

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:

ORIGINAL

Case Nos. 14784 and 14785

7 APPLICATION OF THE NEW MEXICO OIL AND GAS ASSOCIATION  
8 AND THE INDEPENDENT PETROLEUM ASSOCIATION OF NEW  
9 MEXICO FOR AMENDMENT OF CERTAIN PROVISIONS OF  
10 TITLE 19, CHAPTER 15 OF THE NEW MEXICO ADMINISTRATIVE  
11 CODE CONCERNING PITS, CLOSED-LOOP SYSTEMS, BELOW-GRADE  
12 TANKS, SUMPS AND OTHER ALTERNATIVE METHODS RELATED TO  
13 THE FOREGOING AND AMENDING OTHER RULES TO CONFORMING  
14 CHANGES

Case No. 14976

12 APPLICATION OF OCCIDENTAL PERMIAN, LTD., FOR APPROVAL TO  
13 ADD THE NORTH HOBBS GSA UNIT WELL NO. 431 AS AN  
14 INJECTION WELL FOR WATER, CARBON DIOXIDE, AND PRODUCED  
15 GAS IN ITS NORTH HOBBS GRAYBURG-SAN ANDRES TERTIARY  
16 RECOVERY PROJECT LOCATED WITHIN THE HOBBS GRAYBURG-SAN  
17 ANDRES POOL, LEA COUNTY, NEW MEXICO

2013 JUN 11  
RECEIVED  
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16 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
17 COMMISSIONER HEARING

18 BEFORE: JAMI BAILEY, Chairman  
19 DR. ROBERT BALCH, Commissioner  
20 GREG BLOOM, Commissioner  
21 TERRY WARNELL, Commissioner

22 June 6, 2013  
23 Santa Fe, New Mexico

24 REPORTED BY: Jacqueline R. Lujan, CSR #91  
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Albuquerque, NM 87103 505-843-9241

A P P E A R A N C E S

FOR THE NEW MEXICO OIL CONSERVATION COMMISSION:

MARK A. SMITH  
Assistant General Counsel  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

ALSO PRESENT:

Florene Davidson, Secretary  
Theresa Duran-Saenz  
Karin Foster

I N D E X

REPORTER'S CERTIFICATE

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1 CHAIRMAN BAILEY: Good morning. This is  
2 the meeting of the Oil Conservation Commission on  
3 Thursday, June 6th, 2013, here in Porter Hall, in Santa  
4 Fe, New Mexico.

5 To my right is Commissioner Greg Bloom, who  
6 is the designee of the Commissioner of Public Lands. To  
7 my left is Dr. Robert Balch, who's the designee of the  
8 Secretary of the Energy, Minerals & Natural Resources  
9 Department. Mark Smith is our counsel for the first  
10 part of today's hearing.

11 There is a quorum of the Commission. We are  
12 here today to discuss consolidated Cases 14784 and  
13 14785, with the probable signing of the order of the  
14 rule that has been amended.

15 Counsel Smith, do you have some discussion  
16 which you would like to --

17 MR. SMITH: I do. I have some really  
18 house cleaning matters that I'd like to go over with the  
19 Commission. If you would pass that down?

20 What I'm handing to you now is an amended  
21 stipulated exhibit list. It was filed in -- I think  
22 early March is the stamp, which is after you all closed  
23 the record. But the parties filed this in order to  
24 amend an earlier filing so that this would be a complete  
25 list of the exhibits to which the parties stipulated

1 that would include anything that was given in the  
2 January hearings.

3 So I would request that -- and this is  
4 something that really should be part of the record.  
5 It's something that I think a court would like to see if  
6 there is an appeal that comes from this.

7 So I would request that the Commission open  
8 the record for the limited purpose of accepting this  
9 pleading into the record, and then you can close it back  
10 up.

11 CHAIRMAN BAILEY: Commissioners, do I  
12 hear a motion to open the record for the submittal of  
13 the amended stipulated exhibit list?

14 COMMISSIONER BALCH: I'll make that  
15 motion.

16 COMMISSIONER BLOOM: I'll second that.

17 CHAIRMAN BAILEY: All those in favor?

18 So we have now accepted the amended  
19 stipulated exhibit list.

20 Shall we now close the record?

21 COMMISSIONER BLOOM: Do we just vote to  
22 open it, and maybe we need to vote to accept it?

23 CHAIRMAN BAILEY: Yes. I think that  
24 would be a good idea.

25 COMMISSIONER BLOOM: I'll move to accept

1 the amended stipulated exhibit list.

