

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

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

CASE NO. 13,453

ORDER OF THE NEW MEXICO OIL CONSERVATION)
COMMISSION INSTITUTING RULEMAKING,)
PROPOSING AMENDMENTS TO OCD RULES 104)
(WELL SPACING AND LOCATION) AND 701)
(INJECTION OF FLUIDS INTO RESERVOIRS))

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN
JAMI BAILEY, COMMISSIONER

April 14th, 2005

Santa Fe, New Mexico

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This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, April 14th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
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I N D E X

April 14th, 2005
 Commission Hearing
 CASE NO. 13,453

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E X H I B I T S

| Applicant's | Identified | Admitted |
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* * *

A P P E A R A N C E S

FOR THE COMMISSION:

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Assistant General Counsel
Energy, Minerals and Natural Resources Department
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FOR MARBOB ENERGY CORPORATION:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
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Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

* * *

ALSO PRESENT:

ALAN ALEXANDER
Burlington Resources Oil and Gas Company
Farmington, NM

ALLETTA BELIN
New Mexico Citizens for Clean Air and Water, Inc.
Los Alamos, NM

RICHARD E. FOPPIANO
Regulatory Team Leader
OXY USA, Inc./Occidental Permian Ltd./OXY USA WTP LP
Houston, TX

YOLANDA PEREZ
ConocoPhillips
Houston, TX

* * *

1 WHEREUPON, the following proceedings were had at
2 9:36 a.m.:

3 CHAIRMAN FESMIRE: The next case before the
4 Commission is Case Number 13,453, Order of the New Mexico
5 Oil Conservation Commission instituting rulemaking,
6 proposing amendments to OCD Rules 104, concerning well
7 spacing and location, and 701, injection of fluids into
8 reservoirs.

9 At this time are there appearances in the case?

10 MR. CARR: May it please the Commission, my name
11 is William F. Carr. I'd like to enter my appearance in
12 this case for Marbob Energy Corporation. We appear in
13 support of the changes proposed in Rules 104 and 701.

14 CHAIRMAN FESMIRE: Are there any other
15 appearances in the case?

16 MR. FOPPIANO: If it please the Commission, my
17 name is Richard Foppiano. I'm here today representing New
18 Mexico Oil and Gas Association, as well as OXY, operates
19 under various names, Occidental Permian, Ltd.; OXY USA WTP
20 LP; and various others. And we're here today to support
21 the Application as docketed, and I'll have a few comments
22 to make.

23 CHAIRMAN FESMIRE: Okay. Anyone else?

24 MR. ALEXANDER: Mr. Chairman, my name is Alan
25 Alexander. I'm employed with Burlington Resources in

1 Farmington, New Mexico, and I'm here to express the support
2 of the case by Burlington.

3 CHAIRMAN FESMIRE: Would you like to make a
4 statement?

5 MR. ALEXANDER: No, sir, I would not.

6 CHAIRMAN FESMIRE: Okay. Anyone else?

7 Counsel Brooks, would you give us the history of
8 this case and where we stand?

9 MR. BROOKS: Before I do so, Mr. Chairman and
10 Commissioner Bailey, I just realized that I have, as my
11 constitutional law professor quoted one Supreme Court
12 Justice as saying on one occasion -- I forget which one,
13 which perhaps is just as well -- I have been stupider today
14 than I usually am; and I apologize to the Commission and to
15 the guests, but I do not have the exhibits prepared. I
16 have them prepared, but I don't have the copies printed
17 out, and I would respectfully beg the indulgence of the
18 Commission to take about a 10-minute break to enable me to
19 get those exhibits printed out, if that can be done.

20 CHAIRMAN FESMIRE: Commissioner Bailey?

21 COMMISSIONER BAILEY: Sure.

22 CHAIRMAN FESMIRE: At this time we'll take a
23 10-minute break and reconvene at 10 minutes to 10:00.
24 Thank you.

25 (Off the record at 9:38 a.m.)

1 (The following proceedings had at 10:00 a.m.)

2 CHAIRMAN FESMIRE: Mr. Ezeanyim, do you want to
3 give an introduction on this, or would you rather David do
4 it, or --

5 MR. BROOKS: I believe we have coordinated here
6 to do this by question and answer of Mr. Ezeanyim, whose
7 assistance was invaluable in getting these exhibits ready
8 this morning. I apologize again for the time we took.

9 This rule relates to the operation of wells in a
10 spacing unit by more than one --

11 CHAIRMAN FESMIRE: Are we on? Okay.

12 MR. BROOKS: -- proposed rule relates to the
13 operation of wells in a spacing unit by more than operator,
14 and I would like to call Richard Ezeanyim as a witness to
15 tell us about the development of this proposed rule.

16 CHAIRMAN FESMIRE: Okay, Mr. Ezeanyim, would you
17 stand to be sworn, please?

18 (Thereupon, the witness was sworn.)

19 RICHARD EZEANYIM,
20 the witness herein, after having been first duly sworn upon
21 his oath, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q. Would you state your name for the record, please,
25 Mr. Ezeanyim?

