

## NEW MEXICO OIL CONSERVATION COMMISSION

COMMISSION HEARINGSANTA FE, NEW MEXICOHearing Date JULY 10, 1985 Time: 9:00 A.M.

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Joe Rush	Meridian Oil Inc	Englewood Co.
Willa Carpenter	OCD	Hobbs

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SANTA FE, NEW MEXICO

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STATE OF NEW MEXICO  
ENERGY AND MINERALS DEPARTMENT  
OIL CONSERVATION DIVISION  
STATE LAND OFFICE BUILDING  
SANTA FE, NEW MEXICO

10 July 1985

COMMISSION HEARING

IN THE MATTER OF:

In the matter of the hearing called  
on its own motion to amend Rule 0.1,  
Rule 1, Rule 2, Rule 3, Rule 7, Rule  
709, and Rule 710 to define fresh  
water and produced water and to pro-  
vide for protection of fresh water;

CASES  
8643

To promulgate a new Rule 8;	8644
To amend Rule 102;	8645
To amend Rules 108 and 113;	8646
To delete Rule 308;	8647
To amend Rule 111;	8648
To amend Rule 1204 and Rule 1205, to delete Rule 1206, to renumber and amend Rule 1207, and to promul- gate a new Rule 1207.	8649

BEFORE: Richard L. Stamets, Chairman  
Ed Kelley, Commissioner

TRANSCRIPT OF HEARING

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A P P E A R A N C E S

For the OCD: Jeff Taylor  
Attorney at Law  
Legal Counsel to the Division  
Oil Conservation Division  
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MR. STAMETS: The hearing will please come to order.

This morning we're going to consolidate all of the rule change hearings for purposes of testimony, so I will at this time call Cases 8643 through 8649.

These would be in the matter of the hearing called by the Oil Conservation Commission on its own motion to amend Rule 0.1, Rule, 1, 2, 3, and 7, Rule 709, and Rule 710, to define fresh water and produced water and to provide for protection of fresh water; to promulgate the new Rule 8 to provide for the approval of the use of lined pits or below grade tanks for disposal or storage of produced water and other oil field fluids; to amend Rule 102 to require a copy of Form C-101 (permit) on location during drilling operations and to provide for notice to landowners and/or tenants prior to the staking of well locations; to amend Rules 108 and 113 to provide for notice of defective casing and for the notice of damage to casing, cement, or the formation as a result of well treatment; to delete Rule 308 in order to clarify the need for reporting of small volumes of produced water; to amend Rule 111 to provide for operator calculation of bottom hole displacement when the deviation during drilling averages more than five

1 degrees in any 500-foot interval; and to amend Rule 1204,  
2 Rule 1205, to delete Rule 1206, to renumber and amend Rule  
3 1207, to promulgate a new Rule 1207, all for the purpose of  
4 giving notice of hearings and to establish additional notice  
5 requirements for applicants for hearings.

6 Call for appearance in these  
7 consolidated cases.

8 MR. TAYLOR: May it please the  
9 Commission, my name is Jeff Taylor. I'm Counsel for the Oil  
10 Conservation Division and I have two witnesses.

11 MR. STAMETS: Other appear-  
12 ances?

13 MS. AUBREY: Karen Aubrey, Kel-  
14 lahin and Kellahin, Santa Fe.

15 I'm here representing New Mex-  
16 ico Oil and Gas Association and Cities Service Oil and Gas  
17 Corporation.

18 We have one witness to present.

19 MR. CARR: May it please the  
20 Commission, my name is William F. Carr, with the law firm  
21 Campbell and Black, P. A., of Santa Fe.

22 I represent Amoco Production  
23 Company.

24 MR. STAMETS: Are there other  
25 appearances?

1 MR. NUTTER: I'm Dan Nutter,  
2 representing myself.

3 MR. STAMETS: As an interested  
4 citizen.

5 MR. NUTTER: As an interested  
6 citizen and taxpayer.

7 MR. RUSH: Joe Rush with Meri-  
8 dian Oil.

9 MR. INGRAM: Hugh Ingram with  
10 Conoco and I'm here to make a statement.

11 MR. STAMETS: All right. I'd  
12 like to have all those who may be witnesses in this case  
13 stand and be sworn at this time.

14  
15 (Witnesses sworn.)

16  
17 MR. STAMETS: Mr. Taylor, you  
18 may proceed.

19 MR. TAYLOR: Thank you. First  
20 we'll call Mr. David Boyer.

21  
22 DAVID BOYER,  
23 being called as a witness and being duly sworn upon his  
24 oath, testified as follows, to-wit:

25

DIRECT EXAMINATION

1  
2 BY MR. TAYLOR:

3 Q Mr. Boyer, would you please state your  
4 name, employer, and title for the record?

5 A Yes. My name is David Boyer. I'm a Geo-  
6 logist IV with the New Mexico Oil Conservation Division, and  
7 I am in charge of the Environmental Bureau.

8 Q Are you familiar with the subject matter  
9 of Cases 8645, 8646, and 8648?

10 A 8647, I believe. I'm familiar with 8643,  
11 8644, and 8647.

12 Q Okay. Have you testified before the Com-  
13 mission or its Examiners before and had your qualifications  
14 accepted?

15 A Yes, I have.

16 MR. TAYLOR: Mr. Chairman, are  
17 the qualifications acceptable of the witness?

18 MR. STAMETS: Yes.

19 Q Mr. Boyer, which rules will you be pre-  
20 senting testimony on today?

21 A Yes. I will be presenting testimony on  
22 the rules listed in Case 8643. That is the definitions Rule  
23 0.1, additional Rules 1, 2, 3, 7, Rule 709 and 710, regard-  
24 ing fresh water protection under Case 8643.

25 I'll be testifying on Rule 308 regarding

1 reporting of produced water in Case 8647, and I will be tes-  
2 tifying on Rule No. 8 regarding lined pits and tanks in Case  
3 8644.

4 Q Okay. Just to make the record a little  
5 clearer, let's go through the rules on a case by case  
6 basis.

7 In Case 8643 can you tell us the intent  
8 of the changes proposed in this case?

9 A Yes. The general intent of the proposed  
10 changes is to give the protection of fresh water the same  
11 regulatory weight currently given prevention of oil and gas  
12 waste and correlative rights in the rules and regulations of  
13 the Division.

14 My testimony on these changes will not  
15 speak to the requirements for prevention of waste or the  
16 protection of such rights that are currently in the regula-  
17 tions.

18 The requirement to protect fresh water is  
19 embodied in the Oil and Gas Act statute at 70-2-12(E)15,  
20 which provides for Division authority to make rules and  
21 regulations to "regulate the disposition of water produced  
22 or used in connection with the drilling for or producing of  
23 oil or gas, or both, and to direct surface or subsurface  
24 disposal of such water in a manner that will afford reason-  
25 able protection against contamination of fresh water sup-

1 plies designated by the State Engineer."

2 The date of that portion of the statute  
3 is approximately 1961, that was entered into the statute.

4 The overall result of the proposed chan-  
5 ges is to make owners, operators, drillers, producers, and  
6 operators of oil and gas related facilities, aware that they  
7 must protect fresh water as part of their overall responsi-  
8 bility under the regulations.

9 That is the general intent of this --

10 Q Essentially, then, this is, tentatively,  
11 is just to clarify what the statute has said but has not  
12 been reflected in the rules.

13 A Yes, that's correct.

14 Q Could you then discuss and summarize the  
15 changes to each rule proposed in Case 8643?

16 A Yes, I will. I have several exhibits  
17 that I will be discussing as I go through them.

18 Q Let me first introduce as Exhibit One  
19 copies of proposed changes for all of these.

20 MR. BOYER: There are extra  
21 copies up in front here for anyone who wishes.

22 A The first, or I should say the second ex-  
23 hibit, will be two letters from the State Engineer's Office,  
24 dated May 15th, 1985, and April 13th, 1967.

25 The third exhibit is a sheet entitled Ad-

1 additional OCD Proposed Rule Changes, OCC Hearing 7/10/85.

2 And the final exhibits, or exhibit is the  
3 Guidelines for Design and Construction of Lined Evaporation  
4 Pits and the Guidelines for the Selection and Installation  
5 of Below Grade Produced Water Tanks in the San Juan Basin's  
6 Vulnerable Area.

7 Those two I'm requesting be admitted as  
8 one exhibit, those guidelines.

9 Q Exhibit Number Four, then?

10 A Yes, it will be Exhibit Number Four.

11 Shall I proceed?

12 Q Yes.

13 A All right. I will begin by discussing the  
14 definitions proposed as part of the Proposed Rule Additions  
15 and Amendments.

16 The first definition that is proposed to  
17 be added is a definition of fresh water as shown in the  
18 proposed additions.

19 The State Engineer, Mr. Steve Reynolds,  
20 has designated all surface waters, and has designated all  
21 groundwaters having 10,000 milligrams per liter, or less,  
22 total dissolved solids as waters to be protected.

23 This is shown in the May 15th, 1985, let-  
24 ter, which is part of Exhibit Number Two.

25 You'll note that the surface water desig

1 nation has no total dissolved solids limitation. All sur-  
2 face waters of the State of New Mexico are protected regard-  
3 less of quality.

4 A previous designation of April 13th,  
5 1967, designated underground waters for protection unless  
6 there was no present or reasonably foreseeable beneficial  
7 use which would be impaired by allowing such contamination.

8 The letter of May 15th, 1985, does not  
9 contain such a beneficial use clause; however, I understand  
10 a letter is will be forthcoming from Mr. Reynolds in the  
11 next week or so clarifying the matter.

12 The proposed definition includes the 1967  
13 beneficial use statement and if the expected letter of clar-  
14 ification does not include this, the case will likely be  
15 continued and readvertised with a substitute definition for  
16 fresh water.

17 The current proposed definition for fresh  
18 water does provide safeguards for protection of water. No

19 before any water of 10,000 milligrams per liter, or less,  
20 total dissolved solids can be found not to have reasonably  
21 foreseeable beneficial use, a notice and hearing procedures  
22 must be followed.

23 The second definition that was proposed  
24 to be added is the definition of produced water. This is a  
25 definition that is currently found in Rule No. 709-A. It

1 has been expanded by adding processing and transportation  
2 facilities as collection sites and it has been moved to the  
3 definition sections of the regulations.

4 Q Are those all the proposed changes in  
5 Rule 0.1?

6 A Yes, they are, Mr. Taylor.

7 Q Okay. Would you then move to Rule 1?

8 A Yes. I will discuss Rule 1, actually  
9 Rules 1 and 2 together

10 The changes to these rules are to add  
11 protection of fresh waters to existing requirements and man-  
12 dates given in the current regulations. This is again part  
13 of the overall intention of -- of -- to embody in the regu-  
14 lations the concepts that are already in the statute, and  
15 those changes are as published.

