

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

SPECIAL MEETING

ROLL CALL, ADOPTION OF AGENDA AND REHEARING
CONSIDERATION OF CASE NUMBER 16403

January 8, 2019

Santa Fe, New Mexico

BEFORE: GABRIEL WADE, ESQ., ACTING CHAIRMAN
ALLISON MARKS, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Tuesday, January 8, 2019, 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 (9:00 a.m.)

2 ACTING CHAIRMAN WADE: Good morning,
3 everyone.

4 The time is 9:00. Today's date is January
5 8th, 2019. This is a special meeting of the New Mexico
6 Oil Conservation Commission. My name is Gabriel Wade.
7 I am the acting director of the New Mexico Oil
8 Conservation Division.

9 And I'll let my fellow commissioner
10 introduce herself.

11 COMMISSIONER MARKS: Allison Marks. I am
12 the designee of the Honorable State Land Commissioner,
13 Stephanie Garcia Richard.

14 ACTING CHAIRMAN WADE: With us also is the
15 commission clerk, Florene Davidson, and legal counsel,
16 Bill Brancard.

17 Before we start on today's agenda, there is
18 a procedural matter to attend to, and I will pass this
19 to Commissioner Marks.

20 COMMISSIONER MARKS: Under Statute 70-2-4,
21 it is -- the Commission elects a Chair. And for
22 procedural matters, it is -- director of the Oil
23 Conservation Division executes all documents, and
24 typically the director of the Oil Conservation Division
25 serves as the Commission Chair. Therefore, I would make

1 a motion for the acting director and at any time the
2 director of the Oil Conservation Division to serve as
3 the Chair of the Oil Conservation Commission.

4 ACTING CHAIRMAN WADE: And I second. So
5 the motion does carry. I will act as Chair for today's
6 meeting and until time -- such time that a director is
7 appointed.

8 Moving on to the agenda, the first item on
9 the agenda is roll call. We've already introduced
10 ourselves. With Commissioner Marks and I, we do have a
11 quorum for today's meeting.

12 The second item on the agenda is to approve
13 the agenda.

14 Do I hear a motion?

15 COMMISSIONER MARKS: I don't have the --

16 ACTING CHAIRMAN WADE: Oh, you don't
17 have --

18 COMMISSIONER MARKS: I make a motion to
19 approve the agenda.

20 ACTING CHAIRMAN WADE: I second the motion.
21 The agenda is approved for today.

22 The third item on the agenda are the
23 applications for rehearing of Case Number 16403, the
24 application of Hilcorp Energy Company to amend the well
25 density and location requirements and administrative

1 exceptions of the special pool rules for the
2 Blanco-Mesaverde Gas Pool, Rio Arriba and San Juan
3 Counties.

4 Before we go any further into this meeting,
5 I'd like to make a brief statement.

6 Before this Commission are two motions for
7 rehearing, which raise several important legal and
8 policy issues. Hilcorp's applications affects over
9 1 million acres. The State Land Office has stated that
10 over 64,000 of those acres are State Trust Land where
11 correlative rights may be impacted by this application.
12 The San Juan Citizens Alliance has raised waste of
13 natural gas as a potential issue in this matter. Both
14 the State Land Office and the San Juan Citizens Alliance
15 have raised issues regarding the protection of human
16 health and the environment, as well as transparency and
17 the lack of public input in this matter.

18 In addition, the record holds letters from
19 several New Mexico senators, the Navajo Nation and
20 dozens of concerned citizens that raised similar issues
21 of environmental impact, transparency and the lack of
22 public input.

23 The record also shows a lack of input by
24 the New Mexico Oil Conservation Division. The OCD is
25 charged with the prevention of waste, the protection of

1 correlative rights and the protection of human health
2 and the environment in oil and gas matters. OCD experts
3 have not had the opportunity to provide their valuable
4 opinions so that this Commission can make the most
5 informed decision on this application. Section 70-2-11A
6 of the New Mexico Oil and Gas Act states, "The New
7 Mexico Oil Conservation Commission is empowered and it
8 is its duty to prevent waste and to protect correlative
9 rights. To that end, the Commission is empowered to do
10 whatever may be reasonably necessary to carry out the
11 purpose of this Act, whether or not indicated or
12 specified in any section hereof." The New Mexico Oil
13 and Gas Act gives this Commission very broad discretion
14 to decide whether to rehear this case.

