

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

April 12, 2018

Santa Fe, New Mexico

ADOPTION OF AGENDA, ADOPTION OF MARCH 1, 2018 MINUTES,

CASE NUMBER 16078 CALLED,

CASE NUMBERS 15655 AND 15656 CONTINUED,

CASE NUMBERS 15659 AND 15660 CONTINUED,

CASE NUMBERS 15758 AND 15759 CONTINUED,

CASE NUMBER 15844 CONTINUED,

AND

CASE NUMBER 15855 CONTINUED

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, April 12, 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

1 (9:00 a.m.)

2 CHAIRWOMAN RILEY: Let's go ahead and get  
3 started. Can I please take a roll call?

4 COMMISSIONER BALCH: Dr. Robert Balch,  
5 designee of the Secretary of Energy, Minerals and  
6 Natural Resources.

7 COMMISSIONER MARTIN: Ed Martin, designee  
8 of the New Mexico State Land Office.

9 MR. BRANCARD: Bill Brancard, counsel for  
10 the Commission.

11 CHAIRWOMAN RILEY: All right. Thank you.

12 I think everybody's had a chance to look  
13 through the minutes from the last meeting. Can I get a  
14 motion to approve those?

15 COMMISSIONER BALCH: Sure. I read them. I  
16 have no additional changes, and I would move to approve  
17 them.

18 COMMISSIONER MARTIN: I second.

19 CHAIRWOMAN RILEY: Okay. So moved.

20 The next thing on the agenda is Case Number  
21 16078, application of the New Mexico Oil Conservation  
22 Division for proposed amendments to the Commission's  
23 rules on financial assurance and plugging and  
24 abandonment of wells.

25 We need to decide whether and when we want

1 to hear this rulemaking case. So it's been suggested  
2 that we hear this on May 24th, which is --

3 MR. BRANCARD: That is the next regularly  
4 scheduled Commission meeting, so it'll be part of the  
5 regular meeting.

6 CHAIRWOMAN RILEY: Okay.

7 MR. BRANCARD: We can't hear it before  
8 that.

9 CHAIRWOMAN RILEY: Okay.

10 MR. BRANCARD: Not a day.

11 COMMISSIONER BALCH: Do we have a sense --  
12 I think we talked about this last time. It's probably  
13 only going to be half day or a day?

14 MR. BRANCARD: Probably a day. I don't  
15 think we've heard anything back from any parties at this  
16 point. I think there will be interest about this, but  
17 it's not that complicated rulemaking.

18 COMMISSIONER BALCH: We'll more or less be  
19 doing what the legislature is telling us to do, right?

20 MR. BRANCARD: Well, the bulk of what the  
21 Division submitted goes a little beyond that to deal  
22 with some other financial assurance issues.

23 COMMISSIONER BALCH: Seems all right. Plan  
24 forward.

25 COMMISSIONER MARTIN: May 24th is good.

1 CHAIRWOMAN RILEY: Do I have a motion? Do  
2 we need to --

3 MR. BRANCARD: Yeah. You need to --

4 COMMISSIONER MARTIN: I so move it for May  
5 24th, the hearing.

6 COMMISSIONER BALCH: I second the motion  
7 for rulemaking on the 24th.

8 CHAIRWOMAN RILEY: Okay. So moved. We'll  
9 hear this case on May 24th at the next regularly  
10 scheduled Commission hearing.

11 All right. The next thing we need to work  
12 through on here are all of the continued cases. So I'll  
13 go through the list.

14 Case Number 15655, de novo, was continued  
15 from the March 1st Commission meeting. That's going to  
16 be continued again. It's the application of Black  
17 Mountain Operating, LLC for a nonstandard oil spacing  
18 and proration unit, compulsory pooling and unorthodox  
19 well location.

20 Case Number 15659, de novo, was continued  
21 from March 1st, and it will also be continued, the  
22 application of GMT Exploration for a nonstandard oil  
23 spacing and proration unit and compulsory pooling.

24 Case Number 15656, de novo, continued from  
25 March 1st will also be continued, the application of

1 Black Mountain Operating, LLC for a nonstandard oil  
2 spacing and proration unit and compulsory pooling and an  
3 unorthodox well location.

4 Case Number 15660, de novo, continued from  
5 March 1st will be continued again, application of GMT  
6 Exploration Company, LLC for a nonstandard oil spacing  
7 and proration unit and compulsory pooling.

8 Case Number 15758, de novo, continued from  
9 March 1st will be continued again, application of  
10 OneEnergy Partners Operating for a nonstandard spacing  
11 and proration unit and compulsory pooling.

