

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

IN THE MATTTTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

Applications of Permian Oilfield	Case No. 20571 de novo
Partners for approval of Salt	Case No. 20572 de novo
Disposal Wells in Lea County,	Case No. 20575 de novo
New Mexico	Case No. 21233

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

THURSDAY, JULY 8, 2021

This matter came on for hearing before the New Mexico Oil Conservation Commission, via the Webex Virtual Videoconferencing Platform, hosted by the New Mexico Energy, Minerals and Natural Resources Department on July 8, 2021.

BEFORE: ADRIENNE SANDOVAL, COMMISSION CHAIR.
 GREG BLOOM, COMMISSIONER.
 TERRY WARNELL, COMMISSIONER.
 CHRIS MOANDER, ESQ.

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1 (Time noted 10:22 a.m.)

2 COMMISSION CHAIR SANDOVAL: All right. Ms.
3 Bennett and Mr. Biernoff, are you there?

4 MS. BENNETT: Good morning, Madam Chair. Deana
5 Bennett on behalf of Permian Oil Fields Partners, LLC.

6 COMMISSION CHAIR SANDOVAL: Good morning.

7 MR. BIERNOFF: This is Ari Biernoff on behalf of
8 the State Land Office.

9 COMMISSION CHAIR SANDOVAL: Thank you.

10 For the status conference today on the
11 Agenda Items 6, 7, 8 and 9, which are applications of
12 Permian Oil Field Partners, LLC, for approval of salt
13 water disposal wells, it's four different individual
14 cases. I think the Commission should at this point -- so
15 there was a request to continue that was received By the
16 commission clerk. Uhm, I believe the request was a
17 continue until the October 14th OCC hearing.

18 And before the Commission considers that
19 continuance, I think because these cases have been
20 continued so many times, at this point we wanted to have a
21 status conference and where we are and if October 14th is
22 truly an appropriate date to continue these to, because
23 when we put them on the docket it makes our docket pretty
24 full, which means we don't schedule other cases with them,
25 and we just want to make sure for scheduling we are doing

1 the appropriate action.

2 So, Ms. Bennett, would you like to start,
3 please, and given an update on these applications, and
4 then, Mr. Biernoff, I'll give you an opportunity to
5 provide an update, as well.

6 MS. BENNETT: Certainly. Thank you very much.
7 Good morning, Commissioner Bloom. Nice to be appearing in
8 front of you. And good morning Commissioner Warnell.
9 It's great to see you.

10 So these cases that are currently before
11 you were filed, the State Land Office filed de novo
12 applications and, as you mentioned they have been on the
13 docket for some time.

14 The parties are working on negotiations to
15 reach hopefully some settlement resolution here.
16 Originally Permian Oil Field Partners was inclined to take
17 these cases to hearing, but I have since decided that
18 settlement is a path forward that provides more certainty
19 for Permian Oil Field Partners, and so we have been
20 engaging with the State Land Office on settlement
21 negotiations.

22 And it is a fairly complex set of
23 negotiations, simply because the State Land Office is
24 actually protesting 10 total Permian Oil Field Partners
25 SWD applications, so we're working on what I would call

1 like an aggregate settlement to incorporate all 10, not
2 just the four that are pending before the OCC.

3 And so between the unforeseeable
4 circumstances of Covid and the complexity of the
5 settlement including all of the wells, it's just taken the
6 parties some time to work through the settlement process,
7 and so that's the reason for the continuances that we
8 filed.

9 I'd say starting after June, 2020, the
10 continuances that have been filed since that time were
11 filed because the parties have been in negotiations.

12 COMMISSION CHAIR SANDOVAL: Thank you, Ms.
13 Bennett.

14 Mr. Biernoff, would you please provide an
15 update.

16 MR. BIERNOFF: I think Ms. Bennett pretty
17 thoroughly covered the status of the cases and the reasons
18 why the parties have sought continuances. I think that at
19 this point, the parties are in a position to move a little
20 faster than both sides have moved in the past with
21 settlement discussions, so I don't think that we're
22 talking about many months of additional time. But I had
23 asked -- Ms. Bennett and I had conferred about possible
24 dates for the continued hearings, and I'm actually
25 personally unavailable in September. We're glad to have

1 another attorney cover in my place if having the
2 continuance to September as opposed to October is useful
3 for the Commission.