16 Q Okay, you want to move to Rule 2, then?

17 A Yes. This rules currently requires that  
18 those persons in the oil and gas business prevent waste.

19 The proposed change adds treating plant  
20 operators to the list of responsible persons and requires  
21 all persons in oil or gas -- excuse me, all persons in oil  
22 and gas or related operations regulated under the Oil and  
23 Gas Act to protect fresh waters from contamination, as well  
24 as prevent waste.

25 And that summarizes Rule 2 changes and

the reason for them.

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Q Okay, do you want to go to Rule 7?

A Yes. The Rule 7 is a proposed change. The modification is add fresh water protection as a reason to enter into agreements with other entities, such as State or Federal governments and industry or committees.

A good example of such a current arrangement is one that the OCD has with EPA to have the State UIC program run by the State instead of run by the Federal government.

And so these proposed changes clarify and add to our ability to enter into such agreements.

Q Okay, let's skip to, I believe, Rule 709.

A Yes, sir, Rule 709 is the produced water definition that we moved to Rule 0.1. After the moving of the produced water definition the remaining sections have been relabeled to have consistency.

Q So that's just deleting something which you've moved to another section.

A Yes, and relabeling.

Q Okay, and finally, well, let's see, for this case I believe it's Rule 308?

A No, Rule 710.

Q Oh, Rule 710.

1           A           The 710 (a), the changes proposed to  
2 that, I will discuss those changes.

3                       Currently only the person transporting  
4 the produced water is responsible for proper disposal.

5                       The proposed change makes all persons  
6 handling produced water responsible for proper handling and  
7 disposal, so as to protect fresh waters.

8                       This change will make the rule consistent  
9 with the changes proposed for Rules 1, 2, and 3.

10                      In Rule 710 (b) there was originally in-  
11 tended to insert the word "and" because of -- it was thought  
12 that that would add clarity to the rule.

13                      Further review by myself and others in  
14 the Division shows that it does not add substance or clari-  
15 fication to the rule so we propose, instead, to leave the  
16 rule as it is currently stated in the regulations. That is  
17 Rule 701 (b).

18                      I have one additional notation or mention  
19 of note and that is Rule No. 313. Changes to this rule,  
20 concerning emulsions, basic sediments, and tank bottoms,  
21 were not in the original call and they'll likely have to be  
22 advertised in the future; however, the changes to the rule  
23 are shown in the exhibit that we passed out. I believe that  
24 is Exhibit Number Three, and the proposed change that I re-  
25 commend as a member of the Division is that the word

1 "streams" would be deleted and the words "fresh waters"  
2 would be added. Making this change would make the rule con-  
3 sistent with the other proposed changes regarding fresh wa-  
4 ter protection.

5 In summary, all the changes of all the  
6 rules that I've just mentioned would add fresh water protec-  
7 tion to the regs -- to the regulations as is currently in  
8 the statute.

9 And that concludes my testimony on the --  
10 on the first case.

11 Q And is it your professional opinion that  
12 these changes are needed in order to carry out the mandate  
13 of the Legislature that the Oil Conservation Division take  
14 reasonable steps to protect fresh water resources?

15 A Yes, they are.

16 Q Okay. Shall we move next to Case 8644?

17 A 47.

18 Q Case 8647.

19 A I think that's the one I prepared for.

20 Q What is the intent of the changes pro-  
21 posed for the rule listed in Case 8647?

22 A The original intent, or the intent as  
23 called, was to clarify the need for reporting small volumes  
24 of produced water.

25 The -- the way that was to be accom-

1 plished, as was originally intended, was to delete the  
2 Rule 308 since the current definition is unwieldy and hard  
3 to interpret and the rule is inconsistent with the informa-  
4 tion required on Form C-115.

5 Form C-115 is the operator's monthly re-  
6 port which requires a report of total barrels of water pro-  
7 duced from oil and gas wells.

8 Instead of deletion of the Rule 308 I re-  
9 commend to the Commission that the rule be retained and mod-  
10 ified.

11 The modifications that are proposed are  
12 in the Exhibit Number Three.

13 Because of the importance of proper dis-  
14 posal of produced water for freshw ater protection, and the  
15 need of the Oil Conservation Division to have good records  
16 to insure proper disposal of the volumes of water produced,  
17 I recommend that the rule be modified by deleting references  
18 to percentages and by adding a requirement to report volumes  
19 of water produced from gas wells. These changes will then  
20 make the rule consisten with the requirement currently on  
21 the C-115 form.

22 That concludes my comments on Rule 308,  
23 8647.

24 MR. STAMETS: While we're right  
25 there, Mr. Boyer, the advertisement for this Case 8647, the

1 add said the deletion was in order to clarify the need for  
2 reporting of small volumes of produced water.

3 The rule that you have proposed  
4 here, does that make any substantial change in the effect of  
5 what was proposed?

6 A No, sir, it does not. The -- what it  
7 does is it removed percentages of -- from the rule and  
8 therefore all water produced no matter how small will have  
9 to be -- is required to be reported.

10 MR. STAMETS: That was the in-  
11 tent of the advertisement in Case 8647?

12 A Yes, sir.

13 MR. STAMETS: Okay, thank you.

14 Q Okay, Mr. Boyer, we'll next move to Case  
15 8544. Will you explain to us the intent of changes proposed  
16 in this case?

17 A Yes. 8644 is a new rule that is proposed  
18 to require approval prior to use of lined pits or below  
19 grade tanks for disposal or storage of produced water or  
20 other oil field fluids.

21 The OCD needs to review such applications  
22 to assure that design and specifications for the proposed  
23 installation of lined pits or below grade tanks encompasses  
24 all aspects necessary to protect groundwater and provide for  
25 safe operation.

1           Such a design assurance would include  
2 adequate structural design, material selection, leak detec-  
3 tion, and a contingency plan in the event of a leak.

4           Recent occurrences outside of the oil and  
5 gas industry have shown that if any of these items are not  
6 considered in the design, rapid deterioration of an impound-  
7 ment integrity may occur well before the expected life of  
8 such an impoundment ends.

9           And we have two instances outside the oil  
10 and gas industry, such as the Clovis Sewage Treatment Plant  
11 and the Lea Acres situation.

12           In Clovis a lined impoundment began leak-  
13 ing. One reason it did was that there was the structural  
14 construction of the sides was not adequate.

15           At Lea Acres the fact that the dike was  
16 actually breached.

17           Anyway, that is the intent of the regula-  
18 tion; proposed rule, I should say.

19           Q           Would you give us a summary of how the  
20 guidelines for the proposed Rule 8 are to be used, and I be-  
21 lieve that's Exhibit Number Four, is it not?

22           A           Yes. Exhibit Number Four consists of  
23 both the guidelines for lined pits and below grade storage  
24 tanks. There are two different guidelines currently avail-  
25 able from the Division and, again, one is the guidelines for

1 lined evaporation ponds and the second is the guidelines for  
2 below grade produced water tanks in the San Juan Basin's  
3 Vulnerable Area.

4 Both guidelines are prefaced and contain  
5 the statement that designs may deviate from the guidelines  
6 if it can be shown that the design integrity is such that  
7 the installation will not affect any future or present  
8 sources of useful groundwater. Thus the guidelines should  
9 be considered an information source for those who are not  
10 very familiar with such designs as they relate to ground-  
11 water protection.

12 Q What advantages are there for operators to  
13 follow the guidelines for installations outside the San Juan  
14 Basin Vulnerable Area in the northwest part of the state and  
15 in other parts of the state not covered by a special no-pit  
16 order?

17 A It may be possible in the future for an  
18 area not currently listed as being in a vulnerable area, say  
19 in the Order 7940, or in some other part of the state, to be  
20 designated and require a lined pit or a below grade tank,  
21 and thus it will become part of an area that -- that would  
22 need to have some special rules for lining.

23 If the guidelines are followed in such a  
24 situation there is a probability that there will be a need  
25 to retrofit facilities to comply with amendments to orders

1 or any future orders.

2 Q Is that all your testimony in Case 8644?

3 A Yes, that concludes my testimony.

4 Q Okay, and finally, is it your profes-  
5 sional opinion that the rules proposed, rule changes pro-  
6 posed in Case 8644 and 8647 are necessary to better enable  
7 the Oil Conservation Division to carry out its responsibili-  
8 ties to protect fresh water resources?

9 A Yes, sir, it is.

10 Q Okay.

11 MR. TAYLOR: I have no further  
12 questions.

13

14

CROSS EXAMINATION

15 BY MR. STAMETS:

16 Q Mr. Boyer, on Rule 8, I don't believe it  
17 appears as though this rule was intended to cover temporary  
18 operations as, say, a lined pit at a drilling site, is that  
19 correct?

20 A Yes, that's correct. It is not intended  
21 to be --

22 Q So perhaps we might need to put an  
23 explanatory in the rule that clarifies that.

24 A Yes, sir. This is for, this is intended  
25 to be for permanent installations.

1 MR. STAMETS: Are there other  
2 questions of the witness?

3 He may be excused.

4 Mr. Taylor, you may call your  
5 next witness.

6 MR. TAYLOR: Mr. Frank Chavez.

7  
8 FRANK CHAVEZ,  
9 being called as a witness and being duly sworn upon his  
10 oath, testified as follows, to-wit:

11  
12 DIRECT EXAMINATION

13 BY MR. TAYLOR:

14 Q Will you please state your name, employ-  
15 er, and title for the record?

16 A My name is Frank Chavez. I am employed  
17 by Oil Conservation Division as District Supervisor of Dis-  
18 trict III in Aztex, New Mexico.

19 Q Are you familiar with the subject matter  
20 of Cases 8645 and 8646 and 8648?

21 A Yes, I am.

22 Q Have you testified before the Commission  
23 or its Examiners before and had your qualifications accep-  
24 ted?

25 A Yes, I have.

1 MR. TAYLOR: Mr. Chairman, are  
2 the witness' qualifications acceptable?

3 MR. STAMETS: They are.

4 Q Let's see, let's begin with Case 8645.  
5 Would you please summarize the proposed changes sought in  
6 this case?

7 A 8645, we're going to require that the ap-  
8 proved drilling permit be kept at a drilling site and that  
9 the landowner, land tenants, be notified prior to staking a  
10 well location on the property.

11 Q What is the intent of this rule change?

12 A These rule changes will allow for easier  
13 inspection by our operators, I'm sorry, by our inspector,  
14 and clarification to the operator of when their permit to  
15 drill is approved. Also it will allow for speedier drilling  
16 on some well locations on private land.

17 Q And is that essentially why there's a  
18 need for that change?

19 A Yes. The first addition in Paragraph (a)  
20 allows an inspector, OCD inspector, to examine the wellsite  
21 and determine that an operator has a plan that has been ap-  
22 proved by the District Office. It is difficult to keep in  
23 memory all the permits that have been approved.

