

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

ORIGINAL

ADOPTION OF AGENDA,
ADOPTION OF JUNE 21, 2018 MINUTES,
CASE NO. 15844 CONTINUED,
AND

DISCUSSION OF AGENDA ITEMS 7 THROUGH 10

July 19 and July 20, 2018

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN
ED MARTIN, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the
New Mexico Oil Conservation Commission on Thursday,
July 19, 2018 and Friday, July 20, 2018, 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.

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1 (Thursday, July 19, 2018, 9:04 a.m.)

2 CHAIRWOMAN RILEY: Good morning, everyone.
3 Let's go ahead and get started. Today is July 19th. It
4 is now 9:04. We're going to start our regular meeting
5 for the Oil Conservation Commission. My name is Heather
6 Riley. I'm the Chair.

7 May I have roll call, please?

8 COMMISSIONER MARTIN: Ed Martin, designee
9 for the State Land Office.

10 COMMISSIONER BALCH: Dr. Robert Balch,
11 designee of the Secretary of Energy, Minerals and
12 Natural Resources.

13 CHAIRWOMAN RILEY: Who else have I got up
14 here?

15 MR. BRANCARD: Bill Brancard, Commission
16 counsel.

17 CHAIRWOMAN RILEY: So the first item is the
18 agenda. Have you-all had a chance to review the agenda?

19 COMMISSIONER BALCH: I have reviewed the
20 agenda. I would move to adopt it.

21 COMMISSIONER MARTIN: Second.

22 CHAIRWOMAN RILEY: So moved.

23 We also have in front of us the minutes
24 from the last meeting, June 21st. Have you-all had a
25 chance to review that?

1 COMMISSIONER MARTIN: I've reviewed it and
2 move it be adopted.

3 COMMISSIONER BALCH: And I second that
4 motion.

5 CHAIRWOMAN RILEY: So moved.

6 (The proceedings conclude, 9:04 a.m.)

7 (Friday, July 20, 2018, 9:02 a.m.)

8 CHAIRWOMAN RILEY: Good morning, everyone.
9 Let's go back on the record.

10 We've decided this morning that we're going
11 to jump ahead on the agenda. I'm looking for that case.

12 MR. FELDEWERT: Number six on the docket.

13 MR. BRANCARD: Madam Chair, do you want to
14 continue number five?

15 CHAIRWOMAN RILEY: Yes. So let's address
16 that first. We had a request for a continuance of the
17 de novo Case 15844 -- it was continued from the June
18 21st Commission meeting -- which is the amended
19 application of XTO Energy, Inc. for approval of the
20 expansion of the James Ranch Unit. So we'll go ahead
21 and continue that one.

22 MR. BRANCARD: Okay. To the August
23 meeting?

24 CHAIRWOMAN RILEY: Yeah. Bump it ahead.

25 (The proceedings conclude, 9:03 a.m.)

1 (1:40 p.m.)

2 CHAIRWOMAN RILEY: All right. I'm going to
3 take us back to our agenda.

4 MR. BRANCARD: Speaking of which --

5 CHAIRWOMAN RILEY: I believe we are on item
6 number seven.

7 MR. BRANCARD: So this is exactly the
8 situation we just talked about. This is a rule that
9 you-all approved, approved the order, and we were
10 getting ready to file it, and we noticed -- go all the
11 way back to the rule in Section 14 -- there is what
12 appears to be a mistake in a word here. But because
13 it's a word, I prefer to bring it to the Commission here
14 to make sure this is not something substantial that you
15 think, you know, would require a new rulemaking.

16 So in Section 14, under 14C, it says, "If
17 the division district office does not approve or deny a
18 request for variance in requirements of 19.15 within 60
19 days of the date the request for variance was received
20 in the district office," then it says, "the plan is
21 deemed denied." It just seemed like an obvious mistake
22 that "plan" should be "variance," because "variance"
23 occurs twice before, and that's the only thing that's
24 being talked about in the sentence. But I didn't want
25 to make a word change like that without the Commission

1 sort of blessing that that was, in fact, a mistake.

2 COMMISSIONER BALCH: "Plan" could be the
3 wrong word, but I think "the variance" would work.

4 COMMISSIONER MARTIN: I agree.

5 CHAIRWOMAN RILEY: That whole section is
6 about a variance.

7 COMMISSIONER BALCH: Yup. I'm not sure if
8 it's a critical error, but we better at least clean it
9 up. Better to be clean than not clean. Certainly we've
10 had worse typos that made it into the orders.

