1	STATE OF NEW MEXICO
2	OIL CONSERVATION COMMISSION
3	
4	Case No. 23580
5	
6	
7	Tuesday, November 12, 2024
8	9:00 a.m.
9	
10	
11	Pecos Hall, Wendell Chino Building
12	1220 South St. Francis Drive
13	Santa Fe, NM 87505
14	
15	
16	
17	
18	Reported by: James Cogswell
19	JOB NO.: 6866904
20	
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23	
2 4	
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10	ALSO PRESENT:
11	Felicia Orth, Hearing Officer
12	Gerasimos Razatos, Acting Director - State of New
13	Mexico Oil Conservation Division
14	Greg Bloom, Commissioner - State of New Mexico
15	Oil Conservation Commission
16	Dr. William Ampomah, Commissioner - State of New
17	Mexico Oil Conservation Commission
18	Sheila Apodaca, Law Clerk - State of New Mexico
19	Oil Conservation Commission
20	Madai Corral, Law Clerk - State of New Mexico Oil
21	Conservation Commission
22	Norman Gaume, Member of Public
23	Kathleen McCloud, Member of Public
24	Nancy Yuen, Member of Public (by videoconference)
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1	ALSO	PRESENT (Cont'd):
2		Amy Christian, Member of Public (by
3		videoconference)
4		Nodiah Brent, Member of Public (by
5		videoconference)
6		Savanna Woods, Member of Public (by
7		videoconference)
8		Paul Pino, Member of Public (by videoconference)
9		Lauri Costello, Member of Public (by
10		videoconference)
11		Erica Lea-Simka, Member of Public (by
12		videoconference)
13		Stephen Schmidt, Member of Public, By
14		Videoconference
15		Caroline Knapp, Member of Public (by
16		videoconference)
17		Gail Robin Seycel, Member of Public (by
18		videoconference)
19		Elaine Cimino, Member of Public (by
20		videoconference)
21		Michael Sweringen, Member of Public (by
22		videoconference)
23		Evalyn Bemis, Member of Public (by
24		videoconference)
25		
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1	ALSO	PRESENT (Cont'd):
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3		Feleecia Guillen, Member of Public
4		Ennedith Lopez, Member of Public
5		Zephyr Jaramillo, Member of Public
6		Jonathan Juarez, Member of Public
7		Stephany Aguirre, Member of Public
8		Briana Reviere, Member of Public
9		Michael Dolce, Member of Public
10		Miriam Luebano, Member of Public
11		Megan Taros, Member of Public
12		Miguel Acosta, Member of Public
13		Mick Nickel, Member of Public
14		Stephen Meyer, Member of Public
15		Mykayla Trujillo, Member of Public
16		Pat Leahan, Member of Public (by videoconference)
17		Robin Schuett-Hames, Member of Public (by
18		videoconference)
19		Nell Burrus, Member of Public (by
20		videoconference)
21		Rayellen Smith, Member of Public (by
22		videoconference)
23		Xavier Barraza, Member of Public, By
24		Videoconference
25		
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1	ALSO	PRESENT (Cont'd):
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3		videoconference)
4		Mary Martinez-White, Member of Public (by
5		videoconference)
6		Nancy Singham, Member of Public (by
7		videoconference)
8		Rachel Carson, Member of Public (by
9		videoconference)
10		Ryan Tate, Member of Public (by videoconference)
11		Anna Rondon, Member of Public (by
12		videoconference)
13		Susan Schuurman, Member of Public (by
14		videoconference)
15		Brandon Powell, Deputy Director - State of New
16		Mexico Oil Conservation Division
17		Nicholas R. Maxwell, Participant from Lea County,
18		By Videoconference
19		Raife Juarez, Member of Public
20		
21		
22		
23		
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2	NO.	DESCRIPTION	ID/EVD
3	Exhibit 62	WG Exhibit 62	229/230
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Τ	PROCEEDINGS
2	MR. RAZATOS: Okay. Happy Tuesday to
3	everybody. Good to see everybody here. We are going
4	to start our meeting. Today, we are going to start
5	our commission meeting that we had planned. It will
6	be really brief, and then we'll go into our rule
7	making. So we've got that today.
8	So I'm officially calling this meeting
9	to start. I'm going to do a roll call. My name is
10	Gerasimos Razatos. I am the acting Division Director
11	for the Oil Conservation Division, and I'm also the
12	Oil Conservation Commission Chair. And I'll pass it
13	on to my right here. You don't have it?
14	MR. BLOOM: Good morning, everyone.
15	Greg Bloom. I'm the Designee of the Commissioner of
16	Public Lands. Good morning.
17	DR. AMPOMAH: Good morning. My name is
18	Dr. William Ampomah. I'm the Designee of the Energy
19	Secretary.
20	MR. RUBIN: And Daniel Rubin, Counsel
21	to the OCC, from the Office of the Attorney General.
22	MR. RAZATOS: Madai, can we get a
23	battery for this one, please? Thank you. Awesome.
24	So we're all here. Excellent. Our next agenda item
25	is to approve the November 12, 2024, agenda. Can we
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1	get a motion for that?
2	MR. BLOOM: I so move.
3	DR. AMPOMAH: Mr. Chair, can we check
4	page number 3? The next meeting is December 12, 2024,
5	and I just want to clarify that.
6	MR. RAZATOS: Okay. I didn't print my
7	notes for that, so I apologize. Is that what we have
8	on there?
9	DR. AMPOMAH: Yes.
10	MR. RAZATOS: Okay. And is there a
11	concern with that?
12	DR. AMPOMAH: I thought our next
13	meeting is tomorrow.
14	MR. RAZATOS: No. We were going to
15	combine the November meeting in here, and then we're
16	having the December meeting as well, on December 12th.
17	DR. AMPOMAH: So then it's correct?
18	MR. RAZATOS: Yes.
19	DR. AMPOMAH: Okay. I second.
20	MR. RAZATOS: Okay. Excellent. Mr.
21	Rubin, do we need to do an official call for this one?
22	MR. RUBIN: You can simply say, "All in
23	favor say Aye."
24	MR. RAZATOS: Awesome. All in favor,
25	say, "Aye."
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1	MULTIPLE SPEAKERS: Aye.
2	MR. RAZATOS: Great. The agenda for
3	the November 12th has been approved. We also need to
4	do an approval for the minutes for the October 9,
5	2024, meeting. Can I get a motion to approve it?
6	MR. BLOOM: I so move.
7	DR. AMPOMAH: I second.
8	MR. RAZATOS: Excellent. All in favor,
9	please say, "Aye."
10	MULTIPLE SPEAKERS: Aye.
11	MR. RAZATOS: Excellent. So we approve
12	that. Our next agenda item is the ratification of the
13	Commission Motion for Limited Intervention in case
14	number D-506-CV-2023001180. Mr. Rubin, you're going
15	to take that one. Right?
16	MR. RUBIN: Thank you. Chairman and
17	Commission, as you are already aware, the commission
18	has intervened in the case of Empire versus Goodnight
19	in district court. We have moved to intervene to
20	limited purpose of expressing the position to the
21	court, the district court, that the commission's
22	adjudication that is set for February should be heard
23	before the district court weighs in on similar issues.
24	So because of the timing of the
25	litigation, I necessitated filing the motion and

1	rather than having a special meeting to approve it,
2	I'm asking for ratification of that motion. So if I
3	could hear that motion?
4	MR. RAZATOS: I move.
5	DR. AMPOMAH: I second.
6	MR. RUBIN: All in favor?
7	MULTIPLE SPEAKERS: Aye.
8	MR. RUBIN: Thank you.
9	MR. RAZATOS: Okay. So we got that one
10	out of the way, as well. Thank you, Mr. Rubin. We're
11	going to start with our two cases. Our computer space
12	up here, up front, is kind of limited, so if you're
13	going to be talking and you're not part of this, we
14	can use the witness stand so, you know, so then people
15	don't have to move and do all of that. You can
16	actually. No? Okay. Well he moved. Never mind.
17	We'll do it that way then.
18	We're moving on to our pending cases.
19	So our first case is going to be case number 24816 and
20	case number 24878. These are applications from Avant
21	Operating LLC for approval of nonstandard unit and
22	compulsory pooling in Lea County, New Mexico. Are all
23	present for this particular case?
24	MS. BENNETT: Good morning, Mr. Chair,
25	Commissioner, this is Deana Bennett on behalf of

1	Avant, and I'm appearing for Julie today. Thank you.
2	MR. RAZATOS: Thank you, Ms. Bennett.
3	MS. MCLEAN: Good morning. Jackie
4	McLean from Hinkle Shanor on behalf of COG Operating
5	and Concho Oil & Gas.
6	MR. RAZATOS: Excellent. Thank you.
7	MR. FELDEWERT: Good morning, Mr.
8	Chair, members of the commission. Michael Feldewert
9	with the Santa Fe office of Holland & Hart, appearing
10	on behalf of PBEX LLC and E.G.L. Resources.
11	MR. RAZATOS: Excellent. Thank you,
12	Mr. Feldewert. Ms. Bennett, I will turn it over to
13	you.
14	MS. BENNETT: Thank you very much. I
15	appreciate that. Since we have this excuse
16	me the agenda noted that there were two items
17	pending for these cases, but really at this point
18	there's only one pending, which is to consolidate
19	these cases, these two cases, for the moment.
20	And the reason that things have changed
21	a bit is in the intervening month since we last met,
22	Avant and PBEX have been working diligently towards a
23	deal that, if it's resolved, it would result in PBEX
24	dropping it's de novo applications, meaning that we
25	would no longer need to be before the commission.

1	
1	And so Avant's request at this time is
2	that the commission grant the unopposed motion to
3	consolidate these two cases, and then set these two
4	cases for a status conference on the December 12th
5	docket, by which time hopefully we'll have an update
6	on the parties' discussions, and hopefully PBEX will
7	be able to dismiss it's de novo applications at that
8	time.
9	MR. RAZATOS: Okay. Thank you, Ms.
10	Bennett. Any other comments from anybody?
11	MR. FELDEWERT: No, Mr. Chair. I think
12	that makes sense to consolidate, number one, and then
13	move it to the December 12th docket for a status
14	conference.
15	MR. RAZATOS: Okay. Any questions from
16	the commission for this?
17	MR. BLOOM: No, Mr. Chair.
18	MR. RAZATOS: No? Okay.
19	MR. RUBIN: Mr. Chair, I think you
20	could either move to table it or simply decide to take
21	no action.
22	MR. RAZATOS: Okay.
23	MR. FELDEWERT: I'll interrupt anyway.
24	Mr. Rubin, should we consolidate certainly today?
25	MR. RUBIN: Thank you, Mr. Feldewert.
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1	Yes, if
2	MR. RAZATOS: Okay. That's what threw
3	me off.
4	MR. RUBIN: Okay. Yes, that
5	certainly I apologize. That should be that
6	could be moved upon today.,
7	MR. RAZATOS: Okay. I think we should
8	consolidate the cases. Commissioners, do you have any
9	concerns with that?
LO	MR. BLOOM: No, Mr. Chair.
L1	MR. RAZATOS: Okay. Excellent. So
L2	let's definitely consolidate the cases so we can put
L3	them together. That's not a problem. And I think we
L4	can move it to the December is that what you mean
L5	by tabling? I'm not understanding what you meant by
L6	tabling, Mr. Rubin.
L7	MR. RUBIN: That if, to the extent the
L8	parties wish to have the commission hear some further
L9	settlement to the case, right now to what is being
20	consolidated, the commission will have it on its
21	docket, and at a subsequent meeting it will have to be
22	disposed in some manner.
23	MR. RAZATOS: Yeah. Okay. No, I think
24	it's okay to move it to the December, and then we have
25	the status hearing then, and then they can bring up

1	anything else that they want in the interim.
2	MR. RUBIN: Yes, Mr. Chair. So just a
3	motion to consolidate as requested by the parties.
4	MR. RAZATOS: Okay. So motion to
5	consolidate, I believe everybody said yes, but let's
6	hear it again?
7	MR. RUBIN: Commissioner Bloom?
8	MR. BLOOM: I don't know if we need a
9	second.
10	MR. RAZATOS: Do we need a second?
11	MR. RUBIN: I believe we do need a
12	second.
13	MR. BLOOM: Okay. Good. Then I
14	second.
15	MR. RAZATOS: Excellent. And I
16	definitely was motioning for it. So it's approved.
17	Let's
18	MR. RUBIN: Wait. We do need a vote.
19	MR. RAZATOS: A vote.
20	MR. RUBIN: All in favor?
21	MULTIPLE SPEAKERS: Aye.
22	MR. RUBIN: Any opposed? Motion
23	passes.
24	MR. RAZATOS: Motion passed. There we
25	go. The coffee will settle in at some point and I'll
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1	get this right someday, so I apologize. Excellent.
2	So thank you. Thank you for your time. We'll see you
3	in the December hearing.
4	MS. BENNETT: Thank you so much.
5	Appreciate it.
6	MR. RAZATOS: Excellent. Our next case
7	was case number 24912, application of Apache
8	Corporation for and adjudicatory hearing to contest
9	the Division's conditions of approval on Apache
10	Corporation's scope of work for additional
11	investigation in Lea County. This is a status
12	conference and motion to consolidate as well, I
13	believe. Are the parties present?
14	MR. MOELLENBERG: Mr. Chairman, Members
15	of the commission, my name is Dal Moellenberg.
16	MR. RAZATOS: Please click your green
17	button. There you go. There we go.
18	MR. MOELLENBERG: Mr. Chairman, Members
19	of the commission, my name is Dal Moellenberg. I'm
20	here on behalf of the petitioner, Apache Corporation.
21	MR. RAZATOS: Thank you.
22	MR. TREMAINE: And I am Jesse Tremaine
23	for the Oil Conservation Division. First item, Mr.
24	Chair, I think we're in agreement there. I believe
25	the agenda noted that there was a motion to

1	consolidate. There is not a motion to consolidate in
2	this case. I think that was just an error.
3	MR. RAZATOS: Okay. Excellent. So we
4	have a status conference for this. Okay. Mr.
5	Moellenberg?
6	MR. MOELLENBERG: Thank you, Mr. Chair,
7	Members. This case, as the title indicates, relates
8	to an investigation following a release. It's been
9	going on for some time. The current status is Apache
LO	submitted a plan for investigation, which the division
L1	approved subject to conditions that require extensive
L2	additional investigation.
L3	I think our expectation at this point
L4	is that this will go to hearing, and so I think Mr.
L5	Tremaine and I have consulted, and I think we're ready
L6	to set a hearing date and proceed with it.
L7	MR. RAZATOS: Okay. Mr. Tremaine?
L8	MR. TREMAINE: I agree with that, Mr.
L9	Chair. I think depending on how long Apache's case
20	proceeds, I expect we're going to need a full day,
21	potentially longer. The Division will likely be
22	calling two witnesses and need between two and four
23	hours to present our direct and response. So I'm
24	suspecting that this is going to go probably around a
25	full day but potentially longer.

I	
1	MR. RAZATOS: Okay.
2	MR. TREMAINE: Sorry. The Division's
3	primary witness is not available on December 12th, so
4	we're recommending the next earliest date in January.
5	MR. RAZATOS: Okay. Excellent. And
6	when is our hearing for January, Sheila? Sorry.
7	MS. APODACA: Let me look it up.
8	MR. BLOOM: The 16th of January.
9	MR. RAZATOS: Sixteenth of January.
10	All right. Any concerns from the commissioners?
11	MR. BLOOM: No, Mr. Chair.
12	MR. RAZATOS: Commissioner Ampomah?
13	No? Okay. So I think we can set it for the 16th.
14	Mr. Rubin, do I need to do anything else?
15	MR. RUBIN: No, Mr. Chair, just make
16	sure we have it on the agenda with notice to the
17	parties.
18	MR. RAZATOS: Excellent. So Sheila, if
19	you could put it on the agenda for the 16th, the
20	Apache case.
21	MR. BLOOM: Mr. Chair.
22	MR. RAZATOS: Yes, sir.
23	MR. BLOOM: Can we check availability
24	for the 17th, as well, if this spills over?
25	MR. RAZATOS: We probably should.
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1	MR. BLOOM: And I am available.
2	MR. RAZATOS: I am, as well.
3	DR. AMPOMAH: I believe I am.
4	MR. RUBIN: I should be, as well. May
5	I ask, do the parties need any preliminary matters
6	decided? Are there going to be any preliminary
7	motions or just any scheduling orders that need to be
8	entered, that you anticipate?
9	MR. MOELLENBERG: Yep, Counsel, at this
10	point we don't anticipate anything.
11	MR. RUBIN: Okay. Thank you.
12	MR. TREMAINE: Agreed.
13	MR. RAZATOS: We'll just wait on Dr.
14	Ampomah and see his schedule.
15	DR. AMPOMAH: I'm good.
16	MR. RAZATOS: He's good. Okay. So
17	let's schedule it for the 16th and possibly also for
18	the 17th, Sheila, in case it spills over.
19	MS. APODACA: Okay.
20	MR. RAZATOS: Mr. Moellenberg, Mr.
21	Trehaine, anything else?
22	MR. TREHAINE: No.
23	MR. MOELLENBERG: Nothing from me.
24	MR. RAZATOS: Excellent. Thank you.
25	MR. MOELLENBERG: Thank you very much.
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1	MR. RAZATOS: Okay. Now this will take
2	us into our next case, which is case number 23580,
3	which is application of WildEarth Guardians to Amend
4	the Commission's Rules to Address PFAS, Amendments to
5	19.15.2, 19.15.7, 19.15.14, 19.15.16, and 19.15.25 in
6	the New Mexico Administrative Code.
7	This is going to be a hearing, so we'll
8	ask for a hearing officer to come up, Ms. Orth,
9	Felicia Orth, will be doing that. And once you get
10	settled in, Ms. Orth, we'll transfer it over to you.
11	THE HEARING OFFICER: That's on. Good
12	morning. My name is Felicia Ortho, the Hearing
13	Officer as appointed by the Oil Conservation
14	Commission to conduct a hearing in case number 23580.
15	These are proposed amendments to the
16	commission's rules to address chemical disclosure and
17	the use of perfluoroalkyl and polyfluoroalkyl
18	substances, which we'll be referring to as PFAS all
19	week long, in oil and gas extraction. The affected
20	rules are 19.15.2, 19.15.7, 19.15.14, 19.15.16, and
21	19.15.25.
22	The hearing procedures are set out in
23	the commission's rulemaking rules, which is 19.15.3.
24	We do have five parties in the action. These are
25	folks who entered their appearance timely and most are

1	presenting technical witnesses. I will name them and
2	invite appearances in the order in which we will be
3	hearing from them, at least generally, with
4	accommodation for witness time constraints. The
5	petitioner is WildEarth Guardians. Mr. Davis?
6	MR. DAVIS: Good morning, Madam Hearing
7	Officer, Commissioners. I'm Tim Davis. I represent
8	WildEarth Guardians in this matter.
9	THE HEARING OFFICER: Thank you. I
10	know that I excused New Energy Economy from part of
11	this based on international travel, but if someone is
12	here from NEE, happy to accept your appearance. Okay.
13	NEE is the second party we'll hear from subject to
14	time constraints. Then the Oil Conservation Division.
15	Mr. Tremaine?
16	MR. TREMAINE: Thank you, Madam Hearing
17	Officer, Chair, and Commissioners. This is Jesse
18	Tremaine on behalf of Oil Conservation Division.
19	THE HEARING OFFICER: Thank you so
20	much. Nick Maxwell is ordinarily on the platform.
21	Mr. Maxwell are you with us?
22	MR. MAXWELL: Good morning. Can you
23	hear me?
24	THE HEARING OFFICER: Yes, we can.
25	MR. MAXWELL: Thank you for having me.
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	Paye 20

1	My name's Nicholas Maxwell. I'm one of the people of
2	Lea County, New Mexico. It's good to be here. Thank
3	you.
4	THE HEARING OFFICER: Thank you, Mr.
5	Maxwell. And finally, NMOGA, the New Mexico Oil and
6	Gas Association.
7	MS. MULCAHY: Good morning, Madam
8	Hearing Officer, and good morning, Commission. I'm
9	Chris Mulcahy of Holland & Heart Law Firm with my
LO	colleague, Adam Rankin, on behalf of NMOGA.
L1	THE HEARING OFFICER: Thank you so
L2	much. In addition
L3	MS. KESSLER: Good morning, Madam
L4	Hearing Examiner and members of the commission. EOG
L5	Resources had also entered an appearance in this case.
L6	We will not be presenting any technical testimony, we
L7	will not be objecting to exhibits, but we're simply
L8	here on record to monitor. Along with me is Deana
L9	Bennett from Modrall Sperling.
20	THE HEARING OFFICER: All right. Well
21	thank you very much. In addition to the presentations
22	by the five parties, we will also be hearing from
23	public commenters, up to three minutes each. We'll
24	have public comment a couple of times each day, and
25	actually we'll begin with accepting whatever public

1	comment there is to be given in just a moment. So if
2	you're on the platform or in the room to offer public
3	comment, we just need a few more minutes to address
4	preliminary matters.
5	The parties and I had a prehearing
6	conference before the holiday, the weekend, and the
7	two snow days, and we addressed a few things there
8	that I should mention to the commission before we
9	begin.
10	Firstly, there were four motions, each
11	of them addressing the testimony of witnesses and
12	design to exclude or otherwise restrict that testimony
13	based on a reading of what counted as technical
14	testimony, for example.
15	Those four motions were denied with the
16	exception of an acknowledgement that as to Ms.
17	Troutman, she really is a fact witness rather than
18	someone who will be testifying as to specialized
19	knowledge or expert knowledge in a specialized area.
20	You will hear from her, though.
21	The parties presented basically an
22	agreement amongst themselves. They were all agreed
23	that in order to try to finish the evidentiary record
24	this week, so that we do not have to schedule extra
25	days when we get to Friday, they wanted to forego

1 witness summaries. 2 We've all had the actual testimony in hand, in writing, full narrative, for a couple of 3 weeks now, and so each witness will be sworn, because 4 the rules require that they be sworn; they will adopt 6 their written testimony under oath; and then they will stand for cross. 8 We'll begin with cross by the other parties and then come to the commission in the event 9 the commissioners have questions. 10 Some of the 11 witnesses have prepared rebuttal, and all direct and 12 rebuttal will be given in the same witness testimony 13 session so that we're not going back and forth 14 multiple times. 15 There will be opening statements of 20 16 minutes each, and we won't address closing statements 17 until we get to the end of the evidentiary record. The commission will decide when we have completed the 18 evidentiary record whether it chooses to deliberate 19 20 immediately or chooses to deliberate in a subsequent 2.1 meeting. 22 If you choose to deliberate immediately, the parties would like the courtesy of a 23 2.4 verbal closing statement before you do that. It could be limited to 20 minutes, for example. If you choose, 25

1	on the other hand, to deliberate at a subsequent
2	meeting, they would like to be invited to submit
3	written closing statements that you would be able to
4	refer to before you met again.
5	So do the commissioners have any
6	questions about anything I've said in my opening
7	statement? If not, I will proceed to invite public
8	comment.
9	MR. RAZATOS: I do not have any
10	questions.
11	MR. BLOOM: Okay. Nope.
12	DR. AMPOMAH: I do not.
13	THE HEARING OFFICER: Thank you very
14	much.
15	MR. DAVIS: Madam Hearing Officer.
16	THE HEARING OFFICER: Yes.
17	MR. DAVIS: I just wanted to make you
18	and the parties aware that I filed Mr. Horwitt's
19	written rebuttal this morning, and you know, that
20	is the acceptance of that testimony, I understand,
21	is contingent upon a finding from the commission that
22	it is actually offered for rebuttal purposes.
23	And so when Mr. Horwitt takes the
24	stand, hopefully today, this afternoon, maybe this
25	morning, I just wanted to get some direction as to

1	whether the commission wanted him to actually read
2	that, to make that determination, or if there was
3	another procedure you'd like for us to follow prior to
4	me moving for its admission.
5	THE HEARING OFFICER: All right. Well
6	let's address that when we get Mr. Horwitt on the
7	stand. I will ask the other parties, sooner rather
8	than later, let me know if you have an objection along
9	those lines, and I will take an opportunity at our
10	break to read it myself.
11	MR. DAVIS: Thank you.
12	THE HEARING OFFICER: Thank you. All
13	right. Let's turn then to public comment. Once
14	again, public comment will be taken from those in the
15	room and those on the platform. Please gather your
16	thoughts. Public comment is limited to three minutes,
17	and just one comment for each person.
18	If you have more to say than can be fit
19	into three minutes, we invite you to put your thoughts
20	into writing and submit them to Sheila Apodaca, the
21	Commission Administrator. The commission will
22	consider your written comment as having the whole
23	weight as anything you said verbally.
24	So let me ask first, is there someone
25	in the room who is here to offer public comment this

1	morning? There will be lots of other chances. I
2	think I saw you, Mr. Gaume. First? Yes. And you,
3	ma'am, I'll call on you next. Is there anyone else in
4	the room who is going to want to give public comment?
5	No? All right. Would you please, Mr. Gaume. And I'm
6	going to ask everyone to spell your name for the
7	transcript and to ask if you swear or affirm to tell
8	the truth.
9	MR. GAUME: Thank you. My name's
10	Norman Gaume, G-A-U-M-E.
11	THE HEARING OFFICER: And do you swear
12	or affirm to tell the truth?
13	MR. GAUME: I do.
14	THE HEARING OFFICER: Thank you. I'll
15	start your three minutes now.
16	MR. GAUME: Good morning, Madam Hearing
17	Officer and Commissioners. I'm Norm Gaume. I live in
18	rural Sandoval County. I have expertise and formal
19	training, a Master's Degree in Water and Wastewater
20	Engineering.
21	I'm an expert in the state's water
22	resources, having served for six years as the New
23	Mexico Interstate Stream Commission Director. My
24	concern is that New Mexico has is in dire straits
25	with regard to water resilience, and the contaminants

1	such as PFAS need to be prevented as opposed to having
2	to deal with the aftermath more than we already have.
3	I'm president of the New Mexico Water Advocates, and
4	I'm making these comments on behalf of
5	the organization and myself. My topic is the New
6	Mexico Water Quality Control Commission 11-day rules
7	hearing on making rules for the treatment and use of
8	produced water. I was an expert witness.
9	I attended all of that hearing, an
LO	expert witness for New Mexico Energy Economy. I'm not
L1	affiliated with them here. Let me tell you what was
L2	said.
L3	First of all, during and before the
L4	hearing, there were claims without evidence that PFAS
L5	is not used in oil and gas drilling and completions.
L6	The NMOGA president and CEO wrote editorials in the
L7	Albuquerque Journal and the Santa Fe New Mexican
L8	saying that no PFAS was used.
L9	At the hearing I talked to an Oxy,
20	Occidental, vice president from Houston that I met in
21	2020, when I was on the Produced Water Research
22	Consortium, the technical steering committee. He
23	assured me that there was nothing that was added to
24	drilling fluids and completion fluids that I would
25	object to. Those were his words.

1	The sworn testimony painted a different
2	picture. Mike Hightower, who is the Director of the
3	New Mexico sorry, the New Mexico Produced Water
4	Research Consortium, testified under
5	cross-examination, sworn testimony, that whether or
6	not PFAS is used is up to individual operators.
7	The NMOGA CEO and president was listed
8	as an expert witness, but she chose not to testify,
9	and so nothing that she said was sworn testimony and
LO	subject to cross-examination. The facts are
L1	different.
L2	There's no data in the consortium's
L3	produced water characterization database. None. PFAS
L4	has been found in produced water in the limited
L5	samples that are available, and we know that operators
L6	guard the quality of their produced water. They're
L7	free with the quantity information, but they won't say
L8	anything about the quality of it.
L9	I did a quick calculation after EPA set
20	a new limit on 2 PFAS chemicals. One and a half
21	ounces of PFAS would contaminate 100,000 acre-feet
22	above the safe drinking water limit that was just set.
23	One and a half ounces, 100,000 acre-feet.
24	THE HEARING OFFICER: Mr. Gaume, would
25	you wrap up, please?

1	MR. GAUME: I will. The governor in
2	her 2018 campaign platform advocated for full
3	disclosure. Colorado mandates full disclosure. The
4	oil and gas industry says they don't use PFAS. Your
5	job at this point is to ban the use of PFAS and to
6	require disclosure. Thank you.
7	THE HEARING OFFICER: Thank you, Mr.
8	Gaume. Ma'am? Spell your name first, please.
9	MS. MCCLOUD: Good morning, Madam
10	Commissioner I'm sorry, I don't know your
11	title and Commissioners. My name is Kathleen
12	McCloud, M-C-C-L-O-U-D, and I am this is rather
13	short notice for me. I live in La Cieneguilla.
14	THE HEARING OFFICER: Hold on.
15	MS. MCCLOUD: Yes.
16	THE HEARING OFFICER: Do you swear or
17	affirm to tell the truth?
18	MS. MCCLOUD: All right. And I'll
19	start your three minutes.
20	THE HEARING OFFICER: Okay. I live in
21	La Cieneguilla. I'm up north. I know a lot of the
22	oil and gas happens down south; however, we have had a
23	recent misfortune with our water, which is currently
24	under investigation by the Department of the Defense,
25	the Army National Guard, regarding a plume, which has

1	contaminated the water of several wells in La
2	Cieneguilla. So that's my reason for being here, and
3	my own interest in PFAS.
4	I'm also a long-term resident of New
5	Mexico. So I'm all about supporting WildEarth
6	Guardians and New Energy Economy. Full disclosure,
7	there has been nothing but duplicity and lies
8	surrounding PFAS and the new science not new. The
9	science has been there, but the information coming out
10	that it is, indeed, very dangerous for the future of
11	the planet.
12	So I would just say to the
13	commissioners here, be on the solution or be in the
14	solution or be in the problem, but this is our state,
15	this is our land, and it belongs to our children.
16	That's all I have to say. Do the right thing. Full
17	disclosure. Thank you.
18	THE HEARING OFFICER: Thank you very
19	much. Let me move to the platform now. Let's see. I
20	am unable to see the names, Sheila. Would you unmute
21	one of them at a time? Oh now I see Nancy Yuen. All
22	right. Ms. Yuen?
23	MS. YUEN: Yes.
24	THE HEARING OFFICER: If you would
25	spell your name for the transcript, please?

1	MS. YUEN: My last name is Yuen,
2	spelled Y-U-E-N.
3	THE HEARING OFFICER: Thank you. Do
4	you swear or affirm to tell the truth?
5	MS. YUEN: I do.
6	THE HEARING OFFICER: Thank you. I'll
7	start your three minutes.
8	MS. YUEN: The New Mexico Oil
9	Conservation Commission has the authority and
L O	obligation to demand disclosure of all chemicals used
L1	in oil and gas exploration and retrieval within the
L2	state of New Mexico. There are several chemical
L3	substances that are illegal to use in any context, and
L4	companies operating within the state of New Mexico
L5	must ensure the commission that these chemicals are
L6	not in use in their operations.
L7	It is incumbent upon these companies to
L8	provide a complete list of chemicals used, and that
L9	unannounced well inspections must be allowed to ensure
20	not only public safety but compliance with the
21	company's own stated list of chemicals used. Among
22	the chemicals used in exploration and extraction
23	operations, per- and polyfluoroalkyl substances must
24	be prohibited due to their permanence in the
25	environment.

1	Since these chemicals do not break down
2	under natural conditions, they must never be released
3	into the natural environment under any circumstances.
4	These reasons are inarguably clear and pertinent to
5	the discussion at hand.
6	Companies who either explore or extra
7	oil, gas, or any other resources must provide complete
8	lists of chemicals used using the ingredients,
9	chemical names, and not trademarked or proprietary
10	names, which can be used to hide their actual chemical
11	makeup. So-called trade secrets prevent other
12	companies from using proprietary formulations, but all
13	companies must disclose these formulations to the New
14	Mexico Oil Conservation Commission for safety and
15	accountability. Thank you.
16	THE HEARING OFFICER: thank you, Ms.
17	Yuen. Sheila, would you move to the second hand
18	there, Amy Christian? Ms. Christian?
19	MS. CHRISTIAN: Yes.
20	THE HEARING OFFICER: Hello. Would you
21	spell your name for the transcript, please?
22	MS. CHRISTIAN: Christian,
23	C-H-R-I-S-T-I-A-N.
24	THE HEARING OFFICER: Thank you. Do
25	you swear or affirm to tell the truth?
	D 20
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1	MS. CHRISTIAN: I do.
2	THE HEARING OFFICER: Thank you. I'll
3	start your three minutes.
4	MS. CHRISTIAN: Thank you. Thank you.
5	I am a resident of the Pojoaque River Valley here in
6	northern Santa Fe County, and I am coming to you today
7	as both a private citizen, a mother who has raised
8	their kids here on this land, a resident teacher in
9	the public schools and in schools throughout New
10	Mexico, and also a representative of Northern New
11	Mexico SURJ, which is a local chapter of the national
12	Showing Up for Racial Justice organization.
13	I am deeply concerned that this issue
14	is even needing to be discussed. I'm wondering how it
15	can be possible that we're entrusting industry with
16	the health and wellbeing of our children, our
17	families, and the very water that supplies life to New
18	Mexicans across our state. We know for a fact, it's
19	not conjecture, it's been proven, well-documented,
20	that PFAS are highly toxic, even in tiny amounts, and
21	that they can contaminate entire ecosystems.
22	They present a high risk of
23	contaminating both surface and groundwater, but
24	groundwater here in New Mexico, the groundwater is
25	even more susceptible to this risk, and 87 percent of

1	our public water comes from groundwater, meaning that
2	our state, more than any other place in the country,
3	is is very susceptible to this risk. It's been
4	proven that any exposure to PFAS can be linked to
5	cancer, kidney cancer, testicular cancer, thyroid
6	disease, high cholesterol, reproductive and
7	developmental toxicity the list goes on.
8	And our younger generations are already
9	seeing an increase in these cancer rates. And the oil
10	and gas industry are amplifying this already present
11	threat by injecting the PFAS underground, which is not
12	how it's used in many other contexts. Why are we
13	protecting industry over our own health and the health
14	and future of our future generations? We have to
15	stop we have to move away from protecting the
16	profits over people.
17	What will all this be worth if our
18	children and grandchildren can't even live healthy
19	lives. I'm sorry. I'm getting emotional. Pardon me,
20	but I just implore you. It's in your hands. We have
21	to end this lack of disclosure and accountability as
22	the concept of trade secrets is just a farce.
23	There's absolutely no excuse for the
24	lack of a disclosure that leaves our people
25	unknowingly exposed and unprotected. We need public
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protection and it's in your hands to do it. Please,
we need the industry to be held accountable for the
average of four spills a day of fracking wastewater.
We must restrict production until there is adequate
treatment and discharge methods. Thank you for
listening.
THE HEARING OFFICER: Thank you, Ms.
Christian. Sheila, move to the next hand, Nodiah.
MS. BRENT: Hi. My name is Nodiah
Brent.
THE HEARING OFFICER: Nodiah. Spell
the
MS. BRENT: B-R-E-N-T.
THE HEARING OFFICER: Okay. And would
you spell the first name, as well, Nodiah?
MS. BRENT: Yeah. N-O-D-I-A-H.
THE HEARING OFFICER: Thank you so
much. Do you swear or affirm to tell the truth?
MS. BRENT: I do.
THE HEARING OFFICER: I'll start your
three minutes.
MS. BRENT: I would like to thank our
hosts at the OCC. I appreciate this opportunity to
speak. I want to acknowledge the environmental
nonprofits that worked tirelessly on our behalf. Your
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1 conviction, compassion, and wisdom are a source of 2 great comfort and inspiration to the citizens that 3 attend these meetings and beyond. I would also like to express deep 4 5 gratitude to our native communities. Thank you for 6 your prayers for all creation. Your energy feeds the spirit of these lands, and your teachings are the 8 touchstone of conservation. 9 I'm here to ask the OCC to exercise its authority to ban the inclusion of PFAS in fracking 10 11 operations and prohibit the designation of chemical 12 identities as trade secrets, plus implement regular 13 testing to ensure compliance. After much research on the subject of PFAS, I remain unconvince of the wisdom 14 15 of poisoning our water in order to gain access to more 16 fossil fuels that will further heat the planet, 17 potentially ensuring that our species and others will perish prematurely. 18 19 I don't understand how we as a state 20 and a country could believe that it's morally 2.1 acceptable to contribute disproportionately to this 22 horrific preventable demise that would affect, and is, 23 in fact, already affecting the whole world. Our 2.4 elected officials and the regulatory agencies that

they helped to create exist to safeguard public

25

1 health. 2 We entrust them to hold the line between us and bad actors. The pollutants that have 3 been endorsed in my lifetime alone are all waterborne 4 5 and airborne due to evaporation. We may not be able 6 to escape any of them, but we can choose not to boost their saturation levels. 8 I would like to think that cleanup and 9 mitigation are a taxpayer priority, rather than the continued proliferation of toxins. I understand that 10 11 the United States rests on a foundation of 12 unremediated decay, namely genocide and slavery. 13 this why we seem to be able to build decisively in the direction of stability? We must turn this around. 14 15 Our country will soon be under the 16 administration of officials who have promised to enact 17 sweeping environmental deregulations. Let's resolve to uphold principles of respect for earth and all 18 19 life, not because it's a quarantee of immunity but 20 because it's who our children and their children need 2.1 us to be. Speaking of respect, Commissioners, 22 before you knew your mics were on, we on Zoom heard 23 2.4

you make a series of disrespectful remarks about the people who were coming in to join this meeting.

