

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

IN THE MATTER OF THE HEARING CALLED)
BY THE OIL CONSERVATION COMMISSION)
FOR THE PURPOSE OF CONSIDERING:) CASE NO. 11,351
)
HEARING CALLED BY THE OIL)
CONSERVATION DIVISION TO AMEND)
RULE 104 OF ITS GENERAL RULES AND)
REGULATIONS PERTAINING TO UNORTHODOX)
WELL LOCATIONS AND NONSTANDARD UNITS)
_____)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

November 9th, 1995
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission on Thursday, November 9th, 1995, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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November 9th, 1995
Commission Hearing
CASE NO. 11,351

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BILL HAWKINS Senior Petroleum Engineering Associate Amoco Production Company	7
ALAN ALEXANDER Senior Land Advisor Meridian Oil, Inc.	22
RICHARD E. FOPPIANO Regulatory Affairs Advisor OXY, USA, Incorporated	40
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A P P E A R A N C E S

FOR THE COMMISSION:

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FOR THE OIL CONSERVATION DIVISION:

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ALSO PRESENT:

BILL HAWKINS
Senior Petroleum Engineering Associate
Amoco Production Company

RICHARD E. FOPPIANO
Regulatory Affairs Advisor
OXY, USA, Incorporated

ALAN ALEXANDER
Senior Land Advisor
Meridian Oil, Inc.

* * *

1 WHEREUPON, the following proceedings were had at
2 9:12 a.m.:

3 CHAIRMAN LEMAY: We will call Case 11,351, which
4 is called by the Oil Conservation Division to amend Rule
5 104 of its General Rules and Regulations pertaining to
6 unorthodox locations and nonstandard units.

7 So now I'll call for appearances in Case 11,351.

8 MR. HAWKINS: Bill Hawkins with Amoco.

9 CHAIRMAN LEMAY: Any witnesses, Mr. Hawkins?

10 MR. HAWKINS: Just myself. I'd like to make a
11 recommendation for the Rule.

12 CHAIRMAN LEMAY: Okay. Do you want to make a
13 statement or do you want to be sworn in?

14 MR. HAWKINS: Well, I'm not represented by
15 counsel here today, so I can go whichever way the
16 Commission desires.

17 CHAIRMAN LEMAY: Okay, we're kind of informal.
18 Rick?

19 MR. FOPPIANO: Rick Foppiano, OXY USA,
20 Incorporated, and I'm in a similar position with Mr.
21 Hawkins. I want to make some comments, suggestions --

22 CHAIRMAN LEMAY: Okay, no witness to be sworn in,
23 we'll just take your comment and --

24 MR. FOPPIANO: Yes.

25 CHAIRMAN LEMAY: Okay.

1 MR. ALEXANDER: Yes, I'm Alan Alexander with
2 Meridian Oil. And Tom's not here today, so he and I would
3 simply like to make a statement. I do have a handout for
4 the Commission.

5 CHAIRMAN LEMAY: Okay. Since the Division called
6 the case, did you want to make an appearance, Mr. Carroll,
7 or be a matter of record?

8 MR. CARROLL: Sure, Rand Carroll for the Oil
9 Conservation Division.

10 CHAIRMAN LEMAY: Thank you. Anyone else?

11 I did have a statement from Bass Enterprises, I
12 think, that was part of the record, and I can read it in or
13 go from there.

14 Actually, then, we really don't have any
15 witnesses, do we, today?

16 Rick?

17 MR. FOPPIANO: Chairman LeMay, I did want to
18 offer some suggestions and actually testify and answer any
19 questions that the Division may have.

20 CHAIRMAN LEMAY: Okay.

21 MR. FOPPIANO: I don't know if that's the kind of
22 testimony you were thinking about or -- That might be a
23 little more than a statement. But I had some suggested
24 changes, and I wanted to kind of explain the rationale
25 behind it.

1 CHAIRMAN LEMAY: We want to hear them, and I
2 think we can do that. Rulemaking is rather informal.

3 Is that comfortable with you all?

4 COMMISSIONER WEISS: Yes, let them sit at the
5 table. They're here from the table, rather than the
6 witness stand. That's fine with me.

7 CHAIRMAN LEMAY: Why don't you all just come up
8 and sit around the table, those of you that are going to be
9 involved in the discussions?

10 There's only three of you left.

11 MR. FOPPIANO: That weeded them out.

12 CHAIRMAN LEMAY: That will make a cozy round
13 table on this.

14 Well, let the record show that Bill Hawkins, Rick
15 Foppiano, Alan Alexander and Rand Carroll -- no, okay, we
16 won't -- you and Vic, I guess will still be the audience --
17 are here representing their individual companies, and they
18 will be testifying as to the draft document that's been
19 submitted to us concerning unorthodox locations with
20 administrative approval and unorthodox spacing units.

21 What I plan to do is, I think we'll just take
22 them in order. We'll start off -- because you were first,
23 Bill, give your presentation, and then any questions we may
24 have as Commissioners. Hopefully you'll entertain those
25 questions.

1 MR. HAWKINS: I have a handout here that will
2 probably help go through what I'm going to recommend to
3 you.

4 CHAIRMAN LEMAY: Okay.

5 MR. HAWKINS: Again, I'm Bill Hawkins with
6 Amoco --

7 CHAIRMAN LEMAY: Before you start, do my fellow
8 Commissioners have copies of the draft number four?

9 COMMISSIONER BAILEY: Yes.

10 CHAIRMAN LEMAY: Okay, good. You've got one,
11 Bill?

12 (Off the record)

13 CHAIRMAN LEMAY: We'll just take a short break
14 and get some copies.

15 Do you all have copies out there, working from?
16 We're working from draft --

17 MR. FOPPIANO: It's the 9-25-95 draft.

18 CHAIRMAN LEMAY: 9-25-95 is not here.

19 (Off the record)

20 Well, you can start. She's going to bring in the
21 draft copies, so just don't refer to the 9-25 markup till
22 we get our copies and we'll go from there.

23 MR. HAWKINS: Okay. Well, just to kind of set
24 the stage for this, I participated with the NMOGA task
25 force in drawing up the rules that were recommended and

1 have been reviewed before you a couple of times.

2 After that last hearing, NMOGA sent out the
3 survey and offered some other suggestions there, and
4 actually one of the things that came up on that survey was
5 something we had not previously considered, and that was
6 the -- using the language of Rule 1207 as a notice
7 provision for administrative hearing.

8 1207 is the rule that establishes the
9 requirements for notice for a hearing for location
10 exceptions. And we're recommending that we insert language
11 -- and I've provided that language to you at the bottom of
12 the page -- from Rule 1207, which would describe the notice
13 requirement for cases set for NMOCD hearing. We believe
14 it's appropriate to have the same notice requirement for
15 both the administrative-approval process and for the
16 hearing process.

17 In concept, the 1207 is very similar to what the
18 NMOGA task force was proposing, that is, that we notify the
19 parties that the well is moving towards and eliminate the
20 notice for parties that the well is moving away from. It
21 is a little bit simpler in concept, in my opinion, in that
22 it doesn't really require any construction of a circle to
23 see which spacing units get cut or might not get cut.

24 On the other hand, you know, it's pretty short
25 and sweet and leaves a little bit of ambiguity, but I think

1 that it's been working for the NMOCD for hearing practice,
2 and certainly would be suitable to be moved into the
3 administrative process.

4 And that would be a change in both part F (4) and
5 F (5), and I can read kind of the key parts of that to you
6 real quickly.

7
8 Applications for administrative approval of
9 unorthodox locations pursuant to F (2) shall be
10 accompanied by a plat showing the subject spacing
11 unit, its proposed unorthodox well location, the
12 diagonal and adjoining spacing units including wells
13 and operators or owners of undrilled leases which
14 adjoin the subject spacing unit on one or more of the
15 two sides or the single corner closest to the proposed
16 well.

17
18 Again, the idea there is that we're going to
19 notify the parties that the well is moving towards.

20 In F (5) again, similar language comes right out
21 of the 1207, that

22
23 The applicant shall submit a statement attesting
24 that the applicant, on or before the same date the
25 application was submitted to the Division, has sent

1 notification by submitting a copy of the application
2 by certified or registered mail-return receipt to any
3 operator of a spacing unit or owner of an undrilled
4 lease which adjoins the applicant's spacing unit on
5 one or more of the two sides or the single corner
6 closest to the proposed well.

7
8 We believe that it's important to try to keep our
9 rules as simple as we can so that they're understandable.
10 Admittedly, there is a little bit of ambiguity in how you
11 read this, but I believe that having the same rule for
12 hearings as we have for the administrative process would
13 certainly make it easier for most of us, to have just one
14 rule to deal with.

