

NEW MEXICO OIL CONSERVATION COMMISSION

COMMISSION HEARING

SANTA FE, NEW MEXICOHearing Date JUNE 18, 1992 Time: 9:00 A.M.

NAME	REPRESENTING	LOCATION
Craig T. H.	MARATHON	MIDLAND, TX
Ron Smith	Marathon	Littleton, CO
FRANK GRAY	Texaco	Midland, TX
Perry Rance	NM OGA	Santa Fe
William F. Day	NM OGA	Santa Fe
Guth Andrews	NM OGA	Santa Fe
Alan W. Bohling	Chevron U.S.A.	Midland
Jerry Hoover	Conoco	Midland
Elizabeth Bush	Arco	Midland
Eileen H. Conwell	Marathon Oil Co.	Houston, TX
ROBERT UNDER	MARATHON OIL CO.	MIDLAND
Maurice Trimmer	Byram Co	SF
Margaret Alcock	N.M. Taxation Rev Dept	SF
Don Whitaker	State Rep.	

1 NEW MEXICO OIL CONSERVATION COMMISSION

2 STATE OF NEW MEXICO

3 CASE NO. 10492

4
5 IN THE MATTER OF:6 The Application of the Oil
7 Conservation Division on its
8 own motion for an order adopting
9 rules to implement the Enhanced
10 Oil Recovery Act.

11 BEFORE:

12 WILLIAM J. LeMAY, CHAIRMAN
13 WILLIAM WEISS, COMMISSIONER
14 GARY CARLSON, COMMISSIONER15 State Land Office Building
16 Morgan Hall
17 June 18, 199218
19
20 REPORTED BY:21 DEBBIE VESTAL
22 Certified Shorthand Reporter
23 for the State of New Mexico
24
25**ORIGINAL**

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MR. A.W. BOHLING

FOR YATES PETROLEUM CORPORATION:

MR. TOM BROWN

FOR TEXACO USA:

MR. R. FRANK GRAY

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1 CHAIRMAN LeMAY: Good morning. It's
2 the Oil Conservation Commission meeting. My name
3 is Bill LeMay. On my left is Commissioner Bill
4 Weiss; on my right, Commissioner Gary Carlson
5 representing the Commissioner of Public Lands.

6 And I think we have one case today,
7 Case No. 10492, the application of the Oil
8 Conservation Division on its own motion for an
9 order adopting rules to implement the Enhanced
10 Oil Recovery Act.

11 I'd like appearances in Case 10492.

12 MR. STOVALL: Robert G. Stovall on
13 behalf of the Division. And fortunately my
14 witness just walked in, so I do have one.

15 CHAIRMAN LeMAY: Thank you, Mr.
16 Stovall.

17 MS. AUBREY: Karen Aubrey with
18 Kellahin, Kellahin & Aubrey representing Marathon
19 Oil Company. I have two witnesses.

20 CHAIRMAN LeMAY: Thank you, Ms. Aubrey.

21 MR. PEARCE: Perry Pearce representing
22 New Mexico Oil & Gas Association. I have one
23 witness.

24 CHAIRMAN LeMAY: Thank you, Mr.
25 Pearce.

1 Are there any other appearances in the
2 Enhanced Oil Recovery case?

3 MR. BOHLING: Mr. Chairman, my name is
4 Alan Bohling. I'm with Chevron USA.

5 CHAIRMAN LeMAY: Do you have any
6 witnesses, Mr. Bohling?

7 MR. BOHLING: No, I don't.

8 CHAIRMAN LeMAY: Will you be testifying
9 or making a statement?

10 MR. BOHLING: Possibly a statement
11 towards the end.

12 MS. ALCOCK: I'm Margaret Alcock with
13 the New Mexico Taxation & Revenue Department. I
14 do not have any witnesses. I just have one
15 comment to make.

16 CHAIRMAN: Thank you, Ms. Alcock.

17 MR. GRAY: Frank Gray with Texaco from
18 Midland, Texas.

19 CHAIRMAN LeMAY: Will you be presenting
20 testimony, Mr. Gray?

21 MR. GRAY: No.

22 CHAIRMAN LeMAY: Will you be issuing a
23 comment?

24 MR. GRAY: No, sir.

25 MR. BROWN: Tom Brown, Mr. Chairman,

1 with Yates Petroleum. I'll have a short comment
2 at the end of the testimony.

3 CHAIRMAN LeMAY: Thank you, Mr. Brown.

4 Additional comments? We can certainly
5 take comments at the end if you haven't stood up
6 and want to put something in the record. There's
7 no reason to identify yourselves unless you'd
8 like to at this point.

9 Will all those who will be giving
10 testimony, please, stand and be sworn in.

11 [The witnesses were duly sworn.]

12 CHAIRMAN LeMAY: We'll start with Mr.
13 Stovall.

14 MR. STOVALL: I'll ask Mr. Van Ryan to
15 come from the back of the room.

16 **LAWRENCE O. VAN RYAN**

17 Having been duly sworn upon his oath, was
18 examined and testified as follows:

19 EXAMINATION

20 BY MR. STOVALL:

21 Q. How are you this morning?

22 A. Fine, sir. Thank you.

23 Q. Who are you this morning?

24 A. I'm still Larry Van Ryan, Chief
25 Petroleum Engineer for the OCD.

1 Q. Have you previously been qualified by
2 this Commission as an expert in petroleum
3 engineering?

4 A. Yes, I have.

5 Q. Are you familiar with the purpose of
6 this application?

7 A. Yes.

8 Q. Are you familiar with the New Mexico
9 Enhanced Oil Recovery Act?

10 A. That's correct.

11 Q. And the regulations which are proposed
12 by the Division as it implements its part of
13 carrying out the purposes of that act?

14 A. Yes.

15 Q. Will you state briefly for the
16 Commission why we are here this morning? What is
17 the purpose of this hearing?

18 A. The 1992 legislature passed the
19 Enhanced Oil Recovery Act. In that act they
20 directed the Oil Conservation Division to adopt
21 rules to certify enhanced oil recovery projects
22 and to verify by certification that these were
23 valid projects under the law as it was enacted
24 and subsequent to that then to provide our
25 certification to the Taxation & Revenue

1 Department so that these projects could qualify
2 for a reduced severance tax rate.

3 Q. What is your understanding of the
4 purpose of the Enhanced Oil Recovery Act?

5 A. The act in itself is to encourage
6 companies to make investments in the state of New
7 Mexico in enhanced oil recovery projects because
8 they would obtain a benefit in a reduced
9 severance tax.

10 Q. I'm going to pass out at this time --
11 I'll pass to counsel here, and it can be passed
12 back to anybody that wants -- a copy of a
13 document. The front of that document is my
14 prehearing statement, which is filed in this
15 case, indicating what I'm presenting.

16 And attached to it is what is
17 identified as the Proposed Rules and Procedures
18 for Qualification of Enhanced Oil Recovery
19 Projects and Certification for the Recovered Oil
20 Tax Rate. Do you have that in front of you, and
21 do you see that?

22 A. Yes.

23 MR. STOVALL: Now, this has not been
24 marked as an exhibit, Mr. Chairman. We can
25 identify it as Exhibit 1, if that makes it easier

1 for the record, as the proposed rules
2 themselves. I haven't necessarily marked it.

3 CHAIRMAN LeMAY: At your pleasure.

4 MR. STOVALL: I think the record can be
5 clear if we know what it is, so I don't think
6 that's a particular problem.

7 Also we'll pass out at this time at the
8 request of one of the Commissioners -- requested
9 the actual copy of the act. I had not originally
10 planned to distribute this.

11 CHAIRMAN LeMAY: I'd like to have this
12 part of the record.

13 MR. STOVALL: Yes, I am going to make
14 it a part at this time.

15 Q. You also now have in front of you a
16 document with a legislative cover sheet. Would
17 you describe what that document is?

18 A. This is the House Bill 23, which is
19 referred to as the Enhanced Oil Recovery Act
20 passed by the 1992 Legislature, State of New
21 Mexico.

22 Q. And its official citation, I believe,
23 is Chapter 38 of the Laws of 1929, as adopted by
24 the 1992 Legislature; is that correct?

25 A. That's how it reads.

1 Q. And this is the statute upon which
2 these regulations have been adopted --

3 A. That's correct.

4 Q. -- in compliance with which. Let's
5 turn now to the regulations themselves and start
6 through and explain what the purpose is and how
7 the regulations will work. Let's turn first to
8 Section C called "Definitions." Where do the
9 definitions under this regulation come from?

10 A. The definitions, as in the proposed
11 rules, are exactly as it was stated in the act
12 that we have before us. We did not change those
13 because we felt those were legislative intent.

14 Q. Now, with respect to those definitions,
15 I know we've had prior to this hearing comments
16 submitted by operators who have recommended some
17 changes, and I'm sure we'll have some testimony
18 with respect to that today.

19 What is your opinion with respect to
20 making any changes to the definitions in the
21 rules?

22 A. Well, I think since this was part of
23 the act itself, that I feel very uncomfortable
24 with changing these definitions. I think we
25 should use them as they were passed in the act.

1 There is some, even though we have some
2 definitions here, I don't think that they are all
3 encompassing.

4 In a number of cases they give you such
5 statements as, "other than a primary recovery
6 process including but not limited to," and then
7 it goes on for the definition. I think that
8 gives us leeway to look at other things other
9 than what are listed here.

10 Q. In other words, based upon some of the
11 conversations you've had outside, and again I
12 think the parties who have presented that
13 information to you are here today and probably
14 will testify, is it your opinion that, for
15 example, Marathon is a party to this proceeding
16 and has had some discussion with you; is that not
17 correct?

18 A. That's correct.

19 Q. And they have proposed or suggested
20 some types of projects that they feel should
21 qualify for treatment, reduced tax treatment
22 under the EOR Act; is that correct?

23 A. Yes.

24 Q. Do you have an opinion as to whether or
25 not the definitions as contained in the act are

1 broad enough to encompass those should they meet
2 the criteria the Division sets forth to qualify
3 the projects?

4 A. Yes, I would agree they are broad
5 enough to consider any viable projects. For that
6 reason I'd be very leery of changing the
7 definitions.

8 Q. Let's go through the rules now to part
9 D, "Procedures." This is the real guts of the
10 rules, isn't it, as far as what the Division is
11 going to be doing with these projects?

12 A. Yes. This sets forth the procedure for
13 an operator to make application to the Division
14 for an EOR project to be certified by the
15 Division.

16 Q. Why don't you go through and kind of
17 describe, without reading the entire thing, how
18 you would envision the process to work and how
19 the rules would dictate that the process works?

20 A. Well, at the present time, I think for
21 the foreseeable future, we intend for every one
22 of these applications to go to hearing, and these
23 rules set out the procedure for that; that we
24 would go to hearing with each one of these
25 projects and that in each case we want the

1 operators to be very specific on what they're
2 applying for and what area they're applying for.
3 We want a very specific outline of the area that
4 they think is going to be affected by the EOR, a
5 list of the wells, both injectors and producers,
6 that are in their project areas.

7 We want some information from them, as
8 directed by the act, as far as the economic
9 viability of these projects that these are
10 significant projects which should earn, by their
11 significance they should earn the severance tax
12 credit.

13 Q. By significance, what is that? Are you
14 talking about significance of investment or
15 significance of incremental recovery, for
16 example?

17 A. Combination. I think what we're
18 looking for here is that the investment is a bona
19 fide investment. It's not just some kind of a
20 gimmick to get by a reasonable EOR project. But
21 it is a real EOR project with significant
22 investment and significantly more oil will be
23 recovered by this.

24 I know "significant" is a very hard
25 term to define, but each project will have to

1 stand on its own. We may be talking about
2 projects that are millions of barrels or projects
3 that are less than that depending on the size of
4 the area.

5 Q. When you say significant is difficult,
6 you mean it's difficult to quantify?

7 A. Yes.

8 Q. Is it the intent of the regulations
9 that, if I understand what you've just said
10 correctly, that there really has to be some
11 action taken by an operator to do something new
12 to a reservoir that will cause increased recovery
13 of the --

14 A. Yes.

15 Q. -- product?

16 A. Be it an expansion of an existing EOR
17 project or a new EOR project.

18 Q. Let me back up for a moment and make
19 sure that there's some understanding as to the
20 relationship between a proceeding under this
21 proposed set of rules and under the current rules
22 and regulations of the Division.

23 Is it your understanding that currently
24 for the injection of fluids into a reservoir,
25 which is the primary method of enhanced recovery,

1 that currently it must be approved by the
2 Division?

3 A. Yes, that's correct.

4 Q. And that doesn't change under this,
5 does it?

6 A. No. These are in addition to the
7 existing rules. If you're applying -- or if an
8 operator would be applying for a new project, it
9 would still have to abide by all the existing
10 rules in addition to these rules, this
11 information required by this proposed rule.

12 Q. Now, how would you anticipate that
13 working? Say an operator has a new or an
14 expansion project that they want to come in,
15 would it be a combined process to receive the
16 OCD, if you will, general approval plus the
17 certification?

18 A. Well, on a new project, yes. I would
19 say that they would file the C-108 and all the
20 information that we would normally require for a
21 secondary recovery and tertiary recovery project
22 for approval by the Commission.

23 In addition to that they would apply
24 for the Enhanced Oil Recovery certification and
25 provide the information as requested here. Some

1 of it would be the same, but this just gives us
2 the means to certify this.

3 On an expanded project there would
4 already be an approval that would have been done
5 sometime in the past. And for the expansion area
6 we would look for such things as justification:
7 Is this a real project? Is this something that
8 was intended in legislative intent here to
9 qualify?

10 Q. Now, probably one of the critical
11 things in this is: What is the project area? Is
12 that not correct?

13 A. We're going to be very specific on the
14 project area. As an example, if we had an
15 enhanced oil recovery project and the people were
16 looking for a pilot to test a system, we would
17 want them to be very specific on what area was
18 going to be affected by the test procedures and
19 provide us with detailed information on
20 production in a given area so that we could later
21 on certify the positive production response.

22 Q. And it might not -- it probably would
23 not be the entire -- again if it's an existing
24 project, it would not be the entire project area
25 unless there were this new technology or

1 methodology were applied throughout the project
2 area?

3 A. Right. It would have to affect the
4 whole area. They would have to demonstrate to
5 the Commission or to the Division that the whole
6 area was going to be affected. In lieu of that,
7 we're looking at just the project area or the
8 expanded area.

9 Q. I notice in paragraph 4 (b) we talk
10 about a plat and a description of the project
11 area by section, township, and range. What is
12 the intent there again? It's not strictly an
13 OCD -- let me back up and say it's not strictly
14 an OCD process that we're talking about. We're
15 part of a bigger picture; is that not correct?

16 A. Yes, we are. We've tried not to put
17 rules that Taxation & Revenue would have to abide
18 by into our definitions or into our rules. But
19 we do have to provide them with certification and
20 some means of defining the area that would be
21 affected so that when an operator applies at
22 Taxation & Revenue they can identify that same
23 area and make sure it's a certified EOR project.

24 Q. So that land description area of the
25 project area is pretty significant from the

1 Taxation & Revenue Department's perspective?

2 A. Most definitely. Right.

3 Q. And this procedure goes on to describe
4 the methods to be used. Do you anticipate any
5 necessity to get information about investment?

6 A. Yes. We've asked for information as
7 far as the total project cost, the capital cost
8 of additional facilities, and some estimated
9 total values of the additional production that
10 will be recovered as a result of the project.

11 Q. Are there any changes which you'd like
12 to make, recommendations for changes you'd like
13 to make in this particular section at this time
14 particularly with respect to the description of
15 the project or any other information?

16 A. Under item (e) on page 4, we would
17 rather have the list of the producing wells under
18 No. 1 and a list of the injection wells where we
19 just ask for a number. We're not interested if
20 it's five or ten wells. We want to know the
21 wells that they're talking about.

22 In addition to our information, this is
23 some of the same information that will help
24 Taxation & Revenue identify the area of the
25 wells.

