

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION TO AMEND RULES OF THE COMMISSION CONCERNING THE DRILLING, SPACING, AND OPERATION OF HORIZONTAL WELLS AND RELATED MATTERS BY AMENDING VARIOUS SECTIONS OF RULES 19.15.2, 19.15.4, 19.15.14, 19.15.15, AND 19.15.16 NMAC; STATEWIDE. CASE NO 15957

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

Volume 3 of 4

April 19, 2018

Santa Fe, New Mexico

BEFORE: HEATHER RILEY, CHAIRWOMAN  
ED MARTIN, COMMISSIONER  
DR. ROBERT S. BALCH, COMMISSIONER  
BILL BRANCARD, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Tuesday, April 17 through Friday, April 20, 2018, 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  
(505) 843-9241

1 APPEARANCES

2 FOR APPLICANT NEW MEXICO OIL CONSERVATION DIVISION:

3 CHERYL L. BADA, ESQ.  
NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES  
4 DEPARTMENT  
OFFICE OF GENERAL COUNSEL  
5 1220 South St. Francis Drive  
Santa Fe, New Mexico 87505  
6 (505) 476-3214  
cheryl.bada@state.nm.us  
7

8 FOR NEW MEXICO OIL & GAS ASSOCIATION (NMOGA):

9 MICHAEL H. FELDEWERT, ESQ.  
HOLLAND & HART, LLP  
10 110 North Guadalupe, Suite 1  
Santa Fe, New Mexico 87501  
11 (505) 988-4421  
mfeldewert@hollandhart.com  
12

13 FOR MARATHON OIL CORPORATION:

14 JENNIFER L. BRADFUTE, ESQ.  
EARL E. DeBRINE, JR., ESQ.  
15 MODRALL, SPERLING, ROEHL, HARRIS & SISK, P.A.  
500 4th Street, Northwest, Suite 1000  
16 Albuquerque, New Mexico 87102  
(505) 848-1800  
17 jlb@modrall.com  
edebrine@modrall.com  
18

19 FOR JALAPENO CORPORATION:

20 J.E. GALLEGOS, ESQ.  
GALLEGOS LAW FIRM, P.C.  
21 460 St. Michael's Drive, Building 300  
Santa Fe, New Mexico 87505  
22 (505) 983-6686  
jeg@gallegoslawfirm.net  
23  
24  
25

1	INDEX	
2		PAGE
3	Thursday, April 19, 2018	
4	Case Number 15957 Resumes	5
5	NMOGA's Case-in-Chief (Cont'd):	
6	Witnesses (Cont'd):	
7	George E. King:	
8	Direct Examination by Mr. Feldewert	5
	Cross-Examination by Mr. Yates	38
9	Cross-Examination by Commissioner Balch	42
	Cross-Examination by Mr. Brancard	53
10	Redirect Examination by Mr. Feldewert	57
	Cross-Examination by Mr. Cloutier	60
11		
12	Statement by Ms. Bradfute	62
13	Jalapeno Corporation's Case-in-Chief:	
14	Witnesses:	
15	Harvey E. Yates, Jr.:	
16	Direct Examination by Mr. Gallegos	74
	Cross-Examination by Ms. Bradfute	99
	Cross-Examination by Mr. Feldewert	103
17	Cross-Examination by Commissioner Balch	122
	Cross-Examination by Chairwoman Riley	125
18	Cross-Examination by Mr. Brancard	126
	Redirect Examination by Mr. Gallegos	127
19		
20	Lunch Recess	132
21	Closing Statement by Mr. Cloutier	132
22	Closing Statement by Mr. Gallegos	135
23	Closing Statement by Ms. Bradfute	140
24	Closing Statement by Mr. Feldewert	145
25	Open-Session Deliberations by the Commission	150
	Recess/Certificate of Court Reporter	244/245

1	EXHIBITS OFFERED AND ADMITTED	
2		PAGE
3	NMOGA's Exhibit Letter F, Pages 1 through 9	36
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 (9:09 a.m.)

2 CHAIRWOMAN RILEY: So, Mr. Feldewert, I  
3 think we're ready for your last witness.

4 MR. FELDEWERT: We'll call our next  
5 witness.

6 GEORGE E. KING,  
7 after having been first duly sworn under oath, was  
8 questioned and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FELDEWERT:

11 Q. Would you please state your name, identify by  
12 whom you're employed and in what capacity?

13 A. My name is George King. I'm employed by Apache  
14 Corporation. My title is distinguished engineering  
15 advisor, which my kids get an endless kick out of.

16 Q. How long have you been with Apache?

17 A. I've been with Apache for nine years.

18 Q. What have been your job responsibilities since  
19 you've been with Apache?

20 A. Basically, I was hired in and the job  
21 responsibility has been to look at fractures generating  
22 from horizontal wells in terms of hydraulic fracture  
23 stimulation.

24 The next thing would be looking at the  
25 drainage into these fractures, trying to judge how wide

1 of spacing we should have between the fractures along  
2 the wellbore. I look at the geologic ways in which the  
3 fluids move towards the actual fracture face from the  
4 formation, and then looking at, in this fracture  
5 drainage, the effects of the first take point and the  
6 last take point positions in terms of trying to minimize  
7 waste.

8 **Q. Mr. King, in what oil and gas producing areas**  
9 **have you worked?**

10 A. Twenty different countries, probably ten  
11 different shale basins, a number of different states.  
12 Primary objective here is well work and getting into how  
13 a well produces, artificial lift, et cetera, and  
14 application of hydraulic fracturing.

15 **Q. Has your work included the Permian Basin?**

16 A. Yes.

17 **Q. Both Texas and New Mexico?**

18 A. Yes, sir.

19 **Q. Have you had the opportunity to previously**  
20 **testify before the Commission?**

21 A. I have not.

22 **Q. If I turn to what's been marked as NMOGA**  
23 **Exhibit F and I look at the first four -- yeah, four**  
24 **pages, does this accurately summarize your educational**  
25 **background, your work experience and other activities**

1     that you've been involved in?

2           A.     I believe it does.

3           Q.     Now, this biography that I see here -- I'm  
4     looking at the top of the first page -- indicates you  
5     are a registered professional engineer; is that correct?

6           A.     Yes, sir, for the last 40 years.

7           Q.     In what states?

8           A.     In Oklahoma, by test in 1977, and also in  
9     Texas.

10          Q.     And it indicates you've been working in the oil  
11     field for 47 years?

12          A.     Correct.

13          Q.     Has that included -- and when did you start  
14     your work with horizontal drilling and completions?

15          A.     Probably the first one that I did was in 1984  
16     in the Permian Basin just outside of the Odessa.

17          Q.     Was that with Amoco?

18          A.     Yes, sir.

19          Q.     Okay. It indicates that you're a -- that you  
20     lecture on horizontal well issues; is that correct?

21          A.     That's correct.

22          Q.     For whom?

23          A.     The Society of Petroleum Engineers.

24          Q.     And do you teach courses on shale development?

25          A.     I do. I have taught courses on shale

1 selection, horizontal wells, production engineering and  
2 horizontals in terms of getting the fluids into the  
3 wellbore and producing them to surface, and I've taught  
4 that since 2010. I teach that course for SPE about --  
5 anywhere from two to five times a year.

6 **Q. It also indicates that you taught at the**  
7 **University of Tulsa; is that right?**

8 A. Yes, sir, for 11 years, teaching completions,  
9 fracturing and workover operations, at night, while I  
10 was working for Amoco Research.

11 **Q. If I flip over to page 2 of your biography, I**  
12 **see a heading "Technical Advances," and I see a number**  
13 **of paragraphs under that. Just generally, what are you**  
14 **listing under this heading?**

15 A. I'm looking for areas where there have been  
16 problems in production, we haven't been able to produce,  
17 and I try to work in teams to solve those.

18 The one I would draw attention to would be  
19 my work in terms of the Valhall Field, the Dania Chalk  
20 of the Norwegian sector of the North Sea. And I was  
21 able to identify the failure mechanism for the reason  
22 that we could not get that formation to produce, and it  
23 delayed development of the field for ten years. And my  
24 work, along with three other engineers, made possible  
25 the investment of 100 billion -- excuse me -- of over



1     \$1 billion in initial field development and saw the  
2     operation reach maximum oil some years later using  
3     horizontal wells, multiple frac with tip screenout  
4     fractures.

5           **Q.     If I then turn over to page 3, I see a listing**  
6     **of number of honors about a third of the way down**  
7     **through the page. Do you see that?**

8           A.     Yes, sir.

9           **Q.     And the one that particularly caught my**  
10    **attention and it seemed like you're very proud of is**  
11    **that last one.**

12          A.     The Eagle Scout?

13          **Q.     Yes, sir.**

14          A.     I always believe the Boy Scouts should probably  
15    award the Eagle badge to the mother because that's who  
16    generally drives the kid to get it. But yes, very proud  
17    of it.

18                   The other thing that isn't on there is my  
19    wife and I being able to get two kids successfully on  
20    their own with their own families. That was an  
21    accomplishment.

22                   (Laughter.)

23          **Q.     Now, it indicates, under "Publications," you've**  
24    **authored over 85 technical papers?**

25          A.     Yes, sir.

1           Q.    And that has included papers on hydraulic  
2   drilling, horizontal well drilling and completion  
3   techniques?

4           A.    Yes, sir.

5           Q.    In fact, I see on page 4 that you authored a  
6   chapter on "Modern Fracturing and Reservoir Stimulation"  
7   for the SPE handbook; is that right?

8           A.    I've done that on four books.   Yes.

9           Q.    Okay.   When I flip back to page 2, I see a  
10   publication in 2001, and it's a reference book entitled  
11   "Thirty Years of Gas Shale Fracturing:  What Have We  
12   Learned?"

13          A.    Actually, I'll correct that.   It was 2010  
14   instead of 2001.

15          Q.    Okay.

16          A.    In that particular paper, I researched back and  
17   looking at the developments of technology through the  
18   oil industry's reign in terms of doing that, and  
19   actually went back to the first shale well drilled in  
20   the United States, which was also the first successful  
21   gas well, in 1821 near Fredonia, New York.   It hit  
22   flowing gas at a depth of 28 feet.   No wonder why  
23   they've got some of the gas in their water wells up  
24   there.   But I looked at 438 references and used 250 of  
25   them in the publication.   But I tracked the development

1 of technology through horizontal wells and then up --  
2 multiple fractures and then up into the present, looking  
3 at different methods of production, lift and development  
4 of fields from the well perspective.

5 Q. And, Mr. King, with the experience you've  
6 gained since putting together all that work, are you  
7 prepared to discuss with the Commissioners here today  
8 what we've learned about horizontal well fracturing and  
9 completion over what has now been over 40 years?

10 A. I am.

11 Q. What exactly do you intend to cover with the  
12 Commission here today?

13 A. Well, what I'm going to look at is how the  
14 fractures are driven out from the horizontal wells, a  
15 little bit of work on the spacing, how the fluids move  
16 through the rock towards the fracture face, the fact  
17 that you are building the reservoir by fracturing, which  
18 has been mentioned by several other testifiers here, and  
19 also how we make use of that, trying to create  
20 stabilized flow paths from the reservoir that we have  
21 created into the wellbore to the surface, et cetera.  
22 And that is my area of work.

23 Q. And are you going to also then discuss the  
24 drainage patterns as they relate to the first take point  
25 and the last take point?

1           A.     That will be part of the explanation, sir.

2           Q.     Okay.  So in particular, then, if I have you  
3     turn to what's been marked as NMOGA Attachment 1 and if  
4     you would turn, please, to page 15 -- actually, it would  
5     be page 16, and at the top of that page is Subsection B  
6     that falls under the setback provision, so it would be  
7     under the proposed rules Subsection B(1)(b).  And are  
8     you familiar with the Division and the committee's  
9     proposal to allow the first take point and the last take  
10    point of a horizontal well to be closer in the  
11    horizontal plane to the outer boundary of the spacing  
12    unit than the remaining portion of the completed  
13    interval?

14          A.     Yes, sir, I am.

15          Q.     And do you support this provision?

16          A.     Yes, sir, I do.

17          Q.     Okay.  Let's then turn now to what's been  
18    marked as NMOGA Exhibit F1, and would you please explain  
19    what you're showing here on this particular slide?

20          A.     In this slide, let me go to the bottom pictures  
21    first, and I'll draw your attention to the lower,  
22    left-hand corner.  This is a side-looking downhole  
23    television camera developed by Amoco Research in the  
24    late 1960s and first run in the early 1970s.  And I was  
25    part of this effort, although a small part in this

1 particular application. You're looking at a magnified  
2 view there of the center and to the right-hand side.  
3 This is what a natural fracture looks like. This is in  
4 a dolomite. It's in West Texas, Permian Basin. And you  
5 can see that the fracture width on a just-created  
6 fracture, without putting proppant into it, is extremely  
7 narrow. It's on the order of 0.03 to about 0.04 or 5  
8 inches, very, very narrow. This would be impossible to  
9 get sand into this fracture due to bridging problems if  
10 you didn't raise the pressure and, of course, fracture  
11 the well. Then you can put the proppant in there to  
12 stabilize it.

13                   In the far, right-hand picture, you'll see  
14 the discontinuous fractures -- now, this is open hole,  
15 again -- where one fracture grew up into a very small  
16 shale lens, stopped and another fracture took off above  
17 it. This is characteristic of some of the barriers that  
18 stop hydraulic fracturing. The barriers that will stop  
19 a hydraulic fracturing include leak-off, loss of fluid  
20 that is driving the fracture. It includes barriers such  
21 as materials explained by earlier testifiers here that  
22 have different rock mechanics, properties, elasticity,  
23 et cetera, and also the stresses within the rock, which  
24 can absolutely stop a fracture in its tracks or prevent  
25 it from going anywhere. And most fractures are

1 vertical.

2 In the top part, this is just a cartoon  
3 schematic.

4 Q. Mr. King, before you get to that top part, we  
5 previously provided the Commission with a rock sample,  
6 and did you -- did that come from Apache?

7 A. Yes.

8 Q. And is that rock sample that we see there on  
9 the Commission's table, is that representative of what  
10 you're showing here in the pictures at the bottom?

11 A. This is a lower permeability than what we're  
12 showing here. This is a dolomite here. This is a  
13 shale. The shale, being a very, very fine-grain  
14 material with organic content in it, becomes a source  
15 rock under temperature and pressure generating from the  
16 kerogen, which the organic carbon becomes, into oil and  
17 gas. And so it's the kitchen or the source rock that we  
18 draw from.

19 The permeability of this shale is  
20 approximately two orders of magnitude, maybe 100 times  
21 less permeable than the dolomites we're used to working  
22 with in any of these areas of Texas and New Mexico.

23 Q. In your opinion, is that rock sample that we've  
24 provided the Commissioners representative of the type of  
25 formations that are being targeted by horizontal wells

1     **in New Mexico today?**

2           A.     Yes, it is.

3           Q.     Okay.  And working in that kind of  
4     **environment -- I think you were going to move to the**  
5     **upper part of your slide.**

6           A.     Right.

7           Q.     -- **explain how we produce from those.**

8           A.     The horizontal well that comes through there --  
9     and you'll have to pardon the sharp turn going from  
10    vertical to horizontal.  That turn actually takes about  
11    1,500 feet of vertical depth and goes through at about  
12    4- to 8-degree-per-100-feet rotation down into full  
13    horizontal.  Once that well is drilled, then at some  
14    position down the length near the end of the well or  
15    what we call the toe, we'll perforate and fracture the  
16    first fracture, initiate the first fracture there.

17                   The fractures in these low-permeability  
18    wells are transverse to the wellbore because that gives  
19    you the maximum area of contact.  And we're looking at  
20    areas of contact when hundreds of these fractures are  
21    put together of perhaps millions of square feet of  
22    contact.  This is important because of the very, very  
23    low permeability.  You have to have that for a feed into  
24    the fracture to bring back to the wellbore and be  
25    produced.

1                   Now, that first frac is done. You'll set a  
2 plug. It's is a pump-down operation. You'll set the  
3 plug in the well, come off of the plug, perforate  
4 several sections, fracture again and repeat the process.  
5 Each one of these fractures is in a fracture-stage area,  
6 that in the most common way of completing these wells,  
7 which is plug and perf, we might have several small  
8 clusters of perforations separated by several feet to  
9 tens of feet. And we use hydraulic diversion to break  
10 down and actually generate fracture growth outward.

11                   So I show a minimum of fractures along that  
12 plane, six in this particular application. The record  
13 in these longer and longer laterals -- and we are  
14 approaching and have drilled three-mile-long laterals.  
15 The record for the number of fractures along there has  
16 increased from -- in 2002, it was one or two fractures.  
17 In 2008, it was eight to 16 fractures. Today -- and  
18 this has been particularly since the 2010 to '12 time  
19 period -- this number of fractures has gone up with the  
20 realization that we do not drain from deep in -- on  
21 either side of the fracture into the face of the  
22 fracture. We have to have these fractures close  
23 together to be able to access the reserves or the  
24 resources in the formation and be able to get them in.  
25 If you don't have closer fractures, you're stranding



1 production. All right?

2 As we've done this, the record has gone  
3 from 16 fractures or so in a well to over 200 fractures  
4 along the wellbore. Fracture spacing has gone from 250  
5 feet between the individual fracture clusters first to  
6 100, then to 75 to 50. Some companies are putting this  
7 in the range of 15 to 20 feet apart on the fractures.  
8 It's a recognition that we're simply not being able to  
9 draw reserves or resources -- oil, gas or even water --  
10 out of those fractures through the matrix or the  
11 microcracks or natural fractures. And this has been the  
12 progression.

13 Q. Mr. King, if I look at slide F1, the picture at  
14 the top looks like a loaf of bread with a bunch of  
15 slices, right?

16 A. Yes, sir.

17 Q. And in the testimony you've just given, does it  
18 relate to the fact -- if I understand your testimony,  
19 companies are seeing very little draining between the  
20 slices of bread?

21 A. That's exactly right. And when we've gone in  
22 and refractured, it's actually proved that so putting  
23 them in initially is much cheaper than having to go in  
24 later.

25 Q. Now, do you have another slide, then, that's

1     **going to examine this little sliver -- the slices --**

2           A.     I do. Now, I'm going to keep this in -- it  
3     almost looks like vertical, but we'll explain this as we  
4     go through. But yes, it represents that fracture that's  
5     going away from the horizontal well at a mere right  
6     angle.

7           Q.     Okay. So then if I go to what's been marked as  
8     **NMOGA Exhibit F2, is the depiction of that slide a**  
9     **little -- that I pointed to on the prior slide?**

10          A.     We're looking down the length of the fracture,  
11     and you can see the vertical extent of the fracture both  
12     to the top and to the bottom. That is more difficult to  
13     carry proppant or the 100 mesh sand or other sands that  
14     we use, and we can't fill that entire fracture. That's  
15     been seen in modeling tests and even in drill-through  
16     tests where they have later drilled perpendicular to  
17     these fractures to look at proppant distribution.

18                     What we're seeing is that the extent --  
19     these fractures may extend up and down, but there is  
20     very little flow capacity coming through the fracture,  
21     so the area that is propped is the functional area of  
22     the fracture itself.

23                     Now, the color scheme, again I'm just  
24     looking at a little elliptical shape --

25          Q.     **Do you need a pointer, Mr. King?**

1           A.     That would be good.

2           **Q.     I'm going to swap out this one.**

3           A.     This one is a little bit better.

4                     We'll look at the drainage area, and this  
5     would be the unproductive part of the fracture above and  
6     below.  The dark brown area, which extends only a very,  
7     very short distance into the reservoir -- we don't know  
8     exactly how much, but we know it is less than just a  
9     couple of feet.  Now, this is actually dominated -- the  
10    permeability is dominated by natural fractures within  
11    the rock itself.  Only a few of these fractures are ever  
12    opened.  Most of them are forced shut by the overburden  
13    pressure, that was described by one of the testifiers,  
14    as about 1 or so psi per foot.  That's your overburden  
15    pressure pushing down.  Tends to close any open area  
16    that isn't stabilized by some type of fill, proppant, et  
17    cetera.

18                    So they do have this, and these little  
19    cracks do have slightly higher permeability than the  
20    unfractured matrix of the rock itself.  This particular  
21    piece of rock is a shale in a moderately productive  
22    area.  The white components inside are calcium carbonate  
23    that has gotten in there and precipitated generally from  
24    the water that was -- from which the shale was  
25    deposited, the depositional environment.  And that

1 second precipitation happens over millions of years.

2 It's geologic time.

3                   So this is what the fluid is flowing  
4 through, in this nearest area right here. It depends on  
5 natural fractures intersecting with the produced  
6 hydraulic fracture. In the far field, stepping out from  
7 this area, you see almost no drainage of this area, so  
8 fractures are indeed spaced closer and closer trying to  
9 minimize this undrained portion and minimize waste.

10           **Q. So, again, Mr. King, that depiction on the left**  
11 **is as if you're looking down one of those fractures that**  
12 **you see in the inset on the bottom, right-hand?**

13           A. No. The fracture that we're looking down is  
14 this particular fracture right here (indicating).  
15 You're looking out. And given in previous testimony,  
16 this goes out several hundred feet. And this part of it  
17 and particularly the propped part is what we're looking  
18 at as being able to drain the area right around that  
19 propped area.

20           **Q. Okay. Then, now, I believe that the piece of**  
21 **rock that we provided the Commission has a little --**  
22 **couple of cracks in it?**

23           A. Those are some of the microfissures. There is  
24 one crack in there that is a mechanical crack that  
25 happened during coring. The little white streaks, et

1     cetera are evidence of some of the very, very small  
2     fissures and bedding planes that occur during deposition  
3     of this type of material.

4           **Q.     So the important point here, as I understand**  
5     **it, is that, number one, these are -- what did you call**  
6     **them?   Ellipse?**

7           A.     Uh-huh, drainage ellipse.

8           **Q.     All right.   And you essentially create a**  
9     **reservoir with your fracture system?**

10          A.     Yes, sir.

11                     And without fractures, you cannot produce  
12     out of this.   So in this extent, fractures are flow  
13     enablers.   In higher permeability, fractures are flow  
14     accelerators.   But here you have to have the fractures  
15     to even flow out of this particular type of rock.   And  
16     the points we'll be talking about will be from the first  
17     take point near the heel of the well to the last take  
18     point, which will be at the last fracture down the  
19     length of the well.

20          **Q.     And before we get to that, do you have a slide**  
21     **that kind of shows the type of flow -- you said these**  
22     **cracks would be the flow enablers -- what kind of flow**  
23     **you get when you create these flow enablers?**

24          A.     Yes, sir.

25          **Q.     Now we're looking at what is marked as F3?**

1           A.     Correct.

2                     All right.  And this is some scanning  
3     electron microscope work that is in the literature.  
4     It's one of many papers and references that are  
5     available.  This particular one -- from looking at  
6     droplets in the Monterey Formation out in California,  
7     but as we'll show in some later slides, we have similar  
8     fracture evolving -- or fracture evolution in other  
9     formations as well.  We'll show that later under  
10    microseismic.

11                    But what's been shown here -- and this is a  
12    very highly magnified scale.  You're looking at a few  
13    nanometers across here, very, very tiny.  And this is a  
14    droplet of liquid that is draining out of these  
15    extremely small pores into a little bit larger fracture.  
16    And this is a microcrack.  And you can see the  
17    tortuosity with trying to flow through this passage.

18                    Now, there is a difference between flowing  
19    gas and flowing liquids through this formation.  The gas  
20    has a viscosity some 40 times less than most of the  
21    liquids, and the molecular size of gas is about 1/4 of  
22    that of an alkane-range hydrocarbon, like a C20, for  
23    example.  So the liquid hydrocarbons face a very  
24    tortuous path, and this is reflected in the amount of  
25    initial recovery.

1           The technology of shale gas development  
2   over the last 20 years has increased the recovery of  
3   original gas in place from 1 percent, back in the 1980s  
4   and '90s, to, depending on permeability factors in the  
5   shales, in the range of 20, 25 percent of original gas  
6   in place, and that figure has increased with the  
7   development of technology.

8           Oil technology lags it a little bit. It  
9   also started at about 1 percent of oil in place. And  
10   with longer laterals, increased density of fractures  
11   along the lateral, better propping and uses of some  
12   chemical agents, we've now got that in the range of 8 to  
13   10 percent increase -- excuse me -- recovery of original  
14   oil in place.

15           Now, this is a big area of work.  
16   Technology is still progressing in this area.

17       **Q.    So, Mr. King, there was a discussion yesterday**  
18   **from one of the other witnesses about, you know, you**  
19   **have these series of clusters. There was a picture**  
20   **where they showed a horizontal well and a series of**  
21   **clusters and then a vertical well that just had one --**  
22   **do you recall that?**

23       **A.    Yes, sir.**

24       **Q.    And they were talking about the high production**  
25   **rates you see from these horizontal wells being the**

1 fact -- or being a product of all the clusters along the  
2 wellbore. Is it correct that you have all those  
3 clusters, but the hydrocarbons kind of ooze in there?

4 A. Yes. The actual flow rate through these  
5 individual fractures along the horizontal well --  
6 because they're about the same type of fracture  
7 that you'll get one of in a vertical well, you're  
8 getting hundreds of here. And the speed at which these  
9 flow through is much slower.

10 Q. Now, as a result of what you've learned with  
11 these environments that are accessed by horizontal  
12 wells, I think you have a slide that talks about the  
13 cluster spacing and then what it looks like with respect  
14 to the first and last take point?

15 A. Yes, sir.

16 Q. So if we look at what's been marked as NMOGA  
17 F4, would you walk us through this, please?

18 A. Yes, sir.

19 Okay. I've kept the same ellipse drainage  
20 areas. Understand that the area that is still white is  
21 still undisturbed. This is not, you know, just a  
22 different program here. This is a schematic of a lot  
23 these lenses just placed close together.

24 And as I mentioned previously, we're  
25 getting into more and more of these fracture stages and



1     adjusting the volumes to really fit the position of this  
2     well within the rock itself, trying to take advantage of  
3     not fracturing out of the zone, upper or lower, keeping  
4     it in the zone. You get a much more consistent and  
5     effective use of the frac fluid that you're using  
6     keeping it in zone, and you get a better production for  
7     the amount of oil that you're seeing, oil or gas. And  
8     we're seeing this in increased recoveries as we go  
9     along. So it's a learning process. This is an  
10    evolutionary process.

11            **Q.     Just for the record, all the ellipse that you**  
12    **show here on slide 4, this is as if you were looking**  
13    **down the fracture, correct?**

14            A.     This is a mapped view, looking from up overhead  
15    down onto two parallel wells. And the spacing of those  
16    wells, as others have covered it, it depends on fracture  
17    growth, but it depends on a lot of local geology. And  
18    we try to fit that to where we're not overlapping this  
19    area.

20            **Q.     Okay. When you take this knowledge and apply**  
21    **it to the proposal to reduce the setbacks of the first**  
22    **and last take point, do you have a slide that explains**  
23    **why that makes sense here?**

24            A.     Yes, sir. I'll go to that now.

25            **Q.     Which will be NMOGA F5.**

1           A.     Now, this is not to scale on anything but the  
2 edges. The edges are to scale. In the middle, I've  
3 just drawn a lot of fractures.

4                     I have to depart just a little bit. The  
5 fractures that are here, they will not all be the same  
6 length as the cartoon sketches here. We call this an  
7 unbalanced fracture growth or off-balanced fracture  
8 growth. Both terms are in use. And basically what it  
9 shows is that the fracture length, the half-length  
10 coming out from the wellbore, in height and probably  
11 distance out-reflects the stresses and the variances in  
12 these depositional environments to where you'll have  
13 different permeabilities, different numbers of  
14 microcracks or microfractures in a specific area, and  
15 that will alter the way the fracture develops in terms  
16 of its height and also its length. So it only shows the  
17 density at which we are going to.

18                    Now, I'll direct my explanation to the last  
19 take point and first take point. This is the 330-feet  
20 setback in this area, and this is the area that we look  
21 at. Remember that the fluid flow from this formation  
22 into these fractures does not go very far. This is the  
23 reason why we've had to increase the density of  
24 fractures, why it's grown from 16 fracs in a horizontal  
25 to over 200 fracs. It just does not flow perpendicular

1 to the fracture face for any great distance. So  
2 basically we are putting a lot of fractures in here just  
3 to get the recovery. And the recoveries are going up.

4           The point here is because we know that this  
5 fluid does not flow easily into the fracture, we believe  
6 that we can cut this in terms of oil -- the one that has  
7 the hardest time moving through the formation, we can  
8 cut this down from 100 feet from here, and we get a  
9 reduction in stranded reserves by about 70 percent with  
10 the 100-foot toe-and-heel setback over the 330 used in  
11 the oil cases.

12       **Q. So, Mr. King, this is a schematic, right?**

13       A. It's simply just a sketch.

14       **Q. Showing the concept of why --**

15       A. Yes. It's a concept slide.

16       **Q. Do you have actual data that supports this type**  
17 **of change that's been proposed by the Division and the**  
18 **committee?**

19       A. I do. And if we go to the next slide --

20       **Q. Which would be F6.**

21       A. Now, these are microseismic. And let me take  
22 just a second to explain some of the limitations of  
23 microseismic and its advantages.

24           Microseismic is a measurement of shear  
25 fracturing. And if you have a very slight movement of

1 formation faces when you fracture it, as you will in  
2 almost every formation that is under stress, it will  
3 move about the distance of a human hair. And as it  
4 does, it releases a little bit of energy in terms of the  
5 audible scale. The energy release is about a minus-2-  
6 to minus-3-moment magnitude. If I stood up and had a  
7 jug of milk, dropped it on the kitchen floor, that would  
8 be about a minus-2-moment magnitude. It's one billion  
9 times less energy released than a moment magnitude 6.0  
10 earthquake, for example, approximately. It's in that  
11 range.

12 **Q. So, Mr. King, let me interrupt you. So we're**  
13 **now looking at Exhibit F6. Would you please explain**  
14 **where this comes from and what all these colors**  
15 **represent?**

16 **A.** All right. This an Apache well, the Fire Eagle  
17 2H, in an oil pool area in the San Andres of Lea County,  
18 New Mexico, very low permeability here. The grid blocks  
19 are about 100 feet. You're looking at the side view of  
20 a downhole seismic measurement, and this gives you  
21 height of this. And it goes over a couple of these,  
22 maybe 100 feet, 150 feet high, maybe 100 feet going  
23 down. Most of the time we don't think that we're  
24 getting effective fracturing on much more than about 250  
25 to 300 feet.

1                   On the left is the fracture --

2           **Q.    You're talking about on the height?**

3           A.    On the height.   On the height.

4           **Q.    Okay.**

5           A.    And note the last take point and the first take  
6 point, which is the object here, is to show that this  
7 type of development -- and every color is a different  
8 frac stage down the length -- does not extend to either  
9 side of that.   It stays within the boundaries of that  
10 horizontal section.   In other words, it grows out  
11 directly, usually at about a 90-degree, maybe some type  
12 of angle from this, but it doesn't extend into the well  
13 going along the well path.

14                   So if I look at the left, this is the area  
15 or the half-length -- we use a half-length as the  
16 fracture length here -- half the distance of the total.  
17 The half-length goes from the wellbore out.   And you'll  
18 see the same type -- with these 100-foot grid blocks,  
19 you'll see the same type of length as was presented in  
20 testimony yesterday.

21                   So the next series of these will show three  
22 other wells which we've selected, and two will be in  
23 Texas, one will be in the Marcellus.   I show the next  
24 three to demonstrate that the first take point and last  
25 take point is fairly similar, no matter what areas

1   you're in. And I've fractured wells in ten basins  
2   across North America, the shale basins, and I've never  
3   seen them grow beyond these take points. They are  
4   within feet of these.

5           **Q. And, Mr. King, before we leave slide F6, if I**  
6   **look at the map view on the left-hand side, does this**  
7   **also demonstrate the variability that you see of the**  
8   **clusters?**

9           A. Absolutely. And this is just due to rock  
10   variances here. This is the same depositional  
11   environment, but what nature throws at you there is a  
12   lot of changes in both the laminations, the layers and  
13   the bedding planes. And because this is a deep green  
14   deposition in an anoxic environment -- you don't see  
15   fossils here -- you'll see shale, and then you'll have a  
16   bedding of limestone. Shale -- and it'll be a sequence  
17   going up. The points here, the microseismic, are  
18   dependent upon velocity profiles through each of these  
19   formations, and the density makes a difference on the  
20   velocity. So there will be a little bit of difference  
21   here in terms of exactly where that point is.

22                   We use microseismic routinely. I've used  
23   it on probably 300 different fracs. And what we know  
24   from that is the individual points, don't treat them as  
25   an exact point. Treat them as a grouping of points in

1 an area. It's a trend of fracture growth.

2 Now, from that, you can see that most of  
3 these are close together. It might indicate that you've  
4 got some natural fracture development as these go out,  
5 but the primary fracture direction and the type is a  
6 planer fracture going out from the wellbore. Okay?

7 **Q. Okay. I think we can skip through the next**  
8 **three slides fairly quickly.**

9 A. We will. And these are just to show you in  
10 different basins. And from here, this is in West Texas.  
11 Notice that the last take point, first take point,  
12 again, characteristic, and a 500-foot line here. And  
13 you can see it simply does not extend. This is West  
14 Texas. This is one of the wells that I fractured and  
15 ran microseismic on in the Barnett Shale, and the side  
16 view, on the right-hand side, on the left, the map view.  
17 You see, again, this 300, 500 frac length is a little  
18 more directed, some a little slower. You will see --  
19 and I'll just draw your attention here. You'll see some  
20 random points out away from everything. We ran an  
21 experiment on this, putting listening devices down  
22 before we did the frac and found many of these random  
23 points popping up because the earth is in continuous  
24 motion down below. It shifts a little bit. Only when  
25 you see a grouping of these points together do we feel

1     that you have hydraulic connection between this.

2                     In other words, this is a draining area.

3     And the distance that these are apart -- and you'll see  
4     a little bit of overlap here in the Barnett, which is a  
5     very brittle formation and has a lot of natural  
6     fractures, but you still do not see growth past these  
7     first and last take points.

8                     I'll move to the --

9             **Q.     Before you go on, let's go back to that slide.**

10            A.     Okay.

11            **Q.     Before we leave this slide, I see two -- in**  
12 **this case you show two wellbores in black?**

13            A.     The black wellbores -- when I was doing these  
14     wells, we would drill three wells together. We would  
15     monitor from a well close by, and we'd use a  
16     tractor to put the listening devices, which were 400  
17     feet of microphones every, I think, 25 or 50 feet, so  
18     you'd get a triangulation of the sound. All right?

