

STATE OF 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:

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND RULES OF THE COMMISSION FOR PERMITTING OF WELLS FOR UNDERGROUND INJECTION BY AMENDING CERTAIN SECTIONS OF RULE 19.15.26 NMAC; STATEWIDE. CASE NO. 16377

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

October 11, 2018

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN
ED 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, October 11, 2018, 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.

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1 (11:37 a.m.)

2 CHAIRWOMAN RILEY: All right. Let's call
3 the next case, which is 16377, application of New Mexico
4 Oil and Gas Division to amend rules of the Commission
5 for permitting of wells for underground injection by
6 amending certain sections of Rule 19.15.26 NMAC.

7 So can I please have identification of the
8 parties and their counsel?

9 MR. BROOKS: I'm David Brooks, counsel
10 for -- assistant general counsel for the Energy,
11 Minerals and Natural Resources Department, appearing for
12 the Oil Conservation Division.

13 CHAIRWOMAN RILEY: Thank you.

14 MR. FELDEWERT: Madam Chair, members of the
15 Commission, Michael Feldewert, with the Santa Fe office
16 of Holland & Hart, appearing on behalf of the New Mexico
17 Oil and Gas Association, and I have no witnesses here
18 today.

19 CHAIRWOMAN RILEY: Okay. Thank you.

20 Mr. Brooks, do you want to have your
21 witness sworn?

22 MR. BROOKS: I have one witness, and he's
23 standing there ready to be sworn.

24 (Mr. Goetze sworn.)

25 CHAIRWOMAN RILEY: Please proceed.

1 MR. BROOKS: Call Phillip Goetze.

2 PHILLIP GOETZE,

3 after having been first duly sworn under oath, was
4 questioned and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BROOKS:

7 Q. Would you state your name for the record,
8 please, Mr. Goetze?

9 A. My name is Phillip Goetze.

10 Q. And by whom are you employed?

11 A. I am employed by the Oil Conservation Division,
12 Energy, Minerals and Natural Resources Department, State
13 of New Mexico, and I'm currently in the Engineering
14 Bureau and assist in technical review of UIC
15 applications.

16 Q. What are UIC applications?

17 A. Those are applications for underground
18 injection control specifically to Class 2 wells for
19 which the Division has authority.

20 Q. And does the Division also have authority of
21 Class 2 wells under the New Mexico Oil and Gas Act?

22 A. It does.

23 Q. And is that what we're talking about today?

24 A. That's correct.

25 Q. I call your attention first to what's been

1 marked as Exhibit 3 -- Division Exhibit 3. Is that your
2 resume?

3 A. That is correct.

4 Q. Does that state your qualifications and
5 experience in these matters?

6 A. It does so.

7 Q. Is there anything you would like to say about
8 your qualifications?

9 A. Not at this point. I think the Commission has
10 heard them a lot of times.

11 Q. Okay. Thank you.

12 I'd call your attention to what's marked as
13 Exhibit 2. Is that Ms. Davidson's certificate of
14 notice?

15 A. Yes, it is.

16 Q. Very good.

17 And Florene Davidson signed that, right?

18 A. That's correct.

19 Q. I'd call your attention to what has been marked
20 as Exhibit 1 -- Division Exhibit 1, and what is that?

21 A. These are the proposed changes to New Mexico
22 Administrative Code, 19.15.26, which deals with
23 injection.

24 Q. Okay. I will also call your attention to
25 Defendant's Exhibit -- to Division Exhibits 3 and 4,

1 **which were not designated in our pre-hearing statement.**

2 **What are these?**

3 A. I believe that would be 4 and 5.

4 **Q. 4 and 5. I'm sorry.**

5 A. 4 and 5 are supplemental exhibits in order to
6 reference items discussed with the changes. Division
7 Exhibit 4 or -- the excerpt is from the Code of Federal
8 Regulations, specifically 40 CFR 144, which deals with
9 the Underground Injection Control Program, under the
10 guidance provided by the United States Environmental
11 Protection Agency.

12 Exhibit Number 5 are the definitions from
13 New Mexico Administrative Code, 19.15.2, which are, in
14 most cases, definitions, which in this case are relevant
15 to this rule change.

16 **Q. And are these exhibits, 4 and 5, relevant to --**
17 **relevant in the sense that they are law bearing on the**
18 **issues to be discussed rather than being relevant as a**
19 **matter of fact?**

20 A. That is correct.

21 **Q. Okay.**

22 MR. BROOKS: Madam Chairman and Honorable
23 Commissioners, we would request the permission of the
24 Commission to use Exhibits 4 and 5 as being legal
25 materials pertinent to the case even though these

1 exhibits were not designated in our pre-hearing
2 statements, since they don't bear on matters of fact.

3 CHAIRWOMAN RILEY: Mr. Feldewert?

4 MR. FELDEWERT: No objection.

5 CHAIRWOMAN RILEY: Mr. Brancard, do you
6 have any issues with that?

7 MR. BRANCARD: No.

8 Q. (BY MR. BROOKS) Okay. I'd call your attention
9 to Exhibit 1. I believe you already identified that,
10 did you not, Mr. Goetze?

11 A. That is correct.

12 Q. Okay. I'm going to start with 19.15.26.7, the
13 Definitions section and Subsection A of that section.
14 And would you tell us what's been changed there and
15 why -- or what's been proposed for change there and why?

16 A. As a result of the current rulemaking and
17 changes and other rules, in particular the horizontal
18 rule, the definition of "Affected person" now occurs
19 twice in our administrative code. With this, we -- and
20 the Division took upon ourselves the ability or
21 opportunity to take a look at the injection rule and
22 address this primarily, since this is a conflict in
23 definition and does cause an issue with how we provide
24 notice.

25 In order to keep it uniform, the Division

1 recommended that "Affected person" as defined within the
2 injection rule be removed and that the definition
3 provided in 19.15.27 [sic], in this case under A,
4 definitions beginning with the letter A, "Affected
5 person," that's currently been adopted and is now in
6 rule.

7 **Q. Was this change intended to create any**
8 **substantive change in the identification of persons to**
9 **be notified?**

10 A. It is our opinion that it increased the ability
11 to have greater notice, since we have now, in definition
12 of "Affected person," D and E are no longer an option
13 and are required for notification. So that would be
14 either the BLM or the State and the mineral estate
15 owner. So before we just had a hierarchy of designated
16 operator, followed by leaseholder and then finally by
17 mineral estate. Now we have included a requirement
18 similar to what is found in the horizontal rule that the
19 mineral estate owner, as well -- well, just the mineral
20 estate owner is now a mandatory element.

21 **Q. Is that true that the mineral estate owner is a**
22 **private person as opposed to a governmental entity?**

23 A. I believe so. It is.

24 **Q. And a definition has been added as a new**
25 **Subsection A to 19.15.26.7. What is that definition and**

1 **why was it -- where did it come from, and why do we**
2 **propose to include it in our rules?**

3 A. The other consideration given to making changes
4 to this rule was to provide a conformity to what is in
5 the UIC Program under the Federal Code of Regulations,
6 Part 40 for the UIC Program. In the past, we've had
7 various words in this administrative code, and in order
8 to make it uniform, this item in particular, especially
9 with the introduction of things such as different fluids
10 used for enhanced recovery, including gas and the issue
11 of Class 2 acid gas wells, broadening this definition to
12 meet with the EPA standard or EPA definition that we
13 would address outstanding concerns, whether we had the
14 authority and make sure that it was clear in rule that
15 we did.

16 In essence, if you were to go look at
17 Exhibit 4, under 40 CFR 144.3, fluids is defined by:
18 "Means any material or substance which flows or moves,
19 whether in a semi-solid liquid, sludge, gas or any other
20 form or state." By including the EPA definition, we
21 include these changes of recent, with new technology, of
22 disposal and new types and forms of disposal giving the
23 Class 2 that status that we claim to have but have not
24 really brought into rule.

25 **Q. This adopted -- this proposed new definition of**

1 fluids, is that identical to the current EPA definition?

2 A. That is correct.

3 Q. Now, we have proposed to modify the definition
4 of "Water flood project." Can you tell us what's
5 being -- what we're proposing to modify and why?

6 A. With the "water flood project," again, we are
7 expanding the definition so that we do not get locked
8 into the terminology. Again, we have a variety of
9 enhanced recovery processes, and so to be conforming to
10 the general rule of the Underground Injection Control
11 Program by EPA, we made it more standardized with the
12 EPA definitions.

13 Q. Yeah. Specifically, what's been changed? What
14 are we proposing to change?

15 A. In the definitions, we have deleted the "water
16 flood projects" and gone with "fluid" in 19.15.26.7C,
17 and included the language areas in which the wells have
18 reached -- oh, excuse me. I got ahead of you.

19 We've gone basically to, in 19.15.26.8, a
20 broader definition by having the categories of the Class
21 2 wells brought over from the EPA guidance. Again, in
22 definitions -- in 40 CFR 144.6, we have the three
23 classifications of the wells, for the Class 2 wells, and
24 so we have again conformed to what is in the EPA
25 directive or at least in their Code of Federal

1 Regulations and, therefore, removed this conflict of
2 water flood pressure maintenance or anything like that.
3 It is now just an enhanced recovery well.

4 **Q. I would call your attention then to 19.15.26.8.**
5 **There have been a number of changes made in 19.15.26.8.**
6 **Would you discuss those?**

7 A. With the addition of the definitions found in
8 the Code of Federal Regulations, we also looked at the
9 authority. In 19.15.26.8A, we went back to the original
10 reference in the Code of Federal Regulations, again to
11 Exhibit 4. And so we looked at Subpart B, 40 CFR 144.11
12 and .12. And, again, to bring into conformity as to
13 what authority we have outside of the Oil and Gas Act is
14 the general requirements for the program under the EPA.
15 And so we deleted a section of verbiage just to say that
16 basically the permit is required under our approval of
17 our demonstration program through the EPA's --

18 **Q. Okay. Is A.(1) a statement of what we propose**
19 **as the definition of the authority of the Division to**
20 **permit injection wells?**

21 A. That's correct.

22 **Q. And that's proposed new A.(1)? There is not an**
23 **A.(1) existing?**

24 A. That's correct.

25 **Q. And A.(2), does that relate to the Division's**

1 **compliance rule?**

2 A. That is also correct.

3 **Q. Is there any change in that language proposed?**

4 A. I think it was mostly to clean up the rules
5 with our financial assurance and make sure we have the
6 authority in there to -- including also the revoke of a
7 permit through not having the compliance with 5.9, Rule
8 5.9. But this also falls into making this section of
9 the New Mexico Administrative Code for .8 consistent.
10 So it was a matter of changing the language so that
11 A.(1) and A.(2) still met the need of what was
12 originally there.

13 **Q. Okay. In 19.15.26.8B, there is some language**
14 **deleted. What was that -- what was that language about,**
15 **and what is the reason for proposing the deletion of it?**

16 A. The deletion of that was primarily due to the
17 fact that we changed the language of what a Class 2 well
18 was to conform with the EPA definition, as well as a
19 definition change to "fluid." Therefore, these -- this
20 description was found redundant. And we added a --
21 specifically a general phrase that "construct and
22 operate an injection well" would fill that void and
23 suffice.

24 **Q. Okay. Now, the rest of the changes that I see**
25 **all involve changing the -- it appears all involve**

1 recommendations to change the expression "water" or
2 "salt water" to "produced water."