1 Q. In other words, that's how Tax & Rev is
2 going to know who gets the reduced tax rate; is
3 that correct?

4 A. Exactly.

5 Q. If you would just briefly go over and
6 explain the certification process. It's kind of
7 a bifurcated process, if I understand it; is that
8 correct? One is the project and two is getting
9 something out of the investment?

10 A. The project itself can be certified and
11 evidence and certification will be sent to
12 Taxation & Revenue. But nothing happens until
13 there's a positive production response from the
14 project itself. At that time the operator is to
15 notify the Oil Conservation Division that a
16 positive production response has occurred.

17 We certify that. We can do that
18 administratively. Or if we have a doubt, it can
19 be called to hearing for the operator to prove
20 that there's been a positive production response.

21 Q. What are you going to look for, would
22 you anticipate the Division is going to look for,
23 as an indication of positive production response?

24 A. Well, again what we're looking for here
25 is we're looking for a bona fide response to the

1 EOR project. As in some cases when a new
2 secondary recovery project is started, just due
3 to additional attention to the project area, you
4 have an increase in production because wells are
5 taken better care of, pumps are changed out,
6 everybody is getting ready for this anticipated
7 investment.

8 We don't intend for that type of
9 production increase to be a means for positive
10 production response. So we're wanting to look
11 again at a very specific area, the same one that
12 we've certified to start off with. We want a
13 production history that's been provided at the
14 hearing for the certification. We want the same
15 information to come in with the additional
16 production that's been since the time of
17 certification until the time of positive
18 production response. And we want them to provide
19 us with something that would be substantial,
20 maybe two to three months of positive production
21 response so that we can verify that it truly is a
22 positive production response.

23 That should not hurt the operators
24 because the tax credit will be applied back to
25 the date that we've established that it did

1 occur. So the fact that they file it three or
2 four months late is no detriment to the operator.

3 Q. Now, again would you recommend any
4 changes to the provision with respect to
5 certification today to what has been proposed and
6 what is in the proposed rules that I've
7 distributed today?

8 A. I don't recall that we've had much
9 comment in regards to that as far as the
10 certification. Now, as an additional part, if
11 you've --

12 Q. I'm referring to that section more than
13 the process.

14 A. Okay. Part of our requirements after
15 certification is that we receive an annual report
16 from the operators.

17 Q. I'm sorry. You're moving on to the
18 next section. Let me back you up here. The
19 statute imposes some time limits with respect to
20 when the positive production response must occur
21 and an application for certification must occur;
22 is that correct?

23 A. Yes, that's correct. It was brought to
24 our attention that we have an error in section C
25 underneath the positive production response

1 certification. And where it says that "the
2 certification and notice shall be set forth, the
3 date the certification was made, and the date the
4 positive production response occurred provided
5 however," then it has Section 1 for a secondary
6 recovery project and the positive production
7 response must occur not later than five years
8 from the date the Division issued the
9 certification of approval.

10 That should read in effect that the
11 application has to be made within five years.
12 The positive production response could have
13 occurred prior to that, but if they do not make
14 the application for the positive production
15 response, then it goes, prior to the five years,
16 then we cannot -- it won't be accepted.

17 Again in item 2 where it says the same
18 thing for tertiary recovery project and it gives
19 a time limit of seven years, that should read
20 that the application for certification has to be
21 received within seven years.

22 Q. Now, this recommended change is not
23 really discretionary within the Division, is it?
24 Actually that tracks the statutory requirement?

25 A. Exactly. That's as it's mentioned in

1 the Enhanced Oil Recovery Act.

2 Q. So the operator not only has to be able
3 to get a positive production response, they have
4 an affirmative obligation to file an application
5 for certification of that response within these
6 time frames?

7 A. That's correct.

8 Q. Let me go back to one thing again.
9 It's a little bit of a rehash, but I want to make
10 sure it's clear. The statute and the rules
11 provide that this only applies to projects
12 approved after I believe it's March 6 of 1992; is
13 that correct?

14 A. That's correct. That's the date that
15 the bill was signed by the governor.

16 Q. Therefore, any EOR secondary recovery
17 or tertiary recovery project which has been
18 approved by the Division as a project prior to
19 that date cannot now be certified for tax credit
20 subsequent to that date; is that correct?

21 A. That's correct.

22 Q. Those projects, in order for any part
23 of those projects to get the reduced tax rate,
24 they must have some additional enhanced recovery
25 process initiated or approved to be initiated

1 subsequent to that March 6 date; is that correct?

2 A. Yes. That's in the definitions where
3 it talks about the expansion of an existing
4 project.

5 Q. Now, you started a moment ago to talk
6 about reporting requirements, section F of the
7 rules. Would you now go ahead and go into kind
8 of the intent and purpose what the Division will
9 be looking for with respect to that?

10 A. The intent is to have a means of
11 verifying that we're still talking about viable
12 projects here. And we're requesting that the
13 operator file an annual report whereby they'll
14 give us the production graph showing what
15 production is going on, injection pressures, and
16 graphs showing the total injected fluid.

17 And we're wanting them to certify to us
18 basically that this is still a viable enhanced
19 oil recovery project. What we have done is we
20 would recommend that item D under Section 1 there
21 would be stricken and would be put up in the
22 requirements above where it says the operator of
23 a certified EOR project shall report annually on
24 the status of the project and certify that the
25 project is still a viable EOR project as

1 approved.

2 Item D would be changed to the
3 following paragraph, which is now item E, "In any
4 additional data that the Director deems necessary
5 for continued approval."

6 The second part of that we would call
7 it item No. 2 to make it read that "The Director
8 may set any such application for hearing, would
9 it appear necessary," and if there's any
10 question about the existence of a viable EOR, if
11 there's any question that it still is ongoing,
12 that the Director could call this to hearing and
13 ask the operator to give us his reasons for
14 that.

15 Q. And then the statute provides for
16 termination of a project. And at that point I
17 assume the tax credit would no longer apply or
18 the reduced tax rate would no longer apply to
19 production from that project; is that correct?

20 A. That's correct. And in the Taxation &
21 Revenue part of these rules, there are some time
22 frames on that and how long it would proceed.
23 They're not in our rules because we didn't feel
24 that it was appropriate for us to address
25 Taxation & Revenue's rules.

1 Q. In other words, you're recommending
2 deletion of paragraph 2 under G; is that correct?

3 A. Yes. That is a Taxation & Revenue
4 area, and we didn't feel that we ought to include
5 that in our rules.

6 Q. Now, specifically these regulations
7 have not addressed anything with respect to the
8 revenue items that are contained in the Enhanced
9 Oil Recovery Act; is that correct?

10 A. That's correct.

11 Q. Don't address tax rates and effective
12 dates of tax rates and anything else; is that
13 correct?

14 A. No.

15 Q. The only intent is to codify in some
16 way the process that the Division will use to
17 certify a project to Taxation & Revenue, who is
18 then responsible for taxing the product at the
19 appropriate rate under the act?

20 A. That's correct. And the operator, then
21 his communications will be with Taxation &
22 Revenue. They would be provided our
23 certification of the project, certification of
24 positive production response. And from that
25 point on, their dealings are with Taxation &

1 Revenue until the termination of the project.

2 Q. One question that's come up with
3 respect to timing on these projects is, if I'm
4 not mistaken, the act provides for the reduced
5 tax rate for CO₂ projects effective immediately
6 upon the positive production response from those
7 projects. But for other types of enhanced oil
8 recovery projects, the tax rate does not go into
9 effect until January 1 of 1994; is that correct?

10 A. Yes. That's in the Taxation
11 Department's rules again, and we do not address
12 that. But as it reads, I believe it says that
13 any project that uses CO₂ could be classified as
14 an enhanced oil recovery project prior to January
15 1, 1994. Subsequent to that date it would be
16 essentially the definitions that we've included
17 in our rules -- would be subject to
18 qualification.

19 Q. Now, I'm going to ask you a question,
20 and I would also like to ask Ms. Alcock, if she
21 wouldn't mind, to express a preliminary opinion
22 from Taxation & Revenue. But it's my
23 understanding, and is it yours, that the Division
24 may approve a non-CO₂ project? In other words, a
25 waterflood or gas injection type project or

1 something else that doesn't immediately qualify
2 prior to that January 1, 1994, date and can even
3 certify a positive production response to that
4 date, even though that production will not be
5 allowed to receive the reduced tax rate until
6 that date; is that correct?

7 A. That's my understanding. And the
8 reason for that would be that the law went into
9 effect on on March 6, and it doesn't give us any
10 other determination that we can certify both the
11 project and the positive production response.

12 From Taxation & Revenue it's our
13 understanding that it wouldn't qualify, like
14 you've said, for the reduced severance tax rate
15 until 1/1/94.

16 Q. But it's your opinion at this time it's
17 not necessary for the Division to address that in
18 its rules, that it's taken care of in the
19 statute, and that an operator can go ahead and
20 apply without risk of losing that benefit?

21 A. Yes.

22 Q. Is there anything else you'd like to
23 add to your testimony?

24 A. I think we've pretty well covered it.

25 MR. STOVALL: I have no further

1 questions of this witness.

2 CHAIRMAN LeMAY: Would you like to
3 admit the Exhibits 1 and 2 for the record?

4 MR. STOVALL: I guess I should offer at
5 least the rules. I think the statute is
6 self-certifying, but I will offer that for the
7 record.

8 CHAIRMAN LeMAY: Without objection that
9 evidence will be admitted into the record.

10 Questions of the witness?

11 Mr. Pearce?

12 MR. PEARCE: Thank you, Mr. Chairman.

13 EXAMINATION

14 BY MR. PEARCE:

15 Q. Mr. Van Ryan, very quickly, you
16 mentioned the C-108 application form for
17 injection and that's used also for disposal
18 projects. Do you envision an application form
19 for an EOR application as well?

20 A. Not at this time. We may eventually
21 work into that, but since all these will be going
22 to hearing, we don't foresee that right now.

23 MR. PEARCE: I think we'd asked your
24 lawyer to pay some attention to that. We've had
25 several members of the association indicate that

1 they think that would be helpful if the Division
2 could come up with some form for them to fill in
3 because the C-108 form is particularly helpful,
4 Mr. Chairman.

5 Q. Mr. Van Ryan, you mentioned several
6 times in your testimony Taxation & Revenue
7 Department rules and regulations on this. Are
8 there any yet? Do you know?

9 A. I'm not aware if they have anything
10 other than the directive from the act itself.

11 MR. PEARCE: I think that's all I've
12 got, Mr. Chairman. Thank you.

13 Thank you, Mr. Van Ryan.

14 CHAIRMAN LeMAY: Thank you, Mr.
15 Pearce.

16 Ms. Aubrey?

17 MS. AUBREY: Thank you.

18 EXAMINATION

19 BY MS. AUBREY:

20 Q. Mr. Van Ryan, you've met with Marathon
21 Oil Company representatives to discuss some of
22 the proposals that that company has suggested to
23 these rules; is that correct?

24 A. Yes, we have.

25 Q. And part of the topic or one of the

1 topics that you discussed were the additions of
2 certain types of processes that Marathon wished
3 to have included in the definitional section of
4 the Enhanced Oil Recovery definition; is that
5 correct?

6 A. Yes.

7 Q. I understand your testimony to be that
8 the Division intends that the definition
9 contained in the rules, which has been marked as
10 an exhibit, is sort of an all-inclusive
11 definition and includes in fact processes that
12 are not separately stated. Do I understand that
13 correctly?

14 A. Yes, that's our interpretation.

15 Q. So that I'm clear, Mr. Van Ryan, I'd
16 like to take you very quickly through a couple of
17 processes to make sure that we're talking about
18 the same thing and in fact in your opinion those
19 are included in the definition that the Division
20 has proposed.

21 The first would be vertical areal
22 conformance processes. In your opinion are those
23 included in the general definition which is in
24 the proposed rules?

25 A. Yes, I think that it could be included

1 in there.

2 Q. What about cyclic injection processes?

3 A. If they're a viable project, I think it
4 could be, yes.

5 Q. What do you mean by if they're a viable
6 project?

7 A. I think it depends on the testimony
8 that the operator would present as to what
9 they're talking about: Is it an enhanced oil
10 recovery project?

11 Q. So you wouldn't given that the broad
12 inclusion, for instance, that you give vertical
13 areal conformance processes?

14 A. I think all of them have that same
15 qualification. Their evidence has to be
16 presented at hearing, and that's why we're going
17 to request that all these go to hearing to give
18 the operator the opportunity to justify whatever
19 he requests.

20 Q. In the opinion of the Division, are
21 there any processes that you can articulate for
22 me right now that would not in your opinion be
23 included?

24 A. I couldn't tell you exactly what would
25 not be included. I think we want each operator

1 to feel that that he has the opportunity to
2 justify those if something should be included.

3 Q. In connection with your description of
4 the necessity that the projects be significant,
5 do you have an opinion as to whether or not
6 there's any internal definition of either the
7 amount of recovery or the number of dollars that
8 would come up to meet the term "significant"?

9 A. No. I think, as we stated earlier,
10 some of these projects we may be looking at a 1
11 million barrel project, a 5 million barrel
12 project, and it depends on the original size and
13 the original project we're talking about.

14 Some of these projects may encompass
15 one section of land. Some of them may encompass
16 numerous sections of land. So each project has
17 to stand on its own merits.

18 Q. So there's no requirement that, as far
19 as you know, in the Division in creating these
20 rules, there's no intent to set a minimum number
21 of dollars that have to be spent, a minimum
22 number of sections that have to be covered, or a
23 minimum amount of recovery?

24 A. No.

25 Q. Is the Division working with the

1 Department of Taxation & Revenue in coordinating
2 with the text to not only your rules and
3 regulations but the rules and regulations that
4 that department would propose?

5 A. We have visited with members of
6 Taxation & Revenue, given them a copy of these
7 rules. One of the changes we suggested was the
8 fact that their attorney had come across a
9 discrepancy, and that's the reason we suggested
10 this particular change.

11 That was the one about the deadline
12 about filing for secondary recovery projects
13 within five years or within seven years. So,
14 yes, we have been working closely with them.

15 Q. And have you seen any promulgated
16 rules, any drafts of rules by that department?

17 A. No, I have not.

18 Q. Mr. Van Ryan, on the last page of the
19 proposed rules, the exhibit, there's a No. 3
20 under "Termination." Was there an intent to
21 include another paragraph there that got left
22 out?

23 A. This is one that we were making notes
24 on, and it got copied as a part of an exhibit and
25 that was just a what if.

1 MS. AUBREY: Okay. Thank you.

2 CHAIRMAN LeMAY: Thank you, Ms.
3 Aubrey.

4 Additional questions of the witness?
5 Commissioner Carlson?

6 EXAMINATION

7 BY COMMISSIONER CARLSON:

8 Q. Larry, is the only distinction between
9 a secondary and a tertiary project five and seven
10 years? Is that the only difference in the way
11 they're treated throughout this procedure?

12 A. Yes. I think both of them would be
13 called enhanced oil recovery projects. But the
14 only differentiation between them is the time
15 limit you have to apply for the tax
16 certification, positive production response.
17 That would be the only difference.

18 COMMISSIONER CARLSON: That's all I
19 have.

20 CHAIRMAN LeMAY: Commissioner Weiss?

21 EXAMINATION

22 BY COMMISSIONER WEISS:

23 Q. Your discussion about "significant"
24 there, I think in an effort to pin it down a bit
25 more, there may be room to add to the

1 "description of the projection," (e) on page 4.
2 And perhaps there needs to be something in there
3 that describes the volume of the injector.

4 If it's chemical, pounds, and if it's
5 CO₂, Mcf, in terms of not only units of that
6 nature, but also in terms of pore volume. So
7 this would in the past, back in the days of
8 windfall profits tax, people would go out and
9 whisper, for instance, "polymer" and say that was
10 a legitimate project and they put 50 pounds or
11 something in the well. Well, that has to be
12 avoided.

