

## NEW MEXICO OIL CONSERVATION COMMISSION

COMMISSION HEARINGSANTA FE, NEW MEXICOHearing Date NOVEMBER 12, 1992 Time: 9:00 A.M.

NAME	REPRESENTING	LOCATION
BC Cudney	ESI, GCNM	Albuquerque
Maurice Trimmer	Byram Co.	SF
Denny Foust	OCD	Aztec
W. Kelblin	Kelblin & Kelblin	Santa Fe
CAROL REVELT	NORTHWEST PIPELINE	SALT LAKE CITY.
Buddy Shaw	Amoco	FARMINGTON
Ned Schaffer	Western Technologies	Farmington
Ruth Andrews	NM OGA	SF
CHRIS STUEY	SRIC	Arb&
Ned Kendrick	Montgomery & Andrews	SF
Ray Larson	Parsons	Albuquerque
Dennis Olson	Bureau of Indian Affairs	Albuquerque NM

NEW MEXICO OIL CONSERVATION COMMISSION

COMMISSION HEARING

SANTA FE, NEW MEXICO

Hearing Date NOVEMBER 12, 1992 Time: 9:00 A.M.

NAME	REPRESENTING	LOCATION

1 STATE OF NEW MEXICO  
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
3 OIL CONSERVATION DIVISION  
4

5 IN THE MATTER OF:

6 Application of Four Corners  
7 Gas Producers Association and  
8 the New Mexico Oil and Gas  
9 Association to rehear Case  
10 No. 10436 which was called by the  
11 Oil Conservation Commission to  
12 provide for the expansion of the  
13 Vulnerable Area in the San Juan  
14 Basin amongst other things.

Case 10436:  
(Rehearing)

15 OIL CONSERVATION COMMISSION HEARING

16 TRANSCRIPT OF PROCEEDINGS

17 BEFORE: WILLIAM J. LEMAY, CHAIRMAN  
18 JAMI BAILEY, COMMISSIONER  
19 BILL WEISS, COMMISSIONER

20 STATE LAND OFFICE BUILDING  
21 SANTA FE, NEW MEXICO  
22 November 12, 1992

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OIL CONSERVATION DIVISION

**ORIGINAL**

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CUMBRE COURT REPORTING  
(505) 984-2244

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

2 FOR THE OIL CONSERVATION DIVISION:

3 ROBERT G. STOVALL, ESQ.  
4 Post Office Box 2088  
5 Room 206, Land Office Bldg.  
6 Santa Fe, New Mexico 87504-2088

7 FOR THE APPLICANT FOUR CORNERS GAS  
8 PRODUCERS ASSOCIATION and  
9 NEW MEXICO OIL AND GAS ASSOCIATION:

10 KELLAHIN AND KELLAHIN  
11 117 N. Guadalupe  
12 Post Office Box 2265  
13 Santa Fe, New Mexico 87504  
14 BY: W. THOMAS KELLAHIN, ESQ.

15 FOR SOUTHWEST RESEARCH AND INFORMATION CENTER:

16 NEW MEXICO ENVIRONMENTAL LAW CENTER  
17 1520 Paseo de Peralta  
18 Santa Fe, New Mexico 87501  
19 BY: DOUGLAS MEIKLEJOHN, ESQ.

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I N D E X

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E X H I B I T S

There were no exhibits to this hearing

1           THE CHAIRMAN: This is the Oil Conservation  
2 Commission, and we're meeting here today on the  
3 rehearing of Case 10436, which is the application of  
4 Four Corners Gas Producers Association and the  
5 New Mexico Oil and Gas Association for a rehearing of  
6 Case 10436, limited to specific items in our initial  
7 order.

8           I would like to mention we have Diana  
9 Abeyta here. She is our court reporter, and she  
10 doesn't have a recording machine. She will be taking  
11 shorthand with her machine there so that we need to  
12 talk relatively slowly and distinctly so it can all be  
13 incorporated into the record. And with that, I ask  
14 for appearances in Case 10436.

15           MR. STOVALL: Robert G. Stovall, of  
16 Santa Fe, on behalf of the division.

17           MR. MEIKLEJOHN: Douglas Meiklejohn, of  
18 Santa Fe. I represent Southwest Research and  
19 Information Center.

20           MR. KELLAHIN: Mr. Chairman, I'm Tom  
21 Kellahin, of the Santa Fe law firm of Kellahin and  
22 Kellahin, appearing on behalf of the New Mexico Oil  
23 and Gas Association, and for purposes of this hearing  
24 today, in association with Tommy Roberts of  
25 Farmington, representing the Four Corners Gas

1 Producers Association.

2 THE CHAIRMAN: Thank you, Mr. Kellahin. Is  
3 Mr. Roberts here?

4 MR. KELLAHIN: No, sir. I'm appearing on  
5 his behalf today.

6 THE CHAIRMAN: I see. Thank you.

7 Additional appearances? Will there be any  
8 witnesses?

9 MR. STOVALL: There will not, Mr. Chairman.

10 THE CHAIRMAN: Mr. Stovall.

11 MR. STOVALL: Let me bring you up to date  
12 as to what has happened among the various interests  
13 and agreements in this proceeding, Mr. Chairman.

14 As you know and as you've stated, this  
15 matter was reopened on the motion of the producer  
16 groups to consider -- they filed a general motion to  
17 rehear the case. The commission agreed to reopen it  
18 to consider some specific issues.

19 Subsequent to that time there has been  
20 discussion between the producer groups, the division  
21 and the Southwest Research and Information Center to  
22 try to, in a spirit of cooperation, to try to come up  
23 with a workable rule which can be implemented by the  
24 commission and adopt some changes to the order as put  
25 on the commisison Order R-7940-B.

