

1 STATE OF NEW MEXICO  
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
3 OIL CONSERVATION DIVISION

4 IN THE MATTER OF THE HEARING CALLED  
5 BY THE OIL CONSERVATION DIVISION FOR  
6 THE PURPOSE OF CONSIDERING:

7 APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION THROUGH THE SUPERVISOR OF DISTRICT II FOR AN EMERGENCY ORDER SUSPENDING CERTAIN APPROVED APPLICATIONS FOR PERMITS TO DRILL AND FOR ADOPTION OF SPECIAL RULES FOR DRILLING IN CERTAIN AREAS FOR THE PROTECTION OF FRESH WATER, CHAVES AND EDDY COUNTIES, NEW MEXICO. CASE NO. 15487

10

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 EXAMINER HEARING

13 May 10, 2016

14 Santa Fe, New Mexico

15

16 BEFORE: WILLIAM V. JONES, CHIEF EXAMINER  
17 ALLISON MARKS, LEGAL EXAMINER

18 This matter came on for hearing before the  
19 New Mexico Oil Conservation Division, William V. Jones,  
20 Chief Examiner, Allison Marks, Legal Examiner, on  
21 Tuesday, May 10, 2016, at the New Mexico Energy,  
22 Minerals and Natural Resources Department, Wendell Chino  
23 Building, 1220 South St. Francis Drive, Porter Hall,  
24 Room 102, Santa Fe, New Mexico.

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	INDEX	
		PAGE
1		
2		
3	Case Number 15487 Called	4
4	Opening Statement by Mr. Brooks	8
5	New Mexico Oil Conservation Division's Case-in-Chief:	
6	Witnesses:	
7	Paul Kautz:	
8	Direct Examination by Mr. Brooks	19
	Cross-Examination by Mr. Feldewert	35
9	Cross-Examination by Mr. Larson	41
	Cross-Examination by Mr. Olsen	42
10	Cross-Examination by Mr. Bruce	46
	Cross-Examination by Ms. Foster	47
11	Cross-Examination by Examiner Jones	54
	Recross Examination by Mr. Feldewert	58
12		
13	Proceedings Conclude	66
14	Certificate of Court Reporter	67
15		
16		
17	EXHIBITS OFFERED AND ADMITTED	
18	NMOCD Exhibit Number 1	59
19		
20		
21		
22		
23		
24		
25		

1 (9:10 a.m.)

2 EXAMINER JONES: This is a special Examiner  
3 Hearing for Tuesday, May the 10th, 2016, Docket Number  
4 18-16.

5 I'm William V. Jones.

6 This (indicating) is Allison Marks, the  
7 attorney for the Examiner this morning.

8 We have one case on the docket. This is  
9 Case Number 15487. The Oil Conservation Division seeks  
10 an order establishing minimum casing and cementing  
11 requirements that will adequately protect freshwater  
12 aquifers in the designated area in Chaves and Eddy  
13 Counties, New Mexico, as described in Exhibit A hereto.  
14 The Division Examiner will consider the Division's  
15 request that the previously approved APDs in the  
16 designated area be further suspended until a full  
17 hearing is had on the merits of the application on this  
18 case and order is issued thereon.

19 Call for appearances.

20 MR. BROOKS: Mr. Examiner, David Brooks  
21 appearing for -- I'm with the Energy, Minerals and  
22 Natural Resources Department. I'm appearing for the  
23 Division through the supervisor of District 2.

24 EXAMINER JONES: And you will have a  
25 witness this morning?

1 MR. BROOKS: I have one witness.

2 EXAMINER JONES: Other appearances?

3 MR. FELDEWERT: May it please the Examiner,  
4 Michael Feldewert, of the Santa office of Holland &  
5 Hart, appearing on behalf of COG Operating, LLC and OXY  
6 USA.

7 EXAMINER JONES: Other appearances?

8 MR. LARSON: Good morning, Mr. Examiner.  
9 Gary Larson, Santa Fe office of Hinkle Shanor, for Yates  
10 Petroleum.

11 MR. OLSEN: Good morning. A. J. Olsen on  
12 behalf of Pecos Valley Artesian Conservancy District.

13 EXAMINER JONES: Olsen for Conservancy  
14 District.

15 Any other appearances?

16 MR. BRUCE: Jim Bruce of Santa Fe  
17 representing Mack Energy Corporation.

18 MS. FOSTER: Mr. Examiner, Karin Foster  
19 with Southwest Government Affairs on behalf of the  
20 Independent Petroleum Association of New Mexico, IPANM.  
21 Thank you.

22 EXAMINER JONES: Any other appearances?

23 MR. SEIFERT: I'm Pablo Seifert on behalf  
24 of the State Engineering Office, Office of General  
25 Counsel.

1 EXAMINER JONES: Okay. Would you please  
2 state your name again?

3 MR. SEIFERT: Pablo Seifert, S-E-I-F-E-R-T.

4 EXAMINER JONES: And you said you had one  
5 witness?

6 MR. SEIFERT: No. I'm deputy general  
7 counsel for Chris Lindeen of the Office of State  
8 Engineering.

9 EXAMINER JONES: Okay. So what are we here  
10 for this morning, Mr. Brooks?

11 MR. BROOKS: Do we need to swear the  
12 witness, first off?

13 EXAMINER JONES: We can do that.  
14 Is this the only witness for this hearing?

15 MR. BROOKS: Yes, my only witness.

16 EXAMINER JONES: Would the witness please  
17 stand?

18 And would the court reporter please swear  
19 the witness?

20 (Paul Kautz sworn.)

21 MR. BROOKS: Okay. Mr. Examiner, if I may  
22 make an opening statement --

23 EXAMINER JONES: Yes, sir.

24 MR. BROOKS: -- I can explain to you what's  
25 going on here.

1                   A couple of months ago, the Pecos Valley  
2 Conservancy District and the -- representatives from  
3 Pecos Valley Artesian Conservancy District --

4                   Did I correctly identify your client,  
5 Mr. Olsen?

6                   MR. OLSEN:   PVAC.

7                   MR. BROOKS:  Okay.  Representatives is what  
8 I will call the Conservancy District.

9                   -- and the Roswell office of the Office of  
10 the State Engineer met with representatives of the Hobbs  
11 and Artesia offices of the Oil Conservation Division,  
12 and it was brought to the attention of the Oil  
13 Conservation Division that there are or might be  
14 applications for permits to drill in the Roswell  
15 Artesian Basin area, which is the area of the Pecos  
16 Valley to the west of Pecos River and generally in  
17 the -- in the Roswell-Artesia area.  We're not going  
18 to -- we did not bring a map to specifically identify it  
19 this morning, but my witness will give a more  
20 specific -- a little bit more specific description of  
21 the area involved.

22                   Anyway, it was brought to the attention of  
23 our personnel in the Artesia and Hobbs District Offices  
24 that there had been applications for permits to drill,  
25 which in some interpretations might not adequately

1 protect the freshwater resources of the Roswell Artesian  
2 Basin.

3           Our applications for permits to drill  
4 include a casing and cement program designed to protect  
5 fresh water. It is a part of the application. And when  
6 the Oil Conservation Division and the district office  
7 approves an application for permit to drill, then it  
8 also, by that action, approves the casing and cementing  
9 program that is attached to that application. And that  
10 approval is good for two years.

11           The concern that some of the issued and  
12 approved APDs might not fully and adequately protect the  
13 freshwater resources of the state in that area caused  
14 the Director to issue an emergency order suspending any  
15 APDs until the Division could study the situation and  
16 adopt rules for the protection of fresh water, unless  
17 those APDs were again approved by the Artesia District  
18 Office as adequate to protect freshwater resources.

19           That order was extended once, but because  
20 it's uncertain whether or not the Division has authority  
21 to extend emergency orders issued without notice of  
22 hearing beyond the 15-day period provided by statute, it  
23 was felt necessary that notices be set out and a hearing  
24 be convened in order to determine whether or not that  
25 suspension of approved applications for permits to drill

1 could be extended further until the Division has adopted  
2 new rules for the protection of freshwater resources.

3           Of course, the application in this case,  
4 Number 15487, is an application for the adoption of such  
5 rules. However, unlike what is usually done when the  
6 Division applies to adopt rules, no proposed rules are  
7 attached. That is because of the emergency measure of  
8 this action and the fact that the Division has not  
9 concluded -- completed its study and promulgated and  
10 proposed a rule or announced a proposed set of rules at  
11 this point, which the Division is in the process of  
12 doing that, and we need more time to be able to come up  
13 with rules that we feel are adequate and that we can  
14 present to an Examiner and defend.

15           Therefore, we ask you, at this hearing, to  
16 extend the suspension of APDs until a final hearing is  
17 had in case some kind of rule is adopted and an order is  
18 entered.

