

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

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION COMMISSION FOR
THE PURPOSE OF CONSIDERING:

CASE NOS: 21281

IN THE MATTER OF PROPOSED
AMENDMENTS TO THE COMMISSION'S
RULES ON PRODUCED WATER,
19.15.2, 19.15.16 AND 19.15.34 NMAC.

REPORTER'S TRANSCRIPT OF VIRTUAL PROCEEDINGS
COMMISSIONER HEARING, VOLUME 2
Agenda Item
July 31, 2020
Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN
JORDAN KESSLER, COMMISSIONER
DR. THOMAS ENGLER, COMMISSIONER
MIGUEL LOZANO, ESQ.

This matter came on for virtual hearing before
the New Mexico Oil Conservation Commission on Thursday, July
31, 2020 through the New Mexico Energy, Minerals, and
Natural Resources Department, Webex Platform, Santa Fe, New
Mexico.

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CLOSING ARGUMENT

By OCD
By NMOGA
By WildEarth Guardians
By Sierra Club
By New Energy Economy

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1 CHAIRWOMAN SANDOVAL: Good morning, everybody. I
2 will call this meeting back to order. It's 9:09 a.m. on
3 July 31, 2020, and this is the second day of a special
4 hearing of the New Mexico Oil Conservation Commission.

5 I'm Adrienne Sandoval, director of the Oil
6 Conservation Division and chair of the Oil Conservation
7 Commission. Will the Commissioners introduce themselves for
8 the record.

9 COMMISSIONER KESSLER: This is Jordan Kessler,
10 the Commissioner of Mineral Resources of New Mexico State
11 Land Office.

12 COMMISSIONER ENGLER: This is Thomas Engler, I'm
13 the secretary designate for the Commission.

14 CHAIRWOMAN SANDOVAL: Also with us today is
15 Miguel Lozano, counsel to the Commission, and Florene
16 Davidson, Commission clerk who is joining us via Webex.

17 I will reiterate the special protocol for public,
18 attorney and member participation during this meeting. As a
19 courtesy to our members and others listening, participants
20 who are not identified parties will be muted. All
21 participants must identify themselves whenever they speak
22 and must speak clearly audible to the Members of the
23 Commission and public.

24 Members and parties or parties' attorneys should
25 avoid speaking over one another as much as possible. All

1 votes of the Commission during the meeting will be conducted
2 by roll call vote. Additionally the chair will suspend the
3 meeting if a disruption in the audio or video will occur.

4 In addition, in order to keep, you know, this
5 meeting orderly. We will provide people with a warning if
6 they are behaving inappropriately, and upon second issue, we
7 will remove you from the meeting.

8 We will now continue with the hearing in case
9 Number 21281 to consider the proposed amendments to the
10 Commission Rules 19.15.2, 19.15.16, and 19.15.34 regarding
11 produced waters submitted by the Oil Conservation Division.

12 Will the identified parties please make their
13 appearances for the record.

14 The Oil Conservation Division?

15 MS. BADA: Madam Chair, Commissioners, Cheryl
16 Bada for the Oil Conservation Division.

17 CHAIRWOMAN SANDOVAL: Thank you, Ms. Bada.

18 For the Oil and Gas Association?

19 MR. FELDEWERT: Madam Chair, Members of the
20 Commission, Michael Feldewert of the Santa Fe office of
21 Holland & Hart.

22 CHAIRWOMAN SANDOVAL: Thank you, Mr. Feldewert.
23 WildEarth Guardian?

24 MR. TIMMONS: Madam Chair, Members of the
25 Commission, this is Daniel Timmons on behalf of WildEarth

1 Guardians. My co-counsel Samantha Ruscavage Barz will also
2 be joining me.

3 CHAIRWOMAN SANDOVAL: Thank you, Mr. Timmons.
4 Sierra Club, Rio Grande Chapter?

5 MR. MEIKLEJOHN: Madam Chair, Commission, this is
6 Douglas Meiklejohn. I'm a lawyer with the New Mexico
7 Environmental Law Center. Also representing the Sierra Club
8 is my co-counsel, Cara Lynch.

9 CHAIRWOMAN SANDOVAL: Thank you, Mr. Meiklejohn.
10 New Energy Economy?

11 MS. NANASI: Good morning, Madam Commissioner.
12 My name is Mariel Nanasi. I'm the attorney for New Energy
13 Economy.

14 CHAIRWOMAN SANDOVAL: Thank you, Ms. Nanasi.
15 Before we begin the public comment portion of this
16 Commission, does the Commission counsel wish to enter any
17 additional exhibits into the record?

18 MR. LOZANO: Yes, Madam Chair.

19 CHAIRWOMAN SANDOVAL: Have the additional
20 exhibits been provided to the identified parties?

21 MR. LOZANO: Yes, Madam Chair. E-mails were sent
22 to all the identified parties with all additional exhibits
23 as of this morning.

24 CHAIRWOMAN SANDOVAL: Please proceed with the
25 exhibits, with the entry.

1 MR. LOZANO: Yes, Madam Chair, I will again do
2 these in batches starting with Exhibit Number 38, written
3 comment received from Kathy Wooten;

4 Exhibit 39, written comment received from Linda
5 Pafford;

6 Exhibit 40, written comment received from
7 Gabrielle Ontiveros;

8 Exhibit 41, written comment received from Lora
9 Lucero;

10 Exhibit 42, written comment received from
11 Patricia Sheely.

12 CHAIRWOMAN SANDOVAL: Thank you. Do any of the
13 parties oppose these being entered into the record?

14 MS. NANASI: Other than the continuing objection,
15 Madam Hearing Examiner, that I did oppose for not being
16 available to the public pursuant to the Public Open Meetings
17 Act, I would like to continue my objection.

18 CHAIRWOMAN SANDOVAL: Thank you, Ms. Nanasi.
19 Your objection is overruled. Are there any other objections
20 from the parties?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: Commissioners, do you have
23 any objections about entering Exhibits 38 through 42?

24 COMMISSIONER KESSLER: No objection.

25 COMMISSIONER ENGLER: No objection.

1 CHAIRWOMAN SANDOVAL: Exhibits 38 through 42 are
2 now entered into the record.

3 Mr. Lozano, would you continue, please.

4 (Exhibits 38 through 42 admitted.)

5 MR. LOZANO: Yes, Madam Chair, Exhibit Number 43,
6 written comment received from Sandra Wheeler;

7 Exhibit Number 44, written comment received from
8 Justin Nobel, including five subparts;

9 Article: NORM Contamination in the Petroleum
10 Industry;

11 44b, Article: An Analysis of the Impact of the
12 Regulation of Radionuclides as a Hazardous Air Pollutant on
13 the Petroleum Industry;

14 44c, Report: Occupational Exposure to
15 Radioactive Scale and Sludge;

16 44d, Report: Stratigraphic Analysis of the Upper
17 Devonian Woodford Formation, Permian Basin, West Texas and
18 Southeastern New Mexico;

19 44e, Article: Radium in Drinking Water and the
20 Risk of Death from Bone Cancer Among Ontario Youths.

21 I'll stop there.

22 CHAIRWOMAN SANDOVAL: Are there any objections,
23 other than the rolling objection from New Energy Economy, on
24 Exhibits 43 or 44?

25 (No audible response.)

1 CHAIRWOMAN SANDOVAL: Okay. I will take silence
2 as no objection. New Energy Economy's objection is
3 continues to be overruled. Commissioners, do you have any
4 objection?

5 COMMISSIONER KESSLER: No objection.

6 COMMISSIONER ENGLER: No objection.

7 CHAIRWOMAN SANDOVAL: Exhibits 43 and 44 are now
8 entered into the record. Mr. Lozano, would you please
9 continue.

10 (Exhibits 43 and 44 admitted.)

11 MR. LOZANO: Yes, Madam Chair.

12 Exhibit Number 45, comment received from Judith
13 Stanley;

14 Exhibit Number 46, written comment received from
15 Teresa Seamster;

16 Exhibit Number 47, written comment received from
17 Lynn Allen;

18 Exhibit Number 48, all requests for oral comment
19 from 5 p.m. on July 29 to 3 p.m. on July 30; and,

20 Exhibit Number 49, written comment from Stephanie
21 Levy.

22 CHAIRWOMAN SANDOVAL: Thank you. Parties, do you
23 have any objection, other than New Energy Economy's rolling
24 objection to entering these into the record?

25 MR. TIMMONS: No, Madam Chair. This is Daniel

1 Timmons with WildEarth Guardians. However, I do have an
2 inquiry from the public. I just want to confirm that these
3 exhibits are all available presently on the OCD image
4 database.

5 CHAIRWOMAN SANDOVAL: Yeah, anything that's been
6 received thus far should be on the OCD image site.

7 MR. TIMMONS: Thank you.

8 MR. LOZANO: To clarify, Counsel, all of these
9 were pulled from the database themselves so they are there,
10 and, for the most part, they are in order.

11 MR. TIMMONS: Thank you.

12 CHAIRWOMAN SANDOVAL: Are there any objections to
13 entering 45 through 49 into the record?

14 (No audible response.)

15 CHAIRWOMAN SANDOVAL: Hearing no comment, there
16 are no objections. Commissioners, do you have any
17 objection?

18 COMMISSIONER KESSLER: No objection.

19 MS. NANASI: I just want to say that I think it
20 was 45 to 48 and that you didn't get to 49. (Inaudible) Is
21 that right?

22 CHAIRWOMAN SANDOVAL: Mr. Lozano noted Number 49.

23 MS. NANASI: Okay. I didn't hear him. I'm
24 sorry.

25 CHAIRWOMAN SANDOVAL: Are there any objections to

1 including Number 49, Ms. Nanasi?

2 MS. NANASI: Sorry. No, no.

3 CHAIRWOMAN SANDOVAL: Counselors, do you have any
4 objections to 45 to 49?

5 COMMISSIONER KESSLER: Commission members?

6 CHAIRWOMAN SANDOVAL: Yes, Commission Members,
7 not counselors.

8 COMMISSIONER ENGLER: No.

9 CHAIRWOMAN SANDOVAL: Exhibits 45 through 49 are
10 now entered into the record. Mr. Lozano?

11 (Exhibits 45 through 49 admitted.)

12 MR. LOZANO: Yes, Madam Chair.

13 Exhibit Number 50, written comments from Katie
14 Bruell;

15 Exhibit Number 51, written comments from Linda
16 Starr;

17 Exhibit Number 52, written comment from Lisa
18 Bowdey.

19 MS. NANASI: Just for the record, again, I
20 believe that -- this is Mariel Nanasi -- at least what you
21 said to us, written comment from Lisa Bowdey was 51, and
22 written comment from Linda Starr is 52. Is that not
23 correct?

24 CHAIRWOMAN SANDOVAL: Give us a moment to
25 clarify.

1 MR. LOZANO: That's correct, Madam Chair. Let me
2 restate 50 through 52.

3 CHAIRWOMAN SANDOVAL: Okay. Mr. Lozano will
4 restate Exhibits 50 through 52. Thank you, Ms. Nanasi.

5 MR. LOZANO: Exhibit Number 50, written comment
6 from Katie Bruell;

7 Exhibit Number 51, written comment from Lisa
8 Bowdey; and,

9 Exhibit Number 52, written comment from Linda
10 Starr.

11 CHAIRWOMAN SANDOVAL: Are there any objections to
12 admitting Exhibits 50 through 52 from the counselors?

13 (No audible response.)

14 CHAIRWOMAN SANDOVAL: Hearing no comment, hearing
15 no objection, other than New Energy Economy's rolling
16 objection, which has been overruled. Commissioners, do you
17 have any objection?

18 COMMISSIONER KESSLER: No objection.

19 COMMISSIONER ENGLER: No objection.

20 CHAIRWOMAN SANDOVAL: Exhibits 50 through 52 have
21 been entered into the record which concludes the exhibit
22 list that we have received thus far.

23 (Exhibits 50 through 52 admitted.)

24 CHAIRWOMAN SANDOVAL: We may, at the end of the
25 hearing, if there are any additional exhibits that have been

1 received, you know, include that at the end of the hearing
2 to make sure that all exhibits have been introduced into the
3 record appropriately.

4 MR. TIMMONS: Point of inquiry, Madam Chair,
5 this is Daniel Timmons with WildEarth Guardians. I wanted
6 to check in whether the Commission was able to preserve the
7 chat log from yesterday's hearing and whether or not it will
8 be made part of the public record.

9 CHAIRWOMAN SANDOVAL: It is part of the
10 recording, yes.

11 MR. TIMMONS: Is it on the video or is it part of
12 a separate readable text document?

13 (No audible response.)

14 MR. TIMMONS: If the Commission did not preserve
15 a text document, I did. I have just recently submitted that
16 to counsel, as well as to Florene Davidson and Mr. Lozano.

17 I have identified it as WildEarth Guardian's
18 Exhibit 12, attached a declaration from myself verifying
19 that I personally copied and pasted that text log, put it
20 into a Word file and saved it to PDF.

21 And I believe that it is properly part of the
22 public record, documenting conversations occurring among the
23 participants, as well as statements from yourself, Madam
24 Chair. So I believe it is properly part of the record and
25 would be much more accessible to the public if it were in a

1 text format as opposed to requiring folks to watch a
2 seven-hour video in order to read the chat. It's WildEarth
3 Guardian Exhibit 12.

4 MR. FELDEWERT: Madam Chair, this is Michael
5 Feldewert with the New Mexico Oil and Gas Association.
6 Could I be heard on this?

7 CHAIRWOMAN SANDOVAL: Yes, please continue.

8 MR. FELDEWERT: Madam Chair, I don't know if you
9 had a chance to look at what was going on in the chat while
10 this was going on, but I think if you did, what you would
11 find is this is certainly not the type -- it's certainly
12 not testimony. It's certainly not public comment, and it
13 contains many derogatory statements that you would not allow
14 if it was being made verbally at a hearing.

15 They're derogatory, they're inflammatory, and I
16 can read some of them if you would like, but I don't think
17 you would want to hear them. And it's vulgar. It lacks any
18 kind of basis. I don't see that there is any place in these
19 types of hearings for this type of language that is not
20 subject to any kind of scrutiny or really any kind of public
21 common decency.

22 And so, to me, it should not be condoned as an
23 exhibit at a hearing of this fashion.

24 MR. MEIKLEJOHN: Madam Chair, this is Douglas
25 Meiklejohn. May I address this issue?

1 CHAIRWOMAN SANDOVAL: Yes, go ahead, please.

2 MR. MEIKLEJOHN: Thank you, Madam Chair,
3 Commission. I support Mr. Timmons' effort to preserve the
4 chat and get it into the record. I'll admit that there are
5 some comments that fall into the categories that Mr.
6 Feldewert mentioned, but there also are comments that are
7 valuable in terms of their content and because they reflect
8 views of members of the public about the proceeding. We
9 therefore second it be approved to provide the chat as part
10 of the record, and we urge you to admit the exhibit.

11 Thank you.

12 CHAIRWOMAN SANDOVAL: Go ahead.

13 MS. NANASI: Mariel Nanasi, New Energy Economy,
14 we would join the request to admit it as an exhibit.

15 MR. TIMMONS: Madam Chair, if I may also respond
16 directly to Mr. Feldewert. I also appreciate his concerns
17 and recognize that there is vulgarity in that chat, but the
18 reality is that the chat was open and the members of the
19 public were engaging in that. The Commission was also
20 engaging in that chat.

21 There are substantive discussions. There are
22 also discussions regarding the technical difficulties that
23 were experienced yesterday which were limiting the
24 ability -- the public's ability to participate in this
25 proceeding and understand what was going on. And there is

1 also discussion regarding the issue specifically with
2 respect to the agenda, which I raised several times
3 yesterday. I believe it is relevant to these proceedings.

4 MR. FELDEWERT: Madam Chair, those types of
5 issues are reflected in the official record of the hearing.
6 I would suggest that before you make a decision, that you
7 read through these because I don't think you would condone
8 these types of personal attacks, you would not allow these
9 types of statements, and it shouldn't be condoned as an
10 exhibit.

11 So at least read it first before you admit it.
12 Unless -- I mean, I don't think you want your people who
13 were providing public comment making personal attacks to
14 members of the Commission or on any of the parties, which is
15 exactly what's in here. And anything substantive that
16 occurred at the hearing yesterday is on the official record.
17 This hearing is being transcribed.

18 MR. TIMMONS: Madam Chair, we believe that the
19 Commission has been on mute for this proceeding.

20 I'm just inquiring whether the Commission is
21 deliberating regarding this question. I believe that that
22 should be a public deliberation.

23 MR. LOZANO: Counselor, that was a discussion
24 between me and the Chair. It wasn't a discussion
25 (inaudible).

1 MR. TIMMONS: Thank you, counsel.

2 CHAIRWOMAN SANDOVAL: Your request to enter this
3 chat screen into the record, for one, as I said earlier, we
4 will enter the remaining exhibits in the record at the end
5 of this hearing that have not either come in yet or things
6 will be entered at the end of this hearing. I did say
7 yesterday the chat stream could be part of the record.

8 I will note that that is before I knew what was
9 on that chat, and you know -- but we did commit to doing
10 that. It is also part of the recording. If you look at the
11 recording once it is posted, you do not have to watch eight
12 hours, you can see the entire chat all at once. So
13 inherently it's going to be part of the record regardless.

14 But we will admit the exhibit you are proposing
15 later in the hearing and discuss it at that point, and we
16 would have to do the chat stream for today, too.

17 I think it should be made known that all of those
18 comments that people are making are going into the public
19 record, good, bad, in between. I also think it should be
20 noted that, you know, if we were in a normal hearing
21 circumstances, chatter between individuals at the back of
22 the room would not normally be entered into the record.

23 I think we also -- I want you to know as well
24 that we will be monitoring the chat screen today a little
25 more in-depth. Yesterday, you know, we did not want to be

1 distracted by it, so we were not truly monitoring the chat
2 screen.

3 We will monitor it better today, and if people
4 become vulgar, if people become aggressive, if there are
5 threats to any of the Commissioners, any of the witnesses,
6 et cetera, people will be warned, and if that continues to
7 happen, people will be expelled from the meeting because
8 that behavior, frankly, is not acceptable in any shape or
9 form.

10 Everybody here is a public official who is doing
11 their job, and we understand that we may all have different
12 viewpoints, but it is never acceptable to threaten people's
13 health, well being, make them scared. So I want that to be
14 well known on the record that that kind of behavior is
15 absolutely unacceptable and will not be allowed to continue.

16 Is that understood by all the counselors?

17 MR. TIMMONS: Yes, Madam Chair.

18 MR. MEIKLEJOHN: This is Douglas Meiklejohn of
19 Sierra Club, we do understand that, Madam Chair.

20 CHAIRWOMAN SANDOVAL: Thank you. New Energy
21 Economy, do you understand?

22 (No audible response.)

23 CHAIRWOMAN SANDOVAL: I think you are on mute.

24 MS. NANASI: Sorry, I was trying to (inaudible)
25 yes, I understand what you just said. Thank you.

1 CHAIRWOMAN SANDOVAL: Mr. Feldewert, do you
2 understand?

3 MR. FELDEWERT: Yeah. I don't think you have to
4 worry about any comments like that from my group of people.
5 We don't condone that kind of activity, and I'm disappointed
6 there are some parties in this case that do and in fact
7 encourage it.

8 CHAIRWOMAN SANDOVAL: Ms. Bada, do you
9 understand?

10 MS. BADA: Yes, Madam Chair.

11 CHAIRWOMAN SANDOVAL: Thank you. And it's been
12 established that that will not be acceptable going forward,
13 everybody has acknowledged that, so let's move on.

14 We will now move into the public comment period.
15 As was stated yesterday multiple times, we will recall
16 people who were not available to speak yesterday and whose
17 names were called. In addition, if somebody sent Ms.
18 Davidson a request before 3 p.m. yesterday, we will also go
19 through their names.

20 This will allow us to give every opportunity for
21 people to provide a comment. Just a reminder from
22 yesterday, everybody has five minutes. Please, at the
23 beginning, after we call your name, restate your name for
24 the record, if have you an affiliation, and you may proceed
25 with your five minutes.

1 All right. The first three people on the list,
2 we will name three in a row going forward. Joe Zapan, Sonia
3 Grant, Thea Beckett. Joe Zapan, are you with us today?

4 (No audible response.)

5 CHAIRWOMAN SANDOVAL: Mr. Zapan?

6 (No audible response.)

7 CHAIRWOMAN SANDOVAL: Sonia Grant?

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: Sonia Grant?

10 (No audible response.)

11 CHAIRWOMAN SANDOVAL: Sonia Grant?

12 (No audible response.)

13 CHAIRWOMAN SANDOVAL: Thea Beckett?

14 (No audible response.)

15 CHAIRWOMAN SANDOVAL: Thea Beckett?

16 (No audible response.)

17 CHAIRWOMAN SANDOVAL: Thea Beckett?

18 (No audible response.)

19 CHAIRWOMAN SANDOVAL: The next three, Judith
20 Stanley, Carter Beckett and Erica-Bell Benedetti. Judith
21 Stanley?

22 (No audible response.)

23 CHAIRWOMAN SANDOVAL: Judith Stanley?

24 (No audible response.)

25 CHAIRWOMAN SANDOVAL: Judith Stanley?

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: Carter Beckett?

3 (No audible response.)

4 CHAIRWOMAN SANDOVAL: Carter Beckett?

5 (No audible response.)

6 CHAIRWOMAN SANDOVAL: Carter Beckett?

7 (No audible response.)

8 CHAIRWOMAN SANDOVAL: Erica Bell-Benedetti?

9 (No audible response.)

10 CHAIRWOMAN SANDOVAL: Erica Bell-Benedetti.

11 (No audible response.)

12 CHAIRWOMAN SANDOVAL: The next three, Joan Brown,
13 Elaine Cimino, Patrice Mutchnick. Joan Brown?

14 (No audible response.)

15 CHAIRWOMAN SANDOVAL: Anybody trying to speak,
16 please make sure to unmute yourself. Joan Brown?

17 (No audible response.)

18 UNIDENTIFIED: Madam Chair, are there
19 instructions for unmuting from the telephone?

20 CHAIRWOMAN SANDOVAL: People are able to unmute
21 themselves. We have not -- they should not be muted.

22 SISTER JOAN BROWN: Can you hear me?

23 CHAIRWOMAN SANDOVAL: Yes.

24 SISTER JOAN BROWN: Thank you, I am so sorry, but
25 this has been such a difficult process, but I know you are

1 trying the best you can, but I'm unable to get onto your
2 Webex, and I can't use a cell phone because my line is
3 terrible. And I was unmuting and unmuting and it still
4 didn't work on my land line here. So I -- I don't know,
5 there has to be some better way of this. And I also
6 apologize because -- because I had some of the folks we work
7 with wanted to give testimony, and one just called and she
8 probably just gave up after yesterday.

9 Thank you very much, Commissioners, for hearing
10 all of this. My name is Sister Joan Brown. I'm a
11 Franciscan sister and executive director of New Mexico
12 Interfaith Power and Light, and we work with faith
13 communities all over the state of New Mexico and faith
14 leaders and many are concerned about this issue of water.

15 So for all of our traditions, water is life.
16 From birth to death, water is part of ordinary life and
17 sacred ceremonies. Christians celebrate baptism with water.
18 Catholics use water for blessings as they enter churches and
19 celebrate prayers to San Isidro and Santa Maria. Buddhists
20 invite their folks to live mindfully and to drink water with
21 the sacred presence.

22 The indigenous brothers and sisters in New Mexico
23 offer prayers and dances for water for the well being of
24 everyone in our beautiful state. And this is sacred
25 ceremony; it's not entertainment.

1 Hinduism has many ceremonies around water, and
2 our Islamic neighbors fast during Ramadan and then break
3 those fasts here in the desert, here in Albuquerque and
4 Santa Fe and elsewhere with refreshing and holy water.

5 And our Jewish friends have many prayers of
6 stories of the sacredness of water in the desert. And our
7 bodies know the sacredness and the absolute need that we can
8 only live with pure and clean water.

9 So my question is, why do we knowingly here in
10 New Mexico in a desert climate, which is even more arid in
11 some areas like southeast New Mexico and the Permian Basin,
12 continue to use tens of millions of gallons of fresh and
13 clean water which is a limited gift for a short term profit
14 in the oil fields. This makes no sense.

15 Pope Frances in talking about our ability to --
16 our inability to face and address climate change said our
17 inaction has us on a suicide path. I would say that here in
18 New Mexico we are on a suicide path with our water.

19 So New Mexico Interfaith Power and Light pleads
20 that OCD work on regulations with industry, with the public
21 that require use of this toxified water in the oil and gas
22 fields, and that the oil and gas fields use only the
23 toxified water.

24 And I say toxified because it is not accurate to
25 say that this is produced water. Only God has created

1 water. It is a sacred trust. We cannot create any more
2 water than we already have on the planet. Water is not a
3 product (inaudible) calls it a sister.

4 So our asks are that you use only toxified water
5 in the oil fields for the industry, which we realize we need
6 in the state, that those workers and the community members
7 that are surrounded by this are protected, that there are
8 strong regulations and protections that leaks and spills are
9 addressed, and that there be public disclosure of these
10 toxins used in the fracturing process.

11 I'm just assuming that the reason that they're
12 not made public is because they are too dangerous and they
13 don't want us to know what it is. And that we move strongly
14 in the state to work for, as we continue with the oil and
15 gas industry, to work for other clean and sustainable work
16 in our state as well.

17 We must protect the health of our communities.
18 The children, the most vulnerable in our natural world
19 because this is a sacred trust, it's an ethical and moral
20 responsibility. So we have to have these regulations, but
21 they have to be used with a different mindset than we are
22 already using.

23 So we are all responsible for these issues, no
24 one is excluded, and we are responsible for the future --
25 with serious concern because we are on a suicidal path.

1 So thank you for your work these days and
2 blessings and prayer upon you.

3 CHAIRWOMAN SANDOVAL: Thank you Ms. Brown.
4 Elaine Cimino?

5 MS. BRAVO: Madam Chair, I'm Eleanor Bravo. I'm
6 speaking for Elaine Cimino.

7 CHAIRWOMAN SANDOVAL: Yes, you can. Please
8 proceed.

9 MS. BRAVO: Thank you. My name is Eleanor Bravo.
10 I'm speaking to you today as a private citizen, although I
11 am retired southwest director of Food and Water Watch. I'm
12 also a member of the board of directors of New Energy
13 Economy and Amigos Bravos.

14 I'm not going to reiterate, although I support
15 all the comments made by Mr. Timmons and Ms. Nanasi. But my
16 concern is the commodification of fracking flowback. This
17 fluid was originally obtained from underground aquifer,
18 which is ground water.

19 It is my understanding that the New Mexico
20 constitution considers water as a public resource, in other
21 words, belongs to the people of New Mexico. Does House Bill
22 546 then give ownership of this water to private companies
23 by allowing well operators to use and abuse it and then sell
24 it for profit?

25 How can ownership of water be transferred in the

1 this manner? Will private companies be allowed to transport
2 this radioactive substance, which I do not refer to as
3 water, then on public highways owned by the people of New
4 Mexico with little or no responsibility for spills.

5 And I want to thank you for getting the
6 definition of spill so accurately stated yesterday.

7 Further more, does House Bill 546 assume that
8 recycled produced fluids will be marketable and claims it
9 will save hundreds of acre feet of fresh water. With the
10 incredible expense in purification, why would any private
11 company, agricultural ranching or municipality choose to
12 purchase recycled fracking flowback when ground water is
13 still very, very inexpensive at this point.

14 Water is a basic human right and should not be
15 commodified or privatized for profit. This, in my opinion,
16 is a thinly veiled attempt of the oil and gas industry to
17 squeeze every dollar, every nickel, every drop of water that
18 it can. It is a (inaudible) industry will soon be put out
19 of business. I hope that the Commission will take these
20 comments into consideration. Thank you.

21 CHAIRWOMAN SANDOVAL: Thank you, Ms. Bravo.

22 Patrice Mutchnick?

23 (No audible response.)

24 CHAIRWOMAN SANDOVAL: Patrice Mutchnick?

25 (No audible response.)

1 CHAIRWOMAN SANDOVAL: The next three are Brittany
2 Fallon, Norman Norvelle and Susan Selbin.

3 Brittany Fallon, are you there?

4 MS. FALLON: Can you hear me?

5 CHAIRWOMAN SANDOVAL: Yes. Please state your
6 name and affiliation and you have five minutes.

7 MS. FALLON: My name is Dr. Britton Fallon. I am
8 the policy director for New Mexico Wild. Thank you for the
9 opportunity to provide public comment today.

10 Our fresh water is our most precious commodity,
11 and New Mexico Wild supports industry using less fresh water
12 when fracking as it has the potential to significantly
13 reduce the blow the impact the oil and gas industry has on
14 New Mexico water supplies.

15 We believe that this rule is intended to allow
16 the OCD to collect data on what type of fluid operators are
17 using when fracking. And while we support transparency and
18 requiring disclosure, we are concerned that this rule may
19 have the unintended side effect of incentivizing the
20 industry to reuse produced water without additional
21 guidelines to ensure that in-oil field reuse is safe.

22 Unintentionally increasing reuse without added
23 safety measures means that as treatment, transportation and
24 reuse of produced water increases, so too will produced
25 water leak, spill and result in hazards.

1 The occurrence of water spills on our land is
2 widely reported and documented with over 100 occurring last
3 year. Reuse without appropriate safety guidelines directly
4 impacts and jeopardizes New Mexico Wild's core mission to
5 protect New Mexico's land, water and wildlife.

6 In addition to hazards and accidents related to
7 transportation and pipe explosion, there are additional
8 risks posed by increased storage of produced water as it
9 awaits to be treated or reused for example to wildlife.

10 We understand and appreciate the difficult
11 position that our state regulators are in with regard to
12 fresh water. However, without proper guardrails and
13 penalties it is difficult for the public to trust that
14 produced water will not pose undue risk to New Mexicans and
15 to our public land.

16 A rulemaking process will welcomes public input
17 and allows for flexibility to address the risk that many
18 members of the public are raising is the only true way to
19 know that our state's water, public lands and wildlife are
20 not being sacrificed in the name of oil and gas develop.

21 We have a few is suggestions and recommendations
22 that we believe will add clarity to the rules that you are
23 considering.

24 First, we strongly support leading the way
25 towards full transparency in the oil patch, but we ask that

1 potential unintended consequences, including incentivizing
2 reuse of produced water without additional safety guidelines
3 be fully evaluated.

4 Towards that goal, New Mexico Wild recommends
5 that OCD proposes comprehensive safety guidelines within a
6 time frame of six months that addresses the additional risk
7 of unintended consequences, including accidental leaks and
8 spills and the resultant hazards to land and the public and
9 wildlife.

10 And we agree with other commenters and parties in
11 the case that the term potable should not be used in the
12 definition section of the rule, preferring instead that the
13 term be defined according to scientific measurement.

14 Finally it is our position that reporting data
15 should be approved, be made public in a format that is
16 useful and user friendly to the public.

17 In conclusion, New Mexico Wild's mission is to
18 protect New Mexico's land, water and wildlife, a mission
19 that we believe all New Mexicans support. Increasing reuse
20 of produced water without adequate safety guidelines is
21 contrary to what New Mexicans desire and what New Mexicans
22 expect.

23 We hope our recommendations are factored into
24 this rulemaking process to ensure that all of our shared
25 goal of protecting all of New Mexico's natural resources can

1 be moved forward. Thank you.

2 CHAIRWOMAN SANDOVAL: Thank you, Ms. Fallon.

3 Norman R. Norvelle?

4 (No audible response.)