1           There were some limited concerns which we  
2 feel make the order more workable. As of yesterday  
3 afternoon and this morning between discussions between  
4 Mr. Meiklejohn, Mr. Roberts, myself, and Mr. Kellahin,  
5 we have come up with what we believe is an agreement  
6 in principle with respect to some specific amendments,  
7 and I'll summarize those briefly, although I don't  
8 want to be held to the language, because that detail  
9 hasn't really been worked out.

10           If this agreement is approved by the  
11 commission and if it willing to adopt an order based  
12 upon that, I believe any appeals of the order to the  
13 district court will be dropped and the matter will  
14 become a final order and we'll begin with the  
15 implementation of the order.

16           To summarize briefly, just to give you an  
17 idea what the issues are, one of the concerns, the  
18 order provided for a timetable for implementation of  
19 one, two, and three years for the elimination of  
20 discharge into unlined pits within the specified area  
21 under the terms of the order.

22           It also provided that there could be an  
23 extension granted by the division of one-and-a-half  
24 years. The parties have agreed that that extension  
25 provision should allow for a single two-year extension

1 of time of those time periods which could be approved  
2 by the division for good cause shown.

3 A second provision that was of significant  
4 concern was the order established a wellhead  
5 protection area of 1,000 feet around water supply  
6 wells and springs. In the second round of hearings in  
7 this case, the division modified its original request  
8 for a 1,000-foot wellhead protection area and agreed  
9 that a wellhead protection area of a 200-foot radius  
10 around private domestic water supply wells would be  
11 appropriate, based upon testimony and information that  
12 the drawdown rates of those types of wells would be  
13 such that it would not draw from as wide an area and  
14 therefore would not be likely to draw contaminates  
15 into the water supply.

16 With the larger municipal and community  
17 water supply wells, there was a concern that where  
18 there's a steady draw, eventually the area of  
19 influence would be greater, and, therefore, the 1,000  
20 foot was established.

21 Another provision we had a certain question  
22 about was the language of the order providing for  
23 variances. The order provided that the division could  
24 approve variances from the no discharge into unlined  
25 pit provision under certain circumstances, on a

1 case-by-case basis.

2           The parties agree that it was, at least the  
3 intent of the parties, and, hopefully, the intent of  
4 the commission, that such a variance application could  
5 deal with a single site or with multiple sites with  
6 common characteristics. So that an operator could  
7 come in and say, I have several sights; they all have  
8 this common characteristic satisfying the rule which  
9 would justify a variance from the requirement to  
10 eliminate discharge into unlined pits. And we are  
11 going to suggest some language that would suggest a  
12 variance could be granted for multiple sites under a  
13 single application.

14           I believe the other issue is also just  
15 simply one of clarifying the language with respect to  
16 the notice requirements on the variance. The producer  
17 groups were particularly concerned that the language  
18 be a little more clear.

19           The notice requirement would be to  
20 landowners of record within a half mile of the  
21 proposed variance sites. Their concern was that you  
22 might have squatters or unauthorized occupants of the  
23 land and would they be entitled to notice? They would  
24 like to have some interpretation as to who to identify  
25 for the receipt of notice and be able to go to the

1 county records and say, We know who we have to give  
2 notice to, and we'll give notice to these people.  
3 We're suggesting a clarification of that language.  
4 It's really not a substantial change.

5 As the matter stands right now, I think we  
6 have some agreement in principle between all of the  
7 major parties, those three groupings who participated  
8 in the hearing. We would like to refine the language  
9 and submit some approved-upon language basically on  
10 Order 7940, I guess it would be considered at this  
11 point, which would simply amend and clarify 7940-B  
12 consistent with what I've just told you.

13 What I am recommending, and I've discussed  
14 it with other parties, I think it may be workable, is  
15 that we would continue this case to the December  
16 commission hearing, if there is in fact one set for  
17 December. That prior to that time we would clean up  
18 the language and agree upon it, submit it to the  
19 commission, give the commission the opportunity to  
20 review it.

21 If the commission felt that the language  
22 changes were acceptable and that the record already  
23 made before it could justify those changes, and we  
24 believe it can, we believe the record is open enough  
25 that it justifies these changes, then at that time the

1 commission would simply take this matter under  
2 advisement and be able to issue an order consistent  
3 with the recommendations.

4           If the commission has any concerns about  
5 the proposed revised language, it would so advise the  
6 parties and then at the continued hearing date, we  
7 would be prepared to present additional evidence to  
8 support the changes as we recommend or to address any  
9 other concerns of the commission with respect to those  
10 changes.

11           And I believe that pretty well summarizes  
12 the status of the matter at this time, and I will  
13 either allow or ask that Mr. Kellahin and Mr.  
14 Meiklejohn make their comments with respect to what  
15 I've said or answer any questions of the commission's  
16 at this time.

17           THE CHAIRMAN: Thank you, Mr. Stovall.  
18           Mr. Kellahin.

19           MR. KELLAHIN: Mr. Chairman, Mr. Stovall  
20 has correctly relayed to you my understanding of the  
21 situation at this time. Mr. Stovall has initiated a  
22 first draft of proposed rule changes. So we are into  
23 our second draft of implementation of the settlement  
24 in principle. I think all parties involved have  
25 submitted comments on the first draft and we're

1 working on the details of the second draft. So we  
2 have taken the initiative to move, at least to that  
3 point.

4 That does not presume that we're  
5 substituting our judgment for yours. We are trying to  
6 resolve among the parties those issues for which a  
7 rehearing was granted. And I'm prepared to respond to  
8 questions of economics with regard to what we're  
9 doing.

10 I concur that Mr. Stovall has correctly  
11 stated the positions of the parties as I understand  
12 it. And we're trying to provide you with proposed  
13 rule changes to the current order that accommodate the  
14 parties and would result in a dismissal of the  
15 litigation, and that's where we are.

