

STATE OF NEW MEXICO
ENERGY AND MINERALS DEPARTMENT
OIL CONSERVATION DIVISION
STATE LAND OFFICE BLDG.
Santa Fe, New Mexico

23 October 1986

COMMISSION HEARING

IN THE MATTER OF:

Cases 9009, 9010, 9011, 9012, 9013,
and 9014, all of which are concern-
ing proposed rule changes.

CASES
9009-9010
9011-9012
9013-9014

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

TRANSCRIPT OF HEARING

A P P E A R A N C E S

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- 6 Mr. Dan Nutter
- 7 Mr. Al Kendrick
- 8 Mr. Dave Boneau
- 9 Mr. Jerry Sexton
- 10 Mr. Les Clements
- 11 Mr. LeRoy Trood
- 12 Mr. E. R. Manning

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14
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16
17
18
19
20
21
22
23
24
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I N D E X

CASE 9009

JAMI BAILEY

Direct Examination by Mr. Taylor	14
Division Exhibit One	16

CASE 9010

VICTOR T. LYON

Direct Examination by Mr. Taylor	18
Cross Examination by Mr. Stamets	26
Questions by Mr. Chavez	27
Cross Examination by Mr. Kellahin	29
Cross Examination by Mr. Stovall	36
Questions by Mr. Hocker	41
Questions by Mr. Wehmeyer	43
Statement by Mr. Nutter	45
Statement by Mr. Hall	49
Statement by Mr. Currens	50

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

CASE 9011

DAVID R. CATANACH

Direct Examination by Mr. Taylor	53
Questions by Al Kendrick	55

CASE 9012

DAVID R. CATANACH

Direct Examination by Mr. Taylor	56
Questions by Mr. Boneau	59
Cross Examination by Mr. Kellahin	61
Questions by Mr. Sexton	62

CASE 9013

JERRY SEXTON

Direct Examination by Mr. Taylor	63
Cross Examination by Mr. Stamets	67
Questions by Mr. Clements	69

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Questions by Mr. Trood	70
Questions by Mr. Hocker	71
Questions by Mr. Grey	74

CASE 9014

MICHAEL E. STOGNER

Direct Examination by Mr. Taylor	76
Cross Examination by Mr. Stamets	80
Cross Examination by Mr. Stovall	81
Cross Examination by Mr. Kellahin	82
Questions by Mr. Manning	86
Cross Examination by Mr. Currens	87
Recross Examination by Mr. Stovall	90
Questions by Mr. Chavez	92
Comments by Mr. Stovall	
Comments by Mr. Nutter	
Comments by Mr. Stovall	
Cross Examination by Mr. Strand	96
Comments by Mr. Hall	
Comments by Mr. Kellahin	
Comments by Mr. Hall	
Comments by Mr. Hocker	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Division Exhibit One, Page 3	77
Division Exhibit Two,	
Advertisement	78

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
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MR. STAMETS: The hearing will come to order.

Before we begin today, I'd like to make a few comments.

We have first on the docket today ten cases related to rule changes.

The first six of these involve issues which are not related to gas production or proration problems.

Several of these were first mentioned in a memorandum which I sent out on May 8th, 1986. A number of those have been previously adopted and the remainder are being considered here today.

In addition, the H2S proposal was first mentioned at a Bureau of Land Management Industry meeting on May 22nd, 1986; also at the IPAA meeting in September of this year, and the NOVA meeting in October of this year.

These issues have finally been called to hearing.

The remaining four cases are those which relate to gas production, gas purchasing, and gas prorationing. The roots of these cases go back to the (unclear) in gas production and marketing resulting from the

1 collapse in demand and prices beginning early in 1985.

2 The Division held a public
3 meeting in October, 1985, to inquire about whether or not
4 any rule changes needed to be made because of these prob-
5 lems. At that time we appointed a Gas Advisory Committee,
6 chaired by Bill Carr. We had several small groups that met
7 on various issues and a number of those were incorporated in
8 our rule changes which were accomplished in February of
9 1986.

10 At that time there was no de-
11 sire for any major changes in the way the Division operated
12 gas prorationing.

13 In April of 1986 the Governor's
14 Task Force asked that the Division take another look at the
15 situation to see if there was interest in any possible chan-
16 ges in light of the further deterioration of the gas market
17 situation.

18 We sent a memorandum to the
19 general mailing list did determine that there was interest.
20 There was a meeting in Santa Fe on June 12th, 1986. This
21 meeting was attended by majors, independents, interstate
22 purchasers, intrastate purchasers.

23 At that time three areas of
24 concern were identified. One of these related to the prob-
25 lems associated with split sales; another with the neces-

1 sity for the apparent desire to put the priority production
2 schedule into the rules; another concerning impediments to
3 spot market sales of gas.

4 At that time we appointed three
5 subcommittees, again containing a cross section of producers
6 and purchasers. The proposals we have here today by and
7 large are either their recommendations or where there were
8 no recommendations, the issues that they considered.

9 Today we'll be taking testimony
10 in all of these cases. If we are urged to, and if there is
11 a need to, we would continue the cases, any one or all, al-
12 though I don't anticipate that all of them will need to be
13 continued, we will continue those until our November 20th
14 hearing to give everybody an opportunity to digest what's
15 said today and present any additional testimony which might
16 be needed at that time.

17 However, we would want to hear
18 today from those would be in support of any of the particu-
19 lar proposals as well as to hear from those who would be
20 against the proposals in order that all of us will be better
21 able to assess the various positions here so that the time
22 of any continuance might be effectively used by all of those
23 who wish to have something further to say.

24 We also might want to consider
25 appointing some new committees or asking the existing com-

1 mittees to take another look at these rules, if that seems
2 like the appropriate thing to do.

3 What we are hopeful of doing
4 today and will attempt to do, is to dispose of the first six
5 cases, those which are not related to gas production and
6 prorationing, this morning and then have the afternoon for
7 the remaining four cases.

8 I think that that is almost
9 going to require that some be continued until next month,
10 but we'll see how that works out.

11 Does anyone else have anything
12 they wish to say at this point?

13 Good. We'll move on then and
14 we'll consolidate the first cases, first six cases, simply
15 for purposes of testimony. We'll be writing orders on each
16 one of these independently and reaching decisions indepen-
17 dently. So one of the cases or a combination of cases may
18 be continued and others may have action on them.

19 First, all these are in the
20 matter of the hearing by the Oil Conservation Division on
21 its own motion.

22 In Case 9009 that will be to
23 consider amending the Rule 0.1 to define fresh water in a
24 manner consistent with the designation of the State Engin-
25 eer.

1 Case 9010 will be the adoption
2 of a new Rule 118 to provide for regulation of hydrogen sul-
3 fide gas in a manner as to avoid endangering human life.

4 Case 9011, consider amendment
5 of Rule 402 to clarify the filing of Form C-125.

6 Case 9012, to amend Rule 701.D
7 to eliminate the requirement for a hearing when a disposal
8 well is to be located within two miles of oil or gas produc-
9 tion in the same formation.

10 Case 9013, to amend Rule 704 to
11 provide for the conducting of step rate tests, requests for
12 injection pressure limit increases, and notice to the Divi-
13 sion.

14 And Case 9014, which would be
15 consideration of adoption of a new Rule 1207 (a) 1. (ii) for
16 the purpose of providing a semi-adminstrative procedure when
17 compulsory pooling applications are to be uncontested, unop-
18 posed before the Division.

19 Ask for -- call for appearances
20 in these cases at this time.

21 MR. TAYLOR: May it please the
22 Commission, I'm Jeff Taylor, Counsel for the Division and
23 I'll appear on all these cases and we should have five wit-
24 nesses.

25 MR. STAMETS: Other appear-

1 ances?

2 MR. CARR: May it please the
3 Commission, William F. Carr on behalf of Yates Petroleum
4 Corporation.

5 MR. KELLAHIN: Mr. Chairman,
6 I'm Tom Kellahin of Santa Fe, New Mexico, appearing on
7 behalf of Phillips Petroleum Company and Mr. Lewis Burleson.

8 MR. STOVALL: Robert G. Stovall
9 of Farmington, New Mexico, appearing on behalf of Dugan
10 Production.

11 MR. STRAND: Mr. Examiner,
12 Robert H. Strand of Roswell, New Mexico, appearing on
13 behalf of the Independent Petroleum Association of New
14 Mexico, Doyle Hartman of Midland, Texas, and Alpha Twenty-
15 One Production Company of Midland, Texas.

16 MR. WEHMEYER: Mr. Commission,
17 Dennis Wehmeyer representing Texaco from Hobbs, New Mexico.

18 MR. NUTTER: Dan Nutter, Bass
19 Enterprises.

20 MR. HALL: Mr. Commissioner, my
21 name is Scott Hall appearing on behalf of Blackwood and
22 Nichols, Exxon Company USA, Unocal Corporation, Union Texas
23 Petroleum Corporation, also on behalf of Yates Petroleum
24 Corporation and Amoco Production Company.

25 MR. GRAY: Mr. Examiner, I'm

1 Charles Gray representing Sun Exploration and Production
2 Company in Dallas, Texas.

3 MR. HOCKER: R. L. Hocker,
4 Cities Service Oil and Gas Corporation.

5 MR. COOTER: Paul Cooter with
6 the Rodey Law Firm appearing on behalf of Southern Union.

7 MR. STAMETS: Southern Union
8 Exploration?

9 MR. COOTER: Yes.

10 MR. STAMETS: Are there other
11 appearances?

12 I'd like to have all of those
13 who are going to be witnesses in these first six cases to
14 stand and be sworn at this time, please.

15

16 (Witnesses sworn.)

17

18 MR. TAYLOR: I'll call first
19 Ms. Jami Bailey.

20 MR. STAMETS: I believe even
21 though we've consolidated all of these cases we'll be taking
22 them one at a time and attempting to conclude each one as we
23 go through.

24 MR. TAYLOR: Yes, sir. I might
25 state that some of this will be fairly brief, especially for

1 minor rule changes. We'll just explain the reason why the
2 rule change is being made unless there's other testimony ad-
3 versely.

4 Our first case will be Case
5 9009, which is in the matter of the hearing called by the
6 Division for amendment of Rule 0.1 to define fresh water.

7
8 CASE 9009

9
10 JAMIE BAILEY,
11 being called as a witness and being duly sworn upon her
12 oath, testified as follows, to-wit:

13
14 DIRECT EXAMINATION

15 BY MR. TAYLOR:

16 Q Ms. Bailey, would you please state your
17 name, your place of employment and your position for the re-
18 cord?

19 A I am Jami Bailey, work for the OCD in
20 Santa Fe.

21 Q Ms. Bailey, have you previously testified
22 before the Commission or its examiners and had your creden-
23 tials accepted?

24 A Yes, I have.

25 Q Are you familiar with the matters in Case

1 9009?

2 A Yes, I am.

3 MR. TAYLOR: Mr. Chairman, I
4 tender the witness as an expert.

5 MR. STAMETS: The witness is
6 considered qualified.

7 Q Ms. Bailey, why does the definition of
8 fresh water to be protected under the rules of the Division
9 need to be amended?

10 A The OCD definition of fresh water needs
11 to be amended so that it is consistent with that definition
12 by the State Engineer.

13 I have a copy of a letter from the State
14 Engineer in response to a request from Mr. Stamets for a
15 determination by that office of the definition of fresh
16 water supplies under the provisions of Section 70-2-12 B
17 (15) NMSA 1978, and I offer that letter as Exhibit One.

18 Q And would you just state what the con-
19 tents of the letter is, please?

20 A The letter states the definition by the
21 engineer and it is summarized in the proposed new definition
22 by the OCD.

23 Q How does the proposed amended definition
24 differ from the existing definition?

25 A The proposed definition now includes

1 lakes and playas as designated waters. It specifies that it
2 is the surface waters of all streams regardless of their
3 quality that shall be protected, and adds the language "The
4 waters in lakes and playas shall be protected from contami-
5 nation even though it may contain more than 10,000 milli-
6 grams per liter of TDS unless it can be shown that hydrolo-
7 gically connected fresh ground water will not be adversely
8 affected."