4 But I do think we need, the parties need
5 the opportunity to finish our effort to discuss and try to
6 negotiate. You know, we've made some progress but we
7 don't have an agreement yet.

8 COMMISSION CHAIR SANDOVAL: You know, I don't --
9 thank you both. Uhm, I guess my question would be: Do we
10 agree that that October date is truly appropriate at this
11 point? You know, if we're going to look at scheduling
12 this for a date, is October the most appropriate date or
13 would another time be more appropriate?

14 MS. BENNETT: Well --

15 MR. BIERNOFF: So I may -- go ahead. I'm sorry.

16 MS. BENNETT: No, please, Mr. Biernoff, I would
17 defer to you. If I can just follow up after he's done,
18 that would be great.

19 MR. BIERNOFF: Okay. What I think is
20 actually -- Madam Chair, I think it's actually a good idea
21 to right size the period of time that the parties have. I
22 don't think either one of us wants an indefinite amount of
23 time. I think having kind of a fairly imminent hearing
24 date will keep everybody focused on the work that we both
25 need to do to hopefully accomplish a settlement, or, if

1 not, then know that and be able to proceed with hearings.

2 So I think from our point of view we're
3 not interested, not asking for a further continuance
4 beyond October. I think having another month or two,
5 where, you know -- a time between now and October, at
6 most, I think is an appropriate amount of time for our
7 purposes.

8 That's our perspective.

9 MS. BENNETT: Madam Chair, I may just provide a
10 little nuance to that, too.

11 COMMISSION CHAIR SANDOVAL: Yes.

12 MS. BENNETT: I certainly appreciate
13 Mr. Biernoff's sentiment that we would like a date in the
14 near term to keep the parties motivated, to keep them at
15 the table, as it were, in particular because Permian Oil
16 Field Partners' Orders are currently set to expire in
17 November, and so we don't -- Permian Oil Field Partners
18 doesn't have a lot of time. In fact, even as we sit here
19 today they risk not being able to drill those wells,
20 because of needing to get active APDs from BLM. These
21 wells are on federal land and it's taking up to four
22 months, I understand, to get APDs. So even as we sit here
23 today there is a risk that Permian Oil Fields could not
24 drill the wells, even if we reach a settlement with the
25 State Land Office.

1 So Permian Oil Fields is interested in
2 understanding, you know, what the expectation is going to
3 be, how we can address these going forward; and is in fact
4 interested in -- and I realize this is a rather unorthodox
5 discussion topic, but is interested in understanding
6 whether the Commission would be supportive of Permian
7 seeking an additional -- an extension of time given the
8 unusual circumstances that we find ourselves in with the
9 pandemic, the BLM moratorium on issuing APDs that occurred
10 in the early part of this year, and the settlement
11 negotiations.

12 It would be a shame to spend this time
13 working on settlement only to -- and the settlement is
14 designed to give, compensate the State for a royalty on
15 the salt water that's disposed, and so it would be a shame
16 for the State to lose out on the opportunity of that
17 royalty, as well, that we are negotiating towards.

18 And so realizing this is a somewhat
19 unprecedented request, I just wonder if there is any
20 appetite, or I hope there is an appetite amongst this
21 group and amongst the OCD to consider an extension for
22 Permian Oil Field Partners under these circumstances.

23 COMMISSION CHAIR SANDOVAL: Clarify. An
24 extension of what? The APD?

25 MS. BENNETT: An extension of time to begin

1 injection under the Order.

2 COMMISSION CHAIR SANDOVAL: Okay. So from the
3 OCD you would need an extension of time for injection
4 authority.

5 MS. BENNETT: That's right. And just to be
6 clear, we have received one extension of time for
7 injection authority, but we would be asking for a second
8 extension of time, which I recognize is unusual, but these
9 are very unusual circumstances that we find ourselves in.

10 MR. BIERNOFF: Just by way of a quick response,
11 Madam Chair, Commissioners, it may come as no surprise
12 that the Stand Land Office's position on that request will
13 depend in large part on whether the parties, Permian Oil
14 Field Partners and the State Land Office, reach agreement
15 on the underlying dispute.

16 So I appreciate Ms. Bennett raising the
17 issue here to prime the pump, as it were, but I think a
18 formal application would be in order for a request like
19 this.