12 Case Number 15759, de novo, continued from  
13 March 1st will be continued again, application of  
14 OneEnergy Partners for a nonstandard spacing unit and  
15 proration unit and compulsory pooling.

16 Case Number 15844, de novo, this case will  
17 be continued. It's not had a previous continuation.  
18 It's the amended application of XTO Energy for approval  
19 of the expansion of the James Ranch Unit.

20 Case Number 15855, de novo, this case will  
21 be continued, application of Delaware Energy, LLC to  
22 revoke the injection authority granted under SWD-1680  
23 for the Alpha SWD No. 1 well operated by Alpha SWD  
24 Operating.

25 So do I have a motion on that?

1 MR. BRANCARD: No. I would assume the  
2 Commission is okay with the Chair handling the  
3 scheduling.

4 COMMISSIONER BALCH: Sure.

5 COMMISSIONER MARTIN: Yeah.

6 CHAIRWOMAN RILEY: So, Bill, do we need to  
7 look at this motion?

8 MR. BRANCARD: Yeah. There is a pending  
9 motion in 15855. So, obviously, there's time for a  
10 response to that, which we haven't -- we just got the  
11 motion, so there is time for a response to that.

12 I'll tell you right now, shooting from the  
13 hip, I'm not sure how the Commission can grant the  
14 relief that has been requested in this motion without a  
15 hearing.

16 CHAIRWOMAN RILEY: I just started looking  
17 at this, and I'm not comfortable with it either.

18 MR. BRANCARD: Yeah. I mean, it's a  
19 de novo proceeding in front of us, so we have no facts  
20 whatsoever to base a decision on. So unless the parties  
21 get facts to us either through a hearing or through a  
22 stipulation, we have no facts on which to base a  
23 decision on.

24 COMMISSIONER MARTIN: So you're saying they  
25 can bring up this legal matter at hearing?

1 MR. BRANCARD: Right. Or -- they can  
2 either do it at a hearing or stipulate to facts and then  
3 have a legal argument based on those facts. That's one  
4 way of doing that, but that's not what's happened so  
5 far.

6 COMMISSIONER BALCH: Either way, we have to  
7 meet to discuss stipulated facts --

8 MR. BRANCARD: Okay.

9 COMMISSIONER BALCH: -- which means we  
10 might as well have a hearing -- motion to dismiss early  
11 on.

12 MR. BRANCARD: Simple, you know, motion  
13 based on --

14 CHAIRWOMAN RILEY: I think the motion for  
15 continuance had requested it be set for May 24th, but I  
16 don't see how we'll have time for it on the May 24th  
17 docket.

18 COMMISSIONER BALCH: We can go through to  
19 the next day.

20 COMMISSIONER MARTIN: I'd rather do it and  
21 get it done. That's just my opinion.

22 COMMISSIONER BALCH: It shouldn't take two  
23 full days, so we should have time. In fact, I think, if  
24 necessary, it could even be continued to Monday.

25 CHAIRWOMAN RILEY: Yeah. It's Memorial

1 weekend. In fact, I was not planning on being here the  
2 Friday after the 24th.

3 COMMISSIONER BALCH: Well, we're within  
4 time to get it in on the 23rd, and then the 24th is the  
5 next hearing. We can move it up a bit. I think we can  
6 do that.

7 MR. BRANCARD: We can't do the rulemaking  
8 on the 23rd. I mean, the rulemaking has to be on the  
9 24th because of notice.

10 COMMISSIONER BALCH: But we can do this one  
11 on the 23rd.

12 COMMISSIONER MARTIN: I'll be in Artesia on  
13 the 23rd.

14 COMMISSIONER BALCH: Okay. We can't --  
15 you're planning on leaving the 24th?

16 CHAIRWOMAN RILEY: Uh-huh.

17 COMMISSIONER BALCH: Well, in June or the  
18 week of the 29th, I guess.

19 COMMISSIONER MARTIN: 21st? June 21st?

20 COMMISSIONER BALCH: Oh, June 21st? That's  
21 the next hearing, right?

22 COMMISSIONER MARTIN: Yeah.

23 COMMISSIONER BALCH: The matter has urgency  
24 to it? I guess we don't know. Do we have one of the  
25 lawyers?

1 MR. FELDEWERT: We have lawyers here.

2 COMMISSIONER BALCH: We have one of those  
3 lawyers.

4 MR. FELDEWERT: Yeah. If I may speak, the  
5 case is somewhat stuck in the mud, as you can imagine,  
6 with the appeal by the -- by Alpha SWD. And because of  
7 that appellate, the Division most likely will feel -- my  
8 understanding is that they feel like they cannot address  
9 any of the disposal applications before them. So the  
10 longer this drags out, the longer it impacts the  
11 parties' ability and the Division's ability to examine  
12 what I would consider to be competing well-disposal  
13 applications that are before them.