9 Q Was Exhibit One a document received in
10 the normal course of business of the Division?

11 A Yes, it was.

12 Q I'd move the admission of Exhibit One.

13 MR. STAMETS: Exhibit One will
14 be admitted.

15 Are there any questions of the
16 witness?

17 She may be excused.

18 Does anybody have anything fur-
19 ther in Case 9009?

20 The Commission will be entering
21 an order approving the application in this case.

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CASE 9010

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3 MR. STAMETS: We'll move ahead,
4 then to Case 9010.

5 MR. TAYLOR: I'll call Mr. Vic
6 Lyon.

VICTOR T. LYON,

7
8
9
10 being called as a witness and being duly sworn upon his
11 oath, testified as follows, to-wit:

DIRECT EXAMINATION

12
13
14 BY MR. TAYLOR:

15 (Q) Would you please state your name, place
16 of employment, and position for the record?

17 A I am Victor T. Lyon, Chief Engineer for
18 the Oil Conservation Division in Santa Fe.

19 (Q) Mr. Lyon, have you previously testified
20 before the Commission or its examiners and had your creden-
21 tials accepted?

22 A Yes, I have.

23 (Q) And are you familiar with the matters of
24 Case 9010, being an ^{the adoption} amendment of Rule 118?

25 A Well, it's proposing the adoption of a

1 Rule 118.

2 MR. TAYLOR Mr. Chairman, I
3 tender the witness as an expert.

4 MR. STAMETS: The witness is
5 considered qualified.

6 Q Mr. Lyon, what has been your involvement
7 with the proposed -- the amendment of Rule 118 -- or the
8 proposal of Rule 118?

9 A Shortly after I came to work for the
10 Division on the 3rd of March Mr. Stamets, the Director,
11 asked that I draft a rule covering hydrogen sulfide opera-
12 tions just in the event that it may be desirable to enter
13 such a rule.

14 Q And what materials did you review in pre-
15 paring the proposal?

16 A Well, I'd like to review with you a
17 little bit my background and involvement in H₂S in general.

18 I guess my first involvement other than
19 working in an area that had sour gas was the effort by the
20 Environmental Improvement Agency to establish air quality
21 standards in New Mexico, and I served on the Environmental
22 Affairs Committee of the New Mexico Oil and Gas Association,
23 working with that agency in that program.

24 I also worked with the -- the Committee
25 in regard to the drilling and workover practices involving

1 EID's OSHA Division in which hydrogen sulfide was discussed.

2 I worked with the Oklahoma Oil and Gas --
3 Oklahoma-Kansas MidContinent Oil and Gas Association in
4 developing the Oklahoma Oil and Hazardous Substances
5 Pollution Contingency Plan and the Guidelines for Petroleum
6 Emergency Field Situations, where we had a great deal of
7 discussion on H2S.

8 And I also worked with Texas MidContinent
9 Oil and Gas Association's Texas Railroad Commission
10 Regulatory Practices Committee, when Rule 36 of the Railroad
11 Commission was amended.

12 My -- the materials that I have reviewed
13 in preparing these proposed rules was Rule 36 of the Texas
14 Railroad Commission, the Oklahoma Corporation Commission's
15 Oil and Hazardous Substances Pollution Contingency Plan, and
16 that's my primary sources.

17 (Q) Would you now then explain the rule, its
18 purpose, and how it will operate?

19 A Well, the purpose of the rule is to
20 provide for the safety of the general public in regard to
21 H2S operations and the occurrence of H2S in the gas produced
22 in -- primarily in southeast New Mexico.

23 (Q) And how will it -- would you explain how
24 it would operate?

25 A Well, in Paragraph A of proposed Rule 118

1 it provides that any well drilled in known H2S producing
2 areas or where there's a substantial probability of encoun-
3 tering H2S, would be drilled with due consideration and
4 guidance from API's RP-49 and I ought to give you the full
5 title of that publication, which is Recommended Practices
6 for Safe Drilling of Wells Containing Hydrogen Sulfide.

7 Now Paragraph B provides that within
8 ninety days after promulgation of this rule, or within
9 ninety days after completion of the first well on a lease,
10 each operator in Chaves, Eddy, Lea, and Roosevelt Counties
11 would submit to the Division's District Office having juris-
12 diction for each lease and each pool in production at that
13 time, a gas analysis of a representative sample of the gas
14 stream showing the hydrogen sulfide concentration.

15 The analysis is to be performed by an in-
16 dustry recognized method and procedure.

17 And if they are unable to get such an an-
18 alysis of the gas stream, then they may submit a measurement
19 of the hydrogen sulfide in the tank vapors performed by an
20 industry recognized method and procedure.

21 Paragraph C -- I might add that I'm not
22 sure that all the operators in the state, particularly in
23 the southeast part of the state, are aware of the exposure,
24 possible exposure of hydrogen sulfide and if they are not
25 aware, I think they should be aware.

1 Also, we in the Division do not have data
2 which gives us a good handle on what the exposure to recov-
3 ery is in those areas, and so the Paragraph B is to provide
4 that information both to the operator and to the Division.

5 Paragraph C provides that any lease pro-
6 ducing or processing plant handling gas with H₂S concentra-
7 tion of 500 parts per million or more, shall have a plainly
8 visible warning sign at the tank battery or plant entrance
9 stating Danger, Poisonous Gas, in black and yellow colors,
10 legible from at least 50 feet.

11 Now, I understand that there are some
12 rules being proposed by the BLM in regard to H₂S on Federal
13 lands and there may be other rules which are involved where
14 the sign may be a different color, different colors, and I
15 do not want to place an undue burden on anybody. The color
16 scheme in this rule was taken from Texas Rule 36 and if it
17 appears that a different color scheme is advisable in New
18 Mexico, we would like to know what that color scheme should
19 be.

20 That was Paragraph 1 of -- or -- yeah,
21 Paragraph 1 of Section C.

22 Section 2, or Paragraph 2 says, there is
23 an extraneous word in here. It should read "any lease pro-
24 ducing gas", the "or" in there is superfluous. It should
25 read "any lease producing gas with H₂S concentration of 1000

1 parts per million or more shall have in addition to the sign
2 required in Subparagraph 1, a second sign at the foot of the
3 battery stairway stating 'fresh air breathing equipment
4 required beyond this point.'

5 I've had some calls about this and some-
6 body asked me if we are requiring their people to wear fresh
7 air breathing equipment, and that is not necessarily the
8 purpose of this rule.

9 The purpose of this rule is to prevent
10 the public from going up on the stairway and walkway of a
11 tank battery where there is possibly dangerous concentra-
12 tions of H₂S. I think that each operator has the discretion
13 to instruct his employees as he desires but I think that
14 every operator does, and certainly should, use those safety
15 procedures which he feels are necessary in the operations of
16 his property.

17 Oh, there's another provision of Para-
18 graph -- Subparagraph 2.

19 Also, a sign as describe in Subparagraph
20 1 shall be posted at each road entrance to the lease. Now
21 I've had some calls about this provision, too, and my objec-
22 tive in writing this this way is that I do not want -- I do
23 not want any member of the general public to be able to en-
24 ter on a road into a producing area where H₂S is present
25 without encountering one of those signs, and if there are

1 signs that he would encounter before he gets on your speci-
2 fic property, I don't think it's that important to have it
3 at your specific entrance, but there should be a sign at any
4 entrance that goes into that producing area.

5 Subparagraph 3 says that any lease pro-
6 ducing or processing plants handling gas with H₂S concentra-
7 tion of 10,000 parts per million, or more -- that's one per-
8 cent -- and producing or handling as much as 10 MCF per day
9 of H₂S, and I don't mean gas containing H₂S, I mean H₂S, so
10 if you've got gas at 10 percent H₂S, then you need to --
11 that amount of gas would be 100 MCF, and which is located
12 within one-fourth mile of a dwelling or public place or
13 highway, shall install an automatic detection and warning
14 device to warn the endangered people of dangerous concentra-
15 tion of H₂S.

16 In addition the operator shall prepare a
17 contingency plan to be carried out should a substantial por-
18 tion of the gas stream be released, or conditions exist
19 which threaten control of the stream. The plan shall pro-
20 vide for notification of endangered parties, as well as law
21 enforcement personnel, and for evacuation of threatened par-
22 ties and institution of measures for closing in the flow of
23 gas.

24 In Section D, or Paragraph D, the opera-
25 tor of a lease producing or gas processing plant handling

1 hydrogen sulfide in dangerous concentrations shall take ap-
2 propriate measures to protect persons having occasion to be
3 in or near the property. Such measures may include, but are
4 not limited to, training in the characteristics and dangers
5 of H₂S, warning signs, fencing the more dangerous areas,
6 provisions of and requiring use of fresh air breathing
7 equipment, monitoring and warning devices, wind direction
8 indicators, and maintaining tanks, thief hatches and gas-
9 kets, valves, and piping in condition so as to prevent
10 avoidable loss of vapor.

11 Where release of hydrogen sulfide is un-
12 avoidable, the operator, when feasible, shall burn the gas
13 stream or vent from an elevated stack in such a manner as to
14 avoid endangering human life.

15 And that is the rule.

16 (Q) Is it your opinion that this rule and in
17 particular Part C is appropriate and adequate to protect the
18 public from H₂S?

19 A Yes, I think it is. When -- when Mr.
20 Stamets assigned me this task I told him that I did not want
21 a Rule 36 in New Mexico. I have attempted to -- to pull out
22 the meat of Rule 36 and I've got to admit that Rule 36 has
23 become the standard for H₂S production, not only in the
24 United States but all over the world, and I think it is an
25 onerous rule, a complicated rule, so complicated, in fact,

1 that they have to have seminars to explain to people what it
2 means and how to operate under it.

3 I have tried to summarize Rule 36 and put
4 it into a rule which will give guidance to the operator on
5 what he should do after he determines what his H2S exposure
6 is.

7 (Q) Would you recommend adoption of this
8 rule?

9 A I really do not have a recommendation as
10 to whether or not this rule should be adopted but if we
11 adopt a rule involving hydrogen sulfide, I would like to see
12 this rule or one very similar to it adopted.

13 (Q) Do you have anything else to add to your
14 testimony?

15 A I believe not.

16 MR. TAYLOR: That's all we have
17 in this matter, Mr. Chairman.

18

19 CROSS EXAMINATION

20 BY MR. STAMETS:

21 Q Mr. Lyon, in Paragraph C-1, if the phrase
22 "or other color acceptable to the Director" were added after
23 black and yellow, would that then allow for other colors in
24 case some other governmental agency had -- said it had to be
25 puce and chartreuse?

1 A I think that would serve the purpose,
2 yes, sir.

3 Q Okay. And in writing this rule you were
4 not attempting to duplicate OSHA rules or to take over that
5 responsibility, is that correct?

6 A No, the -- the language in there refer-
7 ring to training, I had in mind that in the event somebody
8 from the general public became overcome with H2S on a pro-
9 perty, that the personnel operating that property ought to
10 be trained in what to do for the individual, and that's what
11 I had in mind.

12 I do not intend to prescribe any training
13 for people because that comes under, you know, the
14 employees; that comes under OSHA. That's not our respons-
15 ibility.

16 But I think that it would be very helpful
17 if the people who operate that property could at least ren-
18 der assistance to the general public in case they got in
19 trouble.

20 MR. STAMETS: Are there ques-
21 tions of Mr. Lyon?

22 Mr. Chavez.

23

24 QUESTIONS BY MR. CHAVEZ:

25 Q Mr. Lyon, in Paragraph D-2 are you inten-

1 ding to exclude public throughways, such as state highways
2 and county roads if they go through a lease from having the
3 signs posted along those roads?

4 A Well, Mr. Chavez, I'm not sure which
5 operator would be responsible for putting that if it was on
6 a public highway.