15 Because of the legal and policy issues
16 raised in this case, I move that this Commission, on its
17 own powers as granted by the Oil and Gas Act, rehear
18 Case 16403. And I ask that Commissioner Marks second
19 the motion.

20 COMMISSIONER MARKS: Thank you,
21 Mr. Chairman.

22 I certainly concur with all the statements
23 that were presented by the Chairman, and I -- as a
24 procedural matter before we continue, I think if the
25 matter was -- was reheard, I wanted to address certain

1 concerns as far as -- as far as notice if it was set for
2 rehearing, in particular I think transparency and I
3 think notice in particular to members of, say, the
4 Jicarilla Tribe and noticing the Bureau of Indian
5 Affairs. As far as the impact this application could
6 have on the resource management plan, it could have
7 significant applications. So we insisted that notice
8 was by certified mail to those entities, especially
9 tribal members, the tribal -- tribal government
10 landowners and the Bureau of Indian Affairs. I think
11 that would be great on the transparency and the notice
12 perspective as well.

13 With that, I would second the motion.

14 ACTING CHAIRMAN WADE: Okay. Thank you
15 very much.

16 The motion does carry then. Case Number
17 16403 will be reheard.

18 I do have a second motion that might get
19 towards process, but we can certainly discuss more of
20 the process.

21 MR. FELDEWERT: Mr. Chairman, members of
22 the Commission --

23 ACTING CHAIRMAN WADE: Excuse me,
24 Mr. Feldewert. I'd like to make a second motion before
25 you start.

1 MR. FELDEWERT: Okay.

2 ACTING CHAIRMAN WADE: I also move that
3 this case be renoticed for a future Commission hearing
4 date, and those who wish to participate may do so if
5 they comply with the Oil and Gas Act and rules. Matters
6 of standing and other procedural issues can be heard at
7 that time.

8 And I ask that this motion be seconded, and
9 we can also discuss further procedural issues.

10 COMMISSIONER MARKS: Yeah. I second the
11 motion.

12 ACTING CHAIRMAN WADE: The motion carries.

13 If you would like to discuss those
14 procedural issues now. We could also set the hearing
15 date.

16 COMMISSIONER MARKS: Okay.

17 ACTING CHAIRMAN WADE: Did you have
18 specific issues or requirements that you wanted to
19 raise?

20 COMMISSIONER MARKS: As you mentioned, I
21 believe there are about 1.3 million acres affected by
22 this application and 70-or-so-thousand acres of State
23 Trust Land. I think it's imperative that the BLM, all
24 government land agencies are noticed, that we get as
25 much public input as possible and that we encourage

1 public participation in this application and, as
2 mentioned, that we ask the Applicant to notice the
3 Bureau of Indian Affairs, the Jicarilla and perhaps the
4 Forest Service as well --

5 MR. BRANCARD: And the BLM?

6 COMMISSIONER MARKS: Yes.

7 MR. BRANCARD: And I assume the State Land
8 Office?

9 COMMISSIONER MARKS: And the State Land
10 Office, yes.

11 -- via certified mail, especially given the
12 pending resource management plan with the BLM.