14 COMMISSIONER BALCH: So, Ed, when are you  
15 leaving for Artesia? Are you available on the 22nd or  
16 21st of May?

17 COMMISSIONER MARTIN: Well, yes. The 21st  
18 and 22nd is okay. I'm leaving early the morning of the  
19 23rd.

20 COMMISSIONER BALCH: We could do it the  
21 22nd, for that case, and the 24th for the rulemaking.

22 COMMISSIONER MARTIN: I'm good with that.

23 CHAIRWOMAN RILEY: I'm good with that.

24 MR. BRANCARD: Do we have time for notice,  
25 Florene?

1 MS. DAVIDSON: Yes. Right. Right, 20  
2 days.

3 MR. BRANCARD: Okay.

4 COMMISSIONER BALCH: All right.

5 MR. FELDEWERT: The other thing I would say  
6 is it might be helpful to have some discussion about  
7 what issues are going to be addressed because that would  
8 dictate, it seems to me, whether the parties actually  
9 have to present witnesses and how many witnesses.

10 MR. BRANCARD: Well, the Commission has no  
11 idea what the issues are in this case. It's sort of up  
12 to the parties. If you want to streamline the process  
13 somehow, then, you know, present a more discrete case to  
14 the Commission, that's sort of your option to try to do  
15 that, perhaps stipulate to a series of facts on which  
16 you could -- and argue other factors or other points of  
17 law based on it. That might help move it along.

18 COMMISSIONER BALCH: The parties are not in  
19 agreement, so it's going to be hard to do things out of  
20 the ordinary way.

21 MR. FELDEWERT: Let me say this. We're not  
22 the de novo applicant. We're the prevailing party. And  
23 as I read the Division's order, the Division rested its  
24 order solely based on its records; its records. And  
25 that's why I filed the motion because I guess I don't --

1 I suggest that the Commission is in a position for it to  
2 examine that legal issue based on the Division's  
3 records.

4 MR. BRANCARD: You're going to have to  
5 present those records to us or at least make us  
6 cognizant of what those records are in some fashion,  
7 either throughout a stipulation or through affidavits or  
8 however you-all want to do that. The Commission is not  
9 a research body, you know. The Commission has  
10 hearings --

11 MR. FELDEWERT: We certainly can attach --

12 MR. BRANCARD: -- and deals with the  
13 evidence that's presented to it.

14 MR. FELDEWERT: We can attach the Division  
15 records to a motion.

16 MR. LARSON: Madam Chair, Gary Larson for  
17 Alpha SWD Operating. We were just served with this  
18 motion late Tuesday afternoon. We do intend to file a  
19 written response, and we will be opposing the motion.

20 CHAIRWOMAN RILEY: Okay.

21 COMMISSIONER BALCH: So if it goes to  
22 hearing, what do you anticipate the time on the 22nd?  
23 Is that going to be enough?

24 MR. FELDEWERT: It seems to me -- what I  
25 would propose to do is to attach to our motion the

1 Division records that were utilized by the Division to  
2 reach its decision by way of -- it would be akin to a  
3 summary judgment motion. They could respond to those  
4 Division records and the legal arguments that are raised  
5 therein. It's simply a legal argument. And then if you  
6 wanted -- and then it seems to me that the most  
7 efficient thing would for you to consider that legal  
8 argument based on those facts from the Division records  
9 at your next hearing. I don't think we need to bring a  
10 series of witnesses out here to discuss facts that are  
11 evident from the Division's records. That is my  
12 opinion.

13 COMMISSIONER BALCH: I think we do that  
14 just about every time we have an appeal. We have  
15 witnesses come in, and they present the testimony.

16 MR. FELDEWERT: Well, let me step back.  
17 I'm not talking about testimony. I'm talking about the  
18 Division's recorded file in connection with the  
19 administrative order that they rescinded under this  
20 Division order. Okay? I'm not talking about the record  
21 from the hearing. What they did was basically -- in my  
22 opinion, what they did was -- there were a number of  
23 issues raised in that Division hearing. They properly  
24 examined the initial threshold issue of whether that  
25 administrative order was properly issued based on the

1 Division's records on that administrative order and  
2 determined it was not. And to me that's an issue that  
3 can be easily reviewed by the Commission without wasting  
4 your time and everybody else's time going through a  
5 lengthy hearing on issues that are extraneous. We have  
6 a threshold issue.

