

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

IN THE MATTER OF THE PROPOSED  
AMENDMENTS TO THE COMMISSION'S  
RULES ON PRODUCED WATER,  
19.15.34.20 NMAC.

CASE NOS: 21469

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS  
COMMISSIONER HEARING  
Agenda Item 5  
October 15, 2020  
Santa Fe, New Mexico

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

This matter came on for virtual hearing before  
the New Mexico Oil Conservation Commission on Thursday,  
October 15, 2020, via Cisco Webex platform.

Reported by: Irene Delgado, NMCCR 253  
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1                   CHAIRWOMAN SANDOVAL: Moving on to Item Number 4  
2    -- I'm sorry -- Agenda Item Number 5, Case Number 21469,  
3    application for rulemaking pursuant to 19.15.38(A) NMAC,  
4    Petitioner WildEarth Guardians hereby petitions the New  
5    Mexico Oil Conservation Commission to amend 19.15.34.20  
6    NMAC, disposition of produced water and other oil field  
7    waste, a rule to regulate the disposition, handling,  
8    storage, recycling, treatment and disposal of produced water  
9    in a manner that protects public health, the environment and  
10   fresh water, NMSA 1978 70-2-12(B)(15).

11                   The OCC/OCD rules do not prohibit spills of  
12   produced water. The proposed rule would fill that glaring  
13   regulatory hole by specifically prohibiting the spilling or  
14   releasing of produced water.

15                   Upon application of WildEarth Guardians, the Oil  
16   Conservation Commission will review the request for a  
17   hearing on the rulemaking. Let's see.

18                   MS. MALAVE: Commissioner Sandoval, if I may?

19                   CHAIRWOMAN SANDOVAL: Go ahead.

20                   MS. MALAVE: I just want to clarify that the  
21   motion that what the Commission is considering today is  
22   simply whether or not to hold a rule hearing. And so if  
23   you've reviewed the application, and it -- you're going to  
24   vote on whether or not to grant a rule hearing to initiate  
25   that process or not.

1                   CHAIRWOMAN SANDOVAL: Well, thank you for the  
2 clarification for the record. Commissioners, have you  
3 reviewed the application from WildEarth Guardians?

4                   COMMISSIONER KESSLER: Director, I have reviewed  
5 the application, and I wonder if there may be a segment of  
6 the hearing where we could ask a couple of clarifying  
7 questions of the applicant.

8                   CHAIRWOMAN SANDOVAL: Yes, that is permitted, as  
9 well as both the New Mexico Oil & Gas Association and the  
10 Oil Conservation Division have requested to make statements  
11 today. So it might be best to first hear from or start with  
12 Mr. Timmons.

13                   Mr. Timmons, would you please give a brief  
14 statement regarding the rulemaking petition and then we can  
15 go into Commissioners' questions, and then we will go to the  
16 New Mexico Oil & Gas Association, and then we can move on to  
17 the Oil Conservation Division.

18                   MR. TIMMONS: Thank you, Madam Chair, I would  
19 like to take maybe five minutes, if that's okay.

20                   Madam Chair, Members of the Commission, again,  
21 Daniel Timmons on behalf of WildEarth Guardians. Thanks for  
22 the time today. I will try to be as brief as possible.

23                   Oil and gas waste water, a/k/a produced water, is  
24 toxic. The EPA and everyone else to study has confirmed  
25 this basic uncontroversial fact. Produced water contains

1 high levels of salts, heavy metals, organic compounds  
2 including detox contaminants, fracking chemicals both known  
3 and unknown and significant levels of radioactivity.

4 In fact, just this week researchers from Harvard  
5 University released a new study documenting landscape level  
6 radioactive contamination resulting from fracking across the  
7 country.

8 At the Commission's produced water rulemaking  
9 back in July, Guardians and the public at large were frankly  
10 shocked to learn that the Commission's rules don't actually  
11 prohibit spilling this toxic oil and gas waste. But given  
12 the staggering number of produced water spills that  
13 routinely occur across the state, perhaps we should. 7000  
14 produced water spills since 2010.

15 In the recent New Mexico Oil & Gas waste report  
16 released by Earthworks identified 822 oil and gas waste  
17 water spills in 2019 totaling 3.9 million gallons. To date  
18 in 2020 there have 539 reported spills, 266 major ones by  
19 October 1. That's a major spill of more than 1000 gallons  
20 every single day. This year alone more than 45,000 barrels  
21 of produced water have been reported as spilled and OCD  
22 records show that more than one-third of that was  
23 unrecovered, and, quote, lost in the environment, 700,000  
24 gallons of toxic produced water, simply lost.

25 As testimony back in July also showed, the vast

1 majority of these spills are preventable. They are results  
2 of human error, equipment failure and corrosion, causes  
3 which could be largely eliminated through proper training,  
4 maintenance and materials.