1 A. My name is Richard Ezeanyim.

2 Q. And how are you employed?

3 A. I'm employed by the Oil Conservation Division of
4 the Energy, Minerals and Natural Resources Department.

5 Q. In what position?

6 A. As the chief engineer.

7 Q. Have you testified before the Oil Conservation
8 Commission previously and had your credentials accepted?

9 A. Yes, I have.

10 MR. BROOKS: Okay, I would submit Mr. Ezeanyim as
11 an expert petroleum engineer.

12 CHAIRMAN FESMIRE: Any objection, Commissioner
13 Bailey?

14 COMMISSIONER BAILEY: No.

15 CHAIRMAN FESMIRE: He's so accepted.

16 Q. (By Mr. Brooks) Mr. Ezeanyim, what is the
17 purpose of the proposed rule amendments that are before the
18 Commission today?

19 A. The purpose of the amendment is to clarify the
20 rules concerning operation of wells within a spacing unit
21 for multiple operators.

22 Q. Okay. Now, you said operation of wells, plural,
23 within a spacing unit. Do the OCD rules allow more than
24 one well to be located within a spacing unit?

25 A. Yes. As we can see if we go to the old rule, we

1 see that Rule 104.B.(1) provides that up to four wells may
2 be drilled in a 40-acre oil spacing and proration unit.

3 Secondly, if we go to Rule 104.C.(2).(b), that
4 provides for the drilling of an infill well in the 320-acre
5 deep gas spacing unit in the southeast of New Mexico.

6 Q. Which would permit two wells --

7 A. Two wells, in there, yeah --

8 Q. -- in a 320-acre spacing unit?

9 A. -- an infill well and the original well.

10 Q. And in addition to those statewide rules that
11 appear in Rule 104, are there a number of pool rules that
12 permit infill wells, including some of the large pools in
13 the San Juan Basin?

14 A. Yeah, that's correct.

15 Q. What does Rule 104 provide presently, concerning
16 whether all wells in a spacing unit must be operated by the
17 same operator?

18 A. Rule 104.C.(2).(c) currently provides that the
19 Division-designated operator of the initial well must be
20 the same operator for the infill well in the unit, and this
21 is in the southeast of New Mexico.

22 Q. And this applies only to 320-acre units?

23 A. Only to 320-acre units.

24 Q. Which would be the units in the deep gas pools in
25 the southeast?

1 A. That's correct.

2 Q. Now with the exception of those deep-gas pools in
3 the southeast, is there any -- presently any OCD rule,
4 order or written policy that prohibits the operation of
5 wells within a spacing unit by different operators?

6 A. No.

7 Q. Now, is there or has there been a perception that
8 there is an OCD policy prohibiting operation of wells in a
9 spacing unit by different operators?

10 A. Yes.

11 Q. If this unwritten policy exists, has it been
12 consistently followed by the Division?

13 A. No, not really. The unwritten policy has not
14 been consistently followed by the Division.

15 Q. Did you request Ms. Prouty as the data analyst to
16 ascertain how many existing spacing units have wells
17 operated by more than one operator?

18 A. Yes.

19 Q. And what did you find out?

20 A. This is very interesting. We don't allow
21 multiple operators in New Mexico, but this is interesting:
22 From the results that I found out in the analysis of the
23 production data from the ONGARD, this research disclosed
24 that several spacing units have multiple operators in them.

25 Now, when I analyzed the data that I got from Ms.

1 Prouty, from ONGARD production data, I found that about 116
2 spacing units have multiple operators, they have either
3 two, three, four multiple operators. How that happens, I
4 don't know, but that's what the data is giving me.

5 For example, I can give you some examples here on
6 what the analysis shows. If we go to San Juan County, we
7 have about 22 spacing units that have multiple operators.
8 Rio Arriba has six; Chaves County, seven; Lea County 128,
9 and even Eddy County has 52.

10 Therefore if there is an unwritten policy by OCD,
11 this has not been consistently followed.

12 Q. Now, where the written rule applies,
13 104.C.(2).(c), have there recently been some applications
14 filed for exceptions?

15 A. Yes.

16 Q. And have those been opposed?

17 A. No opposition to those applications.

18 Q. And those exceptions were granted by the
19 Division?

20 A. They have been.

21 Q. Other than the recent exception proceedings, what
22 has caused OCD to rethink the issue of multiple operators
23 in the spacing unit?

24 A. As we have seen and discussed previously, you can
25 see that the policy has not been consistently followed, and

1 it appears that OCD has inadvertently been allowing
2 multiple operators per spacing unit. Therefore, the
3 Division decided to develop a rule that will apply
4 statewide, rather than following an unwritten policy.

5 Q. And did -- were there a series of internal
6 meetings about this issue?

7 A. Yes.

8 Q. And who participated in those meetings?

9 A. The OCD personnel, including the Division
10 Director, the Engineering Bureau staff, initially, the
11 Legal Bureau, the OCD District Supervisors, and Jane Prouty
12 the ONGARD management officer, participated in those
13 meetings.

14 Q. And under your leadership, did the OCD develop a
15 proposed rule -- a proposal for a rule?

16 A. Yes, we did.

17 Q. To whom was this proposal circulated?

18 A. The draft was circulated to a wide range of
19 entities, just, you know, because I was giving the
20 instruction to make sure all entities are involved, and
21 these entities include OCD staff, State Land Office staff
22 members, the Bureau of Land Management, the Taxation and
23 Revenue Department, New Mexico Oil and Gas Association,
24 Independent Producers Association of New Mexico, the Sierra
25 Club, the Oil and Gas Accountability Project, the New

1 Mexico Cattle Growers Association, and even the tribes were
2 contacted for this meeting.

3 Q. And then did the OCD invite the stakeholders to a
4 workshop?

5 A. Yeah, the OCD invited the stakeholders to a
6 workshop.

7 Q. And when was that workshop held?

8 A. That workshop was held on January 26th, 2005.

9 Q. And who participated?

10 A. A number of individuals from all those groups
11 I've mentioned, but I can name some of them. Maybe I might
12 miss some people, but that's okay, I have to name as much
13 as we had on that day.

