

OF STATE NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION DIVISION  
IN THE MATTER OF THE HEARING CALLED  
BY THE OIL CONSERVATION COMMISSION FOR  
THE PURPOSE OF CONSIDERING:

IN THE MATTER OF: PROPOSED AMENDMENTS      CASE NO. 15726  
TO SECTION 19 OF 19.15.16 NMAC AND  
SECTION 16 OF 19.15.7 NMAC, EXTENDING  
THE TIME FOR REPORTING COMPLETION OF  
HORIZONTAL WELLS FROM 20 TO 45 DAYS,  
AND PROPOSED FURTHER AMENDMENT OF SECTION  
19 OF 19.15.16 NMAC TO REQUIRE OPERATORS  
TO REPORT CERTAIN INFORMATION REGARDING  
HYDRAULICALLY FRACTURED WELLS IN THE  
FRAC FOCUS CHEMICAL DISCLOSURE REGISTRY.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

July 13, 2017

Santa Fe, New Mexico

BEFORE: DAVID R. CATANACH, CHAIRPERSON  
EDWARD MARTIN, COMMISSIONER  
DR. ROBERT S. BALCH, COMMISSIONER  
BILL BRANCARD, ESQ.

This matter came on for hearing before the  
New Mexico Oil Conservation Commission on Thursday,  
July 13, 2017, 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  
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1	INDEX	
2		PAGE
3	Case Number 15726 Called	4
4	NMOCD's Case-in-Chief:	
5	Witnesses:	
6	Phillip R. Goetze:	
7	Direct Examination by Mr. Brooks	8
	Cross-Examination by Commissioner Balch	22
8	Cross-Examination by Chairman Catanach	27
	Recross Examination by Commissioner Balch	30
9	Recross Examination by Chairman Catanach	31
	Cross-Examination by Commissioner Martin	33
10	Cross-Examination by Mr. Brancard	34
	Recross Examination by Commissioner Balch	36
11	Redirect Examination by Mr. Brooks	37
12	New Mexico Oil and Gas Association's Case-in-Chief:	
13	Patrick Padilla:	
14	Direct Examination by Ms. Kessler	39, 42
	Voir Dire Examination by Chairman Catanach	41
15	Cross-Examination by Mr. Brooks	49
	Cross-Examination by Commissioner Balch	52
16		
17	Proceedings Conclude	64
18	Certificate of Court Reporter	65
19		
20	EXHIBITS OFFERED AND ADMITTED	
21	NMOCD Exhibit Numbers 1 through 5	21
22	(NMOCD Exhibits 5 and 6 were not provided to the court	
23	reporter and are not attached to this record.)	
24	NMOGA Exhibit Letter A	(attached)
25		

1 (9:09 a.m.)

2 CHAIRMAN CATANACH: The next order of  
3 business today, this morning, is Case Number 15726, In  
4 the matter of: Proposed amendments to Section 19 of  
5 19.15.16 NMAC and Section 16 of 19.15.7 NMAC, extending  
6 the time for reporting completion of horizontal wells  
7 from 20 to 45 days, and proposed further amendment of  
8 Section 19 of 19.15.16 NMAC to require operators to  
9 report certain information regarding hydraulically  
10 fractured wells in the FracFocus Chemical Disclosure  
11 Registry.

12 At this time I will call for appearances in  
13 Case Number 15726.

14 MR. BROOKS: David Brooks, Energy, Minerals  
15 and Natural Resources Department, State of New Mexico,  
16 appearing for the Oil Conservation Division.

17 MS. KESSLER: Jordan Kessler, from the  
18 Santa Fe office of Holland & Hart, on behalf of the New  
19 Mexico Oil and Gas Association.

20 CHAIRMAN CATANACH: Any additional  
21 appearances?

22 Okay. Do we have witnesses this morning,  
23 Mr. Brooks?

24 MR. BROOKS: Yes. I have one witness.

25 MS. KESSLER: One witness also.

1                   CHAIRMAN CATANACH: Can I get the two  
2 witnesses to stand and be sworn in at this time?

3                   (Mr. Padilla and Mr. Goetze sworn.)

4                   CHAIRMAN CATANACH: Do we have the  
5 exhibits, Mr. Brooks?

6                   MR. BROOKS: You should have. My  
7 understanding was the exhibits have been put in your  
8 notebooks. I didn't check the notebooks to see if, in  
9 fact, that was the case. If not, I can provide copies  
10 of the exhibits because we were required by the  
11 rulemaking rule to provide additional -- five additional  
12 copies for the public, and I don't think there is enough  
13 public here to make a big issue of that.

14                  CHAIRMAN CATANACH: This is what we're  
15 talking about.

16                  MR. BROOKS: Yes. There should be five  
17 exhibits. You may have only three. If you have only  
18 three, I will get you the other two. Actually, I think  
19 the rule -- the proposed rule is in your packet under  
20 another -- in another provision, but the proposed rule  
21 has been marked as Exhibit 4.

22                  CHAIRMAN CATANACH: Is Exhibit Number 2 the  
23 long exhibit, Mr. Brooks?

24                  MR. BROOKS: Exhibit 2 is the long one.

25                  COMMISSIONER BALCH: I have Exhibits 1 and

1 2.

2 CHAIRMAN CATANACH: I have Exhibits 1 and

3 2.

4 MR. BRANCARD: There is a supplemental  
5 pre-hearing statement that has Exhibit 3.

6 CHAIRMAN CATANACH: Okay.

7 MR. BROOKS: May I approach?

8 COMMISSIONER BALCH: We have Exhibit 3  
9 also.

10 MR. BROOKS: Okay. Well, you do also have  
11 the proposed rule, which is Exhibit 4, but it's attached  
12 to our motion to -- to our requested modification, I  
13 believe.

14 MR. BRANCARD: And the proposed rule is the  
15 longer version, Mr. Brooks?

16 MR. BROOKS: Yeah. And there have been  
17 several versions. I want to be sure everyone has the  
18 right one. May I approach to look? I will look and see  
19 if that is indeed the right one.

20 That appears to be the right one.

21 MR. BRANCARD: This is the version of the  
22 rule that has an additional Subsection C on it?

23 MR. BROOKS: Yes. And if you have the  
24 right one, you should also have in the first -- to have  
25 the final proposal, you should also have -- in the first

1 line, "20 days" should be deleted out.

2 COMMISSIONER BALCH: That's Exhibit 4?

3 MR. BROOKS: Yeah. The first line should  
4 read "within 45 days after," and everything else in red  
5 should be deleted.

6 COMMISSIONER MARTIN: That's your Exhibit  
7 4?

8 MR. BROOKS: That's my Exhibit 4.

9 CHAIRMAN CATANACH: So there are four  
10 exhibits?

11 MR. BROOKS: Well, we have a fifth exhibit,  
12 but that's Mr. Goetze's resume. You're probably  
13 familiar with his qualifications.

14 COMMISSIONER BALCH: I could probably quote  
15 his resume. He wins the award for frequent witness.

16 MR. BROOKS: Well, he's a good witness.

17 CHAIRMAN CATANACH: Okay. I think we're  
18 set.

19 And do you have a copy of everything?

20 MS. KESSLER: I do. Thank you.

21 CHAIRMAN CATANACH: So I think we're set to  
22 go, so you can call your first witness. Well, do you  
23 have an opening statement?

24 MR. BROOKS: Well, I would just say that I  
25 think everyone knows it, but we are here to propose that

1    you do two things. One is to change the fracking  
2    disclosure requirement to -- from filing a form with the  
3    Oil Conservation Division, which is the way it's now  
4    done, to filing a form containing substantially the same  
5    information electronically on the FracFocus national  
6    registry. The other is to extend the date -- the time  
7    for completion reporting, C-105 filing, from 20 days  
8    after completion to 45 days after completion. The  
9    industry, I believe, supports both of these proposals,  
10   and I have not been advised of any opposition from  
11   anybody. So with that, I'm ready to proceed.

12                   CHAIRMAN CATANACH: Thank you, Mr. Brooks.  
13   You may call your first witness.

14                   MR. BROOKS: Call Mr. Goetze, Phillip  
15   Goetze.

16                   PHILLIP R. GOETZE,  
17           after having been previously sworn under oath, was  
18           questioned and testified as follows:

19                   DIRECT EXAMINATION

20   BY MR. BROOKS:

21           **Q. Good morning, Mr. Goetze.**

22           A. Good morning, Mr. Brooks.

23           **Q. State your name for the record, please.**

24           A. My name is Phillip R. Goetze.

25           **Q. And by whom are you employed?**

1           A.    I am employed by the Oil Conservation Division,  
2   Engineering Bureau.

3           **Q.    And what is your area of specialty?**

4           A.    My classification is petroleum engineer, but I  
5   am a petroleum geologist and hydrologist and  
6   environmental scientist.