24 Also, an inspector can examine the drill-  
25 ling records at the well site and see that they are in ac

1 cordance with the approved plan.

2           Also, in some situations we have adminis-  
3 trative approvals which come out of the Santa Fe Office,  
4 while approval for the drilling permit itself comes out of  
5 the District Office, and this will help to coordinate the  
6 activity of the operator, to be sure that both those appro-  
7 vals are received before a well is commenced.

8           The second addition, Paragraph (c), will  
9 help ameliorate some problems that have arisen at times when  
10 the landowner received little or no notification of proposed  
11 activity on his property.

12           The subsequent rush for approval of  
13 amended or nonstandard locations results in a burden on the  
14 operator and on our office.

15           We've also received complaints from land-  
16 owners about surveying and staking on their property without  
17 the courtesy of prior notification. The biggest advantage  
18 of prior notification is that the operator and landowner can  
19 work together with us to locate a well, especially that --  
20 if it requires a nonstandard location, so we can maximize  
21 recovery of oil and gas and also allow for maximum surface  
22 usage of the land.

23           Q           Could you tell us if there are any cor-  
24 rections or deletions from the rule as it was printed in our  
25 exhibit and docket?

1           A           Yes. In Paragraph (c), the last word,  
2 which says "lease" should be "lessee".

3           Q           Are there any other corrections?

4           A           No, not in 8645.

5           Q           Is that all your testimony in 8645?

6           A           Yes, it is.

7           Q           Let's move next, then, to Case 8646.  
8 Would you please summarize the proposed rule changes sought  
9 in this case?

10          A           In 8646 we are adding wording, as per Mr.  
11 Boyer's previous testimony concerning the contamination of  
12 fresh waters, to make it clear that we are looking at the  
13 protection of fresh waters.

14                   Also, we want to provide a notification  
15 procedure to the Division of situations which may lead to  
16 underground waste.

17          Q           Okay. What is the intent of these  
18 changes?

19          A           In the change for Rule 108 by receiving  
20 immediate notice the Division can make a determination of  
21 the potential hazards that a casing failure poses and can  
22 direct an operator to take appropriate action.

23                   As presently written the rule only re-  
24 quires that the operator proceed with diligence, which is  
25 rather vague.



1 all, the major change is written notice within five working  
2 days of immediate notice is that the -- most casing failures  
3 do not require immediate notice because they do not cause  
4 immediate discharges that would fall under Rule 116.

5 Q So you're just recommending to the Com-  
6 mission that instead of having the words "immediate notice"  
7 that they be given up to five days with notice to be in  
8 writing to you.

9 A That's correct.

10 Q Would you now -- are you finished with  
11 Rule 108?

12 A Yes, I am.

13 Q Could you now briefly explain your alter-  
14 native to Rule 113?

15 A In the Rule 113 we've made some correc-  
16 tions in punctuation.

17 In the second sentence of Rule 113 we  
18 have inserted the word "fracturing" between "shooting" and  
19 "or", plus we have provided a revision there that the "the  
20 operator shall give written notice to the Division within  
21 five working days" for any injury that results to the forma-  
22 tion, casing, or injection interval.

23 Q Could you just briefly explain the pur-  
24 pose and why you propose this alternative to Rule 113?

25 A Yes. The Rule 113 is -- should -- should

1 formation damage occur to a well, the well could be lost to  
2 production or could create underground waste after shooting  
3 or treating of the well. Also, should formation damage oc-  
4 cur, extended period of time to repair the damage may make  
5 it irreparable after a certain period of time, so we want to  
6 provide a notification to the Division about that.

7 Q Okay. Do you have any other testimony  
8 that you'd like to present?

9 A Not in Case 8646.

10 Q Okay. Would you please summarize the  
11 proposed changes sought in Case 8648?

12 A In 8648 we want to change Rule 111 to  
13 provide for the operator to calculate the maximum displace-  
14 ment of a hole when the deviation exceeds five degrees over  
15 a 500-foot interval.

16 Q What is the intent of this change?

17 A The intent will ease the burden on the Di-  
18 vision in assessing the need for requiring a directional  
19 survey and will assist us in doing that.

20 Q Okay. I believe that's all the questions  
21 I have.

22 Do you have any other testimony in Case  
23 8648?

24 A No, I don't.

25 Q Did you prepare Exhibits Five and Six?

1           A           Yes, I did.

2                       MR. TAYLOR: Mr. Chairman, I'd  
3 like to move the admission of Exhibits Five and Six.

4                       Exhibit Five relates to the al-  
5 ternative wording for Rule 108 and Exhibit Six is the alter-  
6 native wording for Rule 113.

7                       MR. STAMETS: These exhibits  
8 will be admitted.

9

10                               CROSS EXAMINATION

11 BY MR. STAMETS:

12           Q           Mr. Chavez, in -- relative to Rule 108  
13 and Rule 113, is -- are the changes that you have proposed  
14 necessary to insure that the Division will be able to carry  
15 out its mandate to prevent waste and protect fresh water?

16           A           Yes.

17           Q           In Rule 111, in that proposal, what's the  
18 -- what's the benefit of having the operator make these cal-  
19 culations?

20           A           There will be a notice to us immediately  
21 when we receive the deviation tabulation that there may be a  
22 problem. Should this well have a nonstandard loction which  
23 places it closer to the proximity of the drill tract line,  
24 this will assist us in determining and advising the (not un-  
25 derstood) whether or not we should require a directional

1 survey of that well.

2 Q Is that the -- for the purpose of pro-  
3 tecting correlative rights to insure the operator that the  
4 well that's drifted is not producing somebody else's oil or  
5 gas?

6 A That's correct.

7 MR. STAMETS: Are there any  
8 other questions of this witness?

9 MS. AUBREY: Yes, I have some  
10 questions, Mr. Stamets.

11

12 CROSS EXAMINATION

13 BY MS. AUBREY:

14 Q Mr. Chavez, with regard to Rule 102, the  
15 proposed rule contemplates notice to the surface owner by  
16 certified mail or (not understood).

17 A It just says with reasonable diligence  
18 and there may be circumstances under which an operator may  
19 not have the opportunity or the time to notify the landowner  
20 by certified mail. Under normal circumstances that would be  
21 reasonably diligent, but the operator may have a short  
22 notice on drilling a well himself.

23 Q Then the rule does not contemplate an  
24 operator obtaining the return receipt prior to commencing  
25 operations under that rule?

1           A           Well, if there has not been enough time,  
2 no.

3           Q           Is it the intent of the rule change to  
4 require new notice every time an operator changes a stake  
5 location?

6           A           No. Once an operator has intended to  
7 stake a location on a person's property, our experience has  
8 been that they will deal with that person to locate the well  
9 and get it -- generally it will be located in one position  
10 that's agreeable to both the operator and the landowner.  
11 There would be no change.

12                        What has happened in the past is a loca-  
13 tion has been moved after the landowner has been notified,  
14 which created more burden on the operator and on us.

15           Q           So is it your testimony that it's the in-  
16 tent of Rule 102 that if there is a change in the staked  
17 location after -- after you have been notified, that there  
18 would be an additional requirement to re-notify the land-  
19 owner by mail?

20           A           I don't understand the question.

21           Q           Let me try that again. The rule as it's  
22 written requires notice to the surface owner, tenant, or  
23 lessee, as I understand it, prior to staking a well.

24           A           Yes.

25           Q           If the location is changed and there is a

1 new location staked on that landowner's land --

2 A For the same well?

3 Q -- for the same well, is it the intent to  
4 require new notice by mail to the surface owner?

5 A No, it is not.

6 MS. AUBREY: That's all I have,  
7 Mr. Stamets.

8

9 RE CROSS EXAMINATION

10 BY MR. STAMETS:

11 Q Mr. Chavez, is there any reason why the  
12 surface owner shouldn't receive a notice of the restaking?

13 A After the landowner has been notified of  
14 the first staking of the well, or that there is a well going  
15 to be staked on his property, at that time is when the oper-  
16 ator and the landowner make negotiations for the visit to  
17 the land, site, and examine it for other alternatives -- for  
18 alternative locations, and make a determination at that time  
19 where the well will be staked.

20 If the well is to be move from where the  
21 operator originally intended to stake it, the landowner is  
22 generally right there for that.

23 Q There could be cases, couldn't there,  
24 where the well would be staked and then the operator would  
25 change his mind based on an offsetting dry hole and restake

1 the well some distance from the original location?

2 A I can't think of a circumstance where  
3 that would happen without them contacting the landowner af-  
4 ter the well was originally staked.

5 Q Would the intent of this rule be more  
6 clear if we inserted the word "surface" before the word  
7 "lessee" at the very end?

8 A Yes, it would.

9 MR. STAMETS: Are there other  
10 questions of this witness?

11 Mr. Johnson?

12

13 QUESTIONS BY MR. JOHNSON:

14 Q Mr. Chavez, in the case of when the sur-  
15 face owner does not want any oil and gas drilling on his  
16 property whatsoever, is it our intent to hold up this appli-  
17 cation to drill until (not understood) is obtained by the  
18 operator?

19 A No.

20 Q Okay. Thank you.

21 MR. STAMETS: Any other ques-  
22 tions?

23 Mr. Hobbs?

24 MR. HOBBS: I wasn't interested  
25 in a possible question but I'd like to -- in some cases the

1 address and the name of the tenant or lessee is not known by  
2 the operator, so then these are not, you know, of record.  
3 The name of the owner, at least his name is on the record,  
4 but we don't always have access to going out on location and  
5 digging out who actually is the lessee from the owner of re-  
6 cord. We have no way to really know that.

7 A This is -- is that a question?

8 MR. HOBBS: No, that's purely a  
9 statement, you know. I mean like you're talking about us  
10 notifying you when we have no access to your name or ad-  
11 dress.

12 MR. STAMETS: For purposes of  
13 this record, let's say that that's an observation by an in-  
14 terested party.

15 A May I speak to that observation?

16 MR. STAMETS: And I think you  
17 may speak to that observation, Mr. Chavez.

18 A This is one reason why I think reasonable  
19 diligence is what's asked of the operator. We have had one  
20 instance that comes to my mind this last year where an oper-  
21 ator, I thought, acted in all diligence and sent them a cer-  
22 tified letter and the people who accepted it and sent the  
23 certification back that they received it were not the re-  
24 sponsible people for the property.

25 And the operator proceeded with, with

1 good reason, and there's no problem with that.

2 MR. STAMETS: Mr. Pearce.

3 MR. PEARCE: Mr. Chairman, if I  
4 may, I'd like to enter a letter of appearance in this mat-  
5 ter.

6 I am W. Perry Pearce of the law  
7 firm Montgomery and Andrews, Santa Fe, New Mexico, appearing  
8 on behalf of Meridian Oil.

