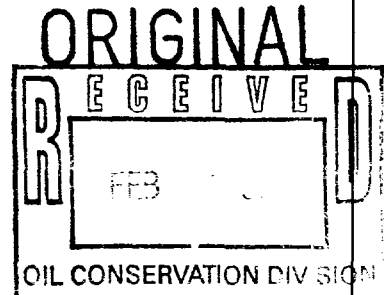


STATE OF NEW MEXICO  
 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
 OIL CONSERVATION COMMISSION

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

CASE NO. 11,451

HEARING CALLED BY THE OIL CONSERVATION )  
 DIVISION TO REFORMAT ITS RULES AND )  
 REGULATIONS TO COMPLY WITH THE )  
 NEW MEXICO ADMINISTRATIVE CODE (NMAC), )  
 WHICH REFORMATTING IS MANDATED BY )  
 14-4-7.2 NMSA 1978 )



REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: WILLIAM J. LEMAY, CHAIRMAN  
 WILLIAM WEISS, COMMISSIONER  
 JAMI BAILEY, COMMISSIONER

January 18th, 1996

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission on Thursday, January 18th, 1996, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

STEVEN T. BRENNER, CCR  
 (505) 989-9317

## I N D E X

January 18th, 1996  
 Commission Hearing  
 CASE NO. 11,451

	PAGE
APPEARANCES	3
APPLICANT'S WITNESSES:	
<u>RAND L. CARROLL</u> (OCD Counsel) Direct Testimony	5
<u>DIANE RICHARDSON</u> (OCD Administrator) Direct Examination by Mr. Carroll	14
<u>RAND L. CARROLL</u> (OCD Counsel, Resumed) Direct Testimony Examination by Commissioner Weiss Examination by Chairman LeMay	16 18 18
REPORTER'S CERTIFICATE	21

\* \* \*

## E X H I B I T S

Applicant's	Identified	Admitted
Exhibit A	5	17
Exhibit B	6	17
Exhibit C1	6	17
Exhibit C2	6	17
Exhibit D	7	17
Exhibit E1	-	17
Exhibit E2	8	17
Exhibit F	17	17

\* \* \*

## A P P E A R A N C E S

## FOR THE COMMISSION:

MARGARET CORDOVANO  
Assistant General Counsel  
Energy, Minerals and Natural Resources Department  
2040 South Pacheco  
Santa Fe, New Mexico 87505

## FOR THE OIL CONSERVATION DIVISION:

RAND L. CARROLL  
Attorney at Law  
Legal Counsel to the Division  
2040 South Pacheco  
Santa Fe, New Mexico 87505

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   9:04 a.m.:

3           CHAIRMAN LEMAY: The fourth item that I have on  
4   the agenda here is Case Number 11,451, which is called by  
5   the Oil Conservation Division to reformat its Rules and  
6   Regulations to comply with the New Mexico Administrative  
7   code.

8           This is a law passed by the Legislature, and this  
9   is required by law, and I'd like to call for appearances in  
10   Case 11,451.

11          MR. CARROLL: Rand Carroll on behalf of the Oil  
12   Conservation Division.

13          CHAIRMAN LEMAY: Thank you, Mr. Carroll. You  
14   will be the only witness?

15          MR. CARROLL: I will have two witnesses,  
16   including myself. I will make the unusual request that I  
17   be sworn in, because I did a lot of this formatting, so I'd  
18   like -- I will in effect be testifying a lot.

19          CHAIRMAN LEMAY: Okay. Will Diane be testifying  
20   at all?

21          MR. CARROLL: Yeah.

22          CHAIRMAN LEMAY: Okay, so you have actually two  
23   witnesses, then?

24          MR. CARROLL: Right.

25          CHAIRMAN LEMAY: Would both of you please stand

1 and raise your right hands?

2 (Thereupon, the witnesses were sworn.)

3 CHAIRMAN LEMAY: Any other appearances in the  
4 case?

5 If not, Mr. Carroll, you may begin.

6 RAND L. CARROLL,

7 the witness herein, after having been first duly sworn upon  
8 his oath, testified as follows:

9 DIRECT TESTIMONY

10 BY MR. CARROLL: Mr. Chairman, fellow  
11 Commissioners, my name is Rand Carroll. I live in Santa  
12 Fe, New Mexico, and I'm employed by the New Mexico Oil  
13 Conservation Division as the Division Attorney. My duties  
14 include all responsibilities for all legal issues involved  
15 in OCD activities, including rule changes and compliance  
16 with State Records Center rules.

