

1 SPECIAL MEETING  
2 MOTION HEARING  
3 STATE OF NEW MEXICO  
4 OIL CONSERVATION COMMISSION  
5  
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7

8 June 9, 2021  
9 10:00 a.m.  
10  
11  
12

13 APPEARANCES:

14 Felicia Orth: Madam Hearing Officer  
15 Andrienne Sandoval: Chairwoman  
16 Gregory Bloom: Commissioner  
17 Terry Warnell: Commissioner  
18

19 Proceedings reported by stenotype.

20 Transcript produced by computer-aided  
21 transcription.  
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1 A P P E A R A N C E S: (Continued)

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9 Baylen Lamkin  
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10

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1 CHAIRWOMAN SANDOVAL: All right. It is  
2 10:00. Our apologies for the delay. Let's get this  
3 show on the record.

4 Mr. Lamkin, would you start the recording,  
5 please.

6 MR. LAMKIN: All right.

7 CHAIRWOMAN SANDOVAL: All right.  
8 Ms. Orth.

9 MADAM HEARING OFFICER ORTH: Yes, Madam  
10 Chair.

11 CHAIRWOMAN SANDOVAL: Are you ready?

12 MADAM HEARING OFFICER ORTH: I am. How is  
13 my sound?

14 CHAIRWOMAN SANDOVAL: I can hear you fine.

15 MADAM HEARING OFFICER ORTH: Great, thank  
16 you.

17 Good morning everyone. My name is Felicia  
18 Orth. I am a Hearing Officer appointed by the Oil  
19 Conservation Commission to conduct a hearing in this  
20 matter, which is an application of WildEarth  
21 Guardians and the New Mexico Oil Conservation  
22 Division to consider proposed amendments to  
23 Rules 19.15.29.6, 19.15.29.18 and 19.15.29.15 of the  
24 New Mexico Administrative Code, concerns major and  
25 minor releases.

1           The matter was docketed by the Commission  
2 Administrator as Case Number 21834.

3           You can find all relevant documents, by  
4 the way, on the Oil Conservation Division imaging  
5 webpage using that Case Number, 21834.

6           We have all Oil Conservation Commissioners  
7 with us. Madam Chair, Andrienne Sandoval;  
8 Commissioner Warnell; and Commissioner Bloom.

9           We also have a number of Oil Conservation  
10 Commission staff and Oil Conservation Division  
11 staff, including our technical host, Baylen Lamkin.

12           Let's see, our court reporter is Paul  
13 Baca.

14           And a number of parties from whom I will  
15 ask for appearances in just a moment.

16           We are conducting this hearing on a  
17 virtual platform, Cisco Webex.

18           There may or may not be a recording made  
19 of it or preserved of it. Having said that, the  
20 official record in this matter is the transcript, it  
21 is not any recording made of this session on a  
22 virtual platform.

23           One of the features of a virtual platform,  
24 of course, is the chat function. Please be aware  
25 that the chat function is designed for this

1 proceeding only to be used to communicate with the  
2 technical host, Mr. Lamkin. It should not be used  
3 for any other purpose. Please do not use it for any  
4 other purpose and nothing in the chat will be  
5 preserved as part of the record.

6 CHAIRWOMAN SANDOVAL: Ms. Orth, I  
7 apologize. I was so excited to get the show on the  
8 road that I forgot to go over Agenda Item Number 2  
9 and Number 3, which is approval of the agenda and  
10 approval of the minutes.

11 MADAM HEARING OFFICER ORTH: Okay. I had  
12 thought this was the hearing, not the meeting, but I  
13 am happy to mute myself for a moment and pick up in  
14 a few minutes.

15 CHAIRWOMAN SANDOVAL: I think technically  
16 the hearing starts on Agenda Item Number 4. That  
17 was my bad here.

18 So this is, as Ms. Orth said, this is a  
19 meeting of the Oil Conservation Commission. I am  
20 Andrienne Sandoval. I am the Chair of the Oil  
21 Conservation Commission and head of the Oil  
22 Conservation Division.

23 Also with us today we have Commissioner  
24 Bloom and Commissioner Warnell, as well as Bill  
25 Brancard who is filling in for the Commission Clerk

1 today and Chris Moander who is Commission Counsel.

2 Agenda Item Number 2 is approval of the  
3 agenda. Commissioners, have you read and reviewed  
4 the agenda and is there a motion to approve it?

5 COMMISSIONER BLOOM: Madam Chair, I have  
6 read the agenda and I move to approve the agenda.

7 CHAIRWOMAN SANDOVAL: Is there a second?

8 COMMISSIONER WARNELL: I second that  
9 motion.

10 CHAIRWOMAN SANDOVAL: Mr. Brancard, would  
11 you do a role call, please.

12 MR. BRANCARD: Certainly.  
13 Commissioner Bloom?

14 COMMISSIONER BLOOM: Approve.

15 MR. BRANCARD: Commissioner Warnell?

16 COMMISSIONER WARNELL: Here.

17 MR. BRANCARD: Chair Sandoval?

18 CHAIRWOMAN SANDOVAL: Approve.

19 MR. BRANCARD: Thank you. Motion  
20 approved.

21 (Unanimous vote. Agenda Item 2 approved.)

22 CHAIRWOMAN SANDOVAL: The second item on  
23 the agenda is approval of the May 13th and June 4th,  
24 2021 minutes. Why don't we take them individually.  
25 Is there -- Commissioners, have you reviewed the



1 May 13 minutes and is there a motion to approve  
2 those minutes?

3 COMMISSIONER BLOOM: Madam Chair, I have  
4 reviewed the May minutes and I move to approve them.

5 COMMISSIONER WARNELL: I second that  
6 motion.

7 CHAIRWOMAN SANDOVAL: Mr. Brancard, would  
8 you do a role call for us again, please.

9 MR. BRANCARD: Thank you. Minutes of  
10 May 13th meeting. Commissioner Bloom?

11 COMMISSIONER BLOOM: Approve.

12 MR. BRANCARD: Commissioner Warnell?

13 COMMISSIONER WARNELL: Approved.

14 MR. BRANCARD: Chair Sandoval?

15 CHAIRWOMAN SANDOVAL: Approved.

16 Passes unanimously. Now on the June 4th  
17 minutes, Commissioners, have you reviewed those  
18 minutes and is there a motion to approve them?

19 COMMISSIONER BLOOM: Yes, Madam Chair, I  
20 reviewed the June 4th minutes and I move to approve  
21 the minutes from June 4.

22 CHAIRWOMAN SANDOVAL: Is there a second?

23 COMMISSIONER WARNELL: I second that  
24 motion.

25 CHAIRWOMAN SANDOVAL: Mr. Brancard, would

1     you assist us again, please.

2                 MR. BRANCARD:   Thank you.

3                 Minutes of the June 4th meeting voting.

4     Commissioner Bloom?

5                 COMMISSIONER BLOOM:   Approved.

6                 MR. BRANCARD:   Commissioner Warnell?

7                 COMMISSIONER WARNELL:   Approved.

8                 MR. BRANCARD:   Chair Sandoval?

9                 CHAIRWOMAN SANDOVAL:   Approved.

10                Passes unanimously.

11                (Unanimous vote.   Agenda Item 3 approved.)

12                CHAIRWOMAN SANDOVAL:   All right.   Now on  
13     to Agenda Item Number 4, Case Number 21834.

14                I will pass it over to our wonderful  
15     Hearing Examiner.   My apologies, Ms. Orth, I just  
16     got too excited to get into it.

17                MADAM HEARING OFFICER ORTH:   Thank you  
18     very much, Madam Chair.   I won't repeat what I said  
19     earlier because I believe we were all present for  
20     it.

21                Let me pick up with the identification of  
22     the Commission's rulemaking rules under which we  
23     will be conducting the hearing.   Those rulemaking  
24     rules are in Section 19.15.3 of the New Mexico  
25     Administrative Code.

1           The hearing will also be conducted  
2 pursuant to a procedural order entered by the Chair  
3 on April 22nd of this year.

4           The rules and the procedural order provide  
5 that technical testimony, in particular, will be  
6 taken under oath and subject to cross-examination.  
7 Public comment is not subject to cross-examination.

8           The entities with party status in this  
9 matter include the Oil Conservation Division, which  
10 is one of the Petitioners; WildEarth Guardians,  
11 which is the other Petitioner; the Independent  
12 Petroleum Association of New Mexico, which you will  
13 hear acronymized as IPANM; the New Mexico Oil and  
14 Gas Association, which you will hear referred to by  
15 the acronym NMOGA; and a number of environmental  
16 nonprofits collectively known as Intervenors.

17           These nonprofits include the Rio Grande  
18 Chapter of the Sierra Club; the Pueblo Action  
19 Alliance; Citizens Caring for the Future; the Native  
20 American Voters Alliance Education Project; and  
21 Amigos Bravos.

22           We will hear from several witnesses from  
23 those parties. We will also invite public comment.  
24 At the moment I have just three or four folks who  
25 have indicated they wanted to offer public comment,

1 and I will invite that comment between each of the  
2 technical presentations and again at the end, that  
3 is to say, we are going to hear first from the  
4 Petitioners, then I will invite public comment and  
5 then we will hear some more technical testimony and  
6 I will invite public comment again. I will keep  
7 inviting it until we have no one left to offer it.

8           You can also submit public comment in  
9 writing until 5:00 o'clock today, pursuant to the  
10 Chair's procedural order.

11           And if you have something to communicate  
12 with us about, please, again communicate with the  
13 technical host. You can use the chat function that  
14 way.

15           By the way, if you have joined (audio cut  
16 out), please be aware the technical host has been  
17 asked to expel anyone doing that without discussion.  
18 If you still have something to say, please submit it  
19 in writing at that point.

20           We will take breaks every 90 minutes to  
21 two hours as needed, and the Commission may  
22 deliberate following the close of the record.

23           The Board may request post-hearing  
24 submittals from the parties and schedule the  
25 deliberations at a later meeting. They will make

1     that decision after the close of the record.

2                 So let me ask them at this point for  
3     appearances from the parties.

4                 Mr. Ames, will you begin, please.

5                 MR. AMES:   Ms. Orth, Eric Ames, Office of  
6     General Counsel, Energy Minerals and Natural  
7     Resources Department for the OCD.

8                 MADAM HEARING OFFICER ORTH:   Thank you.  
9                 Mr. Timmons.

10                MR. TIMMONS:   Thank you, Madam Hearing  
11     Officer.   Daniel Timmons on behalf of WildEarth  
12     Guardians.

13                MADAM HEARING OFFICER ORTH:   Thank you.  
14                Mr. Cloutier?

15                MR. CLOUTIER:   Good morning, Madam Hearing  
16     Officer.   Andrew Cloutier on behalf of the  
17     Independent Petroleum Association of New Mexico or  
18     IPANM.

19                MADAM HEARING OFFICER ORTH:   Thank you.  
20                Mr. Feldewert?

21                MR. FELDEWERT:   Ms. Orth, Madam Chair,  
22     Members of the Commission, Michael Feldewert and  
23     Adam Rankin with the Santa Fe Office of Holland and  
24     Hart, appearing on behalf of the New Mexico Oil and  
25     Gas Association.

1                   MADAM HEARING OFFICER ORTH:   And  
2   Mr. Meiklejohn.

3                   MR. MEIKLEJOHN:   Thank you, Madam Chair,  
4   Madam Hearing Officer and Commissioners, Douglas  
5   Meiklejohn with the New Mexico Environmental Law  
6   Center on behalf of the Intervenors.

7                   MADAM HEARING OFFICER ORTH:   Thank you  
8   very much.

9                   Let me ask if there are any preliminary  
10   matters? We did have a motion hearing on Friday and  
11   there was an order issued in connection with that,  
12   so I don't believe there are any other preliminary  
13   matters, but I will pause for a moment in the event  
14   a party would like to speak up in connection with a  
15   preliminary matter.

16                  No? All right.

17                  And then let me ask if the Petitioners are  
18   going to make an opening statement or if we will  
19   leap right into a witness in this presentation?

20                  MR. AMES:   Ms. Orth, I seem to be having a  
21   little problem with my audio. Did you just ask  
22   whether the Petitioners had opening statements?

23                  MADAM HEARING OFFICER ORTH:   Yes, I did.

24                  MR. AMES:   I apologize. I may need to  
25   move at some point to get better reception. For

1 some reason it just began to break up.

2 Yes, Madam Hearing Officer, OCD would like  
3 to make a brief presentation. We discussed this  
4 with Mr. Timmons from WildEarth Guardians and we  
5 agreed that OCD will go first followed by  
6 Mr. Timmons.

7 MADAM HEARING OFFICER ORTH: Thank you  
8 very much. Please go ahead.

9 MR. AMES: Thank you.

10 Good morning Madam Hearing Officer, Madam  
11 Chair, Commissioners Warnell and Bloom. My name is  
12 Eric Ames. I am an attorney with the Office of  
13 General Counsel Energy and Minerals and Natural  
14 Resource Department. I'm here on behalf of the Oil  
15 Conservation Division.

16 Today the Oil Conservation Division and  
17 WildEarth Guardians present a joint petition to  
18 amend Part 29 commonly known as the Spill Rule. We  
19 propose three changes to Part 29.

20 First we proposed to revise Section 6, the  
21 objective section, to change the objective to  
22 reflect new Subsection 8A.

23 Second we propose to add new Subsection 8A  
24 to prohibit major and minor releases.

25 And finally we propose to revise

1 Section 15, the enforcement section of Part 29 to  
2 conform with the Commission's enforcement rule in  
3 19.15.5.10 NMAC.

4 The Petitioners also -- or OCD proposes  
5 one modification to the petition on its own and that  
6 is to add the phrase, "except as provided in  
7 Parts 27 or 28," into the new Subsection 8A.

8 Parts 27 and 28 are rules recently adopted  
9 by the Commission to regulate venting and flaring of  
10 natural gas from upstream and midstream facilities.  
11 And the exception is required to accommodate certain  
12 releases that are allowed by those rules.

13 This hearing is noteworthy for a couple of  
14 reasons. First, this is, to my understanding, the  
15 first petition to the Commission filed jointly by  
16 the Agency under an environmental group. And also  
17 this petition is supported by the two major trade  
18 associations for the oil and gas industry in  
19 New Mexico.

20 No person has entered an appearance in  
21 opposition to the petition.

22 It is also noteworthy because the  
23 Division, WildEarth Guardians and the trade  
24 associations have agreed to streamline this  
25 proceeding by presenting a single witness to present



1 direct testimony in support of the petition.

2 The Division will present Mr. Jim Griswold  
3 who is currently Special Projects Manager and  
4 formally OCD's Environmental Bureau Chief who was  
5 responsible for the -- let me rephrase that. He was  
6 the Agency lead for the adoption of the current  
7 version of Part 29 in 2018.

8 Mr. Griswold will provide historical  
9 background on developments -- on the development of  
10 Part 29 that will explain that the prohibition on  
11 major and minor releases is appropriate and  
12 necessary because of the number and volume of  
13 releases and the actual or potential threat to  
14 public health and the environment.

15 He will describe the proposed modification  
16 and why it is necessary to accommodate Parts 27 and  
17 28.

18 And then finally I would like to, before  
19 proceeding with direct, I would like to address the  
20 concern raised regarding how OCD intends to use its  
21 enforcement authority if the Commission adopts the  
22 proposed changes prohibiting major and minor  
23 releases.

24 These concerns, we understand are prompted  
25 by the OCD's or the Commission's recent grant of

1 authority to the Division to assess civil penalties  
2 for rule violations.

3 The Division recognizes that releases  
4 occur for a wide range of reasons. Some releases  
5 may be unavoidable, they may be beyond the control  
6 of a prudent operator employing best practices. But  
7 other releases may be preventable by the exercise of  
8 due diligence.

9 Whether a release is preventable or not  
10 requires an evaluation of the facts of the  
11 circumstance. Like any enforcement action, the  
12 Division intends to consider the facts in making a  
13 decision whether to assess a civil penalty and how  
14 much to assess.

15 Relevant considerations include the volume  
16 and the location of the release; the effect of the  
17 release on public health and the environment; the  
18 operator's effort to prevent or mitigate the  
19 release; the operator's response to the release; and  
20 the operator's cooperation with the Division in  
21 identifying and remediating the release.

22 With respect to the civil penalty, the  
23 Division relies on a civil penalty calculation  
24 method to determine the amount of the civil penalty.

25 OCD intends to revise that method to

1 include this new prohibition on releases, if adopted  
2 by the Commission. And when it does, the Division  
3 will consult with the stakeholders, including the  
4 oil and gas industry and the environmental community  
5 as it has done in the past.

6 And the Division would like to reiterate  
7 that it remains open to considering other potential  
8 changes to Part 29 and invites the parties to work  
9 with the Division to improve its regulatory  
10 structure for the benefit of the people of the State  
11 of New Mexico.

12 And with that, I would like to call  
13 Mr. Jim Griswold as the Division's witness.

14 MADAM HEARING OFFICER ORTH: All right. I  
15 am going to ask, Mr. Ames, if there are others with  
16 opening statements.

17 Mr. Timmons, did you have something to add  
18 by way of an opening statement?

19 MR. TIMMONS: Yes, very briefly. Thank  
20 you, Madam Hearing Officer.

21 Madam Hearing Officer, Chair Sandoval,  
22 Members of the Commission, again, my name is Daniel  
23 Timmons and I am appearing here on behalf of  
24 WildEarth Guardians.

25 I want to start by just thanking the many

1 folks who have gotten us here today, starting with  
2 the Commission, particularly Chair Sandoval and  
3 supporting scheduling this rulemaking proposal for  
4 this public hearing here today.

5 Commission Staff, including Ms. Davidson  
6 and Mr. Moander have been working hard behind the  
7 scenes to make sure that all the procedural hurdles  
8 and hoops have been properly jumped through.

9 Finally, Oil Conservation Division, its  
10 leadership and its staff in supporting this proposal  
11 and joining together with Guardians to present this  
12 here today.

13 And in a unique thank you out to the  
14 industry participants here, NMOGA and IPANM, we are  
15 grateful for your participation here.

16 And finally the other Intervenors, Sierra  
17 Club, Pueblo Action Alliance, Citizens Caring for  
18 the Future, Native American Voter Alliance Education  
19 Project, and Amigos Bravos, we thank you for your  
20 support for this proposal.

21 And finally, any concerned citizens here  
22 today, we are grateful for the support of the public  
23 in participating in this important issue.

24 So today is the culmination of many months  
25 of collaborative work to get this proposed rule

1 before the Commission. There have been certainly  
2 some procedural challenges and delays along the way,  
3 including additional delays this morning, but we are  
4 finally here and we are ready for the Commission to  
5 consider a straightforward proposal to prohibit  
6 major and minor releases of oil, gas and related  
7 waste products during oil and gas development and  
8 production.

9           Guardians and the Oil Conservation  
10 Division propose this rule because, quite simply,  
11 there are too many spills and releases from  
12 New Mexico's oil and gas industry. Three reported  
13 spills a day in 2020 with more than 12,000 reported  
14 from 2010 through 2020. It is just too much.

15           As OCD's witness, Mr. Jim Griswold's  
16 written testimony indicated some, if not many of  
17 these spills, are preventible. And after-the-fact  
18 reporting and cleanup, as currently required, is not  
19 always enough to fully protect public health and the  
20 environment.

21           As a general principle, spills and  
22 releases of toxic substances should be prevented  
23 from happening in the first place, and that is what  
24 this rule is all about. "Major and minor releases  
25 are prohibited."

1           That is the crux of this proposal. So  
2   this proposal is intended to provide the Division  
3   with essentially an additional enforcement tool to  
4   address the serious and ongoing problem of releases,  
5   a problem which threatens public health and the  
6   environment.

7           So finally I want to again thank the  
8   Commission and everyone involved for getting us to  
9   this point here today, and I urge the Commission to  
10   adopt the rule proposed by Guardians and the  
11   Division, subject to those minor modifications  
12   proposed by OCD in its Notice of Intent.

13           Thank you.

14           MADAM HEARING OFFICER ORTH: Thank you,  
15   Mr. Timmons. Let me ask Mr. Cloutier, are you  
16   interested in making any kind of opening statement?

17           MR. CLOUTIER: Yes, Madam Hearing Officer.  
18   There will be closing statements, too, I believe; is  
19   that correct, at the conclusion?

20           MADAM HEARING OFFICER ORTH: So if the  
21   Commission decides to deliberate without  
22   post-hearing submittals, I will invite closing  
23   statements. If the Commission decides to deliberate  
24   at a subsequent meeting and they invite opening  
25   statements in writing.

1 MR. CLOUTIER: Thank you, Madam Hearing  
2 Officer.

3 First of all, I appreciate the Commission  
4 and the participants, participating in this  
5 rulemaking. Our relationship with Mr. Ames and  
6 Mr. Timmons and Mr. Feldewert have been amiable and  
7 professional. We appreciate all of the efforts to  
8 move this to a hearing.

9 IPANM supports in general the  
10 clarifications to the rulemaking that are occurring  
11 here.

12 IPANM remains concerned about the use of  
13 civil penalties for -- to discourage reasonable and  
14 prudent operators from investing in New Mexico.

15 IPANM's members are generally small  
16 players in the oil and gas business. They are proud  
17 contributors to New Mexico's public fisc through  
18 royalties, taxes and jobs. Many of our members have  
19 significant and exclusive presence in New Mexico, so  
20 they create both good paying blue collar jobs and  
21 provide opportunities for educated New Mexicans to  
22 stay at home and work as accountants, engineers,  
23 geologists and other white collar jobs that  
24 sometimes in our industry are in remote areas far  
25 from New Mexico.

1           In short, IPANM is invested in  
2 New Mexico's future. It wants to make New Mexico a  
3 better place. Our members live in New Mexico, raise  
4 their families in New Mexico and enjoy New Mexico  
5 for all its beauty.

6           The rule change proposed by the Division  
7 and WildEarth Guardians is not opposed by IPANM or,  
8 as the parties have noted, any party to this  
9 proceeding.

10           The parties who entered their appearances  
11 early in this proceeding have also agreed on an  
12 amendment that makes clear that the changes to  
13 Part 29 to the Commission's rule would not apply to  
14 the types of releases that are governed by Parts 27  
15 and 28 of the Commission rules and IPANM supports  
16 that change to the proposed rulemaking.

17           Two of IPANM's purposes to participate in  
18 these proceedings are to seek an understanding about  
19 how the Division would use its enforcement powers  
20 under the rules and to comment on the limited  
21 utility of civil penalties in many instances where  
22 releases occur in the oilfields.

23           IPANM appreciates Mr. Ames' comments and  
24 is looking forward to working with the Division on  
25 its implementation of the proposed enforcement



1 protocols.

2 When the Commission adopted the penalty  
3 rule, the Division referred to it as adding a tool  
4 to its toolbox of options available to ensure  
5 compliance with its rules.

6 IPANM believes this is an apt metaphor.  
7 Some jobs require a certain tool and for other jobs  
8 that tool is never needed. Like a toolbox, the  
9 Division has made tools at its disposal to seek  
10 regulatory compliance and civil penalties is just  
11 one.

12 On the Division's current C141 form used  
13 for reporting certain releases, there are 11  
14 specific categories for causes of releases and a  
15 12th or catchall clause of Other.

16 As Mr. Ames notes, it may not be possible  
17 to speak in absolutes, but some of the categories of  
18 releases are usually, if ever, are preventable. For  
19 example, lightening strikes are a common natural  
20 phenomenon in New Mexico.

21 Vandalism is a cause of release that  
22 requires the intentional conduct or misconduct of a  
23 third party. Operators can't prevent either.

24 More importantly oil and gas wells and  
25 other facilities used in oil and gas operations are

1 large engineered systems with many manufactured  
2 parts. This is true in any sort of system like  
3 that, whether they are automobiles or anything else,  
4 parts wear out and fail.

5 In well facilities some such failures can  
6 result in the release of oil, gas, or produced  
7 water. Penalizing operators for ordinary equipment  
8 failure is not going to improve the public health  
9 and safety of New Mexico.

