

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

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

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

September 13, 2018

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN
 ED MARTIN, COMMISSIONER
 DR. ROBERT S. BALCH, COMMISSIONER
 BILL BRANCARD, ESQ.

This matter came on for hearing before the
New Mexico Oil Conservation Commission on Thursday,
September 13, 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.

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1 (9:35 a.m.)

2 CHAIRWOMAN RILEY: The next item is Case
3 Number 16078, which is rulemaking, in the matter of
4 proposed amendments to the Commission's rules on
5 financial assurance and plugging and abandonment of
6 wells, 19.15.2, 19.15.8 and 19.15.25; application for
7 rehearing filed by Larry Marker. And so we need to, as
8 a Commission, decide on that application.

9 So we probably need to bring --

10 Mr. Brancard, how shall we proceed with
11 this?

12 MR. BRANCARD: On the one hand, arguably,
13 Mr. Marker does not have standing to bring this
14 application. He's not a party to the proceeding. On
15 the other hand, i mean, if the Commission wanted to
16 consider the issue raised and whether there is any
17 reason to have a rehearing, I think now's the time.
18 Otherwise, we file the rule today, and it becomes final.

19 So I know that we have -- since the rule
20 has been passed by the Commission, I think we have
21 looked a little further at that language about the
22 federal -- including the federal wells in the
23 calculation, and I think it's fairly inartfully drafted.
24 So, basically, if the Commission wanted to take another
25 look at that, you could either go ahead with approving a

1 rehearing in this case -- we'd have to do a public
2 notice, and it would be fairly focused on just that
3 issue, or you could allow the rule to be filed and then
4 there would have to be a new application like we're
5 doing with the new horizontal drilling rule, coming amid
6 changes to do that. So because we have this application
7 pending, it sort of gives the Commission an opportunity
8 if you wanted to move forward just with that issue. So
9 I think there is -- because of -- because of the
10 original language of the rule combined with the
11 on-the-fly changes that were made proposed by the
12 Division and accepted by the Commission, there is some
13 confusion in how that -- how that works, with combining
14 the federal wells into the calculation -- even though
15 we're not requiring financial assurance for the federal
16 wells but they're included in the calculation of the
17 number of federal wells into the blanket bond.

18 COMMISSIONER MARTIN: If an operator is
19 bumped up to a higher bracket because of that, the
20 Division disregards that, right? Is that my
21 understanding?

22 MR. BRANCARD: Well, no. The Division
23 gives them credit for the federal financial assurance,
24 but it doesn't disregard that.

25 COMMISSIONER MARTIN: Right.

1 MR. BRANCARD: So they still get -- they're
2 still triggered into that higher bracket. They just get
3 a credit for that, and that credit may be less than what
4 the bump is.

5 COMMISSIONER MARTIN: Right.

6 MR. BRANCARD: So their financial assurance
7 may go up even though it's just based on the number of
8 federal wells.

9 CHAIRWOMAN RILEY: So one of the
10 conflicts -- and we tried to work through it in the
11 Division -- is how we were going to set that up on our
12 computer system. It was very hard to figure that out
13 because you're adding federal wells in and calculations
14 and giving the credit, and are we actually charging for
15 the wells which we shouldn't be. I think we need to
16 take a look at that.

17 COMMISSIONER BALCH: I seem to recall when
18 we were deliberating that the way we ended up there was
19 the realization that in the case of federal wells, we
20 may well end up having to use the reclamation fund
21 anyway. So I think that's why we have a full count for
22 blanket bond. I'm not sure if that -- if the way it's
23 written is what's causing a double dip, if you will, but
24 the intent of the Commission, the way I remember it, was
25 to ensure that we had some way to remediate those wells

1 if we needed to.

2 MR. BRANCARD: Right. But generally right
3 at the beginning of the financial assurance section, it
4 says this applies to wells on state and private land.

5 CHAIRWOMAN RILEY: The language is fairly
6 conflicting within the rule.

7 COMMISSIONER BALCH: In that case, I'd be
8 more comfortable fixing it before we send it.

9 COMMISSIONER MARTIN: I agree. I don't
10 think any new information is going to come out in a
11 rehearing, particularly.

12 CHAIRWOMAN RILEY: Uh-uh.

13 COMMISSIONER MARTIN: I'd rather fix the
14 change and sign the order.

15 COMMISSIONER BALCH: Yeah.

16 CHAIRWOMAN RILEY: Fix the language?

17 COMMISSIONER MARTIN: Fix the language
18 somehow, modify the language.

19 COMMISSIONER BALCH: We may have to
20 re-open.

21 CHAIRWOMAN RILEY: So we don't -- well,
22 we've already signed. We've already approved the order,
23 but we don't have to --

24 MR. BRANCARD: The rule has not been filed.
25 So -- so the only way -- the only way to prevent the

1 rule from being filed is to go back into rehearing,
2 which would require a new public notice.

3 If you allow the rule to be filed, then
4 there would have to be a new application for an amended
5 rulemaking like we're doing with the horizontal drilling
6 well rule to correct those problems.

7 So those are the two options before the
8 Commission. You can deal with it a little faster if you
9 approve the application for a rehearing.

10 COMMISSIONER BALCH: Set that for October
11 in time for notice?

12 MR. BRANCARD: Probably in November, yeah.

13 COMMISSIONER BALCH: Are you suggesting we
14 approve Mr. Marker's motion for rehearing while he does
15 not have standing?

16 MR. BRANCARD: Well, granting -- I would --
17 I would say you grant the rehearing application on a
18 narrow issue of calculation of federal wells.

19 CHAIRWOMAN RILEY: Do I have a motion?

20 COMMISSIONER MARTIN: Didn't he move?

21 COMMISSIONER BALCH: I didn't.

22 COMMISSIONER MARTIN: I move.

23 COMMISSIONER BALCH: I said, "Are you
24 suggesting?"

25 COMMISSIONER MARTIN: I move we accept

1 Mr. Marker's application and rehear the case.

2 COMMISSIONER BALCH: And I would second it
3 with the caveat that we narrowly focus it on the issue
4 of counting federal wells in the calculation for blanket
5 bond.

6 CHAIRWOMAN RILEY: Okay. So moved.

7 MR. BRANCARD: Take a roll call.

8 CHAIRWOMAN RILEY: Okay. All in favor?

9 COMMISSIONER MARTIN: Aye.

10 COMMISSIONER BALCH: Aye.

11 CHAIRWOMAN RILEY: Aye.

12 (Ayes are unanimous.)

13 (Case Number 16078 concludes, 9:42 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 17th day of October 2018.

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