

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

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

7 APPLICATION OF THE OIL CONSERVATION DIVISION FOR ADOPTION OF SPECIAL
8 POOL RULES FOR DRILLING NEW WELLS IN CERTAIN AREAS, FOR THE PROTECTION
9 OF FRESH WATER, CHAVES AND EDDY COUNTIES, NEW MEXICO. CASE NO. 15487

10 REPORTER'S TRANSCRIPT OF PROCEEDINGS

11 COMMISSIONER HEARING

12 August 8, 2016

13 Santa Fe, New Mexico

14 BEFORE: DAVID R. CATANACH, CHAIRPERSON
15 PATRICK PADILLA, COMMISSIONER
16 DR. ROBERT S. BALCH, COMMISSIONER
17 CHERYL BADA, ESQ.

18 This matter came on for hearing before the
19 New Mexico Oil Conservation Commission on Monday,
20 August 8, 2016, at the New Mexico Energy, Minerals and
21 Natural Resources Department, Wendell Chino Building,
22 1220 South St. Francis Drive, Porter Hall, Room 102,
23 Santa Fe, New Mexico.

24 REPORTED BY: Mary C. Hankins, CCR, RPR
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INDEX

PAGE

Case Number 15487 Called	3
Proceedings Conclude	15
Certificate of Court Reporter	16

1 (1:05 p.m.)

2 CHAIRPERSON CATANACH: The next order of
3 business today is we need to talk about Cause Number
4 15487, which is the adoption of special pool rules for
5 drilling new wells in certain areas for the protection
6 of fresh water, Chaves and Eddy Counties, New Mexico.

7 This case was originally supposed to be
8 commenced at this time. The Division had some notice
9 issues, which required that the case had to be continued
10 to another date. We are here today to see if we can
11 arrive at an agreed time in which to continue this case
12 to be heard.

13 So at this time, let me call for
14 appearances.

15 MR. BROOKS: Mr. Chairman, Honorable
16 Commissioners, David Brooks, Energy, Minerals and
17 Natural Resources Department, appearing for the Oil
18 Conservation Division as Applicant.

19 MR. LARSON: Mr. Chairman, Commissioners,
20 Gary Larson of the Santa Fe office of Hinkle Shanor for
21 Yates Petroleum.

22 MR. FELDEWERT: Mr. Chairman, Members of
23 the Commission, Michael Feldewert, Santa Fe office of
24 Holland & Hart, appearing on behalf of COG Operating,
25 OXY USA and Fasken Oil and Ranch.

1 MS. FOSTER: Mr. Chairman, Karin Foster,
2 Southwest Government Affairs, on behalf of the
3 Independent Petroleum Association of New Mexico.

4 MR. OLSEN: Chairman and Members of the
5 Commission, A.J. Olsen and Olivia Mitchell on behalf of
6 Pecos Valley Artesia Conservancy District.

7 CHAIRPERSON CATANACH: I'm sorry. What was
8 the last name of Olivia, Mr. Olsen?

9 MR. OLSEN: Mitchell.

10 CHAIRPERSON CATANACH: Mitchell.

11 Any additional appearances?

12 Okay. Mr. Brooks, do you want to start us
13 off here?

14 MR. BROOKS: Yes, sir.

15 Mr. Chairman, Honorable Commissioners, I
16 have been informed by email for each of the attorneys
17 that -- separately, including Mr. Bruce who is not
18 present, that they and their witnesses will be available
19 on the days of October 5th through the 7th.

20 CHAIRPERSON CATANACH: December.

21 MR. BROOKS: I'm sorry. December 5th
22 through the 7th -- important difference -- on which date
23 the Commission I believe -- which dates the Commission I
24 believe has indicated are available dates.

25 CHAIRPERSON CATANACH: So is that correct?

1 Can I ask all the attorneys: Is that correct? Is that
2 your understanding, that you're available on those
3 dates?

4 MR. LARSON: That's correct, Mr. Chairman.

5 MR. FELDEWERT: Yes, sir.

6 MR. OLSEN: A.J. Olsen, that is correct.

7 CHAIRPERSON CATANACH: Let me just check
8 with the Commission one more time. Are those available
9 dates for the Commissioners?

10 COMMISSIONER BALCH: I'm good the 5th
11 through the 8th.

12 COMMISSIONER PADILLA: I don't have a
13 conflict.

14 CHAIRPERSON CATANACH: I do not have a
15 conflict as well.

16 Okay. And do we anticipate that it's going
17 to take two or three days, Mr. Brooks?

18 MR. BROOKS: Mr. Chairman, that is what has
19 been represented to me. I will, again, reiterate that I
20 think the Division's case can be concluded within
21 one-half day if our witnesses are not subjected to
22 unreasonable cross-examination.

23 But I would add that at least two of the
24 counsel would probably be happy with a 1:00 p.m. start
25 on the 5th, one being -- being Mr. Olsen who has to come

1 here from Roswell, and the other being myself. I'm
2 going to be on vacation the week before that, and I will
3 be flying in that Sunday from Florida and hopefully
4 without incident, but I've had some problems in the
5 past. So there are plenty of flights on that route, so
6 I should be able to be here by that evening -- Sunday
7 evening, but if not, by Monday midday.