15 If anything, maybe in the future 1207 could be
16 looked at to see if we can remove any of the ambiguity, but
17 for the time being I'm recommending that you insert that
18 same language.

19 The other point I'd like to make to you is that
20 we're asking that the paragraph or section F (3) that was
21 recommended by NMOGA, which established a minimum setback
22 of 660 feet for the wells in southeast be deleted.

23 We don't believe that any application for
24 unorthodox location should have to be set automatically for
25 hearing. We think that cases that would be set for hearing

1 should be set for hearing on good cause, determined by the
2 Director, or based on objections from the parties that are
3 receiving notice. And in the absence of that, I think that
4 the administrative process clearly looks at all the same
5 evidence, the same facts, and can grant an approval in a
6 fair manner.

7 So we're asking that that F (3) be deleted, and a
8 minor change to the part F (2) that said "Subject to the
9 limitations of Section F (3)," that would also be deleted,
10 just to clean up the language.

11 Other than that, we are recommending agreement
12 with all of the other NMOGA task force recommendations.

13 CHAIRMAN LEMAY: You want to eliminate F (3), was
14 it, or what was the --

15 MR. HAWKINS: Yes, F (3) is the rule that says
16 for an unorthodox gas well in southeast, you need a minimum
17 setback that would automatically cause an application to go
18 to hearing for unorthodox location.

19 And again, just in principle, I think, we believe
20 that there ought not to be a rule that says you have to
21 automatically go to hearing unless there's good cause for
22 that.

23 CHAIRMAN LEMAY: And then -- Was it F (4) you
24 wanted to be adjusted to the F (3) deletion? Is that --

25 MR. HAWKINS: Well, no. F (2) has a --

1 CHAIRMAN LEMAY: F (2).

2 MR. HAWKINS: -- lead-in phrase, opening phrase,
3 that says "Subject to the limitations of F (3)" --

4 CHAIRMAN LEMAY: Okay, got it.

5 MR. HAWKINS: -- but there is no F (3); that
6 would be deleted.

7 CHAIRMAN LEMAY: Okay.

8 MR. HAWKINS: And of course F (4) and F (5),
9 we're trying to change the concept from that circle method
10 to establish which spacing units get noticed to just read
11 very similar to the language in 1207.

12 CHAIRMAN LEMAY: Okay. Commissioner Weiss, do
13 you have any questions of Bill?

14 COMMISSIONER WEISS: No, no, I don't. Thank you.

15 CHAIRMAN LEMAY: Commissioner Bailey?

16 COMMISSIONER BAILEY: (Shakes head)

17 CHAIRMAN LEMAY: Just to kind of summarize what I
18 think is Amoco's position, you're endorsing the document
19 here provided by NMOGA, with the exception that you wanted
20 the provisions relating to what amounts to a default
21 setback mandatory Commission hearing eliminated?

22 MR. HAWKINS: That's correct.

23 CHAIRMAN LEMAY: But that's the only part you
24 really object to.

25 And the adoption of the rule for hearing, the

1 notices, I guess, Rule 1207 -- Could I just ask you what
2 you're -- I guess is the ambiguity I'm picking up on, what
3 is meant -- what your interpretation of Rule 1207 is meant
4 when they're talking about on one or more of the two sides.

5 MR. HAWKINS: Well --

6 CHAIRMAN LEMAY: I'm trying to visualize -- I can
7 visualize a corner --

8 MR. HAWKINS: -- normally --

9 CHAIRMAN LEMAY: -- but I can't visualize the two
10 sides that rule refers to.

11 MR. HAWKINS: Normally, the two sides are the
12 ones that are on either side of that corner, like maybe the
13 north and east or east and south. If you're moving your
14 well, you know, towards the northeast, then you would
15 notify the parties on the north and the east and the
16 corner.

17 CHAIRMAN LEMAY: Well, let's just visualize, for
18 simplicity's sake, a standup 320, and we're going 660 from
19 the south and west of that standup 320. The two sides
20 would be the western boundary of that, I assume, and the
21 southern boundary.

22 But what would happen if you were actually equal-
23 distant from those? Say you were 660 from the south but
24 equal-distant from the two vertical boundaries. Would that
25 trigger -- that's only -- There aren't two sides to that.

1 MR. HAWKINS: Yeah, I think you have to look at
2 it in terms of which party are you crowding? And if you're
3 clearly not closer than a legal location to a -- one of the
4 sides, then I don't think that that -- there's any notice
5 necessary for that.

6 CHAIRMAN LEMAY: So the reference to two sides
7 doesn't always mean there will be two sides; there could be
8 one side?

9 MR. HAWKINS: That's correct. It could be just
10 one side --

11 CHAIRMAN LEMAY: Yeah.

12 MR. HAWKINS: -- if you're right in the middle of
13 the one side and moving too close to its neighbor --

14 CHAIRMAN LEMAY: Or if you weren't crowding one
15 side, would there still be a reference to that second side
16 being notified?

17 MR. HAWKINS: If you're not crowding someone, I
18 don't think that you need to notify them.

19 CHAIRMAN LEMAY: According to your interpretation
20 of this rule, is what I'm --

21 MR. HAWKINS: And that's why I say there's a
22 little bit of ambiguity in how do you interpret this
23 language? I think the intent here is to notify the parties
24 that you're moving toward and eliminate notice from the
25 parties you're moving away from.

1 It's been workable for hearings in the past, and
2 that's why I think it would probably work well for the
3 administrative process as well.

4 But admittedly, there -- you have to use a little
5 judgment in how you read that language.

6 CHAIRMAN LEMAY: Getting rid of the radius, but
7 still keeping the concept of notifying offsetting proration
8 units or mineral interests that you're crowding?

9 MR. HAWKINS: That's right.

10 CHAIRMAN LEMAY: Does anyone else have a
11 question?

12 COMMISSIONER WEISS: I've got a comment.

13 CHAIRMAN LEMAY: Yeah.

14 COMMISSIONER WEISS: Why not just use the
15 language you just used?

16 MR. HAWKINS: I don't know, you mean the --
17 rewrite it the way I just said that?

18 COMMISSIONER WEISS: Yeah, that's enough, that's
19 clear to me.

20 MR. HAWKINS: Well, it's clear, and I think the
21 idea there is that it would be simple in our mind to have a
22 circle rule that would say, we're going to notify the same
23 people whether you're going to the hearing process or
24 you're going to the administrative process, because those
25 are the parties that are affected.

1 And so for that reason, we chose to use the
2 language as close as possible out of 1207 rather than
3 trying to change it a little bit.

4 COMMISSIONER WEISS: Yeah.

5 MR. HAWKINS: And that's the other reason I made
6 the comment that maybe 1207 could be worked on a little,
7 but it hasn't come up for -- This is the first time we've
8 talked about that at all. It seems to have been working in
9 the past, and I would presume that it would continue to be
10 workable.

11 CHAIRMAN LEMAY: Thanks, Bill.

12 Any questions, again, of Mr. Hawkins?

13 MR. CARROLL: Mr. Chairman --

14 CHAIRMAN LEMAY: Yes, Rand?

15 MR. CARROLL: Yeah, Bill, regarding the ambiguity
16 in Rule 1207 A (5) -- and this came up at the last hearing,
17 the problem of the remote interest owners, we don't know
18 whether the proration unit in the offsetting tract is going
19 to be a standup or a laydown.

20 MR. HAWKINS: Right.

21 MR. CARROLL: And how are you addressing that
22 problem?

23 MR. HAWKINS: For an undrilled lease? See, if
24 it's drilled, we'll know which way the spacing unit runs.

25 MR. CARROLL: Right, right.

1 MR. HAWKINS: Okay? So it only then falls back
2 to if it's an undrilled lease or an undrilled --

3 MR. CARROLL: Or an unleased tract.

4 MR. HAWKINS: -- unit. Yeah. The way this is
5 worded is that you would notify the owners of the undrilled
6 leases that adjoin the subject spacing unit.

7 And so my interpretation -- and again, it's just
8 my interpretation -- is that you would identify the leases
9 that actually touch along the boundary of your spacing unit
10 that you're moving toward, and notify the owners of those.

11 MR. CARROLL: Okay. Let me throw out a
12 hypothetical, and I'll take it to the extreme. What if
13 that corner, there's just a five-acre lease there, so you
14 just notify the owner of that five-acre lease, and the rest
15 of that 160 acres you wouldn't have to notify; is that
16 correct?

17 MR. HAWKINS: I think that's probably correct.
18 I'm not an attorney, but the legal argument that I've heard
19 for this is that until there has been some type of an
20 agreement, unitization agreement or other joinder document
21 to join all of those interests together, then really the
22 party that is contiguous to your spacing unit is the only
23 party that's subject to potential drainage.

