

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

ORIGINAL

APPLICATION OF WPX ENERGY PRODUCTION, LLC FOR
APPROVAL OF THE KIMBETO WASH UNIT; CREATION OF A NEW
POOL FOR HORIZONTAL DEVELOPMENT WITHIN THE UNIT
AREA, AND FOR ALLOWANCE OF 330 FOOT SETBACKS FROM
THE EXTERIOR OF THE PROPOSED UNIT, SAN JUAN COUNTY,
NEW MEXICO.

CASE NO. 15375

OCTOBER 15, 2015
1220 S. St. Francis Drive
Santa Fe, NM 87505

HEARING EXAMINER: MICHAEL MCMILLAN

LEGAL COUNSEL: GABRIEL WADE

APPEARING FOR THE APPLICANT:

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1 (Note: In session at 9:35.)

2 HEARING EXAMINER MCMILLAN: We're back on
3 the record. Going out of order we are going to call
4 the last case of the docket, Case 19, Application of
5 WPX Energy Production, LLC for Approval of the
6 Kimbeto Wash Unit, Creation of a New Pool For
7 Horizontal Development Within the Unit Area and for
8 Allowance of 330 Foot Setbacks From the Exterior of
9 the Proposed Unit, San Juan County, New Mexico.
10 Call for appearances.

11 MR. FELDEWERT: Michael Feldewert with the
12 Santa Fe office of Holland & Hart on behalf of the
13 applicant. I have no witnesses here today. I just
14 have one notice of publication to present as a final
15 exhibit.

16 HEARING EXAMINER MCMILLAN: Any other
17 appearances?

18 MR. TSO: Daniel Tso, to make a personal
19 comment and I'm an allotment owner. T-S-O.

20 LEGAL COUNSEL WADE: You're an owner of an
21 allotment within this area that's the matter of the
22 application?

23 MR. TSO: I think I am.

24 LEGAL COUNSEL WADE: Any other
25 appearances?

1 MS. ARVISO: Etta Arviso, and I'm a
2 landowner of allotment land.

3 LEGAL COUNSEL WADE: Ms. Arviso, could you
4 spell your name for the court reporter?

5 MS. ARVISO: A-R-V-I-S-O.

6 LEGAL COUNSEL WADE: Did you speak at the
7 last hearing well?

8 MS. ARVISO: Yes, I did.

9 LEGAL COUNSEL WADE: Do you realize this
10 hearing is just to take notice that was required
11 that wasn't presented last time? So there's no
12 additional evidence, no new evidence being presented
13 aside from an affidavit of notice. Did you realize
14 that?

15 MS. ARVISO: No. Wouldn't that be
16 violating my rights?

17 LEGAL COUNSEL WADE: What's that?

18 MS. ARVISO: Wouldn't that be violating my
19 rights?

20 LEGAL COUNSEL WADE: I don't believe so.

21 MS. ARVISO: Because the treaty still
22 stands. I am an owner.

23 LEGAL COUNSEL WADE: You want to make a
24 statement regarding the additional notice?

25 MS. ARVISO: They didn't do their job to

1 do an additional notice nor neither did they do
2 anything of the Chapter 11 the way it was requested
3 last time.

4 LEGAL COUNSEL WADE: We will let you guys
5 give a statement at the end of the presentation and
6 we may have to limit the time, okay?

7 UNIDENTIFIED SPEAKER: I don't have a
8 statement but we have some documentation we would
9 like to put into the record.

10 LEGAL COUNSEL WADE: Did you enter an
11 appearance?

12 UNIDENTIFIED SPEAKER: I just talked to
13 Florene and said we had additional comments so she
14 suggested I bring them.

15 LEGAL COUNSEL WADE: Yes, sir.

16 CHIEF SWIFT ARROW ROSE: Yes. My name is
17 Chief Robert Swift Arrow Rose (native language)
18 Cherokee Nation. I am appointed administrator of
19 the new IGO United Nations. It is the Great Turtle
20 Island Federation.

21 LEGAL COUNSEL WADE: Are you making a
22 statement?

23 CHIEF SWIFT ARROW ROSE: Yes, I am. This
24 woman here --

25 LEGAL COUNSEL WADE: Sir, Can you wait?

1 We are going to take the presentation and then we
2 will allow some statements depending on whether you
3 have standing.