19           Now, I'm saying a rule. This is not a  
20 rule. This is a parenthetical. This is not a rule -- a  
21 Division rule. We're not following the procedures that  
22 we would for Division rules because it will apply only  
23 in specific pools. And by precedent -- judicial  
24 precedent in this state, which I don't have with me to  
25 cite but I can provide it to you if necessary, special

1 pool rules that apply only in particular pools can be  
2 adopted by adjudicatory proceedings and do not require  
3 the amendment of the Division rules. And that's what  
4 we're going to be asking you to do -- or to recommend to  
5 the Director at the time of the final hearing in this  
6 case.

7 Now, one further note, the extension of  
8 this emergency action suspending already-approved APDs  
9 will not prevent drilling in the area designated. It  
10 will only require that the casing program be resubmitted  
11 to the Division and again approved by the Division,  
12 including those requirements that we believe are  
13 necessary in the absence of a Division determination of  
14 the final requirements.

15 Thank you.

16 EXAMINER JONES: Thank you, Mr. Brooks.

17 We've got several attorneys here that have  
18 made appearances -- or entered an appearance, and some  
19 have submitted a prehearing statement. But this  
20 morning -- I want to go down the list of all the  
21 attorneys and ask you what your client's position is on  
22 the -- on the matter at hand today and whether you will  
23 be asking questions of the witness.

24 First of all, though, let's hear from the  
25 State Engineer. Can you please -- Mr. Seifert, can you

1 please stand? You entered an appearance earlier.

2 MR. SEIFERT: Yes.

3 EXAMINER JONES: You don't have a  
4 prehearing statement, as I understand; is that correct?

5 MR. SEIFERT: No, Mr. Examiner. This  
6 matter wasn't brought to the OSE until relatively last  
7 week. We did not submit a formal statement, and I don't  
8 have any -- or plan to have any questions for the  
9 witness.

10 I would simply state that, you know, the  
11 OSE's position with regard to this would just be -- as a  
12 sister agency, we would be providing whatever  
13 information's necessary to assist Mineral and Energy in  
14 accomplishing what they need to accomplish.

15 EXAMINER JONES: Okay. Thank you.

16 Mr. Feldewert, you have entered a  
17 prehearing statement on behalf of OXY and COG. Do you  
18 want to state your client's position on the emergency  
19 extension -- or the emergency order? And do you want to  
20 cross-examine the witness?

21 MR. FELDEWERT: Mr. Examiner, I don't know  
22 if I'm going to cross-examine the witness.

23 We are -- you know, we don't know anything  
24 more than what's been presented on paper as to what is  
25 being proposed. We don't have any witnesses that we're

1 going to call here today.

2                   We certainly do not disagree with the goal  
3 of the Division, and we're not opposed to a limited  
4 extension of the emergency order so long as it is done  
5 with the understanding that the district -- and I'm  
6 reading now from the second amended application,  
7 paragraph five -- that the district supervisor is  
8 authorized to approve exceptions to such a suspension  
9 for particular wells upon demonstration that freshwater  
10 sources will be adequately protected.

11                   In other words, as I understand it, if you  
12 can demonstrate with your APD that you've got sufficient  
13 casing and cement to protect the groundwater, that you  
14 can proceed with your drilling program, because as you  
15 can imagine, an oil company does have a drilling program  
16 in this area. And to put that -- halt that for what  
17 will probably be three or four months is quite a -- is  
18 quite a burden here.

19                   The only question that I have -- and  
20 perhaps it'll be answered by the Division in the  
21 presentation -- is the concept that they feel that they  
22 need new rules as opposed to going back and reviewing  
23 the existing APD to determine if the cementing and  
24 casing program is sufficient to protect the groundwater.

25                   You know, the Division rules are in

1 existence now. We're required to have sufficient casing  
2 and cement to protect the groundwater. I don't know  
3 what they mean by new rules. I don't know why you would  
4 need new rules. It seems to me that what they're  
5 talking about more here is simply reviewing the existing  
6 APDs, making sure the program is adequate to protect the  
7 two aquifers that they have raised concern about.

8 So that's my only real question.

9 EXAMINER JONES: Thank you, Mr. Feldewert.  
10 Mr. Larson?

11 MR. LARSON: Similarly, I do not have a  
12 witness today. I filed a prehearing statement on behalf  
13 of Yates. It states that Yates may be opposed to new  
14 rules to the extent they would unnecessarily increase  
15 drilling costs and/or present safety risks for the  
16 drilling crews.

17 I agree with Mr. Feldewert. I think there  
18 has been a rather broad net cast here, and, if possible,  
19 we would propose that the Division look at the approved  
20 APDs that have been suspended and determine the ones  
21 that do possibly have an issue in terms of protecting  
22 fresh water.

23 And in terms of cross-examination, I  
24 reserve the right to do so.

25 EXAMINER JONES: Right.

1                   Let's hear from Mr. Bruce.

2                   Mr. Bruce.

3                   MR. BRUCE: Mr. Examiner, I do not have a  
4 witness either, and I've been unable to speak with my  
5 engineers. So I suppose I'm pulling the Sergeant  
6 Schultz defense today. But I more or less agree with  
7 the comments Mr. Feldewert made.

8                   EXAMINER JONES: And you don't have a  
9 prehearing statement as of yet?

10                  MR. BRUCE: I was just contacted yesterday.

11                  EXAMINER JONES: Okay. Mr. Olsen?

12                  MR. OLSEN: Mr. Hearing Examiner, thank you  
13 for the opportunity to be here.

14                  The PVACD's position is quite simple.  
15 We're in the business of protecting the fresh water in  
16 the Roswell Artesian Basin. And that Roswell Artesian  
17 Basin runs from approximately 20 miles north of Roswell  
18 down to the Brantley Dam or to Seven Rivers. It starts  
19 at the Pecos River and goes to the west.

20                  The issue here is the regulations of the  
21 State Engineer are quite specific for the drilling of  
22 water wells, both shallow wells and the shallow aquifer  
23 and in the artesian aquifer. And, likewise, the  
24 language in the regulations of the OCD are specific  
25 about protecting those waters, and in the drilling of

1 wells, the stratas are to be protected.

2           It's our position that that is not being  
3 done on a consistent basis in the RAB in the filing of  
4 the applications to drill the wells. And all we're  
5 asking is we want -- we want those APDs reviewed and  
6 approved with specific provisions that the fresh  
7 water -- or that the waters are protected. And that is  
8 our position.

9           We have no witnesses today, sir, and I  
10 would reserve any cross-examination.

11           EXAMINER JONES: Thank you, Mr. Olsen.

12           Ms. Foster?

13           MS. FOSTER: Thank you, Mr. Hearing  
14 Examiner.

15           The position of the Independent Petroleum  
16 Association is questioning whether this is truly an  
17 emergency, and I'd like to hear, you know, the testimony  
18 of the witness.

19           My understanding is that the Division and  
20 the State Engineer have been speaking to the industry  
21 for over two months about this issue. I think this is a  
22 very extreme request of the Division, to impact  
23 potentially near 100 APDs that are out there as opposed  
24 to reviewing the casing program of a single well that  
25 really initially caused this snowball to start.

1                   So we -- you know, the Independent  
2 Petroleum Association's position is questioning whether  
3 this is really truly an emergency.

4                   Whether the Division decides to do new  
5 rules pertaining to a casing program, our position would  
6 be and has always been, on behalf of the industry, that  
7 we ask for consistency. We are very uncomfortable with  
8 a special pool rule with a casing program requirement on  
9 it. My understanding is that pool rules really have to  
10 do with allowables and not necessarily a casing program  
11 just for that pool.

12                   That would be our position today. We are  
13 really questioning whether there is an emergency.

14                   Thank you.

15                   EXAMINER JONES: Okay. Thank you.

16                   I think we've gone down the list.

17                   We're going to be asking for a draft order  
18 in this case. And can we talk about what the draft  
19 order might be?

20                   MR. BROOKS: Mr. Examiner, a draft order  
21 will be prepared. It has been started, but as you may  
22 gather in effect that I was late arriving to this  
23 hearing, I'm not exactly on schedule on all things.  
24 However, I would like the Examiner to give me some  
25 indication at the conclusion of this proceeding, since

1 we will present some specific recommendations from  
2 Mr. Kautz, who I think will testify that he will be  
3 advising the district supervisor of District 2 to follow  
4 certain specific goals for casing programs, whether the  
5 Examiner feels that it's appropriate to put those goals  
6 specifically in an order or simply to leave it to the  
7 discretion of the district supervisor.