24 So for an undeveloped area, I think there's some
25 room to say that you don't have to notify all of the

1 parties who own mineral interests in that area.

2 Once it's been developed and the interest joined
3 under a communitization or a declaration of unitization or
4 something of that nature, declaration of pooling, then I
5 think those parties all have the same right to -- you know,
6 to drainage claim.

7 CHAIRMAN LEMAY: As a practical matter, wouldn't
8 you really be referring to a minimum 40 acres unless you're
9 in a very complex fee area on the Rio Grande or something?
10 Because most of the land ownership that I've seen in New
11 Mexico is -- a lease is going to occupy -- undivided under,
12 maybe, 40, But...

13 MR. HAWKINS: I think that's probably -- for the
14 most part, you're right. I think unless you're moving into
15 a community of some sort where everything has been
16 subdivided substantially, then you're probably going to
17 pick up a relatively large tract of land.

18 MR. CARROLL: That's all I have.

19 CHAIRMAN LEMAY: Okay. Any other questions?

20 COMMISSIONER BAILEY: I have one.

21 CHAIRMAN LEMAY: Commissioner Bailey?

22 COMMISSIONER BAILEY: Do you foresee a language
23 problem with this, quoting, "owners of undrilled leases",
24 when the Land Office has not yet issued a lease for
25 property?

1 MR. HAWKINS: Well, again, I don't -- I mean, I
2 guess it's the way I would interpret that -- I don't see a
3 big problem in it. But I would admit there is a little
4 ambiguity in how you interpret that. For my impression, I
5 think it says that you notify the mineral interests of the
6 undrilled tracts of land, whether they're leased or
7 unleased.

8 COMMISSIONER BAILEY: Maybe we should have some
9 clarification on that so that there is no confusion
10 concerning Land Office lease as opposed to --

11 COMMISSIONER WEISS: But again, I think that
12 would require changing the other rule, where this came
13 from; is that correct?

14 MR. HAWKINS: Well, I mean, our recommendation is
15 to make the two rules be the same, the language be as close
16 to the same as you can.

17 CHAIRMAN LEMAY: You mean with an additional
18 recommendation that we change Rule 1207 too, and
19 therefore --

20 (Laughter)

21 MR. HAWKINS: Consider it, I guess. That's
22 probably not a bad recommendation, to take a look at that.

23 CHAIRMAN LEMAY: Yeah, two-phase deal.

24 MR. ALEXANDER: Mr. Chairman, my testimony runs
25 right along with Bill's, and I do have some exhibits that

1 we could probably talk from that would make it a little
2 easier to see, if you want me to go ahead and hand those
3 out and --

4 CHAIRMAN LEMAY: Yeah, let's -- Right, I think
5 maybe if Rick doesn't mind, we can follow Alan --

6 MR. FOPPIANO: No, I was going to suggest that.

7 CHAIRMAN LEMAY: -- because his might be -- And
8 Rand, did you have a question?

9 MR. CARROLL: Yes, Mr. Chairman. I have a
10 suggestion that if there's ambiguity in Rule 1207, without
11 amending Rule 1207 at this time, let's put the language we
12 want in 1207 and 104, and then worry about amending Rule
13 1207 later.

14 I mean, if we think 1207 means this, then let's
15 make it clear in 104 so at least we get it in 104, rather
16 than just tracking the exact language of 1207.

17 CHAIRMAN LEMAY: My concern is that we indirectly
18 are maybe attacking 1207, the idea -- 1207 needs some work.
19 At least by utilizing whatever 1207 has, we're using the
20 same rule for industry, even though it's flawed, and then
21 we address both of them simultaneously. It's the idea of
22 having one rule for both cases. I think that was --

23 MR. HAWKINS: That's our concept --

24 CHAIRMAN LEMAY: That's the main concept, yeah.

25 MR. HAWKINS: But, you know, I would be the first

1 to admit that I think there's maybe some work that could be
2 done there to help clarify them.

3 I know in tackling this on the task force, it's
4 real difficult to write a very simple rule that covers
5 every aspect of what you want it to cover, And then once
6 you start trying to tackle every little nuance, you've got
7 a much wordier rule that is confusing sometimes.

8 So maybe there's a balance of how much you try to
9 clarify every little potential aspect of the rule, versus
10 keeping the rule as simple to understand as possible.

11 And I think that's probably where we are right
12 now, but -- on 1207, is that we've got a rule that's fairly
13 easy to read and it conveys the concept, but it does
14 require a little bit of interpretation.

15 CHAIRMAN LEMAY: Commissioner Weiss?

16 COMMISSIONER WEISS: One question. Does anyone
17 know how long Rule 1207 has been in use, been in force?

18 CHAIRMAN LEMAY: Stamets' rule, wasn't it?

19 MR. ALEXANDER: Yes, sir.

20 COMMISSIONER WEISS: So it's got a track record
21 of five or ten years? Is that right?

22 CHAIRMAN LEMAY: Ten years plus.

23 COMMISSIONER WEISS: Have there been a lot of
24 lawsuits over it?

25 MR. HAWKINS: (Shakes head)

1 COMMISSIONER WEISS: Looks pretty good to me.

2 MR. ALEXANDER: There's been one or two.

3 CHAIRMAN LEMAY: Don't give these lawyers --
4 Ambiguity.

5 (Laughter)

6 CHAIRMAN LEMAY: Okay, thank you, Bill.

7 At this time, Alan, if you want to be the next
8 witness? Because you have some exhibits -- not witness but
9 at least presenter? Please begin.

10 MR. ALEXANDER: My presentation really follows
11 right along with Bill's, and let me give you -- and I just
12 have a couple more remarks that I think Bill has really
13 addressed.

14 Now, some of these exhibits are the same ones
15 that the task force originally gave to you.

16 MR. FOPPIANO: Do you have an extra set?

17 MR. ALEXANDER: I sure do. These are not
18 colored.

19 MR. FOPPIANO: Oh, that's fine.

20 MR. ALEXANDER: As Bill had indicated, I too --
21 and this is -- My comments are strictly from Meridian Oil.
22 I do adopt the rule as proposed by NMOGA that has been
23 presented to you, and we're just working on some
24 clarifications here, I believe.

25 The task force did deal with, struggle with, Rule

1 1207 as -- well, not particularly 1207, but we struggled
2 with a notice procedure for 104, and that's what brought
3 some of this to light.

4 Let me just briefly describe the exhibit here a
5 little bit for you.

6 The first page is simply a diagram of our current
7 rule for notification, which goes all the way around the
8 proposed spacing unit that you see in blue there in the
9 center. And you can see that at least three of these on my
10 schematic here are developed units, so basically we have no
11 problem with identifying those. We know what those are. I
12 mean, the spacing units are filed of record, everybody's
13 aware of them.

14 We get into a little bit of difficulty on the
15 black cross-hatched area, because I have depicted those as
16 either leased or unleased mineral owners where there is no
17 existing spacing unit, and so we've always struggled a
18 little bit with which of those people out of that group we
19 should notify.

20 And the same thing happens to you in 1207. You
21 have to make a judgment call there about who you're going
22 to notify.

23 The second page there was my attempt in working
24 with the Committee to come up with a mechanism that was
25 more definitive for notifying people, and it's the so-

1 called circle-radius method that's been discussed in the
2 past and that Bill alluded to here. And I've represented
3 to you only as one method that we might use to make 1207
4 ultimately more definitive, if we want to use 1207.

5 And I have broken these -- we're dealing with
6 four sections here, 1, 2, 11 and 12, and I broke those
7 down, just for purposes of discussion, into 40-acre blocks,
8 some of them into 40-acre blocks, so that we could discuss
9 the unleased-owner issue.

10 And you'll see on page 2 in that sketch that the
11 crosshatched blue and the dashed purple lines would be
12 undeveloped owners in there. And I even went ahead and
13 broke down the northwest quarter of the northwest quarter
14 of 12 into two tracts, making them 20-acre tracts, just for
15 purposes of discussion.

16 The current rule, you know, 1207 says that we
17 would notify the unleased -- the undeveloped -- the
18 undrilled leases which adjoin. And of course, as
19 Commissioner Bailey pointed out, that really comes in two
20 forms. One would be undeveloped leases, and then unleased
21 mineral owners. And that's really the population of people
22 that we need to be dealing with. And so, you know, I think
23 ultimately the rule that we adopt should address both of
24 those issues clearly.

25 And if we do that, then I think Bill's

1 interpretation -- and he can correct me if I misunderstood
2 him, but -- and it is the interpretation of other people
3 that I've talked to, that if we do it under 1207, we might
4 want to come all the way down the proposed spacing unit on
5 the east side, which would be the west side of 12. And if
6 all of those parties in this example had been released, we
7 might want to notify all of the parties, because they're
8 contiguous with the proposed spacing unit.