9 The question which I have to  
10 address to Mr. Chavez and may reasonably be answered by mem-  
11 bers of the Commission and staff, if a rule requires that a  
12 surface owner receive notice of intention to drill, does  
13 that mean that if that surface owner objects to that drill-  
14 ling or that location that the OCD is now the proper agency  
15 to which to address that complaint?

16 It is my recollection, Mr.  
17 Chavez, Mr. Chairman, that in the past those disputes have  
18 been decided by the courts of the State of New Mexico rather  
19 than this administrative agency, and this agency has not  
20 taken upon itself the protection of those surface owners  
21 rights which are, in my understanding, governed by the con-  
22 tract entered into between that landowner and his lessee.

23 If the agency is now inserting  
24 itself in the midst of that dispute process, I think we need  
25 to know who these people are going to go on from now on,

1 because I don't think they've gone to the OCD.

2 And that's not in the form of a  
3 question, but I would like for somebody to address it.

4 MR. STAMETS: Mr. Pearce, if I  
5 might observe and make some comments relative to the ques-  
6 tion, I would believe that the proposal here today is much  
7 the same as currently embodied in Rule 102(b), and somewhat  
8 less than that.

9 In 102(b) notice is given to  
10 cities, towns, or villages, when a well is to be drilled  
11 within the boundary of that community, giving them the op-  
12 portunity, then, to take whatever appropriate action that  
13 city, town, or village choses to take.

14 In this instance -- well, in  
15 other instances the Division has used its good offices to  
16 help resolve disputes which allow wells to be drilled more  
17 quickly than if the landowner and the well operator go to  
18 the courthouse, and if I understand Mr. Chavez' testimony  
19 correctly, that is the spirit in which this proposed rule is  
20 offered, not -- not to -- to involve the Division or Commis-  
21 sion directly in deciding disputes but allowing us to use  
22 our good offices to assist operators and surface owners in  
23 resolving disputes if that can be done quickly and effi-  
24 ciently with available staff.

25 MR. PEARCE: Two observations,

1 Mr. Chairman, if I may.

2 Rule 102(b), when it speaks to  
3 cities, towns, and municipalities it seems to me is address-  
4 sing governmental authorities with some leasing power and  
5 responsibility.

6 I don't think that is at all an  
7 analogous situation to an individual landowner.

8 My second observation is that  
9 allowing the Division to informally use its good offices is  
10 very different than adopting a rule which makes the Division  
11 a part of a much more formal process.

12 I don't know that my client ob-  
13 jects to the adoption of this rule, and that I rise to, I  
14 suppose, make a statement, because I don't think it is a  
15 wise thing for this Division to do. I think if the Division  
16 requires an operator to give a surface owner notice, the  
17 surface owner will expect that this is the jurisdictional  
18 agency which is authorized to do something about that, and I  
19 do not find anything in the statute which grants you that  
20 authorization unless that could be tied to prevention of  
21 waste or protection of correlative rights or one of the  
22 other enumerated powers.

23 If in fact that is a matter of  
24 contract contained in the lease between the operator and the  
25 lessor, I don't think there's anything in your jurisdiction

1 which authorizes you to get in the middle of it and yet I  
2 think you are confined to the landowner if you are going to  
3 get in the middle of it.

4 I suppose that's a precaution-  
5 ary comment.

6 MR. STAMETS: I would ask Mr.  
7 Taylor subsequent to the hearing to review the Oil and Gas  
8 Act and determine whether or not this is something that the  
9 Division should become involved in and whether the Commis-  
10 sion should adopt this particular proposal.

11 Are there other questions of  
12 this witness? He may be excused.

13 MR. TAYLOR: Mr. Chairman, I  
14 neglected to enter the exhibits of Mr. Boyer and as long as  
15 he is still under oath, I'd like to do that in case there  
16 are any questions.

17 MR. STAMETS: Good idea.

18 MR. TAYLOR: So I would like to  
19 move the admission of Exhibits One through Four.

20 MR. STAMETS: Without objection  
21 these exhibits will be admitted.

22 MR. TAYLOR: And finally, Mr.  
23 Chairman, on the Rules of Procedure, I do not have a witness  
24 but I thought I would give a brief statement on these and I  
25 would also recommend that on these Rules of Procedure and  
the other rules that we've already had testimony about, the  
Commission might at the end of the testimony of other wit-

1 nesses be open for comments. I might state that we've re-  
2 ceived quite a number of comments on various of the rules,  
3 especially rules on notice, but there may be people here who  
4 wish to make oral comments on some of the rules.

5 MR. STAMETS: Mr. Taylor, do  
6 the application of the rules on procedure fall within your  
7 work duties at the Oil Conservation Division?

8 MR. TAYLOR: Yes, sir.

9 MR. STAMETS: Have you been in  
10 contact with people who have been working on these proposed  
11 rule changes for some period of time?

12 MR. TAYLOR: Yes, sir, I have.

13 MR. STAMETS: I'm not certain  
14 whether or not what you will say in this case will be testi-  
15 mony, but why don't you proceed and we'll figure that out  
16 later?

17 MR. TAYLOR: Okay. I didn't  
18 intend to testify about these, I just wanted to briefly sum-  
19 marize them.

20 Essentially, these rules, Rules  
21 1204, 1205, 1206, and alternate Rules 12-7 are intended to  
22 bring the OCD's notice procedures up to constitutional  
23 standards.

24 Several cases dating from as  
25 far back as the fifties have held essentially that notice

1 should be designed or intended to actually apprise the per-  
2 son of pendency of the action, and both our statute, which  
3 is New Mexico Statute Annotated 70-2-7, and our current  
4 rules, really do not do that in a sense that publication and  
5 personal service are the only things that are addressed, yet  
6 personal service, especially out of state, is especially im-  
7 possible, and therefore many people according to the rules  
8 only need to get notice by publication.

9                   And in the past the practice  
10 has become to give notification by letter to all those  
11 interested parties where an address could be obtained, and  
12 essentially what we're doing is changing the rules so that a  
13 mailed letter notifying a person of the pendency of an  
14 action will satisfy the requirements for notice, and I  
15 certainly think under the Supreme Court case, United States  
16 Supreme Court, that a mailed notice to the last known  
17 address of the interested party is that kind of notice which  
18 is intended and would in fact give actual notice to that  
19 person of the pendency of an action.

20                   I just will briefly go through  
21 these.

22                   Rule 1204, we're striking the  
23 words "given by personal service on the person affected".

24                   Rule 1204 essentially now  
25 becomes a publication provision of our rules.

1                   Rule 1205 strikes the words  
2 "such notice", and essentially is made to correlate with a  
3 published notice.

4                   We are striking Rule 1206 on  
5 personal service and replacing it with a rule which states  
6 that the Commission will be responsible for publication of  
7 notice in newspapers.

8                   That publication notice is es-  
9 sentially intended, I think, under Constitutional law and  
10 Supreme Court cases related only to people who are unknown  
11 or unreachable through any other means, so we have now added  
12 the proposed Rule 1207, which in its various aspects spells  
13 out as specifically as we believe we can the type of people  
14 that should be notified for various cases.

15                   Subsection 1 of that relates to  
16 compulsory pooling.

17                   Subsection 2 to unorthodox well  
18 locations.

19                   Subsection 3, nonstandard pro-  
20 ration units.

21                   Subsection 4 is special pool  
22 rules.

23                   Subsection 5 essentially to our  
24 Rule R-111-A.

25                   Subsection 6 to downhole com-

1 mingling.

2                   And Subsection 7 is a general  
3 provision for anything not covered in the previous subsec-  
4 tions.

5                   Alternative Rule 1207 is one  
6 which may be enacted in place of the first alternative, or I  
7 would recommend that possibly we could have Rule 1 -- the  
8 second alternative Rule 1207 as a coverall for other situa-  
9 tions.

10                   I might state that in going  
11 through the responses from many individuals and companies  
12 that read our rules and commented on them, there's quite a  
13 few who are in favor of the first alternative of Rule 1207,  
14 which requires fairly specific notice. There were only a  
15 couple of comments that thought that that was (not under-  
16 stood) but the vast majority thought that that was adequate  
17 and that it would help give guidance to company representa-  
18 tives responsible for giving notice and who often would not  
19 know the legal requirements of Supreme Court cases and other  
20 guidelines on type of notice.

21                   I think, Mr. Chairman, that's  
22 all I have just right now, if there are questions.

23                   MR. STAMETS: Mr. Taylor, in  
24 1207(a)7, it would appear as though that is limited to sit-  
25 uations where royalty interests might be diminished or ad-

1   versely affected, so it does not appear as though that  
2   covers all the other types of cases which might come along.

3                   MR. TAYLOR: I think you're  
4   probably correct, Mr. Chairman, on that one.

5                   MR. STAMETS: And you are sug-  
6   gesting that perhaps we can take at least a portion of the  
7   wording from Rule 1207 and create a Number 8 there, which  
8   would be as to any case not covered above notice shall be  
9   given.

10                  MR. TAYLOR: Yes, sir. It's  
11   essentially a catch-all which would provide the minimum Con-  
12   stitutional requirements for notice in case we have not  
13   spelled it out in the earlier part of the rule.

14                  MR. STAMETS: Just looking at  
15   the instructions of this Alternative No. 1, it would appear  
16   that perhaps the paragraph which begins "At each hearing the  
17   applicant shall cause", and so on, perhaps that should be  
18   Paragraph (b) of that rule, and what is currently proposed  
19   as Paragraph (b) should be Paragraph (c), since in what is  
20   known as Paragraph (a) the types of notice are stated and  
21   then that middle paragraph indicates what sort of proof will  
22   be given at the hearing.

23                  MR. TAYLOR: I think that would  
24   be probably a good idea.

25                  MR. STAMETS: Are there ques-

1 tions of Mr. Taylor on this proposal?

2 MS. AUBREY: I have some ques-  
3 tions, Mr. Stamets, of Mr. Taylor or the Commission, speci-  
4 fically with regard to Rule 1207.

5 In the comments which we filed  
6 on behalf of the New Mexico Oil and Gas Association and in  
7 connection with other comments which have come through our  
8 office, there has been concern by a number of operators, in-  
9 cluding Cities Service, who is here today, about the re-  
10 quirements in the rule as written for the operator to decide  
11 whose interest is adversely affected.

12 I believe that a substantial  
13 number of situations have been dealt with by specifically  
14 setting out the types of case in which notice is required  
15 and defining to whom that notice goes.

16 My concern this morning is,  
17 first of all, with the unorthodox well location rule, which  
18 continues to require an operator to decide whether or not an  
19 offset operator is adversely affected. I believe it would  
20 save time and constitutionally provide safeguards for every-  
21 one if the Commission were to make that decision for the  
22 operator and set forth exactly what kind of notice needs to  
23 be provided and to whom in, particularly, the unorthodox  
24 well location cases.

