

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:

ORIGINAL

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR  
THE AMENDMENTS OF 19.15.14.8 AND 19.15.16 NMAC.

CASE NO: 14744  
VOLUME 1

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
October 20, 2011  
Santa Fe, New Mexico

BEFORE: JAMI BAILEY, DIRECTOR  
SCOTT DAWSON, COMMISSIONER  
ROBERT BALCH, COMMISSIONER  
SHERYL BADA, COMMISSION COUNSEL

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This matter came on for hearing before the New Mexico Oil Conservation Commission, JAMI BAILEY, Director, SCOTT DAWSON, Commissioner, ROBERT BALCH, Commissioner, October 20, 2011, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South St. Francis, Drive, Room 102, Santa Fe, New Mexico.

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1 MADAM CHAIR: Good morning. It's 9:00 on Thursday,  
 2 October 20, here in Porter Hall in Santa Fe, New Mexico.  
 3 This is a meeting of the Oil Conservation Commission. I am  
 4 Jami Bailey, Director of the Oil Conservation Division and  
 5 Chairman of the Commission. To my right is Scott Dawson,  
 6 designee of the Commissioner of Public Lands. To my left is  
 7 Dr. Robert Balch, designee of the Secretary of Minerals and  
 8 Natural Resources. All three Commissioners are present  
 9 today, so there is a quorum for this hearing. Have the  
 10 Commissioners had a chance to read the minutes of the last  
 11 meeting?

12 COMMISSIONER BALCH: I have.

13 COMMISSIONER DAWSON: I have.

14 MADAM CHAIR: Do I hear a motion to adopt the  
 15 Commission minutes of the last meeting?

16 COMMISSIONER DAWSON: I will motion.

17 COMMISSIONER BALCH: I will second.

18 MADAM CHAIR: All those in favor say aye.

19 MADAM CHAIR, COMMISSIONER BALCH, COMMISSIONER

20 DAWSON: Aye.

21 MADAM CHAIR: All those opposed?

22 (No response.)

23 MADAM CHAIR: I will sign on behalf of the  
 24 Commission and transfer the minutes to the Commission Clerk.

25 (Document signed and transferred to Ms. Davidson.)



1           MADAM CHAIR: First on the docket, final action may  
2 be taken in Case 14161, which was the application of Targa  
3 Midstream Service LP to amend Order 13052. The order for  
4 that hearing has not been finalized, and so this action will  
5 have to be continued to next month.

6           I will now call Case 14744, which is the application  
7 of the New Mexico Oil Conservation Division, notice of  
8 rulemaking concerning the repeal, adoption and amendment of  
9 rules issued pursuant to the Oil and Gas Act, NMSA 1978,  
10 section 70-2-1 through 70-2-38.

11           Because this is a rulemaking hearing, there are  
12 certain procedures that must be followed according to OCD  
13 rules. Rule 19.15.3.12 indicates that the hearing shall  
14 begin with a statement from the Commission Chairman  
15 identifying the hearing's nature and subject matter, which I  
16 have just done, and explaining the procedures to be followed.

17           Part of the procedures are listed in 19.15.3.11,  
18 which indicates that non-technical testimony may be presented  
19 by members of the general public who wish to present  
20 testimony, and they should indicate their intention on the  
21 sign-up sheet that we have in the back of the room. I expect  
22 that we will be able to listen to the non-technical testimony  
23 before we have lunch today.

24           Technical testimony can be -- or cross-examination  
25 of witnesses shall be done if a pre-hearing statement has

1    been entered that contains the attorney's name, the  
2    witnesses, and statement of each witness' testimony, their  
3    qualifications, and the approximate time the person will  
4    offer the evidence.

5           Brief opening statements will begin the case. The  
6    applicant, which is the Oil Conservation Division, will  
7    present its case first, then we will listen to other  
8    testimony based on the notices of intent. Then there will be  
9    brief closing statements, and if the hearing continues for  
10   more than today, we will provide an opportunity each day for  
11   public comment. I believe that summarizes some of the more  
12   important parts of the rules concerning rulemaking hearings.  
13   So at this point I would like to ask for appearances.

14           MS. GERHOLT: Gabrielle Gerholt on behalf of the Oil  
15   Conservation Division.

16           MADAM CHAIR: And how many witnesses will you have?

17           MS. GERHOLT: Two witnesses.

18           MR. CARR: May it please the Commission, my name is  
19   William F. Carr. I'm with the Santa Fe office of Holland and  
20   Hart. I represent the New Mexico Oil and Gas Association.  
21   Appearing with me today are Michael Feldewert, and Carol  
22   Leach of Concho Resources.

23           MADAM CHAIR: And how many witnesses will you have?

24           MR. CARR: We will have three.

25           MS. MUNDS-DRY: Good morning, Madam Chair,

1 Commissioners. My name is Ocean Munds-Dry. I'm with the law  
2 firm of Holland and Hart LLP with the Santa Fe office, and  
3 I'm here representing Lynx Petroleum Consultants, and I have  
4 no witnesses.

5 MS. FOSTER: Good morning, Commissioner. My name is  
6 Karin Foster. I represent the Independent Petroleum  
7 Association of New Mexico. We do not have any witnesses  
8 today.

9 MR. FORT: My name is Patrick Fort. I'm  
10 representing the Jalapeno Corporation, and we have one  
11 witness.

12 MADAM CHAIR: That's all?

13 (No response.)

14 MADAM CHAIR: Okay. Do you have any opening  
15 statements to make?

16 MS. GERHOLT: Madam Chair, Commissioners, I do have  
17 an opening statement, however, before I begin with my  
18 opening, I would like to address some preliminary matters, if  
19 I may.

20 To begin with, one of our witnesses, David Brooks,  
21 has a slide presentation that was created. It's of the  
22 exhibits, so we are not introducing any new exhibits, but for  
23 a flow of presentation, we have a Powerpoint exhibit that we  
24 would like to provide to you. It's been e-mailed to the  
25 attorneys, and we also have copies for the attorney and we

1 can make copies available for the others if they are  
2 interested.

3 MADAM CHAIR: Okay.

4 MS. GERHOLT: May I approach?

5 MADAM CHAIR: Yes, you may.

6 MS. GERHOLT: Madam Chair, the other preliminary  
7 matters -- and I have e-mailed it to all of the attorneys  
8 that have entered an appearance -- is we seek to amend  
9 Exhibits 2 and 13 related to Mr. Ezeanyim's testimony, and  
10 Mr. Ezeanyim has not added any substantial information, but  
11 has just provided more detailed explanation, and we would  
12 offer it at this time if there is no objection.

13 MADAM CHAIR: Are there any objections?

14 (No response.)

15 MADAM CHAIR: They are so accepted.

16 (Exhibits OCD 2 and 13 admitted.)

17 MS. GERHOLT: May I approach?

18 MADAM CHAIR: Yes, you may.

19 MS. GERHOLT: Madam Chair, Commissioners, the only  
20 other -- well, one other preliminary matter is in regards to  
21 Jalapeno Corporation and Heyco's pre-hearing statements.  
22 Jalapeno Corporation and Harvey Yates Company have both  
23 proposed modifications which affect compulsory pooling. The  
24 Division moves that testimony presented by Jalapeno  
25 Corporation and Harvey Yates Company be limited to formation

1 of project areas when there is an existing operating  
2 agreement and not allow testimony about compulsory pooling  
3 notification for the following reasons:

4           The compulsory pooling modification directly affects  
5 OCD's rule on compulsory pooling which can be found at New  
6 Mexico Administrative Code 19.15.13. For example, both  
7 Jalapeno and Heyco have submitted a modification that would  
8 instruct the Division to reduce the compensation to the  
9 driller, the risk taken to 50 percent when drilling a  
10 horizontal in a proven formation.

11           OCD rule on compulsory pooling, specifically in  
12 19.15.13.8A, clearly states that the charge for risk is 200  
13 percent of well costs. This proposed modification directly  
14 affects the current rule, which is not included in the  
15 notice, and is not before the Division today. In addition to  
16 this modification, Jalapeno and Heyco have proposed other  
17 compulsory pooling modifications to a portion of the special  
18 rules for horizontal.

19           The Division, in its proposed amendments at  
20 19.15.16.15F, has simply sought to make clear that the OCD  
21 compulsory pooling rule would apply to horizontal. Today the  
22 Division has not sought that 19.15.13 be modified. We  
23 commend Jalapeno and Heyco for adjusting 19.15.13, however,  
24 it would not be logical outgrowth in this hearing to adopt  
25 modification which significantly impacts a rule that the

1 public was not notified about and that the public has not had  
2 the opportunity to comment, and, further, to institute  
3 versions of the United States EPA, the DC Court of Appeals  
4 accepts the test for logical outgrowth as whether reasonable  
5 commentary should have anticipated that such a requirement  
6 would be promulgated or whether the notice was sufficient or  
7 advised interested parties that comment directed to the  
8 controverted aspect of the final rule should have been made.

9           The Division respectfully requests the Commission  
10 limit Jalapeno and Heyco's testimony to what was then in the  
11 public notice, specifically formation of the project areas,  
12 which was before the public, and the amendment for the  
13 special rules for horizontal. The compulsory pooling rule is  
14 not part of what the Commission -- what the Division seeks to  
15 amend today, nor was the public notified of that.

16           If the Commission is interested in considering  
17 changes to compulsory pooling, the Commission should withhold  
18 from hearing evidence about it today and require the Division  
19 to publish a new notice including the compulsory pooling rule  
20 19.15.13.

21           MADAM CHAIR: Any argument there? Could you please  
22 state your name for the record?

23           MR. FORT: My name is Patrick Fort. I represent  
24 Jalapeno Corporation, which brings us to an interesting point  
25 that she's raised, and that is that our problem is that we

1 believe you do not have the authority to create project areas  
2 under the state law. You have the authority to create a  
3 proration unit allowing for one -- so this is where this,  
4 where the compulsory pooling that we are looking at that our  
5 contention is -- you don't have the authority to do what you  
6 are doing by these rules. You would have to have statutory  
7 authority to create these project areas for horizontal wells.

8 Now, we have tried to come up with a way to deal  
9 with those in terms of the limiting the compulsory pooling  
10 to -- to allow the statute or rules to fit the state law, and  
11 to the extent that there needs to be notice, we feel that  
12 that notice is sufficient in and of itself in terms of these  
13 issues they want to amend, we were asked to give  
14 modifications, and our modifications go to whether or not  
15 these rules are going to be lawful.

16 MADAM CHAIR: Do you have a response to that?

17 MS. GERHOLT: The New Mexico Statute on point is  
18 72.17, Equitable Allocation of Allowable Production in Proven  
19 Spacing. If you look at Paragraph B of that statute, it  
20 states the Division may establish proration units for each  
21 pool. Proration unit is defined as being the area that can  
22 be efficiently and economically drained and developed by one  
23 well.

24 Given that this is the definition, and given the  
25 practice of the Division over a period of time the Division

1 has utilized its authority to create -- to create proration  
2 units and to create project areas that have not previously  
3 been challenged, the Division is aware that there would be  
4 need for legislative change, however, the Division is not  
5 seeking to define compulsory pooling as it relates to  
6 horizontals, but merely to state that the current rules that  
7 we have on compulsory pooling would apply to horizontal wells  
8 in the project area formation.

9 MADAM CHAIR: What was that citation that you gave  
10 for that -- 19.2.12 -- concerning the proration units?

11 MS. GERHOLT: Let's see. 19.2 -- there is New  
12 Mexico Statute 72-17, and then we have OCD Rule 19.15.13, and  
13 then -- and then 19.2.12. One moment, please.

14 (Pause.)

15 MS. GERHOLT: Madam Chair, I apologize, I don't  
16 remember giving a citation with regard -- with regard to the  
17 19.15.

18 MADAM CHAIR: I apologize, because I was misquoting  
19 you. It was 17-2-17B is the one I was looking for.

20 MR. YATES: Madam Chair?

21 MADAM CHAIR: Yes, sir.

22 MR. YATES: I wonder if I may say something.

23 MADAM CHAIR: We have relaxed rules during  
24 rulemaking hearings, it's very clear in our present rules.  
25 Please give your name.



1 MR. YATES: Harvey Yates, president of Jalapeno  
2 Corporation. I want to clarify our position related to  
3 proration units and these other units.

4 MR. FORT: They are called project areas.

5 MR. YATES: Project areas. Our opposition, we  
6 understand that if you want to make a project area into a  
7 proration unit for a new field area, that you have the  
8 authority. We believe you have the authority to do that.  
9 Our problem is that in imposing project areas over existing  
10 proration units, particularly where there are existing wells  
11 and applying the forced pooling rules to those  
12 circumstances --

13 MADAM CHAIR: Mr. Yates, I think we will get into  
14 this part of the testimony for this case. I would appreciate  
15 it if you made your comment at a later point where it is more  
16 applicable to what is --

17 MR. YATES: Yes, ma'am, I will do that. I've got a  
18 question. If we are not allowed to testify related to the  
19 forced pooling matter as a witness, can we do that as a  
20 public -- as a public comment?

21 MADAM CHAIR: Yes. There is no limit, as I  
22 understand it, for that.

23 (Discussion off the record between Commissioners.)

24 MADAM CHAIR: Actually, this all has to be out in  
25 the public, anyway. So at this point we need to speak up so

1 the --

2 COMMISSIONER BALCH: I'm not sure it's appropriate  
3 to limit testimony until we have heard it. We can always  
4 choose to eliminate it at some point in time.

5 MADAM CHAIR: Commissioner Dawson?

6 COMMISSIONER DAWSON: I say at a later time, too.

7 MADAM CHAIR: At this time we will overrule the  
8 objection and hear the testimony at the appropriate time.

9 MS. GERHOLT: So the OCD motion was denied?

10 MADAM CHAIR: Yes, ma'am.

11 MS. GERHOLT: Thank you.

12 MADAM CHAIR: Do you have opening statements?

13 MS. GERHOLT: I do have an opening statement. I  
14 also have one more preliminary matter. If you will turn to  
15 the notebooks provided by the Oil Conservation Division,  
16 you'll see that the first exhibit prepared by the OCD is  
17 Affidavit of Notice. This was prepared by Theresa Duran  
18 Saenz of the Legal Bureau, and if there are no objections,  
19 the Division would request that the evidence be -- that the  
20 notice be accepted into evidence as proper notice to the  
21 proposed amendment was provided.

22 MADAM CHAIR: Any objections to admission of Exhibit  
23 1 of the OCD notebook?

24 (No objection noted.)

25 MADAM CHAIR: The exhibit is accepted.

1 (Exhibit OCD 1 admitted.)

2 MS. GERHOLT: Madam Chair, Commissioners, that does  
3 conclude the preliminary matters that the Oil Conservation  
4 Division has, and I'm prepared for an opening statement.

5 MADAM CHAIR: Go ahead.

6 MR. CARR: No objection.

7 MR. FORT: No objection.

8 MS. GERHOLT: Good morning. The Oil Conservation  
9 Division has applied for an order amending the Oil  
10 Conservation Division Rule 19.15.14.8, permit to drill, and  
11 19.15.16, drilling and production. The Division is seeking  
12 to amend these provisions which relate to drilling in order  
13 to better accommodate the horizontal drilling. The Division  
14 requests these rules be amended for three reasons.

15 First, current Division rules do not adequately  
16 address the horizontal drilling technology. Because of this,  
17 the Division was frequently inundated with applications for  
18 exceptions to drilling and production requirements.

19 Secondly, there have been occasions when  
20 applications for permit to drill, otherwise known as APD,  
21 have been obtained prior to operator obtaining all necessary  
22 easements. The Division recommends that consent for  
23 compulsory pooling is obtained prior to APDs being issued.

24 Finally, the Division would like to encourage the  
25 development of the oil and gas reserves in New Mexico. The

1 two witnesses for the Division are David Brooks and Richard  
2 Ezeanyim. Both are with the Engineering Bureau of the  
3 Division. Mr. Brooks, who is an attorney assigned to the  
4 Engineering Bureau, and he is a Legal Examiner for the  
5 Division, will testify about drafting each of the amendments.  
6 He will also explain why the Division is proposing to replace  
7 the current use of producing interval with the new definition  
8 of completed interval.

9 Mr. Brooks will testify to the Division's proposed  
10 use of standard project areas and provide examples of  
11 standard project areas. Mr. Brooks will also discuss  
12 non-standard project areas, formation of project areas, and  
13 how the Division's proposal requiring notice protects  
14 correlative rights.

15 Finally, Mr. Brooks will testify about why the  
16 Division has proposed not to apply the current pool rules  
17 given simultaneous dedication exception.

18 Mr. Ezeanyim is the chief engineer of the  
19 Engineering Bureau. He will testify why the Division sought  
20 to amend these rules. He will also explain the workgroup and  
21 the process the Division went through to draft the amendment.  
22 Mr. Ezeanyim will discuss the advantages and disadvantages of  
23 horizontal drilling and concept of the completed interval  
24 versus producing interval.

25 Mr. Ezeanyim will also discuss why the Division has

1 proposed not to limit horizontal wells by current pool rules,  
2 but rather allow the number of horizontals be governed by --  
3 and allowables. He will also describe for the Commission how  
4 waste can be prevented if these rules are adopted.

5 It is the hope of the Division that after the  
6 evidence is presented, the Commissioners of the Oil  
7 Conservation will adopt the proposed amendment. Thank you.

8 MADAM CHAIR: Would you call your first witness.

9 MR. CARR: May it please the Commission, I have a  
10 brief opening statement.

11 MADAM CHAIR: Yes.

12 MR. CARR: May it please the Commission. Four or  
13 five years ago it became apparent that rules, the OCD's rules  
14 that have been developed to govern development of oil and gas  
15 property with vertical wells were really not adequate in a  
16 number of ways to address the new technology of horizontal  
17 drilling.

18 I think you are lucky, I think for many of you this  
19 may be your first meeting of horizontal wells. We have had  
20 many meetings on this subject. When the agency first started  
21 looking at the rules, they asked the NMOGA Regulatory  
22 Practices Committee to take a look at current rules and try  
23 and develop certain recommendations that would modify  
24 existing rules to accommodate horizontal drilling. And  
25 during the last several years we have had probably 15

1 meetings on this subject, and while we have been meeting,  
2 there have been technological advances and a number of OCD  
3 hearings and orders entered that have continued to reshape  
4 and mold this target we have been chasing.

5 This year we finished our work and presented to the  
6 Division a draft of what we felt were appropriate revisions  
7 to current rules to accommodate horizontal technology.  
8 Following that, there was a workgroup formed by the OCD to  
9 take a look at what we had done and further revise these  
10 rules to address this issue.

11 The Regulatory Practices Committee meetings were  
12 open to all industry members. The people who worked on the  
13 committee represented large companies and small companies.  
14 They were members of NMOGA and members of IPA New Mexico, and  
15 we operated with relaxed rules in those meetings as well, but  
16 everyone was allowed to participate. And our attitude from  
17 the beginning was that everybody should be heard, and that's  
18 our attitude here today.

19 What we are going to do is we have three people who  
20 worked as members of the workgroup -- Jan Spradlin is going  
21 to testify, she is a land person with Concho -- about the  
22 general development of these rules. And then Chuck  
23 Creekmore, ConocoPhillips, who was actually the chair of the  
24 RPC Committee that developed the rules we submitted to you  
25 this summer, he is also going to testify about the formation

1 of project areas and issues related to that. And then  
2 finally we are going to have Ken McQueen, a petroleum  
3 engineer with Williams Exploration and Production, and he is  
4 going to talk about the more technical drilling aspects of  
5 these proposed rules. But we are here today to support the  
6 recommendation of the Oil Conservation Division.

7 There are certain issues we have already heard  
8 about, but there are other things in the rules that are  
9 really needed if we are going to be able to effectively use  
10 horizontal technology, so we've got something that we think  
11 is important. It doesn't cover all issues. There may be  
12 need for other additional regulatory hearings on other issues  
13 that are related to what's going on today, and there is  
14 certainly a need for statutory change, but we are here today  
15 as the first step of what we hope will become an adjustment  
16 in your current rules that will enable operators in this  
17 state to use a new technology that, in fact, is more  
18 efficient, reduces waste and truly is in the best interest of  
19 conservation.

20 MADAM CHAIR: Ms. Munds-Dry, do you have an opening?

21 MS. MUNDS-DRY: I do not.

22 MADAM CHAIR: Ms. Leach?

23 MS. LEACH: No, I do not.

24 MADAM CHAIR: Mr. Fort?

25 MR. FORT: I think I've already done mine.

1 MADAM CHAIR: Now, would you please call your first  
2 witness.

3 MS. GERHOLT: Yes, Madam Chair. My first witness is  
4 Richard Ezeanyim. Madam Chair, I would like to request  
5 permission to have Mr. Ezeanyim testify briefly to introduce  
6 the workgroup and set the stage, and then recall him after  
7 Mr. Brooks has testified in order for Mr. Ezeanyim to then  
8 present technical information.

9 MADAM CHAIR: Okay. Could you please stand and be  
10 sworn?

11 (Witness sworn.)

12 RICHARD EZEANYIM

13 (Sworn, testified as follows:)

14 DIRECT EXAMINATION

15 BY MS. GERHOLT:

16 Q. Good morning.

17 A. Good morning.

18 Q. Would you please state your name for the record?

19 A. My name is Richard Ezeanyim.

20 THE WITNESS: I gave you my card.

21 Q. Where do you work?

22 A. I work with the Oil Conservation Division of  
23 Minerals and Natural Resources Department.

24 Q. And what position do you hold at the OCD?

25 A. I'm the chief engineer and chief hearing examiner.



1 Q. How long have you been the chief engineer?

2 A. Ten and a half years.

3 Q. How long have you been the chief hearing examiner?

4 A. Ten and a half years.

5 Q. Would you please tell the Commissioners about your  
6 educational and work experience as it relates to engineers?

7 A. Yes. I got MS degree in petroleum engineering from  
8 University of Wyoming, and then master's of business  
9 administration from University of Wyoming. And I have a  
10 third degree in chemical engineering from Texas A & I  
11 University, and I have a BS in natural gas from Texas A & I  
12 University.

13 Q. Okay. And while you have been employed by the Oil  
14 Conservation Division, have you had the opportunity to  
15 testify before the Oil Conservation Commission?

16 A. Yes.

17 Q. And what have you -- in what capacity have you  
18 previously testified before the Commission?

19 A. I have testified as chief engineer on the Oil  
20 Conservation Division in making these, some of the rules they  
21 have made. I have testified several times before the  
22 Commission on the rules.

23 Q. And did those previous Commissions accept your  
24 qualifications as a part of the record?

25 A. Yes.

1 Q. Would you please tell the Commissioners why we are  
2 here today?

3 A. Let's go back to that first rule there. Actually,  
4 I'm very comfortable that Ms. Gerholt, my colleague, and  
5 Mr. Carr have introduced what I wanted to say in the  
6 beginning. So we ask specifically here to ask the Commission  
7 to adopt amendments to the Oil Conservation Division OCD  
8 Rules 19.15.14 NMAC and 19.15.16 NMAC regarding horizontal  
9 well drilling in New Mexico.

10 We are also asking the Commission to -- before I go  
11 to that, look at my first point there. Amendments, in  
12 capitals, they are in capitals because of the importance of  
13 this rule, because we have been messing with this already two  
14 and a half years out we have been messing with this. So I  
15 really appreciate allowing the -- asking the Commission to  
16 adopt these amendments so that the operators and OCD can  
17 operate efficiently.

18 We are also asking the Commission to certify the new  
19 rules so adopted for publication in the New Mexico Register  
20 as required by statute.

21 So, as an introduction, like I said before, my  
22 introduction has been done by my colleagues. As you all  
23 know, this rule has become one of the most valuable and  
24 emerging technologies in the oil and gas industry. Currently  
25 OCD does not have any adequate rules to address the

1 horizontal well drilling to employ some procedures for  
2 operators. So, as you know now, most of these operators are  
3 here, they want to develop their property with horizontal  
4 wells, and there they come to OCD to request if they can form  
5 a project area or a proration unit, and there is no  
6 objection, they can go ahead and drill.

7 Under the current rule, if there is no objection by  
8 any of the interest owners, then they come into hearing for  
9 OCD to approve the project area. OCD may approve or deny,  
10 but I want to tell you that 99 percent of the time we have  
11 approved them in the project areas to allow drilling to  
12 occur, and we have used this procedure ten and a half years  
13 that I have been in OCD.

14 Like about three years ago, sometime in 2008, it  
15 became very necessary that we develop a horizontal well rule.  
16 And, like I said, we are talking about it, and the Regulatory  
17 Practices Committee of the New Mexico Oil and Gas  
18 Association, this was going to develop, you know, this well,  
19 horizontal wells, we allow them to develop it.

20 Then the RPC, they produced a tentative draft in  
21 June of this year. And then, at the same time, we required  
22 OCD to develop a horizontal well rule. Therefore OCD formed  
23 a horizontal well workgroup -- workgroup to develop this  
24 rule.

25 And we are talking about the members of the

1 workgroup, and it includes personnel from the -- from the  
2 following: Oil and Gas Industry, including the majors and  
3 independents, like I said before, New Mexico State Land  
4 Office, the Bureau of Land Management, and the OCD personnel,  
5 Santa Fe district and Santa Fe office.

6 As you can see, when you want to drill a horizontal  
7 well, there are certain expertise you need to plan that,  
8 therefore, we decided to have members, have these -- list  
9 them as experts. We have landmen, and most of them here, we  
10 have attorneys, we have geologists, we have drilling  
11 engineers, we have reservoir engineers, we have production  
12 engineers, and we have completion engineers.

13 If you want to drill a horizontal well, all of these  
14 apply. Most of the attorneys are landmen, so you have all of  
15 those expertise, they are imbedded in planning the horizontal  
16 well. But if you want to drill a vertical well, all you need  
17 is a landman and geologist and drilling engineer, and we  
18 drill the well and pass it on to the completion engineer.  
19 But for horizontal wells you really need to have all of these  
20 people to be able to plan that. It's a new technology and  
21 it's --

22 I use the word "Dedicated," and most of them are  
23 here. Most of you are members that are dedicated, but it is  
24 good to flag their names on that board there, they really  
25 understand the work. They work very consistently. They are

1 very dedicated, and they really -- and I am very proud of  
2 them, and most of them are in the group here. As I stated,  
3 all of these members are from the industry groups,  
4 independents, majors and minors and the land office,  
5 everything. So I want to congratulate this workgroup because  
6 I'm very proud what you guys did.

7 Okay. The first time we met was June 29, so I  
8 remember it very well, it was, oh, I'm going to start this  
9 project. On June 29 we met. And when we met, first of all,  
10 what we decided to do is, in any rule we develop, it must  
11 prevent waste, must protect correlative rights and must meet  
12 the needs and requirements of the operator in developing the  
13 horizontal wells.

14 Once we accomplished those three, then a draft could  
15 be, you know, meaningful. Because we used a draft that was  
16 developed by the RPC and NMOGA, and starting with what they  
17 have developed -- and I commend NMOGA for coming up with  
18 those, that helped us a lot to develop this rule to one and a  
19 half months.

20 So we first talked about time lines because we are  
21 kind of in a hurry and we decided we are going to be having  
22 these meetings every week, all day, morning and afternoon.

23 Then -- and we used those, the tentative draft from  
24 NMOGA and went through it one by one. After every meeting  
25 then we come to some consensus on that that we have for

1 today.

2 And then Mr. Brooks, who is our drafter sitting down  
3 here, we go to the office and write what we reached at and we  
4 put it to all the members of the group. The intent of this  
5 was for everybody to read it and then get ready for the next  
6 meeting. At the next meeting we look at what we did at this  
7 first meeting, come to a consensus before we proceed.

8 So, like I said, to continue, and there were few,  
9 very few additions. On August 3 we were able to come up with  
10 the draft, and by August 10 we came out with the final draft  
11 that had been going on through the process to be able to  
12 present it to them.

13 And I'm happy to report and state that on August 10,  
14 when we came out with the final draft that the consensus  
15 reached among all the members of the workgroup and the rule  
16 we are going to present today, finally, I believe, the rule  
17 will prevent waste and protect correlative rights, and we are  
18 going to present it to the Commission as time goes on.

19 Q. Mr. Ezeanyim, was the Powerpoint created by you or  
20 under your direction?

21 A. Yes, I created the Powerpoint.

22 MS. GERHOLT: OCD moves Exhibit 2 into the record at  
23 this time.

24 MADAM CHAIR: Any objection?

25 MR. CARR: No objection.

1 MR. FORT: No objection.

2 (Exhibit 2 admitted.)

3 MS. GERHOLT: I pass the witness.

4 MADAM CHAIR: Any cross-examination?

5 (No response.)

6 MADAM CHAIR: Commissioners, do you have any  
7 questions?

8 COMMISSIONER DAWSON: I have no questions.

9 MADAM CHAIR: You are excused to come later.

10 MR. EZEANYIM: Thank you.

11 MS. GERHOLT: Madam Chair, the Division would now  
12 call David Brooks as its next witness.

13 MADAM CHAIR: Would you please stand and be sworn.

14 (Witness sworn.)

