

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

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

CASE NOS: 21281

IN THE MATTER OF PROPOSED
AMENDMENTS TO THE COMMISSION'S
RULES ON PRODUCED WATER,
19.15.2, 19.15.16 AND 19.15.34 NMAC.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
COMMISSIONER HEARING, VOLUME 1
Agenda Item
July 30, 2020
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
JORDAN KESSLER, COMMISSIONER
DR. THOMAS ENGLER, COMMISSIONER
MIGUEL LOZANO, ESQ.

This matter came on for virtual hearing before
the New Mexico Oil Conservation Commission on Thursday, July
30, 2020 through the New Mexico Energy, Minerals, and
Natural Resources Department, Webex Platform, Santa Fe, New
Mexico.

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1 CHAIRWOMAN SANDOVAL: Good morning, everybody. I
2 will call this meeting to order. It is 9:06 on July 30,
3 2020, and this is the special meeting of the New Mexico Oil
4 Conservation Division. I'm Adrienne Sandoval, Director of
5 the Oil Conservation, Chair of the Oil Conservation
6 Commission.

7 Will the Commissioners introduce themselves for
8 the record.

9 COMMISSIONER ENGLER: This is Tom Engler, and I'm
10 secretary designate.

11 CHAIRWOMAN SANDOVAL: Can you hear Dr. Engler?

12 PARTIES: Yes.

13 CHAIRWOMAN SANDOVAL: This is Jordan Kessler.
14 I'm the (inaudible).

15 (Discussion regarding sound.)

16 CHAIRWOMAN SANDOVAL: Thank you everybody for
17 bearing with us today. We may have a couple more issues
18 like this, and we will work through it as we go.

19 Also with us today is Miguel Lozano, counsel for
20 the Commission. And Florene Davidson, are you on Webex?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: We have confirmed that
23 Florene is on Webex. Florene Davidson is the Commission
24 clerk.

25 This is an electronic meeting in lieu of a public

1 (inaudible), however, it's still a public meeting conducted
2 (inaudible) with the Open Meetings Act NMSA 1978 Section
3 10-15-1-4. The public portions will be recorded and
4 transcribed by a court reporter as in a normal meeting.

5 The special protocol for public, attorney, and
6 member participation is as follows:

7 As a courtesy to our members and others
8 listening, all participants that are not identified parties
9 will be muted. Participants must identify themselves
10 whenever they speak and must be clearly audible to members
11 of the Commission, and members and parties or party
12 attorneys should avoid speaking over one another as much
13 as possible.

14 All votes of the Commission during this meeting
15 will conducted by roll call vote. Additionally, the Chair
16 will suspend the meeting if a disruption in the audio or
17 video occurs.

18 Approval of the agenda, there is a list of items
19 on today's agenda for the meeting. I have reviewed the
20 agenda and move that it be adopted. Is there a second?

21 COMMISSIONER KESSLER: (inaudible).

22 CHAIRWOMAN SANDOVAL: Commissioner Kessler
23 seconds the motion. Mr. Lozano, will you do a roll call.

24 MR. LOZANO: Yes, Madam Chair. Can you hear me?
25 Commissioner Kessler.

1 COMMISSIONER KESSLER: Approve.

2 MR. LOZANO: Commissioner Engler?

3 COMMISSIONER ENGLER: Approve.

4 MR. LOZANO: Chair Sandoval?

5 CHAIRWOMAN SANDOVAL: Approve. The agenda is
6 adopted unanimously.

7 (Agenda adopted unanimously.)

8 CHAIRWOMAN SANDOVAL: (inaudible) draft minutes
9 from the May 21, 2020 meeting. If you (inaudible) are there
10 any corrections?

11 COMMISSIONER KESSLER: Madam Chair, I have
12 reviewed the minutes from the (inaudible).

13 REPORTER: I'm sorry, I'm still not getting clear
14 sound.

15 COMMISSIONER ENGLER: This is Tom Engler, I also
16 reviewed the minutes and have no changes.

17 CHAIRWOMAN SANDOVAL: Mr. Lozano, will you do a
18 roll call vote, please?

19 MR. LOZANO: Commission Kessler?

20 COMMISSIONER KESSLER: Approve.

21 MR. LOZANO: Commissioner Engler?

22 COMMISSIONER ENGLER: Approve.

23 MR. LOZANO: Chair Sandoval?

24 CHAIRWOMAN SANDOVAL: Approve.

25 (Adoption of minutes unanimous.)

1 CHAIRWOMAN SANDOVAL: We will now proceed with
2 the rules hearing in Case Number 21281. To consider the
3 proposed amendments, the Commission rules 19.15.2, 19.15.16
4 and 19.15.34 regarding produced waters submitted to the Oil
5 Conservation Division at the May 6, 2020 meeting.

6 This meeting will be conducted in accordance with
7 the Open Meetings Act, the State Rules Act, and the
8 Commission's (inaudible) special procedures outlined in the
9 NMSA order issued May 22, 2020 (inaudible).

10 This hearing is being recorded both
11 electronically and through a court reporter. A copy of the
12 final transcript will be posted in the online case file on
13 OCD's website.

14 The Commission has received timely prehearing
15 statements from the following parties: New Mexico Oil
16 Conservation Division, New Mexico Oil and Gas Association,
17 WildEarth Guardians, Sierra Club Rio Grande Chapter and New
18 Energy Economy. Copies of the proposed amendments to the
19 rule have been and continues to be available on Division's
20 website in the rules tab.

21 The hearing will be conducted in a fair,
22 impartial manner to ensure the relevant facts are fully
23 elicited and to provide a reasonable opportunity for all
24 persons to be heard without making the hearing unreasonably
25 lengthy (inaudible) or burdening the record with the

1 (inaudible).

2 Rules of Civil Procedure shall not apply to this
3 hearing. As Hearing Officer, I will make such orders as may
4 be necessary to preserve decorum and to protect the orderly
5 hearing process.

6 The (inaudible) shall proceed as follows:
7 Commission counsel will present prefiled exhibits, copies of
8 exhibits entered into evidence are available for review by
9 the public in the case file on the OCD website.

10 Any testimony provided by the identified parties
11 will be taken under oath. As hearing officer, I will admit
12 any relevant evidence unless I determine that the evidence
13 is incompetent or unduly repetitious.

14 Pursuant to the procedural order and notice in
15 this matter, any person offering exhibits shall have
16 provided the exhibits to the Commission prior to the
17 hearing. Any exhibits not submitted prior to the hearing
18 may be admitted at the discretion of the Chair and only if
19 it's possible for the Commissioners and participating
20 parties to view the proposed exhibit during the relevant
21 testimony.

22 (Inaudible) of this formal hearing portion of
23 this hearing, any of the identified parties that wish to
24 make a brief opening statement before their presentation of
25 direct testimony may do so.

1 Immediately following opening statements, we will
2 allow for public comment. Pursuant to the notice and
3 procedural order, any individual that wishes to present
4 public comment or non-technical testimony regarding the
5 proposed rule changes should have notified the Commission
6 Clerk prior to this hearing. The Chair will call for public
7 comment based on the list compiled by the Commission Clerk
8 from the requests that we received. Public comment will be
9 limited to five minutes.

10 There has been some indication that members of
11 the public misunderstood the public (inaudible) process,
12 including the need to provide prior (inaudible). For this
13 reason and to ensure the full public participation is
14 permitted, the Commission Clerk will continue to take e-mail
15 requests for public comment until 3 p.m. today. So those
16 that make requests prior to that time will be permitted to
17 provide public comment at the start of the meeting tomorrow
18 morning.

19 We will discontinue the technical testimony
20 portion if it continues through today and recommence after
21 the public comment concludes tomorrow. So the technical
22 today is today. We will recess the hearing today and
23 conclude with public comment tomorrow morning. If you are
24 unable to remain on the meeting this morning to make public
25 comment when you are called, we will recall you tomorrow

1 morning to provide your comment.

2 After initial public comment concludes, the
3 Division will be permitted to present direct testimony under
4 rule (inaudible). Other parties that have filed a pre -- a
5 timely prehearing statement with the (inaudible) will
6 present that direct testimony in the order I establish.

7 Pursuant to the procedural order, all technical
8 witnesses should have provided written technical testimony
9 to the Commission prior to this hearing. The Commission
10 asks that testimony provided today does not repeat the
11 written testimony, but should supplement the testimony while
12 providing necessary context.

13 Cross-examination may include questions regarding
14 both the written and oral testimony. Because this hearing
15 is being transcribed, all persons presenting testimony must
16 be (inaudible) at all times. Prior to providing testimony,
17 please introduce yourself and state your affiliation.

18 Please remember that only one person may speak at
19 a time. For all of those persons testifying, please direct
20 your testimony and answer your questions -- answer the
21 questions to the Commission member.

22 Any person who testifies or provides public
23 comment is subject to cross-examine on the subject matter of
24 his testimony for public comment, as well as matters
25 affecting his credibility.

1 Cross-examination by the identified parties will
2 be conducted at the (inaudible) of each presentation
3 following cross-examine by the Commission and Commissioners.
4 Parties who have filed a prehearing statement are entitled
5 to conduct cross-examination of any witness.

6 As Hearing Officer, I may limit cross-examination
7 to avoid harassment, intimidation, needless expenditure of
8 time or undue repetition. After all technical testimony has
9 been provided, parties that have filed a prehearing
10 statement may present necessary rebuttal witnesses and the
11 (inaudible) closing arguments in the same order as the
12 direct testimony.

13 We will now proceed. Does the Commission counsel
14 have any prefiled exhibits to admit for the record?

15 MR. LOZANO: Madam Chair, the Commission was
16 presented with several premarked exhibits. I'm going to go
17 through them in order and get each parties' prehearing
18 statement and exhibits (inaudible) and then all with written
19 testimony.

20 Starting with Exhibit Number 1, Commission's
21 certificate of compliance with rules, notice requirements
22 with the following exhibits:

23 Legal notice published in the New Mexico Register
24 on June 9, 2020, Exhibit 1a;

25 1b, the legal notice published in the Albuquerque

1 Journal on May 29 and 30, 2020;

2 1c, notice of rule hearing posted on Board's
3 website on May 26, 2020;.

4 1d, notice of rule hearing posted on Sunshine
5 Portal, and;

6 1e, OCD notice sent to Small Business Regulatory
7 Advisory Commission.

8 Madam Chair, I don't believe we had (inaudible).
9 We probably should hear appearances from all the identified
10 parties.

11 CHAIRWOMAN SANDOVAL: Okay.

12 We would like to request appearances from
13 everybody who has filed a prehearing statement, the OCD, the
14 New Mexico Oil Conservation, please state your appearance.

15 (Audio interference.)

16 UNIDENTIFIED: Excuse me, can you hear me. Can
17 you guys speak louder (inaudible).

18 CHAIRWOMAN SANDOVAL: Does the OCD wish to enter
19 appearances?

20 MS. BADA: This is Cheryl Bada (inaudible) for
21 the Oil Conservation Division.

22 CHAIRWOMAN SANDOVAL: Thank you. For the Oil &
23 Gas Association enter its appearance.

24 MR. FELDEWERT: Madam Chair, members of the
25 Commission, this is Michael Feldewert with the Santa Fe

1 office of Holland & Hart appearing on behalf of the New
2 Mexico Oil & Gas Association.

3 CHAIRWOMAN SANDOVAL: Does WildEarth Guardians
4 wish to enter an appearance.

5 MR. TIMMONS: Yes, Madam Chair. This is Daniel
6 Timmons on behalf of WildEarth Guardians, here today with my
7 co-counsel, Samantha Ruscavage Barz.

8 CHAIRWOMAN SANDOVAL: Thank you. I will also
9 remind people that you need to speak one at a time, and
10 (inaudible) order we hear them (inaudible) will be actions
11 to (inaudible) ensure that we can have an orderly
12 (inaudible).

13 Sierra Club, Rio Grande Chapter, do you wish to
14 enter an appearance?

15 MR. MEIKLEJOHN: Yes, Madam Chair, members of the
16 Commission, my name is Douglas Meiklejohn. I'm a lawyer
17 with the New Mexico Environmental Law Center. I'm here with
18 my co-counsel, Cara Lynch.

19 CHAIRWOMAN SANDOVAL: Thank you. New Energy
20 Economy, do you wish to enter an appearance today?

21 MS. NANASI: Yes. Good morning, my name is
22 Mariel Nanasi. I'm the executive of New Energy Economy.
23 I'm an attorney.

24 Is it possible, I didn't hear who is going to
25 present on behalf of the Oil Conservation Division. Could

1 that person (inaudible) state her name? Thank you.

2 CHAIRWOMAN SANDOVAL: The person presenting on
3 behalf of the Oil Conservation Division is Cheryl Bada.

4 CHAIRWOMAN SANDOVAL: Okay. Commission counsel.

5 MR. LOZANO: Thank you, Madam Chair. I apologize
6 for (inaudible) I first ask that Exhibit 1 be (inaudible).

7 CHAIRWOMAN SANDOVAL: Wait a minute. Is there
8 any objections to the parties (inaudible).

9 MR. TIMMONS: I would object just because we
10 could not hear what exhibits were being admitted.

11 MR. LOZANO: I will restate. Can you hear me
12 now, sir?

13 MR. TIMMONS: Yes, thank you.

14 MR. LOZANO: Exhibit 1, Commission's certificate
15 of compliance (inaudible) requirements the following
16 exhibits:

17 1a, the legal notice published in the New Mexico
18 Register on June 9, 2020;

19 1b, the legal notice published in the Albuquerque
20 Journal on May 29 and 30, 2020;

21 1c, notice of rule hearing posted on Board's
22 website on May 26, 2020;

23 1d, notice of rule hearing posted on the Sunshine
24 Portal;

25 1e, OCD notice to Small Business Regulatory

1 Advisory Commission.

2 I would note that all of these are in the case
3 file, not necessarily in the (inaudible) generally.

4 Again, I will request that Exhibit 1 be admitted.

5 CHAIRWOMAN SANDOVAL: Are there any objections to
6 entering 1a through e into the record?

7 MS. NANASI: This is Mariel Nanasi from New
8 Energy Economy. I don't necessarily have any objections
9 (inaudible) it's very difficult to, one, hear what you are
10 saying, two, how come we don't have these exhibits like
11 posted right here to see what you are referring to.

12 It's very difficult to, to see them. And just to
13 say they are on the OCD website, we are focused right now
14 (inaudible) rather than seeing a document as part of this
15 hearing.

16 CHAIRWOMAN SANDOVAL: Miguel, would it help that
17 you --

18 (Discussion off the record.)

19 CHAIRWOMAN SANDOVAL: So all of the exhibits are,
20 if you search the case number, which is Case Number 21281,
21 under case file, on the hearing tab of OCD's website -- we
22 are looking to see if we can find a better way, so bear with
23 us for a moment.

24 MS. NANASI: Is there any share kind of tool on
25 this app or this Webex thing?

1 (Inaudible.)

2 (Pause.)

3 CHAIRWOMAN SANDOVAL: Anybody who takes over the
4 presentation and attempts to put their own information up on
5 here will be removed if it happens a second time. This will
6 count as your warning. If it happens again, we will remove
7 you. That goes for anybody who is (inaudible) sort of
8 action like that.

9 We are trying to work through sharing this
10 screen. As we said at the beginning of this meeting, we
11 will work through things as they arise, so please bear with
12 us.

13 MS. NANASI: Excuse me, while you're working
14 through, I want to ask (inaudible) this is Mariel Nanasi
15 (inaudible) can I do that, Madam Chair?

16 CHAIRWOMAN SANDOVAL: Go ahead.

17 MS. NANASI: What I want to ask you is, is the
18 order that you are setting for today that opening
19 statements, then public statements, and then Ms. Bada is
20 going to present for OCD? Is that, is that the way it will
21 work?

22 CHAIRWOMAN SANDOVAL: Yeah. So yes, opening
23 statements, and then public comment, and then it will be in
24 the order of the Oil Conservation Division, the New Mexico
25 Oil & Gas Association, WildEarth Guardians, Sierra Club and

1 New Energy Club -- New Energy Economy.

2 MS. NANASI: Thank you. And for instance I
3 understand that Sierra Club is giving testimony. When does
4 that happen?

5 CHAIRWOMAN SANDOVAL: That will happen after the
6 OCD and NMOGA and WildEarth Guardians -- oh, my apologies it
7 will happen directly after the Oil Conservation Division
8 presents their testimony.

9 MS. NANASI: When does the -- one last question,
10 I'm sorry, but when does the testimony happen? Does it
11 happen after opening statement or after public comment?

12 CHAIRWOMAN SANDOVAL: After public comment.

13 MS. NANASI: Thank you.

14 CHAIRWOMAN SANDOVAL: No problem.

15 Okay. It looks like we have been able to screen
16 share some of the exhibits. This is Exhibit 1a -- this is
17 Exhibit 1, and we can go through it briefly so that
18 everybody understands what exhibit it is, and then we will
19 go through and bring it into the record if approved.

20 MR. TIMMONS: Madam Chair, I'm -- this is Daniel
21 Timmons with WildEarth Guardians. I'm simply seeing a gray
22 screen being shared. I'm not sure if this is on my end or
23 if everyone else is having the same problem.

24 MS. BADA: I'm having the same problem.

25 MR. MEIKLEJOHN: This is Doug Meiklejohn. I also

1 am getting just a gray screen.

2 CHAIRWOMAN SANDOVAL: Okay. Let's go back then.

3 Can you see it now?

4 MR. TIMMONS: No.

5 MR. MEIKLEJOHN: No, Madam Chair.

6 CHAIRWOMAN SANDOVAL: Okay, we are going an
7 alternative mechanism. Again, I apologize, but hold on.

8 (Protester interference.)

9 PROTESTORS: Shut down the meeting, produced
10 water is toxic waste. Shut down the meeting, produced water
11 is toxic waste. Shut down the meeting, produced water is
12 toxic waste.

13 CHAIRWOMAN SANDOVAL: (Inaudible.)

14 PROTESTOR: This water is toxic waste, shut down
15 the meeting, produced water is toxic waste. Shut down the
16 meeting, produced water is toxic waste. Six million people
17 have died according to the WHL --

18 CHAIRWOMAN SANDOVAL: Mr. Carver, I issued you a
19 warning, and we are going to expel you from the meeting.
20 You were issued a warning earlier about interrupting the
21 meeting. This is your second time doing that and you will
22 be expelled from the meeting.

23 We will continue to hold decorum within this
24 meeting. This is a public hearing.

25 We have posted a way to Exhibit 1 in the chat.

1 Everything can be found on the OCD hearings page, and if you
2 go to the Case File 21281, Exhibit 1 is copied into chat.

3 (Inaudible. Protester interference.)

4 CHAIRWOMAN SANDOVAL: (Inaudible.) This is your
5 final warning. If you continue to do this, you will be
6 expelled from the meeting.

7 (Inaudible. Protester interference.)

8 CHAIRWOMAN SANDOVAL: All the parties who have
9 entered (inaudible) and we will move forward.

10 MR. MEIKLEJOHN: Madam Chair, this is Douglas
11 Meiklejohn. When you said that, did you mean Exhibit 1?

12 CHAIRWOMAN SANDOVAL: Yes.

13 MR. MEIKLEJOHN: Thank you.

14 REPORTER: I'm sorry, is somebody speaking? This
15 is the court reporter. Hello?

16 CHAIRWOMAN SANDOVAL: We are going to take a
17 20-minute break. We will be back approximately 10:05. We
18 will try and e-mail you all the exhibits in the meantime, so
19 please watch out for those. Please review them and then at
20 10:05 we will come back and try to hear from you on the
21 exhibits. Thank you.

22 (Recess taken.)

23 CHAIRWOMAN SANDOVAL: To give you an update, we
24 are still working on sending those files. They are quite
25 large. Looks like we got three of five packets through, so

1 there are going to be two more coming. Have the parties
2 received any of the e-mails, any of the three?

3 MR. TIMMONS: This is Daniel Timmons with
4 WildEarth Guardians, I received the first two of those
5 packets. My co-counsel (inaudible) forwarded them to her,
6 Ms. Ruscavage Barz.

7 CHAIRWOMAN SANDOVAL: Okay, great. There should
8 be two more coming. The files, again, are quite large, so
9 there may be a little bit of a delay.

10 (Pause in proceeding.)

11 CHAIRWOMAN SANDOVAL: All right, everybody.
12 Thank you for being patient. The exhibits have been
13 e-mailed to the parties. Parties, I will call you one by
14 one. Can you confirm whether or not you have received the
15 exhibits. Five e-mails, there should be 37 total.

16 Okay, Oil Conservation Division?

17 MS. BADA: We received them.

18 CHAIRWOMAN SANDOVAL: NMOGA?

19 MR. FELDEWERT: Yes, Madam Chair, Commission, we
20 received them and had access to them well in advance of this
21 hearing because of the posting on the Division's website.

22 CHAIRWOMAN SANDOVAL: Thank you. WildEarth
23 Guardians.

24 MR. TIMMONS: Yes, Madam Chair, we have received
25 them.

1 CHAIRWOMAN SANDOVAL: Sierra Club?

2 MR. MEIKLEJOHN: Madam Chair, this is Douglas
3 Meiklejohn. I have not received them, but that may be
4 because my phone -- wait a minute, they just came through
5 on my phone. I apologize.

6 CHAIRWOMAN SANDOVAL: Okay, great. New Energy
7 Economy, have you received them?

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: New Energy Economy?

10 MS. NANASI: Sorry, I was on mute. Sorry, I was
11 on mute. I'm just trying to download them now. Did you say
12 there are 37 hearing exhibits?

13 CHAIRWOMAN SANDOVAL: Correct.

14 MS. NANASI: Yes, I have.

15 CHAIRWOMAN SANDOVAL: Okay, great news. Thank
16 you everybody for your patience.

17 Okay. So I think we are going to go back and
18 then we'll walk through Exhibit 1 and try this again.

19 Commission Counsel, can you please present us the
20 exhibits?

21 MR. LOZANO: Yes, Madam Chair. And let me just
22 say, the 37 that were pushed out right now, those are what
23 we (inaudible) additional exhibits that are marked, anything
24 else will be sure to get all of those (inaudible).

25 We will start with Exhibit 1, the Commission's

1 certificate of compliance with notice requirements with the
2 following exhibits.

3 REPORTER: Mr. Lozano, this is Irene, the court
4 reporter. Could I get you to speak a little louder, please.

5 MR. LOZANO: Sure.

6 REPORTER: Thank you, I appreciate it.

7 MR. LOZANO: I'll try to slow down.

8 REPORTER: Thank you. It's not you, it's the
9 platform.

10 MR. LOZANO: Yes, ma'am. Exhibit 1, Commission's
11 certificate of compliance with notice requirements with the
12 following exhibits:

13 1a, the legal notice published in the New Mexico
14 Register on June 9, 2020, the legal notice --

15 1b, the legal notice published in the Albuquerque
16 Journal on May 29 and 30, 2020;

17 1c, notice of rule hearing posted on Board
18 website on May 26, 2020;

19 1d, notice of rule hearing posted on the Sunshine
20 Portal;

21 1e, OCD notice sent to Small Business Regulatory
22 Advisory Commission.

23 CHAIRWOMAN SANDOVAL: Thank you, Mr. Lozano. Are
24 there any objections entering them into the record from any
25 of the parties?

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: Hearing no comments --

3 MS. NANASI: Madam Commissioner, this is Mariel
4 Nanasi. I am with New Energy Economy. I would just object
5 to all of these exhibits being entered into the record, and
6 I will explain why.

7 I believe that you started this meeting saying
8 that this meeting was going to be held pursuant to the Open
9 Meetings Act. I believe that failure to provide these
10 documents to the people who are on this call, I think there
11 may be like 100 or something is a violation of the Open
12 Meetings Act.

13 To send them to just the attorneys of record is
14 not in compliance with the Open Meetings Act. That's my
15 stated objection, not only to Exhibit 1, but all the
16 exhibits because I don't think they complied with the
17 statute.

18 CHAIRWOMAN SANDOVAL: Thank you for your comment.
19 The Open Meetings Act does not require that the documents
20 are submitted to all members of the public, and therefore we
21 will -- Commissioners, do you have any questions on Exhibits
22 1a through e?

23 COMMISSIONER ENGLER: This is Tom Engler, I have
24 no questions.

25 COMMISSIONER KESSLER: I have no questions.

1 CHAIRWOMAN SANDOVAL: Okay. Exhibits 1a through
2 e will be admitted into the record. The objection from New
3 Energy Economy is overruled. 1a through e will be entered
4 into the record.

5 (Exhibits 1a through 1e admitted.)

6 CHAIRWOMAN SANDOVAL: Mr. Lozano, will you
7 discuss Exhibit 2.

8 MR. LOZANO: Yes, Madam Chair. Exhibit 2, the
9 proposed amendments to the Board rules 19.15.2, 19.15.16 and
10 19.15.34 NMAC, related to produced water were provided as
11 part of the Open Meetings Act.

12 CHAIRWOMAN SANDOVAL: Do any of the parties have
13 any opposition to entering it into the record?

14 MS. NANASI: Madam Hearing Examiner, this is
15 Mariel Nanasi. I would just make a continuing objection so
16 I don't have to interfere with your process if you will
17 acknowledge the objection and overrule it if you deem
18 appropriate.

19 CHAIRWOMAN SANDOVAL: Thank you, Ms. Nanasi.
20 Your objection on Exhibit 2 is overruled. The documents
21 were provided to the parties as is (inaudible) with the Open
22 Meetings Act. Commissioners, do you have any objections
23 about entering Exhibit 2 into the record?

24 COMMISSIONER ENGLER: No questions.

25 COMMISSIONER KESSLER: No questions.

1 CHAIRWOMAN SANDOVAL: Exhibit 2 is entered into
2 the record.

3 (Exhibit 2 admitted.)

4 CHAIRWOMAN SANDOVAL: Mr. Lozano, Exhibit 3?

5 MR. LOZANO: Madam Chair, Exhibit 3 is OCD's
6 prehearing statement as follows:

7 3a, proposed amendments;

8 3b, House Bill 546;

9 3c, written testimony of Bill Brancard, general
10 counsel;

11 3d, proposed modification from the New Mexico Oil
12 & Gas Association;

13 3e, powerpoint presentation of Bill Brancard;

14 3f, Form C-105;

15 3g, proposed water use report; and,

16 3h, certificate of compliance with notice
17 requirements. (inaudible) also admitted.

18 CHAIRWOMAN SANDOVAL: Parties, other than New
19 Energy Economy's rolling objection which is overruled, are
20 there any objections to entering this into the record?

21 MS. GREMILLION: I have an objection. I don't
22 know if I can be heard. Can you tell me if I'm being heard.

23 CHAIRWOMAN SANDOVAL: Yes.

24 DR. GREMILLION: This is Dr. Valerie Gremillion,
25 and I would like to make a request. Could you please, since

1 many of us did not have the opportunity to review the
2 submissions, could you please do at least a short summary of
3 each of the documents, like this is where the actual rules
4 are, or this is a mem -- I mean, you are sorting of doing
5 that, but there is no content whatsoever.

6 So in the light of the intention of the Sunshine
7 Rule, I would really appreciate if some level of sunshine
8 were provided with, you know, a description. In other
9 words, a description of that, this is a presentation is not
10 sufficient. Is it a presentation of the actual rules by
11 EMNRD? Is it a presentation of the proposed rules by Oil &
12 Gas? I would simply appreciate that. Thank you very much.

13 CHAIRWOMAN SANDOVAL: Thank you for your note. I
14 think the first item here is, right now only the parties who
15 entered an appearance are people who participate and speak
16 at this time.

17 And then secondly, they are all on the OCD
18 website. If you go to the OCD website and go to hearings,
19 and you go to OCD imagery and type in the case number, you
20 will -- all of these items will pop up, and you will observe
21 those at your leisure.

22 Okay. Exhibit 3, are there any objections from
23 the parties to entering these into the record other than New
24 Energy Economy's rolling objection which has been overruled.

25 (No audible response.)

1 CHAIRWOMAN SANDOVAL: Okay. I will take the
2 silence as there are no objections from any of the parties.
3 Commissioners, do you have any objections?

4 COMMISSIONER ENGLER: No objection.

5 COMMISSIONER KESSLER: No objection.

6 CHAIRWOMAN SANDOVAL: No questions or objections
7 from the Commissioner. Exhibit 3 will be entered into the
8 record.

9 (Exhibit 3 admitted.)

10 CHAIRWOMAN SANDOVAL: Mr. Lozano?

11 MR. LOZANO: Madam Chair, Exhibit 4, prehearing
12 statement for the New Mexico Oil & Gas Association including
13 proposed changes to the draft rule.

14 CHAIRWOMAN SANDOVAL: Thank you, Mr. Lozano.

15 Parties, do you have any objections to entering
16 in Exhibit 4, other than New Energy Economy's rolling
17 objection which has been overruled.

18 (No audible response.)

19 CHAIRWOMAN SANDOVAL: Okay. I will take silence
20 as there are no objections from any of the parties.

21 MR. TIMMONS: (inaudible) Madam Chair, I was on
22 mute. I was attempting to object. This is Daniel Timmons
23 with WildEarth Guardians.

24 I object to the entrance of Exhibit 4. This
25 document was improperly served. As indicated in the

1 certificate of service, it was e-mailed through Cheryl Bada,
2 as opposed to Florene Davidson, which is required under the
3 procedural order for this matter. That is the proper means
4 of will filing a document.

5 This is a substantive error because -- because of
6 that result, this document was not placed on OCD's website
7 on July 17, but not until July 27. So I believe that
8 WildEarth Guardians and the other participants are
9 prejudiced by the participation of NMOGA as a party in this
10 proceeding.

11 CHAIRWOMAN SANDOVAL: So at the time it was
12 served, the only other party of record was Cheryl Bada, and
13 it has been on the portal for a number of days now, so your
14 objection is overruled. Are there any other objections from
15 any of the other parties?

16 (No audible response.)

17 CHAIRWOMAN SANDOVAL: Commissioners, do you have
18 any objections to entering Exhibit 4.

19 COMMISSIONER KESSLER: No.

20 COMMISSIONER ENGLER: No objection.

21 CHAIRWOMAN SANDOVAL: Okay. Exhibit 4 is entered
22 into the record.

23 (Exhibit 4 admitted.)

24 CHAIRWOMAN SANDOVAL: Mr. Lozano, will you
25 discuss Exhibit 5, please.

1 MR. LOZANO: Yes, Madam Chair. Exhibit 5,
2 prehearing statement from WildEarth Guardians including
3 proposed changes to Draft Rule.

4 Exhibit 5a, EPA Report: Hydraulic Fracturing for
5 Oil and Gas; Impacts from the Hydraulic Fracturing Water
6 Cycle on Drinking Water Resources in the United States;

7 5b, Journal Article: Produced Water in the
8 Western United States, Geographical Distribution,
9 Occurrence, and Composition;

10 5c, Journal Article: Unconventional Oil and Gas
11 Development and Risk of Childhood Leukemia, Assessing the
12 Evidence;

13 5D, Journal Article: Endocrine-Disrupting
14 Chemicals and Oil and Natural Gas Operations, Potential
15 Environmental Contamination and Recommendations to Assess
16 Complex Environmental Mixtures;.

