

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:

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION COMPLIANCE AND ENFORCEMENT BUREAU FOR A COMPLIANCE ORDER AGAINST CANO PETRO OF NEW MEXICO, INC. FOR WELLS OPERATED IN CHAVES AND ROOSEVELT COUNTIES, NEW MEXICO. CASE NOS. 16040, 16359

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

October 11, 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, October 11, 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

FOR APPLICANT NEW MEXICO OIL CONSERVATION DIVISION:

KEITH HERRMANN, ESQ.
STATE OF NEW MEXICO ENERGY, MINERALS & NATURAL
RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
Office of General Counsel
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 476-3463
Keith.Herrmann@state.nm.us

INDEX

PAGE

Case Numbers 16040 and 16359 Called	3
Application of Cano Petro of New Mexico, Inc. for Rehearing	3
Proceedings Conclude	8
Certificate of Court Reporter	9

EXHIBITS OFFERED AND ADMITTED

(No Exhibits.)

1 (9:49 a.m.)

2 CHAIRWOMAN RILEY: All right. Let's move
3 on to item number six: "An Application for Rehearing
4 has been filed for these consolidated cases. Hearing
5 was held before the Commission on August 20th, 2018."
6 That's Case Number 16040, de novo, which is application
7 of NMOCD Compliance and Enforcement Bureau for a
8 compliance order against Cano Petro. And then Case
9 Number 16359 is the application of NMOCD Compliance and
10 Enforcement Bureau also against Cano Petro.

11 So we have Mr. Herrmann here representing
12 the Division.

13 MR. BRANCARD: So we have an application
14 for rehearing from Cano Petro, which is in your packet,
15 from their attorney who states that he was not confirmed
16 as counsel by the bankruptcy court until after the
17 hearing Commission held and requests a rehearing on that
18 basis. There is a response that was filed late
19 yesterday by the Division that's also been handed out to
20 you-all called "Memorandum and Opposition to the
21 Rehearing."

22 CHAIRWOMAN RILEY: I don't see
23 Mr. Padilla.

24 MR. BRANCARD: I don't see Mr. Padilla
25 either.

1 CHAIRWOMAN RILEY: And no one here is
2 taking his place today, I take it?

3 MR. BRANCARD: So, again, the Commission
4 has, by statute, ten days to rule on a rehearing request
5 or it's automatically denied. This one happened to be
6 filed within ten days prior to this regularly scheduled
7 Commission meeting, so we put it on the Commission
8 agenda for you to hear. That's the reason it's on the
9 agenda, not because of any other reasons.

10 So the basic issue is that Cano is
11 requesting another bite at the apple here, and the
12 Division's response is that Cano had plenty of
13 opportunities.

14 CHAIRWOMAN RILEY: And I thought that they
15 had requested that we continue the matter even for the
16 same reason, and we chose not to do that.

17 MR. BRANCARD: We had a request from
18 counsel for the surety of Cano.

19 CHAIRWOMAN RILEY: Oh, counsel for surety.

20 MR. BRANCARD: We never received -- the
21 Commission never received anything formal from Cano
22 prior to that hearing, no request for a continuance,
23 nothing other than there is -- you know, counsel for
24 Cano included some email correspondence which he had
25 with Mr. Herrmann in advance saying he was not

1 confirmed; therefore, he could not appear in this case.

2 And I'll point the Commission to your
3 regulations for these types of hearings -- adjudicatory
4 hearings, 19.15.4.14, which indicates that corporations,
5 partnerships, governmental entities, political
6 subdivisions, other collective entities may appear only
7 through an attorney or through a duly authorized officer
8 or member.

