

NEW MEXICO OIL CONSERVATION DIVISION

COMMISSION HEARING

SANTA FE, NEW MEXICO

Hearing Date FEBRUARY 26, 1998 Time 9:00 A.M.

NAME	REPRESENTING	LOCATION
W. Kellahin Tim W. Gann James Bruce	Kellahin + Kellahin NMOC D —	Santa Fe ALTOSIA Santa Fe

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

CASE NOS. 11,705, 11,807, 11,838, 11,809 (Continued)
CASE NOS. 11,579, 11,844, 11,894 and 11,808 (Dismissed)

CONTINUED AND DISMISSED CASES

TRANSCRIPT OF PROCEEDINGS

ORIGINAL

BEFORE: LORI WROTENBERY, ACTING CHAIRMAN
WILLIAM J. LEMAY, COMMISSIONER
JAMI BAILEY, COMMISSIONER

February 26th, 1998

Santa Fe, New Mexico

These matters came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Acting Chairman, on Thursday, February 26th, 1998, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

I N D E X

February 26th, 1998
Commission Hearing
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	PAGE
Introduction of new Oil Conservation Commission by Mr. LeMay	3
Opening remarks by Commissioner Wrotenbery	3
Minutes of the last meeting	5
Chairmanship of the Commission	5
Appointment of a hearing officer to hear preliminary matters before the Commission in adjudicatory hearings	8
Annual resolution regarding notice standards for Commission public meetings	9
Continued cases	13
Dismissed cases	14
REPORTER'S CERTIFICATE	16

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A P P E A R A N C E S

FOR THE COMMISSION:

LYN S. HEBERT
Deputy General Counsel
Energy, Minerals and Natural Resources Department
2040 South Pacheco
Santa Fe, New Mexico 87505

* * *

1 WHEREUPON, the following proceedings were had at
2 9:05 a.m.:

3 MR. LEMAY: Good morning, this is the first
4 meeting of the new Oil Conservation Commission.

5 And by way of introduction you know my colleague
6 to the far right, Jami Bailey representing the Commissioner
7 of Public Lands.

8 To my immediate right is Lori Wrotenbery, who's
9 the new Division Director of the Oil Conservation Division
10 and, by virtue of that position she is on the Oil
11 Conservation Commission.

12 The reason why I'm still here is, I am the
13 appointment of the -- I am representing the Secretary of
14 Energy, Minerals and Natural Resources, and I am her
15 designee.

16 So the makeup of your new Oil Conservation
17 Commission will be Lori and Jami and myself.

18 With that, I relinquish this gavel to Lori
19 Wrotenbery, who will be conducting the meeting. And
20 congratulations on your position, and we're happy to have
21 you on this Commission. I'm happy to be on it too.

22 MS. WROTENBERY: Thank you very much, Bill.

23 And I wanted to say to everybody how happy I am
24 to be here and how excited I am to be here. I look forward
25 to working with my colleagues here on the Commission and

1 the staff here at the Oil Conservation Division and the
2 representatives of industry and of the bar who practice
3 before the Commission. I feel honored to be here.

4 And I have to tell you, I've had a very warm
5 reception the last few weeks from everybody here, warmer
6 than I could have ever expected it to be, and I'm really
7 appreciative of that. I can't express how much that means
8 to me, and I really look forward to continuing the
9 association with all of you folks.

10 I also would like to ask your indulgence a little
11 bit. One of the reasons I'm so excited to be here is
12 because it gives me an opportunity to use the skills and
13 experience I have in oil and gas issues here in the context
14 of New Mexico. I also understand, though, that I've got a
15 lot to learn here in the next few months in particular
16 about the way things work in New Mexico and the particular
17 practices and procedures of the Oil Conservation Division
18 and the Oil Conservation Commission, and I'm hopeful that
19 you'll help me out in that regard.