13 A. Right.

14 Q. And that may be then the Examiner would
15 have access to that information, if it was in
16 there.

17 A. [Nodded.]

18 COMMISSIONER WEISS: Another thing that
19 has happened in the past and I'll share with you
20 is by and large most of these projects are not
21 put in, these tertiary oil recovery projects are
22 not put in unless people are really expecting
23 incremental oil, and that's what we want to
24 promote.

25 But yet when they put them in, they

1 have to drill additional wells, as you mentioned,
2 change pumps, upgrade equipment. And that's all
3 a part of the project, and that's all part of the
4 expense of the project. And I think any oil from
5 that is due to that project, even though it's not
6 a response to, say, CO₂ injection. It wouldn't
7 have been done without it.

8 And then the third item that came to
9 mind when you were reviewing this, and I don't
10 know how you could possibly look at this. But I
11 think that New Mexico CO₂ is a lot better than
12 Colorado CO₂, especially if they're priced
13 competitive. That's my only comments.

14 CHAIRMAN LeMAY: Thank you,
15 Commissioner Weiss. Just one.

16 EXAMINATION

17 BY CHAIRMAN LeMAY:

18 Q. What is the vertical areal? What was
19 that? Can you define that for me? A question
20 from Ms. Aubrey, she mentioned something about
21 vertical areal something.

22 MR. STOVALL: Mr. Chairman, I bet
23 Marathon would be just tickled pink to describe
24 that for you when their time comes.

25 CHAIRMAN LeMAY: That would be fine.

1 THE WITNESS: What we talked about,
2 which was outside the hearing, but we're talking
3 about, my understanding, we have a flood where we
4 have had water breakthrough already. And now
5 water is following the same channels, and it's
6 just coming right through the same channel and
7 being produced. And we're really not pushing
8 additional oil out.

9 What they had talked about to change
10 this water flow pattern is a jell system that
11 would go in and plug off this flow pattern and
12 force the injected water then to either go up
13 into additional zones or go out in an areal sweep
14 to take into account oil that's been bypassed and
15 would not normally ever be produced if the system
16 continues to operate the way it is.

17 Q. (BY CHAIRMAN LeMAY) So it's really a
18 remedial action on an existing flood basically;
19 is that right?

20 A. Yes. And some of these processes are
21 handled with different chemicals. They're
22 talking about a jell system that would go in and
23 set up to some degree and force the water out.
24 There are other systems that use emulsions or
25 polymers that go in and physically plug off the

1 rocks in the same manner, just forcing the water
2 to take different channels and increase the sweep
3 efficiency of the flood itself.

4 CHAIRMAN LeMAY: That's vertical areal
5 what?

6 MR. STOVALL: Conformance.

7 CHAIRMAN LeMAY: Performance?

8 MS. AUBREY: No. Conformance.

9 CHAIRMAN LeMAY: Conformance. Thank
10 you.

11 THE WITNESS: This has been around a
12 long time. There's been different means of
13 trying to do this from mechanical means to
14 chemical means.

15 CHAIRMAN LeMAY: Thank you. That
16 improves my understanding of the situation.

17 Any further questions of the witness?

18 Ms. Aubrey, you don't have any further
19 questions?

20 MS. AUBREY: I have one brief
21 question. I'd like to follow up on Commissioner
22 Weiss' comment regarding the response to the
23 project.

24 FURTHER EXAMINATION

25 BY MS. AUBREY:

1 Q. Is it your understanding, Mr. Van Ryan,
2 that it is the intent of these regulations and
3 the intent of the legislature that oil which is
4 recovered as a result of the drilling of new
5 wells or the improvement in pumping equipment,
6 that sort of thing, will also as part of the
7 project, an EOR project, will qualify for the
8 severance tax benefit?

9 A. The way the law is written, all oil
10 from the project, once the positive production
11 response is certified, qualifies. It's not an
12 incremental type situation. So at the time that
13 we have a positive production response, as
14 defined by our rules, then all the oil from that
15 project qualifies from that day forward for the
16 search tax credit.

17 MR. STOVALL: Mr. Chairman.

18 CHAIRMAN LeMAY: Mr. Stovall.

19 MR. STOVALL: I do actually have one
20 follow-up question just to make sure it's
21 understood.

22 FURTHER EXAMINATION

23 BY MR. STOVALL:

24 Q. With respect to under the definition of
25 the projects which qualify, I understood you to

1 say that just because something is not listed
2 doesn't mean it won't qualify; is that correct?

3 A. That's correct.

4 Q. Conversely, however, it also means just
5 because a process is identified doesn't mean that
6 just simply saying you're going to use that
7 process will qualify a project. An operator is
8 really going to have to show what the benefits
9 will be and how it's going to work and some
10 substantive evidence to show why that process is
11 being used and how it will be used; is that
12 correct?

13 A. Yes. And back to Mr. Pearce's
14 comments, we have in effect the C-108, which does
15 allow the operator the opportunity to know what
16 information he does have to present from the
17 project. We also -- that's not all definitive
18 either in the C-108.

19 And what we're hoping that the
20 operators will do, will take the hearing process,
21 the opportunity for the hearing to justify the
22 project. And we can't define all the methods or
23 the means or the things that may come up here.
24 But we will be making a judgment based on what
25 they present at the hearings.

1 Q. To touch on that since you've opened
2 that up again, the C-108 may in fact be the forum
3 that's used since they have to apply for approval
4 of the project itself under the OCD rules anyway;
5 right?

6 A. That's correct, for new projects. I
7 guess the only question that would come up here
8 is what we call the expansion or pilot project or
9 something different, you still would abide by
10 almost the same rules. So if there's a doubt in
11 the operator's mind, I don't see any problem with
12 them using the C-108 as a guideline, although we
13 wouldn't require that they file that form.

14 MR. STOVALL: Nothing further.

15 CHAIRMAN LeMAY: Thank you, Mr.
16 Stovall.

17 Additional questions of the witness?
18 If none, he may be excused. Thank you, Mr. Van
19 Ryan.

20 Ms. Aubrey. Would you care to present
21 your --

22 MS. AUBREY: Mr. LeMay, we coordinated
23 this, if it's all right with the Commission, that
24 NMOGA would put on its presentation first.

25 CHAIRMAN LeMAY: Fine. I am very

1 impressed with the versatility of legal counsel.

2 MR. PEARCE: You haven't heard him yet,
3 Mr. Chairman.

4 CHAIRMAN LeMAY: You all get your shot
5 at him right now.

6 MS. AUBREY: We are waiting for this.

7 MR. STOVALL: Mr. Chairman, before we
8 begin, I think we ought to take administrative
9 notice of the fact that the Chairman has
10 categorically stated that attorneys are not
11 experts in anything. So we'll qualify the
12 witness initially.

13 CHAIRMAN LeMAY: I would be surprised
14 if the witness would be qualified as an attorney
15 where he's sitting right now.

16 MR. PEARCE: It's good we have all been
17 present at the first time we have proven the
18 Chairman of this Commission absolutely wrong.

19 WILLIAM F. CARR

20 Having been duly sworn upon his oath, was
21 examined and testified as follows:

22 EXAMINATION

23 BY MR. PEARCE:

24 Q. For the record, sir, would you, please,
25 state your name and your employment?

1 A. My name is William F. Carr. I'm an
2 attorney with the Santa Fe law firm, Campbell,
3 Carr, Berge & Sheridan.

4 Q. And in what capacity are you appearing
5 before us?

6 A. I'm appearing here today as a witness
7 for the New Mexico Oil & Gas Association to
8 propose certain amendments to the Enhanced Oil
9 Recovery Act regulations.

10 Q. Could you briefly describe for us the
11 nature and extent of your involvement with those
12 regulations?

13 A. Well, for the past two years I've
14 worked closely with Representative Whitaker, the
15 bill's primary sponsor, Mr. Van de Graaff, and
16 other industry representatives to twice secure
17 legislative approval of this proposal.

18 I've also worked during the interim
19 with legislative committees, the Department of
20 Tax & Revenue, and the governor's office to
21 finally also secure his approval of the bill.

22 I've responded to legislative
23 inquiries, and I've testified numerous times in
24 support of the legislation. I also worked with
25 Jim Morrow, former Chief Engineer to the

1 Division, in preparing early draft regulations to
2 implement the act.

3 Q. Speaking generally, sir, do you believe
4 that the regulations which are proposed today are
5 in line with legislative intent and requirements
6 as you understand them after your involvement
7 with this process?

8 A. I believe the rules as proposed and
9 also the amendments which we are going to suggest
10 are consistent with the act and the legislative
11 intent as we understand it.

12 Q. Thank you. You mentioned that you were
13 appearing on behalf of the New Mexico Oil & Gas
14 Association. Have a number of companies
15 participated in this process with you?

16 A. Tom Kellahin, Chairman of the
17 Regulatory Practices Committee of NMOGA,
18 circulated the proposed rules to the membership.
19 We have received numerous comments. We also have
20 met, reviewed proposals that were submitted by
21 ten to fifteen companies, and have reached a
22 consensus on the proposals which we are bringing
23 to you today.

24 Q. Mr. Carr, at this time I'd like you,
25 please, to address your attention to what has

1 been marked as Exhibit 1 of the New Mexico Oil &
2 Gas Association. First of all, generally could
3 you describe what this exhibit represents and
4 what information is highlighted on it?

5 A. What we have done is we have taken the
6 proposed rules which were provided by the
7 Division and in basically a legislative format
8 have indicated certain changes which we believe
9 clarify the rules consistent with legislative
10 intent and would also provide guidance to
11 operators in bringing applications to the
12 Division.

13 I think it's important to note that, as
14 we approached this, we recognize that the
15 legislature had directed the Division to exercise
16 its discretion in the administration of this act
17 and develop rules consistent with it that would
18 implement their intent.

19 We are before you proposing some
20 changes even to definitions, but the changes
21 we're proposing we contend are consistent with
22 the legislation. And we think it's appropriate
23 for you in developing rules to not only stay
24 strictly with the language of the statute but
25 also to clarify and provide guidance to the

1 operators who will be bringing applications to
2 you.

3 One other thing is that Marathon will
4 also be presenting testimony concerning some
5 additional changes to the definitions. We would
6 like it clearly understood that the New Mexico
7 Oil & Gas Association endorses these proposals,
8 thinks they are important, and will provide
9 needed clarification.

10 Q. All right. Let's look at the items
11 that have been highlighted on this. And I
12 believe the first suggested change to the
13 proposed rule is found on page 2 in definition
14 No. 8. Could you describe that change for us,
15 please?

16 A. What we have done here is we've made a
17 minor wording change, which we believe clarifies
18 the definitions to indicate that all crude oil
19 produced from an improved enhanced oil recovery
20 project will in fact qualify for the incentive
21 tax rate.

22 There was some confusion on the part of
23 actually a number of companies as to whether or
24 not all production would qualify or only a
25 percentage, the percentage that could be

1 attributed to the application of the enhanced
2 recovery technique.

3 The changing is minor. We've inserted
4 the word "all" before crude oil, and we've also
5 then just expanded it, noting that this is the
6 production from an improved project and it
7 follows certification of the positive production
8 response. It was simply to clarify that all
9 production would qualify for the lower tax rate
10 after certification.

11 Q. And, Mr. Carr, were you present in the
12 hearing this morning when Mr. Van Ryan testified?

13 A. Yes. And we believe this proposal is
14 consistent with Mr. Van Ryan's testimony.

15 Q. Thank you, sir. Looking at definition
16 No. 9 of "Secondary Recovery Project," there are
17 a couple of proposed changes to that definition.
18 Could you discuss those for us, please?

19 A. In the second line of the definition,
20 we have inserted the words, "the completion of."
21 Actually including that language makes this first
22 portion of this definition consistent with the
23 statute. Somehow in drafting those words were
24 omitted.

25 If you look at the definition of

1 "Tertiary Project," the second line contains
2 "subsequent to the completion of a secondary
3 recovery project." And somehow it just appears
4 to have been omitted. That's why we put that
5 back in on page 2 of the proposal.

6 The words, "subsequent to the
7 completion of primary recovery," was troublesome
8 to operators because it suggests that you could
9 not come forward with an enhanced recovery
10 proposal, say to implement a secondary recovery
11 project, until you had recovered all primary
12 production.

13 That clearly was not the intent of the
14 legislation or the legislature. All evidence,
15 all testimony showed that in fact there would be,
16 for example, remaining primary production after a
17 positive response was obtained and you were in
18 the secondary phase.

19 For that reason, we have attempted to
20 define "completion" with the last sentence of the
21 definition. And we've proposed that a sentence
22 be included in this definition and also in the
23 definition of "Tertiary Recovery Project" that
24 simply states, "Completion of a secondary
25 recovery project means the date on which existing

1 enhanced recovery operations are supplemented or
2 replaced by additional recovery enhancement
3 operations as described in subpart (b) of this
4 definition."

5 Now, if you look at just those words
6 without referencing subpart (b), they don't say
7 anything. But if you take it back to subpart
8 (b), it recognizes that you're moving from one
9 phase in the operation to another and that it
10 qualifies, if it is consistent in accordance with
11 sound engineering principles, a method accepted
12 and approved by you, and can be reasonably
13 expected to result in an increase in production
14 and determined in light of all the facts.

15 Our problem is we're just trying to
16 make it clear to an operator who will look to
17 these rules that you don't have to have your
18 project shut down and have exhausted your primary
19 recovery efforts before you can go forward and
20 bring a project to you certification. And the
21 same basic principle applies when we look at
22 moving from secondary to tertiary. That's the
23 reason we've proposed this.

24 We further submit that it's consistent
25 with the statute because one of the reasons for

1 only having a 50 percent reduction in the
2 severance tax rate was the inherent recognition
3 that when you're in a secondary phase, there
4 might be some remaining primary. When you're in
5 tertiary phase, there would be some recovery
6 perhaps that could be obtained under only primary
7 or secondary operations.

8 Q. With regard to that, you mentioned the
9 tertiary, that same --

10 A. It's basically the same amendment.

11 Q. -- amendment is proposed for the
12 definition No. 11; is that correct?

13 A. Yes.

14 Q. All right, sir, let's turn now to page
15 4, please, and look at the proposed changes to D,
16 subpart (e) as in "echo." Could you describe
17 those for us, please?

18 A. Basically this portion of the rules
19 sets forth certain things that an application to
20 this Division must contain. When we looked at
21 subparts (3) and (4), capital costs of additional
22 facilities and total project costs, it was our
23 conclusion that this information would probably
24 not be useful to you.

25 First of all, some companies may

1 consider it proprietary data. But aside from
2 that, the amount invested in the project really
3 isn't the test of whether or not you're going to
4 have a viable project. We think the project
5 should stand simply on the additional recovery to
6 be obtained and not how much money is invested.

7 We go to the next paragraph. It is in
8 the proposed rules, subparagraph (5). It
9 required that an applicant submit the estimated
10 total value of the additional production that
11 would be recovered as a result of this project.
12 We have proposed that you delete the words "total
13 value of the." So it would read, "The estimated
14 additional production that will be recovered as a
15 result of this project."

16 The reason for this, I think, is
17 simple. Again what we're talking about is trying
18 to achieve a positive production response. This
19 is a measurable real quantity. When you start
20 talking about value, you get into something which
21 is extremely speculative. To tell you or to
22 estimate for you the total value of the
23 additional production, one, we have to first
24 estimate an increase in the recovery.

25 We then have the term "value," which is

1 subject to various interpretations. We wouldn't
2 know what price to use, what escalators to apply,
3 whether we use constant or real dollars, whether
4 we look at a before-tax value or an after-tax
5 value.

6 And the bottom line is, you would be
7 getting -- there would be no standard way of
8 bringing this data to you. And we would submit
9 to you that it really would be of no value. And
10 we believe if you amend that provision simply to
11 require us to estimate what we believe will be
12 the additional recovery, it gives you what is
13 required to make your decision. And that will
14 avoid putting together some information that
15 would be, we submit, speculative at best.