10 Additionally, New Mexico legislature  
11 recently adopted the Produced Water Act which  
12 encourages oil and gas producers to recycle and  
13 utilize produced water in their oil and gas  
14 operations. This statute advances the law to both  
15 public policy of reducing the use of fresh water in  
16 oil and gas operations. In order to accomplish  
17 that, again, large engineered systems are needed to  
18 move produced water to recycling facilities where  
19 they are stored and those pits are governed by these  
20 Commission rules. And then the water is again moved  
21 to new oil and gas wells where drilling or  
22 completion operations are occurring.

23 Again, IPANM believes that penalties on  
24 reasonable and prudent operators for releases that  
25 are properly addressed to discourage the recycling

1 and use of produced waters in contravention of  
2 legislative policy.

3           Additionally, while the amendments make  
4 all releases illegal, major and minor releases  
5 illegal, operators have already had systems in place  
6 to protect the public health and welfare and some of  
7 those systems are governed by the Commission's  
8 rules.

9           For instance, in Part 17 of the rules, it  
10 is required for construction of belowground tanks,  
11 that liners be used and aboveground tanks must be  
12 constructed with berms. These measures acknowledge  
13 the risk of releases, even unintended releases, and  
14 put in place measures to contain those releases and  
15 protect the public health and welfare.

16           Even when they are preventable releases,  
17 for instance, one category is human error, which the  
18 definition is preventable since there is no error,  
19 there is no release. Responsive operator will be  
20 spending money on vacuum trucks, roustabout crews,  
21 disposal fees for contaminated surface materials,  
22 resurfacing and other costs in response to the  
23 release. Where the operator is responding, we urge  
24 that the Commission and the Division consider those  
25 responses and that penalties are inappropriate.

1 IPANM hopes that the penalties be used  
2 appropriately and judiciously and when it applies to  
3 releases, if all major and minor releases are to be  
4 made illegal and, again, we appreciate the  
5 opportunity to participate.

6 Thank you, Madam Hearing Officer.

7 MADAM HEARING OFFICER ORTH: Thank you,  
8 Mr. Cloutier.

9 Mr. Feldewert, do you have anything by way  
10 of opening?

11 MR. FELDEWERT: Just real brief,  
12 Madam Hearing Officer, Madam Chair, Members of the  
13 Commission, NMOGA disagrees with the opinions and  
14 the characterizations when it comes -- that we heard  
15 with respect to the number of releases or the impact  
16 of these releases when or they're not preventable.  
17 But those types of technical issues are really not  
18 before the Division here today because as everyone  
19 has observed, these changes are really  
20 straightforward without objection by the Division,  
21 the environmental groups or the regulated industry.

22 And based on our review of the testimony  
23 that has been filed by Mr. Griswold, his expertise  
24 and I will say many years of public service that he  
25 has put in, support these changes.

1           So this should not be a very long hearing.  
2   We hope it is not a long hearing, and we appreciate  
3   the opportunity to be part of this.

4           MADAM HEARING OFFICER ORTH:   Thank you  
5   very much.

6           Mr. Meiklejohn?

7           MR. MEIKLEJOHN:   Thank you, Madam Hearing  
8   Officer, Members of the Commission.

9           I won't repeat what Mr. Timmons said about  
10   the number of spills and the impact on New Mexico's  
11   public health and environment, but the groups that I  
12   represent, the Rio Grande Chapter of the Sierra  
13   Club, the Pueblo Action Alliance, Citizens Caring  
14   for the Future, NAVA EP and Amigos Bravos agree that  
15   there are many, too many releases and that they have  
16   the impact, they have the potential at least to have  
17   very adverse effects on public health and the  
18   environment.

19           The particular groups that I represent and  
20   that will participate in the hearing represent a  
21   cross-section of environmental groups and  
22   nonprofits, as you characterized them, Madam Hearing  
23   Officer, but they also represent frontline  
24   communities, and we think and my clients think that  
25   it is important for the members of the Commission to

1 hear from frontline communities that are actually  
2 impacted by releases and other effects of the  
3 activities of the oil and gas industry.

4 As you know, we proposed amendments to the  
5 changes that have been advocated by the Division and  
6 WildEarth Guardians, those changes were ruled to be  
7 outside the scope of this hearing, however, our  
8 clients do still support the amendments that have  
9 been proposed by the Division and WildEarth  
10 Guardians, and we welcome the opportunity to explain  
11 why we support those changes to the Commission.

12 Thank you very much.

13 MADAM HEARING OFFICER ORTH: Thank you,  
14 Mr. Meiklejohn.

15 Mr. Cloutier, I believe you are not muted  
16 and I know that several of us are going to need  
17 reminders through the day.

18 As panelists if you are not speaking,  
19 please mute yourself. And if you are not speaking  
20 and you're not a Commissioner or me, you are also  
21 welcome to turn off your video. It is up to you,  
22 really.

23 All right. Let's see, let's get to  
24 Mr. Griswold.

25 Mr. Griswold, can you turn on your camera,

1 please.

2 If you would, please raise your right  
3 hand.

4 (Whereupon, the witness was sworn.)

5 THE WITNESS: I do.

6 MADAM HEARING OFFICER ORTH: Thank you  
7 very much.

8 Mr. Ames, whenever you're ready.

9 THE COURT REPORTER: Mr. Griswold, would  
10 you please state your full name for the record.

11 THE WITNESS: My first name is Jim, J-I-M,  
12 last name Griswold, G-R-I-S-W-O-L-D.

13 JIM GRISWOLD,  
14 after having been first duly sworn under oath,  
15 was questioned and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. AMES:

18 Q. Jim, good morning.

19 A. Good morning, Eric.

20 Q. Pleasure to be here today with you.

21 Could you please state your full name for  
22 the record?

23 A. My name is Jim Griswold.

24 Q. And what do you do for the Oil  
25 Conservation Division, Mr. Griswold?

1           A.       Currently I am the Special Projects  
2 Manager for the OCD.

3           Q.       What does that involve?

4           A.       Oh, any myriad of topics that come up in  
5 the course of operations overseeing the oil and gas  
6 industry. Probably the most prominent current issue  
7 that I have been dealing with is an unstable branch  
8 cavern underneath a developed portion of Carlsbad,  
9 but it is any other plethora of projects that may  
10 come up.

11          Q.       Before you became Special Projects  
12 Manager, what did you do for the Division?

13          A.       I was its Bureau Chief in the  
14 Environmental Bureau for approximately six years.

15                 Prior to that starting in 2008 when I was  
16 initially hired by the OCD, I functioned as a senior  
17 hydrogeologist.

18                 So throughout my tenure with the Division  
19 that is pretty much what I deal with, almost any  
20 aspect regarding releases from oil and gas  
21 activities from the reporting, to the  
22 characterization of the release, to cleaning things  
23 up, and then also the development of any rules and  
24 guidance through the years in that regard.

25          Q.       So would it be fair to say that you are



1 familiar with Part 29?

2 A. Yes, sir, very much so.

3 Q. Were you involved in the adoption of  
4 Part 29 in 2018?

5 A. Yes, I was. I was the Division's lead in  
6 that effort.

7 Q. Is your resume reproduced as Exhibit 1 to  
8 OCD's prehearing statement?

9 A. Yes, it is.

10 Q. Okay. So let's turn to the petition now.  
11 What is the purpose of the joint petition filed by  
12 Oil Conservation Division and WildEarth Guardians?

13 A. Well, it is to make it clear in the rules  
14 that a release in and of itself is against the  
15 regulations. Currently that is not the case.

16 Q. And what are the -- in general, what are  
17 the three parts, the three sections of Part 29 that  
18 we propose to amend?

19 A. Let me grab it here real quick.

20 I am looking at OCD Exhibit 6 the proposed  
21 rule changes. And, well, generally we refer to the  
22 Spill Rule as Part 29 regarding releases. And so  
23 with the beginning of that, Bureau regulations and  
24 objectives, we have now just added a simple phrase  
25 to prohibit releases. And then, therefore, the

1 language thereafter remains the same.

2 Subsection or, I guess it would be  
3 Section 8 of Part 29, to add a new subsection in  
4 there displacing current Subsection A with a new one  
5 that, again, explicitly prohibits major, minor  
6 releases except as otherwise provided in Parts 27  
7 and 28, which are the recently adopted venting and  
8 flare, flaring rules that the Commission adopted  
9 just earlier this year.

10 And then the third portion of the  
11 regulation that we are proposing a change, it's in  
12 Section 15, the Enforcement section, and that  
13 language changes there are to bring the Spill Rule,  
14 Part 29 pretty much into concurrence with the  
15 Enforcement provisions in Part 5 of the OCD's rules,  
16 which were modified in February of last year.

17 Q. Great. Thank you.

18 Before we move on, I would like to just  
19 touch briefly on the history behind Part 29.

20 Can you give us a thumbnail sketch  
21 following your testimony, your direct testimony in  
22 the case of how we got to where we are today with  
23 respect to Part 29?

24 A. Well, I started with the Division in 2008.  
25 But speaking to my knowledge, at least, of the

1 Division rules prior to that time in OCD Exhibit 2,  
2 we file what was formally known as Rule 116 and that  
3 dates back to 1991.

4 And if you review the rules at that time,  
5 they primarily focused just on the notifications of  
6 the Division that a release has occurred. Not much,  
7 if any, discussion as to what is done to  
8 characterize and address that release thereafter.  
9 So that was the rule adopted in 1991.

10 In 1993, the Division came out with a  
11 guidance document dealing with remediation of  
12 spills.

13 And it advanced the ball down the field,  
14 so to speak, fairly well, however, there were some  
15 problems with it. One, that it was guidance. It  
16 didn't have the full weight of rulemaking on it.

17 And the other significant problem that I  
18 observed with that guidance document was it did not  
19 address impacts from produced water, at least to the  
20 extent of chloride. There is a whole lot of salt in  
21 produced water and that chloride, which is a  
22 constituent of salt, is probably one of our prime  
23 contaminants concerning that regard.

24 In 1997 the rules were modestly, Part 116  
25 or Rule 116 was partially modified. It really just

1 kind of tightening up the language of it. Again,  
2 there wasn't a whole lot of direction either to the  
3 Division or to industry as to what the response to a  
4 spill should be, other than to notify the Division.

5 In 2008, about the time I came on with the  
6 Division, we renumbered our rules. It was part of a  
7 larger effort within the OCD. And that is when it  
8 went from Rule 116 to Part 29. But, again, Part 29  
9 in 2008 just primarily dealt with the definition of  
10 a release, major or minor.

11 And then what the notifications procedures  
12 were of a responsible party when a release was  
13 discovered. With respect to corrective actions  
14 thereafter, it simply said that they must proceed  
15 per Division approved plan. That did not provide  
16 direction to, like I said, either to the responsible  
17 parties or to the OCD in terms of what forms that  
18 should take.

19 As a result of that we went through the  
20 effort starting back in 2007, to expand Part 29 to  
21 lay out a real process, not just for notification of  
22 a release but also those responses that a  
23 responsible party must take thereafter such that the  
24 release is properly characterized and then properly  
25 cleaned up.

1           So it lays those procedures out for the  
2 Division and for responsible parties. It also makes  
3 it clear that even though a release may occur of a  
4 volume that is what I refer to as less than a de  
5 minimus volume, meaning it is not reportable, five  
6 barrels of liquids, for instance, that those  
7 releases still must be addressed by the operator,  
8 must be cleaned up.

9           Q.     Great. Thank you.

10           I see that you have four exhibits that  
11 reflect the changes over time to Part 29.  
12 Exhibit 2, 3, 4, or Exhibits 2, 3, 4, and 5; is that  
13 correct?

14           A.     Yes, sir.

15           Q.     Okay. Thank you.

16           MR. AMES: I will move admission of  
17 exhibits at the conclusion, Madam Hearing Officer.

18           Q.     (By Mr. Ames) So, Jim, can you tell the  
19 Commission why the Division believes that the  
20 proposed changes to Part 29 proposed today are  
21 needed?

22           A.     Well, it is part of an effort to reduce,  
23 hopefully, the frequency and severity of spills,  
24 because they are adversely effecting public health  
25 and the environment.

1 Q. Did you complete your statement there?

2 A. Yes, Eric, I did.

3 MADAM HEARING OFFICER ORTH: Mr. Ames, if  
4 you need to turn off your video, it might help.

5 Q. (By Mr. Ames) Can you hear me?

6 A. Yes, Mr. Ames, I can hear you.

7 MR. AMES: Yes, I will turn off my video  
8 with your permission.

9 MADAM HEARING OFFICER ORTH: Thank you.

10 Q (By Mr. Ames) Okay. Jim, did you do an  
11 analysis of OCD's database regarding releases  
12 reported between 2010 and 2020?

13 A. Yes, sir, I did.

14 MADAM HEARING OFFICER ORTH: Mr. Ames, are  
15 you still with us?

16 MR. AMES: I can hear you now, Ms. Orth.  
17 My audio is cutting in and out.

18 Q. (By Mr. Ames) Did you hear my question,  
19 Jim, regarding your analysis of releases between  
20 2010 and 2020?

21 A. Yes, I heard your question, Mr. Ames, and  
22 I responded in the affirmative, yes, I have.

23 Q. Okay. I missed that. Could you tell us  
24 what you found?

25 A. Well, basically releases occur at a rate

1 of between three and four releases per day. I think  
2 the actual number is about 3.4.

3 During that ten-year period we looked  
4 at -- well, there were approximately 12,000 releases  
5 occurred. About 7,000 of those releases involve  
6 produced water, which is a waste product that comes  
7 up when you produce oil and gas. 4,000 of them  
8 involved releases of crude oil.

9 As an example during just the prior year,  
10 2020 alone we had more than 700 releases involving  
11 produced water. 330 of those were considered major.

12 Now, we define major or one of the  
13 criteria for identifying a major release is volume  
14 and so that is a release of greater than 25 barrels  
15 of liquid and a barrel is 42 gallons, if you are not  
16 aware of that. Of crude oil releases, nearly 400  
17 releases involve crude oil, which 90 were considered  
18 major, i.e., that released volume is greater than  
19 25 barrels.

20 Q. Jim, what is your view on the  
21 preventability of these releases in a general sense?

22 A. That is a difficult question, Eric,  
23 Mr. Ames. You know, accidents do happen, but they  
24 happen for various reasons, some of which are  
25 preventable, some of which are not. I suppose you

1 make the argument that all releases are preventable,  
2 but I don't think that is really the case.

3 Perhaps a significant fraction of releases  
4 are preventable by the adoption of best management  
5 practices, by operators.

6 Q. Thank you.

7 So that said, I would like to review the  
8 changes that are being proposed.

9 First with respect to Section 6, what  
10 change does the Division and WildEarth Guardians  
11 propose?

12 A. In Section 6 the objective portion, we are  
13 adding the phrase, "Prohibit releases."

14 Currently the language says, "To require  
15 persons who operate or control the release,"  
16 basically to -- I am going to try to jump ahead and  
17 paraphrase it a bit -- that they actually deal with  
18 that release. But, like I said, we are adding this  
19 section now that says, or we explicitly say that  
20 releases are prohibited.

21 And then I guess there is another minor  
22 change in the wording used for the word, "procedures  
23 for," rather than, "procedures thereafter," just to  
24 clean up the English language a little bit. So that  
25 is Subsection 6 or Section 6.



1 Q. How about Section 8?

2 A. As I had mentioned earlier, currently  
3 Provision A in Section 8 establishes requirements,  
4 we would actually push that down now to Section B  
5 and then everything thereafter gets, you know, C, D,  
6 E and F to insert new language, Subsection A,  
7 Prohibition, which states, "Except as provided in  
8 Parts 27 or 28, major releases and minor releases  
9 are prohibited."

10 It is a pretty direct language.

11 Q. And how about the proposed modification  
12 with respect to Parts 27 and 28?

13 A. Well, parts, I am not sure if maybe you  
14 didn't hear all my answer in there, Eric.

15 Parts 27 and 28 deal with venting and  
16 flaring of natural gas.

17 And they were just recently adopted by the  
18 Commission this year. And so the reason they are  
19 included in the language now is that certain venting  
20 and flaring actions are actually allowable,  
21 otherwise I guess you referred to as authorized,  
22 whereas Part 29 really deals with unauthorized  
23 releases and it is just to make sure that we are  
24 clear or in agreement with Parts 27 and 28.

25 Q. Excellent, thank you.

1           And I apologize, my audio is unexpectedly  
2     creating problems here.

3           So let's turn to Section 15. What is the  
4     change -- what changes are being proposed for  
5     Section 15, if you could just review those quickly?

6           A.     Okay. Section 15 is enforcement  
7     provisions in Part 29, i.e., what can the Division  
8     do to a responsible party if they do not adhere to  
9     the regulations, similarly to Parts 27 and 28,  
10    excuse me, Part 10 of the regulations, or excuse me,  
11    Part 5 of our regulations which deals with  
12    enforcement and compliance was modified in February  
13    of last year, 2020, and so that postdates the  
14    current Spill Rule which was adopted in August of  
15    2008. And so it is catching up with that language  
16    in regards to enforcement provisions.

17          Q.     Thank you.

18                 Earlier you said that you believed these  
19     changes to Part 29 were necessary and appropriate.  
20     Can you explain why providing the additional tool  
21     prohibiting major and minor releases and subjecting  
22     them to enforcement authority would be beneficial  
23     for the public health and environment?

24          A.     Well, if it results in less relations  
25     occurring, then indeed it would be beneficial.

1 MR. AMES: Thank you. Nothing further.

2 I would move the admission of -- one more  
3 thing before I do that.

4 Q. (By Mr. Ames) Jim, is the Division's  
5 proposed modification to Section 8A that you  
6 referenced earlier regarding Parts 27 and 28  
7 reflected in Exhibit 6?

8 A. Yes, it is.

9 MR. AMES: Thank you. I move admission of  
10 OCD Exhibits 1 through 6.

11 MADAM HEARING OFFICER ORTH: Thank you,  
12 Mr. Ames. Let me pause a moment in the event a  
13 party has an objection, Exhibits 1 through 6.

14 MR. MEIKLEJOHN: No objection,  
15 Madam Hearing Officer.

16 MADAM HEARING OFFICER ORTH: Thank you,  
17 Mr. Meiklejohn.

18 MR. CLOUTIER: No objection.

19 MADAM HEARING OFFICER ORTH: Thank you  
20 very much.

21 All right. So hearing no objection, OCD  
22 Exhibits 1 through 6 are admitted.

23 (Exhibits admitted, OCD 1 through 6.)

24 MADAM HEARING OFFICER ORTH: Let me ask  
25 for questions at this point, and because we are on a

1 virtual platform, I will do this essentially as a  
2 roll call.

3 Mr. Timmons, do you have questions of  
4 Mr. Griswold?

5 MR. TIMMONS: No, Madam Hearing Officer,  
6 no questions for Mr. Griswold.

7 MADAM HEARING OFFICER ORTH: Thank you.  
8 Mr. Cloutier?

9 MR. CLOUTIER: No questions, thank you  
10 Madam Hearing Officer.

11 MADAM HEARING OFFICER ORTH: Thank you.  
12 Mr. Feldewert?

13 MR. FELDEWERT: Yes, Madam Hearing Officer  
14 just a couple.

15 CROSS-EXAMINATION

16 BY MR. FELDEWERT:

17 Q. Mr. Griswold, first off I want to thank  
18 you for your 16 years and counting of your expertise  
19 in public service to the Division.

20 And, secondly, you mentioned the existing  
21 rule, Part 29, and I just want to make it clear for  
22 the record, Mr. Griswold, that existing rule,  
23 Part 29 currently is comprised of eight pages of  
24 small single typed regulations that look something  
25 like that (indicating); is that right?

1           A.     Yes, sir.

2           Q.     Okay. And you mentioned you were around,  
3 and I know you were a big part in 2018 of the  
4 changes that were proffered. Is it fair to say what  
5 occurred in 2018 was a pretty substantial overhaul  
6 of the Part 29 that governs releases?

7           A.     It was very significant, Mr. Feldewert.

8           Q.     And would you agree with me that what  
9 occurred in 2018 and the changes that were made was  
10 the product of testimony from numerous technical  
11 experts, I believe including yourself, correct?

12          A.     Yes, sir.

13          Q.     Okay. And when you look at the rule as it  
14 currently stands, it addresses many topics,  
15 Mr. Griswold, first starting with definitions, which  
16 you referenced; is that right?

17          A.     Yes. Actually the current rule is not one  
18 of the exhibits, but is it okay if I refer directly  
19 to that anyway, nonetheless.

20          Q.     Yes. You may not need to because I know  
21 you know this rule very well.

22          A.     Well, you too, Michael.

23          Q.     You are aware that within this eight pages  
24 that I am looking at, we have a section dealing with  
25 definitions that you referenced, right?

1 A. Correct.

2 Q. There is a section dealing with releases  
3 and including the notification requirements?

4 A. Yes, in addition to what initial response,  
5 a responsible party should take even prior to  
6 notification. Once they come across, they just  
7 cover the things that they should do.

8 Q. One of the things that was required in  
9 2018, you recall, Mr. Griswold, is that they have to  
10 clean it up no matter what the volume, right?

11 A. Yes, sir.

12 Q. And within this eight pages of rules there  
13 was discussion, testimony that supported site  
14 assessment at the spill site, correct?

15 A. Yes, and also the contents therein, what  
16 are the minimal pieces of information that the  
17 Division needs to know.

18 Q. Well, the title of it and basically the  
19 characterization of those releases, right,  
20 Mr. Griswold?

21 A. Yes, sir.

22 Q. Okay. And then there is a whole section  
23 on the mediation required and the closure that's  
24 required, depending upon site assessment and  
25 characterization; is that right?

1 A. Correct.

2 Q. And then a whole section on what they call  
3 restoration, reclamation and revegetation?

4 A. Yes, sir.

5 Q. Okay. That is all comprised within these  
6 eight pages and codified under 19.15.29.1?

7 A. 19.15.29 NMAC, yes, sir.

8 MR. FELDEWERT: Thank you. That is all  
9 the questions I have.

10 MADAM HEARING OFFICER ORTH: All right.  
11 Thank Mr. Feldewert. Let's see, Mr. Meiklejohn?

12 MR. MEIKLEJOHN: Thank you, Madam Hearing  
13 Officer, I do have some questions.

14 CROSS-EXAMINATION

15 BY MR. MEIKLEJOHN:

16 Q. Mr. Griswold, you -- in your direct  
17 testimony you gave a couple of numbers of types of  
18 material that were involved in spills or releases.  
19 One of them, I believe, was 400 releases consisted  
20 of crude oil and you also gave a number for releases  
21 of produced water and I missed that. What was that  
22 number?

23 A. During 2020, the last calendar year,  
24 operators reported to the Division 700 releases  
25 involving produced water.

1 Q. Thank you.

2 A. They also reported 398 releases involving  
3 crude oil. Now some of those releases will be the  
4 same release because you could release both produced  
5 water and crude oil in a single event.

6 Q. Do you have any estimate of how many of  
7 those releases involved both fluids or both types of  
8 fluids?

9 A. Not off the top of my head,  
10 Mr. Meiklejohn, but needless to say, typically when  
11 you release crude oil there will be a little bit of  
12 produced water in it. And conversely when you  
13 release produced water or produced water release  
14 occurs, there will be crude oil in that produced  
15 water as well.

16 Q. All right. Thank you.

17 In your direct testimony and in your  
18 written testimony, you referred to releases  
19 endangering public health or the environment.

20 Could you explain what you mean by that,  
21 please?

22 A. Well, there are chemicals in produced  
23 water and in crude oil which are toxic both to  
24 humans and to plants, natural wildlife. They could  
25 potentially, if the release is large enough or is



1 not addressed in an appropriate period of time,  
2 could actually migrate their way into groundwater  
3 sources as well.

4 Q. And would there be an additional or  
5 different issue if those fluids or materials came in  
6 direct contact with people or domestic animals or  
7 wildlife before those materials got to groundwater?

8 A. They could pose a problem, yes, sir.

9 Q. Do you have a sense of what kind of a  
10 problem they could pose?

11 A. Well, I am not a health physicist or an  
12 epidemiologist or anything, Mr. Meiklejohn, so I  
13 would probably be hesitant to offer testimony in  
14 that regard.

15 Q. Okay. All right. You also mentioned site  
16 assessments in your written testimony. Could you  
17 explain what you mean by site assessments? I assume  
18 it is a site assessment at the site at which a  
19 release occurred; is that right?