14 Those included David Brooks, Richard Ezeanyim,
15 Gail MacQuesten, Daniel Sanchez, Jane Prouty, and Mark
16 Fesmire from OCD; Jeff Albers, Daniel Martinez and Pete
17 Martinez from State Land Office; Rick Foppiano representing
18 OXY USA and the associates and the New Mexico Oil and Gas
19 Association; Chuck Moran from Yates Petroleum Corporation;
20 Raye Miller, Marbob Energy Corporation; Yolanda Perez and
21 Gene Penny representing ConocoPhillips; Alan Alexander, in
22 the room here, representing Burlington Resources; Jimmy
23 Carlile from Fasken Oil and Ranch; Debbie Beaver from
24 Williams Corporation; Valdean Severson from Taxation and
25 Revenue; Alvin and Shirley Boyd, representing New Mexico

1 Cattle Growers Association; and Gwen Atchet, Oil and Gas
2 Accountability Project.

3 So as you can see, it involves a lot of people
4 that will want to know about the rule revisions.

5 Q. Did the workshop develop a revised draft of the
6 proposal?

7 A. Yes.

8 Q. And I ask you to look at what has been marked as
9 OCD Exhibit 1. I believe you have a copy.

10 A. Yeah, I do.

11 Q. Is that the draft that was developed by the
12 workshop?

13 A. Yeah, that was the draft that was developed by
14 the workshop.

15 Q. Okay, thank you. Was there general agreement at
16 the workshop among the people who participated?

17 A. Yes.

18 Q. Just summarize generally, what does the proposal
19 do?

20 A. Yes, there is general agreement on the terms of
21 the draft rule. Generally, the rule permits multiple
22 operators per spacing unit. Remember now, the current rule
23 prohibits that. But right now, this initial draft
24 prohibits principally that -- I mean multiple operators can
25 operate within a spacing unit.

1 Generally also it requires notice to existing
2 operators in the unit, and the rule does not apply to
3 compulsory pooled units or federal and state exploratory
4 units or the secondary recovery units.

5 Q. Okay, getting back to the internal OCD
6 proceedings, were various approaches to the question of
7 multiple operators per spacing unit discussed, including
8 the adoption of a statewide prohibition against multiple
9 operators?

10 A. Yes, they were.

11 Q. Was it pursuant to your recommendation that it
12 was decided that multiple operators in the spacing units
13 should be generally allowed rather than generally
14 prohibited?

15 A. Yes.

16 Q. Please tell the Commission why you made that
17 recommendation.

18 CHAIRMAN FESMIRE: Can we take a quick break
19 here?

20 MR. BROOKS: Sure.

21 (Off the record at 10:10 a.m.)

22 (The following proceedings had at 10:15 a.m.)

23 CHAIRMAN FESMIRE: Okay, let's go back on the
24 record. We're talking about the OCD order instituting
25 rulemaking on Rule 104. We were in the middle of Mr.

1 Ezeanyim's testimony. Let the record reflect that
2 everybody moved their cars.

3 MR. BROOKS: Okay, then I will proceed with the
4 examination of the witness here.

5 Q. (By Mr. Brooks) I believe you had told us, Mr.
6 Ezeanyim, just before this other issue came up, that you
7 were -- it was pursuant to your recommendation that the
8 Division decided to recommend that multiple operators in a
9 spacing unit be generally allowed.

10 A. Yes.

11 Q. And I had asked you to tell the Commission the
12 reasons why you made that recommendation.

13 A. Yes, and this is the crux of the matter. Well,
14 since last year we've started getting many of the requests
15 for exception to the Rule 104.C.(2).(c) to allow multiple
16 operators, in our dockets.

17 All of these cases were heard, and when they were
18 heard there was no contest, and we have generally issued
19 the orders for multiple operators in those spacing units.

20 It also appears from our discussion this morning
21 that OCD has been inadvertently allowing multiple
22 operators, for whatever reason, and we've not seen any
23 problems or complaints in that regard. And this is very
24 important. The ONGARD database can accept production from
25 multiple operators in a spacing unit even if they're

1 producing from a common source of supply.

2 Q. Yes, I believe at one time we were told --

3 A. Yes.

4 Q. -- that that was not the case --

5 A. Yeah, that's not --

6 Q. -- but Ms. Prouty clarified that?

7 A. Yeah, she clarified that. And that was a very
8 good -- one of the things that I thought, in the direction
9 I was thinking, because if that ONGARD can accept the data
10 from a common source of supply from these different
11 operators, I don't see any reason why. And now I've
12 mentioned that we have -- these cases are now, you know,
13 filling up our dockets, and we generally have approved
14 them, and no complaint has been.

15 And what we've found out in those areas is that
16 you talk to the original operator, and they say there is no
17 contest, they are willing to do it. So -- and that's why
18 I'm doing this.

