

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

ORIGINAL

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

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR THE REPEAL,
ADOPTION AND AMENDMENT OF RULES ISSUED
PURSUANT TO THE OIL AND GAS ACT,
NMSA 1978, SECTIONS 70-2-1 THROUGH
70-2-38

CASE NO. 14181

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN
JAMI BAILEY, COMMISSIONER
WILLIAM C. OLSON, COMMISSIONER

September 12, 2008

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico
Oil Conservation Commission, MARK E. FESMIRE, Chairman, on
Friday, September 12, 2008, at the New Mexico Energy, Minerals
and Natural Resources Department, 1220 South Saint Francis
Drive, Room 102, Santa Fe, New Mexico.

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A P P E A R A N C E S

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ALSO PRESENT:

Carol Leach, Esq., General Counsel
New Mexico Energy, Minerals & Natural
Resources Department

1 CHAIRMAN FESMIRE: Let the record reflect that it's
2 9:00 a.m. on Friday, September 12th, 2008. This is a special
3 meeting of the New Mexico Oil & Gas Conservation Commission
4 that has been called to hear Case No. 14181. It's the
5 Application of the New Mexico Oil Conservation Division for a
6 Repeal, Adoption and Amendment of Rules Issued Pursuant to the
7 Oil and Gas Act, NMSA 1978, Sections 70-2-1 through 70-2-38.

8 The record should also reflect that all three of the
9 Commissioners are present. We therefore have a quorum. And I
10 believe, Ms. MacQuesten, you're the proponent of these changes,
11 so I'll turn it over to you for an opening statement.

12 MS. MACQUESTEN: Thank you, Chairman Fesmire.

13 CHAIRMAN FESMIRE: I guess we better take appearances
14 first. I'm sorry.

15 MS. MACQUESTEN: Gail MacQuesten for the Oil
16 Conservation Division. I have one witness.

17 MR. CARR: May it please the Commission, my name is
18 William F. Carr with the Santa Fe law firm of Holland and
19 Hart, LLP. I represent the New Mexico Oil & Gas Association.
20 And I have no witnesses.

21 CHAIRMAN FESMIRE: Will the witness stand to be
22 sworn, please?

23 [Witness sworn.]

24 CHAIRMAN FESMIRE: Ms. MacQuesten, you may proceed,
25 and I apologize.

1 MS. MACQUESTEN: This is a rule-making proceeding.
2 The OCD is requesting that the Commission approve a
3 rearrangement of the Division's existing rules.

4 You should have an exhibit packet in front of you.
5 Exhibits A through H are the same exhibits that were attached
6 to the application and that appear in the binder that was
7 provided to you with the application. We kept the same
8 numbering for Exhibits A through H. You may find it more
9 convenient to use the binder that came with the application
10 because it has tabs that separate the exhibits.

11 The exhibit packet that we're presenting today has
12 two exhibits that don't appear in the original application
13 packet. Exhibit I is the pleading listing the OCD's proposed
14 modifications. These proposed modifications were filed with
15 the Commission on August 26th. This pleading identifies the
16 typos, grammatical errors, and errors in cross references we
17 found after filing the application. Exhibit J, the final
18 exhibit in the exhibit packet, is the Affidavit of Notice.

19 We've also provided you with a one-page demonstrative
20 exhibit that Ms. Bada will be using in her testimony to explain
21 the structure required for rules. We do not intend to offer
22 this as an exhibit in the case, we just hope that it will be
23 helpful in understanding the testimony today.

24 With that, I would call Ms. Cheryl Bada.

25 CHAIRMAN FESMIRE: Ms. Bada, you've been previously

1 sworn in this case?

2 THE WITNESS: Yes.

3 CHAIRMAN FESMIRE: You may proceed.

4 CHERYL BADA

5 after having been first duly sworn under oath,

6 was questioned and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MACQUESTEN:

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

10 A. Cheryl Bada.

11 Q. Where are you employed?

12 A. The New Mexico Energy, Minerals and Natural
13 Resources Department.

14 Q. Do your duties include being counsel for the Oil
15 Conservation Commission?

16 A. Yes.

17 Q. Are you familiar with the Oil Conversation
18 Division's rule restructuring project?

19 A. Yes, I am.

20 Q. Would you explain why the OCD took on this
21 project?

22 A. We took on the project in order to be able to
23 better use the New Mexico Administrative Code structure.
24 Currently a lot of the rules are jammed into a few parts, and
25 we actually have about 39 or 38 parts that are available, and

1 that makes it easier to locate the rules rather than having
2 them be pages and pages and pages long in one part. Now we
3 have separated them into more parts, and it's easier to find
4 the subject matter. So that was the primary reason.

