

OF STATE NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION
IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

IN THE MATTER OF: PROPOSED AMENDMENTS CASE NO. 15726
TO SECTION 19 OF 19.15.16 NMAC AND
SECTION 16 OF 19.15.7 NMAC, EXTENDING
THE TIME FOR REPORTING COMPLETION OF
HORIZONTAL WELLS FROM 20 TO 45 DAYS,
AND PROPOSED FURTHER AMENDMENT OF SECTION
19 OF 19.15.16 NMAC TO REQUIRE OPERATORS
TO REPORT CERTAIN INFORMATION REGARDING
HYDRAULICALLY FRACTURED WELLS IN THE
FRAC FOCUS CHEMICAL DISCLOSURE REGISTRY.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

July 13, 2017

Santa Fe, New Mexico

BEFORE: DAVID R. CATANACH, CHAIRPERSON
EDWARD MARTIN, COMMISSIONER
DR. ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

This matter came on for hearing before the
New Mexico Oil Conservation Commission on Thursday,
July 13, 2017, at the New Mexico Energy, Minerals and
Natural Resources Department, Wendell Chino Building,
1220 South St. Francis Drive, Porter Hall, Room 102,
Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR
New Mexico CCR #20
Paul Baca Professional Court Reporters
500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87102

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

APPEARANCES

FOR APPLICANT NEW MEXICO OIL CONSERVATION DIVISION:

DAVID K. BROOKS, ESQ.
ENERGY, MINERALS & NATURAL RESOURCES DEPARTMENT
State of New Mexico Oil Conservation Division
Office of General Counsel
1220 South St. Francis Drive
Santa Fe, New Mexico 87505
(505) 476-3463
david.brooks@state.nm.us

FOR THE NEW MEXICO OIL AND GAS ASSOCIATION:

JORDAN L. KESSLER, ESQ.
HOLLAND & HART, LLP
110 North Guadalupe, Suite 1
Santa Fe, New Mexico 87501
(505) 988-4421
jlkessler@hollandhart.com

1	INDEX	
2		PAGE
3	Case Number 15726 Called	4
4	NMOCD's Case-in-Chief:	
5	Witnesses:	
6	Phillip R. Goetze:	
7	Direct Examination by Mr. Brooks	8
	Cross-Examination by Commissioner Balch	22
8	Cross-Examination by Chairman Catanach	27
	Recross Examination by Commissioner Balch	30
9	Recross Examination by Chairman Catanach	31
	Cross-Examination by Commissioner Martin	33
10	Cross-Examination by Mr. Brancard	34
	Recross Examination by Commissioner Balch	36
11	Redirect Examination by Mr. Brooks	37
12	New Mexico Oil and Gas Association's Case-in-Chief:	
13	Patrick Padilla:	
14	Direct Examination by Ms. Kessler	39, 42
	Voir Dire Examination by Chairman Catanach	41
15	Cross-Examination by Mr. Brooks	49
	Cross-Examination by Commissioner Balch	52
16		
17	Proceedings Conclude	64
18	Certificate of Court Reporter	65
19		
20	EXHIBITS OFFERED AND ADMITTED	
21	NMOCD Exhibit Numbers 1 through 5	21
22	(NMOCD Exhibits 5 and 6 were not provided to the court reporter and are not attached to this record.)	
23		
24	NMOGA Exhibit Letter A	(attached)
25		

1 (9:09 a.m.)

2 CHAIRMAN CATANACH: The next order of
3 business today, this morning, is Case Number 15726, In
4 the matter of: Proposed amendments to Section 19 of
5 19.15.16 NMAC and Section 16 of 19.15.7 NMAC, extending
6 the time for reporting completion of horizontal wells
7 from 20 to 45 days, and proposed further amendment of
8 Section 19 of 19.15.16 NMAC to require operators to
9 report certain information regarding hydraulically
10 fractured wells in the FracFocus Chemical Disclosure
11 Registry.

12 At this time I will call for appearances in
13 Case Number 15726.

14 MR. BROOKS: David Brooks, Energy, Minerals
15 and Natural Resources Department, State of New Mexico,
16 appearing for the Oil Conservation Division.

17 MS. KESSLER: Jordan Kessler, from the
18 Santa Fe office of Holland & Hart, on behalf of the New
19 Mexico Oil and Gas Association.

20 CHAIRMAN CATANACH: Any additional
21 appearances?

22 Okay. Do we have witnesses this morning,
23 Mr. Brooks?

24 MR. BROOKS: Yes. I have one witness.

25 MS. KESSLER: One witness also.

1 CHAIRMAN CATANACH: Can I get the two
2 witnesses to stand and be sworn in at this time?

3 (Mr. Padilla and Mr. Goetze sworn.)

4 CHAIRMAN CATANACH: Do we have the
5 exhibits, Mr. Brooks?

6 MR. BROOKS: You should have. My
7 understanding was the exhibits have been put in your
8 notebooks. I didn't check the notebooks to see if, in
9 fact, that was the case. If not, I can provide copies
10 of the exhibits because we were required by the
11 rulemaking rule to provide additional -- five additional
12 copies for the public, and I don't think there is enough
13 public here to make a big issue of that.

14 CHAIRMAN CATANACH: This is what we're
15 talking about.

16 MR. BROOKS: Yes. There should be five
17 exhibits. You may have only three. If you have only
18 three, I will get you the other two. Actually, I think
19 the rule -- the proposed rule is in your packet under
20 another -- in another provision, but the proposed rule
21 has been marked as Exhibit 4.

22 CHAIRMAN CATANACH: Is Exhibit Number 2 the
23 long exhibit, Mr. Brooks?

24 MR. BROOKS: Exhibit 2 is the long one.

25 COMMISSIONER BALCH: I have Exhibits 1 and

1 2.

2 CHAIRMAN CATANACH: I have Exhibits 1 and

3 2.

4 MR. BRANCARD: There is a supplemental
5 pre-hearing statement that has Exhibit 3.

6 CHAIRMAN CATANACH: Okay.

7 MR. BROOKS: May I approach?

8 COMMISSIONER BALCH: We have Exhibit 3
9 also.

10 MR. BROOKS: Okay. Well, you do also have
11 the proposed rule, which is Exhibit 4, but it's attached
12 to our motion to -- to our requested modification, I
13 believe.

14 MR. BRANCARD: And the proposed rule is the
15 longer version, Mr. Brooks?

16 MR. BROOKS: Yeah. And there have been
17 several versions. I want to be sure everyone has the
18 right one. May I approach to look? I will look and see
19 if that is indeed the right one.

20 That appears to be the right one.

21 MR. BRANCARD: This is the version of the
22 rule that has an additional Subsection C on it?

23 MR. BROOKS: Yes. And if you have the
24 right one, you should also have in the first -- to have
25 the final proposal, you should also have -- in the first

1 line, "20 days" should be deleted out.

2 COMMISSIONER BALCH: That's Exhibit 4?

3 MR. BROOKS: Yeah. The first line should
4 read "within 45 days after," and everything else in red
5 should be deleted.

6 COMMISSIONER MARTIN: That's your Exhibit
7 4?

8 MR. BROOKS: That's my Exhibit 4.

9 CHAIRMAN CATANACH: So there are four
10 exhibits?

11 MR. BROOKS: Well, we have a fifth exhibit,
12 but that's Mr. Goetze's resume. You're probably
13 familiar with his qualifications.

14 COMMISSIONER BALCH: I could probably quote
15 his resume. He wins the award for frequent witness.

16 MR. BROOKS: Well, he's a good witness.

17 CHAIRMAN CATANACH: Okay. I think we're
18 set.

19 And do you have a copy of everything?

20 MS. KESSLER: I do. Thank you.

21 CHAIRMAN CATANACH: So I think we're set to
22 go, so you can call your first witness. Well, do you
23 have an opening statement?

24 MR. BROOKS: Well, I would just say that I
25 think everyone knows it, but we are here to propose that

1 you do two things. One is to change the fracking
2 disclosure requirement to -- from filing a form with the
3 Oil Conservation Division, which is the way it's now
4 done, to filing a form containing substantially the same
5 information electronically on the FracFocus national
6 registry. The other is to extend the date -- the time
7 for completion reporting, C-105 filing, from 20 days
8 after completion to 45 days after completion. The
9 industry, I believe, supports both of these proposals,
10 and I have not been advised of any opposition from
11 anybody. So with that, I'm ready to proceed.