7           **Q.    Okay.  Now, I am not going to be asking you to**  
8   **give expert geologic testimony today.  We're going to be**  
9   **talking about FracFocus.  You have had some experience**  
10 **with FracFocus?**

11          A.    Correct.  I've had -- required to use it in  
12 some of my reporting, stipulations by the United States  
13 EPA.

14          **Q.    Okay.  So you have some familiarity with the**  
15 **way FracFocus works?**

16          A.    I am aware of it and have participated in it.

17          **Q.    Okay.  Well, I don't think I'm going to suggest**  
18 **that you're an expert on FracFocus, Mr. Goetze, but I'm**  
19 **going to be asking you, basically, fact questions.  So I**  
20 **think it will not be necessary to ask you opinion**  
21 **questions.**

22                       First of all, I would like you to identify  
23 **Exhibit Number 5.**

24          A.    Exhibit Number 5 is my resume.

25          **Q.    Okay.  Just give us -- give us the big**

1     **highlights.**

2           A.     Well, from 2013, I have been with the Oil  
3     Conservation Division in the capacity of doing a variety  
4     of assignments through the Engineering Bureau, including  
5     nonstandard locations, the Underground Injection Control  
6     Program, as well as being an examiner.

7                     Prior to that, I have worked for numerous  
8     federal agencies and private industry in both the  
9     capacity related to oil and gas, as well as  
10    environmental assessments and remediation.

11           **Q.     Okay. That, I think, will suffice.**

12                     MR. BROOK: I will tender Exhibit Number 5  
13    for the record.

14                     CHAIRMAN CATANACH: Do we have Exhibit  
15    Number 5?

16                     MR. BROOKS: I think you probably do not,  
17    but there is an indication that the Commissioners were  
18    familiar with Mr. Goetze's resume. But I have  
19    additional copies if they're desired.

20                     COMMISSIONER BALCH: They haven't changed  
21    since the last time?

22                     CHAIRMAN CATANACH: But it needs to be put  
23    into the official record.

24                     MR. BROOKS: Yeah. That's all I really  
25    wanted to do, was put it into the record. But in this

1 particular proceeding, the qualifications -- his  
2 qualifications as an expert aren't especially material,  
3 but --

4 CHAIRMAN CATANACH: Okay.

5 MR. BROOKS: If I may approach, I will see  
6 that each Commissioner has a copy.

7 CHAIRMAN CATANACH: That'll be fine.

8 Q. (BY MR. BROOKS) Mr. Goetze, I was asking you  
9 about FracFocus.

10 Well, I guess I better have you -- would  
11 you look at Exhibit 4? Exhibit 4 is a red-line copy of  
12 the new rule -- of the proposed new rule as proposed by  
13 the Division? You will note that the first line changes  
14 the time for filing completion reports from 20 days  
15 after completion to 45 days. Are you familiar with that  
16 requested change?

17 A. I am aware of it, yes.

18 Q. I'm not going to discuss that any further,  
19 but -- because I will ask the other witness about it if  
20 he is put on the stand. But are you aware of any reason  
21 why 45 days would not work?

22 A. I think it represents a more accurate period of  
23 time for assessment of the well, and it represents the  
24 changeover to purely horizontal drilling.

25 Q. Very good.

1                   The second change that is made is the  
2   change in Section -- Subsection B about filing with  
3   FracFocus. Are you familiar with the FracFocus  
4   hydraulic fracturing treatment disclosure registry?

5       A.    Yes. I am aware of it.

6       Q.    What does it consist of?

7       A.    It is a database maintained by the Ground Water  
8   Protection Council that is established to address a  
9   variety of State interests in having a registry for  
10   chemistry of fluids used in hydraulic fracturing. It  
11   is, at this time, in numerous states from both the  
12   majority of oil and gas producers, and it has been going  
13   on for several years and has gone through several  
14   versions, of which right now FracFocus 5.0 is currently  
15   being implemented.

16            It is a database that is outside of what we  
17   have here and is maintained by a third party, and we  
18   have used it, as I stated before, in our compliance for  
19   EPA registration and determination of whether -- what's  
20   known as Guidance 84 for requirements for permits if you  
21   use a certain species or types of chemistry that would  
22   require you to have a permit under our UIC Program.

23       Q.    Among other things, does the FracFocus form  
24   contain a table where the person filling it out is  
25   required to list all of the constituents of the frac

1    **fluid and give certain information about each one of**  
2    **them?**

3           A.    It requires disclosure of all fluids used in  
4    the fracking process and quantities and percentages.

5           **Q.    Of each constituent?**

6           A.    Of each item used, yes.

7           **Q.    What is Exhibit 1?**

8           A.    Exhibit 1 is a summary of what we currently  
9    use. It is the paper trail for the Division's permit  
10   process. The first sheet here is the original form that  
11   was used prior to the incorporation into ePermitting,  
12   the ability to enter online.

13          **Q.    So this is the Oil Conservation Division's form**  
14   **that our present rule requires operators to complete**  
15   **following the frac -- fracture treatment process?**

16          A.    That is correct.

17          **Q.    Okay. Go ahead.**

18          A.    With the advent of improvements in the  
19   permitting, we see on the second page is a summary list  
20   of the process to enter in data into the database. The  
21   two-page item is a typical data entry with instructions  
22   of what is to be put in.

23                   The third and fourth pages -- excuse me --  
24   the fourth and fifth pages -- the fourth page is a  
25   demonstration of what would be a product coming out of

1 the current data system we have. This is reflective of  
2 the entry form. The page after it is actually what is  
3 generated. The concern with what we have now is --

4 **Q. And that's the page --**

5 A. The last page is --

6 **Q. That's the page that's too small to read even**  
7 **with glasses?**

8 A. That's right. That's been a complaint with it.

9 Again, these are tied specifically to a  
10 well, and it would be found in an imaging file  
11 associated with the well.

12 **Q. Okay. And would you have to go into the well**  
13 **file to find that image?**

14 A. Yes, sir. You would have to know either the  
15 well name or the well API number and then go to the case  
16 file or the well file for that particular --

17 **Q. And in order to find an item in the well file,**  
18 **you have to be able to identify by a TIFF image to find**  
19 **it?**

20 A. You would have to search through all the papers  
21 in the file.

22 **Q. Thank you.**

23 **Now, what is Exhibit 2?**

24 A. Exhibit 2 is a summary I prepared currently  
25 showing what is the FracFocus status. The

1 first sheet -- and I'll explain this -- is that when the  
2 Division went on its own path, when we were in the  
3 version FracFocus 1 going into FracFocus 2.0, in that  
4 time, vendors started to see that the necessity of  
5 providing detailed information in an Excel file or  
6 Access file to the operators was becoming more and more  
7 of a requirement. What we saw -- this similar  
8 occurrence -- in the laboratory world, were lab results  
9 now you could pull down an Excel file and put into a  
10 database.

11 FracFocus went ahead and updated their --  
12 as we go into page 2 of the data entry form, it's a  
13 typical data entry form. The nice thing about this is  
14 that it can be prefilled with the Excel, and you have a  
15 way of going through and checking.

16 The third page is what a typical job looks  
17 like when it's been filled out. It provides the  
18 opportunity for you to check, as well as see the  
19 location. Now, they have tied it into Google Earth with  
20 version 3.0 -- FracFocus 3.0, and they have upgraded the  
21 ability to see your data.

22 The fourth page is the example of a summary  
23 generated in a PDF format for a well. This makes it  
24 extremely easier to see, as well as to maintain a data  
25 file set. Now, it does go through -- where we differ

1 from our others is that we do include other items as far  
2 as ingredients that we did not necessarily acquire, but  
3 since it's free-filled, it is one of these things that  
4 may be beneficial down the road.

5 The next page has FracFocus 2.0 validation  
6 checks. With 2.0, we started to increase the ability to  
7 look at data and to make sure that entries were accurate  
8 and that this includes basic information for the well.

9 And, finally, the last group of pages shows  
10 a typical operation of it. In other words, you go in  
11 your "Search" option. It will provide you -- in the  
12 case of a chosen county, it will show you the list of  
13 the latest wells. The nice option with this FracFocus  
14 platform is that you can get PDFs of entire towns or  
15 townships and/or counties, as well as going to the  
16 specific API. And they have also included it to be able  
17 to locate it on Goggle Earth and then link it back in.  
18 Currently, we do not have that option here.

19 And then finally, FracFocus 3.0, which was  
20 completed in 2015, upgraded the security elements and  
21 increased the functionality and allowed for third-party  
22 reviews, as well as input for the Department of Energy,  
23 which also utilizes this.

24 So, overall, what you have is a platform  
25 that is supported by a third party, but at the same

1 time, their sole purpose is to maintain this information  
2 and upgrade it so it becomes both satisfactory for the  
3 state users and the BLM is also using this.

4 Q. Going back to the second page, is this a format  
5 in which the operator or service company makes data  
6 entries that communicate the information to the  
7 FracFocus system?