11 MR. BRANCARD: And we may get a request for
12 rulemaking on the horizontal drilling rule. We found at
13 least two bad cross-references in there.

14 COMMISSIONER BALCH: Okay.

15 MR. BRANCARD: But that's already filed, so
16 we'd have to do another rulemaking.

17 This rule will be filed next week, the
18 release rule.

19 CHAIRWOMAN RILEY: So do we need to do
20 anything else with this?

21 MR. BRANCARD: No. I'm just making sure
22 it's okay with you.

23 CHAIRWOMAN RILEY: Okay. Very good.

24 And that takes us to pending litigation.
25 Do we have any updates on that?

1 MR. BRANCARD: We do. We have a new appeal
2 of a Commission decision. The horizontal drilling
3 rulemaking was appealed to the Court of Appeals by
4 Jalapeno. At this point, all we have is a notice of
5 appeal. They are -- I believe it was filed on the 11th.
6 They are requiring 30 days to submit to the Court of
7 Appeals a docketing statement which will list their
8 issues, what they're claiming is a problem with the
9 rulemaking. So we'll find out at that point what the
10 issues are. Within two weeks after that, we have to
11 file the record, which we've already started working on
12 with Florene to get the record ready for filing.

13 And then after that, the way it works with
14 the Court of Appeals, it's sort of up to them. They
15 take the docketing statement, and they take the record,
16 and they look it over, and they decide how to calendar
17 the appeal. They can either put it on the normal --
18 it's called general calendar, which would then
19 trigger -- it's in the notice to the parties, and that
20 would trigger a briefing schedule.

21 Their other option, if they think there is
22 not much to the appeal or that basically the agency on
23 the face of it really screwed up, they will issue what
24 they call -- assign it to the summary calendar and issue
25 a proposed summary decision, in which they'll say, "This

1 is obvious that, you know, there is no appeal here," or
2 that the agency should be reversed. Then the parties
3 are given a period of time to respond to that. And
4 sometimes after that, they go, "Okay. Well, there is an
5 issue here," and they'll put it on the normal briefing.

6 So those are the two options the Court of
7 Appeals has in this case, and we'll find out at some
8 point how they're going to schedule this. Maybe by the
9 next meeting, I should have the docketing statement from
10 Jalapeno, and we will know what their issues are with
11 the appeal.

12 Other than that, we have no news on all our
13 appeals.

14 CHAIRWOMAN RILEY: Okay. That takes us to
15 Number 9, "Other Business." I think we have some
16 scheduling we need to talk through.

17 COMMISSIONER BALCH: Yeah. I think
18 actually it would not be a bad idea to clarify the
19 schedule for the remainder of year at this time. It
20 would be perfect because I had dates different than some
21 other people on my calendar. And then we had a
22 discussion about November 16th.

23 CHAIRWOMAN RILEY: Yeah.

24 COMMISSIONER BALCH: So the next scheduled
25 meeting, at least on my calendar, is November 21st,

1 which is a Tuesday.

2 COMMISSIONER MARTIN: I have that also.

3 COMMISSIONER BALCH: And I'm just fine with
4 that.

5 CHAIRWOMAN RILEY: As do I.

6 COMMISSIONER BALCH: But is there any
7 impact on potential --

8 MR. BRANCARD: Yes.

9 COMMISSIONER BALCH: -- rulemaking as to
10 that date, I guess?

11 MR. BRANCARD: Yeah. I mean, at the -- at
12 the last meeting, I informed the Commission that if you
13 scheduled a rulemaking in August, it could be done and
14 filed by the end of the year. But I said that at the
15 beginning of the meeting when we were still planning on
16 meeting August 15th, and then you moved the meeting
17 to --

18 COMMISSIONER BALCH: The 21st.

19 MR. BRANCARD: -- the 21st. That sort of
20 throws things off a bit.

21 COMMISSIONER BALCH: Okay. So I am
22 available on the 9th or the 10th of August.

23 MR. BRANCARD: Well, that would make it
24 even harder for somebody to get in a petition.

25 COMMISSIONER BALCH: The whole week of the

1 13th, I'm unavailable.

2 MR. BRANCARD: So there are sort of two
3 ways to solve the problem if we have sort of a
4 substantial rulemaking. One is either to move the
5 October date back a day or two. I think it's scheduled
6 October 10th now. If you moved it to October 11th, we
7 would actually have, then, 30 days' notice that we could
8 accomplish. Okay?