5 UNIDENTIFIED SPEAKER: Madam Hearing Examiner,
6 this Mariel Nanasi with New Energy Economy. I believe that
7 Mr. Norvelle sent in comments yesterday. He wrote it to Ms.
8 Davidson and me, and I believe, a witness from Sierra Club,
9 Ms. Camilla Feibelman, and yet I don't see that it was
10 (inaudible) or exhibit.

11 Can we send them to Ms. Florene Davidson again?
12 They can in at, I believe, 1:14 p.m. yesterday. And I
13 can -- I can forward it again, and it included
14 Mr. Norvelle's testimony, as well as his curriculum vitae.

15 CHAIRWOMAN SANDOVAL: Yes, please reforward that
16 to Ms. Davidson and --

17 MS. NANASI: Would you like me to send it to
18 Mr. --

19 (Overtalk.)

20 CHAIRWOMAN SANDOVAL: -- to Mr. Lozano as well?

21 MS. NANASI: Yes, I will do that.

22 CHAIRWOMAN SANDOVAL: As I said at the beginning,
23 we will do another round of exhibits entering at the end of
24 this hearing so we can make sure it's gets entered.

25 MS. NANASI: Thank you very much. I'll do that

1 right now.

2 CHAIRWOMAN SANDOVAL: Susan Selbin?

3 (No audible response.)

4 CHAIRWOMAN SANDOVAL: Susan Selbin?

5 (No audible response.)

6 CHAIRWOMAN SANDOVAL: Susan Selbin?

7 (No audible response.)

8 CHAIRWOMAN SANDOVAL: All right. The next three
9 are Lynn Allen, Clifton Bain and Walter Thommes.

10 Lynn Allen?

11 (No audible response.)

12 CHAIRWOMAN SANDOVAL: We have all of the phones
13 muted, so if you are calling in via the phone, please make
14 sure to unmute yourself.

15 UNIDENTIFIED: Thank you.

16 CHAIRWOMAN SANDOVAL: Lynn Allen?

17 (No audible response.)

18 CHAIRWOMAN SANDOVAL: Clifton Bain?

19 (No audible response.)

20 CHAIRWOMAN SANDOVAL: Clifton Bain?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: Clifton Bain?

23 (No audible response.)

24 CHAIRWOMAN SANDOVAL: Walter Thommes?

25 (No audible response.)

1 CHAIRWOMAN SANDOVAL: Walter Thommes?

2 (No audible response.)

3 CHAIRWOMAN SANDOVAL: Walter Thommes?

4 (No audible response.)

5 CHAIRWOMAN SANDOVAL: The next three, Gabriella
6 marks, Mary Ogle and Gene Harbaugh.

7 Gabrielle Marks?

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: Gabriella Marks?

10 (No audible response.)

11 CHAIRWOMAN SANDOVAL: Gabriella Marks?

12 (No audible response.)

13 CHAIRWOMAN SANDOVAL: Mary Ogle.

14 MS. OGLE: Yes, this is Mary Ogle.

15 CHAIRWOMAN SANDOVAL: Yes, go ahead.

16 MS. OGLE: Thank you so much for giving me
17 another chance today. I could not figure out the electronic
18 system yesterday.

19 My name is Mary Ogle and I want to thank you so
20 much to the Commission and all the regulators for giving me
21 my chance to inform you of my concerns about all of these
22 issues, including the produced water proposed regulations
23 and amendment.

24 My testimony will be about the primary prevention
25 of health problems and illness. I am a reserve officer in

1 the United States Public Health Service. I'm UNM graduate
2 and family nurse practitioner and have a lot of experience
3 dealing with birth to death issues and wonderful patients
4 and communities.

5 And what I have learned through education and all
6 my experiences is that prevention of illness, disability and
7 death is by far the most effective, least expensive and
8 least detrimental method to preserve, treat and enhance
9 human and all planetary well-being.

10 That is, I'm also talking about the well-being of
11 oil and gas workers, their family, all their communities,
12 the adjacent and nearby communities and all the environment,
13 the air, water, earth, plants, all the people, not just in
14 New Mexico.

15 So prevention in this oil and gas issue is key to
16 the best possible health of all New Mexicans and their
17 environment. To be specific, we must prevent any exposure
18 to any components of fracked and toxic waste water. We must
19 also prevent any exposure to radiation from the fracking
20 process and its waste.

21 We must also do everything we can to preserve our
22 water, our fresh water, which is a gift from God, as we all
23 know. And so many people before me have spoken of the issue
24 of water and also everything else I'm trying to say.

25 I'm pretty nervous today because of yesterday,

1 all the technical difficulties, so I apologize. And also,
2 everything I say has, most of it, has been said so well by
3 people before me, but I do want to remind everybody that we
4 have, by this primary prevention of preventing exposures to
5 so many toxic things, we are affecting our own progeny.

6 So we're talking about human eggs, human sperm,
7 the embryos, the fetuses, the baby, the children, all of
8 these are directly affected by our choices, good and bad.
9 And, we, I define as myself and all citizens. I define we
10 as the oil and gas executive employers. I define we as the
11 New Mexico oil and gas regulators, and we as our New Mexico
12 legislature and government and everybody else.

13 And we adult humans must remember to be careful.
14 We can choose to make responsible choices. We need to put
15 ourselves in the same places and situations of our fellow
16 citizens, especially our indigenous people. We need to
17 respect and have generosity toward all aspects of our
18 planet.

19 We also need to have self knowledge of our own
20 limitations and prejudices and be responsible for our own
21 behaviors and choices. I think we must think we must listen
22 to each other and we must make healthy decisions that are
23 based on science. And with that, I thank you again.

24 CHAIRWOMAN SANDOVAL: Thank you Ms. Ogle.

25 Next up we have Gene Harbaugh.

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: Gene Harbaugh?

3 (No audible response.)

4 CHAIRWOMAN SANDOVAL: Gene Harbaugh.

5 (No audible response.)

6 CHAIRWOMAN SANDOVAL: Our next three, Jeffrey
7 Haas, Pamela Marshall, Joyce Bogosian.

8 Jeffrey Haas?

9 (No audible response.)

10 CHAIRWOMAN SANDOVAL: Jeffrey Haas, we unmuted
11 you. It looks like you are on.

12 MR. HAAS: Yes.

13 CHAIRWOMAN SANDOVAL: Please go ahead. We can
14 hear you.

15 MR. HAAS: Yes. Can you hear me?

16 CHAIRWOMAN SANDOVAL: Yes, sir.

17 MR. HAAS: Thank you. I wanted to say, first of
18 all, it seems to me that the agency here is passing the
19 buck, and there is nobody to pass it to. So by giving up
20 your authority to regulate this, and acknowledging that no
21 one else had, basically you are saying that we have a big
22 problem here, but we are going to wash our hands of it.

23 So I really think that, sort of like Trump with
24 the Coronavirus, I will pass it on to the state. And here
25 we are passing it on to another agency that doesn't have the

1 experience or even the interest to find out how to regulate
2 it.

3 And in addition, regulation and enforcement by
4 New Mexico's have simply failed. They have not been capable
5 of preventing harm. Studies reveal inherent problems in
6 natural gas and oil extraction process, such as well
7 integrity -- such as well integrity failures caused by aging
8 or the process of fracking itself and in the waste disposal
9 process.

10 These issues lead to water contamination,
11 greenhouse gas emissions, air pollution, carcinogens and
12 other toxic chemicals, earthquakes and a range of
13 environmental and other stresses inflicted on communities.

14 Tighter state regulations and tougher
15 enforcement, including unannounced visits by state health
16 inspectors equipped with infrared cameras will reduce
17 leaking methane and toxic vapors at individual well sites.
18 The total air emissions continue to rise as the total number
19 of wells continues to increase.

20 What is distressing and frankly alarming is that
21 the governor I voted for has decreased the number of well
22 inspections by 28 percent from her predecessor, Governor
23 Martinez, who did 42,000 inspections in 2018, and Governor
24 Grisham has done 31,000 since 2019.

25 According to the Energy Minerals Resource

1 Department, well inspections were down in fiscal year 2019
2 due to high vacancy rate in the OCD field, and that's -- the
3 cite is [HTPP//WWW.ENMRD.STATE.NM@ANNUALREPORT2019](http://www.enmrd.state.nm.gov/annualreport2019). This
4 isn't the opinion of -- this isn't the opinion -- this isn't
5 just my opinion, but it's the opinion of the New Mexico
6 Legislative Finance Committee which creates a performance
7 report card for various regulatory agents.

8 In the first quarter L FC had to this to respond
9 to EMNRD. The oil and gas division of OCD attributes fewer
10 inspections and lack of compliance with permits and
11 regulations to compliance officer vacancies. Currently half
12 of OCD's compliance officer vacancies (inaudible).

13 According to New Mexico Oil Conservation
14 Division, there were 15 -- 1523 reported spills in 2018.
15 That's roughly 4.2 spills per day. That means that on an
16 average day, 252 barrels of produced water spilled, 44
17 barrels of crude oil spilled, and 677,000 cubic feet of
18 natural gas leaked.

19 Methane emission leakage rates among active
20 wells are common -- are common and wildly high and out of
21 control. According to the April 2020 Environmental Expense
22 Fund report regarding air pollution in the Permian Basin as
23 a result of O&G extraction activity, methane and other
24 volatile organic compounds were generally three times what
25 was reported nationally by the Federal Environmental

1 Protection Agency.

2 EDF estimated a leak rate of about 3.5 percent,
3 about 15 times higher than the goal of .25 percent by the
4 Oil and Gas Climate Initiative, a national coalition of oil
5 and gas companies formed to address climate issues in the
6 industry.

7 Some wells are super emitters meaning wells that
8 have high methane and other greenhouse gas emissions. But
9 again there is no little or no regulation as well, no
10 ticket, no civil penalties, no permits pulled and no ban on
11 future permits that the operators of these super methane
12 emitting wells.

13 Basically what you have is a bad situation, no
14 regulation now, and it seems like this Commission is saying,
15 "Well, it's not our problem. And not only is it not our
16 problem, but it doesn't seem to be anybody else's problem.
17 But other job is to pass it on and avoid jurisdiction and
18 avoid regulation."

19 And I think that (inaudible) on this is
20 irresponsible. It seems like that you could -- if you were
21 not going to --

22 CHAIRWOMAN SANDOVAL: Mr. Haas, you have reached
23 your five minutes. Can you please wrap it up?

24 MR. HAAS: I will. If you yourselves cannot
25 regulate it, it seems like you have an obligation to form it

1 with another agency with the same administration before you
2 pass on the dangerous risk of these produced water, you make
3 sure that somebody is regulating it safely. Thank you.

4 CHAIRWOMAN SANDOVAL: Thank you.

5 Pamela Marshall?

6 (No audible response.)

7 CHAIRWOMAN SANDOVAL: Pamela Marshall?

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: Pamela Marshall?

10 MS. NANASI: Madam Hearing Examiner, it says in
11 the chat that Ms. Susan Selbin is ready to speak. So I
12 just -- you had called her name before, and I'm reading the
13 the chat and I wanted to alert you to that. Thank you.
14 That was Mariel Nanasi, New Energy Company.

15 CHAIRWOMAN SANDOVAL: Thank you.

16 Pamela Marshall.

17 (No audible response.)

18 CHAIRWOMAN SANDOVAL: I'm going to call Joyce
19 Bogosian and after that Susan Selbin can go.

20 MS. BOGOSIAN: Can you hear me?

21 CHAIRWOMAN SANDOVAL: Yes, we can.

22 MS. BOGOSIAN: Thank you. Good morning, Madam
23 Chairman and Commissioners. My name is Joyce Bogosian of
24 Santa Fe, and I am here to speak on my own behalf.

25 I am vehemently opposed to and against any

1 proposed rule changes that are not fundamentally based on
2 overwhelming scientific data demonstrating harmful effects
3 produced water creates. There is a long list of toxic,
4 radioactive chemicals utilized in the fracking process, and
5 some of them are so-called trade secrets.

6 Any one of these chemicals alone can cause
7 harmful effects to one's health. What produced water
8 produces is extreme contamination of our soil, our water,
9 our wildlife and our people. Everything we need to live and
10 survive is at stake here.

11 There is absolutely no reason in the world it is
12 justified to expose New Mexicans who are already at risk to
13 suffer the consequences of continuing to support a corporate
14 fracking industry that is only invested in placing profits
15 above people.

16 Thank you.

17 CHAIRWOMAN SANDOVAL: Thank you. Susan Selbin?

18 (No audible response.)

19 CHAIRWOMAN SANDOVAL: Susan Selbin?

20 MS. SELBIN: I'm here.

21 CHAIRWOMAN SANDOVAL: We can hear you.

22 MS. SELBIN: Oh, great. Thank you. I appreciate
23 the opportunity. Fracking has concerned me for years, and
24 since I direct films, I've worked with others to direct film
25 festivals and speakers to address the dangers of fracking.

1 My -- the first film was in 2011 entitled, It's
2 All About Water, and it's still all about water. That one
3 was showing viewers how fracking works.

4 And then last April we did a film festival
5 entitled, "Climate Disruption Here Now, focusing on the
6 connection to climate change.

7 And last September we did another film festival,
8 New Mexico Rising, focusing on addressing climate change
9 with a (inaudible). We are working on another film
10 festival, and hopefully (inaudible) and that's facing
11 reality, and it's not so hopeful.

12 In June 2020, the democrats in the US House
13 committee on the climate crises issued a plan entitled,
14 Solving the Climate Crises, the Congressional Action Plan
15 for Clean Energy Economy, and a Healthy Resilient and Just
16 America.

17 With that reality of 2020 climate crises film
18 festival has the subtitle, "Urgent Action to Mitigate
19 Climate Change." I mitigate because it's happening. After
20 40 years of fossil fuel lifestyle, we can't stop the damage
21 that's in progress, so we have to mitigate the damage as
22 best we can while changing the way we live. We are now the
23 problem.

24 As Miguel -- Bill McCibbon has stated, we have
25 just ten years, ten years to change the effects of 40 years

1 of fossil fuel domination, we now know the oil and gas
2 industry -- we knew that would happen, but went ahead,
3 anyway.

4 So our hope with the film festival is to do
5 education and provide -- the City of Albuquerque will
6 provide a venue, but at this time, no scheduling is
7 possible. So it's still about water, and now it's
8 specifically produced water and this insane proposal to
9 drastically erase existing rules that are already inadequate
10 to protect our fresh water sources.

11 So after 40 years, the oil and gas industry still
12 doesn't care about (inaudible) and we have only ten years to
13 turn this around, so some -- reuse and recycling of produced
14 water should be limited solely to oil and gas operation.

15 Fresh water resources should not be used for
16 fracking, period, fracking must end if they require fresh
17 water. That's not an option. So the status quo is really
18 unacceptable. Spills are common in New Mexico, the
19 (inaudible) are not regulated and the data on produced water
20 and is sorely lacking.

21 As the last speaker mentioned, we don't have
22 enough inspectors out there. We are not getting the job
23 done. The produced rules allows us the authority granted by
24 the Produced Water Act to protect public health, the
25 environment and fresh water resources.

1 The rules do not adequately address issues
2 associated with specifications, handling for storage of
3 produced water, and that is leaks and spills which can occur
4 on and off the oil field.

5 The term potable and not potable are not
6 appropriate. I think that was discussed yesterday and
7 agreed that was not appropriate, and it would be eliminated.
8 And we don't know what's in this frac fluid. We, we don't
9 know the chemical characteristics, toxicity, and therefore
10 use within and outside of the oil field is not human safe
11 for human health or the environment.

12 So I ask that you thoroughly oppose the change to
13 the rules and to New Mexico as we (inaudible). Thank you.

14 CHAIRWOMAN SANDOVAL: Thank you. Okay. The next
15 three names, Sandra Wheeler, Barbara A. Kohl and Nicholas
16 King.

17 Sandra Wheeler?

18 (No audible response.)

19 CHAIRWOMAN SANDOVAL: Sandra Wheeler?

20 (No audible response.)

21 CHAIRWOMAN SANDOVAL: Sandra Wheeler?

22 (No audible response.)

23 CHAIRWOMAN SANDOVAL: Barbara A. Kohl?

24 (No audible response.)

25 CHAIRWOMAN SANDOVAL: Barbara A. Kohl?

1 (No audible response.)
2 CHAIRWOMAN SANDOVAL: Barbara A. Kohl?
3 (No audible response.)
4 CHAIRWOMAN SANDOVAL: Nicholas King.
5 (No audible response.)
6 CHAIRWOMAN SANDOVAL: Nicholas King?
7 (No audible response.)
8 CHAIRWOMAN SANDOVAL: Nicholas King?
9 (No audible response.)
10 CHAIRWOMAN SANDOVAL: The next three, Sharon
11 Argenbright, Denton McCullough, Josue Damien Martinez.
12 MR. MARTINEZ: Yes, I'm here.
13 CHAIRWOMAN SANDOVAL: So Sharon Argenbright --
14 we'll do it in that order, Sharon Argenbright, Denton
15 McCullough and then Mr. Damien Martinez.
16 Sharon Argenbright, are with you with us?
17 (No audible response.)
18 CHAIRWOMAN SANDOVAL: Sharon Argenbright?
19 (No audible response.)
20 CHAIRWOMAN SANDOVAL: Sharon Argenbright?
21 (No audible response.)
22 CHAIRWOMAN SANDOVAL: Ms. Argenbright?
23 (No audible response.)
24 CHAIRWOMAN SANDOVAL: Denton McCullough?
25 (No audible response.)

1 CHAIRWOMAN SANDOVAL: Denton McCullough?

2 (No audible response.)

3 CHAIRWOMAN SANDOVAL: Mr. McCullough?

4 (No audible response.)

5 CHAIRWOMAN SANDOVAL: Mr. Danny Martinez, was
6 that you a moment ago?

7 MR. MARTINEZ: Yes.

8 CHAIRWOMAN SANDOVAL: Please proceed, state your
9 name, affiliation, and then you have five minutes.

10 MR. MARTINEZ: Okay. My name is Josue Damian
11 Martinez. I'm a resident of New Mexico. I was raised on
12 the south side of Santa Fe. I'm here to speak against
13 transportation out of the proposed -- the proposal of the
14 uses of produced water and its proposed usage on our crops
15 and streams.

16 I think, too often -- too often do we individuals
17 (inaudible) that effect our future generations in the long
18 run and ignore the impacts it can have on the minority
19 voting communities. I urge the Commission to oppose this
20 proposal.

21 And I know that I'm not the only one to call on
22 accountability. At this time we have heard from various
23 people and younger folks like myself who are urging and
24 asking to look further at -- and look for the safety of our
25 generations.

1 The Commission must understand that we find
2 ourselves in a climate emergency, and that every decision we
3 make is going to impact the bigger picture of the climate
4 emergency in the state we find ourselves in. And we need to
5 start thinking of what's going to benefit our next
6 generation and the people that are going to inhabit the
7 environment we are living in.

8 I'm speaking not only on behalf of the immigrant
9 community -- not only on behalf of (inaudible) community
10 where I find myself in, but I also speak on behalf of the
11 indigenous communities who are often (inaudible) and
12 sacrifice (inaudible) and the land they used for sacrifice
13 and for profit. That's going to be the end of my statement.

14 CHAIRWOMAN SANDOVAL: Thank you, sir. The next
15 three are Ruth Striegel, Wendy Atcitty and Lynn Gold.

16 Ruth Striegel?

17 (No audible response.)

18 CHAIRWOMAN SANDOVAL: Ruth Striegel?

19 (No audible response.)

20 CHAIRWOMAN SANDOVAL: Ruth Striegel?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: Wendy Atcitty?

23 (No audible response.)

24 CHAIRWOMAN SANDOVAL: Wendy Atcitty?

25 (No audible response.)

1 CHAIRWOMAN SANDOVAL: Wendy Atcitty?
2 (No audible response.)
3 CHAIRWOMAN SANDOVAL: Liz Gold?
4 (No audible response.)
5 CHAIRWOMAN SANDOVAL: Liz Gold?
6 (No audible response.)
7 CHAIRWOMAN SANDOVAL: Liz Gold?
8 (No audible response.)
9 CHAIRWOMAN SANDOVAL: The next three are Felina
10 Romero, Valerie Gremillion, Theresa Seamster.
11 Felina Romero?
12 (No audible response.)
13 CHAIRWOMAN SANDOVAL: Felina Romero?
14 (No audible response.)
15 CHAIRWOMAN SANDOVAL: Felina Romero?
16 (No audible response.)
17 CHAIRWOMAN SANDOVAL: Valerie Gremillion.
18 (No audible response.)
19 CHAIRWOMAN SANDOVAL: Valerie Gremillion.
20 (No audible response.)
21 CHAIRWOMAN SANDOVAL: Valerie Gremillion.
22 (No audible response.)
23 CHAIRWOMAN SANDOVAL: Theresa Seamster?
24 (No audible response.)
25 CHAIRWOMAN SANDOVAL: Theresa Seamster?

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: Theresa Seamster?

3 (No audible response.)

4 CHAIRWOMAN SANDOVAL: The next three, Richard
5 Welker, Mark LeClaire and William Ogle.

6 Richard Welker.

7 MR. WELKER: Yes, I'm here. Can you hear me?

8 CHAIRWOMAN SANDOVAL: We can. You are kind of
9 cutting out, so it may help to turn your video off.

10 MR. WELKER: Okay. I will turn my video off.
11 Did that help?

12 CHAIRWOMAN SANDOVAL: It does, yes. Please state
13 your name, any affiliation, and then you have five minutes.

14 MR. WELKER: Thank you so much. Commissioners,
15 Madam Chair, my name is Richard Welker. I'm a 30-year
16 resident of Santa Fe. I'm affiliated with no one but my
17 community.

18 I'm sorry I can't use the video because I'm
19 holding in my hand a jar of what I will call produced
20 artificial water. I want to know if any of you watching
21 this would like to drink this artificial water product.

22 Would you drink it freely if Monarch Oil assures
23 you it's perfectly safe? Would you offer it to your spouse
24 when the EPA says it's not hazardous in any way? Will you
25 let your children make lemonade with it because the state

1 environmental department determines that it passes all
2 applicable state tests? Will you set a glass on your
3 parents' bed stand because politicians you trusted voted to
4 make this product available? Will you offer it to your
5 friends at a party or put it in the water bowls of your pets
6 when the OCD tells you that it's exempt from oversight or
7 that it's well within the metrics of being clean enough or
8 pure enough? Will you do this?

9 Because it's simple, even if we decline to drink
10 this artificial water today out of this jar, we will
11 certainly drink it tomorrow one way or the other if we allow
12 it to be applied to our lands, dumped in our rivers, watered
13 on our crops or sprayed upon our roads.

14 I ask you this now: How will you feel when you
15 learn sometime in the future that this artificial water has
16 been found everywhere like Teflon and glyphosate, in our
17 beans, in our beef, our corn, our squash, our milk, our
18 bodies, our children and our grandchildren born without God
19 knows what. By then our choice to drink this water or not
20 will be long gone.

21 Thank you very much.

22 CHAIRWOMAN SANDOVAL: Thank you, Mr. Welker.

23 Mark LeClaire?

24 (No audible response.)

25 CHAIRWOMAN SANDOVAL: Mark LeClaire?

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: Mark LeClaire?

3 (No audible response.)

4 CHAIRWOMAN SANDOVAL: William Ogle?

5 (No audible response.)

6 CHAIRWOMAN SANDOVAL: William Ogle?

7 (No audible response.)

8 CHAIRWOMAN SANDOVAL: Mr. Ogle, we see you on the
9 participant list. You are unmuted. Are you there?

10 (No audible response.)

11 CHAIRWOMAN SANDOVAL: Mr. Ogle?

12 (No audible response.)

13 MS. OGLE: This is Mary Ogle. He is trying. Is
14 it okay if he uses my machine?

15 CHAIRWOMAN SANDOVAL: Yeah, no problem.

16 MS. OGLE: Thank you so much.

17 MR. OGLE: Hello, this is Bill Ogle.

18 CHAIRWOMAN SANDOVAL: Hi. Please proceed.

19 MR. OGLE: This is Bill Ogle. I'm just
20 representing myself. I wanted to thank you and thank the
21 participants. I agree with and support the previous
22 comments of most of the participants in saying that we, that
23 we really need to, to limit and eventually eliminate the use
24 of fracked water, produced water.

25 And I support the comments of WildEarth Guardians

1 and of Yucca and Earth Care, New Energy Economy. And I want
2 to just say that we need to -- we need to be working
3 towards eliminating the hazards of produced water and of the
4 global warming caused by burning the oil and gas that comes
5 from the Permian Basin. So once again, thank you and good
6 luck. All right.

7 CHAIRWOMAN SANDOVAL: Thank you, sir.

8 Okay. So that was the last of the people. What
9 I'm going to do is if anybody whose name I called a moment
10 ago and you were not there, I'm going to run through names
11 and in a series of five. If I call your name, and you are
12 with us, please indicate as such, and we will allow you to
13 speak.

14 Joe Zapan?

15 (Inaudible.)

16 CHAIRWOMAN SANDOVAL: Okay, I will say this again
17 Joe Zapan, Sonia Grant, Thea Beckett, Judith Stanley and
18 Carter Beckett?

19 Are any of the people's names I just called with
20 us?

21 (No audible response.)

22 CHAIRWOMAN SANDOVAL: Joe Zapan, Sonia Grant,
23 Thea Beckett, Judith Stanley, Carter Beckett?

24 (No audible response.)

25 CHAIRWOMAN SANDOVAL: I'm going to move on to the

1 next five. Erica Bell-Benedetti, Patrice Mutchnick, Norman
2 Norvelle whose comment we did receive, but just in case he
3 is her, Lynn Allen, Clifton Bain?

4 (No audible response.)

5 CHAIRWOMAN SANDOVAL: Erica Belle-Benedetti,
6 Patrice Mutchnick, Norman Norvelle, Lynn Allen, Clifton
7 Bain.

8 (No audible response.)

9 CHAIRWOMAN SANDOVAL: Walter Thommes, Gabriella
10 Marks, Gene Harbaugh, Pamela Marshall, Sandra Wheeler?

11 (No audible response.)

12 CHAIRWOMAN SANDOVAL: Walter Thommes, Gabriella
13 Marks, Gene Harbaugh, Pamela Marshall, Sandra Wheeler?

14 (No audible response.)

15 CHAIRWOMAN SANDOVAL: Barbara A. Kohn, Nicholas
16 King, Sharon Argenbright, Vincent McCullough, Liz Gold?

17 (No audible response.)

18 CHAIRWOMAN SANDOVAL: Barbara A. Kohl, Nicholas
19 King, Sharon Argenbright, Vincent McCullough, Liz Gold?

20 (No audible response.)

21 CHAIRWOMAN SANDOVAL: Felina Romero, Valerie
22 Gremillion, Theresa Seamster, Mark LeClaire?

23 (No audible response.)

24 CHAIRWOMAN SANDOVAL: Felina Romero, Valerie
25 Gremillion, Theresa Seamster, Mark LeClaire?

1 (No audible response.)

2 CHAIRWOMAN SANDOVAL: That was everybody on the
3 list. We have gone through it twice now today. We have
4 given everybody ample time to make their comments this
5 morning, and with that, it is 10:30, let's take a ten-minute
6 break until 10:40, and then we will resume with Sierra
7 Club's witnesses. Thank you. We will take a break until
8 10:40.

9 (Recess taken.)

10 CHAIRWOMAN SANDOVAL: Okay. It's 10:41, and we
11 are going to resume the meeting. It looks like we now have
12 Kathy Wooten and Valerie Gremillion who wish to speak.
13 Kathy, are you there?

14 MS. WOOTEN: Get myself unmuted.

15 CHAIRWOMAN SANDOVAL: Yes.

16 MS. WOOTEN: My name is Kathy Wooten, and I --
17 interrupt somebody?

18 CHAIRWOMAN SANDOVAL: No, please proceed.

19 MS. WOOTEN: Did you want me to go ahead? I'm
20 sorry, I might have interfered with your --

21 CHAIRWOMAN SANDOVAL: Yes, please go ahead.

22 MS. WOOTEN: Thank you. Again, my name is Kathy
23 Wooten, and I live in Los Lunas, New Mexico. I have for two
24 years. Like all, I am a devoted citizen of New Mexico, and
25 the fact that it truly is the Land of enchantment, and I'm

1 very concerned about its welfare.

2 What I was going to say originally was what my
3 written statement said, but when I thought about it, I
4 thought there hasn't been one person that I'm aware of that
5 made a public comment in these two days that is comfortable
6 with the concept of using fracking fluid waste outside of
7 the oil and gas field at all.

8 Also we are very aware the scientific work has
9 not been completed as far as being able to treat the water
10 sufficiently and provenly. Water is the issue, as one of
11 our previous commenters said.

12 I'm a little funny because this is very complex.
13 Very many good brains are working on it in one way or the
14 other. I'm going to consider the Oil & Gas Association of
15 New Mexico to be my fellow citizens. We are not on the same
16 side of this issue, but they are my fellow citizens. They
17 live in the Land of Enchantment. Their kids go to school
18 here.

19 I understand that they are in business and trying
20 to do so in a way that they think is reputable. The problem
21 is, the product is not reputable. The people in
22 Pennsylvania who studied it, the three colleges, Penn State,
23 Colorado State and Dartmouth College, they found the highest
24 concentrations of pollutant and significant contaminations
25 for some carcinogens, found in lake sediment layers

1 deposited five to ten years earlier than the study was made
2 during the peak period of fracking waste water disposal.

3 We are already and have been in a peak period of
4 the Permian Basin. We wonder why we don't have faith and
5 confidence in what's going on? It's because all the science
6 that we have now tells us that this product is harmful to
7 humans, land, animals and plants. I think that's been well
8 stated and well documented.

9 It is -- I am still mystified that the basic
10 problem of destroying Mother Earth with fracking and its
11 contaminants that are left behind doesn't seem to be the
12 issue at all. We are ready to continue fracking, to
13 continue polluting Mother Earth, to continue threatening our
14 indigenous communities and those living close to the oil and
15 gas field.

16 New Mexico is in a strange position. We haven't
17 got money; oil and gas does. We basically haven't got
18 education. We have been told to get the money from oil and
19 gas. So we are a perfect storm for this issue. But I think
20 you can see from the number of responses you have what the
21 feeling of the populus is. And I can only tell you, after
22 having studied this for over a year with another group of
23 just citizens, that we are not going to go away. The
24 opposition to toxic fluid waste, misnamed produced water,
25 will intensify and strengthen.

1 Thank you for allowing me to make a comment.

2 CHAIRWOMAN SANDOVAL: Thank you, ma'am. (.)

3 MS. GREMILLION: Yes, I'm here. Can you hear me?

4 CHAIRWOMAN SANDOVAL: We can. Please state your
5 name and affiliation.

6 MS. GREMILLION: I would like to share some
7 slides later with the court reporter and reassure her,
8 because I do speak very rapidly, that I will be reading
9 directly from these.

10 My name is Dr. Valerie Gremillion. I have a
11 Ph.D. in neuroscience. I'm currently an unaffiliated
12 independent research scientist. My degrees are from Western
13 University. I have a neuroscience Ph.D. from UCSD. My
14 other fields of study have been in complex systems at LANL,
15 Oxford University, large-scale nonlinear brain modeling and
16 ecosystem modeling, including human systems modeling, at
17 UNM, SFI and other independent research institutions.

18 This is relevant because I'm currently engaged in
19 a systems-based cost-benefit analysis of all interactions
20 between laws and economic incentives of the State of New
21 Mexico.