7 I think that could probably be at the
8 District Supervisor's discretion but I have not covered that
9 point in the rule. Perhaps it should be covered. If you've
10 got some proposed language I'd be glad to have it.

11 Mr. STAMETS: Mr. Ingram. We
12 have to remember now Mr. Ingram is not practicing law back
13 here. He's just -- just being a concerned citizen, I'm cer-
14 tain.

15 MR. INGRAM: I'm Hugh Ingram
16 representing Conoco.

17 I just have one -- I have no
18 quarrel with the intent of the proposal, nor most of its
19 contents.

20 I do have one question concern-
21 ing back to the last line in C-2, concerning the signs pos-
22 ted at the -- each road entrance.

23 I think I would recommend that
24 we give some attention to the wording in that sentence to
25 address locations such as where you might have a lease with-

1 in the city limits and you might approach a well from a
2 street. Sometimes it might be very difficult to identify
3 where a road entrance to a lease is and I'm wondering how we
4 might be able to work that in such a way that it accom-
5 plished what the intent is yet clarify for the benefit of
6 the operator just where those signs should be posted.

7 A Well, I don't see any difficulty in
8 identifying a road into a lease, whether it's a city street
9 or any other type of road.

10 MR. STAMETS: Other questions?

11 Mr. Kellahin.

12
13 CROSS EXAMINATION

14 BY MR. KELLAHIN:

15 Q Thank you, Mr. Chairman.

16 Mr. Lyon, it is not clear to me what the
17 basis upon which you are recommending the hydrogen sulfide
18 rule be included in the Oil Conservation Rules and Regula-
19 tions. What is the basis for having such a rule within this
20 agency?

21 A Well, I think that there have been some
22 assertions from time to time that the -- our agency, since
23 we're responsible for oil and gas operations, should take
24 some measures to protect the general public from H2S and
25 that's the sole intent of the rule.

1 Q Have you satisfied yourself that the
2 other rules and regulations adopted by other State agencies
3 do not include or encompass the type of purpose you intend
4 to accomplish with this rule?

5 A I'm not sure what you mean. Could you be
6 a little more specific?

7 Q Are there air quality rules and regula-
8 tions over at the Environmental Improvement Division that
9 are sufficient, in your opinion, to cover the same
10 type of information that you're requiring in this rule?

11 A I don't think that the two are -- make a
12 complete package, and the reason for that is that the -- you
13 realize, of course, that there's not a Federal standard for
14 H2S. There is a New Mexico standard for H2S, and the Air
15 Quality Control Districts have those standards in effect,
16 but those standards apply at the property line and there
17 could be dangerous concentrations of H2S within the property
18 that the general public could be come exposed to, and that's
19 the reason that I don't think that the two make a complete
20 package.

21 Q Under Section A of the proposed rule it
22 says "wells drilled in known H2S producing areas". Have you
23 identified what areas in New Mexico would be known H2s pro-
24 ducing areas?

25 A We have a pretty good idea as to the

1 areas where H2S is found. We don't have that good a handle
2 on specific concentrations in the specific area.

3 ① If you don't have a good handle on what
4 the dangerous concentrations are of H2S in these zone areas,
5 how will then an operator know that he is in fact operating
6 within one of those areas?

7 A I think if he would check with the Dis-
8 trict Office in Hobbs or Artesia, that they could tell him.

9 ① What is the definition then for dangerous
10 concentrations as used in Section A?

11 A Well, I think that can -- can -- can
12 vary, but you could review Paragraph C and its subparagraphs
13 to get an idea of what dangerous concentrations might be
14 considered to be.

15 ① And in the --

16 A I think it varies on, for instance, the
17 location of the well with respect to other dwellings, the
18 public highways, cities, and so forth. I think you could
19 have a high concentration of H2S in the boonies but that re-
20 commended practice, RP-49, goes to more or less the protec-
21 tion of the personnel and so you have more than the public
22 itself to be concerned with and the operator of a well
23 that's being drilled should take those protective measures.

24 ① I have no quarrel with that, Mr. Lyon,
25 but my question is the operator needs guidance from the Div-

1 ision in how the rule is implemented and I'm inquiring as to
2 whether he goes to the District (unclear) some guidance in
3 knowing, first of all, if he's in a known H2S producing area
4 and what the dangerous concentrations are for which he then
5 must make a sampling and recording all the rest.

6 A I think that he can get that kind of
7 guidance from the District Office. They could give him
8 their -- the benefit of their experience and knowledge of
9 the wells that have been drilled and have encountered H2S.

10 Q Is that available from the Division here
11 in Santa Fe in any kind of report or study?

12 A Not to my knowledge, it is not.

13 Q When we look at Section B, you have re-
14 commended a night and day requirement period for the submit-
15 ting of the analysis in completion or after completion of
16 the well. What is the basis for the night and day period as
17 opposed to something larger, for example, maybe 180 days?

18 A I think it's just a reasonable amount of
19 time. If -- if that is unreasonable we'd be glad to extend
20 the time.

21 Q Do you see any significant difference if
22 that reporting period is extended to in fact to be a period
23 as long as 180 days?

24 A Well, I have -- I've had some calls about
25 that question, too, as to whether this had to be a test

1 which was -- or an analysis which was taken after the adop-
2 tion of the rule, and it is not my interpretation, not my
3 intent to require a new analysis.

4 Many operators have gas analyses in their
5 files which contain this informatin and if it's reasonably
6 current, and I'd say within three years, we would be glad to
7 accept that.

8 Q Do you have any proposed standard form
9 for utilization in submitting the information from the ana-
10 lysis? How do you propose to have that informaiton submit-
11 ted?

12 A Well, we can devise a form. I hate to go
13 through the same process they use in Texas, where they adopt
14 a form for each and every thing, but I think that it speci-
15 fies what is required on it and I think the form is not that
16 important.

17 Q Where do you obtain guidance to determing
18 where the industry recognized method of testing is or what
19 it is?

20 A Well, that's a real touchy point.

21 Q That's why I asked you the question.

22 A Yeah, and I've had some counseling about
23 that, too.

24 And it certainly is a well known fact, or
25 it should be a well known fact, that hydrogen sulfide has a

1 very strong tendency to react with metal in a -- in a sample
2 bomb, so a sample that has been in a bomb for an extended
3 period of time probably is going to give you an unrepresen-
4 tatively low reading of H₂S, and I'm not about to specify
5 how they're going to do that.

6 There are procedures that the industry
7 has -- has used and I want them to use those procedures, and
8 I'm not going to tell them how to do it.

9 Q When we look at Subsection C No. 2, is
10 there a phrase omitted when we look at any lease producing,
11 did you intend to exclude the phrase "processing plant hand-
12 ling"?

13 A Yes, I did because this refers to a
14 lease.

15 Q So it was not intended for C-2 to include
16 "processing plant handling."

17 A Right. Most processing plants don't have
18 tank batteries.

19 Q Do you have any objection, Mr. Lyon, hav-
20 ing worked on this subject matter to having this particular
21 case continued to the November hearing?

22 A Oh, I think it ought to be continued to
23 the November hearing, and I've like to have comments from
24 anybody and everybody who has comments to make them.

25 Q Up to now have you circulated other than

1 the notice for the hearing today, circulated this proposed
2 rule among the industry?

3 A Well, as Mr. Stamets said, it was circu-
4 lated at -- at the industry conference with the BLM in May,
5 I believe it was, and perhaps at other places, also, but I
6 don't think it has gone out to the general mailing list be-
7 fore this mailing.

8 Q You mentioned that the Bureau of Land
9 Management was in the process of adopting hydrogen sulfide
10 rules. What is your understanding of the point at which
11 that might be accomplished?

12 A I am informed that there is a draft copy
13 that has been submitted. It has not been approved in Wash-
14 ington and is not generally available to the industry.

15 Those who have been working with the BLM
16 on this do have copies of it, and I have not had a copy of
17 that, so I'm not privy to that.

18 Q Is it reasonable to expect that we might
19 have that additional information by the November hearing?

20 A I don't know, because the way that agency
21 operates, it may be two years from now.

22 Q I thought perhaps they had made some com-
23 mitment to you to share that information so that the --

24 A No, --

25 Q -- State Commission might have what they

1 --

2 A Dick Wilson told me that he hoped that
3 they might have it out for publication by the end of the
4 year, I believe is what he told me, but that was back in
5 May.

6 Q Thank you, Mr. Lyon.

7 MR. KELLAHIN: Thank you, Mr.
8 Chairman.

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

11 Mr. Stovall.

12

13 CROSS EXAMINATION

14 BY MR. STOVALL:

15 Q I'd like to ask you a couple of different
16 things on this.

17 Number one, on the, let me see, Paragraph
18 2, C-2, required a sign that says "Air breathing equipment
19 required beyond this point", and I believe you testified
20 that air breathing equipment is not required beyond this
21 point under any rules that you're aware of at this time, is
22 that correct?

23 A That -- that is correct.

24 Q Okay.

25 A The --

1 Q Would you have any objection, let me
2 speed this up a little bit, to perhaps put -- substitute the
3 word "recommended" for "required" to avoid some ambiguity
4 between a sign and existing State regulations?

5 A Well, I'm not sure that that will give as
6 strong a message to some hunter who is wanting to go up that
7 battery to reconnoiter, and I want a strong message to him
8 that, stay off of this tank battery.

9 Q How about sign that says "you may die if
10 you climb up here."

11 A That would be fine. That would be fine.

12 Q I have a little concern with having a
13 sign that says something's required when in fact that some-
14 thing is not required --

15 A Right.

16 Q -- and the problems it might create for
17 operators.

18 A In all honesty I got that idea from the
19 way that we in Conoco, who I worked for before I came here,
20 had their tank battery set up. They had a chain with that
21 sign on it across the -- now I'm speaking of the Midland
22 Division -- they had a sign across that stairway with that a
23 chain that -- the sign was hung on a chain, and they had to
24 take that chain off in order to go on up the stairway. And
25 I thought it was a good idea that a hunter or somebody roam-

1 ing around out there might hesitate to go past that point.

2 Q Well, I wouldn't disagree with that, and
3 think Conoco did that on their own rather than in a require-
4 ment.

5 A That's right.

6 Q But I would object to having a sign on a
7 -- on any facility saying something is required when in fact
8 there's no legal requirement for that.

9 A Right.

10 Q And that sign being mandated by the -- by
11 the State.

12 How do you envision enforcement of this
13 regulation? What tools do you have to require one subject
14 to the regulation to comply with it?

15 A Well, first we need to get the informa-
16 tion about the H2S concentrations in the gas that's being
17 produced and as in most of our operations, the District per-
18 sonnel in making their inspections and so forth will -- will
19 have to do the enforcement.

20 Q Do you envision a penalty scheme or the
21 general penalty scheme of the -- of the Commission rules --

22 A Not unless there's some -- unless there's
23 some flagrant violation. Our agency has not in the past
24 used penalties that way except for people that just won't
25 listen.

1 Q Well, I agree with that. And the reason
2 I'm asking that question is that Paragraphs C-1, 2, and 3
3 say any lease producing, but it doesn't identify who is ac-
4 tually responsible for placing the sign, just that the
5 various signs will be required.

6 A Well, there doesn't seem to be any ques-
7 tion in my mind. The operator is responsible for everything
8 on that lease.

9 Q So what if I have a lease which is commun-
10 tized or pooled with an H2S well and I'm not the operator?
11 Am I then perhaps exposed to liability?

12 A If you're not the operator you're not re-
13 sponsible.

14 Q I would again raise the question as to
15 whether that -- whether the rule is clear as to that. I
16 would be -- and I'm not just (unclear) the liability to the
17 Commission, I'm concerned perhaps with some civil liability
18 that might accrue as a result of violation of these rules.