16 Our plan is to have this concluded so that  
17 you might act on it at the oil potash hearing, which  
18 is scheduled in early December. If there's a desire  
19 of the commission to have technical evidence  
20 submitted, we need to know that. It's our hope to  
21 avoid the additional cost, expense and effort of  
22 presenting technical witnesses to you, and I concur  
23 that we believe the record, as it now is before you,  
24 will support the changes we propose to make in the  
25 rule.

1 THE CHAIRMAN: Thank you, Mr. Kellahin.  
2 Mr. Meiklejohn.

3 MR. MEIKLEJOHN: Thank you, Mr. Chairman,  
4 members of the commission. The only point that I  
5 would like to add to what Mr. Stovall said is that  
6 with respect to notice of an application for a  
7 variance, it's our position, and I think this is  
8 within the agreement in principle that we have, that  
9 persons who own the property, as Mr. Stovall said,  
10 should receive notice and also persons who are legally  
11 on those premises should receive notice. Not someone  
12 who is a squatter, for example, but someone who has a  
13 lease and is leasing the property, whatever it is, and  
14 it's my understanding, on the basis of my  
15 conversations with Mr. Roberts, that he agrees to that  
16 in principle.

17 We do need to work out the exact language  
18 on that point, and we have not concluded that  
19 negotiation at this point.

20 It is also our understanding that if the  
21 agreement that we come up with is acceptable to the  
22 commission and is adopted by the commission, that the  
23 appeal that was filed in the San Juan District Court  
24 would then be dismissed with prejudice.

25 I should point out, just for the record,

1 that it continues to be our position that the  
2 commission's original order was justified, based upon  
3 the evidence that was presented in this proceeding.  
4 It is also our position, however, that we need to get  
5 on with the implementation of this matter and this  
6 program, and for that purpose and for the purpose of  
7 avoiding the possibility of having this delayed  
8 significantly by that litigation in San Juan County,  
9 we are willing to and interested in resolving the  
10 matter in this manner.

11 I would be glad to answer any questions  
12 that you have. The timetable that I discussed with  
13 Mr. Roberts yesterday would call for us getting  
14 something to the commission by December 3rd or 4th.  
15 It would be sooner than that, but Mr. Roberts is going  
16 to be out of town for about a week, and we have the  
17 Thanksgiving holiday between now and then. I don't  
18 know the exact date of the hearing. Mr. Kellahin may.

19 MR. CHAIRMAN: You're a day late on that.  
20 We have the 1st and 2nd of December, I think, are  
21 scheduled commission dates. It could be the 2nd that  
22 would correspond with our last initiative.

23 MR. MEIKLEJOHN: Well, we certainly can try  
24 to get it to you sooner than that. I was not aware of  
25 that hearing, but we don't want to cause any more

1 inconvenience than we already have, and we would be  
2 glad to try to get it to you as quick as we can.

3 THE CHAIRMAN: Is there anyone that has  
4 anything to say concerning that procedure? Anyone  
5 object to that procedure?

6 My fellow commissioners, do you have any  
7 questions that you would like to ask of Mr. Stovall?

8 I would like to have one comment, if I  
9 might, on the notice issue that was raised with  
10 Mr. Meiklejohn. This language thing that we're  
11 talking about, the rule as it is now is consistent  
12 with the language in many rules, so it is maybe  
13 broader than just this notice to clarify who is  
14 entitled to notice. So I think that's something, as  
15 you think about that, that is a consideration that may  
16 be expressed. I think it's always been the intent and  
17 it's a matter of clarifying the language to accomplish  
18 what we have said here.

19 I would also like to commend the parties  
20 for getting together and focusing and coming to a  
21 resolution of these issues rather than fighting over  
22 how to get to the resolution.

23 Mr. Kellahin.

24 MR. KELLAHIN: With regard to the notices,  
25 Mr. Chairman --

1 THE CHAIRMAN: Yes.

2 MR. KELLAHIN: The notice issue is a  
3 substantial problem. There's a cost factor to  
4 compliance, the component to compliance by going out  
5 and paying the money, lining a pit, and taking an  
6 unlined pit out of the surface that is balanced  
7 against the many costs of going forward with a  
8 variance with the notice involved.

9 And what concerns us, we would like to go  
10 to a public record depository, such as the county  
11 clerk, make a one-time search to find out who is  
12 entitled to notice and avoid the expense of going out  
13 and making a surface inspection and looking for people  
14 that are occupying the surface. That's the issue is  
15 who do you notify and how exhaustive is the search.

16 And so, among us lawyers, we're trying to  
17 deal with what accomodates useful notice and yet is  
18 not so expensive and onerous to the applicant that he  
19 in fact does not have a practical variance procedure  
20 available to that applicant.

21 So when we talk about notice, it's within  
22 the context of how to find these people within a  
23 reasonable period of time without an unreasonable  
24 amount of money spent.

25 The other part, as a footnote, that Mr.

1 Roberts wanted me to convey, and that is within the  
2 context of rule making, if we can solve these issues,  
3 both associations agree to dismiss the litigation.  
4 That does not preclude, certainly, anyone in the  
5 future, either an entity, an individual or a company  
6 or a group to come back and propose rule changes in  
7 that area in the future.

8 With your continuing jurisdiction of rules,  
9 there certainly should be no confusion that dismissing  
10 these appeals now does not bind any party in the  
11 future from taking on the obligation to propose rule  
12 changes in that area. And that's certainly consistent  
13 with how we handle rules before the agency.

14 So the dismissal of litigation puts these  
15 rules in place for us to utilize, but certainly leaves  
16 it open to come back and change the rules later if  
17 they can prove they can justify it. Those are my  
18 comments.