4 CHIEF SWIFT ARROW ROSE: Well, I'm just
5 standing that I'm independent reporting to the U.N.
6 about what's happening with the treaty violation of
7 the land. Thank you very much.

8 MR. FELDEWERT: Mr. Examiner, this case
9 was heard by the division on September 17th. At
10 that time two witnesses were presented. A total of
11 nine exhibits were offered at that time. Public
12 comment was taken on the case itself at that time.
13 In addition, we appeared at the last division
14 hearing with a notice of affidavit in the Durango
15 Herald of the hearing. The division determined and
16 requested that we provide additional newspaper
17 notice of this matter which we have now done with
18 the Farmington Daily Times.

19 So that initial affidavit was Exhibit No.
20 10. I now have marked as Exhibit No. 11 the
21 Affidavit of Publication in the Farmington Daily
22 Times. If I may approach.

23 HEARING EXAMINER MCMILLAN: Please
24 proceed.

25 MR. FELDEWERT: Mr. Examiner, this

1 conforms with the instruction to utilize a newspaper
2 publication in the county in which the property is
3 located. With the submission of Exhibit No. 11 we
4 ask the case be taken under advisement.

5 LEGAL COUNSEL WADE: Well, we do have a
6 couple people who would like to make statements.
7 Ma'am, you had said you wanted to enter something
8 into the record. I'm sorry, I don't think you
9 stated your name before you were interrupted.

10 MS. SEAMSTER: Oh, I'm sorry. Theresa
11 Seamster with the Sierra Club.

12 LEGAL COUNSEL WADE: I guess we will deal
13 with issues one at a time. Mr. Tso, would you like
14 to make a statement?

15 MR. TSO: Thank you for affording me this
16 time to make a comment on this Kimbeto Wash unit
17 that is -- the request is for the unitization and
18 the 330 setback.

19 Basically, it's just the fact that at the
20 previous hearing there was a request to have a more
21 thorough presentation by WPX at a venue where more
22 Elates would be able to attend. That never
23 happened. The only thing they did was publish a
24 notice of the hearing. And we still have a concern.

25 I have this map and it's one of a kind,

1 but I hear from WPX employees that they have a more
2 detailed map. And what I'm trying to present is,
3 Mr. Hearing Officer, the totality of all your
4 decisions are encapsulated in this map of the
5 unitized units. This does not show where people
6 reside. The unitized unit agreement does not
7 document where people reside, where their cornfields
8 are, where the grazing areas are, where there are
9 sacred sites, burial sites.

10 And I'm concerned. You may see it as a
11 flat piece of land, but the terrain, the prevailing
12 winds, the runoff, the directions they flow in
13 regard to how the microenvironment is affected.
14 That part, I think, needs to be -- that's the reason
15 I wanted to make the public statement.

16 Yesterday as I was driving down 550 at
17 Mile Marker 117, to the north there is a valley and
18 there's several homesites. And where the traffic
19 was going into the fracking area there was a
20 tremendous dust cloud, and those folks that are a
21 mile, a mile and a half north of there had this dust
22 cloud that they had to deal with. And I'm sure it
23 would have violated NEPA regulations, but who was
24 there to document that? WPX wasn't going to
25 self-report that.

1 And my concern is that the impact, the
2 impact of the fracking activities, far exceeds the
3 unitized map.

4 The community effect, the effect from
5 these -- the dust cloud basically -- would be a way
6 to track the release of methane gas, other organic
7 compounds. So it just doesn't stay in one spot.
8 The prevailing winds -- the microenvironment is
9 basically affected. And I just want this as a part
10 of the record that the totality of your decision to
11 open this area has a cumulative effect. The
12 increased truck traffic, the increased prevalence of
13 pulmonary and respiratory problems among the
14 population, especially the older folks that are
15 already dealing with hypertension and diabetes. The
16 young folks, preschool age. We have preschool buses
17 that run the routes.

18 And again, those impacts aren't considered
19 as part of the presentation. I just want this part
20 of the record so that down the future when the
21 actual health impacts are documented then the
22 liability factors has to be borne somewhere.

