

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

Election of Chair, Adoption of Agenda,  
Adoption of Minutes of December 7, 2017,  
Dismissal of Case Number 15856,  
Continuance of Case Numbers 15655, 15659, 15656, 15660,  
Hearing Dates Set for Case Numbers 15957 and 15959,  
Legislative Update

January 18, 2018

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRPERSON  
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,  
January 18, 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 (9:00 a.m.)

2 CHAIRWOMAN RILEY: Good morning. This is a  
3 meeting of the New Mexico Oil and Gas Conservation  
4 Commission, and as you-all know, I'm the new director,  
5 Heather Riley. It's nice to have you-all here.

6 I'd like to have roll call.

7 Would the Commissioners please introduce  
8 themselves for the record?

9 COMMISSIONER MARTIN: Ed Martin  
10 representing the State Land Office.

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

14 CHAIRWOMAN RILEY: Thank you.

15 And we also have with us Bill Brancard,  
16 counsel to the Commission.

17 The first order of business is to elect the  
18 chairperson. Do I have any nominations for Chair?

19 COMMISSIONER BALCH: I'll tell you the same  
20 thing I told David.

21 CHAIRWOMAN RILEY: Yeah.

22 COMMISSIONER BALCH: Traditionally, the OCD  
23 fills that position -- because the office is right next  
24 to Florene and it simplifies the paperwork and  
25 communication. So I guess the nomination is for you.

1 COMMISSIONER MARTIN: I second.

2 CHAIRWOMAN RILEY: We had a first and a  
3 second, so I say that that passes? I will be your --  
4 your Chair.

5 All right. So the next thing we need to do  
6 is the agenda. We have a list of agenda items. I don't  
7 know if you-all have had a chance to take a look at  
8 that, but a couple of changes here.

9 For item number seven, Case Number 15856  
10 will be dismissed, and items eight to 11 will be  
11 continued to the February meeting.

12 Do I have a motion and a second to adopt  
13 the agenda?

14 COMMISSIONER MARTIN: I move we adopt it.

15 COMMISSIONER BALCH: And second.

16 CHAIRWOMAN RILEY: All right. So we have  
17 officially adopted the agenda. Thank you.

18 You also have in your packet the minutes  
19 from the last meeting, so December 7th, 2017. And if  
20 you've had a chance to read those, do you have any  
21 corrections?

22 COMMISSIONER BALCH: I've reviewed the  
23 minutes, and I have no additional corrections.

24 COMMISSIONER MARTIN: Nor do I.

25 CHAIRWOMAN RILEY: Do I have a motion to

1     approve these minutes?

2                     COMMISSIONER BALCH:    So moved.

3                     CHAIRWOMAN RILEY:    Second?

4                     COMMISSIONER MARTIN:   Second.

5                     CHAIRWOMAN RILEY:    The minutes are  
6     approved.

7                     All right.   Open Meetings Resolution.    So  
8     my understanding is annually we need to adopt and  
9     approve the Open Meetings Resolution for 2018.   Those  
10    are in your packet as well.

11                    And, Mr. Brancard, could you please explain  
12    to us any changes to this for 2018?

13                    MR. BRANCARD:    Thank you, Madam Chair.

14                    Other than changing the list of when we're  
15    having the dates for meetings -- regularly scheduled  
16    meetings for 2018, under paragraph two, there are no  
17    other changes to the Open Meetings Resolution.   We went  
18    through it pretty thoroughly, I think, last year and  
19    made some changes.   So we're just changing the dates for  
20    this year.

21                    CHAIRWOMAN RILEY:   Have you-all had a  
22    chance to review this and see the dates for this year's  
23    meetings?

24                    COMMISSIONER BALCH:   Yes.   Both Ed and I,  
25    along with David, set these dates, so I think it's more

1 for you.

2 CHAIRWOMAN RILEY: Okay. You know, my  
3 calendar is fairly free, so I feel like these are good  
4 dates. So do I have a motion to approve?

5 COMMISSIONER MARTIN: I so move.

6 COMMISSIONER BALCH: And seconded.

7 CHAIRWOMAN RILEY: Thank you. And the  
8 resolution is approved.

9 COMMISSIONER BALCH: On that one, do we  
10 need a voice for adopting?

11 MR. BRANCARD: Yeah. You can just say "all  
12 those in favor."

13 CHAIRWOMAN RILEY: Okay. All those in  
14 favor?

15 (Ayes are unanimous.)

