

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

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

ORIGINAL

APPLICATION OF THE NEW MEXICO OIL  
CONSERVATION DIVISION TO AMEND  
CERTAIN PROVISIONS OF TITLE 19,  
CHAPTER 15, PART 5, SECTION 9  
OF THE NEW MEXICO ADMINISTRATIVE  
CODE CONCERNING COMPLIANCE.

CASE NO. 15536

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

October 6, 2016

Santa Fe, New Mexico

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

This matter came on for hearing before the  
New Mexico Oil Conservation Commission on Thursday,  
October 6, 2016, at the New Mexico Energy, Minerals and  
Natural Resources Department, Wendell Chino Building,  
1220 South St. Francis Drive, Porter Hall, Room 102,  
Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR  
New Mexico CCR #20  
Paul Baca Professional Court Reporters  
500 4th Street, Northwest, Suite 105  
Albuquerque, New Mexico 87102  
(505) 843-9241

APPEARANCES

FOR APPLICANT NEW MEXICO OIL CONSERVATION DIVISION:

KEITH W. HERRMANN, ESQ.  
OFFICE OF GENERAL COUNSEL  
New Mexico Oil Conservation Division  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
(505) 476-3451  
keith.herrmann@state.nm.us

FOR COG OPERATING, LLC AND COG PRODUCING, LLC:

CAROL LEACH, ESQ.  
COG OPERATING, LLC  
OFFICE OF GENERAL COUNSEL  
1048 Paseo de Peralta  
Santa Fe, New Mexico 87501  
(505) 780-8000  
cleach@concho.com

FOR NEW MEXICO OIL AND GAS ASSOCIATION:

MICHAEL H. FELDEWERT, ESQ.  
HOLLAND & HART  
110 North Guadalupe, Suite 1  
Santa Fe, New Mexico 87501  
(505) 988-4421  
mfeldewert@hollandhart.com

## INDEX

	PAGE
1	
2	
3	Case Number 15536 Called 4
4	Oil Conservation Division's Case-in-Chief:
5	Witnesses:
6	Allison Marks:
7	Direct Examination by Mr. Herrmann 5
	Cross-Examination by Commissioner Balch 9
8	Cross-Examination by Chairman Catanach 12
	Cross-Examination by Mr. Brancard 19
9	Cross-Examination by Mr. Feldewert 22
	Recross Examination by Commissioner Balch 24,29
10	Recross Examination by Mr. Brancard 28
11	Geothermal Rule Appeal Update by Mr. Brancard 35
12	Proceedings Conclude 36
13	Certificate of Court Reporter 37
14	
15	
16	EXHIBITS OFFERED AND ADMITTED
17	OCD Exhibit Letters A and B 9
18	
19	
20	
21	
22	
23	
24	
25	

1 (9:15 a.m.)

2 CHAIRMAN CATANACH: All right. I'll call  
3 Case Number 15536, which is the application of the Oil  
4 Conservation Division to amend certain provisions of  
5 Title 19, Chapter 15, Part 5, Section 9 of the New  
6 Mexico Administrative Code concerning compliance.

7 At this time I will call for appearances.

8 MR. HERRMANN: Mr. Chairman, Keith Herrmann  
9 representing the Oil Conservation Division.

10 CHAIRMAN CATANACH: Okay.

11 Additional appearances in this case?

12 MS. LEACH: Carol Leach representing COG  
13 Operating, LLC and COG Producing, LLC.

14 MR. FELDEWERT: Mr. Chairman, Members of  
15 the Commission, Michael Feldewert, Santa Fe office of  
16 Holland & Hart, appearing on behalf of the New Mexico  
17 Oil and Gas Association.

18 CHAIRMAN CATANACH: Ms. Leach and  
19 Mr. Feldewert, you're not presenting any witnesses here  
20 today?

21 MR. FELDEWERT: No, sir.

22 MS. LEACH: (Indicating.)

23 CHAIRMAN CATANACH: Okay.

24 Mr. Herrmann, you may proceed. You have how many  
25 witnesses?

1 MR. HERRMANN: Mr. Examiner, I listed  
2 two -- or one witness, Allison Marks. And I have two  
3 additional witnesses, Daniel Sanchez and Denise  
4 Gallegos, that I may call for rebuttal purposes only,  
5 but I do not expect to call them.

6 I have two exhibits, if I may approach,  
7 that I submitted with our application.

8 CHAIRMAN CATANACH: Let's go ahead and  
9 swear everybody in.

10 So please stand to swear everybody in.  
11 Would you please swear in the witnesses?  
12 (Ms. Marks, Ms. Gallegos and Mr. Sanchez  
13 sworn.)

14 MR. HERRMANN: I would waive an opening  
15 statement and go right to calling my first witness,  
16 Ms. Marks.

17 ALLISON MARKS,  
18 after having been first duly sworn under oath, was  
19 questioned and testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HERRMANN:

22 Q. Ms. Marks, can you please state your name and  
23 place of employment, for the record?

24 A. Allison Marks, Oil Conservation Division.

25 Q. And what role did you have in the proposed rule

1 changes?