3 A. That's correct.

4 Q. Is that made to conform to the EPA limitations
5 of the Class 2 wells?

6 A. In a way it is. Originally we used the
7 terminology "saltwater disposal." But we also have in
8 our own rules, under 19.15.34.20, the disposition of
9 produced water and other field waste is where the
10 description of "produced water" is found in our rules
11 and references back to the injection. So to keep
12 conformity between what is produced water and salt
13 water --

14 Q. We included the term "produced water" in
15 Exhibit 5; did we not?

16 A. Yes, we did.

17 Q. And is that -- in Exhibit 5, is that the
18 definition that is currently in the NMOCD rules?

19 A. That's correct.

20 Q. Okay. That is not -- "produced water" is
21 not -- not a term that the federal rules define, right?

22 A. That's correct.

23 Q. But our definition of "produced water," does
24 that dovetail better than the use of just "water" or
25 "salt water" with the federal rules?

1 A. It does.

2 Q. Okay. Is there anything else you would like to
3 say about the change -- about any changes that are being
4 proposed and why they should be adopted?

5 A. No. I have no further comments on this.

6 Q. Okay.

7 MR. BROOKS: Then I will pass the
8 witness -- well, first I want to move for admission of
9 Exhibits 1, 2 and 3.

10 MR. FELDEWERT: Do you want to introduce 4
11 and 5, too?

12 MR. BROOKS: Well, my thinking was 4 and 5
13 are demonstrative, so it's not necessary to admit them
14 in evidence.

15 MR. FELDEWERT: I have no objection.

16 MR. BROOKS: But if the Commission would
17 like to have them admitted into evidence, I would
18 certainly propose that.

19 CHAIRWOMAN RILEY: I don't think we need
20 to. They're just for reference, right?

21 MR. BRANCARD: We don't need to. We can
22 cite directly to those rules.

23 CHAIRWOMAN RILEY: Okay. So Exhibit
24 Numbers 1, 2 and 3 are admitted into the record.

25 (NMOCD Exhibit Numbers 1 through 3 are

1 offered and admitted into evidence.)

2 MR. BROOKS: I pass the witness.

3 MR. FELDEWERT: I have no questions.

4 CHAIRWOMAN RILEY: Commissioners, do you
5 have questions?

6 COMMISSIONER BALCH: Well, I presume at
7 some point NMOGA is going to make their case for some
8 changes?

9 MR. FELDEWERT: Yes.

10 COMMISSIONER BALCH: I think I don't have
11 any questions at the moment, but maybe we want to bring
12 Mr. Goetze back up at some point.

13 MR. BROOKS: We would have no objection.

14 THE WITNESS: Can I ask a question? Do I
15 need to be qualified as a witness?

16 MR. BRANCARD: (Indicating.)

17 MR. BROOKS: My understanding was we do not
18 need to qualify -- to get an expert qualified as such in
19 a rulemaking proceeding. Is that correct?

20 MR. BRANCARD: That's correct.

21 THE WITNESS: Thank you.

22 CHAIRWOMAN RILEY: Mr. Brancard, do you
23 have any questions?

24

25

1 CROSS-EXAMINATION

2 BY MR. BRANCARD:

3 Q. Well, I guess so maybe we can avoid having to
4 call you back, Mr. Goetze, do you have a response to the
5 proposed changes that NMOGA has submitted?

6 A. Yes. At this point I really don't feel that
7 we're in support of it. I think the issue of EOR
8 projects, ER projects, the definitions deserve their own
9 effort. I think we've had a lot of change in procedures
10 and what they are. There is certainly, in my regards, a
11 concern with the tax incentive side and definitions in
12 there, and I feel that at this point, it would just be
13 easier to address them all at one time. So if you're
14 going to make changes to enhanced recovery and go
15 through the process, I think it should be done so that
16 we don't have to revisit it two or three times.

17 CROSS-EXAMINATION

18 BY COMMISSIONER BALCH:

19 Q. I suspect you may have to revisit it anyway
20 after 45Q gets through the federal process, because for
21 both acid gas and for enhanced oil recovery with CO2,
22 there are very likely going to be some provisions for
23 Class 2 wells. They might be impacted by those
24 regulations, particularly in --

25 A. Uh-huh. Well, that's a bridge we will cross.

1 Whether the Feds -- the federal government pushes us
2 towards a Class 6 status or --

3 Q. No, it won't be Class 6, not the way it's
4 written.

5 A. I know. I know. I understand, but there have
6 been attempts in months.

7 Q. Also, in the case of an EOR project, you
8 already have a lot of existing Class 2 wells. So if
9 there is a way that the Division could create a bridge
10 or figure out a way that you can turn a well not only
11 into a pressure maintenance or enhanced oil recovery but
12 also incidental storage, that would be more desirable
13 than Class 6, in my opinion. Plus, you can get permits.
14 But Class 6 is unwieldy.

15 A. Unwieldy and very arduous.

16 Q. Yeah. And I could see, in the case of acid gas
17 disposal, those companies might be willing to permit
18 their wells Class 6, but you're not going to get
19 somebody with 1,000 CO2 injectors to convert all their
20 Class 2 wells into a Class 6 permit.

21 A. Well, we were approached about that two years
22 ago, and the Division said no, that these were primarily
23 enhanced recovery projects. And what is used as a
24 fluid -- our concern was that someone -- well, we were
25 contacted by EPA Region 8 concerning our Class 2 wells,

1 and someone had provided them information that we were
2 permitting Class 2 wells for sheer disposal of CO2. And
3 it had to be clarified to Region 8 that the injection
4 really was around the production of oil and gas and,
5 therefore, was part of the waste stream and, therefore,
6 permissible under Class 2 and that our other Class 2
7 wells involving gas injection were clearly enhanced
8 recovery projects.

9 Q. Well, I'm very interested in a couple years to
10 see how that particular bridge burns.

11 Maybe narrowing down Mr. Brancard's
12 question particularly in the definitions that -- it
13 looks like it's NMOGA's position that you really don't
14 need a definition of "pressure maintenance project" and
15 "water flood project" in the statute the way it's being
16 rewritten.

17 A. We still distinguish and rule -- well, it's
18 actually as an application. Pressure maintenance tend
19 to be small operations, single leaseholders, usually
20 small wells, layouts. And, of course, the engineers
21 state that this would still be a reservoir that has
22 enough energy in it to produce, that you're only
23 enhancing the natural source of natural drive. And then
24 once you've depleted that drive, you move into that
25 water flood, which again gets into is that secondary or

1 tertiary. The old standard, tertiary, was fire walls
2 and steam and all sorts of things, which we really don't
3 see much of, but yet for tax purposes, we do
4 characterize, an example being the South Hobbs, North
5 Hobbs field, which starts off as a pressure maintenance.
6 Now it's a water flood. It's characterized as a
7 tertiary recovery project, but it uses a water
8 alternating gas. So definitions have blurred over time.

9 But we still, last year, received PM,
10 pressure maintenance, applications, and it tends to be
11 the smaller operators that benefit from those. And, of
12 course, the water flood is not as common, but they are
13 out there. And those tend to be the older fields, and
14 those have seen applications for expansion. So we do
15 distinguish for that, especially in this older-age field
16 as opposed to the new stuff. We do have -- OXY has
17 several enhanced recovery projects dealing with
18 horizontal wells, but those are very few.

19 **Q. Typically, in preparation for CO2 flood, you**
20 **need to pressure up anyway.**

21 A. Yeah. And they are considered pressure
22 maintenance.

23 **Q. I guess that's all the questions I have.**

24 CHAIRWOMAN RILEY: That's good. Thank you.
25 We appreciate the conversation.

1 Are there any other questions for
2 Mr. Goetze?

3 You had some, Mr. Brancard?

4 CONTINUED CROSS-EXAMINATION

5 BY MR. BRANCARD:

6 **Q. Yeah. Mr. Goetze, I just wanted to clarify**
7 **something you said about enhanced oil recovery projects**
8 **and the tax statutes. In your Exhibit 5, the Commission**
9 **does have a definition of "enhanced oil recovery**
10 **project." And just to clarify, that definition is taken**
11 **from the tax statutes?**

12 A. I believe so.

13 **Q. Okay. And it just refers to enhanced oil**
14 **recovery, so it doesn't refer to all -- not that you**
15 **have a lot of enhanced gas recovery projects, but it**
16 **does not cover --**

17 A. Well, yes. The primary drive at that time was
18 oil, but the -- not in the best interest of the Division
19 to preclude that there would not be a gas-enhanced
20 project. The potential may be out there. And it has
21 certainly been brought to our attention by our engineer
22 that we have coalbed methane, which is being looked at
23 for enhancement. So the potential does lie out there.

24 **Q. And so with the changes that the Division**
25 **proposes to the definition of "water flood project," has**

1 **that concept been expanded to largely cover most of what**
2 **would be an enhanced recovery project?**

3 A. We've tried to include all categories without
4 getting ourselves boxed in a corner.

5 **Q. Okay. Thank you.**

6 CHAIRWOMAN RILEY: Okay. Do we need any
7 redirect? We're kind of out of sequence here.

8 MR. BROOKS: I don't believe that -- I
9 don't believe it's really necessary.

10 However, if there is anything further you
11 would like to say.

12 THE WITNESS: I've gotten in enough trouble
13 already, so --

14 CHAIRWOMAN RILEY: Mr. Feldewert, do you
15 have any questions of this witness?

16 MR. FELDEWERT: No.

17 CHAIRWOMAN RILEY: All right. Mr. Goetze,
18 you can be excused.

19 THE WITNESS: Thank you.

20 CHAIRWOMAN RILEY: Mr. Feldewert?

21 MR. FELDEWERT: Yeah. Madam Chair, members
22 of the Commission, I would ask you to pull out what is
23 marked and submitted as NMOGA Exhibit 1, which
24 contains -- just for the record and just so everything
25 is clear, what we were able to do is Mr. Brooks was kind

1 enough to provide us with their red-line strikeout
2 proposal that was attached to their application. So we
3 were able then to utilize that to highlight in yellow
4 the changes that we had proposed for their -- for their
5 submission.

6 First off, we support the revisions that
7 are suggested by the Division, although we do have a few
8 of the modifications that are set out on NMOGA Exhibit
9 Number 1 highlighted in yellow.

10 As Mr. Balch observed, we do believe that
11 the definitions here on NMOGA Exhibit Number 1 in
12 Subsection 26.7 -- the definition of a "pressure
13 maintenance project," we have a definition here, but
14 then as reflected in the Division's Exhibit Number 5,
15 there is already an existing definition in the general
16 section, and there is a slight word change. If you look
17 at the existing definition under "pressure maintenance
18 project" -- or "pressure maintenance" under Exhibit
19 Number 5, it talks about the injection of gas or other
20 fluid into a reservoir. For whatever reason, the
21 existing definition in the injection rules says "into a
22 producing horizon." So it seems to me that if we have a
23 general definition in the Division's rules already,
24 that, to avoid any confusion, we ought to follow that,
25 and there is no reason to have a separate definition

1 here.

2 Secondly, the definition of "water flood
3 project," if you look at the Division's Exhibit Number
4 5, a water flood project is part -- is a subset of an
5 enhanced oil recovery project, as already defined in the
6 Division's rules. The Division itself has moved away
7 from a water flood project being water and themselves
8 are even proposing it to include fluid. So I don't
9 see -- we don't see the necessity of having a separate
10 definition called "water flood project" which means an
11 injection of fluids, particularly since it falls under
12 the general definition of an enhanced recovery project.
13 So that's the thought process there, to avoid
14 duplicative or confusing definitions.

15 The other proposed change relates -- begins
16 on page 3 of Exhibit Number 1, Subparagraph 26.8.F. And
17 as you can see, currently we have a subsection for
18 what's called "Pressure maintenance," and then a
19 subsection for "Water flood projects." I have had, on
20 occasion, people come to me and say, "Where does a
21 secondary recovery or an enhanced oil recovery project
22 fit into this injection rule? There is no reference in
23 the current injection rules to these other types of
24 injection projects." So we thought what made sense here
25 is to combine Subparagraphs F and G to address the

1 various injection projects that may exist, whether it's
2 pressure maintenance, secondary recovery or enhanced oil
3 recovery injection projects, which by definition would
4 include pressure maintenance, waterflooding and
5 miscible, chemical, thermal and other biological
6 processes. So we capture a lot more by referencing at
7 least enhanced oil recovery projects, as well as
8 secondary projects in this rule.