16 Q. Mr. Carr, during Mr. Van Ryan's
17 testimony with regard to subparts (e) (1) and
18 (2), he suggested that a list of producing wells
19 and a list of injection wells be submitted
20 instead. I know you have not met with the Oil &
21 Gas Association committee. Do you see a problem
22 with those suggested changes?

23 A. No. I think that's clearly an
24 appropriate change.

25 Q. Let me reemphasize. Do you believe

1 that if the list of producing wells, the list of
2 injection wells and for a new injection project,
3 the C-108 information is submitted along with the
4 estimated additional production, do you believe
5 the information necessary for the Division to
6 make certification required under this act will
7 be available to them without the cost information
8 that you're suggesting be deleted?

9 A. Yes.

10 Q. Thank you. Let's turn, please, to page
11 No. 5, at least on your exhibit, item 5 at the
12 top of the page. Would you describe that for us,
13 please, sir?

14 A. In that rule we've inserted after the
15 word "technology," "or operation." Here we were
16 hoping that the rule would suggest to an operator
17 that they could bring all kinds of matters to you
18 for consideration. This is not inconsistent with
19 the statute.

20 Mr. Van Ryan in his testimony talked
21 about expansion of existing projects, new
22 methodologies. "Methodology" might be a word
23 that could be used as well as "operation." But
24 we believe that it signals to an operator that
25 they could come in here with an application that

1 would, say, even involve a change in methodology
2 or operation by going to an infill program. And
3 if the program once before you stands on its
4 merits and it can be reasonably qualified, then
5 that's where the actual determination should be
6 made.

7 The intent here simply is to clarify
8 and let an operator know that those kinds of
9 questions can be brought to you if the project is
10 technically feasible and sound.

11 Q. All right, sir, the next change, also
12 subsection (5) immediately below that, will you
13 discuss that for us, please?

14 A. We think as things stand you can
15 require anything to come to hearing. And we
16 think that in view of the subsequent review by
17 the Taxation & Revenue and the probable
18 legislative review and interest in this subject,
19 that it's appropriate that cases initially do
20 come to hearing.

21 But we have suggested that wording be
22 included that doesn't require every case forever
23 be called to you for hearing, but would permit
24 the Division Director to exercise discretion
25 assuming that someday there may be a case or

1 perhaps many of them where they become routine in
2 some regard and that you wouldn't need to bring
3 the whole matter to a full-blown hearing.

4 Q. Thank you, sir. There's a small change
5 in item (e) (1) on that same page 5.

6 A. When you read the statute, the words
7 "approval" and "certification" and
8 "qualification" are used just in a
9 helter-skelter sort of way throughout the act.
10 We were trying to make it easier to read, and for
11 that reason we have made a couple of minor
12 wording changes. That's what this is. The
13 inclusion of the words "and certification" in E
14 (1), and that's all that is.

15 Q. Looking at E (1), subpart (d), it
16 appears you're suggesting the addition of a new
17 subsection. Could you discuss that for us,
18 please?

19 A. Under these rules an operator is
20 required to come to you and prove that a proposal
21 is economically reasonable. Certain members of
22 the association were concerned that this might
23 mean if they came to you with a pilot project
24 that they knew up front was going to be operated
25 at a loss, that it might be disqualified.

1 So what we were doing is proposing this
2 language that provides, "If the application is
3 for a pilot project to test the feasibility of
4 the process in a particular reservoir, the
5 applicant must demonstrate that upon completion
6 of the successful pilot project, an economically
7 reasonable expansion of the project can be
8 expected to be implemented."

9 The idea there is we just wanted to be
10 sure that we could come in to you and would be
11 allowed to make a showing of what we would
12 anticipate in terms of a full-scale project and
13 that we would not be disqualified with a pilot
14 project or with a proposal to qualify a pilot
15 project just because the pilot alone might have
16 questionable economics.

17 Q. Thank you, sir. Again in subpart E (2)
18 we've got some minor changes.

19 A. Again these are minor wording changes.

20 Q. Okay. In that regard on the exhibit
21 itself, it looks to me like we need to make a
22 change in E (2). First line after the word
23 produced, I believe that should be "from" rather
24 than "for," in which case the "an" is correct
25 rather than the suggested "a" where it's

1 grammatical?

2 A. All right.

3 Q. Looking at page 6, E (2), subpart (c),
4 as in "Charles," could you discuss that proposed
5 change with us, please.

6 A. There was substantial confusion on the
7 part of the operators who responded to NMOGA's
8 inquiry concerning when the incentive tax rate
9 would apply. In subpart (c) on page 6, we have
10 proposed that the Division or the Commission
11 delete the date the certification was made.

12 And so that last sentence reads, "This
13 certification and notice shall set forth the date
14 the positive production response occurred
15 provided however," and it goes on. I believe
16 what we're proposing here is consistent with Mr.
17 Van Ryan's testimony. We think the statute is
18 clear that the lower tax rate applies to the
19 first day of the month following the date that
20 this Division recognized the positive production
21 response occurred. That's inherently a
22 retroactive sort of a determination.

23 As Mr. Van Ryan noted, there may be --
24 several months may pass before you actually are
25 satisfied that what you're seeing is a positive

1 production response. And that the operator of an
2 approved project should not lose the benefit of
3 the lower tax rate during those months.

4 This is consistent with the statute.
5 If you look at the statute, it's Section 5-B, it
6 talks about getting a refund, and a refund would
7 be for severance tax paid at full rate after the
8 month in which the Division certifies the
9 positive production response.

10 That language makes no sense if these
11 determinations are not based on a sort of
12 retroactive date on which you determine there was
13 a positive production response. If the lower tax
14 rate only applied the first day of the month
15 following your action, the tax rate -- you'd get
16 the determination, then the tax rate would go
17 down and then the 25th day of the following
18 month, or whatever it is, you would pay the tax,
19 you would obviously be paying at the lower rate.

20 The refund provisions make no sense
21 whatsoever unless, as Mr. Van Ryan indicated, you
22 determine when the positive production response
23 occurred the first day of the month following
24 that -- the date you determined then triggers the
25 lower tax rate and under the act as provided

1 there would be a credit for the full -- for the
2 overpayment the refund would be in the nature of
3 a credit.

4 So what we were doing in this proposed
5 change in subsection C was trying to eliminate
6 confusion. And the confusion was just whether or
7 not the lower rate was after the date you found
8 the production response occurred as opposed to
9 the date on which you acted. So that's what that
10 change is for.

11 Again on the last -- at the bottom of
12 that page, there's just a wording change. We've
13 just taken "certification" and changed that to
14 "confirmation" because we have so many
15 "certifications" in the act.

16 Q. In the exhibit that's on the top of
17 page 7, you're now referring to the proposed
18 change in F-1 subpart (d)?

19 A. Right. That's just to try not to have
20 so many references to the word "certification."

21 Q. Again you have stricken subpart (e) of
22 that section. Could you describe that?

23 A. We struck subpart (e). We think that
24 it is unnecessary that the Oil Conservation
25 Division has the authority do that anyway, and

1 for that reason we deleted it.

2 Q. Do you have other suggested changes to
3 the proposal?

4 A. Those are the suggestions that the New
5 Mexico Oil & Gas Association would propose to the
6 Commission for its consideration in adopting
7 these rules.

8 Q. Once again for emphasis, other proposed
9 changes are going to be submitted by Marathon
10 subsequent to your testimony?

11 A. And those are changes which the
12 association endorses.

13 Q. Mr. Carr, do you believe that the
14 proposals you have made for amendment to the
15 Division's proposed rules and procedures for
16 qualifications of enhanced oil recovery projects
17 and certification for recovered oil tax rate are
18 consistent with legislative intent as set forth
19 in the act that was submitted as Exhibit 2 to Mr.
20 Van Ryan's testimony and consistent with Mr. Van
21 Ryan's testimony as you understood it?

22 A. I do.

23 Q. Do you request that the Division adopt
24 the changes suggested by the Oil & Gas
25 Association?

1 A. I do.

2 Q. Do you believe that ultimately approval
3 of rules and regulations as we suggest they be
4 amended will be in the best interests of the
5 prevention of waste of New Mexico's natural
6 resources and will act to protect the correlative
7 rights of various interest owners?

8 A. I do.

9 MR. PEARCE: Mr. Chairman, at this time
10 I have no further questions of Mr. Carr. I would
11 ask the admission of New Mexico Oil & Gas
12 Association Exhibit No. 1.

13 CHAIRMAN LeMAY: Without objection
14 Exhibit 1 will be entered into the record.

15 Questions of the witness? Ms. Aubrey?
16 I'm not sure how you're working this out.

17 MR. STOVALL: I'm going to let Ms.
18 Aubrey go first because I want Carr after she's
19 finished with him.

20 MS. AUBREY: Well, I'll speed this up
21 for all of you. It's with a great deal of regret
22 that I say that I have no questions for Mr.
23 Carr. I find that his presentation has been
24 enormously helpful and, of course, Marathon
25 supports the position of the New Mexico Oil & Gas

1 Association in the amendments it's proposed and
2 will have some additional ones we'll discuss a
3 little later.

4 Thank you, Mr. Carr.

5 CHAIRMAN LeMAY: Thank you, Ms.
6 Aubrey.

7 Your witness, Mr. Stovall.

8 MR. STOVALL: I think Ms. Aubrey set
9 Mr. Carr up by making him spend the night
10 worrying about the anticipated cross, but I can't
11 leave him alone.

12 EXAMINATION

13 BY MR. STOVALL:

14 Q. Address some of your specific
15 recommendations, Mr. Carr, on page 2, paragraph 8
16 of the definitions. Is it your opinion that a
17 change to this definition by the OCD really will
18 affect any difference in what oil qualifies?

19 A. No. But I think the rules that you
20 have been directed to develop are not just to
21 regurgitate the statute. In another place in
22 your rule book, by design to clarify and assist
23 operators in bringing matters before you.

24 What we're proposing we think are
25 amendments that clarify that. And if an operator

1 is reading the rule and wondering what oil really
2 will qualify, we think amendment will help them
3 understand what the intent of the rule is.

4 Q. I guess my question would be: Suppose
5 Tax & Rev doesn't agree and says something
6 different; would our rule control?

7 A. I think that's a matter would be taken
8 up by an operator with Tax & Revenue. But I'm
9 convinced that everything we've proposed to you
10 is consistent with the act.

11 Q. I don't disagree with your
12 consistency. I'm not sure what good it does for
13 the Division to tell Tax & Rev what oil
14 qualifies. That's my concern with that.

15 A. Well, I don't think you're telling Tax
16 & Rev with your rule; the statute goes to the
17 Taxation & Revenue Department. Your rule is
18 pursuant to a statutory directive. You've been
19 asked to exercise your discretion and come
20 forward with rules that will assist in
21 administering the act.

22 And there's no reason for rules if
23 you're just going to reprint the statute. We
24 think there's an opportunity here to provide
25 guidance and instruction to operators who are

1 perhaps interested in bringing a case of this
2 nature to you.

3 Q. I've got a question with respect to
4 your suggested changes on page 3. I understand
5 your purpose is to recognize that it makes good
6 sense in the oil field to start an enhanced
7 recovery project before the prior recovery method
8 has completely depleted its share of the oil, if
9 you will.

10 A. Right.

11 Q. The first question is a real technical
12 one as far as the definition that you've added.
13 You've added the definition, talking about
14 secondary recovery project, that talks about a
15 completion of a secondary recovery project.

16 And I'm having a little trouble -- just
17 seeing this for the first time, it would seem to
18 me that that should actually mean completion of a
19 primary project because that's what you talk
20 about earlier in that rule.

21 A. Uh-huh. Mr. Stovall, you're correct,
22 it should say that. It should say -- well, let's
23 see. You see, we're not keying this -- the word
24 "completion" was a problem throughout.

25 Q. I understand.

1 A. We explained it at the legislature.
2 What we're trying to do is come up with language
3 here that wouldn't discourage an operator from
4 bringing a project that otherwise should be
5 qualified under the statute.

6 All we're doing with this last sentence
7 is saying that the completion of secondary
8 recovery means --

9 Q. I don't have a problem with that. Let
10 me interrupt you here because I think you're not
11 answering the question that I'm concerned with in
12 terms of your suggested language.

13 The rule talks about and the language
14 you added at the part first of definition No.
15 9 --

16 A. Yes.

17 Q. -- "occurs subsequent to the completion
18 of a primary recovery and is not a tertiary
19 recovery."

20 A. Oh, it should be "secondary." That's a
21 drafting error.

22 Q. Well, no. Secondary occurs at the
23 completion of primary. I would think that the
24 definition up here should be completion of a
25 primary means the date on which --

1 MR. PEARCE: May I approach the
2 witness, Mr. Chairman?

3 THE WITNESS: I'm not seeing where you
4 are, Bob.

5 CHAIRMAN LeMAY: Fine.

6 MR. STOVALL: I think it's a language
7 thing. I want to make sure I understand.

8 THE WITNESS: There is a drafting error
9 in these, Bob. The error is in the sentence
10 we're proposing at the end.

11 Q. (BY MR. STOVALL) So in the No. 9 --

12 A. It would be --

13 Q. -- completion of primary recovery?

14 A. That's right.

15 Q. Okay.

16 A. That's right. And the same thing --

17 A. And then in No. 11 it should be

18 completion of a secondary project?

19 A. That's correct. That's correct.

20 Q. Would you have any objection if -- I'm
21 a little nervous about changing rules that the
22 statute has written, changing definitions. Would
23 you have any objection if those definitions were
24 include as a separate definitional paragraph
25 within the rules?

1 A. No. And I'll tell you, Mr. Stovall, we
2 had initially proposed do that. But we started
3 looking at it, and we had a definition section.
4 And the first definition, if you do them
5 alphabetically, is "completion."

6 And it is an odd word to be defining by
7 statute because it's really trying to correct
8 other definitions. And it just struck us as
9 peculiar. And we look at the kinds of terms that
10 are being defined: crude oil, Division, enhanced
11 oil recovery project, and it just sort of jumped
12 out as wrong.

13 Initially we had done it that way, and
14 then we decided perhaps the best way to do it was
15 to simply include a sentence in each of these and
16 relate it back to subpart (b) of each of those
17 definitions because that's where really we think
18 the legislature told you to exercise your
19 discretion and determine that these are valid
20 engineering, you know, justifiable projects and
21 there's going to be an increase.

22 And so that's why we placed it where we
23 did. We think it would be helpful to have it
24 somewhere in the rules. And if you're
25 comfortable putting it as a separate definition,

1 we would be happy with that. It was just trying
2 to address that one thing that seemed to be a
3 source of confusion for a number of operators.

4 MR. STOVALL: I understand that and
5 agree with the principles that you're asking.

6 Mr. Chairman, this is the first time
7 I've seen it. As I say, my only concern is I
8 always get nervous when I change a definition
9 that the legislature has handed me. And I would
10 like the opportunity either before the end of the
11 hearing or for a short time afterwards to review
12 how to accomplish what Mr. Carr seeks to do.

13 THE WITNESS: In that regard I would
14 also indicate that we're not trying to change the
15 legislature's definition.

16 MR. STOVALL: I understand that. I
17 understand what you want, and I agree fully with
18 it.

19 Q. I'm going over to page 4. The
20 substantive changes are really the deletions of
21 No. 3 and 4. Mr. Carr, isn't really one of the
22 purposes of providing a tax incentive to
23 encourage or to give -- if an operator has
24 discretion as to where to spend money, to
25 encourage the spending of that money in this

1 state to recover more product as opposed to
2 spending it somewhere else?

3 And isn't the investment side of the
4 project a part of the purpose of the tax
5 incentive? The ultimate goal is to get the
6 incentive -- is to spend money to get more oil
7 out. But part of that incentive is to spend more
8 money because if you don't need to spend money,
9 you've probably got a built-in incentive to get
10 more oil out, don't you?

11 A. It just seems to us that capital costs
12 of additional facilities probably isn't going to
13 mean much of anything to you. And it's also
14 going to be something that is going to be subject
15 to change.