20 And of course based on our progress with
21 settlement discussions, you know, that would determine our
22 position on this request, as well.

23 COMMISSION CHAIR SANDOVAL: Any other --
24 Commissioners, if you have any other questions, feel free
25 to jump in.

1 So I'm looking at the calendar in October.
2 The OCC regularly scheduled hearing is the 14th, and then
3 in November it's the 18th. So anything probably that was
4 decided on the 14th would not have a Final Order until the
5 18th of November.

6 So I mean in general I think the Commission
7 today just wants to determine if October is the
8 appropriate date. I think September we already have -- I
9 think September we have the Colgate/Celebrex de novo, but
10 I think that is the only thing we have on the agenda at
11 the moment.

12 So I mean my interest here is really just
13 to make sure we're appropriately setting this, and so if
14 October is good for both parties and you -- we don't feel
15 like there are going to be any more continuances or
16 issues, I think we can set it for October, assuming no
17 settlement, which, you know, is still on the table. So...

18 MS. BENNETT: This is Deana Bennett. October
19 works for Permian Oil Field Partners. I think we would
20 prefer the September hearing date, just -- specifically in
21 light of the fact that the Orders are set to expire in
22 November, but I also understand Mr. Biernoff's
23 availability. And we have previously agreed to the
24 October status -- or the October hearing date, so we would
25 stick with that hearing date if that works for the State

1 Land Office.

2 MS. BIERNOFF: I appreciate that, Ms. Bennett.

3 And Madam Chair and Commissioners, I would
4 say that we're comfortable with October, but given Permian
5 Oil Fields' -- given the time crunch that Ms. Bennett
6 described, if the Commission has availability on its
7 September docket we can accommodate that, and we will make
8 whatever arrangements we need to in our office to ensure
9 coverage if the hearing goes forward.

10 COMMISSION CHAIR SANDOVAL: Commissioners, do
11 you have any questions for the parties?

12 COMMISSIONER BLOOM: Madam Chair, no questions.

13 COMMISSIONER WARNELL: Madam Chair, Commissioner
14 Warnell. It sounds like either September or October works
15 for either party. Whatever works for OCC.

16 COMMISSION CHAIR SANDOVAL: Mr. Moander, just a
17 procedural item.

18 Did the Commission formally deny the
19 continuances, so would continuances have to be
20 resubmitted, or are they, like, pending?

21 MR. MOANDER: We did not submit a formal or at
22 least a written denial for the request for the continuance
23 that was recently submitted. We can certainly do that,
24 because it came later than I'd prefer, but we could
25 certainly -- I advised the parties it was denied for

1 purposes of continuing this setting, but you could
2 consider that motion still in effect in so far as
3 resetting the original merits hearing, which was what was
4 today.

5 So I think that could be done, yeah.

6 COMMISSION CHAIR SANDOVAL: So the four
7 continuances you have to submit through the fees portal,
8 and if they were officially denied there would have to be,
9 I guess, four new continuances.

10 MR. MOANDER: My preference generally -- I know
11 there is fees involved. I think the attorneys are acutely
12 aware of that. It sounds like now the lay of the land is
13 a bit clearer, the request could be submitted in one
14 document that accounts for all four cases and get a bit
15 more of a firm record for the basis of the request, and we
16 could proceed from there.

17 So we could enter a denial and then the
18 parties could submit something a little more fine tuned.

19 I don't think that's a huge burden, and
20 I'll bet that Ms. Bennett probably already has something
21 like that in mind.

22 COMMISSION CHAIR SANDOVAL: Speaking of, I feel
23 like she -- I don't see her here.

24 MS. BENNETT: I'm still on, through audio only
25 at this point, though.

1 COMMISSION CHAIR SANDOVAL: Okay. Great. I
2 just wanted to make sure you didn't drop. Okay. At this
3 point --

4 MS. BENNETT: Could I just briefly respond to
5 Mr. Moander's comments there, just in terms of logistics?

6 COMMISSION CHAIR SANDOVAL: Yes.

7 MS. BENNETT: Generally speaking we do have to
8 submit a continuance in each case number, but if the OCC
9 is willing to allow us to submit a single continuance
10 through the fee portal for all four cases, rather than
11 submitting it four times to the tune of \$600, I'm just
12 trying to clarify what your instructions were, so that I'm
13 sure that I do it correctly, or Mr. Biernoff and I do it
14 correctly.

