

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

10 July 1985

COMMISSION HEARING

IN THE MATTER OF:

In the matter of the hearing called on its own motion to amend Rule 0.1, Rule 1, Rule 2, Rule 3, Rule 7, Rule 709, and Rule 710 to define fresh water and produced water and to pro- vide for protection of fresh water;	CASES 8643
To promulgate a new Rule 8;	8644
To amend Rule 102;	8645
To amend Rules 108 and 113;	8646
To delete Rule 308;	8647
To amend Rule 111;	8648
To amend Rule 1204 and Rule 1205, to delete Rule 1206, to renumber and amend Rule 1207, and to promul- gate a new Rule 1207.	8649

BEFORE: Richard L. Stanets, Chairman
Ed Kelley, Commissioner

TRANSCRIPT OF HEARING

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For the OCD: Jeff Taylor
Attorney at Law
Legal Counsel to the Division
Oil Conservation Division
State Land Office Bldg.
Santa Fe, New Mexico 87501

For NMO&G Association
and Cities Service Co.: Karen Aubrey
Attorney at Law
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87501

For Amoco Production: William F. Carr
Attorney at Law
CAMPBELL & BLACK P. A.
P. O. Box 2208
Santa Fe, New Mexico 87501

For Meridian Oil Co.: W. Perry Pearce
Attorney at Law
MONTGOMERY & ANDREWS P. A.
P. O. Box 2307
Santa Fe, New Mexico 87504

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MR. STAMETS: The hearing will please come to order.

This morning we're going to consolidate all of the rule change hearings for purposes of testimony, so I will at this time call Cases 8643 through 8649.

These would be in the matter of the hearing called by the Oil Conservation Commission on its own motion to amend Rule 0.1, Rule, 1, 2, 3, and 7, Rule 709, and Rule 710, to define fresh water and produced water and to provide for protection of fresh water; to promulgate the new Rule 8 to provide for the approval of the use of lined pits or below grade tanks for disposal or storage of produced water and other oil field fluids; to amend Rule 102 to require a copy of Form C-101 (permit) on location during drilling operations and to provide for notice to landowners and/or tenants prior to the staking of well locations; to amend Rules 108 and 113 to provide for notice of defective casing and for the notice of damage to casing, cement, or the formation as a result of well treatment; to delete Rule 308 in order to clarify the need for reporting of small volumes of produced water; to amend Rule 111 to provide for operator calculation of bottom hole displacement when the deviation during drilling averages more than five

1 degrees in any 500-foot interval; and to amend Rule 1204,
2 Rule 1205, to delete Rule 1206, to renumber and amend Rule
3 1207, to promulgate a new Rule 1207, all for the purpose of
4 giving notice of hearings and to establish additional notice
5 requirements for applicants for hearings.

6 Call for appearance in these
7 consolidated cases.

8 MR. TAYLOR: May it please the
9 Commission, my name is Jeff Taylor. I'm Counsel for the Oil
10 Conservation Division and I have two witnesses.

11 MR. STAMETS: Other appear-
12 ances?

13 MS. AUBREY: Karen Aubrey, Kel-
14 lahin and Kellahin, Santa Fe.

15 I'm here representing New Mex-
16 ico Oil and Gas Association and Cities Service Oil and Gas
17 Corporation.

18 We have one witness to present.

19 MR. CARR: May it please the
20 Commission, my name is William F. Carr, with the law firm
21 Campbell and Black, P. A., of Santa Fe.

22 I represent Amoco Production
23 Company.

24 MR. STAMETS: Are there other
25 appearances?

1 MR. NUTTER: I'm Dan Nutter,
2 representing myself.

3 MR. STAMETS: As an interested
4 citizen.

5 MR. NUTTER: As an interested
6 citizen and taxpayer.

7 MR. RUSH: Joe Rush with Meri-
8 dian Oil.

9 MR. INGRAM: Hugh Ingram with
10 Conoco and I'm here to make a statement.

11 MR. STAMETS: All right. I'd
12 like to have all those who may be witnesses in this case
13 stand and be sworn at this time.

14
15 (Witnesses sworn.)

16
17 MR. STAMETS: Mr. Taylor, you
18 may proceed.

19 MR. TAYLOR: Thank you. First
20 we'll call Mr. David Boyer.

21
22 DAVID BOYER,
23 being called as a witness and being duly sworn upon his
24 oath, testified as follows, to-wit:

25

DIRECT EXAMINATION

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BY MR. TAYLOR:

Q Mr. Boyer, would you please state your name, employer, and title for the record?

A Yes. My name is David Boyer. I'm a Geologist IV with the New Mexico Oil Conservation Division, and I am in charge of the Environmental Bureau.

Q Are you familiar with the subject matter of Cases 8645, 8646, and 8648?

A 8647, I believe. I'm familiar with 8643, 8644, and 8647.

Q Okay. Have you testified before the Commission or its Examiners before and had your qualifications accepted?

A Yes, I have.

MR. TAYLOR: Mr. Chairman, are the qualifications acceptable of the witness?

MR. STAMETS: Yes.

Q Mr. Boyer, which rules will you be presenting testimony on today?

A Yes. I will be presenting testimony on the rules listed in Case 8643. That is the Definitions Rule 0.1, additional Rules 1, 2, 3, 7, Rule 709 and 710, regarding fresh water protection under Case 8643.

I'll be testifying on Rule 308 regarding

1 reporting of produced water in Case 8647, and I will be tes-
2 tifying on Rule No. 8 regarding lined pits and tanks in Case
3 8644.

4 Q Okay. Just to make the record a little
5 clearer, let's go through the rules on a case by case
6 basis.

7 In Case 8643 can you tell us the intent
8 of the changes proposed in this case?

9 A Yes. The general intent of the proposed
10 changes is to give the protection of fresh water the same
11 regulatory weight currently given prevention of oil and gas
12 waste and correlative rights in the rules and regulations of
13 the Division.

14 My testimony on these changes will not
15 speak to the requirements for prevention of waste or the
16 protection of such rights that are currently in the regula-
17 tions.

18 The requirement to protect fresh water is
19 embodied in the Oil and Gas Act statute at 70-2-12(E)15,
20 which provides for Division authority to make rules and
21 regulations to "regulate the disposition of water produced
22 or used in connection with the drilling for or producing of
23 oil or gas, or both, and to direct surface or subsurface
24 disposal of such water in a manner that will afford reason-
25 able protection against contamination of fresh water sup-

1 plies designated by the State Engineer."

2 The date of that portion of the statute
3 is approximately 1961, that was entered into the statute.

4 The overall result of the proposed chan-
5 ges is to make owners, operators, drillers, producers, and
6 operators of oil and gas related facilities, aware that they
7 must protect fresh water as part of their overall responsi-
8 bility under the regulations.

9 That is the general intent of this --

10 Q Essentially, then, this is, tentatively,
11 is just to clarify what the statute has said but has not
12 been reflected in the rules.

13 A Yes, that's correct.

14 Q Could you then discuss and summarize the
15 changes to each rule proposed in Case 8643?

16 A Yes, I will. I have several exhibits
17 that I will be discussing as I go through them.

18 Q Let me first introduce as Exhibit One
19 copies of proposed changes for all of these.

20 MR. BOYER: There are extra
21 copies up in front here for anyone who wishes.

22 A The first, or I should say the second ex-
23 hibit, will be two letters from the State Engineer's Office,
24 dated May 15th, 1985, and April 13th, 1967.

25 The third exhibit is a sheet entitled Ad-

1 nation has no total dissolved solids limitation. All sur-
2 face waters of the State of New Mexico are protected regard-
3 less of quality.

4 A previous designation of April 13th,
5 1967, designated underground waters for protection unless
6 there was no present or reasonably foreseeable beneficial
7 use which would be impaired by allowing such contamination.

8 The letter of May 15th, 1985, does not
9 contain such a beneficial use clause; however, I understand
10 a letter is -- will be forthcoming from Mr. Reynolds in the
11 next week or so clarifying the matter.

12 The proposed definition includes the 1967
13 beneficial use statement and if the expected letter of clar-
14 ification does not include this, the case will likely be
15 continued and readvertised with a substitute definition for
16 fresh water.

17 The current proposed definition for fresh
18 water does provide safeguards for protection of water. No
19 -- before any water of 10,000 milligrams per liter, or less,
20 total dissolved solids can be found not to have reasonably
21 foreseeable beneficial use, a notice and hearing procedure
22 must be followed.

23 The second definition that was proposed
24 to be added is the definition of produced water. This is a
25 definition that is currently found in Rule No. 709-A. It

1 has been expanded by adding processing and transportation
2 facilities as collection sites and it has been moved to the
3 definition sections of the regulations.

4 Q Are those all the proposed changes in
5 Rule 0.1?

6 A Yes, they are, Mr. Taylor.

7 Q Okay. Would you then move to Rule 1?

8 A Yes. I will discuss Rule 1, actually
9 Rules 1 and 2 together

10 The changes to these rules are to add
11 protection of fresh waters to existing requirements and man-
12 dates given in the current regulations. This is again part
13 of the overall intention of -- of -- to embody in the regu-
14 lations the concepts that are already in the statute, and
15 those changes are as published.

16 Q Okay, you want to move to Rule 3, then?

17 A Yes. This rules currently requires that
18 those persons in the oil and gas business prevent waste.

19 The proposed change adds treating plant
20 operators to the list of responsible persons and requires
21 all persons in oil or gas -- excuse me, all persons in oil
22 and gas or related operations regulated under the Oil and
23 Gas Act to protect fresh waters from contamination, as well
24 as prevent waste.

25 And that summarizes Rule 3 changes and

1 the reason for them.

2 Q Okay, do you want to go to Rule 7?

3 A Yes. The Rule 7 is a proposed change.
4 The modification is add fresh water protection as a reason
5 to enter into agreements with other entities, such as State
6 or Federal governments and industry or committees.

7 A good example of such a current arrange-
8 ment is one that the OCD has with EPA to have the State UIC
9 program run by the State instead of run by the Federal
10 government.

11 And so these proposed changes clarify and
12 add to our ability to enter into such agreements.

13 Q Okay, let's skip to, I believe, Rule 709.

14 A Yes, sir, Rule 709 is the produced water
15 definition that we moved to Rule 0.1. After the moving of
16 the produced water definition the remaining sections have
17 been relabeled to have consistency.

18 Q So that's just deleting something which
19 you've moved to another section.

20 A Yes, and relabeling.

21 Q Okay, and finally, well, let's see, for
22 this case I believe it's Rule 308?

23 A No, Rule 710.

24 Q Oh, Rule 710.

25

1 A The 710 (a), the changes proposed to
2 that, I will discuss those changes.

3 Currently only the person transporting
4 the produced water is responsible for proper disposal.

5 The proposed change makes all persons
6 handling produced water responsible for proper handling and
7 disposal, so as to protect fresh waters.

8 This change will make the rule consistent
9 with the changes proposed for Rules 1, 2, and 3.

10 In Rule 710 (b) there was originally in-
11 tended to insert the word "and" because of -- it was thought
12 that that would add clarity to the rule.

13 Further review by myself and others in
14 the Division shows that it does not add substance or clari-
15 fication to the rule so we propose, instead, to leave the
16 rule as it is currently stated in the regulations. That is
17 Rule 701 (b).

18 I have one additional notation or mention
19 of note and that is Rule No. 313. Changes to this rule,
20 concerning emulsions, basic sediments, and tank bottoms,
21 were not in the original call and they'll likely have to be
22 advertised in the future; however, the changes to the rule
23 are shown in the exhibit that we passed out. I believe that
24 is Exhibit Number Three, and the proposed change that I re-
25 commend as a member of the Division is that the word

1 "streams" would be deleted and the words "fresh waters"
2 would be added. Making this change would make the rule con-
3 sistent with the other proposed changes regarding fresh wa-
4 ter protection.

5 In summary, all the changes of all the
6 rules that I've just mentioned would add fresh water protec-
7 tion to the regs -- to the regulations as is currently in
8 the statute.

9 And that concludes my testimony on the --
10 on the first case.

11 Q And is it your professional opinion that
12 these changes are needed in order to carry out the mandate
13 of the Legislature that the Oil Conservation Division take
14 reasonable steps to protect fresh water resources?

15 A Yes, they are.

16 Q Okay. Shall we move next to Case 8644?

17 A 47.

18 Q Case 3647.

19 A I think that's the one I prepared for.

20 Q What is the intent of the changes pro-
21 posed for the rule listed in Case 8647?

22 A The original intent, or the intent as
23 called, was to clarify the need for reporting small volumes
24 of produced water.

25 The -- the way that was to be accom-

1 plished, as was originally intended, was to delete the
2 Rule 308 since the current definition is unwieldy and hard
3 to interpret and the rule is inconsistent with the informa-
4 tion required on Form C-115.

5 Form C-115 is the operator's monthly re-
6 port which requires a report of total barrels of water pro-
7 duced from oil and gas wells.

8 Instead of deletion of the Rule 308 I re-
9 commend to the Commission that the rule be retained and mod-
10 ified.

11 The modifications that are proposed are
12 in the Exhibit Number Three.

13 Because of the importance of proper dis-
14 posal of produced water for freshw ater protection, and the
15 need of the Oil Conservation Division to have good records
16 to insure proper disposal of the volumes of water produced,
17 I recommend that the rule be modified by deleting references
18 to percentages and by adding a requirement to report volumes
19 of water produced from gas wells. These changes will then
20 make the rule consisten with the requirement currently on
21 the C-115 form.

22 That concludes my comments on Rule 308,
23 §647.

24 MR. STAMETS: While we're right
25 there, Mr. Boyer, the advertisement for this Case §647, the

1 add said the deletion was in order to clarify the need for
2 reporting of small volumes of produced water.

3 The rule that you have proposed
4 here, does that make any substantial change in the effect of
5 what was proposed?

6 A No, sir, it does not. The -- what it
7 does is it removed percentages of -- from the rule and
8 therefore all water produced no matter how small will have
9 to be -- is required to be reported.

10 MR. STAMETS: That was the in-
11 tent of the advertisement in Case 8647?

12 A Yes, sir.

13 MR. STAMETS: Okay, thank you.

14 Q Okay, Mr. Boyer, we'll next move to Case
15 8544. Will you explain to us the intent of changes proposed
16 in this case?

17 A Yes. 8544 is a new rule that is proposed
18 to require approval prior to use of lined pits or below
19 grade tanks for disposal or storage of produced water or
20 other oil field fluids.

21 The OCD needs to review such applications
22 to assure that design and specifications for the proposed
23 installation of lined pits or below grade tanks encompasses
24 all aspects necessary to protect groundwater and provide for
25 safe operation.

1 Such a design assurance would include
2 adequate structural design, material selection, leak detec-
3 tion, and a contingency plan in the event of a leak.