20 A. Yes. The purpose of a site assessment is  
21 to -- if I may make, I guess, maybe a medical  
22 analogy to it is to diagnose the patient before you  
23 provide a cure for their ills, perhaps. So that is  
24 what that assessment is, is define the vertical and  
25 lateral expanse of contaminated soil and groundwater

1 so you know what it is you're trying to deal with  
2 and to what extent where it is at so that you  
3 adequately address it all.

4 Q. Would a site assessment also include an  
5 analysis of the material that was spilled?

6 A. Well, there is testing that is undertaken  
7 as part of that assessment. And to try to, in  
8 essence, kind of simplify that process, the major  
9 contaminant of concern in crude oil are  
10 hydrocarbons.

11 And so as part of that characterization  
12 effort and then again at the end of a remediation  
13 effort when you have proved or showed to the  
14 Division that you have cleaned it up, we have you  
15 assess a level of hydrocarbons.

16 In produced water the primary contaminant  
17 of concern is chloride. It is listed as a  
18 groundwater contaminate in New Mexico regulations,  
19 and so if, again if you -- if you were to clean up  
20 the hydrocarbon, clean up the chloride, then we are  
21 fairly certain that any other constituents that may  
22 be in the crude oil/produced water were cleaned up  
23 as well.

24 Q. Thank you. When you are talking about a  
25 site assessment, would a site assessment include

1     assessing what is going on only at the point of at  
2     which the release occurred or if the release, for  
3     example, spread material in an area of several  
4     hundred yards around the actual release site, would  
5     a site assessment address what is going on within  
6     that radius?

7             A.     Yes, sir, it would.

8             MR. AMES:  Objection, scope.  Mr. Griswold  
9     testified regarding site characterization only to  
10    the extent that he was explaining the history of  
11    Part 29.

12            At this point Mr. Meiklejohn has asked  
13    several questions about characterization and now  
14    they tend to -- they appear to be in support of the  
15    proposed modifications that the Commission declined  
16    to hear today.

17            Mr. Meiklejohn is entitled to ask these  
18    questions in a hearing on his own proposed  
19    modifications but not about OCD and WildEarth  
20    Guardians, which is limited to three very specific  
21    changes to the rule.

22            MR. MEIKLEJOHN:  May I respond?

23            MADAM HEARING OFFICER ORTH:  Go ahead,  
24    Mr. Meiklejohn.

25            MR. MEIKLEJOHN:  Thank you.  Mr. Griswold

1 testified that site assessments are done. I am  
2 trying to find out what those site assessments  
3 consist of.

4 MADAM HEARING OFFICER ORTH:  
5 Mr. Meiklejohn, my memory is that site assessments  
6 and the rule are covered in one or two other  
7 sections of this rule entirely.

8 Mr. Griswold, would you either confirm  
9 that for me or state otherwise.

10 THE WITNESS: Yes, Madam Hearing Officer.  
11 In Section 19.15.29.11, it is entitled Site  
12 Assessment and Characterization and indeed there it  
13 puts the parameters around what a site regulation  
14 is.

15 MADAM HEARING OFFICER ORTH: All right.  
16 Mr. Meiklejohn, I am going to uphold the objection  
17 and ask you to move on because Section 11 is not  
18 under consideration in this rulemaking proceeding.

19 MR. MEIKLEJOHN: Thank you, Madam Hearing  
20 Officer.

21 Q. (By Mr. Meiklejohn) Mr. Griswold, you  
22 also referred in your written testimony to  
23 notification of a release. Who receives that  
24 notification?

25 A. Presently under 19.15.29.9 so, i.e.,

1 Section 9 of Part 29, 9 and 10 are the release  
2 notification requirements.

3 So not only is the Division notified of a  
4 release within a specified period of time but if  
5 that release were to occur either on State, Federal,  
6 or Tribal lands, or at least there was impact, those  
7 lands were impacted by a release, either the State  
8 Land Office, the BLM or the Tribal Authority would  
9 be notified as well by the operator.

10 MR. MIELKE: Thank you. I don't have any  
11 other questions.

12 MADAM HEARING OFFICER ORTH: Thank you,  
13 Mr. Meiklejohn.

14 Commissioner Bloom, do you have questions  
15 of Mr. Griswold?

16 COMMISSIONER BLOOM: Yes. I thank you  
17 very much, Madam Hearing Officer.

18 Yes, good morning, everyone. I am Greg  
19 Bloom. I am the designee of the Commissioner of  
20 Public Lands.

21 Mr. Griswold, thank you so much for your  
22 testimony today. Just a couple of questions.

23 IPANM, Mr. Cloutier and also a letter that  
24 we received from Intrepid Potash Company working in  
25 Southeastern New Mexico, both expressed concerns

1 about penalties that could impact oil and gas  
2 operators and potentially this potash company.

3 I want to be very clear when I vote on  
4 this -- we work on this rule and vote on it about  
5 penalties. There is currently in Part 29 an  
6 enforcement section.

7 At this point in time is OCD able to level  
8 fines on someone that has a spill under the current  
9 rule as it stands today?

10 THE WITNESS: Commissioner Bloom,  
11 actually, under the current rules, the OCD would be  
12 allowed to pursue a fine against an entity that did  
13 not follow the rules, meaning they didn't properly  
14 address the spill, didn't properly characterize it,  
15 didn't clean things up.

16 There is not a provision in the  
17 regulations currently that would allow the Division  
18 to assess a penalty or a fine, however you want to  
19 phrase it, simply for having a release.

20 COMMISSIONER BLOOM: So is it the changes  
21 to Section 6, and I will pull it up here as we are  
22 speaking, of Part 29 that would now allow for  
23 penalties to be assessed essentially prohibiting the  
24 release and I guess under Section 8 as well create a  
25 prohibition. Is that your understanding of where

1     this increased ability to levy a financial penalty  
2     comes in?

3                 THE WITNESS:   Correct.

4                 COMMISSIONER BLOOM:   And just to be clear,  
5     we are changing in Section 15 the language that is  
6     going from an agreed compliance order to a  
7     stipulated final order.   That is to update Part 29  
8     in relation to other rule changes that were  
9     conducted in 2020.   Is that what you said, sir?

10                THE WITNESS:   Correct, and make it, I  
11    don't know the right legal words because I am not an  
12    attorney, but to make it jibe, if I could use that  
13    phrase, with Part 5 which deals with enforcement and  
14    compliance in our regulations.

15                COMMISSIONER BLOOM:   And then just to be  
16    explicit here as well, is it your belief that we  
17    will see less spills in the future if these rule  
18    changes are made just companies, operators would  
19    fear a financial penalty?

20                THE WITNESS:   That would be a hope.   Well,  
21    I know it is not a technical term but --

22                COMMISSIONER BLOOM:   I got it.   So that is  
23    the mechanism, though, that it would prohibit  
24    spills, increase the ability of OCD to level a  
25    penalty and then we hope that we see improvements to

1 public health and the environment and less waste  
2 because of the adoption of these rules, correct?

3 THE WITNESS: Correct.

4 COMMISSIONER BLOOM: Okay. I have no  
5 further questions at this time, thank you.

6 Thank you, Mr. Griswold.

7 MADAM HEARING OFFICER ORTH: Thank you,  
8 Commissioner Bloom.

9 Commissioner Warnell, do you have  
10 questions of Mr. Griswold?

11 COMMISSIONER WARNELL: Thank you,  
12 Madam Hearing Officer, I have no questions at this  
13 time of Mr. Griswold.

14 MADAM HEARING OFFICER ORTH: Thank you.

15 Madam Chair, do you have questions of  
16 Mr. Griswold?

17 CHAIRWOMAN SANDOVAL: I have a couple of  
18 questions.

19 Mr. Griswold, if you were at our last  
20 hearing this will sound very familiar to you.

21 Do you believe that this rulemaking came  
22 out of a collaborative process?

23 THE WITNESS: Yes, ma'am, it did.

24 CHAIRWOMAN SANDOVAL: Are you supportive  
25 of this rule change?



1 THE WITNESS: Yes, I am.

2 CHAIRWOMAN SANDOVAL: Okay. Just so I  
3 understand, so is there -- does OCD have a breakdown  
4 of sort of the spills that you classified as maybe  
5 could not have been prevented versus ones that could  
6 have been prevented? Is there a different, like,  
7 percentage-wise what that looks like?

8 THE WITNESS: Madam Director, Madam Chair,  
9 I currently don't have the statistics for it, but  
10 when a release -- whenever we are provided  
11 notification of the release, the cause of the  
12 release is part of that notification. And there  
13 are -- under the digital system wherein these things  
14 are currently submitted, a selection of causes for  
15 the release, including other, if it is not otherwise  
16 listed in there, and so any statistical analysis  
17 would incorporate that stated cause by the operators  
18 to why the release occurred.

19 CHAIRWOMAN SANDOVAL: But do you know of  
20 like the breakdown at all or has OCD done an  
21 analysis of what the breakdown looks like for  
22 releases that were potentially preventible versus  
23 not?

24 THE WITNESS: No, ma'am, we have not, at  
25 this point.

1 CHAIRWOMAN SANDOVAL: But the intent with  
2 this change is that it is believed that operators  
3 will take, do more due diligence upfront to prevent  
4 releases if there is more -- more potential for a  
5 monetary penalty on the back end if they don't.

6 THE WITNESS: Correct.

7 CHAIRWOMAN SANDOVAL: That is all for now.  
8 Thank you.

9 MADAM HEARING OFFICER ORTH: Thank you,  
10 Madam Chair.

11 Mr. Ames, was there any questioning you  
12 felt you needed to follow-up on with Mr. Griswold?

13 MR. AMES: No, Ms. Orth.

14 MADAM HEARING OFFICER ORTH: All right.  
15 Thank you very much. If there is no reason not to  
16 excuse Mr. Griswold, we will thank him for his  
17 testimony. And thank you very much, Mr. Griswold.

18 (Whereupon, the witness was excused from  
19 the proceedings.)

20 MADAM HEARING OFFICER ORTH: Let's see,  
21 Mr. Ames, do I understand now we are going to turn  
22 to Mr. Timmons?

23 MR. AMES: Yes. Perhaps I should formally  
24 say the State rests.

25 MADAM HEARING OFFICER ORTH: Okay. Thank

1     you.

2                   Mr. Timmons, would you like to say,  
3     anything further at this point in support of the  
4     petition?

5                   MR. TIMMONS:  No, Madam Hearing Officer.  
6     WildEarth Guardians has no additional witnesses.

7                   MADAM HEARING OFFICER ORTH:  All right.  
8     Thank you very much.

9                   Do I understand, perhaps from the order in  
10    which we took folks on Friday during a motion  
11    hearing that I should go to Mr. Cloutier next?

12                  MR. CLOUTIER:  Thank you, Madam Hearing  
13    Officer.  IPANM is not presenting any witnesses or  
14    exhibits.

15                  MADAM HEARING OFFICER ORTH:  All right.  
16    Thank you.

17                  Mr. Feldewert?

18                  MR. FELDEWERT:  Thank you, Madam Hearing  
19    Officer.  New Mexico Oil and Gas Association,  
20    likewise is not presenting any witnesses.

21                  MADAM HEARING OFFICER ORTH:  Thank you.

22                  So we would turn now to Mr. Meiklejohn.  
23    It occurs to me, though, we have been going an hour  
24    and 15 minutes.

25                  Would this be a good time for a short

1 break, Mr. Meiklejohn?

2 MR. MEIKLEJOHN: Madam Hearing Officer, it  
3 would, but we have one witness who needs to leave at  
4 noon, so I am wondering if she could take her  
5 presentation before we take that break.

6 MADAM HEARING OFFICER ORTH: Oh,  
7 certainly. Tell me the name of your witness.

8 MR. MEIKLEJOHN: Her name is Kayley Shoup.

9 MADAM HEARING OFFICER ORTH: Kayley Shoup.  
10 And would you spell first and last name there,  
11 please.

12 MR. MEIKLEJOHN: Yes. Kayley is  
13 K-A-Y-L-E-Y. And Shoup, is S-H-O-U-P.

14 MADAM HEARING OFFICER ORTH: All right.  
15 So I had just snapped that I had said that I would  
16 invite public comment in between the presentations,  
17 but because we need to get Ms. Shoup on and off, I  
18 will take public comment after Ms. Shoup and after a  
19 short break, so please hang in there with us.

20 Ms. Shoup, would you raise your right hand  
21 please.

22 (Whereupon the witness was sworn.)

23 THE WITNESS: I do.

24 MADAM HEARING OFFICER ORTH: Thank you  
25 very much.

1                   Mr. Meiklejohn.

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

5                               DIRECT EXAMINATION

6               BY MR. MEIKLEJOHN:

7               Q.     Ms. Shoup, have you prepared a statement  
8   to read to the Commission this morning?

9               A.     Yes, I have. And thank you for letting me  
10  go out of order, everyone, I appreciate it.

11              Q.     Would you please proceed with your  
12  statement.

13              A.     Yes. My name is Kayley Shoup. I am a  
14  community organizer with Citizens Caring for the  
15  Future in Southeast New Mexico.

16                       Citizens Caring for the Future is a group  
17  of engaged citizens in the Permian and we seek to  
18  find an informed and safe path to ensure protections  
19  for our community in the face of the rapid oil and  
20  gas development that is happening in Southeastern  
21  New Mexico.

22                       I was born and raised in Carlsbad and I am  
23  now serving as an organizer solely because of the  
24  extensive impact from oil and gas development in my  
25  community that I have borne witness to for the past

1     three years --

2             The issue of produced water and oilfield  
3     waste is one that is very near and dear to my heart  
4     because it's been my entry point to my current work.

5             In late 2019, I began to learn about the  
6     industry that was surrounding my home. At that time  
7     the Produced Water Act, HB 546 had just passed and  
8     the New Mexico Environment Department and the Oil  
9     Conservation Division were holding meetings to  
10    provide stakeholders with information on produced  
11    water and the upcoming rulemaking process.

12            I attended that public meeting and to say  
13    the experience as an eye opening, would be an  
14    understatement. What stuck with me, though, was a  
15    family that was there that evening. It was a school  
16    night, they had hauled their school aged child to  
17    this meeting to voice their concerns. Both parents  
18    bravely stood up and stated that they had produced  
19    water spills on their land. They contacted NMED who  
20    had limited authority to act. That evening I  
21    watched as they were again told about the Agency's  
22    limited authority to act.

23            They were told by NMAD that there was no  
24    formal recourse to be taken other than what OCD  
25    requires to report the spill.

1           That meeting was a very eye opening and  
2 life changing moment for me. I didn't know how I  
3 was able to help, but I did know that this family  
4 and my community had been harmed and that they had  
5 very few places to turn for assistance.

6           A year after that meeting I was introduced  
7 to Penny and Dee Aucoin. They are two of the most  
8 amazing advocates I have ever met. Days before  
9 meeting them I actually read their story of having a  
10 produced water spill on their land in early 2020.

11           I learned of the problems after meeting  
12 with them that their family faced because of this  
13 spill, problems that included health issues, having  
14 to euthanize their pets because of their exposure  
15 and ultimately having to leave their home.

16           I then learned of the work they were doing  
17 to raise awareness of the dangers of produced water  
18 and I was also made aware of the wonderful group  
19 they were working called Citizens Caring for the  
20 Future.

21           For a year I thought I was alone in my  
22 fear of what oil and gas production was doing to my  
23 community, but then I met Penny and Dee and found  
24 out how wrong I was. There is actually a lot of  
25 incredible advocates down here that are advocating

1 for our community and I found a home again.

2 Citizens Caring for the Future hopes that  
3 the Oil Conservation Commission will adopt this rule  
4 and in the future additional action will be taken to  
5 alert the public of spills and also to clarify how  
6 spills are repaired and cleaned up.

7 We know firsthand that a lack of clarity  
8 has very real life consequences for frontline  
9 community members that experience spills and we are  
10 grateful that industry is supporting this rule  
11 change that will help protect the communities where  
12 they produce oil and gas.

13 We believe this is a positive step to help  
14 us reach regulatory objectives that will protect us  
15 all.

16 Thank you for the opportunity to testify.

17 Q. Ms. Shoup, you mentioned Penny and Dee  
18 Aucoin. Would you please spell those names for the  
19 court reporter?

20 A. Yes. Penny is P-E-N-N-Y. Dee is DEE.  
21 And then Aucoin is A-U-C-O-I-N.

22 MR. MEIKLEJOHN: Thank you. Madam Hearing  
23 Officer, I do not have any further questions of  
24 Ms. Shoup.

25 MADAM HEARING OFFICER ORTH: Thank you



1 very much, Mr. Meiklejohn and Ms. Shoup for your  
2 testimony.

3 I have to ask if there are other parties  
4 who have questions of you and the Commissioners may  
5 also have questions.

6 So, Mr. Ames, do you have questions of  
7 Ms. Shoup?

8 MR. AMES: No, Madam Hearing Officer, I do  
9 not. Thank you.

10 MADAM HEARING OFFICER ORTH: Thank you.  
11 Mr. Timmons?

12 MR. TIMMONS: No questions for Ms. Shoup.

13 MADAM HEARING OFFICER ORTH: Thank you.  
14 Mr. Cloutier?

15 MR. CLOUTIER: No questions, Madam Hearing  
16 Officer.

17 MADAM HEARING OFFICER ORTH: Thank you.  
18 Mr. Feldewert?

19 MR. FELDEWERT: Likewise, Madam Hearing  
20 Officer, no questions.

21 MADAM HEARING OFFICER ORTH: Thank you.  
22 Commissioner Bloom?

23 COMMISSIONER BLOOM: Madam Hearing  
24 Officer, thank you. Madam Chair, yes, I have two  
25 questions for Ms. Shoup.

1           Ms. Shoup, thank you so much for your  
2   testimony. You talked about a family that was  
3   impacted by a produced water spill and the Aucoin  
4   family as well.

5           Have you yourself been impacted or seen  
6   produced water spills or other similar spill-related  
7   impacts on the environment in your County or  
8   Carlsbad area?

9           THE WITNESS: I have not been affected  
10   personally and those are the two instances that I  
11   have been exposed to or that I have learned of.

12          COMMISSIONER BLOOM: All right. Thank you  
13   very much.

14          MADAM HEARING OFFICER ORTH: Thank you.

15          Commissioner Warnell, do you have  
16   questions of Ms. Shoup?

17          COMMISSIONER WARNELL: I have no  
18   questions. Thank you, Ms. Shoup.

19          THE WITNESS: Thank you.

20          MADAM HEARING OFFICER ORTH: Madam Chair?

21          CHAIRWOMAN SANDOVAL: I just have a  
22   question.

23          Are you supportive of the rulemaking on  
24   the changes?

25          THE WITNESS: Yes.

1 CHAIRWOMAN SANDOVAL: Thank you.

2 MADAM HEARING OFFICER ORTH: All right.

3 Thank you very much. Mr. Meiklejohn, is there any  
4 reason not to excuse, Ms. Shoup?

5 MR. MEIKLEJOHN: No, Madam Hearing  
6 Officer, there is not.

7 Thank you for your testimony, Ms. Shoup.

8 THE WITNESS: Thank you all.

9 MADAM HEARING OFFICER ORTH: Thank you  
10 both.

11 (Whereupon, the witness was excused from  
12 the proceedings.)

13 MADAM HEARING OFFICER ORTH: So I want to  
14 make sure that I invite public comment for those who  
15 wish to offer it before lunch, and then we really  
16 will take a break.

17 This is definitely not your only  
18 opportunity to offer that comment. I will ask you  
19 to keep that verbal public comment at three minutes  
20 or less. If you have a lot more to say, I would  
21 invite you to put it into writing.

22 The four names that I saw this morning,  
23 there may have been more rolling in, but the four  
24 names that I saw earliest were Ralph Wrons. If I am  
25 mispronouncing your name, I'm sorry. Liz Klein,

1 Jessica Hernandez and Gail Evans.

2 So let me ask, Mr. Lamkin, do you see  
3 Mr. Wrons on the platform.

4 MR. LAMKIN: Yes, I do. I will unmute him  
5 right now.

6 MADAM HEARING OFFICER ORTH: Mr. Wrons,  
7 can you hear me?

8 MR. WRONS: This is Ralph Wrons, and  
9 you-all can hear me?

10 MADAM HEARING OFFICER ORTH: Yes, we can.  
11 Thank you very much.

12 Would you like to offer verbal comment at  
13 this time?

14 THE COURT REPORTER: Would you state your  
15 name and spell it for the record, please.

16 PUBLIC COMMENT

17 MR. WRONS: My name is Ralph Wrons. The  
18 last name is spelled W-R-O-N-S. I hope that you  
19 have the spelling of the first name.

20 MADAM HEARING OFFICER ORTH: I did receive  
21 written comment, Mr. Wrons, from you. You need not  
22 repeat that, it is part of the record, already. But  
23 if you have something to add, please go ahead.

24 MR. WRONS: Thank you. Thank you for the  
25 confirmation that you received my written comment.

1           All I will say at this point, then, is  
2   just to reiterate my statement of support for this  
3   proposed rule change. And I have been listening to  
4   the other testifiers and the questioning, and all I  
5   would say at this point is that I am very much in  
6   favor of the discussion and the consideration on  
7   financial penalties as a way of ensuring that this  
8   proposed rule can be enforced, so I will leave it at  
9   that for now.

10           Thank you.

11           MADAM HEARING OFFICER ORTH: Thank you  
12   very much. Commissioners, in the event you have a  
13   question of any public commenter, please, let me  
14   know. I am not going to ask each time, if that is  
15   okay.

16           Commissioner Bloom, do I understand you  
17   have a question?

18           COMMISSIONER BLOOM: Madam Hearing  
19   Officer, yes, I have not seen Mr. Wrons' written  
20   contribution, so if that could just make its way to  
21   me today, that would be fantastic.

22           MADAM HEARING OFFICER ORTH: Yes. We  
23   received it this morning and we will make sure that  
24   all of the Commissioners get all of the written  
25   public comments.

1 COMMISSIONER BLOOM: Thank you so much.

2 MADAM HEARING OFFICER ORTH: All right.

3 Thank you very much, Mr. Wrons.

4 With us on the platform, Mr. Lamkin?

5 Okay. I will definitely call out her name  
6 later. What about Joseph Hernandez?

7 COMMISSIONER BLOOM: I think we missed the  
8 last name, I didn't hear it.

9 MADAM HEARING OFFICER ORTH: Klein,  
10 K-L-E-I-N.

11 MR. MEIKLEJOHN: Madam Hearing Officer.

12 MS. KLEIN: Can everyone hear me?

13 MADAM HEARING OFFICER ORTH: Yes, I can.  
14 Mr. Meiklejohn, did you have something to say?

15 MR. MEIKLEJOHN: I just wanted to say that  
16 I think Mr. Hernandez, and we have become a little  
17 confused because we intended to present him as one  
18 of our witnesses. If he would prefer to make his  
19 statement at this time, that is fine with us, but it  
20 was a little bit of confusion there.

21 MADAM HEARING OFFICER ORTH: I am very  
22 sorry, Mr. Meiklejohn, I hadn't snapped to the fact  
23 that it was the same Joseph Hernandez.

24 I had seen an e-mail communication earlier  
25 and mistook him as a public commenter. I would

1 obviously prefer to have him taken in an orderly  
2 fashion as part of your case.

3 But thank you for bringing that to my  
4 attention.

5 Let me go back to Ms. Klein. Ms. Klein,  
6 would you like to offer a public statement at this  
7 moment or wait until later in the day?

8 MS. KLEIN: I would like to comment now,  
9 if possible.

10 MADAM HEARING OFFICER ORTH: Please, go  
11 ahead.

12 MS. KLEIN: Okay. Well, hello. My name  
13 is Liz Klein, and it's Klein, K-L-E-I-N. I am with  
14 Three Bear Energy. Three Bear Energy operates  
15 natural gas compressor stations and a processing  
16 plant in Lea County.

17 We also operate produced water recycling  
18 ponds where water is received, stored and piped to  
19 other oil gas companies for reuse.

20 Now our produced water operations in 2020  
21 saved over 1.5 barrels or 63 million gallons of  
22 fresh water. Again, that was from 2020.