13 ACTING CHAIRMAN WADE: So the Applicant is
14 to notice the Jicarilla, BLM, State Land Office and the
15 Forest Service --

16 COMMISSIONER MARKS: And the Bureau of
17 Indian Affairs.

18 ACTING CHAIRMAN WADE: -- and the Bureau of
19 Indian Affairs via certified mail.

20 COMMISSIONER MARKS: Correct.

21 I believe that -- although I realize and
22 acknowledge that perhaps there are arguments that this
23 may be an adjudicatory proceedings, that we can look to
24 encourage additional notice, and this would be in the
25 best interest of the citizens of the state of New

1 Mexico.

2 MR. BRANCARD: Well, as a Commission
3 proceedings, it will be noticed in the newspapers, two
4 counties.

5 Is that correct, Florene?

6 COMMISSIONER MARKS: Uh-huh.

7 MS. DAVIDSON: Correct.

8 ACTING CHAIRMAN WADE: So maybe now we can
9 find a date for this hearing.

10 And then, Mr. Feldewert, if you have
11 questions as to the process or any party has questions
12 to the process, we can discuss that.

13 Ms. Davidson, do you have any dates that
14 are not during the legislative session in April or May
15 available?

16 COMMISSIONER MARKS: I also want to make
17 sure that we are staying the current order until the
18 rehearing.

19 MR. BRANCARD: Chair, Commissioner Marks,
20 we've had actually two -- we've granted two rehearings
21 in the last year. And what we did in those cases was
22 there was an order that was suspended until the
23 rehearing was completed. At that point the Commission
24 can decide whether to reinstate that order, draft a new
25 order, amend the order, et cetera.

1 COMMISSIONER MARKS: I make a motion to
2 suspend the current order until there is a rehearing on
3 the pending application.

4 ACTING CHAIRMAN WADE: I second. The
5 motion carries. The order will be suspended until the
6 rehearing takes place.

7 MR. BRANCARD: So a date. We have
8 Commission hearing dates scheduled after the legislative
9 session of April 11th and May 9th.

10 COMMISSIONER MARKS: April 11th would work
11 well for me or May 9th, actually. I think the kiddos
12 are still in school then, so May 9th would actually --

13 ACTING CHAIRMAN WADE: Is there any major
14 conflict with May 9th?

15 We'll set this rehearing for May 9th.

16 Okay. Does anybody have questions as to
17 the process?

18 MR. SCHLENKER-GOODRICH: Mr. Chair,
19 Commissioners, if I may make a request in terms of the
20 notice.

21 MR. BRANCARD: Mr. Schlenker, could you
22 introduce yourself for the record?

23 MR. SCHLENKER-GOODRICH: Apologies. I've
24 been here a few times the last couple of months.

25 Erik Schlenker-Goodrich, with Western

1 Environmental Law Center, representing San Juan Citizens
2 Alliance.

3 I'd like to respectfully request that in
4 terms of notice, if notice could be considered also to
5 the Navajo Nation and also to individual Navajo chapters
6 in the Blanco-Mesaverde Formation or approximate to the
7 Blanco-Mesaverde Formation.

8 And then the second is a request for
9 clarification. Commissioner Marks asked about
10 rulemaking proceeding. That was an issue that San Juan
11 Citizens Alliance had raised. And so whether
12 essentially are we proceeding as a procedural matter,
13 sort of a hybrid adjudicatory and rulemaking process?
14 So those two aspects.

15 MR. BRANCARD: Mr. Chairman, we have taken
16 the position that this is an adjudicatory matter, and
17 there are procedures for notice of adjudicatory matters.
18 But the Commission certainly -- and it's certainly doing
19 it right now -- can obviously ask that additional notice
20 be provided in the proceedings because it's your
21 proceeding. If you want to ask for additional notice,
22 you can do so. I hesitate to call this a rulemaking
23 because it triggers lots of other statutory
24 requirements, New Mexico Administrative Code; we have to
25 codify this, et cetera. So I think we're better off

1 continuing to view this as an adjudicatory matter but
2 with additional notice that the Commission may require.

3 COMMISSIONER MARKS: Mr. Chairman, as
4 Mr. Brancard just stated, I think some of the additional
5 rulemaking procedures that the legislature passed during
6 the last legislative session will trigger some
7 additional requirements that may or may not -- probably
8 may not be necessary in this case. But the publication
9 in the newspaper -- in the newspapers and I think
10 counsel's suggestion of notice to the Navajo Nation and
11 to the chapters as an additional notice requirement, I
12 would make a motion that the Applicant also notice the
13 Navajo Nation and the chapters as well.