9 That then necessitated -- or allowed an
10 elimination of redundant language, because everything
11 you see under F.(2), (3) and (4) also existed under
12 "water flood projects." And so you had some redundant
13 language that if you combine what is now F and G into
14 just Subparagraph F, you capture everything under one
15 subsection.

16 The only other change here was to insert --
17 and I'm looking at page 4 primarily. You'll see that we
18 added the phrase "spacing or proration unit." As you
19 know, having dealt with the horizontal well rules and in
20 making some changes to our definitions as a result of
21 that, a spacing unit is not always a proration unit,
22 and, in fact, we have separate horizontal spacing units.
23 So maintaining the distinction between a spacing or a
24 proration unit is important, I think, number one, and,
25 number two, consistent with what you have previously

1 done. So we have included, wherever we saw "proration
2 unit," the language "spacing or proration unit."

3 I'm looking at page 4, Subparagraph (6).
4 You'll see that it references in the second sentence,
5 "conversion to inject of additional wells," plural,
6 "provided that the well is necessary." We thought there
7 are some language issues there. That's why we -- it's
8 plural in the second line. It should likewise be plural
9 in the third line of Subparagraph F.(6).

10 I believe that captures the modifications
11 that we have proposed. I think they're pretty
12 self-explanatory, and I think it's really borne out by
13 the fact that we have existing definitions that seem to
14 cover this. We seem to have confusion sometimes given
15 the fact that the rules do not specifically address
16 secondary recovery or enhanced oil recovery projects and
17 what you do and how you permit those. So that's the
18 thought process in combining Subparagraphs F and G.

19 CHAIRWOMAN RILEY: I'm going to hit a
20 rewind button like just, you know, 30 seconds, 45
21 seconds. Can we go back over F. for just a minute,
22 which is on page 3, and explain why the deletion is
23 appropriate of Subparagraphs (2), (3) and (4).

24 MR. FELDEWERT: Certainly.

25 CHAIRWOMAN RILEY: Where are those?

1 MR. FELDEWERT: Those are captured in (5),
2 (6) and (7) on the next page. And just on that point,
3 if you look at what is now F.(2), it says, "The division
4 may authorize an operator to expand." So I'm on page 3,
5 F.(2). I went over to the next page, and one of the
6 things we noticed is that -- it would be G.(5). It
7 says, "The division shall authorize the expansion," so
8 to make it consistent, since we're including the
9 language to include "may."

10 CHAIRWOMAN RILEY: Now I have questions for
11 Phil. Can we re-call Mr. Goetze back up?

12 MR. BRANCARD: Yes.

13 Do you mind, Mr. Goetze, coming back up?

14 MR. GOETZE: I have to talk to my lawyer
15 first.

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

19 CROSS-EXAMINATION

20 BY CHAIRWOMAN RILEY:

21 Q. So if we could kind of go through the changes
22 individually, that would be helpful to me to know where
23 you stand on those.

24 MR. FELDEWERT: I have an extra copy.

25 MR. BROOKS: You are talking about

1 Mr. Feldewert's changes, not our changes, weren't you?

2 CHAIRWOMAN RILEY: Yes.

3 MR. BROOKS: Do you have a copy? I don't
4 have one. I'm not suggesting that --

5 MR. FELDEWERT: Does everybody have a copy?

6 CHAIRWOMAN RILEY: So as I understand, the
7 changes from NMOGA are all highlighted in yellow?

8 MR. FELDEWERT: Yes, ma'am.

9 CHAIRWOMAN RILEY: So let's kind of walk
10 through that a little bit. And if I understand it, on
11 definition B. "Pressure maintenance project," the reason
12 for you wanting to pull that out would be because it is
13 already mentioned over in 19.15.27 [sic], "Pressure
14 maintenance," although it's "pressure maintenance," not
15 "pressure maintenance project," but they're fairly
16 similar.

17 And Mr. Feldewert is pointing out that we
18 do have a difference of calling out "reservoir" in our
19 Part 2 definition, but we're saying "producing horizon"
20 in Part 26. So there is -- I do have concerns of having
21 definitions of something in two different places and
22 that conflict.

23 COMMISSIONER BALCH: Especially if they're
24 slightly different.

25 CHAIRWOMAN RILEY: Yeah. So at a minimum,

1 I think we ought to make them match up.

2 Q. (BY CHAIRWOMAN RILEY) But I would ask: Is
3 there a reason to keep them in both places? I mean, it
4 does appear to be like the definitions in Part 26 are
5 talking about a project. Whereas, Part 2 is talking
6 about the actual definition of pressure maintenance,
7 which takes you into water flood project. We don't have
8 a definition, at least not listed on this exhibit, but
9 it talks about a process of enhanced oil recovery
10 project.

11 A. Well, this is kind of the problem and the
12 dilemma we do have currently. We could pull in
13 definitions up to the front, but they will have to match
14 and meet all parts of what we have in both in
15 "injection" and what we use in the application process.
16 So I do not know the history of why we have one as a
17 definition of the process itself and the other as a
18 project. The tendency is the injection rule had
19 specific language put in there at the time of approval
20 in 2008. So that's why you see the reference to the
21 water flood project and the pressure maintenance
22 project.

23 Q. Otherwise, it looks almost identical.

24 A. Almost. But the other thing is where else does
25 it appear and where else will we find it pop up?

1 **Q. Has anyone done that kind of a search, check to**
2 **see if it was elsewhere in the rules?**

3 MR. FELDEWERT: No. But if it's in the
4 general definition, if you saw it in another rule,
5 that's where you go.

6 **Q. (BY CHAIRWOMAN RILEY) Would you have a concern**
7 **with taking it out of here, the "pressure maintenance**
8 **project," and keeping it in general?**

9 A. Or you could move all the definitions up to the
10 front. I mean, it's not necessarily a bad thing. But,
11 again, cross-walking with other parts of this have not
12 been done by us, and we can always open the door again
13 and change it.

14 CROSS-EXAMINATION

15 BY COMMISSIONER MARTIN:

16 **Q. So you prefer having matching definitions in**
17 **both places?**

18 A. Or just remove them. But still it would have
19 to cover what the intent was. Was it just a definition
20 of pressure maintenance as opposed to an EOR project, or
21 are we specifically talking about a pressure maintenance
22 project, which an application is made for.

23 COMMISSIONER BALCH: Well, if you end up
24 putting it in both places, you're going to have to go
25 with 19.15.2, because that is not up for discussion

1 today.

2 THE WITNESS: That's correct.

3 COMMISSIONER MARTIN: So I would say either
4 change it to match it or take it out altogether.

5 COMMISSIONER BALCH: If you think it
6 doesn't exactly fit, then you want to come up with a
7 different definition, something that makes it clearly
8 different.

9 CHAIRWOMAN RILEY: So which is more
10 accurate, to say "reservoir" or to say "producing
11 horizon"?

12 COMMISSIONER MARTIN: Is that a question
13 for Phil?

14 (Laughter.)

15 CHAIRWOMAN RILEY: I don't know. Let's
16 just talk.

17 COMMISSIONER BALCH: Producing horizon
18 would be a subset of reservoir.

19 COMMISSIONER MARTIN: I can't envision a
20 purpose of an injection well without some project
21 associated with it.

22 THE WITNESS: I agree.

23 COMMISSIONER MARTIN: It kind of goes
24 without saying that they should match. And if we're
25 going to make them match, they should match the general

1 definition, since we're not able to change those right
2 now.

3 MR. BRANCARD: Well, the other difference
4 is that the pressure maintenance project definition is
5 limited by that last clause.

6 CHAIRWOMAN RILEY: I thought we originally
7 got rid of that language when we first discussed these
8 changes.

9 MR. BRANCARD: You got rid of it in the
10 water flood project.

11 CONTINUED CROSS-EXAMINATION

12 BY MR. BRANCARD:

13 Q. The other question, Mr. Goetze, then is: In
14 the current definition of "pressure maintenance
15 project," is that last phrase -- limiting phrase, which
16 says, "in an area that has not reached the advanced or
17 stripper state of depletion," still significant?

18 A. It is one of the definitions that we still go
19 by and that it still has energy in reservoir and that
20 you have not depleted it to a point where it is, in a
21 sense, stagnant, has no more energy.

22 Q. So you wouldn't want to approve a pressure
23 maintenance project in an area with stripper wells?

24 A. You would not to want to approve a depletion --
25 well, yeah. You would move it into a water flood

1 status. But, again, this is the problem with
2 definitions we have now.

3 COMMISSIONER BALCH: And you could easily
4 see a scenario where you're going to take a depleted
5 field that is not going to respond to a water flood, but
6 pressuring it up for purposes of an enhanced oil
7 recovery with CO2.

8 THE WITNESS: Yes. And that's part of the
9 dilemma right now, is the definitions we have are very,
10 very old, and they represent an old technology that's
11 still in existence and really doesn't cover everything.

12 COMMISSIONER MARTIN: Then I suggest that
13 we change the general definitions to be more descriptive
14 in what you're trying to do. That would be my solution,
15 rather than making conflicting definitions in two
16 different parts of the rule.

17 MR. BROOKS: Well, I believe that is a
18 legal matter. Changing the general definition in Part 2
19 would require a separate rulemaking.

20 COMMISSIONER BALCH: I agree.

21 COMMISSIONER MARTIN: Uh-huh.

22 THE WITNESS: And it's not that NMOGA's
23 proposition is not without value. I think it's just
24 that at this point, we sit down and have a discussion
25 with NMOGA what the future looks like, the stakeholders

1 and what they see is the future. Certainly enhanced
2 recovery for a horizontal well, we only have one example
3 or two examples of what they are planning or what they
4 foresee. I fear that if we start getting too involved,
5 we may end up pulling out these definitions altogether
6 and resolve it with just a general category based upon
7 changes in current technology.

8 MR. FELDEWERT: May I make an observation?

9 CHAIRWOMAN RILEY: Sure.

10 MR. FELDEWERT: If I look -- I don't know
11 what's easiest to look at. Maybe it's the Division's
12 Exhibit 1 and look at the language as they've proposed
13 it. What I observe is that the last clause that you're
14 talking about here, under "Pressure maintenance," says
15 "an area that has not reached advanced or stripper state
16 of depletion." Okay?

17 CHAIRWOMAN RILEY: That's in the current
18 rule.

19 MR. FELDEWERT: In the current rule.

20 But if you go to the "Water flood project,"
21 the current rule, it says, "Those areas which have
22 reached an advanced state of depletion are regarded as
23 stripper wells." So at one point, it looks like there
24 was an attempt to distinguish between a pressure
25 maintenance project and a water flood project based on

1 whether it has or has not reached an advanced stage of
2 depletion. The Division has, with the rule, determined
3 to eliminate last clause in the "water flood project."
4 So I'm not sure whether it makes sense to retain that
5 language in the -- that mirror language in the "Pressure
6 maintenance project."

7 COMMISSIONER BALCH: Well, I don't like
8 that language in either definition.

9 MR. FELDEWERT: I agree. It seems to me if
10 we eliminate one, we ought to eliminate the other,
11 assuming you keep the definition of "Water flood
12 project," which is no longer "water" but "fluid."