16 You start implementing an enhanced oil
17 recovery project, a waterflood project, you're
18 not getting a response as quickly as possible or
19 an offsetting waterflood that's been going for
20 several years doesn't seem to be performing as
21 hoped, and it's something you're constantly
22 reviewing and changing.

23 You may want to change your injection
24 pattern; you may want to add additional wells.
25 And there was real concern that this might not be

1 very useful to you and that what really we needed
2 to show was not how much money we were going to
3 invest in New Mexico, but how much additional
4 recovery could be obtained within the state of
5 New Mexico. And that was the reason we
6 recommended those be deleted.

7 Q. Would you have any -- perhaps you
8 object to -- the association objects to the
9 specific language. But given the opinion that
10 the purpose is to encourage investment, would you
11 be willing to submit some alternative language
12 whereby the Division would look to ensure that in
13 fact there was going to be some investment to do
14 some additional recovery as opposed to -- as
15 opposed to getting credit for something which a
16 prudent operator would do to get additional
17 recovery without investment?

18 A. Well, we could do that. But in terms
19 of the usefulness of that information, I don't
20 know what it would be. You might also want us
21 then to certify that we would be investing that
22 money in facilities that we would purchase in San
23 Juan County, or in the state of New Mexico as
24 opposed to Archuleta County, Colorado.

25 And, you see, we get into a situation

1 that -- I mean we certainly will do whatever you
2 ask us to do. But we were concerned that the
3 information you are going to get is not going to
4 be useful to you and that the real test here is
5 the additional recovery, not how much a company
6 spends to get to that point.

7 Q. It's that a company spends. It's not
8 uncommon now in secondary recovery or injection
9 projects to come forth with some numbers and some
10 economics; is that not correct?

11 A. We could give you some general
12 estimates.

13 Q. That's all. I don't think it's a
14 matter of requesting specific dollars and holding
15 you to it, but rather defining that the operator
16 is in fact making an investment.

17 A. Not just whispering polymers.

18 Q. Right. That's with I'm looking for.
19 Again that goes down -- when you get down to
20 paragraph E in your suggested change in new
21 paragraph D, you talk about economically
22 reasonable expansion of the project. You do
23 bring that issue up?

24 A. Yes, we do.

25 Q. With respect to your change in

1 paragraph 6 in the paragraph, first paragraph C
2 under "Positive Production Response," you delete
3 the language "the date the certification was
4 made." Would you have any objection to leaving
5 that in on the basis that that is just a simple
6 way for the Division to ensure that the
7 application is filed within the five- or
8 seven-year time frame as required?

9 And that would be the only reason for
10 the Division to leave it in. I understand you're
11 trying to simplify the language, but I think
12 there's a reason.

13 A. What we're just trying to do is clarify
14 what we understand the legislative intent to be
15 and indicate that the tax rate, the lower tax
16 rate keys off of the positive production
17 response, not the date an administrative action
18 is taken once the project has been certified.

19 Q. Correct. But it's only in there for
20 our convenience so we don't have to go look it
21 up, I think, is what it amounts to.

22 A. We prefer not to have it in, but we of
23 course will live with whatever you tell us.

24 MR. PEARCE: May I jump in at this
25 point?

1 MR. STOVALL: Please, Mr. Pearce.

2 MR. PEARCE: What you just explained
3 about that date of certification is not what the
4 people in the committee understood that
5 certification date to mean. They were
6 interpreting that to mean the date the order
7 certifying the positive production response was
8 issued. And you're saying that's the date the
9 certification of an approval on the previous
10 step.

11 I really at this point don't understand
12 what certification you're talking about. The
13 date --

14 MR. STOVALL: I don't understand that.

15 MR. PEARCE: Do you understand?

16 THE WITNESS: I understand we don't
17 understand.

18 MR. STOVALL: I think my intent --
19 well, there is some ambiguity here. And again,
20 Mr. Chairman, I think we're all in agreement on
21 what we're trying to do. I think the best way to
22 approach this perhaps would be to ask for a
23 little time afterwards to work out those details
24 because there's not a substantive disagreement.

25 CHAIRMAN LeMAY: We'll certainly leave

1 the record --

2 MR. STOVALL: There's some language in
3 the statute that kind of drove this thing. I
4 think we just need to clear it up because I think
5 we're all in agreement.

6 CHAIRMAN LeMAY: We can leave the
7 record open too for modified language changes
8 once we get some testimony.

9 MR. STOVALL: Rather than beat up Mr.
10 Carr any more about that.

11 MR. PEARCE: Aw, come on.

12 Q. (BY MR. STOVALL) Again, Mr. Carr, I
13 assume your changes on page 7, the last changes
14 there with respect to E, and the Division has
15 proposed some changes in that whole area.
16 Obviously we've removed D, but your confirmation
17 language would move up where we moved it.

18 Do you have any problem with leaving
19 language in? I understand what you're saying
20 about the hearing, and I don't want to get into
21 that with you. But just adding a paragraph
22 saying we can come back and ask for more if we
23 don't feel you've provided us with adequate
24 information?

25 A. Our only thought there is you certainly

1 have that authority in any event and it's
2 unnecessary.

3 MR. STOVALL: I don't have any other
4 questions for Mr. Carr.

5 CHAIRMAN LeMAY: Thank you, Mr.
6 Stovall.

7 Additional questions of the witness?
8 Commissioner Carlson?

9 COMMISSIONER CARLSON: Yes, I have a
10 couple.

11 EXAMINATION

12 BY COMMISSIONER CARLSON:

13 Q. Bill, on following up on Mr. Stovall's
14 questions and your suggestions to delete (3) and
15 (4) on page 4 and make some changes in (5), if
16 you go back and read the statute and you go back
17 to read -- well, look on page 5 on E-1 (c). The
18 Commission is -- or the Division is required to
19 look at least at some of the economics involved
20 in these before they give the approval.

21 To me it seems it's hard to look at the
22 economics involved if you don't have some numbers
23 in front of you involving capital costs: Here's
24 what we spend; here's what we're going to get
25 back; it's economically feasible.

1 A. I think if the rule -- we'll come back
2 with some alternative language if it is softened
3 so that we can give you some general estimates,
4 recognizing that, you know, these are our best
5 estimates, is what we're looking at going in.

6 Q. And I think that's all is asked for
7 here in (3) and (4) and (5) also is that
8 obviously the companies do that themselves before
9 they get into any project. And I think all the
10 Division is asking is that they get access to
11 those same numbers.

12 A. Recognizing that project by project the
13 basis for generating those numbers are going to
14 vary substantially.

15 Q. Sure. Also I missed your explanation
16 on page 5 up at the top where you added "or
17 operation technology." Would you explain that
18 again?

19 A. We think that this is really focusing
20 on expansion of projects. And if you take a
21 narrow view of it, you could perhaps conclude
22 that it is only a geographic expansion, that is,
23 adding additional land.

24 The legislature also recognized,
25 however, that a change in technology might

1 qualify. When Mr. Van Ryan was testifying, he
2 said technology or methodology. The rule is not
3 and this change is not designed to enlarge the
4 statute. But the rule will be going to operators
5 who will be trying to determine what kinds of
6 projects they might be able to bring to you.

7 We thought by including "or operation"
8 or, to use Mr. Van Ryan's words, "or
9 methodology," it softens it up somewhat so that
10 if an applicant has an infill program, something
11 of that nature which on its own merits, after
12 being reviewed by you that you might qualify,
13 this sort of signals to them that they ought to
14 bring it in and let you take a look at it.

15 So that's what we were attempting to
16 do, Gary, was open this up and just -- not change
17 the statute but suggest to an operator that if
18 you've got a substantial change in operations
19 that meets the test of the act, that you can at
20 least bring them to the Division for
21 consideration.

22 Q. I guess that's what concerned me about
23 your statement. Are you inferring that an infill
24 drilling program would qualify as an enhanced oil
25 recovery project?

1 A. No. I'm telling you that it shouldn't
2 on the face of the subject be disqualified. And
3 that if there is an appropriate case that at
4 least the operator could bring it in and you
5 could then tell them, looking at the particular
6 facts, whether you believe it fits or not.

7 Q. You're saying it might qualify?

8 A. I'm saying that there are circumstances
9 in which it might.

10 MR. PEARCE: Point of clarification.
11 Infilling a secondary or tertiary project, not
12 infilling primary project.

13 COMMISSIONER CARLSON: Not infilling
14 itself being an enhanced recovery project.

15 MS. AUBREY: If I may, Mr. Carlson,
16 Marathon is going to put on a presentation which
17 I think will clarify that distinction for you.

18 COMMISSIONER CARLSON: Okay.

19 THE WITNESS: One of the problems with
20 being a witness is your attorneys keep trying to
21 testify.

22 MR. STOVALL: Debbie, please save that
23 tape.

24 COMMISSIONER CARLSON: I don't have any
25 more questions.

1 CHAIRMAN LeMAY: Commissioner Weiss?

2 COMMISSIONER WEISS: I have no
3 questions.

4 CHAIRMAN LeMAY: Maybe I have one, just
5 clarification.

6 EXAMINATION

7 BY CHAIRMAN LeMAY:

8 Q. Mr. Carr, you were there, I think, at
9 the hearing when Representative Max Coll asked me
10 what's to prevent, I guess, the Division from
11 qualifying projects that he felt probably
12 shouldn't be qualified. He knew a little about
13 oil and gas. And he was inferring, I think, that
14 when you put a few bucks out there and expect a
15 big tax credit what's going to prevent that?

16 I think my response was, of course, the
17 integrity of the Division and things of that
18 nature. But getting back to items (3) and (4) on
19 page 4, I know you're going to submit some
20 additional information, but I hope maybe in doing
21 that, recognizing the Division probably has some
22 problems or at least will have the duty of
23 relating the degree of capital investment with
24 the amount of production response they receive.

25 And you can visualize, or I think we

1 all can visualize situations where there would be
2 some production response, maybe minor, by doing a
3 very minor thing. Would that be something you
4 think the legislature envisioned qualifying for a
5 tax credit? Or was your impression they were
6 looking for something in a more substantial
7 nature? By substantial, I mean cost
8 investment-wise.

9 A. I don't know if I can speak to what the
10 intent of the legislature was on that point or if
11 anyone could. I think the kinds of projects we
12 were discussing with them were projects that
13 involve substantial capital investment and
14 substantial return.

15 And so I think that whether there was
16 any overall legislative consensus, I believe in
17 your comments and ours to Representative Coll and
18 others we were talking about fairly substantial
19 projects.

20 Q. I guess my only question or thought on
21 that matter was, when you do supply additional
22 information under item C, page 4, would it be
23 possible to bring in that concept to some
24 extent? My fear, as Commissioner Weiss' comment
25 was earlier about whispering polymer. I mean, we

1 were involved, all of us I think, when we had
2 tiers of prices for oil and the gimmicks that
3 were used in the oil patch to get additional
4 prices.

5 And if there could be qualifying
6 language somehow that would -- you're not going
7 to eliminate that, but at least show the intent
8 not to have those types of projects qualifying.

9 A. We can certainly work on additional
10 language that adds to that point if you would
11 like. And I am certain that the legislature was
12 intending for you to stand there and prevent
13 those projects that weren't really appropriate.

14 Q. Right. And tying that to items (3) and
15 (4), this has been brought up by everyone who's
16 questioned you, I think the Examiners will need
17 some costs, estimated costs. And somehow the
18 costs, the cost benefit ratios, if possible. I
19 think things like that are pretty important in
20 qualifying enhanced projects that would be
21 certified.

22 MR. STOVALL: Mr. Chairman, if I might
23 jump in, and perhaps you've just hit on the word
24 that will help with the language. If something
25 like "projected costs" or "estimated costs" so it

1 gets you off that concern, it sounds like you
2 have, about locking an operator into an
3 investment level.

4 CHAIRMAN LeMAY: Again I'd like to
5 stress somehow the cost benefit ratio, the idea
6 if something is done, that the response should
7 somehow just economically -- and we're charged
8 with that responsibility -- somehow relate the
9 response -- somehow relate to the costs that have
10 been made and not used as a gimmick to get
11 additional tax relief that isn't justified by the
12 level of investment.

13 THE WITNESS: We'll work on some
14 additional language.

15 CHAIRMAN LeMAY: Thank you, Mr. Carr.

16 CHAIRMAN LeMAY: Mr. Weiss?

17 COMMISSIONER WEISS: One more comment
18 along those lines. I believe there's published
19 information from the accounting firms as to
20 operating costs and drilling costs, which is
21 public knowledge. There is no public knowledge
22 on EOR costs, so it does have to be addressed.

23 THE WITNESS: Okay.

24 CHAIRMAN LeMAY: Additional questions
25 of the witness?

1 Ms. Aubrey?

2 MS. AUBREY: Thank you, Mr. LeMay.

3 EXAMINATION

4 BY MS. AUBREY:

5 Q. Mr. Carr, in talking about the
6 inclusion of the completion language in the
7 secondary recovery project portion on page 2, I
8 wondered if given the problems that we're having
9 with the word "completion," would it meet the
10 intent of the association to use the words
11 "subsequent to the conclusion of" as opposed to
12 "completion of"?

13 A. And actually that would be -- would
14 have been preferable language. Unfortunately the
15 word "completion" is in the act. And so to not
16 be in the position of rewriting the statute, we
17 thought it was appropriate to leave "completion"
18 in and change it.

19 Certainly as the bill was presented,
20 the conclusion of one phase before you moved into
21 the other was what everyone was talking about.

22 Q. If, as Mr. Stovall suggested, it might
23 be possible to move your language to a separate
24 definitional section, would it meet the intent of
25 the association to define completion in this

1 context as the conclusion of one phase prior to
2 moving to the other?

3 A. My understanding of the comments at our
4 meetings, yes, that would meet the intent.

5 Q. You were asked some questions by Mr.
6 Carlson about the addition of the words "or
7 operations" on page 5. And you were asked about
8 the example of infill drilling.

9 Would the change in pattern alignment,
10 of pattern realignment of an existing project, in
11 your opinion be an example of the kind of
12 operations that you were intending to cover here
13 by the addition of those words?

14 A. That could be. And it depends on what
15 the objective is. And I think the critical thing
16 there is that the rule is just to open the door
17 so that these things can be brought in on a
18 case-by-case basis, and then it can be placed in
19 the discretion of the Division to determine if
20 looking at the statute if in fact this is a
21 qualifying project.

22 MS. AUBREY: Thank you, Mr. Carr.

23 CHAIRMAN LeMAY: Additional questions
24 of the witness? Your last chance at this guy.

25 MR. STOVALL: We may recall him.

1 CHAIRMAN LeMAY: He may be excused.

2 Let's take about a 15-minute break.

3 [A recess was taken.]

4 CHAIRMAN LeMAY: We shall resume.

5 Ms. Aubrey.

6 MS. AUBREY: Thank you, Mr. LeMay. I'd
7 like to call my first witness, Mr. Ron Smith.

8 RON SMITH

9 Having been duly sworn upon his oath, was
10 examined and testified as follows:

11 EXAMINATION

12 BY MS. AUBREY:

13 Q. Would you state your name and your
14 employment for the record, sir?

15 A. My name is Ron Smith. I work for
16 Marathon Oil Company.

17 Q. What do you do for Marathon Oil
18 Company?

19 A. I am manager of oil recovery technology
20 in our petroleum technology center in Littleton,
21 Colorado.

22 Q. Mr. Smith, have you testified
23 previously before the New Mexico Oil Conservation
24 Commission?

25 A. I have not.

1 Q. Would you review your professional
2 background for the Commissioners?

3 A. I have a BS degree in chemistry, an MBA
4 from the University of Colorado. I have worked
5 in the enhanced oil recovery area for
6 approximately 21 years.

7 Q. And specifically what kinds of duties
8 do you have in your job now with Marathon?

9 A. I direct a staff of about 20 people,
10 working on various aspects of enhanced oil
11 recovery and the implementation of those
12 projects, in-field operations.