4 Recent occurrences outside of the oil and
5 gas industry have shown that if any of these items are not
6 considered in the design, rapid deterioration of an impound-
7 ment integrity may occur well before the expected life of
8 such an impoundment ends.

9 And we have two instances outside the oil
10 and gas industry, such as the Clovis Sewage Treatment Plant
11 and the Lea Acres situation.

12 In Clovis a lined impoundment began leak-
13 ing. One reason it did was that there was the structural
14 construction of the sides was not adequate.

15 At Lea Acres the fact that the dike was
16 actually breached.

17 Anyway, that is the intent of the regula-
18 tion; proposed rule, I should say.

19 Q Would you give us a summary of how the
20 guidelines for the proposed Rule 8 are to be used, and I be-
21 lieve that's Exhibit Number Four, is it not?

22 A Yes. Exhibit Number Four consists of
23 both the guidelines for lined pits and below grade storage
24 tanks. There are two different guidelines currently avail-
25 able from the Division and, again, one is the guidelines for

1 lined evaporation ponds and the second is the guidelines for
2 below grade produced water tanks in the San Juan Basin's
3 Vulnerable Area.

4 Both guidelines are prefaced and contain
5 the statement that designs may deviate from the guidelines
6 if it can be shown that the design integrity is such that
7 the installation will not affect any future or present
8 sources of useful groundwater. Thus the guidelines should
9 be considered an information source for those who are not
10 very familiar with such designs as they relate to ground-
11 water protection.

12 Q What advantages are there for operators to
13 follow the guidelines for installations outside the San Juan
14 Basin Vulnerable Area in the northwest part of the state and
15 in other parts of the state not covered by a special no-pit
16 order?

17 A It may be possible in the future for an
18 area not currently listed as being in a vulnerable area, say
19 in the Order 7940, or in some other part of the state, to be
20 designated and require a lined pit or a below grade tank,
21 and thus it will become part of an area that -- that would
22 need to have some special rules for lining.

23 If the guidelines are followed in such a
24 situation there is a probability that there will be a need
25 to retrofit facilities to comply with amendments to orders

1 or any future orders.

2 Q Is that all your testimony in Case 8644?

3 A Yes, that concludes my testimony.

4 Q Okay, and finally, is it your profes-
5 sional opinion that the rules proposed, rule changes pro-
6 posed in Case 8644 and 8647 are necessary to better enable
7 the Oil Conservation Division to carry out its responsibili-
8 ties to protect fresh water resources?

9 A Yes, sir, it is.

10 Q Okay.

11 MR. TAYLOR: I have no further
12 questions.

13

14 CROSS EXAMINATION

15 BY MR. STAMETS:

16 Q Mr. Boyer, on Rule 8, I don't believe it
17 appears as though this rule was intended to cover temporary
18 operations as, say, a lined pit at a drilling site, is that
19 correct?

20 A Yes, that's correct. It is not intended
21 to be --

22 Q So perhaps we might need to put an
23 explanatory in the rule that clarifies that.

24 A Yes, sir. This is for, this is intended
25 to be for permanent installations.

1 MR. STAMETS: Are there other
2 questions of the witness?

3 He may be excused.

4 Mr. Taylor, you may call your
5 next witness.

6 MR. TAYLOR: Mr. Frank Chavez.

7

8 FRANK CHAVEZ,

9 being called as a witness and being duly sworn upon his
10 oath, testified as follows, to-wit:

11

12 DIRECT EXAMINATION

13 BY MR. TAYLOR:

14 Q Will you please state your name, employ-
15 er, and title for the record?

16 A My name is Frank Chavez. I am employed
17 by Oil Conservation Division as District Supervisor of Dis-
18 trict III in Aztex, New Mexico.

19 Q Are you familiar with the subject matter
20 of Cases 8645 and 8646 and 8648?

21 A Yes, I am.

22 Q Have you testified before the Commission
23 or its Examiners before and had your qualifications accep-
24 ted?

25 A Yes, I have.

1 MR. TAYLOR: Mr. Chairman, are
2 the witness' qualifications acceptable?

3 MR. STAMETS: They are.

4 Q Let's see, let's begin with Case 8645.
5 Would you please summarize the proposed changes sought in
6 this case?

7 A 8645, we're going to require that the ap-
8 proved drilling permit be kept at a drilling site and that
9 the landowner, land tenants, be notified prior to staking a
10 well location on the property.

11 Q What is the intent of this rule change?

12 A These rule changes will allow for easier
13 inspection by our operators, I'm sorry, by our inspector,
14 and clarification to the operator of when their permit to
15 drill is approved. Also it will allow for speedier drilling
16 on some well locations on private land.

17 Q And is that essentially why there's a
18 need for that change?

19 A Yes. The first addition in Paragraph (a)
20 allows an inspector, OCD inspector, to examine the wellsite
21 and determine that an operator has a plan that has been ap-
22 proved by the District Office. It is difficult to keep in
23 memory all the permits that have been approved.

24 Also, an inspector can examine the drill-
25 ling records at the well site and see that they are in ac

1 cordance with the approved plan.

2 Also, in some situations we have adminis-
3 trative approvals which come out of the Santa Fe Office,
4 while approval for the drilling permit itself comes out of
5 the District Office, and this will help to coordinate the
6 activity of the operator, to be sure that both those appro-
7 vals are received before a well is commenced.

8 The second addition, Paragraph (c), will
9 help ameliorate some problems that have arisen at times when
10 the landowner received little or no notification of proposed
11 activity on his property.

12 The subsequent rush for approval of
13 amended or nonstandard locations results in a burden on the
14 operator and on our office.

15 We've also received complaints from land-
16 owners about surveying and staking on their property without
17 the courtesy of prior notification. The biggest advantage
18 of prior notification is that the operator and landowner can
19 work together with us to locate a well, especially that --
20 if it requires a nonstandard location, so we can maximize
21 recovery of oil and gas and also allow for maximum surface
22 usage of the land.

23 Q Could you tell us if there are any cor-
24 rections or deletions from the rule as it was printed in our
25 exhibit and docket?

1 A Yes. In Paragraph (c), the last word,
2 which says "lease" should be "lessee".

3 Q Are there any other corrections?

4 A No, not in 8645.

5 Q Is that all your testimony in 8645?

6 A Yes, it is.

7 Q Let's move next, then, to Case 8646.
8 Would you please summarize the proposed rule changes sought
9 in this case?

10 A In 8646 we are adding wording, as per Mr.
11 Boyer's previous testimony concerning the contamination of
12 fresh waters, to make it clear that we are looking at the
13 protection of fresh waters.

14 Also, we want to provide a notification
15 procedure to the Division of situations which may lead to
16 underground waste.

17 Q Okay. What is the intent of these
18 changes?

19 A In the change for Rule 10E by receiving
20 immediate notice the Division can make a determination of
21 the potential hazards that a casing failure poses and can
22 direct an operator to take appropriate action.

23 As presently written the rule only re-
24 quires that the operator proceed with diligence, which is
25 rather vague.

1 The Rule 113, the change updates the
2 wording and include the injection intervals as a zone which
3 can be damaged by chemical treating and to include fractur-
4 ing as a well operation, which can lead to formation injury,
5 plus again we want to notify the Division.

6 I have two changes from the Gocket that
7 went out. I left them on the back table but I've brought
8 them up front now, to reword what had originally been sent
9 out.

10 In the changes that we are proposing for
11 Rule 108, we have, first of all, a wording change. We're
12 saying, "If any well appears to have a defective casing pro-
13 gram or faultily cemented or corroded casing which will per-
14 mit may create underground waste or contamination of fresh
15 waters, the operator shall give written notice to the Divi-
16 sion within five working days and proceed with diligence to
17 use the appropriate method and means to eliminate such
18 hazard."

19 We have changed the immediate notice to
20 written notice within five working days. If the casing
21 failure is such that there is a discharge, it will be
22 covered by Rule 116, which does require immediate notifica-
23 tion.

24 Q What is the purpose of this change?

25 A The purpose of this change is, first of

1 all, the major change is written notice within five working
2 days of immediate notice is that the -- most casing failures
3 do not require immediate notice because they do not cause
4 immediate discharges that would fall under Rule 116.

5 Q So you're just recommending to the Com-
6 mission that instead of having the words "immediate notice"
7 that they be given up to five days with notice to be in
8 writing to you.

9 A That's correct.

10 Q Would you now -- are you finished with
11 Rule 108?

12 A Yes, I am.

13 Q Could you now briefly explain your alter-
14 native to Rule 113?

15 A In the Rule 113 we've made some correc-
16 tions in punctuation.

17 In the second sentence of Rule 113 we
18 have inserted the word "fracturing" between "shooting" and
19 "or", plus we have provided a revision there that the "the
20 operator shall give written notice to the Division within
21 five working days" for any injury that results to the forma-
22 tion, casing, or injection interval.

23 Q Could you just briefly explain the pur-
24 pose and why you propose this alternative to Rule 113?

25 A Yes. The Rule 113 is -- should -- should

1 formation damage occur to a well, the well could be lost to
2 production or could create underground waste after shooting
3 or treating of the well. Also, should formation damage oc-
4 cur, extended period of time to repair the damage may make
5 it irreparable after a certain period of time, so we want to
6 provide a notification to the Division about that.

7 Q Okay. Do you have any other testimony
8 that you'd like to present?

9 A Not in Case 8646.

10 Q Okay. Would you please summarize the
11 proposed changes sought in Case 8648?

12 A In 8648 we want to change Rule 111 to
13 provide for the operator to calculate the maximum displace-
14 ment of a hole when the deviation exceeds five degrees over
15 a 500-foot interval.

16 Q What is the intent of this change?

17 A The intent will ease the burden on the Di-
18 vision in assessing the need for requiring a directional
19 survey and will assist us in doing that.

20 Q Okay. I believe that's all the questions
21 I have.

22 Do you have any other testimony in Case
23 8648?

24 A No, I don't.

25 Q Did you prepare Exhibits Five and Six?

1 A Yes, I did.

2 MR. TAYLOR: Mr. Chairman, I'd
3 like to move the admission of Exhibits Five and Six.

4 Exhibit Five relates to the al-
5 ternative wording for Rule 108 and Exhibit Six is the alter-
6 native wording for Rule 113.

7 MR. STAMETS: These exhibits
8 will be admitted.

9

10 CROSS EXAMINATION

11 BY MR. STAMETS:

12 Q Mr. Chavez, in -- relative to Rule 108
13 and Rule 113, is -- are the changes that you have proposed
14 necessary to insure that the Division will be able to carry
15 out its mandate to prevent waste and protect fresh water?

16 A Yes.

17 Q In Rule 111, in that proposal, what's the
18 -- what's the benefit of having the operator make these cal-
19 culations?

20 A There will be a notice to us immediately
21 when we receive the deviation tabulation that there may be a
22 problem. Should this well have a nonstandard location which
23 places it closer to the proximity of the drill tract line,
24 this will assist us in determining and advising the (not un-
25 derstood) whether or not we should require a directional

1 survey of that well.

2 Q Is that the -- for the purpose of pro-
3 tecting correlative rights to insure the operator that the
4 well that's drifted is not producing somebody else's oil or
5 gas?

6 A That's correct.

7 MR. STAMETS: Are there any
8 other questions of this witness?

9 MS. AUBREY: Yes, I have some
10 questions, Mr. Stamets.

11

12 CROSS EXAMINATION

13 BY MS. AUBREY:

14 Q Mr. Chavez, with regard to Rule 102, the
15 proposed rule contemplates notice to the surface owner by
16 certified mail or (not understood).

17 A It just says with reasonable diligence
18 and there may be circumstances under which an operator may
19 not have the opportunity or the time to notify the landowner
20 by certified mail. Under normal circumstances that would be
21 reasonably diligent, but the operator may have a short
22 notice on drilling a well himself.

23 Q Then the rule does not contemplate an
24 operator obtaining the return receipt prior to commencing
25 operations under that rule?

1 A Well, if there has not been enough time,
2 no.

3 Q Is it the intent of the rule change to
4 require new notice every time an operator changes a stake
5 location?

6 A No. Once an operator has intended to
7 stake a location on a person's property, our experience has
8 been that they will deal with that person to locate the well
9 and get it -- generally it will be located in one position
10 that's agreeable to both the operator and the landowner.
11 There would be no change.

12 What has happened in the past is a loca-
13 tion has been moved after the landowner has been notified,
14 which created more burden on the operator and on us.

15 Q So is it your testimony that it's the in-
16 tent of Rule 102 that if there is a change in the staked
17 location after -- after you have been notified, that there
18 would be an additional requirement to re-notify the land-
19 owner by mail?

20 A I don't understand the question.

21 Q Let me try that again. The rule as it's
22 written requires notice to the surface owner, tenant, or
23 lessee, as I understand it, prior to staking a well.

24 A Yes.

25 Q If the location is changed and there is a

1 new location staked on that landowner's land --

2 A For the same well?

3 Q -- for the same well, is it the intent to
4 require new notice by mail to the surface owner?

5 A No, it is not.

6 MS. AUBREY: That's all I have,
7 Mr. Stamets.

8

9

RE-CROSS EXAMINATION

10 BY MR. STAMETS:

11 Q Mr. Chavez, is there any reason why the
12 surface owner shouldn't receive a notice of the restaking?

13 A After the landowner has been notified of
14 the first staking of the well, or that there is a well going
15 to be staked on his property, at that time is when the oper-
16 ator and the landowner make negotiations for the visit to
17 the land, site, and examine it for other alternatives -- for
18 alternative locations, and make a determination at that time
19 where the well will be staked.

20 If the well is to be move from where the
21 operator originally intended to stake it, the landowner is
22 generally right there for that.

23 Q There could be cases, couldn't there,
24 where the well would be staked and then the operator would
25 change his mind based on an offsetting dry hole and restake

1 the well some distance from the original location?

2 A I can't think of a circumstance where
3 that would happen without them contacting the landowner af-
4 ter the well was originally staked.

5 Q Would the intent of this rule be more
6 clear if we inserted the word "surface" before the word
7 "lessee" at the very end?

8 A Yes, it would.

9 MR. STAMETS: Are there other
10 questions of this witness?

11 Mr. Johnson?

12

13 QUESTIONS BY MR. JOHNSON:

14 Q Mr. Chavez, in the case of when the sur-
15 face owner does not want any oil and gas drilling on his
16 property whatsoever, is it our intent to hold up this appli-
17 cation to drill until (not understood) is obtained by the
18 operator?

19 A No.

20 Q Okay. Thank you.

21 MR. STAMETS: Any other ques-
22 tions?

23 Mr. Hobbs?

24 MR. HOBBS: I wasn't interested
25 in a possible question but I'd like to -- in some cases the

1 address and the name of the tenant or lessee is not known by
2 the operator, so then these are not, you know, of record.
3 The name of the owner, at least his name is on the record,
4 but we don't always have access to going out on location and
5 digging out who actually is the lessee from the owner of re-
6 cord. We have no way to really know that.