19 So I genuinely believe that allowing multiple
20 operators in a spacing unit will streamline OCD procedures
21 and processes.

22 It also will help the State Land Office because
23 they will write to and get the notice. Actually,
24 especially because I'm involved in this with the State Land
25 Office where we have issued an order and see a lot of this

1 is subjected to that order.

2 It will also help the Bureau of Land Management
3 and even industry.

4 And I also believe in my heart that this would
5 prevent waste and protect correlative rights.

6 Q. When we took this to the workshop, was there
7 fairly general support for it?

8 A. Yeah, there was general support, there was no
9 objections.

10 Q. The Land Office had some concerns, correct?

11 A. Yes, they do.

12 Q. And we can talk about that --

13 A. Yeah.

14 Q. -- with regard to the notice --

15 A. That's right, that's right --

16 Q. -- portion of the rule.

17 A. -- yeah.

18 Q. Thus, the Exhibit 1 draft -- it allows multiple
19 operators per spacing unit for certain rules, right?

20 A. Yeah, it does.

21 Q. And those rules and the exceptions in regulations
22 concerning that are found in proposed 104.E?

23 A. Yeah, 104.E, that's right.

24 Q. Okay. Now, before we go into the details of
25 104.E, 104 is a multi-section rule, and it goes on with F

1 and G and so forth --

2 A. Yeah, that's right.

3 Q. -- and E is stuck in the middle of it. There
4 used to be something else in 104.E that we're proposing to
5 repeal; is that correct?

6 A. That's correct.

7 Q. And why are we proposing to repeal existing Rule
8 104.E?

9 A. We want to repeal existing Rule 104.E first to
10 get some space to put our revision. However, we know that
11 current Rule 104.E duplicates Rules 1101 and 1201 -- 1102,
12 I'm sorry.

13 Q. And because of that, then, the repeal of Rule 104
14 -- of existing Rule 104.E, will not make any substantive
15 change in those new rules?

16 A. No, it wouldn't at all.

17 Q. Okay. Then let's go on with the new Rule 104.E.
18 Section 1 deals with proration, correct?

19 A. That's correct.

20 Q. Okay. Now, we've recognized all along that there
21 was a potential problem with multiple operators in a
22 spacing unit in a prorated pool, correct?

23 A. That's correct.

24 Q. And would you explain why that is an issue?

25 A. As we all know, in a prorated unit and prorated

1 pool, the unit production cannot exceed the unit allowable.
2 However, if the unit is operated by one operator, then the
3 operator can produce the unit allowable by any number of
4 wells. But when you have multiple operators in the unit,
5 there could be a problem.

6 Q. Yeah, because they might not coordinate --

7 A. Yeah, coordinate with --

8 Q. -- in keeping their production within the --

9 A. That's right.

10 Q. -- allowable?

11 Now, if the unit is marginal, then that's not
12 going to be a problem?

13 A. That's correct.

14 Q. Because the total unit production by definition
15 is less than the allowable?

16 A. Yes, that's right.

17 Q. But if the unit is marginal, it's possible that
18 if a new operator drills a well, the new well will increase
19 the productive capacity of the unit so that it will become
20 nonmarginal?

21 A. Yes, that's possible.

22 Q. And in the OCD discussions, once again, were
23 there several approaches considered to this proration
24 problem?

25 A. Yes.

1 Q. And what approach did the OCD recommend before we
2 went into the workshop?

3 A. Yeah, the OCD recommended that the operator who
4 drilled the new well should produce only the difference
5 between the unit allowable and the actual production of the
6 existing well, or even wells, from the unit.

7 Q. And that would be what I've called the
8 incremental production?

9 A. Incremental production of the unit allowable.

10 Q. Okay. Now, after the workshop we decided on a
11 somewhat different proposal, correct?

12 A. That's right.

13 Q. And what was the proposal that we came out with?

14 A. Yeah, that's right, the well group members
15 recommended that the operators be allowed to agree on the
16 allocation of the allowable between the wells. That's what
17 they wanted before. We allocate the production if they
18 don't agree.

19 Q. And what did we provide in Rule -- in proposed
20 104.E.(1)?

21 A. Rule 104.E.(1) provides first that operators --
22 that's why the operators first of all tried to agree on how
23 to allocate the production among their wells. If they
24 can't reach an agreement, then we apply the formula that
25 the new well has to produce the difference between the unit

1 allowable and the actual production from the pool in the
2 unit.

3 Q. And what are the advantages of this approach?

4 A. Okay, the advantage of this approach is, first of
5 all, we make sure that the operator has -- you know, the
6 prudent operators here in the room, have agreed to talk
7 among themselves to agree to drill the well and produce the
8 unit allowable without exceeding it.

9 However, if they don't agree, then we can apply
10 our formula, which I just did that.

11 Q. Okay. Now, proposed Rule 104.E.(2) deals with
12 the requirement of notice that an operator would have to
13 have to complete a new well, to do a new completion in an
14 existing spacing unit --

15 A. That's right.

16 Q. -- that has a well in it.

17 Before we went into the workshop, what did the
18 Division recommend with regard to notice?

19 A. Yeah, the Division -- the very first, initial
20 draft provided notice to the existing operators only, with
21 no formal protest procedure.