16 CHAIRWOMAN RILEY: Okay. It's approved.

17 Sorry. I like to mess around a little bit.

18 Okay. So applications for rulemaking, I  
19 think that's our next topic and the big one for the day.  
20 We have two major rulemaking applications that are in,  
21 and we need to get those set on the docket.

22 The two applications will be -- the first  
23 one being Case Number 15957, will go to hearing first,  
24 and I believe it's on the horizontal rule. And then --  
25 so what we need to do is identify probably three or four

1 days in March or April to conduct this hearing.

2 Do you-all have preferences or days that  
3 would be more convenient for you?

4 COMMISSIONER BALCH: Well, I brought my  
5 calendar. March is pretty bad for me.

6 CHAIRWOMAN RILEY: Okay.

7 COMMISSIONER BALCH: I think I don't have  
8 anything until the 27th.

9 CHAIRWOMAN RILEY: Oh, wow. Okay.

10 MR. BRANCARD: That's pretty bad.

11 COMMISSIONER BALCH: But we do have a  
12 meeting, so that entire week leading up to that would be  
13 possible.

14 COMMISSIONER MARTIN: February?

15 CHAIRWOMAN RILEY: March?

16 COMMISSIONER BALCH: February 27th to  
17 March --

18 MR. BRANCARD: The earliest we can do it is  
19 starting March 1st, based on getting the notice in the  
20 New Mexico Register.

21 COMMISSIONER BALCH: Okay.

22 CHAIRWOMAN RILEY: Now, I don't know how  
23 you-all do this normally, but personally I would think  
24 having it on consecutive days would be ideal rather than  
25 splitting it --

1 COMMISSIONER MARTIN: I agree.

2 CHAIRWOMAN RILEY: -- rather than splitting  
3 it in two months.

4 COMMISSIONER BALCH: That's usually a  
5 little more ideal. It's really hard to get everybody  
6 back together, so finding a second date, if you don't  
7 finish the first time around, could be months -- could  
8 put it off for months --

9 CHAIRWOMAN RILEY: Uh-huh.

10 COMMISSIONER BALCH: -- getting all the  
11 lawyers and witnesses and everything together.

12 CHAIRWOMAN RILEY: And the information gets  
13 stale.

14 COMMISSIONER BALCH: Well, I mean, that's  
15 not so much the problem because there is a record, and  
16 we can go back to it. But we had one hearing that took  
17 16 months, 48 meeting days. So those are not all  
18 consecutive. Thank God.

19 CHAIRWOMAN RILEY: So in that case, how  
20 about March? How does March look?

21 COMMISSIONER BALCH: April.

22 COMMISSIONER MARTIN: April.

23 CHAIRWOMAN RILEY: April?

24 COMMISSIONER MARTIN: I'm pretty open in  
25 April.

1                   COMMISSIONER BALCH: I'm trying to get on  
2 the Internet here.

3                   MR. BRANCARD: So the Commission's  
4 scheduled meeting for April is April 12th.

5                   COMMISSIONER BALCH: That full week is  
6 available for me, or, actually, April looks very open.

7                   COMMISSIONER MARTIN: For me, too.

8                   COMMISSIONER BALCH: The only thing on my  
9 calendar is the Commission meeting.

10                  CHAIRWOMAN RILEY: Okay. So I'm just  
11 looking for guidance from you-all. Would it make more  
12 sense to start on a Monday or on a Tuesday to Friday?  
13 What's your --

14                  COMMISSIONER BALCH: I would think that if  
15 there's a normal caseload -- there may be other cases  
16 that would need to be heard on the 12th, which is the  
17 scheduled meeting, so I would say another week and start  
18 early. If you anticipate three or four days, start off  
19 on Monday.

20                  CHAIRWOMAN RILEY: So Monday the 9th?

21                  COMMISSIONER BALCH: Well, we might  
22 actually want to do it a separate week.

23                  COMMISSIONER MARTIN: The 12th, start the  
24 following Monday?

25                  MR. BRANCARD: The 16th?



1                   EXAMINER BROOKS: Mr. Feldewert raised the  
2 point with me that I think is a good one, that we  
3 start -- what day of the week is the 16th?

4                   MR. BRANCARD: Monday.

5                   EXAMINER BROOKS: That we not start on  
6 Monday because we have a lot of witnesses coming in from  
7 out of town and then they have to travel on the weekend.  
8 And he suggested we start on Tuesday, if we have three  
9 successive -- at least three successive days available.  
10 If he wants to change that suggestion, he's here.  
11 Mike's here, and he can address that. Seemed like a  
12 good idea to me. It does not matter to me because I'm  
13 here every day.

