

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

ORIGINAL

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

Case No. 15314

APPLICATION OF THE OIL CONSERVATION
DIVISION TO AMEND TITLE 19, CHAPTER
15, PART 8 OF THE NEW MEXICO ADMINISTRATIVE
CODE ("Financial Assurance").

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

June 4, 2015

Santa Fe, New Mexico

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

RECEIVED OGD
2015 JUN 24 P 3:06

This matter came on for hearing before the
New Mexico Oil Conservation Commission on Thursday, June
4, 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.

REPORTED BY: ELLEN H. ALLANIC
NEW MEXICO CCR 100
CALIFORNIA CSR 8670
PAUL BACA COURT REPORTERS
500 Fourth Street, NW
Suite 105
Albuquerque, New Mexico 87102

1	I N D E X (cont'd)	
2	CASE NUMBER 15314 CALLED	
3	OIL CONSERVATION DIVISION CASE IN CHIEF	
4	WITNESS CHERYL BADA	
5		Direct Examination
6	By Ms. Marks	10
7	WITNESS ESTHER VARELA-LOPEZ	
8		Direct Examination
9	By Ms. Marks	14
10	EXAMINATION OF MS. BADA AND MS. VARELA-LOPEZ	
11	By the Commissioners:	
12		Examination
13	Commissioner Balch	19
14	Commissioner Padilla	22
15	Commissioner Catanach	23
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 (Time noted 9:00 a.m.)

2 COMMISSIONER CATANACH: Call this hearing to
3 order. This is a meeting of the New Mexico Oil
4 Conservation Division. My name is David Catanach. I'm
5 the chairman of the Commission.

6 The time is approximately nine o'clock.
7 Today's date is June 4, 2015. This meeting is being
8 conducted in Porter Hall at the Wendell Chino State
9 Building.

10 At this time I will take roll. Would the
11 Commissioners please identify themselves for the record.

12 COMMISSIONER BALCH: Dr. Robert Balch,
13 designated the Secretary of Energy's Hearing Examiner.

14 THE COURT REPORTER: Please speak up so I
15 can hear you clearly.

16 COMMISSIONER PADILLA: Patrick Padilla,
17 designated the New Mexico State Land Commissioner.

18 COMMISSIONER CATANACH: And just for the
19 record, I will state that we did receive a letter from
20 Commissioner Aubrey Dunn with the New Mexico State Land
21 Office appointing Mr. Padilla as his designee for all
22 future meetings and business of the Oil Conservation
23 Commission.

24 Welcome aboard, Mr. Padilla.

25 COMMISSIONER PADILLA: Thank you.

1 COMMISSIONER CATANACH: Commissioners, in
2 your packet, you should have an agenda of today's
3 meeting. And if you've had a chance to review the --
4 I'm sorry.

5 I did neglect to say that also present today
6 is Mr. Bill Brancard, who is the general counsel of the
7 Energy and Minerals Department and Commission attorney.

8 So if the Commissioners have had a chance to
9 review the agenda, do I hear a motion to adopt the
10 agenda for today's meeting?

11 COMMISSIONER BALCH: I'll make a motion to
12 adopt the agenda.

13 COMMISSIONER CATANACH: Do I hear a second?

14 COMMISSIONER PADILLA: I second the motion.

15 COMMISSIONER CATANACH: The motion to adopt
16 today's agenda is hereby passed.

17 Commissioners, also in your packet are the
18 minutes from the commission hearing held on May 7, 2015.
19 If you have read the minutes, do you have any
20 corrections or additions or anything else you would like
21 to state at this time?

22 COMMISSIONER BALCH: I read the minutes and
23 they're fine. And I make a motion to approve them.

24 COMMISSIONER CATANACH: Okay. Is there a
25 second?

1 COMMISSIONER PADILLA: I would second that
2 motion.

3 COMMISSIONER CATANACH: The minutes from the
4 May 7th, 2015, Commission meeting are hereby adopted.

5 The next order of business for today's
6 hearing is Public Hearing for Case No. 15314, which is
7 the Application of the Oil Conservation Division to
8 Amend Title 19, Chapter 15, Part 8 of the New Mexico
9 Administrative Code Dealing with Financial Assurance.

10 Are there appearances in this case?

11 MS. MARKS: Good morning, Mr. Chairman. I'm
12 with the Commission. Allison Marks on behalf of the Oil
13 Conservation Division.

14 May I remain seated?

15 COMMISSIONER CATANACH: Yes. Do you have
16 any witnesses, Ms. Marks?

17 MS. MARKS: Yes, Mr. Chairman. Initially,
18 Ms. Cheryl Bada and Esther Varela-Lopez will be the
19 Division witnesses.

