

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

ORIGINAL

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

APPLICATION OF THE NEW MEXICO OIL
AND GAS ASSOCIATION TO REPEAL AND
REPLACE TITLE 19, CHAPTER 15, PART
34 OF THE NEW MEXICO ADMINISTRATIVE
CODE ADDRESSING PRODUCED WATER,
DRILLING FLUIDS AND OTHER LIQUID
OIL FIELD WASTE, AND TO AMEND THE
DEFINITION OF PRODUCED WATER IN
TITLE 19, CHAPTER 15, PART 2 OF
THE NEW MEXICO ADMINISTRATIVE CODE.

CASE NO. 15239

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION TO SCHEDULE
A PROPOSAL TO AMEND 19-15.17-26 NMAC
(Concerning Injection).

CASE NO. 14974

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

November 19, 2014

Santa Fe, New Mexico

BEFORE: JAMI BAILEY, CHAIRPERSON
TERRY WARNELL, COMMISSIONER
ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the
New Mexico Oil Conservation Commission on Wednesday,
November 19, 2014, 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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EXHIBITS OFFERED AND ADMITTED

(No exhibits were offered.)

1 (10:04 a.m.)

2 CHAIRPERSON BAILEY: Back on the record.

3 The Commission shall now consider the
4 scheduling of hearings for the application for
5 rulemaking. The first one is Case 15239, which is the
6 application of the New Mexico Oil and Gas Association to
7 repeal and replace Title 19, Chapter 15, Part 34 of the
8 New Mexico Administrative Code addressing produced
9 water, drilling fluids and other liquid oil field waste,
10 and to amend the definition of produced water in Title
11 19, Chapter 15, Part 2 of the New Mexico Administrative
12 Code.

13 Since I am retiring, I will not be a part
14 of this rulemaking. I will defer discussion for
15 scheduling to people who will be here.

16 Mr. Brancard, if you would play an active
17 role in determining how this scheduling conversation
18 should go, I would appreciate it.

19 MR. BRANCARD: Okay. Do the parties have
20 any proposals for dates for having a hearing?

21 MR. FELDEWERT: Mr. Brancard, Michael
22 Feldewert here on behalf of the Applicant, the New
23 Mexico Oil and Gas Association. The short answer to the
24 question is no. We are prepared to proceed with this
25 rulemaking at the convenience of the Commission.

1 MR. BRANCARD: We have two rulemakings
2 proposed. Is there any understanding among the parties
3 as to which rulemaking should go first?

4 MR. WADE: Gabriel Wade with the OCD. We
5 did have a brief discussion that the OCD would not be
6 opposed to the produced water rule going first.
7 Otherwise, the Division is prepared to bring the
8 rulemaking for Rule 26 as well.

9 COMMISSIONER BALCH: As one of the
10 interested parties, can I ask you a couple of questions?

11 MR. FELDEWERT: Sure.

12 COMMISSIONER BALCH: Being the produced
13 water rule, do you feel like this is something that's
14 likely to be opposed?

15 MR. FELDEWERT: Well, I was -- I don't know
16 if anyone besides the Oil Conservation and NMOGA are
17 appearing here today. I know that IPA of New Mexico has
18 entered an appearance in the matter. As far as I know,
19 no one else has entered an appearance in the matter. I
20 don't know if anyone's here today to enter an
21 appearance. I would hope that it would not be opposed,
22 but I don't have any information one way or the other at
23 this point.

24 COMMISSIONER BALCH: So if not opposed,
25 what do you anticipate the number of testimonies we're

1 looking at?

2 MR. FELDEWERT: I looked at that yesterday
3 and today. I anticipate probably -- I anticipate
4 calling four witnesses.

5 One of the things that we have done in
6 anticipation of the rule is we have essentially adopted
7 the siting, the design, the operational enclosure
8 provisions that this body adopted for multifluid well
9 management pits under Rule 17 pursuant to the order that
10 was entered last year, Order R-13506D.

11 In light of the findings from that order,
12 we do not believe it's necessary to bring all of that
13 testimony back. To me that would be very inefficient.
14 And so given that we feel that we can adopt -- utilize
15 the findings in the order to support the siting and
16 design and operation enclosure provisions that we have
17 proposed, that allows us to present, I believe, only
18 four witnesses to discuss basically how the rule came
19 about and how it's structured. There are a few
20 technical aspects of the rule that we would address with
21 the second witness, such as what's going to be in these
22 recycling containments, what type of fluids are you
23 talking about and how the operation -- the provisions
24 that are adopted for multifluid well management pits
25 apply equally to this type of facility, although there

1 are some changes.

2 And we would then have a third witness to
3 discuss, for example, the changes that have been
4 proposed to the liner requirements.

5 And then we would anticipate a fourth
6 witness to discuss the changes that were made for the
7 testing for purposes of the closure that would be
8 utilized for the total petroleum hydrocarbons, TPH, as
9 well as benzene. So I anticipate having a witness to
10 discuss those changes.

