

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

Adoption of Agenda
and
Adoption of February 28, March 1 and March 8, 2017
Special Meeting Minutes
and
Other Business and Pending Litigation

April 4, 2017

Santa Fe, New Mexico

BEFORE: DAVID R. CATANACH, CHAIRPERSON
PATRICK PADILLA, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Tuesday, April 4, 2017, 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.

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1 (9:06 a.m.)

2 CHAIRMAN CATANACH: Call the hearing to
3 order this morning. This is the meeting of the
4 New Mexico Oil Conservation Commission. My name is
5 David Catanach, Chairman of the Commission. The time is
6 about 9:05 a.m. on April 4th, 2017. This meeting is
7 being conducted in Porter Hall within the Wendell Chino
8 State Building. At this time I will take roll.

9 Will the Commissioners please introduce
10 themselves for the record?

11 COMMISSIONER PADILLA: Patrick Padilla,
12 designee of the New Mexico Commission of Public Lands.

13 COMMISSIONER BALCH: Dr. Robert Balch,
14 designee of the Secretary of Energy, Minerals and
15 Natural Resources.

16 CHAIRMAN CATANACH: Thank you,
17 Commissioners.

18 Also present is Bill Brancard, Commission
19 attorney, and Florene Davidson.

20 The first order of business, Commissioners,
21 in your packet, you should have an agenda for today's
22 meeting. If you reviewed the agenda, do I hear a motion
23 to adopt -- a motion and a second to adopt the agenda?

24 COMMISSIONER PADILLA: I've reviewed it,
25 and I would move to adopt it.

1 COMMISSIONER BALCH: I have also reviewed
2 it, and I second the motion.

3 CHAIRMAN CATANACH: All in favor?

4 (Ayes are unanimous.)

5 CHAIRMAN CATANACH: Motion to adopt the
6 agenda for today's meeting is passed.

7 Also in your packet are a couple more
8 things, the draft minutes from the Commission meeting
9 that was conducted February 28th through March 1st,
10 2017.

11 Commissioners, if you've reviewed the
12 minutes, do you have any changes? If not, is there a
13 motion and a second to adopt the minutes?

14 COMMISSIONER BALCH: I have no changes, and
15 I move to adopt.

16 COMMISSIONER PADILLA: I've also reviewed
17 them, and I have no changes, and I second that motion.

18 CHAIRMAN CATANACH: All in favor?

19 (Ayes are unanimous.)

20 CHAIRMAN CATANACH: Motion to adopt the
21 minutes from the Commission meeting conducted February
22 28th through March 1st, 2017 is passed.

23 Also in your packet are the draft minutes
24 from the March 8th, 2017 Commission meeting.

25 Again, Commissioners, if you've reviewed

1 the minutes, do you have any changes? And if not, is
2 there a motion and a second to adopt the minutes?

3 COMMISSIONER PADILLA: I've reviewed them.
4 I have no changes, and I move to adopt them.

5 COMMISSIONER BALCH: I would second the
6 motion.

7 CHAIRMAN CATANACH: All in favor?
8 (Ayes are unanimous.)

9 CHAIRMAN CATANACH: Motion to adopt the
10 March 8th, 2017 Commission meeting is passed.

11 (The proceedings conclude, 9:08 a.m.)

12 (10:16 a.m.)

13 CHAIRMAN CATANACH: So I wanted to bring up
14 to the Commission while we have the opportunity, we
15 did -- by way of background, we did have another
16 application for a de novo hearing that I would like to
17 brief you guys on. This case was heard by the Division
18 on September 29th, 2016. As a result of that hearing,
19 Order Number R-14300 was issued on February 21st. This
20 was an application where Mewbourne Oil Company came in
21 and sought to revoke the injection authority granted
22 under SWD-744 for the particular well, the Willow Lake
23 Well Number 1H, which was currently operated by Pyote
24 Well Service, LLC, Eddy County, New Mexico. And just a
25 brief discussion of the case: Mewbourne and, I believe,

1 some other parties -- I'm not certain -- that were
2 involved in that came in, and their contention was that
3 this particular well was injecting into an interval in
4 the Bone Spring Formation. Mewbourne and some other
5 parties contended that due to that injection, some
6 additional reserves or some reserves were being watered
7 out or being affected by the injection in some of their
8 offset horizontal wells.