20 We also asked for any examination or
21 cross-examination to be done by panel, in our prehearing
22 statement, as a procedural matter, if that would be
23 okay. If that is acceptable, two additional witnesses
24 will be called at that time.

25 COMMISSIONER CATANACH: I'm not sure I

1 understand the difference between -- what does that
2 mean?

3 MS. MARKS: The other two witnesses will not
4 be needed in direct testimony.

5 COMMISSIONER BRANCARD: They are available
6 for questioning.

7 COMMISSIONER CATANACH: So you are just
8 going to put on two witnesses?

9 MS. MARKS: That's correct.

10 COMMISSIONER CATANACH: Okay. Are there any
11 additional appearances in this case?

12 (No response.)

13 COMMISSIONER CATANACH: Why don't we just
14 swear in at this time all four witnesses in case they do
15 testify.

16 (Whereupon, the witnesses presented were
17 administered the oath.)

18 MS. MARKS: During the most recent
19 legislative session, two identical bills were passed,
20 Senate Bill 442 and House Bill 383, and subsequently
21 signed providing for a new form of financial assurance,
22 namely, a blanket plugging financial assurance for
23 temporarily abandoned status wells.

24 The Division immediately sought to amend the
25 rule to incorporate the legislative change. In doing

1 so, we reviewed 70-2-14 of the Oil and Gas Act and also
2 reviewed the existing financial assurance rule, and
3 recognize some additional changes that we believe will
4 help protect the state, from a financial perspective.

5 In addition, a few of the proposed
6 amendments stem from an administrative perspective. In
7 addition, to these changes, we propose codifying
8 existing law that is not otherwise existing in rule.

9 Once we came up with a proposed rule, we met
10 with the Independent Petroleum Association of New
11 Mexico, NMOGA, Oxy and Devon Energy before submitting
12 this application. And we are quite appreciative of
13 their feedback and their participation in the
14 rule-making process.

15 Notice of this Commission meeting was duly
16 made and it's before you in your packets as Exhibit 6.
17 And if there are no other questions at this time, we are
18 ready to proceed.

19 COMMISSIONER CATANACH: Go ahead.

20 MS. MARKS: I call Ms. Bada.

21 MS. BADA: Good morning. I'll just briefly
22 go over the background for the proposed changes of
23 19.15.8, the changes that are proposed.

24 THE COURT REPORTER: You're voice is very
25 low and you're sitting across the room. I'm having

1 difficulty hearing you. Please speak in a loud voice.

2 MS. BADA: And Esther Varela-Lopez will then
3 go over some of the other changes as she has in-depth
4 experience working with financial assurance.

5 If you have any questions, after we've
6 testified, I'll be happy to answer any questions.

7 CHERYL BADA
8 having first been duly sworn, was examined and testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. MARKS:

12 Q. Cheryl, can you just state your place of
13 employment for the record.

14 A. I'm employed as the Deputy General Counsel at the
15 Energy, Minerals, and Natural Sources Department.

16 Q. And how long have you been so employed?

17 A. I have been employed with the department for 15
18 years.

19 Q. And have you performed substantial work
20 for the Oil Conservation Division and the Oil
21 Conservation Commission during your tenure with the
22 department?

23 A. Yes, I have.

24 Q. And are you familiar with the proposed financial
25 assurance amendment?

1 A. Yes, I am.

2 Q. Would you please proceed.

3 A. As was previously mentioned, during this last
4 legislative session the legislature passed House Bill
5 383 and Senate Bill 442.

6 The Governor signed those on April 8th. Both
7 contain emergency clauses so they were immediately
8 effective.

9 The bills are identical in nature, and they
10 provide for plaintiff plugging bonds for wells that are
11 in temporarily abandoned status. And amendments also
12 provide that the amounts for that blanket financial
13 assurance for those temporarily abandoned wells will be
14 set by rule.

15 Initially when HB-383 and SB-442 were enacted,
16 the amounts for their financial assurance were included
17 in those bills. The bills were revised for the amounts
18 to be set by rule. And that was done in order to allow
19 for greater flexibility so adjustments can be made
20 throughout the years without going back to the
21 legislature to change the statute.

22 And you can see the final version for both those
23 bills in Exhibits 2 and 4 in your packet.

24 And I'll start with the rule change. And the
25 first one is at 19.15.8.11E. And I just want to point

1 out there is a typo that needs to be corrected in the
2 second line of E where it says, Line of credit, that
3 should be Letter of credit.

4 And what subsection E does is it simply codifies
5 that the terms of the letter of credit must be set forth
6 on a document and signed by both the operator and the
7 financial institution. This is similar to the
8 requirement that already exists in 19.15.8.10 for cash
9 and surety bonds.