2 COMMISSIONER BALCH: I will second the  
3 motion.

4 CHAIRMAN BAILEY: All those in favor?

5 Now we can vote to close the record. Do I  
6 hear a motion for that?

7 COMMISSIONER BLOOM: I so move.

8 COMMISSIONER BALCH: And I second.

9 CHAIRMAN BAILEY: All those in favor?

10 MR. SMITH: Okay. The second issue has  
11 to do with the rule itself. In the process of getting  
12 the order drafted up and the rule finalized in order to  
13 submit to Records, actually Theresa -- there she is --  
14 found most of what I'm about to show you.

15 There are changes that have been made in the  
16 rule since you last saw it. They are not substantive,  
17 but they are in the nature of cleanup or typographical  
18 errors or something like that. Even so, I thought that  
19 these needed to be brought to your attention so you  
20 could see what is being attached to the order, okay?

21 So let's go through that real quickly. You  
22 will notice throughout, as we go through this, there  
23 will be red line date changes in here, and that's to  
24 accommodate for the effective date of the rule.

25 So on the first page you see a series of

1 6/28/13 changes, and that's why. I won't point each one  
2 of those out as we go through. But when you see those,  
3 that's why they're here.

4 The next change that is not a date change is  
5 on page 4. It is 10.A(2). 10.A is citing requirements.  
6 And as you look through, you will notice that it allows  
7 a low chloride fluid temporary pit to be sited in these  
8 various ways.

9 Under (1)(a), (1)(g) and (1)(h), it allows  
10 for a variance. This is all language that you all have  
11 approved, of course. Now, in A(2), it used to read, "An  
12 operator must obtain an exception to locate a temporary  
13 pit containing low chlorides fluids inside setbacks," of  
14 up here in A(1).

15 The problem there is that that conflicts with  
16 the subparagraphs that allow a variance up in A(1). So  
17 I added the language, "Unless a variance is specifically  
18 provided for in Paragraph (1) of Subsection A of  
19 19.15.17.10 NMAC, an operator must obtain an exception,"  
20 just to do away with the inconsistency there.

21 CHAIRMAN BAILEY: Commissioners, do you  
22 accept that alteration of the language?

23 COMMISSIONER BLOOM: It's fine to me.  
24 Yes, it is a good catch.

25 COMMISSIONER BALCH: I accept it.

1 CHAIRMAN BAILEY: So do I.

2 MR. SMITH: On page 5, again this is  
3 10.A(5)(g), this reads -- and again, this is the setback  
4 for a temporary pit having to do with a subsurface mine.  
5 And it reads that you can't put the pit in the area  
6 overlying a subsurface mine unless the Division Santa Fe  
7 Office specifically approves the proposed location, and  
8 then it goes on.

9 As I appreciate what you all have done, that  
10 is an exception. And this is the only reference to  
11 going to the Santa Fe Office, as opposed to an  
12 exception. So I changed it to read, as you can see,  
13 "Unless the operator obtains an exception and  
14 demonstrates," and then it goes on with whatever else is  
15 there.

16 COMMISSIONER BALCH: To obtain an  
17 exception, you have to go through extensive public  
18 hearings. I'm not sure if that was the intent there.

19 MR. SMITH: I can't tell you that.

20 COMMISSIONER BLOOM: That is my  
21 recollection, Commissioner Balch, that that would  
22 require a publication and a notification of concerned  
23 parties and people within a certain geographic distance.

24 We might want to discuss if that's where we  
25 want to go with this.

1                   CHAIRMAN BAILEY: Looking at the part of  
2 the rule having to do with exceptions and variances on  
3 page 17, that's 19.15.17.15.B, the exception process in  
4 the Santa Fe Office requires that notice be given to a  
5 list of different people; publication in a newspaper;  
6 and an application that has to be approved or denied  
7 within 90 days of receipt of the application; acceptance  
8 of comments; and maybe set for hearing, but not  
9 absolutely required to be set for hearing. So it's  
10 notification, publication and demonstration.

11                   COMMISSIONER BLOOM: One advantage of  
12 having this as an exception, rather than a variance, is  
13 that the mining company would certainly at least find  
14 out about this through publication, and perhaps other  
15 affected parties as well.

