

OIL CONSERVATION DIV.

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT ~~SC MAY 5 AM 5:29~~

OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY)
 THE OIL CONSERVATION COMMISSION FOR THE)
 PURPOSE OF CONSIDERING:) CASE NO. 12,169
)
 APPLICATION OF THE OIL CONSERVATION)
 DIVISION TO AMEND AND/OR ADOPT TAX)
 INCENTIVE RULES) ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
 JAMI BAILEY, COMMISSIONER
 ROBERT LEE, COMMISSIONER

April 22nd, 1999

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, April 22nd, 1999, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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I N D E X

April 22nd, 1999
 Commission Hearing
 CASE NO. 12,169

	PAGE
REPORTER'S CERTIFICATE	17

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D O C U M E N T S S U B M I T T E D

Identified

"30 Enhanced Oil Recovery Project Tax incentive"	3
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A P P E A R A N C E S

FOR THE COMMISSION:

LYN S. HEBERT
 Deputy General Counsel
 Energy, Minerals and Natural Resources Department
 2040 South Pacheco
 Santa Fe, New Mexico 87505

* * *

1 WHEREUPON, the following proceedings were had at
2 12:33 p.m.:

3 CHAIRMAN WROTENBERY: Florene, you made some
4 extra copies on the current draft of the incentive rules.
5 I don't know who all has those. Rick, have you gotten one
6 of those yet?

7 MR. FOPPIANO: No, I don't.

8 CHAIRMAN WROTENBERY: And please bear in mind,
9 this is a document in progress, so this is very much a
10 draft. But I wanted to go ahead, and the Commissioners
11 have already received copies of this draft of the
12 incentives.

13 We've also included in the notebook copies of the
14 -- for the Commissioners, copies of the incentive
15 legislation that was passed during this past legislative
16 session. There were -- Actually five incentive bills
17 passed. I've included a copy of the Land Office's Royalty
18 Relief Bill in here, just for everybody's information.
19 That's not something the Oil Conservation Commission will
20 be involved in implementing, but it's sort of an incentive
21 package that came out of the Legislature, so I've included
22 that in here for everybody's information.

23 We also had House Bill 11, which amended the
24 Production Restoration Incentive to basically open the
25 window for inactive wells that would be eligible for this

1 particular incentive. It had applied just to wells that
2 were inactive in the period January 1st, 1993, through
3 December 31st, 1994. The legislation was revised so that
4 the window is now a moving window, any two-year period
5 beginning on or after January 1st, 1993, any two-year
6 period of inactivity will qualify a well for the Production
7 Restoration Incentive if it's later brought back into
8 production.

9 We do have a draft of a rule that basically looks
10 pretty much like the current Commission rule on the
11 Production Restoration Incentive, except that we have
12 included that two-year window, the changes to the two-year
13 window, in here. There's not much else to note, I don't
14 think, about that particular proposal.

15 House Bill 280 is a new-well incentive. This is
16 the one, actually, that's already in effect. This
17 particular incentive provides a \$15,000 credit against the
18 emergency school tax for new wells that are spud, actually,
19 after January 1st, 1999, and before July 1st, 2000. It
20 applies to the first 600 new wells that are spud in that
21 period. And we do have a draft rule here to implement this
22 new incentive. For the most part, it tracks the statutory
23 language.

24 There is one thing in here to note, and that is
25 that we feel like the one difficulty we may encounter in

1 administering this incentive is trying to identify which
2 well was 599, which well was 600 and which well was 601.
3 We're going to have to conclude a procedure to make sure
4 that applications are timely filed and that they contain
5 all the information we need about date and time of
6 spudding, so that we can make that call about which well
7 was number 600, essentially, and is eligible.

8 And so we've included some language in here that
9 would require an application to be filed within 90 days of
10 completion of the well as a producer, just to make sure we
11 have a date certain and we know, okay, all applications are
12 in now, so we can go ahead and make the call about which
13 ones made the cutoff and which didn't.