17 If you will turn to Exhibit A, this contains all  
18 the OCD rules as reformatted in compliance with the new  
19 State Records Center requirements regarding compliance with  
20 the new New Mexico Administrative Code.

21 The OCD proposes to you that these Rules in their  
22 reformatted form be adopted and replace the prior OCD  
23 Rules.

24 You may ask why we're doing this. It's, as you  
25 stated, Mr. Chairman, mandated by law.

1           If you would refer to what has been marked as OCD  
2   Exhibit B -- I just copied the statutes for the Commission.  
3   If you'll look on page 1, Statute 14-4-72, Subsection (A)  
4   requires that the State Records Center create this New  
5   Mexico Administrative Code, and Subsection B of that  
6   statute requires that all State agencies comply with the  
7   new requirements for the New Mexico Administrative Code.  
8   And I'll refer to the New Mexico Administrative Code from  
9   here on out as NMAC.

10           On page 2 is another statute, 14-4-3, which  
11   requires that each State agency filing rules at the Records  
12   Center comply with all the Records Center Rules.

13           And I would refer you also to page 3 of Exhibit  
14   B, which is Statute 14-4-5, which states that no rule shall  
15   be valid or enforceable until it is filed with the Records  
16   Center and published in the *New Mexico Register* as provided  
17   by the State Rules Act.

18           The OCD first became aware of the new NMAC  
19   requirements by a letter from the Records Center dated June  
20   2nd, 1995. I have marked that as Exhibit C1. This letter  
21   states that no rule filings will be accepted by the Records  
22   Center after January 1st, 1996, unless in the NMAC format.

23           We shortly thereafter received a copy of the new  
24   Records Center rules, which I have marked as Exhibit C2.

25           Since that time, I and Diane Richardson of the

1 Oil Conservation Division have met with Records Center  
2 personnel a number of times, we went to a workshop they put  
3 on, on December 1st, 1995, and have had numerous phone  
4 conversations with the Records Center.

5           You also may ask why the Division and all other  
6 state agencies are required to go through a formal rule-  
7 making hearing-type proceeding such as this one just for a  
8 change in the format of the rules. This is due to an  
9 Attorney General opinion dated November 9th, 1995, which  
10 states that since the law requires that agencies  
11 repromulgate their rules to comply with the New Mexico  
12 Administrative Code that normal rule promulgation or rule-  
13 making procedures are required, even if it's just a change  
14 in format.

15           Therefore, every State agency, including the Oil  
16 Conservation Division, is forced to go through a formal  
17 hearing to in effect kind of renumber its rules or reformat  
18 its rules.

19           I skipped over Exhibit D, which is the new rules  
20 regarding publication of agency rules in the *New Mexico*  
21 *Register*.

22           The New NMAC structure allows the OCD to keep  
23 almost all of our current rule numbers intact, with the  
24 exceptions of Rule 0.1, which contains the OCD definitions,  
25 and Rules 1 through 8, which are miscellaneous rules.

1           The structure required under the NMAC rules are  
2 as follows.

3           All State agency rules and regulations are  
4 grouped under subject categories called titles. If you  
5 will refer to what has been marked Exhibit E2, it shows a  
6 listing of all -- well, it shows the Chapters under Title  
7 19. But the OCD rules will be found under Title 19, which  
8 is titled Natural Resources and Wildlife.

9           Titles are divided into chapters, and Exhibit E2  
10 shows all the chapters under Title 19.

11           The OCD rules will be found in Chapter 15 under  
12 Title 19, and this is titled Petroleum, Oil and Gases,  
13 Storage and Handling. The Records Center came up with the  
14 title and chapter names.

15           The OCD currently has a request before the  
16 Records Center to change our chapter name to just Oil and  
17 Gas, rather than Petroleum, Oil and Gases, Storage and  
18 Handling. The Division feels that will simplify users  
19 finding the applicable chapter. The Records Center has not  
20 acted on our name-change request for the chapter.

21           Chapters are then divided into parts. The OCD  
22 parts will correspond to what the OCD formerly referred to  
23 as sections, and our sections are groupings of rules on the  
24 same subject.

25           For instance, current OCD Section C contains

1 Rules 101 through 118, which are all our rules regarding  
2 drilling. Section C will now be Part C under the NMAC  
3 structure.