10 The next section that's being amended is
11 19.15.8.15. And this simply codifies what's already in
12 the Oil and Gas Act in section 70.2.14. That was an
13 amendment that the legislature made back in 2006, but it
14 was never included in the rule. And it establishes
15 insurance of plugging policies as a form of financial
16 insurance.

17 The wording in the proposed rule is taken from
18 the statute. The only change would be to provide a time
19 limit for operators to provide any policy increases to
20 the Division. And that time limit would be 30 days.

21 OCD currently has not received any plugging
22 insurance policies, so there aren't any on file. But it
23 is allowed by the statute. The statute only allows it
24 for single wells; you can't do it as a blanket well.

25 And the last change in the proposed rule

1 amendments is 19.15.8.16. And it would require the
2 operators provide OCD notice of any bankruptcy
3 proceeding pursuant to the bankruptcy court rules.

4 The OCD is a potential creditor in bankruptcies
5 and it often ends up having to plug the wells and use
6 money out of the Oil and Gas Reclamation Fund to provide
7 for that.

8 The EMRD OCD appears on the register of
9 governmental addresses on the Bankruptcy Court and New
10 Mexico's website so that operators know where to send
11 those things.

12 Q. Does the rule also address in 19.15.8.9 ways for
13 an operator to release a plugging financial assurance
14 for temporary abandoned --

15 A. Yes, it does. It allows the financial assurance
16 for those wells to be released if the wells are brought
17 back into production or if they get single well bonds
18 for each of those wells instead. So they have a couple
19 of ways.

20 Q. And can they also reduce the amount of their new
21 blanket bond if they want to go to a different level of
22 coverage?

23 A. Yes, they can. It allows them to reduce. Say
24 they had 20 wells and they were going to down to five,
25 they could reduce the amount. Those amounts were

1 corresponding to the proposed well.

2 MS. MARKS: Mr. Chairman, at this time I
3 have no further questions for Ms. Bada. And I would
4 like to call Ms. Esther Varela-Lopez.

5 COMMISSIONER CATANACH: Can we ask Ms. Bada
6 any questions at this time or is that --

7 COMMISSIONER BRANCARD: Counsel requested
8 that all the questions basically be presented at the end
9 of their testimony when they have all their witnesses
10 available, so you can ask the right person the right
11 question.

12 COMMISSIONER CATANACH: Okay.

13 MS. MARKS: I call Esther Varela-Lopez.

14 ESTHER VARELA-LOPEZ

15 having been first duly sworn, was examined and testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MS. MARKS:

19 Q. Please state your name for the record.

20 A. Ester Verela-Lopez. I'm a contractor currently
21 with the Oil Conservation Division.

22 Q. And what is your educational background.

23 A. I have a bachelor's degree in accounting from the
24 University of New Mexico.

25 Q. And have you previously worked for the State of

1 New Mexico?

2 A. I retired from the State of New Mexico after
3 27 years. I retired as deputy state budget division
4 director with the department of finance administration
5 back at the end of 2010.

6 Q. And what did the Oil Conservation Division ask
7 you to do as a contractor?

8 A. I was hired to audit and review the OCD bond
9 files for accuracy and completeness and to propose any
10 internal controls and processes that would better
11 account for and help to administer those bonds.

12 Q. And have you reviewed the proposed rule amendment
13 regarding financial assurance?

14 A. Yes, I have. Some of the proposed changes had to
15 do with things I came across upon reviewing the bond
16 files that we currently have.

17 Under 19.15.8-8D, one of the things I noted in
18 looking at bond files is many of the bonds had multiple
19 changes to the original bond that were done by rider or
20 an assumption of liability certificate.

21 And some of these changes were -- could be rather
22 significant. They changed operator names, they changed
23 well names, they changed API numbers as well as bond
24 amounts and the actual bond ID number and the surety
25 company who is responsible for the bond. So some of

1 these were very significant.

2 And the original bond, in some cases, looked
3 absolutely nothing like the current bond that was in
4 place. And because some of these riders were on small
5 pieces of paper and individual papers, it would be very
6 easy for some of these to get lost or separated from the
7 original bond document. And if that were to happen, I
8 think it would be very difficult maybe to determine who
9 was liable for the bond, or the correct well and that
10 type of information on what the bond was actually
11 covering.

12 And if there was a need to collect on the bond
13 without some of this documentation, it might be
14 difficult to determine who you needed to go to get
15 reimbursement and that type of information.

16 So that could potentially increase costs to the
17 state, where the state would not be able to get
18 reimbursed for some situations potentially.

19 Q. Do you believe the proposed changes in 19.15.8-8D
20 would help alleviate the problem that you've uncovered?

21 A. Yes. The rule change seems to allow that if
22 those changes are very significant changes to the bond
23 number itself, changes to the surety company that's
24 providing the bond, that the Oil Conservation Division
25 could ask for a new document to be given, rather than

1 two individual -- an old document and an assumption
2 certificate, that type of thing, to better be able to
3 track the actual bond itself.