8 A. That is correct. This would be a submission.

9 Q. Okay. Now, I want you to look at Exhibits 1, 2  
10 and 3. Exhibit 3 appears to be a list of items with  
11 stars in one column that's headed "NMOCD HF Disclosures"  
12 and the other NMOCD -- or no -- the other, "FracFocus HF  
13 Forms." Have you studied this exhibit sufficiently to  
14 determine what Exhibit 3 actually is?

15 A. Yes, I have.

16 Q. You did not prepare it, right?

17 A. No, I did not, sir.

18 Q. Can you tell us what it appears to be?

19 A. I believe at this time, when the initial effort  
20 for the Division to present its own database, a  
21 comparison was made by I.T. to look at the various  
22 informations provided by both databases. And then it  
23 pointed out the differences, as well as the commonality.

24 Q. Okay. Have you analyzed both systems  
25 sufficiently to tell us whether or not Exhibit 3 is a

1     **correct comparison?**

2           A.     Division 3 -- I mean Exhibit 3 represents an  
3     earlier version of FracFocus. There are elements which  
4     are not included currently with FracFocus, for instance,  
5     the bottom-hole location. Certainly OGRID and phone  
6     numbers, the fracture dates are there, pool codes, which  
7     really is our own internal process were. The total  
8     volume of fluid pump is now reported. The percent of  
9     re-use is not. And then, of course, the signature,  
10    print date and email, that type of information,  
11    typically the vendor who prepares it signs off on it  
12    electronically.

13           **Q.     With the exception of the percentage of re-use,**  
14    **which I believe is not captured by the OCD otherwise on**  
15    **the frac reporting form; is that correct?**

16           A.     They're basically -- other than -- you know,  
17    information that it can be found in other formats like  
18    the C-102 or the C-105, the completion reports, there is  
19    a very good matchup of information.

20           **Q.     So other than the percentage of free use of**  
21    **frac fluid, the elements not captured in FracFocus are**  
22    **available to the OCD in other records?**

23           A.     Correct, in the filings that are required for a  
24    well.

25           **Q.     Okay. Is FracFocus easier for the public to --**

1    an easier means for a member of a public who wants to  
2    find out about a fracking process for a particular well  
3    or in a particular area to access that information as  
4    compared to our present system?

5           A.    Compared to our present system, the ability for  
6    those people who wish to obtain this information,  
7    FracFocus does provide a much easier access, as well as  
8    the ability to compile the information.

9           **Q.    Okay. Tell us why.**

10          A.    Because with the opportunity to locate it, with  
11    FracFocus, by using both a GIS location or looking at a  
12    map or looking at an API number, you can generate a --  
13    either a PDF or a complete Excel file. And with that,  
14    you can compile information. In Excel, you would be  
15    able to look for specific CAS numbers.

16                   Our current system is attached only to the  
17    well and is found only in the well file, and, therefore,  
18    you would have to manipulate the data manually or scan  
19    and transfer information. And if you've ever tried to  
20    do that from PDF to Excel, that's quite a task.

21          **Q.    Do a number of other states require their**  
22    **file -- to file fracture fluid data in FracFocus?**

23          A.    Yes, especially the eastern states where --  
24    especially from the play in the Marcellus Shale. The  
25    use of diesel in hydraulic fracturing became quite

1 popular, and with that, people who have wells that are  
2 in the same formations that are being fracked gas  
3 started to complain or at least identify concerns. And  
4 so from the East to Ohio, all the way out here, we have  
5 as many -- I believe it's 13 states that currently have  
6 participation in FracFocus.

7 **Q. Now, under what circumstances does the present**  
8 **rule require a fracking disclosure form to be filed?**

9 A. At this point it's mostly driven by the ability  
10 to see what fluids are used so that at a later time, if  
11 there are any questions, the ability to see if the  
12 source was the result of hydraulic fracturing, that this  
13 determination could be made.

14 **Q. Well, I'm thinking about our present form.**

15 A. Other than --

16 **Q. When is it required to be filed?**

17 A. As a date or --

18 **Q. It's required to be filed within a specific**  
19 **period of time after completion; is it not?**

20 A. Well, everything is supposed to be in about 30  
21 days, but --

22 **Q. 20 days?**

23 A. 20 days.

24 **Q. I'm sorry. I didn't tell you I was going to**  
25 **ask you that.**

1           A.     That's a trick question.

2                     (Laughter.)

3           Q.     Okay. Well, the completion report is required  
4     within 20 days. The fracking disclosure form is  
5     required within 45 days. Now, is that going to change  
6     under the new rule?

7           A.     It would appear not, since 45 is the number  
8     we're aiming for.

9           Q.     45 will be the number for both.

10                    Okay. I think that's all that I have --  
11     all the questions I have to ask you in this sequence,  
12     Mr. Goetze. Thank you very much.

13                   MR. BROOKS: Mr. Chairman, Members of the  
14     Commission, I would like to tender in evidence Exhibits  
15     1 through 5.

16                   CHAIRMAN CATANACH: Any objection?

17                   MS. KESSLER: No objection.

18                   CHAIRMAN CATANACH: Exhibits 1 through 5  
19     will be admitted.

20                   (NMOCD Exhibit Numbers 1 through 5 are  
21     offered and admitted into evidence.)

22                   CHAIRMAN CATANACH: I'm sorry (indicating).

23                   MS. KESSLER: I have no questions for  
24     Mr. Goetze. Thank you.

25                   COMMISSIONER BALCH: Would you like me to

1 start?

2 CHAIRMAN CATANACH: Yes.

3 CROSS-EXAMINATION

4 BY COMMISSIONER BALCH:

5 Q. Good morning. Mr. Goetze.

6 A. Good morning.

7 Q. I have the possible distinction of being the  
8 remaining commissioner who was on the original frac  
9 reporting rule, I think, in 2012.

10 A. Uh-huh.

11 Q. For some reason, I actually remember the  
12 discussion about FracFocus, because it was brought up.  
13 At the time --

14 A. Uh-huh.

15 Q. -- it already existed, and it was proposed by  
16 one or more parties that we use that instead. And, in  
17 fact, some operators said that they were already  
18 reporting there anyway.

19 But there were four things that stick in my  
20 mind as reasons why we elected not to go with FracFocus  
21 at that time. And the first one was, basically, the  
22 data -- long-term data security and operation of the  
23 site. It looks like we may have addressed that with  
24 Part C in the new proposed rule, basically reverting if  
25 they go away. But there may be still some potential for

1 data loss or data manipulation or they might get hacked  
2 or something like that. So that was a concern that we  
3 had.

4 The second concern was FracFocus is in  
5 control of what is reported. And as you notice, there  
6 are already some things that are not reported that the  
7 Division was interested in at that time. So they could,  
8 at any time, change what their reporting requirements  
9 are without going to all the states and addressing the  
10 regulatory requirements that they may have or the  
11 information that they may want to have available to  
12 them. That was the second concern.

13 The third concern was -- I think came from  
14 industry, and it was about protection of proprietary or  
15 trade secret chemical formulations. And I think  
16 FracFocus at that time did not have a distinction there.  
17 They wanted everything reported regardless of trade  
18 secret. I might be wrong on that.

19 And then the fourth concern that I believe  
20 we had was on how does the OCD then track, regulate  
21 compliance that the -- how do you get somebody from here  
22 to keep up with FracFocus to make sure that things are  
23 being reported in those 45 days or that they're being  
24 reported at all.

25 So I would like you to kind of address

1    **those four concerns.  If you'd like, I can go through**  
2    **them one at a time again.**

3           A.    Well, number one, FracFocus did recognize its  
4    susceptibility and went to a higher level of security  
5    and effort to make sure that the data is maintained, as  
6    well as protected.  I think they understand the fact,  
7    having discussed with a couple of their key individuals,  
8    that the scope of what they were doing leads to a great  
9    invitation to having some issues with that.  I don't  
10   think they were prepared in the first round -- first two  
11   rounds to address them.  I think in light of a lot of  
12   things that have happened, that the ability to have a  
13   secure system is now as critical as making the form  
14   right.  So I think they have sufficiently addressed  
15   that.

16                   The second item is the --

17           **Q.    They can make alterations to reporting**  
18   **requirements.**

19           A.    It is my understanding that the only people who  
20   can -- I have established an account with it, and my  
21   understanding is the only way that it can be changed is  
22   through my request as the originator of the data set.

23           **Q.    No.  FracFocus themselves could change what is**  
24   **required to be reported.**

25           A.    Oh, what is required.  Well, I mean, this is

1   going to be an A vendor. I go through that with even  
2   our own ePermitting, RBDMS. I never know what's coming  
3   out of the computer. So that's one of those things  
4   where maybe we'll have to be proactive on our side to  
5   see what we're paying for and to monitor.

6           **Q. All right. So then the third point was**  
7   **proprietary formulations.**

8           A. They have an option for proprietary. You don't  
9   have to report. You have to identify. So --

10          **Q. Just your trade name for it?**

11          A. Yes, it is. And then you further follow it if  
12   you wish to go through the MSDS and request content.

13          **Q. So I think the most important concern, really,**  
14   **is tracking.**

15          A. Yes.

16          **Q. How do you track?**

17          A. Same way we do now, is that we look at the  
18   districts, and, internally, I take a look at them, as  
19   well as our compliance officer. We ran -- I believe it  
20   was last year -- a 10 percent population and followed up  
21   on people to see if it was being done.