16                   I can't imagine there's too many places in  
17 the state where someone would want to drill into a mine  
18 or an abandoned mine which might not be too much of an  
19 imposition to require an exception here.

20                   COMMISSIONER BALCH: Primary areas are  
21 going to be in potash reserve and in coal mines in the  
22 northeast and northwest.

23                   The way it's written now, it's not a variance  
24 or an exception. It's approval by the Santa Fe Office.

25                   CHAIRMAN BAILEY: But there are no



1 standards by which the Santa Fe office would approve or  
2 disapprove.

3 COMMISSIONER BALCH: It would seem  
4 consistent to make it either an exception or a variance.

5 CHAIRMAN BAILEY: An exception that goes  
6 through the public notice with a demonstration might be  
7 appropriate in cases of, as Commissioner Bloom pointed  
8 out, mines having to be notified.

9 COMMISSIONER BALCH: I would tend to  
10 agree that that would be a case where you might be able  
11 to do an exception.

12 COMMISSIONER BLOOM: I move that we  
13 accept that language as proposed in 19.15.17.10.A(5)(g).

14 COMMISSIONER BALCH: I will second the  
15 motion.

16 CHAIRMAN BAILEY: All those in favor?

17 MR. SMITH: Okay. Then the next one is C  
18 under that, and that is simply putting the word  
19 "closure" in after "in place."

20 CHAIRMAN BAILEY: Commissioners, do you  
21 accept that change?

22 COMMISSIONER BALCH: I accept that  
23 change.

24 COMMISSIONER BLOOM: Yes..

25 CHAIRMAN BAILEY: Yes.

1 MR. SMITH: Okay. On page 6, this is  
2 10.C(1)(d), this was a setback requirement for trenches  
3 and in-place closure. It did read, "within 300 feet of  
4 a private, domestic fresh well or spring used for  
5 domestic or stock watering purposes."

6 Elsewhere in the rule, you changed the order  
7 of the language there so that, "used for domestic or  
8 stock watering purposes," modified the well, but not the  
9 spring. And I believe that you either just missed that  
10 or it wasn't picked up in the transcription on screen.  
11 So I changed that so that language would match all the  
12 rest of the language that you approved.

13 CHAIRMAN BAILEY: Commissioners, do you  
14 accept that?

15 COMMISSIONER BLOOM: Yes.

16 COMMISSIONER BALCH: I have no problem  
17 with that.

18 CHAIRMAN BAILEY: Yes for me, too.

19 MR. SMITH: The next one is in 13 on page  
20 12, 13.C. This has to do with closure requirements.  
21 And C applies to just about everything, including drying  
22 pads and tanks for closed-loop systems, which is fine.  
23 Except that C(1) says that you can't move forward with  
24 closing up drying pads or tanks for a closed-loop system  
25 unless the operator has first obtained approval of a

1 closure plan. Closure plans aren't required for the  
2 closed-loop systems.

3 So while C and the rest of C applies to  
4 closed-loop systems, one, you need to delete that or you  
5 have an inconsistency.

6 COMMISSIONER BALCH: I would support  
7 striking that language.

8 COMMISSIONER BLOOM: I agree with that.

9 CHAIRMAN BAILEY: So do I.

10 MR. SMITH: Okay. On 13.C(3)(a), and  
11 you'll also see it on D(9)(a), you all required a five  
12 point sample there. And I believe that it was in the  
13 original rule and elsewhere in the rule that you have  
14 before you, the language, "at a minimum of a five  
15 point."

16 You also do not have the language in here  
17 that required a grab sample. And I think that that was  
18 one of the reasons that you wanted the "at a minimum" in  
19 there, so I placed "at a minimum" here. It makes it  
20 consistent with the rest of the rule, and I think the  
21 "at a minimum" language was inadvertently left out.

22 CHAIRMAN BAILEY: Commissioners, do you  
23 accept that change?

24 COMMISSIONER BALCH: I think that's  
25 consistent with what we had done in the rest of the

1 rule, and it allows for best practices, as well.

2 COMMISSIONER BLOOM: I'm okay with this.

3 CHAIRMAN BAILEY: So am I.

4 MR. SMITH: Okay. And I think, other  
5 than the date changes that I told you about, this one is  
6 the last one. It's on page 15. It's a cross-reference,  
7 and it's under 13.H, which is reclamation of pit  
8 locations and onsite burials.