7 A This is -- is that a question?

8 MR. HOBBS: No, that's purely a
9 statement, you know. I mean like you're talking about us
10 notifying you when we have no access to your name or ad-
11 dress.

12 MR. STAMETS: For purposes of
13 this record, let's say that that's an observation by an in-
14 terested party.

15 A May I speak to that observation?

16 MR. STAMETS: And I think you
17 may speak to that observation, Mr. Chavez.

18 A This is one reason why I think reasonable
19 diligence is what's asked of the operator. We have had one
20 instance that comes to my mind this last year where an oper-
21 ator, I thought, acted in all diligence and sent them a cer-
22 tified letter and the people who accepted it and sent the
23 certification back that they received it were not the re-
24 sponsible people for the property.

25 And the operator proceeded with, with

1 good reason, and there's no problem with that.

2 MR. STAMETS: Mr. Pearce.

3 MR. PEARCE: Mr. Chairman, if I
4 may, I'd like to enter a letter of appearance in this mat-
5 ter.

6 I am W. Perry Pearce of the law
7 firm Montgomery and Andrews, Santa Fe, New Mexico, appearing
8 on behalf of Meridian Oil.

9 The question which I have to
10 address to Mr. Chavez and may reasonably be answered by mem-
11 bers of the Commission and staff, if a rule requires that a
12 surface owner receive notice of intention to drill, does
13 that mean that if that surface owner objects to that drill-
14 ling or that location that the OCD is now the proper agency
15 to which to address that complaint?

16 It is my recollection, Mr.
17 Chavez, Mr. Chairman, that in the past those disputes have
18 been decided by the courts of the State of New Mexico rather
19 than this administrative agency, and this agency has not
20 taken upon itself the protection of those surface owners
21 rights which are, in my understanding, governed by the con-
22 tract entered into between that landowner and his lessee.

23 If the agency is now inserting
24 itself in the midst of that dispute process, I think we need
25 to know who these people are going to go on from now on,

1 Mr. Chairman, if I may.

2 Rule 102(b), when it speaks to
3 cities, towns, and municipalities it seems to me is address-
4 sing governmental authorities with some leasing power and
5 responsibility.

6 I don't think that is at all an
7 analogous situation to an individual landowner.

8 My second observation is that
9 allowing the Division to informally use its good offices is
10 very different than adopting a rule which makes the Division
11 a part of a much more formal process.

12 I don't know that my client ob-
13 jects to the adoption of this rule, and that I rise to, I
14 suppose, make a statement, because I don't think it is a
15 wise thing for this Division to do. I think if the Division
16 requires an operator to give a surface owner notice, the
17 surface owner will expect that this is the jurisdictional
18 agency which is authorized to do something about that, and I
19 do not find anything in the statute which grants you that
20 authorization unless that could be tied to prevention of
21 waste or protection of correlative rights or one of the
22 other enumerated powers.

23 If in fact that is a matter of
24 contract contained in the lease between the operator and the
25 lessor, I don't think there's anything in your jurisdiction

1 which authorizes you to get in the middle of it and yet I
2 think you are confined to the landowner if you are going to
3 get in the middle of it.

4 I suppose that's a precaution-
5 ary comment.

6 MR. STAMETS: I would ask Mr.
7 Taylor subsequent to the hearing to review the Oil and Gas
8 Act and determine whether or not this is something that the
9 Division should become involved in and whether the Commis-
10 sion should adopt this particular proposal.

11 Are there other questions of
12 this witness? He may be excused.

13 MR. TAYLOR: Mr. Chairman, I
14 neglected to enter the exhibits of Mr. Boyer and as long as
15 he is still under oath, I'd like to do that in case there
16 are any questions.

17 MR. STAMETS: Good idea.

18 MR. TAYLOR: So I would like to
19 move the admission of Exhibits One through Four.

20 MR. STAMETS: Without objection
21 these exhibits will be admitted.

22 MR. TAYLOR: And finally, Mr.
23 Chairman, on the Rules of Procedure, I do not have a witness
24 but I thought I would give a brief statement on these and I
25 would also recommend that on these Rules of Procedure and
the other rules that we've already had testimony about, the
Commission might at the end of the testimony of other wit-

1 nesses be open for comments. I might state that we've re-
2 ceived quite a number of comments on various of the rules,
3 especially rules on notice, but there may be people here who
4 wish to make oral comments on some of the rules.

5 MR. STAMETS: Mr. Taylor, do
6 the application of the rules on procedure fall within your
7 work duties at the Oil Conservation Division?

8 MR. TAYLOR: Yes, sir.

9 MR. STAMETS: Have you been in
10 contact with people who have been working on these proposed
11 rule changes for some period of time?

12 MR. TAYLOR: Yes, sir, I have.

13 MR. STAMETS: I'm not certain
14 whether or not what you will say in this case will be testi-
15 mony, but why don't you proceed and we'll figure that out
16 later?

17 MR. TAYLOR: Okay. I didn't
18 intend to testify about these, I just wanted to briefly sum-
19 marize them.

20 Essentially, these rules, Rules
21 1204, 1205, 1206, and alternate Rules 12-7 are intended to
22 bring the OCD's notice procedures up to constitutional
23 standards.

24 Several cases dating from as
25 far back as the fifties have held essentially that notice

1 should be designed or intended to actually apprise the per-
2 son of pendency of the action, and both our statute, which
3 is New Mexico Statute Annotated 70-2-7, and our current
4 rules, really do not do that in a sense that publication and
5 personal service are the only things that are addressed, yet
6 personal service, especially out of state, is especially im-
7 possible, and therefore many people according to the rules
8 only need to get notice by publication.

9 And in the past the practice
10 has become to give notification by letter to all those
11 interested parties where an address could be obtained, and
12 essentially what we're doing is changing the rules so that a
13 mailed letter notifying a person of the pendency of an
14 action will satisfy the requirements for notice, and I
15 certainly think under the Supreme Court case, United States
16 Supreme Court, that a mailed notice to the last known
17 address of the interested party is that kind of notice which
18 is intended and would in fact give actual notice to that
19 person of the pendency of an action.

20 I just will briefly go through
21 these.

22 Rule 1204, we're striking the
23 words "given by personal service on the person affected".

24 Rule 1204 essentially now
25 becomes a publication provision of our rules.

1 Rule 1205 strikes the words
2 "such notice", and essentially is made to correlate with a
3 published notice.

4 We are striking Rule 1206 on
5 personal service and replacing it with a rule which states
6 that the Commission will be responsible for publication of
7 notice in newspapers.

8 That publication notice is es-
9 sentially intended, I think, under Constitutional law and
10 Supreme Court cases related only to people who are unknown
11 or unreachable through any other means, so we have now added
12 the proposed Rule 1207, which in its various aspects spells
13 out as specifically as we believe we can the type of people
14 that should be notified for various cases.

15 Subsection 1 of that relates to
16 compulsory pooling.

17 Subsection 2 to unorthodox well
18 locations.

19 Subsection 3, nonstandard pro-
20 duction units.

21 Subsection 4 is special pool
22 rules.

23 Subsection 5 essentially to our
24 Rule R-111-A.

25 Subsection 6 to downhole com-

1 mingling.

2 And Subsection 7 is a general
3 provision for anything not covered in the previous subsec-
4 tions.

5 Alternative Rule 1207 is one
6 which may be enacted in place of the first alternative, or I
7 would recommend that possibly we could have Rule 1 -- the
8 second alternative Rule 1207 as a coverall for other situa-
9 tions.

10 I might state that in going
11 through the responses from many individuals and companies
12 that read our rules and commented on them, there's quite a
13 few who are in favor of the first alternative of Rule 1207,
14 which requires fairly specific notice. There were only a
15 couple of comments that thought that that was (not under-
16 stood) but the vast majority thought that that was adequate
17 and that it would help give guidance to company representa-
18 tives responsible for giving notice and who often would not
19 know the legal requirements of Supreme Court cases and other
20 guidelines on type of notice.

21 I think, Mr. Chairman, that's
22 all I have just right now, if there are questions.

23 MR. STAMETS: Mr. Taylor, in
24 1207(a)7, it would appear as though that is limited to sit-
25 uations where royalty interests might be diminished or ad-

1 versely affected, so it does not appear as though that
2 covers all the other types of cases which might come along.

3 MR. TAYLOR: I think you're
4 probably correct, Mr. Chairman, on that one.

5 MR. STAMETS: And you are sug-
6 gesting that perhaps we can take at least a portion of the
7 wording from Rule 1207 and create a Number 8 there, which
8 would be as to any case not covered above notice shall be
9 given.

10 MR. TAYLOR: Yes, sir. It's
11 essentially a catch-all which would provide the minimum Con-
12 stitutional requirements for notice in case we have not
13 spelled it out in the earlier part of the rule.

14 MR. STAMETS: Just looking at
15 the instructions of this Alternative No. 1, it would appear
16 that perhaps the paragraph which begins "At each hearing the
17 applicant shall cause", and so on, perhaps that should be
18 Paragraph (b) of that rule, and what is currently proposed
19 as Paragraph (b) should be Paragraph (c), since in what is
20 known as Paragraph (a) the types of notice are stated and
21 then that middle paragraph indicates what sort of proof will
22 be given at the hearing.

23 MR. TAYLOR: I think that would
24 be probably a good idea.

25 MR. STAMETS: Are there ques-

1 tions of Mr. Taylor on this proposal?

2 MS. AUBREY: I have some ques-
3 tions, Mr. Stamets, of Mr. Taylor or the Commission, speci-
4 fically with regard to Rule 1207.

5 In the comments which we filed
6 on behalf of the New Mexico Oil and Gas Association and in
7 connection with other comments which have come through our
8 office, there has been concern by a number of operators, in-
9 cluding Cities Service, who is here today, about the re-
10 quirements in the rule as written for the operator to decide
11 whose interest is adversely affected.

12 I believe that a substantial
13 number of situations have been dealt with by specifically
14 setting out the types of case in which notice is required
15 and defining to whom that notice goes.

16 My concern this morning is,
17 first of all, with the unorthodox well location rule, which
18 continues to require an operator to decide whether or not an
19 offset operator is adversely affected. I believe it would
20 save time and constitutionally provide safeguards for every-
21 one if the Commission were to make that decision for the
22 operator and set forth exactly what kind of notice needs to
23 be provided and to whom in, particularly, the unorthodox
24 well location cases.

25 In addition, in the unorthodox

1 well location case it appears to require -- or the unortho-
2 dox location rule it appears to require notice to all opera-
3 tors. It does not seem to address the question of what an
4 operator does when he is moving to a location which is less
5 unorthodox as opposed to moving closer to someone else,
6 whether or not notice -- whether or not that offset operator
7 then is a party whose interests are adversely affected.

8 With regard to Rule 1207(a)7,
9 which has been discussed here as dealing with royalty own-
10 ers, once again we would like to make comment that this does
11 not appear to address the situation where, for instance, the
12 compulsory pooling application is filed and the result of
13 that pooling order could have an effect upon the adverse --
14 upon a royalty owner's interest, but those royalty owners
15 interests are not royalty owners of the applicant.

16 The rule, as I read it, as it's
17 composed, requires notice only to the applicant's royalty
18 owners, not to royalty owners who may have their interest
19 affected by a proceeding before the Division, and I would
20 suggest, once again, that that is a situation which should
21 be addressed by the proposed rule changes.

22 MR. STAMETS: What you will be
23 talking about then would be in cases other than compulsory
24 pooling or statutory unitization situations.

25 MS. AUBREY: In which a royalty

1 owner's interest will be affected by that royalty owner is
2 not a royalty owner of the applicant.

3 As I read the rule as it is
4 proposed, it only requires notice to the applicant's royalty
5 interest.

6 MR. STAMETS: Just a minute,
7 let me make myself a little clearer.

8 Thank you.

9 MS. AUBREY: I have three more
10 comments on the rules.

11 The first is that 1207 as writ-
12 ten as proposed, provides that evidence of failure to pro-
13 vide notice may be considered a cause for -- may be consid-
14 ered cause for re-opening the matter.

15 We would suggest that language
16 be included in the rule that would permit a case to be con-
17 tinued by a party who comes before, say, an Examiner, and
18 can show either by -- either by letter or in person, that he
19 has not been notified of the hearing within the appropriate
20 amount of time to prepare for it.

21 The concern that we have is
22 that an adversely affected person may have to sit through an
23 Examiner Hearing, have an adverse Examiner order entered,
24 simply because he has not had time to prepare because he has
25 not had notice, and then have to either apply to reopen the

1 case before the Examiner or to commence de novo proceedings
2 before the full Commission.

3 And I believe the Commission
4 could set out some sort of criteria for the Examiners in
5 connection with a continuance, but certainly lack of notice
6 is an appropriate grounds to ask for a continuance and it is
7 our belief (not understood.)

8 MR. STAMETS: I guess we could
9 insert the words "continuance or the" between "for" and
10 "reopen" in there to solve your concern.

11 MS. AUBREY: I think that would
12 be appropriate.

13 And finally we have two com-
14 ments on rules which are not directly in the call of the
15 case.

16 The first is the situation that
17 we have faced recently and that has been, I believe, a prob-
18 lem for the Commission, the Examiners, and the parties at
19 such time, and that is exactly how we proceed from an Ex-
20 aminer order once an application for a de novo hearing has
21 been filed.

22 I would suggest that it would
23 be appropriate for the Commission to consider that in terms
24 of a rule which would provide that it stay or not stay, and
25 since Mr. Carr's here, I will say that I'm willing to accept

1 either one of those alternatives, but that I believe it
2 needs to be addressed and the important thing is for the
3 parties and the Commission and the Examiners to have for a
4 certainty about exactly what happens when you file an appli-
5 cation for a de novo hearing, and what the validity of the
6 Examiner order which is entered is at that particular time.

7 The last comment I have on the
8 notice, this particular notice rule, or the proposed rules,
9 is that we would suggest that some sort of notice require-
10 ment be enacted by the Commission to require notice of op-
11 posed cases.

12 Most of the other jurisdiction
13 which have administrative proceedings relating to oil and
14 gas do, in fact, have a requirement of notice in writing to
15 the Commission and to adverse parties that a case will be
16 opposed.

17 It is our belief that this
18 would permit better preparation of cases, would give the Ex-
19 aminers, particularly, a way to estimate the length and com-
20 plexity of their docket in advance; it would put everyone on
21 notice of exactly how many contested cases were going to be
22 on that day; and would eliminate a situation which has
23 arisen in practice, which is that a party who intends to op-
24 pose does not need to particularly prepare but to simply sit
25 through an Examiner hearing, receive copies of the exhibits

1 which the applicant has prepared, listen to the testimony,
2 and when the Examiner order is entered to file for a de novo
3 hearing, and has had the benefit of discovery, which does
4 not run to the applicant, then, because the opposing party
5 doesn't need to do anything but enter an appearance in order
6 to have a right to a de novo hearing.