2 A. I drafted the proposed rule change.

3 Q. Can you please describe the proposed rule  
4 changes?

5 A. Sure. I'll go through the proposed rule  
6 changes item by item.

7 With 19.15.5.9B., we'll be striking  
8 "sending a letter by first class mail to the address the  
9 operator has provided the division pursuant to  
10 Subsection C of 19.15.9.8 NMAC," and we'll be adding  
11 "making such information available on the division's  
12 website. Further, at least 60 days prior to commencing  
13 an enforcement action against an operator for a  
14 violation of 19.15.5.9 NMAC, the division shall notify  
15 the operator by first class mail to the address provided  
16 to the division pursuant to Subsection C of 19.15.9.8  
17 NMAC." And this change really is a matter of efficiency  
18 for the Division.

19 We have operators who have noncompliant  
20 wells since 1988 or maybe earlier, and the way the rule  
21 is written right now, we have to send a letter of  
22 noncompliance every single month. This not only costs  
23 personnel time, it costs toner, postage, envelopes,  
24 paper. And also with time, we have the Internet, and  
25 all the noncompliant operators are posted on the Web

1 site, and as they file their C-115s, their noncompliance  
2 is listed on the Web site. So we've expanded it and  
3 given something to the operators to inform them they are  
4 noncompliant.

5 But prior to bringing any enforcement  
6 action, we will advise them by first-class mail that  
7 they are out of compliance with the Division's --  
8 Division's rule. I had thought of actually informing  
9 them by certified mail, but then I put on my legal hat  
10 and took off my deputy director hat and remembered that  
11 in first-class mail, they have received notice. So we  
12 put it in the mail, and by law, they have received  
13 notice. So I thought it was sufficient as it stands  
14 right now.

15 The next change is in Section E. Right now  
16 we have added -- it reads, "The division shall make  
17 available on its website penalty assessments assessed  
18 over the last 12 months." I thought it would be good to  
19 add a time period, as that section reads listing all of  
20 our penalty assessments for time immemorial, and that's  
21 kind of cumbersome to the Division and to have all the  
22 penalty assessments that have ever been imposed by the  
23 Division on our Web site. And that's really  
24 impractical. We don't comply with that right now. I  
25 also -- while it's not listed on the proposed rule right

1 now, I would suggest adding, before the word "assess"  
2 and after "assessment," "under the Oil and Gas Act." So  
3 adding those words there just to clarify that these are  
4 penalty assessments under the Oil and Gas Act, since  
5 Rule 19 is under the Oil and Gas Act and authorized to  
6 assess penalties under the Water Quality Control Act.

7 Then the next change is E.(2). Cross out  
8 "An operator who contests an order assessing penalties  
9 may appeal and may seek a stay of the order. And."  
10 Sorry. My printer wasn't so good. Add the word "any."  
11 Maybe your printer is better. I printed this at home.

12 MR. BRANCARD: And there's a period.

13 THE WITNESS: After the word "order," a  
14 period.

15 We're striking, in the next sentence, the  
16 word -- it started with the word "and," and we changed  
17 that word "and" to "any." And that's just a matter of  
18 efficiency and readability. So that next E.(2) would  
19 start with "any order that is stayed pending appeal does  
20 not affect operator's compliance with Subsection A of  
21 19.15.5.9 NMAC."

22 Q. (BY MR. HERRMANN) And for the record, can you  
23 identify Exhibit B, which is the second page in the  
24 packet?

25 A. Sure. That's the notice of this hearing.



1 Q. And were these exhibits prepared by you or  
2 under your direction?

3 A. Yes, they were.

4 MR. HERRMANN: At this time I'd like to  
5 move to admit exhibits -- OCD Exhibits A and B into the  
6 record?

7 CHAIRMAN CATANACH: Exhibits A and B will  
8 be admitted.

9 (OCD Exhibit Letters A and B are offered  
10 and admitted into evidence.)

11 MR. HERRMANN: And I have no further  
12 questions for my witness.

13 CHAIRMAN CATANACH: Commissioners?

14 COMMISSIONER BALCH: Just a couple of  
15 questions.

16 CHAIRMAN CATANACH: Go ahead.

17 THE WITNESS: I'm so happy because it  
18 wouldn't be a great -- it wouldn't be a great Commission  
19 hearing if you didn't ask questions.

20 COMMISSIONER BALCH: I always have  
21 questions, almost always.

22 CROSS-EXAMINATION

23 BY COMMISSIONER BALCH:

24 Q. So under Section B, how many wells are we  
25 talking about here? How many wells are typically in

1 noncompliance?

2 A. Huh.

3 CHAIRMAN CATANACH: I can answer that, if  
4 Ms. Marks can't. I looked on the inactive wells list  
5 this morning on the OCD's Web site, and there are a  
6 total of 10,090 wells.

7 THE WITNESS: That does sound about right.  
8 I'm working on a lot of noncompliance issues right now.  
9 We do have significant expenditures that we spend on  
10 mailing. I did grab our latest budget, and we had  
11 budgeted \$2,500 for the last six months of mailing  
12 expenditures, and that's grossly -- I think we usually  
13 spend \$5,000. We spend a lot of money on --

14 Q. (BY COMMISSIONER BALCH) Every month.

15 A. -- every month. And like I said, that does not  
16 include personnel time, and our personnel could be used  
17 much more efficiently.