25

1	you be willing to apologize for that?
2	THE HEARING OFFICER: Ms. Brent, that
3	may have to remain a rhetorical question at this
4	point. I'm sorry. I wasn't here.
5	MS. BRENT: I tried to alert you. I
6	posted the remarks plus an alert telling you that you
7	could be heard, but nobody responded. So I did try to
8	help you be aware of what was going on.
9	THE HEARING OFFICER: All right. Thank
10	you. I'll ask the chair later if he'd like to address
11	that. Thank you very much for your comment.
12	MS. BRENT: Thank you.
13	THE HEARING OFFICER: Would you move to
14	the next hand, please, Sheila? This is Savanna Woods.
15	Ms. Woods?
16	MS. WOODS: Yes.
17	THE HEARING OFFICER: Would you spell
18	your name for the record, please?
19	MS. WOODS: S-A-V-A-N-N-A W-O-O-D-S.
20	THE HEARING OFFICER: And do you swear
21	or affirm to tell the truth?
22	MS. WOODS: Yes.
23	THE HEARING OFFICER: All right. I'll
24	start your three minutes.
25	MS. WOODS: I support a prohibition on
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1	PFAS and PFOA in oil and gas operations and a
2	requirement to disclose chemicals used in downhole
3	operations because PFAS and PFOA do not break down and
4	are known to accumulate in land, water, and our
5	bodies, leading to their nickname of "forever
6	chemicals."
7	There is no level of exposure to these
8	contaminants that is safe. Even a tiny amount can
9	contaminate entire ecosystems. Exposure to toxic
LO	chemicals like PFAS is a serious public health risk,
L1	and oil and gas regulations must prevent drilling
L2	operations from contaminating our lands and water.
L3	Without disclosure requirements, there's no way for
L 4	regulators to verify or enforce a prohibition on PFAS
L5	on PFAS in oil and gas operations.
L6	That is why I am advocating for
L7	disclosure requirements such as those that are in
L8	place in California and Colorado. As a young person,
L9	I am concerned about cancer showing up in younger
20	generations due to exposure to carcinogens like PFAS.
21	Also PFAS bioaccumulates, so our babies will have more
22	PFAS in their bodies than we do.
23	But what I'm especially concerned about
24	is the protection of profits over people. New Mexico
25	is the second-largest oil and gas producer in the

1	nation, and I'm concerned that our failure to require
2	disclosure, as other states do, is an attempt to
3	protect the fossil fuel industry's profits.
4	Every year American taxpayers pay about
5	\$20,000,000,000 to subsidize the fossil fuel industry.
6	We cannot keep allowing them to get away with murder
7	for the sake of my generation and your grandchildren's
8	generation. The oil and gas industry has known about
9	climate change for decades, and they continue to
10	double down on production, spending millions is
11	misinformation campaigns so they can continue to
12	profit.
13	They're not known for their integrity.
14	Your duty is to keep us safe, not corporations. I ask
15	the Oil Conservation Commission to ensure that the
16	rules governing oil and gas drilling prevent
17	contamination of New Mexico water with PFAS and any
18	other harmful chemicals that can accumulate in soil
19	and water, and harm public health. Thank you for your
20	time.
21	THE HEARING OFFICER: Thank you, Ms.
22	Woods. If you would move to the next name. No, we've
23	already heard from Nodiah Woods. Let's see here.
24	Paul Pino. Okay.
25	DR. COSTELLO: I think it's me, Lauri
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1	Costello, or no?
2	THE HEARING OFFICER: I think since I
3	have Mr. Pino on the screen, can I take you next,
4	please?
5	DR. COSTELLO: Absolutely. I'm sorry
6	to interrupt.
7	THE HEARING OFFICER: All right. Thank
8	you.
9	MR. PINO: Sorry about that, Lauri.
10	Yeah.
11	MR. ORTH: Mr. Pino, if you would spell
12	your name for the record, please.
13	MR. PINO: Paul Pino, P-I-N-O.
14	THE HEARING OFFICER: Do you swear or
15	affirm to tell the truth?
16	MR. PINO: Yes.
17	THE HEARING OFFICER: I will start your
18	three minutes.
19	MR. PINO: Okay. So I'm a retired
20	teacher. I'm a rancher, a great-grandfather, a
21	downwinder, songwriter, and my people have been here
22	in New Mexico for at least 10,000 years. And I'm just
23	a regular guy. I don't study this stuff, and so this
24	is what I understand.
25	The Federal Government, led by Dick
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1	Cheney and republicans, created a law that made it
2	legal to pollute water if you were drilling for oil,
3	if you're an oil company, and if that isn't, like,
4	demon-level stuff, I don't know what is, you know.
5	The EPA says that these chemicals are not safe at any
6	level, and they last for a very, very long time, even
7	longer than my family has been here.
8	So since the Feds created this problem,
9	you know, it's up to you guys, it's up to us to
10	protect ourselves, you know. The Feds aren't going to
11	do it for us. They're they're bought off for sure,
12	you know. But we can protect ourselves, you know, if
13	want to, if we have the cojones to do it, you know.
14	Here's something that's, kind of, funny but it's, kind
15	of, but it's not funny also.
16	I heard this thing that said, "The
17	worst thing that can happen to a third-world country
18	is for someone to discover oil, gold, or diamonds
19	there." You know? And so here we are, blessed with
20	all this oil, and then what happens?
21	You know, people come in that just want
22	to monetize everything, take all the money out of here
23	and leave us with the filth. And that's exactly what
24	happened with the uranium industry. You know,
25	there's, I heard, like, around 500 abandoned uranium

1	mines that the companies just they just went
2	bankrupt or just, like, left, and nobody's holding
3	them accountable.
4	Who's going to have to pay for that?
5	Taxpayers. I don't want to see that happen again
6	here, so please stop the use of these chemicals and
7	absolutely require disclosure, be standup people. And
8	that's it. Thank you very much for listening today.
9	THE HEARING OFFICER: Thank you very
LO	much, Mr. Pino. I would take Ms. Costello next, and
L1	I'll get to you very soon, Ms. Costello. But right
L2	now the chair would like to pause the public comment
L3	in order to address the hot mic.
L4	MR. RAZATOS: So the comment was made
L5	that there was a hot mic and I can, first off, want to
L6	apologize for anything that was said on a hot mic.
L7	Our mics were off here on the dais. So it may have
L8	been someone on the actual platform that said it, but
L9	we respect everybody's opinions; we respect
20	everybody's point of view; and that's the whole point
21	of this hearing, to be able to take this information
22	and to be able to accept what's coming in from the
23	public, what's coming in from oil and gas, what's
24	coming in from the environmental groups, and make the
25	best decision possible.

1	We I can speak for the three of
2	us respect every single one of you. So we not
3	only for us but for all the comments that were made,
4	we need to be respectful. So if you're going to be on
5	the public comment access, as well, either make sure
6	your comments are going to be acceptable or keep your
7	microphone shut until the time to be able to make your
8	comments. This is a respectful place.
9	I expect we expect everybody to show
10	the same level of respect for everyone else. We're
11	all entitled to our opinions. So again I apologize
12	for any comments that were made. I can tell you that
13	the three of us commissioners did not say that.
14	Our microphones were off, but it may
15	have been said on the public platform. This morning,
16	there was quite a lot of chatter before we started,
17	prior to us even having our microphones on here. So
18	please make sure that you're respectful, we're going
19	to be respectful, and then this makes it the best
20	hearing possible. So thank you.
21	THE HEARING OFFICER: Thank you, Mr.
22	Chair. Let's turn to Ms. Costello.
23	DR. COSTELLO: Thank you, Mr. Chair,
24	for those comments. My name is Lauri, L-A-U-R-I,
25	Costello, C-O-S-T-E-L-L-O.

1	THE HEARING OFFICER: Do you swear or
2	affirm to tell the truth?
3	DR. COSTELLO: I do.
4	THE HEARING OFFICER: I'll start your
5	three minutes.
6	DR. COSTELLO: I'm a family physician
7	living in Las Cruces. I urge you to prohibit the use
8	of PFAS along the oil and gas lifecycle and to further
9	prohibit the use of any undisclosed chemicals in
10	fracking operations.
11	Let me first clarify that PFAS refers
12	to per- and polyfluoroalkyl substances. PFOS is
13	simply the most ubiquitous, since it was first
14	marketed for widespread use in the 1940's. PFOA is
15	the other most common of more than 5,000 of these
16	toxins. Some of them already exist in the
17	bloodstreams of essentially everyone in the U.S., and
18	likely in the world.
19	Many PFAS chemicals are carcinogens
20	and/or endocrine disruptors. Endocrine disruptors
21	cause malfunction of hormone pathways and affect every
22	system in our bodies, including thyroid, which
23	regulates our metabolism, neurologic,
24	gastrointestinal, cardiovascular, reproductive.
25	Endocrine disruptor contamination of water in Garfield

1	County, Colorado, was documented in 2016 while I was
2	living in that state.
3	In medicine we used to subscribe to the
4	precautionary principle, and emphasized caution,
5	pausing, and review before promoting new innovations
6	that may prove disastrous. For the last many decades,
7	however, industry has emphasized denial, refusal to
8	acknowledge scientific proof, false accusations, and
9	externalization of costs.
LO	The result is harm to people, wildlife,
L1	and to the environment that used to sustain us. This
L2	harm tends to disproportionately affect marginalized
L3	populations in sacrifice zones, such as Northwest New
L4	Mexico and the Permian Basin area. The complicity of
L5	regulatory agencies and of some politicians is
L6	astounding.
L7	The fact that there are no publicly
L8	available lab tests to analyze for PFAS and few, if
L9	any, public health systems addressing the problem,
20	there is essentially no provision for public
21	protection from PFAS. How ironic that the governor
22	has supposedly championed the fight against PFAS in

our drinking water, yet she continues to advocate for

the reuse of produced water contaminated by much more

than just these forever toxins.

23

24

25

1	The OCC cannot claim to lead the
2	state's charge toward clean energy, as stated on your
3	website, while ignoring the fracking crisis. Please
4	prohibit the use of PFAS along the oil and gas
5	lifecycle, and further prohibit the use of any
6	undisclosed chemicals in fracking operations. Thank
7	you.
8	THE HEARING OFFICER: Thank you, Dr.
9	Costello. If you would move to the next hand, please,
10	Sheila. I see Erica Lea-Simka.
11	MS. LEA-SIMKA: Yes. So that's Erica,
12	E-R-I-C-A, Lea, L-E-A, hyphen, Simka, S-I-M-K-A.
13	THE HEARING OFFICER: Do you swear or
14	affirm to tell the truth?
15	MS. LEA-SIMKA: I affirm.
16	THE HEARING OFFICER: Thank you. I'll
17	start your three minutes now.
18	MS. LEA-SIMKA: Yes. My name is
19	Reverend Erica Lea-Simka and I am a parent, a pastor,
20	and a two-time cancer survivor. I beat ovarian cancer
21	in 2006 and thyroid cancer in 2021. The thyroid
22	cancer is back now, and it is classified as chronic.
23	I am 36 years old, and I am essentially making a third
24	go at fighting cancer.
25	While I can't be 110 percent sure of
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1	the causes of my cancers, genetic predispositions have
2	been ruled out. I believe my repeated cancers are
3	connected to environmental carcinogens. If I had
4	known about these forever chemicals in the water
5	before now, I believe I would have made different
6	choices for mine and my child's consumption. Some
7	people's bodies, like mine, really aren't that
8	sensitive, but I didn't know.
9	I implore you to update the chemical
10	disclosures so people, including myself and my baby,
11	too, can take precautions as I now know that exposure
12	of any amount can have health impacts. These changes
13	you are considering about disclosures, and I'd even
14	like to see stricter standards for waste in the
15	future, these are not a matter of feeling sorry for
16	the girl with cancer.
17	This is about recognizing the harm you
18	cause yourself by choosing to even risk harming a
19	neighbor. Whatever your faith or none, the golden
20	rule is phrased differently but is essentially
21	universal: Treat others the way you want to be
22	treated.
23	And finally as a partner of a
24	non-English speaker, I'd like to be on record as
25	objecting to what I understand to be the commission's

1	deliberate refusal to provide interpreter services,
2	specifically for Spanish speakers, who are some of the
3	most impacted by these issues as workers and residents
4	of New Mexico. Thank you.
5	THE HEARING OFFICER: Thank you,
6	Reverend Lea-Simka, for your comments. Let me correct
7	one impression there. The denial of the original
8	request for an interpreter was the result of the fact
9	that the request came from an organization and not an
LO	individual, and Commission Counsel wanted to make sure
L1	that, in fact, monolingual Spanish speakers appearing
L2	as individuals in these hearings were making that
L3	request. It is an expensive and time-consuming
L 4	proposition for the agency to provide those
L5	interpretive services.
L6	When I heard last Wednesday that there
L 7	would be some folks, individuals, desiring
L8	interpretation between English and Spanish,
L9	notwithstanding the fact that we did not have a timely
20	request for that service, I did ask Ms. Apodaca to try
21	to find an interpreter for some time this week that we
22	could identify. I wanted to confirm with her this
23	morning and haven't yet done it. I understand,
24	though, that she has, in fact, found an interpreter
25	
	for a couple of hours on Friday, and as soon as I

1	confirm that I'll be announcing it all week and hoping
2	that the monolingual Spanish speakers who'd like to
3	offer their comment can make their comment during that
4	time.
5	I do have a plan B and a plan C, if
6	that doesn't work for the individuals who are
7	affected, but it really is our intention to include as
8	much public input as we can. That's why the
9	commission does these hearings in the first place. So
10	but thank you for raising that.
11	MS. LEA-SIMKA: Thank you. I
12	understand.
13	THE HEARING OFFICER: All right.
14	Sheila, if you would move to SS. Let's see here.
15	Stephen
16	MR. SCHMIDT: Schmidt.
17	THE HEARING OFFICER: Schmidt. All
18	right. Thank you. Mr. Schmidt, would you spell your
19	name for the transcript?
20	MR. SCHMIDT: S-T-E-P-H-E-N
21	S-C-H-M-I-D-T.
22	THE HEARING OFFICER: Do you swear or
23	affirm to tell the truth?
24	MR. SCHMIDT: Yes.
25	THE HEARING OFFICER: Thank you. I'll
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1 start your three minutes. 2 I probably won't need MR. SCHMIDT: 3 I just wanted to speak for -- as someone who has been affected by PFAS in their well. I live in La 4 Cienequilla. My well has been verified as containing 6 PFAS chemicals. I don't know how long that has been 8 occurring. It may be that, most likely the 20 years, 9 or 18 years that I've been living here. I've spent 10 about \$1,500.00 to try to mitigate that so I can drink 11 the water. 12 I don't know what the health cost will 13 be for me in the future and what that will cost me. 14 It may be my death. Who knows? And so I'd like to 15 say if industry has claims that they don't use PFAS, 16 then I don't see why they would have any opposition to 17 testing for those chemicals. If they're not using them, they'll come 18 up clean, and they're cleared. And they can't be 19 20 taken to court or anything like that, if it's true. I'm very much for disclosing what is used by 2.1 22 chemical -- by the industry and these chemicals, and I 23 hope to prevent other people in New Mexico having to 2.4 deal with the issues I've had to deal with, along with my neighbors, which also have contaminated wells. 25

1	Thank you very much.
2	THE HEARING OFFICER: Thank you, Mr.
3	Schmidt. Sheila, will you move to CK, please? She
4	has her camera on. There we go.
5	MS. KNAPP: Hi. Is that me?
6	THE HEARING OFFICER: Yes. That's
7	Caroline Knapp.
8	MS. KNAPP: That's me.
9	THE HEARING OFFICER: Would you spell
10	your name for the transcript, please?
11	MS. KNAPP: It's Caroline Knapp, with a
12	K, K-N-A-P-P.
13	THE HEARING OFFICER: And do you swear
14	or affirm to tell the truth?
15	MS. KNAPP: I do.
16	THE HEARING OFFICER: And if you would,
17	please speak up. You're a little soft.
18	MS. KNAPP: Okay. Thank you. Can you
19	hear me better now?
20	THE HEARING OFFICER: Yes, I'll start
21	your three minutes.
22	MS. KNAPP: Great. So like the last
23	two speakers, I'm here to comment as someone whose
24	health and community have already been damaged by PFAS
25	contamination in groundwater. My husband and I, like

1	Stephen Schmidt, live in La Cieneguilla, which is a
2	beautiful and historic rural community just south of
3	Santa Fe. We're near an ancestral pueblo village site
4	at the foot of the Caja del Rio and beside the Santa
5	Fe River. We are also a few miles downhill from the
6	National Guard Training Center at the Santa Fe
7	Airport.
8	One year ago exactly on a Friday
9	afternoon at three o'clock, I happened to open an
10	email from the Santa Fe County Sustainability Program
11	because its title mentioned La Cieneguilla. As I read
12	it, I got chills. The email said that PFAS had been
13	found in a few test wells, and as I scrutinized the
14	map I realized that one of them was on our street.
15	That was the only notification we got
16	that something was wrong. The next weeks were a blur
17	of activism and urgent fact-finding about water
18	testing and filtration. When the dust settled, it was
19	clear that the water that my husband and I had been
20	drinking, showering in, watering our vegetable garden
21	with, and feeding to our chickens was deeply
22	contaminated.
23	We have our well has the highest
24	levels of PFAS in our neighborhood, and because we eat

1	milk, we were taking PFAS into our bodies at high
2	rates. I have since had my blood tested, and I have
3	abnormally elevated levels of PFAS circulating through
4	my body in a signature that matches exactly that of
5	the PFAS found in our water.
6	Though I have no other risk factors for
7	it, I now have very high levels of bad LDL
8	cholesterol, which is a known effect of PFAS. My
9	husband and I now have to live with, for the rest of
LO	our lives, increased risk for heart attack and stroke,
L1	for kidney and testicular cancer, as well as reduced
L2	immunity and scores of other vulnerabilities, many of
L3	them still being discovered.
L4	We have to live with all of that
L5	because of the negligence of the National Guard, which
L6	released firefighting foams directly into the soil,
L7	permanently contaminating the groundwater. None of
L8	the individual guardsmen would have wished to harm us.
L9	They themselves were almost certainly harmed by the
20	same foams.
21	The villain here is the lack of
22	regulation. The Oil Conservation Commission has an
23	opportunity to change that pattern, preventing the
24	harm that was done to us in La Cieneguilla from being
5	inflicted on countless communities across our state

1	I urge you to ban PFAS compounds and all undisclosed
2	chemicals from use in oil and gas drilling development
3	and production. You truly hold our health and the
4	health of future generations in your hands. Thank
5	you.
6	THE HEARING OFFICER: Thank you, Ms.
7	Knapp. Sheila, if you would move to G to
8	Gail let's see here I just see the first name,
9	Gail. All right.
10	MS. SEYCEL: Yeah.
11	THE HEARING OFFICER: All right. And
12	also, Sheila, hold on one sec. Would you please mute
13	SS because I I see the screen going in and out.
14	There we go. So Ms. Gail, if you would, give us your
15	full name and spell it for the transcript.
16	MS. SEYCEL: It's Gail Robin Seycel,
17	G-A-I-L R-O-B-I-N S-E-Y-C-E-L.
18	THE HEARING OFFICER: All right. Thank
19	you. Do you swear or affirm to tell the truth?
20	MS. SEYCEL: I do.
21	THE HEARING OFFICER: I'll start your
22	three minutes.
23	MS. SEYCEL: Thank you. Thank you so
24	much for having this hearing. It's very important
25	that you use your regulatory powers to really protect

1	New Mexicans. I grew up in a cancer cluster
2	community, in which the water table that we all drank
3	out of, underneath our homes and farms, was
4	contaminated with endocrine disrupting chemicals.
5	My mother and my aunt, who lived next
6	door, all died very young, as did many of the adults
7	in the community that I grew up in. Many of us were
8	also affected, the children, and many of us have
9	different kinds of health issues from those exposures
L O	at very young ages. So I would request that you ban
L1	the inclusion of all PFAS and PFOA chemicals in future
L2	industrial oil and gas processes; that you also
L 3	require full disclosure and you can do this without
L 4	impacting so-called trade secrets, industrial trade
L 5	secrets.
L6	So please do that, as well as please
L7	champion regular testing of the chemicals in use of
L8	our water. You have a great responsibility as a
L9	watchdog and community protector, and we really hope
20	you do. And just finally, I would say, you know, I
21	see five of you up on the dais there, and
22	statistically speaking, if you look to your right and
23	you look to your left, one in of the three of you
24	will get cancer and die of it in your lifetime.
25	And we are all having massive exposure

1	to PFAS and other endocrine disrupting chemicals. In
2	fact, Albuquerque had the first public conference in
3	1993 on endocrine disrupting chemicals, which these
4	chemicals are, and was very impactful in terms of
5	promoting many organic processes in food production
6	throughout the state. And I hope that you will take
7	up that banner and really regulate the oil and gas
8	industry and protect the people of New Mexico. Thank
9	you very much.
10	THE HEARING OFFICER: Thank you very
11	much. Finally, Sheila, would you move to thank
12	you yes, E Elaine Cimino, I believe. Ms.
13	Cimino? Still muted.
14	MS. CIMINO: Hello.
15	THE HEARING OFFICER: Hello. Would you
16	spell your name for the transcript, please?
17	MS. CIMINO: Hello. My name is Elaine
18	Cimino. That's C-I-M-I-N-O. I'm the director of
19	THE HEARING OFFICER: Do you
20	MS. CIMINO: Okay.
21	THE HEARING OFFICER: Do you swear or
22	affirm to tell the truth?
23	MS. CIMINO: Yes.
24	THE HEARING OFFICER: All right. I'll
25	start your three minutes.

1	MS. CIMINO: Okay. I'm the Director of
2	Common Ground Rising. Please see our written report.
3	I lived in La Cieneguilla for ten years, near the
4	Santa Fe River in a row of houses impacted by nitrate
5	pollution that had caused blue baby syndrome in
6	infants. And despite this known hazard, no
7	investigation was conducted into other contaminants
8	that could have seeped into our aquifer from the
9	nearby National Guard sludge fields and wastewater
10	treatment plan.
11	The PFAS exposure found by the USGS has
12	lasting impacts on health, of which I now have severe
13	autoimmune issues. I am deeply concerned for my
14	neighbors, their children, their grandchildren, who
15	continue to face these unresolved health risks.
16	In 2004 I witnessed a sludge truck
17	illegally dumping sludge waste into a ditch that
18	flowed directly into the river. When I reported it,
19	instead of the State Police, representatives from the
20	company arrived along with the Sheriff who circled my
21	car and took no action. This incident exemplifies the
22	enforcement failures that communities like La
23	Cieneguilla face.
24	Unfortunately, Rio Rancho has suffered
25	from the city's same practices. In 2018, 288

1	truckloads of radioactive TENORM sludge from the Rio
2	West Brine Wells in a waste injection field were
3	illegally dumped into the municipal landfill by
4	fracking Baker tank truck operators. This toxic waste
5	was also used for dust control during the evap pond
6	reconstruction, allowing dangerous particles to become
7	airborne, increasing exposure risk, the site that has
8	not been cleaned up, and those responsible have not
9	been held accountable.
10	These incidents highlight the
11	confounding risks that toxic waste and PFAS present
12	across New Mexico, especially given our fractured
13	geology, which makes contaminants even more likely to
14	spread into our soils, ground drinking water, and air.
15	With nearly half of New Mexico's population on
16	Medicaid, these health impacts fall hardest on
17	vulnerable communities.
18	Continuing to allow PFAS use will lead
19	to escalating healthcare costs, environmental
20	degradation, that ultimately strain our economy. It's
21	time to ban PFAS, close trade secret loopholes, and
22	prioritize the health and safety of all New Mexicans.
23	Thank you very much.
24	THE HEARING OFFICER: Thank you, Ms.
25	Cimino. All right. We'll do one more online and then

1	I'll return to the room here. Let's see Michael
2	Sweringen?
3	MR. SWERINGEN: Yes. Thank you.
4	THE HEARING OFFICER: Hello. Spell
5	your name for the record, please.
6	MR. SWERINGEN: Michael, M-I-C-H-A-E-L,
7	Sweringen, S-W-E-R-I-N-G-E-N.
8	THE HEARING OFFICER: Thank you. Do
9	you swear or affirm to tell the truth?
10	MR. SWERINGEN: I do.
11	THE HEARING OFFICER: I'll start your
12	three minutes.
13	MR. SWERINGEN: Good morning. Name is
14	Michael Sweringen. I was a science teacher and taught
15	biology, earth science, and the science of climate
16	change. PFAS are some of the most dangerous and toxic
17	chemicals that exist. Any dose is too high.
18	No thoughtful person would ever release
19	PFAS into the environment for any reason, ever. I'm
20	going to talk about two things. One is the chemistry
21	of what makes these last forever, and the other is one
22	of the reasons why they're so dangerous.
23	So what makes PFAS forever chemicals?
24	So the most important chemical of life is called
25	carbon. Here is a carbon atom. There are also atoms
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1	called fluorine. Here's a fluorine atom. When they
2	get together, they make the strongest chemical bond
3	that carbon can make, and that's why PFAS, which have
4	lots of these carbon-fluorine bonds, they're almost
5	impossible to get rid of.
6	So what are they used for? These
7	super-strong chemical bonds make them very good at
8	some things where there's a lot of heat or a lot of
9	pressure. PFAS don't melt or gum up the works. And
LO	that's why they're used in fracking fluid in oil and
L1	gas wells, to keep the gas and oil flowing, don't gum
L2	up the works under the heat and heavy pressure of
L3	fracking wells.
L4	So today you're going to hear a lot
L5	about the very real dangers of PFAS, and we already
L6	have heard, but I want to focus on one particular
L7	danger. These forever chemicals basically also last
L8	forever in our bodies. Once they get in our
L9	bloodstream, they can't be filtered out.
20	We start getting PFAS into our bodies
21	from the placenta before we are born and in mother's
22	milk. Even at very low exposures, they slowly build
23	up and we can't get rid of them, so the damage gets
24	worse over time. We get them from contaminated water,

from fracking, from fire retardant foams, contaminated

25

1 air, and nonstick pots and utensils. 2 Each company has a fracking fluid recipe using PFAS chemicals, and they won't tell us 3 what's in it because it's a trade secret. This has to 4 5 change. At a bare minimum, they should report all the 6 chemicals they use in fracking, since they leave behind toxic sacrifice zones they will never fix. 8 In my opinion, PFAS should never be 9 allowed in the environment. Why would we allow a poison into our food and water that we can never get 10 11 The answer is obvious. Tens of millions of 12 dollars in profit for the oil and gas industry, and 13 this is just one of the reasons we need to leave the 14 oil and gas industries behind and use new ways of 15 powering our world. Thank you. 16 THE HEARING OFFICER: Thank you, Mr. 17 Sweringen. I'm going to move now back to the room. 18 Is there anyone else in the room who would like to 19 offer public comment this morning? There will be 20 other opportunities. Ma'am in the plaid, I saw your hand first, and then I'll call on those of you in the 2.1 22 back row. 23 And for everyone there's a three-minute 2.4 limit. Please gather your thoughts. I will ask you to spell your name and I will ask you to swear or 25

1	affirm to tell the truth. So ma'am, if you would
2	state and spell your name.
3	MS. BEMIS: My name's Evalyn Bemis,
4	E-V-A-L-Y-N, last name B-E-M-I-S.
5	THE HEARING OFFICER: Do you swear or
6	affirm to tell the truth?
7	MS. BEMIS: I do.
8	THE HEARING OFFICER: Thank you. I'll
9	start your three minutes.
10	MS. BEMIS: I am a resident of Santa Fe
11	that just absolutely loves this environment, the
12	people, the wildlife, and I'm not here on behalf of
13	any organization. I'm a photographer, and I was
14	honored in 2014 to take one of the very first fracking
15	reality tours that Daniel Tso conducted. Actually, he
16	did it just for me, which was amazing.
17	And we got to see this whole huge
18	swathe of New Mexico, up on that northwest quadrant,
19	and the impacts on on people there, particularly
20	homesteads that where there had been a waiver of
21	setback, and they had the flaring, you know, the VOCs
22	from that, all the other impacts going on with their
23	livestock, their children.
24	And so I I was rather astonished at
25	what was going on with very little knowledge to the

1	public. So when the BLM started to do their Resource
2	Management Plan Amendment to address fracking, which
3	should never have been wasn't in existence when the
4	first plan was created.
5	And I went to a scoping meeting at the
6	Counselor Chapter, and afterwards there were questions
7	and answers you could do with the staff. And I said,
8	"What about what do you do with those abandoned oil
9	pipelines," that we had seen. And they said,
10	"We we just leave them to rot in place." And I was
11	really astonished by that.
12	And subsequently they stopped at the
13	scoping meetings, they stopped having the staff be
14	able to answer questions directly. And now here we
15	are, ten years later, and the Resource Management Plan
16	has been abandoned. They they just gave up on it
17	after hundreds of meetings and testimony.
18	And so I'm speaking on behalf of the
19	people who live up there, the environment that's been
20	really taking a hit. It's it's been considered a
21	sacrifice zone. And that's just one part of New
22	Mexico. We know there's something, like, four spills
23	a day of fracking fluids. Those are the ones that are
24	reported.
25	So at the very minimum, this thing

1	you're being asked to do, to restrict the ban the
2	use of these chemicals that are known to be so
3	dangerous, something that you can do and we can't rely
4	on the Feds to do it, obviously they had a chance,
5	during all that Resource Management Plan Amendment
6	process to address, and it's certainly not going to
7	happen in the new administration. So thank you, guys,
8	for giving this a really serious consideration.
9	THE HEARING OFFICER: Thank you, Ms.
10	Bemis. If those of you in the back would like to come
11	up one at a time and offer your comment? Please state
12	and spell your name first.
13	MS. JENKINS-NIETO: My name is Sofia
14	Jenkins-Nieto, S-O-F-I-A, Jenkins is J-E-N-K-I-N-S.
15	THE HEARING OFFICER: Do you swear or
16	affirm to tell the truth?
17	MS. JENKINS-NIETO: Yes.
18	THE HEARING OFFICER: I'll start your
19	three minutes.
20	MS. JENKINS-NIETO: Good morning, Chair
21	and Commissioners. My name is Sofia Jenkins-Nieto. I
22	moved to Albuquerque for college and have built my
23	life here ever since. As a young person I always feel
24	the weight of the climate crisis pressing on my
25	generation, causing uncertainty over our future.

1	But it's not just the existential
2	threat of a warming planet. It's also about toxic
3	exposure that we didn't ask for, that we are not even
4	being told about.
5	PFAS are called forever chemicals for a
6	reason. They persist in our environment, accumulating
7	in water, soil, and ultimately our bodies. These
8	chemicals are toxic even in tiny amounts, and have
9	been linked to cancers, thyroid disease, reproductive
10	toxicity, and immune dysfunction.
11	As a young woman, this isn't just an
12	abstract danger. It's deeply personal. A threat of
13	PFAS means facing increased cancer risks, potential
14	harm to fertility and pregnancy, and a legacy of
15	health crises we'll pass down if nothing changes.
16	Here in New Mexico over 80 percent of
17	our public water comes from our groundwater, making
18	our communities especially vulnerable to
19	contamination. When oil and gas companies inject PFAS
20	underground, on top of the leaks, spills, and fracking
21	wastewater mishandling they're already responsible
22	for, they're putting every one of us at risk.
23	Worse yet, they hide behind trade
24	secrets, refusing to disclose the chemicals they use.
25	This lack of transparency leaves our families,

Τ	children, and neighbors unknowingly exposed to a toxic
2	stew with no recourse for protection.
3	In New Mexico we average around four
4	spills of fracking wastewater per day, and without
5	adequate treatment and regulation, these chemicals can
6	seep into our groundwater, polluting what we drink and
7	rely on to live. It's unacceptable.
8	The very least these companies can do
9	is ensure that PFAS isn't among the substances they're
10	releasing when these inevitable spills occur. PFAS
11	isn't a hypothetical risk. Studies show younger
12	generations are already experiencing higher cancer
13	rates.
14	This isn't just an issue for tomorrow;
15	it's harming us today. We need a ban on PFAS use in
16	oil and gas operations. We need full disclosure of
17	chemicals used. We need enforcement, transparency,
18	and accountability.
19	I'm calling on the commission to act
20	for our health, our environment, and our future by
21	passing this rule. We can't afford to wait any
22	longer. Thank you.
23	THE HEARING OFFICER: Thank you, Ms.
24	Jenkins-Nieto. Anyone else? State and spell your
25	name first?

1	MS. GUILLEN: Feleecia Guillen,
2	F-E-L-E-E-C-I-A, last name G-U-I-L-L-E-N.
3	THE HEARING OFFICER: Thank you. Do
4	you swear or affirm to tell the truth?
5	MS. GUILLEN: I do.
6	THE HEARING OFFICER: Thank you. I'll
7	start your three minutes.
8	MS. GUILLEN: Thank you so much for
9	allowing me to speak today. I was originally going to
10	give my comment in Spanish, but because I woke up a
11	little tired today, I decided not to. Frankly it
12	would have been more dramatic in Spanish, but that's
13	okay.
14	My name is Feleecia Guillen. I am a
15	student at the University of New Mexico, studying
16	Business Administration and Sustainability Studies. I
17	grew up in Edgewood, New Mexico, where our water has
18	always been precious and scarce.
19	Today I am here because our water faces
20	a new dangerous threat, contamination from PFAS
21	chemicals. As a young person, I often feel
22	overwhelmed by the constant battles we need to fight
23	against the oil and gas industry. Why do we have to
24	work so hard to protect our natural resources? Why
25	must we fight so hard for what should a basic human

1 right, clean water? 2 PFAS chemicals are extremely toxic, even in small amounts, and they pose a real danger to 3 our environment. In New Mexico 80 percent of our 4 drinking water comes from underground. This water is 6 now at risk. Being exposed to these chemicals can cause cancer and other serious health problems, 8 especially for our young people and for our elders. 9 It is not fair that the oil and gas 10 industry to destroy our land, to pollute our water, 11 and to put our health at the risk just for their own 12 economic gain. We are tired of being treated like a 13 danger or a sacrifice zone, a dumping ground where companies think they can do whatever they want with 14 15 our land. Companies should not be allowed to hide 16 what they are putting into our land. 17 We need to know what chemicals are 18 being used. We need to protect our land and our water for everyone's sake. So I ask that the commission ban 19 20 the use of PFAS in oil and gas operations, and to make sure companies tell us what chemicals they are using. 2.1 22 Our communities, our health, and our very way of life 23 are under threat. As someone who has seen the effects of 2.4 water scarcity firsthand, from watching local farmers 25

1	struggle and community wells run dry, I cannot stress
2	enough the urgency to take decisive action. The
3	safety and security of our water supply are ultimately
4	nonnegotiable.
5	We cannot let our health and our future
6	be put in danger. Thank you so much for listening to
7	me today. Please make the right decision to protect
8	all of us in New Mexico.
9	THE HEARING OFFICER: Thank you, Ms.
10	Guillen. Next? If you would, please state and spell
11	your name?
12	MS. LOPEZ: Yes. My name is Ennedith
13	Lopez, you spell it as E-N-N-E-D-I-T-H L-O-P-E-Z.
14	THE HEARING OFFICER: Thank you. Do
15	you swear or affirm to tell the truth?
16	MS. LOPEZ: Yes.
17	THE HEARING OFFICER: I'll start your
18	three minutes.
19	MS. LOPEZ: My name is Ennedith Lopez,
20	and I'm the Policy Campaign Manager at Youth United
21	for Climate Crisis Action, also known as YUCCA. We
22	are led by young indigenous and people of color, which
23	has thousands of supporters across the state. We are
24	deeply committed to fighting for environmental
25	justice.