4 It's more of a paper clean-up type change, and it
5 would provide better accountability and the ability to
6 better track and administer those bonds.

7 Q. Did you review any other parts of the rule that
8 you --

9 A. Yes. In 19.15.8-9E, there were many bonds that
10 also had letters in the file in which the surety company
11 sent notice that they were canceling the bonds with the
12 30-day notice or that the surety company would no longer
13 accept any additional liability under a current blanket
14 bond. The current rule does not seem to address that
15 cancellation by a surety company.

16 The OCD bond form that is used by many of the
17 bond holders does include language that allows for such
18 cancellation, but it was not in the rule currently.

19 So this is an attempt to put into statute -- I
20 mean put into the rule to address that instance that
21 seems to be happening. And there were quite a number of
22 bonds that I saw in which that was the case.

23 Normally OCD would send a response to the surety
24 company acknowledging that the bond was canceled as of
25 that date, as to any property or wells that were

1 COMMISSIONER CATANACH: It is the pleasure
2 of the Commissioners, do we feel like we need the other
3 two witnesses to testify or do we think we have
4 enough?

5 COMMISSIONER PADILLA: I think I have
6 enough. I have a couple of questions.

7 COMMISSIONER BALCH: I have very limited
8 questions.

9 COMMISSIONER CATANACH: Okay. We'll at this
10 time just cross-examine your two witnesses.

11 Mr. Balch.

12 EXAMINATION BY COMMISSIONER BALCH

13 COMMISSIONER BALCH: I guess my only real
14 question -- I have lots of questions because I'm curious
15 person. The one that's relevant is about the blanket
16 bonds not covering future temporarily abandoned wells,
17 is this really just a bookkeeping issue?

18 MS. VARELA-LOPEZ: The future of temporarily
19 abandoned wells?

20 COMMISSIONER BALCH: I mean -- well, say you
21 have a blanket bond for five wells and you have three
22 that are temporarily abandoned and you add one, and now
23 you have to make a new bond, a new five-well blanket
24 bond, correct?

25 MS. BADA: No. Currently the statute only

1 allows for single well bonds and then there are reserves
2 for blanket bonds, so they don't have to get a single
3 well bond every time they put up a well in temporarily
4 abandoned status.

5 COMMISSIONER BALCH: All right. I
6 misunderstood Ms. Varela's testimony.

7 MS. VARELA-LOPEZ: The change for when the
8 surety company may cancel a bond is the current blanket
9 bonds on -- covering all wells, and not just the
10 temporarily abandoned status wells.

11 COMMISSIONER BALCH: Okay. So, as long as
12 they don't go over five, they're fine? They wouldn't
13 have to get a new blanket bond?

14 MS. BADA: No, not in temporarily abandoned
15 status. They have a blanket bond for a hundred wells.

16 The problem is that the surety companies
17 were saying, Okay, you've 50 wells, we are stopping
18 here. We're not going to cover any future wells. So if
19 you get another 50 wells, they're not covered.

20 COMMISSIONER BALCH: Okay.

21 MS. MARKS: And to be clear, that provision
22 is 8.9-E, would cover the new financial assurance
23 tempor- -- the new blanket bond and existing blanket
24 bonds. So if we ever were to receive a letter from a
25 surety company saying, we're not covering any future

1 liability, it would be either form of financial
2 assurance -- is that incorrect?

3 MS. VARELA-LOPEZ: In the future, yes.

4 MS. MARKS: When they stop any future
5 liability, the operator would then need to deal with
6 that case.

7 COMMISSIONER BALCH: As a result of this
8 rule, we're going to see everybody putting in new
9 bonds --

10 MS. BADA: No.

11 COMMISSIONER BALCH: Well, everybody can
12 only have a temporary bond for one well right now, so if
13 you have 30 wells with an individual bond, you may not
14 have a blanket bond instead, right?

15 MS. MARKS: Uh-huh.

16 COMMISSIONER BALCH: Most people will
17 probably come in --

18 MS. BADA: Yes.

19 COMMISSIONER BALCH: It's not required for
20 them to, but they --

21 MS. BADA: It takes care of all the
22 companies that have lots of oil shifts.

23 COMMISSIONER BALCH: How many temporarily
24 abandoned wells do we have right now?

25 (No response.)

1 COMMISSIONER BALCH: Don't worry. It was
2 just curiosity. That's all I have.

3 COMMISSIONER CATANACH: I don't know for
4 sure. I think the last time I looked there were several
5 hundred, and I don't know -- I mean there are probably
6 more than that. I'm not positive, but there are quite a
7 few. And during times of low oil prices, they probably
8 TA more wells during this period of time also.