17 5e, PowerPoint: New Mexico Environmental
18 Department Report on Ozone Attainment Initiative;

19 5f, Article: EPA Radiation Waste Material from
20 Oil and Gas Drilling;

21 5g, Article: America's Radioactive Secret,
22 Rolling Stone;

23 5h, Journal Article: An Integrative Method of
24 Identification and Prioritization of Constituents of Concern
25 in Produced Water from Onshore Oil and Gas Extraction;

1 5i, search results from NMOCD permitting, spill
2 search database;

3 5j, Article: It Was Raining On Us, Family Awoken
4 by Produced Waterpipe Burst Near Carlsbad;

5 5k, EPA Report: Exemption of Oil and Gas
6 Exploration and Production Wastes from Federal Hazardous
7 Waste Regulations.

8 CHAIRWOMAN SANDOVAL: Before addressing the
9 parties, I want to confirm, since that was a lot, that the
10 court reporter was able to gather that information.

11 REPORTER: I am, thank you.

12 CHAIRWOMAN SANDOVAL: Do you have any objections
13 to entering Exhibit 5 into the record?

14 DR. GREMILLION: I have a question. I apologize
15 for interrupting again. This is Dr. Valerie Gremillion. As
16 we only have a listing of titles of documents, which again
17 are many dozens, I would formally request that Mr. Lozano
18 please reference the name of the actual file which you guys
19 should be able to see on your own website there, and that
20 way we can actually open up the relevant document to check
21 whether or not the official filing people have a reason to
22 object.

23 Right now no one -- we cannot search through 100
24 documents to find the one that you are mentioning as they
25 are not labeled as such. And that would be very

1 appreciated.

2 CHAIRWOMAN SANDOVAL: Again, thank you, Madam.
3 Please do not interrupt again. This is your (inaudible) to
4 the parties. All of the documents are available on the OCD
5 portal, and right now we're addressing the parties who have
6 entered their appearances.

7 If you wish to participate in this type of manner
8 in the future, you must enter an appearance. Thank you.

9 Exhibit 5, parties, do you have any objection to
10 being entered into the record.

11 (No audible response.)

12 CHAIRWOMAN SANDOVAL: I'm hearing no objection,
13 therefore I take that as no issues with it being entered
14 into the record. Commissioners, do you have any questions
15 or concerns with entering in Exhibit 5?

16 COMMISSIONER KESSLER: No questions.

17 COMMISSION ENGLER: No questions, no objection.

18 CHAIRWOMAN SANDOVAL: Thank you. Exhibit 5 is
19 now entered into the record.

20 (Exhibit 5 admitted.)

21 CHAIRWOMAN SANDOVAL: Mr. Lozano, Exhibit 6?

22 MR. LOZANO: Yes, Madam Chair. Exhibit 6, Sierra
23 Club prehearing statement:

24 6a, resume of the Camilla Catherine Feibelman;

25 6b, resume of Norman Gaume;

1 6c, written testimony of Norman Gaume;
2 6d, proposed changes to draft rule; and,
3 6e, which was filed separately, notice of errata
4 for prehearing statement of Sierra.

5 CHAIRWOMAN SANDOVAL: Thank you, Mr. Lozano.

6 Parties, do you have any objections to entering
7 Exhibit 6 into the record?

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: I'm hearing no objection
10 from the parties. Commissioners?

11 COMMISSIONER ENGLER: No objection.

12 COMMISSIONER KESSLER: No.

13 CHAIRWOMAN SANDOVAL: Thank you. Exhibit 6 is
14 entered into the record.

15 (Exhibit 6 admitted.)

16 CHAIRWOMAN SANDOVAL: Exhibit 7, Mr. Lozano?

17 MR. LOZANO: Madam Chair, Exhibit 7, prehearing
18 statement of New Energy Economy.

19 CHAIRWOMAN SANDOVAL: Are there any objections
20 from the parties entering in Exhibit Number 7 into the
21 record?

22 (No audible response.)

23 CHAIRWOMAN SANDOVAL: I'm hearing no objection
24 from any of the parties. Commissioners, do you have any
25 objections?

1 COMMISSIONER KESSLER: None.

2 COMMISSIONER ENGLER: No objection.

3 CHAIRWOMAN SANDOVAL: Thank you. Exhibit 7 is
4 entered into the record.

5 (Exhibit 7 admitted.)

6 CHAIRWOMAN SANDOVAL: The follows exhibits are
7 written comments.

8 MR. LOZANO: Madam Chair, if you allow me, I will
9 give you (inaudible).

10 Beginning with Exhibit 8, written comment
11 received from Amigos Bravos;

12 Exhibit 9, written comment received from
13 Environmental Defense Fund and Audubon New Mexico;

14 Exhibit 10, written comment received from Walker
15 Durell;

16 Exhibit 11, written comment received from
17 Katherine Smith;

18 Exhibit 12, written comment received from Diane
19 Forsdale -- that was (inaudible).

20 MS. NANASI: Madam, this is Mariel Nanasi.
21 According to what you sent us, actually Exhibit 12 is the
22 written comment of Megan Schendel.

23 CHAIRWOMAN SANDOVAL: Yes, Mr. Lozano made an
24 error. He is going to restate.

25 MR. LOZANO: Yes, ma'am.

1 So Exhibit 12 is actually a written comment from
2 Megan Schendel.

3 CHAIRWOMAN SANDOVAL: Thank you. Let the record
4 reflect the change to Exhibit 12.

5 Parties, do you have any objections to admitting
6 Exhibits 8 through 12?

7 (No audible response.)

8 CHAIRWOMAN SANDOVAL: Hearing no objection.
9 Commissioners?

10 COMMISSIONER KESSLER: No objection.

11 COMMISSIONER ENGLER: No objection.

12 CHAIRWOMAN SANDOVAL: Exhibits 8 through 12 are
13 admitted into the record.

14 (Exhibits 8 through 12 admitted.)

15 CHAIRWOMAN SANDOVAL: Exhibit number 13, Mr.
16 Lozano.

17 MR. LOZANO: Yes, Madam Chair.

18 Exhibit Number 13, written comment from Diane
19 Forsdale;

20 Exhibit Number 14, written comment from Jeff
21 Silesky;

22 Exhibit Number 15, written comment received from
23 Mike Neas;

24 Exhibit Number 16, written comment received from
25 Robert Ingliss; and,

1 Exhibit Number 17, written comment received
2 from Erica Belle Benedetti.

3 CHAIRWOMAN SANDOVAL: Thank you. Parties, do you
4 have any objections to entering Exhibits 13 through 17?

5 (No audible response.)

6 CHAIRWOMAN SANDOVAL: I'm hearing no objection.
7 Commissioners?

8 COMMISSIONER ENGLER: No objection.

9 COMMISSIONER KESSLER: No objection.

10 CHAIRWOMAN SANDOVAL: Exhibit 13 through 17 have
11 been entered into the record.

12 (Exhibits 13 through 17 admitted.)

13 CHAIRWOMAN SANDOVAL: Mr. Lozano?

14 MR. LOZANO: Madam Chair, Exhibit Number 18,
15 written comment received from Elaine Cimino;

16 Exhibit Number 19, written comment received from
17 the State Land Office;

18 Exhibit Number 20, written comment received from
19 Lonnie Rowell;

20 Exhibit Number 21, written comment received from
21 Justin Nobel with two attachments;

22 21a, Article: NORM Contamination in the
23 Petroleum Industry;

24 21b, Article: An Analysis of the Impact of the
25 Regulation of Radionuclides as a Hazardous Air Pollutant on

1 the Petroleum Industry;

2 Exhibit Number 22, written comment received from
3 Kelly Lee.

4 CHAIRWOMAN SANDOVAL: Parties, are there any
5 objections to entering Exhibits Number 18 through 22?

6 (No audible response.)

7 CHAIRWOMAN SANDOVAL: I'm hearing no objection
8 from the parties. Commissioners, do you have any
9 objections.

10 COMMISSIONER ENGLER: No objection.

11 COMMISSIONER KESSLER: No objection.

12 CHAIRWOMAN SANDOVAL: No objection. Exhibits 18
13 through 22 will be entered into the record.

14 (Exhibits 18 through 22 admitted.)

15 CHAIRWOMAN SANDOVAL: Mr. Lozano?

16 MR. LOZANO: Madam Chair, Exhibit Number 23,
17 written comment received from Lura Brookins;

18 Exhibit Number 24, written comment received from
19 Thomas A. Mavilia;

20 Exhibit Number 25, written comment received from
21 Karen Cohen;

22 Exhibit Number 26, written comment received from
23 Richard Welker;

24 Exhibit Number 27, written comment received from
25 Diane MacInnes, with three subparts; Article --

1 Exhibit 27a, Article: Regulation Lax as Gas
2 Wells' Tainted Water Hits Rivers;

3 27b, Article: Wastewater Recycling No Cure-All
4 in Gas Process;

5 27c, Article: Waste Water Byproducts of Shale
6 Gas Drilling and Fracking.

7 CHAIRWOMAN SANDOVAL: Parties, do you have any
8 objection entering in Exhibits 23 through 27?

9 (No audible response.)

10 CHAIRWOMAN SANDOVAL: I'm hearing no objection
11 from any of the parties. Commissioners?

12 COMMISSIONER KESSLER: No objection.

13 COMMISSIONER ENGLER: No objection.

14 CHAIRWOMAN SANDOVAL: Exhibits 23 through 27 are
15 now entered into the record.

16 (Exhibits 23 through 27 admitted.)

17 CHAIRWOMAN SANDOVAL: Mr. Lozano, 28.

18 MR. LOZANO: Madam Chair, Exhibit Number 28, a
19 written comment received from Rebecca Sobel, including a
20 letter from Tribal Governments;

21 Exhibit 29, written comment received from Joa
22 Dattilo;

23 Exhibit 30, written comment received from Anita
24 Rodriguez;

25 Exhibit Number 31, Press release from the

1 Coalition for Clean Affordable Energy provided by Rebecca
2 Sobel;

3 Exhibit 32, written comment received from Anni
4 Hanna.

5 CHAIRWOMAN SANDOVAL: Thank you. Parties, do you
6 have any objections to entering in Exhibits 28 through 32?

7 (No audible response.)

8 CHAIRWOMAN SANDOVAL: I'm hearing no objection
9 from the parties. Commissioners, do have any objection?

10 COMMISSIONER KESSLER: No objection.

11 COMMISSIONER ENGLER: No objection.

12 CHAIRWOMAN SANDOVAL: Exhibits 28 through 32 are
13 now entered into the record.

14 (Exhibits 28 through 32 admitted.)

15 CHAIRWOMAN SANDOVAL: Mr. Lozano?

16 MR. LOZANO: Madam Chair, Exhibit Number 33,
17 written comment received from Gene Harbaugh;

18 Exhibit Number 34, written comment received from
19 Barbara Conroy;

20 Exhibit Number 35, written comment received from
21 the New Mexico Environment Department;

22 Exhibit Number 36, written comment received from
23 Robert J. Baroody;

24 Exhibit Number 37 includes all requests for oral
25 comment as of 5 p.m. yesterday that were in the (inaudible).

1 CHAIRWOMAN SANDOVAL: Thank you. Parties, do you
2 have any objections to entering Exhibits 33 through 37?

3 (No audible response.)

4 CHAIRWOMAN SANDOVAL: I'm hearing no objections
5 from the parties. Commissioners?

6 COMMISSIONER KESSLER: No objection.

7 COMMISSIONER ENGLER: No objection.

8 CHAIRWOMAN SANDOVAL: Thank you. Exhibits 33
9 through 37 have been entered into the record, which
10 concludes all of the exhibits.

11 (Exhibits 33 through 37 admitted.)

12 MR. LOZANO: Madam Chair, there has already been
13 a request to (inaudible).

14 CHAIRWOMAN SANDOVAL: Thank you, Mr. Lozano. If
15 there are no other preliminary matters, we will now hear
16 opening statements from the identified parties. Parties
17 that plan to call witnesses may reserve their opening until
18 the beginning of their presentation of (inaudible).

19 MR. TIMMONS: Thank you, Madam Chair. I do have
20 a preliminary matters that I would like to address before we
21 get to opening statements. This is Daniel Timmons with
22 WildEarth Guardians.

23 CHAIRWOMAN SANDOVAL: Please proceed.

24 MR. TIMMONS: As an initial matter, we are
25 concerned that no agenda was made publicly available before

1 this meeting 72 hours in advance as required under the New
2 Mexico Open Meetings Act.

3 The public notice for this hearing that was
4 distributed also specifically indicated that the Commission
5 would make a preliminary agenda available two weeks in
6 advance and that final agenda at least 72 hours before the
7 meeting.

8 To date, no one, outside of the Commission, to my
9 knowledge has seen that agenda. Under OCD's rulemaking
10 procedures at Chapter 19 Chapter 15 Part 3 13 A. It's clear
11 that at the very least the Commission cannot take any action
12 on this rulemaking proposal as part of this hearing because
13 there has been no agenda provided informing the public that
14 such a decision will be made here.

15 We would encourage the public, in particular in
16 light of the technical difficulties that we have had, we
17 would encourage the Commission to provide an additional
18 opportunity for public comment prior to any decision on this
19 matter. That is my first objection.

20 My second objection relates to the statement made
21 earlier that individuals offering public comments here today
22 would be subject to cross-examination. That procedure is
23 not contemplated under the Commission's rules or under the
24 procedural order for this hearing.

25 There is a distinction between non-technical oral

1 testimony, for which cross-examination is permissible, and
2 unsworn public comment for which it is not. Subjecting the
3 public to cross-examination in order to offer public
4 statement here at a public meeting is chilling repression of
5 free speech and raises serious concerns under the First
6 amendment and under the procedures of this body. That is my
7 second objection.

8 My third request would be that the chat that is
9 currently ongoing in this Webex hearing be incorporated as
10 part of the public record of this meeting. I think it
11 provides important indications regarding the technical
12 difficulties and the inability of the public to participate
13 and to fully apprise themselves of the -- of these
14 proceedings and of the public business that is being
15 conducted here today.

16 Finally, I will, I guess, second the objections
17 of Dr. GREMILLION, that the docs -- the documents which OCD
18 has made available on OCD's website are inadequate to inform
19 the public of what's going on, in particular because those
20 documents -- and there is more than 100 of them on there,
21 are simply labeled by the file size and the date of upload,
22 and so there is no indication for the public, and it's very
23 limiting for the public's ability to be able to track the
24 documents and find the exhibits that are being discussed.
25 So I would object to that being a serious problem of

1 allowing the public to participate, follow these proceedings
2 and inform their public comment when that opportunity
3 arises.

4 So those are my four objections or requests.

5 CHAIRWOMAN SANDOVAL: I want to try to make sure
6 I cover each one of them.

7 For your first objection regarding the agenda,
8 the agenda has been posted on the website for (inaudible)
9 time. That objection is overruled.

10 I believe your second objection was referring to
11 cross-examination, that was noted within the rule hearing
12 order and notice, and so that procedure is well established.
13 That is also overruled.

14 Your other item regarding the documents not being
15 made available to the public, again, those are all on the
16 OCD website. You can click on each one of them and
17 determine what it is, therefore that objection is also
18 overruled.

19 I believe you had four. Which one am I missing.

20 MR. TIMMONS: I also request that the chat be
21 incorporated as part of these proceedings.

22 CHAIRWOMAN SANDOVAL: If that's possible, we will
23 incorporate those. This is being recorded which I believe
24 records the chat, we will have to confirm that, but if it
25 is, if we are able to do that we will enter that into the

1 record. I believe that addresses your four items.

2 (No audible response.)

3 CHAIRWOMAN SANDOVAL: I'm hearing no other
4 comments, are there any other preliminary matters from any
5 other parties?

6 (No audible response.)

7 CHAIRWOMAN SANDOVAL: Thank you.

8 Does the Oil Conservation Division wish to make a
9 brief opening statement?

10 MS. BADA: The OCD would like to make an opening
11 statement.

12 CHAIRWOMAN SANDOVAL: Thank you. Please proceed.

13 MS. BADA: Madam Chair, Commissioners, as
14 discussed in William Brancard's written testimony, the Oil
15 Conservation Division filed this application proposing
16 amendments to the Commission's rules in case Number 21281
17 for limited purposes.

18 Those three, the first is amending the language
19 regarding the Division's authority over produced water in
20 the Commission's existing rule 19.15.34 NMAC so that it
21 reflects and does not conflict with the changes that were
22 made by Laws 2019, Chapter 197, otherwise known as House
23 Bill 546, to the Division's authority over produced water.
24 That authority is codified in NMSA 1978, Section 70-2-12 B
25 15.

1 The second change is to amend the definition of
2 produced water in the Commission's rules at 19.15.2 7 P NMAC
3 to conform to the change the legislature made to that
4 definition in House Bill 546. That definition is codified
5 at Section 70-2-33 K. That change simply changed the word
6 waters to (inaudible).

7 And then finally the third purpose of the
8 amendment is to add a section to 19.15.16 NMAC requiring a
9 filing of a water use report for hydraulically fractured
10 well that specified the portion of water used in fracturing
11 by three different types. The first is the use of recycled
12 produced water, the second is the portion of water that is
13 not recycled produced water and contains 1000 milligrams per
14 liter of total dissolved solids or more.

15 The thirds is that portion of the water which
16 contains less than 1000 milligrams per liter and is not
17 recycled reused water.

18 To the enactment by the legislature of House Bill
19 546, Section 70-2 B 15 provided that the decision for the
20 (inaudible) to regulate the disposition of water produced or
21 used in connection with the drilling for or the producing of
22 oil or gas or both, and to direct surface or subsurface
23 disposal of the water, including disposition by use in
24 drilling for or production of oil or gas in road
25 construction or maintenance or other construction in the

1 generation of electricity or in other industrial processes
2 in a manner that will afford reasonable protection against
3 contamination of fresh water supplies designated by the
4 State Engineer.

5 The enactment of 546, Section 70-2 12 A 15 now
6 provides that the Division may adopt rules to regulate the
7 disposition, handling, transport, storage, recycling,
8 treatment and disposal of produced water (inaudible) or for
9 reduced in exploration, drilling production, treatment for
10 refinement of oil and gas, including disposal by injection
11 pursuant to authority delegated by the Federal State
12 Drinking Water Act in a manner that protects public health,
13 environment and fresh water resources.

14 Given the legislative change for reasons such as
15 those in the Commission's current Rule 19.14.34, Section 2,
16 which provides that the Division regulates produced water
17 used in road construction or maintenance or other
18 construction (inaudible) the generation of electricity or in
19 other industrial processes no longer reflects the Division's
20 authority and conflicts with the authority for (inaudible)
21 Section 70-2-12 B 15.

22 The authority to adopt rules regulating the
23 discharge and blank transport, storage, recycling or
24 treatment by the disposition of treated produced water
25 including disposition throughout construction maintenance,

1 roadway, ice or dust control or other construction, or from
2 the application of treated water to land for activities
3 unrelated to the exploration, drilling, production,
4 treatment or refinement of oil or gas is now provided in the
5 Water Quality Act with the Water Quality Control Commission.

6 The purposes of this limited rulemaking
7 application is not to propose new substantive requirements
8 or amend existing substantive requirements in the
9 Commission's rules. Those are beyond the scope of the
10 amendments proposed in this matter and would need to be
11 proposed as a separate rulemaking with notice provided to
12 the public of those proposals.

13 As such, much of the written comment and
14 testimony that has been provided and the proposed
15 modifications that were submitted are outside the scope of
16 this rulemaking and the follow-up notice that was provided
17 regarding this rulemaking. If the Commission wishes to
18 consider them, it would need to initiate a new rulemaking
19 process and provide public notice and include those
20 proposals.

21 House Bill 546 created parallel produced water
22 regulatory roles for the Oil Conservation Division and the
23 New Mexico Environment Department. The Division has worked
24 and will continue to work with the Environment Department on
25 research initiatives, policy development regarding produced

1 water. The Division is part of the produced water research
2 consortium, and is continuing to coordinate with the
3 Environmental Department on future role development
4 regarding produced water. Thank you.

5 CHAIRWOMAN SANDOVAL: Does NMOGA wish to make a
6 pre-opening statement.

7 MS. NANASI: Madam Commissioner, a question,
8 please, as to order. Is there going to be a chance to
9 cross-examine Ms. Bada on her statement?

10 CHAIRWOMAN SANDOVAL: No. This is just an
11 opening statement. There is no opportunity to cross-examine
12 an opening statement.

13 CHAIRWOMAN SANDOVAL: Mr. Feldewert, does NMOGA
14 wish to make a brief opening statement?

15 MR. FELDEWERT: Madam Chair, Members of the
16 Commission, we appreciate the opportunity to be involved.
17 We appreciate the effort the Division has put forth here to
18 put together some limited regulatory changes for the purpose
19 of matching up with the Produced Water Act which we know was
20 passed by the legislature to encourage the recycling and
21 reuse of produced water.

22 We have a few minor comments, which Mr. Brancard
23 has addressed and we can address in more detail at the
24 appropriate time. I think the only observation I have is
25 the disappointing presentations that have been made by the

1 parties in this case as to what this rulemaking is all
2 about, and it certainly has nothing to do with dumping
3 produced water onto crops or into state streams or any other
4 type of statements that we have seen by parties in this case
5 which completely misrepresents the purpose of this rule and
6 it leaves nothing but unnecessary and unguided
7 consternation.

8 With that said, we appreciate the efforts you
9 have made here and have into further need for statements.

10 CHAIRWOMAN SANDOVAL: Thank you, Mr. Feldewert.

11 Does WildEarth wish to make a brief opening
12 statement.

13 MR. TIMMONS: Yes, Madam Chair. Again this is
14 Daniel Timmons -- sorry, I'm getting feedback.

15 CHAIRWOMAN SANDOVAL: It's okay on our end.

16 MR. TIMMONS: Madam Chair, Members of the
17 Commission Daniel Timmons again on behalf of WildEarth
18 Guardians.

19 The Produced Water Act authorized OCD to
20 promulgate rules to regulate produced water, quote, in a
21 manner that protects public health, the environment and
22 fresh water resources.

23 In its public notice for this hearing, the
24 purpose of the proposed rule was to implement the changes,
25 the changes in produced water management and authority

1 enacted by HB 546. OCD's proposal, however, does nothing to
2 implement the statutory directive and does nothing to
3 effectively protect public health, the environment and fresh
4 water resources as the legislature intended.

5 We ask the Commission to direct OCD to go back to
6 the drawing boards to develop substantive rules to implement
7 scientific, specific measurable standards to ensure that the
8 recycling and reuse of produced water is handled safely and
9 responsibly.

10 Guardians have provided red line edits as a start
11 in putting meat on the bones of OCD's proposal, but we
12 believe that the best course of action would be for the
13 Division to take a big step back to convene a much more
14 robust public process, engage scientific experts before
15 coming back to the Commission with a substantive proposal to
16 actually regulate produced water in a manner that protects
17 public health, the environment and fresh water resources.

18 There are huge gaps in the scientific
19 understanding of the toxicity and risks associated with the
20 reuse of produced water. But what we do know, to make this
21 Commission pause before allowing the Division to allow
22 essentially the restricted use of produced water with the
23 oil and gas industry, as the EPA has acknowledged, produced
24 water contains a wide range of contaminants that threaten
25 public health and the environment, including high salt

1 levels, dissolved organic compounds, metals and fracking
2 chemicals.

3 Produced water contains toxic materials,
4 including barium, cadmium, chromium, lead, mercury, nitrates
5 selenium and (inaudible), as well as acetone, ethylene
6 glycol or antifreeze, thalades, propylene glycols and dozens
7 of other toxic chemicals and these can have significant
8 adverse effects on human health, including causing cancer
9 and disrupting the endocrine system.

10 According to the EPA, produced water can also
11 contain radioactive materials, including radium, radon,
12 uranium, potassium, and (inaudible) and produced water from
13 the Permian Basin has been specifically shown to contain
14 significant levels of uranium.

15 Accordingly, the extraction, handling,
16 transportation and reuse of produced water poses a serious
17 threat of wide-spread radioactive contamination here in New
18 Mexico.

19 And the EPA has acknowledged, once oil and gas
20 have been extracted from the formation, workers and members
21 of the public may be exposed to radionuclides that are
22 brought to the surfaces.

23 And perhaps even more troubling is what we don't
24 know, because the toxicity of the vast majority of the
25 chemicals found in produced water has never been studied.

1 One recent scientific analysis found that 86 percent of more
2 than 1000 chemicals found in produced water do not have
3 established toxicity thresholds. And only one-quarter of
4 the chemicals found are even detectable based on standard
5 analytical methods which poses a huge barrier to fully
6 understanding the public health and environmental risks of
7 produced water.

8 And the industry's track record with handling
9 produced water does not support OCD's proposal to continue
10 its hands-off approach to regulating this toxic waste.
11 OCD's records show more than 7000 spills of produced water
12 since July 2010. And in the first six months of this year
13 alone, there have been 325 documented produced water spills,
14 including 171 major spills, a major spill nearly every day
15 here in New Mexico.

16 These are not just industrial accidents. In
17 January of this year, a produced water pipe burst in Otis,
18 New Mexico, and soaked a family home, their yard, their
19 animals and their bodies when they went outside to
20 investigate.

21 Now, the Produced Water Act attempted to draw a
22 jurisdictional line between the reuse of produced water in
23 oil and gas activities regulated by OCD and it's potential
24 reuse for other purposes to be regulated by the Water
25 Quality Control Commission.

1 But as the disaster in Otis made clear, there is
2 no clear line between the oil fields and the communities of
3 New Mexico. OCD's proposed rule ignores this reality and
4 treats produced water as a largely benign byproduct of oil
5 and gas production, appearing to assume that any risks of
6 produced water reuse can be assumed by the industry alone.

7 That is simply not the case. The production,
8 storage, handling, transport, recycling and reuse of
9 produced water for oil and gas activities poses the real
10 risks to public health, the environment and fresh water
11 resources, risks that extend well beyond the oil fields.
12 And OCD's proposal does nothing to address these risks.

13 Accordingly, we ask that the Commission reject
14 OCD's proposal and direct the Division to come back with a
15 robust regulatory proposal with specific measurable and
16 enforceable standards that actually designed to ensure the
17 protection of public health, the environment and fresh water
18 resources as the legislature intended.

19 Thank you.

20 CHAIRWOMAN SANDOVAL: Thank you. Does Sierra
21 Club wish to make a brief opening statement?

22 MR. MEIKLEJOHN: Yes, Madam Chair, members of the
23 Commission. This is Douglas Meiklejohn. I'm a lawyer with
24 the New Mexico Environmental Law Center and with my
25 co-counsel, Cara Lynch, we represent the Rio Grande Chapter

1 of the Sierra Club.

2 We believe that the regulations need to be
3 modified in order to reflect the actual intent of the
4 Produced Water Act as enacted by the New Mexico Legislature.
5 The regulations need to be strengthened with respect to
6 indicating proof (inaudible) regulated so as to protect
7 public health, the environment and fresh water resources.

8 We also believe that regulation needs to be
9 strengthened to indicate that fresh water will not be used
10 in hydraulic fracturing operations if either produced water
11 or other alternatives are available.

12 We will present two witnesses who will testify
13 concerning these issues. Ms. Lynch will present Camilla
14 Feibelman, who is the director of the Rio Grande Chapter of
15 the Sierra Club. And I will present Norman Gaume, who is a
16 geohydrologist with many years's experience in water
17 quantity and water quality issues.

18 We look forward to making that presentation to
19 the Commission. Thank you.

20 CHAIRWOMAN SANDOVAL: Thank you, sir. Does New
21 Energy Economy wish to make a brief opening statement?

22 MS. NANASI: Yes. Thank you, Madam Chair and
23 Commissioners. Good morning, and thank you for the
24 opportunity to allow New Energy Economy to participate in
25 this very important hearing.

1 Two days ago I received an e-mail from Governor
2 Michelle Lujan Grisham, and this is how it began, and I
3 quote:

4 "From day one, my administration's response to
5 Covid 19 has been grounded in science and data.
6 The only way we get through this pandemic is we
7 take to heart what public health experts have to
8 say. It's the best thing we can do to protect
9 ourselves and our loved ones. As we look towards
10 school starting up again in the fall, those
11 decisions have got to be grounded in the science
12 and the data, too, which is why I'm delaying
13 in-person classes until after Labor Day."

14 She went on to state that, quote:

15 "Donald Trump is ignoring guidance from his own
16 CDC," unquote, and lamented, quote, "Look, I wish
17 things were different."

18 The governor would talk, of course, about the
19 devastating Coronavirus and opening of schools, but what we
20 are here to tell you is that this body must apply the same
21 legal, medical, social and moral standards to the situation
22 at hand.

23 This proposed amendment to the, quote (inaudible)
24 water rule must be denied or at least delayed because it is
25 not grounded in science and data and is contrary to what the

1 scientific experts, including oil and gas industry experts
2 admit.

3 There is radiation in fracked toxic waste.
4 Governor Lujan Grisham was forced to delay school opening
5 because of facts don't support that move. We must also
6 exercise extreme caution and rely on science, not political
7 expediency, because it is, in her words, the best thing we
8 can do to protect ourselves and our loved ones. To other do
9 otherwise would be irresponsible in the extreme, and perhaps
10 knowingly criminal.

11 Before you promulgate any new rules, it is
12 incumbent that you take a hard look at the existing science
13 that warns against allowing the use of waste water for oil
14 and gas wells to be used at all outside the oil field.

15 For instance, Pennsylvania's university has found
16 that spreading fracked waste water on unpaved roads to
17 control dust which contains high levels of the carcinogenic
18 and radioactive element radium, inorganic salt and oil and
19 gas hydrocarbons is a threat to human health and the
20 environment.

21 (inaudible) At 2018 study shows that these
22 harmful components are likely leaking (inaudible) into
23 surround fields and water. It further found, Pennsylvania,
24 from 2018 to 2014, spreading oil and gas waste water will
25 leak over four times more radium to the environment and oil

1 and gas waste water treatment (inaudible) and 200 times more
2 radium and (inaudible).

3 That study is reported in Environmental Science
4 Technology 2018. And for the record, DOI, colon, N, dot,
5 1021, back slash, ACS dot EST dot 800716, and it's cited in
6 New Energy Economy's prehearing statement at Page 2.

7 As a result of this -- this study and dozens, if
8 not missed dozens of studies, Pennsylvania and four other
9 states have banned road spreading of produced water from
10 hydraulic fracturing wells.

11 This (inaudible) assuring that governmental
12 agencies consider every significant aspect of the
13 environmental impact and affords the public (inaudible)
14 considered environmental health concerns, all foreseeable
15 direct and indirect impacts, as well as cumulative impacts
16 of a proposed action (inaudible).

17 I will cite to one other study. It's a 2018
18 (inaudible) published in a peer (inaudible) paper on January
19 24, 2018, in Environmental Science and Technology.
20 (inaudible) concludes that disposal of (inaudible) oil and
21 gas waste is a source of toxic radium concentrations,
22 extreme sediments. The study found high levels radium
23 (inaudible) radioactive materials in different stream
24 sediments at levels up to 650 times those found in three
25 industrial waste treatment plants that handle the fluid.

1 As a response to the overwhelming evidence,
2 including health and scientific studies that are available,
3 easily available just with Google searches of the risks of
4 harm fracking, there have been a number of states,
5 countries, municipalities that have issued bans on fracking.