23 LEGAL COUNSEL WADE: Okay. Thank you.
24 Thank you for your statement.

25 HEARING EXAMINER MCMILLAN: Thank you.

1 LEGAL COUNSEL WADE: Ms. Arviso?

2 Mr. Feldewert, any objection to the statement by
3 Ms. Arviso.

4 MR. FELDEWERT: I would make a comment
5 that Ms. Arviso did provide public comment at the
6 initial hearing on this matter. I don't know what
7 would be of additional relevance that wasn't already
8 discussed.

9 LEGAL COUNSEL WADE: Ms. Arviso, do you
10 have something you are going to say at this
11 particular hearing that's different from what you
12 said previously?

13 MS. ARVISO: Yes.

14 LEGAL COUNSEL WADE: We will allow you
15 five minutes to speak.

16 MS. ARVISO: My name is Etta Arviso. And
17 I'm talking about case 15375 and I'm a landowner on
18 allotment land, Kimbeto Wash unit that's being
19 proposed. I need more time to withhold this,
20 getting paperwork and what not for the sacred sites
21 and I would appreciate it because I totally disagree
22 with all this 5,000 portion of land at 5279.20 acres
23 that's being asked. Because my purpose for asking
24 and making this request is because we do have our
25 grandparents buried not so much like, you know, you

1 have cemeteries here within different areas and we
2 have them buried here and there. And those
3 documents, I made a request to come forth to see
4 what the BIA and what the tribe has.

5 So if you can give me more time to allow
6 this, I would appreciate it because I totally, you
7 know, feel it's very important because a lot of,
8 like other drill sites, even the natural springs, we
9 have natural springs in the area and I cannot see --
10 and, you know, I would totally appreciate it. And
11 also a board member under the Medicine Man
12 association.

13 I totally feel that my treaty rights is
14 being violated and I will stand my ground to do
15 whatever I can to protect this land. This land is a
16 lot of land what is being proposed. So yes, there
17 has been -- again, we made a request to where at
18 least they could come back out, WPX, to do a
19 presentation on which shouldn't happen. So a lot of
20 our elderly folks can't read, write and speak
21 English, can't read the paper. So there again, it's
22 totally violating my relatives, my family's rights,
23 too.

24 That's what I got to say that's different,
25 so if you would honor my request, we also have a

1 resolution coming to your office by the Medicine Man
2 Association. Thank you very much.

3 HEARING EXAMINER MCMILLAN: Thank you.

4 LEGAL COUNSEL WADE: Ma'am, can you state
5 your name?

6 MS. SEAMSTER: Can I hand it to you?
7 Theresa Seamster.

8 LEGAL COUNSEL WADE: Your intent is to do
9 what?

10 MS. SEAMSTER: The intent is simply to
11 leave you with some additional information on public
12 health findings. Like the rest of the people here
13 who come from the different affected chapters, we
14 haven't had time to put together a health impact
15 assessment to present and we realize that's sort of
16 out of your purview. However, you do deal with
17 public lands and it's the public lands that we are
18 addressing.

19 LEGAL COUNSEL WADE: Before you -- I think
20 what you are asking is to enter something into the
21 record?

22 MS. SEAMSTER: Yes.

23 HEARING EXAMINER MCMILLAN: Mr. Feldewert,
24 any objections?

25 MR. FELDEWERT: Well, I do. I mean --

1 MS. SEAMSTER: I can show you what it is
2 so you are aware.

3 MR. FELDEWERT: As she indicated, this
4 topic is certainly not one that's within the purview
5 of the division. I mean, number one. Number two,
6 there was no prehearing statement filed, which is a
7 requirement to present evidence. So if she's
8 offering this for evidence as substantive fact, we
9 have concerns with it. I don't know the source of
10 it. I don't know where the information comes from.
11 It's not -- doesn't follow the procedures before the
12 division. So I do object to the introduction of
13 this as evidence.

14 LEGAL COUNSEL WADE: Have you had a chance
15 to look at our division rules? Are you familiar
16 with them?

17 MS. SEAMSTER: I am somewhat familiar with
18 them.

19 LEGAL COUNSEL WADE: I think if you look
20 at 19.15.14, which is how we conduct these hearings,
21 Mr. Feldewert is correct that you didn't follow the
22 rules so these cannot be entered into evidence.

