

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

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

APPLICATION OF THE OIL CONSERVATION                      CASE NO. 15487  
DIVISION FOR ADOPTION OF SPECIAL  
POOL RULES FOR DRILLING NEW WELLS  
IN CERTAIN AREAS, FOR THE PROTECTION  
OF FRESH WATER, CHAVES AND EDDY  
COUNTIES, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

August 8, 2016

Santa Fe, New Mexico

BEFORE:    DAVID R. CATANACH, CHAIRPERSON  
             PATRICK PADILLA, COMMISSIONER  
             DR. ROBERT S. BALCH, COMMISSIONER  
             CHERYL BADA, ESQ.

This matter came on for hearing before the  
New Mexico Oil Conservation Commission on Monday,  
August 8, 2016, 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:    Mary C. Hankins, CCR, RPR  
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18 FOR PECOS VALLEY ARTESIAN CONSERVANCY DISTRICT (PVACD)  
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1 (1:05 p.m.)

2 CHAIRPERSON CATANACH: The next order of  
3 business today is we need to talk about Cause Number  
4 15487, which is the adoption of special pool rules for  
5 drilling new wells in certain areas for the protection  
6 of fresh water, Chaves and Eddy Counties, New Mexico.

7 This case was originally supposed to be  
8 commenced at this time. The Division had some notice  
9 issues, which required that the case had to be continued  
10 to another date. We are here today to see if we can  
11 arrive at an agreed time in which to continue this case  
12 to be heard.

13 So at this time, let me call for  
14 appearances.

15 MR. BROOKS: Mr. Chairman, Honorable  
16 Commissioners, David Brooks, Energy, Minerals and  
17 Natural Resources Department, appearing for the Oil  
18 Conservation Division as Applicant.

19 MR. LARSON: Mr. Chairman, Commissioners,  
20 Gary Larson of the Santa Fe office of Hinkle Shanor for  
21 Yates Petroleum.

22 MR. FELDEWERT: Mr. Chairman, Members of  
23 the Commission, Michael Feldewert, Santa Fe office of  
24 Holland & Hart, appearing on behalf of COG Operating,  
25 OXY USA and Fasken Oil and Ranch.

1 MS. FOSTER: Mr. Chairman, Karin Foster,  
2 Southwest Government Affairs, on behalf of the  
3 Independent Petroleum Association of New Mexico.

4 MR. OLSEN: Chairman and Members of the  
5 Commission, A.J. Olsen and Olivia Mitchell on behalf of  
6 Pecos Valley Artesia Conservancy District.

7 CHAIRPERSON CATANACH: I'm sorry. What was  
8 the last name of Olivia, Mr. Olsen?

9 MR. OLSEN: Mitchell.

10 CHAIRPERSON CATANACH: Mitchell.

11 Any additional appearances?

12 Okay. Mr. Brooks, do you want to start us  
13 off here?

14 MR. BROOKS: Yes, sir.

15 Mr. Chairman, Honorable Commissioners, I  
16 have been informed by email for each of the attorneys  
17 that -- separately, including Mr. Bruce who is not  
18 present, that they and their witnesses will be available  
19 on the days of October 5th through the 7th.

20 CHAIRPERSON CATANACH: December.

21 MR. BROOKS: I'm sorry. December 5th  
22 through the 7th -- important difference -- on which date  
23 the Commission I believe -- which dates the Commission I  
24 believe has indicated are available dates.

25 CHAIRPERSON CATANACH: So is that correct?

1 Can I ask all the attorneys: Is that correct? Is that  
2 your understanding, that you're available on those  
3 dates?

4 MR. LARSON: That's correct, Mr. Chairman.

5 MR. FELDEWERT: Yes, sir.

6 MR. OLSEN: A.J. Olsen, that is correct.

7 CHAIRPERSON CATANACH: Let me just check  
8 with the Commission one more time. Are those available  
9 dates for the Commissioners?