15 DAVID BROOKS

16 (Sworn, testified as follows:)

17 DIRECT EXAMINATION

18 BY MS. GERHOLT:

19 Q. Good morning. Would you please state your name for  
20 the record?

21 A. David Brooks.

22 Q. And where do you work, Mr. Brooks?

23 A. I'm employed by the New Mexico Oil Conservation  
24 Division.

25 Q. And how long have you worked for the Division?

1 A. Like Mr. Ezeanyim, ten and a half years.

2 Q. And in what position are you currently employed?

3 A. I'm assistant general counsel and legal examiner.

4 Q. How long have you been legal examiner?

5 A. I became that in 2006.

6 Q. Okay. In the course of your employment with the  
7 Division, have you had an opportunity to testify before the  
8 Oil Conservation Division Commission?

9 A. I have.

10 Q. And would you please tell this Commission about your  
11 qualification and experience related to oil and gas law?

12 A. Yes, ma'am. I have been involved in oil and gas law  
13 most of my life, even before I went to law school. I  
14 assisted my father who was in the oil business, running land  
15 titles in the county clerk's offices in Midland and some of  
16 the surrounding towns in West Texas. I received a JD degree  
17 from University of Texas at Austin in 1973. Then after a  
18 brief clerkship I worked for the Midland firm of Stubbeman,  
19 McRae, Sealy, Laughlin and Browder, which I believe was, at  
20 least at that time, had a very high reputation in the oil and  
21 gas law practice.

22 And from there I moved to Dallas and worked for the  
23 firm of Akin, Gump, Strauss, Hauer and Field in the Dallas  
24 office. And, after that, I was employed by another firm  
25 doing oil and gas work in Dallas, Texas. And I spent 12



1 years on the Bench. After that I moved to Durango, Colorado,  
2 where I worked for Thomas P. Dugan -- not to be confused with  
3 Thomas A. Dugan. Thomas P. Dugan is a well-known oil and gas  
4 lawyer in the San Juan Basin area. And then I came to Oil  
5 Conservation Commission in 2001 and have been there since  
6 then.

7 Q. Approximately how many years have you been in the  
8 field of oil and gas?

9 A. Well, excluding the 12 years on the Bench, from 1973  
10 until the present, it's 38 years, take out 12, that makes  
11 26.

12 Q. Okay.

13 MS. GERHOLT: Madam Chair, Commissioners, the  
14 Division would move David -- Mr. Brooks as an expert as it  
15 relates to oil and gas law, land matters, and oil and gas  
16 regulations.

17 MADAM CHAIR: Any objection?

18 (No objections.)

19 MADAM CHAIR: He is so admitted.

20 MS. GERHOLT: May I approach the witness? I'm  
21 afraid he doesn't have the exhibits before him.

22 MADAM CHAIR: Yes.

23 Q. Mr. Brooks, if I could draw your attention to  
24 Exhibit 3. Would you take a moment to review that?

25 A. Yes.

1 Q. What is Exhibit 3?

2 A. Exhibit 3 appears to be that portion of our  
3 recommended rule amendments that relates to or is part of  
4 Part 14 of the oil and gas regulations that is 19.15.14 of  
5 the New Mexico Administrative Code.

6 Q. All right. And were you involved in developing that  
7 proposed amendment?

8 A. Yes, I was.

9 Q. If I could now draw your attention to Exhibit Number  
10 4. What is Exhibit Number 4?

11 A. Exhibit Number 4 is the proposed -- the Division's  
12 proposed amendments to Part 16 of the oil and gas  
13 regulations, 19.15.16 of the New Mexico Administrative  
14 Code.

15 Q. Were you involved in developing that proposed  
16 amendment?

17 A. Yes.

18 Q. Could you please describe for the Commissioners what  
19 your role was in the development of these two amendments?

20 A. Well, Richard Ezeanyim and I were co-chairs of the  
21 committee that -- the workgroup -- I'm sorry, I was under the  
22 impression I would have a complete exhibit notebook before  
23 me.

24 Q. I was, too. I apologize. Let me take this and you  
25 may have mine.

1 A. Okay. Thank you.

2 Q. You are welcome.

3 A. I may have to refer to portions of the rule, that's  
4 the reason I made that comment. I'm sorry, what was the  
5 question you asked me?

6 Q. Please tell the Commissioners what your role was in  
7 the development of these amendments.

8 A. Well, I was co-chair with Richard Ezeanyim of the  
9 workgroup committee. I was also the principal drafter.

10 Q. All right. Very good. And if I could now draw your  
11 attention to Amendment 19.15.14.8, which would be the first  
12 slide of your presentation.

13 A. Yes, ma'am.

14 Q. Would you please tell the Commission what the  
15 proposed amendment is and why the Division has proposed it?

16 A. Well, Section 8A of 19.15.14 is the provision of the  
17 OCD rules that requires an application for permit to drill  
18 for prior to drilling a well. This proposed amendment -- and  
19 this proposed amendment, let me say, is not specific to  
20 horizontal wells, in fact, it's really designed for vertical  
21 wells.

22 The proposed amendment is to add to the requirements  
23 of an application for permit to drill, a requirement that an  
24 operator who applies -- before applying for a permit to drill  
25 and before commencing drilling operations must have the

1 permission of at least one owner at the proposed bottom hole  
2 location of these wells. The owner in this case referring  
3 not to the surface owner, but to the owner of the mineral  
4 interest who has the right to drill at that location.

5 Q. Is that consent now part of the current rule?

6 A. It is not required by any OCD rule. Of course it's  
7 probably a common-law trespass to enter without that  
8 permission, but it's not required by any OCD rule.

9 Q. Does the OCD currently require certification in  
10 regards to this?

11 A. We do.

12 Q. And what is that certification, and where can it be  
13 found?

14 A. That certification is on Form C-102, which is a  
15 location plat that is required to be filed with an  
16 application for permit to drill.

17 Q. And does this proposal, 19.15.14.8A, codify that  
18 certification?

19 A. In effect it does. It's in different language. I  
20 interject at this point to explain a little bit of the  
21 history about it. We had an operator five or six years ago,  
22 I don't remember exactly, who started drilling a well --  
23 obtained a permit to drill and started drilling a well,  
24 without having a lease on the land in question, without  
25 having any authorization from anyone who did have a lease on

1 the land in question, on the theory that because that land  
2 was within a spacing unit, and therefore, subject to being  
3 pooled with land on which they did have a lease, that that  
4 gave him a right to enter and drill, which is probably not in  
5 accordance with common law.

6 Anyway, there was a motion -- there was an  
7 application to require them to cease and desist which was  
8 brought before us, and, as a result of that situation,  
9 Mr. Pressmeyer said he didn't want to see that happen  
10 anymore, and because of the blanket rulemaking proceeding, he  
11 requested me to prepare a certification and put it on the  
12 form that would have to be filed by the operator. The form,  
13 however, has no regulatory standing, so it really can't be  
14 enforced as an OCD requirement, whereas, the new proposed  
15 rule will be.

16 Q. All right. You say this proposal is for vertical  
17 wells. Is there a separate section that addresses consent  
18 requirements for horizontals?

19 A. Yes. There are separate issues with regard to  
20 horizontal wells, and accordingly, we proposed a separate  
21 requirement for horizontal wells.

22 Q. And what is that separate proposal?

23 A. That is Subsection A of Section 15, which is the new  
24 horizontal wells special provision in 19.15.16, New Mexico  
25 Administrative Code.

1 Q. And what does that section require for consent?

2 A. It provides that, in the case of a horizontal, the  
3 operator must have the consent of an owner who has the right  
4 to drill, that is, the lessee or owner of the unleased  
5 mineral interest, in each tract that the horizontal well  
6 penetrates, and that he must have that consent before  
7 applying -- or before the Division can approve an application  
8 for permit to drill.

9 Q. Why was the term "tract" chosen?

10 A. Well, there was several terms that were battled  
11 about. Clearly "unit" is not appropriate because the  
12 ownership of the unit may be divided, and some parts of the  
13 unit may be owned by one -- a spacing unit may be owned by  
14 one person, some parts by another. So at some point the word  
15 "subdivision" was suggested, however, the word "subdivision"  
16 has a technical meaning as being a section, a quarter-quarter  
17 section, quarter section, et cetera, of the public land  
18 survey, and the land might be divided differently than that.

19 "Tract" is a generic term so that if we require the  
20 owner of each tract, however, the tract, as configured, each  
21 owner whose land is entered -- no, that's not right. We  
22 don't require the consent of each owner. That's very  
23 important. We require the consent of one owner of each  
24 tract. You don't have to have the consent of every owner,  
25 but before you can enter a tract, you have to have the

1 consent of at least one owner of that tract. I'm using the  
2 term "owner" in a sense that that's a person who has the  
3 right to drill.

4 Q. Why one?

5 A. Because of the legal principal of co-tenancy, which  
6 states that if two or more people own the same tract of land,  
7 any one of them has the right to use that tract subject to a  
8 duty to account for its profits.

9 Q. Okay. Mr. Brooks, if I could now draw your  
10 attention to the proposed 19.15.16.7 definition. The  
11 Division has proposed several new definitions, has it not?

12 A. It has.

13 Q. All right. And if I could now draw your attention  
14 to, specifically to your Slide Number 5.

15 A. Okay.

16 Q. The first definition that the Division has suggested  
17 is "completed interval," is it not?

18 A. Yes, ma'am.

19 Q. Why has the Division proposed the term "completed  
20 interval"?

21 A. The term "completed interval" is intended to define  
22 that portion of a horizontal wellbore that will draw  
23 hydrocarbons from the formation, and, therefore, should be  
24 located within the set -- the required setbacks from any  
25 adjoining tract or any adjoining spacing unit tract.

1 Q. Is completed interval used in the current OCD  
2 rule?

3 A. No. This is a new term.

4 Q. What is the term in the current rule?

5 A. In the current rule we have -- we use the term  
6 "producing interval." Producing interval is defined as the  
7 entire portion of the wellbore from the -- where the  
8 wellbore -- producing interval is the portion of the wellbore  
9 beginning where the wellbore penetrates the top of the pool,  
10 which, loosely speaking, we would say the top of the  
11 formation, although we know that we have pools that cover  
12 more than one formation, so wherever it enters the top of the  
13 geologic formation that is defined as the pool and it goes to  
14 the terminus of the well.

15 Q. Mr. Brooks, if I could interrupt you and draw your  
16 attention to Exhibit 5.

17 A. Exhibit 5, that's the definition of completed  
18 interval.

19 Q. No, actually --

20 A. Okay. Oh, it's numbered 6. Okay. Anyway, I know  
21 what you're talking about. Sorry.

22 Q. Would this slide, that is Slide Number 6 but Exhibit  
23 Number 5, assist you in describing completed interval versus  
24 producing interval?

25 A. Yeah. I prepared this slide for that purpose.



1 Q. Would you please walk the Commission through this  
2 slide?

3 A. If I could make this pointer work. Fortunately  
4 there is no one sitting at the table across from me, so no  
5 one is at jeopardy. I drew this slide to illustrate the  
6 difference between completed interval as defined in the  
7 proposed rule, and producing interval as defined in the  
8 existing rule, and also to illustrate the reasons why we want  
9 to use the different concepts.

10 I would note that so far as the actual technical  
11 aspects of the definition of completed interval, other  
12 witnesses will address that, but this is to show the  
13 difference. The producing interval begins right here. You  
14 see, this is the formation top. This is the vertical portion  
15 of the well. Where the well intersects the formation top is  
16 the beginning of the producing interval as currently defined.  
17 And, of course, the producing interval goes all the way to  
18 the terminus. I have illustrated that with a yellow line at  
19 the bottom that's labeled "producing interval."

20 Because, under current rules, the entire producing  
21 interval, in order for the well to be at a standard location  
22 and not require an exception under our rules, the well must  
23 be -- the producing interval must be entirely within the  
24 setbacks. As you can see, I placed the setback line here, so  
25 I have drawn a picture of a well that is not at a standard

1 location under the requirements of the present rule.

2 The completed interval is defined basically as that  
3 portion that is -- of the hole that is open to the formation.  
4 What I have drawn here is a case toll completion with an  
5 intermediate casing string located at where the black marks  
6 are there. The production casing string, which is  
7 perforated, that goes on through to the terminus of the well.  
8 The completed interval, as I interpret it, begins, in that  
9 scenario, at the casing shoe of the cemented and unperforated  
10 intermediate string, and so that is the portion of the well  
11 that is open to the formation.

12 And, in this particular well, since that location is  
13 within the setbacks, the entire completed interval  
14 illustrated by the blue line at the bottom is within the  
15 setbacks, and, therefore, while this well requires a  
16 non-standard location approval under the existing rules, it  
17 would not under the proposed rule. The reasoning being is  
18 that it's not necessary for the protection of correlative  
19 rights because this portion of the well is behind pipe and  
20 will not be drawing hydrocarbons from the formation.

21 Q. Mr. Brooks, do you have a certain familiarity with  
22 non-standard locations?

23 A. A great deal, yes, ma'am. That's the main thing I  
24 do at the OCD.

25 Q. And do you believe that if the proposal of completed

1 interval is adopted that there will be a decrease in the  
2 number of non-standard location requests?

3 A. I think there will be a very large one since the  
4 horizontal wells have become so popular, wells in which  
5 basically this scenario exists, that is, there is a portion  
6 of the well within the, quote, producing interval that is  
7 behind pipe or is planned to be behind pipe is the source of  
8 probably somewhere between a fourth and a half of the total  
9 number of non-standard location applications we receive.

10 Q. Okay. Mr. Brooks, if I could now draw your  
11 attention to Slide Number 7.

12 A. Okay. Thank you.

13 Q. The second definition that the Division has proposed  
14 is the definition for horizontal wells. Why has the Division  
15 included this definition?

16 A. May I go back to say one further thing about this?

17 Q. You may.

18 A. The reduction of non-standard location applications  
19 of course would save paperwork for both the Division and for  
20 the operators, and I think that it's unnecessary paperwork  
21 for the reasons I stated, however, it has another advantage  
22 which is much more important to the operators. As you can  
23 see, in order -- in this slide, the yellow hatched zone is  
24 the area where the -- where the operators expect to produce  
25 hydrocarbons. That is a different and smaller geologic zone

1 from the formation. The formation is up top is up here at --  
2 the top of the pay zone is right here. Of course, an example  
3 of that is the Bone Spring Formation, which most of the  
4 development seems to be in the Avalon Shale section right  
5 now, and that is not usually the top of the Bone Spring so  
6 that there is an interval in between there.

7 If the operator does not have to move his well over  
8 here to the setback, then you can use that area within the  
9 setback to build a curve so that when he gets -- when the  
10 well gets to its horizontal location, it is just beyond the  
11 setback, and that will prevent waste, because, if the  
12 operator had to locate his well over here, then the portion  
13 of the land within the setback that is used to build the  
14 curve would not be available for production, whereas, it is  
15 under this.

16 Q. Very good. Thank you for pointing that out.

17 A. Okay. You had asked me to refer to Exhibit 7.

18 Q. To Slide 7, yes. The Division has proposed the  
19 definition of horizontal well. Why has the Division included  
20 this definition?

21 A. There is no -- there is no definition for horizontal  
22 wells in the present group. We have a definition for  
23 directional wells. A horizontal well, of course, is a  
24 directional well, however, it's a special case of a  
25 directional well, and it is -- the committee believed that we

1 need to have some rules that are specific to horizontal wells  
2 in order to distinguish between horizontal wells and other  
3 directional wells, we needed the definition of horizontal  
4 well.

5 Q. This definition includes that multiple laterals from  
6 a common wellbore in the same or different target zones would  
7 be considered one well. Is that correct?

8 A. That's what it says.

9 Q. Why?

10 A. This is just a matter of clarification, but it could  
11 be treated either way, but in order to avoid the possibility  
12 of arguing about whether it -- whether it's one way or the  
13 other, we just decided it was this way. And I would add that  
14 it will make our data processing people happy to treat it  
15 this way.

16 Q. Thank you. If I could now draw your attention to  
17 Slide Number 8.

18 A. Yes, ma'am.

19 Q. Slide Number 8 is the definition of project area, is  
20 it not?

21 A. It is.

22 Q. Is this a new definition for project area?

23 A. It is a somewhat, I would say, slightly modified  
24 definition.

25 Q. Could you please explain this slight modification

1 and why it's been proposed?

2 A. Okay.

3 Q. There are two aspects to the definition of project  
4 area, and I will deal with them separately. The first --  
5 number one in -- Paragraph 1 in Subsection K of Section 16,  
6 one thing that a project area can be is one or more complete  
7 contiguous spacing units. That's exactly the same as the  
8 present rule. The parenthetical in one section or in more  
9 than one section is added for clarification. The present  
10 rule does not say that, does not include that language,  
11 however, it doesn't -- it also doesn't include any limiting  
12 language that would in any way suggest it had to be -- that a  
13 project area had to be within one section. The committee  
14 thought it should be allowed to be in more than one section  
15 and felt that because there was some opposition to that,  
16 perhaps that we should clarify and put that in expressly.

17 Number two, allow certain types of units that exist  
18 under the present law or other administrative regimes to be  
19 treated themselves as a participating area. That is the  
20 same -- that portion of the definition is the same as the  
21 existing rule except that we have added an approved state  
22 exploratory unit, which was not included in the definition.

23 Q. If I can now draw your attention to Slide Number 9.  
24 If you could, please describe for the Commissioners standard  
25 project area.

1           A.    Before I do so, I would like to make some  
2 preliminary points about the project area.

3           Q.    You may.

4           A.    Mr. Ezeanyim made a statement which I don't want to  
5 say was incorrect because I just want to distinguish what he  
6 is talking about from what I'm talking about. He said  
7 something to the effect that project areas have come before  
8 the Division for approval, and they -- their hearings, and  
9 they may or may not be approved. What he was talking about  
10 was project areas that someone wants to compulsory pool,  
11 because the only time we are called upon to approve project  
12 areas under the present rules is when someone seeks to  
13 compulsory pool them.

14                There is no procedure for Division approval of  
15 project areas, nor is there any procedure for notice to  
16 people who might be affected by a project area -- by the  
17 designation of a project area. The present rule provides  
18 that a project area is an area designated on a form C-102.  
19 Form C-102 would be filed with the application for permit to  
20 drill, so it would be filed with OCD if it's on state or  
21 private land. It would be filed with the Bureau of Land  
22 Management if the well is to be located on federal land.

23                The only notice requirement incorporated with that  
24 is that notice must be given to the state land office if any  
25 part of the project area is state land. As I said, there is

1 no requirement that the project area be approved or  
2 disapproved by OCD. Of course OCD approves the APD, so one  
3 could imply that is an approval process for the project area.  
4 However, the rule, the present rule does not set any  
5 standards by which the district office in approving that APD  
6 should or could approve or disapprove of the project area,  
7 which, of course, leads to the -- to a legal problem if one  
8 were to interpret the present rule as allowing approval or  
9 disapproval of proposed project areas.

10 That is, there is no standard set by the rule, and  
11 as we all know, it's a fundamental principal of  
12 administrative law that when an agency such as the Commission  
13 or Division delegates the authority to an officer, such as  
14 the district supervisor, to approve or disapprove something,  
15 they must have at least some standard prescribed, otherwise  
16 it's considered a, quote, standardless delegation of  
17 authority. And the standard does not have to be very  
18 specific, but there is a requirement.

19 Okay. We have not proposed a Division approval of  
20 project areas. We have, however --

21 Q. Mr. Brooks, if I could interrupt you for just a  
22 moment.

23 A. Yes, ma'am.

24 Q. I believe we will be discussing that when we get to  
25 the formation of project areas.



1 A. That's correct.

2 Q. If we could get with letting the Commission know  
3 what a standard project area is.

4 A. Yes, ma'am.

5 Q. Okay.

6 A. I wanted to first explain, though, what the purpose  
7 of standard and non-standard project areas is. A  
8 non-standard project area requires -- has a notice  
9 requirement; a standard project area does not. Now, as the  
10 rule -- as the proposed amendments are written, a standard  
11 project area is any project under K(1). And you remember we  
12 go back to K, the definition of project area, K(1), is that  
13 type of project area that is one or more complete spacing  
14 units as opposed to being that type of project area that is  
15 some other kind of unit.

16 Okay. A K(1) project area is a standard project  
17 area if it is rectangular in shape. The definition is more  
18 complicated than that, but if you pick your way through it,  
19 that's, in effect, what it is.

20 Q. Very good. And if I could draw your attention to  
21 Slide Number 10, which is Exhibit Number 6.

22 A. Right. Yeah, thank you. And I would just interject  
23 that a non-standard project area, which you also asked me  
24 about, is any project area which is a non-standard project  
25 area.

1 Q. Very good.

2 A. Exhibit Number 6 -- this is Slide Number 10, right?

3 Q. Yes.

4 A. Exhibit Number 6 is a series of examples of project  
5 areas that are standard project areas. It does not exhaust  
6 the possibilities, but all under the definition as written,  
7 all of the project areas depicted on Exhibit Number 6 would  
8 be standard project areas.

9 Q. Mr. Brooks, if I could draw your attention  
10 specifically to Section -- I believe that's Section 23.

11 A. I believe it is. They are a little hard to read  
12 here, but I think that's correct.

13 Q. Was this project area configuration meant to be a  
14 standard project area?

15 A. Not by me. You know, I'm in a little awkward  
16 situation here because I drafted -- what I ended up drafting  
17 in this one particular respect was not what I exactly  
18 intended to draft, and I can't speak for the committee  
19 because this was not discussed specifically.

20 When I wrote the definition of standard project  
21 area -- and go back to Slide Number 9 for a minute, in the  
22 listed Items 1, 2, and 3 in Slide Number 9, I went to  
23 considerable pains to define what type of project area within  
24 a single section -- within or consisting of a single section  
25 would be standard. And the definition was written to exclude

1 a project area consisting of three quarter-quarter sections  
2 because I was concerned that -- about the installation of the  
3 fourth quarter section in the line.

4 However, the committee wanted larger project areas,  
5 and we discussed quite a bit about how to allow larger  
6 project areas, multi-section project areas, so we came up  
7 with L(4) on Slide Number 9. And L(4) says that a  
8 combination of two or more otherwise standard project areas,  
9 if the result is substantially in the form of a rectangle,  
10 it's a project area.

11 Well, one 40-acre spacing unit is a standard project  
12 area. Two 40-acre spacing units in a line is a standard  
13 project area. So under L(4), if you combine two spacing  
14 units with one spacing unit, you get three spacing units and  
15 it's in the form of a rectangle, therefore, under L(4), it's  
16 a standard project area, even though it's specifically  
17 written out of L(2) and 3.

18 Q. Okay. Do you have any alternative language that you  
19 would suggest for the Commission today?

20 A. Well, we could add as a proviso, if the Commission  
21 wanted to go with my original intention, which let me stress  
22 that I cannot say that my original intention was the  
23 consensus of the committee, because I have to assume that the  
24 committee reached a consensus on what I actually wrote rather  
25 than what I intended to write.

1 But if the Commission were to dispose or were  
2 disposed to adopt what I intended to write, they could simply  
3 add a proviso somewhere in L. I think it would be at the end  
4 of L(4), provided that a project area consisting of three  
5 40-acre, more or less, spacing units within a single section,  
6 and excluding a fourth section adjacent thereto would be a  
7 non-standard -- would not be a standard project area.

8 I say "and excluding" because there are places where  
9 three project areas -- where three sections in a line, where  
10 there is not a fourth -- where there is three 40-acre units  
11 and not a fourth 40-acre unit in that section because of the  
12 irregularity of the section.

13 Q. Thank you, Mr. Brooks. If I could now draw your  
14 attention to Slide 11, which is Exhibit 7.

15 A. Yes, ma'am.

16 Q. Is that -- why is that a non-standard project area?

17 A. Well, clearly it's not in the form of a rectangle.

18 Q. Okay. And if I could draw your attention to Slide  
19 12, Exhibit 8.

20 A. Likewise, that is not a rectangle.

21 Q. And if I can now draw your attention to Slide 13 --

22 A. Yes, ma'am.

23 Q. -- which is the formation of a project area which  
24 can be found at 19.15.16.15.

25 A. Right.

1 Q. Would you please tell the Commission why the  
2 Division has proposed this amendment?

3 A. Okay. If you will look at -- well, the short answer  
4 to this, and then I will get to this -- the short answer to  
5 your question is that to provide a notice requirement to  
6 affected offsetting owners and operators as a prerequisite to  
7 forming a non-standard project area. That's the principal  
8 intent. Now, the long answer, Subdivision 1 of 16.15G is  
9 the -- that's the procedure for forming a standard project  
10 area under the present rule. I don't believe there are even  
11 any words changed.

12 Subdivision 2 requires notice to offsetting owners  
13 and operators if you are forming a non-standard project area.  
14 If the non-standard project area would be a rectangle, except  
15 for the exclusion of one spacing unit, and I don't have a  
16 picture of one like that, but that's a fairly easy thing to  
17 see, then you only have to notify the owners or operators of  
18 that spacing unit.

19 If, on the other hand, you have -- you are proposing  
20 a project area that is configured like the ones on Slides 11  
21 and 12, you would have to give notice to the affected  
22 persons, which would be either the operator or the applicant  
23 himself is the operator, and mineral interest owners or  
24 working interest owners in all of the adjoining units,  
25 spacing units.

1 Q. Okay. And you mentioned previously that there was a  
2 specific notification requirement to the Commissioner of  
3 Public Lands. Is that correct?

4 A. That is correct. And the notice to the Commissioner  
5 of Public Lands applies even if you're proposing a standard  
6 project area as it does in the present rule.

7 Q. Very good.

8 A. Oh, I forgot to add one other thing, G(4) is a  
9 specific provision that was added at the request of Linda  
10 that was a representative at the committee. It provides that  
11 if a project area includes a park, a state exploratory  
12 unit -- well, that's not quite right. If it includes -- if  
13 it is partially within and partially without, partially  
14 outside of a state exploratory unit, then notice to the state  
15 land office -- a separate notice to the state land office --  
16 no, I'm sorry. It's not a notice. The consent of the state  
17 land office is required for that type of project area. Their  
18 concern being that they felt that if the proposed project  
19 area is partly within a state exploratory unit, then the  
20 operator should first go to the state land office and go  
21 through the procedure to get the unit expanded in order to  
22 include that project area.

23 Q. Mr. Brooks, based on your education and training in  
24 oil and gas law, and given these proposed amendments for  
25 project areas, standard project areas, non-standard and

1 formation of project areas, do you believe that correlative  
2 rights would be protected?

3 A. Well, I think they would be better protected than  
4 they are under the present law. I see very little  
5 possibility for gerrymandering with rectangular project  
6 areas, so I think, in most cases, they would be protected.  
7 Are they fully protected? Well, they would more -- there  
8 would be more protection provided if you required notice of  
9 all proposed project areas or of all proposed project areas  
10 that didn't meet some much tighter requirements. But I think  
11 that in the main they will be protected since the operators  
12 will not be able to configure the project areas specifically  
13 to have those tracts include only those tracts in which they  
14 have ownership or ownership interests.

15 Q. These proposed amendments would protect correlative  
16 rights better than the current rule?

17 A. They would protect them better than the current  
18 rule, and I think they would protect them very well.

19 Q. Very good. If I could now draw your attention to  
20 Slide 14.

21 A. Yes, ma'am.

22 Q. Slide 14.

23 A. 14, okay. Yes.

24 Q. Very good. The Division has proposed an amendment  
25 for unorthodox locations, correct?

1           A.    To the provision as to what constitutes an  
2           unorthodox location in the case of horizontal wells.

3           Q.    Why did the Division propose this amendment?

4           A.    Well, this is a kind of a technical amendment.  It  
5           is intended to apply to horizontal wells, an existing  
6           provision that applies, by its terms, applies only to  
7           vertical wells, which allows a well that strays up to 50 feet  
8           from its intended location, and, in the process, crosses a  
9           setback line to be nevertheless considered to be in the  
10          standard location.

11          Q.    If I can now draw your attention to Slide 15.

12          A.    Yes, ma'am.

13          Q.    The next proposed amendment is for allowables for  
14          project areas of multiple proration units.  Is that correct?

15          A.    That is correct.

16          Q.    What is the present rule?

17          A.    The present rule is that a project area gets an  
18          allowable equal to the sum of the allowables for the  
19          spacing -- a project area consisting of more than one spacing  
20          unit gets an allowable equal to the sum of the allowables for  
21          the spacing units or proration units included in the project  
22          area.

23          Q.    And does this current proposal clarify or change  
24          anything?

25          A.    It clarifies.  It does not change anything because



1 there is actually an order that the Commission has issued in  
2 a particular case which follows the same -- which reaches the  
3 same result as the proposed rule. The proposed rule is  
4 designed to deal with a situation that the present rule does  
5 not expressly deal with, that is, where there is an existing  
6 vertical well on one or more of the spacing units that are  
7 included in the project area, what this rule provides is  
8 that, in that case -- unless the owners of the wells  
9 otherwise agree -- that the -- that the allowable for the  
10 horizontal well will be computed by multiplying the number of  
11 spacing units times the per-unit allowable as provided in the  
12 present rule and then deducting the entire production of that  
13 horizontal -- of that vertical well so that the vertical well  
14 is not adversely affected as to its allowable by bringing in  
15 horizontals.