23 MS. SEAMSTER: Then I will not enter them
24 today but we will resubmit them at another time.
25 Thank you very much.

1 LEGAL COUNSEL WADE: Thank you.

2 UNIDENTIFIED SPEAKER: I have a public
3 comment. May I make a statement?

4 LEGAL COUNSEL WADE: Sir, do you have
5 lands or mineral interest in the area subject to the
6 application?

7 UNIDENTIFIED SPEAKER: The constituent
8 member nation does, and they are part of the United
9 Nations now.

10 LEGAL COUNSEL WADE: You do not have any
11 property interest in the lands?

12 UNIDENTIFIED SPEAKER: Through a
13 federation, yes, we do.

14 LEGAL COUNSEL WADE: What is your
15 statement going to be regarding?

16 UNIDENTIFIED SPEAKER: Regarding my
17 concern for all species and that we must think about
18 the flow of water. Water knows no jurisdiction and
19 there are treaties about water. Of course, we know
20 these things.

21 LEGAL COUNSEL WADE: Are you preparing to
22 make a statement right now?

23 UNIDENTIFIED SPEAKER: You just asked me a
24 question so I am responding to your question,
25 respectfully, that this is basically for all

1 concerned, but also what comes out of this is how
2 are we going to resolve this issue that if we don't
3 look at the environmental impact -- you know the
4 flow of water, how it goes downstream.

5 LEGAL COUNSEL WADE: I'm going to stop you
6 there. I'm going to allow Mr. Feldewert to raise
7 any objections.

8 MR. FELDEWERT: Mr. Examiner, this
9 individual is not a party to the case. There's no
10 prehearing statement filed. This individual is not
11 a landowner. I don't know what entity this
12 individual represents and there's no statement that
13 he's authorized to represent a particular entity,
14 which is another requirement that's part of the
15 prehearing statement submission so I would object to
16 this presentation.

17 UNIDENTIFIED SPEAKER: You are objecting
18 to a comment by an administrator of a --

19 LEGAL COUNSEL WADE: Sir, if you could
20 familiarize yourself with these rules regarding our
21 proceedings, it would really help. I'm going to
22 have to sustain the objection.

23 UNIDENTIFIED SPEAKER: I was just asked to
24 come yesterday because --

25 LEGAL COUNSEL WADE: Maybe in future

1 hearings that would be helpful.

2 UNIDENTIFIED SPEAKER: Because I am
3 concerned. We are going to have an IGO office here
4 representing the United Nations with a U.N. flag
5 here in Santa Fe. That's for everybody. Everybody
6 is important.

7 LEGAL COUNSEL WADE: Will you keep these
8 in mind for the future hearings?

9 UNIDENTIFIED SPEAKER: I would love to.

10 LEGAL COUNSEL WADE: I believe there's
11 other people who would like to speak. Thank you.
12 Yes, sir.

13 MS. LEVINSON: I would like to find out
14 whether it would be appropriate to make a statement.
15 I very much don't understand the bureaucracies
16 involved and I would appreciate --

17 LEGAL COUNSEL WADE: State your name.

18 MS. LEVINSON: Charlotte Levinson, and I
19 appreciate any opportunity to speak in public. I am
20 thankful for you for providing a few minutes.

21 LEGAL COUNSEL WADE: I recognize you. So
22 did you get the opportunity to speak at the hearing
23 when more evidence was presented?

24 MS. LEVINSON: Yes, I did.

25 LEGAL COUNSEL WADE: Are you going to be

1 saying anything different today?

2 MS. LEVINSON: Not materially different,
3 no. Except that I do believe I have some standing
4 as a member of the public because public lands are
5 included in this unitized area, so I did want to
6 raise that and see where that goes for the record
7 going forward.

8 LEGAL COUNSEL WADE: I'm not sure we
9 necessarily have an objection to your standing at
10 this point, but if you don't have anything
11 materially different to say, this probably is not
12 the venue or the time to make a statement.