4 NMAC parts are then divided into sections. These  
5 NMAC sections correspond to what we refer to as rules. OCD  
6 will still be able to refer to them as rules, but under the  
7 NMAC code, they are in fact sections, but it's a matter of  
8 semantics.

9 For instance, OCD Rule 101, regarding plugging  
10 bonds, will be Section 101 under Part C of Chapter 15,  
11 Title 19, under NMAC.

12 Paragraphs and further subdivisions under each  
13 section remain the same as before.

14 With the exception of Rules 0.1, Definitions, and  
15 Rules 1 through 8, General Provisions, which are going to  
16 be renumbered as Section 7 and 11 through 18 of Part A, all  
17 OCD rule numbers will remain unchanged.

18 The only change, in effect, will be the addition  
19 of a bunch of NMAC numbers in front of each of our rules.

20 For example, Rule 104 regarding well spacing will  
21 be combined under 19 NMAC 15.C.104.

22 So basically our section and rule numbers stay  
23 the same; it's just putting these NMAC numbers in front of  
24 our rules for people trying to look it up under the New  
25 Mexico Administrative Code.

1           Another requirement of NMAC is that the first six  
2 sections of every part contain the following information:

3           One, issuing agency.

4           Two, if you will refer to the first page under  
5 Exhibit A, you can see what I'm talking about. Like I  
6 said, under the NMAC rules every part has to have these  
7 first six sections, and they're very repetitive. We have,  
8 I think, 18 parts, and the same information is contained at  
9 the beginning of each part. Section one will be the  
10 issuing agency, which is always the OCD. Section two is  
11 the scope. And the scope for each one of our parts is all  
12 persons/entities engaged in oil and gas development and  
13 production within New Mexico. Scope is who it affects.

14           Three is our statutory authority, which is the  
15 Oil and Gas Act.

16           Four is the duration. All our rules are  
17 permanent; we have no temporary rules.

18           Five, the effective date, we have targeted for  
19 February 1st, 1996.

20           And six, the objective, which is pretty self-  
21 explanatory for each one of the parts. For instance, Part  
22 C pertains to drilling, and I think the objective we put is  
23 to regulate the drilling of oil and gas wells within the  
24 State of New Mexico to enable the Oil Conservation Division  
25 to fulfill its statutory mandates under the Oil and Gas

1 Act.

2 The history also of each OCD rule is contained in  
3 brackets after each paragraph. The last date found will be  
4 February 1st, 1996, which is the last date it was amended  
5 or repromulgated.

6 The first date is the date of original enactment.

7 I only went as far back as January 1st, 1950,  
8 because that is the date that the OCD rules were placed in  
9 their current format with the Rules 101 through 1302.  
10 Before that, the rules were like 1 through 38, and it was  
11 hard to track the language.

12 So I didn't go any farther back than January 1st,  
13 1950.

14 The requirement that the first six sections of  
15 every part contain -- those first six sections containing  
16 that information is why Rules 0.1 regarding definitions in  
17 Section A and Rules 1 through 8 in Section B were  
18 renumbered.

19 The Records Center requires that all definitions  
20 for an agency be contained in Section 7 of Part A of every  
21 chapter. That's why 0.1, Definitions, was moved.

22 The Records Center also requires that any general  
23 provisions be put in Part A of every chapter, and that's  
24 why the miscellaneous rules in Part B were moved to Part A.  
25 And to make the numbering somewhat the same, Rules 1

1 through 8 were renumbered 11 through 18, with Sections 8 to  
2 10 reserved.

3 In subsequent parts, any sections between these  
4 first six mandated sections and where the rule numbers  
5 begin have been reserved.

6 For instance, in Part C the first six sections  
7 contain that information, and then our rules start with  
8 101. So all sections between 7 and 100 have been reserved.

9 The Records Center also requires that all orders  
10 of more-than-specific application -- in other words, orders  
11 that operate sort of like rules -- must be filed as rules.

12 The Division has taken those five orders of more-  
13 than-specific application cited in the cover page to the  
14 OCD rule book and created a new Part R called OCD Orders of  
15 more-than-specific Application to list them. These orders  
16 are R-111, pertaining to oil-potash operations; R-3221,  
17 pertaining to produced water disposal and pits; R-5353,  
18 pertaining to associated pools; R-7940, pertaining to  
19 produced water disposal in the vulnerable area; R-8170,  
20 pertaining to prorated gas pools.

