

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
Oil Conservation Commission

IN THE MATTER OF THE HEARING CALLED  
BY THE Oil Conservation Commission FOR  
THE PURPOSE OF CONSIDERING:

**COPY**

DOCKET NO.: 32-11

APPLICATION OF THE NEW MEXICO OIL AND GAS ASSOCIATION FOR  
AMENDMENT OF CERTAIN PROVISIONS OF TITLE 19, CHAPTER 15, PART  
16 OF THE NEW MEXICO ADMINISTRATIVE CODE CONCERNING LOG,  
COMPLETION, HYDRAULIC FRACTURING AND WORKOVER REPORTS,  
STATEWIDE.

CASE NO. 14753

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSION HEARING  
November 17, 2011  
Santa Fe, New Mexico

BEFORE: JAMI BAILEY, CHAIR  
SCOTT DAWSON, COMMISSIONER  
ROBERT BALCH, COMMISSIONER

RECEIVED OCT 29 2011  
2011 NOV 29 P

This matter came on for hearing before the New Mexico Oil Conservation Division, JAMI BAILEY, Director, SCOTT DAWSON, Commissioner, ROBERT BALCH, Commissioner, on November 17, 2011, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis, Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Irene Delgado, NM CCR 253  
Paul Baca Professional Court Reporters  
500 Fourth Street, NW, Suite 105  
Albuquerque, New Mexico 87102

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

## 1 FOR NMOGA:

2 WILLIAM F. CARR  
 3 MICHAEL H. FELDEWERT  
 4 ADAM RANKIN  
 5 HOLLAND & HART LLP  
 6 P.O. Box 2208  
 7 Santa Fe, NM 87504-2208  
 8 mfeldewert@hollandhart.com

## 9 FOR OCD:

10 GABRIELLE A. GERHOLT  
 11 ASSISTANT GENERAL COUNSEL  
 12 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
 13 1220 S. St. Francis Drive  
 14 Santa Fe, NM 87505

## 15 FOR OGAP:

16 DOUGLAS MEIKLEJOHN  
 17 NEW MEXICO ENVIRONMENTAL LAW CENTER  
 18 1405 Luisa Street, Suite 5  
 19 Santa Fe, NM 87505  
 20 dmeiklejohn@nmelc.org

## 21 FOR HALLIBURTON ENERGY SERVICES:

22 J. SCOTT HALL  
 23 MONTGOMERY & ANDREWS  
 24 P.O. Box 2307  
 25 Santa Fe, NM 87504-2307  
 shall@montand.com

## FOR INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO:

KARIN V. FOSTER  
 CHATHAM PARTNERS, INC.  
 5805 Mariola Place, NE  
 Albuquerque, NM 87111  
 fosterassociates2005@yahoo.com

## I N D E X

21	OPENING BY MR. CARR	10
22	OPENING BY MS. GERHOLT	12
	OPENING BY MR. MEIKLEJOHN	13
23	OPENING BY MR. HALL	15
24	CLOSING BY MS. GERHOLT	160
	CLOSING BY MR. MEIKLEJOHN	161
25	CLOSING BY MR. CARR	164

EXHIBITS

1		
2	NMOGA 1 AND 2 ADMITTED	19
3	NMOGA 4 ADMITTED	28
4	NMOGA 3	30
5	OCD A ADMITTED	55
6	OGAP A ADMITTED	85
7	OGAP B ADMITTED	100
8	OGAP D ADMITTED	107
9	OGAP E ADMITTED	113
10	OGAP F ADMITTED	115, 118
11	LARRY DILLON	
12	Direct by Mr. Feldewert	15
13	Cross by Mr. Meiklejohn	39
14	Exam by Commission Balch	45
15	Exam by Madam Chair	45
16	Redirect by Mr. Feldewert	47
17	Further Exam by Madam Chair	48
18	Further Redirect by Mr. Feldewert	49
19	Recross by Mr. Meiklejohn	51
20	ED MARTIN	
21	Direct by Ms. Gerholt	51
22	Cross by mr. Meiklejohn	60
23	Exam by Commissioner Balch	64
24	Exam by Madam Chair	65
25	Redirect by Ms. Gerholt	66
26	Exam by Commissioner Dawson	66
27	Further Exam by Commissioner Balch	67
28	Recross by Mr. Meiklejohn	67
29	GWEN LACHELT	
30	Direct by Mr. Meiklejohn	82
31	Continued Direct by Mr. Meiklejohn	91
32	Voir Dire by Mr. Feldewert	105
33	Continued Direct by Mr. Meiklejohn	107
34	Voir Dire by Mr. Feldewert	109
35	Continued Direct by Mr. Meiklejohn	113
36	Cross by Mr. Feldewert	123
37	Cross by Ms. Gerholt	133
38	Exam by Commissioner Dawson	136
39	Exam by Commissioner Balch	138
40	Exam by Madam Chair	140
41	Redirect by Mr. Meiklejohn	141
42	Recross by Mr. Feldewert	144

1	GWEN LACHELT (RECALLED)	
	Exam by Madam Chair	146
2	Exam by Commissioner Balch	146
3	PATRICIO SANCHEZ	
	Direct by Mr. Feldewert	148
4	Cross by Mr. Meiklejohn	150
	Exam by Commissioner Balch	151
5		
	ED MARTIN (RECALLED)	
6	Exam by Commissioner Dawson	152
	Exam by Commissioner Balch	156
7	Exam by Madam Chair	156
8	PUBLIC COMMENT	
	Maxine Paul	68
9	John Bartlit	70
	Katherine Martin	73
10	Cross by Mr. Meiklejohn	77
	Exam by Commissioner Dawson	77
11	Jack Scott	78
	Joan Brown	158
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1           MADAM CHAIR: Good morning. This is a meeting of  
2 the Oil Conservation Commission on November 17, 2011, in  
3 Porter Hall in Santa Fe, New Mexico. I am Jami Bailey,  
4 chairman of the Commission. To my right is Scott Dawson. He  
5 is designee of the Commissioner of Public Lands. To my left  
6 is Robert Balch, who is designee of the Secretary of Energy,  
7 Minerals, and Natural Resources Department. We have all  
8 three commissioners attending, so there is a quorum.

9           Commissioners, have you had a chance to read the  
10 minutes of the previous meeting?

11           COMMISSIONER DAWSON: I have.

12           COMMISSIONER BALCH: I have.

13           MADAM CHAIR: Do I hear a motion to adopt the  
14 minutes as written?

15           COMMISSIONER DAWSON: I motion.

16           COMMISSIONER BALCH: I second.

17           MADAM CHAIR: All those in favor.

18           ALL COMMISSIONERS: (Collectively.) Aye.

19           MADAM CHAIR: And I will sign on behalf of the  
20 Commission.

21           (Document signed.)

22           MADAM CHAIR: Commissioners, have you had a chance  
23 to read the order of Case Number 14161, reopened, which was  
24 the Application of Targa Midstream Services Limited  
25 Partnership to amend Order Number 13052 in Lea County, New

1 Mexico?

2 COMMISSIONER DAWSON: I have.

3 COMMISSIONER BALCH: I have as well.

4 MADAM CHAIR: Do you believe that it reflects the  
5 decisions of the Commission as we asked the attorneys to  
6 draft the order?

7 COMMISSIONER DAWSON: I do.

8 COMMISSIONER BALCH: Yes.

9 MADAM CHAIR: Do I hear a motion to sign the order  
10 as written?

11 COMMISSIONER DAWSON: I will motion.

12 COMMISSIONER BALCH: I will second.

13 MADAM CHAIR: All those in favor.

14 ALL COMMISSIONERS: (Collectively) Aye.

15 (Document signed.)

16 MADAM CHAIR: Both documents will be transmitted to  
17 the Commission Secretary.

18 (Documents to Ms. Davidson.)

19 MADAM CHAIR: I will now call Case Number 14753,  
20 which is the application of the New Mexico Oil and Gas  
21 Association for amendment of certain provisions of Title 19  
22 Chapter 15 Part 16 of the New Mexico Administrative Code  
23 concerning log, completion, hydraulic fracturing, and  
24 workover reports, statewide. Applicant seeks an order  
25 amending provisions of the New Mexico Administrative Code

1 concerning log, completion, hydraulic fracturing, and  
2 workover reports, codified as Part 16 of the rules of the Oil  
3 Conservation Division 19.15.16.18 NMAC to, one, require the  
4 disclosure of the composition of fluids used to stimulate new  
5 and recontinued wells in hydraulic fracturing stimulation  
6 operations; two, assure transparency that will demonstrate  
7 the safety of this process to all concerned persons thereby  
8 facilitating production in a manner that will demonstrate --  
9 in a manner that prevents waste of oil and gas, protects  
10 correlative rights of owners of these minerals as defined by  
11 the Oil and Gas Act; three, assure New Mexico's oil and gas  
12 resources are developed in a manner that protects  
13 groundwater, human health, and the environment; and, four,  
14 certify the amended rule for publication in the New Mexico  
15 Registry as required by statute. Copies of the text of the  
16 proposed amendment are available from the Division  
17 Administrator Florene Davidson -- and it gives her phone  
18 number -- or from the Division's website, and it gives that  
19 site address.

20           Written comments on the proposed amendments and  
21 prehearing statements must be received no later than 5:00  
22 p.m. on Wednesday, November 9, 2011. Any person may present  
23 non-technical testimony or make an unsworn statement at the  
24 hearing. Any person who intends to present technical  
25 testimony or cross-examine witnesses at the hearing, shall,

1 no later than 5:00 on Wednesday, November 9, 2011, file six  
2 sets of the prehearing statement with Ms. Davidson.

3 I have read this advertisement -- it does go on to  
4 stress the deadlines that were set in the advertisement that  
5 was initiated on October the 6th, 2011.

6 I call for appearances.

7 MR. CARR: May it please the Commission, my name is  
8 William F. Carr, with the Santa Fe office of Holland and  
9 Hart. We represent the New Mexico Oil and Gas Association,  
10 and I'm joined today by my partner, Michael Feldewert, and  
11 our associate, Adam Rankin. We would call one witness.

12 MS. GERHOLT: Gabrielle Gerholt on behalf of the Oil  
13 Conservation Division. The Oil Conservation Division would  
14 call one witness, Ed Martin.

15 MR. MEIKLEJOHN: Good morning. I'm Douglas  
16 Meiklejohn. I'm a lawyer with the New Mexico Environmental  
17 Law Center here in Santa Fe. We represent the Oil and Gas  
18 Accountability Project, and we will be presenting one  
19 witness, Gwen Lachelt, who is seated to my left.

20 MR. HALL: Madam Chairman, Scott Hall with the  
21 Montgomery and Andrews Law Firm in Santa Fe appearing on  
22 behalf of Halliburton Energy Services Incorporated, and I do  
23 not plan on presenting a witness on direct.

24 MS. FOSTER: Members of the Division, Madam Chair,  
25 I'm Karin Foster on behalf of the Independent Petroleum

1 Association. We do not intend to present any witnesses  
2 today.

3 MADAM CHAIR: Anyone else?

4 (No response.)

5 MADAM CHAIR: For opening -- okay, what I first need  
6 to do is to summarize the OCD Rule 19.15.3.12, which is the  
7 rulemaking rule for the Oil Conservation Commission. In the  
8 rule it does ask me to summarize the procedures so that  
9 everyone, particularly the public, can understand what the  
10 day will be like.

11 I will allow persons to make a brief opening  
12 statement. The applicant shall present its case first.  
13 Persons will be able to make a brief closing statement. Each  
14 day before lunch and at the end of the day I will provide  
15 time for public comment for those people who have signed the  
16 sign-in sheet at the back of the room.

17 If the hearing is not complete by the end of today,  
18 we can continue it until tomorrow. All testimony will be  
19 under oath or affirmation, however a person may make an  
20 unsworn position statement. Only those persons who have  
21 filed a prehearing statement will be able to cross-examine  
22 witnesses.

23 The Commission will deliberate at the end of the  
24 hearing. We'll close the record and then deliberate in open  
25 session on the final rule for the Division.

1           Are there any questions from anybody concerning that  
2 process?

3           (No response.)

4           MADAM CHAIR: Okay. For anyone making public  
5 comment, there will be a five-minute time limit. We have a  
6 timer over here, and a one-minute warning that will be  
7 flashed to the person who is presenting testimony as part of  
8 the public comment period. With that, I would ask for  
9 opening statements.

10           MR. CARR: May it please the Commission, the  
11 application of the New Mexico Oil and Gas Association seeks  
12 amendment of the Oil Conservation Division rules to require  
13 the disclosure of chemicals used in the hydraulic fracturing  
14 of wells completed in this state. As we are all aware,  
15 hydraulic fracking is currently an issue of significant  
16 public concern, and much information and misinformation about  
17 what it is, and what threats, if any, it poses to the human  
18 health and the environment are running rampant throughout the  
19 media and in many other forms.

20           What NMOGA proposes, we believe, is an important  
21 part of a disciplined approach to this subject, an important  
22 part of a responsible response to this matter by the Oil  
23 Conservation Commission. What we propose requires the  
24 disclosure to the OCD of the hydraulic fracturing fluid  
25 composition of the chemicals added to the fluid as provided

1 to the operator by the person who actually performs hydraulic  
2 fracking stimulation of oil and gas wells.

3 It establishes what we believe is an  
4 administratively feasible method for the disclosure of these  
5 chemicals. It establishes a formal way in this state to  
6 report these chemicals to you, the agency ultimately  
7 responsible in this area.

8 NMOGA's proposal recommends the use of a template  
9 developed by the Groundwater Protection Council in the  
10 Interstate Oil and Gas Compact Commission for the FracFocus  
11 Registry. NMOGA's proposal also provides as an alternative  
12 that operators should be allowed to disclose this same  
13 information when they file a C-103 or C-105 or when they file  
14 with the BLM, their forms 3164 or 3165.

15 This matter as raised by the NMOGA's application and  
16 the modifications provided to this agency by the Oil  
17 Conservation Division and by OGAP frame the issues before you  
18 in this rulemaking proceeding. NMOGA intends to call one  
19 witness, Mr. Larry Dillon. Mr. Dillon is a completions  
20 manager for ConocoPhillips. ConocoPhillips is a member of  
21 FracFocus. He is responsible for reporting for  
22 ConocoPhillips to FracFocus. And he is going to talk about  
23 how this system works, what's reported, the time frames  
24 related to the acquisition of information to be reported to  
25 the agency.

1           He is going to review the FracFocus form, and he is  
2 going to compare it to the form that the OCD has proposed,  
3 and which at the outset of we support and endorse. At the  
4 end of the case the evidence will show that if this proposal  
5 is adopted, OCD and OCC rules will provide that the  
6 information needed to see how the well has been completed,  
7 how it is cased, the information on how pits are constructed  
8 and maintained and waste are managed, and what chemicals are  
9 used in the well as part of the completion process can be  
10 found by anyone in one place, your well file.

11           We believe you will have created a database and a  
12 source that will serve as an important part of a responsible  
13 response by the Commission to this very important issue.

14           MADAM CHAIR: Ms. Gerholt, do you have an opening  
15 statement?

16           MS. GERHOLT: Thank you, Madam Chair. Madam Chair,  
17 Commissioners, good morning. The Oil Conservation Division  
18 supports the disclosure hydraulic fracturing fluid. The  
19 Division would ask that the Commission adopt a rule that is  
20 administratively feasible for the Division. The Division  
21 will be calling Mr. Edward Martin this morning. Mr. Martin  
22 is the District 4 supervisor and has been employed by the Oil  
23 Conservation Division for many years.

24           Mr. Martin will explain why the disclosure rule  
25 adopted by the Commission needs to be administratively

1 feasible. He will explain why this will help the public if  
2 the Division is able to administer rules and give information  
3 to the public. The Division believes that Material Safety  
4 Data Sheets contain important information about components  
5 used in hydraulic fracking fluids. By having operators  
6 report this MSDS information, the Division meets that  
7 disclosure will be met, and the Division will have a rule it  
8 can administer efficiently. This will provide the public  
9 with information that can be readily accessed.

10 Mr. Martin will further explain why the Division  
11 created its own form and why the Division needs to be the  
12 recordkeeper of disclosed hydraulic fracturing fluids. The  
13 Division believes it is important for the public to have a  
14 source where it can turn to and examine everything about a  
15 well. It can examine information such as where circulation  
16 was set and circulation of cement. It gives a full picture  
17 of the well in the well file. And we appreciate your time  
18 this morning, and thank you.

19 MADAM CHAIR: Mr. Meiklejohn?

20 MR. MEIKLEJOHN: Thank you, Madam Chair and  
21 Commission. In general, the Oil and Gas Accountability  
22 Project, which I will refer to for shorthand as OGAP,  
23 supports full disclosure of the chemicals and constituents  
24 that are used in hydraulic fracturing. These operations have  
25 the potential to contaminate groundwater. They also have the

1 potential to adversely affect public health and safety in the  
2 area where these operations are conducted.

3 Disclosure is a public health and safety issue, and  
4 disclosure alone does not impose substantive obligations on  
5 oil and gas operations. OGAP's position is that disclosure  
6 is necessary not only for members of the public, but also  
7 specifically for surface owners, for health personnel, first  
8 responders, and also for regulatory professionals.

9 It is also OGAP's position that disclosure on MSDS  
10 sheets alone is not adequate because of the number of  
11 chemicals and other constituents used in hydraulic fracturing  
12 operations that do not have MSDS sheets. In addition, it is  
13 OGAP's position that if the FracFocus website is to be used  
14 as a template for disclosure, that the Commission should  
15 adopt what is required by the FracFocus website now, not as  
16 was proposed what is adopted -- or what was proposed adopted  
17 for the FracFocus website in July of this year. The  
18 Commission ought to use the most up-to-date, the most current  
19 information and requirements.

20 Finally, it is OGAP's position, as Ms. Lachelt will  
21 testify, that New Mexico should follow the lead of other  
22 states in the west and require disclosure of all chemicals  
23 and constituents. This is already required in at least one  
24 other state, and it is proposed in a couple of other states,  
25 and New Mexico should be consistent with those other states.

1 Thank you very much.

2 MADAM CHAIR: Mr. Hall?

3 MR. HALL: Briefly, Madam Chairman. Halliburton  
4 Energy Services supports the rule amendments proposed by  
5 NMOGA, as well as the Division, in addition to supporting the  
6 reporting format proposed by the Division.

7 MADAM CHAIR: At this point we will now --

8 MS. FOSTER: Madam, for any Independent, we do not  
9 have an opening statement. We are just here to support  
10 NMOGA.

11 MADAM CHAIR: Okay, thanks. Applicant, you may  
12 begin your case. Swear in the witness.

13 MR. FELDEWERT: Madam Chair, Members of the  
14 Commission, we will call Larry Dillon.

15 MADAM CHAIR: Stand and be sworn.

16 (Witness sworn.)

17 MR. FELDEWERT: Madam Chair, Members of the  
18 Commission, we are going to go through NMOGA'S Exhibits 1  
19 through 5.

20 LARRY DILLON

21 (Sworn, testified as follows:)

22 DIRECT EXAMINATION

23 BY MR. FELDEWERT:

24 Q. Mr. Dillon, would you please state your name, tell  
25 the Commission by whom you are employed and in what capacity.

1       A.    My name is Larry Dillon.  I work for ConocoPhillips.  
2       I am currently the completions manager in the San Juan  
3       Business Unit, Farmington, New Mexico.

4       Q.    How long have you been with ConocoPhillips?

5       A.    I have been with ConocoPhillips and affiliated  
6       companies for 31 years.

7       Q.    And has your -- how long a period of time have you  
8       actually been in the Farmington area?

9       A.    In the Farmington area, since 1987.

10      Q.    So were you employed by Meridian?

11      A.    Yes.

12      Q.    For a period of time?

13      A.    Yes, I was.

14      Q.    And the successor, Burlington Resources?

15      A.    Yes, I was.

16      Q.    And then ConocoPhillips?

17      A.    Yes.

18      Q.    You mentioned that you were a completions manager.

19        Would you please explain what your general job  
20        responsibilities entail as a completions manager?

21      A.    The completions manager job includes such as  
22        overseeing the implementation of the completion of new wells  
23        in the San Juan Business Unit after the well is drilled, the  
24        operation of completing the well, and then we hand it off to  
25        the production department.

1 Q. As part of the completion operations, does that  
2 include the use of hydraulic fracturing techniques?

3 A. Yes, it does.

4 Q. Does your company report to the website known as  
5 FracFocus at the close of your completion operations?

6 A. Yes, we do.

7 Q. And do you submit as part of that reporting the  
8 information about the fluids that have been utilized during  
9 the fracture stimulation process?

10 A. Yes, we do.

11 Q. Now, could you explain briefly to the Commission  
12 what FracFocus is, what this website is about?

13 A. It's a website that was developed by groups of state  
14 agencies to basically document the fluids that are used in  
15 the hydraulic fracturing process. It includes every additive  
16 and every component of the fracturing fluid.

17 Q. Does this website also provide some general  
18 information about the hydraulic fracturing stimulation?

19 A. Yes, it does.

20 Q. Okay. How long has your company been reporting to  
21 FracFocus?

22 A. We started submitting data as of projects that were  
23 implemented in May of 2011 through the current time.

24 Q. Now, as part of your job responsibilities, do you  
25 oversee the recording of the fluid compositions to the

1 FracFocus website?

2 A. Yes, I do.

3 Q. Are you familiar with the template by which the  
4 information is reported to FracFocus?

5 A. Yes, I am.

6 Q. Would you please turn to what's been marked as NMOGA  
7 Exhibit 1. And would you identify that for the  
8 Commissioners, please.

9 A. This is the template that is used to populate the  
10 information on the well. In the upper left-hand corner, we  
11 have what we call the header data which would identify the  
12 well, and -- by many different means, and give a little bit  
13 of data about the well. And then the lower part of the  
14 template is where all the components of the fracturing fluids  
15 are listed and various columns are filled out.

16 Q. Is this the most recent up-to-date form that's used  
17 by FracFocus?

18 A. Yes.

19 Q. Would you then turn to what's been marked as NMOGA  
20 Exhibit 2. Would you identify that for the Commission,  
21 please?

22 A. This is the instructions that resides on the  
23 website, the FracFocus website as to how to fill out this  
24 form and what, what information is populated in each of the  
25 columns.

1 Q. Is NMOGA Exhibit Number 1 a complete and accurate  
2 copy of the most recent form to be used on the FracFocus  
3 website?

4 A. To my understanding it is.

5 Q. Is NMOGA Exhibit Number 2 a complete and accurate  
6 copy of the accompanying instructions for that template on  
7 the FracFocus website?

8 A. It appears to be.

9 MR. FELDEWERT: I would move the admission of  
10 NMOGA's Exhibit 1 and 2.

11 (No objection noted.)

12 MADAM CHAIR: So admitted.

13 (Exhibits NMOGA 1 and 2 admitted.)

14 Q. Does NMOGA Exhibit Number 2 identify, Mr. Dillon,  
15 the agencies that developed the FracFocus template?

16 A. Yes. They are -- their icons are listed on the  
17 bottom of looks like each page.

18 Q. And could you identify those agencies?

19 A. The Groundwater Protection Agency and Independent  
20 Oil and Gas. I don't know what the last association or  
21 committee, I'm not sure what that is.

22 Q. Is there more information about these entities on  
23 the FracFocus website?

24 A. Yes, there is.

25 Q. Okay. Would you then, utilize NMOGA's Exhibit

1 Number 1, and starting in the upper left-hand column, would  
2 you just walk the Commission through the type of information  
3 that is reported on this FracFocus template?

4 A. Again, in the upper left-hand corner, we see again  
5 what we call the header data, which would list the  
6 identifying information for the well, a little bit of data  
7 about the well in terms of how deep the well was drilled.  
8 And then the bottom part of the form is where the actual data  
9 around all the hydraulic fluids and the additives, all the  
10 components of the fracturing fluid would be listed.

11 Q. Now, if I look at the upper left-hand corner,  
12 column, for example, where the rows are, at the bottom it  
13 says, "total water volume by gallon." Do you see that?

14 A. Yes, I do.

15 Q. And if I go to NMOGA Exhibit Number 2, so if I keep  
16 my finger on here and go to NMOGA Exhibit Number 2, does it  
17 have a corresponding instruction for the entry of that type  
18 of information?

19 A. Yes, it does. On Page 3, it looks like that's  
20 Number 11, and it gives a description of what data to put  
21 into that field.

22 Q. So this is at the top of -- towards the top of Page  
23 3 of NMOGA Exhibit Number 2?

24 A. Correct.

25 Q. In Paragraph 11?

1 A. That's correct.

2 Q. Okay. Now, if I then go to the columns in the  
3 middle of this exhibit, why don't you start with the row on  
4 the left and walk us through what these columns mean and what  
5 information is input.

6 A. The trade name is typically the, the name that is  
7 used to describe that component of the hydraulic fracturing  
8 fluid. That's the first column starting from the left. The  
9 next column, the supplier, that is which company provides  
10 that component, whether it's the operator or the company  
11 service -- company or vendor. The purpose is basically just  
12 to -- one- or two-word description of what that ingredient is  
13 intended to do, what it provides for the frac fluid.

14 Number -- the next column, ingredients, actually  
15 lists the components by sometimes laymen's terms, sometimes  
16 chemical name. And then the next column is the chemical  
17 abstract service number or CAS number for that additive, and  
18 that's basically the identifier for that chemical. You can  
19 find that on the EPA website.

20 Q. Let me stop you right there. If we take a look at  
21 NMOGA Exhibit Number 2 and flip over to Page 3 and 4 --

22 A. Okay.

23 Q. -- down at the bottom I see in Paragraph 5 an entry  
24 for the chemical abstract service number or CAS. Do you see  
25 that?

1 A. I do.

2 Q. So that corresponds with the information that would  
3 go in the column that you just discussed?

4 A. Correct.

5 Q. And does it reflect, Mr. Dillon, that if anyone has  
6 any questions about the nature of the ingredient or the CAS  
7 number that has been listed, that there is an EPA website  
8 that they can go to for additional information?

9 A. That is correct.

10 Q. So if someone was interested in the toxicity  
11 characteristics of a certain ingredient or a CAS number,  
12 there is information here, an EPA website they can go to,  
13 correct?

14 A. That's correct.

15 Q. And there is also a telephone number that anyone can  
16 call if they have any questions or want some additional  
17 information about the ingredients or the CAS numbers that are  
18 listed?

19 A. That's correct.

20 Q. If I then go back to, NMOGA Exhibit Number 1, the  
21 next column is something called the maximum ingredient  
22 concentration in additive, can you tell us what that's all  
23 about?

24 A. That's describing that additive in itself and what  
25 the mass percent is of that additive prior to it being mixed

1 with the other additives for the fracturing fluid that is  
2 pumped downhole. So you will see a lot of hundred percent  
3 numbers. So it's just talking about -- so let's say water,  
4 the first one, it's just a percent of that ingredient of  
5 itself prior to mixing with the other components, and it's  
6 100 percent.

7 Q. Then what is the next column, maximum ingredient in  
8 concentration HF?

9 A. That is the percent by mass after all the components  
10 of the fracturing fluids are mixed together, so that would  
11 provide, again, for the water, you would know how much  
12 percent by mass the water was a component of the final  
13 fracturing fluid that would be pumped into the reservoir.

14 Q. So you would have a percentage of the ingredients in  
15 the fluid in the mix, right?

16 A. Right.

17 Q. Okay. All right. Anything else about this form?

18 A. No.

19 Q. Okay. Now, OGAP has suggested that operators should  
20 provide surface owners, Mr. Dillon, with planned hydraulic  
21 fracturing treatment 30 days in advance of any activity.  
22 From your experience with the industry and as a completions  
23 manager, is that 30 day advance notice that they are  
24 requesting practical?