12 CHAIRMAN CATANACH: Thank you, Mr. Brooks.
13 You may call your first witness.

14 MR. BROOKS: Call Mr. Goetze, Phillip
15 Goetze.

16 PHILLIP R. GOETZE,
17 after having been previously sworn under oath, was
18 questioned and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. BROOKS:

21 Q. Good morning, Mr. Goetze.

22 A. Good morning, Mr. Brooks.

23 Q. State your name for the record, please.

24 A. My name is Phillip R. Goetze.

25 Q. And by whom are you employed?

1 A. I am employed by the Oil Conservation Division,
2 Engineering Bureau.

3 **Q. And what is your area of specialty?**

4 A. My classification is petroleum engineer, but I
5 am a petroleum geologist and hydrologist and
6 environmental scientist.

7 **Q. Okay. Now, I am not going to be asking you to
8 give expert geologic testimony today. We're going to be
9 talking about FracFocus. You have had some experience
10 with FracFocus?**

11 A. Correct. I've had -- required to use it in
12 some of my reporting, stipulations by the United States
13 EPA.

14 **Q. Okay. So you have some familiarity with the
15 way FracFocus works?**

16 A. I am aware of it and have participated in it.

17 **Q. Okay. Well, I don't think I'm going to suggest
18 that you're an expert on FracFocus, Mr. Goetze, but I'm
19 going to be asking you, basically, fact questions. So I
20 think it will not be necessary to ask you opinion
21 questions.**

22 **First of all, I would like you to identify
23 Exhibit Number 5.**

24 A. Exhibit Number 5 is my resume.

25 **Q. Okay. Just give us -- give us the big**

1 **highlights.**

2 A. Well, from 2013, I have been with the Oil
3 Conservation Division in the capacity of doing a variety
4 of assignments through the Engineering Bureau, including
5 nonstandard locations, the Underground Injection Control
6 Program, as well as being an examiner.

7 Prior to that, I have worked for numerous
8 federal agencies and private industry in both the
9 capacity related to oil and gas, as well as
10 environmental assessments and remediation.

11 **Q. Okay. That, I think, will suffice.**

12 MR. BROOK: I will tender Exhibit Number 5
13 for the record.

14 CHAIRMAN CATANACH: Do we have Exhibit
15 Number 5?

16 MR. BROOKS: I think you probably do not,
17 but there is an indication that the Commissioners were
18 familiar with Mr. Goetze's resume. But I have
19 additional copies if they're desired.

20 COMMISSIONER BALCH: They haven't changed
21 since the last time?

22 CHAIRMAN CATANACH: But it needs to be put
23 into the official record.

24 MR. BROOKS: Yeah. That's all I really
25 wanted to do, was put it into the record. But in this

1 particular proceeding, the qualifications -- his
2 qualifications as an expert aren't especially material,
3 but --

4 CHAIRMAN CATANACH: Okay.

5 MR. BROOKS: If I may approach, I will see
6 that each Commissioner has a copy.

7 CHAIRMAN CATANACH: That'll be fine.

8 Q. (BY MR. BROOKS) Mr. Goetze, I was asking you
9 about FracFocus.

10 Well, I guess I better have you -- would
11 you look at Exhibit 4? Exhibit 4 is a red-line copy of
12 the new rule -- of the proposed new rule as proposed by
13 the Division? You will note that the first line changes
14 the time for filing completion reports from 20 days
15 after completion to 45 days. Are you familiar with that
16 requested change?

17 A. I am aware of it, yes.

18 Q. I'm not going to discuss that any further,
19 but -- because I will ask the other witness about it if
20 he is put on the stand. But are you aware of any reason
21 why 45 days would not work?

22 A. I think it represents a more accurate period of
23 time for assessment of the well, and it represents the
24 changeover to purely horizontal drilling.

25 Q. Very good.

1 **The second change that is made is the**
2 **change in Section -- Subsection B about filing with**
3 **FracFocus. Are you familiar with the FracFocus**
4 **hydraulic fracturing treatment disclosure registry?**

5 A. Yes. I am aware of it.

6 **Q. What does it consist of?**

7 A. It is a database maintained by the Ground Water
8 Protection Council that is established to address a
9 variety of State interests in having a registry for
10 chemistry of fluids used in hydraulic fracturing. It
11 is, at this time, in numerous states from both the
12 majority of oil and gas producers, and it has been going
13 on for several years and has gone through several
14 versions, of which right now FracFocus 5.0 is currently
15 being implemented.

16 It is a database that is outside of what we
17 have here and is maintained by a third party, and we
18 have used it, as I stated before, in our compliance for
19 EPA registration and determination of whether -- what's
20 known as Guidance 84 for requirements for permits if you
21 use a certain species or types of chemistry that would
22 require you to have a permit under our UIC Program.

23 **Q. Among other things, does the FracFocus form**
24 **contain a table where the person filling it out is**
25 **required to list all of the constituents of the frac**

1 **fluid and give certain information about each one of**
2 **them?**

3 A. It requires disclosure of all fluids used in
4 the fracking process and quantities and percentages.

5 **Q. Of each constituent?**

6 A. Of each item used, yes.

7 **Q. What is Exhibit 1?**

8 A. Exhibit 1 is a summary of what we currently
9 use. It is the paper trail for the Division's permit
10 process. The first sheet here is the original form that
11 was used prior to the incorporation into ePermitting,
12 the ability to enter online.

13 **Q. So this is the Oil Conservation Division's form**
14 **that our present rule requires operators to complete**
15 **following the frac -- fracture treatment process?**

16 A. That is correct.

17 **Q. Okay. Go ahead.**

18 A. With the advent of improvements in the
19 permitting, we see on the second page is a summary list
20 of the process to enter in data into the database. The
21 two-page item is a typical data entry with instructions
22 of what is to be put in.

23 The third and fourth pages -- excuse me --
24 the fourth and fifth pages -- the fourth page is a
25 demonstration of what would be a product coming out of

1 the current data system we have. This is reflective of
2 the entry form. The page after it is actually what is
3 generated. The concern with what we have now is --

4 **Q. And that's the page --**

5 A. The last page is --

6 **Q. That's the page that's too small to read even**
7 **with glasses?**

8 A. That's right. That's been a complaint with it.

9 Again, these are tied specifically to a
10 well, and it would be found in an imaging file
11 associated with the well.

12 **Q. Okay. And would you have to go into the well**
13 **file to find that image?**

14 A. Yes, sir. You would have to know either the
15 well name or the well API number and then go to the case
16 file or the well file for that particular --

17 **Q. And in order to find an item in the well file,**
18 **you have to be able to identify by a TIFF image to find**
19 **it?**

20 A. You would have to search through all the papers
21 in the file.

22 **Q. Thank you.**

23 **Now, what is Exhibit 2?**

24 A. Exhibit 2 is a summary I prepared currently
25 showing what is the FracFocus status. The

1 first sheet -- and I'll explain this -- is that when the
2 Division went on its own path, when we were in the
3 version FracFocus 1 going into FracFocus 2.0, in that
4 time, vendors started to see that the necessity of
5 providing detailed information in an Excel file or
6 Access file to the operators was becoming more and more
7 of a requirement. What we saw -- this similar
8 occurrence -- in the laboratory world, were lab results
9 now you could pull down an Excel file and put into a
10 database.

11 FracFocus went ahead and updated their --
12 as we go into page 2 of the data entry form, it's a
13 typical data entry form. The nice thing about this is
14 that it can be prefilled with the Excel, and you have a
15 way of going through and checking.

16 The third page is what a typical job looks
17 like when it's been filled out. It provides the
18 opportunity for you to check, as well as see the
19 location. Now, they have tied it into Google Earth with
20 version 3.0 -- FracFocus 3.0, and they have upgraded the
21 ability to see your data.

22 The fourth page is the example of a summary
23 generated in a PDF format for a well. This makes it
24 extremely easier to see, as well as to maintain a data
25 file set. Now, it does go through -- where we differ

1 from our others is that we do include other items as far
2 as ingredients that we did not necessarily acquire, but
3 since it's free-filled, it is one of these things that
4 may be beneficial down the road.

5 The next page has FracFocus 2.0 validation
6 checks. With 2.0, we started to increase the ability to
7 look at data and to make sure that entries were accurate
8 and that this includes basic information for the well.

9 And, finally, the last group of pages shows
10 a typical operation of it. In other words, you go in
11 your "Search" option. It will provide you -- in the
12 case of a chosen county, it will show you the list of
13 the latest wells. The nice option with this FracFocus
14 platform is that you can get PDFs of entire towns or
15 townships and/or counties, as well as going to the
16 specific API. And they have also included it to be able
17 to locate it on Goggle Earth and then link it back in.
18 Currently, we do not have that option here.