13 THE WITNESS: And, again, to redirect, most
14 of the effort for this rule change was to bring it into
15 a UIC federal conformity here. And there are certainly
16 going to be issues with regards to -- enhanced recovery
17 is something that has not been driving this. This has
18 been about the disposal of produced water. We tried to
19 address through several -- make it part of the record --
20 several meetings with shareholders about how and what
21 direction produced water should go. Enhanced recovery
22 has always been on the side but has never been the
23 forefront.

24

25

1 CONTINUED CROSS-EXAMINATION

2 BY COMMISSIONER BALCH:

3 Q. Well, except for now the federal --

4 A. Yes, it is.

5 Q. -- government is giving companies the ability
6 to print [sic] free CO2 --

7 A. Uh-huh.

8 Q. -- actually pay them to take their CO2.

9 A. That's correct.

10 And so now we have a new horizon coming
11 with enhanced recovery that really we're looking at the
12 1903 Humble Oil guidance for water flood -- or excuse
13 me -- 1930 guidance for water flood, which basically was
14 a five point and injection with a producer and now
15 seeing, for instance, the example of the North Hobbs and
16 the South Hobbs, a completely different approach. And
17 so even our definitions of a pressure maintenance going
18 into a water flood or tertiary recovery has become
19 blurred because you're not going to wait for that system
20 to deplete because you've lost the economic incentive
21 and plus your own energy. So we have an opportunity
22 here to make larger changes and make sure that they're
23 all in the same realm.

24 MR. BRANCARD: Madam Chair.

25 When you say opportunity, you mean in a

1 future rulemaking?

2 THE WITNESS: Yeah. You will have to
3 revisit this.

4 COMMISSIONER BALCH: Have to. There's
5 going to be a situation where mature CO2 flood will
6 continue injecting CO2 after it's no longer producing a
7 well. It'll be a pure CO2 disposal under a Class 2 UIC
8 permit.

9 MR. BRANCARD: Instead of a Class 6?

10 COMMISSIONER BALCH: The well is already
11 going to be a Class 2. There's no way you can make it
12 Class 6. You can't retrofit the well to meet Class 6
13 standards. A Class 6 well is quite a bit more similar
14 to the way we make them design acid gas disposal wells.

15 THE WITNESS: And actually they're even
16 more representative of what would be a Class 1 well.
17 And the association also becomes a factor. Class 6 --
18 our experience with Region 8 was that they -- they -- an
19 energy producer who had a coal-fired plant was going to
20 think about applying for a Class 2 well up in Region 8,
21 and so that's why we got the phone call. And when we
22 described to them what the process was down here and
23 what the origin of that CO2/H2S was, it certainly took
24 it out of their concerns and said that it would have to
25 go Class 6. This is oil-and-gas-related produced. It

1 would be dealing mostly with it as a Class 2.

2 COMMISSIONER BALCH: The main thing is with
3 a CO2 and an enhanced oil recovery project is you're
4 dealing with legacy wells that are already Class 2. So
5 there's going to have to be a way to bridge that.

6 THE WITNESS: Yes.

7 COMMISSIONER BALCH: Ultimately. We
8 probably don't have to worry about it for a while.

9 THE WITNESS: I don't think ultimately. I
10 think it's something to see on the horizon because it
11 will be coming at us.

12 COMMISSIONER BALCH: I'm not aware of any
13 successful CO2 EOR projects that once started, yet
14 stopped. So we don't have an end-scenario example out
15 of the, say, 200 or so CO2 projects started around the
16 world. More than 120 in the Permian Basin are all still
17 going. Some may be limping along, but they're still
18 going. The first one, SACROC, 1972, the first
19 commercial one, is not only still going, but it still
20 has a 40-year future ahead of it. And OXY, South Hobbs
21 is looking at the same scenario.

22 THE WITNESS: They currently had an
23 expansion for over 140 wells that they have.

24 COMMISSIONER BALCH: Yeah. So one thing
25 that your rule eventually is going to have to address,

1 if it doesn't address it in this hearing, is what
2 happens when all you're doing is injecting; you don't
3 have any producing wells, proportionate injectors to
4 producers? I would try and leave those things out of
5 the definitions and let them be controlled by
6 operational needs for the type of project. That's
7 probably beyond the scope of today.

8 THE WITNESS: Thank you.

9 CHAIRWOMAN RILEY: The scope of today was
10 to just do some minor cleanup to definitions. I mean,
11 really that was the bulk of it and the making of
12 applications. I don't think that the intent was to get
13 really deep in the weeds on this.

14 Well, I guess before I make the second part
15 of that statement, if we can continue and kind of walk
16 through what the changes are and give us your opinion,
17 just keeping in mind that that is the point of today's
18 pretty simple modification.

19 CONTINUED CROSS-EXAMINATION

20 BY CHAIRWOMAN RILEY:

21 Q. So the next one was C -- Subpart C., "Water
22 flood project." And our OCD's change was to change
23 "water" to "fluid" and eliminate that last statement
24 about stripper wells. And NMOGA's is different
25 altogether. So are your comments on that one

1 **essentially the same as the pressure maintenance**
2 **project?**

3 A. Essentially the same.

4 **Q. And then moving over to Subpart F. on 26.8,**
5 **what are your thoughts about adding "secondary recovery"**
6 **and "enhanced oil recovery injection" into that**
7 **subparagraph? Is this something better handled in a**
8 **deeper dive on this rule?**

9 A. It was my feeling that yes, we would be back to
10 that point again to make sure that we aren't striking
11 out something we have already and that what we're
12 putting in as far as the definitions is something that
13 will hold.

14 **Q. What about Mr. Feldewert's comment that we**
15 **don't address how to apply for secondary recovery and**
16 **enhanced oil recovery injection within our rules?**

17 A. Well, the application for injection authority
18 is always handled as a separate item. The C-108
19 application is specific to the -- the nature of the
20 application is under our statute for the enhanced
21 recovery, under our statute for unit -- unitization,
22 which really does not have specific language to pressure
23 maintenance. It just says "the operation." So, in
24 essence, there is no conflict of that. Where our
25 conflict comes in is in our own administrative code.

1 **Q. So under the application, C-108, is it specific**
2 **in there about what type of project you're requesting?**

3 A. It does.

4 **Q. And so does it cover secondary recovery?**

5 A. It covers -- and this is where we -- under the
6 requirements for the unitization, our statutes, we
7 normally require an application for pressure
8 maintenance, is just an appearance before a Division
9 examiner with a C-108.

10 When we get into things that are called
11 water floods, we become more specific in requiring two
12 applications, the first application being an application
13 to describe the project, its area, the status of the
14 leasing, commitments and general overall issues
15 regarding the actual unit. And then we have an
16 associated second application and second order which
17 provides the injection authority for that specific unit
18 which has been approved by the first order. So
19 administratively, we do handle them differently.
20 Pressure maintenance tend to be very, very small and
21 very limited, and water floods are typically much larger
22 in scale.

23 CONTINUED CROSS-EXAMINATION

24 BY COMMISSIONER BALCH:

25 **Q. However, they're all still handled through the**

1 **same C-108 application?**

2 A. Injection authority is all handled through the
3 C-108.

4 **Q. It's just whether you want to deal with it**
5 **administratively or you set it for hearing.**

6 A. That's correct.

7 **Q. And the second permit application?**

8 A. Typically, as you've found, once we approve an
9 enhanced recovery project, we put in there the ability
10 for administrative approval by simply supplying a C-108.
11 And, again, to make the difference, the disposal wells
12 are handled as individual permits. The enhanced
13 recovery are what are considered area permits, where you
14 look at a specific area and use that as an evaluation.
15 And so you're looking at, in your unit that you've
16 approved and have authority for, the same formation, the
17 same characteristics, and then the area permit gives you
18 the ability to have multiple wells and the operator to
19 move those wells according to their needs and how their
20 project goes through the process.

21 **Q. Well, it seems like the main advantage of**
22 **NMOGA's proposal is you remove a quarter of a page of**
23 **statute --**

24 A. Uh-huh.

25 **Q. -- by merging those two sections. I guess my**

1 question is: By doing so, is there any unforeseen
2 consequence? And it doesn't sound like there is one?

3 A. I don't know. Sorry.

4 Q. Never say never. But I guess I don't see a
5 consequence to the existing process by doing that.

6 A. Uh-huh. I mean, this is one of those things
7 that we may go through the process. There are good
8 suggestions in here, but I do not know what's going to
9 happen down the road as a result. And it is not
10 necessarily the common problems. We have projects where
11 there are not going to be any issues. It just gets to
12 be we're going to have individual projects that may run
13 into it where it suddenly cannot be dealt with.

14 Q. I think that after February, you're going to
15 have to look at UIC again anyway, to be quite honest.
16 The impact of 45Q is going to affect everything except
17 for SWDs.

18 A. And, again, that was our major intent with this
19 rulemaking, is to change the New Mexico Administrative
20 Code so that it does have the flexibility in general
21 terms, and then we can get into the nitty-gritty of
22 specific project scope as far as what type of well.

23 MR. FELDEWERT: Can I make an observation
24 at this point --

25 CHAIRWOMAN RILEY: Please do.

1 MR. FELDEWERT: -- or question?

2 I guess I'll direct it to Mr. Goetze.

3 CROSS-EXAMINATION

4 BY MR. FELDEWERT:

5 Q. So right now in the current rule, if we go to
6 file for a pressure maintenance project, the Division
7 fixes the project area for that, correct?

8 A. No. The applicant comes in and usually it's on
9 their lease.

10 Q. Because I'm looking at the language of the
11 rule --

12 A. Uh-huh.

13 Q. -- and it says, "The division shall set
14 applications for establishment of pressure
15 maintenance" --

16 A. That's correct.

17 Q. -- "project for hearing. The division shall
18 fix the project area."

19 A. Yes. We approve the -- if they come in and
20 have an area, yes, we do have the authority.

21 Q. And then if I go to "water flood," again "set
22 for hearing" and the project area -- the current
23 language for water flood, "shall comprise" -- it just
24 says "proration unit" the operator owns or I guess
25 proration units that directly or diagonally offset,

1 right? I'm just following the language here. But then
2 the Division can, well, upon application, approve
3 additional acreage into the project area.

4 A. Uh-huh.

5 Q. So we have a project area for water floods, and
6 we have a project area for pressure maintenance.

7 A. Uh-huh.

8 Q. Okay. When you get into secondary or enhanced
9 oil recovery projects, is it the project area times
10 unitized areas?

11 A. Repeat that once again.

12 Q. So now if I go to the next phase, which is
13 where we don't have language that covers it, if I go to
14 "secondary recovery project," file my C-108, again I've
15 got to establish the area that's going to be part of
16 that secondary recovery project, right?

17 A. That's correct.

18 Q. And that can include a unitized area if you
19 apply for a unit?

20 A. Well, no. Our rule for stature [sic] is that
21 you create your unit. As far as com agreements, things
22 like that, that's addressed through the fact that you're
23 either supported by parties -- in other words, the
24 applicant brings in the information that this unit has
25 all the necessary supporting approvals, depending upon

1 ownership, and agreements with boundaries or geology
2 such that the definition is apparent, and, therefore,
3 the water project will be successful in the area
4 designated by the applicant.

5 Q. Right.

6 So in other words, you've got to get
7 everything you need to establish your unit of
8 operations, right?

9 A. Correct.

10 Q. But the Division still takes a look at what
11 area is going to be impacted by the proposed secondary
12 recovery efforts?

13 A. Yes.

14 Q. And they do the same thing for enhanced oil
15 recovery projects?

16 A. Uh-huh.

17 Q. Okay.

18 CHAIRWOMAN RILEY: Mr. Brancard, do you
19 have --

20 CONTINUED CROSS-EXAMINATION

21 BY MR. BRANCARD:

22 Q. Okay. Let's just go through the rule. Can you
23 look at what was G.(2)? Okay. So G.(2), there is a
24 whole discussion about the project area of a water
25 flood, which Mr. Feldewert has just brought out. That

1 whole discussion currently does not apply to pressure
2 maintenance projects.