1	I am here today to urge you to support
2	WildEarth Guardians and New Energy Economy's petition
3	to ban the use of PFAS on the oil field and ensure the
4	disclosure of the industry's proprietary chemical
5	components to the public. In New Mexico we face a
6	series of emergencies because of environmental
7	pollution and the climate crisis.
8	We see the imbalance between the state
9	prioritizing a polluting industry, which is known to
10	cause the climate crisis, over the public health in
11	our communities, and protecting the sacred lands that
12	are sacred to indigenous communities. Families and
13	entire communities must endure the extremes of the
14	climate crisis, from losing energy and power due to an
15	unexpected record-breaking snowstorm in Northern New
16	Mexico, to the flooding of a landlocked city like
17	Roswell due to a record-breaking rainfall, all within
18	one month.
19	If we continue to fail to hold industry
20	accountable for their crimes against our environment
21	and our communities, we will continue to see these
22	crises time and time again. This petition offers a
23	step towards safeguarding our land, air, and water.
24	New Mexico's groundwater accounts for
25	80 percent of our drinking resources. PFAS poses a
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1	risk of groundwater contamination, which we all know
2	is a scarce resource due to the mega-draught that I've
3	had to endure for my entire existence.
4	It is outrageous for the industry to
5	sit here and claim that PFAS are not intentionally
6	used in fracking in New Mexico, when we know from the
7	Physicians for Social Responsibility's report of its
8	use in 2022. Regardless of its intentional use or
9	not, the irreversible harm still exists and will
LO	continue to exist for generations.
L1	It is unjust and inhumane to expect
L2	communities in proximity to these fracking, drilling,
L3	and maintenance operations to endure this level of
L 4	toxicity. As we know, PFAS exposure over a long
L5	period of time can guarantee the development of
L6	cancers, reproductive hazards, and thyroid disease.
L7	Environmental racism and climate inaction can no
L8	longer be accepted as a practice and the norm for the
L9	sake of the economy or for the sake of one single
20	industry over thousands and millions of people.
21	Ensuring the protection of our health
22	and water resources ensures to deliver justice for our
23	communities who have suffered so much for generations.
24	We bear a duty to protect our water, which is sacred,
25	precious, and irreplaceable. New Mexico is positioned

1	to do just that by banning PFAS in oil and gas
2	operations and ensuring the disclosure of its
3	proprietary chemical components to the public.
4	Lastly I really do want to address the
5	language issue. I am a Latina woman, and I
6	proactively work with my community to inform them of
7	what's going on. And I fail to understand as how the
8	commission can expect for a monolingual Spanish
9	speaker to navigate the website on their own, find the
10	times, the dates, the email to come to this Commission
11	hearing and still not have that available in Spanish.
12	It is the responsibility of the State
13	for you to use your resources to ensure that this is
14	equitably accessible to our communities across the
15	entire week. It is not acceptable to only allocate
16	one single day to monolingual speakers. Thank you.
17	THE HEARING OFFICER: Thank you, Ms.
18	Lopez. Are there any other commenters? If you would,
19	please state and spell your name?
20	MS. JARAMILLO: Zephyr Jaramillo,
21	Z-E-P-H-Y-R J-A-R-A-M-I-L-L-O.
22	THE HEARING OFFICER: Do you swear or
23	affirm to tell the truth?
24	MS. JARAMILLO: I do.
25	THE HEARING OFFICER: Thank you. I'll
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	_ 335

1 start your three minutes. 2 MS. JARAMILLO: Good morning. My name is Zephyr Jaramillo, and I come from the Pueblos of 3 Isleta and San Felipe. In our communities we honor 4 the longstanding tradition of safequarding our lands 6 and waters. We have witnessed the insidious effects of pollution from oil and gas extraction, effects that 8 often remain hidden. 9 One of the most harmful and covert threats is the use of PFAS chemicals. 10 The April 2023 11 report from Physicians for Social Responsibility 12 documented the use of PFAS, including PTFE, in New 13 Mexico oil and gas wells. This report highlighted not only confirmed use across multiple counties but the 14 15 lack of comprehensive disclosure due to industry 16 reliance on trade secrets. 17 This means that the true extent of PFAS 18 contamination remains concealed, putting our communities at profound risk. PFAS persists in the 19 20 environment, accumulating in water and within our bodies over time. This persistence makes their use 2.1 for the oil and gas industry particularly dangerous. 22 23 Here in New Mexico, where over 80 2.4 percent of our public water supply comes from the groundwater, the stakes could not be higher. 25 Page 80

1	industry's routine injection of PFAS-containing
2	materials underground, on top of daily spills and
3	leaks of fracking wastewater endangers our health and
4	our precious water resources. Unlike other sources of
5	PFAS, oil and gas operators inject these chemicals
6	directly into the earth, where they can infiltrate and
7	contaminate aquifers.
8	Industry representatives claim that
9	PFAS is not intentionally used in fracking here, but
10	the evidence tells a different story. The Physicians
11	for Social Responsibility report documented PFAS use
12	and pointed out that due to limited disclosure
13	requirements, we cannot know the full extent of their
14	use or their impact.
15	Industry spokespeople hide behind
16	"trade secrets" to obscure critical information,
17	claiming transparency while keeping New Mexicans in
18	the dark. It is a dangerous distraction to argue that
19	PFAS contamination is ubiquitous. While PFAS
20	contamination is indeed a widespread issue, the oil
21	and gas industry's unique role in injecting these
22	chemicals underground makes it a special threat.
23	This poses a direct risk to our state's
24	groundwater, and yet our current regulations only
2425	groundwater, and yet our current regulations only require partial chemical disclosure, leaving us

1	vulnerable. We have the right to know what chemicals
2	are being used in our water and land. Our families
3	deserve protection and healthcare providers need
4	access to chemical information to respond to exposure
5	incidents.
6	This is about transparency,
7	accountability, and ending the toxic legacy that puts
8	all of us at risk. Ban PFAS in oil and gas
9	operations, demand full chemical disclosure, and
10	protect our water, our health, and our future.
11	THE HEARING OFFICER: Thank you, Ms.
12	Jaramillo. Is there another commenter? If you would,
13	state and spell your name, please.
14	MR. JUAREZ: It's going to be Jonathan,
15	J-O-N-A-T-H-A-N, and then Juarez, J-U-A-R-E-Z.
16	THE HEARING OFFICER: Thank you. Do
17	you swear or affirm to tell the truth?
18	MR. JUAREZ: I do.
19	THE HEARING OFFICER: I'll start your
20	three minutes.
21	MR. JUAREZ: Good morning,
22	Commissioners. My name is Jonathan Juarez. I am from
23	the Pueblos of Laguna and Isleta, but I've grown up in
24	Albuquerque my entire life as a result of the
25	contamination and environmental racism left behind by

1	the Jackpile Uranium Mine, which is less than a mile
2	from the village that my family has called home for
3	thousands of years, where our culture and traditions
4	have evolved with the land.
5	To pueblo people water is more than
6	life-giving. It is sacred. It connects us to our
7	ancestors and to future generations. It also plays
8	vital roles in our ceremonies, and we've always
9	understood it as our relative, not a commodity.
10	This belief in the sanctity of water is
11	shared by New Mexicans from all walks of life and
12	across political spectrums, from chile farmers down in
13	Hatch, who rely on the acequias to irrigate their
14	fields to the families in Albuquerque's South Valley
15	who are fighting tirelessly to preserve the Rio Grande
16	for their children and grandchildren.
17	In a desert region like ours, we all
18	understand the interdependent role that water plays,
19	and yet toxic fracking waste is spilling onto our
20	lands at an unprecedented rate. It contaminates
21	sacred lands, threatens the health and livelihoods of
22	thousands, and is treated as though it can simply be
23	hidden or ignored.
24	These spills, which are happening at a
25	rate of at least four times a day, according to the

1	industry's own self-reporting statistics, contain
2	dangerous levels of PFAS forever chemicals, adding
3	another layer of harm to our water, our air, and our
4	bodies.
5	PFAS do not break down. They
6	accumulate. They seep into our ecosystems. They move
7	through our livestock and into the food we eat. And
8	they even pass from parents to their children. It's a
9	toxic cycle that ripples through generations. And
10	this contamination is not just an emergency, it's a
11	generational threat.
12	PFAS endangers not only those of us
13	here now but also our children and their children.
14	Now as a pueblo person, my elders have taught me that
15	our decisions today must reflect the needs of seven
16	generations to come, and that if we're making those
17	choices with future generations in mind, then our
18	children's children will have clean air to breathe and
19	water to drink. And there's nothing more important
20	than that, certainly not profits.
21	The oil and gas industry is willing to
22	sacrifice New Mexico's future, treating our people and
23	our lands as disposable. How dare they poison our
24	water, our air, and our connection to our homelands,
25	and then attempt to hide behind trade secrets to

1	justify their actions? They profit while communities
2	suffer, our health declines, and our lands are left
3	barren.
4	Remember that while the fossil fuel
5	industry can finance pipelines stretching hundreds of
6	miles and extracting billions of dollars from
7	communities in Northwestern New Mexico, those same
8	communities, primarily on the Navajo Nation, still
9	lack basic access to running water and electricity.
10	The least that our government and state agencies can
11	do is protect us from these toxic chemicals.
12	Banning PFAS in oil and gas isn't just
13	harm reduction, it's essential.
14	THE HEARING OFFICER: Please wrap up,
15	Mr. Juarez.
16	MR. JUAREZ: So I call on you to act.
17	Please ban PFAS in oil and gas operations, demand full
18	chemical disclosure, and enforce real protections. We
19	cannot afford to keep sacrificing our health, our
20	families, or our lands for an industry that profits
21	while we despair. Thank you for your time.
22	THE HEARING OFFICER: Thank you, Mr.
23	Juarez. All right. We'll take a few more commenters,
24	take a break soon, but we will move through all
25	commenters present online or in the room before we

1	turn to the technical case. If you would state and
2	spell your name, please?
3	MR. JUAREZ: Raife, R-A-I-F-E, Juarez,
4	J-U-A-R-E-Z.
5	THE HEARING OFFICER: Okay. Do you
6	swear or affirm to tell the truth?
7	MR. JUAREZ: Yes.
8	THE HEARING OFFICER: I'll start your
9	three minutes.
10	MR. JUAREZ: Good morning,
11	Commissioners. My name is Raife Juarez and I'm a U.S.
12	Army veteran. I served my country to protect our
13	people, our lands, and our future, but here at home I
14	see a new battle, a fight against toxic contamination
15	that endangers everything I thought I was fighting to
16	defend. As a veteran, I know firsthand how vital
17	clean water, fresh air, and healthy land are, not just
18	for survival but for resilience and strength, and yet
19	right here in New Mexico, those basic rights are under
20	attack.
21	PFAS contamination, those so-called
22	forever chemicals, is spreading through our
23	communities, leaching into the water, the soil, and
24	the bodies of our people. These chemicals don't just
25	disappear. They accumulate and leave a lasting

1 impact. 2 It's as if we're in a perpetual 3 struggle, and this time the enemy attacks our health, our environment, and our future. PFAS contamination 4 is a betrayal to every New Mexican. These chemicals 6 used recklessly by the oil and gas industry are poisoning the same lands and waters we veterans swore 8 to protect. 9 Each spill, each like, each trade secret these companies hide behind, these are the 10 11 scars that they leave on our homeland. They get rich 12 off of our resources, but they leave the damage behind 13 for us to clean up for our families to suffer through. 14 The government has a duty here. 15 When I served we learned the value of 16 integrity and of taking responsibility. It's time our 17 government holds the oil and gas industry to the same standard. We can't let them behind a legacy of poison 18 19 in the name of profit. Every day we wait the 20 contamination spreads further, embedding itself deeper into our lands, our food, our families. 2.1 I am asking you to do your duty to 22 protect the people of New Mexico, ban PFAS in oil and 23

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gas operations, demand full transparency from the

industry, enforce the protections that can spare our

2.4

25

1	communities from this slow-moving disaster. We
2	veterans were willing to put our lives on the line for
3	this country. The least our leaders can do is ensure
4	our families aren't left to suffer the fallout from
5	corporate greed. Thank you.
6	THE HEARING OFFICER: Thank you, Mr.
7	Juarez. Would you state and spell your name, please?
8	MS. AGUIRRE: Stephany Aguirre.
9	Stephany, S-T-E-P-H-A-N-Y, Aguirre, it's
10	A-G-U-I-R-R-E.
11	THE HEARING OFFICER: Thank you. Do
12	you swear or affirm to tell the truth?
13	MS. AGUIRRE: Yes.
14	THE HEARING OFFICER: Thank you. I'll
15	start your three minutes.
16	MS. AGUIRRE: I would like to say it in
17	Spanish.
18	THE HEARING OFFICER: We don't have an
19	interpreter at this point. I believe we will have an
20	interpreter Friday at the Friday public comment
21	session. Stefany, is that something you're able to
22	confirm sorry, Stefany. You're Stefany. Sheila,
23	is that something you're able to confirm at this time?
24	MS. APODACA: It hasn't been completely
25	confirmed. That is the time that we're working with.

1	THE HEARING OFFICER: Okay.
2	MS. AGUIRRE: I just don't have another
3	time to come and say it. But I can I have it
4	written in Spanish and English.
5	THE HEARING OFFICER: That's terrific.
6	That would be my plan B, frankly. If you give it to
7	us, we will have it interpreted for the commission
8	before they deliberate.
9	MS. AGUIRRE: Okay. Or I may I say
10	a suggestion?
11	THE HEARING OFFICER: Yes. Yes, you
12	may.
13	MS. AGUIRRE: I brought someone that
14	can say it, can read it with me.
15	THE HEARING OFFICER: Okay. That would
16	be fine.
17	MS. AGUIRRE: And can interpret it for
18	you.
19	THE HEARING OFFICER: That's fine. Do
20	it however you'd like.
21	MS. AGUIRRE: Thank you.
22	MS. AGUIRRE (THROUGH INTERPRETER): My
23	name is Stefany Aguirre. I'm a resident of Santa Fe
24	and I currently reside within the city limits. I'm a
25	mother of four kids under the age of 18. I'd like to
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1	thank you for giving us the opportunity to speak
2	today.
3	One unfortunate thing I would like to
4	mention is that interpreters were not provided for
5	this meeting. This is important because we want to be
6	heard, and this includes our Spanish-speaking
7	communities, because they and their families are at
8	risk, as well. I would like to proceed with my
9	speech.
LO	Today I would like to shed light on an
L1	environmental and public health concern that has been
L2	increasingly getting attention, PFAS for per- and
L3	polyfluoroalkyl substances. These are manmade
L4	chemicals that have been used in various industries
L5	around the world since the 1940's. PFAS is found in a
L6	wide range of consumer products such as nonstick
L7	cookware, water-repellant clothing, stain resistant
L8	fabrics, and some firefighting foam.
L9	One of the most concerning aspects of
20	PFAS is their persistence in the environment and in
21	the human body. These chemicals do not break down
22	easily, earning them the nickname of "forever
23	chemicals." As a result, PFAS can accumulate over
24	time, leading to potential adverse health effects.
25	Studies have linked PFAS exposure to various health

1	problems including liver damage, thyroid disease,
2	decreased fertility, high cholesterol, obesity,
3	hormone suppression, and even cancer.
4	The widespread use of PFAS has led to
5	contamination of water resources, soil, and air.
6	Communities near manufacturing facilities, military
7	bases, and areas where firefighting foam has been used
8	are particularly at risk. As we become more aware of
9	the dangers posed by PFAS, it is crucial to take
LO	action to reduce exposure and mitigate their impact.
L1	This includes advocating for stricter regulations on
L2	the use of PFAS, reporting research into safer
L3	alternatives, and ensuring proper cleanup of
L4	contaminated sites.
L5	In conclusion, addressing the issue of
L6	PFAS is not just about protecting the environment, but
L7	also about safeguarding public health. By working
L8	together we can push for the necessary changes to
L9	reduce the presence of these harmful chemicals in our
20	lives and create a safer, healthier future for all.
21	Thank you.
22	THE HEARING OFFICER: Thank you very
23	much, Ms. Aguirre. We need a break. The Commission
24	has been going since nine o'clock. It's 10:45. Let's
25	return at eleven.

1	(Off the record.)
2	THE HEARING OFFICER: We are back from
3	the break and Mr. Rubin has requested an opportunity
4	to make a statement.
5	MR. RUBIN: Thank you, Madam Hearing
6	Officer. Members of the commission and also to the
7	benefit of the parties, clearly trade secrets is going
8	to be something that's going to be hotly contested,
9	both factually and perhaps legally. I just wanted to
LO	give the parties of the benefit my initial thinking,
L1	and I do apologize if this is something the party's
L2	already anticipated in their exhibits, which I have
L3	not sorted through yet.
L4	But obviously the Uniform Trade Secrets
L5	Act is a constraint on what can be passed by rule;
L6	however, I do note that there is a provision under
L7	74.615, which relates to water quality, which
L8	is which may or may not act as an exception to
L9	trade secrets to the extent they have been disclosed
20	as part of a Water Quality Control Commission meeting.
21	And I read that, or as I quote, under
22	74-6-15(A)(3), "when relevant in any proceeding
23	pursuant to the Water Quality Act or the federal Act."
24	There is an equivalent statute relating to air quality
25	and trade secrets.

I do not know this will ultimately sort
out, but to the extent the parties want to account for
that possibility in their presentations, as I know
there was there has been some discussion of within
the water quality context, it might be helpful to know
that ahead of time. Thank you. And with that, I turn
it back over to our capable hearing examiner.
THE HEARING OFFICER: Thank you, Mr.
Rubin. We are back after a break and we will continue
accepting sorry. I'm very sorry. Thank you. So
the Chair did invite me to proceed regardless of
whether he was on the dais. We had that conversation
earlier this morning.
All right. We're going to continue to
accept public comment, both in the room and on the
platform. Let me ask if there's anyone else in the
room who would like to offer public comment during
this session. There will be lots of other
opportunities. All right. If you would come up one
at a time please. And you have three minutes. I will
ask you to state and spell your name, and I will ask
you if you swear or affirm to tell the truth. If you
would state and spell your name?
MS. REVIERE: My name is Briana
Reviere, B-R-I-A-N-A R-E-V-I-E-R-E.

1	THE HEARING OFFICER: And do you swear
2	or affirm to tell the truth?
3	MS. REVIERE: I do.
4	THE HEARING OFFICER: Thank you. I'll
5	start your three minutes.
6	MS. REVIERE: Good morning,
7	Commissioners. My name is Briana Reviere. I am here
8	to express my deep concern regarding the presence of
9	PFAS in water, air, and healthcare systems of New
10	Mexico. These toxic chemicals, known as forever
11	chemicals, due to the their ability to persist in the
12	environment and the human body for decades, are being
13	detected at alarming levels in various parts of our
14	state.
15	Prolonged exposure to PFAS is directly
16	linked to a wide range of adverse health effects in
17	the New Mexican residents, who are already facing
18	public health challenges due to poverty and limited
19	access to healthcare and other social inequities. The
20	impact of health of the New Mexican residents due to
21	PFAS has proven to be highly harmful to human health,
22	even at low levels of exposure.
23	In particular, scientific studies have
24	shown that these chemicals can cause the following
25	health problems in people who have been exposed:

1	cancer, hormonal and reproductive disorders, immune
2	system damage, metabolic disorders, impact on child
3	development.
4	In Santa Fe, as many other areas of New
5	Mexico, PFAS contamination is beginning to have a
6	serious impact on community health. The city, which
7	relies heavily on groundwater sources and local
8	springs, has seen an increase in levels of PFAS in
9	drinking water in some areas, putting the health of
10	thousands of residents at risk.
11	The people of Santa Fe, especially
12	those living hear industrial areas or military bases,
13	where these toxic chemicals have historically been
14	used, are particularly exposed to these harmful
15	compounds. Additionally, growing concerns about
16	health effects such as increased respiratory diseases,
17	endocrine disorders, and reproductive health problems
18	are disproportionately affecting young families and
19	the elderly.
20	In Santa Fe, where public health
21	already faces challenges due to poverty and limited
22	access to healthcare, exposure to PFAS only worsens
23	the situation, placing an even greater burden on local
24	healthcare systems and exposing vulnerable communities
25	to long-term consequences. The presence of PFAS in

1	drinking water, air, and soil of New Mexico is a
2	serious and growing threat to the health of our
3	residents, especially those in rural and marginalized
4	communities, who are the most vulnerable to
5	contamination.
6	It is urgent that authorities take
7	decisive action to reduce and eliminate PFAS levels in
8	our state, that stricter policies be implemented for
9	PFAS regulation, that water quality and air pollution
LO	laws be strengthened, and that further scientific
L1	research can be conducted to understand the long-term
L2	effects of these compounds on human health and the
L3	environment. Additionally, it is essential that New
L4	Mexican residents receive clear and accessible
L5	information about the risks associated with PFAS, as
L6	well as resources for testing and protecting their
L7	health.
L8	I urge immediate action to protect the
L9	health and wellbeing of future generations. PFAS can
20	no longer be allowed to affect New Mexican
21	communities. It is our responsibility as a society to
22	take swift action to address this issue. Thank you
23	for your time.
24	THE HEARING OFFICER: Thank you, Ms.
25	Reviere. Next? State and spell your name.

1	MR. DOLCE: My name is Michael Dolce,
2	M-I-C-H-A-E-L D-O-L-C-E.
3	THE HEARING OFFICER: Do you swear or
4	affirm to tell the truth?
5	MR. DOLCE: I do.
6	THE HEARING OFFICER: Thank you. I'll
7	start your three minutes.
8	MR. DOLCE: Thank you for allowing me
9	to speak with you today. As a long-time educator, my
10	entire focus of my career has been the future, and I
11	have to ask, what are we doing? What are we doing to
12	our planet and to our children?
13	Eighty-seven percent of our water is
14	groundwater. The EPA warns that fracking chemicals
15	can contaminate this water through spills, faulty
16	casings, or direct injection. With New Mexico's water
17	already strained by draught and climate challenges,
18	protecting it from toxins like PFAS is essential.
19	What are we doing? I don't want to sound like a
20	broken record.
21	A lot of people have talked about the
22	health problems that are associated with PFAS. I will
23	simply say that no level of exposure to these
24	chemicals can be considered safe. What are we doing?
25	Oil and gas companies won't prevent

1	contamination and won't disclose the chemicals they
2	us, citing trade secrets. Well transparency about
3	ingredients is standard in other industries, food,
4	medicine, cleaners, so people can make informed health
5	choices. The same should apply to oil and gas.
6	We have a right to know what chemicals
7	are injected into our land and our very precious
8	water. What are we doing? It's simple. Oil and gas
9	companies override the will of people through
10	lobbying, political influence, and legal exemptions
11	that prioritize industry interests over public health
12	and environmental protection.
13	Their money silences my voice and the
14	voice of others like me. And what do they think
15	they're doing? Acting like collective psychopaths.
16	Corporations act without empathy. They lie,
17	manipulate, evade accountability, and pursue profit at
18	any cost. Don't their leaders consider the world
19	they've leaving for their own children, let alone
20	people like us? What are we doing?
21	When profit is prioritized over ethics
22	and social responsibility, we have to stop allowing
23	it. I urge the Oil Conservation Commission to take
24	bold action by prohibiting PFAS in oil and gas
25	operations, and by requiring full disclosure of

1	chemicals used in downhole operations. Safeguard the
2	future of New Mexico's water supply, essential to the
3	sustainability of life for ourselves and future
4	generations.
5	I look at the students I've taught over
6	the years, and I want to promise them a future, but
7	year after year, as we spoil our land and our water,
8	I'm not even sure they're going to have one. Please
9	hear us on this matter. Thank you.
10	THE HEARING OFFICER: Thank you, Mr.
11	Dolce. Next? State and spell your name.
12	MS. LUEBANO: Good morning. My name is
13	Miriam, M-I-R-I-A-M, Luebano, L-U-E-B-A-N-O.
14	THE HEARING OFFICER: Do you swear or
15	affirm to tell the truth?
16	MS. LUEBANO: Yes.
17	THE HEARING OFFICER: Thank you. I'll
18	start your three minutes.
19	MS. LUEBANO: Thank you for the
20	opportunity, but I prefer doing it in Spanish. I
21	don't know if you have an interpreter here to help me.
22	THE HEARING OFFICER: I believe we may
23	have an interpreter Friday morning.
24	MS. LUEBANO: I can't come in Friday
25	because I need to work.

1	UNKNOWN SPEAKER: I can translate for
2	her.
3	THE HEARING OFFICER: All right. Thank
4	you very much for your assistance, ma'am.
5	MS. LUEBANO (THROUGH INTERPRETER): My
6	name is Miriam Luebano. I am a mother of three
7	children, a resident of Santa Fe, and part of Earth
8	Care. I understand the profound importance of the
9	necessity to protect our health and environment.
10	My youngest son, who suffers from
11	asthma and allergies, is especially vulnerable to the
12	environmental contaminants. The exposure to toxic
13	chemicals like PFAS further heightens the risk of our
14	health for people who struggle with respiratory
15	conditions and allergies.
16	Conscious of the devastating effects of
17	these forever chemicals within our environment and our
18	health, I join in the petition to regulate and
19	prohibit the use of PFAS in operations of oil and gas
20	in New Mexico. Every day we depend on clean water and
21	clean air for the health of our families.
22	Without a doubt, PFAS represents a real
23	threat for various resources. These chemicals, which
24	do not degrade easy in the environment, contaminate
25	our groundwater and our surface water, from which 80

Т	percent of our drinking water of our state comes from.
2	Without a doubt, we cannot ignore that prolonged
3	exposure of PFAS has led to serious problems of
4	health, such as cancer, problems of the thyroid, and
5	reproductive toxicity.
6	In a moment, where federal
7	environmental protections are at risk, it is crucial
8	that we take the necessary measures at a state level
9	to protect our communities. We cannot continue to
10	permit for industries to continue to contaminate our
11	water and our air under the pretext of trade secrets.
12	The lack of transparency and regulation leaves us
13	exposed to dangerous chemicals without knowing where
14	or when these chemicals are being injected into our
15	ground.
16	Our resources are limited and precious,
17	and it is our responsibility to protect it for the
18	future generations. We cannot allow for the interests
19	of corporations to put our health at risk and the
20	future of our children at risk. Thank you for
21	listening to my testimony and for taking into
22	consideration the importance of implementing strict
23	regulations and the prohibition of the use of PFAS in
24	oil and gas operations.
25	THE HEARING OFFICER: Thank you very
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1	much, and thank you, ma'am, for your assistance. Are
2	there any other public commenters?
3	MS. TAROS: Morning.
4	THE HEARING OFFICER: Good morning. If
5	you would state and spell your name, please?
6	MS. TAROS: My name is Megan Taros,
7	M-E-G-A-N T-A-R-O-S.
8	THE HEARING OFFICER: And do you swear
9	or affirm to tell the truth?
10	MS. TAROS: Yes, I do.
11	THE HEARING OFFICER: I'll start your
12	three minutes.
13	MS. TAROS: So I prefer to give my
14	comment in Spanish. I hear you don't have an
15	interpreter until Friday, so I found my own
16	accommodation.
17	THE HEARING OFFICER: Okay. Thank you
18	very much.
19	MS. TAROS (THROUGH INTERPRETER): Good
20	morning, members of the commission. My name is Megan
21	Taros and I am a representative with Poder Familiar.
22	I am urging you today to vote to end the use of PFAS
23	in New Mexico. PFAS are highly toxic chemicals that
24	destroy entire ecosystems and are dangerous at any
25	level.

1	The use of PFAS risks contaminating our
2	surface and groundwater, leading to higher incidences
3	of kidney cancer, thyroid disease, and reproductive
4	and developmental toxicity. In a state where 87
5	percent of the public's water supply comes from
6	groundwater, it is unconscionable to gamble with
7	people's lives, especially with a lack of disclosure
8	that shields industries from accountability.
9	It is reprehensible that our
LO	communities are not even allowed to know where PFAS
L1	are being injected or what types are being used. This
L2	robs them of their right to know if their health is
L3	being endangered and to protect themselves from that
L4	harm. We have already seen the effects of these
L5	dangerous chemicals from La Cieneguilla to Clovis,
L6	where residents have been sickened and cannot drink
L7	their tap water.
L8	Also in Clovis, several cows had to be
L9	euthanized due to being poisoned with PFAS. This
20	shows that PFAS can damage our food and food systems.
21	We cannot allow this to continue a dangerous trend
22	around our state and that is why I urge you to ban the
23	use of PFAS. Thank you.
24	THE HEARING OFFICER: Thank you very
25	much, and thank you, ma'am, for your assistance. Are
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1	there others who would like to offer? I see a
2	gentleman. If you would state and spell your name for
3	the record?
4	MR. ACOSTA (THROUGH INTERPRETER):
5	Miguel Acosta, M-I-G-U-E-L A-C-O-S-T-A.
6	THE HEARING OFFICER: Thank you. Do
7	you swear or affirm to tell the truth?
8	MR. ACOSTA (THROUGH INTERPRETER): Yes.
9	THE HEARING OFFICER: All right. Thank
10	you very much. Go ahead.
11	MR. ACOSTA (THROUGH INTERPRETER): Good
12	morning, Commission Members, my name is Miguel Acosta.
13	I'm the director for Poder Familiar, and I am from
14	Santa Fe, New Mexico. I urge the members of the Oil
15	Conservation Commission to support the proposed
16	rulemaking petition.
17	I live and work in an area of Santa Fe
18	that experienced the worst impacts of COVID in terms
19	of the number of infections, long-term complications,
20	and deaths. We found out that our community also had
21	the highest rates of preexisting health challenges and
22	the lowest rates of health insurance and access to
23	healthcare. We recently found out that our
24	communities are also being exposed to PFAS.
25	We were told it was by accident. Our

1	neighbors are primarily low-income and people of
2	color, and that's why I'm here. Across New Mexico,
3	those most likely to be impacted by PFAS contamination
4	are poor people of color. This is especially true in
5	and around oil production sites, where PFAS are
6	injected into the ground, not by accident but as
7	standard practice. You can change that.
8	These communities also have high
9	preexisting health challenges and lower health
10	insurance rates. Research shows clearly that these
11	cumulative impacts on communities lead to higher rates
12	of several types of cancer, affect childhood
13	development, impact life expectancy, contaminate water
14	sources, kill livestock, and destroy crops. You can
15	change that.
16	New Mexico has been a sacrifice zone
17	for decades. Nuclear mining, corporate farming, and
18	chemical industries have contaminated water, ruined
19	habitats, and killed people. It's still happening,
20	and now a preventable source of contamination and
21	death has been introduced to our land. You can change
22	that.
23	You have the power to decide in favor
24	of people's lives and a healthy environment, or in
25	support of death and destruction in the name of

1	profits. I urge you all to support the proposed
2	rulemaking petition and give our children a better
3	future.
4	I also urge you to provide appropriate
5	interpretation and translation as required by the New
6	Mexico Constitution, the Civil Rights Act of 1964, and
7	the Treaty of Guadalupe Hidalgo. Thank you, and thank
8	you for youth of YUCCA for attending our hearing.
9	THE HEARING OFFICER: Thank you very
10	much, Mr. Acosta and ma'am. Are there other public
11	commenters? Other public commenters? Sir, in the
12	green jacket. If you would state and spell your name
13	first?
14	MR. MICKEL: Good morning. My name is
15	Mick Nickel, M-I-C-K N-I-C-K-E-L.
16	THE HEARING OFFICER: Do you swear or
17	affirm to tell the truth?
18	MR. MICKEL: Yes, ma'am.
19	THE HEARING OFFICER: All right. I'll
20	start your three minutes.
21	MR. MICKEL: Good morning. All earth
22	citizens, here and everywhere else, are suffering from
23	Stockholm syndrome, of human lies from corporate crude
24	capitalism and its toxic stream of 6,000 products.
25	The data are everywhere. A black gold supplies a line

Τ	oi, more or less, 350,000 spin-oil toxins, most
2	unstudied and unregulated, including 15,000 PFAX
3	[sic], all deemed health hazards.
4	How are dominant lies delivered?
5	Propaganda via manipulative advertising, pandering to
6	citizens' fears, needs, and wants; exaggeration and
7	distortion; denial or obfuscation; downplaying or
8	misdirecting; projection leading to transference;
9	intimidation; gaslighting; newspeak and doublethink.
10	The tools of this delivery are bribery, extortion, red
11	herrings, false flags, and bullying stressed out,
12	dumbed down, drugged up, malnourished, and poisoned.
13	Why the lies? Well they work. Note
14	this year's electioneering. Oil and gas create
15	massive financial reward, power, and influence; the
16	reaping of rewards while avoiding punishments; keeping
17	secrets; avoiding laws, rules, distrust,
18	embarrassment, shame, guild, and condemnation from us.
19	To maintain all this requires creating
20	illusions, fantasies, imagery that hide mistakes,
21	errors, bad behaviors, and fear of failure with
22	telling more lies. Lies are terrorist acts, more
23	addictive than fentanyl, coke, tobacco, or booze.
24	Lies destroy trust, they create chaos, and they
25	promote nihilistic violence.

1	Failure is not an option, so laissez
2	faire, anything goes until it does not. All this
3	lying puts you and the rest of us in the crosshairs.
4	Without black goo, capitalism would be just another
5	Chamber of Commerce focus group.
6	We are here for you. For you,
7	troubled, angry, and seasoned citizens from all walks,
8	who have struggled through life's challenges to
9	discover the values and complexities of civic,
10	personal, professional, and planetary responsibility.
11	Responsibility is our birthright. It reveals respect;
12	fosters courage, dignity, strength, honor, and
13	humility. This respect reveals truth, creates trust,
14	empowers resolve to discover and cultivate wisdom,
15	leading to reverence for life and earth, as our home
16	and its gifts of peace, and come back.
17	We must pass this rule now and much
18	more, to put our fingers in the toxin leaking dam of
19	prude capital and drive our steel-toed boot in this
20	toxic door. Reverse and revolutionize this cancerous
21	culture now, not somewhere down the yellow brick road
22	of intimidating fantasies. Lies work until they do
23	not. Then things fall apart. Thank you.
24	THE HEARING OFFICER: Thank you, Mr.
25	Nickel. Are there any other commenters in the room?

1	I do see two more on the platform, but if there's
2	someone else in the room. Come on up, sir, in the
3	gray. If you would, state and spell your name,
4	please.
5	MR. MEYER: My name is Stephen Meyer,
6	S-T-E-P-H-E-N M-E-Y-E-R. I live in Taos, New Mexico.
7	THE HEARING OFFICER: Do you swear or
8	affirm to tell the truth?
9	MR. MEYER: I do.
10	MR. ORTH: All right. I'll start your
11	three minutes.
12	MR. MEYER: I don't think I'll need
13	three minutes. I'm a member of Renewable Taos, which
14	is an advocacy group in Taos County, and I came here
15	just to really understand what was going on with PFAS.
16	And the issue that I would like you to consider is the
17	trade secrets issue related to what the fracking fluid
18	comprises.
19	And if we do nothing more than just
20	have people tell us what is in this fluid, and not
21	hide behind trade secrets, then I think we'll have a
22	clearer path to to fix many of the problems that
23	are that are occurring. Thank you.
24	THE HEARING OFFICER: Thank you very
25	much, Mr. Meyer. Anyone else in the room before I go

1	back to the platform? Ma'am? If you would, state and
2	spell your name.
3	MS. TRUJILLO: Mykayla Trujillo,
4	M-Y-K-A-Y-L-A.
5	THE HEARING OFFICER: Okay. And do you
6	swear or affirm to tell the truth?
7	MS. TRUJILLO: Yes.
8	THE HEARING OFFICER: I'll start your
9	three minutes.
LO	MS. TRUJILLO: Okay. I'm here
L1	representing La Milpa, which is a community garden and
L2	food justice organization here in Santa Fe, and I am
L3	here to express my concern about the PFAS use,
L 4	especially as it's considered a trade secret or a lack
L 5	of clarity that's expected for these companies to
L6	express to the people who live here in Santa Fe and
L7	New Mexico.
L8	It's not a trade secret. It's a public
L9	health crisis. And more than that, it's an
20	environmental justice crisis. Most of our water
21	coming from groundwater here in New Mexico is directly
22	impacted by the use of these chemicals, so it affects
23	every single person who drinks water, as well as every
24	single organism that uses water, which is all of life.
25	It's in our food, it's in our bodies.

1	There's not someone who's not affected or above this
2	decision to keep it a secret from the public. And so
3	this decision to allow the secrecy to continue will
4	affect not only us right now, but for future
5	generations and passed, you know, the terms that we
6	serve and the policies that we get to control.
7	And I would also like to point out that
8	I've been to a few public hearings and there hasn't
9	been a lot of access in terms of language
10	interpretation, and a lot of my coworkers have a lot
11	of very valid points as a lot of New Mexicans speak
12	Spanish and this is definitely a barrier to a lot
13	of our access to health, and live healthy lives. So
14	those are my concerns. Thank you.
15	THE HEARING OFFICER: Thank you, Ms.
16	Trujillo. Anyone else in the room before we go back
17	to the platform? No? All right. Sheila, would you
18	take number 1 there. I think it was Patricia Leahan.
19	All right. Would you state and spell your name, Ms.
20	Leahan?
21	MS. LEAHAN: Sure. Pat Leahan. The
22	last name is L-E-A-H-A-N.
23	THE HEARING OFFICER: All right. Do
24	you swear or affirm to tell the truth?
25	MS. LEAHAN: I swear to tell the truth,
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1	yes.
2	THE HEARING OFFICER: Thank you. And
3	I'll start your three minutes.
4	MS. LEAHAN: Thank you. I'm
5	representing the Las Vegas Peace and Justice Center
6	here in Northeast New Mexico. Madam Hearing Officer
7	Orth and members of the commission, speaking of
8	telling the truth, just this morning as a result of
9	investigations into the oil and gas industry, newly
LO	unearthed documents have come to light, including
L1	those from as far back as the 1950's. Theguardian.org
L2	published an article today about what was found.
L3	Other earlier investigations showed the
L4	industry spent decades internally studying the
L5	consequences of their industry on our air, land, and
L6	water. One study from 2023 discovered that Exxon
L7	scientists made what was labeled "breathtakingly
L8	accurate predictions of global heating" in the 1970's
L9	and 1980's.
20	So what did the industry do next? They
21	spent decades hiding what they found, while also
22	sewing global doubts about climate science. So the
23	basic takeaway? We now have further proof that the
24	oil and gas industry has consistently been lying to
25	us. They cannot be believed. They cannot be trusted.

1	Why would we give an entity like that such power?
2	You've heard from so many articulate
3	speakers here today about the known hazards of PFAS,
4	including of those already sick and those who live on
5	sacred land that's been contaminated. The industry
6	needs to be better monitored and regulated and should
7	not be allowed to hide the truth from us. Their
8	formula needs to be disclosed, as is done in
9	California and Colorado. Why not New Mexico as well?
10	And the PFAS chemicals need to be banned.
11	This water water came out of the
12	spigots of homes in Denton County, Texas. A mayor of
13	a city in Denton County, when he heard that the oil
14	and gas industry had come looking in our pristine area
15	here in Northern New Mexico, he drove here with his
16	family and jars of this toxic water. This came out of
17	the spigots of kitchens, in people's homes there.
18	He shared how his children are now
19	sick, and he is on a mission to protect other
20	children, our children and yours, Commissioners.
21	Please do the same, care about the children. And
22	remember that the industry's not telling us the truth,
23	and they're not even telling you the truth. They just
24	cannot be trusted.
25	In your hearts, Commissioners, you know

1	this. So please do the right thing. Lack of
2	regulation is deadly, so ban PFAS and require full
3	disclosure. Do it for your kids and they'll be deeply
4	grateful some day for your decision on this issue.
5	Thank you.
6	THE HEARING OFFICER: Thank you, Ms.
7	Leahan. Sheila, if you would move to hand number 2
8	there. This is Robin Schuett-Hames. If you would,
9	please state and spell your name. You're muted.
10	You're muted.
11	MS. SCHUETT-HAMES: Robin
12	Schuett-Hames, R-O-B-I-N S-C-H-U-E-T-T, dash,
13	H-A-M-E-S.
14	THE HEARING OFFICER: Do you swear or
15	affirm to tell the truth?
16	MS. SCHUETT-HAMES: Yes, I do.
17	THE HEARING OFFICER: Thank you. I'll
18	start your three minutes.
19	MS. SCHUETT-HAMES: Thank you,
20	Commissioners. I live in rural Taos County, and I am
21	unfortunately one of many people who are ill from what
22	turns out to be environmental causes. I am very aware
23	that there is a whole community of people suffering,
24	often silently, throughout throughout New Mexico
25	and the West.

