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STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION
SANTA FE, NEW MEXICO

ZOOM MEETING
JANUARY 12, 2023
9:00 A.M.

TRANSCRIBED BY:

PAUL BACA PROFESSIONAL COURT REPORTERS
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102

A P P E A R A N C E S

Dylan Fuge, OCD Acting Director/OCC Chair

Chris Moander, Commission Counsel

Greg Bloom, New Mexico State Land Office
Commissioner

Dr. William Ampomah, Commissioner, Energy
Secretary

Florence Davidson, OCC Commission Clerk

Michael Feldewert, Attorney, Holland & Hart

1 (Meeting in Session at 9:00 a.m.)

2 DR. AMPOMAH: ... on my iPad but I'm here.

3 CHAIR FUGE: Well, the good news is this
4 should be a relatively short agenda. I have -- I
5 have -- I have started recording because we do have
6 a quoram present, but we're holding for Commissioner
7 Bloom while -- before we dive into the agenda.

8 I'm also monitoring the participants list
9 in case he ended up as a ...

10 MR. MOANDER: Mr. Chair, I'm going to go
11 ahead and text him real quick and see if I can get a
12 status on him.

13 CHAIR FUGE: Sounds good.

14 MR. MOANDER: All right. So he should be
15 trying to get in now. He was getting the message
16 that the meeting had not commenced yet so ...

17 CHAIR FUGE: Yeah. And he can also try to
18 join on the public link from the OCC landing page
19 and I can promote him to panelist if need be.

20 MR. MOANDER: I'll let him know.

21 All right. He's restarting the app so --

22 CHAIR FUGE: All right.

23 MR. MOANDER: -- stand by.

24 CHAIR FUGE: We'll give him another
25 minute.

1 There we go.

2 MR. MOANDER: Woo-hoo.

3 CHAIR FUGE: I believe that is everyone.

4 Greg, can you -- Commissioner Bloom, can
5 you hear us?

6 COMMISSIONER BLOOM: Yeah, there we go.
7 All right. We're all on.

8 CHAIR FUGE: Perfect.

9 I'm going to go ahead and get us started.
10 I know we normally start with a roll call, but I'm
11 just going to give a little introductory context for
12 the record and folks.

13 My name is Dylan Fuge. I am the General
14 Counsel of the New Mexico Energy Minerals and
15 Natural Resources.

16 On January 3rd, I was appointed the Acting
17 OCD Director. And by virtue of that appointment and
18 statute, I am the Acting OCC Chair.

19 It shows for this particular meeting that
20 I am signed in as Adrienne Sandoval, the host.
21 That's a Webex artifact so it's to not disturb the
22 link that was distributed to the public. We'll --
23 that will, of course, be corrected as we set up for
24 future meetings, but we needed to provide that
25 stability so that the link remained accurate.

1 And with that, I believe I kick it over to
2 you, Mr. Moander, for the roll call?

3 MR. MOANDER: Yeah, absolutely.

4 Commissioner Ampomah? Or wait, roll call,
5 so yes, Mr. Ampomah?

6 DR. AMPOMAH: Approve.

7 MR. MOANDER: Present.

8 DR. AMPOMAH: Present.

9 MR. MOANDER: And we've got Commissioner
10 Bloom.

11 COMMISSIONER BLOOM: Present.

12 MR. MOANDER: And we have Mr. Director.

13 CHAIR FUGE: Present.

14 MR. MOANDER: And additionally joining us
15 today is myself, Chris Moander, Counsel for the
16 Commission through the Attorney General's Office.
17 And we also have Florene available who's the
18 administrative assistant to the director.

19 And with that, I will hand it back to the
20 Chair for approval of the agenda.

21 CHAIR FUGE: We've got a light agenda.
22 Florene distributed it in advance of the meeting,
23 but do we have any current concerns or questions or
24 can I get a motion to approve the agenda?

25 COMMISSIONER BLOOM: Mr. Chair, I so move.

1 DR. AMPOMAH: Mr. Chair, I do second.
2 CHAIR FUGE: Do we need to do a roll call
3 vote, Mr. Moander?
4 MR. MOANDER: Yes, Mr. Chair. And I will
5 proceed with your permission.
6 CHAIR FUGE: Please do.
7 MR. MOANDER: Commissioner Ampomah?
8 DR. AMPOMAH: Approved.
9 MR. MOANDER: Commissioner Bloom?
10 COMMISSIONER BLOOM: Approved.
11 MR. MOANDER: And Mr. Chair?
12 CHAIR FUGE: Approved.
13 MR. MOANDER: Motion carries unanimously.
14 (January 12, 2023 Agenda approved.)
15 CHAIR FUGE: The next item on the agenda
16 are approval of the minutes from the December 1st,
17 2022 Commission Meetings. Again, I believe those
18 were distributed prior to the meeting.
19 Do I have a motion to approve those
20 minutes?
21 COMMISSIONER BLOOM: Mr. Chair, I so move.
22 DR. AMPOMAH: Mr. Chair, I do second.
23 CHAIR FUGE: Motion carries.
24 Mr. Moander, can you have a roll call
25 vote, please?