5 Q. Could you explain what you mean by a "part?" And
6 perhaps if you use the demonstrative exhibit.

7 A. Essentially the way the New Mexico Administrative
8 Code is structured, it starts out with a title. And all the
9 oil and gas rules are in Title 19, which is Natural Resources
10 and Wildlife. They are then subdivided into chapters. And the
11 chapter that the Oil and Gas rules are in is Chapter 15.

12 And this chapter includes not only the OCD rules,
13 they include the Department of Ag rules, and some from
14 Regulation and Licensing. Then the next level is a part. And
15 that's what State Records Center and Archives actually
16 considers a rule. They don't consider the next division, which
17 is a section, as a rule; they consider the whole part as a
18 rule.

19 So the way the State records are written, a part is
20 supposed to contain a single subject matter instead of having a
21 bunch of different, relatively unrelated topics within a part.
22 And right now a lot of our rules do that.

23 And then the next section, the next sublevel, is a
24 subsection. So if you see A, B, C: That's a subsection. The
25 little 1s and 2s are paragraphs, and then it's when you get

1 into the little As and Bs in parentheses, those are your
2 subparagraphs.

3 Q. So using the demonstrative exhibit as an example,
4 we have "19.15.2.7 DEFINITIONS." Could you walk us through
5 those and tell us what those represent?

6 A. 19.15.2.7 is what's considered a section. So
7 that's a -- and 19.15.2, which is definitions and general
8 provisions, is the level above that, that's what's considered a
9 part. So if you go to Exhibit B, and you see Part 2, Part 3,
10 Part 4, those are each considered a rule.

11 Q. How would you describe the structure we currently
12 have as far as what is contained in a part?

13 A. Particularly Part 1 and Part 3 -- those are the
14 two that I can think of right off the top of my head -- they
15 contain a lot of unrelated subject matter, particularly Part 1.
16 If you look at it, it has definitions; it has sections on tax
17 incentives; it has sections on remediation; it has sections on
18 teleconferencing.

19 So it's a real jumble of different requirements, and
20 State Records Center and Archives looks at it and tells us it
21 does not meet the requirements for a part because it's not one
22 subject matter.

23 Q. I noticed that the proposed restructuring does
24 not contain a Part 1. Can you explain why we don't have a
25 Part 1?

1 A. We don't have a Part 1 because Part 1 is
2 reserved. It assumes there will be joint rules or joint
3 definitions or joint general provisions that apply to the
4 entire chapter. And Chapter 15, like I said, includes
5 Department of Ag rules and Regulation and Licensing Department
6 rules as well as our rules.

7 When we set about doing the rearrangement of the
8 rules, the State Records Center and Archives asked us to not
9 use Part 1 because our definitions and our general provisions
10 don't apply to those two agencies' rules. They asked for us to
11 put those in Part 2 instead. So Part 1 can now be reserved in
12 case we ever, for some reason, have a joint rule or joint
13 definition.

14 Q. What was your role in the rule restructuring
15 project?

16 A. I worked with Division counsel and we sat down
17 and looked at our current parts and the requirements that were
18 contained within them and tried to develop a structure for,
19 okay, what new parts would we need? How would we organize
20 them?

21 We tried to put -- group them so that
22 administrative-type rules would be in parts that were located
23 next to each other. Rules dealing with rule-making and
24 adjudication were next to each other. And then we tried to
25 follow the actual process for oil and gas drilling and

1 production and then waste disposal. So they start -- you know,
2 the drilling and production rules are near each other. The
3 allocation and proration rules are near each other, and then
4 you get into remediation and release notification and the waste
5 disposal. We tried to make it follow a logical process so
6 somebody looking for it could actually follow through the parts
7 and have it make, hopefully, a logical progression of what
8 happens in the actual application and production process.

9 Q. Other than moving existing parts and sections,
10 were any changes made?

11 A. We tried to make the use of terminology
12 consistent. You know, given the long-term -- the nature of
13 these rules and how long they have been in existence, a lot of
14 the parts use different terms.

15 We would have OCD, we would have Oil Conservation
16 Division, for example, we would have Division -- all used
17 throughout the parts. So we had to use one term. And because
18 "Division" is actually defined in the definitions, I went
19 through the parts and made all those say Division. Sometimes
20 it would say Division Director; sometimes it would say
21 Director. We tried to make those things consistent.

22 We also did our best to correct all the internal
23 cross references. Many of those were outdated. Where I could,
24 I put things in active voice instead of passive voice just so
25 it was clear who was responsible for that action.

1 Q. Were any additional definitions adopted?

2 A. There are three. They are "Tribal Leases,"
3 "Tribal Lands" and "Tribal Minerals." The reason that was done
4 is throughout the parts we used different terms like tribal
5 minerals, Indian minerals, Indian lands, and they're not
6 defined anywhere. And they were all used in the context of
7 notifying the BLM when someone was going to drill on lands that
8 the BIA has a trust responsibility for.

