or completing or re-completing the well.

13 The Division did not intend for an operator to
14 receive an approved APD from the BLM every time it needed
15 to deepen or plug back the well. It was an oversight on
16 the Division's part that the BLM doesn't use APDs for
17 deepening or plugging back. The Division does for state
18 and fee lands, but the BLM does not. Therefore, it
19 creates an unnecessary burden upon operators.

20 The Division felt that the best way to remedy
21 this would, per New Mexico statute, apply for a
22 re-hearing of the order. And that's the statute that I
23 unfortunately do not have before me but was included in
24 the Division's application for re-hearing. Thank you.

25 CHAIRMAN BAILEY: Do you have a statement?

1 MR. FELDEWERT: Madam Chair, I'm appearing
2 here in support of the request by the Oil Conservation
3 Division. We believe it will eliminate an unnecessary
4 burden upon operators in the state. It will also
5 eliminate a lot of confusion that has arisen, both with
6 operators and the BLM, in terms of how to proceed under
7 this particular section as amended. And therefore, we
8 believe that the remedy proposed by the Division will
9 eliminate the unnecessary burden and the confusion that
10 has resulted.

11 CHAIRMAN BAILEY: So we need to unfix the
12 fix that we had on this particular rule?

13 MS. GERHOLT: Yes, Madam Chair. I would
14 also point out to the Commission that the Division
15 applied for re-hearing prior to the rule being published,
16 but the rule has been published. So that's a technical
17 issue that has occurred since that time that we've
18 applied for the re-hearing, but to bring that to your
19 notice.

20 CHAIRMAN BAILEY: Now the question is:
21 How do we best remedy the problem? And we have a draft
22 order for the Commission which denies the Division's
23 application for a re-hearing pursuant to that statute but
24 to go through a rule-making process for fixing the rule
25 that we fixed before.

1 Commissioners, I don't believe you've had a
2 chance to look at this draft order.

3 COMMISSIONER BALCH: What's the difference
4 between this and reopening the hearing, besides,
5 obviously, a lot more people involved?

6 MR. BRANCARD: Members of the Commission,
7 the problem is that once a rule is published in the New
8 Mexico Register, the rule is set. And the only way that
9 the Commission can modify that rule is to go back through
10 a formal rule-making process. It can be a very simple
11 hearing, but it still requires all the notice and the
12 time frames that you have under your rules for changing
13 the rule. You sort of lose jurisdiction once it's
14 published in the New Mexico Register, and you have to
15 start the process all over again.

16 You could make it part of a larger rule-making
17 or put it into some other rule-making you have which
18 you're going to propose at some point in the future, or
19 you can do a simple rule hearing on just that change.
20 But it would have to be a separate rule-making process.

21 COMMISSIONER BALCH: Is that's what's
22 being proposed here, a separate, specific rule-making?

23 CHAIRMAN BAILEY: Yes. To go through the
24 notice on the website, notification for every interested
25 party that was part of the original rule-making,

1 obviously, so that it is very open, very transparent,
2 very public, to explain why we need to go through the
3 process again.

4 COMMISSIONER BALCH: Okay. I don't have
5 anything else.

6 MR. FELDEWERT: If I may inquire? I
7 guess, number one, I understand that the Commission's
8 application for reconsideration just for the record was
9 served on all the parties that appeared at the hearing,
10 so everyone did get notice of this effort.

11 I understand the position to be that since the
12 rule was, for whatever reason, published, despite the
13 application for a re-hearing, that the feeling is from a
14 legal perspective that the Commission has lost
15 jurisdiction.

16 MR. BRANCARD: Right. The recent case
17 with the Supreme Court dealing with the rules that were
18 passed at the end of the last administration dealt
19 directly with this issue. And it's sort of a sense that
20 once you send something over to the state record center,
21 you may lose control effectively, and the records
22 administrator really has no option but to publish that
23 rule.

24 That case sort of left open a little opening
25 where, for instance, had the Commission itself gone to

1 the records center in enough time before they sent the
2 printing of the Register and asked to withdraw the rule,
3 whether the records administrator could have done that.
4 I don't know. But the records administrator doesn't like
5 to change anything once they get it.

6 MR. FELDEWERT: Is the rule normally sent
7 for publication before the time frame has run for
8 reconsideration?

9 MR. BRANCARD: That's a good question.

10 MS. GERHOLT: That is a good question.

11 MR. FELDEWERT: That's why I'm a little
12 bit surprised that that occurred. My assumption would be
13 that it wouldn't go for publication until the time frame
14 has run for any reconsideration of the -- I mean that, as
15 a matter of either policy or perhaps law, it wouldn't be
16 properly sent for publication until the time frame has
17 run for any reconsideration of the initial order.

18 And I'm wondering if that gives us any
19 flexibility here. That's more of a thought of mine. I
20 can't say it's a product of any research.

21 MR. BRANCARD: That's probably not a bad
22 idea. I think the reconsideration statute that the
23 Commission has is generally directed toward adjudicatory
24 matters, not only considering rule-making. But you could
25 take the same position for rule-making and simply wait 20

1 days before you submit something over to the Register.

2 One thing that I've always advised boards and
3 commissions is to, after a rule-making hearing, give the
4 Chair and whoever is working on preparing that rule for
5 publication some leeway to correct any technical mistakes
6 in the rule prior to publication. That's not the kind of
7 thing you necessarily need to go back to hearing to do.