25 In addition, in the unorthodox

1 well location case it appears to require -- or the unortho-  
2 dox location rule it appears to require notice to all opera-  
3 tors. It does not seem to address the question of what an  
4 operator does when he is moving to a location which is less  
5 unorthodox as opposed to moving closer to someone else,  
6 whether or not notice -- whether or not that offset operator  
7 then is a party whose interests are adversely affected.

8                   With regard to Rule 1207(a)7,  
9 which has been discussed here as dealing with royalty own-  
10 ers, once again we would like to make comment that this does  
11 not appear to address the situation where, for instance, the  
12 compulsory pooling application is filed and the result of  
13 that pooling order could have an effect upon the adverse --  
14 upon a royalty owner's interest, but those royalty owners  
15 interests are not royalty owners of the applicant.

16                   The rule, as I read it, as it's  
17 composed, requires notice only to the applicant's royalty  
18 owners, not to royalty owners who may have their interest  
19 affected by a proceeding before the Division, and I would  
20 suggest, once again, that that is a situation which should  
21 be addressed by the proposed rule changes.

22                   MR. STAMETS: What you will be  
23 talking about then would be in cases other than compulsory  
24 pooling or statutory unitization situations.

25                   MS. AUBREY: In which a royalty

1 owner's interest will be affected by that royalty owner is  
2 not a royalty owner of the applicant.

3 As I read the rule as it is  
4 proposed, it only requires notice to the applicant's royalty  
5 interest.

6 MR. STAMETS: Just a minute,  
7 let me make myself a little clearer.

8 Thank you.

9 MS. AUBREY: I have three more  
10 comments on the rules.

11 The first is that 1207 as writ-  
12 ten as proposed, provides that evidence of failure to pro-  
13 vide notice may be considered a cause for -- may be consid-  
14 ered cause for re-opening the matter.

15 We would suggest that language  
16 be included in the rule that would permit a case to be con-  
17 tinued by a party who comes before, say, an Examiner, and  
18 can show either by -- either by letter or in person, that he  
19 has not been notified of the hearing within the appropriate  
20 amount of time to prepare for it.

21 The concern that we have is  
22 that an adversely affected person may have to sit through an  
23 Examiner Hearing, have an adverse Examiner order entered,  
24 simply because he has not had time to prepare because he has  
25 not had notice, and then have to either apply to reopen the



1 either one of those alternatives, but that I believe it  
2 needs to be addressed and the important thing is for the  
3 parties and the Commission and the Examiners to have for a  
4 certainty about exactly what happens when you file an appli-  
5 cation for a de novo hearing, and what the validity of the  
6 Examiner order which is entered is at that particular time.

7                   The last comment I have on the  
8 notice, this particular notice rule, or the proposed rules,  
9 is that we would suggest that some sort of notice require-  
10 ment be enacted by the Commission to require notice of op-  
11 posed cases.

12                   Most of the other jurisdiction  
13 which have administrative proceedings relating to oil and  
14 gas do, in fact, have a requirement of notice in writing to  
15 the Commission and to adverse parties that a case will be  
16 opposed.

17                   It is our belief that this  
18 would permit better preparation of cases, would give the Ex-  
19 aminers, particularly, a way to estimate the length and com-  
20 plexity of their docket in advance; it would put everyone on  
21 notice of exactly how many contested cases were going to be  
22 on that day; and would eliminate a situation which has  
23 arisen in practice, which is that a party who intends to op-  
24 pose does not need to particularly prepare but to simply sit  
25 through an Examiner hearing, receive copies of the exhibits

1 which the applicant has prepared, listen to the testimony,  
2 and when the Examiner order is entered to file for a de novo  
3 hearing, and has had the benefit of discovery, which does  
4 not run to the applicant, then, because the opposing party  
5 doesn't need to do anything but enter an appearance in order  
6 to have a right to a de novo hearing.

7                   We believe that some sort of a  
8 requirement that there be notice of a contested, of a poten-  
9 tial contested hearing, would provide fairness for both the  
10 applicant to know he's opposed, and for the Examiner, who  
11 would then be able to estimate the length of his docket.

12                   Those are all the comments I  
13 have, Mr. Stamets.

14                   MR. TAYLOR: Mr. Chairman, if I  
15 might briefly responds.

16                   I somewhat share the concern of  
17 Ms. Aubrey for the wording of someone whose interest is ad-  
18 versely affected, because actually, I think the test we use  
19 is whether they have a property interest that's affected,  
20 whether or not it may be adverse, we may not know until an  
21 order is entered or it may not be adverse but it may be  
22 something that their property could be affected by and they  
23 would certainly be interested in knowing about that.

24                   And her other comment on royal-  
25 ty interest, and notice to an applicant's royalty interest,

1 I remember we had a discussion of this with several of the  
2 attorneys that practice here, and it was our feeling at that  
3 time, I recall, that we limit it to the applicant's royalty  
4 interest owners because we thought it would be a huge burden  
5 to find out all the royalty interest owners, but I think we  
6 were talking about the other parties in a case notifying  
7 their own royalty interest owners, but I can't recall, and  
8 therefore I think we'll have to maybe discuss that some  
9 more.

10 MR. STAMETS: Ms. Aubrey, rela-  
11 tive to your first concern about the unorthodox location, I  
12 think Mr. Kellahin was one of those, perhaps he didn't pro-  
13 pose this additional language, I doubt if he did, but he has  
14 been trying for some time to get the notice relative to un-  
15 orthodox locations changed so that only those persons who  
16 are being approached by the unorthodox location are to re-  
17 ceive notice, and I'm certain that you and Mr. Kellahin  
18 could come up with some fantastic language which would say  
19 that much better than it's been said here, and some period  
20 of time, a least a couple of weeks after this hearing, will  
21 be provided for such additional submittals.

22 Also, if the -- any parties  
23 here would like to submit proposals for the catch-all  
24 language which would be then Item 7, Paragraph (a), we would  
25 certainly appreciate receiving such -- such language.

1                                   Did I say a new 7? If I said a  
2 new 7, I'm wrong. It will be a new 8 following 7.

3                                   Are there any other observa-  
4 tions by those who said they were going to comment?

5                                   Mr. Carr?

6                                   MR. CARR: May it please the  
7 Commission, Amoco Production Company is naturally concerned  
8 about any new notice requirements that might be promulgated  
9 by the Oil Conservation Division.

10                                  We are, however, equally con-  
11 cerned that whatever rules are promulgated by the Commission  
12 be clear and clearly put us on notice of what we are to do  
13 as we get into this additional area of providing information  
14 to those who have interest to be affected by actions we're  
15 proposing to take.

16                                  We have a concern that when you  
17 say actual notice by certified mail, return receipt re-  
18 quested, that that not be confused -- I think it probably is  
19 not as the whole rule that is drafted -- but that that not  
20 be confused with a situation where we must not only send it  
21 but we must guarantee that the individual received it at the  
22 other end.

23                                  We've had trouble in the past  
24 with situations where in cases like compulsory pooling where  
25 you have been dealing with someone in good faith, they are

1 opposed to the application, and they simply refuse to accept  
2 the mail when we send them notice.

3                   The rule as written says that  
4 you shall provide proof of receipt when it is available, and  
5 as long as that applies to all situations where certified  
6 mail is required and all we're compelled to do, or required  
7 to do, is to show you that we have sent notice properly ad-  
8 dressed, then that concern is taken care of, but it has been  
9 a problem in the past and Amoco wanted to call it to your  
10 attention.

11                   When we get into the proposed  
12 rule on unorthodox locations, we do believe there is a prob-  
13 lem with the language. We share the concern expressed by  
14 Ms. Aubrey about giving notice of those parties adversely  
15 affected and we are concerned about our being called upon to  
16 make that judgment.

17                   We're also concerned about the  
18 language that says "adversely affected" in spacings and pro-  
19 ration units of the same size.

20                   We think that language is con-  
21 fusing. If you look at the Jalmat Gas Pool, it's difficult  
22 to find situations where you're moving towards spacing or  
23 proration units of the same size.

24                   We think your intent is clearly  
25 to give reasonable notice to those interest owners who are

1 being affected because a well is moving toward them. We  
2 really doubt that this language clarifies that situation,  
3 but in fact leads to further problems, and we would suggest  
4 that having a rule that is clear and understandable lets  
5 operators know what's expected of them, that language should  
6 be adopted to the effect that operators -- or that -- or  
7 that notice should be given by operators of contiguous and  
8 cornering proration or spacing units toward which a well is  
9 being moved. We think that is clear and understandable and  
10 let's the person proposing the unorthodox location know what  
11 is expected of him and would also provide adequate notice to  
12 those interest owners who are being affected by the unortho-  
13 dox well location.

14 We are particularly concerned  
15 about the provisions which require giving notice to royalty  
16 interest owners in cases that may diminish or adversely af-  
17 fect their interest.

18 It's hard to conceive of a case  
19 that comes before you where under a certain set of circum-  
20 stances after the fact someone's interest might not be di-  
21 minished or adversely affected. Beyond that, we're required  
22 to not only identify whether or not their interest may be  
23 ultimately, adversely diminished or affected, but we're to  
24 give actual notice to interest owners immediately affected.  
25 This becomes a real difficult situation for an operator pro

1 posing to do virtually anything and that it creates an un-  
2 healthy situation where after the fact someone could come  
3 back and say, I'm clearly someone who had a royalty interest  
4 that was going to be diminished and I should have been given  
5 notice, the order should be set aside and we can start over.  
6 That's an unreasonable burden.

7                   We also think this whole pro-  
8 posal steps outside the traditional relationship which  
9 exists between lessee and working interest, a royalty inter-  
10 est owner on one hand and a working interest owner on the  
11 other.

12                   The relationship between these  
13 parties is governed by the contract between them, by the  
14 lease, and you have a right as a royalty interest owner not  
15 to expect that every action taken, every single circum-  
16 stance, might not diminish your interest. You have a right  
17 to expect that the property will be operated in accordance  
18 with prudent operating standards.

19                   We think that actually a royal-  
20 ty interest owner in a case where he has signed a lease with  
21 an individual and if that individual is operating the well  
22 or if he signs a lease with another working interest owner  
23 that has (not understood), we think that royalty interest  
24 owner's rights spring from that contract and run to the in-  
25 dividual with whom he has contracted and they shouldn't be

1 a part of the hearing, and in doing this, you're merely  
2 changing the traditional relationship of the parties and  
3 you're going to be creating serious problems from an admin-  
4 istrative point of view for the Division and creating risk  
5 for the operators that are attempting in good faith to dev-  
6 elop properties.

7 We think that Alternative No. 2  
8 seems to now be in the process of being elevated to a catch-  
9 all provision, is the worst part of the proposed rules.  
10 It's simply not clear.