3 A. No. We don't look at these typically for any
4 type of pressure maintenance.

5 Q. Okay. But under Mr. Feldewert's proposal, this
6 analysis would apply to pressure maintenance, secondary
7 recovery, enhanced oil recovery. Is that kind of
8 analysis just something you do for a water flood, or
9 will you apply it to every enhanced oil recovery
10 project, because you're talking about offset tracts
11 being part of a project area, et cetera. I mean, it's
12 sort of a more detailed analysis of what a project area
13 should be.

14 A. Again, the pressure maintenance tends to be
15 very limited. It tends to be the single leaseholder.
16 It doesn't involve a variety of mineral interests and is
17 usually done as a small-scale operation.

18 Q. So which is why that more detailed analysis of
19 a project area that's in the current rule for water
20 flood is not in the section for pressure maintenance?

21 A. Well, that's typically how it's been handled at
22 this time.

23 Q. Okay. So NMOGA's proposal is using the term
24 "secondary recovery" and "enhanced oil recovery" as
25 opposed to the current rule which uses "pressure

1 maintenance" and "water flood." Okay? To clarify, this
2 definition of "secondary recovery" is just pretty broad
3 and vague, "a method of recovering quantities of oil or
4 gas from a reservoir which quantities would not be
5 recoverable by ordinary primary depletion methods." Is
6 there something there that's not covered by a pressure
7 maintenance or water flood project as you're proposing
8 to define them?

9 A. That, I do not know. But it would seem
10 apparently to cover a lot of them, but it doesn't
11 distinguish. So, again, our procedures are not very
12 reflective of lumping them all together. We would have
13 to revisit how we do things or how we categorize things.
14 Don't know.

15 Q. And then "enhanced recovery oil project," the
16 definition you have on your Exhibit 5, it says, "The use
17 of expanded process of displacement of oil of an oil
18 well division designated pool...other than a primary
19 recovery process." So presumably, an enhanced oil
20 recovery project is secondary, tertiary, quaternary,
21 whatever, right, because it's anything other than a
22 primary? So a secondary would be included within the
23 definition of "enhanced oil recovery"?

24 A. Yes, it would.

25 Q. "Including but not limited to the use of a

1 **pressure maintenance process and waterflooding process."**
2 **So water flooding and pressure maintenance are included**
3 **within enhanced oil recovery?**

4 CHAIRWOMAN RILEY: So are you asking then
5 if it's incorrect to have two categories, secondary
6 recovery and enhanced oil recovery, because secondary is
7 an enhanced oil recovery? Is that your question?

8 MR. BRANCARD: Yeah. I don't know that --
9 my initial thought was whether secondary recovery gets
10 us anywhere.

11 CHAIRWOMAN RILEY: It's kind of a
12 subsection of enhanced oil recovery.

13 MR. BRANCARD: And, you know, it's up to
14 the Commission here. I mean, what the Division's
15 witness has sort of posed is we're starting to use terms
16 and changing things that we're not quite sure what all
17 the side effects of that will be.

18 CHAIRWOMAN RILEY: Impacts would be.

19 MR. BRANCARD: And while, I mean, I
20 certainly see a certain amount of logic in NMOGA's
21 proposal here to try to simplify -- to try to have a
22 process that covers basically everything here except
23 maybe acid-gas injection, which was left out.

24 CHAIRWOMAN RILEY: My only concern just as
25 a process here is that we did, as a group of

1 stakeholders, as Mr. Goetze has mentioned, get together
2 and talk through this and it was many, many hours of
3 talking through all these things and trying to look at
4 these types of issues, and this didn't get vetted.
5 These changes didn't get vetted through that larger
6 group. So this really isn't a recommendation coming out
7 of that group. So that's my worry, would be, you know,
8 what are -- are there other concerns, as Mr. Goetze is
9 bringing up, of what would happen by making these
10 changes?

11 COMMISSIONER BALCH: I'm sort of conflicted
12 because I'm really seeing big changes happening in oil
13 recovery in the next few years. People are already
14 starting to look at ways to do EOR and horizontal shale
15 development, for example.

16 THE WITNESS: Uh-huh.

17 COMMISSIONER BALCH: So at some point in
18 the future, this whole thing is going to have to go
19 through a big change.

20 CHAIRWOMAN RILEY: Uh-huh.

21 COMMISSIONER BALCH: But in the short term,
22 you want to make it flexible enough to allow those
23 things to occur to -- in spite of those changes.

24 THE WITNESS: Welcome to my dilemma
25 (laughter).

1 CHAIRWOMAN RILEY: Which I don't know that
2 they're prohibited at this time from occurring. There
3 is a process. This is just somewhat of a cleanup,
4 making it perhaps more user friendly. But I'm wondering
5 if this change wouldn't be more appropriate than a
6 second review of this rule, but --

7 COMMISSIONER BALCH: Well, I kind of wish
8 it would have come in and just said "injection projects"
9 and not started to give all these subcategories.

10 THE WITNESS: I mean, again, we go back to
11 our Part 6, the tax incentives, and the descriptions in
12 there.

13 COMMISSIONER BALCH: Which are also going
14 to change dramatically come February.

15 THE WITNESS: Yeah. So, again, we have a
16 redundancy of terminology that even the experts are not
17 quite agreeing on, because we call -- secondary water
18 flood, we call it tertiary. So the definitions do go
19 over into other parts.

20 COMMISSIONER BALCH: I think it's really
21 going to come pretty quick after 45Q. So roughly 3
22 percent of possible CO2 EOR projects in the U.S. that
23 are technically possible are underway, and that's
24 because of economics. And 45Q is going to change the
25 economics so that those are competitive with other types

1 of operations like shale development but more appealing
2 to middle- and smaller-size producers. So I think you
3 could have a big growth in CO2 EOR particularly at a lot
4 of different scales that have been done before.

5 THE WITNESS: And I would anticipate that
6 the small operators with older fields like the Jal --

7 COMMISSIONER BALCH: They already have the
8 old fields.

9 THE WITNESS: Yeah. So, I mean, you're
10 going to see the ability for the small operator to use
11 oil alternating gas and to revisit.

12 COMMISSIONER BALCH: I think to me they're
13 all injection projects in my head, but there's going to
14 be a whole bunch of stuff to unravel later on. I just
15 want to make it so that this rule doesn't constrain any
16 of those type of activities.

17 MR. BRANCARD: Well, I guess just to get us
18 off the dime here, (A) does the Commission have any more
19 questions for the witness? (B) does the Commission want
20 to hear any closing arguments before you go into formal
21 deliberation and close the record?

22 CHAIRWOMAN RILEY: I'd like to hear closing
23 arguments based on this discussion if you still have
24 them, I mean if anything changed in your mind after this
25 conversation.

1 MR. FELDEWERT: All right. Well, first, do
2 you have any more questions?

3 CHAIRWOMAN RILEY: I don't.

4 COMMISSIONER MARTIN: No.

5 COMMISSIONER BALCH: Not that can get
6 answered.

7 THE WITNESS: Well, I think the NMOGA
8 proposition to include the language of "proration" and
9 "spacing unit" would be beneficial. I think that would
10 open the opportunity for horizontal wells, especially
11 that it would give us the authority to move down the
12 road without us having to go through this spacing versus
13 proration.

14 COMMISSIONER BALCH: Irregardless if we
15 take their merged sections, we should keep that
16 language.

17 MR. BROOKS: If you want closing arguments,
18 I have some observations I'll make, but I do not think
19 it's essential.

20 CHAIRWOMAN RILEY: Well, if you have
21 observations that help clarify what we're looking at,
22 then I'd appreciate hearing it.

23 MR. BROOKS: Hopefully they will clarify.

24 COMMISSIONER BALCH: Do we want to take
25 those arguments after lunch?

1 CHAIRWOMAN RILEY: Oh. Do you-all need
2 time?

3 MR. BROOKS: I will be brief.

4 MR. FELDEWERT: No.

5 CHAIRWOMAN RILEY: Okay.

6 CLOSING STATEMENT

7 MR. BROOKS: I was presented with NMOGA's
8 proposed changes when the pre-hearing statement was
9 filed. We had talked about some of them previously, not
10 all of them. But I believe that just reading it as a
11 lawyer, without the technical knowledge that Mr. Goetze
12 has, and being a lawyer who has some knowledge of the
13 oil and gas business, although not zettai [sic], now I
14 remember when I first heard the terms "water flood" and
15 "enhanced recovery," I thought of them as somewhat
16 opposites in the sense that you do a water flood first
17 and then down the road, you're going to get to enhanced
18 recovery. And that was why I was concerned at an
19 earlier stage to broaden the definition of "water flood"
20 to say fluid rather than water, lest there be any
21 ambiguity of the inclusiveness of that term.

22 Now, maybe I should ask this question of
23 Mr. Goetze, but I'm doing closing statement now, so I'm
24 getting procedurally -- and I want to keep my procedures
25 straight.

1 I do not perceive and I do not think there
2 is anything left out in the terms "water flood" and
3 "pressure maintenance" that based on what we have done
4 in the past leaves any gaps of something that we should
5 be doing that this rule will not allow us to do.

6 Now, when I was presented with
7 Mr. Feldewert's changes and knowing that oil recovery
8 was defined in reference to the tax statute, that is the
9 statute that gives the tax incentive for enhanced oil
10 recovery, I had two concerns. Do we need to be
11 concerned about enhanced gas recovery? That's number
12 one. Well, it's not number one in importance. It's
13 just number one in the first that occurred to me. And
14 the second was if we use the term "enhanced oil
15 recovery" in a different context, are we inadvertently
16 affecting what we want to be doing under the tax statute
17 to authorize the tax incentive for particular projects.
18 And I did not want to create any confusion.

19 I am now satisfied that the proposed
20 changes by NMOGA will not -- will still include in those
21 projects that ought to be -- that can be authorized any
22 enhanced gas recovery project, if there is any such,
23 because of the term -- the defined term "secondary
24 recovery project," which is used in NMOGA's list of
25 projects we can authorize. And I think the definition

1 of "secondary recovery project" is sufficiently broad,
2 from a vocabulary and legal standpoint, to include
3 anything that would be included in the term "enhanced
4 recovery" -- "enhanced gas recovery project," if we had
5 such a term, so I'm not worried about that issue now.

6 I have not had a chance to study the
7 Enhanced Tax Recovery Act or the Statutory Unitization
8 Act or the rules under either of those acts with a view
9 to determining whether or not anything we might do in
10 terms of use of those terms in this rule might somehow
11 have some effect on those regulatory schemes. And I do
12 not have a detailed familiarity with them. I have
13 reviewed orders that had to make the appropriate
14 findings under those statutes, and I even have a
15 checklist of those findings that we have to make just so
16 I can go down through an order and say, "One, two,
17 three, did the examiner make the findings that the
18 statute and rules say that he's supposed to make."

19 But I do not have anything to offer you at
20 this point on whether or not there is any possibility of
21 confusion by making the changes NMOGA proposes to make.
22 Subject to that qualification, I believe that the rule
23 with the language NMOGA proposes would probably work
24 just about as well as the language in the rule that we
25 have proposed. I'm not persuaded it would work better,

1 but then I don't know which would work better. I don't
2 perceive any glaring defects either. With my experience
3 with the recent horizontal well rule suggests that my
4 non-perceiving glaring defects doesn't mean there aren't
5 some.

6 So thank you.

7 CHAIRWOMAN RILEY: Thank you.

8 Mr. Feldewert.

9 CLOSING STATEMENT

10 MR. FELDEWERT: Well, let me say this.
11 NMOGA did not mean to create any substantive issues
12 here. They viewed this, as do you, as kind of a cleanup
13 effort. Okay?