9 Now, there is some ambiguity there, and some
10 people might say, well, no, you only have to notify the
11 people that you're encroaching upon, which would clearly
12 limit us, I think, up to at least the northwest quarter of
13 that section, and probably wouldn't come down into the
14 southeast quarter of 12. So you can see here where you can
15 get some ambiguity in the current Rule 1207 about exactly
16 who you're going to notify.

17 Now, the circle method was just an attempt to put
18 an exact definition on who we're going to notify. I'm not
19 saying maybe it's the best solution in the world, but it's
20 exact. I mean, we know when we draw that circle, if it
21 cuts those people, that's the ones we're going to notify.
22 Now, maybe we're ought to notify more than that. I'm not
23 debating that issue.

24 But I think it's also true that under most of the
25 cases that I've been involved with and the legal aspects of

1 it -- again, though, I'm not a lawyer -- is that -- and I
2 think Bill correctly stated it -- is that if you have an
3 undeveloped lease or if you have an unleased mineral owner,
4 those people do not come into relationship one with the
5 other -- I'm talking about unleased people to unleased
6 people or undeveloped leases to undeveloped leases -- until
7 they do probably two things.

8 One is to file a designation of pool unit, which
9 contractually binds the lessors that are under those leases
10 into that pooled unit, and the lessees have the power to do
11 that under an oil and gas lease in most instances. And of
12 course, the state approves those pooled units for the state
13 purposes.

14 And the working interest owners come into
15 relationship only at the time they enter into an operating
16 agreement. And then when they come into that relationship,
17 we generally view the operator as the responsible party for
18 notification. That's what we're doing in 1207 when we
19 notify developed tracts.

20 So until those two things occur, or one of those
21 two things occurs at a minimum, the unleased mineral owner
22 or the undeveloped lessees are only entitled to notice, in
23 my opinion -- they only have a standing in a case if
24 they've actually been encroached upon and would be drained
25 by the offending well. And you don't need to go out beyond

1 those people in your notice requirements. That's my
2 position on that matter. So I...

3 And the other, the remaining pages of this
4 exhibit, simply show a different -- they go down to show
5 like a southeast notification procedure where we're dealing
6 with 1650 feet. The one that I showed you on page 2 is a
7 setback of 790-foot-radius circle. And so page 3 is 1650-
8 feet-radius circle.

9 It just shows you what happens when you apply
10 that terminology to the various pool rules we have out
11 there. And I don't think it's a difficult concept. I
12 mean, you have to know what your setbacks are in the pool
13 you're dealing with before you know if you've encroached on
14 anybody.

15 So that's a given right up front, that you have
16 to know that information. And so to simply draw a circle
17 around the offending well that matches that is no big deal,
18 in my mind.

19 So I think, to summarize my position on it --
20 Well, first, before I do that, let me point out a couple of
21 areas in 1207 here that I think ultimately need some work
22 on.

23 On page N-3 of the rules, paragraph (5) (a) --
24 It's the third sentence. Well, let's back up to the end of
25 the second sentence.

1 It says, "actual notice shall be given to any
2 operator of a spacing unit..."

3 CHAIRMAN LEMAY: Don't get ahead of us. Where
4 are we now?

5 MR. ALEXANDER: Okay, we're on page N-3 of the
6 Rules, paragraph (5).

7 CHAIRMAN LEMAY: Oh, that's in your rule book,
8 Bill.

9 COMMISSIONER WEISS: Yeah.

10 MR. ALEXANDER: Of the rule book.

11 CHAIRMAN LEMAY: 1207.

12 MR. ALEXANDER: 1207. I'm sorry if I didn't make
13 that clear.

14 CHAIRMAN LEMAY: Okay.

15 MR. ALEXANDER: And we're at paragraph (5),
16 subparagraph (a), and let's start there at the end of the
17 second sentence there. It says -- There's a comma there,
18 and it says, "actual notice shall be given to any operator
19 of a spacing unit..."

20 CHAIRMAN LEMAY: Now, are we on the Amoco change,
21 or are we --

22 MR. ALEXANDER: No, no, we're back in the rule
23 book.

24 CHAIRMAN LEMAY: In the rule book itself.

25 MR. ALEXANDER: In the rule book itself.

1 CHAIRMAN LEMAY: Okay, I understand. And repeat
2 again where we're at.

3 MR. ALEXANDER: Okay, we're on page N-3,
4 paragraph (5) --

5 CHAIRMAN LEMAY: M-3?

6 MR. ALEXANDER: N --

7 CHAIRMAN LEMAY: N?

8 MR. ALEXANDER: -- as in Nancy. It's under Rule
9 1207.

10 CHAIRMAN LEMAY: Okay. (5) (a)?

11 MR. ALEXANDER: Yes, sir.

12 CHAIRMAN LEMAY: "In cases of applications for
13 approval of unorthodox well locations"?

14 MR. ALEXANDER: Yes, sir, that's where I am.

15 CHAIRMAN LEMAY: Okay, thanks.

16 MR. ALEXANDER: Then let's go down into paragraph
17 (5) (a), and then start there at the end of that second
18 sentence that says, "actual notice..." Are you with me
19 there?

20 CHAIRMAN LEMAY: I am, yes.

21 MR. ALEXANDER: It says, "actual notice shall be
22 given to any operator of a spacing unit..."

23 Actually, that is fairly ambiguous there. It
24 doesn't say it's the spacing unit for the type of
25 application that's being proposed. It doesn't tell you

1 what kind of a spacing unit it is, quite frankly.

2 And we've always kind of struggled with that. Is
3 that the space -- If we're proposing a Mesaverde well, is
4 that for an offsetting Mesaverde well or is that an
5 offsetting Dakota well spacing unit? We've really never
6 adequately defined that. And it's left some ambiguity in
7 the Rules that we could possibly be attacked on later, if
8 somebody were to attack one of those orders.

9 So if we're going to address 1207, I would
10 suggest that we make that more specific to the same
11 drilling unit that the application is proposing, a like
12 unit.

13 Then we go on, it says, "or owner of an undrilled
14 lease which adjoins the applicant's spacing unit on one or
15 more of the two sides..."

16 Well, that part of it is just what we've been
17 talking about, the ambiguity of which one of those unleased
18 -- or undrilled leases -- or in fact whether we should also
19 notify unleased mineral owners.

20 So we're a little ambiguous in 1207 there too.
21 And if we're going to work on 1207 my suggestion would be
22 to tighten up that definition so that everybody is more
23 certain of -- that we're notifying the two categories of
24 people, and which one of those we're going to notify.

25 Now, instead of using the circle method that I

1 gave you, we could simply say that we would notify all of
2 the unleased or undeveloped leases that lie along and
3 contiguous to the spacing unit that's being proposed, which
4 I think is what Bill's practice is, in fact, to do that.

5 Or we might even say that we notify all of those
6 parties that are in a like spacing unit offsetting the
7 proposed well.

8 So there's two or three methods we could
9 ultimately use to tighten that rule up so that we know
10 exactly who we're going to notify. I've just given you one
11 with the circle method.

12 CHAIRMAN LEMAY: Okay. Commissioner Weiss?
13 Questions?

14 COMMISSIONER WEISS: Yeah. While circles may
15 look good, I have problems with thinking and understanding
16 that they truly represent a drainage area. But I can
17 accept that -- these statutes that say that 320 acres, or
18 whatever it is, is going to be drained. You know, whether
19 it is or isn't, it's the rule, so you play by that. So I
20 have problems with the circles in that manner.

21 MR. ALEXANDER: Well, let me explain where the
22 circle concept comes from a little bit.

23 COMMISSIONER WEISS: Okay.

24 MR. ALEXANDER: We were trying to stick with
25 current rules and regulations.

1 And in fact, if -- I mean, for this first page,
2 if you'll look at -- well, no, the second page, if you'll
3 look at the circle that is used for a 790-foot setback, we
4 have defined in the rules in the State of New Mexico for
5 the Mesaverde Pool, that in fact is the proper distance of
6 drainage for the Mesaverde pool, because we set the outer
7 setbacks at 790.

8 COMMISSIONER WEISS: Okay.

9 MR. ALEXANDER: And so we've defined that,
10 actually, by the rules. And that's the basis of using the
11 setbacks to draw your circles, to determine who you're
12 actually encroaching upon.

13 COMMISSIONER WEISS: Okay, so that's a rule
14 today?

15 MR. ALEXANDER: That's a rule today.

16 COMMISSIONER WEISS: Sure.

17 MR. ALEXANDER: And each of those pools have
18 these very same setback rules, and if they're not special
19 pools then they have the statewide rules that define that.