22 My comments today are to directly note that the
23 information needed by the public to make wise decisions is
24 either unknown or unavailable by the state, and this is not
25 acceptable for our future. Fracking endangers our drinking

1 water supply, our communities and ecosystems, our forest,
2 rivers, aquifers, the health of our citizens and our ability
3 to adapt to climate change.

4 Fracking threatens our ability to survive in this
5 state, and we cannot survive here if earthquakes begin in
6 our volcanic region. It will simply be impossible, and that
7 is for many reasons. I have a number of questions I just
8 wish to read into the record. I do not expect, because I
9 will not be allowed that ability to receive answers today,
10 but I would like these questions to be known to the state,
11 and I request them to answered as soon as possible.

12 First, in terms of fracking input, impact, how do
13 we know revenue to the state from oil and gas is sufficient
14 to compensate for the destruction of our personal community
15 health, destruction of our landscape and tourism, other
16 resources, and especially this is true now that oil and gas
17 prices have cratered.

18 What cost benefit analysis have been done by
19 EMNRD, NMED and other agencies to the state to prove this is
20 worth doing or that it's not -- it's not just a major cost
21 to us.

22 I secondly -- or now I ask, where is the
23 sustainability model for the amount of fresh water oil and
24 gas uses? How can taxpayers afford 162,000 acre feet of
25 fresh water used by fracking in 2019? Albuquerque used

1 100,000 -- 100,000 acre feet.

2 I would like to note specifically do frackers pay
3 the market value of this water or not? I also would like to
4 know why I can't find -- and I'm an expert researcher,
5 expert scientific researcher -- I can find no public
6 electronic databases at either EMNRD nor NMED documenting
7 oil and gas violations, fines, or incident lists. I would
8 like to know whether such publicly available database
9 exists, or are there private ones? I know there is a
10 spreadsheet somewhere, and I would like to see that. I
11 request formally that the state make all such data
12 electronically available to the public.

13 My next point is -- sorry -- that we have
14 currently completely inadequate economic, health and
15 ecosystem impact data. What is the ratio of inspectors to
16 wells in New Mexico? I believe we have less than 30
17 inspectors. We are 4000 to three 33,000 wells that I have
18 been able to determine. Why are we not prioritizing hiring
19 inspectors for fracking wells despite this being a neglected
20 revenue stream from which we could be making money. They
21 owe us billions of dollars. And many of companies have come
22 in here, extracted, bankrupted themselves and left, and they
23 have not restored anything.

24 How many times has a well been inspected over its
25 lifetime, and how much revenue is lost due to these

1 non-regular inspections? I would like to know at what rate
2 do oil and gas companies pay for water, and how are we
3 subsidizing that?

4 I would like to know why are we issuing new
5 permits when old wells are not cleaned up, nor are they
6 profitable to the state or even to these people. I would
7 like to know how many companies have been bankrupted and
8 reapplied under a new name and received permits for
9 continued fracking.

10 We have multiple undetermined costs of fracking.
11 As a neuroscientist I can tell you that fracking water
12 components are not merely carcinogenic, they are also
13 detrimental to liver, kidney and aging functions, and
14 explicitly to all brain health functions, including IQ and
15 the inducement of Alzheimer's disease. This is not in
16 debate. We know this.

17 I would like to know what bond, payments or
18 recompense is offered by the oil and gas industry. What
19 cost analysis of these health impacts has been done, how
20 much damage to our children has been sustained, what
21 increase in other degenerative diseases and other health
22 impacts can be tied to this?

23 I will do this, but I will not look to the state
24 if they don't have numbers for this. I would also like to
25 indicate that there is currently massive damage and

1 destruction to our ecosystem and towns. Carlsbad is now at
2 risk of a catastrophic sink hole in its northwest, I
3 believe, corner due to fracking. Who will pay for this
4 multi-billion dollar (inaudible).

5 CHAIRWOMAN SANDOVAL: You have reached your five
6 minutes. Will you wrap it up, please?

7 MS. GREMILLION: I will, thank you. I just have
8 a few more sentences. Our quality of life, our wildlife
9 habitat and our tourism economy, as well as our ability to
10 live here is in massive danger. Earthquakes in our volcanic
11 zones are like due to deep well injection. Water is the
12 issue, but fracking is the problem. Frackers are profiting.
13 New Mexico's future is being destroyed. We can not afford
14 this in terms of money or water. It's time for other
15 solutions and other approaches.

16 Thank you very much. I appreciate you listening
17 to this. To the clerk, I can send you these slides, please
18 post on the chat what address I can use. Thank you very
19 much.

20 CHAIRWOMAN SANDOVAL: Thank you. All right. We
21 will now move out of the public comment period again and
22 continue with the testimony.

23 We will now continue the technical testimony
24 portion of this hearing. Yesterday OCD concluded a
25 presentation of testimony. Sierra Club is the only

1 remaining party that wishes to present testimony at this
2 hearing and witnesses.

3 Sierra Club please call your first witness.

4 (Oath administered.)

5 CHAIRWOMAN SANDOVAL: I'm sorry, court reporter,
6 we need Ms. Feibelman to --

7 WITNESS: It's Camilla Feibelman, and I raised my
8 right hand, and I do swear to tell the truth.

9 CHAIRWOMAN SANDOVAL: Thank you.

10 MS. LYNCH: I'm sorry, I think I was on mute. My
11 name is -- Madam Chair, my name is Cara Lynch. I'm
12 co-counsel for Sierra Club. In this matter I wish to
13 present Camilla Feibelman, the chapter director of Sierra
14 Club, in her testimony as a witness.

15 CHAIRWOMAN SANDOVAL: Please proceed.

16 CAMILLA FEIBELMAN

17 (Sworn, testified as follows:)

18 DIRECT EXAMINATION

19 BY MS. LYNCH:

20 **Q. Ms. Feibelman, can you please state your name and**
21 **address for the record?**

22 A. Sure. My name is Camilla Feibelman, and as the
23 director of Rio Grande Chapter of the Sierra Club, our
24 offices are located at 2215 Lead Avenue, Southeast,
25 Albuquerque, New Mexico, 87106.

1 **Q. Thank you. Please spell your last name for the**
2 **recording office?**

3 A. Feibelman, F as in frank, e-i-b as in boy,
4 e-l-m-a-n.

5 **Q. Would you kindly describe your education,**
6 **background and experience?**

7 A. Sure. I graduated from Albuquerque High School.
8 I have an undergraduate degree in environmental biology and
9 master's in planning. I serve as a trustee for the Udall
10 Foundation and have been an employee of the Sierra Club
11 since 2000 serving in different roles.

12 **Q. Thank you. Chairwoman -- or, Ms. Feibelman, when**
13 **we filed Sierra Club's notice of intent, we filed your**
14 **resume as an exhibit. Is that your resume?**

15 A. It is.

16 MS. LYNCH: I respectfully move, Chairwoman, to
17 have the hearing officer formally accept Camilla Feibelman's
18 resume as an exhibit here.

19 **Q. Ms. Feibelman, on whose behalf are you testifying**
20 **today?**

21 A. On behalf of the Rio Grande Chapter of the Sierra
22 Club.

23 **Q. Thank you. And what does the Rio Grande Chapter**
24 **of the Sierra Club do in New Mexico?**

25 A. The Sierra Club staff and volunteers work to

1 explore, enjoy and protect New Mexico and West Texas which
2 is also part of our chapter. Our volunteer leadership have
3 established our priority areas of work to curb the global
4 climate crises, to protect our waters, conserve public
5 lands, defend wildlife, all for our families and for our
6 future.

7 We participate in legislative and administrative
8 processes to achieve these goals for all New Mexicans and
9 West Texans.

10 **Q. Your chapter was granted specific authority by**
11 **the national Sierra Club. Can you describe how that**
12 **authority was provided to you?**

13 A. Yeah. The elected executive committee of our
14 chapter approved our participation in this proceeding, and I
15 was granted authority by them, by our volunteer water issues
16 chair and our National Environmental (inaudible) program to
17 speak today.

18 **Q. Great. And what exactly will you be speaking**
19 **about today?**

20 A. So I would like to speak on three big topic areas
21 and then make four specific suggestions for this rulemaking.

22 So number one, I will talk about the protection
23 and conservation of uncontaminated ground and surface water
24 resources as a high priority for the Sierra Club. And this
25 proceeding has a big potential to affect those fresh water

1 resources in a couple of ways, but just to specify that many
2 of these water resources are found inside and outside the
3 oil fields.

4 Number two, we know that the fracking process
5 uses a large amount of water, and since fresh water
6 resources are a subject scarce resource for New Mexico, it's
7 essential that the amount of fresh water resources used in
8 the fracking process be limited as much as possible.

9 So, for that reason, any regulations that are
10 adopted in this proceeding should emphasize the reuse of
11 produced water and fracking whenever possible, but maybe
12 even more importantly, as provided under the Produced Water
13 Act, the regulation of produced water should protect public
14 health, the environment and fresh water resources.

15 Just because produced water is used in the oil
16 field doesn't mean it's necessarily safe for communities.
17 So any regulations that are promulgated in this proceeding
18 should make clear that the fluid referred to as produced
19 water that's created during the process of the oil and gas
20 extraction, particularly by the means of hydraulic
21 fracturing or fracking, can't be used in any manner that
22 brings it in contact with fresh water resources, they're
23 contaminating those fresh water resources.

24 So contact with fresh water can occur through
25 spills and happen during treatment or even during

1 transportation, so we need to take care and understand that
2 the concept of, in the oil field is a bit unspecific. There
3 are many communities in the oil field that need to transport
4 this produced water.

5 So our formal position with concern to the use of
6 produced water sets forth four things. Produced water must
7 be the fluid used whenever possible in the oil and gas
8 industry fracking process inside the oil field instead of
9 consuming fresh water resources. So that's one issue, no
10 fresh water in the fracking process.

11 Now, that's what goes in, right, but then there's
12 what comes out. So the use of what comes out, the produced
13 water must be limited to use within the oil field in
14 situations which produced water does not contact fresh water
15 resources.

16 And then transportation, storage, processing and
17 other handling of produced water within reuse of the oil
18 field could increase the risk to the public and
19 environmental exposure, and that needs to be regulated,
20 right. If you have produced water come out of a well, and
21 then you have to pipe it in big plastic pipes through the
22 backyard of Penny Aucoin who subsequently got dowsed in
23 produced water, you have a problem.

24 And then Number 4, treated -- either treated or
25 untreated produced water shouldn't be used outside the oil

1 field until it and the risks of use are scientifically
2 understood and proven to be safe to human health and the
3 environment.

4 I understand and recognize that we are not
5 talking about off oil field use of produced water in this
6 proceeding; however, since the water or the fluid has not
7 been shown to be safe at all, extra care needs to be taken
8 in the oil field, not to mention off the oil field.

9 **Q. Thank you. Ms. Feibelman, these are highly**
10 **technical issues requiring a background in science; however,**
11 **we are dealing with the regulatory process. Can you clarify**
12 **for us what qualifies you to speak on these matters?**

13 A. Sure. I have a science in planning background.
14 I have served in many roles within the Sierra Club for 20
15 years. I have led our student national organization. I
16 have provided communications support to environmental
17 justice and Spanish speaking communities throughout the
18 country dealing with issues just like these.

19 I was our founding staff person for the Puerto
20 Rico Chapter and served there for close to ten years, and
21 have served as the Rio Grande Chapter director since 2013.
22 And in all of these roles I have participated in technical
23 rulemaking on an array of environmental quality issues.

24 I will say probably my best qualification to talk
25 about this is as a parent. You know, we teach our kids that

1 issues are inextricably linked together, even the flawed
2 John Muir said, you pull on one thing and it connects to
3 another thing. So while I understand and recognize the need
4 to limit the topic of conversation to what's at hand in this
5 rule, I think it's important that our communities understand
6 how it all fits together.

7 It's just not just the question of an imaginary
8 oil field. People live in the oil field. Produced water is
9 transported through people's backyard and in trucks that
10 share the roads with us, and so we have to look at these
11 issues in a specific way, which I respect in the terms of
12 this proceeding, but also in a comprehensive ecosystem way.

13 **Q. Thank you for clarifying that background. Can**
14 **you just, once more, discuss the specific interests Sierra**
15 **Club can define in this matter?**

16 A. Yeah. I think that the Sierra Club plays a
17 special role in this proceeding because we directly
18 represent over 35,000 members and supporters in New Mexico
19 and West Texas, people who look to our organization to
20 understand and interpret these highly complex issues.

21 The mission of the Sierra Club, as I mentioned
22 before, is to enjoy, explore and protect the planet. The
23 Rio Grande Chapter prioritizes curbing the climate crises,
24 protecting air, water, wildlife, public land, managing the
25 storage of high level nuclear waste, and we have a specific

1 priority of protecting New Mexico's water resources, and
2 that's -- we have a direct interest in this rulemaking.

3 **Q. Earlier on you described the topic areas and four**
4 **main concerns that you would be speaking about, and you**
5 **mentioned reuse of produced water being restricted to use in**
6 **the oil field. Can you describe what you mean that any**
7 **regulations adopted in this proceeding should exercise reuse**
8 **of produced water?**

9 A. Yeah, I can talk about that. I do -- let me just
10 say before I get into that, that I do think that the
11 question of reuse on the one hand, and protection of fresh
12 water, public health and the environment on the other hand
13 are interrelated and are both important goals, and, as some
14 of the commentaries have mentioned, could necessarily come
15 into conflict and that we need to be very careful there.

16 So I want to back up and say, number one, I have
17 not found a clear definition of the oil field. Okay. So
18 we've got public lands overseen by the the BLM. We have
19 state lands, we have tribal lands and we have private lands.
20 When we try to describe what is an oil field, is it the
21 person who lives in a checkerboard on private land or a
22 Owate (phonetic) land, that's complex, and I think it should
23 probably be better defined, if nothing else, than in an
24 informal way.

25 But that leads to this problem that others have

1 mentioned that there is a lack of scientific understanding
2 of the chemical and physical composition of produced water
3 and how to treat it. There is water with chemical additives
4 that goes down in the fracking process, which release the
5 ancient saline and possibly radioactive water, and all of
6 that is what comes back up.

7 There is a lot in that fluid that is not defined,
8 not known, that doesn't have public safety standards. So
9 whether it's used in -- directly in the reuse process, or if
10 it's transported for treatment for later reuse, or is
11 considered for some eventual off oil field use, the basic
12 lack of understanding of what is there is a huge problem.

13 And that leads to this bigger issue of which was
14 stated yesterday by several participants in this proceeding,
15 that we are experiencing in New Mexico daily major leaks and
16 spills, and those are related to the reuse and recycling of
17 this produced water.

18 So the status quo, the current situation is
19 totally unacceptable, and it leads to this question of, can
20 we look at this question only narrowly, and I think that the
21 answer to that is no. So we need to understand if there are
22 risks to the public in the act of reuse, and we need to
23 address those problems.

24 I understand what Bill Brancard said about the
25 fact that there are other agencies involved and they have a

1 different purview, but we must take a comprehensive look at
2 the situation, similar to what the agencies are doing on
3 methane. But I do want to recognize and note that the reuse
4 of produced water in the oil field does have the potential
5 to conserve New Mexico fresh water and that that is
6 important.

7 The regulations should restrict the use of
8 produced water in the oil field and limit the withdrawal of
9 our precious fresh water. That doesn't mean that reuse and
10 recycling can be done without sufficient oversight.

11 **Q. So these regulations should restrict the reuse of**
12 **produced water to the oil field?**

13 A. Absolutely. No reuse should be allowed at any
14 time in the near future for off use oil field reuse. I mean
15 we have heard very clearly that we don't even know what is
16 in this water. It has not been properly characterized.
17 Much of the fluid is under trade secret.

18 The consortium that's doing research on this has
19 only barely begun to meet. And so, you know, this water is
20 not safe for reuse outside the oil field. I understand that
21 that's not what is at question today, but I don't think that
22 there should be any assumption that reuse or recycling
23 because of the, quote-unquote, defined oil field is safe.

24 Yes, we want the reduced use of fresh water in
25 this process, but it has to be safe for the public for fresh

1 water and the environment.

2 **Q. So in your opinion then these regulations, are**
3 **they adequate to protect public health, the environment and**
4 **fresh water resources?**

5 A. Certainly not. We need an ample set of rules
6 that deals with this issue comprehensively. We need to laud
7 the effort to better understand what's being used in the
8 fracking process through the reporting process and are
9 grateful for the acceptance at least initially of our
10 recommendations, but we have some concerns about the NMOGA
11 recommended language that I'm sure our expert witness can
12 handle better than I can.

13 But this is not a comprehensive rule. It doesn't
14 protect public health, fresh water and the environment. And
15 the basis of that is the issue that there is a huge leak and
16 spill problem right now leading to explosions of storage
17 tanks, leading to families being doused in produced water.
18 So we have to address this issue as if you have a problem,
19 not just as if you are cleaning up your rules to match the
20 changes to the law.

21 **Q. I appreciate that clarification. Yesterday**
22 **Mr. Brancard mentioned Sierra Club specifically as an entity**
23 **that was contacted beforehand as part of a stakeholder**
24 **engagement process around these amended, proposed**
25 **amendments. To your knowledge, was a stakeholder engagement**

1 process used to inform these amendments to the regulations?

2 A. No. And, to my knowledge, we didn't receive any
3 prepublication notice or invitation to give feedback.

4 Q. You have a lot of experience in rulemaking
5 proceedings as you shared earlier. Based upon that
6 experience, what would a meaningful stakeholder process
7 actually look like for any future regulations pertaining to
8 produced waters in the oil field?

9 A. Yeah, I mean, I will say I appreciated what Bill
10 Brancard said before that, you know, oh, this was meant to
11 be sort of a narrow fixing or, you know, whatever that may
12 be, and that the public has become more and more concerned
13 about the issues of produced water.

14 And I think that that links to the fact there has
15 been a big oil boom in New Mexico, and in some ways you
16 think, well, maybe the reduction in production is going to
17 lead to less of a problem. However, you know, we know with
18 methane and the relaxing of enforcement of rules by the EPA
19 that the less attention the oil and gas is playing, the more
20 messy and fluid things are likely to be.

21 And so you know, actually the methane rulemaking
22 is a pretty good example of how these things can be done,
23 and the agencies should be lauded for that. You know, last
24 fall they did a whole series of stakeholder meetings, and
25 then they convened a methane advisory panel, environmental

1 (inaudible) industry to create sort of an encyclopedia of
2 alternatives. Then there was a stakeholder meeting on
3 public health and economic impact, and a second stakeholder
4 meeting now, actually just next week there will be an
5 opportunity to comment on a draft rule before a final rule
6 is put to the public, or I should call it a discussion
7 draft.

8 So, you know, I thought that was a pretty good
9 example of community participation, and you know, just sort
10 of a -- kind of point of context I think for the public and
11 the agency, you know, as a member of the public, I mean, I'm
12 grateful to these public servants. You know, I heard some
13 of the feedback from the audience yesterday about, you know,
14 failures on this or that. And you know, I think that the
15 issue is that the public, you know, is facing this issue of
16 devastating global climate change resulting in serious and
17 impactful drought here in the state and feel that we need to
18 address the impact of oil and gas on our state in a
19 comprehensive way.

20 So it's incumbent on the agencies to describe the
21 problem and the scope to the public in a way that's
22 accessible to them and then allows the public to demand the
23 broader approach to these issues. You know, so if I were in
24 charge of putting this process together, I would start with
25 a big public orientation of the terminology and what this is

1 all about. What is an oil field, what is produced water,
2 what are the ancient waters, why is it radioactive, how is
3 this stuff reused and transported?

4 Does it come up out of a well and immediately go
5 back down into the next fracked well, or does it need to be
6 transported? And are there treatment facilities, and whose
7 communities do they run through? And do pipelines have any
8 regulations over them or not? And, you know, do -- are
9 there standards for the vehicles, and is there special
10 training for the drivers, and if that's not the agency's
11 responsibility, they brought in the agencies who do hold
12 that responsibility and have made an effort to deal with
13 this in a comprehensive way and so that we can understand
14 how to deal with impact to our state.

15 So while I understood the Chairwoman's
16 intervention yesterday to keep us on point and on task to
17 this rulemaking, unfortunately by keeping a narrow focus we
18 fail to look at the impacts of oil and gas on our state as a
19 whole.

20 What does it mean to be one of the major oil
21 extractors in the entire world? What is our contribution to
22 global climate change? How much water is that amounting to?
23 And why is that -- why are we in a situation where there is
24 daily major leaks?

25 And so while this rulemaking may be narrow, the

1 explanation to the public of where the other sense of proper
2 good neighborly action by this oil and gas industry might be
3 acted on become much more clear.

4 So, you know, that, to me, a proper stakeholder
5 process recognizes and understands the complexities of the
6 issues, the need for the public to understand how we're
7 addressing, you know, our moral and survival call on
8 addressing global climate change, addressing the impact to
9 our water resources, you know, while at the same time, not
10 allowing these issues to just be broken down into
11 infinitesimal meaninglessness.

12 You know, the NMOGA representative is offended by
13 some of the language on the chats, but I think New Mexicans
14 are offended by the produced water that is spilling all over
15 our state every single day. That is unacceptable.

16 **Q. Camilla, thank you for making your comments.**

17 MS. LYNCH: Chairwoman, I conclude with my direct
18 of our first witness.

19 CHAIRWOMAN SANDOVAL: Thank you, Counselor. Do
20 any of the other identified parties wish to cross-examine
21 this witness? Oil Conservation Division?

22 MS. BADA: We do not.

23 CHAIRWOMAN SANDOVAL: New Mexico Oil and Gas
24 Association?

25 MR. FELDEWERT: Madam Chair, no, we do not.

1 Thank you.

2 CHAIRWOMAN SANDOVAL: WildEarth Guardians?

3 MR. TIMMONS: No, Madam Chair. No cross from the
4 Guardians.

5 CHAIRWOMAN SANDOVAL: New Energy Economy?

6 MS. NANASI: Yes, Madam Chair. I have a couple
7 of questions.

8 CHAIRWOMAN SANDOVAL: Please continue.

9 MS. NANASI: Thank you.

10 CROSS-EXAMINATION

11 BY MS. NANASI:

12 Q. For the record, my name is Mariel Nanasi. I'm
13 counsel for New Energy Economy. Ms. Feibelman, you talked
14 about regulation of produced water, how it ended up in oil
15 fields. Can you describe what you believe was in the oil
16 field meaning and if you think this has been legally defined
17 by this agency, why or why not?

18 A. Okay. I should clarify. I'm neither a lawyer
19 nor a scientist with a higher degree. But, to my knowledge,
20 I have not seen any definition of on oil field. I mean, I
21 think for those of us, including myself, who don't live in a
22 high oil and gas extraction county, it's -- it's certainly
23 not clear what that looks like. I think before I mentioned
24 a patchwork of public land, state land, private land, tribal
25 land, but what is the oil field? Are we talking about, you

1 know, a lease patch, you know, where let's say Chevron has
2 leased x number of acres, and so that's the oil field? Or
3 is it through Penny Aucoin's backyard, and did that pipeline
4 go through her land with her permission? Or was it on the
5 edge of her land and therefore it was acceptable?

6 You know, I -- that -- there is no definition,
7 to my knowledge, of on the oil field and that's problematic.
8 Because I think what you tend to visualize is it comes up
9 here and goes back in here. And that may be true for some
10 of the larger producers, but maybe there are smaller
11 producers that have to pipe their produced water somewhere
12 else, and maybe some that needs to be treated before it can
13 be reused.

14 So it seems to me like there's a lot of movement
15 and transportation that doesn't make things very clear. And
16 then there is this issue of could you apply this produced
17 water to tamp down dust right around the well? Does NMED
18 really have to give a permit there? I would like to hear
19 from NMED on that and be very clear about this idea that you
20 could, you know, ban land applications of produced water. I
21 think that was mentioned at the end of the meeting
22 yesterday.

23 **Q. You also talked about, and it has been referred**
24 **to many times already during this hearing, about the large**
25 **number of regular spills, and these are not spills like**

1 coffee where you take a sponge and clean it up.

2 What's your understanding of the volume that we
3 are talking about? And whether you believe there is -- that
4 this administration has adequately prohibited and created
5 enough penalties and violations and means of enforcement to
6 stop those, those discharges?

7 A. Well, I mean, I think OCD's own numbers are very
8 clear about the volume and regularity of these spills. And
9 we heard from Bill Brancard that spills aren't illegal. You
10 know, what you have to do is if there is a spill, you report
11 it and you have to clean it up.

12 But what is the standard to which you have to
13 clean it up? What happens to you if you don't clean it up?
14 What happens to individuals whose persons or properties are
15 harmed if this happens? And do they have to engage in their
16 own legal action, or are they helped in some way by the
17 agencies?

18 You know, I will say that with the passage of the
19 Produced Water Act in the 2019 session with the restoration
20 of OCD's authority to fine, and so, you know, I understand
21 that that fining ability was recently returned, and I think
22 that that is something that organizations like my own will
23 want to track and understand if the caps that were placed on
24 those fines in the legislative session are being bumped
25 against because of the major leak and spill issue that is

1 taking place across the state.

2 This is a crisis. Putting our communities at
3 risk, that needs to be the underlying fundamental basis from
4 which the agency is acting.

5 Q. Let me ask something. Even before the violation
6 amounts were, were increased, OCD and other New Mexico
7 agencies had the power, for instance, to deny permits
8 because of, you know, major spills and, and to your
9 knowledge, has that been -- those other forms of penalties
10 and violations, has that been utilized?

11 A. I don't know if permits have been denied, but I
12 can say that I know that zero -- only zero to one or two
13 cases were ever referred to the attorney general's office.

14 So, you know, after it was ruled that OCD did not
15 have the authority to fine I think in 2007, you saw fines of
16 around \$800,000 total a year, and those went down to
17 nothing, practically, last year because the agencies had to
18 refer these violation cases to the AG, and, to my knowledge,
19 that rarely happened. I will recognize the change in
20 administration and the Covid crisis, but it is something
21 that needs to be addressed.

22 Q. To follow up on this, you heard Mr. Brancard talk
23 about that when there are produced water spills and
24 releases, that OCD requires clean up and remediation. But
25 he also admitted that there were an inadequate number of

1 **inspectors to actually just inspect wells or to effectively**
2 **enforce protocols. How do you square these two realities?**
3 **What does that mean to the public?**

4 A. The vacancy issue is a huge one, but also the
5 total lacking in budgets for these agencies is a huge issue,
6 and it's something that we at the Sierra Club have openly
7 advocated to fix, not just in past legislative session, but
8 also in this interim session.

9 You know, our argument is that, especially in
10 boom times where you are seeing a huge expansion in the,
11 quote-unquote, oil field, these agencies have to be able to
12 inspect and enforce. And sadly what we are seeing is even
13 in down time where oil and gas companies aren't paying close
14 attention, where flares may have gone out, where spills and
15 leaks may be happening, we need these agencies to have their
16 full set of tools to be able to respond to these issues, to
17 make sure that reports are online, you know, to make sure
18 that these agencies can do their job to assure that oil and
19 gas are following the law.

20 **Q. Is it fair that New Mexico taxpayers pay for**
21 **this, or should it be a cost that the oil and gas industry**
22 **bears?**

23 A. You know, I'm sorry, I would need to think that
24 through. I don't know exactly how that's something that
25 would work, if there is like extra fees, filing fees?

1 Although I do think there was some legislation about that,
2 increasing permitting fees, if it wasn't this last session,
3 the session before. So there may have been an attempt to
4 address that, but that's not my expertise.

5 Q. So I'm wondering if you see part of this
6 rulemaking as a way to essentially market produced water,
7 and how -- how does that sit with, you know, the public
8 comments and what you believe is (inaudible) Sierra Club
9 members?

10 A. I think I have to pass on the marketing question.
11 I'm not clear enough about industry operations to understand
12 if there is a monetary relationship to the produced water.
13 Does it come up at one well and sold to another company? I
14 don't know about that.

15 But I think the Sierra Club's main interest in
16 this is -- I mean, the economic questions should be
17 answered 100 percent. But if this is a market, whether it's
18 a market or just an internal company-by-company reuse, our
19 main interest is, a, reduce your fresh water, yes, but in
20 your reuse and in your recycling, that there is a
21 comprehensive look at the potential impact for local
22 wildlife, local water resources, rivers and streams,
23 communities that live nearby, you know, even the question,
24 you know, it's my understanding that OCD doesn't have formal
25 rules on injection wells, for instance.

1 So do we run the risk of this very odd term and
2 do seismicity? So as I said before, although that isn't
3 pertinent to this rulemaking, it is part of this larger
4 question of how industry works, where it fits within our
5 communities, especially communities within the oil or gas
6 field.

7 **Q. Thank you. The last question I have relates to**
8 **climate. And I wanted to ask you about, how do you see both**
9 **the specific issue of produced water and impacts on climate**
10 **like aridity of New Mexico and the lack of fresh water that**
11 **you even heard Mr. Brancard admit that Jal is worried that**
12 **they're going to literally be out of water, out of water,**
13 **and then the larger issue about what's happening around**
14 **methane, and -- and the greenhouse gas emissions that far**
15 **exceed standards.**

16 **A. Yes, there is a lot there, so I think the first**
17 **thing --**

18 **CHAIRWOMAN SANDOVAL: I think -- sorry to**
19 **interrupt you. I think a portion of the question is**
20 **appropriate, but this proceeding is not about methane**
21 **emissions. The beginning of your question was more on**
22 **point. Can you please repeat that question (inaudible)?**

23 **THE WITNESS: Could I try to answer it in a**
24 **relevant way? Would that be okay? Because I see -- I**
25 **understand that technically, you know, this is -- this is**

1 not about methane, but what I will say is that, you know,
2 the governor issued an executive order on climate change,
3 and that has led to agency action on methane rules, on
4 building codes, on clean vehicles, on refrigerants, and has
5 allowed New Mexico to start to look -- there is a lot more
6 to be done -- to start to look at climate in a comprehensive
7 way. And I think we are going to have to do the same thing
8 on water. That may need to be legislated. There may need
9 to be a comprehensive water rulemaking, but I think we need
10 to look at our water resources in a comprehensive way. It's
11 inextricably linked to climate change because our water
12 resources are going to go away as climate change deepens.

13 So what I am trying to say -- I don't know what
14 Mariel is trying to say, and she can ask me more if she
15 wants to, but what I'm trying to say is, while I recognize
16 the sort of agency and bureaucratic need to stay narrow and
17 stay focused on the rulemaking, that the demand to protect
18 our water resources requires us to do something more ample
19 and comprehensive.

20 **Q. Thank you. No further questions.**

21 CHAIRWOMAN SANDOVAL: Thank you. Commissioners,
22 do you have questions for the witness?

23 COMMISSIONER KESSLER: I do not.

24 COMMISSIONER ENGLER: I do not.

25 CHAIRWOMAN SANDOVAL: I have a couple of

1 questions.

2 You heard Mr. Brancard's testimony yesterday. He
3 said that OCD would be willing to add a statement into the
4 rule that would be explicit that on pad use of produced
5 water would not be allowed because there seems to be a gray
6 area there. Would this be what you see as a positive
7 change?

8 THE WITNESS: I would say so. Yeah, I think
9 clarifying that is important because my understanding is
10 that NMED would not need to issue a permit for something
11 like that. I would like to hear from NMED about that
12 specifically. And I think prohibiting any land application
13 of produced water in the rule would be helpful. I will
14 defer to our technical witness in case there is something I
15 don't properly understand.

16 CHAIRWOMAN SANDOVAL: Thank you. Yesterday in
17 his testimony Mr. Brancard also said that they agree with
18 some of the changes regarding potable versus non-potable,
19 the wording changes. Would you agree with those changes and
20 the back use of word (inaudible).

