

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

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS

COMMISSIONER AGENDA HEARING

Agenda Items 1-3 and 12-15

November 4, 2020

Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
JORDAN KESSLER, COMMISSIONER
DR. THOMAS ENGLER, COMMISSIONER

This matter came on for virtual hearing before the New Mexico Oil Conservation Commission on Thursday, November 4, 2020, hosted by New Mexico Energy, Minerals, and Natural Resources Department via Webex platform.

Reported by: Irene Delgado, NMCCR 253
PAUL BACA PROFESSIONAL COURT REPORTERS
500 Fourth Street, NW, Suite 105
Albuquerque, NM 87102
505-843-9241

1 CHAIRWOMAN SANDOVAL: All right. Well, it looks
2 like we've got everybody, so let's go ahead and get started.
3 Good morning, everybody. It is 9:05 on November the 4th,
4 2020, and this is the meeting of the Oil Conservation
5 Commission. I'm Adrienne Sandoval. I'm the head of the Oil
6 Conservation Division and the chair of the Oil Conservation
7 Commission.

8 Commissioners, would you please introduce
9 yourselves for the record?

10 COMMISSIONER KESSLER: Good morning. This is
11 Jordan Kessler, Commissioner of State Mineral Resources and
12 State Land.

13 COMMISSIONER ENGLER: Good morning, this is Tom
14 Engler, and I'm the secretary designate.

15 CHAIRWOMAN SANDOVAL: Thank you. Also with us, I
16 think Florene Davidson is trying to get on the meeting. She
17 should hopefully be joining shortly. She is Commission
18 clerk, as well as we have two representatives today from the
19 attorney general's office, Ms. Malave and then Mr. Moander,
20 who is going to be our new representation moving forward, so
21 they are joining us today.

22 First off in the agenda is approval of the
23 agenda. I will note that cases or Agenda Items Number 7, 8,
24 9, 10 and 11, have been continued and will not be heard on
25 today's docket. So with that modification, is there a

1 motion to adopt the agenda?

2 COMMISSIONER KESSLER: Director, I move to adopt
3 the agenda.

4 COMMISSIONER ENGLER: I second.

5 CHAIRWOMAN SANDOVAL: Ms. Malave, will you do a
6 roll call vote, please?

7 MS. MALAVE: Commissioner Kessler?

8 COMMISSIONER KESSLER: Approved.

9 MS. MALAVE: Commissioner Engler?

10 COMMISSIONER ENGLER: Approved.

11 MS. MALAVE: Commissioner Sandoval?

12 CHAIRWOMAN SANDOVAL: Approved. The motion
13 passes unanimously, and the agenda is adopted with the
14 changes that were stated.

15 (Motion passes unanimously.)

16 CHAIRWOMAN SANDOVAL: Item Number 3 is approval
17 of the October 15, 2020 minutes. Commissioners, have you
18 had a chance to review the minutes and do you have any
19 modifications to that?

20 COMMISSIONER KESSLER: Madam Chair, I reviewed
21 the minutes, and I do not have any modifications.

22 COMMISSIONER ENGLER: Madam Chair, I have also
23 reviewed them and have no changes.

24 CHAIRWOMAN SANDOVAL: Is there a motion to adopt
25 the minutes?

1 COMMISSIONER KESSLER: So moved.

2 COMMISSIONER ENGLER: Second.

3 CHAIRWOMAN SANDOVAL: Ms. Malave, would you
4 please do a roll call vote?

5 MS. MALAVE: Commissioner Kessler?

6 COMMISSIONER KESSLER: Approved.

7 MS. MALAVE: Commissioner Engler?

8 COMMISSIONER ENGLER: Approved.

9 MS. MALAVE: Commissioner Sandoval?

10 CHAIRWOMAN SANDOVAL: Approved. The motion
11 passes unanimously, and the October 15, 2020 minutes are
12 approved.

13 (Motion passes unanimously.)

14 (Agenda Items 4 through 6 heard.)

15 CHAIRWOMAN SANDOVAL: As I said earlier, Agenda
16 Items Number 7 through 11 were continued. And Ms. Malave,
17 is there any pending litigation?

18 MS. MALAVE: Chris will be delivering that.

19 MR. MOANDER: Hey, everybody. So we've got two
20 cases that are -- that we are looking at. One of them is
21 Jalapeno Corporation versus the Commission, Marathon Oil,
22 and New Mexico Oil & Gas Association. So what we are
23 looking at is a petition for writ of certiorari to the New
24 Mexico Supreme Court, a response -- and I will get into the
25 response issues here in a second more thoroughly, but this

1 is just the procedural status of the case.

2 There is a response due by any of the respondents
3 by November 9. Thus far no one has filed a response that
4 I'm aware of. No response is actually required to a
5 petition. The core of the case is law and some statutory
6 and case law interpretation. The issues that were presented
7 by Jalapeno Corporation, it's a challenge to the New Mexico
8 Court of Appeals' opinion affirming the Commission's rule on
9 charges and fixed spacing for horizontal wells.