6 I won't site all of them, but I want to give you
7 a flavor. France banned fracking in July 2011; Bulgaria in
8 January 2012. In May 2012 the state of Vermont banned
9 fracking. In July 2014 Belgium temporarily banned fracking
10 and its ban is still valid. New York State banned since
11 December 2014. In March 2015, the Canadian province of New
12 Brunswick declared a moratorium on fracking. In 2016, New
13 Brunswick extended its moratorium on fracking indefinitely.

14 On April 2017, Maryland became the third state to
15 ban fracking. In November 2018, the Delaware River Basin
16 Commission, which consists of governors from the four states
17 of New York, New Jersey (inaudible) and Delaware, together
18 with the US Army Corps of Engineers (inaudible) to ban
19 fracking in the Delaware River Water Shed, and that de facto
20 moratorium still exists.

21 On May 8, 2019, Washington enacted a state-wide
22 ban of fracking. In May 2019, Florida (inaudible) fracking
23 moratorium on June 17 up to the 19, the governor signed this
24 bill into law.

25 Extensive empirical data has confirmed that the

1 health risks for unconventional gas and oil extraction are
2 real, the danger to adverse environmental impacts
3 (inaudible) and the negative economic consequence is
4 considerable.

5 Any examination of the (inaudible) medical,
6 public health, biological, earth sciences and engineering
7 literature evidence that fracking cannot be practiced
8 (inaudible) that does not threaten human health, animal
9 well-being and damage our environment.

10 I could go on, but what I want to tell you is
11 that this rulemaking is entirely premature. It is not based
12 on science, and if you follow the edict of this governor and
13 this legislature, there is no way that you can say that this
14 rulemaking is consistent with 19.15.34.6, which the OCD, Ms.
15 Bada cited as protecting public health, environment and
16 fresh water resources.

17 We ask that you deny this rulemaking at this time
18 and conduct the proper background, scientific study, and I
19 will end with this:

20 There is Sixth Edition of the Compendium
21 Scientific Medical and Media Findings demonstrating risks
22 and harms of fracking from unconventional gas and oil
23 extractions produced in 2019, and that's all of your bedside
24 material is being (inaudible) in this record. It can be
25 found at concerned healthy New York dot org, and it is the

1 foundational document that lists hundreds, I mean hundreds
2 of, of studies about air pollution, about water
3 contamination, and about health and environmental risks. It
4 must be included not only in this hearing, but in the proper
5 evaluation of this rule.

6 Thank you.

7 CHAIRWOMAN SANDOVAL: Thank you all for your
8 opening statements. We will now move into the public
9 comment period.

10 We will move to the first round of public
11 comments. I have been provided a list of all individuals
12 that have requested to provide public comment at this
13 hearing as of yesterday at 5 p.m.

14 When you are called, please unmute yourself, your
15 audio, and identify yourself for the record, as well as any
16 affiliation that you have.

17 I would also like to remind members of the public
18 that you have five minutes for your comment, and that as we
19 stated at the beginning of this hearing, you also -- because
20 of some of the commentary that people had a hard time
21 understanding what the procedure was, we extended the public
22 comment period and the ability to e-mail Florene Davidson
23 with your request to make public comment until 3 p.m. today.

24 Anything in addition to the public comment that
25 we hear today, and we receive requests by the today at 3, we

1 will hear tomorrow morning. We will call everybody's names
2 who are on the list today. If we do not -- if you are not
3 here with us, we will call your name again tomorrow. You
4 will be getting multiple opportunities to provide public
5 comment here.

6 Again, just a reminder, each person has five
7 minutes. As we hit the five-minute mark, I will remind
8 speakers that they need to wrap things up.

9 All right. We will move into public comment. I
10 apologize in advance if I mess up anybody's names. First is
11 Joe Zapan. Joe, are you with us? If so, please unmute
12 yourself and state any affiliation you may have, and then
13 you have five minutes.

14 MS. NANASI: Madam Commissioner, this is Mariel
15 Nanasi for New Energy Economy. It's a regular practice, at
16 least in front of the PRC for -- for the -- in your case you
17 would name a couple of people in advance so that people can
18 know who is coming up next. So if you wouldn't mind, that
19 would help prepare to get ready. Thank you.

20 CHAIRWOMAN SANDOVAL: Yeah, sure, no problem. I
21 would be happy to do that. I will list them in threes.
22 Joseph Zapan is Number 1, Michelle Hunter is Number 2,
23 Rebecca Sobel is Number 3.

24 Number 1, Mr. Zapan, are you with us? If so,
25 again, you have five minutes. Please unmute yourself and

1 list any affiliations that you may have.

2 (No audible response.)

3 CHAIRWOMAN SANDOVAL: Mr. Zapan, are you with us
4 today?

5 (No audible response.)

6 CHAIRWOMAN SANDOVAL: Okay, we will call your
7 name again tomorrow. Michelle Hunter, are you with us?

8 MS. HUNTER: I am here.

9 CHAIRWOMAN SANDOVAL: Please unmute yourself and
10 state your affiliation for the record.

11 MS. HUNTER: Madam Chair and Commissioners, my
12 name is Michelle Hunter, and I'm the chief of the Ground
13 Water Quality Bureau of the New Mexico Environment
14 Department.

15 CHAIRWOMAN SANDOVAL: Thank you. Please proceed,
16 you have five minutes.

17 MS. HUNTER: Hello, everyone. My name is
18 Michelle Hunter, and I'm the chief of the Ground Water
19 Quality Bureau at the New Mexico Environment Department or
20 the NMED. I have been the chief of the bureau for five
21 years.

22 As many of you are aware, the NMED has conducted
23 several public meetings about the use of produced water over
24 the course of the last year and many of have participated in
25 those meetings.

1 With respect to this proposed amended rule, which
2 OCD is proposing in order to specify processes for reporting
3 was called generally fresh water usage and to specify
4 jurisdictional lines between the NMED and the OCD.

5 The NMED is here to support the OCD in drawing
6 these lines and specifying fresh water reporting. NMED will
7 have its own rulemaking in the near future in front of the
8 Water Quality Control Commission.

9 After reading the Sierra Club's proposal to
10 divide the water reporting into three categories instead of
11 two, the NMED concurs with the Sierra Club, and we have
12 discussed this with the OCD prior to my remarks today. And
13 I want to thank you for the opportunity to comment.

14 CHAIRWOMAN SANDOVAL: Thank you, Ms. Hunter.

15 Rebecca Sobel, are you with us today?

16 MS. SOBEL: I am here.

17 CHAIRWOMAN SANDOVAL: Please state your name and
18 affiliation and then you have five minutes.

19 MS. SOBEL: Thank you, Chairman and
20 Commissioners. My name is Rebecca Sobel, I'm the
21 (inaudible) for WildEarth Guardians. I'm sorry, I'm a
22 little bit floored because it was a little news to me to
23 hear that representatives from the Environment Department
24 say that in the near future, they expect to promulgate rules
25 related to produced water.

1 That goes against, frankly, NMOGA's exact
2 objection, that these rules have nothing to do with making
3 it easier for the industry to dump and discharge their toxic
4 waste all over our land and water.

5 It's terrifying, I think, you know, my colleagues
6 have submitted written testimony, and we have flooded the
7 record with studies, science and proof that this Commission
8 rules have failed to consider when they are supposed to make
9 it easier to transport the used produced water in fracking
10 operations.

11 It's great that the rules for the first time
12 propose to record the amount of fresh water and produced
13 water used in fracking. Frankly, there is data that the
14 state of New Mexico (inaudible) before promulgating any
15 rules related to the severity of the problem of managing
16 this toxic and radioactive waste.

17 I don't think it's out of line to say that this
18 process is severely underserving the public. I mean, there
19 are over 100 people in this meeting and over 100 documents
20 that have been uploaded as a part of this rulemaking, and
21 not a single one of them is in favor of the Commission
22 moving forward with these rules as proposed.

23 So I, I don't know what we in the next few hours
24 of focus can say to impress upon this administration the
25 dire need to look before leaping. The risks to New Mexico's

1 public health, our clean air, our clean water are forever
2 threatened if this Commission moves forward as planned.

3 So, firstly, considering the lack of public
4 engagement, the confusion around the circus of these
5 proceedings and the inability of the public to stay informed
6 in this process and the lack of information that the
7 Commission has before them in order to promulgate these
8 rules, we are reasonably asking for a suspension of this
9 rulemaking.

10 The Commission should not act until they have all
11 the information in front of them and have done the proper
12 stakeholder engagement related to this process. But if you
13 are going to promulgate rules related to toxic oil and gas
14 rates (inaudible) then that protects so that the health, the
15 environment and fresh water resources are protected.
16 Nothing in these rules provide any safeguards or metrics
17 that would point to any guarantee, let alone tracking, that
18 the public health, environment or fresh water is served.

19 Finally, produced water is too toxic to treat,
20 and there is nothing, nothing that this Commission, that
21 even the EPA, that even the (inaudible) Produced Water
22 Consortium has provided that shows that produced water is
23 any less toxic or any more treatable.

24 And it's clear New Mexico has a problem managing
25 this toxic fracking. We are running out of space to dispose

1 it, and it's very costly for industries to manage it. But
 2 instead of making industry liabilities New Mexico's problem,
 3 we need to go to the source of the problem. And if there is
 4 too much toxic fracking waste to manage, we need to stop
 5 producing so much fracking waste, and the way to do that is
 6 to stop fracking and reduce production.

7 Thank you.

8 CHAIRWOMAN SANDOVAL: Thank you. I apologize, we
 9 need a quick procedural thing, we are allowing cross for
 10 each public comment, so we will finish up with Ms. Sobel,
 11 and then Michelle Hunter, if you are still with us, we will
 12 open up for cross of that, and then we will move on to the
 13 next person.

14 Going forward we will be following each person, I
 15 apologize for the (inaudible). Parties who have any
 16 cross-examination for Ms. Sobel?

17 (No audible response.)

18 CHAIRWOMAN SANDOVAL: Actually I will just open
 19 it up. Do any of the parties have any questions for Ms.
 20 Sobel?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: All right. I hear no
 23 questions. Do any of the parties --

24 UNIDENTIFIED: I have a question for --

25 CHAIRWOMAN SANDOVAL: So it has to be somebody

1 who has entered as one of the parties through the Oil
2 Conservation Division, the NMOGA, the New Energy Economy or
3 WildEarth Guardians.

4 UNIDENTIFIED: I'm a regular citizen. I want to
5 make (inaudible).

6 CHAIRWOMAN SANDOVAL: Thank you for your
7 feedback.

8 MS. SOBEL: Chairman, I wasn't aware that I was
9 open to any cross-examination when offering to give public
10 comment as opposed to non-technical oral testimony. Can you
11 please clarify? I'm still confused, and I think other
12 members on this public hearing want to know if they are open
13 to cross-examination.

14 CHAIRWOMAN SANDOVAL: So that was stated in the
15 notice and the order. It is the standard practice for OCD
16 rulemaking, and it was part of the notice and order and (0
17 public procedure. So that will be part of this rulemaking
18 hearing (inaudible) with Mr. Timmons, I believe.

19 MR. TIMMONS: Yes, Madam Chair, and I will
20 reiterate that objection. In looking at that public notice
21 again, there is a distinction between oral, non-technical
22 testimony and public comment that's imbedded in the rules
23 and I do not believe that is appropriate to subject members
24 of the public to cross-examination. I believe it's a
25 violation of your own regulations.

1 MS. NANASI: Madam Commissioner, this is Mariel
2 Nanasi from New Energy Economy. I have been in dozens of
3 administrative hearings in the State of New Mexico, and I
4 have never seen anybody from the public comment be subject
5 to cross-examination, and I would object based on the
6 statement that Mr. Timmons has already articulated.

7 Thank you.

8 CHAIRWOMAN SANDOVAL: Commissioner Kessler wishes
9 to make a comment.

10 COMMISSIONER KESSLER: (Inaudible.)

11 MR. TIMMONS: We're unable to hear Commissioner
12 Kessler.

13 COMMISSIONER KESSLER: Can you hear me?

14 MR. TIMMONS: Yes, we can hear you.

15 COMMISSIONER KESSLER: I would like to comment
16 that I believe that there is a distinction (inaudible).

17 REPORTER: I'm sorry, Commissioner Kessler, this
18 is Irene, the court reporter, and I'm having difficulty.
19 You're fading out. Maybe if you could pull your laptop
20 closer, the speaker part of it.

21 CHAIRWOMAN SANDOVAL: (Inaudible.)

22 REPORTER: Then just speak loud.

23 COMMISSIONER KESSLER: I would like to comment I
24 think there is a distinction between adjudicatory and
25 rulemaking which applies to the Oil Conservation.

1 I do not believe (inaudible) set up for
2 cross-examine based on public comments. So I would be in
3 favor of not having to cross-examine the public comment
4 section.

5 CHAIRWOMAN SANDOVAL: Mr. Lozano, can we --

6 MR. LOZANO: Madam (inaudible).

7 (Audio interference)

8 REPORTER: Madam Chair, this is Irene the court
9 reporter. I need for all of you guys to stay by the
10 speakers in your laptops if that's what you're feeding into
11 and to speak loudly, please, thank you.

12 CHAIRWOMAN SANDOVAL: They're not in the laptop,
13 they're on the screen as part of the room so we're having
14 to --

15 REPORTER: I understand. Thank you.

16 COMMISSIONER ENGLER: This is Tom Engler, the
17 Commissioner, I want to clarify what Jordan said. So she's
18 saying rulemaking for public comment, there is should not be
19 cross-examination?

20 COMMISSIONER KESSLER: (inaudible) rules that
21 apply to the (inaudible) cross-examining public comment
22 (inaudible). So I would say that cross-examination
23 (inaudible) of public comment.

24 CHAIRWOMAN SANDOVAL: I would make a motion to
25 have (inaudible) we have no cross-examination of public

1 comment which we distinguish from technical testimony. Do I
2 hear a second on that motion?

3 COMMISSIONER KESSLER: Second.

4 CHAIRWOMAN SANDOVAL: Roll call vote.

5 MR. LOZANO: Commissioner Kessler.

6 COMMISSIONER KESSLER: Approve.

7 MR. LOZANO: Commissioner Engler?

8 COMMISSIONER ENGLER: Approve.

9 MR. LOZANO: Chair Sandoval.

10 CHAIRWOMAN SANDOVAL: Approve. We will move
11 forward with public comment and distinguish from technical
12 testimony. The ruling is there will be no cross-examination
13 of public comment.

14 We are moving down the list. The next three are
15 Sonia Grant, Jennifer Bradfute, and Thea Backett or Beckett.
16 My apologies.

17 Sonia Grant, are you with us today? Please state
18 your affiliation and you have five minutes.

19 (No audible response.)

20 CHAIRWOMAN SANDOVAL: Ms. Grant, are you with us?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: Please unmute your phone.

23 (No audible response.)

24 CHAIRWOMAN SANDOVAL: Okay. Ms. Bradfute?

25 MS. BENNETT: Good morning, Commissioner and

1 members of Commission, this is Deana Bennett. I am an
2 attorney at Modrall Sperling. I represent Marathon Oil
3 Permian LLC. And Ms. Bradfute isn't able to join us for
4 public comment today, and I would just note that Marathon
5 Oil Permian supports the proposed rulemaking. Thank you.

6 CHAIRWOMAN SANDOVAL: Thank you, Ms. Bennett.
7 Thea Beckett, are you with us today?

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: On the phone, please unmute
10 yourself.

11 (No audible response.)

12 CHAIRWOMAN SANDOVAL: Okay. We will move down to
13 the next three. Judith Stanley, Carter Beckett and Jon
14 Carver. Judith, are you with us today?

15 (No audible response.)

16 CHAIRWOMAN SANDOVAL: Judith?

17 (No audible response.)

18 CHAIRWOMAN SANDOVAL: Okay. We will move down to
19 the next one. Again, we will try all these names tomorrow
20 to give ample opportunity. Carter Beckett?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: Mr. Beckett, are you here?

23 (No audible response.)

24 CHAIRWOMAN SANDOVAL: Okay. We will move to the
25 next, Jon Carver. Mr. Carver, are you here?

1 MR. CARVER: Yes, I'm here.

2 CHAIRWOMAN SANDOVAL: Please state your name and
3 affiliation.

4 (Inaudible.)

5 CHAIRWOMAN SANDOVAL: (inaudible) Rosella, this
6 is Mr. Carver speaking.

7 (No audible response.)

8 CHAIRWOMAN SANDOVAL: Mr. Carver?

9 (Inaudible.)

10 CHAIRWOMAN SANDOVAL: Mr. Carver.

11 MR. CARVER: (Inaudible) we thought that we
12 couldn't (inaudible).

13 CHAIRWOMAN SANDOVAL: You keep cutting out.
14 Mr. Carver, are you there?

15 MR. CARVER: (inaudible) greenhouse gases. The
16 leading cause of greenhouse gases is fossil fuel extraction.
17 New Mexico is currently producing over 40 percent of the
18 greenhouse gases in the US (inaudible) is now the worst
19 greenhouse gas producer. Greenhouse gases destroy the
20 environment. They destroy (inaudible).

21 CHAIRWOMAN SANDOVAL: I cannot pick up what you
22 are saying when you speak so fast. If you could slow down,
23 please.

24 MR. CARVER: (inaudible) according to the WHO.
25 Fossil fuel extraction and production produces more climate

1 change than anything else in the world. The US produces
2 more greenhouse gases than any country in the world. New
3 Mexico produces over 40 percent of those greenhouse gases.
4 These greenhouse gases are leading to the death of people,
5 over 6 million.

6 When 6 million died in Germany in World War II,
7 the idea was we should do something about it. Nobody is
8 doing anything about these (inaudible) racists, white
9 supremacists, because the people who are dying are old
10 people and people of color and native people.

11 The fossil fuel extraction industry conditions to
12 make this (inaudible) country. Let me repeat that, the
13 fossil fuel extraction industry continues to make
14 (inaudible) country, therefore all fossil fuel extracted are
15 ipso facto white supremacists and racists. (inaudible) 6
16 million dead, nobody is being held accountable and our
17 government is an advocate for the fossil fuel industry.

18 As in (inaudible) response to Covid 19, the
19 response to climate change, you are quite different. This
20 is an enormous (inaudible) on the part of our government.
21 (inaudible) by James Kenny who is a racist white supremacist
22 who (inaudible) frac severely.

23 So we need to get rid of Kenny (inaudible) this
24 Commission to do anything about produced water has to stop.
25 Produced water kills people. It will kill our children, it

1 will kill your grandchildren, it will kill your children.
2 It threatens my son's life right now because the science
3 (inaudible) the human beings and animals are going extinct
4 at an enormous rate.

5 Obviously the Commission doesn't care about the
6 animal lives and they don't care about black or brown bodies
7 and they won't take their foot off our neck. People can't
8 breathe because of fracking problems. People die because of
9 fracking. 6 million now, according to the WHO, World Health
10 Organization, all died from (inaudible). Those people do
11 (inaudible) and they know what they are talking about. This
12 Commission needs to do science (inaudible) stop these
13 ridiculous -- there should be no produced water. It is
14 poisoned water, and you are killing people.

15 You are sitting there right now are complicit
16 with the fossil fuel (inaudible) and you are playing out
17 this farce. You are complicit with fossil fuel deaths all
18 over the world. You are murderers, second degree murderers,
19 murderers by (inaudible) murderers by will or (inaudible)
20 talking now, we need to stop climate change, we need to do
21 that by stopping fossil fuel (inaudible) hired, guilty
22 (inaudible) industry, and it needs to be put to to death.
23 We need to (inaudible) before it kills my kid. You are
24 killing my kid, Adrienne. You are killing my kid
25 (inaudible). You kill my kid by (inaudible) you are killing

1 everybody. You are a murderer.

2 I will leave my comment with (inaudible) stop
3 produced water. (inaudible) participate in white supremacy
4 (inaudible) yours to begin with. It was never seeded to be
5 treated (inaudible) it's based off inside, the racism, and
6 (inaudible) produced water has to stop. Six million deaths
7 should to mean something to you. Six million deaths. I see
8 6 million dead people in the oil and gas industry. I see
9 (inaudible) those industries, and they have to stop killing
10 us. They have to stop extincting my kids. They have to
11 stop extincting my grandkids. Okay? Stop, stop fracking
12 now. Stop fracking now and stop being such (inaudible).
13 You're like our stupid president. You're institutional
14 racists, and you are complicit for killed children, you
15 personally, and everybody who is on this call who is not
16 doing anything to ban fracking is part of the problem. They
17 are helping out. They are helping kill people.

18 CHAIRWOMAN SANDOVAL: Your five minutes --

19 MR. CARTER: Six million deaths.

20 CHAIRWOMAN SANDOVAL: I also want to note for the
21 record that Vita Rozella, and it's unclear, this time was
22 for Jon Carver. His name on the screen says (inaudible).

23 MR. CARVER: (Inaudible.)

24 CHAIRWOMAN SANDOVAL: Jon Carver was expelled
25 from this hearing earlier, and if that.

1 MR. CARVER: I came back as Vita Rozella.

2 CHAIRWOMAN SANDOVAL: Thank you. You will be now
3 be excluded from the hearing as you were excluded earlier
4 and we gave you a couple of (inaudible).

5 All right, the next three people in the list. I
6 think we are going to go through three more, and then we'll
7 break for lunch, and will note at that time when we break
8 for lunch, and we will come back from lunch and we will
9 continue public comment for (inaudible).

10 The next three, Erica Belle Benedetti, Mary
11 Koponen and Justin Nobel.

12 Erica Belle Benedetti, are you with us today?

13 (No audible response.)

14 CHAIRWOMAN SANDOVAL: Ms. Benedetti, are you with
15 us?

16 (No audible response.)

17 CHAIRWOMAN SANDOVAL: We will call you again
18 tomorrow. Mary Koponen, are you with us today?

19 (No audible response.)

20 CHAIRWOMAN SANDOVAL: Ms. Koponen, are you with
21 us today?

22 MS. KOPONEN: Yes, I am.

23 CHAIRWOMAN SANDOVAL: All right. Thank you. You
24 have five minutes. Please state your name and any
25 affiliations that you may have.

1 MS. KOPONEN: Thank you very much. I hope we're
2 allowed to do more than -- well, thank you for allowing us
3 to speak.

4 I am looking at my map of the Rio Grande, and I
5 think it's absolutely criminal that this is even brought up.
6 You are a 30-foot -- I am very sorry to say (inaudible) but
7 you are plotting it perfectly. I would like to give my
8 remaining time to Mariel. Thank you.

9 CHAIRWOMAN SANDOVAL: Okay, thank you.

10 Justin Nobel, are you with us today?

11 MR. NOBEL: Yes, I am with you. Can you hear me?

12 CHAIRWOMAN SANDOVAL: We can hear you. State
13 your name, your affiliation, and you have five minutes.

14 MR. NOBEL: Okay. Good day. My name is Justin
15 Nobel. I have a dual masters degree in earth and
16 environmental science and journalism, writing on issues of
17 science and the environment for US magazines and the
18 investigative sites, recently published a story for Rolling
19 Stone Magazine entitled "America's Radioactive Secret,"
20 about the radioactivity brought to the surface in oil and
21 gas production and the many different pathways of
22 contamination posed to the industry's workers, the public
23 and communities and the environment, and I'm currently
24 writing a book on this topic for Simon & Schuster.

25 Ladies and Gentlemen, it is pathetic that a

1 journalist for a music magazine has been forced to break
2 news that America's oil and gas industry has known for
3 decades.

4 I quote, "Almost all materials of interest and
5 use to the petroleum industry contain measurable quantities
6 are radionuclides that reside finally in process equipment,
7 product streams or waste. In addition, groundwater used for
8 waterflood and brine solutions from operating wells contain
9 biologically significant quantities of radium 226 and radon
10 222."

11 These lines do not come from a research
12 scientist. They are from a research scientist at some
13 eastern university far removed from the oil patch, they do
14 not come from the newsletter of some environmental action
15 group which may have a vested interest in halting oil and
16 gas production. These lines in fact come from a 1982 report
17 of the Department of Medicine and Biology of the American
18 Petroleum Institute.

19 The report goes on to describe the radioactivity
20 risk of the industry's waste.

21 Quote, radium 226 is a potent source of radiation
22 exposure, both internal and external. Radon 222 and its
23 daughters cause the most severe impact to the public
24 health."

25 The 1982 American Petroleum Institute report also

1 invalidates the department's plan, as laid out in this
2 proposed rule, to, quote, "Encourage the recycling or reuse
3 of produced water."

4 Again, I quote from the American Petroleum
5 Institute report, "Any control methodology proposed for
6 radioactive materials must recognize the fact that
7 radioactivity cannot be modified or made inert by chemical
8 means. Decay to daughter products cannot be guaranteed to
9 reduce the hazard."

10 Just a few lines later, "To remove radioactivity
11 is merely transforming," quote, "a very dilute source of
12 radioactive materials into a very concentrated source of
13 radioactivity."

14 So the proposed rule encouraging the treatment of
15 this complex radioactive waste stream is nothing more than a
16 free pass for industry to contaminate uninformed and
17 inappropriately protected oil and gas workers, i.e., human
18 beings; i.e., men, women, mothers and fathers.

19 And members of the Department and Commission,
20 this one damning 1982 American Petroleum Institute paper is
21 not alone. The idea that this issue is not a big problem or
22 only a problem in the Marcellus shale play or back East is
23 not just absurd, this ignorance puts the lives and safety of
24 the workers and communities of the great state of New Mexico
25 in peril.

1 To prove this point, from a 63-page report
2 produced in 1991 by the esteemed petroleum geologist,
3 Brennan V. Comer of the Bureau of Economic Geologist,
4 University of Texas, Austin.

5 Quote: "The Upper Devonian Woodford formation is
6 an organic rich petroleum source rock that extends through
7 West Texas and southeastern New Mexico and is very
8 radioactive."

9 Your rule makes no mention of this highly
10 dangerous radioactivity, and it makes no mention of how you
11 will protect the workers and residents of New Mexico from
12 contamination. While the present New Mexico regulatory
13 agencies have unfortunately scant interest in assessing and
14 monitoring radioactive elements inevitable in the oil and
15 gas industry's waste stream, such as radium, a bone-seeking
16 carcinogen known to have pronounced effects in children with
17 swiftly growing bones, that does not mean your workers and
18 residents cannot be affected by radium, or any of the other
19 well-known carcinogenic radioactive developments common to
20 oil and gas waste.

21 Quote: "There is no threshold of exposure below
22 which low levels of ionizing radiation can be demonstrated
23 to be harmless, the health risks, particularly the
24 development of solid cancers in organs rise proportionately
25 with exposure."

1 This from Harvard epidemiologist and committee
2 chair of the National Academy of Sciences 2006 Biologic
3 Effects of Ionizing Radiation report.

4 Just because you do not believe the science or
5 know the science or care to read a few research papers to
6 understand the science does not mean the science doesn't
7 exist and does not mean the science won't eventually lead to
8 lethal cancers in the workers and residents you are charged
9 with protection.

10 I sincerely hope the Department and Commission
11 reconsiders this science-starved rule and makes a complete
12 about-face on this topic.

13 Either way, your paltry regulations have already
14 enabled an easily traceable trail of contamination to be
15 spilled across the great state of New Mexico and quite
16 literally deposited in the bones and bodies of its people.

17 Radium, again, as anyone in the medical community
18 knows is a bone seeker, mistaken for calcium, incorporated
19 into our skeleton. And as cases during the 1980s from
20 Mississippi and Louisiana, oil patches have shown these
21 exposures may not just lead to cancer and disease in
22 workers, oil and gas workers bring contamination home on
23 their clothes and bodies to their family members.

24 As Dr. Harrison Mart -- as Dr. Harrison Martland,
25 one of the great founders of the field of occupation

1 radiation safety lays out in his seminal 1931 paper in the
2 American Journal of Cancer on the Radium Girls --

3 CHAIRWOMAN SANDOVAL: Can I stop. You just hit
4 the five-minute mark. We will give you an extra minute.

5 MR. NOBEL: Just 20 more seconds. "The
6 bombardment of radioactivity these women experienced will
7 last for an indefinite period. For instance, in the year
8 3491, the skeleton will still be giving off 185,000 alpha
9 particles per second," end quote.

10 So in conclusion, the contamination you enable to
11 be spread, spilled and sloppily treated across this Land of
12 Enchantment is not going anywhere. This carelessness will
13 be recorded indefinitely on the land and in the bodies of
14 its people, and myself, my colleagues and scientific experts
15 and the many, many attorneys of the future will find these
16 victims and we will expose the catastrophe you that has been
17 unleashed. Thank you very much.

18 CHAIRWOMAN SANDOVAL: Thank you. As I mentioned,
19 we'll do three people. Next is Ms. Joan Brown. Ms. Brown,
20 are you with us today?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: I believe you said at the
23 beginning you may have (inaudible).

24 (No audible response.)

25 CHAIRWOMAN SANDOVAL: Ms. Joan Brown, are you

1 with us today?

2 (No audible response.)

3 CHAIRWOMAN SANDOVAL: Okay. Elaine Cimino, are
4 you with us today?

5 (No audible response.)

6 CHAIRWOMAN SANDOVAL: Elaine Cimino?

7 (No audible response.)

8 CHAIRWOMAN SANDOVAL: Okay, the next three.

9 Mutchnick (inaudible). Patrice Mutchnick
10 (inaudible) because I'm messing up names.

11 (No audible response.)

12 CHAIRWOMAN SANDOVAL: Okay. Artisimo Romero, are
13 you with us today?

14 MR. ROMERO: Hello. My name is Artimisio Romero.
15 I'm with you today.

16 CHAIRWOMAN SANDOVAL: Okay. You have five
17 minutes. Please state your name and affiliation and then
18 you can proceed.

19 MR. ROMERO: Hello, my name is Artimisio Romero.
20 I'm associated with (inaudible).

21 I would like to begin, New Mexico is a poor
22 state. They are also a majority minority state. They are a
23 state that both by class and race exist at the bottom of the
24 country's capitalist and white supremacist hierarchies.

25 To make that simple, we are expendable. Because

1 of this, my home state has served two consistent roles. We
2 have served as a place for large corporations to take
3 resources at a cheap price without very much regulation.

4 And second we have served as a place to test
5 unsafe technologies on primarily brown and indigenous
6 populations.

7 Both of these roles are why a word or a lie, like
8 produced water exists. It's a product of the first role,
9 resource extraction. This state houses, in the Permian
10 Basin, the cheapest oil field in the world. And I can
11 promise you, the oil industry that desecrates that land is
12 heavily under-regulated, so much so we don't even know the
13 chemicals they use in combination with our fresh water in
14 the process of fracking.

15 Which brings me to that second role, New Mexico
16 as a testing site. We saw that with the atomic bomb and
17 with the storage of dangerous uranium waste near impacted
18 communities. (inaudible) We are talking about a substance
19 whose few identified ingredients include carcinogenic or
20 cancer-causing and radioactive elements.

21 The little we understand of this fluid we know to
22 be dangerous, but the state government marches on. I don't
23 believe it's a coincidence the first state testing the harms
24 of fracking waste is also one of the brownest. Conscious
25 intention or not, this shows a disregard for non-white lives

1 consistent with the characteristics of white supremacism.