18 And -- and -- and the other -- the truth of  
19 the matter is a lot of these operators -- sending --  
20 sending the same letter every month, that really doesn't  
21 do anything. And when we're working on these compliance  
22 matters, I've taken a different approach. So instead of  
23 mailing them a letter -- we do mail them a letter, and  
24 they say, Oh, yeah, you know, thanks for the letter.  
25 But a lot of operators haven't updated their addresses

1 with OCD, so we're now working with our I.T. department  
2 to get operators in compliance with our other rule,  
3 Subsection C of 19.15.9.8, to get their addresses  
4 updated, so we're going to have operators come in  
5 compliance. When they file their C-115s, they will have  
6 their addresses up-to-date.

7 But now Denise and I are actually starting  
8 to call the operators to say -- before we actually just  
9 bring a compliance action, to do some phone outreach to  
10 get them into compliance, and that's been really  
11 successful with our financial assurance compliance  
12 actions. We've brought maybe about \$700,000 into -- but  
13 with Daniel as well, we've had more compliances by  
14 initial verbal communication, but letters have not  
15 really proven to be --

16 Q. Some of these wells have been out of compliance  
17 for 30 years?

18 A. Yes, that's correct, longer.

19 So -- so -- and I did think about it this  
20 morning. I thought you would be the math person to  
21 maybe calculate postage-rate changes and how every  
22 month, if we sent a letter, what that would have cost.

23 Q. At 50 cents a letter, basically.

24 A. Yeah. How much that would have cost us in  
25 postage, expenditures, everything.

1 Q. Should be about 12 grand a year.

2 CHAIRMAN CATANACH: I don't know how many  
3 operators we have. 19,090 wells there are some wells  
4 multiple operators, so maybe it wouldn't be that much.

5 COMMISSIONER BALCH: Repeat customers.

6 CHAIRMAN CATANACH: It is still burdensome.

7 Q. (BY COMMISSIONER BALCH) Section A -- and you  
8 mentioned already not keeping this data up-to-date.

9 A. We keep the data up-to-date, not posting it.

10 Q. Interested party could go directly to the  
11 Division and get that data if they needed it for some  
12 reason?

13 A. Correct. Correct.

14 Q. I don't have any other questions.

15 CHAIRMAN CATANACH: Mr. Martin?

16 COMMISSIONER MARTIN: No questions.

17 CHAIRMAN CATANACH: I have a couple.

18 THE WITNESS: Fantastic.

19 CROSS-EXAMINATION

20 BY CHAIRMAN CATANACH:

21 Q. This information is still available. So as far  
22 as inactive wells, we post inactive wells. An operator  
23 has the opportunity to log on to our Web site and find  
24 the number of wells they have inactive. It's readily  
25 available to them at this point?

1           A.    Correct, not just for the operator --  
2 individual operator but for all operators in the state.  
3 So as a matter of transparency, members of the public  
4 can see -- can see all this information.

5           Q.    And that includes -- moving a little bit off  
6 topic, but that includes not only inactive well status,  
7 but financial assurance, if they're out of compliance  
8 with financial assurance? Not available to the Web  
9 site.

10          A.    That's available to the Web site most  
11 certainly.

12          Q.    In the new paragraph, we're going to be  
13 notifying them at least 60 days to commencing an  
14 enforcement action. That's new, correct?

15          A.    Right. And so that's -- that's additional  
16 notice in addition to the notice requirements of  
17 19.15.4.12B, that we wouldn't be changing the notice  
18 requirements for specific adjudications. That's just  
19 additional paper notification, one last opportunity, I  
20 guess you might say, in addition to the online notice  
21 that operators would have.

22          Q.    Okay. You mentioned something about first  
23 class. Is that not -- it's not as -- it's not the same  
24 thing as certified mail?

25          A.    Correct. Certified mail costs about \$6.00 with

1 return receipt requested and --

2 Q. Right.

3 A. -- I think a first-class stamp may be 49 cents,  
4 48 cents.

5 Q. I'm not sure.

6 A. Somewhere along those lines.

7 Q. Do you feel like first-class mail would be  
8 sufficient for that purpose?

9 A. I do, because we do get our first-class mail  
10 returned as well, so we will receive the little yellow  
11 label that the post office returns to us saying  
12 "undeliverable." The certified mail, under 19.15.4.12,  
13 that notice has to be certified mail, return receipt  
14 requested, the more expensive \$6.00. So before  
15 Mr. Herrmann brings a compliance action, they will still  
16 receive certified mail. And if that person is  
17 unlocatable anyway, because we will still notice them by  
18 first-class mail, we would not -- it would be unlikely  
19 that we would bring a compliance action and take greater  
20 steps to locate that party.

21 Q. So we wouldn't know -- all we would know is if  
22 they didn't receive it. We would just get the letter  
23 back, is what you're saying?