1 MR. MOANDER: Yes. Commissioner Ampomah?

2 DR. AMPOMAH: Approved.

3 MR. MOANDER: Commissioner Bloom?

4 COMMISSIONER BLOOM: Approve.

5 MR. MOANDER: Mr. Chair?

6 CHAIR FUGE: I'm going to abstain because
7 I did not participate in the December 1st meeting.

8 MR. MOANDER: The motion carries with a
9 majority vote.

10 (December 1st meeting approved.)

11 CHAIR FUGE: The next item on the agenda
12 is actually an update from you, Mr. Moander, on
13 pending OCC litigation.

14 MR. MOANDER: So I've got the -- it's same
15 two cases right now. Well, the first one is A-1-CA
16 39578. That's been before the court of appeals.
17 We're in our 14th month that we've been waiting.
18 But as a reminder, on October 5th of '22, the court
19 of appeals issued a notice that the matter had been
20 submitted to a panel of three judges. I had
21 anticipated we might see something by now, but
22 apparently not, so we're still waiting.

23 The other matter is Ragsdale,
24 D-101-CV-2022-00791. We -- all the parties have
25 fully briefed this matter. This matter was briefed

1 I believe all the back in the summer. The district
2 court has not set a hearing date despite the
3 respondent, respondent/petitioner having filed a
4 request for hearing. So it's possible -- although I
5 don't imagine it will happen -- the court could
6 administratively dismiss this in the near future,
7 but given that there was a request for hearing
8 submitted, I have doubts the Court will do that.

9 I'm going to proceed by reaching out to
10 all counsel on the case and figure out what we want
11 to do because this matter is -- it's getting stale.
12 We just need to get the hearing done. And as a
13 reminder to everybody, this is an appeal off of an
14 adjudication.

15 And right now that is all the litigation
16 that the Commission is currently contending with.

17 CHAIR FUGE: Thank you, Mr. Moander.

18 The next item is other business. And just
19 for an update for the commissioners, because is a
20 matter that was pending before, Salt Midstream filed
21 an emergency motion for a stay for some deadlines in
22 a matter that's pending, stay of injection deadlines
23 and a permit that were issued. And I just wanted to
24 let the commissioners know, I did approve that stay
25 request as the OCD Director on the deadline and the

1 permit. I did deny their request for an expedited
2 hearing.

3 That motion and that order was entered
4 into the record in that matter, which I don't have
5 right in front of me so I'm not -- so I don't have
6 the number, but I wanted to alert my fellow
7 commissioners that that was filed sort of at the
8 end, at the last minute, right at the end of the
9 year, kind of in between the holidays, but we did
10 act on that motion. And all it did was stay, was
11 stay deadlines.

12 Any other business from the other
13 commissioners or questions?

14 MR. MOANDER: Mr. Chair, may I briefly
15 address the Commission?

16 CHAIR FUGE: Yes, please.

17 MR. MOANDER: So and this is primarily
18 aimed at Commissioners Bloom and Ampomah. I wasn't
19 able to speak with you guys individually about this,
20 this will be my last meeting as counsel for the
21 Commission. I'm departing the Office of Attorney
22 General, and I'm pleased to share with you that I am
23 joining the Oil Conservation Division, and will be
24 working under Mr. Fuge starting February 6th.

25 But I wanted to share my grat- -- my true

1 gratitude from the heart in working with both of
2 you. I have been beyond blessed in working with
3 this particular agency. I think the work that you
4 guys do is critical. It's sometimes extremely
5 frustrating. I'm sad that we will not be working
6 together, at least directly anymore, but I would
7 imagine you will be seeing me in the future. And I
8 certainly intend to keep contact with both of you,
9 because I've enjoyed you both personally and
10 professionally. And I thank you for allowing me to
11 serve as your counsel.

12 COMMISSIONER BLOOM: Congratulations,
13 Mr. Moander. We're excited for you. That a great
14 move, and we'll enjoy working with you over at OCD
15 in a different capacity.

16 MR. MOANDER: Thank you, Commissioner
17 Bloom.

18 DR. AMPOMAH: Yes. Congratulations to
19 you. Yeah.

20 MR. MOANDER: Thank you, Commissioner
21 Ampomah.

22 CHAIR FUGE: And it looks like we do have
23 one question from an attendee.

24 Mr. Moander, I seem it's an appropriate
25 time to allow for that question?

1 MR. MOANDER: Yeah, we can address -- we
2 can kind of do that at any point if there's a query
3 that's being made.

4 CHAIR FUGE: Mr. Feldewert, I'm going to
5 unmute you.

6 MR. FELDEWERT: Thank you, Mr. Fuge.

7 Mr. Moander, congratulations. I'm glad to
8 see you're going to work for the division.

9 I have -- I'm counsel in a number of cases
10 that have been moved to the May 11th commission
11 docket: Chevron versus Cimarex; Devon versus
12 Cimarex. I can tell you that there's no way that
13 all three of those sets of cases are going be able
14 to heard on the May 11th docket. I'm also going to
15 be out of the county for March and April.