14 ACTING CHAIRMAN WADE: Now, the Navajo
15 Nation, I don't see as a problem. The individual
16 chapter houses is something the OCD, this Commission has
17 not had experience with. I think I would have to ask
18 that a list be provided for notice.

19 MR. BRANCARD: I believe the Nation has
20 maps of what chapter boundaries are, so it should be
21 pretty easy to figure out the overlap of the chapter
22 boundaries with the pool area.

23 ACTING CHAIRMAN WADE: Is there not a
24 central place -- if we notice the Navajo Nation, would
25 that notice not suffice to get to the chapter houses?

1 MR. SCHLENKER-GOODRICH: Mr. Chair,
2 Commissioners, the Navajo Nation is sort of a local
3 government versus national government dynamic. I think
4 San Juan Citizens Alliance would be happy to work
5 with -- there is a council -- there is a chapter
6 representative back there (indicating), Mario Atencio.
7 We'd be happy to work with the chapters to provide a
8 list of chapters promptly to the Commission and to
9 Hilcorp with those notice provisions, if that's
10 acceptable, to help out in that process.

11 ACTING CHAIRMAN WADE: I think we would
12 need that relatively quickly, so something like two
13 weeks from today's date.

14 MR. SCHLENKER-GOODRICH: More than
15 reasonable. Thank you.

16 COMMISSIONER MARKS: And perhaps a
17 representative from the Nation is comfortable with that
18 as well?

19 MR. ATENCIO: Yes. Thank you.

20 ACTING CHAIRMAN WADE: So the motion has
21 been seconded. The motion now, as I understand it,
22 would be that notice goes to the Navajo Nation. This
23 Commission will be provided with a list to notice
24 chapter houses. I second that motion. The motion
25 carries.

1 MR. SCHLENKER-GOODRICH: Thank you,
2 Commissioners.

3 MR. BRANCARD: In regard to the question
4 about adjudicatory versus rulemaking, one of the issues
5 that's been brought up -- and I think would be very easy
6 to coordinate here -- is that a rulemaking normally has
7 a 30-day public-notice period. I mean, our rules are a
8 20-day public notice period.

9 MS. DAVIDSON: Right.

10 MR. BRANCARD: So we have lots of time
11 between now and the hearing date. I think it will be
12 pretty easy to require that the notices -- the
13 publication notices, which we will do --

14 MS. DAVIDSON: (Indicating.)

15 MR. BRANCARD: -- although I think Hilcorp
16 also does it -- has done it in the past, be done at
17 least 30 days in advance of the May 11th [sic] date.

18 COMMISSIONER MARKS: I'll make a motion for
19 notice to be at least 30 days prior to the May 9th
20 hearing date.

21 ACTING CHAIRMAN WADE: So as I understand,
22 the motion is that all notice will be made 30 days prior
23 to May 9th. I second that motion, and the motion
24 carries.

25 Are there any other procedural questions?

1 MR. FELDEWERT: Yes, sir.

2 ACTING CHAIRMAN WADE: Yes, sir,
3 Mr. Feldewert.

4 MR. FELDEWERT: Michael Feldewert, with the
5 Santa Fe office of Holland & Hart, on behalf of the
6 Applicant in this case, Hilcorp Energy Company.

7 First off, I understand -- I'm assuming
8 that there will be a written decision that will be
9 issued by the Commission encapsulating all of these
10 rulings?

11 MR. BRANCARD: We will try to do that.
12 Yes.

13 MR. FELDEWERT: Okay.

14 Secondly -- Mr. Wade, I was unclear --
15 which motion were you addressing in making your
16 decision?

17 ACTING CHAIRMAN WADE: I moved to rehear
18 this case based on our own powers. That was seconded by
19 Commissioner Marks.