16 Q. All right. Mr. Brooks, if I can draw your attention  
17 to the last statement, "The project area of the allowables  
18 shall be computed by deducting actual production from the  
19 existing wellbore" --

20 A. Yes, ma'am.

21 Q. -- is actual production what was meant to be -- what  
22 you meant to have there?

23 A. Well, yes, with a qualification. It really should  
24 be the actual production or the appropriate unit allowable,  
25 whichever -- the applicable unit allowable, whichever is

1 less. Because I did not intend, and I do not -- in this case  
2 I'm reasonably sure the committee did not intend to allow a  
3 well that was overproducing contrary to OCD regulations to  
4 continue to overproduce and thereby reduce the allowable for  
5 a project area in which it was -- in which it was placed. I  
6 wrote the actual production because assuming that the actual  
7 production was less than the allowable -- less than or equal  
8 to the allowable. But as written, literally it could be  
9 interpreted to allow a vertical well that was overproducing  
10 to continue to overproduce, and that was not my intent, and  
11 I'm confident that was not the committee's intent.

12 Q. So the Division is not seeking to allow for a well  
13 that has an allowable of 40, but is actually producing 42  
14 barrels a day --

15 A. Right.

16 Q. -- to be sanctioned?

17 A. I would be inclined -- we have not filed a formal  
18 request to change our proposal, but I would be inclined to  
19 recommend to the Commission that where we say, if a project  
20 area includes -- the maximum allowable -- I'm not sure  
21 which -- anyway, where it says actual production, it's the  
22 next to the last line on Slide 15, computed by deducting the  
23 actual production of the existing wellbore, I would recommend  
24 that the Commission -- I would personally recommend that the  
25 Commission add a parenthesis after wellbore and say, "But not

1 more than the applicable unit allowable for that well."

2 Q. Okay. Mr. Brooks, do you believe, given the  
3 explanation of actual production, and not wanting to sanction  
4 an operator who is producing more than their allowable, but  
5 otherwise, do you believe if this amendment is adopted, would  
6 correlative rights be protected?

7 A. I would think so because the existing well gets to  
8 do everything they can do.

9 Q. Very good. Now, the proposal before the Commission  
10 today has a significant section on special rules for  
11 horizontal wells, correct?

12 A. That's correct.

13 Q. Okay. If I could --

14 A. That's 19.15.16.15.

15 Q. Yes, it is.

16 A. That's the largest group of changes to the rule, to  
17 the -- that are proposed.

18 Q. And if we could walk through that step by step  
19 beginning with 16.15B, well dedication and acreage plat.

20 A. And I believe we don't begin with 16.15A because we  
21 have already discussed that.

22 Q. That is correct.

23 A. That had to do with the consent -- with the owners'  
24 consent requirement.

25 Q. Yes. Drawing your attention to well dedication

1 acreage plat, why has this proposal been made?

2 A. Well, the district offices brought this to our  
3 attention. I think this can -- we need to go back to a prior  
4 exhibit to -- no, it's probably here. Yes, Slide 17 will  
5 give us a chance to see the reasons.

6 Q. Slide 17 is Exhibit 9. What is this slide showing  
7 us?

8 A. This shows a project area that includes spacing  
9 units that the well does not penetrate. Now, I picked this  
10 out of a number of examples of existing project areas that  
11 have been designated. The rule says -- the existing rule  
12 says that a project area may consist of one or more spacing  
13 units. It does not say that all of the spacing units -- that  
14 the well to which the project area is dedicated has to  
15 penetrate all of those spacing units. This one does not.

16 This one is a strange one because I have absolutely  
17 no idea why the operator designated the particular project  
18 area they did for this well. It came to my attention only  
19 because the location of the well is actually outside the  
20 project area, and therefore, non-standard, and required a  
21 non-standard location approval. But as I interpret  
22 non-standard location approval, certainly that approval  
23 process does not involve approval of project areas, so I was  
24 not concerned with why they may have designated the project  
25 area. That's a digression, though.

1           The important point is that there are -- there are,  
2   under present rules, and there will continue to be under the  
3   proposed rules if adopted as proposed, project areas that  
4   include spacing units that the well to which they are  
5   dedicated does not penetrate. The district office needs to  
6   capture some data in order that the Division can do what it  
7   needs to do. One of the data elements they need to capture  
8   is what spacing units apply to that well for proration  
9   purposes, and that is basically going to be under the  
10  proposed rule.

11       Q.    Okay.

12       A.    I will interject at this point, there is a minor  
13  change in the proration provision that I neglected to  
14  discuss, but I don't want to digress on to that now.

15       Q.    All right. Thank you.

16       A.    They need -- the Division office needs to capture  
17  that data, what unit does the well penetrate, because that  
18  will control the proration -- the allowable for that well.  
19  But they also need to capture the outer boundaries of the  
20  project area because the outer boundaries of the project area  
21  will control the setbacks, determine whether the location is  
22  standard or not -- and my mind has gone blank now. There is  
23  another reason why we need to have that information, but  
24  certainly that is information that we need for setback  
25  purposes.

1           Normally in a case like this -- the purpose of Form  
2   C-102 is to show everything graphically so that the district  
3   office can see it as opposed to just having a description.  
4   In order to show -- in this exhibit you can easily show  
5   graphically both the outer limits of the project area and the  
6   spacing units penetrated by the well because the project area  
7   is small, but not all project areas are small. And we have  
8   already been over the definition, and we know an entire state  
9   exploratory unit or entire participating area in a federal  
10   exploratory unit may be a project area.

11           Some people may have designed their own large  
12   project areas. We had one filed in the Aztec district  
13   recently where they wanted a project area of 4,000 acres. In  
14   order to map a large project area, you have to use a scale  
15   which makes the portion of the C-102 that shows the units  
16   penetrated by the well and actual location of the well not  
17   very readable, if at all. Consequently, to make sure the  
18   district office gets the data they need in the form that they  
19   can use it, we introduced 19.15.16B to require that two  
20   C-102s be filed if there are units in the project area in  
21   addition to those that the well penetrates.

22       Q.    Very good.

23       A.    Did you want to go back to the change in the  
24   proration rule that I neglected to discuss?

25       Q.    Give me one moment.

1 A. Okay.

2 Q. Mr. Brooks, are you referring to Slide 15?

3 A. Yes, ma'am.

4 Q. Are you talking about traverses or developed?

5 A. Yes, ma'am.

6 Q. Please discuss that with the Commission.

7 A. I said that the definition -- that how you compute  
8 the allowable under the proposed rule is the same as it is  
9 under the present rule, except with the clarification about  
10 existing wells, that's actually not correct. The present  
11 rule says that the allowable for a project area will be the  
12 sum of the allowables for those units that the horizontal  
13 well traverses or develops.

14 Traverses, I would assume, means the same thing as  
15 penetrates, which is the word we have used in the new rule,  
16 but we recommend deleting the word, "or developed." The  
17 reason being is because there is no clear, unambiguous way  
18 you can determine that, that you would have to have technical  
19 testimony in every case to determine what spacing units a  
20 horizontal well develops, in addition to those that it  
21 traverses or penetrates. And this committee specifically  
22 addressed this in the consensus we have reached.

23 Q. Are you ready to move forward?

24 A. I'm ready to move forward.

25 Q. Slide 18?

1 A. Yes, ma'am.

2 Q. All right. Is this proposal similar to the present  
3 rule?

4 A. Yeah, basically it is, with the exception that we  
5 now use the area -- the completed interval concept instead of  
6 the -- the producing interval concept as designed.

7 Q. Okay. Is there any other comments that you would  
8 like to make to the Commission about this?

9 A. Well, C(4) provides a surface location may be  
10 outside the setbacks and outside the project area. This is  
11 something that frequently they want to do, I think, primarily  
12 because the BLM and other surface owners want to minimize the  
13 industry's footprint and therefore like for them to use  
14 existing well pads, but whatever the reason, we interpret the  
15 present rule as allowing that. This provision would simply  
16 make it express.

17 Q. Okay, thank you. Drawing your attention now to  
18 Slide --

19 A. 19.

20 Q. -- 19, existing and subsequent wells in the project  
21 areas, what is the provision in the present rule?

22 A. I believe there isn't any.

23 Q. Oh. Is that why using subsequent wells in project  
24 areas in this provision was injected?

25 A. It is. Now, there is an existing order which I



1 drafted, and Mr. Pressmeyer, of course, signed it, so I can't  
2 call it my order, but there is an existing order which  
3 provides much the same thing as this proposed rule, but there  
4 is not a rule.

5 Q. Okay. Could you please walk the Commission through  
6 this proposal?

7 A. Yes. This proposal provides two things, Number 1,  
8 Part 1 is one that is covered in existing law. If there is  
9 an existing well in a spacing unit or any project area that  
10 is proposed for a new horizontal, if that -- if that existing  
11 well is a vertical well dedicated to only one spacing unit,  
12 it remains dedicated to that spacing unit. It does not  
13 become dedicated to the project area, therefore, there is no  
14 requirement that the operator consolidate the ownership of  
15 the interest in that well with the portions of the project  
16 area outside of that well spacing unit. And that will make  
17 the owners of that well very happy because they would  
18 continue to receive the same interest in production that they  
19 were accustomed to receiving and that they contemplated  
20 paying for the well, the working interest owners.

21 It also provides that if there is an existing  
22 horizontal well that is in a spacing unit other than the  
23 proposed spacing unit, that existing horizontal well,  
24 likewise, will remain dedicated to its existing project area  
25 and not have to be rededicated to the new project area.

1 Q. Okay. And what about new wells in that project  
2 area?

3 A. Okay. That is the subject of 16.15.2, and this was  
4 extensively discussed at the committee, and it was brought to  
5 our attention -- it was -- I wish my memory was refreshed on  
6 this. I have probably been over everything in the joint  
7 operating -- in the AAPL form, joint operating agreement at  
8 one time or another in my career, but I don't remember it.

9 It was brought to my attention that the standard  
10 form of AAPL operating agreement, which of course can be  
11 modified, so it's not necessarily every joint operating  
12 agreement that exists, but the standard form of joint  
13 operating agreement provides that no subsequent well will be  
14 drilled -- no second well will be drilled in the area covered  
15 by the joint operating agreement to the same formation in  
16 which there is an existing producing well unless it conforms  
17 to the existing spacing pattern. And that's a little  
18 troubling to me in this context because I'm not sure how you  
19 apply that to horizontal well issues, but regardless of that,  
20 no well will be drilled to a formation in which there is an  
21 existing producing well without the consent of all working  
22 interest owners. However, that doesn't necessarily mean that  
23 there is not an issue of drilling subsequent wells in a  
24 project area because there is some of our project areas are  
25 compulsory pooled, which means that there are working

1 interest owners in those project areas who are not parties to  
2 a joint operating agreement.

3 So what we have done is basically adopt this  
4 provision of the operating agreement by rule. We said,  
5 "Subject to the terms of any applicable joint operating  
6 agreement," we said that because we didn't want to impose on  
7 parties to a joint operating agreement some kind of provision  
8 that they didn't agree to. And they may have modified the  
9 AAPL form in a specific respect, so their own contractual  
10 rights are preserved, but subject to that. And we have an  
11 OCD rule that says that a subsequent well cannot be drilled  
12 in the project area without the consent of all the working  
13 interest owners or by order of the OCD.

14 Q. So in some -- a new well in this project area can  
15 only be drilled pursuant to a joint operating agreement or  
16 consent of all the working interest owners or pursuant to OCD  
17 order?

18 A. Yeah, that's right.

19 Q. And if these provisions are adopted, would  
20 correlative rights be protected?

21 A. I believe they would.

22 Q. Why do you believe that?

23 A. Well, the working interest owners retain all the  
24 rights they have under the joint operating agreement, and  
25 what we have done is, by rule, effectively provided that if a

1 joint operating agreement is compulsory pooled, then the  
2 people who are -- the pooled parties will have the advantage  
3 of the same consent requirement that exists under the  
4 standard form of operating agreement to the project, to the  
5 JOA.

6 Q. If I can now draw your attention to Slide Number 20.

7 A. Yes, ma'am.

8 Q. And Slide Number 20 is 16.15E, pooled rule, is it  
9 not?

10 A. That's correct.

11 Q. What is the current rule and what this application  
12 to horizontal does.

13 A. Okay. This provision, the title doesn't give you a  
14 very fair clue as to what it's about. What this provision is  
15 about is -- is rules, whether they be statewide or special  
16 pool orders, that limit the number of wells that may be  
17 simultaneously produced from a pool within a particular  
18 spacing unit or a particular portion of a spacing unit.

19 This proposal says that such rules do not apply to a  
20 horizontal well. The effect of that provision is that the  
21 operator can drill as many horizontal wells within a spacing  
22 unit in any configuration in which they choose to do, which  
23 is a considerable change in present law. And that was  
24 specifically requested by the industry in their proposed  
25 draft that we started from, and we strongly urged all the

1 industry representatives in the committee --

2 Q. Mr. Brooks, if I could ask you for a moment, could  
3 you please talk to us about simultaneous dedication  
4 exception?

5 A. Okay. Simultaneous dedication exception is the word  
6 we use for the administrative order that the OCD issues when  
7 an operator petitions to produce more wells from a spacing  
8 unit in a particular pool than the applicable statewide pool  
9 rules allow.

10 Q. Okay. And how -- is there a correlation between  
11 simultaneous dedication exception and this proposal to not  
12 apply current pool rules?

13 A. Yes, there is. What has happened in the horizontal  
14 well development is that the horizontal well, the ways in  
15 which operators have thought it appropriate from a technical  
16 standpoint to develop spacing units by horizontal wells do  
17 not jibe very well with existing limitations on the number of  
18 wells which were designed for vertical wells. And, as a  
19 result, the OCD has had a very large volume of simultaneous  
20 dedication exceptions filed to deal with these situations.

21 I would note, for example, I have been legal  
22 examiner since 06. I have had more simultaneous dedication  
23 exceptions filed this year than in all of the years I have  
24 worked for the OCD previously combined.

25 Q. And how often are those opposed?

1 A. I don't recall that any of them have been opposed.

2 Q. Mr. Brooks, if I could draw your attention to Slide  
3 21 which is supposed to be Exhibit Number 10.

4 A. Yes, ma'am.

5 Q. Are you familiar with this slide?

6 A. Yes. This is another one I drew.

7 Q. And could you please explain what you have  
8 illustrated in this slide and then go on to Slide 22, which  
9 is Exhibit 11, and then Slide 23, which is Exhibit 12.

10 A. Okay. Yes, ma'am. Slides 21 through 23 are slides  
11 that I produced in order to show where problems have arisen  
12 between existing well density rules designed for vertical  
13 wells and horizontal well development programs. All of these  
14 are based on the northeast -- northwest -- I'm sorry. I  
15 don't have a lot of problems in the northeast, but in the  
16 northwest, and they are all about gas units. In the  
17 southeast we have oil units, 40-acre oil units and they allow  
18 four wells per unit, so that's probably as much density as  
19 anybody is going to want to deal with any kind of well.

20 We had similar problems with deep gas in the  
21 southeast at the time when there was interest in deep gas in  
22 the southeast. There doesn't seem to be any interest in deep  
23 gas in the southeast at this particular point in time..

24 But, the first slide, Number 21 here, is based on  
25 the Basin Fruitland Coal, which, incidentally, are

1 substantially the same as the deep gas rules for Southeast  
2 New Mexico. And those rules provide for a 320-acre unit, and  
3 the north half and the south half here are separate units, so  
4 I haven't drawn a line between them, but they provide for  
5 320-acre units, and they provide that there can be two wells  
6 in the unit, but they must be in different quarter sections.

7           The result of this is, for a 320-acre gas unit,  
8 under these rules you can have only one horizontal well that  
9 goes all the way across the section without a simultaneous  
10 dedication exception. That's why I've drawn an X through the  
11 second horizontal well because it's not allowed under that  
12 exception.

13           The south half shows the effect -- the north half  
14 shows the effect of these rules if there is no existing wells  
15 in the unit. The south half shows the effect if there is one  
16 existing vertical well in the unit, existing vertical well  
17 being the southeast quarter, the horizontal well has to stop  
18 at the line dividing the quarter sections because if it went  
19 over into that quarter section, you would have two wells in  
20 the southeast quarter.

21           And then going on to Slide Number 22, in this case  
22 we are talking not about the Mancos Mesaverde, but about the  
23 other large pools in Northwest New Mexico which are spaced on  
24 basically the same -- I think they are identical, but I'm not  
25 absolutely certain, so I said basically the same rules as --

1 among the three -- among these, the Basin Dakota, the Blanco  
2 Mesaverde and Basin Mancos, in each of these cases, the  
3 applicable rules provide for 320-acre units, so once again  
4 these are two separate units described here being the north  
5 half and south half.

6 In each of the units, the operator is allowed four  
7 wells. Those wells, however, must be located no more than  
8 one well in a quarter-quarter section, and no more than two  
9 wells in a quarter section. Here I'm showing the effect on  
10 horizontal well development if you have one existing well in  
11 such a unit. Up here it's in the northwest northeast that  
12 prevents you from drilling. You could drill a horizontal all  
13 the way across, but then it would be awkward to get it into  
14 the northeast northeast up here, so this kind of indicates a  
15 pattern that you could use.

16 Down here it's even more problematic because, if you  
17 want to go all the way across here, you've got to omit this  
18 quarter with a straight horizontal, you've got to omit this  
19 quarter-quarter section from your horizontal development  
20 plan.

21 Okay. Slide 23 shows similarly the effect on the  
22 horizontal development plan if you had two existing well  
23 units. Under the rules of the Basin Dakota, Blanco Mesaverde  
24 and Basin Mancos Pools, in that case, as you can see, you can  
25 only drill two horizontals, and they have to be configured in



1 particular ways which may not be the way the operator would  
2 ideally like to configure them to produce hydrocarbons in  
3 those units.

4 Basically I would say about these rules that the  
5 existing well density rules are designed for vertical wells.  
6 They don't work well with horizontal wells, and the  
7 alternative to doing what we propose would be necessary to  
8 develop new pool rules and new statewide rules basically that  
9 would be tailored to the demands of horizontal well  
10 development.

11 The industry does not regard these as necessary, and  
12 I'm not a technical witness. I cannot say what is necessary  
13 in this well development pattern to protect correlative  
14 rights and prevent waste, however, Mr. Ezeanyim can.

15 Q. Do you have certain experience with simultaneous  
16 dedication exceptions?

17 A. I do.

18 Q. Based on that, do you believe if this provision is  
19 adopted, that operators will need to seek as many  
20 simultaneous dedication exceptions from the Division?

21 A. Based on my experience with the simultaneous  
22 dedications exceptions I have received, I believe, if this  
23 amendment is adopted, we will receive fewer to none.

24 Q. Okay. If I could now draw your attention to Slide  
25 24. Slide 24 is again 15.16F of the special rules for

1 horizontal wells and it's entitled "Compulsory Pooling," is  
2 it not?

3 A. That is correct.

4 Q. And this amendment says that the current compulsory  
5 pooling rules will -- pooling rule will apply to horizontals  
6 in project areas, correct?

7 A. Correct.

8 Q. What is the current OCD compulsory pooling rule?

9 A. That's found in 19.15.13.

10 Q. All right. Very good. And are you familiar with  
11 the current rule?

12 A. I am. I drafted a large part of it.

13 Q. Okay. Very good. Does the Division have statutory  
14 authority for compulsory pooling?

15 A. It does.

16 Q. Okay. And could you talk to the Commission a little  
17 bit about that authority?

18 A. Well, I think that's very important because it has a  
19 tremendous impact on what we are doing here and also on what  
20 we're not doing here. The gentleman from -- representing  
21 Heyco, of course, has addressed some of those issues.

22 Subdivision F of proposed 19.15.16.15 is a very  
23 limited provision. It is only intended to make certain  
24 procedural provisions. I call them procedural, but basically  
25 there are two major ones that we are importing into any

1 compulsory pooling proceeding that involves the pooling of a  
2 project area. This says those provisions will basically  
3 apply just as they do in any compulsory pooling case.

4 One is that the provision of 19.15.13 that  
5 establishes a presumption that a 200 percent risk penalty is  
6 appropriate for an operator to recover out of a pooled  
7 party's interest, it's only a presumption subject to  
8 rebuttal.

9 The other provision is the one that provides that  
10 after a unit is pooled, an operator may propose additional  
11 wells to be drilled on the spacing established by that unit  
12 without the necessity of another hearing before the OCD  
13 unless a hearing is specifically requested by somebody.

14 It was not the intention of the committee, and it  
15 was certainly not mine in drafting 19.15.13 to commit the  
16 Commission or the Division to the proposition that all or  
17 even any project areas are subject to compulsory pooling. I  
18 recognize that that is an extremely important issue because  
19 we are daily -- almost daily -- I may be exaggerating because  
20 most of them come in 30 days before the intended hearing  
21 because that's when the applications are filed, but at every  
22 hearing docket we have numerous applications to compulsory  
23 pool project areas consisting of more than one spacing unit.

24 The difficulty with addressing that in this proposed  
25 rule is that the OCD's authority to compulsory pool was set

1    forth in the statutes. And in a case that I have  
2    considerable reason to remember because I was counsel in it  
3    before the Supreme Court of New Mexico, the Oil Conservation  
4    Commission was chastened for adopting rules which I think the  
5    Commission thought was filling in gaps in its statutory  
6    authority, and the Supreme Court concluded it was exceeding  
7    its statutory authority. And we attempted to prescribe a  
8    rule -- I guess Mr. Carr is looking at me because he was on  
9    the other side, and Mr. Kellahin -- Mr. Tom Kellahin was in  
10   the last examiner hearing I presided over, and Mr. Carr was  
11   not.

12                    And Mr. Kellahin said that, "You know, usually I  
13   have Mr. Carr against me at these hearings, and the only  
14   thing worse than having Mr. Carr against you is having  
15   Mr. Carr on your side." And I think I'm in the latter  
16   situation.

17                    MR. CARR: That's why Mr. Kellahin needs to retire.

18                    A. Okay. Back to my -- back to my subject matter. If  
19   we prescribe the rule as to what circumstances we would and  
20   would not pool, compulsory pool project areas that included  
21   more than one standard spacing unit, we would run the risk of  
22   the Court or Court of Appeals or District Court or somebody  
23   might conclude that we had exceeded our statutory authority.  
24   And it seems quite likely that that issue would be raised,  
25   because I don't think it would have to be raised in an appeal

1 from the -- from the rulemaking proceeding. I think that  
2 issue could probably be raised by a party who was unhappy  
3 with a result in a particular compulsory pooling case and  
4 appealed from that case. That's not necessarily true, but I  
5 think there is a substantial possibility of it.

6 So we believed, and I think I speak for the  
7 committee, however, there are many present who can say if  
8 they don't agree, that the appropriate course for the  
9 Division is to continue to address these issues on a  
10 case-by-case basis -- we continue to address them on a  
11 case-by-case basis until we can get some clarification from  
12 the legislature. And we believe that the Division and the  
13 Oil and Gas Industry should seek an appropriate modification  
14 of the Oil and Gas Act to define our authority so we can then  
15 proceed to apply that authority or not on a uniform basis  
16 that everybody will understand.

17 Q. Mr. Brooks, if I may interrupt you for one moment.

18 A. You may.

19 Q. Has it been established in case law that the Oil  
20 Conservation Division has the authority to establish and  
21 compulsory pool non-standard spacing units?

22 A. Yes, it has. In the case of Rutter and Wilbanks  
23 versus Oil Conservation Commission, the Supreme Court held  
24 that the -- that the Commission can force pool non-standard  
25 spacing units.

1           Now, we actually knew, without the benefit of Rutter  
2   and Wilbanks, that the Commission can force pool non-standard  
3   spacing units because the statute says so. What Rutter and  
4   Wilbanks clarified is the Commission can establish a  
5   non-standard spacing unit in a particular case that is  
6   different from a standard spacing unit for that pool, and  
7   then proceed to force pool that non-standard spacing unit.  
8   That wasn't necessarily clear from the statute, but that is  
9   very clear from Rutter and Wilbanks because that's exactly  
10   what happened.

11           However, Rutter and Wilbanks does not provide us  
12   with a satisfactory resolution of this issue, of what our  
13   authority to compulsory pool non-standard spacing units is,  
14   because, while they did not say there was any limitation on  
15   their power to do that, the caveat which every lawyer  
16   recognizes in interpreting judicial decisions is the Court's  
17   write on the particular facts of the case.

18           Sometimes the Court will say, "We limit our decision  
19   to the facts of this case." Rutter and Wilbanks' opinion  
20   doesn't say that; it speaks in broad terms. However, it was  
21   a decision based on a specific set of facts, and the specific  
22   set of facts in that case was that you had an irregular  
23   section, and the proposed non-standard units were only  
24   slightly larger than -- than a standard unit would be, and  
25   less than double the size of a standard unit, so -- and I

1 would add, also, it had nothing to do with horizontal wells,  
2 which the decision was a 1975 decision, and I don't believe  
3 horizontal wells existed in 1975.

4 Q. Mr. Brooks, given the issues you just talked to the  
5 Commission about, is that why the proposal has just been to  
6 say that the compulsory pool rule is applicable?

7 A. That is.

8 Q. Okay.

9 A. There is one thing I would like to add on this  
10 subject. I think, you know, an argument that seems to me  
11 quite plausible is that we would have the authority to  
12 compulsory pool a spacing unit for one horizontal well. And  
13 the reason that argument seems very plausible to me is  
14 because the statute, Section 70-2-17 of the New Mexico  
15 Statutes, says that the Division or the Commission can  
16 compulsory pool a spacing or proration, and it defines a  
17 spacing or proration unit as the area that can efficiently  
18 and economically be drained by one well. And if -- say a  
19 160-acre, if the Division and Commission concluded on  
20 appropriate evidence that a 160-acre north half north half  
21 project area could be efficiently and economically drained by  
22 one horizontal well, and therefore it dubbed it a  
23 non-standard spacing unit, it seems to me it would be  
24 doing -- or I think it's a plausible argument it would be  
25 doing exactly what the legislature authorized it to do,

1 although using terminology a little different from what we  
2 have used in the past to deal with a situation that didn't  
3 exist when the original terminology was designed. However,  
4 that's just one opinion, and we can look at the others.

5 Q. If I can now draw your attention to Slide 25.

6 A. Yes, ma'am.

7 Q. Slide 25 is 16.15H, consolidation of project areas,  
8 what does the current rule require?

9 A. There is no current rule specifically applicable to  
10 project areas.

11 Q. Is consolidation of project areas necessary?

12 A. I believe it's very necessary. Let me add about the  
13 current rule. There is a statute -- 19 point -- 17-2-18 of  
14 the New Mexico Statutes that requires an operator to  
15 consolidate ownership in a spacing unit. I think it's even  
16 more necessary to consolidate ownership in the project area  
17 because if you drill a horizontal well that crosses multiple  
18 spacing units in which there may be different ownership, I  
19 think you are creating a legal nightmare, because, one, there  
20 is no -- there is no legal authority in Texas -- I mean in  
21 New Mexico about what rules apply as to who owns the  
22 production from that well. There is a case in Texas, but  
23 that case is not very satisfactory because it says you have  
24 to prove what part of the production comes from each separate  
25 tract.



1           There is also a principle in law called confusion of  
2 goods, which suggests that if a person commingles  
3 undistinguishable personal property in his possession, and he  
4 cannot show what part of it belongs to each person, then he  
5 is liable to each person for the whole amount. And under  
6 these circumstances, I believe that it would be extremely  
7 imprudent for any operator to drill a well and not  
8 consolidate ownership, and we should not allow an operator to  
9 produce a well unless and until they have consolidated  
10 ownership by either voluntary or compulsory pooling, which is  
11 what 19.15.16.15H proposed.

12           Q.    Okay. Very good. Mr. Brooks, if I could have you  
13 turn to your personal OCD rulebook.

14           A.    Yes, ma'am. First one I have had since I worked for  
15 the OCD.

16           Q.    Very good. I'm still on my first. If could I draw  
17 your attention to Rule 19.15.20, and specifically Paragraph  
18 14, unitized areas.

19           A.    Okay. 19.15.20.14?

20           Q.    Yes, sir.

21           A.    Okay. Yes, ma'am.

22           Q.    This rule says that contiguous developed proration  
23 units may be combined to create a unitized area, correct?

24           A.    It does say that.

25           Q.    Is a project area different than a unitized area?

1           A.   Well, it's different from what this rule comes  
2   from.

3           Q.   Okay. How is that?

4           A.   Well, a project area for a horizontal well -- well,  
5   first of all, this rule talks about contiguous development  
6   proration units. And although this rule is very short, it  
7   doesn't give me much clue as to what it's talking about. I  
8   think it's pretty obvious it's talking about secondary or  
9   tertiary recovery or some such procedure, because, for that  
10   purpose, you would be combining contiguous development  
11   proration units.