2 The reason so many lobbyists and officials like
3 the ones present here today are so excited to begin the
4 rulemaking process around produced water is because it
5 allows them to exploit our state in both of those two ways I
6 mentioned simultaneously. At the same time they enable the
7 dangerous under-regulated fracking industry. They can also
8 test the radioactive properties of fracking waste on an
9 innocent population.

10 So, Members of the Oil Conservation Commission, I
11 came here to tell you, with all undue respect, we refuse to
12 be your guinea pigs.

13 I would like now to read the statement that
14 (inaudible) has prepared and the letter of demand.
15 (inaudible) give me a brief second.

16 CHAIRWOMAN SANDOVAL: If you take your
17 (inaudible) off, we might be able to hear you uninterrupted.

18 It looks like you have low band width. It may be
19 helpful to you if you turn your camera off.

20 MR. ROMERO: (inaudible).

21 CHAIRWOMAN SANDOVAL: Are you still with us, sir?

22 MR. ROMERO: I'm still with you. I believe
23 somehow I was muted. (inaudible) I will just continue from
24 the beginning.

25 (inaudible) 42 tribal government representatives

1 from some businesses representing the indigenous and
2 minority voices across New Mexico (inaudible) Colorado and
3 Arizona --

4 REPORTER: I'm sorry, sir, sir -- this is
5 Irene -- this is Irene, the court reporter, could I ask him
6 to slow down a little bit, please.

7 CHAIRWOMAN SANDOVAL: Yes, ma'am.

8 MR. ROMERO: (inaudible) is publicly demanding
9 the Oil Conservation Commission suspend all (inaudible).
10 There has been no meaningful outreach or engagement with our
11 impacted communities. As a result, we recognize the
12 state's authority in these proceedings as (inaudible). We
13 demand future rulemaking by the OCD denounce the untruthful
14 nature of produced water and protect our environment and
15 citizens with associated dangers.

16 The health risk for New Mexico -- the health
17 risks of New Mexicans cannot be forfeited so that the oil
18 industry can offload the hazardous materials they make. The
19 modification of frack (inaudible) in a generation of
20 violence of fracking, we are standing against any and all
21 efforts to bail out the industry and expand extraction
22 (inaudible).

23 We are facing (inaudible) measures before the
24 land on an industry that is fundamentally unsustainable, and
25 its base are killing our people, poisoning our land and

1 destroying our planet. (inaudible) and hold the industry
2 accountable. We demand research and (inaudible) for a
3 moratorium on the fracking within the state of New Mexico.

4 To put it simply, Members of the Commission, we
5 demand justice. Thank you for your time. I yield.

6 CHAIRWOMAN SANDOVAL: So we are now going to take
7 a break. It is 12:08. We will come back at 1 o'clock. We
8 will resume the meeting -- the meeting will stay live, we
9 are not going to turn it off, but we will turn off the video
10 and mute it, so please join us back here at 1 o'clock.

11 We will continue with public comment and the next
12 three in order are Brittany Fallon, Norman R. Norvelle and
13 Susan Selbin. So those will be the next three, and we will
14 begin at 1 o'clock. Please join us back at that time.
15 Again, just a reminder, you have until 3 o'clock today, if
16 you were not able to register to speak today, you have until
17 3 o'clock today to register to speak tomorrow.

18 Thank you, and we will get going again at
19 approximately 1 o'clock.

20 MS. FALLON: Chairwoman, this is Brittany Fallon,
21 I'm not available at 1 o'clock. May I speak later in the
22 afternoon?

23 CHAIRWOMAN SANDOVAL: We can put you at the end
24 of the list.

25 MR. FALLON: That's perfect. Thank you.

1 CHAIRWOMAN SANDOVAL: The next three will be
2 Norman R. Norvelle, Susan Selbin and Lynn Allen. Those will
3 be the three that begin at 1 o'clock. All right. Thank
4 you, everybody. We will continue again at 1.

5 (Lunch recess taken at 12:10. The proceeding
6 resumed at 1:02 p.m. as follows:)

7 CHAIRWOMAN SANDOVAL: Good afternoon, everybody.
8 I hope you had a lovely lunch. It is 1:02 on Thursday, July
9 30, and we will resume this hearing of the Oil Conservation
10 Commission.

11 We ended on public comment, and we will continue
12 now with public comment. Picking back up on the list, the
13 three next individuals are Norman R. Norvelle, Susan Selbin
14 and Lynn Allen. Norman, are you with us today?

15 (No audible response.)

16 CHAIRWOMAN SANDOVAL: Norman Norvelle, are you
17 here today?

18 (No audible response.)

19 CHAIRWOMAN SANDOVAL: Okay. Susan Selbin, are
20 you here today?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: Susan, we see your name on
23 the Webex. It looks like you are unmuted. Are you able to
24 speak at the moment? If you are speaking, we cannot hear
25 you.

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: Okay. We will call your
3 name again tomorrow. Lynn Allen?

4 (No audible response.)

5 CHAIRWOMAN SANDOVAL: Lynn Allen?

6 (No audible response.)

7 CHAIRWOMAN SANDOVAL: Okay. We will go to the
8 next three names. Reminder again, we will call the names if
9 they are not responsive today again tomorrow. Clifton Bain
10 and Melissa Troutman and Ean Tafoya are the next three
11 names. Clifton, are you with us?

12 (No audible response.)

13 CHAIRWOMAN SANDOVAL: Clifton Bain?

14 (No audible response.)

15 CHAIRWOMAN SANDOVAL: Melissa Troutman?

16 MS. TROUTMAN: Hello. Can you hear me?

17 CHAIRWOMAN SANDOVAL: Yes, we can hear you, Ms.
18 Troutman. So five minutes, please identify if you are
19 affiliated with anyone and then proceed.

20 MS. TROUTMAN: Sure. Thank you. My name is
21 Melissa Troutman. I'm a research and policy at (inaudible)
22 dedicated to protecting communities from the oil and gas
23 industry operations (inaudible). There's documentation
24 (inaudible) industry's waste stream --

25 CHAIRWOMAN SANDOVAL: I'm sorry, Ms. Troutman --

1 MS. TROUTMAN: -- Pennsylvania where I'm from and
2 where I'm currently from.

3 CHAIRWOMAN SANDOVAL: It may be easier if you
4 turn your video off. (inaudible) You're kind of glitching.
5 Maybe sometimes when you turn the video off sometimes it
6 picks up better.

7 MS. TROUTMAN: All right. My video is off. Is
8 this better?

9 CHAIRWOMAN SANDOVAL: Yeah, that's much better.

10 MS. TROUTMAN: Okay, good. All right. Let me
11 fast forward a little bit just to (inaudible) time lost
12 here.

13 I want to acknowledge that I'm speaking to you
14 from (inaudible) land, and that the native people the Tuck
15 Island are the original caretakers of this land and lived in
16 harmony with nature for thousands of years.

17 I also want to acknowledge that this body, the
18 OCC, like others, is an agency that derives its position
19 from a colloquial government that claims power over stole
20 land, not the legitimate authority of the land.

21 But the mess that's been created by the pollution
22 permitted by the government of New Mexico (inaudible) with
23 this in mind that I testify that, as we all know, the oil
24 and gas industry is exempt from federal hazardous waste law,
25 despite the fact that various oil and gas waste streams

1 exhibit physical characteristics of hazardous waste.

2 The exemption, the worker exemption (inaudible)
3 has the word loophole defies all common sense and scientific
4 evidence by allowing industries to keep chemical additives
5 including carcinogens a secret.

6 Commissioners (inaudible) are in a position to
7 protect New Mexico in spite of it, but you're not, not with
8 this proposed rule. If you further it, the following would
9 be true: Hazardous oil and gas waste would be characterized
10 (inaudible) the oil field and handled hazardous waste
11 criteria and regulations.

12 A full disclosure of all additives used in oil
13 and gas operations and their concentrations would be
14 mandatory and made publicly available. And of course, the
15 use of untreated or treated produced outside of the oil
16 field would be discouraged by this rule, not presumed as a
17 potential inevitability. And of course, comprehensive
18 testing of each (inaudible) for all additives which would be
19 required to be disclosed would be required prior to waste
20 water (inaudible).

21 There is some major toxic mistakes that have
22 happened in Pennsylvania that can be avoided in New Mexico
23 that I would like to share with you.

24 One is that in New Mexico the discharge -- I'm
25 sorry, in Pennsylvania -- the discharge of treated produced

1 water, that is produced water treated with the best
2 available technology has created radioactive riverbeds here.

3 Duke University published a study in July 2018
4 that found cancer-causing radium accumulations up to 650
5 times higher in the river (inaudible) where treated waste
6 water was discharged.

7 Another problem we have is road spraying. In May
8 2018, Penn State University (inaudible) the spreading of the
9 waste, oil and gas waste water on roads indicated high
10 levels of radiation. Radium is a carcinogen. (inaudible)
11 1600 years, so this was happening.

12 Treated or untested produced water from the
13 industry is allowed to be discharged in Pennsylvania, and
14 when it's treated it's (inaudible) into drinking water
15 standards, which means it's a small amount of radiation.

16 Okay. The problem with radium is that it
17 accumulates over time, so even if you cut out (inaudible)
18 per liter, that stays there and accumulates over time
19 because of the half life of 1600 years, which means that it
20 turns the radio -- the riverbed radioactive.

21 Finally (inaudible) residents like myself and the
22 public are denied access to critical health and safety data
23 here in Pennsylvania regarding the constituency and
24 concentration of toxins in this water as it's being
25 transported through our community in front of our houses.

1 The lab analyses that are required have been
2 withheld specifically from Pennsylvania Department -- or by
3 Pennsylvania Department of Environmental Protection. The
4 company's transporting waste water over the top of my
5 family's water supply every single day. (inaudible) tested,
6 but they are not required to give us that information and in
7 fact requests are denied. Now, it has been our hope.

8 CHAIRWOMAN SANDOVAL: (inaudible) I'm going to
9 give you a little bit of time to finish up though.

10 MS. TROUTMAN: Sure. It's been our hope to
11 engage as a stakeholder throughout the rulemaking
12 proceedings regarding produced water in New Mexico. And our
13 hope was that this would become a best in the nation policy
14 for America's produced water, but unfortunately that's not
15 happening.

16 New York state legislators last week passed the
17 nation's first bill to close (inaudible). So, New Mexico,
18 you got some catching up to do. Thank you.

19 CHAIRWOMAN SANDOVAL: Thank you, Ms. Troutman.

20 Ian (inaudible)?

21 MR. TAFOYA: Hello. Can you hear me?

22 CHAIRWOMAN SANDOVAL: We can. Please state your
23 name and any sort of affiliation you may have, and you have
24 five minutes.

25 MR. TAFOYA: My name is Ian Thomas Tafoya, and I

1 am from Colorado. I am the co-chair of the Colorado
2 (inaudible) forum, which is a nonprofit that works to
3 improve the lives of the Latinas and latinos across
4 Colorado. Currently, of our 11 members, we have all run for
5 office and several of them are current office holders.

6 I also am the organizer of Colorado for Latinos
7 National Frac Justice, an environmental organization. And I
8 work as a conservationist and environmentalist. I get
9 involved in things that effect indigenous latino public
10 health.

11 I'm here today to express my supreme commitment
12 that this meeting has (inaudible). I myself worked as a
13 secretary of the city council, the Denver City Council. Not
14 posting documents, I believe, is enough of a reason to
15 postpone this type of hearing.

16 But I really want to talk about why this is such
17 a bad idea. I hold a water certificate from metropolitan
18 (inaudible) sponsored by the state of Colorado, and we are
19 not thinking wholistically about the long-term harm that
20 spreading radioactive things that are meant to be in the
21 ground out on top of the ground for them to (inaudible).

22 I have deep concern that you are going to set a
23 precedent that will be leveraged against my state and my
24 community. We know these oil and gas wells and rigs have
25 not treated employees well, have not treated communities

1 well. In fact, they constructed wells across the street
2 from an elementary school in my community.

3 They spill benzene and pollute the air and all
4 while they are fostering economics. Places like New Mexico
5 seem to prop up the industry by allowing them to now sell
6 toxic water and call it life.

7 We talk a lot about black snakes in oil and gas
8 and what it means. I had a chance to visit Chaco Canyon
9 (inaudible) and I can tell there is a snake approaching
10 (inaudible) an invisible snake of constant pollution that
11 moves through the air like water, and through our water into
12 our bodies.

13 These are broken promises. These are
14 continuation of broken treaties. These businesses will be
15 bankrupt and they will leave a legacy of pollution to be
16 cleaned up by you or to be bared by frontline communities
17 for another (inaudible) or longer.

18 I ask you, the Colorado Latino Forum asks you,
19 (inaudible) Latino and our members, many who live and have
20 families in New Mexico, ask you to think twice. This is
21 your opportunity to protect water. Please do that. Thank
22 you.

23 CHAIRWOMAN SANDOVAL: Thank you, Ean.

24 So I will go through to the next three, but prior
25 to doing that, people are asking about what the kind of

1 order of operations is. As I mentioned earlier, we are
2 going to continue to go through the comment list that
3 received prior to 5 p.m. yesterday. There are a total of
4 45. We are about halfway through, and so I expect the
5 public comment will continue to take the next couple of
6 hours.

7 Following that, witnesses will be presented by
8 the parties if they have them, but some of that will just
9 depend on how long public comment takes. We cannot provide
10 specific times because we did not know how long public
11 comment will take. It could be a variable amount of time.
12 So that's the order of operation.

13 The next three individuals are Walter Thommes,
14 Gabriella Marks and Mary Ogle. Walter Thommes, are you with
15 us today?

16 (No audible response.)

17 CHAIRWOMAN SANDOVAL: Walter Thommes, are you
18 with us?

19 (No audible response.)

20 CHAIRWOMAN SANDOVAL: Okay. Gabriella Marks?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: Ms. Marks, are you with us
23 today?

24 (No audible response.)

25 CHAIRWOMAN SANDOVAL: Okay. Mary Ogle.

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: You are showing up on the
3 Webex participant list. If you are trying to speak, Ms.
4 Ogle, we cannot hear you.

5 (No audible response.)

6 CHAIRWOMAN SANDOVAL: Ms. Ogle, are you able to
7 speak at the moment?

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: Okay. We will move down to
10 the next list of participants. The next three are Madeleine
11 Carey, Gene Harbaugh, Oliver Hillenkamp. Madeleine Carey?

12 (No audible response.)

13 CHAIRWOMAN SANDOVAL: Madeleine Carey?

14 (No audible response.)

15 CHAIRWOMAN SANDOVAL: Gene Harbaugh?

16 (No audible response.)

17 CHAIRWOMAN SANDOVAL: Gene Harbaugh?

18 (No audible response.)

19 CHAIRWOMAN SANDOVAL: Oliver Hillenkamp?

20 MR. HILLENKAMP: Yes, I'm here. Can you hear me?

21 CHAIRWOMAN SANDOVAL: Yes, we can.

22 MR. HILLENKAMP: So my name is Oliver Hillenkamp.
23 I just wanted to say that I think that we need to take bold
24 action in our state to address the climatic and existential
25 threat that fracking poses to New Mexicans. And I believe

1 that from expert people that have explained this to me, my
2 understanding is that produced water is too toxic to
3 actually treat effectively, and that the best way to reduce
4 fracking waste is to actually reduce fracking in the first
5 place.

6 And the proposed rules that we are discussing
7 were prepared too quickly and were not really prepared for
8 engagement with the public or with the (inaudible) toxic
9 waste water, produced water. And we should not allow the
10 fracking industry to dispose of the waste water in
11 (inaudible) land, and I really think you should take a stand
12 against it and not just allow the industry to (inaudible)
13 all over us. And that's pretty much all I have.

14 CHAIRWOMAN SANDOVAL: Thank, Mr. Hillenkamp.
15 Okay. I will go through the next three. Jeffrey Haas,
16 Pamela Marshall and Joyce Bogosian. Are you with us?

17 MS. NANASI: Madam Commissioner, this is Mariel
18 Nanasi for New Energy Economy. There are two people, ones
19 who you called before the break, one is Norm Norvelle and
20 Jeffrey Haas. Both contacted me and are no longer able to
21 accommodate this scheduling. And I have Norman Norvelle's
22 statement which he also wrote to submit Florene Davidson, so
23 I ask that be included in the record.

24 An Mr. Haas indicated that he would also submit
25 his written statement in to Ms. Florene Davidson as well and

1 ask you that they (inaudible).

2 CHAIRWOMAN SANDOVAL: Okay. Yeah, I think, as
3 Mr. Lozano laid out, we will, you know, kind of take the
4 remaining exhibits that we collected today and tomorrow, so
5 we will go through that process of gathering any more
6 written statements, and then we will call everybody who did
7 not respond today, but was on the list, again tomorrow. So
8 I can't (inaudible) if they are available tomorrow, they
9 will have another opportunity.

10 MS. NANASI: Thank you kindly. I just want to
11 say that you called Madeleine Carey just a few minutes ago,
12 and she is available via the chat. Thank you very kindly.

13 CHAIRWOMAN SANDOVAL: Madeleine Carey, are you
14 with us? If so --

15 MS. CAREY: yes, I am.

16 CHAIRWOMAN SANDOVAL: Go ahead, state any
17 affiliations you have and you have five minutes to address
18 the Commission.

19 MS. CAREY: My name is Madeleine Carey. I'm not
20 affiliated with anyone today. I am representing myself
21 although I am employed by WildEarth Guardians. I am here to
22 speak against the proposed rules. I have grave concerns,
23 and specifically as a horse owner I'm concerned about the
24 impact that these rules can have on the production of
25 (inaudible) for New Mexico's horse and livestock industry.

1 There is a well-documented study of hay and
2 pasture grown with frack water causing a high level, over 50
3 percent of life-affecting mutations in young foals whose
4 mothers were raised on hay grown with frack water while they
5 were pregnant. And I'm concerned that a large portion of
6 the hay grown in New Mexico is irrigated with water, it's
7 flood irrigated, it's not sprinkler irrigated, and that
8 there is nothing to protect people like me, that there is no
9 consultation with New Mexico Department of Agriculture.

10 There is nothing proposed to safeguard other
11 industries against the potential harm caused by this rule.
12 I also have a lot of concerns, I go to a ton of public
13 meetings for my job. I engage other people's public
14 meetings.

15 I think the transparency process around this
16 meeting was particularly horrendous. We have all had to do
17 stuff digitally for months now, and I was on earlier
18 (inaudible) call, a lot of the concerns are what's going to
19 happen with the chat. It's going to be resolved. I found
20 the answers to be really inappropriate.

21 It's not a surprise that these meetings
22 (inaudible) digitally (inaudible) we had months to prepare.
23 I am really frankly disappointed in this agency and its
24 administration in doing that. And I really think this
25 meeting should have been canceled and that there has not

1 been enough done to ensure any proper publication on this.

2 And just back to my first point, I think it's
3 easy to say, "Oh, we are recycling water, we are doing this
4 and that. There's been studies done."

5 But there hasn't been a study done on the impact
6 of children who eat Papa John's Pizza whose mozzarella is
7 produced in Las Cruces, New Mexico, or southern New Mexico
8 by cows who are fed with alfalfa that is grown with produced
9 water.

10 And that is an example of the type of cascading
11 effects that this rulemaking process could have. And I,
12 frankly, don't see that they show an interest or initiative
13 in trying to address those things, rather saying we have
14 done some science, and there are some examples of some
15 problems being mitigated, rather than saying, what are the
16 real health and human and animal safety impacts that could
17 happen if we go forward with the rulemaking. Thank you.

18 CHAIRWOMAN SANDOVAL: Thank you, Ms. Carey.

19 Okay. The next three are Pamela Marshall, Joyce
20 Bogosian and Sandra Wheeler. Do we have Pamela Marshall
21 with us today?

22 (No audible response.)

23 CHAIRWOMAN SANDOVAL: Pamela Marshall?

24 (No audible response.)

25 CHAIRWOMAN SANDOVAL: Joyce Bogosian?

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: Ms. Bogosian, it looks like
3 you're on the Webex. If you are speaking, we cannot hear
4 you.

5 (No audible response.)

6 CHAIRWOMAN SANDOVAL: Ms. Bogosian, are you
7 there?

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: Okay. Sandra Wheeler?

10 (No audible response.)

11 CHAIRWOMAN SANDOVAL: Sandra Wheeler?

12 (No audible response.)

13 CHAIRWOMAN SANDOVAL: Okay. I will go through
14 the next three names. Barbara Kohl, Nicholas King and Yang
15 Toledo. Barbara Kohl?

16 (No audible response.)

17 CHAIRWOMAN SANDOVAL: Barbara Kohl?

18 (No audible response.)

19 CHAIRWOMAN SANDOVAL: Nicholas King?

20 (No audible response.)

21 CHAIRWOMAN SANDOVAL: Nicholas King?

22 (No audible response.)

23 CHAIRWOMAN SANDOVAL: Yang Toledo?

24 SPEAKER: Can you hear me?

25 CHAIRWOMAN SANDOVAL: We can. Please state your

1 name and affiliation, and you have five minutes to speak.

2 MS. TOLEDO: Okay, thank you. Hello Madam Chair
3 and members of the Commission. Good afternoon. My name is
4 Yang. I come from the Dine Nation in Farmington, New
5 Mexico.

6 I'm a first-generation graduate and a standing
7 committee member (inaudible) Crises Action. I am a
8 spokesperson representing my indigenous people on behalf the
9 Navajo Nation, and I want to let you know how my people are
10 systemically targeted in this corruption of unsafe and
11 unjust economic development for resources to provide for
12 this country and this state.

13 We must put an end to this genocide of indigenous
14 people for resources. Produced water will increase our
15 environmental disaster around the Four Corners. My hometown
16 of Farmington is heavily polluted by the Gold King Mine
17 spill that happened in 2015.

18 We aren't able to farm and maintain a healthy
19 lifestyle with the current state of iron and aluminum in our
20 rivers currently. Allowing produced water into New Mexico's
21 clean water is poisoning our people. If the oil and gas
22 industries don't know where to put the produced water, stop
23 fracking and ban destruction of indigenous home lands.

24 Farmington is home to two coal plants which is
25 one the most extracted impacted areas in New Mexico. This

1 risky approach to releasing produced water into New Mexico's
2 water sources is supporting the big corrupt oil and gas
3 companies that kill our people by poisoning our waters
4 across our water sources and profiting from it.

5 Still reservations are aware of fracking tactics
6 are implemented, and oil and gas barrels reside all over,
7 and there is no adequate food, shelter, water or medicine to
8 care for my people. The air pollution that surrounds cause
9 health-related problems and now makes our indigenous
10 relatives more likely to die from Covid 19.

11 My elders that live on the reservation do not
12 have access to clean, running water or electricity. We have
13 to live through these environmental effects that our elected
14 official decided.

15 Have you elected officials been out to the Navajo
16 Reservation and inhaled the toxic chemicals that kills my
17 people every single year. Have you drank from our water
18 source and taste the chemicals. And have you bathed in
19 toxic water only to have skin rashes from the water source.

20 Oil -- OCD recycled produced water will only kill
21 our people and environment. We, the youth, have to shine a
22 light on the inequality indigenous people and colored people
23 have been facing for multiple centuries.

24 Indigenous people across the United States face
25 the dangerous atrocities and consequences of pollution from

1 the pollution -- of the politicians and states. My
2 ancestors have (inaudible) without the necessities of health
3 care and safety (inaudible) that we have a dangerous economy
4 infrastructure. The Covid virus is just a piece of the
5 climate crises problem. And we need to understand these
6 problems will not go away. It will continue to get worse if
7 we do not honor the traditional medicines from the earth or
8 knowledge of indigenous people.

9 In these desperate times humanity needs to make
10 adequate transition to this and this much required by my
11 community to have (inaudible) environmental decisions being
12 made such as this produced water hearing. You will not be
13 there when the toxic waste kills your family, our family.

14 Those being affected by extracted (inaudible)
15 possibly losing family members, now the youth are taking a
16 stand -- now are taking a stand against generational
17 genocide of our people. We are all throughout this state on
18 different reservations and mobilization efforts to change
19 public policy to help our people benefit from the transition
20 of the renewable energy economy.

21 We only have a decade or less to drastically
22 reduce our carbon emissions or face the existential threat
23 of silent change. Before this crises, many people faced
24 drought, water scarcity and pollution in their home land,
25 making them more vulnerable to catch the virus. These

1 impacts hit our land-based communities the hardest, and
2 science is clear and the facts are clear.

3 You heard statistics all day, but we have only a
4 few years left to shift to a carbonless economy, to a
5 sustainable transition. Extraction of fossil fuels in New
6 Mexico poses a threat to our future, and we recognize that
7 it's ripe for potential for renewable resources.

8 New Mexico can be a leader in the next phase to
9 shift to a carbon-neutral economy with the leadership of our
10 elected officials. The crises will not go away in the blink
11 of an eye.

12 CHAIRWOMAN SANDOVAL: We will let you continue
13 and wrap up for a short period, but you have spent your five
14 minutes.

15 MS. TOLEDO: Okay. I'm almost done.

16 CHAIRWOMAN SANDOVAL: Okay.

17 MS. TOLEDO: Thank you. Just as the Coronavirus
18 will not be treated until we take precautionary action to
19 prevent the spread of find a vaccine solution, oil spills on
20 the land, polluted water in New Mexico have got to be ended
21 and prevented from happening right now.

22 If we took the necessary actions of switching to
23 renewable energy sources, 50 years ago communities might be
24 facing food or water scarcities in New Mexico. In the Four
25 Corners area, I have witnessed the tremendous change that

1 has benefited the earth -- that has not benefited the earth,
 2 people or the economy. I witness the chemical pollution
 3 kill the land, people and water. The profit the state makes
 4 does not make a change in the New Mexico communities,
 5 economy or environment. These resources will run out and
 6 create catastrophic environment disasters for all humanity,
 7 and the Navajo Nation is already an example.

8 Throughout the United States, we see reservations
 9 and people dying because of the environmental crises, and no
 10 access to clean water. And we, as New Mexico, must find a
 11 new sustainable solution to help the people's environment
 12 but it's too late.

13 Please support a sustainable, clean environment
 14 for everyone in the state. We ask that the committee deny
 15 the proposal of the OCD's plan and reconsider a sustainable
 16 proposal to the produced water and stop fracking. We must
 17 make big sacrifices for the environment.

18 CHAIRWOMAN SANDOVAL: Can you please wrap it up.

19 MS. TOLEDO: Thank you.

20 CHAIRWOMAN SANDOVAL: Thank you.

21 All right. We have the next three participants,
 22 Sharon Argenbright, Grietie Laga, Patricia Sheely.

23 Do we have Sharon Argenbright with us?

24 (No audible response.)

25 CHAIRWOMAN SANDOVAL: Sharon Argenbright?

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: Grietie Laga?

3 MS. LAGA: Can you hear me?

4 CHAIRWOMAN SANDOVAL: Yes, we can. Please state
5 your name and affiliation.

6 MS. LAGA: So let me know when I cut out like so
7 many other people don't come through fully.

8 So my name is Grietie Laga. I'm the resident for
9 the Apache Creek Watershed, which is part of the upper Rio
10 Grande bio region. Thank you for the opportunity to speak
11 today.

12 First it's important to me that you know I'm a
13 mother of two, and I do cater to many, as well as a mental
14 health worker, specifically in the realm of suicide
15 prevention. And if you want to affiliate me with an
16 organization, I know myself to be connected with Yucca, New
17 Energy Economy and Retake Our Democracy.

18 One moment because I have been rewriting some
19 words here. I'm not a scientific, nor am I good with papers
20 and documents that describe these type of regulations, rules
21 and adjustments, so you won't hear numbers nor stats or
22 references to studies from me.

23 I'm much more comfortable with rounds of
24 intuition and common sense, which is not necessarily a basis
25 of knowledge and awareness in our current white supremacist

1 society. However, at the risk of being ridiculed, I will
2 speak nonetheless.

3 And I come from a place of deep care, of intense
4 love for humans and non-humans alike, and from that place I
5 just need to say that I'm absolutely appalled at the
6 proposed regulations which make it easier for oil and gas
7 industry to jump forward and dump its toxic waste.

8 One doesn't need to know numbers and status to
9 understand how dangerous and exceedingly reckless these
10 proposals are. Just ask any child who plays outside, who
11 loves jumping in water puddles, who eats dirt once in a
12 while. Ask any Native youth, just like we heard from Yang
13 Toledo earlier, and it's clear to me that the industry, oil
14 and gas industry is playing with our health, my kids'
15 health, my neighbors' health, your health, and as
16 importantly, it's not more importantly, but the health and
17 well-being of the land. So please, please suspend your
18 rulemaking.

19 One more moment here, because I think there must
20 be, there ought to be a pre-rulemaking engagement with the
21 public, one that is acceptable and easy to join in, unlike
22 this particular format, easy to join in especially for
23 directly impacted communities.

24 And furthermore, and maybe even more important to
25 me, I urge you to start naming this so-called produced water

1 for what it truly is. It is toxic, meaning it kills. It
2 kills because of water -- of what this water contains,
3 radioactive materials, heavy metals, other contaminates.

4 So please do not look -- no longer use the
5 euphemism that hides the truth. That is just not okay. And
6 I'm getting really emotional about this, so I will end. I
7 will end with some of the final words of John (inaudible).
8 His words were published in the New York Times today, only a
9 couple of sentences.

10 So, quote, "Now it is your turn to let freedom
11 ring," unquote.

12 And at the very end he said, quote, "I say to you
13 walk with the wind, brothers and sisters, and let the spirit
14 of peace and the power of ever-lasting love be your guide,"
15 unquote.

16 So, Commissioners, please do your part and free
17 these lands which we call home to do your part to free these
18 lands of indoctrination and continued exploitation by the
19 gas and oil industry. And may the winds, as well as ever-
20 lasting love, inform all of your decision-making. Thank you
21 so much.

22 CHAIRWOMAN SANDOVAL: Thank you. I think we are
23 going to take a five minute break. Our system here is
24 trying to shut down. We are going to try to keep that from
25 happening. On the chance that you get kicked off of here,

1 please just log right back on, and we will get back started
2 in a couple of minutes. Again, we are going to take at
3 least a five-minute break. We are going to attempt to keep
4 from shutting down. If it does and you get kicked off,
5 please just call back in using the same information you
6 logged in this morning. Thank you.

7 (Recess taken.)

8 CHAIRWOMAN SANDOVAL: Thank you. Everybody we
9 will get the meeting started again at 1:47.

10 Okay. The next three are Patricia Sheely, Seneca
11 Johnson and Denton McCullough.

12 Patricia Sheely, are you with us today?

13 MS. SHEELY: This is Patricia Sheely. Can you
14 hear me?

15 CHAIRWOMAN SANDOVAL: Yes. Please proceed.

16 MS. SHEELY: My name is Patricia Sheely, and I'm
17 a resident of Gallup, New Mexico. I moved to New Mexico in
18 1993. I grew up in Ohio. I love the Land of Enchantment,
19 its open spaces, its rock, its vegetation, its people.

20 I am concerned about its water supply. We are
21 seeing higher and higher temperatures and less rain, so I
22 grow native, drought resistant plants in my back yard. Some
23 are dying.