25 A. In my opinion, it is not practical due to the fact

1 that we don't know exactly what the final design of the  
2 fracturing fluid is going to be 30 days in advance of  
3 actually pumping the job.

4 Q. And why is that? What goes on in putting together  
5 these completions operations in the sketch of those  
6 efforts?

7 A. After the well is drilled, the next thing that has  
8 to occur is we have to run logs that determine where, where  
9 the intervals are that we are going to fracture stimulate,  
10 the thickness. And based on that, then we calculate volumes,  
11 make any adjustments to the fluids that we are going to pump,  
12 and just the time frame of the process between the time the  
13 well is drilled and logged to the time to stimulate fracture  
14 the wells, it allows about ten days prior to the fracture  
15 stimulation that we have the final design and procedure in  
16 place. And then we present that to the pumping company.

17 Q. Now, let me ask you this, let's step back a little  
18 bit. How far out do you attempt to schedule your completion  
19 operations?

20 A. The wells are scheduled about two weeks in advance,  
21 so each week we will build a schedule for the next two  
22 weeks.

23 Q. Is that put together after the drilling and running  
24 of the logs?

25 A. That's correct.

1 Q. What type of events occur that -- well, let me ask  
2 you this: Do you always meet your two-week schedule?

3 A. No.

4 Q. What type of events occur that result in you not  
5 being able to meet your two-week schedule?

6 A. There could be wellbore issues. You may have to  
7 clean out the well. You may not get your logs all the way to  
8 the bottom and you have to have another wellbore operation to  
9 do that. And a lot of times it just comes down to weather,  
10 adverse weather conditions that keep us from moving around in  
11 the field, and that is actually one of the biggest things  
12 that impact our schedule.

13 Q. And, if I'm understanding the sequence here, you  
14 have your drilling, your logging, and you set up your  
15 completion schedule, and then you would put together your  
16 hydraulic fracturing treatment plan?

17 A. That's correct. Once we have the information from  
18 the logging operation, we use that information to determine  
19 our final design and procedure.

20 Q. So then any delays you have in your completion  
21 schedule equally then impact the putting together of your  
22 hydraulic treatment?

23 A. That's correct.

24 Q. You mentioned that you tried to get your hydraulic  
25 treatment plan ten days ahead of time. Do you always meet

1 that type of schedule?

2 A. No, we don't. And sometimes it's considerably less  
3 than that.

4 Q. Okay. Now, OGAP has also suggested that a 30-day  
5 advance disclosure to surface owners is necessary for health  
6 and safety issues, to protect workers, regulators, landowners  
7 from accidental exposure. In your experience, Mr. Dillon, is  
8 there information that's already available at each well site  
9 to address how to deal with exposure to potentially hazardous  
10 chemicals?

11 A. Yes, there is.

12 Q. And what is available, and in what form?

13 A. The information that would be used for how to deal  
14 with an exposure incident would be the MSDS or Material  
15 Safety Data Sheet.

16 Q. And what is -- what is the -- to your knowledge,  
17 what is the nature of those sheets? When are they required  
18 to be present?

19 A. The MSDS is required to be present with that  
20 particular chemical or additive at all times, whether it's in  
21 the vendor's yard, it's in transportation en route to the  
22 location, on location, wherever that chemical exists, the  
23 MSDS has to be present with that chemical.

24 Q. Is that, in your experience as a completions  
25 manager, is that always the case out there at those well

1 sites, the MSDS sheets are there?

2 A. Yes, they are there.

3 Q. Required by law?

4 A. Required by law.

5 Q. Okay. Would you turn to what's been marked as --

6 MR. FELDEWERT: And I apologize to the Commission,  
7 I'm going to skip a little bit to what's been marked as NMOGA  
8 Exhibit Number 4. I'm going to skip over 3.

9 Q. Mr. Dillon, do you recognize NMOGA Exhibit  
10 Number 4?

11 A. Yes, I do.

12 Q. Would you identify this exhibit to the  
13 Commissioners, please?

14 A. This is a Material Safety Data Sheet or MSDS for an  
15 additive that we use in our fracturing fluids. This  
16 information was presented by DJ's Services, which is now  
17 Baker Hughes.

18 Q. And did you obtain this particular document from one  
19 of your service providers?

20 A. Yes, we did.

21 Q. And did you locate it in one of your engineer's  
22 files?

23 A. Yes, I did.

24 Q. And is this a complete and accurate copy of the  
25 document that you received from your service provider and

1 kept in the engineer's file?

2 A. Yes, it is.

3 MR. FELDEWERT: I move the admission of NMOGA  
4 Exhibit 4.

5 MADAM CHAIR: Any objection?

6 (No objection noted.)

7 MADAM CHAIR: So admitted.

8 (Exhibit 4 admitted.)

9 Q. Mr. Dillon, is this the type of sheet that you were  
10 just talking about that is required by law to be available at  
11 the well site of each and every chemical that is potentially  
12 hazardous?

13 A. Yes, it is.

14 Q. Now, this particular sheet deals with a product  
15 called InFlo 250W. Do you see that?

16 A. Yes, I do.

17 Q. Do you know what that is, in laymen's terms?

18 A. It's a surfactant, a surface tension reducer that is  
19 added to the hydraulic fracturing fluid.

20 Q. A surface tension reducer. Does it become a foam?

21 A. No, this is not a foamer. The intent of this fluid  
22 is to reduce the tension of the liquids in the reservoir so  
23 that they will more readily flow back from the reservoir and  
24 not stay -- not stay -- the liquid would not stay entrained  
25 in the reservoir.

1 Q. I heard somebody tell me this is kind of like a  
2 soap.

3 A. It is. It is a soap.

4 Q. Okay. Does this -- does this sheet then for the  
5 InFlo 250W, does it identify what to do for each of the  
6 chemical components if there is an accidental exposure that  
7 occurs at the well site or in transport?

8 A. Yes, it does.

9 Q. Now, based on your field experience over the last 25  
10 years, do you believe that a 30-day advance exposure of your  
11 planned hydraulic fracturing treatment is practical?

12 A. No, I do not.

13 Q. Do you believe that a 30-day advanced disclosure of  
14 your planned hydraulic fracture treatment plan to the surface  
15 owner is necessary for health and safety reasons?

16 A. No, I do not.

17 Q. Okay. Would you then turn back to -- let's go back  
18 to NMOGA Exhibit Number 3. Do you recognize this exhibit,  
19 Mr. Dillon?

20 A. Yes, I do.

21 Q. Would you explain to the Commissioners what it is.

22 A. This is a copy of the data for a well that was  
23 fracture stimulated in the San Juan Basin back in September,  
24 and this is the information that we received from Baker, the  
25 pumping services company that's executed this job. And at

1 this time of this copy, this was being quality checked to  
2 make sure the data was correct in -- in our office.

3 Q. Is this -- so this is a sheet that your company  
4 generated in its ordinary course of business?

5 A. That's correct.

6 Q. Okay. Is this an accurate copy of the -- of the  
7 template that your company generated in the ordinary course  
8 of business for this particular well?

9 A. Yes, it is.

10 MR. FELDEWERT: I move the admission of NMOGA  
11 Number 3.

12 MADAM CHAIR: Any objections?

13 (No objection noted.)

14 MADAM CHAIR: So admitted.

15 (Exhibit NMOGA 3 admitted.)

16 Q. Before we go into this form any further, Mr. Dillon,  
17 would you explain to the Commission the process of your  
18 company, ConocoPhillips, to -- to complete these templates  
19 and then upload them to the FracFocus website?

20 A. When the job is, is actually pumped, the vendor has  
21 a list of the amount of additives, each ingredient in the  
22 fracturing fluid that was actually pumped downhole. So they  
23 provide -- they, as part of their billing process, they use  
24 that information to generate this spreadsheet and put all of  
25 those quantities onto this spreadsheet, and then they would

1 provide that information to ConocoPhillips. And then our  
2 staff, the completions team, would quality check the data and  
3 then upload the data to the FracFocus website.

4 Q. Now, you have been doing this since May of this  
5 year?

6 A. Correct.

7 Q. Okay. You mention the quality control check. Has  
8 your group, at times, found errors in what was initially  
9 submitted to them?

10 A. Yes, we have.

11 Q. So the quality control check then is a necessary  
12 ingredient in the process?

13 A. Yes, it is.

14 Q. Okay. How long, in your experience over the last --  
15 since May -- how long has this process taken to get this data  
16 inputted by your vendors to have your group quality check the  
17 data and then get it uploaded into the FracFocus template?

18 A. The total process time has averaged between 45 and  
19 50 days.

20 Q. Is there a fee that is charged by the vendors for  
21 initially completing this type of form?

22 A. Yes, there is.

23 Q. How much is that fee being for ConocoPhillips?

24 A. The fee is a \$1000 per well.

25 Q. So per sheet?

1 A. Per -- yeah.

2 Q. Per well?

3 A. Per template.

4 Q. Per template, okay. If I look at this particular  
5 template that we have here for this San Juan 27-4 94P Well,  
6 if I look at water and look at nitrogen and look at sand,  
7 three out of the first four entries, and I go to the right,  
8 far right-hand column which shows the maximum ingredient  
9 concentration in the HF fluid, what percentage is accounted  
10 for or what percentage -- what's the word I'm looking for --  
11 how much of a percentage do those three ingredients account  
12 for in the total fluid that goes into the ground?

13 A. Just real quickly, it looks like we're a little more  
14 than 97 percent by mass.

15 Q. So 97 of the fluid that goes into the ground is  
16 comprised of water, sand and nitrogen?

17 A. That's correct.

18 Q. So then all the remaining ingredients only account  
19 for 2 to 3 percent?

20 A. That is correct.

21 Q. Is it common for water, sand, and nitrogen to  
22 comprise 98 or -- 97 or 98 percent of the fluid that goes  
23 into the ground?

24 A. Yes, it is.

25 Q. I also note that the remaining products or

1 ingredients listed on here from the trade name, aside from  
2 water, nitrogen, and sand, there is only about ten additional  
3 products, correct?

4 A. That is correct.

5 Q. Is it common for -- for the additives to the water  
6 and nitrogen and sand to be ten or less products?

7 A. Yes.

8 Q. And then to account for only 2 or 3 percent of the  
9 total volume that goes into the ground?

10 A. Yes, that's correct.

11 Q. Now, we just saw in Exhibit Number 4 an MSD sheet  
12 for product InFlo 250W, did we not?

13 A. Yes.

14 Q. If I look on NMOGA Exhibit Number 3, does it list  
15 the product InFlo 250W?

16 A. Yes. On the top of the second page, you will see  
17 the data for that additive.

18 Q. If I go to the far right-hand column and I look at  
19 those percentages of the total fluid, and if I did my math  
20 right, which is a big if, it indicates to me that it accounts  
21 for less -- or about 6/100s of a percent of the fluid that  
22 goes into the ground. Is that right?

23 A. That's correct.

24 Q. Am I reading it correctly?

25 A. Yes.

1 Q. It then provides under this trade name, Inflo 250W,  
2 it identifies it in the fourth or in the third column as a --  
3 in the purpose column as a surfactant which you already  
4 testified about. Correct?

5 A. Correct.

6 Q. And then in the next column, the fourth column, it  
7 lists the ingredients of this particular Inflo 250W  
8 ingredients. Do you see that?

9 A. Yes.

10 Q. Now, where did that information come from? Is that  
11 shown on the MSDS sheet?

12 A. Yes, that's correct.

13 Q. MSD sheet, I should say.

14 A. Yes, that's correct.

15 Q. So if I keep my finger here on the second page of  
16 NMOGA Exhibit Number 3 and I flip over to NMOGA Exhibit  
17 Number 4, and I'm on the first page, if I look in the middle,  
18 is that where that information is listed?

19 A. I'm sorry, can you let me follow you.

20 Q. I keep my finger on the second page of NMOGA  
21 Exhibit 3, and I flip to Exhibit 4, first page?

22 A. Right.

23 Q. Looking in the middle.

24 A. Yes.

25 Q. Is that where that information came from?

1           A.    Yes, that's where it came from.

2           Q.    Then I look for surfactants, for example, and on

3 NMOGA Exhibit Number 3 I see an entry under the CAS number

4 which is the fifth column of CBI.

5           A.    Correct.

6           Q.    Do you know what CBI means?

7           A.    Confidential business information.

8           Q.    And if I look over at the sheet, first page of the

9 sheet comprising Exhibit Number 4, if I look in the middle

10 under surfactants and go across to the CAS number, it shows

11 it as being proprietary.

12          A.    That's correct.

13          Q.    And then it goes on to provide then a CAS number for

14 the methanol ingredient in this Inflo 250W. Is that correct?

15          A.    That's correct.

16          Q.    And then the -- I'm now going to the 2-B component

17 of that surfactant.

18          A.    That's correct.

19          Q.    Let me ask you something, it shows under surfactant

20 on the MSDS sheet, the CAS number as being proprietary.

21          A.    That's correct.

22          Q.    Do you know what a CAS number is, generally?

23          A.    The CAS number for the chemicals?

24          Q.    No. What is a CAS number? What does that

25 reflect?

1 A. On the chemicals themselves?

2 Q. Yeah.

3 A. It's their identifier. The CAS number identifies  
4 what that chemical is.

5 Q. Okay. And does it then, in this case for  
6 surfactants, it's listed as proprietary, which means the  
7 company considered that CAS number to be confidential  
8 business information?

9 A. That's correct.

10 Q. And they are allowed by federal law governing the  
11 MSD sheets to list it as proprietary?

12 A. That is my understanding.

13 Q. But nonetheless, does this MSD sheet identify what  
14 to do in the event that there is an accidental spill or an  
15 exposure?

16 A. Yes, it does.

17 Q. Okay. In your experience, do the companies out  
18 there in the San Juan Basin that are offering surfactants,  
19 like an InFlo 250W, do they all claim that their surfactant  
20 is better than the other?

21 A. They all claim their surfactant provides better  
22 value.

23 Q. Which means that they all have a different way, I'm  
24 assuming, of putting their surfactants together that gives  
25 them a competitive advantage?

1 A. That's my understanding.

2 Q. Looking at this template, what has been your  
3 company's experience over the last six months in utilizing  
4 these templates? Has it worked?

5 A. Yes, it has.

6 Q. Okay. Do the service companies that you are working  
7 with, I know they charge you, but are they able and willing  
8 to work with this type of disclosure?

9 A. Yes, they are.

10 Q. Okay. If I then turn to our final exhibit which has  
11 been marked as NMOGA Exhibit Number 5, I'm now going to  
12 represent to you, Mr. Dillon, that this is the form for  
13 reporting that has been put together by the New Mexico Oil  
14 Conservation Division, and I believe it's attached to their  
15 prehearing statement. Have you reviewed this form put out by  
16 the -- proposed by the Division prior to the hearing here  
17 today?

18 A. Yes, I have.

19 Q. Is it -- now, I know it's not identical, but is it  
20 similar in format to the FracFocus template which has been  
21 marked as NMOGA Exhibit Number 1?

22 A. Yes, it is.

23 Q. Okay. Does it provide the same information as the  
24 most up-to-date FracFocus template provides?

25 A. There are two columns that don't exist on the NMOGA

1 template that you'd find on the FracFocus template. Let's  
2 see if I can -- it's the purpose column and the comments  
3 column are the only differences in terms of data.

4 Q. But in terms of the data about the chemicals that  
5 are utilized, it provides the same information as the most  
6 up-to-date form used by FracFocus?

7 A. Yes, it does.

8 Q. Okay. Do you anticipate then, Mr. Dillon, that the  
9 OCD form will be just as easy for operators and vendors to  
10 use as the FracFocus template?

11 A. Yes, I do.

12 Q. Do you expect that you would be able to populate the  
13 data that's currently reported on the most up-to-date  
14 FracFocus template into the OCD form?

15 A. Yes.

16 Q. Mr. Dillon, do you believe the form proposed by the  
17 Division is an acceptable and workable means of disclosing  
18 potentially hazardous ingredients in your hydraulic  
19 fracturing forms?

20 A. Yes.

21 MR. FELDEWERT: Madam Chairperson, Members of the  
22 Commission, that's all the questions I have from our witness.

23 MADAM CHAIR: Cross-examination?

24 MR. MEIKLEJOHN: Madam Chair, I'm not clear on the  
25 order in which we are going here. Does the Commission have a

1 preference about that?

2 MADAM CHAIR: I believe that we should go in the  
3 order that appearances were made. And so Ms. Gerholt should  
4 actually go.

5 MS. GERHOLT: No questions, Madam Chair.

6 MADAM CHAIR: All right.

7 MR. MEIKLEJOHN: Thank you, Madam Chair.

8 CROSS-EXAMINATION

9 BY MR. MEIKLEJOHN:

10 Q. Mr. Dillon, you are, as I understand it, providing  
11 testimony for the New Mexico Oil and Gas Association. Is  
12 that right?

13 A. That's correct.

14 Q. And that's the perspective that you are bringing to  
15 this particular proceeding; is that right?

16 A. I don't know if I understand perspective.

17 Q. Your -- your testimony is based on your perspective  
18 as a representative of NMOGA. Is that right?

19 A. My testimony is based on my experience in my current  
20 position --

21 Q. And what is your current -- I'm sorry go ahead.

22 A. -- with ConocoPhillips. That was it.

23 Q. Are you a lawyer?

24 A. No, I'm not.

25 Q. Were you involved in the enactment of the New Mexico

1 Surface Owners Protection Act?

2 A. I was not.

3 Q. Have you ever had occasion to work with surface  
4 owners to evaluate the impacts of hydraulic fracturing  
5 operations on their property?

6 A. That is actually a different group within  
7 ConocoPhillips that actually interacts with the surface  
8 owners and obtains the surface use agreements.

9 Q. So the short answer to the question is no?

10 A. Personally, no.

11 Q. In the prehearing statement that was filed by NMOGA,  
12 NMOGA took the position that the modifications proposed by  
13 OGAP were not consistent with the New Mexico Surface Owner  
14 Protection Act. Could you explain that, please?

15 A. I am not familiar with the act word for word, so I  
16 can't.

17 Q. All right. In the prehearing statement there also  
18 is an assertion that OGAP's proposed modifications would  
19 impose an unworkable regulatory burden on the Oil  
20 Conservation Division or OCD. Are you currently an employee  
21 of the Division?

22 A. I am not.

23 Q. Have you ever been an employee of the Division?

24 A. I have not.

25 Q. Do you have an opinion about what the unworkable

1 burden is that's referred to there?

2 A. I do not.

3 Q. As I understand your direct testimony, you are --  
4 you agreed with a disclosure that includes disclosure of  
5 everything that is currently required by the FracFocus  
6 website. Is that right?

7 A. That's correct.

8 Q. Are there chemicals that are used in hydraulic  
9 fracturing operations for which there are not MSD sheets?

10 A. Not that I'm aware of.

11 Q. If there were, would you be -- would it be  
12 acceptable to you to require -- for the regulation to require  
13 disclosure of those chemicals even though there are not MSD  
14 sheets for them?

15 A. I can't answer that. I'm not aware of any.

16 Q. I see. In terms of what's required by the FracFocus  
17 website, you're all right with what is currently required as  
18 opposed to what was required as of July 1?

19 A. I am not aware of the differences now versus  
20 July 1.

21 Q. Is ConocoPhillips currently disclosing what that  
22 website mandates now?

23 A. Yes.

24 Q. What is your understanding of what would happen if  
25 ConocoPhillips submitted a disclosure form to the FracFocus

1 website that the operators of that website determined did not  
2 comply with their requirements?

3 A. I have no idea.

4 Q. Has that ever happened in your experience?

5 A. Not that I'm aware of.

6 Q. And when did you say that the FracFocus website came  
7 into existence again?

8 A. I didn't say it because I don't know.

9 Q. I'm sorry, I misunderstood you.

10 A. Yeah.

11 Q. Was it this year? Do you know?

12 A. I truly don't know --

13 Q. Okay.

14 A. -- exactly when that site came up.

15 Q. How long has ConocoPhillips been disclosing to the  
16 FracFocus website?

17 A. As of May 1, 2011.

18 Q. If ConocoPhillips is conducting drilling operations  
19 in a particular formation, for example, a shale formation, is  
20 the recipe for the substances used in the hydraulic  
21 fracturing operation going to remain relatively constant  
22 throughout the drilling in that formation?

23 A. Are you talking about drilling fluids?

24 Q. No, I'm sorry. If ConocoPhillips is conducting  
25 hydraulic fracturing in a formation, does the recipe for the

1 hydraulic fracturing fluid remain relatively constant  
2 throughout that formation?

3 A. I'm not truly understanding the question. I'm  
4 sorry. Can you elaborate a bit?

5 Q. That's probably because I'm probably not stating it  
6 very clearly. ConocoPhillips conducts hydraulic fracturing  
7 operations in various different types of subsurface  
8 formations, does it not?

9 A. That's true, yes.

10 Q. What, for example, is the most recent formation, in  
11 your experience, in which ConocoPhillips has started doing  
12 hydraulic fracturing?

13 A. We have been doing hydraulic fracturing in six  
14 different formations in the San Juan Basin, six to seven.

15 Q. And could you name a couple of them for us,  
16 please?

17 A. The Dakota, the Mesaverde.

18 Q. In the Dakota formation, do the fluids, do the  
19 substances that are used in the hydraulic fracturing  
20 operation remain relatively constant wherever you do  
21 hydraulic fracturing within that formation?

22 A. No, they don't. We actually use two significantly  
23 different fluid systems in the Dakota.

24 Q. You said that, I believe, on direct examination,  
25 that you plan two weeks in advance, generally speaking?

1 A. Yes. Yes.

2 Q. Would you be able to disclose to the surface owner  
3 the substances to be used in a hydraulic fracturing operation  
4 two weeks in advance of drilling or of using those fluids?

5 A. Two weeks, the two weeks is actually scheduling the  
6 work. It's not having a final design in place. To do that  
7 two weeks in advance would be very high-level generic  
8 information.

9 Q. Would it give the surface owner notice of the  
10 chemicals and the substances to be used even if it doesn't  
11 give the surface owner exact information about the amounts of  
12 each of those substances to be used?

13 A. That's at a high level.

14 Q. I'm sorry, what do you mean by at a high level?

15 A. Say it would be a -- what we would call a slick  
16 water or a foam fluid design.

17 Q. On Exhibit Number 1, if you go back to that for a  
18 minute, there is a space for comments on that exhibit. There  
19 is also the same space for comments on Exhibit Number 3.  
20 What sorts of comments would normally appear in that column?  
21 I don't see any comments in either of those two exhibits.

22 A. I can't answer that. I don't know what an operator  
23 might put in there.

24 Q. I see, okay.

25 MR. MEIKLEJOHN: We don't have any further

1 questions.

2 MADAM CHAIR: Mr. Hall, do you have any further --

3 MR. HALL: I have no questions. Thank you.

4 MADAM CHAIR: Commissioner Dawson?

5 COMMISSIONER DAWSON: I have no questions.

6 MADAM CHAIR: Commissioner Balch?

7 EXAMINATION

8 BY COMMISSIONER BALCH:

9 Q. I would like to get a clarification. Aside from the  
10 service company fee to provide the data for the frac fluid  
11 content, how much additional personnel overhead does  
12 ConocoPhillips experience per well or job?

13 A. Initially it was pretty significant. It was several  
14 hours per project by an engineer and maybe a half an hour to  
15 an hour by an engineering technician. That has been reduced  
16 to maybe about an hour of time from an engineer and 15 to 30  
17 minutes -- probably 15 minutes for the engineering tech to  
18 upload the data, check the header information.

19 Q. So a couple of hours per job?

20 A. Yeah, tops.

21 COMMISSIONER DAWSON: Okay. That's all the  
22 questions I have.

23 EXAMINATION

24 BY MADAM CHAIR:

25 Q. I have several questions. ConocoPhillips does

1 report through the FracFocus, but there are other large  
2 productive companies in New Mexico that have not been  
3 reporting on the FracFocus. Do you have a personal opinion  
4 as to why these large, highly-productive companies would not  
5 already be using FracFocus?

6 A. No, I would have no idea.

7 Q. No personal opinion on that?

8 A. No.

9 Q. You talked extensively about MSD sheets, and you  
10 mentioned that they are required under federal regulation?

11 A. Yes.

12 Q. And the federal regulation does require that each  
13 hazardous material be reported with an MSD sheet?

14 A. Yes.

15 Q. So that any chemical that is not reported under an  
16 MSD sheet would probably not be considered hazardous under  
17 federal law?

18 A. I can't answer that with absolute certainty.

19 Q. You said that ConocoPhillips fracked maybe six  
20 formations?

21 A. (Nodding.)

22 Q. What is the shallowest formation that, in your  
23 recent experience, has been fractured?

24 A. The Fruitland Coal.

25 Q. And at what depth is the Fruitland Coal found?

1           A.   Typically the Fruitland Coal is found between 3,000  
2   and 4,000 feet.

3           MADAM CHAIR:   That's all I have.   Thank you.

4           MR. FELDEWERT:   Madam Chair, Members of the  
5   Commission, I have one follow-up question, if I may.

6           MADAM CHAIR:   On those questions that have been  
7   asked?

8           MR. FELDEWERT:   Correct.

9                           REDIRECT EXAMINATION

10          BY MR. FELDEWERT:

11           Q.   In response to Mr. Meiklejohn's question, you talked  
12   about the only thing you could do prior to a job would be to,  
13   at some point, once you got your FracFocus from your fracture  
14   stimulation plan put together, would be to provide a high  
15   level generic level of exposure?

16           A.   (Nodding.)

17           Q.   Mr. Dillon, the FracFocus templates that are  
18   completed like Exhibit Number 3, okay?

19           A.   Okay.

20           Q.   Those are available on the public website,  
21   correct?

22           A.   Yes, they are.

23           Q.   Okay.   So if a surface owner was interested in  
24   knowing, for example, what type of ingredients were utilized  
25   in a well near his location, or in a particular type of well,

1 or even in a particular formation, it would be able to go to  
2 the website and make that determination as to what was used  
3 in the jobs, correct?

4 A. That's correct.

5 Q. And but once you report then, a -- so they can have  
6 a generic understanding of what occurs prior to the fracture  
7 stimulation process by going to the website now and getting  
8 to certain webs, correct?

9 A. That's correct.

10 Q. Okay. And then, secondly, once this is reported on  
11 the website, if I am a surface owner, I can go, pull that  
12 well down, pull up this template, and view what was actually  
13 put into the ground on this template, correct?

14 A. It's my understanding anyone can do that.

15 MR. FELDEWERT: Okay. That's all the questions I  
16 have.

17 MADAM CHAIR: I'm sorry, I have one further  
18 question.

19 FURTHER EXAMINATION

20 BY MADAM CHAIR:

21 Q. On your Exhibit Number 1, the left-hand, upper-most  
22 table, this location of the well by longitude, latitude and  
23 along that projection, it does not list unit, letters,  
24 section, township, and range. Is that correct?

25 A. That's correct.

1 Q. However, all of the OCD forms are reported by  
2 section, township, range or well locations. Does that create  
3 a problem, potentially, for somebody trying to find a  
4 location of a well if they don't have that long, but do have  
5 section, township, range?

6 A. In terms of navigating in FracFocus? Finding it in  
7 the FracFocus?

8 Q. For any of the member of the public who wants to  
9 find out, is there a potential problem by not having section,  
10 township, range on this form?

11 A. I don't believe so. You -- I know you can navigate  
12 down to county level; I have done that. I guess I can't  
13 answer the question any further than that.