10 COMMISSIONER BALCH: I'm good the 5th  
11 through the 8th.

12 COMMISSIONER PADILLA: I don't have a  
13 conflict.

14 CHAIRPERSON CATANACH: I do not have a  
15 conflict as well.

16 Okay. And do we anticipate that it's going  
17 to take two or three days, Mr. Brooks?

18 MR. BROOKS: Mr. Chairman, that is what has  
19 been represented to me. I will, again, reiterate that I  
20 think the Division's case can be concluded within  
21 one-half day if our witnesses are not subjected to  
22 unreasonable cross-examination.

23 But I would add that at least two of the  
24 counsel would probably be happy with a 1:00 p.m. start  
25 on the 5th, one being -- being Mr. Olsen who has to come

1 here from Roswell, and the other being myself. I'm  
2 going to be on vacation the week before that, and I will  
3 be flying in that Sunday from Florida and hopefully  
4 without incident, but I've had some problems in the  
5 past. So there are plenty of flights on that route, so  
6 I should be able to be here by that evening -- Sunday  
7 evening, but if not, by Monday midday.

8 CHAIRPERSON CATANACH: Okay. Is there any  
9 opposition to starting at 1:00 p.m. on Monday, December  
10 5th?

11 MS. FOSTER: No opposition.

12 COMMISSIONER PADILLA: Is December 6th a  
13 Commission hearing? Are there going to be cases? Are  
14 they going to be pushed off?

15 CHAIRPERSON CATANACH: Oh, that's right.  
16 We have a December 6th docket, and I don't know what's  
17 going to be on the docket. We could --

18 Help me, if I'm wrong. We could move the  
19 cases off the 6th if we have to.

20 MS. BADA: We could.

21 CHAIRPERSON CATANACH: This is the only  
22 time to do this before the end of the year, so I would  
23 rather delay any other cases on the 6th. We can delay  
24 those cases --

25 COMMISSIONER PADILLA: I don't even know if

1    there is anything on the docket, but I know it's a  
2    regularly scheduled Commission hearing.

3                   CHAIRPERSON CATANACH:  If we had to --  
4    like, we have until -- if there was something pressing  
5    on that date, we could go until --

6                   You're available until the 8th?

7                   COMMISSIONER BALCH:  I have to leave  
8    sometime in the afternoon on the 8th.  Yes.

9                   CHAIRPERSON CATANACH:  That's at least four  
10   days -- no, three and a half.  Well, we'll see how it  
11   goes, but we can advise the parties ahead of time that  
12   the 6th is probably going to be reserved for this case,  
13   so we might have to go into January on something else.

14                  COMMISSIONER PADILLA:  So 1:00 p.m. on the  
15   5th?

16                  CHAIRPERSON CATANACH:  1:00 p.m. on the  
17   5th, it looks like.

18                  MR. BROOKS:  That's correct.

19                  CHAIRPERSON CATANACH:  Hopefully this will  
20   not get continued again.  That is my desire, not to  
21   continue it any further than that.

22                  MR. BROOKS:  Hopefully, sir.

23                  CHAIRPERSON CATANACH:  Okay.

24                  MR. FELDEWERT:  Mr. Chairman, Members of  
25   the Commission, I have a couple of housekeeping matters,



1 since that's the date, you know.

2 First off, as Mr. Brooks knows, there is a  
3 little confusion, on those hearing dates starting on  
4 Monday, as to when the exhibits and pre-hearing  
5 statements are to be filed.

6 I'm assuming that since we're starting on  
7 December the 5th, that the pre-hearing statements and  
8 proposed exhibits would be filed with the Commission on  
9 or before, I guess, November 28th, which is a Monday, or  
10 is it Tuesday? How do we interpret that rule?