22 Q. In other words, you just send a notice --

23 A. Yeah, that's --

24 Q. -- then you can go on and do it --

25 A. That's right.

1 Q. -- and you didn't have to wait?

2 A. You didn't have to wait, that's what the initial
3 proposed draft says.

4 Q. Okay, and the notice would be only to the
5 existing operator?

6 A. To the existing operators only.

7 Q. And did the industry representatives at the
8 workshop think there should be a protest procedure?

9 A. Yes, they strongly did that, yes.

10 Q. And did the State Land Office representatives
11 strongly feel that notice should be given to the State Land
12 Office if there was state land included?

13 A. Yes, that was correct.

14 Q. Now, actually we didn't have any input from BLM
15 indicating that they wanted notice, did we?

16 A. No, we didn't have any input, but during the time
17 I was sampling and calling people to do that they mentioned
18 they would like to have notice. The person who was
19 supposed to attend, I don't know what happened because it
20 was a one-day work group. And after we did that, I sent
21 the draft to him, and he said it's okay with him, the
22 notice requirement is okay with him.

23 Q. Okay, as a result of that input, what did the
24 work group recommend?

25 A. The work group recommended that proper notice be

1 given to the existing operators in the unit, including the
2 Bureau of Land Management, the State Land Office, if they
3 include both federal and state minerals. And also Rule
4 104.E provided formal protest procedure, in which case an
5 affected party can formally protest if he doesn't like
6 multiple operators in the unit.

7 Q. Now, as regards to the State Land Office and the
8 BLM, that would be -- if there is state or federal --

9 A. Yeah.

10 Q. -- land -- minerals in the unit, then it would go
11 to the applicable agency?

12 A. Yes.

13 Q. In other words, if there was both, it would go to
14 both agencies?

15 A. That's correct, yeah.

16 Q. Okay. Now, we are currently making a change in
17 what we're recommending the Commission to do from what was
18 proposed in the order initiating rulemaking; is that
19 correct?

20 A. That's correct.

21 Q. Would you identify Exhibit 2?

22 A. Yes, as we can see, Exhibit 2 is a new draft Rule
23 104 incorporating some minor changes we are now
24 recommending from the Exhibit 1 proposal.

25 Q. And are the new changes that we're recommending

1 in the proposed rule, are those shown in green font on
2 Exhibit 2?

3 A. Yes, if you look at Exhibit 2, they are shown in
4 green font. Those minor changes we are recommending from
5 the proposed Exhibit 1 to the proposed Exhibit 2.

6 Q. Actually, the edited material is shown in green
7 font, the deleted material -- the material that was
8 previously recommended as being deleted --

9 A. Deleted, yeah.

10 Q. -- is shown in red strikeout?

11 A. That's right.

12 Q. Okay. Now, the principal change that is made has
13 to do with the procedural provisions, right?

14 A. That's correct.

15 Q. And that's in E.(1) -- that's in, I'm sorry,
16 E.(2)?

17 A. Yes.

18 Q. What is the change that you're recommending in
19 Exhibit 2?

20 A. As we've said before, we are recommending -- we
21 are recommending -- what we are recommending is shown in
22 green font. If you look at Exhibit 2, you can see them in
23 green font. Those are the minor changes we are trying to
24 make, changes from the initial draft.

25 First of all, the operator shall specify the

1 location and the depth of the proposed well to all the
2 affected parties.

3 And the operator has the -- this time now, the
4 operator has the burden to tell the Division that they have
5 obtained all waivers from all the affected parties, or they
6 have done their public notice, all the affected parties,
7 and received no objection after their 20-day public
8 notification to the affected parties. And they have to use
9 that information to submit their APD to OCD, so that we can
10 carry on.

11 So we are shifting the burden to the operators to
12 tell us that we have done the permit notification or we
13 have gotten all the waivers, before the APD is submitted.

14 Q. So under Exhibit 1, the way it would have been,
15 as proposed after the workshop, under Exhibit 1 the
16 operator -- the procedure was, the operator files an APD;
17 at the time they file it, they send notice of the filing of
18 it with a copy to the existing operator, to SLO and BLM;
19 and then the Division would wait 20 days, and if the
20 Division did not receive a protest then the APD could be
21 granted, correct?

22 A. Yes, that's correct. And that's why we are --
23 And this is very important, I think it might help both the
24 OCD and the operator because as we all know, the APD is
25 normally approved within 24 to 48 hours, and if operators

1 think that they can just do the notice and then give it to
2 us to approve in 24 to 48 hours, they might lose a rig,
3 because it's -- I didn't hear that that is already what
4 they have been doing.

5 So by shifting this burden to the operator, they
6 know they have to do the public notice or obtain a waiver
7 from the affected parties before they can apply for APD,
8 because if you apply for APD without those, then that
9 application is not complete.

10 Q. Yeah, the --

11 A. That's why we did that.

12 Q. -- the new procedure that we're proposing in
13 Exhibit 2 is, the operator sends out the notice, and
14 instead of saying to the existing operators and the people
15 notified, Protest to the OCD, they say, Send your protest
16 to us?

17 A. Yes.

18 Q. And then the operator, when he files his APD, he
19 can say -- he can either attach an affidavit that he sent
20 these notices 20 days before and received no protest, or he
21 can attach copies of waivers. Or if he's received a
22 protest he has to forward that so it can be considered as a
23 hearing?

