

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

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

APPLICATION OF DELAWARE ENERGY, LLC CASE NOS. 16258,
FOR PRESSURE MAINTENANCE AND AUTHORIZATION 16259,
TO INJECT, EDDY COUNTY, NEW MEXICO. 16260

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

February 21, 2019

Santa Fe, New Mexico

BEFORE: PHILLIP GOETZE, CHIEF EXAMINER
 MICHAEL McMILLAN, TECHNICAL EXAMINER
 TERRY WARNELL, TECHNICAL EXAMINER
 DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the New Mexico Oil Conservation Division, Phillip Goetze, Chief Examiner; Michael McMillan and Terry Warnell, Technical Examiners; and David K. Brooks, Legal Examiner, on Thursday, February 21, 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.

REPORTED BY: Mary C. Hankins, CCR, RPR
 New Mexico CCR #20
 Paul Baca Professional Court Reporters
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 (505) 843-9241

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APPEARANCES

FOR APPLICANT DELAWARE ENERGY, LLC:

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EXHIBITS OFFERED AND ADMITTED

Delaware Energy, LLC Exhibit Number 3A For Each Case	9
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1 (11:40 a.m.)

2 EXAMINER GOETZE: Call Case Number 16258,
3 application of Delaware Energy, LLC for authorization to
4 inject salt water for purposes of disposal through its
5 proposed Bear Trap SWD well, Eddy County, New Mexico.
6 And it's been consolidated with Case Number 16259,
7 application of Delaware Energy, LLC for authorization to
8 inject salt water for purposes of disposal through its
9 proposed Giant Panda SWD No. 1, Eddy County, New Mexico,
10 and Case Number 16260, application of Delaware Energy,
11 LLC for authorization to inject salt water for purposes
12 of disposal through its proposed Grizzly SWD No. 1 well,
13 Eddy County, New Mexico.

14 Call for appearances.

15 MR. RANKIN: Mr. Examiner, Adam Rankin with
16 the law firm of Holland & Hart here on behalf of the
17 Applicant on these three consolidated cases. I have no
18 witnesses today, but I have three affidavit packets for
19 each of the cases supplementing the notice that was
20 provided previously.

21 MR. McMILLAN: Mr. Examiner, Seth McMillan,
22 Montgomery & Andrews, here on behalf of the Foundation
23 Minerals Group only to the extent I'm authorized to be
24 here following the Division's ruling as to standing.
25 And I believe that at a minimum, I'm here fully

1 authorized to be here as to 16258, the Bear Trap well,
2 if I recall correctly.

3 Mr. Rankin, correct me if I'm wrong.

4 The motion to dismiss my clients was
5 withdrawn as to that particular well.

6 MR. RANKIN: That's correct, Mr. Examiner.

7 In light of the testimony that was provided
8 at the hearing in that case, in which it was made clear
9 that one of the notice parties was no longer -- had an
10 ownership interest and reverted to McMillan's client,
11 that was one of the reasons why we wanted to perfect
12 notice for these cases, was to ensure that the correct
13 notice was provided. So as to Case 16258, McMillan's
14 clients are officially notice parties within the area of
15 review, and I did withdraw our motion to dismiss them as
16 to that case.

17 MR. McMILLAN: Thanks.

18 EXAMINER BROOKS: Okay. The gentleman who
19 sent us the letter on this said he was not going to
20 appear, so I need to verify for the record what exactly
21 happened. My -- my conclusion from the papers I
22 examined that were submitted after the last hearing was
23 that all of the parties -- the other parties either were
24 not parties because they did not have -- they were not
25 required -- persons required to be noticed -- that they

1 were not parties -- oh, the gentleman's name was Marion
2 Craig.

3 MR. RANKIN: That's right.

4 EXAMINER BROOKS: And he sent us a letter,
5 a copy of which is in the case file. And he stated that
6 he was not given notice of certain things and he
7 probably -- he may not have been, but the Division came
8 to a conclusion that -- the examiner, on my
9 recommendation, came to the conclusion that the people
10 he represents either were not parties or -- well, they
11 were not parties, and they were not entitled to
12 intervene because their interventions were not timely
13 filed, whether or not they had standing, and we did not
14 reach the issue of whether they had standing to
15 intervene. The ruling was that they were either not
16 parties, or they did not file a timely intervention
17 under the rules.

18 Now, as the attorney who presented this
19 case, is it correct that -- is that established by some
20 evidence in the record according to your understanding?

21 MR. RANKIN: Mr. Brooks, yes. We've
22 elicited testimony from Mr. Craig's witnesses that they
23 did not own either a surface interest where the well is
24 proposed or any of the other interests that would make
25 them a party required to get notice of the applications.

1 They entered appearances and provided testimony
2 nevertheless. So with that -- you know, I think with
3 the addition of these affidavits and the perfection of
4 notice, I think that the Division can proceed to take
5 these cases under advisement.