23 Three Bear is committed to safe  
24 responsible energy production. We do not oppose the  
25 petition to prohibit releases. We support the

1 statements filed by NMOGA and the Independent  
2 Petroleum Association of New Mexico.

3 In 2019 the Groundwater Protection  
4 Council, the national group of state regulatory  
5 agencies said it considers produced water to be a  
6 potential resource rather than a waste.

7 New Mexico oil and gas operators generate  
8 one billion barrels of produced water each year.  
9 Nationally, according to the Groundwater Protection  
10 Council, 45 percent of that is reused.

11 We need to recycle more in New Mexico and  
12 avoid wasting this water. The more water we reuse,  
13 the less fresh water that will be consumed, and this  
14 will benefit all New Mexicans.

15 Produced water can safely be treated and  
16 reused in New Mexico strengthening its protections.  
17 This Commission updated its rule in October. The  
18 NMED has done outreach on new rules for reuse off  
19 the oilfield. The produced water research  
20 consortium is developing new technology to  
21 capitalize on reuse.

22 We ask you to help New Mexico take  
23 advantage of the benefits of produced water.

24 The rules should promote reuse and  
25 recycling. Any unnecessary rules like those



1 proposed by the Sierra Club can create barriers to  
2 managing the water.

3 The Commission rejected their proposal but  
4 you will in the future hear more advanced for more  
5 rules. The future rules make it hard to treat  
6 produced water and manage produced water. Operators  
7 may just inject it because it is easier, which would  
8 be a waste.

9 House Bill 546 removed legal obstacles to  
10 water reuse. If this Commission revisits its  
11 produced water rules in the future, please make  
12 certain its feasible for industry to provide  
13 produced water as a resource for New Mexico.

14 MADAM HEARING OFFICER ORTH: Is that all,  
15 Ms. Klein?

16 MS. KLEIN: Yes, that is. Thank you for  
17 the opportunity.

18 MADAM HEARING OFFICER ORTH: Thank you  
19 very much. Thank you very much for your comments.

20 Let's turn to the fourth person that I saw  
21 this morning who indicated an interest in providing  
22 public comment, and then any other public comment we  
23 will take this afternoon.

24 Gail Evans. Is Gail Evans on the  
25 platform?

1 MS. EVANS: I'm here but I don't wish to  
2 make a public statement right now. Thank you.

3 MADAM HEARING OFFICER ORTH: All right. I  
4 am happy to take your statement later today as you  
5 wish.

6 In that case, let's take -- well, Madam  
7 Chair, what is your pleasure? We have actually made  
8 it all the way to 11:30. Would you like to take a  
9 lunch break or a shorter break?

10 CHAIRWOMAN SANDOVAL: Do we know how many  
11 public commenters we have that didn't sign up that  
12 wish to speak?

13 MADAM HEARING OFFICER ORTH: Those are the  
14 only four I have been notified of.

15 Mr. Lamkin, do you have any other  
16 information?

17 MR. LAMKIN: There is a couple more that  
18 popped up in chat and I believe that one of them  
19 Ms. Aguilar has three or four that are going to be  
20 making comments from the same platform.

21 CHAIRWOMAN SANDOVAL: I just want to make  
22 sure, I think even if they didn't sign up we need to  
23 make sure to try to get them. There are a handful  
24 of people who are on the line. I am not sure how we  
25 want to manage that. Maybe if you are an attendee

1 and you want to make a comment, message the host in  
2 the chat box.

3 MADAM HEARING OFFICER ORTH: I think that  
4 is what they have been doing.

5 CHAIRWOMAN SANDOVAL: Okay. Great.

6 I am fine if we want to go ahead and do a  
7 30-minute, 45-minute lunch break, however long is  
8 appropriate, and then come and do commenters.

9 MADAM HEARING OFFICER ORTH: All right.  
10 So let's break, then, until 12:15. That is just a  
11 slightly short lunch hour, if you will, and when we  
12 return before we take more party witnesses, I will  
13 see if there are some folks who would like to give  
14 public comment at that time. But thank you all very  
15 much. We are on break until 12:15.

16 (A recess was taken.)

17 MADAM HEARING OFFICER ORTH: All right.  
18 Let's go back on the record, then, after having a  
19 lunch break. When we broke we agreed to take some  
20 public comment before we returned to the party  
21 witnesses. And the technical host informed me that  
22 two folks wanted to offer comment and perhaps joined  
23 by students are Castille Aguilar, C-A-S-T-I-L-L-E,  
24 A-G-U-I-L-A-R, and Bianca, B-I-A-N-C-A, S-O-P-O-C-I  
25 hyphen B-E-L-K-N-A-P.

1                   And Ms. Sopoci-Belknap if I mispronounce  
2     your name, please correct me when you're on.

3                   So do we have Castille Aguilar and Bianca  
4     Sopoci-Belknap.

5                   MR. LAMKIN: Yes, they are both here.

6                   MADAM HEARING OFFICER ORTH: All right.  
7     If you will unmute them, please.

8                   MS. AGUILAR: Hi, you-all, this is  
9     Castille. I would actually like to let Bianca go  
10    first in her testimony, if that is okay.

11                  MADAM HEARING OFFICER ORTH: That is fine,  
12    thank you very much.

13                  MS. SOPOCI-BELKNAP: I am ready but I  
14    can't see where I can turn on my camera.

15                  MADAM HEARING OFFICER ORTH: It may not be  
16    possible, but we can certainly hear your voice  
17    clearly.

18                  MS. SOPOCI-BELKNAP: I believe, let me  
19    see, can you all see me now.

20                  Well, good afternoon, everyone, my name is  
21    Bianca Sopoci-Belknap. I am the associate director  
22    of New Energy Economy, so thank you so much for the  
23    opportunity to speak this morning.

24                  We have several additions we believe  
25    should be added to the proposed rule, which we have

1 also e-mailed for inclusion in the record.

2 I understand that the Oil Conservation  
3 Division is obligated to monitor, regulate, control  
4 and enforce against oil and gas pollution to,  
5 "Protect human health and the environment from the  
6 effects of development of the State's oil and gas  
7 resources."

8 It is New Energy Economies' position that  
9 the New Mexico Environmental Department, Energy  
10 Minerals Natural Resources Department and Oil  
11 Conservation Division are obligated to monitor,  
12 supervise, regulate, control and enforce against oil  
13 and gas pollution but have failed in their fiduciary  
14 responsibility to do so.

15 NMED, MNERD and OCD have failed to issue  
16 compliance actions, require remediation plans and  
17 complete remediation, restoration and reclamation  
18 requirements, assess penalties, suspend or terminate  
19 permits and have failed to commence civil actions or  
20 criminal actions for negligent incidents perpetrated  
21 by oil and gas.

22 As a result the Agencies have caused a  
23 general atmosphere of impunity for the industry that  
24 has proximately caused harm to the people of  
25 New Mexico by contaminating our water and land and

1 causing imminent and substantial danger to our  
2 health and animals and to the health and welfare of  
3 the public.

4 Your official policy of failing to  
5 regulate is responsible for the deprivation of New  
6 Mexicans rights protected by the New Mexico  
7 constitution and laws. Much more stringent rules  
8 are needed to protect us. And as a quick point of  
9 clarification, contrary to the testimony provided by  
10 an industry representative earlier no off oilfield  
11 rules have been made, for example.

12 But we are here today to talk about  
13 releases, and a rule prohibiting releases is  
14 absolutely necessary, however, prohibition is  
15 meaningless without any required enforcement or  
16 penalty. Rules on books that are not enforced are  
17 not helpful.

18 We believe that in order to truly protect  
19 New Mexicans the following additions must be made.  
20 One, if this State really wants to prevent spills,  
21 we need mandated penalties and enforcement in  
22 addition to adding a no spills provision to  
23 19.15.29.6 you should also change the "may" to a  
24 "shall" in 19.15.29.15, which would mean that the  
25 Division is committed to taking enforcement action

1 for any violations of this section of the rules.

2 Two, when taking enforcement action in  
3 order to ensure the penalty is meaningful and a  
4 deterrent, the compliance section of the rules  
5 should have an addition which reads in  
6 19.15.5.10(g), "There shall be a rebuttable  
7 presumption that any violation of 19.15.29 NMAC  
8 presents a risk either to the health or safety of  
9 the public or of causing significant environmental  
10 harm pursuant to NMSA 70-2-31(d), and if not  
11 rebutted shall result in a civil penalty of up to  
12 \$10,000 per violation per day."

13 Three, rather than just making major  
14 spills a violation, please also prohibit minor  
15 spills and please define minor spills to be any  
16 spill that is more than one barrel. Our communities  
17 deserve to be protected against any contamination.

18 Next in order to ensure that community  
19 members who are impacted by the spill know about it,  
20 please amend the reporting and notification section  
21 of the rule, which is 19.15.29.10 to add a section  
22 that says that the responsible party shall notify  
23 landowners, residences, institutions, and businesses  
24 within 500 feet of the point of release and areas  
25 impacted by the release in order to protect human

1 health.

2 And, please, make the responsible parties  
3 send the C141 to all people located or working with  
4 in a half mile of the point of release.

5 And finally please add a provision to the  
6 rule about releases to make the responsible party  
7 collect samples from the point of release and the  
8 area that has been impacted so we can identify what  
9 is in the release. Those contaminants should be  
10 disclosed to the public and OCD should have to post  
11 that information on its website. That way the  
12 community can find out what contaminants they may  
13 have been exposed to and take precautions and  
14 measures to protect their health --

15 Thank you. Please consider adding these  
16 additions to the rule.

17 MADAM HEARING OFFICER ORTH: Thank you,  
18 Ms. Sopoci-Belknap. Let's see, Ms. Aguilar?

19 MS. AGUILAR: Hi, everyone. Thank you for  
20 hearing me today. My name is Castille Aguilar. I'm  
21 here as a spokesperson for YUCCA. Thank you for the  
22 opportunity to speak.

23 I am providing an abbreviated version of  
24 our testimony given the time limit on public  
25 comments today, however, we have e-mailed our full



1 testimony for the record.

2 YUCCA does not support fracking. We do  
3 not believe that the costs to our health, to our  
4 environment and to the millions of people and  
5 species already impacted by catastrophic climate  
6 change are an acceptable price to pay.

7 The scientific consensus is that we now  
8 have just a decade to decarbonize our economy. The  
9 effects of climate change are already devastating  
10 our food systems, our ecosystems and our economies.

11 We also know that many of our indigenous  
12 and communities of color have had their health  
13 sacrificed because of extraction and that has to  
14 stop.

15 It is critical that both industry and our  
16 government are accountable when our public health,  
17 environment and futures are threatened.

18 In New Mexico we know that environmental  
19 racism has led to our indigenous and low income  
20 communities of color bearing disproportionate  
21 burdens when it comes to the pollution and  
22 contamination caused by extractive industry and  
23 dirty energy.

24 Some of our members have been directly  
25 harmed by living in areas where industry seems to

1 call the shots and you regulators seem blind to the  
2 real and present danger posed by polluters with  
3 their daily dumping.

4 We believe the OCD should make it illegal  
5 to release produced water intentionally or  
6 unintentionally. And we believe the proposed rule  
7 must be expanded to require enforcement and  
8 penalties for every incident. We support the  
9 changes to the proposed rule introduced by New  
10 Energy Economy in 19.15.29.15 to change the  
11 requirement from "may" to "shall," because  
12 regulation should not be optional.

13 We have seen what optional enforcement has  
14 brought us. I remind the OCD that under the current  
15 language we see more than three spills on average  
16 per day. For these same reasons we support the  
17 additional changes proposed for 19.15.5.10(g)  
18 regarding the presumption that releases of produced  
19 water present a risk to our health and safety and  
20 shall result in civic penalties, sorry, civil  
21 penalties.

22 There must be consequences with spills,  
23 including minor spills that take place. We believe  
24 the polluters must be required to collect samples  
25 and, sorry, samples to determine the levels of

1     contamination and release to the public the list of  
2     contaminants. And we believe the State must require  
3     notification and reporting so that the community in  
4     the impacted area is fully informed.

5             The people whose health is at risk  
6     certainly have a right to know and it is the State's  
7     duty to protect us. We must transition away from  
8     fracking, urgently, but as long as it exists it must  
9     be fully regulated.

10            Thank you.

11            MADAM HEARING OFFICER ORTH: Thank you  
12     very much, Ms. Aguilar. And for the transcript, let  
13     me note that it appears you're joined by nearly 20  
14     people. Are they members of YUCCA?

15            MS. AGUILAR: Yes. And additionally we do  
16     have a few other folks that would like to give a  
17     public statement as well and was told that we could  
18     make that happen through this account.

19            MADAM HEARING OFFICER ORTH: Yes, you can.  
20     We do need the full spelling of their first and last  
21     name and if they would keep their remarks brief.

22            Who are you introducing first?

23            MS. AGUILAR: I will introduce Akyra  
24     Cordova, and I will let them spell their name out  
25     for you so I don't mess it up.

1                   MADAM HEARING OFFICER ORTH: Thank you  
2 very much.

3                   MS. CORDOVA: Hello. My name Akyra  
4 Cordova, A-K-Y-R-A, C-O-R-D-O-V-A.

5                   Before I begin, I would like to show you  
6 something. These are my moccasins, okay. Hello, my  
7 name is Akyra Cordova. I am a member of YUCCA, and  
8 I stand here for my ancestors, my relatives and all  
9 of these beautiful people in the back. Before I  
10 express my thoughts and feelings about fracking and  
11 oil and your complacency of our lives in relation to  
12 Mother Earth, I would like to recognize the original  
13 caretakers of this land that we are on.

14                  I am in so-called Santa Fe and we are on  
15 Tewa land. We are all on stolen land. Today I'm  
16 here before you in my moccasins. These moccasins  
17 were made for me by my auntie for a graduation gift.  
18 This is so significant because this is resistance.  
19 My grandfather made all of my family moccasins when  
20 we were young. Hours of time and hand crafts, eye  
21 strains and careful precision. This is an act of  
22 love, intergenerational love and radical love.  
23 Intergenerational love that was supposed to be  
24 completely eradicated. We remembered these ways  
25 even through the trauma. We always remembered in

1 our spirits. Our spirits also remember  
2 intergenerational pain, genocide and colonialized.

3 I look at my hands and I can feel the  
4 tense told memories breathing, breathing the  
5 polluted air and drinking the toxic water.

6 Oil pipelines liter our land and flood  
7 into the clean water making us sick and suffocating  
8 that intergenerational love. We are dying, not just  
9 indigenous people, but all people, black, brown,  
10 Asian, Muslim, indigenous and other marginalized  
11 communities experience this firsthand, yet you are  
12 suddenly blinded and refuse to accept it.

13 There is no Plan B. There is no second  
14 option. We are fighting the same fight against  
15 colonization as our assessors did except now they  
16 market it as the oil industry, fracking or economic  
17 growth.

18 What I explain today is nothing you  
19 haven't heard before, and yet you are hearing it  
20 again and you will continue to hear it until your  
21 waters turn black and your skies are brown. I will  
22 leave this meeting with a quote by Russell Means, an  
23 AIM leader and earth protector and a human rights  
24 activist. He said, "Mother Earth will retaliate.  
25 The whole environment will retaliate and abusers

1 will be eliminated."

2 Thank you.

3 MADAM HEARING OFFICER ORTH: Thank you,  
4 Ms. Cordova.

5 Please state and spell your name.

6 MS. YANG: Yang, Y-A-N-G. Good afternoon.  
7 My name is Yang. I am Dena Anchicana (phonetic)  
8 from the frontline and borderline town Puta,  
9 Farmington. I'm here speaking as a spokesperson for  
10 YUCCA, Youth United 4 Climate Crisis Action. I am a  
11 spokesperson and representative of my indigenous  
12 people from this region where our communities and  
13 lands have been sacrificed for coal, oil, gas and  
14 uranium for decades.

15 Our lands have been systemically targeted  
16 and desecrated for profit before I was born. Anesta  
17 (phonetic), my homeland, was designed to energy  
18 sacrifice by the Nixon administration in 1973 and  
19 since then my community has experienced detrimental  
20 health effects and environmental effects from  
21 hundreds of uranium mines, coal plants, hundreds of  
22 fracking wells and the Gold King mine spill in 2015.

23 Back home oil and gas lease is polluting  
24 our precious water, air, and land. Legislators and  
25 industries that contaminate the land and don't clean

1 up their mess should not just pay a fine, they  
2 should be held accountable for the depths of the  
3 frontline communities and contamination of the land.

4           The leadership of our State and our Navajo  
5 Nation has forgotten their duty to protect people  
6 and the environment, instead they protect the  
7 industry and oil and gas companies. Our indigenous  
8 communities and frontline communities have had their  
9 health sacrificed because of fracking and the  
10 State's failure to regulate and that has got to end  
11 now.

12           This approach of extraction and  
13 consumption powers gentrified cities which allows  
14 those with wealth to continue to colonize for their  
15 conveniences and luxuries of a modern life but back  
16 home on my reservation, it means living beside oil  
17 and gas barrels and fracking wells. It means  
18 breathing in your hate for the earth and community.  
19 You know we don't have the same luxuries as any of  
20 you or your children, but soon all of us will all  
21 begin to have plenty of asthma, cancer, and lung  
22 disease. If you don't hold these industries  
23 accountable for the mess that they are making, there  
24 is no reason for you to be a representative if all  
25 do you is contaminate the earth and kill

1 communities.

2           You are regulators. You have the power to  
3 make change. This rule is one way to begin to start  
4 regulating and again to do the right thing.

5           We demand that it be strengthened. I see  
6 the vision of a clean valley with a healthy  
7 community, clean air, water and environment, and a  
8 thriving wildlife. This is the future all of us are  
9 all fighting for. Help make this a reality.

10           Thank you.

11           MADAM HEARING OFFICER ORTH: Is there  
12 anyone else?

13           MS. AGUILAR: We have two more young  
14 folks.

15           MADAM HEARING OFFICER ORTH: Please state  
16 and spell your name.

17           MS. HANNA: Alex Hanna. A-L-E-X,  
18 H-A-N-N-A.

19           Hi. I am Alex and I'm here with YUCCA. I  
20 support the proposed rules to prohibit oil and gas  
21 industry spills in New Mexico. They are the first  
22 step to protect people and the environment and hold  
23 the oil and gas industry accountable.

24           This is environmental racism and is  
25 disproportionately impacted on indigenous and



1     frontline communities. It is unfair that these  
2     people have to suffer because of who they are.

3             In the Permian and San Juan Basin the  
4     leading cause of death is cancer. These people are  
5     literally dying and it is still legal for the oil  
6     and gas industries to spill toxic waste in  
7     New Mexico.

8             This is shocking, and we need to change  
9     this. Change this for the community suffering,  
10    change this for the people on the front lines,  
11    change this for the Land of Enchantment.

12            Thank you.

13            MADAM HEARING OFFICER ORTH: Thank you,  
14    Ms. Hanna.

15            Is there anyone else?

16            MS. ADRIAN HANNA: I am Adrian Hanna,  
17    A-D-R-I-A-N, H-A-N-N-A.

18            Thank you for letting me speak today. My  
19    name is Adrian Hanna. I'm here with YUCCA.

20            Produced water is radioactive. Toxic  
21    waste is dangerous, contaminating our water, killing  
22    wildlife and scarring the great Land of Enchantment.

23            Water is life. We can't contaminate  
24    water, we can't contaminate life. I have been down  
25    to Artesia. After one hour of being there, my

1 throat was sore, and I had a headache, and my ear  
2 was a constant buzz. I saw people suffering from  
3 pain and sadness because of fracking.

4 Toxic waste spills have already caused  
5 harm to the land, to the communities and to our  
6 water. There are places in New Mexico where you  
7 can't go because of fracking spills. There are  
8 communities torn apart because of fracking spills.  
9 There is water not safe to go into, because of  
10 fracking spills.

11 It should be illegal to scar Mother Earth.  
12 It should be illegal to put poisonous fracking waste  
13 into Mother Earth. It should be illegal to kill the  
14 wildlife it took nature thousands of years to  
15 create.

16 I support the proposed rule to prohibit  
17 oil and gas spills, to take this first step to a  
18 safer Land of Enchantment, to hold the oil and gas  
19 industry accountable for the harm they have done.

20 These rules are not enough. All spills  
21 should be illegal. We need to transition away from  
22 these industries that threatened our health,  
23 environment and future. We need to transition away  
24 from the industries poisoning our water, our  
25 communities and our Land of Enchantment.

1 Thank you.

2 MADAM HEARING OFFICER ORTH: Thank you,  
3 Ms. Hanna.

4 Is there anyone else, Ms. Aguilar?

5 MS. AGUILAR: No. Thank you so much for  
6 hearing the youth's testimony today and giving us  
7 the time to voice our concerns.

8 MADAM HEARING OFFICER ORTH: Thank you so  
9 much. You have a great group of thoughtful well  
10 spoken students.

11 Thank you.

12 If there is anyone else on the platform  
13 who would like to offer public comment at this time,  
14 this is not the last opportunity, I will ask again a  
15 few more times this afternoon, but if you would like  
16 for offer public comment now, please reach out to  
17 the technical host and let him know that you would  
18 like to offer comment now.

19 Mr. Lamkin, do we have any interest?

20 MR. LAMKIN: I haven't received anything  
21 else here.

22 MADAM HEARING OFFICER ORTH: Commissioner  
23 Bloom?

24 COMMISSIONER BLOOM: Madam Chair, I just  
25 want to also thank our young people here today.

1     Adrian, Alex, and Akyra for coming and speaking to  
2     us. I think it is great that people are taking a  
3     role in being active in regulation, and obviously  
4     care greatly about our environment.

5             I just briefly wanted to say to Castille  
6     and, sorry, Ms. Castille Aguilar and Ms. Bianca that  
7     the additions that they want to see and support are  
8     the same or very similar to the ones that were  
9     presented to us recently by the Sierra Club and  
10    other Intervenors.

11            And while we are not taking those up  
12    during this hearing, we -- based on what we heard  
13    last week from the Intervenors, I am sure  
14    Mr. Meiklejohn can speak to this. I believe there  
15    will be a petition in the near future prompting  
16    those very changes and we may be hearing that in the  
17    near future. So I just wanted to address that while  
18    they were all still on the line.

19            Thank you.

20            MADAM HEARING OFFICER ORTH: Thank you,  
21    Commissioner Bloom.

22            Mr. Lamkin, any interest yet or shall we  
23    turn to a few party witnesses?

24            MS. EVANS: Hello. This is Gail Evans.  
25    Can you hear me?

1                   MADAM HEARING OFFICER ORTH: Yes, I can  
2   Ms. Evans.

3                   First spell your name and then make your  
4   statement.

5                   MS. EVANS: I don't know if you can see  
6   me. My name is Gail Evans. I am a constitutional  
7   rights attorney here in Albuquerque.

8                   MADAM HEARING OFFICER ORTH: Would you  
9   spell your name, please.

10                  MS. EVANS: G-A-I-L, E-V-A-N-S.

11                  I wanted to bring to everybody's attention  
12   a section of our State Constitution that applies to  
13   this hearing, and it is Article 20, Section 21 of  
14   the constitution and it reads, "The protection of  
15   the State's beautiful and healthful environment is  
16   hereby declared to be a fundamental importance to  
17   the public interest, health, safety and the general  
18   welfare. The legislature shall provide for control  
19   of pollution and control of despoilment of the air  
20   and other natural resources of this State consistent  
21   with the use and development of these resources for  
22   the maximum benefit of the people."

23                  So the legislature passed the Oil and Gas  
24   Act which gives the OCD the opportunity to regulate  
25   the oil and gas industry. It is disappointing that

1 the Oil and Gas Act doesn't mandate regulation of  
2 the oil and gas industry, in fact, it should, but it  
3 gives this Division and this Commission the  
4 opportunity to regulate the Oil and Gas Act, to  
5 regulate the industry.

6 And today you have the opportunity to take  
7 a stance against spills, not simply by saying they  
8 are prohibited because prohibiting something without  
9 enforcing that rule is meaningless. And today you  
10 have the opportunity to change 19.15.29.15 to say  
11 that you shall take enforcement action for any  
12 violations of this spills rule.

13 And I understand that you're saying you're  
14 going to take up some matters on another day, but  
15 not ensuring enforcement of this rule leaves today's  
16 hearing to be meaningless and doesn't address the  
17 concerns that are intended to be addressed and that  
18 are so needed to be addressed as spoken by the  
19 members of YUCCA.