9 The reference here is to re-vegetating --  
10 it's the very last part of H(1)(a), "re-vegetate  
11 according to Paragraph" -- it said, "3 in Subsection H  
12 of Part 13." And that should be "Paragraph 5," because  
13 that is the paragraph that covers re-vegetation.

14 COMMISSIONER BALCH: Five is the correct  
15 one, I believe.

16 MR. SMITH: Five is correct, but it said  
17 "3."

18 CHAIRMAN BAILEY: Commissioners, are you  
19 okay with that?

20 COMMISSIONER BALCH: I'm okay.

21 CHAIRMAN BAILEY: So am I.

22 MR. SMITH: The rest of them are simply  
23 the date changes that I told you about.

24 CHAIRMAN BAILEY: Shall we vote on the  
25 corrected version of the amended rule Title 19, Chapter

1 15, Part 17, having to do with pits, closed-loop  
2 systems, below-grade tanks and sumps?

3 COMMISSIONER BLOOM: I move to adopt all  
4 the changes proposed by Mr. Smith.

5 COMMISSIONER BALCH: I second the motion.

6 CHAIRMAN BAILEY: All those in favor?

7 MR. SMITH: Okay, and this is the last  
8 one. This is one of the findings in the order. Each  
9 one of you approved this.

10 It occurred to me that while I believe that  
11 this is fairly inferred from the action that you all  
12 have taken, that it probably would be a good idea for  
13 you to discuss this on the record.

14 And this has to do with the earlier Pit  
15 Rules' reliance on the Surface Waste Management Rule to  
16 set its siting standards and constituent standards, and  
17 I thought that you all should discuss the propriety of  
18 that.

19 Because again, as I say, I think it's fairly  
20 inferred that you all are not relying -- are no longer  
21 relying on the Surface Waste Management Rule, but I  
22 thought that you should talk about it just for a little  
23 bit.

24 CHAIRMAN BAILEY: I think it's very clear  
25 in our deliberations that we were not amending Rule 36,

1     which has to do with surface waste management  
2     facilities, and that we were focused the entire time on  
3     what's called the Pit Rule, which is Rule 17.

4                 So if there were discrepancies that may arise  
5     between the two rules as far as requirements, the  
6     amendment to 17 was thoroughly deliberated over many  
7     days, many hours, put in by all people.

8                 There was no testimony for Rule 36. There  
9     was never any kind of deliberation for Rule 36. So it  
10    is a stand-alone, as far as the two different rules are  
11    concerned.

12                MR. SMITH: So you plainly intended, I  
13    think, to depart from that.

14                Do you believe it to be the case that your  
15    willingness to depart from that relies not only on all  
16    the evidence and so forth that you took, but also on the  
17    size and lifespan differences of surface waste  
18    management facilities, as compared to pits?

19                COMMISSIONER BALCH: And the contents  
20    that are going into them. We had no testimony about  
21    organic or household wastes being put into a pit and the  
22    effect of that on the water table.

23                We did have testimony for typical or expected  
24    constituents from a pit or a drilling operation.  
25    Really, they're not the same thing.

1 MR. SMITH: Okay.

2 COMMISSIONER BLOOM: Chairman Bailey, you  
3 covered that very well.

4 MR. SMITH: Okay. I thank you all for  
5 discussing that, just as a final point. And that's all  
6 I have. Thank you for your patience.

7 CHAIRMAN BAILEY: Commissioners, have you  
8 had a chance to look at the order that Counsel Smith  
9 developed for us giving the order and the statement of  
10 reasons for amending NMAC Title 19, Chapter 15, Part 17?

11 COMMISSIONER BLOOM: Yes, I have.

12 COMMISSIONER BALCH: I have, as well.

13 CHAIRMAN BAILEY: I have also. And I  
14 believe it accurately describes the results of the  
15 Commission's decisions that we were reached, the  
16 deliberations that were gone through, and that it is an  
17 order to explain why and what we have accomplished over  
18 the however many months of testimony and deliberation  
19 involved in this.