14                  COMMISSIONER BALCH: Do you have a feel yet  
15 for -- so three or four days, is that just the  
16 presentation from the Division?

17                  MS. BADA: The Division has half a day.  
18 Most of it is going to be industry.

19                  MR. FELDEWERT: That's fine. Yes. So my  
20 thought is, I think there is a good chance we can get it  
21 done in three days, but that assumes that there is no  
22 extensive cross-examination. So it would seem to me if  
23 we started on Tuesday, chances are we could be done by  
24 Thursday, and then we'd have Friday available if things  
25 didn't work out as anticipated.

1                   And I do echo the point that it is  
2   difficult, for people coming from out of town and also  
3   just getting hearing prep, to start on Monday. It would  
4   be preferable to start on Tuesday. That way the  
5   witnesses can come in and get together on a Monday, and  
6   we make sure we're ready to go. We're more organized  
7   when they get here to us.

8                   COMMISSIONER BALCH: All right. Sure.

9                   COMMISSIONER MARTIN: I'm good with that.

10                  MR. BRANCARD: 17, 18, 19? Does that work?

11                  COMMISSIONER BALCH: Yeah. I think -- and  
12   if it came down to the 23rd, that would be all right,  
13   too. If, for some reason, it went very long, we could  
14   just hold it over to the next Monday.

15                  CHAIRWOMAN RILEY: Okay.

16                  MR. FELDEWERT: So would we have April 20th  
17   available as well? That's a Friday.

18                  COMMISSIONER BALCH: That's a Friday, yeah.

19                  MR. FELDEWERT: So that would give us --  
20   we'd start on the 15th, and that would give us four  
21   days.

22                  CHAIRWOMAN RILEY: Uh-huh.

23                  MR. FELDEWERT: I would think it could be  
24   done in four days.

25                  CHAIRWOMAN RILEY: Do I have a motion to

1 set this matter for hearing starting on April 17th and  
2 extending through April 20th?

3 COMMISSIONER MARTIN: So moved.

4 COMMISSIONER BALCH: I second it.

5 CHAIRWOMAN RILEY: It's passed. This  
6 matter is set for hearing.

7 So the second case that needs to be set is  
8 Case Number 15959, same process. You-all can get your  
9 calendars and tell me when.

10 MR. BRANCARD: Mr. Herrmann, how much time  
11 do you think?

12 MR. HERRMANN: I expect one to two days for  
13 the Division to present its case.

14 COMMISSIONER BALCH: Is there any  
15 opposition?

16 MR. HERRMANN: None has been stated yet,  
17 but it will be regarding releases, so it might be  
18 anticipated.

19 COMMISSIONER BALCH: My anticipation is  
20 there will be some public interest.

21 MR. HERRMANN: Yes. I'd agree with that.

22 COMMISSIONER BALCH: That may take  
23 significant time, so I would suggest we do the same kind  
24 of thing, go four days, schedule it for, just in case.

25 CHAIRWOMAN RILEY: Okay.

1 MR. HERRMANN: That would work for us.

2 MR. BRANCARD: So the Commission's meeting  
3 in May is May 24th.

4 MR. HERRMANN: Yes.

5 CHAIRWOMAN RILEY: The 28th is Memorial  
6 Day, so I would suggest we avoid that week. I think we  
7 should try to do something similar, so Monday's held for  
8 travel and prep.

9 COMMISSIONER BALCH: How about May 1st?  
10 May 1st through the 4th?

11 MR. FELDEWERT: I believe I'm appearing on  
12 behalf of NMOGA in the case. I haven't visited with  
13 them.

14 My biggest problem is my daughter's  
15 graduating from school that weekend, and I have the  
16 privilege of helping her drive her car back from  
17 Washington, D.C. to New Mexico. So I don't think I'll  
18 be back until later that week.

19 COMMISSIONER BALCH: We'll just  
20 conference-call you in.

21 MR. FELDEWERT: We could do that. If the  
22 Bluetooth works, we might be okay.

23 COMMISSIONER BALCH: So the 28th would be  
24 out. The 14th, I've actually got something that week.  
25 And there is the Four Corners Oil and Gas Conference on

1 the 9th and the 10th. I don't know if people go to that  
2 or not. Sometimes I do.

3 COMMISSIONER MARTIN: Sometimes I do, too.

4 CHAIRWOMAN RILEY: Okay.

5 COMMISSIONER BALCH: At the risk of having  
6 too much fun in one month, we could look at -- I guess  
7 you're going to be -- when are you going to be in D.C.?

