

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PREHEARING TRANSCRIPT

August 8, 2019

Santa Fe, New Mexico

BEFORE: LEONARD LOWE, CHIEF EXAMINER
MICHAEL McMILLAN, TECHNICAL EXAMINER
DANA Z. DAVID, LEGAL EXAMINER

ALSO PRESENT: Ms. Marlene Salvidrez

This matter came on for hearing before the New Mexico Oil Conservation Division, Leonard Lowe, Chief Examiner; Michael McMillan, Technical Examiner; and Dana Z. David, Legal Examiner, on Thursday, August 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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New Mexico CCR #20
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1 (8:17 a.m.)

2 EXAMINER LOWE: Good morning. Today is
3 August 8th, 2019. My name is Leonard Lowe, and I'm your
4 hearing examiner today for Docket Number 28-19. Good
5 morning.

6 I have with me a new attorney for the OCD,
7 Mr. Dana David. He'll be replacing Mr. David Brooks who
8 retired just recently. So he'll be helping -- assisting
9 me with our OCD hearings from now on.

10 EXAMINER DAVID: Well, just here in the
11 near term, until we hire a replacement for Mr. Brooks.
12 I'm just a temporary fill-in.

13 EXAMINER LOWE: Welcome, Mr. David.

14 EXAMINER DAVID: Thank you.

15 EXAMINER LOWE: And we have Michael
16 McMillan assisting me this morning. He will be helping
17 us today, helping me, maybe tomorrow. We shall see what
18 happens.

19 I'm going to read off the docket for today.
20 Let's see here. I don't know if we have all --
21 everybody has copies of the -- we're going back to the
22 old format of what the case docket is going to be going
23 by. So we have 16 pages.

24 Of the 16 pages, we had initially 59 cases
25 set for hearing. Of the 59, 36 will be heard today. Of

1 the 36, 20 are continued and three are dismissed, as I
2 was last made aware of. And I will go through that.
3 After I finish, I will announce additional information
4 pertaining to our docket.

5 So on page 1, Case Number 20657,
6 application of Milestone Environmental Services, LLC for
7 approval of a saltwater disposal well, Lea County, New
8 Mexico is continued to August 22nd.

9 Case Number 20658 -- actually never mind.
10 Hold on -- will be heard today.

11 Going to page 2 -- page 2, Case Number
12 20659, which is number six on the docket, will be
13 continued to August 22nd. Number seven, Case Number
14 20660, will be continued to September 9th.

15 MS. SALVIDREZ: 19th.

16 EXAMINER LOWE: 19th. Sorry.

17 Page 3, case number ten, Case Number 20663,
18 is dismissed. And then number 12, Case Number 20666, is
19 continued to August 22nd.

20 Page 4, Case Number 20667 is continued to
21 August 22nd. Number 14, Case Number 20668, is
22 dismissed.

23 We'll skip page 5 and go to page 6.

24 Page 6, number 23, Case Number 20676, is
25 continued to August 22nd. Number 24, Case Number 20677,

1 is continued to September 19th.

2 Page 7, number 26, Case Number 20679, is
3 continued to August 22nd.

4 Page 8, number 31, Case Number 20686, is
5 continued to September 19th. Number 33, Case Number
6 20688, is continued to September 19th.

7 Page 9, number 35, Case Number 20690, is
8 continued to August 22nd.

9 Page 10, number 38, Case Number 20693, is
10 continued to September 19th.

11 Page 11 will be heard today.

12 Page 12, number 44, Case Number 20699, will
13 be continued to September 19th.

14 Number 45, Case Number 20700, is continued
15 to October 31st. Yay.

16 (Laughter.)

17 Page 13, number 47, Case Number 20702, is
18 dismissed. Number 49, Case Number 20704, is continued
19 to October 31st.

20 Page 14, number 50, Case Number 20705, is
21 continued to September 19th. 51, Case Number 20706, is
22 continued to October 31st.

23 Page 15, number 53, Case Number 20708, is
24 continued to September 19th. And number 55, Case Number
25 20710, is continued to September 19th.

1 And that concludes our updated -- our
2 lastly updated information for continuances and
3 dismissals.

4 In reference to that, we were --

5 MS. RYAN: I do have one correction.

6 EXAMINER LOWE: Yes, ma'am.

7 MS. RYAN: Case number 39, 20694 --

8 EXAMINER LOWE: What page is that on?

9 MS. RYAN: That is on page 10. Number 39
10 is a case that's consolidated with the other Mastiff
11 well cases that have been continued to August 30 -- or
12 excuse me -- October 31st.

