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. 12,177
IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION DIVISION TO DISCUSS POSSIBLE AMENDMENTS TO 19 NMAC 15.C.104, PERTAINING TO THE NOTICE REQUIREMENTS THROUGHOUT THE RULES, INCLUDING 19 NMAC 15.N	ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSION HEARING

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

April 22nd, 1999
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, April 22nd, 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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I N D E X

April 22nd, 1999
Commission Hearing
CASE NO. 12,177

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D O C U M E N T S S U B M I T T E D

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A P P E A R A N C E S

FOR THE COMMISSION:

LYN S. HEBERT
Deputy General Counsel
Energy, Minerals and Natural Resources Department
2040 South Pacheco
Santa Fe, New Mexico 87505

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WHEREUPON, the following proceedings were had at 11:05 a.m.:

CHAIRMAN WROTENBERY: And now we're going to take up the proposed notice rules. This was part of Case 12,119, but we have pooled the notice provisions out of that particular case and put them into a new case, 12,177. This is the matter of the hearing called by the Oil Conservation Division to discuss possible amendments to 19 NMAC 15.C.104, pertaining to the notice requirements throughout the rules, including 19 NMAC 15.N -- Part N, I guess, is what we call that.

And I believe we have also received from NMOGA a memo on the proposed notice rules. Mr. Kellahin and Mr. Foppiano are here to make a presentation to us on that particular issue.

So if you'd like to go ahead?

MR. KELLAHIN: Madame Chairman, members of the Commission, I'm Tom Kellahin of the Santa Fe Law Firm of Kellahin and Kellahin. I'm appearing on behalf of the New Mexico Oil and Gas Association, in association with Mr. Rick Foppiano. We are the co-chairmen of the Regulatory Practices Committee.

Previously to the hearing, we have submitted to the members of the Commission the latest draft of the NMOGA-proposed notice changes. In addition, I have passed

out to you this morning, and you have before you, some additional items. I thought it might be helpful to have you have before you all eight pages of current Rule 104 so you can see how complicated it is.

Mr. Carr and I have made a sizeable practice out of trying to understand the current rule, and he is particularly distressed that he now has a proposed rule that even a junior-high kid can probably read and figure out, and no one needs his services. Be that as it may, you can see where we are.

Rule 104.A is undisturbed.

Rule 104.B and C were addressed by Mr. Foppiano and Mr. Stogner when we talked about locations in April.

As you turn through the pages, you're going to find, starting with 104.F, some of the procedures that establish the administrative processing. The shorthand is that if we're talking about administrative procedures, it is the part of the practice before the Division that does not yet include hearing before an Examiner.

As you continue to turn the pages, you're going to find some things that are unchanged by the Committee effort when we talk about notice. There are some other sections, and the practice in 104 has been to add a new letter every time we thought of something new to do, and it's confusing. And you may choose within the context of

either 104 or the notice process to pay attention to how this is organized, because really it is awkward.

After that, you have in the handout two replacement pages. There's a replacement page to the NMOGA notice rules that replaces pages 3 and 6. The replacement language is shown on those pages in italics. And when I get to those pages, we'll talk about what was changed and why. But those are two replacement pages.

To tell you how long we have been working on this, I have put together a chronology, which is the next thing you have in the handout. There are two pages.

Back on October 30th, 1997, Director LeMay asked me and Mr. Carr and Mr. Carroll to be a group of attorneys to take a first cut at at least identifying the notice issues within the entire spectrum of the Division Rules and Regulations and start from there, and that's where the outline starts, that's where the chronology begins.

And so by January 15th of 1998, I have prepared a working discussion draft. It goes through a series of editing changes. It includes conversations with the Division technical people, Mr. Stogner and Mr. Catanach, Ms. Hebert, Mr. Carroll.

I want to represent to you that their comments and suggestions were simply that. The final work product that you see today is not intended to represent their

approval of any of this. They simply provided comments, debate, discussions, not unlike what Mr. Gray and I had a while ago, to try to see if we could put our hands around some of the notice problems. So when I make reference to the fact that they participated, it's in that way. We had detailed discussions with Mr. Carroll and Ms. Hebert and myself on various drafts, all the way through August and October of 1998.

During that entire time, the Association's Regulatory Practices Committee is also working on their own proposal. They're taking these items and discussing it as industry people.

By the time we get to the January 14th Commission hearing that initially addressed this topic, the Oil and Gas Association has a pretty refined product. We are into our seventh draft of this activity. And so when I delivered to you on April 7th our proposal, it was the eighth draft.

It doesn't necessarily represent every possible thing you could do. We've attempted to look at all the notice issues so that you can see our perspective. Ms. Hebert could aid you in looking at some at some of the drafts the attorneys put together early on. The strategy was for the lawyers to be as nit-picking as possible, to be as particularly fussy as we could. And the early drafts

were incredibly broad in the people that were identified and given notice to. So we gave a huge palette to work with.

And we in the industry found it was easier to work from the extreme and see where you could take and omit notice, make it better, make it useful, because we were trying to balance this problem. The dilemma is to balance adverse impacts on correlative rights with meaningful opportunity to continue to conduct your business. And if the threshold is so high that you can't change the rules for any reason, then we're wasting our time. And so where we started was a huge road, and we've refined it down to what you're about to see.

In addition, you need to recognize -- I hope you'll appreciate the fact that the notice committee at NMOGA had the same kind of attention and detail involved as the 104 did, and I have shown you the major industry participants in the next part of the handout. These are major players. These people came to all the meetings, you'll see the meetings attended to, that we have spent hundreds of hours talking about this stuff. And I wanted to give thanks and credit to the companies and particularly to the individuals that have participated, and their names and companies are listed.

The next thing you're going to find is my attempt

to summarize the changes. I found that once I put aside the work product, the 23 pages of details of the rule, that sometimes I lost track of where I was. And so I've prepared a summary in an effort to focus for your attention what we're trying to do. And so as you later walk through the details of how we tried to do it, you'll see our point of view.

First of all, we started with 104.D, and that is the nonstandard proration units. Currently, this is the requirement: If you want a nonstandard proration unit, the affected parties are all categories of owners within what would be a standard spacing unit from which you're creating the nonstandard unit, which is just part. And it's those parties being excluded. Everybody concedes those people have a vested property interest that is being affected by carving them out. And so they are all categories of owners being sent notice, and we propose no change to that.

In addition, there is categories (2), (3) and (4). I focus your attention on this organization, because it is consistently repeated for each of the activities engaged in by the Division. And so as we look at each activity, you need to decide if there's a difference that matters or if you want it as detailed a notice as you could have.