20 MR. FELDEWERT: So you didn't address any
21 applications for rehearing?

22 ACTING CHAIRMAN WADE: That's correct.

23 MR. FELDEWERT: Okay. Now, the agenda
24 indicates that you are to consider applications for
25 rehearing, not your own motion, number one.

1 Number two, are you aware that the San Juan
2 Citizens Alliance did not file their application for
3 rehearing?

4 ACTING CHAIRMAN WADE: I am aware. I'm
5 making this motion independently as a member of this
6 Commission. So these types of issues that you're
7 raising are beyond the scope of the motion that I made.

8 MR. FELDEWERT: Okay. So there is no
9 debate that they did not file?

10 MR. SCHLENKER-GOODRICH: I would object to
11 that.

12 Counsel for San Juan Citizens Alliance.

13 Notice was provided. I provided the
14 briefing to Bill Brancard on January 3rd. It was posted
15 to the docket on January 4th. We concede and apologize
16 that it was not timely filed. That was, frankly, our
17 mistake, a product of email and filing on Christmas Eve.
18 To the degree this is a relevant issue, we would move
19 the Commission to exercise its discretion to waive
20 timely notice given that the briefing was, in fact,
21 filed.

22 ACTING CHAIRMAN WADE: This decision was
23 made based on a motion I made as a commissioner. All
24 matters of standing and other procedural issues will be
25 heard at rehearing.

1 Commissioner Marks, please.

2 COMMISSIONER MARKS: Mr. Feldewert, if you
3 are alleging any violations of the Open Meetings Act
4 because of the notice, I believe we can certainly
5 discuss the pending -- we can start with the pending
6 State Land Office application for rehearing, if that is
7 a contention that you have before the Commission right
8 now.

9 MR. FELDEWERT: I'm afraid, Ms. Marks, you
10 misapprehend my question. The point being that the --
11 as a jurisdictional requirement, the application for
12 rehearing has to be filed within a certain period of time
13 after the entry of the decision. That did not occur
14 here with respect to the San Juan Citizens Alliance
15 motion. It's a judicial issue. So that motion is not
16 viable. But I understand that you're not granting
17 either motion. You're moving on your own motion.

18 ACTING CHAIRMAN WADE: That's correct.

19 MR. FELDEWERT: If I may approach.

20 COMMISSIONER MARKS: Is there any objection
21 to the Chairman's own motion?

22 MR. FELDEWERT: If I may approach.

23 COMMISSIONER MARKS: Okay.

24 MR. SCHLENKER-GOODRICH: If I may request
25 that a copy be provided to counsel for San Juan Citizens

1 Alliance and to the State Land Office.

2 MR. FELDEWERT: (Complies.)

3 MR. SCHLENKER-GOODRICH: Thank you.

4 MR. FELDEWERT: This body has a
5 long-standing tradition of being composed of people with
6 special expertise in the area of oil and gas production.
7 And as you'll see from the first page, the courts give
8 this Commission specialized expertise when it pertains
9 to the regulation and conservation of oil and gas, the
10 prevention of waste and the protection of correlative
11 rights. And that's precisely because this Commission is
12 normally comprised of individual with particular
13 expertise in oil and gas production such as geologists,
14 engineers and other persons with that particular
15 expertise.

16 The remaining pages of the handout that I
17 gave you set forth the requirements for those that
18 must -- that they exist for those who sit here on this
19 Commission. And I'd note -- go to the -- in particular,
20 which is Section 70-2-5, which requires that anyone
21 sitting on this Division -- or this Commission as the
22 director of the Oil Conservation Division or as its
23 acting director must be a registered petroleum engineer
24 or an engineer by experience and education in the field
25 of petroleum engineering.

1 Mr. Wade, I know you're a very good
2 attorney, but I do not believe that you are an engineer,
3 so I don't see how you can sit on this Commission here
4 today as the director of the Oil Conservation Division.