9 So those definitions were added to clarify that
10 that's when you notify the BLM. You notify them when those
11 lands were actually trust lands of trust minerals and not if
12 they were fee lands that had never been put in trust.

13 Q. Let's walk through the exhibits in this case.
14 Could you turn to what's been marked as Exhibit A, please?

15 A. Yes.

16 Q. Would you tell us what this is?

17 A. These are the repeals that we would require the
18 Commission to adopt the proposed rules. Because we're moving
19 the requirements and the rules to new parts, the way the
20 Records Center and Archives asked that that be done is, we
21 should do a repeal-and-replace. So these would repeal Parts 1
22 through 15, and then those in Exhibit B would be the
23 replacement rules.

24 Q. So let's turn to Exhibit B. What is that?

25 A. These are the new parts that show where all of

1 the current requirements have been moved. So like all of the
2 definitions that weren't in Part 1 are now in Part 2, for
3 example. The Operator Registration Provisions that were in
4 Part 3, currently Part 3, are now in Part 15.

5 So if you go through, you can tell where they were if
6 you look at the little notations after every section. Like so
7 if you look at the end of Section 7, and Part 2, the
8 Definitions, it will show you that came from 19.15.1.7,
9 previously.

10 Q. So the parts that were repealed by the language
11 in Exhibit A are rearranged --

12 A. Into these parts.

13 Q. -- into the parts that appear in Exhibit B?

14 A. And because we used more parts, you know, there's
15 now a lot more than in the previous -- the current rules and
16 arranged parts.

17 Q. Could you turn to what's been marked as
18 Exhibit C? What is this document?

19 A. This is the amendment of Part 17, 19.15.17, the
20 Pit Rule.

21 Q. Why is it an amendment? Why didn't you repeal
22 and replace the Pit Rule?

23 A. This wasn't repealed and replaced because -- I
24 have to start back when we did the surface waste rules. That
25 was originally proposed as an amendment to what is now

1 currently Part 2. When we went to file, the State Records
2 Center and Archives told us, "No. You've got to do it on a
3 separate part. It's too long. It's one subject matter. You
4 can't just amend it and leave it in Part 2."

5 So at that point, we were put on notice that they
6 were going to require us when we re-did rules, and they were
7 long and contained a single subject matter, that we were going
8 to end up using a part. So when we did the Pit Rule, we just
9 put it in a new part at that time. So there's no need to
10 repeal and replace. It's already in a part, and we just
11 amended it to reflect the new internal cross references.

12 And also we moved some of the acronyms that are in
13 here, some of the definitions, some of those went into what's
14 now Part 2 in the General Definitions.

15 Q. So the numbering for the Pit Rule and the Surface
16 Waste Management Rule will not change?

17 A. They will not change.

18 Q. They were already numbered consistently with the
19 structure you're proposing today?

20 A. Yes.

21 Q. If there was some section within the Pit Rule or
22 the Surface Waste Management Rule that didn't have a change,
23 will it appear in our exhibits today?

24 A. No, it will not. When you do an amendment, you
25 only show those sections that actually have changes in them.

1 So if they are not in this exhibit, nothing was changed.

2 Q. And nothing will change in those if the
3 Commission adopts our proposed changes?

4 A. Right. They'll stay the same. They're
5 not affected.

6 Q. Okay. Is Exhibit D the proposed amendment to the
7 Surface Waste Management Rule?

8 A. Yes, it is. And that's, you know -- it's only an
9 amendment, the same as I explained for Part 17.

10 Q. Could you turn to what's been marked as
11 Exhibit E? What is this document?

12 A. This is a crosswalk that I developed because I
13 thought it would be easier to follow where the rules had been
14 moved to. The first column shows where they are in the current
15 rules. The second column shows where they've been moved to.
16 So you can look at the current rules, look at the new rules and
17 compare them and be able to locate them.

18 Q. Now, is this something that the Commission has to
19 adopt or that would be part of the rules?

20 A. No. It's only done so that the Commission and
21 interested parties would be able to locate where the rules have
22 been moved to.

23 Q. So this is just a tool to help us during this
24 process as we try to move from the old structure to the new
25 structure?

1 A. Right, right.

2 Q. And what is Exhibit F?

3 A. It is also a crosswalk. It's just refers -- you
4 go from the rearranged proposed new rule to existing rules. So
5 if you have the proposed rules, you look at them and look at
6 this crosswalk, and you'll know where they moved from.

7 Q. Could you tell us what Exhibit G is?

8 A. This is my written testimony which was pre-filed.
9 So it explains the process that we did and the changes that
10 were made so the Commission and the public could look at it and
11 know in advance what had been changed and what had been moved,
12 too.