7 We believe that some sort of a
8 requirement that there be notice of a contested, of a poten-
9 tial contested hearing, would provide fairness for both the
10 applicant to know he's opposed, and for the Examiner, who
11 would then be able to estimate the length of his docket.

12 Those are all the comments I
13 have, Mr. Stamets.

14 MR. TAYLOR: Mr. Chairman, if I
15 might briefly responds.

16 I somewhat share the concern of
17 Ms. Aubrey for the wording of someone whose interest is ad-
18 versely affected, because actually, I think the test we use
19 is whether they have a property interest that's affected,
20 whether or not it may be adverse, we may not know until an
21 order is entered or it may not be adverse but it may be
22 something that their property could be affected by and they
23 would certainly be interested in knowing about that.

24 And her other comment on royal-
25 ty interest, and notice to an applicant's royalty interest,

1 I remember we had a discussion of this with several of the
2 attorneys that practice here, and it was our feeling at that
3 time, I recall, that we limit it to the applicant's royalty
4 interest owners because we thought it would be a huge burden
5 to find out all the royalty interest owners, but I think we
6 were talking about the other parties in a case notifying
7 their own royalty interest owners, but I can't recall, and
8 therefore I think we'll have to maybe discuss that some
9 more.

10 MR. STAMETS: Ms. Aubrey, rela-
11 tive to your first concern about the unorthodox location, I
12 think Mr. Kellahin was one of those, perhaps he didn't pro-
13 pose this additional language, I doubt if he did, but he has
14 been trying for some time to get the notice relative to un-
15 orthodox locations changed so that only those persons who
16 are being approached by the unorthodox location are to re-
17 ceive notice, and I'm certain that you and Mr. Kellahin
18 could come up with some fantastic language which would say
19 that much better than it's been said here, and some period
20 of time, a least a couple of weeks after this hearing, will
21 be provided for such additional submittals.

22 Also, if the -- any parties
23 here would like to submit proposals for the catch-all
24 language which would be then Item 7, Paragraph (a), we would
25 certainly appreciate receiving such -- such language.

1 Did I say a new 7? If I said a
 2 new 7, I'm wrong. It will be a new 8 following 7.

3 Are there any other observa-
 4 tions by those who said they were going to comment?

5 Mr. Carr?

6 MR. CARR: May it please the
 7 Commission, Amoco Production Company is naturally concerned
 8 about any new notice requirements that might be promulgated
 9 by the Oil Conservation Division.

10 We are, however, equally con-
 11 cerned that whatever rules are promulgated by the Commission
 12 be clear and clearly put us on notice of what we are to do
 13 as we get into this additional area of providing information
 14 to those who have interest to be affected by actions we're
 15 proposing to take.

16 We have a concern that when you
 17 say actual notice by certified mail, return receipt re-
 18 quested, that that not be confused -- I think it probably is
 19 not as the whole rule that is drafted -- but that that not
 20 be confused with a situation where we must not only send it
 21 but we must guarantee that the individual received it at the
 22 other end.

23 We've had trouble in the past
 24 with situations where in cases like compulsory pooling where
 25 you have been dealing with someone in good faith, they are

1 opposed to the application, and they simply refuse to accept
2 the mail when we send them notice.

3 The rule as written says that
4 you shall provide proof of receipt when it is available, and
5 as long as that applies to all situations where certified
6 mail is required and all we're compelled to do, or required
7 to do, is to show you that we have sent notice properly ad-
8 dressed, then that concern is taken care of, but it has been
9 a problem in the past and Amoco wanted to call it to your
10 attention.

11 When we get into the proposed
12 rule on unorthodox locations, we do believe there is a prob-
13 lem with the language. We share the concern expressed by
14 Ms. Aubrey about giving notice of those parties adversely
15 affected and we are concerned about our being called upon to
16 make that judgment.

17 We're also concerned about the
18 language that says "adversely affected" in spacings and pro-
19 portion units of the same size.

20 We think that language is con-
21 fusing. If you look at the Jalmat Gas Pool, it's difficult
22 to find situations where you're moving towards spacing or
23 proportion units of the same size.

24 We think your intent is clearly
25 to give reasonable notice to those interest owners who are

1 being affected because a well is moving toward them. We
2 really doubt that this language clarifies that situation,
3 but in fact leads to further problems, and we would suggest
4 that having a rule that is clear and understandable lets
5 operators know what's expected of them, that language should
6 be adopted to the effect that operators -- or that -- or
7 that notice should be given by operators of contiguous and
8 cornering proration or spacing units toward which a well is
9 being moved. We think that is clear and understandable and
10 let's the person proposing the unorthodox location know what
11 is expected of him and would also provide adequate notice to
12 those interest owners who are being affected by the unortho-
13 dox well location.

14 We are particularly concerned
15 about the provisions which require giving notice to royalty
16 interest owners in cases that may diminish or adversely af-
17 fect their interest.

18 It's hard to conceive of a case
19 that comes before you where under a certain set of circum-
20 stances after the fact someone's interest might not be di-
21 minished or adversely affected. Beyond that, we're required
22 to not only identify whether or not their interest may be
23 ultimately, adversely diminished or affected, but we're to
24 give actual notice to interest owners immediately affected.
25 This becomes a real difficult situation for an operator pro

1 posing to do virtually anything and that it creates an un-
2 healthy situation where after the fact someone could come
3 back and say, I'm clearly someone who had a royalty interest
4 that was going to be diminished and I should have been given
5 notice, the order should be set aside and we can start over.
6 That's an unreasonable burden.

7 We also think this whole pro-
8 posal steps outside the traditional relationship which
9 exists between lessee and working interest, a royalty inter-
10 est owner on one hand and a working interest owner on the
11 other.

12 The relationship between these
13 parties is governed by the contract between them, by the
14 lease, and you have a right as a royalty interest owner not
15 to expect that every action taken, every single circum-
16 stance, might not diminish your interest. You have a right
17 to expect that the property will be operated in accordance
18 with prudent operating standards.

19 We think that actually a royal-
20 ty interest owner in a case where he has signed a lease with
21 an individual and if that individual is operating the well
22 or if he signs a lease with another working interest owner
23 that has (not understood), we think that royalty interest
24 owner's rights spring from that contract and run to the in-
25 dividual with whom he has contracted and they shouldn't be

1 a part of the hearing, and in doing this, you're merely
2 changing the traditional relationship of the parties and
3 you're going to be creating serious problems from an admin-
4 istrative point of view for the Division and creating risk
5 for the operators that are attempting in good faith to dev-
6 elop properties.

7 We think that Alternative No. 2
8 seems to now be in the process of being elevated to a catch-
9 all provision, is the worst part of the proposed rules.
10 It's simply not clear.

11 We're supposed to give notice
12 to people we expect to be adversely affected down the road.
13 Two years down the road we may be called to task because we
14 should have expected that this was going to happen to some-
15 body who now finds themselves adversely affected. We're
16 again in the position of trying to identify royalty interest
17 owners that might be immediately affected. I think it's un-
18 clear and we submit that any rule that you propose not only
19 should attempt to address what's (not understood) but if
20 there are problems with the notice requirements, that rule
21 should be clear enough so when an operator tries to apply it
22 and acts in good faith, he's not out in a never, never land
23 where he's trying to anticipate what might happen two years
24 down the road and determine whether or not the royalty own-
25 ers is going to be immediately affected at that time.

1 MR. STAMETS: Again, Mr. Carr,
2 if you've got some language which would help clear that up,
3 feel free to submit that within the next couple of weeks.

4 MR. CARR: We will do that and
5 I also would just like to note that I do have comments that
6 relate to our previous conversation, or previous testimony
7 concerning Rule 102 and I was planning to make a comment at
8 the end but with your permission I would just note that in
9 regard to 102 when the (not understood) is being proposed,
10 we use reasonable diligence to give notice to the landowner,
11 a tenant or a lessee.

12 Amoco would submit that it
13 would be clear and we think adequate if the Commission
14 adopted a rule that required that we give notice to -- or
15 make reasonable, diligent efforts to give notice to land-
16 owners, lessees of record, and beyond we get into an area
17 where it is difficult, if not impossible, to locate owners
18 of interests that are not recorded and also it is virtually
19 impossible often to identify a group of tenants of a lessee,
20 so we would request that you consider inserting language to
21 require that (not understood).

22 Finally, I don't believe that
23 the hearing was called to discuss procedures concerning how
24 we conduct a de novo hearing, so I won't address those.

25 I won't address procedures con

1 cerning how matters should be handled by the Division
2 concerning the common purchaser's statute, and I will not
3 give you my opinion on how a contested hearing should be
4 handled.

5 MR. STAMETS: Mr. Carr, on the
6 royalty interest owner notification, it almost sounded as
7 though you said that when a person signs a lease he no
8 longer has any rights to come into the Commission and be
9 heard, for example, in a spacing case. Is that -- is that
10 what you were saying?

11 MR. CARR: I think when you
12 take a lease or give someone a lease to go out and operate
13 or explore and develop the property for the production of
14 oil and gas, that your rights with that individual are
15 defined by that document and I think that in that situation,
16 if that lease does not give the operator to commit your
17 interest or to pool your interest, then I think you have the
18 right to do that, but I don't think you should come in and
19 become an armchair operator and come to the Oil Commission
20 and start squabbling over the well location and squabbling
21 over downhole commingling, and all these other things, when
22 you have given someone else the right to go out and develop
23 that property, and the standard that governs what that indi-
24 vidual is to do when he's out there drilling and exploring
25 and developing that mineral interest, is he's required to

1 act as a prudent operator, and I think that is a standard
2 that applies, and I think bringing all the working interest
3 -- royalty interest owners into this proceeding is inappro-
4 priate.

5 MR. STAMETS: Mr. Nutter.

6 MR. NUTTER: Mr. Chairman, I
7 want to make it clear from the outset that I'm speaking for
8 myself as an interested party and as a friend of the Commis-
9 sion. My remarks do not necessarily reflect the views of
10 any of my clients but rest assured they're not in conflict
11 with those clients, either.

12 With respect to Case Number
13 8645, Rule 102, prior to staking a well the operator shall
14 make a reasonably diligent attempt to give notice to the
15 landowner and, if different, notice to the tenant or lessee.

16 First of all, I don't under-
17 stand the necessity of notification to the landowner or ten-
18 ant at all, to begin with. When the lease is obtained, the
19 right of ingress and egress, as well as the right to drill,
20 is established.

21 Further, the rights of origi-
22 nating where a well is to be drilled is usually not included
23 within the lease; it may be in some particular case.

24 Granted such notification may
25 be a demonstration of common courtesy, but approval of an

1 acceptable notice of intention is a ministerial function of
2 the Division and failure to notify a landowner before stak-
3 ing a location would never be sustained as justification to
4 withhold approval of the otherwise acceptable drilling per-
5 mit.

6 I just don't believe that you
7 can legislate common sense courtesy.

8 Supposing you do adopt this
9 proposed rule, I believe you will have to define what a
10 reasonably diligent effort or attempt to give that notice
11 is.

12 Now, as was pointed out there
13 may be an analogy of this rule with the one relating to giv-
14 ing notice to the city, town, or village; however, a very
15 small percentage of the wells are drilled within the corpor-
16 ate limits of cities, towns, and villages, and this rule
17 would be applicable to 99 percent of the wells that are
18 drilled in the state, and it's imposing undue burden on the
19 operator, especially when you say that notice to the land-
20 owner shall be given and, if different, notice to that ten-
21 ant or lessee.

22 As mentioned previously, now,
23 oftentimes you don't know the name of the sharecropper or
24 whoever it may be that has a sublease on the property or in
25 the case of state lands, who the surface lessee would be. I

1 don't know if this is intended to apply also to Federal
2 lands or not, but if notice is given to the landowner, why
3 shouldn't it be the duty of the landowner to notify his les-
4 sees, the surface lessees?

5 But the establishment of what a
6 reasonably diligent attempt to give that notice, should be
7 clarified at any rate.

8 Now, with respect to Case Num-
9 ber 8646, Rule 113, where it talks about injury to the pro-
10 ducing formation or injection interval, and so forth, it's
11 not clear to me whether the concern here is injury to the
12 formation or injury to the casing or the casing seat, or
13 even the cement job.

14 I can understand your concern
15 for the casing, the casing seat, or the cement, but not the
16 formation. I believe that it's the intent of shooting,
17 fracturing, or chemically treating a formation to injure it,
18 at least to the extent of breaking down and changing its
19 permeability, and that that injury is irreparable.

20 Therefore my question is what
21 irreparable injury to the well is and does the word "well"
22 in the first part of the last sentence include the formation
23 or is it just the well.

24 If it does not include the for-
25 mation, then the words "formation" and "injection interval"

1 should be stricken from this rule.

2 I realize that you're not
3 changing anything here as far as entry to the formation is
4 concerned, and I think that Mr. Chavez' punctuation change
5 has clarified this to a certain extent by putting the comma
6 after the word "formation". It sounded previously like
7 you're talking about the formation casing, not the forma-
8 tion, casing, but it's been a -- it's been a weakness of
9 this rule for over the years before you proposed this amend-
10 ment today, that you're not supposed to damage the formation
11 but it is your intent to damage the formation.

12 Now if you're talking about
13 creating channels or avenues between this formation and an-
14 other formatio, maybe that's what the rule should say, and I
15 believe that probably is the intent, that you don't want to
16 create communication from one formation to the other.

17 MR. CHAVEZ: May I comment on
18 --

19 MR. STAMETS: Let's let Mr.
20 Nutter finish.

21 MR. CHAVEZ: All right.

22 MR. NUTTER: That's all I have
23 on that one. Now I'll go to another one or maybe he might
24 want to make his comments here.

25 MR. STAMETS: Fine. Mr. Cha-

1 vez?

2 MR. CHAVEZ: Formation damage
3 that can occur during chemical treating, shooting, fractur-
4 ing, are (not understood) blocks, plugging of fines, other
5 types of damage that can occur, skin damage, it's sometimes
6 called, when you're drilling that in some cases is repairable
7 through other processes, maybe a re-fracturing, different
8 chemical situations (not understood) the wellbore.

9 MR. NUTTER: Of course if a man
10 has created a block or a skin effect in this wellbore, he's
11 not going to get production. A prudent operator is going to
12 try to correct that, and that isn't really formation -- in-
13 jury to the formation; it's a blockage to the formation,
14 that's creating a barrier between his well and the forma-
15 tion.

16 But you are trying to injure
17 the formation when you fracture or treat.

18 MR. STAMETS: Mr. Nutter, do
19 you think it's appropriate if we were concerned about injury
20 to the producing formation which would result in waste?

