

NEW MEXICO OIL CONSERVATION COMMISSION

Commission Hearing  
 Santa Fe, New Mexico  
 May ~~28~~<sup>19</sup>, 1999 -- 9:00 A.M.

Name	Representing	Location
William A. Sam	Samuel, Sam, Foye + Borden	Santa Fe
W. Kellahie	Kellahie + Kellahie	Santa Fe
FRANK GRAY	Texaco E&P	Midland, TX
Bill Hawkins	BP Amoco	Houston TX
FRED HANSEN	NMOSA	Santa Fe
Randy S. Spencer	Yates Petroleum	Artesia
Alan Alexander	Burdington	Farmington
Rick Foppiano	OXY	Houston
SUBORAH SEIGMAN	NMOSA	SFE

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: )  
APPLICATION OF THE OIL CONSERVATION )  
DIVISION TO AMEND AND ADOPT TAX )  
INCENTIVE RULES )

CASE NO. 12,169

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
ROBERT LEE, COMMISSIONER

May 19th, 1999

Santa Fe, New Mexico

OIL CONSERVATION DIV.  
99 JUN -3 PM 4:07

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Wednesday, May, 19th, 1999, 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.

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May 19th, 1999  
Commission Hearing  
CASE NO. 12,169

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## E X H I B I T S

OCD		Identified	Admitted
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\* \* \*

NMOGA		Identified	Admitted
	Exhibit 1	14	-

\* \* \*

Additional submission by Jane E. Prouty, not offered or admitted:

	Identified
Letter dated May 18, 1999	25

\* \* \*

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

FOR THE COMMISSION:

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FOR THE OIL CONSERVATION DIVISION:

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

(Continued...)

## A P P E A R A N C E S (Continued)

## ALSO PRESENT:

PAUL KAUTZ (present by telephone)  
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Hobbs District Office (District 1), NMOCD  
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Senior Advisor, Regulatory Affairs  
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R. FRANK GRAY (Representing NMOGA)  
Regulatory Compliance Manager  
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RANDY G. PATTERSON  
Secretary, Land Manager  
Yates Petroleum Corporation  
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W. PERRY PEARCE  
Attorney at Law  
Director, State Affairs  
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Santa Fe, New Mexico 87501

JANE PROUTY  
NMOCD Systems Analyst  
2040 South Pacheco  
Santa Fe, New Mexico 87505

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2           9:05 a.m.:

3           CHAIRMAN WROTENBERY: I think we can get started  
4           here this morning. This is Wednesday, May 19th, 1999, this  
5           meeting of the Oil Conservation Commission. We're here in  
6           the Oil Conservation Division's conference room in Santa  
7           Fe, New Mexico.

8           My name is Lori Wrotenbery, I'm Chairman of the  
9           Commission. To my left is Commissioner Robert Lee. To my  
10          right is Commissioner Jami Bailey representing Land  
11          Commissioner Ray Powell on the Oil Conservation Commission.

12          We also have Florene Davidson, the Commission  
13          secretary; Lyn Hebert, the Commission's legal counsel; and  
14          Steve Brenner, the court reporter. He's going to record  
15          the proceedings today.

16          And then by phone connection we have Paul Kautz  
17          from the Hobbs District Office. Paul, can you hear us?

18          MR. KAUTZ: Yes, I can.

19          CHAIRMAN WROTENBERY: Paul is the senior  
20          technical staff member in Hobbs, and he is the one who took  
21          the initiative to begin drafting the incentive rules. In  
22          fact, he got started just about -- I think the day that  
23          they were signed, if I remember right, Paul, if not before.  
24          And so he is participating with us today on that portion of  
25          our agenda dealing with the incentives, which we'll take up

1 momentarily.

2 We really have two major items to consider today.  
3 One is adoption of the rules implementing the new tax  
4 incentives, and the other is taking testimony on the  
5 proposed revisions to the notice rules and the procedural  
6 rules for the Oil Conservation Division and the Oil  
7 Conservation Commission.

8 We also had included on the docket a reference to  
9 amendments to Rule 104, but that particular item is being  
10 deferred to the next meeting of this Commission in June, so  
11 we won't be taking that up today.

12 We do have one quick item of business that we  
13 need to take care of before we start talking about the  
14 rules, and that's the minutes of the last meeting. I  
15 believe, Commissioners, you've had a chance to review the  
16 minutes of that meeting.

17 COMMISSIONER BAILEY: Yes, I have, and I move  
18 that we adopt minutes.

19 CHAIRMAN WROTENBERY: All in favor say "aye".

20 COMMISSIONER BAILEY: Aye.

21 COMMISSIONER LEE: (Nods)

22 CHAIRMAN WROTENBERY: Aye. Let me sign those on  
23 our behalf, quickly here.

24 And as I said, we're deferring any action on Case  
25 12,119, in the matter of the amendments to Rule 104, until

1 the next Commission meeting.

2 \* \* \*

3

4 CHAIRMAN WROTENBERY: So that gets us to Case  
5 12,169. This is the Application of the Oil Conservation  
6 Division to amend and adopt tax incentive rules. A copy of  
7 the proposed new rules and rule amendments went out with  
8 the docket for this meeting.

9 What we would like to do today is take the time  
10 to hear whatever comments people have on these proposed  
11 rules and also try to work through those comments and go  
12 ahead and adopt those today. This is a little bit of an  
13 expedited proceeding, because we want to go ahead and get  
14 these rules in effect as quickly as possible. Most of the  
15 statutes go into effect June 19th, I believe, and we'd like  
16 to have our rules in place at that time or shortly  
17 thereafter.

18 So we would like to go ahead and try to do what  
19 we need to do to give everybody a fair opportunity to  
20 present their comments today, and then go ahead and discuss  
21 any changes that we might want to make to the proposed  
22 rules and act on them at this meeting.

23 At this point, Commissioners, unless you have any  
24 questions, I'll call for appearances in this particular  
25 matter.

1 MR. CARROLL: May it please the Commission, my  
2 name is Rand Carroll, appearing on behalf of the New Mexico  
3 Oil Conservation Division.

4 CHAIRMAN WROTENBERY: Is there anybody else here?

5 MR. FOPPIANO: Rick Foppiano, appearing on behalf  
6 of OXY USA.

7 MR. GRAY: Frank Gray, appearing on behalf of the  
8 NMOGA Regulatory Practices Committee.

9 MR. PATTERSON: Randy Patterson of Yates  
10 Petroleum in Artesia.

11 CHAIRMAN WROTENBERY: Is there anybody else that  
12 plans to comment on these proposed rules today?

13 Well then, why don't we go ahead and have  
14 everybody who's going to testify on the proposed rules  
15 stand and be sworn in?

16 (Thereupon, the witnesses were sworn.)

17 CHAIRMAN WROTENBERY: Mr. Carroll, would you like  
18 to lead us on?

19 MR. CARROLL: Yes, what has been marked as OCD  
20 Exhibit Number 1 is a copy of the proposed tax incentive  
21 rules. Rule 30 is the Enhanced Oil Recovery Project Tax  
22 Incentive. This wasn't recently adopted or amended; this  
23 is from 1992, that was never incorporated into the OCD  
24 rulebook. And the Division believed this is the proper  
25 time --

1 CHAIRMAN WROTENBERY: Rand --

2 MR. CARROLL: -- or past the proper time to get  
3 the Enhanced Oil Recovery Project Tax Incentive into the  
4 rulebook.

5 CHAIRMAN WROTENBERY: -- do we have what you're  
6 looking at?

7 MR. CARROLL: Oh.

8 CHAIRMAN WROTENBERY: Is this the same thing that  
9 was in the Commissioner's notebooks, or have there been  
10 some changes?

11 MR. CARROLL: I'm going to give you some further  
12 changes. But it's the same, same package that's in your  
13 binders.

14 CHAIRMAN WROTENBERY: Okay.

15 MR. CARROLL: This Rule 30 is just a restatement  
16 of the current rule governing qualification for the  
17 Enhanced Oil Recovery Project Tax Incentive.

18 We have proposed one change to this rule, that's  
19 on page 2. It didn't show up well on the copy, but it  
20 would be a new definition, Number 6. And that definition  
21 would be a definition of "project area". And the  
22 definition of "project area" would mean "a pool or portion  
23 of a pool that is directly affected by EOR operations".