19 A Well, I don't have an opinion that's
20 worth anything as to -- as to liability on that, but --

21 Q I wont enter that as a comment, perhaps
22 as much as a question to the witness.

23 A Yeah. I understand.

24 Q If the Commission would accept that, and
25 likewise, with respect to the posting a sign on the road en-

1 trance to a lease, we have numerous leases which have
2 noncontinuous tracts scattered throughout an area. I think
3 perhaps, again the wording of this language might defeat or
4 not accomplish the purpose you want, that is to warn the
5 public that there may be dangerous gases in the area, and
6 perhaps I would suggest that more specific wording as to a
7 distance, relative distance, from the facility producing
8 that gas rather than, say, at the entrance to a lease,
9 which could be anywhere from a few hundred feet to more than
10 a mile away from the actual source of the gas.

11 A I'd be glad to consider your suggested
12 language, if you'll write it down for me.

13 Q I will attempt to get something to you.
14 I just want to get it in the record that I don't know if
15 I'll be back for the next hearing if this is continued.

16 I think that's all I have.

17 MR. STAMETS: Other questions
18 of the witness? Mr. Hocker.

19 MR. HOCKER: I also want to
20 specify that I'm not trying to practice law.

21 MR. STAMETS: Thank you.

22 MR. HOCKER: I want to ask a
23 question or two right here, if I may.

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QUESTIONS BY MR. HOCKER:

Q With regard to C-3, there are a lot of "ands" and "ors" in there but I want to make sure that I understood that rule to mean that there are three -- it meets all three conditions before you have to install automatic detection and warning devices; that is, you have to have a concentration greater than one percent; that you have to have equipment volume of ten MCF per day and 100 percent hydrogen sulfide; you also have to be within one-quarter mile. It takes all three of those conditions, is --

A That is --

Q -- that right?

A That is correct.

Q All right, sir. One other question with regards to C-3 and D, the words "automatic detection and warning devices" is used in C-3 but in D it's "monitoring and warning devices" and I didn't know whether there was an intentional change in that rule or would you tell me, if possible, what you mean by the difference in the words?

A Well, I'll have to review that and see --

Q Or was there any intended difference? Perhaps that's a better question. Automatic seems to mean something maybe more than monitoring, and I'm just trying to

1 get a little guidance.

2 A Well, I think there probably was an in-
3 tended difference in there. I think there is a little bit
4 different situation.

5 Q Will you explain it to me?

6 A Well, in Subparagraph C I see that there
7 is an apparent dangerous situation there that the operator
8 should take care of, and in Paragraph D, if there isn't a
9 dwelling or anything within a quarter of a mile, I think
10 that the operator in his own discretion should install what-
11 ever measures that he thinks are appropriate under those
12 conditions.

13 I just want him to be aware of the fact
14 that he's got a possible problem and let him evaluate it
15 himself and do whatever's appropriate like a reasonably pru-
16 dent operator would do.

17 Q I wondered whether you might want to
18 treat that particular words different between the lease pro-
19 ducing and the gas processing plant, maybe there might be a
20 difference there.

21 Normally lease producing doesn't have
22 personnel in attendance daily or hourly, as you might in a
23 gas processing plant.

24 A Right.

25 Q I just throw that out for whatever you

1 can do with it.

2 A That's right. That's -- that's part of
3 the individual situation that the operator needs to review.

4 MR. HOCKER: That's all the
5 questions I have.

6 MR STAMETS: Mr. Wehmeyer.

7
8 QUESTIONS BY MR. WEHMEYER:

9 Q I wanted to ask Mr. Lyon or reiterate
10 that on Part B, that I think (not clearly understood). I
11 was wondering if he could comment or add to that rule, (not
12 clearly understood.)

13 And under Part D I have a question there
14 as to the wording. On the third line, second sentence,
15 there was something to the effect that he added "such (not
16 understood) to include or not limited to training (unclear)
17 operators (not clearly understood.)

18 A Well, when I -- when I wrote this rule I
19 tried to make it as unlike Rule 36 as I possibly can. The
20 Rule 36, I think, is excessively long and detailed and this
21 is clear to me.

22 It may not be clear to all the lawyers,
23 but by the time they get it clear we'll have a Rule 36, and
24 so, you know, I like it the way it is.

25 MR. STAMETS: I have to applaud

1 Mr. Lyon's attempts to brevity. I also agree that, never-
2 theless, that you have to remember that these are the views
3 of the Chief Engineer and not necessarily those of the Com-
4 mission.

5 Are there other questions of
6 Mr. Lyon?

7 I have two telegrams here, one
8 from Marbob Energy Corporation; another from Ralph Nix, both
9 of Artesia, asking for an extension of time in this -- in
10 this case, and it seems to me that there are some issues
11 here that have been uncovered this morning that might --
12 might bear some improvement with an opportunity for review
13 and submittal of proposed language.

14 So we will continue this case
15 until the November 20th hearing and, Mr. Nutter, you had
16 something?

17 MR. NUTTER: No, I want to make
18 a statement with regard to this.

19 MR. STAMETS: Well, let me --
20 let me go ahead then and urge that everyone with an interest
21 in this case either submit proposed language to Mr. Lyon and
22 the Commission or to come in and sit down with Mr. Lyon and
23 across the desk discuss how you'd like to see the language
24 changed.

25 Mr. Nutter:

1 MR. NUTTER: Yes. On behalf of
2 Bass Enterprises Production Company I'd like to make some
3 comments regarding the proposed rule.

4 In the first place, Section A
5 of the rule is for wells drilled in known H2S producing
6 areas or where there's a substantial probability of gas of
7 dangerous -- H2S in dangerous quantities or concentrations.

8 I think there's two words in
9 that statement right there, that are vague and not compat-
10 ible with the previous attempts of the Commission to come up
11 with concise, precise rules.

12 I don't know how much is a sub-
13 stantial probability and I don't know what a dangerous con-
14 centration is. I see at least four concentrations of H2S
15 mentioned in this rule. There's dangerous concentrations.
16 There's concentrations of 500 parts per million; 1000 parts
17 per million, and 10,000 parts per million, and presumably,
18 also, somewhere in here there's a non-dangerous concentra-
19 tion of H2S.

20 So if that's the case, we have
21 five concentrations to be concerned with.

22 It also in A says that these
23 wells shall be drilled in accordance with the API standards
24 or recommended procedure. It doesn't say they'll be drilled
25 in accordance with this rule, so I would like to see B and

1 subsequent sections of the rule require that they -- that
2 these rules would be applicable to the wells that would
3 known to be in dangerous areas or where there -- in known
4 dangerous areas or where there's a substantial or reasonable
5 or probable expectation of encountering H2S in dangerous
6 quantities.

7 In C-1 we have the requirement
8 that the warning sign would be at the tank battery or plant
9 entrance and I'm thinking of particularly Hobbs, New Mexico,
10 where you have leases right in the center of town. The tank
11 batteries in many cases are located on the outskirts of the
12 city. I think those wells pose a danger. I think there
13 should be signs around the wells. There's no requirement in
14 here for a sign around the well.

15 Where we say that there should
16 be a sign posted at each road entrance to the lease, you
17 can think of a 160-acre lease in Hobbs and the nearest well
18 may -- and the entrance to the lease is on Turner Street and
19 Broadway Street and Marlin, and a whole bunch of other
20 streets in town. You're entering the lease but there's no
21 requirement then that you'd have any sign after you crossed
22 Turner Street and come onto the lease, there's no require-
23 ment that you'd have a sign until you got to the other side
24 of the lease and you may go down two or three blocks away
25 from the well, and you had a sign warning you but you didn't

1 have any sign near the well itself.

2 I think Mr. Lyon clarified an-
3 other point that I had in mind, that oftentimes operators
4 have tested and had an analysis made on the gas but it may
5 not be of real recent origin, and I don't think the H2S con-
6 centration is going to go down. If you knew you had a dan-
7 gerous concentration of gas in a test that was taken six
8 months or a year ago, is probably still dangerous and I
9 think that submitting previously taken tests should be ade-
10 quate in this case.

11 I certainly don't think that if
12 we read the rule without tying it back, if we read Rule B
13 without tying it back to A, and as I mentioned, this doesn't
14 -- this says that the wells be drilled in accordance with
15 the recommended procedures, RP-49. It doesn't say that
16 they're going to be drilled in accordance with these rules,
17 so presumably Rule B stands on its own and not necessarily
18 applicable to wells that are known in known H2S producing
19 areas, or where there's substantial probability.

20 So if I read it that way, I
21 would find that B requires this test to be made on the first
22 well and on every lease anywhere in those counties, whether
23 it's in a known concentration -- in a known area or not.
24 Without tying it back and clarifying that B would be appli-
25 cable to wells drilled in known H2S producing areass or

1 where there is a probability of encountering gas.

2 I would also like to make men-
3 tion that if the BLM is writing rules it might be advisable
4 to wait until their rules come out and hope that they're not
5 Rule 36 type rules, and adapt the State rules to those
6 rules, to the BLM rules, because again, when you have two
7 sets of rules for operators in the state, as many Federal
8 leases as there are in this state, it's inconvenient to try
9 to conform with two different types of rules when you go
10 from a State lease or a fee lease onto a Federal lease.
11 You've got a different set of regulations and it's not com-
12 mon that the BLM is willing to amend their rules to conform
13 to State rules. Usually it's the other way around and it
14 might be advisable to wait and see what they've got, at
15 least.

16 I know that Rule 36 is onerous
17 and was an over-reaction to Denver City, probably, and I
18 don't think it was all that necessary to adopt everything
19 they did in Rule 36. So I think Mr. Lyon is to be commended
20 for trying to make reasonably concise rules here without a
21 lot of detail, and don't let the lawyers get hold of it, be-
22 cause you'll come up with 36, and you may not want to con-
23 form to the BLM rules, either, because they're probably
24 going to be a carbon copy of 36 plus some.

25 I believe with those observa-

1 tions I'd suggest that you continue this hearing or maybe
2 even dismiss it.

3 MR. CARR: Just one question.
4 Is Mr. Nutter appearing as an attorney engineer?

5 MR. NUTTER: You know, I didn't
6 get up when all those "law-gineers" were asking those ques-
7 tions. I waited and made my legitimate statement by an en-
8 gineer.

9 MR STAMETS: Thank you, Mr.
10 Nutter, we will -- Mr. Hall, did you have something?

11 MR. HALL: Yes, I have some
12 brief comments on behalf of Union Texas Petroleum and I'd
13 like the Commission to know I'm a lawyer and don't want to
14 be accused of practicing engineering.

15 That's why I'm going to read
16 this statement.

17 With respect to Subparagraph A,
18 the term "dangerous concentrations" is vague and should be
19 defined. API RP-49 states, "These guidelines should be ad-
20 ministered where there is a reasonable expectation that H2S
21 gas bearing zones will be encountered that could potentially
22 result in atmospheric concentration of 20 parts per million
23 or more of H2S."

24 With respect to Subparagraph C,
25 a sign stating Danger, Poisonous Gas, should be in accor-

1 dance with ANSI 235.1, Specification of Accident Prevention
2 Sign, and ANSI 253.1, Safety Color Codes for Marking Physi-
3 cal Hazards.

4 Thank you.

5 MR. STAMETS: Mr. Lyon, did you
6 get that information?

7 MR. LYON: No, would you --

8 MR. STAMETS: Mr. Hall, if
9 you'd give a copy of that information to Mr. Lyon later,
10 we'd appreciate it.

11 MR. HALL: Okay.

12 MR. STAMETS: Mr. Currens is
13 both a lawyer and an engineer.

14 MR. CURRENS: Dan Currens, Amoco
15 Production Company and attorney from Houston, Texas, in
16 this instance.

17 I'm appearing in association
18 with members of the Campbell & Black firm.

19 Certainly Amoco supports your
20 continuance of this matter because it's complex, it's impor-
21 tant, and we do support very much the efforts towards to hy-
22 drogen sulfide rule. We think it is appropriate and we com-
23 mend Mr. Lyon for his efforts in it.