19 And then finally, FracFocus 3.0, which was
20 completed in 2015, upgraded the security elements and
21 increased the functionality and allowed for third-party
22 reviews, as well as input for the Department of Energy,
23 which also utilizes this.

24 So, overall, what you have is a platform
25 that is supported by a third party, but at the same

1 time, their sole purpose is to maintain this information
2 and upgrade it so it becomes both satisfactory for the
3 state users and the BLM is also using this.

4 Q. Going back to the second page, is this a format
5 in which the operator or service company makes data
6 entries that communicate the information to the
7 FracFocus system?

8 A. That is correct. This would be a submission.

9 Q. Okay. Now, I want you to look at Exhibits 1, 2
10 and 3. Exhibit 3 appears to be a list of items with
11 stars in one column that's headed "NMOCD HF Disclosures"
12 and the other NMOCD -- or no -- the other, "FracFocus HF
13 Forms." Have you studied this exhibit sufficiently to
14 determine what Exhibit 3 actually is?

15 A. Yes, I have.

16 Q. You did not prepare it, right?

17 A. No, I did not, sir.

18 Q. Can you tell us what it appears to be?

19 A. I believe at this time, when the initial effort
20 for the Division to present its own database, a
21 comparison was made by I.T. to look at the various
22 informations provided by both databases. And then it
23 pointed out the differences, as well as the commonality.

24 Q. Okay. Have you analyzed both systems
25 sufficiently to tell us whether or not Exhibit 3 is a

1 **correct comparison?**

2 A. Division 3 -- I mean Exhibit 3 represents an
3 earlier version of FracFocus. There are elements which
4 are not included currently with FracFocus, for instance,
5 the bottom-hole location. Certainly OGRID and phone
6 numbers, the fracture dates are there, pool codes, which
7 really is our own internal process were. The total
8 volume of fluid pump is now reported. The percent of
9 re-use is not. And then, of course, the signature,
10 print date and email, that type of information,
11 typically the vendor who prepares it signs off on it
12 electronically.

13 **Q. With the exception of the percentage of re-use,**
14 **which I believe is not captured by the OCD otherwise on**
15 **the frac reporting form; is that correct?**

16 A. They're basically -- other than -- you know,
17 information that it can be found in other formats like
18 the C-102 or the C-105, the completion reports, there is
19 a very good matchup of information.

20 **Q. So other than the percentage of free use of**
21 **frac fluid, the elements not captured in FracFocus are**
22 **available to the OCD in other records?**

23 A. Correct, in the filings that are required for a
24 well.

25 **Q. Okay. Is FracFocus easier for the public to --**

1 an easier means for a member of a public who wants to
2 find out about a fracking process for a particular well
3 or in a particular area to access that information as
4 compared to our present system?

5 A. Compared to our present system, the ability for
6 those people who wish to obtain this information,
7 FracFocus does provide a much easier access, as well as
8 the ability to compile the information.

9 Q. Okay. Tell us why.

10 A. Because with the opportunity to locate it, with
11 FracFocus, by using both a GIS location or looking at a
12 map or looking at an API number, you can generate a --
13 either a PDF or a complete Excel file. And with that,
14 you can compile information. In Excel, you would be
15 able to look for specific CAS numbers.

16 Our current system is attached only to the
17 well and is found only in the well file, and, therefore,
18 you would have to manipulate the data manually or scan
19 and transfer information. And if you've ever tried to
20 do that from PDF to Excel, that's quite a task.

21 Q. Do a number of other states require their
22 file -- to file fracture fluid data in FracFocus?

23 A. Yes, especially the eastern states where --
24 especially from the play in the Marcellus Shale. The
25 use of diesel in hydraulic fracturing became quite

1 popular, and with that, people who have wells that are
2 in the same formations that are being fracked gas
3 started to complain or at least identify concerns. And
4 so from the East to Ohio, all the way out here, we have
5 as many -- I believe it's 13 states that currently have
6 participation in FracFocus.

7 **Q. Now, under what circumstances does the present**
8 **rule require a fracking disclosure form to be filed?**

9 A. At this point it's mostly driven by the ability
10 to see what fluids are used so that at a later time, if
11 there are any questions, the ability to see if the
12 source was the result of hydraulic fracturing, that this
13 determination could be made.

14 **Q. Well, I'm thinking about our present form.**

15 A. Other than --

16 **Q. When is it required to be filed?**

17 A. As a date or --

18 **Q. It's required to be filed within a specific**
19 **period of time after completion; is it not?**

20 A. Well, everything is supposed to be in about 30
21 days, but --

22 **Q. 20 days?**

23 A. 20 days.

24 **Q. I'm sorry. I didn't tell you I was going to**
25 **ask you that.**

1 A. That's a trick question.

2 (Laughter.)

3 Q. Okay. Well, the completion report is required
4 within 20 days. The fracking disclosure form is
5 required within 45 days. Now, is that going to change
6 under the new rule?

7 A. It would appear not, since 45 is the number
8 we're aiming for.

9 Q. 45 will be the number for both.

10 Okay. I think that's all that I have --
11 all the questions I have to ask you in this sequence,
12 Mr. Goetze. Thank you very much.

13 MR. BROOKS: Mr. Chairman, Members of the
14 Commission, I would like to tender in evidence Exhibits
15 1 through 5.

16 CHAIRMAN CATANACH: Any objection?

17 MS. KESSLER: No objection.

18 CHAIRMAN CATANACH: Exhibits 1 through 5
19 will be admitted.

20 (NMOC D Exhibit Numbers 1 through 5 are
21 offered and admitted into evidence.)

22 CHAIRMAN CATANACH: I'm sorry (indicating).

23 MS. KESSLER: I have no questions for
24 Mr. Goetze. Thank you.

25 COMMISSIONER BALCH: Would you like me to

1 start?

2 CHAIRMAN CATANACH: Yes.

3 CROSS-EXAMINATION

4 BY COMMISSIONER BALCH:

5 Q. Good morning. Mr. Goetze.

6 A. Good morning.

7 Q. I have the possible distinction of being the
8 remaining commissioner who was on the original frac
9 reporting rule, I think, in 2012.

10 A. Uh-huh.

11 Q. For some reason, I actually remember the
12 discussion about FracFocus, because it was brought up.
13 At the time --

14 A. Uh-huh.

15 Q. -- it already existed, and it was proposed by
16 one or more parties that we use that instead. And, in
17 fact, some operators said that they were already
18 reporting there anyway.

19 But there were four things that stick in my
20 mind as reasons why we elected not to go with FracFocus
21 at that time. And the first one was, basically, the
22 data -- long-term data security and operation of the
23 site. It looks like we may have addressed that with
24 Part C in the new proposed rule, basically reverting if
25 they go away. But there may be still some potential for

1 data loss or data manipulation or they might get hacked
2 or something like that. So that was a concern that we
3 had.

4 The second concern was FracFocus is in
5 control of what is reported. And as you notice, there
6 are already some things that are not reported that the
7 Division was interested in at that time. So they could,
8 at any time, change what their reporting requirements
9 are without going to all the states and addressing the
10 regulatory requirements that they may have or the
11 information that they may want to have available to
12 them. That was the second concern.

13 The third concern was -- I think came from
14 industry, and it was about protection of proprietary or
15 trade secret chemical formulations. And I think
16 FracFocus at that time did not have a distinction there.
17 They wanted everything reported regardless of trade
18 secret. I might be wrong on that.

19 And then the fourth concern that I believe
20 we had was on how does the OCD then track, regulate
21 compliance that the -- how do you get somebody from here
22 to keep up with FracFocus to make sure that things are
23 being reported in those 45 days or that they're being
24 reported at all.

25 So I would like you to kind of address

1 **those four concerns. If you'd like, I can go through**
2 **them one at a time again.**

3 A. Well, number one, FracFocus did recognize its
4 susceptibility and went to a higher level of security
5 and effort to make sure that the data is maintained, as
6 well as protected. I think they understand the fact,
7 having discussed with a couple of their key individuals,
8 that the scope of what they were doing leads to a great
9 invitation to having some issues with that. I don't
10 think they were prepared in the first round -- first two
11 rounds to address them. I think in light of a lot of
12 things that have happened, that the ability to have a
13 secure system is now as critical as making the form
14 right. So I think they have sufficiently addressed
15 that.

16 The second item is the --

17 **Q. They can make alterations to reporting**
18 **requirements.**

19 A. It is my understanding that the only people who
20 can -- I have established an account with it, and my
21 understanding is the only way that it can be changed is
22 through my request as the originator of the data set.