21 The OCD reserved new Parts P and Q and went to  
22 and used Part R to retain the R letter before these orders,  
23 now rule numbers.

24 Therefore, Order R-3221, for example, will now be  
25 Section Number 3221 in Part R of Chapter 15. The cite will

1 then be 19 NMAC 15 R-3221.

2 The orders which are now rules are not included  
3 in the rule book because of their length and the need to  
4 retype and place in the proper format these voluminous  
5 orders.

6 The rule-book cover page will continue to refer  
7 users to these orders for guidance regarding those  
8 subjects.

9 The orders will also be listed in new Part R in  
10 the rule book. These orders will remain effective in their  
11 current form.

12 However, if the Commission ever amends these  
13 orders again, to have the amendments become effective they  
14 must be in the required NMAC format. This means that the  
15 next time the Commission amends one of these orders, it  
16 must rewrite this order as a rule in the NMAC form and file  
17 and publish it in order for the amendment to become  
18 effective.

19 Besides the changes referred to already regarding  
20 the renumbering of rules 0.1 and 1 through 8 and the  
21 addition of those five orders as rules, another change to  
22 the OCD rules were the inclusion in Section D of Rule 100  
23 of eight new OCD forms, Form C-134 through C-140.

24 At this time I would like to call Diane  
25 Richardson to the stand.

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DIANE RICHARDSON,

the witness herein, after having been first duly sworn upon her oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CARROLL:

Q. Ms. Richardson, will you please state your name, your place of residence and your employer for the record?

A. Diane Richardson, Tesuque, New Mexico, Energy, Minerals and Natural Resources, Oil Conservation Division.

Q. What is your position with the OCD and what are your duties in that position?

A. I'm an administrator and I handle the plugging bonds, the approval and releasing of them and the filing of our rules with the Records Center in the proper order so that -- according to their applicable rules, so that the rules become effective.

Q. Are you familiar with the new NMAC requirements of the Records Center, and have you worked with them and with me to reformat the OCD rules to comply with these requirements?

A. Yes.

Q. Besides the changes referred to already, the renumbering of Rules 0.1 and 1 through 8, the addition of eight new forms to Subsection D of Rule 100 -- 1100 -- and the addition of five orders to the rules in new Part R,

1 were there any other changes made to the Rules in  
2 reformatting them?

3 A. Just very minor spelling, punctuation, grammar  
4 and numbering corrections that we noticed while we were  
5 reformatting them.

6 Q. So nothing of substance was changed in any of the  
7 rules; is that correct?

8 A. That is correct.

9 Q. What is the procedure once the Commission signs  
10 the order repromulgating the OCD rules in the NMAC format?

11 A. Assuming the Commission signs the order today,  
12 then I'll take Exhibit A over to the Records Center and  
13 file it today so that it can go in the *New Mexico Register*  
14 for January the 31st, which will make this effective as of  
15 February the 1st, 1996.

16 Q. Okay. So the proposed effective date found in  
17 all this documentation is based upon the Commission signing  
18 the order today --

19 A. Yes, that's correct.

20 Q. -- and beating the *New Mexico Register* filing  
21 deadline?

22 A. Yes.

23 Q. Ms. Richardson, was reformatting all these rules  
24 and working with the Records Center and getting these rules  
25 formatted one of the most pleasurable experiences of your

1 life?

2 A. Yes.

3 (Laughter)

4 CHAIRMAN LEMAY: You're under oath, remember.

5 THE WITNESS: Well...

6 MR. CARROLL: That's all I have, Mr. Chairman.

7 CHAIRMAN LEMAY: Wait a minute, Diane, we might  
8 want to ask some questions.

9 THE WITNESS: I'm ready to go.

10 CHAIRMAN LEMAY: Are there any questions of, I  
11 guess, either Diane or Rand?

12 MR. CARROLL: I have some more testimony too.

13 CHAIRMAN LEMAY: You have some more testimony to  
14 give?

15 Well, how about any questions of Diane?

16 COMMISSIONER WEISS: I have no questions.

17 COMMISSIONER BAILEY: No.

18 CHAIRMAN LEMAY: Nor do I. You may be excused.  
19 Thank you.

20 You may continue, Mr. Carroll.

21 MR. CARROLL: Thank you, Mr. Chairman.

22 The entire rule book is not required to be  
23 published in the *New Mexico Register* to have this  
24 reformatting effect, but since the reformatting has not  
25 affected the substance of any of the rules, a synopsis

1     which I've marked as Exhibit Letter F can be published  
2     instead, which explains the changes that were made.