14 Q. Okay.

15 A. If that would be a problem or not.

16 FURTHER REDIRECT

17 BY MR. FELDEWERT:

18 Q. On the FracFocus form, you said you do it to the  
19 county level. You go in and put in, for example, San Juan  
20 County?

21 A. Correct.

22 Q. And then it will pull up a number of wells?

23 A. That's correct.

24 Q. And there will be information about those wells?

25 A. Yes.

1 Q. There is also an API number that's provided. Is  
2 that correct?

3 A. Yes, there is.

4 Q. So if anyone was interested, they could get the  
5 information they needed to offer the FracFocus website for a  
6 particular well in a particular county, take that API number  
7 and go to the Division's public website and pull up some  
8 additional information about that well, perhaps section,  
9 township and range?

10 A. I have not done that, but I believe that is true.

11 MR. FELDEWERT: Okay. That's all the questions I  
12 have.

13 MR. MEIKLEJOHN: May I ask one other question?

14 MADAM CHAIR: Along the lines of the previous  
15 question, as this is rebuttal time.

16 MR. MEIKLEJOHN: It's related, but it's a little bit  
17 tangential.

18 MR. FELDEWERT: Then I will have to object.

19 MR. MEIKLEJOHN: It's a very straightforward  
20 question.

21 MR. MEIKLEJOHN: Let me ask it and see if Counsel  
22 Feldewert objects.

23 MADAM CHAIR: That sounds good.

24

25

REXCROSS-EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. MEIKLEJOHN:

Q. Would your company have any concern about reporting to the Division at the same time that the company reports to FracFocus, that is, sending two e-mails instead of one?

A. No, I don't believe so.

MR. MEIKLEJOHN: Thank you.

MR. FELDEWERT: No more questions.

MADAM CHAIR: All right. Your witness may be excused.

MR. FELDEWERT: We have no further witnesses.

MADAM CHAIR: No further witnesses. All right. Ms. Gerholt?

MS. GERHOLT: Madam Chair, the Division will call Ed Martin at this time.

ED MARTIN

(Sworn, testified as follows:)

DIRECT EXAMINATION

BY MS. GERHOLT:

Q. Good morning. Would you please state your name for the record?

A. Ed Martin.

Q. Where do you work?

A. The Oil Conservation Division.

Q. How long have you been employed by the Oil

1 Conservation Division?

2 A. Eighteen years.

3 Q. And what position do you currently hold?

4 A. I'm the District 4 supervisor.

5 Q. How long have you been the District 4 supervisor?

6 A. Almost six years.

7 Q. And what does District 4 comprise?

8 A. It's a section of the counties extending from the  
9 northeast part of the state to the southwest part of the  
10 state.

11 Q. And what are your current responsibilities as  
12 District 4 supervisor?

13 A. To approve applications to drill, well completions,  
14 well activity, anything related to a well, inspection of  
15 those well locations, eventual plugging approval, inspection,  
16 and witnessing of the plugging of the well, pressure testing  
17 the wells, anything that has to do with the wells in my  
18 district.

19 Q. And do you go out into the field to inspect or to  
20 observe completion processes?

21 A. Yes.

22 Q. If I could draw your attention to NMOGA's Exhibit A,  
23 Application for Rulemaking, which is filed with the  
24 rulemaking application. Have you previously seen this?

25 A. Yes.

1 Q. After NMOGA filed its application for rulemaking,  
2 did the OCD form a workgroup?

3 A. Yes.

4 Q. Who were the members of the OCD workgroup?

5 A. Carl Chavez of the OCD Environmental Bureau, myself,  
6 yourself, Ms. Gerholt, Terry Warnell of the Engineering  
7 Bureau, and representatives of the OCD District.

8 Q. Who were the representatives of the OCD districts?

9 A. District supervisors.

10 Q. And what was the purpose of the workgroup?

11 A. To analyze the NMOGA proposed rule and ascertain if  
12 we wanted to make any modifications to that rule for to  
13 better administrative -- to serve as administrator of the  
14 rule.

15 Q. And did the OCD propose certain modifications?

16 A. Yes.

17 Q. Going back to the those original applications that  
18 the OCD made, do you recall what those were?

19 A. Yes.

20 Q. What were those?

21 A. The industry proposal had 45 days as a deadline for  
22 submittal of fracturing fluid, hydraulic fracturing fluid  
23 components. We had a problem with that because it was tied  
24 to the 105, and the 104 which usually comes in with it, which  
25 is currently, under our rules, required in 20 days. So we

1 did not want to extend the deadline of the time of the  
2 C-105.

3 Q. Were the OCD concerned about consistency with its  
4 rules?

5 A. Yes.

6 Q. And is that where the modification came to have the  
7 C-105 still due within 20 days?

8 A. Yes.

9 Q. Was there any concern about the proposed  
10 modification reports solely to FracFocus?

11 A. There was. Certain members of the workgroup were  
12 uncomfortable with requiring the industry to report to a  
13 third party of which we had no control. It would make it  
14 harder for us to monitor the reporting by industry, and would  
15 prefer, most prefer that they report to us on our form.

16 Q. Okay. During the course of the workgroup, was a  
17 form created?

18 A. Yes.

19 Q. If I could now draw your attention to OCD Exhibit A,  
20 and I believe NMOGA's witness has already discussed this  
21 form, but could you tell the Commissioners what it is?

22 A. This is the form that we devised to -- for industry  
23 to use to report to us directly the components of the  
24 hydraulic fracture fluid.

25 Q. Okay. Mr. Dillon pointed out a few differences in

1 this form and the FracFocus form. If I could direct your  
2 attention to Box 4 of OCD Exhibit A. What is Box 4?

3 A. Box 4 is the unit, letter, section, township, and  
4 range of the well.

5 Q. Why is it that the Division made this suggestion  
6 with this draft form?

7 A. Why did we include that?

8 Q. Yes.

9 A. Because our system is based on those parameters for  
10 location of well and not latitude-longitude.

11 Q. And then if I could draw your attention to Box 12,  
12 total volume of fluid pumped, why did the Division seek to  
13 include that?

14 A. We thought the public would be interested in seeing  
15 how much water and other things were used in total to  
16 accomplish a frac job.

17 Q. And, Mr. Martin, you were involved in the  
18 preparation of this form. Is that correct?

19 A. Yes.

20 MS. GERHOLT: Madam Chair, the Division would move  
21 Exhibit A into evidence at this time.

22 MADAM CHAIR: Any objection?

23 (No objection noted.)

24 MADAM CHAIR: So admitted.

25 (Exhibit OCD A admitted.)

1 Q. Mr. Martin, would you please tell the Commission why  
2 the Division is requesting this form be adopted?

3 A. As opposed to the reporting to FracFocus?

4 Q. As an alternative form to the FracFocus form.

5 A. We feel that it's more than adequately allows the  
6 industry to report the publicly-demanded components of  
7 fracturing, hydraulic fracturing fluid.

8 Q. Okay. Now, Mr. Martin, if we can talk a moment  
9 about some of the responsibilities of the Division, does the  
10 Division keep files on every well in the state of New  
11 Mexico?

12 A. Yes.

13 Q. Could you please describe for the Commission the  
14 contents of a well file?

15 A. Every bit of filing that becomes public information,  
16 including the application to drill, the completion reports  
17 after that, the authorization to transport the product, any  
18 sundry notices describing any actions taken on the well, all  
19 the way to and including the eventual plugging and abandoning  
20 of the well.

21 Q. Are these well files available to the public?

22 A. Yes.

23 Q. Are they on the Division's website?

24 A. Yes, they are.

25 Q. Do these well files give an accurate picture of what

1 has occurred downhole?

2 A. Yes, they do.

3 Q. Okay. By requiring a, whether the OCD form or the  
4 FracFocus template form, but by requiring one of those forms  
5 to be filed with the Division, is it your opinion that the  
6 public would have complete knowledge about the well?

7 A. It would get a better picture, yes. Yes, it is my  
8 opinion that they would get a better picture of the entire  
9 well and how it was drilled, where it was perforated, where  
10 it was fracked. And with the addition of this form, exactly  
11 what the components of that fracturing was.

12 Q. Okay. Mr. Martin, are you familiar with the  
13 Material Safety Data Sheets?

14 A. Yes.

15 Q. And how are you familiar with them?

16 A. They are widely available on drilling locations,  
17 frac jobs, any kind of -- almost every kind of oil and gas  
18 operation I have ever been on, including downstream  
19 facilities, such as refineries, gas plants, and those types  
20 of plants.

21 Q. Mr. Martin, in your course of work with the  
22 Division, have you had the opportunity to be on location  
23 during a fracture completion?

24 A. Yes.

25 Q. And was that a controlled environment?

1 A. Ingress and egress, you mean?

2 Q. Yes.

3 A. Yes.

4 Q. And to the best of your recollection, were there  
5 Material Safety Data Sheets on that rig?

6 A. There were.

7 Q. Okay. And to the best of your knowledge, is that  
8 typical?

9 A. Yes.

10 Q. And, Mr. Martin, do you know, are Materials Safety  
11 Data Sheets required for hazardous chemicals?

12 A. That's my understanding.

13 Q. Okay. And do you have an understanding of whether  
14 or not they are required for all chemicals, or just those  
15 that are hazardous?

16 A. My understanding is that they are required for  
17 hazardous -- hazardous as defined by the EPA chemicals.

18 Q. Okay. And would you please tell the commissioners  
19 why the OCD is asking for MSDS information to be reported?

20 A. For a couple of reasons. They are widely  
21 available -- they are widely accepted by a variety of first-  
22 responder types of organizations, police, fire department, so  
23 they should be acceptable to the OCD for that purpose.

24 Q. Okay. And, Mr. Martin, are you aware of -- well,  
25 let me stop you right there. Were you here for Mr. Dillon's

1 testimony?

2 A. Yes.

3 Q. Were you here when Mr. Dillon testified to the fact  
4 that an MSDS sheet can include proprietary information?

5 A. Yes.

6 Q. If the Division were required to obtain proprietary  
7 information but keep it confidential, would the Division be  
8 able to efficiently manage that?

9 A. In my opinion, no. With the limited resources we  
10 have, we would have to somehow set up some kind of system to  
11 redact any kind of proprietary or confidential information  
12 from whatever was submitted to us before it was made public  
13 information.

14 Q. And does the Division face current budgetary  
15 restraints?

16 A. Yes.

17 Q. Is the Division fully staffed?

18 A. Not currently.

19 Q. If I could now draw your attention to OGAP Exhibit  
20 A, their recommended modification. Have you had an  
21 opportunity previously to review OGAP's proposed  
22 modification?

23 A. I have.

24 Q. And if I could draw your attention to their first  
25 modification which is at the beginning of the paragraph in

1 capital letters beginning with, "Consistent with."

2 A. Yes.

3 Q. This first modification would require an operator to  
4 notify a surface owner 30 days prior to hydraulic fracturing,  
5 does it not?

6 A. Yes, it does.

7 Q. Mr. Martin, you are not an attorney. Is that  
8 correct?

9 A. That's correct.

10 Q. But you have been with the Division for 18 years?

11 A. Correct.

12 Q. And it was during that -- during these 18 years that  
13 the Surface Owner Protection Act was enacted. Is that  
14 correct?

15 A. Correct.

16 Q. Based upon your time and experience with the OCD,  
17 does the OCD have any authority under the Surface Owner  
18 Protection Act?

19 A. We do not.

20 MS. GERHOLT: I have no further questions for this  
21 witness. I would pass the witness at this time.

22 MADAM CHAIR: Any cross-examination?

23 MR. FELDEWERT: I have no questions.

24 MR. MEIKLEJOHN: Commissioners, thank you.

25

## CROSS-EXAMINATION

1

2 BY MR. MEIKLEJOHN:

3 Q. Mr. Martin, what is the ONGARD, O-N-G-A-R-D, project  
4 that's listed in the Division's prehearing statement?

5 A. That was the mainframe database into which all of  
6 the well information is entered, such as location, the depth,  
7 casing depths, total depth of the well, completion reports,  
8 those types of things.

9 Q. And how long did you say that you worked for the  
10 Division?

11 A. Eighteen years.

12 Q. Were you employed before that?

13 A. Yes.

14 Q. Where?

15 A. In Houston with a geophysical company.

16 Q. Who were you working for in that position?

17 A. What company?

18 Q. Yes.

19 A. Western Geophysical Company.

20 Q. Okay. So the perspective that you are bringing to  
21 this proceeding today is that of a regulator. Is that  
22 right?

23 A. That's correct.

24 Q. Mr. Dillon testified that ConocoPhillips, at least,  
25 is providing to FracFocus all of the information that is

1 required by the FracFocus website. Do you recall that?

2 A. Yes, I do.

3 Q. If a company like ConocoPhillips sent to the  
4 Division information that was complete according to  
5 FracFocus, would the Division accept that?

6 A. I'm not that familiar with the FracFocus website to  
7 know what they deem complete, so I can't really answer that.  
8 We, through the workgroup, decided that the information  
9 required on our submitted form is what we would require.

10 Q. And your submitted -- your form indicates it does  
11 not require the reporting of information beyond the Material  
12 Safety Data Sheets. Is that right?

13 A. Yes.

14 Q. Would the Division object to receiving and posting  
15 information beyond Material Safety Data Sheets if that  
16 information was compiled with FracFocus?

17 A. Again, I don't want to be held -- I don't want all  
18 the Division accountable for what is or is not reportable to  
19 FracFocus. I would say that if the operator wants to submit  
20 any information to us that's not confidential by nature or by  
21 statement, that we would accept it.

22 Q. Do you know whether all of the -- whether there are  
23 Material Safety Data Sheets for all of the substances used in  
24 hydraulic fracturing?

25 A. I do not.

1 Q. You expressed concern about the Division having to  
2 redact information from filings. Is that right?

3 A. That was our concern, yes.

4 Q. Does the Division handle any confidential  
5 documents?

6 A. We have -- we allow operators to hold certain forms  
7 confidential for a certain period of time, and then they  
8 become public information. Apart from that, I'm not aware of  
9 anything of that nature.

10 Q. Are personnel records confidential?

11 MS. GERHOLT: Objection, beyond the scope of direct.

12 MR. MEIKLEJOHN: Madam Chair, this goes to the  
13 question of whether the Division has the capability of  
14 redacting information or dealing with confidential documents.

15 MADAM CHAIR: I think the response is the Division  
16 does not deal with personnel issues apart from the human  
17 resources division. I support the objection.

18 Q. Are there any contexts, other than reporting by oil  
19 and gas companies, in which the Division deals with  
20 confidential records?

21 A. Apart from the 90-day time limit on keeping certain  
22 forms confidential, no, not to my knowledge.

23 Q. Are there other documents besides reports from the  
24 oil and gas companies that the Division receives for which it  
25 redacts information?

1 A. No.

2 MS. GERHOLT: Objection, asked and answered.

3 MADAM CHAIR: Sustained.

4 Q. If the Division receives a report, say it's on your  
5 form, and that information is posted on the Division's  
6 website, could an individual who does not have internet  
7 access obtain that form by coming to the Division office or  
8 by requesting it in writing from the Division?

9 A. They could.

10 Q. How would they go about doing that?

11 A. Either one of those avenues would result in  
12 production of the documents.

13 MR. MEIKLEJOHN: We don't have any further  
14 questions.

15 MADAM CHAIR: All right. Mr. Hall?

16 MR. HALL: No questions.

17 MADAM CHAIR: Commissioner Dawson?

18 COMMISSIONER DAWSON: No questions.

19 EXAMINATION

20 BY COMMISSIONER BALCH:

21 Q. I would be interested, for the record, approximately  
22 how many fracturing completions are done in an average year  
23 in New Mexico?

24 A. I don't have direct knowledge of that, but I would  
25 say that, in a year, of the total wells drilled in a year, I

1 would say in excess of 50 percent are fractured. I would say  
2 that's a conservative estimate. I don't have any numbers for  
3 you.

4 Q. Any recompletions?

5 A. The same.

6 COMMISSIONER BALCH: That's all I have.

7 EXAMINATION

8 BY MADAM CHAIR:

9 Q. Looking at the Oil Conservation Division's  
10 modification of the proposed rule, it says, "As an  
11 alternative to disclosure on the Division's hydraulic  
12 fracturing disclosure form, an operator may use the hydraulic  
13 fracturing fluid product component information disclosure  
14 template of the Groundwater Council, the FracFocus website."

15 However, as pointed out, that form for FracFocus  
16 does not include the section, township, range. Would you  
17 recommend that that be a requirement of addition to that  
18 FracFocus template in New Mexico?

19 A. It would be helpful, but if we have the API number,  
20 we have that information as far as filing goes, knowing where  
21 to file that. It would help -- that would be helpful, but  
22 not a matter of life and death, I don't think.

23 MADAM CHAIR: That's all I have.

24 MS. GERHOLT: We have --

25 MADAM CHAIR: Any redirect?

1 MS. GERHOLT: I have a clarification point.

2 REDIRECT EXAMINATION

3 BY MS. GERHOLT:

4 Q. Mr. Martin, the Division's modification would be  
5 acceptance of either the OCD form or the FracFocus form. Is  
6 that correct?

7 A. Yes.

8 Q. And to the best of your --

9 MS. GERHOLT: I have no further questions. Thank  
10 you, Madam Chair.

11 MADAM CHAIR: The witness may be excused. Oh, wait,  
12 wait, wait.

13 EXAMINATION

14 BY COMMISSIONER DAWSON:

15 Q. The FracFocus form, so if the company fills out the  
16 FracFocus form, you will accept that, and that will be  
17 implemented into the well file?

18 A. Yes, rather than make them duplicate it on a  
19 separate form.

20 COMMISSIONER DAWSON: No further questions.

21 COMMISSIONER BALCH: That raises a question for me  
22 as well.

23 MADAM CHAIR: Okay.

24

25

FURTHER EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY COMMISSIONER BALCH:

Q. If FracFocus were to change their template later on or change the data that was required on their form, the question that Commissioner Dawson just asked may not hold true. Is that correct?

A. That's possible.

COMMISSIONER BALCH: Thank you.

MADAM CHAIR: Mr. Meiklejohn?

MR. MEIKLEJOHN: Yes.

CROSS-EXAMINATION

BY MR. MEIKLEJOHN:

Q. Mr. Martin, would the Division be willing to change its form to comply with what the FracFocus form currently requires?

A. Being an attorney, I can't answer that as far as copyright laws and other things go, so I don't know.

MR. MEIKLEJOHN: Okay. Thank you.

MADAM CHAIR: Now the witness may be excused. Do you have any other witnesses?

MS. GERHOLT: No, Madam Chair, OCD has no further witnesses.

MADAM CHAIR: Why don't we take a ten-minute break and reconvene at a quarter to 11.

(Recess taken.)

1 MADAM CHAIR: It's time to go back on the record.  
2 Now would be an appropriate time to allow those people who  
3 would like to present non-technical testimony or to make  
4 position statements or to be sworn for public comment so we  
5 can have their time so we can break at an early hour for  
6 lunch.

7 (Public testimony/comment.)

8 MADAM CHAIR: The first name of the person -- of the  
9 people who have signed the form that says, "Persons wishing  
10 to present non-technical testimony," is Dan Lorimer. Would  
11 you --

12 UNIDENTIFIED SPEAKER: He is out.

13 MADAM CHAIR: We will go to Cathy Jate.

14 MS. JATE: Oops, no, I withdraw.

15 MADAM CHAIR: Maxine Paul.

16 MS. PAUL: Sure.

17 MADAM CHAIR: Would you come to the table. Would  
18 you like to be sworn?

19 MS. PAUL: I just wanted to make a statement on  
20 behalf of our advocacy organization.

21 MADAM CHAIR: At the table, please. I just motioned  
22 to Theresa to begin the five-minute timer.

23 MS. PAUL: I'm Maxine Paul. I am the preservation  
24 associate at Environment New Mexico. We are a statewide  
25 citizen based environmental advocacy organization with over

1 15,000 members and supporters across the state. I'd just  
2 like to say for the public and everyone that there is not  
3 information in the public realm about fracking and health  
4 effects, and in terms of research and trying to do research.

5 And we do know that when our air and our drinking  
6 water is threatened by toxic chemicals such as volatile  
7 organic compounds like benzene and xylene that are involved  
8 in the fracking process, many of the products or injections,  
9 as well as the 29 chemicals that are listed under the --  
10 under the Clean Air and Water Drinking Act, the public has a  
11 right to know about this beforehand, before that happens.

12 So from Environment New Mexico, we are -- we are  
13 supportive of the beginning of this -- this disclosure, but  
14 we think that we support OGAP's, Oil and Gas Accountability's  
15 proposal because it -- it requires the full disclosure to the  
16 public about the chemicals that are involved. It requires  
17 that the disclosure happen beforehand. And we just want to  
18 stress that it's important that the public know about this,  
19 and that their homes and their areas, that they may be  
20 potentially impacted by fracking, that that kind of  
21 information is available. So thank you.

22 MADAM CHAIR: Thank you for your comment. John  
23 Bartlit. Would you like to be sworn or unsworn?

24 MR. BARTLIT: I guess sworn. This is public  
25 comment, if it's non-technical, I'm happy to be sworn. I

1 have some copies, would you like to have, of what I'm going  
2 to read. Is that appropriate to --

3 MADAM CHAIR: Yes, as a sworn witness you can --  
4 okay.

5 (Witness sworn.)

6 MR. BARTLIT: You can have that one. I will give to  
7 the others later. It's just one page. My name is John  
8 Bartlit, and I comment on behalf of New Mexico Citizens For  
9 Clean Air and Water Incorporated. We have been active in  
10 technical issues of pollution control since our founding in  
11 1969.

12 I am a chemical engineer by training and experience.  
13 My comments today support the principles of efficiency and  
14 transparency in the regulatory process. Transparency of  
15 information in the regulatory process is a core value of the  
16 OCD and is the key to credibility. I support the full and  
17 public disclosure of all components of fracking fluid, their  
18 proportions, and amounts used.

19 Improved efficiency of the regulatory process needs  
20 to be a high priority of all interests. In my comments,  
21 "efficiency" refers to ways of regulating that are more  
22 efficient, faster and lower cost in the working.  
23 "Efficiency" does not refer to how stringent regulations may  
24 or may not be. Competing interests constantly debate the  
25 optimum stringency of regulations. Little attention is

1 devoted to constructing regulations whose very nature makes  
2 them quicker and cheaper to do in all aspects, that is, in  
3 permitting, surveillance, and enforcement. I believe that a  
4 universal need is greater efficiency in the regulatory  
5 process, quite apart from making rules more lax or more  
6 strict, which should still be debated and certainly will.

7 Fracking offers an attractive technical opportunity  
8 to improve regulatory efficiency. Don Neeper of our  
9 organization submitted comments to the OCC by mail on  
10 November 7. His comments include the suggestion to require  
11 that tracers be added to all fracking fluids. Use of tracers  
12 is a common technique to identify the origin and track the  
13 paths of chemicals moving in the environment.

14 Suitable tracers for fracking fluids need three  
15 qualities. One, they must be non-reactive with other  
16 chemicals in the fracking environment. Two, they must be  
17 unique to fracking fluids and not otherwise found in the  
18 fracking environment. Three, they must be easily detected  
19 and measured in mixtures, whether liquid or gaseous.

20 Adding tracers to fracking fluids has great  
21 potential to save time and cut costs for all parties in the  
22 regulatory process. In particular, tracers have potential to  
23 avoid some more complicated requirements that could be used  
24 to assure there is adequate knowledge and control of fracking  
25 fluids. Tracers have potential to save time and everyone's

1 costs in resolving disputes, even lawsuits, over who or what  
2 is responsible if unexplained chemicals reach unexpected  
3 places.

4 Work remains to be done. Yet adding tracers to  
5 fracking fluids has a large potential to benefit every  
6 interest, from industry to regulators, ranchers, towns and  
7 taxpayers. I urge consideration of this technical  
8 opportunity to make regulation more efficient in the working.  
9 Thank you for taking public comment.

10 MADAM CHAIR: Do you -- you are subject to  
11 cross-examination.

12 MR. BARTLIT: I will be happy to do so.

13 MADAM CHAIR: Are there any questions of this  
14 person?

15 MR. FELDEWERT: No, Madam Chairperson.

16 MS. GERHOLT: No, Madam Chair.

17 MR. MEIKLEJOHN: No, Madam Chair.

18 MADAM CHAIR: Thank you, Dr. Bartlit. Next person  
19 on the list may have signed the other form. I'm assuming  
20 that Ms. Meiklejohn don't care to make public comment.

21 MR. MEIKLEJOHN: No, thank you.

22 MADAM CHAIR: Patrick Sanchez.

23 MR. SANCHEZ: I didn't sign the one for public  
24 comment.

25 MADAM CHAIR: Wally Dragermeister? --

1 MR. DRAGERMEISTER: No.

2 MADAM CHAIR: No? Seci?

3 (No response.)

4 MADAM CHAIR: Scott Hall?

5 MR. HALL: (Nodding.)

6 MADAM CHAIR: Michael Parker?

7 (No response.)

8 MADAM CHAIR: Andrew Hawk?

9 MR. HAWK: No.

10 MADAM CHAIR: Susie Holland?

11 (No response.)

12 MADAM CHAIR: Lisa Winn?

13 MS. WINN: No?

14 MADAM CHAIR: Zoe Foster?

15 MS. FOSTER: No.

16 MADAM CHAIR: Karin Foster?

17 MS. FOSTER: No.

18 MADAM CHAIR: Katherine Martin?

19 MS. MARTIN: Yes. I don't think I put my glasses

20 on, so I must have signed something. I will be sworn in.

21 (Witness sworn.)

22 MS. MARTIN: My name is Kathy Martin. I'm a

23 professional engineer from the state of Oklahoma. I have a

24 bachelor's degree in petroleum engineering, a master's in

25 civil, and about 50 hours past my master's in civil. I have

1 been working the last four years on dairy rules in the state  
2 of New Mexico, so I was here yesterday for that meeting.

3 I have also been working on the hydraulic frac  
4 issues nationwide for the last two and a half to three years,  
5 mainly in the Barnett Shale and Marcellus. I was on the  
6 Stronger Board, I was an environmental stakeholder  
7 representing the Sierra Club for six years. During that time  
8 they developed the hydraulic fracturing guidelines.

9 I was involved and present during the time that the  
10 Groundwater Protection Council put together FracFocus, and I  
11 had also comments during that time to them about some of the  
12 problems I had with how frac fluid chemicals are presented to  
13 the public, so that's what I would like to comment about  
14 today.

15 The chemicals are listed, and they are presented in  
16 a percent by mass which is not necessarily the way a  
17 layperson thinks of the chemicals that are out on the frac  
18 pad or on the well site pad; they are thinking in terms of  
19 gallons of acid or gallons of methanol. They are not  
20 thinking of pounds or, per se, and so I think that the  
21 presentation and percent by weight -- or by mass -- I'm  
22 sorry -- is not really telling the public something that they  
23 can use.

24 It may be because I believe there is additional  
25 information that's necessary in order for the public to

1 calculate what the actual gallons of a contaminant would be  
2 near their site. So it's disclosure in a way, but it's  
3 disclosure at a level where someone with a degree would have  
4 to do additional calculation in order to come up with gallons  
5 of methanol or gallons of nitrogen or something like that to  
6 make an understanding.

7           Although I do absolutely support disclosure, I  
8 actually support disclosure beyond even the proprietary to  
9 the people that are adjacent landowners because they are the  
10 people that are going to suffer first if there is  
11 contamination of their groundwater, and this would be a  
12 constitutional right to be able to protect your private  
13 property. And even if it's a generalized piece of  
14 information, which is one of the questions I asked, so that  
15 that landowner needs to go to their water well and take a  
16 sample and analyze it in a laboratory, they need to know what  
17 chemical to analyze for. If nitrogen is the main ingredient,  
18 then they need to know what form of nitrogen it is so that  
19 they can sample their water and get a baseline water quality  
20 to compare to after fracking in case they believe that  
21 something has contaminated their water source.