7 MR. LARSON: I don't know if I agree with  
8 Mr. Feldewert's assumption on the basis for the  
9 Division's decision. Certainly, he's welcome to submit  
10 whatever portions of the record he chooses to, but I  
11 don't know that we can jump from that evidence to this  
12 was the basis for the Division's ruling. And I will, of  
13 course, address that in our opposition.

14 MR. BRANCARD: So your proposal, then, is  
15 to file an amended motion to which you will attach  
16 documents that are a part of the record below?

17 MR. FELDEWERT: I would attach documents  
18 that are part of the Division's record for that  
19 administrative application that they revoked. And you  
20 can easily look at their order in the paragraphs that I  
21 cite, and you'll see that they addressed that threshold  
22 issue based on their own records from that  
23 administrative file and determined that it was issued  
24 prematurely.

25 So it seems to me that what I'm hearing

1 from you is that I need to supplement our motion with  
2 the actual Division file from that administrative order  
3 that the Division cited and utilized to conclude it had  
4 been issued prematurely. And that is independent of all  
5 the testimony that was at that initial hearing.

6 MR. BRANCARD: Shooting from the hip here,  
7 I guess my preference would be for the parties to  
8 stipulate to certain documents and facts and then go  
9 forward and argue based on that. In the absence of  
10 that, you can -- you can amend your motion,  
11 Mr. Feldewert, to attach documents, and Mr. Larson, in  
12 his response, can attach other documents or argue that  
13 those documents need to be presented at a hearing.

14 MR. FELDEWERT: That certainly makes sense  
15 to me.

16 MR. LARSON: That's agreeable.

17 CHAIRWOMAN RILEY: Okay.

18 MR. BRANCARD: Okay.

19 COMMISSIONER BALCH: So until this is dealt  
20 with, they can't really issue any more SWD permits. So  
21 if this part of it is dealt with, even if we end up  
22 going back to a hearing on the appeal --

23 MR. FELDEWERT: I think --

24 COMMISSIONER BALCH: -- will that fix the  
25 problem with the Division?

1 MR. FELDEWERT: I think what happened  
2 is the Division issued its order looking at its records,  
3 determined that the administrative order was issued  
4 prematurely and rescinded it. Okay? If you uphold that  
5 legal determination based on their records, then it  
6 seems to me that the next step of the parties is to then  
7 be at the Division with competing disposal applications,  
8 are then considered by the Division and all the evidence  
9 brought to bear on that. That's what I would see  
10 happening. Because all the Division did in its order  
11 was to rescind the prior administrative application  
12 because that was the threshold issue. And what should  
13 happen now is it should go back to the Division, and  
14 they should examine the competing disposal applications  
15 and make a decision on which one should be granted.

16 MR. LARSON: There is another element to  
17 that, which is Alpha SWD had injection authority,  
18 subsequently protested an application filed by Delaware.  
19 So with the rescission of their injection authority, I  
20 don't know that they would have standing to protest  
21 Delaware's subsequent application.

22 MR. FELDEWERT: Well, that would be an  
23 issue that Division would have to sort out in the  
24 competing application, none of which was done.

25 MR. BRANCARD: So the goal, I assume what

1 we're talking about here, is to have a hearing on the  
2 22nd?

3 CHAIRWOMAN RILEY: (Indicating.)

4 COMMISSIONER BALCH: It sounds like the  
5 22nd is available. The 22nd may be a little bit better  
6 for my travel.

7 CHAIRWOMAN RILEY: It's fine for me.

8 COMMISSIONER MARTIN: Yeah. It's okay with  
9 me.

10 COMMISSIONER BALCH: Assuming that's enough  
11 time.

12 MR. FELDEWERT: And to me, we'll get the  
13 papers filed and get the motion filed, get the documents  
14 filed, and then it seems to me that the 22nd would be  
15 argument on that, what I would consider the Division to  
16 consider to be the threshold issue.

17 MR. LARSON: I would be available on the  
18 22nd. I guess my question is: Would that hearing be  
19 solely on Mr. Feldewert's motion, or would it also be a  
20 hearing on Alpha's de novo application, because I do  
21 intend to bring witnesses?

22 MR. FELDEWERT: I would say -- I would  
23 suggest on the threshold issue, because if that is  
24 upheld, then the next step is to then, for the Division,  
25 having now rescinded that administrative order, okay,

1 getting back to square one, to then consider the  
2 competing applications.

3 MR. LARSON: And that's assuming that the  
4 motion is granted. If it's denied, then we're pushing  
5 back the hearing.