And so that's my effort, is to show you those

items.

Item (2), offset operators to adjoining spacing units. The argument is, they have a higher priority, in terms of having correlative rights adversely impacted, than an owner in a spacing unit not yet drilled. The industry makes a distinction because they believe an operator has a higher exposure to his correlative-right risk. He has -- He or they or she have invested their money and put it in the ground. And they have committed themselves to a well location, a spacing-unit configuration, and they are impacted by an offset operator who might want a different size applied to his well. The industry was unanimous in suggesting that the operator of offset spacing units adjoining the proposed nonstandard proration unit be maintained.

And then we got down to a difference. The difference is in 3 and 4. If your spacing unit offsets an undrilled tract where you have lessees, or in the absence of lessees you have mineral owners, the current rule requires notice. To the best of my knowledge -- and Mr. Catanach may have an example, but I am hard-pressed to think, after all these years of this rule, ever seeing an example of an offset undrilled tract protesting. I don't know if it's ever happened. And if they've protested, I'm having trouble understanding what I would show on their

behalf to defeat the application.

So we made a decision. Commissioner Bailey has expressed a point of view with regards to 104 and the infill well that is the alternative argument. There may be interest owners who have not yet drilled, who may believe that it's important to be told. And so if you share that opinion, then you have to apply that standard of notice, recognizing that the industry has to bear the expense of that activity. And so wherever you tip the scale, you're balancing in one direction and taking off of another.

The reason the Committee chose to delete those items is, one, we couldn't think of a protest, and then we couldn't think of how you would defeat it if you did. And second of all, we thought if the opportunity is there for you in an undrilled tract, then you haven't committed your resources, you haven't drilled your well, and you could have a like-kind nonstandard proration unit and you could take advantage of what was happening to you and neutralize any problem.

All of this is intertwined in the concept of correlative rights, and you need to look at the Division's rule or definition in the rulebook. That definition is consistent in Kansas, Oklahoma, Texas, New Mexico, in *Williams and Meyers*, you can call Professor Kramer or Martin or Anderson and all those guys, and they're going to

give you the same definition. It's in all the books. The point of difference is that Mr. Carr and I can come with the same fact situation and that same definition, and we can argue all day as to differences. You need to look at it.

Correlative rights is not a vested property right, it is not an absolute guarantee. It simply says it's an opportunity. And if you sit on your opportunity, you can lose it. It's sort of the compete or get out of the way. It's the chance to have your share of that resource, but if you choose to hold your inventory, if you choose to be an industry dinosaur and you don't want to compete, you just want to hold your reserves or your inventory, the rule is, you lose. If it's portrayed as something more, it's not a vested property right. You simply have to exercise your opportunity or you forfeit it.

Correlative rights, to me, means that if an operator has exercised his correlative rights and put his money in the ground then he deserves some protection in not changing the rules of the game without telling him. If you haven't exercised your opportunity, then you stand a chance to have those affected by rule changes, and you simply need to keep informed or start competing. That's the difference, I think.

So that's the nonstandard proration units. We've

come to a consensus about what you'll see when we wrote the language of the rule, but that's what we were trying to do, minimize the notice requirement.

104, we're dealing with 104.F, it's the unorthodox well locations. You'll see that I've attached about -- either before or after this, a map. And I'll use the map in a moment to help you illustrate what I'm trying to explain.

Consistently through the notice rules, we have chosen to use affected parties. It is an effort to be consistent in the notice rules because as you read them now, there are different words that apply. Sometimes it's "operator", sometimes it's "interest owner", sometimes it's "owner", and there is not a consistent use of terms.

So we have chosen "affected parties", and then within each category of activity, we have chosen to describe who the affected parties were.

For example, we have organized them in such a way that the current rule says affected parties, in an unorthodox well location example, are those parties towards whom the well encroaches. Years ago the rule was different, but that's the rule now, and we've agreed that that's the one that ought to apply. No use notifying somebody on the other side of your spacing unit, away from whom you're moving. You know, how do they care? They're

happy to see you go the other direction.

So here's what we're doing. The current rule is, you notify offsetting operators in adjoining spacing units. The presumption is, they are competing in the same pool.

The second category is, in the absence of an offsetting operator, then it's the lessees of adjoining leases. Therein lies a problem. It doesn't impose -- or it doesn't address the fact that the size and shape of the leases adjoining you may be 40 acres, 80, or 320 or 640. And so if you read the literal words and you're encroaching on an 80-acre offset, you notify that owner only, and if your encroachment is to the next lessee who would have been included in the spacing unit had there been a well, he gets no notice. The Land Office gets no notice in that circumstance. They're just out of the loop.

It says then, third, in the absence of an operator or a lessee, and then it says mineral owners. But it fails to describe what the area is within which you have to have a mineral ownership. The notice rule is ambiguous, it's flawed, and it invites a change.

And so the proposed change is this: It introduces a formal rule that adopts an informal practice that we have. The practice is to engage in a concept that says "existing adjoining spacing units" and "prospective adjoining spacing units". What that means is, an existing

adjoining spacing unit simply contains a producing well, while a prospective spacing unit is a hypothetical unit which does not yet have a producing well. Having created that definition, it gives us an opportunity, then, to be very specific on the notice rules.

For example, if you'll take the diagram, I've color-coded it so I can give you an illustration. The illustration is that in the north half of 16 the yellow acreage is a laydown north-half spacing unit. The operator proposes to put the well 660 out of the northeast corner. You see the red dot. That well, under the current rules, is standard as to the north boundary, but is currently unorthodox as to the east boundary. The question is, to whom do you send notice? The current practice is that even with or without wells, nobody in 9 gets notice. The reason is, you're not closer to the side boundary than standard, nobody's affected, they're out of the loop.

If you look at 15, the practice is to send notice. The problem is, to whom? If 15 has the north half dedicated to a producing well, then you send it to the operator of that spacing unit. That leaves open the southwest quarter. There's no encroachment on the southwest quarter. You would have to be on the southeast end of the north half of 16 to encroach on the southwest quarter. You can get a compass out and demonstrate it to

yourself. So the southwest quarter of 15 gets no notice.

What happens if there's no well in 15? The dilemma is, do I have to notify everybody in the northeast, northwest and southwest of the section because there's not yet a spacing unit?

We came to this solution: We said that rather than speculate on the orientation of the future development in 15, you did this: You notified the owners in the northwest quarter, and you stopped. So if there's no well, you're going to find the lessees, mineral owners, in that quarter section, and you're going to send them notice because they are going to be impacted whether it's a laydown or a standup.