12           A project area may include developed proration  
13   units, but it's just as likely, perhaps more likely that it  
14   would be all or a part of undeveloped proration units because  
15   you are dealing with horizontal wells in primary development  
16   in those cases.

17           Q.   Okay. If I could now have you turn to Rule  
18   19.15.15.

19           A.   Very familiar with that part of the rules.

20           Q.   Okay. And Paragraph 11, B as in boy, 2.

21           A.   Yes, ma'am.

22           Q.   What is the purpose of this rule -- or what is this  
23   rule, first, and then what's its purpose?

24           Well, B(2) -- B -- 11B is a rule --

25           MADAM CHAIR: 11.15?

1 MS. GERHOLT: 15.11B, non-standard spacing unit.

2 MADAM CHAIR: Okay. Thank you.

3 A. 11B is the rule about non-standard spacing units.

4 You will note, to explain what 11B(1) is, I have to first --

5 no, 11B(2) is, I need to first explain what 11B(1) is.

6 11B(1) authorizes the district office in certain

7 circumstances to approve non-standard proration units.

8 11B(2) authorizes the director in certain circumstances to

9 approve non-standard spacing units without hearing. In other

10 words, it is a procedure for administrative -- what we called

11 administrative approval in the OCD policies. Somewhat of a

12 misnomer because we are an administrative agency, everything

13 we do is administrative, but somehow in OCD we have developed

14 the concept that an order entered without a hearing is

15 administrative as distinguished from a hearing order. So

16 that's what B(2) does, it authorizes the director in a

17 limited category of cases to issue non-standard spacing unit

18 approvals administratively.

19 Q. Okay. During your time here with the Oil

20 Conservation Division, do you know if there have been any

21 non-standard spacing units that have gone beyond the bounds

22 of a single section?

23 A. Yeah. I'm aware of several. The ones I have seen

24 have been project areas for horizontal wells. I'm also aware

25 that there have been a number of others issued prior to the

1 time I was here dealing with situations in Northwest New  
2 Mexico where there is small or strangely-configured  
3 sections.

4 Q. So at some -- some exceptions are based on the  
5 strange size of the subdivision?

6 A. There are a lot of those in the northwest.

7 Q. And are there exceptions for other reasons? That  
8 you're aware of.

9 A. Other than to configure particular sections,  
10 boundaries, and for horizontal wells, no, I guess I'm not  
11 aware of any specific ones. I mentioned both of those  
12 concepts to you because I think it's clear that prior  
13 Commissions, both the -- the last administration in  
14 connection with horizontal wells, and both our Commissions  
15 before that going on back to the 1950s have assumed that this  
16 provision that you cited, 15.11B, does not -- B(2) does not  
17 limit what the Commission or the Division can do by hearing  
18 order, in fact, the power exists, whatever the reasons are  
19 not for exercising it to establish spacing units to include  
20 portions of more than one section.

21 Q. In the definition of project area that is proposed  
22 today, a project area may cross-sectionalize, correct?

23 A. That is correct.

24 Q. Why has that definition of project area been  
25 proposed to explicitly allow the project areas to

1 cross-sectionalize when there is this administrative  
2 procedure for non-standard spacing units?

3 A. I don't see that one has anything in particular to  
4 do with the other, because I think it's clear to me that this  
5 administrative -- that this administrative provision by its  
6 terms and as it has been interpreted throughout the  
7 Commission's history is not a limitation on the Commission's  
8 power, on the Division's power to establish spacing units  
9 that cross-sectionalize.

10 Now, as to why this provision is included, like I  
11 say, it has been the interpretation of the present rule that  
12 such sections were -- that such project areas were permitted.  
13 The present rule does not say they're not. And the other  
14 reason why the committee adopted it is because the industry  
15 thinks that that it is appropriate, and I believe that is --  
16 I'm not a technical witness, but I believe that's influenced  
17 by the fact that the technology is rapidly changing, and  
18 while a mile-long horizontal may be -- seems to me what many  
19 people are doing right now, it looks likely that longer  
20 horizontals are going to become increasingly economic and  
21 have certain advantages. And they further reduce -- the  
22 longer your horizontal, the further reduction you have in the  
23 industry's surface footprint, and of course, a portion of  
24 your drilling cost is to get down to where you do your turn,  
25 and you would want to get the most bang for the buck by

1 drilling horizontal as long as it's economically practical to  
2 do it.

3 Q. All right. Mr. Brooks, based upon your education  
4 and experience, would the project area cross-sectionalize the  
5 exploratory unit?

6 A. I don't think so.

7 Q. Why?

8 A. Not as I interpret the term. The term "exploratory  
9 unit" is not used in any OCD rule that I'm aware of.  
10 However, its term is very familiar to oil and gas lawyers.  
11 Williams and Meyers, in their treatise on oil and gas, deals  
12 with this to some extent because they point out first that  
13 from a legal point of view in terms of land ownership,  
14 pooling and unitization are essentially the same thing. They  
15 both involve either by agreement between owners or by  
16 exercise of the sovereign power that separately-owned tracts  
17 of land will be combined such that instead of each person  
18 having the right to use their own tract for oil and gas  
19 exploration, the combined tract can be used -- oil and gas  
20 exploration and development, a combined tract can be used and  
21 some kind of proportionate accounting can be made to various  
22 owners. That's what pooling is, and that's what unitization  
23 is.

24 And then Williams and Meyers goes on to say, but  
25 there is a distinction that is generally observed in the

1 industry, and of course this was written before we had  
2 horizontal wells, so again, it's not specific. So there is a  
3 distinction that is usually observed in the industry that  
4 pooling is the process of putting together the acreage needed  
5 to drill one well. Unitization, on the other hand, is the  
6 process of planning the development of the field or pool.  
7 Therefore, it would seem to me that establishing a project  
8 area for one well is a matter of pooling, and, therefore, not  
9 a matter of unitization, as those terms are generally used by  
10 oil and gas lawyers.

11 Q. Finally, Mr. Brooks, have Exhibits 3 through 12  
12 which were incorporated into your slide show either been  
13 prepared by you or under your direction?

14 A. Yes.

15 MS. GERHOLT: Madam Chair, the OCD would move  
16 Exhibit 3 through 12 into evidence.

17 MADAM CHAIR: Any objections?

18 (No objection.)

19 MADAM CHAIR: They are admitted.

20 (Exhibits OCD 3 through 12 admitted.)

21 MS. GERHOLT: No further questions of Mr. Brooks. I  
22 pass the witness.

23 MADAM CHAIR: This is a logical place to stop. I  
24 think we all need a 15-minute break, and then we can have the  
25 people who signed up to make some non-technical testimony

1 begin their presentation. So Mr. Brooks can be excused until  
2 after lunch if we --

3 MR. BROOKS: Do you know what time you will be  
4 convening after lunch?

5 MADAM CHAIR: Let's see, when we are through with  
6 all the non-technical discussions.

7 MR. BROOKS: Well, Madam Chairman, with respect, not  
8 meaning to be presumptuous in any way, I have a meeting which  
9 I am fully prepared not to go to because my first duty is to  
10 this proceeding, but if you set a specific time, say 1:00, I  
11 can be here at that time. I can still go to my meeting and  
12 be here at that time, whereas, if I don't have a specific  
13 time, I cannot go.

14 MADAM CHAIR: At the risk of having an hour and a  
15 half worth of lunch, we'll reconvene at 1:00.

16 MR. BROOKS: Thank you for the consideration, Madam  
17 Chairman.

18 MADAM CHAIR: Sure. So let's take a 15-minute  
19 break, and then we can have non-technical testimony.

20 (Recess taken.)

21 MADAM CHAIR: We are back in session providing an  
22 opportunity for persons who signed up to present  
23 non-technical testimony. I will ask each one of you to come  
24 forward and state your name so that the court reporter can be  
25 sure and hear what you have to say and what your name is.



1 The first person on this list is Rachel Jankowitz?

2 MS. JANKOWITZ: Jankowitz.

3 MADAM CHAIR: Do you care to be sworn or not sworn?

4 MS. JANKOWITZ: Not unless it's necessary.

5 MADAM CHAIR: It's not necessary.

6 MS. JANKOWITZ: Although, if you don't mind, I will  
7 sit here so everyone can hear me.

8 MADAM CHAIR: That will be fine.

9 (NON-TECHNICAL TESTIMONY)

10 MS. JANKOWITZ: I'm Rachel Jankowitz,  
11 J-a-n-k-o-w-i-t-z. I'm a habitat specialist with the  
12 Department of Game and Fish, and I'll keep it brief. The  
13 Department of Game and Fish is not going to delve into the  
14 realm of protecting correlative rights. We just would like  
15 to make a general statement in favor of any actions that the  
16 Commission can take that would facilitate directional  
17 drilling, horizontal drilling in the state.

18 Horizontal drilling has the potential to be  
19 protective of wildlife and wildlife habitat. Oil and gas  
20 development impacts wildlife habitat through habitat loss,  
21 habitat degradation and habitat fragmentation. The mechanism  
22 and the magnitude of the impact vary by species, but probably  
23 the most predominant species in the state that are affected  
24 would be big game in the San Juan Basin and special status  
25 species in the Permian Basin.

1 Directional drilling has the potential -- or  
2 horizontal drilling has the potential to reduce the amount of  
3 surface impact per resource that can be recovered. It also  
4 has the potential to facilitate the probability reducing of  
5 those surface impacts. And in that way directional --  
6 horizontal drilling itself is not necessarily protective of  
7 habitat, but it gives tools to the surface owner which they  
8 can use in furthering their mission and considering our  
9 wildlife and habitat.

10 In the case of the Fire Service of BLM, we  
11 acknowledge their efforts to manage for multiple simultaneous  
12 natural resource values, and in the case of private surface  
13 owners to preserve their property values and pass that  
14 property on to their decedents in an unimpaired condition.  
15 So that's all I have to say.

16 MADAM CHAIR: Are there any questions of this  
17 witness by OCD?

18 MS. GERHOLT: No questions.

19 MADAM CHAIR: Commissioner Balch?

20 COMMISSIONER BALCH: No questions.

21 MADAM CHAIR: You may be excused. Scott Hall?

22 MR. HALL: No comment. I just signed the sign-up  
23 sheet.

24 MADAM CHAIR: Well, we did have the sign-up sheet,  
25 also. Did anyone sign the sign-up sheet that meant to be on

1 the non-technical sheet?

2 (No response.)

3 MADAM CHAIR: All right. This is it then. At the  
4 risk of an hour and a half, I already committed to 1:00 to  
5 reconvene. So we will continue this after lunch.

6

7 (Lunch recess was taken at approximately 11:30 a.m.,  
8 and the hearing was reconvened at 1:00 p.m. as follows:)

9

10 MADAM CHAIR: It's 1:00. We are reconvening. The  
11 request has been made that we take witnesses out of order  
12 because of travel arrangements, so the cross-examination of  
13 Mr. Brooks will be delayed, and we will allow those witnesses  
14 who are under severe time constraints for their travel  
15 arrangements to go ahead and prepare their testimony and  
16 deliver their testimony to the Commission at this time. So  
17 are -- who would fall under those travel constraints?

18 MS. MUNDS-DRY: We would fall under that criteria, I  
19 believe, Madam Chair, and we could call Mr. Scott on behalf  
20 of Lynx.

21 MADAM CHAIR: Yes.

22 (Witness sworn.)

23

24

25

LARRY RAY SCOTT

(Sworn, testified as follows:)

DIRECT EXAMINATION

BY MS. MUNDS-DRY:

Q. Thank you. Would you please state your full name for the record?

A. Larry Ray Scott.

Q. And, Mr. Scott, where do you reside?

A. I'm in Hobbs, New Mexico.

Q. By whom are you employed?

A. Lynx Petroleum Consultants Incorporated.

Q. And what do you do for Lynx?

A. I currently serve as president.

Q. As president, what are some of the duties that you have for Lynx?

A. Well, in a company as small as mine, pretty much every hat that is worn I have the opportunity to wear, and that's all the way from land, to regulatory, to completion engineering, to drilling engineering, to land acquisition.

Q. And have you previously testified before the Commission?

A. On multiple occasions.

Q. And I don't believe you have testified before Commission Dawson and Commissioner Balch. If you could give us a brief -- and we don't need to go into detail because

1 your testimony today, as I understand, is not very technical,  
2 but just give a history of your background.

3 A. Bachelor of science degree, engineering degree from  
4 University of Texas. I was employed out of college by Conoco  
5 and transferred to Hobbs in the early 80s from where I  
6 formed, with two partners, Lynx Petroleum. That company is  
7 still in business, has been for 30 years, independent  
8 producer, exclusively located in Lea and Eddy Counties, New  
9 Mexico, and we are just coming up on our 30-year anniversary.

10 MS. MUNDS-DRY: Madam Chair, I don't plan on  
11 qualifying Mr. Scott as an expert in anything technical just  
12 because of the nature of his comments. I just didn't want  
13 you to think I was skipping a step.

14 Q. And, Mr. Scott, because we also have two  
15 Commissioners that weren't involved in that case, I would  
16 appreciate it if you could give us a short summary of the  
17 cases that you had before the Commission that really  
18 predicate your comments here today, if you could give us a  
19 summary of the cases you were involved in just last year.

20 A. I owned and had multiple partners under the south  
21 half of a section in Eastern Eddy County, New Mexico.  
22 Another operator owned an interest in the north half of that  
23 section and offered a horizontal north south well that I did  
24 not feel was in the best interest of my company and my  
25 partners for geological reasons.

1           That case was, the compulsory pooling order was  
2   granted by the original examiner. We appealed that ruling  
3   and came up to the full Commission who heard our case again.  
4   That compulsory pooling order, on the basis of that  
5   testimony, was vacated where it remains today.

6           Q.   And, Mr. Scott, if you recall, the order that the  
7   Commission's decision to deny that compulsory pooling  
8   application was based on what?

9           A.   Well, the operator that pooled us up commenced the  
10  drilling of his well immediately upon the issuance of the  
11  order and had it completed and producing by the time my  
12  appeal was heard. The geological evidence that we presented  
13  at the initial hearing was substantially verified by the  
14  geological information that was developed during the drilling  
15  of that well, and that new information based on that drilling  
16  is what actually, I think, carried the day for our case.

17          Q.   The during Commissioner's decision, they determined  
18  that the operator that sought the compulsory pooling  
19  application hadn't proved that they were protecting  
20  correlative rights?

21          A.   That is correct.

22          Q.   Based on that history and your experience with --  
23  with compulsory pooling and horizontal wells, have you had a  
24  chance to review the proposed sets of horizontal rules before  
25  the Commission today?

1           A.    Yes, I have. I have reviewed them at some length  
2   and have developed the opinion that the application of the  
3   compulsory pooling statutes to horizontal project areas  
4   consisting of multiple standard proration units in the  
5   situation where the -- where the proposed well owner does not  
6   own an interest in each 40-acre tract may be inappropriate.  
7   And I would like to develop -- well, what I would like to do  
8   is offer two hypothetical cases, one of which is very close  
9   to my heart, as an example of the -- of the impacts both on  
10  preventing waste and protecting correlative rights.

11          Q.    And, Mr. Scott, if I could interrupt you for just a  
12  moment, for the record, are your comments primarily focused  
13  on what's been proposed as 19.15.16.15, Subsections A and F?

14          A.    That would be correct.

15          Q.    Okay. And please go ahead and illustrate -- you had  
16  two scenarios that you said you were going to give us.

17          A.    Okay. In Case 1, Operator 1 owns an interest in the  
18  north half of a section. Operator 2 owns an interest in the  
19  south half of the section, and, in fact, has a completed  
20  morrow producer not -- just a producing well.

21                Operator 1 has proposed a horizontal well, north to  
22  south across that section covering roughly a mile at a  
23  standard project area. Operator 2 has identified behind-pipe  
24  reserves in the First Bone Springs Sand, a Second Bone  
25  Springs Carve, and the Second Bone Springs Sand. Operator

1 1's target is the Second Bone Springs Sand.

2 Now, this brings up a couple of issues. The first  
3 is, Operator 1, upon Operator 2 not wanting to participate,  
4 offers to compulsory pool Operator 2 up to -- to form a  
5 project area consisting of four standard proration units.  
6 Operator 2 at this point is required to engage counsel and  
7 travel to Santa Fe to defend his development decisions on  
8 acreage and mineral leases that he owns that Operator 1 has  
9 no interest in. I can't imagine that this does not speak to  
10 correlative rights.

11 Now, let me presume that Operator 2 is unsuccessful  
12 with his defense of his minerals and the pooling order is  
13 granted. That pooling order will cover the Bone Springs  
14 Formation, which, in Eastern Eddy County, is approximately  
15 3,000 vertical feet of section. Operator 1's target is the  
16 Second Bone Springs Sand, and all he will develop with a  
17 horizontal well is approximately 100 feet of vertical  
18 interval as a result of that horizontal well being drilled.

19 Operator 2, if he wants to try to protect his Bone  
20 Springs mineral leases, is forced, and, under the terms of  
21 his joint operating agreement, has to have 100 percent  
22 approval, usually, to plug back out of an economic Morrow  
23 well to attempt to recover his Bone Springs reserves.

24 Now, this speaks not only to correlative rights, but  
25 to prevention of waste as that Morrow gas well is unlikely to



1 ever be as productive down the road as it was when they were  
2 producing it. And, lastly, the -- the pooling order that  
3 awards that 3,000 feet of vertical section to Operator 1 will  
4 now depth segregate the minerals under Operator 2's  
5 previously clean lease and may have significant impacts down  
6 the road with regard to any development in deeper horizons.

7 As a small company, given the uncertain nature of --  
8 of many of the formations that we attempt to drill to and  
9 complete in, the availability of back-up zones in the event  
10 of primary targets are -- are not productive is an important  
11 factor. So the value of my -- of that -- of Operator 2's  
12 acreage in the south half has been substantially diminished  
13 by the awarding of that compulsory pooling order.

14 Let me -- let me offer as an example another case,  
15 and this would be one very close to my heart in that there is  
16 no wellbore in the section in question. Again, Operator 1  
17 owns the north half. Operator 2 and his partners own the  
18 south half. There is substantial evidence from offset  
19 wellbores, specifically, there are two dry holes immediately  
20 north of the section in question, and there are two producing  
21 Bone Springs wells offsetting the south half of that section  
22 both to the west and the southeast. The available  
23 information, the available geological information indicates  
24 that the south half of that section is substantially more  
25 prospective than the north half.

1           Operator 1's proposal to drill a north south  
2 horizontal well is not acceptable to Operator 2 because he  
3 believes, on the best evidence that he has, that a better  
4 proration unit or project area would be east to west across  
5 his own acreage. In this instance, and because compulsory  
6 pooling only provides for allocation on a straight-acreage  
7 basis, Operator 2's correlative rights are being impacted  
8 because, in his opinion, he is being forced to combine more  
9 prospective acreage with less.

10           At the end of the day, if compulsory pooling is  
11 allowed to form project areas -- and I recognize that this is  
12 a statutory limitation that needs to be changed in order to  
13 ultimately solve the problem, but if -- if compulsory pooling  
14 to form horizontal project areas is -- is allowed, then it  
15 needs to be more in the form of unitization where  
16 compensation for existing wellbores and behind-pipe reserves  
17 become a factor, geological considerations with regard to  
18 pay, quality, thickness becomes a factor. The vertical  
19 extents of that pooled acreage in a unitization situation  
20 typically are defined very closely by log section data and do  
21 not include the entire interval or formation of Bone Springs.

22           And, lastly, the -- the pooling orders have the  
23 potential to significantly impact existing joint operating  
24 agreements, as in this last case, Operator 2 had an existing  
25 JOA with all of its partners that covered the interval in

1 question.

2 I'm not here advocating in any form or fashion that  
3 compulsory pooling should not be allowed for horizontal  
4 projects. What I am advocating is that some of these  
5 ramifications that may have long-term effects be taken more  
6 into consideration than they currently are. I am of the  
7 opinion that aggressive operators in Southeast New Mexico are  
8 utilizing the existing rules and regulations not to protect  
9 correlative rights, but rather as a pure acreage acquisition  
10 strategy.

11 The pendulum needs to come back a little bit toward  
12 the people's property that is being taken, and that's all I  
13 have to say.

14 Q. You qualified your opinion, as you understand it,  
15 that the statute does limit what the Commission and Division  
16 can consider from allocation --

17 A. From my understanding, under the current laws and  
18 statutes, there are no other options, and that's really what  
19 needs to be modified.

20 MS. MUNDS-DRY: Thank you. I have nothing further  
21 for Mr. Scott. I pass the witness.

22 MS. GERHOLT: May I have one moment, please?

23 CROSS-EXAMINATION

24 BY MS. GERHOLT:

25 Q. Would you agree that currently the Division is --

1 the best way for the Division to weigh these factors is  
2 through hearings?

3 A. Gabrielle, I'm of the opinion that any policy that  
4 requires constant adjudication before an Examiner is probably  
5 bad policy.

6 Q. Okay.

7 MS. GERHOLT: I have no other questions for this  
8 witness.

9 MADAM CHAIR: Are there other questions of this  
10 witness?

11 (No response.)

12 MADAM CHAIR: Commissioner Dawson?

13 COMMISSIONER DAWSON: I have no questions.

14 MADAM CHAIR: Commissioner Balch?

15 COMMISSIONER BALCH: I have no questions.

16 MADAM CHAIR: I don't, either. You may be excused.

17 MS. MUNDS-DRY: I have one more question, if I may.

18 REDIRECT EXAMINATION

19 BY MS. MUNDS-DRY:

20 Q. Mr. Scott, whether compulsory pooling is allowed for  
21 horizontal well project areas or not, wouldn't you agree, in  
22 whatever factors are used, wouldn't you agree that each case  
23 should be decided on a case-by-case basis depending on the  
24 fact of that particular case?

25 A. I think the technology is available -- allocating

1 production on a straight acreage basis in a vertical well is  
2 an artifact of not being able to get there any other way, but  
3 the technology is available to evaluate these formations both  
4 from offset data and as the well is being drilled that  
5 actually develops a significant improvement in the predictive  
6 productivity of that well. And I am of the opinion that  
7 the -- that the best available technology should be applied  
8 when it's available.

9 MS. MUNDS-DRY: Thank you, Mr. Scott. I have  
10 nothing further.

11 MADAM CHAIR: Are there -- you may be excused.

12 MR. SCOTT: Thank you very much.

13 MADAM CHAIR: Are there other witnesses under this  
14 severe time restraint, also?

15 MS. ROWLAND: Arlene Rowland.

16 MADAM CHAIR: And your attorney?

17 MS. ROWLAND: I don't have one. Do I need one?  
18 Mr. Fort offered to step in for me if I needed one.

19 MADAM CHAIR: Otherwise it's non-technical  
20 testimony, correct?

21 MS. BADA: Let's see the statute for rulemaking  
22 rules.

23 (Discussion between the Commission and Counsel.)

24 MADAM CHAIR: Counsel says she needs to have an  
25 attorney.

1 ARLENE ROWLAND

2 (Sworn, testified as follows:)

3 DIRECT EXAMINATION

4 BY MR. FORT:

5 Q. Would you please state your name for the record?

6 A. Arlene Rowland.

7 Q. And where are you employed?

8 A. I work for Harvey E. Yates Company, commonly known  
9 as Heyco.

10 Q. What do you do there?

11 A. I'm the vice president.

12 Q. And how long have you worked there?

13 A. Thirty-four years.

14 Q. And during those 34 years, what different types of  
15 duties have you had?

16 A. My background, my education is I have a bachelor's  
17 from New Mexico State University in accounting. I'm a CPA.  
18 I have worked in the accounting department and managed the  
19 Roswell office for Harvey Yates Company for about the last 15  
20 years.

21 Q. Okay. And as part of your duties there at Heyco,  
22 are you involved with -- are you knowledgeable about drilling  
23 practices?

24 A. Yes, sir.

25 Q. Okay. Have you -- the focus of this is these

1 horizontal well rules today. What experience has Heyco had  
2 regarding horizontal wells that have -- that you all have  
3 either joined in with or that you have been forced into? You  
4 are just going to have to give me the specifics on those.

5 A. Okay. Sorry. Let me say, first of all, that I am  
6 not a geologist, and I am not an engineer, and so I don't  
7 hold myself out as an expert on the drilling of horizontal  
8 wells. But what I would like to do today is give our  
9 experience in horizontals and how we think the impact of the  
10 proposed rules can be on the development in Southeastern New  
11 Mexico, which is where Heyco has its leasehold.

12 First of all, I'm not a lawyer, either, and -- but I  
13 don't believe that the legislature has authorized the  
14 Commission to allow for compulsory pooling to form project  
15 areas, which is what is being proposed under these horizontal  
16 rules, which includes acreage committed to joint development  
17 through a joint operating agreement containing already-  
18 drilled vertical wells which penetrate the target formation.

19 Before it expands its horizontal drilling rules to  
20 allow for compulsory pooling of acreage of cross-spacing  
21 units, the Commission should be mindful of the title of the  
22 compulsory pooling statute, which is Section 72-17, Equitable  
23 Allocation of Allowable Production Pooling and Spacing.

24 Any change in the Commission's rule should ensure  
25 that they provide for an equitable allocation of allowable

1 production, much like the gentleman that preceded me was  
2 speaking to. The legislature has provided in the pooling  
3 statute what constitutes an equitable allocation of  
4 production.

5 And this is from the wording of the statutes, "The  
6 rules, regulations or orders of the Division so far as is  
7 practical to do so affords the owner of each property in a  
8 pool the opportunity to produce his just and equitable share  
9 of the oil and gas or both in the pool being an amount so far  
10 as can be practically determined and so far as such can be  
11 practically obtained without waste, substantially in the  
12 proportion that the quantity of the recoverable oil or gas or  
13 both under such property bears to the total recoverable oil  
14 or gas or both in the pool, and, for this purpose, to use his  
15 just and equitable share of the reservoir energy."

16 The compulsory pooling statute is an extraordinary  
17 exercise of police power by the state which is deemed  
18 necessary to prevent waste and promote conservation while  
19 protecting correlative rights. It provides a procedure in  
20 which an operator which lacks sufficient acreage to meet the  
21 minimum amount of acreage required by the spacing rules to  
22 form a spacing unit for a well to combine its acreage with  
23 that of other owners. But the pooling statute only provides  
24 for compulsory pooling of acreage for the purpose of forming  
25 a spacing unit or proration unit for a well.



1           The statute repeatedly refers to the pooling of  
2   lands to form a unit and directs the Division to pool all or  
3   any part of such lands or interest or both in the spacing of  
4   proration unit as a unit. It says nothing about combining  
5   lands for project areas which may cross multiple spacing  
6   units.

7           Because this statute requires that production be  
8   allocated based upon the amount of surface acreage each  
9   separately-owned tract contributes to the unit, it provides  
10   an opportunity for operators, which own relatively poor  
11   geologic prospects, to combine their acreage for development  
12   with geologically superior tracts.

13          An important provision of the pooling statute also  
14   requires the Division to adopt a plan of development agreed  
15   to by working interest owners so long as it has the effect of  
16   preventing waste and is fair to royalty owners of the pool.

17          Heyco believes that under this provision where  
18   working interest owners have already agreed to a JOA which  
19   includes the target zone of a proposed project area of a  
20   horizontal well, that the Division has no authority to force  
21   pool acreage to form a project area which embraces acreage  
22   previously committed to joint development, which is adequate  
23   to form a spacing unit or multiple spacing units or well in  
24   the target formation. In those circumstances the joint plan  
25   of development must be adopted by the provision under the

1 pooling statute if it is fair to the royalty owners and  
2 prevents waste.

3 Heyco believes that to be consistent with authority  
4 granted by the pooling statute, the amended rule needs to  
5 make two changes. Under 19.15.16A, first in Subsection A(1),  
6 the rule should include the following language in front of  
7 the or at the end of the subsection and say, "And in which  
8 each tract is not dedicated to an existing operating  
9 agreement or communitized agreement covering a proposed  
10 geologic interval."

11 Second, in Subsection A(2), the rule should specify  
12 that, "If an existing operating agreement or communitization  
13 agreement is in place which covers any portion of the target  
14 zone which prevents waste and is fair to royalty owners, the  
15 Division may not issue an order for compulsory pooling  
16 without obtaining the consent of the working interest owners  
17 required to amend the terms of the agreement. In the absence  
18 of language in the existing operating agreement which sets  
19 the percentage of ownership required to amend the operating  
20 agreement, the Division may consider compulsory pooling with  
21 the consent of two or more parties owning 75 percent or more  
22 of the working interest ownership governed by an existing  
23 operating agreement."

24 Now, that is not a magic number. It's a number  
25 that, after we had done some research on BLM rules at 80

1 percent, Nevada at 62.5, different states had different  
2 percentages, that's just Heyco's recommendation.