22           So by not knowing what's in the frac fluid recipe,  
23 the adjacent landowner is left to guess and possibly miss a  
24 vital parameter to be tested, and, therefore, loses at the  
25 end after the fracking because, in a court of law, they can't

1 prove that that particular chemical was not already in their  
2 water. Does that make sense? This is very critical in the  
3 relationship between the operator and the adjacent landowner.

4 And I would like to make one more comment. I need  
5 to watch my time. When -- as far as the township and range  
6 versus lat-long, that's obviously -- you have caught a very  
7 big problem, but there is also another problem in the  
8 searchability in FracFocus. If you go on there, yes, you can  
9 go to a county, and yes, you can go to an operator, but that  
10 operator is the name of the operator when the data was  
11 submitted to FracFocus. It does not necessarily reflect who  
12 the operator is today.

13 For example, Cabot may have been the original  
14 operator, but they sold to some other field, to Chesapeake  
15 who then divided up and sold to ABC Operator, so when you  
16 drive down the road and look at the fence and look at the  
17 sign, you see the well you are interested in, ABC Operator,  
18 you go to FracFocus and it's not there because actually that  
19 well is under Cabot. So that's one of the weaknesses of  
20 FracFocus. It's only a snapshot in time. It's not  
21 necessarily updated as the operators change. Thank you.

22 MADAM CHAIR: Any cross-examination?

23 MR. MEIKLEJOHN: Madam Chair, I have one question.

24

25

CROSS-EXAMINATION

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

BY MR. MEIKLEJOHN:

Q. How long has the FracFocus website been in existence?

A. Just this year. And I didn't know the answer, either, to that, but it's been very recent.

Q. Thank you.

A. The last six months or something. Anything else?

MADAM CHAIR: Commissioner Dawson?

EXAMINATION

BY COMMISSIONER DAWSON:

Q. There is one thing I wanted to emphasize on that, you might not be able to find the current operator of that well, but if you have the API number, you have access to the OCD well files and you can go in and see exactly -- they have change of operator forms in there that you can trace from the original operator all the way through to the current operator on those wells.

A. That could be solved with some kind of direction on the OCD website, because even though you may go to FracFocus, you may want to think about this problem. Otherwise, people are -- it's not there. It's not.

Q. I agree.

MADAM CHAIR: Commissioner Balch, any questions?

COMMISSIONER BALCH: I have no questions.

1 MADAM CHAIR: You are excused. Rachel Jankowitz.

2 MS. JANKOWITZ: No, I didn't sign that page.

3 MADAM CHAIR: We go back to Dan Loriman.

4 MR. LORIMAN: Thank you very much, Madam Hearing  
5 Officer, my points have been well covered. Thank you.

6 MADAM CHAIR: Okay. That concludes all people who  
7 have signed up for public comment for the morning session.

8 MR. SCOTT: I failed to sign in. Could I go ahead  
9 and make a comment?

10 MADAM CHAIR: We have plenty of time, you have five  
11 minutes. Would you like to be sworn or unsworn?

12 MR. SCOTT: Unsworn.

13 MADAM CHAIR: Please give your name.

14 MR. SCOTT: Jack Scott from up in Aztec, San Juan  
15 County. I'm on the board of San Juan Citizens Alliance.  
16 It's a surface owner environmental multiorganization. We  
17 have members throughout the San Juan Basin in New Mexico and  
18 in Colorado, and my comments are representing San Juan  
19 citizens today.

20 I live in San Juan County, New Mexico. I have been  
21 around fracking since basically the 1950s. We support the  
22 Oil and Gas Accountability proposal. We feel that complete  
23 disclosure and no proprietary exemptions a requirement. Part  
24 of the reason for this is -- I can speak personally -- when  
25 things go wrong in fracking, they go wrong. I remember when

1 I was in high school they were fracking a well southwest of  
2 Aztec, and a ten-acre parcel all of a sudden developed gas  
3 seeps all over that parcel. It was a fractured subsurface  
4 shale combination sandstone, and the house was ultimately  
5 destroyed, taken down, the people were moved out.

6 We don't know what happens underground, and the  
7 reason I feel proprietary exemptions shouldn't be allowed is  
8 we don't know also what happens once those chemicals get in  
9 the ground, what chemicals are in those formations that they  
10 combine and mutate or form and very easily it can make it  
11 into surface water or create problems for surface owners.

12 It's a big area we are opening up to massive  
13 amounts. The old style of fracking, they drilled the hole  
14 deal, they fracked a narrow area. Now with directional  
15 drilling and going into the shales that are up there, it's  
16 the potential for millions of gallons of fracking fluid being  
17 used and millions of gallons under pressure multisections  
18 within the horizontal drill that can be two miles long. The  
19 potential for entering fractures in the subsurface area and  
20 coming up to the surface is really a real situation, and we  
21 need protection so that we can identify what is being put  
22 underground.

23 For years and years diesel was a main component.  
24 Industry denied this originally and then finally admitted,  
25 yeah, we do use diesel, and large quantities of diesel. The

1 shale drilling is going to change drilling in San Juan County  
2 substantially, especially if we believe what is said in the  
3 paper, that it will be as big or bigger than the conventional  
4 oil and gas and the coal methane that occurred in the San  
5 Juan Basin. And, if that happens, I really don't know where  
6 they are going to get the water to do the fracking, let alone  
7 the quantity of wells that will be drilled.

8 So I highly recommend that -- that you go with the  
9 strongest rule that you can and require complete disclosure.  
10 Thank you.

11 MR. MEIKLEJOHN: I have one question.

12 MR. SCOTT: Yes.

13 MR. MEIKLEJOHN: What is your occupation?

14 MR. SCOTT: I am a farmer-rancher, lived in San Juan  
15 county all our lives.

16 MR. MEIKLEJOHN: Thank you.

17 MADAM CHAIR: That concludes the listing of people  
18 wishing to present public comments before lunch. It's a  
19 little too early to break for lunch right now. How long did  
20 you say your witness will take?

21 MR. MEIKLEJOHN: Madam Chair, we anticipate an hour.

22 MADAM CHAIR: Which would throw us after 12.

23 MR. MEIKLEJOHN: We are at the pleasure of the  
24 Commission. That's fine with us.

25 MADAM CHAIR: If there is a logical stopping point,

1 could we go ahead and start with your witness' testimony and  
2 then break at about 11:30-ish?

3 MR. MEIKLEJOHN: Certainly.

4 MS. FOSTER: Madam Hearing Officer, on behalf of  
5 Independent Petroleum Association, I would like to make a  
6 statement as to our legal status. I spoke to counsel on  
7 break, and I think it would be important to make a statement  
8 at this time before this witness. The Independent Petroleum  
9 Association did file a notice of appearance in this case,  
10 however, we did not file a prehearing statement. We did that  
11 purposely because we do not intend to present witnesses. We  
12 have no intention to cross-examine any witnesses, and  
13 pursuant to the OCD rules, it's my understanding that in  
14 order to be able to cross-examine witnesses, a party does  
15 need to file a prehearing statement. We did not -- the  
16 Independent Petroleum Association did not file a prehearing  
17 statement, so we are here today just to observe. We did file  
18 a notice of appearance so that we do receive notification  
19 when parties file cases and anything -- file testimony and  
20 briefing and all of that, and we would like to preserve our  
21 rights as a legal party to the case, however, we are not  
22 participating in this case as noticed by us not filing the  
23 prehearing statement.

24 MADAM CHAIR: Thank you, Ms. Foster.

25 MR. MEIKLEJOHN: The Oil and Gas Accountability

1 Project has one witness, Ms. Gwen Lachelt.

2 (Witness sworn.)

3 GWEN LACHELT

4 (Sworn, testified as follows:)

5 DIRECT EXAMINATION

6 BY MR. MEIKLEJOHN:

7 Q. Would you state your full name for the record  
8 please?

9 A. My name is Gwen Lachelt.

10 Q. And where are you employed?

11 A. I'm employed with Earthworks Oil and Gas  
12 Accountability Project.

13 Q. Can you tell us what the relationship of Earthworks  
14 to the Oil and Gas Accountability Project is, please?

15 A. Yes. Earthworks and the Oil and Gas Accountability  
16 Project merged officially in 2005. OGAP is a program of  
17 Earthworks.

18 Q. Is Earthworks a national organization?

19 A. Earthworks actually works across the United States  
20 and across the world on mining and energy issues.

21 Q. Does OGAP work throughout the United States?

22 A. Yes, OGAP is primarily -- we primarily focus our  
23 work on the 34 oil and gas producing states in the US, and we  
24 have worked with individuals and organizations in British  
25 Columbia and Alberta.

1 Q. And where is the office, the OGAP office in which  
2 you work?

3 A. I am based out of our office in Durango, Colorado.  
4 I also split my time between Durango and Albuquerque.

5 Q. Could you tell us generally what work you have done  
6 in communities that are -- where there is oil and gas  
7 drilling occurring?

8 A. Yes. We have worked with communities throughout the  
9 state of Colorado, throughout the state of New Mexico, and a  
10 number of other states. I mentioned there is about 32 to 34  
11 oil and gas producing states in the country, and we work both  
12 with individuals who are facing oil and gas development in  
13 their back yard or on their ranch or on neighboring public  
14 lands to understand what their rights are in regards to oil  
15 and gas development. And we also work with local, state, and  
16 federal agencies on various oil and gas policy issues.

17 Q. What specific work on policy issues have you done in  
18 New Mexico?

19 A. We have been involved in a lot of oil and gas policy  
20 issues in the state. Beginning in 2003 we actually started  
21 working with the Oil Conservation Division on Rule 50, the  
22 guidelines for the Pit Rule. We have been very involved in  
23 rulemakings surrounding the Pit Rule, Surface Waste Rule,  
24 Inactive Well Rule. We also built and developed the  
25 coalition of groups to promote the Surface Owners Protection

1 Act. We introduced that legislation originally in 2005, and  
2 that was put into law in 2007.

3 Q. And were you OGAP's lobbyist in connection with the  
4 efforts at the Surface Owner Protection Act enacted?

5 A. I participated in that, as well as our lobbyist,  
6 Mary Feldman.

7 Q. Have you done -- pardon me -- have you done work at  
8 the county level in New Mexico?

9 A. We have worked with a number of local governments to  
10 help local governments develop and implement oil and gas  
11 regulations, including Colfax County, Rio Arriba County. We  
12 have also worked with the city of Aztec, and we also  
13 participated in Santa Fe County's process.

14 Q. Do you mean the process by which Santa Fe County  
15 adopted its oil and gas ordinance?

16 A. That's correct.

17 Q. When you say -- when you were speaking about all of  
18 that work, you said, "We have been involved." Have you  
19 personally been involved in all of that work?

20 A. Either personally or members of my staff which would  
21 include Mary Feldman or Bruce [Basil], primarily.

22 Q. And are you the director of OGAP?

23 A. I am the cofounder of the organization and the  
24 director.

25 Q. How long has OGAP existed?

1           A.    We started OGAP in 1999.

2           Q.    We attached your resume to our prehearing statement  
3 as Exhibit 1. Do you have a copy of that?

4           A.    I do have a copy.

5           Q.    Is it accurate?

6           A.    It is accurate.

7           Q.    Is it up to date?

8           A.    Well, it doesn't exactly include the details of the  
9 oil and gas policy works, nor papers that I have written, or  
10 publications that I have participated in over the past dozen  
11 years, but, in terms of employment, it is correct.

12           MR. MEIKLEJOHN: I would move the admission of  
13 OGAP's Exhibit Number 1.

14           MADAM CHAIR: Any objections?

15                   (No objection noted.)

16           MADAM CHAIR: So admitted. Actually it's called  
17 Exhibit A on ours.

18                   (Exhibit OGAP A admitted.)

19           MR. MEIKLEJOHN: I'm sorry, that's because I did the  
20 numbering, and I got that wrong, and I apologize for that.  
21 Should we refer to the exhibits by the letters that were  
22 given to them in the prehearing statement? Would that be  
23 useful?

24           MADAM CHAIR: I think it would be easier.

25           MR. MEIKLEJOHN: Okay. That's fine.

1 Q. Two, there are two specific aspects of your  
2 experience and your education that I wanted to address, Ms.  
3 Lachelt. First, have you ever worked as an employee in the  
4 oil and gas industry?

5 A. No, I have not.

6 Q. And, second, do you have any technical expertise  
7 either in terms of education or in terms of experience as a  
8 hydrologist, an engineer or a chemist?

9 A. No, I do not.

10 Q. So is your testimony here today based upon your work  
11 with communities and with surface owners rather than upon  
12 technical expertise?

13 A. That's correct. It's based on my experience with  
14 the community.

15 Q. Tell us, please, specifically when and where you  
16 have worked on issues involving hydraulic fracturing.

17 A. We worked with individuals and organizations and  
18 local governments and state government agencies on the issues  
19 of hydraulic fracturing in at least two dozen states,  
20 primarily in the states where we have offices, which include  
21 Colorado, and New Mexico, California, Montana, Texas, New  
22 York, and Washington.

23 Q. And with whom were you working in those efforts?

24 A. We work with individuals who are directly affected  
25 by oil and gas development who live with oil and gas

1 development. We work with citizens in ranching  
2 organizations, Native American organizations. We have also  
3 worked extensively with local and state government officials  
4 and with federal agency officials.

5 Q. And what, generally speaking, were the concerns of  
6 the people with whom you were working in those efforts?  
7 Specifically related to hydraulic fracturing.

8 A. Yes. The greatest concern of the folks that we work  
9 with around the issues of hydraulic fracturing are concerns  
10 about the water quality issues, about the potential for these  
11 operations to contaminate their water.

12 Q. Do you mean groundwater or surface water?

13 A. Both groundwater and surface water. And, you know,  
14 we understand that about 95 or 90 percent of New Mexicans get  
15 their groundwater, their drinking water sources are  
16 underground sources of drinking water, so there is a great  
17 concern across the state of the potential for fracking to  
18 contaminate water sources.

19 Q. And what did you do in your work to address those  
20 concerns?

21 A. We started working on the issue of hydraulic  
22 fracturing. When we first started OGAP in 1999, we went to  
23 the EPA to urge the agency to follow the opinions of the  
24 Eleventh Circuit Court of Appeals that came out in 1997 that  
25 stated that hydraulic fracturing is indeed underground

1 injection and needs to be regulated under the EPA underground  
2 injection control program.

3 And to our organization, and to a lot of the people  
4 we work with, that meant that the EPA needed to develop  
5 regulations and actually regulate the practice. That led us  
6 to the -- that led to the EPA deciding that it would, instead  
7 of regulating, study the issue of hydraulic fracturing, we  
8 were very involved in EPA's first study of hydraulic  
9 fracturing which began in 1999 -- actually in August of 2000,  
10 excuse me, and the final report came out in 2004. So we  
11 worked extensively on that issue.

12 We are involved in the current EPA effort to study  
13 hydraulic fracturing. We have been involved with a number of  
14 local and state governments as well to address the issue  
15 around disclosure of chemicals used in hydraulic fracturing  
16 and the nature of that and how it regulates that practice.

17 Q. And in that work, in those efforts, what is the  
18 perspective that you have advocated to those regulatory  
19 bodies?

20 A. We have advocated that they require the full and  
21 public disclosure of all the chemicals used in hydraulic  
22 fracturing.

23 Q. And whose interests were you promoting by advocating  
24 that?

25 A. Primarily from the aspect of a landowner or a person

1 who is directly affected by these operations, whether it be a  
2 tenant or a landowner. Primarily for the purpose of  
3 understanding what's going to be used to fracture a well so  
4 they can get baseline water well testing done before the  
5 operation takes place so they have an understanding of what  
6 their baseline water quality is.

7 Q. In the effort to enact a New Mexico Surface Owner  
8 Protection Act, did you work with the New Mexico Cattle  
9 Growers?

10 A. We did. We did approach the New Mexico Cattle  
11 Growers Association, and because so many of their members and  
12 ranchers are directly affected by oil and gas operations,  
13 they were very eager to participate in that effort.

14 Q. And did they actively participate in that effort?

15 A. Very actively, yes.

16 MR. MEIKLEJOHN: We would request that the  
17 Commission recognize Ms. Lachelt as an expert in concerns for  
18 communities and surface owners about hydraulic fracturing.

19 MADAM CHAIR: Any objections?

20 MR. FELDEWERT: No objection.

21 MS. GERHOLT: No objection.

22 MADAM CHAIR: She is so admitted.

23 MR. MEIKLEJOHN: I think, Madam Chair, that this  
24 would be a good break point, if the Commission would like to  
25 stop for lunch now.

1 MADAM CHAIR: All right. Let's go ahead and stop  
2 for lunch and reconvene at 12:45.

3

4 (Lunch recess taken at 11:21 a.m. The proceeding  
5 reconvened at 12:45 as follows:)

6

7 MADAM CHAIR: We'll go back on the record. It is  
8 12:45. Mr. Feldewert, you indicated you had something to --

9 MR. FELDEWERT: Thank you, Madam Chairperson. Our  
10 witness, Larry Dillon, would like to be excused. He is -- he  
11 has to check out of his hotel and he's going to try to catch  
12 a train to Albuquerque, so I'm hoping we can excuse him from  
13 the proceedings.

14 MADAM CHAIR: Commissioner Dawson, did you want to  
15 question Mr. Dillon further?

16 COMMISSIONER DAWSON: No, I didn't. That's fine  
17 with me.

18 MADAM CHAIR: Commissioner Balch, did you want to?

19 COMMISSIONER BALCH: No, I don't think so.

20 MADAM CHAIR: Okay. Did any of the counsel wish to?

21 (No response.)

22 MADAM CHAIR: Then he may be excused, Mr. Feldewert.

23 MR. FELDEWERT: Thank you very much.

24 MADAM CHAIR: And, Ms. Lachelt, you are still under  
25 oath.

1 THE WITNESS: Yes.

2 MADAM CHAIR: And I believe we were listening to  
3 direct testimony.

4 MR. MEIKLEJOHN: Yes. Thank you, Madam Chair, and  
5 members of the Commission.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. MEIKLEJOHN:

8 Q. Ms. Lachelt, would you explain your understanding of  
9 the New Mexico Oil and Gas Association's original proposal  
10 initiated in this rulemaking?

11 A. Yes. My understanding is that companies should be  
12 required to report the chemicals used 45 days after a  
13 fracturing operation either to FracFocus or to the OCD's  
14 website. The proposal seemed to change from the -- when they  
15 first proposed the modification -- or the rule to -- I  
16 believe last week -- it was reporting to the state, and, as  
17 an alternative, to the FracFocus website.

18 Q. Whereas, the original proposal was to report to  
19 FracFocus with the state as an alternative. Is that right?

20 A. Correct.

21 Q. From OGAP's point of view, and based on your  
22 expertise working with communities and surface owners, why is  
23 it important to have disclosure before hydraulic fracturing  
24 begins?

25 A. Well, I believe the most important reason that

1 surface owners need disclosure prior to fracturing operations  
2 is so they can do baseline water well testing to assess the  
3 water quality of their drinking water wells.

4 Q. Are you aware of any states in which companies are,  
5 in fact, doing that?

6 A. It's my understanding that the proposed rule in  
7 Colorado would require companies to notify surface owners 30  
8 days in advance, and I think that's the main state at this  
9 point of that requirement.

10 Q. Does the state of Wyoming require its disclosure?

11 A. The state of Wyoming requires disclosure 30 days in  
12 advance to the state's website of what the company intends to  
13 use in its fracturing operation. That's my understanding.

14 Q. And have companies been able to comply with that, as  
15 far as you know?

16 A. Yes, as far as I know, that is my understanding,  
17 companies have been following that.

18 Q. Do you know how long that requirement has been in  
19 effect?

20 A. I believe the Wyoming disclosure rule went into  
21 effect in September of last year, September of 2010.

22 Q. You said earlier that you were involved in the  
23 effort to get the Surface Owner Protection Act enacted?

24 A. Yes.

25 Q. Do you recall that?

1 A. Yes, I recall that.

2 Q. How many years did you work on that before that  
3 became law?

4 A. We worked on the Surface Owner Protection Act for  
5 three years. The first year we worked to get it introduced  
6 in 2005, and then it was finally passed in 2007.

7 Q. And what does the Surface Owner Protection Act say  
8 about disclosure to surface owners before an oil and gas  
9 drilling operation begins?

10 A. So I am actually reading from the final act that was  
11 passed, and it says, it states that, "No less than 30 days  
12 before first entering the surface of the land to conduct oil  
13 and gas operations, an operator shall by certified mail or  
14 hand delivery give the surface owner notice of planned oil  
15 and gas operations, and that the notice shall include, one,  
16 sufficient disclosure of the planned oil and gas operations  
17 to enable the surface owner to evaluate the effect of the  
18 operations on the property."

19 And property, in our viewpoint, includes water  
20 wells, that if you want to do baseline water well testing,  
21 that you need to have this information ahead of time.

22 MR. FELDEWERT: Objection. Is she offering an  
23 opinion on what she believes Surface Owner Protection Act  
24 requires? If she is, I would object to that on the grounds  
25 she is not qualified.

1 MR. MEIKLEJOHN: On the basis of Ms. Lachelt's role  
2 in getting that statute enacted, and the work that she did on  
3 that in the New Mexico legislature, we believe she is  
4 qualified to testify to that.

5 MADAM CHAIR: However, it did not mention which  
6 section of the law, and I will sustain the objection.

7 Q. Which section of the law were you referring to?

8 A. I am referring to the final Act, Section 3 --  
9 sorry -- Section 5, Notice of Operations, Proposed Surface  
10 Use and Compensation Agreements.

11 Q. And would you read into the record, please, what  
12 Section B 1 says?

13 A. Yes. Section B of that section states, "No less  
14 than 30 days before first entering the surface of the land to  
15 conduct oil and gas operations, an operator shall by  
16 certified mail or hand delivery give the surface owner notice  
17 of the planned oil and gas operation. The notice shall  
18 include, number one, sufficient disclosure of the planned oil  
19 and gas operations to enable the surface owner to evaluate  
20 the effect of the operations on the property."

21 Q. Thank you. Does OGAP have a position -- is it  
22 OGAP's position that hydraulic fracturing should never be  
23 used?

24 A. No, that is not our position as an organization.

25 Q. Does OGAP's -- do you -- is it OGAP's view that

1 the -- that conditions may be required to be replaced on oil  
2 and gas drilling if fracturing is involved, hydraulic  
3 fracturing?

4 A. We do believe that -- well, it's our position as an  
5 organization that we need oil and gas development, and  
6 apparently we do because it's a huge part of our energy to  
7 the United States, that we need to develop oil and gas  
8 responsibly. And, in our opinion, if hydraulic fracturing  
9 poses a threat to drinking water, that non-toxic fracturing  
10 fluids should be used in order to extract oil and gas.

11 Q. What is the community's perspective from a surface  
12 owner's perspective? Is it important to know all of the  
13 ingredients that may be used in a hydraulic fracturing  
14 operation?

15 A. We believe that the people need the full disclosure  
16 of all the chemicals used in a fracturing operation in order  
17 to assess their baseline water well quality in the case  
18 that -- in case their water well quality degrades after an  
19 operation.

20 Q. Is it your understanding that all of the substances  
21 used in hydraulic fracturing operations require preparation  
22 of MSD sheets?

23 MR. FELDEWERT: Object to the question on lack of  
24 foundation. She doesn't have any experience in oil and gas  
25 operations. She hadn't expressed any experience with what

1 MSDS requires. She is certified only as an expert on what  
2 concerns about communities or surface owners about hydraulic  
3 fracturing.

4 MADAM CHAIR: Would you like to rephrase your  
5 question?

6 MR. MEIKLEJOHN: Yes.

7 Q. What is your understanding of what an MSD sheet  
8 is?

9 A. We actually have quite a bit of experience with MSD  
10 sheets, Material Safety Data Sheets. They are required by  
11 OSHA to protect worker health and safety, and we engaged in a  
12 process a few years ago to go around to our local fire  
13 departments and collect MSD sheets, and we had an expert  
14 evaluate MSD sheets, and it was determined --

15 MR. FELDEWERT: Object to the -- to the witness  
16 testifying about what some expert at some one point in time  
17 determined, given the fact we don't have that report to offer  
18 it in evidence, and they have not offered that expert up as a  
19 witness.

20 MADAM CHAIR: Sustained.

21 MR. MEIKLEJOHN: For the record, I would note the  
22 rules of evidence don't apply in this proceeding, according  
23 to the Commission's rulemaking procedures, and therefore, we  
24 believe that the objection is not well taken.

25 Q. Have you compared reports of substances used in

1 hydraulic fracturing with substances listed on MSD sheets?

2 A. Yes. And that information was evaluated in the  
3 first EPA study on hydraulic fracturing and found that not  
4 all the chemicals used on a well site are included in the MSD  
5 sheet.

6 Q. When the FracFocus website was initially  
7 established -- let me back up. Do you know when the  
8 FracFocus website was established?

9 A. In April of this year. April 2011.

10 Q. When it was initially established, did it require  
11 reporting of all chemicals or all substances used in the  
12 hydraulic fracturing?

13 A. No. Only the chemicals that are listed on MSD  
14 sheets.

15 Q. And has that been changed?

16 A. Yes.

17 MR. FELDEWERT: Object to lack of foundation.

18 Q. Do you know whether the FracFocus website has made  
19 any changes since it was initially established?

20 A. I -- yes. The Groundwater Protection Council  
21 adopted a resolution that went into effect in September of  
22 this year requiring companies to list all of the chemicals  
23 used on a well site.

24 Q. Do you recall the exact date of that resolution?

25 A. It was in September of 2011. I actually do have a

1 copy of that resolution with me.

2 Q. That's all right. September is fine. Who runs that  
3 website?

4 A. The Groundwater Protection Council and the  
5 Interstate Oil and Gas Compact Commission.

6 Q. How long have they been in existence?

7 A. I am not aware of when those organizations were  
8 established. It's my understanding they have been around,  
9 oil and gas, as long as I have, which is about 23 years --  
10 longer than that.

11 Q. As far as you know, is there a way for someone who  
12 does not have internet access to access the information that  
13 is posted on the FracFocus website by the Groundwater  
14 Protection Council?

15 A. No, I'm not aware of how they would obtain that  
16 information.

17 Q. Do you know where the Groundwater Protection Council  
18 office is?

19 A. I believe it's in Oklahoma.

20 Q. Okay. What is OGAP's position with respect to  
21 posting information about substances used in hydraulic  
22 fracturing on the Oil Conservation Division website?

23 A. Our position is that that would be -- that would be  
24 fine, but we would like to eliminate the redundancy of  
25 companies having to fill out two reports and just fill out

1 the FracFocus questionnaire or form.

2 Q. Do you know how many -- approximately what  
3 percentage of people in New Mexico do not have internet  
4 access?

5 A. I believe, according to the last census, that 35  
6 percent of New Mexicans do not have access to the internet.

7 Q. Did OGAP address that issue in its proposed  
8 modifications?

9 A. Not explicitly.

10 Q. All right. Were you here when Mr. Martin testified  
11 about information being available at Oil Conservation  
12 Division offices --

13 A. Yes, I was here.

14 Q. -- by not electronic means. Do you believe that  
15 would be an appropriate way for people who don't have  
16 internet access to obtain that information?

17 A. Yes. If people can go to the Division offices in  
18 the different parts of the state to access that  
19 information.