22          **Q. Are you cross-checking the FracFocus reports**  
23   **with APDs --**

24          A. Yeah.

25          **Q. -- things like that, making sure there is a**

1     **reference to that somewhere in the file?**

2           A.     Yes.

3                     And I also -- again, I have to do -- for  
4     the guidance from the UIC Program, I have to go through  
5     and actually look at the content. And, again, I take a  
6     representation on both the southeast and northwest to  
7     see if there are any of the six identified CASEs that  
8     would require a permit.

9           **Q.     All right. So my last concern or possible**  
10    **question is the missing data, and I think that**  
11    **everything except for the water use and re-use data is**  
12    **available elsewhere.**

13          A.     We have -- well, that's -- I'm not sure about  
14    that. We have asked for it previously. We do get it on  
15    a lot of the C-105s. But it's one of those items that  
16    we ask for it, but, like a lot of things, sometimes it's  
17    not filled in.

18          **Q.     The percentage of re-use water?**

19          A.     Of re-use.

20          **Q.     That seems like a statistic that you'd like to**  
21    **track, particularly since the Commission has already put**  
22    **forth a water recycle rule to track the results of that**  
23    **rule if you didn't have that data.**

24                     So that's my last concern. I don't know if  
25    those are really questions. I just wanted to bring

1 forward to this proceeding the concerns that kept us  
2 from using FracFocus the first time?

3 A. Uh-huh.

4 CHAIRMAN CATANACH: Well, I think in terms  
5 of tracking and re-use of -- re-use of water for  
6 fracture operations, I think that's being done under  
7 Rule 34, Commissioners. They are required, for the  
8 recycling facilities, to provide that information to us.  
9 So I think that's one method that the Division currently  
10 has to track that information.

11 CROSS EXAMINATION

12 BY CHAIRMAN CATANACH:

13 Q. And I do believe it's required on the -- on  
14 the -- I think on the C-105?

15 A. Yes, it is.

16 Q. The space -- the way that they're being filed  
17 now within the well files, we haven't been able to  
18 compile that information in any form or fashion, or at  
19 least we haven't attempted to do that. So we -- yeah.  
20 I think we just rely on the recycling facilities to  
21 track the re-use at this point.

22 COMMISSIONER BALCH: So, effectively, all  
23 the data, you think, is available now?

24 CHAIRMAN CATANACH: I think it is. Yeah.  
25 I think -- coming from the recycling facilities, I think

1 it's a good indication of how much water is being  
2 re-used.

3 Q. (BY CHAIRMAN CATANACH) Let's see. FracFocus is  
4 in its fifth version, Mr. Goetze?

5 A. That's correct.

6 Q. I don't know how the process works, but is it  
7 possible that if the State wanted another field on the  
8 FracFocus form, could we petition GWPC or IOGCC to maybe  
9 incorporate another field? Do you know how that process  
10 might work?

11 A. There, I believe, is an opportunity to have a  
12 sundry or accessory sheet to be included. I have not  
13 pursued that, but it is a possibility.

14 Q. When this was first proposed, I -- I talked to  
15 the district offices, and they were not overly concerned  
16 with the data that was not included on FracFocus that  
17 was on the Division's form. They were not overly  
18 concerned that that was an issue. I just throw that  
19 out, because they believed that all that information was  
20 available in the well file anyway. So -- and I know one  
21 of my -- one of the early proposals on this was to have  
22 the operators file with FracFocus and also file a copy  
23 of the FracFocus with us to put in the well file. After  
24 some discussion with industry and internally, I think  
25 the Division has not proposed to go forward with that at

1     **this time.**

2           A.     That's my understanding, too.

3           **Q.     So the advantages are search advantages.  You**  
4     **can -- somebody can log on to FracFocus and --**

5           A.     Well, not only that, but downloading  
6     information.  To compile it together is -- when I did it  
7     the first time for the northwest, I had over 100 wells  
8     that I had to go through and individually look at at  
9     font two to find out if they were --

10                   COMMISSIONER BALCH:  Files --

11                   THE WITNESS:  Yes.

12                   But, I mean, again, the concern of having  
13     your database in someone else's hand is a valid one.  It  
14     will always be a legitimate liability.  But, again, the  
15     ability -- they annually -- well, not annually.  They  
16     quarterly provide a zip file that you can download all  
17     the data in the Excel file, and some of these reach over  
18     726 megabytes.  So it's there if you want to take a look  
19     at it.  Whether it's one of these things that you kind  
20     of have to look for a going-out-of-business-sale sign is  
21     something I don't think we're going to have a concern  
22     with since we are a participant in the Ground Water  
23     Protection Council.

24

25

1                                   RECROSS EXAMINATION

2       BY COMMISSIONER BALCH:

3           **Q.    Is there some sort of delivery that they do**  
4       **besides the optional download?**

5           A.    Notification to us and that sort of thing?  Not  
6       really.  I mean, it would be our effort to look at the  
7       data sense [sic].

8           **Q.    It seems like it would be a good idea, from a**  
9       **data security point, to mandate a quarterly download of**  
10      **those zip files to storage somewhere.**

11          A.    Yeah.  I mean, again, there are a lot of things  
12      outside the rule peripherally that would have to be  
13      incorporated.  I think requesting additional information  
14      is a good thing.  If there is a deficiency, we should go  
15      to either the Ground Water Protection Council or look at  
16      our C-105 to see if there is some option there to be  
17      able to include that information.

18                   CHAIRMAN CATANACH:  I think my other  
19      question was with regards to another change that appears  
20      to be in Part B that I'm not quite sure was addressed by  
21      testimony.  Initially, they're required to file the  
22      hydraulic fracture report upon completion of a well.  
23      And I think what you're doing, Mr. Brooks, if I read it  
24      correctly, you're also going to require that that form  
25      be filed for recompletion or other hydraulic fracturing

1 treatment of the well, which is new to this rule.

2 MR. BROOKS: Yes. I was going to bring  
3 that out. The testimony would be that Mr. Goetze was  
4 not, in detail, familiar with that new provision, but  
5 that is correct.

6 CHAIRMAN CATANACH: Okay. If you're going  
7 to have -- if you're going to talk about it later,  
8 that's fine.

9 RECROSS EXAMINATION

10 BY CHAIRMAN CATANACH:

11 Q. And the form -- the 45 days will be applicable  
12 to the FracFocus form, and you believe that there is  
13 sufficient tracking that we can make sure that that gets  
14 done?

15 A. I believe we can.

16 Q. We might even be able to put it on a -- put a  
17 new box on the completion report, just a question: Have  
18 you filed with FracFocus? I mean, there are  
19 opportunities for us. If we see that it's not being  
20 tracked or it's hard to track, we can also change our  
21 form later on.

22 A. I believe we have the opportunity, with the  
23 completion report, to include at least an opportunity  
24 to, yeah, check off a box.

25 Q. We're not proposing that at this time?

1           A.     No.

2           Q.     But we can do that if we find that it's not  
3     being tracked adequately.

4                     MR. BROOKS:   The Division will be proposing  
5     revision to several of our forms in connection with the  
6     Horizontal Well Rule revisions, assuming that that  
7     process is completed.

8                     CHAIRMAN CATANACH:   Okay.   And that might  
9     be considered in that process?

10                    MR. BROOKS:   I'm sure it will be because  
11     the C-101, 2 and then 4 and 5 are all going to be  
12     studied.   At least that's the intention.

13                    CHAIRMAN CATANACH:   There is actually a  
14     subcommittee, isn't there?

15                    MR. BROOKS:   There is a subcommittee.  
16     Whether it is functioning at this time, I don't know,  
17     but there is a subcommittee that has been designated to  
18     do that.

19                    CHAIRMAN CATANACH:   Okay.   Do we need to  
20     give the operators any kind of transition period to  
21     phase this in, in your opinion, or will just maybe some  
22     notice to operators in advance of the rule change be  
23     adequate?

24                    THE WITNESS:   I believe that we could make  
25     an announcement on our Web page, a change in rule and

1     what to anticipate and give a deadline.

2                   CHAIRMAN CATANACH:   My understanding from  
3     talking to industry is there are quite a few operators  
4     who already file with FracFocus, and I don't think it  
5     would be that major of a change for most operators.  I'm  
6     not overly concerned about that.

7                   That's all my questions.

8                   CROSS-EXAMINATION

9     BY COMMISSIONER MARTIN:

10           **Q.     Just one.  It's not directly related to**  
11 **FracFocus, but there's something we found out.  Did I**  
12 **understand you to say that the Division requires a**  
13 **permit to perform a frac that contains certain**  
14 **constituents?**

15           A.     There are six CASEs number, diesel mostly,  
16     constituents that have been required since 2014 by the  
17     EPA, that if you use them in your hydraulic fracture,  
18     that you will have to -- be required to get a UIC Class  
19     II Permit.