5 MR. BRANCARD: Mr. Feldewert, are you
6 making a motion to challenge?

7 MR. FELDEWERT: Yes, sir.

8 MR. BRANCARD: (Indicating.)

9 MR. FELDEWERT: So as a result --

10 MR. BRANCARD: I would like you to say what
11 you're going to say. I mean, instead of giving a
12 speech, tell us what you're moving and what you're
13 asking for.

14 MR. FELDEWERT: If I may.

15 MR. BRANCARD: Yes.

16 MR. FELDEWERT: You've interrupted me.

17 What I'm asking for is -- or what I'm
18 pointing out is that it's my understanding that the --
19 that Mr. Wade is not either a registered petroleum
20 engineer or an engineer by education and experience and,
21 therefore, is not qualified to sit on this Commission,
22 so I would move to have him removed from this Commission
23 on the grounds that he does not meet the statutory
24 qualifications.

25 COMMISSIONER MARKS: I do believe -- just

1 for engagement here, this is a very interesting -- the
2 statute was actually brought to my attention over the
3 weekend. And the first part, B1, is pretty interesting
4 as well, and the first part is "a resident of this
5 state." And I don't know if we should get into this
6 conversation now or not discussing the former director
7 and whether she was a resident of this state and
8 validating all former decisions of the director, if we
9 are discussing the qualifications and all -- ratifying
10 all decisions of the director and whether she was
11 properly sitting as Chair of the Commission.

12 However, if we go to B3, "by virtue of
13 experience," I will note, from working with Mr. Wade,
14 Mr. Wade has served as counsel for the Commission, has
15 certainly gained a tremendous amount of experience in
16 the oil and gas industry, has, I believe, gone to the
17 field, worked with a number of the district offices, and
18 now is the deputy director for the Oil Conservation
19 Division and has gained a great deal of experience in
20 petroleum engineering, and I believe, in my opinion,
21 meets the qualifications of 70-2-5B to serve as the
22 acting director of the Oil Conservation Division.

23 ACTING CHAIRMAN WADE: Thank you,
24 Commissioner Marks.

25 I'm comfortable with denying your motion.

1 MR. FELDEWERT: Secondly -- I wish I was
2 prepared to argue the merits of the motion, but I guess,
3 since it's your own motion, it doesn't matter.

4 I appreciate your time here today. I'm
5 obviously concerned with the procedural aspects here
6 today, the politics that appear to have been implemented
7 in here and the total disregard for the decisions that
8 were made by the prior Commission, which was comprised
9 of long-standing individuals with expertise and
10 knowledge on this Commission, including Mr. Ed Martin
11 who sat on this Commission as the designee of the State
12 Land Office at that time and served in that capacity for
13 a number of years. And he was only removed because he
14 chose to apply the facts to the issues that were
15 presented to him --

16 MR. SCHLENKER-GOODRICH: I would object.
17 Is counsel for Hilcorp providing evidence or making a
18 statement? It's unclear to me what's going on at this
19 point.

20 ACTING CHAIRMAN WADE: I think we'll allow
21 Mr. Feldewert to have his say and allow the other
22 parties to give a brief statement if they wish.

23 MR. SCHLENKER-GOODRICH: Thank you.

24 MR. FELDEWERT: -- and made his decision on
25 the request to intervene, some of which weren't timely,

1 some of which were filed more than once, based on the
2 evidence and the briefing and the counsel that was
3 provided to him at that time.

4 And so I think it appears to me -- and I've
5 been involved in this for a long time. But this type of
6 political shenanigans that are going on here is a low
7 point, in my opinion, for the Commission, the lowest
8 point that I have seen, other than perhaps what I saw
9 during the Pit Rule when they removed a commissioner in
10 the morning session and changed in the afternoon
11 session. So it's disappointing. I've made my position
12 clear as to the merits of this particular matter. And
13 we and I think other operators of the San Juan Basin,
14 all of which were cognizant and participated in these
15 proceedings and were in favor of this density, are
16 extremely disappointed with the results here today.