21 THE WITNESS: Removal of potable and unpotable,
22 we think, is essential, and I think almost every party has
23 agreed with that.

24 CHAIRWOMAN SANDOVAL: You stated one of your main
25 concerns was regarding produced water coming into contact

1 with fresh water. Have you comprehensively read OCD's
2 rules?

3 THE WITNESS: I probably should read them about
4 three or four times more, but this proceeding has been a
5 good opportunity to start to get to know them.

6 CHAIRWOMAN SANDOVAL: I know how complicated they
7 can be.

8 THE WITNESS: Yes.

9 CHAIRWOMAN SANDOVAL: Have you particularly read
10 Rule 29, which is the release rule which dictates the clean
11 up if you do happen to spill.

12 THE WITNESS: I have read it, but I wouldn't feel
13 comfortable trying to quote it or say what it does or
14 doesn't do right now. I don't have it in front of me.

15 CHAIRWOMAN SANDOVAL: Would you be surprised to
16 hear that there are places within that rule that
17 specifically dictate what happens if you do come in contact
18 with fresh water, and that we have another rule that
19 dictates again what would happen if you come in contact with
20 fresh water.

21 THE WITNESS: No, I'm not surprised at that, I
22 know that. But my point is that there needs to be more done
23 to ensure that that doesn't happen. And, you know, I do
24 recognize that Bill Brancard -- and I don't know if he is
25 supposed to have a formal title, like in Spanish he would be

1 El Santiago Brancard, but, you know, he said, yeah, maybe we
2 can do -- maybe we can do pipeline rules, or do we need to
3 get OSHA involved, or do we need to get the Department of
4 Transportation involved.

5 So, yes, I understand that there was a rewriting
6 of those rules in the last couple of years. My concern is
7 about the prevention part.

8 CHAIRWOMAN SANDOVAL: Do you think that all of
9 the proposed changes for the rule that we have seen through
10 the exhibits, even some of Sierra Club's, would meet the
11 standard of being a logical outgrowth of the initial
12 proposal and therefore allowed to be changed. Do you think
13 that if you, as a rule, or read the proposed rule, with no
14 other context you would think that at the end of the day
15 there could end up being a new permit requirement or a
16 standard that you cannot use fresh water, would that have
17 been a natural outgrowth of the initial proposal?

18 THE WITNESS: Let me just kind of think through
19 what you are saying. I do understand what you are saying.
20 You are saying, this is a narrow rulemaking. This is not us
21 trying to deal with issues that you can't use fresh water,
22 here is pipelines, here is trucks, I get that. And what I'm
23 saying is that the urgent state of produced water leaks and
24 spills and the lack of disincentives to cause them to occur
25 requires a broader rulemaking.

1 And I understand that it will probably be hard to
2 figure out, you know, how to stop using fresh water, but I
3 think I will defer to the attorneys on this. I mean, my
4 point is that a narrow -- the moment requires something
5 more than a narrow rulemaking.

6 CHAIRWOMAN SANDOVAL: Understood. Thank you. Do
7 you think it's acceptable to have rules that don't
8 necessarily match the law, or should rules be modified to
9 match laws that are in place?

10 THE WITNESS: Yeah. I mean, this is a good
11 example of that, where the law gives you the statutory
12 authority to protect public health, the environment and
13 fresh water. And that is one of our principal concerns
14 here, that, in addition to the need to prevent and enforce,
15 so I think we agree.

16 CHAIRWOMAN SANDOVAL: Under this new rule and
17 some of the other OCD regulatory framework, would you be
18 surprised to hear that all of that reclamation is done by
19 the industry and operator cleaning up their own mess?

20 THE WITNESS: No. I'm not surprised at all. And
21 that's of concern, right? You know, it's the same issue on
22 reporting, it's the same issue -- you know, the company
23 makes a mess, has to report it themselves, you don't have
24 the inspectors to ensure that they are actually doing what
25 they need to do, you know, it's often the community

1 following up to say, "Did you get our complaint? Are you
2 going to act on the complaint?"

3 And believe me, Chairwoman, I know what you are
4 dealing with. You are dealing with eight years of defunding
5 of your agency and major vacancy rates, okay, but my job is
6 to protect our communities.

7 So it's not enough that agencies self report, and
8 it's not enough that they clean up their own messes. What
9 we need is clear active prevention of leaks and spills on
10 the front end, a number of inspectors that can do things
11 like we are talking about on methane, leak detection and
12 repair. Do we need to have regular visits up and down the
13 pipelines to these sites, surprise inspections, whatever
14 helps. So them cleaning up their own messes at this point
15 is clearly not enough because we have daily major spills in
16 this state.

17 CHAIRWOMAN SANDOVAL: Thank you. If you aware
18 that under, under the rules, people are able to propose
19 regulations to the Commission outside of the Oil
20 Conservation Division, other (inaudible).

21 THE WITNESS: I thought that was a
22 great (inaudible), and I will say we probably haven't taken
23 good enough advantage of that. So I'm going to take this
24 moment to recommend urgent rulemaking on pipelines, on spill
25 and -- spill and -- leak and spill prevention, definition of

1 an oil field, and injection well and well spacing.

2 CHAIRWOMAN SANDOVAL: All right. Thank you. Are
3 there any redirect from any of the counselors? Oh, I'm
4 sorry, are there any redirect from Sierra Club of the
5 witness?

6 MS. LYNCH: Madam, this is Cara Lynch, and I just
7 wanted to clarify, a couple of statements ago Ms. Feibelman,
8 I think she spoke that agencies should be responsible for
9 the clean ups, but she actually meant the oil and gas
10 companies.

11 REDIRECT EXAMINATION

12 BY MS. LYNCH:

13 Q. Is that correct, Ms. Feibelman?

14 A. Well, you're the lawyer. I mean, the industry
15 should be held responsible for the clean up that they do.
16 However, we need to ensure that the agencies have the
17 capacity that they need to take preventative action and then
18 enforce it.

19 MS. LYNCH: Thank you for clarifying that.

20 THE WITNESS: Okay.

21 MS. LYNCH: I yield.

22 CHAIRWOMAN SANDOVAL: Thank you. So I think it's
23 12 -- it's 11:43, and it may be best to take a lunch break
24 right now and then continue with the next witness after the
25 break.

1 So it's 11:43, we will go ahead and break for an
2 hour and come back at 12:45. And we will continue with the
3 Sierra Club's next witness. Thank you, Mrs. Feibelman, for
4 your time today. Thank you for the answers.

5 THE WITNESS: Thank you. And I should say, if I
6 can, I know this is a hard time for everybody. So just to
7 all the public participants and the public servants, it's
8 good to be able to talk in this way, in a productive
9 constructive way.

10 CHAIRWOMAN SANDOVAL: Yes, thank you for your
11 input. All right. We will go ahead and break. It's now
12 11:44. We will come back at 12:45 and begin Sierra's Club's
13 next witness.

14 (Lunch recess taken at 11:44. The proceeding
15 resumed at 12:50 p.m. as follows:)

16 CHAIRWOMAN SANDOVAL: Good afternoon. It's 12:50
17 on July 31. We will get the hearing restarted. Sierra
18 Club, you have called your first witness. Please call your
19 second witness.

20 MR. MEIKLEJOHN: Thank you, Madam, Commissioners.
21 I'm Douglas Meiklejohn with the New Mexico Environmental Law
22 Center, and we represent the Sierra Club in this matter.
23 Our second witness is Norman Gaume.

24 Good afternoon, Mr. Gaume.

25 MR GAUME: Good afternoon, Madam Chair,

1 Commissioners.

2 MR. MEIKLEJOHN: Would you please state your name
3 and address?

4 REPORTER: Excuse me, Mr. Meiklejohn, I need to
5 swear in the witness.

6 MR. MEIKLEJOHN: I'm sorry.

7 NORMAN GAUME

8 (Sworn, testified as follows:)

9 DIRECT EXAMINATION

10 BY MR. MEIKLEJOHN:

11 Q. Would you please state your name and address for
12 the record?

13 A. My name is Norm Gaume. I live at 44 Canoncito
14 Drive, Albuquerque.

15 Q. And we (inaudible) with the Sierra Club
16 (inaudible) a copy of your resume. Is that an accurate copy
17 of your resume?

18 A. Yes, it is.

19 MR. MEIKLEJOHN: Madam Chair, this is
20 Mr. Meiklejohn (inaudible).

21 MR. TIMMONS: On my end I'm getting a lot
22 of (inaudible) I'm not sure if that's just me, or I'm having
23 a hard time.

24 (Audio interference.)

25 CHAIRWOMAN SANDOVAL: Mr. Meiklejohn, are you not

1 speaking (inaudible).

2 REPORTER: Madam Chair, this is the court
3 reporter, and I'm getting unclear audio from everybody.

4 CHAIRWOMAN SANDOVAL: Understood. We are trying
5 to work through that. Maybe Mr. Meiklejohn (inaudible).

6 MR. MEIKLEJOHN: I will certainly do that.

7 BY MR. MEIKLEJOHN:

8 Q. Would you please, Mr. Gaume, would you please
9 summarize your background for us?

10 A. I'm an engineer. I have degrees in electrical
11 engineering and civil engineering and a master's degree in
12 civil engineering from New Mexico State University. I
13 worked four years for a consultant developing water
14 resources models, 19 years for the City of Albuquerque in
15 water and waste water operations and management and
16 planning.

17 I was director of the New Mexico Interstate
18 Stream Commission. I did independent consulting as an
19 individual for several years, and I'm now retired. I am
20 receiving compensation from no one for anything having to do
21 with this case.

22 Q. Could you explain in a little bit more detail,
23 the work you have done on waste water issues, please?

24 A. When I was hired by the City of Albuquerque, the
25 City of Albuquerque waste water system had been declared by

1 a New Mexico district judge to be a public nuisance
2 associated with problems with facilities that were built
3 complying with the Clean Water Act.

4 I was part of a team of expanded professionals
5 who were assigned to tackle that problem. I was maint --
6 electrical and mechanical -- mechanical maintenance engineer
7 for a few years. I then became plant manager of the waste
8 water treatment facilities in Albuquerque. I had
9 responsibility for waste water and storm water pumping
10 stations throughout the city, and I also had responsible
11 charges (inaudible).

12 Q. You were provided with the Sierra Club's filing,
13 Exhibit 3, which is a written statement of your testimony?
14 Did you review that before it was filed?

15 A. I prepared it, and it is a faithful copy of what
16 I prepared.

17 Q. Thank you. Did you also participate with
18 representatives of the Sierra Club in the preparation of
19 Exhibit 4, which is the Sierra Club's proposed changes to
20 the regulation proposed by the OCD?

21 A. Yes.

22 Q. Are you -- you are with the Produced Water
23 Research Consortium that's been mentioned a few times in
24 this proceeding?

25 A. I am not with the consortium; rather, I applied

1 in October at the New Mexico Environment Department public
2 meeting on produced water. I talked to the executive
3 director of the consortium and inquired about how I could
4 become a member of the technical steering committee. And I
5 was informed that that would only be possible if I
6 represented a non-governmental organization.

7 So I asked several organizations if they would
8 allow me to represent them on the consortium, and the Sierra
9 Club was one of three organizations who agreed. So I'm a
10 member of the technical steering committee.

11 I might add that the qualifications for
12 membership on the technical steering committee were
13 originally required to include expertise, relevant
14 expertise. I'm not sure that all of the technical steering
15 committee members now have that membership because the
16 membership of the steering committee is secret. I have
17 asked for a membership list and have not been able to obtain
18 it.

19 **Q. Would you please give us a summary of the**
20 **highlights of your written testimony. I don't mean read the**
21 **entire thing, but -- because it's in the record already, but**
22 **could you go through and give us, as I say, a summary of the**
23 **high points, please?**

24 **A.** I'm going to not address the introductory part of
25 my testimony. The first topic that I addressed was the

1 statutory authority and jurisdiction of the Oil Conservation
2 Division and the Oil Conservation Commission as conveyed by
3 the Produced Water Act.

4 We have already discussed in these hearings that
5 the statutory authority cited in the proposed rule does not
6 include the phrase, any manner that protects public health,
7 the environment and fresh water resources, and I requested
8 that that be included. It did appear in an objective, but
9 an objective is very different than statutory authority to
10 undertake those critically important government
11 responsibilities.

12 Similarly, the Produced Water Act clarified
13 jurisdiction between NMED -- excuse me -- the New Mexico
14 Environment Department and the Water Quality Control
15 Commission outside the oil field, and the Oil Conservation
16 Commission and the Oil Conservation Division inside or
17 within.

18 We have identified some questions about whether
19 or not the agencies' interpretations that their jurisdiction
20 is unambiguously separate as we heard testimony yesterday
21 from General Counsel Brancard that NMED might have
22 jurisdiction over application of produced water for dust
23 control on roads and drilling pads.

24 But I requested in my testimony that the amended
25 rules make clear the statutory assignment of jurisdiction

1 and responsibility.

2 The next section of my testimony dealt with
3 protection of fresh water resources. And this is an issue
4 I'm critically concerned with that I have spent decades of
5 my career dealing with protection of fresh water resources.

6 I chaired the City of Albuquerque and Bernalillo
7 County committee that produced the groundwater protection
8 policy and action plan due to concerns over contamination of
9 the aquifer, and I made a number of comments with regard to
10 the qualities of what groundwaters that need to be protected
11 and need to be reported, I guess. They need to be
12 protected, but these -- this stage of regulations don't do
13 that protection, they just gather data. And we have heard a
14 general agreement that Sierra Club's proposed protection
15 categories are acceptable to most people.

16 I spent a bit of time in my testimony describing
17 that the produced water regulatory status quo is
18 unacceptable and that more protection -- more protective
19 produced water regulations are needed to prevent releases.
20 I would actually like to go into that in a little more
21 detail in this testimony, but let me first just cover the
22 summary.

23 I will say that there are OCD online records that
24 I recently discovered. I am relatively new to the produced
25 water and oil and gas issues, only having been working on

1 those for a little over a half a year. And I found that
2 there's lots of raw data on the OCD website, and I have done
3 some examination of that data and have drawn some
4 conclusions about spills and their causes.

5 There are two aspects to the protection of fresh
6 water resources, and particularly in the Permian Basin in
7 southeast New Mexico. I'm very familiar with that area. I
8 went to high school in Hobbs, but maybe more pertinently,
9 while I was ISC director, my highest priority of charge from
10 my boss was to find a way for New Mexico to achieve
11 permanent compliance with the Pecos River Compact Amended
12 Decree. Because, at that time, New Mexico's -- New Mexico
13 was operating under a Supreme Court decree that basically
14 said that New Mexico could never again not be in compliance,
15 and yet our compliance was on a razor-thin margin, and major
16 steps needed to be taken to correct that.

17 So I became very familiar with the water
18 resources of southeast New Mexico and the critical nature of
19 the water balance down there, and very frankly, in the
20 Ogallala aquifer, that work didn't deal with Ogallala, but the
21 situation with the Ogallala is it's basically gone. And to
22 use fresh water from that aquifer when produced water could
23 be used for hydraulic fracking operations just seems to me
24 to be an absolutely grave and very selfish mistake.

25 I summarize the need for reliable public

1 information pertaining to produced water. We have talked
2 about the need for data, and I think we do have a great need
3 for much better data, particularly with regard to the
4 contaminants in produced water, their concentrations, their
5 toxicity, basically all aspects of the quality of produced
6 water.

7 We also need information, data -- or not
8 information particularly when they're not as volum -- when
9 they are as voluminous as the data that the Oil Conservation
10 Division has posted on their website, in order to understand
11 those data, you either have to be an expert and spend time
12 examining them, or much more desirably, a government agency
13 or an NGO or somebody needs to look at the data and
14 interpret it so the public can understand it in a publicly
15 understandable manner. That's a very substantial gap we
16 have right now.

17 At the Santa Fe meeting that was held in October,
18 I believe, October 2019 by the New Mexico Environment
19 Department with the participation of the Oil Conservation
20 Division and State Engineer, I complained about the wide
21 variance, the wide disparity of information presented by
22 different government agencies.

23 And in my testimony I included a recent example
24 that came from the Produced Water Research Consortium where
25 they reported only about two-thirds of the amount of

1 produced water that is shown on the Oil Conservation
2 Division database. And it turns out that they later
3 explained that to me after I prepared my prefiled written
4 testimony, that they had screened the data to eliminate data
5 that were in a specially built in matrix or that had to be
6 screened out for them to increase their correlations.

7 I'm not sure of the details, but they, I believe
8 that that graphic represented that there was 800 million
9 barrels of produced water in 2019, and the Oil Conservation
10 Division shows a total, it's about 50 percent higher than
11 that. So I have real concerns about data quality.

12 Another topic of particular concern is the
13 incredibly high salinity of Permian Basin produced water,
14 which is generally three or four times the saline as ocean
15 water. And as a water treatment expert, I know that this
16 high salinity presents unique problems for produced water
17 treatment. And in reuse, you have to get the salt out, and
18 the conventional processes that are used to desalinate ocean
19 water won't work with this water just because of -- because
20 it's too saline. The principal chemistry processes don't
21 work.

22 And you know, it's eye-opening to think about the
23 amount of residuals for the treatment, the treatment
24 by-products it would produce. You know, as an example, I
25 calculated the amount of salts that would be produced if

1 enough water to irrigate 100 acres for one year were
2 desalinated and used for irrigation. So that would be 300
3 acre feet of water, three acre feet per acre for 100 acres
4 of alfalfa, because the water is 10 percent salt by weight,
5 that after the salt were extracted from the water and de --
6 excuse me -- dried, there would be enough salt that it would
7 take 1800 ten-yard dump trucks to haul away one year's worth
8 of salt taken from the water needed to irrigate 100 acres of
9 alfalfa for one year.

10 Another particular problem I think is that the
11 very high salin -- the very high salinity levels basically
12 leave only what is euphemistically referred to as thermal
13 processes to take the salt out of the water.

14 I'm not exactly sure what the industry jargon
15 "thermal processes" means, and I don't mean to represent
16 what, what they think, but to me it means (inaudible) and
17 the energy requirements to distill any decent amount of
18 water are just incredibly high. If that desalination were
19 to use natural gas as its energy source, the carbon load and
20 the energy requirements would be very significant. I have
21 done some calculations on that. I don't consider those to
22 be finished at this point.

23 I think another point with regard to data is that
24 it needs to be collected, compiled, described by metadata.
25 Now this step is crucially important. Metadata is data that

1 describes the data, how was it collected, what does it
2 contain, you know, what is it's accuracy, and the data needs
3 to be managed for public purposes.

4 New Mexico is actually taking a leadership
5 position in water data with the passage of the New Mexico
6 Water Data Act and the completion of the Water Data
7 Initiative and Plan which I've given the link to in my
8 testimony, and I highly recommend that the Oil Conservation
9 Division organize its data and require the data be submitted
10 in forms that are commensurate with the objectives of the
11 Water Data Act and the Water Data Initiative.

12 In summary, the comment that I would make is that
13 I think there is a huge problem in preventing produced water
14 releases within the oil field, and I was very disappointed
15 when I first read this rule to see that it takes no steps to
16 fulfill the reg of the Oil Conservation Commission and the
17 Oil Conservation Division, which is to regulate produced
18 water in a manner that protects public health, the
19 environment and fresh water resources. And I very much look
20 forward to the future efforts that will make that a reality.

21 **Q. Let me go just a couple of things. First of all,**
22 **on your Page 7 of your testimony, you presented a graph.**
23 **Could you explain that graph, please?**

24 A. It's a technical steering committee meeting that
25 (inaudible) produced water, and what it says is that it's

1 produced water over time. And that immediately caught my
2 eye because the amount was much less than has been reported
3 by the Oil Conservation Division.

4 What the graph shows is -- we would have to blow
5 it up -- is that the number of wells has steadily increased,
6 that the total amount of produced water has gone up
7 exponentially, and the water, the produced water per well
8 has gone up very rapidly, particularly in the last few
9 years.

10 Q. Turning now to the changes the Sierra Club
11 proposed, do you have a copy of those?

12 A. I do.

13 Q. With respect to Section 19.15.34.3, that's the
14 section that sets forth the statutory authority. Is it your
15 position that that authority ought to include the language
16 that was appended at the end of that paragraph by the Sierra
17 Club about protection of public health, the environment and
18 fresh water resource?

19 A. Absolutely.

20 Q. And with respect to Section 19.15.34.6, the
21 Sierra Club suggested spelling out three objectives. Do you
22 support the inclusion of those three objectives?

23 A. I do. And -- sorry, I'm having problems with my
24 mute button. I do support those objectives. I think
25 Objective B is particularly important, and I would like to

1 talk about -- I would like to offer testimony about that
2 point in particular.

3 **Q. Please do.**

4 A. Well, the -- the job of the Oil Division is to
5 regulate produced water in a manner that protects public
6 health, the environment and fresh water resources. So we
7 are going to concentrate on the fresh water resources part
8 of that.

9 There is two main ways that fresh water can be
10 protected. The first is to prevent produced water releases
11 or to produce fresh water -- sorry -- yeah -- protect fresh
12 water from coming into contact with produced water which
13 would ruin it.

14 The second way, and it was discussed yesterday,
15 General Counsel Brancard said that he wasn't sure that the
16 statutory authority was conveyed by the Act, but the Act is
17 broad. It says to regulate produced water in a manner to
18 protect fresh water resources. Well, the best protection of
19 fresh water resources would be to use produced water in
20 hydraulic fracturing.

21 A few years ago that was said to be impossible.
22 Now it is accepted practice and that practice needs to be
23 spread in and regulations should be put in place to mandate
24 it. And there are other benefits from that.

25 I believe that if produced water were used

1 instead of fresh water in all operations involving the
2 drilling and production -- not all because we, we can't have
3 produced water in contact with fresh water aquifers when it
4 all starts, but as the well is cemented and goes past those
5 zones, if the operation switched to using produced water,
6 and if all hydraulic fracturing were done using produced
7 water, it's my professional opinion that the amount of
8 produced water requiring disposal -- and that is supposedly
9 the driver for the consortium's efforts, there are disposal
10 problems -- if fresh water were not used, the amount of
11 produced water that was produced and have to be dealt with
12 would be -- would be reduced on a one-to-one basis.

13 If, if you stop using 50,000 acre feet per year
14 of fresh water, you are going to have 50,000 acre feet per
15 year less of produced water to have to deal with and dispose
16 of.

17 **Q. Going on to Section 19.15.34.7, the Sierra Club**
18 **recommended requiring registration with the Division by**
19 **operators for use and reuse of produced water. Would**
20 **registration provide more information about produced water**
21 **for the Division?**

22 A. I'm (inaudible) for the industry to comply with,
23 after all it would be registration and not permitting. They
24 fill out a form, they announce their intentions. And I
25 think what would be very useful if the Oil Conservation

1 Division had notice before that an operator intended to use
2 fresh water, particularly fresh water having less than 1000
3 milligrams per liter of total dissolved solids, which is
4 truly a precious resource in southeast New Mexico, because
5 the Oil Conservation Division might know that treated
6 produced water or mildly treated produced water is available
7 instead, and perhaps something could be done proactively. I
8 also think it would be interesting to see the operator's
9 intentions versus what they actually report in their well
10 completion information.

11 **Q. Moving along in that section, the Sierra Club**
12 **recommended changes to Subsection B, C and E. Would you**
13 **explain those, please?**

14 A. Well, produced water in B, we recommended that
15 produced water, drilling fluids and other liquid oil field
16 base may be transported, recycled, and reasonably disposed
17 of only in accordance with procedures promulgated by the
18 Division and only if those activities are related to the
19 exploration, drilling, production, treatment and refinement
20 of oil and gas.

21 And the purpose for that is that as, as we read
22 or as I read the rules as proposed, there were lots of
23 references to reuse outside the oil field, and it took a
24 little time for me to recognize that that was merely
25 conforming the rules to statutory language.

1 But these are the Division's rules, and the
2 Division should make it clear that they have nothing to do
3 with reuse outside the oil field. And as I earlier
4 discussed, there even is some ambiguity with regard to dust
5 control inside.

6 Paragraph C says that the produced water or
7 recycled produced water shall not be used in any activities
8 that are not related to the exploration, drilling,
9 production, treatment or refinement of oil and gas that
10 could result in produced water contacting ground or surface
11 water. So that would make what I just described very clear.

12 In F, I have already described that I believe
13 that fresh water does not need to be used, that produced
14 water can be used instead of fresh water in almost all of
15 the, of the applications except the initial drilling phase
16 where drinking water aquifers, high quality aquifers are
17 being penetrated by the drill stem.

18 And I, I wonder, and I haven't been able to do
19 the research yet because the fresh water data use is, the
20 data is just not available. But I wonder if this, if this
21 crisis that people are talking about with regard to disposal
22 of produced water, that the deep well injection facilities
23 are becoming overwhelmed, I wonder if that's not strictly
24 due to high fresh water use, and that if high -- if fresh
25 water were not used where there was a choice, not only would

1 the fresh water be preserved, but the produced water
2 disposal problem would be reduced by the same magnitude.

3 **Q. There's been discussion about a land application**
4 **of produced water or treated produced water. In your**
5 **professional opinion, does land application of produced**
6 **water or treated produced water pose any risks?**

7 A. I believe it would pose enormous risks. And I
8 cannot, for the life of me, understand how that that could
9 be feasible. To desalinate, first of all, if you put
10 untreated produced water on land or even produced water with
11 moderate salinity, it basically ruins the land forever.

12 I mean, you remember that Rome, when they used to
13 conquer territories, used to salt the fields of the, of the
14 territories they conquered to keep anything from growing
15 there.

16 The cost of treating produced water so it could
17 be safely applied to land would just be incredible. I mean,
18 if the cost is, is just a couple of dollars a barrel, then
19 we are talking about tens of thousands of dollars per acre
20 foot, and that's -- I don't know who would pay that.
21 Perhaps oil and gas would pay those costs and contribute the
22 water, but I'm old enough and gray enough that I don't
23 believe that is (inaudible).

24 **Q. Clarify one thing, you used the acronym ISC**
25 **earlier in your testimony. What does that mean?**

1 A. Pardon me. As a technical person, I'm cursed
2 with speaking in acronyms, and I do it without realizing it.
3 The ISC is the New Mexico Interstate Stream Commission.

4 **Q. Is there anything you would like to add at this**
5 **point?**

6 A. No. Other than I appreciate the Oil Conservation
7 Commission and the Oil Conservation Division beginning to
8 move in these areas, and I hope that they will understand
9 the huge issues that they have regulatory jurisdiction over
10 and need to deal with.

11 And, actually, there is, there is one other issue
12 that I would like to mention. Public commenters have said
13 that they don't know where the data exists, and of course
14 it's raw data and hard to deal with. So data needs to be
15 easier to find and it needs to be compiled and interpreted
16 and presented graphically.

17 One issue of particular concern to me are the
18 spills of produced water, and if I could, I would like to
19 share a graphic that I prepared, if the Chair will give me
20 permission, of produced water spills and their causes.

21 **Q. Please go ahead.**

22 A. I don't think I have the ability to share the
23 screen.

24 CHAIRWOMAN SANDOVAL: You may if you (inaudible)
25 if you have a little up arrow there.

1 THE WITNESS: I have a (inaudible) button, but it
2 is grayed out.

3 CHAIRWOMAN SANDOVAL: We are going to try to get
4 you permission. Just a second.

5 (Pause.)

6 CHAIRWOMAN SANDOVAL: Try now.

7 THE WITNESS: All right.

8 CHAIRWOMAN SANDOVAL: Perfect.

9 A. So I prepared this graphic after I prepared the
10 prefiled written testimony. I used the search functions
11 that are available with the spills data on the Oil
12 Conservation Division's statistics page. I decided to
13 select those spills that are classified as major and that
14 occurred in 2016, 2017, 2018 and 2019.

15 There were 1,588 of those spills, and causes
16 should be listed in the database for all of them, but I
17 would like to just briefly review this.

18 There were a few spills that were due to a cause
19 called blowout, and I'm sure that has a specific meaning.
20 I'm not sure if it's unambiguous, but I'm really not sure I
21 know what it is.

22 A little under 200 spills over that four-year
23 period were caused by corrosion. Well, produced water is
24 incredibly corrosive. In order to contain produced water,
25 you have to use materials -- one would have to use materials

1 that won't corrode. And in talking to, to engineering
2 professors that have experience with this, they say that
3 exotic metals would be required for -- for containment and
4 basically long life of equipment that's in contact with
5 produced water. Anyway 200 spills due to corrosion.

6 The largest category was equipment failure.
7 Well, that's a very broad category. As I said, I was an
8 electrical and mechanical maintenance engineer when I was a
9 young man, and I dealt with all of the City of Albuquerque's
10 storm water and waste water electrical and mechanical
11 equipment. And I know that equipment fails because it's
12 neglected or because it's not maintained, and I know that
13 the equipment we choose near the end of its life, that it's
14 common practice in the water and waste water industry to
15 replace it before it gets spills.

16 So the fact that there were a little under 900
17 major produced water spills due to equipment failure over
18 that four-year period indicates to me that those are
19 preventable and there would likely be a fair amount of
20 neglect involved.

21 Fire and freeze are relatively minor causes.
22 Human error is certainly a preventable cause. Lightning, I
23 really couldn't comment on.

24 Now, this one really caught my eye. More than a
25 couple of spills were due to normal operations. Now, how

1 can that possibly be acceptable?

2 Other was listed as a cause for maybe 75 spills,
3 approximately, just looking at this graph. Overflows of
4 tank -- a tank, a pit, or et cetera, caused over, looking at
5 the graph, maybe 130 spills. That certainly is preventable
6 and negligent.

7 A few spills from vandalism, a few from vehicular
8 accidents, and then it looks to me like maybe 35 spills
9 listed no cause at all.

10 Well, I'm very sensitive, having been a state
11 manager, of the challenges that state agencies face with
12 inadequate budgets in personnel. But what this indicates to
13 me is that there aren't even enough people to read the spill
14 reports and make sure that they are filled out completely
15 and correctly.

16 Now, how do I stop share?

17 **Q. You said you had a document that also**
18 **(inaudible)?**

19 A. I'm sorry, I didn't understand your question.

20 **Q. I may have misunderstood, but I thought you**
21 **indicated you had two documents that you wanted to talk**
22 **about.**

23 A. Well, there is another one, so if I could figure
24 out how to stop sharing this. Well (inaudible) to the other
25 one. I also created this graphic from -- not from the spill

1 data, but from the basic production data on the OCD
2 statistics web page. And I believe this exhibit -- I
3 wanted to know the geometric distribution of produced water.

4 CHAIRWOMAN SANDOVAL: (inaudible) you are talking
5 about.

6 THE WITNESS: I'm sorry?

7 CHAIRWOMAN SANDOVAL: If you are presenting a
8 graph, we can't see it.

9 THE WITNESS: Okay, I'm at -- then give me a
10 moment, please, so I can figure out how to do this. I need
11 to stop share, and I'm unfamiliar with this platform.

12 CHAIRWOMAN SANDOVAL: You should be able to
13 (inaudible).

14 THE WITNESS: Well, I'm stuck at the inability
15 to -- let me just try something else. Okay. Just a
16 moment, please.

17 CHAIRWOMAN SANDOVAL: No problem, sir.

18 A. So despite being a member of the technical
19 steering committee of the Produced Water Resource
20 Consortium, I have yet to see any compiled data that shows
21 the geographic distribution of produced water in the various
22 areas of the state that generate produced water.

23 So the pie chart, I generated that pie chart
24 using the information from the Oil Conservation Division's
25 production data. 96 percent of the produced water is in the

1 Permian Basin, 3 percent in northwest New Mexico, 1 percent
2 in northeast New Mexico, and I'm not sure why, but the coal
3 seam produced water was not included in the totals.