9 The Division heard that case and issued
10 that order and effectively approved Mewbourne's
11 application. We ordered the operator of that particular
12 well to -- effective April 1st, to shut the well in and
13 cease injection.

14 Pyote has applied for a de novo hearing on
15 that matter and has requested the May 18th Commission
16 docket for that particular case. They've also requested
17 in their application that a stay of that particular
18 order, R-14300 -- that the order be stayed until such
19 time as the hearing is conducted and a decision is
20 reached by the Commission.

21 A couple of things: I guess the de novo
22 hearing will be granted. That's -- that's pretty much
23 automatic. The hearing will be held on May 18th. I
24 guess with regards to the stay -- and correct me if I
25 misstep here, Mr. Brancard. But I have the authority to

1 make a ruling on the stay by myself. But, I mean, would
2 it be appropriate for the Commission to discuss that
3 stay?

4 MR. BRANCARD: You have to put it on the
5 agenda of the meeting to discuss it. I mean, that's --
6 you know.

7 COMMISSIONER BALCH: It's not on the agenda
8 today?

9 CHAIRMAN CATANACH: Right.

10 COMMISSIONER BALCH: So the next time -- we
11 have to have a special meeting.

12 COMMISSIONER PADILLA: Don't we have
13 something April 24th?

14 COMMISSIONER BALCH: Yes, deliberations.

15 CHAIRMAN CATANACH: Deliberations.

16 COMMISSIONER PADILLA: It's not a formal
17 meeting?

18 MR. BRANCARD: We should discuss that --
19 whether you -- whether you just want that to be a closed
20 deliberation meeting or whether you also want that to
21 later open up into a later meeting where you announce a
22 decision.

23 COMMISSIONER BALCH: Tuesday, the 25th,
24 we're deliberating COG versus Mewbourne.

25 COMMISSIONER PADILLA: 25th?

1 CHAIRMAN CATANACH: I don't have an issue
2 making a decision on the stay. If the Commission wants
3 to be involved in that, we can certainly schedule that
4 to be on that date.

5 COMMISSIONER BALCH: I don't have an
6 opinion on that. I'll let you make the decision on the
7 stay. I'm fine.

8 CHAIRMAN CATANACH: We can -- if we do it
9 that way, I can take care of all of this without
10 involving the Commission and then schedule the hearing
11 for May 18.

12 COMMISSIONER PADILLA: Again, for the sake
13 of expediency --

14 COMMISSIONER BALCH: That means another six
15 weeks of operation of the SWD.

16 CHAIRMAN CATANACH: Right. And my concern
17 would be the protection of the oil and gas reserves.
18 That'll be a primary concern when I make that decision
19 on the stay.

20 COMMISSIONER BALCH: Okay. I'll trust your
21 judgment on it.

22 CHAIRMAN CATANACH: So I'll go ahead and
23 decide that stay.

24 We might want to talk about scheduling on
25 the May 18th hearing. If the Roswell case is also going

1 to be heard on that date, we may want to check to see
2 the availability of the Commission on the 19th.

3 COMMISSIONER BALCH: I think I'm available.
4 On the 17th, I could be available as well, and it looks
5 like I'm available the next week as well.