13 MS. LEVINSON: I see. So it wouldn't be
14 appropriate to make a general statement about the
15 ethical realities of this situation?

16 LEGAL COUNSEL WADE: I believe that's the
17 gist of your last statement.

18 MS. LEVINSON: You're correct. Thank you
19 for the opportunity to have a public forum to raise
20 these. These are really moral issues we are talking
21 about here.

22 LEGAL COUNSEL WADE: Thank you. Yes,
23 ma'am. If you could state your name?.

24 MS. SOBEL: Rebecca Sobel, S-O-B-E-L. I'm
25 a member of the public and I'm representing Wild

1 Earth Guardians. I was not at the last hearing.

2 LEGAL COUNSEL WADE: Five minutes.

3 THE WOMAN: I first want to thank the
4 commission for the opportunity to speak. As I
5 understand, this is an update on requirements of
6 notice for this unit, and what I wanted to offer
7 into the record was perhaps that there needs to be a
8 reassessment of the notice for rule-making in the
9 area that WPX is operating.

10 We have been told that there's been
11 notice, as has been mentioned, in the Farmington
12 Daily and the Durango paper. As I understand it,
13 the development that is happening in the area is
14 happening very quickly. I don't think anybody in
15 the room would necessarily deny that. And there's a
16 matter of education of the public and also awareness
17 of what this development requires if it takes place
18 and impact that is slowly being heard and educated
19 by community members.

20 As a result, as Ms. Arviso mentioned,
21 there's a fair amount of community members that
22 don't speak English as a first language and are not
23 in the distribution circles of either the Farmington
24 Daily or Durango Herald. There have been
25 recommendations that in order to provide adequate

1 notice in this region, extra steps must be taken in
2 order to fulfill some semblance of minimum
3 requirement for public participation, and those
4 would include notices on Navajo radio in Navajo,
5 notices in the Navajo Times as well as notices in
6 public spaces. There are post offices next to the
7 chapter houses and there would be an opportunity to
8 post information there.

9 Barring these specific steps to outreach
10 to Navajo community members, we believe that efforts
11 of notification are falling far short.

12 Yeah, that's pretty much all I have to
13 say.

14 LEGAL COUNSEL WADE: Thank you. I believe
15 one more request to speak? Is that correct, sir? I
16 believe you represent Ms. Arviso? State your name.

17 MR. LEE: I'm Calvin Lee, Jr., the
18 attorney for the landowners. Ms. Etta Arviso is the
19 person that put herself before the OCD in the past,
20 so I just briefly met with legal counsel here for
21 WPX so I understand there was an exhibit going to be
22 introduced as a notice and, in fact, this was
23 published. I think I did see this in the paper and
24 I just wanted to also reiterate what we had
25 explained previously was that the notice, given the

1 large number of landowners, could be provided in the
2 way of notice at the chapter houses where the
3 communities are affected, the Navajo Nation
4 chapters, in addition to perhaps another public
5 place, such as a post office. And we had brought
6 out the possibility of also providing notice through
7 the Navajo Nation Radio KTNN. That would be done
8 also in English and Navajo.

9 So from what I understand, basically this
10 is the extent of the notice that has gone out, so I
11 would emphasize to the OCD that it's really rather
12 insufficient and I would also join in the remarks
13 made by the previous speaker. Thank you.

14 LEGAL COUNSEL WADE: Thank you.

15 HEARING EXAMINER MCMILLAN: Okay. Thank
16 you for your comments. Case No. 15375 shall be
17 taken under advisement.

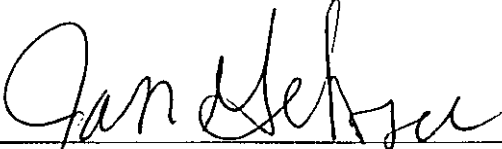
18 (Note: The proceedings were concluded.)
19
20

21 I do hereby certify that the foregoing is
22 a complete record of the proceedings in
23 the Examiner hearing of Case No. _____
24 heard by me on _____
25 _____, Examiner

REPORTER'S CERTIFICATE

I, JAN GIBSON, Certified Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

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


JAN GIBSON, CCR-RPR-CRR
New Mexico CCR No. 194
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