4 And then I also wanted to understand the volumes
5 of this toxic waste in terms that I can relate to as a water
6 professional, and the terms we use in New Mexico and that
7 more of you are familiar with are acre feet.

8 So I plotted the total produced water from
9 southeast New Mexico, northwest New Mexico, and northeast
10 New Mexico for ten years starting -- actually 11 years --
11 starting in 2010 after converting the information presented
12 in barrels on the Oil Conservation Division website, I
13 converted those into acre feet.

14 And it does show a huge magnitude of produced
15 water, over 160,000 acre feet of produced water in 2019 was
16 reported. And this graphic also shows the increase in total
17 produced water volumes that I wonder and would like to have
18 the data to understand to what degree are those increases
19 associated with the use of fresh water that advances in oil
20 and gas technology have caused to be unnecessary. Produced
21 water can be used instead of almost all fresh water in oil
22 and gas operations.

23 And these were the reasons: The protection of
24 fresh water against spills, the protection of fresh water
25 from over extraction in an area where we have none to spare,

1 no water to spare, and, at the same time, reduce the problem
2 that has got everybody mobilized, which is, how are we going
3 to get rid of all this produced water? Why aren't we doing
4 that, and why aren't we doing it now?

5 **Q. Thank you, Mr. Gaume.**

6 MR. MEIKLEJOHN: I don't have any other
7 questions. I would move the admission of the Sierra Club's
8 Exhibits 2, 3 and 4, which are Mr. Gaume's resume, his
9 written testimony, and the Sierra Club's proposed changes to
10 the rule that's presented by the Oil Conservation Division.

11 We also move the admission of the two documents
12 that Mr. Gaume shared on the screen as Sierra Club Exhibits
13 5 and 6. Thank you, Madam Chair.

14 CHAIRWOMAN SANDOVAL: Mr. Meiklejohn, so we have
15 already admitted the first three documents you referred to,
16 The last two, Sierra Club needed to provide those to us
17 prior to the hearing. We will accept them if you can send
18 them to Florene Davidson and Miguel Lozano before the end of
19 the hearing and get them into the record, but you know, just
20 a reminder that all exhibits have to be submitted prior
21 to -- prior to the (inaudible).

22 MR. MEIKLEJOHN: Thank you, Madam Chair. If I
23 may go back to Mr. Gaume for just a minute.

24 Mr. Gaume, are you in a position to e-mail those
25 documents to me or directly to Florene Davidson?

1 THE WITNESS: (inaudible)

2 MR. MEIKLEJOHN: Pardon me?

3 THE WITNESS: Yes, I can do both.

4 MS. NANASI: Madam Hearing Examiner, could the
5 witness or his counsel please tender those documents that
6 have just been admitted to all counsel of record?

7 MR. MEIKLEJOHN: Yes. As soon as I receive them,
8 I will do that.

9 MS. NANASI: Thank you.

10 CHAIRWOMAN SANDOVAL: Mr. Meiklejohn, have you
11 concluded with your questions of Mr. Gaume?

12 MR. MEIKLEJOHN: Yes, Madam Chair, I have. I
13 thank you and the Commissioners for taking the time to
14 listen to Mr. Gaume's testimony.

15 CHAIRWOMAN SANDOVAL: Does the Oil Conservation
16 Division wish to cross the witness?

17 MS. BADA: We do not, Madam Chair.

18 CHAIRWOMAN SANDOVAL: Do you have questions?

19 MS. BADA: Oh, we do have questions.

20 CHAIRWOMAN SANDOVAL: Please proceed.

21 CROSS-EXAMINATION

22 BY MS. BADA:

23 Q. Mr. Gaume, are you available?

24 (Audio interference.)

25 Q. Are you aware of the amount of produced water

1 compared to the amount of water used in drilling?

2 A. I am not.

3 MS. BADA: I have no other questions.

4 CHAIRWOMAN SANDOVAL: Thank you, Ms. Bada. Does
5 the New Mexico Oil & Gas Association wish to cross the
6 witness?

7 MR. FELDEWERT: No, thank you, Madam Chair.

8 CHAIRWOMAN SANDOVAL: Thank you.

9 Does WildEarth Guardians wish to cross the
10 witness?

11 MR. TIMMONS: We have no questions, Madam Chair.

12 CHAIRWOMAN SANDOVAL: Does New Energy Economy
13 wish to cross the witness?

14 MS. NANASI: Yes, please. I have a few
15 questions.

16 CROSS-EXAMINATION

17 BY MS. NANASI:

18 Q. Mr. Gaume, I think that you were present
19 yesterday when Mr. Brancard testified. Is that true?

20 A. It is true.

21 Q. Did you hear his admission that other than
22 relative to 19.15.21 regarding the Water Use Report and the
23 scientific determination of 1000 milligrams per liter total
24 dissolved solids, that no scientific data was used to create
25 these rule amendments?

1 A. I heard a reference that he made that scientific
2 data was not used, yes.

3 **Q. And in your (inaudible) is that a proper basis to**
4 **make these rule changes without any scientific data?**

5 A. Well, I want to clarify that your question is
6 with respect to 19.15.16.21, so with, only with respect to
7 that I think it's totally appropriate because the science
8 has been done by other agencies and exists in both law and
9 rules.

10 **Q. And with regard to produced water, has there been**
11 **adequate scientific data, in your opinion, that -- that has**
12 **formed the basis of these changes outside of the (inaudible)**
13 **part of this (inaudible) report.**

14 A. I'm afraid I don't understand your question.

15 **Q. Is it appropriate that no scientific data was**
16 **used in the amendment changes for this rule?**

17 A. The purpose of this rule as we heard Mr. Brancard
18 testify yesterday was to conform existing rules to new
19 statutory language, and that does not require scientific
20 input.

21 The one section that does rely on science is
22 19.15.16.1, is Sierra Club took exception to particular
23 numeric values that were proposed by the Oil Conservation
24 Division, and instead suggested that other limits be used
25 that are scientifically derived and have a basis in statute,

1 and I think that that's entirely appropriate. I think both
2 are appropriate.

3 **Q. And when -- what is your understanding of the**
4 **boundary line that defines, quote-unquote, within the oil**
5 **field?**

6 A. Well, I would have to agree with Ms. Feibelman
7 that it is a poorly defined term. To me, the oil field is a
8 vast geographic area. But if, if the rules could be
9 interpreted, and apparently they can be, then produced water
10 might be used for oil and for dust suppression on drilling
11 pads and roads, then the oil field has a different meaning
12 than I just said, so I think it's ambiguous.

13 **Q. Could it be interpreted as the whole Permian**
14 **Basin, for instance?**

15 A. Would you please repeat your question. I'm
16 sorry, there was some break up.

17 **Q. Sorry. Could it be interpreted as the entire**
18 **Permian Basin?**

19 A. Well, I know when I was growing up in Hobbs, the
20 whole area was referred to as the oil patch. So I presume
21 the answer to your question is some people would say yes,
22 the whole Permian Basin is an oil field.

23 **Q. Was your opinion about the fact that this agency**
24 **is essentially disclaiming through the rule authority over**
25 **produced water, quote-unquote, outside the oil field, but**

1 **that there is no actual guidelines, features, standards for**
2 **that, what is that based on?**

3 A. My opinion is that renders the rules ambiguous.
4 Actually, I'm not sure that the statute is ambiguous. It
5 talks about uses, not geographic locations, but the
6 testimony in this hearing before me already established that
7 there is some ambiguity with regard to the example we
8 discussed before, the dust control application.

9 **Q. You, in your direct testimony, your oral**
10 **testimony, you talked about that -- you just mentioned**
11 **people who are part of this consortium are secret. Can you**
12 **explain that?**

13 A. Saying it very simply that I have asked more than
14 once for a membership list and contact information for the
15 technical steering committee members, and the reply that I
16 finally received just recently from the director of the
17 consortium is that, on advice of NMSU counsel, we will not
18 provide that information.

19 **Q. Do you see this rule as being more about limiting**
20 **OCD's liability versus OCD taking responsibility for**
21 **regulating oil and gas and particularly produced water?**

22 A. Well, I think you asked me if I see it as, as an
23 attempt to limit OCD's liability. No, I don't see that at
24 all.

25 **Q. Do you see it as OCD taking responsibility for**

1 **regulating oil and gas, and, in particular, produced water?**

2 A. I think Mr. Brancard explained his situation and
3 that he intends that the Division move forward with
4 regulations that will fulfill the statutory authority to
5 regulate produced water in a manner that protects public
6 health, the environment and fresh water resources, and I
7 take him at his word.

8 **Q. But to date there's no specific information about**
9 **that; is that correct?**

10 A. Specific information and the status quo -- let me
11 emphasize this, I didn't say it directly -- the status quo
12 is unacceptable, and in fact, I would say it's really
13 publicly outrageous.

14 **Q. Could you explain that?**

15 A. Well, I could. Another calculation that I
16 prepared recently was to look at the same major spills, the
17 same data that I used to generate that graphic that
18 attributed spills to causes, I also looked at the volumes
19 of, of produced water that was spilled.

20 And again we've heard testimony that spills
21 aren't illegal, and that facilities aren't regulated, and
22 many of the causes look, look to me to be associated with,
23 with neglect, and, in my professional opinion, are
24 definitely preventable.

25 The average spill was 9418 gallons. The average

1 recovery was 56 percent. The average loss was 43 percent.
2 And strangely, and I think again this reflects data quality
3 problems, and I understand it with the human resources
4 issues the Division has, but the recovered and the -- the
5 volume recovered and the volume lost do not add up to the
6 volume spilled. There is a 1.8 percent variance.

7 Now, that's not much, but it indicates to me that
8 we have a data quality problem, particularly when we are
9 talking about a toxic waste water with unknown constituents,
10 in unknown concentrations that, that really, in terms of its
11 toxicity, should be regulated as a hazardous waste.

12 Q. So could you just clarify on the record
13 (inaudible) understand what recovery and loss to mean?

14 UNIDENTIFIED: I'm sorry, what was -- nobody
15 heard her.

16 A. Would you please repeat your question.

17 Q. Could you please explain for the record what you
18 mean by recovery and loss? You said there was a 56 percent
19 recovery, what does that mean? And then you said there was
20 a 43 percent loss, and what does that mean to the
21 (inaudible)?

22 A. So the Oil Conservation Division in the spilled
23 data on its website, and as I said I only recently learned
24 of that, the spills include everything from crude oil -- I
25 don't know if it's everything, but there are many

1 classifications. And I use the search functions that the
2 Oil Conservation Division provides to only look at major
3 produced water spills.

4 And I looked at the columns that the Oil
5 Conservation Division entitles Volume Spilled, Volume
6 Recovered, Volume Lost and Spill Costs. And I presume that
7 those English words mean what they say.

8 **Q. Thank you. Do you understand, for instance, the**
9 **56 percent recovery means that when there was this release,**
10 **that 56 percent of the release was recovered by the operator**
11 **in some factor, and that 43 percent of the release went into**
12 **the land or water or was not -- was not gathered back up?**

13 A. Is that the operator reported the volume of the
14 spill, and reported the volume that was recovered, and
15 reported the volume that was lost, and the database doesn't
16 go into the various at risk loss, so I'm not going to
17 speculate on what that means.

18 **Q. What's the difference (inaudible).**

19 A. I am having a very hard time understanding you.
20 I'm sorry.

21 **Q. What constitutes major spill?**

22 A. Frankly, I don't know. I just selected only
23 those spills that the Oil Conservation Division classifies
24 as major. I'm pretty sure they have a rule that defines
25 that, but I'm not yet conversant with all their rules.

1 **Q. Is it your testimony that there could be and**
2 **should be more done to prevent these major spills of what**
3 **you call (inaudible)?**

4 A. Absolutely. I believe that we have an
5 environmental disaster in the making ongoing, and it needs
6 to be stopped.

7 **Q. Thank you very much, Mr. Gaume. No further**
8 **questions.**

9 CHAIRWOMAN SANDOVAL: Thank you. Do the
10 Commissioners have any questions for the witness?

11 COMMISSIONER KESSLER: I don't.

12 COMMISSIONER ENGLER: I do. Mr. Gaume, can you
13 hear me? This is Tom Engler.

14 THE WITNESS: Yes, Commissioner Engler.

15 COMMISSIONER ENGLER: You were talking about the
16 salinity and particularly very high salinity, it's very
17 difficult to treat. Would you agree that in the oil field
18 or (inaudible) that salinity can vary quite a bit?

19 THE WITNESS: Well, I don't know, Commissioner
20 Engler, I don't know the answer to that question because
21 produced water water quality data are very hard to come by.
22 I hear that there is substantial variability within the
23 Permian Basin, but I think the minimum salinity
24 concentrations are still quite high, but I've not seen
25 definitive data.

1 COMMISSIONER ENGLER: Are you aware that there is
2 water data listed on the Gotech website where it provides
3 salinities from a variety of formations and locations?

4 THE WITNESS: I have participated in
5 conversations with the director of the New Mexico Tech, I
6 believe it was called Petroleum Recovery Research Center. I
7 have not yet looked at that database. I was told that the
8 data -- the data are -- I'm sure there is useful data on the
9 database, but it hasn't been kept up to date, and I have not
10 looked at it.

11 COMMISSIONER ENGLER: Would you be willing to
12 accept that, in my experience in that data, that salinities
13 do vary quite a bit in the reservoirs?

14 THE WITNESS: (inaudible) true statement.

15 MR. MEIKLEJOHN: Madam Chair, may I? We object
16 to the Commissioner testifying. He's not a witness. He's
17 not under oath under. We don't believe it's appropriate for
18 him to be testifying.

19 CHAIRWOMAN SANDOVAL: Objection overruled,
20 Mr. Meiklejohn, he asked a question. It was framed as a
21 question. Please continue.

22 COMMISSIONER ENGLER: Let me rephrase what I'm
23 trying to do here, Mr. Gaume. Would you agree there are a
24 variety of ways to treat saline water?

25 THE WITNESS: I would agree that there are a

1 variety of treatment processes that each have a quick
2 ability to deal with concentrations of salinity.

3 COMMISSIONER ENGLER: Yes. Yes, sir. So what
4 I'm trying to ask is that the lower salinity fluids, other
5 than distillation as you mentioned, there are other methods
6 that can treat low salinity produced water?

7 THE WITNESS: Commissioner, I'm familiar with
8 reverse osmosis and other means of, of removing salinity. I
9 know they have upper salinity limits. I have been told that
10 there are areas within the Permian Basin that have lower
11 salinity, but it's still quite elevated, and until I have
12 become familiar with the data, I couldn't tell you if I
13 think they are capable to treat with membrane or reverse
14 osmosis or not.

15 COMMISSIONER ENGLER: But the fact is, I think --
16 would you agree that -- that this is a serious issue that
17 technology that we are using today and technology advancing
18 in the future could also resolve some of that problem, in
19 your expert opinion?

20 THE WITNESS: I believe that technology could be
21 developed to remove most of the contaminants from produced
22 water. But I also believe that newborn babies some day will
23 be able to run. We are so far away from understanding
24 what's in produced water and how to treat it and how long a
25 membrane might last if it were to be applied to a particular

1 waste water fluid.

2 I don't know what would come out as effluent from
3 the distillation process, how many volatile organic
4 compounds would carry over with the water because they have
5 boiling points similar to water. I don't know the
6 toxicities of those. I do understand, you know, from
7 reading the produced water report, the 300-page report that
8 was produced from the Groundwater Protection Advisory
9 Council, and I would be happy to quote you their
10 conclusions, that we are in the infancy of this.

11 So I am very concerned about what appears to be,
12 you know, a rush to do this without really understanding
13 much at all about the problem. I mean the data has been
14 secret or concealed or withheld for so long that we have a
15 real problem understanding what the problem is and what the
16 solutions are.

17 COMMISSIONER ENGLER: Thank you very much.

18 CHAIRWOMAN SANDOVAL: Thank you, Dr. Engler.

19 Mr. Gaume, would you agree that the volume of
20 produced water that you reported earlier does not equate to
21 the volume of fresh water that was used in drilling and
22 (inaudible)?

23 Sorry, you may have heard (inaudible).

24 THE WITNESS: I'd agree.

25 CHAIRWOMAN SANDOVAL: So would you agree that

1 with the changes proposed in this rulemaking, we are going
2 to have a much better understanding of how much and what
3 types of water are truly being used?

4 THE WITNESS: I would agree that you are taking
5 steps to collect information and data that you very much
6 need, yes.

7 CHAIRWOMAN SANDOVAL: Would you agree that, as
8 has been I think discussed earlier, it's much easier to move
9 forward with rulemaking, and it's a better way to do it if
10 it's based on data and science, and by collecting this data,
11 we are going to be able to move forward in a much more
12 scientific manner and base future rules on data and science?

13 THE WITNESS: I agree that the data you're
14 collecting is very important. I also believe that there are
15 other data that should be available to answer these
16 questions, but that no one has compiled them. The state
17 engineer has recorded years on this water, and the operator
18 should be reporting how much water they use, but none of
19 that information is compiled or readily available. So there
20 is lots that could be done and needs to be done.

21 CHAIRWOMAN SANDOVAL: Thank you.

22 Would you be surprised if I told you that it
23 costs a lot of money and resources to have public IT
24 platforms?

25 THE WITNESS: I'm sorry, to have public

1 something. I didn't get it.

2 CHAIRWOMAN SANDOVAL: Public -- like IT
3 platforms. To make data available via a website, it costs
4 resources and, and time?

5 THE WITNESS: Absolutely. It's a big endeavor
6 to, to put processed data in an understandable format up on
7 websites for public access. It's a huge endeavor.

8 CHAIRWOMAN SANDOVAL: Would you be surprised if I
9 told that over the past eight plus years, the OCD budget was
10 cut more than 45 percent?

11 THE WITNESS: No, I'm very aware of that fact.
12 As I said, I was director of the New Mexico Interstate
13 Stream Commission. I worked for them under the state
14 engineer as a consultant and for other government agencies,
15 and I am very well aware of the destruction of agency
16 capacity during the previous administration.

17 CHAIRWOMAN SANDOVAL: Would you be surprised to
18 hear that the Oil Conservation Division has been trying to
19 set up an analytics bureau, but resources with the Covid
20 hiring freeze, that has now become not possible, which may
21 help put the data in a more easily digestible manner?

22 THE WITNESS: I don't know that I'm surprised. I
23 would say that I'm delighted to hear that you tried, and I'm
24 dismayed to hear the resource is not there to do it.

25 CHAIRWOMAN SANDOVAL: Are you aware of the large

1 discrepancies in pay between the oil and gas industry and
2 state classifications?

3 THE WITNESS: I'm very aware of that. When I was
4 appointed ISC director -- excuse me. When I was appointed
5 director of the New Mexico Interstate Stream Commission, the
6 agency was pretty much in, in disarray. And lots of people
7 had quit, or we didn't have enough people to begin with.

8 And I had to do many of the same things that I
9 heard General Counsel Brancard talk about yesterday, you
10 know, allow people to work in places other than where your
11 offices are, you know, to do extraordinary recruitment, and
12 I applaud the Division for that, and I'm very sympathetic to
13 the hurdles that you have, including the pay disparity. I
14 wish -- I wish I knew how to solve that. I don't.

15 CHAIRWOMAN SANDOVAL: Thank you, Mr. Gaume. Are
16 you aware of the challenge -- I mean you somewhat answered
17 this, but are you aware of the challenges in hiring when
18 there are severe pay discrepancies between one division and
19 another?

20 THE WITNESS: I am aware that state government
21 personnel and hiring procedures are difficult for agencies
22 to deal with and succeed, yes.

23 CHAIRWOMAN SANDOVAL: Thank you, Mr. Gaume.
24 These are my last two questions. I think -- did you hear
25 Mr. Brancard state during his testimony that the OCD had

1 worked very hard over the last year to bring its vacancy
2 rate down from 50 -- over 50 percent to 25 percent?

3 THE WITNESS: I did. And what I -- what I didn't
4 hear, but suspect, is that a fair number of the 25 percent
5 vacancies are what is referred to in state government as
6 forced vacancies because there is no money in the budget to
7 fill them.

8 CHAIRWOMAN SANDOVAL: Thank you, Mr. Gaume. I
9 would like -- I just want to -- did you hear Mr. Brancard
10 testify yesterday that the OCD would be comfortable with
11 adding in some side rails to ensure that produced water is
12 not reused for a surface use within the oil field, the oil
13 patch, whatever terminology you would like to say?

14 THE WITNESS: I did hear him say that. I'm very
15 appreciative of that. Thank you.

16 CHAIRWOMAN SANDOVAL: I have no further
17 questions. Would you like to redirect, Mr. Meiklejohn?

18 MR. MEIKLEJOHN: No, Madam Chair. We have no
19 more questions for Mr. Gaume. Thank you.

20 CHAIRWOMAN SANDOVAL: Thank you, sir.

21 MR. MEIKLEJOHN: Actually, there is one point I
22 would ask. You indicated that we should get those two
23 exhibits to Ms. Davidson by the end of the hearing. Given
24 that Mr. Gaume is the last witness of the hearing, would we
25 have until the the end of the day today to do that?

1 CHAIRWOMAN SANDOVAL: So we would need to allow
2 all of the parties to enter any opposition to entering those
3 exhibits. We still do have within today's agenda closing
4 arguments, as well as a rebuttal if needed, so there is
5 still time to enter additional exhibits.

6 MR. MEIKLEJOHN: Then the end of the hearing will
7 be fine.

8 CHAIRWOMAN SANDOVAL: Thank you.

9 Court reporter, would you like a little break
10 before we move on?

11 REPORTER: A little 5 or 10 minute break would be
12 great.

13 CHAIRWOMAN SANDOVAL: Let's take a ten-minute
14 break, and we will come back at 2:20. Thank you.

15 (Recess taken.)

16

17 CHAIRWOMAN SANDOVAL: Thank you. It's 2:24, and
18 we will resume the meeting. Do any of the identified
19 parties wish to present any rebuttal testimony?

20 OCD?

21 MS. BADA: Madam Chair, the OCD does not.

22 CHAIRWOMAN SANDOVAL: NMOGA?

23 MR. FELDEWERT: No, thank you, Madam Chair.

24 CHAIRWOMAN SANDOVAL: WildEarth Guardians.

25 MR. TIMMONS: No, thank you, Madam Chair.

1 CHAIRWOMAN SANDOVAL: Sierra Club?

2 MR. MEIKLEJOHN: No, thank you, Madam Chair.

3 CHAIRWOMAN SANDOVAL: New Energy Economy?

4 MS. NANASI: No, thank you, Madam Chair.

5 CHAIRWOMAN SANDOVAL: Thank you. Do any of the
6 identified parties wish to make a closing argument? Oil
7 Conservation Division?

8 MS. BADA: Madam Chair, the Oil Conservation
9 Division would like to present a closing argument.

10 CHAIRWOMAN SANDOVAL: Please proceed.

11 MS. BADA: Madam Chair, Commissioners, the
12 purpose of this rulemaking was to remove conflicts with the
13 changes made by the legislature to Oil Conservation
14 Division's statutory authority over produced water in House
15 Bill 546, and to require reporting to obtain data on the
16 types of water that are used in hydraulic fracturing wells.

17 We continue working with the New Mexico
18 Environment Department and on our own to review data and
19 interact with the public to develop further rules related to
20 produced water.

21 We have reviewed the proposals of
22 other (inaudible) proposed modifications and have agreed to
23 a number of those. We would like to submit a revised draft
24 based on those changes if the Commission will allow. And I
25 would also like to clarify that the statute and the rules do

1 not place the OCD's jurisdiction on a geographic location,
2 such as the oil patch or oil field, it is based on uses, and
3 our jurisdiction is defined is to regulate the disposition,
4 handling, transport, storage, recycling, treatment and
5 disposal of produced water during for (inaudible) and
6 exploration, drilling, production, treatment or refinement
7 of oil and gas, including injection pursuant to the Federal
8 Safe Drinking Water Act in a manner that protects public
9 health, fresh water and the environment.

10 I would like to express our concern about the
11 technical documents that have been put in the chat and that
12 were submitted in prehearing statements that were not
13 presented by technical witnesses and were not available for
14 cross-examination. We ask that the Commission give those
15 little weight in their deliberations. Thank you.

16 CHAIRWOMAN SANDOVAL: Thank you, Ms. Bada. Ms.
17 Bada, can you send the updated proposed rules to all the
18 parties and Florene Davidson and Mr. Lozano?

19 MS. BADA: Yes. When would you like those by?

20 CHAIRWOMAN SANDOVAL: As soon as possible.

21 MS. BADA: Would Tuesday be soon enough?

22 CHAIRWOMAN SANDOVAL: I think we are intending to
23 deliberate today.

24 MS. BADA: Well, I can try, but -- deliberation
25 (inaudible)?

1 CHAIRWOMAN SANDOVAL: Yes.

2 MS. BADA: Can you give me until 4 o'clock?

3 CHAIRWOMAN SANDOVAL: We are going to verify.

4 (Pause.)

5 CHAIRWOMAN SANDOVAL: So we have talked about on
6 the agenda, it is listed that the Commission will
7 deliberate. If you have something available now, you are
8 welcome to send it to the parties as well as us. Otherwise
9 we will deliberate using the compilation that Commissioners
10 have heard throughout the testimony.

11 MS. BADA: Okay. I don't have anything prepared
12 at this moment, so --

13 CHAIRWOMAN SANDOVAL: Thank you.

14 Mr. Feldewert, do you wish to make a closing
15 statement?

16 MR. FELDEWERT: Yes, Madam Chair, Members of the
17 Commission, can you hear me okay?

18 CHAIRWOMAN SANDOVAL: Yes.

19 MR. FELDEWERT: I would also like to do some
20 screen sharing, if that's possible.

21 CHAIRWOMAN SANDOVAL: Yes, give us a moment.

22 MR. FELDEWERT: Sure.

23 CHAIRWOMAN SANDOVAL: You now have (inaudible).

24 MR. FELDEWERT: Thank you. I want to thank you
25 first for your reference here today. And I'm sorry that you

1 had to deal with the fallout of what I would consider to be
2 intentional misrepresentations about what this limited
3 rulemaking was all about.

4 And I don't know if a misrepresentation was done
5 for headline reasons, for fundraising reasons or what, but
6 the type of misrepresentation that was put out there that
7 you had to deal with -- can you see this, Madam Chair?

8 CHAIRWOMAN SANDOVAL: Yes, we can.

9 MR. FELDEWERT: This was by our good friends
10 WildEarth Guardians who took the opportunity to make
11 statements as if this rulemaking was going to open the door
12 for toxic frac waste dumping. They had a nice headline
13 here.

14 They make statements like, "New Mexico's plan to
15 let the oil and gas industry dump their toxic waste onto the
16 crops and the state stream is a horrible idea." So you kind
17 of get an understanding of why this was misunderstanding
18 about what this rule was all about and what the Division was
19 trying to accomplish here.

20 The second thing that did not really become
21 apparent throughout this rulemaking process, but there is a
22 huge notebook of Division rules. I have had this for a long
23 time. Most of these rules look like this, all typed,
24 sometimes you have to have your glasses on to read them
25 because they are very comprehensive. And I did a count, and

1 the produced water rule which we have been discussing today
2 is over ten pages of that small type.

3 And maybe part of the problem here, although I
4 don't think it's a problem by the Division, I don't -- I
5 think they approached it correctly, but when you look at
6 what was put out during the rulemaking, you will see, as we
7 now share a screen again, that the rule was very limited in
8 nature and just sought to inform the statute and acquire
9 additional data.

10 I will let you see in what was put out as a rule
11 is a section in which changes were made. And you will see
12 there are various gaps in these sections that go from
13 Section 8, to 9, to Section 13, 14, jump over Section 18.
14 There are ten pages with small type rules that conform or
15 consist of the produced water rule that was enacted by this
16 Commission -- I shouldn't say this Commission -- by a prior
17 Commission, by Order 13497B back in 1995 -- I'm sorry --
18 2015.

19 And this produced water rule that we have now was
20 a result of extensive public comment and testimony, and it
21 was promulgated by Robert Balsch, who was a designee from
22 New Mexico Tech, Aubrey Dunn, who was the State Land Office
23 Commissioner at the time, a rancher himself, David Catanach
24 who was former chair of the Commission, former examiner
25 himself, and there was -- this extensive rule that we have

1 now was not only the result of a lot of testimony and a lot
2 of public comment, but participation by agencies such as the
3 Environmental Defense Fund, by Earthworks, by New Mexico
4 Interfaith Power and Light, Sierra Club, Rio Grande Chapter,
5 they were involved when we drafted and passed this produced
6 water rule back in 2015, Environmental Standards Inc., and
7 the Division.

8 And so we have a rule that was put in place back
9 in 2015, but there was a lot of participation by a lot of
10 people and a lot of testimony. And all the Division was
11 doing here is taking this five-year-old rule and making the
12 modifications that are necessary to match the Produced Water
13 Act and to get the data that you need to do some additional
14 analysis.

15 Now, we, at NMOGA, understood the purpose,
16 understood why it's done, and we offered some very limited
17 modifications. And those very limited modifications were
18 non-technical in nature, and they relate solely to the
19 language that was being proffered by the Division to
20 accomplish their goals.

21 And if you look at our Exhibit 1, which is
22 NMOGA's -- or OCD Exhibits 4 or 3 A, whichever one you want
23 to look at, as I think Mr. Brancard explained before, the
24 red line, the strikeouts that you see here are those of the
25 Division except, except for those that are highlighted.

1 And we have, we had some proposed minor
2 modifications to Section 16.21, and in our next page we had
3 some proposed modifications to a language change in 34.8.
4 With respect to 16.21, we can work off of the Sierra Club's
5 proposal. Can you see that now?

6 CHAIRWOMAN SANDOVAL: Yes.

7 MR. FELDEWERT: Okay, thank you. And the end
8 result of the testimony of Mr. Brancard's discussion with
9 the Sierra Club, as I understand it, is that 16 -- the
10 language that is proffered for 16.21 can be modified where
11 we simply eliminate what I shaded here in yellow.

12 So it essentially said it was going to be
13 reported in the breakdown of what's reported by, and this is
14 where you stick your colon, and then there are four
15 categories; produced water; water other than produced water
16 that has 10,000 or more mg/l TDS; water other than produced
17 water that has more than 1000 milligrams per liter, but less
18 than 10; and water other than produced water that has less
19 than 10,000 milligrams per liter TDS. Does this makes
20 sense, get you the data that you need (inaudible) we have
21 no problem with that.

22 The other modification that we sought relates to
23 34.8. It's nice to actually get to the language of the rule
24 which is what we should be talking about here.

25 In 34.8 we had a couple of changes. As

1 Mr. Brancard talked briefly about, there is no objection to
2 these changes. The Division understands the purpose of
3 them. I didn't hear any objection by -- by any other party.

4 So basically 34.8A, the reason that we think this
5 change needs to be made is you will see that the existing
6 rule has terms like pressure maintenance and secondary
7 recovery in the rule now. In the rule now under A1. The
8 Division proposed to strike pressure maintenance and
9 secondary recovery and just use the term enhanced recovery.

10 The problem with that, the problem with that is
11 that the term enhanced recovery, when you start looking at
12 the definitions, appears limited to displacement of oil,
13 operations, secondary operations to the displacement of oil.
14 It does not clearly encompass the operations for the
15 secondary or enhanced recovery of natural gas.

16 So we think it's a mistake to take out pressure
17 maintenance and secondary recovery. We think you need to
18 leave that language in so that it is clear that this
19 authorization extends not to just the recovery of oil, but
20 also for natural gas.