24 My faith tradition compels me to speak to you.
25 We need water for life, for the life of our people, for the

1 life of the animals and for the life for plants. I have
2 three main concerns; depletion of fresh water resources,
3 protection of our fresh water resources, and the toxicity of
4 produced water and its effect on human, animal and plant
5 life.

6 Produced water, the fluid that comes up to the
7 surface in the fracking process should be used only in the
8 fracking process. My understanding (inaudible) would be
9 added. This is a better solution than storing it in natural
10 underground wells.

11 Fracking uses a lot of water which is in limited
12 supply. The reuse of produced water for fracking would save
13 our water and possibly prevent contamination from
14 underground storage. Produced water is toxic. It can even
15 contain uranium.

16 Here in McKinley County we understand the effect
17 of uranium contamination and the difficulty to get it
18 cleaned up. Produced water can easily contaminate the
19 surface water and land (inaudible).

20 Right now we have inadequate information
21 regarding spills. Knowledge is essential for seeking the
22 best information. We need information on what is in the
23 produced water, we need to know how many spills are
24 occurring, how large they are, where do they occur and what
25 happens after they occur.

1 This information needs to be obtained in a timely
2 manner, the present system of the industry's self-reporting
3 is not sufficient without adequate oversight. We need to
4 determine how many people are required to carry out this
5 work.

6 These things could have been discussed and
7 resolved in a satisfactory manner if stakeholders were
8 involved in creating these regulations. Since they were
9 not, I ask that the rules be (inaudible) checked to protect
10 the public health, the environment and our fresh water
11 resources. Thank you.

12 CHAIRWOMAN SANDOVAL: Thank you. The next
13 individual is Seneca Johnson. Are you with us today?

14 (No audible response.)

15 CHAIRWOMAN SANDOVAL: It looks like Ms.
16 Johnson -- I don't think we can hear you, Ms. Johnson.

17 (No audible response.)

18 CHAIRWOMAN SANDOVAL: Ms. Johnson?

19 (No audible response.)

20 CHAIRWOMAN SANDOVAL: Ms. Johnson?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: Ms. Johnson. Seneca
23 Johnson?

24 (No audible response.)

25 CHAIRWOMAN SANDOVAL: Denton McCullough?

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: Denton?

3 (No audible response.)

4 CHAIRWOMAN SANDOVAL: Okay. The next three,
5 Josue Damien Martinez, Ruth Striegel and Noah Tamas-Parris.
6 Do we have Mr. Damian Martinez?

7 (No audible response.)

8 CHAIRWOMAN SANDOVAL: Mr. Damien Martinez?

9 (No audible response.)

10 CHAIRWOMAN SANDOVAL: Ruth Striegel?

11 (No audible response.)

12 CHAIRWOMAN SANDOVAL: Ruth Striegel?

13 (No audible response.)

14 CHAIRWOMAN SANDOVAL: Noah Tamas-Parris?

15 MR. TAMAS-PARRIS: Before I speak, I was
16 contacted by Seneca, and she asked me to note (inaudible)
17 she -- her tech is having trouble reaching her. Could she
18 be bumped to the bottom of the list?

19 CHAIRWOMAN SANDOVAL: Yeah, or if you want to
20 just finish yours and then her go directly after that, that
21 would be amenable.

22 MR. TAMAS-PARRIS: Well --

23 CHAIRWOMAN SANDOVAL: Would it be easier for her
24 to go at the bottom of the list?

25 MR. TAMAS-PARRIS: I think so.

1 CHAIRWOMAN SANDOVAL: Okay, yeah, no problem.

2 Okay. State your name and affiliation you may have, and you
3 have five minutes.

4 MR. TAMAS-PARRIS: Yes. My name is Noah
5 Tamas-Parris. I am a -- I teach college here in New Mexico,
6 and I would like to be referred to for myself, although I am
7 a volunteer for (inaudible) Action.

8 And first I want to address the strange way that
9 that this hearing started because it started out with people
10 who wanted to comment on the rulemaking process or on the
11 proposed rule to be subject to cross-examine. And that in
12 itself is incredibly confusing because how does that even
13 work when you are just trying to represent yourself.

14 And I'm glad that you all unanimously decided to
15 not make that part of the process after some -- WildEarth, I
16 believe, raised an objection, but it makes me wonder how and
17 why that process started in the first place and who exactly
18 did it, since you all agreed, unanimously agreed to take it
19 out of the process.

20 So I just wanted to mention that as part of the
21 public record, I think that's incredibly strange. And
22 moving on to what I have prepared, I want to start with the
23 very problem with being called produced water in the first
24 place. It doesn't really accurately describe what we are
25 talking about. This is toxic fracking waste, and it's a

1 toxic mixture of radioactive material, like radium and heavy
2 metals and chemicals that we not allowed to even know about
3 it because it was considered a trade secret and propriety
4 through the oil and gas industry.

5 And so that on itself was like should give people
6 pause when considering this rule that prefers to see this
7 produced water, but the proposed rule, it allows the oil and
8 gas industry to discharge or otherwise dump this toxic
9 fracking waste outside of oil and gas producing areas, and
10 it explicitly implies to let (inaudible) fracking waste onto
11 land and into streams. (inaudible) report eight years ago
12 saying that this fracking waste is incredibly toxic, and
13 none of the tools we have for treating it or disposing of it
14 are adequate to protect the public health and environment.

15 And as recently as 2018, Pennsylvania has decided
16 to ban the spraying of this fracking (inaudible) on roadways
17 because it's harming public health and the environment. And
18 the fact that today, the way we dispose of fracking waste is
19 to basically dump it into these giant pools and let it
20 evaporate shows that we -- there doesn't seem to be
21 (inaudible) that there's an adequate way to drain this
22 water, let alone have it be done on a mass scale, let alone
23 have it be done in a cost-effective scale.

24 So before we have a way of drafting -- of showing
25 that (inaudible) it can be created in a way that keeps the

1 environment and public safe, we are putting things in place
2 as to how the dumping of this frack waste onto land outside
3 of the areas that are producing this fracking waste water.

4 And I mean, they're called (inaudible) for a
5 reason, but because the materials that they produce are
6 toxins, and they have to be contained, and that alone is
7 incredibly problematic.

8 And I completely understand the position that New
9 Mexico is in because we need to figure out how to conserve
10 our water and maintain our water as ground (inaudible)
11 climate change which fracking ironically is attributed to,
12 but it should be clear that the solution shouldn't be to
13 hide and let the industry dump outside of the oil and gas
14 producing areas, but to put a moratorium on new fracking
15 wells until we can get the problem (inaudible) we decide
16 that's (inaudible) adequately put a problem and we have to
17 phase out fracking all together.

18 CHAIRWOMAN SANDOVAL: Sir, you have reached your
19 five minutes. You can kind of wrap it up, but please try to
20 wrap it up.

21 MR. TAMAS-PARRIS: Just a couple of things
22 (inaudible) delay the rulemaking process until a thorough
23 and adequate review of the scientific data has been
24 completed because it has not been shown that that has been
25 done. Thank you very much, and I rest.

1 CHAIRWOMAN SANDOVAL: Thank you, sir. Okay. I
2 will list the next three. Wendy Atcitty, Liz Gold, Felina
3 Romero. Wendy Atcitty, are you joining us today?

4 (No audible response.)

5 CHAIRWOMAN SANDOVAL: Windy Atcitty?

6 (No audible response.)

7 CHAIRWOMAN SANDOVAL: Liz Gold?

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: Liz Gold?

10 (No audible response.)

11 CHAIRWOMAN SANDOVAL: Felina Romero?

12 (No audible response.)

13 CHAIRWOMAN SANDOVAL: Felina Romero.

14 (No audible response.)

15 CHAIRWOMAN SANDOVAL: So the three remaining we
16 have are Brittany Fallon and then Seneca Johnson and then
17 Valerie Gremillion. Okay. Brittany Fallon, are you with
18 us?

19 (No audible response.)

20 CHAIRWOMAN SANDOVAL: Brittany Fallon?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: Seneca Johnson?

23 (No audible response.)

24 MS. JOHNSON: Hello, can you hear me?

25 CHAIRWOMAN SANDOVAL: Yes, we can. Can you state

1 your name, affiliation, and you have five minutes.

2 MS. JOHNSON: Thank you so much. Hello. My name
3 is Seneca Johnson, I'm from (inaudible) Navajo Nation, and
4 I'm a steering committee member of the (inaudible) Climate
5 Change Action.

6 So the gas industries have been pillaging our
7 communities (inaudible) for decades, especially indigenous
8 and vulnerable communities. The proposed rule can only
9 perpetuate this and perpetuate the environmental (inaudible)
10 that is so prevalent in New Mexico and should not be passed
11 or even considered. It is a gross misuse of our resources
12 and the public trust.

13 Produced water is toxic and cannot be fully
14 treated, and we know that. It has been studied extensively
15 and has been talked about extensively here in (inaudible).
16 Becoming more (inaudible) than any (inaudible) in our
17 country with toxic waste is unacceptable, especially when
18 the health of our (inaudible). We cannot and should not be
19 putting New Mexican health at risk in any capacity,
20 especially when our state is still dealing with the ongoing
21 pandemic. It makes absolutely no sense to put New Mexicans
22 in danger.

23 And we need tighter regulations to protect our
24 human beings. The current proposal needs to be suspended
25 because the information reasons and it shows that there has

1 not been adequate communication with community members about
2 what the (inaudible) would be.

3 If anything else, it should be proposed then it
4 absolutely needs to be talked through with the communities
5 that are affected and be restricted, but even better than
6 that, we need to stop fracking altogether and to stop the
7 production of toxic waste. That's the only way (inaudible)
8 and ensure the safety of our communities, our land, our
9 water and our way of life. Thank you.

10 CHAIRWOMAN SANDOVAL: Thank you, Ms. Johnson.

11 I believe we have two more names, Nancy Galloway
12 and Valerie Gremillion. Nancy, are you with us?

13 MS. GALLOWAY: Yes, I am. Can you hear me?

14 CHAIRWOMAN SANDOVAL: Yes, we can. Please state
15 your name, any affiliation you may have, and you have five
16 minutes.

17 MS. GALLOWAY: Hi. My name is Nancy Galloway, I'm
18 just a concerned citizen with no formal affiliations with
19 any other group. I live in Albuquerque, and could you
20 please let me know if my voice starts to break up.

21 CHAIRWOMAN SANDOVAL: Yes, we will do. You sound
22 good right now.

23 MS. GALLOWAY: Great. Thank you. Drilling one
24 well in the Permian Basin requires more than 11 million
25 gallons of fresh water, 11 million gallons of fresh water

1 water for each well. And we live in a state where water is
2 scarce. Does that make sense? It doesn't make sense to me.

3 For every barrel of fracked oil, four barrels of
4 toxic waste water is produced. In order for this toxic
5 (inaudible) produced water is a problem for the oil
6 industry. This so-called produced water should be
7 (inaudible) a toxic (inaudible) dangerous for humans other
8 than things. It contains radioactive waste among many other
9 cancer-causing toxins. And for that reason alone, it should
10 never be used on our crops or on our (inaudible). It should
11 never be allowed to contaminate our precious groundwater.

12 I suppose it would be nice if all the toxic
13 fracking water could be treated and reused safely, but
14 unfortunately less than a quarter of the about 1200
15 chemicals identified in produced water have an approved
16 (inaudible) technique, in other words, even after being
17 treated, it can't be tested and analyzed to determine its
18 safety.

19 And if someone did eventually develop analytical
20 methods to determine the safety (inaudible) produced water,
21 the extreme methods of water treatment that would be
22 required to restore it to a truly safe form would be
23 prohibitively expensive, and all the toxins would still need
24 to be dealt with.

25 Far better that we prohibit the toxic process of

1 fracking all together, allowing us to save our precious and
2 scarce drinking water, drinking and agriculture. We all
3 need water to live. We don't need oil and gas to live.
4 Quite the contrary, oil and gas is progressively making our
5 planet's climate unlivable.

6 It would make much more sense to transition to
7 clean, renewable energy like solar and wind as quickly as
8 possible and save our fresh water for drinking. Our state
9 has a lot of solar and wind. Government is tasked with
10 protecting citizens' health, our water and our environment,
11 please do so.

12 I support (inaudible) statement and Ms. Nanasi's
13 100 percent, as well as Rebecca Sobel's public comment this
14 morning. It's terrifying the rules that are being proposed
15 here and without fully taking plans (inaudible).
16 Regulations must respect the science. It is incumbent upon
17 the OCD to take a hard look at the existing science that
18 won't allow the use of waste water from oil and gas wells to
19 be used at all outside the oil field before adopting new
20 rules.

21 Lab experiments have demonstrated that nearly all
22 of the metals from these waste waters leached from roads
23 after raining, likely reached the ground -- likely reaching
24 grounds and surface metals from these waste waters leached
25 from roads after rain events.

1 Pennsylvania and four other states have banned
2 (inaudible) of waste water from (inaudible) and New Mexico
3 should do the same. OCD has not established appropriate
4 regulatory procedures and has failed to enforce the ones you
5 do have. Given the current shameful history of wide-spread
6 contamination by the oil and gas industry, it would be a
7 violation of New Mexico constitution and our laws to
8 consider expanding the oil and gas waste water outside the
9 oil and gas field. And that's all. Thank you for allowing
10 me to speak.

11 CHAIRWOMAN SANDOVAL: Thank you. Our last one is
12 Valerie Gremillion.

13 MS. GREMILLION: Hi there, I'm here, but I would
14 like to request to speak tomorrow because when the e-mail
15 that I received from Florene Henderson said I would not be
16 allowed to speak today because I did not get my request in
17 on time, so I would like to speak tomorrow. Can you please
18 tell me around what time that might be or what the actual
19 timing window would be.

20 CHAIRWOMAN SANDOVAL: Yes, you can speak
21 tomorrow. We will call everybody's names today, who were
22 not responsive today, we will call again tomorrow. We plan
23 to begin the meeting tomorrow with public comment, and so we
24 estimate, you know (inaudible) that time for you, but the
25 meeting starts at 9 a.m. tomorrow morning, and we will, you

1 know, start right away with public comment.

2 MS. GREMILLION: Thank you very much.

3 CHAIRWOMAN SANDOVAL: Thank you.

4 This concludes the first round of public
5 comments. If you are a member of the public and still wish
6 to address the Commission, please e-mail Florene Davidson
7 prior to 3 p.m. today, which is, you know, a short amount of
8 time, at the e-mail listed on the hearing notice, and you
9 will be permitted to provide public comments tomorrow
10 morning when this hearing reconvenes at 9 a.m.

11 Just also reminding people, if we called your
12 name today and you were not able to participate, we will
13 call your name again tomorrow.

14 We will now go to the presentation of technical
15 testimony from the identified parties, beginning with the
16 Division.

17 The Division may not present direct testimony on
18 the proposed rule amendment. Division, will you please call
19 your first witness.

20 MS. BADA: (inaudible).

21 REPORTER: I can't hear you, Cheryl.

22 CHAIRWOMAN SANDOVAL: Ms. Bada, you're cutting
23 out.

24 MS. BADA: Should I try it without the video?
25 Can you hear me?

1 CHAIRWOMAN SANDOVAL: Yes, ma'am.

2 MS. BADA: We have one witness, William Brancard.

3 Can you swear him in?

4 CHAIRWOMAN SANDOVAL: Will the court reporter
5 please administer the oath.

6 (Witness duly sworn.)

7 CHAIRWOMAN SANDOVAL: Thank you. Please proceed
8 with this witness.

9 WILLIAM BRANCARD

10 (Sworn, testified as follows:)

11 DIRECT EXAMINATION

12 By MS. BADA:

13 Q. Could you state your name?

14 A. My name is William Ordell Brancard.

15 Q. (inaudible)?

16 CHAIRWOMAN SANDOVAL: Ms. Bada, we can't hear you
17 very well. We can hear Mr. Brancard very well, though.
18 Yeah, I think it's better if you switched it to yourself.

19 Okay. Would you like to begin again, Ms. Bada.

20 Q. Please state your full name for the record?

21 A. William (inaudible).

22 Q. On whose behalf are you testifying?

23 A. (inaudible) the New Mexico Energy, Minerals and
24 Natural Resources Department, and I am testifying on behalf
25 of the Oil Conservation Division of the Energy Minerals and

1 (inaudible).

2 CHAIRWOMAN SANDOVAL: Thank you. Ms. Bada and
3 Mr. Brancard, I think, when you switch, when you are each
4 speaking, can you switch, I guess, whatever it is you are
5 using. If the laptop is pointed at you we can hear you
6 well. If you are off to the side, we can't hear you.

7 THE WITNESS: Did you get the last part?

8 CHAIRWOMAN SANDOVAL: If you just want to repeat.
9 We heard -- I would, yes, please.

10 A. Thank you. I work for the Energy, Minerals and
11 Natural Resources Department as general counsel, and I'm
12 testifying on behalf the Oil Conservation Division.

13 Q. Did you submit prefiled written testimony?

14 A. Yes, I did.

15 Q. Do OCD Exhibits 3 and 4 contain your prefiled
16 testimony?

17 A. Yes.

18 Q. Do you adopt your written testimony today?

19 A. Yes.

20 Q. Does the OCD support any of the proposed
21 modifications that were submitted by other parties?

22 A. I can now go through some of those, explain what
23 our position is in regards to these changes proposed by
24 other parties. Can the Commission hear me?

25 CHAIRWOMAN SANDOVAL: Yes, sir.

1 A. Okay. First of all, as background about this
2 rule proceeding, you know, it is -- it is, as we have been
3 accused, a narrow rulemaking. We are seeking basically here
4 to accomplish one task, which is to remove conflicts between
5 our existing regulations and the new statutes passed by the
6 legislature under House Bill 546 in 2019. That is the
7 primary goal of this rulemaking.

8 This rulemaking is not designed to deal at all
9 with the (inaudible) scientific and technical issues that
10 deal with produced water. That's why you have a lawyer
11 testifying here, not a scientist.

12 But please be clear that this is not the only
13 rulemaking our agency is working on in regard to produced
14 water. We are working with the New Mexico Environment
15 Department, Produced Water Research Consortium to develop
16 better data and science regarding produced water. The
17 Environment Department is working on proposed rules. We
18 need to make our proposed rules consistent with theirs when
19 they deal with the science around produced water.

20 We also have a number of other rules that deal
21 with produced water, and so that should be made clear here.
22 Rule 34, which we are referring to here as Rule 19.15.34, is
23 not the only Commission rule that deals with produced water.
24 The Commission has a number of other rules that actually go
25 into greater detail about certain activities and facilities

1 that deal with produced water from Rule 19.15.17, which
2 deals with (inaudible), Rule 19.15.46 which deals with
3 injection wells, which is the primary disposal option, an
4 every use option for various water and is governed by the
5 Safe Drinking Water Act. In 19.15.29 and 30 which deal with
6 spills and releases and clean up of spills and releases, and
7 19.15.36 which deal with surface waste management
8 facilities.

9 All of these relate to produced water, and as we
10 move forward coming up with additional changes related to
11 the regulation of produced water, we will likely be
12 addressing a number of these (inaudible) amendments to those
13 regulations as well as potentially adopting new regulations.

14 For instance, in the Natural Gas Waste Rule or
15 Methane Rule proposal that Division has put forward in the
16 last couple of weeks, there are rules governing pipelines.
17 Pipelines are a key element of how produced water is also
18 transported. So we are looking at those rules and the same
19 model in helping to regulate produced water.

20 So finally we also, as it's been obvious as
21 everyone else has commented, we do need more data. We do
22 need more science. We appreciate all the input from
23 folks --

24 (Protestor interruption.)

25 PROTESTOR: This meeting needs to be canceled.

1 This meeting needs to be canceled. This is not an
2 illegitimate meeting. You need to be canceling this meeting
3 right now. I don't understand how you are still doing this.
4 This is not okay. This meeting needs to be shut --

5 CHAIRWOMAN SANDOVAL: Thank you. Please
6 continue, Mr. Brancard. And if that type of interruption
7 happens again --

8 PROTESTOR: This meeting needs to be canceled.
9 It needs to be canceled.

10 CHAIRWOMAN SANDOVAL: Thank you. You will now be
11 removed from this meeting.

12 PROTESTOR: (inaudible) cancel this meeting, this
13 is not a legitimate meeting.

14 CHAIRWOMAN SANDOVAL: Thank you. Please proceed,
15 Mr. Brancard.

16 A. So, as I mentioned, we do need more data, we need
17 more fresh science. That is a reason why we are using the
18 concept of a water use report in this to fill a gap that we
19 have in our data on the fact of where produced water goes.
20 We have a sense of how much water gets used in disposal
21 wells, how much water gets used in enhanced recovery
22 operations, but we don't have a good grasp of how much water
23 is used in recycling in oil and gas production.

24 As I mentioned, those three items, the disposal
25 through injection wells, the reuse of produced water in

1 enhanced oil recovery operations and recycling of produced
2 water in the drilling operations, those are the only three
3 operations produced water uses that we currently allow and
4 regulate and so --

5 (Protestor interference.)

6 PROTESTOR: We don't waste water.

7 A. There is nothing in this proposed rule that
8 allows any use of produced water outside of the oil and gas
9 industry. That's the exact opposite of what we are trying
10 to accomplish here. House Bill 546 made it clear that our
11 Division, which had limited jurisdiction over certain uses
12 outside the oil and gas industry who no longer has
13 jurisdiction over those uses, and we are changing our rules
14 to make that clear to everyone, that is what our
15 jurisdiction is. It's now limited only to disposal and uses
16 within the oil and gas industry.

17 And so with that I will try to look at a number
18 of the changes. I really appreciate all the changes that
19 have been proposed. We have seen a number of them.
20 (inaudible) Environmental Defense Fund, (inaudible) Society,
21 Sierra Club, WildEarth Guardians. New Mexico Environment
22 Department in their written comments had some, and New
23 Mexico Oil and Gas Association.

24 Starting with the water use report, New Mexico
25 Oil and Gas Association had a small change, which is fine,

1 but Sierra Club and WildEarth Guardians had much more
2 detailed changes to the water use reports. And frankly,
3 almost everyone can disagree with our use of the phrase
4 potable and not potable water, and that's fine, they can
5 disappear.

6 What we would like to look at and go with the
7 ideas put forth by the Sierra Club in terms of how they
8 rewrote 19.15.16.21. What it does, and what's different
9 from not only getting rid of the potable-nonpotable
10 terminology, it creates a fourth category which is water,
11 produced water that is greater than 10,000 TDS.

12 That's obviously -- that's beyond what all
13 agencies consider fresh water, so that's another distinction
14 that the Environment Department said they are in agreement
15 with that distinction as long as the Commission is agreeable
16 that's within the scope of this rulemaking.

17 They also require in their proposed change to the
18 water use report that we compile regular monthly reports
19 about this water use reporting and put them up on our
20 website statistics and reporting page, that's perfectly
21 fine. I hope that we provided in our exhibits an example of
22 what that reporting would look like.

23 What our hope is is that the reporting is all
24 done electronically and can easily be put into a database
25 and made publicly accessible. We have no problem with

1 having that report.

2 On to Rule 34, 19.15.34, in the scope section,
3 Section 2, WildEarth Guardians proposes an additional
4 sentence that says that this Rule, 19.15.34 does not
5 authorize any of these use of produced water that is not
6 directly related to the exploration, production, treatment
7 or refinement of oil and gas.

8 We think that's what the statute says, and so
9 with don't have a problem with that, particularly if that
10 sentence can really clarify some of the misunderstandings
11 here that in some ways that we are allowing the uses outside
12 of oil and gas to this. We don't think we are. I think our
13 language is quite clear about it, but I think it makes it
14 even clearer. So that's -- that's the areas -- that's the
15 change to 19.15.34.2 that we would be fine with.

16 In addition, WildEarth Guardians makes a proposed
17 change to 19.15.34.3, which adds in the phrase that has been
18 amended in the statute, in a manner that protects public
19 health, the environment and fresh water resources. That's
20 fine to have that language in there. It's in the statute.
21 It clarifies our standard which frankly doesn't really
22 change our standard because we have the same standard now
23 under B 15 that we have also under B 21 and B 22 dealing
24 with regulation of waste. So that's fine to have that
25 phrase in there. It's out of the statute. We are totally

1 okay with that.

2 When it comes to 19.15.34.8, there is a number of
3 changes, wording changes that the New Mexico Oil and Gas
4 Association (inaudible) tried to get our rule to comply with
5 the language that's used in another rule, 19.15.26, so in A1
6 that's what their goal is, and we're fine with that.

7 A2, rather than repeating exploration, drilling,
8 production, treatment or refinement of oil and gas,
9 basically saying within the jurisdiction of the Division,
10 that change is fine.

11 So finally New Mexico Environment Department in
12 8A6 proposes language that read -- that adds to the release
13 section to say, releases for activities related to the
14 exploration, drilling, production refinement, adding those
15 words into it would make it clear that releases that are
16 covered in the Oil & Gas Act are simply the releases that
17 would be related to oil and gas in our jurisdiction.

18 They are fine with the proposed language. They
19 offered the language that the Oil and Gas Association
20 proposed earlier, within the jurisdiction of the Division.
21 That would make it more clear that if have you a release,
22 when you have to report to our agency and when you have to
23 report to the Environment Department for the release.

24 So those are the changes, quickly, that we are
25 okay with. And I think -- do you have any more questions?

1 Are we open? We are open for questions from the Commission.

2 CHAIRWOMAN SANDOVAL: Okay. The Commission will
3 conduct their questions at the end. NMOGA, do you have any
4 questions for Mr. Brancard?

5 MR. FELDEWERT: Yes, Michael Feldewert. Can you
6 hear me?

7 CHAIRWOMAN SANDOVAL: Yes, we can.

8 CROSS-EXAMINATION

9 BY MR. FELDEWERT:

10 Q. Mr. Brancard, I believe you testified as to the
11 goal, one of the goals of the Produced Water Act in your
12 testimony. Were you involved at all with the passage by the
13 legislature to this Water Act?

14 A. Yes, in a minor way. The bill was introduced
15 actually by people within the oil and gas industry. The
16 state agencies who were affected by it, our agency, the New
17 Mexico Environment Department and Office of the State
18 Engineer obviously were very interested in what this was
19 doing to the state's disregulation of produced water, and so
20 all three agencies became involved, and that's the bill
21 moved further to try to refine it and make it more palatable
22 to the state agencies.

23 Q. Is it fair to say that one of the goals the
24 legislature in enacting this statute was to encourage the
25 recycling and reuse of produced water by the industry?

1 A. You know, you have to read the intent of the
2 legislature from the words that are on the paper. By
3 discouraging -- by eliminating certain practices that
4 discourage the use of recycled produced water, and by
5 clarifying ownership and responsibility for produced water,
6 one could infer that they were encouraging the reuse of
7 produced water certainly within the oil and gas industry.

8 **Q. And in fact the legislature also then made sure**
9 **to define produced water; correct?**

10 A. Right. They made a minor change to the
11 definition of produced water.

12 **Q. Okay. And as I understand your testimony, one of**
13 **the goals of your role here is to obtain data on the reuse**
14 **of produced water by the industry?**

15 A. That's correct. And frankly on the -- what is
16 being used in drilling.

17 **Q. Okay.**

18 A. Produced water and fresh water.

19 (Audio interruption, screaming.)

20 **Q. And so there is (inaudible) --**

21 (Audio interruption, screaming.)

22 **Q. Your role that requires operators to file a**
23 **report on the types of water that they utilize when they are**
24 **developing and drilling oil and gas, oil and gas wells?**

25 A. That's correct.

1 CHAIRWOMAN SANDOVAL: Will you please -- I'm
2 sorry, Mr. Feldewert. Can you hold a minute. Lynn, would
3 you please mute your microphone and keep it muted.

4 (No audible response.)

5 MR. FELDEWERT: Thank you.

6 Q. And, Mr. Brancard, if you are going to obtain
7 data on the amount of produced water used by the industry
8 for drilling, then it's important that they report it as
9 produced water; correct?

10 A. Yes.

11 Q. Okay. And then is that why in the draft rule
12 requires operators to report either as produced water, and
13 then if it's not produced water, there are some categories
14 that you initially stated are the types of non-produced
15 water that need to be reported, that being potable or
16 non-potable?

17 A. Correct.

18 Q. And as I --

19 MR. FELDEWERT: Madam Chair, is it okay if I
20 share the screen?

21 CHAIRWOMAN SANDOVAL: If you can, yes.

22 MR. FELDEWERT: I'm going to try. Let's see how
23 this works, okay? I'm unable to share. Okay.

24 Q. As I understand it, you have examined the Sierra
25 Club's proposed modifications?

1 A. Yes.

2 Q. And in terms of the reporting under Subpart 16.21
3 -- I apologize, I was hoping to be able to bring it up, but
4 apparently I can't -- but you were talking about 16.21;
5 correct?

6 A. That is correct.

7 Q. All right. I am going to trying to go to that.
8 Do you have that in front of you, Mr. Brancard?

9 A. I do.

10 Q. Okay. Great.

11 CHAIRWOMAN SANDOVAL: We are trying to change
12 your permission.

13 MR. FELDEWERT: That would be nice. Should I
14 wait? Let me try it now.

15 CHAIRWOMAN SANDOVAL: It may not be up there yet.
16 There it is.

17 Q. Great. This is the sentence you were talking
18 about -- are these the changes, Mr. Brancard, that the
19 Division considered would be appropriate in order to
20 accomplish your goal?

21 A. Yes. We do not oppose these changes.

22 Q. Okay. As I look at it, what they are proposing
23 here is a break -- and I'm here at 16.21 -- the breakdown of
24 that amount by types of water including, and then the first
25 category was produced water; right?

1 A. It should be.

2 Q. 16.21 A?

3 A. Oh, yes. I see it.

4 Q. Okay. The second category would be water other
5 than produced water that has 10,000 or more milligrams per
6 liter TDS?

7 A. Yes.

8 Q. And it would be important to have, other than
9 produced water so that you don't get mixed up in the event
10 they reporting produced water?

11 A. Correct. The goal that the four categories or
12 three categories add up to 100 percent.

13 Q. Okay. All right. Do you think it would be
14 appropriate in order to make this -- and let me finish.

15 The other two categories would be water other
16 than produced water that has more than 1000 milligrams per
17 liter TDS, but less than 10,000. And then the fourth
18 category would be water other than produced water that has
19 less than 1000 milligrams TDS those would be your four
20 categories?

21 A. That's correct.

22 Q. Would it therefore be important, do you think, to
23 take out, for example, the language "including," so that
24 it's clear that operators are to report either as produced
25 water, or if it's not produced water, either one of these

1 other three categories?

2 A. If that would help the understanding of the
3 section, sure.

4 Q. Okay. Okay. And then I think you, I'm going to
5 pull a switch-up here, and I'm going to go to what's been
6 marked as NMOGA's Exhibit A, which is OCD Exhibit 3B. And
7 we just went through 16.21, so I'm going to go to the second
8 page. And this is part 34.8 where NMOGA had proposed
9 changes. Mr. Brancard, are you there?

10 A. Yes.

11 Q. Okay. And I believe your -- and you understand
12 the reason for these changes?

13 A. Yes. These are words -- these are terms that are
14 used in other regulations, particularly 19.15.26, and we
15 don't want to conflict with that regulation.