And if you're in the next quarter away, we think you're so far removed from an NSL that you're not impacted. I guess hypothetically you might be; if you decide you want to be fussy, I guess you do it. But we had to draw a line. And sometimes, if you have to find the ownership in three quarters of a section, it's a huge burden. And people sort of choke when they have to spend $40,000 to search title. If you're in Bloomfield or Aztec or -- there's examples down in Artesia and elsewhere where you get close to town lots and stuff, it's a big problem. What we're doing now is, we're guessing, and sometimes we guess conservatively and we send notice to three-fourths of the section. It's a

nuisance. You need to decide, does it matter? And if so, to whom do we send it?

Our choice was to do as what I described, is that you send it to the owners in the northwest quarter. Look at 10. We have come to agreement, at least among the lawyers, about how to recognize that issue. That well encroaches on a portion of Section 10. And so we notify the operator and, in the absence of an operator, the owners in 10. The suggestion here is, it would be the southwest of 10 only.

We have agreed upon, among ourselves, that we are going to define "adjoining" as meaning connected or contiguous on a side or a corner towards which the well encroaches. So "adjoining" as defined here covers the corner, the diagonal or the side that you're encroaching, and that's what we're trying to say there.

We've given you some of the reasons, there are certainly more. First of all, it clarifies the notice obligations. We are using a term of art to say we're notifying an operator, and that operator is the Division-designated operator. We don't want to be caught in a trap of figuring that somebody is operator under a joint operating agreement and we don't know who they are. We want to go to the Division records, look at that well file and see who the Division has approved by designation as the

operator. Easy to find, they get the notice, we're done. We don't want to search for some operator that says he's the operator and has not told you he's the operator.

We've tried to resolve the ambiguities in the language of what adjoining leases mean. We've simply wiped that out in terms of finding an identified area, and we've tried to focus the notice issue on that category of people that we think are directly affected, and so that's where the debate was engaged. We spent a considerable amount of time talking about notice to a bigger group, and this is where we've come out.

The next topic that we dealt with was downhole commingling. The current rule provides that you send notice to all categories of owners in your spacing unit, if you're going to commingle that production, if there's a difference of identity or percentage between the two pools being commingled. Absolutely required, no dispute about it, that is fair, you impact them. Because if you commingle, you're going to allocate based upon a formula, and that formula needs to be fair. And so there's a chance that if your commingled interest is only in one pool, then that commingling could result in you receiving less than your share. That stays the same.

The part of the rule we're asking you to change is, the current rule says notice to offset operators. We

do it. We asked this Commission a few years ago to take it out. It stayed in because -- and here was the argument -- it was not that it was important to correlative rights; the offset people, some of them, wanted the work product of the applicant. They wanted the data, the information, they wanted to be told it was happening to them so that they could see what was going on.

If they take care of their own business, they can get the application. But we thought, why do we send it to them? There was testimony about the fact that in many instances, Burlington/Amoco would get it from each other and throw it in the garbage can. They didn't do anything with this stuff, throw it away.

We're trying to save some paper and the nuisance of sending the notice. We're asking you to take it out now. We asked before, you didn't. We can't think of a reason to keep it. And so that's that point.

Number (4) on page 4 is an item of significance. I needed to highlight because you wouldn't necessarily recognize what we think is the importance. And that is how the Division handles objections to administrative applications.

Here is what happens: If a timely objection is filed the Division notifies the Applicant, either by letter or phone call, and either, one, puts the case on the docket

and tells the applicant to send new notices. If they put it on the docket too soon, you can't satisfy the 20-day notice period, and all of a sudden you're into a month delay. The alternative is even worse. Occasionally the administrative application, if objected to, is simply returned by mail to the applicant, and told to refile.

We think that extra delay invites a solution that streamlines the process, and we're suggesting what they do in other states. Mr. Foppiano tells me this is what happens in Texas, is that if a timely objection is filed, the Division notifies the applicant and the objecting party in writing, puts it on the next available docket, and that's the end of that. No additional notices are sent out, you don't run through the traps again, you don't start over, you don't go in circles, the process moves ahead.

And I will tell you, time is more important than money. We have cases before you that aren't advanced, not because of money but because of time. These projects all have a priority of funding, and if they run into a delay they fall to the bottom of the list, and something that's unopposed or more routine gets funded. And delay kills projects. If it takes an Examiner four months to issue an order, by the time that order is issued that project is almost dead. If we have delays in getting this thing docketed and processed, money doesn't matter, it goes away.

So, end of that story.

The next one is, we have consistently tried to find and edit all objection periods to be a 20-day period. We are accustomed to it in the industry, we're equipped to handle it, we can debate its fairness. It is a sending requirement. Lawyers out in the other world that do other kinds of things are particularly infatuated that we have such an efficient administrative adjudication process that it can be expedited in this fashion. They are -- It marvels them, how efficient this is.

Here's the problem, though. It's a sending requirement. And I can put that certified mail in the envelope to Conoco in Houston, but I know the guy that manages that problem and pays attention to that notice is in Midland. I think the industry has become accustomed to where to send notices to Randy Patterson and to all the players that play here. We've got a pretty good system of sending the notice to the right place. But it's a sending requirement, and by the time you get it you may be down to your last five days. And yet we respond, and yet the industry likes it, and yet the industry doesn't want to change it. And they know it will bite them tomorrow, but they like it. They can handle it.

And so we're suggesting all notices are 20 days. It includes notices on saltwater disposal wells and

injection wells, and therein lies an issue. Mr. Catanach, as your underground injection control officer, has gone through all the tedium of satisfying the federal rules on getting the procedures adopted by the State of New Mexico so that you're the primary adjudicator of protection of fresh water with regards to that activity, and it will be a paperwork nightmare for Mr. Catanach to change the current 15 days to 20. The industry would like 20, it's consistent, but you need to be aware as decision-makers that staff is in disagreement. We can live with 15. It just means the 15 for that activity is different than everything else. You need to decide.

The next one is in auditing. As you go through, you find stuff in the rule you didn't even know was there, for an activity you didn't know anybody cared about. This is one slightly above that, but not much. It is Rule 509. It deals with discovery allowables and pool creations. And until I started looking through the rule book to work on this activity, I didn't even know this was there. It's an interesting little glitch.

The current rule provides the Division, if there's no objection filed, can approve discovery allowables and pool creations. The interesting problem is, there's no procedure to identify affected parties or to tell you what the notice requirements are. And so we've

filled the gap by simply saying that if you have a new pool discovery and/or you want new pool rules created, you go out and drill that Strawn oil well, and you say, Gee, I want to be on 80s and not 40s, who do you send notice to? In this instance we have chosen to be consistent with the fact that we think you send it to operators of all wells within a mile.