23 **Q. No. FracFocus themselves could change what is**
24 **required to be reported.**

25 A. Oh, what is required. Well, I mean, this is

1 going to be an A vendor. I go through that with even
2 our own ePermitting, RBDMS. I never know what's coming
3 out of the computer. So that's one of those things
4 where maybe we'll have to be proactive on our side to
5 see what we're paying for and to monitor.

6 **Q. All right. So then the third point was**
7 **proprietary formulations.**

8 A. They have an option for proprietary. You don't
9 have to report. You have to identify. So --

10 **Q. Just your trade name for it?**

11 A. Yes, it is. And then you further follow it if
12 you wish to go through the MSDS and request content.

13 **Q. So I think the most important concern, really,**
14 **is tracking.**

15 A. Yes.

16 **Q. How do you track?**

17 A. Same way we do now, is that we look at the
18 districts, and, internally, I take a look at them, as
19 well as our compliance officer. We ran -- I believe it
20 was last year -- a 10 percent population and followed up
21 on people to see if it was being done.

22 **Q. Are you cross-checking the FracFocus reports**
23 **with APDs --**

24 A. Yeah.

25 **Q. -- things like that, making sure there is a**

1 **reference to that somewhere in the file?**

2 A. Yes.

3 And I also -- again, I have to do -- for
4 the guidance from the UIC Program, I have to go through
5 and actually look at the content. And, again, I take a
6 representation on both the southeast and northwest to
7 see if there are any of the six identified CASEs that
8 would require a permit.

9 **Q. All right. So my last concern or possible**
10 **question is the missing data, and I think that**
11 **everything except for the water use and re-use data is**
12 **available elsewhere.**

13 A. We have -- well, that's -- I'm not sure about
14 that. We have asked for it previously. We do get it on
15 a lot of the C-105s. But it's one of those items that
16 we ask for it, but, like a lot of things, sometimes it's
17 not filled in.

18 **Q. The percentage of re-use water?**

19 A. Of re-use.

20 **Q. That seems like a statistic that you'd like to**
21 **track, particularly since the Commission has already put**
22 **forth a water recycle rule to track the results of that**
23 **rule if you didn't have that data.**

24 So that's my last concern. I don't know if
25 those are really questions. I just wanted to bring

1 forward to this proceeding the concerns that kept us
2 from using FracFocus the first time?

3 A. Uh-huh.

4 CHAIRMAN CATANACH: Well, I think in terms
5 of tracking and re-use of -- re-use of water for
6 fracture operations, I think that's being done under
7 Rule 34, Commissioners. They are required, for the
8 recycling facilities, to provide that information to us.
9 So I think that's one method that the Division currently
10 has to track that information.

11 CROSS EXAMINATION

12 BY CHAIRMAN CATANACH:

13 Q. And I do believe it's required on the -- on
14 the -- I think on the C-105?

15 A. Yes, it is.

16 Q. The space -- the way that they're being filed
17 now within the well files, we haven't been able to
18 compile that information in any form or fashion, or at
19 least we haven't attempted to do that. So we -- yeah.
20 I think we just rely on the recycling facilities to
21 track the re-use at this point.

22 COMMISSIONER BALCH: So, effectively, all
23 the data, you think, is available now?

24 CHAIRMAN CATANACH: I think it is. Yeah.
25 I think -- coming from the recycling facilities, I think

1 it's a good indication of how much water is being
2 re-used.

3 Q. (BY CHAIRMAN CATANACH) Let's see. FracFocus is
4 in its fifth version, Mr. Goetze?

5 A. That's correct.

6 Q. I don't know how the process works, but is it
7 possible that if the State wanted another field on the
8 FracFocus form, could we petition GWPC or IOGCC to maybe
9 incorporate another field? Do you know how that process
10 might work?

11 A. There, I believe, is an opportunity to have a
12 sundry or accessory sheet to be included. I have not
13 pursued that, but it is a possibility.

14 Q. When this was first proposed, I -- I talked to
15 the district offices, and they were not overly concerned
16 with the data that was not included on FracFocus that
17 was on the Division's form. They were not overly
18 concerned that that was an issue. I just throw that
19 out, because they believed that all that information was
20 available in the well file anyway. So -- and I know one
21 of my -- one of the early proposals on this was to have
22 the operators file with FracFocus and also file a copy
23 of the FracFocus with us to put in the well file. After
24 some discussion with industry and internally, I think
25 the Division has not proposed to go forward with that at

1 **this time.**

2 A. That's my understanding, too.

3 **Q. So the advantages are search advantages. You**
4 **can -- somebody can log on to FracFocus and --**

5 A. Well, not only that, but downloading
6 information. To compile it together is -- when I did it
7 the first time for the northwest, I had over 100 wells
8 that I had to go through and individually look at at
9 font two to find out if they were --

10 COMMISSIONER BALCH: Files --

11 THE WITNESS: Yes.

12 But, I mean, again, the concern of having
13 your database in someone else's hand is a valid one. It
14 will always be a legitimate liability. But, again, the
15 ability -- they annually -- well, not annually. They
16 quarterly provide a zip file that you can download all
17 the data in the Excel file, and some of these reach over
18 726 megabytes. So it's there if you want to take a look
19 at it. Whether it's one of these things that you kind
20 of have to look for a going-out-of-business-sale sign is
21 something I don't think we're going to have a concern
22 with since we are a participant in the Ground Water
23 Protection Council.

24

25

1 RE CROSS EXAMINATION

2 BY COMMISSIONER BALCH:

3 Q. Is there some sort of delivery that they do
4 besides the optional download?

5 A. Notification to us and that sort of thing? Not
6 really. I mean, it would be our effort to look at the
7 data sense [sic].

8 Q. It seems like it would be a good idea, from a
9 data security point, to mandate a quarterly download of
10 those zip files to storage somewhere.

11 A. Yeah. I mean, again, there are a lot of things
12 outside the rule peripherally that would have to be
13 incorporated. I think requesting additional information
14 is a good thing. If there is a deficiency, we should go
15 to either the Ground Water Protection Council or look at
16 our C-105 to see if there is some option there to be
17 able to include that information.

18 CHAIRMAN CATANACH: I think my other
19 question was with regards to another change that appears
20 to be in Part B that I'm not quite sure was addressed by
21 testimony. Initially, they're required to file the
22 hydraulic fracture report upon completion of a well.
23 And I think what you're doing, Mr. Brooks, if I read it
24 correctly, you're also going to require that that form
25 be filed for recompletion or other hydraulic fracturing

1 treatment of the well, which is new to this rule.

2 MR. BROOKS: Yes. I was going to bring
3 that out. The testimony would be that Mr. Goetze was
4 not, in detail, familiar with that new provision, but
5 that is correct.

6 CHAIRMAN CATANACH: Okay. If you're going
7 to have -- if you're going to talk about it later,
8 that's fine.

9 RECROSS EXAMINATION

10 BY CHAIRMAN CATANACH:

11 Q. And the form -- the 45 days will be applicable
12 to the FracFocus form, and you believe that there is
13 sufficient tracking that we can make sure that that gets
14 done?

15 A. I believe we can.

16 Q. We might even be able to put it on a -- put a
17 new box on the completion report, just a question: Have
18 you filed with FracFocus? I mean, there are
19 opportunities for us. If we see that it's not being
20 tracked or it's hard to track, we can also change our
21 form later on.

22 A. I believe we have the opportunity, with the
23 completion report, to include at least an opportunity
24 to, yeah, check off a box.

25 Q. We're not proposing that at this time?

1 A. No.

2 **Q. But we can do that if we find that it's not**
3 **being tracked adequately.**

4 MR. BROOKS: The Division will be proposing
5 revision to several of our forms in connection with the
6 Horizontal Well Rule revisions, assuming that that
7 process is completed.

8 CHAIRMAN CATANACH: Okay. And that might
9 be considered in that process?

10 MR. BROOKS: I'm sure it will be because
11 the C-101, 2 and then 4 and 5 are all going to be
12 studied. At least that's the intention.

13 CHAIRMAN CATANACH: There is actually a
14 subcommittee, isn't there?

15 MR. BROOKS: There is a subcommittee.
16 Whether it is functioning at this time, I don't know,
17 but there is a subcommittee that has been designated to
18 do that.

19 CHAIRMAN CATANACH: Okay. Do we need to
20 give the operators any kind of transition period to
21 phase this in, in your opinion, or will just maybe some
22 notice to operators in advance of the rule change be
23 adequate?

24 THE WITNESS: I believe that we could make
25 an announcement on our Web page, a change in rule and

1 what to anticipate and give a deadline.

2 CHAIRMAN CATANACH: My understanding from
3 talking to industry is there are quite a few operators
4 who already file with FracFocus, and I don't think it
5 would be that major of a change for most operators. I'm
6 not overly concerned about that.