13 Q. Did you prepare the pre-filed testimony yourself?

14 A. Yes, I did.

15 Q. Have you previewed it prior to this hearing
16 today?

17 A. Oh, yes, I did.

18 Q. Do you want to make any changes to the testimony
19 as originally prepared?

20 A. No, I do not.

21 Q. Are you prepared today to adopt that testimony
22 under oath?

23 A. Yes, I am.

24 Q. Is Exhibit H the draft advertisement that was
25 given to the Commission with the application?

1 A. Yes, it is.

2 Q. And what is Exhibit I?

3 A. Exhibit I is the Division's proposed
4 modifications. When we were preparing for the hearing, we
5 found some typos in the existing rules that I had not caught,
6 so it is proposing to correct those, some that I had
7 inadvertently made when I was moving to new parts.

8 And also in the proposed rules, we removed the
9 sections dealing with the new well tax incentive credit because
10 it's no longer available. It expired, and it's not in the
11 statutes, so there's no point in having it in the rules. And
12 we hadn't got all the references to it taken out, so it shows
13 those.

14 And then there's a couple of others. If you look at
15 Paragraphs 12 and 13, when we read those as subsections, they
16 were extremely awkward, so we're proposing slight modifications
17 to make them a little easier to read and understand.

18 Q. Is the OCD proposing any additional modifications
19 today?

20 A. No, we are not.

21 Q. Do you have any suggestions for addressing the
22 OCD's proposed modifications or any modifications the
23 Commission may want to make?

24 A. We would suggest that if the Commission adopts
25 the proposed rearrangement and the modifications, they could

1 direct the Division to draft an order that would incorporate
2 those modifications and have it circulated to the other parties
3 and then present it to the Commission.

4 Q. I take it, in going through this process, that
5 you are extremely familiar with the formatting requirements of
6 the NMAC folks?

7 A. Probably more than I would like to be.

8 Q. And you'd like to make sure that the final
9 proposed rules are in conformity with the NMAC requirements?

10 A. Yes. Otherwise they reject our filings, and
11 that's never pleasant.

12 Q. After the filing of the application in this case,
13 did the OCD receive any comments?

14 A. No, we did not.

15 Q. Did any entity file an entry of appearance?

16 A. No, they did not.

17 MS. MACQUESTEN: I have no further direct examination
18 of Ms. Bada at this time.

19 CHAIRMAN FESMIRE: Mr. Carr?

20 MR. CARR: Mr. Chairman.

21 CROSS-EXAMINATION

22 BY MR. CARR:

23 Q. Ms. Bada, I circulated the draft to the NMOGA's
24 regulatory practices committee and we received several
25 questions and comments, and I just want to be sure to clarify

1 some of them.

2 A. Okay.

3 Q. Most of the concern really related to
4 definitions. For example, in Rule 36, deleted from the
5 definitions, at least in the exhibit, were definitions for
6 liner runon and unstable area. Where do those definitions
7 appear in the rule?

8 A. They now appear in Part 2 because they're used in
9 more than one part. So we placed them in Part 2 instead of
10 Part 36. Because if you use a definition in more than one
11 part, they should be in your general definitions section.

12 Q. And the general concern was that we have a
13 definition section. Is our understanding correct that if there
14 are definitions that relate to only specific sections of the
15 rule, that those definitions still are contained, not in the
16 original definitions section, but spread throughout the rules?

17 A. Right. If there are definitions that only apply
18 to a part, then they're in Section 7 of that part. If they
19 relate to a lot of other parts, then they're in Part 2,
20 Section 7 of that part.

21 Q. I received a number of comments that certain
22 things had mysteriously disappeared from the rule, and if I
23 understand your testimony, that is because there were no
24 changes, and they will be back in the recodified rule?

25 A. Right. When State Records and Archives -- we're

1 required to file what's called an integrated version of the
2 rule. So what that does is, it takes any sections that are
3 amended and those that weren't, you put them together, and
4 that's what shows up on the State Records Center and Archives'
5 website. And that's considered the integrated rule. But when
6 you do an amendment, it doesn't show up.

7 Q. And it is your belief that there are no
8 substantive changes to the rules; just a reorganization of the
9 existing rules?

10 A. Yeah. There was no intent to make substantive
11 changes. It was merely to make it easier to use, update cross
12 references, make terms consistent.

13 Q. Thank you very much.

14 CHAIRMAN FESMIRE: Your members should not be
15 embarrassed about that because that was the subject of a panic
16 trip to Ms. Bada's office one morning by me.