5           Now we recognize that the Commission's rules  
6 require reporting and clean up of spills, but frankly that  
7 is simply not good enough to protect the public health  
8 environment and fresh water resources as the legislature has  
9 specifically charged the Commission to regulate produced  
10 water.

11           As we discussed back in July a produced water  
12 pipeline that burst in January of this year showered a  
13 family home with toxic rain of produced water. Penny  
14 Aucoin's chickens are now all dead. Her dog is dead,  
15 euthanized after this exposure.

16           Now, the Division has reportedly deemed the spill  
17 clean-up complete, but there is still benzene, chloride and  
18 petroleum contaminants in the soil, and county health  
19 officials have directed the family not to eat anything grown  
20 on their property.

21           And this is just one of many examples that  
22 highlights the need to prevent spills from happening in the  
23 first place and not simply react after the fact. Guardian's  
24 rulemaking proposal is intended to fill that regulatory gap  
25 and prohibit spills and releases of produced water.

1           There is really not much else to say. Guardians  
2   and the public don't think it should be okay to spill toxic  
3   oil and gas waste water here in New Mexico, period. So we  
4   are asking the Commission to exercise its authority and to  
5   take this most basic step to protect public health, the  
6   environment and fresh water resources by prohibiting spills  
7   and releases of produced water.

8           Given the toxic emergency posed by daily waste  
9   water spills, we ask that you initiate a formal rulemaking  
10   on this proposal to be heard as soon as possible, preferably  
11   at your already-scheduled November meeting.

12           And again, I would be happy to answer any  
13   questions that you may have. Thank you.

14           CHAIRWOMAN SANDOVAL: Thank you, Mr. Timmons.  
15   Commissioner Kessler, did you want to begin with any  
16   questions?

17           COMMISSIONER KESSLER: Thank you, Director. Mr.  
18   Timmons, can you please explain to me why this rule,  
19   proposed rule (unclear) produced water rather than spills  
20   more generally?

21           MR. TIMMONS: Thank you, Commissioner. I think  
22   in reviewing this we have come to the understanding that  
23   broader reform on spills is likely needed. But given the  
24   current legislative and regulatory push to open up new uses  
25   of produced water, the recent rulemaking before the

1 Commission and the efforts at NMED, we felt that it was  
2 appropriate to focus on produced water as well as the fact  
3 that there are, you know, multiple spills a day happening  
4 across the state, daily major spills across the state, and  
5 this just seems a huge regulatory gap, so we wanted to take  
6 first a targeted approach at produced water and recognizing  
7 that broader spills reform is likely needed as well.

8 COMMISSIONER KESSLER: Thank you. (unclear) to  
9 amend this application for a proposed rulemaking hearing, or  
10 will the proposed application stand as it is?

11 MR. TIMMONS: At this point our intention is to  
12 maintain the rule as proposed. We believe that a broader  
13 spills rule would likely require a, a new application or at  
14 least a new notice given that if you went through the spills  
15 rules in particular, it would invoke a different regulatory  
16 provision, so we want to make sure that we provide proper  
17 notice of what's being proposed.

18 COMMISSIONER KESSLER: That was finishing my  
19 question. Thank you.

20 CHAIRWOMAN SANDOVAL: Dr. Engler, do you have any  
21 questions for Mr. Timmons?

22 COMMISSIONER ENGLER: No, I don't. Thank you.

23 CHAIRWOMAN SANDOVAL: Okay, I just have a couple  
24 of brief questions. So you said you are going to do a more  
25 targeted approach. I guess, are you familiar with OCD's



1 rules in that spills of all kinds are regulated under Part  
2 29?

3 MR. TIMMONS: Yes, Commissioner, we're aware that  
4 they are regulated, but our reading of the rules and from  
5 the testimony back in July, it's pretty clear that those  
6 rules do not actually prohibit spills.

7 CHAIRWOMAN SANDOVAL: Right. So but wouldn't it  
8 be more appropriate if you wanted to regulate spills for  
9 that under 29 and not Part 34?

10 MR. TIMMONS: I mean, I think that there are  
11 certainly different ways that the Commission could approach  
12 prohibiting spills. If the Commission was interested in a  
13 broader rules to prohibit spills across the board including  
14 oil and gas spills, certainly Part 29, the spills rule could  
15 be a place to do that.

16 We have been focused on the produced water issue  
17 just given the extreme volume of the produced water issue  
18 right now, and again the current regulatory and legislative  
19 focus on produced water. So given the efforts to expand  
20 uses of produced water in the state right now, that's why we  
21 focused on this.