17 MS. ANTILLON: Commissioners -- if I may,
18 Mr. Chair.

19 Thank you, Commissioners.

20 My name is Andrea Antillon, and I am here
21 representing the Commissioner of Public Lands and the
22 State Land Office. And I just wanted to add a few
23 comments regarding the Commissioner's appointment. The
24 Commissioner, by statute, can appoint whomever she or he
25 wants as long as they have the education and experience.

1 And that person serves on this Commission on behalf of
2 the Commissioner, and the Commissioner can change that
3 appointment at any time and as long as it's -- as you
4 stated, as long as the new designee meets those
5 requirements under 70-2-5.

6 And so when the prior Commissioner Dunn
7 decided to sit on the Commission himself, he had the
8 expertise, after four years of working as Commissioner
9 for the State Land Office, to do so, and it was his
10 choice to remove Mr. Martin who had served on his behalf
11 at that time.

12 I think the Commissioner of Public Lands
13 realizes that this is an important decision and takes
14 care to appoint somebody that they believe will act in
15 the best of the interest of the OCC and in the best
16 interest of the public and -- so I take note on behalf
17 of the State Land Office as to what Mr. Feldewert has
18 said, and I just wanted to make those comments known.

19 ACTING CHAIRMAN WADE: Okay. Thank you.

20 Any other comments?

21 MR. SCHLENKER-GOODRICH: Yeah, just one
22 brief comment.

23 I want to say exactly what I said back in
24 November at this hearing, that there is an opportunity
25 to do this process right. We recognize that Hilcorp has

1 a right to seek a doubling of its well density in the
2 area. We don't think its application was well tailored,
3 but we certainly think that they are entitled to bring
4 that argument. At the same time, we need to work
5 together as New Mexicans to bring all stakeholders to
6 the table to ensure that when you make these decisions,
7 these decisions are, in fact, in the public interest,
8 not the corporate oil and gas industry interest. And so
9 I appreciate the Commission's motion sua sponte to
10 rehear this case, and I look forward to San Juan
11 Citizens Alliance bringing its arguments on May 9th.

12 Thank you.

13 ACTING CHAIRMAN WADE: Commissioner Marks.

14 COMMISSIONER MARKS: Thank you,
15 Mr. Chairman.

16 Mr. Chairman, to Mr. Feldewert's comment, I
17 certainly was not here for any of the prior hearings,
18 and any implications that this Commission or the State
19 Land Office has prejudged the merits of the application
20 is quite offensive to me. I -- I think the -- the State
21 Land Office -- the Enabling Act certainly creates a
22 charitable trust, and it's in the interest of the State
23 Land Office to gain and get as much money as possible to
24 the beneficiaries of -- of the trust? And if we -- if
25 we look at the Enabling Act, I think that goes to show

1 as to why perhaps the State Land Office, looking at the
2 application for rehearing filed by the State Land Office
3 and looking at those merits and the merits of that
4 application, why under the Enabling Act perhaps the
5 State Land Office should have been a stakeholder and
6 should have been a party to those proceedings. And it
7 is for that reason and that reason alone that I would
8 make a motion to grant the State Land Office's
9 application for a rehearing. When you look at the New
10 Mexico constitution and -- and not to violate those
11 statutory duties and to make sure parties that should be
12 represented before this Commission are parties to a
13 proceeding.

14 There is a motion there, Mr. Chairman,
15 to consider the State Land Office's application for
16 rehearing.

17 ACTING CHAIRMAN WADE: As I stated and I
18 think where we left off procedurally, that any questions
19 as to standing or other procedural issues will be heard
20 at the rehearing. That is the motion and the way we had
21 left that, my understanding of it. So I think maybe
22 your motion might be better heard at the next hearing
23 where argument can be made.

24 MR. BRANCARD: I think Ms. Marks' motion is
25 to grant the State Land Office's request for rehearing.

1 So you're granting the rehearing on two grounds?

2 ACTING CHAIRMAN WADE: Essentially.

3 MR. BRANCARD: Is that -- am I correct?

4 COMMISSIONER MARKS: That's correct, under
5 the sua sponte motion and the State Land Office's
6 application for rehearing as well.