9 The other option is that you could move the
10 December meeting ahead -- back a few days, which would
11 allow enough time for an order to be adopted and the
12 rehearing period to be done and filed before
13 January 1.

14 COMMISSIONER MARTIN: What's the December
15 date? The 17th?

16 COMMISSIONER BALCH: 13th, I think.

17 COMMISSIONER MARTIN: 13?

18 MR. BRANCARD: So you need to have at least
19 20 days before the end of the year.

20 COMMISSIONER BALCH: So it would need to be
21 before the 11th.

22 MR. BRANCARD: Right. Again, this is
23 totally dependent on if we actually get a request for a
24 substantive rulemaking next month. If we don't, I mean,
25 we don't change anything.

1 COMMISSIONER BALCH: So in a sense, the
2 August 21st date is okay?

3 MR. BRANCARD: Right. And then you can go
4 from there in scheduling.

5 COMMISSIONER BALCH: September 13th, would
6 that be okay also? I have September 13th as the --

7 CHAIRWOMAN RILEY: I have September 13th.

8 MR. BRANCARD: Yeah, that's fine.

9 COMMISSIONER BALCH: So you're suggesting
10 for October, maybe we move that a little bit back?

11 MR. BRANCARD: Right. But I'm just sort of
12 putting you on alert because if we get a request in in
13 August, then we may want to do that. But if we don't
14 get a request in, nobody submits anything. The only
15 rulemaking request is the one I mentioned, changing
16 cross-references. I don't think we need to worry about
17 that.

18 COMMISSIONER BALCH: Right now October is
19 for the 10th or the 11th?

20 CHAIRWOMAN RILEY: 10th.

21 COMMISSIONER MARTIN: Right now it's the
22 10th.

23 COMMISSIONER BALCH: And you were
24 suggesting the other day we could move it to is the 11th
25 if we wanted to.

1 MR. BRANCARD: Right, because the "New
2 Mexico Register" publishes on September 11th, so you
3 need 30 days from now to be good. So October 10th
4 fails. October 11th is good.

5 COMMISSIONER BALCH: Really any of those
6 days, 10th, 11th, 12th, works fine. I think the 10th,
7 because LOGOS may be proceeding, which I will also come
8 up for. I mean, I'm good with the 11th or 12th or
9 whatever.

10 COMMISSIONER MARTIN: Either one is okay
11 with me.

12 CHAIRWOMAN RILEY: If you guys bring me
13 birthday cake on the 11th, then I'll agree to it. I
14 have high expectations when it comes to my birthday.

15 COMMISSIONER MARTIN: I understand.

16 COMMISSIONER BALCH: Should we set the date
17 now or wait and see?

18 MR. BRANCARD: It's up to you. We can wait
19 and see if we get anything in August.

20 COMMISSIONER BALCH: In November, I have
21 the 15th -- no, the 16th.

22 COMMISSIONER MARTIN: August?

23 COMMISSIONER BALCH: November.

24 CHAIRWOMAN RILEY: November.

25 COMMISSIONER MARTIN: Oh, November.

1 CHAIRWOMAN RILEY: Is the 7th.

2 COMMISSIONER BALCH: And there is a request
3 for both of us to be somewhere else.

4 CHAIRWOMAN RILEY: On the 15th?

5 COMMISSIONER MARTIN: The 15th should be
6 okay.

7 CHAIRWOMAN RILEY: You're good?

8 COMMISSIONER BALCH: 15th of November?
9 Then we can just leave the 13th of December until we
10 know if we have rulemaking.

11 CHAIRWOMAN RILEY: Okay. So then we have
12 some cases that I think we need to talk about when to
13 put them on. Case Number 16040, which is OCD's
14 application regarding Cano Petro. And they have
15 appealed that.

16 Do you want to come up, Keith, and talk to
17 us about that?

18 MR. HERRMANN: Keith Herrmann representing
19 the Compliance and Enforcement Bureau of the Oil
20 Conservation Division.

21 We brought this case in front of the
22 division. It has appealed de novo. It hasn't been
23 calendared yet. However, in light of the appeal, we
24 would like to file another application for a hearing and
25 request that it be removed from the Commission and

1 joined with this case to consider some additional facts.