9 Do you have any --

10 COMMISSIONER PADILLA: I just have one. I
11 had two, but I think you kind of covered it there.

12 I don't know who would be best able to
13 answer this. It relates to the letters of credit dealt
14 with in 19.15.8.11-B.

15 Does the OCD have a mechanism in place to
16 track those letters of credit and their expiration
17 dates?

18 MS. VARELA-LOPEZ: Currently in looking
19 through the system, all bond information is entered into
20 the OCD online system. And it would have an expiration
21 date on there.

22 Potentially -- I am not sure, I would have
23 to actually look at the file, but the current letter of
24 credit form includes language for an automatic renewal
25 after so many years so that they don't actually have to

1 replace the letter of credit. When it expires, it's
2 considered an automatic renewal, I believe.

3 COMMISSIONER PADILLA: Okay.

4 MS. MARKS: And the financial institution
5 would have to send a letter to the OCD if it did not
6 choose to automatically renew it.

7 COMMISSIONER PADILLA: Okay.

8 MS. BADA: If I can point out just one other
9 typo that I forgot to earlier, with the Commission's
10 permission.

11 There is a typo in the very last line of
12 section 16 -- not 16 -- I mean 15, in subparagraph 3, it
13 says, "polity" and that should be "policy." So if we
14 can get that corrected, that would be great.

15 MS. MARKS: G subpart 3.

16 MS. BADA: Uh-huh.

17 COMMISSIONER CATANACH: Do you have any
18 other questions?

19 COMMISSIONER PADILLA: No.

20 COMMISSIONER CATANACH: I have always been
21 confused, the legislation has not been totally clear to
22 me; if an operator has an existing blanket bond that
23 covers plugging, that bond, it's not -- the
24 legislation -- the intent is not to allow them to
25 increase that bond. You have to get a separate bond for

1 the TA wells?

2 MS. MARKS: That's correct.

3 COMMISSIONER CATANACH: And that's the way
4 the rule has been written. And you have defined the
5 bonding amounts based on -- and that's just -- that was
6 the original recommendation that was in the legislation.

7 MS. BADA: It was. It was in the initial
8 bills, so we just took the amounts of the initial --

9 COMMISSIONER CATANACH: And I believe,
10 Ms. Marks, you were on the committee that looked at
11 this?

12 MS. MARKS: Yes, that is correct.

13 COMMISSIONER CATANACH: Was there any
14 concern expressed by any of the committee members about
15 capping that at \$1 million for 25 wells or was that an
16 issue at all?

17 MS. MARKS: No. The amounts proposed in the
18 rule did not receive any attention during the committee
19 and we received no comments or at least no negative
20 comments about the -- that I can recall about the
21 amounts proposed.

22 And as Ms. Bada commented to the FIR during
23 legislation, three agencies commented, the State Land
24 Office, the Attorney General's Office, and Energy and
25 Minerals and Natural Resources Department. And there

1 would have been an opportunity to comment on the amounts
2 in the FIR and there were no comments about the amounts
3 so far in the FIR.

4 COMMISSIONER CATANACH: So under these rules
5 an operator can have -- I mean there's really no limit
6 on the number of TA wells that can be covered by the
7 million-dollar bond; is that correct?

8 MS. MARKS: That's correct.

9 COMMISSIONER CATANACH: I believe that I
10 looked during the time when the legislation was being
11 proposed, I think that the most wells that any operator
12 had in TA status, I think was about 98 or so. That's
13 what I recall.

14 COMMISSIONER BALCH: It's limited to a
15 percentage of their operating wells, right?

16 COMMISSIONER CATANACH: No. They can have
17 as many wells as they want to in TA status.

18 COMMISSIONER PADILLA: Isn't that correct,
19 Mr. Brancard?

20 COMMISSIONER BRANCARD: You may be thinking
21 about the 5.9 enforcement provision. It says, when you
22 have more than a certain number of wells that have not
23 properly been made temporarily abandoned, then the
24 agency can stop you producing based on the total number
25 of wells you have.

1 MS. BADA: Right. But that's for wells that
2 haven't been TA'd.

3 COMMISSIONER CATANACH: I have a couple more
4 questions. A lot of these changes that we're doing is
5 just to clean up the procedure that OCD uses to kind of
6 keep track of bonds and things like that.

7 In your examination of this whole bonding
8 situation, Ms. Varela, are you going to recommend maybe
9 a business practice that we can follow in the future to
10 kind of better keep up with these issues?

11 MS. VARELA-LOPEZ: Yes. I will have some
12 recommendations to the overall business process and
13 internal controls over and above these two situations
14 that I am putting together as part of the project.