11 We're supposed to give notice  
12 to people we expect to be adversely affected down the road.  
13 Two years down the road we may be called to task because we  
14 should have expected that this was going to happen to some-  
15 body who now finds themselves adversely affected. We're  
16 again in the position of trying to identify royalty interest  
17 owners that might be immediately affected. I think it's un-  
18 clear and we submit that any rule that you propose not only  
19 should attempt to address what's (not understood) but if  
20 there are problems with the notice requirements, that rule  
21 should be clear enough so when an operator tries to apply it  
22 and acts in good faith, he's not out in a never, never land  
23 where he's trying to anticipate what might happen two years  
24 down the road and determine whether or not the royalty own-  
25 ers is going to be immediately affected at that time.

1 MR. STAMETS: Again, Mr. Carr,  
2 if you've got some language which would help clear that up,  
3 feel free to submit that within the next couple of weeks.

4 MR. CARR: We will do that and  
5 I also would just like to note that I do have comments that  
6 relate to our previous conversation, or previous testimony  
7 concerning Rule 102 and I was planning to make a comment at  
8 the end but with your permission I would just note that in  
9 regard to 102 when the (not understood) is being proposed,  
10 we use reasonable diligence to give notice to the landowner,  
11 a tenant or a lessee.

12 Amoco would submit that it  
13 would be clear and we think adequate if the Commission  
14 adopted a rule that required that we give notice to -- or  
15 make reasonable, diligent efforts to give notice to land-  
16 owners, lessees of record, and beyond we get into an area  
17 where it is difficult, if not impossible, to locate owners  
18 of interests that are not recorded and also it is virtually  
19 impossible often to identify a group of tenants of a lessee,  
20 so we would request that you consider inserting language to  
21 require that (not understood).

22 Finally, I don't believe that  
23 the hearing was called to discuss procedures concerning how  
24 we conduct a de novo hearing, so I won't address those.

25 I won't address procedures con

1 cerning how matters should be handled by the Division  
2 concerning the common purchaser's statute, and I will not  
3 give you my opinion on how a contested hearing should be  
4 handled.

5 MR. STAMETS: Mr. Carr, on the  
6 royalty interest owner notification, it almost sounded as  
7 though you said that when a person signs a lease he no  
8 longer has any rights to come into the Commission and be  
9 heard, for example, in a spacing case. Is that -- is that  
10 what you were saying?

11 MR. CARR: I think when you  
12 take a lease or give someone a lease to go out and operate  
13 or explore and develop the property for the production of  
14 oil and gas, that your rights with that individual are  
15 defined by that document and I think that in that situation,  
16 if that lease does not give the operator to commit your  
17 interest or to pool your interest, then I think you have the  
18 right to do that, but I don't think you should come in and  
19 become an armchair operator and come to the Oil Commission  
20 and start squabbling over the well location and squabbling  
21 over downhole commingling, and all these other things, when  
22 you have given someone else the right to go out and develop  
23 that property, and the standard that governs what that indi-  
24 vidual is to do when he's out there drilling and exploring  
25 and developing that mineral interest, is he's required to

1 act as a prudent operator, and I think that is a standard  
2 that applies, and I think bringing all the working interest  
3 -- royalty interest owners into this proceeding is inappro-  
4 priate.

5 MR. STAMETS: Mr. Nutter.

6 MR. NUTTER: Mr. Chairman, I  
7 want to make it clear from the outset that I'm speaking for  
8 myself as an interested party and as a friend of the Commis-  
9 sion. My remarks do not necessarily reflect the views of  
10 any of my clients but rest assured they're not in conflict  
11 with those clients, either.

12 With respect to Case Number  
13 8645, Rule 102, prior to staking a well the operator shall  
14 make a reasonably diligent attempt to give notice to the  
15 landowner and, if different, notice to the tenant or lessee.

16 First of all, I don't under-  
17 stand the necessity of notification to the landowner or ten-  
18 ant at all, to begin with. When the lease is obtained, the  
19 right of ingress and egress, as well as the right to drill,  
20 is established.

21 Further, the rights of desig-  
22 nating where a well is to be drilled is usually not included  
23 within the lease; it may be in some particular case.

24 Granted such notification may  
25 be a demonstration of common courtesy, but approval of an

1 acceptable notice of intention is a ministerial function of  
2 the Division and failure to notify a landowner before stak-  
3 ing a location would never be sustained as justification to  
4 withhold approval of the otherwise acceptable drilling per-  
5 mit.

6 I just don't believe that you  
7 can legislate common sense courtesy.

8 Supposing you do adopt this  
9 proposed rule, I believe you will have to define what a  
10 reasonably diligent effort or attempt to give that notice  
11 is.

12 Now, as was pointed out there  
13 may be an analogy of this rule with the one relating to giv-  
14 ing notice to the city, town, or village; however, a very  
15 small percentage of the wells are drilled within the corpor-  
16 ate limits of cities, towns, and villages, and this rule  
17 would be applicable to 99 percent of the wells that are  
18 drilled in the state, and it's imposing undue burden on the  
19 operator, especially when you say that notice to the land-  
20 owner shall be given and, if different, notice to that ten-  
21 ant or lessee.

22 As mentioned previously, now,  
23 oftentimes you don't know the name of the sharecropper or  
24 whoever it may be that has a sublease on the property or in  
25 the case of state lands, who the surface lessee would be. I

1 don't know if this is intended to apply also to Federal  
2 lands or not, but if notice is given to the landowner, why  
3 shouldn't it be the duty of the landowner to notify his les-  
4 sees, the surface lessees?

5 But the establishment of what a  
6 reasonably diligent attempt to give that notice, should be  
7 clarified at any rate.

8 Now, with respect to Case Num-  
9 ber 8646, Rule 113, where it talks about injury to the pro-  
10 ducing formation or injection interval, and so forth, it's  
11 not clear to me whether the concern here is injury to the  
12 formation or injury to the casing or the casing seat, or  
13 even the cement job.

14 I can understand your concern  
15 for the casing, the casing seat, or the cement, but not the  
16 formation. I believe that it's the intent of shooting,  
17 fracturing, or chemically treating a formation to injure it,  
18 at least to the extent of breaking down and changing its  
19 permeability, and that that injury is irreparable.

20 Therefore my questions is what  
21 irreparable injury to the well is and does the word "well"  
22 in the first part of the last sentence include the formation  
23 or is it just the well.

24 If it does not include the for-  
25 mation, then the words "formation" and "injection interval"

1 should be stricken from this rule.

2 I realize that you're not  
3 changing anything here as far as entry to the formation is  
4 concerned, and I think that Mr. Chavez' punctuation change  
5 has clarified this to a certain extent by putting the comma  
6 after the word "formation". It sounded previously like  
7 you're talking about the formation casing, not the forma-  
8 tion, casing, but it's been a -- it's been a weakness of  
9 this rule for over the years before you proposed this amend-  
10 ment today, that you're not supposed to damage the formation  
11 but it is your intent to damage the formation.

12 Now if you're talking about  
13 creating channels or avenues between this formation and an-  
14 other formatio, maybe that's what the rule should say, and I  
15 believe that probably is the intent, that you don't want to  
16 create communication from one formation to the other.

17 MR. CHAVEZ: May I comment on

18 --

19 MR. STAMETS: Let's let Mr.

20 Nutter finish.

21 MR. CHAVEZ: All right.

22 MR. NUTTER: That's all I have  
23 on that one. Now I'll go to another one or maybe he might  
24 want to make his comments here.

25 MR. STAMETS: Fine. Mr. Cha-

1 vez?

2 MR. CHAVEZ: Formation damage  
3 that can occur during chemical treating, shooting, fractur-  
4 ing, are (not understood) blocks, plugging of fines, other  
5 types of damage that can occur, skin damage, it's sometimes  
6 called, when you're drilling that in some cases is reparable  
7 through other processes, maybe a re-fracturing, different  
8 chemical situations (not understood) the wellbore.

9 MR. NUTTER: Of course if a man  
10 has created a block or a skin effect in this wellbore, he's  
11 not going to get production. A prudent operator is going to  
12 try to correct that, and that isn't really formation -- in-  
13 jury to the formation; it's a blockage to the formation,  
14 that's creating a barrier between his well and the forma-  
15 tion.

16 But you are trying to injure  
17 the formation when you fracture or treat.

18 MR. STAMETS: Mr. Nutter, do  
19 you think it's appropriate if we were concerned about injury  
20 to the producing formation which would result in waste?

21 MR. NUTTER: That's a step in  
22 the right direction, yes, sir. It's -- this is an old fal-  
23 lacy of this rule that I've always questioned.

24 MR. STAMETS: Okay, do you have  
25 comments on some other rules?

1 MR. NUTTER: Yes, sir, Case  
2 8649. I notice that this case is numbered 8649 and I'm also  
3 reminded that the Oil Conservation recently commemorated its  
4 50th anniversary, and in all of those cases and all of those  
5 years, I do not believe there has ever been a single order  
6 of the Commission or the Division even challenged, much less  
7 reversed, because of failure of the present system of giving  
8 notice for hearings.

9 As the Chairman is aware, there  
10 have been possibly two occasions where a complaint by some  
11 affected party that did not receive notice was received and  
12 the Commission simply reopened the case, but never, to my  
13 knowledge, has anyone felt that the present procedure for  
14 giving notice was so inadequate as to giving the confidence  
15 to justify challenging an order of this Commission.

16 I do believe that it's alto-  
17 gether fitting and proper to adopt your proposed Alternative  
18 No. 1 Rule 1. Compulsory pooling cases and statutory uniti-  
19 zation cases are in effect the adjudication of property  
20 rights and individuals noticed by certified mail should  
21 certainly be advisable for this type of a hearing.

22 In Alternative No. 1 Rule 2 I  
23 believe certified mail notice for unorthodox locations may  
24 be a little much. If it is adopted, I would point out that  
25 a flaw in this notice is required by giving notice only to

1 those operators of units of the same size.

2                   If I had a nonstandard unit of  
3 a size different than the offset, I don't have to notify  
4 them or if I have a standard unit I would not have to notify  
5 anyone with nonstandard units.

6                   Alternative 1 Rule 3, again I  
7 believe the certified mail notice is a little bit excessive.

8                   Alternative 1 Rules 4 and 5,  
9 for the promulgation of or amendment of special pool rules  
10 notice would be required by regular mail to all operators  
11 within the pool or within one mile thereof.

12                   In the case of amendments to  
13 Rule R-111-A, notice is required to be given to affected  
14 potash operators and affected oil and gas operators by cer-  
15 tified mail.

16                   I don't comprehend the differ-  
17 ence, one by regular mail and one by certified mail. Spe-  
18 cial rules are special rules and certainly the notification  
19 of all operators in a very large pool and within one mile  
20 thereof, could develop into a most onerous and expensive  
21 chore.