20 I know the people in this room right now have
21 many years of experience and, as a result, are the experts
22 on the oil and gas practices in New Mexico, and I hope
23 you'll be willing to help me out and share some of that
24 knowledge with me. And please know that I welcome that
25 kind of advice or suggestions that you might have, as well

1 as just any instruction you might want to give me in the
2 way things work here.

3 So I hope you'll be willing and feel free to do
4 that for me.

5 With that, I think we have a few items of
6 business that we need to take care of before we go on and
7 discuss the cases that are on the docket today.

8 * * *

9 MS. WROTENBERY: The first item, I guess,
10 traditionally, is the minutes of the last meeting, and we
11 have those here.

12 MR. LEMAY: Yes, I move acceptance of the minutes
13 of the previous meeting.

14 COMMISSIONER BAILEY: I second.

15 MS. WROTENBERY: All in favor?

16 COMMISSIONER BAILEY: Aye.

17 MR. LEMAY: Aye.

18 MS. WROTENBERY: And I believe it would be
19 appropriate, Bill, since you were the Chairman of that
20 meeting, for you to maybe sign these minutes --

21 MR. LEMAY: I'd be happy to.

22 MS. WROTENBERY: -- acceptable to you.

23 * * *

24 MS. WROTENBERY: Also, there is the issue of the
25 chairmanship of the Commission, and that particular item we

1 will be taking up at the next scheduled meeting of the
2 Commission. It was not something that was included in the
3 notice of this particular meeting. But I did want to maybe
4 open the issue up for a little bit of discussion, if that
5 would be okay at this point, and ask for some input from
6 the other members of the Commission.

7 I understand that the tradition has been that the
8 Oil Conservation Division Director serves as the Chairman.
9 I know that practice is not only grounded in tradition but
10 also in some considerations of convenience and efficiency,
11 if not practical necessity. And so I would hope to be
12 able to step into that role here, with the -- obviously,
13 the consent of the other members of the Commission, and
14 serve as Chairman.

15 But I wanted to also tell you that obviously I'll
16 look for any assistance and guidance and support that the
17 other Commissioners would be willing to offer.

18 MR. LEMAY: Speaking for myself, I'll certainly
19 give you the support, any support I can. And I think
20 historically it's been the -- not necessarily; if you go
21 further back there's been other chairmen. But since, I
22 think, I was Division Director I served as Chairman of the
23 Commission. And for logistical purposes, sometimes having
24 that in the Division office here lent itself to a smooth
25 transition. I'm in the business, mainly, although going

1 back in the past, I know there's been other chairmen, and
2 also the conducting of the meetings wouldn't have to be
3 done by the Chairman. That in the past has changed too.

4 But for the last 11 years, there's reasons for
5 that, I think. It serves the Commission well to have the
6 Division Director as Chairman. I certainly would support
7 your candidacy in that regard, Lori.

8 MS. WROTENBERY: I appreciate that.

9 COMMISSIONER BAILEY: Well, it's certainly
10 logical for the Division Director to be the Chairman of the
11 Commission, not only for the support staff but because of
12 the intimate knowledge of the cases that are presented to
13 the Commission.

14 And so for those reasons I have no objection at
15 all to continuing that 11-year, so far, tradition.

16 MS. WROTENBERY: I appreciate that. We'll take
17 formal action, then, on that particular issue at the next
18 meeting after it's been duly posted. But I think that
19 probably means, Lyn, that it would be okay for me to
20 continue to serve at this meeting in the role --

21 MS. HEBERT: Acting --

22 MS. WROTENBERY: -- as Chairman, as a practical
23 matter.

24 MS. HEBERT: Acting Chairman, yes.

25 MR. LEMAY: If you need a motion, I so move,

1 that --

2 MS. WROTENBERY: Okay, that sounds great.

3 * * *

4 MS. WROTENBERY: Let's see. There's also the
5 matter of the appointment of a hearing officer to hear
6 preliminary matters before the Commission in adjudicatory
7 hearings, and at this point the type of preliminary matters
8 that I have seen come across my desk in the first few weeks
9 here have been matters such as subpoenas, requests for
10 continuances. Bill, you may be able to think of some other
11 examples.