9 So Cano most likely already had counsel
10 because they were going through bankruptcy, so they
11 would have had bankruptcy counsel, and they had
12 corporate officers, and one of them could have filed
13 something with the Commission either requesting a
14 continuance or --

15 COMMISSIONER BALCH: Saying, We're trying
16 to resolve this issue.

17 MR. BRANCARD: Right.

18 So the Commission heard nothing from Cano
19 in advance of that hearing, and so the Commission went
20 forward with that hearing. And remember, there are two
21 cases, the first of which that triggered the hearing was
22 actually an application by Cano for a de novo hearing of
23 the Division order. Okay? So it was Cano's application
24 that was before the Commission. They took no action in
25 regard to that application even though they had filed

1 it.

2 The bankruptcy began more than two months
3 before the Commission hearing, so there was, you know,
4 in my mind plenty of time for Cano to do something in
5 this matter, and they chose to do nothing. So the
6 Commission had nothing in front of it, really, from Cano
7 about its position on the hearing at the time of the
8 hearing.

9 And to do a rehearing at this point, there
10 are no specific allegations in the rehearing about any
11 flaws with the Commission order -- or the Commission
12 hearing other than Cano now has a lawyer authorized
13 after the fact to participate before the Commission.

14 And I will say that having, on behalf of
15 the agency, been part of numerous bankruptcy
16 proceedings, my experience has been that it's generally
17 not that difficult to have the bankruptcy court fairly
18 quickly respond to a request to have a lawyer represent
19 the bankrupt entity in a proceeding. Bankruptcy courts
20 generally act on those pretty quickly, unless there is
21 some other party in the bankruptcy affected.

22 So Cano at this point is basically asking
23 for a do-over, you know. I mean, that's what it would
24 be because they have not pointed to any issues
25 specifically. Like in these other cases where we've had

1 rehearings, there is often a specific issue that is
2 requested, that there is a flaw in the Commission
3 proceeding that they want a rehearing on. We don't have
4 that. We have the whole proceeding is flawed. They
5 want the whole proceeding to start all over again.

6 CHAIRWOMAN RILEY: Yeah. My inclination is
7 to deny the request. They've had plenty of opportunity
8 to be present for all of the actions that have happened,
9 and they've not done that.

10 COMMISSIONER MARTIN: Right.

11 COMMISSIONER BALCH: Actually, we have
12 three options. We have a yes, a no and a do nothing,
13 which is essentially no also.

14 CHAIRWOMAN RILEY: Yeah. Uh-huh.

15 COMMISSIONER BALCH: I'm not -- I'm trying
16 to think of what information that would come to us that
17 would alter the result of the hearing. It would have
18 been nice if they had been there.

19 COMMISSIONER MARTIN: But they chose not to
20 be.

21 COMMISSIONER BALCH: And it sounds like
22 there was a -- certainly the ability to put it on their
23 importance list. I would also be inclined to deny it.

24 COMMISSIONER MARTIN: Actively deny it or
25 just delay. I agree.

1 COMMISSIONER BALCH: Either way.

2 COMMISSIONER MARTIN: I agree, actively
3 deny.

4 CHAIRWOMAN RILEY: Well, gives a stronger
5 statement.

6 COMMISSIONER BALCH: Well, except we have
7 to make a statement. We have to have a motion?

8 MR. BRANCARD: Motion? Yeah, a motion.

9 COMMISSIONER BALCH: Would you so move?

10 COMMISSIONER MARTIN: I move that we deny
11 the application for rehearing.

12 COMMISSIONER BALCH: I second the motion.

13 CHAIRWOMAN RILEY: Do we need to take a
14 vote on this or --

15 MR. BRANCARD: An all in favor.

16 CHAIRWOMAN RILEY: Okay. All in favor?

17 COMMISSIONER BALCH: Aye.

18 COMMISSIONER MARTIN: Aye.

19 CHAIRWOMAN RILEY: Aye.

20 (Ayes are unanimous.)

21 CHAIRWOMAN RILEY: So moved.

22 Cano's application for rehearing is denied.

23 (Case Numbers 16040 and 16359 conclude,
24 9:57 a.m.)

25

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

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 6th day of November 2018.

21

22

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

25