11 Other than that, you know, unless someone
12 appears and intends to present testimony in opposition
13 on specific points, I think that will present our case,
14 and we could do that, in terms of our presentation, in a
15 day. I can't anticipate what the cross-examination
16 would be or questions the Commission would have, but I
17 can say that our case will take a day.

18 MR. WADE: And, Madam Chair and
19 Commissioners, the OCD anticipates really only calling
20 one, possibly two witnesses, so from the OCD's
21 perspective, we're probably looking at a case-in-chief
22 of maybe an hour or two hours.

23 COMMISSIONER BALCH: And then
24 deliberations. So perhaps a week if we're -- I'm sorry.

25 MS. FOSTER: Karin Foster on behalf of the

1 Independent Petroleum Association.

2 Mr. Feldewert is correct. We did file a
3 pre-hearing statement in this case. At this point it's
4 based on the petition that was presented by NMOGA. We
5 do not expect to object to NMOGA's petition as drafted
6 at this time. We will be present for cross-examination
7 or any rebuttal if it is absolutely necessary.

8 COMMISSIONER BALCH: Terry?

9 COMMISSIONER WARNELL: The dates I've got
10 here --

11 (Discussion off the record.)

12 COMMISSIONER BALCH: Okay. So we do have
13 the schedule for January 15th, February 12th and March
14 12th. I would probably not like to go on the January
15 15th date because I have field work the whole rest of
16 the month, and I wouldn't necessarily be able to commit,
17 if the hearing goes beyond two days, to an immediate
18 continuance.

19 Does that work out for you, Commissioner
20 Warnell?

21 COMMISSIONER WARNELL: Yeah. I wouldn't
22 mind if we pushed it a little further because they have
23 a 60-day session this year, and I know things are going
24 to be quite hectic at the State Land Office.

25 COMMISSIONER BALCH: All right. So that

1 session ends on or around March 19th?

2 COMMISSIONER WARNELL: Yeah.

3 COMMISSIONER BALCH: Would the March 12th
4 date be close enough to the end of that session to --

5 COMMISSIONER WARNELL: Yeah. I think we
6 could do that.

7 COMMISSIONER BALCH: Would March 12th -- I
8 think March 12th is on the calendar. Go ahead.

9 MR. FELDEWERT: Mr. Commissioner, I
10 think -- I do think -- I do hope that you would only
11 need, at most, two days. So I think March 12th, with
12 the idea of carrying over to the 13th, make sense to me,
13 and we'll work for -- make it work for the New Mexico
14 Oil and Gas Association.

15 MR. BRANCARD: Ms. Foster?

16 MS. FOSTER: With the session ending on the
17 19th, I might have some difficulty with a conflict. The
18 last week of the session does get extremely hectic,
19 especially any bills, you know, that might be last
20 minute that might still need to be passed or opposed.

21 COMMISSIONER BALCH: I presume February
22 would offer the same?

23 MS. FOSTER: Well, February, believe it or
24 not, is the last week of the session.

25 COMMISSIONER BALCH: I think February would

1 also work for me as far as a two-day allowance if a
2 continuance went into the next week, February the --

3 MR. BRANCARD: 12th?

4 COMMISSIONER BALCH: -- 12th.

5 COMMISSIONER WARNELL: Or would April 9th
6 be better?

7 MR. FELDEWERT: I don't think it makes a
8 difference. I think February would be fine. I mean,
9 you know, we have to -- you know, we need to contact our
10 witnesses, but as far as I know, February 12th -- we can
11 make February 12th or 13th work as well.

12 COMMISSIONER BALCH: Would that be all
13 right with the Division?

14 MR. WADE: Short of having an issue.

15 MR. BRANCARD: There shouldn't be.

16 COMMISSIONER BALCH: All right with the
17 Land Office?

18 COMMISSIONER WARNELL: We'll make it right.

19 COMMISSIONER BALCH: Do you know who your
20 replacement will be?

21 CHAIRPERSON BAILEY: They're going in the
22 deep end anyway.

23 COMMISSIONER BALCH: So with the
24 difficulties in March, I think April would be the next
25 possible date for acid gas.

1 MR. WADE: OCD would be prepared at that
2 time.

3 MR. FELDEWERT: What would be the date in
4 April?

5 COMMISSIONER BALCH: April 9th would be the
6 start.

7 Do you have a sense, Mr. Gutierrez, how
8 long that period might be?

9 MR. WADE: I can fill you in on what I
10 think the Division application -- I think that the
11 Division would like to bring at least two witnesses,
12 Phil Goetze and -- they will probably speak for 45
13 minutes apiece. Mr. Gutierrez has agreed to testify
14 regarding the rule. He played a strong part in the
15 Rulemaking Committee, and I think his testimony would
16 probably not go more -- like 90 minutes and possibly up
17 to two hours, so we're talking about less than a day at
18 least for the case-in-chief.