24 Other than that, this is just a restatement of  
25 the current rule, and that's the only change we recommend.

1           CHAIRMAN WROTENBERY:  Where did that definition  
2 of "project area" come from?

3           MR. CARROLL:  Mike Stogner, with the Engineering  
4 Bureau, did some research, and I think he got it from an  
5 old definition that was used for qualified tertiary area,  
6 and he thought it would work here also.

7           When we circulated this among the Division  
8 Districts, the District thought we needed a definition of  
9 "project area", and Mr. Stogner agreed.

10           If you'll flip to -- It's about the seventh page,  
11 it will be Rule 31, and what we've done here is amend the  
12 current Rule 712, which is the Production Restoration  
13 Project Tax Incentive, and this is to take account of the  
14 amendment made by the Legislature this year to change the  
15 two-year qualification period, which was January 1st, 1993,  
16 to December 31st, 1994, to a floating 24-consecutive-month  
17 window.  And those -- That was the only change in Rule 712,  
18 which we're renumbering as Rule 31.

19           And the reason we renumbered it and brought in  
20 the Enhanced Oil Recovery Project Tax Incentive was to have  
21 all the tax incentives in one place.  So the five tax  
22 incentives would be numbered 30 to 34.

23           Four pages past that is Rule 32.  This is the  
24 Well Workover Project Tax Incentive.  This was amended to  
25 take account of the amendment made by the Legislature this

1 year to change the way this incentive is applied. After  
2 July 1st, 1999, all the production from a well workover  
3 will qualify, albeit at a higher severance tax rate,  
4 although it's still lower than the regular severance tax  
5 rate. And I believe that's the only change made to 32.

6 Prior to that it was -- you had to project your  
7 production, and only the incremental oil would qualify. So  
8 that rule would apply to July 1st, 1999. And then this  
9 rule which we propose to make effective July 1st, 1999,  
10 will apply after that.

11 After that is Rule 33. This is a brand-new rule,  
12 and this is to implement the -- a new law enacted by the  
13 Legislature this year, giving a tax incentive to stripper  
14 wells. The Division every year will certify all the  
15 stripper wells in the state, or stripper-well properties,  
16 which is determined by the Taxation and Revenue  
17 Department's PUN number, and then it will be divided by the  
18 number of qualifying eligible wells within that PUN number.

19 In essence, then, it would apply to any property  
20 with less than 10 barrels of oil per day per eligible well  
21 or less than 60 MCF per day per eligible well.

22 If you'll flip past that to Rule 34, this is the  
23 New Well Tax Incentive, and this is a \$15,000 tax credit  
24 against an operator's liability for the Oil and Gas  
25 Emergency School Tax.

1           The Oil Conservation Division is required to  
2 certify the first 600 new wells, and only the first 600 new  
3 wells will qualify for the \$15,000 tax credit.

4           If you'll go to page 2, I have some changes that  
5 were made after this rule was put on the Internet and  
6 circulated.

7           If you'll look at (c), we had some comments from  
8 industry, and I checked with the District, and we should  
9 add after "Division Form C-103", we should put "or Federal  
10 Form 3160-5".

11           And then after "Form C-105" we propose to insert  
12 the words "or Federal Form 3160-4", because the District  
13 does accept the federal forms for these wells, so it might  
14 not be a C-103 or a C-105 that we receive.

15           (d) is in this rule. It wasn't in the original  
16 rule, but after talking to industry and the way the tax  
17 credit is applied, it will be to all the working interest  
18 owners in the well, not just the operator, and the operator  
19 will distribute or allocate that tax credit among the  
20 working interest owners according to their ownership  
21 percentages. So I've listed a list of all working interest  
22 owners in the well along with their percentage interests,  
23 which should be an easy listing for the operator to make on  
24 the form.

25           And then if you notice at the bottom, 34.E (3),

1 the operator is required to then notify all the -- and then  
2 we propose to insert the word "working" before "interest  
3 owners of approval and certification of the well as a new  
4 well."

5 Oh, my copy has got two -- a duplicate of the  
6 same page, the last page of Rule 34.

7 CHAIRMAN WROTENBERY: I just had one.

8 MR. CARROLL: Oh, okay. We have received some  
9 comments from industry. I just mentioned the ones that we  
10 propose to incorporate, and those are the changes made to  
11 Rule 34. Industry will let you know of other proposed  
12 changes.

13 Other than that, the Division believes that these  
14 rules, with the further amendments I just proposed, should  
15 be ready to adopt.

16 CHAIRMAN WROTENBERY: Thank you.

17 Did we receive any written comments on the rules,  
18 other than -- I know we received some from Mr. Gray.

19 MR. CARROLL: Those are the only ones I received  
20 written.

21 CHAIRMAN WROTENBERY: So I trust, Mr. Gray,  
22 you'll go over those with us in a minute.

23 MR. GRAY: (Nods)

24 CHAIRMAN WROTENBERY: Any questions for Rand?

25 COMMISSIONER LEE: (shakes head)

1 COMMISSIONER BAILEY: No.

2 CHAIRMAN WROTENBERY: Okay, thank you.

3 I guess we'll start over -- Mr. Foppiano, would  
4 you like to go?

5 MR. FOPPIANO: Rick Foppiano, again, with OXY  
6 USA. With all due respect, I'd rather defer my comments  
7 until after Mr. Gray speaks --

8 CHAIRMAN WROTENBERY: Certainly.

9 MR. FOPPIANO: -- since I participated in the  
10 development of his comments.

11 CHAIRMAN WROTENBERY: Okay. Mr. Gray?

12 MR. GRAY: The rest of that is Exhibit 1, but it  
13 may be 2, since you've got an Exhibit 1.

14 As indicated earlier, I'll be addressing the  
15 group here as a representative of the NMOGA Regulatory  
16 Practices Committee this morning, and I've passed out  
17 Exhibit -- I've labeled it Exhibit 1. Since Rand had an  
18 Exhibit 1, this may be 2. I'm not sure how that  
19 procedure --

20 MR. CARROLL: This is NMOGA Exhibit 1.

21 MR. GRAY: Right, NMOGA Exhibit 1. Okay.

22 In going through these comments that I have, I  
23 don't have any comments on Rule 30 or 31. I would like for  
24 you to turn to Rule 32, which is the top of my exhibit, and  
25 turn four pages back to the last paragraph, labeled 32.F.

1 That paragraph I would like to amend by adding at the end  
2 of the sentence where it says "well workover incentive tax  
3 rate effective July 1", I'd like to modify that to read  
4 "well workover incentive tax rate that becomes effective  
5 July 1, 1999."

6 The reason for that is that the intent of the  
7 authors of the bill and the Legislators was that any  
8 benefit not yet received on a workover that had been  
9 certified, even back to 1995, would be recovered utilizing  
10 this new tax rate applied to the 100-percent production.  
11 This above wording makes it a little clearer that that  
12 production on any certified well that had not yet been  
13 realized would be done at the rate that becomes effective  
14 July 1, 1999.

15 Did you want to discuss each of these issues as  
16 we go, or just get all of the information in and then --

17 CHAIRMAN WROTENBERY: Why don't we get all the  
18 information in and then maybe open the discussion. That  
19 might be --

20 MR. GRAY: Okay.

21 CHAIRMAN WROTENBERY: -- a good way to proceed.

22 MR. GRAY: Okay, that -- We go on to Rule 33,  
23 then, on -- halfway down the page on 33.C (3), speaking of  
24 "eligible well" definition. We would like to insert,  
25 following the word "injects", "or disposes and is integral

1 to production".

2 The reason for this is, a disposal well is often  
3 integral to the economics of the lease. Disposal of  
4 produced water is necessary sometimes to operate the  
5 marginal leases, keep them from having to be plugged out or  
6 abandoned, and the statute is unclear and we ought to  
7 clarify it right now, but we think that it ought to include  
8 disposal, saltwater disposal wells on the property also, in  
9 the well count.

10 Then on item (4) I just suggested we insert after  
11 the term "a single production number", in parentheses the  
12 initials "PUN", which is what most of us recognize  
13 production unit number as.

14 And then we turn to the second page of Rule 33.  
15 I think the exhibit as listed reflects the last four  
16 parentheses items under 33.D as (4), (5) and (6), and they  
17 really should be numbered (3), (4) and (5).