20           **Q.     And that's all done prior to the frac and prior**  
21 **to the well being drilled or not?**

22           A.     Well, it depends on what part of the country  
23     you're from.  Evidently, this came as a result of --  
24     again, for instance, the Marcellus Shale shared both  
25     groundwater and gas sources, back in New York, and with

1 the fracturing of it, they were using at that time --  
2 the initial run, they were using diesel as the main  
3 constituent, and then for the backflow, they were  
4 discharging it onto the streets, and it was going into  
5 the public water treatment systems. So not only were  
6 you seeing impact to surface, but as well as wastewater  
7 treatment. So the EPA initiated a guidance stating that  
8 if you had any one of these six constituents, then you  
9 must file for a permit.

10 **Q. And the Division requires such a permit?**

11 A. The Division has posted that it is required and  
12 has identified it.

13 **Q. Okay. That's all I've got.**

14 CHAIRMAN CATANACH: Thank you, Mr. Martin.  
15 Mr. Brancard?

16 CROSS-EXAMINATION

17 BY MR. BRANCARD:

18 **Q. Just a few quick things to clarify the record,**  
19 **starting with acronyms. You've been talking about GWPC**  
20 **and IOGCC running this Web site. IOGCC is the**  
21 **Interstate Oil and Gas Compact Commission?**

22 A. That's it.

23 **Q. And GWPC is?**

24 A. Ground Water Protection Council.

25 **Q. And these are organizations run by the State?**

1           A.     These are third parties with donations  
2 chartered through the states.

3           **Q.     Right.**

4                     **And we are a member of those organizations,**  
5 **New Mexico is?**

6           A.     Yes, we are.

7                     CHAIRMAN CATANACH:   Currently.

8                     MR. BRANCARD:   That's all we care about.

9           **Q.     (BY MR. BRANCARD) And then the Web site that**  
10 **this information is placed on, this is a totally**  
11 **publicly acceptable Web site?**

12          A.     Yes, it is.

13          **Q.     You don't have to be a member; you don't have**  
14 **to pay a fee?**

15          A.     You don't have to have any access other  
16 than -- the only access requirement is if you wish to  
17 enter data.  Other than that, you may use it at any  
18 time.

19          **Q.     And you may not know the answer to this, but**  
20 **when an operator enters the information into the**  
21 **FracFocus Web site, does it fairly automatically appear**  
22 **on the Web site or --**

23          A.     I believe there is a delay.  They recompile,  
24 but it will be by the next day, is my understanding.

25          **Q.     By the next day.**

1           A.     Yeah.

2           Q.     So we have a 45-day deadline. We can check by  
3     day 46 and 47 on their Web site to see whether somebody  
4     has met that deadline?

5           A.     We can -- we are registered as an operator, and  
6     we can look as an operator or look through the public  
7     portal.

8           Q.     Thank you.

9                         RE CROSS EXAMINATION

10          BY COMMISSIONER BALCH:

11          Q.     Do you know how they vet people who can enter  
12     data, operators?

13          A.     As far as --

14          Q.     Say I wanted to come with the works. I just --

15          A.     I had to go through a stepping-stone system of  
16     who I was, where I was, and they confirmed my entry, so  
17     yeah.

18          Q.     They do have some --

19          A.     I just couldn't do it if I did not have -- I  
20     didn't have an OGRID, but I did have employment, and it  
21     was confirmed.

22          Q.     So when you -- when you became a member of the  
23     system and were able to enter data --

24          A.     Uh-huh.

25          Q.     -- there was some vetting of your application?

1           A.    Yes, of who I was, including email and calling  
2   up.

3           **Q.    They just called you?**

4           A.    They call people who are employees, and I'm  
5   also known to them, which is the other thing, too.

6           **Q.    So not just anybody can do this?**

7           A.    Hopefully not.

8           **Q.    Well, it'll take a little bit of effort?**

9           A.    I say the same thing every time I use an ATM.

10          **Q.    Nothing is insurmountable.**

11                   CHAIRMAN CATANACH:   That's it?

12                   COMMISSIONER BALCH:   (Indicating.)

13                   CHAIRMAN CATANACH:   Anything further of  
14   this witness?

15                   COMMISSIONER MARTIN:   I'm good.

16                   CHAIRMAN CATANACH:   Thank you, Mr. Goetze.

17                               REDIRECT EXAMINATION

18   BY MR. BROOKS:

19           **Q.    Just one follow-up question because you were**  
20   **asked about the 2014 EPA requirement, and Mr. Martin**  
21   **asked about the OCD rules.**

22                               The OCD UIC rules have not been changed in  
23   quite a long time; is that correct?

24           A.    That's correct.

25           **Q.    And while not everything -- so not everything**

1     that EPA has required -- requires now is necessarily  
2     incorporated in the rules?

3           A.     That is correct.

4           Q.     And this is one that isn't, correct?

5           A.     That's correct.

6                   MR. BROOKS:   Thank you.

7                   CHAIRMAN CATANACH:   You are excused,  
8     Mr. Goetze.   I guess we'll see you in August at the next  
9     hearing.

10                  MR. BROOKS:   I believe I did tender  
11     Exhibits 1 through 5 in evidence, and I forget if they  
12     were admitted.

13                  CHAIRMAN CATANACH:   Yes, they were.

14                  MR. BROOKS:   Very good.

15                  That would conclude the Division's  
16     case-in-chief.

17                  CHAIRMAN CATANACH:   Thank you, Mr. Brooks.

18                  MS. KESSLER:   May I call my witness?

19                  CHAIRMAN CATANACH:   Yes, please.

20                                 PATRICK PADILLA,  
21     after having been previously sworn under oath, was  
22     questioned and testified as follows:

23                  MS. KESSLER:   May I proceed?

24                  CHAIRMAN CATANACH:   Good morning.

25                  THE WITNESS:   Good morning.

1 DIRECT EXAMINATION

2 BY MS. KESSLER:

3 Q. Can you please state your name for the record?

4 A. Patrick Padilla.

5 Q. With whom are you employed and in what  
6 capacity?

7 A. I am the deputy director of the New Mexico Oil  
8 and Gas Association.

9 Q. Can you please review your employment history  
10 prior to your current position?

11 A. Sure. Immediately prior to my current  
12 position, I was the assistant commissioner for mineral  
13 resources at the New Mexico State Land Office where I  
14 handled both the Oil, Gas and Minerals Division and the  
15 Royalty Management Division.

16 Prior to that, I held a variety of land  
17 regulatory and operational roles in what the Division  
18 would term the microproducer category of oilfield  
19 operation.

20 Q. And that would be private industry, correct?

21 A. Private industry, yes.

22 Q. During your time working for private industry,  
23 did your responsibilities include the UAing and filing  
24 regulatory form disclosures with various regulatory  
25 agencies?

1           A.    Yes.  Everything from an initial notice of  
2   staking up to and through a well-completion report, as  
3   well as ongoing field infrastructural maintenance,  
4   workovers, pretty much everything under the sun for  
5   smaller producers.

6           Q.    And did that include, in fact, filing hydraulic  
7   filing disclosures?

8           A.    It did.

9           Q.    At the State Land Office, did your  
10   responsibilities include review of regulatory paperwork  
11   submitted by operators?

12          A.    Yes.

13          Q.    And during your time with NMOGA, have you had  
14   occasion to discuss with a variety of operators their  
15   experiences with filing FracFocus forms?

16          A.    I have, yes.

17          Q.    Are you also involved with the Interstate Oil  
18   and Gas Compact Commission and Ground Water Protection  
19   Council?

20          A.    Yes.  I share the Public Lands Committee for  
21   the Interstate Oil and Gas Compact Commission.

22          Q.    And as you mentioned earlier, those are the  
23   organizations that are responsible for the FracFocus  
24   registry, correct?

25          A.    Correct.

1           **Q.    As part of your position with the IOGCC, do you**  
2           **review the FracFocus forms?**

3           A.    I'm involved in the amendment process, and I  
4           keep abreast of what's going on with FracFocus as far as  
5           reviewing the actual forms. I don't get that far into  
6           the weeds, but yes.

7           **Q.    And have you previously testified before the**  
8           **Division?**

9           A.    Yes.

10          **Q.    And are you familiar with the FracFocus and the**  
11          **New Mexico Oil Conservation Division disclosure forms?**

12          A.    Yes.

13                   MS. KESSLER: Mr. Commissioners, I will be  
14           using Mr. Padilla primarily as a fact witness, but he  
15           will be offering some nonexpert as well.

16                   CHAIRMAN CATANACH: Can we ask him  
17           questions about his qualifications?

18                   MS. KESSLER: I believe so.

19                   THE WITNESS: I expected that (laughter).

20                   VOIR DIRE EXAMINATION

21           BY CHAIRMAN CATANACH:

22          **Q.    Mr. Padilla, were you previously associated**  
23          **with this body?**

24          A.    I was. I did have the pleasure of serving on  
25          this body for nearly two years.

1           Q.    You're stating for the record that was a  
2    pleasure?

3                               (Laughter.)