14 I might note that that period may be too long.
15 Something for everybody to think about. The statute, by
16 its own terms, is repealed effective July 1st -- Oh, excuse
17 me, it's effective July 1st, 2001. So that should provide
18 plenty of time for everybody to get their paperwork in and
19 get their wells certified and their applications submitted
20 to Tax and Revenue Department, even with a 90-day time
21 period. I was thinking it expired July 1st, 2000, but
22 that's not right; it's 2001. So take a look at that and
23 see if you've got any thoughts on that one.

24 And then House Bill -- Actually the House --
25 Taxation and Revenue Committee substitute for House Bills

1 281 and 436 contain a revision to the well workover
2 incentive and a new incentive for stripper well properties.
3 The Well Workover Incentive was revised to basically
4 eliminate the requirement for an operator to provide a
5 production projection as part of the application process.
6 The previous incentive applied just to the incremental
7 production. This new incentive will apply to all
8 production from a well that is worked over.

9 Now, in exchange for getting that change in the
10 workover incentive, what the Legislature did was increase
11 the tax rate. So there's less of a tax break. The idea
12 was to keep the proposal revenue-neutral. There's less of
13 a tax break, but you get to apply it to all of the
14 production from the well, not just the incremental
15 production.

16 We've got a draft rule change here that
17 implements the new legislation. Some of the things we
18 still need to look at, we've still got some language in
19 here that talks about a production projection. This was
20 intended to apply just to wells that were certified before
21 July 1st of this year, before July 1st, 1999. I'm not even
22 sure if we need that language in here anymore, if we make
23 this rule effective at the time that the new incentive
24 becomes effective. So we need to look at that.

25 Also, we need to clarify. There is a provision

1 in the legislation that states that well workover projects
2 that were certified before July 1st, 1999, will be deemed
3 to be approved and certified in accordance with the
4 provisions of the new law. So they will be eligible for
5 the benefits of the new workover incentive. And that's not
6 in this current draft, we need to just make note of that.
7 That was brought to our attention by Frank Gray, that we
8 need to go ahead and incorporate into this rule that
9 language, just to make sure everybody is aware that the
10 previously certified workover projects will be eligible for
11 the benefits of the new incentive.

12 And then finally there's a stripper well
13 incentive, and production from stripper well properties
14 will be eligible for reduced severance tax rates and
15 reduced emergency school tax rates, provided the price of
16 oil, the price of gas in the preceding calendar year met
17 certain triggers that are set out in the legislation. The
18 Oil Conservation Division's role in implementing this
19 legislation is to certify those properties that qualify as
20 stripper well properties, based on the production from
21 those properties. And this will not involve an application
22 by the operator. The Division will be basically doing a
23 query of its production records to identify those
24 properties that qualify as stripper well properties and
25 then notifying the operators.

1 This particular draft laid that part of the
2 process out. One comment that we've gotten is that we need
3 some sort of a process where an operator can ask for a
4 review of the Division's decision either to include or not
5 to include a certain property as a stripper well property,
6 and we agree with that.

7 In fact, we are -- Throw this out, see what Rick
8 and Alan think about this. We are anticipating perhaps
9 within the next few weeks circulating a test run of our new
10 query that will help us determine which properties are
11 stripper well properties. And so we'll come up with a list
12 to circulate as a preliminary list of those properties that
13 we think are eligible currently, based on last year's
14 production, I should say.

15 I think that will be helpful to everybody, but I
16 wanted to ask you -- The one thing I don't want to have is
17 people panicking if certain of their properties are not on
18 the list, and getting too upset. Because we imagine that
19 in that test there will be some things, some results that
20 we'll need to validate and some errors that we'll have in
21 that first run that we'll need to correct, and we want to
22 make sure we go into the process with everybody
23 understanding that. Do you think that sounds like a --

24 MR. FOPPIANO: I think that's an excellent idea.

25 CHAIRMAN WROTENBERY: -- good process to go

1 through?

2 MR. FOPPIANO: I think it's an excellent idea.

3 CHAIRMAN WROTENBERY: Okay.

4 MR. ALEXANDER: My experience is, anytime you
5 develop any new queries to access databases, you have bugs
6 in them --

7 CHAIRMAN WROTENBERY: That's right.

8 MR. ALEXANDER: -- so that's a good way to
9 determine what they are before you really get into the
10 production mode of that.