16 Q. Okay. And so you agree that these two changes
17 showing up here under Exhibit 3, 34 which are highlighted,
18 that those would be appropriate?

19 A. Yes, we don't oppose those changes.

20 Q. And just for clarity of the record, this
21 particular exhibit, it shows in unhighlighted in line format
22 the Division's proposals; correct?

23 A. Correct.

24 Q. And then the highlighted red line that we see on
25 here would be what the language change that NMOGA is

1 **proposing?**

2 A. That's my understanding.

3 **Q. Okay. Great. Thank you for your effort here.**

4 **That's all the questions I have.**

5 CHAIRWOMAN SANDOVAL: Thank you, Mr. Feldewert.
6 WildEarth Guardian, would you like to cross-examine?

7 MR. TIMMONS: Yes, Madam Chair, and I would also
8 like to share my screen. I'm not sure if I have that
9 permission yet, but maybe we can get that process started.

10 CHAIRWOMAN SANDOVAL: Go ahead and try, and if it
11 doesn't work we'll --

12 MR. TIMMONS: (inaudible) option on my screen.
13 Okay, it does give me that permission now. I'm not quite
14 ready to share, but it looks like I have that option, so
15 thank you.

16 CROSS-EXAMINATION

17 BY MR. TIMMONS:

18 **Q. Again, this is Daniel Timmons on behalf of**
19 **WildEarth Guardians. Good afternoon, Mr. Brancard.**

20 A. Hello.

21 **Q. In your oral testimony you described this**
22 **rulemaking as part of -- to implementing the Produced Water**
23 **Act. Would you agree with that?**

24 A. I missed a few words there, sorry.

25 **Q. Okay.**

1 MR. TIMMONS: I think we are getting some
2 background noise from someone who is not muted.

3 (Response.)

4 MR. TIMMONS: That's very helpful.

5 Q. So in your oral testimony you described this
6 rulemaking as part of a phased approach to implementing the
7 Proposed Water Act. Would you agree?

8 A. Yes.

9 Q. Would you also agree that there is nothing in the
10 public notice for this rulemaking that describes a phased
11 approach?

12 A. That's right. I'm sorry, no, we did not do that,
13 no.

14 Q. So nothing that outlines future rulemakings in
15 that public notice?

16 A. That's correct. And these are rulemakings
17 related to produced water. They are not necessarily related
18 to (inaudible).

19 Q. Has OCD issued any, aside from this rulemaking,
20 any formal public notices for future rulemakings regarding
21 produced water?

22 A. No.

23 Q. Will it provide any public time table for such
24 rulemakings?

25 A. No.

1 Q. Is there any statutory time line that would
2 require OCD to promulgate additional produced water rules by
3 any certain date?

4 A. No.

5 Q. Was that a "no"? I'm sorry.

6 A. No. Sorry.

7 Q. So the public effectively has no certainty that
8 OCD will actually promulgate produced water rules within say
9 the next year?

10 A. Given all the circumstances going on with the
11 pandemic and our involvement with other rulemakings, it's
12 hard to guarantee any scheduled rulemaking.

13 Q. Is OCD going to wait for future rules to be put
14 in place before it allows the recycling and produced water
15 (inaudible). These being the proposed rules.

16 A. Well, no, the proposed rules limits are defined
17 to approve the radius of produced water. So that came into
18 effect with House Bill 546. We didn't need these rules to
19 limit our authority; our authority was already limited.
20 This just makes it clear to the regular community and others
21 that we have no authority over any use outside of oil and
22 gas activities.

23 Q. Would you agree that OCD does have authority to
24 issue permits for the use of produced water within the oil
25 and gas industry?

1 A. We do, and we issue permits for disposal wells
2 under our authority delegated to us in the Safe Drinking
3 Water Act. We issue the permits for injection wells dealing
4 with enhanced oil recovery, also under the Drinking Water
5 Acts authority. And the rule we are looking at here, Rule
6 34, deals with recycle of water just for the use in drilling
7 activities. So those are the three areas that we cover.

8 **Q. Just drilling activities, or other activities**
9 **within the oil and gas industry, to be clear?**

10 A. Well, these recycling facilities and containments
11 are designed to (inaudible) and that's what they are there
12 for.

13 **Q. The rulemaking (inaudible) indicated that this**
14 **rulemaking, quote, implements the (inaudible) for produced**
15 **water management and authority enacted by HB 546. Do you**
16 **agree with that? I can post it up if you need to?**

17 A. I will go with what you are saying.

18 **Q. And in your written testimony, you noted that**
19 **produced water reporting would aid in future regulatory**
20 **decisions; is that right?**

21 A. Yes.

22 **Q. And that obtaining what you refer to as, quote,**
23 **basic information regarding the use of produced water in**
24 **fracking is again, quote, essential to implement the goal of**
25 **HB 546 and will inform future policies.**

1 A. Agree.

2 Q. So based on that statement, do you agree that OCD
3 currently lacks basic information it needs to implement the
4 goals of HB 546?

5 A. In this particular sense, we lack some basic
6 information, and that's, where does all of that produced
7 water go? We have a sense of where it goes, down injection
8 wells, or recovery wells, which is probably 80 to 95
9 percent, maybe. But we don't know what's being used in
10 drilling, and that's obviously an important issue as far as
11 the commenters said earlier about trying to discourage fresh
12 water use in drilling.

13 Q. Okay. Thank you. So I'm going to share my
14 screen now and hope to -- looks like that's going to work,
15 great.

16 CHAIRWOMAN SANDOVAL: (inaudible). Just if you
17 could like hit the plus sign. I think it's 75 percent.

18 MR. TIMMONS: On the PDF itself?

19 CHAIRWOMAN SANDOVAL: That's better.

20 Q. Okay, great. So this was included in OCD's
21 prehearing statement as OCD Exhibit 4. I think that number
22 has stayed the same.

23 But you would agree that this was a true and
24 accurate representation of OCD's Exhibit 4 that you have of
25 your (inaudible).

1 A. I will take your word for it, so yes

2 Q. So far. I want to take you to what's Page 2 of
3 your presentation where you discuss the goals of
4 (inaudible). So this page (inaudible) identifies the goal
5 of this (inaudible); is that correct?

6 A. Yes.

7 Q. Based on this slide, did OCD identify the
8 protection of public health, the environment and fresh water
9 resources as a goal of this rulemaking?

10 A. We were just trying to avoid conflicts with the
11 statute. That's what it says; that's what we were doing.

12 Q. So this is Page 3 of the same presentation,
13 identifying what you describe as the key changes in HB 546
14 including the Produced Water Act.

15 So on this slide, did you identify the protection
16 of public health, environment and fresh water resources as a
17 key change of HB 546.

18 A. No, frankly because it was simply taking language
19 that already existed in the Oil and Gas Act and putting it
20 into this particular same -- same paragraph, actually,
21 within the Act. That language already existed.

22 Q. The presentation begins (inaudible) "HB 546
23 encourages (inaudible) produced water in the oil and gas
24 industry." Correct?

25 A. Yeah, that's the way we read House Bill 546. I'm

1 not sure if anybody else reads it that way, but that's the
2 way we read it.

3 Q. With respect to OCD's authority, HB 546 actually
4 restricted OCD's authority to authorize certain types of
5 produced water reuse; right?

6 A. For uses outside the oil and gas industry, yes,
7 absolutely.

8 Q. So the Produced Water Act limited OCD's
9 jurisdiction?

10 A. Yes.

11 Q. I'm going to go to Page 8 of your presentation.
12 So this is showing the statutory changes in 70-2-12 B 15
13 before and after. Again, looking at this statute, there
14 were certain activities that were previously within OCD's
15 regulatory jurisdiction that are no longer within that
16 jurisdiction; right?

17 A. That's correct.

18 Q. So OCD's regulatory jurisdiction for produced
19 water is now limited to those activities specifically listed
20 in the statute --

21 (Interruption, screaming.)

22 Q. I will reword the question. OCD's regulatory
23 jurisdiction for produced water is now limited to those
24 activities that are specifically listed in the statute at
25 Paragraph 15, right side of the presentation?

1 A. That's correct.

2 Q. So OCD cannot authorize any use of produced water
3 beyond those uses listed in the statute?

4 A. Yes. That's correct.

5 Q. Also looking at this statutory change, would you
6 agree that the legislature changed the manner for the
7 standard of protection that underlies OCD's regulation of
8 produced water?

9 A. In terms of?

10 Q. In terms of --

11 A. -- produced water, yes, yes.

12 Q. So the legislature indicates -- has now indicated
13 that the new OCD rules should regulate produced water in a
14 manner that protects public health, the environment and
15 fresh water resources; correct?

16 A. For the purposes of this subsection -- or
17 paragraph -- sorry -- yes.

18 Q. And that was a change from the previous language
19 in the Oil & Gas Act?

20 A. Well, we got rid of some archaic language.

21 Q. And that authorized OCD to regulate produced
22 water in a manner that will afford reasonable protection
23 against contamination of fresh water supplies designated by
24 the state engineer?

25 A. That was -- that was a phrase in the old statute.

1 Q. Would you agree that the change from reasonable
2 protection to protect represented a heightened standard of
3 care for OCD's rules?

4 A. Well, frankly, like some of the other phrases
5 that we then got rid of here in B 15, we are not exactly
6 sure what a reasonable protection was. We always went with
7 we should have protection because if we look at B 21, we
8 feel deals with the handling of waste, and this would be
9 waste, it says protecting public health and environment so
10 we went with that standard.

11 Q. In Paragraph 15, prior to HB 46, public health
12 protection was not identified as a standard underlying OCD's
13 regulation of produced water; is that correct?

14 A. It was not specifically put out, yes.

15 Q. And nor was the environment.

16 A. Right. Those are in B 21.

17 Q. So given this new legislative directive, why
18 didn't you identify the protection of public health, the
19 environment and fresh water resources as a key change in HB
20 546?

21 A. Like I said, that standard already existed under
22 Rule 21 under the Statute B 21, so that was always the
23 standard that we dealt with. We're quite glad that the
24 language, reasonable protection, is gone because we weren't
25 sure what that was, and we weren't sure no one would try to

1 use it against us to limit our authority, so we are happy
2 with that gone.

3 So it's a clarification. It doesn't really
4 change, you know, in any great way our standard because we
5 always had the standard to protect the public health.

6 **Q. So based on this same language in Paragraph 15,**
7 **did the legislature direct OCD to regulate produced water in**
8 **a manner that encourages its recycling and reuse?**

9 A. Now, you know, the word recycling appears for the
10 first time in here. And reuse, one could imply from that
11 that recycling is a use among those types of activities that
12 we should be doing.

13 **Q. Did the legislature authorize OCD to regulate**
14 **produced water in a manner that protects the public health,**
15 **the environment and fresh water resources?**

16 A. Yes.

17 **Q. Are you generally aware that produced water often**
18 **contains toxic chemicals?**

19 A. I'm not a science, but I know produced water
20 contains a lot of constituents.

21 **Q. Including B-Tech?**

22 A. I think I would be aware of that, yes.

23 **Q. Including ethylene glycol or antifreeze?**

24 A. I don't disagree with that.

25 **Q. Chemicals known to cause cancer, carcinogenic**

1 **chemicals?**

2 A. I wouldn't be someone who had the expertise on
3 that, but --

4 **Q. And has OCD offered any technical witnesses at**
5 **this hearing?**

6 A. No, we don't, because this is not a technical
7 rulemaking, this is a legal rulemaking.

8 **Q. Are you aware there are chemicals known to**
9 **disrupt the endocrine system in produced war?**

10 A. There may well be. I'm not personally aware of
11 it, but --

12 **Q. I understand. Are you aware that there are high**
13 **levels of salt in produced water?**

14 A. That I'm certainly aware of, yes.

15 **Q. And metals?**

16 A. Metals. Yes, salt and metals.

17 **Q. Volatile organic compounds or VOCs?**

18 A. Yes.

19 **Q. Are you aware that VOCs are a primary precursor**
20 **to (inaudible) pollution?**

21 A. Yes.

22 **Q. Are you aware of ozone levels in the Carlsbad**
23 **area are out of compliance with federal ambient air**
24 **standards based on monitoring data from 2017 through 2019?**

25 A. That's the environment department tells us.

1 Q. Are you aware that produced water may contain
2 radioactive materials?

3 A. I have seen papers on that, yes.

4 Q. And that significant levels of uranium have been
5 found in produced water (inaudible).

6 A. That I'm not aware of, no.

7 Q. OCD's proposed rules don't require testing of
8 produced water for radiation levels prior to recycling or
9 reuse, do they?

10 A. They do not.

11 Q. And no radiation testing would be required under
12 these wells before produced water could be transported for
13 reuse or disposal?

14 A. Within the oil and gas industry.

15 Q. Within the oil and gas industry.

16 A. That's right. We haven't addressed that issue
17 yet.

18 Q. And OCD's proposal would not require toxic
19 (inaudible) for produced water for use within the oil and
20 gas industry?

21 A. We have not addressed that issue yet. It is a
22 potential issue. We may address it for future rulemaking,
23 but we have not addressed it yet.

24 Q. Are you aware of scientific reports indicating
25 that the toxicity of the most of the chemicals found in

1 **produced water has not been previously studied?**

2 A. I have seen papers saying that. There hasn't
3 been no standards developed for that, and that's what I --
4 we have a study, but no standards.

5 Q. So let's turn back to the rule stuff. Let's see,
6 what page am I on? Let's go to Page 14 of your
7 presentation.

8 Turning back to the regulations here, in
9 Paragraph 1, OCD is not proposing -- or I should say -- OCD
10 is proposing to not require a permit for the reuse of water
11 in drilling, completion, producing or enhanced recovery of
12 oil or gas; is that right?

13 A. We do not require that now, and we, we are not
14 changing that.

15 Q. As to permit requirement, how does the OCD ensure
16 such uses are conducted in a manner that protects public
17 (inaudible)?

18 A. We regulate the facilities that are used in these
19 manners, the (inaudible), and hopefully we will regulate
20 more, pipelines, et cetera, and that's how we try to protect
21 the public from any potential impact of produced water.

22 Q. So looking at Paragraph 4 here, on Paragraph 4 it
23 says that produced water will be handled in a manner that
24 protects public health, the environment and fresh water
25 resources; correct?

1 A. Right. We're replacing the old statutory
2 language with the new statutory language.

3 **Q. But these proposed rules don't actually define**
4 **what that means, do they?**

5 A. We, we deal with produced water in a variety of
6 manners that we hope to have that goal of protecting the
7 public health and the environment and fresh water resources.

8 **Q. This rulemaking proposal doesn't specify**
9 **operational requirements for produced water handling; right?**

10 A. This rule, yes, it does actually. This rule
11 deals with containments of recycled facilities in 34.

12 **Q. Okay. I was referring to the proposed rule, but**
13 **I will move on. Does this rulemaking proposal specify**
14 **standards for protective equipment that will apply to**
15 **workers handling produced water?**

16 A. We do not regulate worker protection. That's an
17 OSHA issue.

18 **Q. Do these rules specify any numeric water quality**
19 **standards that would apply to any particular uses to be**
20 **authorized by OCD?**

21 A. We certainly comply with water quality, standards
22 for groundwater and surface water, but we don't require that
23 water be of a certain quality before it's used in drilling
24 or put down an injection well.

25 **Q. Or hauled to (inaudible)?**

1 A. Or transported.

2 **Q. OCD's rulemaking does not specify particular**
3 **statements for trucks that would be hauling produced water;**
4 **is that correct?**

5 A. It does not, and I don't know that that would be
6 our jurisdiction. It might be more be the Department of
7 Transportation.

8 **Q. And this rulemaking proposal does not specify any**
9 **hazardous waste training requirements for individuals**
10 **handling or transporting produced water?**

11 A. It does not. It's not a hazardous waste, first
12 of all.

13 **Q. Are you aware that produced water can exhibit the**
14 **characteristics of toxic waste or hazardous waste under the**
15 **standards?**

16 A. I have not looked at that issue. I know it's
17 exempt from RCRA.

18 **Q. All right. Would produced water and other oil**
19 **and gas waste need to be exempt from RCRA in order to be**
20 **regulated under RCRA if it does meet the characteristics of**
21 **hazardous waste?**

22 A. I think you answered your own question. If it
23 wasn't exempt from RCRA, it would have to meet the test
24 under RCRA, it would have to meet the test, whether it was
25 or wasn't a hazardous waste.

1 Q. Why would be it exempt from RCRA if it was not
2 characteristic of hazardous waste?

3 A. I don't know. You have to ask congress that, or
4 the EPA.

5 Q. So beyond the general statement in Paragraph 4,
6 that produced water shall be handled and stored in a manner
7 that protects public health, et cetera, how do these rules
8 in this specific rulemaking proposal in front of the board
9 today, in front of the Commission, how does that ensure
10 waste water will be reused in a manner that protects public
11 health, environment and fresh water resources?

12 A. As I mentioned earlier, we have a series of rules
13 that deal with various aspects of produced water, whether
14 it's being placed in impoundments at the well site or
15 recycle (inaudible) under this Rule 34, whether it's
16 injection standards, drilling standards, there is whole
17 series of rules that produced water operations have to
18 comply with that are designed to protect public health and
19 particularly fresh water resources.

20 Q. So you mentioned OCD's recent proposal or draft
21 methane rules that have been put out for informal public
22 comment. So you are generally aware of those rules; right?

23 A. Generally.

24 Q. You specifically mentioned there are new rules
25 regarding pipelines; correct?

1 A. Yeah, gathering lines, yes.

2 Q. I'm going to pull up that rule proposal here.
3 This is their proposed rule, Title 19, Chapter 15, Part 28,
4 that have in fact been included in the case file before this
5 hearing 21281.

6 So scrolling down to 19.15 -- I guess before I
7 get there, would you generally agree that the regulatory
8 requirements for this proposed methane are a lot more
9 specific than what's being proposed by OCD here today?

10 A. Yes. Rulemaking is going through an extensive
11 process, technical review and input and that, you know,
12 that's the kind of rulemaking process we need to go through
13 moving forward with the new rules and other changes in the
14 future.

15 Q. So just to help go through a few of these that
16 were changes starting at .8, the methane rules include a
17 recordkeeping requirement; right?

18 A. Correct.

19 Q. In .9, standards for pipeline materials; correct?

20 A. Correct.

21 Q. In .10, design requirements?

22 A. (inaudible) yes.

23 Q. In .11, construction standards.

24 A. Yes.

25 CHAIRWOMAN SANDOVAL: Mr. Timmons, can you please

1 explain how this is relevant to this (inaudible).

2 MR. TIMMONS: Madam Chair, OCD's charge from the
3 legislature was to adopt rules that regulate produced water
4 in a manner that protects public health, environment and
5 fresh water resources. The lack of specificity of how these
6 rules actually do that is relevant to these proceedings.
7 I'm simply drawing a comparison to other rulemaking
8 proceedings, we found that OCD is currently undergoing
9 showing the distinction between what a real regulatory
10 proposal looks like and what is being proposed here today.

11 CHAIRWOMAN SANDOVAL: And these rules are
12 informal (inaudible) at the moment. These will be debated
13 later, and so I'm just not quite sure again how this is
14 relevant to our conversation.

15 MR. TIMMONS: Okay, I can move on.

16 Q. OCD's proposed produced water rules in front of
17 the Commission today included recordkeeping requests?

18 A. (inaudible) We have not dealt with the
19 specificity of any of those (inaudible).

20 Q. Go back to your -- so this is on Page 12. This
21 is back to OCD's file, Exhibit 4. This is referring to the
22 scope of the proposed rules. I appreciate your earlier
23 statement that you had had WildEarth Guardians suggested the
24 sentence at the end. But in this description of the
25 proposed rules, the scope of the rules, OCD refers here to

1 the, quote, direct surface or subsurface disposition of
2 produced water in that second line from the top. What does
3 that mean, the direct surface disposition of produced water?

4 A. Yeah, that's certainly language that we can live
5 without, but likely a surface disposition is placing into
6 impoundments where it would be temporarily stored. And
7 that's -- that's what's going on here in 19.15.34 is a rule
8 that most of the rule deals with recycling containments,
9 surface facilities where produced water is held temporarily
10 before it can be recycled.

11 Q. In your professional legal opinion, do you
12 believe that OCD has the authority, under the Produced Water
13 Act, to regulate the reuse of produced water for dust
14 control at a well pad?

15 A. Boy, I think we would be extremely reluctant to
16 allow that. Obviously, we don't regulate anything related
17 to the road maintenance or use, and so I think we would
18 probably view that as similar to road maintenance.

19 Q. Do you believe that OCD (inaudible) spraying
20 produced water on the road --

21 A. Is not something we have any interest of
22 approving. And we certainly wouldn't without consultation
23 with the New Mexico Environment Department.

24 Q. Do you think this rule proposal here today is
25 clear whether such activity, again, the reuse of produced

1 **water at the well site for dust control is prohibited or**
2 **not?**

3 A. I would have to say that before House Bill 546
4 was passed, there was a huge amount of gray areas between
5 our authority and the Environment Department. And House
6 Bill 546 did a great job of really narrowing that issue.
7 Okay?

8 That doesn't mean there still aren't some gray
9 areas out there. It would be my opinion that any
10 application of produced water to the surface of the ground
11 would be an issue covered by the Environment and their
12 authority under Water Quality Control Commission.

13 **Q. But you can acknowledge that these rules still**
14 **leave some gray area regarding that question?**

15 A. I think there will always be gray areas. I think
16 there are far fewer now with House Bill 546, much, much
17 fewer.

18 **Q. Okay. So now I want to dig in just a little bit**
19 **into the uses that require a permit under Paragraph 1.**
20 **Again, I'm back to Page 14 of OCD's Exhibit 4.**

21 **Uses that would not require a permit on Paragraph**
22 **1, and uses that would require a permit under Paragraph 2.**
23 **Am I correct that produced water could be used for drilling**
24 **without a permit under Paragraph 1?**

25 A. I'm sorry, what was the question again?

1 Q. Under Paragraph 1, produced water could be used
2 for drilling without a permit?

3 A. That's correct.

4 Q. But under Paragraph 2, a paragraph would be
5 required for other uses of produced water in the drilling.

6 A. (No audible response.)

7 Q. That's enough of an answer for me, I think. Can
8 you explain the difference between using produced --

9 A. I mean, we have agreed to a change to sub
10 Paragraph 2 to eliminate that phrase, in the exploration,
11 production, treatment, to say within jurisdiction of the
12 Division. That was the proposal from the New Mexico Oil and
13 Gas Association. I think that clarifies why we are not
14 repeating drilling in both 1 and 2.

15 Q. And that change would basically say there are
16 specific uses that don't require a permit under Paragraph 1,
17 and anything else within the jurisdiction of the Division
18 would require a permit under Paragraph 2. Is that correct?

19 A. Yes, but there are other rules that require
20 permits, too, so --

21 Number 1, it says you don't need a permit to use
22 produced water in enhanced recovering or in drilling, but
23 you still need a permit to drill that well, to drill the
24 injection well, et cetera. It's not like it's no permit for
25 those activities, it's just the reuse of produce in that

1 activity by itself does not require a permit.

2 Q. But any other reuse of produced water within the
3 jurisdiction of the OCD would require a permit. Right?

4 A. That's right.

5 Q. And you believe that that red line amendment
6 offered by NMOGA would provide clarity regarding what uses
7 would in fact require a permit?

8 A. Like you said, you know, it makes 1 and 2
9 exclusive of each other.

10 Q. Can you specify what uses of produced water would
11 require a permit under Paragraph 2?

12 A. We don't know. There may be -- there may be
13 projects, although those are dealt with other than here.
14 But sometimes, you know, it's impressive often the ideas
15 that the industry comes up with, and so we want to make sure
16 that we oversee any ideas they have about using produced
17 water and don't let anything fall through the cracks. So
18 while I can't give you an example right now, part of that is
19 designed to deal with unknowns, to make sure we cover those
20 unknowns.

21 Q. So maybe I -- under these rules, again on
22 Paragraph 2, do you think that OCD could authorize the reuse
23 of produced water for dust control at a fracking site
24 through the permitting process.

25 A. Well, it's my opinion that we couldn't. I can

1 see where you are getting at here.

2 Q. Do you think it might help provide clarity to
3 operators and the public to say that explicitly in these
4 rules?

5 A. Dust suppression?

6 Q. Or as you said it, the application of water to
7 land in is outside the jurisdiction of OCD.

8 A. Untreated produced water, I think that's where
9 the Environment Department is going also, which is why we
10 may want to coordinate with them. I believe they are moving
11 toward removal of use of untreated produced water.

12 Q. Okay. Do you believe, based on these rules, that
13 OCD could authorize the use of produced treated water for
14 dust control at the well pad?

15 A. Again, I don't think so. I think (inaudible) and
16 I think our entire agency approving would require that we
17 have strict standards about any use of produced water. I
18 mean, even when we had the authority to approve the use of
19 produced water on roads, we didn't approve any in anybody's
20 memory because when somebody came to us, we would say, well,
21 here are all the restrictions on it and we (inaudible) them
22 any more.

23 Q. Okay. Yeah, let's talk about those restrictions,
24 and specifically that permitting process in Paragraph 2.
25 Under Paragraph 2, to receive an OCD permit to recycle and

1 reuse produced water, there would be no uniform permitting
2 requirement under this proposal; correct?

3 A. That's right.

4 Q. And there is no specific best management
5 practices that all permittees would need to follow in order
6 to receive an OCD permit; right?

7 A. Unless we have the Form C-147 where we have
8 policies, I'm not aware of it.

9 Q. And there would be no universal requirement that
10 the toxicity of produced water be characterized before
11 issuance of a permit?

12 A. Well, we then jump down to Number 4. So we still
13 have the standard of protecting public health, the
14 environment and fresh resources. That would apply to any
15 approval under Paragraph 2.

16 Q. An interpretation of Paragraph 4 and the permit
17 approval requirements would be, quote, determined by the
18 district office based upon the proposed use; correct?

19 A. Correct.

20 Q. Is OCD's position that leaving approval
21 requirements up to the discretion of the district office is
22 appropriate?

23 A. No. Frankly, we would be fine with eliminating
24 the word appropriate Division office out -- appropriate
25 district office out of there. Because in reality, nowadays

1 almost all of those decisions are made in Santa Fe, anyway.
2 So should an approval by the Division would be more
3 appropriate.

4 Q. Even if that change were made, approval
5 requirements would still be determined at some point in the
6 future based upon the proposed use; correct?

7 A. Right. They would have to protect public health,
8 environment and fresh water resources.

9 Q. So it's your position -- OCD's position that this
10 provides sufficient clarity for operators to understand
11 what's required to obtain an OCD permit?

12 A. It gives them direction on who they have to talk
13 to. I mean, that's the issue we get is that oil and gas
14 operators come up with ideas. So you can't just go ahead
15 and do it, you have to work with us and get a permit.

16 And it's hard to, again, you know, it's the
17 unknown unknown of knowing what exactly -- what that idea
18 would be. It would have to be a specific situation about
19 the conditions we put on, or if we would approve it at all.

20 Q. So you acknowledge that under Paragraph 2 of
21 these proposed rules, OCD could potentially permit some
22 potential future reuse of produced water that we haven't
23 even thought of yet?

24 A. That's correct.

25 Q. And it's OCD's contention that leaving approval

1 requirements for some future potential use we have not
2 thought of yet, leaving that approval requirement for
3 determination on a case-by-case basis will protect public
4 health, the environment and fresh water resources?

5 A. That has to be the standard. That is the
6 standard.

7 Q. I think I can unshare my screen. I have a few
8 more questions, but it might take me a minute -- stuff here.
9 All right. So just, just a few more questions here
10 before -- change category of questions. Would you agree
11 that spilling and release of produced water occur regularly
12 in New Mexico's oil fields?

13 A. Yes.

14 Q. And spills of produced water is something that
15 OCD has to routinely deal with?

16 A. Yes.

17 Q. Are you aware that OCD's online spill database
18 shows 325 reported spills during the first six months of
19 this year?

20 A. I'm not aware of that number, but I don't dispute
21 if you say that's correct.

22 Q. And 171 major spills of produced water from
23 January to June of 2020, you don't disagree?

24 A. I don't disagree.

25 Q. 171 spills in six months would be a major spill

1 of produced water nearly every day. Right?

2 A. Close.

3 Q. Are you familiar with the major WPX spill that
4 occurred around January 21, 2020 in Otis, New Mexico?

5 A. You know, my knowledge is largely based on what I
6 read in the papers.

7 Q. And so based on what you have read in the papers,
8 a produced water pipe burst in that instance; correct?

9 A. I believe that's correct.

10 Q. And the pressure was so high, the produced water
11 sprayed a family's home that was 200 yards away; correct?

12 A. I think that's correct.

13 Q. And the paper reported that the produced water
14 sprayed on their yard and their animals and their bodies
15 when they went outside to investigate; correct?

16 A. That's what the paper reported.

17 Q. And the family also reported smelling gas at the
18 time; right?

19 A. Yes.

20 Q. That WPX pipeline that burst was in the oil
21 fields; right?

22 A. Yes.

23 Q. So it was under OCD's jurisdiction at the time it
24 exploded?

25 A. Yes.

1 Q. And that pipeline will remain under OCD's
2 jurisdiction under these proposed regulations; correct?

3 A. Yes.

4 Q. Is there anything in these regulations proposed
5 by OCD that's designed to prevent this type of disaster from
6 occurring again?

7 A. That's not the intention of this rulemaking. As
8 I said, we will be looking at more specific facility rules
9 in particular pipelines going forward.

10 Q. And will OCD continue to issue permits for
11 produced water reuse and allow unpermitted use -- or allow
12 reuse without permits before any new rules are promulgated?

13 A. That's right. Yes.

14 Q. Thank you, no further questions.

15 CHAIRWOMAN SANDOVAL: Thank you, Mr. Timmons. I
16 think we are going to take a ten-minute break. It's 3:22
17 now. We will begin again at 3:32. We will get back started
18 at 3:34.

19 (Recess taken.)

20 CHAIRWOMAN SANDOVAL: Everyone, we will get back
21 started. It's 3:34. Mr. Brancard, are you still with us?

22 MR. BRANCARD: In body, yes.

23 CHAIRWOMAN SANDOVAL: We will no continue with
24 the cross-examination with Mr. Meiklejohn.

25 MR. MEIKLEJOHN: Good afternoon, Madam Chair,

1 members of the Commission. My name is Douglas Meiklejohn.
2 I'm a lawyer with the New Mexico Environmental Law Center.
3 We represent the Sierra Club with our co-counsel Cara Lynch.

4 CROSS-EXAMINATION

5 BY MR. MEIKLEJOHN:

6 Q. Good afternoon, Mr. Brancard, how are you?

7 A. Wonderful, thank you, Mr. Meiklejohn.

8 Q. Given what you have just been through -- I
9 suspect that's an exaggeration, but I would like to start by
10 address 19.15.16.21 of the proposed regulations.

11 A. Okay.

12 Q. It seems to me you said that Sierra's proposed
13 changes were acceptable, but then the Oil and Gas
14 Association during this (inaudible) proposed inserting the
15 word either in the introductory language, and you said you
16 were agreeable to that. Am I remembering that correctly?