21 MR. NUTTER: That's a step in
22 the right direction, yes, sir. It's -- this is an old rel-
23 lacy of this rule that I've always questioned.

24 MR. STAMETS: Okay, do you have
25 comments on some other rules?

1 MR. NUTTER: Yes, sir, Case
2 8649. I notice that this case is numbered 8649 and I'm also
3 reminded that the Oil Conservation recently commemorated its
4 50th anniversary, and in all of those cases and all of those
5 years, I do not believe there has ever been a single order
6 of the Commission or the Division even challenged, much less
7 reversed, because of failure of the present system of giving
8 notice for hearings.

9 As the Chairman is aware, there
10 have been possibly two occasions where a complaint by some
11 affected party that did not receive notice was received and
12 the Commission simply reopened the case, but never, to my
13 knowledge, has anyone felt that the present procedure for
14 giving notice was so inadequate as to giving the confidence
15 to justify challenging an order of this Commission.

16 I do believe that it's alto-
17 gether fitting and proper to adopt your proposed Alternative
18 No. 1 Rule 1. Compulsory pooling cases and statutory uniti-
19 zation cases are in effect the adjudication of property
20 rights and individuals noticed by certified mail should
21 certainly be advisable for this type of a hearing.

22 In Alternative No. 1 Rule 2 I
23 believe certified mail notice for unorthodox locations may
24 be a little much. If it is adopted, I would point out that
25 a flaw in this notice is required by giving notice only to

1 those operators of units of the same size.

2 If I had a nonstandard unit of
3 a size different than the offset, I don't have to notify
4 them or if I have a standard unit I would not have to notify
5 anyone with nonstandard units.

6 Alternative 1 Rule 3, again I
7 believe the certified mail notice is a little bit excessive.

8 Alternative 1 Rules 4 and 5,
9 for the promulgation of or amendment of special pool rules
10 notice would be required by regular mail to all operators
11 within the pool or within one mile thereof.

12 In the case of amendments to
13 Rule R-111-A, notice is required to be given to affected
14 potash operators and affected oil and gas operators by cer-
15 tified mail.

16 I don't comprehend the differ-
17 ence, one by regular mail and one by certified mail. Spe-
18 cial rules are special rules and certainly the notification
19 of all operators in a very large pool and within one mile
20 thereof, could develop into a most onerous and expensive
21 chore.

22 Also with rule -- with respect
23 to Rule 5, how does one determine who an effective potash
24 operator or oil and gas operator is.

25 Alternative No. 1 Rule 6, this

1 because I've only got a 40-acre tract and I can't drill a
2 well.

3 This, as I stated, this -- this
4 one rule here really frightens me.

5 Alternative 2 in Rule 1207
6 would be fine if you could magically know who was adversely
7 affected and if there were some time limit upon which this
8 -- within which this adversely affected party could have --
9 could not crawl out of the woodwork and get the case re-
10 opened.

11 Also, the method used to deter-
12 mine the parties who received the notice must also, by
13 necessity, include the ability to analyze the other guy's
14 economics and tax situation and see if he's going to be be-
15 benefited or injured by your proposal.

16 As I mentioned at the begin-
17 ning, this Commission has survived fifty years and almost
18 9000 orders without a problem of giving adequate notice for
19 its hearings, so I do not know what is going to be cured by
20 these proposals.

21 I do honestly believe the adop-
22 tion of either of these alternatives will result in chal-
23 lenges to orders where previously there were none. After
24 adoption of a procedure like this, anyone who can't chal-
25 lenge an order on the merits of the case will certainly

1 start picking over the bones of the notices that were mailed
2 and there will certainly be times when the applicant has re-
3 ceived this order, relied upon it in good faith, and subse-
4 quently finds himself with no order and his case reopened,
5 without even a time limit for doing this.

6 I believe that either of these
7 alternatives is going to open a can of worms if ever a can
8 of worms has been opened. I therefore respectfully urge you
9 to retain the present system of notice.

10 If it ain't broke, don't fix
11 it.

12 Thank you.

13 MR. STAMETS: Mr. Ingram.

14 MR. INGRAM: My name is Hugh
15 Ingram. I represent Conoco.

16 I have one question and might I
17 assume that if the Commission elects to change the notifica-
18 tion, that you will discontinue the present notification
19 procedure of mailing copies of Examiner dockets and Commis-
20 sion hearings to operators and interest owners?

21 MR. STAMETS: I'm certain we
22 intend to continue to mail dockets to everybody who wants to
23 get on the mailing list.

24 MR. INGRAM: That, I think that
25 would be a good procedure, Mr. Chairman, but in the first

1 place, it gives me as an operator the ability to determine
2 for myself whether I'm being adversely affected or not and
3 it does not put that responsibility off on someone else.

4 If we use that as the only pro-
5 cedure, then I would feel that I was being adequately noti-
6 fied and if we incorporated into the present method, which
7 would support Mr. Nutter's statement that the present method
8 be continued, with possibly the addition of making it the
9 responsibility of every operator in the state to maintain a
10 current mailing list and representatives names for their com-
11 panies and the Commission then could maintain that list,
12 send all of those people a copy of that docket and that
13 would place the responsibility of each -- upon each operator
14 to decide whether or not he's being adversely affected by
15 any of the cases being heard.

16 In addition, in order for me as
17 an operator to determine who might be adversely affected
18 might be next to impossible.

19 Take for example in cases of
20 hardship gas well, I think it could be stated by any opera-
21 tor within the State of New Mexico that they could be ad-
22 versely affecteds because any hardship gas well removes a
23 certain amount of gas from the market, this is my opinion
24 now, from a market, so it directly or indirectly affects
25 every operator in the state every time a hardship gas well

25 more complications than it does answers. If I were to

1 case is approved.

2 And also in response to a
3 statement or a question raised by Mr. Carr concerning royal-
4 ty owners, it's my opinion that most, if not all, modern
5 leases, at least that we are taking in the oil patch today,
6 give the operator the rights to pool royalty owner's inter-
7 est, and this would, I think, cover any question that might
8 arise concerning compulsory pooling, because we have that
9 right by virtue of the lease the royalty owner has given us
10 to pool his interest in that, so I don't think that would
11 become a problem.

12 I don't think the royalty owner
13 or the overriding royalty owner would be, would have any re-
14 percussion from them at all.

15 I think it's also complicated
16 by the fact that maybe in my notification I don't know who
17 all has farmed out and at the time the case is heard the
18 royalty owner, or the operators or the royalty owners,
19 either one, could have changed two or three times, so then
20 where does that put the responsibility, on the operator who
21 gave a farmout, is he still responsible and who's to be noti-
22 fied in that case?

23 My closing statement, I think
24 the regulations, either one of them as proposed presents
25 more complications than it does answers. If I were to

1 choose between the two I'd certainly choose proposal number
2 (unclear).

3 I would suggest that the rule
4 remain unchanged with possibly the addition of the current
5 mailing list maintained in the Division office.

6 MR. STAMETS: Mr. Hobbs, I be-
7 lieve you indicated you wanted to make a statement.

8 MR. HOBBS: Yes, sir. I not
9 only represent Southland Royalty Company, but I'd like to
10 speak on behalf of the committee that, as I understand, was
11 appointed by the Oil Commission to clarify and rewrite the
12 general rules that were under study.

13 AM: I correct in that this com-
14 mittee was appointed by you or by the Commission?

15 MR. STAMETS: Are you referring
16 to the rule relative to gas prorationing?

17 MR. HOBBS: Right. Well, in
18 this committee some of these things are addressed in our
19 proposed rule changes and rewrites, and although you may not
20 have seen it, we're approaching a hearing on that and some
21 of these same things are going to be coming up.

22 We've spent a year and numerous
23 of manhours rewriting and rewording some of these same
24 things we've listed today, and I offer that let's, you know,
25 let's have a look at that before we make these changes, at

1 MR. CARR: May it please the
2 Commission, Ms. Aubrey will be back in just a moment and I
3 believe Cities was going to present testimony on this. It
4 might be appropriate to take a recess at this time until she
5 can return.

6 MR. STAMETS: All right. We'll
7 take a short recess, probably ten minutes.

8

9 (Thereupon a recess was taken.)

10

11 MR. STAMETS: The hearing will
12 please come to order.

13 Does anybody have anything they
14 wish to offer in any of these cases at this time?

15 MS. AUBREY: Mr. Stamets, on
16 behalf of Cities Oil and Gas Corporation, I would like to
17 call Mr. Randy Pitre to testify briefly about Cities' re-
18 sponse to the proposed rule changes.

19 MR. STAMETS: Okay.

20 MS. AUBREY: Mr. Stamets, we've
21 placed copies of Cities' Exhibit One in front of you. There
22 is also one copy of Cities' Exhibit Two. I'm sorry we don't
23 have more copies of that exhibit.

24

25

1 RANDY PITRE,

2 being called as a witness and being duly sworn upon his
3 oath, testified as follows, to-wit:

4
5 DIRECT EXAMINATION

6 BY MR. AUBREY:

7 Q Will you state your name and place of
8 employment for the record?

9 A My name is Randy Pitre. I'm employed
10 with Cities Service Oil and Gas Corporation in Tulsa,
11 Oklahoma.

12 Q In what capacity are you employed by
13 Cities Service?

14 A I'm Environmental Coordinator for our Ex-
15 ploration and Production Group.

16 Q And would you describe for the Commission
17 your professional educational training background?

18 A All right. I have a BS in oceanography
19 from (unclear) University, Texas, and a Master of Science
20 degree in wildlife and fishery sciences from Texas A & M
21 University.

22 Q How long have you been employed by Cities
23 Service?

24 A Approximately four years.

25 Q You're here today to testify about the

1 comments which Cities Service has on the proposed rule chan-
2 ges and you've brought with you an exhibit, marked Exhibit
3 One, which sets out Cities comments.

4 A Right.

5 Q Do you have that in front of you, Mr.
6 Pitre?

7 A Yes, I do.

8 Q Would you go through and briefly comment
9 for us what, particularly on the produced water and the Rule
10 102 Notice of Intention to Drill, which I believe you have
11 included in your comments.

12 A Right. On the produced water definition,
13 we would like to suggest including carbon dioxide after the
14 -- on the third line there. It's after "crude oil and/or
15 natural gas," including carbon dioxide "and commonly col-
16 lected at field storage or disposal facilities...", because
17 we believe that carbon dioxide is being significantly pro-
18 duced here in New Mexico and that produced water can be pro-
19 duced in association with these components.

20 Q And is that including carbon dioxide
21 wells in connection with the oil and gas wells that are de-
22 scribed in the proposed rule you believe will contribute to
23 the statutory scheme in regulating these wells?

24 A Right, and give better clarification.

25 Q Do you have a comment now on proposed

1 Rule 102 which will require notice to the surface owner
2 prior to staking? What is your comment on that rule?

3 A All right, we would like to see that it
4 be worded somewhat to the effect of "prior to the commence-
5 ment of operations the operator shall give notice of inten-
6 tion to drill to the surface owner, or owners". We believe
7 that this would meet any -- any understood requirements. We
8 believe that any requirements that lessors of surface rights
9 or tenants are between the tenants and the surface owner,
10 and that the responsibility of notifying tenants lies with
11 the surface owner, so that an operator, in meeting the no-
12 tice requirements to the surface owner therefore meets his
13 responsibility.

14 Q Do you have an opinion as to whether or
15 not the rule as proposed would require notice even to some-
16 one who was running cattle under a grazing permit?

17 A Yes, apparently it does, is my interpre-
18 tation.

19 Q Is it Cities' recommendation, then, that
20 all the language as proposed regarding notice prior to stak-
21 ing be excluded and the language which Cities has included
22 in its exhibit be substituted in its place?

23 A Yes, we recommend that.

24 Q With regard to Rule 107, Mr. Pitre, do
25 you have a preference between Alternate No. 1 and Alternate

1 No. 2?

2 A Yes. Our comments recommend that Alter-
3 nate No. 1 be accepted. We -- our comments are extensive,
4 although we are significantly concerned about the words ad-
5 versely affected parties, that this is very difficult for an
6 operator to determine which parties would be adversely af-
7 fected, and we feel that exactly identifying parties or de-
8 fining adversely affected parties would clarify this re-
9 quirement.

10 In operations in other states generally
11 the rule's clearly defined as offset operators, working in-
12 terest owners, or those types of terminology on parties
13 which should be notified.

14 Q With regard to these proposed unorthodox
15 well location rules, is it Cities' suggestion that those
16 offset operators toward which a well location is going to be
17 moved should be notified?

18 A Yes, that is correct.

19 Q So that is if you get -- the operator is
20 moving more unorthodox toward someone then there would be a
21 notification requirement.

22 A Right.

23 Q Do you have any other comments on your
24 proposed changes in -- in the unorthodox well location rule?

25 A No.

1 Q With regard to the nonstandard proration
2 unit proposal, what are your -- what are your suggestions?

3 A We recommend that actual notice shall be
4 given to each lessee in a quarter quarter section, which is
5 for 40-acre pools or formations; the quarter section for
6 160-acre pools or formations; the half section for 320-acre
7 pools or formations; or in the section for 640-acre pools or
8 formations in which the nonstandard unit is located and to
9 each operators or each adjoining or cornering tract of land
10 or spacing proration unit.

11 Q Let me have you now comment on the provi-
12 sion of the proposed rule which deals with any situation
13 which may be diminish or adversely affect the royalty own-
14 ers' interest.

15 A Okay. In the case of any other applica-
16 tion which will, if granted, alter any owner's or any royal-
17 ty interest owner's percentage interest in an existing well,
18 we believe actual notice shall -- should or shall be given
19 to the owners and applicant's royalty interest owners in
20 such existing well.

21 Such notice shall be provided by certi-
22 fied mail, return receipts requested.

23 Any notice required by this rule shall be
24 mailed at least ten days prior to the date of hearing on the
25 application.

1 Q And you recommend that Alternate No. 2
2 will (not understood).

3 A That's correct.

4 Q Do you have any other comments or sugges-
5 tions that you would like to make this morning for the Com-
6 mission about the proposed rules?

7 A Right. I'd like to comment on the pro-
8 posed definition of fresh water within the State of New
9 Mexico.

10 We recognize that -- that Federal re-
11 quirements as well as State requirements require that waters
12 with 10,000 parts per million or milligrams per liter dis-
13 solved solids be protected, because we understand that it's
14 been determined that these waters can be used for various
15 purposes or may be used for various purposes in the future;
16 however, 10,000 parts per -- or milligrams per liter dis-
17 solved solids is a relatively high concentration of dis-
18 solved solids, and fresh water is normally referenced with
19 5000 milligrams per liter, or less, dissolved solids, and
20 most scientific documents refer to 10,000 milligrams per
21 liter dissolved solids waters as being brackish.