19                     The black wells are the two production  
20     wells, and we were zipper-fracturing these, if you will,  
21     the toe of one, then as soon as you were finished with  
22     that, you start fracturing the toe of the other and  
23     perforating this area, and you just switch back and  
24     forth. And we found that that gave us about a 20 to 30  
25     percent uplift in initial production over fracturing a



1 single well. That's kind of off subject here. But,  
2 nonetheless, in these wells, we really -- you just saw  
3 the grouping of the points going right to the last  
4 fracture and that first fracture here -- or the first  
5 take point. I'm sorry.

6 **Q. Then the orange line would be the monitoring**  
7 **well?**

8 A. The orange line is the monitoring well, and  
9 it's an equal distance out. These wells were separated  
10 by about 400 to 450 feet.

11 **Q. Okay.**

12 A. The last one is a more recent one out of the  
13 Marcellus. And you'll notice in any of these slides I  
14 have given that come out of the literature, it has an  
15 SPE reference number on here. This is the same thing I  
16 do in my teaching, is teaching the latest technologies.  
17 Note in the left-hand side, which is surface  
18 microseismic, the ends of these wellbores -- and there  
19 are seven wellbores across here -- hardly any points  
20 even go to the end here. The same thing is true about  
21 the heel well or the heel fracs. These stop out here.  
22 You don't see microseismic points on any side of this.  
23 And this is also characteristic with downhole. You see  
24 about that same pattern.

25 Now, there are sweet spots in this rock,

1    which are shown here by areas easy to fracture, but the  
2    dominant fracture type is the planer-type fracture that  
3    goes through here. The variance here may be due to more  
4    positioning, but it may be to a little bit of natural  
5    fractures. It commonly happens within this area,  
6    because this is an area of built-up stress. This is  
7    where you'll see the width. But, again, it does not  
8    penetrate and go out into the reservoir beyond these  
9    first and last take points.

10       Q.   And, again, just to be clear for the record, in  
11   order to have drainage, you have to have that  
12   stimulation, right?

13       A.   Yes, sir. You have to have the stimulation.

14       Q.   So, Mr. King, in your opinion, is there  
15   drainage that occurs horizontally along the wellbore  
16   beyond the first take point and the last take point?

17       A.   No, sir.

18       Q.   And in your opinion, can the Commission  
19   lengthen the completed interval of the horizontal  
20   wellbore in New Mexico by extending the first take point  
21   and the last take point without impairing correlative  
22   rights?

23       A.   I believe so, and I believe that will cut down  
24   a lot of waste.

25       Q.   That was my next question. You believe it will

1 prevent waste?

2 A. Yes, I do.

3 Q. And is it your opinion, Mr. King, that under  
4 the current rules, which apply to setbacks equally to  
5 horizontally and perpendicular to the wellbore, are  
6 there reserves that are not being recovered because of  
7 that setback?

8 A. Because of the current setback?

9 Q. Because of the setback -- current setback that  
10 would apply to the first take point and the last take  
11 point?

12 A. Yes.

13 Q. Okay. And do you believe, then, that the  
14 provisions that have been adopted by the committee and  
15 the Division to allow the first take point and the last  
16 take point to be closer to the outer boundary of the  
17 spacing unit, that that should be adopted?

18 A. Yes, sir, I do.

19 Q. Okay. Were the pages comprising NMOGA's  
20 Exhibit F compiled by you or under your direction and  
21 supervision?

22 A. Yes, they were.

23 MR. FELDEWERT: Madam Chair, I'd move the  
24 admission into evidence of NMOGA Exhibit F, which  
25 contains Mr. King's biography and slides 1 through 9.

1                   CHAIRWOMAN RILEY: The exhibits are  
2     accepted into the record.

3                   (NMOGA Exhibit Letter F, pages 1 through 9,  
4                   is offered and admitted into evidence.)

5                   MR. FELDEWERT: That concludes my  
6     examination of this witness.

7                   CHAIRWOMAN RILEY: We'll open it up for  
8     questions by the parties.

9                   OCD, do you have questions?

10                  MS. BADA: No.

11                  MS. BRADFUTE: No questions.

12                  MR. HALL: No questions.

13                  MR. GALLEGOS: Madam Chair, may  
14     Mr. Yates ask questions?

15                  MR. YATES: Michael, would you mind turning  
16     back to the toe and heel?

17                  MR. FELDEWERT: Hold on a minute. So we're  
18     not having the attorney of record ask questions?

19                  CHAIRWOMAN RILEY: Would you mind  
20     identifying yourself?

21                  MR. YATES: Harvey Yates.

22                  MR. FELDEWERT: Madam Chair, members of the  
23     Commission, normally -- my understanding of the  
24     procedures is that the attorney of record for the party  
25     is allowed to cross-examine witnesses.

1                   CHAIRWOMAN RILEY: Is Michael Condon here?

2                   MR. GALLEGOS: Gene Gallegos is here for  
3 Jalapeno, Madam Chairman. But this is a technical  
4 matter, and I'd ask leave that Mr. Yates be allowed to  
5 ask the question. It's not -- not in my area of  
6 expertise.

7                   CHAIRWOMAN RILEY: Mr. Brancard?

8                   MR. YATES: It will not be a very difficult  
9 question.

10                  MR. FELDEWERT: Well, then Mr. Gallegos  
11 should be able to ask it.

12                               (Laughter.)

13                  MR. BRANCARD: It simply says that a person  
14 can be examined by a party, and Mr. Yates is  
15 representing the party at this point. That's fine.

16                  MR. GALLEGOS: We'll be -- we'll be  
17 presenting Mr. Yates as a witness in a bit,  
18 Commissioners, and we can address this. But just while  
19 this witness is here, it would be an opportunity for  
20 this one question. So I would ask leave that Mr. Yates  
21 be entitled to pose that question. I mean, it's kind of  
22 absurd to write the question down for me to ask it. But  
23 what's the reason --

24                  MR. BRANCARD: That's what normally occurs.  
25 I'm a little concerned because Mr. Yates is also a

1 witness in this matter.

2 MR. GALLEGOS: Yes.

3 MR. BRANCARD: One question.

4 MR. YATES: Two questions.

5 Would you mind turning us back to the  
6 heel-toe exhibit?

7 MR. FELDEWERT: (Complies.)

8 MR. YATES: What I'm trying to do is get  
9 information from Mr. King without having to pay for it.

10 Right there.

11 May I use your pointer just a minute?

12 CROSS-EXAMINATION

13 BY MR. YATES:

14 Q. Mr. King, this is a shale zone right here.  
15 Let's assume that right there at the end, a vertical  
16 well were drilled and it was fractured in a shale. The  
17 problem with having a vertical well at this point that  
18 the fractures will go out generally, in your experience,  
19 intrude on the -- intrude on this (indicating) acreage  
20 and offend correlative rights.

21 A. No, it is not, because that fracture would have  
22 to change path. And as I've said, most fractures are in  
23 a vertical direction. And changing path, I've never --  
24 I've never seen one unless it is aimed directly at the  
25 well.

1           Q.    Okay.  So if I understand you right, if a  
2   vertical well were drilled right there, that also would  
3   not abuse --

4           A.    The fracture direction from the vertical well  
5   would be the same as the fracture direction from the  
6   horizontal well if the stress does not change.

7           Q.    Okay.  So you could drill a vertical well right  
8   there also and not intrude on the adjoining -- I'm not  
9   asking whether it's wise.  You've already testified that  
10  you get less out -- and I understand that.

11                   MR. FELDEWERT:  So let's stop right here.  
12  We've had a number of questions raised here.  I guess  
13  your first question is whether you could drill a  
14  vertical well there?

15                   MR. YATES:  Vertical well there, frac it --

16                   MR. FELDEWERT:  And the next question --

17                   MR. YATES:  -- and not intrude on the --

18           Q.    (BY MR. YATES) So the question here is:  You  
19  are promoting -- which I support -- the last take point  
20  be right there (indicating).  I'm asking whether, also,  
21  a vertical well can be drilled right there without  
22  intruding onto the adjoining acreage in a shale zone?

23           A.    It would seem to me that if you were putting a  
24  well there, wouldn't you be closer to the line, and,  
25  therefore, the well would not be permitted?

1           Q.    It would not be permitted under the, correct,  
2   rules.   Step back.   Under the present rules, it would  
3   not be permitted.

4           A.    Then --

5                   MR. FELDEWERT:   So is your question,  
6   Mr. Yates, whether the drainage radius of a vertical  
7   well is similar to --

8                   MR. YATES:   That's it.   That's what I'm  
9   asking.

10                  MR. FELDEWERT:   -- drainage radius of a  
11   horizontal well that's been fracked?

12                  THE WITNESS:   Yes.   The drainage radius of  
13   a fracture going out, assuming the fracture is the same  
14   length, the same type, propped in the same manner,  
15   fractured with the same fluid, the drainage area would  
16   be approximately the same.   This is why horizontal wells  
17   generally replace the vertical wells in this area,  
18   simply because we can put more fracturing in there.   But  
19   in the area that it's in -- and I'm no expert when it  
20   comes to boundaries, et cetera.   I deal within the  
21   formation -- the drainage area would be similar.   But  
22   would the well even be allowed?

23           Q.    (BY MR. YATES) Well, the answer is no under  
24   present -- that's why I'm asking you this question.   The  
25   horizontal well wouldn't be allowed as it's projected



1     **here either, the extension to within 100 feet.**

2           A.     I don't know the rules here, but -- you know,  
3     that's out of my area of expertise.

4           **Q.     Okay. I'm not asking you about that. I'm**  
5     **asking you about the drainage, where the drainage is**  
6     **going to --**

7           A.     Okay.

8           **Q.     Thank you very much.**

9                   MR. FELDEWERT: May I ask a follow-up  
10    question?

11                  CHAIRWOMAN RILEY: Do you want to do that  
12    now or after --

13                  Does anyone have any questions?

14                  MR. CLOUTIER: I don't have any questions.  
15    Thank you, Madam Chair.

16                  CHAIRWOMAN RILEY: Is it appropriate for  
17    his follow-up now or after ours?

18                  MR. BRANCARD: After ours.

19                  CHAIRWOMAN RILEY: Mr. Martin, do you have  
20    any questions?

21                  COMMISSIONER MARTIN: I do not have any  
22    questions.

23                  CHAIRWOMAN RILEY: Dr. Balch, do you have  
24    any questions.

25                  COMMISSIONER BALCH: I do.

1 CROSS-EXAMINATION

2 BY COMMISSIONER BALCH:

3 Q. Good morning, Mr. King.

4 A. Good morning.

5 Q. I don't think we've actually met, but it's a  
6 pleasure?

7 A. (Indicating.)

8 Q. Early on in your testimony, particularly slides  
9 1 and 2, you were interchangeably using the terms  
10 "fracture" and "fracture stages." Would you -- would  
11 you mind, for the record, just kind of describing what  
12 the difference between those two things are and how you  
13 might define the geometry in the fracture stage?

14 A. Okay. The fracture stage is the length of the  
15 wellbore in a horizontal well that we are considering  
16 fracturing. In perf and plug, which is probably used in  
17 85 to 90 percent of well completions in shales in the  
18 U.S. and almost exclusively in certain areas, we put  
19 clusters of perforations typically about 2 feet long, a  
20 limited number of perforations at various points down  
21 the length of this stage. The stage may be 250, 150  
22 foot long. Some people group the stage by brittleness  
23 or rock type or layer or landing zone, et cetera. But  
24 the clusters are placed either by just simple arithmetic  
25 distance all being the same, or some companies will

1 actually look at the shows during drilling and try to  
2 focus in on the areas which seem to have the most  
3 hydrocarbon shows and fracture those areas.

4                   There are different ways to do it in terms  
5 of placement of the clusters, but once the clusters are  
6 placed, then your frac starts with a clean-water stage  
7 breaking the clusters down due to hydraulic diversion.  
8 And if you're looking for a rate of which they break  
9 down, it's about 2 to 2.5 barrel-per-minute per  
10 perforation. And in that, you get hydraulic diversion.  
11 Several of these cluster -- fractures within the  
12 clusters -- individual clusters, one fracture per  
13 cluster, is thought to break down. Then the frac  
14 actually starts including proppant, and the proppant  
15 will follow the liquids into these areas. Okay? So  
16 individual clusters, and there may be anywhere from one  
17 to as many as ten along the length of this particular  
18 frac stage.

19                   But the frac stage is all of these clusters  
20 that will be open at any one time during the frac.  
21 That's a frac stage. The individual frac are what goes  
22 out from these perforation clusters.

23           **Q. And that's what's separated by 15 to 20 feet,**  
24 **in some cases?**

25           A. I've done a lot of work in that area just

1     trying to look at breakdowns, and it's specific to an  
2     area as to how close you can get those fractures.  Yes.

3           Q.     And your testimony is that you do that  
4     primarily because you do not see any real transport of  
5     fluids from the matrix to the fractures, so you need to  
6     increase the number of fractures in those stages?

7           A.     Right.  You need to get that because the  
8     drainage in the area from the fracture face is very  
9     limited.

10          Q.     So really if you were to go much beyond even a  
11     few feet along the axis of the wellbore in towards your  
12     100-foot offset that's being proposed, you would have to  
13     intersect some natural fracture that was somehow open?

14          A.     You have to have a disturbance in the rock  
15     fabric such as a natural fracture that was open, which  
16     is -- from what I've seen in investigations, is rare, or  
17     some other type of feature.  Right.

18          Q.     So I think microseismic -- I mean, it's been  
19     used quite a bit.

20          A.     Uh-huh.

21          Q.     Pretty interesting studies, including West  
22     Virginia, where they drilled three wells in Morgantown  
23     and used colored proppants, if you remember that study.

24          A.     Uh-huh.

25          Q.     And you can look in the literature.  I've got

1 SPE 115766 here. That's from 2008.

2 A. Uh-huh.

3 Q. But you do see some transport of proppant, I  
4 mean even long distances, in the slickwater fracs, 1,600  
5 feet sometimes.

6 A. And you're talking -- to interrupt, please.  
7 You're talking down the fracture, away from the wellbore  
8 at an angle out --

9 Q. Sure.

10 A. -- but not to each side?

11 Q. Right.

12 A. Okay.

13 Q. You're just talking about communication --  
14 interwell communication, the possibility for that.

15 A. Uh-huh.

16 Q. So really that's -- according to your  
17 testimony, that's going to be really along that  
18 relatively narrow --

19 A. Planer.

20 Q. -- relatively short height than from the  
21 induced fracture?

22 A. Yes, sir.

23 Q. Is that how that communication is occurring?

24 A. Yes, sir, down the planer length of the  
25 fracture.

1           Q.    Also, I think I mentioned some other studies  
2   have indicated that it takes very little proppant  
3   sometimes to hold the fracture open enough to give you  
4   conductivity. I think one of the other witnesses  
5   remarked on that as well, that just having any sort of a  
6   channel is a lot better than the matrix, right?

7           A.    Yes.

8           Q.    So I think that most of the modeling that I've  
9   seen indicates what you've said. You're looking at,  
10   primarily, about 250 feet of your frac pathway,  
11   something like that, in general, but you do have  
12   anomalies where you will see radioactive tracers or  
13   something 1,500 feet away.

14          A.    That's correct. I've seen the same thing.

15          Q.    Is sounds like at one point during your  
16   testimony that you thought that the further you got away  
17   from those, the heavily propped part of the fracture,  
18   the less that fracture would be communicating oil to the  
19   wellbore.

20          A.    Yes, sir.

21          Q.    And it sounded like it was dramatically  
22   different?

23          A.    It can be pretty significant simply because in  
24   the placement of proppant down the length of a vertical  
25   planer fracture, when that fluid comes out of the

1 perforation into the fracture, the velocity of the fluid  
2 drops below that -- when you're talking about slickwater  
3 fracturing, drops below the velocity threshold. The  
4 proppant starts dropping down. So the effect is to  
5 build dunes of the proppant within the fracture. And  
6 this is reflected in physical models that have been made  
7 and some investigations where they have drilled across  
8 the fracture plane. ConocoPhillips did one and reported  
9 it in the URTEC meeting last summer and also again in  
10 the Hydraulic Fracturing Conference in January of this  
11 year.

12 **Q. So how routine in the Permian Basin in these --**  
13 **kind of these big shale plays right now -- you've got**  
14 **the Bone Spring plays, and you have the Wolfcamp in**  
15 **particular -- are microseismic. Is it being done every**  
16 **well, every few wells or only in the beginning?**

17 **A.** It's -- anytime you go into an area -- you'll  
18 see a company, that if they're new to an area, if all  
19 they have is a 3D seismic, et cetera, you will see a  
20 tendency towards use of a microseismic. Microseismic  
21 was used considerably in the Barnett Shale, for example.  
22 But in West Texas, I have seen it used a number of  
23 times. I can't tell you the percentage of wells that  
24 would use it, but usually where I see the best use of  
25 it -- I'll put it that way -- is when you're developing

1 a pad or an area. You run it in the first one or two  
2 wells to see how the fracture develops, length, height,  
3 et cetera, and then you change your frac designs or  
4 modify a part of the application of that frac if you  
5 don't see it going where you would like it to go.

6 But bear in mind here that as these  
7 fractures progress, yes, it may be open when you first  
8 turn that well around and start producing. The  
9 tendency, however, is for the unpropped part of that  
10 fracture to close as you remove the load-supporting  
11 elements, the gas, the oil, the water, out of that. The  
12 rock will come back together. You'll still have a  
13 little bit more permeability than the matrix but nothing  
14 like the propped fracture. And most of that propped  
15 fracture is from the wellbore out to where the end of  
16 the proppant in the dune will be, and some proppant will  
17 be swept on with the frac fluid as you pump. And this  
18 is why you see individual points of radioactive prop --  
19 excuse me -- gamma ray-coated or radioactive proppant  
20 out at long distances as you've just said.

21 Q. Yeah. Well, it's in the literature.

22 So it would be safe to say that  
23 microseismic is probably used on the order of magnitude  
24 as pilot holes. You do it early on, figure out your  
25 geomechanics, and then you just start to factory --



1           A.    I would agree --

2           Q.    -- factory mine it?

3           A.    Yes, sir.

4           Q.    On your -- on your -- actually, you had a  
5   pretty nice image on slide 9.

6           A.    Let me back up.  Oops.  Sorry.  Right there.

7           Q.    I know that it's probably not -- it's not on  
8   here, but can you really show on here where the -- where  
9   the end of the last fracture stage is for that last take  
10  point, for example, or is it just inferred from --

11          A.    The last frac stage is shown in red, along  
12  here.  That is my understanding in reading this paper,  
13  listening to it presented and reading it.  And that's  
14  the frac stage there.  And I do not see the frac stage  
15  on the front side, but as this thing comes down, it has  
16  to be right in this area (indicating) because that's  
17  where you see the larger diameter points, which indicate  
18  that is the higher moment magnitude energy that is  
19  released.  And then it's in that planer form, so it's  
20  going out directly from that wellbore.

21          Q.    It seems pretty clear on the furthest --

22          A.    On the toe.  Uh-huh.

23          Q.    -- north lateral.  And on the toe, it looks  
24  like you can see it on every one of them, but it's a  
25  little less defined.  It may be just the projection of

1     **these laterals onto -- onto the plat plane?**

2           A.     Uh-huh.  If you'll notice, also, the very small  
3     points are the ones that are back where you're talking  
4     about.  The lower the energy of a shear-fracturing  
5     event, the less accuracy you have in the point  
6     placement.  The higher the energy, the greater the  
7     accuracy on the --

8           Q.     On slide 8, maybe this is -- projection on  
9     left-hand side -- of the left-hand side, but it looks  
10    like it's not orthogonal to the stress field.  You have  
11    frac lengths going out of an oblique angle from the --  
12    from the horizontal part of the wellbore.

13          A.     It's slightly that and probably done to try to  
14    fit into the lease shape as much as possible and still  
15    stay within the setback areas.

16          Q.     Were you here yesterday for testimony?

17          A.     I was.

18          Q.     So you remember the testimony from Mr. Taylor  
19    about stand-up and lay-down not being important in  
20    southeast New Mexico; you still saw the same amount  
21    production whether you were stand-up or lay-down?

22          A.     Okay.

23          Q.     You also remember testimony about the San Juan  
24    Basin?  They saw 30 percent increase when they were able  
25    to go directly orthogonally to the principal stress?

1           A.    (Indicating.)

2           Q.    How would you -- I'm like Mr. Yates.  I'm  
3   trying to get free information from you.

4           A.    No problem.

5           Q.    How would you address that for the Permian?  Is  
6   that -- I mean, do you think that realistically they are  
7   going to see better results from getting perpendicular  
8   to that stress field?

9           A.    It depends upon the basin and the part of the  
10   basin in which you are located.  If you -- I'll take the  
11   Barnett, for example, simply because -- in 2008, I did  
12   over 120 fracs there and monitored about 80 percent of  
13   them with microseismic and was able to see those things.

14                   All right.  In that particular application,  
15   what we were seeing was, within certain parts of the  
16   Barnett, particularly the core, then the orientation of  
17   the well with respect to the fracture was very  
18   important.  In other areas, you could shift it slightly  
19   side to side.  You did not see much difference.  So in  
20   certain areas, it does make a difference.  In others, it  
21   doesn't.

22                   I would refer you to a paper done by Baker  
23   and presented, I believe, three years ago at the  
24   Hydraulic Fracturing Conference.  And they looked the  
25   Bakken Formation and did a sensitivity analysis of all

1 of the wells that they had information on, and they  
2 found that the orientation of the well made absolutely  
3 no difference in the production. And this was in the  
4 Elm Coulee Field and then over by the Nesson anticline.  
5 So there are areas where it makes a difference. There  
6 are areas that it doesn't. That's the best I can answer  
7 your question.

8 Q. Well, it sounds like from your testimony and  
9 some of the previous testimony that 100 feet is actually  
10 pretty conservative.

11 A. In my opinion, yes, it is.

12 Q. And I think it was inferred that Texas uses 100  
13 feet in their --

14 A. I believe that's correct. I did not hear that  
15 in the testimony, but I believe that's correct.

16 Q. What about Oklahoma?

17 A. I don't know on that one. I've run  
18 microseismic in there, too, but the well was already  
19 there. The issue didn't come up. Somebody else took  
20 care of that.

21 Q. How many of these horizontal microseismic  
22 studies have you looked at?

23 A. I think it approaches 500 right now. And this  
24 is --

25 Q. How many would you say would pose a threat to

1     **correlative rights at 100 feet?**

2           A.     I haven't seen a one that would.

3           **Q.     Thank you very much.**

4           A.     Thank you.

5                     MR. CLOUTIER:  Madam Chair, I've got a  
6     question from Dr. Balch's questions, if I can have leave  
7     to ask it.

8                     COMMISSIONER BALCH:  That would be for  
9     redirect.

10                    MR. BRANCARD:  I have two.

11                    CHAIRWOMAN RILEY:  No, I don't have any  
12     questions.

13                                 CROSS-EXAMINATION

14     BY MR. BRANCARD:

15           **Q.     Well, I just wanted to clarify, on some of**  
16     **these maps used, there is clearly a certain amount of**  
17     **variability in the distances where you've seen the frac**  
18     **length.**

19           A.     Yes.

20           **Q.     And if I can recall, I think you testified that**  
21     **that's due to the geology down there?  In other words,**  
22     **there is some area -- even though it's all very low**  
23     **permeability, there is some that has more permeability?**

24           A.     It's not only the permeability in the  
25     development of a fracture, it is the leak-off, which is

1 a direct effect on the permeability.

2 But it is also the presence of barriers.

3 And in many of these shales, you will have lenses of  
4 materials like -- layers and lenses of material-like  
5 carbonate that will stop a fracture, or then you'll have  
6 stresses within the rock. These are natural in situ  
7 stresses that are there before we have fracture, and  
8 that will also do an off-balance fracture, where it will  
9 stop one side of the fracture, but that stress isn't  
10 present on the other side. And this is due to both  
11 depositional materials that are laid down at the time of  
12 deposition but also post-deposition elements such as a  
13 lift, a slump and other geological factors that go  
14 through there that would change the stress and the rock.  
15 And that will spell whether a fracture -- where it goes  
16 in terms of the distance out, but it still follows that  
17 same frac plane and is very, very dominated.

18 You see -- I don't see fracs that go this  
19 way and then turn and go this way. With microseismic or  
20 any other measurement system like tilt meters or  
21 magnetic proppant or any of those things, you just don't  
22 see that.

23 **Q. You described what might cause the fracs to be**  
24 **shorter. What might cause the fracs to be longer?**

25 **A. Longer?** You would get into areas where you

1 would find a regional fracture system that was running  
2 in the same direction. You fracked into that. Almost  
3 unpredictable. We can't see them from 3D seismic. And  
4 other things like a small fault that -- if it's less  
5 than a 50-foot throw, you're not going to see it on 3D  
6 seismic.

7                   So there are cases where you find fractures  
8 that will grow a little further. Usually, those are  
9 within just a general boundary of what you would  
10 consider the range of the fracture growth. I can't put  
11 a percentage on that simply because there is so much  
12 variance from basin to basin. Some of them are very  
13 consistent. Some of them are not. But this is a --  
14 it's not a homogeneous type of arrangement here. You're  
15 into several different factors and stresses.

16           **Q. And I guess if we can go to that last slide, I**  
17 **was a little confused by your last response to**  
18 **Mr. Yates.**

19           A. This one?

20           **Q. Yeah.**

21                   Obviously, with the horizontal wellbore,  
22 your fractures are going perpendicular to the  
23 wellbore --

24           A. Right.

25           **Q. -- right?**

1           A.    As shown.

2           Q.    Mr. Yates was describing a vertical well, that  
3   if you fractured off a vertical well, wouldn't your  
4   fractures possibly go in any direction?

5           A.    No, sir. They will follow the path of least  
6   resistance. In the subsurface --

7           Q.    I mean, aren't you deciding when you -- when  
8   you perforate the well which way you're sending the  
9   fractures?

10          A.    No, sir.

11                   And let me just give an illustration.  
12   You've got -- the stresses in the rock are the vertical  
13   stress, which was mentioned the other day, being about  
14   1 psi per foot. That is the dominant stress in almost  
15   everything. But you have a maximum and a minimum  
16   horizontal stress within the formation. Now, this can  
17   vary a little bit, but typically they're within a  
18   bracket of being the same down the length of the well.  
19   And if you have a minimum stress this way, then the  
20   fracture will go there because it can part and push out  
21   the minimum stress rather than trying to push out the  
22   maximum stress. So the direction of this minimum  
23   stress, that's perpendicular -- it's perpendicular to  
24   the fracture. Your fracture goes perpendicular to the  
25   minimum stress.



1 CHAIRWOMAN RILEY: Do you have any more  
2 questions?

3 Would you like to do redirect on this  
4 witness?

5 REDIRECT EXAMINATION

6 BY MR. FELDEWERT:

7 Q. Mr. King, I've had a few minutes to think about  
8 this. Let me ask you a couple of questions.

9 Now, Mr. Yates was talking about drilling a  
10 vertical well right there. Okay?

11 A. Uh-huh.

12 Q. 100 feet off the line, where your fracture  
13 system is taking the stimulation you do north to south.

14 A. Right.

15 Q. Okay. If we had a circumstance like this  
16 (indicating), if he drills a vertical well right here --

17 A. Right.

18 Q. -- wouldn't you be concerned that that vertical  
19 well is 100 feet off that line, given the fracture  
20 system, that it would go beyond that line?

21 A. It would, because you're relatively close  
22 there. So it's going to cross that boundary and back  
23 towards your well.

24 Q. So it's the unique nature of horizontal wells,  
25 then, that lets you, in these circumstances, to get

1     within 100 feet?

2           A.     Yes.

3           Q.     Because your fracture is always going to go out  
4     from the wellbore?

5           A.     Uh-huh.

6           Q.     I don't have the ability, for example, to have  
7     my vertical -- my horizontal well and extend my fracture  
8     out like this --

9           A.     Uh-huh.

10          Q.     -- whereas, if I've got a vertical well?  
11     Right?

12                     And I think what Mr. Brancard was talking  
13     about, my fracture -- and I understand the stresses.  
14     But, theoretically, the fracture could go this way,  
15     could go this way, right? So if I stick a vertical well  
16     right there, 100 feet off the line, couldn't the  
17     fracture go north?

18          A.     Yes, of course.

19          Q.     Could the stimulation go north?

20          A.     It's going to cross that line.

21          Q.     Whereas, with this horizontal well, that  
22     stimulation is not going to extend it to the east? It's  
23     not going to extend the fracture system to the east?

24          A.     No. No, it's not.

25          Q.     And that's because of the unique nature of

1     **horizontal wells?**

2           A.     Right.  It's coming out from the well itself.

3           **Q.     Got it.**

4                   MR. FELDEWERT:  Okay.  That's all the  
5     questions I have.

6                   CHAIRWOMAN RILEY:  Thank you.

7                   So at this point, I think maybe it would be  
8     a great time for a break.  But I do have a question.

9                   MR. CLOUTIER:  Could I ask the one question  
10    on redirect, Madam Chair, or is that disallowed?

11                   COMMISSIONER BALCH:  We have slightly  
12    different procedures than you might expect in a  
13    normal -- like a court case, right, where there are very  
14    strict rules about things.  And in the past -- and  
15    Mr. Brancard can correct me -- sometimes we allow things  
16    because we are really trying to seek information and use  
17    it to make our decision, and we're a little less formal  
18    about those kinds of things.  I don't know what  
19    Mr. Brancard is going to say, but maybe it's in our  
20    discretion.

21                   MR. BRANCARD:  Well, we normally just do  
22    questioning and then redirect.  We open it up to  
23    redirect to all the parties if the other parties don't  
24    object.

25                   MR. FELDEWERT:  How many questions do you

1 have?

2 MR. CLOUTIER: Huh?

3 MR. FELDEWERT: How many questions?

4 MR. CLOUTIER: One.

5 MR. FELDEWERT: I don't have objection.

6 CROSS-EXAMINATION

7 BY MR. CLOUTIER:

8 Q. You've heard me ask a few questions. One of  
9 the things on the protection of correlative rights and,  
10 like, the unique nature of horizontal wells that  
11 Mr. Feldewert was just talking about, you are -- I'm not  
12 criticizing you. But there are a lot of components in  
13 the well. One of the things that you're assuming is  
14 competent hydraulic isolation within the wellbore,  
15 correct, when you're talking about the -- for instance,  
16 the heel not affecting correlative rights?

17 A. Behind the wellbore? In other words, the  
18 cement?

19 Q. Yes, sir.

20 A. Yeah. You have to -- you have to assume some  
21 level of isolation.

22 Q. And I'm not criticizing your testimony on that.

23 A. Right.

24 Q. I'm just saying that's part of what you're  
25 assuming when you're talking about all these --

1           A.     Yes.   That's one of the assumptions, the same  
2   as we do assumptions in the geologic makeup of the rock.

3                   MR. CLOUTIER:   Thank you, Madam Chair.

4                   Thank you, Mr. King.   Appreciate the  
5   indulgence.

6                   CHAIRWOMAN RILEY:   Thank you.   You're  
7   dismissed.

8                   THE WITNESS:   Thank you.

9                   CHAIRWOMAN RILEY:   Next would be Marathon.  
10   Are you calling any witnesses?

11                  MS. BRADFUTE:   I am not going to call our  
12   witness, but I would like to make a brief statement on  
13   the record.

14                  CHAIRWOMAN RILEY:   Okay.   It's 10:30.   It's  
15   time for a break.   Is your statement short enough to do  
16   it before or after the break?

17                  MS. BRADFUTE:   It's very short.   We can do  
18   it after the break.   It's fine.   It will only take a few  
19   minutes.

20                  CHAIRWOMAN RILEY:   All right.   Let's take  
21   about a ten-minute break, give our court reporter some  
22   time to regroup.

23                               (Recess, 10:27 a.m. to 10:40 a.m.)

24                  CHAIRWOMAN RILEY:   Let's get started again.  
25   Would you like to make your statement?

1 MS. BRADFUTE: Yes, I would.

2 Commissioners, Marathon Oil entered an  
3 appearance in this matter with very specific concerns.  
4 Marathon is a member of NMOGA and in general it fully  
5 supports the Horizontal Well Rule Committee's efforts to  
6 create rules that update how horizontal wells can be  
7 developed throughout this state.

8 Marathon's concern, which was articulated  
9 on the record yesterday, was that the rule somehow  
10 limits operators from proposing multiple wells within a  
11 spacing unit together and then conducting completions  
12 operations which allow the wells to be completed  
13 contemporaneous using technologies like a zipper frac.

14 Yesterday, Marathon worked with both NMOGA  
15 and the Division, and the parties agreed on language  
16 which addresses the majority of these concerns.

17 Either the Division or NMOGA later today is  
18 going to be presenting these amendments, along with  
19 other amendments to the Commission so that you have them  
20 in writing, but I also wanted to state what the specific  
21 amendment was which addresses Marathon's concern on the  
22 record.

23 What is going to be changed in the rule is  
24 going to be the definition for "infill horizontal  
25 wells," and the parties have agreed to broaden the scope

1 of this definition. While there were several ways that  
2 Marathon's concerns probably could have been addressed  
3 through the rules language, this appeared to be the most  
4 straightforward way without disturbing other concepts  
5 that have been thought through by the committee.

6 And so what Marathon has agreed with is to  
7 change the definition of "infill horizontal well." And  
8 under this concept, the defining well that creates the  
9 horizontal spacing unit will either be the well that is  
10 drilled and completed or a well that is proposed. And  
11 the term "proposed" is going to be further defined to  
12 mean that an APD has been submitted to a regulatory  
13 body, that any wells that are proposed after that  
14 initial defining well will qualify as infill wells. And  
15 the time period for those proposals would be very short.  
16 This would allow operators to have infill wells and a  
17 defining well dedicated to the same spacing unit so you  
18 could have shared facilities, and you could perform  
19 contemporaneous -- operation. Marathon thinks that this  
20 satisfies the vast majority of its concerns and hopes  
21 that the Commission will take this language under  
22 consideration.

23 Thank you.

24 CHAIRWOMAN RILEY: Thank you.

25 Okay. I think we're ready for our next

1 party, so that would be Jalapeno.

2 Mr. Gallegos?

3 MR. GALLEGOS: I'm Gene Gallegos of Santa  
4 Fe representing Jalapeno. We have filed a pre-hearing  
5 statement, which we stand by as part of the records, but  
6 Mr. Yates will not testify to each and every one of  
7 those. He will concentrate on certain ones. So I call  
8 Harvey Yates as a witness.