8 MR. FELDEWERT: We're actually flying out  
9 April 26th.

10 MR. BRANCARD: There's also --

11 CHAIRWOMAN RILEY: May is typically kind of  
12 a crazy month for everybody with graduations.

13 MR. FELDEWERT: A lot graduations.

14 CHAIRWOMAN RILEY: Yeah.

15 COMMISSIONER BALCH: We could schedule it  
16 with the regular Oil Commission meeting. Again, that  
17 might push other cases back.

18 MR. BRANCARD: We could schedule it that  
19 week.

20 COMMISSIONER BALCH: 22nd? If you want to  
21 have it done in May, that's probably the only week it  
22 can be done. Then there's June. I don't know how  
23 pressing this particular matter is.

24 MR. BRANCARD: I think the pressing  
25 deadline is December 31st, 2018.

1 COMMISSIONER BALCH: I could see that.

2 I don't have any preference.

3 COMMISSIONER MARTIN: I have none. Anytime  
4 in May or June would be fine with me.

5 COMMISSIONER BALCH: June's pretty open,  
6 too. June?

7 CHAIRWOMAN RILEY: What about June 5th?

8 COMMISSIONER BALCH: June 5th would work.

9 COMMISSIONER MARTIN: That's okay for me.

10 CHAIRWOMAN RILEY: Do I have a motion to  
11 set this matter for hearing on June 5th lasting through  
12 June 8th if needed?

13 COMMISSIONER BALCH: I would so move.

14 COMMISSIONER MARTIN: Second.

15 CHAIRWOMAN RILEY: All right. Then that's  
16 passed. We have a hearing date.

17 So if there is no further discussion on  
18 that, Mr. Brancard, do you have any pending litigation  
19 information you want to give us?

20 MR. BRANCARD: Yes. I'll just update the  
21 Commission. We have three appeals of Commission  
22 decisions that are in district court right now. I don't  
23 think we need to go into executive session to discuss  
24 this. It's just an update. And one is from two years  
25 ago, plus the geothermal case. It's still waiting for

1 the judge to make a decision on our motion to dismiss.

2 The second is the Jalapeno-Matador case,  
3 where we have a partial motion to dismiss that is  
4 pending. That was argued in November, and we're, again,  
5 waiting for the judge to act on that motion.

6 And the final case is the LES-Urenco appeal  
7 of the CK facility landfill permit. In that case it  
8 was -- just recently, the briefing was completed, last  
9 month -- late last month and the request for the judge  
10 to set an oral argument in that case. So that'll be  
11 coming up soon. In that case that's a different judge,  
12 so hopefully this will move a little faster.

13 COMMISSIONER BALCH: I think CK will be  
14 interested in a quick resolution.

15 MR. BRANCARD: Yeah. It took us a while to  
16 get the briefing done, but now it's done, and there are  
17 no pending motions. So the judge -- the judge can just  
18 decide it on the briefs if he wants, but most of the  
19 judges here in Santa Fe will have oral argument with the  
20 parties and then decide the case after that. We're just  
21 waiting for a setting. It's a brand-new judge, so  
22 hopefully he's not too -- so that's the update on  
23 litigation.

24 We started the legislative session this  
25 week, by the way. It's a 30-day session. And at this

1 point, there's no legislation introduced so far dealing  
2 directly with the Oil and Gas Act. The Department is  
3 anticipating introducing legislation related to bonding  
4 limits, raising the limits for the blanket bonds for oil  
5 and gas operators. That's what we have planned. There  
6 are rumbles that either the industry or NGOs will  
7 introduce bills related to the penalty provisions in the  
8 Act. I don't know if that's going to happen in the  
9 30-day session. So it has to be the governor's call.

10 And then probably the biggest issue for the  
11 agency during this session is potential funding of the  
12 mediation of the brine well in Carlsbad. We are in the  
13 process of choosing a party to do the remediation, but  
14 we need money to do it. So the bill's pending in  
15 legislation trying to deal with that issue. So we'll  
16 see where that goes.

17 That's all I have to report.

18 CHAIRWOMAN RILEY: Thank you, Mr. Brancard.

19 The next meeting is scheduled for February  
20 15th.

21 Are there any business or announcements  
22 that we need to discuss at this time?

23 All right. If there is nothing else, do I  
24 hear a motion to adjourn?

25 COMMISSIONER MARTIN: I so move.



1 COMMISSIONER BALCH: And seconded.

2 CHAIRWOMAN RILEY: All right. The meeting  
3 is adjourned.

4 Thank you.

5 (The proceedings conclude, 9:19 a.m.)

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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 31st day of January 2018.

21

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

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