3 A similar change would be made to section  
4 19.15.16.15G(4) to address the issue where a project area  
5 involves acreage already committed to a JOA so that it reads,  
6 "Nor may a project area be designated which includes acreage  
7 dedicated to an existing operating or communitization  
8 agreement which prevents waste and is fair to royalty owners  
9 without obtaining the consent of the working interest owners,  
10 again required to amend the terms of the agreement. In the  
11 absence of language in the existing JOA, the Division may  
12 require two or more parties owning 75 percent or more of the  
13 working interest ownership governed by an existing operating  
14 agreement. Additionally, the forced pool interest may be  
15 limited to the common source of supply for the project area  
16 proposed."

17 So the horizontal target formations with substantial  
18 thickness, which in Southeastern New Mexico is the Delaware  
19 Mountain Group, the Bone Springs and Wolfcamp, are composed  
20 of numerous potential common sources of supply often totally  
21 separated from the completion and the horizontal drilled  
22 lateral.

23 Mr. Scott just spoke to that in two of his  
24 circumstances, and we feel that the rule should address them  
25 so as not to award the party requesting a forced pool order

1 the 3,000 or so of potential feet of pay to produce  
2 approximately 10 percent of the formation.

3 A final issue that should be addressed in the  
4 amended rule is the charge for risk associated with the  
5 compulsory pooling order. The pooling statute does not  
6 mandate a risk charge, but provides that the Division may  
7 include a charge for the risk involved in the drilling of  
8 such a well, which charge shall not exceed 200 percent.

9 In New Mexico the compensation for risk was  
10 originally set at 100 percent for development wells where it  
11 was thought to be less risk and 200 percent for Wildcat  
12 wells. As demonstrated by the success rate of horizontal  
13 wells drilled within the last five years, these wells are  
14 being drilled into zones that have been penetrated by a  
15 number of wells and where seismic testing and petrophysical  
16 logs have revealed the extent of producing zones with high  
17 degrees of certainty, the geologic risk being taken by an  
18 operator drilling a horizontal well, in most cases, is much  
19 lower than that of a Wildcat well. Consequently, the reward  
20 for taking such a risk should be adjusted downward.

21 And even though I understand from the testimony this  
22 morning that we are not really talking about the compulsory  
23 pooling regulations, we do think that these need to be  
24 addressed in congruency with the horizontal rules that are  
25 being proposed because these horizontal rules can't --

1 expanding the standard proration unit language, and how that  
2 is -- is dealt with in the compulsory pooling statutes go  
3 hand in hand.

4 Finally, to ensure that property rights are not  
5 infringed upon, the Commission could make it clear that any  
6 amendments to its rules only operate prospectively and do not  
7 affect any APDs that have already been granted by the  
8 Division or any compulsory pooling cases filed prior to the  
9 date that this amendment is -- rule is enacted, if it is.

10 Q. Do you have any other thing that you would want to  
11 add about specific cases that you have been involved with in  
12 horizontal wells?

13 A. We are also a non-operator and have experienced the  
14 same situation that Mr. Scott talked about where the  
15 geologic -- the superior geological acreage that was proved  
16 with the horizontal drilling was encroached on, and we think  
17 that these rules that -- that are -- as they are written  
18 today, do not protect an operator or property owner's rights.

19 We also have seen a problem with the no limit on the  
20 spacing. We are a participant in a vertical well operated --  
21 we are a non-operator -- operated by another company that has  
22 proposed a horizontal well through the same spacing unit. We  
23 felt we had to participate in drilling the horizontal well  
24 because our geologist said that there is no way that this  
25 horizontal well will not impact the vertical well, it was in

1 the same producing formation, that it will not impact the  
2 production from that well, and they drilled the horizontal  
3 well. We did participate. They fracked the well, and sand  
4 came out the wellbore in our vertical well.

5 So I think that -- and while I'm not here to propose  
6 any wording adjustments to that rule, I think that there is  
7 some problems in having no spacing limits.

8 Q. Do you have anything further?

9 A. No, sir.

10 MR. FORT: I will pass the witness.

11 MADAM CHAIR: Any questions?

12 MS. GERHOLT: Yes. Thank you.

13 CROSS-EXAMINATION

14 BY MS. GERHOLT:

15 Q. Ms. Rowland, one of the modifications that Heyco has  
16 proposed and which you spoke of today was in regards to  
17 driller risk, correct?

18 A. Yes.

19 Q. Allocation of driller risk?

20 A. Yes.

21 Q. And as you're aware, driller risk is discussed in  
22 the footnote Conservation Division Rule 19.15.13, compulsory  
23 pooling, correct?

24 A. Yes.

25 Q. And it's not specifically addressed in the

1 amendments that are presently before the Commission, is it?

2 A. No.

3 Q. Okay.

4 A. But you do have a -- a 13 -- whichever number that  
5 we did add that says that compulsory pooling will be allowed,  
6 and so I think, if -- if we are going to change the terms of  
7 and add additional language on proration units where they no  
8 longer fit under the rules as they are today, which are what  
9 the compulsory rules are written to address, that you have to  
10 address the compulsory rules at the same time or you don't  
11 have an equitable system working.

12 Q. Given the concern Heyco has about the compulsory  
13 pooling rule, has Heyco considered filing an application for  
14 rulemaking and making amendments to the compulsory pooling  
15 rule?

16 A. No, I have not.

17 Q. Okay. One of the other things that you mentioned  
18 that had come up several times today is New Mexico Statute  
19 72-17 about the equitable allocation of allowable production.

20 A. Yes.

21 Q. And again, within that statute we find the  
22 definition of the proration unit being an area that can be  
23 efficiently and economically drained and developed by one  
24 well.

25 As you are -- I should ask it this way: You are

1 aware that currently the State of New Mexico has a proration  
2 rate that have more than one well, correct?

3 A. Yes, that they have to share allowable on.

4 Q. The state already allows for proration units with  
5 more than one well even though it --

6 MS. GERHOLT: I will end it there. Thank you. No  
7 further questions.

8 MADAM CHAIR: Any other questions of this witness?

9 MR. FELDEWERT: If I may. Michael Feldewert on  
10 behalf of New Mexico Gas Association. I have a couple of  
11 questions.

12 CROSS-EXAMINATION

13 BY MR. FELDEWERT:

14 Q. Ms. Rowland, I was -- I'm looking at the language in  
15 the rule that addresses at least what you seem to be  
16 concerned about here, the compulsory pooling rule. In  
17 Subsection 16.15F, I don't know if you have that in front of  
18 you.

19 A. I don't. I'm sorry.

20 Q. So the section dealing with special rules for  
21 horizontal wells, 19.15.16.15F as in Frank.

22 A. Okay.

23 Q. Now, my question is, as I read that, at least to me  
24 as an attorney, it seems to be saying that whatever  
25 compulsory pooling authority the Division currently has will



1     apply to horizontal wells just as it would to vertical wells.  
2     Yet, when I looked at your language that you have proposed in  
3     your pre-hearing statement, it seems to me that you are  
4     trying to limit the compulsory pooling authority to  
5     circumstances where there is not a joint operating agreement  
6     in effect for the area at issue.

7             In other words, you seem to be saying that, look, if  
8     you have a joint operating agreement in effect for the  
9     project area, that you are asking the Division to say now  
10    that they should not allow pooling.

11    A.    I don't believe the state -- and this is an "I  
12    believe" -- does hear compulsory pooling -- that they don't  
13    give compulsory pooling hearings where there is a JOA. If  
14    there is a JOA and someone does not want to participate in  
15    the next well, then they are just non-consent parties.  
16    The -- the Division is not asked to rule and -- on compulsory  
17    pooling on subsequent wells in a JOA, and a subsequent well  
18    would be what we are talking about.

19    Q.    But it seems to me, if I'm reading your language  
20    that you have proposed, particularly the provision dealing  
21    with Subpart 15A(2), where it says, "A party seeking to  
22    create a project area could obtain a compulsory pooling order  
23    from the Division," you seem to be adding language that would  
24    require the Commission now to say that we are not going to  
25    allow pooling to occur where there is a JOA involved. That's

1     how I read your language. Am I reading it wrong?

2           A.     I will tell you my -- or Mr. Feldewert -- sorry --  
3     that what we are trying to propose is a methodology for the  
4     Division to be able to affect an opportunity for oil and gas  
5     producers to make a bigger than proration unit as it now  
6     stands, but without breaking the JOAs that are currently in  
7     place.

8           And, again, this was just our suggestion, and there  
9     is nothing magic about it, but trying to get at least as many  
10    of the people involved in that JOA to agree before it could  
11    be broken.

12          Q.     Okay.

13          A.     Because that's what it's doing is breaking the JOA  
14    by combining acreage covered by an existing JOA with another  
15    well proposal.

16          Q.     I know it's a matter of policy, but, I mean, your  
17    suggestion would be, as I read it, that they add language now  
18    to prevent them from pooling lands if there is a JOA  
19    involved. Is it just as likely that another approach to it  
20    would be to address these issues on a case-by-case basis or  
21    to consider certain amendments to propose compulsory pooling  
22    rules at some future date? Isn't that another way to get to  
23    your issue?

24          A.     Well, one way to get to my issue. Two would be just  
25    to use the unitization rules with a few modifications, and

1 then you wouldn't -- we wouldn't have all of the additional  
2 horizontal rule language.

3 Q. I understand that. Might be another way to get to  
4 it perhaps on a case-by-case basis, they could examine it?

5 A. If -- you know, I will defer to what Mr. Scott said  
6 right before me because I thought he said it very well. He  
7 said, "I'm not so sure that any rules that require the  
8 Division to be mediating all the time is such a good idea."

9 Q. I guess our concern is it doesn't seem to make a lot  
10 of sense to have the Commission say now in this forum that  
11 they are not going to allow compulsory pooling any time that  
12 there is a JOA involved. Then I guess we just have an area  
13 of disagreement.

14 A. Okay.

15 MR. FELDEWERT: Thank you.

16 MADAM CHAIR: Are there any other questions of this  
17 witness?

18 MR. FORT: I do have a couple. I just want to  
19 follow up.

20 MADAM CHAIR: Well, you will redirect after the  
21 Commissioners.

22 MR. FORT: That will be fine.

23 MADAM CHAIR: Commissioner Dawson?

24 COMMISSIONER DAWSON: I have no questions.

25 COMMISSIONER BALCH: I have no questions.

1 MADAM CHAIR: I do.

2 EXAMINATION

3 BY MADAM CHAIR:

4 MADAM CHAIR: If the Statutory Unitization Act --

5 MS. ROWLAND: Yes.

6 MADAM CHAIR: -- is in effect, it can cover extended  
7 areas where development of a pool has already been  
8 established, and allocation of production is based on factors  
9 other than acreage. Would you support use of the Statutory  
10 Unitization Act and its requirements --

11 MS. ROWLAND: Yes.

12 MADAM CHAIR: -- instead of compulsory pooling of  
13 project areas where there --

14 MS. ROWLAND: Yes. And I will say that in talking  
15 with a lawyer concerning those unitization rules -- because  
16 that was the way we first went, and we -- he thought there  
17 would have to be modifications to that rule because what we  
18 don't really have a development, what we are proposing on  
19 some of these horizontals is -- is not -- we don't already  
20 have existing development in both -- in all areas, and so  
21 there would have to be some expansion or modification of the  
22 rules, but that does seem to be the best basis for going  
23 forward.

24 MADAM CHAIR: Thank you. Now, do you have redirect,  
25 just a couple of questions.

1 MR. FORT: Yes.

2 REDIRECT EXAMINATION

3 BY MR. FORT:

4 Q. In reference to 19.15.16.15F as in Frank, compulsory  
5 pooling where these rules are applied to horizontal wells and  
6 compulsory pool project areas, is that the basis for which  
7 you brought in -- even though the rules aren't subject to it,  
8 we are modifying this rule by adding in this provision the  
9 horizontal wells and compulsory pooled project areas?

10 A. When I read these proposed rules, that's how I read  
11 it.

12 Q. Okay. And so that's why you brought up about the  
13 risk for drilling, the penalty risk?

14 A. Yes.

15 Q. There was -- now, in a spacing unit, you are allowed  
16 to drill up to, I believe, four wells, not two?

17 A. Yes.

18 Q. What's the purpose of those drilling more than one  
19 well?

20 A. If you are not finding that you are draining a  
21 reservoir, that you are getting as much of a production as it  
22 can be and it's still an economic opportunity, then drill a  
23 second well, infield wells, even, you know, five spots.

24 Q. So that's why you do that, to get up to your  
25 allowable for that?

1       A.    We have found -- and this is just one  
2   circumstance -- that we had a 40 that had a fault that was  
3   right on the edge on one side, and we drilled two in order to  
4   get the reserves.

5       Q.    And as to your -- when you were -- on  
6   cross-examination you referred several times to you didn't  
7   want to see the JOA broken up. Why do you not want to see  
8   the JOA broken up by these compulsory horizontal wells?

9       A.    Really, two reasons. I personally and my company  
10   would like to -- whenever you put together a JOA, it's a  
11   contract between all of the working interest owners that have  
12   agreed to participate in your well, and they have come to  
13   different agreements on how they are going to handle it, even  
14   in some circumstances what their interests are going to be,  
15   et cetera, you have a contract in place, and to break that  
16   contract and have someone else come in that is not under  
17   their plan of development that they have put together through  
18   this JOA is not good business.

19       MR. FORT: I have no further questions.

20       MADAM CHAIR: You may be excused.

21       MS. ROWLAND: Thank you.

22       MADAM CHAIR: Mr. Carr?

23       MR. CARR: May it please the Commission, our  
24   engineering witness is teaching a class tomorrow morning at  
25   University of Tulsa, and so, with your permission, I would

1 like to go out of order and call Ken McQueen at this time.

2 (Witness sworn.)

3 MR. CARR: May it please the Commission. At the  
4 conclusion of the RPC effort and then at the conclusion of  
5 the workgroup, NMOGA provided copies of the proposed rules,  
6 and we had conference calls, and in those calls certain  
7 particular issues were raised, and the witnesses we have  
8 called today addressed certain particular fairly narrow  
9 issues.

10 One of the issues that was raised was whether or not  
11 the new proposed rules in practice would allow operators to  
12 actually maximize horizontal wells, the completed interval  
13 within the producing area of their project area. And so  
14 Mr. McQueen has prepared three slides that show how that  
15 works just as an explanation that shows how the new rules  
16 will provide this new flexibility, and that was the only  
17 reason for calling him. It would have probably made more  
18 sense after the Division's technical presentation, but I'd  
19 have to probably try and shoot him a closing because my  
20 technical witness would be in Oklahoma, so with that, we  
21 would like to call Mr. McQueen.

22

23

24

25

1 KENLEY HAYWOOD McQUEEN, JR.

2 (Sworn, testified as follows:)

3 DIRECT EXAMINATION

4 BY MR. CARR:

5 Q. Would you state your name for the record, please.

6 A. My full name is Kenley Haywood McQueen, Junior.

7 Q. And, Mr. McQueen, where do you reside?

8 A. I reside in Tulsa, Oklahoma.

9 Q. By whom are you employed?

10 A. I'm employed by Williams Exploration and Production  
11 Company.

12 Q. What is your position with Williams?

13 A. I am the director for the San Juan Region.

14 Q. Have you previously testified before the New Mexico  
15 Oil Conservation Commission?

16 A. I have.

17 Q. Has the membership of the Commission changed since  
18 you last testified?

19 A. It has.

20 Q. Could you review for the Commissioners your  
21 educational background and your work experience?

22 A. I received a BS in petroleum engineering from the  
23 University of Tulsa in 1982. I went to work for Amerada Hess  
24 in 1982 in Tulsa, was there for 13 years. Moved employment  
25 to Vintage Petroleum, was there for eight years. And then in



1 2002 I went to work for my current employer, Williams E&P.  
 2 Each of those positions had increasing responsibility with  
 3 the years. In addition, I'm an adjunct professor since 2002  
 4 at the University of Tulsa, Petroleum Engineering  
 5 Department.

6 Q. And since you graduated in 1982, have you always  
 7 been employed in an engineering position?

8 A. That's correct.

9 Q. Is NMOGA Exhibit Number 4 a copy of your resume?

10 A. That's correct.

11 Q. Are you familiar with the application filed in this  
 12 case on behalf of the New Mexico Oil Conservation Division?

13 A. I am.

14 Q. Are you familiar with the proposed revisions to the  
 15 Division's rules?

16 A. Yes.

17 Q. Were you a member of the OCD industry workgroup that  
 18 worked on the preparation of the graph that is now before the  
 19 Commission?

20 A. I was.

21 MR. CARR: We tender Mr. McQueen as an expert in  
 22 petroleum engineering.

23 MADAM CHAIR: Any objection.

24 (No objection.)

25 MADAM CHAIR: He is so admitted.

1 Q. Could you briefly summarize for the Commission what  
2 is the focus of your testimony here today?

3 A. After the rules workgroup finished its draft, it was  
4 provided to NMOGA for its members to review and comment.  
5 There were questions concerning how a horizontal well could  
6 be completed and produced. In particular, operators wanted  
7 to be able to complete horizontal wells so that it could  
8 produce the entire length of the producing area. And my  
9 testimony addresses these issues and also outlines some of  
10 the -- the issues that we have had with drilling horizontal  
11 wells under the current rules.

12 Q. Is your exhibit -- your presentation contained  
13 within four slides?

14 A. That's correct.

15 Q. And you have them both in Powerpoint and hard  
16 copies?

17 A. That's correct.

18 Q. Let's go to your first slide, and I would ask you to  
19 identify what it shows in view of that --

20 A. I thought it would be helpful to look at the  
21 limitations of the current horizontal rules, and basically  
22 what I have displayed here are two horizontal wellbore tracts  
23 with different radius of curves. In drilling horizontal  
24 wells, we describe the curve in degrees per hundred feet, and  
25 I have indicated what some typical examples are here in this

1 table and what the respective X values are.

2 And the X is basically the vertical and horizontal  
3 component that is required to make the corner when we drill a  
4 horizontal well. From the standpoint of getting casing to  
5 bottom, we prefer lower degree, lower angle wells. For  
6 example, my preference is to utilize a ten degree per hundred  
7 foot turn when we go into the lateral section, but because  
8 this is a relatively long radius curve, the X distance here  
9 for that curve is 572 feet as shown here in this X and this  
10 X. I could shorten that distance up quite a bit if I went to  
11 something as steep as 16 degrees per hundred feet, but that  
12 would decrease my turn distance here, the Xs, to 358 feet.  
13 But, again, the horizontal drilling has many double-edged  
14 swords, and to decrease that curve makes it much more  
15 difficult to get casing to the bottom of my hole.

16 So our problem was that -- we actually had two  
17 problems in trying to exercise a horizontal drilling program  
18 in Northwest New Mexico. The first of those was the  
19 definition of the producing interval, and the producing  
20 interval is currently defined as a portion of the directional  
21 well inside a pool's vertical limits between its penetration  
22 point and its terminus, and the problem in that definition is  
23 the penetration point, because, as Mr. Brooks indicated  
24 earlier, the penetration point is where a directional well  
25 penetrates the top of the pool from which it is intended to

1 produce. And I have indicated that penetration point here as  
2 what I'm also calling the top of the formation. Strictly  
3 speaking, that would be the top of the pool.

4 But the problem with this definition is that without  
5 employing relief through NSL, I basically lose this X  
6 distance from the length of horizontal lateral that I might  
7 be able to drill in the spacing unit. For example, in  
8 Northwest New Mexico, most of our spacing units are 320 acres  
9 with 660 foot setbacks, so that basically gives me a target  
10 area, a producing area within the proration unit of 3,960  
11 feet. If I'm drilling a 10 degree curve, I'm losing 572 feet  
12 from what might potentially be drilled horizontally in that  
13 spacing unit. That accounts for almost 14 percent of the  
14 total lateral distance that I would have available to drill  
15 in that spacing unit.

16 Q. Under the current rule, the vertical portion of this  
17 well would be required to be within the well's producing area  
18 unless you get a non-standard location approved by the  
19 Division?

20 A. That is correct. And the producing area, again  
21 under the current rule, is defined as that inner rectangle  
22 that is set back from the spacing unit.

23 Q. So if you have 330 setback for a vertical well all  
24 the way around your project area, you would have to be 330  
25 feet in from the outer bounds. Is that correct?

1 A. That's correct.

2 Q. Okay.

3 A. So in Southeastern New Mexico where we are spaced or  
4 40-acre tracts and there's a 330 foot setback, my producing  
5 area there is basically a 660 foot square in the middle of  
6 that spacing unit. In Northwest New Mexico where we have the  
7 320s with 660 setbacks, my producing area target is 1320 by  
8 3960.

9 Q. Regardless of the size of the spacing unit, without  
10 a non-standard location approval, you lose a significant  
11 portion of what could be your horizontal well within the  
12 producing area under the current rules?

13 A. That's correct, and if I utilize the ten foot or --  
14 excuse me -- the 10 degree per 100 curve here, that equates  
15 to about 14 percent of the potential lateral length in the  
16 producing area that would be lost.

17 Q. Let's go to your next slide.

18 A. Under the proposed rules, these restrictions are  
19 removed, and I have a much more liberal way that I can drill  
20 my lateral. Under the new rules we no longer use the  
21 penetration point as the beginning or the top of the  
22 formation. Instead, we introduce a new concept called the  
23 completion interval, and the completion interval is this  
24 length of the horizontal lateral such that the -- the  
25 completion interval begins where the lateral is isolated.

1           So there are two common practices of isolating  
2           laterals currently available to the industry. The first of  
3           those is isolation with cement, and the second, which I will  
4           show on the next slide, is isolation with slow patches. So  
5           by isolating my production casing around the curve and to the  
6           point of my setback, then I can effectively utilize the  
7           entire completion interval equivalent to the area that's in  
8           my producing area, thereby I can get the maximum length of  
9           lateral laid in my spacing unit.

10           The additional enhancement that the new rules allow  
11           for me is the ability to drill a rat hole, and the rat hole  
12           is that section of lateral that is drilled beyond the  
13           setback. And the reason that I need to drill beyond the  
14           setback at the terminus end is that my logging equipment is  
15           typically 120 feet minimum in length, and I need to get that  
16           entire length of logging tool past the setback so that I can  
17           properly measure and quantify the petrophysical properties  
18           associated with the lateral distance.

19           So by using cement to isolate this rat hole, it  
20           effectively eliminates any drainage within the setback into  
21           the lateral portion of the hole.

22           Q.    If we take this -- and now we are looking at the  
23           side view of the well?

24           A.    Yes.

25           Q.    If we put this on a project area, the vertical

1 portion of the well could be from the project area, but  
2 outside the producing area --

3 A. That's correct.

4 Q. -- of the well? And so the lines that show the  
5 boundaries of the completed interval, those could coincide  
6 with say the 330 foot setback all the way around on the  
7 project area, so you could have the horizontal portion of  
8 your well open and producing across the entire producing area  
9 within the project area?

10 A. That's absolutely correct.

11 Q. Now, when I look at this, you've got a completed  
12 interval, and you've got the setbacks shown. When you're  
13 talking about the completed interval, are you talking about  
14 the open portion of the wellbore, or you have indicated  
15 perforations. How do -- what controls here?

16 A. The completed interval is the distance between the  
17 setbacks. Basically each one of these perforations is going  
18 to be a site from which a hydraulic fracture is initiated,  
19 and the purpose of this cement up to the setback is to  
20 provide isolation of this producing lateral from owners who  
21 may be on the other side of the wellbore.

22 Q. I think the rule talks about the completed area  
23 being isolated by impermeable remains or something like that,  
24 is that what those vertical lines are that are labeled  
25 setback?

1           A.    The blue is basically the cement isolation that is  
2   placed between the drilled hole and the casing that is ran in  
3   the well. The setback is the point that I cannot cross in my  
4   stimulation activity. So I can perf and stimulate anywhere  
5   in this completed area as long as it's between the two  
6   setbacks that are applicable to that spacing unit.

7           Q.    And are those both sides, the ends of that sealed  
8   off with an impermeable barrier?

9           A.    That's correct. And in this case it would be  
10  cement.

11          Q.    Let's go to the next slide.

12          A.    The next slide actually shows completion techniques  
13  in horizontal wells that are fairly recent, although they are  
14  receiving quite wide-spread applications in the Bakken Play  
15  in North Dakota, and rather than cementing the casing in  
16  place, the casing is ran with external packers attached to  
17  the casing, and these external packers, when ran, are of  
18  diameter such that they will slide into the drilled hole.  
19  And then upon exposure to formation fluids these packers  
20  swell to the drilled diameter of the hole and essentially  
21  isolate each of these sections from the other.

22               And the reason multiple swell packers are used in  
23  this type of application is that, between the swell packers,  
24  instead of perforations, we put in sliding sleeve devices  
25  that can be open for stimulation and then subsequently



1 stimulated as we move up the lateral. And then the last  
2 swell packer has to be in place at or inside the setback, and  
3 the same is true on the terminus end of the drilled well so  
4 that the rat hole is not in communication with the completed  
5 interval, and that's the reason for these swell packers here.  
6 Each of these swell packers are in place to allow for stage  
7 stimulation that will take place.

8 This swell packer is in place to isolate the lateral  
9 from the rest of the wellbore in the setback area.

10 Q. What about the swell packers that are just to the  
11 left of this vertical line?

12 A. This is not required, nor is this required, but  
13 those are put in place from our safety perspective to provide  
14 additional isolation and well control for the stimulation.

15 Q. Mr. McQueen, were you present for the testimony this  
16 morning?

17 A. I was.

18 Q. Did you hear Mr. Ezeanyim's presentation in which he  
19 outlined the benefits of horizontal drilling?

20 A. Yes.

21 Q. Do you agree with those benefits?

22 A. Yes. And, in fact, the new rules make it possible  
23 for operators like Williams E&P to move forward with their  
24 horizontal development programs without being burdened with a  
25 lot of paperwork and Commission hearings, which is currently

1 the case with the existing rules. And we feel like the  
2 revised rules really brings the New Mexico Oil and Gas  
3 Industry into the 21st century as far as addressing the  
4 current technology that's being employed to exploit oil and  
5 gas and horizontal wellbores.

6 Q. Are you finding horizontal development of these  
7 areas you're working on in the San Juan Basin to be more  
8 efficient than a vertical development?

9 A. Yes, we do. In fact, the single biggest advance for  
10 natural gas drilling and horizontal drilling in particular is  
11 in shales. And that is what we are currently pursuing in  
12 Northwest New Mexico is being actively pursued in other  
13 basins, Barnett in the Ft. Worth Basin, and the Marcellus in  
14 Pennsylvania, but the reality is, without horizontal drilling  
15 and without fracture stimulation, these plays would not be  
16 economically viable. So those two enhancements in  
17 technology, which have really come to fruition in the last  
18 five years or so, have opened up a whole new avenue of making  
19 previously uneconomic resources now economic to pursue for  
20 operators.

21 Q. By doing that, will you be recovering reserves that  
22 otherwise would be left in the ground and wasted?

23 A. That's absolutely the truth, and, in fact, utilizing  
24 vertical wellbore technology in the shale plays for natural  
25 gas production is just not economically feasible because we

1 cannot deliver the amount of gas that's required to cover our  
2 capital investment, so this horizontal technology really  
3 makes it possible to access gas reserves which previously  
4 were uneconomic to pursue.

5 Q. If the rules before the Division are adopted, in  
6 your opinion, would they facilitate and encourage horizontal  
7 development of this sort?

8 A. I believe they would, yes.

9 Q. Do you believe approval of the proposal would be in  
10 the best interest of conservation and prevention of waste and  
11 the protection of correlative rights?

12 A. Absolutely.

13 Q. Were Exhibits 4 and 5 either prepared by you or have  
14 you reviewed them and you can confirm their accuracy?

15 A. They were prepared by me, yes.

16 MR. CARR: May it please the Commission, at this  
17 time I move the admission of the New Mexico Oil and Gas  
18 Association Exhibits 4 and 5.

19 MADAM CHAIR: Any objections?

20 (No objection.)

21 MADAM CHAIR: They are so admitted.

22 (Exhibits NMOGA 4 and 5 admitted.)

23 MR. CARR: That concludes my direct of Mr. McQueen.

24 MADAM CHAIR: Do you have cross?  
25

## CROSS-EXAMINATION

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BY MS. GERHOLT:

Q. I have a simple question. Is your Slide Number 3 in that -- bring that back up -- completed interval cement, that's an example of a completed interval that's been case cemented and perforated?

A. Correct.

MS. GERHOLT: Thank you. That's my only question.

MADAM CHAIR: Any other questions?

(No response.)

MADAM CHAIR: Commissioner Dawson?

COMMISSIONER DAWSON: I have no questions.

MADAM CHAIR: Commissioner Balch?

COMMISSIONER BALCH: I have no questions.

MADAM CHAIR: I don't, either.

MR. McQUEEN: Thank you.

MR. CARR: Thank you, and I appreciate being able to go out of turn. It breaks up other people's flow, but I wouldn't have had a witness.

