

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

IN THE MATTER OF THE:

PROPOSED AMENDMENTS TO THE COMMISSION'S CASE NO. 16078
RULES ON FINANCIAL ASSURANCE AND
PLUGGING AND ABANDONMENT OF WELLS,
19.15.2, 19.15.8, AND 19.15.25 NMAC.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

August 20, 2018

Santa Fe, New Mexico

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 Monday,
August 20, 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 (9:03 a.m.)

2 CHAIRWOMAN RILEY: All right. So moving on
3 to our actual matters for today, the first one would be
4 Case Number 16078, which is a rulemaking. This is
5 continued from our July 19th Commission meeting, and
6 it's in the matter of proposed amendments to the
7 Commission rules on financial assurance and plugging and
8 abandonment of wells, 19.15.2, 19.15.8 and 19.15.25
9 NMAC.

10 We also have, in relation to this, an
11 application for rehearing that was filed by Larry
12 Marker. We need to deal with that initially, before
13 we -- before we rule on the amendment.

14 So, Mr. Brancard, do you have something on
15 that?

16 MR. BRANCARD: I believe I sent the
17 Commissioners a proposed order in this case. I hope
18 you-all had a chance to sort of look that over. There
19 is also the final rule. If anybody needs to look at
20 that, we can get copies of that.

21 We have from Mr. Marker an application for
22 rehearing, and if you look at the statute that
23 Mr. Marker is appealing under, he's either too early,
24 too late or doesn't have standing to do this. The
25 statute says, "Within 20 days after entry of order or

1 decision of the Commission, the party of record
2 adversely affected may file with the Commission an
3 application for rehearing." So in this case, Mr. Marker
4 is not a party to the rulemaking proceeding. He did not
5 file a pre-hearing statement. He was simply a member of
6 the public commenting on this matter.

7 And we normally apply this rule to be 20
8 days after the Commission actually signs the order.
9 That's the 20-day period that people can do that,
10 because the Commission is actually still in
11 deliberations at this point. You have not made a final
12 decision. So in that sense, he's too early. The rule
13 also says the Commission has ten days to act on any
14 application, and those days have come and gone since
15 Mr. Marker filed.

16 I think if the Commission sees any merit in
17 this application and the contents of it, you can view
18 this as a request to re-open the hearing. In other
19 words, you have not made a final decision on the matter
20 yet. You could re-open the hearing, but to do that,
21 under the Commission's regulations, you would have to
22 put it back out for public notice in order to re-open
23 the hearing.

24 So that's my analysis of Mr. Marker's
25 submittal. The Division has also submitted a response

1 to Mr. Marker's --

2 COMMISSIONER BALCH: What recourse does
3 Mr. Marker have after -- after the order is signed?
4 Does he then have the ability to appeal it?

5 MR. BRANCARD: Yeah, I think he might,
6 because I think the statute -- I know this issue was
7 debated when we did the new statute.

8 Well, the statute also refers to "any party
9 of record or any person adversely affected."

10 COMMISSIONER BALCH: "Or." Okay.

11 MR. BRANCARD: This was the debate in the
12 legislature when we proposed this statute, about who had
13 the ability to appeal this provision. And so the
14 legislature went with the broader interpretation, not
15 just a party, but anybody adversely affected by the rule
16 had the ability to appeal.

17 COMMISSIONER MARTIN: I think Mr. Marker
18 qualifies under the second basis.

19 MR. BRANCARD: Yes, I think so, too. If he
20 would like to, he could appeal this to the Court of
21 Appeals, if the Commission goes ahead with the rule.

22 COMMISSIONER BALCH: So he could wait until
23 the rule is signed and then refile this, essentially?

24 MR. BRANCARD: He could. Yes, he could. I
25 mean, he doesn't -- unlike your adjudicatory procedures

1 where you have to file an application for rehearing in
2 order to trigger an appeal, with the rule, it's
3 optional.

4 CHAIRWOMAN RILEY: My inclination is, for
5 reasons stated in the division's response, that we
6 should deny it for today, and then if he so chooses,
7 after we've issued the order, he can apply again.

8 COMMISSIONER BALCH: For lack of standing
9 and premature filing.

10 CHAIRWOMAN RILEY: Uh-huh. Yeah. I don't
11 think it would be appropriate for us to do it at this
12 point.

13 COMMISSIONER MARTIN: I agree, not based on
14 that standing --

15 COMMISSIONER BALCH: And the lack of
16 standing I was talking to referred to specifically this
17 stage of the process.

18 (The court reporter requested the
19 Commissioners speak louder.)

20 COMMISSIONER BALCH: I was just telling
21 Mr. Martin that the lack of standing I was referring to
22 had purely to do with this stage of the process, not
23 with Mr. Marker's lack of standing overall.

24 CHAIRWOMAN RILEY: Do we need to do
25 anything more official than that in terms of -- do we

1 need to vote on it or just state it?

2 MR. BRANCARD: That's fine. I think --
3 it's premature. You don't need to act on it.

4 CHAIRWOMAN RILEY: Okay. Okay. Well, then
5 moving to the order itself, Mr. Brancard had sent this
6 out to us last week. Do you-all need time to look
7 through it again?

8 COMMISSIONER MARTIN: I've reviewed it.

9 CHAIRWOMAN RILEY: I actually may have an
10 older copy of it. Do you want to look at it?

11 COMMISSIONER BALCH: I've looked at it
12 online, so as long as it hasn't changed since then.

13 MR. BRANCARD: It has not.

14 COMMISSIONER BALCH: Then I'm all right
15 with it.

16 COMMISSIONER MARTIN: I am, too.

17 CHAIRWOMAN RILEY: Okay. Do we need to
18 take a vote on this --

19 MR. BRANCARD: Well, at this point --

20 CHAIRWOMAN RILEY: -- or just sign?

21 MR. BRANCARD: -- what's before the
22 Commission is the formal adoption of the proposed rule
23 change and the proposed order to go with it.

24 COMMISSIONER BALCH: I move to adopt it.

25 COMMISSIONER MARTIN: I second it.

1 CHAIRWOMAN RILEY: All right. So moved.

2 Do you need a vote?

3 MR. BRANCARD: Yes.

4 CHAIRWOMAN RILEY: Okay. Can I please
5 have -- by saying aye if you approve this order as
6 proposed?

7 COMMISSIONER BALCH: Aye.

8 COMMISSIONER MARTIN: Aye.

9 CHAIRWOMAN RILEY: Aye.

10 (Ayes are unanimous.)

11 CHAIRWOMAN RILEY: Go ahead and sign.

12 COMMISSIONER BALCH: Shall we?

13 CHAIRWOMAN RILEY: Yes. Please start it,
14 Bob.

15 Do you want this in black ink?

16 MS. DAVIDSON: It doesn't matter.

17 CHAIRWOMAN RILEY: It doesn't matter? I've
18 been told both on different things. Some people want
19 you to sign blue so it shows up on the scanning, and
20 then there have been some -- usually the attorneys bring
21 me a black pen and say it has to be black. I'm going to
22 start signing in purple just to shake it up.

23 All right. That one is done. That
24 completes number four.

25 (Case Number 16078 concludes, 9:11 a.m.)

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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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 10th day of September 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

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