17 MR. CARR: I want you to know that has -- I had an
18 initial screaming response. Thank you, Mr. Chairman.

19 CHAIRMAN FESMIRE: Commissioner Bailey?

20 EXAMINATION

21 BY COMMISSIONER BAILEY:

22 Q. I'm a real advocate of user-friendly references,
23 user-friendly commuter systems, user-friendly governmental
24 policies, so that I've noticed that since the NMAC form is the
25 way that OCD rules have been presented, there hasn't been as

1 index. Is it possible for the OCD to provide an index, which
2 obviously would not be part of the NMAC system, but which would
3 help people tremendously in finding where to look for
4 references on particular subjects?

5 A. We certainly could. And right now online, even
6 though it's not an index, we do a table of contents that you
7 can click on the various titles. I know that's not the same as
8 an index. But yes, we certainly could.

9 Q. Right. I'm talking an index, not a table of
10 contents. Because I need to -- for example, I was looking --
11 where do I find commingling? And it took me five minutes,
12 where before it would have been taken me five seconds. I would
13 really urge the OCD to provide an index in addition to a table
14 of contents.

15 A. I think that's entirely doable.

16 Q. Thank you.

17 A. I can't speak for everybody else in the Division,
18 but I think it's a good idea.

19 Q. Thank you. That's all I have.

20 CHAIRMAN FESMIRE: Commissioner Olson?

21 COMMISSIONER OLSON: I just had a couple of
22 questions.

23 EXAMINATION

24 BY COMMISSIONER OLSON:

25 Q. I guess in some places we do have definitions

1 that are part of individual sections. Is there some reason why
2 they could all just be in the definitions?

3 A. They could. But in an attempt to rework every
4 part, I only moved the ones that applied to all the parts. And
5 lots of times agencies, if the definition only applies to that
6 part, they put them in that part. But you could do it either
7 way.

8 Q. But is there some conflict, I guess, between a
9 definition there and other definitions?

10 A. There may be, and I did not go through and check
11 all of those. There are certainly places where the same term
12 has different meanings, and there were at least a couple of
13 places where that occurred.

14 Q. Because I was thinking a lot of the WQCC
15 regulations, we kind of try to move a lot of the definitions
16 just in one place and put them all in the definitions. So if
17 you're looking for something, you go to one place to look for
18 it. And it just seems like that would be a little simpler for
19 folks that were looking for a definition.

20 A. And I don't disagree with that. There were
21 certainly places where a term was used two different ways, so I
22 did not go through and check every part to see whether they
23 would conflict. But certainly they could be moved to --

24 Q. So did you cross-check some of those definitions,
25 like across the rules, like a word search, to see if they

1 appeared in other places? Is that what you did?

2 A. Yes.

3 Q. So the ones that are in those sections are only
4 for those sections?

5 A. Yes.

6 Q. Okay.

7 A. Now, not that they couldn't be in Part 2 if we
8 were sure they didn't conflict with anything else. Really, if
9 they're in another part, that's really what they mean, and I
10 did not do that. I think that would take more technical
11 expertise than I have, and I didn't attempt to move them.

12 Q. Okay. And then I was just wondering if certain
13 sections were reserved in places, kind of in the middle of the
14 numbering. Why was it done that way and not just put at the
15 back? Was there some reason for that?

16 A. When we renumbered them, we tried to group them
17 as far as topics. So we tried to leave -- in case a new rule
18 is adopted that relates to that area, that they're still close
19 and not down at the end. So that was the thought process
20 behind that, that we could leave them in those areas, in those
21 particular subject matters. And we wouldn't have, you know, a
22 drilling rule way at the end when all the others were closer.

23 Q. I was just wondering if you had something that
24 you thought might be going in there in the future.

25 A. Not that I know at this point. We just reserved

1 them because we didn't want Regulations or Licensing or
2 Department of Ag using them and we didn't have them, and our
3 rules would end up way at the end of the chapter and then be
4 difficult to find.

5 Q. Okay. And then on -- the one that confused me
6 was towards the back of the rules in Part 34 on produced water.

7 A. Uh-huh.

8 Q. And Part 35 is Waste Disposal.

9 A. Right.

10 Q. And it looks like really the bulk of what's going
11 on in Part 34 is really about waste disposal as well as the
12 transportation of a lot of the waste. I mean, especially in --
13 some of them in Part 34 talk about disposal of produced water
14 and disposal of other oil field waste. Couldn't we just put
15 that in as a section under waste disposal so at least it's all
16 in one place?

17 A. Given the Division is working on new produced
18 water rules, that why we left them in 34. Now, if there are
19 sections that don't apply once that rule is done, and would be
20 better on 35, they can certainly be moved.

21 Q. So that's going to be coming forward sometime
22 this next year, maybe?

23 A. I couldn't say when it's coming forward, I just
24 know they're working on it.

25 Q. So if we were looking at changes to the produced

1 water section at that time, we could move some of those to the
2 other sections, I guess, if it's more appropriate?