6 COMMISSIONER BALCH: Then the hearing gets  
7 pushed back to at least late June.

8 MR. LARSON: I'm sorry?

9 COMMISSIONER BALCH: At least late June.  
10 Mid to late June would be the hearing.

11 MR. LARSON: (Indicating.)

12 MR. FELDEWERT: That's fine with me.

13 MR. BRANCARD: So I would assume, given all  
14 the Commission has going on in the next two months, that  
15 it may work to just fit in an argument on the motion in  
16 May. As you say, you have a whole -- reading today's  
17 agenda, we have a whole stack of cases we keep  
18 continuing, that want to get on the docket, may want to  
19 have a hearing at some point, if they don't settle.

20 CHAIRWOMAN RILEY: So May 22nd sounds like  
21 it's a good date for everybody. We could consider the  
22 motion on May 22nd.

23 COMMISSIONER MARTIN: Would that include  
24 the records you've specified?

25 COMMISSIONER BALCH: Well, whatever they

1 stipulate.

2 MR. BRANCARD: Mr. Larson, what's the  
3 normal response to a motion? 15 days?

4 MR. LARSON: The Commission rules state  
5 whatever is reasonable under the circumstances. I was  
6 thinking maybe ten business days, but I would obviously  
7 wait until I see an amended motion.

8 MR. BRANCARD: Well, yeah. I think we need  
9 to set a deadline for Mr. Feldewert to submit a revised  
10 motion.

11 COMMISSIONER BALCH: We have the 20 days  
12 before the 22nd, right --

13 MS. DAVIDSON: Uh-huh.

14 COMMISSIONER BALCH: -- for notice? So the  
15 response has to be in before the first of May, I guess.

16 MR. BRANCARD: Well, we need  
17 Mr. Feldewert's motion to trigger this, really. We just  
18 need a reasonable time before the hearing for the  
19 Commission to review Mr. Larson's response.

20 MR. FELDEWERT: And really all I need to do  
21 is attach the Division records from the administrative  
22 file that they relied upon to issue their order.

23 MR. BRANCARD: Okay. Can you get that in  
24 by Monday, or do you want more -- I mean --

25 MR. FELDEWERT: Well, I think I'm going to

1 have to do that because next week's a little tied up, as  
2 is this week for me, but I can get somebody to get those  
3 records. And what I would do is just supplement the  
4 motion with the records that the Division cited from  
5 their administrative file.

6 MR. BRANCARD: Okay. And then so how about  
7 May 4th for a response?

8 MR. LARSON: That's reasonable. Actually,  
9 Mr. Feldewert, are you saying Monday, the 16th, you'll  
10 file the amended --

11 MR. FELDEWERT: Is that Monday? Whatever  
12 Monday is. Yes.

13 MR. LARSON: Yeah, May 4th. Madam Chair,  
14 May 4th will work.

15 MR. BRANCARD: Is the Commission okay with  
16 May 22nd, then, to hear this?

17 CHAIRWOMAN RILEY: You mean take it for a  
18 vote?

19 COMMISSIONER BALCH: Set a date --

20 MS. DAVIDSON: (Indicating.)

21 CHAIRWOMAN RILEY: Is there a motion to  
22 setting this matter on May 22nd?

23 COMMISSIONER MARTIN: So move.

24 COMMISSIONER BALCH: And second.

25 CHAIRWOMAN RILEY: Approved.

1           Is there any other business that needs to  
2 be taken care of today?

3           MR. BRANCARD: Madam Chair, we had a  
4 decision yesterday -- late yesterday from the district  
5 court on one of our appeals. There is a partial  
6 granting of Matador's motion. I'll take a more thorough  
7 look at it and send you an email summarizing. If I  
8 understand, it's knocked one issue out; is that correct?

9           MR. FELDEWERT: Correct.

10          MR. BRANCARD: There are four left, so  
11 we'll probably have to have a hearing on those. So I  
12 will forward to you and summarize what the Court said.

13          CHAIRWOMAN RILEY: Okay. Thank you.  
14 Anything else?

15          COMMISSIONER MARTIN: I don't have  
16 anything.

17          MR. BRANCARD: I think that's it.

18          CHAIRWOMAN RILEY: All right. Our next  
19 meeting is next week, April 17th, and it's the big one.

20          MR. BRANCARD: Tax day.

21          COMMISSIONER MARTIN: Let the fun begin.

22          CHAIRWOMAN RILEY: Let the fun begin.  
23 That's right.

24                 If there is nothing else, let's adjourn.

25                 Thank you, everyone.

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(The proceedings conclude, 9:27 a.m.)

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 13th day of May 2018.

21

22

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

25