11 MR. BROOKS: Mr. Chairman, there normally  
12 is a confusion about that, but I believe in this case  
13 there is not because, if I'm not mistaken -- you have a  
14 calendar in front of you, but if I'm not mistaken,  
15 December the 5th is the -- no, I am mistaken. December  
16 5th is not the Thursday after Thanksgiving. It's the  
17 next Thursday. There is a whole week there. So yes,  
18 there could be some room for confusion. I don't believe  
19 there is.

20 I believe that the rule clearly states that  
21 the pre-hearing statements are due on the -- due four  
22 business days before the meeting but not less than --  
23 not later than the Thursday before the meeting. Since  
24 the meetings are usually on Thursdays, that means that  
25 in the usual case, the pre-hearing statements are due on

1 Thursday, because if there are no holidays and if the  
2 meeting is on a Thursday, then the Thursday before the  
3 meeting is the applicable day. But if the meeting is on  
4 a day other than Thursday, then the Thursday before the  
5 meeting is less than four business days before the --  
6 before the hearing and, therefore, the four business  
7 days rule controls.

8 I would add, however, that the Commission  
9 has the power to set the pre-hearing statement by order.  
10 And since -- my understanding is there will be an order  
11 issued setting this date, then we could say in that  
12 order specifically when the pre-hearing statements would  
13 be due so no party would be confused.

14 MS. FOSTER: Mr. Chairman, in light of the  
15 fact that we're talking about dates and the ability to  
16 review pre-hearing statements, I'd like to renew my  
17 objection to this proceeding again. I did, before the  
18 hearing officer, and, again, I feel that because of the  
19 geographic area, the size of the geographic areas, the  
20 number of pools that are affected by this potential  
21 order that's going to come out of this hearing, that  
22 this is really a rule-making.

23 If this was a rule-making process, then we  
24 would have a 30-day notice. I would be able to notify  
25 my 300-plus companies and be able to show them what this

1 potential rule is all about rather than just four days.

2 So I would ask, you know, per Mr. Brooks'  
3 statement, that we get at least four business days --  
4 actual business days, not including the weekend, at a  
5 minimum.

6 But, again, this really should be a rule --  
7 rule-making process, which means we should really have  
8 30 days.

9 CHAIRPERSON CATANACH: So noted,  
10 Ms. Foster.

11 Mr. Brooks, given the four-day rule, that  
12 would put it at Monday, the 28th.

13 MR. BROOKS: I believe it would put it at  
14 Tuesday, the 29th, sir.

15 CHAIRPERSON CATANACH: Okay. So let's go  
16 ahead and set that as -- those would be due on the 29th  
17 of November.

18 MR. BROOKS: Yeah. Yes, sir.

19 COMMISSIONER BALCH: I wouldn't mind having  
20 a little more time. I have an excessive amount of  
21 travel in late November. I could be coming back from  
22 travel on Sunday right before the meeting.

23 CHAIRPERSON CATANACH: The problem is the  
24 previous week to that would be the Thanksgiving holiday,  
25 Thursday and Friday, so --

1 COMMISSIONER PADILLA: Maybe bump it back  
2 to the Monday before?

3 CHAIRPERSON CATANACH: The 21st? November  
4 21st? Is that what you're suggesting?

5 COMMISSIONER PADILLA: Sure.

6 COMMISSIONER BALCH: I would have time to  
7 review them.

8 CHAIRPERSON CATANACH: Is that a problem,  
9 Mr. Brooks, do you think?

10 MR. BROOKS: I believe not for the  
11 Division. I'm going to be on vacation at that time,  
12 but -- from then on up to through the hearing, but -- I  
13 mean until the beginning of the hearing (laughter).  
14 Excuse me. But if I have any need for assistance, I  
15 have the invaluable assistance of your entire staff to  
16 get ready.

17 CHAIRPERSON CATANACH: Correct.

18 Are there any other issues with that date?  
19 We have established that would be the 21st -- I'm  
20 sorry -- the 20th -- no. The 21st.