21 And what you will see also is, if you look at the
22 injection rule, which is 19.15.26.1 which Mr. Brancard
23 referenced, in particular Subparagraph F, which I have up
24 before you now. Can you see that?

25 CHAIRWOMAN SANDOVAL: Yes.

1 MR. FELDEWERT: Okay. You will see that that
2 suggestion rule references not just enhanced recovery, but
3 pressure maintenance and secondary recovery. So in our
4 opinion, the language in Subpart A1, you need to keep in
5 there pressure maintenance and secondary recovery so that
6 there is no confusion about whether those operations fall
7 under A1. Okay? That's the first. The second change
8 involves A2, and we again believe this modification is
9 necessary to avoid confusion -- confusion over what oil and
10 gas operations are covered by A1 and what oil and gas
11 operations are covered by A2. But we recognize the need to
12 reference the jurisdiction of the Division, as opposed to
13 the Water Quality Control Commission which is down here and
14 referenced in Subparagraph 7, which, as Mr. Brancard said,
15 is taken directly from the statute.

16 So the problem right now with putting in the
17 phrase, "In the exploration, drilling, production, treatment
18 and refinement of oil and gas," the problem with using that
19 phrase here is that you have the term drilling and
20 production appearing in both A1 and A2.

21 So if you eliminate that problem, you have
22 accomplished the goal that the Division had here, and that
23 referencing the jurisdiction of the Division. We suggest
24 you just put in, "Within the jurisdiction of the Division,"
25 which is further described down here in Subparagraph A7 with

1 that bare language here at the bottom, the exploration,
2 drilling, production, treatment and refinement of oil and
3 gas. Okay?

4 So all we are trying to do with A2 is avoid
5 confusion over somebody who is going to reuse for drilling
6 and production and not knowing whether they fall under A1 or
7 A2. That's the whole purpose here, and that's it. And I'm
8 not aware of any objection to this. So that's our
9 amendments.

10 Now, there has also been a lot of talk and some
11 discussion about what's been proposed by Sierra Club, which
12 I now have up here. And Madam Chair, Members of the
13 Commission, like I said, with the discussion we have had
14 about 16.21, no problem there. But as we move down here,
15 they have a change here in 34.6. Just to put it in
16 perspective here, what they struck out is the language that
17 the Division had proposed, and they substituted an A, B and
18 C.

19 Here is the problem. Subparagraph B, which they
20 want you to adopt, says, "to prohibit the use of fresh water
21 in hydraulic fracturing unless there is no alternative to
22 the use of fresh water." Okay? To prohibit. And I submit
23 to you that that is completely outside your jurisdiction.
24 That is a restriction on property rights. There is no
25 statutory authority for that. There is no statutory

1 authority to restrict anyone's use of fresh water that they
2 own. So I don't see how you can adopt this.

3 It's also not something that would have been
4 noticed to the public. The public is not on notice that the
5 Commission was going to entertain a rule that was going to
6 infringe on somebody's property rights, so I don't see how
7 you can adopt this and you should just use the Division's
8 language.

9 Moving on down, under 34.8, they want some kind
10 of a registration process for the reuse, the reuse. The
11 solid A1, 34.8A1 is just talking about the reuse of produced
12 water, and they suggest you need some kind of a registration
13 process there. (inaudible) WildEarth Guardians and they
14 have a whole permitting process.

15 As Mr. Brancard pointed out, there is already a
16 permitting process for drilling, for completion, production,
17 for enhanced recovery, for pressure maintenance. You
18 already have to go through a permitting process for those
19 activities. You don't registration, you don't need
20 permitting.

21 That's why the Commission, in 2015 when they
22 adopted these rules, put in A1. They recognized that. More
23 importantly, no one was on notice that the Division -- that
24 the Commission was going to entertain and change this
25 provision that would require some kind of extensive

1 permitting process or some kind of undisclosed, unknown
2 registration process. So again, I submit to you that this
3 is outside the scope of this rule, which I think is
4 something the Sierra Club even recognized in their testimony
5 discussion.

6 If we then move down to 34.8B and C, they are
7 suggesting some kind of procedural process for the, beside
8 transporting, reuse, recycling, et cetera. And then they
9 say produced water or recycled, not to use in any activities
10 that are not related to the exploration of oil and gas.

11 Now, again, there was no notice to the public or
12 to anyone that this was going to be a consideration. And I
13 would submit to you that this is infringing on the authority
14 that the Water Quality Control Commission has, to approve or
15 not approve some future use of produced water that might be
16 out there based on technology as states develop it.

17 And I think Commissioner Engler pointed that out.
18 There are processes. There may be opportunities here in the
19 future where there could be some beneficial use of produced
20 water, and we need to enact rules that recognize that. In
21 fact, the existing rules recognize that now.

22 But they are asking you to put in, as a Division,
23 to put in a prohibition on the use of produced water in any
24 activity other than the production of oil and gas. I submit
25 to you that that would be improper, it's not noticed, and

1 that's not something you want to do. This is under the
2 control of the Water Quality Control Commission. They may
3 or may not approve it, but I don't think you want to be
4 infringing on their authority.

5 And then we get down here to E -- or F -- E, I'm
6 sorry. 34.8E, again talking about a prohibition. No fresh
7 water shall be used in hydraulic fracturing unless -- I
8 think I already covered that. I don't see how you can adopt
9 that either legally or under these proceedings.

10 The last point will be with WildEarth Guardians.
11 They also proposed an amendment. I haven't heard a lot
12 about it, yet. I guess we will. They haven't offered any
13 evidence. But you see the first thing that they want to do
14 here, if I can get to it, they want to change the definition
15 of produced water.

16 Now, this comes directly from the statute. This
17 comes directly from the statute. I didn't -- there is no
18 public notice that we are going to have any kind of change
19 in the definition of produced water, and I would submit to
20 you that once you start messing around with the statutory
21 definition, it's going to be inconsistent with that
22 definition, so I don't know why you would do this.

23 The next thing they want to do is down here in
24 16.21. I think we can largely set that aside because that's
25 covered by what the Sierra Club proposed, and I don't think

1 anybody really disapproves of that. Then down here in --
2 I'm sorry, another part, 16.21 (inaudible) doesn't even talk
3 about it at all.

4 So they want to not only deal with the reporting,
5 but then down here in C -- I'm sorry -- in B and E, they
6 are placing some burdens on the Division here, how quickly
7 you gotta get it posted, and what you've gotta do. I
8 haven't heard much testimony about that. I haven't heard
9 testimony about whether that can be done or not, so I really
10 don't have a lot to comment on that other than I'm not sure
11 that's necessary at this point or it's something you are
12 even able to do.

13 The next change involves, a substantive change
14 here involves 34.6. And they had the same proposal. In
15 this rulemaking, they want you to prohibit use of
16 groundwater that's less than 1000 milligrams per liter TDS
17 for any kind of oil and gas operation prohibited, again
18 infringing on property rights. Outside of your
19 jurisdiction.

20 And then they do the same thing in Subpart C, to
21 prohibit the use of produced water and the use of recycled
22 produced water in any activities that are not directly
23 related to the oil and gas operations, again infringing, I
24 would suggest to you, on the Water Quality Control
25 Commission's authority and ability, based on evidence of

1 what a particular use outside the industry based on the
2 nature of the produced water warranted. Adopting something
3 like this flatly prohibiting would be an infringement on the
4 Water Quality Control Commission's authority.

5 34.8, this is again what's authorized by rule,
6 what requires further review by the Division. You want to
7 make everything permanent. Again, something that was not
8 disclosed or discussed or identified to the public that
9 would be a subject of this kind of hearing, outside the
10 scope. And as I said before, there is already a permitting
11 process for drilling, completion, enhanced recovery,
12 plugging, et cetera.

13 And then 2, A2 and 3, A2 deals with the notice
14 process that would be required for any other use, reuse of
15 produced water within your jurisdiction, and this seems
16 rather extensive. There hasn't been any discussion about
17 it. There hasn't been any notice to the public that you
18 were going to consider elaborate permitting process for
19 approval of any other reuse within the industry. So I
20 submit to you that this is not ripe for review at this
21 point.

22 And the same thing with these pilot projects in
23 Subpart 3. Again, that was not part of this rulemaking.
24 The process for approving pilot projects, the public is not
25 on notice that that was going to be a subject of this

1 hearing. It hasn't shown any real need for it, so I don't
2 see a reason or basis to adopt that.

3 Subparagraph 4, essentially without notice to
4 the public, they want you to treat produced water in
5 whatever fashion as a hazardous waste and put in various
6 restrictions, controls, et cetera, as if it's a hazardous
7 waste. Again, without any discussion about the nature of
8 various types of produced water, the constituents of various
9 types of produced water or any discussion or ability of the
10 public to come in and discuss whether this is appropriate.
11 So, again, I would submit this is outside the scope of this
12 hearing.

13 And then I think the last proposed change that
14 really hasn't been discussed much is similar to -- is
15 similar to what the Sierra Club has proposed, and that is a
16 flat out ban of anyone using fresh water for oil and gas
17 activities, again infringing not only on property rights
18 without any notice, but again something that's outside your
19 authority.

20 So that's my closing, I guess. I appreciate the
21 time put in here. I appreciate what the Division, and NMOGA
22 appreciates what the Division is trying to do. And once
23 again I'm sorry that this was blown up into something that
24 it's not. Thank you for your time.

25 CHAIRWOMAN SANDOVAL: Thank you, Mr. Feldewert.

1 WildEarth Guardians, would you like to do a
2 closing statement?

3 MR. TIMMONS: Yes, Madam Chair. Madam Chair,
4 Members of the Commission, are you ready for me to begin?

5 CHAIRWOMAN SANDOVAL: (inaudible)

6 MR. TIMMONS: Madam Chair, Members of the
7 Commission, again, Daniel Timmons on behalf of WildEarth
8 Guardians. I appreciate the time and attention that each of
9 you has put forward to these proceedings.

10 And I first want to start by talking about the
11 process that has occurred over the past two days.

12 Again, I appreciate the challenge of holding a
13 public hearing in a virtual manner, but unfortunately the
14 process that has occurred over the past two days simply is
15 not good enough to provide opportunities for robust public
16 participation to ensure that the public is fully apprised of
17 the activities of this public body.

18 There were numerous technical challenges
19 throughout these two days. It has been difficult for many
20 witnesses, Commissioners, and members of the public to see
21 and hear the activities that have occurred here. And,
22 again, we reiterate our serious concern regarding the lack
23 of an agenda that was posted 72 hours in advance. This has
24 compounded the difficulty of public commenters not knowing
25 when to be available over a two-day hearing period when

1 people have work and family obligations that an unpaid
2 member of the public simply does not have the time to sit
3 around and wait for two days to figure out when they have
4 the opportunity to comment.

5 The public notice that was posted by OCD states,
6 "The Commission shall make a final" -- I'm sorry -- "The
7 Commission shall make available to the public a preliminary
8 agenda for the meeting no later than two weeks prior to the
9 meeting, and a final agenda for the meeting no later than 72
10 hours before the meeting."

11 That's the public notice that is still posted on
12 the OCD's website in its hearing database. The Chair has
13 indicated that there is an agenda that has been posted, but
14 none of the parties appear to have seen it, including OCD
15 counsel.

16 And this is particularly concerning because the
17 Commission's own rules require that the agenda specifically
18 state that a -- inform the public that a decision or
19 deliberations will be heard 72 hours in advance, so the
20 public is informed that that decision might occur.

21 Again, OCD's counsel itself was unaware that this
22 Commission would be deliberating here today, and so that
23 seems completely inappropriate and in violation of the New
24 Mexico Open Meetings Act and this body's own rules at
25 19.15.3.13.A NMAC.

1 I also note that my notes from this meeting
2 indicate that the Commission, in fact, approved an agenda at
3 the start of the hearing. It is unclear to me, and
4 apparently to the other parties, if what was approved was
5 simply the chair's description of the process orally of what
6 would occur here over these two days or there is some actual
7 document that no one has seen. But again that is -- there
8 is no agenda that has been posted 72 hours in advance.

9 So I would urge the Commission to look closely at
10 that public notice that's available on the website, and take
11 a hard look at whether that notice really meets statutory
12 and regulatory requirements to meet as an agenda.

13 Turning to the substance of OCD's proposed rule,
14 business as usual, that's what this rule is all about,
15 preserving the status quo for the oil and gas industry to
16 continue its produced water practices.

17 OCD has continually characterized this as a
18 narrow rulemaking and disclaimed any need whatsoever to
19 consider the clear science regarding the toxicity of
20 produced water.

21 There is unrebutted evidence in the record that
22 shows that produced water causes cancer, birth defects,
23 disrupts the endocrine system and causes a wide variety of
24 other significant public health and environmental harms.
25 And neither OCD nor the industry have really disputed this.

1 They simply say that now is not the time to do anything
2 about it.

3 But this rule change specifically says that
4 produced water reused must protect public health, the
5 environment and fresh water resources. How can you do that
6 without science? Again, OCD points to other rules to
7 sidestep the issue. But according to the public notice for
8 this hearing, for this rulemaking, this rule implements the
9 changes in produced water management and authority enacted
10 by HB546, and that includes the legislative charge to craft
11 rules designed to regulate produced water in a manner that
12 protects public health, the environment and fresh water
13 resources.

14 So if not now, then when? How long does the
15 public have to wait before OCD takes real action on this
16 dire public health (inaudible). OCD's sole witness,
17 Mr. Brancard, acknowledged that there is debate within OCD
18 itself regarding whether its current rules are adequate to
19 protect the public health, environment and fresh water
20 resources.

21 As he said, "We may need more specific standards
22 for pipelines, tank batteries and other produced water
23 facilities."

24 He noted a long list of potential rulemakings
25 that were being debated within the agency, but when pressed,

1 he admitted that that list was really more of a, quote,
2 conversation piece.

3 A conversation piece is cold comfort to the
4 public, that some day OCD might do something doesn't protect
5 the public now from spills that are happening now, from
6 health impacts that are being felt now, and from new
7 facilities and new uses of produced water that OCD is
8 continuing to permit now. Kicking the can down the road is
9 simply not good enough.

10 Mr. Brancard referenced a two-step process that
11 is being considered by NMED in crafting their produced water
12 rules. First to clarify that there would be no off field
13 oil uses until there is real science to justify future
14 rules. And that second part would be to develop that
15 science, to take a hard look at that science, and to see if
16 off field oil uses can be made safe, and, if so, under what
17 specific standards and specific measurable conditions.

18 Why can't OCD consider the same type of approach
19 here? Put the brakes on now on as yet unimagined uses until
20 specific standards are actually developed.

21 Regarding the jurisdiction question between OCD
22 and Water Quality Control Commission, Mr. Brancard indicated
23 that narrowing the gray area between OCC and WQCC
24 jurisdiction is a primary focus of this rule. But in cross,
25 he acknowledged that OCD's proposed rule leaves significant

1 gray area.

2 And he could not say definitively that the use of
3 produced water for dust control at a well pad would not be
4 allowed under OCD's original proposal. That is a huge gap
5 that the Commission must close.

6 We greatly appreciate Ms. Bada's redirect of
7 Mr. Brancard and OCD's statement that it would not oppose
8 language to clarify that ambiguity. And to state
9 definitively that dust control or other uses involving
10 applying produced water to the ground is prohibited unless
11 specifically authorized by NMED.

12 We would point the Commission to Guardian's red
13 line at 19.15.34.8A7, language that we believe would clarify
14 this ambiguity. If I am given access to share my screen, I
15 would bring that language up now.

16 CHAIRWOMAN SANDOVAL: We are working on it. Give
17 us a second.

18 MR. TIMMONS: Thank you.

19 CHAIRWOMAN SANDOVAL: We can see it now.
20 (inaudible).

21 MR. TIMMONS: Is that better?

22 CHAIRWOMAN SANDOVAL: Yes, thank you.

23 MR. TIMMONS: So again, this language the
24 Guardian has proposed would indicate that, you know, any
25 discharge for activities -- or any discharge or use of

1 produced water for activities not directly related to oil
2 and gas activities shall be prohibited unless specifically
3 authorized by rules that may be adopted under the Water
4 Quality Control Commission pursuant to the Water Quality
5 Act, and that disposition and road construction or
6 essentially other application of produced water to land is
7 not directly related to oil and gas activities and is
8 prohibited unless specifically authorized by rules that
9 again may be adopted by the Water Quality Control
10 Commission.

11 I believe that, in addition to addressing the
12 question that I think that the Commission -- or the
13 ambiguity that time Commission -- or, I'm sorry -- that OCD
14 and its witness have acknowledged, we think this language
15 will also help us sway the legitimate concerns of many
16 members of the public regarding the clear assumption in
17 OCD's original proposal that the Water Quality Control
18 Commission will ultimately authorize these types of uses.
19 So we believe that this language should be adopted by the
20 Commission.

21 CHAIRWOMAN SANDOVAL: Thank you, Mr. Timmons.

22 (No audible response.)

23 MR. TIMMONS: I'm sorry, I did not realize that I
24 had muted myself.

25 CHAIRWOMAN SANDOVAL: Oh, okay, keep going.

1 MR. TIMMONS: Was I on mute the whole time?

2 CHAIRWOMAN SANDOVAL: No.

3 MR. TIMMONS: Okay. I also want to know that
4 even if that legal jurisdictional line can be drawn between
5 OCD and WQCC, the line on the ground between oil fields and
6 New Mexico's communities is not so clear. When an oil field
7 pipeline bursts and soaks a family home, it's clear that
8 this jurisdictional line is a legal fiction, which is a nice
9 way, a lawyer's way of saying, that's a lie.

10 As Ms. Feibelman's testimony laid out, there is
11 no line between the oil fields and the people of New Mexico,
12 and to pretend otherwise is to bury your heads in the sand.
13 Because of this, the absence of specific measurable
14 standards designed to protect public health, the environment
15 and fresh water resources remains a glaring omission from
16 these rules.

17 Turning to the permitting process. We continue
18 to have a fundamental concern that OCD's permitting process
19 contemplates authorizing future uses. And Mr. Brancard
20 could not give a single example beyond indeterminate pilot
21 projects of what such a use might be. Who knows what the
22 industry will come up with? Who knows what the industry
23 will come up with? It's not only -- not only does the
24 public not know what such future uses might be permitted
25 under these rules potentially enacted today, the rules here

1 provide no standards at all for such permits.

2 OCD admitted that these proposed rules would
3 allow the agency to permit future and yet unimagined uses
4 under standards that have yet to be determined, and that
5 such standards would be determined simply on a case-by-case
6 basis.

7 We appreciate Mr. Brancard's concession that OCD
8 would be okay with such future standards to be determined in
9 Santa Fe as opposed to by the district offices, but that's
10 really not the critical issue. Future, unknown uses to be
11 authorized under standards that have yet to be determined,
12 there's (inaudible).

13 And the public is supposed to trust that this
14 process, this as-yet undetermined process will protect
15 public health, the environment and fresh water resources.
16 It is simply unacceptable.

17 Mr. Bankrupt -- I'm sorry -- Mr. Brancard's
18 testimony further attempted to put the ball in the court of
19 the public to propose new rules with specific measurable
20 standards. It is the Division's responsibility to regulate
21 produced water, to protect public health, the environment
22 and fresh water.

23 The agency -- the Commission cannot abdicate that
24 responsibility and put it on the backs of the public.
25 Vague, some-day assurances that OCD is thinking about doing

1 something more some day, some point in the indeterminate
2 future, is simply not good enough because produced water is
3 being extracted, it's being transported, stored and reused
4 right now. It's being spilled every day right now. OCD is
5 allowing new facilities and new uses right now.

6 So to conclude, we believe that the process for
7 this rulemaking has been fundamentally inadequate and that
8 the substantive regulations simply are completely lacking in
9 substance. So we request OCC deny OCD's proposal. In the
10 alternative, we would request that OCD adopt the specific
11 red line edits offered by WildEarth Guardians.

12 Thank you, Madam Chair and Commission.

13 CHAIRWOMAN SANDOVAL: Thank you, Mr. Timmons.

14 Mr. Meiklejohn?

15 MR. MEIKLEJOHN: Thank you, Madam Chair, Members
16 of the Commission, we appreciate your attention to this
17 matter and the time that you put in yesterday and today.

18 There are two fundamental bases for what the
19 Commission is considering doing today. The first is House
20 Bill 546. House Bill 546 says that the Division may
21 regulate produced water in a manner that protects public
22 health, the environment and fresh water resources, and that
23 charge was in the public notice for this proceeding. So any
24 argument that the issue of protecting public health and the
25 environment and fresh water resources should not be

1 considered in this proceeding is inappropriate.

2 The second point, the second fundamental point
3 about this proceeding is what we know about produced water.
4 And the basic point is that we know very little about
5 produced water. It's -- let me interrupt. It's not clear
6 to me whether the Commission is hearing me because I've got
7 a blank screen.

8 CHAIRWOMAN SANDOVAL: Yes, we can hear you, sir.

9 MR. MEIKLEJOHN: Thank you. The, the second
10 point, as I was starting to say, is what we know about
11 produced water, because the evidence that's been put before
12 you indicates quite clearly that we know very little about
13 produced water, and we therefore know very little about how
14 to protect public health, the environment and fresh water
15 resources from the impacts of produced water except that we
16 know that the way to protect those resources from produced
17 water is to keep produced water away from those resources.

18 Let me go through the changes that have been
19 proposed by the Sierra Club to the Oil Conservation
20 Division's draft and relay each of those changes to one or
21 both of these points.

22 First, with respect to Section 19.15.16.21, there
23 isn't, I think, much controversy about this section, but the
24 point of the Sierra Club's proposal for that section which
25 the Division has agreed to, and I thank Mr. Brancard for

1 being willing to work with me on the language, is that will
2 generate more data and more information about what kind of
3 water is being used, what amount of produced water is being
4 used, and that those reports should be made available on the
5 Energy and Minerals Natural Resources Department website so
6 that they can be available to members of the public.

7 Moving on with respect to Section 19.15.34.3,
8 that sets forth -- pardon me -- the statutory authority for
9 what the Commission is doing today. That clearly should
10 include the Produced Water Act and the statement that the
11 regulation should be in a manner that protects public
12 health, the environment and fresh water resources. That's
13 directly related to House Bill 546.

14 Similarly, with respect to the objectives, the
15 next section, 19.15.34.6, the first objective proposed by
16 the Sierra Club is to provide protection of public health,
17 the environment and fresh water resources from produced
18 water or production, storage, transportation, et cetera,
19 within the oil and gas industry.

20 Item B is to prohibit use of fresh water in
21 hydraulic fracturing unless there is no alternative to the
22 use of fresh water in that process. As Mr. Gaume pointed
23 out, there are two ways in which the oil and gas industry
24 can endanger and pollute fresh water resources. One is by
25 having produced water come in contact with fresh water

1 resources, but the other is by using fresh water when there
2 are other alternatives available, because New Mexico, as I'm
3 sure you are all aware, and as Mr. Gaume testified, has a
4 very limited supply of fresh water resources. And if it's
5 used in situations in which produced water could be used
6 instead of the fresh water, then we are essentially wasting
7 that fresh water resource.

8 The third item, Item C, is simply an
9 encouragement to the oil and gas industry to recycle or
10 reuse produced water in activities related to the oil and
11 gas industry so that, in effect, fresh water doesn't get
12 used where it doesn't have to be used.

13 Going to Section 19.15.34.8, as Mr. Gaume
14 explained, the idea behind requiring registration is it's
15 just another way of collecting more data and more
16 information about what's being used by the oil and gas
17 industry and how it's being used.

18 With respect to the subsequent subsections of
19 that section, we believe that it's appropriate to clarify
20 that the Water Quality Control Commission would adopt rules
21 pursuant to the Water Quality Act, that the Water Quality
22 Act requires protection of water resources, and it's
23 appropriate to include that qualifying language.

24 Subsection D would require appropriate procedures
25 promulgated by the Division to cover transportation,

1 recycling, reuse and disposal of produced water and other
2 liquid oil field waste. That is a way of ensuring that
3 those activities are undertaken properly and that they do
4 not impair or endanger public health, the environment or
5 fresh water.

6 The same is true of Subsection C that's proposed
7 by the Sierra Club. It indicates that produced water or
8 recycled produced water shall not be used in activities not
9 related to oil and gas extraction or in activities that
10 could result in produced water contacting groundwater or
11 surface water, because, as Mr. Gaume testified, if produced
12 water does contact ground water or surface water, the water
13 groundwater or surface water is going to be contaminated,
14 and it's going to be very difficult, if not impossible, to
15 clean it up.

16 And finally, Subsection E simply makes explicit a
17 prohibition against using fresh water in hydraulic
18 fracturing unless there is not an alternative fluid
19 available for use in that hydraulic fracturing. And that is
20 a prohibition that would, pardon me, protect fresh water
21 resources in two ways; one, by making sure that produced
22 water doesn't come in contact with fresh water resources;
23 and, two, by making sure that fresh water is not used in
24 situations in which other fluids, including produced water,
25 could be used in place of fresh water.

1 New Mexico, as I said earlier, and as Mr. Gaume
2 testified, does not have unlimited quality -- quantities of
3 fresh water, far from it. New Mexico has got a real serious
4 water quantity problem, and New Mexico needs to address
5 that, and these regulations are a way of doing that.

6 And as I said at the outset, the public notice
7 that was given for this proceeding indicated that the
8 proceeding was going to be conducted to bring the
9 regulations into compliance with House Bill 546.

10 House Bill 546 is the source of the mandate that
11 regulations protect public health, the environment and fresh
12 water resources, and therefore anything in these regulations
13 that is adopted for that purpose is appropriately within the
14 scope of this rulemaking proceeding.

15 Thank you very much.

16 CHAIRWOMAN SANDOVAL: Thank you, Mr. Meiklejohn.

17 Ms. Nanasi, would you like to make a closing
18 statement?

19 MS. NANASI: Thank you, Madam Chair and
20 Commissioners. Before I start, I also just see a gray
21 screen. Can you hear me?

22 CHAIRWOMAN SANDOVAL: Yes, we can.

23 MS. NANASI: Thank you. We join WildEarth
24 Guardians in their procedural objections regarding
25 transparency and violation of the Open Meetings Act and

1 inaccessibility for the public to testify and review in real
2 time documents that were being discussed.

3 Onto the substance. Mr. Feldewert says he is
4 sorry that this rule was blown up unnecessarily. Is the
5 public just paranoid? I don't think so. Not only do we
6 have 100 plus people who took (inaudible) over two days out
7 of their lives to weigh in this proceeding, including
8 written testimony, but let's look at what oil and gas says
9 as reported in the Santa Fe New Mexican this morning.

10 The Oil and Gas Association spokesman, Robert
11 McEntire said in a statement, quote, "Produced water has the
12 potential to be a game changer for New Mexico placing our
13 state at the forefront of innovating and studying the unique
14 opportunity it presents."

15 He went on to say that these rules have been
16 created, quote, "Are practical transparent rules that ensure
17 that such water is treated and used safely."

18 Quote, "The rules should illustrate that the oil
19 and natural gas industry is doing a good job managing our
20 limited water resources and minimizing fresh water use," he
21 went on to say.

22 So this attempt to turn abundant quantities of
23 toxic waste into a new commodity market to spread onto the
24 roadways (inaudible) isn't a crazy conspiracy theory
25 concocted by concerned citizens and environmentalists, this

1 is the bald truth articulated about the intentions of the
2 unrestrained oil and gas industry.

3 As a matter of fact, Hungry Horse Environmental,
4 an industry offshoot of the company also stated in the
5 Carlsbad Current Argus, "Why wait until them to start
6 figuring out the next step. We are licensing the," quote,
7 "(inaudible) by design," unquote, "system to give our arid
8 land the water it needs and to help the energy industry meet
9 their environmental, social and governance goals."

10 And then he wanted to use that produced water,
11 that was what they were -- he was saying when he was being
12 quoted onto agriculture and the land.

13 And in the same article, Governor Lujan Grisham
14 stated, "Turning this waste product into a commodity is good
15 for preserving fresh water resources, good for compact
16 requirements with other states, good for conservation
17 purposes, good for local and county governance. It's good
18 for large and small producers. It's good for agriculture,"
19 the governor stated.

20 So that's why there is so much opposition to this
21 rulemaking, because we fear that this body will fail to act
22 in a way to protect public health, environmental and fresh
23 water resources as is your mandate, and that you have
24 failed, frankly, because of you haven't enforced regulations
25 that you already have on the books.

1 The oil and gas industry is obviously planning to
2 plow ahead to use produced water, regardless. This is
3 scary, disturbing, dangerous and unlawful. The rapidly
4 expanding body of scientific evidence compiled and
5 referenced in the prehearing statement, the oral statements,
6 the testimony from the public and from experts and including
7 the Sixth Edition of the Compendium of Scientific Medical
8 and Media Findings demonstrating risks and harms of fracking
9 that I put into the chat, and that I stated in my oral
10 statement that was produced in June 2019, and found again at
11 Concerned Healthy New York -- excuse me -- Concerned
12 Healthy and (inaudible) dot org, present a massive volume
13 that is troubling and cries out for decisive action, which
14 we did not hear from the OCD witness.

15 Across a wide range of parameters from air and
16 water pollution, to radio activity, to social disruption, to
17 greenhouse gas emission, the data continued to reveal a
18 plethora of recurring problems and harms that cannot be
19 sufficiently averted through ineffective enforcement --
20 regulatory enforcement framework, and certainly not the
21 pathetically paltry oversight by this Administration and OCD
22 in particular.

23 There is no evidence that fracking can operate
24 without threatening public health directly and without
25 imperiling climate stability upon which public health

1 depends.

2 The only method of mitigating its grave harm to
3 public health and the climate is a complete and
4 comprehensive ban on fracking. If you love your children,
5 the only responsible response is to delay or abort these
6 rule amendments, which is inconsistent with the obligation
7 to protect public health, environment and fresh water
8 resources.

9 Environmental disaster is what Mr. Gaume called
10 what is occurring regarding the ubiquitous discharge of
11 produced water. This is of utmost alarm and significance
12 and requires this administration's immediate attention.

13 We, the public, need assurances from OCD and this
14 administration that it will not only promulgate regulations,
15 but enforce them. We oppose the amendments to the produced
16 water regulations -- there is no rush -- and instead demand
17 the following:

18 The establishment of regulatory standards for the
19 following contaminants commonly found in frac waste:
20 Ethylbenzene, toluene, xylene, methylene fluoride,
21 formaldehyde, polycyclic aromatic hydrocarbons, radon and
22 other volatile organic compounds based on science,
23 establishment of regulatory standards for radiation
24 poisoning and monitoring and enforcement in many oil and gas
25 industry, a requirement to increase monitoring and actual

1 enforcement of oil and gas companies, especially those who
2 repeatedly offend and violate regulations including minor
3 and major spills and to increase penalties for repeat
4 contamination of offenses, including the threat of
5 disallowing any further well permits.

6 We ask you, if you cannot -- if do you not
7 have -- and I'm sorry that you don't have enough money, but
8 if you don't have enough money, and you can't figure out a
9 way to get more money, and there aren't enough inspectors to
10 effectively inspect this out-of-control disastrous industry,
11 then there must be injunctive relief requiring the
12 suspension of all further well permits.

13 And finally, we ask that you delay or abort
14 amendments to the produced water rule until a thorough and
15 adequate review of scientific data has been completed
16 because to do otherwise would be arbitrary and capricious.

17 If we don't address the drivers of climate, which
18 include disproportionate greenhouse gas emissions from the
19 Permian Basin and ban fracking, and I quote from last
20 Sunday's New York Times, "19 percent of the currently
21 habitable part of our world will be unlivable by 2070."