8 Thank you.

9 EXAMINER JONES: Okay. Thank you.

10 Okay. Let's present the first witness,  
11 first and only witness.

12 MR. BROOKS: We would call Paul Kautz.

13 We need to get you to the witness chair by  
14 the court reporter where she can hear you.

15 PAUL KAUTZ,

16 after having been first duly sworn under oath, was  
17 questioned and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. BROOKS:

20 Q. Good morning.

21 A. Morning.

22 Q. Could you state your name for the record,  
23 please?

24 A. Paul Kautz.

25 Q. And have you given a card to the court

1 reporter?

2 A. No, I haven't.

3 Q. Could you spell your last name for the record?

4 A. K-A-U-T-Z.

5 Q. Okay. Mr. Kautz, by whom are you employed?

6 A. I'm employed by the State of New Mexico Energy,  
7 Minerals and Natural Resources Department, Oil  
8 Conservation Division in its Hobbs office.

9 Q. And what is your working title?

10 A. District -- district geologist.

11 Q. And you are a professional geologist,  
12 Mr. Kautz?

13 A. Yes, I am.

14 Q. Could you briefly explain your -- or describe  
15 your education and experience as a geologist?

16 A. I received a B.S. degree in geology from the  
17 University of New Mexico in Albuquerque in 1974. After  
18 that, I was in the Navy for four years as a commissioned  
19 officer, and then I went back to grad school at UNM,  
20 spent about three years there and then went to work for  
21 the Oil Conservation Division in 1981.

22 Q. So you have been continuously employed by the  
23 Oil Conservation Division since that date?

24 A. No. I retired in 2006. And they tried to hire  
25 a replacement for me, and they weren't able to. So they

1 asked me to come back. I came back on a temporary  
2 basis, part-time, for one year, and at that point, they  
3 asked me to come back full-time. And so I've had about  
4 four or five months of interruption in the last 35  
5 years.

6 Q. This business of retiring and then coming back  
7 is getting to be a pattern at the OCD.

8 (Laughter.)

9 Q. (BY MR. BROOKS) Mr. Kautz, are you the  
10 longest-serving professional employee of the OCD at this  
11 point?

12 A. I consider Florene a professional.

13 Q. Well, let me say are you the longest-serving  
14 technical expert at this point?

15 A. Yes, sir.

16 Q. Very good.

17 In what office of the OCD are you regularly  
18 employed?

19 A. In the Hobbs OCD office.

20 Q. And what district is that?

21 A. District 1.

22 Q. Now, have you been asked on numerous occasions  
23 in the last several years to assist in the District 2  
24 office?

25 A. Every time they've been without a geologist, I

1 have assisted over there, from the time when Larry  
2 Brooks was district geologist there in the '80s.

3 Q. No relation to me, right?

4 A. No.

5 I assisted -- I assisted in the training of  
6 the new geologists. There's been, oh, at least five or  
7 six different ones in the last -- since 2010, it's been  
8 almost a regular basis. IN 2010, Jackie Reaves was  
9 severely injured in a head-on automobile accident, which  
10 required me to take over duties of both districts. And  
11 then when she left employment, I continued.

12 And then when Craig Shepard passed away  
13 from cancer, I again had to take over duties as district  
14 supervisor -- not district -- district geologist over  
15 there in the Artesia office.

16 And just recently we've hired a geologist,  
17 brand-new, Kellie Jones, and she's still in the training  
18 phase.

19 Q. And are you the person who is primarily  
20 training her at this time?

21 A. Yes, sir.

22 Q. Very good.

23 Oh, have you made a study of the issues in  
24 this case in the last couple of months?

25 A. Yes, I have.

1 Q. Very good.

2 MR. BROOKS: Mr. Examiner, we would tender  
3 this witness as an expert petroleum geologist.

4 EXAMINER JONES: Any objections --

5 MR. FELDEWERT: No objection.

6 EXAMINER JONES: -- or questions?

7 MR. LARSON: No objection.

8 MR. OLSEN: No objection.

9 EXAMINER JONES: Pending the book that you  
10 should publish anytime soon, we'll be able to qualify  
11 Mr. Kautz as an expert in petroleum geologist.

12 MR. BROOKS: Okay. Thank you,  
13 Mr. Examiner.

14 Q. (BY MR. BROOKS) Mr. Kautz, are you familiar  
15 with the area that we have called the "designated area"  
16 in this proceeding?

17 A. Yes, I am. It's -- I refer to it as the RAB,  
18 or the Roswell Artesian Basin.

19 Q. Okay. Have you -- did you prepare the  
20 exhibit, Exhibit A, to the application which lists the  
21 specific townships and ranges to which this proceeding  
22 will apply?

23 A. Yes, sir. It extended from -- I went to the  
24 State Engineer's map, and it extends from Township 6  
25 South down to approximately 20 and a half south and

1 basically from the -- in some places, just east of the  
2 Pecos River and then west of the Pecos River --  
3 townships.

4 Q. Isn't most of it west of the Pecos River?

5 A. Most -- the majority of it's west of the Pecos  
6 River, but in this area, there are a few sections that  
7 extend on the east side of the river.

8 Q. Okay. Could you explain from a geologic point  
9 of view how this area -- what is it that's unique about  
10 this area?

11 A. The uniqueness of it is that the artesian  
12 aquifer is one of the -- is the only artesian aquifer  
13 here in -- in New Mexico. It consists of several  
14 formations. Basically, the main part of it in the south  
15 is the upper part of the San Andres Formation. In some  
16 areas, it includes the Grayburg Formation, and in a few  
17 areas, it also includes the Queen Formation. And as you  
18 go north, it no longer includes the San Andres but  
19 includes the Grayburg Formation.

20 Q. I know there are local differences, but can you  
21 tell us generally speaking approximately at what depth  
22 is this artesian aquifer encountered?

23 A. Oh, I would say approximately -- well, it  
24 depends on the area but at least from 600 feet to about  
25 1,300 feet.

1 Q. Okay. I'm going to interrupt description of  
2 the area at this point to ask you a little bit about the  
3 background of why we're here today. Did you meet with  
4 representatives of the PVAC and the Office of the State  
5 Engineer earlier this year?

6 A. Yes, on April 1st of this year. And they had  
7 some concerns. These concerns consisted of several  
8 things. One is the casing program. Two was the use of  
9 a conductor pipe and how it was -- whether it was  
10 cemented in or not. And the third was -- boy --  
11 isolating the two aquifers from each other.

12 Q. Was there a concern expressed about the width  
13 of the annular space and well -- and oil wells?

14 A. Yes, there was concern. We were operating  
15 under old agreement with the State Engineer's Office  
16 that required, through freshwater zones, that the hole  
17 slides be at least two inches greater than the outer  
18 diameter of the coupling on the casing, and the State  
19 Engineer now has a new requirement. It's either three  
20 to four inches greater than the outer diameter of the  
21 coupling.

22 Q. Okay. Can you identify the individuals you met  
23 with from the PVAC and the OSE?

24 A. I do not remember their names. I can -- I can  
25 point out -- point them out to you here.

1 Q. You're like me. You don't always remember  
2 names?

3 A. I have a hard time with names. The gentleman  
4 back there in the blue shirt (indicating), and the  
5 lawyer next to him was there, and Mr. -- (indicating).

6 EXAMINER JONES: Mr. Olsen.

7 THE WITNESS: Mr. Olsen.

8 MR. BROOKS: Mr. Olsen. Thank you.

9 Q. (BY MR. BROOKS) After you met with these  
10 individuals and discussed their concerns and reviewed  
11 the casing program that we had been approving in the --  
12 in this -- in the Roswell Artesian Basin, did you  
13 communicate to the Director that there was some concern  
14 about the adequacy of our casing requirements?

15 A. Yes, sir. I -- on the way back to Artesia, I  
16 called Dave Catnac on the phone, and we discussed what  
17 went on at the meeting and the needs to conduct a study  
18 on the area.

19 Q. Now, when you -- when the district office  
20 receives an application for a permit to drill an oil or  
21 gas well, is there a proposed casing program attached to  
22 that or submitted in connection with that? I realize  
23 they don't submit -- most of them are not submitted on  
24 paper now, but --

25 A. They are submitted on the APD, on the front

1 page of the APD for state and fee land. Federal goes  
2 through the BLM, and they're submitted as an attachment  
3 to the -- to the federal form.

4 Q. Okay. Is it your responsibility as district  
5 geologist in District 2 -- in District 1 to review those  
6 casing plans when you receive an APD?

7 A. No. They were usually done either by the T. C.  
8 Shephard or Randy Dade, the district supervisor.

9 Q. You're talking about District 2?

10 A. Yeah. Oh, District 1. It's my responsibility  
11 in District 1.

12 Q. That's what I thought.

13 So in District 2, it would be done by the  
14 district geologist in District 2?

15 A. Yes.

16 Q. Whose name is Kellie what?

17 A. The new one is Kellie Jones.

18 Q. Kellie Jones.

19 And you testified, I believe, that you  
20 advise and assist Kellie Jones with her duties, while  
21 she is relatively new in that position?