20 So we were trying to use something that was
21 logical, something that's been in use for many years for
22 the circle method.

23 Now, I grant you that it's somewhat arbitrary to
24 say that you have drainage in perfect-circle radiuses. But
25 not knowing what the drainage is in any particular

1 situation without an exhaustive reservoir study, I think
2 it's very appropriate to assume something like that.

3 COMMISSIONER WEISS: But why don't -- If we could
4 go on that basis, wouldn't we want to drill a lot more
5 wells on that 320 acres? Would you want one every 790 feet
6 in order to drain the 790 acres --

7 MR. ALEXANDER: Well, in fact, in the case --

8 COMMISSIONER WEISS: -- the 320 acres?

9 MR. ALEXANDER: In fact, in the case of the
10 Mesaverde pools that was recognized and they drilled an
11 infill well, so there's now two wells on 320. So those
12 things do happen.

13 We go back and look at the pool rules
14 occasionally and say, were we correct? Was that the
15 correct amount of acreage that we dedicate to a well, or
16 are we leaving reserves in the ground?

17 In the case of several of the pools we said, no,
18 that wasn't correct, we need to drill additional wells in
19 the spacing unit, and we infill those units to take care of
20 that.

21 COMMISSIONER WEISS: Right, but if we follow
22 along here, it seems to me we'd need about eight wells to
23 drain that 320, which is preposterous.

24 MR. ALEXANDER: Yes that would be economic waste
25 to drill that many wells to ultimately to develop the same

1 amount of reserves.

2 But I'm simply telling you that the criteria that
3 we used, the analogy that we used --

4 COMMISSIONER WEISS: Uh-huh.

5 MR. ALEXANDER: -- in determining the circles was
6 the same criteria that's being used today for the setbacks
7 for the individual pools.

8 COMMISSIONER WEISS: Good, good.

9 MR. ALEXANDER: We didn't want to come up with
10 something new and different in that regard.

11 COMMISSIONER WEISS: Okay. That's my only
12 comment. Thank you.

13 MR. FOPPIANO: Could I add to that answer? I
14 think it may be confusing a little bit, but if that setback
15 distance of 790 was made equivalent -- or thought of in
16 terms of a drainage context, the actual distance between
17 wells would be twice that.

18 COMMISSIONER WEISS: So you would have four
19 wells, not eight?

20 MR. FOPPIANO: Yeah, but you would be two times
21 790 from the other well in the same pool, because it would
22 also be 790 from that same setback.

23 COMMISSIONER WEISS: It seems to me that four
24 wells is --

25 CHAIRMAN LEMAY: Commissioner Bailey?

1 COMMISSIONER BAILEY: I appreciate your
2 distinction between the two types of ownerships that should
3 be notified.

4 What is your opinion on whether or not this
5 should be corrected at this point, or how do you feel about
6 waiting until Rule 1207 is corrected and at the same time
7 the definition of the --

8 MR. ALEXANDER: I guess it's a matter of kind of
9 format. If we want to stick with one rule -- which I see
10 some value in that for simplicity purposes -- we could go
11 ahead and adopt 1207. But I wouldn't leave 1207 the way
12 that it is. Ultimately I'd like to address that issue and
13 tighten that up.

14 Now, if we don't see a horrendous problem in
15 having a different notice rule under 104 than 1207, then I
16 would suggest we go ahead and put some language in there
17 that is more definitive at this point in time and go ahead
18 and use it. I'm open to both mechanisms, and I can work
19 both ways.

20 I think we'll have some ambiguity until we
21 address 1207 at a later date, and that ambiguity will
22 continue. But as Bill has mentioned to you, and Mr. Weiss
23 has pointed out, we've had some history behind that rule,
24 and it's been dealt with.

25 But I'm not saying that just because we have some

1 history and we haven't had any big problems that we leave
2 it alone. I think we need to go ahead and address it.

3 COMMISSIONER BAILEY: Thank you.

4 CHAIRMAN LEMAY: Does anyone else have -- Rick,
5 do you have any questions of --

6 MR. FOPPIANO: I had a question. In your example
7 on page two -- Well, actually, a probably better example is
8 on page three. If the proposed location with the circle
9 method had touched the northwest quarter-quarter or the
10 northwest quarter of that southwest quarter, right here, if
11 it had touched this area up in here --

12 MR. ALEXANDER: Yes.

13 MR. FOPPIANO: -- would that party, in your
14 interpretation of NMOGA's proposed rules, would that party
15 be entitled to notice?

16 MR. ALEXANDER: If that circle had touched them?

17 MR. FOPPIANO: Yeah.

18 MR. ALEXANDER: Yes. Well, under the circle
19 method, that's correct, they would be entitled to notice,
20 yes.

21 Under 1207 I don't believe they would be, because
22 that's the corner point of the rule that says, or the
23 single closest corner to the proposed well.

24 MR. FOPPIANO: Yeah, uh-huh.

25 MR. ALEXANDER: I think you would only notify the

1 southwest of the southwest in that instance.

2 MR. FOPPIANO: That was the answer I was hoping
3 you would make, because I agree with that. If the circle
4 touches, it ought to get noticed.

5 CHAIRMAN LEMAY: Can I interject something? It's
6 in the form of a question, but also a comment, because we
7 need to bring a little bit this questionnaire that NMOGA
8 sent out. Are you all familiar with the results of that?

9 MR. HAWKINS: Don't know if --

10 MR. FOPPIANO: I haven't seen it.

11 CHAIRMAN LEMAY: Okay. I think the circle
12 concept is either causing confusion, or what I saw was kind
13 of a rejection of it, based on the percentage that voted
14 against it and for it, on the NMOGA application.

15 It may have a lot of technical merit, but it also
16 tends to cause confusion to those people that are -- just
17 come into the state and are thinking, well, who's notified?
18 Well, you notify to get this circle out here, and you draw
19 it and you see -- You know, it does cause some confusion
20 among a lot of operators.

21 And those of us that have a tendency to work with
22 this on a day-to-day basis don't see any problems, but
23 those that are doing a lot of things in the industry come
24 on this circle concept and say, what are you -- let me hire
25 a rocket scientist here to find out who I notify or -- you

1 know.

2 MR. ALEXANDER: Well, we do have -- Texas uses
3 virtually the same type of rule, and so it's not like it's
4 an unknown thing. And I would agree with you, when you
5 change rules and you implement new procedures you're going
6 to have some confusion at first.

7 But quite frankly we're going to have a little
8 bit of confusion on 104 because we have substantially
9 modified 104, and it's going to take a little time and
10 energy for people to get up to speed on it and become
11 familiar with it.

12 But I would agree with you. At first, I think it
13 will probably cause a little bit of confusion.

14 CHAIRMAN LEMAY: Or if you're looking -- We're a
15 small group here. If you're looking for at least those
16 people that would vote in favor or against it, what I see
17 here is a vote against the circle concept, just talking
18 about proration units, unleased minerals, that type of
19 thing, who you crowd, more verbalizing it than talking
20 about the setback distances and all that. That's just what
21 I seem to hear or see from the --

22 MR. ALEXANDER: And that may be true. I kind of
23 view it as a 50-50 of which direction to go.

24 But I see the same problem with -- some people
25 out there see a problem with 1207 too because of that

1 question there too.

2 CHAIRMAN LEMAY: Yeah, I'm not defending 1207,
3 but --

4 MR. ALEXANDER: Yeah.

5 CHAIRMAN LEMAY: -- 1207 cleaned up, versus,
6 maybe, the circle concept.

7 MR. ALEXANDER: And we didn't get --
8 Unfortunately, we didn't get near the responses that we
9 needed to have a good opinion poll on that.

10 COMMISSIONER WEISS: Yeah, I agree.

11 CHAIRMAN LEMAY: Yeah, that's a problem.

12 MR. ALEXANDER: So you may be right in the end.
13 There may be more people that see some confusion there than
14 not. But I'm not ready to concede that quite yet.

15 CHAIRMAN LEMAY: Bill?

16 COMMISSIONER WEISS: No, I have no more questions
17 or comments.

18 But that's a good one on that response to that --

19 CHAIRMAN LEMAY: Yeah.

20 COMMISSIONER WEISS: -- which is meaningful to
21 me. Don't kick a sleeping dog is what I say, you know?

22 CHAIRMAN LEMAY: Okay.

23 MR. ALEXANDER: That's the gist of what I wanted
24 to present.

25 CHAIRMAN LEMAY: Is that generally it?

1 MR. ALEXANDER: Yeah, we can recirculate comments
2 after, maybe, Mr. Foppiano makes a presentation, then we'll
3 see if there are any more comments by anyone.

