

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

Election of Chair, Adoption of Agenda,
Adoption of Minutes of December 7, 2017,
Dismissal of Case Number 15856,
Continuance of Case Numbers 15655, 15659, 15656, 15660,
Hearing Dates Set for Case Numbers 15957 and 15959,
Legislative Update

January 18, 2018

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRPERSON
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, January 18, 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.

REPORTED BY: Mary C. Hankins, CCR, RPR
New Mexico CCR #20
Paul Baca Professional Court Reporters
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102
(505) 843-9241

1 (9:00 a.m.)

2 CHAIRWOMAN RILEY: Good morning. This is a
3 meeting of the New Mexico Oil and Gas Conservation
4 Commission, and as you-all know, I'm the new director,
5 Heather Riley. It's nice to have you-all here.

6 I'd like to have roll call.

7 Would the Commissioners please introduce
8 themselves for the record?

9 COMMISSIONER MARTIN: Ed Martin
10 representing the State Land Office.

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

14 CHAIRWOMAN RILEY: Thank you.

15 And we also have with us Bill Brancard,
16 counsel to the Commission.

17 The first order of business is to elect the
18 chairperson. Do I have any nominations for Chair?

19 COMMISSIONER BALCH: I'll tell you the same
20 thing I told David.

21 CHAIRWOMAN RILEY: Yeah.

22 COMMISSIONER BALCH: Traditionally, the OCD
23 fills that position -- because the office is right next
24 to Florene and it simplifies the paperwork and
25 communication. So I guess the nomination is for you.

1 COMMISSIONER MARTIN: I second.

2 CHAIRWOMAN RILEY: We had a first and a
3 second, so I say that that passes? I will be your --
4 your Chair.

5 All right. So the next thing we need to do
6 is the agenda. We have a list of agenda items. I don't
7 know if you-all have had a chance to take a look at
8 that, but a couple of changes here.

9 For item number seven, Case Number 15856
10 will be dismissed, and items eight to 11 will be
11 continued to the February meeting.

12 Do I have a motion and a second to adopt
13 the agenda?

14 COMMISSIONER MARTIN: I move we adopt it.

15 COMMISSIONER BALCH: And second.

16 CHAIRWOMAN RILEY: All right. So we have
17 officially adopted the agenda. Thank you.

18 You also have in your packet the minutes
19 from the last meeting, so December 7th, 2017. And if
20 you've had a chance to read those, do you have any
21 corrections?

22 COMMISSIONER BALCH: I've reviewed the
23 minutes, and I have no additional corrections.

24 COMMISSIONER MARTIN: Nor do I.

25 CHAIRWOMAN RILEY: Do I have a motion to

1 approve these minutes?

2 COMMISSIONER BALCH: So moved.

3 CHAIRWOMAN RILEY: Second?

4 COMMISSIONER MARTIN: Second.

5 CHAIRWOMAN RILEY: The minutes are
6 approved.

7 All right. Open Meetings Resolution. So
8 my understanding is annually we need to adopt and
9 approve the Open Meetings Resolution for 2018. Those
10 are in your packet as well.

11 And, Mr. Brancard, could you please explain
12 to us any changes to this for 2018?

13 MR. BRANCARD: Thank you, Madam Chair.

14 Other than changing the list of when we're
15 having the dates for meetings -- regularly scheduled
16 meetings for 2018, under paragraph two, there are no
17 other changes to the Open Meetings Resolution. We went
18 through it pretty thoroughly, I think, last year and
19 made some changes. So we're just changing the dates for
20 this year.

21 CHAIRWOMAN RILEY: Have you-all had a
22 chance to review this and see the dates for this year's
23 meetings?

24 COMMISSIONER BALCH: Yes. Both Ed and I,
25 along with David, set these dates, so I think it's more

1 for you.

2 CHAIRWOMAN RILEY: Okay. You know, my
3 calendar is fairly free, so I feel like these are good
4 dates. So do I have a motion to approve?

5 COMMISSIONER MARTIN: I so move.

6 COMMISSIONER BALCH: And seconded.

7 CHAIRWOMAN RILEY: Thank you. And the
8 resolution is approved.

9 COMMISSIONER BALCH: On that one, do we
10 need a voice for adopting?

11 MR. BRANCARD: Yeah. You can just say "all
12 those in favor."

13 CHAIRWOMAN RILEY: Okay. All those in
14 favor?

15 (Ayes are unanimous.)