22 Q That would be water that was not suitable
23 for drinking.

24 A That's correct. In fact, EPA standards
25 published in 1975 recommend that the total dissolved solids

1 for drinking waters be no more than 500 milligrams per liter
2 and it's generally understood that fresh waters are waters
3 which can be used for wildlife or agricultural purposes, or
4 any of these uses, and that water -- I don't believe waters
5 with 10,000 milligrams per liter dissolved solids would --
6 would be acceptable for those type uses, and we're recom-
7 mending that somewhat different terminology be used, which
8 we've seen in other states and has been accepted and is cur-
9 rently used in -- to define the waters which should be pro-
10 tected as treatable waters or possibly usable waters, and
11 that defining these as fresh waters could -- could possibly
12 -- possibly lead to some confusion if -- if there was ever
13 any sort of liabilities.

14 If we had a water that was less
15 than 10,000 milligrams per liter in one of our pits and with
16 -- and it was migratory -- migratory water fowl or any other
17 wildlife, you know, any of these waters, and were harmed in
18 any way, if they were defined as fresh waters within the
19 State of New Mexico I believe there could be some confusion.

20 Q Do you have any additional comments or
21 suggestions to add to your testimony, Mr. Pierce?

22 A No, I don't.

23 MS. AUBREY: I have no more
24 questions.

25 MR. STAMETS: Are there any

1 questions of this witness?

2 MS. AUBREY: I'm sorry, Mr.
3 Stamets, I'd like to offer Cities Exhibits One and Two.

4 MR. STAMETS: Exhibits One and
5 Two will be admitted if there are no questions.

6 MR. TAYLOR: Mr. Chairman, I
7 believe I have one question.

8 MR. STAMETS: Okay.

9

10 CROSS EXAMINATION

11 BY MR. TAYLOR:

12 Q Mr. Pitre, on your proposed Alternative
13 Rule 1207 in SubParagraph 2 on -- I believe on unorthodox
14 well locations, you talk about notice given to offset
15 operators of a well.

16 If there is no well on an offset --
17 offsetting location, are you recommending no notice or could
18 we change that such that an offsetting proration unit would
19 get notice whether or not there was a well located on it?

20 A Well, in our -- in our wording of this we
21 were interpreting well locations as being even as proposed
22 well --

23 Q So you're not --

24 A -- but there would not necessarily be an
25 existing well there but there would be a proposed -- is that

1 understandable, clear?

2 Q Yeah, that's fine. I just wanted to
3 clarify whether you wanted --

4 A In our understanding of this there would
5 not actually have to be a well in place; could be a proposed
6 well.

7 Q Okay. That's all the questions I have.
8 Thank you.

9 MR. STAMETS: Any other ques-
10 tions?

11 The witness may be excused.

12 Does anyone have anything they
13 wish to add in any of these cases at this time?

14 Mr. Rush.

15 MR. RUSH: I'm Joe Rush with
16 Meridian Oil, Inc. and in lieu of the proposal submitted by
17 Mr. Boyer today, we would like to defer hearing oral testi-
18 mony today and submit it -- our comments in writing if that
19 is permitted.

20 MR. STAMETS: I think it's the
21 Commission's feeling that they would like to continue Case
22 8640, the notice case, until the September 19th hearing,
23 which would give an opportunity for the proposal that Mr.
24 Hobbs spoke about earlier to come before the Division or
25 Commission, and also to give any interested parties an op-

1 opportunity to try and develop some proposals which would sat-
2 isfy what the Division is trying to get to in this case.

3 And so that case will be con-
4 tinued to the September 18th Examiner Hearing.

5 In the meantime, we may -- may
6 advertise the additional proposals that Mr. Aoyer had, which
7 might be brought up at that time relative to Rule 313, and
8 we will hold all of the other cases open for two weeks for
9 any comments anybody might wish to present.

10 Is there anything further in
11 any of these cases?

12 Mr. Chavez?

13 MR. CHAVEZ: Listening to the
14 questions that came up over the proposed changes to Rule
15 102, I, apparently, I may not have made it clear in my tes-
16 timony that the prior notification of staking to the land-
17 owner would ease the burden on the Division in that we do
18 get the landowners coming into our office, first of all,
19 this is the first place many landowners for questions con-
20 cerning oil and gas operations on their properties, and the
21 alternatives are available for a wellsite.

22 Secondly, after the -- the
23 second way this may help us is that when an operator wants
24 to stake a wellsite on private land, the landowner, after
25 discussing this with the operator and us, we can move the

1 well location to an unorthodox location that may be accept-
2 able to the landowner, the operator, and get quicker ap-
3 preval for an unorthodox location on the original permit
4 without having to look at changes of well location after the
5 fact.

6 As to the comments on notifying only the
7 landowners, not the surface tenant or lessees, many times
8 the situations which do arise where the tenant or lessee has
9 plans for the development of the surface of the land, who's
10 to be immediately affected by a well location, which might
11 be ameliorated if it was moved 50 feet, which may not impose
12 any burden on the operator (unclear) or not, but the prior
13 notification procedure can start the ball rolling in that
14 situation.

15 MR. STAMETS: Thank you, Mr.
16 Chavez.

17 Any other comments?

18 MR. TAYLOR: Mr. Chairman, I'd
19 just like to move that all the comments that the Division
20 has received on the proposals will be made a part of the re-
21 cord, so the public and everybody might want to (not under-
22 stood.)

23 MR. STAMETS: Okay, Mr. Taylor,
24 if you'll assemble those and submit those to the record sub-
25 sequent to the hearing we will incorporate them.

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MR. TAYLOR: Thank you.

MR. STAMETS: If there is no-
thing further, then, Cases 8643, 44, 45, 46, 47, and 48 will
be taken under advisement.

(Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY CERTIFY that the foregoing Transcript of Hearing before the Oil Conservation Division was reported by me; that the said transcript is a full, true, and correct record of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BLDG.
SANTA FE, NEW MEXICO

18 September 1985

COMMISSION HEARING

IN THE MATTER OF:

The hearing called by the Oil Conservation Commission on its own motion to amend Rule 1204 and 1205, to delete present Rule 1206, to renumber and amend Rule 1207, and to promulgate a new Rule 1207. CASE 8649

BEFORE: Richard L. Stamets, Chairman
Ed Kelley, Commissioner

TRANSCRIPT OF HEARING

A P P E A R A N C E S

For the Division: Jeff Taylor
Attorney at Law
Legal Counsel to the Division
State Land Office Bldg.
Santa Fe, New Mexico 87501

For the NMO&G Asso.: W. Thomas Kellahin
Attorney at Law
KELLAHIN & KELLAHIN
P. O. Box 2265
Santa Fe, New Mexico 87501

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1
2 MR. STAMETS: We'll call next
3 Case 8649.

4 MR. TAYLOR: May it please the
5 Commission, my name is Jeff Taylor, Counsel for the Commis-
6 sion, and I don't believe I'll have a witness in this case;
7 however, I will explain the proposed changes.

8 Case 8649 is continued from
9 the last Commission Hearing and as a result of comments we
10 received from operators and the public at that time, we have
11 made some revisions in our -- in this proposed ruled, or
12 these rules.

13 These rules relate primarily to
14 notice for hearings and if you'll -- if you'll notice on the
15 advertisement for the case we have outlined what changes
16 we're making there.

17 The primary changes are on Rule
18 1207, paragraph (a) Sub-parts 2, 5, and 7 were changed to
19 make, I believe, more specific the types of notice to be
20 given in those situations.

21 (a)2 relates to unorthodox well
22 locations.

23 (a)5 relates to potash areas
24 and rules there; and (a)7 relates to notice to royalty and
25 other owners, that notice be given to them generally on our

1 applications.

2 We've also added new paragraphs
3 (a)8 and (a)9 on produced water, which I believe is -- (a)8
4 is just to track other proposed changes made in disposed
5 water.

6 And (a)9 is kind of a generic
7 catch-all notice requirement. Essentially, as we explained
8 at the prior hearing, our notice requirements are not cur-
9 rently, or have not been, in keeping with constitutional
10 standards to give notice which is intended to actually ap-
11 prise adverse parties or parties whose property interest
12 would be affected of the pendency of the hearing and (a)9 is
13 kind of a catch-all which if we don't have a specific rule
14 on notice, we're saying that if you are affecting a property
15 interest, then you should give that person notice.

16 And I suppose we'll probably
17 have comments from operators and others, but I just -- I
18 raise a couple of questions I've had through either corres-
19 pondence or conversations with operators in the last week,
20 especially as to (a)9.

21 I've had several questions
22 about the foreseeability of affecting a property interest;
23 whether this -- at what point in time the property interest
24 would be affected and how -- how we foresee finding that.

25 For instance, if you're doing

1 something that would affect somebody's income or property
2 interest in five or ten years, whether requiring an operator
3 to foresee that and give notice to those people who would
4 not be immediately affected, and I -- I think, I have to ad-
5 mit that we did not -- we have not really discussed that in
6 this rule, the degree of foreseeability of effect on proper-
7 ty, and I suppose we'll have comments from operators on that
8 problem.

9 We've redesignated part (c) of
10 this rule. I believe that was an undesignated paragraph be-
11 fore and we've listed it as (c).

12 And I think that's all the
13 changes in this -- in these rules.

14 That's all I have at the mo-
15 ment.

16 MR. STAMETS: Thank you, Mr.
17 Taylor.

18 Are there others here today who
19 may have appeared at the earlier case who would like to make
20 a statement or present testimony at this time?

21 MR. KELLAHIN: Mr. Chairman,
22 I'm Tom Kellahin, Chairman of the Regulatory Practices Com-
23 mittee of the New Mexico Oil and Gas Association.

24 We have with us today certain
25 members of that committee that have particular expertise

1 with regards to notice rules in Oklahoma, Texas, and they
2 have assisted us in trying to fine tune the proposed notice
3 rules.

4 We do not have a consensus
5 among everyone on the committee as to exactly how to say
6 what we want to say or exactly how to resolve certain issues
7 that are perhaps more important to other companies than they
8 are to some of the other members.

9 We have Mr. Dick Hocker of
10 Cities Service, who I'd like to have testify today with re-
11 gards to his review and concerns about the notice provisions
12 and he has worked on a possible redraft of the notices for
13 the unorthodox well locations, and if it's appropriate, I'd
14 like to call him at this time and present his testimony on
15 that issue.

16 In addition I have a gentleman
17 from ARCO that is also concerned about how to provide notice
18 in unorthodox well locations, and finally we have a
19 gentleman from Texaco who has expressed for us concerns that
20 others have expressed with regards to Rule 7 and Rule 9, and
21 that is the general focus of the testimony from our
22 committee. There may be other members of the industry here
23 that have their own comments, but we have three individuals
24 that have expressed a desire to make their comments known at
25 this time.

1 MR. STAMETS: In addition to
2 these three are there others who will be presenting testi-
3 mony in this case today, either from the earlier hearing,
4 having appeared in the earlier hearing or as new partici-
5 pants today?

6 And seeing none, I'd like to
7 have those three stand and be sworn at this time.

8 MR. KELLAHIN: Mr. Dees says he
9 prefers to just to read his statement.

10 MR. STAMETS: That will be
11 fine, then.

12 Mr. Taylor, as I recall from
13 the last hearing, the Alternative No. 1 is the alternative
14 that was at least, if not universally -- well, let me -- let
15 me rephrase that.

16 As I recall, Alternative No. 2
17 was universally deplored by all of those in attendance and
18 all of those who submitted comments, is that correct?

19 MR. TAYLOR: I believe so, al-
20 though I haven't reviewed the contents of those, but I would
21 like to for the record request again, as we did at the last
22 hearing, that any comments, written, written comments that
23 we've received be made part of the record and because this
24 case is a continuation, the record will reflect the testi-
25 mony and the comments made at the previous hearing.

1 MR. STAMETS: All right, we'll
2 be sure and incorporate any new comments into the record as
3 well as the ones we have heard.
4

5 RICHARD L. HOCKER,
6 being duly sworn upon his oath, testified as follows, to-
7 wit:
8

9 DIRECT EXAMINATION
10 BY MR. KELLAHIN:

11 Q Mr. Hocker, for the record would you
12 please state your name and occupation, sir?

13 A My name is R. L. Hocker. I'm a petroleum
14 engineer for Cities Service Oil and Gas Corporation, located
15 in Tulsa, Oklahoma.

16 Q Mr. Hocker, would you describe for us
17 what your particular responsibilities are for Cities Service
18 Oil and Gas Corporation?

19 A Well, my job title is Regulatory Affairs
20 Consultant, Tom.

21 Q As a Regulatory Affairs Consultant for
22 your company, Mr. Hocker, are you familiar with the notice
23 rules and regulations of the Commissions of Texas, Oklahoma,
24 and New Mexico?

25 A Yes, I am.

1 working interest owners in Section 12 because the operator
2 in Section 12 is also Cities Service. Cities Service should
3 know who their working interest owners are in Section 12.

4 Q You're explaining for us, sir, the notice
5 rules in what state?

6 A This -- so far we've talked about like
7 Oklahoma.

8 Q All right.

9 A And it would provide they would have to
10 be in the same formation.

11 For Section 11, which does not have a
12 well or which might have a well in some other formation, the
13 notice would require that all of the parties having a right
14 to drill would be notified; in other words, all of the les-
15 sees and all of the unleased mineral interest owners. This
16 is more like Texas.

17 However, with regard to Texas, you would
18 also have to give notice to all of the offsetting parties,
19 being the north of Section 2, the northwest of Section 2,
20 the west of Section 2, and the southwest of Section 2, for
21 which the well is moving away from, and it seems to me that
22 that provision in Oklahoma is superior to Texas, and it
23 would seem to me that the provision of notice in Section 12
24 is superior to Texas, because in that case you do have to
25 give notice to the working interest owners. In other words,

1 Cities Service in this case could not waive for its own be-
2 half, and all of its other working interest owners in Sec-
3 tion 2, the right to object to the right to notice.

4 So it seems to me what I tried to do is
5 to meld together the better parts of Texas and Oklahoma in
6 this particular rule.

7 Q Let me direct your attention now to the
8 proposed New Mexico rule for this subject matter that is set
9 forth on the docket sheet and have you describe for us what,
10 in your opinion, are the weaknesses that you observe in the
11 language as currently proposed.

12 A Well, in this case, since I said it was
13 new, all new, I didn't attempt to try to show what I was
14 deleting and what I was adding but simply to try again to
15 write it better than I did last time, and in this case I
16 think it explains, if you'd like we could read through it,
17 it's a little long.

18 MR. STAMETS: That would be
19 fine.

20 A All right, sir. For unorthodox loca-
21 tions, "actual notice shall be given to the operator of each
22 well on each adjoining or cornering tract of land or spacing
23 unit currently producing from the same formation toward
24 which the unorthodox location is to be moved.