19 COMMISSIONER BALCH: He's been working on
20 formulating this rule for the Division?

21 MR. WADE: Yes.

22 COMMISSIONER BALCH: Have you received any
23 indication from outside parties that there may be a
24 contest to this?

25 MR. WADE: I think there will be portions,

1 but at the moment, there is 100 percent consensus, but I
2 have not seen any indication of other issues.

3 MS. FOSTER: Commissioner, on that case,
4 IPANM does not intend to file a pre-hearing statement on
5 the acid gas injection rule.

6 I also neglected to mention, on the
7 produced water rule, I did have conversations with the
8 New Mexico Environmental Law Center last week concerning
9 the produced water rule, and they informed me that
10 there's not an interest in that case at this time, so
11 they are not intending to participate on the produced
12 water rule.

13 MR. FELDEWERT: With respect to the acid
14 gas rule -- this is Michael Feldewert. I did appear on
15 behalf of OXY U.S.A. and Oxidental Permian, as well as
16 the New Mexico Oil and Gas Association. We do have some
17 lingering concerns with the rule. We're hopeful with
18 the passage of the time, between now and if this
19 occurred in April, they could address those issues, but
20 if you're planning, I anticipate I may call a witness or
21 two.

22 COMMISSIONER BALCH: Well, I think April
23 would probably be the best month, at least for me. I
24 don't know about Mr. Warnell. Into May and June, my
25 schedule tightens up considerably. So a bunch of April

1 is needed at this point to put towards this rule.

2 MR. BRANCARD: So can we have a motion from
3 the Commission to set the hearing on Case 15239 to be
4 commenced on February 12th and continued as needed?

5 COMMISSIONER BALCH: I'll make that motion.

6 COMMISSIONER WARNELL: I second that
7 motion.

8 CHAIRPERSON BAILEY: All those in favor?

9 (Ayes are unanimous.)

10 MR. BRANCARD: And then a motion to
11 commence the hearing on 14974 on April 9th and continue
12 thereafter?

13 COMMISSIONER BALCH: I'll make that motion
14 as well.

15 COMMISSIONER WARNELL: I second that
16 motion.

17 CHAIRPERSON BAILEY: All those in favor?

18 (Ayes are unanimous.)

19 CHAIRPERSON BAILEY: That wraps it up.

20 MR. FELDEWERT: Madam Chair, I have one
21 other matter.

22 CHAIRPERSON BAILEY: Yes.

23 MR. FELDEWERT: When I first came to
24 New Mexico and I started practicing law with Bill Carr,
25 the first person I got to know at the Commission was

1 Jami Bailey. It's been a little while ago. And I just
2 want to say it's been a pleasure knowing you, getting to
3 know you, and appreciate the time that you've spent in
4 service to the state, the industry, and you're going to
5 be missed.

6 CHAIRPERSON BAILEY: Thank you very much,
7 Mr. Feldewert. I really take that to heart.

8 I came to the Commission in 1991 under
9 then-Commissioner of Public Lands, Jim Baca. I have
10 continued for 23 years to be a member of this Commission
11 both through designee of the State Land Office and for
12 the OCD. Pete Porter, for whom this hall was named, was
13 on the Commission for 21 years. So I am the
14 longest-serving commissioner in the history of the state
15 of New Mexico.

16 (Applause.)

17 CHAIRPERSON BAILEY: As the longest-serving
18 commissioner, I would like to recognize the
19 longest-serving secretary for the Commission, Florene
20 Davidson --

21 (Applause.)

22 CHAIRPERSON BAILEY: -- 39 years as
23 Commission secretary.

24 Thank you very much for keeping us all
25 together, Florene.

1 MS. DAVIDSON: You're welcome.

2 Thank you.

3 MR. BRANCARD: Jami, if I may be
4 recognized. On behalf of the Commission -- we figured
5 it would be very hard for you to give up your gavel, so
6 we wanted to present you --

7 CHAIRPERSON BAILEY: Oh, wow.

8 MR. BRANCARD: -- with this on behalf of
9 the Commission, Jami Bailey, in appreciation of your
10 distinguished service on the Oil Conservation Commission
11 from 1991 to 2014.

12 CHAIRPERSON BAILEY: Thank you so much.
13 This is just outstanding. I appreciate it.

14 (Applause.)

15 CHAIRPERSON BAILEY: This will have a place
16 of honor because I put my heart and soul into this, just
17 being fair and finding that balance. So thank you.
18 I've learned so much. I will miss being able to learn
19 from the attorneys as much as I have. Hopefully -- I
20 may even go to law school. Who knows?

21 Thank you very much.

22 We are adjourned.

23 (Case Numbers 15239 and 14974 and further
24 proceedings conclude, 10:20 a.m.)

25

1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO
3

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6 Court Reporter No. 20, and Registered Professional
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13 Record of the proceedings truly and accurately reflects
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15 I FURTHER CERTIFY that I am neither
16 employed by nor related to any of the parties or
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