13 EXAMINER LOWE: Which case number is that
14 now?

15 MS. RYAN: 20694. And it's the same as
16 20700, 20704 and 20706.

17 MS. SALVIDREZ: So did you submit a
18 continuance through the fees portal? Did you get an
19 approval?

20 MS. RYAN: Mr. DeBrine --

21 MR. DeBRINE: Yes, we did, on behalf of
22 EOG.

23 MS. RYAN: All those cases are together.

24 MS. SALVIDREZ: And for what date?

25 MS. RYAN: We asked for a special docket in

1 October that we'll be communicating with dates with.

2 MR. DeBRINE: But the notice came through
3 that it was set for October 31st.

4 EXAMINER LOWE: Did you get all that,
5 Marty?

6 MS. SALVIDREZ: Yeah. I'll have to check
7 it.

8 EXAMINER McMILLAN: We have to be very
9 clear on this because we were given very explicit
10 instructions on how this is supposed to proceed.

11 EXAMINER LOWE: Yeah. We were given a
12 notice as of July 26th. I'm not sure if you-all have
13 been made aware of this. It's been put on our website.
14 Basically, it states as follows:

15 "Continuances for cases set for hearing
16 before the OCD:

17 "This notice is to provide guidance for OCD
18 staff on how motions for continuances are to be handled
19 under NMSA 1978, Section 70-2-39, OCD fee law and OCD
20 Rule 19.15.4.13C NMAC. The OCD fee law requires that a
21 motion for continuance be accompanied by a fee of \$150.
22 The motion and the fee must be filed via the OCD fees
23 portal before the OCD can process the motion for
24 continuance.

25 "OCD Rule 19.15.4.13C requires that,"

1 quote, "'parties shall file and serve motions for
2 continuances no later than 48 hours prior to the time
3 the hearing is set to begin, unless the reasons for
4 requesting a continuance arise after the deadline, in
5 which case the party shall file the motion as
6 expeditiously as possible after becoming aware of the
7 need for continuance,'" end quote.

8 "Beginning July 26th, 2019, any motion for
9 continuance made (A) without payment of fees; (B)
10 without the showing required by 19.15.4.13C for motions
11 filed less than 48 hours prior to the hearing; or (C)
12 filed after 4:00 p.m. the day before the hearing,
13 including verbal motions made on the day of hearing,
14 will be denied and the case dismissed without prejudice.
15 The case may then be refiled as a new case with the
16 associated fee.

17 "If no motion for continuance has been
18 granted and the applicant appears at the hearing and
19 claims to be unprepared or unable to move forward with
20 their case set for the docket, the case shall be
21 dismissed without prejudice and may be refiled as a new
22 case with the associated fee.

23 "If an opposed motion for continuance is
24 timely filed and fees paid, a hearing on the motion will
25 occur. If the hearing examiner denies the motion, the

1 case will be heard regardless of whether the moving
2 party is prepared or not."

3 That's what -- is our policy we are
4 required to go through as of July 26th. So I'm not too
5 sure if you-all were made aware of this or not, but
6 everything -- all the continuances and dismissals have
7 to be in form with the OCD and go through Marlene. She
8 will verify all the docket. And she and I get together
9 prior to any hearing -- or any hearing examiner to find
10 out what cases are dismissed and/or continued.

11 MS. SALVIDREZ: I'll double-check that, but
12 I'm pretty sure I only have three. So I'll double-check
13 when I get to my office on that one.

14 EXAMINER LOWE: And, once again, what were
15 those cases you mentioned, just the case numbers?

16 MS. RYAN: 20694, 20700, 20704, 20706.

17 EXAMINER LOWE: 20694, 20700, 20704 and
18 20706.

19 MS. RYAN: Yes. Those were all filed by
20 EOG. EOG entered an appearance and requested a
21 continuance. We agreed to it. They filed the
22 continuances, so if there is a fee or something to be
23 paid on their end, I know they'll take care of it.

24 MR. DeBRINE: Yeah. We timely filed the
25 agreed motions for continuances in accordance with the

1 rule. And I don't know if we left one of them out and
2 didn't file it for this case and that's what happened,
3 but the intent was to file continuances with respect to
4 each of the COG Mastiff cases. And so if we could
5 just -- we'll follow up and file a formal motion because
6 they're all related cases that should have been
7 continued. And if we made an error, we apologize.
8 We'll fix that.

9 EXAMINER DAVID: Just for the record, did
10 you pay the fee?

11 MR. DeBRINE: We paid the fee for all three
12 and then we filed. But if we left one off and we
13 inadvertently didn't file for that one, we'll follow up
14 and with file a formal motion and pay the fee,
15 obviously.

