

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 TO AMEND RULES OF THE COMMISSION CONCERNING THE DRILLING, SPACING AND OPERATION OF HORIZONTAL WELLS AND RELATED MATTERS BY AMENDING SECTION 15 OF RULE 19.15.16 NMAC; STATEWIDE. CASE NO. 16376

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.

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1 (9:57 a.m.)

2 CHAIRWOMAN RILEY: That takes us to item
3 number seven, which is Case 16376, application of
4 New Mexico Oil Conservation Division to amend rules of
5 the Commission concerning the drilling, spacing and
6 operation of horizontal wells and related matters by
7 amended Section 15 of Rule 19.15.16 NMAC.

8 How long do we think this will be?

9 MS. BADA: About ten minutes at the most.

10 CHAIRWOMAN RILEY: All right. So who do we
11 have here representing parties?

12 MS. BADA: Cheryl Bada for the Oil
13 Conservation Division.

14 MR. FELDEWERT: Madam Chair, members of the
15 Commission, Michael Feldewert, with the Santa Fe office
16 of Holland & Hart, appearing on behalf of the New Mexico
17 Oil and Gas Association. I have no witnesses.

18 CHAIRWOMAN RILEY: Ms. Bada.

19 MS. BADA: I have one witness, David
20 Brooks.

21 CHAIRWOMAN RILEY: Please swear in the
22 witness.

23 (Mr. Brooks sworn.)

24 MS. BADA: Madam Chair, Commissioners, you
25 have two exhibits in front of you. One is the

1 certification of notice and the second are the proposed
2 amendments to 19.15.16.15 NMAC. The certification is
3 Exhibit 1, and the proposed amendments are Exhibit 2.

4 CHAIRWOMAN RILEY: Let's wait until
5 everybody finds their exhibits.

6 Are you ready, Mr. Brancard?

7 MR. BRANCARD: Yes.

8 CHAIRWOMAN RILEY: Okay. Go ahead.

9 MS. BADA: Madam Chair, Commissioners, we'd
10 ask that you take notice of Exhibit 1 and admit it to
11 the record.

12 MR. FELDEWERT: No objection.

13 CHAIRWOMAN RILEY: Said exhibit is admitted
14 into the record.

15 (NMOCD Exhibit Number 1 is offered and
16 admitted into evidence.)

17 DAVID K. BROOKS,
18 after having been previously sworn under oath, was
19 questioned and testified as follows:

20 DIRECT EXAMINATION

21 BY MS. BADA:

22 Q. Mr. Brooks, can you please state your name for
23 the record?

24 A. David Brooks.

25 Q. Where are you employed?

1 A. New Mexico -- well, no. I'm actually -- I'm
2 employed by the Energy, Minerals and Natural Resources
3 Department of the State of New Mexico.

4 **Q. And what are your duties?**

5 A. I'm an assistant general counsel. Generally my
6 duties are to work for the Oil Conservation
7 Commission -- or to advise and counsel the New Mexico
8 Oil Conservation Division.

9 **Q. Are you familiar with the current Commission**
10 **rules for horizontal wells?**

11 A. I am.

12 **Q. Why is the OCD proposing amendments to**
13 **19.15.16.15?**

14 A. Because there were some typographical errors in
15 the amendments that were adopted in April of last
16 year -- or no, of this year, and it was thought
17 appropriate that those should be corrected so they
18 wouldn't sit there and cause confusion. There was
19 enough confusion anyway.

20 **Q. Can you describe what those proposed amendments**
21 **are?**

22 A. Okay. The first one is on page 2 of Exhibit 2,
23 and item eight, and this is 19.15 -- no. I'm sorry.
24 Wait a minute. This is -- no. This is it. I'm
25 correct. Item one is on page 2 and in paragraph eight

1 of 19.15 -- 19.15.16.15B(8). That's paragraph eight of
2 Subsection B of 19.15.16.15 NMAC. And as stated here in
3 the rules adopted by the Commission in April, it states,
4 "For a horizontal well the completed interval of which
5 is located wholly within a unitized area or an area of
6 uniform ownership as to the mineral estate in the
7 objective formation, the horizontal spacing unit
8 configuration requirements of Subparagraphs (c) and (d)
9 of Paragraph (1), and Subparagraph (c) of Paragraph (2)"
10 is proposed to be changed to read "Subparagraph (c) of
11 Paragraph (1) and Subparagraph (c) of Paragraph (3)."