20 So I am requesting that you change the  
21 "may" to a "shall" and that you put the oil and gas  
22 industry on notice that if they spill, there shall  
23 be enforcement by your Division. And if the  
24 Division needs more funding to do that enforcement,  
25 which you made clear at the last legislative session

1 and other sessions, then, to please go and seek that  
2 funding in a (audio cut out) and not signed a  
3 supposed budgetary constraints. We have choices, we  
4 make choices about how we spend our State money and  
5 more State money needs to be spent on enforcement.

6 Thank you.

7 MADAM HEARING OFFICER ORTH: Thank you  
8 very much, Ms. Evans.

9 Well, let me ask if there is anyone else  
10 on the platform at this time who would like to offer  
11 public comment? This is not the final opportunity  
12 in this hearing.

13 Please reach out to the technical host if  
14 you would like to offer that comment now.

15 Mr. Lamkin?

16 MR. LAMKIN: Nobody has said anything.

17 MADAM HEARING OFFICER ORTH: All right.  
18 We are going to turn, then, to the next party  
19 witnesses which will be presented by Mr. Meiklejohn  
20 on behalf of the environmental groups known as  
21 Intervenors. And after awhile we will take another  
22 break and I will ask again if there is additional  
23 public comment.

24 So Mr. Meiklejohn.

25 MR. MEIKLEJOHN: Thank you, Madam Hearing

1 Officer, Commission Members, our next witness is  
2 Camilla Feibelman.

3 THE WITNESS: Can you hear me all right?

4 MADAM HEARING OFFICER ORTH: I can and now  
5 I can see you as well.

6 (Whereupon, the witness was sworn.)

7 CAMILLA FEIBELMAN,  
8 after having been first duly sworn under oath,  
9 was questioned and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MEIKLEJOHN:

12 Q. Would you please state your full name and  
13 your address?

14 A. Yes. It's Camilla Feibelman. That is  
15 spelled C-A-M-I-L-L-A. The last name is Febibelman,  
16 F-E-I-B-E-L-M-A-N. And my address is 2215 Lead  
17 Avenue, Southeast, Albuquerque, New Mexico, 87106.

18 Q. Would you please describe for us your  
19 education and background?

20 A. Yes. I am the director of the Rio Grande  
21 Chapter of the Sierra Club. That is a position that  
22 I have held since May of 2013.

23 I have a Master's degree in planning from  
24 the University of Puerto Rico and an undergraduate  
25 degree in environmental biology from Columbia



1 University in New York.

2 Maybe most importantly, I graduated from  
3 Albuquerque High School where I founded my first  
4 environmental club. I was a Fulbright scholar in  
5 Peru and I serve as a trustee for the Udall  
6 Foundation at the nomination of President Obama  
7 confirmed by the Senate, and I have been employed by  
8 the Sierra Club since 2000, and have had a variety  
9 of positions and participated in multiple technical  
10 rulemakings on topics of environmental quality and  
11 protection.

12 Q. Have you prepared a statement for the  
13 Commission?

14 A. I have.

15 Q. Would you please provide that.

16 A. Sure, yeah.

17 I am testifying on behalf of the Rio  
18 Grande Chapter of the Sierra Club, which is a  
19 volunteer led organization representing more than  
20 35,000 members and supporters in New Mexico and West  
21 Texas.

22 Our mission is to explore, enjoy and  
23 protect the planet. Our Rio Grande Chapter  
24 prioritizes protecting climate, air, water, wildlife  
25 and public lands in New Mexico and West Texas.

1           And because of those interests we are  
2 particularly interested in protecting New Mexico's  
3 precious water resources and therefore have a  
4 significant interest in this proceeding.

5           Effective regulation of the oil and gas  
6 industry and addressing the impacts that that  
7 industry has on people, and our environment are top  
8 priorities for us. The rule changes proposed by  
9 WildEarth Guardians and the Division would prohibit  
10 major and minor releases of oil, gas, produced water  
11 and oilfield wastes that are collectively referred  
12 to as releases, thereby addressing one important  
13 source of the oil and gas industry's impact on  
14 people and the environment.

15           The Sierra Club strongly supports the  
16 change to the Commission rules proposed by Guardians  
17 and the Division. The current Commission rules do  
18 not actually prohibit releases of oil and gas or oil  
19 and gas waste. And that, from our point of view, is  
20 a serious problem with the current rules.

21           The Sierra Club and its members are  
22 grateful to WildEarth Guardians who initially  
23 brought this proposed rule change to the Commission  
24 and that OCD concurred that a prohibition of spills  
25 is needed and therefore they filed this joint

1 petition that is before you today.

2 We really think that this type of  
3 collaborative rulemaking is key to moving forward to  
4 protect air, water, and other aspects of our  
5 environment.

6 The proposed modification to prohibit  
7 releases will strengthen the rules governing  
8 releases and give OCD the much needed enforcement  
9 authority to protect public health, the environment  
10 and fresh water resources.

11 As stated by OCD and WildEarth Guardians  
12 in the joint rulemaking proposal, operators should  
13 not release oil and gas, produced water and other  
14 contaminants in the first place. And the Division  
15 should be given the tools necessary to prevent those  
16 releases. But in that context, I would like to  
17 recognize OCD's need for funding, staffing and  
18 overall limited resources to adequately implement  
19 and enforce this rule as well as other rules.

20 We shouldn't spend resources on permitting  
21 industry without the proper capacity to inspect and  
22 enforce and protect our people, air, water, and  
23 climate.

24 Thank you for the opportunity to express  
25 our concerns about ongoing releases of oil, gas,

1 produced water and other oilfield waste and to voice  
2 our strong support for the proposed modifications to  
3 the rules that govern releases from oil and gas  
4 facilities to prohibit releases.

5 Thank you.

6 Q. Madam Hearing Officer, I have one  
7 question.

8 Ms. Feibelman, has the Sierra Club in the  
9 past worked to support efforts by the New Mexico  
10 Energy Mineral and Natural Resources Department to  
11 get more funding for its various jobs that it has to  
12 do, has the Sierra Club supported that in the State  
13 legislature?

14 A. We have and I will preface my answer by  
15 saying and I should have said this in my statement.  
16 You know, we are really grateful to the public  
17 servants on this call, the Commissioners, the  
18 members of the staff of these agencies, who, you  
19 know, are really bearing the impact of reduced  
20 budgets from previous years and past  
21 administrations. And so if I can say it in a  
22 colloquial way, we know you are doing the Lord's  
23 work for us and at the same time we need to ensure  
24 that the legislature provides, as is their  
25 constitutional duty, for budgets that protect our

1 communities and for that reason we actively, openly  
2 and publicly advocate for reasonable budgets for our  
3 environmental agencies.

4 MR. MEIKLEJOHN: Thank you, Ms. Feibelman.  
5 I do not have any other questions.

6 MADAM HEARING OFFICER ORTH: All right.  
7 Thank you, Mr. Meiklejohn and Ms. Feibelman.

8 Mr. Ames, do you have any questions?

9 MR. AMES: Ms. Orth, thank you. We  
10 appreciate Ms. Feibelman's testimony but we have no  
11 questions.

12 Thank you.

13 MADAM HEARING OFFICER ORTH: Mr. Timmons,  
14 any questions?

15 MR. TIMMONS: No questions for  
16 Ms. Feibelman today. Thank you.

17 MADAM HEARING OFFICER ORTH: Mr. Cloutier?

18 MR. CLOUTIER: Madam Hearing Officer, we  
19 have no questions for Ms. Feibelman.

20 MADAM HEARING OFFICER ORTH: Thank you.

21 Mr. Feldewert?

22 MR. FELDEWERT: Thank you, Madam Hearing  
23 Officer, no questions.

24 MADAM HEARING OFFICER ORTH: All right.

25 Commissioner Bloom, any questions of

1 Ms. Feibelman?

2 COMMISSIONER BLOOM: Ms. Feibelman, thank  
3 you for your testimony today and I have no questions  
4 at this time.

5 MADAM HEARING OFFICER ORTH: All right.  
6 Thank you.

7 Commissioner Warnell?

8 COMMISSIONER WARNELL: Madam Hearing  
9 Officer, I have no questions at this time.

10 Thank you.

11 MADAM HEARING OFFICER ORTH: Thank you.

12 Madam Chair?

13 CHAIRWOMAN SANDOVAL: Just one brief  
14 question.

15 Are you supportive of this rulemaking  
16 petition?

17 THE WITNESS: Very much.

18 CHAIRWOMAN SANDOVAL: Thank you.

19 MADAM HEARING OFFICER ORTH: Thank you  
20 very much for your testimony, Ms. Feibelman.

21 And, Mr. Meiklejohn, we will excuse  
22 Ms. Feibelman.

23 (Whereupon, the witness was excused from  
24 the proceedings.)

25 MR. MEIKLEJOHN: Thank you, Madam Hearing

1 Officer. Our next witness is Julia Bernal.

2 MADAM HEARING OFFICER ORTH: I see  
3 Ms. Bernal there on the screen. If you would please  
4 raise your right hand.

5 (Whereupon, the witness was sworn.)

6 JULIA BERNAL,  
7 after having been first duly sworn under oath,  
8 was questioned and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MEIKLEJOHN:

11 Q. Ms. Bernal, would you please state your  
12 name and spell your name for the court reporter?

13 A. Yes. Julia Bernal, J-U-L-I-A,  
14 B-E-R-N-A-L.

15 Q. And have you prepared a statement for the  
16 Oil Conservation Commission for today's hearing?

17 A. Yes, I have.

18 Q. Would you please go ahead and provide that  
19 to the Commission?

20 A. Yes, thank you.

21 My name is Julia Bernal. I am the current  
22 director of Pueblo Action Alliance. We are a  
23 community organization that addresses environmental  
24 and social injustices that occur on our ancestral  
25 indigenous landscapes. We are a woman and youth-led

1 organization that addresses issues like the fossil  
2 fuel industry, the Federal Fossil Fuel Leasing  
3 programs, climate adaptation and mitigation and also  
4 addressing the economic impacts of extractive  
5 industries that we believe are desecrating our  
6 cultural integrity.

7           We have been providing our expertise and  
8 grass roots experience to the Frack Off Chaco  
9 coalition addresses, again, the Federal fossil fuel  
10 leasing programs, particularly in the San Juan  
11 Basin, otherwise known as the Greater Chaco Region.

12           This place is significant in its spiritual  
13 and cultural importance to the 20 Pueblo nations in  
14 the Southwest. I myself am from Sandia, so I have a  
15 personal investment as well.

16           We have been addressing these issues  
17 pertaining to the basin for years. As mentioned  
18 before, I have been serving for Pueblo Action  
19 Alliance for the past five years but have  
20 experience, previous experience in the water  
21 resources sector.

22           For the past seven years I have been  
23 working in many capacities within the water  
24 resources sector, whether that is a technician, data  
25 collector, educator, and now a graduate student and



1 research assistant at the University of New Mexico.

2 In my experience over the years, I have an  
3 understanding of how a typical fracking well works,  
4 the consumption of water and the waste this type of  
5 extractive operation produces. And produced water  
6 should be treated in a manner that holds the  
7 industry accountable for the releases that are  
8 potentially exposed to the natural landscape, and  
9 this particular type of release could be extremely  
10 harmful to the environment, its ecosystem, public  
11 health and clean water.

12 I myself and Pueblo Action Alliance do  
13 support the amendment of the Oil Conservancy  
14 Commission's regulations that would prohibit  
15 releases but I would also ask that the Commission  
16 engage in its 2020 Tribal Collaboration Act with the  
17 sovereign nations of New Mexico on any rulemaking  
18 processes.

19 I also want to point out that as  
20 indigenous people to this landscape, we hold our  
21 ancestral homelands as the number one priority in  
22 terms of protection and stewardship. Also, those  
23 who have settled and lived in New Mexico also have  
24 taken stances to protect public lands and other  
25 cultural landscapes that make the State unique,

1 beautiful and cultural.

2 So strengthening rules to protect the  
3 landscape and its people should also be a top  
4 priority, and enforce the oil and gas industries to  
5 also help to protect the landscape, whether they  
6 have vested interests or stake in our lands. I hope  
7 the Commission considers the long-term impacts that  
8 produced water can have on our lands, water and  
9 people.

10 Thank you.

11 Q. Thank you, Ms. Bernal. I have one  
12 follow-up question.

13 Do you support the proposed change to the  
14 regulations that has been advocated by WildEarth  
15 Guardians and the Oil Conservation Division?

16 A. Yes, I do.

17 MR. MEIKLEJOHN: Thank you. I have no  
18 further questions.

19 MADAM HEARING OFFICER ORTH: Thank you,  
20 Mr. Meiklejohn and Ms. Bernal.

21 Mr. Ames, do you have any questions of  
22 Ms. Bernal?

23 MR. AMES: We appreciate Ms. Bernal's  
24 testimony. I have no questions for her. Thank you.

25 MADAM HEARING OFFICER ORTH: Thank you.

1                   Mr. Timmons?

2                   MR. TIMMONS: I echo the sentiment of  
3 Mr. Ames and have no questions.

4                   MADAM HEARING OFFICER ORTH: Thank you.

5                   Mr. Cloutier?

6                   MR. CLOUTIER: No questions for  
7 Ms. Bernal. Thank you.

8                   MADAM HEARING OFFICER ORTH: Thank you.

9                   Mr. Feldewert?

10                  MR. FELDEWERT: Madam Hearing Officer, no  
11 questions. Thank you.

12                  MADAM HEARING OFFICER ORTH: Thank you.

13                  Commissioner Bloom?

14                  COMMISSIONER BLOOM: Ms. Bernal, thank you  
15 for your testimony today, I really appreciate it.  
16 No questions.

17                  MADAM HEARING OFFICER ORTH: Thank you.

18                  Commissioner Warnell?

19                  COMMISSIONER WARNELL: I have no  
20 questions. Thank you for your support, Ms. Bernal.

21                  MADAM HEARING OFFICER ORTH: Thank you.

22                  And, Madam Chair?

23                  CHAIRWOMAN SANDOVAL: Mr. Meiklejohn got  
24 ahead of me, so I have no questions. Thank you for  
25 your time.

1                   MADAM HEARING OFFICER ORTH:   Thank you so  
2 much, Ms. Bernal, for your testimony.

3                   THE WITNESS:   Thank you.

4                   MADAM HEARING OFFICER ORTH:  
5 Mr. Meiklejohn, we will excuse Ms. Bernal at this  
6 time.

7                   (Whereupon, the witness was excused from  
8 the proceedings.)

9                   MR. MEIKLEJOHN:   That is fine.  
10                   Our next witness is Norman Gaume.

11                   MADAM HEARING OFFICER ORTH:   All right.  
12 Let's see, there you are, Mr. Gaume.

13                   Would you raise your right hand, please.

14                   (Whereupon, the witness was sworn.)  
15  
16  
17  
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23  
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25

1 NORMAN GAUME,  
2 after having been first duly sworn under oath,  
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MEIKLEJOHN:

6 Q. Would you state and spell your full name,  
7 please?

8 A. My name is Norman Gaume, N-O-R-M-A-N,  
9 G-A-U-M-E.

10 Q. And what is your address, Mr. Gaume?

11 A. I reside in rural Sandoval County,  
12 New Mexico.

13 Q. Could you outline for us your background?

14 A. I am a retired licensed professional water  
15 engineer. I was educated at Hobbs High School and  
16 New Mexico State University where I earned a  
17 Bachelor of Science in electrical engineering and a  
18 Master of Science in civil engineering degrees.

19 All my professional employment in  
20 New Mexico for 37 years, from 1978 through 2014,  
21 required a New Mexico professional engineering  
22 license. I have professional experience in water  
23 and wastewater facilities management, design,  
24 construction, operations and maintenance, and in  
25 water resources management, planning, and

1 administration.

2 My graduate work included eight graduate  
3 hours in statistical analysis and models of data.

4 Q. Did we submit with our notice of intent to  
5 present testimony, a resume of your qualifications?

6 A. Yes.

7 Q. Is that resume accurate?

8 A. Yes, it is.

9 Q. What is your interest in this proceeding?

10 A. I am participating in this hearing to  
11 support the joint proposal to prohibit spills in  
12 order to protect human health, the environment and  
13 fresh water resources.

14 I am interested because spills are  
15 currently okay. There is nothing prohibited or  
16 illegal about them. Enormous volumes of oil and gas  
17 industry toxic and highly saline liquid oilfield  
18 waste and other materials are released. Spills  
19 occur frequently. About 3.5 liquid spills per day  
20 in 2020, Oil Conservation Division data show that  
21 some operators do a much better job in preventing  
22 spills than other operators.

23 My testimony will elaborate on why the  
24 proposed rule is critical.

25 Q. Would you explain, please, your experience

1 and background on water issues in New Mexico and on  
2 oil, gas, produced water and other oilfield waste  
3 issues?

4 A. Yes, thank you.

5 I served as director of the New Mexico  
6 Interstate Stream Commission for six years. I  
7 personally engaged with stakeholders to negotiate  
8 and prepare an effective agreed plan for compliance  
9 with the 1987 United States Supreme Court amended  
10 degree which required that New Mexico never again  
11 owe water to the State of Texas on the Pecos River.

12 The principals were Carlsbad and Roswell  
13 Irrigation Districts, the Bureau of Reclamation and  
14 numerous agricultural and municipal users.

15 Our plan was authorized by State law was  
16 implemented and has proven to be successful. I  
17 understand surface water issues on the Pecos River.

18 I have addressed water resources  
19 controversy in many other areas of New Mexico. I  
20 have been retained as a consultant on a variety of  
21 water resources planning management and water rights  
22 issues by three State agencies, a university, two  
23 large water purveyors and two environmental advocacy  
24 groups.

25 I was selected on the basis of my

1 professional qualifications to serve on the  
2 New Mexico Produced Water Research Consortium's  
3 technical steering committee. I have devoted many  
4 hours since the beginning of 2020 to research oil  
5 conservation data, and perform analysis regarding  
6 produced water and spills.

7 Q. The proposed rule, that is, the rule  
8 proposed by the Division and WildEarth Guardians  
9 refers to releases, you refer to spills. What are  
10 spills?

11 A. The Oil Conservation Division statistics  
12 web page lists various files and databases that can  
13 be downloaded. "Incidents and spills (search and  
14 listing)," is the name of the Oil Conservation  
15 Division file that contains thousands of records  
16 pertaining to releases. When the spills and  
17 incidents data is searched and the selected records  
18 are downloaded, they appear in an Excel file  
19 entitled Spills.

20 I have downloaded and analyzed some  
21 aspects of the most recent of these thousands of  
22 spill records since 2017.

23 Q. Have you or did you hear the technical  
24 testimony that was provided earlier in this hearing  
25 earlier by Jim Griswold?



1           A.       Yes. I found it very useful.

2           Q.       Do you agree with part or all of it?

3           A.       I do agree. Further I am really pleased  
4 to see this rulemaking occur. It is a very  
5 significant initiative that has been needed for many  
6 years, as Mr. Griswold's expert testimony makes  
7 clear.

8                   The joint rulemaking proposal of the Oil  
9 Conservation Division and the WildEarth Guardians  
10 makes clear the critical need for this rulemaking  
11 proposal to be approved.

12                   It says in part, "After-the-fact reporting  
13 and cleanup obligations standing alone are  
14 inadequate to protect public health and the  
15 environment. Operators should not release oil, gas,  
16 produced water and other contaminants in the first  
17 place. And the Division should be given the tools  
18 necessary to prevent those releases."

19                   I wholeheartedly agree with that  
20 statement. Much remains to be done to truly stop  
21 preventable spills. Prohibiting spills is the first  
22 essential but insufficient step.

23           Q.       Have you conducted research regarding  
24 produced water and oil and gas industry spills?

25           A.       Yes, I have and my research continues. I

1 am seeking to understand Oil Conservation Division  
2 public data, the information it provides and its  
3 sufficiencies.

4 In preparation for an Oil Conservation  
5 Division rulemaking hearing in 2020, I downloaded  
6 and reviewed 2019 spills data. I found that more  
7 than half of the produced water spills were  
8 self-reported by four operators, XTO Energy, COG  
9 Operating, Devon Energy, and Oxy USA.

10 The vast majority of those spills were  
11 reportedly due to causes, that in my professional  
12 opinion, are preventable and/or negligent.

13 I offered those conclusions drawn from Oil  
14 Conservation Division data and my opinions regarding  
15 preventable and negligence able skills in my  
16 testimony before this Commission last year.

17 For this hearing I reviewed 2020 spills.  
18 I summarized my findings in my written testimony  
19 offered in support of the proposed rule.

20 I also felt the need to calculate a  
21 directly comparable rate of produced water spills  
22 for each registered operator.

23 Using Oil Conservation Division data, I  
24 calculated each operator's normalized rate of spills  
25 by dividing each operator's numbers of self-reported

1 produced water releases divided by the million  
2 barrels of oil equivalence they produced. My  
3 analysis relied on four different Oil Conservation  
4 Division files, three for annual production in each  
5 even year 2017 through 2019, and the number of  
6 released records with materials spilled equal to  
7 produced water for those three years.

8 My analysis shows there is a wide variance  
9 in normalized produced water spill rates by both  
10 larger and smaller operators. I will explain with  
11 example and I would like to show a table on your  
12 screens to illustrate these changes. This table  
13 compares the normalized spill rates and the relative  
14 frequency of spills for the largest New Mexico  
15 energy producers with the four operators that  
16 produced reported more than half of the produced  
17 water release incidents in 2019. The table is  
18 contained in my written technical testimony.

19 THE WITNESS: Am I allowed, Madam Chair,  
20 Madam Hearing Officer to share my screen?

21 MADAM HEARING OFFICER ORTH: Yes.  
22 Mr. Lamkin, if you would make that so.

23 MR. LAMKIN: You should be able to.

24 MADAM HEARING OFFICER ORTH: Please try  
25 it, Mr. Gaume.

1           THE WITNESS: Well, I am having a  
2 technical difficulty. It says I am the presenter  
3 but my share screen box at the bottom of my window  
4 is still grayed out.

5           Rather than take your time to sort through  
6 these technical problems, I will just describe the  
7 table for you and refer you to -- it is the same  
8 table that appears in my written testimony submitted  
9 earlier.

10           MADAM HEARING OFFICER ORTH: Thank you.

11           A. So this table compares the spill rates and  
12 energy production of five operators. I chose EOG  
13 Resources because they have produced the most energy  
14 of all the New Mexico operators for the time period  
15 I looked at, 2017 through 2019.

16           The other four operators I selected for  
17 this comparison are the four operators that together  
18 were responsible for more than half of the produced  
19 water spills in 2019 and these data, again, are for  
20 2017 through 2019.

21           And those operators are XTO Energy, COG  
22 Operating, Devon Energy, and Oxy USA.

23           Going from memory, XTO Resources is the  
24 largest energy producer. I believe COG Operating is  
25 the second. I believe Devon Energy is the fourth,

1 Oxy USA is tenth. I may have that wrong. I think  
2 XTO Energy is maybe the tenth.

3 EOG Resources experienced a reported 43  
4 spills over -- produced water spills over the period  
5 from 2019, 2017 through 2019. And when you divide  
6 that number of spills into the million barrels of  
7 oil equivalence that they reported producing they  
8 have a normalized spill rate of 0.26.

9 XTO Energy reported 211 spills over the  
10 three-year time period. And dividing that by the  
11 million barrels of oil equivalence they produced  
12 gives them a normal spill rate of 5.12, which is 20  
13 times higher than the spill rate per million barrels  
14 of energy produced by EOG Resources.

15 Similarly, COG Operating reported 342  
16 spills, Devon Energy 270 spills, Oxy USA 199 spills,  
17 and those number of spills divided by the amount of  
18 energy they produced are 9.6, 9.9, and 8.0 times --  
19 those are the multipliers with regard to the  
20 performance of EOG Resources which I used as a  
21 benchmark for that study.

22 What this indicates to me, and I have  
23 confirmed it through conversations with an employee  
24 of EOG Resources is that spill control in New Mexico  
25 is currently voluntary. Some operators choose to

1 spend money and invest in facilities and training  
2 and automation to prevent spills and other  
3 operators, having no mandate, choose not to spend  
4 that money.