9 MR. FELDEWERT: Madam Chair, members of the  
10 Commission, I have a couple of concerns with respect to  
11 Mr. Yates' testimony here today. If I look at the  
12 pre-hearing statement in which they identify the areas  
13 that Mr. Yates is going to testify -- you can see that  
14 they clearly identify them at the bottom of page 3,  
15 Mr. Brancard.

16 And Mr. Yates proposes to testify that this  
17 rule and these proposed amendments do directly restore  
18 problems that he sees with forced pooling orders. Okay?  
19 Forced pooling orders and provisions under which pooling  
20 occurs and how that occurs is not here before the  
21 Commission today.

22 He also intends to testify that the  
23 amendments do not conform with the legal standards and  
24 procedures set forth in the pooling statute. Again, as  
25 you know, having gone through this rule, it does not



1 deal with force pooling issues, yet that's what he wants  
2 to testify to here today.

3 Now, Madam Chair, members of the  
4 Commission, if I may approach?

5 CHAIRWOMAN RILEY: Yes.

6 MR. FELDEWERT: This is a transcript for  
7 the last time that we dealt with the horizontal well  
8 rules. And in that transcript, the Madam Chair at that  
9 time of the Commission stated, on page 60, that the  
10 "Commission counsel advised us that the Commission needs  
11 to confine itself to the case that was brought before it  
12 as advertised and not address the issues that were  
13 brought up for the larger questions concerning force  
14 pooling." Okay? That's my same objection here today.  
15 This case was advertised to deal with the horizontal  
16 well rules and the amendments to those rules. It was  
17 not advertised nor does this rule even address the  
18 conditions under which forced pooling occurs, how they  
19 should occur and what the risk penalty should be. So I  
20 have concerns about the subject matter of his testimony.

21 Secondly -- secondly, they appear to want  
22 to go through exhibits that were not attached to their  
23 pre-hearing statement and which were not provided to any  
24 of the parties until Monday afternoon, the day before  
25 this hearing.

1                   And if I may again approach the Chair?

2                   CHAIRWOMAN RILEY:   Yes.

3                   MR. FELDEWERT:   Again, I'll offer you the  
4 transcript for the last time in which we had the  
5 horizontal well rules.  And just like this time,  
6 Jalapeno, at the last time we were here before the  
7 Commission on these rules, filed their exhibits late  
8 just like they did here.  This is the second time around  
9 they've done this.

10                  And at that time, the Madam Chair was very,  
11 very explicit about how that practice has to stop.  And  
12 she said on page 36:  "I would like to make a statement  
13 that all of the exhibits that have been introduced and  
14 accepted -- we will accept Mr. Yates' exhibit, as we did  
15 others.  However" -- she cites the rule -- "it requires  
16 attachments of all exhibits that are offered at the  
17 hearing to be attached to the pre-hearing statement.  
18 This was ignored by quite a few of the attorneys and the  
19 witnesses in the case.  I would like to make a statement  
20 now.  We will not allow this rule to be challenged,  
21 except for extraordinary cases, for any further hearings  
22 before this Commission.  Because we accepted the others  
23 that came late, we will accept Mr. Yates' exhibit, but  
24 this practice needs to stop here and now, and observance  
25 of this rule needs to be observed for commission

1   hearings."

2                   Here we are a number of years later, and  
3   they've done the same thing. They did not attach their  
4   exhibits to the pre-hearing statement like everybody  
5   else did. They did not follow the rule with respect to  
6   the exhibits like every other party did. They didn't  
7   provide their exhibits until the afternoon before the  
8   hearing. And if this statement by the Commission Chair  
9   back in 2011 is going to have any weight and if we're  
10   going to have a rule, we need to enforce it, and it  
11   needs to be enforced today.

12                  So I would move that their exhibits that  
13   were filed late, that they not be entertained by this  
14   Commission.

15                  MR. GALLEGOS: Madam Chair, may I be heard?

16                  Obviously, this is a matter of discretion.  
17   What one chairperson did at one time doesn't mean what  
18   will be done today.

19                  The exhibits that we submitted and filed  
20   and sent to the members of the Commission and all  
21   counsel are very simple exhibits. We can do with them  
22   or without them. They're not critical to Mr. Yates'  
23   testimony. There are a couple of them that we would  
24   like to use because they're illustrative. All they're  
25   showing, you know, is the shape of a quarter section and

1 ownership that might exist. I mean, they're simply  
2 cartoons.

3                   And this is a rulemaking proceeding, not an  
4 adjudicatory proceeding. You know, the public -- the  
5 public could be heard here today. A mineral owner could  
6 come in and say, "I think this affects me." The more  
7 you know and the more you hear, in order to adopt a rule  
8 as important and as extraordinary as these, the better  
9 off you are in making a good, reasoned decision. So I  
10 don't think, you know, we should try and tie this down  
11 and make an adjudicatory, "Oh, you can't admit this; you  
12 can't admit that."

13                   I think Mr. Yates' testimony will be  
14 helpful. Out of five simple exhibits here, there's  
15 probably two that we were going to refer to, and I  
16 submit they can be done -- or no different than  
17 Mr. Yates drawing them on a -- on a board, something  
18 like that. That's the nature of the exhibits. So we  
19 ask to be permitted to go forward with the testimony  
20 that we want to present. The pre-hearing statement sets  
21 forth the issues with many of the rules, and I think  
22 it'll be helpful to this Commission to have this  
23 testimony because everything else you're hearing is all  
24 proponent. Proponent. How do you make a reasonable  
25 decision unless you hear something on the other side of

1 the issues? Otherwise, it's just -- you know, it's a  
2 one-party, in effect, decision-making process.  
3 Everybody here is: Well, let's have these rules.

4 There are a few things about the rules that  
5 we think should be addressed and that you should  
6 consider, and that's the purpose of Mr. Yates'  
7 testimony.

8 MR. FELDEWERT: If I may respond?

9 Number one, the rule that the Chairman  
10 cited last time we were here when they violated the rule  
11 is a rule for rulemaking. Okay? It's not just a rule  
12 for adjudicatory proceedings. It is a rule for  
13 rulemaking.

14 And it doesn't matter whether you think  
15 your late-filed exhibit is a cartoon, whether you think  
16 it's simple or whatever your opinion is. It is still  
17 late, and it is still in violation of the rule. And one  
18 of the purposes we file -- one of the reasons we file a  
19 pre-hearing statement and we file exhibits is so that  
20 the parties are on notice about what is going to be  
21 testified to and they have an understanding of what type  
22 of evidence and what type of exhibits are going to be  
23 used so they can prepare for that. That was not  
24 forwarded to the parties here today. And that rule  
25 applies whether you're a proponent or an opponent.

1     There is no distinction there.   Okay?

2                     Number two, the issue -- and as he said,  
3     "Yes, we want to testify on the issues before the  
4     Commission here today."   The issues before the  
5     Commission here today do not involve pooling.   They do  
6     not involve the pooling statute.   They do not involve  
7     the regulations that govern the pooling, yet that's what  
8     he wants to testify to, and that's improper.   Both of  
9     those things are.

10                    MR. GALLEGOS:   I don't want to elongate  
11     this unnecessarily.   But there is a rule on the  
12     subsequent infill wells that absolutely invokes the  
13     compulsory pooling statute.   It adopts it.   That opens  
14     the door.   That creates the issue.   We're not creating  
15     the issue.   The issue is within the proposed rule that's  
16     going to go back to compulsory pooling orders, which  
17     involve, of course, a risk penalty, so forth.   So the  
18     issue is introduced by the proposed rule.

19                    CHAIRWOMAN RILEY:   Okay.

20                    MR. BRANCARD:   Madam Chair, there are two  
21     issues here.   One is the scope of the testimony of  
22     Mr. Yates, and the other is the exhibits.

23                    The scope of the testimony, what the  
24     Commission's scope is, is largely relevance.   Is this  
25     testimony relevant to what's before the Commission?   And

1 clearly what's relevant before the Commission are the  
2 proposed rule changes that are here. To the extent that  
3 somebody's testimony is relevant to that, that's what  
4 you have to judge it on.

5 I think it's difficult to prejudge what  
6 Mr. Yates is going to say. The pre-hearing statement  
7 broadly covers a lot of topics, some of which seem  
8 relevant, some of which -- I think I would agree with  
9 Mr. Feldewert. We're not here to discuss the pool rule  
10 because it's not at issue here today. Anybody can  
11 submit an amendment to amend the pooling rule, and they  
12 can do so, and the Commission can consider that. But  
13 that's not at issue here. It's just the rules governing  
14 the drilling of horizontal wells.

15 Obviously, they have responded specifically  
16 to certain rule changes here, and it would be good to  
17 hear about concerns about specific rules and the  
18 problems that may occur.

19 So I think, basically, for the testimony,  
20 you can't really judge it until Mr. Yates starts  
21 testifying what he's going to testify to.

22 As for the exhibits, okay, the Commission  
23 rules have been rewritten, and we adopted new commission  
24 rules on rulemaking recently. What the standard says --  
25 and I guess I would disagree with Mr. Feldewert. It

1 says, "The commission may exclude any expert witnesses  
2 or technical exhibits not identified and/or attached to  
3 the pre-hearing statement unless the testimony is  
4 offered solely for rebuttal."

5                   So I think -- I think you need to look at  
6 these and determine whether these are technical  
7 exhibits. I mean, the parties put on -- you provide  
8 this as a way of -- if people are going to submit  
9 technical data, which there was a fair amount of in the  
10 previous testimony, that those be given to all the  
11 parties in advance. So that would be the question,  
12 whether these are technical exhibits. I don't think  
13 there is a hard-and-fast rule saying you must attach  
14 your exhibits.

15                   I guess to the extent that you can limit  
16 the use of these exhibits or not have them be technical,  
17 that would be preferable.

18                   CHAIRWOMAN RILEY: Yeah. I mean, I'm  
19 looking at Exhibit E, and it's questionable whether you  
20 call that technical or not. But it is showing an  
21 ellipse. So I look at that as technical.

22                   Fellow Commissioners, do you have an  
23 opinion whether that's technical?

24                   COMMISSIONER BALCH: I think I would echo  
25 Mr. Brancard. We don't know until he talks about them,



1 I suppose.

2 CHAIRWOMAN RILEY: Okay.

3 COMMISSIONER MARTIN: I think I've got a  
4 problem on the fairness of it. Mr. Feldewert's comment  
5 about nobody has had the time to look at these and  
6 everybody else afforded -- to me that's blatantly unfair  
7 in this case, in any case.

8 COMMISSIONER BALCH: And I think more  
9 recently when we made exceptions to that, it's been on a  
10 slide-by-slide case, and it's been because the  
11 Commission felt like they needed that information. But  
12 I think probably to the extent these exhibits couldn't  
13 be used would be in the interest of fairness to the  
14 other parties. I have to agree with you on that,  
15 Mr. Martin.

16 CHAIRWOMAN RILEY: I have a tendency to  
17 agree with that as well. Even to the extent that we had  
18 questioning by an expert witness earlier rather than by  
19 counsel, I think that was a bit unfair to the other  
20 parties because they all had to have their attorneys do  
21 the questioning.

22 So my preference at this point is really  
23 keep this limited to what we're here to do today, which  
24 is this rulemaking, and I say we not use these exhibits.

25 You said you could present without them, so

1     why don't we go forward without these exhibits?

2                     HARVEY E. YATES, JR.

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

5                     DIRECT EXAMINATION

6     BY MR. GALLEGOS:

7             **Q.     Would you state your name, please, and your**  
8             **business address?**

9             A.     Harvey E. Yates, Jr. My business address is  
10            1429 Central, Northwest, Albuquerque, New Mexico.

11            **Q.     Jalapeno has filed a pre-hearing statement in**  
12            **this case and is a party. What is Jalapeno Corporation?**

13            A.     Jalapeno is an oil and gas exploration company.

14            **Q.     What is your connection with Jalapeno**  
15            **Corporation?**

16            A.     I'm president of the company.

17            **Q.     And are you essentially the owner of that**  
18            **company, the assets of the company?**

19            A.     Yes.

20            **Q.     Okay. Explain the oil and gas business of**  
21            **Jalapeno Corporation.**

22            A.     Our primary business today is to participate as  
23            a nonoperator in drilling, most of which that drilling  
24            is horizontal wells. Probably most of that is in Texas  
25            today. We also occasionally operate a vertical well.

1 And so that's the business.

2 Q. What is the extent of your -- of Jalapeno's  
3 leasehold in the Permian Basin both in Texas and  
4 New Mexico?

5 A. The number of acres, you're asking about?

6 Q. Yes, the number of acres in the general area,  
7 counties.

8 A. We have an interest in Texas in probably 5- or  
9 6,000 acres. In the Delaware and Permian Basin, we have  
10 an interest in probably 20,000-plus acres. In  
11 nonproducing basins, wildcat basins, in one basin, we  
12 probably have 30,000. In another -- a leasehold  
13 interest in another, probably 15,000 mineral acres.

14 Q. I wanted to ask you a little bit more about  
15 that, what I'd call the exploratory enterprises of  
16 Jalapeno. Has it been historic for your company to do  
17 what I would call wildcat --

18 A. Yes.

19 Q. -- into undeveloped basins?

20 A. Yes.

21 Q. And in doing that, do you drill vertical wells  
22 in order to --

23 A. Yes.

24 Q. -- perform that exploration?

25 As far as the development of horizontal

1 wells in shale formations, what, if anything, has  
2 Jalapeno done to participate in those wells?

3 A. Well, we've participated in over 100 horizontal  
4 plays.

5 Q. Now, on a personal basis, just to -- I think  
6 two of the Commissioners are not acquainted with you.  
7 What has been your education?

8 A. I went to the University of Texas, studied  
9 geology there, did not get a degree in geology. I got a  
10 lot of science courses. But I got pre-law and then  
11 later went to Cornell University where I got a JD.

12 Q. Have you testified before the Oil Conservation  
13 Division?

14 A. I have.

15 Q. And have you testified before the Oil  
16 Conservation Commission?

17 A. Before the Division and the Commission, both.

18 Q. And Commission.

19 And have you testified before both of those  
20 agencies in the role as an expert witness and also as a  
21 fact witness?

22 A. Yes, I have.

23 Q. Mr. Yates, do you recall that in -- I believe  
24 the year was 2003 -- there was a rulemaking case that  
25 addressed the horizontal wells?

1           A.    I recall it.  We did not participate.

2           Q.    You did not appear and testify in that case?

3           A.    We did not.

4           Q.    Have you -- and by you, I mean Jalapeno as  
5 well -- appeared and testified before the Commission in  
6 prior rulemaking proceedings?

7           A.    Prior to 2003?

8           Q.    Or at any --

9           A.    Or prior to today?

10          Q.    Yes, prior to today.

11          A.    Yes.  We appeared in 2011 in a rulemaking.

12          Q.    And what was that rulemaking proceeding?

13          A.    It had to do with horizontal, trying to create  
14 a horizontal well rule.

15          Q.    And just generally, what was the information  
16 that you brought before the Commission in that 2011  
17 rulemaking proceeding that involved horizontal wells?

18          A.    Initially, if my memory serves me, the  
19 Commission had suggested that they would touch on --  
20 they would deal with the compulsory pooling, and then  
21 that was pulled back.  But we generally testified about  
22 spacing units, for instance, that were proposed in that  
23 2011 hearing and whether you could tie together --  
24 appropriately under the law, tie together multiple  
25 contiguous spacing units to create -- I don't remember

1    whether they were calling it a tract or a project area.  
2    I think the terminology has changed.  So the testimony  
3    related to that.

4           Q.    And was one of the issues at that time whether  
5    or not multiple 40-acre established spacing units,  
6    oilwell spacing units, could be overlapped for purposes  
7    of --

8           A.    Yes.

9           Q.    -- what was then referred to as project areas?

10          A.    Yes.

11          Q.    And what, generally, was the outcome of that  
12    proceeding?

13          A.    Well, my memory is that the Commission decided  
14    that it lacked legal authority to do that and -- or  
15    precedential authority to do that.

16          Q.    Now, I want to go to some of the specific  
17    issues and, in particular, the testimony of the prior  
18    witness, which you were allowed to ask a question.  Is  
19    it your understanding of the current rules that setback  
20    requirements for wells are 330 feet from the --

21          A.    For oil wells, yes.

22          Q.    For oil wells.

23                   And is it your understanding that that is  
24    true whether it's a vertical well or a horizontal well?

25          A.    Yes, it is.

1           Q.    Do you read anything in these rules that  
2   confines the proposed 100-foot setback rule to shale  
3   formations?

4           A.    No.  I don't see anything that limits it to  
5   shale, if that's your question.

6           Q.    That was my question.

7           A.    In other words, you could -- you could have a  
8   sand zone and the rules, as I read them, would apply to  
9   that as well, or a carbonate.

10          Q.    That's my question.  The sands -- typical  
11   developed sandstone formation, if it's a horizontal  
12   well, it's a 100-foot setback.  It doesn't have to be a  
13   shale formation.  That's the state of the proposed rule?

14          A.    That's my understanding.

15          Q.    Let me turn then to -- and I think it'll be  
16   helpful if I just refer to page.  Do you have a set of  
17   the regulations -- of the proposed regulations?

18          A.    I do.

19                    I wonder if I could comment on something  
20   related to the testimony that just --

21          Q.    Oh, on that -- the setback?

22          A.    Yes.

23                    On Mr. Feldewert's redirect or whatever  
24   after my --

25                    MR. FELDEWERT:  Madam Chair, members of the

1 Commission, Mr. Yates is up here as a witness to be  
2 examined by counsel. This is not the time for comments.

3 Q. (BY MR. GALLEGOS) Do you have an observation  
4 concerning testimony that was developed on redirect of  
5 the prior witness?

6 A. Yes, I do. Yes, I do.

7 Mr. Feld- -- you saw on that particular  
8 Exhibit, two wells -- horizontal wells and fractured  
9 going this way, and you had the witness testify that the  
10 rock, essentially -- the rock is going to determine  
11 where those fractures go the frac play. So I asked the  
12 question whether if you put a vertical well at the  
13 end -- within 100 feet, drilling in the same type rock  
14 that is shale, whether the fractures would extend out  
15 into the next party's acreage and offend correlative  
16 rights. And the answer, as I understood it, no, because  
17 it's determined by the rock.

18 Mr. Feldewert then went over and put a  
19 vertical well within 100 feet on the other side and said  
20 that vertical well would extend out and across the line.  
21 Well, I agree, because it's determined not whether -- by  
22 whether it's a horizontal well or a vertical well, but  
23 it's determined by the rock. Thus, if you flip those  
24 vertical wells -- or those horizontal wells around, land  
25 them north and fractured from that toe, you're probably



1 going into the next -- the offsetting acreage as well,  
2 just like you would with a vertical well.

3 Q. Mr. Yates, turn to page 7 of the proposed  
4 regulations. And I'm referring you to what's -- it's  
5 15A, small (c), subparagraph. It's a short provision,  
6 so I'm going to read it. "The provisions of 19.15.13.10  
7 NMSA and 19.15.13.11 NMAC shall apply to any proposal to  
8 drill an infill horizontal well in a horizontal spacing  
9 unit subject to a compulsory pooling order unless the  
10 order includes specific provisions for such additional  
11 well." Is that the provision --

12 MR. BRANCARD: Mr. Gallegos, would you let  
13 us know which section you're on so we can follow along?

14 MR. GALLEGOS: Yeah. It's Section  
15 19.15.16.15 A, small (c). We're under the provisions  
16 for "Existing and subsequent wells to horizontal spacing  
17 units" -- "in horizontal spacing units." If your  
18 pagination is the same as mine on the regulation, we're  
19 at page 7 and just approximately middle of the page,  
20 small (c).

21 COMMISSIONER BALCH: It appears to have  
22 different pagination.

23 MR. GALLEGOS: Oh, okay. It's under --  
24 it's D.

25 MR. CLOUTIER: Page 14 of the OCD exhibit,

1 if I'm looking at it correctly, Commissioners.

2 MR. GALLEGOS: Thank you.

3 MR. BRANCARD: Okay.

4 MR. GALLEGOS: It's under the heading --  
5 the topic is "Existing and subsequent wells in  
6 horizontal spacing units."

7 MR. BRANCARD: It's 15A(11)(c). Thank you.

8 COMMISSIONER BALCH: (11)(b).

9 MR. GALLEGOS: 15A, I think, (11)(A)(c),  
10 capital A. I just want to make sure. That's why I read  
11 it into the record. But maybe we need time for  
12 everybody to be focused on the provision.

13 CHAIRWOMAN RILEY: I don't see A.

14 COMMISSIONER BALCH: Capital A(11).

15 CHAIRWOMAN RILEY: A, little (c).

16 COMMISSIONER BALCH: Bottom of page 14 of  
17 OCD Exhibit 1.

18 MR. BRANCARD: Okay.

19 Q. (BY MR. GALLEGOS) This is the rule that if you  
20 have one well and you're presumably just adjoining, you  
21 have an infill well, but it's referring back to the  
22 pooling orders. It's referring back to 19.15.13.10,  
23 which is producing the pooling order with all its  
24 provisions, risk penalty, well cost and so forth.

25 MR. GALLEGOS: Madam Chair, do you have the

1 provision before you --

2 CHAIRWOMAN RILEY: I do.

3 MR. GALLEGOS: -- so we're all on the same  
4 page?

5 Q. (BY MR. GALLEGOS) Now, as far as this proposal  
6 regarding infill wells, to be treated under the  
7 compulsory pooling orders, what is your objection or  
8 your comment in regard to that for the Commission?

9 A. As I understand the proposal, the driller would  
10 go in and get an order allowing the driller to drill  
11 this well. And then -- but if a compulsory pooling  
12 order is issued, which inevitably 99 percent of the time  
13 in this state is 200 percent, that 200 percent would be  
14 applied to subsequent infill wells because then we have  
15 to go back and go through the process again. And that  
16 gives me great pause because of my having looked at what  
17 has happened before.

18 Now, you talked -- Mr. Feldewert talked  
19 about our not having presented exhibits in evidence. I  
20 would refer you to the Hickman McClaine & Associates  
21 petroleum consultants' report, which we submitted. And  
22 here's the --

23 Q. You're referring to the attachment to the  
24 pre-hearing statement?

25 A. The attachment to the pre-hearing statement.

1                   Based on that study and on my experience as  
2 well, correlative rights of the nondrilling parties of  
3 the forced poolees are breached every day. And  
4 according to that study, unless you get a well in the  
5 700,000-barrel equivalence, you're not going to have the  
6 parties coming back in and receiving anything for the  
7 drilling. And I can give you specific examples where  
8 this -- this has happened.

9                   The study also goes through the force --  
10 the risk that is attached -- should be attached and  
11 studies a four-township area. And in the four-township  
12 area for a Bone Spring, you have 70 percent of the wells  
13 paying out and less than 1 percent of the wells dry  
14 hole. And yet the Commission attach -- the Commission  
15 and OCD attached a 200 percent risk penalty. Well, the  
16 result of that is the correlative rights are taken from  
17 these parties. So if you allow the automatic -- if the  
18 OCD gives 200 percent to that initial well and all  
19 subsequent wells receive the same, you're going to have  
20 taking after taking or abuse of correlative rights over  
21 and over and over.

22                   Now --

23           **Q. Mr. Yates, let me -- just to clarify, is the**  
24 **provision of this rule such that if the first well --**  
25 **let's say it's an east half-east half well and it was**

1 drilled as a result of a compulsory pooling order and  
2 the rig is moved 500 feet for another east half-east  
3 half well right next to the same formation, that risk  
4 penalty and other provisions would automatically apply  
5 to that?

6 A. That's my understanding.

7 And I'd like to give you a couple of cases  
8 which I present to show how unlikely it is that in the  
9 circumstance we're talking about, the OCD is going to do  
10 anything but attach a 200 percent risk penalty.

11 I reference an Amtex case related to the  
12 134H and 133H, Case Number 15243, Order R-13960; Case  
13 15366, Order R-14097. A gentleman who owned all of --  
14 one-half of the spacing unit -- it wasn't an undivided  
15 interest. It was a total interest -- got a forced  
16 pooling order from Texas. He didn't understand our  
17 system. So the driller, Matador, in this case, was able  
18 to drill into his acreage. They imposed a 200 percent  
19 penalty in addition to the 100 percent.

20 The lawyer -- one of the lawyers for  
21 Matador then writes the OCD and says, "Please go on and  
22 approve the next well, offset well, because the first  
23 well is a very good well." So the OCD approves it and,  
24 again, a 200 percent nonconsent penalty.

25 The result is that those wells in the

1 operator's information to shareholders listed as  
2 producing 500,000-barrel equivalence -- barrel  
3 equivalence. The force pooled party gets nothing from  
4 those wells. Nothing. And yet if the OCD had applied a  
5 40 percent risk penalty rather than a 200 percent risk  
6 penalty in those circumstances, the nonconsenting party  
7 would have, in one case, \$3,700,000, and in other case,  
8 \$3,800,000. So if you talk about correlative rights,  
9 there is a magnificent abuse of correlative rights. And  
10 what I see in this rule is that happening over and over  
11 and over.

12 And in this circumstance, as I've said  
13 before, unless those wells produced 700,000 estimated  
14 ultimate recovery, the party would get nothing. So  
15 that's why I say, in the state of New Mexico, your  
16 correlative rights are not protected. And this rule  
17 right here -- proposed rule, I am enthusiastic about  
18 part of it. But that's our problem right there.  
19 Correlative rights are thrown out the window.

20 **Q. Mr. Yates, do you have a recommendation**  
21 **specifically as far as -- just so the record's clear.**  
22 **This is 19.15.16.15A(c), subparagraph small (c). Do you**  
23 **have a recommendation to the Commission?**

24 A. Yes. I think --

25 MR. FELDEWERT: Let me lodge an objection

1 here. Mr. Yates had a section of his pre-hearing  
2 statement in which he set forth -- titled it "Proposed  
3 Modifications and Basis." Now, at first glance here --  
4 and maybe Mr. Gallegos can correct me if I'm wrong -- I  
5 don't see any notice or discussion of the -- whatever  
6 proposed modification, in particular whatever language,  
7 Mr. Yates is now seeking to get the Commission to  
8 consider.

9 MR. BRANCARD: I think it's right on page 8  
10 of his pre-hearing statement.

11 MR. FELDEWERT: So (11)(c) page 8?

12 MR. BRANCARD: Number 8 on page 8.

13 MR. GALLEGOS: Item number 8 on page 8.

14 May the witness answer the question?

15 MR. FELDEWERT: It seems to me this is an  
16 attempt to rewrite the regulations that apply for  
17 compulsory pooling in the context of the horizontal well  
18 rules.

19 MR. GALLEGOS: That's not the case at all.  
20 Not at all. It simply says that in these subsequent  
21 horizontal wells, for obvious reasons, that it shouldn't  
22 have this automatic provision here. What can happen can  
23 happen with every well and every application. The  
24 Commission can make its decision. So if you could at  
25 least see, then, it's a question of case by case of

1    what's appropriate.  Otherwise, you just have an  
2    automatic -- on a well that clearly is just a twin to an  
3    existing well, you're just automatically going to say  
4    "Oh, here's the risk penalty and so forth."  That's not  
5    appropriate.  It's appropriate for the Division to  
6    say -- on the second well, the infill well, there are  
7    two or three infill wells -- what's going to be  
8    appropriate.

9                   MR. FELDEWERT:  The predicate for this is  
10   wrong.  Okay?  If you read that rule -- the existing  
11   rules governing compulsory pooling say that in a  
12   subsequent well, the risk penalty in the pooling order  
13   shall apply unless stated otherwise.  Okay?  In terms of  
14   a pooling order, that means you come before the Division  
15   and you give opportunities, like Mr. Yates and other  
16   parties, in which -- and as you know, Mr. Yates has  
17   taken full advantage of that.  You come here before the  
18   Division and you make a recommendation as to what the  
19   risk penalty should be.  And then that pooling order --  
20   if he succeeds, then that's in that pooling order.  And  
21   then that risk penalty -- after all that evidence is  
22   brought in on this individual case, that risk penalty  
23   applies to subsequent wells.

24                   So this whole predicate that there is  
25   somehow an automatic 200 percent risk penalty and



1 operators like Mr. Yates have no opportunity to come in  
2 and suggest a more appropriate risk penalty under  
3 particular facts and particular circumstances is  
4 completely wrong.

5 MR. GALLEGOS: Madam Chair and members of  
6 the Commission, that's not the whole rule, because the  
7 whole rule would allow the party with the second well to  
8 participate. You're not going to be saddled necessarily  
9 with a 200 percent risk penalty. Once you see, oh,  
10 they've got a great Wolfcamp well, they got it by force  
11 pooling, now they want a second well, I'm going to  
12 participate. Isn't the objective here to have voluntary  
13 agreement rather than force pooling? The rule proposal  
14 on second well says you can participate. Then you don't  
15 have the penalty. And that would be the probability for  
16 most parties, to say, "My gosh, on this second well,  
17 here they've already got a great Wolfcamp well; I don't  
18 have to go through -- be force pooled." That's the part  
19 of the order. That's B of the order that I'm referring  
20 to. Counsel's referring to Part C. But Part B provides  
21 opportunities for voluntary agreement, and that's --

22 CHAIRWOMAN RILEY: Do you have a proposal  
23 for changing the rule?

24 MR. GALLEGOS: We have a proposal that's --  
25 well, I guess Mr. Yates can answer. But the proposal

1 would be delete C, and as I said, then you would just  
2 proceed. What is appropriate for the second subsequent  
3 wells would be up to the Division, what's appropriate,  
4 including the opportunity for the force pooling to say,  
5 "I want to participate in this second well. Obviously,  
6 you've got a good well. Why don't I participate in the  
7 second and third well?"

8 MR. FELDEWERT: They have the opportunity  
9 to participate in the second well --

10 MR. BRANCARD: Mr. Feldewert, you can  
11 cross-examine Mr. Yates' on this when you have your  
12 opportunity. But I think if Mr. Yates is about to offer  
13 a proposed rule change to something we're proposing  
14 here, we need to hear it, and we need to move on.

15 MR. GALLEGOS: Thank you.

16 Q. (BY MR. GALLEGOS) So the question was: Do you  
17 have a recommendation and why?

18 A. C be deleted for the reasons I stated. It need  
19 not be automatic. The driller can go back and the  
20 issues can be examined related to the force pooling for  
21 each of the subsequent wells.

22 Q. Okay. I want to turn to another subject now,  
23 Mr. Yates. And just broadly speaking -- and I will  
24 refer you and the Commission counsel to the specific  
25 rule. But do you find in the horizontal proposed rules

1     a priority of vertical wells over -- priority of  
2     horizontal wells over vertical wells?

3           A.     Yes.    Yes, I do.

4           Q.     Okay.  Let me -- let me get us to the  
5     provision.

6                   MR. GALLEGOS:  And I have different page  
7     numbers but it's my page number 5 of the proposed rule,  
8     but it's Rule 19.15.16.15A(1)(d).

9           Q.     (BY MR. GALLEGOS) It's a provision, Mr. Yates,  
10    that horizontal wells have no limitation on production,  
11    but vertical wells can be limited on production.  Do you  
12    I find the provision that I'm talking about?

13          A.     I'm sorry.  Which again?

14          Q.     It's -- it's --

15          A.     I know I can talk about it, but I don't --

16          Q.     But I want to help the Commission.

17                   CHAIRWOMAN RILEY:  I'm still not finding  
18    where you're at.  I'm sorry.

19                   COMMISSIONER BALCH:  Mr. Gallegos, maybe if  
20    you have OCD Exhibit 2 handy, you could just work from  
21    that document.

22                   MR. GALLEGOS:  Yeah.  The page numbers are  
23    from the OCD exhibit instead of --

24                   I'm sorry to take so much time, but I'm  
25    trying to be sure we're talking about --

1                   MR. BRANCARD: Are you on the allowable  
2 rule?

3                   MR. GALLEGOS: I'm on the allowables rule.  
4 That's what I was trying to --

5                   MR. BRANCARD: 15(C)(1).

6                   MR. GALLEGOS: I'm looking for the rule,  
7 Mr. Brancard, that provides that the horizontal well  
8 will produce what it can produce but a nonmarginal  
9 vertical well can be required to reduce production.

10                  THE WITNESS: It's on page 8 of your  
11 earlier -- it's "Allowables," C, and it's number 1.

12                  MR. GALLEGOS: We were trying to relate  
13 this to the -- my page 8 is different. But it's under  
14 allowables. It's C, the allowables section.  
15 Unfortunately, we have different versions of the rules.  
16 It's under allowables, and it's subparagraph capital C,  
17 subparagraph (1) under C. The heading is "Oil  
18 allowables and gas-oil ratios."

19                  MR. BRANCARD: I think we're there.

20                  MR. GALLEGOS: Okay.

21                  **Q. (BY MR. GALLEGOS) Does this provide a priority**  
22 **over vertical wells for volume of production, Mr. Yates,**  
23 **as you read the rule?**

24                  A. It appears to me -- it appears to me to do  
25 that, set no allowable for the horizontal well but

1 restrict the vertical, nonmarginal well -- to  
2 potentially restrict it to some sort of allowable. Now,  
3 my understanding of this is the horizontal well would  
4 have invaded an earlier vertical well's spacing --  
5 spacing unit assigned by the Oil Conservation Division  
6 to that particular well and that they could produce  
7 without restrictions -- horizontal wells, without  
8 restriction, and yet the vertical well could be silenced  
9 or reduced with an allowable. And there are a number of  
10 places in the proposed rules where vertical wells take  
11 the backseat to horizontal wells. And in some cases,  
12 that might be fine.

13 Counselor, maybe this would be a good time  
14 to talk about some things we agree on. Could I do that?

15 **Q. Yes. I think the Commission would welcome**  
16 **that, too.**

17 A. If horizontal wells are drilled within units --  
18 and by units, I not only mean federal, state but within  
19 units set up in what we call mechanical units under an  
20 operating agreement, where the parties are governed by a  
21 contract and the acreage is governed, we fully support  
22 this drilling -- this sort of drilling.

23 Where we have a problem is the horizontal  
24 well is, without voluntary agreement, being drilled into  
25 a spacing unit where there is a producing vertical well.

1 To think that the correlative rights of the vertical  
2 well are going to be protected, I think is erroneous.  
3 If there is a voluntary agreement, there is no problem.

4 Now, one issue that you see today is, you  
5 have a large area that is governed by an operating  
6 agreement, and then someone wants to drill into that  
7 operating agreement area. And that creates a problem.