12 Now, that error originated for -- there
13 were two reasons that contributed to that error
14 originating. One was that the way Subsection B of
15 19.15.16.15 is organized was changed because originally
16 the provision in 19.16.15 -- 19.15.16.15B, which was
17 originally 19.15.16A in the Division's draft, was
18 organized with paragraphs -- Paragraph (1) related to
19 spacing of oil wells, and Paragraph (2) related to
20 spacing of gas wells. In the course of the preparation
21 of drafts for the final submission to the Commission,
22 Paragraph (1) relating to oil wells was supplemented
23 with Paragraph (2) that also related to oil wells. And
24 so Paragraph (2) that originally related to spacing of
25 gas wells became Paragraph (3).

1 Consequently, when we referred to
2 Subparagraph (c) of Paragraph (1) and Subparagraph (c)
3 of Paragraph (3) and Subparagraph -- when we originally
4 referred to Paragraph (1) and Paragraph (2), which we're
5 now proposing that language be deleted, we were
6 proposing -- we were attempting to describe conditions
7 in parallel paragraphs related to oil and gas spacing.
8 When we -- when Paragraph (2) became Paragraph (3), then
9 this reference became erroneous.

10 Also, the second reason this error occurred
11 is because during the Commission's deliberations, the
12 Commission decided to delete Subparagraph (d) of
13 Paragraph (1), and, therefore, it was no longer
14 necessary or appropriate that Subparagraph (d) be
15 referred to. Subparagraph (d) was a provision that
16 would have prohibited three quarter-quarter sections or
17 equivalents in one section to be included in a
18 horizontal spacing unit if the fourth one was not. And
19 the Commission decided that restriction should not
20 exist, and, therefore, it's not necessary to make an
21 exception for it in unitized areas, which is what this
22 paragraph was intended to do. It also stranded that
23 provision because it referred to a nonexistent
24 subparagraph.

25 I'm sorry. I'm not finding in this exhibit

1 the other error. Do you have it located?

2 MR. BRANCARD: I believe on page 4.

3 THE WITNESS: Thank you for calling my
4 attention to that.

5 MR. BRANCARD: E(2).

6 THE WITNESS: D(2)?

7 MR. BRANCARD: E(2).

8 THE WITNESS: Oh, yes, E(2)(b). Yes. This
9 was just an incorrect cross-reference. There was a
10 reference to Subparagraph (a) of Paragraph (2) of
11 Subsection D, and it actually should have been
12 Subparagraph (a) of Paragraph (2) of Paragraph (e). And
13 that correction was made. Subparagraph (d) is the
14 paragraph dealing with allowables. It does not have
15 anything to do with multilateral wells.

16 Subparagraph (e), on the other hand,
17 includes Paragraph (2), which relates to downhole
18 commingling, and that Subparagraph (b) is an exception
19 to Subparagraph (a) on that subject and should refer to
20 Subparagraph (a) of the same -- of the same subsection.
21 That is Subsection E of 19.15.16.15.

22 This is all very arcane, but these
23 references are simply wrong. There is not any policy
24 involved here, and they just need to be corrected.

25 CHAIRWOMAN RILEY: Okay. Do you have

1 anything else?

2 MS. BADA: I no other questions. Madam
3 Chair, Commissioners, I move to admit Exhibit 2.

4 CHAIRWOMAN RILEY: Mr. Feldewert?

5 MR. FELDEWERT: No objection.

6 CHAIRWOMAN RILEY: All right. Exhibit 2 is
7 admitted into the record.

8 (NMOCD Exhibit Number 2 is offered and
9 admitted into evidence.)

10 CHAIRWOMAN RILEY: Mr. Feldewert, do you
11 have any questions?

12 CROSS-EXAMINATION

13 BY MR. FELDEWERT:

14 Q. Mr. Brooks, just for the record --

15 A. Yes, sir.

16 Q. -- you were involved and worked on the
17 committee that assisted in adopting and developing the
18 horizontal well rules?

19 A. I was.

20 Q. And you, in fact, assisted in drafting the
21 application that was filed by the Division?

22 A. I did.

23 Q. And you testified at the Commission hearing
24 prior to the enactment of these rules?

25 A. I did.

1 Q. So you are very familiar with the purpose and
2 intent of these provisions as adopted by the Commission?

3 A. I believe I am.

4 Q. Okay. And in your opinion, do these
5 modifications that you propose here today, do they
6 change the purpose of this rule?

7 A. No.

8 Q. Does it change the intent of the rule?

9 A. No.

10 Q. Does it change the effect of these rules?

11 A. No, except that there should be some confusion
12 about what the effect was caused by the fact that these
13 provisions refer to nonexistent provisions, that
14 somebody would not know what the effect was if they
15 couldn't find the provision referred to.