22 Many of the people who testified or gave public
23 comment were young people. They will be alive in 2070. I
24 will not. The end of this startling article on the
25 intersection of climate and migration that was in last

1 Sunday's New York Times reads as follows: "If societies
2 respond aggressively to climate change and migration and
3 increase their resilience to it, food production will be
4 shored up, poverty reduced and international migration
5 slowed. Factors that could help the world remain more
6 stable and more peaceful, if leaders," that's you, "if
7 leaders take fewer actions against climate change or more
8 punitive ones against migrants, food insecurity will be
9 (inaudible) as will poverty. Populations will surge and
10 cross-border movement will be restricted leading to greater
11 suffering. Whatever actions governments take next, and when
12 they do it makes a difference." The window for action is
13 closing. Thank you.

14 CHAIRWOMAN SANDOVAL: Thank you. This concludes
15 the -- oh, does the Oil Conservation Division wish to make a
16 rebuttal statement?

17 MS. BADA: We do not.

18 CHAIRWOMAN SANDOVAL: Thank you. That concludes
19 the hearing portion of this rulemaking process. Actually,
20 we are going to take a -- we are going to take a 10- to
21 15-minute break so counsel can send the remaining exhibits
22 to all of the counselors and we can accept the exhibits into
23 the record or work to enter the exhibits into the record.

24 So it's 3:35. We will be back in 10 to 15
25 minutes. Thank you.

1 (Recess taken at 3:35. The proceeding resumed at
2 5:20 p.m. as follows:)

3 CHAIRWOMAN SANDOVAL: Hello, everybody. We are
4 going to give it a couple more minutes, and then we are
5 going to get going. Thanks.

6 (Continued recess.)

7 MR. LOZANO: I'm going to say, I will let the
8 Chair know that even if she comes back, we won't start at
9 least again until 4:30. If she is not back at that time, I
10 will give you an update again, so at least until 4:30. We
11 apologize.

12 (Continued recess.)

13 MR. LOZANO: The Commission Chair is still out of
14 the room at the moment. I will give you another 10- to
15 15-minute update. Unfortunately obviously I can't stop the
16 meeting or anything like that, so I will keep you updated as
17 I can. Thank you.

18 (Continued recess.)

19 MR. LOZANO: I got word from the director we will
20 be beginning again very shortly.

21 MS. NANASI: Like five minutes --

22 MR. LOZANO: Aspirationally, five to ten minutes.

23 MS. NANASI: Thank you.

24 (Continued recess. The proceeding resumed at
25 5:20 p.m. as follows:)

1 CHAIRWOMAN SANDOVAL: Hello, everybody. We
2 apologize for the extended break. Do we still have our
3 court reporter?

4 REPORTER: I'm here.

5 CHAIRWOMAN SANDOVAL: Thank you. Do we have the
6 Oil Conservation Division?

7 (No audible response.)

8 CHAIRWOMAN SANDOVAL: Do we have the Oil
9 Conservation Division, Mr. Brancard and Ms. Bada?

10 MR. BRANCARD: (Response inaudible.)

11 CHAIRWOMAN SANDOVAL: Okay, great. Ms. Bada, are
12 you on?

13 (No audible response.)

14 CHAIRWOMAN SANDOVAL: Mr. Brancard and Ms. Bada,
15 are you here?

16 (No audible response.)

17 MR. BRANCARD: I don't see her name on the --

18 CHAIRWOMAN SANDOVAL: Is she planning to join us?

19 MR. BRANCARD: I have no idea.

20 CHAIRWOMAN SANDOVAL: Can you get ahold of your
21 counsel, please?

22 MR. BRANCARD: Okay.

23 CHAIRWOMAN SANDOVAL: Thank you. NMOGA, Mr.
24 Feldewert, are you with us?

25 MR. FELDEWERT: Yes, Madam Chair.

1 CHAIRWOMAN SANDOVAL: Mr. Timmons, are you here
2 still?

3 MR. TIMMONS: Yes, Madam Chair, I'm here.

4 CHAIRWOMAN SANDOVAL: Mr. Meiklejohn, are you
5 here?

6 MR. MEIKLEJOHN: Yes, Madam Chair.

7 CHAIRWOMAN SANDOVAL: And, Ms. Nanasi, are you
8 here?

9 MS. NANASI: Yes, I am. I just want to say for
10 the record, it's 5:20. Thank you.

11 CHAIRWOMAN SANDOVAL: Thanks. Let's see. Do we
12 have Ms. Bada?

13 (No audible response.)

14 CHAIRWOMAN SANDOVAL: Ms. Bada, are you on?

15 MR. BRANCARD: She's on, but apparently you can't
16 hear her. She is on the phone.

17 CHAIRWOMAN SANDOVAL: (inaudible) unmute the
18 phone. Ms. Bada, are you on? We unmuted you, so please
19 speak.

20 MS. BADA: Whom did you call?

21 CHAIRWOMAN SANDOVAL: Ms. Bada, Cheryl Bada.

22 MS. BADA: Yes.

23 CHAIRWOMAN SANDOVAL: Oh, hi.

24 MS. BADA: Hi. Could you hear me?

25 CHAIRWOMAN SANDOVAL: Yes, we can now.

1 MS. BADA: Okay. I could hear you, but I don't
2 think you could hear me.

3 CHAIRWOMAN SANDOVAL: We got you now. Thank you.

4 MS. BADA: Okay.

5 CHAIRWOMAN SANDOVAL: All right. We have all of
6 the parties attending, so we need to proceed with entering
7 the remaining exhibits into the record.

8 Mr. Lozano, would you please proceed?

9 MR. LOZANO: Yes, Madam Chair.

10 The remaining exhibits were e-mailed to all of
11 the parties. They are Exhibits 53 through 64, and I will
12 state them in batches again.

13 Exhibit Number 53, written comment from Norman
14 Norvelle with an attachment;

15 53a, the CV of Norman Norvllle;

16 Exhibit Number 54, written comment from Mark
17 LeClair;

18 Exhibit Number 55, written comment from Nick
19 King;

20 Exhibit Number 56, written comment from Wendy
21 Atcitty;

22 Exhibit Number 57, written comment from Artemisio
23 Romero Y Carver.

24 MS. NANASI: I'm sorry, we haven't -- or I
25 haven't received anything from Mr. Lozano, and I don't know

1 if anybody else has.

2 CHAIRWOMAN SANDOVAL: Have the other parties
3 received the e-mails?

4 MR. TIMMONS: Yes, Madam Chair, the Guardians
5 have received them.

6 MR. MEIKLEJOHN: Madam Chair, Sierra Club
7 received them.

8 MR. FELDEWERT: As did NMOGA, Madam Chair.

9 MS. NANASI: I'm sorry, (inaudible).

10 CHAIRWOMAN SANDOVAL: 3:43 p.m.

11 MS. NANASI: Ah, I did receive them, I apologize.
12 I did receive them. Thank you.

13 CHAIRWOMAN SANDOVAL: All right. No problem.
14 Are there any objections to, other than New Energy Economy's
15 rolling objection, which was overruled, for entering 53
16 through 58?

17 MR. LOZANO: 57.

18 CHAIRWOMAN SANDOVAL: 57.

19 (No audible response.)

20 CHAIRWOMAN SANDOVAL: Hearing no comment,
21 Counselor -- Commissioners, do you have any objections to
22 entering them into the record?

23 COMMISSIONER KESSLER: No objection.

24 COMMISSIONER ENGLER: No objection.

25 CHAIRWOMAN SANDOVAL: Number -- Exhibits Number

1 53 through 57 will now be entered into the record.

2 Counselor.

3 (Exhibits 53 through 57 admitted.)

4 MR. LOZANO: Madam Chair, Exhibit Number 58, a
5 written comment from (inaudible) Nichols of WildEarth
6 Guardians including a number of pages;

7 Exhibit Number 59, the slides that Mr. Gaume
8 presented during his testimony;

9 Exhibit Number 60, preliminary agenda for July 30
10 OCC meeting posted on July 2, 2020;

11 Exhibit Number 61, the final agenda for July 30,
12 OCC, posted on July 21, 2020;

13 Exhibit Number 62, the hearing chat dialogue from
14 July 30, 2020, which, per your direction, Madam Chair, we,
15 the OCC, pulled those ourselves rather than using WildEarth
16 Guardian's proposed exhibit;

17 Exhibit Number 63, the hearing dialogue from July
18 31, 2020;

19 And then finally Exhibit Number 64, written
20 comment from speaker of the house, Brian Egolf.

21 CHAIRWOMAN SANDOVAL: Counselors, are there any
22 objections to admitting 58 through 64?

23 (No audible response.)

24 CHAIRWOMAN SANDOVAL: Hearing no objection,
25 Commissioners, do have you any objection to entering 58

1 through 64 into the record?

2 COMMISSIONER KESSLER: No.

3 COMMISSIONER ENGLER: No objection.

4 CHAIRWOMAN SANDOVAL: 58 through 64 are now going
5 to be entered into the record. Does that conclude the
6 exhibits?

7 (Exhibits 58 through 64 admitted.)

8 MR. LOZANO: Yes, Madam Chair.

9 CHAIRWOMAN SANDOVAL: Thank you.

10 COMMISSIONER KESSLER: At this time, Madam Chair,
11 the State Land Office would move to delay deliberations on
12 the proposed amendments pending additional (inaudible)
13 agencies or stakeholders understand the Oil Conservation
14 Division's approach to rulemaking at this time.

15 CHAIRWOMAN SANDOVAL: Is there a second to the
16 motion?

17 (No audible response.)

18 CHAIRWOMAN SANDOVAL: Hearing no second, the
19 motion is overruled. Failed for lack of a second, we will
20 continue with the hearing.

21 This concludes the hearing portion of this
22 rulemaking process. I would like to thank the Commission
23 and everyone in attendance for their participation today.
24 The meeting agenda indicated that a decision may
25 immediately -- that the Commission may immediately

1 deliberate and decide on the proposed regulatory changes at
2 the conclusion of the hearing.

3 Let the record of this public -- sorry, let me
4 restate that. The record of this public hearing is now
5 closed. Let the record show this hearing was adjourned at
6 5:26 p.m. on July 31.

7 The Commission will immediately deliberate so as
8 to make a decision on the proposal amendment. If while
9 deliberating the Commission determines that additional
10 testimony or documentary evidence is necessary for a proper
11 decision on the proposal amendment, the Commission may,
12 consist with due process requirements, reopen the hearing
13 for such additional evidence only.

14 If the Commission decides to finalize the
15 proposed rule, a final order will be drafted and considered
16 at a subsequent Commission meeting for final acceptance of
17 the proposal.

18 We will go into deliberations. Give me a moment
19 to get the documents pulled up.

20 (Commission deliberating.)

21 CHAIRWOMAN SANDOVAL: Okay. Dr. Engler, starting
22 with the OCC proposal, do we want to use that as a base and
23 then go through the other proposals and go off of it and
24 make the changes?

25 COMMISSIONER ENGLER: Yes, Madam Chair, I think

1 that would be the best way to go about it.

2 CHAIRWOMAN SANDOVAL: Commissioners -- Counsel,
3 would you take notes or how -- or I guess we could use
4 that --

5 MR. LOZANO: Yes, Madam Chair, I will try to keep
6 track of deliberations and changes to the proposed rule as
7 requested by the Commission.

8 COMMISSIONER KESSLER: Madam Chair, if I may just
9 say, the State Land Office has decided to abstain from
10 deliberations on the proposed matters (inaudible) earlier.
11 Thank you.

12 MS. NANASI: We can't hear what the Commissioner
13 just said. Could that be repeated?

14 COMMISSIONER KESSLER: Yes. I stated that the
15 State Land Office is going to abstain from the deliberations
16 given that it (inaudible) in light of the concerns that I
17 raised earlier.

18 CHAIRWOMAN SANDOVAL: So let's begin with the
19 documents then.

20 WildEarth Guardians proposed an alternative
21 definition for produced water. I do not believe that we
22 should or are able to change the definition because that was
23 definition was established within the Produced Water Act.

24 Dr. Engler, do you agree?

25 COMMISSIONER ENGLER: Yes. Madam Chair, from

1 what I have heard, the best definition is off of 546, and so
2 that we real the definition (inaudible).

3 CHAIRWOMAN SANDOVAL: Okay. We will leave the
4 definition as was proposed by the Oil Conservation Division.

5 Moving on to 19.15.16.21 --

6 MS. NANASI: Madam, can I -- I ask that the --
7 this is Mariel Nanasi, I'm sorry that I'm unfamiliar with
8 the rules that govern this proceeding, but I don't quite
9 understand. There is only two Commissioners who will be
10 voting? Is that the situation?

11 CHAIRWOMAN SANDOVAL: We only need two
12 Commissioners for a quorum. We are not voting at this time;
13 we are deliberating.

14 MR. LOZANO: Yes.

15 CHAIRWOMAN SANDOVAL: Okay. Going back to 15 --
16 or, I'm sorry -- 19.15.16.21. So in this -- let me bring
17 up other documents. In this section, Sierra Club provided
18 for some changes on the types of water that should be
19 reported, and they made some changes to the initial
20 paragraph.

21 The Commission agreed to those changes. I think
22 the only change to Sierra's Club -- Sierra Club's proposed
23 language is to conclude the initial paragraph at the word
24 "by," and followed by a colon.

25 MR. LOZANO: Or we could check the

1 word (inaudible).

2 REPORTER: Madam Chair, this is the court
3 reporter. Mr. Lozano, could you speak up, or whoever it is.

4 MR. LOZANO: My apologies. Madam Chair, the
5 intention is to use the Sierra Club's version of that
6 section in its entirety.

7 CHAIRWOMAN SANDOVAL: I think that's what we are
8 going to discuss right now.

9 MR. LOZANO: Okay, my apologies.

10 CHAIRWOMAN SANDOVAL: I was trying to outline the
11 frame of the discussion, to discuss the changes proposed by
12 Sierra Club and whether or not we want to proceed as
13 proposed.

14 I think that it is clear the way the reporting --
15 or the categories are laid out, those are clearer and
16 provide better metrics, so I propose to go forward with
17 their -- the new A, B, C, D and E. I think we want -- I
18 would propose to -- just a second.

19 I would propose to leave the introductory
20 portion, the statement for fractured well and operator shall
21 report on C-103 or 105 the amount of water reported to the
22 disclosure (inaudible) of 19.15.16.19 NMAC, and then the
23 breakdown -- into the breakdown of the amount by, so we
24 leave that language as is, and put a semicolon after the
25 word "by," of OCD's original proposed language. And then I

1 would propose the types of water as denoted here in Sierra
2 Club's proposal.

3 I believe Sierra Club's proposal provides a
4 better reporting description, as was stated by Mr. Gaume,
5 and it will provide us with a reporting also as the point
6 made by Mr. Meiklejohn about the concerns with leaving the
7 types of water, including it could be -- we want to make
8 sure that all the categories add up to 100, and so it will
9 be clearer if we cut that paragraph at the word "by."

10 Does what I propose make sense, Dr. Engler?

11 COMMISSIONER ENGLER: It makes sense, yes. So
12 this is (inaudible) and then you got your A, B, C, D
13 (inaudible) which water, B, water other than produced water
14 has 10,000 or more milligrams of (inaudible); C, water other
15 than produced water that has more than a 1000 milligrams of
16 TDL (inaudible); and D, water other than produced water that
17 has less than (inaudible).

18 CHAIRWOMAN SANDOVAL: Correct.

19 COMMISSIONER ENGLER: So in the first segment
20 that was proposed by Sierra Club (inaudible) just to
21 reiterate, what we are saying is --

22 CHAIRWOMAN SANDOVAL: I do not believe that is
23 necessary.

24 REPORTER: Excuse me, Dr. Engler, can I ask you
25 to speak up a little bit.

1 COMMISSIONER ENGLER: What we are going to do is
2 we are going to (inaudible) follow by with a colon, and then
3 we are going to include the description of A, produced
4 water, B, water other than produced water that has 10,000 or
5 more milligrams per liter TDS, and C, water other than
6 produced water that has more than 1000 milligrams per liter
7 TDS, but less than 10,000 milligrams per liter TDF, and D,
8 water other than produced water that has less than 1000
9 milligrams per liter TDF, and I agree with those changes.

10 My question, I guess, to you, Madam, is for E, do
11 you want that as an E, or just as a separate item underneath
12 19.15.16.21, the reporting part?

13 CHAIRWOMAN SANDOVAL: So you are asking if it
14 would be better not being left as a subcategory of that
15 section?

16 COMMISSIONER ENGLER: Yes, because that's
17 really (inaudible) --

18 CHAIRWOMAN SANDOVAL: Yeah.

19 COMMISSIONER ENGLER: -- which is what we want.
20 It really should be done in E, and then this will be a
21 reporting requirement.

22 CHAIRWOMAN SANDOVAL: I see what you're saying.
23 I'm wondering if A, B, C is the right denotation here. I'm
24 looking at all these sub bullets. And that was correct, I
25 do think it should come out as a separate paragraph. I'm

1 wondering how it fits within our rule structure, standard
2 rule structure.

3 COMMISSIONER ENGLER: Well, it (inaudible).

4 CHAIRWOMAN SANDOVAL: Do you see what we're
5 doing?

6 MR. LOZANO: Yes. Yeah, I think we can back it
7 up as its own paragraph.

8 CHAIRWOMAN SANDOVAL: Okay.

9 MR. LOZANO: Yeah, I think that would be
10 appropriate.

11 CHAIRWOMAN SANDOVAL: Okay. So one slight
12 alteration for Sierra Club, the third bullet point would be
13 their proposed E will be tabulated over so it will not be
14 kind of (inaudible) it doesn't quite fit, but we will still
15 keep the language regarding the report.

16 MR. LOZANO: So to be clear, Madam Chair, it will
17 be considered part of the fourth paragraph, the subparts
18 would be A through D; correct?

19 CHAIRWOMAN SANDOVAL: Yes. That may comport a
20 little bit better with our rulemaking structure.

21 So that concludes the water use report. We will
22 keep similar language to what we had in the paragraph. It
23 will be ended at the word by, and we will use a colon, and
24 then we'll have the other -- the reporting category and then
25 we will have the reporting requirements.

1 I guess my one -- Dr. Engler, Im just thinking on
2 Section E here as is proposed by Sierra, is that under the
3 department website statistics reporting page. I'm not our
4 website expert, but I wonder if that would be appropriate
5 the place on our website.

6 I wonder if it would be a little more clear if we
7 put that on the Oil Conservation website, so it shall be
8 compiled and reported monthly on the Oil Conservation
9 Division, section of the New Mexico Energy Mineral
10 Department's website and end it at that.

11 COMMISSIONER ENGLER: You know, Madam Chair, I
12 guess, without being a lawyer, you know better than I. I
13 don't know if we do have a statistics page.

14 CHAIRWOMAN SANDOVAL: I believe we do. And that
15 may be the appropriate place. I'm just thinking, what if
16 we, you know, we have them looking at -- a website is when
17 you get more transparent and friendly and you want to change
18 that down the road.

19 COMMISSIONER ENGLER: So the website would be
20 general --

21 CHAIRWOMAN SANDOVAL: I mean the website would be
22 more general, so get rid of the (inaudible) page, and that I
23 think leaves us more flexibility from our website to make it
24 more easy to address that.

25 COMMISSIONER ENGLER: I understand. I agree.

1 CHAIRWOMAN SANDOVAL: Okay. All right. So now
2 we move on to 19.15.34. Takes me a second to get all my
3 papers in a row here.

4 So the proposal -- so in the WildEarth Guardian
5 proposal, I think WildEarth Guardians, as well as the Sierra
6 Club (inaudible) so in this section, 19.15.34.2, the
7 WildEarth Guardians' proposal, which I believe is the only
8 proposal in this section, the proposal basically said very
9 explicitly 19.15.34 does not authorize any transportation,
10 (inaudible) recycling for this (inaudible) of produced water
11 that is not directly related to the exploration, production,
12 treatment or refinement of oil and gas.

13 COMMISSIONER ENGLER: That was, that was also --
14 the Division updated that they were okay with that.

15 CHAIRWOMAN SANDOVAL: Yes.

16 COMMISSIONER ENGLER: The question -- this also
17 shows up later on underneath, I believe 34.8 from Sierra
18 Club. So to me, this particular sentence, should it be the
19 scope, or it should be, you know, listed as (inaudible).

20 CHAIRWOMAN SANDOVAL: I feel like it's more
21 appropriate in the scope because it's a little more
22 overarching.

23 COMMISSIONER ENGLER: Yes.

24 CHAIRWOMAN SANDOVAL: It's may be more
25 overarching.

1 COMMISSIONER ENGLER: I concur. After hearing
2 everything yesterday, I was trying to decide which way to
3 go, and I felt like it is more higher level overarching to
4 have it in the scope, and it also defines what, what was
5 (inaudible) from this rulemaking (inaudible) House Bill 546,
6 so I would have considered and I would have concurred.
7 (inaudible).

8 CHAIRWOMAN SANDOVAL: Was this directly taken
9 from the statute, do you recall, this language?

10 COMMISSIONER ENGLER: I don't know. I don't --
11 yes, if it's a specific statement, I don't believe so.

12 CHAIRWOMAN SANDOVAL: So I'm (inaudible) so
13 19.15.34 does not authorize any transportation, recycling,
14 reuse or disposition of produced water that is not
15 related -- I wonder if it makes more sense to say to the
16 jurisdiction of this Division. They don't list out all
17 the place.

18 COMMISSIONER ENGLER: Well, that does -- several
19 places in (inaudible) looking at actually jurisdiction at
20 the (inaudible) so I think for consistency, if we feel
21 that's where we should be going, then we should state that
22 here.

23 CHAIRWOMAN SANDOVAL: So instead of listing
24 (inaudible) that portion about production, treatment or
25 refinement, we should say that is not directly related to

1 jurisdiction of the Division.

2 COMMISSIONER ENGLER: That would be directly
3 related to --

4 (Overtalk.)

5 COMMISSIONER ENGLER: Yes.

6 CHAIRWOMAN SANDOVAL: Because we do not have
7 regulatory authority for anything external, so --

8 COMMISSIONER ENGLER: With that (inaudible).

9 MR. LOZANO: Madam Chair, if I may suggest a
10 different ending, disposition of produced water that is not
11 directly within the jurisdiction of the Division.

12 CHAIRWOMAN SANDOVAL: That makes sense, within
13 the jurisdiction of the Division.

14 Okay. So we want to include the WildEarth
15 Guardian language that what you proposed with a minor
16 refinement of instead of listing out the different divisions
17 or types of oil and gas activity, we will just say within
18 the Division's jurisdiction, or the jurisdiction of the
19 Division.

20 MR. LOZANO: Yes.

21 CHAIRWOMAN SANDOVAL: Within the jurisdiction of
22 the Division. And I think that's a good, very explicitly
23 states what cannot be done and what is not authorized
24 through this rule change.

25 We had talked about adding a statement of saying

1 that it's not allowed to -- you're not allowed to use it for
2 any land use on pad, I don't think that goes under the
3 scope, it probably goes anywhere else.

4 COMMISSIONER ENGLER: Probably under procedures.

5 CHAIRWOMAN SANDOVAL: We will visit that in a
6 moment then.

7 Statutory authority, 19.15.34.3, we had two
8 proposals, one proposal from the Sierra Club, and one
9 proposal from WildEarth Guardians. It's just different
10 types of ways of adding language about protecting public
11 health, the environment and fresh water. I believe it was
12 the Division who afforded the WildEarth Guardian language.
13 Is that what you recall, Dr. Engler?

14 COMMISSIONER ENGLER: Yes, that's correct. It's
15 in a manner that protects public health, the environment and
16 fresh water resources, I think that's good to do that.

17 CHAIRWOMAN SANDOVAL: I agree. It again adds the
18 explicit statement in there. So we would propose to use
19 WildEarth Guardian's change to 19.15.34.3 as it was proposed
20 in their proposal.

21 MR. LOZANO: Okay. Yes, Madam Chair.

22 CHAIRWOMAN SANDOVAL: All right. The next
23 change, or next several changes are changes to the
24 objectives. I think it would be good maybe, Dr. Engler,
25 to -- I will just go through and list kind of the different,

1 the different options here for changes to the objective.

2 So the original change to the objective is the
3 change that the Oil Conservation Division made, which also
4 explicitly states protects public health, environment, and
5 fresh water resources. I think it is good to state that in
6 as many places as possible, so I'm fine with their edition.

7 At the end of the Oil Conservation language they
8 use that kind of same language that I believe the WildEarth
9 Guardians use (inaudible) I think maybe we should change
10 that to within the jurisdiction of the Division to keep it
11 aligned. Okay. So that was the change from the Oil
12 Conservation Division.

13 We will get to New Mexico Oil and Gas Association
14 and see if they have any, they have any proposed changes to
15 the objective.

16 WildEarth Guardians had multiple changes to the
17 objectives. They added -- they deleted the entire section
18 which had been added by the Oil Conservation Division, and
19 they rewrote it to create four sections of equal importance
20 to prohibit hydraulic fracturing, to prohibit
21 hydraulic (inaudible) the use of surface or groundwater that
22 has less than a 1000 milligrams per liter of TDS.

23 On that statement specifically, I do not believe
24 that that change is a logical outgrowth of the original OCD
25 rule, and therefore cannot be considered at this rulemaking

1 because the public was not provided adequate notice that
2 this change would arise.

3 COMMISSIONER ENGLER: I agree.

4 CHAIRWOMAN SANDOVAL: Okay.

5 COMMISSIONER ENGLER: (inaudible).

6 CHAIRWOMAN SANDOVAL: Excellent. B, to ensure
7 the protection of public health, the environment and fresh
8 water resources from any transportation, recycling, reuse
9 and disposition of produced water, I believe that -- or
10 other Division proposal, and then some of this language
11 about the -- the original statements of public health --
12 and protection of public health and environment and fresh
13 water resources, so I believe that section is adequately
14 covered in the proposal.

15 COMMISSIONER ENGLER: That's correct. B of
16 WildEarth Guardians is really a restatement of what we
17 already had.

18 CHAIRWOMAN SANDOVAL: C, that prohibits the use
19 of produced water and the use of recycled produced water in
20 any activities that are not directly related to oil -- to
21 drilling -- to exploration, drilling, production, treatment
22 or refinement of oil and gas.

23 I mean, I feel like we put that in here already,
24 so (inaudible).

25 COMMISSIONER ENGLER: Correct.

1 CHAIRWOMAN SANDOVAL: So it's the (inaudible) the
2 basis of this whole regulation, and therefore in the basis
3 if we phrase that you cannot use, we do not have the
4 authority to give you approval to use recycled produced
5 water outside of oil and gas operations, then that well
6 covers this.

7 COMMISSIONER ENGLER: That's correct. The way I
8 see this is this is outside of our jurisdiction (inaudible)
9 objective. I think the statement that we developed up here
10 in the scope is informational to make sure everyone
11 understands what we are going to be preparing for the rules.
12 But as an objective, it is not up to us to prohibit
13 (inaudible). It's a matter of jurisdiction, so I think C,
14 again, is (inaudible).

15 CHAIRWOMAN SANDOVAL: I agree. So let's look at
16 D. WildEarth Guardians' (inaudible) produced water
17 activities related to exploration, drilling, production,
18 treatment or refinement in a manner that protects public
19 health and the environment and fresh water resources.

20 I do think that we -- and you know, kind of
21 already have covered the statement to protect public health,
22 environment, and fresh water resources in the Oil
23 Conservation Division proposal. And I think that that's,
24 some of the extraction of -- not extraction -- the objective
25 of the Act was to encourage the reuse of recycled water.

1 COMMISSIONER ENGLER: Yes. Madam Chair, it's --
2 again, it's already explicitly in the Division objective.
3 So (inaudible) I'm fine with what the Division wrote.

4 CHAIRWOMAN SANDOVAL: I would agree. Okay. So
5 that -- I mean we walked through the four objectives
6 proposed by WildEarth Guardians. I do not propose to enter
7 any of those in this updated rule language, but look at
8 Sierra Club's objective section.

9 Okay. So again, similar to WildEarth Guardians,
10 they strike that whole paragraph predominantly that the Oil
11 Conservation Division proposed, and they have three
12 objectives.

13 In A, to provide protection of public health, the
14 environment and fresh water resources from produced water
15 production, storage, transportation and reuse of any oil and
16 gas industry. I --

17 COMMISSIONER ENGLER: That's, again, is very
18 good, but it's also already covered.

19 CHAIRWOMAN SANDOVAL: I agree. Okay. So we will
20 not include Section A of the Sierra Club's objective
21 section.

22 B, to prohibit the use of fresh water in major
23 well fracturing unless there is well permitted. Again this
24 is similar to WildEarth Guardian's proposal which we
25 discussed. I do not believe that this is a logical

1 outgrowth of the proposed rule, and therefore it cannot be
2 considered during this rulemaking section.

3 It would have to be -- because this, you know,
4 the public could not have expected that this would have been
5 part of the rulemaking, and therefore were not given
6 adequate notice, so therefore it cannot be part of this
7 rulemaking.

8 COMMISSIONER ENGLER: I would concur, and just
9 add that they provided really no testimony whatsoever about
10 alternatives or how to go about this in terms of not just
11 the prohibition of the fresh water, but how you go about the
12 alternatives. So without any really strong evidence or
13 testimony, I would -- I just read that as (inaudible) and
14 agree with what you are saying.

15 CHAIRWOMAN SANDOVAL: Okay. So we will not be
16 including B.

17 C, to encourage recycling or reuse of produced
18 water it has to be related activities related to
19 exploration, drilling, production, treatment or refinement
20 of oil and gas that permanently and physically separate the
21 reuse of produced water from ground water or surface water
22 (inaudible) water.

23 Again I believe this is covered in the Oil
24 Conservation Division proposal in that first line, and so
25 that adequately covered what is being stated there.

1 COMMISSIONER ENGLER: Yes, Madam Chair, I agree
2 that the first part (inaudible) the second part of the
3 statement specifically separates again, there was really no
4 testimony or evidence to support that statement. I would
5 think that most, if not all, a lot of the rules already
6 within the Division cover this. So I don't see any need to
7 add this statement.

8 CHAIRWOMAN SANDOVAL: Okay. All right. Let's
9 look at 19.15.34.7. So -- actually, I'm sorry, let's just
10 quickly go back to 19.15.34.6. I just want to state clearly
11 that we will move forward with the language that was
12 proposed by the Division other than changing the last
13 sentence to say, in activities related to the --

14 COMMISSIONER ENGLER: Within.

15 CHAIRWOMAN SANDOVAL: -- within the jurisdiction
16 of the Division. So that's the only change to the proposed
17 language.

18 Okay. So the definition section, there is only
19 minor changes proposed by the Division. Let's go through
20 each one and see if there is any -- there are no proposed
21 changes by any party to this section. So 19.15.34.7 will
22 remain as was proposed in the Division proposal.

23 Okay. There are quite a few changes to
24 19.15.34.8 that we should walk through.

25 Let's do this, let's do this similar to how we

1 did this a moment ago. Hold on a second, I need to
2 (inaudible).

3 Okay. 19.15.34.8 must -- it's rather long. See
4 if we want to do them one by one or by each. Let's look at
5 one -- let's just do 19.15.8.A1.

6 So the Oil and Gas Association proposed a small
7 change to the language to say completion, production,
8 pressure maintenance and secondary recovery, and then
9 continues with the OCD changes or (inaudible) recovery of
10 oil and natural gas, and I believe the NMOGA proposal was
11 because they wanted to match the language in other rules
12 that we have.

13 COMMISSIONER ENGLER: That is correct. It is
14 consistent with their objection.

15 CHAIRWOMAN SANDOVAL: I have no problems with
16 adding the changes from the New Mexico Oil and Gas
17 Association on top of the changes from the Oil Conservation
18 Division for one.

