

**STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION**

**Meeting Minutes
Regular Meeting
July 19-20, 2018
Porter Hall
Wendell Chino Building
1220 S. St. Francis Drive
Santa Fe, New Mexico 87505**

MEMBERS PRESENT:

Heather Riley	Chair, Oil Conservation Division
Robert Balch	Designee, Energy, Minerals and Natural Resources Department
Ed Martin	Designee, New Mexico State Land Commissioner

OTHERS PRESENT:

Bill Brancard, Counsel for the Commission

Item 1. Roll Call.

Roll was taken; a quorum was present.

Item 2. Approval of Agenda.

Action: Commissioner Balch moved adoption of the agenda. Commissioner Martin seconded the motion. The motion passed unanimously.

Item 3. Approval of minutes of June 21, 2018 meeting.

Action: Commissioner Martin moved to approve the minutes. Commissioner Balch seconded the motion. The motion passed unanimously.

**Item 4. Case No. 16078 (Rulemaking): (Continued from the May 24, 2018 Commission Meeting)
In the Matter of Proposed Amendments to the Commission's Rules on Financial Assurance and Plugging and Abandonment of Wells, 19.15.2, 19.15.8, and 19.15.25 NMAC**

Action: Appearances were made by David Brooks for the Oil Conservation Division (OCD) and Gary Larson for the Independent Petroleum Association of New Mexico (IPANM). Mr. Larson pointed out IPANM's proposed modifications to the rules.

OCD's first witness was Allison Marks, Deputy Director of the OCD in Santa Fe, New Mexico. Ms. Marks explained the rules being proposed by OCD section by section and addressed the modifications proposed by IPANM. Mr. Larson, Commissioner Martin, Commissioner Balch, and Chair Riley cross-examined the witness and she was excused.

OCD's next witness was Phillip Goetze, Petroleum Engineer with OCD in Santa Fe. He explained the proposed definitions regarding vertical depth and measured depth in a well. Counsel Brancard, Commissioner Balch, and Chair Riley cross-examined the witness, and he was excused.

Chair Riley asked for public comments. Sworn comments were presented as follows:

Larry Marker testified about his concerns with the proposed tiers of bonding and the increase in the blanket bond. Mr. Marker also offered written comments with some proposed rule modifications.

Rory McMinn testified about his concerns with the OCD proposal and his support for IPANM and Mr. Marker's proposed modifications.

Mr. Brooks and Mr. Larson made closing statements.

The Commission began deliberations in open session on each of the proposed rule amendments and modifications presented by OCD and IPANM. Ms. Marks was recalled to provide additional information regarding the well count and level of bond money available to OCD under both OCD's and IPANM's proposals.

The meeting was recessed at 4:47 p.m.

The meeting reconvened at 9:00 a.m. on July 20, 2018.

Deliberations were continued in Case No. 16078. The Commission made certain changes to the proposed rule and asked Counsel Brancard to draft a copy of the proposed rules incorporating all the Commission's changes. The Commission reviewed the proposed rules, as amended, and unanimously agreed to adopt them. Counsel Brancard was instructed to finalize an order and rules to be adopted and signed by the Commission at the August 21, 2018 regular Commission meeting.

Item 5. Case No. 15844 (De Novo): Amended Application of XTO Energy Inc. for Approval of the Expansion of the James Ranch Unit, Eddy County, New Mexico.

Action: A request for continuance of De Novo Case No. 15844 was received from the parties involved, and the Commission continued the case to the August 21, 2018 Commission meeting.

Item 6. Case No. 15855 (De Novo): Application of Delaware Energy LLC to Revoke the Injection Authority Granted Under SWD-1680 for the Alpha SWD No. 1 Well Operated by Alpha SWD Operating LLC, Eddy County, New Mexico.

Action: Appearances were made by Michael Feldewert for Delaware Energy LLC (Delaware) and Gary Larson for Alpha SWD Operating LLC (Alpha). Mr. Larson and Mr. Feldewert argued their clients' positions regarding whether Delaware had standing in this matter and whether the case should have been initially appealed de novo to the Commission instead of before the Oil Conservation Division (OCD or Division).

After a motion by Commissioner Balch and a second to the motion by Commissioner Martin, the Commission voted unanimously to close the meeting pursuant to NMAC 1978, Section 10-15-1H to deliberate on this matter. After a motion by Commissioner Balch and a second to the motion by Commissioner Martin, the Commission voted unanimously to go back into open session. Chair Riley announced that De Novo Case No. 15855 was the only matter discussed during the closed session. Counsel Brancard announced that the Commission wants to make it clear that the record shows missteps made by the Division in this matter. The Commission finds that allowing the Division to revoke at any time a prior final decision by the Division creates great uncertainty and is without authority under the Oil and Gas Act. Delaware should have either appealed Division Order SWD 1680 to the Commission under 70-2-17 or sought a writ of certiorari in the District Court under Rule 1-075 NMRA. Division Order No. R-14484-A in this matter is hereby vacated. Mr. Larson was requested to draft an order. Mr. Feldewert asked for a stay of the order so he can confer with his client about going to district court. He asked for a 30-day stay pending the decision by the district court on the appeal. Commissioner Balch made a motion to grant a 32-day stay in order that the matter can be addressed at the next Commission meeting. Commissioner Martin seconded the motion, and the motion unanimously passed. The case was continued to the Commission meeting scheduled for August 21, 2018.

Item 7. Final review of Case 15959, the proposed repeal and replacement of the Commission's Rule on Release Notification, 19.15.29 NMAC.

Action: Counsel Brancard informed the Commission that a minor mistake was found in the rule and order, and the Commission unanimously agreed that the change was non-substantive and could be made prior to filing. Counsel Brancard said that the final rule and order will be filed with the State Records Center.

Item 8. Pending litigation

Action: Counsel Brancard stated that Jalapeno Corporation has filed an appeal to the horizontal well rulemaking with the Court of Appeals. He said the OCD will have to file the record of the hearing with the Court.

Item 9. Other business

Action: Counsel Brancard stated that if a rulemaking application is received by the Commission and placed on the August agenda, it can be heard at the Commission's regularly scheduled October 10, 2018 meeting.

Keith Herrmann, Assistant General Counsel with the Oil Conservation Division, requested the Commission to hear Case 16359, a compliance order against Cano Petro of New Mexico, Inc., in conjunction with the De Novo case filed by Cano in Case 16040. The Commission unanimously agreed to hear the two cases on August 21, 2018.

A discussion was held on the scheduling of the August Commission Meeting, and the date was rescheduled from August 21 to August 20, 2018.

Item 10. Next meeting: August 20, 2018

Item 11. Adjournment.

The meeting was adjourned at 1:55 p.m.


Heather Riley, Chair