The other line of debate is that you broaden the notice issue, and you do the research and you find all interest owners, leased or otherwise, within a mile, and you send them notice, and you're back to the same topic. Is that a category of affected party that's so important that we need to spend money to find out who the are and send them notice? Are there other ways that they protect themselves by seeing the discovery and say, Wow, here's a great chance for me to take advantage of the discovery and play the game.

So we've drawn the line in the sand in saying only operators, and if you choose to increase the notice obligation with that activity, you need to recognize that the unanimous opinion of the industry is in opposition to that point of view.

We get down to the big one, and if you turn to 5, here's the big one. The big one is 1207. And let me tell you a little bit about 1207.

The Division rule book is organized in a particular way. You can go to the rule book and find a particular activity and usually read through it and find out what to do, except when it comes to what to do with that activity if you need a hearing. You then need to know that 1207 exists, because therein is the notice procedure to get a hearing for that activity.

What we have done in the Association is, we have made identical the notice requirements I have just described for you, for downhole commingling, nonstandard locations and nonstandard proration units. But we have repeated the current format of dealing with this activity within the context of Rule 1207. You may choose to edit this differently. We have simply used the current format.

In addition, you need to recognize that Rule 1207 makes no current separation between the general rule-making activity of the Commission and what lawyers could agree on would be activities that account for adjudication proceedings. And let me explain what I'm saying.

There's a certain category of activity that you as regulators, or any regulator, does that is general rule-making, that has attached to it a different standard of notice. For example, if you're the County Commissioners of Santa Fe County and you want to adopt zoning rules that affect the County, you're not obligated to go out and find

anybody that's got a property interest in Santa Fe County and serve them with actual notice. Do you know why? Because the system can't function if that notice requirement is the rule. You can't simply function as a rule-making, policy-making, decision-making body, making rules prospectively. The system won't function. So the courts recognize that there is a level of activity that's rule-making, and you can apply a different standard to it.

In addition, many adjudications now are not in district courts; they are before administrative hearing judges like you have. Those are adjudications, and you are affecting certain categories of property owners and their correlative rights. So when you see our draft under 1207, you will see it's formatted to recognize, as the New Mexico Supreme Court invited this Commission to do in the *Johnson-Burlington* decision, they have begged you to attend to Rule 1207, and they clubbed you over the head with the current rule.

This activity on changing 1207 was thought about years before the *Burlington* decision has taken place. We had recognized under the *Uhden* decision, which was the Amoco spacing change in Cedar Hills back years ago -- and we can talk about that if you want to know the facts. The point is that the Supreme Court in *Uhden* says, if you're changing the size of the spacing unit, you need to tell all

categories of owners in the spacing unit that has production that's being changed.

This proposed rule attempts to address *Uhden*. In addition, it attempts to do or complete what the Supreme Court suggested in the *Burlington* case, and that is for this agency to recognize that actual notice is not what's required. We have found some odd language in the rule book, and you'll see it repeated. It says, in the absence of notice and hearing, you can approve an administrative application. Well, that's nonsense, that's not what we do. We send notice. That was linked to say notice of a hearing and the hearing. And so we've taken that odd language out to keep some lawyer that doesn't work here from beating us up with it.

We have an argument now with one of our attorneys in a case saying he thinks you ought to have a process server serve everybody that's affected by anything anytime we do something over here. So the sending requirement is under judicial review at this point. My point is that we've tried to address this by reorganizing Rule 1207.

And here is specifically what we've done: First of all, this is the catch-all section that deals with notice. And I've looked at the adjudication that deals with compulsory pooling or statutory unitization. Here is the problem with the current rule: The current rule does

not specify when an individual has acquired a sufficient interest in the property to be pooled so as to give that individual standing in this type of case.

Here's what I'm saying: It happens more regularly than necessary that an applicant will file a compulsory pooling application -- Let's use Mike Gray. Nearburg has decided to file a compulsory pooling case against Randy Patterson of Yates. The application gets filed, and before it comes to hearing Randy says, I'm going to beat Mike Gray and I'm going to scatter my interest. I'm going to take my 25-percent working interest, and I'm going to assign a fractional interest to everybody in Artesia. You can do that now, and it's a nightmare, because all of a sudden you have to go look for people who have acquired an interest after you have filed your application, and it has been done in an effort to delay or avoid the pooling.

The other thing that occasionally happens is, a party perceives he's about to be pooled, he has a big unburdened interest, wants to reduce the portion that's exposed to the cost, and he'll put a 50-percent overriding royalty burden to his sister, aunts, cousins and nephews. You can, on occasion, create a subterfuge where you say, I'm going to deal with you in terms of pooling, and I'm dealing with you on a whole group of undisclosed partners

that might someday in the future have an interest in this property if I ever assign it to them.

To clear the hurdle on all that kind of commotion the change is this, is to use what is generally required in real property litigation, and that is, fix a point in time in which you have an affected interest that gets you notice.

For example, we want to be able to go to the county records and find that you have a recorded property interest, a conveyance saying you own this. And we want to say, If I serve you, I'm done. And if you decide to scatter your interests, if you have undisclosed partners, if you have friends and acquaintances that want to claim an interest, that's your problem. You need to tell them you're about to be pooled, or you need to come to the Division and substitute in the new owners. Don't give that to me, a problem, as an Applicant.

We're also saying that you have to have it documented in writing. You can't pretend to be dealing and then not have the interest. So we're using a conveyance of record that you can find or that you send to me. If you say, Mr. Kellahin, you've sent me a notice of pooling, I need to tell you and here it is, we've got other interest owners, this record -- this assignment was made months ago. Rather than waiting till after I've been pooled, waiting

till the well is drilled and completed, wait till it's paid out and become hugely profitable, and then record your interest and try to beat the pooling order. So that's where this was going.

The last one to focus on is what to do about special rules. We touched on it initially when we talked about how incredibly difficult it is to guess about how to send notices to change special rules. Mr. Alexander will share with us an example here in a moment.

The problem is, when you look at *Uhden*, and if you're really being a nitpicker, it might give you pause about how am I going to change the special pool rules for any size pool if I have to send notice to the world? And there are lawyers that might argue *Uhden* says more than what I think the facts are.

Mrs. Uhden was Amoco's -- She had acquired a position that put her in the capacity of a lessor. She had an overriding royalty interest under a federal lease, if I remember right, but... Amoco had a pooling clause in the lease that allowed them to increase the size of the spacing unit consistent with what the Division allowed, and that was in the lease. Mrs. Uhden was being paid on a coal gas well on 160 acres.