24 I wonder if perhaps you alluded
25 to two things, Mr. Chairman, early on in your meeting.

1 One of them was that some of
2 these matters be continued and, two, that some of these mat-
3 ters might be referred to an existing or to be formed com-
4 mittee, and I suggest that this might be an instance where a
5 small, knowledgeable committee made up of industry members,
6 lead by a Commission staff member, might be able to take the
7 many suggestions that you've heard and the puce and char-
8 treuse and all those other things and perhaps bring forth
9 something that would be quite good.

10 I suggest that you might want
11 to consider that.

12 MR. STAMETS: I think that's an
13 outstanding idea.

14 What I would propose is that
15 when we have a break this morning that all of those indivi-
16 duals or companies who might be interested in working with
17 Mr. Lyon on such a committee meet with him and at least give
18 him their names so that he might know who those people are.
19 There's not a lot of time between now and November 20th and
20 I'm not sure that there's anything magical about November
21 the 20th, except the Commission doesn't intend at this point
22 to have a December hearing, and we, if we're going to do
23 something we might need to do it before January 1.

24 So with that in mind, please
25 feel free to contact Mr. Lyon during the break today.

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Mr. Taylor.

MR. TAYLOR: I might just point out that we have had some discussions about the liability problem that Mr. Stovall brought up, and unfortunately I don't practice law enough so I don't know what the rule is about full liability, but oftentimes in the law if there's a state rule, regulation, or statute and someone violates that, that can be proved in court as negligence in the matter and I think we ought to -- I think people ought to look at this and address comments to Mr. Lyon, because we certainly don't want to make the rule too onerous. In that respect, although we do recognize the need for some warning. I think we might look at both of those together and come up with one to rewrite the rule.

MR. STAMETS: Thank you, Mr. Taylor. We will then continue Case 9010 to November 20th and move ahead with consideration of the issues in Case 9011.

CASE 9011DAVID R. CATANACH,

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

DIRECT EXAMINATION

BY MR. TAYLOR:

Q Would you please state your name, your place of employment, and position for the record?

A My name is David Catanach and I'm a petroleum engineer with the Division here in Santa Fe.

Q Mr. Catanach, have you previously testified before the Commission or its examiners and had your credentials accepted?

A Yes, I have.

Q Are you familiar with Case 9011 and the amendments proposed to Rule 402?

A Yes, sir, I am.

MR. TAYLOR: Mr. Chairman, I tender the witness as an expert.

MR. STAMETS: The witness is considered qualified.

Q Mr. Catanach, would you please explain what is proposed by Division in Case 9011?

1 A The Division is proposing simply to amend
2 Rule 402 to eliminate the need for filing Form C-125, the
3 Annual Gas Well Pressure Report, with the Division District
4 Offices.

5 The procedure currently used by the Divi-
6 sion involves sending computerized forms to the operators
7 and directing them to return these forms to the Santa Fe Of-
8 fice of the Division, where they are processed.

9 Since this is all done now out of Santa
10 Fe, there's no longer a need to file these forms with the
11 District Offices.

12 Q Do you recommend adoption of amended Rule
13 402?

14 A Yes, I do.

15 Q Do you have anything further to add to
16 your testimony?

17 A No, sir, I don't.

18 MR. TAYLOR: That's all we have
19 in this case, Mr. Examiner.

20 MR. STAMETS: Are there any
21 questions of the witness?

22 He may be -- Mr. Kendrick.

23 MR. AL KENDRICK: I'd like to
24 try being a lawyer for a little bit.

25

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QUESTIONS BY MR. KENDRICK:

Q Now your proposed rule says that pressure be taken and reported. It doesn't say where or when or how.

A Mr. Kendrick, in the forms that we send out to the operators it directs them on the procedures to be used in taking the test and where to send the test.

Q Then might I suggest that Paragraphs (a) and (b) be deleted and Paragraph (c) says the Director might request test and procedures and times to suffice for the entire rule and let the reporting procedure be part of the procedural description of the request for tests?

A Yes, sir.

MR. STAMETS: Or perhaps, Mr. Kendrick, in that sentence, tests shall be reported as prescribed by the Division on Form C-125.

MR. KENDRICK: Something; just so they'll be reported, but you just said they'll be reported. You might report them to a pipeline company or a neighbor, somebody.

MR. STAMETS: Thank you, Mr. Kendrick, I think that -- that was useful.

Any other questions of the witness?

He may be excused.

1 Does anyone have anything they
2 wish to add in this case?

3 With the substitution of the
4 words as prescribed by the Division for those which have
5 been crossed off in this rule, we will then issue an order
6 which carries out this proposed change.

7 And we will move on then to
8 Case 9012.

9
10 CASE 9012

11
12 MR. TAYLOR: Mr. Catanach is
13 also our witness for this case and the record, I'm sure,
14 will show that he's been previously sworn and qualified.

15
16 DAVID R. CATANACH,
17 being still under oath and qualified, testified as follows,
18 to-wit:

19
20 DIRECT EXAMINATION

21 BY MR. TAYLOR:

22 Q Mr. Catanach, are you familiar with Divi-
23 sion Case Number 9012?

24 A Yes, sir, I am.

25 Q Would you explain what is proposed by the

1 Division in that case?

2 A The Division is proposing to amend Rule
3 701-D, sub part 1, to eliminate the requirement for a hear-
4 ing when a disposal well is to be located within two miles
5 or oil or gas production in the same formation.

6 This amendment is being proposed because
7 the Division feels that quite a few applications for salt
8 water disposal are unnecessarily set to hearing because of
9 this requirement and because of the following reasons:

10 At a hearing the applicant is not re-
11 quired to furnish any additional information than he would
12 normally be -- than he would normally submit for administra-
13 tive approval, and the majority of these applications that
14 are set for hearing are uncontested.

15 Q So essentially what you're doing here is
16 you will not have a full blown hearing for uncontested ap-
17 plications unless there's some other reason.

18 A That's right.

19 Q Would this rule change affect only those
20 applications that are unopposed?

21 A Yes, sir, it would.

22 Q And what would happen to the application
23 -- to applications that are contested?

24 A Well, any application which is opposed by
25 an offset operator, or an operator in the pool, would still

1 be set for hearing, and also the Division Director would
2 still have the option of setting any application to hearing
3 if he feels that it would have a detrimental affect on the
4 formation.

5 Q And the way this is -- would work, I as-
6 sume, is -- my familiarity with the rule, is that we do re-
7 quire that notice be given so many days -- or when you send
8 in an application you also have to send in -- send notices
9 to offset operators.

10 A Yes.

11 Q How will the Division know if there's
12 going to be objection? Is there a requirement that that ob-
13 jection be noted? Will it require that?

14 A Any objection to an administrative appli-
15 cation has to be filed by letter with the Division within
16 fifteen days.

17 Q So after the passing of those fifteen
18 days with no objection, we would then be allowed to approve
19 that without a formal hearing?

20 A Yes, sir.

21 Q Okay, that's all the questions I have at
22 this time.

23 MR. STAMETS: Are there ques-
24 tions of the witness?

25 Another non-lawyer.

1 MR. BONEAU: My lawyer's asleep.

2
3 QUESTIONS BY MR. BONEAU

4 Q Mr. Catanach, I'm concerned about a clar-
5 ification of what notice requirements remain after this
6 change is made.

7 A Well, the notice requirements will remain
8 the same, Mr. Boneau. You would be required to notify any
9 operator within a half mile of the proposed disposal well
10 and also the surface owner.

11 So the notice requirements would remain
12 the same for administrative approval.

13 MR. STAMETS: Mr. Catanach, is
14 there not a requirement that the applicant put a notice in
15 the newspaper?

16 A Yes, sir, there is also a requirement
17 that the notice be placed in the newspapers in the county in
18 which the well is to be located.

19 Q I suggest that that -- Mr. Stamets
20 realizes that I've been on both sides of very many of these
21 things. I'd suggest that that is not really sufficient.
22 What happens, a half a mile is a very near radius and a lot
23 of problems are in the half mile to a mile area, and fifteen
24 days is a very short time, but even you -- even if you hear
25 about -- that the well is going to be asked to be changed to

1 salt water disposal, you'd have no information. You call
2 the people about the C-108. They, you know, give you some
3 song and dance -- by the time I give them some song and
4 dance -- the fifteen days goes by very fast, and as a prac-
5 tical matter, our response has got to be that we oppose it.
6 You know, that we send off a form letter to you saying we
7 oppose it in an effort to get this information.

8 And I think it -- I'm saying that the
9 combination of the half mile, which is very small and gets
10 almost nobody, and the fifteen days, you kind of let these
11 things go by without a proper review is my fear, and I
12 thought that perhaps there was some notice that I was miss-
13 ing, but that doesn't seem to be there.

14 MR. TAYLOR: I know after the
15 fifteen days we may get an objection, like a day or two days
16 later, and it might be appropriate that we allow twenty or
17 thirty days before actually approving such applications.

18 I think we probably ought to
19 look at that because I know we have had several situations
20 where immediately after the fifteen days have run, we've had
21 people calling in and wondering about it or objecting, and
22 it might be that that is a short period of time for people
23 to get back to us.

24 MR. STAMETS: Mr. Kellahin.

25 MR. KELLAHIN: Thank you, Mr.
Chairman.

CROSS EXAMINATION

1
2 BY MR. KELLAHIN:

3 Q Mr. Catanach, can you tell us in terms of
4 numbers how many applications would have been affected in
5 the recent past if this rule had been in place? What kind
6 of burden has placed upon the Division with the current
7 rule?

8 A I can't give you exact numbers, Mr. Kel-
9 lahin, but I have set probably a dozen or so in the past
10 year to hearing that have been uncontested.

11 Q And how many cases does the Division set
12 normally in the last -- or the current year we're in?

13 A How many salt water disposal cases?

14 Q Yes, sir.

15 A I don't know. I don't have a figure.

16 Q We're talking about a difference of maybe
17 twelve cases a year?

18 A Probably.

19 Q And if this rule is adopted, then the ap-
20 plicant would still have to file a Form C-108 and go through
21 that process for the salt water disposal approval?

22 A Yes, sir.

23 Q And under that administrative process the
24 notice requirement, then, is to offset operators within a
25 half mile radius?

1 A Yes, sir.

2 MR. KELLAHIN: I have nothing
3 further.

4 MR. STAMETS: Mr. Sexton?

5
6 QUESTIONS BY MR. SEXTON:

7 Q Under this, David, do you -- is there any
8 stipulation that a commercial disposal well could come in
9 under this operation (not clearly understood), I can see
10 this would be relevant only to district, but if you're on
11 the operators (not clearly understood) probably would not
12 bother most operators, you know, net in, net out, but to put
13 in large injections with a half mile clearance, I'm not sure
14 if that (not clearly understood.)

15 A We didn't address that, Mr. Sexton, and
16 we may want to do that. We may want to talk about that some
17 more.

18 MR. STAMETS: It sounds as
19 though this might be one that could use a little more work,
20 perhaps to clarify the difference between commercial, non-
21 commercial, maybe give some further consideration to whether
22 the fifteen days is sufficient time, whether the area ought
23 to be expanded.

24 We will continue Case 9012 and
25 again urge all of you who have an interest in this case to

1 contact Mr. Catanach when we have a break today and see what
2 is the best way that you might proceed with concerns.

3 Mr. Catanach, thank you, you
4 may be excused.

5 We'll move on, then, to Case
6 7004. I'm sorry, 9013, it's Rule 704.

7

8

9

10 CASE 9013

11

12 MR. TAYLOR: Call Mr. Jerry
13 Sexton.

14

15 JERRY SEXTON,

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

18

19 DIRECT EXAMINATION

20 BY MR. TAYLOR:

21 Q Will you please state your name and place
22 of employment for the Commission?

23 A Jerry Sexton, and I'm employed by the OCD
24 at Hobbs as a District Supervisor.

25 Q Mr. Sexton, have you previously testified

1 before the Commission or its examiners and had your creden-
2 tials accepted?