MADAM CHAIR: Can we now return to questioning of Mr. Brooks?

MR. BROOKS: Your Honor, may I request a five-minute break?

MADAM CHAIR: Let's take a five-minute break. We'll reconvene at 20 after.

1 (Recess taken.)

2 MADAM CHAIR: Back on the record. I believe we were  
3 at the point where we were going to cross-examine Mr. Brooks.

4 MS. GERHOLT: That is correct, Madam Chair.

5 MADAM CHAIR: Mr. Carr, do you have any questions?

6 MR. CARR: I have no questions of Mr. Brooks.

7 MS. MUNDS-DRY: I have no questions for Mr. Brooks.

8 MR. BROOKS: I'm surprised.

9 MR. FORT: I have some questions.

10 CROSS-EXAMINATION

11 BY MR. FORT:

12 Q. Mr. Brooks, in terms of, as I understand it, your  
13 Exhibit Number 2, I'm looking at what was the handout this  
14 morning that you had up on the wall.

15 A. Is this the slide, the second slide, Number 2?

16 Q. Yes, sir. Thank you.

17 A. Yes, sir.

18 Q. And this applies to vertical wells?

19 A. That's correct.

20 Q. Okay. Now, Slide Number 4, you said, applied to  
21 horizontal wells. Obviously that's --

22 A. That's also correct.

23 Q. Okay. Now, in terms of -- there is two ways to  
24 make -- to file an application. One is, as you said, to get  
25 the consent of at least one lessee or owner of unleased

1 mineral interest in each tract?

2 A. Right.

3 Q. So if you have four tracts, you have to have an  
4 interest in each one?

5 A. Yes, sir.

6 Q. Now, can that interest -- is there any size to that  
7 interest that you have to have?

8 A. No.

9 Q. So you can have one percent in each of the four  
10 tracts?

11 A. Right. It has to be a working interest.

12 Q. Okay. A one percent working interest?

13 A. It can be of any size.

14 Q. Okay. Okay. But as I understand it, if you can't  
15 get an interest in those four tracts that are adjoined to  
16 each other, that you can come in, and even though you don't  
17 have an interest -- you may have an interest in one of them,  
18 but the other three you don't, you can come in and get a  
19 compulsory pooling order?

20 A. You can apply for a compulsory pooling order.

21 Q. You can apply for one, okay. Is this rule -- is  
22 this rule any different than what's happening today?

23 A. No, that is, so far -- no, I have to withdraw that  
24 because I don't know exactly what is happening today. We  
25 have encountered situations where people have applied for

1 APDs and even have drilled wells where they -- there were  
2 spacing units penetrated by those wells in which they did not  
3 own an interest.

4 Q. And you heard the testimony of Mr. Scott?

5 A. I did hear the testimony of Mr. Scott. I believe  
6 the facts of that case were -- I have some familiarity with  
7 that case, and I believe the facts of that case were, when  
8 the well was initially proposed, the operator did not have an  
9 interest in one of the tracts or perhaps two of the tracts  
10 that were included in that spacing unit, however, the  
11 operator did acquire some interest in those tracts I think  
12 before the they drilled the well. I know that they -- I'm  
13 certain that they do now own an interest in all of the  
14 spacing units in there.

15 Q. But this -- this rule as it's presently proposed  
16 doesn't prevent anybody from doing to Mr. Scott what happened  
17 to him previously?

18 A. It does not prevent anybody from applying to the  
19 Division for a compulsory pooling order without owning an  
20 interest in one or more tracts.

21 Q. Okay. So he would be -- his position is, you have  
22 violated my correlative rights?

23 A. I understand that is his position, yes.

24 Q. Now, and I appreciate your candor this morning when  
25 we talked about the problem. And the problem as I understand

1 it is that project area is not a statutory term?

2 A. That is correct. It is not.

3 Q. And that is the -- and in some cases we are actually  
4 overlaying or pooling on top of a joint operating agreement?

5 A. Well, I have to be precise about meanings. There is  
6 one thing that is entirely clear, I think, from the statutes.  
7 If the OCD is requested to pool an area, and that area is  
8 subject to a joint operating agreement to which all of the  
9 working interest owners are parties, the entire area that the  
10 OCD is being asked to force pool, the OCD cannot force pool  
11 that area, but there may be -- but if they are asked to force  
12 pool a project area comprising four spacing units, it's  
13 entirely possible that there might be one spacing unit among  
14 those four and which was covered by a joint operating  
15 agreement to which all working interest owners who owned  
16 interests in that spacing -- that 40-acre spacing unit were  
17 parties.

18 Q. Okay. But the problem hinges on the statute allows  
19 you to have the -- talking about a spacing unit or a  
20 proration unit, but it does not define project area in terms  
21 of you can have pooling for greater areas than a spacing unit  
22 or a --

23 A. The statute, no, does not define the term project  
24 area. It does not use the term.

25 Q. Okay. And you mentioned a case this morning, but



1 not by name, but I believe it's Marbob versus the OCC.

2 A. I mentioned two cases. I mentioned Rutter and  
3 Wilbanks versus Oil Conservation Commission, and I mentioned  
4 Marbob versus Oil Conservation Commission.

5 Q. I do recall that. And in that case the Commission  
6 lost --

7 A. In Marbob.

8 Q. In Marbob you lost, and that was a question as to  
9 whether or not you had authority when there was a specific  
10 statute that said only the AG could, I guess, enforce  
11 fines --

12 A. Well, the statute said that -- without going into  
13 the real specifics of that case, you are correct, the Court  
14 said -- the Court held that the Oil Conservation Commission's  
15 rule which was adopted in that case, one provision of it  
16 violated the statutory provision.

17 Q. Okay. And here we don't even have a statute that  
18 covers project area. Is that correct?

19 A. That is subject to argument, sir.

20 Q. Okay. Is there a definition of project area in New  
21 Mexico statutes?

22 A. There is not.

23 Q. Let's talk about my four spacing units, 40 acres  
24 apiece, A, B, C, and D.

25 A. Yes, sir.

1 Q. And in A we have a vertical well, and there is a  
2 joint operating agreement for it, in that 40-acre tract in A.

3 A. By way of clarification, you mean joint operating  
4 agreement to which all the working interest owners of that  
5 tract are parties?

6 Q. Yes. I'm sorry, yes, sir. Thank you. And then we  
7 have one who -- and it's a proposed operator that has an  
8 interest in D.

9 A. And that proposed operator is not a party to the  
10 joint operating?

11 Q. Correct, he is not a party. And now we have -- C  
12 and B we are not going to worry about, but he doesn't have an  
13 interest in C, B, or A.

14 A. Correct.

15 Q. How many horizontal wells can D drill or apply for  
16 and drill in those four 40-acre tracts?

17 A. You are assuming, I suppose, that the, number one,  
18 the rule is adopted, number two, the Commission has granted  
19 the compulsory pooling in those four 40-acre tracts --

20 Q. Yes.

21 A. -- to form a non-standard project area? As many as  
22 he wants to.

23 Q. So it's unlimited?

24 A. That is correct, sir.

25 Q. Now, how many -- okay. So how many additional

1 vertical wells can be drilled without permission of the  
2 owners of the project area in that 40-acre -- those four 40  
3 acres?

4 A. Without permission of the owners of Unit A that you  
5 said was subject to a JOA?

6 Q. No -- yeah, they -- yes. Without owners of the  
7 project area -- I'm sorry, not -- not under the joint  
8 operating agreement.

9 A. Yeah. There is some uncertainty in my  
10 understanding, so I will say -- I will try to be specific.  
11 In any unit in which there is a working -- in any of the four  
12 units in which there is a working interest owner who is not a  
13 party to that joint operating agreement, they -- that working  
14 interest owner can drill up to four wells in that 40-acre  
15 unit. In Unit A where you said all interests were subject to  
16 the joint operating agreement --

17 Q. Yes.

18 A. -- if we assume that there is an existing producing  
19 well in the subject formation, and that the joint operating  
20 agreement contains the standard provision on subsequent wells  
21 as found in the AAPL form --

22 Q. Okay.

23 A. -- then no one could drill an additional well on  
24 Unit A, initial vertical well on Unit A without the  
25 permission of all the working interest owners who are parties

1 to that joint operating agreement.

2 Q. Okay. So you are saying that they can still drill  
3 up to three more wells in Unit A or -- Spacing Unit A, or can  
4 the project area operator prevent them from doing that?

5 A. I don't think the project area -- the project area  
6 operator can prevent them from doing that, no. But as long  
7 as they are -- well, you ask an interesting question because  
8 I hadn't -- when one undertakes to write a rule, there are  
9 many consequences of the language that are adopted, and it's  
10 not possible to think of all of them, and this is one I did  
11 not think of.

12 Q. Okay.

13 A. Because we have adopted by rule a provision that you  
14 have to have the consent of all working interest owners, and  
15 in the hypothetical you've presented, the party desiring to  
16 drill a vertical well, an additional vertical well on A under  
17 the terms of the operating agreement, they would only have to  
18 have the consent of the other working interest owners in Unit

19 A. But the way the rule is written, I can see, quite  
20 arguably -- and I don't have that particular proposed  
21 language in front of me, but it would seem arguable that  
22 parties wishing to drill another vertical well in A would  
23 have to have the consent of all working interest owners in  
24 the project area. If you wish me to look at the specific  
25 language and tell you what I think it means, I will do so.

1 Q. Yeah. Why don't we do that. I'm not familiar with  
2 the section site.

3 A. I'm not that familiar with it I can find it  
4 instantly. It's in 19.16.15, I'm sure. I believe that the  
5 language is ambiguous on that point.

6 Q. Now, if it was required to get the working interest  
7 owners of the project area's consent, and the JOA folks were  
8 denied a subsequent vertical well --

9 A. Right.

10 Q. -- would not their correlative rights be interfered  
11 with?

12 A. Well, they might be. Of course, there is another  
13 remedy available to them because they will -- the rule  
14 provision also says, with the permission -- or by order of  
15 the Commission or Division, so they could apply to the  
16 Division for permission to drill.

17 Q. Okay. But at the same time, they still have to come  
18 here to do something they had a right to do before?

19 A. That's correct.

20 MR. FORT: Just one moment.

21 (Pause.)

22 Q. Under the current rules that we currently have that  
23 if we again go back to my example of the four 40-acre tracts,  
24 A, B, C, and D, that A can be force pooled as a result of a  
25 filing of an application by the interest owner in D for

1 creating a project area of A, B, C, and D?

2 MS. GERHOLT: Excuse me. Which current rule are you  
3 referring to?

4 MR. FORT: The current rule that applies today.

5 MS. GERHOLT: The permitting rule or compulsory  
6 pooling rule.

7 MR. FORT: I believe, the compulsory pooling rule.

8 A. I don't think I can answer that question because the  
9 rules, both the present rule and the proposed rule, do not  
10 address in what situation a project area can be compulsory  
11 pooled.

12 Q. Okay. But that was what was done with Mr. Scott?

13 A. Yes. That has been done in a number of cases.

14 Q. Okay.

15 A. But it's not -- it is current practice, but there is  
16 nothing in the rule that purports to either authorize or  
17 prohibit that -- that practice.

18 Q. Okay. Fine. Thank you.

19 MR. FORT: I have no further questions.

20 MADAM CHAIR: Any other questions?

21 (No response.)

22 MADAM CHAIR: Commissioner Dawson?

23 EXAMINATION

24 BY COMMISSIONER DAWSON:

25 COMMISSIONER DAWSON: On your Slide 3, can you turn

1 to Slide 3? I suppose the project you are referring to  
2 C-102, that also requires two APDs for two separate APDs for  
3 that or to get those approved?

4 MR. BROOKS: Madam Chairman, Commissioner Dawson,  
5 that's not my understanding. I would think it requires one  
6 APD with two C-102s attached.

7 COMMISSIONER DAWSON: The reason I asked is I  
8 noticed on the west side, those two, I guess those are  
9 tracts, two 40-acre tracts? Is that what those are?

10 MR. BROOKS: Each of the rectangles is a 40-acre  
11 tract. They should be square, but I didn't draw them quite  
12 square.

13 COMMISSIONER DAWSON: I was a little confused on the  
14 diagram where the wellbores were, and while that would be  
15 considered a project area, there is no wellbore within that  
16 project area.

17 MR. BROOKS: Yeah, this is the wellbore.

18 COMMISSIONER DAWSON: Yeah, but there is no wellbore  
19 on the western part of that?

20 MR. BROOKS: Madam Chairman, Commissioner Dawson,  
21 that's correct.

22 COMMISSIONER DAWSON: So would that C-102, that  
23 wouldn't be approved, would it, if it was presented like  
24 that?

25 MR. BROOKS: Madam Chair, Commissioner Dawson, my

1 understanding and belief is that it would be, and, in fact,  
2 this is a C-102 for an APD that was approved.

3 COMMISSIONER DAWSON: I just thought maybe they  
4 needed the wellbore depicting -- to traverse those two tracts  
5 to be approved.

6 MR. BROOKS: Madam Chair, Commissioner Dawson, my  
7 understanding is that the rule allows an operator to include  
8 spacing units in the project area that the wellbore does not  
9 penetrate. It allows it by default because it doesn't  
10 prohibit it in the sense there is nothing in the rule that  
11 I'm aware of that says. However, I think it's pretty clear  
12 that the rule, as the present rule, not the proposed, but the  
13 present rule was intended to allow some, at least some  
14 spacing units that the wellbore did not penetrate to be  
15 included in the project area. The reason I say that is  
16 because of the proration provision which refers to spacing  
17 units, quote, traversed or developed.

18 Now, I would be interested to hear the argument by  
19 which they would say these spacing units are developed by  
20 this well. However, this is just a matter of trying to  
21 construe what the rule was intended to say.

22 COMMISSIONER DAWSON: That's all the questions I  
23 have. Thanks.

24 MR. BROOKS: Thank you, sir.

25 MADAM CHAIR: Commissioner Balch?



1 EXAMINATION

2 BY COMMISSIONER BALCH:

3 COMMISSIONER BALCH: I have a question. As a  
4 hearing examiner, what would be the impact of not  
5 specifically addressing compulsory pooling in Subsection  
6 16.15F in the horizontal rule, or would there be any impact?  
7 Would it default to that anyway?

8 MR. BROOKS: Madam Chair, Commissioner Balch, I'm  
9 not entirely sure what your question is. I do think it is a  
10 serious problem for the Division that we do not address in  
11 what circumstances we can compulsory pool project areas  
12 because we had so many applications for that. However, I do  
13 not frankly see how we can address it in view of the  
14 uncertainty in how the statute should be interpreted and how  
15 we can address it otherwise and as best we can on a  
16 case-by-case basis because any rule we might adopt is  
17 vulnerable to the possibility of being challenged in court  
18 unless and until our statutory authority is clarified.

19 COMMISSIONER BALCH: That addresses my concern.  
20 Thank you.

21 EXAMINATION

22 BY MADAM CHAIR:

23 MADAM CHAIR: I'm concerned about project areas  
24 masquerading as exploratory units. As Commissioner Dawson  
25 asked, the dedication -- acreage dedication plat of the C-102

1 is confined to acreage dedicated to one well. The OCD may  
2 not have a definition about exploratory unit, but it deals  
3 with exploratory units on a very regular basis and does not  
4 create conflict with definitions of exploratory units that  
5 are put out by BLM or the state land office.

6 MR. BROOKS: Okay. Madam Chairman, I'm trying to  
7 figure out exactly how to respond because I'm trying to  
8 figure out exactly what you are asking me. The BLM, of  
9 course, has regulations that prescribe the creation of  
10 federal exploratory units. The state land office also, I  
11 assume, has regulations, though I haven't specifically read  
12 them, on that subject. We, as the OCD, approved status  
13 exploratory units. In practice our approval has been  
14 entirely perfunctory, and we have relied upon the state land  
15 office to approve those -- to give their preliminary  
16 approval, which then, if it's given, in the absence of  
17 opposition, which is almost a given because really no notice  
18 is required to anybody who might oppose, we also approve.

19 On private lands in New Mexico, I believe that  
20 exploratory unitization would be entirely a matter of  
21 contract. I can see that if a person is putting together a  
22 unit for the purpose of drilling a program of horizontal  
23 wells within a pool, that that would be within the terms and  
24 meaning that -- that the phrase as used in oil and gas law an  
25 exercise of exploratory unitization, and if it involved

1 federal or state lands, then there would be a procedure that  
2 they would be required by the state or the United States as  
3 proprietor to follow, which would be separate from and in  
4 addition to whatever procedure they would be required by the  
5 state of New Mexico as sovereign represented by the OCD to  
6 follow.

7 If they are laying out an area to drill a single  
8 horizontal well, then I would think that the definition of  
9 that unit, that whatever kind of unit they would need to  
10 dedicate to that well and how it was to be configured would  
11 be an appropriate matter for the OCD to prescribe rules on  
12 under its power to prescribe the spacing of wells and to  
13 create spacing and proration units. I do not know if that  
14 answers your question.

15 MADAM CHAIR: It does, in quite a few ways.  
16 Although I notice that on orders that are issued by the OCD  
17 concerning approvals of exploratory units, a finding is made  
18 that all of the proposed unit acreage appears to be  
19 prospective for recovery of gas or oil from the target  
20 formation under the concept proposed by the applicant.

21 MR. BROOKS: I am familiar with that fact.

22 MADAM CHAIR: You should be. Which explains in some  
23 ways that a state exploratory unit must be justified as being  
24 prospective for production.

25 MR. BROOKS: Correct.

1 MADAM CHAIR: Where a project area does not even  
2 have that requirement.

3 MR. BROOKS: And that is true, and, yeah. Well, you  
4 haven't asked me a question. It does not have that  
5 requirement, that's correct.

6 MADAM CHAIR: But you agree with that?

7 MR. BROOKS: I agree that it does not have that  
8 requirement under the existing or the proposed rules.

9 MADAM CHAIR: And with no limitation on the size of  
10 a project area by an operator who may or may not have any  
11 rights within all -- all quarter-quarters or subdivisions  
12 within that project area, what's to prevent Lynx from  
13 designating on his C-102 a project area that covers 15,000  
14 acres for one horizontal well?

15 MR. BROOKS: I believe nothing is except the  
16 consolidation requirement that we propose in 16.15H because  
17 he is going to have to consolidate ownership before he can  
18 produce that well, so he's got to either get all of those  
19 15,000 acres to be consolidated by voluntary agreement of the  
20 owners, or else he's got to convince the Division for some  
21 reason that a 15,000-acre unit is an appropriate non-standard  
22 spacing unit to create for that well.

23 MADAM CHAIR: So under H, the operator of a  
24 horizontal well has to get signed off by one owner of any  
25 interest, but does that apply to the project area, or does

1 that apply simply to the well acreage --

2 MR. BROOKS: 16.

3 MADAM CHAIR: -- under that proration unit?

4 MR. BROOKS: I'm sorry. I'm sorry I interrupted  
5 you.

6 MADAM CHAIR: That's all right.

7 MR. BROOKS: Madam Chair, 16.15A applies only to the  
8 spacing units penetrated and poses a requirement that must be  
9 met before drilling. 16.15H applies to the entire spacing  
10 unit -- I'm sorry -- to the entire project area and imposes a  
11 requirement that must be met before producing from the well.  
12 Section 16.15A only requires one owner per tract. Section  
13 16.15H requires consolidation of the entire working interest  
14 ownership.

15 MADAM CHAIR: Of the entire project area?

16 MR. BROOKS: Correct.

17 MADAM CHAIR: That clarifies quite a bit. Thank you  
18 very much. I have no other questions. Is there redirect?

19 REDIRECT EXAMINATION

20 BY MS. GERHOLT:

21 Q. Mr. Brooks, there has been a lot of discussion of  
22 compulsory pooling today.

23 A. Yes, ma'am.

24 Q. And drawing your attention back to 19.15.16.15F as  
25 in Frank --

1 A. Yes, ma'am.

2 Q. -- was that proposed because the current procedural  
3 rule that the New Mexico Oil Conservation Division has is  
4 19.15.13?

5 A. Well, the current -- 19.15.13 is the current  
6 compulsory pooling rule that the Division has and only  
7 provision the Division has in that rule with regard to  
8 compulsory pooling.

9 Q. Okay. And this isn't -- this new provision, 16.15F,  
10 is not stating that in fact the Oil Conservation Division in  
11 every instance would compulsory pool the project area?

12 A. Well, I don't understand it that way. Now, that --  
13 I have a little bit of a disagreement with Mr. Carr about  
14 the -- who was supporting me on these rules -- about the  
15 construction of the compulsory pooling statute because he  
16 has -- he has urged me several times and read to me from the  
17 statute the provision that says, if A, B, C, the Commission  
18 shall pool. And I grant that that provision is in the  
19 statute, and Mr. Carr has already whipped me once with the  
20 mandatory nature of shall in the statutes, however, I would  
21 point out that there is also another case which says that the  
22 Commission not only is not required to, but cannot compulsory  
23 pool any area unless it finds that doing so will prevent  
24 waste and protect correlative rights, so I believe there is  
25 some discretion for the Commission.

1 Q. So what would be -- what is most important is that  
2 the Division Examiner or the Commission would have to find  
3 that it was preventing waste and protecting correlative  
4 rights?

5 A. I believe that it must find that, and if it goes to  
6 the Commission and the Commission makes an order and they do  
7 not so find, then the compulsory pooling order is invalid.

8 MS. GERHOLT: I have no further questions.

9 MADAM CHAIR: The witness may be excused.

10 MR. BROOKS: I suspect Mr. Carr, after that tirade,  
11 has some questions.

12 MR. CARR: Do you mind if I just ask a couple of  
13 questions? They are just the -- have to do with a couple of  
14 statements Mr. Brooks just made.

15 MADAM CHAIR: Go ahead.

16 CROSS-EXAMINATION

17 BY MR. CARR:

18 Q. Could you give me the cite of the case that you  
19 cited that said you don't have to --

20 A. I do not have it here, sir, but I will be happy to  
21 e-mail it to you when I get back upstairs.

22 Q. Is it a New Mexico case?

23 A. It is, sir.

24 Q. You indicated that when the Division didn't find  
25 that their order prevented waste and protect correlative

1 rights, it should be set aside?

2 A. That's what I said, sir.

3 Q. Would that apply to orders of the Commission as  
4 well?

5 A. Well, I specified in a compulsory order of the  
6 Commission.

7 Q. Would it apply to other orders of the Commission?

8 A. I think, Mr. Carr, you are asking me to comment on a  
9 pending case in which you are counsel, and I believe that  
10 would be inappropriate.

11 Q. So be it. But I would like the transcript.

12 MADAM CHAIR: You may be excused.

13 MR. BROOKS: Thank you, Madam Chair.

14 MADAM CHAIR: Ms. Gerholt, do you have any further  
15 witnesses?

16 MS. GERHOLT: Yes, Your Honor, the Division would  
17 now call Richard Ezeanyim back to the stand.

18 RICHARD EZEANYIM

19 (Previously sworn, testified as follows:)

20 REDIRECT EXAMINATION

21 BY MS. GERHOLT:

22 Q. Good afternoon.

23 A. Good afternoon.

24 Q. Would you please tell the Commission what a  
25 horizontal well is?



1           A.    By definition, but before I begin, I wanted to  
2   clarify for the operators, during Mr. Brooks' testimony, we  
3   are clear on allowables, we do not allow operators who exceed  
4   the allowables to continue business. That's principally my  
5   job. How do we protect correlative rights if you are  
6   continuously oil producing? So we do not. And I hope you  
7   have not corrupt -- So I want to make sure that nobody here  
8   corrupt here. My job is to make sure all that --

9           Q.    Well, thank you for that cautionary statement.  
10   Would you please tell us what a horizontal well is?

11          A.    Yeah. We have to start with the definition of a  
12   horizontal well, and that way we will begin to imagine in  
13   what we say later how it applies to what I'm going to say in  
14   my testimony.

15                A horizontal well is a directional well. They may  
16   have two or more laterals as long as it extends 100 feet into  
17   the formation. I'm taking my time to explain this because  
18   I'm going to invoke this in some of my testimony here. So as  
19   long as it extends 100 feet into the target zone and has  
20   laterals, that is a horizontal well.

21                A horizontal well that has multiple laterals from  
22   one wellbore is defined as one well, and that's why I have  
23   that underlined. We tell you why I underline that when we go  
24   forward with our presentation today, but that is the  
25   definition of a horizontal well.

1 Q. Okay. What are the advantages of horizontal wells?

2 A. Well, I mean, multiple advantages, but there are  
3 several of them that we have that I think most people here,  
4 you know, look and look at the advantages, and one of them is  
5 that they're used in a naturally fractured reservoir, you  
6 should have one, to intersect those fractures and then drain  
7 the reservoir. That's a very good view point.

8 Okay. The multiple laterals they are talking about,  
9 I'm going to show you examples, they drain different pools,  
10 what we call sources of supply. It is used in the drainage  
11 of thin oil-rim reservoirs that a vertical well would not  
12 really do anything. So if you can position your horizontal  
13 well through a very thin oily reservoir, you can drain that  
14 through a horizontal well. And you can also drain a deep  
15 shale reservoir with horizontal wells. I think that was  
16 mentioned.

17 Okay. This is interesting. We can use horizontal  
18 wells to recover hydrocarbons under buildings. You know, we  
19 might be here -- you go to a hearing and somebody is drilling  
20 two miles below and recovering hydrocarbons. That's  
21 interesting. Under roads, highways, hospitals, airports,  
22 cities. So you put your wellbore somewhere else and drain  
23 under the obstructions, surface obstructions. That is why  
24 you use horizontal wells.

25 It reduces surface impacts, that's what I'm saying,

1 and therefore it is environmentally friendly. You know, I'm  
2 going to show you examples. It preserves endangered species  
3 habitats. We have a lot of Sand Dune Lizards and the Lesser  
4 Prairie Chickens. So we can allow this drilling while we are  
5 getting some hydrocarbons from them.

6 And technically horizontal wells can produce  
7 anywhere from 15 to 20 times as much as one vertical well.  
8 And an important idea that I think I use them -- enhanced oil  
9 recovery method, not porous -- what I mean by enhanced  
10 recovery by fragmentation is that you can recover more of the  
11 original oil in place with horizontal wells than vertical  
12 wells.

13 There are just -- there is a number of advantages  
14 for having horizontal wells, and if you have the advantages  
15 in our mind, then we can begin to understand why we need  
16 this.

17 Now why don't we go to the disadvantages of  
18 horizontal wells. I just said two, I think. You can drain  
19 only one pay zone at a time. Well, if I have two pay zones,  
20 I drill two laterals. So that's not really, you know, a  
21 disadvantage. I just need to drill two laterals.

22 Now, of course, we know it costs more to drill a  
23 horizontal well than vertical well, but I think in the 80s or  
24 90s, the cost was as much as six to one. Now, you have gone  
25 down to three -- two to three times as one compared to a

1 vertical well. But more recent we find out that it's not  
2 going to be much different from draining a vertical well,  
3 maybe 1.5. I'm expecting that to happen in the near future  
4 so that the cost issue is not really going to be a problem  
5 here. So if I look at all the disadvantages, they are not  
6 really disadvantages. I also have some simplified examples  
7 of it to demonstrate the way I'm seeing most of them, the way  
8 they're constructed.

9 On this slide you can see -- this is not drawn to  
10 any scale -- I mentioned before the disadvantages that -- of  
11 the area because you come in and you are draining from  
12 somewhere else and drilling one mile underneath, this is just  
13 to indicate why, you know, horizontal wells are very  
14 important, especially in this case.

15 Okay. Here this one I'm talking about, you see the  
16 oil field over here, this is the oil field we are talking  
17 about. I can align this horizontal well east and west, and  
18 dig the well. But if I need to do that, I might drill a lot  
19 of vertical wells to be able to drain that area. So this  
20 will allow horizontal use for draining that.

21 And this is a simplified -- or say you can drill  
22 laterals, these are laterals might be in different pools.  
23 They might be in different zones. Remember we said we can be  
24 in different pools. You see this -- this is -- this is a  
25 dual lateral. You can drill in any formation you want and

1 then try to strike all the target zones.

2 But if I want to drill with a vertical well, I'm  
3 going to have to drill a lot of them to do it exactly what  
4 these two laterals is going to do. This is to indicate those  
5 two laterals, we drain maybe, you know, ten --

6 Okay. This is just to show that you can have them,  
7 the laterals drilled in different directions. And the same  
8 thing that I mentioned before. And then this is a triple  
9 lateral, you know, a triple lateral. It depends on what the  
10 operator wants to do. I know that they do everything.

11 Q. Mr. Ezeanyim, what is a completed interval and why  
12 is it important?

13 A. I think that's a very good question. We can talk  
14 about completed interval. As you can see, it is new term  
15 that replaced the producing interval. And I'm proud of the  
16 committee for coming up with this term and how you can use it  
17 to protect correlative rights. It helped me a lot in my job  
18 in reducing a lot of NSL applications.