3 A. Certainly. You could amend Part 35 if some of
4 those requirements fit better there, yes.

5 Q. Because it just seemed like they were doing the
6 same thing that we were trying to avoid to try to keep things
7 together.

8 A. And that's why they're located right next to each
9 other.

10 Q. Right.

11 A. That's the other thing Records and Archives
12 doesn't like. If the part gets too long -- they prefer them to
13 be under ten pages. Some of our parts are already over that,
14 but they really don't like that. They think it makes them
15 difficult to read, and I intend to agree.

16 COMMISSIONER OLSON: Okay. That's all I have.

17 CHAIRMAN FESMIRE: Commissioner Bailey?

18 EXAMINATION

19 BY COMMISSIONER BAILEY:

20 Q. Under Tab D, Part 36, Surface Waste Management
21 Facilities, I noticed that where we would have spelled out
22 terms like regulated Naturally Occurring Radioactive Material,
23 for instance, NORM, the explanatory words were left out and
24 only the acronyms were used.

25 A. Right.

1 Q. In the interest of user-friendly, again, I
2 advocate not deleting those explanatory words. And I just
3 wanted to make that comment. Because for people who are not
4 using these every single day, it really helps to have the
5 explanatory words along with the acronyms. Because the
6 acronyms become jargon, and normal people can't use jargon.

7 A. They are defined in Part 2. Again, State Records
8 and Archives does not want you defining acronyms in your rules.
9 They either want them as definitions or they want you to spell
10 out the term and not use the acronym. So that's the other
11 option -- just to use the entire phrase and not use the
12 acronym.

13 Q. Could you put the acronym and then the
14 parentheses like it was originally?

15 A. They really don't like that. They want you to
16 find our acronyms in your definitions or spell out your term.

17 Q. They're not very user-friendly now, are they? My
18 comment is that for people who are not used to governmental
19 jargon, it really helps to have explanatory information.

20 A. And I personally would probably just prefer
21 spelling out the term and using that phrase, but most of our
22 rules have used the acronym, so that's entirely up to the
23 Commission as how you want to handle that.

24 Q. I've seen it for NORM and for EC and for GRO and
25 DRO, and it just makes it more difficult.

1 COMMISSIONER BAILEY: That's all I have.

2 EXAMINATION

3 BY CHAIRMAN FESMIRE:

4 Q. Ms. Bada, on the new proposed Part 2,
5 Section 18 --

6 A. Yes.

7 Q. -- would you explain why that was necessary?

8 A. That was included so that those using the rules
9 would know that if they have a permit or an order that
10 references the old number and system, that they use the rule as
11 it's been rearranged, the rule number.

12 Q. So that's basically to protect the validity of
13 current orders and things like that?

14 A. Right.

15 CHAIRMAN FESMIRE: I want to go on record as thanking
16 Counsel Bada and Counsel MacQuesten and Theresa for all the
17 work that they've put into this. I'm incredibly impressed, and
18 I want to make sure that that gets on the record, and thank you
19 all for this.

20 COMMISSIONER BAILEY: I second that.

21 COMMISSIONER OLSON: I'll echo that as well. It's a
22 difficult job to do, to take an entire set of rules and try to
23 put it in a whole new framework, so I think it was a very good
24 job.

25 THE WITNESS: Thanks.

1 CHAIRMAN FESMIRE: And I have no further questions.
2 Mr. Carr?

3 MR. CARR: I just have a brief statement.

4 CHAIRMAN FESMIRE: Okay.

5 MS. MACQUESTEN: I do want to move for the admission
6 of Exhibits A through J.

7 CHAIRMAN FESMIRE: Any objection?

8 MR. CARR: No objection.

9 CHAIRMAN FESMIRE: Exhibits A through J are admitted
10 to the record.

11 [Applicant's Exhibits A through J admitted into
12 evidence.]

13 CHAIRMAN FESMIRE: Ms. MacQuesten, do you have a
14 close.

15 MS. MACQUESTEN: I do not.

16 CHAIRMAN FESMIRE: Mr. Carr?

17 MR. CARR: Mr. Chairman, members of the Commission, I
18 would like to report to you that early on in this process, Ms.
19 MacQuesten, Carol Leach, Cheryl Bada, made copies of their work
20 available to us. We've been in the process and were brought
21 into the process early, and we appreciate that.

22 We also had copies of the August 27th modifications.
23 And these crosswalks that were prepared by Cheryl were not only
24 important, they were really essential to enable us to really
25 compare what was in the rule. And I think we would join with

1 you in thanking them for that effort.

2 As for NMOGA, when we received the comments, or when
3 we received the drafts, we mailed them and the crosswalks to
4 all members of NMOGA's regulatory practices committee. And we
5 found that not only was your effort an undertaking, trying to
6 review them was a significant undertaking as well. And I
7 received one comment back, one brave soul worked through the
8 whole thing for us.