19 THE CHAIRMAN: Any further comments, Mr.  
20 Meikeljohn?

21 MR. MEIKLEJOHN: Just to point out that is  
22 our understanding, also, with with respect to future  
23 changes, that any party could come in and petition the  
24 commission for that.

25 THE CHAIRMAN: We always maintain

1 jurisdiction in all cases, as you are well aware, so  
2 the commission on it's own motion could certainly call  
3 on this case for changes in the future, always.

4 That's also an open -- May I ask, how this technically  
5 would work? You plan to submit a draft due to us on  
6 the 1st and 2nd that you would tend to agree with; is  
7 that what you plan to do?

8 MR. STOVALL: I think what we would do,  
9 Mr. Chairman, is we would propose a draft order for  
10 the commission. It would include findings that will  
11 explain the basis for the rehearing and the basis for  
12 the changes, amend R-7940-B to show the changes, and  
13 then that would result in the final order which would  
14 be the Vulnerable Area order, if you will.

15 It just really has very few substantive  
16 changes to 7940-B, but we would do the work and hand  
17 it to you, and if you liked it, you can convene and  
18 sign it. If you didn't, tell us, and we could come  
19 back and tell us what to do next, whether to present  
20 the evidence or discuss it again.

21 THE CHAIRMAN: Any comments from any  
22 commissioners?

23 COMMISSIONER BAILEY: I would just like to  
24 applaud the spirit of cooperation that has been shown.  
25 I think this is a great thing to come before the

1 commission.

2 THE CHAIRMAN: I would like to second that.  
3 I think you all deserve a lot of credit for coming to  
4 grips with these issues and working them out, at least  
5 to date, among the various opposing factors.

6 COMMISSIONER WEISS: Yes, everybody, I'll  
7 third it.

8 THE CHAIRMAN: Unanimous praise for your  
9 efforts, gentlemen. I hope you will be able to come  
10 before us on either the 1st or 2nd and present us with  
11 your draft order. We'll look forward to you doing  
12 that.

13 Is there anyone else who has a comment  
14 concerning the procedure or what we plan to do in this  
15 case? Anyone else have anything further to say in  
16 this case? If not, we'll have -- You want to pick a  
17 date on this that gives you a little time, the 1st or  
18 the 2nd, and I want to continue the case and have a  
19 date to advertise in the continuance.

20 MR. STOVALL: Mr. Chairman, I might suggest  
21 what we do, we'll put it on the docket for that  
22 hearing. By the 1st, I think we should advise you  
23 whether there will be a document or not so you will  
24 know on the date of the 1st. Then we could proceed  
25 with that. So just for the date of the hearing, we'll

1 put it on the docket.

2 THE CHAIRMAN: We'll put it on the 1st.  
3 We'll continue the case until the 1st and look forward  
4 to your report or at least when that report will be  
5 received.

6 Anything further in that case is continued  
7 to the 1st and we shall take under advisement.

8 Thank you, very much.

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NEW MEXICO OIL CONSERVATION COMMISSION  
 COMMISSION HEARING

SANTA FE, NEW MEXICO

Hearing Date DECEMBER 1, 1992 Time: 8:30 A.M.

NAME	REPRESENTING	LOCATION
NELSON MUNCY	MYCO IND INC	ARTESIA
Ernie Zanolli	Yates Pet	Artesia
DAVE BONEAU	YATES PETROLEUM	ARTESIA
NEAL NAGEE	PHILLIPS PETROLEUM	BARTLESVILLE, OK
Elizabeth Harris	Phillips Petroleum	Odessa TX
Rod Bogdan	PHILLIPS PET.	BARTLESVILLE, OK
Troy E. Richard	Phillips Petroleum Co.	Odessa, TX
[Signature]	Keller & Keller	Santa Fe
Joe MRAZ	SLO	Santa Fe
W. Traneck	Petash Industry	Tucson, AZ
A. H. LANE	New Mexico	Albuquerque
Maurice Truine	Bynum Co	SF
James Bane	Hinkle Law Firm	SF
Tim Woomer	NMPC	Ubbles, NM
Randy S. Patterson	Yates Petroleum	Artesia
Ernest Szabo	S.L.O.	SF
G. Warrick	Consent	Alb.

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STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION  
CASE 10,436

COMMISSION HEARING

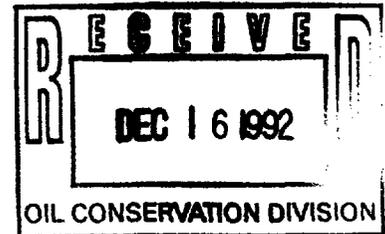
IN THE MATTER OF:

In the matter of the application of Four Corners Gas Producers Association and the New Mexico Oil and Gas Association to rehear Case No. 10,436 which was called by the Oil Conservation Commission to provide for the expansion of the Vulnerable Area in the San Juan Basin amongst other things.

TRANSCRIPT OF PROCEEDINGS

**ORIGINAL**

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



STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO  
December 1st, 1992

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

FOR THE OIL CONSERVATION DIVISION:

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Attorney at Law  
Legal Counsel to the Division  
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Santa Fe, New Mexico 87504

FOR SOUTHWEST RESEARCH AND INFORMATION CENTER:

NEW MEXICO ENVIRONMENTAL LAW CENTER  
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103 Cienega Street  
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\* \* \*

1           WHEREUPON, the following proceedings were had  
2 at 8:33 a.m.:

3           CHAIRMAN LEMAY: Good morning. This is the  
4 Oil Conservation Commission, and we're here to hear  
5 some continuations from cases.

6           To my left here is Commissioner Bill Weiss;  
7 to my right, Commissioner Gary Carlson representing the  
8 Commission of Public Lands. My name is Bill LeMay.