19 But, of course, defining completed interval, it  
20 means that portion of a wellbore or lateral that is, one,  
21 cased, cemented and perforated. I'm showing that in the  
22 demonstration again. I'm going to show that as we go  
23 further. It's an open hole. It's a completed interval.  
24 It's isolated by a packer or other non-permeable means.

25 In view of this concept, why is it important to have

1 completed interval? The committee designed this first to  
2 principally to protect correlative rights. Because as you  
3 are going to see before, I think we are moving to that, is  
4 for this interval, if this is a completed interval, this  
5 completed interval would apply to all laterals, two, three,  
6 four laterals, all would apply.

7 It allows the operator to design and plan their  
8 horizontal wells. If you remember Mr. McQueen, they were  
9 talking about using the curve, so if you have this completed  
10 interval, that's how you do your curve to hit your target.

11 So with the current rule, and they will do that  
12 because we will -- that would help me reduce the number of  
13 NSL applications. And we are going to see that as we go  
14 through some of the diagrams that demonstrate what completed  
15 intervals are.

16 This is close to what you are seeing. Here what we  
17 are trying to see is the first one is cased, cemented and  
18 perforated. Here I want to point out the spacing, the  
19 spacing boundary, and then we have our setbacks. Okay. I  
20 use here the target zone -- it might be a -- but a target  
21 zone, which isn't that hard. We are putting it in the target  
22 zone, and I want to demonstrate my completed interval. Under  
23 this scenario presented here, when the -- the way it's cased,  
24 I cemented to the setback here. The completed interval must  
25 lie within the setback. You are talking about all setbacks

1 330, we have got setback 660.

2 As long as we can go do a setback, you are -- if any  
3 of those perforations outside the setback because of how you  
4 design your well, then you might be looking for no  
5 correlative rights there. So this is for the case of a well  
6 that is cased or cemented.

7 Now, for the case that is cemented -- I mean this  
8 case was not cemented. I know you described about it in the  
9 morning. You can see the completed interval is isolated by a  
10 packer. So as long as there is a packer on my left side for  
11 the operator for drilling unit which is outside the setback,  
12 and that the packer on the right to protect the other  
13 operator from draining or -- from draining the other  
14 operator, I use within these packers for that location. But  
15 if you don't have any of the -- if you have any of the  
16 perforations outside the packer, again that would be another  
17 case because your casing is not cemented, and it's supposed  
18 to -- if the case is not cemented, nothing is preventing you  
19 from draining somebody over here if you have your perforation  
20 over here like we currently have in our rule.

21 So that's why this completed interval is very  
22 important in protecting correlative rights. And what I'm  
23 talking about, it's all the way around for gas, specifically,  
24 for oil it's better.

25 Let's say that an operator wanted to drill a

1 horizontal well in one location, wants to drill open hole  
2 completion. You drill a pad and then come up and complete  
3 it. Because you have -- and you don't want to spend money on  
4 your -- you want your well to produce to continue.

5 You have to start from the boundary of your  
6 setbacks. That's a completed interval right here. There are  
7 no perforations. So -- and once you are -- this is a  
8 completed interval. Anything from -- you start from this,  
9 now you've got that, because I know operators can drill wells  
10 and produce through open hole, you know, and that's one  
11 indication of the completed interval is an open hole. That's  
12 an open hole.

13 Let's go to this -- this is a cartoon that was drawn  
14 by Mr. Brooks, and he talked about it, but I think I am going  
15 to demonstrate what it is. What I'm trying to point out here  
16 that Brooks didn't, this is where the curve -- now, under the  
17 current rule, whether you fit here or not, and this is your  
18 producing interval, you have to come in for non-standard  
19 application. But now, with the proposed rule, I have a  
20 casing here as we defined by completed interval, then your  
21 casing here, your completed interval starts from the  
22 beginning of casing to the end of the setback here, somewhere  
23 here in the terminus.

24 So in that case, this is where -- if we -- if we  
25 adopt this rule, which we are asking the Commission to do,



1 they won't have to -- it doesn't need any -- what we do, if  
2 the rule is adopted, they won't have to get notice of  
3 application and because the producing interval is the behind  
4 the setback.

5 This is one of the most important aspect of the  
6 rules is the completed interval. And why is that? Because I  
7 am adamant in trying to protect correlative rights. We want  
8 to protect correlative rights. We want to talk about  
9 correlative rights. My job here as mandated by the oil and  
10 gas industry to protect correlative rights and prevent waste,  
11 so we have to comport.

12 I told you in the morning that before we started  
13 developing these rules, that's we have at the back of our  
14 minds, is to prevent waste, protect correlative rights, and  
15 allow these operators to exploit their minerals, and I think  
16 with this rule we are able to do both.

17 Q. Mr. Ezeanyim, do the current limitations on the  
18 number of wells producing within a spacing unit apply to  
19 horizontal wells?

20 A. No.

21 Q. Why not?

22 A. That's a good question. If we look at the exhibit  
23 that was generated -- I am very proud of this Commission --  
24 this is one of the most important provisions. It took almost  
25 a month, almost a month and a half to get to come up with

1 this language or to be able to reach a consensus.

2 So without reading, what this provision says, it's  
3 saying that this rule will not apply to horizontal wells, and  
4 -- you know, rules. And we started working on it. And after  
5 I had some idea of my own I shared with everybody, I came to  
6 the conclusion that the best language we have in this rule,  
7 we are not going to impose any limitations on the horizontal  
8 wells.

9 I told you before that a working well may produce 15  
10 to 20 times as compared to the vertical well. At the  
11 beginning we say that one vertical well or 15 vertical wells,  
12 and these are completions, what are we going to say, each  
13 stage of completion, is that a vertical well?

14 So as far as horizontal wells are concerned, whether  
15 it's inappropriate, and I will tell you why we can ensure  
16 this, because, we put in a well, and these are horizontal  
17 wells. Now, maybe you have to -- maybe you have to hire two  
18 or three more to come in here, to come in here to grant  
19 simultaneous dedication. You come to work and use that time  
20 most efficient, because I think 99 percent of the time we  
21 approve them.

22 So why are we doing then imposing limitations of  
23 such a rule and then granting -- and the operator, and you  
24 operators have to come here, go to hearing, and then get this  
25 approved. And you have to hire 10 more people, 20 more

1 people to get this approved, and I want to show you why it's  
2 inappropriate for horizontal wells.

3 And now, before I get out of this, I know David  
4 mentioned -- I want to mention rule, and he said, horizontal  
5 wells, this applies. If you have a pool order that is in  
6 effect, and if you can give this rule, it also applies to the  
7 rule order. So I want be able to be, you know, to understand  
8 this. I'm really talking about what happened with these,  
9 some of these things, and that would be my next slide.

10 So we look at the horizontal wells. Let's take it  
11 one by one. Limits to the number of wells per spacing unit,  
12 they are not appropriate for horizontal wells for a number of  
13 reasons that I have been talking about.

14 A horizontal well can have multiple laterals in any  
15 direction. A horizontal well, we already defined it. The  
16 lateral can be drilled into the different sources of supply.  
17 The laterals may have several stages of completion. Take  
18 those four bullets, how many wells are there. How many wells  
19 are there? When I say well, you know, horizontal wells have  
20 multiple laterals, they have different sources of supply.  
21 They have different stages of completion. It is hard for me  
22 to call it -- even though we say it's a horizontal well, but  
23 it's hard for me to call it one well, so I don't want to use  
24 the word one, I want to use the word horizontal well.

25 Okay. Now, a horizontal well will drain -- that

1 bullet says, "A horizontal well has as much potential to  
2 drain an offset acreage as many vertical wells." That is  
3 true. If you drill many vertical wells, and you drill a  
4 horizontal well, all of them have the same setback  
5 requirements that are no different. So you say, a horizontal  
6 well will drain -- a vertical well will also drain if you  
7 drill a lot of them.

8 We talk about production factor of a horizontal  
9 wells can be enhanced as much 15 to 20 times or even more  
10 compared to a vertical well. And horizontal wells are very  
11 different technology, performance and cost. Well, of course.  
12 They are all different. So we can't put a vertical well with  
13 a horizontal well.

14 And I think operators in this room will not  
15 necessarily to out and drill a vertical well if it's not  
16 going to be economic. I really believe it. I would say 95  
17 percent of the time. Let's say you want to spend 10 million  
18 to drill the laterals, and you're not even going to break  
19 even. I don't see how you go about drilling that well  
20 because you think somebody is going to break even.

21 Due process will be applied. And my last bullet  
22 there. You come in to this hearing, you come in to the  
23 Division and tell all the committees -- well, let me question  
24 before I develop from there.

25 I have gotten any complaints from operators saying

1 that somebody is draining me because of setback requirements,  
2 because I did setback requirements, I did it early on in the  
3 provision, I did all of this before. When I came in I was  
4 trying to modify, and some of you knew this rule in effect  
5 since 1945, so 50 years, I haven't gotten any complaints  
6 about somebody coming to see what I could do because somebody  
7 is draining me because of these setback requirements that  
8 don't work. I think they have been working for 76 years, and  
9 I promise you that, I do that.

10 Q. Would you please explain for the Commission how  
11 waste is prevented and correlative rights protected if these  
12 amendments are adopted?

13 A. That's the crux of the whole rule. The process  
14 allows operators to explore their minerals. I talked about  
15 the setback requirements. Setback requirements have been in  
16 place for 76 years, and have recommended -- unless anybody  
17 complain right now.

18 We -- we have developed this completed interval that  
19 we come up with that. That will go a long way to protect  
20 correlative rights. In addition, it's going to go a long way  
21 in allowing operators to design their technology to design  
22 their horizontal wells. In addition, it's going to allow me  
23 not to have to use the non-standard application. Because  
24 every time we get this, I mean, you guys apply for them, and  
25 we approve them.

1           Now, let's go back to our allowable and how it gets  
2   into preventing waste. And that -- that comment I made  
3   before, we want to enforce oil allowable. We want to enforce  
4   gas-oil ratio limitations. I take them by the bullhorn, if  
5   anybody is rough with this now, I will mess you up. But I  
6   end up with this now, I have done that a long time. So we  
7   don't want any operator to operate over the allowable or  
8   operator that -- please come to OCD and ask for an increase.  
9   If geology in that and everybody -- everything is right it  
10  allows you to do that.

11           But going back to allowable and how it is going to  
12  prevent waste and protect correlative rights and gas-oil  
13  ratio, you see, it depends on very different -- is depends on  
14  what is looked at. Is there a whole plan in there. Do we  
15  have to show you that? Do we show you that draft, do you  
16  have gas car, do you have black hole, no -- you have -- so  
17  you depend on it to be able to develop the allowable that way  
18  you properly use it to control the production of that.

19           Everyone will get their piece of the pie. And  
20  that's why whenever I said about the interval and make sure  
21  that the -- make sure that every party get their share. I  
22  think that's what the legislature is asking us to do, and we  
23  are trying to carry it on.

24           You cannot produce one day allowable, you cannot  
25  produce one day -- that is very, very important, and that is

1 based on engineering determination. If the oil price today  
2 is \$100 a barrel, you still -- that will still apply. If  
3 it's \$10 a barrel, that still applies because it's based on  
4 engineer. That's not subjective.

5 Now, why don't we go to gas reservoirs, I would like  
6 to talk about gas reservoirs. Gas reservoirs, they are not  
7 affected by accelerated production, and that is done in the  
8 minds of -- and let me go back and talk about how gas  
9 reservoirs have been prorated.

10 When I came in 2002 I studied gas exploration in New  
11 Mexico and I discovered that all are marginal units. Some of  
12 them are not marginal, but -- the process of determining the  
13 provision is too subjective. We call them the examination,  
14 what is the gas price, and what is then subjective, even if  
15 I'm selling gas at \$150, I might come back and say I really  
16 need to -- if I can convince the Commission, I get to put it  
17 in that unit.

18 And that's why that note is getting in there, to --  
19 because it's not based on any engineering. It's based  
20 subjectively on what the size that the Division or on the  
21 status, and then the Commission then appoints what is, you  
22 know, allowable. Since I'm here ten and a half years, it  
23 hasn't been done.

24 So as we know now that those gas units are marginal,  
25 and there is no -- if there is no gas reservoirs are not --

1 then if you apply the concept of setbacks -- drill one well,  
2 drill 100 wells, we see that happening already, and that is  
3 what we are trying to do, what we are trying to do here is  
4 make sure that it's never --

5 What I won't allow to have is if some of them is  
6 left uncollected, it's a finite commodity. Once it's gone,  
7 it's gone. So we get as much as we can. So we do this in  
8 the area of completion, in that gas reservoir, I have one  
9 well, two wells, three wells, 100 wells, I can still produce  
10 my estimated ultimate recovery from that gas reservoir.

11 Well, okay. I say already, we got the gas price is  
12 high, you know, and then I said, well, it's okay. I know  
13 that I'm not getting anything down there, and the average in  
14 the market, it's a lot of gas. I haven't seen any -- no  
15 money because what they have been doing has been subjective,  
16 fixed in some number. I hate subjective things.

17 So in that case I'm trying to lay the groundwork  
18 here to tell you why we have done these things. So as long  
19 as we have our ultimate recovery which could be handled by  
20 allowables, if you have the ambition to protect gas-oil ratio  
21 units, setback requirements, because everybody agrees that  
22 would prevent waste and protect correlative rights.

23 And if we have that setback, and most of the units  
24 are marginal, and I don't see any -- we can produce the  
25 ultimate recovery in that reservoir. But if you -- you



1 produce it for one month or two months or something, that's  
2 it, that's not correlative.

3 So I want to make it clear to the Commission that  
4 this has been one of the most contentious provisions in the  
5 rules. I know that because we already knew, that we have  
6 talked about it and not allowing, and well, this is most  
7 contentious. Maybe the people in this room who have changed  
8 their mind, but I'm not going to be changing my mind. I'm  
9 not going to be changing my mind. I still believe no  
10 limitation on the horizontal wells, as far as I'm concerned,  
11 is the way to go.

12 I will do that if you want me to demonstrate that.  
13 Of course, I'm not perfect. If anything happens, I have to  
14 change it, well, we say I'm not perfect. What I'm trying to  
15 say that, we are not supposed to have this as far as this is  
16 concerned. I'm trying to hang on just because of work I get  
17 from everybody, even from my own folks, from everybody that  
18 said, well, allowing these people to drill without limitation  
19 will destroy, and it's not going to. It's not going to. I  
20 want to make it clear, it's not going to happen. It's going  
21 to prevent waste and protect correlative rights and process  
22 the way they want to using the very, very advanced  
23 technology.

24 Q. Mr. Ezeanyim, was this Powerpoint created by you and  
25 under your direction?

1 A. Yes, I did the Powerpoint.

2 MS. GERHOLT: Madam Chair, OCD would move Exhibit  
3 13.

4 MADAM CHAIR: Any objections?

5 (No objection.)

6 MADAM CHAIR: So admitted.

7 (Exhibit OCD 13 admitted.)

8 MS. GERHOLT: I have no further questions for this  
9 witness.

10 MADAM CHAIR: Do you have questions of this witness?

11 MR. CARR: No, I do not.

12 MS. MUNDS-DRY: I have no questions for Mr.  
13 Ezeanyim.

14 MR. FORT: I don't have any questions, either.

15 COMMISSIONER DAWSON: I have no questions.

16 COMMISSIONER BALCH: I also have no questions.

17 MADAM CHAIR: I do.

18 MR. EZEANYIM: I knew you would, Madam. I knew you  
19 would.

20 EXAMINATION

21 BY MADAM CHAIR:

22 MADAM CHAIR: I would just like to be sure that I  
23 truly understand that there is no notice required for a  
24 project area, that a project area bears no relationship to a  
25 proration unit or acreage that contributes to production from

1 the well..

2 MR. EZEANYIM: Yeah.

3 MADAM CHAIR: That there are no limits on the size  
4 of the project areas?

5 MR. EZEANYIM: Uh-huh.

6 MADAM CHAIR: That there are no criteria for  
7 approval or denial of non-standard project areas?

8 MR. EZEANYIM: Uh-huh.

9 MADAM CHAIR: There has always been the question on  
10 reservoir damage for producing too much too fast.

11 MR. EZEANYIM: Yes.

12 MADAM CHAIR: Would you slowly explain to me why  
13 there would not be reservoir damage with an unlimited number  
14 of wells producing?

15 MR. EZEANYIM: Okay. That's a good question. I  
16 tell you -- I tell you that that was very contentious. And  
17 in New Mexico we have, most of the pools we have that are  
18 actually not that good, and most of those have very, very low  
19 permeability and low porosity.

20 So if there -- given that these are gas well from  
21 the initial -- I mean, primary and then we have gas carbs.  
22 Now, we do allowables, especially in the case that was  
23 issued, some of these, we have some conflict in that it  
24 doesn't really matter. The rate of production doesn't really  
25 matter.

1           But the production skills that you might employ that  
2   might decrease, for example, in the situation where they have  
3   very low porosity and low permeability, if you produce at a  
4   low rate, you allow gas to come out. I don't want to get  
5   gas, and that gas will -- because really, we don't want gas  
6   in the oil. What I want to employ is to employ a production  
7   scheme that will give me more oil than gas.

8           So that's what I want to do, and that's why we are  
9   here. It's a good question. But if it's -- if it's seen  
10  from that that has gas carbs, then the rate of production  
11  will matter. In that case, we are not going to increase your  
12  rate of production. You are going to have to produce your  
13  allowable, and those allowables, I have told you that I have  
14  looked at, as long as you produce the unit at that allowable,  
15  and that's why I made the comment initially when I was asked  
16  a question, I said, I hope nobody is -- because I don't want  
17  your -- your consent to be -- to be, you know, we are friends  
18  here, but if you are overproducing, and they are not supposed  
19  to, and they are drawing that well down very fast, well, we  
20  are going to lose the ultimate recovery and OCD will not  
21  stand by and allow you to do that.

22           MADAM CHAIR: That's all my questions. Do you have  
23  redirect on those two questions?

24           MS. GERHOLT: No, Madam Chair, I do not.

25           MADAM CHAIR: Then this witness may be excused.

1 MS. GERHOLT: Thank you. The OCD has no further  
2 witnesses.

3 MADAM CHAIR: Mr. Carr, do you have witnesses?

4 MR. CARR: May it please the Commission, we have two  
5 additional witnesses. The next witness NMOGA would like to  
6 present will be presented by Carol Leach, and it's -- and  
7 then the second, the next witness will be presented by Mr.  
8 Feldewert.

9 (Witness sworn.)

10 JAN PRESTON SPRADLIN

11 (Sworn, testified as follows:)

12 DIRECT EXAMINATION

13 BY MS. LEACH:

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

15 A. My name is Jan Preston Spradlin.

16 Q. And where do you work?

17 A. I work for Concho Resources Inc., also known as COG  
18 Operating LLC.

19 Q. And how long have you done that?

20 A. I have been there -- will be seven years in  
21 January.

22 Q. And what do you do for them?

23 A. I'm a senior landman.

24 Q. What does that mean?

25 A. I do all their oil contracts. I work in the New

1 Mexico asset team. I put well projects together, make sure  
2 they're drillable, make sure that we're in line with the  
3 state rules and regulations.

4 Q. You have other experience in working as a landman  
5 before Concho?

6 A. Yes. I worked 18 years for a company called Maralo  
7 out of Midland and Houston, and prior to that I worked for  
8 Wainoco Oil and Gas, Texas National Exploration. I have been  
9 in the business 30 years.

10 Q. Have you testified before the OCD?

11 A. Yes, I have.

12 Q. Were your qualifications accepted as an expert  
13 petroleum landman?

14 A. Yes, they were.

15 MS. LEACH: At this time I would move acceptance of  
16 Ms. Spradlin as an expert in petroleum landman issues.

17 MADAM CHAIR: Any objection?

18 MS. GERHOLT: No objection.

19 MADAM CHAIR: She is so accepted.

20 Q. Would you tell us a little bit about Concho or COG  
21 Operating?

22 A. Concho started back in 1997, but this iteration of  
23 Concho started in 2004 when they purchased -- acquired all  
24 of -- most of the assets of Maralo Inc. in Midland, and from  
25 that time, we went public in 2007. We have grown through the

1 drill bit and multiple acquisitions, and we now have over --  
2 we're drilling, at this point we have over 30 wells running  
3 in New Mexico and Texas. And we have an average daily  
4 production of 61,000 BOE per day here in our area. We are  
5 the number one oil producer according to the records last  
6 year in the state of New Mexico.

7 Q. Are horizontal wells important to Concho?

8 A. What?

9 Q. Are horizontal wells important to Concho?

10 A. Very.

11 Q. Were you here during the testimony of David Brooks  
12 and Richard Ezeanyim when they described the task force and  
13 other work leading up to this application?

14 A. Yes.

15 Q. Were you part of that process?

16 A. Yes, I was.

17 Q. Would you describe it for us, please?

18 A. I was a member of the Regulatory Practices Committee  
19 since I started work at Concho. And then in 2008, we had a  
20 case where our drilling permit was canceled by a ruling from  
21 the Commission, which is known as the Chesapeake Black Hawk  
22 case, and I became very interested in horizontal wells, how  
23 to -- there were no rules. There were no processes in  
24 dealing with the rules.

25 And at that time NMOGA had a committee, the

1 Regulatory Practices Committee, and they had started the  
2 process of looking at horizontal, how to drill horizontal  
3 wells and the various processes for that. And through the  
4 years we have come to some agreement. Then there were  
5 disagreements; permitting was a major one, when you could  
6 permit, who could, how, and we just went through these  
7 various and worked out through our industry different ways of  
8 how to handle this and how we should go forward in the  
9 rulemaking which was very -- everybody was very interested  
10 and felt like it was necessary to go forward with looking at  
11 new horizontal rules.

12 Q. Are you here as a representative of Concho Resources  
13 to testify about the proposed rule changes?

14 A. Yes, I am.

15 Q. Why?

16 A. Well, you need to have -- we need to set forth  
17 guidelines that all parties are -- know how to go -- to  
18 protect everybody's correlative rights, to get wells drilled,  
19 increase revenue for the state, increase company revenues,  
20 also. And as it stands right now, the rule -- it depends  
21 on -- there is no set rule, so we -- we need to have that  
22 structure to be able to proceed with our well program.

23 Q. Do you think the adoption of the proposed rule  
24 changes will improve the process that you are going through  
25 now with almost everything in that hearing --



1 A. Yes, I do.

2 Q. -- other exception?

3 A. I feel like that it will because the various  
4 district offices will have the same rules, everybody will be  
5 on the same page and know what to do.

6 Q. Let's look at a couple of the specific sections of  
7 the proposed rule, and first I draw your attention to part  
8 19.15.14.8B, and that's really sort of two parts of the rules  
9 here, so that's the first part, Part 14. And then within  
10 Part 14, then the 8B section has underlined language.

11 And the way I read it, it says, "An operator shall  
12 not file an application for permit to drill nor commence  
13 drilling operations until the operator has either, received  
14 the consent of at least one lessee or owner of an unleased  
15 mineral interest at the proposed bottom hole location; or  
16 obtained a compulsory pooling order." What does that mean to  
17 you?

18 A. It basically means that I have to go out and  
19 approach anybody that I do not have under a contract already  
20 in the project area, whether it be four 40s, or six 40s, or  
21 three 40s, and I need to get a party to join with us. And  
22 then, if somebody doesn't want to join, that's their right,  
23 but I also can then take them to compulsory pooling.

24 Q. So when you mentioned compulsory pooling, does this  
25 proposed language change in any way affect the current rules

1 or process for obtaining compulsory pooling orders?

2 A. Not in my -- the way I read the rules, the way it  
3 stands right now.

4 Q. No?

5 A. No.

6 Q. So now this basically talks in terms of having  
7 consent from an owner of the bottom hole location, and that  
8 would primarily be for a vertical well, is that correct?

9 A. That would go with vertical wells, as well as  
10 anywhere you are going to traverse a horizontal.

11 Q. Okay. And then from that, let me get you to look at  
12 Part 19.15.16.15A, that's the second rule or the second rule  
13 part, and then it's in there is the draft as part of the  
14 prehearing statement, but that's in the special rules on  
15 horizontal wells. And, on Page 6, if you would read that to  
16 us, please.

17 A. Okay. "Directional and horizontal well consent  
18 requirement. An operator shall not file an application for  
19 permit to drill nor commence drilling of a horizontal or  
20 directional well until the operator has either; one, received  
21 the consent of at least one lessee or owner of an unleased  
22 mineral interest in each tract in the target pool or  
23 formation in which any part of the well's completed interval  
24 will be located; or, two, obtain a compulsory pooling order  
25 from the Division."

1 Q. And what does that mean?

2 A. It means that I cannot get an application to drill,  
3 file for a permit, unless I have either -- I have to have  
4 consent of at least one party under each spacing unit being  
5 traversed in that completed interval, or I would have to go  
6 to compulsory pooling.

7 Q. So if you have to have consent of somebody, they  
8 certainly would have notice of what you are proposing to  
9 do?

10 A. Right.

11 Q. If you had to go to compulsory pooling, you would  
12 give notice of your proposal for compulsory pooling?

13 A. That's correct.

14 Q. And you would have to do one or -- you would have to  
15 do one or the other of these before you even asked for an  
16 application for permit to drill, and the application for  
17 permit to drill would also contain with the C-102 that  
18 describes the project area. Isn't that right?

19 A. That's true.

20 Q. So the fact is that people involved in the project  
21 area are going to have notice through the regular processes?

22 A. Yes, and in any process we do prior to -- I mean,  
23 even going for a -- we send out a proposal stating where our  
24 well is going to be, a plat of the area, what's going to be  
25 included, an AFE, I mean, it is -- we have a very strict

1 process that we go through in saying when the well is planned  
2 to be drilled, et cetera.

3 Q. So basically when Mr. Brooks was testifying and said  
4 perhaps you could protect correlative rights better by  
5 requiring notice of every proposed project area, in effect  
6 that is going to happen under the rule as it exists now,  
7 isn't it?

8 A. Right, because it always -- horizontals, it states  
9 that we are going to be drilling a well at a legal location,  
10 let's just say south half south half of Section 14, 16 South  
11 28 East, with the bottom, you know, surface location in A,  
12 bottom hole in D. I mean, that's -- that's a typical --  
13 because you don't know a specific call because of surface  
14 issues you might have that are -- we have caves and karst and  
15 prairie chickens and lizards.

16 Q. So you have a pretty good idea, just not the exact  
17 location --

18 A. Uh-huh.

19 Q. -- where the surface location -- okay. If I could  
20 get you to look at Part H of that same section and ask you to  
21 read that, please.

22 A. Okay. "Consolidation of project area. If a  
23 horizontal well is dedicated to a project area in which there  
24 is more than one owner of any interest in the mineral estate,  
25 the operator of the horizontal well shall cause the project

1 area to be consolidated by voluntary agreement for compulsory  
2 pooling or -- or for compulsory pooling before the Division  
3 may approve a request for form C-104 for the horizontal  
4 well."

5 Q. Will you tell us your understanding of that section  
6 of the provision language?

7 A. I can't produce until I have either one of those,  
8 either or.

9 Q. And this is everybody, not just one?

10 A. It's everybody.

11 Q. So it's one interest holder before you can get an  
12 APD, but everybody before you get basically an allowable that  
13 lets you produce?

14 A. That's correct.

15 Q. Okay. And is that a substantial change from the  
16 current practice?

17 A. Not in my mind or what I have seen from our  
18 practices.

19 Q. Does the language you just read in any way propose a  
20 change to the compulsory pooling rules?

21 A. No.

22 Q. Are the compulsory pooling rules in a completely  
23 different part of the OCD rules?

24 A. They're in NMAC.

25 Q. Right, but are they in Part 13 instead of the parts

1 we are talking about?

2 A. They are not a part of this.

3 Q. Right. Thank you. Do you know if the -- if the  
4 compulsory pooling rules allow parties to challenge the 200  
5 percent risk penalty associated with basically an operator  
6 who goes forward with a well?

7 A. I know when they -- that's given in the -- when you  
8 have a forced pooling hearing.

9 Q. So somebody can basically challenge that?

10 A. Yes.

11 Q. Do you think the proposed rule changes will help  
12 prevent waste?

13 A. I think they do.

14 Q. And why do you think that?

15 A. Because if you have guidelines, people tend to  
16 follow. When you follow rules, you tend -- it just gives  
17 everybody equal rights under that, and everybody will be able  
18 to produce their minerals. They have a right to get their  
19 minerals developed.

20 Q. Do you think the proposed changes protect  
21 correlative rights?

22 A. Yes.

23 Q. Do you want to tell us why you think that?

24 A. Well, the setbacks, I think, in having looked at  
25 this when we lost our case on the Black Hawk Well, in essence

1 we were trespassing without having joinder of somebody under  
2 each of those tracts and not owning in that tract, so I feel  
3 like it -- it wasn't intentional, but it -- it is trespass,  
4 and so the new rules will keep that from happening, and it  
5 also keeps the small person, gives them the same rights as  
6 the larger company.