1	I, you know, I was once a bright and
2	enthusiastic college student with a wonderful future,
3	and career, and public contributions awaiting me, and
4	then I spent decades being often bedridden, homebound
5	with strange ailments, pains, fatigue, thyroid
6	disorders, infertility, inflammation, joint pain, and
7	it was only after, you know, seeing literally hundreds
8	of doctors that I began to make a connection between
9	my own health, those of other friends and community
10	members of mine, and environmental exposures.
11	And it's only recently that I've
12	learned about the science relating to PFAS, and that
13	PFAS are linked to my illness, including things that,
14	well, in some ways are even worse, like cancer,
15	thyroid cancers, and ulcerative colitis. And I'm
16	watching my generation and the generation after mine
17	be sicker and sicker. We're already losing people to
18	cancer in our 30's, and I'm seeing people developing
19	neuroinflammatory disorders like Alzheimer's in their
20	50's.
21	I'm, you know, I'm not a scientist. I
22	understand that science is complicated, and it is
23	difficult for science to say that, with any certainty,
24	that one chemical leads to one health ailment, but I

do know this: We're seeing a pattern. And we have to

1	have the data.
2	We can't have this data obfuscated by
3	secrecy, in order to bring these things to light, and
4	study them, and begin to gain some idea about what is
5	happening to our water, and whatever happens to our
6	water happens to our bodies.
7	One thing I've learned from being sick
8	all this time is that any illusion I had that my body
9	or my life was separate from our water, our earth, and
LO	our air, is completely delusional.
11	THE HEARING OFFICER: Ms. Hames, would
12	you wrap up, please?
13	MS. SCHUETT-HAMES: Yes. Thank you.
14	So I I just want to say that above all, this is a
15	moral issue, and you, Commissioners, have a profound
16	responsibility to protect our water and our bodies for
17	all New Mexicans. Thank you very much.
18	THE HEARING OFFICER: Thank you, Ms.
19	Schuett-Hames. Sheila, if you would move to hand
20	number 1 now, Nell Burrus, it looks like.
21	MS. BURRUS: Yes.
22	THE HEARING OFFICER: Hello. If you
23	would state and spell your name?
24	MS. BURRUS: My name is Nell Burrus,
25	N-E-L-L B-U-R-R-U-S.

1	THE HEARING OFFICER: Do you swear or
2	affirm to tell the truth?
3	MS. BURRUS: Yes, I do.
4	THE HEARING OFFICER: Thank you. I'll
5	start your three minutes.
6	MS. BURRUS: Good morning, Madam
7	Chairperson and Commissioners. Thank you for your
8	time. My name is Nell Burrus, a retired APS teacher,
9	here to ask the New Mexico Oil and Gas Commission to
10	ban the use of PFAS, particularly in fracking, since
11	that process can introduce PFAS chemicals into our
12	life-sustaining groundwater. In New Mexico, there are
13	approximately four spills a day of fracking wastewater
14	from the oil and gas industry, which adds to the risk
15	of drinking water contamination.
16	This is a relatively new topic for me,
17	and to understand it better I decided to compare PFAS
18	chemicals to DDT, a now-banned toxic chemical I
19	remember from my childhood. DDT has a half-life of 2
20	to 15 years, which means about half of it breaks down
21	within that timeframe. PFAS, on the other hand, are
22	reported to last thousands of years. They do not
23	break down easily.
24	The State of New Mexico has set a
25	standard for DDT in drinking water that it should not

1 exceed 2 micrograms per liter. A microgram is very 2 small, but a nanogram is 1,000 times smaller than a microgram. So doing the conversion, 2,000 nanograms 3 per liter is the New Mexico standard for DDT in 4 5 drinking water. Let's compare 2,000 nanograms per liter 6 7 for DDT to the EPA standards for PFAS chemicals in 8 drinking water. The EPA standard for PFOA is seven 9 one-thousandths of a nanogram per liter. That's 0.007 nanograms per liter. And for another chemical in this 10 11 same class, PFOS, the standard is 1 nanogram per 12 liter. Compared to 2,000 nanograms for DDT. 13 It is questionable whether there is any safe level, since at even a very, very low level there 14 15 is documented link to kidney and testicular cancer, as 16 well as other health problems, which have already been 17 mentioned. The takeaway for me is that PFAS chemicals last way longer than toxic chemicals that the U.S. has 18 19 banned, and that even very, very low concentrations of 20 PFAS in drinking water are very dangerous. 2.1 We should not allow companies to 22 obscure their use of PFAS and their attempt to avoid 23 regulation. We need to know when and where these 2.4 chemicals have been and are being used. Thousands of

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years of health and environmental impacts is too big

1	of a risk to take for the sake of profits.
2	Physicians for Social Responsibility
3	has carefully laid out the science of why we should
4	stop using PFAS and why we should greatly expand the
5	disclosure requirements for PFAS use, especially in
6	fracking operations.
7	I hope you have read every word of that
8	report, the 2023 report. To me their recommendations
9	seem logical, sensible, and urgent. Let's follow the
10	lead of Colorado and other states that have already
11	taken the necessary steps to protect residents from
12	these dangerous chemicals. Thank you for your time.
13	THE HEARING OFFICER: Thank you, Ms.
14	Burrus. I see another hand. I believe it's Rayellen
15	Smith?
15 16	Smith? MS. SMITH: Hello, yes.
16	MS. SMITH: Hello, yes.
16 17	MS. SMITH: Hello, yes. THE HEARING OFFICER: Hello. If you
16 17 18	MS. SMITH: Hello, yes. THE HEARING OFFICER: Hello. If you would state and spell your name, please?
16 17 18 19	MS. SMITH: Hello, yes. THE HEARING OFFICER: Hello. If you would state and spell your name, please? MS. SMITH: Rayellen Smith,
16 17 18 19 20	MS. SMITH: Hello, yes. THE HEARING OFFICER: Hello. If you would state and spell your name, please? MS. SMITH: Rayellen Smith, R-A-Y-E-L-L-E-N, last name Smith, S-M-I-T-H.
16 17 18 19 20 21	MS. SMITH: Hello, yes. THE HEARING OFFICER: Hello. If you would state and spell your name, please? MS. SMITH: Rayellen Smith, R-A-Y-E-L-L-E-N, last name Smith, S-M-I-T-H. THE HEARING OFFICER: Do you swear or
16 17 18 19 20 21 22	MS. SMITH: Hello, yes. THE HEARING OFFICER: Hello. If you would state and spell your name, please? MS. SMITH: Rayellen Smith, R-A-Y-E-L-L-E-N, last name Smith, S-M-I-T-H. THE HEARING OFFICER: Do you swear or affirm to tell the truth?
16 17 18 19 20 21 22 23	MS. SMITH: Hello, yes. THE HEARING OFFICER: Hello. If you would state and spell your name, please? MS. SMITH: Rayellen Smith, R-A-Y-E-L-L-E-N, last name Smith, S-M-I-T-H. THE HEARING OFFICER: Do you swear or affirm to tell the truth? MS. SMITH: I do.

1	MS. SMITH: Thank you, members of the
2	commission. I am the President of Indivisible
3	Albuquerque and Reboot Our Democracy. I represent
4	2,500 activists statewide who are all very interested
5	in this issue, and we are mad.
6	For almost 20 years, U.S. public health
7	advocates have worried that toxic chemicals are
8	getting into groundwater and harming human health
9	because of an exemption to the Federal Safe Water
L O	Drinking Act that allows operators of oil and gas
L1	fracking operations to use chemicals that would be
L2	regulated if used for any other purpose. The
L3	so-called Halliburton loophole means that the industry
L4	can use fracking fluid containing chemicals linked to
L5	negative health effects, and we've heard many people
L6	giving testimony about that, without being subject to
L7	regulation under the Act.
L8	So this makes poisoning Americans
L9	legal. This has to be fixed, and you can fix it.
20	Fracking companies can keep data about dangerous
21	chemicals from state regulators and the public in all
22	but two states. California and Colorado require all
23	chemicals to be disclosed, even those that frackers
24	claim are trade secrets. Twenty-four other states

have disclosure laws but allow frackers to keep their

1 secrets to themselves. 2 From 2014 through 2021, 62 to 73 percent of reported fracks each year used at least one 3 chemical that the Safe Water Drinking Act recognizes 4 5 as detrimental to human health and the environment. 6 If not for the Halliburton loophole, these projects would have been subject to permitting and monitoring 8 requirements, providing information for local 9 communities about this potential risk. 10 In total, fracking companies reported 11 using 282,000,000 pounds of chemicals that would 12 otherwise be regulated under the Safe Water Drinking 13 Act through 2021. This is likely an underestimate, 14 since the information is self-reported and only covers 15 23 states. 16 It's unconscionable to me that New 17 Mexico would allow chemical disposition of fracked water, we don't know what's in it, and in any 18 circumstance. Until the Federal Government overturns 19 20 the Halliburton rule, which isn't very likely, and 2.1 goes back to supporting the Clean Water Act, we run 22 the risk of killing New Mexicans, wildlife, whole 23 scale ecologies, and our children. We can fix it. 2.4 It's easy. 25 I'm pretty confident when I say that no

1	oil and gas company executive would ever allow these
2	trade secrets to be disposed of in their water supply,
3	put in their glass of water, put in their swimming
4	pool. So why don't the rest of us matter?
5	Members of this Committee need to think
6	about the broader implications to our water supply and
7	insist on disclosure laws requiring full disclosure of
8	all chemicals, including the super-dangerous PFAS
9	being discussed today. Thank you for your time.
10	Protect us. It's your job.
11	THE HEARING OFFICER: Thank you, Ms.
12	Smith. Let me ask if there's anyone else on the
13	platform who is present to offer public comment.
14	Please raise your hand on that platform. I don't see
15	any more hands. All right. Let me make another sweep
16	of the room here. Is there anyone else in the room
17	who is here to offer public comment? There will be
18	lots of other opportunities this week, tomorrow,
19	Thursday, Friday.
20	All right. Let me just get
21	confirmation maybe from Counsel that this would
22	actually be a better time to take a lunch break than
23	to leap into opening statements? Yeah. If we come
24	back at one o'clock, is that enough time to
25	MR. BARRAZA: Hello. Are we does

1	that include those of us who called in?
2	THE HEARING OFFICER: Yes. I hear a
3	voice. Hold on one second. Is this no. Okay.
4	MR. BARRAZA: I called in.
5	THE HEARING OFFICER: So I see yes I
6	see a phone number ending in 7751. Sir, if you would
7	identify yourself, please?
8	MR. BARRAZA: Yes. This is Xavier
9	Barraza. X-A-V-I-E-R, last name's B-A-R-R-A-Z-A.
10	THE HEARING OFFICER: Okay. Thank you
11	for that. Do you swear or affirm to tell the truth?
12	MR. BARRAZA: Absolutely.
13	THE HEARING OFFICER: All right. I'm
14	going to start your three minutes.
15	MR. BARRAZA: Thank you. I'm calling
16	also on behalf of Los Jardines Institute, that's the
17	Gardens Institute here in Albuquerque, New Mexico,
18	which is a historical organization working on issues
19	of environmental and economic issues and injustices.
20	So much has been said, and thank you,
21	Hearing Examiner, and those listening, and those who
22	have spoken. Because I'm not sure what else to say.
23	But what I will say is I did a quick research on the
24	news around PFAS, and I'm just going to these
25	are this is all within the last couple of months.

"PFAS forever chemicals found in South
Florida rain. Over 21 types of PFAS forever chemicals
have been found in South Florida's rainwater." That's
the Sun Sentinel. The Atlanta Journal just in the
last couple of days, "Georgia judge lets forever
chemicals lawsuits over wastewater sludge advance."
Let's keep going, because
there's there's dozens and dozens. The Montpelier,
"Delays costly PFAS solution for wastewater plant," in
this looks like Minnesota. Everyone uses Miracle-Gro.
Well there was PFAS in Miracle-Gro, the lawsuit,
versus Scotts and GreenTechnologies, which just closed
on October 28th, was sued because there was PFAS from
sewage sludge in the Miracle-Gro. So watch your
Miracle-Gro, folks.
"Forever chemicals reach extraordinary
levels in wildlife at Holloman Air Force Base."
Hunters are told not to shoot or kill wildlife near
Holloman Air Force Base in Alamogordo, New Mexico,
because of PFAS. Brown University, "Using personal
care products during and after pregnancy can increase
exposure to toxic PFAS chemicals, especially in people
who are pregnant or lactating." EHN, "Maine has
invested over \$200,000,000 in PFAS litigation,
prioritizing the safety of local foods, while many

other states lag in protections." 1 2 Let's keep going, because there's tons. 3 "Register today for the upcoming virtual Great Lakes PFAS Summit. 1,147 registrants from 46 states are 4 5 gathering to talk about PFAS in the Great Lakes. Let's keep going. "Brunswick Group organizing to do 6 widespread PFAS screening in the wake of a toxic foam 8 spill, because PFAS levels are through the roof in 9 Maine. 10 Let's keep going. "Processors ditching 11 PFAS, " so this is microchip processors, "are ditching 12 PFAS to create PFAS-free products in future microchip 13 processors, because the costs are getting too high to 14 use PFAS, a.k.a. litigation and getting sued, and 15 disclosures. "PFAS chemicals are in young adults and 16 may harm bacteria, leading to reduced kidney 17 function." This is from the Environmental Health 18 Network, published November 7, 2024. 19 Let's keep going. "Banning PFAS 20 forever chemicals in Massachusetts will protect our This is from MASSPIRG, the local news outlet 2.1 health." 22 in Massachusetts who's trying to ban PFAS from drinking water. Let's keep going. "PFAS may affect 23 2.4 kidneys via micro gut biomes and blood metabolites." This is from Medscape, from November 12, 2024. 25

1	THE HEARING OFFICER: Sir. Would you
2	wrap up, please?
3	MR. BARRAZA: Yeah. I could keep
4	going. There's probably about another 42 or so
5	articles I pulled up that involve PFAS in other
6	communities around the nation, really concerned about
7	this issue, so we're not alone. Oil and gas is not
8	the only industry poisoning ourselves, each other,
9	themselves with PFAS. This is a major issue.
10	Ms. Hearing Examiner and others, thank
11	you for your due diligence in not allowing this any
12	further as many other states, and localities, and
13	governments are not, as well. Thank you.
14	THE HEARING OFFICER: Thank you very
15	much. And if you'd like to submit the rest of your
16	comment in writing, we'd be happy to include it as
17	part of the record. Sheila, would you go to that
18	hand, please? Bianca Sopoci-Belknap, I think. Can
19	you hear my voice?
20	MS. SOPOCI-BELKNAP: I can. Can you
21	hear me?
22	THE HEARING OFFICER: Yes. If you
23	would, please state and spell your name for the
24	record.
25	MS. SOPOCI-BELKNAP: I'm actually not
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	1

1	wanting to give public comment. I work for one of the
2	parties that's intervened in this case. But I'm
3	wanting clarification, because it was our
4	understanding that public comment would resume after
5	the lunch break if there are public commenters, and I
6	know of several folks who are planning to comment in
7	the afternoon. So I just wanted to clarify. I heard
8	you talking about going to opening statements after
9	lunch, so
10	THE HEARING OFFICER: Yes. I'm going
11	to keep taking public comment for so long as it is
12	here to be given, and again, there will be lots of
13	opportunities, this afternoon, tomorrow morning,
14	tomorrow afternoon, every morning and every afternoon
15	really. But when I believed that there was no more to
16	be given, I was going to get the jump on a lunch break
17	and opening statements. And now I'm seeing hands
18	again.
19	We do have to take a lunch break. When
20	we come back, if there are folks in the room or on the
21	platform still around to give public comment, I will
22	invite it at that point. All right. Shall we take
23	one more comment, then, from let's see Mary
24	Martinez-White?
25	MS. MARTINEZ-WHITE: Yes. Thank you
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1	very much. Can you hear me?
2	THE HEARING OFFICER: Yes. If you
3	would state and spell your name, please?
4	MS. MARTINEZ-WHITE: Certainly. My
5	name is Mary Martinez-White, and I'm Native Nuevo
6	Mexicana. Thank you to the oil
7	THE HEARING OFFICER: Hold on. Do you
8	swear or affirm to tell the truth?
9	MS. MARTINEZ-WHITE: Yes, I do.
LO	THE HEARING OFFICER: And I'll start
L1	your three minutes.
L2	MS. MARTINEZ-WHITE: Thank you to the
L3	Oil Conservation Commission for your public service
L4	and for taking these comments. I urge you to approve
L5	the application to amend the commissions rules to
L6	address PFAS, case number 23580.
L7	In New Mexico, 80 percent of our water
L8	comes from groundwater. Our cultures and traditions
L9	are intertwined with water, land, and the environment.
20	None of us takes kindly to the abuse of our beloved
21	state of the harming of our children and the
22	degradation of the health in each and every one of us.
23	Mega corporations hide behind trade secrets, and we
24	all know that. Those who refuse to hold them
25	accountable are complicit in the harm caused by profit

at any price.

2.1

2.4

Mexico is not their dumping ground, and we will not be a sacrifice zone to their economic gain. I support a 100 percent ban on any use of PFAS and PFOA in New Mexico or elsewhere, but relative to this meeting I support the prohibition on PFAS and PFOA chemicals in oil and gas operations in New Mexico, and I ask that we require a ban on these chemicals in order to prevent them from contaminating our water and our land.

The question is why would we ever make anything that would be a forever problem? PFAS is linked to kidney cancer, testicular cancer, thyroid disease, high cholesterol, preeclampsia, and ulcerative colitis. These forever chemicals accumulate in our land, in our water, and in our bodies. Our children deserve to be protected from this dangerous exposure.

Exposure to toxic chemicals like PFAS and PFOA are a serious public health risk and cancers are increasing in our children because of increased exposure compared with previous generations. PFAS and PFOA fluids can migrate to rivers and aquifers. OCC must prohibit PFAS in oil and gas operations because

1	without a prohibition there's no guarantee that
2	contamination of our drinking water will not occur.
3	Because more than 3,600 New Mexico
4	wells have already been contaminated, the harm is
5	already being done. To stem the tide, the OCC should,
6	at a minimum, set rules in place governing oil and gas
7	drilling to prevent these contaminations. Requiring
8	those disclosure requirements does not make us safe,
9	but disclosure is a minimal step in the right
10	direction.
11	Again thank you for the opportunity to
12	provide comment, and we ask you to be guardians of our
13	wellbeing by passing a prohibition of the use of PFAS
14	and PFOA chemicals in oil and gas operations.
15	THE HEARING OFFICER: Thank you, Ms.
16	White. We'll take one more comment. I see a hand,
17	NS. Let's see. Nancy Singham?
18	MS. SINGHAM: That's me.
19	THE HEARING OFFICER: Hello. If you
20	would state and spell your name of the record?
21	MS. SINGHAM: Nancy Singham. It's
22	spelled N-A-N-C-Y. Singham is S as in Sam,
23	I-N-G-H-A-M.
24	THE HEARING OFFICER: Do you swear or
25	affirm to tell the truth?

1	MS. SINGHAM: I do.
2	THE HEARING OFFICER: Thank you. I'll
3	start your three minutes.
4	MS. SINGHAM: Thank you, Commissioners.
5	I'm a retired kindergarten teacher, I'm 75 years old,
6	and yet I have a very vivid memory of two small events
7	from my childhood I'd like to share.
8	One must have dated from about 1957 or
9	so. I was standing next to my dad in our plot at the
LO	neighborhood garden as he was dusting his garden with
L1	a hand-cranked metal cannister duster, which certainly
L2	contained DDT to kill insect pests. By the way, the
L3	products from this era carried tradenames from their
L4	oil company manufacturers such as, I looked it up,
L5	"Shell Tox Aerosol," and "Standard Oil Aerosol Insect
L6	Killer."
L7	A few short years later, maybe 1962 or
L8	1963, I distinctly remember my mom, who was an avid
L9	bird watcher, telling me about a shocking new book she
20	was reading by a scientist named Rachel Carson, about
21	how the chemical DDT was causing eagle eggs to crack
22	and species numbers to plummet.
23	Now the point of these reminiscences is
24	this: Through my entire lifetime, we have been
25	affected by multiple examples of products and

1	processes launched for profit with deceptive and false
2	promises, without testing or without concern for the
3	health impacts on people, air, water, and land,
4	leaving us, the victims, to belatedly resist in
5	hearings such as this one.
6	Jumping to the present, knowing as I do
7	that New Mexico has already allocated every drop of
8	water available, I took note of a recent article
9	referencing a major study in the respected journal,
10	"Science." It's the with the headline, "Millions
11	of People in Lower 48 States May Be Relying on PFAS
12	Contaminated Groundwater for Drinking."
13	This is a really long, complicated
14	study that appeared in Science Magazine, October 24th
15	of this year, so I urge you to have a look at it.
16	They studied both deeper community wells as well as
17	shallower private wells used for drinking water, where
18	their models results indicated that 71 to 95 million
19	people in the United States potentially rely on
20	groundwater with detectible concentrations of PFAS for
21	their drinking water supplies.
22	And they also listed, in great detail,
23	24 they were looking for 24 different PFAS type
24	products, and looking for sources. And their sources
25	included airports, plastic and resin manufacturing

1	plants, oil and gas extraction sites, refineries,
2	power plants, mining operations, fire training areas,
3	national defense sites, and at least a dozen more.
4	The danger of drinking water
5	contamination by PFAS use in oil and gas drilling is
6	real. We need to learn from history before it's too
7	late. So I support a prohibition on PFAS and PFOA in
8	oil and gas operations and a requirement to disclose
9	chemicals used in these operations. Thank you very
10	much.
11	THE HEARING OFFICER: Thank you, Ms.
12	Singham. I will one more, and if anyone else is on
13	the platform wishing to offer public comment, I'll
14	invite you to rejoin us at 1:15. But for right now,
15	we're going to hear from Ryan Tate. Ryan Tate?
16	MR. TATE: Hi, how are you doing?
17	Sorry about that.
18	THE HEARING OFFICER: Hello. Hi.
19	That's all right.
20	MR. TATE: Hi.
21	THE HEARING OFFICER: If you would
22	state and spell your name, please?
23	MR. TATE: Of course I can. It's going
24	to be R-Y-A-N T-A-T-E.
25	THE HEARING OFFICER: Thank you. And
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1	do you swear or affirm to tell the truth?
2	MR. TATE: Yes, I do.
3	THE HEARING OFFICER: All right. I'll
4	start your three minutes.
5	MR. TATE: Wonderful. Thank you very
6	much. So my full title is Reverend Ryan Tate, and I
7	am actually the youth minister at First Congregational
8	United Church of Christ. I am also the head pastor at
9	the First Spiritual Church of the Rio Grande in
10	Albuquerque, New Mexico.
11	Now environmental contamination is a
12	violation of land autonomy. We walk on the soft
13	dirt-laden belly of a family member, the mother of us
14	all separable or your destiny is separate from her.
15	When speaking of PFAS, I believe we must ask ourselves
16	if we would consent to the unregulated disposal of
17	these forever chemicals into our very own bodies.
18	Would we allow our own government officials and
19	corporate overseers to hook us up to an IV filled with
20	these carcinogenic mutagens as we helplessly watch on?
21	We live in a country with a tenuous
22	grasp of bodily autonomy and dissonant understandings
23	of ownership and possession. We see it play out in
24	how we treat our most vulnerable and how we treat the
25	earth. Would you allow your own mother to be forced

1	to take the IV of these PFAS on behalf of the few?
2	Would you at least want her to speak or give her the
3	chance to do so?
4	In the scenario we're entertaining, an
5	earth without autonomy, we would not listen to her
6	cries, we would ignore her plight, and instead subject
7	the earth and our mothers, and all living things, to
8	the dangers of PFAS. These are particularly nefarious
9	when entering our waterways in an already ecologically
10	vulnerable environment which is the Southwest.
11	Water is life and water is the gateway
12	that links our past, present, and future. Our
13	children will drink the poison of our actions if we do
14	not act now. It is a spiritual imperative that we
15	take care of one another, as well as all living
16	beings.
17	That means stricter environmental
18	regulations for forever chemicals and other
19	long-lasting contaminants, and for the companies,
20	corporations, and government entities that produce
21	them, as well. And that is the end of my statement.
22	THE HEARING OFFICER: Thank you very
23	much, Reverend Tate. Great.
24	MR. TATE: Thank you. Have a good day.
25	THE HEARING OFFICER: Thank you. We
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1	are going to break for lunch now. We'll return at
2	1:15. If there is more public comment to be given, we
3	will take it. Otherwise, we will move to opening
4	statements. Thank you all.
5	(Off the record.)
6	THE HEARING OFFICER: Let's come back
7	from the lunch break, please. All right. We broke
8	from lunch. We are back now. First let me ask in the
9	room, is there anyone here who would like to offer a
10	public comment who has not already commented? No.
11	All right. Is there anyone on the platform who would
12	like to offer public comment who has not already
13	commented? Please raise your hand. I see AR. And
14	this is Anna Rondon?
15	MS. RONDON: Yes.
16	THE HEARING OFFICER: Would you state
17	and spell your name, please?
18	MS. RONDON: I'm Anna Rondon, A-N-N-A
19	R-O-N-D-O-N.
20	THE HEARING OFFICER: Thank you. Do
21	you swear or affirm to tell the truth?
22	MS. RONDON: Yes, I do.
23	THE HEARING OFFICER: All right. I
24	will start your three minutes.
25	MS. RONDON: Thank you. Dear Members
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1	of the New Mexico Oil and Gas Commission, my name is
2	Anna Rondon and I stand before you as an indigenous
3	woman, Navajo woman, deeply committed to protection
4	and wellbeing of our communities. I am here to urge
5	the full disclosure of PFAS contents in our water
6	sources, and to highlight the critical need for
7	transparency and accountability.
8	Throughout history, and in particularly
9	United States history, there has been significant and
10	tragic incidents where industries have withheld
11	crucial information from the public resulting in
12	severe health consequences. The tobacco industry's
13	failure to disclose the addictive chemicals in
14	cigarettes stands as a stark reminder of devastating
15	impacts that a lack of transparency can have.
16	Despite clear evidence of the harm, the
17	tobacco industry chose profit over people's lives,
18	leading to the widespread addiction, illness, and
19	death. The people won major lawsuits with this
20	industry, and any industry that has posed damage and
21	harm to our people should have lawsuits filed.
22	We now face a similar threat with PFAS,
23	often referred to as forever chemicals, due to their
24	persistence in their environment and the body. PFAS
25	contamination has been linked to numerous health

	issues, including cancer, liver damage, and
2	developmental problems. As these chemicals infiltrate
3	our water supplies, the health and safety of New
4	Mexico residents are at risk.
5	It is imperative that New Mexico's Oil
6	and Gas Commissioners take decisive action to protect
7	its citizens. We demand full disclosure of PFAS on
8	tainting our water sources. The public has a right to
9	know what's in their water, and transparency is the
10	first step towards addressing and mitigating this
11	serious issue. The parallels between the tobacco
12	industry's past actions and the current situation with
13	PFAS are very clear. Both involve the concealment of
14	dangerous substances and their resulting harm to the
15	public health.
16	As an indigenous woman, a Kin Ya'aanii
17	Clan woman, I am acutely aware of the profound
18	connection between communities and the land and water
19	that sustains us. We have a responsibility to
20	safeguard these resources for future generations, and
21	we must be protected from the effects of PFAS. I urge
22	the New Mexico Oil and Gas Commissioners, I plead with
23	you, to prioritize transparency, accountability, and
24	public health.
25	Let us not repeat the mistakes of the
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1	past. Full disclosure of PFAS contents is not just a
2	necessity, it's a moral imperative. Thank you for
3	your attention and the commitment in the oath that you
4	took as Commissioners to stand for the citizens of New
5	Mexico. In beauty it shall be. Ahehee. Thank you.
6	THE HEARING OFFICER: Thank you, Ms.
7	Rondon. Is there anyone else on the platform who
8	would like to offer a public comment now? There will
9	be more opportunities tomorrow, Thursday, and Friday.
10	I don't see Sue Schuurman?
11	MS. SCHUURMAN: Can you hear me?
12	THE HEARING OFFICER: Yes. Would you
13	state and spell your name for the record, please?
14	MS. SCHUURMAN: Sure. Thank you very
15	much. My first name is Susan, S-U-S-A-N, and my last
16	name is Schuurman, S-C-H-U-U-R-M-A-N.
17	THE HEARING OFFICER: Do you swear or
18	affirm to tell the truth?
19	MS. SCHUURMAN: Yes, I do.
20	THE HEARING OFFICER: I'll start your
21	three minutes.
22	MS. SCHUURMAN: Sure. Thank you very
23	much. I just have a very brief statement. I would
24	like to urge the OCC to take the reasonable step to
25	require companies to disclose what chemicals are in
	Da 120
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1	the drilling fluid, because the health of workers and
2	everyone who drinks water is at risk. PFAS is just
3	too dangerous in tiny amounts not to take this
4	protective action. Thank you very much.
5	THE HEARING OFFICER: Thank you very
6	much. Anyone else on the platform interested in
7	offering public comment at this time? All right. In
8	that case, we are going to turn to the technical case,
9	consistent with the public notice of this matter.
10	And Sheila, before I forget, if you
11	would please, if someone else gets on the platform and
12	asks when they might be able to make public comment,
13	please tell them I won't invite it again until after
14	the first technical witness, and if they want a more
15	time certain, they can join us at 8:30 tomorrow
16	morning.
17	MS. APODACA: Okay. Thank you.
18	THE HEARING OFFICER: All right. So we
19	have five six parties, excuse me, with EOG, and
20	each party is allotted 20 minutes for an opening
21	statement. You may make your opening statement right
22	now or you may reserve it. Certainly, I think NEE's
23	going to reserve, as I don't believe they're with us
24	right now. Mr. Davis, would you like to start?
25	MR. DAVIS: I would. Thank you, Madam
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1	Hearing Officer. Good afternoon, Commissioners. My
2	name is Tim Davis. I represent WildEarth Guardians.
3	And the petition that you accepted asked a very simple
4	question of you. It asked you to ban the use of PFAS
5	substances in downhole operations, and then it
6	requests full disclosure of all chemicals that are
7	used in downhole operations in order to enforce that
8	ban.
9	And if we don't know the chemicals that
10	are going down hole, then we can't be certain that
11	those chemicals are not PFAS. This proposed rule is
12	rooted in the fact that PFAS poses a serious public
13	health threat and an environmental threat. It also
14	recognizes that as the law currently stands,
15	regulators do not know all chemicals that are being
16	used in downhole operations, and neither does the
17	public.
18	It is important to note that Guardians'
19	proposed rule does not require the disclosure of trade
20	secret chemicals. It simply prohibits the use of
21	undisclosed chemicals. So in other words, it puts a
22	choice to the holder of the trade secret. They can
23	either disclose it and use it or they can keep it as
24	undisclosed but not use it in New Mexico.
25	The oil and gas industry is currently

1	disclosing a significant amount of chemical
2	information per the regulations that we have right
3	now, and they're disclosing that on the FracFocus
4	database. And in an op-ed that NMOGA submitted on
5	Saturday to the Santa Fe New Mexican, they recognized
6	the fact that they're already disclosing chemicals in
7	the FracFocus database. But in this same op-ed, NMOGA
8	misrepresents the law and misleads the public into
9	believing that all chemicals are disclosed,
10	conveniently leaving out that current disclosures
11	include chemicals whose names and chemical abstract
12	numbers are withheld as proprietary.
13	Obviously if there was already a
14	requirement for full chemical disclosure in New
15	Mexico, like there is in California and Colorado, we
16	wouldn't be here today asking you to require it. In
17	order to carry out our proposed provisions to ban PFAS
18	and undisclosed chemicals in downhole operations,
19	we've also included proposed changes to the
20	definitions and adopted proposed redlines from OCD
21	that are related to testing for groundwater
22	contamination, and we've also included proposed
23	community notification provisions.
24	And again I'd like to make clear that
25	Guardians' request is to ban PFAS and undisclosed

1	chemicals in all downhole operations. And my
2	experience with these rulemaking hearings is that I
3	often learn during the course of the hearing. And so
4	acknowledging that, I'd also request that Guardians
5	has an opportunity to present a final proposed redline
6	rule to the commission to ensure that our proposed
7	redline does carry out our intent here, which is to
8	ban all PFAS in downhole operations and ban all
9	undisclosed chemicals in downhole operations.
LO	So I'd like to briefly just state that
L1	you have statutory authority to adopt our proposed
L2	regulation, and that is in the rulemaking provisions
L3	powers that you're given under 70-2-12(B)(15) relating
L4	to the regulation of produced water, as well as
L5	subsections 21 and 22 related to the regulation of
L6	nondomestic waste.
L7	You will hear from three technical
L8	witnesses from Guardians. First, you'll hear from
L9	Dusty Horwitt, and Mr. Horwitt is in the hearing room
20	with us today. He's a lawyer and the author of seven
21	reports related to the use of PFAS and loopholes which
22	prevent full disclosure of chemicals used in oil
23	operations, including a report focused on New Mexico.
24	His testimony draws on his reports and
25	his research to explain that the use of PFAS has

1	already been disclosed by oil and gas operators in New
2	Mexico, gaps exist in our chemical disclosure
3	reporting requirements, and that these gaps prevent
4	regulators and the public from knowing all chemicals
5	that are used in oil and gas downhole operations,
6	including ones that may not start off as PFAS but
7	could break down into PFAS. Mr. Horwitt's testimony
8	further explains that other states have closed similar
9	data gaps.
10	You will also hear from Professor John
11	Speer. He's a professor of civil and environmental
12	engineering at the Colorado School of Mines, and his
13	specialty is subsurface environmental microbiology.
14	His testimony explains that oil and gas wells will
15	eventually leak at some point, and this is due to
16	microbial-induced corrosivity, seismicity, or a
17	combination of those two factors, and that this
18	requires indefinite retention of the disclosed
19	chemical information.
20	Dr. Speer also explains that the
21	subsurface is alive and is an ecosystem itself, and
22	that should also be protected from PFAS and
23	undisclosed chemicals. We should at least know what
24	we are putting down hole. His testimony further shows
25	that chemicals used in downhole operations can spread

1	through fate and transport processes, and that deep
2	strata can and do communicate with shallower strata.
3	Dr. Speer will also appear in person.
4	Next you will hear from Dr. David
5	Brown. He's a public health toxicologist. He has
6	extensive experience working on public health issues
7	affecting communities in the Marcellus Shale oil and
8	gas fields, and has co-led several studies of oil and
9	gas impacts on communities at the Southwest
LO	Pennsylvania Environmental Health Project.
L1	Dr. Brown's testimony focuses on the
L2	toxicity of PFAS, the need for complete chemical
L3	disclosure from a public health standpoint, and the
L 4	public health lessons learned from the Marcellus
L5	Shale. Dr. Brown will appear on the Microsoft Teams
L6	platform.
L7	We also have one fact witness. That is
L8	Melissa Troutman. Ms. Troutman is the climate and
L9	energy advocate with WildEarth Guardians, where she
20	works with communities and individuals impacted by oil
21	and gas spills and emissions. Her testimony is a
22	compilation of state held data. This data comes from
23	OCD databases and acknowledges that fluid spills can
24	and do happen, and at times these spills affect our
25	freshwater resources.