7 ACTING CHAIRMAN WADE: Will the -- what's
8 the effect of the granting of the State Land Office's
9 motion at this time?

10 COMMISSIONER MARKS: Another -- another
11 grounds to grant the rehearing in addition. I believe
12 there were two pending applications for rehearing. We
13 would not be entertaining the San Juan Citizens Alliance
14 application for rehearing, but we entertained the sua
15 sponte motion for a rehearing brought by the Chair and
16 then the pending application for rehearing by the State
17 Land Office.

18 ACTING CHAIRMAN WADE: Mr. Brancard, do you
19 have any input?

20 MR. BRANCARD: No. To me I think it's
21 perfectly acceptable for you to grant the rehearing on
22 two grounds.

23 ACTING CHAIRMAN WADE: Okay. Then I will
24 second that motion, and the motion carries.

25 MR. FELDEWERT: No argument, Mr. Chairman?

1 ACTING CHAIRMAN WADE: We will hear
2 argument, if there is going to be, at rehearing. That
3 is when we will be better prepared to hear that
4 argument.

5 COMMISSIONER MARKS: Perhaps a motion to
6 reconsider at that time. But I did see a response by
7 Hilcorp to the State Land Office's application. I just
8 don't think argument is necessary at this time.

9 ACTING CHAIRMAN WADE: So be prepared for
10 whatever arguments you want to make at rehearing.

11 Anything further?

12 MR. BRANCARD: Do we have a date?

13 ACTING CHAIRMAN WADE: We have a date.

14 MR. BRANCARD: I will draft a proposed
15 order and send it to the two Commissioners. Do you want
16 to give the acting Chair the authority to sign the
17 order, so we don't have to meet --

18 COMMISSIONER MARKS: Yes, because I believe
19 under Statute 70-2-4, we have it anyway. But yes, I'll
20 make a motion to give the Chair authority to sign the
21 order. Actually -- yes.

22 ACTING CHAIRMAN WADE: I second the motion
23 to carry. So I will be able to sign the order that will
24 be forthcoming.

25 Any other procedural issues?

1 MR. BRANCARD: I think we're fine for now.

2 COMMISSIONER MARKS: Yes.

3 Mr. Chair, I would just -- I would just
4 note that I looked at the docket. Perhaps this is not
5 acceptable, but I looked at the pending docket for
6 January 17th. If counsel could reach out to -- I notice
7 the dockets are quite large before the Commission and
8 the Division. But if all counsel in those cases, if we
9 could maybe get proposed stipulated findings submitted
10 to the Commission before the hearing, that might
11 expedite the hearings before the Commission and
12 certainly would do so before the Division as well. And
13 then that would allow the Commission to hear more cases
14 that are pending before it. So if counsel for the
15 Commission could reach out to any parties that have
16 filed appearances in those cases, that may help the
17 Commission, although I would ask that those proposed
18 findings be filed with the Commission maybe at least ten
19 days before -- I guess in the 17th case, that would be
20 hard. In that case maybe five days or so beforehand, as
21 a matter of transparency so the public can see the
22 proposed findings and comment on those findings as well.

23 MR. BRANCARD: There are a lot of cases
24 listed for the January 17th docket. A lot of those are
25 parts of single hearings, so there are actually fewer

1 hearings. I don't know.

2 Have we had any other requests for
3 continuances yet, Florene?

4 MS. DAVIDSON: No.

5 MR. BRANCARD: So we may be going forward
6 with a number of these.

7 I think there is a possibility for
8 stipulations because a number of these cases were
9 already heard before with the Division. And so while
10 it's de novo, they can certainly agree in advance which
11 of the facts that the Division could be agreed to.
12 Florene and I will check and see which cases are
13 actually going forward.

14 COMMISSIONER MARKS: Okay.

15 ACTING CHAIRMAN WADE: Okay. If there is
16 nothing further, this meeting is adjourned.

17 (The proceedings conclude, 9:37 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 11th day of January 2019.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2019
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