4 So Rick?

5 MR. FOPPIANO: For the record, my name is Rick
6 Foppiano. I'm Regulatory Affairs Advisor for Occidental
7 Oil and Gas, I think, today. We've just reorganized, so
8 we're in transition from OXY USA to Occidental Oil and Gas.
9 I think I'm Occidental Oil and Gas today.

10 CHAIRMAN LEMAY: Don't file a change of operator
11 with us, or we'll never get through.

12 MR. FOPPIANO: By the time we do get through,
13 we'll change our name again.

14 I'm here to support the NMOGA suggested changes
15 to Rule 104. As one that has to deal with reading these
16 rules and trying to figure out what they mean, I have more
17 than once been confused in trying to figure out who is
18 entitled to notice.

19 And in that respect, the circle method, in my
20 view, clarifies a lot of what is needed, at least what
21 areas are entitled to notice. And so we support that
22 concept.

23 We had a couple other suggestions, and actually I
24 agree a lot with what these gentlemen were saying.

25 The first was the necessity for a hearing where

1 there's no protest or where the Director doesn't feel in
2 his discretion that a hearing is otherwise warranted, we
3 feel shouldn't be mandatory, and -- you know, no matter
4 where the location is. So I would concur with Amoco in
5 that respect.

6 I would also concur with Amoco that to the extent
7 we can make 1207 and 104 consistent and read the same
8 thing, we'd wholeheartedly support that. Because every
9 time I get in to where I have to go to a hearing on an
10 unorthodox location I have to hire an attorney to tell me
11 what -- how to understand 1207 and who's entitled to
12 notice, because I'm extremely concerned that we give proper
13 notice so my order to drill the well is not attacked later
14 on.

15 And so that's an issue that I try to pay close
16 attention to. But it requires legal support just about
17 every time that I get into that area, because I quite
18 frankly think that 1207 is a little bit ambiguous.

19 And another issue that Meridian brought up -- was
20 actually the main reason why I showed up this morning and
21 wanted to present some refinements -- was the issue about
22 parties being in the same pool.

23 That -- When we read the Rules, that is not clear
24 to us, that the parties that are entitled to notice are the
25 ones that either operate wells or own interests in the same

1 correlative interval as the proposed well is going to be
2 producing from. And I understand from a lot of my
3 colleagues in industry that, oh, that's obvious, and I
4 didn't understand to be obvious. It's one of those things
5 I've always been somewhat unsure about. And I was pleased
6 to hear Meridian express the same uncertainty as to that
7 part of the rule.

8 And a case in point might be where you have an
9 operator of a well in a shallow zone and another operator
10 is proposing to drill a well to a deeper zone. You have an
11 offset operator there that can give notice, but because
12 that offset operator doesn't own interest in the deeper
13 stuff, he files it. And as a result, the parties that own
14 interest in the same -- in the deeper zone offsetting the
15 proposed location don't get notice, and I worry about that.

16 So what I wanted to suggest this morning was some
17 language that I think addresses that concern, and also
18 understanding that the intent of NMOGA's task force was to
19 try to pattern the priority of notice after what is
20 experienced in Texas, since I also handle Rule 37
21 applications in Texas I tried to go ahead and craft some
22 language that I felt more clearly stated what that priority
23 of notice was.

24 So I'll -- With your permission, I'll just walk
25 down this little list.

1 Oh, I'm sorry.

2 MR. HAWKINS: Do you have any extras there?

3 MR. FOPPIANO: Item number 1 was what I
4 mentioned. We concur with Amoco to delete 104 (F) (3) in
5 its entirety and make the appropriate change to a prior
6 paragraph to that.

7 In 104 (F) (4) we would propose to add a new
8 section -- subsection, actually -- entitled (d), and that
9 would define affected parties entitled to notice, and it
10 sets up that priority of notice.

11 First, since adjoining and diagonal spacing units
12 and leases are already defined adequately under the
13 proposed changes, this paragraph would just identify those
14 parties located on those -- in that area that are entitled
15 to notice of an unorthodox location.

16 And basically what it says is that the first you
17 would look to is the designated operator of an adjoining or
18 diagonal spacing unit that's producing from the same pool
19 as the proposed location. And that would be -- "producing
20 from the same pool" is language addressing that concern,
21 that it's interest and operators in the same correlative
22 interval.

23 And paragraph (ii) there, "In the absence of an
24 operator...", meaning that if there is not an operator for
25 wells in that correlative interval, then it's the lessees

1 of record in those areas that own interest in that same
2 pool.

3 And then lastly, "in the absence of" either an
4 operator or a lessee, "owners of record of unleased mineral
5 interests". And this is identical to what we see in Texas
6 as priority of notice, and it works pretty effectively,
7 that and the circle method, because where we have a
8 situation where we don't have offset operators or they're
9 shallow and we're unclear who owns the deep rights, we
10 basically draw a circle on a map and send a landman to the
11 courthouse and say, go do the records search and tell us
12 who the parties are.

13 And once affected parties are defined, then in
14 item 3 there, we're suggesting that language be added to
15 the application requirements that require a list of
16 affected parties, so those parties are listed in the
17 application. Which is really the same thing that's done
18 now, but I think it makes it a little more clear that those
19 are the parties that should be listed in the application.

20 And then in item number 4 there -- and this is
21 one that I guess you could say is a little pet peeve of
22 mine, but I suspect a lot of other people in the industry
23 experience the same thing -- we would propose that the
24 notice to offset operators or others include a copy of the
25 plat, so you can see where your interests are.

1 And I have -- Most of the notices I give of
2 proposed locations do have a plat, but there are a couple
3 that don't. And it's a scramble to try to figure out, why
4 did I give notice here?

5 And so having -- Since the plat is already
6 available to the applicant, we're just suggesting that it
7 be made a part of the notice that is given to the offsets.

8 And then lastly just a couple of cleanups. We
9 found a few typos in there that we could suggest go ahead
10 and be cleaned up. We think they were typos, but --

11 MR. HAWKINS: Yeah.

12 MR. FOPPIANO: Are they? Okay, I figured they'd
13 probably already been caught.

14 That's pretty much it. Those were the gist of my
15 suggestions. I was real heartened to hear that some of the
16 same concerns were expressed by the other parties.

17 I'd be happy to answer any questions.

18 CHAIRMAN LEMAY: Thank you, Rick.

19 Commissioner Weiss, do you have any questions?

20 COMMISSIONER WEISS: Yes, sir. How have you
21 solved your notification problems in the past when you come
22 up with this quandary?

23 MR. FOPPIANO: Well, for administrative
24 applications -- Here again, we probably file maybe one a
25 year. We don't file a lot of requests for administrative

1 approval for unorthodox locations.

2 But I can't recall a case that I haven't gone
3 ahead and called Tom up and explained the situation and
4 have him interpret it for me. And the reason was because
5 when I read 1207 and 104, they appear to me to be sometimes
6 in conflict and unclear, and that concerns me. So I
7 basically just get a legal interpretation of who am I
8 supposed to notice?

9 And to me, the encroachment part of what's
10 proposed in NMOGA's recommendation is not clear in 1207.

11 COMMISSIONER WEISS: So you're going to have to
12 call him anyways, huh?

13 MR. FOPPIANO: Yeah, it is a problem, and I
14 suspect it's a problem for other people.

15 COMMISSIONER WEISS: Is that the case with you
16 gentlemen? Do you call a lawyer to find out if you're --
17 who you have to notify?

18 MR. HAWKINS: Not usually, we -- although we talk
19 to our attorneys a lot, and we file enough applications
20 that we -- once we've gotten kind of a read on how to
21 interpret that rule, we just try to continue to apply that
22 same principle every time.

23 I would admit, just like I said earlier, that
24 1207 probably has some ambiguity. But I think we've
25 learned how to deal with it.

1 COMMISSIONER WEISS: Amoco has learned how to --

2 MR. HAWKINS: Yeah, and I think it could be
3 cleaned up, I agree with that. But I don't have a lot of
4 problem in applying the same concept every time that I need
5 to use it.

6 MR. ALEXANDER: Again, we work -- we file quite a
7 few applications. So from time to time for Meridian, we'll
8 approach Tom Kellahin and make sure we're still on the
9 right track. But generally we'll approach it with an
10 understanding that we've been working with.

11 But we have to make some decisions sometimes.
12 You know, if it's not tremendously burdensome, we might go
13 ahead and notify everybody in an offsetting 320 acre that
14 are all unleased. If we have availability of those records
15 and it's not going to cost us tens of thousands of dollars
16 to do a record search, we might go ahead and notify all of
17 them.

18 But if that has been cut up horrendously, we
19 might drop back to what we think is the true meaning of the
20 rule and notify only those parties that are being
21 encroached upon.