6 EXAMINER BROOKS: Very good. Well, that
7 will be -- it will then be my advice to the examiner
8 that we adhere to those rulings. I did review a bunch
9 of things in the brief, but I wanted to be sure that you
10 were comfortable with that in the record.

11 MR. RANKIN: Yeah. I had not yet seen
12 Mr. Craig's letter. He did not send one to me.

13 EXAMINER BROOKS: He should have copied
14 you. He does not -- he indicates that he copied Seth.
15 Well, no, he indicates that he copied Adam Rankin also.

16 MR. RANKIN: I saw some correspondence from
17 him, but I don't think --

18 Did you see the letter, Mr. McMillan?

19 MR. McMILLAN: I did.

20 MR. RANKIN: Well, maybe I missed it.

21 (Laughter.)

22 EXAMINER BROOKS: Well, anyway, let me make
23 this an exhibit to this hearing. I guess we need to get
24 a copy, don't we?

25 EXAMINER GOETZE: That's a copy.

1 EXAMINER BROOKS: Oh, this is a copy?

2 EXAMINER GOETZE: Oh, I don't get the
3 originals. It's a copy.

4 EXAMINER BROOKS: Okay. Well, the original
5 comes in electronically anyway.

6 EXAMINER GOETZE: That's correct.

7 EXAMINER BROOKS: I assume somebody -- the
8 person to whom the original is directed, as I understand
9 our system, if we have a system, is supposed to be
10 responsible for preserving it.

11 EXAMINER GOETZE: And we did put it into
12 the record, so it stays in the case file for each of
13 the cases.

14 EXAMINER BROOKS: Very good. Then this --
15 I want to get this letter from Marion Craig to Oil
16 Conservation Division marked as an exhibit for the
17 hearing.

18 EXAMINER WARNELL: Exhibit number?

19 EXAMINER BROOKS: It's not evidence. It's
20 just evidence of what it is, because it's hearsay,
21 and -- but Mr. Craig didn't waive anything, but it's
22 evidence of what it is and that's why we have gone
23 through this conference on the record.

24 MR. RANKIN: So, Mr. Examiner, with that, I
25 would ask that -- and, unfortunately, my assistant did

1 not put the sequential exhibit numbers on there. I will
2 double-check the case file right now and confirm what
3 the exhibits numbers should be for these packets before
4 I leave today and mark them for the record.

5 But I ask that these -- in each case, that
6 these supplemental affidavits reflecting that we sent
7 out notice to all the parties identified within a
8 one-mile area of review as to each of these cases did
9 receive notice timely for today's hearing. And so with
10 that, notice has been perfected for each of these three
11 cases.

12 I'll also note, Mr. Examiner, that I
13 believe there is some additional information you had
14 requested that's not yet been provided, unless it's been
15 provided directly by the client. I think it's
16 updated -- some updated information on the new location
17 for the Bear Trap that I think you wanted.

18 EXAMINER GOETZE: Well, we'd like to have
19 at least a current C-102, even if it is in a draft form,
20 so we have a final record of where the well ended up. I
21 think we've had with these applications a headache of
22 trying to accommodate, and as a result, we have numerous
23 locations. So yeah, if we could get, for the record, at
24 least a draft C-102. It does not have to be a final,
25 and, therefore, we have the correct location.

1 MR. RANKIN: I'll make sure that we get
2 that to you timely.

3 With that, we would ask that these
4 affidavits be accepted into the record as exhibits and
5 ask that the Division take these cases under advisement.

6 MR. McMILLAN: No objection.

7 EXAMINER GOETZE: Okay. So we will take
8 the affidavits of notification for the amended
9 applications in Cases 16258, 16259, 16260 -- with an
10 exhibit number to be provided, these exhibits will go
11 into the record.

12 (Delaware Energy, LLC Exhibit Number 3A
13 for each case is offered and admitted into
14 evidence.)

15 EXAMINER BROOKS: And let me add, for the
16 record, I have advised Mr. Craig that the final order
17 will reflect our rulings on the issue of standing -- no,
18 not on the issue of standing because we didn't rule on
19 the issue of standing. On the issue of right to
20 intervene which was lost by failure to intervene timely,
21 and that will be in the final order, whatever the final
22 order otherwise provides, and so that we are preserving
23 Mr. Craig's right to appeal if he should so choose to do
24 so on behalf of his clients.

25 EXAMINER GOETZE: And with that, you don't

1 have anything to say, Mr. McMillan?

2 MR. McMILLAN: No. I am quiet.

3 EXAMINER GOETZE: Then we are going ahead,
4 and Cases 16258, 16259, 16260 are taken under
5 advisement.

6 Thank you.

7 And 3Bear is gone. Hard to believe.

8 EXAMINER BROOKS: That is.

9 (The Case Numbers 16258, 16259 and 16260
10 conclude, 11:45 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 27th day of March 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
Paul Baca Professional Court Reporters

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