13 Q. In what states do you direct those
14 operations?

15 A. I am the direct supervisor of these
16 people.

17 Q. In what states does Marathon have these
18 operations ongoing?

19 A. All the way from Alaska to the North
20 Sea throughout the country.

21 Q. Approximately how many operations are
22 you talking about?

23 A. Oh, probably on the order of 15 to 20.

24 Q. Mr. Smith, are you familiar with the
25 subject matter of today's hearing?

1 A. Yes, I am.

2 Q. And are you prepared to speak to
3 Marathon Oil Company's comments by way of
4 assistance to the Commission in drafting rules
5 and regulations?

6 A. Yes, I am.

7 MS. AUBREY: Mr. LeMay, I tender Mr.
8 Smith as an expert in enhanced oil recovery.

9 CHAIRMAN LeMAY: His qualifications are
10 acceptable.

11 MS. AUBREY: Thank you.

12 Q. Mr. Smith, can you begin by describing
13 Marathon Oil Company and its involvement in areas
14 of improved oil recovery?

15 A. Well, Marathon is a fully integrated
16 oil company involved in all areas of petroleum
17 business from exploration to marketing. We have
18 been quite active in all areas of improved oil
19 recovery from the inception of a project through
20 completion. Our work involves an integrated
21 effort of geologists, scientists, mathematicians,
22 engineers.

23 We have a strong effort on reservoir
24 management including reservoir characterization,
25 an important part of any EOR project, reservoir

1 engineering, simulation of projects. We have
2 been involved in all areas of EOR from chemical,
3 thermal, gas injection, and conformance
4 improvement.

5 We are also active in the areas of
6 operations including well stimulation, improved
7 well completions, and the use of horizontal
8 wells. We do have a technology center in
9 Littleton, Colorado. We employ 270 people at the
10 center.

11 We are involved in the production,
12 exploration, refining, and marketing areas. And
13 the budget of this center is approximately \$30
14 million a year. I might make a point here that
15 much of that \$30 million is used in developing
16 technology which will be utilized in these EOR
17 projects.

18 Q. Let me have you help me with some
19 definitions briefly. Mr. Smith, you spoke of
20 conformance improvement. Could you tell me what
21 that means?

22 A. Conformance improvement is the use of a
23 substance, perhaps an aqueous polymer solution or
24 a foam, to improve the distribution of dry fluids
25 within a reservoir.

1 Q. And that's an area in which Marathon
2 Oil Company has specific experience and
3 expertise; is that correct?

4 A. That's correct.

5 Q. Mr. Smith, you put together a booklet
6 of exhibits for the Commission. Would you turn
7 first to what is marked as your Exhibit 1-A and
8 review that exhibit for the Commissioners.

9 A. This exhibit was simply intended to
10 point out that Marathon has been very active in
11 chemical enhanced oil recovery. If you look at
12 the total of the chemical EOR as of 1988, the
13 most recent data we were able to acquire for the
14 industry, Marathon produced roughly one-third of
15 the total oil produced by chemical EOR in the
16 US.

17 Q. Let me have you look now at Exhibit
18 1-B, which is a pie graph entitled, "Remaining
19 Oil Resource After Conventional Recovery." Can
20 you explain the colors and the relationship of
21 that figure for me?

22 A. Yes. Quickly going over it, this is
23 simply the present status of the US oil
24 reserves. The green pie segment represents
25 cumulative production to date. The pink and red

1 represent production that is expected before
2 operations cease. And the remaining white and
3 blue segments represent oil that will not be
4 recovered under current operations.

5 The point I want to stress is that of
6 that 66 percent of the oil in place that will not
7 be recovered by current methods, 19 percent of
8 that is mobile oil that is movable but is simply
9 not produced because of conformance problems or
10 confinement, compartment problems.

11 Q. By that do you mean that the oil is
12 physically trapped in some way?

13 A. Yes. It's either trapped in
14 compartments that are untapped by existing wells,
15 or it is bypassed by the injection fluids that
16 are used in the enhanced production project.

17 Q. In terms of the mobile oil, what
18 techniques in Marathon's experience are useful
19 for recovering that oil?

20 A. Of the mobile oil, a large part of it
21 is contained in compartments within a reservoir.
22 That type of oil can only be addressed through
23 infill drilling or perhaps pattern realignment.

24 Q. Mr. Smith, when you say infill
25 drilling, are you talking about infill drilling

1 for purposes of primary production or to assist
2 with secondary production?

3 A. Because the compartment was prior to
4 this operation untapped, it would be primary
5 production from that compartment, although it may
6 exist in a waterflood or some type of a secondary
7 operation.

8 An example would be a lens that might
9 be missed by existing wells within a waterflood.

10 Q. And what do you mean by "pattern
11 realignment"?

12 A. We'll discuss that -- the next witness
13 will discuss that in a little detail, but that
14 would be infill drilling to shift the arrangement
15 of a pattern oftentimes by 45 degrees.

16 Q. Now, these are in your experience
17 accepted methods of enhanced oil recovery?

18 A. Yes. An example, infill drilling was
19 studied in the Means Field in West Texas by
20 another major oil company. And the statistical
21 study they did indicated that by having their
22 spacing, they increased oil recovery by 4 percent
23 of the original oil in place. This was true
24 incremental recovery, not just accelerated
25 recovery.

1 Q. In your pie chart, which is Exhibit
2 1-B, you show 47 percent of this unrecovered oil
3 as being immobile oil. Can you explain what you
4 mean by that term and describe the techniques
5 that Marathon has found over the years are useful
6 and efficient in recovering that immobile oil?

7 A. The immobile oil, of course, exists
8 because oil and driving fluid, being usually
9 water or gas, are immiscible. Recovery could be
10 improved therefor by reducing the surface forces,
11 making the drive fluid appear immiscible with the
12 oil by using heat to reduce viscosity and cause
13 swelling of the oil and the use of solvents, such
14 as the CO₂ injection process, which we are very
15 familiar with.

16 These techniques are all well studied
17 and presently being utilized by many people
18 within the industry.

19 Q. Are these techniques applicable to both
20 producing and injecting wells, injection wells in
21 your experience?

22 A. No. I'm sorry. State the question
23 again.

24 Q. In your experience in using some of
25 these techniques, are you talking about strictly

1 using them on injection wells, or are you also
2 talking about treatments on producing wells?

3 A. These last techniques, including
4 surfactants heat and solvents, are typically used
5 in a drive system where they're injected in an
6 injection well and forced to a producing well.
7 However, in some very small compartmentalized
8 reservoirs, it is not only feasible, but has been
9 demonstrated that cyclic processes can be
10 effective in recovering incremental oil.

11 Q. What is a cyclic process, Mr. Smith?

12 A. It's a process in which heat or gas is
13 injected into a producing well, allowed to soak.
14 Energy is thereby provided to the formation. The
15 well is put back on production, and oil is
16 displaced back into the well.

17 Q. And in your experience, sir, is this an
18 accepted method of enhanced oil recovery?

19 A. It's a rather new technology but has
20 been fairly widely used in the past five or six
21 years.

22 Q. Let me have you look now at your next
23 exhibit, which is Exhibit 1-C. Can you explain
24 the significance of that exhibit to the
25 Commissioners?

1 A. 1-C demonstrates the concept of areally
2 bypassed oil, areal conformance problems. The
3 example here shows that either because of
4 heterogeneities in the reservoir or viscosity
5 differences between the drive fluids, oil left in
6 corners of the pattern is left unproduced.

7 Q. And what technique would you be
8 speaking to in describing how you would recover
9 this areally bypassed oil?

10 A. Techniques such as mobility control
11 using polymers in a waterflood operation, perhaps
12 foam in a gas injection project. A technique
13 that we have found quite efficient is the use of
14 conformance treatments in which some of these
15 channels are blocked by a rather permanent
16 chemical solution.

17 And, lastly, infill drilling and
18 pattern realignment. You can see in this
19 example, if you drilled wells in the upper left
20 corner and bottom right corner, you could tap
21 that oil that is left unswept by this existing
22 pattern.

23 Q. Let me have you look now at Exhibit
24 1-D, which is an exhibit which shows, graphically
25 shows the vertically bypassed mobile oil. What

1 technique is useful for recovering that
2 particular type of oil?

3 A. Again a commonly used technique is
4 polymer injection for waterflooding operations.
5 And more recently foams are in the process of
6 being tested, in fact in New Mexico, for gas
7 injection projects.

8 Q. Mr. Smith, you participated in some
9 meetings with the New Mexico Oil & Gas
10 Association in connection with the comments that
11 the association has made today on the language of
12 the rules and regulations; is that correct?

13 A. That's correct.

14 Q. And is Marathon generally in agreement
15 with the comments made by the New Mexico Oil &
16 Gas Association?

17 A. Yes.

18 Q. So Marathon was part of that group?

19 A. That's correct.

20 Q. Is it correct, Mr. Smith, that because
21 Marathon's substantial experience in enhanced oil
22 recovery over the years, particularly in
23 connection with some projects that Mr. Kent will
24 be talking about, that you felt it would be
25 helpful to the Commission to have a separate

1 presentation?

2 A. That's correct.

3 Q. Do you have anything you'd like to add
4 to your testimony, Mr. Smith?

5 A. One brief comment. The conformance
6 treatments that I briefly mentioned in my
7 discussions are the use of rather small slug
8 sizes of chemicals. We will show some examples
9 of the types and quantities of the chemicals
10 involved. These have been quite effective,
11 produced very significant amounts of oil.

12 I would say that our company and other
13 companies have devoted a good deal of research
14 costs to these projects with the goal being to
15 make them very cost effective.

16 From prior comments, I worry a bit that
17 we might be penalized for producing significant
18 amounts of incremental oil without spending large
19 sums of money on the front end. It all, I guess,
20 boils back to what large amounts of money are
21 considered, what the concept of large amounts of
22 money are.

23 Q. Let me follow up on that a little bit,
24 Mr. Smith. As I understand what you're saying,
25 Marathon has spent a number of years doing

1 research and development in the area of enhanced
2 oil recovery; is that correct?

3 A. That's correct.

4 Q. And those years of research and
5 development will necessarily be reflected, and
6 the cost of doing that research and development
7 will necessarily be reflected in the technology
8 that Marathon is able to apply to a project
9 today?

10 A. That's correct.

11 Q. Do you believe that a company should be
12 permitted and in fact encouraged to bring this
13 technology to the State of New Mexico and apply
14 for these projects even where the money has been
15 spent over the years and will not necessarily be
16 reflected in the actual capital outlay for a
17 particular project?

18 A. I think it should be taken under
19 consideration.

20 Q. In terms of your analysis of the
21 proposed regulations and the statute enacted by
22 the legislature, do you understand that it's
23 consistent with the legislative intent to
24 encourage efficient use of company resources in
25 terms of not spending enormous sums of money to

1 recover oil which could be recovered by a company
2 who had performed that task efficiently and using
3 its prior experience?

4 A. Yes.

5 Q. Any other comments you'd like to make,
6 sir?

7 A. Just one additional comment in that
8 regard. The use of such technology that might be
9 quite cost-effective would have the additional
10 benefit of rather expanded use throughout the
11 state in which operators might be able to
12 implement this technology; whereas, they might
13 not be able to afford the large front-end costs
14 associated with perhaps a CO₂ project.

15 MS. AUBREY: Thank you, Mr. Smith.

16 CHAIRMAN LeMAY: Questions of the
17 witness?

18 MR. STOVALL: I assume Mr. Pearce
19 doesn't have any. I've just got one.

20 EXAMINATION

21 BY MR. STOVALL:

22 Q. I assume that you and your company are
23 prepared to come down and discuss the specific
24 application of this process to a specific project
25 at the time you seek certification and approval

1 of that specific project; is that correct?

2 A. Yes, we will.

3 MR. STOVALL: Thank you.

4 CHAIRMAN LeMAY: Additional questions?

5 Commissioner Carlson.

6 COMMISSIONER CARLSON: Is your next
7 witness going to address the specific language
8 changes you're talking about?

9 MS. AUBREY: Yes, Mr. Carlson, he will.

10 COMMISSIONER CARLSON: Thank you. No,
11 I don't.

12 CHAIRMAN LeMAY: Commissioner Weiss?

13 COMMISSIONER WEISS: Yes, I have a
14 couple.

15 EXAMINATION

16 BY COMMISSIONER WEISS:

17 Q. How do you determine compartments? How
18 do you locate them?

19 A. That is not an easy task, of course.
20 There are several techniques that are being
21 attempted to be used now, including some high
22 resolution seismic techniques, both downhole as
23 well as high resolution 3-D surface seismic.

24 Sometimes you can also determine
25 boundary effects in pressure transient tests.

1 And sometimes a simple good geological model will
2 give you a clue as to the areas where these
3 compartments may be located.

4 Q. Do you envision this as a type of
5 information that will be presented to an
6 Examiner?

7 A. If that information is available and
8 for you to have reason to believe or for the
9 department to believe that it would provide
10 incremental recovery, I think that type of
11 information would have to be provided, yes.

12 Q. And another similar question, how do
13 you determine areally or vertically bypassed oil?

14 A. Well, we oftentimes infer it from
15 production logs run on injection and producing
16 wells. We see what zones the oil or the fluids
17 are being produced from and thereby infer the
18 zones that are not being swept. That's in the
19 case of the vertical sweep efficiency.

20 Areal, one of the techniques that we
21 commonly use is the use of tracers, chemical
22 tracers. And by modeling the tracer response,
23 you can at least estimate the areal sweep
24 efficiency of the drive process.

25 Q. Is this the kind of thing again that

1 you envision being presented to an Examiner?

2 A. Yes.

3 Q. And then, lastly, what are Marathon's
4 EOR plans for New Mexico?

5 A. I think the next witness will address
6 that in a little more detail. But the
7 conformance improvement treatments, we have some
8 definite plans in that area. I believe we have
9 some waterfloods that are planned. And we will
10 at least be participating in unit operations in
11 almost all of the EOR techniques that I have
12 discussed today.

13 Q. Thank you. And Marathon's expertise in
14 EOR is certainly recognized, well-known.

15 A. Thank you.

16 EXAMINATION

17 BY CHAIRMAN LeMAY:

18 Q. Mr. Smith, were you part of any
19 legislative hearings in the enactment of this
20 bill? Did you take part in any of the hearings,
21 or were you there?

22 A. I did not.

23 Q. Do you feel qualified to comment on the
24 legislative intent with the act, not being there?

25 A. I have studied the act, have reviewed

1 it both in the NMOGA deliberations and with our
2 people that were involved in the hearings. And
3 from that aspect, I do feel somewhat
4 knowledgeable about the process.

5 Q. About legislative intent?

6 A. No, probably not. Probably not.

7 Q. Was your testimony that you felt -- I
8 was confused. The R and D costs incurred by
9 Marathon, the research and development, do you
10 think that part of that should be recovered
11 through the tax credit?

12 A. No. What I was referring to in the
13 conformance improvement treatments, for instance,
14 that is, as you will see in the upcoming
15 exhibits, it was a quite cost-effective process.
16 It's cost effective based on the amount of
17 chemicals injected and the cost of conducting the
18 operations.

19 However, there was a significant
20 amount, literally millions of dollars spent on
21 the R and D and field testing of the process
22 prior to that being instituted on a wide basis.
23 So I would -- my intent was that these costs be
24 considered when we look at the cost of the
25 project being instituted, maybe not on a firm

1 dollar basis, but realizing that we have put a
2 great deal of investment into this technology.

3 CHAIRMAN LeMAY: Thank you.

4 Additional questions of the witness?
5 If not, he may be excused.

6 Call your next witness, Ms. Aubrey.

7 MS. AUBREY: Call Craig Kent.

8 CRAIG KENT

9 Having been duly sworn upon his oath, was
10 examined and testified as follows:

11 EXAMINATION

12 BY MS. AUBREY:

13 Q. Would you state your name and by whom
14 you are employed?

15 A. My name is Craig Kent, and I'm employed
16 by Marathon Oil Company in Midland, Texas.

17 Q. What's your occupation, sir?

18 A. I'm a reservoir engineer.

19 Q. Have you testified previously before
20 the New Mexico Oil Conservation Commission or its
21 Division and had your qualifications accepted as
22 a matter of record?