16 CHAIRWOMAN RILEY: Okay. It's approved.

17 Sorry. I like to mess around a little bit.

18 Okay. So applications for rulemaking, I
19 think that's our next topic and the big one for the day.
20 We have two major rulemaking applications that are in,
21 and we need to get those set on the docket.

22 The two applications will be -- the first
23 one being Case Number 15957, will go to hearing first,
24 and I believe it's on the horizontal rule. And then --
25 so what we need to do is identify probably three or four

1 days in March or April to conduct this hearing.

2 Do you-all have preferences or days that
3 would be more convenient for you?

4 COMMISSIONER BALCH: Well, I brought my
5 calendar. March is pretty bad for me.

6 CHAIRWOMAN RILEY: Okay.

7 COMMISSIONER BALCH: I think I don't have
8 anything until the 27th.

9 CHAIRWOMAN RILEY: Oh, wow. Okay.

10 MR. BRANCARD: That's pretty bad.

11 COMMISSIONER BALCH: But we do have a
12 meeting, so that entire week leading up to that would be
13 possible.

14 COMMISSIONER MARTIN: February?

15 CHAIRWOMAN RILEY: March?

16 COMMISSIONER BALCH: February 27th to
17 March --

18 MR. BRANCARD: The earliest we can do it is
19 starting March 1st, based on getting the notice in the
20 New Mexico Register.

21 COMMISSIONER BALCH: Okay.

22 CHAIRWOMAN RILEY: Now, I don't know how
23 you-all do this normally, but personally I would think
24 having it on consecutive days would be ideal rather than
25 splitting it --

1 COMMISSIONER MARTIN: I agree.

2 CHAIRWOMAN RILEY: -- rather than splitting
3 it in two months.

4 COMMISSIONER BALCH: That's usually a
5 little more ideal. It's really hard to get everybody
6 back together, so finding a second date, if you don't
7 finish the first time around, could be months -- could
8 put it off for months --

9 CHAIRWOMAN RILEY: Uh-huh.

10 COMMISSIONER BALCH: -- getting all the
11 lawyers and witnesses and everything together.

12 CHAIRWOMAN RILEY: And the information gets
13 stale.

14 COMMISSIONER BALCH: Well, I mean, that's
15 not so much the problem because there is a record, and
16 we can go back to it. But we had one hearing that took
17 16 months, 48 meeting days. So those are not all
18 consecutive. Thank God.

19 CHAIRWOMAN RILEY: So in that case, how
20 about March? How does March look?

21 COMMISSIONER BALCH: April.

22 COMMISSIONER MARTIN: April.

23 CHAIRWOMAN RILEY: April?

24 COMMISSIONER MARTIN: I'm pretty open in
25 April.

1 COMMISSIONER BALCH: I'm trying to get on
2 the Internet here.

3 MR. BRANCARD: So the Commission's
4 scheduled meeting for April is April 12th.

5 COMMISSIONER BALCH: That full week is
6 available for me, or, actually, April looks very open.

7 COMMISSIONER MARTIN: For me, too.

8 COMMISSIONER BALCH: The only thing on my
9 calendar is the Commission meeting.

10 CHAIRWOMAN RILEY: Okay. So I'm just
11 looking for guidance from you-all. Would it make more
12 sense to start on a Monday or on a Tuesday to Friday?
13 What's your --

14 COMMISSIONER BALCH: I would think that if
15 there's a normal caseload -- there may be other cases
16 that would need to be heard on the 12th, which is the
17 scheduled meeting, so I would say another week and start
18 early. If you anticipate three or four days, start off
19 on Monday.

20 CHAIRWOMAN RILEY: So Monday the 9th?

21 COMMISSIONER BALCH: Well, we might
22 actually want to do it a separate week.

23 COMMISSIONER MARTIN: The 12th, start the
24 following Monday?

25 MR. BRANCARD: The 16th?

1 EXAMINER BROOKS: Mr. Feldewert raised the
2 point with me that I think is a good one, that we
3 start -- what day of the week is the 16th?

4 MR. BRANCARD: Monday.

5 EXAMINER BROOKS: That we not start on
6 Monday because we have a lot of witnesses coming in from
7 out of town and then they have to travel on the weekend.
8 And he suggested we start on Tuesday, if we have three
9 successive -- at least three successive days available.
10 If he wants to change that suggestion, he's here.
11 Mike's here, and he can address that. Seemed like a
12 good idea to me. It does not matter to me because I'm
13 here every day.