When Amoco had some pressure interference data on coal wells they were doing, they had undisputed technical

evidence to show spacing should be bigger. They petitioned the Division, the Division approved 320 gas spacing, and we have that throughout the Basin now.

Mr. Uhden complained when her check was cut in half, not appreciating the fact that her half was extended because she was sharing half of more. She took that through the system to the New Mexico Supreme Court, and they said, Yes, Mrs. Uhden needs notice. The narrow reading of the facts are that if you have an interest owner in any category in production, they need notice if you change the size of the spacing unit. The proposed rule change recognizes the facts as to that point.

It then subdivides rule-making for special pools and says that any other category of activity -- if we're coming in and changing the gas-oil ratio, if we're changing the setbacks, if we're changing well densities, if we're changing oil allowables, all that, we're going to be obligated to send notices to operators who are producing wells. Notice stops. You need to decide if that matters. The industry position is, we don't think it does. The current rule leaves it open to debate about who gets the notice.

The current rule says actual notice to all operators of wells and each unleased mineral owner within the existing or proposed pool boundaries and all operators

of wells within a mile. That's the rule.

We are suggesting that it's useful to focus on those parties that have acted on their correlative rights and ought to have notice. I'm going to show Mr. Alexander's example in the Blanco-Mesaverde, how hard that was to do, and therein lies the dilemma about where do you draw the line and stop sending notice?

I think the proposed change complies with *Uhden*. I am satisfied myself, after I got over my personal trauma in the *Burlington* case, to say that this is an opportunity to change 1207, and I have satisfied myself that the *Burlington-Johnson* case is a unique circumstance, it's unique to a very specialized fact circumstance, and that this Supreme Court has invited the Commission to clean up the rules and adopt a different methodology so that we can understand what's reasonable notice. The statute allows you to define reasonable notice, and let's go about doing just that.

Let me show Mr. Alexander's example, and I'll ask him to amplify all the things Burlington had to do. Here's the Blanco-Mesaverde. It has a million acres. Let me set the stage for the Blanco-Mesaverde. It's a million acres. I don't know, there's 5000 or 6000 wells, maybe 300 operators. Thousands and thousands of people to notify.

Burlington had gone through an exhaustive process

of determining that the current two-well-per-320-spacing-unit was leaving reserves in the pool, and there was a huge resource being unexploited. And so they presented a case to Examiner Stogner to increase well density. That was the topic, increased well density, and to relax well locations going from the classic 790 setbacks to the 660 setbacks and to relax the internal boundaries.

We were faced with, who do we send notice to? We did as good as we could, doing as best we could, and here's what Mr. Alexander had to do.

We had the good fortune of having the Mesaverde in very large federal units, for the most part -- there was lots of that -- where an entire township is a unit. Amoco, Conoco, Phillips and Burlington operate most of those. And through the cooperation of those companies they aided us in sending notice of this hearing to every payee that was being paid for Mesaverde in production out of the units.

That's how we tried to address the Mrs. Uhdens, by sending them notice, recognizing that this wasn't increasing spacing-unit sizes, this was just changing one of the other rules. We said, Well, we'll try to do it and see if we can do it.

They send out 3500 notices, it cost them $20,000-plus, it took months of effort. We came to the hearing after all that, and there was, you know, no opposition. We

did have some discussion about creating some special qualifying areas and some additional notice, but when we came down to it, there was no competing technical dispute. We sent notice to the world. And yet, you know out there there's somebody that didn't get notice. I guess there's the opportunity of saying, Hey, I didn't know about this, you've changed it. And I guess they can come in, and that's the risk of doing business, is that we can't stop doing business based upon that kind of problem.

And the issue for you is, do we make everybody do what Burlington had to do? What if you can't do it? What if it's virtually impossible? What if you don't want to devote the resources to that kind of effort? What has happened is what you see: We don't change these rules, we simply do not change them. We know they need to be changed, we know we need to address them, and we don't do anything about it.

And so a way to, we think, effectively manage your resources and truly protect correlative rights is, if we're going to make a rule change, let's get the operators in here, let's get the operators in here that have the data, that have the information, have the resources, have the technical experts, and let's let them debate what happens to that resource. And if we can't find the owners of undeveloped spacing units, then that's maybe as good as

we can do.

Maybe you want to address a special category of ownership. I don't know if it's appropriate, but maybe you could single out the BLM or the State Land Office and say their category of ownership is a governmental entity that requires notice, and you send notice to the Land Office. You have to think of how you separate their correlative rights from a fee owner, a private fee owner. Are they a different category? Maybe there's a way to manage that issue. But this is as good as we could do. We think it's fair and appropriate. I am told it's the level of notice required in other jurisdictions, and that's where we came out after hundreds of hours of effort and days of debate.

There are some other changes in the procedure. We took an opportunity to repeat Linda Baer's effort, and that was to pull out all the memos that are really unwritten rules, and with her aid she has found, I think, all of them we were aware of, and we simply repeated her work product, and we put into the rule book the stuff about the prehearing statements, and all the rest of that is in there for you to look at. I haven't addressed, and we can if you desire to. But that's the substance of our effort, was to debate what to do about what I've just described.

We also put a rule in about *ex parte* conduct, we talk about that. It's an issue of concern to all of us,

and our effort was to put an item in here to give the Examiners an actual rule so if they get an operator or an employee for a company wanting to talk about a case that's before them, they can cite them to the rule.

Lastly, let me come back to the changes we made in pages 3 and 6. It did not occur to me when I was drafting a change in the notice provisions for nonstandard locations and for unorthodox locations, it was not my intent to delete -- Let's use page 6, I think it's an easier illustration.

If you look at page 6, you'll see it's renumbered as 5. If you read the bottom of that first paragraph, the lined-out area says "days after the Director has received the Application". When I edited this, I was trying to make it very clear that an opposing party had 20 days from the date the notice was sent to him. That was his notice period. He could not take advantage of extending the notice period by linking it to the date the Division received the application.

And there's been some of that confusion. There are people that will get notice, file an objection beyond the 20-day period they got it but within the processing time the Division uses for the 20 days, and I was focusing on fixing that. In deleting it, I recognized I had unintendedly deleted what the industry accepts to be the

Division processing time for administrative applications.

And so when you see the italics language, it's an acknowledgement by the Association that we're saying within 20 days after the receipt of a complete application, that's the period in which the Division processes the Application. We're not asking you to shorten that period, but we are trying to clean up the language so that an objecting party has a definitive 20-day period, and you can clock it and we can clock it.

Those are the two changes on 3 and 6, and everything else remains the same as we submitted to you on April 7th.

I'll respond to questions as I'm able to, Madame Chairman. Thank you.