5 Prohibition of spills is the first step in  
6 leveling the playing field between operators for the  
7 benefit of New Mexicans.

8 I was asked to describe my research, that  
9 summarizes one piece of it. I also want to say that  
10 I am seeking to understand what the data shows by  
11 performing compilations of public data and  
12 comparisons that the Oil Conservation Division  
13 should, in my professional opinion, prepare and make  
14 public.

15 I am also seeking to understand  
16 efficiencies in the Oil Conservation Division's  
17 public data, and I have many unanswered questions.

18 My colleague Peter Coe and I have met once  
19 with Jim Griswold regarding questions. It was a  
20 very helpful conversation. I have submitted in  
21 writing specific questions and have asked for a  
22 meeting to discuss them, but our schedules have not  
23 been compatible since I posed the questions a couple  
24 of months ago.

25 I have compared what I know about Oil

1 Conservation Division data with public data quality  
2 implementation standards pursuant to the New Mexico  
3 Water Data Act of 2019, which names the Oil  
4 Conservation Division as a directing agency.

5 Q (By Mr. Meiklejohn) In your professional  
6 opinion, Mr. Gaume, why are spills a problem and why  
7 do you support the proposed rule to prohibit spills?

8 A. As Mr. Griswold's written technical  
9 testimony demonstrates, the Oil Conservation  
10 Division and the Oil Conservation Commission have  
11 not used their statutory discretionary authorities  
12 to date to prohibit spills and to cause operators to  
13 prevent them, thereby protecting the public health,  
14 the environment and fresh water resources from huge  
15 volumes of oil, industry products, chemicals, and  
16 liquid waste that are spilled onto the surface of  
17 the earth?

18 Registered oil and gas operators reported  
19 they spilled 26.5-acre feet of toxic materials in  
20 2020. I put the volume into units that I think make  
21 more sense to people than may be reporting that same  
22 volume as almost 9 million gallons. The amount of  
23 spill volumes, the total volume self-reported by  
24 operators would have covered 26.5 acres one foot  
25 deep in these toxic and highly saline waste and

1 other oil products and chemicals.

2 Of the 1,543 spills that were spills and  
3 releases that were self-reported by oil and gas  
4 operators in 2020, 1,294 were not natural gas  
5 releases. These spills, an average of three and a  
6 half a day in 2020 are currently allowed but would  
7 not be under the WildEarth Guardians and Oil  
8 Conservation Division jointly proposed amendments to  
9 the Oil Conservation Commission's release rule.

10 Preventable causes labeled equipment  
11 failure, corrosion, human error, overflows of  
12 storage tanks and pits and normal operations caused  
13 over 1,000 or 82 percent of these self-reported  
14 spills.

15 The total volume reported of these spills,  
16 as I said, was 26.5-acre feet, but the actual total  
17 spill volume is likely higher because 404 of the  
18 1,259 release incidents that were not natural gas  
19 were reported to have spilled zero barrels, even  
20 though 208 of those zero volume spills were  
21 self-reported as having major severity.

22 Forty additional spills that were reported  
23 as having a spill volume of zero also address a  
24 blank in the severity column of the Oil Conservation  
25 Division's data.



1 Oil Conservation Division data and  
2 personal communications with industry managers  
3 demonstrate the prevention of spills as currently  
4 voluntary. Some operators invest to control their  
5 spills, others don't.

6 Exhibit 3, which depicts Oil Conservation  
7 Division data regarding spills and productions  
8 demonstrates that fact.

9 Q. When you refer to Exhibit 3, are you  
10 talking about the Exhibit 3 that was submitted as  
11 part of our notice of intent to present testimony in  
12 this proceeding?

13 A. Yes, that was my reference.

14 Q. And does that accurately reflect OCD -- I  
15 beg your pardon, division data and your analysis of  
16 it?

17 A. It does.

18 MR. FELDEWERT: Madam Chair, or Members of  
19 the Commission, Madam Hearing Officer, I would  
20 object at this point in time to Mr. Gaume's  
21 discussion and verification of the analysis that he  
22 has purported to prefile in advance of this hearing  
23 because, as I understand it, that is based solely on  
24 the quote/unquote workbook that he put together that  
25 has been excluded because it was not timely and

1 properly given to the parties so that they could  
2 analyze this information.

3 So to the extent that he is going into  
4 that data any further and offering and referencing  
5 any exhibits, that is not appropriate.

6 MADAM HEARING OFFICER ORTH: All right.  
7 Thank you, Mr. Feldewert.

8 As I was listening it occurred to me that  
9 perhaps he was speaking more to the information on  
10 the OCD web page and not necessarily the workbook.

11 Let me ask, Mr. Ames, do you have -- do  
12 you want to share in the objection or do you have  
13 any observations here?

14 MR. AMES: Thank you, Madam Hearing  
15 Officer. It is a close question but I think I need  
16 to support Mr. Feldewert. My understanding from the  
17 order is that the workbook was excluded. The  
18 workbook is the basis for the summaries and  
19 conclusions in Mr. Gaume's testimony.

20 He has essentially been testifying to  
21 those summaries and conclusions without referencing  
22 the workbook explicitly, so I have refrained to this  
23 point but I think we have now heard virtually all of  
24 Mr. Gaume's testimony. I think it may be  
25 appropriate to bring it to a close.

1                   MADAM HEARING OFFICER ORTH: All right,  
2 thank you.

3                   Mr. Timmons, any other observations here?

4                   MR. TIMMONS: No questions from me.

5                   MADAM HEARING OFFICER ORTH: All right.

6                   And, Mr. Cloutier, any comments,  
7 objections?

8                   MR. CLOUTIER: I join in Mr. Feldewert's  
9 objection. Thank you.

10                  MADAM HEARING OFFICER ORTH: All right.  
11 Thank you.

12                  Mr. Meiklejohn, your response, please.

13                  MR. MEIKLEJOHN: Thank you, Madam Hearing  
14 Officer. I believe that Mr. Gaume would testify  
15 that the -- what he is talking about is based on the  
16 data and not necessarily the compilation of that  
17 data in the workbook.

18                  We understand that the workbook has been  
19 excluded from evidence but that does not mean that  
20 the data that were gathered for purposes of the  
21 workbook also has to be excluded.

22                  MADAM HEARING OFFICER ORTH: All right.  
23 Thank you. That was kind of what was happening in  
24 my head as I was listening to Mr. Gaume. Can I  
25 please clarify one other thing while I have you,

1 Mr. Meiklejohn. I am looking at the NOI, at your  
2 NOI and Exhibit 3 is Mr. Gaume's resume.

3 Exhibit 4 is his statement and a few  
4 moments ago it sounded that he was referring to an  
5 Exhibit 3 that maybe didn't jibe with my copy of the  
6 NOI.

7 MR. MEIKLEJOHN: Madam Hearing Officer, I  
8 apologize for the confusion. The Exhibit 3 that  
9 Mr. Gaume was referencing was what is labeled as  
10 Exhibit 3 in his testimony on Page 12 of his  
11 prefiled testimony, so I'm sorry, that is my error,  
12 and I apologize for that.

13 MADAM HEARING OFFICER ORTH: I'm sorry I  
14 just wanted it to be clear on the transcript. When  
15 he was speaking to Exhibit 3 he was speaking to a  
16 table, really, labeled Exhibit 3, which appears on  
17 Page 12 of Exhibit 4. Okay.

18 So let me ask you, Mr. Meiklejohn, I guess  
19 consistent with what Mr. Ames just said, I feel like  
20 we have heard Mr. Gaume's conclusions, that is to  
21 say the testimony he wanted to give. What else was  
22 he going to speak to coming up here? Is there  
23 anything else?

24 MR. MEIKLEJOHN: Yes, Madam Hearing  
25 Officer. Mr. Gaume is prepared to speak to whether

1 spills are preventable and whether there is a need  
2 for protection of public health, the environment and  
3 fresh water in an organized manner rather than the  
4 current piecemeal approach by several different  
5 agencies that is the current situation.

6 MADAM HEARING OFFICER ORTH: So will there  
7 be additional testimony that would flirt with that  
8 line there between the workbook and OCD's data  
9 generally?

10 MR. MEIKLEJOHN: I don't believe that the  
11 Exhibit 3 is a part of the points that I just  
12 mentioned. There is one other point, and that is  
13 why is control of water pollution particularly  
14 important in New Mexico.

15 MADAM HEARING OFFICER ORTH: Okay.

16 Mr. Feldewert, anything else on that? You  
17 understood the distinction that I was trying to make  
18 there?

19 MR. FELDEWERT: Yes, if I may comment on  
20 that, I understand the distinction. I can only go  
21 by what Mr. Gaume has provided with respect to how  
22 he put this information together and what he  
23 intended to provide, okay.

24 When you look at his written testimony we  
25 see marked as Exhibit 4, on Page 3 he discusses the

1 Exhibits 2 and 3 that are attached to his testimony.  
2 He states in each one of -- for each of those  
3 circumstances that it is based on the data in  
4 Exhibit 1, which is the excluded workbook.

5 In fact, he says these are graphs that are  
6 also depicted in Exhibit 1.

7 So I don't know how, given the fact that  
8 the workbook has been excluded and the fact that  
9 these exhibits that he intends to reference and  
10 discuss are based upon the data that is in that  
11 workbook, I don't know how he can now move forward  
12 and discuss these additional exhibits when the  
13 public has not had an opportunity to examine the  
14 data that he has chosen to rely upon to put these  
15 together.

16 MADAM HEARING OFFICER ORTH: All right.  
17 Thank you for that.

18 Mr. Meiklejohn, obviously the prefiled  
19 testimony is in the larger documentary record for  
20 this rulemaking. But as to charts or tables that  
21 are based on a workbook that was excluded for now  
22 they are going to have to have the status of an  
23 offer of proof and the Commission will have to weigh  
24 whatever weight they want to give them as part of  
25 their deliberations.

1           So if you would please move on to the  
2 other two topics that you said Mr. Gaume would be  
3 addressing.

4           Q       (By Mr. Meiklejohn) Mr. Gaume, in your  
5 professional opinion are spills preventable?

6           A.       My experience as a professional engineer  
7 managing water and wastewater facilities,  
8 rehabilitation operations and maintenance is the  
9 basis for my professional opinion that the vast  
10 majority of spills are preventable.

11                   Equipment failure indicates the equipment  
12 was not designed to operate without failure under  
13 foreseeable conditions or has not been maintained  
14 adequately or replaced with sufficient frequency.

15                   Corrosion indicates that equipment and  
16 facilities materials were not selected to withstand  
17 the highly coercive conditions that are to be  
18 expected with handling highly corrosive liquid  
19 oilfield wastes or that investments to maintain or  
20 replace equipment were not made to prevent corrosion  
21 failures.

22                   Human error indicates the responsible  
23 human was not properly trained or supervised or was  
24 expected to perform tasks that could be automated  
25 with superior reliability.

1           Overflows of tanks and pits is neglect.  
2   The fact that normal operations is the cause for  
3   spills indicates that the Commission and the  
4   Division have been willing it accept spills as  
5   normal.

6       Q.     Mr. Gaume, in your opinion, does the State  
7   of New Mexico currently have an organized or a  
8   piecemeal approach to regulating spills and  
9   protecting public health and the environment?

10           MR. AMES:  Objection.  I am objecting to  
11   the potential based on Mr. Meiklejohn's previous  
12   representation regarding this topic that Mr. Gaume  
13   is going to testify regarding regulatory schemes  
14   implemented by other agencies in the State of  
15   New Mexico and compare them and contrast them to  
16   what OCD is doing.

17           There is nothing in the prehearing  
18   statement or in Mr. Gaume's pretrial testimony  
19   regarding the regulatory schemes of other agencies  
20   to regulate releases.  It is also irrelevant to the  
21   topic of the petition which is to prohibit major and  
22   minor releases under OCD's rules.  I think the  
23   testimony would be very interesting to hear but it  
24   is not appropriate and has not been properly  
25   noticed.



1                   MADAM HEARING OFFICER ORTH: All right.  
2     Mr. Meiklejohn, that objection sounds like a solid  
3     one to me.

4                   MR. MEIKLEJOHN: Madam Hearing Officer, it  
5     is relevant to the issue of how the Oil Conservation  
6     Commission and the Oil Conservation Division go  
7     about regulating spills and protecting public  
8     health, the environment and fresh water.

9                   It is relevant to the need for that effort  
10    to be a much more coordinated and organized effort  
11    than it currently is.

12                  MADAM HEARING OFFICER ORTH: So I  
13    understand and, you know, if you have got a  
14    foundation that Mr. Gaume can speak to OCD's efforts  
15    or scheme, that is fine, but to go to Mr. Ames'  
16    point, I don't think it needs to be a comparison  
17    with other agencies when that testimony was not  
18    noticed up.

19           Q.     (By Mr. Meiklejohn) So, Mr. Gaume, in  
20    terms of the Commission and the Division's efforts  
21    to regulate spills and protect public health, the  
22    environment and fresh water, is your opinion that  
23    the approach used by the Commission and the Division  
24    has been a coordinated organized approach?

25           A.     No. My opinion is that it's been

1     piecemeal, and I would like to describe the dilemma  
2     that Intervenors find themselves in.

3             It was mentioned earlier that we might  
4     petition to have the three minor changes, changes  
5     that we characterized as minor be the subject of a  
6     rulemaking. We could petition to have those heard,  
7     but there are many other issues that need to be  
8     heard.

9             The Intervenors are concerned that if we  
10    were to file a petition to add those three minor  
11    things, that a year might elapse as has been the  
12    case or almost a year, the petition to prohibit  
13    spills. We would prefer to know the Oil  
14    Conservation Division's and the Oil Conservation  
15    Commission's regulatory plan. We would prefer to  
16    participate in an open collaborative process, but we  
17    have not been invited to do that and we are unaware  
18    of plans that we have heard Oil Conservation  
19    Division staff mention but not describe in any  
20    detail or provide to us.

21         Q.     In your professional opinion, Mr. Gaume,  
22     why is control of pollution of water resources  
23     particularly important in New Mexico?

24         A.     Well, the public has a constitutional  
25     right adopted in 1971 by a vote of the people. And

1 you have already heard in a public comment that  
2 testimony or rather that the constitutional  
3 provision was read to you. I think it is  
4 particularly important and I don't think the control  
5 of pollution from the oil and gas industry, it is  
6 far from regulated or controlled and the despoilment  
7 of the air, water, and other natural resources of  
8 this beautiful state have been substantially  
9 compromised by this uncontrolled pollution.

10 I am a water engineer. I have worked my  
11 career to try to protect clean water, and see that  
12 it is available for all of the uses that we depend  
13 on for our existence here in New Mexico.

14 Water pollution control is particularly  
15 important here, we are the driest, most arid of the  
16 50 states. Our groundwater resources are all we  
17 have up in Southeast New Mexico other than the Pecos  
18 River. We are seeing water rights and compact  
19 delivery requirements to the State line require more  
20 water than the Pecos River provides.

21 Groundwater resources, including brackish  
22 water protected by State law are the only water  
23 resources available for Southeast New Mexico's  
24 future. The Ogallala Aquifer has been nearly  
25 depleted. We need to preserve the quality of the

1 water remaining for the use of younger and future  
2 generations. We also need to prohibit the waste of  
3 water.

4 The State engineer recently suspended new  
5 permit applications for groundwater pumping in  
6 Southwest New Mexico, which is an indication of how  
7 precious it is. In the San Juan Basin shallow  
8 groundwater, which is particularly vulnerable to  
9 toxic and salt pollution from spills is the drinking  
10 water source for tribal communities.

11 MR. MEIKLEJOHN: Thank you, Mr. Gaume. I  
12 don't have any further questions.

13 MADAM HEARING OFFICER ORTH: Thank you,  
14 Mr. Meiklejohn and Mr. Gaume.

15 Mr. Ames, do you have questions of  
16 Mr. Gaume?

17 MR. AMES: Just a couple, please.

18 CROSS-EXAMINATION

19 BY MR. AMES:

20 Q. Mr. Gaume, you testified that the Sierra  
21 Club was not invited to participate in the  
22 development of these proposed changes, isn't that  
23 right?

24 A. Yes.

25 Q. You are aware then that the Sierra Club

1 proposed amendments, additional amendments to  
2 Part 29 to OCD about four weeks ago?

3 A. Yes.

4 Q. And you're aware that OCD told the Sierra  
5 Club that if it wanted to propose additional changes  
6 they should present it to all the parties who are  
7 presently in this hearing, including our  
8 co-Petitioner, WildEarth Guardians and the two trade  
9 associations, isn't that right?

10 A. Yes.

11 MR. AMES: Thank you, nothing further.

12 MADAM HEARING OFFICER ORTH: All right.

13 Thank you, Mr. Ames.

14 Mr. Timmons, do you have questions of  
15 Mr. Gaume?

16 MR. TIMMONS: No questions for Mr. Gaume,  
17 thank you.

18 MADAM HEARING OFFICER ORTH: Thank you.

19 Mr. Cloutier?

20 MR. CLOUTIER: Just one follow up on  
21 Mr. Ames' questions.

22 CROSS-EXAMINATION

23 BY MR. CLOUTIER:

24 Q. Mr. Gaume, you are aware that Sierra Club  
25 after the Division's invitation to share with my

1 client and the other industry association present  
2 here, that Sierra Club elected not to do so until  
3 the deadline for filing its prehearing statement on  
4 of May 26, correct?

5 A. That is correct.

6 Q. And there was a reason for that, there  
7 were only days left before the deadline for written  
8 testimony to be submitted?

9 A. Yes.

10 MR. CLOUTIER: No further questions.

11 MADAM HEARING OFFICER ORTH: Thank you.

12 Mr. Feldewert, do you have any questions  
13 of Mr. Gaume?

14 MR. FELDEWERT: I do. My initial  
15 question, though, is I'm assuming, Madam Hearing  
16 Officer, that Mr. Gaume's Exhibit 4 has not been --  
17 will not be part of the record as it should not be  
18 since it was not offered?

19 MADAM HEARING OFFICER ORTH: Right. So,  
20 Mr. Meiklejohn, would you like to offer 3 and talk  
21 about the status of 4? What would you like to do.

22 MR. MEIKLEJOHN: I am sorry, I am not sure  
23 what the reference -- what is referred to by  
24 Exhibit 4?

25 MADAM HEARING OFFICER ORTH: Exhibit 4 is

1 Mr. Gaume's written testimony that was attached to  
2 your NOI.

3 MR. MEIKLEJOHN: Yes, we do intend to  
4 offer that into evidence with the exception of the  
5 workbook, which is noted in Footnote 1, which the  
6 Hearing Officer has previously ruled is not  
7 admissible.

8 MADAM HEARING OFFICER ORTH: All right.  
9 Then there are a few other things in the testimony  
10 that we have already discussed, the tables based on  
11 the workbook which will be included in the record as  
12 part of an offer of proof. It is kind of a mixed  
13 status of admission hearing, understanding that  
14 those parts of it based on the workbook are part of  
15 an offer of proof, are there any objections to  
16 Exhibit 3 and 4, that's the resume and his  
17 testimony?

18 MR. FELDEWERT: I have no objection to  
19 Exhibit Number 3, he has testified.

20 Exhibit Number 4 seems to be a  
21 supplementation or addition to his testimony offered  
22 today, and it has a number of problems with it. I  
23 don't see how you can distinguish the information  
24 that he has offered in Exhibit 4 from the work that  
25 he relied upon, which is in workbook, which he

1 describes in this attachment as is Exhibit Number 1.

2 That is the first problem with it.

3           The second problem with it is that it  
4 contains a number of references to, we call them  
5 hearsay discussions with EOG, a discussion with  
6 Chair Sandoval that I am going to suggest is  
7 inappropriate. You will see that on Page 6 and then  
8 a discussion with Ms. Sandoval on Page 7.

9           I don't see how that is appropriate given  
10 that he is testifying here today. It also contains  
11 in this Exhibit 4 an entire section devoted to the  
12 rule amendments that the Commission has determined  
13 are not appropriately before them.

14           I don't see how you could piecemeal this  
15 and would suggest to you that Mr. Gaume has provided  
16 his testimony, Exhibit 4 should be excluded.

17           MADAM HEARING OFFICER ORTH: Okay.

18           MR. AMES: Madam Hearing Officer, we  
19 concur with Mr. Feldewert's objection and his  
20 analysis.

21           MADAM HEARING OFFICER ORTH: All right.  
22 Thank you.

23           MR. CLOUTIER: As do we.

24           MADAM HEARING OFFICER ORTH: All right.  
25 Thank you, Mr. Cloutier.



1                   Mr. Meiklejohn, let me ask, we did hear  
2 Mr. Gaume knowing that there are large fractions of  
3 Exhibit 4 that are objectionable, some of them  
4 subject to a ruling prior to this hearing and some  
5 of it subject to a ruling starting the hearing. Is  
6 there anything in Exhibit 4 that you would have  
7 Mr. Gaume add to his spoken testimony today so that  
8 the entirety of Exhibit 4 really stands as an offer  
9 of proof, which is in the larger record, but may not  
10 be weighed by the Commission in their deliberations?

11                   MR. MEIKLEJOHN: Thank you, Madam Hearing  
12 Officer. First of all, we do not object to the  
13 exclusion of the portions of Exhibit 4 that go to  
14 the proposals that were advanced by the Intervenors  
15 that aren't part of this hearing.

16                   On the other hand, the reference to  
17 hearsay is not an objection that is well taken  
18 because the Rules of Evidence don't apply in this  
19 proceeding. And I think that Mr. Gaume would  
20 testify that the figures and the graphs within his  
21 written testimony are based on the data that also  
22 was part of the workbook. And that the workbook was  
23 merely a conduit for those data and that if the data  
24 themselves support the graphs and exhibits within  
25 his written testimony, that those graphs and

1 exhibits are properly before the Commission.

2 MADAM HEARING OFFICER ORTH: I would like  
3 to move past this issue. Let me ask Madam Chair.

4 Madam Chair, there are a couple of ways we  
5 can handle this. Sometimes objectionable -- a  
6 larger document that is objectionable can be  
7 redacted so that you have in your hands just parts  
8 that are not objectionable. That takes time, and  
9 presumably wouldn't be able to be done today, for  
10 example.

11 Another way is to ask the Commission to  
12 disregard those portions that are objectionable or  
13 have been excluded. What is your preference here?

14 CHAIRWOMAN SANDOVAL: What would the  
15 redacted, what would that practically look like?

16 MADAM HEARING OFFICER ORTH: Well, so we  
17 would ask Mr. Gaume to go to the trouble, Mr. Gaume  
18 and Mr. Meiklejohn to go to the trouble of removing  
19 the objectionable parts of Exhibit 4 which as  
20 Mr. Feldewert notes and Mr. Ames with his  
21 concurrence, there are a fair number of things that  
22 are objectionable in there, either going to the  
23 Intervenor's proposals that are not before the  
24 commission right now, the references to the  
25 workbook. Let's see, the statements that go to the

1 workbook that would not sort of go generally to the  
2 data found on the page.

3 Mr. Feldewert had another objection around  
4 a statement that he made in connection with  
5 conversations with you.

6 As Mr. Meiklejohn notes, hearsay is not  
7 necessarily excluded in an administrative  
8 rulemaking.

9 CHAIRWOMAN SANDOVAL: That sounds like it  
10 probably would slow down the process.

11 MADAM HEARING OFFICER ORTH: That's my  
12 fear.

13 CHAIRWOMAN SANDOVAL: My inclination would  
14 be the Commissioners either need to disregard it or  
15 give it sort of the weight during deliberations as  
16 necessary, you know, taking into consideration that  
17 pieces of this were excluded in the motions hearing  
18 and do the redacted version.

19 MR. MOANDER: This is Mr. Moander  
20 speaking. I think when we got an order excluding,  
21 and I haven't heard what I would construe to be so.  
22 And this is slightly more technical than the rules  
23 that apply to this hearing allow, but if there has  
24 been an exclusion and no other alternative ground  
25 have been sufficiently laid and demonstrated for it,

1 I mean, the order is pretty straightforward, so it  
2 is excluded.

3 My suggestion is that it be disregarded  
4 because that is the ruling that applies to this  
5 hearing. It is the law of the case.