17 A. Yes. I mean, if that's -- if that clarifies it
18 better than including, then that's fine.

19 Q. But if the word is either, then we've got four
20 categories of fluids here. One is produced water, and then
21 there are three categories of water.

22 If you use the word either the operator could
23 arguably only report one of those categories even if more
24 than one was relevant. Isn't that accurate?

25 Whereas, if the word is including, if all four

1 **categories are used, then all four categories have to be**
2 **reported.**

3 A. Right. I think what NMOGA's concern was that the
4 phrase including, you know, under the Uniform Statute and
5 Regulatory Construction Act is generally interpreted as
6 including, but not limited to.

7 And so I think the point is trying to draft this
8 in a way that if it's these four, then they should add up to
9 100 percent. So whatever words work, I'm fine with it.

10 **Q. Well, what about language that says something**
11 **like including whichever of the following four categories**
12 **are appropriate? Including all the four categories that are**
13 **appropriate.**

14 A. Well, how about if we just drop the last five
15 words. So it begins, and break out that amount by, which I
16 think is actually the Oil and Gas Association's original
17 proposal, eliminate that phrase, types of water.

18 **Q. So would the introductory language would add the**
19 **word by?**

20 A. By, colon.

21 **Q. And then it would list the four categories?**

22 A. Right.

23 **Q. Well, you're the regulator, if that language --**
24 **if it was changed to be that language, would it be your**
25 **opinion that in a case in which all four categories of**

1 fluids have been used, all four had to be reported?

2 A. Yes.

3 Q. All right. Well, then fine. If you're amenable
4 to that, then why don't we have the introductory language
5 with the word by?

6 A. Yes, that would be fine.

7 Q. Okay. You were asked, I believe, by Mr. Timmons
8 about public processes for rulemaking. What's a public
9 process by which you, the Division, obtain public comments
10 on these specific proposed rules?

11 A. Are you meaning the formal process or informal
12 process?

13 Q. Either one.

14 A. Well, we have to go through a formal rulemaking
15 process, which is what we did, and we are required by the
16 State Rules Act to have a 30-day period for public comment.
17 In this case I think we had -- the Commission actually
18 approved 51 days for public comment.

19 There was an informal process in advance of this
20 where I notified stakeholder groups that were involved in a
21 prior rulemaking that came before the Commission, which is
22 amendments to our compliance rule, 19.15.8 -- or 5, sorry,
23 19.15.5. And there were, there were three groups of
24 stakeholders that were involved in that, and they were
25 informed that we were going to move ahead next with this, so

1 I sent out a draft version of this rule to them to get some
2 comments on.

3 I didn't get a lot of comments on it, and so we
4 asked them again, and NMOGA responded, but that was about
5 it.

6 So yes, we did an informal process. It wasn't as
7 robust as say what's going on with the methane rule, which
8 is obviously a much more technically detailed rule. So
9 that's -- that is the process. That's a long-winded answer
10 to your question.

11 **Q. That's fine. Do you recall which, if any,**
12 **community or environmental groups were notified of that**
13 **process?**

14 A. Yes, I believe it was Sierra Club, and I believe
15 it was members from your office, Mr. Desale.

16 **Q. All right. The statute as the Produced Water Act**
17 **discusses protection of public health, the environment and**
18 **fresh water. Do you know how that language got into that**
19 **Act?**

20 A. Okay. You are talking about B 15, 72-2-12.

21 **Q. I think that's right.**

22 A. So that's actually where we got that. Things are
23 a little confusing because House Bill 546, elements of it
24 are in the Produced Water Act and elements of it are in the
25 statute (inaudible) Oil & Gas Act and Water Quality Act, in

1 particular.

2 So this was an amendment to the Oil & Gas Act
3 that was part of House Bill 546, and as that bill moved
4 through, there were discussions among various groups and
5 sponsors about changing that particular subsection of the
6 Oil & Gas Act.

7 **Q. Do you know who suggested that change?**

8 A. You know, I can't remember, but I liked it.

9 **Q. Okay. So do we. Is it your position that the**
10 **current Commission regulations provide the kind of**
11 **protection within the oil field?**

12 A. I'm sorry, you broke up a little bit, Mr.
13 Meiklejohn.

14 **Q. Do -- is it your opinion that the current Oil**
15 **Conservation Commission regulations provide that level of**
16 **protection within the oil field?**

17 A. Well, that's a matter of debate both internally
18 and externally. I will say we are always looking for ways
19 to improve how we regulate and provide that protection.

20 **Q. Given the figures that Mr. Timmons gave you about**
21 **numbers of spills that have occurred, I think he said in the**
22 **first six months of 2020, and I think he said another time**
23 **period, is there an argument that in fact that kind of**
24 **protection is being provided?**

25 A. Well, I think there is an argument that we need

1 to improve our regulations. You know, we did two years ago
2 completely rewrite our clean-up regulation that (inaudible)
3 making it clear to companies they had to follow specific
4 steps in characterizing, testing and actually doing the
5 clean-up and meeting standards. At that period there were
6 requirements which didn't exist before, it was a very
7 general provision, with the emphasis to have fewer releases.

8 To put it simply, with how much production is
9 going on today that we have this many releases, but I think
10 we need to be looking at, as I mentioned earlier, looking at
11 the facilities where a lot of these releases are occurring,
12 and that would be pipelines, gathering lines. It would be
13 tank batteries and other facilities that we may need to have
14 specific standards on that would hopefully prevent more of
15 these occurrences.

16 **Q. Are there regulations in place now that prohibit**
17 **those releases?**

18 A. You know, we actually do not prohibit a release.
19 We require you to immediately report the release and take
20 action and clean it up.

21 **Q. Is it your view that produced water, either**
22 **recycled or non-recycled produced water can be used in road**
23 **construction within the oil field?**

24 A. That's not something we would approve. It would
25 be up to the Environment Department to determine if that was

1 at all possible.

2 Q. Would you expect that the Environment Department
3 would require a groundwater discharge permit before allowing
4 produced water to be sprayed on a road or other land
5 surface?

6 A. I think we had a recent discussion with
7 (inaudible) somebody who had that idea and I think that's
8 the conclusion they came to.

9 Q. Is there anything either in the Water Quality Act
10 or House Bill 546 that requires the Water Quality Control
11 Commission regulations allowing for the use of produced
12 water outside the oil field?

13 A. You can read the language that's in the Water
14 Quality Act. I believe they are required to adopt
15 regulations related to that, and whether those regulations
16 would actually allow for those uses, that would depend on
17 how those regulations are written.

18 Q. But is there anything in the Water Quality Act
19 that would require that those regulations be written in such
20 a way as to allow that kind of use?

21 A. It would be my opinion that it doesn't require
22 that.

23 Q. Okay.

24 A. But I'm not the Environment Department's lawyer.
25 I'm the Commission's lawyer.

1 Q. You are familiar with the Frac Focus website?

2 A. Somewhat, yes.

3 Q. Is it your understanding that trade secret
4 information does not need to be reported on that website?

5 A. Right. Certain trade secret information, and you
6 have to list all of your constituents, but some of them you
7 can do by more general category and then say the more
8 detailed information is protected by trade trade secret.
9 That's my understanding.

10 Q. So if a member of a community where hydraulic
11 fracturing has gone on wants to find out exactly what was
12 used in that hydraulic fracturing, that community member may
13 or may not be able to get that information from Frac Focus.
14 Isn't that right?

15 A. That's correct. They can get maybe most, but not
16 all in many situations.

17 Q. And isn't it also the case that the Commission's
18 regulations, specifically Section 19.15.16.19 requires that
19 disclosure of what's used in hydraulic fracturing be
20 reported 45 days after completion of the hydraulic
21 fracturing?

22 A. That's right. That's one that generally when the
23 completion reports are done for a well.

24 Q. Is it your opinion that that's an appropriate
25 time for reporting from the point of view of the community

1 member who's (inaudible) on a well where in an area where
2 hydraulic fracturing has occurred?

3 A. You know, the issue there is that the company may
4 not know until they do the fracturing job what actually is
5 going to be in the fracturing fluid. So that was my
6 understanding about why that time frame was agreed to.

7 Q. Do you know whether the Division or the
8 Commission has any plans to reconsider that requirement and
9 that timing?

10 A. I'm not aware, but we have a long list of
11 potential rulemakings out there, and that could be one.

12 Q. Is that list publicly available anywhere?

13 A. No, it's kind of a conversation piece.

14 Q. Okay.

15 A. And frankly, you know, anyone can propose a rule
16 change to the Commission.

17 Q. Right. And anyone includes the Division; right?

18 A. Right. But it includes public groups, industry
19 groups, whatever.

20 Q. There are a couple of specific forms that are
21 mentioned in these proposed regulations, Forms C-103 and
22 C-105. What is it that has to be disclosed on those forms?

23 A. I believe C-105 is the completion report. So
24 that's all the details about how you drilled your well and
25 how it was actually done. And so it's actually appropriate,

1 and it's also that 45 day time frame there. So that's when
2 you would do, you would disclose that information, with all
3 the other information about how the well was actually
4 drilled. And C-103 is a very generic form, something that
5 would fit into another form you use a C-103.

6 Q. All right. I would like to go back to the Sierra
7 Club's proposed changes. Do you have those?

8 A. Somewhere.

9 Q. Okay.

10 A. Okay. I do, Mr. Meiklejohn.

11 Q. In Section 19.15.34.3, the Sierra Club proposed
12 adding at the end of that section the language, and the
13 Produced Water Act with a citation which the regulation
14 should be in a manner that protects the public health, the
15 environment and fresh water resources. Why does the
16 Division object to the inclusion of that language?

17 A. We actually don't. We favor the version from
18 WildEarth Guardians which we think is more accurate. That
19 Section 70-2-12 is not part of the Produced Water Act,
20 that's part of the Oil & Gas Act. In fact that subsection
21 is referenced at the top of that paragraph. So WildEarth
22 Guardians includes that phrase, in a manner that protects
23 the public health, environment and fresh water resources
24 toward the beginning of that section where that, where that
25 proper statutory reference is. So that's why we went with

1 them instead of you guys, okay?

2 Q. That's fine. In the next section, the Sierra
3 Club proposed spelling out three objectives of the
4 regulations, to provide protection of public health, the
5 environment and fresh water resources. To prohibit the use
6 of fresh water in hydraulic fracturing unless there is no
7 alternative, and to encourage recycling or reuse of produced
8 water in activities related to basically the oil and gas
9 industry.

10 Are you amenable to including those three
11 objectives in that section?

12 A. Well, we kind of like our version better. We
13 thought it was simpler. We usually don't -- you know,
14 objective sections are required in each part of the New
15 Mexico Administrative Code, and I think often the goal is to
16 keep them pretty simple and let the rules or regulation
17 speak for themselves.

18 Q. All right. You, in section 19.15.34.8, the
19 Sierra Club suggested that a change that would require
20 registration by operators with the Division for reuse of
21 produced water. Wouldn't that help in the Division's effort
22 to obtain more information about what's happening with
23 produced water?

24 A. Well, two things here. One, we see this as a
25 pretty significant change not contemplated by the proposal

1 that we submitted to go from a situation which says no
2 permit or registration, and then it all says registration
3 or, in the case of WildEarth Guardians, permit.

4 So we see that as a significant change deviation
5 that is potentially outside the scope of this rulemaking, to
6 me, you know, people were not on notice that this change
7 could occur.

8 The second, the reason (inaudible) was a policy
9 choice a number of years ago (inaudible) to create fewer
10 steps for somebody who is recycling produced water, to
11 encourage the recycling of produced water within the oil and
12 gas industry.

13 And registration, you know, these operators are
14 already going to have to get permits for these activities
15 that are in here. They have to get an application for
16 drilling, or a permit for an injection or enhanced recovery
17 well. So they are already going through a permitting
18 process. This would simply a whole nother regulatory
19 hurdle just because they are happening to recycle produced
20 water. They wouldn't have to have that hurdle if they were
21 using fresh water, so that seemed counter-intuitive to us.

22 **Q. Well, we would be amenable to requiring**
23 **registration for both. But I mean, the point is that**
24 **registration is not like getting a permit. If you want to**
25 **register, all you have to do is send the Division a notice**

1 presumably on a Division form saying, we are doing this.
 2 You don't have to go through any sort of permitting process.
 3 And it really seems like that would help you in your efforts
 4 to get more data about what's being done with produced
 5 water.

6 A. Well, I don't see a question there, but I will
 7 answer it anyway.

8 Q. I would appreciate that.

9 A. That's the purpose of the water use report in
 10 19.15.16.21, to get that information. And you are going to
 11 get more accurate information after the drilling is done
 12 because then you will know exactly what they did is whether
 13 or not what they thought they might do.

14 Q. All right. Later in that section, the Sierra
 15 Club proposed the language indicating that produced water,
 16 the fluids other liquid oil field waste my be used in
 17 certain ways in accordance with procedures promulgated by
 18 the Division. Is the Division amenable to going through
 19 procedures that need to be followed in those activities?

20 A. Well, frankly, we view this as a restatement of
 21 the whole subsection before that, which says, set down what
 22 you have to do if you are going to reuse and dispose of
 23 produced water. And fluid is very broadly defined, so we
 24 view that term fluid and other liquid waste are covered in
 25 there. But so we just didn't think it was necessary. It

1 might be confusing compared to what we had just stated in
2 the rule.

3 **Q. Is your view about the Sierra Club's proposed**
4 **Subsection C the same?**

5 A. I think we agreed to the language that WildEarth
6 Guardians put in the scope, which I think covers this, so --

7 **Q. Okay.**

8 A. -- one or the other, basically.

9 **Q. And what about Subsection E?**

10 A. Well, that's a (inaudible) and we use that --
11 it's certainly something we have talked about internally and
12 have debated about whether to do that, whether we have
13 authority to do that, and we see that as a major change in
14 the scope of this rulemaking, so therefore, while ultimately
15 that may end up being a good idea, it's not a good idea in
16 this rulemaking.

17 **Q. If the Sierra Club or some other group petitioned**
18 **the Oil Conservation Commission for rulemaking to make that**
19 **change, what would be the Division's position be?**

20 A. I'm not the Division director, and I'm terrible
21 at predicting the future. We would certainly consider it.

22 **Q. Would, as the Division's counsel, would you have**
23 **any advice one way or the other to the Division director?**

24 A. Well, one advise is we need to be very clear that
25 there is authority under the Oil & Gas Act to have this. I

1 think that's an issue we have not thoroughly researched yet.
 2 So that's -- that's -- that would be my advice is that we
 3 have to first sort of look and come up with a good legal
 4 opinion about the authority to do this.

5 Q. Do you have that search ongoing now?

6 A. No, because you haven't proposed it yet.

7 Q. We were waiting for you to do the research and
 8 invite us to propose it. You've mentioned several times
 9 future rulemakings. Do you have a sense of the timing of
 10 those things?

11 A. Well, as I explained this to Mr. Timmons, there
 12 are a lot of unknowns right now, the public health
 13 emergency, the resources with our budget being cut, that
 14 makes predicting the future very difficult.

15 Right now the big efforts of the agency is to
 16 move forward with the natural gas waste pool, a/k/a methane
 17 venting, flaring, and that will absorb a lot of energy in
 18 the near future. But as I said, we are looking at a series
 19 of other rules, changes that we hope to move forward on, and
 20 that was part of why I pushed this rule change is just to
 21 get something done.

22 Q. Well, we commend you for that, but this is
 23 perhaps an unfair question, but Michelle Hunter of the
 24 Environment Department indicated that the Environment
 25 Department was going to be looking at a rulemaking in the

1 **future. Do you know what the Environment Department's**
2 **timing is on that?**

3 A. You know, I don't know the specifics. But I
4 would say that Secretary Kenny in the past has indicated
5 that they may approach produced water either in a two-step
6 process, one sort of an interim kind of rulemaking to make
7 it clear that they are not going to approve anything in the
8 short term, before they get to the more substantive
9 rulemaking about the standards and what those might be.

10 I'm probably speak out of turn for my brethren or
11 the Environment Department, but that's -- to clarify what
12 Michelle said, I think that may be what they are looking at.

13 **Q. Do you know whether the second stage of that is**
14 **going to be delayed until the consortium that is looking at**
15 **produced water has completed its work.**

16 A. I don't know. I think that work will be ongoing
17 for some period of time. I hope not in some ways, but
18 Secretary Kenny has made it clear from the beginning that
19 these rules are going to be based on sound science. So if
20 he is comfortable with the science and information, I think
21 that's when they will go forward.

22 **Q. Do you know whether -- well, is the Division or,**
23 **as far as you know, the Environment Department, doing any**
24 **research on that issue aside from the research that's being**
25 **done by the consortium?**

1 A. I'm not aware. But I wouldn't be the best person
2 to ask that question.

3 Q. Right. I don't have any other questions. Thank
4 you, Mr. Brancard.

5 A. Thank you.

6 CHAIRWOMAN SANDOVAL: Thank you, Mr. Meiklejohn.
7 We will now move to New Energy Economy, and would you like
8 to cross Mr. Brancard?

9 MS. NANASI: Yes please. Thank you very much
10 Madam Commissioner.

11 CROSS-EXAMINATION

12 BY MS. NANASI:

13 Q. I want to start where Mr. Michael Dunn left off.
14 I'm particularly concerned with the edition to 19.15.34.8 7.
15 So I'm just going to read it for the record so people who
16 are listening can hear it.

17 So your proposal is, any discharge, handling,
18 transport, storage, recycle or treatment for the disposition
19 of treated produced water, including disposition in road
20 construction maintenance (inaudible) ice or dust control or
21 other construction are in the application of treated
22 produced water to for land.

23 For activities unrelated to the exploration,
24 drilling, production, treatment of refinement of oil or gas,
25 it's subject to rules adopted by the Water Quality Control

1 Commission.

2 And you are amenable to at adding the word
3 pursuant to Water Quality Control to the Water Quality Act.

4 Is that correct?

5 A. Absolutely, that's where that language comes
6 from.

7 Q. Okay. And as you sit there today, those rules
8 have not been written by the Water Quality Control
9 Commission; right?

10 A. No, nor is there even an application for it.

11 Q. Okay. So let me just ask you, why would you
12 even -- I know you want to get something done, and that's
13 good, but why would you promulgate this rule change without
14 having the rule for the Water Quality Control Commission
15 before you? Like why wouldn't you be in touch with your
16 sister agency before you went forward?

17 A. Good question. But we wanted to make it clear in
18 our rules that we don't have authority over any of these
19 activities. Okay? And so this language is, is sort of a
20 sign post, you might say. In other words, we are deleting
21 the authority that we once had over road maintenance,
22 energy, industrial activities being a source of reuse of
23 produced water that we once had the authority over. And so
24 it sort of leaves those with the question, well, who does
25 have authority?

1 We'll tell you who has authority. This is
2 language from the Water Quality Act, so it's sort of letting
3 people know, don't talk to us, talk to them. I guess we
4 could say that, don't talk to us, talk to them, but you
5 know, I thought I would savor this copy and the language
6 from the Water Quality Act.

7 **Q. So basically what you are telling the public is,**
8 **no one right now is -- no regulator body, no regulatory**
9 **agency has any rules about the use of produced water,**
10 **quote-unquote, outside of the oil and gas field. That's**
11 **like the purpose here?**

12 A. Well, no because there are two things in House
13 Bill 546. There is this language which is an amendment to
14 the Water Quality Act. Okay? And then if you look at
15 34.8B-3, that is language from House Bill 546, which is in
16 the Produced Water Act, which says, for those things that
17 are regulated by the WGCC, you need a permit from the
18 Environment Department. Okay?

19 It doesn't necessarily say that those things were
20 (inaudible) WGCC has an active (inaudible) it says regulated
21 by. So we wanted to cover both possibilities here that, a,
22 the WGCC is regulating this, and, b, the Environment
23 Department is handing out permits.

24 The Environment Department could hand out permits
25 or maybe they are the ones you ask for a permit and they say

1 no, but we are just taking the parts that are in House Bill
2 546 and move the authority away from us and putting it upon
3 somebody who might need a regulation, it is more likely that
4 somebody who has produced water will read our rules first
5 and telling them, "go across the street."

6 **Q. (Inaudible) there are no rules?**

7 A. Well, there are no rules other than the general
8 rules that exist under the Water Quality Act and the ability
9 to issue discharge permits for uses.

10 **Q. Okay. I want to ask you, how many vacancies are**
11 **there right now in the Oil Conservation Division?**

12 A. I don't know the number. The Chair would know
13 the number by heart, but my understanding is that we are,
14 again, we are cheering loudly that we are down to only a 25
15 percent vacancy rate down from 50 percent.

16 **Q. And how many vacancies are there in the Water**
17 **Quality Control Commission?**

18 A. Well, the Commission is 14 members. I have no
19 idea what the appointment process is.

20 **Q. And regarding NMED, specific to oil and gas, not**
21 **just everything, what's the vacancy rate there?**

22 A. I have no idea. I mean that would be the Ground
23 Water Bureau most likely.

24 **Q. So I want to go to -- so right now what you are**
25 **saying in this rule is, essentially, produced water cannot**

1 be used outside the oil and gas industry at all until the
2 Water Quality Control Commission adopts rules. Is that
3 right? Or can it be?

4 A. That's an issue you would have to address to the
5 Environment Department. I'm saying that our agency has no
6 authority to allow the reuse, recycling, or any use of
7 produced water outside of the oil and gas activities.

8 Q. Why would this be the first rule that you're
9 working to to promulgate?

10 A. Okay. Because unlike the Environment Department,
11 with the Water Quality Control Commission which currently
12 has no rules that (inaudible) with produced, we do have
13 rules dealing with produced water. And after House Bill 546
14 was enacted, we went through all of our rules to see whether
15 there was language in our rules that was now in conflict
16 with the new statutes.

17 And that's why we found -- this is the rule we
18 found, but like I said earlier, we have a lot of other rules
19 that deal with produced water, but primarily Rule 34 is one
20 we found language that was in conflict with the new language
21 in the statutes, and we thought it was a good idea early
22 on to just correct those conflicts and, and get the new
23 language from the statutes in our regulations and not have
24 our statutes and rules conflict.

25 Q. When you were asking Mr. Meiklejohn questions,

1 you say you don't prohibit releases of spills and
2 discharges, you just require that they are cleaned up. Why
3 don't you prohibit the releases and spills from happening?

4 A. Well, we don't have a specific statute or rule
5 that generically prohibits it. There obviously may be
6 causes of, of a spillage that involved violations of our
7 rules in terms of how you are operating a well or other
8 facilities that would be a violation.

9 Likely it's somebody acting incorrectly that may
10 have caused this that would lead us to investigate and
11 possibly see a violation, but there is no specific rule that
12 says, thou shall not release.

13 Q. Why not?

14 A. Good question. I don't know.

15 Q. Why wouldn't you spend the time, why wouldn't the
16 Oil Conservation Division spend the time making that rule as
17 opposed to this rule, which that rule would prevent
18 discharges of toxic waste including hydrocarbons,
19 radioactivity, all sorts of other bad stuff, carcinogens,
20 why wouldn't you do that first?

21 If your goal is to protect the health and welfare
22 of New Mexicans and the environment, why wouldn't you focus
23 on the most violent aspect of the oil and gas industry that
24 you do regulate?

25 A. Because we deal with the spills when they happen.

1 That has simply been the way it has worked. That is
 2 certainly an idea that we can look at. I don't know that it
 3 will necessarily will prevent releases from happening.

4 Q. Well, let me follow up on that. We don't know
 5 what's going to prevent the releases, but there is clear
 6 evidence that this is a major problem, that -- that -- we
 7 will go with the number that has been cited most often. We
 8 will go with (inaudible). Sorry, go ahead.

9 A. Sorry, I missed your question.

10 Q. Let me just ask you about the number that has
 11 been most often cited today is 171 major spills. Of those
 12 171 major spills, what action at all has OCD taken against
 13 any of those major -- these operators who caused those
 14 major spills?

15 A. They are required to characterize it, test it,
 16 clean it up.

17 Q. Well, what action has OCD done in response to any
 18 of those 171 major spills?

19 A. Made them clean it up.

20 Q. And has there been any civil penalties?

21 A. If they don't follow the requirements under our
 22 release rule, yes, there will be. We just enacted civil
 23 penalties. House Bill 546 gave us the specific authority to
 24 have civil penalties for the first time, and so we are now
 25 in the process of issuing penalties against operators. And

1 so that's -- we have issued several already, and we will be
2 issuing a lot more.

3 **Q. I read about two in the paper, but other than --**
4 **well, can you even talk about those two? Do you know about**
5 **that?**

6 **A. I don't know the details on them. Those are just**
7 **the two most recent.**

8 **Q. So, so since 546 was adopted, have there, there**
9 **been any OCD fines that have been enacted.**

10 **A. Yes.**

11 **Q. And how many?**

12 **A. I don't have that number. First of all, this**
13 **House Bill 546 required us to adopt a series of rules in**
14 **implementing the notice of violation and penalty process,**
15 **which this Commission adopted earlier this year. And so**
16 **since then we have been moving forward on penalties where**
17 **appropriate.**

18 **Q. Are you talking about less than five, more than a**
19 **dozen, more than 100?**

20 **A. I don't know. It's not more than 100. It's in**
21 **the tens.**

22 **Q. And has OCD moved to -- to revoke the permit of**
23 **any oil and gas operators as a result of repeated violations**
24 **and a number of discharge incidents?**

25 **CHAIRWOMAN: Ms. Nanasi, Mr. Brancard has**

1 answered your question in numerous different ways. And you
2 have asked the question in multiple different ways, he
3 answered it multiple different times. Could you move on.

4 MS. BADA: Well, I have. This is Cheryl Bada, I
5 would like to object to those questions as outside the scope
6 of Mr. Brancard's testimony.

7 MS. NANASI: Well, I want to respond to that and
8 ask Ms. Sandoval if you would rule on Ms. Bada's objection.
9 I'm concerned that there is very serious not only regulation
10 problem, but enforcement problem in the Oil Conservation
11 Division. And before any OCD promulgates rules that
12 eventually say, hey, this is somebody else's responsibility,
13 when there is no rule established for that, we are concerned
14 that there is basically no one home doing the regulation and
15 enforcement.

16 And I think this goes exactly -- it goes to the
17 heart of what you are trying to do here. I applaud that you
18 want to move forward, but frankly we have little confidence
19 in -- in -- the public has little confidence in OCD's
20 ability to promulgate meaningful regulation and then enforce
21 them. So if you don't think that that's relevant in this
22 proceeding, I would like a ruling on that.

23 CHAIRWOMAN SANDOVAL: So Ms. Bada's order is
24 sustained -- that was, her objection is sustained.

25 Her objection is sustained. It's outside of the

1 scope of this, outside of the scope of the testimony,
2 outside the scope (inaudible) so continue with your
3 questions.

4 BY MS. NANASI:

5 Q. Mr. Timmons had referred to the January 21 water
6 explosion that happened to Marlene Aucoin and Carl George
7 where almost all of the animals are dead. And those
8 individuals have lesions on their bodies as a result of what
9 happened. What has the OCD done relative to WPX in making
10 sure that an incident like that would not happen to anybody
11 else?

12 MS. BADA: Again, I'm going to object. That's
13 outside of the scope Mr. Brancard's testimony. He testified
14 to Mr. Timmons that he was only aware of the incident
15 because of what was in the newspaper.

16 CHAIRWOMAN SANDOVAL: The objection is sustained.
17 Outside of the scope. Stay on topic.

18 BY MS. NANASI:

19 Q. Well, let me ask you this: Has the OCD
20 promulgated any rule for toluene?

21 A. The standard, if you are looking for a chemical
22 standard, we generally rely on the standards enacted by the
23 Water Quality Control Commission.

24 Q. And they have not been established, is that
25 right, for toluene?

1 A. I'm not aware whether toluene has standards.

2 Q. What about ethyl benzene?

3 A. Again, you know, we rely on the Water Quality
4 Control Commission. They are experts in terms of a lot of
5 the standards, so we rely on their ability to set standards,
6 and we apply them.

7 Q. And how about xylene?

8 MS. BADA: Again, I'm going to object. Mr.
9 Brancard already answered he relied on Water Equality
10 Control Commission standards.

11 CHAIRWOMAN SANDOVAL: The objection is sustained.
12 Ms. Nanasi has basically asked and answered that question
13 multiple times.

14 MS. NANASI: I have asked and answered that
15 question?

16 CHAIRWOMAN SANDOVAL: Correct. Ms. Bada's
17 objection is sustained. Please move on.

18 Q. So these are -- you would agree that toluene and
19 ethyl benzine, those are commonly found in produced water;
20 is that right?

21 A. I don't know. I'm not a scientist.

22 Q. Did you read the documents that were submitted to
23 WPX -- from WPX to the Oil Conservation Division in that
24 case?

25 A. No.

1 CHAIRWOMAN SANDOVAL: Ms. Nanasi, Mr. Brancard
2 has already testified both through Mr. Timmons and you that
3 he is vaguely aware of that case. It's not --

4 MS. NANASI: I'm sorry, I didn't hear what you
5 said.

6 CHAIRWOMAN SANDOVAL: That he is just vaguely
7 aware that that happened, and does not know the incident.
8 He has addressed that to Mr. Timmons. He has done that to
9 you as well.

10 Q. Where -- were you know where this language from
11 19.15.34.8 7, where does that come from?

12 A. Sure that comes from the Water Quality Act. It's
13 74-6, I believe dash 4 P.

14 Q. And it was also in HB546; right?

15 A. That's correct.

16 Q. And that language was written by Marathon Oil;
17 correct?

18 A. No. It was -- at that point in the process, that
19 language was written by a group working with Marathon Oil.
20 (inaudible) draft got changed considerably.

21 Q. And this pretty much mimics the law in
22 Pennsylvania; correct?

23 A. I have no idea.

24 Q. Do you not know that in Pennsylvania they have
25 banned the use of produced water outside of oil and gas when

1 **they had language almost verbatim as this?**

2 A. I'm not aware of Pennsylvania statutes, but
3 somebody may have been in order to get that language in the
4 Water Quality.

5 **Q. Do you agree with NMOGA that these rules are now**
6 **substantive changes?**

7 A. These are technical changes designed to comply
8 with the statute. I don't know that substantive is a good
9 word.

10 **Q. And you, I believe, mentioned in fact these rule**
11 **changes are not based on science or health studies; is that**
12 **correct?**

13 A. These rule changes are not designed to deal with
14 technical standards or scientific standards.

15 **Q. As a matter of fact, did anybody review**
16 **scientific data before promulgating these rules, or**
17 **initiating the rulemaking change?**

18 A. Certain portions of this rule, particularly
19 19.15.16.41 were reviewed by technical staff.

20 **Q. And what, what scientific data was reviewed**
21 **before creating 19.15.16.21?**

22 A. Technical staff is looking at the dividing line
23 of 1000 milligrams per liter for total dissolved solids,
24 whether that was a good dividing point. So they had their
25 documents that they look at, and that they have to work

1 with.

2 Q. Are you aware of any of those documents that you
3 can speak for the record?

4 A. I'm not, no.

5 Q. Other than the water use report section of this
6 rule, to what extent was any other scientific data relied
7 upon?

8 CHAIRWOMAN SANDOVAL: Ms. Nanasi, again, I think
9 you asked this three or four different ways. Mr. Brancard
10 has answered the question a couple times. Please move on.