12 MR. LEMAY: We'll we certainly get plenty of this
13 recently, subpoenas, motions to quash subpoenas and other
14 adjudicatory matters.

15 So if it's appropriate, I think now would be the
16 time to take up the hearing officer issue.

17 MS. WROTENBERY: Okay. And I also understand, I
18 think, again, that the Oil Conservation Division Director
19 has been serving in that role to try to facilitate the
20 process of moving these cases along. Is there any
21 discussion on that particular issue?

22 MR. LEMAY: That works well, it has worked well
23 in the past.

24 MS. WROTENBERY: I guess I'm open to a motion to
25 designate the Oil Conservation Division Director as the

1 hearing officer to hear preliminary matters.

2 COMMISSIONER BAILEY: I so move.

3 MR. LEMAY: Second.

4 MS. WROTENBERY: All in favor?

5 MR. LEMAY: Aye.

6 COMMISSIONER BAILEY: Aye.

7 * * *

8 MS. WROTENBERY: Okay. As a fourth item of
9 business, we have an annual resolution regarding notice
10 standards for Commission public meetings. And Lyn, were
11 you prepared to address that particular issue?

12 MS. HEBERT: Yes, Commissioners, every year
13 you're required to adopt your resolution on what is the
14 notice you're going to provide for your public meeting.
15 And in the past your notice for your regular meeting has
16 been notice published at least 30 days in advance in a
17 paper of general circulation in the state, posting the
18 notice and providing the notice to any broadcast
19 stations -- radio, television -- that have requested such
20 notice.

21 Now, your practice has also been to mail out a
22 docket of -- hundreds of the docket and agendas that
23 include the notice of the meeting, of course, to anyone who
24 requests that, and I think that that mailing list just
25 continues to grow. I'm not sure anybody ever falls off of

1 it; I think it just continues to be added to.

2 So this resolution before you today, the only
3 change there is from the resolution that was adopted last
4 year is the provision that any other person, in addition to
5 the broadcast station that is licensed by the FCC, that any
6 other person who requests notice will be mailed that
7 notice. And it's just formalizing what your practice has
8 always been.

9 We may be a little bit more sensitive to this
10 issue this year because of a recent district court case
11 where the district court judge in Aztec, Judge Byron Caton,
12 stated that he wanted the Commission to understand he did
13 not believe the notice that we were writing for our public
14 rule-making was adequate due process.

15 And we argued to the judge that in the instance
16 where you are considering a rule-making that covers half a
17 million acres and that has hundreds and thousands of
18 interest owners, that constructive service or service by
19 publication is the only kind of service that's going to be
20 possible because the persons to be served aren't readily
21 ascertainable. It would take hundreds of thousands of
22 dollars and months and months to discover a list of people
23 who, in the meantime, would be changing.

24 He didn't agree with us. I still believe that
25 the Commission's notice is all that reasonably can be

1 expected, and I think by going the extra step of providing
2 notice to anyone who requests it of the continuing public
3 meetings that you are in compliance with the Constitutional
4 due process considerations.

5 So I just am passing on to you the opinion of one
6 district court judge, and we are challenging that decision
7 in the Supreme Court.

8 So the resolution before you is just like last
9 year's with that one little addition about mailing out to
10 any new requests.

11 That's all I have.

12 COMMISSIONER BAILEY: Are the dockets also
13 available on the Internet?

14 MS. HEBERT: I don't know.

15 MS. DAVIDSON: Yes.

16 MS. HEBERT: Are they?

17 COMMISSIONER BAILEY: So that's additional notice
18 to the party?

19 MS. HEBERT: Apparently so.

20 MS. WROTENBERY: Commissioner Bailey or
21 Commissioner LeMay, do you have any thoughts on this
22 particular issue, given your experience working under
23 these --

24 MR. LEMAY: I think we've always been challenged
25 in some form or fashion as to our notice requirements. We

1 go back to the *Udden* decision, that's one we'd like to
2 revisit and maybe will revisit in some case.