8 But I want to emphasize that where there  
9 are voluntary agreements, where there are units  
10 established, then no problem from our standpoint. It's  
11 where you start breaching the other guy's rights that we  
12 have a problem and taking his correlative rights.

13 Sorry for that.

14 **Q. Mr. Yates, let me pose a hypothetical fact**  
15 **situation to you in a way because you've already**  
16 **testified that you do exploratory drilling. As you read**  
17 **the rules and the opportunities that have been provided**  
18 **under these rules, if, in one of these undeveloped**  
19 **basins, you hit it with vertical wells, you find that**  
20 **you've got a formation that's highly productive, what do**  
21 **you see is the opportunity for operators with horizontal**  
22 **wells?**

23 **A. Well, to go through that process, you spend**  
24 **likely millions of dollars doing geology, drilling a**  
25 **large number of vertical dry holes, and finally you hit**

1 production. Now, that production may or may not be out  
2 of a shale zone. Let's assume initially it isn't  
3 because you're looking for a zone with higher  
4 permeability and good porosity. But you finally hit it.

5           And so as I read these rules -- proposed  
6 rules, they're not limited to shale zones. In other  
7 words, they are from grassroots child [sic]. And so a  
8 horizontal driller -- after a vertical well has  
9 discovered production, which you may later want to drill  
10 horizontally. A horizontal driller can stand out here  
11 two miles and drill into that newly discovered  
12 production. That's the same sort of problem that we're  
13 concerned about. Who in his right mind is going to go  
14 explore -- and the exploration will take place with  
15 vertical wells -- under those circumstances? Because if  
16 you look at the history of the Division, that production  
17 is going to be taken. That's the problem.

18           It not only has to be -- it need not be a  
19 rank wildcat basin. It can be in the Permian Basin, a  
20 new field. Same thing can happen. So the question I  
21 would have is: Why then aren't the proposed rules  
22 restricted? One helpful feature is if they would be  
23 restricted to the shale zone, so what I'm talking about  
24 couldn't -- couldn't happen.

25           **Q. Mr. Yates, in the Jalapeno pre-hearing**

1 statement, the very first matter that's raised is a  
2 question about spacing unit, and the pre-hearing  
3 statement says --

4 MR. FELDEWERT: What page you on, Gene?

5 MR. GALLEGOS: It's item number one, which  
6 is page 4.

7 Q. (BY MR. GALLEGOS) The pre-hearing statement  
8 references that the definition of a spacing unit is  
9 simply whatever is dedicated to a horizontal well, and  
10 there is the complaint that, therefore, there is no  
11 definition of a spacing unit. Having made that  
12 challenge, what I want to ask you is if you go over to  
13 another portion of the proposed rules, under the heading  
14 of "Well spacing," which would be at page 5 of the set  
15 of regulations that you have -- it's paragraph A of  
16 "Well spacing." It has that heading.

17 A. Uh-huh.

18 Q. Have you familiarized yourself with the  
19 provisions of this well spacing portion of the proposed  
20 regulations?

21 A. Yes.

22 Q. Does that alleviate your concern, then, about  
23 the absence of any specific or understanding as to what  
24 is a well spacing unit of these horizontal wells?

25 A. As I read this, there is an attempt to make it



1 appear as if the Division is creating or the Commission  
2 is creating the size and spacing unit. Essentially, it  
3 will be the driller who is creating the size of the  
4 spacing unit. And with a vertical well, of course,  
5 you're limited because you can only drill to China  
6 [sic], and it's a 40-acre spacing.

7                   With a horizontal well, you can sit  
8 virtually anywhere in the state of New Mexico and with  
9 enough money and enough horsepower, you can drill  
10 anywhere, with a horizontal, in the state of New Mexico.  
11 And so the -- the spacing unit is set -- the nature of  
12 the spacing unit is set by the horizontal driller.

13                   Well, that's fine and dandy in my view  
14 within a unit, as I've discussed, but if that horizontal  
15 well comes up against a vertical well spacing unit that  
16 has already been approved by the OCD and where the rules  
17 have been followed, that vertical well spacing unit  
18 contains wealth that has been stored behind the pipe and  
19 may have been mortgaged, and the rules have been  
20 followed. So how is it that that can be invaded without  
21 a voluntary agreement? That's the problem with the  
22 expansive definition of the horizontal well spacing, in  
23 my estimation.

24           **Q. Do you read anything in that rule regarding**  
25 **spacing that confines these special rules to shale**

1     **formations?**

2           A.     No, I do not.

3           **Q.     Without going through each of the issues raised**  
4     **in the pre-hearing statement, let me just ask you:**  
5     **Toward the end of these rules and in your pre-hearing**  
6     **statement, you address the -- what I call the**  
7     **transitional provision. It's 19.15.16.15D(4). It**  
8     **appears toward the very end of the proposed rules. Have**  
9     **you familiarized yourself with that provision?**

10          A.     Yes, I have.

11          **Q.     Do you have any comment or concern with that**  
12     **provision that you want the Commission to consider?**

13          A.     Well, this is an effort by the Division and the  
14     Commission to paper over all those project areas that  
15     were created where the Commission, in 2011, said it  
16     lacked legal authority to create them. But now this is  
17     an effort to paste over those, in my estimation.

18                     In order to get that done legally, you're  
19     going to have to have hearings with all these people who  
20     have been -- where these have been created. This is  
21     unconstitutional ex post facto adjudication as far as  
22     I'm concerned. What's the due process here?

23          **Q.     And what's the hearing, right?**

24          A.     Are we going to have hearings?

25                     MR. GALLEGOS: Madam Chair, members of the

1 Commission, I pass Mr. Yates for cross-examination.  
2 There are a few points I think are more appropriate to  
3 be made in my statement at the end. I'm sure all  
4 counsel will have some statement as we close here. But  
5 that concludes my direct examination.

6 CHAIRWOMAN RILEY: Mr. Feldewert?

7 MR. FELDEWERT: I'll defer first to others.

8 CHAIRWOMAN RILEY: Ms. Bada?

9 MS. BADA: (Indicating.)

10 CHAIRWOMAN RILEY: No questions?

11 MS. BRADFUTE: I just have a couple of very  
12 brief questions.

13 CROSS-EXAMINATION

14 BY MS. BRADFUTE:

15 Q. Mr. Yates, you testified earlier about  
16 correlative rights, and you referenced two different  
17 Division cases in your testimony; is that correct?

18 A. Yes.

19 Q. The first case was Case Number 15366 involving  
20 Amtex; is that right?

21 A. Let me -- 15243 and 15366, right.

22 Q. Okay. So I want to start first with Case  
23 Number 15366. Isn't it true that Amtex never appeared  
24 at the Division hearing concerning compulsory pooling in  
25 that matter and that the Commission entered an order,

1    **which is R-14097-A, which found that failure to appear**  
2    **made Amtex not a party to that proceeding?**

3           A.    That may very well have been.  I'm not sure  
4    that's the whole story.  But my point is this, that over  
5    and over -- I listed those cases because the information  
6    related to the results is available.  But over and over,  
7    in hundreds of cases, the OCD has imposed a 200 percent  
8    nonconsent penalty like they did in that case, whether  
9    people appeared or didn't appear or whatever, and the  
10   result is taking of correlative rights.

11                   I have -- as Mr. Feldewert talked about, I  
12   have -- I may be the only objector in the sense that I  
13   have come and I have protested, and we're in the  
14   district court now over that.  Well, to get that done is  
15   going to cost you a quarter of a million dollars.  And  
16   many, many people who are force pooled cannot afford  
17   that.  Amtex might have.

18                   In Amtex's case, Amtex thought the rules --  
19   the force pooling rules were like those in Texas.

20                   MS. BRADFUTE:  And I'm going to object  
21   because you don't have personal knowledge of Amtex.

22                   THE WITNESS:  I talked to the -- I talked  
23   to the person who was force pooled.

24                   MS. BRADFUTE:  Okay.  And that would be  
25   hearsay.

1 MR. BRANCARD: We're not in an adjudicatory  
2 proceeding here, so hearsay is not an objection.

3 THE WITNESS: If hearsay is no protection,  
4 then let me answer your question. This gentleman, a  
5 Texan, called the State Land Office to find out what was  
6 going on because he thought they would know. He bought  
7 the lease from the State Land Office. He also felt that  
8 the rules -- the force pooling rules in New Mexico would  
9 be much like those in Texas, that is, that his  
10 correlative rights would be protected. They weren't  
11 protected.

12 Q. (BY MS. BRADFUTE) Thank you, Mr. Yates.

13 And in Case Number 15243, likewise, didn't  
14 the Division enter an order, R-13960, which found that  
15 Amtex didn't appear on the record to present any  
16 objections?

17 A. I think Amtex attempted to appear in that case  
18 or attempted to appeal to the Commission, if I remember  
19 correctly, in that case.

20 Q. But if the Commission wanted to look to see if  
21 there was an objection, they could verify that by  
22 looking at --

23 A. Sure.

24 Q. -- order R-13960?

25 A. Sure.

1                   My point has to do with abuse of  
2   correlative rights throughout the state by application  
3   of this risk penalty. And I'm particularly concerned,  
4   as I said before, where you have drilled an initial well  
5   and then automatically pick up the same results for all  
6   subsequent wells. That's why I brought that. Because  
7   in that case, the OCD knew well that the first well was  
8   a very good well, and yet they imposed a 200 percent  
9   nonconsent penalty whether anyone showed up or not,  
10   because that information was made available by the force  
11   pooler, the driller.

12           **Q.    And that's your summary of the record, but the**  
13   **Commission could, if they wanted to, go back and look at**  
14   **it?**

15           A.    Sure.

16                   And if you want it, I have the economic  
17   results provided by the driller. Now, half a million  
18   barrels in each of those wells, and you can go back and  
19   do your own calculations and find out that Amtex will  
20   get nothing. So if somebody doesn't show up, is the  
21   rule in New Mexico that you get screwed just simply  
22   because you don't show up; you have your correlative  
23   rights abused? Pardon my French. But I think that's  
24   the rule in New Mexico.

25           **Q.    But there are other regulations under Part**

1     **13 --**

2                   MR. BRANCARD:  Do you have a question,  
3     Ms. Bradfute?

4                   MS. BRADFUTE:  Yeah.  Yeah.

5           **Q.     (BY MS. BRADFUTE) Are you aware that there are**  
6     **other regulations which are not a part of this**  
7     **proceeding which are directly implicated by the risk**  
8     **penalty provisions that you're discussing here today?**

9           A.     I would appreciate you telling me what you're  
10    talking about.

11          **Q.     Are you aware that there are other risk penalty**  
12    **regulations in Part 13 of the Administrative Code which**  
13    **are not open for amendment today?**

14          A.     Of course.

15          **Q.     Okay.  Thank you.**

16                   MS. BRADFUTE:  Those are my questions.

17                   MR. CLOUTIER:  No questions by IPANM.

18                   MR. HALL:  No questions.

19                               CROSS-EXAMINATION

20    BY MR. FELDEWERT:

21          **Q.     Mr. Yates, would you agree with me that tight**  
22    **low-permeability formations such as shales, that**  
23    **horizontal wells are more efficient and effective?**

24          A.     On the whole, yes, unless they -- unless a  
25    vertical well hits a natural fracture system.

1           Q.    Would you agree with me that most horizontal  
2 wells being drilled in New Mexico today target tight  
3 low-permeability formations?

4           A.    I do agree.  They're sweet spots.

5           Q.    And would you agree with me that in those  
6 circumstances horizontal wells can cover more reserves  
7 and prevent waste?

8           A.    Yes, I would.

9           Q.    And I think --

10          A.    Well, you said -- you said prevent waste.  
11 You'll have to show me the circumstance.  Are you  
12 drilling into a producing vertical well's spacing area?  
13 In a generic sense, I agree with you.

14          Q.    Okay.  Would you agree -- and I think you also  
15 would agree, the industry should be able to use  
16 horizontal wells in improving the spacing unit for  
17 horizontal wells, acreage that is contributing to the  
18 wellbore?

19          A.    So long as it's voluntary, yes.

20          Q.    And that they should be able to drill across  
21 section lines?

22          A.    Yes.

23          Q.    And they should be able to drill diagonally  
24 when it's appropriate?

25          A.    So long as it's within a unit or some -- yes, I



1     agree.  I think that is --

2           **Q.     Shouldn't be limited to checkerboard?**

3           A.     Absolutely.  I agree.

4           **Q.     And do I understand that you mentioned that you**  
5     **do exploratory drilling, but am I correct that Jalapeno**  
6     **has not drilled a horizontal well within the last year?**

7           A.     Jalapeno has never operated a horizontal well,  
8     if that's your question.

9           **Q.     That's not my question.**

10          A.     We are participating in horizontal wells  
11     drilling today.

12          **Q.     So you have no expertise in horizontal**  
13     **drilling?**

14          A.     I have paid a hell of a lot of money to  
15     participate in horizontal wells, so I have, along the  
16     way, developed some expertise in horizontal wells.

17          **Q.     When was the last time that Jalapeno drilled a**  
18     **vertical well?**

19          A.     We are just, unfortunately, plugging a dry  
20     hole.

21          **Q.     When was the last time you drilled a vertical**  
22     **well for production?**

23          A.     We -- you mean how long ago was --

24          **Q.     In New Mexico.**

25          A.     How long ago was the vertical well?  We drilled

1 a well in the Tularosa Basin that has reserves behind  
2 pipe. Because they're gas -- and that was drilled in  
3 2015. Because they're gas and there is no system --  
4 system there to deliver the gas, it's behind pipe.

5 **Q. When is the last time Jalapeno drilled a**  
6 **producing vertical well in New Mexico?**

7 A. Probably in 2014.

8 **Q. And where was that?**

9 A. Chaves County. And I may have the date wrong  
10 but more or less. That was the Energy [sic] #2 in  
11 Chaves County.

12 **Q. An oil well?**

13 A. It was an oil well. Yeah.

14 **Q. And you mentioned you participated in some**  
15 **horizontal --**

16 A. We drilled a couple of producing wells after  
17 that. They were smaller wells.

18 **Q. You said participated in some horizontal**  
19 **drilling projects?**

20 A. Yes.

21 **Q. I think the term you used was well over 100?**

22 A. I'm sorry?

23 **Q. The term -- you said over 100?**

24 A. Over 100.

25 **Q. How many in New Mexico?**

1           A.    I don't know specifically.  Probably 50.  We've  
2 participated in 98 in Texas.

3           Q.    And in those circumstances where you  
4 participated, did you do so under a joint operating  
5 agreement?

6           A.    Some of them, joint operating agreements.

7           Q.    What were the other circumstances?

8           A.    Force -- where we agreed to participate in the  
9 drilling of the well historically.

10          Q.    Let me stop you there.  Where you participated  
11 under what agreement?

12          A.    We will receive, from time to time, an AFE  
13 together with an operating -- proposed operating  
14 agreement.  And occasionally what we will do is sign the  
15 AFE and participate in the well without having an  
16 operating agreement.  Our objections to the operating  
17 agreement -- agreements are that they inevitably propose  
18 a 300 percent nonconsent penalty.

19          Q.    So, now, you said that's what you do  
20 occasionally.  What do you do when you sign a JOA?

21          A.    I think -- I think there are three cases.  If  
22 the horizontal wells are governed by an operating  
23 agreement, in which case we participate under the  
24 operating agreement.  In some cases, the horizontal well  
25 is proposed with an operating agreement to which we

1 object and we will not sign the operating agreement but  
2 agree to pay for the well and go forward and  
3 participate. We've done that. And from time to time,  
4 we will agree --

5 This is an example right here with Devon  
6 Energy, 2013 (indicating). We agreed to participate in  
7 a horizontal well because the operating agreement was  
8 restricted to the single well. What we did -- I'll be  
9 glad to make this of record. Related to the Belatrix  
10 [sic; phonetic] Federal 3H and 4H wells, we agreed to  
11 sign the operating agreement even though it had a 300  
12 percent penalty, but we had intended to participate in  
13 the wells and we put the operator on notice that the 300  
14 percent penalty was inappropriate -- it was a relatively  
15 vertical well era -- and that we would not again sign an  
16 operating agreement like that.

17 Q. So, Mr. Yates, you've signed joint operating  
18 agreements with development in New Mexico that provided  
19 for a 2- or 300 percent penalty?

20 A. Here's an example.

21 Q. Okay.

22 A. I think I've done that twice.

23 Q. And that 300 percent penalty would be the  
24 equivalent, under the pooling statute, to a 200 percent  
25 risk charge, correct?

1           A.    Well, the pooling is -- with this exception,  
2   Mr. Feldewert. Under the JOA, the mechanical -- the  
3   equipment, surface equipment, is going to have 100  
4   percent rather than a 300 percent penalty, essentially.  
5   And under -- as we all know in this room, the  
6   Commission -- or the OCD has been assigning its risk  
7   penalty to the equipment as well.

8           **Q.    Have you also participated under pooling**  
9   **orders?**

10          A.    Where we have been force pooled and then -- you  
11   know, I -- I do not remember a circumstance where we  
12   have had a force pooling order where we've gone back and  
13   participated, but we may have.

14          **Q.    And that force pooling order -- you don't**  
15   **recall?**

16          A.    I don't recall.

17          **Q.    All right. Now, you raised a lot of concerns**  
18   **about pooling, similar to what you raised with the**  
19   **Commission in 2011, right?**

20          A.    We have far more information than we did in  
21   2011 now as to what the legitimate risk penalty should  
22   be.

23          **Q.    So you have concerns about the risk penalty?**  
24   **You have concerns about when it should apply?**

25          A.    And about the spacing.

1           **Q.    How it should apply?**

2           **A.    Uh-huh.**

3           **Q.    And then what acreage should be included?**

4                   MR. GALLEGOS:   Are these questions?

5                   MR. FELDEWERT:   Yeah.

6           **Q.    (BY MR. FELDEWERT) What acreage should be**  
7 **included?**

8           **A.    Whether -- our concern was whether the**  
9 **Commission and the Division was following the law.**

10          **Q.    Okay. And didn't you agree in 2011, when you**  
11 **raised these, Mr. Yates, that your concerns could be**  
12 **addressed under the facts of particular cases?**

13          **A.    You mean on a case-by-case basis?**

14          **Q.    Uh-huh.**

15          **A.    No, I don't agree.**

16                   I mean, it is -- it is possible that we  
17 could go through this every time, but as I've already  
18 testified, to do this every time costs about a quarter  
19 of a million dollars.

20          **Q.    But you agree it can be done on a case-by-case**  
21 **basis?**

22          **A.    It needs to be done via adequate rulemaking.**

23          **Q.    Now, you also mentioned that you could address**  
24 **your concerns by amendments to the compulsory pooling**  
25 **rules?**

1           A.    We could -- if -- if we can get the compulsory  
2   pooling rules amended correctly or if they would follow  
3   the law related to -- what we believe to be the law in  
4   regard to the compulsory pooling rules, then we could  
5   solve the problem.  As you know, we're in district court  
6   over it.

7           Q.    My point is, back in 2011, you agree some of  
8   your concerns could be addressed by amendment to the  
9   compulsory pooling rules?

10          A.    If they were amended, yeah.

11          Q.    And since 2011, has Jalapeno filed any  
12   application to amend the compulsory pooling rules?

13          A.    No, we haven't.  What we've done is file an  
14   objection and take it to district court, because we  
15   think that what is being done by the Division and  
16   Commission breaches the law.

17          Q.    And, in fact, as you point out, you've actually  
18   addressed and litigated your concerns about the proposed  
19   horizontal wells in particular cases?

20          A.    In one case.

21          Q.    That involved a particular drilling plan,  
22   correct?

23          A.    Yes.

24          Q.    With particular geologic circumstances?

25          A.    Yes.  The circumstances were that --

1           Q.    We don't need to know the circumstances.

2           A.    I thought you asked -- asked about the  
3    circumstance.

4           Q.    And a particular spacing unit that was  
5    proposed, correct?

6           A.    A spacing unit was proposed in a known Wolfcamp  
7    field.

8           Q.    And both parties came to that hearing and  
9    presented evidence on what the risk penalty should be?

10          A.    That's correct.

11          Q.    And isn't that the Airstrip case, Mr. Yates?

12          A.    Yes.

13          Q.    Okay. And at that hearing, you addressed your  
14    concerns both with the Division and the Commission;  
15    isn't that correct?

16          A.    Yes. We testified in both cases.

17          Q.    And, in fact, your Exhibit 1 that you  
18    referenced that you attached to your pre-hearing  
19    statement was the type of evidence that was developed  
20    for that particular case?

21          A.    It was -- it was developed for that case and  
22    we've -- subsequent information.

23          Q.    I'm just reading from the first paragraph of  
24    Exhibit 1. Doesn't it indicate in the first paragraph  
25    that Jalapeno asked HMA to determine risk?



1           A.    That's right.

2           Q.    Let me finish.  "The risk entailed in drilling  
3   a horizontal well proposed by Matador Production Company  
4   in Lea County, New Mexico."

5           A.    Correct.

6           Q.    So it was developed with those particular  
7   circumstances.

8                         And isn't it true, then, that you brought  
9   that evidence, and Matador presented their evidence, and  
10  it was heard by the Commission and the Division, right?

11          A.    That's correct.

12          Q.    And did they impose a 200 percent risk penalty?

13          A.    No, they didn't in either case.  But let me --  
14  let me comment on that.

15          Q.    You can comment later.  I want to get through  
16  my cross, and then you can say whatever.

17          A.    All right.

18          Q.    In fact, are you aware now, then, Mr. Yates,  
19  that under the current pooling rules, that even under  
20  the pooling order, when you came to Santa Fe and you got  
21  your amendments that you wanted, that if there is a  
22  subsequent well under that pooling order, that you first  
23  are afforded the right whether you want to participate  
24  or not participate in that infill well?

25          A.    You mean under the proposed rules?

1           Q.    Under the current compulsory pooling rules.

2           A.    Yes.  Under the current rules, I'm aware of  
3   that.

4           Q.    So if I'm a party that's a nonparticipating  
5   interest owner in the first well, that if there is an  
6   infill well that has been proposed in that spacing unit  
7   by that approved operator, you get an opportunity to  
8   participate or not participate, correct?

9           A.    Under the present rules.

10          Q.    And if you choose not to participate, what  
11   applies is the risk penalty that was decided in the  
12   initial pooling order?

13          A.    That's my understanding of the proposed rules.

14          Q.    Okay.  No.  That's the understanding -- isn't  
15   that what occurs under the existing rules?

16          A.    I thought that a new hearing would be had on  
17   that infill well.

18          Q.    Well, I'm just talking about existing rules.  
19   Have you read them?

20          A.    My -- my understanding, Mr. Feldewert, is that  
21   under the present rules, that a new hearing would be  
22   had -- could be had on the subsequent infill well.

23          Q.    Could be had if you wanted one?

24          A.    Yeah.  That's right.

25          Q.    And if you decided you didn't need a hearing on

1     **an infill well, that you could either participate or not**  
2     **participate, right?**

3           A.     And my understanding -- correct me if I'm  
4     wrong -- is that at that point, the Division could set  
5     new penalties.

6           Q.     **If you came to hearing and asked for them?**

7           A.     If you came to hearing, under the present  
8     rules.

9           Q.     Okay. And if you didn't come to hearing and  
10    ask for it and you decided not to participate after  
11    giving the opportunity to participate in the infill  
12    well, that the risk penalty set in that initial pooling  
13    order that was subject to the evidence that presented  
14    would apply?

15          A.     My understanding is that anytime that -- and  
16    this is based on what we've seen. Anytime somebody  
17    doesn't show up, a 200 percent risk penalty is imposed  
18    regardless of whether it's an infill well or no matter  
19    what.

20          Q.     Okay. Well, that's where I'll disagree with  
21    you, and I'll leave that up to the Commission.

22                   MR. FELDEWERT: I will tell the Commission  
23    to read the regulation that says what a risk penalty is  
24    in that initial pooling order after the notice of  
25    hearing.

1                   Now let's move on.

2                   MR. BRANCARD:   You're referring to Rule  
3   19.15.13.10?

4                   MR. FELDEWERT:   Yes, sir.

5                   MR. BRANCARD:   All right.

6           **Q.    (BY MR. FELDEWERT) Now, let's go to your**  
7   **concerns over well spacing -- horizontal well spacing,**  
8   **Mr. Yates. And I think your concern was that it could**  
9   **include, in a horizontal spacing unit, acreage that has**  
10   **been dedicated to a vertical well that has been drilled?**

11          A.    That's one part of my concern. The other is  
12   that if you drill into acreage covered by a joint  
13   operating agreement, then you ought to be able -- you  
14   ought to be required to get more than a 1 percent  
15   interest in order to invade that operating agreement.  
16   There ought to be a standard like requiring that 50  
17   percent of the owners or 50 percent of owners in  
18   interest be required in order to invade that operating  
19   agreement area.

20          **Q.    Now, what you call invading the operating**  
21   **agreement area, let me ask you about that. Isn't it**  
22   **true, Mr. Yates, that before they could produce a well**  
23   **from that area you say has been invaded under a**  
24   **horizontal spacing unit, that the operator would have to**  
25   **first seek a voluntary agreement governing the acreage?**

1           A.    That's always true regardless of -- that's  
2 true.

3           Q.    And if they can't reach that voluntary  
4 agreement, if they run up against somebody like you that  
5 doesn't want to be pooled no matter what your percentage  
6 interest is --

7           A.    (Laughter.)

8           Q.    -- then finally they have to go to -- like your  
9 percentage interest in the Matador case was, what, 2  
10 percent?

11          A.    6 percent, something like that.

12          Q.    Then if they can't reach that voluntary  
13 agreement, then that operator has to file a force  
14 pooling application with the Division --

15          A.    Here's the problem.

16          Q.    -- is that correct, Mr. Yates?

17          A.    That's correct. Here's the --

18                   MR. GALLEGOS: Chairman, he's continually  
19 interrupting.

20                   Let the witness finish his answer, please.

21                   THE WITNESS: Here's the problem.

22          Q.    (BY MR. FELDEWERT) I'm going to let you talk.

23          A.    You're talking about -- you have addressed  
24 voluntary agreement. We've been through these, as have  
25 many small producers, where the voluntary agreement

1 arises this way: Here is a lease you can sign; here is  
2 a farm-out on our term, and if you don't agree to do  
3 this, we're going to force pool you, and you'll pay 300  
4 percent, your cost of your well plus 200 percent. In  
5 other words, they use the rule as leverage in the  
6 voluntary agreement, and so you don't end up -- the  
7 driller would rather end up here in the Commission or  
8 before the OCD than reach a voluntary agreement. That's  
9 part of the problem. If that is reformed, then you'll  
10 have more voluntary agreements. Drillers have come into  
11 the state of New Mexico because of this force pooling.  
12 It is a real problem.

13 Q. Here's my question.

14 A. All right.

15 Q. Okay? If you can't reach voluntary agreement,  
16 then you have to file an application to pool with the  
17 Division, correct?

18 A. Right. Correct.

19 Q. Okay. And then you have -- as the operator,  
20 you have to come to hearing, correct?

21 A. Correct.

22 Q. And at that hearing, are you aware, Mr. Yates,  
23 that you have to demonstrate that you undertook  
24 good-faith efforts to reach an agreement?

25 A. I understand that you're supposed to. Yes.

1           Q.    Okay.  And that that hearing only occurs after  
2   there's been notice to parties like yourself and  
3   opportunity to come to the hearing and contest the  
4   pooling --

5           A.    That's right.

6           Q.    -- correct?

7                       Okay.  And for someone like -- and that  
8   occurs in circumstances, like you said, where you've  
9   invested millions of dollars for a vertical well?  You  
10  still have to go through that same process, correct?

11          A.    Same process applies.

12          Q.    And your concern is about the transitional  
13  provisions that you mentioned in the previously approved  
14  spacing units for horizontal wells or project areas.  
15  Mr. Yates, are you aware that every single one of those  
16  were created either by a voluntary agreement or by a  
17  pooling order?  Are you aware of that?

18          A.    I am aware of this:  I am aware that some  
19  drillers, Cimarex as an example, drilled into acreage  
20  owned by other parties without a pooling order.  They  
21  sought a pooling order subsequently.  I was involved in  
22  that.  We sued for trespass.  So what you say is not --  
23  not true.

24          Q.    But didn't those spacing units have to be  
25  approved by a pooling order?

1           A.     Subsequently, they were.   One wasn't.

2           **Q.     So all of the -- all of the existing spacing**  
3           **units and approved drilling that's been done for**  
4           **horizontal wells has been either by voluntary agreement**  
5           **or Division orders?**

6           A.     Well, I've just given you an example where one  
7           wasn't.   But the problem is that these pooling orders do  
8           not consider the fact that from time to time the driller  
9           has no interest whatever in the acreage into which it is  
10          drilling.   It doesn't consider the fact that there is  
11          behind-the-pipe reserves in some of these cases.   So if  
12          you're saying that each time it's hunky-dory because  
13          there's a pooling order or it's voluntary, my problems  
14          are the problems that I just talked about.

15          **Q.     And each one of those pooling orders would not**  
16          **have been issued, Mr. Yates, without notice and**  
17          **opportunity for those parties to come in and raise the**  
18          **very issue that you raise now?**

19          A.     Yeah.   So you pointed out that we had, you  
20          thought, a 2 percent interest in a well to which we  
21          objected.   Well, what about Ma Jones, who has a  
22          1 percent interest?   Is she going to come in and object?  
23          Is she going to go hire you to come in and object?   How  
24          can people do this?

25          **Q.     They have an opportunity, Mr. Yates.**



1           A.     That's the problem.

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

4                       THE WITNESS:   The problem -- the Commission  
5     and the OCD needs to set these rules where they are fair  
6     and conduct them so they're fair.  They should not  
7     receive a letter or an email saying "permit the next  
8     well because the offsetting well was a good well" and  
9     then impose a 200 percent nonconsent cost.  That's the  
10    problem.  And this is an effort to paste over that, plus  
11    paste over the fact that under the law, the Commission  
12    did not have authority to tie together multiple,  
13    contiguous spacing units that had been created earlier.

14                      MR. FELDEWERT:   I have no further  
15    questions.

16                      MG. GALLEGOS:   May I?  Just two very -- few  
17    questions on redirect.

18                      CHAIRWOMAN RILEY:  We still need to have  
19    the panel here.

20                      So, Mr. Martin?

21                      COMMISSIONER MARTIN:  I do not have any  
22    questions.

23                      CHAIRWOMAN RILEY:  Dr. Balch?

24                      COMMISSIONER BALCH:  Just a couple of  
25    things.

1 CROSS-EXAMINATION

2 BY COMMISSIONER BALCH:

3 Q. So Jalapeno's major problems are pass through  
4 the force pooling?

5 A. I'm sorry?

6 Q. Jalapeno's major problems today are with the  
7 pass-through of force pooling for infills in a  
8 horizontal spacing unit?

9 A. That's one problem.

10 Q. Second problem is the reduced setback for the  
11 final take point and -- first take point and last take  
12 point are going to also apply to conventional wells?

13 A. Should apply to conventional wells under the  
14 same circumstance.

15 Q. I believe they do, the way it's written. They  
16 would apply to any horizontal --

17 A. My -- my understanding of reading the proposal  
18 is it applies to a horizontal well but not a vertical  
19 well.

20 Q. You're saying it should also apply to any  
21 vertical well anywhere?

22 A. Well, particularly if they're drilled into the  
23 same zone -- same shale zone.

24 Q. So the real issue is where there is a possible  
25 exception for allowables in the case of a vertical well

1     **in the same pool?**

2           A.     Right.

3           **Q.     Whereas, it's automatic for a horizontal well**  
4     **to have the maximum possible allowable?**

5           A.     Right.

6                     I have -- if you're through listing my  
7     concerns, there is one you haven't addressed. I'm  
8     sorry.

9           **Q.     That's up to your lawyer. Those are the two**  
10    **that I caught from your testimony.**

11          A.     Okay.

12          **Q.     Right now you have an infill well and a force**  
13    **pool. What happens to the force-pooled party?**

14          A.     The party gets notice.

15          **Q.     You just drill -- you just drill a vertical**  
16    **well and then a force pool order and they do an offset**  
17    **well. What happens?**

18          A.     My understanding is that the well will be  
19    proposed, and the party has the right to come in and  
20    participate or not in the well. Generally, those are  
21    taking place, in my experience, under operating  
22    agreements. And so they're governed by operating  
23    agreements. That's where I've seen this happen. And so  
24    they don't end up in a force pooling circumstances.  
25    That's my experience.

1           Q.    But if there is a force pool, what would happen  
2   in that case?

3           A.    My understanding is they would have an  
4   opportunity to come in and participate, but they'd have  
5   to go through a hearing.

6           Q.    So I don't know exactly which statute the force  
7   pooling rule is, but that's -- that's still going to  
8   apply after today. We're not changing that statute or  
9   that part of the rule.

10          A.    No. The portion of the rule -- proposed rule  
11   to which I objected is the automatic adoption where you  
12   have a series of infill wells proposed that pick up  
13   whatever was applied to the first -- first well. That's  
14   the way I read it. In other words, it automates the  
15   penalty imposed, and it becomes -- the penalty imposed  
16   on the first well becomes the penalty imposed on all  
17   subsequent wells -- infill wells. That's the way I read  
18   that.

19          Q.    It really looks like to me -- and we've had  
20   this discussion I think three times now. The real  
21   problem is with the force pooling rule, not with what  
22   we're trying to do today. If that's fixed, then all the  
23   problems you're talking about today go away, if the  
24   force pooling rule is fixed.

25          A.    Well, let's take, for instance, the automatic

1 requirement on a horizontal well that the fourth  
2 quadrant be included. Well, is that -- and it seems  
3 like that was written in a way where even if there is a  
4 vertical well on it, then the horizontal driller  
5 nonetheless is obliged to drill into that. I've got a  
6 problem with that.

7 Q. I think that applies to -- the way it's  
8 presented, they are obliged to include it in their unit.  
9 They're not obliged to drill into it, I don't think.

10 A. I'm not sure that that's -- there is really  
11 that difference. That's my concern. My concern is  
12 penetrating, going into property owned by other people  
13 with not -- without having the right -- proper right to  
14 do so.

15 Q. Those are my questions. Thank you.

16 CROSS-EXAMINATION

17 BY CHAIRWOMAN RILEY:

18 Q. I don't know if this a question or a statement.

19 I think there is a lot of confusion here in  
20 your wanting to take out (c) off of (11)(c), which is  
21 about the infill horizontal and the compulsory pooling.  
22 The way I read 19.15.13.10, because it references back  
23 to that, the provisions of 19.15.13.10 and 19.15.13.11  
24 apply to any proposal to drill an infill horizontal  
25 well, because there is -- this rule only talks about

1     infill wells and doesn't really reference the horizontal  
2     well. So I think it's just bringing the existing  
3     compulsory pooling rules to apply to these wells. And  
4     so it would have the same process as a vertical well.  
5     Am I reading that correctly?