20 Q. Is Exhibit B a copy of the proposed modifications  
21 that were submitted by our office on behalf of OGAP?

22 A. Yes. I have one here.

23 Q. Is that an accurate copy?

24 A. It is an accurate copy.

25 MR. MEIKLEJOHN: We would move the admission of

1 Exhibit B.

2 MADAM CHAIR: Any objections?

3 MR. FELDEWERT: No objection. I think it's already  
4 part of the record. It's a modification.

5 MS. GERHOLT: No objection.

6 MR. HALL: No objection.

7 MADAM CHAIR: So admitted.

8 MR. MEIKLEJOHN: Thank you.

9 (Exhibit OGAP B admitted.)

10 Q. Given what you described as a change in the position  
11 of the New Mexico Oil and Gas Association between its initial  
12 submission and its prehearing statement, would OGAP like the  
13 opportunity to submit a new proposed set of modifications?

14 MR. FELDEWERT: I guess I have no objection to the  
15 question, but certainly what he is requesting would be in  
16 violation of the Commission's rules.

17 MADAM CHAIR: I agree.

18 MR. FELDEWERT: So I guess I would object to the  
19 question on the grounds of relevancy.

20 MR. MEIKLEJOHN: Well then I will withdraw the  
21 question.

22 Q. Are OGAP's proposed modifications consistent with  
23 what is happening in other states in the Western United  
24 States?

25 A. OGAP's modifications are --

1 MR. FELDEWERT: Objection. I would object on the  
2 grounds of lack of foundation. She hasn't identified to what  
3 extent she's been involved in any perspective.

4 Q. Are you aware of any other states that are in the  
5 process of addressing disclosure of substances used in  
6 hydraulic fracturing?

7 A. I am aware of two other states that are currently  
8 considering disclosure rules, the state of Texas and the  
9 state of Colorado. The state of Texas passed a law this year  
10 to require disclosure. They are now in a rulemaking process  
11 at the Railroad Commission and were -- we were involved in  
12 the legislation. We have submitted comments in the state of  
13 Texas on their proposed rule, and in Colorado we are also  
14 involved in that process to develop disclosure requirements.

15 Q. Is Exhibit C a copy of the relevant language in the  
16 disclosure -- in the rule that is being considered in  
17 Colorado?

18 A. It is.

19 MR. MEIKLEJOHN: Move the admission of Exhibit C.

20 MR. FELDEWERT: I would object to -- I do have an  
21 objection to Exhibit C, Madam Chairperson. They preface this  
22 as what they consider to be the relevant amendments in  
23 Colorado, but I look at the document itself, and, first off,  
24 as she testified, these are merely proposals and nothing  
25 that's been adopted by any state, so I don't see the

1 relevancy.

2 Secondly, you can't tell from the document whose  
3 proposal is what.

4 Number three, as I look at the document, I think it  
5 has some serious authenticity problems because it looks, as a  
6 document, it looks to me like anybody can sit down and type.  
7 It's not self-authenticating, and so I don't know where it  
8 came from. We don't know if they pulled it off the internet  
9 someplace or somebody just sat down and typed it up.

10 So we would object to C on relevancy. According to  
11 testimony it's some proposal by someone at some point in  
12 time, first off, and secondly we object on the grounds of  
13 authenticity. And I guess I would add that OGAP has come  
14 here today proposing amendments to the existing rule, and  
15 their amendments comprise about three sentences. They have  
16 not proposed anything else. They are not proposing other  
17 state's regulations. They are not proposing other state's  
18 provisions, so I don't see the relevance of going down the  
19 road of what's being proposed in other states.

20 MR. MEIKLEJOHN: First of all, Madam Chair,  
21 Commissioners, it's relevant because it's a -- it is another  
22 state, a neighboring state in the western United States that  
23 is considering the same issue that is in front of the  
24 Commission today, therefore, it is relevant to know what  
25 other states are looking at doing.

1 I can elicit testimony from Ms. Lachelt about the  
2 source of this document and about whether, in fact, she or  
3 someone else in her office typed this up. I can assure you  
4 that that was not the case, but it is relevant for New Mexico  
5 to look at what other states are doing, particularly given  
6 the arguments that have been made about the feasibility of  
7 adopting similar provisions for New Mexico, that is, the  
8 feasibility both from the point of view of producers and from  
9 the point of view of the Division.

10 MADAM CHAIR: Objection overruled based on further  
11 testimony for the authenticity of this exhibit.

12 MR. MEIKLEJOHN: Thank you, Madam Chair.

13 Q. First, Ms. Lachelt, was this typed up by somebody in  
14 your office or by you?

15 A. No, it was not. It's part of what is being proposed  
16 in the rulemaking process in Colorado.

17 Q. Where did this document come from?

18 A. This document, I believe, came from the state  
19 website, Colorado state website. We could -- oversight on my  
20 part -- I should have included the rule in its entirety.

21 Q. Would you be willing to provide that to the  
22 Commission if the Commission wants to see that?

23 A. Yes.

24 MADAM CHAIR: If we need it, we will ask for it.

25 MR. MEIKLEJOHN: That's fine.

1 MR. FELDEWERT: I would just maintain my objection  
2 on the grounds I think she testified it's part of what's  
3 being proposed, so it's incomplete, number one. All she can  
4 testify to is she believed it came from the Colorado state  
5 website. I don't think that meets the standard for  
6 authenticity, and I think it supports the proposition that  
7 this nine-page, single-space proposal is not relevant to what  
8 OGAP has submitted to the Commission as modified language.

9 Q. (By Mr. Meiklejohn) Ms. Lachelt, can you summarize  
10 for us your understanding of what the Colorado proposal  
11 provides?

12 A. Yes. Just briefly, the Colorado proposal requires  
13 companies to provide 30 days' notice to surface owners  
14 through a hydraulic fracturing form that they plan to  
15 fracture a well. Then it requires that 60 days after a  
16 fracturing operation, that the company reports all the  
17 chemicals and additives that were used in their fracturing  
18 operations, which is very similar to Wyoming's.

19 It also states that, within a year, FracFocus needs  
20 to update its functions to allow users to search for  
21 chemicals by name, by CAS or chemical abstract service  
22 number, operator and county, and that the final bullet point  
23 is that, regardless of trade secret claims, companies need to  
24 report all of the chemicals they used to health professionals  
25 and medical providers in the case of a -- of a medical

1 emergency, similar to what happened to a nurse in Durango a  
2 few years ago.

3 Q. Moving on to OGAP Exhibit Number D or Letter D, can  
4 you explain to the Commission what that is and where you  
5 obtained that?

6 A. Yes. We obtained this from the Texas Railroad  
7 Commission.

8 Q. And what is it, what is the exhibit?

9 A. This exhibit is the staff's recommended changes for  
10 the disclosure rule in Texas.

11 Q. Is the Texas Railroad Commission the regulatory  
12 agency in Texas?

13 A. Yes, it is.

14 MR. MEIKLEJOHN: Move the admission of Exhibit D.

15 MR. FELDEWERT: May I voir dire the witness about  
16 ~~the exhibit? May I question the witness about the exhibit?~~

17 MADAM CHAIR: Yes, go ahead.

18 VOIR DIRE EXAMINATION

19 BY MR. FELDEWERT:

20 Q. Mrs. Lachel -- did I say that right?

21 A. Lak-el.

22 Q. I'm sorry. My last name is Feldewert, so I will  
23 switch with you. This is a proposal by, I think you said,  
24 the staff at the Texas Railroad Commission?

25 A. Yes.

1 Q. It has not been adopted by any state agency?

2 A. Correct.

3 Q. Okay. And it comprises 21 pages of detailed,  
4 regulatory proposals?

5 A. Correct.

6 Q. And it's premised on legislation that was passed by  
7 the state of Texas?

8 A. Correct.

9 Q. Okay. And these proposals, as I understand it, from  
10 Texas, these provisions have a number of definitions to them,  
11 correct?

12 A. Yes.

13 Q. They have a number of provisions dealing with trade  
14 secrets and how it's going to be handled and how it should be  
15 presented and dealt with by the agency, correct?

16 A. Correct.

17 Q. And it has a number of provisions that identified  
18 circumstances where no disclosure is required, correct?

19 A. Correct.

20 Q. Okay. And OGAP has not proposed the adoption of  
21 what has been marked as Exhibit Number D?

22 A. Not yet.

23 Q. Okay.

24 MR. FELDEWERT: I would object to the admission of  
25 the exhibit on the grounds of relevance.

1 MR. MEIKLEJOHN: I believe this is the same issue  
2 that was discussed with respect to the exhibit dealing with  
3 Colorado's regulatory or regulation proposal. And the point,  
4 again, is that this is what another oil and gas producing  
5 state in the southwest is looking at doing, and that's  
6 relevant for the purposes of this Commission determining what  
7 it should do both from the point of view of a regulating  
8 agency and from the point of view of producers.

9 MADAM CHAIR: Objection is overruled. The  
10 Commission will give it the weight that it deserves.

11 (Exhibit OGAP D admitted.)

12 MR. MEIKLEJOHN: Thank you, Madam Chair.

13 CONTINUED DIRECT

14 BY MR. MEIKLEJOHN:

15 Q. With respect to Exhibit Letter E, Ms. Lachelt, would  
16 you tell the Commission what that is, please?

17 A. Exhibit D or Exhibit E?

18 Q. E. I'm sorry. E.

19 A. Exhibit E is the Wyoming disclosure requirements.

20 Q. So this -- is this currently in effect?

21 A. It is currently in effect, and it's been in effect  
22 for just over a year now.

23 Q. And can you tell us your understanding of what it  
24 provides in terms of disclosure?

25 A. Yes. It requires that when companies file an

1 application for permit to drill, that they specify the  
2 chemicals that they intend to use in a fracturing operation  
3 to the Wyoming Oil and Gas Conservation Commission.

4 Q. Do you know whether that is the equivalent of New  
5 Mexico's Oil Conservation Division?

6 A. It is the equivalent.

7 Q. Since the adoption of this regulation in Wyoming,  
8 has oil and gas extraction continued in Wyoming?

9 MR. FELDEWERT: Object to form. Lack of foundation.

10 MADAM CHAIR: Sustained.

11 Q. Are you familiar with oil and gas drilling  
12 operations in Wyoming?

13 A. I am familiar.

14 Q. Would you tell us the basis of your familiarity?

15 A. I have traveled to Wyoming numerous times to work  
16 with individuals and with organizations and state and federal  
17 agencies on oil and gas development in the state of Wyoming.

18 Q. Have you done that since this regulation was  
19 adopted?

20 A. I have done -- in fact, I was in Pinedale, Wyoming,  
21 in September of this year during the Jonah in the Jonah Field  
22 and the Pinedale and Anticline Field.

23 Q. Would you please spell the names.

24 A. The Jonah Field is J-o-n-a-h, and Pinedale,  
25 P-i-n-e-d-a-l-e, Anticline, A-n-t-i-c-l-i-n-e.

1 Q. And is oil and gas extraction continuing in those  
2 fields?

3 A. Yes. I witnessed new wells being drilled.

4 Q. Thank you.

5 MR. MEIKLEJOHN: We move the admission of Exhibit E.

6 MR. FELDEWERT: May I question the witness about  
7 Exhibit E?

8 VOIR DIRE EXAMINATION

9 BY MR. FELDEWERT:

10 Q. Ms. Lachelt, I look at Exhibit E, and it looks to me  
11 like you've only provided the Commission with part of the  
12 regulations. And the reason I say that, there is notation at  
13 the bottom of the first page, Page 3 dash 1, and then we jump  
14 over to 3 dash 62.

15 A. Uh-huh.

16 Q. 3 dash 63, 3 dash 64, and 3 dash 65?

17 A. Yes.

18 Q. So it appears there are at least 65 pages to this  
19 particular regulation, correct?

20 A. Correct.

21 Q. Okay. And I believe you testified that what Wyoming  
22 has determined to do was to require advanced approval of  
23 hydraulic fracturing stimulation techniques?

24 A. With the application permit to drill.

25 Q. When you file your APD --

1 A. Correct.

2 Q. -- you have to get the approval from the Wyoming  
3 Commission to conduct your fracture stimulation operations?

4 A. Correct.

5 Q. So they have procedures set up where they are  
6 approving or disapproving in advance your -- a proposed  
7 hydraulic fracturing stimulation claim, correct?

8 A. That -- well, it's my understanding that they --  
9 when they file an application permit to drill, they have to  
10 specify what chemicals they intend to use in a fracturing  
11 operation with the APD.

12 Q. Let's take a look at what you submitted to the  
13 Commission. If I look at Section 1(a) on the very first  
14 page, Page 3 dash 1, about midway down it says, does it not,  
15 that "Approval must be sought to acidize, cleanout, flush,  
16 fracture or stimulate a well." Do you see that, about  
17 halfway through the first paragraph?

18 A. Yes.

19 Q. That approval is sought from the supervisor of  
20 the -- of the -- I guess the Wyoming regulatory agency?

21 A. Uh-huh.

22 Q. All right. And then if I look to Section 45 which  
23 begins on the second page of your exhibit dealing with well  
24 stimulation, that leaves out what is provided with the APD as  
25 part of this overall approval process, correct?

1 A. Uh-huh.

2 Q. Is that right?

3 A. Yes.

4 Q. Okay. And then, in addition to that, the Wyoming  
5 Division's, if I look at, for example, Subparagraph 45(f),  
6 which is on the third page of your exhibit, Page 3 dash 63,  
7 they have come up, and for reason dealing with providing  
8 confidential protection to certain information submitted to  
9 the Commission in part as part of this prior approval  
10 process. Is that correct?

11 A. Correct.

12 Q. Okay. So they apparently have staff and the  
13 capability available to them up in Wyoming to deal with  
14 confidential information. We could assume that, correct?

15 A. Correct.

16 Q. All right. And as I look at what you provided,  
17 there is nothing in the Wyoming provisions here that suggests  
18 that an operator is required to provide a surface owner 30  
19 days in advance of operations with their proposed hydraulic  
20 fracturing plan. That's not in this regulation, is it?

21 A. That's correct.

22 Q. And this is a regulation that was actually passed;  
23 it's not something that was proposed?

24 A. Right. It was through -- through regulation at the  
25 Wyoming Oil and Gas Conservation.

1 Q. Compared to the other two exhibits, this is  
2 something that was actually passed --

3 A. Right.

4 Q. -- by a regulatory agency?

5 A. Correct.

6 Q. And they determined it's not necessary to provide  
7 surface owners 30 days in advance with a proposed hydraulic  
8 fracturing plan, correct?

9 A. The state made that determination. The people who  
10 were participating in that urged notice to surface owners.

11 Q. I understand. I understand. So this particular  
12 exhibit has nothing to do with your proposal here at issue?  
13 In fact, it demonstrates, does it not, that what you are  
14 proposing is not practical?

15 A. Well, what it shows to us is that they are required  
16 to provide notice of a fracturing operation in advance of  
17 fracturing operations, not just after.

18 Q. Part of an overall approval process set up by the  
19 Commission where they have to decide whether or not a  
20 particular hydraulic fracturing plan is going to be approved?

21 A. Okay.

22 Q. Okay.

23 MR. FELDEWERT: I would object to the admission of  
24 this exhibit on the same grounds, lack of relevance. It has  
25 nothing to do with what they proposed to this agency or what

1 NMOGA proposed to this agency.

2 MR. MEIKLEJOHN: Madam Chair, Commission Members, we  
3 believe it is relevant because it requires disclosure in  
4 advance, which is one of the key points at issue is whether  
5 disclosure should occur only after the fact or in advance of  
6 the proposed operation, and it is relevant for that reason  
7 particularly because this regulation was already enacted and  
8 oil and gas extraction activities are continuing in the state  
9 where this is operative.

10 MADAM CHAIR: Well, we'll allow this exhibit on the  
11 same basis as the other.

12 (Exhibit OGAP E admitted.)

13 CONTINUED DIRECT EXAMINATION

14 BY MR. MEIKLEJOHN:

15 Q. Ms. Lachelt, was there a report that was conducted  
16 or produced by the US Department of Energy concerning  
17 hydraulic fracturing in the last several years?

18 A. Yes. The Department of Energy Advisory Board issued  
19 a report in August of this year.

20 Q. And what was -- what happened to -- what was the  
21 impetus for that report?

22 MR. FELDEWERT: Object to lack of foundation.

23 MADAM CHAIR: Would you like to have her --

24 Q. Do you know what the impetus was for that report?

25 A. Well, if anybody was reading the newspapers at that

1 time, President Obama became concerned after a well blowout  
2 in Pennsylvania, a well that was drilled into the Marcellus  
3 Shale Formation. And he stated that he's a huge advocate of  
4 developing America's natural gas reserves, but he wants to  
5 make sure that gas development happens in the most  
6 responsible manner possible. So he directed Secretary Chu to  
7 organize an advisory committee to come up with  
8 recommendations for making gas development as responsible as  
9 possible.

10 Q. And did that advisory committee produce a report?

11 A. Yes, it did produce a report.

12 Q. And is Exhibit F, OGAP's Exhibit F, an excerpt from  
13 that report?

14 A. It's an excerpt from the report.

15 Q. Do you have the entire report?

16 A. I am in possession of the entire report. It's in my  
17 office, yes.

18 Q. Would you be willing to provide that to the  
19 Commission if the Commission would like to see it?

20 A. Yes, absolutely.

21 Q. Where did you obtain this excerpt?

22 A. We obtained this from the Department of Energy's  
23 website.

24 MR. MEIKLEJOHN: I would move the admission of  
25 Exhibit F.

1 MADAM CHAIR: Any objection?

2 MR. FELDEWERT: I would object on grounds of  
3 relevancy.

4 MR. MEIKLEJOHN: I think I have responded to that  
5 objection, but I will be glad to do so again if the  
6 Commission wants me to.

7 MADAM CHAIR: We will accept it on the same basis as  
8 previously.

9 (Exhibit OGAP F admitted.)

10 Q. With respect to this excerpt, Ms. Lachelt, what is  
11 your understanding of what the report in this excerpt  
12 specifically say about disclosure of the composition of  
13 fracturing fluids?

14 A. Well, it states that there is a -- can I quote from  
15 the report?

16 Q. Certainly.

17 A. First of all, it talks about -- it discusses  
18 background water quality measurements and states that, "At  
19 present there are widely different practices for measuring  
20 the water quality in wells in the vicinity of a shale gas  
21 production site. Availability of measurement in advance of  
22 drilling would provide an objective baseline for determining  
23 if the drilling and hydraulic fracturing activity introduced  
24 any contaminants in surrounding drinking water wells."

25 It goes on to state that, "Some states, such as

1 Wyoming, Arkansas, and Texas, have adopted disclosure  
2 regulations for the chemicals that are added to fracturing  
3 fluid, and the US Department of Interior has recently  
4 indicated an interest in acquiring disclosure for fracturing  
5 fluids used on federal lands."

6 It states that, "The DOE has supported the  
7 establishment and maintenance of a relatively new website,  
8 FracFocus," which we understand is jointly operated by the  
9 Groundwater Protection Council and Interstate Oil and Gas  
10 Compact Commission, "to serve as a voluntary chemical  
11 registry for individual companies to report all chemicals  
12 that would appear on Material Safety Data Sheets, subject to  
13 certain provisions to protect trade secrets. While FracFocus  
14 is off to a good start with voluntary reporting growing  
15 rapidly, the restriction to MSDS data means that a large  
16 universe of chemicals frequently used in hydraulic fracturing  
17 treatments goes unreported. MSDS only reports chemicals that  
18 have been deemed to be hazardous in an occupational setting  
19 under standards adopted by OSHA, the Occupational Safety and  
20 Hazard Administration. MSD sheet reporting does not include  
21 other chemicals that might be hazardous if human exposures  
22 occurs through environmental pathways. Another limitation of  
23 FracFocus is that the information is not maintained as a  
24 database. As a result, the ability to search for data is  
25 limited, and there are no tools for aggregating data."

1           So it calls for the -- the disclosure of all  
2 chemicals used and for FracFocus to update its functions to  
3 allow for that information.

4           Q.    In the next paragraph after the one from which you  
5 were reading, Ms. Lachelt, the certain language that is  
6 underlined --

7           A.    Yes.

8           Q.    -- do you know who underlined that?

9           A.    It's my understanding that the Department of Energy  
10 has this underlined through its advisory committee.

11          Q.    You did not?

12          A.    No, we did not underline this.

13          Q.    Do you regard the US Department of Energy as an  
14 environmental group?

15          A.    Not typically.

16               MR. MEIKLEJOHN:  I move the admission of OGAP  
17 Exhibit F.

18               MADAM CHAIR:  Any objection?

19               MR. FELDEWERT:  No objection.

20               MS. GERHOLT:  Objection, relevancy.

21               MR. MEIKLEJOHN:  I'm sorry, I didn't hear.

22               MS. GERHOLT:  Objection, relevancy.  I don't see how  
23 it is relevant to the modifications that are before the  
24 Commission today.

25               MR. MEIKLEJOHN:  We believe it is relevant, Madam

1 Chair, Members of the Commission, because it addresses the  
2 issue of disclosure of all substances used in hydraulic  
3 fracturing rather than -- rather than just those that are  
4 listed on MSD sheets.

5 MADAM CHAIR: The exhibit is accepted.

6 (Exhibit OGAP F (previously admitted), offered and  
7 admitted.)

8 Q. Ms. Lachelt, the New Mexico Oil and Gas  
9 Association's prehearing statement, the Oil and Gas  
10 Association included some responses to language proposed by  
11 OGAP. Do you have that?

12 A. Yes, I believe I do.

13 Q. It's on Page 3 of the New Mexico Oil and Gas  
14 Association prehearing statement.

15 A. Yes.

16 Q. The first point, I'm referring to the last written  
17 paragraph at the top of that page, the first point is that  
18 the language proposed by OGAP is not consistent with the  
19 Surface Owner Protection Act. Do you agree with that  
20 statement?

21 MR. FELDEWERT: Object to the -- on the grounds  
22 there is a lack of foundation. She's not an attorney. She  
23 is not here to interpret the Surface Owner Protection Act and  
24 what it does and does not require.

25 MR. MEIKLEJOHN: Madam Chair, Members of the

1 Commission, Ms. Lachelt already testified to her involvement  
2 in the enactment of the Surface Owner Protection Act. She  
3 was extensively involved in its formation and in lobbying it  
4 through the legislature. She read the provision on which she  
5 has relied. She is qualified to testify to that.

6 MADAM CHAIR: However, this does require an  
7 interpretation of what was enacted by the legislature, signed  
8 by the governor, so I will sustain that objection.

9 Q. With respect, Ms. Lachelt, to the section of the New  
10 Mexico Surface Owner Protection Act that you've read, can you  
11 take a look at that again?

12 A. Yes.

13 Q. I believe you said, reading from the text, that it  
14 mandates notice to the surface owner, including sufficient  
15 disclosure of the planned oil and gas operations to enable  
16 the surface owner to evaluate the effect of the operations on  
17 the property. Is that right?

18 A. That's correct.

19 Q. From the point of view of the surface owners with  
20 whom you have worked, would that information include what  
21 substances are to be used if there is to be hydraulic  
22 fracturing?

23 MR. FELDEWERT: Objection. Still asking for an  
24 interpretation of what is required under Section B 1 of the  
25 Surface Owner Protection Act, which itself has a number of

1 definitions that are associated with the terms and that are  
2 used within the statute.

3 MR. MEIKLEJOHN: Madam Chair, Members of the  
4 Commission, I didn't ask for an interpretation. I asked for  
5 what her understanding is of what a surface owner would want  
6 based on her expertise in working with surface owners.

7 MADAM CHAIR: That is not what she was testifying  
8 to. This is requesting an interpretation of the law. If you  
9 ask her, "What do surface owners want," that's separate from  
10 this Surface Owner Protection Act, and it's not considered an  
11 interpretation at this time.

12 MR. MEIKLEJOHN: Well, then the fault was mine for  
13 not phrasing the question correctly, and I apologize for  
14 that.

15 Q. From your point of view, on the basis of your  
16 expertise in working with surface owners, what would a  
17 surface owner want to know before a hydraulic fracturing  
18 operation was conducted?

19 A. Surface owners want to know what chemicals are going  
20 to be used on their property and transported to their --  
21 either their property, their ranch, their -- through their  
22 neighborhoods, what chemicals are going to be used in  
23 fracturing operations that are near schools, for example.

24 Q. The NMOGA language also indicates that -- also  
25 asserts that the OGAP modifications appear to advocate

1 disclosure to a website operated by a non-governmental third  
2 party. Do you understand that to refer to the FracFocus  
3 website?

4 A. Yes.

5 Q. What is your view about disclosure to the FracFocus  
6 website as opposed to disclosure to the Division.

7 A. My understanding of FracFocus is that over around 80  
8 companies are already posting to FracFocus, that it was  
9 suggested by industry, is my understanding, and that it's  
10 widely accepted as a website for this purpose.

11 Q. From the point of view of accessibility to residents  
12 of New Mexico who do not have internet access, would it also  
13 be appropriate to have disclosure to the Division?

14 A. Yes. Absolutely.

15 Q. The NMOGA also suggested that OGAP's proposed  
16 modifications impose unnecessary and unworkable regulatory  
17 burden on the Division and operators. Do you have a response  
18 to that?

19 MR. FELDEWERT: Object to the question and lack of  
20 foundation. Ms. Lachelt has never worked with anybody in the  
21 oil and gas industry. She is not qualified to testify or  
22 offer an opinion on what is workable or unworkable from a  
23 regulatory standpoint.

24 MR. MEIKLEJOHN: Ms. Lachelt, Madam Chair, Members  
25 of the Commission, Ms. Lachelt can offer an opinion about the

1 relative difficulty of submitting the same form to two  
2 different agencies, and that's where this question is going.

3 MADAM CHAIR: Then I'll allow her to answer the  
4 question.

5 A. It's my opinion that it would simplify the concern  
6 of staff of OCD in handling additional information if they  
7 were only processing disclosure to one format rather than two  
8 in streamlining that process.

9 Q. You indicated that you were involved in the  
10 discussions that resulted in the establishment of the  
11 FracFocus website. Is that right?

12 A. I was not involved in the discussions that led to  
13 the --

14 Q. Were you -- was there a public comment process?

15 A. No, there was not, not that I'm aware of. I wasn't  
16 asked for my opinion.

17 Q. In conclusion, Ms Lachelt, what is -- again, what is  
18 the basis on which you are expressing concerns to the  
19 Commission about this issue?

20 A. Well, my -- the basis is that the people that we  
21 work with across the state of New Mexico want to know all of  
22 the chemicals that are going to be used in fracturing  
23 operations near their homes or on their ranches, adjacent  
24 public lands, and for the purpose of establishing baseline  
25 water quality prior to fracturing operations.

1 MR. MEIKLEJOHN: Thank you. I don't have any  
2 further questions.

3 MADAM CHAIR: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. FELDEWERT:

6 Q. Ms. Lachelt, can you turn to what's been marked as  
7 OGAP's Exhibit B, for me, please?

8 A. Yes.

9 Q. Now, this is the -- comprises the sum total of the  
10 language that you've asked the Commission to adopt as part of  
11 the amendment to the rule, correct?

12 A. Correct.

13 Q. And the first sentence deals with what you are  
14 requesting here, and that is disclosure to surface owners no  
15 less than 30 days before a hydraulic fracturing treatment,  
16 correct?

17 A. Correct.

18 Q. And I think you testified to the fact that the  
19 reason you want that is so that landowners can do some  
20 baseline sampling of their water?

21 A. Correct.

22 Q. Now, first off, that concern is based upon the  
23 assumption that fracturing stimulation techniques pose a  
24 threat to groundwater, right? You're assuming that?