18 CHAIRMAN WROTENBERY: I think we've made that --

19 MR. GRAY: Yeah, we've already made that.

20 CHAIRMAN WROTENBERY: -- correction already.

21 MR. GRAY: On the one that was at the back, it  
22 wasn't yet done, but you've done that. Okay, good.

23 And I just wanted to open up for discussion, if  
24 it's appropriate to do so today, when we get to the  
25 discussion portion, how the OCD would handle the

1 calculation of the stripper property qualification in  
2 regard to the connection of OGRID and property ID numbers  
3 and pool numbers versus PUNs and so forth. If we could get  
4 that clarified at this point it might help to be on the  
5 record.

6 Then we move to Rule 34, New Well Incentive. I  
7 have nothing on the first page. On the second page, Rand  
8 has already indicated on the (c) there that federal form  
9 numbers would be utilized. That's good.

10 On your new exhibit, Rand, I'm not sure where --  
11 What used to be my (d), I think, may have moved to your  
12 (e), where it's talking about "the application is complete  
13 and correct".

14 MR. CARROLL: That's correct.

15 MR. GRAY: So I need to address that as your (e).

16 (ii), we would propose that that be changed,  
17 rather than saying "the well is producing" to "the well is  
18 capable of production." The well will have been tested and  
19 a Form C-105 or Federal Form 3160-4 will have been filed,  
20 but we might be waiting on a pipeline connection or other  
21 production facilities to be installed before we can  
22 actually put the well on production.

23 So in a sense, this is important that the first  
24 600 wells, we need to be able to get the wells certified as  
25 early as possible after completion, and so we would like to

1 change that to "capable of production" rather than actually  
2 "producing", as it's implied there.

3 Then down 34.E (3), Rand has indicated that we  
4 would insert the word "'working' interest owners". We  
5 would like to take that a little bit further at the end.  
6 And it's not in the handout that I gave; this is something  
7 that came up this morning over breakfast. We would like to  
8 add at the end of that sentence -- Or let me read the whole  
9 sentence:

10 "The operator shall notify all working interest  
11 owners of the approval and certification of the well as a  
12 new well, and it shall distribute the benefit incentive to  
13 working interest owners entitled to such benefit."

14 Now, Rand actually mentioned that, but I didn't  
15 know if it was in your comment or he actually inserted it  
16 up in your new (d) up here. If it's a duplication, we  
17 can -- That would be all right. But we wanted to make sure  
18 it was clear that the benefit would be distributed to the  
19 working interest owners.

20 That concludes my comments for the NMOGA  
21 Regulatory Practices Committee.

22 CHAIRMAN WROTENBERY: Thank you, Mr. Gray.

23 Does anybody have any questions or comments? We  
24 might just go ahead and hear from everybody and then come  
25 back and talk about the different issues. Okay.

1 Yes, Mr. Carroll?

2 MR. CARROLL: Yes, may I respond first?

3 CHAIRMAN WROTENBERY: Well --

4 MR. CARROLL: Okay.

5 CHAIRMAN WROTENBERY: -- we might want to -- I  
6 think there's some other folks. Mr. Foppiano, did you want  
7 to add anything?

8 MR. FOPPIANO: I don't have anything to add over  
9 what Frank Gray has already put in the record.

10 CHAIRMAN WROTENBERY: Okay. Mr. Alexander, were  
11 you going to make some comments?

12 MR. ALEXANDER: Not on these tax matters.

13 CHAIRMAN WROTENBERY: Oh, who am I -- Let's see.  
14 Mr. Patterson?

15 MR. PATTERSON: Yes.

16 Ladies and Gentlemen, my name is Randy G.  
17 Patterson, with Yates Petroleum Corporation in Artesia, New  
18 Mexico.

19 As most of you know, our company was -- very  
20 actively participated in the passage of these incentive  
21 bills and in the NMOGA efforts, with the committees and  
22 such, and I just -- I don't want to rehash everything that  
23 Frank has said, but I do want to put on the record that we  
24 echo and adopt the NMOGA comments as our own, and we very  
25 much would like to encourage the Commission to adopt these

1 regulations as presented by Mr. Gray and the NMOGA  
2 committee.

3 Thank you.

4 CHAIRMAN WROTENBERY: Thank you, Mr. Patterson.

5 Is there anybody else that wanted to present  
6 comments on this package of incentive rules?

7 Okay, then let's get into some discussion on  
8 these issues.

9 First let me ask quickly, we had proposed just  
10 today a change to the EOR rule. Has everybody had a chance  
11 to think about that one, to even look at the language and  
12 think about it? I'd like to...

13 MR. FOPPIANO: Well, my initial reaction was, I  
14 didn't really sense a problem with it. I've actually  
15 testified in these tax -- in the EOR tax incentive  
16 applications that OXY has filed at the Division level and  
17 even in *de novo* proceeding, and the issue of project area  
18 has not really been a problem, to my knowledge. Maybe it  
19 has been later on.

20 I think the idea of defining a project area as a  
21 geographical area is a good idea. I know the issue came up  
22 early on about defining "project area" as a geographical  
23 area and a listing of wells, and that has created problems  
24 down the road.

25 And so I would encourage that if we do see a need

1 to define "project area", that we keep it geographically  
2 based. And then what gets into the record, what the  
3 applicant files and the Division subsequently approves as  
4 the project area, being the geographical area, makes it  
5 much easier to administer the tax incentive at the operator  
6 level.

7 So here again, I wasn't aware it was a problem,  
8 but I have no problem with the definition as proposed.

9 CHAIRMAN WROTENBERY: Anybody else have any  
10 thought on that particular addition to the EOR incentive?

11 Then shall we go on to the issue related to the  
12 workover incentives? I think there's just one remaining  
13 issue there, if I remember right.

14 Mr. Carroll, did you want to comment?

15 MR. CARROLL: Thank you. The Division has  
16 discussed this internally, and 32.F is a direct restatement  
17 of the legislation, and we believe it is not within our  
18 authority to change the legislative language, and we would  
19 prefer to track what the Legislature did rather than making  
20 changes to the legislation.

21 That is found on 19 of the signed law. No,  
22 actually it's 21 of the signed law. And it does say  
23 effective beginning July 1st, 1999. So I don't believe we  
24 feel right in changing that language till that becomes  
25 effective July 1st, 1999.

1           CHAIRMAN WROTENBERY: I was anticipating that  
2 there might be somebody here from the Tax and Revenue  
3 Department, although I don't see anybody here today. I  
4 know that that particular issue is pending before the Tax  
5 and Revenue Department.

6           I'm not aware that they've made a determination  
7 on that issue, so I do think probably that in our situation  
8 we probably should track the statutory language, which then  
9 leaves it open for the Tax and Revenue Department to decide  
10 it as they see fit. I don't really think that we can, by  
11 our rule, affect the determination that rightfully falls  
12 with the Tax and Revenue Department, is my perspective on  
13 that particular issue.

14           I don't know if the other Commissioners have  
15 questions or if Mr. Gray or anybody else might want to make  
16 another comment on that.

17           MR. GRAY: I acknowledge that that is exactly the  
18 way the statute reads, and I was just in hopes that we  
19 could get some guidance here, some clarification of the  
20 wording from the OCD that would be beneficial to our cause  
21 here, and I understand your position that --

22           MR. CARROLL: Yeah, the Division believes it's  
23 within the Taxation and Revenue Department's authority to  
24 interpret this language, and I don't know if us enacting a  
25 rule would help industry in dealing with the TRD.

1 CHAIRMAN WROTENBERY: Questions?

2 COMMISSIONER BAILEY: No, not really. I know  
3 that there have been problems with trying to determine the  
4 intent of the Legislature at times. Much more comfortable  
5 with tracking their language and letting TRD make the  
6 determination.

7 CHAIRMAN WROTENBERY: Mr. Lee?

8 COMMISSIONER LEE: (shakes head)

9 CHAIRMAN WROTENBERY: Okay. Then I think -- I'm  
10 getting the sense that the Commission -- that we'll track  
11 the statutory language and defer that issue to TRD.

12 Were there any other issues on the workover  
13 incentive? I don't recall any.

14 I think the next one -- related to the stripper  
15 well; is that it? And the first issue of the stripper well  
16 incentive rule is the question about disposal wells.

17 Mr. Carroll, did you want --

18 MR. CARROLL: Right. Once again, the Division  
19 tracked the definition in the legislation, and the OCD  
20 definition is exactly the definition contained in the  
21 legislation, and we don't believe we can change that  
22 legislation through an OCD rule.

23 Now, we can interpret what is an injection well,  
24 and maybe that's what we should be discussing today, rather  
25 than changing the definition.