1	Because fluid spills can contain
2	contaminant used in downhole operations and are a
3	potential pathway to exposure, Guardians submitted Ms.
4	Troutman's testimony to make sure this state data is
5	part of the record in this proceeding. Mr. Troutman
6	also references an NED webpage, where the Environment
7	Department acknowledges that 78 percent of us get our
8	drinking water, in New Mexico, from groundwater
9	sources.
10	Because the overwhelming majority of
11	New Mexicans get our drinking water from groundwater,
12	we should know the universe of potential contaminants
13	when a spill occurs or when the integrity of a well is
14	in question. Also note that WildEarth Guardians
15	exhibit 7 is the New Mexico Bureau of Geology and
16	Mineral Resources report entitled "Climate Change in
17	New Mexico Over the Next 50 Years Impacts on Water
18	Resources." As the report acknowledges, our
19	freshwater resources are only going to become more
20	scarce through climate change.
21	I'd like to briefly talk about the fact
22	that what we're asking for is already law in
23	California and Colorado. California and Colorado both
24	require full chemical disclosure in the oil field
25	without regard to trade secrets. Those laws are

1	WildEarth Guardians exhibits 4 and 5, and just like
2	the proposed rule, require full disclosure.
3	This means that each individual
4	chemical in a chemical product that's used in
5	California and also in Colorado must be disclosed.
6	And if that same chemical product is used in New
7	Mexico, it does not have to be disclosed. In New
8	Mexico, those chemicals could be claimed as
9	proprietary, and this rule seeks to change that. We
10	ask that New Mexicans are afforded the same
11	protections and access to chemical safety data that
12	Californians and Coloradans already have.
13	I'd like to touch briefly again about
14	the op-ed that was published on Saturday by NMOGA,
15	just to clear up what I think is something that is
16	probably misleading. The op-ed stated that "the
17	industry is already required by law to report their
18	chemical usage and ensure that PFAS are not
19	intentionally utilized while protecting proprietary
20	information and trade secrets, to keep American
21	companies competitive." There is no PFAS ban in New
22	Mexico. There is no requirement for full chemical
23	disclosure in New Mexico.
24	As I think some of the commenters
25	pointed out this morning, before the governor was

1	elected, she made a promise, and that campaign promise
2	was that as governor she would "require the mandatory
3	disclosure of what chemicals are used in hydraulic
4	fracturing to better protect groundwater." That was
5	in 2018, released during her gubernatorial campaign.
6	And this proposed rule is aligned with that campaign
7	promise. And it's an opportunity to further
8	groundwater protections in New Mexico.
9	Next I'd like to just address some of
10	the arguments that NMOGA made in their prehearing

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the arguments that NMOGA made in their prehearing statement. First there is an argument that Guardians is seeking to somehow conflate produced water with nondomestic waste or change the definition of produced water. We are not doing that. If wanted to do that, we would have included a change in those definitions in our redline. So I just want to make clear that that is not what we're trying to do, and I don't think we need to spend any time on that at this hearing.

Second, one of NMOGA's witnesses alleges that full chemical disclosure could cause something called "chemophobia." That's a type of anxiety among communities in areas of oil and gas extraction. Interestingly, however, NMOGA does not argue that chemophobia already exists. After all, partial disclosure is already happening on FracFocus.

It's hard to understand how full chemical disclosure
would be so much scarier than partial disclosure or
how it would somehow lead to an epidemic of anxiety.
The bottom line is the public should
have a right to know what chemicals they are
potentially exposed to so they can make the best
decisions for themselves, their healthcare providers
should have access to that data, and that would help
with diagnosis and treatment of ailments, which many
peer reviewed studies have confirmed do increase with
close proximity to oil and gas operations.
First responders should know chemicals
they and patients are exposed to emergent situations.
Researchers should are know chemicals they are looking
for in characterization efforts or studies of
subterranean ecosystems. And last, but certainly not
least, the regulators should know the universe of
chemicals present at a spill site, or when there is a
well blowout, or when a mechanical integrity issue is
present. This would make cleanup and remediation more
thorough and less expensive.
In short the industry is saying, "Trust
us, but not the public," a public that includes
professionals across many fields: Doctors, emergency
personnel, academic researchers, not to mention

1	mothers, fathers, elders, children, oil field workers
2	and their families. We believe that trust requires
3	transparency and accountability, and this is what New
4	Mexicans deserve.
5	Next I'd like to talk about the
6	definition of PFAS. NMOGA points out that six states
7	use the PFAS definition proposed by their experts,
8	assert that this definition is appropriate because it
9	covers PFAS that we already know has been used in oil
10	and gas. What they failed to say is that 23 states
11	use Guardians' proposed definition, and that includes
12	the Colorado PFAS Ban and Disclosure Law. WildEarth
13	Guardians' Exhibit 8 compiles all these definitions
14	from these 23 states.
15	NMOGA also does not acknowledge that we
16	only know certain PFAS have been used in oil and gas
17	because those are the ones that have been disclosed.
18	Without full chemical disclosure, we simply do not
19	know what has been used, and there is no restriction
20	on what could be used in the future.
21	The Uniform Trade Secrets Act is not a
22	barrier to promulgating the proposed rule. We would
23	request the opportunity to brief this issue for the
24	commission. I think this is a very important issue
25	and I'm going to briefly touch on it, but I would

1	really like to be able to provide something in
2	writing.
3	The Uniform Trade Secrets Act does not
4	prohibit disclosure of trade secrets. It provides a
5	cause of action for "the misappropriation of a trade
6	secret," and it provides that you can sue for damages
7	and/or injunctive relief. "Misappropriate" is defined
8	in the statue, but the bottom line is that disclosure
9	by the holder of the trade secret is not
10	misappropriation.
11	The proposed rule does not require
12	disclosure of trade secrets. It does not, however,
13	also prevent a trade secret holder from voluntarily
14	disclosing. If a trade secret holder will not
15	disclose the trade secret, the rule simply says, "Well
16	then you cannot use that in New Mexico," but it is a
17	decision for the holder of the trade secret to make.
18	By the way, Colorado also has passed
19	the Uniform Trade Secrets Act, and they require full
20	disclosure. Quite simply, the proposed rule does not
21	"nullify" the protections of the Uniform Trade Secrets
22	Act as alleged by NMOGA.
23	The Commission has independent
24	authority to regulate produced water and nondomestic
25	waste, and protect human health and the environment,

1	and it can exercise that authority to ban the use of
2	PFAS and undisclosed chemicals, and it can leave the
3	decision of whether to disclose chemical identifies to
4	the holder of the trade secret. When a trade secret
5	holder discloses, it is not misappropriation under the
6	Act.
7	Additionally the disclosure of a
8	chemical identify is like disclosing the ingredient to
9	a recipe. We are not asking for disclosure of
10	recipes. We're asking for disclosure of ingredients.
11	It's notable that NMOGA acknowledges the trade secrets
12	definition in the Uniform Act protects formulas, but
13	it applies that definition to fracking constituents,
14	and that's on page 20 of the prehearing statement.
15	NMOGA then characterizes the choice to
16	disclose as a Hobson choice, but it fails to
17	acknowledge that the entities benefitting from the
18	choice to disclose doctors, researchers, government
19	agencies, elected officials, emergency medical
20	professionals, teachers, mothers, elders, et
21	cetera they fail to acknowledge that a chemical
22	identify is not a trade secret.
23	And if you read the Colorado and
24	California acts, you'll see that that's what they've
25	done in those states. They say in those laws that

Τ	chemical abstract service numbers are not trade
2	secrets. Formulas are. Ingredients are not.
3	In order to properly communicate the
4	risks associated with injecting toxic chemicals
5	underground at high pressure, especially in
6	earthquake-prone areas, as well as risks associated
7	with routine spills that can contain chemicals,
8	community notification of what chemicals are involved
9	is necessary. In our petition we have proposed
10	specific community stakeholders that should receive
11	such communications, and there are no restrictions on
12	how this communication can be delivered. I'd also
13	like to point out that it tracts the Colorado law that
14	their legislature passed.
15	That brings me to my last point about
16	NMOGA's prehearing statement. While we agree that OCD
17	and OCC have very limited jurisdiction to regulate to
18	protect the environment and public health, for
L9	example, it cannot consider environmental impacts in
20	permitting new wells; however, this Commission can
21	regulate produced water and nondomestic waste for the
22	protection of the environment and the public health.
23	That's the only place that those words appear in the
24	Oil and Gas Act.
24 25	Oil and Gas Act. NMOGA argues that the commission has no

1	jurisdiction to regulate the "generation of produced
2	water and nondomestic waste," because the word
3	"generation" does not appear in the Oil and Gas Act;
4	however, in order to properly regulate produced water
5	and nondomestic waste, OCD needs to know what
6	constituents may be added in drilling, fracking, and
7	other downhole operations. Chemical disclosure is
8	needed to do this.
9	Additionally once chemicals are
10	disclosed, the commission and Division can regulate
11	the disposition of a toxic constituent by banning it
12	in the first place. In other words, the power to
13	regulate what constituents might be added to produced
14	water and nondomestic waste is inherent in its power
15	to regulate the disposition of produced water and
16	nondomestic waste.
17	As an example, OCD has authority to
18	regulate the disposition of waste contained in the Pit

regulate the disposition of waste contained in the Pit Rule. OCD has many rules governing that waste, including regulations about specific constituents. For instance, OCD is regulate the amount of chloride in waste that oil and gas operators want to bury. The Pit Rule requires operators to fill out form C144 detailing the well information, the API number, the OCD permit number, well location, and the amount of

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1	chloride in the waste stream.
2	And it also requires an oil field waste
3	stream characterization of waste streams to be
4	permanently buried. If OCD has the authority to
5	regulate chloride in wastes, it also has the authority
6	to regulate other constituents in oil and gas wastes,
7	like PFAS.
8	So in conclusion, again, Guardians is
9	asking you to ban PFAS and undisclosed chemicals in
LO	downhole operations. We request an opportunity to
11	submit a final redline proposed rule after the
12	hearing. And if the industry has transitioned away
13	from using PFAS, then they should disclose all
14	chemicals used in downhole operations to show that.
15	If we don't ban PFAS now, nothing prevents its use in
16	the future. Thank you.
17	THE HEARING OFFICER: Thank you, Mr.
18	Davis. We don't have NEE with us today, so they will
19	necessarily be reserving their opening statement. Let
20	me ask the division. Mr. Tremaine, would you like to
21	do it now or later?
22	MR. TREMAINE: Yes, I'll proceed now.
23	Thank you.
24	THE HEARING OFFICER: All right. Thank
25	you.

1	MR. TREMAINE: Good morning, or
2	afternoon at this point, pardon me, Madam Hearing
3	Examiner, and Mr. Chair, and the commission, and the
4	public. I want to start by thanking the parties and
5	the commission. At the time of the first petition in
6	this matter, the proposal looked remarkably different
7	than it does today, and at that time that was a
8	proposal that OCD could not support.
9	OCD requested time to secure expert
10	services and engage in stakeholder discussions, and I
11	want to highlight, before we start this process, that
12	both the petitioner, WildEarth Guardians, and the
13	regulating community engaged in discussions with OCD
14	to find the appropriate way to make the core elements
15	of this petition work. In particular, the petitioner
16	worked with OCD and ultimately proposed a quite

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I also want to thank the public commenters and observers for their participation and thank everyone in advance for their patience and understanding. We're halfway through the first day of a four-day hearing on extremely technical issues, which we are necessarily discussing in the framework of a discrete and very limited statutory authority. Some of the issues raised generally in the public

substantial revision to the original proposal.

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1	comment cannot be addressed by this motion. But we
2	are here, particularly the division is here, to work
3	through this very complicated and sensitive topic to
4	address it in a most equitable way possible in the
5	context on oil and gas development and production.
6	The purpose, in my mind, of this
7	rulemaking is in large part to address the specific
8	potential use of PFAS that is not addressed as part of
9	the larger PFAS problem from other sources.
LO	Ultimately we arrive at a proposal that includes a ban
L1	on the use of PFAS in completion activities, requires
L2	certification that qualifying PFAS were not used by
L3	operators, creates a reporting and disclosure
L4	requirement to the OCD in the event of potential
L5	contamination, and trigger necessary investigations
L6	and remediation under existing Commission rules.
L7	During the course of this hearing, we
L8	will be putting forward the testimony of three
L9	witnesses, Dr. Court Sandau and Dr. Erik Martin.
20	We'll respectively address the chemistry and
21	toxicology of PFAS, the foundation for the division's
22	proposed rule definition of PFAS, and the rule and
23	limits of PFAS testing methodologies. And then Mr.
24	Brandon Powell, Deputy Director of the OCD, will
25	provide testimony to explain the remaining structure

1	of OCD's proposal and the reasons why OCD is
2	recommending changes to the latest petition to allow
3	that, to allow the core elements of this petition to
4	work within the existing statutory framework and
5	resource limitations of the Oil Conservation Division.
6	At the end of this hearing we believe
7	that the record will show that PFAS chemicals as
8	proposed to be defined by OCD warrant regulation as to
9	their use in oil and gas due to the consensus that at
LO	least some of the chemicals are harmful to human
L1	health in reliance on industry representation that
L2	PFAS are not currently used, it is not necessary for
_3	use in completions operations, and the prohibition on
_4	their use achieves the goals of protecting public
L5	health and the environment without harming industry.
L6	The scope of the definition in our
L7	proposal is appropriate regardless of history or
-8	current use of PFAS, as chemicals falling under the
_9	proposed definition have the potential for future use,
20	so this prohibition on their use and structure
21	proposed by the division is forward-looking. We
22	believe that the record will show that there are
23	possible pathways from completion liquids to
24	groundwater, so the proposal is warranted and
25	addresses a real if potential or debated to its extent

problem.

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We do expect extensive debate and disagreement on a periphery of terms, or at least the most robustly stated conclusions, but I believe that the record should fairly review a consensus on those core issues, that PFAS can be harmful to human health, the use of PFAS in oil and gas completions activities creates at least a potential pathway of exposure to humans, that prohibiting use in completions will not materially detriment oil and gas operations, and that oil and gas operations may proceed in the future effectively without the use of PFAS.

I would like to clarify a few things that we do not believe will be shown in the record and that the division disagrees with. Full public disclosures of proprietary information are not supported by the OCD at this time in observance of the Uniform Trade Secrets Act. OCD does not take a position on the voracity of such of a public policy, but this, we believe, would necessitate a legislative update.

In addition to the Uniform Trade

Secrets Act, one statute of particular concern to the division is that trade secrets within the possession of the division, if held and marked, identified as

trade secrets, are accepted from the Inspection of Public Records Act.

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There is a potential that PFAS could be addressed as part of a Groundwater Discharge Permit under Water Quality Act; however, that's a very small component of OCD's purview, and we believe that the current structure of the petition as we proposed anticipates OCD addressing any such impacts under part 29 or 30, which are promulgated under the authority of the Oil and Gas Act. So as stated earlier, in reference to Counsel's statements, we do not believe that the bulk of the proposal is going to fall under the exception, as stated -- as referenced in the other statute.

OCD's proposal does not contemplate a definition inclusive of all possible PFAS chemicals, and there's a very practical reason for this, that until OCD is able to test or order testing to verify for any particular chemical, OCD cannot possibly enforce prohibition. So if there is a rule promulgated that prohibits the use of an expansive list of potentially thousands of chemical compounds, OCD will have no means or ability until testing methodologies are updated to actually verify the existence or the amounts of those chemical compounds.

1 And so you will see, as we work through the division's 2 proposal, that we have identified a definition of PFAS generally that is more broad than that proposed in the 3 redline from NMOGA but is limited to existing and 4 5 future updates to testing methodologies. 6 There are number of things that this 7 rule -- that this hearing will not address, which is 8 that it will not change the way that the division 9 addresses releases or groundwater abatement once those It will not address potential surface uses of 10 11 PFAS, and it does not address air quality or PFAS from 12 non-oil and gas sources. 13 In terms of the other party proposals, OCD does not support a ban on the use of all 14 15 proprietary chemicals. This relates to the Uniform 16 Trade Secret Act, but also, as will be explained, 17 there are numerous other proprietary or trade secret compounds that we do not believe will be supported by 18 19 the record necessary to support a ban that have 20 nothing to do with PFAS. So essentially this proposal 2.1 of banning the use of anything that's listed as 22 proprietary would ban the use of chemicals that we're 23 not talking about during this hearing from a 2.4 perspective of human health impacts.

OCD does not concede NMOGA's generation

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1	versus disposition argument. There is a legal
2	distinction to debate there, but within the context of
3	this petition's language, I don't see a difference in
4	effect, and I'm hoping, I do not believe that this
5	needs to be litigated, simply clarified in terms of
6	discussing the petition.
7	Further, OCD cannot support proposed
8	language that elevates the requisite intent of
9	operators to an unreasonable degree. Essentially
10	operators must be held responsible for additives in
11	completions fluids. This is an important distinction
12	because OCD's authority does not extend to, for
13	instance, chemical manufacturers outside of the oil
14	and gas industry.
15	So to effectively regulate PFAS,
15 16	So to effectively regulate PFAS, operators must be held responsible for additives that
16	operators must be held responsible for additives that
16 17	operators must be held responsible for additives that are included by manufacturers and used by the
16 17 18	operators must be held responsible for additives that are included by manufacturers and used by the operator, whether or not the operator at the time took
16 17 18 19	operators must be held responsible for additives that are included by manufacturers and used by the operator, whether or not the operator at the time took the necessary steps to know of their use, so
16 17 18 19 20	operators must be held responsible for additives that are included by manufacturers and used by the operator, whether or not the operator at the time took the necessary steps to know of their use, so essentially creating an impetus for operators to
16 17 18 19 20 21	operators must be held responsible for additives that are included by manufacturers and used by the operator, whether or not the operator at the time took the necessary steps to know of their use, so essentially creating an impetus for operators to require that information so that that they know
16 17 18 19 20 21 22	operators must be held responsible for additives that are included by manufacturers and used by the operator, whether or not the operator at the time took the necessary steps to know of their use, so essentially creating an impetus for operators to require that information so that that they know exactly what they are certifying that they are not
16 17 18 19 20 21 22 23	operators must be held responsible for additives that are included by manufacturers and used by the operator, whether or not the operator at the time took the necessary steps to know of their use, so essentially creating an impetus for operators to require that information so that that they know exactly what they are certifying that they are not using.

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any completion act additive. Now the nuance here, the flip side of this, is that it is not OCD's intent to hold operators accountable for PFAS contamination that originates from sources outside of oil and gas, and that is a very complicated proposition potentially.

I think it will become necessary during this hearing to clarify the rules proposed coverage of -- potential coverage of drilling fluids, which we will address, and I will notice separately through rebuttal testimony from Mr. Powell. I think that this contemplates the necessary modifications to sections of the rule, to different sections of the rule. Depending on exactly how it's proposed for a PFAS ban to address using drilling fluids, we will need to clarify that the structure is appropriately noticed in appropriate outgrowth of the current petition.

Additionally there are other safeguards related to the drilling processes, drilling fluids, and materials that are used, that Mr. Powell is able to explain. So drilling fluids, and references, and WildEarth Guardians' testimony to downhole operations was not really contemplated by OCD in review of the revised petition due to the use of completions and recompletions language, but I think it's something that we're going to need to talk about as we move

through the hearing. We will continue to work with
the parties during this hearing to address those
concerns and ultimately it's OCD's understanding that
fluids used while drilling through freshwater zones
are already limited under OCD rule and practice, which
we can address at a later time

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So ultimately when you look at the division's redline, OCD proposes a definition of PFAS that will automatically grow with the scientific consensus and testing methods available, which will allow OCD to actually and effectively enforce the We do support if the petition does support a triggered reporting mechanism, where complete information is disclosed to OCD, so in the event of, like, a loss of containment from a casing failure, for instance, full chemical disclosures will be required under our proposal to the OCD. So that's the line we're drawing, where we don't believe that there's authority to require that disclosure publicly -- that has to be a legislative mandate -- but in terms of effective enforcement, we do believe that that information in specific circumstances can and should be held by the division absent a legislative amendment. We believe OCD's authority allows us to require that disclosure.

1	Further as a rulemaking petition rather
2	than a legislative proposal, it's imperative that the
3	commission adopt a version of the rule that's
4	effective, given the existing statutory authority and
5	the resources of the division, as this Commission, as
6	you know, is not authorized and enabled to expand
7	either the authority or those resources. We believe
8	that OCD's redline proposal achieves each of these
9	goals and should be adopted, with any modifications
LO	and clarifications deemed necessary and appropriate by
L1	the commission, at the summation of the hearing.
L2	Thank you.
L3	THE HEARING OFFICER: Thank you, Mr.
L 4	Tremaine. Let's see. Mr. Maxwell, do you have an
L5	opening statement?
L6	MR. MAXWELL: Your Honor, I would
L7	reserve my time.
L8	THE HEARING OFFICER: All right. Thank
L9	you very much. Let's see. Is the EOG representative
20	on? No? All right. They can reserve if they'd like.
21	And to NMOGA, Ms. Mulcahey.
22	MS. MULCAHEY: Good afternoon. Thank
23	you, Madam Hearing Officer and thank you to the
24	commission. Thank you to the other parties in this
25	matter, as well as all of the folks that provided

1	public comment this morning. We appreciate everyone's
2	time.
3	I would start by saying NMOGA supports
4	prohibiting intentionally added perfluoro- and
5	polyfluoroalkyl substances, PFAS, to the chemical
6	additives used in hydraulic fracturing fluids in the
7	completion of recompletion of oil and gas wells. We
8	want to make that position very clear.
9	NMOGA supports the proposed regulations
10	where they are consistent with (1) up-to-date
11	scientific standards, data, and understandings of
12	PFAS, (2) where they are technically feasible and
13	technically correct, and (3) consistent with the
14	commission's statutory authority. As NMOGA will
15	demonstrate, based on the disclosures in FracFocus,
16	the oil and gas industry has already discontinued
17	using two PFAS compounds historically used in downhole
18	operations.
19	The Physicians for Social
20	Responsibility report on New Mexico identified two
21	specific PFAS compounds that were historically used
22	downhole in New Mexico. These compounds are (1) PTFE,
23	which has not been used since 2020. (2) fluoroalkyl
24	alcohol substituted polyethylene glycol. My lord, is
25	that a mouthful. We are going to call that FPEG, for

Т	snort. Free has not been used in operations in New
2	Mexico since 2015.
3	NMOGA has proposed a definition of PFAS
4	in this rulemaking. NMOGA proposes the following
5	definition of PFAS: "Substances with two or more
6	fully fluorinated carbon atoms." NMOGA proposed this
7	definition for two reasons: (1) it is the definition
8	of PFAS that the Environmental Protection Agency, the
9	agency tasked with regulating the manufacture, import,
10	and control of PFAS and PFAS containing substances,
11	adopted under the Toxic Substances Control Act, or
12	TSCA. This is the TSCA definition. Second, this
13	definition is both tangible, and executable, and
14	enforceable.
15	No analytical method currently exists
16	that can analyze for a single fluorinated carbon
17	compound, like WEG and New Energy Economy proposes.
18	Not a single analytical method. Without any method to
19	verify compliance through analytical sampling, any
20	definition of PFAS that contains a single fluorinated
21	carbon atom would be unenforceable.
22	In the alternative, NMOGA supports the
23	definition of PFAS propounded by the division. While
24	the division's definition does include a single
25	fluorinated carbon atom, it also specifically
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identifies analytical methods to be used for
compliance. Currently these analytical methods all
require two or more fully fluorinated carbon atoms,
which makes the division's proposed definition
tangible, executable, and enforceable, because as I
already mentioned, WEG's definition has no analytical
method that exists today.
At the same time, the division's
definition, while including a single fluorinated

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At the same time, the division's definition, while including a single fluorinated carbon atom, defines PFAS in a manner to allow it to be a living definition. That is, as the scientific understanding and analytical capabilities of PFAS advance in the future, analytical methods can be added to this definition.

Relatedly, NMOGA has also proposed a definition for "intentionally added PFAS." NMOGA proposes the following definition: "PFAS that are deliberately added during the manufacture of a chemical product to serve an intended function in the final product." NMOGA's proposal to include a definition of intentionally added PFAS is consistent with those statutes and regulations passed by all states that have banned the use of PFAS in various industrial applications. These states are identified in WildEarth Guardians' -- I'll call them WEG or

1	Guardian Exhibit 8. Each of these states in
2	WildEarth Guardians' Exhibit 8 have included a
3	definition of intentionally added PFAS every one of
4	them.
5	NMOGA has included the term
6	"intentionally added PFAS" with its proposed revisions
7	to account for the numerous potential sources of PFAS
8	that are unrelated to oil and gas operations but may
9	nonetheless result in PFAS being present in the
10	environment. These sources can include septic
11	systems, treated wastewater from wastewater treatment
12	plants, biosolids used for agriculture, consumer
13	textiles, like this jacket that I'm wearing,
14	firefighting foams, and many other sources. The
15	Division has proposed a similar backstop in its
16	redline revision to account for PFAS that may be in
17	the environment and that is unrelated to oil and gas
18	operations.
19	Any regulations that the commission
20	adopts to prohibit the use of PFAS compounds in
21	hydraulic fracturing fluid additives must be tangible,
22	executable, and enforceable. That means the
23	regulation needs to be clear, so that it can be easily
24	implemented by the division and followed by the
25	industry. The regulation must be science-based so the

1	rule accurately reflects the actual analytical
2	capabilities to sample for PFAS compounds, and the
3	regulation must be flexible to keep pace with
4	advancement in scientific understanding of and
5	analytical capabilities related to PFAS.
6	Furthermore, any final rule also needs
7	to be tailored to the PFAS that has been documented in
8	the oil and gas industry so (1) the rule is not overly
9	broad in scope, (2) stays within the commission's
0	authority, and (3) provides a predictable regulatory
1	framework that can actually be implemented. In
_2	addition to supporting the ban on PFAS intentionally
_3	added to hydraulic fracture fluids, NMOGA also
4	supports requiring oil and gas operators to certify
_5	that no PFAS containing fluids have been used in the
-6	fracturing of an oil and gas well.
.7	To implement this rule, NMOGA urges the
-8	commission to continue to use FracFocus as the
_9	platform for industry chemical disclosures. It is a
20	proven framework for managing these disclosures. It
21	is a tried and true system. There is simply no good
22	reason to abandon it.
23	On the issue of disclosures, NMOGA
24	cannot support either (1) petitioner's proposal to
25	provide hydraulic fracturing disclosures to a litany

of individuals outside of and in addition to the
mandated disclosures in FracFocus. So to be clear,
NMOGA has no issue with continuing to make disclosures
in FracFocus, but the additional disclosures that WEG
proposes to a whole litany of individuals is
ridiculous. Second, petitioner's proposal to wholly
ban the use of any chemicals downhole that are not
fully disclosed in FracFocus is something NMOGA cannot
agree to.
Petitioner has proposed requiring

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additional disclosures outside of FracFocus to building owners, area residents, tribal members, schools, government actors, public water systems administrators, and many, many other individuals and entities. As Dr. Janet Anderson has testified in her pre-filed written draft testimony, Petitioner's proposal to provide scattershot disclosures to this litany of individuals and entities without any context and whom lack the necessary expertise to understand and interpret such disclosures is contrary to standard risk communication best practices utilized by toxicologists such as Dr. Anderson. Such scattershot disclosures can and have caused more harm than good in communities, as Dr. Anderson also testifies.

New Mexico Law recognizes the

1 importance -- excuse me. Likewise, Petitioner's 2 proposal to ban the use of any undisclosed chemicals violates New Mexico's law and public policy. 3 New Mexico's law recognizes the 4 5 importance of maintaining the confidentiality of 6 valuable commercial information, also known as trade There has been much discussion already here secrets. 8 today about trade secrets. This morning, Mr. Rubin mentioned sectioned 74-6-15, which is the statutory 9 provision that applies to the Water Quality Control 10 11 Commission. 74-6-15 does not apply in this rulemaking 12 because the commission is not acting pursuant to the 13 Water Quality Act. Additionally, even if you were to assume that this Commission was acting pursuant to its 14 15 constituent Water Quality Act authority, the plain 16 language of 74-6-15 demonstrates both a strong public 17 policy and legal protections for trade secrets. fact, that statute continues to protect trade secrets. 18 19 New Mexico's Uniform Trade Secret Act 20 also protects trade secrets from being publicly 2.1 disclosed. The prohibition against public disclosure 22 of trade secrets has been codified by statute in this

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apply equally, whether the trade secret information is

state and has been case law for at least 35 years.

New Mexico Law and public policy on trade secrets

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1	a manufacturing process, software program, or a
2	chemical additive for hydraulic fracturing. In fact,
3	the term used by 57-3(a)(2) for a trade secret
4	includes information, a formula, a pattern, a
5	compilation, a program, a device, a method, a
6	technique, or a process. It is quite broad.
7	Petitioner's proposed rule that
8	requires the full disclosure of trade secreted
9	fracturing fluids or the inability to use those fluids
LO	downhole runs afoul of New Mexico Law and public
L1	policy. It seeks to prohibit the use of valuable,
L2	useful, and entirely legal chemical additives that
L3	have nothing to do with PFAS, just because the
L 4	chemical is trade secreted.
L5	Petitioners and their supporters are
L6	making the exact same arguments here today that the
L7	commission heard back in 2011, when it first adopted
L8	the hydraulic fracturing disclosure rule, and again in
L9	2017, when the commission updated the rule to adopt
20	the FracFocus form. The only difference now is that
21	Petitioners are pointing to Colorado and California,
22	which recently made legislative changes not
23	regulatory changes, legislative changes to address the
24	disclosure of chemicals in oil and gas operations.
25	In our prehearing statement on page 8,

NMOGA discusses why a legislative process is different
from a rulemaking process, and why that matters. Here
the commission has no legal authority to codify
Colorado's legislative approach into this regulatory
framework. It makes no sense and would be contrary to
public policy to prohibit downhole use of effective
hydraulic fracturing chemicals just because they are
not publicly disclosed in their entirety.
Nevertheless in its redlines to WildEarth's amended
regulations, NMOGA has proposed a process by which
operators could fully disclose all chemicals to the
Division in the event that such disclosure is needed.
I would also point the commission to
19.15.16.19(B)(2), where the commission has adopted by
reference 29 CFR 1910.1200. Those are the hazard
communication regulations from OSHA. Under the OSHA
regulation at 1910.1200(I)(2) there is already a
process in place whereby healthcare providers and
force responders can obtain full chemical disclosures.
That exists already in the rules today. NMOGA's
proposal to do a full disclosure to the Division
strikes the right balance between continued protection
of trade secrets under New Mexico Law while also
providing regulators with all information when and if
needed.

1	Finally, NMOGA has provided a full
2	response to the proposed rulemaking here today,
3	including our legal arguments and our prehearing
4	statement. NMOGA has also included its modifications
5	to the proposed rule in redline strikeout format in
6	NMOGA Exhibit A. Those documents appear in this giant
7	binder that we have provided to the commission. As
8	the commission will see in these documents, NMOGA is
9	substantially in agreement with the Division over what
10	portion of the rules should be adopted, what portion
11	should be rejected, and how the rules should be
12	modified to make them tangible, executable, and
13	enforceable.
14	I will not go over every legal argument
15	or technical position in detail that we have provided
16	in our prehearing statement, but I do want to draw the
17	commission's attention to a few important
18	considerations that are necessary to bear in mind as
19	you consider the testimony over the coming days.
20	First it is important to keep in mind that the
21	commission has no statutory authority over the
22	"generation" of nondomestic waste, only the
23	disposition of nondomestic waste, as enumerated in the
24	Oil and Gas Act.
25	Petitioners seek to prohibit the

1	generation of PFAS contaminated produced water and
2	nondomestic waste." If indeed the commission had this
3	authority, it could have been included here expressly
4	in 70-2-12, where, such as in other statutes governing
5	oil and gas regulations, specifically generation has
6	been mentioned. You don't see that language in these
7	statutes.
8	MR. RAZATOS: Hold on. Ms. Mulcahy,
9	can you just hang on? It seems we I believe we're
10	back on. Are we back on, Sheila?
11	MS. APODACA: Let me make sure. Let me
12	make sure.
13	MR. RAZATOS: I can ask. Brittany, can
14	you hear us? Paul, can you hear us?
15	UNKNOWN SPEAKER: Yes.
16	UNKNOWN SPEAKER: Yes.
17	MR. RAZATOS: Okay. We're back on.
18	Sorry, Ms. Mulcahy.
19	MS. MULCAHY: Okay. No problem.
20	Section 72-12(B)(15) provides the commission with
21	authority to "regulate the disposition, handling,
22	transport, storage, recycling, treatment, and disposal
23	of produced water." It makes no mention or
24	enumeration of generation. Likewise, section
25	70-2-12(E)(21) empowers the commission to "regulate

1	the disposition of nondomestic waste resulting from
2	the exploration, development, or storage of crude oil
3	or natural gas to protect public health and the
4	environment." Again, these enumerated powers are
5	specific and they are intentional.
6	Second and relatedly, Petitioner's
7	attempt to conflate produced water and nondomestic
8	waste with one another. That is both procedurally and
9	substantively improper. Produced water and
10	nondomestic waste are defined by statute. Under both
11	the Division's regulations and the Produced Water Act,
12	produced water is defined as "an incidental byproduct
13	from drilling for or the production of oil and gas."
14	Nondomestic waste, which is statutorily defined at
15	74-3-43(A), is "waste associated with the exploration,
16	development, production, transportation, storage,
17	treatment, or refinement of crude oil, natural gas,
18	and carbon dioxide gas, but does not include produced
19	water."
20	THE HEARING OFFICER: Could you wrap
21	up, Ms. Mulcahy?
22	MS. MULCAHY: Third, as I mentioned in
23	this opening statement, NMOGA supports a prohibition
24	on intentionally added PFAS in the completion or
25	recompletion of wells. NMOGA's Exhibit A contains

1	redline to WEG's proposed amendment. NMOGA's Exhibit
2	D contains the written direct testimony of Dr. Stephen
3	Richardson, PE, PEng, and Ph.D. NMOGA's Exhibit E
4	contains the written direct testimony of Dr. Janet
5	Anderson, Ph.D., Toxicology.
6	Together with its prehearing statement,
7	these exhibits provide NMOGA's detailed science-based
8	revision to WildEarth Guardians' proposed regulatory
9	amendment. NMOGA and its technical experts have
10	carefully considered and has agreed with WildEarth's
11	proposed amendment where they consistent with
12	up-to-date scientific standards, technically feasible
13	and technically correct, and consistent with the
14	commission's authority.
15	At the end of the day and at the end of
16	this rulemaking, if there is no way to ensure
17	regulatory compliance through sampling and analysis,
18	then any regulations banning the use of PFAS in oil
19	and gas operations are essentially meaningless. Thank
20	you.
21	THE HEARING OFFICER: All right. Thank
22	you, Ms. Mulcahy. Can we turn now to our first
23	witness, Mr. Horwitt?
24	MR. DAVIS: WildEarth Guardians calls
25	Dusty Horwitt.

1	THE HEARING OFFICER: Perfect. Do you
2	swear or affirm that you will tell the truth, Mr.
3	Horwitt?
4	MR. HORWITT: I do.
5	THE HEARING OFFICER: Thank you very
6	much. Go ahead, Mr. Davis.
7	EXAMINATION
8	BY MR. DAVIS:
9	Q Good afternoon, Mr. Horwitt. Could you
10	please state and spell your name for the record?
11	A Yes. It's Dusty, D-U-S-T-Y, Horwitt,
12	H-O-R-W-I-T-T.
13	Q Did you prepare direct testimony on behalf
14	of WildEarth Guardians in this matter?
15	A Yes.
16	Q And that is WildEarth Guardians Exhibit 10?
17	A Yes.
18	Q Did you prepare rebuttal testimony in this
19	matter?
20	A Yes.
21	Q And that is WildEarth Guardians Exhibit 94?
22	A Yes.
23	Q Do you have any changes to that written
24	testimony?
25	A No.
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1	Q Did you review and/or rely on any documents
2	to prepare your testimony?
3	A Yes.
4	Q Are those the documents that are in
5	WildEarth Guardians Exhibits 11 through 55?
6	A Yes.
7	Q And your CV is also an exhibit to your
8	testimony?
9	A Yes.
10	Q Is that WildEarth Guardians Exhibit 9?
11	A Yes.
12	Q Is your written testimony, direct and
13	rebuttal, true and accurate to the best of your
14	knowledge?
15	A Yes.
16	Q Do you adopt your written direct and written
17	rebuttal as WildEarth Guardians Exhibit 10 and 94 as
18	your sworn testimony today?
19	A Yes.
20	MR. DAVIS: With that, Madam Hearing
21	Officer, I would move for the admission for the
22	admission of WildEarth Guardians Exhibits 9 through
23	55, and WildEarth Guardians Exhibit 94.
24	(WildEarth Exhibits 9 through 55 were
25	marked for identification.)
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1	(WildEarth Exhibit 94 was marked for
2	identification.)
3	THE HEARING OFFICER: Okay. Let me ask
4	if there are objections from the other parties.
5	Please just speak up.
6	MS. MULCAHY: Yep.
7	THE HEARING OFFICER: Ms. Mulcahy?
8	MS. MULCAHY: Yes, Madam Hearing
9	Officer. We've had an objection to parts of Exhibit
10	94, and I guess right now I will not only make an
11	objection to the admission of parts of Exhibit 94, I
12	would also make an oral motion in limine to exclude
13	parts of Exhibit 94, and I have highlighted those
14	parts here on my screen, which I am willing and able
15	to share if it's easier to visualize it that way.
16	THE HEARING OFFICER: Yeah. All right.
17	Sheila, would you allow Ms. Mulcahy to screen share,
18	please?
19	MS. APODACA: Yes, she should be
20	allowed to share.
21	MR. BLOOM: And if we could pause for a
22	moment. We're up here looking for Exhibit 94.
23	THE HEARING OFFICER: Okay. We'll take
24	just a moment here to settle ourselves. Mr. Bloom,
25	are you ready?