25 Provided, however, if the applicant is

1 the operator of the well in the adjoining or cornering tract
2 of land or drilling and spacing unit currently producing
3 from the same formation toward which the well location is
4 proposed to be moved, the applicant shall provide actual no-
5 tice to each working interest owner in such well."

6 Aside: That takes care of 1 and 12, the
7 notice to parties in 1 and 12.

8 Continuing: "Actual notice shall also be
9 given to each lessee and each unleased mineral interest own-
10 er in an adjoining or cornering tract of land or spacing
11 unit toward which the unorthodox well is to be moved if a
12 tract or unit does not have a well producing from the same
13 formation."

14 And I think the last part is much the
15 same as the proposed rule.

16 "If the proposed well lies within or off-
17 sets a Division designated potash area subject to special
18 rules, actual notice shall be given to each potash operator
19 within one mile of the proposed location. Actual notice
20 shall be given by certified mail (return receipt reques-
21 ted.)"

22 End of rule.

23 Q To clarify your observations, Mr. Hocker,
24 could you compare the proposed rule as it now exists on the
25 docket sheet with the one that you have proposed in today's

1 tion 2 the Dakota well is in fact a well location for a Mor-
2 row well.

3 A For a Morrow well.

4 Q Yes, sir.

5 A All right, sir.

6 Q And that you're dedicating the east half
7 of Section 2.

8 A Let's see, let's draw on that a little.

9 Q All right. And let's assume that the
10 east half of Section 2 is the proposed 320 for the Morrow
11 well; that the Cities Service Morrow well is 660 out of that
12 southeast corner. That's the location that you're trying to
13 get approved.

14 A Closer than normal, whatever it is.

15 Q Yes, sir.

16 A All right, sir.

17 Q You're crowding the south boundary.

18 A All right.

19 Q Which normally would be 1980 and now
20 you're moving to 660, which makes it unorthodox.

21 A All right.

22 Q You are still 660 from the east boundary,
23 which is a standard distance.

24 A All right. Okay, I'm 660 from the east
25 boundary.

1 Q 660 from the east boundary; 660 from the
2 south boundary.

3 A All right, and I've forgotten what the
4 standard location is.

5 Q The standard location would be 1980 from
6 the south, 660 from the east.

7 A 1980 from the south, and 660 from the
8 east is the standard, is that correct?

9 Q Yes, sir.

10 A All right, sir.

11 Q Let's also assume for the sake of discus-
12 sion that in Section 1 the Amoco well is also a Morrow pro-
13 ducing well and that it has a west half dedication.

14 A Well, I'd have to move the well -- oh,
15 I've got it in the --

16 Q Just barely.

17 A -- west half, okay. All right, sir. And
18 it's a -- it's a --

19 Q It's a Morrow well in the west half.

20 A -- Morrow well, all right.

21 Q With a west half dedication. Let's as-
22 sume in the Section 12 that there is no Morrow well; that
23 the only well in that section is a Dakot well which produces
24 from another formation --

25 A All right, sir.

1 Q -- in the Morrow. Let's also assume in
2 Section 11 that there are no Morrow wells.

3 A May I ask you one further question about
4 Section 12. Is Section 12 spaced in any way, or not?

5 Q It would be on statewide spacing of 320
6 but there is no allocation or dedication as to the
7 orientation of the spacing unit.

8 A So there's not really any Morrow spacing
9 at all in Section 12.

10 Q Only the statewide rule that would re-
11 quire 320 dedicated to a Morrow well, but it is undrilled
12 and the operators or working interest owners in 12 still
13 have the option to dedicate the north half or the west half.

14 A All right, sir.

15 Q All right. A similar situation in 11
16 where there is no Morrow well.

17 A All right, sir.

18 Q Under that fact situation, Mr. Hocker,
19 who's entitled to notice under your proposed rule?

20 A It would be my opinion that Amoco in Sec-
21 tion 1 would not be entitled to notice because a well would
22 not be drilled any closer to Amoco than a regular location;
23 however, as to Section 11 and 12, it certainly is much
24 closer and since, since neither one of them have a well in
25 the Morrow formation and there are no established spacing

1 units in 11 and 12, the offsetting tracts to the southeast
2 quarter of 2 and the cornering tract in Section 12, includ-
3 ing all of the parties who have a right to drill in those
4 tracts that actually touch and corner, would be required to
5 be given notice.

6 Q For purposes of understanding your propo-
7 sal, Mr. Hocker, if, for example, in Section 12 the 40-acre
8 tract that's in the northwest of the northwest, has a single
9 working interest owner, the balance of that 160-acre tract
10 in the northwest quarter had a different working interest
11 owner.

12 Under your proposal who gets the notice?

13 A The cornering tract.

14 Q The 40-acre tract?

15 A Yes, sir.

16 Q All right, and similarly, in Section 11,
17 if the north half of the northeast quarter is a single work-
18 ing interest owner and the balance of that section, excluded
19 that 80-acre tract, is owned by someone else, who in that
20 situation gets notice under your proposal?

21 A The cornering tract.

22 Q The 80-acre --

23 A Well, it's offsetting the south tract be-
24 cause there would only be one tract offsets all of the
25 southeast quarter of 2, as I understood it, so whoever has

1 the right to drill in the north half of the northeast quar-
2 ter of Section 11 would be required to be given notice.

3 Q And that is consistent with the notice
4 provisions that are used in Oklahoma on this subject?

5 A Yes, it is. Simply, the really different
6 part between New Mexico and Oklahoma is that the spacing
7 units for 320, are rectangular spacing unit are set out so
8 that you know exactly where the eighties are, where the 320s
9 are.

10 In New Mexico it's different.

11 Q Do you have any further comments you
12 would like to make with regards to your review and proposal
13 of this particular notice rule?

14 A No, this is an attempt to try to -- with
15 regard to 2, is to try to cover those parties in a better
16 manner, because the parties who also give notice, like to
17 receive notice, so this is a rule in which I think all par-
18 ties have a legitimate interest in trying to give the notice
19 that can be given, that can be given, and also would like to
20 receive it.

21 MR. KELLAHIN: We'd like to
22 submit Mr. Nocker's Exhibits One and Two at this time, Mr.
23 Chairman.

24 MR. STAMETS: What about the
25 parts 4 and 5 on Exhibit Two? Can you discuss those?

1 A Yes, indeed, yes.

2 Now with regard to part 4, the main
3 change there, I think one of them might have been a typo-
4 graphical error, I'm not sure. I think it's "all" operators
5 rather than "those of" operators.

6 The other one would be that you would
7 change from regular mail to certified mail. Again we're
8 talking about special pool rules, amendment of special pool
9 rules.

10 Q All right, sir, and then for number 5?

11 A Number 5 would give additional notice in
12 those potash areas. It would seem to me that when potash
13 area rules are going to be changed, all parties who have a
14 right to drill would be affected, and as such, I tried to
15 provide for all those parties who have a right to drill to
16 also receive notice.

17 MR. STAMETS: We'll accept Cit-
18 ies Service Exhibits One and Two.

19

20 CROSS EXAMINATION

21 BY MR. STAMETS:

22 A Mr. Stamets, if I may, I'd like to make
23 further unwritten comments, if I may.

24 Q Certainly.

25 A Simply because I really didn't understand

1 exactly what was proposed in 1 and 9, I'd like to make those
2 comments and perhaps you can clarify my mind as to how that
3 would be done.

4 It would seem to me that in -- that in 1,
5 (a)1, actual notice is required but, as you know, from the
6 many hearings you've held, that there are times when you
7 cannot actually locate the parties you are required to give
8 actual notice.

9 I assume that the Commission in its wis-
10 dom had -- intends to make provision for cases in which a
11 party cannot be located but for which a bonafide effort was
12 made to attempt to locate them to give actual notice.

13 I have not attempted to try to write
14 those rules because that may be fully your intent as it is,
15 but I think that needs to be considered, is that there are
16 times when you search the county records, the phone books,
17 everything that you can get your hands on, particularly in
18 pooling cases and unitization cases, we're talking about,
19 you make a tremendous effort to try to find those folks, you
20 simply may not be able to do it.

21 Q Would you suggest some additional lan-
22 guage which would say in those cases where such owners can-
23 not be found the applicant shall demonstrate he's made a
24 good faith attempt to find them?

25 A I like your words just fine. That's

1 great.

2 Q And that would also apply to number 9.

3 A Well, number 9 is a little different.

4 Q Okay.

5 A Number 9, to me when you read 9, this is
6 (a)9, it seems to be applications for other than those kinds
7 listed above, 1 through 8.

8 I don't even know what those kinds are.
9 I tried to visualize what you had in mind when you said
10 "other than those above". So I really can't tell you wheth-
11 er I like the notice rule or not because I can't figure out
12 what it's going to apply to.

13 Q Well, there won't be very many of them,
14 then, will there?

15 A Not right now. I didn't think of it, and
16 if you have some in mind, then I might want to comment on
17 that rule.

18 Q I think the drafters of the rule face the
19 same problem.

20 A All right, sir. Well, if I don't know
21 what it applies to, then I don't know how to comment on it.

22 MR. STAMETS: Let me ask you,
23 in your proposed Rule 2, now, I believe that looking at your
24 proposal and the one drafted by the Division that you're
25 really looking in the same direction here, only looking to

1 notify people who are being located closer to than standard.

2 A Yes, sir.

3 Q Okay. Now, in the case of the rule as it
4 currently exists, say for unorthodox locations for adminis-
5 trative approval, only offset operators are notified.

6 So what you're proposing here is a whole
7 additional group of working interest owners if they're dif-
8 ferent from the operator.

9 A That's true.

10 Q Now I'm not clear if your formation pro-
11 posal adds clarity or subtracts clarity, and I can see what
12 you're getting at, but if there's no -- if you don't have
13 any interest in that pool, then you shouldn't receive any
14 notice of this.

15 But I wonder about this phrase in here
16 that says "actual notice will also be given to each lessee
17 and each unleased mineral interest owner in an adjoining or
18 cornering tract of land or spacing unit towards which the
19 well is moved if the tract does not have a well producing
20 form the same formation."

21 Well, if they have no rights in there
22 does this mean they still get a notice?

23 A I don't believe that it says they have no
24 rights. It simply says that there are no wells completed in
25 the same formation for which you're asking a location set.

1 What I tried to cover were those people
2 who have the right to drill offsetting like in Section 11,
3 if you'll look at the exhibit.

4 And if we were to go back to Mr. Kella-
5 hin's exhibit where we made the Morrow in Section 1, and
6 this was still a Dakota location, then I'd have to give no-
7 tice to all the parties who have the right to drill in Sec-
8 tion 1.

9 Q If we go back --

10 A If that's one tract, excuse me.

11 Q If we go back and look at the Division's
12 proposal, if there was some simple way of adding to this the
13 provision that if the operator is an offset operator he
14 shall give notice to the working interest owners if differ-
15 ent, then how are we really different, because in the case
16 here we talk about giving notice to an owner of an undrilled
17 lease and an owner would be that person who has the right to
18 drill. It would seem like in that respect we're -- we're
19 basically the same.

20 It seems like what we have proposed, what
21 the Division has proposed, is essentially the same as what
22 you've proposed with one exception of notice to the addi-
23 tional working interest owners.

24 A In the well in which the well is the same
25 operator.

1 Q In an offset well, that's correct.

2 A The same operator, okay. I tried to
3 write it shorter than that. Lord, I'd like to write it
4 shorter than that, but in the essence of, you said, clarity,
5 I thought it was better to write it longer if they could un-
6 derstand it better, and so consequently it's long.

7 Q And so we understand one another, really
8 the only difference between what you've written and what is
9 written over here by the Division is the additional notice
10 to the working interest owners when they're -- when the
11 operator is the same on an offset well.

12 A In the same formation.

13 Q In the same formation. All right, I
14 think I understand that. Perhaps with a little time that
15 can be drafted up to be shorter, if necessary.

16 A Yes, sir.

17 MR. STAMETS: Any other ques-
18 tions of Mr. Hocker?

19 Oh, I want to ask one.

20 Q Mr. Hocker, why did you want everybody
21 notified by certified mail? Seems like an expensive opera-
22 tion.

23 A It does, except that the parties I talked
24 to who wanted to receive it were willing to pay for it when
25 they send it out. They thought the benefit of receiving it

1 was worth the expense of sending it out, and they're the
2 people that's going to pay for it, so --

3 Q Okay.

4 MR. STAMETS: All right, any
5 other questions of Mr. Hocker?

6 He may be excused.

7 A Thank you.

8 MR. KELLAHIN: We have another
9 company, Mr. Chairman, that is concerned about the very dif-
10 ficult problem of dealing with proration and spacing units
11 that are rectangular in shape and the unorthodox well loca-
12 tions when they are applied based upon the orientation of
13 that unit, and I'd like to direct the next portion of our
14 presentation to the question about those particular cases,
15 the deep gas wells on 320, some of the shallower gas wells
16 on 180, where we're dealing with rectangles in trying to de-
17 cide who gets notice in those situations where you're deal-
18 ing with other than the square spacing unit.

19

20

STEPHEN SCHUBARTH,

21 being duly sworn upon his oath, testified as follows, to-
22 wit:

23

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25

1 DIRECT EXAMINATION

2 BY MR. KELLAHIN:

3 Q Would you please state your name and oc-
4 cupation for the record?5 A My name is Steve Schubarth, a petroleum
6 engineer with ARCO Oil and Gas.7 Q Steve, would you spell your last name for
8 the record?

9 A S-C-H-U-B-A-R-T-H.

10 Q Would you again state for the record, Mr.
11 Schubarth, what it is you do for your company?12 A I'm what ARCO calls an Operations Analy-
13 tical Engineer, which is a petroleum engineer with responsi-
14 bilities in New Mexico, mostly over the Empire-Abo Unit.15 Q All right. Have you given some consider-
16 ation to the effect of the proposed unorthodox notice rule
17 in terms of ARCO's interest when it applies to deep gas 320-
18 acre spaced units or shallow gas units that are on 80-acre
19 spacing?20 A Yes, sir, I have. In the proposed alter-
21 nate rule that is currently proposed, it does not apply, as
22 you've brought out in -- through the testimony before, that
23 an offset acreage that is within 36 -- that is the 660 away
24 from an unorthodox location, in other words, if 660 were the
25 boundary or the standard location, that that offset operator

1 would not be notified.

2 This could be -- this could come into
3 where a person was moving closer to another acreage in order
4 to take advantage of a situation that would arise in the ac-
5 tual offset acreage that would not be notified.

6 Q All right, let's see if we can demon-
7 strate your concern in terms of an actual case that was
8 filed before the Division, Mr. Schubarth.

9 Let me direct your attention to what I
10 have marked as ARCO Exhibits One and Two, which are
11 documents from the Oil Conservation Commission records, and
12 the subject matter is an Exxon application.

13 Have you had an opportunity to review
14 your file on that particular case in terms of what the
15 applicant sought to accomplish in that case?