1           CHAIRMAN WROTENBERY: Mr. Pearce?

2           MR. PEARCE: Madame Chairman, if I may, I didn't  
3 stand. I am Perry Pearce, Director of State Affairs for  
4 Burlington Resources.

5           In regard to this, the disposal well issue, we  
6 have received a draft of a stripper-well calculation run  
7 from the OCD, and I notice that it has injection days  
8 assigned to individual PUNs. So between injection wells,  
9 there is some tie to the production unit number. And I'm  
10 wondering if in the disposal well system there is a similar  
11 tie. If I have a disposal well in a particular production  
12 unit number, do those show up on Division reports?

13 Clarification. I just don't know.

14           CHAIRMAN WROTENBERY: In fact, neither injection  
15 wells nor disposal wells are tied directly to the PUN. I  
16 might get Jane Prouty involved in this discussion.

17           Just to clarify for everybody, we have been doing  
18 -- developing the query of the ONGARD system that we'll use  
19 to generate the list of eligible stripper properties, and  
20 we've done a test run -- we're going to do a couple of test  
21 runs before the final list is developed at the end of June.  
22 But we've done a first test run that we sent out to about  
23 ten operators, including Burlington, and OXY I believe got  
24 one as well --

25           MR. FOPPIANO: Right here.

1           CHAIRMAN WROTENBERY: Yes. And just to try to  
2 help us identify any bugs in our system or in our query  
3 that we need to address before we send out our final list.

4           And we're learning some things in developing this  
5 system. One of the things that we learned is, neither  
6 injection wells or disposal wells are directly tied to the  
7 PUNs.

8           Jane, would you like to describe the process that  
9 you have gone through to identify injection wells that are  
10 integral to a particular -- production from a particular  
11 PUN.

12           MS. PROUTY: Okay, the PUNs are identified by  
13 well completion, which is the API and the pool. And  
14 apparently when a well changes from a producing well to an  
15 injecting well, TRD deactivates the PUN. But it's still  
16 left in the tables.

17           So I went through for every well that didn't have  
18 an active PUN and pulled the most recent PUN for all wells,  
19 and actually that picked up the injection wells.

20           So where there is -- where an injection well  
21 completion had a PUN number, it was summed in with the  
22 other wells in that PUN. And in many cases it didn't have  
23 a PUN number because it never was a producing well. Those  
24 were not included.

25           And we look at -- We've discussed this with TRD,

1 and we didn't necessarily come up with the best solution,  
2 and we look at this time as a fine time to come up with the  
3 best way to get PUNs assigned to all injection wells.

4 Now, as far as --

5 CHAIRMAN WROTENBERY: I might add too, that we've  
6 done just some initial analysis of the effect of including  
7 injection wells, and what we're finding is, we're really  
8 talking about a fairly small number of properties that are  
9 on the borderline. Most of them that we've identified  
10 qualify regardless of whether you count the injection wells  
11 as eligible wells. There's a very small percentage where  
12 counting injection wells may make a difference.

13 And so we're hoping through some of these test  
14 runs to refine our process a little bit, and get some help  
15 from operators too. We're obviously going to need some  
16 help from operators, where adding injection wells will make  
17 a difference in identifying the injection wells that are  
18 integral to the production process and counting those.

19 MR. CARROLL: Chairman Wrotenbery?

20 CHAIRMAN WROTENBERY: Yes?

21 MR. CARROLL: Yeah, we discussed this within the  
22 Division, and it turned out that purely injection wells  
23 that were drilled as injection wells don't show up on these  
24 reports. It's just the injection wells that were formerly  
25 producing wells. And then disposal wells aren't assigned

1 to a PUN.

2 So we're going to have to figure out some way to  
3 include the injection wells that have always been injection  
4 wells, that weren't converted.

5 CHAIRMAN WROTENBERY: Mr. Gray?

6 MR. GRAY: I know we report injection from every  
7 injection well on the C-115, and that data has got to be in  
8 ONGARD somewhere, so it should be able to pick out all of  
9 the active injection wells and injection days off of the  
10 C-115, some way, whether it's assigned to a PUN --

11 CHAIRMAN WROTENBERY: It is there, it's just not  
12 linked to the --

13 MR. GRAY: -- the PUN.

14 CHAIRMAN WROTENBERY: -- PUN, unless it's  
15 previously produced in that PUN. So...

16 Ms. Prouty?

17 MS. PROUTY: Excuse me, just a point that -- our  
18 discussion yesterday, trying to be sure we understood this  
19 came up, I believe what Lori pointed out was that the  
20 saltwater disposal wells tend to be in a different  
21 formation -- is that correct? -- which would put them in a  
22 different PUN anyway, by definition. So even though they  
23 don't have PUNs, they would not tend to end up in the same  
24 PUN as your producing.

25 CHAIRMAN WROTENBERY: And I will comment that

1 during the analysis of this legislation, while the  
2 Legislature was in session, we did discuss with the  
3 drafters what to include in our estimates of the impacts of  
4 this incentive and what not to include.

5 And during those discussions, what we understood  
6 the intent was, was that we would include those -- This may  
7 be an oversimplification, but basically the wells injecting  
8 into a producing zone in order to enhance recovery of oil  
9 and gas. And that was our assumption during the  
10 legislative session when we were trying to do our analysis  
11 of the scope and impact of this legislation.

12 MR. PEARCE: Madame Chairman, it seems to me if  
13 we solve the problem of injection wells that are drilled  
14 for injection in the producing zone -- which may be a  
15 straightforward problem to solve, I'm not sure -- that only  
16 leaves the very what I suspect is tiny universe of a well  
17 that's classified as a saltwater disposal well but is  
18 injecting into the producing horizon.

19 And as Ms. Prouty indicated she understood, I  
20 think that will happen very uncommonly. And if that  
21 happens, then I think that saltwater disposal well could be  
22 construed as increasing production, which would fit within  
23 the intent.

24 But perhaps if we provide an operator with some  
25 way to administratively petition for inclusion of those

1 days we take care of the problem, I don't know that it's  
2 ever going to happen. It may, but --

3 CHAIRMAN WROTENBERY: We're not sure that it's  
4 going to come up either, and if it does we think it will be  
5 a very small number of cases. Because as we've said, most  
6 of the properties qualify just on the basis of the  
7 producing wells.

8 Mr. Gray?

9 MR. GRAY: I agree with what Mr. Pearce has said  
10 and Ms. Prouty, both, that this is a very small number of  
11 deals and certainly not a deal-breaker of any kind.

12 I am very concerned, though, that we must find a  
13 way to make sure all the wells that were drilled as  
14 injectors are counted in the deal, because I think you'll  
15 find when you get into more of the waterflood projects and  
16 stuff that the count on injection wells will be very, very  
17 critical to the calculation.

18 It's pointed out that there is a place on page 2  
19 where an operator may make a request of the Division to re-  
20 evaluate a property if it didn't originally qualify.

21 So I think that party who feels like their  
22 disposal well might -- should be counted -- could take that  
23 avenue to re-evaluation. So that's not a big issue as far  
24 as I'm concerned, but I would suggest that we sure find a  
25 way to get all the injection wells counted in the

1 calculation.

2 CHAIRMAN WROTENBERY: And that's what we had  
3 envisioned. We think that we'll capture most of the  
4 properties through our run -- our query of the ONGARD  
5 system, but there are going to be some cases where because  
6 of errors or omissions from the system that an operator may  
7 have evidence to present to us, to show that the well,  
8 though it may not have ended up on the list -- or the  
9 property, though it may not have ended up on the list, is  
10 actually qualified for this incentive, and that's why we  
11 put that appeal mechanism in the draft rule.

12 MR. GRAY: And the way that the query has been  
13 made so far, it sounds like there could be a potential for  
14 an error in that, say a well was drilled as a producer in  
15 the deep rim and recompleted as an injection in an upper  
16 zone, it would have a PUN, an active PUN from the other  
17 deeper zone, so that process of actually looking back over  
18 PUNs may not be a good way to actually come up with even  
19 the injectors that are from the list.

20 CHAIRMAN WROTENBERY: It's not going to be a  
21 perfect method; it may be the best we can do. But that's  
22 what we're trying to work through with these test runs, and  
23 then we'll always have the opportunity to look at  
24 properties on a case-by-case basis to get a more precise  
25 determination if it's needed.

1 MR. PEARCE: Madame Chairman, if I may, one  
2 general comment. I want to express the industry's  
3 appreciation to the Division for the attempt it's making to  
4 simplify this stripper system.