22                   Also with rule -- with respect  
23 to Rule 5, how does one determine who an effective potash  
24 operator or oil and gas operator is.

25                   Alternative No. 1 Rule 6, this

1 required regular notice, regular mail notice to all offset  
2 operators for hearings for downhole commingling. Why?

3                   Alternative 1 Rule 7, I believe  
4 that the relationship of the operator and his royalty owner  
5 is of a fiduciary nature and that any violation of this  
6 trust by the operator opens the operator to criticism and  
7 possible legal action.

8                   This one sort of reminds me of  
9 the above on calling for notice to the landowner prior to  
10 staking the location. Common sense or courtesy should pre-  
11 vail and you can't legislate either one.

12                   Now we get to the next to last  
13 paragraph of Alternative 1, evidence of failure to provide  
14 notice as provided in this rule may upon proper showing be  
15 considered cause for reopening the case.

16                   This is the one that really  
17 scares me. There's no time limit imposed here and nothing  
18 to prevent someone from creeping out of the woodwork at any  
19 time down the road and establishing that he was indeed sub-  
20 ject to notice but did not receive it. This could even be  
21 one minority royalty owner you accidentally overlooked in  
22 Rule 7, and you diminished his interest by a wide spacing  
23 case or the owner of a 40-acre tract outside the pool but  
24 within one mile thereof, when you applied for and received  
25 80-acre spacing. He could say my interest was diminished

1 because I've only got a 40-acre tract and I can't drill a  
2 well.

3 This, as I stated, this -- this  
4 one rule here really frightens me.

5 Alternative 2 in Rule 1207  
6 would be fine if you could magically know who was adversely  
7 affected and if there were some time limit upon which this  
8 -- within which this adversely affected party could have --  
9 could not crawl out of the woodwork and get the case re  
10 opened.

11 Also, the method used to deter-  
12 mine the parties who received the notice must also, by  
13 necessity, include the ability to analyze the other guy's  
14 economics and tax situation and see if he's going to be  
15 benefited or injured by your proposal.

16 As I mentioned at the begin-  
17 ning, this Commission has survived fifty years and almost  
18 9000 orders without a problem of giving adequate notice for  
19 its hearings, so I do not know what is going to be cured by  
20 these proposals.

21 I do honestly believe the adop-  
22 tion of either of these alternatives will result in chal-  
23 lenges to orders where previously there were none. After  
24 adoption of a procedure like this, anyone who can't chal-  
25 lenge an order on the merits of the case will certainly

1 start picking over the bones of the notices that were mailed  
2 and there will certainly be times when the applicant has re-  
3 ceived this order, relied upon it in good faith, and subse-  
4 quently finds himself with no order and his case reopened,  
5 without even a time limit for doing this.

6 I believe that either of these  
7 alternatives is going to open a can of worms if ever a can  
8 of worms has been opened. I therefore respectfully urge you  
9 to retain the present system of notice.

10 If it ain't broke, don't fix  
11 it.

12 Thank you.

13 MR. STAMETS: Mr. Ingram.

14 MR. INGRAM: My name is Hugh  
15 Ingram. I represent Conoco.

16 I have one question and might I  
17 assume that if the Commission elects to change the notifica-  
18 tion, that you will discontinue the present notification  
19 procedure of mailing copies of Examiner dockets and Commis-  
20 sion hearings to operators and interest owners?

21 MR. STAMETS: I'm certain we  
22 intend to continue to mail dockets to everybody who wants to  
23 get on the mailing list.

24 MR. INGRAM: That, I think that  
25 would be a good procedure, Mr. Chairman, but in the first

1 place, it gives me as an operator the ability to determine  
2 for myself whether I'm being adversely affected or not and  
3 it does not put that responsibility off on someone else.

4                   If we use that as the only pro-  
5 cedure, then I would feel that I was being adequately noti-  
6 fied and if we incorporated into the present method, which I  
7 would support Mr. Nutter's statement that the present method  
8 be continued, with possibly the addition of making it the  
9 responsibility of every operator in the state to maintain a  
10 current mailing list and representatives names for their com-  
11 panies and the Commission then could maintain that list,  
12 send all of those people a copy of that docket and that  
13 would place the responsibility of each -- upon each operator  
14 to decide whether or not he's being adversely affected by  
15 any of the cases being heard.

16                   In addition, in order for me as  
17 an operator to determine who might be adversely affected  
18 might be next to impossible.

19                   Take for example in cases of  
20 hardship gas well, I think it could be stated by any opera-  
21 tor within the State of New Mexico that they could be ad-  
22 versely affecteds because any hardship gas well removes a  
23 certain amount of gas from the market, this is my opinion  
24 now, from a market, so it directly or indirectly affects  
25 every operator in the state every time a hardship gas well

1 case is approved.

2                   And also in response to a  
3 statement or a question raised by Mr. Carr concerning royal-  
4 ty owners, it's my opinion that most, if not all, modern  
5 leases, at least that we are taking in the oil patch today,  
6 give the operator the rights to pool royalty owner's inter-  
7 est, and this would, I think, cover any question that might  
8 arise concerning compulsory pooling, because we have that  
9 right by virtue of the lease the royalty owner has given us  
10 to pool his interest in that, so I don't think that would  
11 become a problem.

12                   I don't think the royalty owner  
13 or the overriding royalty owner would be, would have any re-  
14 percussion from them at all.

15                   I think it's also complicated  
16 by the fact that maybe in my notification I don't know who  
17 all has farmed out and at the time the case is heard the  
18 royalty owner, or the operators or the royalty owners,  
19 either one, could have changed two or three times, so then  
20 where does that put the responsibility, on the operator who  
21 gave a farmout, is he still responsible and who's to be not-  
22 ified in that case?

23                   My closing statement, I think  
24 the regulations, either one of them as proposed presents  
25 more complications than it does answers. If I were to

1 choose between the two I'd certainly choose proposal number  
2 (unclear).

3 I would suggest that the rule  
4 remain unchanged with possibly the addition of the current  
5 mailing list maintained in the Division office.

6 MR. STAMETS: Mr. Hobbs, I be-  
7 lieve you indicated you wanted to make a statement.

8 MR. HOBBS: Yes, sir. I not  
9 only represent Southland Royalty Company, but I'd like to  
10 speak on behalf of the committee that, as I understand, was  
11 appointed by the Oil Commission to clarify and rewrite the  
12 general rules that were under study.

13 Am I correct in that this com-  
14 mittee was appointed by you or by the Commission?

15 MR. STAMETS: Are you referring  
16 to the rule relative to gas prorationing?

17 MR. HOBBS: Right. Well, in  
18 this committee some of these things are addressed in our  
19 proposed rule changes and rewrites, and although you may not  
20 have seen it, we're approaching a hearing on that and some  
21 of these same things are going to be coming up.

22 We've spent a year and hundreds  
23 of manhours rewriting and rewording some of these same  
24 things we've listed today, and I offer that let's, you know,  
25 let's have a look at that before we make these changes, at

1 least to the last three, 1206, 1207, 1208.

2 Some of these rules are all  
3 grouped together, 1, 2, 3, 4, and so forth, and are in fact  
4 in those rules under, like unorthodox locations, they're ac-  
5 tually put into that category and addressed in that area,  
6 and as I said in my comments to you earlier, I think that's  
7 what is needed under each heading instead of all put to-  
8 gether, but I'd like for us to get a chance for the hearing  
9 for the proposed proration rules where we address these mat-  
10 ters.

11 MR. STAMETS: Mr. Hobbs, do you  
12 anticipate that that's going to occur before September the  
13 18th?

14 MR. HOBBS: Well, we anticipate  
15 another maybe, our final meeting, maybe before the end of  
16 the month, this summer. We'd be presenting these to you  
17 probably during August, so if anything, it may cloud the is-  
18 sue that we're addressing here today because we're going to  
19 be addressing some of the same questions.

20 MR. STAMETS: Are there other  
21 comments?

22 MR. PITRE: My comment was to  
23 -- Randy Pitre, Cities Service Oil and Gas.

24 It appears that our attorney's  
25 left the hearing room but my comments were --

1 MR. CARR: May it please the  
2 Commission, Ms. Aubrey will be back in just a moment and I  
3 believe Cities was going to present testimony on this. It  
4 might be appropriate to take a recess at this time until she  
5 can return.

6 MR. STAMETS: All right. We'll  
7 take a short recess, probably ten minutes.

8  
9 (Thereupon a recess was taken.)

10  
11 MR. STAMETS: The hearing will  
12 please come to order.

13 Does anybody have anything they  
14 wish to offer in any of these cases at this time?

15 MS. AUBREY: Mr. Stamets, on  
16 behalf of Cities Oil and Gas Corporation, I would like to  
17 call Mr. Randy Pitre to testify briefly about Cities' re-  
18 sponse to the proposed rule changes.

19 MR. STAMETS: Okay.

20 MS. AUBREY: Mr. Stamets, we've  
21 placed copies of Cities' Exhibit One in front of you. There  
22 is also one copy of Cities' Exhibit Two. I'm sorry we don't  
23 have more copies of that exhibit.

24  
25

RANDY PITRE,

1  
2 being called as a witness and being duly sworn upon his  
3 oath, testified as follows, to-wit:

4  
5 DIRECT EXAMINATION

6 BY MS. AUBREY:

7 Q Will you state your name and place of  
8 employment for the record?

9 A My name is Randy Pitre. I'm employed  
10 with Cities Service Oil and Gas Corporation in Tulsa,  
11 Oklahoma.

12 Q In what capacity are you employed by  
13 Cities Service?

14 A I'm Environmental Coordinator for our Ex-  
15 ploration and Production Group.

16 Q And would you describe for the Commission  
17 your professional educational training background?

18 A All right. I have a BS in oceanography  
19 from (unclear) University, Texas, and a Master of Science  
20 degree in wildlife and fishery sciences from Texas A & M  
21 University.

22 Q How long have you been employed by Cities  
23 Service?

24 A Approximately four years.

25 Q You're here today to testify about the

1 comments which Cities Service has on the proposed rule chan-  
2 ges and you've brought with you an exhibit, marked Exhibit  
3 One, which sets out Cities comments.

4 A Right.

5 Q Do you have that in front of you, Mr.  
6 Pitre?

7 A Yes, I do.

8 Q Would you go through and briefly comment  
9 for us what, particularly on the produced water and the Rule  
10 102 Notice of Intention to Drill, which I believe you have  
11 included in your comments.

12 A Right. On the produced water definition,  
13 we would like to suggest including carbon dioxide after the  
14 -- on the third line there. It's after "crude oil and/or  
15 natural gas," including carbon dioxide "and commonly col-  
16 lected at field storage or disposal facilities...", because  
17 we believe that carbon dioxide is being significantly pro-  
18 duced here in New Mexico and that produced water can be pro-  
19 duced in association with these components.