14 COMMISSIONER BALCH: Do you have a feel yet
15 for -- so three or four days, is that just the
16 presentation from the Division?

17 MS. BADA: The Division has half a day.
18 Most of it is going to be industry.

19 MR. FELDEWERT: That's fine. Yes. So my
20 thought is, I think there is a good chance we can get it
21 done in three days, but that assumes that there is no
22 extensive cross-examination. So it would seem to me if
23 we started on Tuesday, chances are we could be done by
24 Thursday, and then we'd have Friday available if things
25 didn't work out as anticipated.

1 And I do echo the point that it is
2 difficult, for people coming from out of town and also
3 just getting hearing prep, to start on Monday. It would
4 be preferable to start on Tuesday. That way the
5 witnesses can come in and get together on a Monday, and
6 we make sure we're ready to go. We're more organized
7 when they get here to us.

8 COMMISSIONER BALCH: All right. Sure.

9 COMMISSIONER MARTIN: I'm good with that.

10 MR. BRANCARD: 17, 18, 19? Does that work?

11 COMMISSIONER BALCH: Yeah. I think -- and
12 if it came down to the 23rd, that would be all right,
13 too. If, for some reason, it went very long, we could
14 just hold it over to the next Monday.

15 CHAIRWOMAN RILEY: Okay.

16 MR. FELDEWERT: So would we have April 20th
17 available as well? That's a Friday.

18 COMMISSIONER BALCH: That's a Friday, yeah.

19 MR. FELDEWERT: So that would give us --
20 we'd start on the 15th, and that would give us four
21 days.

22 CHAIRWOMAN RILEY: Uh-huh.

23 MR. FELDEWERT: I would think it could be
24 done in four days.

25 CHAIRWOMAN RILEY: Do I have a motion to

1 set this matter for hearing starting on April 17th and
2 extending through April 20th?

3 COMMISSIONER MARTIN: So moved.

4 COMMISSIONER BALCH: I second it.

5 CHAIRWOMAN RILEY: It's passed. This
6 matter is set for hearing.

7 So the second case that needs to be set is
8 Case Number 15959, same process. You-all can get your
9 calendars and tell me when.

10 MR. BRANCARD: Mr. Herrmann, how much time
11 do you think?

12 MR. HERRMANN: I expect one to two days for
13 the Division to present its case.

14 COMMISSIONER BALCH: Is there any
15 opposition?

16 MR. HERRMANN: None has been stated yet,
17 but it will be regarding releases, so it might be
18 anticipated.

19 COMMISSIONER BALCH: My anticipation is
20 there will be some public interest.

21 MR. HERRMANN: Yes. I'd agree with that.

22 COMMISSIONER BALCH: That may take
23 significant time, so I would suggest we do the same kind
24 of thing, go four days, schedule it for, just in case.

25 CHAIRWOMAN RILEY: Okay.

1 MR. HERRMANN: That would work for us.

2 MR. BRANCARD: So the Commission's meeting
3 in May is May 24th.

4 MR. HERRMANN: Yes.

5 CHAIRWOMAN RILEY: The 28th is Memorial
6 Day, so I would suggest we avoid that week. I think we
7 should try to do something similar, so Monday's held for
8 travel and prep.

9 COMMISSIONER BALCH: How about May 1st?
10 May 1st through the 4th?

11 MR. FELDEWERT: I believe I'm appearing on
12 behalf of NMOGA in the case. I haven't visited with
13 them.

14 My biggest problem is my daughter's
15 graduating from school that weekend, and I have the
16 privilege of helping her drive her car back from
17 Washington, D.C. to New Mexico. So I don't think I'll
18 be back until later that week.

19 COMMISSIONER BALCH: We'll just
20 conference-call you in.

21 MR. FELDEWERT: We could do that. If the
22 Bluetooth works, we might be okay.

23 COMMISSIONER BALCH: So the 28th would be
24 out. The 14th, I've actually got something that week.
25 And there is the Four Corners Oil and Gas Conference on

1 the 9th and the 10th. I don't know if people go to that
2 or not. Sometimes I do.

3 COMMISSIONER MARTIN: Sometimes I do, too.

4 CHAIRWOMAN RILEY: Okay.

5 COMMISSIONER BALCH: At the risk of having
6 too much fun in one month, we could look at -- I guess
7 you're going to be -- when are you going to be in D.C.?