24 A. Correct, which, for all intents and purposes,  
25 does the same job that -- in the initial steps, that we

1 would want to accomplish by serving the person via  
2 certified mail.

3 COMMISSIONER BALCH: That just discounts  
4 the possibility of it being lost. A certified letter,  
5 you would know it was lost or not delivered.

6 THE WITNESS: Right. And Mr. Brancard may  
7 serve as the legal counsel there, but I know, under, you  
8 know, the mailbox rule, if you put it in the mail, it  
9 would -- there is a presumption of delivery.

10 Q. (BY CHAIRMAN CATANACH) How many --  
11 Ms. Marks, how many would you anticipate sending out of  
12 those types of mail at this point? Do you have any  
13 idea?

14 A. You know, like I said, we're changing our --  
15 we're changing our compliance procedures, and we're  
16 trying to do a lot more outreach with the operators. A  
17 lot of it has to do with mindful of the State's budget  
18 and our budget in general. So with Daniel and Denise,  
19 we're trying to do phone outreach to operators. So  
20 hopefully -- hopefully we're minimizing the amount of  
21 pieces of mail that are sent out. We can call  
22 operators, have a lot more -- a lot more engagement with  
23 operators. Daniel does a great job engaging with  
24 operators and trying to work out compliance orders.

25 And ideally -- ideally, we can work with

1 operators so we don't -- we don't incur a liability as a  
2 division. The fewer liabilities that we incur as a  
3 division, the better we are positioned as a division.  
4 So the more we can engage -- engage operators via phone  
5 or other -- other means, the better. So that's an  
6 internal -- that's an internal procedure that we are  
7 changing. Bad for the U.S. Postal System, I guess.

8 Q. Moving on to paragraph one, these are not --  
9 these are penalties under the Oil and Gas Act. They're  
10 not penalties associated with the Water Quality Control  
11 Act?

12 A. That's why I thought it would be great to add  
13 after the word "assessments under the Oil and Gas Act,"  
14 just to clarify what penalties are mandatory to be  
15 posted under -- on our Web site.

16 Q. Okay. Because there are penalties that we  
17 collect under the Water Quality Control Act, right?

18 A. That's correct, Mr. Chairman.

19 Q. Okay. And with regards to paragraph two -- so  
20 we're eliminating the opportunity for an operator to  
21 request a stay of the order?

22 A. So any operator who contests an operator --  
23 right now the Division isn't -- penalties aren't  
24 assessed via an order. So this language doesn't make  
25 sense as it's written, and it's confusing. And it adds



1 clarity if we just eliminate that first sentence.

2 COMMISSIONER BALCH: And there are other  
3 rules that allow them to request a stay anyway, right?

4 THE WITNESS: Exactly.

5 Q. (BY CHAIRMAN CATANACH) So they still would have  
6 the opportunity to request a stay of some kind pending  
7 appeal?

8 A. Sure. Exactly. And if we just read any order  
9 that is stayed pending appeal, that opportunity is still  
10 clearly -- clearly provided.

11 Q. One more thing on paragraph one on the penalty  
12 assessment. Do we intend to just have -- is that going  
13 to be done on a continual basis? Is that going to be  
14 updated every month so that the 12 months are always on  
15 there, or is that going to be done on an annual basis,  
16 or how is that going to be done? Because it says "over  
17 the last 12 months." So, I mean, would that be updated  
18 every month so there is always a 12-month period on  
19 there?

20 COMMISSIONER MARTIN: Rolling 12 months  
21 or --

22 Q. (BY CHAIRMAN CATANACH) And would prior months  
23 be available? I mean, if I wanted to look at two years  
24 ago, would that be on the Web site or --

25 A. Well, to the latter question, no, but we would

1 have the 12-month -- it would only be required under the  
2 rule now to have 12 months' worth of penalties updated.  
3 I think it would make sense to have it updated on a  
4 monthly basis.

5 Q. To comply with the rule. So just the 12 months  
6 would show up on the Web site.

7 A. Correct.

8 COMMISSIONER BALCH: Once you roll out last  
9 August, you might as well leave it there at that point.  
10 You don't need to go back for the last 40 years and add  
11 in all those missing months, because once you have data  
12 there, it's easy to leave it.

13 THE WITNESS: Right. But then I think if  
14 we look, you know, ten years into the future, how long  
15 are we supposed to keep it -- keep it up there. I think  
16 as a matter of internal procedure, we can do whatever.  
17 I just think as a matter of rule, what is mandatory  
18 should be clear in the rule. But as a matter of  
19 procedure, we can certainly leave up as much data as we  
20 like.

21 Q. (BY CHAIRMAN CATANACH) And there are other  
22 sections on the Web site where we can maybe summarize  
23 that data on an annual basis. We can put that under  
24 statistics. So we can have that data but in a specific  
25 place?

1 A. Most certainly.

2 Q. Okay. I have no further questions.

3 Anything from the Commissioners?

4 CROSS-EXAMINATION

5 BY MR. BRANCARD:

6 Q. So, Ms. Marks, on B -- 9B, when you say "prior  
7 to commencing an enforcement action," I assume what you  
8 mean is what's -- the process under 5.10, which is that  
9 you would file an application with the Division for a  
10 hearing? You're changing 9B?