6 CHAIRMAN CATANACH: Wow.

7 COMMISSIONER BALCH: I found a window.

8 CHAIRMAN CATANACH: Did the airlines close?

9 COMMISSIONER BALCH: Yeah. I found a
10 window between China and somewhere else.

11 CHAIRMAN CATANACH: Well, I guess I would
12 suggest that we go with the 18th and 19th, depending on
13 Mr. Padilla.

14 COMMISSIONER PADILLA: I'm fairly certain I
15 can find the time.

16 COMMISSIONER BALCH: And if we did have it
17 extended, I believe I'm available the next week.

18 COMMISSIONER PADILLA: 17th, I'm not
19 available, but the 18th and 19th, yes.

20 CHAIRMAN CATANACH: I think, if I'm not
21 mistaken, in talking to the Examiners, that Mewbourne --
22 and I might ask Mr. Bruce.

23 Did that last one day, Mr. Bruce?

24 MR. BRUCE: No. Actually, in that case,
25 Mr. Chairman, I represented Kaiser-Francis. Ms. Kessler

1 and Mr. Feldewert represented Mewbourne.

2 CHAIRMAN CATANACH: Mr. Feldewert, do you
3 remember how long that lasted?

4 MR. FELDEWERT: 1:00 to 6:00.

5 CHAIRMAN CATANACH: So it was half a day.

6 MR. BRUCE: But, Mr. Chairman, there may be
7 an additional witness that we may present, that
8 Kaiser-Francis may present. And so as you know, with
9 more questioners, more time.

10 CHAIRMAN CATANACH: More lawyers, more
11 questions.

12 MR. BRUCE: You bet.

13 COMMISSIONER BALCH: More Examiners.

14 CHAIRMAN CATANACH: So you're free?

15 COMMISSIONER PADILLA: (Indicating.)

16 CHAIRMAN CATANACH: Okay. We'll just hold
17 that 19th in reserve, because on the Roswell thing,
18 we're going to have to hear the case and make open
19 deliberations on the rule change -- on the proposed rule
20 change. So I don't envision that taking long, but it
21 could take a while.

22 COMMISSIONER BALCH: That's essentially a
23 day for each case. It should be sufficient.

24 CHAIRMAN CATANACH: I would think so,
25 definitely.

1 Okay. Should we talk about the April
2 25th --

3 Do we need to say anything on that,
4 Mr. Brancard?

5 MR. BRANCARD: Well, it depends on when you
6 want to announce your decision. So you can hold this as
7 an entirely closed meeting just for deliberations, and
8 it stays that way, but then you would announce your
9 decision at the next meeting of the Commission. Or you
10 can say this is a part closed, part open meeting and, at
11 the end of your deliberations, go into open session and
12 announce the decision and direct somebody to prepare an
13 order, for purposes of Florene having to get the notice
14 right and get all the Open Meetings Act compliance here.
15 That's the issue here.

16 COMMISSIONER BALCH: It's been more typical
17 to deliberate a case and then make a decision and
18 announcement right away.

19 CHAIRMAN CATANACH: It would save some time
20 as far as getting an order prepared. And in that case,
21 we could finalize the order at the May 18th hearing and
22 sign that order at that time opposed to announcing the
23 decision at that time and going --

24 COMMISSIONER BALCH: Or we could hedge and
25 say a decision may be made.

1 MR. BRANCARD: I think we could say that,
2 that a decision may be made.

3 CHAIRMAN CATANACH: So that would be a
4 partially closed and partially open meeting.

5 COMMISSIONER PADILLA: It will be open, and
6 then we'll go into closed session right away and then
7 announce in the afternoon.

8 CHAIRMAN CATANACH: Okay. So we'll
9 schedule it that way.

10 So did you want to give us any --

11 MR. BRANCARD: Oh. Just an update with
12 where we are with litigation, we have two cases. The
13 geothermal case remains stuck in the district court
14 judge's hands. We had a motion to dismiss. We had a
15 hearing on that motion now over six months ago, and we
16 have no decision from the judge in that case. If he
17 denies the motion to dismiss, then we'll brief the case.
18 That's where we are on the geothermal case.