11 CHAIRMAN WROTENBERY: Okay. Well, that's what
12 we're anticipating doing within the next few weeks. We are
13 required by the statute to actually do our certification of
14 properties by June 30th of each year. So if we get it out
15 within the next couple of weeks, that will give us about
16 two months to work through those bugs.

17 And also we anticipate that there's going to be
18 some data that needs to be completed and updated by
19 operators, and this will give everybody a chance to do that
20 work before June 30th.

21 And then also, even after we go through that
22 process, there will probably be some questions, and so we
23 would envision a process where an operator could ask for a
24 review and provide additional information to the Division
25 regarding a certain property.

1 And then ultimately, if the Division does not
2 grant certification of that property, a hearing could be
3 requested, is what we anticipate would happen.

4 So those provisions still need to be reflected in
5 the rule.

6 MR. FOPPIANO: I'd guess the biggest problem
7 would be around eligible wells. There might be some
8 disagreement about what's eligible, what's not eligible
9 and --

10 CHAIRMAN WROTENBERY: Yes.

11 MR. FOPPIANO: -- that would be a great thing to
12 do, is to set up a preliminary list --

13 CHAIRMAN WROTENBERY: Uh-huh.

14 MR. FOPPIANO: -- let people look it over to have
15 a chance to bring up any different data to the Commission.

16 CHAIRMAN WROTENBERY: Okay. That is what we
17 anticipate doing.

18 And then also included in your packet was a copy
19 of a new enhanced oil recovery project tax incentive rule.
20 This -- There's no substantive changes in this rule. I
21 think Rand may have done some editorial work, but there are
22 no substantive changes here. For some reason, this
23 particular rule was never codified in the Division's oil
24 and gas rules, and I don't know why that was. We've got it
25 in the form of an order currently, but it was never

1 codified. So we decided to go through that process so that
2 we'd have all of the incentive rules together in one place
3 in the Division statewide rules.

4 MR. FOPPIANO: Lori, could I make a comment?

5 CHAIRMAN WROTENBERY: Yes.

6 MR. FOPPIANO: Just real quickly, I've noticed,
7 particularly on the new well tax incentive, and it may be
8 on the others --

9 CHAIRMAN WROTENBERY: Uh-huh.

10 MR. FOPPIANO: -- the statute mentions
11 "operator", and "operator getting the benefit", and so
12 forth and so on. "Operator" in the tax code is defined as
13 all the owners in the well. But when you translate it down
14 to this level, "operator" is now being defined as the
15 actual operator of the well. And so there might be a
16 little bit of a problem in the way "operator" is defined.

17 I mean, if you look at the new well incentive,
18 you see that the definition -- well, actually "operator" is
19 not defined on the new well incentive, but it's defined on
20 the stripper. And the other places where it's the person
21 responsible for the actual physical operation of the oil
22 and gas well --

23 CHAIRMAN WROTENBERY: Uh-huh.

24 MR. FOPPIANO: -- and in the rules, proposed
25 rules, we say, the first paragraph there, it's the operator

1 of the gas well may receive the one-time credit. The
2 statute, when it says the "operator" there, meant everybody
3 in the well, not just the operator. And so there might be
4 some inconsistency when it comes down to the rule-making
5 level.

6 CHAIRMAN WROTENBERY: On the new well incentive
7 -- I'm trying to remember. Is that the case? I was trying
8 to remember right now.

9 MS. HEBERT: Which rule?

10 CHAIRMAN WROTENBERY: Huh?

11 MS. HEBERT: Which rule is this?

12 CHAIRMAN WROTENBERY: 280, is the new well
13 incentive.

14 Now, on the others, "operator" is defined in
15 different ways. In the Oil and Gas Incentive Act, it's
16 defined as the person responsible for the physical
17 operation and control of the well, because the provisions
18 of that Act relate to the process we're applying --

19 MR. FOPPIANO: Yeah.

20 CHAIRMAN WROTENBERY: -- for the incentive --

21 MR. FOPPIANO: Uh-huh.

22 CHAIRMAN WROTENBERY: -- and --

23 MR. FOPPIANO: But in the new well one in
24 particular --

25 CHAIRMAN WROTENBERY: Uh-huh.

1 MR. FOPPIANO: -- it doesn't show up in the
2 legislation, because the legislation amended a portion of
3 the code that where the definitions are in another portion
4 of the code, and it defines "operator" as the owners of the
5 well.