20 Do I hear a motion to adopt this order as  
21 presented?

22 COMMISSIONER BALCH: I will make the  
23 motion to adopt the order.

24 COMMISSIONER BLOOM: I will second that.

25 CHAIRMAN BAILEY: All those in favor?

1           Mr. Smith, I commend you on the effort you  
2 put into writing this order and providing us counsel  
3 during this period. Thank you very much.

4           The next order of business is the application  
5 of Occidental Permian, Limited, for approval to add the  
6 North Hobbs Grayburg-San Andres Unit Well No. 431 as an  
7 injection well. That's Case Number 14976.

8           Our attorney who drafted this order is not  
9 present right now. So at this time let's say we take a  
10 recess until he can return for our discussion on the  
11 draft order that he presented and the minutes on that  
12 May 9th and 10th hearing.

13           MR. SMITH: You might want to announce  
14 the placement of the order on the website.

15           CHAIRMAN BAILEY: The new Pit Rule will  
16 become effective on June 28th. And as soon as Florene  
17 Davidson can possibly do it, the order and the rule will  
18 go on the OCD website under the link for rules on the  
19 rules forum so it can be distributed.

20           MS. FOSTER: Madam Chair, as a party to  
21 this case, I would ask that the order be sent to all the  
22 parties of record in this case in a .pdf format so that  
23 we can search it. My understanding is that when it ends  
24 up on the OCD website, it is a scan, which is in a .tiff  
25 format, which is very difficult to work with.



1 MS. DAVIDSON: It will be posted on the  
2 rules page in .pdf.

3 CHAIRMAN BAILEY: It will be .pdf on the  
4 rules page.

5 MS. FOSTER: Thank you.

6 CHAIRMAN BAILEY: So we are in recess  
7 until Bill Brancard arrives.

8 (A recess was taken.)

9 CHAIRMAN BAILEY: We'll go back on the  
10 record. This is still the meeting of the Oil  
11 Conservation Commission on June 6th. It is now 10:00.

12 We have a change in the makeup of the  
13 Commission. To my right is Commissioner Terry Warnell,  
14 who is the designee of the Commissioner of Public Lands.  
15 And to my left is still Dr. Robert Balch, who is the  
16 designee of the Secretary of Energy, Minerals & Natural  
17 Resources. And I'm Jami Bailey, Director of the  
18 Commission.

19 We have before us the minutes of the meeting  
20 of the Oil Conservation Commission meeting held on May  
21 9th through 10th in 2013.

22 Commissioners, have you had a chance to  
23 review the minutes as presented to us?

24 COMMISSIONER WARNELL: Yes, I have.

25 COMMISSIONER BALCH: I have.

4 COMMISSIONER BALCH: I second the motion.

6                   Then I will sign on behalf of us all.

7                   Now we have Case Number 14976, which is the  
8   application of Occidental Permian, Limited, for approval  
9   to add the North Hobbs Grayburg-San Andres Unit Well  
10   Number 431 as an injection well for water, carbon  
11   dioxide and produced gas in its North Hobbs Grayburg-San  
12   Andres Tertiary Recovery Project located within the  
13   Hobbs Grayburg-San Andres Pool, in Lea County, New  
14   Mexico. We have a draft of the order in that case.

15           Commissioners, have you had a chance to  
16   review this order?

17 COMMISSIONER WARNELL: Yes, I have.

18 COMMISSIONER BALCH: I have, as well.

19 CHAIRMAN BAILEY: Do I hear a motion to  
20 sign this order?

21 COMMISSIONER BALCH: I make the motion.

22 COMMISSIONER WARNELL: I second.

23 CHAIRMAN BAILEY: All those in favor?

24 We will transfer these documents to the  
25 Commission Secretary, Florene Davidson.

1 Is there any other business before the Commission today?

2 Do I hear a motion for us to adjourn?

3 COMMISSIONER WARNELL: I so move.

4 COMMISSIONER BALCH: I second.

5 CHAIRMAN BAILEY: All those in favor?

6 Thank you very much.

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## REPORTER'S CERTIFICATE

I, JACQUELINE R. LUJAN, New Mexico CCR #91,  
DO HEREBY CERTIFY that on June 6, 2013, 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 nor related to nor contracted with any of the parties  
or attorneys in this case and that I have no interest  
whatsoever in the final disposition of this case in any  
court.

WITHNESS MY HAND this 17th day of June,  
2013.

  
Jacqueline R. Lujan, CCR #91  
Expires: 12-31-2013