11 A. Right.

12 Q. And the words "commencing an enforcement  
13 action," the commencing is the filing of the  
14 application?

15 A. Correct.

16 Q. With the Division clerk to trigger the hearing  
17 under the next section that you're not amending, under  
18 5.10?

19 A. Correct. Correct.

20 Q. And then once you do that, your proceeding is  
21 now covered by Rule 4 for adjudicatory proceedings?

22 A. Yes. Yes.

23 Q. Right.

24 So -- and I think you answered the question  
25 before. Rule 4 deals with appeals and stays --

1 A. Yes.

2 Q. -- so it's unnecessary to have anything in here  
3 about appeals and stays in this section?

4 A. Right, which is why we eliminated the first  
5 sentence. I believe -- I believe your esteemed deputy  
6 thought we should -- well, I don't want -- yes. Yes.  
7 Think we should keep the second sentence there, though.  
8 I don't think we should eliminate the entire sentence.

9 Q. I agree.

10 CHAIRMAN CATANACH: Is that it?

11 MR. BRANCARD: That's it.

12 CHAIRMAN CATANACH: Any other questions?

13 MR. HERRMANN: I have just one brief  
14 statement regarding proper notice of this rulemaking. I  
15 would ask that the Commission take judicial notice that  
16 this was filed properly in accordance with our rules.  
17 We filed with the "New Mexico Register" and that was  
18 published -- or it was filed on 8/23, and it was  
19 published in Volume 27, Issue 17 on September 15th,  
20 2016. We were having some issues getting an Affidavit  
21 of Publication on that because our staff member in  
22 charge of that is out on extended family medical leave  
23 right now, but it is available under the "New Mexico  
24 Register" Web site.

25 The New Mexico Economic Development

1 Department was given notice on 9/17, and that's also  
 2 been provided to the Commission clerk in accordance with  
 3 the Small Business Regulatory Relief Act. On 9/9, it  
 4 was published in the Commission's own docket, and on  
 5 8/26, it was filed -- or it was published in the  
 6 "Albuquerque Journal." And there is an Affidavit of  
 7 Publication that is on file with the Commission clerk.

8 CHAIRMAN CATANACH: I would defer to legal  
 9 counsel. Does that all sound like we have complied with  
 10 what we needed to?

11 MR. BRANCARD: Yes.

12 CHAIRMAN CATANACH: So we will take notice  
 13 of the various types of actions the Division did  
 14 regarding notice.

15 Anything else?

16 MR. HERRMANN: No, Mr. Chairman.

17 CHAIRMAN CATANACH: Okay. So I guess we  
 18 close the record at this point?

19 MR. BRANCARD: (Indicating).

20 MR. FELDEWERT: Mr. Chairman, can I ask one  
 21 question?

22 CHAIRMAN CATANACH: Yes.

23 CROSS-EXAMINATION

24 BY MR. FELDEWERT:

25 Q. Ms. Marks, on 9B, your 60-day notice is by

1 first-class mail?

2 A. That's correct.

3 Q. What's the reason for that? In other words,  
4 why not certified mail? Is it more -- is there a big  
5 cost differential?

6 A. Yes, that's correct. I believe -- and I cannot  
7 remember if it's 48 or 49 cents for the cost of a  
8 first-class stamp, and the cost of certified mail is,  
9 what, \$6.00 for certified mail, return receipt  
10 requested. And when we send first-class mail, if it's  
11 undeliverable, we get the first-class mail that is  
12 undeliverable returned to us anyway. For example, P.O.  
13 boxes that operators have the address on file with us  
14 and they haven't updated pursuant to Rule 19.15.9.8,  
15 Section C, which requires to update with us, but they  
16 don't. And so we get notice if the operators aren't  
17 complying with that rule anyway. If we send it via  
18 certified mail, it's sending it for no reason anyway.  
19 So we've been -- we are aware of the fact that sending  
20 it certified mail or first-class mail, it really makes  
21 no difference.

22 The reason that they wanted to -- that I  
23 added the provision to send via mail is basically to  
24 make certain that the operators do have actual notice  
25 via paper that they should -- they have notice. And

1 because of the mandatory online filing of the report of  
2 the C-115s, they have the notice that they're not  
3 complying with the -- it says, "Are you compliant?" And  
4 it says no. It's easy to get into the online system.

5 Q. Right.

6 A. But sometimes people like the additional, you  
7 know, paper that comes in the mail. When we get that  
8 back, we then would start calling the operator, or  
9 sometimes even before, we send a letter and start  
10 calling the operator.

11 Q. So if I understand you, then, mechanically,  
12 they have notice by the Web site. And as you said, you  
13 do a telephone outreach --

14 A. Uh-huh.

15 Q. -- a lot of times. And then mechanically you  
16 would send a letter out by first-class mail. You would  
17 give notice if the address was not valid, correct?

18 A. Correct.

19 Q. And then once you file your application for  
20 action, I'm assuming then you would provide notice by  
21 publication because you would have an indication that  
22 the address you previously used was incorrect, right?