CHAIRMAN WROTENBERY: Thank you.

Questions?

COMMISSIONER BAILEY: Obviously, I'm very concerned about notice requirements to the State Land Office. Are there any cites or cases that can be applied to narrowly define the charge to this Commission for protection of correlative rights, to have it apply only to operators and not to royalty owners or mineral owners or...

MR. KELLAHIN: Unfortunately, Chairman Bailey -- I mean, Commissioner Bailey, I had hoped the *Burlington* case might be that opportunity for the Supreme Court to

give us one of those cases where it was truly definitive on guiding through what the lawyers, or the judicial system, told us was the notice. You don't see that very often.

I think the pattern with most judicial decisions now, in all formats, is to narrowly apply it to a particular fact situation, and the Justice Marshalls of the world have long since left this earth, and we don't have those kind of definitive scholars that will take this problem and use it as a way to define what we mean by rule-making, adjudication, correlative rights, affected parties.

And if you look at the *Burlington* decision, they dump it right back in your lap, and they say you have the statutory to define what is reasonable, and they leave it up to you to define "reasonable" and what's appropriate in a fact situation, and then it goes up on the sniff-and-smell test. They're going to sniff it and smell it, and if it doesn't smell right they're going to say more notice. That's where we are.

CHAIRMAN WROTENBERY: Mr. Kellahin, would you mind summarizing the *Burlington* decision for the Commission? I don't believe Ms. Hebert has had a chance to brief the other Commissioners on that particular case.

MR. KELLAHIN: Historically in the San Juan Basin, if you were looking at deep gas production, and that is below the base of the Dakota, you're under an old

general rule that says it's 160 acres, and that's where you are. At the point in time there had probably been no more than 60 gas wells drilled in the Basin to test for that resource, and it wasn't accessed.

And so Burlington came before the Commission -- and I think Commissioner Bailey may have been in that hearing process -- and they presented to the Commission this argument, that in order to provide the proper economic opportunity, 160 acres was not enough, that you needed to adopt prospectively, before any production was established, larger spacing. And it was done on the fact that 640 acres appeared to be appropriate by analogy to an example up on the Ute Indian Tribe for some deep gas.

The argument is this: If you change general rule -- and this was one of the General Rule 104 changes -- that you could do it prospectively, and that you could do it in satisfaction of the *Uhden* case, who was a known entity sharing in actual production, because in the deep gas for Burlington there was no production yet.

The Commission agreed, adopted 640 spacing prospectively.

A week after that's done, Burlington, then, files a compulsory-pooling case in Section 9, I think it was, to target one of the features that they thought might be deep gas productive, and force-pooled that acreage for a 640-

acre deep gas well. The problem was this dilemma, that if they drilled the deep gas well under 160 acres, they knew that wasn't enough, if it was successful at all. And we're talking big bucks. This is, you know, a $2-million-plus well, I think, is how it came out. You need to have a bigger drainage area than might be exposed by 160 acres.

And so what you set up is that the offsetting 160s could take advantage of the risk that you had engaged in, and either do this after the fact, ask for bigger spacing and back into a producing well, or drill competing wells on spacing that was too close.

The Supreme Court found fault with the specific fact that unbeknownst to me, but to others in Burlington, there was an active part of the Burlington personnel that were engaged in trying to consolidate acreage for all these opportunities, one of which were the very owners in Section 9 who were being exposed to force pooling, and who had not been sent actual notice of the change to 640 spacing. Those owners, the GLA-66 Group, called in the opinion "the holders", held this interest. And they had 80 percent of the other three-fourths of Section 9.

They complained to the District Court that they were in a unique position, that because part of Burlington knew they were there it was easy to find them, they should have gotten notice. The District Judge says, Yeah, they're

unique, we'll give them notice. But as to everybody else, that spacing order is good. And it's good as to people that you might have found, might have known about, but didn't tell, except for the GLA owners, because they had timely complained.

So the District Court drew the distinction and said, Those are special categories. I had trouble saying they were special and different from anybody else that didn't get notice. You know, if they're supposed to get notice, how come somebody else doesn't get notice?

And so I fell back on the position that if you're making a general rule change, despite the fact that Burlington may have known these people, you can do the zoning rule change of the county commission, despite the fact that Albertson's may be planning a grocery store in your subdivision and may benefit by the zoning change, is now the whole process tainted because Albertson was going to put a store in your back yard? That was sort of the analogy.

The New Mexico Supreme Court chose not to exercise the opportunity to give you guidance on the judicial difference between rule-making and adjudication, they chose not to differentiate between what are the necessities for categories of affected correlative rights, they didn't choose to decide that owners in a certain area

were so impacted they got notice and as you moved out you didn't, did none of that.

They simply locked onto the fact that the current Rule 1207 invited the Supreme Court to say that the GLA-66 owners needed protection. And some of the things they cite to is, they cite to the Oil and Gas Act. And the Oil and Gas Act talks about reasonable notice, and so they throw it back in your lap to take that concept and execute it.

They talk specifically about 1207 in the actual notice, and they catch Rule 1207 and they quote it back to us, and they say under the current 1207, "In cases of applications not listed above, the outcome of which may affect the property interest of other individuals or entities, actual notice shall be given to such individuals or entities by certified mail." They said that was so broad that it captured notice to the GLA-66 owners, and we violated this rule by not doing it. And they blamed the Commission for not notifying the GLA owners. You know, they just didn't put it on Burlington, they said the whole process is flawed because as to those people this is not in effect.

So here's where you are. You have deep gas 640-acre spacing as to everybody in the Basin except for this category of owner. So I guess you have to find out where they have all their property, and we'll put a yellow line

around it and say, as to everybody but them. And as to them it's, I guess, 160.

And so there you are. You can read it, it's 14 pages long, and it was not the kind of solution I had hoped for.

CHAIRMAN WROTENBERY: We do have copies for you.

COMMISSIONER BAILEY: Okay.

CHAIRMAN WROTENBERY: Did you have any other questions?

MS. HEBERT: I have a question.

CHAIRMAN WROTENBERY: Okay.

MS. HEBERT: I think we're going to have to remember that a lot of these rules that you have addressed have not been put on any kind of notice as far as the docket, because the docket, as I understand it, just noticed 104 and part -- and the procedural rules. So we'll have to kind of remember to do that.

The substantive question I had was, the definition that seems to kind of anticipate the *Branko* decision, case --

MR. KELLAHIN: Yes, ma'am.

MS. HEBERT: -- do you feel like it would be unwise to put that language in there before we see what the court determines in *Branko*?