22 We are certainly willing to investigate and work  
23 with the Division or the Commission to craft a broader  
24 spills reform, but we do feel that its appropriate to take  
25 a -- you know, given sort of the, I would say, the toxic

1 emergency of produced water right now, that focusing right  
2 on that produced water issue was our intention with this  
3 rule.

4 CHAIRWOMAN SANDOVAL: So would it be accurate to  
5 say that you are really only concerned about the produced  
6 water spills and not the remainder of the spills that  
7 happen?

8 MR. TIMMONS: No, I think we are absolutely  
9 concerned about the rest of them, just the produced water  
10 volume at this moment, we felt that a targeted approach is  
11 the way we wanted to start this. Again, if -- actually, I  
12 would be very interested to hear if the Commission is, I  
13 guess, willing to entertain at least the general concept of  
14 a spills -- of a broader spills prohibition which would  
15 certainly, I think, be great information to have.

16 And I think we would, again, be willing to work  
17 with the Division, Division staff, again, to craft a broader  
18 spills rule if that was something that the Commission at  
19 least sort of, I guess, generally was willing to entertain.

20 CHAIRWOMAN SANDOVAL: Okay. So are you aware of  
21 all of the filing time lines and the procedures and  
22 processes that go along with having a rulemaking hearing?

23 MR. TIMMONS: I have reviewed them, but I can't  
24 remember all of them off the top of my head, no.

25 CHAIRWOMAN SANDOVAL: So you had mentioned you

1 wanted to have this rulemaking hearing during the November 4  
2 hearing. There is some very rigorous scheduling time lines.  
3 It has to be posted in the New Mexico Register. Those are  
4 only posted twice a month on very certain days, you have  
5 twice (unclear) those days then dictate public comment time,  
6 et cetera.

7 The very soonest, due to like the regulatory time  
8 line we could have this hearing, is mid December, which  
9 basically butts up on Christmas, which is not something that  
10 the Commission would be willing to do.

11 In addition, I think, as the public is very well  
12 aware of, we will likely be having a rulemaking hearing  
13 early on in 20 -- well, 2021 now on venting and flaring,  
14 which will take the majority of the State's -- well, OCD's  
15 resources in order to implement.

16 So, in general, the earliest we can have this  
17 rulemaking hearing would probably be in April. So if we  
18 have venting and flaring, you know, if we're addressing that  
19 in early 2021 and we move into two months, a 60-day  
20 legislative session this time, which doesn't end until the  
21 very end of March, then we are looking at basically April.

22 So, you know, you said that something along the  
23 lines of if the Commission or the Division were willing to  
24 entertain a different rulemaking proposal, I mean, I think  
25 the whole purpose of this whole process, the Commission --

1 well, the Division doesn't have to entertain any sort of  
2 rule, you can propose whatever you want.

3 And due to regulatory time lines, if you were to  
4 propose something (unclear) it's probably going to impact  
5 whatever sort of rulemaking time line that may be in effect.  
6 So I just want to make sure you've done your homework and  
7 understand those regulatory time lines are tied to a  
8 rulemaking hearing.

9 MR. TIMMONS: Thank you, Madam Chair. I think a  
10 great Christmas present for the people of New Mexico would  
11 be to ban toxic spills. I appreciate the concerns about  
12 folks' time and holidays, but I think that if that's, if  
13 that's a doable thing, I think there is an emergency  
14 situation in the state right now with multiple spills of  
15 toxic waste occurring every single day.

16 So, again, I appreciate your concerns about  
17 holidays and butting up with the holidays, but that is a  
18 scheduled meeting on the Commission's agenda or on their  
19 calendar, I think it would be appropriate to move forward  
20 with a hearing at that date if that date can be reasonably  
21 issued.

22 CHAIRWOMAN SANDOVAL: Okay. Well, we have heard  
23 your perspective. Commissioners, do you have any additional  
24 questions?

25 COMMISSIONER KESSLER: I want to simply state,

1 Director, that I think an important component of this  
2 hearing, I think, it's a really important proposed rule,  
3 rule change that has been submitted, and I would also like  
4 to hear from the public on it, so I would like to ensure  
5 that we have -- not only that we fulfill the public comment  
6 requirement, but as for the produced water rule that was  
7 recently heard before the Commission, consider, you know,  
8 potentially an extended time frame so that we can receive  
9 the public comment that we need to hear to support decisions  
10 that we make. Thank you.

11 CHAIRWOMAN SANDOVAL: Thank you. So we'll go  
12 next to NMOGA and then the OCD and Commissioners and we'll  
13 circle back and discuss the proposal hearing time lines,  
14 what those sort of public engagement requirements would be.

15 We did, as Commissioner Kessler mentioned, do an  
16 extended comment and public engagement period on the front  
17 end of the rule. I believe 30 days is what's required, but  
18 we did something around 50, and we would probably want to do  
19 something synonymous here.