7 That's all my questions.

8 CROSS-EXAMINATION

9 BY COMMISSIONER MARTIN:

10 Q. Just one. It's not directly related to
11 FracFocus, but there's something we found out. Did I
12 understand you to say that the Division requires a
13 permit to perform a frac that contains certain
14 constituents?

15 A. There are six CASEs number, diesel mostly,
16 constituents that have been required since 2014 by the
17 EPA, that if you use them in your hydraulic fracture,
18 that you will have to -- be required to get a UIC Class
19 II Permit.

20 Q. And that's all done prior to the frac and prior
21 to the well being drilled or not?

22 A. Well, it depends on what part of the country
23 you're from. Evidently, this came as a result of --
24 again, for instance, the Marcellus Shale shared both
25 groundwater and gas sources, back in New York, and with

1 the fracturing of it, they were using at that time --
2 the initial run, they were using diesel as the main
3 constituent, and then for the backflow, they were
4 discharging it onto the streets, and it was going into
5 the public water treatment systems. So not only were
6 you seeing impact to surface, but as well as wastewater
7 treatment. So the EPA initiated a guidance stating that
8 if you had any one of these six constituents, then you
9 must file for a permit.

10 **Q. And the Division requires such a permit?**

11 A. The Division has posted that it is required and
12 has identified it.

13 **Q. Okay. That's all I've got.**

14 CHAIRMAN CATANACH: Thank you, Mr. Martin.
15 Mr. Brancard?

16 CROSS-EXAMINATION

17 BY MR. BRANCARD:

18 **Q. Just a few quick things to clarify the record,**
19 **starting with acronyms. You've been talking about GWPC**
20 **and IOGCC running this Web site. IOGCC is the**
21 **Interstate Oil and Gas Compact Commission?**

22 A. That's it.

23 **Q. And GWPC is?**

24 A. Ground Water Protection Council.

25 **Q. And these are organizations run by the State?**

1 A. These are third parties with donations
2 chartered through the states.

3 **Q. Right.**

4 **And we are a member of those organizations,**
5 **New Mexico is?**

6 A. Yes, we are.

7 CHAIRMAN CATANACH: Currently.

8 MR. BRANCARD: That's all we care about.

9 **Q. (BY MR. BRANCARD) And then the Web site that**
10 **this information is placed on, this is a totally**
11 **publicly acceptable Web site?**

12 A. Yes, it is.

13 **Q. You don't have to be a member; you don't have**
14 **to pay a fee?**

15 A. You don't have to have any access other
16 than -- the only access requirement is if you wish to
17 enter data. Other than that, you may use it at any
18 time.

19 **Q. And you may not know the answer to this, but**
20 **when an operator enters the information into the**
21 **FracFocus Web site, does it fairly automatically appear**
22 **on the Web site or --**

23 A. I believe there is a delay. They recompile,
24 but it will be by the next day, is my understanding.

25 **Q. By the next day.**

1 A. Yeah.

2 Q. So we have a 45-day deadline. We can check by
3 day 46 and 47 on their Web site to see whether somebody
4 has met that deadline?

5 A. We can -- we are registered as an operator, and
6 we can look as an operator or look through the public
7 portal.

8 Q. Thank you.

9 **RE CROSS EXAMINATION**

10 BY COMMISSIONER BALCH:

11 Q. Do you know how they vet people who can enter
12 data, operators?

13 A. As far as --

14 Q. Say I wanted to come with the works. I just --

15 A. I had to go through a stepping-stone system of
16 who I was, where I was, and they confirmed my entry, so
17 yeah.

18 Q. They do have some --

19 A. I just couldn't do it if I did not have -- I
20 didn't have an OGRID, but I did have employment, and it
21 was confirmed.

22 Q. So when you -- when you became a member of the
23 system and were able to enter data --

24 A. Uh-huh.

25 Q. -- there was some vetting of your application?

1 A. Yes, of who I was, including email and calling
2 up.

3 **Q. They just called you?**

4 A. They call people who are employees, and I'm
5 also known to them, which is the other thing, too.

6 **Q. So not just anybody can do this?**

7 A. Hopefully not.

8 **Q. Well, it'll take a little bit of effort?**

9 A. I say the same thing every time I use an ATM.

10 **Q. Nothing is insurmountable.**

11 CHAIRMAN CATANACH: That's it?

12 COMMISSIONER BALCH: (Indicating.)

13 CHAIRMAN CATANACH: Anything further of
14 this witness?

15 COMMISSIONER MARTIN: I'm good.

16 CHAIRMAN CATANACH: Thank you, Mr. Goetze.

17 REDIRECT EXAMINATION

18 BY MR. BROOKS:

19 **Q. Just one follow-up question because you were**
20 **asked about the 2014 EPA requirement, and Mr. Martin**
21 **asked about the OCD rules.**

22 **The OCD UIC rules have not been changed in**
23 **quite a long time; is that correct?**

24 A. That's correct.

25 **Q. And while not everything -- so not everything**

1 **that EPA has required -- requires now is necessarily**
2 **incorporated in the rules?**

3 A. That is correct.

4 **Q. And this is one that isn't, correct?**

5 A. That's correct.

6 MR. BROOKS: Thank you.

7 CHAIRMAN CATANACH: You are excused,
8 Mr. Goetze. I guess we'll see you in August at the next
9 hearing.

10 MR. BROOKS: I believe I did tender
11 Exhibits 1 through 5 in evidence, and I forget if they
12 were admitted.

13 CHAIRMAN CATANACH: Yes, they were.

14 MR. BROOKS: Very good.

15 That would conclude the Division's
16 case-in-chief.

17 CHAIRMAN CATANACH: Thank you, Mr. Brooks.

18 MS. KESSLER: May I call my witness?

19 CHAIRMAN CATANACH: Yes, please.

20 PATRICK PADILLA,
21 after having been previously sworn under oath, was
22 questioned and testified as follows:

23 MS. KESSLER: May I proceed?

24 CHAIRMAN CATANACH: Good morning.

25 THE WITNESS: Good morning.

DIRECT EXAMINATION

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

BY MS. KESSLER:

Q. Can you please state your name for the record?

A. Patrick Padilla.

Q. With whom are you employed and in what capacity?

A. I am the deputy director of the New Mexico Oil and Gas Association.

Q. Can you please review your employment history prior to your current position?

A. Sure. Immediately prior to my current position, I was the assistant commissioner for mineral resources at the New Mexico State Land Office where I handled both the Oil, Gas and Minerals Division and the Royalty Management Division.

Prior to that, I held a variety of land regulatory and operational roles in what the Division would term the microproducer category of oilfield operation.

Q. And that would be private industry, correct?

A. Private industry, yes.

Q. During your time working for private industry, did your responsibilities include the UAing and filing regulatory form disclosures with various regulatory agencies?

1 A. Yes. Everything from an initial notice of
2 staking up to and through a well-completion report, as
3 well as ongoing field infrastructural maintenance,
4 workovers, pretty much everything under the sun for
5 smaller producers.

6 **Q. And did that include, in fact, filing hydraulic**
7 **filing disclosures?**

8 A. It did.

9 **Q. At the State Land Office, did your**
10 **responsibilities include review of regulatory paperwork**
11 **submitted by operators?**

12 A. Yes.

13 **Q. And during your time with NMOGA, have you had**
14 **occasion to discuss with a variety of operators their**
15 **experiences with filing FracFocus forms?**

16 A. I have, yes.

17 **Q. Are you also involved with the Interstate Oil**
18 **and Gas Compact Commission and Ground Water Protection**
19 **Council?**

20 A. Yes. I share the Public Lands Committee for
21 the Interstate Oil and Gas Compact Commission.

22 **Q. And as you mentioned earlier, those are the**
23 **organizations that are responsible for the FracFocus**
24 **registry, correct?**

25 A. Correct.

1 **Q. As part of your position with the IOGCC, do you**
2 **review the FracFocus forms?**

3 A. I'm involved in the amendment process, and I
4 keep abreast of what's going on with FracFocus as far as
5 reviewing the actual forms. I don't get that far into
6 the weeds, but yes.

7 **Q. And have you previously testified before the**
8 **Division?**

9 A. Yes.

10 **Q. And are you familiar with the FracFocus and the**
11 **New Mexico Oil Conservation Division disclosure forms?**

12 A. Yes.

13 MS. KESSLER: Mr. Commissioners, I will be
14 using Mr. Padilla primarily as a fact witness, but he
15 will be offering some nonexpert as well.