23 A. Actually -- so with Rule 19.15.4.12B, we still  
24 require notice to be sent by certified mail, return  
25 receipt requested to the last known address to be

1 certain notice is given. So we still send it to the  
2 address of record.

3 A lot of times what we do is we'll send it  
4 to the last address we have filed with OCD, and then we  
5 will also look to the Secretary of State's Web site. It  
6 depends if it's an LC and they've filed their annual  
7 reports, like a corporation. We'll still send it to  
8 that address. A lot of times those green cards are  
9 returned, and if those green cards are returned, then we  
10 will publish.

11 Q. Thank you.

12 COMMISSIONER BALCH: That brings up another  
13 question for me.

14 RECROSS EXAMINATION

15 BY COMMISSIONER BALCH:

16 Q. Well, I had a question. Oh. I mean, how many  
17 compliance actions are undertaken in a given month, I  
18 mean just kind of an average? How often are you going  
19 to have to send out this mail?

20 A. So your question's an interesting question. So  
21 how many compliance actions -- it's really a matter of  
22 discretion for the Division, and it's a matter of  
23 resources. How many -- how many compliance actions can  
24 we take? How many compliance actions should we take,  
25 and is it a waste of resources? If we went and took a



1 compliance action against an operator who has been out  
2 of compliance since the '80s, since the '90s, and I  
3 looked at an operator who is defunct in Arkansas or in  
4 tracking down some of these operators, we had a lot of  
5 charging [sic] liability. If we took some of these  
6 compliance actions, our plugging liability list would go  
7 from 200 up to probably 800.

8           So taking a compliance action for the sake  
9 of taking a compliance and taking on all these  
10 liabilities is really -- is probably not in the best  
11 interest of the Division right now, just to add plugging  
12 liabilities to the Division's Web sites. So we could  
13 take a ton of compliance actions and overwhelm  
14 Mr. Herrmann right here, or we can take compliance  
15 actions that would really see real results.

16       Q.    So how many did you do last year or --

17       A.    Again, it's a legal resource, too, and  
18 Mr. Herrmann was new. And we're reshifting our  
19 compliance -- our compliance procedures and bringing  
20 efficiency to how we bring compliance. And it's a  
21 new -- it's a new priority.

22       Q.    Did you do any last year?

23       A.    Maybe a few.

24       Q.    So it's not a very common occurrence? You're  
25 hoping it's going to be more commonplace?

1       A.    I think in the past, the OCD did bring  
2    compliance actions and then they stopped, and that a  
3    part of the issue was in the Legal Bureau and turnover  
4    in Legal and just the way compliance actions were  
5    prioritized and organized in OCD in general. We do have  
6    Ms. Leach and Mr. Brancard who could also explain the  
7    Legal Bureau.

8       Q.    So in a perfect world, how many would you want  
9    to do?

10      A.    In a perfect world, we want to do zero. We  
11    operators to be compliant.

12      Q.    How about a slightly imperfect world, where  
13    some operators are still not in compliance?

14      A.    Yeah. That's a really --

15      Q.    If you had the resources, I mean, how many  
16    would you do? Is it ten a month? Five a month? One a  
17    month?

18      A.    It's really -- it's a really -- it's a much  
19    more complex answer, to be honest. We have a -- there  
20    are a lot of issues with our oil and gas reclamation --

21      Q.    Well, you're the witness. You can speculate.

22      A.    Well, our oil and gas reclamation fund is in a  
23    not great state right now, so we don't really have the  
24    resources to plug wells. So, again, it's understanding,  
25    balancing the reclamation fund and the assets that we

1 have in the reclamation fund and to really work with  
2 the -- really work with the operators.

3 Q. But not a common occurrence?

4 A. Ideally, we just would want operators to become  
5 compliant.

6 CHAIRMAN CATANACH: I think if the Division  
7 could bring compliance cases and expect them to actually  
8 comply and come into compliance, we would bring them all  
9 to hearing. But, unfortunately, that's not the case,  
10 and we'll end up with a huge number of wells that we'll  
11 probably have to plug.

12 COMMISSIONER BALCH: Because you're  
13 basically working through those -- the reclamation funds  
14 allows going back to the 1980s?

15 THE WITNESS: Right. Bringing it to the  
16 1980s is -- for the -- I know one like a 1980 -- the one  
17 operator from the 1980s that I just heard from her,  
18 1988, 1986, there's a plugging bond for about -- around  
19 \$8,000, which is not going to do much to plug. And we  
20 have \$300,000 or so in the reclamation fund to plug  
21 wells, and we're looking at 800 wells to plug. If we  
22 brought that, how are we going to prioritize those wells  
23 and allocate Mr. Herrmann's resources to bring those --  
24 to bring those actions and the amount of bonding that we  
25 do have available? It's very interesting waters to

1 navigate.

2 COMMISSIONER BALCH: We need to have a  
3 plug-and-abandon well sale.

4 RECROSS EXAMINATION

5 BY MR. BRANCARD:

6 Q. But, again, the 60-day letter in B is not the  
7 commencement of a hearing proceeding?

8 A. That's correct.

9 Q. It's simply notifying X. Say, if you send out  
10 ten letters, it's simply notifying ten operators that  
11 they have compliance problem, and you would hope that a  
12 certain percentage of them would come into compliance,  
13 or would come in and say, I can't come into compliance  
14 today, but I can come into compliance over the next six  
15 months. And you would have an agreed compliance order  
16 without having to go to hearing?