6           A. Well, I have read it differently, and I would  
7     like for this to be used the way I read it. The way I  
8     read it was that once you force pool on the initial  
9     well, and then all of the subsequent infill wells would  
10    be treated the same way that the vertical -- that the  
11    initial well was treated. You're reading it --

12           Q. But you get notice and get to go through the  
13    same process, though, as a vertical well infill.

14           A. You get notice and you can object to the force  
15    pooling. That's what -- that's not the way I read it.  
16    That's why we objected.

17                   MR. BRANCARD: I would agree with your  
18    interpretation.

19                               CROSS-EXAMINATION

20    BY MR. BRANCARD:

21           Q. So, Mr. Yates, it says that the provisions of  
22    13.10 and 13.11 "shall apply to any proposal to drill an  
23    infill well," horizontal well. Okay? 13.10 and 13.11  
24    say you have to notify every pool owner from the  
25    original pool, and they have an option to elect to

1     participate under 10B. So it seems like the process you  
2     were just discussing with Mr. Feldewert is taking that  
3     process and simply applying it to horizontal wells.

4           A.     Okay. That's correct.

5           Q.     You can disagree.

6           A.     I mean, I hope that is the consequence.

7                   CHAIRWOMAN RILEY: That's all I have.

8                   Do you have any questions?

9                   MR. BRANCARD: I'm fine.

10                  CHAIRWOMAN RILEY: So redirect,  
11     Mr. Gallegos?

12                  MR. GALLEGOS: Very briefly.

13                                 REDIRECT EXAMINATION

14     BY MR. GALLEGOS:

15           Q.     I want to be clear on a couple of points of  
16     what your position is.

17                                 Is there a concern on the 100-foot setback  
18     requirement, as set forth in these rules, which are  
19     really designed because of the development of shale oil  
20     wells, but the rule does not restrict it to those  
21     formations and it could be applied to sandstone  
22     formations?

23           A.     Yes. Yes. That is one of the concerns. The  
24     other concern is if it is true that you're not going to  
25     invade the other adjoining owner in a shale zone set up

1 with a horizontal well that -- I think the testimony  
2 here is that's true in a vertical well drilled in the  
3 same place. So the same rules should allow a vertical  
4 well in a shale zone.

5 Q. In a shale zone?

6 A. In a shale zone. That's right.

7 Q. But confined to the -- to the unique characters  
8 of the shale formations. Is that your view?

9 A. That's right. That's right.

10 Q. Mr. Feldewert referred to cases, the Airstrip  
11 case. We can call it that. From your participation in  
12 that case, what did you learn about the standard to be  
13 applied by the Division when it's considering assessing  
14 a risk charge?

15 A. There were two -- the Division applied what was  
16 called the Stogner rule. And under the Stogner rule,  
17 they started with a 200 percent risk penalty, divided  
18 into three parts: Geological, reservoir and  
19 engineering. So each of those parts got 66 percent.  
20 And then the assumption was that it would be 200 percent  
21 unless the opponent could suggest there is less  
22 engineering risk, in which case, the 66 percent is  
23 reduced, or less geologic risk, in which case, the 66  
24 percent. That's what the Division did.

25 We got to the Commission, assuming that



1     that same rule was going to be utilized in the  
2     Commission. The head of the OCD at that time said, "Oh,  
3     I thought we threw out the Stogner rule." So then our  
4     question was: Well, what is the rule? Risk of what?  
5     Is it a risk of getting a dry hole? Is it a risk of not  
6     getting a payout? We never could get an answer as to  
7     the definition of "risk." And all of this is in the  
8     transcript.

9           **Q.     Okay. So after all that millions of dollars**  
10          **spent -- not on attorneys' fees, however --**

11          A.     It's on its way (laughter).

12          **Q.     -- a number of was thrown out there. Do you**  
13          **know what the standard is?**

14          A.     I do not know what the standard is for risk. I  
15          do not know what risk is.

16                     Under the law, it says risk of drilling and  
17          completing a well. Well, is that risk of getting a dry  
18          hole? Is it risk of not getting a well that will pay  
19          out?

20                     We presented evidence showing that Texas  
21          had taken the circumstance where they would analyze the  
22          risk of not getting payout, but, obviously, that's not  
23          what's happening here.

24                     MR. GALLEGOS: That's all. Thank you.

25                     CHAIRWOMAN RILEY: Thank you.

1                   So it's 12:25, which is a natural place to  
2   take a lunch break. But I guess my question is: Do  
3   you-all have closing statements, and, if so, how long do  
4   you expect closings to take?

5                   MR. FELDEWERT: Madam Chairman,  
6   Commissioners, I would suggest there are two things.  
7   One is, given the questions that have been proffered by  
8   the Commission throughout these multi-day hearings to  
9   the various witnesses, there have been some  
10   suggestions -- or there were some concerns raised about  
11   the specific language in the proposed rule. With the  
12   exception of Jalapeno, who wasn't here until today, the  
13   parties who have been involved in these proceedings and  
14   were here for those questions were able to sit down and  
15   develop language to address the Commission's concerns.

16                  Now, I recognize that Jalapeno has not had  
17   a chance to look at those. So I'm going to offer that  
18   to Mr. Gallegos over lunch, and when I come back, I'd  
19   like to be able to submit to the Commission a unanimous  
20   proposal for addressing some of the language issues and  
21   language concerns that you have, number one.

22                  Number two, I don't anticipate a closing  
23   statement.

24                  CHAIRWOMAN RILEY: Closing?

25                  MR. CLOUTIER: I anticipate a short closing

1 statement, Madam Chair.

2 MS. BRADFUTE: No closing needed from  
3 Marathon.

4 CHAIRWOMAN RILEY: Mr. Gallegos?

5 MR. GALLEGOS: I have about a ten-minute  
6 statement, Madam Chair.

7 MR. BRANCARD: Would the Commission prefer  
8 to see these proposed changes to look at over lunch  
9 individually, without accepting it as a document?

10 MR. FELDEWERT: Good point.

11 MR. BRANCARD: We won't accept it,  
12 necessarily. We'll reserve anybody's right to object to  
13 it. But I'm just thinking, to try to move deliberation  
14 along, that we have -- the Commission has a chance to  
15 look at it. Would that be helpful?

16 CHAIRWOMAN RILEY: Yeah. I think it would  
17 be helpful.

18 COMMISSIONER BALCH: I'm not going to  
19 promise to look at it, but sure.

20 (Laughter.)

21 MR. BRANCARD: No. You can look at it.

22 MR. FELDEWERT: So if I may approach, I'm  
23 going to hand you a document that is entitled  
24 "Additional Recommended Changes To OCD Proposed Rules."

25 MR. BRANCARD: Okay. We assume OCD is in

1 support of these?

2 MS. BADA: Yes.

3 MR. BRANCARD: So some of these are like  
4 typos that we discovered during the course of the  
5 hearing?

6 MR. FELDEWERT: Correct. Correct.

7 MR. BRANCARD: Okay.

8 CHAIRWOMAN RILEY: So I suggest we break  
9 for lunch for an hour. Come back -- be back by 1:30.  
10 We'll have closing statements and deliberations. So  
11 let's make it instead of -- 1:45.

12 (Recess, 12:26 p.m. to 1:47 p.m.)

13 CHAIRWOMAN RILEY: Before we commence with  
14 closing arguments, is there anyone from the public that  
15 would like to give a statement -- a nontechnical  
16 statement today.

17 I see no hands.

18 I think we can proceed.

19 Mr. Cloutier, you want to go first?

20 CLOSING STATEMENT

21 MR. CLOUTIER: Thank you, Madam Chair.

22 I want to -- on behalf of IPANM, I want to  
23 say that the association is proud to participate in the  
24 work group and expresses its appreciation to staff and  
25 all the participants in the work group. We feel like we

1     were able to contribute to a very terrific product. The  
2     association also wants to express its appreciation to  
3     NMOGA for doing the heavy lifting in presenting the new  
4     rules today and, you know, frankly, the amazing  
5     technical case and very impressive technical witnesses  
6     they put forward.

7                     We endorse the rule as presented. We do  
8     not endorse the proposed changes that were circulated.  
9     We do not endorse the proposed infill well change.  
10    While we do not actively oppose it, because we  
11    appreciate the reasons why from Marathon's position, we  
12    note that it is going to have the effect of somewhat  
13    altering the compulsory pooling issues that we were  
14    discussing this morning. And that while compulsory  
15    pooling orders would have to be, we believe, received  
16    for each infill well, there would not be an existing  
17    producing well from which a working interest owner who  
18    does not wish to participate in the first well could  
19    judge performance and participate in subsequent wells.

20                    And this rule does an amazing job overall,  
21    we believe, in prevention of waste. This is one time  
22    where we're not able to get our heads around where  
23    correlative rights may -- are being pushed a little  
24    hard, in our view, in the prevention of waste, and we  
25    note that for the Commission. And Marathon raises a

1 good issue. We appreciate that issue, but we're not  
2 able to endorse it at this time.

3 We do endorse the other 11 changes that  
4 Mr. Feldewert presented to you right before lunch.

5 CHAIRWOMAN RILEY: I'm sorry. You said you  
6 do not endorse the infill language change, but you don't  
7 oppose it? Is that --

8 MR. CLOUTIER: We're not able to endorse  
9 it. And we have competing concerns. And we felt that  
10 this was a significant change, and we're not able to run  
11 it by our Executive Board or come to a decision. And  
12 it, frankly, is going to impact different of our  
13 membership differently, and we suspect that we would  
14 have members actively opposed to it and some may be in  
15 favor of it. So we're not able to take a position on it  
16 as an association today, and the association members did  
17 not -- were not able to do that. And we're just noting  
18 the reasons why we weren't able to endorse it for you.

19 We would like to stress that in doing these  
20 projects, one of the issues on correlative rights that  
21 are very important and that I tried to elicit with the  
22 questioning that I did of the witnesses is that  
23 competent hydraulic isolation is key in these projects  
24 with the vast amounts of water and pressure that they're  
25 performing.

1                   We don't suggest any change to the rule,  
2     but we would like to stress to the Commission and we  
3     believe that this case -- and we recognize that it's not  
4     a compulsory pooling case and we're not doing the risk  
5     penalty here, but we wanted to close by noting that a  
6     lot of the information is information we believe the  
7     Commission should be considering in those issues. And,  
8     really, frankly, the proposed infill well definition  
9     change is very telling, in our view, because you are  
10    proposing four or five infill wells without a well being  
11    drilled and committing tens of millions of dollars to a  
12    project and the question: At what risk profile of that  
13    project is in relationship to the penalties.

14                  Our members tend to be small working  
15    interest owners in a lot these project areas and are not  
16    as capitalized as the big operators, and these issues  
17    are very important to our membership.

18                  So with that, I want to thank the three  
19    members of the Commission and all the staff, and we  
20    appreciate the opportunity to participate.

21                  CHAIRWOMAN RILEY: Thank you.

22                  Mr. Gallegos?

23                  CLOSING STATEMENT

24                  MR. GALLEGOS: Yes. Madam Chair and  
25    members of the Commission, Jalapeno opposes the proposed

1 amendment in the infill well rule, and we adopt some of  
2 the reasons that were stated by counsel for IPANM.

3 But let me go a little further because I  
4 think the proposal not only circumvents the letter, but  
5 the spirit of what I call the second well rule, which is  
6 19.15.13.10. And this ties in, if you'll allow me, with  
7 our objection to paragraph A(1)(c) of 19.15.16.15.  
8 There was some suggestion, along with Mr. Yates'  
9 testimony, that maybe our objection to that subparagraph  
10 (c), which refers over to the second well rule, was  
11 tempered somewhat, because if you refer to that rule,  
12 well, then, that takes care of it. That's not so.  
13 That's not so, because we need to give attention to what  
14 the adopted rule is, which (c) refers us over to 10.  
15 And 10 is a mandatory rule, and it says, "If the  
16 operators proposes an infill well, it shall...." And  
17 then it provides, in B, that a party can decide on the  
18 second well or maybe third or fourth that they have  
19 participated. Of course, under the proposed rule, there  
20 won't be a first rule in which to make the decision that  
21 now you want to participate.

22 But let's say that we're dealing with a 5  
23 percent interest owner and that 5 percent interest owner  
24 was force pooled for the first well. Now we go to this  
25 second well rule, and the option is for that owner --



1 and let's say that this rule that we oppose is not  
2 adopted, that you do have to have drilled a well. That  
3 second owner must then, for a \$7 million well, come  
4 forward and pay up front \$350,000. If he or she does  
5 not do, then Subpart (c) does exactly what Mr. Yates was  
6 testifying. It just overlays and refers right back and  
7 requires the royalty rate -- the -- the penalty charge  
8 that was in the first order. Let me read that so there  
9 is no misunderstanding, because I think there was  
10 something said before noon that the thought was, No,  
11 it's not as troublesome.

12 But it is troublesome because what it  
13 provides is, in Subparagraph (c), that the pooled  
14 working interest owner, if he or she is not able to pay  
15 the theoretical \$350,000 -- and now we're talking about  
16 situations where it's not a second well but maybe a  
17 third or fourth. So start talking about that 5 percent  
18 interest owner coming up with four or five times to that  
19 \$350,000. And if unable to do so and not willing to do  
20 so, then (c) provides that the share of cost of the  
21 infill well, together with the risk charge computed at  
22 the same rate as provided in the pooling order with  
23 respect to the initial well. In other words, you don't  
24 go back and say, "Okay, the second well; now we've got a  
25 good first well. We know it's productive." But you

1 still have the same 300 percent risk penalty. And  
2 that's exactly the way we read (c), and that is the  
3 effect of (c).

4 So what really happens, if you were to  
5 adopt the rule that's proposed here that counsel for  
6 IPANM spoke to, you now double and triple and quadruple  
7 the effect of this force pooling and leave people  
8 basically where they have no choice, but they've lost  
9 their interest.

10 So we believe, again, that our  
11 recommendation is that that 19.15.16.15A(1)(c) should be  
12 deleted. And, of course, we propose the change that  
13 would allow, I guess, three, four, five wells to be  
14 drilled on a forced pooling order with no first well  
15 drilled.

16 The other point I wanted to make in my  
17 statement that troubles me -- and I think it's more a  
18 question of law and not appropriate for the witness.  
19 But 70-2-17 says that when you have a tract of land, if  
20 one owner does not agree, then you can come forward for  
21 a force pooling. But we turn around in 19.15.16.15A(5)  
22 and say a party can go forth and drill if he has the  
23 consent of at least one lessee or owner in a tract. It  
24 seems to me when I read this, you've flipped around what  
25 the law is requiring, that if you have one owner who

1 doesn't agree, you've got to have an order of force  
2 pooling and turn around and say a 1 percent owner in a  
3 40-acre tract can consent and the drilling, development  
4 of that well can go forward. What's happened to the  
5 correlative rights of the other 99 percent? Plus,  
6 what's happened to the Commission following the terms of  
7 72-2-C [sic]. So we ask, in both instances, that those  
8 portions of the rule not be adopted as written.

9 Other than that, we don't want to take the  
10 time to go through all the other provisions within our  
11 pre-hearing statement, but we would submit those matters  
12 of consideration of the Commission. And as Mr. Yates  
13 testified, certainly when there is voluntary agreement  
14 and there is a joint operating agreements, whatever,  
15 Jalapeno fully and enthusiastically endorses the  
16 development of the shale resources by horizontal  
17 drilling.

18 Thank you, members of the Commission.

19 CHAIRWOMAN RILEY: Thank you.

20 MS. BRADFUTE: Would it be okay if I do  
21 make a closing statement? I know I said earlier on the  
22 record that I was not going to, but I'd like to address  
23 some of the remarks that were made by IPANM.

24 CHAIRWOMAN RILEY: Okay.

25 MS. BRADFUTE: Thank you.

1 CLOSING ARGUMENT

2 MS. BRADFUTE: Madam Chair and members of  
3 the Commission, I want to reiterate everyone's comments.  
4 Thank you for your time and consideration.

5 Throughout this hearing, we've seen a lot  
6 of evidence and testimony concerning new technologies  
7 and completion techniques and development plans  
8 throughout this state. And most of the technical  
9 information that was presented to the Commission during  
10 this hearing involved development plans where you saw  
11 sections that were completely developed with wells.  
12 Encana's geologist who testified presented pictures of  
13 wells that filled an area all running diagonally and  
14 testified how you would get better recovery through that  
15 development plan.

16 Today we heard Mr. King testify that  
17 through the use of zipper fracking, Apache was able to  
18 increase recovery by 30 percent. We heard David Brooks  
19 testify, on the first day, that the Division has already  
20 been issuing compulsory pooling orders where there are  
21 multiple wells that are proposed. And we heard  
22 Mr. Foppiano testify that NMOGA's members oftentimes  
23 have multiple well proposals where you're going to have  
24 multiple wells that develop a half section or a whole  
25 section, a more comprehensive development plan than what

1 has historically been used, and that NMOGA had no  
2 opposition to proposing multiple wells to develop a half  
3 section or an entire section and then using simultaneous  
4 or contemporaneous completion techniques in order to  
5 complete those wells together.

6 I think as a state, we can't live in the  
7 past. Operators compete internally within their  
8 companies for resources when they're looking at whether  
9 or not they're going to get capital for operations in  
10 New Mexico or other states, and I think that's something  
11 that the Commission can't ignore. Operators, even if  
12 they're not competing internally, are going to be  
13 looking at development opportunities in states that  
14 border us or other basins that look productive.

15 And so we need to embrace technology that  
16 will fully allow us to develop the basin we have and  
17 that aligns with the purpose of the New Mexico Oil and  
18 Gas Act, which specifically prohibits the creation of  
19 waste, and it does ask us to consider correlative rights  
20 and balance those interests, and I think the proposal  
21 that you have in front of you today does exactly that.  
22 It allows operators to come together with a  
23 comprehensive development plan that is defined by a  
24 defining well.

25 And under the amendments that you received

1 during the lunch hour, that defining well is the first  
2 well that is permitted or proposed -- sorry -- proposed  
3 by submitting an APD to a regulatory agency. That well  
4 will set the scope of the spacing unit. So the spacing  
5 unit can't grow larger than that defining well. So if a  
6 well is near the centerline of a half section, it would  
7 be a 320-acre spacing unit, and then other infill wells  
8 could be used to develop that half section. And that's  
9 exactly what operators are doing today. That is the  
10 type of development plan that they're putting together.  
11 That's the type of development plan they want to put  
12 together so that they can get a comprehensive look at  
13 the basins they're developing in and use the zipper frac  
14 system that can increase their recovery by 30 percent.  
15 And that's the testimony that we've heard throughout the  
16 course of this proceeding.

17 Now, I understand IPANM's comments, that  
18 there is some reluctance to have somebody come in and  
19 drill five wells in a half section, but I think we have  
20 to realistically look at this as a state and say, "Do we  
21 want to limit that development option?" Do we want to  
22 say, "Operator, you can only complete one well in a half  
23 section, then you have to wait 60 days and bring your  
24 rigs back out and drill your infill wells?" I don't  
25 think that's in line with what you can do in other

1 states, and it's going to create increased costs on  
2 operators. And those increased costs, I mean, it just  
3 makes it more expensive to do business here in our state  
4 and pursue development within the state. And those  
5 incentives are the types of things that rules are made  
6 to address and provide for.

7               If you look at the rules that have been  
8 provided to you over the course of the last couple of  
9 days, under 16A(11)(c), it does actually state that --  
10 incorporate the compulsory pooling provision for infill  
11 wells under that provision specifically. And there was  
12 a lot of discussion, honestly, about that over the last  
13 couple of days between NMOGA, Marathon and the Division  
14 and how that would be handled. Under the rules as  
15 contemplated, you could not get a single pooling order  
16 and then simultaneously drill five wells. You'd have to  
17 propose all five wells together, bring them to hearing  
18 for the pooling proceeding if you want to drill them all  
19 together and get an order from the Division that allows  
20 you to drill them together. And that's because this  
21 provision is linked to 19.15.13.10 and 19.15.13.11,  
22 which provides a notice mechanism. So there are  
23 barriers already in the rules.

24               If parties want to bring something to  
25 hearing, they're going to have to propose the well, and

1 each well is going to get a separate election. Each  
2 well is going to have a separate AFE, which is already  
3 required under the Division's procedures and regulations  
4 for compulsory pooling hearings. You're going to have  
5 to present your evidence at a pooling hearing just as  
6 you would for any case involving a single well. And  
7 people are going to be afforded notice, the opportunity  
8 for hearing, the opportunity to make a record, and then  
9 the Division is going to decide, based on the evidence,  
10 whether or not the operator can go ahead and  
11 simultaneously complete those wells and whether or not  
12 that's in the best interest of the reduction of waste,  
13 increasing -- and protecting correlative rights. And I  
14 think that that's the proper mechanism that we have in  
15 place.

16 When the Division enters an order, it has  
17 the power to do that and not have somebody jump through  
18 all the hoops of the notification provisions. And  
19 that's something that David Brooks explained to us as we  
20 were working on these specific provisions.

21 So I think as you go into your discussions  
22 today about the language that's proposed to you, there  
23 are mechanisms built into the regulations to protect  
24 correlative rights, and there are mechanisms built into  
25 the regulations to address IPANM's concerns. And I ask



1     that this Commission think about future development.  
 2     Since these are the rules we're going to live with for  
 3     the next ten-plus years, think about how operators are  
 4     trending to develop now, not how they used to develop  
 5     ten years ago.

6                     Thank you.

7                     CLOSING STATEMENT

8                     MR. FELDEWERT:   Madam Chair, if I may?

9                     I want to make one comment on the  
 10    proposition that Subsection A(5) is contrary to law.  
 11    Okay?   So what we're looking at here is page 12 in  
 12    NMOGA's Attachment 1.   Mr. Gallegos has suggested that  
 13    this provision is contrary to law, contrary to our  
 14    pooling statute, Section 70-2-17.

15                    If we look at A(5), first off, A(5) is the  
 16    same provision that's in the rules now.   This is the  
 17    same provision that was adopted in 2011 by the  
 18    Commission at that point in time when they raised these  
 19    same issues.   Okay?   And the Commission at that point in  
 20    time recognized that correlative rights aren't impacted  
 21    until you produce.   It's your opportunity to produce  
 22    your just and equitable share of reserves.   There is no  
 23    correlative rights issue until you produce.   This  
 24    provision is nothing more than when I can file an  
 25    application to drill and when I can commence drilling.

1     Nothing more than that.

2                     As we know -- and this has worked very well  
3     since it was enacted in 2011 -- nobody can produce their  
4     well until they have aggregated their acreage comprised  
5     of their spacing unit or either by a voluntary agreement  
6     or a pooling order. Mr. Gallegos says, "Well, that's  
7     contrary to law because you've already drilled."

8                     All you've got to do is go to the statute  
9     that he cited. 70-2-17C says that when one such owner  
10    or owners who has the right to drill has drilled or  
11    proposes to drill a well -- and said common sources --  
12    got a pooling order. So the statute itself contemplates  
13    that there are going to be circumstances where you pool  
14    after drilling. The statute allows that. That is  
15    entirely consistent with the statute. So there is  
16    absolutely nothing inconsistent between Subsection A(5)  
17    and the pooling stage.

18                    Thank you.

19                    CHAIRWOMAN RILEY: Thank you.

20                    Anyone else that I hadn't considered before  
21    lunch that wants to say something?

22                    All right. I think that concludes.

23                    We do want to keep the record open; is that  
24    correct --

25                    MR. BRANCARD: Yes.

1 CHAIRWOMAN RILEY: -- as we go into our  
2 deliberations?

3 MR. BRANCARD: Correct.

4 CHAIRWOMAN RILEY: Is there anything else?

5 COMMISSIONER BALCH: Basically, as with  
6 other rulemaking, sometimes we get in there and want to  
7 call a witness back, so we like to keep the record open  
8 until we're done deliberating.

9 MR. FELDEWERT: So you want the witnesses  
10 to stick around?

11 COMMISSIONER BALCH: If that's convenient.

12 MR. FELDEWERT: We can make that happen  
13 with the exception of one that left, but the remaining  
14 witnesses are here.

15 CHAIRWOMAN RILEY: Here comes the fun part.

16 MR. BRANCARD: First the question is: Do  
17 you think you're ready to deliberate? In other words,  
18 do you want anything more from the parties? Do you want  
19 them to summarize anything in writing? Do you want them  
20 to come up with a clean copy of the rule and then  
21 deliberate at some later date, or do you want to just  
22 take what you have now and go for it?

23 COMMISSIONER MARTIN: All those things were  
24 satisfied. We got a clean copy, for sure, of what  
25 contains all the agree-upon changes.

1                   COMMISSIONER BALCH: All right. So I guess  
2 I have a slightly different opinion on than that because  
3 I've marked up my copy, obviously, of Exhibit 2 and my  
4 copy of NMOGA Exhibit 1 --

5                   MR. FELDEWERT: Attachment 1.

6                   COMMISSIONER BALCH: -- Attachment 1 with  
7 my notes. So I think I would prefer to take OCD Exhibit  
8 2, which is a complete list, work from that with NMOGA's  
9 exhibit open next to me and their additions we just got  
10 before lunch and kind of go through it line by line and  
11 see if we have a consensus starting out. Maybe a lot of  
12 things we'll agree on and maybe a few things will need  
13 to be discussed.

14                   And what we've done in the past that's  
15 worked pretty well is Florene and the Commission and  
16 counsel has tracked our discussion and then provided us  
17 a clean copy at the end of a certain period of the  
18 deliberations. So I think we can get a clean copy of  
19 whatever we deliberate on today tomorrow morning to  
20 continue deliberations, and that might satisfy your -- a  
21 full, clean copy to look at, but also let us take  
22 advantage of information I've already scribbled on my  
23 own.

24                   COMMISSIONER MARTIN: Okay.

25                   CHAIRWOMAN RILEY: I tend to agree with

1     that.  I think that's a good plan.

2                   COMMISSIONER BALCH:  Now, as far as being  
3     ready to deliberate, I think I'm ready to deliberate  
4     with those caveats.

5                   CHAIRWOMAN RILEY:  I'm ready.  I'd like to  
6     do it while it's nice and fresh because it's a lot of  
7     information we got presented over the last few days.

8                   MR. BRANCARD:  And the most important  
9     discussion in negotiations is what should be the shape  
10    of the table?

11                   (Recess, 2:13 p.m. to 2:19 p.m.)

12                   CHAIRWOMAN RILEY:  Back on the record.

13                   So my understanding of your suggestion for  
14    doing this is to walk through it section by section,  
15    line by line and just see if we all agree with what it  
16    says and take into consideration the changes that were  
17    suggested, all that, line by line.

18                   COMMISSIONER BALCH:  And any discussion we  
19    might need of that.  And I would guess that a lot of the  
20    earlier part, until you get to 15.16, is going to be  
21    relatively simple.

22                   CHAIRWOMAN RILEY:  Yeah.

23                   COMMISSIONER BALCH:  And then it gets much  
24    more complicated.

25                   CHAIRWOMAN RILEY:  Okay.  So

1 systematically, I don't mind kind of reading at where  
2 we're at.

3 Or, Bill, do you want to do that?

4 OPEN-SESSION DELIBERATIONS

5 MR. BRANCARD: I can do that.

6 So we have five parts of the oil and gas  
7 rules that have been proposed for changes, one of which  
8 has extensive changes. So I guess we can leave that for  
9 last.

10 COMMISSIONER BALCH: That's 16?

11 MR. BRANCARD: 16, yeah.

12 And we can start with Rule 2, which is our  
13 rule that includes all the basic definitions that apply  
14 to all the oil and gas rules. There were significant  
15 changes related to three or four definitions, and then a  
16 series of grammatical changes, stylistic changes made to  
17 a number of other definitions.

18 So the first one is on page 1, A(8) --  
19 7(A)(8), "Affected persons." This is a term that's  
20 actually taken from Rule 4, which is the adjudicatory  
21 provisions, which includes -- Rule 4 includes all the  
22 notices provisions for various types of applications and  
23 hearings. In there, there was a definition of "affected  
24 persons" -- well, there was a statement that "affected  
25 persons" is the following. And it was decided to move

1 it to this section because the term is then used in  
2 several other places now in the rule as who gets notice.  
3 So really "affected persons" is who gets notice. So a  
4 lot this comes from -- I believe it's under "Notice for  
5 unorthodox well locations," just taken from there and  
6 then kind of elaborated a bit here.

7           There was a change from what NMOGA proposed  
8 in (8)(A), where it says "included in Division-approved  
9 units," to read "Division-approved or federal unit."

10           COMMISSIONER BALCH: I think OCD went along  
11 with that change, and I see no reason why not to add it.

12           COMMISSIONER MARTIN: I agree.

13           CHAIRWOMAN RILEY: I agree.

14           MR. BRANCARD: Some other terms used in  
15 this definition were also modified such as "working  
16 interest owner," "royalty interest owner." Those are  
17 pretty key definitions throughout the rules. So those  
18 are defined terms.

19           So if we're okay with that, we go to page  
20 6, I believe, where "mineral interest owner" is. This  
21 is designed to try to remove some ambiguity, with this  
22 use of "executive right," which is not a defined term.  
23 And it's replaced with "working interest owner," which  
24 will be a defined term -- which is a defined term. So  
25 now "interest owner" is a combination of working

1 interest owner and the owner of mineral rights that are  
2 not leased.

3 CHAIRWOMAN RILEY: I'm good with that.

4 COMMISSIONER MARTIN: I am, too.

5 COMMISSIONER BALCH: I'm fine.

6 MR. BRANCARD: The next page, the  
7 definition of "proration unit." That's actually a  
8 definition taken from the statute, and you see the  
9 statutory definition in there. Sort of removed is this  
10 interesting sort of tautology of the spacing unit here  
11 that I think was causing confusion. One of my favorite  
12 sentences in the rules: "All proration units are  
13 spacing units but not all spacing units are proration  
14 units." Leaves you scratching your head.

15 COMMISSIONER MARTIN: Right.

16 MR. BRANCARD: Any problems with those  
17 changes?

18 COMMISSIONER MARTIN: No.

19 COMMISSIONER BALCH: I only note that there  
20 more or less was a consequence of horizontal spacing  
21 units being able to overlap. So you may want to exclude  
22 that. I think I'm comfortable with the way it is now,  
23 although later on when we talk about allowables, I'll  
24 probably have a few things that I want to discuss.

25 COMMISSIONER MARTIN: Are you saying you're



1     okay with overlapping spacing units?

2                   COMMISSIONER BALCH:   Yes.

3                   COMMISSIONER MARTIN:   Okay.   I am, too.

4                   MR. BRANCARD:   Okay.   So then the next  
5     page, "royalty interest owner" defined.   Again, there is  
6     that phrase "executive rights."   It's sort of ambiguous.  
7     It's been replaced with more specific --

8                   COMMISSIONER MARTIN:   I'm sorry.   Where are  
9     you, Bill?

10                  MR. BRANCARD:   I'm on page 8R(7), "Royalty  
11     interest owner."

12                  COMMISSIONER MARTIN:   Okay.

13                  CHAIRWOMAN RILEY:   I'm good with this one.

14                  COMMISSIONER MARTIN:   I am, too.

15                  COMMISSIONER BALCH:   As am I.

16                  MR. BRANCARD:   I think the final did not  
17     change the definition of "working interest owner."   I  
18     think that may be the major changes to Part 2.

19                  Okay.   The next part is Adjudicatory  
20     Procedures and in particular its focus on 4.12, which is  
21     "Notice Requirements For Specific Adjudications."   OCD  
22     had proposed to amend the notice requirements for  
23     unorthodox well locations and nonstandard proration  
24     unit.   NMOGA has added to those proposed changes to the  
25     "compulsory pooling and statutory unitization notice

1 requirements."

2 CHAIRWOMAN RILEY: I have down that the OCD  
3 agreed with that.

4 COMMISSIONER MARTIN: So do I.

5 COMMISSIONER BALCH: I think the more  
6 important change is the part up there at the top of A  
7 where it changes it from "give notice to an owner" to  
8 "give notice to each owner." As long as we mention  
9 that, I'm all right with it.

10 CHAIRWOMAN RILEY: I agree with that.

11 COMMISSIONER MARTIN: Yeah. I don't have a  
12 problem with that.

13 MR. BRANCARD: And then NMOGA adds a  
14 sentence to the end of that (A)(1)(a): "An applicant  
15 seeking compulsory pooling of a standard horizontal  
16 spacing unit need not give notice to affected persons in  
17 adjoining spacing units or tracts unless the Division so  
18 directs."

19 CHAIRWOMAN RILEY: Yeah. That's the  
20 statement I referred to that I have down that OCD agrees  
21 with that. I'm not sure --

22 COMMISSIONER MARTIN: So do I.

23 CHAIRWOMAN RILEY: That's what I was  
24 talking about earlier.

25 COMMISSIONER BALCH: Yeah. They seem to

1    agree with it.  And I think really all this does is say  
2    that if they're not related to the pool, then they don't  
3    really need to know necessarily.

4                   COMMISSIONER MARTIN:  Right.

5                   COMMISSIONER BALCH:  Is that consistent  
6    with what the way the vertical wells and traditional  
7    pools have been done?  That's not my area.

8                   MR. BRANCARD:  Well, I mean, A simply says  
9    you give notice to anybody who has an interest in the  
10   area you're pooling.

11                  COMMISSIONER BALCH:  Which makes sense.

12                  MR. BRANCARD:  Right.  So this doesn't say  
13   anything in opposition to that.  It just sort of says --

14                  COMMISSIONER BALCH:  It explicitly states  
15   that you don't need to send notice to anybody else.

16                  COMMISSIONER MARTIN:  Kind of limits it.

17                  MR. BRANCARD:  Yeah.

18                  CHAIRWOMAN RILEY:  Yeah.  And I think the  
19   point that Mr. Brooks made on that was that they've  
20   never had anyone show up that has been noticed in this  
21   way.

22                  COMMISSIONER BALCH:  Plus, they still have  
23   to know the Division can specify if they feel like it.  
24   So --

25                  CHAIRWOMAN RILEY:  I'm okay with that.

1 COMMISSIONER MARTIN: I am, too.

2 MR. BRANCARD: And then in the next  
3 paragraph, A(1)(b), the phrase "the proposed unit is not  
4 larger in size than provided in 19.15.15...or applicable  
5 special pool orders." NMOGA proposes to delete that.