22 A. Yes, sir.

23 Q. As requested, I assume?

24 A. Uh-huh.

25 Q. Okay. After these concerns were raised, did

1 you determine whether or not there are some approved  
2 APDs that would not meet what the PVAC and the OSE had  
3 indicated ought to be the criteria for the Roswell  
4 groundwater production in the Roswell Artesian Basin?

5 A. I believe there are about 200 APDs. I  
6 determined that none of them met the requirements. They  
7 were either set in shell surface, about 450 feet, and  
8 with a proposed production string set at TD, with the  
9 production string allowing the artesian aquifer to be  
10 open to -- to oil and gas while drilling.

11 Q. Okay. The Division is asking in this  
12 application that the existing APDs be suspended so that  
13 those wells for which the APD could then approve cannot  
14 be drilled until they are subjected to further review.  
15 Do you understand that correctly?

16 A. Yes.

17 Q. Now, the Division is also asking that the  
18 district supervisor in the Artesia District -- that's  
19 District 2, right?

20 A. Yes.

21 Q. -- be given authority to approve exceptions to  
22 the suspension. Now, in your capacity -- well, I'm  
23 going to ask you step-by-step what your recommendations  
24 are going to be, but generally, in your capacity as  
25 advisor to the new district geologist in District 2,

1 will you be giving advice as to the criteria that would  
2 be considered appropriate for the granting of such an  
3 exception?

4 A. Yes, sir.

5 Q. Okay. Now, starting at the top, the first  
6 thing that goes in the hole is the conductor pipe,  
7 right?

8 A. Yes, sir.

9 Q. And what is your -- what would your  
10 recommendation be with regard to the conductor pipe?

11 A. Well, there's concern about the conductor pipe  
12 as being a conduit for surface waters, contaminations to  
13 be able to flow down to the aquifer. And so far in the  
14 study, most conductor pipe, there is information on  
15 that. They have cemented those conductor pipes in. But  
16 there are some that there is no information, on whether  
17 they cemented it or not. And our requirement would be  
18 if they do run conductor pipe, that they must cement it  
19 in, and they must report it on a sundry report.

20 Q. Now, the surface casing will be run through the  
21 conductor pipe; is that correct?

22 A. Yes, sir.

23 Q. So that when you're starting from the outside  
24 of the hole, you'll have the conductor pipe, which will  
25 go down how far?

1           A.    It usually -- most casings goes down 20 to 40  
2 feet in this area.  There are -- there are some cases  
3 where they have set 200 feet of conductor pipe.

4           Q.    What is the purpose of the conductor pipe?

5           A.    The conductor pipe is to prevent any cave-ins  
6 of the surface material into the hole while they're  
7 drilling it.

8           Q.    Now, what would your recommendation be  
9 generally speaking -- now, I understand local conditions  
10 will vary, but what would generally be your  
11 recommendation for surface casing for wells drilled in  
12 the Artesian -- in the Roswell Artesian Basin?

13          A.    To be set at at least 425 to 450 feet.

14          Q.    Now, is there a higher aquifer down there above  
15 the artesian aquifer that we talked about?

16          A.    Yes, sir.  It's called the upper aquifer, and  
17 it consists of the surface alluvial material in the  
18 area.  And the 450 -- 425 to 450 feet is mainly designed  
19 to protect that aquifer.

20          Q.    Is that sometimes called the valley-fill?

21          A.    Sometimes, yes.

22          Q.    And do you believe that setting the surface  
23 casing at 425 to 450 feet in most places will help to  
24 protect the valley-fill from any fluids from the well?

25          A.    Yes, sir.

1 Q. Now, what would be the cementing requirement  
2 for the surface casing?

3 A. The surface casing submitting requirement would  
4 be -- would require it to be circulated to the surface.

5 Q. Okay. Now -- then are you going to require --  
6 or do you think that generally it would be desirable to  
7 require an intermediate casing string?

8 A. At this time, yes.

9 Q. And at what depth would you expect, in most  
10 cases generally -- again, allowing for local differences  
11 for particular wells, at what depth would you expect to  
12 advise that the intermediate casing be set?

13 A. Probably no deeper than 1,300 feet.

14 Q. Now, would that be below the artesian aquifer  
15 in most places?

16 A. Most locations, that would be at the first  
17 occurrence of any shows of oil or gas. We intend to, if  
18 there are no mud logs in the general vicinity wherever  
19 the well's being drilled, require the operator to run a  
20 mud log on that interval. And at the first occurrence  
21 of any shows of oil, they are to immediately stop  
22 drilling and run their intermediate casing in order to  
23 protect the artesian aquifer from any oil or gas.

24 Q. Now, I need to get -- I need to get a little  
25 background in the record here. I believe you testified

1 that the Roswell Artesian -- that the artesian  
2 aquifer -- that the characteristic of the Roswell  
3 Artesia Basin is, most places, located in the San Andres  
4 Formation?

5 A. The upper part of the San Andres, yes, sir.

6 Q. Is the San Andres Formation also, in many  
7 places, a hydrocarbon formation?

8 A. Yes, sir. It's usually -- from logs that I  
9 looked at and the history, in some of the areas -- and  
10 at the mud logs that I looked at, usually the first  
11 occurrence of any oil occurs about 1,300. There are  
12 some areas where it can occur a little higher than  
13 1,300, but most areas it's in that interval.

14 Q. And is that below but very close to the  
15 Roswell -- the artesian aquifer?

16 A. Yes, it is.

17 Q. So if hydrocarbons intrude into the wellbore  
18 and there is not a sealer between the -- a sealing  
19 mechanism between there and the aquifer, is there a  
20 danger of hydrocarbons intruding into the aquifer?

21 A. Yes, sir.

22 Q. And is that the reason for recommending a  
23 casing string at that general level?

24 A. Yes, sir.

25 Q. Now, is that casing string -- would you also

1 advise that that casing string be cemented to surface?

2 A. On the first two strings, we require them to  
3 circulate it to surface. And if they're unable to  
4 circulate to surface, we require either a cement bond  
5 log or a temperature survey and also require them to do  
6 what we call a one-inch -- a one-inch cement from the  
7 top of the cement to the surface.

8 Q. Okay. What does that mean?

9 A. In some cases, the cement does not circulate to  
10 the surface, and we have to determine where the top of  
11 cement is and to bring it to the surface. I've seen  
12 many reports where most of the time cement will fall  
13 back under intermediate, and they can see it in the  
14 surface just a few feet down. And sometimes they'll  
15 just dump cement there from the surface to it.

16 Q. Okay. There would be -- well, let me go back.  
17 What depth are most of the wells -- proposed wells in  
18 this area seeking to explore?

19 A. 6- to 7,000.

20 Q. And what formation?

21 A. That's the Yeso Formation.

22 Q. Okay. So that's quite a long way underneath  
23 the artesian aquifer, correct?

24 A. Yes, sir.

25 Q. Do you anticipate that the wells will have a

1 production string casing set within the intermediate  
2 casing?

3 A. Yes, sir. They'll run production casing to TD.  
4 And I -- I like to require them to at least tie back in  
5 at least 500 foot above the intermediate shoe. But in  
6 this case here, 500 foot inside your intermediate shoe,  
7 you're already 500 feet from the surface, so most  
8 companies will just go ahead and circulate cement to the  
9 surface.

10 Q. Okay. So your recommendation would be, then,  
11 what? A minimum of 500 feet or circulation?

12 A. A minimum of 500 feet.

13 Q. Okay. That would be 500 feet above the  
14 intermediate casing shoe?

15 A. That's correct.

16 Q. So you would have, like, 4- or 5,000 feet of  
17 cement behind that pipe?

18 A. Yes, sir.

19 Q. Okay. Is there anything else that you would  
20 recommend the district geologist require in the casing  
21 and cementing program that we haven't discussed?

22 A. The hole size -- the hole size, I believe,  
23 should remain at 2 inches greater than the outer  
24 diameter of your coupling string on your surface in the  
25 intermediate.

1 Q. Well, are there some differences between oil  
2 wells and water wells that would suggest that -- that  
3 would support having that difference between what you  
4 recommend and what the State Engineer recommends for oil  
5 wells in terms of the diameter of the casing -- diameter  
6 of the annular -- in terms of the width of the annulus?

7 A. From talking to drilling engineers, the wider  
8 the hole is, the less turbulence you create when you run  
9 the cement, and you need that turbulence to clean out  
10 the mud and the varnish off the casing before -- in  
11 front of the cement as it's coming up the annulus.