20 So let's go to NMOGA and then OCD and circle back  
21 around and have that discussion. Mr. Rankin, do you have  
22 any statements?

23 MR. RANKIN: (Inaudible.)

24 CHAIRWOMAN SANDOVAL: You may be muted.

25 MR. RANKIN: (Inaudible.)

1 CHAIRWOMAN SANDOVAL: Still can't hear you.

2 MR. RANKIN: How is that?

3 CHAIRWOMAN SANDOVAL: There you go.

4 MR. RANKIN: My assistant switched my microphone  
5 to the sound bar.

6 Good morning, Madam Chair, Commissioners, Adam  
7 Rankin with the law firm of Holland & Hart and appearing on  
8 behalf of NMOGA this morning. Thank you very much for the  
9 opportunity to respond.

10 At this time NMOGA is still evaluating the  
11 proposed rule, but, in general, in considering the  
12 proposals, we don't necessarily see a great need for the  
13 rulemaking or the proposed changes at this time.

14 As has been mentioned, the OCD does have a  
15 separate rule addressing spills, and in that rule it  
16 identifies -- it didn't use the word "prohibit," but it  
17 uses the word "unauthorized." So any release of any fluid  
18 that is not permitted is unauthorized.

19 So whether you use the word unauthorized or  
20 prohibited, it seems the intent is the same. And then of  
21 course under that rule there is a strong enforcement  
22 provision that gives the Division and Commission authority  
23 to enforce against parties who have not complied with the  
24 rule willing to unauthorize, so I have been through that, I  
25 know it's stringent enforcement Division.

1           So at this time, in light of that, you know, I  
2    think it's a little bit of a semantics game at this point,  
3    so we don't feel a great need to go through the rulemaking  
4    and take the effort and time.

5           But with that, we would like to reserve the  
6    opportunity to further comment depending on how the  
7    Commission decides whether to proceed or not.

8           And then finally on the rulemaking application  
9    itself, the applicants cite to an incident that I'm  
10   intimately familiar with. I just want to point out, I'm not  
11   aware the Division did approve the closure of that release.  
12   I'm not aware of any independent analysis at all that  
13   indicates there is still any unhealthy levels of  
14   contaminants in the soil of any kind, so I take issue with  
15   that.

16           I'm very familiar with this case, and I'm not  
17   aware of a single independent analysis out there that shows  
18   anything other than that the cleanup met closure  
19   requirements imposed by the Division.

20           So I, I just want to state my, my concern that  
21   that was considered in this application because I'm not --  
22   unless Mr. Timmons can point me to where those are, I think  
23   he maybe took it from a newspaper article, and I'm not aware  
24   of any analysis that supports his statement.

25           With that, Madam Chair, we have no further

1     comments at this time other than to evaluate the application  
2     and think maybe it might be better served on other matters  
3     that are (unclear).

4                 CHAIRWOMAN SANDOVAL:   Thank you, Mr. Rankin.   Do  
5     any of the Commissioners have any questions for Mr. Rankin?

6                 COMMISSIONER KESSLER:   No questions.

7                 COMMISSIONER ENGLER:    No, Madam Chair.

8                 CHAIRWOMAN SANDOVAL:   Thank you.   Mr. Ames, would  
9     you like to make any statement?

10                MR. AMES:   (Inaudible.)

11                CHAIRWOMAN SANDOVAL:   I think you're on mute, Mr.  
12     Ames.

13                MR. AMES:   Let's start again.

14                CHAIRWOMAN SANDOVAL:   Okay.

15                MR. AMES:   Thank you, Ms. Sandoval.   Good  
16     morning, Madam Chair, Members of the Commission, Eric Ames  
17     for the Oil Conservation Division.   Appreciate the  
18     opportunity to address you this morning.

19                OCD is concerned about this petition.   It appears  
20     to amend the wrong part of the OCD rules.   WEG proposes to  
21     amend Part 34.   According to the petition WEG's objective is  
22     to prohibit and make subject to enforcement the unauthorized  
23     release of produced water.   Putting aside the merits of the  
24     proposal, Part 34 is not the right place for the proposed  
25     amendment.



1           Part 34 authorizes the transportation, disposal,  
2   recycling and reuse of produced water, it does not regulate  
3   spills or releases. The right place to regulate spills and  
4   releases is Part 29, which is specifically designed for that  
5   purpose.

6           WEG also proposes to amend Section 20 of Part 34.  
7   That also doesn't make sense to us. Section 20 already  
8   prohibits the unauthorized disposal of produced water, and  
9   that prohibition is already enforceable by OCD.

10           Now, Bill Brancard and I brought this up with  
11   Mr. Timmons a few weeks ago, and we asked WEG to consider  
12   withdrawing its petition and refileing it in the right place  
13   in our rules, but WEG apparently has now refused.