15 COMMISSIONER CATANACH: Okay.

16 In 8.9, I notice you guys are taking out
17 "firm, corporation or association."

18 MS. BADA: I can answer that. "A person"
19 includes those already, so they're redundant.

20 COMMISSIONER CATANACH: So the definition of
21 "person" includes that?

22 MS. BADA: Yes.

23 COMMISSIONER CATANACH: Okay. And we
24 haven't gotten any plugging insurance policies yet with
25 the rule --

1 MS. BADA: The statute allows for it.

2 COMMISSIONER CATANACH: And that was done by
3 legislation in 2006 and just never incorporated into the
4 rules?

5 MS. BADA: Yes.

6 COMMISSIONER CATANACH: So this language you
7 are proposing you said basically nears the legislative
8 one --

9 MS. BADA: Except for the 30-day time limit
10 is right from the statute.

11 COMMISSIONER CATANACH: Okay.

12 MS. MARKS: And, Mr. Chairman, I did receive
13 some phone calls from some insurance companies who were
14 interested in the plugging insurance policy. But I
15 think the idea that it is limited to single wells and it
16 is not available as a blanket to cover -- as a blanket
17 policy, I think that's why you haven't seen -- just as a
18 matter of my personal view, as to why you have not seen
19 any insurance policies filed with the Division.

20 COMMISSIONER CATANACH: Okay. On these
21 blanket insurance policies, would they designate OCD as
22 the beneficiary on those?

23 MS. MARKS: Yes.

24 COMMISSIONER CATANACH: On paragraph 8.9,
25 part C, about releasing a blanket financial assurance

1 for TA'd wells, it states the Division may release a
2 blanket plugging financial assurance for wells in
3 temporary abandoned status upon the operator's or
4 surety's written request after the wells are returned to
5 production.

6 To get out of TA status, a well could be
7 also plugged? Do we want to add "plugged" to that?

8 MS. BADA: That would be a good idea.

9 COMMISSIONER CATANACH: Because that would
10 be the only, I guess, two ways that a well could get out
11 of TA status, you either return it to production or you
12 can plug it, so this would give them the option -- not
13 that we want them to plug it -- but we might just want
14 to add that language.

15 I notice that we did add in the rule that
16 they had to -- hold on a second. Let me see what that
17 is. In rule 8.10, part A, Authorized by the office of
18 the superintendent of insurance.

19 That's new right.

20 MS. BADA: That's correct. That is who
21 oversees insurance in New Mexico. So they have to be
22 authorized by them.

23 COMMISSIONER CATANACH: So when we got a
24 bond is OCD going to check to make sure that that's been
25 complied with, is that the plan?

1 MS. BADA: Yes.

2 MS. MARKS: Under statute, surety companies
3 actually have to be authorized by the superintendant of
4 insurance, as opposed to the secretary of state. It's a
5 unique law; as opposed to being authorized by the
6 corporation office to do business by the secretary of
7 state, surety companies have to be authorized by the
8 superintendent of insurance.

9 COMMISSIONER CATANACH: And I guess my last
10 question deals with the forms. Are we changing forms as
11 a result of this rule?

12 MS. MARKS: Yes.

13 COMMISSIONER CATANACH: And do we have those
14 forms available at this time or not yet?

15 MS. MARKS: Not yet.

16 COMMISSIONER CATANACH: Do you know when
17 those might be available, because this rule, I guess, is
18 already in effect?

19 MS. BADA: The rule is but the statute --

20 COMMISSIONER CATANACH: Oh, I'm sorry.

21 MS. BADA: The statute can't be implemented
22 until the amounts are set by rule. So the forms...

23 COMMISSIONER CATANACH: So the forms will
24 probably be done by the time the rule is --

25 MS. BADA: Yes.

1 COMMISSIONER CATANACH: And the rule won't
2 go into effect until...

3 MS. BADA: Until it's filed --

4 COMMISSIONER CATANACH: 30 days after it's
5 filed or so. But the forms should be available at that
6 time?

7 MS. MARKS: Whatever the director of OCD
8 requires will be done.

9 COMMISSIONER CATANACH: Okay. That's all
10 the questions I have. Are there any other questions?

11 Mr. Brancard.

12 COMMISSIONER BRANCARD: Well, No. 1,
13 Mr. Chairman, you suggested this change. Do you want
14 to -- can we try to wordsmith that right now?

15 It says here, "The Division may release a
16 blanket plugging financial assurance for wells in
17 temporarily abandoned status upon the operator's or
18 surety's written request after the wells" -- how about
19 if we insert the words, "are permanently plugged or if
20 the wells are returned to production," and then follow
21 the language?

22 COMMISSIONER BALCH: Wouldn't it be simpler
23 to just after "are returned to production" -- to put "or
24 plugged" -- to just put two words in there?