3             We request that the Commission approve such  
4     synopsis for publication in the *New Mexico Register*. I  
5     have included language regarding the synopsis in a draft  
6     order I've submitted for the Commission's signature, or I  
7     took the liberty of submitting.

8             The Division believes that the adoption of the  
9     proposed reformatted rules with a common effective date of  
10    February 1st, 1996, will comply with the new New Mexico  
11    Administrative Code, provide for better service through  
12    electronic accessibility to persons dealing with the  
13    Division Rules, and will improve the operation of the  
14    Division.

15            We intend on sending out the reformatted rules to  
16    every holder of our rule book within the next month, at --  
17    I checked and there's currently about 1070 rule books out  
18    there.

19            At this time I move that what has been marked as  
20    OCD Exhibits lettered A, B, C1 and -2, D, E1 and -2 and F  
21    be admitted into the record.

22            CHAIRMAN LEMAY: Without objection, those  
23    exhibits will be admitted into the record.

24            MR. CARROLL: And with that, I rest. Thank you.

25            CHAIRMAN LEMAY: Thank you.

1           Some questions of Mr. Carroll from the audience?  
2           Commissioner Weiss, any questions?

3                           EXAMINATION

4   BY COMMISSIONER WEISS:

5           Q.   Yeah, I think he answered the one.  You figure  
6   that this will replace the current rule book on February  
7   1st; is that correct?

8           A.   That's correct.

9           Q.   And then the other one, I guess Exhibit F here  
10   might be considered a cross-reference?

11          A.   Yes, it's parallel tables listing the old rule  
12   numbers and what the new NMAC numbers will be.

13          Q.   Will this be included in the new rule book as  
14   maybe a cover page for those who are used to looking at  
15   the --

16          A.   Yes, we intend on placing parallel tables in  
17   front of the new rules.

18                   COMMISSIONER WEISS:  That's all the questions I  
19   have.  Thank you.

20                   CHAIRMAN LEMAY:  Commissioner Bailey?

21                   COMMISSIONER BAILEY:  No questions.

22                           EXAMINATION

23   BY CHAIRMAN LEMAY:

24           Q.   I guess I have one, Mr. Carroll.  You reference  
25   the Oil and Gas Act.  Is there anything in the Rules that

1 would require the Water Quality Act to be included also?

2 A. That's part of the OCD -- Oil and Gas Act.

3 Q. Okay, that's a subsection of the Oil and Gas Act?

4 A. Yeah, 70-2-12 (B) 22 references the Water Quality  
5 Act.

6 CHAIRMAN LEMAY: Okay, thank you. that's the  
7 only question I had.

8 Any other questions of the witness?

9 MR. CARROLL: And --

10 CHAIRMAN LEMAY: Yeah.

11 MR. CARROLL: -- let me add to that.

12 We also publish in the rule book the delegation  
13 of authority under the Water Quality Act, in the back of  
14 the rule book where we've delegated certain responsibili-  
15 ties under the Water Quality Act.

16 CHAIRMAN LEMAY: Right, that's what I was  
17 referring to, that reference to the Water Quality Act, if  
18 that would be included.

19 That's all I have.

20 Any other questions?

21 If not, you may be excused. Thank you.

22 (Off the record)

23 CHAIRMAN LEMAY: We've conferred, and let the  
24 record reflect that the Commission has unanimously agreed  
25 -- or I should say, Commissioner Weiss, do you plan to sign

1 the proposed order?

2 COMMISSIONER WEISS: Yes, I do.

3 CHAIRMAN LEMAY: Commissioner Bailey, do you

4 agree to sign the proposed order?

5 COMMISSIONER BAILEY: Yes, I do.

6 CHAIRMAN LEMAY: And I agree to sign the proposed

7 order, so let the record reflect that final action was

8 taken on the reformatting of rules at this meeting.

9 And that's it, thank you.

10 MR. CARROLL: Thank you.

11 (Thereupon, these proceedings were concluded at

12 9:30 a.m.)

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## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO    )  
                                  )   ss.  
COUNTY OF SANTA FE    )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL January 18th, 1996.

  
\_\_\_\_\_  
STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 1998