6 MADAM HEARING OFFICER ORTH: So  
7 Mr. Moander, certainly, those sections that are  
8 objectionable as described by Mr. Feldewert would be  
9 excluded, I guess --

10 MR. MOANDER: I may have misunderstood the  
11 question then.

12 MADAM HEARING OFFICER ORTH: Not inclined  
13 to exclude all of Exhibit 4 insofar as some parts of  
14 it really do just support the petition, that is to  
15 say, the petition filed by OCD and WildEarth  
16 Guardians and to the extent that it supports the  
17 petition and is not objectionable for one of the  
18 three reasons mentioned by Mr. Feldewert, it seems  
19 to me that the Commission ought to be able to at  
20 least weigh it in their deliberations.

21 MR. MOANDER: I agree with that, then. I  
22 think I got my wires crossed, but that makes sense  
23 and that is fair.

24 MADAM HEARING OFFICER ORTH: Sorry that is  
25 not a clear ruling Mr. Feldewert and Mr. Ames. I

1 have had clearer rulings before, but I don't really  
2 want to toss out the baby with the produced water, I  
3 guess, so --

4 MR. AMES: That was a good one, Madam  
5 Hearing Officer.

6 MADAM HEARING OFFICER ORTH: Okay. So  
7 Mr. Meiklejohn and Mr. Gaume, if you would please  
8 just understand that when the Commission weighs  
9 Exhibit 4, they are going to have to be weighing it  
10 with an eye to not weighing those parts that are  
11 objectionable as set out by Mr. Feldewert and yet  
12 weighing the other parts that support the petition.

13 THE WITNESS: Madam Hearing Officer, may I  
14 make one more comment, please?

15 MADAM HEARING OFFICER ORTH: Who is this,  
16 I'm sorry?

17 THE WITNESS: It's Norman Gaume.

18 MADAM HEARING OFFICER ORTH: It is  
19 Mr. Gaume, I'm sorry.

20 MR. AMES: Madam Hearing Officer, is this  
21 testimony again? He needs to be called properly to  
22 make a comment plus, I believe Mr. Feldewert was not  
23 afforded an opportunity for cross.

24 MADAM HEARING OFFICER ORTH: Right, I  
25 haven't excused Mr. Gaume.

1           Mr. Gaume, do you have a question about  
2   our discussion on Exhibit 4? I am sure it is  
3   excruciating.

4           THE WITNESS: I don't have a question. I  
5   did offer in my testimony concerns I have about the  
6   quality of Oil Conservation Division data that don't  
7   relate to the workbook, they relate to my  
8   observations about the data themselves and I think  
9   they are pertinent to the Commission's decision.

10          MADAM HEARING OFFICER ORTH: All right.  
11   Thank you for that observation. Let's go then --  
12   now, I have lost my place.

13          Mr. Meiklejohn, I understand that you were  
14   finished with your questions of Mr. Gaume?

15          MR. MEIKLEJOHN: Madam Hearing Officer, I  
16   had one other question.

17          MADAM HEARING OFFICER ORTH: Go ahead.

18                       REDIRECT EXAMINATION

19          BY MR. MEIKLEJOHN:

20          Q.    Mr. Gaume, do you support the amendment  
21   proposed by the Division and WildEarth Guardians?

22          A.    Yes, I wholeheartedly support that  
23   amendment.

24          MR. MEIKLEJOHN: Thank you.

25          MADAM HEARING OFFICER ORTH: Thank you,

1 Mr. Meiklejohn.

2 Mr. Ames, do you have questions of  
3 Mr. Gaume?

4 MR. AMES: I have already asked my on  
5 cross, Ms. Orth, thank you. And I don't want to  
6 cross Mr. Gaume on his additional testimony. Thank  
7 you.

8 MADAM HEARING OFFICER ORTH: Thank you.  
9 I'm sorry if I am duplicating a step here.

10 And I think, Mr. Timmons, you said you  
11 didn't have questions.

12 MR. TIMMONS: I didn't but actually sort  
13 of given this ruling and we are not entirely sure  
14 what is still in the testimony, I have one  
15 clarifying question, if I may.

16 MADAM HEARING OFFICER ORTH: Go ahead.

17 CROSS-EXAMINATION

18 BY MR. TIMMONS:

19 Q. Mr. Gaume, excluding your workbook  
20 analysis and based on your review solely on the data  
21 from OCD's database, do you have an opinion about  
22 whether spills reflected in that database are  
23 preventible or not?

24 A. I testified that I believe that the vast  
25 majority of spills are preventable and I provided my

1 professional opinions, both orally today and in  
2 written testimony, as to the reasons for my  
3 professional opinions. I would be happy to  
4 reiterate those if you wish.

5 MR. TIMMONS: I think that is unnecessary.  
6 Thank you, Mr. Gaume, no further questions.

7 MADAM HEARING OFFICER ORTH: Thank you,  
8 Mr. Timmons.

9 Mr. Cloutier, I believe you said you had  
10 no questions.

11 MR. CLOUTIER: I asked my question,  
12 Madam Hearing Officer, after Mr. Ames so I have no  
13 further follow-up.

14 MADAM HEARING OFFICER ORTH: All right.  
15 Thank you. And Mr. Feldewert we are back to you.

16 MR. FELDEWERT: Thank you.

17 CROSS-EXAMINATION

18 BY MR. FELDEWERT:

19 Q. Mr. Gaume, I think you stated that your  
20 discussion of releases or your review of the data on  
21 releases demonstrates that there is really two  
22 categories, preventable able and unpreventable,  
23 correct?

24 A. No, Mr. Feldewert, I testified that I  
25 believe the majority of releases are, in my opinion,



1 preventable and I don't understand enough about the  
2 other causes to draw a conclusion about whether they  
3 are preventible or not. Lightening certainly is not  
4 preventable.

5           Vandalism could be prevented by fences or  
6 better security, so there is -- more would have to  
7 be known about the circumstances of spills,  
8 individual spills to draw a professional conclusion  
9 as to whether or not a particular spill was  
10 preventible or not.

11       Q.     Okay. Thank you.

12           So you would need more information than  
13 what you saw?

14       A.     I would need more information than exists  
15 in downloaded data from the Oil Conservation  
16 Division from the database entitled Spills and  
17 Incidents.

18       Q.     Okay. And your discussion that you had  
19 here today was based upon your review and what you  
20 call analysis of that, of those Division records,  
21 correct?

22       A.     Correct.

23       Q.     Okay. And you're aware that the current  
24 rules require the Division to be notified of  
25 releases?

1           A.       Yes.

2           Q.       And that when the Division receives these  
3    notices they do go out and investigate to get  
4    further information as needed.  You are aware of  
5    that, correct?

6           A.       I am not aware the Division does go out  
7    and investigates individual spills.

8           Q.       Are you saying they don't?

9           A.       I am not saying that.  I am saying I don't  
10   know.  I don't think the Division has the  
11   wherewithal to inspect well over a thousand spills a  
12   year.

13          Q.       Would you agree that the Division will  
14   also have the ability and perhaps does go out and  
15   review the severity of the release and the risks  
16   that is associated with that release?

17          A.       You know, I have numerous questions about  
18   the Oil Conservation Division data.  I have posed  
19   those questions in writing and I would like to get  
20   answers for them.  So, no, I don't know what you  
21   suggested I might know.

22          Q.       So whatever the Division did, let's put  
23   that aside.  What we do know is that all you did was  
24   look at the data on the Division website.  You did  
25   nothing further with respect to any of those

1 releases?

2 A. I spent an enormous amount of time looking  
3 at an enormous amount of data and I drew conclusions  
4 from it.

5 Q. And the data that you looked at was  
6 limited to the information on the Division's  
7 website?

8 A. That is correct.

9 Q. And that information, I believe, you have  
10 characterized, Mr. Gaume, and correct me if I am  
11 wrong, that the data you relied upon you would  
12 characterize as being deficient, correct?

13 A. That is absolutely correct.

14 Q. And you characterize that as being of poor  
15 quality?

16 A. That is also correct. Would you like  
17 me --

18 Q. You also indicated that the data that you  
19 relied upon is incomplete and inadequate?

20 A. Mr. Feldewert, the Division's data is  
21 replete with blanks.

22 Q. Mr. Gaume, here is my question to you.  
23 Didn't you also characterize the data that you  
24 relied upon as being incomplete and inadequate?

25 A. Mr. Feldewert, as a professional --

1 Q. Yes or no, Mr. Gaume, yes or no?

2 MR. MEIKLEJOHN: Madam Hearing Officer, I  
3 object. Mr. Gaume does not have to answer the  
4 question yes or no. He wants to explain his answer,  
5 he can do that.

6 MADAM HEARING OFFICER ORTH: Right.  
7 Mr. Meiklejohn, the way Mr. Feldewert posed the  
8 question it was a yes or no answer. And if  
9 Mr. Feldewert wants to hear an explanation he will  
10 ask for it, otherwise I will certainly provide you  
11 an opportunity for follow-up when he is done with  
12 his questions.

13 Q (By Mr. Feldewert) Mr. Gaume, didn't you  
14 characterize the information that you relied upon as  
15 being incomplete and inadequate?

16 A. I did.

17 Q. Now, you have also raised concerns about  
18 the Sierra Club's ability to participate in these  
19 proceedings and you raised concerns about the timing  
20 of being able to offer amendments that you believe  
21 were necessary.

22 Mr. Gaume, if I look at your resume I  
23 believe you were an activist in 2018, were you not?

24 A. Yes.

25 Q. And the Sierra Club organization existed

1 in 2018, correct?

2 A. Yes.

3 Q. And are you aware that the Commission had  
4 extensive hearings on Rule 29 in 2018?

5 A. I am. I wasn't contemporaneously.

6 Q. Can you explain why neither you nor the  
7 Sierra Club participated in those extensive  
8 proceedings six years ago?

9 A. I have no knowledge of why the Sierra Club  
10 didn't participate. I did not participate because I  
11 didn't begin looking at oil and gas waste issues  
12 until 2020.

13 Q. Okay. Let's talk about that. If I read  
14 your experience, and correct me if I am wrong, I  
15 believe you characterized that your experience is in  
16 water and wastewater facilities management?

17 A. I have experience in that field.

18 Q. So that would be design, construction,  
19 management of municipal water systems?

20 A. And wastewater.

21 Q. And by wastewater you mean what I would --  
22 some people would call sewage systems?

23 A. Yes.

24 Q. Okay. I believe, and to be fair, I think  
25 you also testified that you have experience with

1 water resources management?

2 A. I do.

3 Q. And when you say water, Mr. Gaume you are  
4 talking about fresh water?

5 A. I am talking about groundwater and surface  
6 water and rivers.

7 Q. Drinkable, potable water?

8 A. No.

9 THE COURT REPORTER: One at a time,  
10 please.

11 Q. (By Mr. Feldewert) Sorry, you're talking  
12 about water that is utilized for drinking and use?

13 A. No, sir, I am talking about water  
14 resources that has not been treated to be potable.

15 Q. Okay. You are not talking about produced  
16 water?

17 A. No.

18 Q. And, in fact, if I read through your  
19 resume, Mr. Gaume, you have no experience with oil  
20 and gas operations, do you?

21 A. I don't.

22 Q. Or oil and gas facilities?

23 A. I don't.

24 Q. And you don't have any experience with  
25 produced water itself?

1           A.       I didn't understand your question.

2           Q.       You don't have any experience with, for  
3 example, the management of produced water?

4           A.       I do not.

5           Q.       You don't have any experience with  
6 produced water facilities?

7           A.       I do not.

8           Q.       And you don't have any experience with  
9 dealing with produced water releases?

10          A.       I do not.

11          Q.       Okay.

12                 MR. FELDEWERT: That is all the questions  
13 I have. Thank you.

14                 MADAM HEARING OFFICER ORTH: Thank you,  
15 Mr. Feldewert.

16                 Commissioner Bloom, do you have questions  
17 of Mr. Gaume?

18                 COMMISSIONER BLOOM: Hearing officer, I  
19 do, thank you.

20                 Mr. Gaume, thank you for your testimony  
21 today. Mr. Gaume, was the data you looked at  
22 sufficient to show, number one, the number of spills  
23 and number two, the operator that reported the  
24 spill?

25                 THE WITNESS: Yes.

1                   COMMISSIONER BLOOM: And as I heard your  
2 testimony it seemed to me that the deficiencies and  
3 inadequacies you mentioned were related to details  
4 of the spills and that as I see it, you were saying  
5 that you would like to see more information about  
6 what happened in the case of each spill; is that  
7 correct?

8                   THE WITNESS: That's correct and I would  
9 like to see the Oil Conservation Division  
10 concentrate on improving the quality of its data.

11                  COMMISSIONER BLOOM: Can you elaborate on  
12 what that would look like, quality of data?

13                  THE WITNESS: The quality would mean that,  
14 for example, there were some 1,200 liquid spills in  
15 2020. I believe the Oil Conservation Division  
16 requires that the depth to groundwater be reported  
17 for all of these spills, yet the data that are  
18 available for downloads show the depth to  
19 groundwater as being equal to zero for each of them,  
20 and there are other similar things.

21                  For example, the Oil Conservation spills  
22 data has fields for the date of notification and the  
23 date of a final report. Many very old spills have  
24 no data for a final report.

25                  If there was no final report required, the



1 data that is available to the public should say,

2 "Not applicable."

3 But what does a blank mean when there is  
4 no final report, I don't know.

5 COMMISSIONER BLOOM: Mr. Gaume, I believe  
6 I heard you say that there were 400 spills in which  
7 there was no volume reported.

8 THE WITNESS: I believe I said 400 spills  
9 that were classified as major with no volumes  
10 reported.

11 COMMISSIONER BLOOM: These were the  
12 inadequacies and deficiencies that you saw, the  
13 inadequacies and deficiencies weren't related to the  
14 overall number of spills for the database or the  
15 operator that was being associated with each spill;  
16 is that correct?

17 THE WITNESS: That's correct.

18 COMMISSIONER BLOOM: Okay. Thank you, and  
19 just one other question. I did notice and then  
20 Mr. Feldewert pointed this out as well, that you  
21 have background and have done work in water resource  
22 management.

23 We have spoken, I think at length here  
24 today about -- heard some details about public  
25 health and the environment and how these proposed

1 rules could improve and protect public health and  
2 the environment.

3 Water resource management is certainly  
4 part of protecting public health and the  
5 environment, particularly in a water challenged  
6 State such as New Mexico. Is there anything you  
7 would like to add as someone that has worked in the  
8 area of water resource management.

9 THE WITNESS: Well, I would like to add  
10 that once water is contaminated it is basically lost  
11 from use. That has been the case all over the State  
12 with pollution of large volumes of groundwater which  
13 effectively are not a resource for the future of the  
14 people of New Mexico.

15 COMMISSIONER BLOOM: Thank you, Mr. Gaume.  
16 I have no further questions. And, Madam Hearing  
17 Officer, we might -- we are getting about the  
18 two-hour point before wrapping up our questions for  
19 Mr. Gaume, if we could have a little break here in a  
20 minute that would be wonderful.

21 MADAM HEARING OFFICER ORTH: I am  
22 wondering, in fact, if perhaps we should break right  
23 now because I saw Mr. Meiklejohn disappear from the  
24 screen. I just checked the participant list and I  
25 don't see him.

1                   Mr. Lamkin, can you see whether  
2   Mr. Meiklejohn is still with us?

3                   MR. LAMKIN: I don't see him right  
4   offhand.

5                   MADAM HEARING OFFICER ORTH: So I think  
6   let's take a 15-minute break and try to get  
7   Mr. Meiklejohn back before we proceed with  
8   questions.

9                   Thank you very much.

10                  (A recess was taken.)

11                  MADAM HEARING OFFICER ORTH: We are back  
12   after a short break. We are nearly done with the  
13   questioning of Mr. Gaume but we lost Mr. Meiklejohn  
14   from the call. So Mr. Meiklejohn is back. I  
15   assured him that he missed really just Commissioner  
16   Bloom's last question and answer, so we are moving  
17   now to Commissioner Warnell.

18                  Commissioner Warnell, do you have  
19   questions of Mr. Gaume?

20                  COMMISSIONER WARNELL: Thank you,  
21   Madam Hearing Officer.

22                  Yes, one question.

23                  During our break I walked down and got the  
24   mail. It is quite warm out in Santa Fe.

25                  Mr. Gaume, thank you for being with us

1     today.  You made reference during your testimony  
2     here this afternoon about EOG Resources?

3                 THE WITNESS:  Yes, sir.

4                 COMMISSIONER WARNELL:  Yeah, can you tell  
5     me who that resource is?

6                 THE WITNESS:  EOG Resources is the name of  
7     the registered owner in New Mexico who produced the  
8     most energy from 2017 through 2019.

9                 COMMISSIONER WARNELL:  Yeah, I understand  
10    that, but didn't you say that you had talked to a  
11    resource over at EOG?

12                THE WITNESS:  Yes, I talked to the  
13    employee that representative Nathan Small asked me  
14    to talk to in the context of legislation that I  
15    supported during the last session but which failed.

16                COMMISSIONER WARNELL:  But, Mr. Gaume,  
17    have you ever been employed by EOG?

18                THE WITNESS:  No, no.

19                COMMISSIONER WARNELL:  Okay.  Well, thank  
20    you.  I have no further questions.

21                MADAM HEARING OFFICER ORTH:  Thank you,  
22    Commissioner Warnell.

23                Madam Chair?

24                CHAIRWOMAN SANDOVAL:  I just have a couple  
25    of questions.

1                   I think Mr. Meiklejohn already got ahead,  
2   but I will ask it again. Do you support this  
3   rulemaking petition?

4                   THE WITNESS: Yes.

5                   CHAIRWOMAN SANDOVAL: Thank you.

6                   I think a number of times you sort of  
7   referenced that you had sent a spreadsheet to OCD,  
8   requested a meeting and it had been relatively  
9   unresponsive, not been able to set up dates,  
10  et cetera; is that correct?

11                  THE WITNESS: I said that our schedules  
12  had not allowed for a meeting.

13                  CHAIRWOMAN SANDOVAL: In one of the  
14  responses did OCD ask you in particular for any  
15  proposals you would have to address the adequacies  
16  that you perceived in your letter, yes or no?

17                  THE WITNESS: I do not recall that.

18                  CHAIRWOMAN SANDOVAL: Okay. In one of the  
19  responses back to you, OCD specifically states,  
20  "Have you had conversations about any proposals you  
21  or others may have to address the issues that are  
22  listed in your letter?"

23                  Have you sent OCD a response back or any  
24  proposal to address any of the inadequacies that you  
25  perceive in your letter?

1           THE WITNESS: Madam Chair, I have not sent  
2 a proposal to have a meeting to discuss the  
3 questions that I had.

4           CHAIRWOMAN SANDOVAL: Has OCD on two  
5 occasions sent you lists of time, one of which did  
6 not work, the second of which OCD received no  
7 response on those time proposals; is that correct?

8           THE WITNESS: Yes.

9           CHAIRWOMAN SANDOVAL: Thank you.

10          THE WITNESS: I was on a trip visiting my  
11 grandchildren and was not available and was not  
12 paying attention to e-mail.

13          CHAIRWOMAN SANDOVAL: Thank you.

14          On some of the issues, though, are you  
15 familiar with the rules pre-Part 29 which existed  
16 pre2018.

17          THE WITNESS: I am not.

18          CHAIRWOMAN SANDOVAL: Okay. In some of  
19 the perceived data inadequacies have you reviewed  
20 sort of the past rules to see what was required by  
21 those rules to align whether or not the perceived  
22 inadequacies line up with what the past rule was and  
23 what was reported?

24          THE WITNESS: I have not.

25          CHAIRWOMAN SANDOVAL: Do you believe that

1     OCD should modify historical data -- I will leave it  
2     at that.

3             Do you believe that OCD should be  
4     modifying historical data?

5             THE WITNESS: I do not and I have  
6     observed, not associated with any of the analysis  
7     that I did, that historical OCD data changed over  
8     one week in 2020. That was one of the questions I  
9     was hoping to discuss with OCD staff.

10            CHAIRWOMAN SANDOVAL: I have no further  
11     questions. Thank you.

12            MADAM HEARING OFFICER ORTH: Thank you,  
13     Madam Chair.

14            Mr. Meiklejohn, did you have any follow-up  
15     with Mr. Gaume.

16            MR. MEIKLEJOHN: I have one follow-up  
17     question, Madam Hearing Officer.

18                         REDIRECT EXAMINATION

19            BY MR. MEIKLEJOHN:

20            Q.     Mr. Gaume, in response to an earlier  
21     question you referenced an individual named Nathan  
22     Small. Who is Nathan small.

23            A.     He is a member of the House of  
24     Representatives, the New Mexico House of  
25     Representatives and he was a sponsor of House

1 Bill 546, the Produced Water Act in 2019.

2 MR. MEIKLEJOHN: Thank you. I have no  
3 further questions.

4 MADAM HEARING OFFICER ORTH: If there is  
5 no reason not to excuse Mr. Gaume, then, thank you  
6 very much for your testimony.

7 (Whereupon, the witness was excused from  
8 the proceedings.)

9 MR. MEIKLEJOHN: Madam Hearing Officer,  
10 our next witness is Joseph Hernandez.

11 MADAM HEARING OFFICER ORTH: Thank you. I  
12 think I saw Mr. Hernandez on earlier there you are.

13 (Whereupon, the witness was sworn.)

14 MADAM HEARING OFFICER ORTH: If you would,  
15 please, spell your name for the transcript.

16 THE WITNESS: Joseph Hernandez,  
17 J-O-S-E-P-H, H-E-R-N-A-N-D-E-Z.

18 JOSEPH HERNANDEZ,  
19 after having been first duly sworn under oath,  
20 was questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. MEIKLEJOHN:

23 Q. Mr. Hernandez, would you introduce  
24 yourself to the members of the Commission?

25 A. Yes. Greetings, yah-ta-hey, Madam Hearing



1 Officer, Chair Sandoval, and Members of the  
2 Commission. My name is Joseph Hernandez. I am  
3 33 years old from the community of Tokoi,  
4 New Mexico, located 7 miles west of Shiprock.

5 I am of the Zia Pueblo People Clan born  
6 for Mexican. My maternal grandfather is the Salt  
7 People Clan and my paternal grandfather is Mexican.

8 I am the diné energy organizer for NAVA  
9 Education Project. We are also referred to as NAVA  
10 EP. I have been working in this position with NAVA  
11 EP since 2019 focusing on the chapter house  
12 community situated in the Four Corners region.

13 My work has been to effectively engage  
14 Navajo communities in renewable energy advocacy.

15 Q. Thank you, Mr. Hernandez.

16 You referred to a community located  
17 7 miles west of Shiprock. Would you please spell  
18 the name of that community for the court reporter to  
19 the extent it can be spelled in English?

20 A. Yes. It is spelled T-O-K-O-I.

21 Q. Thank you. You also used the word Diné.  
22 Would you spell that, please?

23 A. Yes, it is the letter D-I-N-E and on the E  
24 it has a, I want to say it has one the marks.

25 Q. An accent?

1           A.       Yes.

2           Q.       Thank you.

3                   Have you prepared a statement to read to  
4 the Commission today?

5           A.       Yes, I have.

6           Q.       Would you please read that statement?

7           A.       Yes.

8                   The issues of oil and gas bills in  
9 New Mexico is important to me because my family and  
10 I hold allotments in Eastern Agency of the Navajo  
11 Nation near Nageezi, New Mexico.

12                  My community is well aware of the impacts  
13 of resource extraction. For example, back in June  
14 of 2019 there was an accident with a vehicle and a  
15 large industrial tanker truck carrying hazardous oil  
16 and gas wastewater on Highway 550. With the heavy  
17 industrial traffic on tribal lands, accidents like  
18 this are common and can threaten the health, and  
19 lives of our communities.

20                  During a Navajo Nation Council Naabik  
21 Iyati Committee meeting in January of 2020, I heard  
22 about some of the high profile spills that occurred  
23 on the Navajo Nation in 2018 and 2019.

24                  A major 55,000-gallon spill by Enduring  
25 Resource of combined crude oil and produce water

1 occurred on February 28 of 2019 within Counselor  
2 Chapter Borders.