10 And that's what I mentioned earlier, the
11 statutory interpretation issue, really, it's -- it's really
12 all the way down throughout the Commission's interpretation.
13 Similarly here, the rule, the appellant, Jalapeno, is really
14 focusing on the Court of Appeals claiming that the Court of
15 Appeals misread and misapplied relevant case law to the
16 facts presented.

17 So the issue in play is whether to draft a
18 response. At this point I don't know who else will file
19 something if at all. So we don't know what the positions of
20 the other parties are, though I'm always happy to hear that.

21 I believe Mr. Rankin might potentially have some
22 thoughts on this. I'd say the odds -- yeah. So at this
23 point in the briefing the next steps would be if the New
24 Mexico Supreme Court grants cert, the briefing cycle would
25 begin and we would appear on behalf of the Commission.

1 The other item up is the Marker appeal -- well,
2 one of the Marker appeals versus the Commission. We saw the
3 docketing statement come in on October 30 or October 20.
4 Mr. Marker has until December 4 of this year to file a brief
5 in chief, and then the briefing cycle would begin for the
6 Commission with a deadline of January 18 of 2021.

7 It's not clear what Mr. Marker's specific
8 complaints are. They appear to be rooted in Rule 19.15.5,
9 compliance and enforcement. We will know more if Mr. Marker
10 files a brief in chief, and if he does, our response brief
11 would be due on behalf of the Commission by January 18 of
12 2021.

13 So that's all we've got cooking in litigation at
14 the moment. I'm happy to answer questions if there are any
15 in particular.

16 CHAIRWOMAN SANDOVAL: Thank you. Is there any
17 other business in front of the Commission today?

18 (No audible response.)

19 CHAIRWOMAN SANDOVAL: All right. Then,
20 everybody, thank you. Our next meeting is on December 10.

21 COMMISSIONER ENGLER: Madam Chair, this is Tom
22 Engler. Do you know what's on the docket for the 10th, how
23 long it will be?

24 CHAIRWOMAN SANDOVAL: I believe we have an acid
25 gas injection case, a couple of compulsory pooling cases.

1 So if that isn't continued, it could potentially go a while.

2 COMMISSIONER ENGLER: The continued cases from
3 today, the Commission case 10321, they asked for the 10th.
4 Is that going to be on the 10th there or somewhere else?

5 CHAIRWOMAN SANDOVAL: They were scheduled for
6 February.

7 MS. MALAVE: Okay.

8 COMMISSIONER ENGLER: Just to beware, as I
9 mentioned to you, I am not available after the 10th. So if
10 you think that the 10th is going to be multiple days, I'm
11 not going to be around after that.

12 Now, I could do the 9th if you want to do 9th and
13 10th, but I'm gone the 11th.

14 CHAIRWOMAN SANDOVAL: Ms. Malave, is it too late
15 to move up that date?

16 MS. MALAVE: What's your -- I would have to look
17 at your Open Meetings Act resolution, but, you know, we are
18 looking just about a month out, I think -- no, it would be
19 okay, as long as you provide ample notice.

20 CHAIRWOMAN SANDOVAL: I'm fine with pushing it up
21 to the 9th. Commissioner Kessler?

22 COMMISSIONER KESSLER: I'm fine with it.

23 CHAIRWOMAN SANDOVAL: Okay. We can push it up to
24 the 9th, and then if it goes two days we would have the
25 10th.

1 COMMISSIONER ENGLER: Do you anticipate that it
2 will be two days then, because I don't know what's coming
3 up.

4 CHAIRWOMAN SANDOVAL: It just depends on if they
5 continue or not. If they don't continue, yes, it could
6 realistically be two days. If they do continue, like they
7 did yesterday, then maybe not.

8 COMMISSIONER ENGLER: Thank you.

9 CHAIRWOMAN SANDOVAL: Do we need for me to make a
10 motion, or do we just need to change notice it will be on
11 the 9th.

12 MS. MALAVE: You can move that and then we will
13 change notice.

14 CHAIRWOMAN SANDOVAL: Okay. All right. Is there
15 any other business?

16 (No audible response.)

17 CHAIRWOMAN SANDOVAL: All right. Our next
18 hearing is now December 9. And it is 12:08 and we will end
19 this hearing, this meeting. Thank you.

20 (Agenda items concluded.)

21

22

23

24

25

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 REPORTER'S CERTIFICATE

5

6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings to the best of my ability.

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

15 I FURTHER CERTIFY that the Virtual Proceeding was
16 of poor to good quality.

17 Dated this 4th day of November 2020.

18

/s/ Irene Delgado

19

Irene Delgado, NMCCR 253
License Expires: 12-31-20

20

21

22

23

24

25