23 A. Yes, I have.

24 Q. Have you reviewed the Enhanced Oil
25 Recovery statute and the proposed regulations by

1 the Division?

2 A. Yes, I have.

3 Q. Are you familiar with the subject
4 matter of today's hearing?

5 A. Yes, I am.

6 MS. AUBREY: Mr. LeMay, I tender Mr.
7 Kent as an expert witness.

8 CHAIRMAN LeMAY: His qualifications are
9 acceptable.

10 Q. (BY MS. AUBREY) Mr. Kent, before we
11 start with your exhibits, can you talk briefly
12 about Marathon's enhanced oil recovery plans in
13 the state of New Mexico specifically in
14 connection with the rules and regulations and
15 legislation we're discussing today?

16 A. Yes, I can briefly address that.
17 Marathon is currently active in implementing a
18 number of waterflood operations in southeast New
19 Mexico, as well as participating with other
20 operators in unitized fields such as Arrowhead,
21 North Monument, which have just recently come on
22 line, as well as the vacuum field, which is
23 scheduled to be on line or to be unitized in the
24 near term.

25 Q. Mr. Kent, you prepared some exhibits

1 which are included in Marathon's booklet. In the
2 first set, Exhibits E through I, refer to a
3 project which Marathon conducted up in Wyoming;
4 is that correct?

5 A. That's correct.

6 Q. Could you review, very briefly review
7 those exhibits for the Commissioners, and while
8 you're doing that, relate your experience in that
9 project to your comments on the proposed rules
10 and regulations?

11 A. Yes, I will. Exhibit E is basically a
12 field data sheet or a summary of the Oregon Basin
13 field in Park County, Wyoming, specifically the
14 south dome of that field. It was discovered in
15 1928 and produces from primarily two formations,
16 the Embar, which is of Permian age, and the
17 Tensleep, which is Pennsylvanian.

18 The Embar would be somewhat similar in
19 characteristics to the San Andres of the Permian
20 Basin, being a fractured carbonate reservoir.
21 Originally the field was under solution gas drive
22 with some edge water drive and is currently under
23 waterflood operations.

24 As you can see, it's currently spaced
25 on between 10 and 20 acres and occupies about

1 6,000 acres that are productive.

2 Q. When you say, sir, that it's currently
3 under waterflood, is that the only technique
4 that's been applied to enhance the oil recovery?

5 A. No. Prior to the waterflood
6 operations, this field was under a polymer
7 augmented waterflood to help improve sweep
8 efficiencies.

9 Q. Is that the operation in which Marathon
10 was involved?

11 A. Yes, it is.

12 Q. Let me have you look at Exhibit 1-F.
13 We talked a little bit about the costs of
14 enhanced oil recovery. And there have been some
15 questions from the Commissioners. Can you use
16 this exhibit to help explain Marathon's position
17 on cost and the efficiency of some of its
18 techniques?

19 A. Yes. Basically this exhibit is a
20 description of jell conformance treatments that
21 we've performed in the Oregon Basin field since
22 1984. To date we've performed 39 such treatments
23 at a cost of \$1.8 million, pumping almost half a
24 million barrels of jell, and recovering
25 approximately 4 million barrels of oil that would

1 have otherwise been left in the reservoir.

2 Q. The 4 million barrels of oil,
3 approximately 4 million that's shown on your
4 exhibit, is that the incremental recovery?

5 A. That is the incremental recovery.

6 Q. The additional recovery?

7 A. That's correct.

8 Q. There have been some questions about
9 some problems in the past in terms of whispering
10 polymer. Can you talk about how Marathon's
11 injection of, I believe you said, half a million
12 barrels of jell is a substantial project?

13 A. Basically, if you break that down,
14 we're pumping approximately 12,000 barrels of
15 jell per job. So we're not -- we're trying to
16 contact an area that's significantly out away
17 from the wellbore, probably not on a reservoir
18 type scale, but certainly more than just pumping
19 in a couple of barrels of jell and calling it
20 good.

21 Q. Would this exhibit be typical, although
22 not identical to, but typical of the type of
23 project that Marathon is talking about
24 particularly in terms of jell conformance
25 treatments and its desire to add that type of

1 treatment to the definitional section of the
2 regulations?

3 A. Yes, it is.

4 Q. Do you have any other comments to make
5 on Exhibit 1-F, Mr. Kent?

6 A. I guess basically we believe that it is
7 intended that the state is wanting us to come
8 forth with projects that will recover more oil
9 and also do that in an efficient manner, whether
10 that may be by any type of low cost method or not
11 necessarily low cost, but lower cost when
12 compared to large scale CO₂ floods.

13 Q. Do you know, sir, whether or not, for
14 instance, the jell conformance treatment method
15 is generally lower cost than a CO₂ flood?

16 A. Yes, it is.

17 Q. Do you have any other comments about
18 that exhibit, sir?

19 A. No, I don't.

20 Q. Let's move on to your Exhibit 1-G. Can
21 you explain that to the Commissioners?

22 A. Basically Exhibit 1-G is just a simple
23 diagram of what is required to perform one of
24 these jell conformance treatments. An aqueous
25 polymer solution is mixed with a chromic

1 crosslink solution whose concentration is
2 controlled by a metering pump and is then mixed
3 in a static mixer and pumped downhole.

4 And generally these treatments take
5 anywhere from several days to several weeks
6 depending on the slug size as well as the
7 reservoir characteristics.

8 Q. Now, Mr. Kent, Exhibit 1-H graphically
9 shows the Oregon Basin field in Wyoming that you
10 were discussing earlier; is that correct?

11 A. That is correct.

12 Q. What are the red squares on that
13 exhibit?

14 A. The red squares indicate five
15 particular injection wells that we performed
16 conformance treatments on to try to improve the
17 sweep efficiency of a polymer flood. At this
18 time when these conformance treatments were done,
19 the field was under active polymer flood.

20 And what we had seen happening was we
21 were having channels due to natural fracturing
22 where our injected fluid was essentially going
23 straight from an injection well to a producing
24 well and not contacting very much reservoir area
25 at all.

1 Q. Now, the yellow area on that exhibit,
2 is that -- what is that?

3 A. The yellow area is the area in which we
4 saw a positive response from these jell
5 conformance treatments.

6 Q. So that's not a unit boundary or some
7 artificial designation?

8 A. No. This is just a portion. What you
9 see in this map is just a portion of the
10 northeast part of the south dome. As I said, the
11 yellow portion is just the area that saw a
12 positive response.

13 Q. And that's the area which saw a
14 positive response from these five wells in which
15 you treated?

16 A. That's correct.

17 Q. Let me have you move on now to the next
18 exhibit, Exhibit 1-I, which is a production
19 graph. Can you review for the Commissioners what
20 that exhibit shows in regards to the response to
21 jell conformance treatments in the Oregon Basin?

22 A. Yes, I can. Basically this is a
23 production graph showing production and injection
24 that was ongoing in the yellow highlighted area
25 of the previous exhibit. As you can see, this

1 part of the field was under polymer flood, and it
2 was down at about 600 barrels a day of production
3 in late 1985 and proceeding on a decline of about
4 7-1/2 percent.

5 From a period from late 1985 through
6 early 1988, five conformance treatments were done
7 on the five wells I had indicated earlier. And
8 initially production went from approximately 600
9 barrels a day to 1200 barrels a day between late
10 1985 and early 1896. And then as subsequent
11 treatments were done in 1977 and again in 1988,
12 there were similar responses seen.

13 Two interesting things to note that
14 while our oil production increases, or increased,
15 we were able to maintain injection rate and also
16 see a dramatic decline in the water-oil ratio
17 produced at the wells.

18 Q. What does that tell you, sir, about
19 whether or not the oil you were producing was in
20 fact incremental oil which would not otherwise
21 have been recovered?

22 A. Basically it says that we were able to
23 divert the water that was channeling from
24 injector to producer to contact more of the
25 reservoir area.

1 Q. Now, this is an area that was under a
2 polymer flood --

3 A. That's correct.

4 Q. -- when you started this jell
5 conformance treatment; is that correct?

6 A. That's correct.

7 Q. So the response that you received, you
8 believe, was in addition to that which was
9 attributable simply to the polymer flood?

10 A. That's correct. And basically to
11 quantify that value, extrapolating some of these
12 numbers, we feel that the incremental oil due to
13 these jell conformance treatments was
14 approximately 2.6 million barrels of oil. And I
15 know that shown on the graph, there's a drill
16 well in 1989. And the effects of that well were
17 excluded from the incremental oil.

18 Q. So you did not include that additional
19 production in calculating the incremental oil
20 shown on the exhibit; is that correct?

21 A. No, we did not.

22 Q. Is there anything else you'd like to
23 say about that exhibit, Mr. Kent?

24 A. Basically I think that what we tried to
25 show is this type of a process has merit. And

1 what we are asking for is clarification within
2 the rules to state that this is a process that
3 will be considered by the Division.

4 Q. Now, your next exhibit, sir, is Exhibit
5 J, which appears to be discussing again the
6 Oregon Basin field in Wyoming. Is this the same
7 part of the Oregon Basin that we just saw?

8 A. No, it's not. This portion of the
9 field is approximately two to three miles to the
10 southwest of the previous exhibits.

11 Q. And what did you do in this
12 southwestern area that's different than what you
13 did in the area we just discussed?

14 A. Basically what we did was take and
15 convert several irregular patterns to more
16 tightly spaced regular patterns by drilling
17 infill wells and converting active producing
18 wells to injection wells.

19 Q. Was this an area that was under a
20 waterflood or polymer flood of some kind?

21 A. Yes, it was.

22 Q. And your Exhibit 1-J shows the number
23 of wells you drilled, wells that were converted,
24 and some wells that were recompleted; is that
25 correct?

1 A. That's correct. And it also shows, as
2 a result of this work, we recovered approximately
3 1.7 million barrels of oil that wouldn't have
4 been recovered under the existing operations.

5 Q. Is this the type of infill drilling
6 pattern realignment that Mr. Smith spoke about
7 and we've referred to previously as being a
8 technique for enhanced oil recovery?

9 A. Yes, it is.

10 Q. Now, your next exhibit, sir, shows the
11 old pattern before the pattern realignment?

12 A. That's correct. And basically what you
13 see is that there was a rather irregular
14 seven-spot injection pattern where one injector
15 was surrounded by six or in some cases five
16 producing wells. And wells were at that time on
17 about 20-acre spacing.

18 Q. And then Exhibit 1-L shows the new
19 pattern after the pattern realignment; is that
20 right?

21 A. That's correct. And what was done was
22 wells were drilled at infill locations. Four
23 wells were converted to injection. And the
24 pattern was augmented from the irregular
25 seven-spot to a more regular and tightly spaced

1 five-spot pattern.

2 Q. Do you have any more specific comments
3 you'd like to make about this second technique or
4 the exhibits showing the second technique?

5 A. Yes. I think that also again under the
6 definitions of expansion or expanded use, I think
7 this is a technique that applies when used in a
8 field that's currently under some sort of
9 enhanced oil recovery.

10 Q. Now, your Exhibit 1-M is a written
11 recap of Marathon's comments on both House Bill
12 23 and the proposed regulations; is that correct?

13 A. That's correct.

14 Q. Without reading that, I'd like to take
15 you briefly through the specific language changes
16 which Marathon Oil Company recommends that the
17 Commission adopt in promulgation of the new
18 rules.

19 A. Okay.

20 Q. Let me have you go, I believe, to page
21 3 of that sub-exhibit and talk about the changes
22 that Marathon Oil Company has proposed in the
23 definition of "Enhanced Oil Recovery Project."

24 A. I think the changes we proposed are
25 more of a clarification rather than a change of

1 what was proposed in the original statute. And
2 what we would have added would be a vertical
3 areal conformance process, cyclic injection
4 process.

5 And it goes on to state, "whether this
6 process is applied on a single-well or
7 multiple-well basis as part of an overall
8 development plan."

9 We recognize that the Division doesn't
10 want to go on endorsing some sort of sham where
11 somebody whispers polymer at a well and expects
12 to get the tax break. But this should apply
13 where an overall plan of action is demonstrated
14 during the hearing process.

15 Q. Is your Oregon Basin project an example
16 of a project in which there is more than one
17 enhanced oil recovery technique being used?

18 A. Yes, it is. Through our exhibits you
19 can see that we've tried waterflooding, polymer
20 flooding, infill drilling, and pattern
21 realignment as well as jell conformance
22 treatments to try to maximize the recovery from
23 this reservoir.

24 Q. What is it that affects your choice of
25 particular technique or a particular portion of a

1 project?

2 A. Basically it has to do with the
3 reservoir description that we're able to come up
4 with from geologic data.

5 Q. So your choice of technique would be
6 reservoir specific and even a portion of a
7 reservoir specific; is that right?

8 A. That's correct.

9 Q. What is the intent behind Marathon's
10 suggestion that the rule specifically state that
11 the process be approved whether applied on a
12 single- or a multiple-well basis?

13 A. Basically there are some small
14 reservoirs where you may only have one, two,
15 three producing wells where some sort of a cyclic
16 injection process may be the only way that you
17 can undergo some sort of enhanced oil recovery.

18 Q. So is it Marathon's intent that the
19 rules encompass projects which would not
20 necessarily be physically large but which would
21 be designed to produce oil which would not
22 otherwise be produced?

23 A. That's correct.

24 Q. Do you have anything else you'd like to
25 say about the proposed additional language to the

1 definition of enhanced oil recovery project?

2 A. No, I don't.

3 Q. Let's move to your comments on the
4 proposed rule on expansion or expanded use. What
5 are Marathon's proposed exchanges for that
6 portion of the rule?

7 A. Again at the end of the definition, we
8 would ask to add the wording, "including but not
9 limited to the addition of infill injection and
10 producing wells and the change of injection
11 patterns" to the definition.

12 Q. And does that take us back, sir, to Mr.
13 Smith's exhibit, No. 1-C, which shows the oil
14 which is left in place that is areally bypassed?

15 A. That's correct. By drilling infill
16 injection and producing wells and/or by modifying
17 injection patterns, it's possible to change the
18 movement of the fluids through the reservoir to
19 recover parts of that bypassed oil.

20 Q. Now, the next comment that Marathon has
21 is on the language concerning termination of a
22 project. Could you explain what changes Marathon
23 would propose and the justification for that
24 change?

25 A. Basically what we're proposing is that

1 the method of determining the date of
2 determination be discussed and set out during the
3 hearing process. And our concerns there are that
4 there are several EOR processes that involve the
5 injection of a slug followed by a drive fluid.

6 And we wanted to make sure that the
7 rules weren't misinterpreted by operators or the
8 Division to mean that when the slug fluid
9 injection ceased, that the project was
10 terminated.

11 Q. So it would be for purposes of clarity
12 to make it apparent that where the slug is
13 followed by injection of, say, water or some
14 other fluid that that doesn't constitute a
15 termination of a project?

16 A. That's correct.

17 Q. What time period are we talking about
18 in terms of how long these injections would go
19 on, not only the slug injection, but following
20 the injection of water following the slug?

21 A. If you take, for example, the case
22 history of the jell conformance treatments, those
23 treatments took place over maybe a three- to
24 four-week period while water injection followed
25 up over several years and is continuing today.

1 Q. Is that part of the Oregon Basin
2 project --

3 A. That's correct.

4 Q. -- on which you've provided some
5 information? Is it Marathon's recommendation
6 that this be a determination or an issue that is
7 discussed and resolved in the application process
8 when approval is sought for the project so that
9 at the beginning of the project everyone agrees
10 on what the determination event will be?

11 A. That's correct.

12 Q. Let me have you discuss your next
13 proposal, which is contained on page 4 of your
14 Exhibit 1-N, regarding the date of January 1,
15 1994.