14 And the second thing is the terms
15 "secondary recovery," "enhanced oil recovery," "pressure
16 maintenance," those are already defined terms. They
17 already exist in the Division's definitions, and nobody
18 is changing any of those.

19 The question that came up and has come up
20 with me -- I remember when I first started -- and
21 certainly with clients is they look at the injection
22 rule and they say, "Well, I need to permit a defined
23 secondary recovery project. How do you permit an
24 enhanced oil recovery project? What are the
25 procedures?" Okay? Because those terms are not in the

1 injection rules, but they all involve injection
2 operations. That's how you do them. Okay? So the
3 thought was you take existing terms that are already
4 defined and you put them into Subparagraph F.

5 Now, Dr. Balch, your comment about making
6 it broad, maybe it should say -- let's use the defined
7 terms, "pressure maintenance, secondary recovery,
8 enhanced oil recovery and other injection projects."
9 Maybe we say that. That way it's very clear that this
10 applies to a broad set of injection projects designed to
11 enhance the recovery of oil and gas. Okay? But I don't
12 think it changes any of the existing definitions. I
13 don't think it brings up a statutory credit issue.
14 Those are all subject to the definitions. All we're
15 dealing with is where do I go to ascertain how I permit
16 a project that involves injection that's going to
17 enhance the production oil and gas? That's what this is
18 designed to do.

19 And in going through that, the thought was
20 if waterflooding is no longer just water, now it's
21 fluids, which is a pretty broad term -- it can include a
22 lot of different things -- then why would we still have
23 something that says "water flood project"? Because
24 really what it is is a secondary recovery or an enhanced
25 oil recovery project, which are already defined.

1 So that's the -- that's the intent here. I
2 mean, we don't mean to change anything substantively.
3 It was just an effort to -- if we're cleaning up, let's
4 clean it up. Let's make it very clear. That way
5 somebody can go to this five years from now and say,
6 "Okay. That's what I'm trying to do. Here's how I need
7 to permit." That's what this is all about.

8 CHAIRWOMAN RILEY: Okay. Thank you.

9 Everybody have what they need to deliberate
10 on this after lunch?

11 COMMISSIONER MARTIN: After lunch, sure.

12 CHAIRWOMAN RILEY: All right. We're just
13 on break, so we are off the record, please, Miss Mary.

14 And let's break until -- say an hour and
15 15, so 1:30. See everybody back here at 1:30.

16 (Recess, 12:13 p.m. to 1:32 p.m.)

17 CHAIRWOMAN RILEY: Let's go back on the
18 record, please.

19 So we are now in deliberation. What say
20 you?

21 COMMISSIONER BALCH: So then I guess the
22 definition of "fluid" was put in there because that's
23 mirroring the EPA terminology change.

24 CHAIRWOMAN RILEY: I believe so.

25 MR. BRANCARD: Yes.

1 COMMISSIONER BALCH: But is it used
2 anywhere else in the document besides in the definition?

3 MR. BRANCARD: Well, it's put into the
4 water flood definition, but more importantly, it's in
5 8.A(1), so it kind of covers a whole bunch of things all
6 at once. 8.A(1), as I understand it, is taken from the
7 EPA definition of what a Class 2 well is. And it,
8 therefore, replaces all these other attempts to try to
9 create a scope for this rule in various places. So
10 8.A(1) is what is covered by this rule.

11 COMMISSIONER BALCH: So in all of these
12 places that -- and you said the water flood rule
13 definition is "fluids," not "fluid." Is it worth
14 changing the definition to "fluids"?

15 MR. BRANCARD: We could.

16 COMMISSIONER BALCH: Maybe we should decide
17 whether we want to keep the definition of "water flood
18 project" first.

19 MR. BRANCARD: If we change "fluid" to
20 "fluids," we could change "water flood" into "fluids"
21 also.

22 COMMISSIONER BALCH: "Injects fluids
23 into." That would work.

24 It might be useful in these documents if
25 the defined words of terminology were always capitalized

1 or something, bolded.

2 MR. BRANCARD: Now you're running into the
3 style rules of the Records Center and Archives.

4 COMMISSIONER BALCH: I mean statute-wide
5 all the way across the state. That way you know it's a
6 definition.

7 MR. BRANCARD: Right. And, unfortunately,
8 the Records Center follows the format of the statutes,
9 which tends to capitalize hardly anything.

10 COMMISSIONER BALCH: I would be in favor of
11 changing "fluid" to "fluids," and "fluids means any
12 materials or substances which flow or moves, whether
13 it's semi-solid liquid, sludge, gas or any other form or
14 state." Basically just pluralizing it, because every
15 use of it in the document except for one definition is
16 plural.

17 MR. BRANCARD: So just change the word
18 "fluid" to "fluids"?

19 COMMISSIONER BALCH: Yeah. We'd have to
20 make "material and substances" in that definition plural
21 as well. "Means many materials or substances" would
22 probably work also.

23 CHAIRWOMAN RILEY: Plural would be --
24 "flows" would be "flow"?

25 MR. BRANCARD: Yeah. Then you've got to

1 change "flow" and "move."

2 CHAIRWOMAN RILEY: Does it matter?

3 MR. BRANCARD: I do not think it matters.

4 COMMISSIONER MARTIN: I kind of like the
5 way it is because it mirrors the EPA definition, and
6 that's the purpose of the definition.

7 COMMISSIONER BALCH: That's the whole
8 point. Okay.

9 CHAIRWOMAN RILEY: Do we want to go through
10 from the very beginning --

11 MR. BRANCARD: Yeah.

12 CHAIRWOMAN RILEY: -- and just say that
13 we're okay with these changes? Some of these changes --
14 I think Bill was the one that drafted this and went
15 through and cleaned up basically other cleanups, right?
16 So in other words, "Issuing Agency," instead of it being
17 "Energy, Minerals," all that.

18 MR. BRANCARD: Right. We're trying to be
19 consistent now with all of our rulemaking, since it's
20 the Commission that issues the rules. For some reason
21 in the past, it was listed as the Division. But now the
22 Commission is required by statute to be the one who
23 holds the hearing.

24 CHAIRWOMAN RILEY: Okay. So I propose
25 we're okay with change number one, which is .1.

1 .2, under Scope --

2 MR. BRANCARD: So the changes -- the
3 changes to Sections 2, 3, 6 and 8A are all intended --
4 because what happened in this rule, as you can see, is
5 there are attempts to sort of discuss the scope of the
6 rule in various places, and they're not all consistent.
7 You know, sometimes it mentions enhanced recovery.
8 Sometimes it mentions the type of fluids that go in
9 there. And so, you know, under 3, it talks about
10 repressuring and cycling. And so got rid of all those
11 sort of lists in 2, 3, 6 and 8A and replaced it with
12 8.A(1), which is the definition of a Class 2 well under
13 the EPA regulations, which is what this program is
14 intended to do, to regulate Class 2 wells. So it's
15 avoiding a lot of inconsistencies and concerns, I think,
16 that have been raised by stakeholders that, you know, is
17 everything that we do covered?

18 COMMISSIONER BALCH: I have no problem with
19 the "scope."

20 "Statutory authority," really it's just
21 listing the relevant statutes and taking out language
22 that is perhaps otherwise confusing.

23 MR. BRANCARD: Right.

24 And also in "scope," a sentence was added
25 because there are other types of injection wells that

1 are regulated under other statutes, and this just makes
2 it clear that we're only regulating injection wells
3 under the Oil and Gas Act, that the Class 1, 3, other,
4 et cetera, 5 wells that are regulated under the Water
5 Quality Act, Geothermal Act or even the Surface Mining
6 Act, which is next to coal mines, that's a different EPA
7 delegation to other agencies. So, therefore, this rule
8 has nothing to do with those wells.

9 CHAIRWOMAN RILEY: Yeah. And I'm good with
10 "scope."

11 COMMISSIONER BALCH: Yup.

12 CHAIRWOMAN RILEY: "Statutory authority"?

13 COMMISSIONER BALCH: Yup.

14 COMMISSIONER MARTIN: Yeah.

15 CHAIRWOMAN RILEY: That one's good?

16 COMMISSIONER BALCH: And the objective
17 makes it clear it's just UIC Class 2 wells.

18 CHAIRWOMAN RILEY: Uh-huh.

19 COMMISSIONER BALCH: I'm also good with
20 that.

21 COMMISSIONER MARTIN: Me, too.

22 CHAIRWOMAN RILEY: Okay.

23 And then how about removing "affected
24 persons" as a definition, since we did take care of that
25 definition in a previous rulemaking?

1 COMMISSIONER MARTIN: I agree.

2 Adding "fluid." We just talked about that.
3 That's okay.

4 And then "water flood project." Adding --
5 substituting "fluid" in for "water" and removing the
6 last part of that sentence.

7 MR. BRANCARD: Do you want to get back to
8 that later after you --

9 COMMISSIONER BALCH: I don't think they
10 really conflict with the other definitions because
11 they're projects instead of pressure maintenance and
12 produced water and enhanced oil recovery.

13 COMMISSIONER MARTIN: I'm going to agree
14 with what Mr. Brancard was about to say. We table that
15 until we talk about the NMOGA changes, just as a
16 suggestion.

17 COMMISSIONER BALCH: I thought we were just
18 talking about the NMOGA changes now while we're in --
19 because we have competing proposals.

20 CHAIRWOMAN RILEY: We do.

21 COMMISSIONER MARTIN: Okay. In that case I
22 tend to agree with NMOGA to strike both of those
23 definitions, unless we make them consistent with the
24 general definitions. Then they become superfluous.

25 COMMISSIONER BALCH: Well, the problem

1 there is there is not a definition of a pressure
2 maintenance project. There is a definition of pressure
3 maintenance. The broader question would be: Do you
4 need to have a definition of pressure maintenance
5 project when there is a definition of pressure
6 maintenance already?

7 COMMISSIONER MARTIN: I agree with Phil
8 that it needs to be done, but this is the wrong place
9 for it.

10 COMMISSIONER BALCH: All right. I don't
11 know if we really need it here. It seems like they're
12 taking good care of that statutorily when the
13 applications come in.

14 COMMISSIONER MARTIN: Sounds like that to
15 me, too.

16 COMMISSIONER BALCH: Already have a process
17 for it.

18 Now, for water flood project, there is not
19 a definition in the previous areas, although it does
20 fall under secondary recovery. However, it seems like
21 if you're going to specifically call out water flood
22 project, perhaps you also need to call out other
23 tertiary processes, CO2, polymers, surfactants, fire
24 plugs.

25 MR. BRANCARD: Well, by putting the word

1 "fluid" instead of "water," you're turning water flood
2 into something a lot more than water floods.

3 COMMISSIONER BALCH: It would be a fluid
4 flood project.

5 MR. BRANCARD: It would be a fluid flood
6 project.

7 (Laughter.)

8 COMMISSIONER MARTIN: Water flood is kind a
9 generally accepted term, and it covers a lot of
10 different things informally that's being injected.

11 COMMISSIONER BALCH: Nobody puts pure H2O
12 into a reservoir.

13 COMMISSIONER MARTIN: No.

14 COMMISSIONER BALCH: It's always produced
15 water with some measure of dissolved solids and other
16 things in it.

17 COMMISSIONER MARTIN: And there are a lot
18 of water flood unit agreements out there that are --

19 CHAIRWOMAN RILEY: I am okay as well with
20 taking out B and C that are in NMOGA's changes.

21 COMMISSIONER BALCH: I think that's well
22 addressed elsewhere.

23 COMMISSIONER MARTIN: I agree. Well, maybe
24 not completely based on the technology, but we need to
25 change the general definitions and the other section --

1 the main section of the rules.