17 A. That's correct, Mr. Brancard.

18 And many of these people -- many operators,  
19 when we do have the final, kind of, written notice  
20 precompliance action, they're aware of their compliance  
21 issues. And it's kind of like the big final warning you  
22 get in the mail, get your warranty on your car type  
23 thing, and that sparks a great conversation between  
24 Daniel and the operators and that motivates them to  
25 really come into -- come into the Division or

1 communicate with us and enter into an agreed compliance  
2 order. But they're aware of their lack of compliance.

3 RECROSS EXAMINATION

4 BY COMMISSIONER BALCH:

5 Q. Under the new section of 9B, when you're  
6 sending out a letter, it's because you're going to go to  
7 hearing, 60-day notice?

8 A. It doesn't --

9 Q. That's your intent?

10 A. At least 60 days prior to hearing. So it gives  
11 us a cushion to continue to work with an operator.

12 Q. Okay. Thank you.

13 CHAIRMAN CATANACH: Anything else?

14 Close the record at this time and go into  
15 deliberation on this matter?

16 COMMISSIONER BALCH: I'm willing to start  
17 it if you want.

18 CHAIRMAN CATANACH: Okay.

19 COMMISSIONER BALCH: I think all the  
20 changes are good with two exceptions. I think we should  
21 add Ms. Marks' language in Section E.(1) to make the  
22 statement say, "The division shall make available on its  
23 website penalty assessments under the Oil and Gas Act."

24 And then in Section B, I think that notice  
25 needs to be by certified mail because first-class mail

1 can get lost, and then they'll never know it wasn't  
2 delivered; or you won't know it was undeliverable if it  
3 never made it to the mailbox.

4 MR. BRANCARD: The record's closed so --

5 CHAIRMAN CATANACH: (Indicating.)

6 MR. BRANCARD: I guess -- I mean, the point  
7 here is that these operators are required under a  
8 separate regulation to have a current address.

9 COMMISSIONER BALCH: Uh-huh.

10 MR. BRANCARD: And it's not as though  
11 you're just sort of mailing out to somebody who you've  
12 never been in contact with before. These are people who  
13 are required to give a current mailing address to the  
14 Division.

15 COMMISSIONER BALCH: But every other  
16 enforcement action that is taken requires certified-mail  
17 notice, right?

18 MR. BRANCARD: Right. And they will get  
19 that if it actually goes to the formal enforcement  
20 action. So this is just the 60 days in advance of us --  
21 or them starting a formal enforcement action, giving  
22 them a notice, Hey, you're on our list; 60 days, we  
23 could be going to hearing with you.

24 COMMISSIONER BALCH: So I'm still a bit  
25 concerned.

1 MR. BRANCARD: Once you file that -- once  
2 they file the application with the Division for the  
3 hearing, then there is public notice; there are all  
4 sorts of notices that are triggered under a separate  
5 rule.

6 COMMISSIONER BALCH: So I see the logic of  
7 taking away the monthly notice because that's expensive  
8 and it doesn't really serve a purpose, but that 60-day  
9 notice that hey, we're getting ready to take you to  
10 hearing, that's pretty important. And it doesn't seem  
11 to happen very often, so I think the 24 to \$30 a year  
12 additional expense to use certified mail might be  
13 justified for that. That's just my -- my thought. It's  
14 certainly up to the Commissioner.

15 CHAIRMAN CATANACH: Well, again, we  
16 may -- I mean, we haven't decided how we will proceed.  
17 We have a lot of operators who have inactive wells, and  
18 we haven't decided how to pursue that at this point. So  
19 there may be quite a few letters sent out, and we are  
20 attempting at this time to get the operators to update  
21 their addresses on our Web site so that we have current  
22 addresses for these operators.

23 So I think first class would be fine for  
24 this purpose. Again, more formal action I think would  
25 require certified mail.

1 COMMISSIONER BALCH: As long as there is a  
2 certified-mail step.

3 MR. BRANCARD: And literally the way -- if  
4 you read the reg now, the way it works now is if the  
5 Division is sending out, say, 500 letters every month to  
6 operators who are out of compliance, if they want to go  
7 to hearing, they could pick any one of those 500 people  
8 and say, Bam, we're going to hearing, without giving  
9 them any advance notice that they were thinking about  
10 going to hearing. So this, in a sense, sort of forces  
11 the Division to say, Okay, who are we going to focus on  
12 now, because we've got to give them that 60-day notice  
13 before we go to -- it isn't sort of pick an operator  
14 this month and we'll go after them. In some ways, it's  
15 a much more -- it forces the Division to be much more  
16 logical about the approach about formal compliance.

17 CHAIRMAN CATANACH: Okay. So are you happy  
18 with that, Commissioner?

19 COMMISSIONER BALCH: I'm fine. I think we  
20 need to add the language, in E.(1), "under the Oil and  
21 Gas Act." I think all the other changes are fine.