12 Q. Okay. And the requirements we have been  
13 discussing -- let me just make a catchall question here.  
14 In your capacity as an advisor to the district geologist  
15 in District 2, would these be -- would these be the  
16 requirements that, generally speaking, subject to local  
17 variations, you would recommend in order to -- for the  
18 district supervisor to approve an exception to the  
19 suspension that we have asked -- we are asking the  
20 Examiner to recommend?

21 A. Yes, sir.

22 MR. BROOKS: Thank you.

23 I have only one exhibit, and it is not  
24 sponsored by the witness. It's an Affidavit of Notice.  
25 So I will present that after, at the conclusion of the

1 testimony.

2 At this time I will pass the witness.

3 EXAMINER JONES: Okay. Mr. Brooks, I don't  
4 think anybody here that had entered an appearance  
5 without a prehearing statement asked earlier to question  
6 the witness, but they may have changed their mind. Do  
7 you object to anybody --

8 MR. BROOKS: The Division has no objection  
9 to any of the attorneys present cross-examining the  
10 witness.

11 EXAMINER JONES: Okay. We'll start, then,  
12 with Mr. Feldewert.

13 CROSS-EXAMINATION

14 BY MR. FELDEWERT:

15 Q. Mr. Kautz, you mentioned that you met with the  
16 representatives of PVAC and the State Engineer on April  
17 1st?

18 A. Yes, sir.

19 Q. Okay. And they raised various issues with you;  
20 is that correct?

21 A. Yes, sir.

22 Q. And did they explain why they had -- why these  
23 issues had arose as of April 1st?

24 A. They did express some concern that there might  
25 be some groundwater contamination.

1 Q. And did they provide any evidence of that?

2 A. No, sir.

3 Q. Did they explain the basis for their concern?

4 A. Nothing other than that there may be some  
5 groundwater contamination.

6 Q. So they explained a condition where there might  
7 be some groundwater contamination?

8 A. No, sir.

9 Q. They didn't give you any examples of any  
10 instances or anything like that?

11 A. No, sir.

12 Q. And at that time, having said that, what  
13 specific suggestions did they raise that the Division  
14 should adopt for this particular area?

15 A. One was the hole size should be at least 3  
16 inches greater than the outer diameter of coupling.

17 Q. Okay. Let's stop right there. Did they -- did  
18 they explain the basis for that position?

19 A. Not specifically.

20 Q. Did they point to any particular regulation  
21 that supported that suggestion, that it should be 3  
22 inches greater than the outer diameter of the coupling?

23 A. They did state to the State Engineer's rules  
24 and regs. I'm not sure what they refer to them as.

25 Q. And the regulations they pointed to, those were

1 for water wells?

2 A. Yes, sir.

3 Q. Okay. And I think you testified that you see a  
4 distinction between a hole size that may be appropriate  
5 for water wells and a hole size that may be appropriate  
6 for drilling for oil and gas?

7 A. Yes, sir.

8 Q. And you, at least here today, suggested that in  
9 your opinion it's more prudent to remain with the hole  
10 size that has been utilized by the Division for oil and  
11 gas wells?

12 A. Yes, sir.

13 Q. What else did they suggest?

14 A. They suggested two strings, one string for  
15 the -- to protect the -- isolate the upper aquifer and a  
16 second string to protect the artesian aquifer.

17 Q. Okay. Now, I get confused. I'm not an  
18 engineer. I get confused by two strings, three strings,  
19 four strings. When you say -- when they say -- so  
20 you're always going to have a production string, right?

21 A. Yes, sir.

22 Q. Okay. And so when they suggested two strings,  
23 they were saying you needed a surface casing string and  
24 then an additional string?

25 A. Yes, sir.

1 Q. And then were they also saying that you needed  
2 an intermediate string?

3 A. Well, the second string was the intermediate  
4 string.

5 Q. Okay. So they were suggesting two strings.  
6 Can you explain to me what they were suggesting with  
7 respect to two strings?

8 A. They were suggesting that you -- that both  
9 aquifers needed to be isolated from each other and that  
10 there be -- the surface string would be your first water  
11 protection string, and your immediate string would be  
12 your second water protection string.

13 Q. Okay. Now, with respect to the two strings,  
14 did they explain to you, for example, why it wouldn't be  
15 appropriate to have, for example, a surface casing  
16 string that went to a depth that protected both the  
17 shallow aquifer and the deeper aquifer?

18 A. They -- they were quoting the State Engineer's  
19 requirements that there are to be two strings to  
20 isolate, and we have not ruled out the possibility of  
21 one string for both aquifers.

22 Q. So the basis for their suggestion for two  
23 strings was the State Engineer's requirements for water  
24 wells?

25 A. Yes, sir.

1 Q. And they didn't provide any other support for  
2 that particular concept?

3 A. Well, they -- they quoted the OCD rules require  
4 isolating different -- different water zones or oil and  
5 gas zones.

6 Q. Okay. Anything else that they cited?

7 A. I don't -- I don't remember anything else.

8 Q. Okay. And you're aware of the fact that the  
9 OCD has, at least in some areas, recognized that a  
10 surface casing string down to a depth sufficient to  
11 protect both aquifers is sufficient to provide the  
12 necessary protection?

13 A. Yes, sir.

14 Q. Okay. And you have not ruled out the idea of  
15 allowing and continuing to allow a surface casing -- a  
16 single surface casing string that would go down below  
17 the depth of the protectable groundwater?

18 A. Yes, sir.

19 Q. That would be, I guess, a two-string scenario?  
20 You have your surface casing below the aquifer, and then  
21 you have your production string?

22 A. Yes, sir.

23 Q. All right. What else did they raise?

24 A. I can't remember anything else.

25 Q. Okay. Okay. So when you testified that your

1 review of some of the approved did APDs not meet what  
2 the State Engineer and the PVAC required, is that what  
3 you're talking about with their water well  
4 recollections?

5 A. Yes, sir.

6 Q. Because my --

7 A. And it also did not meet our requirements to  
8 protect fresh water.

9 Q. Okay. Some of the APDs did not?

10 A. A majority of them did not.

11 Q. Okay. And that was -- and is that because the  
12 surface casing string did not do go down to a sufficient  
13 depth to protect the lower aquifer?

14 A. Yes, sir.

15 Q. Okay. Were there any other concerns about  
16 those APDs other than the fact that the surface casing  
17 string did not go down to a depth to protect the lower  
18 aquifer?

19 A. No.

20 Q. Okay. Is there a reason, Mr. Kautz, that the  
21 Division couldn't just suspend the APDs that did not  
22 have a casing string that goes down below the depth of  
23 the aquifer? Wouldn't that be one scenario that the  
24 Division could follow here?

25 A. It's a possible scenario.

1 Q. Okay.

2 MR. FELDEWERT: That's all the questions I  
3 have.

4 EXAMINER JONES: Now Mr. Larson, Mr. Olsen  
5 and Mr. Bruce here from the north country -- let's start  
6 with Mr. Larson.

7 CROSS-EXAMINATION

8 BY MR. LARSON:

9 Q. Good Morning, Mr. Kautz.

10 A. Morning.

11 Q. Following up on Mr. Feldewert's last question,  
12 I understood from your direct testimony that you're  
13 going to ask all the operators who have approved APDs to  
14 resubmit? Do I understand that correctly?

15 A. Resubmit a casing program, yes, sir.

16 Q. Only the casing program?

17 A. Yeah. They don't have to submit a new APD.  
18 Just submit a C-103 with an attachment of their casing  
19 program to it.

20 Q. And Mr. Brooks walked you through your various  
21 recommendations. Is that something you feel comfortable  
22 committing to writing that could be given to be  
23 operators when they're re-evaluating their APDs?

24 A. Yes, sir.

25 Q. Any time frame you can give us when that could

1 occur?

2 A. I can do it tomorrow.

3 Q. Okay. Certainly you'd have it in advance of  
4 any hearing we have on the merits of the Division's  
5 application?

6 A. Yes, sir.

7 Q. And this meeting that occurred on April 1, were  
8 there any oil and gas drilling engineers or petroleum  
9 engineers present at that meeting?

10 A. Not at that meeting.

11 Q. That's all I have. Thank you.

12 EXAMINER JONES: Mr. Olsen.

13 MR. OLSEN: Mr. Hearing Examiner.

14 CROSS-EXAMINATION

15 BY MR. OLSEN:

16 Q. I want to address a couple of three areas, if I  
17 may, please, sir. First, would you agree with me that  
18 the Roswell Artesian Basin is a unique geologic area,  
19 much different than over at Hobbs?

20 A. Yes, sir.

21 Q. And then because of the hydrologic makeup, the  
22 groundwater makeup of the area? Would you agree with  
23 that?

24 A. I --

25 Q. Let me be specific. The shallow aquifer, is

1 that area down to about 440, plus or minus?