6 And so I just bring that up because -- The reason
7 why I know this is because when I first saw the legislation
8 I thought, Wow --

9 CHAIRMAN WROTENBERY: Uh-huh.

10 MR. FOPPIANO: -- a \$15,000 credit just to the
11 guy who's operating the well and not to the other interest
12 owners? It didn't seem to be real fair. And I went back
13 and read the rest of the section that -- left unchanged by
14 the legislation --

15 CHAIRMAN WROTENBERY: Uh-huh.

16 MR. FOPPIANO: -- and that's where the
17 definitions of "operator" are that apply to that tax -- or
18 to that legislation -- Bill 280.

19 So it can create a problem, I guess, when we
20 bring it down to the rule-making level.

21 CHAIRMAN WROTENBERY: Okay, we'll need to look at
22 that. I know the legislative intent was, there was just
23 one \$15,000 credit for each well.

24 MR. FOPPIANO: Yes, and it did not go only to the
25 operator.

1 CHAIRMAN WROTENBERY: That's going to be
2 interesting. Probably more so on the tax and revenue end
3 of implementing this than on our end, because --

4 MR. FOPPIANO: And it may be that because it's
5 the language in the rule that says the operator of the
6 well --

7 CHAIRMAN WROTENBERY: Uh-huh.

8 MR. FOPPIANO: -- gets to take the tax credit.
9 Maybe that's the part of it --

10 CHAIRMAN WROTENBERY: That's just tracking the
11 statute --

12 MR. FOPPIANO: Yes.

13 CHAIRMAN WROTENBERY: -- but I --

14 MR. FOPPIANO: But the statute, when it says
15 "operator" means somebody else.

16 CHAIRMAN WROTENBERY: It means a group of people,
17 is what you're saying. So we can -- Yeah, we can try to --

18 MR. FOPPIANO: We may just --

19 CHAIRMAN WROTENBERY: -- clarify that, yeah.

20 Now, in the other rules, I know we had worked
21 that distinction in, for instance, the workover incentive
22 and the production restoration incentive, and our rule
23 defines "operator" as the person responsible for physical
24 operation and control of the well, because they're the ones
25 responsible for filing the application with us. But I

1 think there are provisions that clarify that then the
2 operator notifies all the other interest owners who may
3 have a claim to --

4 MR. FOPPIANO: Yeah, it's just a problem --

5 CHAIRMAN WROTENBERY: -- the tax relief.

6 MR. FOPPIANO: -- with the way they use
7 "operator" in that portion of the tax code.

8 CHAIRMAN WROTENBERY: That's a good point. We'll
9 need to read through these and make sure that we haven't
10 misstated the intent of the legislation.

11 Okay, thank you.

12 Any other comments at this point?

13 We do hope to be able to work through the
14 language of these incentive rules pretty quickly here so
15 that we can adopt them by a Commission order at the next
16 Commission hearing in May, and that way we could get them
17 effective either at the same time or -- I guess they would
18 be come effective at the time that the legislation becomes
19 effective, is what we would do for most of them, and then
20 of course we could just make them effective upon
21 publication in the *Register* for the new well incentive,
22 because the legislation there is already in effect.

23 But -- So if anybody has any comments or
24 questions, we encourage you to bring those forward quickly.
25 And we will be meeting with some of the people from NMOGA

1 next week to work through the language in a little more
2 detail.

3 Anybody have any questions up here? Don't think
4 so.

5 Okay. Well, thank you very much. It's been a
6 long meeting, but I think we made a lot of progress, had a
7 lot of good discussion. Appreciate your patience.

8 The meeting is adjourned.

9 (Thereupon, these proceedings were concluded at
10 12:45 p.m.)

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