3 It spilled into a tributary to the  
4 Escavada Wash that leads into Chaco National  
5 Monument. This spill threatened to contaminate the  
6 tribes shallow groundwater supplies.

7 NAVA EP supports WildEarth Guardians and  
8 OCD's joint petition to make release spills of  
9 oilfield waste prohibited.

10 More needs to be done to prevent these  
11 spills from happening in the first place. We  
12 believe the changes being proposed will strengthen  
13 the current rule and will give OCD a much needed  
14 enforcement tool to prevent releases that could  
15 impact our health, land and sparse water resources.

16 A prohibition on spills, it's an important  
17 step to help keep our homes and communities safe  
18 from unnecessary exposure of toxic release of  
19 oilfield related spills that contaminate our lands  
20 and sacred sites.

21 As our community works to transition away  
22 from fossil fuel field extraction, this begins the  
23 healing process for our Mother Earth.

24 Q. Thank you, Mr. Hernandez.

25 Let me ask you to spell a couple of the

1 words that you used for the court reporter. The  
2 first one is Nageezi?

3 A. Yes, N-A-G-E-E-Z-I.

4 Q. Thank you. You also mentioned a Navajo  
5 Nation Council and I am not sure I can pronounce the  
6 word committee meeting. Could you spell that word  
7 it is between council and committee, please?

8 A. Yes. That is -- we also refer that, we  
9 also call that the Naabi for short. You know,  
10 everybody refers it to the Naabi, but yes.  
11 N-A-A-B-I-K space I-Y-A-T-I.

12 Q. Thank you.

13 And then the last one is you referred to  
14 what I believe is the Escavada Wash that leads into  
15 Chaco National Monument. Would you spell the word  
16 Escavada for the court reporter, please.

17 A. E-S-C-A-V-A-D-A.

18 Q. Thank you.

19 And finally you said that your  
20 organization supports the petition filed by  
21 WildEarth Guardians and the Division; is that  
22 correct?

23 A. Yes, that is correct.

24 MR. MEIKLEJOHN: I have no further  
25 questions, thank you.

1                   MADAM HEARING OFFICER ORTH: Thank you,  
2 Mr. Meiklejohn and Mr. Hernandez.

3                   Mr. Ames, do you have questions?

4                   MR. AMES: Thank you, Ms. Orth.

5 Mr. Hernandez, thank you for your testimony. I have  
6 no questions.

7                   MADAM HEARING OFFICER ORTH: Mr. Timmons?

8                   MR. TIMMONS: I want to thank  
9 Mr. Hernandez for his testimony as well and no  
10 questions, thank you.

11                  MADAM HEARING OFFICER ORTH: Mr. Cloutier?

12                  MR. CLOUTIER: No questions for  
13 Mr. Hernandez, Madam Hearing Officer.

14                  MADAM HEARING OFFICER ORTH: Thank you.  
15 Mr. Feldewert?

16                  MR. FELDEWERT: No questions, thank you.

17                  MADAM HEARING OFFICER ORTH: All right.  
18 Commissioner Bloom?

19                  COMMISSIONER BLOOM: Mr. Hernandez, thank  
20 you for your testimony. I do not have any  
21 questions.

22                  MADAM HEARING OFFICER ORTH: Thank you.  
23 Commissioner Warnell?

24                  COMMISSIONER WARNELL: No, thank you.  
25 Mr. Hernandez, no questions.

1                   MADAM HEARING OFFICER ORTH:   And Madam  
2   Chair?

3                   CHAIRWOMAN SANDOVAL:   Just one quick  
4   question.   Are you supportive of the proposal today?

5                   THE WITNESS:   Yes, I am supportive of the  
6   proposal.

7                   CHAIRWOMAN SANDOVAL:   Thank you.   Thanks  
8   for your time today.

9                   MADAM HEARING OFFICER ORTH:   Thank you  
10   very much, Mr. Hernandez, and we will excuse you  
11   now, thank you.

12                   (Whereupon, the witness was excused from  
13   the proceedings.)

14                   MR. MEIKLEJOHN:   Madam Hearing Officer,  
15   our last witness is Joseph Zupan.

16                   (Whereupon, the witness was sworn.)

17                   MADAM HEARING OFFICER ORTH:   Would you  
18   please spell your name for the transcript.

19                   THE WITNESS:   First name is Joseph,  
20   J-O-S-E-P-H.   Last name is, Z-U-P-A-N.

21

22

23

24

25

1 JOSEPH ZUPAN,  
2 after having been first duly sworn under oath,  
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MEIKLEJOHN:

6 Q. Thank you, Mr. Zupan. Would you explain  
7 for the Commission your background and your current  
8 position?

9 A. I will.

10 Thank you, Madam Hearing Officer and  
11 Members of the Commission. My name is Joseph Zupan.  
12 I am the Executive Director of Amigos Bravos which  
13 is a nonprofit organization whose mission for over  
14 33 years has been to protect and restore the waters  
15 of New Mexico.

16 I served as the ED of Amigos Bravos now  
17 for about five and a half years. Prior to my role  
18 at Amigos Bravos, I worked as an environmental  
19 consultant over 25 years at an Austin based firm.  
20 Some of my clients included oil and gas exploration  
21 and production companies.

22 I have a Bachelor of Science degree from  
23 the Colorado School of Mines in chemical and  
24 petroleum refining engineering. I am currently a  
25 licensed professional engineer in New Mexico and

1 Colorado.

2 I have held my license in New Mexico for  
3 over ten years. My technical work in environmental  
4 consulting was focused on so-called risk-based  
5 corrective action which entails a calculation of  
6 risks posed by spilled contaminants and  
7 environmental media. And by environmental media, I  
8 mean things like soil, surface water and groundwater  
9 in order to develop cleanup standards that minimize  
10 risks to human health and the environment.

11 And during my tenure in environmental  
12 consulting I was asked by the Texas Commission on  
13 Environmental Quality to serve on a committee tasked  
14 with developing guidance for the regulated community  
15 with respect to the so-called Texas Risk Reduction  
16 Program, which is codified at their 30 Texas  
17 Administrative Code 350 for the cleanup of  
18 contaminated sites using risk-based standards.

19 I served in this role for over six years  
20 all. Of this is just to say that I am familiar with  
21 oil and gas operations and with the development of a  
22 rigorous environmental regulatory program.

23 Q. Could you explain for the Commission,  
24 Mr. Zupan, why Amigos Bravos is interested in this  
25 particular proceeding?



1           A.       Yes, I certainly can.

2                   As previously stated, the mission of  
3 Amigos Bravos and the objective of its several  
4 thousand supporters across New Mexico is to protect  
5 and restore the waters of New Mexico.

6                   The three primary areas of our work are  
7 restoring watershed health, holding polluters  
8 accountable and building a water protection movement  
9 for the future.

10                  Our specific concerns with the oil and gas  
11 industry in New Mexico include the impacts that  
12 spills have on New Mexico surface and groundwater  
13 resources as well as on public health and  
14 environmental receptors. We do view the number and  
15 extent of spills as very problematic as outlined by  
16 Mr. Gaume and is shown in the OCD database.

17                  I would also note that as per  
18 Mr. Cloutier's comment, we do support the reuse of  
19 produced water within the industry in order to  
20 minimize the consumption of New Mexico's scares  
21 fresh water resources. So that is kind of the  
22 objectives and the concerns of Amigos Bravos with  
23 respect to this rulemaking.

24           Q.       Does Amigos Bravos support the petition  
25 that was filed by the Division and WildEarth

1 Guardians?

2       A.       We do. We very much appreciate the  
3 application by WildEarth Guardians and the Oil  
4 Conservation Division to prohibit the unauthorized  
5 release of oil and gas, produced water and other  
6 contaminants, and to clarify the Division's  
7 authority to enforce this prohibition on major and  
8 minor releases.

9               We do see this as a very, very important  
10 step in protecting human health and the environment  
11 from the impacts of oilfield releases and we commend  
12 both Petitioners for this application.

13              We also commend responsible industry  
14 parties for supporting the rulemaking. We  
15 appreciate you.

16              Like the Sierra Club, we also publicly  
17 advocated for budget increases to the agencies  
18 responsible for regulating such spills, including  
19 both MNERD, of which the OCD is a constituent and  
20 the New Mexico Environment Department to ensure  
21 their staff has the necessary resources to address  
22 the magnitude of the problems they are trying to  
23 regulate?

24              Given the number and nature of spills  
25 since 2018, I guess I should say we also appreciate

1 the rulemaking in 2018 that the Division and  
2 Mr. Griswold in particular, it sounds like,  
3 undertook to tighten up the rules for how to respond  
4 to spills. But given the number and nature of  
5 spills since 2018, it is clear to us that more work  
6 remains to be done.

7 We do see this rulemaking as a good start  
8 but we encourage the OCC to consider what additional  
9 steps may be required and we urge the Oil  
10 Conservation Commission to adopt this rule.

11 Q. Thank you, Mr. Zupan. I did attach your  
12 resume to the notice of intent that we filed for  
13 this proceeding?

14 A. We did.

15 Q. And is that an accurate resume?

16 A. It is.

17 MR. MEIKLEJOHN: Thank you. I do not have  
18 any further questions for Mr. Zupan.

19 MADAM HEARING OFFICER ORTH: Thank you.  
20 And you offer, presumably, Exhibit 2 which is his  
21 resume?

22 MR. MEIKLEJOHN: Yes.

23 MADAM HEARING OFFICER ORTH: I will just  
24 pause a moment here for objections, if there are  
25 any. Exhibit 2 is admitted, thank you.

1 (Exhibit admitted, 2.)

2 MADAM HEARING OFFICER ORTH: Mr. Ames, do  
3 you have questions of Mr. Zupan?

4 MR. AMES: I do not, Madam Hearing  
5 Officer, thank you.

6 MADAM HEARING OFFICER ORTH: Thank you.  
7 Mr. Timmons?

8 MR. TIMMONS: No questions, thank you.

9 MADAM HEARING OFFICER ORTH: Thank you.  
10 Mr. Cloutier?

11 MR. CLOUTIER: No, Madam Hearing Officer,  
12 no questions.

13 MADAM HEARING OFFICER ORTH: All right,  
14 thank you.

15 Mr. Feldewert?

16 MR. FELDEWERT: Thank you, Madam Hearing  
17 Officer, no questions.

18 MADAM HEARING OFFICER ORTH: Thank you.  
19 Commissioner Bloom?

20 COMMISSIONER BLOOM: Thank you,  
21 Madam Hearing Officer. Mr. Zupan, thank you so much  
22 for your testimony today. No questions, thanks.

23 MADAM HEARING OFFICER ORTH: Thank you.  
24 Commissioner Warnell?

25 COMMISSIONER WARNELL: Thank you, I have

1 no questions.

2 MADAM HEARING OFFICER ORTH: And, Madam  
3 Chair?

4 CHAIRWOMAN SANDOVAL: Real quick one.  
5 Do you support the proposal today?

6 THE WITNESS: I do. Thank you, Madam  
7 Chair.

8 CHAIRWOMAN SANDOVAL: Thank you. Thanks  
9 for your time today.

10 MADAM HEARING OFFICER ORTH: Thank you so  
11 much, Mr. Zupan, and I think we can excuse you now.  
12 So thank you very much for your testimony.

13 (Whereupon, the witness was excused from  
14 the proceedings.)

15 MR. MEIKLEJOHN: Thank you, Madam Hearing  
16 Officer, we do not have any other witnesses. We do  
17 move the admission of the resume for Normal Gaume  
18 that was attached to our notice of intent and I  
19 believe we have already admitted Joseph Zupan's  
20 resume. I recognize that the other exhibits that we  
21 offered are somewhat in limbo, I guess I would say  
22 at this point, but we urge the Commission to admit  
23 them.

24 MADAM HEARING OFFICER ORTH: All right,  
25 thank you. I may have already admitted 3, but if I

1 did not, Exhibit 3 is admitted and Exhibit 1 was  
2 excluded and Exhibit 4 is excluded in part and will  
3 be considered in part consistent with our earlier  
4 conversation.

5 So you have no other witnesses,  
6 Mr. Meiklejohn?

7 (Exhibit admitted, 3.)

8 MR. MEIKLEJOHN: That is correct, we have  
9 nothing further to present unless the Commission  
10 wants to hear a closing argument.

11 MADAM HEARING OFFICER ORTH: We will talk  
12 about that in just a second. The Petitioners,  
13 Mr. Ames or Mr. Timmons, did any of the evidence  
14 prompt any desire to offer any kind of rebuttal?

15 MR. AMES: Thank you, Madam Hearing  
16 Officer, the Division has no rebuttal witness.  
17 Thank you.

18 MR. TIMMONS: Nor does WildEarth Guardians  
19 have any rebuttal witnesses. Thank you.

20 MADAM HEARING OFFICER ORTH: We should  
21 talk, then, about closing arguments and  
22 deliberations.

23 Mr. Lamkin has just put something in the  
24 chat to the effect that he has had no other requests  
25 to make public comment through the chat, but let me

1 just offer that as an opportunity now.

2 Is there anyone who would like to offer  
3 public comment, nontechnical public comment? If you  
4 can hear me, please communicate with the technical  
5 host through the chat function if you would like for  
6 offer public comment.

7 All right. In the event you would prefer  
8 to put your public comment in writing, the deadline  
9 is in about two hours, at 5:00 p.m.

10 So because the Commission will consider  
11 everything that comes in before 5:00, they will not  
12 be deliberating before 5:00. We do have all of  
13 tomorrow starting at 9:00 for their deliberations.

14 Madam Chair, what is your preference to  
15 have verbal closing arguments and to deliberate  
16 tomorrow, to have verbal closing arguments tomorrow  
17 and then deliberate tomorrow, or to put off  
18 deliberations for another meeting and to have  
19 closing arguments in writing? This is the three  
20 options I can think of.

21 CHAIRWOMAN SANDOVAL: Well, I think we can  
22 deliberate tomorrow. I guess I will ask the  
23 Commissioners, but I feel comfortable deliberating  
24 tomorrow morning. We have a written comment  
25 deadline at 5:00 today, if any come in. At that

1 point they will be sent to the Commissioners so that  
 2 everybody has all of the information, but I think we  
 3 deliberate tomorrow morning, and I would advocate  
 4 for doing closing arguments now.

5 COMMISSIONER BLOOM: Madam Chair, I agree.

6 CHAIRWOMAN SANDOVAL: Commissioner  
 7 Warnell, are you on board?

8 COMMISSIONER WARNELL: Yes, I agree.

9 CHAIRWOMAN SANDOVAL: All right. Closing  
 10 arguments now if you choose to do that and  
 11 deliberations starting at 9:00 tomorrow.

12 MADAM HEARING OFFICER ORTH: All right.  
 13 And, Mr. Moander, I see you on my screen. Did you  
 14 have something to add at this point?

15 MR. MOANDER: To make sure that this  
 16 matter is papered properly, I think under 19.15.3.13  
 17 of the NMAC, deliberations can be moved into or can  
 18 occur right after the completion of the rulemaking  
 19 hearing. The issue is that a rulemaking hearing to  
 20 a certain extent, from my view, really isn't going  
 21 to be complete until tomorrow primarily because we  
 22 have the 5:00 p.m. deadline today, which is the  
 23 close of business.

24 So I think legally the Commission is in a  
 25 good position to do deliberations tomorrow. I don't



1 have a problem with that and then there was one  
2 other section I was going to cite for the record,  
3 and I have apparently misplaced that.

4 But, yeah, so I think that is where we are  
5 at on this. If any parties have objections to that,  
6 I am happy to -- I would like to hear them now so  
7 that we can assess this out, but I think that should  
8 work.

9 MADAM HEARING OFFICER ORTH: All right,  
10 thank you. I am going to pause for a moment, not do  
11 a roll call, just pause for a moment.

12 Do any of the counsel have objections or  
13 contrary observations if we are to go to closing  
14 argument right now and pick up deliberations at 9:00  
15 in the morning.

16 MR. MEIKLEJOHN: No objection.

17 MR. CLOUTIER: No objection.

18 MR. AMES: No objection.

19 MADAM HEARING OFFICER ORTH: I did hear  
20 Mr. Ames, Mr. Meiklejohn and Mr. Cloutier.

21 MR. MOANDER: Can we have Mr. Feldewert on  
22 the record with his position as well, please. I  
23 just want to be thorough here.

24 MR. FELDEWERT: You want my official  
25 position, Mr. Moander?

1                   MR. MOANDER: Yes, I would like to hear  
2 your official position.

3                   MR. FELDEWERT: No problem with what has  
4 been proposed.

5                   MR. MOANDER: Excellent.

6                   MR. FELDEWERT: NMOGA does not have any  
7 closing statement or closing argument.

8                   MR. MOANDER: In an abundance of caution,  
9 I just like making sure this stuff now because the  
10 attorneys here understand why, so thank you very  
11 much. I appreciate it.

12                  MR. FELDEWERT: I say that without hearing  
13 what anybody else wants to do, but I don't see a  
14 need for one.

15                  MADAM HEARING OFFICER ORTH: All right,  
16 thank you.

17                  And, Mr. Timmons, I trust you are on  
18 board?

19                  MR. TIMMONS: No objection. We would like  
20 to offer a short closing as well.

21                  MADAM HEARING OFFICER ORTH: All right,  
22 thank you.

23                  Mr. Ames, why don't you begin the closing  
24 arguments.

25                  MR. AMES: Thank you, Ms. Orth.

1           OCD respectfully requests that this  
2   Commission adopt the proposed changes to Part 29  
3   prohibiting major and minor releases and making them  
4   subject to enforcement and to both in the rule and  
5   in actuality will incentivize operators to exercise  
6   due diligence to avoid releases in the first  
7   instance.

8           The proposed changes are authorized by the  
9   Oil and Gas Act because they protect public health  
10   and the environment from waste, they are supported  
11   by all the parties and their witnesses and there has  
12   been no testimony or comments in opposition to them.

13           Now some commenters have proposed other  
14   changes. In our view, they cannot be considered in  
15   the absence of a valid petition. Other commenters  
16   have also alleged that the Agency has failed to  
17   bring enforcement actions and suggest that the  
18   Agency is somehow complicit in harming public health  
19   and the environment, we disagree. But then that is  
20   not the point of the hearing and I will have no more  
21   to say about it.

22           The Commission's purpose today is to hear  
23   the proposed changes to Part 29 proposed by the Oil  
24   Conservation Division and WildEarth Guardians. Our  
25   petition has been properly noticed. We have offered

1 appropriate and adequate testimony and evidence to  
2 support it.

3 Accordingly, we respectfully request that  
4 this Commission adopt the petition as proposed so  
5 that the Agency can get on with its business of  
6 regulating releases to protect public health and the  
7 environment.

8 Thank you.

9 MADAM HEARING OFFICER ORTH: Thank you,  
10 Mr. Ames.

11 Mr. Timmons?

12 MR. TIMMONS: Thank you, Madam Hearing  
13 Officer, Chair Sandoval, Members of the Commission  
14 and everyone who has participated here today. I  
15 want to thank you for your time and attention to  
16 this matter.

17 As I noted in my opening statement, this  
18 joint proposal before the Commission filed by  
19 WildEarth Guardians and the Oil Conservation  
20 Division is a straightforward proposal to prohibit  
21 major and minor releases.

22 As Mr. Ames indicated, no party appearing  
23 here today opposes this rule modification. All of  
24 the witnesses who have testified support the rule  
25 and the vast majority of public commenters support

1 prohibiting releases of crude oil and fracking  
2 waste.

3 But just to briefly get into the weeds on  
4 a couple of points. First, the only opposition to  
5 this rule that I am aware of came in a written  
6 comment letter from Intrepid Potash New Mexico, I  
7 believed referenced earlier by Commissioner Bloom.

8 Now that comment letter expressed concern  
9 regarding the potential for civil penalties to be  
10 assessed on what it characterized as de minimus  
11 spills. But that concern is overblown for a couple  
12 of reasons. One, this rule does not apply to de  
13 minimus spills but only kicks in for what are  
14 defined as minor spills in the Commission's existing  
15 regulations. So these are spills of 5 barrels or  
16 more. That is more than 200 gallons. So it is  
17 certainly not de minimus when we are talking about  
18 spills of crude oil or fracking waste including  
19 produced water.

20 And, two, as Mr. Ames explained,  
21 imposition of civil penalties is not an automatic  
22 process but it is subject to the enforcement  
23 discretion of the Division which takes into account  
24 a number of considerations, including spill volume,  
25 threat to public health and the environment. And

1 the operator's particular response to the spill at  
2 issue as well as compliance history.

3 The second issue I want to address is the  
4 testimony of Mr. Gaume, in his cross-examination of  
5 Norman Gaume, Mr. Feldewert questioned Mr. Gaume's  
6 background and the reliability of the data that  
7 Mr. Gaume based his testimony on.

8 But no offense to Norm, his testimony is  
9 not needed for the Commission to approve this rule.  
10 As Mr. Griswold indicated, OCD records show about  
11 12,000 reported spills from 2010 to 2020, about  
12 three and a half spills every day, and that  
13 testimony is un rebutted.

14 So Mr. Feldewert may dispute my  
15 characterization of three and a half spills every  
16 day as too much, but the numbers speak for  
17 themselves.

18 And so we would urge the Commission to  
19 adopt the joint proposal as amended by OCD's minor  
20 modification included in its notice of intent.

21 Thank you.

22 MADAM HEARING OFFICER ORTH: Thank you,  
23 Mr. Timmons.

24 Mr. Cloutier.

25 MR. CLOUTIER: Thank you, Madam Hearing

1 Officer. I made an opening statement where I made  
2 most of my points to the Commission, I don't want to  
3 repeat those. I appreciate the Commissioner's  
4 attention and yours.

5 I would only add that there were factual  
6 comments about the oil and gas industry that were  
7 made in public comments. And as Mr. Feldewert did  
8 at the beginning of the morning, while we vigorously  
9 disagree with those and Mr. Ames disagreed with the  
10 characterization about the Division, which I would  
11 second him on that, those comments are not pertinent  
12 to this rulemaking and so other than noting my  
13 disagreement, I will leave them alone.

14 Thank you for your time.

15 MADAM HEARING OFFICER ORTH: Thank you  
16 very much. I trust Mr. Feldewert you haven't  
17 changed your mind?

18 MR. FELDEWERT: I do have to say one thing  
19 and to clarify, I know Mr. Ames talked about the  
20 proposals, the modifications to the rule that were  
21 proposed. Those include, I assume, the -- what you  
22 see in the Division's Exhibit Number 6, which is the  
23 reference to Part 27 and 28 which I think everybody  
24 agrees is necessary.

25 MADAM HEARING OFFICER ORTH: All right.

1 That is my understanding. Let's see here,  
2 Mr. Meiklejohn?

3 MR. MEIKLEJOHN: Thank you, Madam Hearing  
4 Officer, thank you Commissioners. We appreciate  
5 very much the time you have devoted to this.

6 As our witnesses indicated, the  
7 Intervenors do support the proposal advanced by  
8 WildEarth Guardians and the Division. And I would  
9 ask the Commission to consider that they support not  
10 just from environmental groups who support, I think  
11 is quite important in terms of the impacts of spills  
12 on New Mexico, but also from representatives of  
13 frontline communities.

14 So you're hearing from people whose  
15 communities are affected on the ground when spills  
16 occur. That is significant. We urge you to take  
17 that into account. We urge the Commission to adopt  
18 the proposed changes to the regulations.

19 Thank you.

20 MADAM HEARING OFFICER ORTH: Thank you  
21 very much, Mr. Meiklejohn.

22 Madam Chair, I believe, it is time to  
23 close at least this portion of the record. Again,  
24 the written public comment opportunity is not closed  
25 until 5:00 p.m. today, and you will find the e-mail



1 address to which you can send written public comment  
2 in the public notice.

3 So unless there is anything further, we  
4 will be on a break until 9:00 tomorrow morning.

5 CHAIRWOMAN SANDOVAL: Sounds good to me.

6 MADAM HEARING OFFICER ORTH: Thank you all  
7 very much.

8 CHAIRWOMAN SANDOVAL: Thanks everyone.

9 (Proceedings concluded at 3:04 p.m.)

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REPORTER'S CERTIFICATE

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Date: June 9, 2021

/s/ PAUL BACA

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