5 There are some ways that this could be managed  
6 that are much more complicated and administratively  
7 intensive than the Division's proposal to come up with this  
8 list. It will make the Legislature's incentive much more  
9 valuable to the extent that we reduce the administrative  
10 burden, and that's not unnoticed. I mean, it's a big help.

11 CHAIRMAN WROTENBERY: Thank you, Mr. Pearce.

12 Mr. Foppiano?

13 MR. FOPPIANO: Yes, I'd just like to add OXY's  
14 full support of the comments just made by Burlington. We  
15 do appreciate the simplified process used in trying to  
16 certify these properties and also the idea that maybe the  
17 disposal-well issue is best handled on a case-by-case  
18 basis. I think one problem that hasn't been discussed is,  
19 it's not unusual for a disposal well to serve or be  
20 integral to production to a number of properties, and so it  
21 can be kind of difficult to decide, is it more integral to  
22 this property than to that property?

23 So I think maybe that is the best way to do it,  
24 in the language on page 2, allowing an operator to come in  
25 and ask for his property to be certified based on this sort

1 of example. This is obviously the best way to go on that  
2 and should cover that.

3 In reviewing the sample query, though, one idea  
4 occurred to me, and I just wanted to throw it out for  
5 consideration.

6 I notice that it says -- It's asking the  
7 operators to essentially go back and try to come up with a  
8 more accurate number of injection well dates for the  
9 injection wells. And I was just wondering, because we've  
10 run into this issue in other areas, in other states, if we  
11 could not make some determination based on the status of  
12 the injection well for that month, that the well is  
13 presumed to have been active for that entire month, and use  
14 those as the well dates, rather than ask an operator to go  
15 back through all his records for that particular well.  
16 Because quite frankly, I'm trying to figure out how we  
17 would do it, unless we went back and actually looked day by  
18 day at our monthly -- or daily pumper sheets, to determine  
19 whether that well was active on that particular day.

20 And I just was wondering if there's some way  
21 through either a status determination that's in ONGARD or  
22 whatever that we can make a presumption that it was active  
23 for the entire month, rather than have to go back and look  
24 well by well for all of our injection wells to see whether  
25 it was active for 25 days or 30 days or whatever.

1           CHAIRMAN WROTENBERY: We had considered that as  
2 one option, and so what we would like to do, probably, on  
3 that particular issue is sit down with you and discuss how  
4 that might be done and when that assumption would be  
5 reasonable. That would help us out.

6           Any questions, then, on this particular issue,  
7 further discussion?

8           Mr. Carroll, what you're proposing to do is to  
9 track the statutory language and --

10          MR. CARROLL: That is correct.

11          CHAIRMAN WROTENBERY: -- make the  
12 determination --

13          MR. CARROLL: And then have the Division --

14          CHAIRMAN WROTENBERY: -- on a case-by-case basis  
15 if there's a question about what well is -- what injection  
16 well is integral to production?

17          MR. CARROLL: That is correct.

18          CHAIRMAN WROTENBERY: There was also a suggestion  
19 to add the acronym PUN after a single production unit.

20          MR. CARROLL: The Division agrees to that.

21          CHAIRMAN WROTENBERY: And then on the question  
22 about the determination of production unit numbers and the  
23 relationship of OGRIDs and property codes, I think Jane  
24 actually answered that question a minute ago. Do you want  
25 to summarize, Jane?

1 MS. PROUTY: I actually was listening, but could  
2 you --

3 CHAIRMAN WROTENBERY: Well, this was -- I'm  
4 sorry, this was a question that was in Mr. Gray's handout:  
5 "How will NMOCD determine the stripper property  
6 qualification when ONGARD reports OGRID and property code  
7 numbers which do not tie to PUNs set by TRD?"

8 MS. PROUTY: Okay, thank you. Yes, even though,  
9 for example, on your production, when you report production  
10 on the C-115, we use the API pool as the owner of that  
11 production, and TRD's PUN tables are also tied to API  
12 pools. So we don't really use the property number in that  
13 instance.

14 So any well completion you report production for  
15 has the API pool, and that's how we get the PUN, directly  
16 in their tables.

17 CHAIRMAN WROTENBERY: And I think that covers all  
18 the questions on the Stripper Well Incentive.

19 Moving on to the New Well Incentive, it seems  
20 like there was really one issue remaining, and that was  
21 related to the status of the well as producing or capable  
22 of production.

23 Mr. Carroll?

24 MR. CARROLL: Thanks, Madame Chairman.

25 Now, once again, the Division is trying to track

1 the statutory language, and the definition of new well --  
2 This is the definition of a new well, "means a crude oil or  
3 natural gas producing well for which drilling commenced"  
4 within that time frame, and "that has been approved and  
5 certified as such by the" OCD.

6 So we certify it as a producing well that was --  
7 the drilling of which commenced in that time period. And I  
8 don't know if the Division is ready to certify a well as  
9 capable of production and make it qualify when the  
10 definition refers to producing.

11 CHAIRMAN WROTENBERY: Mr. Gray?

12 MR. GRAY: I would propose that that statement is  
13 used to define the well as something other than an injector  
14 or a monitor well or some other kind of well, that a  
15 producing well is a well that's intended to produce, not  
16 that it is physically putting oil down the line.

17 And we're not differing from that in stating that  
18 it's capable of production; that does verify that it is a  
19 producing well. This just takes care of the case where  
20 we've experienced times where we have to wait on a pipeline  
21 or to build our production facilities for several months  
22 for various reasons, where you do have a well capable of  
23 production that's tested on a C-105 or 3160-4 to be capable  
24 of production. It's completed as a producing well, but  
25 it's just -- you can't open the valve because you don't

1 have the facilities there to do it.

2 We just want to make that distinction here, that  
3 it is a producing well, that it is capable of production  
4 but waiting on facilities to be installed or some other  
5 reason.

6 MR. FOPPIANO: I might also add that the  
7 application must be filed within 60 days of the completion  
8 of the well as a producer. So when you have a completion  
9 status --

10 MR. GRAY: With a C-105.

11 MR. FOPPIANO: -- that really gets to the  
12 capability of production more than it is actually reporting  
13 production.

14 So there's other language in there that seems to  
15 give more to the data, or that the well is actually  
16 completed and capable of producing, as opposed to actually  
17 producing.

18 MR. CARROLL: The Division could go either way on  
19 this.

20 CHAIRMAN WROTENBERY: So if I understand Mr.  
21 Gray's argument correctly, what you're saying is, when -- I  
22 was looking for the language of the statute, actually.  
23 It's on page 2?

24 MR. CARROLL: Yes.

25 CHAIRMAN WROTENBERY: Ah, the definition of "'New

1 well' means a crude oil or natural gas producing well for  
2 which drilling commenced after January 1, 1999 and before  
3 July 1, 2000..." And Mr. Gray, you're saying that that  
4 term, "producing well" really refers to the type of well --

5 MR. GRAY: A producing well versus an injection  
6 well --

7 CHAIRMAN WROTENBERY: -- not the status of the  
8 well?

9 MR. GRAY: Right, not the status of the well, the  
10 type of well.

11 MR. PEARCE: Madame Chairman, if I may ask a  
12 question again?

13 CHAIRMAN WROTENBERY: Uh-huh.

14 MR. PEARCE: Division Form C-103, Federal Form  
15 3160-5, am I correct that those can be filed showing the  
16 well according to this language as a producer before the  
17 well is connected and producing?

18 MR. GRAY: The 105 and 3160-4, yes.

19 MR. PEARCE: In subpart (c) of the draft rule,  
20 34.D (4) (c), we require the operator to submit a copy of  
21 the form that's submitted to the Division or the feds  
22 showing the well as a producer. It may be that that  
23 satisfies the statutory requirement that the well be a  
24 producing well, and you can simply strike sub-item (d) (ii)  
25 altogether, so that (d) only requires that the applicant

1 submit certification that it's complete and correct,  
2 because the producing question may be handled by the filing  
3 of the form or the section above.

4 MR. CARROLL: The Division agrees with that.

5 MR. GRAY: I did overlook that proposed change  
6 when I was giving my testimony there. I had proposed that  
7 we strike "producing well" and make it read "producer" --

8 CHAIRMAN WROTENBERY: Uh-huh.

9 MR. GRAY: -- and that would -- you know, that  
10 again is defining the status of that well --

11 MR. CARROLL: So we would leave in "producing  
12 well" and strike out the change and then delete --

13 MR. GRAY: No, we'd go ahead and strike  
14 "producing well", insert the word "producer" there, and  
15 then, as Perry pointed out, you might be able to do away  
16 with (ii) entirely because you have so stated in your  
17 application that this is a producer.