22 So it depends on -- and it can change from time
23 to time on who we actually notice.

24 CHAIRMAN LEMAY: Thank you.

25 Commissioner Bailey?

1 COMMISSIONER BAILEY: No.

2 CHAIRMAN LEMAY: I've got a couple.

3 Would it be your vote that we clean up 104 now
4 and then use that as a model to go back to 1207, or that we
5 keep some consistency and put on the docket just the notice
6 rules which would affect both and standardize them but also
7 make them less ambiguous?

8 MR. FOPPIANO: My concern would be that adopting
9 104 and using that as a model, and leaving 1207 in somewhat
10 of limbo, that in that interim there's going to be even
11 more confusion about what is proper notice.

12 And the problem that Bill brought up, which is
13 you have one notice provision for administrative
14 applications and another for hearing, might be exacerbated
15 by that situation.

16 I'm not sure what the right answer is, how to get
17 there, but I dearly would love to see exactly what Amoco
18 said: same consistent rules and the same notice
19 requirements for administrative notice and hearing, and as
20 clear as possible. That's where we're trying to get.

21 And maybe if 1207 could be docketed or a policy
22 statement issued that this is -- 1207 is kind of held in
23 abeyance until we can get it revised and 104 applies and --

24 CHAIRMAN LEMAY: Well, the advantage to that, I
25 guess, is we would have a larger forum, too, in looking at

1 the notice rules, instead of just for the small group we've
2 got here. Little more democratic process, as long as we
3 address it, it doesn't get lost somewhere.

4 The other thing, I guess what I'm hearing from
5 all of you, is that a default setback for hearing isn't
6 really what you want, that that's a discretionary call by
7 the Director, any footage. But would guidelines help on
8 that?

9 Obviously, someone comes to us and they want to
10 drill a Morrow well 50 feet from the line and get
11 administrative approval without objection, there seems to
12 be such a gross violation of the integrity of the rule that
13 my gut instinct would be to throw it -- as Director, to put
14 it to hearing.

15 But there again, I think we get pushed to the
16 limit as regulators. How far is too far? And there needs
17 to be some -- maybe some signals out there. Default would
18 be, hey, this is too far, this is pushing it too far.

19 You might get it, but you'd better have a little
20 better evidence at a hearing to justify that gross an
21 encroachment, we'll say.

22 But that could also be covered in guidelines, and
23 then it doesn't -- It's not cast in stone. I think the
24 word gets out pretty quick that you try and get a 660
25 without a hearing, and it will probably be rejected. And

1 that would not appear in the rule, that would appear either
2 by a policy memorandum -- that type of thing.

3 Do you have any feeling on that?

4 MR. FOPPIANO: My feeling is, if an applicant
5 wanted to drill a well 330 from somebody else's lease, and
6 if they're on a 320-acre spacing unit and he gave notice
7 and there was no protest, I suggest there's no controversy.

8 CHAIRMAN LEMAY: You don't think there's a waste
9 issue, if he makes a San Andres well and then you have such
10 a screwed up spacing that you're not going to get good
11 injection and -- or that you're --

12 MR. HAWKINS: I think there's two parts to that.
13 One is that you give all the proper notice and nobody
14 objects, and the other is that you have a good reason for
15 why you want to do it, why you can't drill it in a legal
16 location.

17 I mean, I think your obligation is to drill in
18 the legal location with a proper setback, and you need to
19 explain why that is not working for you. What's the
20 problem?

21 CHAIRMAN LEMAY: Well, I think, then, what you're
22 saying is, there still is a burden of proof.

23 MR. HAWKINS: Yeah, sure.

24 CHAIRMAN LEMAY: What I'm hearing from Rick and
25 I've heard from others is, let them do it if they want to

1 do it. Which really kind of destroys all spacing as a
2 concept, because that means you can drill anywhere, as long
3 as you're not objected to.

4 MR. FOPPIANO: I guess I have a lot more faith in
5 the self-help principle.

6 CHAIRMAN LEMAY: The what?

7 MR. FOPPIANO: The self-help. If I'm an offset
8 operator and I get notice that somebody wants to drill 330
9 and I think that I'm going to be adversely affected, I'm
10 going to protest, I'm going to take them to hearing and
11 make him prove his case.

12 But if I agree with his geology or we have the
13 same geological interpretation, we've already drilled a
14 well over there and it's in a dry area for us --

15 CHAIRMAN LEMAY: What about the aspect -- I call
16 it the no-muscle guy, the one that has one little tract
17 there. You encroach on him, I guess he can object. But
18 you get two big companies, they'll trade off unorthodox
19 locations all over: You won't object to me, I won't object
20 to you. And if you're one isolated owner in there, you
21 don't have any bargaining chip for anyone that wants to
22 come in and -- You're stuck.

23 So I mean, what you're saying, the big guys -- I
24 perceive a decided advantage, I've seen it take place --
25 make deals, where the little guy is stuck with the record,

1 he's got to go -- He doesn't have anything to trade.

2 MR. FOPPIANO: This is what we experience in
3 Texas. If an applicant files for a well 100 foot off of a
4 line, gives notice, there's no protest, it's approved
5 administratively.

6 CHAIRMAN LEMAY: I don't think Texas has all the
7 right answers.

8 (Laughter)

9 MR. HAWKINS: Well, I still think it falls back
10 to the point that you have to have a valid reason of why do
11 you need to move away or outside of your legal location?

12 CHAIRMAN LEMAY: What I'm hearing from Rick, it
13 doesn't matter, he's not going to buy into that, from what
14 he said.

15 MR. FOPPIANO: Well, my experience is, in Texas,
16 that that pretty well works, the self-help principle pretty
17 well works effectively.

18 COMMISSIONER WEISS: The valid reason, then, is
19 valid in your eyes. If he wants to move in on you, he's
20 got a reason and it's justifiable, that's fine. There's no
21 need for a --

22 MR. HAWKINS: The first thing you'd ask is, why
23 can't you drill it in a legal location? And, you know, if
24 there's not a good -- if they can't answer that, other than
25 I just don't want to, then they shouldn't probably be

1 allowed to.

2 CHAIRMAN LEMAY: Well, being candid, what we see
3 as a principle we're operating under today is -- I got in
4 trouble with the word "closeology". That's used in
5 reference to, you get a good well and, boy, I want to get
6 as close to that good well as possible. That's my reason,
7 I'll show you lots of isopachs why I need to crowd that to
8 avoid risk. I'm risk-averse.

9 That's not necessarily the best reason, because
10 everyone needs to absorb -- You're increasing the risk as
11 you move away. You're also gaining more information on the
12 reservoir, you're also establishing a spacing pattern that
13 probably will flood better, et cetera. So just closeology
14 by itself to reduce risk, I don't feel is a valid reason.

15 Other people might argue that, do it because no
16 one objects. But -- You see what I mean? I mean, there
17 are people that are much more risk-averse than others.

18 3-D seismic, those kind of concepts, no problem.
19 I mean, they need to be drilled at their top.

20 But as a regulator implementing this -- your
21 recommendations without guidelines, just let them do it if
22 no one objects, I think there's a problem with that
23 concept.

24 MR. FOPPIANO: Maybe the answer is, instead of
25 660, to set a more -- a closer distance that sets up a

1 mandatory requirement, like a 330.

2 CHAIRMAN LEMAY: Well, then you're still talking
3 about some default --

4 MR. FOPPIANO: Yeah, you're still talking about a
5 default --

6 CHAIRMAN LEMAY: -- default distance that would
7 come to hearing.

8 MR. FOPPIANO: Uh-huh.

9 CHAIRMAN LEMAY: And what I'm hearing is, you
10 want that discretionary, you don't want a default distance?

11 MR. FOPPIANO: I'm happy -- It works for me not
12 to have a default distance because of the experience we've
13 had in other states.

14 MR. HAWKINS: But I would clearly say that at
15 your discretion, you have the right to set any application
16 for public hearing.

17 So if, in your opinion, the reason or the
18 rationale that's presented on the administrative
19 application doesn't appear sufficient, just set it for
20 hearing.

21 MR. ALEXANDER: And I think your policy -- if you
22 adopt the rules with no setback and you do decide to have a
23 policy statement out there, the policy statement ought to
24 clearly say that you're going to have to furnish sufficient
25 evidence.

1 And that does two things. It gives you some
2 comfort factor, and it gives the offsetting owner a
3 knowledge of why they may want to encroach upon that
4 particular leasehold.

5 CHAIRMAN LEMAY: Thanks. The only other question
6 I had really doesn't pertain to Rick, but it pertains to
7 Rick's comment, and I wonder how you two gentlemen felt
8 about -- or maybe you do it.