6 COMMISSIONER MARTIN: I'm okay with that.  
7 I think the Division is as well.

8 COMMISSIONER BALCH: It's just confusing  
9 the way it's written.

10 CHAIRWOMAN RILEY: Uh-huh.

11 MR. BRANCARD: Well, for horizontal wells,  
12 for the size limitations that are in 15, it's now been  
13 replaced by what's in 16.

14 COMMISSIONER MARTIN: Right.

15 MR. BRANCARD: So it wouldn't be good to  
16 refer to --

17 COMMISSIONER BALCH: I'm comfortable with  
18 striking that sentence -- part of the sentence.

19 MR. BRANCARD: So the next page is the  
20 notice requirements for unorthodox well locations.  
21 Okay? So here, again, in (a), that was the "affected  
22 persons" provision that has now been moved to the  
23 general definition section.

24 CHAIRWOMAN RILEY: I'm okay accepting this.

25 COMMISSIONER MARTIN: I am. So the new (a)

1 needs to be more specific about who gets notice.

2 COMMISSIONER BALCH: Modified by NMOGA to  
3 specify that it's in the same pool or formation.

4 COMMISSIONER MARTIN: Right.

5 CHAIRWOMAN RILEY: I think that's a great  
6 clarification.

7 COMMISSIONER BALCH: Right, if you're --

8 CHAIRWOMAN RILEY: And OCD had agreed with  
9 that as well.

10 COMMISSIONER BALCH: I would accept it with  
11 the modifications by NMOGA.

12 CHAIRWOMAN RILEY: Me, too.

13 COMMISSIONER MARTIN: (Indicating.)

14 CHAIRWOMAN RILEY: Are you okay with the  
15 changes in B?

16 COMMISSIONER BALCH: They're specifically  
17 pointing in B to 19.15.15.10B.

18 MR. BRANCARD: Where are you seeing this  
19 cross-reference?

20 COMMISSIONER BALCH: This is in NMOGA's  
21 version of --

22 MR. BRANCARD: Oh, okay. Yes.

23 COMMISSIONER BALCH: -- of (b). "If the  
24 proposed well location is unorthodox by being in a  
25 different quarter-quarter section or quarter section

1     than 19.15.15.10.B or special orders provide...."

2                   CHAIRWOMAN RILEY:    So B is:   "320-acre  
3     spacing applies to a deep gas well in Lea, Chaves, Eddy  
4     or Roosevelt county that is projected to be drilled to a  
5     gas-producing formation, or is within a defined gas  
6     pool, that is in the Wolfcamp or an older formation.  
7     The well shall be located on a spacing unit consisting  
8     of 320 surface contiguous acres, more or less,  
9     comprising any two quarter sections of a single section  
10    that is a legal subdivision of the United States public  
11    land surveys provided that...."   And then there is a 1  
12    and a 2.   So "the initial well on a 320-acre unit is  
13    located no closer than 660 feet to the outer boundary of  
14    the quarter section on which the well is located and no  
15    closer than 10 feet to a quarter-quarter section line or  
16    subdivision inner boundary, and;

17                   "Only one infill well on a 320-acre unit  
18    shall be allowed provided that the well is located in  
19    the quarter section of the 320" -- "of the 320-acre unit  
20    not containing the initial well and is no closer 660  
21    feet to the outer boundary of the quarter section and no  
22    closer than 10 feet to a quarter-quarter section line or  
23    subdivision inner boundary."

24                   COMMISSIONER BALCH:   So that seems to be  
25    pointing to a specific area of large exceptions to

1 normal pool orders.

2 CHAIRWOMAN RILEY: Well, this refers to  
3 vast [sic] wells.

4 COMMISSIONER MARTIN: Special provisions  
5 for those counties, for those areas.

6 CHAIRWOMAN RILEY: Uh-huh.

7 COMMISSIONER MARTIN: I'm okay with that.  
8 And I'm okay including the language in the same --

9 COMMISSIONER BALCH: Works for me.

10 COMMISSIONER MARTIN: I did have a note on  
11 that one that the Division agrees. Did they agree on  
12 that one?

13 CHAIRWOMAN RILEY: I have a check that they  
14 agreed.

15 COMMISSIONER BALCH: Next is the  
16 nonstandard proration unit. I think the observation was  
17 that there is not much prorationing going on. It looks  
18 like to me the purpose of this, with NMOGA's  
19 modification, is that you're basically maintaining the  
20 existing language and then saying that the nonstandard  
21 horizontal spacing units don't apply to this. I believe  
22 that comes back on the ability to overlap --

23 COMMISSIONER MARTIN: Which I'm okay with.

24 COMMISSIONER BALCH: -- without triggering  
25 proration.

1 COMMISSIONER MARTIN: Right.

2 CHAIRWOMAN RILEY: I'm good with this.

3 COMMISSIONER BALCH: So I'm okay with  
4 NMOGA's modification. I think OCD was as well.

5 COMMISSIONER MARTIN: I think so, too.

6 CHAIRWOMAN RILEY: I have notes that that  
7 last sentence was requested by OCD, actually. So --

8 COMMISSIONER BALCH: Are we going too fast  
9 for you, Mr. Brancard?

10 MR. BRANCARD: No.

11 COMMISSIONER BALCH: You should take  
12 shorthand lessons from Florene. You could write faster.

13 MR. BRANCARD: I think I've got everything  
14 down.

15 Rule 13, which is the rule on drilling  
16 permits.

17 COMMISSIONER BALCH: Looks like just  
18 housecleaning.

19 COMMISSIONER MARTIN: Right.

20 MR. BRANCARD: Yeah.

21 COMMISSIONER BALCH: We're pretty much  
22 doing this every time we go back to a rule and cleaning  
23 up, to modify the language.

24 MR. BRANCARD: As stated earlier, we have  
25 to send these rules to the State Records Administrator.



1 And they have a set of rules on rules, and they edit our  
2 rules for grammatical errors. And I was just noticing  
3 in Rule 4, they refer to 19.15.10B. That's a bad one.  
4 It's supposed to be Subsection B of 19.15.15.10 NMAC.

5 COMMISSIONER BALCH: They're going to  
6 capture that in the --

7 MR. BRANCARD: Yeah. And that's one of the  
8 things. When we get down to the point where you-all  
9 approve the rule for filing, we will ask that we be  
10 allowed to proofread it and try to catch nonsubstantive  
11 grammatical changes before filing.

12 COMMISSIONER MARTIN: That's required by  
13 Records.

14 MR. BRANCARD: Yeah. Because it's really  
15 bad if they make a correction after you file, because  
16 then we have to do another round of public notice about  
17 the errors they have found, under the new statute.

18 COMMISSIONER BALCH: The only other change  
19 in this one, besides the renumbering, is in B(2) -- and  
20 this is a consequence of defining horizontal wells  
21 separately from directional and deviated wells.

22 COMMISSIONER MARTIN: Right.

23 COMMISSIONER BALCH: However, it does point  
24 to paragraph five of Subsection A of 15.16.15, which  
25 we'll discuss later, I suppose. And that's where the

1 rules for horizontal well rules would be if they are so  
2 adopted.

3 MR. BRANCARD: Well, I think that's a  
4 miscitation, because that A -- A of 15 is vertical and  
5 deviated. Or am I in the wrong section? That's 14.  
6 Yeah. We took "directional" out of 15, right? So A(5)  
7 is -- A(5) is just largely a restatement of what's in  
8 D(1) of this section.

9 COMMISSIONER BALCH: Was it needed?

10 MR. BRANCARD: Yeah, because it's more  
11 specific to the horizontal spacing unit.

12 COMMISSIONER BALCH: Well, as long as we  
13 can make sure the citation is correct, then I'm all  
14 right with it.

15 MR. BRANCARD: Yeah. It's correct, so the  
16 changes to Rule 15, the well spacing rule.

17 COMMISSIONER BALCH: There is a  
18 modification change by NMOGA in Section A -- 15.11A, "45  
19 days" instead of the "10 days." I think that was  
20 because you need more time to get a directional survey  
21 for a horizontal well, which is required later on in 16.

22 COMMISSIONER MARTIN: Right, for  
23 consistency in another -- in another rule or procedure.  
24 I can't remember which one was changed, but one was  
25 changed.

1                   MR. BRANCARD: That was the one where when  
2 we looked at the rule that's cross-referenced in there,  
3 that hadn't changed. But that rule references  
4 19.15.19.8, which is "Method of Determining Gas Well  
5 Potential," and it says that "the operator shall report  
6 the tests on form C-122 ... and file it within 10 days  
7 following the test's completion."

8                   CHAIRWOMAN RILEY: The only thing that  
9 changed to 45 days is the completion of just the C-105  
10 [sic].

11                  COMMISSIONER MARTIN: The completion  
12 report?

13                  CHAIRWOMAN RILEY: Uh-huh.

14                  COMMISSIONER BALCH: Basically giving 45  
15 days to turn in a completion report.

16                  MR. BRANCARD: That's a well test, not a  
17 completion report.

18                  CHAIRWOMAN RILEY: A well test?

19                  MR. BRANCARD: The completion report is  
20 somewhere else.

21                  CHAIRWOMAN RILEY: "An operator shall  
22 conduct tests to determine the daily open flow potential  
23 volumes of gas wells from which gas is being used or  
24 marketed. The operator shall report the test on  
25 division-prescribed forms within 60 days after the date

1 of the well's initial connection to gas transportation  
2 facility; and the date of reconnection following the  
3 workover." Huh. "The operator shall report the  
4 test ... 60 days after...."

5 COMMISSIONER MARTIN: I think it makes more  
6 sense to have test results supplied along with the  
7 completion report, test the consistency. If you're  
8 going to file a completion report within 45 days, you  
9 should file a test report within 45 days as well,  
10 because sometimes it takes that long to test these  
11 horizontal wells.

12 COMMISSIONER BALCH: And flowback a lot  
13 longer.

14 CHAIRWOMAN RILEY: So when your test  
15 allowable, C-104 -- I'm trying to think. They have to  
16 report -- report that data on test allowable if it  
17 doesn't come into the final C-104, in which case the 45  
18 days makes sense.

19 COMMISSIONER MARTIN: Right.

20 COMMISSIONER BALCH: I believe the Division  
21 was on board with that change.

22 COMMISSIONER MARTIN: I don't know. It  
23 didn't come up. I don't think it came up with the  
24 hearing. I don't think the Division commented on it.

25 COMMISSIONER BALCH: Or it was a change

1 presented by NMOGA, from ten to 45 days.

2 COMMISSIONER MARTIN: Yeah.

3 CHAIRWOMAN RILEY: This seems to conflict  
4 because the rule, 19.8, is talking about "operator shall  
5 report the tests on division-prescribed forms within 60  
6 days after the well's initial connection to gas  
7 transportation," which can be on a test allowable. We  
8 need a flow chart (laughter).

9 COMMISSIONER MARTIN: I think if we require  
10 45 days, it's still within the 60.

11 CHAIRWOMAN RILEY: Yeah.

12 COMMISSIONER BALCH: And in the absence of  
13 testimony on it, we can either accept the change or --

14 CHAIRWOMAN RILEY: Yeah.

15 COMMISSIONER BALCH: I don't think we can  
16 put in a different date, unless there is some  
17 substantial reason to change it. So we can go with the  
18 original "not represented by the division," or we can go  
19 with NMOGA's 45 days.

20 MR. BRANCARD: I can see in 19.8, it talks  
21 about gas wells that are not connected to a gas  
22 gathering facility without doing the test within 30 days  
23 and then reporting within ten days, which goes along  
24 with this. And this is talking about wildcat or  
25 development wells. One can assume they're probably not

1 connected to gas gathering.

2 CHAIRWOMAN RILEY: The other thing is --

3 COMMISSIONER MARTIN: I'm okay with the 45  
4 days.

5 COMMISSIONER BALCH: I'm okay with the 45  
6 days, too. It's hard to discuss it without testimony  
7 to --

8 CHAIRWOMAN RILEY: Yeah. Okay.

9 MR. BRANCARD: Okay. So changes to 15 are  
10 just wording of notice changes required either because  
11 we now have special rules for horizontal wells or  
12 because we've now defined the term "affected persons."  
13 They don't need to reference back to -- well.

14 COMMISSIONER BALCH: We had a little bit of  
15 discussion on 15.15.12B(3)(a). That's where we had our  
16 history of English on the 20-day requirement.

17 COMMISSIONER MARTIN: Oh, right, where we  
18 got the reasoning from Mr. Brooks.

19 COMMISSIONER BALCH: I think the reason why  
20 I brought it up originally is because it seemed to put  
21 the burden of not wanting to be involved on approving --  
22 nobody said they wouldn't want to be involved on the  
23 operator who was trying to drill the well rather than  
24 the -- the Division. I don't know if the Division had  
25 that requirement before or not.

1                   CHAIRWOMAN RILEY: These didn't change.

2   This notice requirement didn't change.

3                   COMMISSIONER MARTIN: The question came up  
4   of why 20.

5                   COMMISSIONER BALCH: Why 20, because  
6   everything else is 10 or 15 or 45 or 30. I think I  
7   specifically asked Mr. Brooks if 20 days was long enough  
8   and if this was putting the onus for informing the OCD  
9   on the operator. He didn't seem to have a problem with  
10  20 days.

11                  CHAIRWOMAN RILEY: I think everybody's  
12  really used to 20 days.

13                  COMMISSIONER BALCH: Works for me.

14                  The rest looks like pointers to different  
15  notice requirements.

16                  CHAIRWOMAN RILEY: Where are you looking at  
17  now?

18                  MR. BRANCARD: In 15, most of the -- yeah.  
19  Most of the changes are sort of clarifying the notice  
20  requirements, not really changing them. Sort of making  
21  them more precise of who exactly --

22                  COMMISSIONER BALCH: And that was proposed  
23  by the Division and unopposed by anybody else.

24                  CHAIRWOMAN RILEY: I'm good.

25                  COMMISSIONER BALCH: Except those with the

1 caveat that Mr. Brancard gets to check them all at some  
2 point.

3 COMMISSIONER MARTIN: Thank you, Bill.

4 CHAIRWOMAN RILEY: Thank you, Bill.

5 MR. BRANCARD: We also have Part 20, the  
6 last page that you've got instead of -- oh, no. That's  
7 Rule 16. Sorry. I thought it was Part 20. It's 16.  
8 Never mind. Thank you.

9 COMMISSIONER BALCH: False alarm.

10 MR. BRANCARD: Okay. Now you need to look  
11 at three documents.

12 COMMISSIONER BALCH: Jalapeno starts on  
13 15.16 -- 15.16.7F.

14 I can't seem to find my handout that we got  
15 before lunch.

16 CHAIRWOMAN RILEY: I think we can talk  
17 about the first take points with just three documents.  
18 I don't see --

19 COMMISSIONER MARTIN: Take the commas out.

20 CHAIRWOMAN RILEY: Yeah. I think that  
21 makes it more clean.

22 COMMISSIONER MARTIN: Uh-huh. I'm good.

23 COMMISSIONER BALCH: I think Jalapeno, when  
24 they made their case, did refer to E and F, but that  
25 would probably need to be part of our larger discussion



1 on setbacks anyway.

2 COMMISSIONER MARTIN: Sure.

3 COMMISSIONER BALCH: If they don't have  
4 anything in their pre-hearing statement that  
5 addresses -- I mean E or J, I guess.

6 The first thing is -- so E, which is the  
7 new definition for "first take point."

8 CHAIRWOMAN RILEY: I'm good with that.

9 COMMISSIONER BALCH: Yeah. That's a lot of  
10 confusion, when I first read that with the comma in  
11 there. I was trying to figure out how to rewrite the  
12 sentence and make it more clear. Taking out the comma  
13 does a pretty good job.

14 MR. BRANCARD: At this point, "measured  
15 depth" is not a defined term. But I think the  
16 Commission has a proposed rule heading toward hearing  
17 where it will be defined. So we may need to be careful  
18 when we get to that rulemaking.

19 COMMISSIONER MARTIN: Isn't that defined --  
20 not here but somewhere else?

21 MR. BRANCARD: It's defined in the geologic  
22 or gas dictionary.

23 COMMISSIONER BALCH: It's not defined in  
24 the rules anyway.

25 CHAIRWOMAN RILEY: I was shocked.

1                   MR. BRANCARD: We have to consider the  
2     proposed financial assurance rules that are coming down  
3     the pike. There is going to be a definition proposed.

4                   COMMISSIONER MARTIN: For measured depth?

5                   MR. BRANCARD: Yeah.

6                   COMMISSIONER BALCH: That's coming up.

7                   MR. BRANCARD: Next month.

8                   COMMISSIONER BALCH: Next month.

9                   So we might need to address "measured  
10    depth" here as a definition.

11                  MR. BRANCARD: Yeah. But I guess if we  
12    ought to -- if we approve it here, we have to keep in  
13    mind that when we look at that rule, that that  
14    definition may have implications for this, too.

15                  COMMISSIONER BALCH: So you'll be the  
16    attorney on that rulemaking also?

17                  MR. BRANCARD: Yes.

18                  COMMISSIONER BALCH: Make sure to remind  
19    us.

20                  MR. BRANCARD: Okay. And I believe what's  
21    being proposed is, like you said, something coming out  
22    of a standard dictionary.

23                  COMMISSIONER MARTIN: It's a pretty widely  
24    accepted term.

25                  CHAIRWOMAN RILEY: Uh-huh. I don't think

1 it'll be --

2 COMMISSIONER BALCH: "First take point" is  
3 the -- "means the shallowest measured depth of the  
4 wellbore where the completed interval starts," which I  
5 understand. I'm fine with it.

6 COMMISSIONER MARTIN: I am, too.

7 CHAIRWOMAN RILEY: Yeah.

8 MR. BRANCARD: It would almost be simpler  
9 to say "where the completed interval starts." That's  
10 really what you're talking about.

11 COMMISSIONER BALCH: Perhaps they did that  
12 because there is no definition of measured depth in the  
13 rules.

14 Similarly for J, the last take point, which  
15 takes care of the additional recommended changes, number  
16 two.

17 COMMISSIONER MARTIN: Right.

18 COMMISSIONER BALCH: So we have Jalapeno's  
19 proposed rule, 19.15.16.7F, "Horizontal spacing unit."

20 CHAIRWOMAN RILEY: I think Mr. Feldewert  
21 explained why that wasn't a conflict in the law.

22 COMMISSIONER BALCH: What's your  
23 interpretation of that, Bill?

24 MR. BRANCARD: Well, I think Jalapeno's  
25 trying to give a very strict reading to a statute which

1 doesn't exactly say what they say it says. The statute  
2 doesn't say that the Commission's obligation is to fix  
3 spacing units. What they cite to is a provision of the  
4 statute that says the Commission should adopt rules to  
5 fix the spacing of wells, which I think is what you're  
6 doing here.

7 COMMISSIONER BALCH: Which is fairly broad.

8 MR. BRANCARD: I think they're trying to  
9 create an implication -- like we had currently for  
10 vertical wells, there is a spacing unit. There is a  
11 40-spacing unit that should be there for 160 acres or  
12 240 acres for horizontal wells. I don't think there is  
13 anything in the statute that regulates that.

14 COMMISSIONER BALCH: Nothing that precludes  
15 us from creating a horizontal spacing unit?

16 MR. BRANCARD: No.

17 COMMISSIONER BALCH: I'm comfortable with  
18 the definition as it stands --

19 CHAIRWOMAN RILEY: I'm comfortable with it.

20 COMMISSIONER BALCH: -- realizing we'll be  
21 discussing later on what exactly horizontal spacing unit  
22 means.

23 So 7H had an additional recommended change  
24 from NMOGA, Marathon and OCD, their number one on the  
25 handout from before lunch.

1                   MR. BRANCARD: Do you want to tackle that  
2 right now?

3                   COMMISSIONER BALCH: That's where we're at.  
4 We can try and figure out if we can tackle it. If we  
5 need to push off the discussion until later, that's  
6 fine, too.

7                   CHAIRWOMAN RILEY: It kind of goes  
8 hand-in-hand with some of this other stuff.

9                   COMMISSIONER BALCH: So maybe make a note  
10 to come back to it.

11                  CHAIRWOMAN RILEY: Let's table it and put  
12 it with the same discussions --

13                  COMMISSIONER MARTIN: Are you concerned  
14 about the word "proposed"?

15                  COMMISSIONER BALCH: Well, it's -- we  
16 probably have to have a discussion.

17                  COMMISSIONER MARTIN: Are you talking about  
18 7H, "Infill horizontal well"?

19                  COMMISSIONER BALCH: There is a  
20 modification proposed that satisfied Marathon that NMOGA  
21 and OCD agreed on.

22                  COMMISSIONER MARTIN: Right.

23                  COMMISSIONER BALCH: But there may need to  
24 be some discussion from Jalapeno's brief later on about  
25 the impact of the infill wells.

1 COMMISSIONER MARTIN: Okay. Okay.

2 COMMISSIONER BALCH: I think the suggestion  
3 was to table it until we've had that discussion.

4 Do you have a note for us to come back  
5 there?

6 MR. BRANCARD: Yeah.

7 COMMISSIONER BALCH: 15(A)(1). We also had  
8 a definition introduced for kickoff point. NMOGA's  
9 proposing to delete the last -- the additional last  
10 clause here.

11 CHAIRWOMAN RILEY: I'm missing that. Where  
12 is that.

13 MR. BRANCARD: It's this (indicating).

14 CHAIRWOMAN RILEY: Sorry. Document two?

15 MR. BRANCARD: Now we're working on four  
16 documents at once.

17 CHAIRWOMAN RILEY: I know.

18 COMMISSIONER BALCH: It came with a  
19 deletion. I think it's unnecessary to add that  
20 language. You can kick off any number of times in a  
21 well, in theory.

22 COMMISSIONER MARTIN: I agree.

23 CHAIRWOMAN RILEY: I'm fine with that.

24 COMMISSIONER BALCH: And that would have a  
25 different well designation, so --

1 COMMISSIONER MARTIN: Right.

2 COMMISSIONER BALCH: -- it is its own well.

3 COMMISSIONER MARTIN: I agree. That's my  
4 point.

5 COMMISSIONER BALCH: We've already talked  
6 about last take point.

7 There are also proposed edits to the term  
8 "lateral," in K.

9 CHAIRWOMAN RILEY: I think that follows the  
10 kickoff point. It's not necessary. I'm okay with  
11 taking that out.

12 MR. BRANCARD: They wanted to replace  
13 "deviated" with "diverted," but now they're going back  
14 to "deviated," which would make it more consistent with  
15 "kickoff."

16 COMMISSIONER BALCH: That brings up a  
17 question because we've separated definitions of  
18 horizontal, deviated and directional. Does that add  
19 confusion if we use the term "deviated," which I think  
20 now is defined as "an unintentional movement away from  
21 the vertical"?

22 COMMISSIONER MARTIN: Okay. "True  
23 horizontal well" defined with -- stands -- 100 lateral.

24 CHAIRWOMAN RILEY: It's is kind of tough to  
25 use that "deviated" term when we've defined -- in the

1 definition above, it's clear that it's not with  
2 intentional azimuth, which creates the horizontal  
3 well -- wait -- or directional. Sorry.

4 COMMISSIONER MARTIN: Directional.

5 COMMISSIONER BALCH: Intentional as --  
6 maybe you can help me, Bill, on the legal language side.  
7 But normally we don't want to use the word of -- in its  
8 definition.

9 MR. BRANCARD: Normally, I would agree, but  
10 the phrase "intentionally deviated" is used in at least  
11 four definitions. It's used in the definition of  
12 "deviated well," "directional well," "kickoff point" and  
13 "lateral." And that's how it's currently used.

14 COMMISSIONER BALCH: In other parts of the  
15 rule.

16 MR. BRANCARD: Yeah. So -- of course,  
17 "vertical well" is defined as "not having an intentional  
18 departure or a course deviation." So "deviation" is  
19 back in.

20 COMMISSIONER BALCH: "Or course deviation."

21 CHAIRWOMAN RILEY: "Deviated well" has the  
22 word "deviated well" on it in the definition. So I  
23 don't know.

24 COMMISSIONER BALCH: You said they were  
25 using "diverted" before that?



1                   MR. BRANCARD: Well, in "lateral," they  
2 switched from "deviated" to "diverted," and then in  
3 their amendments switched back. Never mind.

4                   CHAIRWOMAN RILEY: K. I'm okay with it.  
5 To unravel all that would take more time than we have.

6                   COMMISSIONER MARTIN: I am, too.

7                   COMMISSIONER BALCH: Well, we would have to  
8 change the "deviated" definitions to "diverted" or  
9 "departure from." Not terribly complicated to do that.

10                  CHAIRWOMAN RILEY: Well, have you done a  
11 word search on the rest of the rules?

12                  COMMISSIONER BALCH: There is that.

13                  MR. BRANCARD: The rules don't really make  
14 a lot of changes with deviated and directional wells nor  
15 did we get any testimony about deviated or directional  
16 wells.

17                  COMMISSIONER BALCH: Yeah. Deviated is  
18 certainly an industry-understood term.

19                  MR. BRANCARD: It is? Okay.

20                  CHAIRWOMAN RILEY: Uh-huh.

21                  COMMISSIONER BALCH: All right.

22                  So going back to M. I'm happy striking the  
23 last part of the sentence, as suggested by NMOGA.

24                  COMMISSIONER MARTIN: I am, too.

25                  CHAIRWOMAN RILEY: As am I.

1 MR. BRANCARD: So then "multilateral well"?

2 CHAIRWOMAN RILEY: Yeah.

3 COMMISSIONER MARTIN: I'm okay with that.

4 CHAIRWOMAN RILEY: I'm okay with that.

5 COMMISSIONER BALCH: Yeah, "multilateral  
6 well."

7 MR. BRANCARD: So whatever the  
8 definitions -- so focused on how prior wells were  
9 analyzed with project areas and producing areas, those  
10 concepts are no longer in the new draft.

11 COMMISSIONER BALCH: Replaced with "first  
12 take point."

13 MR. BRANCARD: Right. Change "attain" to  
14 "drill in terminus and end."

15 CHAIRWOMAN RILEY: I think that's a great  
16 change.

17 COMMISSIONER BALCH: In ten years, we're  
18 just going to wave a magic wand and holes are appearing  
19 in the ground, and we'll wish we had never struck the  
20 word "drilling."

21 CHAIRWOMAN RILEY: Well, they can do  
22 another change at that point.

23 COMMISSIONER BALCH: "Tract." Seems like  
24 it should be defined somewhere already.

25 CHAIRWOMAN RILEY: Not in the first

1 definition.

2 COMMISSIONER BALCH: They mainly define  
3 that because they later on use the term "proximal" or  
4 "proximity tract" or "proximal tract."

5 MR. BRANCARD: I think the word "tract"  
6 does appear a number of times.

7 COMMISSIONER BALCH: Did it already have a  
8 legal definition?

9 MR. BRANCARD: I think that's pretty close.  
10 We haven't defined it in our rules.

11 COMMISSIONER BALCH: But somewhere else in  
12 some statute.

13 MR. BRANCARD: And I actually Googled it  
14 while we're doing it. It's the "smallest tract  
15 available generally in a quarter-quarter section," which  
16 is sort of the common understanding of what --

17 COMMISSIONER BALCH: Substantially in the  
18 form of a square or rectangle?

19 MR. BRANCARD: (Laughter.)

20 COMMISSIONER BALCH: It doesn't take too  
21 long to look at the language and figure out why they  
22 have to put the word "substantial" in there.

23 CHAIRWOMAN RILEY: I don't see any issues  
24 with P. Is everybody on P, because that's what I'm on?

25 COMMISSIONER BALCH: I'm on P. I'll go

1 with the State Land Office on this one. I'm okay with  
2 it.

3 COMMISSIONER MARTIN: Talking about P?

4 Yeah.

5 COMMISSIONER BALCH: Is that your  
6 understanding of "unitized area"? Looks like it's not  
7 really changed from before.

8 COMMISSIONER MARTIN: I'm okay.

9 COMMISSIONER BALCH: Nobody asked to change  
10 it.

11 MR. BRANCARD: Section 14, a lot of that --  
12 almost all of that is simply what used to be there. I'm  
13 not really sure what got changed but a few words here  
14 and there.

15 COMMISSIONER BALCH: Well, basically, they  
16 replaced Section A with -- A and B and C with new text  
17 in 15.16.14. The first two pages is deletions -- first  
18 two-and-a-half pages, and then there is a page and a  
19 half of new material at the end.

20 MR. BRANCARD: So A used to be -- it said  
21 "deviated wellbores," but it refers to both vertical and  
22 deviated. So it changed to "vertical and deviated  
23 wellbores."

24 CHAIRWOMAN RILEY: The text in A(1),  
25 "deviation test required" is exactly the same as it used

1 to be. So --

2 MR. BRANCARD: Yeah. Pretty much the same  
3 for B.

4 COMMISSIONER BALCH: It's essentially the  
5 same language, just re-ordered a little bit at the end,  
6 A(1). The main thing is you're removing the -- you're  
7 changing and adding from "deviated wellbores" to  
8 "vertical and deviated wellbores."

9 CHAIRWOMAN RILEY: Uh-huh.

10 MR. BRANCARD: And B used to apply to  
11 directional and horizontal, but now it just applies to  
12 directional.

13 COMMISSIONER BALCH: So looks like mostly  
14 just housekeeping to me, moving parts of the text.

15 MR. BRANCARD: It eliminated, again, the  
16 concepts of project area, producing area in place of  
17 spacing unit.

18 CHAIRWOMAN RILEY: They did take out  
19 "notice to the appropriate division district office on  
20 directional survey requirements" and just said they'll  
21 file the surveys -- that's the only sentence they took  
22 out. "The operator shall notify the appropriate  
23 district office of the approximate time the operator  
24 will conduct the directional survey," which I can see  
25 why they took that out. I don't know why we would need

1 to witness that. Those are certified.

2 COMMISSIONER BALCH: Not much to witness.

3 CHAIRWOMAN RILEY: There isn't. So I'm  
4 okay with that.

5 There's some different language on  
6 "directional drilling."

7 MR. BRANCARD: Well, I think that was  
8 probably because the previous version was trying to get  
9 both directional and horizontal well together. So there  
10 is a lot of language that got deleted as language that  
11 is more unique to horizontal wells, such as project  
12 areas, allowables within projects areas, which we now  
13 deal with. The new language is for horizontal wells.

14 COMMISSIONER BALCH: Yeah. They moved the  
15 "allowables," for example, to the other section.

16 MR. BRANCARD: Yeah.

17 CHAIRWOMAN RILEY: Yeah. I like the  
18 language in 1 and 2, and I'm okay with 3.

19 COMMISSIONER MARTIN: Me, too.

20 COMMISSIONER BALCH: The 50-foot  
21 requirement, at first I thought was pretty stringent,  
22 but it seems like it's a piece of cake.

23 MR. BRANCARD: There actually is a -- NMOGA  
24 caught a typo in (B)3, halfway down on the left side,  
25 first two "of wells." The article should be in there of

1 "a well."

2 CHAIRWOMAN RILEY: I'm also okay with C.

3 COMMISSIONER MARTIN: You're okay with  
4 which one?

5 CHAIRWOMAN RILEY: The last one in that is  
6 C, which is "Directional survey specifications." And  
7 that's where they took out "survey company that the  
8 division approved."

9 COMMISSIONER BALCH: Well, we do have one  
10 more I think we need to deal with in Section A. There  
11 was a new definition -- or a new statement that we  
12 requested be added specifying distinctly that horizontal  
13 spacing units could overlap, and we just need some  
14 language from Marathon, NMOGA and OCD to address that,  
15 15(A)(1).

16 MR. BRANCARD: So you're now on Section 15?

17 COMMISSIONER BALCH: 16. I'm sorry.  
18 19.15.16.

19 MR. BRANCARD: .15.

20 COMMISSIONER BALCH: 15(A)(1).

21 MR. BRANCARD: Well spacing?

22 CHAIRWOMAN RILEY: Won't that be later?

23 COMMISSIONER BALCH: No, no. That's --

24 CHAIRWOMAN RILEY: I don't think we've  
25 gotten to --

1                   COMMISSIONER BALCH: Oh, you're right, well  
2 spacing. The 15s are getting me confused.

3                   MR. BRANCARD: Yeah, there are a few, and  
4 the 16s, too.

5                   COMMISSIONER BALCH: Okay. Never mind  
6 that.

7                   CHAIRWOMAN RILEY: So are we on  
8 19.15.16.15, "Horizontal well," page 8?

9                   MR. BRANCARD: I think so.

10                  COMMISSIONER BALCH: There was a NMOGA  
11 addition. Did we catch that already, for directional  
12 wells, (B)3?

13                  MR. BRANCARD: Yes.

14                  COMMISSIONER BALCH: I guess that should  
15 have an "A," a small typo.

16                  CHAIRWOMAN RILEY: So we're back to four  
17 documents because Jalapeno has some --

18                  MR. BRANCARD: Yes.

19                  COMMISSIONER BALCH: I think we're about to  
20 hit some pretty serious discussion.

21                  CHAIRWOMAN RILEY: Let's take a break.

22                               (Recess, 3:34 p.m. to 3:44 p.m.)

23                  CHAIRWOMAN RILEY: Okay. Where are we?  
24 "Well spacing"?

25                  MR. BRANCARD: Okay. So you have to kind



1 of go to the end of the proposed amendments, and you'll  
2 see that what they're proposing is -- if you go to A(5),  
3 three pages in, sort of the original general section.  
4 A(5), they're proposing to move all the way to the  
5 front, ahead of "Well spacing" and call that "General  
6 Provisions." I think A(5) was also amended by NMOGA.

7 COMMISSIONER MARTIN: "Unleased mineral  
8 interest owner." Yeah, 5(a); 5, little A.

9 MR. BRANCARD: Frankly, I think you could  
10 just say "at least one mineral interest owner," because  
11 I think we have defined mineral interest owner for both  
12 of these. But if I'm going to tinker with what's in  
13 here and what's elsewhere in the rules --

14 COMMISSIONER BALCH: So the caveat there  
15 is, this is just to file the APD. It's not going to be  
16 granted without some kind of general operating agreement  
17 or force pool, right?

18 COMMISSIONER MARTIN: Yeah. Some  
19 consolidation, right.

20 COMMISSIONER BALCH: This is just so they  
21 can open the door?

22 COMMISSIONER MARTIN: Right.

23 MR. BRANCARD: As we look at it in Rule 14,  
24 which is the APD rule, it basically says the same thing.

25 COMMISSIONER BALCH: Basically, it allows

1 for things like notice to be official, have a timer put  
2 on them. Is that the main purpose of that?