MR. KELLAHIN: Madame Chairman, Ms. Hebert, I do

not. I think it is particularly useful, independent of the *Branko* decision with Mitchell Energy -- and I can give you that example if you care for the facts, but the point is, I think it's important to go forward with clarifying all your notice rules -- and you may want to do that before you act on 104 -- just to make sure 104 doesn't fall into some other trap.

I had persuaded myself that in accordance with the *Burlington* decision, if you change 1207 you have created a new category of definition for notice within your authority that the Supreme Court reminds you you have, and you've cleared up some of this ambiguity, uncertainty, about what happens. They're going to let you take the first cut at defining what's fair and reasonable. And if you choose to draw the line at the operator, we may have to decide that in some other cases if it's ever litigated, and I think the industry is prepared to do that.

If you decide that's too aggressive, then we'll draw the line a little farther out, recognizing that the industry has got to figure out how to comply with notices that are hard to obtain because you have to do the additional search.

But to answer your question, I think it's appropriate to go ahead and clean up the compulsory pooling thing, because it could happen tomorrow with the next case,

and let it be adopted and see if that's later changed by whatever happens in Judge Galeny's courtroom.

You know, we could have waited to change 1207 and waited for the *Burlington* decision, and quite frankly, it didn't help me in doing anything with 1207. If had it waited for, it didn't help. They just threw it back at us and say, Fix it.

MS. HEBERT: Well, I guess I see the *Branko* case as defining a property interest --

MR. KELLAHIN: Yes, ma'am.

MS. HEBERT: -- as opposed to who's entitled to notice. It seems sort of a different --

MR. KELLAHIN: Well, I think it's a subset.

MS. HEBERT: Yeah.

MR. KELLAHIN: You have to start and say, All right, if I'm going to give notice to affected parties, who are they? If you take property law, you say they have to be identifiable, they have to have a property interest, and how is that evidenced? It has to be a conveyance, it has to be a document that's either recordable, recorded or delivered to you. It can't be my pretending that you're my partner and there's nothing to evidence it. And it certainly shouldn't happen two years after the well is drilled.

So I think if you establish that if I have an

interest at the time that pooling application is filed, then it's fair for the Applicant to have to go the courthouse and find my recorded interest. So after that -- I've identified them, I have fixed that point in time where you give them the notice, and after that is, if there's a change or a shift in ownership and identity of percentages, it is the party holding the interest's burden to take care of it. And you cut out a lot of gamesmanship.

CHAIRMAN WROTENBERY: Anything else?

Mr. Kellahin, I thought it was interesting that you raised the point about perhaps proceeding with the changes to the notice rules before we finalize the changes we were talking about earlier this morning in Rule 104. And Ms. Hebert talked to me during the break and advised me to carefully consider that particular issue. We had been thinking, coming into this meeting today, that we were a little further along in terms of the drafting of the Rule 104 changes we talked about this morning, so perhaps we want to go ahead and move those on through. But --

MR. KELLAHIN: A suggestion --

CHAIRMAN WROTENBERY: -- because of -- Yeah, okay, please?

MR. KELLAHIN: A suggestion. There is no reason the 104 project can't move through your processing to a point where it shows up on several dockets. The reason I

suggest that is, it becomes more difficult to say you didn't know if it's been out there in a final form, or close to a final form, and you have narrowed the points of difference, and we can debate fine-tuning or small differences.

But the longer it's out there and the more people that hear about it, the less likely you are to have someone criticizing you for doing the dramatic change of taking a 650-setback from the end, taking it to 660 and not telling anyone. You know, there are lawyers out there that would contest that.

And so the -- And as long as that general rule is out there longer, and particularly if it's finally adopted after 1207 has been modified as the Supreme Court suggests that you attend to it, then you have an explanation, the next case that goes to the Supreme Court, say, Yes, your Honor, the Commission has recognized the *Burlington* decision and the *Uhden* decision, they have attended to this, they have made the conscious choice that within their range of activity, these are the parties that are affected, and here's what happened.

It's a lot easier to make that argument than it is to say, Well, we did another rule change. Somebody will say, Well, it looks like the *Burlington* change. And then you have to work your way through some judges that don't

even know what you people do.

CHAIRMAN WROTENBERY: But you do recommend that we complete the revisions to 1207 before we finally adopt the changes to the spacing requirements?

MR. KELLAHIN: That would be my recommendation.

CHAIRMAN WROTENBERY: That was what Ms. Hebert was commenting on earlier this morning, that --

MR. KELLAHIN: I concur in her advice. I think she's absolutely right on that.

CHAIRMAN WROTENBERY: So we may just -- You know, I had indicated we might pursue the notice changes a month behind the 104 changes or spacing changes, and it may well be that we want to reverse that order or try to take them up concurrently. Probably you need to go ahead and have the notice changes in effect before we adopt the spacing changes.

And the Commission's position is that the kind of work that we're doing on Rule 104 is rule-making work, that should not require the kind of actual notice to everybody who might conceivably be --

MR. KELLAHIN: Well, and a footnote to that.

CHAIRMAN WROTENBERY: -- interested in the case.

MS. HEBERT: But that's not what the *Johnson* case held, so...

CHAIRMAN WROTENBERY: Well, on some very narrow

facts, though, so --

MS. HEBERT: Well --

CHAIRMAN WROTENBERY: -- and they did cite our current rules, which do have some language in there about actual notice, that -- And I would think that's the part of the rule that we need to clarify.

MR. KELLAHIN: Well, particularly when you deal with the second-well issue, part of the comfort in having an opportunity for an injection does, I think, remove you from the criticism of the *Burlington* issue, in that there is a post-adoption process that could specify a unique circumstance where there's a true correlative-rights concern, rather than frustrating the process now by trying to find them. I don't think we can find them now, to identify that unique Burlington problem and say, All right, let's address those people with notice.

So I think -- I agree with you, I think this is general rule-making. And if that is done after you've changed the notice rules, then you have avoided the interesting choices of phrase in the *Burlington* decision where they talk about a distinction between adjudication and rule-making as a slippery slope. You know, they don't want to play on it. But then they invite you to make that distinction. So I think you're applying rule-making as how they perceive you want to handle the rule.

CHAIRMAN WROTENBERY: Mr. Foppiano, did you want to make any comment?

MR. FOPPIANO: Just a brief comment, if I could. I know it's getting late.

The notice proposal that was recommended by NMOGA was the subject of a lot of discussion, and from the industry standpoint we urged the attorneys to be reasonable, primarily because the cost is getting more and more significant with notice, and it is approaching a point where it dissuades us from doing things. I know my company had a specific example where we gave up because of the cost of notice to offsetting parties. It was just -- We were in an area where it was so broken up, and after getting estimates from brokers, to go to the courthouse and make the record search, identify the parties, the cost was so exorbitant that we just said the heck with it.