3 A Yes.

4 Q Are you familiar with Case 9013, which is
5 proposed rule change, Rule 704?

6 A Yes.

7 MR. TAYLOR: Mr. Chairman, I
8 tender the witness as an expert.

9 MR. STAMETS: The witness is
10 considered qualified.

11 Q Mr. Sexton, would you please explain what
12 is proposed by the Division in this case?

13 A Yes. What the Division is intending to
14 do is we're -- take the UIC, administer it, and it has some
15 requirements that make it mandatory that we have mechanical
16 tests on each well in the five year period, and we have also
17 done some studies that I think point out that this probably
18 should be done.

19 In 1983 we did a random sampling of in-
20 jection wells and disposal tests on 300-some wells. In
21 southeast New Mexico we had approximately 15 percent of the
22 injection wells showed leaks in the casing and 25 percent of
23 the disposal wells on vacuum showed that we had problems
24 downhole. And in '84 we went ahead and tested for a year as
25 many of the wells as we could test and in District One we

1 showed a 19 percent failure rate of almost 1000 wells and in
2 District Two, out of 1000 wells they had a 25 percent
3 failure rate, and in District Three they had a 35 percent
4 rate.

5 And what this rule is trying to do is to
6 not only conform to UIC standards that would be EPA set, but
7 also to assure the State that the wells are brought up into
8 good mechanical conditions.

9 And Part A of this is, we feel like, will
10 eliminate a lot of the five year testing. When a well is
11 pulled most of the time the operators have a truck on loca-
12 tion to put the packer prevention fluid or corrosion inhibi-
13 tor in the annulus and they'll have a truck on location any-
14 how, and at this time you can test it with probably the
15 least economic loss to the operator and this will do for a
16 five-year test, plus, also, it was apparent from our leakage
17 test done on well failures that this hadn't been done in the
18 past, and we feel like this will take care of most of the
19 five-year testing, but at least every -- the rest of this,
20 at least once every five years every injection well and dis-
21 posal well will have mechanical tests, and this outlines
22 what testing is acceptable and what the Division will ac-
23 cept.

24 It also points out that other surveys can
25 be required. I think the Division's always operated with

1 the -- under the opinion that we could require other tests
2 and we have in the past where we had problems, and this
3 just further states it to put it down in a little bit more
4 black and white that the Division does have policy where
5 they're having trouble to do additional testing.

6 And in the monitoring, I think most or-
7 ders have had this written in, and I think all of the opera-
8 tors have been aware that this has been required for some
9 time and is really nothing new to the operators of the in-
10 jection wells or disposal wells in the area, and shouldn't
11 really add any hardship at all, so just clarifies it in our
12 rules instead of in the actual hearings.

13 And I think we've had some slight prob-
14 lems with storage wells and this clears up the point that
15 the good operator, you can't really operate a storage faci-
16 lity where you inject or withdraw fluids without this data,
17 so I think this just clears it up to make it on record.

18 And Part C is the step rate tests. We've
19 had some districts that the Districts have to put comments
20 into the Division on whether to accept the step rate tests
21 where they change pressures, and this just gives the Dis-
22 tricts the opportunity to be on location and really make
23 some consideration. If you're not on location the Districts
24 really won't have that much input on the actual authority --
25 or authenticity of the tests, anyhow. So I don't feel like

1 anything in the rule 704 proposed rule will change too much
2 of our operations; it just more or less puts it down in a
3 rule the way we have been doing it, anyhow.

4 That's all I have.

5 Q Okay, did you -- maybe for my clarification
6 tion more than anything, would you state once more what the
7 difference is between this rule and the old rule?

8 A Well, I think this, and I didn't look
9 that close, I testified for why this rule was brought about,
10 but I don't think we had -- we didn't require testing and
11 this came about through our acceptance of the UIC programs.

12 Q It's come about through orders, stuff in
13 orders that haven't necessarily been in the rule previously?

14 A Right.

15 Q That may have been required in (unclear)
16 rules.

17 Okay. Is that all you have?

18 A Yes.

19 MR. TAYLOR: That's all we have
20 in this matter, Mr. Chairman.

21

22 CROSS EXAMINATION

23 BY MR. STAMETS:

24 Q Mr. Sexton, have you seen instances where
25 step rate tests have had to be re-done based upon an appli-

1 cation that was submitted to Santa Fe and when you got the
2 information it wasn't acceptable?

3 A Some and I think part of it, even with
4 field person on location, our big problem is on high rate
5 wells that your surface pressure is masked until you get the
6 bottom hole pressure up; you may not have the proper points
7 above and below the fracture pressure to make this judgment.

8 I'm not sure that this -- I'm not saying
9 this rule of having someone on location will eliminate this.
10 It may help but there's some cases where on location, until
11 you look at the bottom hole and calculate, you can't make a
12 good decision.

13 Q It has the potential to avoid having to
14 redo some of these tests and should improve your ability to
15 respond to worries about whether or not pressure limits
16 should be increased?

17 A Yes, it does give us an idea of what the
18 fracture pressures are in areas and if we're not on location,
19 really you look at the data, and so the Districts could be
20 bypassed as far as if you're not on location, then the Divi-
21 sion can make the same recommendations we do.

22 Q In the first portion of this Paragraph A,
23 the changes there, that should serve to better assure mech-
24 anical integrity of injection wells?

25 A Yes. I think from the surveys we've got

1 that this is something we needed and it also brings us up
2 into compliance, but certainly we in the industry weren't
3 doing a good job.

4 MR. STAMETS: Are there other
5 questions of the witness? Mr. Clements.

6

7 QUESTIONS BY MR. CLEMENTS:

8 Q Yes. On Paragraph A there, have you
9 given any consideration to maybe having them notify the Div-
10 ision prior to running these MIT tests and including that in
11 this rule change?

12 A I'm not sure but what in District I they
13 have been. I think if it -- this is something that probably
14 should be in there. They have to notify you when you pull a
15 packer or when they have problems and we've used this as
16 notification. If the companies do this, then we feel like
17 it's our option to be out there and carry on.

18 But if you would like to have it changed,
19 I don't -- I don't think any operator would really have a
20 problem, but they are supposed to notify the Districts when
21 they have problems with an injection well.

22 MR. CLEMENTS: That's all I
23 have.

24 MR. STAMETS: Other questions?
25 Comments?

1 Would you come on up front?
2 Our reporter can't hear you this morning, and identify your-
3 self for the record.

4
5 QUESTIONS BY MR. TROOD:

6 Q Trood, with ARCO Oil and Gas.

7 Under C here that you have to notify the
8 Commission before you can run your step rate test, how do
9 you have to notify the Commission and how long a notice do
10 you have to give them? Could the notice be by telephone
11 when you get ready to do it, or what would be the (unclear)?

12 A I think it would be the same as cement-
13 ing, 24 hours. We realize you can't do it by letter and we
14 --

15 Q We can give you just as much notice as we
16 always have.

17 A Right, you know, we'll run it just like
18 cementing, but probably 24 hours should be in there with the
19 realization that, you know how the District operates. If
20 you call before 7:00, why that's almost like 24 hours.

21 Q I take it telephone would be --

22 A Telephone would be fine.

23 MR. STAMETS: Other questions?

24 MR. HOCKER: R. L. Hocker.

25 MR. STAMETS: Mr. Hocker.

1

2 QUESTIONS BY MR. HOCKER:

3 Q Mr. Sexton, I'm a stranger and I have a
4 question about some of the old parts of the rule.

5 A Okay. I don't even have it.

6 Q And if I understand (unclear) -- I assume
7 that under (a), little (a), which talks about -- oh, here,
8 you don't have it?

9 A No.

10 Q Maybe we can both look at it here.

11 A Okay.

12 Q Where it talks about the measurement of
13 the annular pressures, I assume that that's on the form how
14 often that has to be measured, is that correct?

15 A Well, you can submit it -- I mean I'm not
16 sure it is.

17 Q I'm not -- I mean I really don't know.
18 I'm just trying to find out.

19 A The annular pressure I don't believe has
20 to be submitted. We test each well once a year but I think
21 what it has to be -- what it is there for is in case one of
22 our inspectors comes by, but I don't -- I don't recall it
23 having to be submitted to us, but it's one of those --

24 MR. STAMETS: As I recall, Mr.
25 Hocker, the reason these are in there is because of the ne-

1 cessity for filing this rule with the EPA saying what we
2 would accept as demonstrations of mechanical integrity.

3 Q Well, perhaps before we proceed any fur-
4 ther let me ask you one other question.

5 A Okay.

6 Q As between (a), (b), and (c) under big A
7 --

8 A Okay.

9 Q -- could that properly say, after little
10 (a) "or" and after little (b) instead of "and", "or"? In
11 other words, these are alternatives?

12 A Yes, I think this would be --

13 Q I was wondering whether that might be an
14 improvement. It was a little confusing to me.

15 A Okay. Well, it's -- it's just a matter
16 of which way is least confusing. I think you're right, when
17 you can put "or" in there, it's just a matter of which way
18 is the less confusing.

19 Q I didn't interpret this to mean that un-
20 der big A little (a) that five years applies to the measure-
21 ment of annular pressure that's up there just before that,
22 but I just wanted to fully understood -- understand it, ex-
23 cuse me.

24 A Well, I think it does --

25 Q I took that away from you; that isn't

1 quite right.

2 A No, I think it -- no, I think it does.
3 It is an alternative and it is a good test and that's what
4 we're after and I think --

5 Q That was that I thought this was but I
6 wanted to make sure, affirm that with you.

7 A Right, and I do think you have to have a,
8 you know, a series of measurements of positive -- and some
9 people with oil blankets go in with (unclear) where you keep
10 a positive pressure and keep this, and --

11 Q I know you don't do it like you do in
12 Texas and Oklahoma. We measure it once a month and report
13 it annually, as an alternative. I'm not suggesting that's
14 the best way but that's one way.

15 A Right.

16 Q But I didn't know what we were supposed
17 to be doing in New Mexico. I'm sure somebody does with my
18 company but I didn't.

19 A Yes. Okay, well, I'm glad you asked.

20 Q All right, thank you.

21 MR. STAMETS: Thank you, Mr.
22 Hocker, I was wondering why you didn't speak up back in 1981
23 when you were --

24 MR. HOCKER: I probably did but
25 I don't remember what I did in 1981.

1 MR. STAMETS: Are there any
2 other questions or comments?

3 MR. GREY: Charlie Grey with
4 Sun Exploration.

5
6 QUESTIONS BY MR. GREY:

7 Q I have a question concerning the -- the
8 recording of the time. The way I understand this rule, if
9 we test the well for mechanical problems, say, six months
10 from now, then the period of time runs for five more years,
11 is that correct?

12 A Yes. When your last test, if you pulled
13 it, why then you've got five years to when it's tested.

14 Q Who would record that time?

15 A We're --

16 Q Who keeps track of it, I guess is what
17 I'm asking here.

18 A We are in the Districts. It doesn't do
19 any good to test it if you don't send a chart in and I think
20 your field people are aware that when they test it, if we're
21 on location, we'll take it in; if not, they send a chart in
22 and we put it with your well file and that goes on record as
23 being your last date of test and you'll be five yers from
24 that date.

25 Q Would you notify the operator then the

1 next time it needs testing?

2 A Yes.

3 Q That's all I have, thank you.

4 MR. STAMETS: Any other ques-
5 tions and comments?

6 The witness may be excused.

7 MR. TAYLOR: And for the last
8 case -- oh, excuse me.

9 MR. STAMETS: Let's decide what
10 we're going to do here.

11 The Commission will take this
12 case under advisement and probably will be entering an order
13 at the November 20th hearing.

14 And then we'll take up last for
15 this morning Case 9014.

16 MR. TAYLOR: Mr. Mike Stogner
17 will be the witness in this case.

18

19

20

21

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25

CASE 9014

MICHAEL E. STOGNER,

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

DIRECT EXAMINATION

BY MR. TAYLOR:

Q Would you please state your name, place of employment, and position for the record?

A Michael E. Stogner. I'm an engineer here in Santa Fe with the Oil Conservation Division.

Q Mr. Stogner, have you previously testified before the Commission or its examiners and had your credentials accepted?