14           Nonetheless, if the Commission decides to go  
15   ahead and schedule a hearing on this petition, we request  
16   that the hearing not be scheduled until after the Commission  
17   hears the venting and flaring proposed rules in January of  
18   2021 or anticipated to be heard in early January 2021.

19           Today OCD filed the proposed rules with the  
20   Commission. There will be a meeting, I believe, the  
21   beginning of next month to schedule a hearing on that  
22   petition, and OCD is requesting a hearing in early January.  
23   We do not believe it would be appropriate to hear WEG's  
24   proposed rules until after then.

25           First of all, WEG is sorely mistaken to think

1    their petition can be heard as early as November 4.  The  
2    rules are very clear.  If OCC agrees to have a hearing, a  
3    notice needs to be published in the New Mexico Register, and  
4    at least 30 days needs to pass before a hearing can be held.  
5    By my calculation that's no earlier than mid December.

6                   And if, in fact, OCC decides to include a longer  
7    public comment period given the significance of WEG's  
8    petition and the Commission's desire to hear -- or to give  
9    the public a full and fair opportunity to comment, that time  
10   will only be longer.

11                   I also would like to say that I think Mr. Timmons  
12   focused on Commissioner -- Commissioner or Chairwoman  
13   Sandoval's comment about Christmas as being a reason not to  
14   hear it is misplaced.  Chairman Sandoval also -- or  
15   Chairwoman Sandoval also mentioned OCD resources being  
16   fairly limited in another major hearing coming up, and I  
17   think it's important not to downplay that too much.  That's  
18   an important consideration to take into account.

19                   We only have so many attorneys and staff to go  
20   around, and to address this petition in a meaningful way  
21   will require a considerable amount of work, including  
22   possibly OCD filing its own petition.

23                   So that said, if the Commission decides to go  
24   forward and schedule a hearing, we request that it not be  
25   any sooner -- or, let me rephrase that.  We ask that it not

1 be until after the Commission hears the Division's proposals  
2 for the venting and flaring rules.

3 Thank you.

4 CHAIRWOMAN SANDOVAL: Thank you, Mr. Ames.  
5 Commissioners, do you have any questions for Mr. Ames?

6 COMMISSIONER KESSLER: I don't.

7 COMMISSIONER ENGLER: No, I don't.

8 CHAIRWOMAN SANDOVAL: Thank you. Mr. Ames, would  
9 you just very briefly explain for the Commission what the  
10 typical filing time lines are in terms of a rulemaking, like  
11 the regulatory time lines are.

12 MR. AMES: Sure, happy to, Commissioner. Once  
13 OCC decides to have a hearing -- and I should say, Ms.  
14 Malave is an expert in this as well, so you might want to  
15 ask her as well -- but once the OCC decides to have a  
16 hearing, a public notice needs to get published in the New  
17 Mexico Register.

18 The New Mexico Register publishes twice monthly.  
19 It has stringent submittal deadlines that occur about 10  
20 days to -- 10 to 14 days prior to publication. Once the  
21 notice is published in the Register, there is a mandatory  
22 waiting period of 30 days of public comment period.

23 So once you -- once you look at -- so when you  
24 figure out when the Register has published, then you figure  
25 out when the hearing can be. And according to my

1 calculation, the earliest a hearing could occur would be mid  
2 December provided that the Commission did not extend the  
3 public comment period beyond 30 days.

4 And then I guess I should also say, one week  
5 before the hearing, pursuant to Commission rules, prehearing  
6 statements are filed, but that's not really relevant to our  
7 discussion right now.

8 CHAIRWOMAN SANDOVAL: Thank you, Mr. Ames.  
9 Commissioners, do you have any follow-up questions for any  
10 of the three parties who entered appearances?

11 COMMISSIONER KESSLER: I have no additional  
12 questions, thanks.

13 COMMISSIONER ENGLER: I have no additional  
14 questions.

15 CHAIRWOMAN SANDOVAL: Okay. So now let's discuss  
16 a couple of things. We need to decide whether or not this  
17 rulemaking application should be set for a hearing, when  
18 that would be and what the parameters around that are.

19 Unfortunately we are in this position where we  
20 don't know what next month or three months from now will be  
21 in terms of the health pandemic, and so in my mind we have  
22 to move forward considering that.

23 I am open to having a hearing on this and  
24 scheduling it. I do not think that the OCD can do that  
25 until April, at the earliest, for really all of the time

1 frames and issues that Mr. Ames detailed in his statement.  
 2 But I do not ultimately have any concerns about scheduling  
 3 this for a hearing, it would just need to take into  
 4 consideration the venting and flaring rule, the limited  
 5 resources that we have, and that all of them are going to be  
 6 working towards that and then the two-month session that we  
 7 have after that.