And so I urge you to look carefully at the proposal, primarily from the standpoint of being reasonable, because every time we have expansive notice requirements they run the risk of providing a disincentive to operators not to do so. And it could also be argued that it provides an unlevel playing field between larger operators who have in-house staff and smaller operators who do not, because they have to pay for all that just on a consulting basis.

So it's a very touchy issue or a very important issue with the companies because of the costs that can be incurred up front before any well is drilled. And this proposal, we went through it piece by piece to determine what we felt like we could reasonably do to comply with the requirements for due process and court decisions, and I think it represents a very good compromise.

I would also suggest that at the end of the day, we're the losers if a court overturns an order approving an NSL or some other activity, as is the *Burlington* case. It's the company that loses. And so the notice requirements really could be better looked at as almost like a minimum level of notice requirement. And in some cases, like in my company, we even have taken the notice requirements as they exist today and have done more than that where we felt like there was some exposure. Because my mantra to the geological and technical people is, our order is only as good as the notice that we give.

And so we try to do everything we can to have as good an order as we can and give as good a notice as we possibly can. But we also do run into the fact that in some cases it can get so exorbitant that it dissuades us from performing activities.

I'd also like to address the question Commissioner Bailey brought up about the distinction

between operators and owners of other interest in terms of their correlative rights. It may not be that true in New Mexico, but in other states that I'm familiar with, the notice to operators is quite common, and that's where it stops for a variety of activities. In fact, I'm trying to think -- I believe, when I last looked at it, even in Oklahoma that's what the rule still is for encroachment: It's notice to offset operators.

And so the -- In some cases what we have here in New Mexico where it defaults to the operator, if there's not an operator it goes to the lessee and unleased mineral interest owners, is even more broad than what we see in other states. And they have the opinion, at least on an issue that I recently worked with, with UIC in Texas, that their rules prescribe minimum notice requirements. And if the facts of a particular case dictate that more notice should be given, then it really is on that Applicant to give that additional notice, because his order may be overturned later on by a district court when it's challenged.

So I think that's an appropriate way to look at it, because I just urge this caution that it is becoming just more and more costly for us to try to give notice to the world on everything. And very, very rarely -- in fact, I cannot remember a case where these parties, outside of

the operator, have protested anything.

So it's a -- I just wanted to let you know that we did carefully go through this, and from industry's standpoint we felt we reached a good balance between what the attorneys said we need to have or should have for ultimate compliance and then what the industry said we can reasonably live with as far as cost goes.

That's all I have. Thank you.

CHAIRMAN WROTENBERY: Thank you.

Mr. Alexander?

MR. ALEXANDER: I would like to add a little bit further to that. The cost and the time, they are important matters. But one thing that we haven't brought out is that that may not even be the limiting factor. In the case of the Blanco-Mesaverde Pool, it's a physical impossibility to determine who all the owners are. You reach the size of a given area, what you have to do is, you have to hire brokers or you have to have company people go to a plant, an abstract plant or the county clerk's office, and physically you can only put so many people in there during a given time period. And six, eight, ten people, that's all that plant can handle.

And to search an area the size we're talking about may take anywhere from six months to a year. Well, guess what's happened to you? By the time that you've

finished your search, many of the interests have already changed, because -- creating estates, transfers of assignments, people dying, deceased people. And what's happening is, as time goes on, we're getting more and more interest owners from those various mechanisms.

So it's physically impossible to comply with the rule. It's not just a matter of time and money. You can't do it.

COMMISSIONER BAILEY: But I'll guarantee you plenty of room in the land office.

(Laughter)

CHAIRMAN WROTENBERY: Anybody else like to make a comment? Okay.

In terms of next steps on this particular proposal, because of the urgency in addressing these notice issues I think maybe we'd better go ahead and try to get something out as quickly as we can in the form of a proposed rule from the Division on the notice issues and the procedural issues.

And I do think I agree with Ms. Hebert and Mr. Kellahin that it would be wise of us to go ahead and make these changes to the notice rules before we proceed to adopt any further statewide rule changes, just to clarify those issues that were brought up in that *Burlington* Supreme Court decision.

And so I'm not sure what that does to our timetable. The Division will certainly give it a shot and try to get the proposed notice rules out as quickly as we can, perhaps in time so that we can take comment on them at the next meeting in may, and then plan for adoption in June. We'll certainly try to do that.

And then --

COMMISSIONER BAILEY: Plan for an order in June.

CHAIRMAN WROTENBERY: For -- Yeah, an order adopting the rule change. Is that -- or are you thinking something different?

COMMISSIONER BAILEY: Just re-evaluate whether to adopt it.

CHAIRMAN WROTENBERY: Right. Okay, are you proposing that we not take final action until later or --

COMMISSIONER BAILEY: No, no. No, no --

CHAIRMAN WROTENBERY: Okay.

COMMISSIONER BAILEY: -- I think it's incumbent that we do take action as soon as we can.

CHAIRMAN WROTENBERY: Okay, great.

COMMISSIONER LEE: Today?

CHAIRMAN WROTENBERY: Today, we -- No, not quite. We've still got some steps to go through, but I applaud your dedication --

(Laughter)

MR. FOPPIANO: Wants to set a new precedent.

CHAIRMAN WROTENBERY: -- to the task.

Okay, I should put the other Commissioners on notice, too, as well as -- I'm not sure how many of the folks in the room Lyn may have talked to. There will be a couple of other procedural matters included in the proposal that were not included in the NMOGA draft.

And Lyn, help me out if I'm forgetting something, but I know, for instance, there will be some procedural provisions related to the hearings process, and just some of the prehearing conference procedures and discovery procedures we realize we need to clarify.

We're trying to make some changes in our practices to make our hearings as efficient and effective as possible, and there have been some questions raised about our authority to use certain types of procedures, so we want to remove all that and go ahead and incorporate those procedures into our rules.

Lyn, am I forgetting any other major kinds of changes?

MS. HEBERT: No, I believe the NMOGA included Rule 11, just cleaning that up, and at one time we also included Rule 12. So those are the only things.

CHAIRMAN WROTENBERY: So look for those in the proposal as well.

I know it's getting late, but if you'd bear with me for just a few more minutes, I'd like to touch on the incentive rules.

Anything else on the notice rules? Any other questions, comments? Okay, good.

(Thereupon, these proceedings were concluded at 12:33 p.m.)

* * *

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 April 24th, 1999.

STEVEN T. BRENNER
CCR No. 7

My commission expires: October 14, 2002