7 Q. In Concho's experience, is Concho able to produce  
8 with horizontal wells in places otherwise you would not be  
9 able to produce in?

10 A. Okay. Repeat the question. My ears are plugged.

11 Q. In Concho's experience, have you been able to, with  
12 the use of horizontal wells, be able to produce oil that  
13 otherwise would be left in --

14 A. Definitely. We are seeing it in a lot of places.

15 Q. So basically encouraging horizontal wells would  
16 prevent waste?

17 A. Yes, and it's reviving old, because of the new  
18 technology, you are reviving old fields and then getting more  
19 reserves from old fields that have kind of slowed down.

20 Q. So basically you are telling me that fields that  
21 were perceived to be mature fields and declining have been  
22 rejuvenated with the development of the horizontal wells?

23 A. That is correct.

24 MS. LEACH: Thank you. I have no further  
25 questions.

1 MADAM CHAIR: Any cross-examination?

2 MS. GERHOLT: No questions.

3 MADAM CHAIR: Anybody else?

4 MR. FORT: I have one question.

5 MADAM CHAIR: Mr. Fort.

6 CROSS-EXAMINATION

7 BY MR. FORT:

8 Q. You mentioned about the special rules for horizontal  
9 wells, consolidation of the project area.

10 A. Uh-huh.

11 Q. When I read through that it says if you've got a  
12 horizontal well dedicated to a project area, I guess that  
13 comes under the C-102?

14 A. Uh-huh.

15 Q. And that there is more than one owner of an  
16 interest, I'm sure that's everyone, if you have to deal with.  
17 It says, "The operator of the horizontal well shall cause the  
18 project area to be consolidated by voluntary agreement for  
19 compulsory pooling." Is that a typo in there? Is that a --

20 A. It is. From what I remember from our various  
21 meetings it should say, "or compulsory pooling." It's  
22 voluntary or compulsory.

23 Q. So, in other words, you can force somebody to do  
24 something when they said no?

25 A. I don't --



1 Q. Well, if they didn't consent --

2 A. But there are -- I'm sorry, but we have been in  
3 contentions things also.

4 Q. Sure.

5 A. There are times that, you know, you're not -- there  
6 are some parties you are never going to agree with.

7 Q. Sure.

8 A. And we all need to have a -- whether I'm the  
9 contentious party or you're the contentious party, there  
10 needs to be a way to protect all the other people, too.

11 Q. Okay. So you -- but you can get a right in their  
12 particular tract, let's say you've got -- my example that I  
13 gave to Mr. Brooks -- you've got A, B, C, and D, 40-acre  
14 tracts each, no one in A wants to give the owner of the  
15 mineral interest in D who wants to propose a horizontal well,  
16 they don't want to do anything, so you get to force them to  
17 join your project area?

18 A. Well, if A is the last 40, you can drill, you can --  
19 by -- by you not wanting -- the way the rules, the current --  
20 not the current rules, but the proposed rules, that 40 in D,  
21 he doesn't have to join, if he wants to be stranded, if  
22 that's -- that would be your right.

23 Q. So you would leave it out there and have three  
24 40s?

25 A. You can have three 40s. But the way the rule says,

1 we cannot strand -- or that's my understanding -- we will not  
2 strand a 40, but if you choose to be stranded, I don't see  
3 why we would not be given a project area of three 40s because  
4 that would be your choice as a mineral owner not to join that  
5 project area.

6 Q. Okay. But whether it was C or B, in between, you  
7 know, if they don't want to, A does -- all I'm asking is, you  
8 can force that mineral owner to come under this compulsory  
9 pooling order for this horizontal well?

10 A. Yes.

11 Q. Okay.

12 A. But you are going to have to go to hearing. You can  
13 do it right now.

14 Q. Right, because nothing that has changed? That was  
15 my point in the first place.

16 A. That's the whole point.

17 Q. Nothing has changed?

18 A. Nothing has changed.

19 Q. We are forcing people who don't want to belong to it  
20 into it where they have no interest?

21 A. But that happens on whether you are drilling a  
22 Morrow, or 320, and you have a 160 and another party has a  
23 160 and you might not want to drill a Morrow.

24 Q. But that's a spacing unit, not a horizontal project  
25 unit area?

1           A.    But it's spacing -- a project area is only made up  
2   of spacing units.

3           Q.    I understand that. I understand that.

4           A.    So it -- it's --

5           Q.    So we are unitizing the spacing units, if you will,  
6   by --

7           A.    It's a voluntarily agreement. I wouldn't put it in  
8   unitization.

9           Q.    Okay. I may have used the wrong choice of words,  
10   but still you are forcing people to join that project area  
11   for the horizontal drilling?

12          A.    I don't --

13          Q.    You can get a compulsory pooling order?

14          A.    Right. Right. And then you can present your case  
15   and you might not be granted compulsory pooling to make that  
16   happen, so --

17          Q.    Sure, but you still have the right?

18          A.    Then it wouldn't keep up -- the party who wanted it  
19   away from drilling their well. They just -- you wouldn't be  
20   part of that well. You wouldn't be part of that unit. It  
21   doesn't prohibit you --

22          Q.    But he doesn't have a choice; it becomes the  
23   Commission's choice to make that decision?

24          A.    That's correct.

25                MADAM CHAIR: Commissioner Dawson?

1 COMMISSIONER DAWSON: I have no questions.

2 MADAM CHAIR: Commissioner Balch?

3 COMMISSIONER BALCH: I have none.

4 MADAM CHAIR: I don't, either. This witness may be  
5 excused.

6 MR. FELDEWERT: Please the Commission, we'll call  
7 our next witness, Mr. Chuck Creekmore.

8 MADAM CHAIR: Shall we take a ten-minute break  
9 first?

10 (Recess taken.)

11 MADAM CHAIR: Back on the record. Mr. Feldewert,  
12 call your first witness.

13 MR. FELDEWERT: Yes.

14 (Witness sworn.)

15 CHUCK CREEKMORE

16 (Sworn, testified as follows:)

17 DIRECT EXAMINATION

18 BY MR. FELDEWERT:

19 Q. Mr. Creekmore, would you please tell the Commission  
20 by whom you are employed and in what capacity?

21 A. I'm employed by ConocoPhillips, and I'm a staff  
22 landman with them, and I currently preside in the San Juan  
23 Basin in the Farmington office.

24 Q. Have you previously testified before the Oil  
25 Conservation Division?

1 A. Yes, I have.

2 Q. And were your credentials as a petroleum landman  
3 accepted and made a matter of record?

4 A. Yes, they were.

5 Q. How long have you been involved in the oil and gas  
6 industry in New Mexico?

7 A. Well, off and on for probably 20 years. I  
8 administered -- I have worked for Oxy from 19 -- well, City  
9 Service and then Oxy from 1981 to 1995. And for about eight  
10 and a half years I administered all their field-wide units  
11 and their numerous units down in the southwest part of the  
12 state. And then five years after that I was -- I  
13 administered -- or I was manager of the division order for  
14 Oxy. I also put together the -- drafted the contract and  
15 coordinated sign up for the West Bravo Dome Unit which Oxy  
16 operated.

17 And then with Williams, I worked for Williams six  
18 years after that from 95 to 2002, and I worked on a couple of  
19 projects in the San Juan Basin on that with them. And then I  
20 have been employed for a little over four years working  
21 strictly in the San Juan Basin for ConocoPhillips.

22 Q. Does NMOGA's Exhibit Number 2 contain an accurate  
23 copy of your resume?

24 A. Yes.

25 Q. And are you familiar with the horizontal rule

1 revisions that have been proposed by the Oil Conservation  
2 Division?

3 A. Yes, I have.

4 Q. In fact, were you involved in the process in coming  
5 up with those proposed rules?

6 A. When I first came to the San Juan Basin a little  
7 over four years ago, Allen Alexander, he was a landman with  
8 ConocoPhillips, and Liz Bush, who was a -- she was a  
9 regulatory engineer with Oxy, were co-chairs of the  
10 Regulatory Practices Subcommittee that dealt with these  
11 rules, and they -- they worked on them for a couple of years,  
12 and then I took over approximately two years ago as chair of  
13 the subcommittee finalizing the agreement.

14 Part of the delay, as you heard today in the  
15 testimony, is there are some differences between the  
16 southeast part of the state and northwest part of the state,  
17 and we worked very diligently trying to find a set of rules  
18 that would meet the needs of both the southeast and  
19 northwest. And we also explored all of the existing state  
20 rules that were in place and tried to incorporate what we  
21 felt like were the best rules and the most appropriate rules  
22 for New Mexico from what other states had already done and  
23 from problems that we were encountering in the state of New  
24 Mexico both from the southeast and the northwest.

25 Q. I think you mentioned, or maybe you didn't, that you

1 were actually chair of the committee for NMOGA?

2 A. Of the subcommittee, yes.

3 Q. You were then asked to serve on the workgroup?

4 A. Yes. Once the subcommittee completed its work, we  
5 gave it to the Regulatory Practices Committee, and then the  
6 Regulatory Practices Committee approved it, and then we  
7 submitted -- well, all through the process we submitted it to  
8 the BLM. In fact, I have taken it to the Aztec office to --  
9 just to get feedback so that we -- we were -- our process  
10 would be acceptable. And then we had an opportunity to work  
11 with the OCD, Mr. Brooks and Mr. Ezeanyim, to further develop  
12 and come up with the set of rules that you have before you  
13 today.

14 Q. There was a slide Mr. Ezeanyim presented of members  
15 of the workgroup. You were one of those?

16 A. Yes, I was.

17 Q. I think you said you had been involved in this for a  
18 little over two years?

19 A. Four years.

20 Q. Four years, okay. Even before I was chairman.

21 MR. FELDEWERT: Let me then tender Mr. Creekmore as  
22 an expert witness in petroleum land matters.

23 MADAM CHAIR: Any objection?

24 MS. GERHOLT: No objection.

25 (No objection.)

1 MADAM CHAIR: So admitted.

2 Q. Mr. Creekmore, what aspects of the rules would you  
3 like to briefly address with the Commission here today?

4 A. Actually, I brought a set of slides, a set of  
5 exhibits, and I was asked to prepare two exhibits. I  
6 apologize, I didn't realize until I got over here that I  
7 hadn't numbered my exhibits, so starting with the coversheet  
8 as Page 1, I will refer to the exhibits. I hope yours have  
9 been numbered, but I apologize. But let's see --

10 Q. Now, let me --

11 A. Those are not showing up. The blue is not showing  
12 up on that one for some reason.

13 MR. FELDEWERT: You probably have to click it. Can  
14 you click it a couple of times, perhaps? There we go.

15 A. There we go.

16 Q. Before you start, before we run through the  
17 exhibits, first off, are you referring to NMOGA's Exhibit  
18 Number 3, what's been marked as NMOGA's Exhibit Number 3?

19 A. Yes, sir.

20 Q. Secondly, what's the general topic we are going to  
21 address here today?

22 A. Actually, I'm just going to go through the exhibits  
23 from Number 4, on -- or exhibits that we have had that  
24 actually Allen Alexander prepared three and a half, four  
25 years ago that we were trying to accomplish from the very



1 beginning, and now that we are here, I'm trying to show that  
2 I believe that these rules have accomplished what industry  
3 was trying to do in this whole process.

4 So I'm going to confirm what is here today and  
5 discuss in a few areas some distinct problems that we have  
6 had in the northwest that these rules now address and will  
7 allow us to produce reservoirs in a systematic way that we're  
8 being prohibited from doing right now because based on the  
9 existing rules.

10 And much of this has already been touched on today,  
11 but I just wanted to reiterate how positive we are that we  
12 can finally do some things that we haven't been able to do in  
13 the past.

14 Q. Why don't you turn to NMOGA Exhibit Number 3, and I  
15 believe what we have up on the screen --

16 A. Is Page 2 Number 2.

17 Q. -- a slide, which is Page Number 2 in NMOGA  
18 exhibits.

19 A. Yes. This is just a non-standard PA, and I think  
20 it's been addressed adequately. I just prepared it before I  
21 knew what the other testimony would be, and I think it's been  
22 addressed as to what a non-standard PA is and also -- the  
23 standard project area, which is -- and these are primarily in  
24 the southeast-type situations. So Exhibit 3 has already been  
25 addressed.

1           Q.    So let me stop you there. This would be a standard  
2 project area?

3           A.    That would be a standard project area on 40-acre  
4 spacing, but most of our spacing in the northwest is on a 320  
5 with some on 160, so I was just prepared to come today in  
6 case I needed to discuss it, so I would really like to move  
7 to Slide Number 4.

8           Q.    Okay.

9           A.    And this was prepared, as I said, by Allen  
10 Alexander, and to show part of the problems that we were  
11 facing with developing our drill blocks on a -- with vertical  
12 wells with a parent and three infill wells where -- and these  
13 ellipticals are just illustrative of what a drainage pattern  
14 may look like. And we felt like we weren't adequately  
15 draining our existing reservoirs.

16               Also, many of these wells were drilled 50 and 60  
17 years ago, and are quite old. The drilling techniques have  
18 improved immensely, so if you move to Slide 4, what we are  
19 trying to do is -- is completely drain the reservoir and  
20 capture -- prevent the waste of a lot of the oil that wasn't  
21 previously produced or may not have even been able to be  
22 produced by these vertical wells, so we have had -- oops --  
23 okay. There we go.

24               We propose several lateral re-entries, and  
25 currently, as Mr. Brooks showed today on the simultaneous

1 dedications, we would be -- this is a drill block, and you  
2 have the setbacks here, we would be prevented from going  
3 across that half section line. We could not drill this  
4 completely. If the engineers felt like we should go to the  
5 extent of the setback up there, we could not do that. We  
6 would have -- we would be foreclosed from going into the  
7 northeast quarter of this section. And now, with the new  
8 rules, if this were a project area, we could go across and be  
9 much more effective in the drainage and capture of the gas in  
10 place and -- and oil.

11 And I might also get into right now, we felt like,  
12 on the existing spacing rules, that the setbacks were  
13 adequate. If they were adequate for the vertical wells, they  
14 were adequate for a horizontal well to protect the  
15 correlative rights and prevent waste outside of the drill  
16 block. And, of course, in the southeast it's more -- the  
17 protection was based on the existing allowables and multiples  
18 of the allowables that Mr. Brooks testified to earlier today.

19 Q. I think you mentioned this, but it might be worth --  
20 the way you have the ellipses drawn here, that's just for  
21 illustration purposes?

22 A. Illustration only. As I said, these -- I saw these,  
23 and I thought, "Wait a second. This is what we were  
24 proposing three and a half, four years ago. We are almost  
25 there. Why don't I use what we were hoping to accomplish

1 to -- to show you today that I hope we have accomplished what  
2 we set out to do as an industry with NMOGA at the outset.

3 Q. So the draining patterns could fall the other way.

4 A. Yes. Yes. This is just for illustration purposes  
5 only, but showing you what we are trying to accomplish.

6 Q. Okay. What's the next slide?

7 A. The next slide is where -- oops, that's not -- the  
8 one that -- the next slide is Number 6. Is that not showing  
9 up? That's 5. Go one more. Go back. Go one more.

10 The next slide -- okay. One slide is omitted, but  
11 the next -- the Slide 6 which somehow is not showing up is --  
12 is just where this is a new drill and not -- this was an  
13 example of a lateral re-entry where you are using a wellbore  
14 that was formerly a vertical production, and the next slide  
15 was just to show that you can do the same thing with a new  
16 drill, so basically the same slide.

17 Q. So if I look at the NMOGA Exhibit Number 3, it's the  
18 sixth page in of the exhibits before.

19 A. Yeah. For some reason that's not showing up on  
20 my --

21 Q. And the only difference was you were showing -- in  
22 this one you can use -- this is an existing development  
23 pattern which you use an existing wellbore?

24 A. Yes.

25 Q. This next exhibit would be if that wellbore was a

1 new drill?

2 A. Yes, would be a new drill.

3 Q. Okay. All right. Then we can go to Page 7 of  
4 NMOGA's Exhibit Number 3.

5 A. And then here is another new drill which would allow  
6 you again to go across that half section line, which now you  
7 would have to stop at because of -- Fruitland Coal is where I  
8 personally experienced most of this where you have one well  
9 per -- per 160, and if you had one well up here in the  
10 northeast quarter, you couldn't go across this half section  
11 line. You couldn't adequately drain what the engineers were  
12 trying to -- what they felt would be a good way to more  
13 effectively drain the reservoir.

14 Q. Okay.

15 A. And then --

16 Q. So those slides illustrate the benefits of the  
17 horizontal wellbores to current development patterns as well  
18 as future drills?

19 A. Yes. And how to -- how to keep from leaving your  
20 product in the ground and trying to develop it all in a  
21 systematic way.

22 Q. Okay. And the next slide shows us something a  
23 little bit different, right?

24 A. The next slide is when things get kind of  
25 complicated when you go across three drill blocks. And we

1 have heard some interesting discussions here today, and this  
2 is when you -- the subsequent vertical well I'll address in  
3 just a minute, but this is where you have nine wells or --  
4 let's see. Okay -- nine wells, and you fully develop except  
5 for the south half of the north half and the south half of  
6 the northeast in this section, and you decide to put a  
7 horizontal in this well and go across three -- three existing  
8 spacing units, and your project area would be this area right  
9 here that would allow you to, within the confines of that and  
10 within the setbacks that we have discussed, drill this  
11 horizontal across that acreage.

12 And the complication is you have three JOAs covering  
13 the east half, the west half, and the east half, so what  
14 happens in this instance, I would imagine you would try to  
15 get a JOA covering just the horizontal, but what about the  
16 JOAs that cover the existing wells, the existing vertical  
17 wells? Well, due to the investments and equities in each of  
18 these wells, you may not be able to combine all of those  
19 JOAs. So each one of those JOAs would still have to stand on  
20 their own because of the complexities of the investment in  
21 those wells and ownerships in those wells.

22 However, everybody would have an undivided interest  
23 in this horizontal well, and you would probably have a  
24 separate JOA there, and one of those three operators will  
25 probably operate your horizontal well.

1 Q. If I may stop you there. To put this in  
2 perspective, if I look at the proposed rules and go to  
3 special rules for horizontal wells, which is the OCD's  
4 Exhibit Number 4, there is a Section 16.15D, as in dog, under  
5 these special rules for horizontal wells.

6 A. Yes.

7 Q. And the title of that is, "Existing and Subsequent  
8 Wells in Project Areas." Now, does this -- is this a  
9 depiction of what the current rule as drafted will allow to  
10 occur?

11 A. Yes.

12 Q. Okay.

13 A. And the existing wells are still there under their  
14 operating agreements, they are still operating under their  
15 existing operating --

16 Q. So in other words, under the provisions of the  
17 rules, the JOA for these existing wells would still stay in  
18 place?

19 A. Yes. As it says, "They are not part of the new  
20 project area unless otherwise agreed to by all working  
21 interest owners in the new project area." And, as I said,  
22 that may be ideal, but it may not be -- you may not be able  
23 to do that based on your existing investments, and you  
24 sometimes get into inventory adjustments and all sorts of  
25 other things that may not -- that may prevent you from

1 using -- from conforming all of the project area into the new  
2 JOA.

3 Q. So, Mr. Creekmore, in my simple world, what this  
4 allows to occur is additional development without changing  
5 the JOAs for the existing wells, correct?

6 A. That's my understanding, yes.

7 Q. Without changing the operators of those existing  
8 wells?

9 A. Correct.

10 Q. But it allows for additional horizontal development  
11 in a circumstance where we have JOAs and wells and operators  
12 already in place?

13 A. And that -- that covers a great deal of our acreage  
14 up in the northwest where we have these large spacing areas  
15 and a lot of existing wells.

16 Q. Anything else on this slide?

17 A. Well, and then you have the subsequent vertical --  
18 well, the horizontal well has to have production so that  
19 Operator C doesn't come in and say, "Well, I like the way the  
20 horizontal was perped, and I like what it's done, and I want  
21 to drill a well on top of you," and this -- under D(2), all  
22 working interest owners have to agree so that that well  
23 doesn't interfere with your horizontal well, your investment  
24 in the horizontal well. The protection goes both ways. I  
25 mean, it keeps you from spending that money and then having



1 somebody drill a well right on top of you.

2 Q. Is there anything more about this slide?

3 A. I don't believe so.

4 Q. In reviewing these rules, did you -- and I know we  
5 have already talked about one of them -- did you happen to  
6 notice there was one additional typo that you saw?

7 A. Yeah, I think there were a couple. And as many  
8 times as I've read it, I just discovered them yesterday. So  
9 under 19.15.16.15G, formation of project areas, under 1 in  
10 the last part of that sentence where it reads, "or delivering  
11 a copy thereof to the New Mexico State Land Office if,"  
12 instead "in the proposed project" -- I mean, "if the proposed  
13 project area includes state lands," instead of "in," I think  
14 is what was meant in that sentence.

15 Q. And the second typo?

16 A. The second typo I think was talked about earlier,  
17 and it's in H on that same page under the same provision,  
18 next to the last line, it says, "Area to be consolidated by  
19 voluntary agreement or compulsory pooling." And I think Ms.  
20 Spradlin alluded to that, but I think those typos need to be  
21 corrected.

22 Q. Okay.

23 A. And then I was also reading yesterday, there is a  
24 practical problem that -- that where under the same Rule  
25 19.15.16.15B, where a project area can be a participating

1 area in a federal unit, and you are supposed to submit two  
2 plats, one of the project area. Well, if the participating  
3 area can be a project area, that's pretty voluminous, and I  
4 would hope that we can just refer to it by reference because  
5 it -- it is available, the participating areas in those  
6 federal units are available, and I don't know that you can  
7 read them if you put them on a small plat, anyway. So I  
8 would hope that we could incorporate those by reference  
9 and --

10 MADAM CHAIR: What section are you talking about?

11 MR. CREEKMORE: In B, under 19.15.16.15, where it  
12 talks about on the C-102.

13 MADAM CHAIR: Okay.

14 MR. CREEKMORE: It talks about -- I think -- I think  
15 that's the one. I'm sorry. An acreage plat, well dedication  
16 and acreage plat, it says a C-102, one of which shall depict  
17 the outer boundaries of the project area, and the project  
18 area, some of them are an entire township, so I don't know  
19 that a plat on an 8 1/2 by 11, I don't know that you could  
20 even read it being that small, so I was hoping we could  
21 incorporate those. It's a small thing, but it would probably  
22 be helpful if we could do something like that.

23 Q. Then on another topic, just briefly here.

24 A. Okay.

25 Q. There's been some concern expressed that these rules

1 don't provide for or expressly provide for notice for the  
2 creation of, I guess, standard project areas. Do you have  
3 any comments on that?

4 A. Well, when you say notice, if you have agreement by  
5 all the parties and all the parties have worked it out, I  
6 don't know that notice is actually necessary unless you went  
7 to a compulsory pooling hearing, and then notice would be  
8 necessary. But if -- I think it would be redundant to  
9 require notice if all your parties had agreed to a joint  
10 operating agreement because you have already been in  
11 communication with each other.

12 Q. I know Mr. Brooks alluded to this. We have two  
13 types of project areas. We have standard project areas and  
14 non-standard project areas. Now, I would suspect the  
15 non-standard project areas, you do have to provide notice,  
16 correct?

17 A. Yes, you do.

18 Q. And with respect to standard project areas, you are  
19 going to have to have an agreement by all the parties  
20 involved, or you are going to have to go through the notice  
21 process required by compulsory pooling?

22 A. Yes.

23 Q. There was also some concern that these project areas  
24 didn't bear a relationship to spacing or proration units.  
25 What's your comments on that?

1           A.   Well, I think if you look at the definition in -- I  
2   think it incorporates, except for the larger areas like the  
3   participating area in a federal unit, and it anticipates the  
4   project area being a spacing unit or a combination of spacing  
5   units, and so by its very nature it is comprised of spacing  
6   units, and in the form of a rectangle, just like this spacing  
7   unit would be -- to enable you to drill this horizontal well,  
8   this spacing unit would be -- I mean this project area --  
9   pardon me -- this project area would be comprised of three  
10   spacing units.

11          Q.   Therefore, Mr. Creekmore, would this project area  
12   for this horizontal well, for example, that would be the area  
13   that the parties would anticipate would be drained by the  
14   single wellbore, correct?

15          A.   Or portion of it, yes. I mean, it -- this one would  
16   be limited to just that corridor that -- that it's -- whereas  
17   the vertical wells, it would be draining the others. But if  
18   you go back to my previous examples, those spacing units -- I  
19   mean those project areas were all on a spacing unit, so they  
20   were one and the same.

21          Q.   Currently the way the Division rules are set forth,  
22   a spacing unit in a project area is an area that is  
23   anticipated to be drained by a single well, correct?

24          A.   Or -- well --

25          Q.   In theory.

1       A.    In theory.  In the southeast I think that would be  
2   more appropriate.  Here you are allowed four wells, but in  
3   lieu of the four wells or the two wells, you are substituting  
4   that with a horizontal well which enables you to drain it,  
5   yes.  It gets a little complicated, and that's why you get  
6   into the difficulty with horizontals and vertical rules.

7       Q.    But -- but in terms of the relationship between a  
8   project area and spacing unit proration unit, essentially  
9   it's areas of land that are expected to be drained by the  
10  wellbore, correct?

11      A.    Yes.  By the wells that were permitted by the order  
12  establishing that pool, yes.

13      Q.    Okay.  Then let me ask you, having worked on this  
14  committee, do the rules that the Division is proposing here  
15  today, has it been similar to what the committee agreed upon  
16  and determined to be in the best interest of conservation and  
17  prevention of waste, having looked at all the other rules and  
18  taking into account provisions in other states and issues  
19  that were presented by horizontal drilling in this state?

20      A.    Yes.

21      Q.    And is it your opinion that the adoption of this new  
22  rule was in the best interest of conservation and prevention  
23  of waste and protection of correlative rights?

24      A.    Yes.

25      Q.    Were NMOGA's Exhibits 2 and 3 prepared by you or

1 compiled under your direction or supervision?

2 A. Yes.

3 MR. FELDEWERT: I would move the admission of  
4 NMOGA's Exhibits 2 and 3.

5 MADAM CHAIR: Any objection?

6 MS. GERHOLT: No objection.

7 MADAM CHAIR: Be admitted.

8 (Exhibits NMOGA 2 and 3 admitted.)

9 MADAM CHAIR: Mr. Fort?

10 CROSS-EXAMINATION

11 BY MR. FORT:

12 Q. Yes, Mr. Creekmore, on this, the slide that's up  
13 there, as I understood it, you have initially three joint  
14 operating agreements, and then they came in and created a  
15 fourth joint operating agreement for that horizontal well?

16 A. Yes.

17 Q. So there is no compulsory pooling here?

18 A. No.

19 Q. You've got a lot of happy campers?

20 A. I think that would be generally the case.

21 Q. Okay. Thank you.

22 MADAM CHAIR: Any other questions?

23 (No response.)

24 MADAM CHAIR: Commissioner Dawson?

25 COMMISSIONER DAWSON: I have no questions.

1 MADAM CHAIR: Commissioner Balch?

2 COMMISSIONER BALCH: No questions.

3 MADAM CHAIR: I do not, either.

4 MR. CREEKMORE: All right. Thank you.

5 MADAM CHAIR: Do you have any other witnesses, Mr.  
6 Feldewert?

7 MR. FELDEWERT: We do not.

8 MADAM CHAIR: That leaves Mr. Fort.

9 MR. FORT: Yes.

10 MADAM CHAIR: I would like to stop about 5:00 today.  
11 Is that appropriate for the amount of testimony that you  
12 expect, or would you be able to continue until tomorrow  
13 morning?

14 MR. YATES: We would be able to continue. I'm so  
15 tired this evening that I probably couldn't go beyond 5.

16 MADAM CHAIR: Would you rather that we continue the  
17 hearing at this point?

18 MR. YATES: That would be my preference.

19 MADAM CHAIR: And continue at 9 o'clock?

20 MR. YATES: That would be my preference.

21 MADAM CHAIR: We need to continue until tomorrow,  
22 anyway, because of open deliberations for -- for the  
23 rulemaking, so why don't we call it a day and reconvene at  
24 9:00 tomorrow morning.

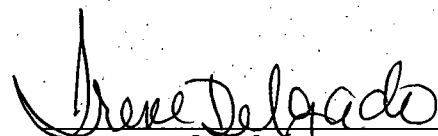
25 (Recessed at 4:30 p.m.)

## REPORTER'S CERTIFICATE

I, IRENE DELGADO, New Mexico CCR 253, DO HEREBY  
CERTIFY THAT ON October 20, 2011, proceedings in the  
above-captioned case were taken before me and that I did  
report in stenographic shorthand the proceedings set forth  
herein, and the foregoing pages are a true and correct  
transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor  
related to nor contracted with any of the parties or  
attorneys in this case and that I have no interest whatsoever  
in the final disposition of this case in any court.

WITNESS MY HAND this \_\_\_\_\_ day of November  
2011.

  
Irene Delgado, CCR 253  
Expires: 12-31-2011