

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 SOLARIS WATER
MIDSTREAM, LLC FOR APPROVAL OF
A SALTWATER DISPOSAL WELL, EDDY
COUNTY, NEW MEXICO.

CASE NO. 20588

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

July 11, 2019

Santa Fe, New Mexico

BEFORE: WILLIAM V. JONES, CHIEF EXAMINER
DAVID K. BROOKS, LEGAL EXAMINER

This matter came on for hearing before the
New Mexico Oil Conservation Division, William V. Jones,
Chief Examiner, and David K. Brooks, Legal Examiner, on
Thursday, July 11, 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
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APPEARANCES

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EXHIBITS OFFERED AND ADMITTED

(No Exhibits.)

1 (11:13 a.m.)

2 EXAMINER JONES: Let's call Case Number
3 20588, Eddy County, New Mexico.

4 Call for appearances.

5 MR. DOMENICI: Pete Domenici for the
6 Applicant.

7 MS. BENNETT: Deana Bennett on behalf of
8 NGL Water Solutions Permian, LLC.

9 MR. RANKIN: Adam Rankin on behalf of EOG
10 Resources, Incorporated.

11 EXAMINER JONES: Any other appearances?

12 MR. DOMENICI: The only action I want to
13 take on this is the same motion to dismiss that
14 Mr. Brooks just, I think, recommended denial without
15 prejudice. The same circumstance applies here. It is a
16 little different because we are going to continue this,
17 and so we would have to bring in witnesses and go to the
18 level of preparation as opposed to having everyone ready
19 to go today.

20 EXAMINER BROOKS: Okay.

21 MR. DOMENICI: So if there was a way to
22 decide that, it would facilitate the next hearing for
23 everyone involved.

24 EXAMINER JONES: Uh-huh.

25 MR. DOMENICI: So that's the --

1 EXAMINER BROOKS: The next hearing being
2 the one -- the case just called?

3 EXAMINER JONES: No, when it's continued
4 to --

5 MR. DOMENICI: We're going to continue it
6 to -- our continuance is for the August 8th docket,
7 pending discussions with EOG.

8 EXAMINER BROOKS: Okay. And that has been
9 agreed to?

10 MR. DOMENICI: Yes.

11 EXAMINER JONES: We actually have to
12 continue it to August 22nd.

13 MR. DOMENICI: 22nd, right.

14 EXAMINER JONES: Yeah.

15 Now we can hear the motion.

16 EXAMINER BROOKS: And that's the motion --
17 you have a motion to dismiss the parallel -- you were
18 the one who filed the motion to dismiss?

19 EXAMINER JONES: No. She wanted motion to
20 dismiss the objection.

21 Is that correct?

22 MS. BENNETT: Uh-huh.

23 MR. DOMENICI: Yes, sir. I filed in both
24 cases. The last one you recommended dismissing without
25 prejudice.

1 EXAMINER BROOKS: Is it an identical
2 motion?

3 MR. DOMENICI: Identical.

4 EXAMINER BROOKS: Well, the entire argument
5 is on record, so do you have anything -- does anybody
6 want to say anything to supplement what's on the record
7 in the prior case or just incorporate that record by
8 reference rather than restating?

9 MR. DOMENICI: I don't want to restate. I
10 want to add one thing, which is the question of late
11 protests and the resolution of whether or not are a
12 basis for going to hearing, which streamline this
13 docket, and this is the example, that we're continuing a
14 hearing. We're not here for the hearing, but we're here
15 for the motion. That's one of the benefits of hearing
16 and I think that's actually one of the purposes of the
17 15-day requirement, is to streamline matters. If there
18 is no time to protest, it stays administratively.

19 EXAMINER BROOKS: Okay. Well, the
20 difficulty is that -- there are several difficulties.
21 I'm not going into all of them. But one that
22 immediately presents itself is there is not a whole lot
23 of point in reiterating arguments that parties have
24 already made on the record because when the record is
25 transcribed, we can evaluate those arguments. The

1 problem is, though, is that we can't do it today.

2 So are you saying that it will somehow
3 facilitate the disposal of today's docket to get a
4 ruling on this issue?

5 MR. DOMENICI: No. It would facilitate the
6 August 22nd docket.

7 EXAMINER BROOKS: Okay. I recommend then
8 that we go ahead and take the case -- go ahead and
9 continue this case. We already took the previous one
10 under advisement, right?

11 EXAMINER JONES: We have written -- we
12 have -- the motion as written and the response.

13 EXAMINER BROOKS: Yeah. And you also have
14 the arguments they presented orally today, which are on
15 record.

16 EXAMINER JONES: If there is any objection
17 to incorporating --

18 MR. DOMENICI: No, that's fine.

19 EXAMINER JONES: Okay.

20 EXAMINER BROOKS: I think that would be a
21 reasonable way to do it because then we can evaluate
22 those arguments along with what is in the motion. It's
23 an extremely complex issue because the rules are
24 confusing. The rules -- or the applicable provisions
25 are confusing, and the Commission's decision in the

1 Alpha-Delaware case, which is now on appeal to the
2 district court, may well have some bearing on these
3 matters. So that being said, I think we need to have
4 some time for consideration with this issue.

