

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

ADOPTION OF AGENDA,  
ADOPTION OF FEBRUARY 22, 2018 MINUTES,  
CONTINUATION OF CASE NUMBERS:  
15655, 15656, 15659, 15660, 15758, 15759

and

LEGISLATIVE UPDATE

March 1, 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, March 1, 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  
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1 (9:01 a.m.)

2 CHAIRWOMAN RILEY: I'd like to do a roll  
3 call.

4 Commissioners, please state your name for  
5 the record.

6 COMMISSIONER MARTIN: Ed Martin  
7 representing the State Land Office.

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

11 CHAIRWOMAN RILEY: Mr. Brancard?

12 MR. BRANCARD: Bill Brancard, counsel for  
13 the Commission.

14 CHAIRWOMAN RILEY: I'm Heather Riley,  
15 Director of the Oil and Gas Division and Chair for the  
16 Commission.

17 And so we're going to go over the agenda  
18 first.

19 Everybody, I don't know if you've had a  
20 chance to look through this, but there is not much for  
21 today. But if I could have a vote to approve the  
22 agenda.

23 COMMISSIONER BALCH: I would -- I've  
24 reviewed the agenda. I approve it -- I would move to  
25 approve it.

1 CHAIRWOMAN RILEY: Okay.

2 COMMISSIONER MARTIN: Second.

3 CHAIRWOMAN RILEY: So moved. The agenda is  
4 approved.

5 So we'll need to look at the minutes, which  
6 I know Florene sent those out to everyone, and I'm fine  
7 with them.

8 Have you-all had a chance to look at those,  
9 the minutes from the last meeting?

10 COMMISSIONER MARTIN: I have, and I move to  
11 accept them.

12 COMMISSIONER BALCH: I also have reviewed  
13 them and have no additional changes. Second the motion.

14 CHAIRWOMAN RILEY: Okay. The minutes are  
15 approved. I'll sign them.

16 All right. So let's go ahead and go  
17 through the cases that were going to be heard today.  
18 We've got Case Number 15655, de novo, continued from  
19 February 15th, and now this is going to be continued  
20 until the April 12th Commission meeting.

21 Case Number 15659, de novo, was continued  
22 from the February 15th meeting and is going to be  
23 continued to the April 12th Commission meeting.

24 Case Number 15656, de novo, continued from  
25 February 15th, will be heard on April 12th.

1 Case Number 15660, de novo, continued from  
2 February 15th, will be continued until April 12th.

3 Case Number 15758, de novo, continued from  
4 April 12th -- oh, this is going to be continued to April  
5 12th. Excuse me.

6 Case Number 15759 is going to be continued  
7 until April 12th.

8 And that takes care of all of the hearings  
9 that would have taken place.

10 Do we have -- is there anything on that  
11 front that you guys are aware of that we need to  
12 discuss?

13 MR. BRANCARD: No. I think we had a case  
14 filed yesterday, Florene?

15 MS. DAVIDSON: Excuse me?

16 MR. BRANCARD: Did we have another case  
17 filed yesterday?

18 MS. DAVIDSON: Yes, we did. Jim Bruce  
19 filed it, and he filed a de novo application. And I  
20 can't remember which one it was, but it will be set --  
21 he didn't ask for a specific date, but it will probably  
22 be April 12th.

23 COMMISSIONER BALCH: He's not going to --

24 CHAIRWOMAN RILEY: Okay.

25 MR. BRANCARD: You know, we've been in this

1 practice -- Florene's in a practice where folks ask for  
2 continuances, just to roll it to the next commission  
3 meeting, but you're going to be really busy in April,  
4 May and June. So I think we may want to have the  
5 discretion to sort of roll it past that at times.

6 CHAIRWOMAN RILEY: Past that?

7 COMMISSIONER BALCH: Are those mostly your  
8 cases?

9 MR. FELDEWERT: Not my appeals, but yes. I  
10 think that the one that Jim Bruce filed may be subject  
11 to a motion at some point, would be my guess, and I was  
12 going talk to him about this. I have to talk to him,  
13 because I think the April 12th case is going to be  
14 dealing more with motions. And then I think those other  
15 two groups of cases were continued primarily because the  
16 parties are trying to work things out. So ultimately  
17 I'm hoping you don't have to have any hearing.

18 COMMISSIONER BALCH: So if there is a  
19 request to push those to July, nobody's going to notice  
20 at the next meeting?

21 MR. FELDEWERT: Correct. I would think at  
22 the next meeting, if we can address it at that time --  
23 yeah. I mean, I can tell you what my opinion is, but  
24 that wouldn't represent anybody else.

25 COMMISSIONER BALCH: But you're the only

1 one here.

2 (Laughter.)

3 COMMISSIONER BALCH: They couldn't be  
4 bothered to show up.

5 MR. FELDEWERT: I mean, I think if we --  
6 these being pushed to April 12th, I think that will --  
7 by that time, we should have a real good understanding  
8 as to whether it's going to get resolved or not. At  
9 that point, if we have to have hearings later because of  
10 the Commission's schedule, I think everybody recognizes  
11 that.

12 COMMISSIONER BALCH: Okay.

13 CHAIRWOMAN RILEY: Okay.

14 MR. FELDEWERT: I think one of these is  
15 subject to a drill-and-stay order, too.

16 MR. BRANCARD: Yeah. We have another -- we  
17 have another case that's actually on a -- like a  
18 three-month motion, that we keep delaying it at three  
19 months while they're trying to settle it. But instead  
20 of just continuing it every time, they actually just ask  
21 for the case to be stayed, which is an option, you know,  
22 for you-all. When somebody files a case and you're in  
23 settlement, just immediately ask the Commission to stay  
24 it, then we don't have to keep adding it to docket after  
25 docket.