1	MR. BLOOM: Yes.
2	THE HEARING OFFICER: Okay. Great. Go
3	ahead, Ms. Mulcahy.
4	MS. MULCAHY: Thank you, Madam Hearing
5	Officer. NMOGA would object to and also would seek to
6	exclude certain comments in Mr. Horwitt's rebuttal
7	testimony. I have highlighted those here in red on
8	the screen. And we seek to exclude them because they
9	are conclusions about the chemistry and toxicology of
10	PFAS that Mr. Horwitt makes in his testimony. And I'm
11	looking at WEG Exhibit 9.
12	Mr. Horwitt is an attorney and an
13	advocate. He has no scientific, technical, or
14	engineering training. He is not qualified to opine on
15	whether or not certain PFAS are exceptionally toxic.
16	He is not qualified to opine on the chemistry of these
17	PFAS.
18	He is not qualified to opine on
19	exposure pathways to these PFAS, and what, if any,
20	might be the results of any such exposures. I'm happy
21	to go line by line here, sharing my screen, to
22	demonstrate what it is that we seek to exclude.
23	THE HEARING OFFICER: Let me first ask
24	Mr. Davis for a more general response to your
25	objection. I do remember that Mr. Horwitt is an

1	attorney, and I understand that he has a lot of
2	research in his background into this highly
3	specialized area, and yet we do have to make sure that
4	we don't have attorneys testifying as chemists.
5	MR. DAVIS: Yeah, in addition to that,
6	I'll just add on that if we look at the citations in
7	Mr. Horwitt's testimony, he relies on reliable and
8	publicly available sources, and some of those are
9	actually the drinking water regulations.
10	So any argument that NMOGA has that he
11	cannot simply compile this information from these
12	publicly available sources and apply them to his
13	testimony regarding regulations, legal loopholes,
14	would just go to the weight, but I don't think that
15	that makes it inadmissible at all.
16	It's certainly relevant, which is the
17	standard for admission in this proceeding, and Mr.
18	Horwitt has already been qualified as a technical
19	expert. And so again I would just ask the commission
20	to take a look at what he cited and then make a
21	determination based on how much weight you believe
22	that deserves.
23	THE HEARING OFFICER: All right. So
24	I'm going to stay with you there, Mr. Davis. For
25	example, on page 2, the part here that Ms. Mulcahy has

1	highlighted in pink, "PFAS are exceptionally toxic," I
2	don't see a citation right there. Are there yeah,
3	go ahead.
4	MR. DAVIS: There are many citations
5	under that heading and if we, you know, in order to
6	move this process along we're more than happy to
7	strike his heading.
8	MS. DAVIS: So Ms. Mulcahy, let me ask
9	you then, to the extent the commission were to be
10	advised clearly that Mr. Horwitt is a lawyer, that
11	anything that resembles a conclusion that would
12	require a chemistry degree, for example, to reach,
13	would not be his own but would be made only in
14	reliance of the work of others, and to the extent
15	those others are included by citation in the
16	materials, do you think that would remedy it?
17	MS. MULCAHY: Thank you, Madam Hearing
18	Officer. No, I don't believe it would remedy it.
19	First of all, it's not just merely the heading here.
20	That's just one example that I've provided. But there
21	are a number of numerous other examples in this
22	document, and I would also say that two things in
23	response to Mr. Davis.
24	Mr. Horwitt has not been identified as
25	a technical expert. He has been identified as a
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Τ	technical witness. And to the extent that he has
2	relied on other scientific statements in this paper,
3	again he is not a scientific expert, so he has no
4	authority, even under a relaxed evidentiary standard,
5	to rely on those documents, because he himself is not
6	a technical expert in those fields.
7	For example, here, on page 2, lines 15
8	through 18, he opines on the need for greater toxicity
9	studies because there is significant toxicological
10	data that exists that puts the public at risk and
11	these PFAS are exceptionally toxic. He is not
12	qualified to make that statement. Neither does he
13	cite to any authority for making that statement.
14	And so to the extent that he goes
15	through this paper, through this rebuttal testimony,
16	in which there are numerous instances which I have
17	highlighted here about, you know, human carcinogens
18	and analogizing PFAS to other chemicals and why
19	they're similar or different than other chemicals, he
20	is not qualified to make those statements, Madam
21	Hearing Officer.
22	THE HEARING OFFICER: Okay. Part of my
23	challenge, of course, is that I I walked through
24	this very quickly.
25	MS. MULCAHY: Sure.

1	THE HEARING OFFICER: Because we
2	received it this morning. So Mr. Davis, I share Ms.
3	Mulcahy's concern that again I certainly
4	recognized, even in our prehearing conference last
5	Wednesday, that Mr. Horwitt had a background and
6	expertise in research. Right? In legal research in
7	this area of law. That's who I understood he was
8	being offered, if you will, as a technical witness
9	last week.
LO	This just seems different to me this
L1	week, and it seems different to Ms. Mulcahy, as well.
L2	The statements that seem to me typically would rely on
L3	expertise in chemistry or toxicology, for example.
L4	MR. DAVIS: If I can offer a quick
L5	response to that?
L6	THE HEARING OFFICER: Please.
L7	MR. DAVIS: First of all, the statement
L8	that's highlighted in purple I believe is something
L9	that NMOGA's own witnesses acknowledge, so that,
20	combined with the fact that we are in front of a
21	Commission that by statute must have expertise in the
22	matters over which they regulate, I believe the
23	commission is absolutely qualified to take a look at
24	this testimony, look at the citations to things like
25	the Federal Register, Federal Government websites,

1	scientific studies, and make a determination based on
2	weight.
3	We are not protecting a lay jury here
4	and again, I think that the commission's more than
5	capable of reading this and assigning weight, but Mr.
6	Horwitt does have to have some facts to which he can
7	apply, you know, these regulations to show the gaps
8	that exist in chemical reporting and why that's
9	important.
10	THE HEARING OFFICER: Okay. Is there
11	any other party who would like to offer a comment on
12	this objection? I forgot to ask.
13	MS. MULCAHY: If I may?
14	THE HEARING OFFICER: Yes.
15	MS. MULCAHY: Madam Hearing Officer,
16	regardless of whether NMOGA agrees with some of these
17	statements or not does not still qualify Mr. Horwitt
18	to speak on them. And certainly the NMOGA witnesses
19	that have agreed with some of these statements are
20	technically qualified. They're Ph.D. toxicologists
21	working specifically on PFAS. They are chemists
22	working specifically on PFAS.
23	And regardless of the commission's own
24	amazing experience and expertise, this witness still
25	must be qualified in and of himself, and, like I

1	stated originally, Mr. Horwitt cannot rely on these
2	articles because even under the most relaxed
3	evidentiary standards, he still has to have the
4	technical expertise to independently analyze, and
5	understand, and make his own conclusions about these
6	very scientific topics, including toxicology,
7	chemistry, exposure pathways.
8	He's not qualified to do that.
9	Otherwise it's all just hearsay. It's all hearsay.
10	MR. DAVIS: I'll just add that hearsay
11	is not something that makes anything inadmissible in
12	this proceeding.
13	THE HEARING OFFICER: Yeah, I
14	MR. DAVIS: Rules of evidence don't
15	apply.
16	THE HEARING OFFICER: Yeah. No, I
17	understand, Mr. Davis. The rules of evidence do not
18	apply. And this is a more sophisticated body I say
19	that with affection than your typical jury. Sorry.
20	By this, I think I said last Wednesday, I really do
21	try to take my role seriously as something of a
22	gatekeeper, even if that gate is full of holes, around
23	making sure that what the commission is focusing on
24	and has before it can be relied upon to make their
25	decision. That's that's my that's my focus.

1	And I'm concerned about some of the some of the
2	rebuttal testimony. I wasn't concerned about the
3	direct testimony, but some of this rebuttal testimony
4	raises concerns for me. Having said that, I don't
5	know that it is helpful at this moment to either
6	strike it all or accept it all, or to walk through
7	paragraph by paragraph. I don't know that that's
8	helpful either, so
9	MR. BLOOM: Madam Hearing Officer?
LO	THE HEARING OFFICER: Yes, Commissioner
L1	Bloom. Yeah.
L2	MR. BLOOM: Yes. So as a commission,
L3	could we be in a position then that we can only hear
L4	from scientific experts and there can be no consensus
L5	around anything that any PFAS is toxic unless we hear
L6	it from a scientific expert?
L7	THE HEARING OFFICER: So let me just
L8	offer an example that we talked about last Wednesday.
L9	It was a hearing I did a very long time ago in Eunice,
20	New Mexico. There was a man offered as a witness to
21	talk about karst near the LES plant proposed, and
22	there was an objection because he had a degree in
23	geography, the landscape, if you will, not geology.
24	And so the way I handled that and the
25	way well let me put it this way: The court of

1	appeals, I think, tends to prefer administrative
2	bodies and agencies to handle it, is to accept it as
3	part of an offer of proof so that it is in the record,
4	that is to say, anyone reviewing the record can
5	actually see what was offered.
6	It's not going to be stricken as in
7	tear it up, but a warning, if you will, or a caution
8	that relying on what appears to be a toxicological
9	conclusion reached by a lawyer is not going to form a
LO	great basis for a final decision for it. Okay? Legal
L1	analysis, great. Toxicological conclusions, you ought
L2	to hear that from a toxicologist or a chemist. That's
L3	all.
L4	So let's do it this way. Ms. Mulcahy,
L 5	please, on your cross-examination of Mr. Horwitt draw
	please, on your cross-examination of Mr. Horwitt draw a few lines there, in terms of his his background
-6	
L5 L6 L7 L8	a few lines there, in terms of his his background
L6 L7	a few lines there, in terms of his his background or experience, and for now, I think we we have this
L6 L7 L8	a few lines there, in terms of his his background or experience, and for now, I think we we have this caution here, and I won't admit 94 without reservation
L6 L7 L8	a few lines there, in terms of his his background or experience, and for now, I think we we have this caution here, and I won't admit 94 without reservation for the moment unless we have further conversations
L6 L7 L8 L9	a few lines there, in terms of his his background or experience, and for now, I think we we have this caution here, and I won't admit 94 without reservation for the moment unless we have further conversations about it, I'll accept it as part of an offer of proof.
L6 L7 L8 L9	a few lines there, in terms of his his background or experience, and for now, I think we we have this caution here, and I won't admit 94 without reservation for the moment unless we have further conversations about it, I'll accept it as part of an offer of proof. So please assume that it's in. Please
16 17 18 19 20 21	a few lines there, in terms of his his background or experience, and for now, I think we we have this caution here, and I won't admit 94 without reservation for the moment unless we have further conversations about it, I'll accept it as part of an offer of proof. So please assume that it's in. Please assume that we haven't yet obviously we haven't yet

1	were offered? It's just 94? Okay. So 94 is accepted
2	for the moment as part of an offer of proof, and all
3	the other exhibits Mr. Davis would you repeat the
4	numbers, please? Nine through
5	MR. DAVIS: Nine through 55.
6	MR. ORTH: Fifty-five. And 94. Yes?
7	MR. DAVIS: Correct.
8	THE HEARING OFFICER: Thank you. So 9
9	through 55 are admitted, and 94 is accepted as part of
10	an offer of proof and may be the subject of additional
11	discussion.
12	(WildEarth Exhibits 9 through 55 were
13	received into evidence.)
14	(WildEarth Exhibit 94 was received into
15	evidence.)
16	All right. Is there anything else, Mr.
17	Davis?
18	MR. DAVIS: The witness is available
19	for questions from the commission and the parties.
20	THE HEARING OFFICER: Thank you. I'm
21	going to start with the parties, and I'm going to go
22	in the order of presentation. And then I will go to
23	the commissioners. So again, we don't have NEE. It
24	would be the division's turn to ask questions of Mr.
25	Horwitt if they have them.

1	MR. DAVIS: Madam Hearing Examiner, I'm
2	sorry. I'm not sure we discussed this on Wednesday or
3	not. I may be remembering wrong from the hearings
4	over the summer, but I was under the impression that
5	we would cross in reverse order to presentation, so I
6	just wanted to get a clarification on what the order
7	of cross will be.
8	THE HEARING OFFICER: All right. How
9	do the other counsel feel about that?
10	MS. MULCAHY: We did discuss it at the
11	procedural hearing on the 6th, and we said we would go
12	in the order that the parties proceed, but we're
13	happy, and I just conferred with Mr. Tremaine, and he
14	said he's fine if NMOGA goes. I don't mean to step in
15	front of any other party, if there's another party
16	that would like to go and have me to wait.
17	THE HEARING OFFICER: All right. Any
18	other comments? I see your camera on, Mr. Maxwell.
19	Do you have a comment on the order in which cross is
20	held?
21	MR. MAXWELL: I do not.
22	THE HEARING OFFICER: Okay. Thank you.
23	Go ahead, Ms. Mulcahy. We can go in reverse order.
24	MS. MULCAHY: Thank you.
25	//

1 CROSS-EXAMINATION 2. BY MR. MULCAHY: Thank you, Mr. Horwitt, for being here. 3 0 appreciate it. Mr. Horwitt, your professional 4 5 experience, if I'm not mistaken, is listed in WEG 6 Exhibit 9. Is that correct? I think so. 8 Okay. And Mr. Horwitt, looking at WEG 0 9 Exhibit 9, you are an advocate against -- you've spent 10 your career advocating against oil and gas. Is that 11 correct? 12 I've spent my career advocating to try to Α 13 protect communities from pollution caused by oil and 14 gas. 15 So the answer is "yes" then. Thank you. 0 16 Α I wouldn't characterize it that way, but --17 Q Okay. -- it's up to you. 18 Α 19 And Mr. Horwitt, you are not a chemist. 0 20 Correct? 2.1 Α That's right. And Mr. Horwitt, you are not a chemical 22 Q engineer. Correct? 23 2.4 Α That's correct. 25 And Mr. Horwitt, you are not a toxicologist. 0 Page 193

1	Correct?
2	A That's correct.
3	Q And Mr. Horwitt, you have no scientific
4	education. Is that correct?
5	A I have I don't have a degree in science,
6	but I have taken multiple courses in science in
7	college.
8	Q Okay. You do not have a degree in
9	engineering. Correct?
10	A That's right.
11	MS. MULCAHY: Nothing further. Thank
12	you.
13	THE HEARING OFFICER: All right. Thank
14	you. Mr. Maxwell, do you have questions of Mr.
15	Horwitt?
16	MR. MAXWELL: Your Honor, I do not.
17	Thank you.
18	THE HEARING OFFICER: Thank you. Mr.
19	Tremaine, do you have questions of Mr. Horwitt?
20	MR. TREMAINE: No, no further
21	questions.
22	THE HEARING OFFICER: All right. Mr.
23	Davis, any redirect before I go to the commission?
24	MR. DAVIS: I do not have any redirect.
25	Thank you.
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1	THE HEARING OFFICER: All right. Thank
2	you. Mr. Chair, do you have questions of this
3	witness?
4	MR. RAZATOS: I do not.
5	THE HEARING OFFICER: Okay.
6	Commissioner Bloom?
7	MR. BLOOM: Madam Hearing Officer,
8	thank you. Can you hear me? It's live? Yeah. Okay.
9	Probably screaming.
LO	MR. BLOOM: Yesterday at this time, I'm
L1	sure I clearly remembered Mr. Horwitt's testimony and
L2	the issues that he spoke to. At this point, having
L3	heard a little bit from all sides, I'm Mr. Horwitt, if
L 4	you could give us a two-minute summary of the issues
L5	you spoke to, I do have some questions. I'm just not
L6	sure which person to ask them of, so
L7	A I'm sorry? The issues I spoke to?
L8	Q The issues on which you provided testimony.
L9	A Oh yes. Yes, so basically we're we are
20	concerned about the use of PFAS in oil and gas
21	operations in New Mexico. The organization that I
22	wrote a report for, Physicians for Social
23	Responsibility, found that over about a ten-year
24	period, oil and gas companies have used two types of
25	PFAS as Ms. Mulcahy mentioned in in New Mexico,

1 PTFE and -- I'll try to attempt this one 2 also -- fluoroalkyl alcohol substituted polyethylene glycol, I think. 3 And we are concerned that those -- that 4 5 those types of PFAS could pose toxic risks given the 6 evidence we know about the types of PFAS that have been studies for toxicity, which have been found to 8 have a variety of health harms, including cancer, 9 preeclampsia, which is a dangerous condition for pregnant women, low birth weight babies, and others. 10 11 We're also concerned that there are many, many, many 12

examples over this ten-year period, 2013 to 2022, of oil and gas operators in New Mexico using at least one trade secret chemical in their oil and gas wells, which could be additional PFAS.

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We counted 8,000 some wells out of a total of 9,000 wells we examined in that period. And so given the extreme toxicity of the PFAS that have been studied for toxicity, you know, we -- we believe it's very important to have full disclosure of the chemicals going into oil and gas wells in New Mexico so that the public can know the extent of the use of PFAS, and we think it's very important to have a prohibition on PFAS.

I'll just add, there are two other pathways

through which oil and gas companies in New Mexico could use PFAS without disclosing them to the public, and one is that under New Mexico's law, companies have to disclose to the public only chemicals they use in hydraulic fracturing but not the chemicals they use in other stages or methods of oil and gas production, like drilling that precedes fracking, chemical flooding, anything else.

2.1

2.4

And so chemicals that could be PFAS could be used in those other stages and methods. And then New Mexico's law also -- also says that disclosure does not have to extend beyond what's in safety data sheets related to the chemical products. And what we found in our research is that those safety data sheets, at least in other states where we've been able to examine them, often do not disclose the full list of chemicals in the chemical product.

So in other words, a company might use a chemical product in an oil and gas well. The safety data sheet could say something like, "This product contains 5 percent methanol and 25 percent water," and that's it, and the 75 percent -- 75 percent of the ingredients could be missing. And we've seen multiple data sheets like that. So if that's the basis for the disclosure, it could be incomplete and there could be

1 PFAS used without being disclosed. 2 Okay. Thank you, Mr. Horwitt. Mr. Horwitt 0 3 and Mr. Davis, I do have some questions for y'all, and if you feel that there's somebody coming after you 4 that would be more appropriate to answer that, just please let us know. Mr. Horwitt, are you comfortable 6 speaking to some of the public disclosure related 8 issues? 9 Α I think so. Okay. And I'll ask this of NMOGA's witness, 10 11 too, but we heard, I believe, from NMOGA today that 12 PTFE and FPEG have not been used in New Mexico in a 13 number of years, but how do we know something like that with certainty when there are protections for 14 15 proprietary information? Do we actually know what has 16 gone down the well bore in a frack job? 17 Yeah. We don't know that with certainty. 18 We examined in our report the records listed with FracFocus, which at least some of the witnesses 19 20 mentioned, that that is the repository, the legally 2.1 required repository for fracking chemicals for the 22 State of New Mexico. 23 And we also looked at the disclosures to the 2.4 State of New Mexico, which used to be -- the disclosures used to be made under the law to the state 25

1 rather than FracFocus, or rather than solely to 2 FracFocus, and then at a certain point, I think it 3 was -- I can't remember exactly what year, there was a switch so that the fracking chemicals are disclosed 4 only to FracFocus. That's the universe of reference we looked at. 6 And it is correct that the disclosed uses of 8 PTFE and I will call it PEG, stopped at a certain 9 point. I think PTFE did stop in 2020. The other one 10 stopped in, I think it was 2015. But we cannot be 11 confident that that means that those types of PFAS 12 were not used beyond those dates or that other types of PFAS were not used during that ten-year period we 13 14 looked at or beyond those dates, because of the gaps 15 in disclosure that I mentioned. 16 Okay. Thank you. And then as part of 17 WildEarth Guardians' proposal you would have a much 18 more robust disclosure regimen, including people 19 living nearby, police departments, fire departments, 20 the BLM, the State Land Office. I'm not sure, and I might have missed it, but how would the public be 21 22 advised in these cases? 23 You mean how would they receive those Α 2.4 disclosures? I think perhaps -- perhaps WildEarth

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I -- my

Guardians could speak to that directly.

25

1	understanding, having looked at multiple different
2	states' disclosure regimes, I I recall that in
3	California they have a similar requirement that
4	certain parties that live close to the fracking
5	operation must receive disclosure, chemical
6	disclosure, directly, and I believe they do that by
7	certified mail. I'd have to double-check on that.
8	And let me just add that I do think it's
9	important for people living close to the oil and gas
10	wells to have that type of disclosure, especially if
11	there were an emergency situation.
12	As Ms. Mulcahy said, there are some avenues
13	for first responders to access trade secret
14	information, which may not be available for certain
15	wells; however, based on my conversation with a
16	long-time first responder, time is of the essence in
17	those situations, and having that data on hand would
18	be very important so that a first responder would not
19	have to contact a federal agency and perhaps wait some
20	period of time to get that information.
21	And for people who are not first responders,
22	it's also important to have the information as soon as
23	possible so that people can make decisions about
24	whether they want to ask for water testing for
25	themselves or for their community, whether they want

1	to confer with scientific experts to determine if
2	certain chemicals do pose a risk that are being used
3	nearby. So there's several reasons I think it's
4	important.
5	Q It looks like Mr. Davis went away, and I had
6	one more follow-up regarding FracFocus, but Mr. Davis.
7	MR. DAVIS: Yeah, I'll just say that
8	the proposed rule does not require any method for
9	notification, nor does it restrict any method of
10	notification.
11	MR. BLOOM: Would then this be left to
12	the OCD to determine, or do we need to determine that
13	in the course of this hearing?
14	MR. DAVIS: I would say that the
15	division could do that. If we determine it in the
16	course of this hearing, I'm certainly open to
17	discussing that with the parties.
18	BY MR. BLOOM:
19	Q Very good. And Mr. Horwitt, do you know in
20	the case that a company invokes their proprietary
21	information, like a status under FracFocus, who has
22	that information of what was used in that frack job?
23	Is it just the company, or is it filed and held aside
24	by FracFocus? Does OCD have that information? Do you
25	know?

1	A I have not seen any requirement that anybody
2	besides the company has that information, and that's
3	in contrast to Pennsylvania, which is the state [sic]
4	that leaps to mind, which requires trade secret
5	information to be filed with the state [sic]. So the
6	State [sic] of Pennsylvania has fracking trade secret
7	information at least for it's horizontal gas wells,
8	and they keep that, but that's not disclosed to the
9	public.
10	Q Mr. Horwitt, we've seen a lot of M&A
11	activity, merger and acquisition activity in the
12	Permian Basin in the last decade plus. I don't know
13	that too many people would imagine that that ending
14	any time soon. I guess, does this raise questions for
15	you about the longevity or the ability to get that
16	information from a company when it hasn't been filed
17	with the state, or FracFocus, or a third party that
18	has an enduring presence, rather than a company that
19	can be swallowed up by another one or frankly go out
20	of business?
21	Which is something I'm hearing from the Land
22	Office, that's something that we deal with more than
23	you'd imagine complete loss of records, both
24	through hacking, companies shutting down. We've seen
25	all that. Is that a concern?

1	A Yes, it is a concern. And I would add that
2	under Colorado's newly enacted law that requires full
3	disclosure of chemicals used underground in the oil
4	and gas wells, all of that chemical information has to
5	be shared with the state. Although as Mr. Davis
6	indicated, when the chemical information is disclosed
7	to the public, it's disclosed in a way that is just a
8	list of individual chemicals that would make it
9	difficult for anybody to be able to link those
10	chemicals back to particular chemical products that
11	went into the well.
12	And that's a you know, that's a type of
13	chemical disclosure that has been recommended at least
14	since 2014, when a panel of the Department U.S.
15	Department of Energy recommended that type of
16	disclosure for fracking chemicals as a way to make the
17	public fully informed of what kind of chemicals are
18	going into oil and gas wells without creating, you
19	know, undue risks for the oil and gas companies that
20	their intellectual property could be stolen by a
21	competitor.
22	Q A different angle on this perhaps, and this
23	might be more of a question for Mr. Davis or someone
24	else, or maybe it's irrelevant, but I mean, what do

you hope that the public gains from this more

25

1 widespread disclosure? I think all of us get a lot of 2. mail sometimes that we didn't ask for. You know, if it was certified mail arriving 3 in our boxes. We're someone that lives in the oil 4 5 patch and we're receiving a lot of this. What do we 6 do with it? How do we handle it? You know, would it help a fire department if the city, say, of Carlsbad, 8 receives 400 notifications a year. 9 You know, we don't know that that's going to be organized in any helpful way. I'm wondering if 10 11 there's another way to make information more 12 accessible. I guess it's kind of an open question 13 there. 14 That's a good question. I -- I think for an Α 15 institution like a fire department, they -- they could 16 receive, as you suggested, multiple 17 certifications -- or multiple lists of chemicals if they cover the territory involving multiple oil and 18 gas wells. 19 20 I would -- I -- I think it would be in their 2.1 interest to keep those on file in some kind of 22 organized way. As far as individuals, you know, I think it would be possibly unlikely that an individual 23 2.4 would live near, you know, hundreds of wells or dozens 25 of wells.

I think I think it would be a manageable
amount of information. And you know, people can
decide what to do with that, if they want to follow-up
on it or not, but at least they would have access to
it and they would know that there are chemicals being
used close to them and, you know, and what those
chemicals are. Yeah.
MR. DAVIS: Commissioner Bloom, I'd
just like to add that Dr. David Brown will be
testifying as well in this proceeding. He is a public
health expert who has dealt with these disclosure
issues in Pennsylvania. So just in terms of the
importance of that, why it might be important to
disclose, I would ask you to direct some of those
questions to him and
I'm not sure how the rest of this is
going, but I think we may have just tried to contact
him because I didn't expect that we might call him
today, but I don't know, maybe we'll hear from him
this afternoon.
MS. MULCAHY: Madam Hearing Officer, if
I may
THE HEARING OFFICER: Yes.
MS. MULCAHY: I want to make sure that
it's clear that I continue to have a standing

1	objection to a lot of this testimony from Mr. Horwitt,
2	particularly testimony about the toxicity of PFAS.
3	THE HEARING OFFICER: Would you speak
4	up just a little?
5	MR. MULCAHY: I apologize. I'm sorry.
6	I just wanted to make clear, because it wasn't clear
7	from your last ruling, that this objection to Mr.
8	Horwitt's testimony, a large part of it, I have a
9	standing objection to it on the record, especially
10	this stuff about, like, risk communications. He's not
11	a toxicologist. Toxicity. He's not a toxicologist.
12	I just wanted to understand that that is a standing
13	objection.
14	THE HEARING OFFICER: Yes. All right.
15	Your standing objection is on the record, and before I
16	forget, I would ask you to send me and the other
17	parties the document with the pink and purple
18	highlighting that you showed on the screen.
19	MS. MULCAHY: Sure. I can do that. I
20	just have to take some other information out of there
21	that's not public.
22	THE HEARING OFFICER: That's fine.
23	MS. MULCAHY: Okay. Thank you.
24	THE HEARING OFFICER: I'm sorry for the
25	interruption, Mr. Davis. You said you were going to
	Page 206

1	try to contact Dr. Brown. We'll hear whether he's
2	available or not. Commissioner Bloom, were you
3	finished with your questions?
4	MR. BLOOM: Just one more question.
5	Mr. Horwitt, we heard from both the OCD and the Oil
6	and Gas Association of New Mexico today that what's
7	my question again here? That we need a narrower
8	definition of PFAS because there are some PFAS
9	chemicals that can't be tested for, and I'll ask this
10	of their witnesses as well. Any reaction to that?
11	MR. HORWITT: I would say that's
12	outside the scope of my testimony.
13	MR. BLOOM: Okay. Mr. Horwitt, one of
14	the concerns I would have, and I think somebody
15	mentioned ingredients in the foods we eat, like, I'm
16	getting into law school type questions here or those
17	sorts of hypothetical situations. But would it make
18	sense to not say you couldn't put a novel poison in
19	food because we can't test for it, because no test
20	exists?
21	For example, and if you're still not
22	comfortable answering these sorts of questions, I
23	think theoretically what I'm struggling with is we
24	can't to say we can't ban something because we
25	can't test for it would say that there are other sorts

1	of things we couldn't introduce into certain types of
2	supply chains simply because we don't have a test for
3	them yet.
4	MR. HORWITT: I think I can just
5	generally speak to this and maybe add one specific
6	point. I think the regulation here that's being
7	proposed falls generally under, you know, taking
8	precautions based on what we do know to prevent very
9	serious harm in the future based on what we don't
LO	know.
L1	I mean, we do know that there are nine
L2	different types of PFAS that are regulated in drinking
L3	water by I think it's eight different states and the
L4	EPA. Not all of the states and the EPA regulate all
L 5	of the types, but they, you know, together they
L6	regulate those those types.
L7	And we know from from the
L8	Intergovernmental Technology and Regulatory Counsel,
L9	which is a consortium of states that come together to
20	work on various issues, that there is very
21	little that that for the PFAS that have been
22	studied for toxicology, we know that that those are
23	mostly the ones that are regulated. And they're
24	regulated at very, very low concentrations in drinking
25	water.

1	And you can look at the state
2	regulations, you can look at the EPA's regulations,
3	and you know, draw your own conclusions about the
4	toxicity there, but they're they're very low
5	concentrations. And so based on what we know about
6	the ones that have been studied, it would be prudent
7	to act with caution and and say, you know, "This
8	class of chemicals, from what we know, is very
9	dangerous, and let's have a prohibition on their use,
10	especially in this process, oil and gas extraction,
11	that EPA has found has multiple potential pathways for
12	water contamination."
13	That's in the EPA's 2016 report on
14	fracking and drinking water. This is not, you know,
15	inside a laboratory where, you know, the chemicals can
16	be carefully controlled. This is, you know, outside
17	where you're injecting chemicals under high pressure.
18	You can have leaks, spills, the the
19	well integrity can be compromised underground,
20	chemicals can get out into the drinking water. And
21	that's happened in New Mexico. That's been documented
22	in those, you know, documented cases of pit leakage
23	led to the New Mexico Pit Rule.
24	So there is some evidence here in New
25	Mexico that yes, there are pathways with oil and gas

1	operations that can lead to water contamination, and
2	you've got this class of chemicals that has some very,
3	very high levels of toxicity associated with it. And
4	so it's based on that information, it would be wise
5	to put a prohibition on the further use of these
6	chemicals in oil and gas wells.
7	MR. BLOOM: So just two last quick
8	questions. Mr. Horwitt, so you're an attorney.
9	You've been working for many years for Physicians for
10	Social Responsibility. You've been advising states in
11	regulatory matters. In that capacity, do you think
12	regulators are better off when they scratch that.
13	I think I heard that already.
14	But I guess the last question I would
15	have for you, and I don't know if somebody else at
16	WildEarth Guardians would want to address this, but
17	are you all okay with adding this language that the
18	ban on PFAS would be for and whatever that may
19	be intentionally added PFAS?
20	MR. DAVIS: Just to give Guardians'
21	position, we are not okay with that. And then to the
22	extent that Mr. Horwitt could explain, you know, why
23	"intentionally added" as a ban is different from a ban
24	on PFAS without that language, I'd let him do that.
25	But I'm I'm just saying that Guardians' position is

1	that we do not support that language, "intentionally
2	added," to be added to the proposed rule.
3	MR. HORWITT: From my own perspective,
4	I I would be concerned about limiting the ban to
5	intentionally added PFAS because there are, you know,
6	the largest source of fluid that goes into oil and gas
7	wells is likely to be the water used in hydraulic
8	fracturing. You know, wells can be injected with
9	millions of gallons of water, an individual well can
10	be injected with millions of gallons of water.
11	And that water can come from surface
12	water, groundwater, and it can be it can come from
13	water that is reused from previous hydraulic
14	fracturing treatments.
15	If, you know, any of those sources have
16	very high levels of PFAS in them, and we know that
17	those levels can be astronomical based on what we know
18	about, for example, Cannon and Holloman Air Force
19	Bases here in New Mexico, then you could be injecting
20	or introducing very high levels of PFAS into an oil
21	and gas well with the potential that that water could
22	leak, spill.
23	It could be in the wastewater that
24	could come back to the surface. That could leak.
25	That could spill. And so I think the commission

1	should consider expanding the prohibition to at least
2	to certain concentrations in the water used in
3	hydraulic fracturing, because that's such a large
4	volume of fluid used in oil and gas wells.
5	The levels could be, you know, set at
6	the same level that exists in, like, the EPA's
7	drinking water regulation or other state drinking
8	water regulations. You have to make sure the
9	regulation could say, "You have to make sure your PFAS
10	levels in your fracking water are at this level or
11	lower."
12	MR. BLOOM: Thank you, Mr. Horwitt. No
13	further questions.
14	THE HEARING OFFICER: All right. Thank
15	you. Commissioner Ampomah, do you have questions of
16	the witness?
17	DR. AMPOMAH: Yes, I do. Thank you so
18	much for taking time to be here today to present your
19	testimony to the commission. I do have a couple of
20	questions. So in your testimony, on page 2 of your
21	testimony, there's a statement that I'll read. "They
22	are a class of laboratory-made chemicals that have
23	useful properties, including being oil and
24	gas" no "that have useful properties."
25	So I just want to know, based on your
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	rage 212

1	studies, what are the, let's say, the usefulness of
2	PFAS, you know, as utilized in oil and gas industry?
3	What is the importance of that?
4	MR. HORWITT: I wish I could tell you,
5	but there is a lot of confidentiality in the record we
6	looked at, and and whether intentional
7	confidentiality or not, it's very difficult to tell
8	from FracFocus what the PFAS are being used for in the
9	oil and gas operations.
10	There's a scientific paper that I cite
11	in the report that I co-authored for Physicians for
12	Social Responsibility written by a Gluge, G-L-U-G-E,
13	and other authors, that surveys the use of PFAS across
14	multiple industries, and in that article they they
15	looked at patent records and other sources.
16	And they found that PFAS had at least
17	been proposed for use in oil and gas extraction for a
18	variety of purposes drilling, fracking, chemical
19	flooding but it's not clear if the PFAS was used
20	for those purposes or where. So I can't tell you
21	exactly how it's used in the industry.
22	DR. AMPOMAH: So I want to ask, based
23	on your studies, is there any specific example in the
24	state of New Mexico in the two major basins, the San
25	Juan Basin and then also in the Permian Basin, has

1	there been any leak of PFAS into underground source of
2	drinking water that has been documented?
3	MR. HORWITT: You mean associated with
4	oil and gas operations?
5	DR. AMPOMAH: Yes.
6	MR. HORWITT: Not that I know of, but I
7	will add there have been very few studies that we know
8	of examining the link between PFAS use in oil and gas
9	operations and water contamination. There's there
10	are three that I know of that are more more than
11	just anecdotal.
12	One was a peer-reviewed paper published
13	about investigating private water wells in West
14	Virginia. It came out, I believe, in 2023. The
15	researchers looked at, I think, 45 private water
16	wells, and they did find a number of those wells 45
17	water wells in areas near oil and gas
18	extraction and they found that many of those wells
19	had PFAS in them.
20	And in three of those wells, they
21	concluded that it was likely that the PFAS originated
22	from oil and gas production. In the other wells,
23	they they could not be sure, because even though
24	there was oil and gas production nearby, there was
25	also another major source of PFAS pollution nearby,

1	the DuPont and Chemours chemical factory in
2	Parkersburg, West Virginia. So that's one study that
3	did a link between the use of PFAS in oil and gas
4	wells and water pollution.
5	And then there are two other studies,
6	one by the U.S. Geological Survey, which
7	found which studied. Sorry. I have to remember
8	which state they looked at. It was West Virginia.
9	They looked at water supplies in West Virginia, and
10	they did find PFAS in those supplies. Some of those
11	water supplies were co-located in areas where oil and
12	gas production is common, but they did not draw any
13	conclusions about the sources of PFAS in those water
14	supplies.
15	And then the third study came out in
16	2023. The U.S. Geological Survey and the Pennsylvania
17	Department of Environmental Protection looked at PFAS
18	in streams in Pennsylvania, and they found PFAS in a
19	number of the streams. And one of the findings was
20	that some of the PFAS levels were close were
21	associated with areas of oil and gas production and
22	sewer system outfalls, but they said that more
23	research was necessary to try to determine a link.
24	Those are those are the three
25	studies I'm aware of that, you know,

1	have some have looked at some connection between
2	PFAS use in oil and gas operations and groundwater,
3	and you know, I would say that more research is
4	necessary.
5	DR. AMPOMAH: Yeah, so are you aware of
6	how oil and gas well is built?
7	MR. HORWITT: I have some familiarity
8	with it.
9	DR. AMPOMAH: Yeah, so, you know, in
LO	your testimony, you talk about you found that oil and
L1	gas companies have used PFAS for fracking in New
L2	Mexico. You cited several wells that they've injected
L3	PFAS in there, and even you cited a company in your
L4	testimony.
L 5	So I just want to know, if you look at
L6	how oil and gas well are being constructed, to about,
L7	let's say 10,000 feet, you know, and how the stuff
L8	is the USDW, the lowest, or let's say they are
L9	probable with USDW, the surface most USDW, the way the
20	wells are built up to protect, you know, I'm still
21	curious because I don't see it anywhere here in terms
22	of how, or let's say where it's documented,
23	where in oil and gas wells, in about, let's say,
24	10,000 feet, all the way gets into the surface water.
25	You know, I'm curious, based on your

1	research, these wells that you found in New Mexico,
2	has there been any determinations that any of these
3	injections, more or less, resulted in contamination?
4	MR. HORWITT: Of water with PFAS?
5	DR. AMPOMAH: Yes.
6	MR. HORWITT: In New Mexico, I'm
7	not I'm not aware of any. But I would refer again
8	to the EPA's 2016 report on fracking and drinking
9	water, as well as the evidence from New Mexico of
10	groundwater contamination from oil and gas waste pits,
11	which documented 400 cases of groundwater
12	contamination. It's certainly possible that oil and
13	gas operations can contaminate drinking water through
14	a variety of different pathways.
15	You know, it doesn't it doesn't
16	necessarily have to come from the fracking that is
17	10,000 feet below the surface. There could be a spill
18	of the wastewater that comes up after fracking is
19	complete. There could a spill on the surface before
20	fracking is conducted or before drilling is conducted
21	of chemicals.
22	There could be in the drilling
23	process, there could be chemicals used in drilling the
24	well prior to fracking. And if the wellbore goes
25	through the groundwater when those chemicals are being