8 MR. FELDEWERT: We're actually flying out
9 April 26th.

10 MR. BRANCARD: There's also --

11 CHAIRWOMAN RILEY: May is typically kind of
12 a crazy month for everybody with graduations.

13 MR. FELDEWERT: A lot graduations.

14 CHAIRWOMAN RILEY: Yeah.

15 COMMISSIONER BALCH: We could schedule it
16 with the regular Oil Commission meeting. Again, that
17 might push other cases back.

18 MR. BRANCARD: We could schedule it that
19 week.

20 COMMISSIONER BALCH: 22nd? If you want to
21 have it done in May, that's probably the only week it
22 can be done. Then there's June. I don't know how
23 pressing this particular matter is.

24 MR. BRANCARD: I think the pressing
25 deadline is December 31st, 2018.

1 COMMISSIONER BALCH: I could see that.

2 I don't have any preference.

3 COMMISSIONER MARTIN: I have none. Anytime
4 in May or June would be fine with me.

5 COMMISSIONER BALCH: June's pretty open,
6 too. June?

7 CHAIRWOMAN RILEY: What about June 5th?

8 COMMISSIONER BALCH: June 5th would work.

9 COMMISSIONER MARTIN: That's okay for me.

10 CHAIRWOMAN RILEY: Do I have a motion to
11 set this matter for hearing on June 5th lasting through
12 June 8th if needed?

13 COMMISSIONER BALCH: I would so move.

14 COMMISSIONER MARTIN: Second.

15 CHAIRWOMAN RILEY: All right. Then that's
16 passed. We have a hearing date.

17 So if there is no further discussion on
18 that, Mr. Brancard, do you have any pending litigation
19 information you want to give us?

20 MR. BRANCARD: Yes. I'll just update the
21 Commission. We have three appeals of Commission
22 decisions that are in district court right now. I don't
23 think we need to go into executive session to discuss
24 this. It's just an update. And one is from two years
25 ago, plus the geothermal case. It's still waiting for

1 the judge to make a decision on our motion to dismiss.

2 The second is the Jalapeno-Matador case,
3 where we have a partial motion to dismiss that is
4 pending. That was argued in November, and we're, again,
5 waiting for the judge to act on that motion.

6 And the final case is the LES-Urenco appeal
7 of the CK facility landfill permit. In that case it
8 was -- just recently, the briefing was completed, last
9 month -- late last month and the request for the judge
10 to set an oral argument in that case. So that'll be
11 coming up soon. In that case that's a different judge,
12 so hopefully this will move a little faster.

13 COMMISSIONER BALCH: I think CK will be
14 interested in a quick resolution.

15 MR. BRANCARD: Yeah. It took us a while to
16 get the briefing done, but now it's done, and there are
17 no pending motions. So the judge -- the judge can just
18 decide it on the briefs if he wants, but most of the
19 judges here in Santa Fe will have oral argument with the
20 parties and then decide the case after that. We're just
21 waiting for a setting. It's a brand-new judge, so
22 hopefully he's not too -- so that's the update on
23 litigation.

24 We started the legislative session this
25 week, by the way. It's a 30-day session. And at this

1 point, there's no legislation introduced so far dealing
2 directly with the Oil and Gas Act. The Department is
3 anticipating introducing legislation related to bonding
4 limits, raising the limits for the blanket bonds for oil
5 and gas operators. That's what we have planned. There
6 are rumbles that either the industry or NGOs will
7 introduce bills related to the penalty provisions in the
8 Act. I don't know if that's going to happen in the
9 30-day session. So it has to be the governor's call.

10 And then probably the biggest issue for the
11 agency during this session is potential funding of the
12 mediation of the brine well in Carlsbad. We are in the
13 process of choosing a party to do the remediation, but
14 we need money to do it. So the bill's pending in
15 legislation trying to deal with that issue. So we'll
16 see where that goes.

17 That's all I have to report.

18 CHAIRWOMAN RILEY: Thank you, Mr. Brancard.
19 The next meeting is scheduled for February
20 15th.

21 Are there any business or announcements
22 that we need to discuss at this time?

23 All right. If there is nothing else, do I
24 hear a motion to adjourn?

25 COMMISSIONER MARTIN: I so move.

1 COMMISSIONER BALCH: And seconded.

2 CHAIRWOMAN RILEY: All right. The meeting
3 is adjourned.

4 Thank you.

5 (The proceedings conclude, 9:19 a.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

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 31st day of January 2018.

21

22 MARY C. HANKINS, CCR, RPR
23 Certified Court Reporter
24 New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2018
Paul Baca Professional Court Reporters

24

25