2 A. Yes.

3 Q. And it is separated from the artesian by what  
4 we called the red bed, correct?

5 A. Yes, sir.

6 Q. That shallow aquifer is primarily recharged  
7 from precip [sic]. Would you agree with that?

8 A. Yes, sir.

9 Q. The Artesia Basin, its makeup is a karstic  
10 system; would you agree?

11 A. Yes, sir.

12 Q. And that -- that recharge is from -- primarily  
13 from the west, from the mountain. Would you agree with  
14 that?

15 A. Yes, sir.

16 Q. So those two distinct geologic makeups is why  
17 the requirement for the separation, to set the two  
18 separate cases and cement them in, to protect the  
19 contamination of both the shallow and the artesian,  
20 correct?

21 A. That's the State Engineer's view of that.

22 Q. Now, you would agree with me that the  
23 operators, by virtue of regulations of the OCD, they're  
24 charged with protecting the fresh water?

25 A. Yes, sir.

1 Q. And those fresh waters are waters identified  
2 both by the OCD and the State Engineer?

3 A. Yes, sir.

4 Q. The protection of those groundwaters are  
5 specified both by regulations of the OCD?

6 A. Yes, sir.

7 Q. And so your proposal is merely clarifying, just  
8 for the Roswell Artesian Basin, the casing requirements  
9 to protect the shallow and the artesian, correct?

10 A. It is a temporary measure pending the outcome  
11 of the next hearing.

12 Q. Now, are you familiar with -- my understanding  
13 is that the BLM in many instances requires that casing  
14 be set just the way you're recommending, correct?

15 A. I do not know what the BLM's requirements are.

16 Q. Are you familiar that there are several --  
17 numerous wells in the area that have been cased just the  
18 way your recommendation is being made?

19 A. Not completely.

20 Q. Explain.

21 A. There are a few that I think the intermediate  
22 falls short.

23 Q. As in the bottom being what depth?

24 A. The bottom deep being about 800 feet.

25 Q. Would it surprise you that there are wells that

1 have been drilled in those seven by -- by local  
2 operators -- I believe Marbob -- that had their casing  
3 set down to 1,300-plus on a BLM well?

4 A. I'm not aware of that.

5 Q. The proposal is for the casing requirements or  
6 the APDs to be modified, come in with a casing plan.  
7 Would you agree that your review would dictate how the  
8 casing would be set, and that's not necessarily  
9 requiring the two strings if there was not a shallow  
10 connection -- I mean a shallow aquifer and an artesian?

11 A. Could you say --

12 Q. What I'm saying is you could -- you, in your  
13 review, possibly could identify areas where the setting  
14 of the casing would not have to be as strict as what  
15 you're proposing?

16 A. Yes. We've -- we've done that already, or,  
17 actually, we've made it a little stricter in the case of  
18 several operators. One, COG, we required them to add an  
19 intermediate string, and they provided us with the mud  
20 logs showing where the first shows of oil came in at.  
21 So that's where we -- we set these intermediate casings  
22 50 feet above.

23 Just recently we had a BLM well that was  
24 only setting 425 feet of surface casing and about 700  
25 feet of production casing, and I had -- I told Kellie to

1 send that back to the BLM for review. It obviously did  
2 not -- was not meeting any of the requirements to  
3 protect fresh water.

4 Q. Would you agree that extension of this  
5 certainly -- of the order certainly affords protection  
6 of the fresh water -- the groundwater in the RAB?

7 A. Yes.

8 MR. OLSEN: I'll pass the witness.

9 EXAMINER JONES: Okay. The Applicant has  
10 not objected to any of the attorneys wanting to ask a  
11 question.

12 Mr. Bruce?

13 MR. BRUCE: One quick question,  
14 Mr. Examiner.

15 CROSS-EXAMINATION

16 BY MR. BRUCE:

17 Q. Mr. Kautz, in your study of the area within the  
18 subject of this application, what is the shallowest base  
19 of fresh water and what is the deepest base of fresh  
20 water, and where do they occur?

21 A. The base of fresh water is the -- is the  
22 toughest question out there. There's not that much  
23 information available, and it's -- it's really hard to  
24 say. And that's why we've had to result to mud logs to  
25 look for -- for shows of -- of any oil.

1 Q. Thank you.

2 EXAMINER JONES: Mr. Seifert, do you have  
3 any questions of this witness?

4 MR. SEIFERT: I have no questions.

5 EXAMINER JONES: Ms. Foster?

6 MS. FOSTER: I do. Can I move up?

7 EXAMINER JONES: Sure. Come up.

8 CROSS-EXAMINATION

9 BY MS. FOSTER:

10 Q. Good morning, Mr. Kautz.

11 A. Morning.

12 Q. Just for the record, my name is Karin Foster.

13 It's K-A-R-I-N, F-O-S-T-E-R, and I'm here on behalf of  
14 the Independent Petroleum Association of New Mexico.

15 My understanding is that we're here for an  
16 emergency hearing, and I came to this very late, in  
17 fact, just over the weekend.

18 And my question to you is: There was this  
19 meeting on April 1 with the OSE and the conservation  
20 folks, but there must have been some kind of event that  
21 started this whole thing that brought your attention to  
22 this matter?

23 A. Brought my attention to the matter?

24 Q. Or the OCD's attention.

25 A. OCD. We were told -- the only thing I know is

1 we were told to -- there's going to be a meeting in  
2 Roswell at the Pecos Valley Artesian Conservancy  
3 District and that I needed to be there and the new  
4 district geologist in Artesia needed to be there.

5 Q. So you're not aware of any instance of  
6 contamination that has occurred out there?

7 A. There has been vague reference to. And we have  
8 requested that information, and we still have not  
9 received any information to that effect.

10 Q. All right. And you stated that this could  
11 potentially affect 200 wells or APDs that have been  
12 granted?

13 A. Yes.

14 Q. All right. And when an APD is granted, the  
15 district supervisor to District 2 does review all of the  
16 requirements or the potential casing program that  
17 accompanies those APDs, correct?

18 A. Yes, sir -- yes, ma'am.

19 Q. And the APD -- the district director at that  
20 opportunity that the -- well, at the time of review, has  
21 the opportunity to put conditions on the APD; is that  
22 correct?

23 A. Yes, ma'am.

24 Q. For example, the conditions that you're  
25 recommending now --

1 A. Yes, ma'am.

2 Q. -- right?

3 And I seem to hear you saying that that did  
4 not happen and that you have concern of these 200 APDs?

5 A. Yes, ma'am.

6 Q. All right. You also stated that the OSE talked  
7 about a new rule that they had for water wells that had  
8 a lot of these conditions in it?

9 A. Yes, ma'am.

10 Q. Do you know when that new rule came into  
11 effect?

12 A. I think they mentioned 2005.

13 Q. 2005.

14 A. And that was at the second meeting we had.

15 Q. All right. So these 200 APDs obviously were  
16 granted after 2005, right?

17 A. Yes, ma'am.

18 Q. And these wells have not been drilled yet?

19 A. That's correct. I take that back. One of them  
20 has been drilled. COG did change its casing program.

21 Q. For that single well?

22 A. For that single well.

23 Q. Do you know the cost of changing that casing  
24 program as a result of this new requirement?

25 A. No, I don't.

1 Q. Do you know the cost of an additional  
2 intermediate string to an operator that wasn't planning  
3 on it?

4 A. I do not.

5 Q. Okay. This area you stated went from  
6 Township -- I think it was 6, down to Section -- to  
7 Township 20 and a half?

8 A. Yes, ma'am.

9 Q. Do you know how many miles that is or areas or  
10 acres that is?

11 A. That's approximately 15 townships and ranges  
12 times six, so that's approximately 90 miles north-south  
13 and at least 18 miles wide.

14 Q. Okay. So what I hear you saying is that you  
15 have these 200 APDs that are out there that now you feel  
16 are not protective of the fresh water and the  
17 environment?

18 A. Yes, ma'am.

19 Q. And that you'd like to review them?

20 A. (Indicating.)

21 Q. Have you notified all those operators?

22 A. Yes --

23 MS. FOSTER: I have no further questions.

24 THE WITNESS: -- and --

25 MS. FOSTER: I'm sorry. I didn't mean to

1 cut you off.

2 THE WITNESS: And another operator has  
3 submitted revised, and I've recommended denial because  
4 they didn't change anything.

5 MS. FOSTER: Okay.

6 I have no further questions.

7 EXAMINER MARKS: I just want to clarify for  
8 counsel, make sure we're all on the same page. We're  
9 not here for any emergency order or an emergency hearing  
10 under 19.15.2.11, and we're all in agreement on that; is  
11 that correct?