25 MR. MEIKLEJOHN: I object to the form of the

1 question. Ms. Lachelt didn't indicate that she was assuming  
2 something about hydraulic fracturing operations.

3 MADAM CHAIR: Would you like to rephrase your  
4 question?

5 MR. FELDEWERT: Okay.

6 Q. Now, you expressed a need for baseline water  
7 sampling. Why is that?

8 A. So landowners can assess what their baseline water  
9 quality is prior to fracturing occurring.

10 Q. Why do we need to know that?

11 A. In case there is -- in case their water quality  
12 degrades after fracturing operations.

13 Q. Okay. So your concern is that, I believe, that  
14 there is a possibility that the water quality could be  
15 impacted by hydraulic fracturing techniques?

16 A. Correct.

17 Q. But you don't -- you haven't presented any report  
18 indicating that that has actually occurred, despite the fact  
19 that fracturing has been going on in New Mexico since the  
20 1940s, right?

21 A. That's correct.

22 Q. And you can't point us to any agency that has any  
23 reported contamination of groundwater from hydraulic  
24 fracturing techniques?

25 A. The New Mexico OCD did a several, year-long process

1 to develop a Pit Rule over the concern of soil and  
2 groundwater contamination from pits.

3 Q. From pits?

4 A. From pits.

5 Q. I'm talking about hydraulic fracturing.

6 A. I am, too.

7 Q. All right.

8 A. The surface storage of fracturing, flowback water in  
9 inline pits.

10 Q. You can't point to any agency that -- that contain  
11 any report of alleged contamination from downhole hydraulic  
12 fracturing techniques?

13 A. Can I cite anything?

14 Q. That's what I'm asking.

15 A. I am aware of a case in Texas where a fracture went  
16 3,000 feet out of zone. Costal versus Garza. That's one  
17 example. There are --

18 Q. I'm talking about an agency.

19 A. Of an agency.

20 Q. Reporting any groundwater contamination from  
21 downhole hydraulic fracturing stimulation techniques.

22 A. I know that the EPA has two investigations ongoing  
23 right now, one in Texas in the Barnett Shale with range  
24 resources and the EPA and ATFER are investigating the  
25 potential for downhole contamination in Wyoming.

1 Q. So we have some agencies that are investigating  
2 that?

3 A. Correct.

4 Q. So that's the most we can say at this point?

5 A. Hydraulic fracturing is exempt from the Safe  
6 Drinking Water Act, and there is no ongoing monitoring of the  
7 effects right now of --

8 Q. I understand you have opinions --

9 A. -- the issue.

10 Q. I'm just trying to make sure if you have any  
11 additional information other than what you have just  
12 testified about an agency reporting hydraulic fracturing  
13 causing groundwater contamination.

14 A. I know of investigations that are underway. I'm not  
15 aware of the final conclusions of those studies at the  
16 moment.

17 Q. Now, let me ask you this: What is keeping a  
18 landowner who is apprised under the Surface Owner Protection  
19 Act that there are going to be oil and gas operations on his  
20 or her property from going out at that point and doing the  
21 baseline sampling that you suggest is needed?

22 A. If -- well, a landowner needs to understand what  
23 chemicals that are going to be using so they know what to  
24 test for in their baseline water well. A standard water  
25 quality test is not going to cover the extent of chemicals

1 used in a fracturing operation.

2 Q. Can't you go out and get a baseline of what  
3 currently is in your water? You could test your water,  
4 ascertain what's in it, and have a baseline, can you not, if  
5 I'm a landowner?

6 A. You could get an understanding of some of the  
7 fluids, some of those chemicals.

8 Q. In your water, right, you could go out and conduct  
9 whatever study you wanted on your water, as detailed as you  
10 wanted to ascertain what is currently in your water before  
11 drilling operations?

12 A. But you need to know what to test for in advance  
13 of --

14 Q. Can't you --

15 A. -- in your water well test.

16 Q. - Can't you --- can't you ask your chemist to give you  
17 an analysis of what currently is in your water?

18 A. Well, they will sample what they want to sample  
19 for.

20 Q. I mean, I have done it before where we have a farm  
21 in Missouri. We went out and tested water in our pond to  
22 find out exactly what the constituents are. That can be  
23 done, correct?

24 A. In the range that they will testify test for.

25 Q. And you control what range you want to them to

1 test?

2 A. Yes. But unless you know what to test for, you are  
3 not going to know what to have the company look for.

4 Q. But in terms of advanced notice, if somebody wants  
5 to be aware of their baseline sampling, they already know  
6 that oil and gas operations are going to occur by the way of  
7 the Surface Protection Owner Act, correct?

8 A. Would you restate that?

9 Q. A landowner already knows in advance if there are  
10 going to be oil and gas operations on his property by virtue  
11 of the Surface Owner Protection Act, correct?

12 A. Correct.

13 Q. It can also go to the Division's website and pull  
14 down any APD they might be interested in, see a proposed  
15 well, a well being proposed on their property?

16 A. Yes, that's my understanding.

17 Q. And then they can go to a FracFocus website and pull  
18 that information on what types of treatments has occurred at  
19 other wells within the area of their property and get a  
20 general understanding?

21 A. I believe, yeah, they could look by county.

22 Q. Okay. Now, as part of the Surface Owner Protection  
23 Act, it provides, does it not, that landowners can negotiate  
24 any kind of surface use agreement that they want, they can go  
25 in and try to get a surface use agreement with the company,

1 correct?

2 A. Correct.

3 Q. In fact, the act mandates the parties try to enter  
4 into a surface use agreement?

5 A. Correct.

6 Q. And as part of that process, the landowner is free,  
7 is he not, to request whatever data he wants about the  
8 operations on his property?

9 A. Correct, as long as they have full disclosure of  
10 what the company intends to do on their property.

11 Q. So if I'm a landowner, and I want to know exactly  
12 what type of fracture stimulation operations from a generic  
13 standpoint that they are going to use on my property, I could  
14 ask them, as part of a surface use agreement, to provide me,  
15 the surface owner, with that information?

16 A. I believe that's the company's responsibility to  
17 explain their planned activities, not for the landowner to  
18 have to guess what the activities are going to be.

19 Q. But if I'm a surface owner, I could ask the oil and  
20 gas company, as part of my surface use agreement, if I'm  
21 really concerned about it, to provide me notice of and  
22 information about, to the extent they can, of their hydraulic  
23 fracturing operations?

24 A. I think as long as that's disclosed. I think oil  
25 and gas development is a business that a lot of people are

1 not aware of what oil and gas development is or what it  
2 involves, and I believe it's up to the company to disclose  
3 the activities that its planning to do, including hydraulic  
4 fracturing. In my community we found out about fracking  
5 quite by accident. It was never something that a company  
6 said it was going to do in our community. We found out about  
7 it by accident.

8 Q. I think through agencies such as yourself, I mean,  
9 the general public is apprised today that at least 50 percent  
10 of the wells that are drilled in New Mexico are subject to  
11 some hydraulic fracturing technique. You all have put that  
12 word out, correct?

13 A. It's our understanding from industry testimony and  
14 various rulemakings that 95 percent of all oil and gas wells  
15 drilled utilize hydraulic fracturing. That's nine out of ten  
16 wells utilize that process.

17 Q. Now, the other suggestion that you have put in your  
18 proposed language in Exhibit B is about in the middle of the  
19 page in which you have suggested that the Commission add  
20 language that says, "Including the type and volume of base  
21 fluid used, each additive used, all chemical ingredients  
22 contained in the additives and their associated chemical  
23 abstracts service registry numbers and the actual or maximum  
24 concentration of each chemical ingredient used," correct?

25 A. Correct.

1 Q. You are requesting that they put -- they mandate  
2 that as part of their rule?

3 A. Correct.

4 Q. But your proposed language provides for no  
5 exceptions to the disclosure that you are seeking here,  
6 correct?

7 A. Would you restate that?

8 Q. Well, you haven't proposed any language providing  
9 for any exceptions to the disclosure information that you  
10 have requested under your proposed language?

11 A. Exceptions? Could you explain what you mean by  
12 exception?

13 Q. For example, you have not proposed any provision for  
14 the protection of trade secret information?

15 A. No. That's consistent with what the Department of  
16 Energy Advisory Committee has recommended, that all chemicals  
17 and additives, regardless of trade secret information, be  
18 included.

19 Q. And if I go to that Exhibit F that you were  
20 referring to, would you turn to that for me, please?

21 A. Yes. Okay.

22 Q. Okay. If I go to Page 24 of that --

23 A. Uh-huh.

24 Q. -- and I go to the paragraph right above Point 5 --

25 A. Yes.

1 Q. -- does that paragraph not indicate that if you go  
2 beyond the MSD sheet reporting that is currently being  
3 utilized and that is proposed here today, that you are, in  
4 essence, requiring the disclosure of confidential,  
5 proprietary, commercial information?

6 A. That all chemicals be included, not just those that  
7 appear on MSD, yes.

8 Q. And they point out further in that paragraph that it  
9 outweighs the restriction on company action, the cost of  
10 reporting, and any intellectual property value of the  
11 proprietary chemicals?

12 A. Yes.

13 Q. So they note in this report that if a state agency  
14 mandates reporting beyond the MSDS level, that you are  
15 getting into proprietary commercial information, correct?

16 A. Yes.

17 Q. Okay. And that you therefore better have procedures  
18 available to deal with propriety commercial information?

19 A. I would assume so.

20 Q. The last thing that OGAP has proposed here in its  
21 proposed language is that the disclosure not be to the  
22 Division under any type of a Division-approved form, but to  
23 the Groundwater Protection Council Interstate Oil and Gas  
24 Compact Commission FracFocus website, correct?

25 A. Uh-huh.

1 Q. Okay?

2 A. Correct.

3 Q. And you recognize, have you not, that about a third  
4 of New Mexicans do not have access by internet to the  
5 FracFocus website, correct?

6 A. Correct.

7 Q. And what NMOGA has proposed is that the reporting be  
8 done to the Division on their proposed form which would  
9 thereby allow people to access the information either by way  
10 of the internet or go to the district office here in New  
11 Mexico and get the information?

12 A. Correct.

13 Q. All right.

14 MR. FELDEWERT: That's all the questions I have.  
15 Thank you.

16 MR. HALL: No questions.

17 MS. GERHOLT: Madam Chair, the Division has a couple  
18 of questions.

19 MADAM CHAIR: Thank you.

20 CROSS-EXAMINATION

21 BY MS. GERHOLT:

22 Q. Ms. Lachelt?

23 A. Lachelt.

24 Q. Thank you. You testified that OGAP has provided  
25 Exhibit C, the Colorado proposed rule, Exhibit D, the Texas

1 proposed rule, I believe, Exhibit E, the rule in regards to  
2 administrative feasibility. Is that correct?

3 A. In regards to --

4 Q. Administrative feasibility, so also --

5 A. Correct.

6 Q. -- also a point to administrative feasibility of  
7 this proposed rule?

8 A. Correct.

9 Q. Yet OGAP has not provided statutes or regulations  
10 from Colorado, Texas, or Wyoming that discussed the authority  
11 of those oil and gas conservation commissions, have they?

12 A. Can you restate that?

13 Q. Of course. So Colorado, Texas, Wyoming has  
14 regulatory bodies for oil and gas?

15 A. That's correct, they do.

16 Q. And those regulatory bodies presumably have enabling  
17 acts that their legislature created, correct?

18 A. Correct.

19 Q. OGAP has not provided that today to the Commission,  
20 have they?

21 A. The enabling legislation for the regulatory agency,  
22 no, we have not provided that.

23 Q. Okay. OGAP has not provided a witness or evidence  
24 as to what the Colorado, Texas, or Wyoming's regulatory body  
25 staffing constraints or resources are, have they?

1 A. In the -- in Exhibit D, the Railroad Commission --

2 Q. Uh-huh.

3 A. -- the staff notes that they believe the industry's  
4 cost of compliance --

5 Q. Could I ask what you are looking at --

6 A. -- 50 to \$100 -- let me look that up. Here we go.  
7 On Page 6 of 21, in the middle of the page it states, and I  
8 quote, "The Commission estimates these additional costs would  
9 range from \$50 to \$100 per well."

10 Q. Yes, but isn't that in regards to the cost that  
11 would be incurred to the business, not to the regulatory?

12 A. Correct, the operator.

13 Q. Okay.

14 A. The operator.

15 Q. So that does not discuss the staffing or budgetary  
16 resources of those regulatory -- of the Texas regulatory  
17 body?

18 A. It does not discuss that. It's my understanding  
19 from my reading of this that because companies are required  
20 to file completion reports, that that would not be an undue  
21 burden on staff to receive that information, in addition to  
22 what's already required in a completion report.

23 Q. And do you have a specific cite for that?

24 A. I do not right at the moment, but that's my  
25 assessment from reviewing all of this material.

1 Q. But no --

2 A. Reviewing those proposed rules.

3 Q. But no specific cite, thank you.

4 MR. GERHOLT: I have no further questions.

5 MADAM CHAIR: Commissioner Dawson, do you have any  
6 questions?

7 EXAMINATION

8 BY COMMISSIONER DAWSON:

9 Q. So you indicated that Wyoming already implemented  
10 this?

11 A. Yes.

12 Q. Do you know how that's working for them, this --

13 A. I have some understanding from visiting with members  
14 of the public in Wyoming and also reviewing the website  
15 myself. In Wyoming the disclosure is to the state website;  
16 it's not to FracFocus. They do allow companies to not  
17 disclose trade secret chemicals, and it's my understanding  
18 that since the website went live in September of 2011, that  
19 100 companies have requested a total of 178 chemicals -- that  
20 178 chemicals be exempted from disclosure, and that just  
21 varies by company. There is probably about 20 companies that  
22 have requested anywhere from four to six to 20 chemicals be  
23 exempted from disclosure on the state's website in Wyoming.

24 Q. So whenever you file an APD, then you disclose these  
25 chemicals to the Wyoming OCC. Is that how they are doing

1 that?

2 A. Yeah. It's my understanding that, with the APD they  
3 file what they understand they are going to use in a  
4 fracturing operation. And I have seen the letters posted by  
5 company on the state website, and Halliburton is the main  
6 company that I've -- I have looked up, and they tend to file  
7 pretty much the same disclosure with their APD with every  
8 permit they -- their understanding is that they are -- they  
9 are going to use, you know, basically a standard set of  
10 fracturing chemicals, so they file that letter with their  
11 APD.

12 Q. So when they file that letter with their APD  
13 disclosing the chemicals, do they have the amounts on there  
14 and amount of fluids they are going to use? How do they know  
15 that before they drill the well? I mean, we have the  
16 electric logs and thickness of the formation.

17 A. It's an estimation based on previous fracking  
18 operations.

19 Q. So when they file that, they have to estimate it,  
20 when they file it with Wyoming, and then they have to revise  
21 it once the well is drilled?

22 A. Correct.

23 Q. That sounds like it's --

24 A. I believe it's 60 days after a fracturing operation  
25 in Wyoming, you have to disclose what you've actually used.

1 So with the APD you have to file what you understand you are  
2 going to use based on your experience in drilling and  
3 fracturing previous wells, and then 60 days after, you have  
4 to file what it is you actually used.

5 Q. Okay. I just -- it just seemed like to me it would  
6 cause excessive work for an operator and also the staff that  
7 the -- I don't know what their Oil Conservation Division  
8 equivalent is there, but it seems like they would have to do  
9 twice the work for a company that applied for a permit to  
10 drill to disclose that information, and they have to go back  
11 again and revise it after the well is drilled. So it seems  
12 to me like it's double work.

13 A. I believe it's consistent with current completion  
14 reports, that they have to file a completion report, anyway,  
15 and so now they have to disclose the amounts and types of  
16 chemicals that they actually used. They think the benefit to  
17 the public, which is our interest, is that members of the  
18 public can go to the state's website and get an understanding  
19 of what Halliburton or another company intends to use when it  
20 fractures so they can try to get baseline water quality data  
21 on their well.

22 COMMISSIONER DAWSON: No further questions.

23 EXAMINATION

24 BY COMMISSIONER BALCH:

25 Q. Mr. Dillon from ConocoPhillips testified that they

1 have two different fracture treatments that they used on the  
2 Dakota sandstone, for example. If they were to have to fill  
3 out a Wyoming form and submit a generic set of chemicals, I  
4 imagine they would use one for all of their Dakota wells that  
5 they're going to drill in a year, yet, when the disclosure  
6 came around, they may be using a completely different set of  
7 chemicals than what they initially proposed. So I'm  
8 wondering if a generic requirement for chemicals that might  
9 be used in an operation will actually give you the data you  
10 want to have for your baseline.

11 A. Ideally, it would. I mean, I think companies have a  
12 lot of information based on -- I mean, ConocoPhillips is one  
13 of the largest if not the largest operator in the state of  
14 New Mexico. I think they have a very solid understanding of  
15 what chemicals they have used previously and what they are  
16 going to use in the future, so, I mean, I would expect that  
17 that information filed ahead of time would be as accurate as  
18 possible.

19 Q. You may be aware that around half of the natural gas  
20 and approximately 70 percent of oil in New Mexico is produced  
21 by small companies, not large companies. Mr. Dillon also  
22 testified that -- that their cost of compliance was \$1,000 to  
23 the surface company for the data, and then three or four  
24 engineer hours, and then one or two technician hours to  
25 actually submit the data. That impact might be dramatically

1 larger on a small company that doesn't have dedicated staff  
2 to that.

3 A. You know, I don't have anything other than  
4 Mr. Dillon's statement that it's \$1,000, and this -- and the  
5 state of Texas saying a 50 to \$100, and that's a big range.  
6 And so I think we would need more information in New Mexico  
7 of the cost across companies, large and small.

8 COMMISSIONER BALCH: That's all.

9 EXAMINATION

10 BY MADAM CHAIR:

11 Q. Your Exhibit F --

12 A. Yes, ma'am.

13 Q. -- the Shale Gas Production Subcommittee 90-Day  
14 Report of August 18 --

15 A. Yes.

16 Q. -- were you aware of the second 90-day report that  
17 was issued after the August 18 date in which the 20  
18 recommendations of the initial report were discussed, along  
19 with some of the problems of implementing those  
20 recommendations?

21 A. I am aware of the report. I do not have a copy of  
22 that report with me.

23 Q. You did not submit it along with this report?

24 A. No.

25 MADAM CHAIR: Okay. That's all I have. Rebuttal?

1 Redirect examination?

2 MR. MEIKLEJOHN: Yes, Madam Chair. Thank you.

3 REDIRECT EXAMINATION

4 BY MR. MEIKLEJOHN:

5 Q. Mr. Feldewert asked you about pointing to agency  
6 determinations of hydraulic fracturing causing groundwater  
7 contamination, at least if I understood his question  
8 correctly. Do you believe that an agency should adopt a  
9 regulation only where a problem has occurred, or do you  
10 believe that an agency should adopt a regulation to deal with  
11 the possibility of a problem arising in the future?

12 A. Oh, definitely I believe in being proactive and  
13 adopting regulations in order to prevent impacts from  
14 occurring in the first place. That's the reason for the  
15 existence of my organization.

16 Q. With respect to the surface owner agreement that  
17 Mr. Feldewert referenced under the Surface Owner Protection  
18 Act, do you have a copy of this Surface Owner Protection Act  
19 there?

20 A. I do have a copy.

21 MADAM CHAIR: Do you have copies for the  
22 Commissioners?

23 MR. MEIKLEJOHN: I'm sorry, Madam Chair, I have one  
24 copy, but that's all.

25 THE WITNESS: I have one.

1 Q. The section that he was referring to, when you  
2 referred to earlier was Section 5, is that right?

3 A. Section 5, Notice of Operations Proposed Surface Use  
4 and Compensation Agreements.

5 Q. All right. Would you please read to us the  
6 introductory language to Section 6.

7 A. Yes.

8 MR. MEIKLEJOHN: I'm sorry, Madam Chair.

9 A. Section 6, the title is, "Entry Without Agreement  
10 dash dash bond period. If after 30 days from a surface owner  
11 receiving notice pursuant to Subsection B of Section 4 of the  
12 Surface Owner Protection Act, no surface use and compensation  
13 agreement has been entered into, the operator may enter the  
14 surface owner's property and conduct oil and gas operations."

15 Q. Thank you.

16 MR. FELDEWERT: Did we just read the introductory  
17 paragraph? We didn't read the requirements, the subsequent  
18 requirements?

19 MR. MEIKLEJOHN: That's all I asked for her to read.

20 Q. Is it your understanding -- excuse me for just a  
21 second. With respect to the question of the proposed  
22 modifications that OGAP submitted --

23 A. Yes.

24 Q. -- in those proposed modifications, OGAP struck the  
25 language at the bottom of the NMOGA proposal saying, "As an

1 alternative to disclosure on the FracFocus registry an  
2 operator may attach the information with submittal of the  
3 appropriate forms C-105, C-103," and then there are a couple  
4 of BLM forms listed. Is that right?

5 A. Correct. We did strike that language.

6 Q. And based on the change that NMOGA made in its  
7 proposal, what is OGAP's position about that at this point?

8 MR. FELDEWERT: Object to the form of the question  
9 if they are proposing now another set of modifications. I  
10 think, under the Commission rules, they cannot do that.

11 MR. MEIKLEJOHN: Madam Chair, the NMOGA proposal and  
12 what NMOGA indicated in its prehearing statement are  
13 different. The first notice that we received of the change  
14 was when we received NMOGA's prehearing statement. This is  
15 our only opportunity to address that change. We believe we  
16 should be allowed to address that change.

17 MADAM CHAIR: I believe the objection is  
18 overruled.

19 Q. Do you remember the question?

20 A. Yes, and we did state this previously that to  
21 simplify reporting for staff, OCD staff, to have companies  
22 file their disclosure on the FracFocus form to include all  
23 chemicals used, and to use that to file on the FracFocus site  
24 and also with the state OCD in order to allow people that do  
25 not have internet access to obtain the information from the

1 Division offices.

2 MR. MEIKLEJOHN: Thank you. I have no further  
3 questions.

4 MR. FELDEWERT: I have one additional question about  
5 the --

6 RE-CROSS-EXAMINATION

7 BY MR. FELDEWERT:

8 Q. You mentioned some of your proposal is based on the  
9 concept that you want landowners to obtain a baseline of  
10 their water. Correct?

11 A. Correct.

12 Q. Can you identify for me how many people that you  
13 work with, the land surface owners you work with in New  
14 Mexico, how many surface owners have actually gone out and  
15 done any kind of baseline water well sampling that you are  
16 suggesting they would want to do?

17 A. I -- let's see. I am actually not aware of a  
18 landowner who has tried to obtain baseline water quality  
19 information because they have not known what to test for.

20 MR. FELDEWERT: That's all the questions I have.

21 MR. MEIKLEJOHN: No more questions.

22 MADAM CHAIR: You may be excused.

23 THE WITNESS: Thank you.

24 MADAM CHAIR: I think it would be appropriate to  
25 take a 15-minute break about now. We will reconvene at 25

1 after 2.

2 (Recess taken.)

3 MADAM CHAIR: Back on the record. There are no  
4 other names for public comment on the sign-up sheets that  
5 were in back of the room. Is there anyone here in the room  
6 now that would like to provide public comment that did not  
7 sign up on the sheets?

8 (No response.)

9 MADAM CHAIR: All right. The Commissioners have  
10 several witnesses that they would like to recall for  
11 additional questions. Mr. Dawson.

12 COMMISSIONER DAWSON: I wanted to talk to Ed Martin,  
13 but is he still here?

14 MS. GERHOLT: If I may have a moment, I will go get  
15 him, Commissioner Dawson.

16 MADAM CHAIR: Any other witnesses you wanted to  
17 recall?

18 COMMISSIONER DAWSON: No, that's all.

19 MADAM CHAIR: Commissioner Balch?

20 COMMISSIONER BALCH: No.

21 MADAM CHAIR: I had one of Ms. Lachelt. You are  
22 still under oath.

23

24

25

1 GWEN LACHELT (Recalled)

2 EXAMINATION

3 BY MADAM CHAIR:

4 Q. My question has to do with the suggestion by one of  
5 the public commenters that instead of a column listed of  
6 maximum ingredient concentration entered by mass which has  
7 very little connection to most of the public, that that  
8 report be given in -- that column be reported in gallons or  
9 pounds. Do you have an opinion on that suggestion?

10 A. I do, and I believe that using gallons as a  
11 measurement would be very helpful for communities and  
12 individuals who are directly affected.

13 Q. Instead of concentration percent by mass?

14 A. Correct.

15 MADAM CHAIR: That's all the questions I had for  
16 you.

17 EXAMINATION

18 BY COMMISSIONER BALCH:

19 Q. Since you brought it up, I will go ahead and ask  
20 another question. In your involvement with development for  
21 frac purposes, since your involvement, do you know why they  
22 originally elected to go with mass in that way instead of  
23 something more understanding for the layperson?

24 A. I'm not aware of that.

25 Q. Is it for technical reasons?

1 A. I am not aware of that decision, how that was made.

2 MADAM CHAIR: Mr. Feldewert, do you have a witness  
3 available that would be able to respond to that question?

4 MR. FELDEWERT: If you can give me a few minutes,  
5 perhaps we can break and wait a minute for the other witness.  
6 I can find out.

7 MADAM CHAIR: Okay.

8 (Recess taken.)

9 MADAM CHAIR: Back on the record.

10 MR. FELDEWERT: We will call Mr. Pat Sanchez.

11 MR. MEIKLEJOHN: Madam Hearing Officer, if the  
12 witness is going to offer technical testimony, we object on  
13 the grounds that this witness was not provided to us before  
14 the hearing in accordance with the Commission's rules.

15 MADAM CHAIR: I have asked a question of opinion to  
16 your witness and I would like to provide the opportunity for  
17 Mr. Feldewert's group to respond as an opinion to the  
18 question concerning the substitution of common measurements  
19 of gallons and pounds as opposed to the scientific  
20 measurements of masses of ingredient concentrations by mass.  
21 I believe that it is an acceptable question since I have  
22 asked your witness.

23 MR. MEIKLEJOHN: I will withdraw the objection.

24 MADAM CHAIR: Thank you.

25

PATRICIO SANCHEZ

(Sworn, testified as follows:)

DIRECT EXAMINATION

BY MR. FELDEWERT:

Q. Would you please state your name for the record?

A. Yes. My full name is Patricio Sanchez. I work for Energen Resources in Farmington, New Mexico. I'm a senior district engineer. I work on special projects, including hydraulic fracturing, the drilling and completion of horizontal wells, and the installation of multilateral junctions systems and artificial lift systems as well.

Q. Mr. Sanchez, how long have you been employed by Energen in that capacity?

A. Seven years.

Q. Prior to Energen, what did you do?

A. I worked for -- I worked for Benson, Montin, Greer, which is a little independent in Farmington, New Mexico for about three years. Before that I worked for Conoco in Midland, Texas, for about three years. Before that I worked for the OCD and the Environmental Bureau for about three years dealing with groundwater discharge plans, UIC programs, Chemical QAQC Program, and before that I work followed Big A Well Services as a safety engineer for about a year, and worked prior to that for Conoco in the beginning of my career for about three years.

1 Q. What time frame were you employed by the OCD and the  
2 Environmental Bureau?

3 A. In the mid 90s, probably 95 to 97, thereabouts.

4 Q. And what's your educational background?

5 A. I have a bachelor of science in petroleum and  
6 natural gas engineering from New Mexico Institute of Mining  
7 and Technology in Socorro.

8 Q. Were you present here at the hearing when the  
9 Commissioners inquired about the reporting on the form  
10 maximum by mass rather than by gallons or pounds?