8 So let's maybe first go through and discuss our  
 9 (unclear) Commissioner Kessler, where are you on scheduling  
 10 this for hearing? Are you open to scheduling this for  
 11 hearing, or would you wish to deny the proposal?

12 COMMISSIONER ENGLER: Madam Chair, this is Tom  
 13 Engler. I do have -- I actually truly agree that this has  
 14 been filed in the wrong section. I think this should get  
 15 returned back and WildEarth Guardians should go back and  
 16 think about Section 29.

17 So before you even want to schedule the timing to  
 18 hear this, I really don't like the fact that it's in the  
 19 wrong section. And so my opinion and I guess my take is  
 20 that this should get sent back to WildEarth Guardians to  
 21 review the appropriate section, 29, and then come back with  
 22 a better proposal. Thank you.

23 CHAIRWOMAN SANDOVAL: Thank you, Dr. Engler.  
 24 Commissioner Kessler?

25 COMMISSIONER KESSLER: Yes, I share that similar

1 concern related to the placement of the rule. I generally  
2 would like to hear this application. I have -- there's a  
3 question in my mind about whether or not there is a  
4 substantive argument rather than a procedural argument  
5 related to where the rule can be placed.

6 So I would support setting a hearing date for  
7 this application, understanding that, you know, we may get  
8 to hearing and hear arguments that it's not located in the  
9 correct section of OCD's code.

10 I also would just like to state concerns about  
11 potential amendment of the application with respect to  
12 notice, although that may be something that Guardians can  
13 hear. So I would support hearing this application. I would  
14 support setting a hearing date for this application.

15 I certainly would support hearing this  
16 application after the venting and flaring rule in January,  
17 although, you know, if we -- I don't think any of us have  
18 certainty about what the session will look like this year,  
19 so in my mind we could set this in February, March or April  
20 and continue it if there are conflicts that arise because of  
21 the session, you know, but that's something that we can  
22 discuss.

23 COMMISSIONER ENGLER: Madam Chair, do we discuss  
24 this separately then and provide a decision, or do we keep  
25 this open? How does this work?

1 CHAIRWOMAN SANDOVAL: Ms. Malave?

2 MS. MALAVE: So I think --- excuse me, I'm  
3 sorry -- Commissioner Engler, at this point, as I mentioned  
4 at the outset, this, what you are considering right now is  
5 whether or not to grant or deny the petition for a hearing.

6 And so, you know, in terms of the actual merits  
7 and the different arguments that both Mr. Timmons and  
8 Commissioner Kessler alluded to, those would be considered  
9 at the hearing, but that's not what you are considering  
10 right now. What you are considering is whether or not you  
11 are inclined to grant the hearing or not.

12 And at this point, you are looking at, for  
13 example, I looked up in the New Mexico Register, the  
14 earliest publication of this rule would be November 10, and  
15 if you are wanting a robust -- a robust public comment  
16 period, then you are looking, whether it's 30, 45, 60 days  
17 from November 10 for your public comment, and then after  
18 that, you are looking at then you can set the hearing for  
19 any time after your public comment period.

20 COMMISSIONER ENGLER: Thank you. I think, you  
21 know, as mentioned, you know, we have a lot of time and  
22 effort, and the Division does, too, towards this methane  
23 rule coming up. I am not in favor of trying to squeeze this  
24 in between now and then.

25 I am not in favor of, again, the fact that it's

1 in the wrong section. I do agree there are merits that I  
2 would like to hear and would definitely like to hear, but I  
3 just think this is the wrong section and the wrong time.

4 I don't think do we get to -- I guess, Ms.  
5 Sandoval, are we going to have a decision to agree to either  
6 deny or accept this, or how are we going to do that?

7 CHAIRWOMAN SANDOVAL: Yeah, we need to make a  
8 decision whether or not the Commission wants to accept this  
9 application or deny it. And if it accepts the application,  
10 what the conditions and parameters would be around the  
11 hearing, as well as what date we want to set it, so it's  
12 like twofold.

13 COMMISSIONER ENGLER: Well, I make a motion to  
14 deny it and to turn it back to WildEarth to look at possibly  
15 resubmitting under Section 29. That's my motion.

16 CHAIRWOMAN SANDOVAL: Is there a second for that  
17 motion?

18 (No response.)

19 CHAIRWOMAN SANDOVAL: I do not believe that there  
20 is a second for that motion, Dr. Engler. Maybe there is a  
21 counter-motion?

22 COMMISSIONER KESSLER: Director, I would move to  
23 accept the application that's been filed and set it for  
24 hearing, again noting the concerns that I've addressed  
25 earlier.