9 To be sure that there was a broader review, I divided
10 the rules into -- the proposed reorganization -- into 12 parts
11 and mailed it to members of the regulatory practices committee,
12 asked each of them to review it and report back. And we have
13 done that.

14 And if Ms. MacQuesten or Ms. Bada are trying to slip
15 something through us, we can't find it. I can report that.
16 And I also can tell you that I did call Karin Foster at IPA
17 New Mexico and asked if she had reviewed them, and she said she
18 had and could find no substantive change.

19 The concerns that we got were felt generally in a
20 couple of areas. One, there was concern about how heavily
21 cross-referenced they felt some of the sections were. If
22 you'll recall, that was a concern that a number of people
23 expressed after the Pit Rules were adopted. As people started
24 working with the Pit Rules, that seems to have taken care of
25 itself, and I suspect that's what is going to happen here.

1 The other area of comment -- not concern, but
2 comment -- is the organization of the definitions. At my
3 request, Scott Hall did prepare an index of those, not only
4 what's in the original definitions section, but where other
5 definitions appear throughout the rules. And I'd be happy to
6 make that available. And I doubt that you need it, but I
7 certainly could do that for you.

8 The other thing that I'd like to report is that the
9 new definitions that relate to tribal lands, that group of
10 definitions, I think were unanimously viewed as both well
11 written, clear, and very helpful.

12 I would personally like to followup on Commissioner
13 Baily's question. Believe it or not, I have a set of the OCD
14 rules. And I have an index that was prepared in 1979 by an
15 attorney named Lynn Teschendorf. And I will tell you that I
16 refer to that today on basic things because it is extremely
17 helpful. And along with the effort that's been made to make
18 the rules more workable, I think that truly would be helpful.

19 So the purpose of my appearing here today for NMOGA
20 is to support you and endorse the effort that's been made to
21 make the OCD rules more workable, more usable, and I thank you.

22 CHAIRMAN FESMIRE: Thank you, Mr. Carr. Commissioner
23 Olson?

EXAMINATION

BY COMMISSIONER OLSON:

Q. Something that came to mind when Mr. Carr was mentioning the tribal definitions: How does that relate back now to the definition that the federal government uses on Indian Country?

A. It does not. And it's because that's not the way they're used in the rules. They're really dealing with getting BLM approval for pooling or unitization. Those terms, as they're used in the rules, relate to their trust responsibility.

So it doesn't have a broader -- it's just whatever they have the trust responsibility for, which, you know, is the allotments, tribal lands, that have been put in trust.

Q. I know it's a concern that has come up with the WQCC regulations. And the Indian Country definition there has been applied through in the UIC program with the uranium in situ mining. So I just was wondering how that -- so there isn't really a link to this?

A. There's not a link because that's how they are used in the OCD rules. They really are about notifying the BLM and getting their approval. The BLM that they deal with is the trust. The lands that are under their trust responsibility are the minerals that are under their trust responsibility or the leases they've issued.

1 Q. So if there is still some kind of disagreement
2 between the State and EPA on Indian County definitions, that is
3 not affected by what happens here?

4 A. No.

5 Q. Okay.

6 CHAIRMAN FESMIRE: At this time, the -- it's been so
7 long since we've done a rule-making. I think the next
8 procedural event is to proceed with public deliberations on the
9 rule itself, on the proposal itself.

10 And with that, the Chair would entertain a motion to
11 begin deliberations.

12 COMMISSIONER BAILEY: I so move.

13 COMMISSIONER OLSON: Second.

14 CHAIRMAN FESMIRE: All those in favor signify by
15 saying "aye."

16 COMMISSIONER BAILEY: Aye. .

17 COMMISSIONER OLSON: Aye.

18 CHAIRMAN FESMIRE: Aye. And let the record reflect
19 that the deliberations on the proposal began at 20 minutes to
20 10:00 on the 12th of September, 2008.

21 And these deliberations are public. Comments from
22 the Commissioners?

23 COMMISSIONER BAILEY: I support the changes, the
24 reorganization. I would like to see this application get
25 approved by the Commission with the amendments as given to us

1 today, and to have a direction to the Division to provide an
2 index for use by the public.

3 CHAIRMAN FESMIRE: Commissioner Olson?

4 COMMISSIONER OLSON: Well, I think I agree to support
5 this reorganization because I think it helps keep a lot better
6 organization to how these rules are presented. And I think it
7 makes them a little bit more easy to follow. I guess, I still
8 kind of wonder if all the definitions shouldn't just be in one
9 place and just all of the definitions -- without -- that sounds
10 like a task in itself, so I think I'd probably leave that alone
11 for the moment.