8 CHAIRPERSON CATANACH: Okay. Is there any
9 opposition to starting at 1:00 p.m. on Monday, December
10 5th?

11 MS. FOSTER: No opposition.

12 COMMISSIONER PADILLA: Is December 6th a
13 Commission hearing? Are there going to be cases? Are
14 they going to be pushed off?

15 CHAIRPERSON CATANACH: Oh, that's right.
16 We have a December 6th docket, and I don't know what's
17 going to be on the docket. We could --

18 Help me, if I'm wrong. We could move the
19 cases off the 6th if we have to.

20 MS. BADA: We could.

21 CHAIRPERSON CATANACH: This is the only
22 time to do this before the end of the year, so I would
23 rather delay any other cases on the 6th. We can delay
24 those cases --

25 COMMISSIONER PADILLA: I don't even know if

1 there is anything on the docket, but I know it's a
2 regularly scheduled Commission hearing.

3 CHAIRPERSON CATANACH: If we had to --
4 like, we have until -- if there was something pressing
5 on that date, we could go until --

6 You're available until the 8th?

7 COMMISSIONER BALCH: I have to leave
8 sometime in the afternoon on the 8th. Yes.

9 CHAIRPERSON CATANACH: That's at least four
10 days -- no, three and a half. Well, we'll see how it
11 goes, but we can advise the parties ahead of time that
12 the 6th is probably going to be reserved for this case,
13 so we might have to go into January on something else.

14 COMMISSIONER PADILLA: So 1:00 p.m. on the
15 5th?

16 CHAIRPERSON CATANACH: 1:00 p.m. on the
17 5th, it looks like.

18 MR. BROOKS: That's correct.

19 CHAIRPERSON CATANACH: Hopefully this will
20 not get continued again. That is my desire, not to
21 continue it any further than that.

22 MR. BROOKS: Hopefully, sir.

23 CHAIRPERSON CATANACH: Okay.

24 MR. FELDEWERT: Mr. Chairman, Members of
25 the Commission, I have a couple of housekeeping matters,

1 since that's the date, you know.

2 First off, as Mr. Brooks knows, there is a
3 little confusion, on those hearing dates starting on
4 Monday, as to when the exhibits and pre-hearing
5 statements are to be filed.

6 I'm assuming that since we're starting on
7 December the 5th, that the pre-hearing statements and
8 proposed exhibits would be filed with the Commission on
9 or before, I guess, November 28th, which is a Monday, or
10 is it Tuesday? How do we interpret that rule?

11 MR. BROOKS: Mr. Chairman, there normally
12 is a confusion about that, but I believe in this case
13 there is not because, if I'm not mistaken -- you have a
14 calendar in front of you, but if I'm not mistaken,
15 December the 5th is the -- no, I am mistaken. December
16 5th is not the Thursday after Thanksgiving. It's the
17 next Thursday. There is a whole week there. So yes,
18 there could be some room for confusion. I don't believe
19 there is.

20 I believe that the rule clearly states that
21 the pre-hearing statements are due on the -- due four
22 business days before the meeting but not less than --
23 not later than the Thursday before the meeting. Since
24 the meetings are usually on Thursdays, that means that
25 in the usual case, the pre-hearing statements are due on

1 Thursday, because if there are no holidays and if the
2 meeting is on a Thursday, then the Thursday before the
3 meeting is the applicable day. But if the meeting is on
4 a day other than Thursday, then the Thursday before the
5 meeting is less than four business days before the --
6 before the hearing and, therefore, the four business
7 days rule controls.

8 I would add, however, that the Commission
9 has the power to set the pre-hearing statement by order.
10 And since -- my understanding is there will be an order
11 issued setting this date, then we could say in that
12 order specifically when the pre-hearing statements would
13 be due so no party would be confused.

14 MS. FOSTER: Mr. Chairman, in light of the
15 fact that we're talking about dates and the ability to
16 review pre-hearing statements, I'd like to renew my
17 objection to this proceeding again. I did, before the
18 hearing officer, and, again, I feel that because of the
19 geographic area, the size of the geographic areas, the
20 number of pools that are affected by this potential
21 order that's going to come out of this hearing, that
22 this is really a rule-making.

23 If this was a rule-making process, then we
24 would have a 30-day notice. I would be able to notify
25 my 300-plus companies and be able to show them what this

1 potential rule is all about rather than just four days.

2 So I would ask, you know, per Mr. Brooks'
3 statement, that we get at least four business days --
4 actual business days, not including the weekend, at a
5 minimum.