15 COMMISSION CHAIR SANDOVAL: Mr. Moander, would
16 you follow up on that?

17 MR. MOANDER: I do forget that the parties are
18 limited on that. We've got a record here. There is an
19 on-the-record motion -- there's an on-the-record motion.
20 It's not a complicated one. I could craft an Order if I
21 can get a transcript, and I'll circulate to the parties
22 before I submit it to the Commission, and that way we can
23 make sure that everyone makes sure that their position has
24 been properly stated. And that should cover us. If
25 there's a motion on the record, that is an option.

1 COMMISSION CHAIR SANDOVAL: So they don't need
2 to submit through the portal?

3 MR. MOANDER: Yeah, and --

4 (Note: Reporter interruption.)

5 COMMISSION CHAIR SANDOVAL: I just was trying to
6 clarify, Mr. Moander, so they don't need to resubmit
7 through the fees portal.

8 MR. MOANDER: The motion is on -- it's been made
9 on the record. If the Commission wishes -- well, I guess
10 it's your discretion, actually, whether that's granted.
11 If you grant it, then I will draft the Order accordingly.

12 COMMISSION CHAIR SANDOVAL: Commissioners -- and
13 let's see. Ms. Davidson, are you on and can you confirm
14 that there is availability on the September docket?

15 MS. DAVIDSON: Yes. The Colgate/Cimarex case is
16 the only one scheduled for September right now.

17 COMMISSION CHAIR SANDOVAL: Thank you.

18 So, Commissioners, do you have a preference
19 on the date? It looks like we have availability for both
20 September and October, and the parties are agreeable to
21 both dates.

22 COMMISSIONER BLOOM: Madam Chair, I have no
23 preference.

24 COMMISSIONER WARNELL: September sounds good to
25 me, or October.

1 COMMISSION CHAIR SANDOVAL: Okay. I mean, since
2 I think both parties are agreeable to September and one
3 party would prefer September, it might be advantageous to
4 put it on the September docket.

5 Is there a motion to continue this case to
6 the September docket, uhm, not -- using the initial
7 continuance that was submitted for this hearing?

8 COMMISSIONER BLOOM: Madam Chair, I move to move
9 Case No. 20571 de novo, Case No. 20572 de novo, and Case
10 No. 20575 de novo, and Case No. 21233 to the September OCC
11 meeting.

12 COMMISSION CHAIR SANDOVAL: Is there a second?

13 COMMISSIONER WARNELL: Thank you, Mr. Bloom. I
14 second that motion.

15 COMMISSION CHAIR SANDOVAL: Mr. Moander, would
16 you do a roll call vote, please.

17 MR. MOANDER: Absolutely, Madam Chair.

18 Commissioner Warnell?

19 COMMISSIONER WARNELL: Yes, approved.

20 MR. MOANDER: Commissioner Bloom.

21 COMMISSIONER BLOOM: Approved.

22 MR. MOANDER: And Madam Chair.

23 COMMISSION CHAIR SANDOVAL: Approved.

24 MR. MOANDER: The motion carries.

25 COMMISSION CHAIR SANDOVAL: Thank you, Ms.

1 Bennett and Mr. Biernoff.

2 MR. MOANDER: I would politely ask the parties
3 to give me a little forbearance on getting an Order put
4 together. I want to make sure I have a quality one. It's
5 going to take me a little bit of time to get the
6 transcript but I'll turn it around once I get that in my
7 hands.

8 MS. BENNETT: Thank you. Definitely. Thank you
9 for doing that.

10 COMMISSION CHAIR SANDOVAL: Thank you,
11 Mr. Biernoff and Ms. Bennett for the update today. That
12 was very helpful.

13 MR. BIERNOFF: Thank you, Madam Chair, and
14 commissioners.

15 MS. BENNETT: Thank you.

16 (Time noted 10:35 a.m.)

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1 STATE OF NEW MEXICO)
2 : SS
3 COUNTY OF TAOS)

5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter
7 CCR No. 122, DO HEREBY CERTIFY that on Thursday, July 8,
8 2021, the proceedings in the above-captioned matter were
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13 I FURTHER CERTIFY that I am neither employed by
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