25 COMMISSIONER BRANCARD: Well, I wanted to

1 make clear -- because -- if they are permanently plugged
2 you don't need the financial assurance at all for them
3 anymore. But if they return to production, you need --

4 COMMISSIONER BALCH: Financial assurance.

5 COMMISSIONER BRANCARD: -- financial
6 assurance for them.

7 So the clause that talks about, if there is
8 an existing blanket bond for producing wells or single
9 wells, that should be connected to that clause, as
10 opposed to the permanently plugged, which is just simply
11 by itself. You no longer need financial assurance.
12 That's -- I tried to word it that way.

13 MS. MARKS: Mr. Chairman and Mr. Brancard,
14 if I might. If I may suggest "permanently plugged and
15 released according to rules" -- and returned to
16 production.

17 MS. BADA: "Plugged and abandoned," whatever
18 rule number it is.

19 MS. MARKS: Yes.

20 "Plugged and abandoned according to the
21 rules."

22 COMMISSIONER CATANACH: Can you read your
23 proposed language, Ms. Marks, for that paragraph?

24 MS. BADA: If I may.

25 COMMISSIONER CATANACH: Ms. Bada, go ahead.

1 MS. BADA: I would suggest "plugged and
2 abandoned according to 19.15" -- and I can't remember
3 the rule number, but...

4 MS. MARKS: Twenty-five.

5 COMMISSIONER PADILLA: So that wording would
6 go after where it says --

7 MS. BADA: I would defer to counsel on the
8 order of those two clauses.

9 COMMISSIONER BRANCARD: So it would read,
10 "Surety's written request after the wells are plugged
11 and abandoned in accordance with 19.15.25 or if the
12 wells are returned to production," et cetera.

13 COMMISSIONER CATANACH: That sounds good to
14 me. Do we want to vote on that language? Do the
15 Commissioners have any other concerns?

16 COMMISSIONER BALCH: Well, there is one typo
17 and one word change. We probably could do it all at
18 once.

19 COMMISSIONER CATANACH: We have two typos.
20 Don't we have two typos?

21 MS. MARKS: Yes, "polity" should be
22 "policy," and "line of credit" should be "letter of
23 credit."

24 COMMISSIONER CATANACH: Okay. So with
25 regards to the change in 8.9, part C, do I have a motion

1 to adopt the new language?

2 COMMISSIONER BALCH: I would make a motion
3 to adopt the language as recommended by Counsel
4 Brancard.

5 COMMISSIONER CATANACH: A second?

6 COMMISSIONER PADILLA: I second that motion.

7 COMMISSIONER CATANACH: Okay. That motion
8 to adopt that language in that part is hereby approved.

9 And a motion to adopt the changes to the two
10 typographical errors in 8.11-E and 8.15-G,
11 paragraph A, do I have a motion to adopt those two
12 changes?

13 COMMISSIONER BALCH: I will make a motion to
14 adopt those two changes.

15 COMMISSIONER PADILLA: I second.

16 COMMISSIONER CATANACH: Okay. Those two
17 changes are adopted as well.

18 Do Commissioners have any --

19 COMMISSIONER BRANCARD: Just one more
20 question. Your testimony is that the proposed numerical
21 amounts in the rule that are being offered for the new
22 blanket plugging financial assurance came from the
23 legislative changes, that you've addressed this with
24 stakeholders and everybody seems to be comfortable with
25 that.

1 Is the Division comfortable that these
2 proposed blanket amounts are reasonable to implement
3 this new statutory change?

4 MS. BADA: Yes.

5 COMMISSIONER BALCH: And if those amounts
6 become unreasonable later on, anybody, including the
7 Division, could ask for revision to those numbers?

8 MS. BADA: Yes, they could.

9 COMMISSIONER CATANACH: Okay. Any other
10 questions of the witnesses?

11 COMMISSIONER PADILLA: No.

12 COMMISSIONER CATANACH: I guess I make a
13 motion to --

14 COMMISSIONER BRANCARD: You can close the
15 record and now go into deliberation. You can't go into
16 closed session.

17 COMMISSIONER CATANACH: So do I have a
18 motion to close the record at this time?

19 COMMISSIONER PADILLA: I will make that
20 motion.

21 COMMISSIONER BALCH: And I'll second.

22 COMMISSIONER CATANACH: The motion is hereby
23 passed. And at this time, we will go into open
24 deliberations.

25 (Commissioners in Open Deliberations.)

1 COMMISSIONER CATANACH: Commissioners, do
2 you want to discuss -- anything you want to discuss
3 about the proposed rule?