24 A. That's right, that's correct. Of course, in the
25 event of a protest, then the application can only be

1 approved after -- you know, during a hearing.

2 Q. After a hearing.

3 A. After a hearing, yeah.

4 Q. Okay. Now, I was going to ask you what the
5 reasons for the change were, but I think you've already
6 told us, so --

7 A. Yes, I -- Yes.

8 Q. -- I will pass on them.

9 Is there any other respect in which Exhibit 2
10 differs from Exhibit 1?

11 A. Yes, we are recommending changing application for
12 permit to drill to application for permit to drill, deepen
13 and plug back.

14 Q. Okay, now let's see, I didn't -- Where is that in
15 here? Yeah, it's in --

16 A. That was those minor changes we are recommending
17 in --

18 Q. Yeah --

19 A. -- Exhibit 2.

20 Q. -- we are recommending that change, but I'm
21 afraid it didn't get into Exhibit 2.

22 A. Yeah.

23 Q. That would be in Exhibit 2, E.(2) --

24 A. Yes.

25 Q. -- in the third line of E.(2) --

1 A. Yeah.

2 Q. -- where it says "application for permit to
3 drill", you would change that to "application for permit to
4 drill, deepen or plug back".

5 A. "...or plug back", that's correct.

6 Q. Okay, and why is that being recommended?

7 A. Because I think that is the correct and complete
8 name of the application, and because using the shut-in form
9 might make the rule ambiguous. Because, you know, if the
10 operator, you know, is trying -- you know, the operator
11 might think a well -- the application is not to deepen or
12 plug back, it's only for drilling a new well.

13 So we want to make -- clarify it and make sure
14 it's not ambiguous, you know.

15 Q. And a new completion could --

16 A. Yes.

17 Q. -- could arise under either -- in the pool, could
18 arise under any of those --

19 A. Yes.

20 Q. -- conditions, correct?

21 A. Yes, that's correct. Yeah.

22 Q. Okay. Is there anything else that you changed in
23 Exhibit 2?

24 A. Yes, paragraph subheadings, if you look at
25 Exhibit 2, you see we -- you know, and you look at Exhibit

1 1, we didn't have paragraph subheading, but here now we
2 have paragraph subheadings added from paragraphs (2)
3 through (5) on the proposed Rule 104.

4 Q. And of course the paragraph subheadings don't
5 change the substance?

6 A. Right, they don't change anything, we're just
7 adding paragraphs for clarity.

8 Q. Anything else we're recommending changed?

9 A. No.

10 Q. Okay, thank you. Let us go on, then, to
11 paragraph (3) concerning transfer of existing wells.
12 That's 104.E.(3). The notice procedure does not apply,
13 correct?

14 A. That's correct.

15 Q. And if a multiple-operator situation arises
16 because of the existing -- because of the transfer of an
17 existing well, it still doesn't apply?

18 A. That's correct, it wouldn't apply because this is
19 all yours --

20 Q. Yeah.

21 A. -- in all cases.

22 Q. That would not be -- And why would that be?

23 A. Because there is no call for notice to the
24 existing operator, because the existing operator already
25 knows.

1 Q. Because he's the one that's transferring the
2 well?

3 A. Yes, he's transferring the well, so he already
4 knows that. He can't, you know, notify himself.

5 Q. Now, if there are three operators in the unit and
6 one of them transfers a well -- well, no, there are two
7 operators in a unit, one of them transfers a well -- Let's
8 say you've got an oil unit with four --

9 A. Yeah.

10 Q. -- four wells --

11 A. Yeah.

12 Q. -- and you have operator A operates two of the
13 wells, and operator B operates two of the wells, and
14 operator B transfers one of those wells to operator C, so
15 that there are now four -- there are now three operators --

16 A. Yeah.

17 Q. -- operators A and B -- operators B and C, of
18 course, know about it, because they're the parties to the
19 transfer --

20 A. Yeah.

21 Q. -- operator A doesn't know about it, but is he
22 really an affected party?

23 A. No, he's not really an affected party.

24 Q. Because he's the operator of some but not all of
25 the wells before the transfer, and he's the operator of

1 some but not all of the wells after --

2 A. That's correct.

3 Q. -- and there's no new well?

4 A. There's no new well, so you already know that
5 there are multiple operators in the unit.

6 Q. Okay. Okay, thank you. But however, SLO and BLM
7 would still be entitled to notice in that case, wouldn't
8 they?

9 A. That's correct.

10 Q. If there's -- if the transfer itself will
11 create -- will produce a situation where there's an
12 additional operator in the unit, who was not in the unit
13 before, then notice would be given to SLO and BLM, if that
14 were --

15 A. That's correct.

16 Q. Let us go on then, to 104.E.(3) [sic], then, with
17 compulsory pooling, and what does that provide?

18 A. Well, if you look at Exhibit 2, you see that
19 language in 104.E.(3), where it did say multiple operation
20 in a compulsory pooled unit. Basically, that's what that
21 language is saying.

22 Q. Right.

23 A. Yes.

24 Q. And why did we do that? Why are we recommending
25 that?

1 A. We are recommending that because it's a separate
2 unit that we are working on to be able to come up on how we
3 can --

4 Q. The Division is working on another rule --

5 A. Yes.

6 Q. -- on that?

7 A. So --

8 Q. I know there's some people in the audience who
9 are very familiar with that.

10 A. So I tried to work on that rule so that we are
11 not going to mess it up, the unit, with multiple
12 operations.

13 Q. Okay. Then does 104.E.(4) -- I'm sorry, E.(4)
14 we've already dealt with -- does 104.E.(5) address the
15 issue of federal and state exploratory units?