12 MR. BROOKS: I don't have my rule book  
13 here, but this is a hearing -- an emergency hearing  
14 under 19.15.2.11 because the notice that was originally  
15 given for this hearing was to be a hearing on the  
16 merits, and the Director issued an emergency order  
17 shortening the time for notice in order to enable us to  
18 change this to a notice for an interim -- for an interim  
19 review.

20 Now, it's not an emergency order under the  
21 Oil and Gas Act because an emergency order under the Oil  
22 and Gas Act is one that is issued without notice of  
23 hearing and is only valid for 15 days.

24 So we're asking for an interim order, which  
25 will be issued after notice of hearing and will continue

1 in effect until the hearing on the merits.

2 EXAMINER MARKS: So under 19.15.2.11B --  
3 and I'll read it to you -- states: "Notwithstanding  
4 other provisions of 19.15.2 NMAC." The rest is: "If  
5 the Division or the Commission finds an emergency  
6 exists, the Division or Commission may conduct a hearing  
7 on an application with less than 30 days after party  
8 files an application, and the Director may set the  
9 notice period at the Director's discretion." That's why  
10 you feel we're here today?

11 MR. BROOKS: Such an order was entered.  
12 Now, whether it was actually necessary for this hearing  
13 is questionable because this date -- a hearing on this  
14 date on this case had already been noticed prior to  
15 that. But on May the 4th, the Director issued an  
16 emergency order to allow this interim-order hearing to  
17 be set on May the -- on this same setting, date and  
18 time, and that order was issued pursuant to 19.15.2.11.

19 (Cell phone ringing.)

20 EXAMINER MARKS: Mr. Feldewert, do you have  
21 anything to say?

22 MR. FELDEWERT: No.

23 EXAMINER JONES: The issue of -- I'm not a  
24 legal person. Mr. Kautz is not a legal person. But  
25 they have 200 permits already granted by the Division,

1 and now we're moving to revoke those permits?

2 MR. BROOKS: No, Mr. Examiner. We're not  
3 asking that those permits be revoked. They will be --  
4 we're asking that they be suspended so that the  
5 operators cannot drill those wells until they either  
6 receive an approval of a -- of a casing program -- new  
7 approval of a casing program by the district supervisor  
8 or until new pool rules are adopted after hearing on the  
9 merits.

10 If, after a hearing on the merits, the new  
11 rules are adopted which the existing APDs comply with,  
12 then they would be eligible for approval, and they would  
13 not then be required to follow the recommendations that  
14 have been made here, if they do comply with the rules  
15 that are adopted.

16 EXAMINER JONES: Okay. Thank you for  
17 clarifying that.

18 It's an issue of once a drilling program is  
19 approved and the casing design is approved, then all  
20 this casing is ordered and they get ready to drill a  
21 well and then at the last minute, it is suspended.  
22 Well, it does cost money, obviously. But that's --  
23 that's why we're here, to consider the merits of the  
24 emergency order.

25 But let me ask the witness some questions.

1 CROSS-EXAMINATION

2 BY EXAMINER JONES:

3 Q. How many of these are BLM?

4 A. In the southern area, there's maybe a handful,  
5 maybe 15, maybe 20 at the most.

6 Q. Okay. And you were talking earlier about  
7 working with the BLM. Do you have a good working  
8 relationship with the BLM, or does the Artesia office?  
9 Do you consider that they have a good working  
10 relationship with the BLM?

11 A. Well, that's a tough question to answer  
12 (laughter).

13 Q. Okay. That would be tough.

14 What about closed loop in this area? Are  
15 all these drilled -- you said the conductor pipe is  
16 being used, so I assume closed-loop drilling is going  
17 on. Is that a correct assumption?

18 A. All of them are closed loop --

19 Q. All of them are closed loop.

20 A. -- because of the relative depth to fresh  
21 water.

22 Q. Okay. And they -- so they have to have a  
23 conductor pipe to circulate, assuming that's -- on the  
24 surface pipe to control the circulation.

25 Have you received any pushback from any of

1 the professionals with the companies that you've talked  
2 to about changing the drilling program, the casing  
3 program?

4 A. Not really. COG, they've --

5 Q. Been pretty cooperative?

6 A. Pretty cooperative, yes, sir.

7 Q. And you mentioned -- what about this area of  
8 protection you're proposing? How do you come up with  
9 that? And is that still movable, or is that changing,  
10 or are you going to change between now and the main  
11 hearing?

12 A. I don't foresee any changes in it. I went to  
13 the State Engineer's Web site and looked at the maps on  
14 the Roswell Artesian Basin and finally pinpointed  
15 down -- the farthest north we went was Township 6 South  
16 and down -- I figured it extends a little farther south  
17 than what the Pecos Valley Conservancy District  
18 includes.

19 MR. BROOKS: Mr. Chairman, for your  
20 information -- I don't know if you've been advised of  
21 this -- the State Land Office has indicated to us that  
22 they may request an expansion of the designated area.  
23 The interim order is only for the designated areas that  
24 now exists. I got an indication yesterday that the  
25 State Land Office planned to make an appearance in this

1 proceeding. However, no one has done so, so I don't  
2 know where they stand.

3 EXAMINER JONES: Okay. Thank you,  
4 Mr. Brooks.

5 Q. (BY EXAMINER JONES) So the emergency order that  
6 is going to be drafted, are you going to be -- will --  
7 are you going to have a lot of specifics in there, or is  
8 it going to be more general, but you're going to look at  
9 each well on a case-by-case basis?

10 A. We'll look at each well on a case-by-case  
11 basis. But, you know, one of the concerns was -- that  
12 was expressed was the quality of the cement jobs, and we  
13 would like to see cement bond logs run on this interval.

14 Q. Okay.

15 A. And I don't know how -- how we would require  
16 it, but one of the legislators there at the first  
17 meeting suggested that any testing that is required by  
18 the oil and gas industry also be required by the water  
19 people and that -- and I know they have problems with  
20 some of their water wells, and they should be required  
21 to run cement bond logs, too.

22 Q. Okay. So what you're -- I guess we'll consider  
23 all the merits of the proposal at the main hearing --  
24 the specific merits.

25 MR. BROOKS: Yes, Mr. Examiner. There will

1 be rules -- pool rules proposed between now and the  
2 hearing on the merits, and they will be based on an  
3 independent study. When I say independent, I mean  
4 independent of Paul's work -- except insofar as Paul's  
5 work has been communicated, as a basis -- as a place to  
6 start by the staff of the Santa Fe office. And we will  
7 come up with recommendations at the hearing on the  
8 merits, which may be the same as what Paul has testified  
9 to or they may be different. We expect we will probably  
10 receive some input from other parties, and then you will  
11 be -- assuming you're the Examiner at the hearing of the  
12 merits, you will be asked to listen to the testimony of  
13 all the parties that will be presented then and  
14 determine the final rules to be adopted.

15 Q. (BY EXAMINER JONES) Okay. But in the meantime,  
16 are you going to make them run two strings, one to  
17 protect the alluvial fill -- the valley-fill and one to  
18 protect the higher pressure of the artesian water?

19 A. Yes, as of right now.

20 Q. Okay. So they can -- they can plan on that?

21 A. Yes.

22 Q. Something they can plan on.

23 EXAMINER JONES: Okay. I don't have any  
24 more questions, if you guys want to redirect.

25 MR. OLSEN: No.

1 EXAMINER JONES: Questions?

2 MR. FELDEWERT: I do have one.

3 EXAMINER JONES: Okay.

4 RECROSS EXAMINATION

5 BY MR. FELDEWERT:

6 Q. You mentioned -- I'm sorry. You mentioned, I  
7 guess, two meetings?

8 A. Yes. There was a second meeting around the  
9 middle of April. I'm not sure exactly what date it was.  
10 At that meeting, there were representatives of the Pecos  
11 Valley Artesian Conservancy District, the OCD and  
12 Artesia and Hobbs and the representative from Santa Fe,  
13 and then there was about seven state legislators and two  
14 state senators there.

15 Q. And was there any additional evidence presented  
16 at that meeting, or was it just talking through what you  
17 had previously discussed?

18 A. Basically what I previously discussed. And  
19 there was -- I believe we also presented the possibility  
20 of one water protection string, which raised a lot of  
21 protests from the people there.

22 Q. Was it the OCD that presented a single string  
23 down through the two aquifers?

24 A. Yes.

25 Q. Okay. Anything else?

1 A. Not that -- not that I remember.

2 Q. Thank you.

3 MR. BROOKS: Mr. Examiner, I have one thing  
4 further, which is to present my Affidavit of Notice.

5 EXAMINER JONES: Okay.

6 MR. BROOKS: Okay.

7 EXAMINER JONES: Is this going to be  
8 Exhibit Number 1?

9 MR. BROOKS: This is going to be Exhibit  
10 Number 1, and only.

11 EXAMINER JONES: Okay. Do you move Exhibit  
12 1 be admitted?

13 MR. BROOKS: I do so move.

14 EXAMINER JONES: No objection?

15 MR. FELDEWERT: No objection.

16 MR. LARSON: No objection.

17 MR. OLSEN: No objection.

18 EXAMINER JONES: Exhibit 1 is admitted, for  
19 the record.

20 (OCD Exhibit Number 1 was offered and  
21 admitted into evidence.)