11 MS. NANASI: I didn't ask that question.

12 CHAIRWOMAN SANDOVAL: You asked about scientific
13 data, what was looked what was (inaudible) multiple times in
14 multiple different ways. Please move on to your next line
15 of questions.

16 BY MS. NANASI:

17 Q. Can you give us any information other than the
18 water use report and scientific data for the water use
19 report that was consulted in any way when promulgating an
20 issue?

21 A. We consulted House Bill 546 and the changes to
22 the Oil and Gas Act and other statutory changes to make the
23 provisions in our regulations consistent, or at least would
24 (inaudible) inconsistencies with the new statutory changes.
25 That was the basis on which this rule change came about.

1 Q. And do you agree, though, that you have to make
2 these rule changes pursuant to the protection of human
3 health, the environment and water resources; right?

4 A. No. Those are the standards for which the
5 statute's provision is implemented. Now the rule changes
6 can be -- I mean, you can make rule changes for anything.
7 It doesn't have to be science.

8 Q. But it's supposed to be consistent with
9 protecting public health and the environment and fresh water
10 resources; right?

11 A. We put that standard in there, yes.

12 Q. And given the fact that you are a lawyer, you
13 understand that rulemaking must be based on substantial
14 evidence; is that right?

15 A. That's right.

16 Q. And what substantial evidence was relied on by
17 the OCD to -- to make these rule amendments?

18 A. As I said, House Bill 546. We are making the oil
19 and gas regulations consistent with the Oil & Gas Act and
20 also the Water Quality Act and the Produced Water Act, all
21 of which were amended by House Bill 546, just as we did a
22 few months ago when we made the compliance rules for the
23 Commission consistent with the changes that are in House
24 Bill 546.

25 Q. Is there anything else that you relied on other

1 **than what what you just testified to?**

2 A. There are a few little wording changes that are
3 designed to make it consistent with other rule changes that
4 happened in the last couple of years. For instance, we
5 don't call them saltwater disposal wells anymore, they are
6 produced water disposal wells, so that change was made in a
7 couple things.

8 Q. If I can have one moment. How would you
9 characterize the current number of -- how would you
10 characterize the decrease in well inspections under Governor
11 Lujan Grisham's administration?

12 MS. BADA: Again, I'm going to object. That's
13 outside the scope of his testimony, and outside the scope of
14 this rulemaking.

15 CHAIRWOMAN SANDOVAL: Objection sustained.
16 That's not within the scope of this rulemaking and
17 (inaudible).

18 BY MS. NANASI:

19 Q. Is the purpose of -- let me ask you this: You
20 talked about the availability -- right now, can you just
21 describe what happens right now with produced water? What
22 happens today?

23 A. You mean where does it go?

24 Q. Yes.

25 A. Okay. Well, you know, I looked into this the day

1 I gave the talks to -- during stakehold -- well, the public
2 meetings that were (inaudible) by the Environment Department
3 by which our department and the office of the (inaudible)
4 participated in, and worked with our staff to try to come up
5 with the numbers.

6 Our best estimate at this point is about -- and
7 of course this is a number based on maybe a year ago. I
8 don't know what it is today with the downturn in the
9 industry -- is about 60 percent of the produced water goes
10 to deep disposal injection wells. About 30 percent, maybe a
11 little more, goes to reuse in what are called enhanced oil
12 recovery wells. And then the remainder, which may be ten
13 percent, we are looking at as being used to be recycled in
14 the drilling process.

15 **Q. And is there a problem with not -- with**
16 **basically filling up those disposal injection wells and not**
17 **having enough room for all the produced water that is, is**
18 **produced?**

19 CHAIRWOMAN SANDOVAL: Ms. Nanasi, that's out of
20 the scope of this rulemaking.

21 MS. NANASI: Well, isn't it a reason why this
22 rulemaking is really happening, is that the industry has so
23 much produced water and they don't have anywhere to put it,
24 and so they are moving to try to create a new market outside
25 of the oil and gas field. Isn't that what's really

1 happening here?

2 CHAIRWOMAN SANDOVAL: No that's (inaudible).

3 THE WITNESS: No.

4 MS. NANASI: I think that's what's happening.

5 CHAIRWOMAN SANDOVAL: (inaudible)

6 MS. NANASI: I'm sorry?

7 A. The intent of the rulemaking if there is any
8 intent other than complying with the words of the statute
9 which is the primary, with the water use report is too try
10 and see how much produced water is being used in drilling
11 operations. And we have had, as a policy for a number of
12 years here, dating back to the last administration,
13 encouraging operators to use produced water in drilling
14 operations so they wouldn't be using fresh water. Okay?

15 And so if there is an intent here with the water
16 use report, that is what we are following up on, and hence
17 their ability to -- you know, I can tell you they have
18 applied for a lot of new injection wells across the
19 southeast part of the state, so they are still looking to
20 inject a lot of water.

21 **Q. And because fresh water is scarce; correct?**

22 A. Well, because we don't think that that -- or
23 that's really a great use of fresh water. We prefer that it
24 be used for ranching, agriculture, municipal.

25 **Q. And actually, I mean according to newspapers, I'm**

1 **sure you read this, like the city of Jal is worried about**
2 **running out of fresh water for just that, for drinking and**
3 **for agriculture; right?**

4 A. I will have to agree with that because I was
5 quoted in the article.

6 Q. And -- and so to the extent -- can you tell us
7 about how much or explain how many applications for new
8 injection wells there are?

9 A. At one point last year we were getting over 100,
10 you know, in a three-month period. It was a lot compared to
11 previous years. And whether they really need all of those
12 wells, good question.

13 Q. Were those permitted?

14 A. A lot of them are still in the permitting
15 process.

16 Q. And so would it be safe to say that the reason
17 they are asking for new injection wells is because the ones
18 that they currently have are filled up?

19 A. I don't know if they are filled up, but there
20 certainly is obviously more demand. There is also a certain
21 amount of competition among companies trying to get more
22 wells than the other and market their services, so sometimes
23 it's hard to tell whether the demand is real or not.

24 CHAIRWOMAN SANDOVAL: This is a really
25 interesting conversation. Again, Ms. Nanasi, I need you to

1 please stay on point and talk about this rulemaking, and if
2 you can't, you know, we will consider (inaudible)

3 MS. NANASI: Can I just say something? With all
4 due respect, when the other male attorneys were asking
5 questions, about, about the January 21 incident or other,
6 other parts of the things that I am touching on and just
7 following up on, a lot of the questions that were asked
8 before, you, you didn't object to them.

9 CHAIRWOMAN SANDOVAL: Ms. Nanasi, I've allowed a
10 line of questions from you, but it has become very
11 repetitive, which is (inaudible) previous cross-examination
12 of Mr. Brancard. So again, you know, please stay on point
13 here. Let's move along on the point of the proposed
14 regulation.

15 BY MS. NANASI:

16 Q. Would you say that it's prudent to fast forward
17 is to wait until there are actually rules adopted by the
18 Water Quality Control Commission before promulgating this
19 rule?

20 Wouldn't that be the most (inaudible) way to
21 proceed that was consistent with the public interest?

22 A. You know, it's always a debate of strategy about
23 how to do these things. I know we were working with the
24 Environment Department, but we became concerned that, you
25 know, time had passed since House Bill 546 had been signed,

1 and we still had these rules sitting there that were in
2 conflict with the statute.

3 So we decided -- maybe it was me -- to move
4 forward with this rulemaking, you know, on the absurd notion
5 I thought this would be non-controversial.

6 Q. Why do you think it's non-controversial?

7 A. Well, I think produced water has become a big
8 issue these days. If we had a conversation two years ago
9 about produced water, it would be the agency and the
10 industry talking because it wasn't a public issue. It's
11 become a public issue, and you know, that's, that's fine. I
12 mean, it's an important issue for the public to be aware of.

13 Q. Well, hasn't some of the controversy come to the
14 to the floor because there are these other states who have
15 banned use of it outside of the oil and gas field and are
16 concerned that the (inaudible) as one of them. And then the
17 other is that the produced water that's in the oil and gas
18 field are being charged on a daily basis without any
19 meaningful regulation. That's what the concern is. Aren't
20 those the concerns?

21 A. We are not allowing any discharges of oil and gas
22 produced water anywhere like that, so if that's happening in
23 other states, I hope they get control of it.

24 Q. Well, I asked you that before and you said you
25 don't prohibit that release. And as a matter of fact I know

1 that WPX, the very next incident after the January 21
2 incident that's on your website was WPX admitting that they
3 illegally dumped produced water and nothing happened to
4 them. And those are the concerns. And you are the
5 regulatory body. And so here we are talking about outside,
6 inside, it's --

7 CHAIRWOMAN SANDOVAL: Ms. Nanasi, I need you to
8 ask a question. This is not allowed. Please ask your
9 question.

10 MS. NANASI: That's my question.

11 CHAIRWOMAN SANDOVAL: You are going to have to
12 restate it because I did not hear a question.

13 BY MS. NANASI:

14 Q. So isn't it a concern that is being -- produced
15 water is being discharged already without repercussion
16 inside the the oil and gas field, including the WPX illegal
17 dumping where they admitted it to OCD and nothing happened
18 to WPX. When they just discharged, I think it was 13
19 barrels, if my memory serves me, but it might not be perfect
20 in that part, but I will look it up.

21 A. We are always concerned about activities in the
22 oil and gas area. That's why we have inspectors, that's why
23 we are out there looking for these things. We can't simply
24 rely on the industry to tell us what they are doing all the
25 time, so we have to be out there.

1 But we don't allow these activities. As you
2 mentioned, WPX said it was doing an illegal discharge.

3 **Q. But nothing happened. How come?**

4 A. I don't know. I don't know the situation that
5 you are talking about.

6 **Q. Well I'm going to tell you?**

7 CHAIRWOMAN SANDOVAL: Mr. Brancard has said over
8 and over that he on has a peripheral understanding of that
9 incident. Please move on. I do not want to have to repeat
10 that. That will be a third time I had to repeat that.
11 (inaudible).

12 BY MS. NANASI:

13 **Q. I would like to bring to your attention, Mr.**
14 **Brancard, I will tell you the incident number, NRM**
15 **2006956859. And, yes, we are making a specific request for**
16 **you to investigate that and --**

17 CHAIRWOMAN SANDOVAL: Ms. Nanasi, please ask your
18 question of Mr. Brancard.

19 **Q. You just said that your concern is with**
20 **inspection. I want to ask you about this: The legislature**
21 **in its first fiscal year 2020 report said that (inaudible)**
22 **fewer inspections and lack of compliance with permits and**
23 **regulations because of compliance officer vacancies.**

24 Currently half of OCD's compliance officer
25 positions are vacant. I'm asking you, sir, what is OCD

1 **doing about that?**

2 A. Well, that's -- you know, by the end of the last
3 administration, we were pretty much wiped out. And, you
4 know, under the leadership now, we were trying greatly
5 reducing those inspections, inspector position vacancies.
6 It's a challenge hiring people in parts of the state where
7 they can get paid a lot more by the industry is a huge
8 challenge.

9 So we are having to be creative, having to
10 reorganize, look for all sorts of ideas to try to make this
11 work, but it is a challenge to hire people for these
12 positions. We would love to have 100 percent filled
13 position in the agency, but it's -- it's a lot of work at
14 this point. We are having to move people to different
15 offices so we can recruit better. So it's an enormous
16 bureaucratic change to overcome the vacancy rate.

17 Q. So in terms of the public confidence in the OCD's
18 ability to regulate this industry, I hear you, and I, you
19 know, I wish that you had more money, and I wish that there
20 was better regulation and enforcement, so we share that.

21 What I'm concerned about is that's not something
22 the permitting of four new wells to be drilled from
23 operators. How do you justify that? If you can't regulate
24 them, why are you permitting?

25 MS. BADA: I'm going to object. It's beyond the

1 scope of his testimony.

2 CHAIRWOMAN SANDOVAL: Objection is sustained
3 please stay on topic.

4 Q. Have you agreed to the Sierra Club's 19.15.34.8
5 7 C suggested change?

6 A. Let me find it here. Well, my response to Mr.
7 Meiklejohn was a similar statement was offered by WildEarth
8 Guardians for the scope of this rule, and we agreed to that.
9 And so that's, I guess, why we didn't agree to this
10 specifically, but the Commission can look at it and decide
11 whether that's a better place to put that language or not.

12 Q. Isn't the proposal by Sierra Club, specifically
13 19.15.34.8 7 C, more -- just more aligned and just clearer
14 with your testimony that you don't want to allow produced
15 water to be, you know, discharged?

16 I mean, it puts -- doesn't it put oil and gas
17 operators on notice, very specifically? And wouldn't that
18 give you an extra rule to use if they violate that by
19 illegally dumping, for instance?

20 A. Again, it's just, as I said, we agreed to -- to
21 language from WildEarth Guardians in 34.2 that basically
22 says the same thing, and if the Commission thinks the
23 language that you are referring to is a better way of doing
24 it, that's fine. I think -- you know, making it explicit,
25 as you said, is not a bad idea.

1 Q. And that would reinforce your commitment to -- to
2 discourage discharging of produced water; isn't that right?

3 A. Right. I mean the difference in the two
4 proposals is that WildEarth Guardians basically said, this
5 rule doesn't allow it, okay? But Sierra Club says is sort
6 of broader, which is yes, we don't allow it, you know, so
7 either way.

8 Q. I mean, I don't want to make the Chairwoman irate
9 with me, but wouldn't -- I -- I mean it's a problem. It's
10 a serious problem, the number of major and, quote, minor
11 spills. And if you had something as explicit as this, then
12 you could point to it and say, hey --

13 CHAIRWOMAN SANDOVAL: You can't testify on behalf
14 of Mr. Brancard, so -- everything you posed is a question
15 (inaudible)

16 Q. Wouldn't this be a tool that you could point to
17 when produced water was discharged on -- in or outside the
18 oil and gas field. It ways as explicit as --

19 A. Well, maybe, but the problem -- the issue is if
20 it's discharged outside of oil and gas activities, that's
21 not ours to enforce. That's the Environment Department to
22 enforce under the Water Quality. So we would certainly work
23 with them, but we also have authority under the Water
24 Quality Act to a certain extent, but the -- the Produced
25 Water Act was pretty specific that they are the ones, you

1 can't do it, you can't do that without a permit from them.
2 So they would be the ones more specifically to, to enforce
3 that. We would certainly work with them, especially if we
4 found it.

5 Q. But what I'm -- but right now, the operators when
6 they do discharge both inside and outside the oil and gas
7 field self report to you; isn't that right?

8 A. Yes. But deliberate dumping, that could be
9 criminal violations.

10 Q. Yeah. So if you could look at the incident
11 report that I mentioned later, I would appreciate that and
12 so would Mr. (inaudible). Thank you very much.

13 CHAIRWOMAN SANDOVAL: Have you completed your
14 cross of Mr. Brancard?

15 MS. NANASI: Yes.

16 CHAIRWOMAN SANDOVAL: Thank you. Let me check in
17 with the court reporter real quick.

18 (Discussion with reporter.)

19 CHAIRWOMAN SANDOVAL: We will now allow the
20 Commissioners to cross Mr. Brancard if they have any
21 questions for him. Commissioner Kessler, do you have
22 questions?

23 COMMISSIONER KESSLER: For purposes of child
24 care, will you clarify if the meeting will end at 5 p.m.,
25 please?

1 CHAIRWOMAN SANDOVAL: Thank you. It will be
2 slightly over 5 p.m. Once the commissioners have completed
3 with Mr. Brancard, the meeting will conclude for the day.

4 Commissioner Kessler?

5 COMMISSIONER KESSLER: Mr. Brancard, can you hear
6 me?

7 THE WITNESS: Yes.

8 COMMISSIONER KESSLER: Can you please just give
9 an overview of the process that you went through for
10 informal public engagement, give just a little bit more
11 detail (inaudible).

12 REPORTER: I'm sorry to interrupt, Commissioner
13 Kessler, could you please speak up? My apologies.

14 COMMISSIONER KESSLER: Sure. I'm sorry. Can you
15 please review the public engagement process that you went
16 through related to this rule hearing that you (inaudible)
17 and this formal process in a little bit more detail?

18 THE WITNESS: Okay. So as I mentioned, we had
19 had a set of -- a group of folks who were involved
20 informally with the other changes under House Bill 546, the
21 enforcement rule that came before this Commission. And
22 during the process of that, I informed them our next rule
23 would be this rule change, and I handed out a draft to those
24 folks and asked for any comments back from them.

25 Before we officially came to the Commission with

1 an application, I went back to those groups and said, do you
2 have any more comments? So it was a pretty informal process
3 about this. And we also reached out to two agencies such as
4 the Environment Department.

5 COMMISSIONER KESSLER: Did you receive back, in
6 your informal process, did you receive any comments back?

7 THE WITNESS: We received some questions from
8 representatives of the New Mexico Oil and Gas Association,
9 and I believe that was it. And we had discussions with the
10 Environment Department also about the proposed rules.

11 COMMISSIONER KESSLER: At that time did the
12 Environment Department express any concerns about the
13 categorization of potable versus non-potable water?

14 THE WITNESS: We had specific discussions --
15 well, they wanted to know where we came up with that, the
16 number and the definitions, and so we gave them information
17 about that. You know, there was sort of a little bit of
18 back and forth, but we didn't take any hard position about
19 that rule at that point.

20 COMMISSIONER KESSLER: And I understand that the
21 at this point the Division concurred in eliminating the
22 distinction between non-potable and potable in favor of
23 Sierra Club's suggestion; is that correct?

24 THE WITNESS: That's correct, and we don't object
25 to that either.

1 COMMISSIONER KESSLER: Okay. That's all my
2 questions. Thank you.

3 CHAIRWOMAN SANDOVAL: Commissioner Engler, would
4 you like to ask some questions?

5 COMMISSIONER ENGLER: Yes, thank you. Bill, can
6 you hear me?

7 THE WITNESS: I can hear you, Commissioner.

8 COMMISSIONER ENGLER: I want to ask, relative to a
9 lot of this House Bill 546, in trying to address what was
10 put in there. Part of that house bill was to (inaudible)
11 part to be able to generate penalty rules; is that correct?

12 THE WITNESS: I'm sorry, I missed the last part
13 of your question.

14 COMMISSIONER ENGLER: Part of House Bill 546 was
15 was to generate penalty rules.

16 THE WITNESS: Yes. As it was finally passed,
17 yes.

18 COMMISSIONER ENGLER: So we did that earlier this
19 year as being able to address that part of House Bill 546;
20 correct?

21 THE WITNESS: Yes.

22 COMMISSIONER ENGLER: So when we talk about
23 things like spills and discharges, in essence what we tried
24 to do was (inaudible) for 546 was to try to create a
25 (inaudible) to those defenses?

1 THE WITNESS: Yeah, hopefully.

2 COMMISSIONER ENGLER: So in earlier testimony,
3 you know, we talked about spills and sanction versus
4 (inaudible). And would you agree that we took the first
5 step, which is (inaudible)?

6 THE WITNESS: Yes. But again, the focus is on
7 reporting the spills, but that's one of the higher penalties
8 actually in our penalty guidance, so that's where the main
9 disincentive would be, along with any kind of, you know,
10 violation of a particular standard that -- a particular
11 practice that general regulation that resulted in a spill.

12 COMMISSIONER ENGLER: And so, you know, from that
13 first step we've gone to the second step of what we are
14 looking at today, which was again to address House Bill 546
15 with regard to the both protecting the health, safety and
16 environment, but also to be able to (inaudible) of produced
17 water; is that correct?

18 THE WITNESS: Yes, there are basically two
19 aspects to House Bill 546, largely, yes.

20 COMMISSIONER ENGLER: So what we are doing today
21 is, again, without the level of detail, or as you mentioned,
22 we are in a rulemaking, we are trying to set a (inaudible).

23 THE WITNESS: Right. If we get into a specific
24 rulemaking about produced water, we don't have to deal with
25 these technical issues about compliance, the language of the

1 statute. That will be done with. See if they went along
2 with this rule we proposed.

3 COMMISSIONER ENGLER: I think I'm going to
4 stop -- well, this is to clarify more than anything. I just
5 want, again, clarification. This has been going on again
6 repeatedly today, and does the 546 specifically define oil
7 field -- non-oil field (inaudible)?

8 THE WITNESS: Yes, we are trying to draw that
9 line very clearly as was put in House Bill 546.

10 COMMISSIONER ENGLER: So we really are addressing
11 the requirements of the house bill?

12 THE WITNESS: That's my goal with this proposed
13 rule.

14 COMMISSIONER ENGLER: Thank you.

15 CHAIRWOMAN SANDOVAL: Thank you, Dr. Engler.

16 Mr. Brancard, thank you for attending today. I
17 have a couple of comments.

18 In any sort of rulemaking is a pre public comment
19 period required?

20 THE WITNESS: No, but it's not a bad idea.

21 CHAIRWOMAN SANDOVAL: So do you think OCD took
22 extra steps to engage in public feedback.

23 THE WITNESS: Yes. We brought this application
24 straight to the Commission.

25 CHAIRWOMAN SANDOVAL: Thank you. Does OCD

1 consider this to be a first step?

2 THE WITNESS: Yes.

3 CHAIRWOMAN SANDOVAL: Do you believe that some of
4 the numbers you get from this will help advocate the
5 rulemaking.

6 THE WITNESS: We certainly help so, yes.

7 CHAIRWOMAN SANDOVAL: Does OCD have rules
8 governing how produced water is cleaned up if it's spilled?

9 THE WITNESS: Yes. We have clean-up standards
10 for spills. Whether it's oil or produced water, they have
11 to meet that standard.

12 CHAIRWOMAN SANDOVAL: There's been a lot of talk
13 today using different words. The word spill has been used,
14 the word discharge has been used and illegal dumping has
15 been used.

16 First can you describe to me what a spill is
17 within kind of the regulatory framework of the OCD?

18 THE WITNESS: Well, our Rule 29 is dealing
19 largely accidental spills or releases, and we try to use
20 both words so we are covering everything.

21 CHAIRWOMAN SANDOVAL: So in general, a spill is
22 something that is not intended?

23 THE WITNESS: Correct.

24 CHAIRWOMAN SANDOVAL: Thank you. So a discharge,
25 can you describe what a discharge traditionally means within

1 our rulemaking structure?

2 THE WITNESS: That's a word that the Environment
3 Department tends to use more of. And so they have, you
4 know, we have discharge permit that they require, so
5 that's -- that's any release of liquids that could cause a
6 problem or not, or could potentially cause a problem.

7 CHAIRWOMAN SANDOVAL: Is a discharge something
8 that may be more intentional or known ahead of time?

9 THE WITNESS: Well, yes, because you often have
10 to get a permit for that.

11 CHAIRWOMAN SANDOVAL: So basically a spill is
12 something that's not intended, and a discharge is something
13 that's pretty known it may happen?

14 THE WITNESS: Yes or you have a good sense it
15 might happen, yes.

16 CHAIRWOMAN SANDOVAL: Okay. Can you now describe
17 for me what an illegal dump is compared to a spill or
18 discharge?

19 THE WITNESS: That would be -- a discharge is
20 generally done in accordance with a permit. You get a
21 discharge permit, like I said, from the Environment
22 Department or from us. We issue discharge permits under the
23 Water Quality Act. And illegal dumping is something that's
24 out of the rule. There is no authorization for it, and it's
25 intentional.

1 CHAIRWOMAN SANDOVAL: So if I were to say that a
2 spill is something that happened that's not expected or
3 intended, a discharge is something you get a permit for and
4 it is expected to potentially happen. An illegal dump is
5 something you very intentionally take action if it is
6 illegal. Would that be accurate?

7 THE WITNESS: That's probably a decent simplified
8 version of all of that.

9 CHAIRWOMAN SANDOVAL: Thank you, Mr. Brancard.
10 What would happen if, for example, we caught somebody
11 illegally dumping? You know, do we have rules against that?
12 You stated earlier it could be a criminal issue, not just a
13 civil issue. Could you please describe the OCD framework
14 around illegal dumping, please?

15 THE WITNESS: Right. I mean we would
16 investigate, but we would also, you know, based on what we
17 understood about the situation, we may want to refer that
18 investigation to a local district attorney or the attorney
19 general's office if we think there is the potential for a
20 criminal violation there.

21 And the criminal violation actually could be a
22 criminal violation of the Oil and Gas Act, not just dumping,
23 which is a more generic violation.

24 CHAIRWOMAN SANDOVAL: So usually that's already
25 managed in some place within the Oil & Gas Act and within

1 the OCD rules?

2 THE WITNESS: The Oil and Gas act talks
3 specifically, a change that was made in House Bill 546 that
4 the intentional actions remain criminal, and the civil
5 violations were no longer intentional. And so that's a
6 distinction that's now in the Oil and Gas Act as a result of
7 House Bill 546.

8 CHAIRWOMAN SANDOVAL: Thank you. Mr. Brancard,
9 does the OCD have authority to regulate any type of use
10 outside of the oil and gas operation?

11 THE WITNESS: I'm not aware of it, no. We used
12 to but now we don't because it's for produced water.

13 CHAIRWOMAN SANDOVAL: Thank you. Do you -- do
14 you believe that the Produced Water Act actually makes off
15 field oil and gas use available, some sort of use not for
16 oil and gas more difficult than it was previous to this Act?

17 THE WITNESS: I'm sorry, I -- I missed the
18 question.

19 CHAIRWOMAN SANDOVAL: Do you believe that the
20 Produced Water Act makes it harder for produced water to be
21 used outside of the oil and gas industry than before the
22 Produced Water Act?

23 THE WITNESS: Well, I don't know if the
24 Environment Department agrees with me, but I think it does
25 because it's much clearer where the jurisdiction is, and you

1 know, individuals can't play the agencies off of each other.
2 And so I think by having much clearer jurisdictional lines
3 it should discourage that.

4 CHAIRWOMAN SANDOVAL: Thank you. Does the Oil
5 Conservation Division governing statutes the Oil & Gas Act,
6 does it require that basically everything under -- that the
7 OCD does protect human health and the environment?

8 THE WITNESS: No. A lot of what the OCD does is
9 regulation of the industry, and it's designed to prevent
10 waste and protect correlative rights. That's the standard
11 for a lot of what the agency does. But when the agency
12 deals with waste, produced water, that's then the standard
13 of protecting health and the environment when it comes into
14 effect.

15 CHAIRWOMAN SANDOVAL: Thank you. Does the OCD
16 have jurisdiction to regulate worker safety?

17 THE WITNESS: No.

18 CHAIRWOMAN SANDOVAL: Does the OCD have
19 jurisdiction to regulate things such as the design of trucks
20 that may transport oil and gas material?

21 THE WITNESS: No.

22 CHAIRWOMAN SANDOVAL: Do you know if the OCD has
23 jurisdiction to ban the use of fresh water? I think you
24 touched on this a little bit earlier.

25 THE WITNESS: Yeah, I think that's something we

1 need to be clear about if we are going to regulate whether
2 we have that authority or not. I'm not sure we are clear
3 about that right now.

4 CHAIRWOMAN SANDOVAL: Okay. Thank you. Would
5 the OCD be opposed to changing the language that refers to
6 the appropriate district office if approved by the Division?

7 THE WITNESS: We would not be opposed to that.

8 CHAIRWOMAN SANDOVAL: All right. Well, that
9 completes my questions, Mr. Brancard. Oh, Commissioner
10 Kessler, has one follow-up question.

11 COMMISSIONER KESSLER: Mr. Brancard, you
12 discussed the complexity of one of the (inaudible) series of
13 rulemaking related to potentially to House Bill 546;
14 correct?

15 THE WITNESS: Related to produced water, correct,
16 yes.

17 COMMISSIONER KESSLER: Well, produced in the
18 (inaudible) the division moves forward with additional
19 rulemaking (inaudible) substantive standard. Do you
20 anticipate additional scientific review and community input?

21 THE WITNESS: Yes, to both of those. I mean we
22 would certainly reach out and have a more robust stakeholder
23 process and/or public review process prior to any formal
24 application, and we would certainly need to have good
25 science behind what we are doing.

1 COMMISSIONER KESSLER: Okay. Thank you.

2 CHAIRWOMAN SANDOVAL: Mr. Brancard, Mr. Lozano
3 has a question for you. So I can have him -- sorry, Bill.

4 MR. LOZANO: Can you hear me, sir.

5 THE WITNESS: I can, yes.

6 MR. LOZANO: I'm curious, in looking at all the
7 proposed changes that the other parties have, have put
8 together, are there any specifically that you give you
9 heartburn about whether if we get the Commissioners to adopt
10 it, it would be a notice issue with regard to this
11 rulemaking.

12 THE WITNESS: I think I mentioned a few of them
13 already, you know, the requirements for either a permit or
14 registration, the prohibit against the use of fresh water,
15 and I think there was some other standards that were totally
16 new in there about worker training, et cetera. Those seem
17 to be questionable whether they are inside the scope of the
18 notice that was pretty specific about what the issues were
19 that were being proposed. So that's our concern about
20 whether those proposed changes were outside the scope.

21 MR. LOZANO: Thank you, sir.

22 CHAIRWOMAN SANDOVAL: Commissioner Kessler,
23 Commissioner Engler, do you have any follow-up questions for
24 Mr. Brancard?

25 COMMISSIONER ENGLER: No, I do not.

1 COMMISSIONER KESSLER: No.

2 CHAIRWOMAN SANDOVAL: Okay.

3 MS. BADA: I would like to ask one question on
4 redirect.

5 CHAIRWOMAN SANDOVAL: Go ahead.

6 REDIRECT EXAMINATION

7 BY MS. BADA:

8 Q. Would the OCD be opposed -- would the OCD be
9 opposed to a change that says in activities such as dust
10 control on well pads or well (inaudible) are not allowed?

11 A. I don't think we would be opposed to that.

12 CHAIRWOMAN SANDOVAL: Thank you, Mr. Brancard.

13 So that will conclude today's portion of this
14 hearing. We will call for a recess until tomorrow morning.
15 Beginning the meeting tomorrow morning we will review the
16 public comments today, and we'll allow those individuals who
17 made timely notice to make a public comment tomorrow
18 morning.

19 We will also again call people who were not
20 available to speak today to provide public comment.
21 Following public comment, we will proceed with the hearing
22 and move forward.

23 MR. TIMMONS: Point of clarification, since we
24 did not see a detailed agenda, is there going to be an
25 opportunity for a closing statement from the parties to this

1 matter?

2 CHAIRWOMAN SANDOVAL: Yes, there will be
3 following testimony.

4 MR. TIMMONS: Thank you.

5 MR. MEIKLEJOHN: Madam Chair, this is Doug
6 Meiklejohn. What time will the hearing start tomorrow
7 morning?

8 CHAIRWOMAN SANDOVAL: 9 a.m.

9 MR. MEIKLEJOHN: Thank you.

10 CHAIRWOMAN SANDOVAL: Any other questions from
11 the parties?

12 (No audible response.)

13 CHAIRWOMAN SANDOVAL: All right. Well, it is
14 5:15 on July 30 and we will recess this hearing until 9 a.m.
15 tomorrow. Have a good evening, everyone. Thank you.

16 (Recessed.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 REPORTER'S CERTIFICATE

5

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7 Reporter, CCR 253, do hereby certify that I reported the
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