1 MR. FELDEWERT: Before they've filed the de  
2 novo appeal.

3 MR. BRANCARD: Well, when they file the de  
4 novo appeal, then file the stay, the appeal.

5 MR. FELDEWERT: Yes.

6 MR. BRANCARD: Basically, then the  
7 Commission can just simply say, Okay, report back to us  
8 in three months; if you haven't settled it by, then  
9 we'll set a hearing date.

10 MR. FELDEWERT: But the Cases 15758 and  
11 15759, I believe is the one that is subject to an agreed  
12 stay order. So no one's drilling at this point, so they  
13 can find out if they're competing -- drilling plans.

14 MR. BRANCARD: I guess there's no news on  
15 the litigation front. All the cases that are there are  
16 still sitting there, and we have three of them right now  
17 waiting for either -- a hearing in one case, the LES  
18 case, waiting for the judge to set a hearing, and the  
19 other two, we are waiting for the judge to make a  
20 decision on various motions to dismiss.

21 COMMISSIONER BALCH: I think in seven  
22 years, we've never not had a case sitting out there  
23 somewhere. It was the Pit Rule for --

24 MR. BRANCARD: That's right. Early on, it  
25 was the Pit Rule for a long time.

1                   COMMISSIONER BALCH: That took more than  
2 five years, I mean, after that. I started in 2011.

3                   MR. BRANCARD: Yeah. The original appeal  
4 was 2008. It wasn't resolved until 2014 or '15.

5                   MR. FELDEWERT: Right, two different  
6 appeals.

7                   MR. BRANCARD: Three appeals, actually.

8                   On the legislative front, we have a bill  
9 before the Governor that will increase financial  
10 assurance for blanket bonds. And so if the Governor  
11 signs that, that will trigger another rulemaking by the  
12 Commission, which --

13                   CHAIRWOMAN RILEY: Are there any updates on  
14 her signing?

15                   MR. BRANCARD: I think she just started  
16 focusing on the bills. Yesterday was the first set of  
17 announcements from them on signatures and vetoes, so --

18                   COMMISSIONER BALCH: They have until next  
19 Tuesday, right?

20                   MR. BRANCARD: Yeah.

21                   COMMISSIONER MARTIN: What happened with  
22 the legislation about the brine well, the 35 million  
23 general fund?

24                   MR. BRANCARD: Okay. Well, that's sort of  
25 a complicated process, but in the end, we have -- we

1 have -- we started adding it up yesterday. It looks  
2 like a little over 45 million that can be used for the  
3 brine well. It comes from various funds. It comes over  
4 a three-year period. But it's there to be used.

5           The big maneuver they did was to move fund  
6 money that comes out of the vehicle excise taxes, which  
7 is a tax you pay when you buy a car. That had always  
8 been going into the general fund. They moved a portion  
9 of that into the road fund, and then for three years,  
10 they take -- they took \$10 million from the road fund  
11 each year and moved that into the Carlsbad Brine Well  
12 Remediation Fund.

13           COMMISSIONER MARTIN: Is Carlsbad and Eddy  
14 Counties still contributing on that?

15           MR. BRANCARD: That 30 million, in fact, is  
16 contingent on about \$8 million from the City and County,  
17 which we understand they have passed resolutions  
18 approving that.

19           There is also another 3 million from the  
20 general fund, another 2 million from the Corrective  
21 Action Fund, which is the fund that the Environment  
22 Department uses to clean up underground storage tanks.  
23 And so -- and then there is almost 2 million that's  
24 coming in on the legislature's severance tax bond money,  
25 couple of severance tax bonds. So that adds up to about

1 45 million.

2                   There is another bill in front of the  
3 Governor that basically transfers the oversight of the  
4 remediation. Right now it's in the hands of our agency.  
5 It would go to, I think, probably the Carlsbad Brine  
6 Well Authority -- Mediation Authority, which exists now  
7 as strictly an advisory body, but the legislation turns  
8 it into a real live state agency with oversight of this.

9                   It also shifts the chairmanship of that  
10 authority from the mayor of Carlsbad to the Secretary of  
11 Energy and Minerals. So -- and it's administratively  
12 attached to our department, so I think we're still going  
13 to do the lion's share of the administrative work on the  
14 project. But there will be an authority which, you  
15 know, has local membership, et cetera, that will have  
16 some oversight and involvement in this. And that's  
17 probably a good thing for everyone, to have more local  
18 involvement in the project. And we are in the midst of  
19 negotiating a contract for remediation. So things will  
20 start moving in the next year or two down there, and  
21 we'll get that project going.

22                   But for our agency, those were the two big  
23 legislative efforts.

24                   There was an effort to increase the  
25 penalties or change the penalty structure under the Oil

1 & Gas Act, but it didn't get anywhere.

2 CHAIRWOMAN RILEY: Thank you.

3 Do we have any other business that needs  
4 discussed?

5 COMMISSIONER MARTIN: I don't.

6 COMMISSIONER BALCH: I have no other  
7 business.

8 CHAIRWOMAN RILEY: All right. So do I have  
9 a motion to adjourn?

10 COMMISSIONER BALCH: So moved.

11 COMMISSIONER MARTIN: Second.

12 CHAIRWOMAN RILEY: Meeting adjourned.

13 (The proceedings conclude, 9:12 a.m.)

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25 STATE OF NEW MEXICO

1 COUNTY OF BERNALILLO

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3 CERTIFICATE OF COURT REPORTER

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

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

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

19 DATED THIS 13th day of March 2018.

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