4           A.    It was a pleasure each and every day.

5           Q.    Thank you.  That's all.

6                               CHAIRMAN CATANACH:  Do you have anything?

7                               COMMISSIONER BALCH:  I was kind of curious  
8    about why you wrote a certain way on a case, but I'll  
9    defer --

10                              (Laughter.)

11                              THE WITNESS:  We'll get a copy (laughter).

12                              CHAIRMAN CATANACH:  Thank you.  I think  
13    that's all we have.

14                              CONTINUED DIRECT EXAMINATION

15    BY MS. KESSLER:

16           Q.    Mr. Padilla, do you have Exhibit 4 in front of  
17    you?  Those are the proposed modifications to the --

18           A.    I actually don't think I have Exhibit 4.  I've  
19    got 2, 3 and --

20           Q.    Let me approach.

21           A.    Thank you.

22           Q.    Are you familiar with these proposed  
23    modifications and have you reviewed them in detail?

24           A.    I have, yes.

25           Q.    Can you please walk us through the process of

1     **submitting a FracFocus disclosure?**

2           A.     Sure. A company who is interested in posting  
3     to FracFocus would first have to register with the Web  
4     site and either designate an employee or registered  
5     agent in cases where they wanted to use a vendor to  
6     upload their data onto the site, and that's about it.  
7     After that, they would upload an XML file to the site  
8     that contained all the data for an individual well.

9           **Q.     And have you had discussions with operators**  
10    **regarding the FracFocus form and the additional OCD**  
11    **disclosure filing?**

12          A.     Yes, I have.

13          **Q.     Is there industry consensus that filing a**  
14    **single FracFocus form eliminates administrative**  
15    **redundancies?**

16          A.     Yes, definitely, given that 80 to 85 percent of  
17    production in New Mexico comes from about a dozen  
18    companies. Most -- all of those companies, all of our  
19    top producers, are already doing that, so eliminating  
20    the Division's filing would definitely reduce  
21    redundancies.

22          **Q.     Is there potential for error in the New Mexico**  
23    **Oil Conservation Division's form due to some data entry**  
24    **requirement?**

25          A.     Yes. Yes.

1           **Q.     Can you please discuss that?**

2           A.     The Division currently requires an XML -- I  
3     believe it's an XML that they use for the CSD file.  
4     But -- so you upload your XML, and then you also have to  
5     put in -- a lot of the data that is listed on Exhibit  
6     Number 3, that will not be tracked by FracFocus, such as  
7     the surface location, as far as unit letter, the  
8     location from the north-south, east-west lines, things  
9     like that. Those also have to be manually entered in  
10    conjunction with your upload, and there is the potential  
11    that data entry could make those two reports  
12    conflicting.

13          **Q.     Is there also potential for some confusion and**  
14    **error when you amend the either -- with the Oil**  
15    **Conservation Division disclosure form?**

16          A.     Yes. The amendment process for the Division's  
17    form is somewhat cumbersome compared to FracFocus.  
18    Wherein, if you want -- if you recognize an error, you  
19    can pull the entire XML file back, but that has the  
20    unintended effect of restarting the clock on when you  
21    file that, which is problematic because you could be  
22    outside of the timeline required by the Division for  
23    filing by simply trying to amend your form in  
24    recognition of an error.

25          **Q.     And that process is more straightforward on the**

1     **FracFocus Web site?**

2           A.     It is.  It allows for pinpointed amendments to  
3     specific fields.

4           **Q.     Mr. Goetze discussed the ease and the clarity**  
5     **of searching on FracFocus versus the New Mexico Oil**  
6     **Conservation Division Web site.  Do you agree with his**  
7     **testimony?**

8           A.     Completely.  FracFocus is very user friendly.  
9     You can search on all of the fields mentioned by  
10    Mr. Goetze:  Company, county, other location that has  
11    GIS capabilities.  It's very, very easy for anyone to  
12    just go on and, from the home page, hit "Find a Well"  
13    and be well on your way to your search.

14                   The current OCD imaging site, for those of  
15    us in the industry, is relatively user friendly, but  
16    that takes some getting used to.  And I believe their  
17    TIFF images that Mr. Goetze referred to are -- they're  
18    also not downloadable, the data, so if you want to put  
19    together any kind of data package, it's very cumbersome.

20           **Q.     In your opinion, does the ease of searching the**  
21     **FracFocus Web site make it more transparent?**

22           A.     Definitely.  And that was one of the -- one of  
23    the major reasons for FracFocus, was so that people  
24    could see the chemical constituents used in hydraulic  
25    fracturing.

1           Q.    Is it your understanding that industry -- we've  
2   discussed this before, but industry uses both the  
3   FracFocus form and the Oil Conservation Division Web  
4   site?

5           A.    Yes, they do.

6           Q.    Is it your understanding that industry uses the  
7   FracFocus form to disclose and report later frac jobs,  
8   as well as initial frac jobs?

9           A.    Yes.  Recompletions or extensions or anything,  
10  plug-backs and re-fracs are all reported on FracFocus as  
11  industry practice now.

12          Q.    So the additional requirement outlined in the  
13  proposed modification related to disclosing additional  
14  recompletions is already practiced?

15          A.    Yes.

16          Q.    In your opinion, does the Division's proposed  
17  amendment to the FracFocus ruling -- administrative  
18  redundancies?

19          A.    Yes, it does.

20                   And I should point out that there are 23  
21  states that currently use FracFocus as either their  
22  stand-alone or an option for reporting disclosures for  
23  operators, and all -- all ten of the top oil and gas  
24  producing states use it except for New Mexico and  
25  Wyoming.  So we're one in two who don't.

1           **Q.    Are you familiar with the proposed amendment to**  
2           **allow 45 days to submit the completion reports?**

3           A.    Yes, I am.

4           **Q.    Why is this important to the industry?**

5           A.    I think it cuts down on a rush to the finish  
6           line, and it could result in a reduction in errors and  
7           then future amendments. Twenty days is a pretty tight  
8           timeline if you are working with a contractor like  
9           Halliburton or Baker Hughes in having to, first of all,  
10          receive the information and vet the information and then  
11          make your submission and get it all that under 20 days.  
12          Having the 45 days would be much more user friendly.

13          **Q.    In your opinion, will 45 days allow operators**  
14          **to submit more complete and accurate reports and avoid**  
15          **the necessity of supplementing those reports?**

16          A.    Definitely.

17          **Q.    Did you hear Commissioner Balch's four**  
18          **questions that he was concerned about?**

19          A.    I did.

20          **Q.    If we could just review --**

21          A.    I don't remember them in order, but I did hear  
22          them.

23          **Q.    I will refresh your recollection.**

24                       **The first one is regarding the security of**  
25          **the information on the FracFocus Web site. Do you have**

1     **an opinion regarding that?**

2           A.     I think information security is a big deal, but  
3     I'm not convinced that state systems are vulnerable to  
4     the same kind of hacks.  And I think that the GWPC and  
5     the IOGCC have taken significant steps toward improving  
6     data security.  So while I realize that is a threat for  
7     any Internet-based data warehousing, I don't think it's  
8     a significant one.

9           Q.     And you also heard Mr. Goetze's testimony of a  
10    possible quarterly download of the information; is that  
11    correct?

12          A.     Yes.

13          Q.     What about the concern that the FracFocus Web  
14    site could change their requirements?

15          A.     Having had a significant amount of interaction  
16    with the IOGCC, it is a member-driven organization,  
17    meaning the chairman who is the state representative has  
18    a very strong voice in that group, as well as other  
19    states, and it has to be kind of a comprehensive change.  
20    It's not something that can be undertaken tomorrow  
21    because someone in the IOGCC or Ground Water Protection  
22    Council staff decides they don't like something.

23          Q.     So there is an administrative process for a  
24    change?

25          A.     Absolutely.  Yes.

1           **Q.    And I believe Mr. Goetze comprehensively**  
2           **addressed this, the trade secrets issue. Do you have**  
3           **any additional testimony you'd like to give regarding**  
4           **that?**

5           A.    No. He hit everything he needed to and was  
6           very thorough.

7           **Q.    The final point was the concern about tracking**  
8           **compliance. Do you have any additional testimony**  
9           **regarding that?**

10          A.    Well, given that the Web site is so user  
11          friendly, the OCD should have no problem tracking the  
12          compliance. It actually improved the process because  
13          they can download the XML and create spreadsheets now.  
14          Whereas, before, if someone is in Farmington and wants  
15          to see what's happening in Hobbs because they're trying  
16          to, you know, lighten the load between the district  
17          offices, that's really tough to do with the current OCD  
18          imaging system.