1           CHAIRWOMAN SANDOVAL: I would second that motion  
2 and also echo Commissioner Kessler's concerns, you know, I  
3 think it's worth hearing this application, but it does seem  
4 like it's positioned in the wrong place.

5           It might be much more practical and actually  
6 regulatory appropriate in another place, but if that is the  
7 way that WildEarth Guardians wants to move forward, that's,  
8 you know, their decision.

9           So I, again, I second that motion. Ms. Malave,  
10 would you do a roll call vote to approve the WildEarth  
11 Guardians' petition for rulemaking?

12           MS. MALAVE: Commissioner Kessler?

13           COMMISSIONER KESSLER: Approve.

14           MS. MALAVE: Commissioner Engler?

15           COMMISSIONER ENGLER: No.

16           MS. MALAVE: Commissioner Sandoval?

17           CHAIRWOMAN SANDOVAL: Approve. The motion  
18 carries two to one with Dr. Engler not agreeing.

19           (Motion passes 2-1.)

20           CHAIRWOMAN SANDOVAL: So now that we have decided  
21 to set it for a hearing, we need to determine the parameters  
22 around the hearing and when we should set that date. I do  
23 not feel comfortable having this hearing before the session.  
24 I believe the session ends the 19th of March is the last  
25 day.

1           I would be open to like maybe that first week of  
2   April setting a special hearing date. But just knowing how  
3   the session is and how burnt out everybody is, it might be  
4   good to have a day or two of a breather before we jump into  
5   a hearing. But I am open to hearing other suggestions, and,  
6   Dr. Engler, what your schedule is.

7           COMMISSIONER ENGLER: Well, again, thank you.  
8   What I do again is, I load my work here at Tech on Monday  
9   through Wednesday, so -- specifically so that Thursdays,  
10   Fridays are available.

11           So right now we have a meeting scheduled, OCC  
12   meeting for the 15th of April. I think that one already has  
13   cases into it or a schedule I believe; correct?

14           CHAIRWOMAN SANDOVAL: Yes.

15           COMMISSIONER ENGLER: I would -- earlier April  
16   than late April would be best for me because when you get  
17   late April you are getting very close to the end of  
18   semester. So that's -- Thursdays, Fridays, I can hold off.

19           CHAIRWOMAN SANDOVAL: I believe we have our March  
20   Commission hearing on the 25th, but we do already have cases  
21   on that. I might suggest April 1 or 2nd -- or 1st or 2nd  
22   would probably be more appropriate.

23           COMMISSIONER KESSLER: That's fine with me,  
24   Director. You know, again, I think it's hard for us, any of  
25   us to predict what April is going to look like, so -- even

1 in terms of the session, I don't know what it will look  
2 like, what we are used to. So I would restate, you know,  
3 the possibility of hearing it in February or March, but if  
4 that's something that (unclear) decides to work with  
5 resources, then I understand that, and I'm available April,  
6 I think, 2nd or 3rd.

7 CHAIRWOMAN SANDOVAL: 1st and 2nd?

8 COMMISSIONER KESSLER: That's fine with me.

9 COMMISSIONER ENGLER: You do know April 2nd is  
10 Good Friday?

11 CHAIRWOMAN SANDOVAL: Oh, is it? That could  
12 cause a conflict for some people.

13 COMMISSIONER KESSLER: Director, I think the Land  
14 Office sometimes -- well, in the past they've closed early.  
15 I think other agencies have as well.

16 CHAIRWOMAN SANDOVAL: Okay. 8th and 9th?

17 COMMISSIONER KESSLER: That's fine with me.

18 COMMISSIONER ENGLER: I can do that, yes.

19 CHAIRWOMAN SANDOVAL: Okay.

20 COMMISSIONER ENGLER: Do we think two days is  
21 going to be enough?

22 CHAIRWOMAN SANDOVAL: Last time two days was just  
23 enough. No? I saw you shake your head there. We could --  
24 it depends -- you said your Wednesdays are pretty rough? I  
25 believe you don't have spring break this year.

1                   COMMISSIONER ENGLER: That's a different  
2 problem -- question we are still working on.

3                   CHAIRWOMAN SANDOVAL: Okay.

4                   COMMISSIONER ENGLER: I can try -- if you decide  
5 if you want 7, 8, 9, I will work with that and figure out  
6 what -- from there. I can make it.

7                   CHAIRWOMAN SANDOVAL: Maybe we should say for 7,  
8 8 and 9, and then if we end, if we end early, that's  
9 fantastic.

10                  COMMISSIONER KESSLER: It seems if we are  
11 doing one and a half days would be Good Friday, and then  
12 spill over into the Thursday, Friday on the 8th and 9th.