16 CHAIRMAN CATANACH: Can we ask him
17 questions about his qualifications?

18 MS. KESSLER: I believe so.

19 THE WITNESS: I expected that (laughter).

20 VOIR DIRE EXAMINATION

21 BY CHAIRMAN CATANACH:

22 **Q. Mr. Padilla, were you previously associated**
23 **with this body?**

24 A. I was. I did have the pleasure of serving on
25 this body for nearly two years.

1 **Q. You're stating for the record that was a**
2 **pleasure?**

3 **(Laughter.)**

4 A. It was a pleasure each and every day.

5 **Q. Thank you. That's all.**

6 CHAIRMAN CATANACH: Do you have anything?

7 COMMISSIONER BALCH: I was kind of curious
8 about why you wrote a certain way on a case, but I'll
9 defer --

10 (Laughter.)

11 THE WITNESS: We'll get a copy (laughter).

12 CHAIRMAN CATANACH: Thank you. I think
13 that's all we have.

14 CONTINUED DIRECT EXAMINATION

15 BY MS. KESSLER:

16 **Q. Mr. Padilla, do you have Exhibit 4 in front of**
17 **you? Those are the proposed modifications to the --**

18 A. I actually don't think I have Exhibit 4. I've
19 got 2, 3 and --

20 **Q. Let me approach.**

21 A. Thank you.

22 **Q. Are you familiar with these proposed**
23 **modifications and have you reviewed them in detail?**

24 A. I have, yes.

25 **Q. Can you please walk us through the process of**

1 **submitting a FracFocus disclosure?**

2 A. Sure. A company who is interested in posting
3 to FracFocus would first have to register with the Web
4 site and either designate an employee or registered
5 agent in cases where they wanted to use a vendor to
6 upload their data onto the site, and that's about it.
7 After that, they would upload an XML file to the site
8 that contained all the data for an individual well.

9 **Q. And have you had discussions with operators**
10 **regarding the FracFocus form and the additional OCD**
11 **disclosure filing?**

12 A. Yes, I have.

13 **Q. Is there industry consensus that filing a**
14 **single FracFocus form eliminates administrative**
15 **redundancies?**

16 A. Yes, definitely, given that 80 to 85 percent of
17 production in New Mexico comes from about a dozen
18 companies. Most -- all of those companies, all of our
19 top producers, are already doing that, so eliminating
20 the Division's filing would definitely reduce
21 redundancies.

22 **Q. Is there potential for error in the New Mexico**
23 **Oil Conservation Division's form due to some data entry**
24 **requirement?**

25 A. Yes. Yes.

1 **Q. Can you please discuss that?**

2 A. The Division currently requires an XML -- I
3 believe it's an XML that they use for the CSD file.
4 But -- so you upload your XML, and then you also have to
5 put in -- a lot of the data that is listed on Exhibit
6 Number 3, that will not be tracked by FracFocus, such as
7 the surface location, as far as unit letter, the
8 location from the north-south, east-west lines, things
9 like that. Those also have to be manually entered in
10 conjunction with your upload, and there is the potential
11 that data entry could make those two reports
12 conflicting.

13 **Q. Is there also potential for some confusion and**
14 **error when you amend the either -- with the Oil**
15 **Conservation Division disclosure form?**

16 A. Yes. The amendment process for the Division's
17 form is somewhat cumbersome compared to FracFocus.
18 Wherein, if you want -- if you recognize an error, you
19 can pull the entire XML file back, but that has the
20 unintended effect of restarting the clock on when you
21 file that, which is problematic because you could be
22 outside of the timeline required by the Division for
23 filing by simply trying to amend your form in
24 recognition of an error.

25 **Q. And that process is more straightforward on the**

1 **FracFocus Web site?**

2 A. It is. It allows for pinpointed amendments to
3 specific fields.

4 **Q. Mr. Goetze discussed the ease and the clarity**
5 **of searching on FracFocus versus the New Mexico Oil**
6 **Conservation Division Web site. Do you agree with his**
7 **testimony?**

8 A. Completely. FracFocus is very user friendly.
9 You can search on all of the fields mentioned by
10 Mr. Goetze: Company, county, other location that has
11 GIS capabilities. It's very, very easy for anyone to
12 just go on and, from the home page, hit "Find a Well"
13 and be well on your way to your search.

14 The current OCD imaging site, for those of
15 us in the industry, is relatively user friendly, but
16 that takes some getting used to. And I believe their
17 TIFF images that Mr. Goetze referred to are -- they're
18 also not downloadable, the data, so if you want to put
19 together any kind of data package, it's very cumbersome.

20 **Q. In your opinion, does the ease of searching the**
21 **FracFocus Web site make it more transparent?**

22 A. Definitely. And that was one of the -- one of
23 the major reasons for FracFocus, was so that people
24 could see the chemical constituents used in hydraulic
25 fracturing.

1 Q. Is it your understanding that industry -- we've
2 discussed this before, but industry uses both the
3 FracFocus form and the Oil Conservation Division Web
4 site?

5 A. Yes, they do.

6 Q. Is it your understanding that industry uses the
7 FracFocus form to disclose and report later frac jobs,
8 as well as initial frac jobs?

9 A. Yes. Recompletions or extensions or anything,
10 plug-backs and re-fracs are all reported on FracFocus as
11 industry practice now.

12 Q. So the additional requirement outlined in the
13 proposed modification related to disclosing additional
14 recompletions is already practiced?

15 A. Yes.

16 Q. In your opinion, does the Division's proposed
17 amendment to the FracFocus ruling -- administrative
18 redundancies?

19 A. Yes, it does.

20 And I should point out that there are 23
21 states that currently use FracFocus as either their
22 stand-alone or an option for reporting disclosures for
23 operators, and all -- all ten of the top oil and gas
24 producing states use it except for New Mexico and
25 Wyoming. So we're one in two who don't.

1 **Q. Are you familiar with the proposed amendment to**
2 **allow 45 days to submit the completion reports?**

3 A. Yes, I am.

4 **Q. Why is this important to the industry?**

5 A. I think it cuts down on a rush to the finish
6 line, and it could result in a reduction in errors and
7 then future amendments. Twenty days is a pretty tight
8 timeline if you are working with a contractor like
9 Halliburton or Baker Hughes in having to, first of all,
10 receive the information and vet the information and then
11 make your submission and get it all that under 20 days.
12 Having the 45 days would be much more user friendly.

13 **Q. In your opinion, will 45 days allow operators**
14 **to submit more complete and accurate reports and avoid**
15 **the necessity of supplementing those reports?**

16 A. Definitely.

17 **Q. Did you hear Commissioner Balch's four**
18 **questions that he was concerned about?**

19 A. I did.

20 **Q. If we could just review --**

21 A. I don't remember them in order, but I did hear
22 them.

23 **Q. I will refresh your recollection.**

24 **The first one is regarding the security of**
25 **the information on the FracFocus Web site. Do you have**

1 **an opinion regarding that?**

2 A. I think information security is a big deal, but
3 I'm not convinced that state systems are vulnerable to
4 the same kind of hacks. And I think that the GWPC and
5 the IOGCC have taken significant steps toward improving
6 data security. So while I realize that is a threat for
7 any Internet-based data warehousing, I don't think it's
8 a significant one.

9 **Q. And you also heard Mr. Goetze's testimony of a**
10 **possible quarterly download of the information; is that**
11 **correct?**

12 A. Yes.

13 **Q. What about the concern that the FracFocus Web**
14 **site could change their requirements?**

15 A. Having had a significant amount of interaction
16 with the IOGCC, it is a member-driven organization,
17 meaning the chairman who is the state representative has
18 a very strong voice in that group, as well as other
19 states, and it has to be kind of a comprehensive change.
20 It's not something that can be undertaken tomorrow
21 because someone in the IOGCC or Ground Water Protection
22 Council staff decides they don't like something.

23 **Q. So there is an administrative process for a**
24 **change?**

25 A. Absolutely. Yes.

1 **Q. And I believe Mr. Goetze comprehensively**
2 **addressed this, the trade secrets issue. Do you have**
3 **any additional testimony you'd like to give regarding**
4 **that?**

5 A. No. He hit everything he needed to and was
6 very thorough.

7 **Q. The final point was the concern about tracking**
8 **compliance. Do you have any additional testimony**
9 **regarding that?**

10 A. Well, given that the Web site is so user
11 friendly, the OCD should have no problem tracking the
12 compliance. It actually improved the process because
13 they can download the XML and create spreadsheets now.
14 Whereas, before, if someone is in Farmington and wants
15 to see what's happening in Hobbs because they're trying
16 to, you know, lighten the load between the district
17 offices, that's really tough to do with the current OCD
18 imaging system.