19 Slightly related to that is that the entity
20 that has the permit did, in fact, declare bankruptcy,
21 and I don't see -- in the last few weeks. So they are
22 in bankruptcy court now, and we will, through the
23 Attorney General's Office, enter an appearance in the
24 case to protect our interest with the permits. We don't
25 necessarily file a claim. But we now have this sort of

1 routine. The AG's Office does a very good job
2 representing our agencies in proceedings. In the world
3 these days, there is a number of those. So we will
4 enter an appearance in that case, too.

5 The second case is the Jalapeno-Matador
6 matter, which is now being briefed. Jalapeno filed
7 their brief in chief, and we'll be filing our briefs in
8 the next week or two. NMOGA filed to intervene in the
9 case. And there is a slightly confusing order from the
10 judge. It appears that they have been granted
11 intervening status, and then the judge goes on to
12 discuss the amicus brief they're going to file. So --

13 COMMISSIONER BALCH: Okay.

14 MR. BRANCARD: -- it's a little strange.
15 But anyway, they're in the case. The Division has also
16 filed to intervene. We'll be asking the judge to sign
17 on that, too.

18 That's where we are on litigation.

19 CHAIRMAN CATANACH: Do we need to talk
20 about legislative issues at all?

21 MR. BRANCARD: The Legislature was
22 exciting.

23 COMMISSIONER PADILLA: Enough said.

24 MR. BRANCARD: Nothing -- nothing -- well,
25 we did get legislation passed on the brine well -- the

1 brine well issue, creating local authority -- decision
2 making on the brine well, and then there is a whole slew
3 of memorials, some of which actually got through.

4 CHAIRMAN CATANACH: To my knowledge, I
5 thought only the venting and flaring got through SM-102,
6 which requires the Division to produce a report sometime
7 this year on venting and flaring and the biggest -- or
8 the companies that flare and vent the most and that kind
9 of thing and the reasons why and the possible solutions
10 out there to the problem. So sometime this year, we'll
11 have to compose that report and probably testify before
12 an interim committee at some point, I would think.

13 COMMISSIONER BALCH: That might be just the
14 acid gas people. Something else to work on on your
15 weekends.

16 CHAIRMAN CATANACH: Anyway, so I think
17 that's it. Is there anything else? Anything further of
18 us that we need to discuss?

19 COMMISSIONER PADILLA: Nothing further from
20 me.

21 CHAIRMAN CATANACH: Okay. With that --

22 MR. FELDEWERT: Mr. Chairman, I do have one
23 request.

24 CHAIRMAN CATANACH: Mr. Feldewert.

25 MR. FELDEWERT: Yes. It relates to that

1 case you bought up earlier, 15519, the Division hearing,
2 R-14300.

3 CHAIRMAN CATANACH: Yes, sir.

4 MR. FELDEWERT: It's my understanding that
5 out of the order, the well was to be shut in by April
6 1st. I do not know whether that has happened. As you
7 also know, the parties who appeared in that case have
8 likewise filed an objection with the Commission for
9 request for a stay. The motion for a stay, seems to me,
10 can be addressed fairly quickly, but my fundamental
11 point is that I don't think the filing of a motion for a
12 stay alleviates the requirement that they shut in the
13 order -- or that they shut in the well. So I don't know
14 what the status is. I don't know what your timetable is
15 on addressing that motion for a stay, but we obviously
16 do have concerns with the continued injection of that
17 well and the apparent -- and the issue as to whether the
18 Division order has been complied with.

19 CHAIRMAN CATANACH: Good point,
20 Mr. Feldewert. We will look into that, and we will try
21 and get the stay order issued as soon as we can.

22 MR. FELDEWERT: Thank you.

23 CHAIRMAN CATANACH: Thank you.

24 There being nothing further, this meeting
25 of the Commission is adjourned.

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(The proceedings conclude, 10:30 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
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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.

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