3 MR. BRANCARD: It's just how -- to start  
4 the process, this is how far you have to get before you  
5 start the process, basically.

6 COMMISSIONER BALCH: So is the real goal to  
7 kind of streamline or shorten the overall application  
8 process? You can do certain things while you're waiting  
9 for the communitization agreement?

10 MR. BRANCARD: Yeah, or not have to do  
11 things. I mean, the whole idea of a standard horizontal  
12 spacing unit is you don't have to take a whole bunch of  
13 administrative steps like you had to take before, but  
14 you still have to get an APD.

15 COMMISSIONER BALCH: You do. So I think  
16 that addresses one of Jalapeno's concerns with that  
17 section, basically. It's not granting anything until  
18 later. It's just starting the application.

19 CHAIRWOMAN RILEY: And if I understood  
20 right, the well can be drilled, but you can't produce  
21 it?

22 COMMISSIONER MARTIN: That's right.

23 COMMISSIONER BALCH: Which is a lot of risk  
24 to take --

25 CHAIRWOMAN RILEY: It is.

1                   COMMISSIONER BALCH:  -- in one of these,  
2     potentially.

3                   CHAIRWOMAN RILEY:  Uh-huh.  I wouldn't  
4     recommend it.

5                   MR. BRANCARD:  So the idea is that this (5)  
6     moves to the beginning, kind of as an introductory.

7                   CHAIRWOMAN RILEY:  To the beginning of  
8     "Well spacing"?

9                   MR. BRANCARD:  Actually, I think they're  
10    proposing to make it new "A.  General Provisions," and  
11    everything gets relettered.  So it's before "well  
12    spacing."

13                  COMMISSIONER BALCH:  "A.  General  
14    Provisions."

15                  CHAIRWOMAN RILEY:  I'm good with 5(a) and  
16    (b).

17                  MR. BRANCARD:  And then they're also  
18    proposing, under "Well spacing, (1), to add two new  
19    sentences to that that are designed I think (A) to sort  
20    of say you're either a standard horizontal spacing unit,  
21    and if not, you're a nonstandard.  That's all there is.  
22    And then maybe to make it clear that horizontal spacing  
23    units can overlap.

24                  CHAIRWOMAN RILEY:  That did happen or --

25                  MR. BRANCARD:  Yes.

1                   COMMISSIONER BALCH: We have to propose  
2 language.

3                   CHAIRWOMAN RILEY: Where?

4                   MR. BRANCARD: Right here (indicating).

5                   CHAIRWOMAN RILEY: Okay. I like it.

6                   COMMISSIONER BALCH: So we do have both  
7 changes from Jalapeno for 15(A)(1), particularly (b),  
8 (d), 5, which was just moved, 6, 11, 11(c), 12,  
9 substantial proposed changes to this entire section.

10                  Do we want to address these as we go  
11 through them or try and address OCD and NMOGA changes  
12 and then contrast them with Jalapeno, or do we want to  
13 address Jalapeno first and then decide how to go forward  
14 on that?

15                  COMMISSIONER MARTIN: The former  
16 suggestion. I choose OCD and NMOGA, iron that out, and  
17 then bring in Jalapeno.

18                  COMMISSIONER BALCH: So make sure we're  
19 on -- all of the other parties, the proponents, are on  
20 one page, and then we will cross-check it with the  
21 opponent?

22                  COMMISSIONER MARTIN: Right.

23                  CHAIRWOMAN RILEY: Sounds reasonable.

24                  MR. BRANCARD: Okay. So we have additional  
25 language to (A)(1), which is now going to be B(1). I'll

1 try to stay with the original language, knowing that  
2 we're going to have to renumber these at a later point.  
3 That's not really your-all's job, to renumber.

4 COMMISSIONER BALCH: It will be easier to  
5 cross-reference Jalapeno that way.

6 COMMISSIONER MARTIN: Right.

7 MR. BRANCARD: Now, there are two  
8 additional sentences, then, to (A)(1), that opening  
9 paragraph. Now, I guess -- it seems a little awkward  
10 the way they've added it to that paragraph because that  
11 paragraph is just for horizontal oil wells, and the two  
12 sentences they're adding, I think, would apply to all  
13 horizontal spacing units. So maybe that would be better  
14 to go into this General Provisions section they've  
15 created above that.

16 CHAIRWOMAN RILEY: That makes sense.

17 COMMISSIONER BALCH: I'd almost even pull  
18 out the very last end of that where you see "horizontal  
19 spacing units can overlap other horizontal spacing units  
20 and vertical spacing units" into its own bullet.

21 MR. BRANCARD: Sure. Yeah. Leave  
22 separate --

23 COMMISSIONER BALCH: The language was  
24 agreed on by the proponent, so I think having it on  
25 this, which is somewhat unrelated, might not be the best

1 place to add that language. So that sentence would  
2 begin: "Subject to Paragraph 11 and Subsection  
3 19.15.16.15 NMAC, horizontal spacing units can overlap  
4 other horizontal spacing units," so on.

5 MR. BRANCARD: So make each of those  
6 sentences a subparagraph?

7 COMMISSIONER BALCH: I think so.

8 MR. BRANCARD: That makes sense.

9 COMMISSIONER BALCH: Of the new General  
10 Provisions.

11 MR. BRANCARD: I hate to bring up my ideas,  
12 but the one thing I suggested, which they didn't take  
13 up, was just -- there is nothing in here about the fact  
14 that a standard horizontal spacing unit does not require  
15 the approval of the Division or where you provide the  
16 information that you have met the criteria of the  
17 standard horizontal spacing unit, which I would assume  
18 would be in your C-102 because that's where you  
19 designate your area.

20 COMMISSIONER BALCH: That's where the plan  
21 is that determines if you're standard or nonstandard.

22 COMMISSIONER MARTIN: Right.

23 MR. BRANCARD: Right. So while -- and I  
24 think the assumption, which I think we got out in the  
25 testimony, is that this is not something that the

1 Division has to approve. So it's self-enacting, but  
2 still you've got to document it somewhere.

3 COMMISSIONER BALCH: Well, we have a  
4 General Provisions category now, so you can easily add  
5 another bullet to that, being specific about it.

6 CHAIRWOMAN RILEY: I think they tried to  
7 capture that in that first sentence, "a horizontal  
8 spacing unit that does not meet the standard horizontal  
9 spacing unit shall be considered a nonstandard  
10 horizontal spacing unit and must be approved pursuant to  
11 the process described in" blah-blah-blah.

12 COMMISSIONER MARTIN: Right.

13 CHAIRWOMAN RILEY: I think they just went  
14 about it the other way. Instead of stating specifically  
15 that a standard one doesn't have to be approved, it's  
16 nonstandard has to be approved.

17 MR. BRANCARD: Do you want to see  
18 additional language of what they have, or what's your  
19 preference?

20 CHAIRWOMAN RILEY: I'm okay with how they  
21 wrote it.

22 COMMISSIONER MARTIN: I am, too.

23 COMMISSIONER BALCH: I'm inclined to add  
24 something additional primarily because every  
25 Commission -- not every -- well, every Commission is

1 different, but also every so many years, the Division  
2 changes as well. So I'd rather not leave it to the  
3 whims of a form which can be changed administratively,  
4 when it should be perhaps included in the rule, which  
5 gives the intent on how this Commission decides it, not  
6 to be dealt with, which I think is what you said, right,  
7 Bill?

8 MR. BRANCARD: Yeah. My only thought is  
9 to -- where we have that sentence that begins "a spacing  
10 unit," that does not -- before that, say: "An operator  
11 shall indicate on a Form C-102 if a horizontal spacing  
12 unit meets the criteria for a standard horizontal  
13 spacing unit," and cite to where the criteria is.

14 COMMISSIONER MARTIN: I don't know. I kind  
15 of like the Division making the determination, but I'm  
16 not opposed to it.

17 MR. BRANCARD: Well, I think their whole  
18 proposal is they're not waiting for an approval from the  
19 Division. But I would think that the Division needs to  
20 see it in order to be able to say, "Whoa, that doesn't  
21 meet it; go back to square one.

22 COMMISSIONER BALCH: Maybe we can put  
23 something like that in for now, and we can look at in  
24 the next version of the document --

25 COMMISSIONER MARTIN: Sure.



1                   COMMISSIONER BALCH:  -- and decide if it's  
2   necessary or not.

3                   MR. BRANCARD:  Okay.  I think that's it on  
4   (A)(1), or is this more on (A)(1), other than Jalapeno's  
5   comment?

6                   CHAIRWOMAN RILEY:  I don't want to  
7   complicate things.  The only other thing we need to talk  
8   about is on D, whether stranded acreage really even  
9   needed to be addressed, but I don't know where that  
10  landed.  And short of them -- our group presenting  
11  something, I don't know if we're prepared to do anything  
12  like that.

13                  COMMISSIONER BALCH:  I'm not sure I'm  
14  prepared to do something about it.  I actually have in  
15  my notes deleted that Section D because I don't think  
16  there is substantially any difference between one,  
17  quote, unquote "stranded quarter-quarter" and two or  
18  three or four or ten.  I mean, basically these things go  
19  off in all directions and then also up and down in  
20  pools, too.  So I think Mr. Brooks was the one who made  
21  the comment that you can't really tell something is  
22  stranded until the last well is drilled.

23                  CHAIRWOMAN RILEY:  And with overlapping  
24  spacing units, is it going to be stranded?

25                  COMMISSIONER BALCH:  Exactly right.  You're

1 never going to be truly stranded because you can overlap  
2 spacing units. So I think it's -- I think it's  
3 unnecessary.

4 COMMISSIONER MARTIN: I agree.

5 COMMISSIONER BALCH: Possibly even  
6 complicate it.

7 CHAIRWOMAN RILEY: Yeah.

8 COMMISSIONER BALCH: And somewhat  
9 arbitrary.

10 COMMISSIONER MARTIN: I agree. I'm of  
11 the -- no such thing as stranded acreage.

12 COMMISSIONER BALCH: You know the exhibit  
13 from the San Juan Basin where they showed the  
14 development plan, it really highlighted the way that  
15 it's going to be difficult to strand acreage. You can  
16 fit these things at any angle, given a large enough  
17 communitized or unitized area to cover everything you  
18 want. And I think that this also addresses the point  
19 that was brought up by Jalapeno and was: Well, if you  
20 bring in that, quote, unquote, "stranded quarter  
21 section," then you're obligated to drill it,  
22 potentially. I mean, that's one interpretation. And it  
23 may not be the best way to develop that quarter-quarter.  
24 It may be better to develop it in a different horizon  
25 within the formation or to have a lateral going off in a

1 different direction than what the other development is,  
2 into some other set of contiguous tracts.

3 CHAIRWOMAN RILEY: And to argue the other  
4 point, how would you, in the northwest, determine what  
5 is stranded acreage because they're doing theirs  
6 completely different?

7 COMMISSIONER BALCH: With the overlap of  
8 horizontal spacing units, it becomes much more  
9 challenging to define stranded tract.

10 COMMISSIONER MARTIN: Right.

11 CHAIRWOMAN RILEY: I think we take it out.  
12 What do you think?

13 MR. BRANCARD: You know, I think -- I think  
14 we're going to, after we implement this rule, find out a  
15 lot of how it works or doesn't work. I mean, I guess my  
16 only fear is whether stranding becomes something -- I  
17 mean, the northwest is different because you have large  
18 blocks of contiguous ownership. Then you get into the  
19 southeast where you have a lot of small blocks of  
20 ownership. And if you have an operator or lessee who is  
21 not very cooperative, stranding could become something  
22 intentional.

23 COMMISSIONER BALCH: So I think the idea  
24 that you're stranding a quarter-quarter really ties us  
25 back to the way we've done development in New Mexico for

1 horizontal wells. You have the land grid system. You  
2 space everything out that way. But I like to think that  
3 the geology doesn't really care about our artificially  
4 imposed land grid system, and I think that anything  
5 that's going to be "stranded," quote, unquote, would be  
6 stuff that probably is not going to be produced anyway.

7 COMMISSIONER MARTIN: Or produced using new  
8 technology.

9 COMMISSIONER BALCH: Or it's waiting for  
10 something else.

11 COMMISSIONER MARTIN: Yes.

12 COMMISSIONER BALCH: And the fact that you  
13 can overlap units and have infill units within a  
14 horizontal spacing unit. I think the implications for  
15 stranding areas becomes smaller and smaller, especially  
16 when you look at it in not just the horizontal sense but  
17 also the vertical sense. Let the geology determine  
18 where the production is and what the orientation of the  
19 wells are.

20 COMMISSIONER MARTIN: I think it would take  
21 longer to drill.

22 MR. BRANCARD: So at this point, the  
23 consensus is to not adopt Subsection Paragraph D?

24 CHAIRWOMAN RILEY: Correct.

25 COMMISSIONER BALCH: I thought the same.

1     Bring it in anyway because it's adjacent, if it has  
2     potential.

3                     MR. BRANCARD:   Okay.   You want to move on  
4     from 2, or do you want to address Jalapeno's concerns?

5                     COMMISSIONER MARTIN:   I say move on.

6                     COMMISSIONER BALCH:   I think we were going  
7     to try and incorporate OCD and NMOGA and Marathon and  
8     then come back and address Jalapeno's in that  
9     incorporated version, because right now we're trying to  
10    juggle changes to what has been proposed, and that is  
11    what was addressed by Jalapeno's motions.   So some of  
12    those may become irrelevant or even more important.

13                    MR. BRANCARD:   Okay.   So then A(2), propose  
14    larger spacing.

15                    CHAIRWOMAN RILEY:   I don't remember  
16    testimony on this.

17                    COMMISSIONER BALCH:   I think those were  
18    examples where they had 80-acre tracts being combined  
19    even though they were trying to make a horizontal on the  
20    bottom of the two 80-acre tracts.   It was addressed.   I  
21    just think there wasn't any real disagreement on it.   I  
22    thought the examples were pretty clear as to what the  
23    intent was.

24                    CHAIRWOMAN RILEY:   Okay.

25                    MR. BRANCARD:   Yeah.   This was a result of

1 special pool orders, I think, and required larger  
2 spacing. And the first example was NMOGA 82 -- NMOGA  
3 Exhibit A82. I actually had A57.

4 COMMISSIONER BALCH: 57?

5 57.

6 CHAIRWOMAN RILEY: I'm good with that one.

7 COMMISSIONER MARTIN: I'm okay.

8 MR. BRANCARD: So A(3). Now we're back to  
9 gas wells. Gas wells are the same as oil wells except  
10 they don't have the "stranded" paragraph.

11 COMMISSIONER BALCH: That's because both  
12 generally -- larger tracts -- same logic would apply  
13 here, ask for it to be removed.

14 CHAIRWOMAN RILEY: I'm good with (3) and  
15 all of its subsections.

16 COMMISSIONER MARTIN: (3)(c), take out the  
17 "of." I think it's unnecessary. Take out "of the."

18 COMMISSIONER BALCH: "Of the horizontal,"  
19 as identified by NMOGA.

20 MR. BRANCARD: (4) is largely equivalent to  
21 (2).

22 CHAIRWOMAN RILEY: I'm good.

23 COMMISSIONER BALCH: I'm good with that.

24 COMMISSIONER MARTIN: I'm good.

25 MR. BRANCARD: (5), we have moved.

1                   COMMISSIONER BALCH: I think everybody had  
2 a good consensus of changing, in (6)(a), the paragraphs  
3 from two to five to three to five.

4                   COMMISSIONER MARTIN: Yes.

5                   CHAIRWOMAN RILEY: I'm good with notice in  
6 B.

7                   COMMISSIONER MARTIN: Me, too.

8                   COMMISSIONER BALCH: Yeah.

9                   MR. BRANCARD: Okay with (6)?

10                  CHAIRWOMAN RILEY: Yes.

11                  COMMISSIONER MARTIN: (6)? Yeah.

12                  MR. BRANCARD: Okay. (7).

13                  CHAIRWOMAN RILEY: I have a note that we  
14 want to know about who to notice.

15                  COMMISSIONER MARTIN: Ones that had tribal  
16 authority, in addition to the State Land Office and BLM.

17                  COMMISSIONER BALCH: Where to, yeah.

18                  COMMISSIONER MARTIN: Applicable tribal --

19                  COMMISSIONER BALCH: So you're thinking,  
20 instead of the State Land Office or BLM or tribal  
21 authority, "as applicable"?

22                  COMMISSIONER MARTIN: (Indicating.)

23                  COMMISSIONER BALCH: "State Land Office,  
24 the BLM or tribal authority as applicable"?

25                  CHAIRWOMAN RILEY: Let's think about this.

1                   BLM really has jurisdiction over the  
2   tribal --

3                   COMMISSIONER MARTIN:   It always BLM, or is  
4   it sometimes the BIA?

5                   CHAIRWOMAN RILEY:   BIA deals with the  
6   surface stuff but not with the downhole portion of it.

7                   MR. BRANCARD:   In the definition of  
8   "affected persons" that we approved back in the general  
9   definition, it says, "If the mineral estate in the  
10   spacing unit or identified tract or any part thereof is  
11   tribal land, the BLM, the United States department of  
12   the interior, bureau of Indian Affairs and the relevant  
13   tribe shall be noticed."

14                  COMMISSIONER MARTIN:   So you want to  
15   substitute "affected persons" in its place?

16                  MR. BRANCARD:   We could reference back to  
17   these.

18                  CHAIRWOMAN RILEY:   Yeah.   That might make  
19   it --

20                  MR. BRANCARD:   Because the subsection  
21   before that tells you if it's federal or state land, who  
22   you notify.

23                  COMMISSIONER MARTIN:   Right.

24                  CHAIRWOMAN RILEY:   Right.

25                  MR. BRANCARD:   Okay.   I can do that.   Do



1     you want me to read it aloud?

2                   COMMISSIONER BALCH:  We can look at it when  
3     you give us a fresh version.

4                   MR. BRANCARD:  Okay.

5                   CHAIRWOMAN RILEY:  I'm good with (8).

6                   COMMISSIONER BALCH:  So it was actually  
7     moved -- well, reworded and proposed to be moved --

8                   COMMISSIONER MARTIN:  Up.

9                   COMMISSIONER BALCH:  -- by NMOGA, OCD,  
10    Marathon.  I thought it wasn't that clear to begin with,  
11    actually.

12                  MR. BRANCARD:  No.

13                  COMMISSIONER BALCH:  So I'm reading the new  
14    version, which I think is a lot better.  They have moved  
15    it to the new general category, which I think is  
16    probably not a bad place for it to be.

17                  MR. BRANCARD:  Well, the question I asked  
18    and I thought I got a response to it was that everybody  
19    needs a horizontal.  You always need a horizontal,  
20    right?  It's not like you don't need it.  You just don't  
21    need to re-apply for the horizontal spacing unit.

22                  COMMISSIONER BALCH:  Well, I think what  
23    we're saying is if you're going to make a horizontal  
24    spacing unit, it's going to have one well associated  
25    with it for sure.  And the only real exception is -- so

1   it's either going to be a standard or nonstandard  
2   horizontal spacing unit associated with that well. And  
3   then the only exceptions to that would be -- and I would  
4   note here that it's not an exception -- the concept of  
5   the infill or multilaterals what would share your  
6   spacing unit with your well, although technically have  
7   that same horizontal spacing unit for each well, I  
8   suppose.

9                   MR. BRANCARD: Yeah. Every well has to be  
10   dedicated to acreage.

11                  COMMISSIONER BALCH: So it would be  
12   dedicated to that same acreage.

13                  MR. BRANCARD: Right.

14                  COMMISSIONER BALCH: A really good example  
15   is NMOGA's example where you have one well, but you can  
16   easily put several more in there. In fact, you would  
17   probably put at least one more. That well would have  
18   the exact same spacing unit as the original well. It  
19   would have its own, but it would be exactly the same as  
20   another horizontal spacing unit.

21                  MR. BRANCARD: Well, that gets us back on  
22   the topic of infill horizontal wells.

23                  COMMISSIONER MARTIN: It doesn't say that,  
24   but it implies that. And I understand infill wells.  
25   I'm not sure I understand multilaterals.

1                   COMMISSIONER BALCH: I think it's because  
2 of the way -- I think it depends on how you define the  
3 pool or the vertical depth of your original horizontal  
4 spacing unit, because it's either -- if it's the entire  
5 Wolfcamp, then you're allowed -- multilaterals would all  
6 fall within that exact, same horizontal spacing unit.  
7 But if you have a Wolfcamp A, B and C and your  
8 horizontal spacing unit is for B and the multilateral is  
9 targeting something in C, then that would have to have a  
10 different horizontal spacing unit than the first one.

11                   COMMISSIONER MARTIN: Oh, okay.

12                   COMMISSIONER BALCH: But they would  
13 overlap.

14                   CHAIRWOMAN RILEY: It would? I thought  
15 that they were treating all --

16                   COMMISSIONER BALCH: Within the same pool  
17 or formation. Whatever is defined in that first  
18 horizontal spacing unit.

19                   MR. BRANCARD: I didn't bring this up, but  
20 it was confusing because it says -- the exception says  
21 "except for infill horizontal wells and multilateral  
22 horizontal wells." There is no exception for a  
23 multilateral horizontal well. There is an exception for  
24 a second lateral. It's not the well. It's the lateral.

25                   COMMISSIONER MARTIN: Yeah. I see what

1     you're saying, but I think each wellbore can be  
2     considered a well.

3                   COMMISSIONER BALCH:  Each lateral is going  
4     to be its own well, I think.  It's going to have its own  
5     designation in the data index, its own listing.  So I  
6     think it really comes down to how the original  
7     horizontal spacing unit was defined.  If it's included  
8     areally but not vertically, then you would have to have  
9     a different -- different dimensions on that horizontal  
10    spacing unit.  But a unit that was completely within the  
11    original horizontal and vertical extension of the first  
12    well's horizontal spacing unit, it would still have its  
13    own spacing unit.  It would just be identical, if every  
14    well has to have its own spacing unit according to the  
15    rule.

16                  COMMISSIONER MARTIN:  So the four laterals,  
17    one north and south and east and west, they're all going  
18    to end up with the spacing unit, in the same formation?

19                  CHAIRWOMAN RILEY:  Uh-uh.

20                  MR. BRANCARD:  No.  That would be four  
21    spacing units.

22                  COMMISSIONER MARTIN:  Four spacing units?

23                  MR. BRANCARD:  Yeah.  It's what they were  
24    referring to in the testimony as stacking, right?

25                  COMMISSIONER BALCH:  (Indicating.)

1                   MR. BRANCARD: So when you are putting two  
2   laterals stacked inside the same pool, same formation,  
3   same vertical -- same horizontal area.

4                   CHAIRWOMAN RILEY: They could be stacked.  
5   They could be, in this case, side by side.

6                   MR. BRANCARD: Right.

7                   COMMISSIONER BALCH: Which is what they're  
8   calling an infill.

9                   MR. BRANCARD: That's an infill. Yeah.

10                  COMMISSIONER BALCH: But I think when you  
11   think of multilateral, it could be one of two things.  
12   It could be a -- well, it could be a lot of things. But  
13   it could be, essentially, that same thing in a vertical  
14   dimension, where you're basically lining up wells next  
15   to each other, or it could be headed off into a  
16   completely set of tracts from the same pad.

17                  MR. BRANCARD: I think (9) -- I think (9)  
18   makes it quite clear what you need separate -- a  
19   separate horizontal spacing unit for.

20                  COMMISSIONER BALCH: I guess that's more or  
21   less what I just said.

22                  MR. BRANCARD: No, no. That's exactly what  
23   you said.

24                  COMMISSIONER BALCH: Yeah. I wish I would  
25   have read that instead of trying to come up with all

1     that language myself.

2                   MR. BRANCARD:   But I think (9)(a), I think,  
3     covers what we're talking about.  It doesn't say you  
4     don't need a horizontal spacing unit.  You simply can be  
5     dedicated to the same one.

6                   COMMISSIONER BALCH:  You can be.

7                   COMMISSIONER MARTIN:  Right.

8                   MR. BRANCARD:  Just like an infill can be  
9     dedicated to the same.

10                  COMMISSIONER BALCH:  It depends on how you  
11     define that vertical extent in your -- in your first  
12     application.  So if you cover the entire Wolfcamp and  
13     that's approved, then you can do anything in 1,500 feet,  
14     I guess.

15                  CHAIRWOMAN RILEY:  How do we fix it?

16                  COMMISSIONER BALCH:  I think their  
17     suggestion to -- well, they reworded it.  It's now in 8,  
18     for the additional recommended changes.  They reworded  
19     it a little bit, and then they moved it to the top, that  
20     general category that was created.  And I think that's  
21     not a bad place for it.

22                  COMMISSIONER MARTIN:  I'm okay with that.

23                  COMMISSIONER BALCH:  But the way it was --

24                  CHAIRWOMAN RILEY:  Does it change the  
25     problem?  I mean, they just swapped the sentence

1 structure, but it says the same thing.

2 COMMISSIONER BALCH: So right now every  
3 well in New Mexico has to have a spacing unit, right?

4 CHAIRWOMAN RILEY: Uh-huh.

5 COMMISSIONER BALCH: So I don't think you  
6 can get around that, or maybe we can. I don't know.  
7 Seems to me the easiest thing is to just share the  
8 same dimensions of a horizontal spacing unit that the  
9 other well has that it's a, quote, unquote, "infill,"  
10 too or a multilateral, too, if it fits within those  
11 dimensions.

12 COMMISSIONER MARTIN: So do we want to say  
13 that specifically?

14 COMMISSIONER BALCH: Maybe you don't want  
15 to say it at all.

16 CHAIRWOMAN RILEY: Do you really need the  
17 first part of it? Because doesn't that go without  
18 saying, that each horizontal well shall be dedicated to  
19 a horizontal unit or approved --

20 MR. BRANCARD: You know my theory.  
21 Anything that goes without saying must be said.

22 (Laughter.)

23 COMMISSIONER BALCH: I mean, you could say  
24 something like "each horizontal well shall be dedicated  
25 to a standard or nonstandard horizontal spacing unit."

1                   MR. BRANCARD: I mean, you could -- you  
2     could add the phrase that it's at the end of (9)(a),  
3     right? "Except for any multilateral," blah-blah-blah,  
4     "which may be dedicated to the same horizontal spacing  
5     unit."

6                   COMMISSIONER MARTIN: That's what I'm  
7     thinking.

8                   COMMISSIONER BALCH: Yeah. So combine  
9     (9)(a) -- part of (9)(a). Move it up to the general  
10    category and call it good?

11                  CHAIRWOMAN RILEY: Is it "may"?

12                  COMMISSIONER BALCH: Well, it could also be  
13    assigned its own horizontal spacing unit. That would be  
14    different.

15                  CHAIRWOMAN RILEY: But then it's not an  
16    infill. Then it's its own, right? Isn't that what we  
17    decided? They have the choice of doing infill or  
18    creating a separate spacing unit.

19                  COMMISSIONER BALCH: I think that -- that  
20    the idea -- I think this is mostly promulgated by  
21    Marathon, it sounds like, who wants to do multiwell  
22    development at the same time. And they want to do just  
23    one application, set up the entire space and then not  
24    have to go through noticing for each lateral.

25                  COMMISSIONER MARTIN: Which makes sense to



1 me.

2 CHAIRWOMAN RILEY: Uh-huh.

3 COMMISSIONER BALCH: Yeah. Speeds up the  
4 process, makes it more efficient.

5 CHAIRWOMAN RILEY: I guess my point is,  
6 "except for infill horizontal wells and multilateral  
7 horizontal wells" -- you need to clarify are they going  
8 the same direction" -- "will be" -- I think it's a  
9 "will be," not a "may," be dedicated to the unit they're  
10 in.

11 COMMISSIONER BALCH: "Will be assigned."  
12 That makes sense.

13 CHAIRWOMAN RILEY: Did you get all that,  
14 Bill?

15 MR. BRANCARD: Okay.

16 COMMISSIONER BALCH: I think you're right.  
17 It has to be -- they all have to have one. It can be  
18 the same one as another one that is associated as an  
19 infill or multilateral. Also, it almost goes without  
20 saying because we've already said that these units can  
21 overlap each other.

22 COMMISSIONER MARTIN: Yeah.

23 COMMISSIONER BALCH: So here you're just  
24 saying they can overlap each other 100 percent.

25 COMMISSIONER MARTIN: Right.

1                   MR. BRANCARD: "Which will be dedicated to  
2   the existing horizontal spacing unit in which the well  
3   is located"?

4                   COMMISSIONER BALCH: Makes sense.

5                   CHAIRWOMAN RILEY: Uh-huh.

6                   COMMISSIONER BALCH: We can look at it  
7   again once we have a fresh draft.

8                   CHAIRWOMAN RILEY: Fresh eyes.

9                   COMMISSIONER BALCH: And fresh eyes.  
10                  So does that eliminate (9)(a), since we've  
11   melded it with (8)?

12                  MR. BRANCARD: Well, we have to make clear  
13   which laterals get dedicated.

14                  COMMISSIONER BALCH: Has to be infills or  
15   multilateral well completions.

16                  CHAIRWOMAN RILEY: There is another  
17   distinction in this one about the longer lateral. I  
18   don't think we can get rid of it.

19                  COMMISSIONER BALCH: I'm not sure if we  
20   want to change that to "will be" from "may be" because  
21   you're forcing them, then, to combine it into the same  
22   horizontal spacing unit. Whereas, it should be an  
23   operational decision and they may, for some reason, want  
24   to put it into its own horizontal spacing unit.

25                  COMMISSIONER MARTIN: I agree.

1                   CHAIRWOMAN RILEY: But then it's not an  
2   infill. That's was my point on that. You're in the  
3   same spacing unit, right?

4                   COMMISSIONER BALCH: For infill, you're  
5   right, but for multilaterals, it's not.

6                   CHAIRWOMAN RILEY: Yeah. Maybe we're  
7   trying to put too much in one sentence. I know the  
8   group is very smart individuals who have already worked  
9   this sentence over.

10                  COMMISSIONER MARTIN: I think it's okay.

11                  CHAIRWOMAN RILEY: Like it is?

12                  COMMISSIONER MARTIN: Yeah, I think so.

13                  CHAIRWOMAN RILEY: And just leaving it?

14                  MR. BRANCARD: What are we leaving?

15                  COMMISSIONER BALCH: (9)(a).

16                  MR. BRANCARD: (9)(a) as modified by NMOGA?

17                  CHAIRWOMAN RILEY: (9)(a) or (8)? I'm  
18   worried about (8).

19                  COMMISSIONER BALCH: Well, they're already  
20   suggesting to reword and move (8).

21                  CHAIRWOMAN RILEY: Yeah, but that's the one  
22   we were adding to. I'm thinking maybe we don't --

23                  COMMISSIONER MARTIN: I agree. That's what  
24   I was saying.

25                  MR. BRANCARD: Leave (8) the way it is?

1 CHAIRWOMAN RILEY: In this.

2 COMMISSIONER BALCH: And move to the new  
3 general category.

4 COMMISSIONER MARTIN: Right.

5 CHAIRWOMAN RILEY: Uh-huh.

6 COMMISSIONER BALCH: We can revisit this  
7 when we look at the fresh version, make sure it has the  
8 right form to it.

9 MR. BRANCARD: Okay. So A(8) is the way  
10 it's written in this proposal from the parties?

11 COMMISSIONER MARTIN: Right.

12 COMMISSIONER BALCH: And I think, with  
13 multilateral horizontal wells, we leave it the way it  
14 is.

15 CHAIRWOMAN RILEY: So the suggestion, Bill,  
16 was to change "longer" to "longest." I don't know if  
17 that made it in.

18 COMMISSIONER BALCH: Which section is that?

19 CHAIRWOMAN RILEY: You still feel that will  
20 way, (9)(a)?

21 MR. BRANCARD: Yeah.

22 CHAIRWOMAN RILEY: The yellow.

23 MR. BRANCARD: NMOGA's changes to (9)(a).

24 COMMISSIONER BALCH: Oh, NMOGA. I was  
25 looking for the word "longest." I couldn't find it.

1 "Longer."

2 MR. BRANCARD: The top document.

3 COMMISSIONER BALCH: I don't think it's  
4 necessary, but it's a clarification nonetheless. I  
5 don't think you're going to imagine a scenario where you  
6 can fit the shorter one -- the longer one into the  
7 shorter horizontal spacing unit, unless you're looking  
8 at measured depth.

9 COMMISSIONER MARTIN: "Longest" is fine.  
10 It sounds fine when you -- but I understand what you're  
11 saying.

12 CHAIRWOMAN RILEY: You're saying "longer"  
13 is fine or "longest"?

14 COMMISSIONER BALCH: "Longest." "Longer"  
15 is great if you only have two, but if you have more than  
16 two, you need "longest."

17 COMMISSIONER MARTIN: That was Bill's --

18 CHAIRWOMAN RILEY: I'm good with (b).

19 COMMISSIONER MARTIN: Which one are you on?

20 MR. BRANCARD: (9)(b).

21 COMMISSIONER BALCH: (9)(b).

22 COMMISSIONER MARTIN: Oh, yeah. Okay. I  
23 am, too.

24 COMMISSIONER BALCH: Yup. And (c) as well.

25 COMMISSIONER MARTIN: I agree.

1                   MR. BRANCARD: Well, did you want to --  
2     since you're talking about infill horizontal wells, did  
3     you want to get back to that definition change?

4                   COMMISSIONER BALCH: Well, (9) -- I think  
5     (9) is with regard to multilaterals, which are somewhat  
6     different than infill.

7                   MR. BRANCARD: We were talking about the  
8     paragraph before, so we've kind of delayed talking about  
9     the definition of "infill horizontal," the changes  
10    thereto.

11                  COMMISSIONER BALCH: Have we addressed all  
12    the additional recommended changes regarding infills?  
13    Did we talk about that? Looks like we have.

14                  CHAIRWOMAN RILEY: We could do what we're  
15    doing, combine our three documents before we go to  
16    Jalapeno. Is that okay, Bill?

17                  COMMISSIONER BALCH: The concept of infill  
18    is going to probably take a lot of discussion. It might  
19    be better to catch what we can today, get a fresh  
20    document for the morning, and then we can --

21                  COMMISSIONER MARTIN: I think that would be  
22    easier for me, instead of trying to incorporate  
23    Jalapeno's changes, and get a clean document that  
24    includes --

25                  COMMISSIONER BALCH: Right.

1                   CHAIRWOMAN RILEY: Do you want to talk  
2 about it tomorrow?

3                   COMMISSIONER BALCH: A lot of Jalapeno's  
4 argument was about infills. So if we don't need to  
5 change the OCD-NMOGA-Marathon language yet, then we  
6 probably should not until after we address these, if we  
7 don't need to, because of the additional changes being  
8 suggested or made or if any of us have comments in our  
9 own notes to change it.