13                  CHAIRWOMAN SANDOVAL: That would be fine. So  
14 basically you are saying do -- wait, say that again, 1st  
15 and 2nd, half day of the 2nd?

16                  COMMISSIONER KESSLER: Half day of 2nd, and then  
17 we can reserve whatever the following week, the 8th and 9th,  
18 hoping that it will not be a three-and-a-half day hearing,  
19 but anticipating that.

20                  CHAIRWOMAN SANDOVAL: That's fine with me. And  
21 then if it goes a lot further than expected, it's done  
22 earlier. I'm fine with that. Okay. So then what do we  
23 want to look at in terms of formatting? I think, you know,  
24 considering where the world is today, we have to set it for  
25 a virtual format.

1                   COMMISSIONER KESSLER: Let me ask, that's  
2 something that's two months from now, three months from now  
3 can look very different, is that something that we could, if  
4 we go from virtual to in-person, or are you meaning to stick  
5 with whatever we decide to do today?

6                   CHAIRWOMAN SANDOVAL: Ms. Malave, do you know?

7                   MS. MALAVE: No, because the notice of hearing,  
8 you know, you can decide in terms of whether or not -- your  
9 notice of hearing will indicate whether or not it's virtual  
10 or in-person or a hybrid, so you do not need to make that  
11 determination today. You can probably, you know, just wait.

12                   I mean, you have the date and then, you know, the  
13 notice of hearing later will indicate when or how, you know,  
14 that hearing will be held. What you need to consider,  
15 though, is how -- well, at this point you are accepting  
16 public comment, and then you will have your, you know, your  
17 public participation -- the hearing later.

18                   So at this point you can just decide how long  
19 your public comment period will be, and -- and given that  
20 you're talking about an April hearing, I mean, now you are  
21 looking -- you know, depending on when you get, you get this  
22 in the register, a prolonged public comment period, which is  
23 probably a good thing given the pandemic because you will  
24 have more people, you know, people have a longer period of  
25 time within which to submit comment.

1                   CHAIRWOMAN SANDOVAL: Okay. I mean, I think  
2     considering that we are planning to do it the meeting of  
3     April, a 60-day comment period might be appropriate.

4                   COMMISSIONER KESSLER: I'd agree with that.

5                   CHAIRWOMAN SANDOVAL: I think, like last time, it  
6     was helpful when people signed up ahead of time for public  
7     comment because it just helped keep some structure. So  
8     maybe if you want to make public comment, you know, public  
9     comment would be 60 days and submit a request to the  
10    Commission clerk.

11                  MS. MALAVE: Commissioner Sandoval, we can work  
12    on the details for that in terms of when we do, when we  
13    prepare the notice to be published, we can work on those  
14    details.

15                  CHAIRWOMAN SANDOVAL: Okay. So maybe we just  
16    need to relate how long the public comment period is. Okay.  
17    All right.

18                  COMMISSIONER KESSLER: Do you need a motion for  
19    that, Counsel?

20                  CHAIRWOMAN SANDOVAL: Excuse me?

21                  COMMISSIONER KESSLER: Do you need a motion for  
22    how long the comment period would be?

23                  MS. MALAVE: Well, I guess you can do a motion.

24                  COMMISSIONER KESSLER: I would move that the  
25    comment period be 60 days.

1 MS. MALAVE: At least 60 days.

2 COMMISSIONER KESSLER: At least 60 days.

3 CHAIRWOMAN SANDOVAL: Is there a second?

4 COMMISSIONER ENGLER: I will second that.

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

7 MS. MALAVE: Commissioner Engler?

8 COMMISSIONER ENGLER: I approve.

9 MS. MALAVE: Commissioner Kessler?

10 COMMISSIONER KESSLER: I approve.

11 MS. MALAVE: Commissioner Sandoval?

12 CHAIRWOMAN SANDOVAL: Approved.

13 (Unanimous approval of 60 day comment period.)

14 CHAIRWOMAN SANDOVAL: All right. Well, the  
15 hearing will be set for April 1, half day April 2nd, and  
16 then continue the 8th and 9th if need be. There will be a  
17 60 day comment period for that. More details will be to  
18 come.

19 I will just make the note that with the hearing  
20 scheduled on April 1, that time frame, I suspect there will  
21 be time to withdraw an application and resubmit a new  
22 application and then get rescheduled on that same date if  
23 that were to be the path that the parties choose to go.

24 (Agenda Item 5 concluded.)

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 proceedings in stenographic shorthand and that the  
9 foregoing pages are a true and correct transcript of those  
10 proceedings that were reduced to printed form by me to the  
11 best of my ability.

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

16 I FURTHER CERTIFY that the Virtual Proceeding was  
17 of fair quality.

18 Dated this 15th day of October 2020.

19

/s/ Irene Delgado

20

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

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