

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

16 March 1988

EXAMINER HEARING

IN THE MATTER OF:

The hearing called by the Oil Conser- CASE
vation Division on its own motion to 9328
consider the amendment of Division
Order No. R-3221.

BEFORE: David R. Catanach, Examiner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Division:

For the Applicant:

1
2 MR. CATANACH: Call next Case
3 9328, in the matter of the hearing called by the Oil Conser-
4 vation Division on its own motion to consider the amendment
5 of Division Order No. R-3221, which prohibits disposal of
6 water produced in conjunction with the production of oil and
7 gas on the surface of the ground or in any place or manner
8 which will constitute a hazard to fresh water supplies in
9 the area encompassed by Lea, Eddy, Chaves and Roosevelt
10 Counties, New Mexico.

11

12 (Mr. David Boyer sworn.)

13

14 MR. CATANACH: You may proceed.

15 MR. BOYER: Yes. My name is
16 David Boyer and I'm Environmental Bureau Chief with the Oil
17 Conservation Division in Santa Fe.

18 I have been requested to pre-
19 sent this particular case regarding procedures for excep-
20 tions to Order R-3221.

21 The purpose of these procedures
22 are to provide a standardized procedure for applicants and
23 hearing officers to follow in hearing and deciding requested
24 exceptions to Order R-3221.

25 I'm going to give you a little,

1 brief history as to how this came about and to why I feel
2 there's a need for this particular procedure.

3 In August of 1985, after
4 responding to inquiries from several potential applicants
5 for exceptions to Order R-3221, I became aware that there
6 was no set procedure for an applicant to follow in applying
7 for an exception.

8 I researched the issue and
9 drafted a policy memorandum.

10 I was asked by Dick Stamets,
11 who ws then the OCD Director, to formalize the document and
12 it was circulated to OCD staff and attorneys as a draft.

13 Dick requested comments on the
14 draft by December 15th of 1985.

15 To my knowledge there was no
16 comment because after that date he signed the memo and did
17 not, however, did not have the memo redrafted to change the
18 date of signing. So the date of signing of the memo is the
19 original memo of October 22nd, 1985.

20 I've provided copies of the
21 memo by the sign-in sheets at the other end of the room
22 there.

23 The memorandum itself is self-
24 explanatory. It details the Oil Conservation Commission's
25 reasoning and action in the case and references to State

1 Engineer Office letters, which I have attached to the memor-
2 andum.

3 I might back up a second again,
4 in that the memorandum or, correction, R-3221 was originally
5 adopted back in 1967, and there have been several State En-
6 gineer letters regarding protection of fresh water since tht
7 time; one in 1967 and a more recent one in 1985. Both of
8 these letters are attached to the copies of the memorandum
9 that I've provided.

10 Briefly this is the exception
11 procedure.

12 1. Based on R-3221 findings
13 for areas not already excepted, the Oil Conservation Divi-
14 sion must assume groundwater to be be present at shallow
15 depths unless the applicant specifically documents other-
16 wise.

17 2. The Oil Conservation Divi-
18 sion must assume that any groundwater present has 20,000
19 milligrams per liter, or less, total dissolved solids, un-
20 less otherwise documented. The figure 10,000 milligrams per
21 liter is the limit of protectable fresh water as designated
22 by the State Engineer.

23 3. Given 1 and 2, OCD must
24 further assume that the water has a present or reasonably
25 foreseeable beneficial use that would be impaired by surface

1 disposal.

2 The applicant can attempt to
3 demonstrate lack of present or reasonably foreseeable use of
4 hte water by showing that even though the water is less than
5 10,000 milligrams per liter TDS, it's present quality is
6 such that treatment would be economically or technologically
7 impractical. Such a demonstration is the responsibility of
8 the applicant.

9 Also, the applicant can attempt
10 to show that water, even if of relatively good quality, is
11 not of sufficient volume to provide a reliable water supply
12 for beneficial use, including domestic or stock use, and I
13 might add that these demonstrations have been successfully
14 prepared by a number of applicants in the past.

15 In summary, the burden of proof
16 to demonstrate that surface disposal will not impair protec-
17 table fresh water is on the applicant. He must make an ac-
18 ceptable demonstration based on site specific hydrologic in-
19 formation. He is expected to research public reports, State
20 Engineer records, drillers logs, oil well logs, local infor-
21 mation, et cetera, to prove his case.

22 It is the responsibility of the
23 Division to critically review the applicant's information
24 and grant the exception only if fresh water is afforded
25 reasonable protection from the proposed activity.

1 And that concludes my comments
2 on the case this morning, and I have submitted copies of the
3 memorandum and the State Engineer's letters for the record.

4 MR. CATANACH: Are there any
5 questions of the witness?

6 So I understand it, Mr. Boyer,
7 all we're trying to do is document the guidelines that have
8 already been in place for awhile. We're just trying to put
9 those in the order so they'd be easily accessible so every-
10 body would know they had to do when they came in for that.

11 MR. BOYER: Yes, that's cor-
12 rect. The memorandums and policy statements tend to get
13 lost in the paperwork and if this was attached as part of
14 the order it would be more accessible to everyone practicing
15 before the Division.

16 MR. CATANACH: Okay. I don't
17 have anything further. You may be excused.

18 Is there anything further in
19 Case 9328?

20 If not, it will be taken under
21 advisement.

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(Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY CERTIFY that the foregoing Transcript of Hearing before the Oil Conservation Division (Commission) was reported by me; that the said transcript is a full, true, and correct record of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

I do hereby certify that the foregoing is a complete record of the proceedings in the Examiner hearing of Case No. 9368, heard by me on March 16, 1989.

David R. Cabant, Examiner
Oil Conservation Division