16 Q. And the proposed modifications will alleviate
17 that issue, correct?

18 A. They will.

19 Q. Okay. That's all the questions I have.

20 CHAIRWOMAN RILEY: Thank you.

21 Commissioners, do you have any questions?

22 COMMISSIONER MARTIN: I do not.

23 CHAIRWOMAN RILEY: I don't have any
24 questions.

25 Mr. Brancard?

1 MR. BRANCARD: Just one clarification.
2 Somewhere between your application and your pre-hearing
3 statement, something got dropped out of the rule that
4 you're changing. If you look at your first change on
5 page 2 -- and this is language you're not proposing --
6 you were not proposing to change in your application,
7 but I just want to make sure that we're clear here. The
8 cross-reference now reads, "Subparagraph (c) of
9 Paragraph (1) and Subparagraph (c) of Paragraph (3) of."
10 And in the current language of the rule, it would be "of
11 Subsection B of 19.15.16.15," to complete the
12 cross-reference. Somehow that dropped out between the
13 application and your exhibit.

14 THE WITNESS: That is correct. It should
15 read, "Subparagraph (c) of Paragraph (1) and
16 Subparagraph (c) of Paragraph (3) of Subsection A."

17 MR. BRANCARD: B.

18 THE WITNESS: Oh, "Subsection B." It
19 originally read "of Subsection A," but that was before
20 the Commission adopted a new Subsection A. So it should
21 read "Subsection B."

22 MR. BRANCARD: Okay. I think we're good
23 there.

24 Do you still want to create another
25 cross-reference problem?

1 THE WITNESS: No, definitely not. I
2 would -- well, we also want to comply with the
3 requirements of the State Records Administrator who
4 wants that full change of subdivisions.

5 MR. BRANCARD: Right. The Records
6 Administrator would likely find that issue and kick it
7 back to us.

8 CHAIRWOMAN RILEY: Okay. If there is
9 nothing else, then we -- do you guys need to deliberate
10 or --

11 MR. BRANCARD: Mr. Feldewert does.

12 CHAIRWOMAN RILEY: Oh, you do have
13 something?

14 MR. FELDEWERT: Yeah. Madam Chair, members
15 of the Commission, NMOGA filed a pre-hearing statement
16 that should be in your packet in which we reflect that
17 NMOGA concurs with the proposed revisions set forth here
18 today by the Division. But in reviewing the rule, we
19 did find one additional clerical error. And if you
20 still have Exhibit 2 in front of you, it's actually
21 located on page 2 -- I'm sorry -- on page 3, and it
22 involves Subparagraph (9)(c). So I'm at the top of
23 Exhibit 2, Subparagraph (c). The full cite would be
24 19.15.16.15B(9)(c), and particularly the last clause.
25 It says, "Unless the order includes specific provision

1 for such additional well." It seems to be -- I'm not an
2 English major, but those that are indicate to me that
3 that's rather awkward language.

4 We have proposed a modification under which
5 it would read, "Subject to a compulsory pooling order,
6 unless the order provides for such additional well." I
7 suppose you could also put in there "unless the order
8 includes specific" -- "includes a specific provision for
9 such additional well" or "includes specific provisions
10 for such additional well." I think it all gets to the
11 same point. But right now the language is a little
12 awkward. So the thought was while we're fixing the
13 rule, perhaps we can address this, what is clearly a
14 typographical error.

15 COMMISSIONER BALCH: It seems like -- go
16 ahead.

17 CHAIRWOMAN RILEY: Oh, no. Go ahead.

18 COMMISSIONER BALCH: Well, I think your
19 proposed remedy is still -- sounds a little bit stilted.
20 So I'm wondering if something like "unless the order
21 provides for an additional well or wells." That might
22 more accurately encompass what the intent of the
23 Commission was. Certainly you can have more than one
24 infill well.

25 MR. BRANCARD: So I'm just slightly

1 concerned tinkering with this subsection, just slightly,
2 because this is one of the specific provisions that is
3 on appeal at the Court of Appeals. Not the language
4 that Mr. Feldewert is talking about. It's the bringing
5 in of 19.15.13.10 and 19.15.13.11 is what the party
6 appealing the Court of Appeals is bothered by. So I
7 kind of like Mr. Feldewert's second or third offers here
8 because the beginning of the section refers to "the
9 provisions," and so perhaps it ought to parallel that
10 the "order provides provisions" -- "unless the order
11 provides provisions." So "a specific" or "specific
12 provisions," either one, would make it a little -- a
13 little less awkward.

14 CHAIRWOMAN RILEY: I like "provisions."
15 Just adding an S. Would that -- if we did that, would
16 that alleviate your concern of making changes to what is
17 being appealed?

18 MR. BRANCARD: Well, it would be a pretty
19 minor change.

20 CHAIRWOMAN RILEY: Yeah. That is pretty
21 minor.

22 MR. FELDEWERT: Certainly.

23 CHAIRWOMAN RILEY: I don't think it changes
24 the context of the paragraph.

25 MR. BRANCARD: Because then you have

1 "provisions" at the beginning and "provisions" later in
2 the sentence.