20 Q And is that including carbon dioxide  
21 wells in connection with the oil and gas wells that are de-  
22 scribed in the proposed rule you believe will contribute to  
23 the statutory scheme in regulating these wells?

24 A Right, and give better clarification.

25 Q Do you have a comment now on proposed

1 Rule 102 which will require notice to the surface owner  
2 prior to staking? What is your comment on that rule?

3 A All right, we would like to see that it  
4 be worded somewhat to the effect of "prior to the commence-  
5 ment of operatios the operator shall give notice of inten-  
6 tion to drill to the surface owner, or owners". We believe  
7 that this would meet any -- any understood requirements. We  
8 believe that any requirements that lessors of surface rights  
9 or tenants are between the tenants and the surface owner,  
10 and that the responsibility of notifying tenants lies with  
11 the surface owner, so that an operator, in meeting the no-  
12 tice requirements to the surface owner therefore meets his  
13 responsibility.

14 Q Do you have an opinion as to whether or  
15 not the rule as proposed would require notice even to some-  
16 one who was running cattle under a grazing permit?

17 A Yes, apparently it does, is my interpre-  
18 tation.

19 Q Is it Cities' recommendation, then, that  
20 all the language as proposed regarding notice prior to stak-  
21 ing be excluded and the language which Cities has included  
22 in its exhibit be substituted in its place?

23 A Yes, we recommend that.

24 Q With regard to Rule 107, Mr. Pitre, do  
25 you have a preference between Alternate No. 1 and Alternate

1 No. 2?

2 A Yes. Our comments recommend that Alter-  
3 nate No. 1 be accepted. We -- our comments are extensive,  
4 although we are significantly concerned about the words ad-  
5 versely affected parties, that this is very difficult for an  
6 operator to determine which parties would be adversely af-  
7 fected, and we feel that exactly identifying parties or de-  
8 fining adversely affected parties would clarify this re-  
9 quirement.

10 In operations in other states generally  
11 the rule's clearly defined as offset operators, working in-  
12 terest owners, or these types of terminology on parties  
13 which should be notified.

14 Q With regard to these proposed unorthodox  
15 well location rules, is it Cities' suggestion that those  
16 offset operators toward which a well location is going to be  
17 moved should be notified?

18 A Yes, that is correct.

19 Q So that is if you get -- the operator is  
20 moving more unorthodox toward someone then there would be a  
21 notification requirement.

22 A Right.

23 Q Do you have any other comments on your  
24 proposed changes in -- in the unorthodox well location rule?

25 A No.

1           Q           With regard to the nonstandard proration  
2 unit proposal, what are your -- what are your suggestions?

3           A           We recommend that actual notice shall be  
4 given to each lessee in a quarter quarter section, which is  
5 for 40-acre pools or formations; the quarter section for  
6 160-acre pools or formations; the half section for 320-acre  
7 pools or formations; or in the section for 640-acre pools or  
8 formations in which the nonstandard unit is located and to  
9 each operators or each adjoining or cornering tract of land  
10 or spacing proration unit.

11          Q           Let me have you now comment on the provi-  
12 sion of the proposed rule which deals with any situation  
13 which may be diminish or adversely affect the royalty own-  
14 ers' interest.

15          A           Okay. In the case of any other applica-  
16 tion which will, if granted, alter any owner's or any royal-  
17 ty interest owner's percentage interest in an existing well,  
18 we believe actual notice shall -- should or shall be given  
19 to the owners and applicant's royalty interest owners in  
20 such existing well.

21                   Such notice shall be provided by certi-  
22 fied mail, return receipt requested.

23                   Any notice required by this rule shall be  
24 mailed at least ten days prior to the date of hearing on the  
25 application.

1           Q           And you recommend that Alternate No. 2  
2 will (not understood).

3           A           That's correct.

4           Q           Do you have any other comments or sugges-  
5 tions that you would like to make this morning for the Com-  
6 mission about the proposed rules?

7           A           Right. I'd like to comment on the pro-  
8 posed definition of fresh water within the State of New  
9 Mexico.

10                   We recognize that -- that Federal re-  
11 quirements as well as State requirements require that waters  
12 with 10,000 parts per million or milligrams per liter dis-  
13 solved solids be protected, because we understand that it's  
14 been determined that these waters can be used for various  
15 purposes or may be used for various purposes in the future;  
16 however, 10,000 parts per -- or milligrams per liter dis-  
17 solved solids is a relatively high concentration of dis-  
18 solved solids, and fresh water is normally referenced with  
19 5000 milligrams per liter, or less, dissolved solids, and  
20 most scientific documents refer to 10,000 milligrams per  
21 liter dissolved solids waters as being brackish.

22           Q           That would be water that was not suitable  
23 for drinking.

24           A           That's correct. In fact, EPA standards  
25 published in 1975 recommend that the total dissolved solids

1 for drinking waters be no more than 500 milligrams per liter  
2 and it's generally understood that fresh waters are waters  
3 which can be used for wildlife or agricultural purposes, or  
4 any of these uses, and that water -- I don't believe waters  
5 with 10,000 milligrams per liter dissolved solids would --  
6 would be acceptable for those type uses, and we're recom-  
7 mending that somewhat different terminology be used, which  
8 we've seen in other states and has been accepted and is cur-  
9 rently used in -- to define the waters which should be pro-  
10 tected as treatable waters or possibly usable waters, and  
11 that defining these as fresh waters could -- could possibly  
12 -- possibly lead to some confusion if -- if there was ever  
13 any sort of liabilities.

14 If we had a water that was less  
15 than 10,000 milligrams per liter in one of our pits and with  
16 -- and it was migratory -- migratory water fowl or any other  
17 wildlife, you know, any of these waters, and were harmed in  
18 any way, if they were defined as fresh waters within the  
19 State of New Mexico I believe there could be some confusion.

20 Q Do you have any additional comments or  
21 suggestions to add to your testimony, Mr. Pitre?

22 A No, I don't.

23 MS. AUBREY: I have no more  
24 questions.

25 MR. STAMETS: Are there any

1 questions of this witness?

2 MS. AUBREY: I'm sorry, Mr.  
3 Stamets, I'd like to offer Cities Exhibits One and Two.

4 MR. STAMETS: Exhibits One and  
5 Two will be admitted if there are no questions.

6 MR. TAYLOR: Mr. Chairman, I  
7 believe I have one question.

8 MR. STAMETS: Okay.

9

10 CROSS EXAMINATION

11 BY MR. TAYLOR:

12 Q Mr. Pitre, on your proposed Alternative  
13 Rule 1207 in SubParagraph 2 on -- I believe on unorthodox  
14 well locations, you talk about notice given to offset  
15 operators of a well.

16 If there is no well on an offset --  
17 offsetting location, are you recommending no notice or could  
18 we change that such that an offsetting proration unit would  
19 get notice whether or not there was a well located on it?

20 A Well, in our -- in our wording of this we  
21 were interpreting well locations as being even as proposed  
22 well --

23 Q So you're not --

24 A -- but there would not necessarily be an  
25 existing well there but htere would be a proposed -- is that

1 understandable, clear?

2 Q Yeah, that's fine. I just wanted to  
3 clarify whether you wanted --

4 A In our understanding of this there would  
5 not actually have to be a well in place; could be a proposed  
6 well.

7 Q Okay. That's all the questions I have.  
8 Thank you.

9 MR. STAMETS: Any other ques-  
10 tions?

11 The witness may be excused.

12 Does anyone have anything they  
13 wish to add in any of these cases at this time?

14 Mr. Rush.

15 MR. RUSH: I'm Joe Rush with  
16 Meridian Oil, Inc. and in lieu of the proposal submitted by  
17 Mr. Boyer today, we would like to defer hearing oral testi-  
18 mony today and submit it -- our comments in writing if that  
19 is permitted.

20 MR. STAMETS: I think it's the  
21 Commission's feeling that they would like to continue Case  
22 8640, the notice case, until the September 18th hearing,  
23 which would give an opportunity for the proposal that Mr.  
24 Hobbs spoke about earlier to come before the Division or  
25 Commission, and also to give any interested parties an op-

1 portunity to try and develop some proposals which would sat-  
2 isfy what the Division is trying to get to in this case.

3 And so that case will be con-  
4 tinued to the September 18th Examiner Hearing.

5 In the meantime, we may -- may  
6 advertise the additional proposals that Mr. Boyer had, which  
7 might be brought up at that time relative to Rule 313, and  
8 we will hold all of the other cases open for two weeks for  
9 any comments anybody might wish to present.

10 Is there anything further in  
11 any of these cases?

12 Mr. Chavez?

13 MR. CHAVEZ: Listening to the  
14 questions that came up over the proposed changes to Rule  
15 102, I, apparently, I may not have made it clear in my tes-  
16 timony that the prior notification of staking to the land-  
17 owner would ease the burden on the Division in that we do  
18 get the landowners coming into our office, first of all,  
19 this is the first place many landowners for questions con-  
20 cerning oil and gas operations on their properties, and the  
21 alternatives are available for a wellsite.

22 Secondly, after the -- the  
23 second way this may help us is that when an operator wants  
24 to stake a wellsite on private land, the landowner, after  
25 discussing this with the operator and us, we can move the

1 well location to an unorthodox location that may be accept-  
2 able to the landowner, the operator, and get quicker ap-  
3 proval for an unorthodox location on the original permit  
4 without having to look at changes of well location after the  
5 fact.

6           As to the comments on notifying only the  
7 landowners, not the surface tenant or lessees, many times  
8 the situations which do arise where the tenant or lessee has  
9 plans for the development of the surface of the land, who's  
10 to be immediately affected by a well location, which might  
11 be ameliorated if it was moved 50 feet, which may not impose  
12 any burden on the operator (unclear) or not, but the prior  
13 notification procedure can start the ball rolling in that  
14 situation.

15                           MR. STAMETS: Thank you, Mr.  
16 Chavez.

17                           Any other comments?

18                           MR. TAYLOR: Mr. Chairman, I'd  
19 just like to move that all the comments that the Division  
20 has received on the proposals will be made a part of the re-  
21 cord, so the public and everybody might want to (not under-  
22 stood.)

23                           MR. STAMETS: Okay, Mr. Taylor,  
24 if you'll assemble those and submit those to the record sub-  
25 sequent to the hearing we will incorporate them.

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MR. TAYLOR: Thank you.

MR. STAMETS: If there is nothing further, then, Cases 8643, 44, 45, 46, 47, and 48 will be taken under advisement.

(Hearing concluded.)

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## C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY  
CERTIFY that the foregoing Transcript of Hearing before the  
Oil Conservation Division was reported by me; that the said  
transcript is a full, true, and correct record of the hear-  
ing, prepared by me to the best of my ability.

*Sally W. Boyd CSR*