12 And just organizationally, it didn't seem to me that
13 the produced water section may be more appropriately put in
14 with waste disposal. But if we're going to be looking at that
15 here coming up shortly, I think I'll defer on that until that
16 time, since we will be looking at the rule anyway.

17 And outside of that, I think -- from what I've seen,
18 I support this, and I think it's been a good effort of the
19 Division to take on this task.

20 CHAIRMAN FESMIRE: With respect to the produced water
21 rules, counsel was correct. That is our next plan. We're
22 working on that now. Like I said, I've been able to watch this
23 as it progressed, and I'm very satisfied with the form that
24 it's taken.

25 Then, if the Commissioner's don't object, I would

1 entertain a motion to adopt the proposal and the proposed rules
2 as presented by the OCD subject to the amendments mentioned
3 today.

4 COMMISSIONER OLSON: So moved.

5 COMMISSIONER BAILEY: Second, along with an index.

6 MS. LEACH: Mr. Chairman, I think it would be better
7 if you adopted the rules and then made the recommendation on
8 the index so that someone can't argue that until the index is
9 done, you can't go forward with the rules to State Records.

10 COMMISSIONER BAILEY: Okay. That's fine.

11 CHAIRMAN FESMIRE: So the motion is before the
12 Commission to go ahead and adopt the rules as presented by the
13 Division. All those in favor signify by say "aye."

14 COMMISSIONER BAILEY: Aye.

15 COMMISSIONER OLSON: Aye.

16 CHAIRMAN FESMIRE: Aye. Let the record reflect that
17 the Commission unanimously adopted the proposal.

18 And Commissioner Baily, would you like to make a
19 motion on the index?

20 COMMISSIONER BAILEY: Yes. I move that the Division
21 be directed to provide an index on the new organization for the
22 rules.

23 CHAIRMAN FESMIRE: Is there a second?

24 COMMISSIONER OLSON: Second.

25 CHAIRMAN FESMIRE: All those in favor signify by

1 saying "aye."

2 COMMISSIONER BAILEY: Aye.

3 COMMISSIONER OLSON: Aye.

4 CHAIRMAN FESMIRE: Aye. Let the record reflect that
5 that motion also passed unanimously.

6 MS. LEACH: Just one more thing. The Division has
7 graciously offered and suggested as a process at this point
8 that they prepare the draft order and circulate it to Mr. Carr
9 and then bring it back to the Commission for finalization. And
10 I think that would be good because I think they would be very
11 careful to make sure that the amendments that are proposed are
12 made and that kind of thing.

13 So it's a little unusual for how we proceed, but I
14 think it's perfect in this case.

15 CHAIRMAN FESMIRE: Ms. MacQuesten, is that acceptable
16 you?

17 MS. MACQUESTEN: It is.

18 CHAIRMAN FESMIRE: That you prepare the order and
19 circulate it to Mr. Carr, and that we review and vote on the
20 order at the next Commission meeting?

21 MS. MACQUESTEN: As long as I have Ms. Bada's help,
22 yes.

23 CHAIRMAN FESMIRE: And I'm assuming, Commissioner
24 Bailey, that the index doesn't include the handwritten pencil
25 one that I've got on my desk?

1 COMMISSIONER BAILEY: And the one from 1979 that I
2 use also -- all the topics.

3 CHAIRMAN FESMIRE: With that, is there any other
4 business before the Commission? Counsel, anything else we need
5 to address?

6 MS. LEACH: No, I think you've taken care of
7 everything today.

8 CHAIRMAN FESMIRE: With that, let the record reflect
9 that the Chair is open to a motion to adjourn.

10 COMMISSIONER BAILEY: I move we adjourn.

11 COMMISSIONER OLSON: Second.

12 CHAIRMAN FESMIRE: All those in favor, signify by
13 saying "aye."

14 COMMISSIONER BAILEY: Aye.

15 COMMISSIONER OLSON: Aye.

16 CHAIRMAN FESMIRE: Aye. The record should reflect
17 that the Commission meeting was adjourned at 9:45 a.m. on the
18 12th of September.

19 Thank you.

20 * * *

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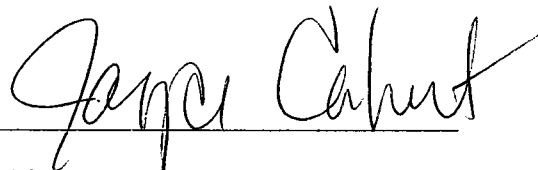
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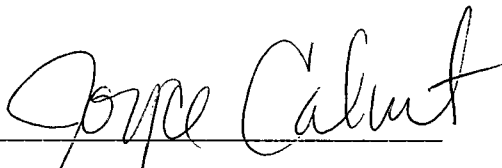
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