2 CHAIRWOMAN RILEY: So if we were to try and
3 schedule that for August 21st, is that too soon, or
4 can --

5 MR. HERRMANN: No. We would be ready for
6 the 21st.

7 CHAIRWOMAN RILEY: Do we have anything
8 else?

9 COMMISSIONER BALCH: The only thing we have
10 is this order --

11 MR. BRANCARD: Well, we have the case that
12 was continued from today.

13 COMMISSIONER BALCH: -- and the case
14 continued from today.

15 MR. BRANCARD: And then there are several
16 other de novo applications that have been hanging around
17 for months, and every time we schedule them, they ask
18 for continuances. So I thought maybe we would just put
19 them all on the calendar for August and see who wants to
20 show up.

21 COMMISSIONER BALCH: Sure.

22 COMMISSIONER MARTIN: Sounds good.

23 MR. BRANCARD: Try to force them to settle
24 or something.

25 CHAIRWOMAN RILEY: Do you know how long it

1 might take for this case?

2 MR. HERRMANN: I think our presentation
3 would be no more than two hours, probably closer to one.
4 But in their application for de novo hearing, Cano has
5 noted that they are in bankruptcy right now, and I can't
6 say how those issues might impact the length of the
7 hearing.

8 COMMISSIONER BALCH: So I think the
9 conflict the week of the 20th of August was with you,
10 Mr. Martin.

11 COMMISSIONER MARTIN: Yeah.

12 COMMISSIONER BALCH: So you can't be here
13 one of those days?

14 COMMISSIONER MARTIN: Actually, no. Later
15 in the week?

16 COMMISSIONER BALCH: Yeah.

17 COMMISSIONER MARTIN: No. I'm out 22
18 through 24.

19 COMMISSIONER BALCH: You're out.

20 COMMISSIONER MARTIN: Annual leave.

21 COMMISSIONER BALCH: Okay. That's why
22 we're going on the 21st.

23 COMMISSIONER MARTIN: Yeah.

24 COMMISSIONER BALCH: So we have just one
25 day for all of these cases.

1 CHAIRWOMAN RILEY: Unless we start Monday.

2 COMMISSIONER MARTIN: Monday's okay.

3 MR. HERRMANN: I might need to consult
4 Commissioner Martin about getting a witness available
5 from the State Land Office as well.

6 COMMISSIONER MARTIN: That would not be me,
7 you mean?

8 MR. HERRMANN: We may have to discuss that
9 (laughter).

10 COMMISSIONER BALCH: I mean, I don't mind
11 starting on the 20th. We can start on the 20th. All
12 right. So let's move August to the 20th, and it will
13 potentially be two days.

14 CHAIRWOMAN RILEY: And I think -- I'm not
15 sure the process for this since I haven't done it
16 before, but 19.15.4.20B says that the director is to
17 direct the OCC to hear the case. And so is that
18 appropriate now to put it on the record, that the
19 director is directing that case that's not filed yet?

20 MR. BRANCARD: Yeah. It's in the statute.
21 It gives you the ability to decide who hears that.

22 CHAIRWOMAN RILEY: Okay. Yes. I'd like it
23 to be combined with the other.

24 MR. BRANCARD: Well, once you get the
25 application in, you can -- I think what we've done in

1 the past -- and we've done that -- is that the director
2 issues an order --

3 CHAIRWOMAN RILEY: Okay.

4 MR. BRANCARD: -- citing the statute and
5 moving it. We've done that several times --

6 CHAIRWOMAN RILEY: That makes sense.

7 MR. BRANCARD: -- with cases --

8 CHAIRWOMAN RILEY: All right.

9 MR. BRANCARD: -- the landfill case and
10 several others.

11 CHAIRWOMAN RILEY: That's all I have for
12 other business. Does anyone else have other business?

13 COMMISSIONER MARTIN: I have none.

14 CHAIRWOMAN RILEY: Our next meeting then
15 will be August 20th.

16 Entertain a motion to -- do we have a
17 motion to adjourn?

18 COMMISSIONER MARTIN: I so move.

19 COMMISSIONER BALCH: And second it.

20 CHAIRWOMAN RILEY: This meeting is
21 adjourned.

22 Thank you, everyone.

23 (The proceedings conclude, 1:57 p.m.)

24

25

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO
3

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 DATED THIS 28th day of August 2018.

21

22

23

24

25



MARY C. HANKINS, CCR, RPR
Certified Court Reporter
New Mexico CCR No. 20

Date of CCR Expiration: 12/31/2018

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