9 The plat to offset operators, do you submit that
10 yourselves?

11 MR. ALEXANDER: Yes.

12 MR. HAWKINS: We regularly submit the plat.

13 CHAIRMAN LEMAY: Would you be in favor of that
14 being in the rule?

15 MR. ALEXANDER: (Nods)

16 MR. HAWKINS: Sure.

17 CHAIRMAN LEMAY: Anything else? Let's just throw
18 it open now, before we take it under advisement, for anyone
19 that might have a question or comment that -- We've pretty
20 well covered the bases.

21 MR. FOPPIANO: One comment I might make in
22 addressing a concern about closeology, getting up in there
23 in the corner and then maybe the need for a mandatory
24 setback.

25 The situation that always bothered me is where

1 you have -- the applicant and the offsets are the same
2 people, because then there's no notice. And that, in my
3 view, is a real good place to exercise discretion and say,
4 wait a minute, you know, we may need to see some evidence
5 on this, or may need to discuss -- have a hearing on this,
6 because of the very fact that the other, traditional
7 protections are gone.

8 CHAIRMAN LEMAY: So you would agree in terms of
9 needing a valid reason to encroach as part of the
10 application?

11 MR. FOPPIANO: Yes, I think the application
12 requires, I believe, some technical evidence as to why, as
13 Bill mentioned, you are not able to drill the well in a
14 legal location.

15 And I just presumed that every time you submit an
16 application, if the Division looks at it they're not duty-
17 bound, just because there's no protest, to approve it. If
18 they think the evidence doesn't warrant it, they can deny
19 it. Or, if they think you haven't done an adequate job of
20 looking at legal locations -- I always envision that to be
21 a discretionary process. And then if the Applicant got a
22 "no" on his request for administrative approval, then he
23 has the option to request a hearing.

24 So I always presume that you're required to
25 submit some evidence to prove your case to the experts at

1 the Division. And if you don't adequately do that, then
2 you should be denied.

3 MR. ALEXANDER: One comment about your concern
4 there. There are a couple of protection issues there. If
5 the applicant is the same as the offset party, if you're
6 dealing with unleased owners -- Well, you wouldn't be
7 dealing with unleased owners.

8 But say you're dealing with undeveloped leases
9 over there. There's a vast body of law about protections
10 and covenants of that lessor to that lessee. And if he's
11 not real careful he's going to be in violation of those.
12 So it's not that he has *carte blanche* to anything that he
13 wants over there. So he's got to be very careful about
14 what he does, even though the two parties are the same. So
15 I mean, there are some protections there.

16 CHAIRMAN LEMAY: We operate generally under two
17 premises. One, that the lessee does have an obligation to
18 his override interest owners, mineral interest owners, and
19 that's his obligation or her obligation.

20 The other factor is that a lot of these issues
21 that tend to come before us, we'll push back if it's
22 covered by an operating agreement, because that's a
23 dangerous realm for us to get into.

24 The one thing, Mr. Foppiano, I just wanted to
25 check, because I'm -- on your affected -- I guess your

1 number 2 -- this may be something I can't get by -- you --
2 2, (d) (i), you say "...the designated operator of any
3 adjoining or diagonal spacing unit producing from the same
4 pool as the proposed well."

5 Well, the proposed well hasn't found that pool
6 yet. What happens -- You assume it's a target objective,
7 but what happens if there is a plugback that the proposed
8 well plugs back to and then your idea of a shallow owner
9 being not notified, but maybe only the objective depth
10 owners would be notified, you plug back or complete from a
11 different horizon, that person hasn't had adequate notice,
12 have they?

13 MR. FOPPIANO: Let me see if I understand your
14 question. For example, if we're talking, say, like a Bone
15 Springs reservoir and a Morrow reservoir --

16 CHAIRMAN LEMAY: Okay, yeah.

17 MR. FOPPIANO: -- and let's say we propose to
18 drill a Morrow well --

19 CHAIRMAN LEMAY: Right.

20 MR. FOPPIANO: -- and we give notice to the
21 owners of interest in that Morrow interval --

22 CHAIRMAN LEMAY: Right.

23 MR. FOPPIANO: -- but the Morrow turns up dry and
24 we want to complete three of the Bone Springs, and we
25 didn't give notice to those people.

1 CHAIRMAN LEMAY: Right.

2 MR. FOPPIANO: Is that --

3 CHAIRMAN LEMAY: Yeah, that's basically it, yeah.

4 MR. FOPPIANO: My personal opinion about that is
5 that the applicant should not be allowed to produce that
6 well until he has unorthodox-location approval for that
7 pool he's proposing to produce from.

8 And I feel pretty strongly about that, because I
9 guess the opportunity exists to maybe do a little
10 subterfuge here, which is make your application on one
11 zone, give notice, when in reality your intent all along
12 was to go to Bone Springs and you wanted to avoid protest.

13 So my own personal opinion is that the
14 unorthodox-location approval should apply to the reservoirs
15 that the applicant applied for, that he gave notice for.
16 And if he proposes something different from that --

17 CHAIRMAN LEMAY: Or if he completes something
18 different, he comes to hearing?

19 MR. HAWKINS: He comes to hearing or files an
20 application.

21 MR. HAWKINS: Files a application.

22 MR. ALEXANDER: Files an application.

23 MR. FOPPIANO: Yeah.

24 MR. HAWKINS: Notify the parties at the shallow
25 horizon and see if there's any objection --

1 MR. FOPPIANO: Yeah.

2 MR. HAWKINS: -- and if there is, then you go to
3 hearing on it.

4 MR. FOPPIANO: Yeah.

5 CHAIRMAN LEMAY: Yeah.

6 MR. ALEXANDER: You know, I guess my
7 understanding is that that exists currently.

8 MR. HAWKINS: Yeah.

9 MR. ALEXANDER: Those NSLs are only for the
10 objective formation; they are not good for any others.

11 CHAIRMAN LEMAY: Before this subterfuge thing, we
12 do tend to see a little bit.

13 MR. ALEXANDER: Yeah. But he can't produce at
14 that location without an approved nonstandard location,
15 which he has to come back for, to get.

16 MR. FOPPIANO: That was my understanding.

17 MR. HAWKINS: Yeah, mine too.

18 CHAIRMAN LEMAY: The other thing, beginning with
19 (d) there, "Affected parties shall be defined as those
20 parties who own interests in leases..." You're going to
21 notify the --

22 MR. FOPPIANO: Who own interest in leases or
23 operate wells.

24 CHAIRMAN LEMAY: Well, if you have one percent on
25 a lease, you check the county records, half of one percent

1 in a lease -- If you're an undivided leasehold owner, do
2 you need to be notified?

3 MR. FOPPIANO: If there's not an operator, yes,
4 and you are on a diagonal or adjoining lease and you're
5 being encroached upon, you're within the circle, yes.

6 CHAIRMAN LEMAY: And you're all agreeing to that.
7 The undivided interests a lease need to be notified if
8 they're a matter of public record, I guess?

9 MR. HAWKINS: If an operator is not already
10 appointed, selected or whatever --

11 CHAIRMAN LEMAY: Okay, I just wanted
12 clarification.

13 Anything else?

14 Okay, thank you very much, gentlemen. We'll take
15 this case under advisement.

16 We're going to take about a -- maybe a five-
17 minute break and then come back and set out some dates. If
18 you all want to hang around, we'll give you some dates when
19 we're going to meet next year. Okay?

20 MR. FOPPIANO: Thank you.

21 (Thereupon, a recess was taken at 10:20 a.m.)

22 (The following proceedings had at 10:35 a.m.)

23 CHAIRMAN LEMAY: Let's go back on the record with
24 some dates.

25 We're back on the record, and these are the dates

1 that the Commission will be meeting for the next seven
2 months.

3 The December date is fixed at the 14th of
4 December.

5 We'll meet on January 18th, on February 15th, on
6 March 12th. The 12th is a Tuesday, it's an odd date. It's
7 a tough month. And hopefully that won't cause any
8 hardships.

9 April 11th, May 23rd, and June 20th. That gets
10 us out six months in 1996.

11 Also, we currently plan on having that February
12 15th hearing both a proration hearing and an "industry
13 speaks, commission listens" hearing. That was pretty
14 successful last year in the sense that the feedback was
15 good and the Division did adopt a lot of the
16 recommendations that were presented at that meeting. So we
17 feel that was kind of a successful approach to feedback.

18 Okay, with that -- I won't wish you merry
19 Christmas, just a happy Thanksgiving. We'll see some of
20 you the 14th.

21 Thank you.

22 (Thereupon, these proceedings were concluded at
23 10:38 a.m.)

24 * * *

25

CERTIFICATE OF REPORTER

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

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

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

WITNESS MY HAND AND SEAL November 17th, 1995.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 1998