9           Before we begin on the -- I think it will be  
10 the final two days of the potash hearings, I'd like to  
11 call Case 10,436, which was the Application of Four  
12 Corners Gas Producers Association for rehearing on  
13 parts of the Vulnerable Area order.

14           I think the last time we met there was some  
15 talk on -- a compromise, submitting that to the  
16 Commission for consideration.

17           Mr. Meiklejohn?

18           MR. MEIKLEJOHN: Yes, Mr. Chairman, members  
19 of the Commission, I'm Douglas Meiklejohn, representing  
20 Southwest Research and Information Center.

21           The counsel for Four Corners and counsel for  
22 the Division and I are still working on language to  
23 implement the agreement that we've reached, and we  
24 request that this matter be continued to the January  
25 hearing, at which point we hope to present the

1 Commission with an agreed-upon compromise for the  
2 Commission's consideration and, we hope, approval.

3 CHAIRMAN LEMAY: Fine, thank you.

4 Mr. Stovall, is that your --

5 MR. STOVALL: Mr. Chairman, yeah, Robert  
6 Stovall on behalf of the Division.

7 I believe Mr. Meiklejohn -- Mr. Meiklejohn is  
8 correct. And just for the Commission's information, I  
9 think there is a -- Basically, there is an agreement.  
10 It is simply a matter of putting the three written  
11 suggestions into single form, which is largely  
12 completed, actually, but it is just not ready to  
13 present to the Commission.

14 So if we just continue it to January, I think  
15 we'll have a finished recommendation to the Commission  
16 as a mutually agreeable revision to the Order.

17 And I concur in Mr. Meiklejohn's request.

18 CHAIRMAN LEMAY: Is there anyone else that  
19 has something to say in this case?

20 We don't have our dockets here. What I was  
21 going to suggest is, fellow Commissioners and I, at the  
22 first break, bring our calendars down to get some firm  
23 Commission hearing dates in January.

24 I think there is a tentative date set at the  
25 14th. That's a Thursday. But we'll confirm that at

1 the first break. But it looks like the 14th is when  
2 we'll take that case up again.

3 MR. MEIKLEJOHN: That will be fine.

4 CHAIRMAN LEMAY: Fine. So if there's nothing  
5 further in that case, we'll take that case under  
6 advisement after we hear it on the 14th -- or it will  
7 be extended to the 14th, is what I meant to say.

8 MR. MEIKLEJOHN: Thank you, Mr. Chairman.

9 CHAIRMAN LEMAY: January 14th, 1993.

10 Thank you.

11 (Thereupon, these proceedings were concluded  
12 at 8:35 a.m.)

13 \* \* \*

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## NEW MEXICO OIL CONSERVATION COMMISSION

COMMISSION HEARINGSANTA FE, NEW MEXICOHearing Date JANUARY 14, 1993 Time: 9:00 A.M.

NAME	REPRESENTING	LOCATION
Tommy Roberts Douglas Steiklephus Maurice Trimmick	Tarsey Law Firm Southwest Research and Information Center PetrochemCo	Farmington, NM Santa Fe SF

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NEW MEXICO OIL CONSERVATION COMMISSION  
STATE LAND OFFICE BUILDING  
STATE OF NEW MEXICO  
CASE NO. 10436

IN THE MATTER OF:

The Application of Four Corners Gas  
Producers Association and the New  
Mexico Oil and Gas Association  
to Rehear Case No. 10436 for the  
Expansion of the Vulnerable Area  
in the San Juan Basin.

BEFORE:

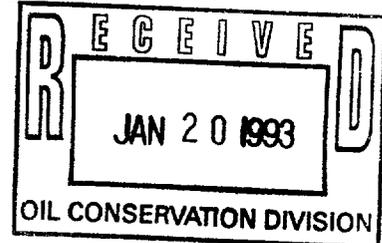
CHAIRMAN WILLIAM LEMAY  
COMMISSIONER BILL WEISS  
COMMISSIONER JAMI BAILEY  
FLORENE DAVIDSON, Staff Specialist

State Land Office Building  
Morgan Hall

January 14, 1993

REPORTED BY:

CARLA DIANE RODRIGUEZ  
Certified Court Reporter  
for the State of New Mexico



ORIGINAL

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

FOR THE NEW MEXICO OIL CONSERVATION DIVISION:

**ROBERT G. STOVALL, ESQ.**

General Counsel  
State Land Office Building  
Santa Fe, New Mexico 87504

FOR FOUR CORNERS GAS PRODUCERS ASSOCIATION  
and THE NEW MEXICO OIL AND GAS ASSOCIATION:

**TANSEY, ROSEBROUGH, GERDING & STROTHER, P.C.**

621 West Arrington  
Post Office Box 1020  
Farmington, New Mexico 87401

BY: **TOMMY ROBERTS, ESQ.**

FOR THE SOUTHWEST RESEARCH & INFORMATION CENTER:

**DOUGLAS MEIKLEJOHN, ESQ.**

Executive Director  
New Mexico Environmental Law Center  
103 Cienega Street  
Santa Fe, New Mexico 87501

1                   CHAIRMAN LEMAY: We shall now call Case  
2 10436, which is the continuation of the  
3 vulnerable area hearing, which is about the fifth  
4 time we've met on this. And I know that counsel  
5 for all three or four entities were involved in  
6 redrafting the draft order, so Mr. Stovall, do  
7 you want to bring us up to date on that?

8                   MR. STOVALL: Yes, Mr. Chairman. This  
9 case is on the matter of the rehearing called or  
10 on the motion of the Four Corners Gas Producers  
11 Association and the New Mexico Oil and Gas  
12 Association.

13                   The Commission granted a rehearing to  
14 hear the limited issues set forth in the docket.  
15 This is actually the sixth time we have met on  
16 this issue and, as you can see, attention has  
17 waned. Perhaps it is because we have  
18 accomplished the result.