11 A. Yes.

12 Q. And if you turn to what's been marked as NMOGA  
13 Exhibit 1, it's in that sheet there in front of you, I  
14 believe we are talking about the very last column on --

15 A. Yes.

16 Q. -- second to last column on NMOGA Exhibit  
17 Number 1.

18 A. Okay. Maximum ingredient concentration and additive  
19 by mass.

20 Q. Do you have an opinion as to why the information is  
21 provided by mass rather than by way of gallon or pounds?

22 A. Yes. Well, pounds is mass. Mass is an actual  
23 measure of the substance that is placed, and that's what you  
24 want to know. You want to know the actual measure of the  
25 substance. If you go off of gallons, gallons is -- it's a

1 volume, okay. It's not really relative to the amount of  
2 substance, okay. Because volume is subject to density which  
3 then implies back to mass. Mass is an actual measurement of  
4 the material that is placed.

5 Q. Do you believe that it provides a more accurate  
6 measurement then of the ingredients utilized in a frac  
7 process rather than if you would do it by way of gallons?

8 A. Yes. Because mass is the actual measure of the  
9 material placed. Gallons is volume. It's not the actual  
10 amount of the substance. With mass, then once you know the  
11 total mass of the system, you can go back and actually back  
12 out concentration if you want to. If you just have gallons,  
13 and you don't know the density of the material, you have no  
14 way of knowing actual material. You have no way of actually  
15 doing the concentration, either.

16 MR. FELDEWERT: Madam Chairperson, that's all the  
17 questions that I have.

18 MR. MEIKLEJOHN: Madam Chair.

19 CROSS-EXAMINATION

20 BY MR. MEIKLEJOHN:

21 Q. Mr. Sanchez --

22 A. Yes, sir.

23 Q. -- if a company discloses in terms of mass that you  
24 were describing, could the company also disclose the number  
25 of gallons?



1 may be excused.

2 MR. FELDEWERT: Thank you.

3 MADAM CHAIR: Are you ready to do --

4 COMMISSIONER DAWSON: I wanted to recall Ed Martin  
5 and ask him a few questions about the form.

6 ED MARTIN (Recalled)

7 (Previously sworn, testified as follows:)

8 EXAMINATION

9 BY COMMISSIONER DAWSON:

10 Q. Ed, I was looking at the sample form that the OCD  
11 put together on the page notice of modification.

12 A. Yeah.

13 Q. And I was comparing it to the form that's used on  
14 the FracFocus website, and I noticed on the OCD form that you  
15 guys put together on the -- going to that maximum ingredient  
16 concentration percent by mass.

17 A. Yes.

18 Q. There is two asterisks on that next to the mass on  
19 that next column over, there is two small asterisks right  
20 next to it.

21 A. Right next to the parenthesis that says percent by  
22 mass?

23 Q. Yes. I was noticing on this form on the bottom  
24 there is no --

25 A. I don't see that on my form.

1 MS. GERHOLT: Excuse me, Commissioner Dawson, what  
2 is the date of the form you are looking at? In the  
3 right-hand corner, up in the right-hand corner there should  
4 be a date.

5 COMMISSIONER DAWSON: November 2.

6 MS. GERHOLT: Commissioner Dawson, if I may  
7 approach, the revised form that the Oil Conservation Division  
8 attached with its prehearing statement is November 7. May I  
9 approach?

10 COMMISSIONER DAWSON: I think that was in here  
11 somewhere.

12 COMMISSIONER BALCH: Exhibit 5.

13 MR. FELDEWERT: Should be the very last.

14 COMMISSIONER DAWSON: The very last form?

15 MADAM CHAIR: Okay.

16 COMMISSIONER DAWSON: I thought this was the form  
17 you were going to use, the one that's in landscape. Are you  
18 going to use the one that's in portrait?

19 MS. GERHOLT: Yes, that's what we submitted with our  
20 prehearing statement.

21 Q. (By Commissioner Dawson) Okay. So then you took  
22 away the asterisks on the form that's going to be used?

23 A. Yes.

24 Q. I was just questioning, because it was on the  
25 FracFocus form, it says information is based on the maximum

1 potential for concentration. The total may be over 100  
2 percent.

3 A. Right.

4 Q. But you are going to take that off of your form?

5 A. Right.

6 Q. Okay. That's the only question I had, because I  
7 thought you were going to use this other form here, this  
8 sample.

9 A. Okay.

10 Q. You don't think that's necessary to put on the --

11 A. We didn't think it was. We thought it was kind of  
12 redundant information, but if it's confusing, it could be  
13 added back.

14 Q. So you are not going to specify on your form whether  
15 that could be over 100 percent or not?

16 A. That's not the present plan, no.

17 Q. Okay. That's all I was wondering.

18 MADAM CHAIR: Commissioner Balch, do you have any  
19 questions?

20 COMMISSIONER BALCH: I have no questions.

21 COMMISSIONER DAWSON: I have one other thing, I'm  
22 sorry.

23 Q. (By Commissioner Dawson) On the form itself, on  
24 the -- I know there was some confusion as to the location,  
25 like somebody just has the API, they didn't know the

1 location, and I noticed on the Box 4 on your form --

2 A. Yes.

3 Q. -- it has unit, lot, section, township and range --

4 A. Yes.

5 Q. -- there could be like six wells within a unit or  
6 lot or even more within a lot or a parcel, a tract of land?

7 A. That's correct. Without the footages, you can't  
8 tell exactly what well you are talking about, but with the  
9 API number, that's a double check that you are talking about  
10 the same well, the well specified with that API.

11 Q. I thought it might be easier if you specified the  
12 surface and bottom hole location of the well, that way you  
13 could identify on a map or plat just exactly where that well  
14 was, but you can -- I understand you can go back in and cross  
15 reference that through the well file?

16 A. Yes.

17 Q. It seems to me it might be easier if you specified  
18 that on the form, too.

19 A. Okay. I mean, that's something that could be added  
20 to the form.

21 Q. That's the only two things I saw on the form. I  
22 noticed you created some confusion with some earlier  
23 testimony.

24 A. About the lat long?

25 Q. About the lat long and API numbers because there is

1 not really any specified distances from the section lines.

2 A. Not on this, no, we don't have a double check  
3 between -- if the API number is wrong, and it happens to be a  
4 well within that same section, that's a different well, so  
5 you could be confusing two wells, yes. I see your point.

6 EXAMINATION

7 BY COMMISSIONER BALCH:

8 Q. Addressing the cost of compliance, not necessarily  
9 dollars, but also time, do you believe that this form -- or  
10 what do you think the impact of collecting this data will be  
11 on the OCD, not only that, but collecting this form or  
12 collecting the FracFocus form instead in place?

13 A. The difference, in my opinion the difference between  
14 collecting one over the other is negligible because they are  
15 so similar. As far as cost of collecting any additional  
16 data, there is some additional cost, but it's just a matter  
17 of the additional time and storage resource it takes to scan  
18 one extra page as well as the 104 and 105, so I don't have a  
19 dollar figure to tell you, but it doesn't seem like it would  
20 be too much.

21 Q. Minor impact.

22 EXAMINATION

23 BY MADAM CHAIR:

24 Q. I have one last question.

25 A. Yes, ma'am.

1 Q. The column for purpose --

2 A. Uh-huh.

3 Q. -- was deleted from the portrait draft form. Was  
4 there a reason not to include the purpose of a particular  
5 chemical as the FracFocus form does?

6 A. It was necessary -- information that was not  
7 necessary for us to -- we didn't feel it was necessary for us  
8 to know the purpose. Usually we know the purpose of the  
9 additive, and to have them have to report it was, I thought,  
10 unnecessary. And aside from that, it restricted space  
11 constraints, space on the form.

12 MADAM CHAIR: That's all the questions I have. You  
13 may be excused.

14 THE WITNESS: Excused? Thank you.

15 MADAM CHAIR: No other questions. Any other  
16 witness?

17 COMMISSIONER DAWSON: No other questions.

18 MADAM CHAIR: No other witnesses?

19 (No response.)

20 MADAM CHAIR: We do have additional people who have  
21 come forward for public comments. Joan Brown, would you come  
22 up to the table? Would you like to be sworn or unsworn?

23 MS. BROWN: Unsworn.

24 MADAM CHAIR: Okay, it's a position statement then.  
25 We have allowed five minutes for each person. The timer is

1 over here. At one minute you will be shown the board that  
2 warns you.

3 (Public comment continued.)

4 MS. BROWN: Thank you very much, Commissioner. I  
5 know you have been here all day. My comments will be less  
6 than five minutes. My name is Joan Brown. I am a Franciscan  
7 sister, and I'm the executive director of New Mexico  
8 Interfaith Power and Light. We are one of 40 state  
9 affiliates of a national organization that work addressing  
10 climate change, educating people about that in faith  
11 communities working towards energy efficiency.

12 And we are concerned about this issue and actually  
13 have a policy statement nationally. And our concern is that  
14 we realize that natural gas is a transitional fuel and will  
15 be, and, in that sense, can be cleaner in terms of addressing  
16 climate change and energy use, but we have some concerns in  
17 terms of the water and water quality and use of water, and  
18 for us this is a moral and an ethical concern, and in this  
19 state, in particular, New Mexico where we suffer from  
20 draughts and have less water and highly contaminated -- water  
21 getting contaminated and stress on water because of a lot of  
22 population, it's even more of a concern.

23 Second, because the hydro fracking is not legislated  
24 by the EPA at this point, we in the state have a particular  
25 responsibility to address that to safeguard our water and

1 water security for the future and into the future and future  
2 generations. So there -- and there have been numbers of  
3 other areas where there have been incidents of hydro fracking  
4 with respect to drinking water and health problems that  
5 ensued from that.

6 So it's just -- the onus is on us, I think, as a  
7 state to regulate as much as we can to prevent those kinds of  
8 things from happening. So I would like to recommend two  
9 things, and one is an effective regulatory structure to  
10 protect human health in terms of hydro fracking so that there  
11 will be clean air and clean water, and this would include  
12 appropriate resources to allow for the regulations of those  
13 elements.

14 And then a second one that I think is relevant to  
15 this is the disclosure, full disclosure of the composition  
16 and safety of the chemicals used in hydro fracking. And it's  
17 been stated that scientists believe that 25 percent of the  
18 hundreds of chemicals used in fracking can cause cancer, 37  
19 can disrupt the endocrine system and 40 to 50 percent can  
20 affect the nervous, immune, and cardiovascular system.

21 So our concern is for the health and well-being of  
22 the citizens and people of New Mexico, and so we would just  
23 ask that as high a standard as possible be used with  
24 disclosure and follow through with regulations to monitor  
25 those disclosures and the high use of hydro fracking system

1 within the wells in New Mexico.

2 MADAM CHAIR: Thank you.

3 MS. BROWN: Thank you.

4 MADAM CHAIR: Was there anyone else that wanted to  
5 participate in the public comment area?

6 (No response.)

7 MADAM CHAIR: All right. Then it's time to ask for  
8 closing arguments.

9 MS. GERHOLT: Madam Chair, I recall from the last  
10 rulemaking, the applicant goes last. The Division would be  
11 willing to go first unless OGAP would prefer to -- thank you.

12 Madam Chair, Commissioners, the Oil Conservation  
13 Division asks that you adopt the proposed disclosure rule as  
14 set forth in NMOGA's prehearing statement. We have not only  
15 provided for disclosure, but the Division, by using the  
16 information that's on Material Safety Data Sheets, the public  
17 will be made aware of hazardous chemicals. Those MSDS sheets  
18 are kept on the rigs during the hydraulic fracking process.

19 This is vital information, and it's information that  
20 the Division would be able to manage. The Division will be  
21 required to accept more information than that, and through  
22 other statutory means, if operators sought to keep that  
23 information confidential, then the Division would be faced  
24 with having public records that they would have to review,  
25 redact, store the originals, and post redact, as well. This

1 becomes burdensome and also does not provide the public with  
2 disclosure. But providing disclosure to the Oil Conservation  
3 Division versus just FracFocus, the public, as well as the  
4 Oil Conservation Division would have a complete picture of a  
5 particular well, of all activities that have occurred from  
6 cradle to grave, from application of permit to drill to  
7 plugging and abandoning that well.

8           According to OGAP's proposed modification, OGAP  
9 seeks to incorporate the Surface Owner Protection Act into  
10 Oil Conservation Division rules. The Oil Conservation  
11 Division does not have that authority. Mr. Martin testified  
12 to that. To enforce the Surface Owner Protection Act, if the  
13 Commission approves to adopt this measure, the OCD would be  
14 faced with a similar situation that the Supreme Court has  
15 already said, "OCD, you cannot act beyond your statutory  
16 authority."

17           We ask that the Commission adopt the rule which  
18 provides for disclosure and that can be administered easily.  
19 Thank you.

20           MR. MEIKLEJOHN: Madam Chair, Members of the  
21 Commission, the Oil and Gas Accountability Project favors  
22 disclosure, but argues that disclosure has to be done in a  
23 way that provides meaningful and complete disclosure in order  
24 for it to be of a benefit to the public, and the emphasis in  
25 disclosure ought to be on what is going to benefit surface

1 owners and members of communities because they are the ones  
2 who are receiving the information.

3 Specifically with respect to OGAP's proposal, OGAP  
4 is not requesting that the Oil Conservation Division or the  
5 Oil Conservation Commission enforce the Surface Owner  
6 Protection Act. OGAP is requesting that this rule which  
7 deals with disclosure to parties of an aspect of oil and gas  
8 drilling be consistent with the Surface Owner Protection Act.

9 The Surface Owner Protection Act, as you heard,  
10 requires disclosure of enough information to a surface owner  
11 so that the surface owner can evaluate the impacts that the  
12 oil and gas operation will have on the surface owner's  
13 property. Disclosing the chemicals and other substances that  
14 may be used in fracking is consistent with that. It does not  
15 mean that the Oil Conservation Commission or the Oil  
16 Conservation Division is taking over enforcement of that  
17 obligation.

18 The obligation under the Surface Owner Protection  
19 Act to disclose to a surface owner is enforceful under that  
20 act by a private lawsuit, and we are not arguing that the Oil  
21 Conservation Division ought to be in the business of filing  
22 that private lawsuit or somehow adjudicating that private  
23 lawsuit.

24 The OGAP proposal, as I said earlier, would require  
25 meaningful disclosure by requiring disclosure of all the

1 constituents that are used in a fracking operation, not just  
2 those for which there are MSD sheets, and the information  
3 that you received this afternoon or this -- well, this  
4 morning and this afternoon, indicates that there are  
5 substantial numbers of constituents that are used in  
6 hydraulic fracturing operations for which there are not MSD  
7 sheets, and so that's a very relevant consideration.

8           The other relevant consideration in that regard is  
9 the testimony of the witness for NMOGA who works for  
10 ConocoPhillips and who pointed out that ConocoPhillips  
11 currently discloses to the FracFocus website what is required  
12 by that website, and that includes information on substances  
13 for which there are not MSD sheets.

14           In addition, the witness for the Oil Conservation  
15 Division indicated that if the Division receives a report  
16 from a company that includes more than is called for by the  
17 Division form, the Division will accept that information, and  
18 so this is already happening, I assume, if the -- if, in  
19 fact, Conoco is sending to the Division the same information  
20 it's sending to FracFocus.

21           And so our recommendation is that the industry  
22 disclose what is required by FracFocus now, not what was  
23 required by FracFocus as of July 1, which is in NMOGA's  
24 proposal, and that that be available through the Division.  
25 And we stress that that should be available through the

1 Division so that people in New Mexico who do not have  
2 internet access, and as you heard, that's about a third of  
3 the people in this state, do have the ability to get that  
4 information without going online to do so.

5 Finally, I would just repeat that we ask that the  
6 Commission look at who is to benefit from disclosure. The  
7 purpose of disclosure is to require that information be made  
8 available to people who may be affected by what's going on.  
9 Clearly an oil and gas drilling operator is affected by  
10 what's going on, but so is the surface owner, and so are the  
11 people in the community, and they have a right to know what's  
12 going on, and we urge you to adopt a meaningful regulation  
13 that will give them that opportunity. Thank you very much.

14 MADAM CHAIR: Mr. Hall?

15 MR. HALL: Madam Chair, thank you. I have no  
16 closing argument.

17 MADAM CHAIR: Mr. Carr?

18 MR. CARR: May it please the Commission. The New  
19 Mexico Oil and Gas Association filed an application seeking  
20 amendment of your rules and asked you to adopt language, the  
21 language that is set forth in the prehearing statement that  
22 would require operators to disclose certain chemicals used in  
23 hydraulic fracking fluids, and now at the end of the hearing,  
24 we again ask you to adopt the language as set forth in the  
25 prehearing statement.

1           To the extent that it differs from the original  
2 application, it only differs in that it accepts  
3 recommendations, modifications proposed by the Oil  
4 Conservation Division itself, which, on review, made sense to  
5 us.

6           We are asking that your rule be amended to provide  
7 that operators indicate on Form C-103 and C-105 if they are  
8 intending to hydraulically frac a well. Then we suggest that  
9 they use or endorse the use of the OCD's hydraulic fracturing  
10 disclosure form, or, as an alternative, the July 1, 2011,  
11 FracFocus registry form. If you change your form from  
12 maximum ingredient concentration by mass, you should keep in  
13 mind that you have a proven alternative that would require  
14 reporting not in gallons and pounds, but by maximum  
15 ingredient concentration by mass. I suggest in that there is  
16 a potential for confusion.

17           What we ask requires disclosure of all chemicals  
18 used in hydraulic fracking for which there is an EPA-approved  
19 Material Safety Data Sheet, and while we have heard everyone  
20 say there is lots of other things that cause cancer, I  
21 haven't heard one mention here today, other than in a generic  
22 fashion, we think, to control the kind of data you get this  
23 is the appropriate thing for you to do, to rely on what EPA  
24 has determined requires a safety data sheet for their  
25 chemical.

1           We hear a lot about time issues, should we provide  
2 information on the chemicals that we may use 30 days in  
3 advance of actually fracking the well. And then we have a  
4 discussion or request that we not file final information on  
5 what is actually used until 40 days after the well is  
6 completed. I would suggest both of these things, at the  
7 core, have the very same issue, and that is the quality of  
8 the information that is filed and avoiding unnecessary and  
9 meaningless work by operators and by the Oil Conservation  
10 Division staff. Twenty days or 45 days, if we file 20 days,  
11 one, there is difficulty in responding and you are going to  
12 get standard, generic responses that have to be amended, and  
13 I submit that that information is a waste of time for us and  
14 for you. It needs to be filed when we get it from the people  
15 who actually frac when we can confirm it and give you  
16 information upon which you can rely if you have to look at it  
17 and make decisions based upon it.

18           As to the filing 30 days in advance, again we have  
19 generic and inaccurate information that's being sought. Ms.  
20 Lachelt talked about what happened I believe it was in  
21 Wyoming, but when they prefile, what you get are sort of,  
22 quote unquote, standard responses. I think she said  
23 estimates. Well, if that's what you want, I suggest you go  
24 look at FracFocus right now because that's where you will  
25 find standard responses and estimates for what's going on in

1 the area around a proposed well.

2 But let me get to real information. When you have  
3 something you can rely on, it's unavoidably at one time,  
4 after it's done. And instead of filing an estimate or a  
5 standard response that's available on FracFocus and then  
6 amending it, we submit, with our recommendation, we file the  
7 real data as soon as you get it.

8 I don't know if New Mexico has ever adopted  
9 regulations based on what's going on in other states, but I  
10 don't think an example was provided to you today of a single  
11 state that has adopted something that would point the way of  
12 this Commission, and I would turn you back to our  
13 recommendation. We, after seeing the OCD's form, we endorsed  
14 it. We think it should be part of the order itself.

15 Remember, you are the Commission that is requiring  
16 the disclosure of this information by all operators. These  
17 are your requirements. This is your form. And when we hear  
18 today, well, use FracFocus, but I don't want you to use, you  
19 know, the July 1, 2011 form, well, nobody told me that it had  
20 changed or how it had changed or what it is. The fact of the  
21 matter is, you should use your form because it gives you  
22 control over what is being disclosed. It doesn't make your  
23 agency subject to what some other board or commission may or  
24 may not do because the legislature puts responsibility on you  
25 to recommend this. And what we are proposing, hopefully,

1 will give you a database you can rely on as you go forward  
2 and attempt to do that. Changes in the form, we should come  
3 back and ask you to change it, or you should call us back and  
4 ask us to explain why they should not be changed, and, in the  
5 meantime, with your form adopted by your order, we know what  
6 to disclose and where to disclose it.

7 And this form, furthermore, does not require the  
8 disclosure of confidential trade secret information that's  
9 protected by federal law. We think your form should be  
10 adopted. We think it is an important step in getting hands  
11 around an issue that may or may not become very important for  
12 us in the years immediately ahead.

13 OGAP says, "We want you to adopt a rule that is  
14 consistent with SOPA." I have never heard a term more  
15 ambiguous than consistent with SOPA. If that is what is  
16 really a valid modification proposed under your rules, I  
17 would suggest that every time I filed anything here, I would  
18 say we would like this proposal to be consistent with law,  
19 but then do what I want because I can come back and say,  
20 "Well, I wanted it to be consistent with law, and I think  
21 this is what the law says."

22 There is no clear modification before you based on  
23 SOPA. And as your own witnesses have pointed out, the  
24 legislature didn't give you any authority under SOPA. It  
25 does require negotiation between the operator and the

1 landowner and they work on a consent agreement. The  
2 landowner could request the MD or MSDS sheets, and I don't  
3 know -- I don't go out like Ms. Lachelt or maybe some of the  
4 other people from NMOGA do and go out and deal with these  
5 people, maybe they should ask for that in the future because  
6 they might just get some MSD sheets on chemicals that are  
7 actually going to be used in the wells, but I haven't heard  
8 that anyone has bothered to ask. So if we want to be  
9 consistent with SOPA, maybe what we should first do is start  
10 acting under SOPA, not asking other agencies to come in and  
11 do things consistent with that. I don't know if that means  
12 go to court or get an arbitrator, I don't know, but I think  
13 there are things that could be done right now without  
14 invoking the jurisdiction.

15 We think the goal here is an important one. We  
16 think it is going to result in a data or information base  
17 that's important, and we think it's particularly important  
18 because it's in one place; it will be in your well file. I  
19 can get a hard copy of your well file if I don't have access  
20 to the internet, or I can go on the internet if I do have  
21 access, but what I can see there is information on how the  
22 well was drilled and completed and cemented. I can make a  
23 determination on the integrity of the wellbore, and that has  
24 got to be the first step as we continue down this road  
25 looking at keeping fracture fluids in the correct formation.

1           It tells me what you have done about the pits and  
2 managing the waste, and if you adopt this, it will tell you  
3 what chemicals have been used in the fracking as required by  
4 the EPA MSDS sheets. And it's available in one place, and,  
5 in New Mexico, that place is the OCD. That's where the  
6 legislature said it should be. It clarifies what we file.  
7 It clarifies when we file, and it is administratively  
8 feasible.

9           It's an important part of a responsible agency  
10 response to this issue, and it will result in the development  
11 of proper -- of a proper regulatory system in the state of  
12 New Mexico.

13           Thank you very much.

14           MADAM CHAIR: Commissioners, do you have any other  
15 information which you would like to have, to request, before  
16 we close the record?

17           COMMISSIONER BALCH: I have no information.

18           COMMISSIONER DAWSON: I have no other information.

19           MADAM CHAIR: I don't either. So at this point we  
20 will close the record. And we will take a short break for us  
21 to evaluate what we have heard today, and then we will  
22 deliberate in open session. How long do you think you would  
23 like to take, Commissioners, for your private evaluation?

24           COMMISSIONER BALCH: I'm essentially ready now.

25           MADAM CHAIR: Commissioner Dawson, would you like to

1 take a few minutes to gather your thoughts?

2 COMMISSIONER DAWSON: I think I'm ready.

3 MADAM CHAIR: Then let's go.

4 (Deliberation.)

5 MADAM CHAIR: It seems to me that we have a series  
6 of questions that we need to go through in order to determine  
7 what that the decision should be. First off is, do we want  
8 to have a rule change that would require disclosure of  
9 fluids. At this point we don't need to determine what  
10 fluids, but do we need a rule change as applied for by the  
11 New Mexico Oil and Gas Association?

12 I believe that we have had testimony that shows that  
13 we need to have a rule change. What do you say?

14 COMMISSIONER BALCH: I concur.

15 MADAM CHAIR: What do you say, Commissioner Dawson?

16 COMMISSIONER DAWSON: I concur.

17 MADAM CHAIR: Then the next question is what do we  
18 want to have in the rule? And we have three separate drafts  
19 that we could look at. One of them is the NMOGA -- the New  
20 Mexico Oil and Gas prehearing statement. We have the OGAP  
21 version, and then we have the Oil Conservation Division  
22 modification, and I believe that's all we have to look at.

23 The first item that comes up in looking at these  
24 various versions is the number of days after the completion  
25 of a well before any kind of report is due. It was first

1 applied for 45 days to change from the current 20 days, and  
2 then the OCD's modified rule amendment was back to 20 days.  
3 NMOGA has 20 days and OGAP has 45 days after completion or  
4 fracking of the well. How do you feel about the time  
5 discrepancies there?

6 COMMISSIONER BALCH: I believe the testimony of Mr.  
7 Dillon indicated that 20 days was not always going to be  
8 viable time. In fact, that exhibit -- when we were talking  
9 about Exhibit 3, he mentioned 45 to 50 days, looking at that  
10 format.

11 MADAM CHAIR: However, the OCD has this rule for  
12 submittal of the Form C-105 which is the completion report  
13 that's due within 20 days, and so this changing of the 20  
14 days would create a ripple effect of problems for other OCD  
15 rules.

16 COMMISSIONER BALCH: I believe that in NMOGA and the  
17 OCD versions of the rule change, that they separate that 20  
18 days so --

19 REPORTER: Excuse me, Commissioner Balch, could I  
20 ask you to speak up just a little bit, please?

21 COMMISSIONER BALCH: You can ask, but I may not  
22 comply. It's been, at least from my reading, it looks like  
23 there is a separation of timing between the C-105 or the  
24 C-103. That still has a 20-day requirement, and on that form  
25 you are supposed to indicate that you are going to or

1 planning to do hydraulic fracturing. I think that also  
2 serves as notice to the surface owner that hydraulic fracture  
3 will occur in the well.

4 Then they have a separate 45-day reporting for the  
5 actual components of the fracking fluids they reported.  
6 That's my reading of those rules, the way they are written.

7 MADAM CHAIR: Commissioner Dawson, do you have  
8 anything in there?

9 COMMISSIONER DAWSON: I think 45 days is sufficient.  
10 Up to 20 days, that's for the C-105, but the C-103, they can  
11 also do it on the C-103, 45 days sounds sufficient to me.  
12 Twenty days is little bit too quick, according to Mr. Dillon  
13 and the testimony that I heard. And I believe that that's  
14 pretty restrictive on an operator to be able to have them do  
15 it in 20 days. I think 45 days is more realistic.

16 MADAM CHAIR: So are we in agreement that a C-105 is  
17 still due in accordance with the rules that deals with C-105,  
18 but within 45 days of completion of the well or recompletion  
19 that a report is due on the disclosure of fluids used for the  
20 hydraulic fracture fluids.

21 COMMISSIONER BALCH: I am in agreement with that.

22 COMMISSIONER DAWSON: I am in agreement with that.

23 MADAM CHAIR: All right. That's one point. Another  
24 point would be what fluids should be reported, the fluids as  
25 recommended by OGAP, or the fluids as recommended by Oil and

1 Gas Association and the OCD?

2 COMMISSIONER BALCH: My primary concern on that  
3 regard is the federal law prohibits disclosure of the  
4 proprietary information, and I'm not sure if anything  
5 supercedes that in any way.