10                  CHAIRWOMAN RILEY: Marathon wants to change  
11 it, right?

12                  COMMISSIONER BALCH: But that's addressed  
13 in these additional recommended changes, so we  
14 haven't -- actually, it's the very first thing on the  
15 list of additional recommended changes. And that was a  
16 definition, basically.

17                  MR. BRANCARD: So are we good with (9)?

18                  CHAIRWOMAN RILEY: Uh-huh.

19                  MR. BRANCARD: (10), "Unitized areas."  
20 There were several NMOGA changes there, I think one of  
21 which OCD did not agree with, I think.

22                  MR. BROOKS: (10)(b).

23                  COMMISSIONER BALCH: Did you hear  
24 something?

25                         (Laughter.)

1                   MR. BROOKS: I know I'm not supposed to  
2 talk, but you were saying that we didn't agree -- we  
3 didn't agree with what was on (10)(b).

4                   MR. BRANCARD: So we had the NMOGA changes  
5 to (10)(a).

6                   COMMISSIONER BALCH: Changes to (10)(a) as  
7 well. I think that's just a really long way of saying  
8 that you remove some of the restrictions inside the  
9 larger unitized area.

10                  CHAIRWOMAN RILEY: I'm good with that.

11                  COMMISSIONER BALCH: And I think I'm okay  
12 with the language in (10)(a) as proposed by NMOGA. So  
13 NMOGA wants to strike (10)(b), and OCD did not agree  
14 with that. And I have no basis or understanding for the  
15 interaction of federal and state lands. Do you have any  
16 insight there?

17                  CHAIRWOMAN RILEY: Well, if you have two  
18 different federal leases, they are typically -- yeah.  
19 That is kind of a BLM thing, but typically considered  
20 two different owners, treated as two different --

21                  COMMISSIONER BALCH: Well, it can't be an  
22 uncommon thing to combine private, state and federal  
23 leases into a single horizontal well, especially  
24 checkerboard, right?

25                  CHAIRWOMAN RILEY: Yeah. That's not



1 uncommon. What they're saying is, if I'm reading it  
 2 right, if it's outside of a federal unit, two federal  
 3 leases side by side, that they would be considered --  
 4 that's not considered uniform ownership because --  
 5 that's what the paragraph before it stricken says. It's  
 6 two different BLM leases, so it's not uniform even  
 7 though it's both BLM. And if I understood the  
 8 testimony, it was to take it out because it's really up  
 9 to the Feds to figure that out. But I think --

10 COMMISSIONER MARTIN: Or the Forestry.

11 CHAIRWOMAN RILEY: Well, it's -- why would  
 12 the State? If the --

13 COMMISSIONER MARTIN: Communitized state  
 14 acreage or state, federal acreage or two state tracts  
 15 under an organizational [sic] agreement, not quite  
 16 communitization agreement but similar.

17 CHAIRWOMAN RILEY: I'm not reading it like  
 18 that. I'm reading it as they're only looking at two  
 19 federal leases sitting side by side but not included in  
 20 the PA or federal unit. They're just referencing two  
 21 federal leases.

22 COMMISSIONER MARTIN: I guess it does  
 23 justify --

24 COMMISSIONER BALCH: Two or more.

25 COMMISSIONER MARTIN: Or two to more.

1                   CHAIRWOMAN RILEY: It can't be considered  
2 uniform ownership even though both --

3                   COMMISSIONER BALCH: If it's not part of  
4 the federal already.

5                   CHAIRWOMAN RILEY: Yeah, because they  
6 could -- they could be different.

7                   COMMISSIONER MARTIN: It is uniform  
8 ownership. Whether you call it a tract or not is  
9 something else, I think. Does that have applications?

10                  COMMISSIONER BALCH: "Shall not constitute  
11 a tract."

12                  MR. BRANCARD: Well, I think we would  
13 rephrase that because in (a), it's been rewritten  
14 regarding "an area with uniform ownership." So I think  
15 that's what we are saying, that there is not an area of  
16 uniform ownership if it's just two or more federal  
17 tracts.

18                  COMMISSIONER BALCH: So why wouldn't it be  
19 one or more federal tracts? Why does it trigger at two?  
20 Or am I misunderstanding it completely?

21                  CHAIRWOMAN RILEY: I don't know. I wish I  
22 knew. Don't we get to ask these guys since we left it  
23 open?

24                  MR. BRANCARD: We have to be clear about  
25 what we're going to do and when we're going to do it.

1                   CHAIRWOMAN RILEY: Oh. I don't know what  
2 they're getting at.

3                   COMMISSIONER BALCH: So we have to figure  
4 out what we're going to ask.

5                   MR. BRANCARD: Who, what, when and where.

6                   COMMISSIONER BALCH: Then we can pull out  
7 somebody.

8                   CHAIRWOMAN RILEY: They're out there  
9 waiting, and they're biting their tongues.

10                  COMMISSIONER BALCH: They're still getting  
11 paid by the hour.

12                  CHAIRWOMAN RILEY: We'll ask them: Are we  
13 warm; are we cold from doing any of that?

14                               (Laughter.)

15                  MR. BRANCARD: No hand signals, no coaches.

16                  COMMISSIONER BALCH: I mean, where would we  
17 get additional clarification? It's probably going to  
18 come from OCD, right?

19                  MR. BRANCARD: So you can announce you want  
20 to re-open the record tomorrow morning and recall a  
21 witness.

22                  COMMISSIONER BALCH: So that would be  
23 Mr. Brooks.

24                  CHAIRWOMAN RILEY: Okay.

25                  COMMISSIONER BALCH: So I think at the

1 moment, we'll circle that one and leave it in, (10)(b),  
2 until we have a chance to get additional testimony.

3 That brings us to (11). So I have a note  
4 to re-order Section 11, but I think that may be  
5 addressed by additional recommended change number six.  
6 I thought it was unclear where the noticing was being --  
7 noticing was described later in the section.

8 MR. BRANCARD: I think you wanted to move  
9 it up, right?

10 COMMISSIONER BALCH: I wanted to put (c)  
11 and (d) in front of (a) and (b). Looks like they're  
12 proposing instead to put a pointer to the notice  
13 procedures into B(1) and (2), which I think would  
14 accomplish pretty much the same thing. I would leave it  
15 to your knowledge of how these rules are supposed to be  
16 ordered as to which one is more appropriate.

17 MR. BRANCARD: Well, I mean, your point is  
18 readability and are the combinations of requirements in  
19 the right places. That's more the point.

20 COMMISSIONER BALCH: Well, I'm not a  
21 lawyer. The way I would write it would be to re-order  
22 (c), (d), (a), (b). But I have a feeling that a bunch  
23 of lawyers put their heads together and came up with 6  
24 instead. Actually, there is a missing (d), (c) and (e).

25 MR. BRANCARD: Yeah. So there are

1 categories of situations here. There is existing wells  
2 on which you throw on top a new horizontal spacing unit.  
3 And there is subsequent wells in existing spacing units,  
4 and then there is infill horizontal wells in the spacing  
5 unit subject to the compulsory pooling order.

6 COMMISSIONER MARTIN: I'm okay.

7 Re-ordering it is okay with me.

8 CHAIRWOMAN RILEY: Tell me your re-order  
9 again.

10 COMMISSIONER BALCH: That would be (c), (e)  
11 in front of (a), (b) in Section 11. It may be that it's  
12 more complicated than that. Maybe even just move (e) in  
13 front of (a), (b), (c).

14 MR. BRANCARD: Oh. But (e) would be  
15 numbered (d), only applies to (b).

16 COMMISSIONER MARTIN: Right. If we're only  
17 going to move one, I'd prefer (c). Move that. I say  
18 move them both up.

19 COMMISSIONER BALCH: So move (c) --

20 COMMISSIONER MARTIN: (C) is the one that  
21 refers to 19.15.13.11.

22 COMMISSIONER BALCH: So (c) only applies to  
23 (a). Or does it apply to (a) and (b)?

24 COMMISSIONER MARTIN: Right.

25 COMMISSIONER BALCH: Both?

1 COMMISSIONER MARTIN: Both.

2 COMMISSIONER BALCH: But (d) only applies  
3 to (b). Well, it refers to Section A. That's Section  
4 A, 19.15.16.

5 Maybe the appropriate thing is to move (c)  
6 above (a) and then move (d) into (b)?

7 COMMISSIONER MARTIN: Okay.

8 MR. BRANCARD: Well, which is what they  
9 propose, basically.

10 COMMISSIONER BALCH: Is that what they're  
11 proposing? Okay. More or less, yeah. Well, except for  
12 moving (c) in front of the (a) part.

13 MR. BRANCARD: There were a number of  
14 changes proposed by NMOGA to all of this anyway.

15 COMMISSIONER BALCH: It's in my notes that  
16 we discussed point (b) to (d) or have (b) above (d) or  
17 included in (b).

18 MR. BRANCARD: Well, I don't have a problem  
19 with their proposed change of moving -- simply  
20 putting -- and according to -- it's going to eliminate  
21 the need for Subparagraph D or E, whatever you want to  
22 call it.

23 COMMISSIONER BALCH: Works for me, if it's  
24 the right kind of flow.

25 MR. BRANCARD: And then do you want to have

1 any restructuring?

2 COMMISSIONER BALCH: I think that's fine.  
3 I mean, you can leave (c) where it is.

4 The rest of the changes in (B)(1) and (2)  
5 were agreed to by OCD.

6 CHAIRWOMAN RILEY: Which changes? For the  
7 horizontal well?

8 COMMISSIONER BALCH: Yeah, and then NMOGA  
9 Exhibit A.

10 CHAIRWOMAN RILEY: Because I have next to  
11 (b)(i) that OCD did not concur. Did you take a note?

12 COMMISSIONER BALCH: Maybe we can include  
13 that of our examination of Mr. Brooks tomorrow morning.

14 Does that bring us to 12?

15 CHAIRWOMAN RILEY: I was about to ask the  
16 same thing. Yes.

17 COMMISSIONER BALCH: Madam Chair, I'm  
18 wondering if it might be possible for us at least to get  
19 to a point where we've gone through the entire document  
20 one time tonight as quickly as possible. That way a  
21 fresh document can be given, and also we can identify  
22 any other witnesses that need to come back tomorrow.  
23 Then we can concentrate on the details tomorrow.

24 CHAIRWOMAN RILEY: Okay. You okay?

25 COMMISSIONER MARTIN: I'm good.

1                   CHAIRWOMAN RILEY: I think Mr. Brancard is  
2   checking to see if he's good.

3                   MR. BRANCARD: I'm fine.

4                   COMMISSIONER BALCH: So 12?

5                   CHAIRWOMAN RILEY: 12.

6                   COMMISSIONER BALCH: I'm fine with 12.

7                   COMMISSIONER MARTIN: I am, too.

8                   CHAIRWOMAN RILEY: I'm good.

9                   COMMISSIONER BALCH: Also fine with 13.

10                  COMMISSIONER MARTIN: Me, too.

11                  CHAIRWOMAN RILEY: Yup.

12                  I'm good with B(1)(a) and (b).

13                  COMMISSIONER BALCH: So I would like to  
14   have probably what will end up being an extended  
15   discussion of setbacks but not right tonight. So I  
16   think the language is good the way it is. The only  
17   thing that might change would be a number, or we might  
18   have to change some text if the discussion leads to  
19   that.

20                  COMMISSIONER MARTIN: Okay.

21                  COMMISSIONER BALCH: But I do think we need  
22   to discuss the setbacks, particularly in the case where  
23   these rules are applied to a conventional horizontal  
24   well where you do have matrix flow.

25                  COMMISSIONER MARTIN: Okay.



1 CHAIRWOMAN RILEY: Okay.

2 COMMISSIONER BALCH: So the 100-foot  
3 toe-and-heel setback for unconventional, I'm thoroughly  
4 convinced after testimony today that that's probably  
5 even conservative, but we may need to discuss it in the  
6 context of other horizontals that could be drilled using  
7 this rule, whether we need to separate those into two  
8 categories -- I don't know -- somehow.

9 CHAIRWOMAN RILEY: Okay.

10 COMMISSIONER MARTIN: Okay.

11 COMMISSIONER BALCH: But the language is  
12 okay, I think, for the next draft.

13 NMOGA did have a change to (3) -- I'm  
14 sorry. (2) looked all right to me.

15 COMMISSIONER MARTIN: (2) is okay.

16 CHAIRWOMAN RILEY: Uh-huh.

17 COMMISSIONER MARTIN: The change on (3) was  
18 agreed to by the Division, is what I have.

19 COMMISSIONER BALCH: I think it makes it  
20 much more clear. Basically, the intent is that the  
21 surface location can be anywhere that's reasonable. And  
22 this is actually really good. This has come up before  
23 in other cases, where you're able to be flexible in your  
24 surface location. You can avoid sensitive surface  
25 areas --

1 COMMISSIONER MARTIN: Right.

2 COMMISSIONER BALCH: -- other land issues  
3 that could arise, and also you can co-locate your  
4 processing facilities a lot more simply if you have that  
5 flexibility.

6 COMMISSIONER MARTIN: I agree.

7 CHAIRWOMAN RILEY: I'm good with that.

8 COMMISSIONER BALCH: I think that's a very  
9 good change -- or a very good addition to the proposed  
10 rule.

11 CHAIRWOMAN RILEY: I'm good with (4).

12 COMMISSIONER MARTIN: I am, too.

13 COMMISSIONER BALCH: I am as well.

14 I'm also good with all of (5)(a), (b) and  
15 (c). They don't have an impact on the discussion of  
16 setbacks. They're just pointing back to them.

17 CHAIRWOMAN RILEY: Yeah. I'm good with  
18 those.

19 COMMISSIONER MARTIN: I'm good with (a),  
20 (b) and (c) also.

21 I'm okay with NMOGA's change on (6).

22 CHAIRWOMAN RILEY: And then there was an  
23 additional change on today's wording. I'm okay with it  
24 all as well.

25 COMMISSIONER MARTIN: I am, too.

1                   COMMISSIONER BALCH: So they took it back  
2 out of the hands of the district office and put it back  
3 in Santa Fe. And I might say, generally when we've used  
4 the term "variance" before, this is something we wanted  
5 to make discretionary generally at the hands of the  
6 district office but possibly in Santa Fe as well. But  
7 exception was much a higher -- an exception is a higher  
8 bar of that, where you need to potentially notice  
9 parties and have a hearing. A variance is something  
10 that's more administrative.

11                   So as the OCD director, with that hat on,  
12 you might consider that, whether you want it to be in  
13 the district office or in Santa Fe.

14                   CHAIRWOMAN RILEY: I think what throws it  
15 to the Santa Fe office is that the as-drilled location  
16 is unorthodox, so you're back at a nonstandard location.  
17 And those are all approved through --

18                   COMMISSIONER BALCH: So I would agree with  
19 that. So you're proposing we accept the language as  
20 modified in the recommended changes -- additional  
21 recommended changes?

22                   CHAIRWOMAN RILEY: Yeah. I'm looking over  
23 here at NMOGA's changes.

24                   COMMISSIONER BALCH: These ones?

25                   CHAIRWOMAN RILEY: Well, what they took out

1 is, if the location is 50 feet less, it could be done  
2 without a hearing, on a Form C-102. That came out.

3 COMMISSIONER BALCH: Looks like they put it  
4 all back in Santa Fe in number nine of their additional  
5 recommended changes.

6 COMMISSIONER MARTIN: I think they just  
7 reworded it.

8 CHAIRWOMAN RILEY: Do you? Because when  
9 you start with the language they capped on NMOGA's side,  
10 it is in here on the OCD version, too, which is talking  
11 about it being greater than 50 feet, and that goes to  
12 Santa Fe. So they just struck the first line about it  
13 being less than 50 feet. I don't know that it's needed,  
14 maybe, is why they took that out.

15 "If the variance of a horizontal well  
16 as-drilled location from the projected location is 50  
17 feet or less, the division's district office may approve  
18 the as-drilled location by approving the amended C-102,"  
19 which -- I mean, that's kind of a given already in the  
20 language, isn't it? If it's less than 50-foot variance,  
21 it doesn't need anything. Isn't that what we heard? So  
22 I don't know why that sentence is even in there, which  
23 may be why they took it out.

24 COMMISSIONER BALCH: Yeah. I think I would  
25 move to take the language that they have in their

1 additional recommended changes, mainly because it has  
2 the pointer to their correct subsection of the  
3 unorthodox location, I presume.

4 MR. BRANCARD: Well, yeah. I don't think  
5 really it does.

6 CHAIRWOMAN RILEY: What, Bill?

7 MR. BRANCARD: It references 19.15.15.12B,  
8 which is "Notice requirements" for "Special Rules For  
9 Multiple Operators Within A Spacing Unit." That's not  
10 what this is. 19.15.15.13 is unorthodox locations.

11 CHAIRWOMAN RILEY: Maybe that's just a typo  
12 on the proposed changes.

13 COMMISSIONER BALCH: It might fall under  
14 the category of making sure it points to the right spot  
15 in the final edit.

16 CHAIRWOMAN RILEY: Yeah. I think it needs  
17 a (3) instead of a (2).

18 MR. BRANCARD: What I had in my notes is  
19 that the previous section of unorthodox well locations  
20 doesn't say what happens to you if you have an  
21 unorthodox well location. I guess they're all assuming  
22 we know which way to go in the rules.

23 CHAIRWOMAN RILEY: Where? Which?

24 MR. BRANCARD: Under (5). It just says  
25 you're unorthodox. It doesn't say what happens.

1                   CHAIRWOMAN RILEY: So the approval of  
2 variations, if we go to the -- the second-to-the-last  
3 sentence talks about if there is an as-drilled  
4 location -- the operator shall approve the approval. So  
5 they define unorthodox above and then tell you what to  
6 do.

7                   MR. BRANCARD: Well, then but (5) says that  
8 "directional survey shows that you're closer to the  
9 outer boundary than allowed."

10                  COMMISSIONER BALCH: Basically, your offset  
11 is whatever, and you're inside of that -- or outside of  
12 that -- inside of that.

13                  COMMISSIONER MARTIN: Inside, but not  
14 closer than 330. You'd probably have to add words in  
15 (5), "after considering that, the application must be  
16 filed with the Santa Fe office," something like that.

17                  MR. BRANCARD: I guess I'm not  
18 understanding what we're doing here.

19                  CHAIRWOMAN RILEY: Well, the testimony they  
20 gave was they wanted to make sure that two things  
21 happened: that the variance was more than 50 feet and  
22 the as-drilled came back as unorthodox. So I think they  
23 were trying to capture those conditions between what was  
24 going to require a variance. But that's kind of an  
25 after-the-fact. So maybe to go back to your point of

1 unorthodox well locations, and maybe need to clarify in  
2 (5) that requires approval pursuant to -- because this  
3 variance below is after it's been drilled because it's  
4 the as-drilled indicating it's unorthodox.

5 MR. BRANCARD: Yeah. I mean, (5) and (6)  
6 don't seem to work, because (5)(a) is you submit an  
7 application and it's unorthodox.

8 CHAIRWOMAN RILEY: Uh-huh.

9 MR. BRANCARD: You're planning an  
10 unorthodox.

11 CHAIRWOMAN RILEY: Before the fact.

12 COMMISSIONER BALCH: Becomes unorthodox.

13 MR. BRANCARD: (5)(b) and (c) after the  
14 fact, right.

15 CHAIRWOMAN RILEY: Uh-huh. So these are  
16 the conditions that can become unorthodox.

17 MR. BRANCARD: But (6) is trying to deal  
18 with (b) and (c), I think, or some of (b), and (6) is  
19 sort of ignoring (5)(b), which says there is no 50-foot  
20 tolerance for that 1,100-foot setback. There is zero  
21 tolerance.

22 COMMISSIONER BALCH: Yeah. There is no  
23 tolerance.

24 CHAIRWOMAN RILEY: That's a good point.  
25 That's not brought up.

1 COMMISSIONER MARTIN: That's a good point.

2 COMMISSIONER BALCH: I don't think there  
3 should be probably tolerance that would make that  
4 unorthodox if it was within -- whatever the minimum  
5 setback being.

6 CHAIRWOMAN RILEY: Variance talk about --  
7 below more than 50 feet from the sides of the lateral.  
8 I don't know how you want to characterize --

9 COMMISSIONER BALCH: It's almost like you  
10 have to leave (5)(a) the way it is and take (b) and (c)  
11 and -- at the end of those, say, or maybe add a (d).  
12 Turn (6) into a (d), short and dramatically, and just  
13 highlight or point out that these wells that now become  
14 unorthodox need to go through same procedure, unorthodox  
15 well application.

16 MR. BRANCARD: Right. I think you have to  
17 add a little (d) in there, which is this new category,  
18 which is if you start out as orthodox but then you --  
19 even further, right? That's the second part of (6).

20 COMMISSIONER BALCH: Oh.

21 MR. BRANCARD: Unorthodox well location,  
22 directional survey, it's, I'd say, even more unorthodox.

23 COMMISSIONER BALCH: It's not the  
24 unorthodox you planned, but it's still unorthodox,  
25 right? So that's sort of a fourth category. That may



1 actually go between (a) and (b) because you're intending  
2 in (a) for it to be unorthodox. (B) would then -- the  
3 new (b), while it was intending to be unorthodox, it  
4 became a different unorthodox. And then the new (c)  
5 would be (d), and that's the take points. And the new  
6 (c) would be (d) where it shows any part of the tract is  
7 outside of the 50 feet from its projected location and  
8 closer to the boundary than allowed. And in the new  
9 cases of the new (b), (c) and (d), you then have to go  
10 and apply for an unorthodox well location after the  
11 fact.

12 MR. BRANCARD: Yes. So I guess having all  
13 four categories under (5). And maybe (5) should start  
14 with "the horizontal well's location is considered  
15 orthodox and requires division approval if." And then  
16 you have those two categories. And then (6) becomes  
17 "approval of unorthodox well locations," and it tells  
18 you to follow the procedures that are indicated in the  
19 changes here, under the current procedures for  
20 unorthodox well locations.

21 COMMISSIONER BALCH: You don't really need  
22 a variance. You need to go back and basically re-apply.

23 MR. BRANCARD: Apply to the Division and  
24 get approval.

25 COMMISSIONER BALCH: So I think that's

1     probably the cleanest way to do.

2                   COMMISSIONER MARTIN:   That makes sense.

3                   COMMISSIONER BALCH:    So can you capture  
4     that and then put it in a fresh version of the document  
5     that you'll miraculously produce at 8:30 tomorrow  
6     morning, and we can discuss it further after that?

7                   (Laughter.)

8                   CHAIRWOMAN RILEY:    I think you have a (d)  
9     and (e).

10                  MR. BRANCARD:    Okay.

11                  COMMISSIONER BALCH:    So I think that moves  
12     us to (7), "Unitized areas."

13                  CHAIRWOMAN RILEY:    I feel like we read that  
14     already.   Didn't we address that?

15                  COMMISSIONER BALCH:    Well, the first one  
16     said:   With any unitized area setback, don't apply.   And  
17     this one is saying:   Any unitized area, setbacks only  
18     apply to the outer boundaries.

19                  CHAIRWOMAN RILEY:    The first one was  
20     internal setbacks?

21                  COMMISSIONER BALCH:    Yeah.   It said "no  
22     internal setbacks."   That's what I'm saying.   The  
23     internal setbacks are the only ones that apply.

24                  CHAIRWOMAN RILEY:    Okay.   I'm good.

25                  COMMISSIONER MARTIN:   I'm okay.

1                   Check out I and N [sic] and A and M [sic],  
2   or is that already --

3                   MR. BRANCARD:   We don't have the exception  
4   that we had before like the two or more federal tracts.

5                   CHAIRWOMAN RILEY:   It's different.

6                   MR. BRANCARD:   Another question to ask.

7                   CHAIRWOMAN RILEY:   Are you saying it's part  
8   of the Brooks' question?

9                   COMMISSIONER BALCH:   If he's nice, we'll  
10   let him know what we're going to ask.

11                  CHAIRWOMAN RILEY:   Hopefully he's paying  
12   attention.

13                  Are we on allowables now?

14                  COMMISSIONER BALCH:   I would suggest that  
15   we leave allowables the way it is for the next draft and  
16   have that full discussion, because that's also  
17   intertwined with Jalapeno's comments and objections.

18                  COMMISSIONER MARTIN:   Sure.

19                  CHAIRWOMAN RILEY:   Okay.

20                  COMMISSIONER BALCH:   And I think it will be  
21   not a short discussion.

22                  COMMISSIONER MARTIN:   Okay.

23                  COMMISSIONER BALCH:   Because that depth  
24   bracket sure makes me angry when I think of it.

25                  CHAIRWOMAN RILEY:   Other matters?

1                   COMMISSIONER BALCH: On D(1), there was a  
2 proposed additional recommended change for directional  
3 survey requirements, to add one sentence, basically  
4 stating the obvious, right?

5                   CHAIRWOMAN RILEY: Are you talking about  
6 what they included in this?

7                   COMMISSIONER BALCH: Yeah. "The division  
8 shall not approve a C-104 for the well until the  
9 operator has filed the required directional survey."

10                  MR. BRANCARD: That's the requirement  
11 that's in the directional requirements for deviated and  
12 directional wells.

13                  COMMISSIONER BALCH: Which I think it's a  
14 good idea to add that here. It's probably implied, but  
15 it's probably maybe not good enough.

16                  CHAIRWOMAN RILEY: I'm good with (2)(a).  
17 I'm kind of ecstatic about (2)(a). I think that'll  
18 reduce some paperwork.

19                         (Laughter.)

20                  COMMISSIONER BALCH: You have to do some  
21 kind of -- at the OCD level, some kind of accounting to  
22 apportion the production from force pool. But I imagine  
23 that would --

24                  COMMISSIONER MARTIN: And I think the C-115  
25 requires it, need to allocate correctly between the

1 pool.

2 COMMISSIONER BALCH: The only way you can  
3 allocate here is -- without putting flow meters into  
4 every perfed frac, you're going to have to just say  
5 3,000 feet here, 7,000 feet, and they get 3/10 of it.

6 COMMISSIONER MARTIN: They all have their  
7 own methods, and I think OCD accepts them all.

8 COMMISSIONER BALCH: Okay. As long as  
9 there is a way to catch it.

10 I think "date of adoption" was uniformly  
11 decided to be better than "February 1, 2017."

12 CHAIRWOMAN RILEY: Uh-huh.

13 COMMISSIONER BALCH: And D(3)?

14 COMMISSIONER MARTIN: Yes. Yes. That  
15 makes sense.

16 MR. BRANCARD: All right. Let me put in  
17 that lengthy sentence that was added at the beginning of  
18 (3).

19 COMMISSIONER MARTIN: I don't have any  
20 problem with that. I don't think the Division does  
21 either.

22 COMMISSIONER BALCH: Except in the NMOGA  
23 modification.

24 MR. BRANCARD: Okay. Well, that's through  
25 once through.

1                   COMMISSIONER BALCH: The transitional  
2 provisions I think -- hearing. I mean, as well as  
3 16.20, right? That's back to allowables, so leave that  
4 one.

5                   Do either of you think, on the discussion  
6 of allowables, we need to bring back a witness, or can  
7 we move on without that?

8                   CHAIRWOMAN RILEY: I don't know. You have  
9 all the questions on allowables.

10                  COMMISSIONER BALCH: I have questions. I  
11 just don't like them.

12                  COMMISSIONER MARTIN: You don't like  
13 abolishing them?

14                  COMMISSIONER BALCH: No. I don't like  
15 them.

16                  COMMISSIONER MARTIN: You don't like  
17 allowables?

18                  COMMISSIONER BALCH: The only reason for an  
19 allowable, in my opinion, is to prevent formation damage  
20 or --

21                  COMMISSIONER MARTIN: Then we're okay. I'm  
22 okay with that.

23                  COMMISSIONER BALCH: -- waste.

24                  CHAIRWOMAN RILEY: I think that's the  
25 suggestion.

1                   COMMISSIONER BALCH: It is, but I think  
2   that there may be some ratification as far as getting  
3   rid of something that's been in the statute for 80  
4   years. That may need to be discussed.

5                   MR. BRANCARD: Allowables are in the  
6   discretion of the agency to prevent waste. That's what  
7   the statute says.

8                   COMMISSIONER BALCH: That's the only reason  
9   why I wouldn't want to do it.

10                  COMMISSIONER MARTIN: I think they're  
11   outdated. I think they've lived past their prime, past  
12   their time.

13                  COMMISSIONER BALCH: Probably about 1936.

14                  CHAIRWOMAN RILEY: And we're not getting  
15   rid of them. We're just allowing them all they can get.

16                  COMMISSIONER BALCH: Well, so another  
17   reason why I think the discussion might be a little  
18   longer, why we may or may not need another witness to  
19   come back, is that there was a Jalapeno objection or  
20   concern that these horizontal wells are going to be able  
21   to produce full out, but there was not that complete  
22   carte blanche for the associated vertical wells in the  
23   same pool or formation. There was an additional  
24   possibility that they could be stuck with an allowable  
25   at the discretion of the Division.

1                   COMMISSIONER MARTIN: Yeah. But it  
2 didn't -- it didn't produce at the top allowable.

3                   COMMISSIONER BALCH: Right. So when I  
4 looked at that, I thought, well, if we just strike that  
5 sentence out of the allowables, maybe you can fix  
6 Jalapeno's objection, as long as everybody's okay with  
7 getting rid of allowables.

8                   COMMISSIONER MARTIN: I think the  
9 assumption may be that any well is going to produce as  
10 much as you can except for the top allowable well. So,  
11 I mean, I don't know if that is a question or not. To  
12 me it's -- but I see what you're saying.

13                  COMMISSIONER BALCH: I guess my question  
14 is: Do we need anybody else to answer questions? I  
15 think I'm okay. I don't think I need any more  
16 clarification.

17                  CHAIRWOMAN RILEY: I think I'm okay.

18                  COMMISSIONER BALCH: But I do think it will  
19 be a long discussion. That's why I don't want to start  
20 tonight.

21                  COMMISSIONER MARTIN: Okay.

22                  CHAIRWOMAN RILEY: Do you need anybody  
23 tomorrow?

24                  COMMISSIONER MARTIN: No.

25                  COMMISSIONER BALCH: Besides Mr. Brooks?



1 CHAIRWOMAN RILEY: Yeah.

2 COMMISSIONER MARTIN: Yes, Mr. Brooks.

3 CHAIRWOMAN RILEY: Put him back on the hot  
4 seat tomorrow.

5 MR. BROOKS: Ask me about the allowables,  
6 and I'll tell you why it is. That doesn't necessarily  
7 mean it should be, but there was a reason why it was  
8 written that way.

9 CHAIRWOMAN RILEY: Okay. Any other  
10 discussion for this evening?

11 COMMISSIONER BALCH: So we have to make a  
12 motion to bring back Mr. -- to re-open testimony and  
13 bring back Mr. Brooks?

14 MR. BRANCARD: Yes. I think that would be  
15 appropriate.

16 COMMISSIONER BALCH: So I would make the  
17 motion that first thing tomorrow, we bring back  
18 Mr. Brooks for additional questions on topics of --

19 MR. BRANCARD: Unitization, federal tracts.

20 COMMISSIONER BALCH: -- unitization,  
21 federal tracts and allowables and anything else that  
22 comes to us in the middle of the night.

23 COMMISSIONER MARTIN: I second that we  
24 second the allowables.

25 COMMISSIONER BALCH: You don't want to hear

1 any more?

2 COMMISSIONER MARTIN: I second the motion.

3 (Laughter.)

4 CHAIRWOMAN RILEY: So moved.

5 So let's plan on tomorrow morning at 9:00.

6 COMMISSIONER BRANCARD: The other question

7 would be: When can we get a fresh version,

8 Mr. Brancard?

9 CHAIRWOMAN RILEY: That's true.

10 MR. BRANCARD: I'll shoot for tomorrow

11 morning. I need a Word version.

12 COMMISSIONER BALCH: Your work from the OCD

13 version should be somewhere in-house here, right?

14 MR. BRANCARD: Yeah.

15 MR. FELDEWERT: Do you need a Word version

16 of NMOGA's modification?

17 MR. BRANCARD: That would be helpful.

18 MR. FELDEWERT: I'll get that to you.

19 COMMISSIONER BALCH: Technically, we

20 wouldn't need that until after we're done examining

21 Mr. Brooks. Give you a little more time.

22 COMMISSIONER MARTIN: What time do you want

23 to get started?

24 Bill, do you want to go at 9:00 or --

25 CHAIRWOMAN RILEY: Well, if you're not

1     going to -- are you going to do changes now or after we  
2     talk to Mr. Brooks?

3                     MR. BRANCARD:   No.   I think you want to --  
4     I think you want to go tomorrow and get this done,  
5     right?

6                     CHAIRWOMAN RILEY:   Uh-huh.

7                     COMMISSIONER BALCH:   The idea is to start  
8     with a fresh version tomorrow, and then we'll basically  
9     go through the things that we haven't been able to get  
10    resolved today, particularly the Jalapeno motions and  
11    objections and discussions, right?

12                    MR. BRANCARD:   I have like several items:  
13    allowables, general discussion about setbacks you wanted  
14    to have, and then infill.

15                    COMMISSIONER BALCH:   I mean, I think if you  
16    want to get to the point of having a, more or less,  
17    final order by the end of the day, tomorrow then you're  
18    looking at trying to resolve all those issues.   And then  
19    sometime in the afternoon, getting another fresh version  
20    for us to all review.   We don't necessarily have to  
21    discuss the entire thing, but just to review and make  
22    sure we're happy with it.

23                    MR. BRANCARD:   Well, it would be preferable  
24    to me if you started like 10:00 tomorrow.   Then I could  
25    have all these changes put together, and you can discuss

1 those three topics -- well, question Mr. Brooks and then  
2 these three topics that are tabled here.

3 COMMISSIONER BALCH: And then go through  
4 the Jalapeno step-by-step.

5 MR. BRANCARD: Go through the Jalapeno  
6 stuff, and over lunch, come up with another version.

7 COMMISSIONER BALCH: Or simply decide  
8 whether we want to pass it.

9 CHAIRWOMAN RILEY: Okay. Let's break until  
10 10:00 tomorrow then.

11 (Recess, 5:36 p.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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 DATED THIS 13th day of May 2018.

21

22

23 MARY C. HANKINS, CCR, RPR  
24 Certified Court Reporter  
New Mexico CCR No. 20  
Date of CCR Expiration: 12/31/2018  
Paul Baca Professional Court Reporters

25