6 But, again, this really should be a rule --
7 rule-making process, which means we should really have
8 30 days.

9 CHAIRPERSON CATANACH: So noted,
10 Ms. Foster.

11 Mr. Brooks, given the four-day rule, that
12 would put it at Monday, the 28th.

13 MR. BROOKS: I believe it would put it at
14 Tuesday, the 29th, sir.

15 CHAIRPERSON CATANACH: Okay. So let's go
16 ahead and set that as -- those would be due on the 29th
17 of November.

18 MR. BROOKS: Yeah. Yes, sir.

19 COMMISSIONER BALCH: I wouldn't mind having
20 a little more time. I have an excessive amount of
21 travel in late November. I could be coming back from
22 travel on Sunday right before the meeting.

23 CHAIRPERSON CATANACH: The problem is the
24 previous week to that would be the Thanksgiving holiday,
25 Thursday and Friday, so --

1 COMMISSIONER PADILLA: Maybe bump it back
2 to the Monday before?

3 CHAIRPERSON CATANACH: The 21st? November
4 21st? Is that what you're suggesting?

5 COMMISSIONER PADILLA: Sure.

6 COMMISSIONER BALCH: I would have time to
7 review them.

8 CHAIRPERSON CATANACH: Is that a problem,
9 Mr. Brooks, do you think?

10 MR. BROOKS: I believe not for the
11 Division. I'm going to be on vacation at that time,
12 but -- from then on up to through the hearing, but -- I
13 mean until the beginning of the hearing (laughter).
14 Excuse me. But if I have any need for assistance, I
15 have the invaluable assistance of your entire staff to
16 get ready.

17 CHAIRPERSON CATANACH: Correct.

18 Are there any other issues with that date?
19 We have established that would be the 21st -- I'm
20 sorry -- the 20th -- no. The 21st.

21 MR. FELDEWERT: No, Mr. Chairman. I think
22 that would be a good idea, given the following week is
23 Thanksgiving week.

24 CHAIRPERSON CATANACH: Okay. So then we'll
25 set those due on the 21st of November.

1 MS. FOSTER: Thank you, Mr. Chairman.

2 MR. FELDEWERT: Mr. Chairman, one other
3 housekeeping matter, if I may. I've looked at the
4 pre-hearing statement, trying to ascertain where
5 everybody stands on this. I recognize this is the
6 Division's application, so I'm sure they will go first
7 in their presentation. I understand from Mr. Olsen's
8 pre-hearing statement, they are in favor of the rules as
9 drafted. Therefore, it seems to me that they would then
10 follow the Division. And then those that have expressed
11 concern or opposition to the proposed rules would follow
12 the presentation by the Division and the -- I'll call
13 them Pecos Valley for short.

14 CHAIRPERSON CATANACH: And that would be my
15 understanding. That would be correct.

16 MR. FELDEWERT: Okay.

17 MR. BROOKS: I don't know --

18 Mr. Olsen, did you hear Mr. Feldewert?

19 I'm not sure Mr. Olsen is still there.

20 MR. OLSEN: I did not hear completely.

21 MR. BROOKS: Okay. I believe, from
22 conversations with you, that your expectations were at
23 variance with that. I have nothing to do with this
24 determination. It's entirely a matter for the Division.

25 Mr. Feldewert, would you mind reiterating

1 your position for Mr. Olsen?

2 MR. FELDEWERT: Yeah. Mr. Olsen, my
3 position was since you have expressed support for the
4 Division's rules in your pre-hearing statement, that it
5 seemed to me that the Division and the Pecos Valley
6 group would present their evidence first, and then the
7 remaining parties who had expressed opposition or some
8 issues with the proposal would present their evidence.
9 I think that's the normal sequence.

10 MR. OLSEN: I agree with that, and we're
11 prepared to go forward in that manner.

12 CHAIRPERSON CATANACH: Okay. Good. No
13 issue there.

14 Anything else, Mr. Feldewert?

15 MR. FELDEWERT: No, sir. Thank you.

16 CHAIRPERSON CATANACH: Okay. Is there any
17 other discussion at this time?

18 Mr. Olsen, anything you want to contribute?

19 MR. OLSEN: Mr. Chairman, I would simply
20 like to thank you and the Commission and other counsel
21 for allowing Ms. Mitchell and I to appear
22 telephonically. We certainly appreciate that and the
23 board of directors of the PVACD, also.

24 CHAIRPERSON CATANACH: You're welcome, sir.
25 No problem.

1 Okay. Anything else we need to take care
2 of?

3 Okay. Do I have a motion to adjourn the
4 hearing?

5 COMMISSIONER PADILLA: So moved.

6 COMMISSIONER BALCH: And seconded.

7 CHAIRPERSON CATANACH: All in favor.

8 (Ayes are unanimous.)

9 (Case Number 15487 concludes, 1:18 p.m.)

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1 STATE OF NEW MEXICO
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CERTIFICATE OF COURT REPORTER

I, MARY C. HANKINS, Certified Court Reporter, New Mexico Certified Court Reporter No. 20, and Registered Professional Reporter, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings that were reduced to printed form by me to the best of my ability.

I FURTHER CERTIFY that the Reporter's Record of the proceedings truly and accurately reflects the exhibits, if any, offered by the respective parties.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.

MARY C. HANKINS, CCR, RPR
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Date of CCR Expiration: 12/31/2016
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