6 MS. BADA: There are chemicals that aren't propriety  
7 that aren't being covered by the --

8 COMMISSIONER BALCH: I think there was testimony  
9 given in both directions on that, however, the MSD sheets are  
10 provided by EPA, and those are chemicals that the EPA has  
11 decided are hazardous and to what degree and manner they are  
12 hazardous. So really if there is chemicals that are not  
13 included in that listing already, it would be up to someone  
14 or EPA to arrive at a determination that an MSDS sheet was  
15 needed for those chemicals. That may be beyond the scope of  
16 what we are being asked to do.

17 MS. BADA: Looking at it for all purposes, for  
18 direct exposure and occupational situations.

19 COMMISSIONER BALCH: Again, that may be beyond my  
20 understanding.

21 MADAM CHAIR: Because that was not brought out in  
22 testimony by any party as to whether or not hazardous was  
23 listed as occupational or --

24 MS. BADA: I thought it was in OGAP's -- not in the  
25 evidence, in OGAP's -- in the DOE report.

1           MADAM CHAIR: But the DOE report was incomplete and  
2 modified by the second report that was not submitted as an  
3 exhibit by anybody.

4           COMMISSIONER DAWSON: I don't believe you should put  
5 in proprietary fluids. Like they said, that's protected by  
6 federal law.

7           COMMISSIONER BALCH: There is already a mechanism  
8 there --

9           COMMISSIONER DAWSON: I think what they are doing --  
10 I think what -- the way they are doing on the FracFocus is  
11 sufficient, and I think, by testimony, if a surface owner has  
12 a concern as to their groundwater getting contaminated, they  
13 have their -- they have -- their option is to go out and test  
14 their water and they can look at the Material Safety Data  
15 Sheets for any well offsetting their acreage that's been  
16 drilled and they can go to the FracFocus website and look up  
17 that information and look it up and see -- have that water  
18 well tested. It's gotta to be tested, that water well, for  
19 those constituents if they feel it's -- if they feel like  
20 it's going to threaten their water supply.

21           So I think the proprietary information should be  
22 left proprietary to the companies that deal with the --  
23 Baker-Hughes, Halliburton, it's proprietary, that's their  
24 trade secrets. They don't want to give that to other  
25 companies.

1           COMMISSIONER BALCH: I think also under the MS --  
2 the other system which I'm not familiar with, but it seems to  
3 me the purpose of the system is to identify hazardous  
4 chemicals, and then have data sheets associated with those  
5 chemicals that provide appropriate warning.

6           If there were chemicals that people suspect are in  
7 the proprietary formulas, there is a mechanism that exists on  
8 the federal level for them to go to EPA and ask for that  
9 determination.

10           MADAM CHAIR: So is it the will of the Commission to  
11 use the language of the Oil and Gas Association for  
12 disclosure of fluids as it's written in their application?

13           COMMISSIONER BALCH: Are you referring to the last  
14 two sentences?

15           MADAM CHAIR: The Division does not require the  
16 reporting of information beyond the MSDS data as described in  
17 29 C.F.R. 1910.1200.

18           COMMISSIONER BALCH: And then the Division does not  
19 require the reporting or disclosure of proprietary trade  
20 secrets or confidential business information.

21           MADAM CHAIR: So is that what you --

22           COMMISSIONER DAWSON: That's what I think should --  
23 how it should read.

24           MADAM CHAIR: Okay. That's point number two. Point  
25 number three is where should this information be filed?

1           COMMISSIONER DAWSON: My feelings on that is it  
2 should be filed through the OCD because, I mean, you could  
3 give the operator the option to file it to both OCD and  
4 FracFocus, one or the other, but to me the OCD should  
5 implement their own filing system regarding those fluids  
6 because what happens if FracFocus goes away or something  
7 happens to that, then the OCD is on track with their new  
8 system to file and monitor these fluids and it will be  
9 accessible at any district office within the state.

10           If somebody doesn't have a computer, 30 percent of  
11 New Mexico doesn't have a computer, they can go to the  
12 district office -- they may be able to go to the district  
13 office, use their computer to look at the FracFocus, but they  
14 can go to the district office and ask for hard copies of  
15 those frac disclosure forms from the district office.

16           MADAM CHAIR: Or they can call the district  
17 office --

18           COMMISSIONER DAWSON: They can call.

19           MADAM CHAIR: -- and ask for a copy of a piece of  
20 paper.

21           COMMISSIONER DAWSON: I don't know how FracFocus,  
22 how they disclose that information or if they would, if  
23 someone called them via telephone or emailed them and wanted  
24 that data, I mean, they can access through their website, but  
25 OCD will -- they will be able to provide that information to

1 people if they just walk into the office.

2 COMMISSIONER BALCH: FracFocus is new since May or  
3 April of this year, and in that time, the testimony has been  
4 today that it's changed at least once in their requirements.--  
5 Their data requirements and collection requirements are not  
6 controlled by the OCD, so the chances are that at some point,  
7 their form may no longer reflect the data that OCD wants to  
8 collect.

9 I think the data form needs to be consistent with  
10 collected database and retrievable for it to be effective in  
11 its goal, which is to disclose fracture fluids. As has been  
12 mentioned in testimony and by Commissioner Dawson, having it  
13 involved in the OCD database directly allows a direct linkage  
14 to all the other well files, and if you are investigating  
15 water contamination of your site, I imagine that that's a lot  
16 of information that you would like to have on hand.

17 So I think actually I would add language to any of  
18 these proposed rules that said that you can FracFocus so long  
19 as that form meets the requirements of the Division's  
20 hydraulic fracturing disclosure form. So if it no longer  
21 meets that requirement, it is no longer be admitted.

22 MADAM CHAIR: Does that create ambiguity, though?

23 COMMISSIONER BALCH: There may be ambiguity, but it  
24 errs in favor of people disclosing data in more than one  
25 place, which I think should be encouraged. So if they can

1 fill out their form on FracFocus, still submit it here to the  
2 New Mexico OCD, you have data available in more than one  
3 place, and that contributes to the national database.

4 MADAM CHAIR: So it's at their discretion?

5 COMMISSIONER BALCH: They have the OCD form that  
6 they would have to submit, or they can submit an alternate  
7 FracFocus form, so long as it maintains the data required by  
8 the OCD disclosure form.

9 MADAM CHAIR: However, I feel very strongly that the  
10 FracFocus form does not have footage for the wells or the  
11 section, township, range that I think are vital to cross-  
12 correlation of information in New Mexico of the wells.

13 COMMISSIONER BALCH: So it already does not meet the  
14 disclosure form that you would prescribe.

15 MADAM CHAIR: Already, uh-huh. So I believe that  
16 the OCD should create a form for filing with the OCD, and if  
17 companies choose to file with FracFocus, that's their option,  
18 but the OCD should require the form to be filed with them.

19 COMMISSIONER BALCH: That goes back to my argument  
20 for consistency in a collection of the database and  
21 retrievability of the data. I did have a little bit of  
22 concern in the back of my mind at that point about having two  
23 potentially different looking forms to show up to be the same  
24 information on multiple wells, they may not recognize that  
25 difference.

1 MADAM CHAIR: So do you vote for having the forms  
2 filed with the OCD instead of FracFocus?

3 COMMISSIONER BALCH: I would prefer that the  
4 database go through the OCD first.

5 MADAM CHAIR: You say first as though somebody  
6 else --

7 COMMISSIONER BALCH: Somebody else could voluntarily  
8 use FracFocus or an outside organization that will take the  
9 data which is fairly retrievable from New Mexico's online  
10 database, and then put that into FracFocus on their own, it  
11 doesn't have to be a company.

12 MADAM CHAIR: I don't know how FracFocus would  
13 ensure that the information from a third party would be  
14 correct and not altered before it's filed with their  
15 database.

16 COMMISSIONER BALCH: No testimony was given to us  
17 about how FracFocus collects their data, except for that it  
18 appears to be voluntary by company, so presumably companies  
19 will be registering with them. I agree with that we have no  
20 control over the data they ask for and how they quality  
21 control it, actually.

22 MADAM CHAIR: Uh-huh.

23 COMMISSIONER BALCH: Which causes me to retract my  
24 statement about allowing FracFocus as an alternate data  
25 source. I think you're correct, it should be the OCD form.

1 MADAM CHAIR: Do you agree, Commissioner Dawson?

2 COMMISSIONER DAWSON: I think you may want to put on  
3 there that the constituents are required on the disclosure  
4 form, OCD's disclosure form, but you might want to also  
5 reiterate on that, if the companies, some of them may feel  
6 like they want to do both, the OCD disclosure form and the  
7 FracFocus form, so just because some companies like to, you  
8 know, cover all bases when they are doing operations, so I  
9 think maybe you should give them the option that if they --  
10 they are required to do it on the OCD disclosure form, but if  
11 they feel like they would want to disclose that information  
12 on FracFocus also, they can do both, but that's to their  
13 expression, you know, you can't require them to do FracFocus,  
14 but you can require them to do the OCD form.

15 COMMISSIONER BALCH: I'm not sure that encouraging  
16 someone to do that is part of a well written rule.

17 MS. BADA: I would agree with that.

18 MADAM CHAIR: A company can file their information  
19 wherever they want to outside of OCD. We don't --

20 COMMISSIONER DAWSON: Correct. That's their option,  
21 but I think you should require them to do the OCD frac  
22 disclosure form on any fracture operation in the state.

23 MADAM CHAIR: So all we can really do is require for  
24 them to file an OCD approved or developed form filed with the  
25 OCD.

1 COMMISSIONER DAWSON: Uh-huh -- yes.

2 MADAM CHAIR: We are all in agreement with that?

3 COMMISSIONER BALCH: I can go with that.

4 MADAM CHAIR: Now we need to determine what we want  
5 to recommend, if we want to have a form that's determined  
6 today by the Commission, or if we want to -- if we tell the  
7 OCD what elements we would like to see on a form and not have  
8 the form itself as part of the order.

9 COMMISSIONER BALCH: If I may, I think it would  
10 probably be more prudent to list with the rule the data that  
11 we would like to have on the form. That means if there is a  
12 typo on the form, we don't have to have another commission  
13 hearing to fix it.

14 MADAM CHAIR: And we can call those minimum  
15 requirements on the form.

16 COMMISSIONER BALCH: Minimum requirements.

17 MADAM CHAIR: Which would not negate any future  
18 amendments of the form. If OCD decided to change its address  
19 or if we move again, we wouldn't need to come back to a  
20 commission hearing in order to change the form. So if we  
21 list those elements that we want to have on the form, and  
22 then the OCD can incorporate those into a form that is not a  
23 part of the rule, does that make sense?

24 COMMISSIONER DAWSON: Uh-huh.

25 COMMISSIONER BALCH: (Nodding.)

1           MADAM CHAIR: Okay. At a minimum we need to have  
2 where to send the form, the well API number, the well name,  
3 the well number, and its location including footages or unit  
4 letter, or lot, section, township, range and county. Are we  
5 okay so far?

6           COMMISSIONER BALCH: Yes.

7           MADAM CHAIR: Okay. Operator name, OGRID number,  
8 phone number. Now, that's be an unusual one because we  
9 normally have operator address rather than phone number.

10          COMMISSIONER BALCH: Isn't that part of the OGRID  
11 process, they are registered.

12          MADAM CHAIR: Except phone numbers are not always  
13 updated when offices move or mergers. Do you see a problem  
14 with having a phone number?

15          COMMISSIONER DAWSON: No, but I think that maybe you  
16 should put on there the operator name and address, because  
17 somebody that's doing these forms, processing these forms, if  
18 they need to write these companies to say that we received  
19 your fracture disclosure form, then that eliminates being  
20 that -- if you have the name and address, you can -- they can  
21 go right to the form and type the letter to them. They don't  
22 have to go through the ONGARD database and look up the OGRID  
23 number and get all of that information. They don't have to  
24 access two different databases, it's on the form. That and  
25 also the well location is on the form, so you can look up

1 footages. You can identify exactly on your plat or map  
2 exactly what well you are looking at.

3 MADAM CHAIR: Okay.

4 COMMISSIONER DAWSON: I think the operator name and  
5 address probably would be appropriate on this form, too.

6 COMMISSIONER BALCH: Name and address and Google  
7 will get you a phone number.

8 MADAM CHAIR: Assuming it's been updated. Obviously  
9 we will keep Number 6, operator name and address, OGRID  
10 number, and phone number. The fracture date, production  
11 type, true vertical depth?

12 COMMISSIONER DAWSON: One question on production  
13 type.

14 MADAM CHAIR: Yes.

15 COMMISSIONER DAWSON: People are going to ask, "What  
16 you are talking about production type?" Are you going to  
17 put -- is that for gas, gas oil, I mean --

18 MADAM CHAIR: Oil, gas, and --

19 COMMISSIONER DAWSON: You might want to put  
20 something to that -- that box that says the instruction sheet  
21 along with this on how to fill it out will be incorporated on  
22 the back or on the bottom of the sheet or somewhere so that  
23 that way they will know what to put into these boxes when  
24 they fill this thing out.

25 MADAM CHAIR: So an instruction sheet to accompany

1 this disclosure form to explain what's required for each of  
2 the numbered fields?

3 COMMISSIONER BALCH: Is that not already a standard  
4 practice for all the forms, they have associated  
5 instructions?

6 MADAM CHAIR: Not necessarily.

7 COMMISSIONER BALCH: So we can put something as  
8 simple as associated instructions, something on the back.

9 MADAM CHAIR: Right.

10 COMMISSIONER BALCH: All right.

11 COMMISSIONER DAWSON: Could you maybe put a -- you  
12 could have a link to a -- to a form that's filled -- been  
13 filled out by an operator as a sample form. That way they  
14 can click on the sample form, look at it and say, "I know  
15 what to put in Box 10 or Box 4," whatever box they are  
16 looking at.

17 MADAM CHAIR: Rather than that, why not provide a  
18 phone number for --

19 COMMISSIONER BALCH: I think it's a list of  
20 information that you want to have in the rule. You don't  
21 want to get as involved as where the instructions are or  
22 the -- I would think that should be at the discretion of the  
23 OCD when they create forms.

24 MADAM CHAIR: I would agree with you there. True  
25 vertical depth, Commissioner Dawson, did you have another

1 suggestion concerning the bottom hole location?

2 COMMISSIONER DAWSON: I thought that should be up in  
3 Box 4, the surface hole, the location, footage, and bottom  
4 hole location.

5 COMMISSIONER BALCH: Surface and the bottom,  
6 particularly with horizontal wells, that's going to be a very  
7 important piece of information.

8 MADAM CHAIR: So Box 4 will have surface location  
9 and bottom hole location?

10 COMMISSIONER DAWSON: Correct.

11 MADAM CHAIR: Total volume of fluid pumped, are we  
12 good with that?

13 COMMISSIONER BALCH: (Nodding.)

14 MADAM CHAIR: 13, the title, hydraulic fluid makeup,  
15 or hydraulic fluid composition?

16 COMMISSIONER BALCH: Before we talk about that,  
17 would it be appropriate to have information on the form  
18 regarding formation?

19 MADAM CHAIR: Which is included on the C-105 which  
20 is filed previously.

21 COMMISSIONER BALCH: Okay. They can find that  
22 information easily.

23 MADAM CHAIR: Yes, sir. So how would you like the  
24 title of Box 13?

25 COMMISSIONER BALCH: I think the name is fine, and I

1 have a short list already of things I would like to see.  
2 Trade name, supplier, purpose I think is important,  
3 ingredients, CAS number, concentration as additive by mass,  
4 and by HF percent by mass.

5 MADAM CHAIR: Okay. I would like to see that title  
6 change from hydraulic fluid makeup to hydraulic fluid  
7 composition and concentration.

8 COMMISSIONER DAWSON: That sounds good to me.

9 MADAM CHAIR: Now, Commissioner Balch, you are  
10 saying these columns that are labeled as they are?

11 COMMISSIONER BALCH: Except for add back in the  
12 purpose column. That provides more information to a  
13 layperson that's looking at it.

14 MADAM CHAIR: How do you feel about that,  
15 Commissioner Dawson?

16 COMMISSIONER DAWSON: That sounds good to me,  
17 purpose, yeah, I like that.

18 MADAM CHAIR: And certification by someone of  
19 authority. Include in the e-mail address. Commissioner  
20 Dawson, you brought up the question concerning the asterisks  
21 that explained concentration by additive by mass. Did you  
22 want to add any of that explanatory information that was on  
23 the FracFocus form?

24 COMMISSIONER DAWSON: That may clarify confusion if  
25 you put on there that the information is based on the maximum

1 potential for concentration and thus the total may be over  
2 100 percent.

3 MADAM CHAIR: How do you feel about that,  
4 Commissioner Balch?

5 COMMISSIONER BALCH: I'm not sure if being that  
6 specific in the rule is -- is the best approach. It may be  
7 better to leave that to the OCD who feel it's necessary  
8 information. If people complain about the form, they are not  
9 able --

10 MADAM CHAIR: They can add that at their discretion.

11 COMMISSIONER BALCH: I just have an opinion that the  
12 rule should be simple and clear.

13 MADAM CHAIR: Yes. And then we have the  
14 informational -- after the affirmation, it says, "OCD does  
15 not require reporting of the information," blah, blah, blah.

16 COMMISSIONER DAWSON: That sounds good to me.

17 MADAM CHAIR: That's part of the OCD sample draft  
18 form.

19 COMMISSIONER DAWSON: One thing when I look at this  
20 form, the one thing I question on it is to that's kind of  
21 unknown on the form itself is the pool and perforation depths  
22 where the fracture occurred. There is nowhere on that form  
23 that says there is any pool or perforation.

24 COMMISSIONER BALCH: That is also on the C-105.

25 COMMISSIONER DAWSON: Again, when somebody is

1 reviewing the form, they will look at this form and they will  
2 have all -- they used this much fluid, but what zone did they  
3 perforate or what zone did they frac?

4 COMMISSIONER BALCH: I see what you're saying, while  
5 they are in the frac stages.

6 COMMISSIONER DAWSON: Yeah. So they are going to  
7 have to -- you're going to have to go again to the well file  
8 to see where the well has been fracked and the depths of  
9 where it was fracked.

10 COMMISSIONER BALCH: That brings up a very good  
11 question, because if you have a multistage frac, that may  
12 make, in the case of the horizontal well -- they would all be  
13 in one formation in the case of a vertical well -- and you  
14 may be having a total volume of fluid, whereas 20 percent is  
15 in one formation and ten percent is going into another  
16 formation.

17 MADAM CHAIR: True.

18 COMMISSIONER BALCH: Some language on that may be  
19 important.

20 MADAM CHAIR: So do you think the form should show  
21 perforation intervals, as well as --

22 COMMISSIONER BALCH: As expected volume into that  
23 interval. You're never going to get an exact estimate, I  
24 would imagine. If you put in 20 percent in one and 80  
25 percent to the other one of the wells --

1           MADAM CHAIR: It would show where the perforations  
2 are, but it would not have any guesstimate as to what portion  
3 of the frac fluids went to which --

4           COMMISSIONER BALCH: Which portion of the -- how the  
5 perforation may have -- hydraulic fractures, so maybe what we  
6 really need is hydraulic fracturing interval and feet, and  
7 that could be in the case of measuring a true vertical and  
8 horizontal well versus vertical well. Fracture interval top,  
9 fracture interval bottom.

10          MADAM CHAIR: Now, how do you feel about that,  
11 Commissioner Dawson?

12          COMMISSIONER DAWSON: On the C-105 they can pick the  
13 perforation, all perforations, because some of these, you  
14 know, they might have multistage, and they have like six  
15 intervals or seven intervals they are fracking.

16          COMMISSIONER BALCH: Or stages.

17          COMMISSIONER DAWSON: I guess you could put --  
18 instead of putting the net fracs, you could put the gross  
19 fracs, like fracture interval top and bottom.

20          COMMISSIONER BALCH: I think beyond that, maybe  
21 frac --

22          COMMISSIONER DAWSON: Or fracture interval, gross  
23 perforations, you could put that on there.

24          COMMISSIONER BALCH: Gross perforation interval.

25          COMMISSIONER DAWSON: Gross perforation depth.

1 COMMISSIONER BALCH: Top and bottom.

2 COMMISSIONER DAWSON: Just put like 9,500 to 97  
3 hundred or something like that, or the pool code and fracture  
4 interval, gross fracture intervals, depth or --

5 MADAM CHAIR: So these are elements that we ask the  
6 OCD to incorporate within their reporting form.

7 COMMISSIONER DAWSON: Yes.

8 MADAM CHAIR: Okay. Are we threw with  
9 recommendations to the Division for what we would like to see  
10 included on a form as a minimum of what needs to be reported  
11 by companies?

12 COMMISSIONER BALCH: Would you mind just running  
13 through the full list real quick?

14 MADAM CHAIR: Okay. Let's do a complete summary,  
15 why don't we, of the rule and the form elements. So that the  
16 rule would read:

17 "19.15.16.18, Log, Completion, Hydraulic Fracturing  
18 and Workover Reports. Within 20 days after the completion of  
19 a well drilled for oil or gas, or the recompletion of a well  
20 into a different common source of supply, the operator shall  
21 file a completion report with the Division on Form C-105.  
22 For the purpose of 19.15.16.18 NMAC, a hole drilled or cored  
23 below fresh water or that penetrates oil or gas bearing  
24 formations or that an owner drills is presumed to be a well  
25 drilled for oil or gas.

1           "For a hydraulically fractured well, the operator  
2 shall file the Division's hydraulically fracture well  
3 disclosure form as an attachment to Form C-105 or C-103 or as  
4 an attachment on the appropriate Bureau of Land Management  
5 Form 3160-4 or 3160-5 for federal and tribal lands."

6           And I'm reading from the OCD modified rule which is  
7 slightly different from the NMOGA rule. Okay. We can go  
8 back to the sentence that ended, "Or that an owner drills is  
9 presumed to be a well drilled for oil or gas." That is  
10 current rule.

11           The modification, the amendment would read:

12           "The operator shall signify on form C-105, or  
13 alternatively on Form C-103 whether the well has been  
14 hydraulically fractured. For a hydraulically fractured well,  
15 the operator shall also complete and file the Division's  
16 Hydraulic Fracturing Disclosure Form within 45 days after  
17 completion of the well. The Division does not require the  
18 reporting of information beyond MSDS data as described in 29  
19 CFR 1910.1200. The Division does not require the reporting  
20 or disclosure of proprietary, trade secret, or confidential  
21 business information."

22           Is that what we have all agreed to today?

23           COMMISSIONER BALCH: I think with the exception of  
24 the data that we would like to have, the required data we  
25 would like to have collected, yes.

1 MADAM CHAIR: Commissioner Dawson?

2 COMMISSIONER DAWSON: I think it does, yes.

3 MADAM CHAIR: Now we should go over the elements,  
4 minimum elements of a disclosure form for the OCD.

5 COMMISSIONER BALCH: Which actually probably  
6 immediately following the statement, the first sentence of  
7 the modified second sentence of the modified part of the  
8 rule, the one that starts out with, "For a hydraulically  
9 fractured well" and ends with, "after the completion of the  
10 well," that is where we should insert the data required.

11 MADAM CHAIR: Okay. And those data requirements  
12 should be the well API number, well name, well number, the  
13 surface location and bottom location -- bottom hole location  
14 by footage from section, line, unit or lot, section,  
15 township, range, and county.

16 Is that correct?

17 COMMISSIONER BALCH: Yes.

18 COMMISSIONER DAWSON: Yes.

19 MADAM CHAIR: Then the operator name and address,  
20 OGRID number, phone number of the operator, fracture date,  
21 production type, which will be explained in instructions that  
22 will accompany the form, the true vertical depth, the pool  
23 code, and gross fractured interval, total volume of the fluid  
24 pumped, and then a table of the hydraulic fluid composition  
25 and concentration which would include columns for trade name,

1 supplier, ingredients, purpose, CAS number, which is the  
2 chemical abstract service number, maximum ingredient additive  
3 percent by mass, maximum ingredient concentration in  
4 hydraulic fluid -- hydraulic fracturing fluid percent by  
5 mass, an affirmation to be signed by a responsible party of  
6 the operator, the -- the statement of the NMOCD does not  
7 require the reporting of information beyond MSDS data as  
8 described in 29 CFR 1910.1200. NMOCD does not require the  
9 reporting or disclosure of proprietary, trade secret, or  
10 confidential business information. And if the Division  
11 determines to number this form, that would be appropriate  
12 also.

13 COMMISSIONER DAWSON: I think you just turned your  
14 form from a portrait to a landscape.

15 MADAM CHAIR: Probably so.

16 COMMISSIONER BALCH: Have we given you enough  
17 information to --

18 MS. BADA: Yes.

19 COMMISSIONER BALCH: -- to draft that rule?

20 MADAM CHAIR: We would like to have the parties  
21 submit findings of fact and conclusions to help the counsel,  
22 the Commission counsel to draft the rule as the Commission  
23 has directed today. And they should be submitted by --  
24 what's a reasonable date?

25 MADAM CHAIR: Our next -- when is our next -- in

1 time so that counsel can have it for signing by the  
2 January -- oh, yes -- Commission hearing. So it needs to be  
3 done by -- the January Commission hearing is January 23rd.  
4 So by January 10?

5 MS. BADA: Let's say, if somebody has a calendar.

6 MADAM CHAIR: When will we have the transcript?  
7 Two weeks?

8 COMMISSIONER BALCH: When is our hearing in January?

9 MADAM CHAIR: 23rd.

10 COMMISSIONER BALCH: 23rd.

11 MADAM CHAIR: That really gives them a happy merry  
12 Christmas and New Year's, doesn't it?

13 COMMISSIONER BALCH: They don't have to wait that  
14 long to submit it, do they?

15 MADAM CHAIR: No, they don't have to, but human  
16 nature.

17 MS. BADA: Actually, the 4th gives them couple of  
18 days after New Years, gives me a little more than two weeks.

19 COMMISSIONER BALCH: January 4.

20 MADAM CHAIR: Would you be able to --

21 MR. MEIKLEJOHN: I'm sorry?

22 MADAM CHAIR: Would you be able to submit your  
23 findings of fact and conclusions by January 4?

24 MR. MEIKLEJOHN: Yes, ma'am.

25 MADAM CHAIR: Do we need to discuss anything

1 further?

2 MS. BADA: No.

3 MADAM CHAIR: Is there anything else before the  
4 Commission?

5 (No response.)

6 MADAM CHAIR: Then do I hear a motion to adjourn?

7 COMMISSIONER DAWSON: I motion.

8 COMMISSIONER BALCH: I will second the motion.

9 MADAM CHAIR: All those in favor say aye.

10 ALL COMMISSIONERS: (Collectively) Aye.

11 MADAM CHAIR: All those opposed?

12 (No response.)

13 MADAM CHAIR: Thank you very much.

14 (Adjourned 3:53 p.m.)

15

16

17

18

19

20

21

22

23

24

25

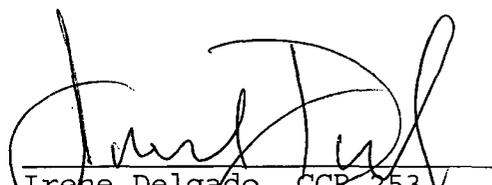
REPORTER'S CERTIFICATE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, IRENE DELGADO, New Mexico CCR 253, DO HEREBY CERTIFY THAT ON November 17, 2011, proceedings in the above-captioned case were taken before me and that I did report in stenographic shorthand the proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with any of the parties or attorneys in this case and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND this \_\_\_\_\_ day of NOVEMBER 2011.

  
Irene Delgado, CCR 253  
Expires: 12-31-2011