2 CHAIRWOMAN RILEY: I think that's going to
3 be a deeper dive into this rule but not today.

4 MR. BRANCARD: If you take out "water
5 flood," that means that you're basically going to accept
6 NMOGA's changes to 8.F and G, because that's where
7 "water flood" is used?

8 COMMISSIONER BALCH: I'm inclined to do
9 that.

10 COMMISSIONER MARTIN: I am too, actually.

11 COMMISSIONER BALCH: And I didn't hear any
12 real objection from the OCD on that issue either.

13 COMMISSIONER MARTIN: Mr. Brooks said that
14 he had reviewed it and didn't think it would
15 substantially change the rule.

16 COMMISSIONER BALCH: So just clean up.

17 And I think the other really important
18 piece of language in that -- I guess it's the next thing
19 to talk about really, isn't it? No. We've got some
20 other stuff.

21 "Injection of Fluids in Reservoirs."
22 There's "fluids" again.

23 CHAIRWOMAN RILEY: Where are you?

24 I think he's on 8A.

25 So they agree with the removal of A, and

1 I'm good with that.

2 COMMISSIONER BALCH: There's a lot of
3 statement of the obvious in there.

4 MR. BRANCARD: Which section are you in?

5 COMMISSIONER BALCH: 26.8A., "Permit for
6 injection required."

7 MR. BRANCARD: Well, this is kind of
8 the -- with this proposal, this section becomes the core
9 of defining what the scope of this rule is. We've sort
10 of eliminated all the other little lists, and so this is
11 it. And this is not exactly but almost entirely the EPA
12 Class 2 well with a few little word changes.

13 COMMISSIONER BALCH: So it's adapted after
14 the EPA language?

15 MR. BRANCARD: Yes. So this is -- if you
16 look under the materials you were given in Exhibit 4,
17 144.6, which determines the classification of wells and
18 Class 2 wells, this is pretty much that definition, of a
19 Class 2 well. So the purpose -- what the Division is
20 trying to do is mesh what's under this rule with what
21 the EPA regulations cover. So we are doing what we're
22 supposed to do under primacy, and it's fairly broad.

23 COMMISSIONER BALCH: I think it's better
24 organized anyway than the wall of text paragraph they
25 had before.

1 CHAIRWOMAN RILEY: Uh-huh. I like it
2 better.

3 COMMISSIONER BALCH: Shall we accept all of
4 the changes to A, 26.8A?

5 COMMISSIONER MARTIN: I'm okay with that.

6 CHAIRWOMAN RILEY: And B?

7 COMMISSIONER BALCH: Well, I've already
8 stated my interest in making these things as broad as
9 possible, and that's accomplished by B.1.

10 CHAIRWOMAN RILEY: Yup.

11 COMMISSIONER BALCH: That leaves the door
12 open for anything new that they can invent. Tells them
13 to use the C-108.

14 MR. BRANCARD: New fluids.

15 COMMISSIONER BALCH: Nano particles,
16 stabilized CO2 foams.

17 MR. BRANCARD: Yeah (laughter.)

18 CHAIRWOMAN RILEY: I'm good with all of B.

19 COMMISSIONER MARTIN: All of which?

20 CHAIRWOMAN RILEY: "Method of making
21 application," so B.(1) and (2). Just the changes in
22 (2).

23 COMMISSIONER BALCH: So in B.(2) -- and I
24 realize this is something that probably needs to be
25 brought up later on, but in the hypothetical situation

1 that I posed earlier where someone is doing perhaps CO2
2 EOR or pressure maintenance in parallel horizontal
3 wells, at the very end of (2), where you say "contained
4 within one-half mile of the well," that might have you
5 drawing a circle around the kelly bushing and having two
6 miles of the well outside of that area. Maybe that's
7 addressed in the horizontal rule.

8 MR. BRANCARD: I mean, my feeling is that
9 B, C and D will need to be addressed in a future
10 rulemaking, that the whole process for doing notice,
11 timing of that notice is something -- obviously, we came
12 up with it in the Alpha-Delaware case with the 15 days
13 and when does it begin and end. The 15 days actually is
14 not in compliance with the EPA rule. The EPA rule gives
15 30 days.

16 COMMISSIONER BALCH: I guess what I'm
17 asking for, in B.(2), would be okay to add "bore" to the
18 end of (2)? So "partially contained within one-half
19 mile of the wellbore." That would cover the case of the
20 horizontal injector.

21 COMMISSIONER MARTIN: This is only
22 concerning surface -- surface ownership.

23 CHAIRWOMAN RILEY: Yeah. "Location to each
24 owner of the land surface on which each injection or
25 disposal well is to be located" --

1 COMMISSIONER MARTIN: Well, another well on
2 the surface within half mile.

3 COMMISSIONER BALCH: What if you're
4 injecting something into subsurface? When does the
5 mineral rights of the other people become at issue?

6 CHAIRWOMAN RILEY: You're back to "affected
7 persons."

8 MR. BRANCARD: Well, again, I think there
9 are a lot of implications here. I think what we've seen
10 in these AGI applications is that they're defining well
11 in the half mile as the bottom-hole location.

12 COMMISSIONER BALCH: Uh-huh.

13 COMMISSIONER MARTIN: That's not what this
14 says, though.

15 MR. BRANCARD: No.

16 COMMISSIONER BALCH: This just says "well."

17 COMMISSIONER MARTIN: This specifically
18 says "surface."

19 CHAIRWOMAN RILEY: That's for number one.

20 COMMISSIONER BALCH: Well, I think what I
21 would like it to say is within one-half mile of the
22 injection zone or injection perforations or whatever
23 part of the well is actively injecting.

24 MR. BRANCARD: The injection point? I
25 don't know.

1 CHAIRWOMAN RILEY: But if you go up to "and
2 other affected persons" --

3 MR. BRANCARD: I mean, I think this is
4 again something that will have a lot of implications
5 whichever way we go with it.

6 CHAIRWOMAN RILEY: If you go back and read
7 "affected persons," I think it's going to cover what
8 you're looking for.

9 COMMISSIONER BALCH: All right.

10 MR. BRANCARD: And I think "affected
11 persons" is a definition that in the future will need to
12 be addressed also.

13 COMMISSIONER MARTIN: I agree with what
14 you're saying. If you're affected downhole, that should
15 be covered under "affected persons." I see. I agree.

16 CHAIRWOMAN RILEY: Uh-huh. And that
17 they're capturing the surface owner in here --

18 COMMISSIONER MARTIN: Right.

19 CHAIRWOMAN RILEY: -- which isn't addressed
20 on the federal side.

21 I don't know that "leasehold operator"
22 needed to be in there. Isn't that already in "affected
23 persons"?

24 Right, Bill?

25 MR. BRANCARD: Yes. That's a curious

1 proposal. I mean, that's the language that's currently
2 there, "leasehold operator and other affected persons."

3 CHAIRWOMAN RILEY: I mean, it's not a big
4 deal. It's just --

5 MR. BRANCARD: I think they wanted to keep
6 that, not change that, thinking that might have some
7 implications and something to make it clear what
8 "affected persons" means, that there is a definition
9 somewhere else that defines it. So that's really the
10 only change there.

11 COMMISSIONER BALCH: So I guess working
12 interest owners is going to make sure that the
13 mineral -- affected minerals are probably going to be
14 covered. But I guess my concern is if you have toe of a
15 horizontal injection well -- and I'm kind of surprised
16 nobody has done this already with horizontals or
17 saltwater disposal. Maybe they have. But for a
18 horizontal injection well for an enhanced recovery of
19 some sort, you could be a couple miles away from your
20 surface location from your vertical portion, bottom-hole
21 location, heel of the well. And what about the surface
22 estate above that?

23 MR. BRANCARD: Well, I think all of those
24 issues are implicated in the new definition of "affected
25 persons." Okay? And at some point, that's going to

1 have to be addressed because I think there are just a
2 lot of questions, in my mind, about what the definition
3 of "affected person" does. Because if you look at it
4 now, we're no longer talking about a lease. We're
5 talking about the operator of a well. Okay? And,
6 again, where is that well located? What kind of well is
7 that? Is it an oil-gas well? An injection well? A
8 water well?

9 COMMISSIONER BALCH: For the UIC point of
10 view, you're interested in part of the well that goes
11 through any potentially impactable drinking water
12 aquifers. But if your well is underneath an aquifer for
13 two miles, they might also be concerned with that.

14 MR. BRANCARD: Well, you're concerned with
15 the drinking water issue, but for the purpose of the Oil
16 and Gas Act, you're concerned with the producing level
17 you may be injecting into, right?

18 COMMISSIONER BALCH: Absolutely.

19 MR. BRANCARD: Which is why we have this
20 "affected persons" getting specific notice, because that
21 relates to people whose producing or potentially
22 producing interests might be impacted by this disposal
23 well as opposed to just the drinking water, which is
24 what EPA cares about. EPA cares about the drinking
25 water. But they recognize in their rules that states,

1 oil and gas authorities may want to give greater notice
2 to oil and gas operators, mineral interest owners, et
3 cetera, that may be affected by a disposal well. So we
4 use this "affected persons," which we're also using for
5 other notice issues.

6 COMMISSIONER BALCH: Maybe I'm having a
7 hard time reading it or something, but I don't see much
8 in there that would give you guidance for what's going
9 on at the toe of a two-mile-long lateral that's
10 injecting fluids when you have a half-mile limit around
11 the well. So maybe I'm missing something in there, in
12 the "affected persons" definition, that would
13 incorporate that. I keep reading and I don't see it.
14 The thing that comes closest is probably C, but that
15 doesn't really give you guidance on who might be
16 impacted. Am I looking at the right definition of
17 "affected persons"?

18 MR. BRANCARD: Yes. Yes, you are. But
19 really I think the issue that you identified is "within
20 one-half mile of the well."

21 COMMISSIONER BALCH: What does that mean?

22 COMMISSIONER MARTIN: Surface-hole
23 location. That's the general area --

24 COMMISSIONER BALCH: Well, I think it would
25 actually be -- it would be the bottom-hole location.

1 COMMISSIONER MARTIN: I may be wrong, but I
2 don't think the area of review considers bottom-hole
3 location. I may be wrong.

4 COMMISSIONER BALCH: So it's surface hole.
5 But that can be radically different from where the
6 injection is occurring.

7 CHAIRWOMAN RILEY: But I think typically
8 the injection wells were vertical wells, so probably in
9 this language, they were considering one-half mile
10 around the vertical. But --

11 COMMISSIONER BALCH: So we already have the
12 deviated injection wells for acid gas, right? And
13 people are actively looking at secondary recovery in
14 horizontals. So I want to make sure that whatever we do
15 here doesn't preclude that.

16 CHAIRWOMAN RILEY: Uh-huh.

17 MR. BRANCARD: Well, this is language that
18 was not to be changed in this rulemaking.

19 COMMISSIONER BALCH: I know that.

20 MR. BRANCARD: And I'm concerned not just
21 because of that but because the Division folks have to
22 make sort of a practical decision, but they also have to
23 make a decision that is consistent with how EPA
24 interprets this, because this is a huge issue for EPA,
25 the area of review. And so EPA may have a whole other

1 way of looking at this that we're not aware of because
2 we didn't discuss this during the hearing.

3 COMMISSIONER BALCH: So in B.(2) --
4 26.8B.(2), I mean, they are making changes. Now, it's
5 mostly to include the new definition of "affected
6 persons."

7 MR. BRANCARD: Right.

8 COMMISSIONER BALCH: But, I mean, that
9 section is being changed. Now, we didn't get testimony
10 about it.

11 MR. BRANCARD: Right. I'm just -- you
12 know, it's -- it's the unintended consequences that we
13 seem to be running into a lot lately that I'm concerned
14 about.