18 MR. CARROLL: I don't understand the distinction  
19 between "producing well" and "producer".

20 MR. GRAY: Again, "producing well" might have the  
21 implication that production is going down the line. We are  
22 certifying with a C-105 that this well has a completion  
23 test and it is a producer and not an injector.

24 MR. CARROLL: Okay.

25 MR. PATTERSON: I think --

1 CHAIRMAN WROTENBERY: Mr. Patterson?

2 MR. PATTERSON: I think the clarification here is  
3 good, because when you get to number 598 and 599 and number  
4 600, there's going to be a horse race to see who gets in  
5 first for those incentive dollars --

6 CHAIRMAN WROTENBERY: Uh-huh.

7 MR. PATTERSON: -- and you don't want to create  
8 at that time a fight between somebody who has a shut-in gas  
9 well and somebody who comes on line with an oil well, and  
10 then you have the controversy, is this a producing well or  
11 is this well capable of production?

12 So I think it is a good clarification.

13 MR. GRAY: So our position would be that we  
14 change it above to strike "producing well" and leave it as  
15 "producer", and then still have a statement that it is  
16 capable of production, go ahead and leave the (ii) also. I  
17 think it would be a good distinction.

18 MR. CARROLL: Well --

19 CHAIRMAN WROTENBERY: May I ask if you leave that  
20 language "capable of production" in there, do you raise a  
21 question about a well that doesn't have a connection yet?  
22 I mean, arguably --

23 MR. GRAY: Under this --

24 CHAIRMAN WROTENBERY: -- it's not capable of  
25 production if it doesn't have the pipeline connection.

1           MR. GRAY: By filing a C-105 where you stated a  
2 production test, you state in there that it produced 10  
3 oil, 100 water, 50 MCF of gas, you have stated that it is a  
4 producing well, capable of production by the production  
5 test, and you're simply waiting on either construction of  
6 facilities -- you might be waiting for an endangered  
7 species booming time to be over with or something, that you  
8 can't get the well connected.

9           And you would not want to penalize -- This person  
10 has invested their money to drill a well and created jobs  
11 and all of that, so they shouldn't be penalized because  
12 they can't get a line hooked up to get production flowing.  
13 It is capable of production, but it's beyond their control  
14 to get actual oil going down the line.

15           MR. CARROLL: Madame Chairman, the Division  
16 agrees with Mr. Pearce's suggested solution that we believe  
17 it's duplicative to put (d) (ii) -- which is actually (e)  
18 (ii) now -- in if (c) is filed. I think it would simplify  
19 things and not leave that question open when we leave the  
20 words "capable of production" in there.

21           CHAIRMAN WROTENBERY: Okay. So, Mr. Rand, what  
22 you're proposing, that in number (c) we would change that  
23 provision to read, copies of the Division or federal forms  
24 showing the well was completed as a producer --

25           MR. CARROLL: That's correct.

1           CHAIRMAN WROTENBERY:  -- would be required, and  
2 then (d) would be amended to delete that second  
3 certification that the well is capable of production?

4           MR. CARROLL:  Right, it would just be that the  
5 application is complete and correct, which would  
6 incorporate the C-105.

7           CHAIRMAN WROTENBERY:  That seems reasonable.

8           Okay, would you mind reading those two provisions  
9 as they will read, then, Mr. Carroll?

10          MR. CARROLL:  (c) will read, "copies of Division  
11 Form C-103 or Federal Form 3160-5 showing spud date and  
12 time, and Form C-105 or Federal Form 3160-4 showing the  
13 well was completed as a producer; and".  Well actually,  
14 "and" will be struck there.  "and" will appear after the  
15 new (d).

16          And then (e) will read, "a statement under oath  
17 by the operator or its authorized representative having  
18 knowledge of the facts contained in the application that  
19 the application is complete and correct."

20          CHAIRMAN WROTENBERY:  I didn't follow you.  How  
21 did (d) end up (e)?

22          MR. CARROLL:  (d) was changed after this version  
23 was circulated on the Internet.  (d) reads, "a list of all  
24 working interest owners in the well along with their  
25 percentage interests; and".

1           If you'll refer to the Division Exhibit rather  
2 than Mr. Gray's exhibit --

3           MR. GRAY: Ah. Okay, that's where I got lost.

4           MR. CARROLL: -- that incorporates the change we  
5 made in inserting (d) but doesn't incorporate Mr. Gray's  
6 other changes.

7           CHAIRMAN WROTENBERY: Okay.

8           Any comments or questions from the Commissioners?

9           COMMISSIONER BAILEY: The \$15,000 credit is  
10 credited against the school tax, which is based on actual  
11 production; am I right? So there's no incentive for an  
12 operator to complete a well and never get a pipeline  
13 connection.

14           So I think that this clarification is necessary  
15 when you get down to 598, 599, 600, because that  
16 eliminates, by looking at where that credit is applied,  
17 there's no worry of wells that are never hooked up, because  
18 they don't get the credit until there's actual production.

19           CHAIRMAN WROTENBERY: Mr. Pearce?

20           MR. PEARCE: Madame Chairman, if I may, the only  
21 thing I'd point out in clarification of that, I believe the  
22 title of the New Well Incentive makes it clear that what  
23 the Legislature intended to incentivize was the capital  
24 investment, rather than the production.

25           I believe the legislation would -- Well, it does

1 lead me to conclude that if the State of New Mexico gets  
2 the investment and gets the jobs created to drill the  
3 wells, the State of New Mexico has gotten what the  
4 Legislature intended to try to encourage. It's not a  
5 production incentive, it's a job-creation, spend-the-money  
6 incentive.

7 MR. CARROLL: And Madame Chairman, the Division  
8 knows of no situation where a producer would spend tens or  
9 hundreds of thousands of dollars to complete a well to get  
10 a \$15,000 tax credit.

11 CHAIRMAN WROTENBERY: Okay. There was, I guess,  
12 one other recommendation that did not appear on your  
13 written materials, but it had to do with the notification  
14 to working interest owners and also a provision that  
15 requires in these rules distribution to working interest --

16 MR. CARROLL: Madame Chairman?

17 CHAIRMAN WROTENBERY: Mr. Carroll?

18 MR. CARROLL: I think once again, the Division  
19 would be stepping on the TRD's toes if we told TRD how to  
20 distribute the tax benefit. We think this is within the  
21 domain of the Taxation and Revenue Department, and we would  
22 like to stay out of how the tax is distributed and just  
23 certify the 600 wells as new wells.

24 CHAIRMAN WROTENBERY: Mr. Gray?

25 MR. GRAY: I may have led to some confusion

1 there. Our intent was that the operator not only shall  
2 notify but the operator shall distribute the benefit to the  
3 working interest owners who are entitled to such benefit,  
4 and not the TRD. Just wanting to make it clear to  
5 operators that they don't get the \$15,000 and put it in  
6 their pocket, that they must share this with the other  
7 working interest owners of the well.

8 MR. CARROLL: Madame Chairman, I think the  
9 listing of the other working interest owners and then the  
10 requirement that they be notified would be sufficient for  
11 Division purposes.

12 MR. GRAY: That may be, I haven't -- Excuse me,  
13 we haven't seen your new (d), to see before we made this  
14 comment, so that may clarify. It may be duplicative to put  
15 this in there too.

16 CHAIRMAN WROTENBERY: We did clarify that it was  
17 working interest owners that should be notified.

18 Mr. Patterson?

19 MR. PATTERSON: I agree that it does help to  
20 clarify it when you send in the list of working interest  
21 owners, and as Frank said, we did not know that was coming.  
22 But still, there's no language that indicates that those  
23 dollars should be allocated to the other parties that took  
24 the risk and spent the money.

25 And I just think that particularly because we

1 have several operators that are not too familiar with  
2 working in New Mexico, a lot of operators that are new to  
3 the State, you know, I just think it would be good to just  
4 clarify, for the OCD to say that this money that comes to  
5 the operator should be distributed to the other parties  
6 that took the risk and that spent their money also. That  
7 was the legislative intent, and I just think it would be a  
8 good clarification to make.