19 MS. KESSLER: That completes my
20 presentation. Thank you.

21 CHAIRMAN CATANACH: Thank you, Ms. Kessler.
22 Mr. Brooks?

23 CROSS-EXAMINATION

24 BY MR. BROOKS:

25 **Q. Yes. As brought up previously, the present OCD**

1 rule requires the fracking disclosure form to be filed
2 only after completion of a well. It does not require it
3 after recompletion or workover if there is a frac. A
4 re-frac is done on either of those occasions, which a
5 recompletion -- a recompletion almost certainly would be
6 a new frac job if you're going to recomplete to another
7 formation.

8 A. Yes.

9 Q. But -- and there might be a frac job done --
10 there might be some refracking done in connection with a
11 workover --

12 A. Could be, sure.

13 Q. Okay. You understand that the new rule will
14 require any frac job to -- a disclosure form to be filed
15 with FracFocus for any -- for any frac job?

16 A. Uh-huh. I do.

17 Q. And is that, in your judgment, likely to be a
18 problem for operators?

19 A. No. I think that operators are inclined to do
20 that because they use FracFocus as a part of their well
21 file. They don't necessarily keep stand-alone data. I
22 mean, I'm sure they keep backup data somewhere to help
23 the OCD if they wanted to. But if someone at a
24 company -- a member company, anyone who is doing any
25 kind of operations in New Mexico wanted to see what was

1 going on with a well and what had happened prior and
2 they want information on hydraulic fracturing, FracFocus
3 is a first step. So there is big incentive to make sure
4 it's complete as possible.

5 **Q. Okay. The Chairman said, in connection with**
6 **one of his questions, that from what he had heard, many**
7 **operators were already reporting to FracFocus. Is that**
8 **consistent with your knowledge of what's going on in the**
9 **industry?**

10 A. Yes. I would say the vast majority of them are
11 already -- especially if they operate in other states
12 that require the disclosure, like Texas or Oklahoma,
13 they're already doing it here because it's just standard
14 practice.

15 **Q. Okay. Now, so far as filing the completion**
16 **reports within 45 days, are you in a position to address**
17 **that issue?**

18 A. I think it's a good idea. I think it would
19 eliminate the potential for errors due to rushing the
20 form, the C-105, and it would lead to more complete
21 and -- more complete filing with less amendment
22 potential.

23 **Q. Do you have an impression of how the**
24 **industry -- what the industry thinks is the appropriate**
25 **period of time to -- necessary to get the necessary**

1 **information and file a complete report?**

2 A. Industry is definitely amenable to 45. They
3 would take 60 if you gave it to them.

4 (Laughter.)

5 **Q. Okay. I believe that's all the questions I**
6 **have for you. Thank you.**

7 A. Thank you.

8 CROSS-EXAMINATION

9 BY COMMISSIONER BALCH:

10 **Q. Good morning.**

11 A. Good morning.

12 **Q. I have just one question.**

13 The change would be with completions,
14 recompletions or other hydraulic fracturing treatment.
15 What would be the distinction of "other hydraulic
16 fracturing treatment"?

17 A. To me that sounded like a catchall for future
18 technology. I don't know, but I think it is probably a
19 good way to make sure that you're covering all bases.

20 **Q. Well, the note that I put in there was I'm not**
21 **sure -- I can't remember that part of the 2012**
22 **testimony, but I know we talked about completions. And**
23 **recompletions, I think -- I'm sure would fall into that**
24 **category, material that we had -- evidence presented at**
25 **that hearing to include in the rule. So this seems a**

1 little nebulous to me, "other hydraulic fracturing
2 treatment." How would this be different than a
3 completion or recompletion?

4 A. I don't know.

5 Q. You should be responsible for this.

6 A. Well, I would ask Mr. Goetze what he -- what he
7 intended when he drafted that language. I say it leaves
8 potential open for future technologies. That's my best
9 guess.

10 Q. Well, I think that you, along with Mr. Goetze,
11 sufficiently addressed most of my concerns or most of
12 the concerns that were originally in place. But it is
13 your feeling that industry, with NMOGA representatives,
14 is interested in making this change?

15 A. They're very interested in it.

16 Q. Originally it was opposed, FracFocus reporting,
17 or there may have been some -- some disagreement about
18 that, because it was originally proposed [sic] by some
19 of the opponents to it.

20 A. Uh-huh. As Mr. Goetze said, we are through
21 several iterations of FracFocus now, and most of the
22 concerns of both industry and concerned outside parties
23 have been addressed and brought up to -- or the Web site
24 and the tool has been brought up to a level that the
25 consensus is everyone's comfortable with it.

1 Q. The only other real concern I have is -- as I
2 mentioned, my third concern -- or my second concern is
3 that they could change the reporting requirements. It
4 sounds like there is a rather high bar to do that.

5 A. Yes.

6 Q. But if they do, you have to be cautious that
7 you don't require a new regulatory process --

8 A. Very true.

9 Q. -- in order to ensure continued compliance.
10 I'm not quite sure how to do that.

11 A. Well, as I said, the states do have
12 significant -- and industry and anyone else who would
13 like to interact and become active in either the GWPC or
14 the IOGCC has potential to have significant input into
15 the process. So there is a high bar, and it's not
16 something that is taken lightly, I would say.

17 Q. Thank you.

18 A. Uh-huh.

19 CHAIRMAN CATANACH: I think that the
20 section "other hydraulic fracturing treatment," as I
21 understand it from Mr. Brooks, was to address maybe a
22 refracture process in maybe the same formation that was
23 being produced, not necessarily would be a recompletion,
24 but maybe a re-frac.

25 COMMISSIONER BALCH: You can recomplete in

1 the same formation.

2 MR. BROOKS: May I address that because
3 that's really a legal issue, believe it or not?

4 CHAIRMAN CATANACH: Yes.

5 MR. BROOKS: OCD Rule 19.15.2 --
6 19.15.2.7R(2) defines recomplete as follows:
7 "Recomplete means the subsequent completion of a well in
8 a different pool from the pool in which it was
9 originally completed." So yes, you -- in fact, you can
10 recomplete a well in a different formation, but in law,
11 you can't. In the same formation, but in law, you
12 can't.

13 COMMISSIONER BALCH: So the "other
14 hydraulic fracture treatment" is a re-frac?

15 MR. BROOKS: Yes. If -- if you -- a
16 re-frac in the same formation. If you recomplete in the
17 same formation, that is not a recompletion under the OCD
18 rules. It is something else. And that is why that
19 language appears in the proposed new rule.

20 THE WITNESS: So a plug-and-perf in between
21 previous perfs for the purpose of fracking, those offset
22 intervals would be an other fracturing --

23 MR. BROOKS: That would be "other fracture
24 treatment."

25 COMMISSIONER BALCH: By law.

1 MR. BROOKS: By law.

2 THE WITNESS: Okay.

3 CHAIRMAN CATANACH: The only other concern
4 I have was insofar as some of the language. I think the
5 original proposal, Mr. Brooks, was to -- a 45-day
6 completion report was to limit that to horizontal wells.
7 I think it was subsequently changed after internal
8 discussions to include horizontal and vertical wells,
9 which it does now. Correct?

10 MR. BROOKS: That is correct. And that
11 change was made by a Division change proposal that was
12 filed pursuant to Part 3 of the rule -- of the OCD rules
13 governing processes in rulemaking. And that was filed,
14 as required, two weeks before the Commission hearing.

15 CHAIRMAN CATANACH: So the only concern I'd
16 have with regards to that is on today's docket, amended
17 finally -- well, on the amended final agenda, under Case
18 Number 15726, the paragraph underneath does say that
19 "extend the time for reporting completed of horizontal
20 wells from 20 to 45 days." And I guess I would ask the
21 Commission attorney to address that.

22 Is there anything we need to do? Do we
23 need to continue that to fix any of that? Is that a
24 problem at all?

25 MR. BRANCARD: I don't think so. I mean, I

1 think Mr. Brooks properly submitted the amendment as a
2 logical outgrowth of what you'll been looking at in
3 terms of timing.

4 CHAIRMAN CATANACH: So we don't have to
5 continue our re-advertisement or anything else?

6 MR. BRANCARD: Uh-uh.

7 MR. BROOKS: I have one other further
8 housekeeping matter to mention. The advertisement, as
9 well as the title of this proceeding, also mentions
10 19.15.7, and there is a conforming change that has to be
11 made to 19.15.7, which -- well, as I say, we duly
12 proposed the change to 45 days for all wells, but
13 Exhibit 5 does not -- Exhibit 4, which was admitted in
14 evidence, which is the change in the rule, does not
15 contain a copy of the conforming change to Exhibit 2,
16 19.15.7, which is just a one -- one word where you
17 change 20 days to 45 days. And it was submitted with
18 the original, but it is not -- was not on the exhibit
19 that was introduced in evidence.