15 CHAIRWOMAN RILEY: Changing stuff on the
16 fly.

17 MR. BRANCARD: And, you know, at this point
18 the Commission may simply want to identify issues that
19 need to be addressed because there will need to be a
20 further rulemaking.

21 COMMISSIONER MARTIN: Just make a note of
22 it?

23 MR. BRANCARD: Yeah.

24 COMMISSIONER BALCH: Can you include that
25 as a finding? Can you include those as findings in the

1 order?

2 MR. BRANCARD: Sure.

3 COMMISSIONER BALCH: So I think that would
4 not be a bad thing.

5 COMMISSIONER MARTIN: I agree.

6 COMMISSIONER BALCH: At least it's stored
7 somewhere.

8 MR. BRANCARD: Uh-huh.

9 CHAIRWOMAN RILEY: All right. So we're
10 good with (2) -- B.(2)?

11 COMMISSIONER BALCH: Such as it is.

12 COMMISSIONER MARTIN: I'm good.

13 CHAIRWOMAN RILEY: With reservations.

14 COMMISSIONER BALCH: Well, I think the
15 findings will take care of my concern.

16 CHAIRWOMAN RILEY: I don't remember this
17 getting talked about, but on E., where "produced" is
18 underlined, is that an addition, I'm assuming, since it
19 is underlined?

20 MR. BRANCARD: Yes, it is.

21 CHAIRWOMAN RILEY: All right.

22 MR. BRANCARD: Because at times during the
23 existing rule, there is a reference to water disposal
24 wells, and later, when you get into Section 12, they
25 started talking about saltwater disposal wells. And so

1 all of those were changed to read "produced water
2 disposal well." Produced water is a defined term
3 actually in the statute, and you can see why the
4 definition that's in Exhibit 5 -- it's a very broad
5 definition. So for the purpose of disposal wells, that
6 sort of clarifies what goes into a disposal well.

7 COMMISSIONER BALCH: So am I reading E.(3)
8 correctly, that the director can authorize disposal of
9 5,000 TDS water to 9,000 TDS brackish aquifer?

10 CHAIRWOMAN RILEY: Where are you reading?

11 COMMISSIONER BALCH: E.(3).

12 COMMISSIONER MARTIN: Are you just -- are
13 you interpreting a higher quality as 5,000 as opposed to
14 4,000? I would say 4,000 is higher quality.

15 COMMISSIONER BALCH: Yeah. Say you have a
16 9,000 TDS aquifer.

17 COMMISSIONER MARTIN: Right.

18 COMMISSIONER BALCH: So that falls into the
19 10,000 protectable water --

20 COMMISSIONER MARTIN: Right.

21 COMMISSIONER BALCH: -- 10,000 TDS
22 protectable water.

23 COMMISSIONER MARTIN: Right.

24 COMMISSIONER BALCH: If you have some
25 produced water that is either naturally or by treatment

1 5,000 TDS --

2 COMMISSIONER MARTIN: Uh-huh.

3 COMMISSIONER BALCH: -- it sounds like in
4 E.(3), the director would be allowed to let you inject
5 that in there.

6 COMMISSIONER MARTIN: That's what that
7 says, I think.

8 COMMISSIONER BALCH: That's very
9 interesting.

10 COMMISSIONER MARTIN: And I don't think
11 you're allowed to change the water quality either for
12 better or worse that is natural, whatever natural means
13 anywhere.

14 COMMISSIONER BALCH: So then you couldn't
15 inject?

16 COMMISSIONER MARTIN: I think that's right.

17 COMMISSIONER BALCH: So this is in
18 opposition to the --

19 COMMISSIONER MARTIN: I'm sure this has
20 been vetted by the group, though.

21 COMMISSIONER BALCH: If you put better
22 water quality into that aquifer, you will change its
23 composition. At the very least, you will change its
24 composition, if you don't change its TDS?

25 COMMISSIONER MARTIN: Right.

1 COMMISSIONER BALCH: Right?

2 COMMISSIONER MARTIN: Maybe that's just
3 surface water I'm thinking of. You can't improve the
4 quality by injecting --

5 COMMISSIONER BALCH: You certainly can't do
6 that.

7 COMMISSIONER MARTIN: Maybe it's surface
8 water.

9 COMMISSIONER BALCH: All right. I was just
10 curious about that.

11 COMMISSIONER MARTIN: You're okay with
12 "produced"?

13 CHAIRWOMAN RILEY: I am.

14 COMMISSIONER MARTIN: Me, too.

15 COMMISSIONER BALCH: Yeah.

16 MR. BRANCARD: And I think that avoids a
17 conflict between -- I mean, there are aquifer storage
18 wells that are now becoming a bigger issue, but they're
19 regulated -- they're regulated by the Environment
20 Department. So by calling this produced water, you're
21 avoiding anybody trying to get an aquifer storage well
22 under this rule.

23 CHAIRWOMAN RILEY: Okay. That takes us to
24 F, which is NMOGA's other change.

25 COMMISSIONER MARTIN: I think I'm okay

1 with it, although I'm hesitant because we're making kind
2 of a wholesale change to something that's been discussed
3 and vetted by the group -- the core group. I think I'm
4 a little uncomfortable with that idea, but, otherwise, I
5 see what NMOGA's trying to do.

6 CHAIRWOMAN RILEY: Yeah. I mean, I'm the
7 same. We, unfortunately, didn't discuss these changes
8 that came up after the fact, but just listening to
9 today, I don't see a big issue with it.

10 COMMISSIONER BALCH: I think mostly it's
11 just kind of compacting and making the language a little
12 more streamline.

13 COMMISSIONER MARTIN: I think so, too.

14 COMMISSIONER BALCH: The only thing that's
15 substantive in there is actually later on.

16 CHAIRWOMAN RILEY: The spacing and
17 proration?

18 COMMISSIONER BALCH: Let's see.
19 "Additional spacing or proration unit." So "spacing or"
20 basically allows you to do other horizontals. So I'm in
21 favor of that language --

22 COMMISSIONER MARTIN: I am, too.

23 COMMISSIONER BALCH: -- even though it was
24 not discussed by the group.

25 COMMISSIONER MARTIN: I am, too. I got the

1 impression the OCD was okay with that or at least Phil
2 was.

3 CHAIRWOMAN RILEY: Yeah. I'm good with all
4 of those.

5 So is everybody --

6 COMMISSIONER BALCH: I think it covers
7 everything. We're good.

8 CHAIRWOMAN RILEY: We good?

9 I don't know that we talked about storage
10 wells, number one, but I think it's just -- it doesn't
11 make sense there.

12 Is that why you took it out, Bill?

13 MR. BRANCARD: Let me see.

14 COMMISSIONER BALCH: Yeah. It's fine.

15 MR. BRANCARD: Yeah. It's grammatical.

16 CHAIRWOMAN RILEY: The next change is under
17 12, "Commencement," and A., changing "salt" to
18 "produced." Everybody good with that?

19 COMMISSIONER BALCH: Yeah. That can mean a
20 lot of things.

21 CHAIRWOMAN RILEY: Yeah.

22 So really the rest of the changes are to
23 change "salt water" to "produced water." I don't see
24 any other changes.

25 COMMISSIONER MARTIN: Taking out the words

1 "water flood," leaving the word "injection"? You're
2 talking about NMOGA's changes?

3 CHAIRWOMAN RILEY: Yeah. I don't see any
4 others.

5 COMMISSIONER MARTIN: There are several.

6 CHAIRWOMAN RILEY: Okay. I thought we had
7 said we were all okay with all those changes.

8 COMMISSIONER MARTIN: Oh.

9 COMMISSIONER BALCH: And the "shall" to a
10 "may" to make it consistent.

11 I think that's the first time I've seen
12 NMOGA request -- no. That's about right. They like
13 "may" better than "shall" always.

14 CHAIRWOMAN RILEY: It depends on if it's on
15 them or on the OCD, but --

16 COMMISSIONER BALCH: Yeah. In this case
17 you'd think they would like the "shall."

18 CHAIRWOMAN RILEY: They were just watching
19 out for us.

20 COMMISSIONER MARTIN: I'm sure that was
21 their intent.

22 CHAIRWOMAN RILEY: I think so.

23 Okay. So then under 13, "Records and
24 Reports," it was just changing "salt" to "produced."
25 And I'm good with that.

1 Mr. Brancard, are we ready to --

2 MR. BRANCARD: I think you've covered it --

3 CHAIRWOMAN RILEY: Now, do we need a
4 motion --

5 MR. BRANCARD: -- in good time.

6 CHAIRWOMAN RILEY: -- to approve the
7 changes?

8 COMMISSIONER MARTIN: I move we go back
9 into regular session.

10 CHAIRWOMAN RILEY: We are.

11 MR. BRANCARD: Well, you are.

12 CHAIRWOMAN RILEY: Aren't we?

13 COMMISSIONER MARTIN: I mean where they
14 (indicating) can talk again.

15 COMMISSIONER BALCH: Technically, we're
16 talking, although we haven't closed the record yet.

17 MR. BRANCARD: When you go into
18 deliberations, you've pretty much closed the record.

19 COMMISSIONER MARTIN: Okay.

20 COMMISSIONER BALCH: 99 percent.

21 MR. BRANCARD: We've bent that a little bit
22 in some rulemakings, but our procedures sort of view
23 that as two separate phases.

24 COMMISSIONER BALCH: I would -- I would
25 propose that we accept the modifications as proposed by

1 OCD, with certain modifications as suggested by NMOGA
2 and as have been adjusted by the Commission during
3 deliberation.

4 COMMISSIONER MARTIN: I second that
5 suggestion.

6 CHAIRWOMAN RILEY: Okay. So let's vote by
7 representation by saying aye if you agree.

8 COMMISSIONER BALCH: Aye.

9 COMMISSIONER MARTIN: Aye.

10 CHAIRWOMAN RILEY: Aye.

11 (Ayes are unanimous.)

12 CHAIRWOMAN RILEY: For the record, we've
13 approved these changes as stated in the motion.

14 Mr. Brancard?

15 MR. BRANCARD: Okay. And my recollection
16 was -- was the only change that the Commission made was
17 "fluid" to "fluids"?

18 CHAIRWOMAN RILEY: No. We didn't change
19 it.

20 COMMISSIONER BALCH: We didn't change it
21 because that was part of the EPA definition.

22 MR. BRANCARD: So you left that as "fluid"?

23 COMMISSIONER BALCH: Yes.

24 COMMISSIONER MARTIN: Yes.

25 COMMISSIONER BALCH: I'll write a letter to

1 EPA and tell them they should change it to "fluids."

2 MR. BRANCARD: Well, yeah, because even in
3 their own rules, when they use the word, they use
4 "fluids." They don't use "fluid."

5 COMMISSIONER BALCH: Fluid and fluids.

6 CHAIRWOMAN RILEY: One is a noun and the
7 other one is -- an adjective?

8 COMMISSIONER BALCH: You could have a
9 fluid, or you could have fluid movement.

10 CHAIRWOMAN RILEY: Uh-huh. Yeah.

11 So, Mr. Brancard, would you prepare the
12 order and the new language? And then what do we need to
13 do next? Just need to review it again?

14 MR. BRANCARD: Yeah. We can do it at the
15 next meeting.

16 COMMISSIONER BALCH: And to the extent that
17 you have it in your notes, findings that relate to
18 shortcomings of the rule would be useful, I think, for
19 future guidance.

20 MR. BRANCARD: Okay.

21 (Case Number 16377 concludes, 2:15 p.m.)

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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 DATED THIS 6th day of November 2018.

21

22

23 MARY C. HANKINS, CCR, RPR
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