16 My question is, are you -- is it -- are we
17 considering the May 11th docket to be a status
18 conference for those cases for purposes of trying
19 get them set to be heard? Or is -- do you know if
20 the Commission is actually anticipating hearing any
21 of those cases on May 11th? I know it's difficult
22 to project that far out in the future, but I'm
23 trying to plan ahead of time.

24 MR. MOANDER: Mr. Chair, can I opine on
25 that a little?

1 CHAIR FUGE: Please do.

2 MR. MOANDER: So, and I'm speaking mostly
3 to you, Mr. Chair.

4 Generally, when we have cases that sound
5 like they're going to proceed to hearing, the prior
6 practice was to hold a status conference to assess
7 issues with evidence, witness attendance, and so
8 basically what I would call a pretrial conference.
9 So if there's a need for a motion practice, which
10 does happen, things like that, that's generally how
11 we've handled these.

12 It probably would -- I don't know that
13 there's a problem provided the Commission's
14 comfortable with it on maybe trying to address that
15 next month. But I mean because of the status
16 conferences I found are of high value primarily
17 because if cases have a potential for resolution
18 independent of Commission action, we try to foster
19 that.

20 But at the same time, if it looks like the
21 parties are dead set on proceeding to a full
22 hearing, then we can assess. All right, is everyone
23 going to have their witnesses there, documents, etc.
24 And if it's sufficiently big, on occasion, we'll
25 issue a bit of procedural, a small procedural order,

1 so if there's unique issues that might need address
2 that arise out of that status conference.

3 If Mr. Feldewert is going to be
4 unavailable in April or March, yeah there could be
5 benefit next month in simply setting them for status
6 so we can get the parties together and kind of
7 assess things as they stand.

8 CHAIR FUGE: Okay. And that answered my
9 questions heading in.

10 Mr. Feldewert, I assume that this has not
11 had a status conference? These matters had not have
12 a status conference yet?

13 MR. FELDEWERT: That is correct. They
14 are -- all of them are de novo appeals. So at this
15 point, there has not been any appearance before the
16 Commission by any of the parties on any of these
17 sets of cases.

18 CHAIR FUGE: And I know you just represent
19 some of the -- some of the parties. I guess my last
20 question would be, is your sense that the other
21 parties or that your clients will be ready to have a
22 status conference at next month's meeting on the
23 9th?

24 MR. FELDEWERT: Certainly. I would be
25 prepared for a status conference. I can reach out

1 to the other counsel that are involved to see if
2 they would likewise be available for a status
3 conference. So I think it would be February 9th, is
4 that what you said?

5 CHAIR FUGE: Yes.

6 MR. FELDEWERT: Yeah.

7 CHAIR FUGE: So my request is, if this is
8 proper, Mr. Feldewert, if you would be willing to do
9 that outreach and communicate back to commission
10 counsel that everyone will be ready for a status
11 conference on the 9th.

12 You know, I would make a motion here that,
13 you know, subject to that confirmation that we
14 schedule a status conference as part of the 9th
15 meeting.

16 MR. MOANDER: Mr. Chair, you don't even --
17 you don't need a motion --

18 CHAIR FUGE: Oh.

19 MR. MOANDER: -- if this is you.

20 CHAIR FUGE: Okay.

21 MR. MOANDER: If Mr. Feldewert can get
22 that info to me, I can get that on the agenda as
23 quickly as I hear from him for next month.

24 CHAIR FUGE: Yes.

25 So Mr. Feldewert, if you just come back to

1 us and confirm that your -- that the other counsel
2 in these matters are prepared to have a status
3 conference, or even if it's a subset or prepared to
4 have a status conference, I can add that to the
5 agenda for the February 9th meeting.

6 MR. FELDEWERT: I appreciate that and I'll
7 be happy to do that.

8 MR. MOANDER: Excellent.

9 CHAIR FUGE: Any other business to flag?
10 Dr. Ampomah, were you raising your hand?

11 DR. AMPOMAH: No.

12 CHAIR FUGE: Our next meeting is February
13 9th, 2023. We will get out information in advance
14 along the normal schedule, including a draft agenda.

15 And so hearing nothing else, I move for
16 adjournment. I need to.

17 COMMISSIONER BLOOM: And I -- and I
18 second.

19 MR. MOANDER: Meeting is adjourned.

20 CHAIR FUGE: Thank you.

21 DR. AMPOMAH: Bye.

22 MR. MOANDER: Bye everybody.

23 CHAIR FUGE: Bye.

24 COMMISSIONER BLOOM: Thanks everybody.

25 (Meeting adjourned at 9:18 a.m.)

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[& - available]

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