19                   You have each been presented with, last  
20 night, two documents. One is a proposed  
21 order--actually the cover sheet is marked as  
22 R-7940-B with proposed changes marked, and it  
23 shows with redline and strikeout what changes  
24 have been recommend by the parties to Commission  
25 Order R-7940-B, which was entered by this

1 Commission back in August, I believe it was, of  
2 1992.

3           You also have been handed a document  
4 which shows Order R-7940-C as revised and  
5 proposed. What this does is take out all the  
6 correction markings that appeared in the other  
7 one, and this is the order which I think we're  
8 asking you to adopt today, although we may have a  
9 minor change that I'm aware of.

10           As a result of several hours of  
11 negotiation and several months, we have actually  
12 come to an order and set of rules, I think which  
13 Mr. Roberts has described as the perfect order.  
14 Unfortunately, it's not quite perfect, it's about  
15 99.9 percent perfect, and I think there's only  
16 one recommended change to it.

17           MR. ROBERTS: I would have to say it's  
18 perfect grammatically.

19           CHAIRMAN LEMAY: I think at this point,  
20 for the record, I'll call for appearances in this  
21 case, and we can get those on the record.

22           MR. STOVALL: Robert G. Stovall on  
23 behalf of the Division.

24           MR. MEIKLEJOHN: Douglas Meiklejohn on  
25 behalf of Southwest Research and Information

1 Center.

2 MR. ROBERTS: Tommy Roberts from the  
3 Tansey Law Firm in Farmington, New Mexico. I'm  
4 appearing on behalf of the Four Corners Gas  
5 Producers Association, and I think I have the  
6 authority to speak on behalf of the New Mexico  
7 Oil and Gas Association today.

8 CHAIRMAN LEMAY: Thank you, Mr.  
9 Roberts. Are there additional appearances in  
10 this case? If not, Mr. Stovall, you may  
11 continue.

12 MR. STOVALL: I'm sorry I neglected  
13 that. The result is, what you have before you is  
14 an order which has been agreed upon and accepted  
15 by the parties, and I would like to commend  
16 everybody for the spirit of cooperation that has  
17 resulted in the order here.

18 At this time, let me identify the one  
19 suggested change that Mr. Meiklejohn identified  
20 this morning. I told him I wasn't going to turn  
21 on the computer and run another draft, but when  
22 we do the final, we'll do it.

23 If you'll turn to Exhibit A, Rule 1, it  
24 has been suggested, and I think it makes it  
25 grammatically more readable in the first line,

1 these rules shall apply to the disposal of all  
2 oil and natural gas waste, generated, that's an  
3 additional word, within the vulnerable area.  
4 Other than that, it remains the same.

5           There were some changes made to the  
6 structure of the original Commission order which  
7 do not change its intent. In the process of  
8 revising it, we found it necessary to restructure  
9 it to separate issues so that they could be  
10 addressed individually.

11           And then there are specific changes to  
12 the substance consistent with the matters heard  
13 on rehearing; specifically, we are offering that  
14 the time frame for implementation of the rules  
15 regarding the elimination of discharges to the  
16 surface is a one-year, two-year, three-year time  
17 frame as set out in the order and as requested by  
18 the Division.

19           What has been agreed to is, with  
20 respect to the granting of extensions for  
21 compliance with that, is to grant a single  
22 two-year extension to compliance upon application  
23 and good cause shown to the Division. That may  
24 be administratively granted. The Division, of  
25 course, always has the right to set it to

1 hearing.

2           The second issue which was up for  
3 reconsideration, and I believe that was the  
4 result actually in the course of the multi-day  
5 hearing, the Division had revised its request on  
6 the wellhead protection area. There were various  
7 requests made but the Division ultimately had  
8 requested that there be a 1,000 foot radius  
9 around all water sources, which is now a defined  
10 term. We've added the definition of water source  
11 to the rules, and then we've included in that a  
12 definition of private, domestic water sources,  
13 which is simply those water sources used by less  
14 than five households, and for private, domestic  
15 water sources the wellhead protection area of 200  
16 feet is recommended in this order.

17           And I think that has been accepted by  
18 all the parties as being a reasonable wellhead  
19 protection area for these small areas because of  
20 the lower draw-down rates.

21           The third matter for consideration and  
22 rehearing was the provision for variances. It is  
23 the understanding, I believe, of all the parties  
24 originally, that the Commission intended that a  
25 variance could be granted for more than one

1 site. However, the Producers group was concerned  
2 that the language on a case-by-case basis didn't  
3 make that clear. So, we have simply suggested  
4 language which restates that to say, it can be  
5 for a single site or multiple sites with common  
6 characteristics.

7 So that a producer might come in and  
8 say, I have several pits or several sites for  
9 which I seek a variance, and they all have this  
10 common characteristic, and the criteria meet the  
11 requirements of the rule as proposed.

12 One thing we did take out on the  
13 variance request, the actual language of the  
14 original order on variances had language about,  
15 "can apply for the variance if the sites are not  
16 located in alluvium or are outside the boundaries  
17 of the vulnerable or expanded vulnerable area."  
18 I think it's clear that if the area is outside  
19 the vulnerable area it does not need a variance,  
20 because the rules don't apply to it in the first  
21 place. So, we deleted that language.

22 Other than that, I believe any other  
23 changes that you see marked are merely in form,  
24 grammatical or otherwise structured so that we  
25 could accommodate the changes. Again, we've

1 recommend that Orders R-7940-B and C be rescinded  
2 and replaced by this one, so we start out with a  
3 single order rather than a rule that, even before  
4 it starts, has two or three amendments.

5 And we request an effective date of  
6 March 1, 1993, to allow us time to publish the  
7 rules in the New Mexico Register, as required, to  
8 make them effective.