8 And in fact, there's an AG opinion about that
9 from many years ago that says, yes, you can do that.
10 You're not just struck with whatever scribbles you have
11 at the time of the hearing. You can make it look nice
12 and correct grammatical mistakes and wording mistakes, et
13 cetera. That's another reason to carefully proofread
14 something before you submit it to the state records
15 center. Because once you submit it, you've largely lost
16 control of that rule.

17 CHAIRMAN BAILEY: And the timing on this
18 was that we submitted it to the records center, and
19 before publication was when we discovered the problem and
20 the Division entered its application.

21 MR. BRANCARD: Right. It's clear from the
22 Court decision that the Division would not have the
23 ability to go to the records center and say, "Stop."
24 Because that's exactly what happened in the case that's
25 in front of the Supreme Court. You had a rule from the

1 Environmental Improvement Board and you had the
2 Environmental Department and Governor running to the
3 records administrator saying, "Stop." And the Court
4 said, "They don't have the ability to do that."

5 But had they gotten the Environmental
6 Improvement Board to meet itself during that period, the
7 Court never addressed whether they could then, if there
8 was enough time before.

9 And the record center claims that they have
10 like a two-week lead time to publication. But they sort
11 of claim that once you get within a week, it's too late,
12 because they set the presses and nothing can change.

13 COMMISSIONER BALCH: Can the Division
14 administratively allow people not to do that while we're
15 fixing this?

16 CHAIRMAN BAILEY: It's already been
17 published in this case.

18 COMMISSIONER BALCH: Right. But I mean
19 with the published rule, is it possible for the Division
20 to not make this a burden while we fix the problem?

21 CHAIRMAN BAILEY: I think you've already
22 addressed that.

23 MS. GERHOLT: Commissioner Balch, the
24 Division has addressed that. We have sent notification
25 to our district offices as to how they need to proceed,

1 given what the intent was. The intent was not to place
2 this extra burden on operators. The intent was that
3 prior to doing anything, you needed to have approval for
4 it. And we, unfortunately, included application for a
5 permit to drill, not realizing that the BLM used this
6 other form. So we've informed district offices as to how
7 they need to proceed.

8 I believe NMOGA has been contacted. I have a
9 vague recollection that I spoke to Mr. Feldewert about
10 this issue. So we are working with operators, and we do
11 have -- we are not -- we're doing our best, but we need
12 to get this amended as quickly as possible.

13 CHAIRMAN BAILEY: What is the quickest
14 that we can get it on the docket?

15 MS. GERHOLT: I would have to turn to
16 Ms. Duran-Saenz, because it does relate back to the New
17 Mexico Register because of the notification requirement.

18 MS. DURAN-SAENZ: We have to allow at
19 least 10 days for it to be published in the New Mexico
20 Register or notice of hearing. But we have the
21 requirements of notice for a regular meeting, and I
22 believe that's a 20-day notice that we have to give the
23 public. And then we also have to publish in a newspaper
24 of general circulation, and they have their own specific
25 timeline. So at a minimum, 30 days.

1 CHAIRMAN BAILEY: Our next Commission
2 hearing is?

3 MS. DAVIDSON: March 27th.

4 MS. DURAN-SAENZ: I think we've passed the
5 New Mexico deadline. The earliest I believe would be in
6 April.

7 CHAIRMAN BAILEY: It would be April,
8 because Mr. Brancard is going to tell us about latest
9 developments on the April hearings.

10 COMMISSIONER BALCH: Okay.

11 CHAIRMAN BAILEY: Okay. Why don't we try
12 to have the rule-making fix in April?

13 MR. BRANCARD: I think essentially what
14 you're saying, Madam Chair, is you want to treat this
15 petition for re-hearing as a petition for a new
16 rule-making?

17 MR. SCOTT: The Division would move to
18 have that be, when the application is considered, a
19 petition for rule-making.

20 MR. BRANCARD: But that means that you've
21 got to come up with a notice real fast.

22 MR. SCOTT: Yes.

23 MR. FELDEWERT: Would that allow the
24 Commission then to consider it on the March 27th docket?

25 CHAIRMAN BAILEY: No, because they say

1 we've missed the date for filing with the New Mexico
2 Register.

3 MR. FELDEWERT: I see.

4 MR. BRANCARD: It only publishes twice a
5 month.

6 COMMISSIONER BALCH: April would be the
7 next hearing, unless we had a special meeting.

8 CHAIRMAN BAILEY: That's true. But I
9 think we'll have plenty of time in April.

10 MR. BRANCARD: Then I need to rewrite your
11 order to indicate we're rejecting re-hearing. We are
12 approving it as a petition for rule-making.

13 CHAIRMAN BAILEY: Okay. And I will sign
14 on behalf of the Commission.

15 MR. BRANCARD: All right.

16 CHAIRMAN BAILEY: Can I get your approval?

17 COMMISSIONER DAWSON: I approve.

18 COMMISSIONER BALCH: Absolutely.

19 MR. BRANCARD: I don't know if the
20 Commissioners are familiar with the proceeding that's
21 going on in the courts now related to the Pit Rule
22 rule-making.

23 Back on January 9th, the Oil & Gas
24 Accountability Project filed a petition for a writ of
25 prohibition with the District Court. This kind of

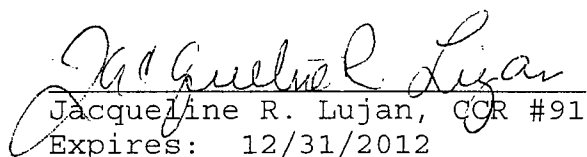
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on February 23, 2012, proceedings in
the above captioned case were taken before me and that I
did report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
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attorneys in this case and that I have no interest
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court.

WITNESS MY HAND this 7th day of March, 2012.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2012