16 A. Yes, it does do that.

17 Q. What does that paragraph provide?

18 A. Okay, the paragraph also provides that there
19 should be no -- and this is the recommendation of the work
20 group members, that we should not allow multiple operators
21 in state or federal exploratory units, because those units
22 would be governed by whatever rules and regulations apply
23 to them.

24 Q. And those would be the rules of the BLM --

25 A. The BLM or State Land Office, and we don't want

1 to, you know, mess them up.

2 Q. Okay, now -- then we go to the issue of secondary
3 recovery units. Would the proposed rule allow multiple
4 operators in established secondary recovery units?

5 A. No.

6 Q. And where in the rule does it say that?

7 A. Okay we recommended adding proposed paragraph
8 701.F.(5) -- if you look at it, 701.F.(5) -- to the Rule
9 701, to prohibit multiple operations in pressure
10 maintenance units, and also the proposed paragraph
11 701.G.(8) to prohibit multiple operations for waterflood
12 projects, as shown in that Exhibit 2.

13 Q. Now, these are the two kinds of secondary
14 recovery units that OCD specifically authorizes?

15 A. That's correct.

16 Q. Why should there not ordinarily be multiple
17 operators in a pressure maintenance or for a waterflood
18 project?

19 A. That's a good question. Of course, we all know
20 that the nature of the operation will require established
21 and coordinated management and production practices.
22 Allowing multiple operators in these units will create some
23 confusion, and it would not be prudent to do that.

24 Q. Now, was there some consideration at the Division
25 level about a project area established for a horizontal or

1 deviated well under Rule 111?

2 A. Yes.

3 Q. And did the OCD originally recommend that Rule
4 111 project areas be excluded from the rule permitting
5 multiple operators?

6 A. Yes, that's correct.

7 Q. And what did the workshop recommend on that?

8 A. The workshop recommended that -- about the
9 multiple operators?

10 Q. About the Rule 111 units?

11 A. Oh, 111 units, they thought that the notice
12 requirement will take care of any deviated or directional
13 drilling for any interference --

14 Q. So the language --

15 A. -- and take care of that.

16 Q. So the language in the previous Division
17 drafts --

18 A. Yes.

19 Q. -- of the rule, that Rule 111, was deleted?

20 A. Yeah, that was deleted from the initial draft.

21 Q. Okay, I think we've gone through all the
22 provisions of the new rule. Do you recommend, Mr.
23 Ezeanyim, that the Commission adopt the proposed rule
24 amendments in Exhibit 2?

25 A. Yes, that's why I'm here, to recommend that.

1 Q. In other words, you're recommending that we adopt
2 Exhibit 1 as modified by Exhibit 2?

3 A. That's correct.

4 CHAIRMAN FESMIRE: And as further modified by the
5 phrase, "for permit to drill, deepen or plug back"?

6 THE WITNESS: That's correct.

7 Q. (By Mr. Brooks) Okay, and I believe you've
8 already told us, but do you believe that these proposals
9 would serve the interests of prevention of waste and
10 protection of correlative rights?

11 A. Yes, they would, I sincerely believe that.

12 Q. Okay. Exhibits 1 and 2 were developed with your
13 input and able assistance, correct?

14 A. That's correct.

15 MR. BROOKS: We'll tender Exhibits 1 and 2.

16 CHAIRMAN FESMIRE: They're so admitted.

17 MR. BROOKS: Pass the witness.

18 CHAIRMAN FESMIRE: Mr. Carr?

19 MR. CARR: No questions.

20 CHAIRMAN FESMIRE: Mr. Foppiano, would you have
21 any questions of the witness?

22 MR. FOPPIANO: Yes, I did have one question,
23 thank you.

24 For the record, my name is Richard E. Foppiano,
25 and for this matter I'm just representing OXY.

EXAMINATION

1
2 BY MR. FOPPIANO:

3 Q. I had a question with respect to the changes.
4 OXY doesn't object at all to taking the burden of the
5 notice requirements, but the time frame that the rule --
6 the draft that I was looking at has 20 days from the date
7 the application was filed. And since we're moving the 20
8 days over to where the operator gives a notice, it would
9 not key off of the date the application is filed, and I'm
10 just curious what -- I don't have a copy of the latest
11 draft, so I don't -- does that -- what would the 20 days
12 key off of now?

13 A. Are you saying when does the 20 days start? Is
14 that --

15 MR. FOPPIANO: Oh, you have a copy.

16 CHAIRMAN FESMIRE: Make sure we're working off
17 Exhibit 2.

18 THE WITNESS: Yeah, Exhibit 2. And that's why I
19 recommend those minor changes.

20 MS. PEREZ: This is called Exhibit A from the
21 copy that I have. I don't know where it says anything
22 about --

23 MR. BROOKS: You may look at the court reporter's
24 draft --

25 MR. FOPPIANO: Okay.

1 MR. BROOKS: -- copy here.

2 MR. BROOKS: I think you will find that if you
3 look on the page on which the rule is continued, which is
4 the page I handed it to you open to, if you'll look down --

5 MR. FOPPIANO: Oh, I see, 20 days of the date
6 such notice was mailed.

7 THE WITNESS: Yes.

8 MR. FOPPIANO: Okay, that answers my question.

9 MR. BROOKS: So you go from the date the notice
10 is mailed, 20 days forward, and at that time you will have
11 to certify in the APD that you -- and the certificate
12 attached to the APD, that you mailed the notice at least 20
13 days prior to the date of filing -- the date that you filed
14 the APD.