19                   MS. KESSLER: That completes my  
20          presentation. Thank you.

21                   CHAIRMAN CATANACH: Thank you, Ms. Kessler.  
22                   Mr. Brooks?

23                                   CROSS-EXAMINATION

24          BY MR. BROOKS:

25           **Q.    Yes. As brought up previously, the present OCD**

1 rule requires the fracking disclosure form to be filed  
2 only after completion of a well. It does not require it  
3 after recompletion or workover if there is a frac. A  
4 re-frac is done on either of those occasions, which a  
5 recompletion -- a recompletion almost certainly would be  
6 a new frac job if you're going to recomplete to another  
7 formation.

8 A. Yes.

9 Q. But -- and there might be a frac job done --  
10 there might be some refracking done in connection with a  
11 workover --

12 A. Could be, sure.

13 Q. Okay. You understand that the new rule will  
14 require any frac job to -- a disclosure form to be filed  
15 with FracFocus for any -- for any frac job?

16 A. Uh-huh. I do.

17 Q. And is that, in your judgment, likely to be a  
18 problem for operators?

19 A. No. I think that operators are inclined to do  
20 that because they use FracFocus as a part of their well  
21 file. They don't necessarily keep stand-alone data. I  
22 mean, I'm sure they keep backup data somewhere to help  
23 the OCD if they wanted to. But if someone at a  
24 company -- a member company, anyone who is doing any  
25 kind of operations in New Mexico wanted to see what was

1   going on with a well and what had happened prior and  
2   they want information on hydraulic fracturing, FracFocus  
3   is a first step. So there is big incentive to make sure  
4   it's complete as possible.

5       **Q.    Okay. The Chairman said, in connection with**  
6   **one of his questions, that from what he had heard, many**  
7   **operators were already reporting to FracFocus. Is that**  
8   **consistent with your knowledge of what's going on in the**  
9   **industry?**

10       **A.   Yes. I would say the vast majority of them are**  
11   **already -- especially if they operate in other states**  
12   **that require the disclosure, like Texas or Oklahoma,**  
13   **they're already doing it here because it's just standard**  
14   **practice.**

15       **Q.    Okay. Now, so far as filing the completion**  
16   **reports within 45 days, are you in a position to address**  
17   **that issue?**

18       **A.   I think it's a good idea. I think it would**  
19   **eliminate the potential for errors due to rushing the**  
20   **form, the C-105, and it would lead to more complete**  
21   **and -- more complete filing with less amendment**  
22   **potential.**

23       **Q.    Do you have an impression of how the**  
24   **industry -- what the industry thinks is the appropriate**  
25   **period of time to -- necessary to get the necessary**

1     **information and file a complete report?**

2           A.     Industry is definitely amenable to 45.  They  
3     would take 60 if you gave it to them.

4                     (Laughter.)

5           **Q.     Okay.  I believe that's all the questions I**  
6     **have for you.  Thank you.**

7           A.     Thank you.

8                                 CROSS-EXAMINATION

9     BY COMMISSIONER BALCH:

10          **Q.     Good morning.**

11          A.     Good morning.

12          **Q.     I have just one question.**

13                     The change would be with completions,  
14     recompletions or other hydraulic fracturing treatment.  
15     What would be the distinction of "other hydraulic  
16     fracturing treatment"?

17          A.     To me that sounded like a catchall for future  
18     technology.  I don't know, but I think it is probably a  
19     good way to make sure that you're covering all bases.

20          **Q.     Well, the note that I put in there was I'm not**  
21     **sure -- I can't remember that part of the 2012**  
22     **testimony, but I know we talked about completions.  And**  
23     **recompletions, I think -- I'm sure would fall into that**  
24     **category, material that we had -- evidence presented at**  
25     **that hearing to include in the rule.  So this seems a**

1     little nebulous to me, "other hydraulic fracturing  
2     treatment." How would this be different than a  
3     completion or recompletion?

4           A.     I don't know.

5           Q.     You should be responsible for this.

6           A.     Well, I would ask Mr. Goetze what he -- what he  
7     intended when he drafted that language. I say it leaves  
8     potential open for future technologies. That's my best  
9     guess.

10          Q.     Well, I think that you, along with Mr. Goetze,  
11     sufficiently addressed most of my concerns or most of  
12     the concerns that were originally in place. But it is  
13     your feeling that industry, with NMOGA representatives,  
14     is interested in making this change?

15          A.     They're very interested in it.

16          Q.     Originally it was opposed, FracFocus reporting,  
17     or there may have been some -- some disagreement about  
18     that, because it was originally proposed [sic] by some  
19     of the opponents to it.

20          A.     Uh-huh. As Mr. Goetze said, we are through  
21     several iterations of FracFocus now, and most of the  
22     concerns of both industry and concerned outside parties  
23     have been addressed and brought up to -- or the Web site  
24     and the tool has been brought up to a level that the  
25     consensus is everyone's comfortable with it.

1           Q.    The only other real concern I have is -- as I  
2 mentioned, my third concern -- or my second concern is  
3 that they could change the reporting requirements. It  
4 sounds like there is a rather high bar to do that.

5           A.    Yes.

6           Q.    But if they do, you have to be cautious that  
7 you don't require a new regulatory process --

8           A.    Very true.

9           Q.    -- in order to ensure continued compliance.  
10 I'm not quite sure how to do that.

11          A.    Well, as I said, the states do have  
12 significant -- and industry and anyone else who would  
13 like to interact and become active in either the GWPC or  
14 the IOGCC has potential to have significant input into  
15 the process. So there is a high bar, and it's not  
16 something that is taken lightly, I would say.

17          Q.    Thank you.

18          A.    Uh-huh.

19                   CHAIRMAN CATANACH: I think that the  
20 section "other hydraulic fracturing treatment," as I  
21 understand it from Mr. Brooks, was to address maybe a  
22 refracture process in maybe the same formation that was  
23 being produced, not necessarily would be a recompletion,  
24 but maybe a re-frac.

25                   COMMISSIONER BALCH: You can recomplete in

1 the same formation.

2 MR. BROOKS: May I address that because  
3 that's really a legal issue, believe it or not?

4 CHAIRMAN CATANACH: Yes.

5 MR. BROOKS: OCD Rule 19.15.2 --  
6 19.15.2.7R(2) defines recomplete as follows:  
7 "Recomplete means the subsequent completion of a well in  
8 a different pool from the pool in which it was  
9 originally completed." So yes, you -- in fact, you can  
10 recomplete a well in a different formation, but in law,  
11 you can't. In the same formation, but in law, you  
12 can't.

13 COMMISSIONER BALCH: So the "other  
14 hydraulic fracture treatment" is a re-frac?

15 MR. BROOKS: Yes. If -- if you -- a  
16 re-frac in the same formation. If you recomplete in the  
17 same formation, that is not a recompletion under the OCD  
18 rules. It is something else. And that is why that  
19 language appears in the proposed new rule.

20 THE WITNESS: So a plug-and-perf in between  
21 previous perfs for the purpose of fracking, those offset  
22 intervals would be an other fracturing --

23 MR. BROOKS: That would be "other fracture  
24 treatment."

25 COMMISSIONER BALCH: By law.

1 MR. BROOKS: By law.

2 THE WITNESS: Okay.

3 CHAIRMAN CATANACH: The only other concern  
4 I have was insofar as some of the language. I think the  
5 original proposal, Mr. Brooks, was to -- a 45-day  
6 completion report was to limit that to horizontal wells.  
7 I think it was subsequently changed after internal  
8 discussions to include horizontal and vertical wells,  
9 which it does now. Correct?

10 MR. BROOKS: That is correct. And that  
11 change was made by a Division change proposal that was  
12 filed pursuant to Part 3 of the rule -- of the OCD rules  
13 governing processes in rulemaking. And that was filed,  
14 as required, two weeks before the Commission hearing.

15 CHAIRMAN CATANACH: So the only concern I'd  
16 have with regards to that is on today's docket, amended  
17 finally -- well, on the amended final agenda, under Case  
18 Number 15726, the paragraph underneath does say that  
19 "extend the time for reporting completed of horizontal  
20 wells from 20 to 45 days." And I guess I would ask the  
21 Commission attorney to address that.

22 Is there anything we need to do? Do we  
23 need to continue that to fix any of that? Is that a  
24 problem at all?

25 MR. BRANCARD: I don't think so. I mean, I

1 think Mr. Brooks properly submitted the amendment as a  
2 logical outgrowth of what you'll been looking at in  
3 terms of timing.

4 CHAIRMAN CATANACH: So we don't have to  
5 continue our re-advertisement or anything else?

6 MR. BRANCARD: Uh-uh.

7 MR. BROOKS: I have one other further  
8 housekeeping matter to mention. The advertisement, as  
9 well as the title of this proceeding, also mentions  
10 19.15.7, and there is a conforming change that has to be  
11 made to 19.15.7, which -- well, as I say, we duly  
12 proposed the change to 45 days for all wells, but  
13 Exhibit 5 does not -- Exhibit 4, which was admitted in  
14 evidence, which is the change in the rule, does not  
15 contain a copy of the conforming change to Exhibit 2,  
16 19.15.7, which is just a one -- one word where you  
17 change 20 days to 45 days. And it was submitted with  
18 the original, but it is not -- was not on the exhibit  
19 that was introduced in evidence.