A I have.

Q Are you familiar with the matters in Case 9014, which is the amendment or the proposed rule 1207?

A Yes, I am.

MR. TAYLOR: Mr. Chairman, are the witness' credentials acceptable?

MR. STAMETS: He is considered qualified.

Q Would you please explain the purpose of the proposed rule in this case?

1 A The proposed new rules, 1207(a)1.(ii)
2 would provide the industry an alternate method of force
3 pooling without coming to hearing and accruing all the addi-
4 tional expenses. This would only be applicable to unopposed
5 compulsory pooling applications, such as those where maybe
6 an interest owner has been gone since 1950 or where an unop-
7 posed party doesn't wish to sign the paper but yet he's not
8 going to come and oppose a forced pooling, either.

9 This would just give an alternative to a
10 hearing.

11 Q Would you please identify Exhibit One in
12 this case and explain it for the Commission?

13 A My Exhibit Number One is identical to
14 page three of Mr. Stamets' memo of October 1st and which is
15 attached to the docket here today.

16 If I can go over it just a little bit,
17 under the heading, actual notice shall be given as required
18 in (i) above. The present Rule 1207(a)1, would become
19 1207(a)1(i), with the (ii) being added to the bottom.

20 This gives an overview of what would be
21 required when an application is submitted to the Division
22 and those are pretty muchly self-explanatory.

23 Once an application does come in, it
24 would be treated such as an advertisement and would be
25 assigned a case number and advertised at the next hearing.

1 Q All right, sir. Would you refer next to
2 Exhibit Two and explain that for the Commission?

3 A My Exhibit Two, is just a fictitious ad-
4 vertisement showing what a method of an advertisement which
5 would appear in the regular scheduled docket. It would
6 start out being something like application under General
7 Rule 1207 (a)1(ii) of the applicant for compulsory pooling,
8 Any County, New Mexico.

9 It would essentially have the same word-
10 ing as what's in a compulsory pooling case now; however,
11 there would be a little bit of difference in the second pa-
12 ragraph, or the second portion of those ads, which would
13 read something like, further, the applicant seeks to be
14 named the operator of the subject well and unit; the assess-
15 ment of a certain percent risk penalty for the drilling of
16 the subject well; and also what would be printed in there
17 would be the overhead charges in which the applicant would
18 request; and it would also continue that it would -- the
19 consideration of actual operating costs for the well and the
20 actual cost of those would be considered.

21 Also, the last paragraph would read, in
22 the absence of objection this case will be approved pursuant
23 to the Division General Rule 1207(a)1(ii).

24 Q Is it my understanding, then, or is it
25 correct that this would be approved at the time of hearing?

1 It would actually come up and be called on the docket and if
2 there was no objection then there wouldn't actually have to
3 be testimony but the evidence would be submitted in docu-
4 mentary form?

5 A That's right. An actual case would then
6 be submitted after that particular hearing if there was no
7 objection.

8 I see that there probably wouldn't be any
9 difference between a regular order under compulsory pooling
10 and our order here. The requirements aren't any different
11 between what we're proposing here and what would be -- come
12 in at a regular scheduled hearing. The same type of infor-
13 mation would have to be provided for us to make those deter-
14 minations.

15 Q And that would be done rather than
16 through testimony, documents -- documentary evidence would
17 all be submitted, AFE's and other notice things would all be
18 submitted, and that would just be filed with an affidavit as
19 to authenticities?

20 A That's right, yes.

21 Q Okay. Will a notice to the interest
22 owners be any different than a case of compulsory pooling
23 that was heard today?

24 A No, it would not, because the application
25 under 1207(a)1(i), which is the old (a)1, for the notifica-

1 tion would still apply. Certified copies of return receipts
2 would still need to be submitted with the application.

3 Q Were Exhibits One and Two prepared by
4 you?

5 A They were.

6 MR. TAYLOR: I move the
7 admission of Exhibits One and Two.

8 MR. STAMETS: The exhibits will
9 be admitted.

10 Q Do you have anything further to add in
11 your testimony?

12 A I have not.

13 MR. TAYLOR: That concludes
14 this matter, Mr. Chairman.

15 MR. STAMETS: Thank you.

16

17

CROSS EXAMINATION

18 BY MR. STAMETS:

19 Q Mr. Stogner, if I understand it
20 correctly, the way the system would work is there would
21 still be a hearing and there would still be a record in the
22 case, but the record would consist of the sworn material
23 which was submitted with the application, is that correct?

24 A That's right, Mr. Commissioner.

25 Q And if there was any objection filed prior

1 to hearing or at the hearing, then oral testimony would be
2 required.

3 A Yes, sir, at that time oral testimony
4 would need to be submitted at that time, yes, sir.

5 MR. STAMETS: Are there other
6 questions of the witness?

7 Mr. Stovall.

8

9

CROSS EXAMINATION

10 BY MR. STOVALL:

11 Q As an out-of-town attorney, I would ask
12 you in this procedure that you outlined, if I submitted what
13 I thought was an unopposed application and it came down and
14 was set for hearing, would it be possible that I might not
15 attend and then if somebody showed up and opposed it, then
16 it would be continued, and I guess that's an inconvenience
17 to one of the other parties?

18 A That would --

19 Q One of the advantages would be that I
20 don't have to come in from Farmington to conduct my -- to
21 present my case when there's really no case to present.

22 A If, in the likelihood -- or unlikelihood
23 that that would happen, I would see that the policy would be
24 to continue that case to the next Examiner's Hearing so oral
25 arguments could then be presented by both parties.

1 MR. STAMETS: Would it be
2 possible to include that information in the docket so that
3 all parties would be aware of that?

4 A I see no reason why it couldn't be, yes,
5 sir.

6 MR. STAMETS: Mr. Kellahin.

7 MR. KELLAHIN: Thank you, Mr.
8 Chairman.

9
10 CROSS EXAMINATION

11 BY MR. KELLAHIN:

12 Q Mr. Stogner, if Mr. Stovall's client
13 files that type of application in anticipation that it's un-
14 opposed, and I happen to have a client on the other side,
15 will I have access to all the information he has filed in
16 his application so that I will know at the time of the hear-
17 ing exactly what it is that he's based his application on,
18 or will that be held in confidence at the Division?

19 A There has not been any procedure to hold
20 this in confidence. It would be treated -- that information
21 to come in would be treated just like an application of any
22 case file and would be part of the public record, yes.

23 Q Would I be under any obligation on behalf
24 of my client to notify Mr. Stovall of my opposition at any
25 time prior to a hearing or can I simply come to the hearing,

1 enter my objection, and then have the case continued to the
2 following docket?

3 A We would certainly hope that communica-
4 tions between all parties would -- would prevail, but there
5 has not been any stipulation in the proposed rules for that
6 procedure, no.

7 Q In terms of the Division's review of the
8 application under this process, when will that review take
9 place? Will that take place at the hearing or will the
10 Examiner do it prior to the hearing?

11 A Like I said, when these come in as an ap-
12 plication I was -- I would see that these would be treated
13 as an advertisement and would need the immediate attention
14 at that time so they could get docketed in at the earliest
15 possible time. There has not been a time limitation set.

16 If, for instance, an application would
17 come in with, say, something amiss, a letter would then --
18 or communications between the Division and the party, I
19 would foresee take place before an advertisement to set this
20 to a hearing could be proceeded.

21 Q Let's take the situation where the appli-
22 cant has got a complete application and the question is the
23 risk factor penalty. The applicant has asked for a 200 per-
24 cent risk factor penalty based upon an infill well that's
25 150 feet from a hotshot producing well, and the Examiner has

1 some doubts in his mind about whether he will accept that
2 penalty factor, if the Division itself in analyzing even an
3 unopposed case disagrees with the applicant on such an is-
4 sue, how is that resolved and handled?

5 A There's a stipulation down here that the
6 Division Director can call any of them to hearing. I be-
7 lieve is that situation did come up and the Division had any
8 opposition or any question such as that, and if it could
9 not be handled between communications, then oral argument
10 would have to be presented at the hearing and I believe the
11 Division would notify the applicant at that time, that this
12 is coming up and they would need to appear at the hearing.

13 Q The process, as you envision it, is one
14 that includes the absence of both the applicant and his wit-
15 nesses and his attorney at the hearing?

16 A Yes.

17 Q Can you tell me what the basis was for
18 suggesting the alternative procedure? Was there a company
19 or an individual that suggested this or is this something
20 the staff had suggested?

21 A In our discussions here in the Division
22 and just by past record, I'd say about -- about ten to fif-
23 teen percent of our compulsory pooling applications, that
24 can be given or taken a few percentages either way, in a
25 given year has there parameters, where an unopposed party

1 that can't be found, or somebody is just stubborn enough to
2 not sign anything. It is to provide the industry an alter-
3 native solution to these problems.

4 Q Would you have any objection to the order
5 itself, in entering an order for this type of application,
6 that it include some reference to this procedure so that
7 anyone examining title, or examining the record outside of a
8 hearing and looking at the order itself, will know which
9 process the applicant has selected in obtaining this type of
10 order?

11 MR. STAMETS: That could be
12 done with a couple of findings, couldn't it, Mr. Stogner,
13 and --

14 A I believe so and I'm -- I imagine it's
15 covered under here. I don't see why it wouldn't. But those
16 type of notifications to the interest owners of what kind of
17 case is set up, whether it be toward a hearing or without
18 testimony, should be done at that time, but I don't see any
19 provisions in here of that kind, but I don't see why it
20 couldn't be, no.

21 Q My suggestion would be that the order it-
22 self reflect that this is a case that was processed using
23 this administrative procedure.

24 A Oh, yeah, a finding.

25 Q So a third party would know that he's

1 looking at the ordinary forced pooling order or he's got one
2 under this alternative procedure.

3 A I believe a finding could -- like that
4 could be put in.

5 Q Thank you.

6 MR. KELLAHIN: Nothing further,
7 Mr. Chairman.

8 MR. STAMETS: Mr. Manning.
9

10 QUESTIONS BY MR. MANNING:

11 Q Mr. Stogner, if you have -- are you look-
12 ing at Mr. Stamets' memorandum dated October 1st, 1986, enti-
13 tle Proposed Changes In Division Rules? Is that the latest
14 one?

15 A October 1st?

16 Q Yes, sir.

17 MR. STAMETS: Yes, to my know-
18 ledge that's the latest one.

19 Q Would you look at (7) there, Mr. Stogner?
20 I'm appearing here as an English teacher, I think.

21 MR. STAMETS: Where are you,
22 Mr. Manning, where --

23 MR. MANNING: Page 3, Number
24 (7), Rule 1207. The third from the last word in Number (7).

25 A Those should be charges. Boy, that's a

1 tough question, Mr. Manning. I'm glad you handled it. You
2 (unclear).

3 MR. STAMETS: Thank you, Mr.
4 Manning. That was presented with tact.

5 Are there other questions or
6 harassments?

7 Mr. Currens.

8

9

CROSS EXAMINATION

10 BY MR. CURRENS:

11 Q These -- these are simply some questions
12 to clarify some things but they are not intended in any way
13 as harassment.

14 I want to see if I understand the proce-
15 dure to begin with here.

16 If a person sends in an application for
17 pooling in this form with the verified application, verified
18 statements, and so forth, the Division will first then de-
19 cide whether or not to put it on the potential unopposed
20 docket or whether it docket it regularly. Is that the first
21 kind of point on the decision --

22 A When it comes in with the required infor-
23 mation, yes, that determination would be made at that time.

24 Q Okay, by the Division or the Division
25 staff.

1 A By the Division and staff, yes.

2 Q Okay, and then in the event that it was
3 put on the docket in that manner and the applicant did not
4 show up because he knows of no opposition, what form of op-
5 position is required by an opponent to this? Need he write
6 a letter, simply call in, must he appear, or what?

7 A I believe he must appear.

8 Q Okay. So there's nothing then to prevent
9 someone from being on this docket as applicant and appearing
10 in the event that there is to be -- in the event that there
11 may be an appearance that he doesn't know about at all prior
12 to the time of the call of the case.