9 CHAIRMAN LEMAY: Effective date of  
10 what, Mr. Stovall?

11 MR. STOVALL: March 1, 1993, and that  
12 is in the order. I think that pretty well  
13 summarizes it, unless Mr. Meiklejohn or Mr.  
14 Roberts have any comments.

15 CHAIRMAN LEMAY: I'll call on them.  
16 Thank you, Mr. Stovall. Mr. Meiklejohn?

17 MR. MEIKLEJOHN: Thank you, Mr.  
18 Chairman, members of the Commission. There was  
19 one other change that I think ought to be brought  
20 to the attention of the Commission. It's a minor  
21 change. It's on page 4, dealing with pit  
22 closure. This was not an issue on which  
23 rehearing was granted, but it concerns the  
24 deadline for filing applications or plans to  
25 close unlined pits.

1           The original order required that those  
2 be filed within 60 days of the elimination of  
3 discharge. It was pointed out by Mr. Roberts  
4 that that might, in fact, act as a disincentive  
5 to eliminating the discharge, and there was,  
6 therefore, an agreement to change that to  
7 indicate it could be filed within 60 days after  
8 the final date by which the discharge has to be  
9 eliminated under the rule. The feeling or the  
10 rationale Mr. Roberts expressed was that the  
11 discharges should be eliminated even if the plan  
12 doesn't have to be filed, until some later time.

13           We concur with Mr. Stovall's  
14 recommendation that the Commission should adopt  
15 this order. It is our understanding that  
16 following the adoption of the order, the lawsuit  
17 that was filed by the Four Corners Gas Producers  
18 Association and the New Mexico Oil and Gas  
19 Association will be dismissed.

20           The order is supported by the evidence  
21 that was presented in the various hearings  
22 conducted by the Commission, and we believe it's  
23 a workable order and a very reasonable and  
24 competent one, and we urge you to adopt it.  
25 Thank you.

1                   CHAIRMAN LEMAY: Thank you, Mr.  
2 Meiklejohn. Mr. Roberts.

3                   MR. ROBERTS: Mr. Chairman and members  
4 of the Commission, I would also like to indicate  
5 to you that this draft proposal, rule and order,  
6 represents our agreement with respect to the  
7 resolution of the issues on rehearing, and we  
8 simply ask that you adopt the order.

9                   I would confirm Mr. Meiklejohn's  
10 statement that the Four Corners Gas Producers  
11 Association and New Mexico Oil and Gas  
12 Association will dismiss its lawsuit in the  
13 district court of San Juan County as soon as the  
14 order is adopted. Thank you.

15                   CHAIRMAN LEMAY: Thank you, Mr.  
16 Roberts. At this point, if there are questions  
17 by the Commissioners, should they question the  
18 expert or the lawyers, or is there any procedure  
19 there?

20                   MR. STOVALL: Mr. Chairman, we don't  
21 have an expert on the stand and available,  
22 although Mr. Olson is in the audience. I think  
23 any questions can be directed to counsel, if you  
24 have any.

25                   CHAIRMAN LEMAY: If counsel can't

1 answer, we can recall Mr. Olson. Just in case we  
2 do have some technical questions, Mr. Olson,  
3 would you stand and be sworn.

4 [And Mr. Olson was duly sworn.]

5 CHAIRMAN LEMAY: At this point I would  
6 like to turn it over to my fellow colleagues  
7 here.

8 Commissioner Bailey, do you have any  
9 questions that you might want to ask?

10 MS. BAILEY: No.

11 CHAIRMAN LEMAY: Commissioner Weiss?

12 COMMISSIONER WEISS: I have a  
13 question. I see the definition of water sources  
14 on page 2, Exhibit A(f) includes springs, but I  
15 can't find the definition for springs.

16 CHAIRMAN LEMAY: Is that something that  
17 you all have addressed or is that something--

18 MR. STOVALL: I believe that that  
19 hasn't been addressed because nobody has raised  
20 the question. My understanding of a spring, and  
21 I think it's a common understanding, it is a  
22 natural water source rather than pumped water  
23 source such as a well would be a natural water  
24 source occurring at the surface.

25 And perhaps Mr. Olson can confirm that,

1 if that's a technical question. It's more  
2 scientific than legal.

3 MR. OLSON: We haven't included any  
4 definition for a spring, but that would be the  
5 consideration, that it was a natural feature that  
6 issues at the surface. Essentially, natural  
7 groundwater.

8 COMMISSIONER WEISS: My concern, a  
9 spring is a spring that is in March and not a  
10 June, is a spring.

11 MR. OLSON: What we would look at it  
12 for would be on the maps, there's usually  
13 designated springs that are set out by the  
14 U.S.G.S. on their topographic maps, and that's  
15 the only thing we would look at that would be a  
16 spring, towards enforcement of a regulation.

17 COMMISSIONER WEISS: That was just a  
18 question. Thank you.

19 CHAIRMAN LEMAY: Anything else,  
20 Commissioner Weiss?

21 COMMISSIONER WEISS: No.

22 CHAIRMAN LEMAY: Maybe in that same  
23 regard, and I'm just looking at definitions, on  
24 Exhibit A, page 2, where water sources were  
25 defined, you put water sources shall mean wells,

1 springs or other sources of fresh groundwater  
2 extraction.

3 When we're talking about springs, would  
4 discharge and extraction be more appropriate  
5 there, or would extraction by itself cover  
6 normally occurring discharge points?

7 MR. STOVALL: I'm not sure I understand  
8 what you mean, what the distinction between  
9 discharge and extraction would be.