20 CHAIRMAN CATANACH: I would let  
21 Mr. Brancard address that.

22 MR. BROOKS: Well, I would suggest that, in  
23 any case, the Commission -- the Commission is entitled  
24 to make changes in the rule at any time, but this has  
25 been properly noticed because we say throughout the

1 proceeding -- all the papers that have been filed and  
2 sent confirm the changes to be made to 19.15.16.

3 MR. BRANCARD: Well, I guess my  
4 suggestion -- I think Mr. Brooks is right because it's  
5 in the title of the case, that notice has been given of  
6 this change. I would suggest that perhaps you just  
7 leave the record open until the end of the day for  
8 Mr. Brooks to submit an exhibit that shows that change.

9 MR. BROOKS: Okay.

10 CHAIRMAN CATANACH: Okay. Is that what  
11 you -- when can you get that done, Mr. Brooks?

12 MR. BROOKS: In about five minutes.

13 CHAIRMAN CATANACH: Okay. I have nothing  
14 further.

15 Ed?

16 COMMISSIONER MARTIN: I have no questions.

17 CHAIRMAN CATANACH: Is there anything  
18 further of this witness?

19 He may be excused.

20 THE WITNESS: Thank you, gentlemen. It's  
21 been a pleasure.

22 CHAIRMAN CATANACH: Was it also a pleasure  
23 during the Lightning Dock case, too?

24 THE WITNESS: Absolutely.

25 (Discussion off the record, 10:23 a.m. to

1 10:24 a.m.)

2 CHAIRMAN CATANACH: So what's the pleasure  
3 of the Commission? This appears to be a very simple  
4 rule to deliberate on. Do you want to do that now, or  
5 do you want to take a break?

6 COMMISSIONER BALCH: The only thing I would  
7 want to do is put in a requirement that the quarterly is  
8 filed -- is archived in some way at OCD. And that could  
9 probably go in as B.2. or part of C.

10 CHAIRMAN CATANACH: B.2. That's what you  
11 would propose?

12 COMMISSIONER BALCH: Or title it "Quarterly  
13 FracFocus, ZIP file." I'm not -- I can't make it sound  
14 right.

15 MR. BRANCARD: So it would be a download of  
16 all FracFocus submissions within New Mexico in the  
17 previous quarter?

18 COMMISSIONER BALCH: That's when they're  
19 available. Quarterly, right?

20 CHAIRMAN CATANACH: I guess we should go  
21 into open -- have a motion to go into open deliberations  
22 on this, if everything is done with the testimony.

23 MR. BRANCARD: Yeah. You can't close.

24 CHAIRMAN CATANACH: Right.

25 MR. BRANCARD: But you can decide to close

1 the record except for the submission of what would be  
2 Exhibit 6 [sic].

3 MR. BROOKS: Yes. Keep the record open  
4 only for that purpose, for submission of revised Exhibit  
5 4 [sic], which contains the change -- the change  
6 specifically to 19.15.7.16 NMAC.

7 CHAIRMAN CATANACH: Okay. Do I have a  
8 second to go into open deliberations?

9 COMMISSIONER MARTIN: Second.

10 CHAIRMAN CATANACH: Okay. All in favor?  
11 (Ayes are unanimous.)

12 CHAIRMAN CATANACH: Commissioners, we're  
13 now on open deliberations on --

14 COMMISSIONER BALCH: So wait. Question.  
15 How would it be archived at the OCD? We'll have to take  
16 it, print it all out and scan it and -- or is there a  
17 way for an XML file, which would probably be 2  
18 megabytes?

19 CHAIRMAN CATANACH: That's going to have to  
20 be worked out with our I.T. folks. I don't know.

21 COMMISSIONER BALCH: I don't want to be  
22 responsible for more TIFF images. But I think it would  
23 be prudent to archive the data in case we can't get into  
24 the FracFocus Web site. Other than that, I have no  
25 problem with the rest of the changes.

1                   CHAIRMAN CATANACH: Yeah. I don't have any  
2 changes with regard to the rule.

3                   Do you?

4                   COMMISSIONER MARTIN: No changes.

5                   CHAIRMAN CATANACH: So if we can hammer out  
6 the language on that, I think we will pretty much be  
7 done.

8                   COMMISSIONER MARTIN: I like what  
9 Mr. Brancard has already proposed. Let the mechanism  
10 decide itself. Let I.T. decide how to do that.

11                  MR. BRANCARD: Because, basically, you're  
12 just downloading.

13                  COMMISSIONER MARTIN: That's my impression.

14                  MR. BRANCARD: How they do it --

15                  COMMISSIONER BALCH: I don't care how they  
16 do it. Just downloading the data quarterly is the  
17 primary concern.

18                  MR. BRANCARD: So "download and archive  
19 FracFocus on a quarterly basis"?

20                  COMMISSIONER BALCH: Uh-huh.

21                  MR. BRANCARD: So that would be a B.2.,  
22 "the Division shall download and archive FracFocus  
23 submissions" -- "New Mexico FracFocus submissions."

24                  COMMISSIONER BALCH: Yes.

25                  CHAIRMAN CATANACH: Good addition.

1 COMMISSIONER BALCH: Not all 23 states.

2 You can keep it on a thumb drive in your --

3 MR. GOETZE: I'm sure.

4 COMMISSIONER BALCH: Two thumb drives, just  
5 for security.

6 CHAIRMAN CATANACH: Can you read that back  
7 to us one more time?

8 MR. BRANCARD: Sure. So under  
9 19.15.16.19B, this is going to be a new number three,  
10 and it will say: "The Division shall download and  
11 archive New Mexico FracFocus submissions on a quarterly  
12 basis."

13 CHAIRMAN CATANACH: "Archive New Mexico  
14 FracFocus submissions."

15 Commissioners, any problem with that  
16 language?

17 COMMISSIONER BALCH: Works for me.

18 COMMISSIONER MARTIN: I don't have any  
19 problems with it.

20 CHAIRMAN CATANACH: Okay. So with that  
21 change, we're going to adopt the rule as proposed by the  
22 Division without any additional changes.

23 COMMISSIONER BALCH: I would certainly make  
24 a motion to adopt it with the addition of B.2.

25 CHAIRMAN CATANACH: Okay.

1 COMMISSIONER MARTIN: I second.

2 CHAIRMAN CATANACH: All in favor?

3 (Ayes are unanimous.)

4 CHAIRMAN CATANACH: Motion is passed. With  
5 the additional addition, the rule change will be  
6 approved.

7 With regards to an order -- a draft order,  
8 do you have any suggestions, Mr. Brancard? Would that  
9 be incumbent on Mr. Brooks to draft that?

10 MR. BRANCARD: Yeah. He can do a draft.

11 MR. BROOKS: I will do so if you wish me to  
12 do it. You want an order drafted before the conclusion  
13 of the Commission proceeding today, or do you want an  
14 order submitted at the next --

15 MR. BRANCARD: That does seem a little  
16 ambitious.

17 CHAIRMAN CATANACH: It does seem a little  
18 ambitious.

19 MR. BROOKS: That's what I was interested  
20 in doing. I have to gear up either way.

21 CHAIRMAN CATANACH: I think we can give you  
22 until August 10th, maybe, to -- or maybe a week prior to  
23 that so we can review it.

24 MR. BROOKS: I understand that.

25 CHAIRMAN CATANACH: And I don't anticipate

1 it being a very long order.

2 MR. BROOKS: I would not think it would be.

3 CHAIRMAN CATANACH: Okay. So we'll go  
4 ahead and do that, and we'll give final approval at the  
5 August 10th hearing on the rule. So.

6 MR. BROOKS: Okay. Mr. Brancard, do you  
7 want the supplemental exhibit to be filed before the end  
8 of the day? I would assume you probably would.

9 MR. BRANCARD: Yeah, for the Commission to  
10 decide.

11 MR. BROOKS: So the Commission can admit  
12 it?

13 MR. BRANCARD: Yeah.

14 MR. BROOKS: Okay. Very good.

15 CHAIRMAN CATANACH: Okay. Anything  
16 further, Mr. Brancard, on this one?

17 MR. BRANCARD: No. I think we've got it  
18 covered.

19 CHAIRMAN CATANACH: Okay. Thank you,  
20 Mr. Brooks.

21 Thank you, Ms. Kessler and Mr. Padilla and  
22 Mr. Goetze. Thank you very much.

23 Let's take a ten-minute break, 10, 15.

24 (Case Number 15726 concludes, 10:31 a.m.)

25 (Recess, 10:32 a.m. to 10:53 a.m.)

1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

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

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

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

20

21

22 MARY C. HANKINS, CCR, RPR  
23 Certified Court Reporter  
24 New Mexico CCR No. 20  
25 Date of CCR Expiration: 12/31/2017  
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