1	used, it could go directly into the groundwater. So
2	there are multiple pathways. I think that more study
3	is necessary to see if there is a link, because there
4	has been very little study to date, and yet some
5	concerning information.
6	I just want to add quickly, when I said
7	I'm not sure how PFAS has been used in the oil and gas
8	industry, what I mean is we know that it's been used
9	in fracking, but I can't say precisely how it's been
10	used, whether it's been used for, you know, a friction
11	reducer, or a biocide, or, you know I I don't
12	know that.
13	DR. AMPOMAH: So in your testimony are
14	you saying that the petition that is the subject of
15	this week's hearing asks the New Mexico Oil
16	Conservation Commission to implement rules similar to
17	the law enacted by Colorado, and, more or less,
18	California. So I just want to know were those rules
19	through legislation or through, more or less, like, a
20	rulemaking?
21	MR. HORWITT: They were through
22	legislation.
23	DR. AMPOMAH: So then do you believe
24	that this probably should be in the New Mexico
25	Legislature, more or less, and not these guideline

1	rules?	
2	MR. HORWITT: I have not researched	
3	that aspect of New Mexico Law, but I would I would	
4	say that New Mexico should follow particularly in	
5	Colorado's footsteps one way or another. You know,	
6	California's legislation is also a step forward. It	
7	covers fracking chemicals only or stimulation	
8	chemicals only, whereas Colorado's legislation covers	
9	all chemicals used underground in oil and gas wells.	
10	DR. AMPOMAH: Yeah, so the NMOGA	
11	position is that this has to be through legislation.	
12	So that is what I want to know your position on that,	
13	whether it is appropriate, you know, or not.	
14	MR. HORWITT: I that's one aspect of	
15	New Mexico Law I've not researched. Sorry.	
16	DR. AMPOMAH: So in your testimony you	
17	also talk about full disclosure to public. Now my	
18	question to you is why not to the divisions, but to	
19	the general public, in regards to the full	
20	disclosures?	
21	MR. HORWITT: I'm sorry. Can you	
22	repeat the question?	
23	DR. AMPOMAH: So my question is that	
24	with regards to the full disclosure and also you	
25	compound it with the trade secret provisions, why	

1	not there has to be a full disclosure of the
2	chemicals used by the operators to, let's say, for
3	example, NMOCC, for instance, and not necessarily to
4	the general public?
5	MR. HORWITT: You mean why not have the
6	disclosure only to the division and not the public?
7	DR. AMPOMAH: Yes.
8	MR. HORWITT: Because the public has a
9	right to know what chemicals they might be exposed to,
10	so they can take action to protect themselves. For
11	example, somebody might want to conduct, you know,
12	what's called a baseline water test on their water
13	well before any fracking occurs. So if they knew that
14	certain chemicals were being used in the oil and gas
15	industry, and they know that a well's going to be
16	drilled near them, then they could test for those
17	particular chemicals.
18	But under the current law, when there
19	are some gaps, whether trade secret provisions or the
20	fact that New Mexico does not require disclosure of
21	drilling chemicals or chemicals used for any purpose
22	other than fracking, it's impossible for the public to
23	know the full universe of of chemicals being used
24	in oil and gas wells, and they may not be able to
25	conduct a baseline test on their water that would be
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1	comprehensive.	
2	They could test for those chemicals	
3	likely to be used, and then come back again after an	
4	oil and gas well were drilled or fracked and test	
5	again to see if there's any change in water quality,	
6	looking for those chemicals that have been known to be	
7	used. It would also empower regulators and scientists	
8	to conduct similar testing, maybe not maybe across	
9	multiple drinking water wells.	
10	DR. AMPOMAH: So in your conclusion on	
11	the last page, so that would be, more or less, a	
12	summary of your findings, you say that, "The findings	
13	is these studies, that PFAS has contaminated water	
14	supplies near oil and gas extractions."	
15	So on that one, I'm sure you are	
16	referring to the case in Pennsylvania or West	
17	Virginia. Would you be very specific on that, you	
18	know, not necessarily making it more broad, to see	
19	more to show probably more, like, this probably	
20	happened in New Mexico.	
21	MR. HORWITT: I'm sorry. Could you	
22	just refer me to the exact page, please?	
23	DR. AMPOMAH: So page 19. And I	
24	presume that would be the summary of your testimony.	
25	MR. HORWITT: And, sir, which line on	

1	page 19?
2	DR. AMPOMAH: Line number 5. You know,
3	as I read through your testimony, it's very broad.
4	You know, so you are, more or less, making inferences
5	from West Virginia, Pennsylvania, and more or less, I
6	don't see how you link that to New Mexico.
7	So this here, on line number 5, "The
8	findings in these studies that PFAS had contaminated
9	water supplies near oil and gas extraction." So on
LO	that one, I'm saying, can you, more or less, be very
L1	specific, you know, to the examples that you are
L2	citing in here? Because this statement, more or less,
L3	looks very, very broad.
L4	MR. HORWITT: I can talk about
L4 L5	MR. HORWITT: I can talk about the the studies that I mentioned. I I'd just be
L5	the the studies that I mentioned. I I'd just be
L5 L6	the the studies that I mentioned. I I'd just be repeating them. The study from West Virginia, which
L5 L6 L7	the the studies that I mentioned. I I'd just be repeating them. The study from West Virginia, which found PFAS contamination in three wells that the
L5 L6 L7 L8	the the studies that I mentioned. I I'd just be repeating them. The study from West Virginia, which found PFAS contamination in three wells that the researchers do link to oil and gas operations nearby,
L5 L6 L7 L8	the the studies that I mentioned. I I'd just be repeating them. The study from West Virginia, which found PFAS contamination in three wells that the researchers do link to oil and gas operations nearby, and they found PFAS in multiple other water wells in
L5 L6 L7 L8 L9	the the studies that I mentioned. I I'd just be repeating them. The study from West Virginia, which found PFAS contamination in three wells that the researchers do link to oil and gas operations nearby, and they found PFAS in multiple other water wells in the same study, and those wells were located near oil
15 16 17 18 19 20	the the studies that I mentioned. I I'd just be repeating them. The study from West Virginia, which found PFAS contamination in three wells that the researchers do link to oil and gas operations nearby, and they found PFAS in multiple other water wells in the same study, and those wells were located near oil and gas operations, though they could not conclude
15 16 17 18 19 20 21	the the studies that I mentioned. I I'd just be repeating them. The study from West Virginia, which found PFAS contamination in three wells that the researchers do link to oil and gas operations nearby, and they found PFAS in multiple other water wells in the same study, and those wells were located near oil and gas operations, though they could not conclude that the contamination came from the oil and gas wells
15 16 17 18 19 20 21 22 23	the the studies that I mentioned. I I'd just be repeating them. The study from West Virginia, which found PFAS contamination in three wells that the researchers do link to oil and gas operations nearby, and they found PFAS in multiple other water wells in the same study, and those wells were located near oil and gas operations, though they could not conclude that the contamination came from the oil and gas wells because of possible confounding sources.

1	and the one in Pennsylvania with the streams, that
2	showed association between PFAS contamination and oil
3	and gas operations. There just isn't a lot of data
4	out there that specifically looks at that connection,
5	but we know that where oil and gas operations have
6	been conducted, including in New Mexico, there has
7	been groundwater contamination of some type linked to
8	those operations.
9	In other words, oil and gas extraction
10	can contaminate nearby water supplies. And we know
11	that from New Mexico, as well as from other states.
12	And so if PFAS is being used in New Mexico, if it's
13	being used elsewhere, there is a chance that the
14	contamination associated with oil and gas wells could
15	contain PFAS. So it's a risk.
16	DR. AMPOMAH: Okay. So line number 11,
17	and I just want to be straightforward on this
18	particular statement, you know, we've talked about in
19	trade secrets. Now you say that you present this in
20	your testimony that, "Oil and gas well operators would
21	have to disclose all individual chemicals injected
22	into their wells without exception for trade secrets.
23	They would have to disclose chemicals
24	used in all steadies and methods of extraction." So
25	you want the commission to, more or less, agree to

1	you to agree to, more or less, and not this rule.
2	Now my question to you is that does this not violate
3	the trade secret provisions?
4	MR. HORWITT: Are you talking about the
5	Uniform Trade Secret Act we mentioned earlier?
6	DR. AMPOMAH: Yes, yes.
7	MR. HORWITT: I have not researched
8	that aspect in New Mexico Law.
9	DR. AMPOMAH: Now but you are
LO	making you are saying, it is your testimony that
L1	the commission should enact a law that where all well
L2	operators would have to disclose, so why would you,
L3	let's say, write a testimony like this without, more
L4	or less, digging deeper into, let's say, whether or
L5	not it is whether we, the commission, do have
L6	authority to, more or less, enact this law enact
L7	this rule?
L8	MR. HORWITT: So my my understanding
L9	is that they did, but I can take their word for it.
20	DR. AMPOMAH: Okay. Thank you.
21	THE HEARING OFFICER: Okay. Thank you,
22	Commissioner Ampomah. We need a break. It's been 2
23	hours and 15 minutes. So let's take a 15-minute break
24	until 3:45. Oh first, is there any reason not to
25	excuse Mr. Horwitt? I guess, no? Terrific. Thank

Τ	you, Mr. Horwitt. You're excused.
2	When we come back, I will issue a brief
3	invitation in the event someone has been waiting on
4	the platform to offer public comment, since we're
5	between technical witnesses. Mr. Davis?
6	MR. DAVIS: A quick announcement.
7	During the questions from the commission, I was able
8	to put some page numbers and an exhibit number on Dr.
9	Brown's rebuttal testimony. It's two pages. And my
10	understanding is that he is on the platform, so again,
11	contingent on a ruling that his rebuttal is offered.
12	First the rebuttal is there for everyone to see. I'm
13	sorry I don't have any hard copies. But we I do
14	believe we can call Dr. Brown next on the platform.
15	THE HEARING OFFICER: Terrific. Thank
16	you very much for that. Let's take a break.
17	(Off the record.)
18	THE HEARING OFFICER: I don't know that
19	we have Mr. Tremaine but I'll count on him coming
20	back. Thank you, Mr. Rubin. Oh thank you. All
21	righty. We are back after an afternoon break. Let me
22	ask first whether there's anyone in the room who would
23	like to offer public comment? I see no hands.
24	Is there anyone on the platform who has
25	not already provided public comment who has comment to

1	offer at this time? There will be additional			
2	opportunities this week, but if you'd like to offer			
3	comment at this time, and I'm not referring to you,			
4	Dr. Brown. I'm going to take your testimony.			
5	I'm talking about non-technical public			
6	comment. Non-technical public comment. All right. I			
7	see no hands raised on the platform. So again, the			
8	next opportunity for nonpublic non-technical public			
9	comment, excuse me, will be at 8:30 tomorrow morning.			
10	Please join us then if you'd like to offer something.			
11	And now we have Mr. Tremaine and Mr.			
12	Powell. That's terrific. Mr. Davis, would you call			
13	Dr. Brown, please?			
14	MR. DAVIS: WildEarth Guardians calls			
15	Dr. David Brown.			
16	THE HEARING OFFICER: All right. Dr.			
17	Brown, if you would join us, turn on your camera			
18	there, I believe you'll be pinned to our screen. And			
19	do you swear or affirm to tell the truth?			
20	DR. BROWN: I I do.			
21	THE HEARING OFFICER: Thank you very			
22	much. Mr. Davis?			
23	EXAMINATION			
24	BY MR. DAVIS:			
25	Q Good afternoon, Dr. Brown. Could you please			
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1	state your name and spell it for the record?
2	A My name is David Robert Brown, and it's
3	spelled D-A-V-I-D, Robert, R-O-B-E-R-T, and Brown,
4	B-R-O-W-N.
5	Q Did you prepare direct testimony on behalf
6	of WildEarth Guardians in this matter, and is that
7	Exhibit 57?
8	A Yes. I'm having some trouble with my screen
9	going off. Is it you or is it me?
LO	Q We're seeing it. We're losing your image.
L1	THE HEARING OFFICER: I don't think
L2	it's us, Dr. Brown.
L3	MR. RAZATOS: It's more than likely on
L4	his end.
L5	THE HEARING OFFICER: But you know
L6	what, if it makes your connection unstable, you can
L7	offer your testimony without the the image. It's
L8	more important, at least for my purposes, to hear you.
L9	THE WITNESS: Okay. It looks like it's
20	okay now.
21	THE HEARING OFFICER: Okay. Thank you.
22	BY MR. DAVIS:
23	Q I believe I left off asking you, Dr. Brown,
24	if your direct testimony was Exhibit 57. Is that
25	correct?

1	A	Yes, it is.
2	Q	And did you prepare rebuttal testimony in
3	this matt	er?
4	A	Yes, I did.
5	Q	And is that WildEarth Guardians Exhibit 97?
6	A	It is.
7	Q	Do you have any changes to that written
8	testimony	?
9	A	No, I don't.
10	Q	Did you review and rely on any documents to
11	prepare y	our written testimony?
12	A	Yes.
13	Q	Are those documents WildEarth Guardians
14	Exhibits	58 through 77?
15	A	Yes, they are.
16	Q	Your CV is also an exhibit to your
17	testimony	?
18	A	Yes.
19	Q	Is that WildEarth Guardians Exhibit 56?
20	A	Yes, it is.
21	Q	Is your written direct and written rebuttal
22	testimony	true and accurate to the best of your
23	knowledge	?
24	A	It is.
25	Q	Do you adopt your written direct and written
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1	rebuttal testimony as your sworn testimony today?
2	A I do.
3	MR. DAVIS: Madam Hearing Officer,
4	WildEarth Guardians moves for admission of WildEarth
5	Guardians Exhibits 56 through 77 and WildEarth
6	Guardians Exhibit 97.
7	(WildEarth Guardians Exhibits 56
8	through 77 were marked for
9	identification.)
10	(WildEarth Guardians Exhibit 97 was
11	marked for identification.)
12	THE HEARING OFFICER: Thank you, Mr.
13	Davis. Are there objections?
14	MR. RANKIN: No objections from NMOGA,
15	Madam Hearing Officer.
16	THE HEARING OFFICER: Okay. All right.
17	Thank you. Hearing no objections, Exhibits 56
18	DR. AMPOMAH: Quick one. Do we have
19	the 97?
20	THE HEARING OFFICER: Yes, it was
21	emailed recently. Mr. Davis?
22	MR. DAVIS: My apologies. I actually
23	was able to put an exhibit number and page numbers on
24	that during Mr. Horwitt's examination, and I emailed
25	that to the hearing officer, parties, and to Ms.

1	Apodaca, and I did not directly email anything to the
2	commission.
3	THE HEARING OFFICER: Ms. Apodaca,
4	would you email Mr. Davis's forward Mr. Davis's
5	email of Dr. Brown's rebuttal to the commissioners,
6	please?
7	MS. APODACA: Yes, ma'am. I'll do it
8	right now.
9	THE HEARING OFFICER: Thank you.
10	MR. DAVIS: And my apologies for that
11	and not having a printed copy for the commission, but
12	it is two pages, double-spaced, I believe.
13	THE HEARING OFFICER: All right. I'm
14	wondering, Sheila, if it is possible for another staff
15	member to assist you in making a hard copy just for
16	those of us on the dais up here.
17	MS. APODACA: Yes, I'll get that done.
18	THE HEARING OFFICER: Thank you so
19	much. Let me go back to the admission of the
20	exhibits. I'm admitting Exhibits 56 through 77, and
21	97.
22	(WildEarth Guardians Exhibits 56
23	through 77 were accepted into
24	evidence.)
25	//
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1	(WildEarth Guardians Exhibit 97 was
2	accepted into evidence.)
3	Let's see. We are going to go to NMOGA
4	first for questions. Is that true, Mr. Rankin?
5	MR. RANKIN: Good afternoon, Madam
6	Hearing Officer, commissioners, members of the
7	commission. Yes, I'll be conducting the cross of Dr.
8	Brown.
9	CROSS-EXAMINATION
10	BY MR. RANKIN:
11	Q Good afternoon, Dr. Brown. I'm sorry that
12	your technology makes it hard for us to engage in a
13	more personal way, but thank you for being here and
14	thank you for your testimony. Dr. Brown, I understand
15	from your dialog with Counsel that WildEarth Guardians
16	Exhibit 56 is your your curriculum vitae. Is that
17	right?
18	A That should be right, yep.
19	Q And that includes your education, work
20	experience, and relevant training, relevant to this
21	hearing on this rulemaking?
22	A Yes, it does.
23	Q And you would have included all relevant
24	work and experience that would pertain to this
25	specific rulemaking on that CV. Correct?

1	A I would.
2	Q But I don't see any in your relevant
3	experience, I don't see any discussion of work with
4	PFAS or PFAS-related substances.
5	A I I've been on a commission in the State
6	of Massachusetts, their expert panel, and we've
7	discussed and gone into the detail of PFAS.
8	Q When did you join that commission?
9	A Approximately 12, 15 years ago.
10	Q Okay. But you didn't is that commission
11	reflected on your CV or your work experience?
12	A I'm not sure which CV I sent you. It might
13	not have gotten on that one.
14	Q Well let me see if I can just assist, not to
15	belabor the point, but I want to make sure that we are
16	able to reflect what I want to make sure I
17	understand your history and background here. Are you
18	able to see my my page on your screen, Dr. Brown?
19	A I do.
20	Q Okay. I'm going to just scroll through, and
21	if you would, just tell me, you recognize this as your
22	CV. Right?
23	A Yeah, I think it was yes, it is.
24	Q Okay. Do you recognize the commission on
25	this CV that you're referring to?

1	A I may not have put it on that CV.
2	Q Okay. But you had some exposure to let
3	me change that phraseology some experience working
4	with PFAS on that commission. Is that right?
5	A We did.
6	Q Okay. And what was the context of that
7	commission? Was the name of the commission?
8	A It was the Hazardous Substances Commission
9	with Massachusetts Department of Health, and it was a
10	group of experts who reviewed water and other issues
11	that came before the toxicology group at the
12	department.
13	Q What years were you on that commission?
14	A I've been on it since it was founded.
15	Q Do you recall what years those were?
16	A 2019, 2018.
17	Q To the present?
18	A Yeah, I'm sure that should have been '19,
19	'18, to '19. It '95 to the present. Yeah.
20	Q Okay. So from 1995 to the present, you've
21	served on that commission on the Massachusetts
22	Department of Health?
23	A Right.
24	Q Okay. And in that commission, have you done
25	research or prepared any reports or papers
	Page 233

specifically	addressing	DFAS?
phectiteativ	addressing	EL. AD:

2.1

2.4

A Yeah, we have. We've -- the State of
Massachusetts, department, prepared papers. We
reviewed them. This is a panel of experts from the
New England area. We reviewed them, and we issued
directives on drinking water levels for Massachusetts.
And those are required to be reviewed every three
years, so we've done that twice, and our most recent
review was in 2023.

Q Okay. Thank you, Dr. Brown. In your testimony -- I'm going to go ahead and scroll down, just because it's probably easier since -- since I'm not sure if you have it in front of you -- on page 9. If you do happen to have it in front of you, that's great; and if you don't then I'll try to direct you to the portion that I'm interested in here. Down on page 9 of your testimony, and I apologize if I'm making anybody dizzy by scrolling rapidly. I'm looking at page 9 in footnote 13.

A Okay.

Q You state her that, "Health risks associated with certain oil and gas fracking chemicals are shown in the document prepared by the Health Project, and you cite WildEarth Guardians Exhibit 68. Do you see that?

1	A Yes.
2	Q Okay. Now you agree with me that health
3	risks symptoms or health effects "associated with" a
4	chemical exposure do not establish causation for
5	purposes of public health toxicology. Do you agree?
6	A Not exactly. If you have no information at
7	all in a public health setting, you would look at
8	exposure risks and look at the classes of chemicals,
9	and seeing if they are capable of producing the
LO	effects that you're seeing in the population.
L1	Q So
L2	A I think I'm not sure I understood your
L3	question, but that
L 4	Q I guess my question is isn't there a
L5	distinction between something that determined
L6	causation versus associating an exposure with a
L7	certain health effect. Isn't there a distinction
L8	between confirming that something is caused by an
L9	exposure versus associating a health effect with it?
20	A Well certainly there is. It's a little more
21	complicated than that. You have to think about what
22	are the chemicals that you're looking at capable of
23	doing. And in a public health situation, when you
24	have a population that's showing health effects, you
25	have to think about how to whether those health
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1	effects could be related to that chemical. If you're
2	doing an analytical research study, you would or an
3	epidemiology study, you would actually spend more time
4	looking at chemicals and risks.
5	These chemicals fell in classes that
6	produced those kinds of actions, and many of them
7	actually, there is data available showing that they
8	are health risks of various sorts. And that data's
9	been tabulated by OSHA and other people, so you can
10	get some feeling for them.
11	Q So if I were in other words, you're
12	saying that, if I understand you correctly, that
13	public health agencies have tabulated the data and
14	have evaluated whether there is an association with an
15	exposure for a certain health risk?
16	A There is there is to use the term
17	"exposure" there's an exposure level at which that
18	health risk would be expected, yes.
19	Q Okay. But there's a difference between a
20	health risk and an association with a health effect
21	and determining causation with that exposure. Agree?
22	A I don't.
23	Q Why not?
24	A I don't. I don't agree because I think your
25	question was is there an association between is
	Page 236

1	there a difference between saying "this chemical, this
2	health action was caused by a specific chemical," as
3	opposed to the fact that this chemical is present and
4	we're seeing health actions, which could be caused by
5	this chemical or possibly another one. Generally we
6	don't have, in environmental exposures, single
7	chemicals; we have mixtures of chemicals present.
8	Q So based on that exposure to mixture of
9	chemicals, how do you determine causation to any one
LO	specific chemical?
L1	A Well you identify "this is a plausible
L2	health link" and since you're in a public health
L3	setting, you act to remove that chemical that possibly
L4	could be producing the effect.
L5	Q Now also in your testimony, skipping down to
L6	page 15 sorry it will take me a moment to get
L7	there.
L8	A That's okay.
L9	Q In looking at lines 12 to 14. I'll
20	highlight it here just for ease of reference. You
21	state that, and I'll read it, then you tell me if I've
22	done a good job, "It also has been confirmed that
23	exposure to PFAS can cause hepatotoxicity,
24	neurotoxicity, reproductive toxicity, immune toxicity,
25	thyroid disruption, cardiovascular toxicity in humans,

1	and pulmonary toxicity and renal toxicity in
2	laboratory animals." Did I read that correctly?
3	A That's correct.
4	Q And then you cite here to a paper that is
5	attached to one of your exhibits it's one of your
6	exhibits, it's Exhibit 73-A. And I'm not going to
7	read the whole title of that exhibit, but that's the
8	basis that you rely on for that statement. Correct?
9	A Well not the entire basis, but but that
10	and the fact that that and the fact that you'll see
11	those links are links that are in the literature.
12	They're I read the, actually the papers, the
13	original papers on it, and they show that there is
14	hepatotoxicity effects, and there are other effects at
15	very low doses.
16	Q So I just want to, you know, work through
17	the nuance, or the language here, because I think it
18	is important. Here in your testimony you used the
19	word "confirmed."
20	A That's right.
21	Q And then you also use the word "cause." And
22	I want to understand whether that paper that you cite
23	to, because I read through it and I don't I'm
24	not I'm not aware I can't determine I don't
25	see where in that paper it establishes or confirms
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1	that any of those conditions are caused by PFAS. Do
2	you agree with me that that paper does not establish
3	causation?
4	A No, I I think given the current level of
5	understanding of PFAS, PFAS has I've actually
6	looked at the basic actions of PFAS. PFAS is very,
7	very toxic because at low concentrations it tends to
8	bind with receptors, and it tends to interfere with
9	membranes.
10	It also has effects on endocrine with
11	endocrine factors. It it there's no doubt that
12	it does that. It does that in animals. And in people
13	there are similar reports of similar effects.
14	Cause may be too strong a word, but if you want to put
15	"plausibly cause" in front of that, you can do that.
16	But it is a plausible cause of these effects.
17	In fact, the problem with PFAS is we don't
18	know exactly how it acts in the receptor system to
19	make these changes happen in the body that people are
20	experiencing. But it's confirmed that
21	that's that's what's happening. I mean, there's
22	multiple studies not multiple, but at least five to
23	ten, that show that those effects are occurring. The
24	question is what dose do they occur at.
25	Q Okay. Just a couple of questions. I mean,
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1	I think I understood you to say, I mean, are you
2	changing your testimony that it maybe should be
3	restated as "plausible cause"?
4	A No. I'm I'm I'm convinced that they
5	have that that, within the sense of, as well if we
б	know the effects of those things, that those
7	are they are linked to that to those exposures,
8	and I think the word "cause" is descriptive of what's
9	going on with the general public.
10	Q Just to be clear, you're using two different
11	terms. One is "linked" and also "caused." I want to
12	understand. Do you use those synonymously, linked and
13	caused to mean the same?
14	A It depends on where I'm talking. It
15	depends. And if I'm talking to a population, I
16	would I would be I would get a strong response
17	to that. If I was in front of the Society of
18	Toxicology, I would give them more information about
19	why I believe those relationships are causal.
20	Q Okay. But as to this citation on this paper
21	here that I was referring to and footnote 24, is it
22	your testimony that that paper that you cite to does
23	establish causation for those health effects that you
24	referenced in your testimony?
25	A It it it was not entirely, but as a
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1 group of papers that we looked at, it was a key paper. 2 Now on page 8. I'm going to flip 0 Okay. 3 back again. I apologize for bouncing around. I could say there was a reason to my madness, but I 4 5 don't think there really is. 6 I'll try and help you out. All right. Page 8. I'm looking at lines 2 0 8 to 6. And this is, sort of, jumping into a discussion 9 where I think there were some public health assessments going on in Pennsylvania. Do I have that, 10 11 sort of, general description correct for this portion 12 of your testimony? 13 Would you say your description again? Α That starting at -- well it's really the 14 Q 15 bottom of page 7 at line 22, this portion of your 16 testimony is discussing some public health assessment 17 that was occurring in Pennsylvania. Is that correct? It was a -- it was a situation where 18 Α Yes. 19 people who were exposed to fracking and exposed to gas 20 development were experiencing health effects and other 2.1 concerns, and we were asked to -- I was asked to come 22 in and form a group, to see what it -- what -- what was happening. So it was the beginning of a public 23 24 health investigation of the type that we would have done if we were -- or someplace else, and they wanted 25 Page 241

1	to do the investigation. That that is the
2	description of the beginning of that project.
3	Q Okay. Now on that topic, reading through
4	your testimony, your experience here, as I understand,
5	is intended to relate your experience in Pennsylvania.
6	Correct?
7	A Well it is it does relate my experience
8	in Pennsylvania, but it was attempting to emphasize
9	the fact of what problems occur if you're trying to
10	investigate a public health outbreak where people are
11	sick and you don't have information on what they're
12	being exposed to, and you don't have information on
13	the capability of the community where they're living.
14	So our objective was to try to do something to
15	ameliorate their health issues.
16	Q And so in your testimony, it's limited to
17	your experiences with oil and gas operations in
18	Pennsylvania?
19	A This was done in Pennsylvania, but we also
20	looked at other states.
21	Q In your testimony
22	A From the organization, there was an
23	organization formed that was called
24	environmental it's now called the Environmental
25	Health Project. It was called the Southwest
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1	Environmental Health Project. The initial studies
2	were done in Southwest Pennsylvania. It extended
	-
3	further our from that and ultimately it was, we're
4	working areas nationwide.
5	Q Okay. In your testimony, though, Dr. Brown,
6	I didn't see anything outside of Pennsylvania. Do you
7	agree with me that your testimony was limited to your
8	experiences with oil and gas operations and public
9	health effects in Pennsylvania?
10	A Well including my entire experience, but
11	most of the data that I showed you came from
12	Pennsylvania, yes.
13	Q Okay.
14	A And came from that project.
15	Q Okay. Thank you, Dr. Brown.
16	MR. RANKIN: I have no further
17	questions.
18	THE HEARING OFFICER: Thank you, Mr.
19	Rankin. Mr. Maxwell, do you have any questions of Dr.
20	Brown?
21	MR. MAXWELL: Your Honor, I have no
22	questions.
23	THE HEARING OFFICER: All right. Thank
24	you very much. Mr. Tremaine?
25	MR. TREMAINE: Yes, Madam Hearing
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1	Officer, I do have a few questions. Thank you.
2	CROSS-EXAMINATION
3	BY MR. TREMAINE:
4	Q Good afternoon, Dr. Brown. Thank you for
5	being here, and I thank you for your time. I just
6	have a few clarifying questions.
7	A Okay.
8	Q In WildEarth Guardians Exhibit 57, on page
9	13, you've included a table including a list of
10	symptoms. Do you recall that?
11	A On page 13? Yeah, I did.
12	Q Okay. Is my understanding correct that this
13	is a list of symptoms that were reported to Project
14	Health or excuse me, Health Project staff by
15	individuals in the community?
16	A You're correct, but they were the way we
17	set this up, we would send a nurse practitioner, or a
18	nurse, or a health professional to each one of
19	those each one of those people. They were
20	families.
21	We selected one person out of each family,
22	usually the adult, and these questions were there
23	was a questionnaire. I didn't give it to you, but a
24	questionnaire that asked, typically as a clinician
25	would look at a case, starting from the head on down,

1	each each system identified, we asked a question
2	about that system. For example, "Do you have any
3	problems with dizziness?" or "Do you have any problems
4	with that?" And people would say, "Well I may be
5	woozy, or I may be something else."
6	But because we had professionals asking
7	them, they would say, "Well, that's dizziness," or
8	"That's nausea," or we would rate that as that. So
9	these each one of these items was defined as a
10	clinician would define them, who was looking at the
11	people.
12	We did that both in Pennsylvania, near the
13	fracking areas, mainly as people were there. We also
14	did it in New York State, which as similar, but no
15	fracking or nothing had happened to these people, but
16	they were identifies as places where fracking would
17	occur, or a compressor station or something would
18	occur.
19	Q Okay.
20	A So it just isn't it just isn't a
21	questionnaire where somebody wrote something down. It
22	was identified by a clinician.
23	Q And is my understanding correct that
24	your that the purpose of this table is to indicate
25	your findings that, or conclusions that individuals

1	reporting to Health Project that were within a certain
2	proximity to gas development experienced this list of
3	symptoms at a higher rate than individuals who did not
4	live within that proximity?
5	A Yeah. What we were trying to do is to
6	identify which symptoms we had appeared to be most
7	likely the most reasonably to be related to the health
8	area.
9	For example, if you go down and look at
10	joint pain, which is about the 12th from the bottom,
11	there it this table suggested that's unlikely to
12	be related to the health problem. But if you go up
13	and look at nausea, for example, or abdominal pain,
14	that was more likely to be related to the health
15	problem.
16	What we're trying to do is to what we
17	were really trying to do was to create an
18	epidemiologic case description, so we could work and
19	take the next step. And this told us what we should
20	be looking for to designate this as a case.
21	Q Okay.
22	A For affects. So it's it's more than
23	that. And there is some statistical significance
24	within it, but we didn't we didn't test the
25	statistical significance of this because it was not a
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	raye 240

1	research study; it was trying to direct our our
2	project.
3	Q Okay. So Dr. Brown, when you in this
4	analysis, when you're looking at individuals, or
5	getting reports from individuals who are living in
6	proximity to gas development, can you please clarify
7	what is the radius of that proximity that you're
8	looking at?
9	A Yes, I can. It's it's usually within
10	two two miles, or about three point something
11	kilometers. Because we we we restricted our
12	looking at where we we were calling it cases. We
13	thought we had cases further out, but we wanted to be
14	certain that we were not getting something else.
15	Q So is it your testimony that after
16	performing this analysis you associate a list of a
17	certain list of symptoms to living in proximity to gas
18	development in Pennsylvania?
19	A It's my analysis that we see an increase in
20	those symptoms. Because for example, you get a
21	headache for some other reason, but these this
22	population, which is a pretty large group it's 72
23	people that they that that was a real increase.
24	Q Is my understanding correct that at the time
25	of performing this analysis, you were not aware of the
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1	potential of PFAS as a contributing factor to these
2	potential health impacts?
3	A At that point in time, we had no idea that
4	PFAS had any involvement whatsoever with with oil
5	and gas, and that was and other compounds also, and
6	that was a major problem from a public health
7	standpoint, because what we were trying to do was
8	identify where the likely causes of this are coming
9	from. Using "causes" again, per the earlier
10	gentleman.
11	And in public health when that when
12	you're at that stage and you don't know what is
13	happening, you take a step to break the chain of
14	transmission. You're not trying to prove anything
15	about this chemical does something or doesn't do it.
16	You're trying to protect as many people as you can, as
17	quickly as you can.
18	Q Dr. Brown, I took as a core tenant or
19	takeaway from your testimony that one of your primary
20	concerns was that you, due to a lack of information
21	you do not actually know what might be causing
22	potential symptoms such as those listed in this chart
23	on page 13. Is that fair?
24	A It's fair up to a point. We know that some
25	of those chemicals that were there were capable of
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1	causing that, and it seemed reasonable to include
2	that, but we also knew there were other chemicals
3	there, which could have been synergizing and
4	increasing the responses to these chemicals.
5	It's those other chemicals that we didn't
6	know, so we were having to make the best judgment we
7	could to protect the people with the information that
8	was available. When we didn't have information
9	available, we had no way to do anything with it,
10	because we didn't have any information. Is that
11	clear?
12	Q I think it was. Thank you, Dr. Brown. The
13	wells that in this analysis, when you're talking
14	about these wells in Pennsylvania, for which or
15	reporting individuals are living within that two-mile
16	radius, or assumed proximity, are you aware of the
17	producing depth of those wells?
18	A That that information is available in
19	Pennsylvania. It's the Pennsylvania DEP keeps
20	that, provides that data. So on any given well at any
21	given time, you can go and look at the depth of the
22	well and see whether it's a shallow well or a fracking
23	well. We looked only at hydrofracking wells.
24	Q Okay. Can you characterize the average
25	depth of the wells that were considered?