5 MS. BENNETT: I would like to just make one
6 quick point -- well, two quick points.

7 One, I agree that any guidance that the
8 Division can give all of us will be much appreciated on
9 this issue and will be very helpful on a going-forward
10 basis both for applicants and protestants. So I
11 appreciate the thought that the Division is going to put
12 to this and give us some clarity on how to proceed.

13 The other point I would note is that
14 although our arguments are essentially the same, as you
15 heard from the testimony today, this application -- the
16 application for the 20587 case was not complete until
17 yesterday -- or until today when it was submitted to the
18 Division. So if it is the Division's conclusion that
19 the protest period does not begin to run until an
20 application is deemed administratively complete, then
21 evidence elicited at the hearing would be necessary to
22 bring that out -- bring that to bear.

23 I would also point out that Solaris has in
24 the meantime begun asking the Division for clarification
25 on timeliness of protests, and in my view, that is the

1 appropriate path to take, is to take us out of the --
2 take me out of the equation and let the Division decide
3 whether protests are timely or not before invoking the
4 Division's hearing -- administrative hearing machinery.
5 But that's another path by which Solaris may get clarity
6 on the timeliness of protests.

7 MR. DOMENICI: Just to follow up with this,
8 since we've heard Case 20587, we'll withdraw the motion
9 on that case. So the motion would only remain on the
10 case we're continuing, so to simplify the case we just
11 heard.

12 EXAMINER BROOKS: Okay. That will simplify
13 it and give the Division an opportunity for analysis.

14 EXAMINER JONES: Okay. On Case 20587, the
15 motion to dismiss the protest has been withdrawn.

16 And the only issue with 20588 being
17 administratively complete is we haven't got any exhibits
18 to it yet.

19 MS. BENNETT: Right. We don't know. I
20 don't know if it's administratively complete or when it
21 was. But I would also just -- I mean, that's only if
22 that's the rule that the Division comes up with, which
23 it seems like Mr. Goetze has taken that position in the
24 past. But I'm not -- I only bring that up as --

25 EXAMINER JONES: We've gone through three

1 directors in about three years -- three or four years,
2 and we haven't had extremely clear direction between two
3 directors back on this. We did have before that. Then
4 it ties in to our I.T. system, how we can actually
5 administer this, and we've got a brand-new I.T. system,
6 and now we have these fines -- not fines but the fees.

7 MS. BENNETT: Fees, uh-huh.

8 EXAMINER BROOKS: And add to all that
9 complexity as it affects this issue, we have a
10 Commission decision that's been appealed to the courts
11 that tangentially involves this question. So, you know,
12 it's about as -- it's about as knotty a case as it can
13 be, as the issues could be imagined.

14 MR. DOMENICI: Well, if I could just follow
15 up based on what you just described. If you need to see
16 the hearing presentation to decide this case, 588, which
17 sounds like possibly might be something you would, then
18 we're prepared to -- we'll be prepared for that hearing,
19 and we'll be prepared with a package of exhibits and
20 that may assist.

21 EXAMINER JONES: Okay. But you still want
22 that last hearing incorporated --

23 MR. DOMENICI: Yes, please.

24 EXAMINER JONES: -- to the point that it's
25 applicable?

1 MR. DOMENICI: Yes. We'd like to be on the
2 docket on the merits.

3 EXAMINER JONES: Okay. The facts -- or the
4 testimony, I guess, and the exhibits as far as they are
5 applicable in Case 20587 --

6 EXAMINER BROOKS: Well, I thought all that
7 would be incorporated was the argument.

8 MR. DOMENICI: Yeah.

9 EXAMINER JONES: Okay. You say it then,
10 Mr. Brooks.

11 EXAMINER BROOKS: Okay. The argument
12 presented on the motion to dismiss in Case Number --
13 what was it?

14 EXAMINER JONES: 20587.

15 EXAMINER BROOKS: -- 20587 will be
16 incorporated into the record in 20588 and may be
17 considered by the Division in making a decision in that
18 case to the extent that the facts are similar, and the
19 Division will not consider -- well, if we determine the
20 legal question, then it's going to apply to the facts
21 whatever they are in each particular case.

22 MR. DOMENICI: Yes, sir. I don't have any
23 objection to the way you stated it, Mr. Brooks.

24 EXAMINER JONES: Okay. So 20588 is
25 continued, and we're going to continue it to August

1 22nd.

2 MR. DOMENICI: Thank you.

3 MS. BENNETT: Thank you.

4 (Case Number 20588 concludes, 11:23 a.m.)

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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 26th day of July 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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