20 CHAIRMAN CATANACH: I would let
21 Mr. Brancard address that.

22 MR. BROOKS: Well, I would suggest that, in
23 any case, the Commission -- the Commission is entitled
24 to make changes in the rule at any time, but this has
25 been properly noticed because we say throughout the

1 proceeding -- all the papers that have been filed and
2 sent confirm the changes to be made to 19.15.16.

3 MR. BRANCARD: Well, I guess my
4 suggestion -- I think Mr. Brooks is right because it's
5 in the title of the case, that notice has been given of
6 this change. I would suggest that perhaps you just
7 leave the record open until the end of the day for
8 Mr. Brooks to submit an exhibit that shows that change.

9 MR. BROOKS: Okay.

10 CHAIRMAN CATANACH: Okay. Is that what
11 you -- when can you get that done, Mr. Brooks?

12 MR. BROOKS: In about five minutes.

13 CHAIRMAN CATANACH: Okay. I have nothing
14 further.

15 Ed?

16 COMMISSIONER MARTIN: I have no questions.

17 CHAIRMAN CATANACH: Is there anything
18 further of this witness?

19 He may be excused.

20 THE WITNESS: Thank you, gentlemen. It's
21 been a pleasure.

22 CHAIRMAN CATANACH: Was it also a pleasure
23 during the Lightning Dock case, too?

24 THE WITNESS: Absolutely.

25 (Discussion off the record, 10:23 a.m. to

1 10:24 a.m.)

2 CHAIRMAN CATANACH: So what's the pleasure
3 of the Commission? This appears to be a very simple
4 rule to deliberate on. Do you want to do that now, or
5 do you want to take a break?

6 COMMISSIONER BALCH: The only thing I would
7 want to do is put in a requirement that the quarterly is
8 filed -- is archived in some way at OCD. And that could
9 probably go in as B.2. or part of C.

10 CHAIRMAN CATANACH: B.2. That's what you
11 would propose?

12 COMMISSIONER BALCH: Or title it "Quarterly
13 FracFocus, ZIP file." I'm not -- I can't make it sound
14 right.

15 MR. BRANCARD: So it would be a download of
16 all FracFocus submissions within New Mexico in the
17 previous quarter?

18 COMMISSIONER BALCH: That's when they're
19 available. Quarterly, right?

20 CHAIRMAN CATANACH: I guess we should go
21 into open -- have a motion to go into open deliberations
22 on this, if everything is done with the testimony.

23 MR. BRANCARD: Yeah. You can't close.

24 CHAIRMAN CATANACH: Right.

25 MR. BRANCARD: But you can decide to close

1 the record except for the submission of what would be
2 Exhibit 6 [sic].

3 MR. BROOKS: Yes. Keep the record open
4 only for that purpose, for submission of revised Exhibit
5 4 [sic], which contains the change -- the change
6 specifically to 19.15.7.16 NMAC.

7 CHAIRMAN CATANACH: Okay. Do I have a
8 second to go into open deliberations?

9 COMMISSIONER MARTIN: Second.

10 CHAIRMAN CATANACH: Okay. All in favor?
11 (Ayes are unanimous.)

12 CHAIRMAN CATANACH: Commissioners, we're
13 now on open deliberations on --

14 COMMISSIONER BALCH: So wait. Question.
15 How would it be archived at the OCD? We'll have to take
16 it, print it all out and scan it and -- or is there a
17 way for an XML file, which would probably be 2
18 megabytes?

19 CHAIRMAN CATANACH: That's going to have to
20 be worked out with our I.T. folks. I don't know.

21 COMMISSIONER BALCH: I don't want to be
22 responsible for more TIFF images. But I think it would
23 be prudent to archive the data in case we can't get into
24 the FracFocus Web site. Other than that, I have no
25 problem with the rest of the changes.

1 CHAIRMAN CATANACH: Yeah. I don't have any
2 changes with regard to the rule.

3 Do you?

4 COMMISSIONER MARTIN: No changes.

5 CHAIRMAN CATANACH: So if we can hammer out
6 the language on that, I think we will pretty much be
7 done.

8 COMMISSIONER MARTIN: I like what
9 Mr. Brancard has already proposed. Let the mechanism
10 decide itself. Let I.T. decide how to do that.

11 MR. BRANCARD: Because, basically, you're
12 just downloading.

13 COMMISSIONER MARTIN: That's my impression.

14 MR. BRANCARD: How they do it --

15 COMMISSIONER BALCH: I don't care how they
16 do it. Just downloading the data quarterly is the
17 primary concern.

18 MR. BRANCARD: So "download and archive
19 FracFocus on a quarterly basis"?

20 COMMISSIONER BALCH: Uh-huh.

21 MR. BRANCARD: So that would be a B.2.,
22 "the Division shall download and archive FracFocus
23 submissions" -- "New Mexico FracFocus submissions."

24 COMMISSIONER BALCH: Yes.

25 CHAIRMAN CATANACH: Good addition.

1 COMMISSIONER BALCH: Not all 23 states.

2 You can keep it on a thumb drive in your --

3 MR. GOETZE: I'm sure.

4 COMMISSIONER BALCH: Two thumb drives, just
5 for security.

6 CHAIRMAN CATANACH: Can you read that back
7 to us one more time?

8 MR. BRANCARD: Sure. So under
9 19.15.16.19B, this is going to be a new number three,
10 and it will say: "The Division shall download and
11 archive New Mexico FracFocus submissions on a quarterly
12 basis."

13 CHAIRMAN CATANACH: "Archive New Mexico
14 FracFocus submissions."

15 Commissioners, any problem with that
16 language?

17 COMMISSIONER BALCH: Works for me.

18 COMMISSIONER MARTIN: I don't have any
19 problems with it.

20 CHAIRMAN CATANACH: Okay. So with that
21 change, we're going to adopt the rule as proposed by the
22 Division without any additional changes.

23 COMMISSIONER BALCH: I would certainly make
24 a motion to adopt it with the addition of B.2.

25 CHAIRMAN CATANACH: Okay.

1 COMMISSIONER MARTIN: I second.

2 CHAIRMAN CATANACH: All in favor?

3 (Ayes are unanimous.)

4 CHAIRMAN CATANACH: Motion is passed. With
5 the additional addition, the rule change will be
6 approved.

7 With regards to an order -- a draft order,
8 do you have any suggestions, Mr. Brancard? Would that
9 be incumbent on Mr. Brooks to draft that?

10 MR. BRANCARD: Yeah. He can do a draft.

11 MR. BROOKS: I will do so if you wish me to
12 do it. You want an order drafted before the conclusion
13 of the Commission proceeding today, or do you want an
14 order submitted at the next --

15 MR. BRANCARD: That does seem a little
16 ambitious.

17 CHAIRMAN CATANACH: It does seem a little
18 ambitious.

19 MR. BROOKS: That's what I was interested
20 in doing. I have to gear up either way.

21 CHAIRMAN CATANACH: I think we can give you
22 until August 10th, maybe, to -- or maybe a week prior to
23 that so we can review it.

24 MR. BROOKS: I understand that.

25 CHAIRMAN CATANACH: And I don't anticipate

1 it being a very long order.

2 MR. BROOKS: I would not think it would be.

3 CHAIRMAN CATANACH: Okay. So we'll go
4 ahead and do that, and we'll give final approval at the
5 August 10th hearing on the rule. So.

6 MR. BROOKS: Okay. Mr. Brancard, do you
7 want the supplemental exhibit to be filed before the end
8 of the day? I would assume you probably would.

9 MR. BRANCARD: Yeah, for the Commission to
10 decide.

11 MR. BROOKS: So the Commission can admit
12 it?

13 MR. BRANCARD: Yeah.

14 MR. BROOKS: Okay. Very good.

15 CHAIRMAN CATANACH: Okay. Anything
16 further, Mr. Brancard, on this one?

17 MR. BRANCARD: No. I think we've got it
18 covered.

19 CHAIRMAN CATANACH: Okay. Thank you,
20 Mr. Brooks.

21 Thank you, Ms. Kessler and Mr. Padilla and
22 Mr. Goetze. Thank you very much.

23 Let's take a ten-minute break, 10, 15.

24 (Case Number 15726 concludes, 10:31 a.m.)

25 (Recess, 10:32 a.m. to 10:53 a.m.)

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,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

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

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

20

21

22 MARY C. HANKINS, CCR, RPR
23 Certified Court Reporter
24 New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2017
Paul Baca Professional Court Reporters

24

25