1	A No.
2	Q Okay. Would you agree that gas development
3	in Pennsylvania typically occurs at a shallower depth
4	than that occurring in New Mexico?
5	A I don't know.
6	Q Okay. Are you able to characterize the
7	difference between the production depth of these wells
8	and the water depth?
9	A Most of the wells were going through the
10	water table, and then the fracking was occurring below
11	the wells, if that's your question.
12	Q Yes, Dr. Brown, that's essentially my
13	question. I'm trying to get at how far what's the
14	delta in depth between the fracking depth that you're
15	looking at and the water table.
16	A It was I I don't I can get that
17	actual data for you if you want them. It's
18	probably somebody knows that, I mean, but the fact
19	is that the flowback water that was coming back and
20	the produced water that was coming back was getting,
21	sometimes and the flaring, was reaching the homes and
22	people who we were working with.
23	Q Thank you. Dr. Brown, I think I just
24	want to clarify. Did you draw any conclusions as to
25	whether the potential health systems you note in your

1	testimony and in your project were associated with air
2	impacts or exposure to water contaminants?
3	A Yes.
4	Q Could you articulate that distinction?
5	A Sure. If we took the evidence that we
6	had, we we looked at people who were drinking
7	groundwater in wells and were also getting exposed by
8	the air and compared them to people who were drinking
9	public what we called public water, water that was
10	from a community or such, and compared the two.
11	And we would see, in both cases we saw the
12	health the pattern of health effects we were
13	seeing. But we saw that those patterns were higher in
14	those people who were drinking groundwater.
15	MR. TREMAINE: Thank you for that, Dr.
16	Brown. I have no further questions.
17	THE HEARING OFFICER: Thank you, Mr.
18	Tremaine. Mr. Davis, any follow-up?
19	MR. DAVIS: I do not.
20	THE HEARING OFFICER: All right. Let
21	me move to the commissioners then. Commissioner
22	Ampomah, would you like to start this time? No?
23	Sorry. Commissioner Bloom? That's what I meant to
24	say.
25	MR. BLOOM: All right. Thank you, Dr.
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1	Brown. Can you hear me okay?
2	DR. BROWN: I can hear you fine. Thank
3	you.
4	MR. BLOOM: All right. From my
5	perspective at this point, some of the issues we have
6	to resolve during the course of this hearing are what
7	definition of PFAS do we use? Should we prohibit the
8	use of undisclosed chemicals in New Mexico? We also
9	need to talk about how studies are performed
10	post post accident in our state. And should
11	notification be changed? And if so, how do we do
12	that?
13	So I think my questions for you are do
14	you have any thoughts on which definition of PFAS we
15	should use? There's a broader one that WildEarth
16	Guardians has proposed, and I believe OCD and NMOGA
17	have different a different definition or
18	definitions. Oh I think I'll make the question. Do
19	you have any thoughts on which definition we should
20	use, the broader or more narrow one?
21	DR. BROWN: I would use the broader
22	definition, and the reason is that if we look at
23	PFAS first of all, PFAS is amazingly toxic. It is
24	probably more toxic than dioxane, the the water
25	levels set by EPA for all of these agents are very

1	low they're in parts per trillion.
2	Of the compounds that we've studied
3	well, that have been studied well, I think only one or
4	two have been shown not to be as toxic as the
5	extremely toxic ones, although they're still toxic.
6	So every compound that has been tested carefully has
7	been shown to be a very hazardous compound.
8	I think if other chemicals come in, we
9	would be acting too hopefully that they would not be a
10	toxic chemical. I think the, you know, seven, I think
11	it's seven out of nine chemicals are in the highly
12	toxic range. I think there's a message for us there.
13	MR. BLOOM: And this is your
14	thinking on this based as a Doctor of Physiology and
15	Toxicology?
16	DR. BROWN: Yeah, more more on my
17	chemistry and my biology background. We think about
18	compounds in toxicology in groups. We think about
19	aldehydes. We think about groups of chemicals. And
20	we think about what target organ do they have. We
21	don't have a specific target organ necessarily for
22	these compounds, but wherever they turn up they seem
23	to produce effects at very, very low doses.
24	There's a piece of data from Minnesota
25	that I didn't provide to you where the State of

1	Minnesota put strong controls on PFAS and the blood
2	levels in their people actually went down after a
3	couple of years, so I think that there's no doubt that
4	they get in the body, they produce blood levels that
5	are within the range that we would be worried about as
6	health professionals, and not having them there is
7	better.
8	And to come back to your question,
9	I I think we would be making a too don't want to
10	use the term "faulty," but this: If we were to assume
11	that these compounds only occurred, the ones we've
12	had, we've found all the toxic ones and the others are
13	not toxic, I don't think that that's a logical
14	assumption.
15	MR. BLOOM: And Dr. Brown, do you feel
16	comfortable talking about public health?
17	DR. BROWN: Yes, I do.
18	MR. BLOOM: Okay. I think one of the
19	reasons there's a more broad and more narrow proposal
20	is the more narrow one would limit what we can test
21	for, saying that there aren't tests for all of these
22	substances out there, and therefore, we shouldn't ban
23	them. Do you have any comments on that?
24	DR. BROWN: I'll try to keep myself in
25	control. I I not knowing whether something is
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1	toxic doesn't make it safe to anyone. And we have a
2	history in our country, and the world, of finding
3	toxic chemicals that we've been breathing for years.
4	Lead would be one of them, and others, mercury and
5	things of that sort. When we got the chemicals out of
6	the environment, people showed increased robustness
7	and stuff.
8	So from a public health standpoint, if
9	you don't know that something is safe, the only thing
10	you can say is, "I don't know whether it is safe or
11	not." And if somebody asks you what to do, you need
12	to avoid the exposure or reduce it, if you can. The
13	problem with PFAS and its danger is individuals don't
14	have a way to reduce it. They they can move away,
15	is basically is all they can do.
16	And people in Pennsylvania, some of
17	them just abandoned their homes and moved away because
18	they couldn't be certain their children were safe. I
19	don't think we personally, as a toxicologist, or a
20	professional, or anybody I don't want people moving
21	away from their houses because they don't know whether
22	it's safe or not.
23	MR. BLOOM: So in your professional
24	opinion, you would say that we should establish a
25	chemical as safe before we allow it versus allowing it

1	and then trying to find out later if it's toxic?
2	DR. BROWN: That that would be the
3	only moral thing to do, but we don't do that.
4	We we don't have a precautionary principle. So but
5	we do FDA, for example, with drugs, carefully
6	follows exposures in people when something new is put
7	out there, so that they would each year, they would
8	go back and make sure the drug didn't have some
9	unforeseen effect.
10	And in occupational medicine, we
11	usually could do that by and I worked in
12	occupational medicine for some time we actually can
13	look at the workers and see how the workers are doing
14	after the exposures. With the oil and gas industry,
15	there really is no available, that I know of, health
16	information on their workers, their workforce,
17	available to the public. So you don't have that clue.
18	You have to go to the public, as we had
19	to go in Pennsylvania and say, first, "Were these
20	people plausibly exposed? They were? Were they
21	showing health effects? They were. Were there
22	chemicals there that could have caused these health
23	effects? They were there. Do we know what to tell
24	them to do?" We we didn't.
25	MR. BLOOM: Thank you. Yeah, thank
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1	you. Just changing tact, maybe two more questions.
2	DR. BROWN: Okay.
3	MR. BLOOM: So WildEarth Guardians'
4	proposal would greatly expand disclosure to residents,
5	police departments, fire departments, the Bureau of
6	Land Management, the State Land Office, where I work,
7	anyone within one mile of where the frack job's taking
8	place.
9	We're not quite sure yet what form that
LO	communication would take. You know, it could be a
L1	postcard, it could be a certified piece of mail. What
L2	would you want? I looked at some of the citations you
L3	made. You talked about the EPA's SALT program.
L4	DR. BROWN: Yeah.
L 5	MR. BLOOM: I'll call it SALT program.
L6	And you know, it talks about providing in, kind of,
L7	actionable information, following up so that there's
L8	education, things like that. Just your thoughts,
L9	please.
20	DR. BROWN: I'll try to stay on point.
21	First if you don't tell somebody that somethings toxic
22	or something is there and you know it, and they find
23	out that you didn't tell it to them, you you cease
24	becoming a trusted source. SALT talked about trusted
25	sources.

1	And once you cease to become a public
2	trusted source, the public health community and the
3	government overall loses its ability to protect the
4	population, because they just don't believe you. They
5	think you lie. So you don't want to do that.
6	Water companies in some areas have
7	systematic ways where they warn you. I just got
8	something in the mail from my water company saying
9	they didn't know whether there was toxic lead in the
10	pipe coming to my house or not. I should test it
11	myself. That's but they have frequent requirements
12	that they do that.
13	Some communities have put data on
14	websites, so that you can get to websites. The
15	FracFocus website is a nice website, but it doesn't
16	tell you enough. It tells you that there's a chemical
16 17	tell you enough. It tells you that there's a chemical there. It doesn't tell you what, sort of, organ
17	there. It doesn't tell you what, sort of, organ
17 18	there. It doesn't tell you what, sort of, organ system would be affected, which a clinician would
17 18 19	there. It doesn't tell you what, sort of, organ system would be affected, which a clinician would need. It doesn't tell you what the signs and symptoms
17 18 19 20	there. It doesn't tell you what, sort of, organ system would be affected, which a clinician would need. It doesn't tell you what the signs and symptoms would be, which is what a patient would want. Can
17 18 19 20 21	there. It doesn't tell you what, sort of, organ system would be affected, which a clinician would need. It doesn't tell you what the signs and symptoms would be, which is what a patient would want. Can that problem be solved? I think it can.
17 18 19 20 21 22	there. It doesn't tell you what, sort of, organ system would be affected, which a clinician would need. It doesn't tell you what the signs and symptoms would be, which is what a patient would want. Can that problem be solved? I think it can. I think that we we have to change.
17 18 19 20 21 22 23	there. It doesn't tell you what, sort of, organ system would be affected, which a clinician would need. It doesn't tell you what the signs and symptoms would be, which is what a patient would want. Can that problem be solved? I think it can. I think that we we have to change. In some cases we might do it at the county level if

1	you have an aggressive public health department or a
2	thoughtful public health department. But I think the
3	failure to tell somebody that something is there, you
4	lose so much of your ability to do your job when they
5	decide "I can't trust those people." I think you have
6	to do something.
7	MR. BLOOM: Thank you. No further
8	questions. Thank you, Dr. Brown.
9	THE HEARING OFFICER: All right. Thank
10	you. Mr. Chair, do you have questions?
11	MR. RAZATOS: Thank you, Dr. Brown.
12	Appreciate it. I do have some questions. On the
13	charts that you have on page 13 with the symptoms in
14	the exposed population from Pennsylvania and the
15	non-exposed population in New York, just out of
16	curiosity, why is your sample size different, an n of
17	77 and an n of 88?
18	DR. BROWN: It it is
19	different. It wasn't a study. This was a collection.
20	We got
21	MR. RAZATOS: Dr. Brown, your your
22	volume, kind of, went down. You changed something
23	with your microphone. I can barely hear you.
24	DR. BROWN: Can you hear me now?
25	MR. RAZATOS: Yes, sir.

1	DR. BROWN: Okay. It wasn't exactly a
2	study. We we were looking in New York State for
3	health effects that were occurring. We managed to get
4	88 families. We looked at Pennsylvania, and we
5	were remember I was restricting the families to a
6	certain distance around the around the site, and
7	that's the number we got. Statistically, I'm I've
8	got a doctorate not a doctorate in statistics, but
9	I studied statistics at Berkeley and Harvard. And
LO	those those numbers we could do statistics with if
L1	we wanted.
L2	MR. RAZATOS: So thank you for that,
L3	but I do have a question. Then on page 7 of your
L 4	testimony, you spoke about "The table on page 9 shows
L5	a comparison of health complaints between fracking
L6	communities in Pennsylvania and similar population in
L7	New York." Is this the same table, just different,
L8	wrong page number?
L9	DR. BROWN: Yeah, it's it's the same
20	table. It got moved around when I was doing it. And
21	the reason I stated it that way is we didn't go to
22	Manhattan and look at people.
23	MR. RAZATOS: Sure.
24	DR. BROWN: We we went to
25	rural New York, which was, kind of, like rural

1	Pennsylvania with different food.
2	MR. RAZATOS: So thank you for that,
3	but for rural New York, did you apply the same
4	criteria? You said that the area in New York was
5	planned to have gas wells, but the drilling had not
6	happened yet. So did you still follow, like, they
7	would be within two miles of these proposed gas wells,
8	et cetera, et cetera?
9	DR. BROWN: That's a very good
LO	question
L1	MR. RAZATOS: I can't hear you again,
L2	Dr. Brown. You you changed something.
L3	DR. BROWN: Sorry. I know what's
L4	happening. Okay. That's that's a very good
L5	question. I think we may have made the distance a
L6	little bit bigger just because there wasn't anything
L7	going on. There would be a farmhouse, and this would
L8	be the farmhouse within a mile or so, or half a mile,
L9	of where they were predicting they were going to put
20	the well, or in some cases it was a compressor
21	station.
22	MR. RAZATOS: Okay. So we're not
23	really dealing with apples and apples, and oranges
24	with oranges. We're fruit, but not the same
25	statistics. So when you state we could draw

1	statistical comparisons off of this, we really can't
2	because you're really not dealing with the same
3	dataset.
4	DR. BROWN: And we didn't.
5	MR. RAZATOS: Or criteria.
6	DR. BROWN: Yeah. We didn't. What we
7	were doing was looking at people who had the same SRS
8	background in New York and comparing them to similar
9	people in Pennsylvania. And we were trying to
10	identify which of those health effects we were seeing
11	would be more likely than not to be associated with
12	the, being near the wells.
13	MR. RAZATOS: Okay. And just to
14	clarify, the criteria, such as being within the
15	two-mile radius of a well, or a proposed well, was not
16	applied. Correct?
17	DR. BROWN: Well it was in
18	Pennsylvania.
19	MR. RAZATOS: In Pennsylvania but not
20	in New York?
21	DR. BROWN: There was no well in New
22	York.
23	MR. RAZATOS: I know, but there was a
24	proposed site. Correct?
25	DR. BROWN: Yeah. We didn't we did
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1	not do that, no.
2	MR. RAZATOS: Okay. Thank you for
3	that. My next question was, in the questioning, that
4	the Oil Conservation Division asked you, you stated
5	that chemicals can synergize.
6	DR. BROWN: Sorry.
7	MR. RAZATOS: I beg your pardon?
8	DR. BROWN: I'm sorry. I'm
9	MR. RAZATOS: It's been a long day, I
10	know, Doctor. I apologize. It's long for us all, and
11	it's
12	DR. BROWN: I'm it's beyond seven in
13	New York.
14	MR. RAZATOS: Yes, I know. So if you
15	could just bear with me, I apologize.
16	DR. BROWN: Yeah.
17	MR. RAZATOS: You stated that these
18	chemicals can synergize, and I wanted to know,
19	synergizing in what way? Do we have any of that data?
20	DR. BROWN: Yeah, we do, a little bit.
21	MR. RAZATOS: Okay.
22	DR. BROWN: Synergism, particularly
23	these chemicals tend to attach themselves to fine
24	particulate and PM2.5, and the PM2.5 carries the
25	chemical into the deep lung.

1	MR. RAZATOS: And Doctor, could
2	
	you I'm sorry. Could you tell me what PM2.5,
3	because that was going to be one of my questions, as
4	well? I was trying to find it in your testimony here,
5	but you didn't say what PM stood for.
6	DR. BROWN: I'm sorry. It's
7	particulate matter. It's that is
8	MR. RAZATOS: Smoke.
9	DR. BROWN: Smoke. But very fine
10	smoke, less than the width of a human hair.
11	MR. RAZATOS: 2.5 microns, 2.5
12	nanometers?
13	DR. BROWN: Microns. No, 2.5 microns.
14	MR. RAZATOS: Okay. Thank you.
15	DR. BROWN: Very fine particulate. And
16	that size particulate absorbs water-soluble toxic
17	chemicals, water-soluble chemicals to the surface.
18	Those water-soluble chemicals, if they're not on
19	particulate, are trapped in the upper respiratory
20	tract and and are relatively nontoxic. If they're
21	on particulate, they don't they go by that trap and
22	go to the deep lung, where they can be absorbed into
23	the into the bloodstream.
24	MR. RAZATOS: Okay.
25	DR. BROWN: So that and that effect
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1	is about a ten-fold effect in terms of toxicity. So
2	if you put a toxic chemical in the air and expose some
3	animal to it, and then put fine particulate with it,
4	mix it, and then it will make the animal ten times as
5	sensitive.
6	MR. RAZATOS: Okay.
7	DR. BROWN: And unfortunately almost
8	all of the chemicals that we're getting around these
9	sites are in the presence of fine particulate, PM2.5
LO	and smaller.
L1	MR. RAZATOS: Okay. That made more
L2	sense. Thank you for clarifying that. But I just
L3	have two more questions, and they should be fairly
L4	simple.
L5	DR. BROWN: Sure.
L6	MR. RAZATOS: In the table with the
L7	Southwest Pennsylvania and all the symptoms that they
L8	were seeing, was bloodwork done on these individuals,
L9	and if so, was PFAS in these people's blood?
20	DR. BROWN: There was in some cases,
21	there was bloodwork done that was gathered from NIOSH,
22	National Institute for Occupational Health Data. In
23	some cases, there was bloodwork done on those
24	chemicals. In other cases, it was just an air it
25	was not just an air exposure, it was another effect.

1	And I don't think they looked for PFAS.
2	MR. RAZATOS: Okay. But there was some
3	PFAS data collected on some of the samples?
4	DR. BROWN: In that for that table,
5	we didn't know PFAS was a problem when we prepared
6	that table, so we didn't look for it.
7	MR. RAZATOS: Okay. Sorry. That
8	generated another question for me then.
9	DR. BROWN: Okay.
10	MR. RAZATOS: So then you're
11	extrapolating that PFAS is present in the area, PFAS
12	can have these particular effects on an individual;
13	hence, PFAS could be an attributing cause to, for
14	instance, as you brought out, and I apologize, I
15	flipped the page so I need to get back, headaches,
16	shortness of breath, hair loss, skin cysts, any of
17	these gamut of issues. Is that what I'm
18	understanding, you're extrapolating that PFAS could
19	potentially cause these issues?
20	DR. BROWN: Well some of them, they
21	could. It's some of them are consistent with what
22	PFAS is known to do. Others it's not. But there are
23	certain ones in here. I can if you'll bear with
24	me, I can take a look and see if I can show those.
25	Shortness of breath may maybe all. The skin rash,

1	the weakness, and there's there's probable others
2	in there, too are also consistent with PFAS being
3	there. But there's other chemicals that could do
4	that, too, in the in the chemicals that we found
5	present in fracking.
6	MR. RAZATOS: Okay. So it could be any
7	gamut of these chemicals that are in fracking,
8	including PFAS, could cause these issues. Correct?
9	DR. BROWN: Sure.
L O	MR. RAZATOS: Okay. So you're not
L1	necessarily saying PFAS is doing this. You're saying
L2	any gamut of these compounds could be contributing to
L3	this these causes in these individuals?
L4	DR. BROWN: Yeah, the the big
L5	problem is that nobody's getting exposed to just PFAS
L6	or just nitrogen oxide. People there are getting
L7	exposed to all of it. And when they get exposed to it
L8	because of the weather system, they get exposed to
L9	very high levels.
20	MR. RAZATOS: Sure, and
21	DR. BROWN: So you're faced with "I
22	don't know."
23	MR. RAZATOS: Okay. And as you can
24	see, I mean, I I understand that there's other
25	chemicals, as well, but we're strictly talking about

1	PFAS, so I'm keeping it strictly on the PFAS here.
2	DR. BROWN: Okay.
3	MR. RAZATOS: So I do appreciate your
4	answers on that. My last question for you, in your
5	conclusion on page 20, on, starting with line 5, it
6	says, "Additionally, it requires community
7	identification of chemicals used downhole in oil and
8	gas operations." And you were stating how, in this
9	particular paragraph, that undisclosed chemicals down
10	the hole in New Mexico right now is a problem. Did
11	Pennsylvania notify individuals of downhole chemicals?
12	DR. BROWN: No. That was part of the
13	problem. They they eventually began to
14	put their they strengthened their
15	identification. This project went over nine years,
16	and it's still going on, but at the beginning people
17	didn't receive any information at all. Ultimately,
18	they did. There was an attorney general's report, I
19	think you might want to look at, that caused the
20	public health department to become more aggressive.
21	MR. RAZATOS: Okay. Awesome. So then
22	in your professional opinion, who should be notifying
23	these individuals? Would it be the actual company
24	that is using PFAS? Is it the Department of Health?
25	Is it in this instance, like, the Oil Conservation
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1	Division, who regulates in the State of New Mexico?
2	Who would be issuing these notifications?
3	DR. BROWN: I would think the person
4	that the group that is most trusted in this is the
5	Department of Health.
6	MR. RAZATOS: Okay.
7	DR. BROWN: That that
8	would that's who I would think should do it. The
9	least trusted my apologies to people from are
10	the companies.
11	MR. RAZATOS: Sure.
12	DR. BROWN: Now there were companies in
13	Pennsylvania who we had a great deal of confidence in,
14	who came to us with information and were interested in
15	what we were finding and what they could do about it.
16	So it isn't a blanket, every company is bad. None of
17	them were bad, but some companies were very, very
18	concerned about the health issues that they might be
19	creating.
20	MR. RAZATOS: Excellent. Thank you,
21	Dr. Brown. No further questions from me.
22	THE HEARING OFFICER: Okay. Thank you.
23	Commissioner Ampomah?
24	DR. AMPOMAH: Thank you. Dr. Brown,
25	thank you so much.

1	DR. BROWN: You're welcome.
2	DR. AMPOMAH: So I do have a couple of
3	questions. On page 4, line 5, in your testimony you
4	said that, "WildEarth Guardians has asked that I
5	describe any experiences responding to the human
6	health risks from those chemical exposures encountered
7	by residents in communities near oil and gas
8	extraction." So my question to you is that, as you
9	were preparing for your testimony, did you get any
10	data from the state of New Mexico, especially within
11	the two basins that produce oil and gas in the state?
12	DR. BROWN: I didn't I didn't use
13	any data from New Mexico in doing that. In our
14	history, we had worked with the Navajo Nation and on
15	issues that they had with gas extraction, and of
16	course, I considered that. There's a report on that
17	someplace. But I didn't include it as it wasn't
18	central to any point that I was making.
19	DR. AMPOMAH: So basically your studies
20	were, more or less, centered in Pennsylvania. So why
21	do you believe that the state [sic] of Pennsylvania
22	has not banned PFAS?
23	DR. BROWN: I really don't have any
24	professional knowledge on what the state [sic] of
25	Pennsylvania does or doesn't do.

1	DR. AMPOMAH: Can you provide to the
2	commission, you know, the depth, you know, based on
3	your study, the depth where oil and gas operations
4	were occurring in your study area, specifically in
5	this in Pennsylvania?
6	DR. BROWN: I I could do that. It
7	would require that I go back and dig it out. It would
8	be it would be a significant effort.
9	DR. AMPOMAH: Yeah, then certainly that
LO	can be provided to us, since we do have a couple of
L1	days within the hearing. Definitely it is good for
L2	the commission, more or less, since there has not been
L3	any specific study in the state of New Mexico, and we
L4	are, more or less, relying on other states, as I think
L5	it is fair to the commission for us to get all the
L6	information for us to, more or less, make a very good
L7	decisive decision on this matter.
L8	DR. BROWN: Yeah. I I think I
L9	suspect one of the people that I was talking to
20	earlier can go online and get that depth information
21	through Washington County in Pennsylvania.
22	DR. AMPOMAH: So in your study, as
23	you or in your testimony so is your testimony
24	that you don't have any data, or you do not have any
25	information with regards to exposure of PFAS to oil

1	and gas operations in the state of New Mexico?
2	DR. BROWN: I don't.
3	DR. AMPOMAH: Okay. You talk about the
4	pathways of exposure on page 10, page 10 of your
5	testimony. I want to ask you, are you familiar with
6	oil and gas operations, especially how we drill a
7	well, we stimulate a well, we complete a well?
8	DR. BROWN: I I'm not an expert in
9	that area, but in the work we were doing we had to
10	understand how the wells were being drilled, the
11	number of wells that would be on a site, and how they
12	displayed what the air exposures were around the wells
13	and what the potential water pathways were.
14	DR. AMPOMAH: So then can you explain
15	to me, you know, it's not really clear, on the
16	pathways of exposure? I do know that you've mentioned
17	water contamination and airborne exposure.
18	So based on your understanding as to
19	how oil and gas wells are operated, can you, more or
20	less, explain to the commission how, based on your
21	study, you've seen water contamination through, let's
22	say with PFAS, and then also airborne exposures, for
23	us to fully understand, with regards to the pathways
24	of exposure?
25	DR. BROWN: I think you asked for PFAS.
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1	We didn't know PFAS was there, so we didn't look for
2	PFAS. We know other chemicals were there, and I can
3	explain how we determined that there was a we would
4	call that an open pathway of exposure by through
5	water or through air. I could explain that to you.
6	DR. AMPOMAH: So you're saying that
7	even now, because you still made mention of the PFAS
8	in that session of your testimony? So can you
9	describe to the commission how you see the
10	contamination of, let's say, USDW on the ground source
11	of drinking water, but let's say PFAS, and then also
12	the airborne exposure, as well?
13	DR. BROWN: Well they're both pretty
14	easy. If if PFAS everything that goes down the
15	well that isn't utilized in the fracking process
16	is eventually comes up the well with the gas, and
17	it's released in I don't want to go into a lot of
18	detail on that. Sometimes it's just released into the
19	air in a blowdown. Sometimes it's released to the air
20	and the gas is the gas is dried we had wet gas
21	in Pennsylvania. The gas goes through a drying
22	process and chemicals are released into the air that
23	way.
24	Sometimes the water comes back and the
25	wastewater and the produced water is used for various

1	uses. At one point in Pennsylvania, they were using
2	it on the highway to control dust. So all of those
3	were ways that information could get from a well to a
4	person who could breathe it and be affected by it.
5	That would be a closed we would call that an open
6	pathway.
7	What we were trying to do, or our goal,
8	was to close as many pathways as we could. We could
9	close water pathways by simply saying, "Don't drink
10	water. Drink it out of a, you know, a bottled water
11	instead." We we closed that pathway partly by
12	saying, "Don't take showers in any shower that
13	doesn't isn't well-ventilated." We could say,
14	"Take short cold showers." It didn't go over big with
15	the teenage kids.
16	But our goal was to reduce the exposure
17	because we did not know exactly what was causing this
18	group of people to be sick, but we knew that they were
19	ill and we knew that those people who were more ill
20	were near sites with open pathways of exposure.
21	DR. AMPOMAH: Dr. Brown, so on page 12
22	to page 13, you talk about the table of health
23	symptoms. Now can you explain to the commission how
24	was utilized this table. You know, especially where
25	there is no data from the state of New Mexico, you

1	know, you are presenting two different, let's say
2	scenarios, and even the Chair probed a little bit, you
3	know, to comparing if it is apples to apples. How
4	would you want the commission to view this table, and
5	also how would you want to us to incorporate that into
6	our decision-making?
7	DR. BROWN: I can I can only go so
8	far with that. The way you would use a table like
9	this is really three steps. First you would look at
10	what is the these are symptoms, and you would say,
11	"What organ system, the brain, the lungs, or soever,
12	are affected by these systems?" We did that in our
13	process. We would then take that that data and
14	create what we called a case description.
15	The case description is actually in our
16	files. It's online. It says, if you have one or more
17	of these symptoms, or three or more of these symptoms,
18	and you are in a position where you could be in a
19	pathway of exposure, then we should consider your
20	effect as potentially associated with the well or
21	with the fracking process.
22	That that that table is as
23	complete as we could make it when we made it,
24	but but once you have a case description, then a
25	public health agency or anyone else can screen a

1	population and find out who is being affected and
2	who's not being affected. There's another step, of
3	course, of identifying where are the possible sources
4	of exposure to these people.
5	If I were doing this, I would ask the
6	health department I've done this, actually. I
7	would say to the health department, "If people call
8	you with this series of effects and they are in an
9	area where there's gas drilling, you should be
LO	concerned about a contaminated well or a downwind
L1	exposure that they're getting that's unduly high. The
L2	health department then is going to have to decide what
L3	it wants to do to protect those people.
L4	DR. AMPOMAH: Thank you.
L4 L5	DR. AMPOMAH: Thank you. DR. BROWN: It it can be done. I
	-
L5	DR. BROWN: It it can be done. I
L5 L6	DR. BROWN: It it can be done. I will assure you that it can be done, but somebody with
L5 L6 L7	DR. BROWN: It it can be done. I will assure you that it can be done, but somebody with public health background or a health background is
L5 L6 L7 L8	DR. BROWN: It it can be done. I will assure you that it can be done, but somebody with public health background or a health background is going to need to think through the steps for New
L5 L6 L7 L8	DR. BROWN: It it can be done. I will assure you that it can be done, but somebody with public health background or a health background is going to need to think through the steps for New Mexico, because I'm not from New Mexico. I'm from
L5 L6 L7 L8 L9	DR. BROWN: It it can be done. I will assure you that it can be done, but somebody with public health background or a health background is going to need to think through the steps for New Mexico, because I'm not from New Mexico. I'm from Connecticut. We have an ocean right next to us, and
15 16 17 18 19 20	DR. BROWN: It it can be done. I will assure you that it can be done, but somebody with public health background or a health background is going to need to think through the steps for New Mexico, because I'm not from New Mexico. I'm from Connecticut. We have an ocean right next to us, and you guys are high desert, so it's different.
15 16 17 18 19 20 21	DR. BROWN: It it can be done. I will assure you that it can be done, but somebody with public health background or a health background is going to need to think through the steps for New Mexico, because I'm not from New Mexico. I'm from Connecticut. We have an ocean right next to us, and you guys are high desert, so it's different. DR. AMPOMAH: Yeah, so even on that
15 16 17 18 19 20 21 22 23	DR. BROWN: It it can be done. I will assure you that it can be done, but somebody with public health background or a health background is going to need to think through the steps for New Mexico, because I'm not from New Mexico. I'm from Connecticut. We have an ocean right next to us, and you guys are high desert, so it's different. DR. AMPOMAH: Yeah, so even on that point, would you agree with me that it would have been

1	Mexico who really do understand what is going on in
2	New Mexico to give you some guidance on your
3	testimony?
4	DR. BROWN: No, I don't think I need
5	guidance on my testimony. I I actually worked at
6	CDC where I was responsible for public health practice
7	and safety at all the superfund sites in the country.
8	So I know pretty much how it's done. If there were
9	some unique things about New Mexico, they would
10	be they would focus on the government of New Mexico
11	and the ability of your communication system to get
12	information out in a way that's trusted.
13	And I don't somebody would need to
14	do that. But if you went to your health agency and
15	asked some of the policy people, they could design it
16	for you.
17	DR. AMPOMAH: Thank you, Dr. Brown. So
18	this question is more general. I don't know whether
19	you can respond to that or WildEarth Guardians do have
20	some response to that.
21	The question is, as you prepare
22	for let's say as you were preparing for this
23	hearing, did WildEarth Guardians, more or less, talk
24	to community members in the state of New Mexico,
25	specifically within the basins where oil and gas

1	operations where we do have oil and gas operations?
2	You know, I took notes of all
3	the all the public comments that we received so
4	far. You know, some of the community members are from
5	Santa Fe, talking about being exposed to PFAS in the
6	water, you know, and in my mind, I'm like, "Okay, is
7	there oil and gas operations in Santa Fe?" Right?
8	So do you have any, you know, do you
9	have any data, you know, based on the communities,
LO	more or less, directly impacted by oil and gas
L1	operations in the state of New Mexico to back, let's
L2	say, some of the some of the research that has been
L3	done in West Virginia and Pennsylvania to, more or
L4	less, support the case?
L4 L5	less, support the case? DR. BROWN: I heard this morning, in
	- -
L5	DR. BROWN: I heard this morning, in
L5 L6	DR. BROWN: I heard this morning, in fact, I've been listening to your your people, and
L5 L6 L7	DR. BROWN: I heard this morning, in fact, I've been listening to your your people, and it's just the same song in a new cafe. That's exactly
L5 L6 L7 L8	DR. BROWN: I heard this morning, in fact, I've been listening to your your people, and it's just the same song in a new cafe. That's exactly what people were telling me in Pennsylvania. It's
L5 L6 L7 L8	DR. BROWN: I heard this morning, in fact, I've been listening to your your people, and it's just the same song in a new cafe. That's exactly what people were telling me in Pennsylvania. It's exactly, people were coming to our offices and telling
L5 L6 L7 L8 L9	DR. BROWN: I heard this morning, in fact, I've been listening to your your people, and it's just the same song in a new cafe. That's exactly what people were telling me in Pennsylvania. It's exactly, people were coming to our offices and telling the very same kind of stories.
15 16 17 18 19 20	DR. BROWN: I heard this morning, in fact, I've been listening to your your people, and it's just the same song in a new cafe. That's exactly what people were telling me in Pennsylvania. It's exactly, people were coming to our offices and telling the very same kind of stories. They they they have limited water
15 16 17 18 19 20 21	DR. BROWN: I heard this morning, in fact, I've been listening to your your people, and it's just the same song in a new cafe. That's exactly what people were telling me in Pennsylvania. It's exactly, people were coming to our offices and telling the very same kind of stories. They they they have limited water and they have limited resources to change it, but
15 16 17 18 19 20 21 22 23	DR. BROWN: I heard this morning, in fact, I've been listening to your your people, and it's just the same song in a new cafe. That's exactly what people were telling me in Pennsylvania. It's exactly, people were coming to our offices and telling the very same kind of stories. They they they have limited water and they have limited resources to change it, but they're very concerned about the potential exposures.

1	Pennsylvania experienced.
2	But I I would be very surprised if
3	the natural the nature is the same in North in
4	New Mexico as it is in Pennsylvania and in
5	Connecticut, in Maine and in various other states, and
6	countries around the world. There's air pathways that
7	people are exposed to. We know that. There's water
8	pathways that people are exposed to. Your people have
9	very limited water.
10	Just thinking about the amount of water
11	that you would use to frack a well is breathtaking how
12	much of your water supply it would use. I don't think
13	as an expert as I am in this area I would be able to
14	go to any particular state and say, "This is what this
15	state ought to do or not to." I can give you the
16	information, but that's up to you to decide how you
17	want to deal with it.
18	DR. AMPOMAH: Yeah, so Mr. Davis can
19	you respond to the other part of my question, whether
20	data were collected in these counties?
21	MR. DAVIS: Can you repeat the question
22	again?
23	DR. AMPOMAH: Yeah, so most of the
24	testimony is all based on West Virginia and
25	Pennsylvania. Right? So are there any direct, let's
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1	say, data collected in the state of New Mexico?			
2	MR. DAVIS: Commissioner Ampomah,			
3	commissioners, I'll do my best to answer your			
4	question. And I think I would put it this way: And			
5	this really relates to the chart that people have been			
6	discussing, is that this chart, as I understand it,			
7	from what Dr. Brown said, is not to be used as a			
8	guideline in New Mexico. It is an example of the			
9	lengths that public health professionals had to go to,			
LO	to try to solve a problem when they did not know what			
L1	chemicals were present.			
L2	And the reason they didn't know what			
L3	chemicals were present was because Pennsylvania did			
L4	not require full disclosure to the public, and Dr.			
L5	Brown was a member of the public. I hope that answers			
L6	your question.			
L7	DR. AMPOMAH: Yeah, so			
L8	DR. BROWN: If I could add just one			
L9	thing. The data that I showed you was the data we had			
20	on the fly, several as we went through this process.			
21	All the data that I'm showing you, if you look at some			
22	of the more recent papers, showed that we were pretty			
23	close to being on target. We had we had identified			
24	the same effects.			
25	Now there are papers that say,			

1	"Here here's what the chemicals are," and they've
2	been analyzed by research studies. But we were not
3	doing a research study. We were trying to respond to
4	a public health outbreak, what we would call an
5	outbreak. And we were gathering data on the fly and
6	making decisions on the fly.
7	DR. AMPOMAH: David, so my main concern
8	here is that, you know, WildEarth Guardians, you are
9	asking a big you know, you are asking a big ask of
10	the commission. One is banning PFAS and the other one
11	is banning all undisclosed chemicals. All right. So,
12	you know, as I sit here, I really want to see evidence
13	of how, with let's say, there has been numerous oil
14	and gas operations in the state of New Mexico.
15	All right. So definitely I want to see
16	real data in our state. That should push us to, more
17	or less, go the extreme of even banning undisclosed
18	chemicals, you know, where there's no data to support
19	the claims.
20	DR. BROWN: Your experience with
21	undisclosed chemicals will be in my judgment the same
22	as the experience we had in Pennsylvania when we were
23	working with undisclosed chemicals. Physicians and
24	public health people simply cannot guess as to what
25	the effects are, and you simply cannot assume the

1 compounds are safe. 2 We don't assume every compound is not 3 safe, but when there are chemicals that are in the toxic category, which these are, we assume that we 4 5 need to protect the public health. 6 DR. AMPOMAH: Yeah, I do understand 7 8 9

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that, but as I sit here, I really want to see some work done in New Mexico, at least real evidence, data from New Mexico, that can support the commission, you know, if we're asked to, more or less, go the extreme of even banning undisclosed chemicals.

You know, these are great examples, but what is happening in New Mexico? You know, I -- I want to see some real evidence based on, let's say, this week-long hearing. I want to see some community members in the direct oil and gas operations who are going through these problems. At least there has to be some kind of evidence, you know, because you are, more or less, using West Virginia and Pennsylvania.

And based on Jesse's comment, probably they operated in the shallow zones in the state. So it's definitely different from the state of New Mexico. So I really want to see more information, you know, based on any work study done in the state of New Mexico.

1	DR. BROWN: The Sierra Club is a study
2	with the Navajos, which we worked with. I think
3	if I think the Navajo Nation is in New Mexico, and
4	if you find that study, I'm sure that WildEarth
5	Guardians can find it for you and give it to you;
6	you'll see the damage that we identified in New
7	Mexico. So if you want data directly from New Mexico,
8	it's it exists. You see, you only have to go look
9	for it.
10	THE HEARING OFFICER: And thank you,
11	Commissioner Ampomah. Is there any reason at this
12	time not to excuse Dr. Brown? No? All right. Thank
13	you very much for your testimony, Dr. Brown.
14	DR. BROWN: Thank you for for
15	listening to me, and if you need any other thoughts,
16	I'd be happy to share them with you.
17	THE HEARING OFFICER: Thank you very
18	much.
19	DR. BROWN: Bye.
20	THE HEARING OFFICER: All righty. So
21	we've come to the vicinity of the end of the workday.
22	Mr. Davis, I know you have two more witnesses, Dr.
23	Speer and Ms. Troutman. What order do you suppose
24	you'll be presenting them in?
25	MR. DAVIS: I have not heard from Dr.
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1	Speer yet today, but he's supposed to be traveling.		
2	He may be en route, so if possible, I'd like to call		
3	Dr. Speer in the morning, assuming he gets here on		
4	time, and then we would call Ms. Troutman. If he does		
5	not get here on time, we will reverse that order.		
6	THE HEARING OFFICER: All right. Than		
7	you very much for that. We will start tomorrow		
8	morning at 8:30. I'll take public comment for at		
9	least a half-hour for it to be given, and then we'll		
10	turn to the technical case whenever we run out of		
11	public commenters.		
12	Is there anything else we need to talk		
13	about before we break today? Sheila, would you		
14	confirm this room will be locked and we can leave		
15	nonvaluable things overnight?		
16	MS. APODACA: Yes, I will lock it up at		
17	the end of the day.		
18	THE HEARING OFFICER: All right. Thank		
19	you.		
20	MS. APODACA: And we may have somebody		
21	on who's been waiting to make a public comment. I		
22	don't know if she's still here.		
23	THE HEARING OFFICER: Okay.		
24	MS. APODACA: But her name was Ruth,		
25	Ruth Striegel.		

1	THE HEARING OFFICER: Okay. Ms.
2	Striegel, are you still on the platform? I see an RS.
3	No, that's Rebecca. Ms. Striegel, are you here? No?
4	MS. APODACA: Yeah, she may return
5	tomorrow morning. I told her she she could.
6	THE HEARING OFFICER: Okay. Well thank
7	you very much for that, Sheila. All right. We will
8	see you all tomorrow morning at 8:30.
9	(Whereupon, the meeting concluded at
10	5:15 p.m.)
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1 CERTIFICATE 2 I, JAMES COGSWELL, the officer before whom 3 the foregoing proceedings were taken, do hereby certify that any witness(es) in the foregoing 4 5 proceedings, prior to testifying, were duly sworn; that the proceedings were recorded by me and 6 thereafter reduced to typewriting by a qualified transcriptionist; that said digital audio recording of 8 9 said proceedings are a true and accurate record to the 10 best of my knowledge, skills, and ability; that I am 11 neither counsel for, related to, nor employed by any 12 of the parties to the action in which this was taken; 13 and, further, that I am not a relative or employee of any counsel or attorney employed by the parties 14 15 hereto, nor financially or otherw: 16 outcome of this action. 17 JAMES COGSWELL Notary Public in and for the 18 State of New Mexico 19 20 2.1 22 23 2.4 2.5

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