16 A. Again this was -- we're suggesting some
17 added language to provide more clarity in the
18 regulations. We are asking that some wording be
19 added to the effect that "Non-carbon dioxide EOR
20 projects may be approved by the Division between
21 March 6, 1992, and January 1, 1994, even though
22 such projects would not be eligible for the
23 recovered oil tax rate until January 1, 1994."

24 We realize it's beyond the Division's
25 jurisdiction to tell Tax & Revenue how to apply

1 the tax. But we feel that it is necessary that
2 operators know that they can come in and get a
3 project approved and possibly even a positive
4 production response certified prior to that
5 January 1, 1994, date.

6 Q. Even though they would not be liable
7 for the tax relief until after that?

8 A. That's correct.

9 Q. Any other comments you'd like to make
10 on Exhibit 1-N, Mr. Kent?

11 A. No, there's not.

12 Q. Now, the last document contained in
13 your packet of paper on jell conformance
14 treatments, can you tell the Commission a little
15 bit about the background of that paper and why
16 it's been included in your exhibits?

17 A. That's correct. This paper was
18 included to provide additional information about
19 jell conformance treatments that we've undertaken
20 in various fields in Wyoming. The case history
21 that I showed you is a subset of the information
22 that is contained in this paper.

23 It was written by one of our engineers
24 in our Cody, Wyoming, office along with a
25 researcher in our Littleton technology center.

1 And it goes into some more detail about the types
2 of fluids that we used, the types and amounts of
3 jell that was pumped in each job, and the types
4 of recoveries that were expected.

5 MS. AUBREY: Mr. LeMay, I offer
6 Marathon Exhibit No. 1, and I have no more
7 questions of the witness at this time.

8 CHAIRMAN LeMAY: Without objection to
9 Exhibit 1 of Marathon's, the exhibit will be
10 admitted into the record.

11 Questions of the witness?

12 MR. STOVALL: I just have a couple.

13 CHAIRMAN LeMAY: Mr. Stovall.

14 EXAMINATION

15 BY MR. STOVALL:

16 Q. Did I understand you correctly on 1-F
17 that the 4 million barrels of recovery is
18 incremental after the commencement of the jell
19 conformance process?

20 A. That's correct. It's incremental over
21 whatever we would have recovered over waterflood
22 or polymer flood operations.

23 Q. That was about \$1.8 million
24 investment. If I just use the \$22 a barrel price
25 and 1.75 percent credit, or 1.875 percent credit,

1 you get about 1-million-6 of that back in the tax
2 credit just off the incremental oil; is that
3 correct, assuming -- what's the expression?
4 subject to check? Is that the expression we've
5 used in the past?

6 A. I haven't made those calculations, but
7 I'll trust your mathmematics on that.

8 Q. Is that type of incentive necessary to
9 get Marathon to do this type of process?

10 A. I believe in the environment we're in
11 right now with the prices of oil, constraints on
12 capital budgets, this type of incentive would
13 indeed provide us with additional reasons to make
14 investments in New Mexico over, say, Texas,
15 Wyoming or any of the other places we have
16 operations.

17 Q. Does Wyoming have a tax credit for EOR
18 right now?

19 A. I'm not sure whether they do or not.

20 Q. Do you have any idea of what the costs
21 were on your Exhibit 1-J on your new wells and
22 conversions? What were the costs?

23 A. I don't have that information.

24 Q. Now, you indicated that what you're
25 showing here, you have different processes in the

1 same field. Now, is Oregon Basin a single
2 operation like a unit?

3 A. Yes, it is.

4 Q. How big is it?

5 A. In the south dome it encompasses
6 approximately 6,000 acres. The north dome is
7 slightly smaller but along the same magnitude.

8 Q. Now, is it your interpretation and
9 suggestion that you should get credit for all of
10 the oil produced from the entire basin --

11 A. No.

12 Q. -- based upon these limits?

13 A. No. And I think what we tried to show,
14 in particular with Exhibit 1-H, I think it would
15 only be realistic to expect to get the tax break
16 on the area that's shown in yellow.

17 Q. Okay. I just wanted to make sure. I
18 kind of thought that's what you meant, but I
19 wanted to make sure.

20 A. Right.

21 Q. You were here for Mr. Van Ryan, weren't
22 you, this morning?

23 A. Yes, I was.

24 Q. And is it your understanding that even
25 without the language you have suggested, that

1 this project might qualify depending on the
2 specifics, as your previous witness indicated you
3 would present in specific application?

4 A. Yes. I believe that according to what
5 Mr. Van Ryan said, this type of process would be
6 considered. We're asking for these
7 clarifications basically to provide, in essence,
8 a comfort level or a base of knowledge for
9 operators to be able to say this may be a type of
10 process that the Division will consider rather
11 than trying to go through the broad definition
12 and come to a particular conclusion.

13 Q. I guess my only comment to you would
14 be -- my fear would be that the more you try to
15 define specific processes, the more likely it is
16 that something that's not on the list wouldn't be
17 considered. By adding little pieces here and
18 there, you may be leaving something else out.

19 Again, looking at the second part of
20 your changes on the top of page 3 on the
21 recommendations, when you say whether the process
22 is applied on a single-well or a multiple-well
23 basis, you understand that in this small-well,
24 small-project situation, it would again only
25 apply to the area affected by that process?

1 A. That's correct.

2 Q. And you also understand just because
3 it's on the list doesn't necessarily mean it's
4 approved? You would have to go drill a well?

5 A. That's correct. And I think we would
6 be trying to bring forth only projects that were
7 viable and not just something where we were
8 trying to get a tax break.

9 Q. With respect to the termination
10 provision amendments that you've suggested, the
11 way your language reads, it would say that "The
12 termination method shall be mandatory." Would
13 you have any concern if that were changed to a
14 "may be" --

15 A. No, I wouldn't.

16 Q. -- approach where you would address a
17 specific situation but other better-known
18 projects, such as pure waterflood or something --

19 A. That is correct. And I think what we
20 were trying to do here, the definition is quite
21 vague and can be interpreted several different
22 ways. And our feeling was that the best way to
23 approach this may have been through the hearing
24 process.

25 MR. STOVALL: I have no further

1 questions.

2 CHAIRMAN LeMAY: Thank you, Mr.
3 Stovall.

4 Additional questions?

5 Commissioner Carlson?

6 COMMISSIONER CARLSON: Yes.

7 EXAMINATION

8 BY COMMISSIONER CARLSON:

9 Q. Following up on Bob's questions on your
10 Exhibit 1-F, and I don't think Marathon should be
11 faulted for producing oil at lower costs than
12 most methods, but if you look at the costs that
13 are involved, assuming oil is \$22 and you can get
14 \$4 million -- or 4 million barrels of \$22 oil at
15 a cost of \$1.8 million, you're getting \$88
16 million for an investment of \$1.8 million. I
17 think that's good with or without a tax credit in
18 whatever state you're talking about. That's a
19 pretty good return.

20 Going through Bob's numbers, working it
21 out on a per-barrel basis, basically you're
22 spending \$.45 a barrel to get \$22 barrel oil.
23 And if the state gives you a tax credit -- I
24 guess it's not a tax credit -- gives you a lower
25 tax rate, the state is essentially paying for

1 \$.41 of your \$.45 cost.

2 I don't think that was the intent of
3 this legislation. I realize, like any tax law
4 that if you fall into it, you're certainly going
5 to take it. I don't know, though, if we should
6 expand the definitions to try to include those
7 kind of things.

8 A. I guess --

9 Q. I guess that's more of a comment than a
10 question. You don't have to respond unless you
11 want to.

12 A. I guess the one piece of information
13 that is left out of here, as the previous person
14 testified, our R and D costs are not included in
15 these costs, and they are significant. And also
16 just because we're being cost-effective, we don't
17 feel we should be penalized for --

18 Q. And I think that's a good point.

19 A. -- for recovering oil in a
20 cost-effective way.

21 Q. Now, let's get on to your definition on
22 page 3 of your Exhibit 1-M. Have you read the
23 statute, the passed Enhanced Oil Recovery Act?

24 A. Yes, I have.

25 Q. Are you familiar with the definition in

1 the statute of "expansion" or "expanded use"?

2 A. Yes, I am.

3 Q. And it basically -- I think it's
4 identical -- well, it's not identical, but it's
5 basically the same as the proposed rule. What
6 Marathon is proposing, is it not, is that you
7 have an existing waterflood project and if you
8 realign the injection wells or do an infill
9 drilling program within that waterflood project,
10 then you feel that you should qualify for the
11 lower tax rate?

12 A. That's correct. But only in the
13 area -- if you only infilled a small area of the
14 field, only that area of the field that was
15 affected by this project, not the entire field.

16 Q. If you read the statute, which is
17 basically your definition there without your
18 underlying language, and you're talking the
19 technology or process used for the displacement
20 of crude oil from the oil well or pool classified
21 by the Division, do you think realigning
22 injection wells is a change in the technology or
23 process?

24 A. It's a change in the process because
25 you're actually changing the fluid flow in the

1 reservoir. You may not be using any different
2 technology. You may not be switching from
3 waterflood to polymer flood or waterflood to CO₂
4 flood, but you are changing the way that the
5 fluids are moving in the reservoir to maximize
6 the recovery of oil from the reservoir.

7 COMMISSIONER CARLSON: Again I question
8 if that's what the legislature had in mind, but
9 we'll leave that, I guess, to the Division.

10 I don't have any other questions.

11 CHAIRMAN LeMAY: Commissioner Weiss?

12 EXAMINATION

13 BY COMMISSIONER WEISS:

14 Q. What were the results of the polymer
15 flood?

16 A. To date I think in the South Oregon
17 Basin we're approaching approximately recovery of
18 50 percent of the original oil in place. What
19 that breaks out on the polymer flood, I don't
20 have those numbers. But through the entire set
21 of processes we've used, we have recovered a
22 substantial amount of the oil that was there.

23 Q. And then I notice that you characterize
24 the Embar at least as a naturally fractured
25 reservoir. And I take it that perhaps is where

1 these conformance treatments work the best?

2 A. That's correct.

3 Q. How did you determine it was naturally
4 fractured?

5 A. Core and log analysis.

6 Q. Did you use these processes that were
7 discussed earlier by Mr. Smith through the
8 seismic and et cetera?

9 A. I doubt that they used the 3-D seismic
10 type processes. I was not involved personally
11 with these and can't particularly answer that.
12 But I do know that there was --

13 Q. See, do you think this would be a
14 problem: If a person applied these relatively
15 small volume treatments and you didn't get the
16 response that you got at Oregon Basin because it
17 wasn't the proper application, yet it somehow or
18 another qualified for the reduction in the
19 severance tax on all of the oil produced off that
20 lease, do you see that as a problem unless it's
21 characterized properly?

22 From my viewpoint, from what you've
23 said, you guys might have been real lucky, but I
24 don't know how it was characterized.

25 A. I understand that. And I think we have

1 the same problem with putting in a large scale
2 waterflood and seeing a minor response and having
3 that tax apply, tax break apply to a full field.

4 Q. That's right. That's in the future.

5 A. I think it's something that's inherent
6 in the legislation.

7 Q. Just another question aside from this.
8 Does Marathon have a lot of opportunities to
9 produce in other states incremental oil for \$.50
10 a barrel?

11 A. I couldn't quantify that. I couldn't
12 tell you exactly where and what types of
13 opportunities we have other than what I
14 personally deal with.

15 COMMISSIONER WEISS: That's all my
16 questions. Thank you.

17 CHAIRMAN LeMAY: Just one, Mr. Kent.

18 EXAMINATION

19 BY CHAIRMAN LeMAY:

20 Q. Do you see a difference between prudent
21 operations and new processes?

22 A. Yeah, I think there is a difference
23 there. It may be prudent to do one thing that
24 may involve the same process you're currently
25 using. As we've shown with realigning waterflood

1 patterns in an active waterflood, that may be a
2 prudent operation to undertake rather than going
3 to a CO₂ or polymer flood, which would be a new
4 process.

5 CHAIRMAN LeMAY: Thank you.

6 Any additional questions of the
7 witness?

8 MS. AUBREY: Yes, Mr. LeMay.

9 FURTHER EXAMINATION

10 BY MS. AUBREY:

11 Q. Mr. Kent, if you use a technique in a
12 reservoir and there is no positive production
13 response, then you won't get your project
14 certified; is that right?

15 A. That's correct.

16 Q. So the legislation has a built-in
17 safeguard there for making sure that the
18 technique that the operator uses is a successful
19 technique?

20 A. That's correct.

21 Q. And when we talk about incremental oil,
22 isn't it true, Mr. Kent, that that incremental
23 oil is oil that would remain in the ground
24 without the enhanced recovery project on which
25 the state would receive no tax at all, not a

1 reduced amount, but absolutely no tax because it
2 would not be produced?

3 A. That's correct also.

4 MS. AUBREY: That's all I have.

5 CHAIRMAN LeMAY: Thank you.

6 Additional questions of the witness?

7 Thank you. You may be excused. Thank you, Mr.
8 Kent.

9 At this time we'll take some
10 statements. Mr. Bohling?

11 MR. BOHLING: We don't have anything to
12 say other than Chevron would like to express its
13 appreciation for the Commission's efforts and
14 involvement in establishing and getting us the
15 EOR severance tax relief.

16 Also that Chevron fully supports New
17 Mexico Oil & Gas Association's testimony as
18 presented here by an extremely qualified witness
19 today. Thank you.

20 CHAIRMAN LeMAY: Thank you. I'm sure
21 Mr. Carr appreciates that too.

22 Ms. Alcock, do you have anything you'd
23 like to add, state, comment on with Tax &
24 Revenue's position?

25 MS. ALCOCK: Not really. Taxation &

1 Revenue has reviewed the proposed rules. We have
2 one concern which was addressed in the testimony,
3 which was the rule at E-2 (c), to just make sure
4 there is a clarification that the five- and
5 seven-year period applies to the time within
6 which application must be made as opposed to when
7 positive production response begins.

8 Other than that we just believe that
9 the rules as proposed by the Division is
10 consistent with the statute, and we would support
11 its adoption.

12 CHAIRMAN LeMAY: Thank you very much.
13 You've noticed we've not addressed the \$28
14 ceiling either, but that would be in your
15 jurisdiction because many of the items of
16 legislation, of course, would be in your
17 jurisdiction.

18 MS. ALCOCK: Right. Yes.

19 CHAIRMAN LeMAY: Thank you.

20 Mr. Gray for Texaco?

21 MR. GRAY: I don't have any particular
22 comments.

23 CHAIRMAN LeMAY: Tom, Mr. Brown, Yates
24 Petroleum?

25 MR. BROWN: Mr. Chairman, I would just

1 echo the comments made by the gentleman from
2 Chevron. We do appreciate the Commission's
3 indulgence and your fair hearing and the
4 expertise of the expert witness for NMOGA, and we
5 do support that position.

6 CHAIRMAN LeMAY: Thank you, Mr. Brown.

7 Additional statements for the record?
8 If not, we'll leave the record open -- two weeks
9 enough for you guys? Okay. We'll leave it open
10 two weeks for additional comments and
11 clarifications and additional statements. And we
12 thank you very much for your input in this
13 process.

14 We'll take this case under advisement.

15 [And the proceedings were concluded
16 at the approximate hour of 12:00 p.m.]

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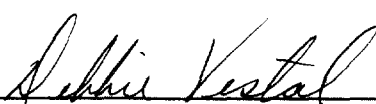
1 CERTIFICATE OF REPORTER

2
3 STATE OF NEW MEXICO)
4) ss.
COUNTY OF SANTA FE)

5
6 I, Debbie Vestal, Certified Shorthand
7 Reporter and Notary Public, HEREBY CERTIFY that
8 the foregoing transcript of proceedings before
9 the Oil Conservation Commission was reported by
10 me; that I caused my notes to be transcribed
11 under my personal supervision; and that the
12 foregoing is a true and accurate record of the
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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 JUNE 27, 1992.
20
21

22
23 
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25