9 MR. CARROLL: Madame Chairman, the Division still  
10 believes it's up to TRD to interpret its own definition of  
11 "operator" and who is entitled to the tax benefit, and as  
12 long as we just certify what new wells qualify for the  
13 first 600, require a listing of the working interest owners  
14 and require notification, it's sufficient for our purposes,  
15 and if industry wants further clarification, I think it  
16 should be through a TRD rule rather than an OCD rule.

17 CHAIRMAN WROTENBERY: That was our thinking. The  
18 whole question about how to distribute the tax credit and,  
19 in fact, how the claimant should even file their claim is  
20 really a question that falls with the Tax and Revenue  
21 Department. I do understand that it's their intent to cut  
22 one check to the designated operator and then leave it to  
23 that operator to make the distribution to the working  
24 interest owners as appropriate.

25 I don't know that they've put that -- I don't

1 know that they've made a final decision on that question,  
2 and so it -- for one thing, it might be premature for us to  
3 anticipate that that will be the way that TRD sets up that  
4 process.

5           What we did think we could do, though, just to  
6 make sure everybody who needs to know was aware of the  
7 filing of the application, was to include this provision in  
8 here that would require notice to all the working interest  
9 owners. That's something we felt like the Oil Conservation  
10 Division could legitimately do.

11           MR. CARROLL: And then the working interest  
12 owners could take action against the operator --

13           CHAIRMAN WROTENBERY: Uh-huh.

14           MR. CARROLL: -- if it wasn't distributed.

15           MR. GRAY: Could I ask that (d) be read again in  
16 its entirety? I have some confusion as to exactly what it  
17 says. It may answer the question completely.

18           MR. CARROLL: Okay, it says all applications  
19 shall contain, and then (d), "a list of all working  
20 interest owners in the well along with their percentage  
21 interests". So that will be on the form. When we approve  
22 a form we send that form to TRD, so they'll be aware of the  
23 working interest owners.

24           And then in 34.E (3) the operator is required to  
25 notify all those working interests of the approval and

1 certification. So the other working interest owners will  
2 know that the credit is there, and then they can take  
3 whatever action they want to receive their percentage of  
4 that tax credit.

5 CHAIRMAN WROTENBERY: Mr. Carroll, you did  
6 propose to insert the word "working" before "interest  
7 owners" in 34.E (3)?

8 MR. CARROLL: That's correct.

9 MR. GRAY: I still think we have a shortfall here  
10 in that we don't go that extra step to say that the  
11 operator must distribute those funds. And I don't think  
12 it's a TRD issue, I think it's just a statement that the  
13 operator should distribute those funds to the working  
14 interest owners.

15 MR. CARROLL: The Division feels that may be  
16 beyond the authority of the OCD to order distribution of  
17 tax credit.

18 CHAIRMAN WROTENBERY: And for one thing, it may  
19 well be that TRD decides that each working interest owner  
20 needs to file their own claim. I don't think that that's  
21 the way they're headed, but that was one option I think  
22 that they considered at the outset, and I don't think  
23 they've made a determination finally on that particular  
24 issue. Although -- I should clarify -- I think they are  
25 leaning toward cutting one check, and they think that that

1 makes sense for everybody, yes.

2 MR. FOPPIANO: Madame Chairman?

3 CHAIRMAN WROTENBERY: Yes, Mr. Foppiano?

4 MR. FOPPIANO: May I be permitted the opportunity  
5 to further confuse the issue?

6 CHAIRMAN WROTENBERY: Please.

7 MR. FOPPIANO: I continue to wrestle with the  
8 first -- 34.A, the first paragraph, in light of the  
9 discussion about the desire of the Division not to get into  
10 the distribution of the proceeds. The first paragraph  
11 does, in fact, say that the operator -- it can be applied  
12 against the operator's liability. It seems to me to be  
13 real clear about -- or at least has some language that  
14 creates some idea as to who's benefitting from the tax  
15 incentive. And then we go on to say working interest  
16 owners.

17 I would just argue that whatever -- if we decide  
18 working interest owners, could we replace in that first  
19 paragraph, the last part of it where it's against the  
20 operator's liability, could we say against the working  
21 interest owners' liability? Or just whatever is consistent  
22 throughout this whole rule about who's getting the credit.  
23 Because I think that --

24 CHAIRMAN WROTENBERY: That is --

25 MR. FOPPIANO: -- that creates a big problem for

1 people who read this and say, Well, I'm the operator, I can  
2 pocket the check.

3 CHAIRMAN WROTENBERY: That's a good point,  
4 because then in 34.A we're referring to "operator" as it's  
5 defined in the tax code, and then in the rest of the rule,  
6 I believe, we're using the term "operator" as we typically  
7 use it, meaning the designated operator.

8 MR. CARROLL: Madame Chairman, 34.A restates the  
9 legislation again where it says the operator of a well may,  
10 upon completion of the new well, apply for and receive a  
11 one time credit against the Emergency School Tax.

12 CHAIRMAN WROTENBERY: Yes, and how is "operator"  
13 defined for purposes of that provision?

14 MR. CARROLL: Well, it's within -- This section  
15 will be in the Taxation and Revenue Department statutes  
16 related to the Emergency School Tax, so it will be  
17 interpreted according to that definition.

18 MS. HEBERT: Chairman Wrotenbery, that is also  
19 repeated in the legislation in other parts, in paragraph C  
20 where it says the tax credit may be applied only to the  
21 operator, oil and gas emergency tax liability.

22 MR. CARROLL: Madame Chairman, I think we're  
23 going as far as --

24 CHAIRMAN WROTENBERY: What are you reading?

25 MS. HEBERT: I'm looking at --

1 MR. CARROLL: -- page 2.

2 MS. HEBERT: -- page 2 of the statute, paragraph  
3 C.

4 CHAIRMAN WROTENBERY: Yes, and I understand that.  
5 I think Mr. Foppiano's point is, we use the "operator" at  
6 several different parts of this rule, and it has different  
7 definitions in each subsection.

8 In 34.A it's defined as it is -- It's defined by  
9 the tax code.

10 When we get down to 34.D (2), "The operator must  
11 apply for and be granted Division approval of the 'new  
12 well'", we're using the term "operator" there as the  
13 Commission-designated operator.

14 So we've got some confusion within our own rules  
15 about what we mean by the term "operator".

16 MS. HEBERT: Madame Chairman --

17 CHAIRMAN WROTENBERY: Yes?

18 MS. HEBERT: -- wouldn't it be that "operator"  
19 for the purposes is, it's not qualified under the 34.D (2),  
20 which would be clearly just the Division-designated  
21 operator, but then "operator" that's not qualified would  
22 just be however it is defined in the tax code? So it isn't  
23 -- Would that not be the distinction between the two uses  
24 of "operator"?

25 CHAIRMAN WROTENBERY: That's what's intended,

1 yes. I don't know if it's clear.

2 Let me ask you this, Mr. Carroll: Do we -- Is  
3 "operator" defined anywhere in a general definition, for  
4 purposes of our rules?

5 MR. CARROLL: Yeah, I believe it is.

6 CHAIRMAN WROTENBERY: So --

7 MR. GRAY: If you go back to the 32 and 33, it's  
8 defined as the person responsible for the actual physical  
9 operation of the well.

10 CHAIRMAN WROTENBERY: Uh-huh.

11 MR. CARROLL: Which I think tracks the OCD's  
12 definition. I don't have our rule book in front of me.

13 CHAIRMAN WROTENBERY: We don't have a definition  
14 of "operator" in this rule, so I presume we go back to the  
15 definition in the Division's general rules --

16 MR. CARROLL: That's correct.

17 CHAIRMAN WROTENBERY: -- which means the  
18 Commission-designated operator.

19 MR. CARROLL: Well, our definition doesn't even  
20 say the Division-designated operator.

21 CHAIRMAN WROTENBERY: Or the person --

22 MR. CARROLL: -- responsible --

23 CHAIRMAN WROTENBERY: -- responsible for the  
24 physical operation and control of the well.

25 In that case, you would have to read 34.A to say

1 it is the person responsible for the physical operation and  
2 control of the well that is eligible for the tax credit.  
3 That's the concern, I think.

4 MR. FOPPIANO: It just created some confusion.

5 CHAIRMAN WROTENBERY: So we need to rework 34.A  
6 to clarify that -- what we're referring to there as  
7 "operator" -- in that particular paragraph is "operator" as  
8 defined in the tax code, some way or another.

9 MR. CARROLL: Well, maybe we could somehow do  
10 away with -- I mean, we're referring to what they're doing  
11 at TRD.