22 EXAMINER JONES: Okay. I will be getting a  
23 draft order from Mr. Brooks, but we would -- I'll turn  
24 it over be to Attorney Marks here for -- I would assume  
25 we would welcome any written proposals within a certain

1 amount of time that would be possibly considered for the  
2 inclusion in the draft order.

3 Does that sound okay?

4 MS. MARKS: Uh-huh.

5 Do we have any other outstanding matters  
6 pending that we need to address?

7 MR. FELDEWERT: It's my understanding the  
8 draft order is going to do nothing more than simply  
9 state --

10 What would you call it, Mr. Brooks? Simply  
11 state what?

12 MR. BROOKS: Mr. Examiner, we anticipate --  
13 and Madam Counsel, we anticipate submitting a draft  
14 order that will simply state that the APDs are suspended  
15 subject to exceptions as made by the district  
16 supervisor -- as authorized by the district supervisor  
17 of the -- of the Artesia District Office in his  
18 discretion.

19 We presented the testimony of Mr. Kautz to  
20 indicate the direction of his thinking and the advise he  
21 would give to the district supervisor.

22 If, after hearing the evidence, the  
23 Examiner feels it's appropriate to put specific criteria  
24 in the hearing order, we can do so at the Examiner's --  
25 in the draft order at the Examiner's request.

1                   MR. FELDEWERT: The reason I ask the  
2 question is because when you look at the application, it  
3 seems to be very limited in terms of the relief that was  
4 sought.

5                   And I would oppose at this point any -- an  
6 order that would suggest any specific requirements with  
7 respect to the APD, because the only thing that's been  
8 noticed is the idea that the interim order will remain  
9 in effect for the designated area for the subject pools,  
10 with the caveat that the district supervisor may approve  
11 exceptions upon demonstration that the freshwater  
12 sources will be adequately protected. It seems to me  
13 that would be the scope of the order and nothing more.

14                  EXAMINER JONES: Mr. Olsen, what do you  
15 think about that?

16                  MR. OLSEN: I need to contemplate that for  
17 a moment because my understanding, when we agreed to  
18 come up to do this hearing, was going to get the -- get  
19 the order extended. And I guess I would not agree with  
20 counsel.

21                  MS. MARKS: Pursuant to that 19.15.2.11B,  
22 we can't extend the emergency order, but we'll issue a  
23 new order. And I think the agreement we had when we had  
24 our pre-hearing conference was counsel would come  
25 together and having a new order, which would be similar

1 to the existing emergency order, but we want to extend  
2 the emergency order because of Subpart A of 19.15.2.11.  
3 And I believe in substance we are maybe talking of the  
4 same -- maybe there is a wording issue here.

5 But, Mr. Brooks, maybe you want to rephrase  
6 it.

7 MR. BROOKS: Well, the draft order I had  
8 planned to submit and will submit, unless the Examiner  
9 requests otherwise, is in line with what Mr. Olsen is  
10 contemplating, and what it does is suspend an emergency  
11 order -- I mean -- not the emergency order -- suspend  
12 the approval of the existing APDs and suspend because  
13 they will go back into effect when the -- when a final  
14 order is entered, subject to whatever provisions are  
15 adopted in the final order.

16 But in the meantime, the district  
17 supervisor will be given a discretionary authority to  
18 make exceptions. And we put on the testimony to  
19 indicate the advice that Mr. Kautz would give in his  
20 capacity as advisor to the district supervisor.

21 MR. OLSEN: That's my understanding.

22 MR. BROOKS: But the order that we intend  
23 to submit will simply say "with the district  
24 supervisor's approval, subject to his discretion."

25 MR. FELDEWERT: That's what I understand.

1 MR. OLSEN: I'm sorry.

2 MR. FELDEWERT: That's what I understood.

3 MR. OLSEN: That's my understanding, and  
4 that's my position.

5 EXAMINER JONES: Mr. Larson?

6 MR. LARSON: My understanding, also.

7 EXAMINER JONES: Okay. I think we're done  
8 here.

9 MR. LARSON: Mr. Jones, I have one  
10 suggestion here, if we could do the procedure normally  
11 done in district court. If Mr. Brooks is going to draft  
12 an order, if it could be circulated among counsel before  
13 he submits it.

14 EXAMINER JONES: That's agreeable to me.

15 MR. BROOKS: It's acceptable to me. It's  
16 not ever been customarily done at the OCD. And, of  
17 course, it's understood that a draft order prepared by  
18 counsel and even after being approved by the Examiner is  
19 merely a recommendation, that only the Director has the  
20 authority to issue an order. But with that caveat, I  
21 have no objection to submitting the draft order to all  
22 counsel.

23 MS. MARKS: The only caveat to that is we  
24 need an order by a date certain. So if that isn't done  
25 by -- today's -- today is the 10th. So we need a

1 date -- a cutoff date -- an early cutoff date to get  
2 this order in place.

3 EXAMINER JONES: When could you start  
4 circulating it?

5 MR. BROOKS: Today by 5:00.

6 EXAMINER JONES: He could email it out to  
7 everybody.

8 MR. BROOKS: I will do so.

9 MS. MARKS: And then a return to the  
10 Hearing Examiner by?

11 MR. OLSEN: Tomorrow afternoon.

12 EXAMINER MARKS: Does that work for  
13 counsel?

14 MR. FELDEWERT: Yes.

15 EXAMINER JONES: Anything further in this  
16 matter?

17 MR. BROOKS: Nothing further, Your Honor.

18 EXAMINER JONES: We'll take Case 15487 as  
19 issue of an emergency order -- and the main case, we  
20 agreed at the pre-hearing conference, that we would --  
21 we would continue the main case to May the 26th.

22 MR. BROOKS: Since we have a lot of  
23 attorneys here -- let's go ahead and announce that, but  
24 since we have a lot of attorneys here, I am going to  
25 seek to have a brief meeting of the attorneys to see if

1 we can come up with a more specific recommendation. So  
2 I want to go ahead and announce that because I don't  
3 want to have to re-notice the proceeding.

4 EXAMINER JONES: We can take a ten-minute  
5 break, and you guys can talk.

6 MR. BROOKS: Okay. It may take longer than  
7 ten minutes, but --

8 EXAMINER JONES: 15 minutes. How about  
9 that?

10 MR. BROOKS: Thank you.

11 (Recess 10:41 a.m. to 11:00 a.m.)

12 EXAMINER JONES: Mr. Brooks, did you reach  
13 an agreement about when to continue the case?

14 MR. BROOKS: Mr. Examiner, all counselors  
15 have agreed to pass the setting that was suggested for  
16 the 26th and specially set this hearing for June 15th.

17 EXAMINER JONES: Okay.

18 MR. BROOKS: And I don't know what day of  
19 the week that is.

20 MR. FELDEWERT: Wednesday.

21 MR. BROOKS: Wednesday. Okay.

22 EXAMINER JONES: Okay. And that's  
23 agreeable to everybody that's made an entry so far?

24 MR. BROOKS: It's agreeable to everybody  
25 that's entered so far.

1                   EXAMINER JONES: Okay. The hearing is  
2 over. We'll just -- 9:00 a.m. sounds good, if that's  
3 all right.

4                   MR. BROOKS: 9:00 a.m. sounds good, too.

5                   MR. FELDEWERT: No objection.

6                   EXAMINER JONES: No objection to that, huh?

7                   Okay. Well, this hearing -- the case is  
8 continued then, Case Number 15487.

9                   (Case Number 15487 concludes, 11:01 a.m.)

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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court  
6 Reporter, New Mexico Certified Court Reporter No. 20 and  
7 Registered Professional Reporter, do hereby certify that  
8 I reported the foregoing proceedings in stenographic  
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10 correct transcript of those proceedings that were  
11 reduced to printed form by me to the best of my ability.

12 I FURTHER CERTIFY that the Reporter's  
13 Record of the proceedings truly and accurately reflects  
14 the exhibits, if any, offered by the respective parties.

15 I FURTHER CERTIFY that I am neither  
16 employed by nor related to any of the parties or  
17 attorneys in this case and that I have no interest in  
18 the final disposition of this case.

19 DATED at Albuquerque, New Mexico, on May  
20 15, 2016.

21

22

23 MARY C. HANKINS, CCR, RPR  
24 Certified Court Reporter  
25 New Mexico CCR No. 20  
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