13 A Yes, sir.

14 Q And in that case you'd go on with hearing
15 and hold it in that manner.

16 A It would be --

17 Q In the regular manner.

18 A Yes, it would be continued in the regular
19 manner, yes.

20 Q And by continued you mean heard at that
21 time, both parties being there.

22 A Well, if both parties are there, yeah,
23 but if the applicant isn't there it can't very well be heard
24 and be then continued in the regular format.

25

1 Q But the protestant does have to appear to
2 protest.

3 A I believe so, yes.

4 Q Thank you.

5 MR. STAMETS: Mr. Stogner,
6 would it be possible to have a procedure where the person
7 could either appear at or file a written notice with the
8 Division prior to the time of the hearing?

9 A I believe the proposed rule changes can
10 be amended to include that to make the -- make it clear.

11 MR. CURRENS: May I suggest
12 something further there, though, Mr. Chairman. In that
13 event a person could file a written protest and automatical-
14 ly cause a continuance of this even though applicant would
15 certainly be willing to be there and be -- and go forward.
16 Now that might put you in a terrible situation on some occa-
17 sion because of lease expiration dates and things of that
18 nature. Now perhaps the rule says that the applicant
19 shouldn't make this kind of application in those circum-
20 stances, but it's a complex situation.

21 That was a comment, Mr. Stog-
22 ner.

23 MR. STAMETS: Mr. Stovall.

24

25

1 RECROSS EXAMINATION

2 BY MR. STOVALL:

3 Q You asked my question about the -- making
4 a procedure for filing a written objection to it, so I think
5 that would be important and if written objection is filed,
6 then it certainly would be possible to go to hearing at the
7 originally scheduled hearing date, is that not correct?
8 Would you agree that that would be -- in other words, I file
9 such an application, you and I get notice that somebody
10 opposes that application, we would then show up the -- at
11 the docketed date and have our hearing.

12 A Yes, and then you wouldn't necessarily be
13 held to these parameters at that time, either.

14 Q Correct, yeah, now it would be a new
15 case, new conditions, put on new evidence, whatever.

16 A I believe --

17 Q Not a new case, I'm sorry, that's a wrong
18 statement.

19 A I believe it's general enough, or we can
20 have an advertisement general enough, that we can handle it
21 both ways, yes.

22 Q Okay. So the situation, I think, that
23 we're both envisioning here, and I think Mr. Stamets
24 envisions, is how do we know when the hearing is going to
25 be?

1 A Because it will be docketed at the next
2 hearing.

3 Q Well, the real hearing, if there's going
4 to be opposition, and whether we'd need to devise a mechan-
5 ism in a time frame which says if you file a notice of oppo-
6 sition a hearing will be held on the docketed date and so
7 forth. I can see -- I can see the problems that are coming
8 out for this, due to this thing. When are we actually going
9 to get the hearing? Is it really unopposed? How am I going
10 to find out when and if so, when do I get that -- get my
11 case heard?

12 I just offer that as a concern.

13 A It would be continued to the next sche-
14 duled hearing, if that happens, and I'm not -- if I can
15 stress here at this time, this type of application should
16 not be made if there is any kind of doubt that you're not
17 going to get opposed.

18 Well, you know what I mean. This is just
19 to offer an alternative to those times that you're 99 per-
20 cent sure that you're not going to have opposition to a
21 case.

22 If you have a case like that, where some-
23 body could come in, then you ought to come in the other way.

24 MR. STAMETS: Mr. Stogner, have
25 you seen cases where it's the same party hearing after hear-

1 ing who's being pooled and they couldn't find him two years
2 ago and they weren't able to find him six months ago, and
3 they're still not able to find him?

4 A I seem to remember some operators like
5 that. There's some operators that I've run into that just
6 won't sign. I can't remember who that is, though.

7 MR. STAMETS: So this, what
8 we're talking about here is an alternative for those where
9 the operator is absolutely, positively sure --

10 A Unequivocally.

11 MR. STAMETS: -- Federal Ex-
12 press sure, that he's not going to get opposition.

13 A That's right, and I would envision that
14 if an operator comes in and asks for these type of cases and
15 each time they get opposed, I'm sure about the fifth or
16 sixth time the Division Director may, at the request of the
17 Examiner, set this to a regular scheduled hearing.

18 MR. STAMETS: Mr. Chavez.

19

20 QUESTIONS BY MR. CHAVEZ:

21 Q Mr. Stogner, would it be wise, then, for
22 an operator who has an expiring lease or problems like that,
23 to have to go through regular procedure should there be any
24 chance of opposition?

25 A I would strongly suggest that, yes.

1 MR. STAMETS: Mr. Stovall.

2 MR. STOVALL: As the attorney
3 who has raised the question regarding the procedural issue,
4 let me say that I do not oppose this -- this procedure. I
5 think it probably is valid and I guess it's incumbent upon
6 me to recognize the situations and when it's appropriate for
7 me to use it.

8 MR. STAMETS: Mr. Nutter.

9 MR. NUTTER: I think that part
10 of the problem could probably be resolved if the sentence
11 starting off with the words "actual notice shall be given as
12 in (i) above" would go on and say the application for hear-
13 ing shall state that no opposition for hearing is expected,
14 and the reasoning behind such expectation is given. I think
15 that if they could make a good case as to why they don't
16 expect opposition, that the only party who hasn't voluntar-
17 ily signed has said that he was -- he's not objecting to
18 them going for hearing, and he doesn't object to being force
19 pooled, or something like that.

20 Also, I want to clarify one
21 point. I think that the Rule 1, or (a) 1 above, or (a) I
22 above, requires that the application for compulsory pooling
23 be sent to all parties that are being pooled, is that cor-
24 rect?

25 MR. STAMETS: I could tell you

1 if I had my rule book with me.

2 MR. NUTTER: I think all
3 poolees have to be notified by certified mail.

4 A That's covered under (a) 1, right?

5 MR. NUTTER: Under (a) 1, yes,
6 I think so.

7 MR. STAMETS: It says that ac-
8 tual notice shall be given to each individual owning an un-
9 committed leasehold interest, an unleased and uncommitted
10 mineral interest, or royalty interest not subject to a pool-
11 ing unitization clause in the lands affected by such appli-
12 cation, which interest must be committed and has not been
13 voluntarily committed to the area proposed to be pooled or
14 unitized. Such individual notice in compulsory pooling or
15 unitized -- that's interesting, I think we must have --

16 MR. NUTTER: Okay, so we go on
17 and we find out that the application for -- for the pooling
18 here in this case is required as in (i) above, so you'd be
19 sending a copy of the application to everybody, and it says
20 here the application shall include the following. So you
21 would be sending all of these parameters to any poolee at
22 any rate, and he would be fully aware of the conditions that
23 are being imposed on him. He would know why you don't ex-
24 pect him to show up and he's in a better position then to
25 judge for himself whether he wants to file an objection or

1 not.

2 But I think it's going to im-
3 pose a rather onerous burden on Mr. Stogner to make this an-
4 alysis as to whether he's going to set this for this type of
5 an administrative approval hearing or the other type if the
6 application comes in just a day or so before he has to run
7 his ads, though. He's got to make the commitment when he
8 writes his advertisement. He's going to make a little (in-
9 audible).

10 I think if the applicant can
11 give his reasoning behind the expectation that there would
12 be no opposition, it would help in preparing the advertise-
13 ment.

14 MR. STOVALL: Any opponent to
15 the pooling is always going to have the right to appear and
16 oppose it and I think the applicant, it's going to be incum-
17 bent upon the applicant to evaluate the danger and the risk
18 of that, and whether he would like to try this procedure and
19 see if it works, with recognition that he may be continued
20 and may have to come down and present a case.

21 MR. NUTTER: What are you op-
22 posed to, making a statement as to why you don't expect op-
23 position?

24 MR. STOVALL: I don't think
25 it's -- I don't think it's a necessary part of the applica-

1 tion for this type of procedure.

2 MR. NUTTER: Well, it's not
3 forbidden to put it in an application.

4 MR. STOVALL: Oh, not forbid-
5 den, no. I don't think it should be required.

6 MR. STAMETS: Mr. Strand.

7

8 CROSS EXAMINATION

9 BY MR. STRAND:

10 Q Mr. Stogner, can I assume that the Divi-
11 sion would accept written waivers as conclusive evidence of
12 non-opposition?

13 A We'd take that into account, yes.

14 MR. STAMETS: Other questions
15 or comments?

16 Mr. Hall.

17 MR. HALL: Mr. Chairman, Union
18 Texas Petroleum urges that the requirement for the AFE, Sub-
19 paragraph 9, not be incorporated into the process in cases
20 of unopposed applications.

21 MR. STAMETS: Why not?

22 MR. HALL: I don't know much
23 more than that. I think it's thought that if the process is
24 indeed unopposed, there's no need to go into that much de-
25 tail and the AFE materials that have been introduced into

1 the docket in the past, some companies have wished to treat
2 some of the information in AFE's as confidential.

3 MR. STAMETS: Mr. Kellahin.

4 MR. KELLAHIN: Mr. Chairman, a
5 couple of comments.

6 I'm not aware of anything in
7 the current procedure that requires an applicant in a forced
8 pooling case to send the application, simply a notice of the
9 area and what's involved, and it would not appear under the
10 current procedure that the applicant must share all this in-
11 formation with the other parties to be pooled, and I guess
12 those parties could get that information by simply coming to
13 the Division and looking at the application, but there cur-
14 rently does not appear to be any requirement that this al-
15 ternative application must include these exhibits and that
16 they be sent to the parties to be pooled. You'll have to
17 decide which way you might want that. I would recommend
18 that you shared that information with those people, but I
19 don't think the rule as it's suggested here accomplishes
20 that.

21 MR. STAMETS: I think you're
22 correct, Mr. Kellahin, and again it seems that we're only
23 dealing with those cases where the operator's absolutely
24 certain that he's not going to get any opposition, in which
25 case this does not -- it doesn't seem like it makes that

1 much difference.

2 MR. KELLAHIN: The only other
3 comment I have is in response to Mr. Hall.

4 One of the fundamental findings
5 in the forced pooling order is a finding that the estimated
6 charges for the costs of the well are reasonable and docu-
7 mented, and unless the applicant submits that as part of his
8 application you have a lack of evidentiary proof to justify
9 that finding.

10 So I would suggest that No. (9)
11 remain in the suggested procedure.

12 MR. STAMETS: Thank you, Mr.
13 Kellahin.

14 Mr. Hall?

15 MR. HALL: I wonder if it might
16 not be possible that an order could be based upon a summary
17 of drilling and completion costs and confirmed with an AFE
18 if opposed with all of the details in the AFE confirmed.

19 MR. STAMETS: If there's no-
20 thing further -- Mr. Hocker.

21 MR. HOCKER: I just wanted to
22 commend the Commission for this action. I think it's a step
23 forward to try and save time and money and Lord only knows,
24 at this time, why, we want to do that.

25 Thank you very much.

1 MR. STAMETS: Thank you, Mr.
2 Hocker.

3 Mr. Stogner may be excused.

4 What the Commission desires to
5 do in this case is to take it under advisement but to pro-
6 vide two weeks for any interested party to submit any pro-
7 posed language changes based upon the record we've gotten in
8 this case today, and also to submit any procedural recommen-
9 dations that they might like to present on how we would do
10 this, when people would have to register their objections,
11 how they would have to register them, and so on.

12 There were a number of people
13 that I told we would not be taking up the gas cases until
14 this afternoon, but what I would like to do here is to call
15 these cases, get the appearances, swear the witnesses this
16 morning, and then we'll recess until 1:00 o'clock, allow you
17 to get a head start on the lunch crowd and be set and ready
18 to go this afternoon.

19
20 REPORTER'S NOTE: At this time the transcript of hearings in
21 Case 9009, 9010, 9011, 9012, 9013, and 9014 were 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 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