16 A Yes, sir, I have.

17 Q Do you have with you a copy of an Isopach
18 that shows this acreage and from which we might use that
19 exhibit to demonstrate your concern?

20 A Are you talking about this one?

21 Q The large one, if you would.

22 A The large one.

23 MR. KELLAHIN: Mr. Chairman,
24 for purposes of the record we've marked Exhibits One and
25 Two. Number Two is a reduced Isopach. Mr. Schubarth has a

1 larger scaled Isopach with him that he wants to use to dem-
2 onstrate his concern.

3 We might, if you please, put
4 this on the wall and have you come on over here so the Com-
5 mission can see what it is that you're discussing.

6 Just a minute now, don't start
7 without me.

8 Q All right, sir, here's a pointer, Mr.
9 Schubarth. Let me see if we can't use your Ispach to iden-
10 tify the fact situation that was involved in that case be-
11 fore we talk about what you're concerns are on behalf of
12 your company.

13 If you'll first of all locate for us the
14 spacing unit that Exxon had proposed to use for this Atoka
15 well.

16 A The south half of Section 22.

17 Q When we look at the south half of Section
18 22, would you identify for us the proposed unorthodox well
19 location that Exxon had requested?

20 A It is the location there colored in
21 orange.

22 Q What would be the footage location, ap-
23 proximately, in that spacing unit?

24 A It was approximately 660 from the south
25 and 660 from the east line.

1 Q Would you identify for us now the ARCO
2 acreage and the ARCO wells in the section to the south?

3 A It would be the north half of Section 27.

4 Q Was the ARCO well actually drilled and
5 producing at the time of the Exxon application?

6 A Yes, sir, it was.

7 Q And what is the spacing unit that was de-
8 dicated to the ARCO well?

9 A It's --

10 Q The north half?

11 A -- the -- let's say the north half of
12 Section 27.

13 Q Was the proposed Exxon location standard
14 or unorthodox as to the boundary line between the ARCO and
15 the Exxon acreage?

16 A No, sir, it was not. It was 660 from
17 (inaudible.)

18 Q So it would be standard --

19 A Yes, sir.

20 Q -- as to that line.

21 Under the proposed rule for notice that
22 the Commission has docketed in today's docket, would ARCO be
23 in a position to have received actual notice from Exxon
24 should they have filed this type of case after the effective
25 date of this rule?

1 A No, sir, they would not.

2 Q What is your reason or opinion for be-
3 lieving that notice is important to the operator in your po-
4 sition in this type of fact situation?

5 A In this position here the unorthodox lo-
6 cation would have been moving towards the east line in order
7 to take advantage of the position or the orientation of the
8 reservoir and quite possibly drain reserves underneath an
9 offsetting 30 which would not have been notified.

10 Q Under the current proposed rule what
11 operators would have received notice under the fact situa-
12 tion we're talking about?

13 A I believe it would have only been the
14 320 in the south half of Section 23.

15 Q What do you propose to the Commission in
16 terms of a notice that will require an operator seeking an
17 unorthodox well location in spacing units of rectangular
18 shapes that will give parties such as ARCO notice and an op-
19 portunity to object to the case?

20 A I have some -- some words drafted up
21 that's a slight change in the way that it's worded right
22 now.

23 Q Before we look at your exact words, would
24 you describe for us the intent of what you're trying to
25 accomplish with that wording?

1 A What we're trying to accomplish is the
2 removal of the fact that an operator could orientate (sic)
3 his spacing unit so that to minimize the opposition to drill-
4 ing an unorthodox location. Of course, if this had been a
5 stand-up 320 on the east half of Section 22, ARCO would have
6 been notified, whereas Section 23 would not have, but as it
7 is, if they orientate (sic) in a laydown south half of Sec-
8 tion 22, they only have to notify the south half of Section
9 23 and not the north half of Section 27, which is the area
10 that they would really be affecting by the unorthodox loca-
11 tion.

12 Q What was the outcome or result of this
13 particular case in which ARCO had (not clearly understood)
14 of Exxon?

15 A When we had notified Exxon that we were
16 going to appose, they dropped their application for the un-
17 orthodox location.

18 Q Would you return to your seat now and
19 discuss for us the language that you would propose to the
20 Commission to satisfy your concerns about notice in these
21 particular cases?

22 A It reads pretty much the same way as it's
23 written. I'll just read the order as it is and put my words
24 in where they apply.

25 Q Stop us when you get to the point where

1 we're going to write your words.

2 A Okay. "In cases of applications for ap-
3 proval of unorthodox well locations: Actual notice shall be
4 given to any operator of an offsetting spacing unit or owner
5 of an undrilled lease to which the proposed location is clo-
6 ser" -- this is where my words come in -- "closer than the
7 greater of the standard location dimensions and, if the pro-
8 posed well lies within or offsets a Division-designated po-
9 tash area subject to special rules, any potash operator
10 within one mile of the proposed location. Such notice shall
11 be given by certified mail."

12 Q Give us your phrase again.

13 A Closer than the greater of the standard
14 location dimensions.

15 Q All right, let's -- let's take that
16 phrase and have you explain how an operator reading the rule
17 with your change would understand how to calculate or deter-
18 mine who the offset operators were that were to receive the
19 notice.

20 A In the case of a 320 the standard loca-
21 tion is 660 from the long side and 1990 from the short side.
22 He would then be, if the unorthodox location is inside 1990
23 feet -- 1980 feet, excuse me, of any offsetting acreage,
24 then that -- or spacing unit, that would be the people that
25 would need to be notified.

1 Q And using Mr. Hocker's Exhibit Number
2 Two, in which we show that the west half of Section 1 was a
3 320 for the Morrow, the east half of 2 was a proposed 320
4 for the Morrow, who would receive notice under your proposed
5 change?

6 A The operators in the west half of Section
7 1, the cornering tract in Section 12, and the east half of
8 Section 11.

9 Q Would your proposed additional phrase af-
10 fect only those spacing units that are rectangular in shape?

11 A It should. most square spacing units
12 have the same dimensions from -- from either side.

13 Q Do you have any further comments or sug-
14 gestions to make to the Commission on this particular sub-
15 ject, Mr. Schubarth?

16 A I don't believe so.

17 MR. KELLAHIN: At this time,
18 Mr. Chairman, we'd move that -- the admission of Exhibits
19 One and Two.

20 MR. STAMETS: Exhibits One and
21 Two will be admitted.

22 MR. KELLEY: This is Exhibit
23 Number Two, correct?

24 MR. KELLAHIN: Exhibit One is a
25 copy of the docket sheet showing that the Commission denied

1 the case or dismissed.

2 Exhibit Two is the Isopach.
3 This is a similar Isopach on a larger scale. I don't be-
4 lieve it's exactly identical, but the exhibit on the board
5 corresponds to Exhibit Number Two in the record.

6 MR. STAMETS: Did you plan to
7 leave the --

8 A We would prefer not to.

9 MR. STAMETS: Do you plan to
10 leave the one on the board with us?

11 MR. KELLAHIN: It's the only
12 copy we have. We can make another copy for you, if you
13 like. I think the smaller size Isopach shows the orienta-
14 tion of the reservoir and demonstrates the concern that Mr.
15 Schubarth had about the notice rule.

16 MR. STAMETS: It seems to me,
17 just as a point of information, that some 80-acre spacing
18 units have the requirement that the well be located within
19 150 feet of the center of a quarter quarter section and if
20 you located that close to the end boundary of that 180, peo-
21 ple on the side wouldn't get any notice because they would
22 not be located closer than the greater standard location di-
23 mensions.

24 MR. KELLAHIN: I've asked Mr.
25 Schubarth that question. He tells me the opposite. You'll

1 have to ask him.

2 A Could you repeat that, please?

3

4

CROSS EXAMINATION

5 BY MR. KELLAHIN:

6 Q Let's assume that this tablet here is an
7 80-acre proration unit and whichever quarter quarter the
8 well is located in, the rules say you're going to be located
9 within 150 feet of the center of that quarter quarter sec-
10 tion.

11 One could move to the east here at a non-
12 standard location and be close to the end boundary but still
13 not be located closer to the south boundary of 80 than al-
14 lowed by the pool rules.

15 A Yes, sir.

16 Q And so the person on the south boundary
17 would not receive notice.

18 A In that particular case there --

19 Q Nor would the person on the north boun-
20 dary, for that matter.

21 A Okay. What we're concerned about is the
22 -- is the fact that an operator may choose the orientation
23 of his unit, of his proration unit to lessen opposition.

24 In your case there if the unit were --
25 were rotated, he would still be just affecting the same per-

1 son and in that case there the south would not have to be
2 notified.

3 Q It seems to me the same geological situa-
4 tion could exist on this 80-acre tract and that someone to
5 the north or to the south could be affected.

6 As you probably are aware, the Division
7 for years has received objections from people who say why do
8 you require everybody all the way around the proration unit
9 to be notified, and by and large that's because of the com-
10 plexity of writing any particular rule which would result in
11 notice to anybody who might be impacted under one of a seem-
12 ingly endless variety of circumstances which might exist.

13 A Yes, sir.

14 Q I'm wondering if perhaps we ought to just
15 revert to that and keep the requirement in there that notice
16 be given to anybody who adjoins the proration unit at the
17 side or any point.

18 A I believe that would probably be prefer-
19 able to us rather than the chance of this type of thing hap-
20 pening.

21 Q The only other thing that occurs to me
22 would be put some requirement in there that if the unortho-
23 dox location results in any improvement geologically over an
24 offset operator that such offset operator should be noti-
25 fied, or shall be notified, but again that gets into the --

1 A That's interpretative.

2 Q I appreciate you once again pointing out
3 the difficulty in this particular type of notice.

4 MR. STAMETS: Are there any
5 other questions of Mr. Schubarth?

6 He may be excused.

7 Anyone else have anything they
8 wish to add at this time?

9 MR. KELLAHIN: Mr. Chairman,
10 Mr. Dees, who is a member of our committee, has put his
11 statement in writing and with his permission at this time
12 I'd like to submit his comments for you. They are directed
13 particularly to 17 and, I believe, 9.

14 He has submitted this in the
15 form of a letter to you dated September 7th, 1985, over his
16 signature and I hand you the original copy.

17 MR. STAMETS: Thank you, Mr.
18 Kellahin.

19 Mr. Nutter.

20 MR. NUTTER: Yes, sir, Mr.
21 Stamets.

22 I'm appearing today for Doyle
23 Hartman.

24 We feel certainly that notice
25 should be given by certified mail to all parties that are

1 affected by any compulsory pooling or unitization case; how-
2 ever, we feel that the imposition of notice beyond the re-
3 quirements of the state laws at the present time by adver-
4 tisement in the newspaper is imposing a serious burden on
5 operators that hasn't been established to be necessary in
6 the State of New Mexico by the records.

7 They may be inferred by the United States
8 Constitution, but so far it hasn't affected the State of New
9 Mexico, and as we can see from the discussion here this
10 morning, there are just a whole plethora of problems that
11 are going to arise from this: Interpretations, definitions
12 of what is an offset operator.

13 For instance, Mr. Hocker, in his testi-
14 mony and in reply to a direct question from Mr. Kellahin,
15 said that on his exhibit showing the plat where he was drill-
16 ling the Morrow well in the southeast southeast of Section
17 2, that he would be required to notify the working interest
18 owner that owned the 40-acre tract in the northwest north-
19 west of Section 12. What if that working interest owner
20 were a 5-acre tract? Is that all he would have to notify?
21 Then the other 315 acres of either the north half or the
22 west half of Section 12 wouldn't get any notice and they're
23 certainly going to be affected just as much if not quite a
24 little bit more than the guy that owns the 5-acre tract
25 right in the corner.

1 Mr. Schubarth's recommendation as to giv-
2 ing notice if the location falls closer than the farthest
3 dimensions of the proration unit, and so forth, is going to
4 establish a whole new cottage industry just interpreting
5 what you have to do to give notice.

6 I would also point out that in the case
7 of Amendment Number 4 on Mr. Hocker's Exhibit Number One or
8 Two, the printed rules, in Number 2 up here at the top we're
9 giving notice to leaseowners that don't have developed
10 lands.

11 In Number 5 down here in the potash area
12 we're talking about unleased mineral interest owners.

13 However, in Section 4 where we're talking
14 about the establishment of special pool rules, we're going
15 to give notice to operators within the existing or proposed
16 pool boundaries.

17 Does the word "operator" include the
18 owner of an undrilled tract? I don't know.

19 It seems that there's many questions that
20 have arisen in these two hearings that we've had concerning
21 this proposed rule. I think that the whole thing ought to
22 go back to the drafting board and another year of study
23 given to it before anything is decided. Maybe something
24 more concrete could come up later.

25 MR. STAMETS: Mr. Nutter, we

1 always value your opinion.

2 MR. HOCKER: Mr. Stamets, may I
3 make one further comment?

4 MR. STAMETS: Yes, Mr. Hocker.

5 MR. HOCKER: In answer to Mr.
6 Nutter's query or statement about Number 4, it would be my
7 belief that in the interest of clarity on the first line you
8 could put all operators of wells, if you'd like to add that.

9 I think that would answer your
10 question.

11 MR. NUTTER: That would take
12 care of the --

13 MR. HOCKER: That was my in-
14 tent. That was just one thing I did not change. I changed
15 many things but not that one.

16 The other comment I would make
17 is that the discussion here today has been about actually
18 mailed notice.

19 I've certainly assumed that no-
20 tice will be published and just that the personal notice
21 will not be given, so that I think all operators, including
22 Mr. Schubarth, if you noticed on the docket that there was
23 an application which might affect him to which he was not
24 entitled to actual notice, certainly Cities Service, and I'm
25 sure ARCO, is going to read those notices. It may be not as

1 easy and I like the actual notice, but in this case it's not
2 the only kind of notice given.

3 Thank you.

4 MR. STAMETS: Any other com-
5 ments, questions at this point?

6 MR. DEES: Mr. Stamets, I'm Al-
7 lan Dees with Texaco.

8 We've listened to these com-
9 ments and there may be some more before we leave here today.
10 We would appreciate the opportunity to submit further writ-
11 ten comments after consideration of some of the testimony
12 that has been presented here today.

13 MR. STAMETS: We'll hold the
14 case open for additional comments for two weeks and it would
15 be my intention to attempt to have orders ready for signa-
16 ture in this case at the next Commission hearing, the 17th
17 of October.

18 With that, then, we will take
19 Case 8649 under advisement.

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21 (Hearing concluded.)

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C E R T I F I C A T E

I, SALLY W. BOYD, C.S.R., DO HEREBY
CERTIFY that the foregoing Transcript of Hearing before the
Oil Conservation Division (Commission) was reported by me;
that the said transcript is a full, true, and correct record
of the hearing, prepared by me to the best of my ability.

Sally W. Boyd CSR