3 But we've tried, and I think succeeded, at
4 getting public notice out to anyone who wishes it, and
5 through all kinds of media, so I think we're doing all we
6 can in a practical sense.

7 COMMISSIONER BAILEY: Sounds like it to me too.

8 MR. LEMAY: So is it appropriate to entertain a
9 motion to continue the public meetings?

10 COMMISSIONER BAILEY: To adopt this --

11 MR. LEMAY: To adopt the public-meeting motion or
12 the public-meeting resolution? So I move we adopt the
13 public-notice resolution.

14 COMMISSIONER BAILEY: I second.

15 MS. WROTENBERY: All in favor say aye.

16 COMMISSIONER BAILEY: Aye.

17 MR. LEMAY: Aye.

18 MS. WROTENBERY: The motion is adopted -- or the
19 resolution is adopted.

20 Are there any other business items, then, that we
21 need to take up at this point, or shall we proceed to the
22 docketed cases here?

23 * * *

24 MS. WROTENBERY: What I thought I might do, we
25 had quite a lengthy docket here initially, but a number of

1 the cases have either been postponed or dismissed or the
2 applications have been withdrawn. I thought I might just
3 make a note of those type of activities for anybody who's
4 interested in those particular cases before we proceed to
5 the cases that remain on the docket.

6 Let's see. First of all, we had some cases
7 postponed until April 9th at the request of the parties.

8 Case 11,705, the Application of the Oil
9 Conservation Division to amend Order R-8170, as amended,
10 "General Rules for the Prorated Pools of New Mexico", that
11 case has been postponed to April 9th at the request of the
12 Oil Conservation Division.

13 Case 11,807, Application of Stevens & Tull, Inc.,
14 for saltwater disposal, Lea County, New Mexico, that case
15 has been continued to April 9th at the request of the
16 Applicant, Stevens and Tull.

17 Case Number 11,838, the Application of Premier
18 Oil and Gas, Inc., to have a wellbore of its included in
19 the Avalon (Delaware) Unit operated by Exxon Company, USA,
20 Eddy County, New Mexico, that Application has been
21 continued to April 9th at the request of the parties.

22 And then one more continuance to April 9th,
23 that's Case 11,809, the Application of Burlington Resources
24 Oil and Gas Company for compulsory pooling an unorthodox
25 gas well location and a nonstandard proration unit in San

1 Juan County, New Mexico, again, that case has been
2 continued to April 9th at the request of the parties.

3 * * *

4 MS. WROTENBERY: We also have a number of cases
5 that have been dismissed.

6 Case 11,579, the Application of Pogo Producing
7 Company for a pressure maintenance project in Lea County,
8 New Mexico, that case has been dismissed at the request of
9 the Applicant.

10 Case 11,844, the Application of Chesapeake
11 Operating, Inc., for an unorthodox oil well location in Lea
12 County, New Mexico, that case has been dismissed at the
13 request of the parties.

14 Case 11,894, the Application of Chesapeake
15 Operating, Inc., for an unorthodox oil well location in Lea
16 County, New Mexico, again, that case has been dismissed at
17 the request of the parties.

18 And then Case 11,808, Application of Burlington
19 Resources Oil and Gas Company for compulsory pooling and a
20 nonstandard gas proration and spacing unit in San Juan
21 County, New Mexico, that particular Application has been
22 withdrawn by the Applicant, so the case has been dismissed.

23 And I understand also that we need to vacate the
24 order that had previously been issued in that case. Is
25 that something we need to do by Motion, or is that just

1 something we need to acknowledge in the record here?

2 MS. HEBERT: Just acknowledge it in the record.

3 MS. WROTENBERY: Okay. So just -- We're just
4 making a note there that the case has been dismissed and
5 that the order is hereby vacated.

6 (Thereupon, these proceedings were concluded at
7 9:15 a.m.)

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CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL February 27th, 1998.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 1998