4 COMMISSIONER PADILLA: All of my questions
5 and concerns were answered during the testimony.

6 COMMISSIONER BALCH: And on my
7 cross-examination. I believe we've captured the intent
8 of the bills.

9 COMMISSIONER CATANACH: Okay. And I'm
10 comfortable with the language that has been proposed,
11 with the changes that we've suggested in the fixing of
12 the typos and things. And I don't have any other issues
13 with regards to the proposed rule. So do I have a
14 motion to adopt the rule as proposed with the proposed
15 changes?

16 Do we have a motion from the Commissioners
17 to adopt the rule as proposed with the amendments that
18 we have discussed?

19 COMMISSIONER BALCH: And I will so motion.

20 COMMISSIONER PADILLA: I will second that
21 motion.

22 COMMISSIONER CATANACH: Okay. The motion
23 passes and the rule is hereby adopted as proposed and
24 amended.

25 COMMISSIONER BRANCARD: Mr. Chair, may I

1 propose something a little out of order here with the
2 Commission? Normally, what we do is after a hearing we
3 then wait until the next meeting to adopt an order
4 memorializing your decision. But because we have an
5 emergency clause in this legislation, so the statute is
6 already in effect, we really need this rule in place and
7 we can't file the rule until you all adopt an order.

8 I'd like to take a few minutes to try to go
9 upstairs quickly -- I sort of started a framework of an
10 order and sort of fill in the blanks with the testimony
11 I've heard today and bring it back down to you all to
12 review and possibly sign maybe in 15 minutes.

13 Would that be reasonable?

14 COMMISSIONER CATANACH: I think that would
15 be wonderful. If we can do that to take care of this
16 matter today, let's do that. And we stand in recess for
17 15 to 20 minutes.

18 (Recess from 9:45 a.m. to 10:07 a.m.)

19 COMMISSIONER CATANACH: We'll go back on the
20 record at this time. We have received a draft order
21 from Mr. Brancard and a rule that includes the revisions
22 that we made during our deliberations and we have
23 already voted to adopt the rule, so I guess the order of
24 business is to just sign the order; is that correct?

25 COMMISSIONER BRANCARD: Approve the order.

1 COMMISSIONER CATANACH: Approve the order.

2 COMMISSIONER BRANCARD: Yes.

3 COMMISSIONER CATANACH: Okay.

4 Commissioners, have you reviewed the draft order in this
5 case?

6 COMMISSIONER BALCH: I have.

7 COMMISSIONER CATANACH: Do you have any
8 changes or amendments to the order?

9 COMMISSIONER PADILLA: I don't.

10 COMMISSIONER BALCH: No changes.

11 COMMISSIONER CATANACH: Okay. Can I have a
12 motion to adopt the order in this case?

13 COMMISSIONER BALCH: I will make the motion
14 to adopt the order.

15 COMMISSIONER PADILLA: And I second that.

16 COMMISSIONER CATANACH: The motion passes.
17 The order will be adopted in this case.

18 COMMISSIONER BRANCARD: I sent this to
19 Florene, so she is preparing the final version for your
20 signatures. I assume that is where she is right now,
21 working on that.

22 COMMISSIONER CATANACH: So that's all we
23 have to do at this point, is sign --

24 COMMISSIONER BRANCARD: Yes. And it will
25 become effective upon publication in the New Mexico

1 Register, which is probably at the end of this month.

2 COMMISSIONER CATANACH: Okay. Do we have
3 any other business at this meeting?

4 COMMISSIONER BRANCARD: I don't believe we
5 do.

6 COMMISSIONER CATANACH: Do we have a motion
7 to adjourn?

8 COMMISSIONER PADILLA: I make that motion.

9 COMMISSIONER BALCH: And I will second it.

10 COMMISSIONER CATANACH: Okay. Motion to
11 adjourn this Commission meeting is hereby approved.
12 Thank you. We are done.

13

14

15 (Time noted 10:20 a.m.)

16

17

18

19

20

21

22

23

24

25

1 STATE OF NEW MEXICO)
2) ss.
3 COUNTY OF BERNALILLO)
4
5

6 REPORTER'S CERTIFICATE

7 I, ELLEN H. ALLANIC, New Mexico Reporter CCR
8 No. 100, DO HEREBY CERTIFY that on Thursday, June 4,
9 2015, the proceedings in the above-captioned matter were
10 taken before me, that I did report in stenographic
11 shorthand the proceedings set forth herein, and the
12 foregoing pages are a true and correct transcription to
13 the best of my ability and control.

14 I FURTHER CERTIFY that I am neither employed by
15 nor related to nor contracted with (unless excepted by
16 the rules) any of the parties or attorneys in this case,
17 and that I have no interest whatsoever in the final
18 disposition of this case in any court.

19 

20 ELLEN H. ALLANIC, CSR
21 NM Certified Court Reporter No. 100
22 License Expires: 12/31/15
23
24
25