12 MR. GRAY: That would be a possibility, if you  
13 just deleted A altogether.

14 MR. CARROLL: Maybe we should delete A and --

15 CHAIRMAN WROTENBERY: A altogether.

16 MR. CARROLL: -- just re-number B, C, D and E as  
17 A, B, C and D.

18 MR. PATTERSON: Madame Chairman, I would concur  
19 with that recommendation to delete A and re-number.

20 MR. FOPPIANO: I would too.

21 CHAIRMAN WROTENBERY: Any comments on that? I  
22 think that does avoid the problem.

23 And then everywhere else we use "operator" in  
24 this rule, it refers to the person responsible for the  
25 physical operation.

1 MR. CARROLL: Right.

2 MR. GRAY: Would it be a good idea, then, to  
3 actually insert the Division's definition of "operator"  
4 here under "Definitions", then, like it has been in 32 and  
5 33, just to clarify that?

6 MR. CARROLL: Well, then I'd propose to delete  
7 the definition of "operator" in 32 and 33, since it's very  
8 similar to the general definition, and it would shorten the  
9 rule --

10 CHAIRMAN WROTENBERY: Ms. Hebert, do you have  
11 that general definition before you?

12 MS. HEBERT: "'Operator' shall mean any person or  
13 persons who, duly authorized, is in charge of the  
14 development of a lease or the operation of a producing  
15 property."

16 MR. CARROLL: Oh, well, that would be Division-  
17 designated, then, "duly authorized". So let's delete the  
18 definitions of "operator" in 32 and 33.

19 CHAIRMAN WROTENBERY: Okay.

20 MR. CARROLL: And Madame Chairman, I forgot to  
21 bring this up earlier, but attached to Rule 34 is our  
22 proposed Form C-142, the Application for the New Well Tax  
23 Credit. Actually, we should probably change that to  
24 Application for New Well Status, because they're not  
25 applying for the tax credit with the Division; they're

1 applying for the status of their well as a new well.

2 CHAIRMAN WROTENBERY: That's right. This is the  
3 first I think most people have seen this --

4 MR. CARROLL: That's correct.

5 CHAIRMAN WROTENBERY: -- form, correct? So...

6 MR. CARROLL: Yeah, it was just finalized  
7 yesterday.

8 CHAIRMAN WROTENBERY: Okay. So this is something  
9 we would like comments from NMOGA and anybody else who's  
10 interested in helping us put this form together, so we can  
11 get that finalized.

12 Were there any changes to other forms required?

13 MR. CARROLL: We don't believe so.

14 CHAIRMAN WROTENBERY: Okay.

15 MR. GRAY: There should be a change in 140, the  
16 workover incentive, to where it's -- currently requires you  
17 to give your decline curve and production projection and so  
18 forth. The C-140 would need to be changed.

19 CHAIRMAN WROTENBERY: Let me ask, Mr. Kautz, are  
20 you still with us?

21 MR. KAUTZ: Yes, I am.

22 CHAIRMAN WROTENBERY: Have you been working on  
23 some changes to the C-140?

24 MR. KAUTZ: I submitted those about a month ago  
25 by e-mail.

1 MR. CARROLL: Oh, I didn't attach that to --

2 CHAIRMAN WROTENBERY: Okay.

3 MR. CARROLL: But that's outside of the rule.

4 CHAIRMAN WROTENBERY: Any other forms needed to  
5 be revised, Mr. Kautz?

6 MR. KAUTZ: Just the C-139 and C-140, they need  
7 to be revised.

8 CHAIRMAN WROTENBERY: Minor revisions to those  
9 two?

10 MR. KAUTZ: Yes.

11 CHAIRMAN WROTENBERY: Okay.

12 MR. KAUTZ: It would probably, on 139, require an  
13 indication of what the two-year period is, where before it  
14 was given as "a certain two-year period" --

15 CHAIRMAN WROTENBERY: Yes. Mr. Pearce?

16 MR. PEARCE: Madame Chairman, if I may, on the  
17 proposed Form C-142, item Roman numeral IV, in light of the  
18 changes we made previously I think that needs to be changed  
19 to insert the federal form numbers.

20 CHAIRMAN WROTENBERY: Uh-huh, good point. We'll  
21 be continuing to work on these forms over the next few  
22 weeks, so if you have a chance to take a look at them and  
23 give us any comments, we'd appreciate that.

24 MR. GRAY: Just right off the top, under Roman  
25 numeral V, item 3, we would strike that too, if the well is

1 producing.

2 MR. CARROLL: Uh-huh.

3 CHAIRMAN WROTENBERY: Right.

4 MR. GRAY: This doesn't exactly require that deal  
5 about attaching the working interest owner list. It should  
6 reflect that, actually, on the working interest owner list.

7 MR. CARROLL: Uh-huh.

8 CHAIRMAN WROTENBERY: I think now we've gone  
9 through all the comments. Am I forgetting anything that  
10 was brought up in the testimony today?

11 Okay, what we will do is get a clean copy of the  
12 incentive rules with the changes that we've discussed today  
13 and a proposed order, and we'll bring that back up at the  
14 end of the meeting and take action on it at that point  
15 today.

16 COMMISSIONER BAILEY: Fast work.

17 CHAIRMAN WROTENBERY: Fast work. And ordinarily  
18 we wouldn't do it this fast, but we're trying to get these  
19 rules in place, basically -- roughly at the same time the  
20 legislation goes into effect.

21 COMMISSIONER BAILEY: I see.

22 CHAIRMAN WROTENBERY: Okay.

23 MR. GRAY: Madame Chairman?

24 CHAIRMAN WROTENBERY: Yes?

25 MR. GRAY: As a clarification, though, today we

1 will not necessarily approve the forms, right?

2 CHAIRMAN WROTENBERY: We will not approve the  
3 forms today; we'll just plan to adopt the rules today.  
4 We'll continue to work on the forms.

5 It's about 10:15 now. Why don't we take a ten-  
6 minute break, come back about 10:25, and move into the  
7 notice case?

8 (Off the record at 10:17 a.m.)

9 (The following proceedings had at 1:01 p.m.)

10 CHAIRMAN WROTENBERY: Okay. Then, Mr. Carroll,  
11 did you have the materials, the draft order on the  
12 incentive rules?

13 MR. CARROLL: Yeah, I just got them.

14 CHAIRMAN WROTENBERY: There's just the one copy?

15 MR. CARROLL: Yes.

16 CHAIRMAN WROTENBERY: Okay.

17 (Off the record)

18 CHAIRMAN WROTENBERY: Okay, we've got here a  
19 draft order of the Commission adopting the new incentive  
20 rules and the revisions to the existing incentive rules.  
21 We've had a quick opportunity to review this order.

22 COMMISSIONER BAILEY: And just for clarification,  
23 the language always tracks the statutory language and not  
24 modifications as suggested today?

25 CHAIRMAN WROTENBERY: I think that's true, except

1 in one circumstance, and that had to do, perhaps, with the  
2 issue of what was meant by a producing well in the New Well  
3 Incentive, and I think we decided there that that meant it  
4 was a well that had been completed as a producer.

5 COMMISSIONER BAILEY: I think it's important that  
6 we have clarification before we sign --

7 CHAIRMAN WROTENBERY: Yes, yes.

8 COMMISSIONER BAILEY: -- what was decided.

9 CHAIRMAN WROTENBERY: Yes. Can you think of any  
10 other --

11 MR. CARROLL: No, I can't.

12 CHAIRMAN WROTENBERY: -- changes that we made  
13 along those lines?

14 MR. CARROLL: No, we retained the statutory  
15 language.

16 CHAIRMAN WROTENBERY: Yes. Okay, I'll entertain  
17 a motion, then, to adopt this order.

18 COMMISSIONER BAILEY: I intend to sign this  
19 order.

20 COMMISSIONER LEE: I second.

21 CHAIRMAN WROTENBERY: All in favor of adopting  
22 this order indicate by saying "aye".

23 COMMISSIONER BAILEY: Aye.

24 COMMISSIONER LEE: Aye.

25 CHAIRMAN WROTENBERY: Aye.

1           Okay, great. Thank you very much. Do we have  
2 anything else that we need to take up today?

3           Well, thank you for everybody's patience and  
4 everybody's input. I think it was a real constructive  
5 session today, appreciate it.

6           (Thereupon, these proceedings were concluded at  
7 1:03 p.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 May 23rd, 1999.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 2002