22 CHAIRMAN CATANACH: So are you willing to  
23 go with first class?

24 COMMISSIONER BALCH: Yes.

25 CHAIRMAN CATANACH: So yeah. I have no



1 other changes.

2 COMMISSIONER MARTIN: I have none.

3 CHAIRMAN CATANACH: So the only change we  
4 have is in paragraph E.(1), adding that language, after  
5 "assessed," "under the Oil and Gas Act." That's the  
6 only change.

7 Okay. Then do I hear a motion to adopt the  
8 rule as proposed, with the proposed change that we made?

9 COMMISSIONER MARTIN: I so move.

10 COMMISSIONER BALCH: I second it.

11 CHAIRMAN CATANACH: Okay. All in favor?

12 (Ayes are unanimous.)

13 CHAIRMAN CATANACH: The motion is passed.  
14 The rule is adopted with the one change the Commission  
15 discussed.

16 MR. BRANCARD: Okay. Just so everybody's  
17 clear, we changed the statute a year ago, so there is a  
18 whole process in 70-2-12.2 about when to file the rule  
19 and how to get this done. So the Commission needs an  
20 order first to adopt the order on the rule. Okay? And  
21 then you've got to wait the 20-day period for anybody  
22 requesting a rehearing. If nobody does, then you can  
23 file a directive. So that's the process in 12.2, just  
24 so everybody is aware because we changed the statute.

25 CHAIRMAN CATANACH: So Mr. Herrmann would

1 submit a draft order to us?

2 MR. BRANCARD: Yes.

3 CHAIRMAN CATANACH: When would that be, Mr.  
4 Brancard?

5 MR. BRANCARD: When can you do it?

6 CHAIRMAN CATANACH: Can we have that done  
7 on the 17th, because we are meeting on the 17th?

8 MR. HERRMANN: Yes.

9 MR. BRANCARD: Thank you.

10 CHAIRMAN CATANACH: And that draft order  
11 will have the rule change in it?

12 MR. BRANCARD: Attached to it, yeah. We  
13 normally attach the rule change to the order.

14 CHAIRMAN CATANACH: Okay. So we'll expect  
15 that on the 17th.

16 MR. HERRMANN: Will we need to have that  
17 signed for part of the hearing?

18 CHAIRMAN CATANACH: Good question. We can  
19 just have Mr. Padilla sign it.

20 MR. BRANCARD: Yeah. Mr. Martin can  
21 consult with Mr. Padilla to make sure --

22 CHAIRMAN CATANACH: Legally, it would be  
23 okay for Mr. Padilla to sign it?

24 MR. BRANCARD: Yeah.

25 CHAIRMAN CATANACH: Okay. All right.

1 Anything else today?

2 There being nothing else --

3 MR. BRANCARD: And I don't know if I  
4 informed the Commission, we've had a hearing on the  
5 geothermal rule appeal. We were scheduled for two weeks  
6 from now, and the judge sent out an email last week,  
7 Wednesday. Saying, Can't make that, but I can make this  
8 Friday. So we all ran off to court last Friday and had  
9 oral argument on our motion to dismiss the geothermal  
10 appeal case. I hate making arguments that are  
11 technicalities, but it was technicality argument.

12 Under the geothermal statute, the rehearing  
13 right only applies to orders in the Division. There's a  
14 section there that screwed up, but that's what it says  
15 in this document. They requested a rehearing on a  
16 Commission order and then used that extra time on the  
17 Commission's action or lack of action on the rehearing  
18 to give them more time to appeal. So I argued that they  
19 had no right to rehearing, and they should have filed  
20 the appeal sooner.

21 So we argued for a while, and the judge got  
22 thoroughly confused in part because the statute that  
23 we're working under has been repealed. So the judge  
24 actually had no access to the statute, as we kept citing  
25 to different parts of the statute. So he wanted to take

1 it back to his office and think about it. So we're  
2 waiting for the judge to act on that motion to dismiss.  
3 If it gets denied, then we start just briefing that case  
4 going forward.

5 CHAIRMAN CATANACH: Okay. Thank you, Mr.  
6 Brancard.

7 Just one more announcement, on the 17th, we  
8 had had a request from counsel for Jalapeno Corporation  
9 to start that hearing at 1:00 that day. We felt that by  
10 starting so late, we would not be able to finish that  
11 hearing that day, and we were -- some of the  
12 Commissioners were not available the next day, on the  
13 18th, so we denied that request from Mr. Gallegos, and  
14 we are starting at 10:00 on the 17th. So that should  
15 take care of that.

16 Okay. There being nothing further, this  
17 hearing is adjourned.

18 (The proceedings conclude, 9:56 a.m.)  
19  
20  
21  
22  
23  
24  
25

1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO  
3

4 CERTIFICATE OF COURT REPORTER

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

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

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

20   
21

22 MARY C. HANKINS, CCR, RPR  
23 Certified Court Reporter  
24 New Mexico CCR No. 20  
25 Date of CCR Expiration: 12/31/2016  
Paul Baca Professional Court Reporters