3 MR. FELDEWERT: Makes sense to me.

4 CHAIRWOMAN RILEY: Ms. Bada, do you have
5 any --

6 MS. BADA: That's fine with the Division.

7 CHAIRWOMAN RILEY: I'm comfortable with
8 that.

9 COMMISSIONER MARTIN: I am, too.

10 COMMISSIONER BALCH: The least amount of
11 change to address the issue.

12 CHAIRWOMAN RILEY: Okay.

13 THE WITNESS: Am I still on the witness
14 stand, or have I been excused?

15 CHAIRWOMAN RILEY: You're still there,
16 certainly.

17 THE WITNESS: Well, have I been excused
18 (laughter)?

19 MR. BRANCARD: I think you have.

20 CHAIRWOMAN RILEY: Did you want to be
21 excused, or did you have something you want to say?

22 THE WITNESS: No. Well, I was not asked a
23 question about the proposed change, so I won't comment
24 thereon, but I wanted to know if I was still on the
25 witness stand or if the proceeding was going to continue

1 with the testimony being concluded.

2 CHAIRWOMAN RILEY: Ms. Bada?

3 MS. BADA: I have no further questions,
4 unless you have something you (indicating) would like to
5 add.

6 THE WITNESS: Did you -- are you posing
7 that question to me?

8 REDIRECT EXAMINATION

9 BY MS. BADA:

10 Q. I am. Would you like to comment?

11 A. Well, I disagree with Mr. Feldewert's English
12 major acquaintances, but the language was chosen by me
13 and I think it's the best way of saying it. But any of
14 the other ways of saying it that have been suggested are
15 okay also. I'm a little concerned about saying
16 "provisions" because that seems to suggest that there
17 are required to be more than one, which I don't think is
18 necessary to serve the purpose. So I would think -- if
19 I were choosing from the alternatives suggested, I would
20 say "a specific provision."

21 MR. BRANCARD: I still like "the
22 provisions."

23 COMMISSIONER MARTIN: So I do.

24 CHAIRWOMAN RILEY: I do, too.

25 I'm sorry, Mr. Brooks.

1 THE WITNESS: It's your call.

2 CHAIRWOMAN RILEY: Okay. Thank you.

3 THE WITNESS: Thank you.

4 CHAIRWOMAN RILEY: If there are no other
5 comments, you may be excused.

6 All right.

7 MR. BRANCARD: So the question before the
8 Commission is do you want to go into deliberations now
9 on the proposal from the Division to amend the section
10 on the drilling regulation?

11 COMMISSIONER BALCH: Sure.

12 CHAIRWOMAN RILEY: Anybody need a break
13 prior to this, or are we --

14 MR. BRANCARD: Are you ready to deliberate
15 or have a motion?

16 COMMISSIONER MARTIN: I move that the
17 changes be accepted as -- with Mr. Brancard's
18 qualifications as is.

19 COMMISSIONER BALCH: I would agree with
20 that, although I think also accept NMOGA's -- the
21 modification of NMOGA's proposed language change as
22 well, including NMOGA's proposed --

23 COMMISSIONER MARTIN: Oh, yes.

24 COMMISSIONER BALCH: Or interposed language
25 change based on NMOGA's --

1 COMMISSIONER MARTIN: I agree.

2 CHAIRWOMAN RILEY: Let's start our motion
3 over so that Mary's got a clean record.

4 COMMISSIONER MARTIN: I move that all the
5 changes proposed by anybody in the room except
6 Mr. Brooks be adopted.

7 (Laughter.)

8 COMMISSIONER BALCH: I second that motion.

9 CHAIRWOMAN RILEY: All right. Let's have a
10 vote by signifying your yes with an aye.

11 COMMISSIONER BALCH: Aye.

12 COMMISSIONER MARTIN: Aye.

13 CHAIRWOMAN RILEY: Aye.

14 (Ayes are unanimous.)

15 CHAIRWOMAN RILEY: All right. So moved.

16 We are -- we have approved the application
17 of the Oil and Gas Division, along with the amendments
18 from NMOGA, has been officially approved.

19 Let's take a break.

20 MR. BRANCARD: I wonder if we want to sort
21 of move the consensus -- it's a pretty simple case --
22 whether the Commission would be willing to delegate
23 signing the order to the Chair?

24 COMMISSIONER BALCH: I would move that we
25 allow Chair Riley to sign this order.

1 COMMISSIONER MARTIN: I agree.

2 CHAIRWOMAN RILEY: Okay.

3 (Case Number 16376 concludes, 10:22 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 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
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25