19 COMMISSIONER ENGLER: I concur.

20 MR. LOZANO: Madam Chair, would you -- how is
21 that going to read? I'm not sure -- so it's --

22 CHAIRWOMAN SANDOVAL: No permit or
23 registration -- sorry -- no permit or registration is
24 required from the Division for the reuse of produced water
25 for drilling, completion, production, pressure maintenance,

1 secondary recovery or enhanced recovery of oil and natural
2 gas or plugging of wells pursuant to 19.15.34 NMAC.

3 MR. LOZANO: Thank you.

4 CHAIRWOMAN SANDOVAL: Yes. Okay. Let's move
5 on to WildEarth Guardians' proposal. They require some
6 pretty large changes that require basically, for the reuse
7 of produced water, you have to get a permit, obtain a
8 permit.

9 So there's a couple of items here of concern.
10 Again, this was not a logical outgrowth of the proposed
11 rule, and therefore the public was not provided notice that
12 this could be part of the rulemaking, and so that's the
13 first reason.

14 The second reason which we heard testimony from
15 Mr. Brancard on is, we do not require a permit for any other
16 water type, and so this would actually make using recycled
17 produced water more onerous on operators and might have the
18 unintended consequence of not meeting the objectives of this
19 rule, which is to encourage recycling, and so I do not
20 believe that that should be included.

21 COMMISSIONER ENGLER: Yes, Madam Chair, whether
22 permit as one entity proposes or the registration of
23 another, I think the -- I agree with your statement, that
24 the objective is to promote the reuse. And that this is,
25 this is going to be more onerous and less of a promotion

1 than what we are trying to achieve. So I would agree with
2 you that this, to my mind, neither a permit nor a
3 registration is necessary from the (inaudible).

4 The second reason is there is already a permit
5 through the Department that has to happen for drilling or
6 production, so it's already -- so I don't see the need for
7 additional, nonproductive, onerous paperwork.

8 CHAIRWOMAN SANDOVAL: I agree, and I think that
9 basically covers the conversation of the Sierra Club's
10 proposal, as well as what Dr. Engler stated is that a permit
11 is required for registration, and so for all other reasons
12 Dr. Engler just mentioned, I agree and I think that covers
13 Section 1. We will remain with the hybrid model of OCD's
14 proposal and the Oil and Gas Association's proposed
15 language.

16 Section 2, the Oil Conservation Division
17 proposes -- so we have some -- some of the same verbiage
18 that was used earlier, and the next version is really
19 production, treatment or refinement of oil or gas, I think
20 we should change that language to the language consistently
21 stated, within the jurisdiction of the Division.

22 In lieu of that language I think the word reuse
23 at the beginning of the sentence is appropriate with the
24 modified language following that actually matches what the
25 changes with NMOGA. And WildEarth Guardians proposed, the

1 Division shall provide public notice of all produced water
2 permit or registration approval on the Division's website.

3 So inherently, if we are not requiring a permit
4 for use, we cannot then require a permit that does not exist
5 to be posted.

6 COMMISSIONER ENGLER: Yes, Madam Chair, I concur.

7 CHAIRWOMAN SANDOVAL: Okay. Sierra Club did not
8 have any proposed changes to that language. Three --

9 COMMISSIONER ENGLER: Excuse me, Madam Chair. I
10 think also on 2, change that word from district office to
11 the Division; isn't that correct.

12 CHAIRWOMAN SANDOVAL: Yes, good catch, I agree.
13 I just -- yes, in both 2 and 3, let's -- instead of by the
14 the district office -- let's see. In 2 it says, "Will be
15 determined by the district office," and in 3 it says,
16 "Approved by the appropriate division district office." I
17 think we should change it to the Division. Determine -- in
18 2 it should be, determined by the Division, and in 3 it
19 should be approved by the Division, and keep it at that.

20 COMMISSIONER ENGLER: I concur.

21 CHAIRWOMAN SANDOVAL: Since that is consistent
22 with how we are currently functioning and not that we have
23 any more (inaudible) structure where we no longer have silos
24 within our district offices.

25 MR. LOZANO: Madam Chair, Subsection 2, approval

1 requirement will be determined by the Division, are we
2 keeping the basic on --

3 CHAIRWOMAN SANDOVAL: Yes. We say, by the
4 Division based upon the proposal.

5 MR. LOZANO: Thank you.

6 CHAIRWOMAN SANDOVAL: And then Number 3 will just
7 say, the appropriate Division, period.

8 MR. LOZANO: Approved by the Division, period;
9 right?

10 CHAIRWOMAN SANDOVAL: Yes, yes, approved by the
11 Division. Thank you.

12 Okay, 4. In 4 Sierra Club has no proposed
13 changes to the Oil Conservation Division's language which
14 just -- it looks like makes consistent with the word reuse
15 as is used up above, so keep the language consistent. And
16 then add in the language for protection of public health,
17 environment and fresh water sources, which I believe
18 clarifies the statement that was currently -- that was
19 previously used.

20 MR. LOZANO: Madam Chair, point of clarification.
21 Above we used -- we will probably -- their phrasing is on
22 fresh water sources. We prefer the use of fresh water
23 resources to be consistent throughout.

24 CHAIRWOMAN SANDOVAL: Yes.

25 MR. LOZANO: I'm trying to find where we put that

1 phrase.

2 CHAIRWOMAN SANDOVAL: Yeah, and it needs to be
3 consistent. I don't know that it makes a huge difference.
4 Dr. Engler, do you have a preference on that?

5 MR. LOZANO: It was under statutory authority on
6 34.3. It was fresh water sources, but I can amend that to
7 resources for consistency.

8 COMMISSIONER ENGLER: It should say resource,
9 consistently.

10 MR. LOZANO: (inaudible) jump around --

11 CHAIRWOMAN SANDOVAL: No, thank you. It
12 should -- so anywhere where it says fresh water sources, it
13 needs to be fresh water resources just so it comes up as
14 clear.

15 Thank you, Mr. Lozano.

16 Okay, we're on 4. NMOGA does not have any
17 changes. I think we actually missed -- I'm sorry, we need
18 to go back to 3. WildEarth Guardians proposed some changes
19 to 3 regarding the pilot project.

20 So, my apologies. Let's finish up with 4 and
21 then we'll drop back to WildEarth Guardians' proposal in
22 Number 3.

23 So there are substantial changes in 4 from
24 WildEarth Guardians. They change the language in 4 and then
25 add three subsections, A, B and C. So what is added is

1 (inaudible) should be handled, stored and transported
2 (inaudible) functionally equivalent to the appropriate
3 (inaudible).

4 (Internet connection lost.)

5 CHAIRWOMAN SANDOVAL: What number is the exhibit?

6 MR. LOZANO: It's Exhibit 35, Madam Chair.

7 CHAIRWOMAN SANDOVAL: I have it.

8 COMMISSIONER ENGLER: Have Miguel draft this,
9 draft (inaudible).

10 MR. LOZANO: Correct.

11 CHAIRWOMAN SANDOVAL: Okay, we can do that.

12 Yeah, I mean, we are dealing from like eight documents here.

13 Okay, 6, we'll go back to 6 and leave 7 for the moment.

14 COMMISSIONER ENGLER: Madam Chair, I think the
15 first statement (inaudible) NMOGA, really what they want is
16 all related to the recycling or reuse of produced water
17 within the jurisdiction of (inaudible) shall be handled in
18 accordance with.

19 CHAIRWOMAN SANDOVAL: I think that's appropriate.

20 COMMISSIONER ENGLER: And that's okay. I agree
21 with you.

22 The second statement that they are asking to have
23 (inaudible) the responsible party will send a copy of the
24 form C-141 to the department (inaudible) 19.15.29.

25 CHAIRWOMAN SANDOVAL: I think those are both

1 reasonable edits. I would say that we keep it consistent
2 and go within the jurisdiction of the Division. But I also
3 think that it's totally appropriate that operators and C-131
4 Environment Department (inaudible) impact surface or
5 groundwater because they are also involved in those
6 remediation or abatement processes. So I would propose to
7 use that language within the jurisdiction.

8 COMMISSIONER ENGLER: My question (inaudible) is
9 reasonable probability defined?

10 CHAIRWOMAN SANDOVAL: No. That's an excellent
11 point, that if the release is of any volume that may with
12 reasonable -- I don't know if that's -- the volume
13 (inaudible) may not have any impact if it reaches surface or
14 groundwater. It's more the area, how it was spilled. I
15 mean volume can be a factor, but it's not the only factor.

16 COMMISSIONER ENGLER: Correct. It's got
17 everything, land, environment, just like (inaudible).

18 CHAIRWOMAN SANDOVAL: Okay. So let's -- okay,
19 let's start with the beginning change (inaudible) from
20 recycling and reuse of produced waters, produced water for
21 activities related -- for activities within the jurisdiction
22 of this Division shall be handled in accordance with
23 19.15.29. We are good with that piece of it.

24 COMMISSIONER ENGLER: That's correct.

25 CHAIRWOMAN SANDOVAL: So let's take the second

1 part. I think maybe the statement, if groundwater or
2 surface water are impacted, make like a hard statement,
3 because I -- I -- the probable -- reasonable probability
4 is sloppy, at best.

5 What about if there is a (inaudible) impact
6 ground or surface waters regulated by the Department of
7 Environment, the responsible party must send a copy of the
8 C-141 to the Department of Environment as applicable in
9 accordance with 19.15.29?

10 COMMISSIONER ENGLER: Madam Chair, I like that
11 better than reasonable probability. I still think that
12 opens up the question how you define impact. (inaudible).

13 CHAIRWOMAN SANDOVAL: Another excellent question
14 by Dr. Engler. (inaudible) it says effect (inaudible) which
15 has the same problem as impact. Reaches, comes in contact
16 with?

17 COMMISSIONER ENGLER: I don't know about this one
18 because it seems to me -- I know what the Environment
19 Department is trying to do is trying to get notice from
20 their C-141.

21 CHAIRWOMAN SANDOVAL: That's our form.

22 COMMISSIONER ENGLER: Our Form C-141.

23 CHAIRWOMAN SANDOVAL: Yes.

24 COMMISSIONER ENGLER: But I'm not sure how --
25 what the wording should be.

1 CHAIRWOMAN SANDOVAL: So interestingly enough, in
2 our Rule Part 29, the definition of a major release, one of
3 the components is, release of a volume that may with
4 reasonable probability be detrimental to fresh water.

5 COMMISSIONER ENGLER: So you do have that phrase.

6 CHAIRWOMAN SANDOVAL: We apparently have that --
7 we -- hm, I don't know though, as you point out, what that
8 probably means.

9 COMMISSIONER ENGLER: Well, this --

10 CHAIRWOMAN SANDOVAL: So we would be perpetuating
11 that statement.

12 COMMISSIONER ENGLER: We would be consistently --
13 this will be consistent with your other rule, even though --
14 that's fine, I'm good with that, even though, by definition,
15 I would -- I think it just opened up a huge question about
16 reasonable probability.

17 CHAIRWOMAN SANDOVAL: Yeah, I don't -- but
18 actually, I don't know if we should continue with that, but
19 I do think the part of this statement that is helpful is the
20 detrimental, and maybe that's -- instead of effect or --
21 instead of effect or impact, detrimental is a much --
22 it's --

23 COMMISSIONER ENGLER: It's a stronger.

24 CHAIRWOMAN SANDOVAL: It's a stronger word. It
25 has more meaning (inaudible) if you will. So maybe the more

1 appropriate way to go is to say, if the release is
2 detrimental to ground or surface waters regulated by the
3 Department of Environment, the responsible party must send a
4 copy of the Form C-141 to the Department of Environment as
5 applicable and in accordance with 19.15.29.

6 COMMISSIONER ENGLER: I'm fine with that.

7 MR. LOZANO: Madam Chair, reasonable probability
8 comes up in 5 (inaudible) 5 or 6.

9 CHAIRWOMAN SANDOVAL: That doesn't make it a good
10 statement.

11 MR. LOZANO: I'm just saying.

12 COMMISSIONER ENGLER: But it is consistent with
13 the other rules.

14 CHAIRWOMAN SANDOVAL: Consistently fuzzy.

15 COMMISSIONER ENGLER: That's how I would
16 interpret it.

17 CHAIRWOMAN SANDOVAL: I mean, I think we could
18 start making the rule language better now. We have the
19 opportunity, we are here today, spending our Friday evening
20 together.

21 So my proposal (inaudible) if the release is
22 detrimental to ground or surface water, and then keep the
23 rest of that statement as is, ground or surface waters
24 regulated by the Department of Environment, the responsible
25 party must send a copy of the Form C-141 to the Department

1 of Environment as applicable in accordance with 19.15.25
2 NMAC.

3 Bam.

4 COMMISSIONER ENGLER: I'm good with that.

5 CHAIRWOMAN SANDOVAL: I think we got 6. 7, let's
6 go back to 7.

7 Okay. So earlier we had hit on the changes that
8 were added, basically this clarifies that OCD -- I think
9 this is where Mr. Brancard said it's a sign post, this is
10 the sign post on the rule. It says the things that we used
11 to have authority for, we no longer have authority for. And
12 it's the sign post, so you know it's not us, we have no
13 authorization here. Where you have to go is over here, you
14 need to go left -- or straight.

15 COMMISSIONER ENGLER: Madam Chair, I think there
16 is a discussion with the need to (inaudible) about using
17 produced water on both (inaudible).

18 CHAIRWOMAN SANDOVAL: Yeah.

19 COMMISSIONER ENGLER: And I think this -- and I
20 think this may be where we -- we need to define.

21 CHAIRWOMAN SANDOVAL: Are you sure we shouldn't
22 just put 8? I mean, I'm kind of thinking we make it 8.

23 COMMISSIONER ENGLER: Just sure that we clearly
24 see that as a separate item?

25 CHAIRWOMAN SANDOVAL: Yeah, I don't want to fuzzy

1 up Number 7 by just throwing it in. I think it will be a
2 stronger statement if we let it have its own bullet point.

3 COMMISSIONER ENGLER: That's a good idea. I like
4 that.

5 CHAIRWOMAN SANDOVAL: Okay. So 7, let's just go
6 through the process here. There were no proposed changes to
7 the language by NMOGA.

8 WildEarth Guardians, okay, did propose changes to
9 the language. So I do like the (inaudible) language in here
10 -ish. I think this just slightly modifies, and it almost --
11 I think it achieves a very similar purpose. So that's the
12 WildEarth Guardians' change, I believe.

13 Let's see what Sierra Club changed. Sierra Club
14 begins on the language at the very end, pursuant to the
15 Water Quality Act.

16 And then the Environment Department wants the
17 word released included, so it would say, what any release
18 discharge handling; correct? I think that's a natural
19 change. I see no issue with expanding the section to add
20 release. We need to look at WildEarth Guardians' language
21 is what we should be focused on. (inaudible).

22 COMMISSIONER ENGLER: Yeah. Madam Chair
23 (inaudible) the release (inaudible) ended at pursuant to the
24 Water Control Quality Act, as that has been defined by. The
25 dispositional description, disposition in road construction

1 and so on, it seems like it's a repetitive statement of what
2 we already have. I don't see why that's there, the purpose
3 behind it at this point. Do you agree?

4 CHAIRWOMAN SANDOVAL: Yeah, I don't know. The
5 statement is very long (inaudible) it's a little confusing,
6 disposition in road construction or maintenance, roadway or
7 ice or dust control or other construction or the application
8 of treated produced waters to land shall not be considered
9 directly related to drilling, exploration, production,
10 treatment, and shall be prohibited -- I feel like it's a
11 little redundant, but maybe I (inaudible).

12 COMMISSIONER ENGLER: Yes, I think it's
13 redundant -- shall not, shall be, so it just doesn't make
14 sense to me.

15 CHAIRWOMAN SANDOVAL: Okay. The original
16 proposal by the Oil Conservation Division, it seems to
17 achieve the same, the same thing. I think that the Sierra
18 Club edition of the Water Quality Act at the end is not a
19 substantive edit, but I think it's adds a little more
20 jurisdictional flurry.

21 COMMISSIONER ENGLER: I agree.

22 CHAIRWOMAN SANDOVAL: And then we can add the
23 word release, so it will say, any release, discharge,
24 handling, so on and so forth, and then end it by saying,
25 pursuant to the Water Quality Act.

1 COMMISSIONER ENGLER: Correct.

2 CHAIRWOMAN SANDOVAL: So now I think we need to
3 discuss the edition of the statement, to explicitly prohibit
4 use of treated, recycled, any sort of produced water for
5 surface use on oil and gas sites.

6 COMMISSIONER ENGLER: Where -- where is that at?

7 CHAIRWOMAN SANDOVAL: I'm thinking we need to add
8 a Number 8.

9 COMMISSIONER ENGLER: Oh, yeah, got you. So
10 Number 8, say it again, please.

11 CHAIRWOMAN SANDOVAL: We need to expressly
12 prohibit basically any surface use of produced water or
13 recycled produced water within the oil and gas industry.

14 COMMISSIONER ENGLER: Within the jurisdiction?

15 CHAIRWOMAN SANDOVAL: Within the jurisdiction of
16 the Division, that would be better. That would be all
17 encompassing and make sure there is no weird loophole.

18 Okay. So Miguel, can you help here? Did you
19 write down what I said?

20 MR. LOZANO: No, Madam Chair, I did not.

21 CHAIRWOMAN SANDOVAL: So we need to expressly say
22 what, no surface use shall -- surface use of produced water
23 or recycled produced water shall not be allowed within the
24 jurisdiction under -- shall not be allowed on any sites
25 within the jurisdiction of the Division.

1 Can you read that back to me, what I said?

2 MR. LOZANO: Surface use of produced water or
3 recycled produced water shall not, not be allowed on any
4 sites within the jurisdiction of the Division.

5 Madam Chair, is "site" a capital?

6 CHAIRWOMAN SANDOVAL: Facilities is a defined
7 term in our rule. Facilities would be a better statement.
8 The facilities or equipment -- I'm just -- I want to make it
9 as expansive as possible, okay, I don't want a loophole. I
10 want the definition of facility.

11 Okay. Facility means a structure, installation,
12 operation, source, transmission line, access road, motor
13 vehicle, roaming stock or activity of any kind whether it's
14 stationary or mobile. Okay. I think this is what -- a
15 pretty broad definition, and so I don't think that there
16 could be really any loopholes in that, and so we should use
17 the word facility.

18 COMMISSIONER ENGLER: I agree.

19 CHAIRWOMAN SANDOVAL: Okay. Will you now read
20 that back?

21 MR. LOZANO: Madam Chair, Number 8, surface use
22 of produced water or recycled produced water shall not be
23 allowed under on any facility within the jurisdiction of the
24 Division.

25 CHAIRWOMAN SANDOVAL: Sorry, say that one more

1 time.

2 MR. LOZANO: Section 8, surface use of produced
3 water or recycled produced water should not be allowed on
4 any facility within the jurisdiction of the Division. I'm
5 just -- I'm just processing, Madam Chair. If there's
6 another way, I think --

7 CHAIRWOMAN SANDOVAL: If there is, I think that
8 captures the intent. I'm open to other language that
9 captures similar intent.

10 MR. LOZANO: The word I'm struggling with
11 actually is allowed.

12 CHAIRWOMAN SANDOVAL: Prohibited, is not.

13 MR. LOZANO: Surface use of produced water or
14 recycled produced water is prohibited on any facility within
15 the jurisdiction of the Division.

16 CHAIRWOMAN SANDOVAL: That's better. That's
17 stronger.

18 CHAIRWOMAN SANDOVAL: Dr. Engler?

19 COMMISSIONER ENGLER: I agree.

20 CHAIRWOMAN SANDOVAL: And I think our definition
21 of facility within the rules should help to prevent any
22 loopholes.

23 COMMISSIONER ENGLER: Hopefully.

24 CHAIRWOMAN SANDOVAL: Agreed. All right, we made
25 it through 8, 19.15.34.8, and so that is progress. I

1 think we -- I'm sorry, will you read that one more time,
2 Miguel?

3 MR. LOZANO: Sure. Subsection 8, surface use of
4 produced water or recycled produced water is prohibited on
5 any facility within the jurisdiction of the Division.

6 CHAIRWOMAN SANDOVAL: Would it be clear to say
7 surface application, cleaner?

8 MR. LOZANO: I would defer to you on that, Madam
9 Chair, as to what the appropriate terminology is.

10 CHAIRWOMAN SANDOVAL: I think application.

11 COMMISSIONER ENGLER: Yes.

12 CHAIRWOMAN SANDOVAL: Surface application.

13 COMMISSIONER ENGLER: (Nodding.)

14 CHAIRWOMAN SANDOVAL: Okay. Now we changed the
15 word use to application. Now I think we are good with 8.

16 Okay. We are going to move on to 19.15.34.8B.
17 This -- this is the disposal of produced water, let's go to
18 OCD. Okay.

19 COMMISSIONER ENGLER: Excuse me, Madam Chair,
20 under Sierra Club, they have additional -- well, they had
21 B/D as new substitutes.

22 CHAIRWOMAN SANDOVAL: Okay.

23 COMMISSIONER ENGLER: And then they put the
24 disposal of produced water, which is B under the Division D.

25 CHAIRWOMAN SANDOVAL: Oh, thank you.

1 Let's discuss the (inaudible). Does the
2 (inaudible) have any edition?

3 COMMISSIONER ENGLER: For Sierra Club.
4 (inaudible)

5 COMMISSIONER ENGLER: WildEarth Guardians after.
6 (inaudible)

7 CHAIRWOMAN SANDOVAL: So let's see, Sierra Club.
8 Not sure what this says. I mean, inherently you
9 have to do the (inaudible).
10 (inaudible).

11 COMMISSIONER ENGLER: Yes. I think much of the
12 testimony discussions were centered around -- you know,
13 this -- these parts, again, would actually approved
14 (inaudible) scope.

15 CHAIRWOMAN SANDOVAL: All right.

16 COMMISSIONER ENGLER: And so I think we agreed
17 that it's more of a higher arching scope kind, not really
18 should be underneath the procedures requirements. My
19 recommendation is for B and C included not.

20 CHAIRWOMAN SANDOVAL: And you recommend that
21 because basically you feel like it's already been included?

22 COMMISSIONER ENGLER: In the scope.

23 CHAIRWOMAN SANDOVAL: In the scope. I mean, I
24 agree. I think we covered it in other areas and we made
25 modifications to the (inaudible) the language.

1 COMMISSIONER ENGLER: Correct.

2 CHAIRWOMAN SANDOVAL: Okay. I would agree that
3 the use of B and C, the proposal for Sierra Club, should not
4 be included because they are already managed and covered in
5 other portions of the document.

6 Okay. So let's look at the C of the Oil
7 Conservation Division proposal. Basically they clean the
8 language up. There is not -- I think this is some of the
9 stylistic changes that they discussed. They have been
10 getting rid of the kind of bracketed language.

11 COMMISSIONER ENGLER: Yes, that's correct.

12 CHAIRWOMAN SANDOVAL: I think the proposed
13 language continues to be the same intent of what was
14 originally there. So Oil and Gas Association has no
15 comments on that.

16 WildEarth Guardians does not have any changes to
17 B 1, 2 or 3. The WildEarth Guardians was fine with all the
18 changes in B that the Oil Conservation Division proposed
19 with 1, 2 and 3. The Oil and Gas Association made no
20 edition or changes to 1, 2 or 3. Sierra Club makes no
21 changes to proposed language by OCD, 1, 2 or 3.

22 Basically that leaves E. So we will need to go
23 back to E and to WildEarth Guardians' editions, but let's do
24 the 1, 2 and 3.

25 Okay. In the OCD proposal B 1, 2 and 3 is what

1 we are reviewing. Disposal of produced water. Persons
2 disposing of produced water shall use one of the following
3 disposition methods, I see no issues with what the proposals
4 are. 3 is, for uses regulated by the Water Quality Control
5 Commission pursuant to Water Quality Act, a person shall
6 obtain a permit from the Department of Environment before
7 using produced water, recycled or treated water or treated
8 product or any byproduct of the produced water.

9 Again that's really making clear what the process
10 is going forward. Counsel, I just have a procedure
11 question -- or I don't know what the question is. Maybe
12 it's not a question.

13 Should the Water Quality Control Commission be
14 capitalized?

15 MR. LOZANO: No. Actually, Madam, the
16 Commission, the Division or this Division are capitalized
17 within the rules.

18 CHAIRWOMAN SANDOVAL: What about the Department
19 of Environment?

20 MR. LOZANO: The same.

21 CHAIRWOMAN SANDOVAL: No capitalization, okay.

22 Okay. I am -- I think the language as is
23 proposed clearly explains what goes on in the Produced Water
24 Act and translates that into this rule which was the intent
25 of the original rulemaking.

1 Dr. Engler, do you have any concerns with 1, 2 or
2 3?

3 COMMISSIONER ENGLER: Madam Chair, I think
4 (inaudible) spelled out (inaudible) and the third component
5 is necessary for this rule.

6 CHAIRWOMAN SANDOVAL: Okay. Okay. So now let's
7 move first to the WildEarth Guardians' edition of C. So
8 that would have been 19.15.34.8C, which basically says you
9 cannot use fresh water or drinking water in drilling and
10 completions operations.

11 You know, we had a proposal, I believe, from
12 Sierra Club in (inaudible). First of all, I think
13 Mr. Brancard testified that (inaudible) he is unsure if OCD
14 has the direct authorization to do this.

15 Second, it's -- again, I think (inaudible) it is
16 not a logical outgrowth of the initial proposal and
17 therefore cannot be considered in this rulemaking because
18 the public was not afforded reasonable public notice that
19 this may be a requirement going forward. Dr. Engler?

20 COMMISSIONER ENGLER: I concur, and I guess I
21 will add the statement that, again there was really no
22 evidence or testimony provided to say why this should be
23 prohibited.

24 CHAIRWOMAN SANDOVAL: And actually, that is
25 almost identical to Sierra Club's C, which says no fresh

1 water shall be used in hydraulic fracturing, which hydraulic
2 fracturing is what I referred to as completion. So both E
3 in the Sierra Club's and C in WildEarth Guardians should not
4 be included for the reasons we stated.

5 COMMISSIONER ENGLER: I concur.

6 CHAIRWOMAN SANDOVAL: Thank you. Okay. We are
7 now moving to 19.15.34.9, which the only change in OCD was a
8 very minor wording change because we now refer to Class 2
9 wells as produced water disposal wells instead of saltwater
10 disposal wells. So this will make it more standardized with
11 other rules.

12 The Oil and Gas Association has no edits.
13 WildEarth Guardian has no changes. Sierra Club has no
14 changes, but I think we should change the word from salt to
15 produced.

16 COMMISSIONER ENGLER: I concur.

17 CHAIRWOMAN SANDOVAL: Okay, 19.15.34.13, back to
18 the Division's proposal, a minor stylistic change, writing
19 out 20 percent rather than the number 20 percent. The other
20 thing I would like to change in this section is the
21 appropriate division district office (inaudible) and I would
22 like to standardize that and say the Division.

23 And so it says, "The operator must report
24 cessation of operations to the appropriate division district
25 office," we should just say, "To the Division," and end it

1 there.

2 The next sentence says, "The appropriate division
3 district office may grant an extension to this determination
4 of cessation of operations not to exceed six months." I
5 think there we should say, "The Division may grant an
6 extension to its determination," and again, in order to
7 standardize how we are now operating the Division, of a
8 centralized uniform structure across the board.

9 COMMISSIONER ENGLER: Madam Chair, I agree with
10 all of it.

11 CHAIRWOMAN SANDOVAL: So again, I believe, just
12 some minor stylistic changes in 19.15.34.14, I am fine with
13 the stylistic changes. They just get rid of the bracketed
14 percentage numbers, and the same thing goes (inaudible) to
15 19.15.34.14. 19.15.34.18 is the same change. The Oil and
16 Gas Association has no edit to that. WildEarth Guardians
17 has no edits to that. Sierra Club has no edits to that.
18 Again, that's a stylistic change. I have no problems with
19 those changes.

20 COMMISSIONER ENGLER: I agree. I think that
21 concludes the review of this document. Dr. Engler, was
22 there anything else that we did not cover in this discussion
23 thus far?

24 COMMISSIONER ENGLER: As far as I know, we are
25 (inaudible).

1 CHAIRWOMAN SANDOVAL: I do not have any
2 additional changes to the rule. I think this well covers
3 the intent of today's rule, though I think, as we spoke
4 about today multiple times, there may be places which would
5 be more appropriate for a future rulemaking.

6 There was so many excellent points made
7 throughout some of the edits, but unfortunately we have to
8 stick to the confines of today's hearing and what was
9 proposed so as to afford the public with reasonable notice
10 in this proceeding so that they would be aware of what the
11 changes are and be able to provide any appropriate comment.

12 Mr. Lozano, will you please prepare a draft rule
13 order for us to review at the special meeting that will be
14 held on September 3 to finalize the changes and edits that
15 were made to the Oil Conservation Division's proposal.

16 No decisions will be made today because we need
17 to see all of the finalized changes prior to voting on the
18 order, which again will be done on September 3.

19 Okay. We will move on to the next item in the
20 agenda, which is pending litigation. And Mr. Lozano, would
21 you please give the Commission an update?

22 MR. LOZANO: I will spare the Commission, I will
23 have an update on August 13 on a couple of matters, Madam
24 Chair. Thank you.

25 CHAIRWOMAN SANDOVAL: That's excellent. Is there

1 any other business from the Commissioners?

2 COMMISSIONER KESSLER: None.

3 COMMISSIONER ENGLER: None.

4 CHAIRWOMAN SANDOVAL: The next meeting is August
5 13, 2020. A special meeting will also be held on September
6 3 to finalize the produced water rule after reviewing the
7 draft order to ensure that the changes that were made meet
8 the scope of this rulemaking and reflect the Commissioner's
9 changes.

10 And on that September 3, if the order is adequate
11 and meets the changes, the Commission will issue the
12 corresponding order. Is there any other business before the
13 Commission?

14 (No audible response.)

15 CHAIRWOMAN SANDOVAL: This meeting -- I heard no
16 other business. This meeting is adjourned at 7:06 on
17 Friday, July 31.

18 MS. NANASI: Madam -- Madam, we are (inaudible)
19 when is the recording of this (inaudible) where is that
20 recording?

21 CHAIRWOMAN SANDOVAL: You may have to repeat your
22 question. You are kind of cutting out from the record.

23 MS. NANASI: So this is Mariel Nanasi, and I just
24 wanted to inquire as to exhibits (inaudible) and I'm just
25 wondering where that recording will appear.

1 CHAIRWOMAN SANDOVAL: Oh. Well, the recording
2 usually takes like 24 hours for the process, and then we
3 will post it on our website -- on the hearing page would be
4 more appropriate. If not, it will be somewhere -- maybe
5 the rules page may be more appropriate.

6 MS. NANASI: Thank you so much. Have a good
7 night.

8 CHAIRWOMAN SANDOVAL: You, too, please. Everyone
9 have a good evening and stay safe. Thank you.

10 (Adjourned 7:06 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 REPORTER'S CERTIFICATE

5

6 I, IRENE DELGADO, New Mexico Certified Court
7 Reporter, CCR 253, do hereby certify that I reported the
8 foregoing virtual proceedings in stenographic shorthand and
9 that the foregoing pages are a true and correct transcript
10 of those proceedings that were reduced to printed form by me
11 to the best of my ability.

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

16 I FURTHER CERTIFY that the Virtual Proceeding was
17 of poor to good quality.

18 Dated this 31 day of July 2020.

19 /s/ Irene Delgado

20

21

Irene Delgado, NMCCR 253
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