16 EXAMINER McMILLAN: And the case has to be
17 dismissed.

18 EXAMINER LOWE: More than likely, that case
19 will have to be dismissed.

20 MS. RYAN: Mr. Examiner, that's not fair.
21 This is Concho's case that we --

22 EXAMINER McMILLAN: We understand it's
23 Concho's case, but we have a directive that we have to
24 follow. If you have a problem with it, you need to talk
25 to the director. We are told we are to follow this. So

1 the best advice I can give you is to talk to the
2 director.

3 MS. RYAN: I'm just going to state on the
4 record here --

5 EXAMINER McMILLAN: That's fine.

6 MS. RYAN: -- I have the right. Concho
7 filed this case. If there is an error that occurred by
8 another party that's entered an appearance in this case,
9 that should not affect our filing of the case, and it
10 can easily be corrected with filing of the fee. So yes,
11 I will take it up with the director.

12 EXAMINER McMILLAN: Thank you very much.

13 EXAMINER LOWE: Thank you.

14 MR. DeBRINE: And I would just add that the
15 rule does allow for -- for allowances for special
16 circumstances, and I think this is one of them, and it
17 could easily be fixed by the filing a formal motion
18 later today with the fee --

19 EXAMINER McMILLAN: Yeah. That's fine.

20 MR. DeBRINE: -- instead of a dismissal.

21 EXAMINER McMILLAN: We're told we're
22 supposed to follow this verbatim. That's all we can do.

23 MS. SALVIDREZ: And we did talk about
24 special circumstances yesterday with management, and
25 that's like very rare, and it's, you know, you missed

1 your flight, a witness missed a flight, death in the
2 family. So it's kind of rare. So we'll have to talk to
3 management on this.

4 MR. DeBRINE: Okay.

5 EXAMINER LOWE: Or as Michael mentioned,
6 you-all can bring it up with the director and bring that
7 to light, because we were told to do this, and we're
8 just doing as we are told.

9 So on that note, being that -- from my
10 minimal experience on this, we've gone back to the old
11 format of the docket. And previously Will would put the
12 Excel spreadsheet together and we would kind of
13 correlate to how we're going to maneuver. But the way
14 it's panned out right now, I'm just going to go through
15 the cases in numerical order, unless there are cases out
16 there and instances you-all want to combine cases or put
17 them together.

18 Mr. Jim Bruce already mentioned that he
19 wants to do his cases toward the end of the day. So
20 right now we'll initially start out with the saltwater
21 disposal cases.

22 (The proceedings conclude, 8:32 a.m.)

23 (9:49 a.m.)

24 EXAMINER LOWE: Back on the record.

25 I just want to put on the record that it

1 was clarified and justified that the cases that were
2 mentioned before to be continued for COG -- is that
3 correct -- Case Numbers 2694 [sic] --

4 MS. RYAN: Yes.

5 EXAMINER LOWE: -- and 2700 [sic], 2704
6 [sic] and 2706 [sic] are continued.

7 EXAMINER McMILLAN: Does counsel for EOG
8 have any objections?

9 MR. DeBRINE: No.

10 MS. RYAN: Thank you.

11 (The proceedings conclude, 9:49 a.m.)

12 (4:00 p.m.)

13 MR. BRUCE: Case Numbers 20669 and 20300,
14 the Sundown well and Pavo Frio well, and Case Number 22,
15 20675, is the Sandlot well. In looking at the data,
16 there are notice issues. So if I have to dismiss and
17 refile, just let me know. Otherwise, I'll continue them
18 for --

19 EXAMINER LOWE: Which one would that one
20 be?

21 MR. BRUCE: All three of them had notice
22 issues.

23 EXAMINER McMILLAN: We're going to dismiss
24 them.

25 EXAMINER LOWE: So basically you're saying

1 20669, Case Numbers 20300 and 20675 have notice issues?

2 MR. BRUCE: Yes.

3 EXAMINER LOWE: According to our new
4 procedures, those cases will have to be dismissed and
5 have to be refiled.

6 MR. BRUCE: Okay. I'll take care of that.

7 EXAMINER McMILLAN: So it's 669, 330. And
8 what was the other one?

9 EXAMINER LOWE: 675.

10 MR. BRUCE: 20675.

11 EXAMINER LOWE: Due to renotece.

12 MR. BRUCE: I know. I understand. Such is
13 life.

14 EXAMINER McMILLAN: Okay.

15 (The proceedings conclude, 4:01 p.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 19th day of August 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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