10 CHAIRMAN LEMAY: This is a layman's  
11 impression. Extraction would mean a physical  
12 effort to take that water from wherever it is to  
13 the surface, like a well. A discharge point  
14 would be a natural point of discharge along that  
15 aquifer. And whether water sources, if they're  
16 to include both, I would assume discharge would  
17 be appropriate along with extraction.

18 Maybe I'm raising a point here that  
19 needn't be clarified. Mr. Meiklejohn?

20 MR. MEIKLEJOHN: I would suggest that  
21 that's a good addition. I think your point is  
22 well taken. Extraction implies an effort to get  
23 the water out of the ground, whereas discharge  
24 does not imply that.

25 MR. OLSON: Mr. Chairman, also, most

1 springs are not used as a source of drinking  
2 water for extraction purposes. They are just  
3 discharging essentially at a discharge point for  
4 groundwater and may also be recharging local  
5 alluvium in that area, and they're not actually  
6 used for extraction.

7 CHAIRMAN LEMAY: Would you be in favor  
8 of adding discharge also there, for  
9 clarification? Discharge and extraction?

10 Mr. Roberts, do you have any problem  
11 with that?

12 MR. ROBERTS: No problem.

13 MR. STOVALL: I will make the change,  
14 and that will appear in the final order.

15 CHAIRMAN LEMAY: One other point I  
16 guess I had, just again for clarification, on  
17 page 6, under item 25(b), it reads, "the  
18 discharge quality is within groundwater standards  
19 established by..." Would "protectable" before  
20 "groundwater standards" be more appropriate, or  
21 not?

22 In other words, the discharge quantity  
23 is within protectable groundwater standards, or  
24 does groundwater standards imply that we're  
25 talking about protectable standards?

1 MR. STOVALL: Mr. Olson is a member of  
2 the Water Quality Control Commission.

3 CHAIRMAN LEMAY: Right. I probably  
4 should address that to Mr. Olson.

5 MR. OLSON: Mr. Chairman, I believe  
6 that standards are only adopted by the WQCC for  
7 protectable groundwater. You could put it in for  
8 clarification, but it already applies to  
9 protectable groundwater.

10 CHAIRMAN LEMAY: If that's the  
11 understanding of the WQCC, I'm not recommending  
12 it except if it was necessary, unless someone  
13 else wants it in.

14 MR. STOVALL: Mr. Chairman, I might  
15 point out that you notice there is some change  
16 there. In the original it was stricken where it  
17 says meets or exceeds. We did make that change  
18 because does meets or exceeds mean the levels are  
19 higher or lower than. Meets or exceeds which  
20 way? That's why we did it this way.

21 I'm inclined to agree with Mr. Olson.  
22 Technically it's within it, but whether it adds  
23 any clarity, I don't know.

24 CHAIRMAN LEMAY: I have no problem. If  
25 it's in it, we'll leave it. I just had a

1 question whether it was within it or not. Those  
2 are the only two items I thought would need some  
3 clarification.

4 Does anyone else have any questions or  
5 comments concerning the proposed draft?

6 If not, I want to commend all of you,  
7 everyone involved with this process. I think it  
8 really is extremely productive to get this type  
9 of working relationship with all elements. It  
10 really does serve to make our job not only easier  
11 but, from the Division's point of view, where  
12 there's more consensus behind the order, much  
13 easier to and more effective, really, to put it  
14 in place.

15 So, there again, my congratulations to  
16 all of you and thanks for a very worthwhile  
17 effort and successful conclusion to your efforts.

18 Mr. Stovall?

19 MR. STOVALL: Mr. Chairman, we would  
20 ask, and we came into this hearing with the  
21 intent of asking that if this order meets or  
22 satisfies the Commission, with the suggested  
23 changes, that you actually adopt it at this  
24 hearing and we will generate it. That way we can  
25 publish it and everybody will know it's a final

1 order, and we can make a copy while Commissioner  
2 Weiss is here and have it signed today when this  
3 hearing is over.

4 CHAIRMAN LEMAY: I think that's a  
5 worthwhile suggestion. We just concurred with  
6 your suggestion, and let the record show that we  
7 adopt this order as amended here, and that it  
8 will be executed today and be effective  
9 immediately or upon signature, actually. And  
10 that will happen today.

11 MR. STOVALL: The order will be  
12 effective and the rule will be effective March  
13 1st? Is that not acceptable?

14 CHAIRMAN LEMAY: Right. That's in the  
15 vulnerable area. Is there anything else in this  
16 case? Anything else any of you want to say?

17 MR. STOVALL: Yes, sir. Yea!

18 [Applause]

19 CHAIRMAN LEMAY: Let the record show  
20 unanimous agreement on that point. We're closed  
21 for business.

22 (And the proceedings concluded.)

23

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1 CERTIFICATE OF REPORTER

2

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

5

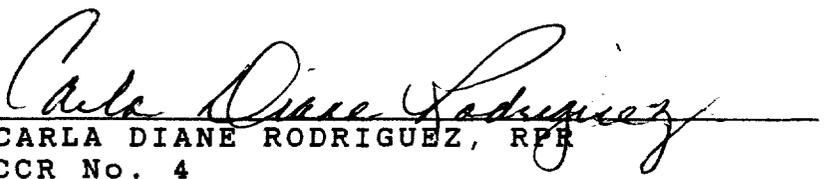
6 I, Carla Diane Rodriguez, Certified  
 7 Shorthand Reporter and Notary Public, HEREBY  
 8 CERTIFY that the foregoing transcript of  
 9 proceedings before the Oil Conservation  
 10 Commission was reported by me; that I caused my  
 11 notes to be transcribed under my personal  
 12 supervision; and that the foregoing is a true and  
 13 accurate record of the proceedings.

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

19 WITNESS MY HAND AND SEAL January 15,  
 20 1993.

21

22

23 

24 CARLA DIANE RODRIGUEZ, RPR  
 25 CCR No. 4