21 MR. FELDEWERT: No, Mr. Chairman. I think  
22 that would be a good idea, given the following week is  
23 Thanksgiving week.

24 CHAIRPERSON CATANACH: Okay. So then we'll  
25 set those due on the 21st of November.

1 MS. FOSTER: Thank you, Mr. Chairman.

2 MR. FELDEWERT: Mr. Chairman, one other  
3 housekeeping matter, if I may. I've looked at the  
4 pre-hearing statement, trying to ascertain where  
5 everybody stands on this. I recognize this is the  
6 Division's application, so I'm sure they will go first  
7 in their presentation. I understand from Mr. Olsen's  
8 pre-hearing statement, they are in favor of the rules as  
9 drafted. Therefore, it seems to me that they would then  
10 follow the Division. And then those that have expressed  
11 concern or opposition to the proposed rules would follow  
12 the presentation by the Division and the -- I'll call  
13 them Pecos Valley for short.

14 CHAIRPERSON CATANACH: And that would be my  
15 understanding. That would be correct.

16 MR. FELDEWERT: Okay.

17 MR. BROOKS: I don't know --

18 Mr. Olsen, did you hear Mr. Feldewert?

19 I'm not sure Mr. Olsen is still there.

20 MR. OLSEN: I did not hear completely.

21 MR. BROOKS: Okay. I believe, from  
22 conversations with you, that your expectations were at  
23 variance with that. I have nothing to do with this  
24 determination. It's entirely a matter for the Division.

25 Mr. Feldewert, would you mind reiterating

1 your position for Mr. Olsen?

2 MR. FELDEWERT: Yeah. Mr. Olsen, my  
3 position was since you have expressed support for the  
4 Division's rules in your pre-hearing statement, that it  
5 seemed to me that the Division and the Pecos Valley  
6 group would present their evidence first, and then the  
7 remaining parties who had expressed opposition or some  
8 issues with the proposal would present their evidence.  
9 I think that's the normal sequence.

10 MR. OLSEN: I agree with that, and we're  
11 prepared to go forward in that manner.

12 CHAIRPERSON CATANACH: Okay. Good. No  
13 issue there.

14 Anything else, Mr. Feldewert?

15 MR. FELDEWERT: No, sir. Thank you.

16 CHAIRPERSON CATANACH: Okay. Is there any  
17 other discussion at this time?

18 Mr. Olsen, anything you want to contribute?

19 MR. OLSEN: Mr. Chairman, I would simply  
20 like to thank you and the Commission and other counsel  
21 for allowing Ms. Mitchell and I to appear  
22 telephonically. We certainly appreciate that and the  
23 board of directors of the PVACD, also.

24 CHAIRPERSON CATANACH: You're welcome, sir.  
25 No problem.

1                   Okay. Anything else we need to take care  
2 of?

3                   Okay. Do I have a motion to adjourn the  
4 hearing?

5                   COMMISSIONER PADILLA: So moved.

6                   COMMISSIONER BALCH: And seconded.

7                   CHAIRPERSON CATANACH: All in favor.

8                   (Ayes are unanimous.)

9                   (Case Number 15487 concludes, 1:18 p.m.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

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4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court  
6 Reporter, New Mexico Certified Court Reporter No. 20,  
7 and Registered Professional Reporter, do hereby certify  
8 that I reported the foregoing proceedings in  
9 stenographic shorthand and that the foregoing pages are  
10 a true and correct transcript of those proceedings that  
11 were reduced to printed form by me to the best of my  
12 ability.

13 I FURTHER CERTIFY that the Reporter's  
14 Record of the proceedings truly and accurately reflects  
15 the exhibits, if any, offered by the respective parties.

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

20

21

22 MARY C. HANKINS, CCR, RPR  
23 Certified Court Reporter  
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25 Date of CCR Expiration: 12/31/2016  
Paul Baca Professional Court Reporters