15 MR. FOPPIANO: Okay, that answers my question. I
16 just wanted to make sure it was clear. Thank you.

17 CHAIRMAN FESMIRE: Are there any further
18 questions of Mr. Ezeanyim?

19 Mr. Ezeanyim, you can return to your seat. Thank
20 you very much.

21 THE WITNESS: Thank you.

22 CHAIRMAN FESMIRE: Does anybody have a statement
23 concerning the proposed rule that they'd like to make at
24 this time on the record? Mr. Foppiano?

25 MR. FOPPIANO: Mr. Chairman, Commissioner Bailey,

1 thank you for allowing the opportunity to speak.

2 My name again is Rick Foppiano, I'm here today
3 representing NMOGA and OXY.

4 And speaking for NMOGA and OXY both, we support
5 the rule changes that have been proposed. And speaking for
6 OXY, we believe that these changes will actually prevent
7 waste.

8 We have run into situations in prior years where
9 what looked like to be a good project, utilization of
10 wellbores that were already out there or development of
11 infill drilling potential was -- we had to scrap those
12 projects because of the prohibition of the multiple
13 operators.

14 And we explored multiple ways to address the
15 prohibition. We did not file for exceptions, and we were
16 quite interested when somebody did file for their first
17 exception and it was granted.

18 So we believe that -- just from what we see, that
19 this will prevent waste by allowing wellbores that are
20 drilled through multiple horizons by different operators to
21 be more efficiently utilized in the recovery of reserves
22 that exist in a particular reservoir.

23 And I could give you some examples of that if you
24 want more information, but that's what we see. It would
25 make more efficient use of existing wells that have already

1 been drilled, and it will allow development to occur in
2 some limited circumstances that previously was discouraged
3 because of the multiple-operator prohibition.

4 And we also believe that in so preventing this
5 waste that the correlative rights of the affected parties
6 will be protected. The notice provisions protect them, the
7 C-102 that's required to be filed, stating that all the
8 interests have been consolidated.

9 Basically, we see that this order does not give
10 any operator, anybody, anything, that which they don't have
11 by private agreement already. So everybody's got to be on
12 board with this proposal, and in that respect we believe it
13 protects correlative rights.

14 So I personally would like to thank Richard
15 Ezeanyim and David Brooks for their leadership on this
16 particular issue, and that's all I have, and I'd be happy
17 to answer any questions you might have. Thank you.

18 CHAIRMAN FESMIRE: Commissioner Bailey?

19 COMMISSIONER BAILEY: I would just like to thank
20 the OCD for its efforts in doing this, particularly the
21 recognition of the need for notice to the Land Office.

22 We have communitization agreements and other
23 contractual agreements with lessees of record and
24 communitization operators that have to be modified, and so
25 we have now set into place new procedures for those

1 processes.

2 CHAIRMAN FESMIRE: Are there any other comments
3 on this issue?

4 Counsel Brooks, what's our next step?

5 MR. BROOKS: I believe that the next step would
6 be for the Commissioners to deliberate, if they have any
7 deliberation in which they wish to engage, and decide if
8 they wish to adopt the rule and we wish to adopt the
9 proposed amendments or modifications in Exhibit 2, and give
10 me instructions, and then by the next meeting I will
11 prepare an order adopting this rule.

12 CHAIRMAN FESMIRE: Okay.

13 MR. BROOKS: Of course, this being a rulemaking
14 proceeding, the deliberations should be in the public
15 session rather than executive session.

16 CHAIRMAN FESMIRE: Commisioner Bailey, do you --

17 COMMISSIONER BAILEY: I fully support Exhibit 2
18 as modified, and I think it should be adopted by the
19 Commission.

20 CHAIRMAN FESMIRE: Exhibit 2, as modified by the
21 statement under E.(2) to turn the phrase, "the application
22 for permit to drill" to the phrase, "the application for
23 permit to drill, deepen or plug back", otherwise as drafted
24 and presented to the Commission?

25 COMMISSIONER BAILEY: Yes.

1 CHAIRMAN FESMIRE: Okay, is there a motion to
2 that effect?

3 COMMISSIONER BAILEY: I so move.

4 CHAIRMAN FESMIRE: I second the motion.

5 All those in favor?

6 COMMISSIONER BAILEY: Aye.

7 CHAIRMAN FESMIRE: Opposed? The motion carries,
8 the motion to instruct Counsel Brooks to draft the final
9 order and amend the rule for attachment to the final order
10 is adopted by the Commission.

11 MR. BROOKS: Thank you.

12 (Thereupon, these proceedings were concluded at
13 10:46 a.m.)

14 * * *

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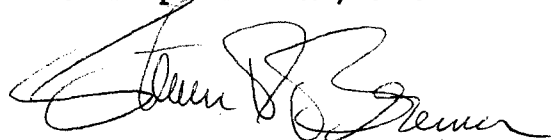
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL April 16th, 2005.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006