

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

ORIGINAL

APPLICATION OF THE NEW MEXICO OIL AND GAS
ASSOCIATION FOR AMENDMENT OF CERTAIN PROVISIONS OF
TITLE 19, CHAPTER 15 OF THE NEW MEXICO
ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP
SYSTEMS, BELOW GRADE TANKS AND SUMPS AND OTHER
ALTERNATIVE METHODS RELATED TO THE FORE GOING
MATTERS, STATE-WIDE.

CASE NO. 14784 AND 14785

VOLUME 21

January 10, 2013
1:00 p.m.
Wendell Chino Building
1220 South St. Francis Drive
Porter Hall, Room 102
Santa Fe, New Mexico

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JAMI BAILEY, Chairperson

GREG BLOOM, Commissioner

DR. ROBERT BALCH, Commissioner

MARK SMITH, Esq.

FLORENE DAVIDSON, COMMISSION CLERK

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1 (In session at 1:00 p.m.)

2 CHAIRPERSON BAILEY: We will go on the
3 record. This afternoon we are here to deliberate
4 the Consolidated Cases 14784 and 14785. In earlier
5 deliberations we developed a draft document to
6 indicate what we had agreed to. This draft document
7 was based on the IPANM and the NMOGA exhibits which
8 indicated what would be amended, what suggested
9 language was being presented to us.

10 MR. FELDEWERT: Madam Chair, for the
11 record, I can say that we have nothing more to
12 present on the issue that you noticed for the
13 hearing.

14 CHAIRPERSON BAILEY: Then we will look
15 forward to findings and conclusions by close of
16 business on Wednesday. Then we will close the
17 record except for findings and conclusions having to
18 do with these consolidated cases and we will begin
19 deliberations. As part of the deliberations we have
20 rearranged the seating so that the commissioners
21 were able to talk to each other rather than talking
22 outward to the audience, so Commissioner Bloom will
23 take his old place.

24 Comments from the audience are not welcome
25 or allowed, as neither are any other sounds that may

1 erupt. It is a given that we will not be able to
2 discuss topics that are affected by the hearing that
3 we have just conducted on the limited basis that we
4 will be getting findings of fact and conclusions
5 next Wednesday. After we receive those, we will be
6 able to deliberate on those portions of the rule
7 that were impacted by testimony conducted yesterday
8 and today.

9 So we have up on the screen the draft rule
10 with strikeouts and additions that have developed
11 over six days worth of deliberations. There were
12 comments that I saw when I reviewed this draft of
13 our deliberations, and if it would please the
14 commissioners I would like to bring those up now so
15 we can correct what we have in our draft that we're
16 looking at on the screen.

17 DR. BALCH: After that we would go to the
18 revisions?

19 CHAIRPERSON BAILEY: Yes, we would discuss
20 other portions. On Page 2 I just point out that low
21 chloride fluids is in the milligrams per liter and
22 that it is allowed by analysis or process knowledge.
23 I will not make any further comment on that because
24 that was discussed in the hearing over the past day
25 and a half.

1 DR. BALCH: Madam Chair, I don't think
2 it's actually relevant to the tables, especially the
3 tables that we have, because the low chloride fluids
4 they are talking about here are drilling fluids that
5 are there temporarily and they are more involved
6 with the siting that we have already discussed in
7 previous deliberations and not really related to the
8 contents of whatever ends up being Table 1 and/or 2.

9 CHAIRPERSON BAILEY: Except that it does
10 say that the fluid contains less than 15,000
11 milligrams per liter determined by analysis or
12 process knowledge, so it does not require a
13 laboratory analysis.

14 DR. BALCH: Right. The fluid is just
15 designed for the particular well site. Once you put
16 that in there, of course, you get formation water
17 that could change the composition, but I think it's
18 pretty much a completely separate issue from our
19 discussion.

20 COMMISSIONER BLOOM: Although we may want
21 to come back to it because the pit actually contains
22 that low chloride fluid, so at some point should it
23 be tested?

24 DR. BALCH: Well, fluids are drained off,
25 and then that's before trigger any sort of closure

1 of the site or burial or haul-off or like that. I
2 mean, this is really a fluid that's used for the
3 drilling part of the process.

4 COMMISSIONER BLOOM: But the pit that
5 contains the LCF could be closer to groundwater from
6 the get-go or --

7 DR. BALCH: Well, that's where it comes
8 into our discussion of siting criteria rather than
9 Table 1 and 2. I think we can discuss low chloride
10 fluids in that context if we need to. I don't think
11 we have to exclude discussion of low chloride fluids
12 just because it was brought up in the hearing since
13 it wasn't applicable to the tables. At least that
14 was my interpretation.

15 CHAIRPERSON BAILEY: Okay. So when we
16 come to siting -- and I do have some suggestions in
17 that area, too. K, in the definition below,
18 Multi-well fluid Management Pit. The next to the
19 last sentence says, "Any extensions for permits to
20 drill identified in the pit permit shall go to
21 hearing."

22 I also thought about adding the words "any
23 additional wells or extensions of permits to drill
24 identified in the pit permit shall go to hearing."

25 DR. BALCH: I think that's the intent.

1 CHAIRPERSON BAILEY: That's the intent.

2 COMMISSIONER BLOOM: Yes.

3 CHAIRPERSON BAILEY: With the addition of
4 the language after the word "any" insert "addition
5 of wells or." And then the very last words of that
6 section where it says "other impoundment is not a
7 temporary pit," we also wanted to include my
8 suggestion where it would read, "Any containment
9 structure that holds only freshwater, such as a
10 pond, pit or other impoundment, is not a multi-well
11 fluid management or temporary pit."

12 What do the commissioners think about the
13 addition of the clarification, that it's not a
14 multi-well fluid management pit if it's a
15 containment structure that holds only freshwater?

16 COMMISSIONER BLOOM: I think it makes
17 sense.

18 DR. BALCH: I think since we're in this
19 particular definition and dealing with multi-well
20 fluid management pits we don't need to also say
21 temporary pits because those are defined elsewhere.

22 COMMISSIONER BLOOM: Yes, I think that
23 should just read "not a multi-well fluid management
24 pit."

25 DR. BALCH: Temporary pits have different

1 rules than the multi-well fluid management.

2 COMMISSIONER BLOOM: That language came --
3 we brought that over from temporary pits.

4 DR. BALCH: It's an artifact, I believe.

5 CHAIRPERSON BAILEY: Okay. So you are
6 saying to replace the word "temporary" With
7 "multi-well fluid management."

8 DR. BALCH: Yes is.

9 COMMISSIONER BLOOM: I have one more
10 question about that definition. I believe somewhere
11 in temporary pits we link them to an APD.

12 CHAIRPERSON BAILEY: In the Definition Q?

13 COMMISSIONER BLOOM: I don't think it was
14 there though.

15 CHAIRPERSON BAILEY: Well, it does say in
16 Q "one or more wells must be located at one of the
17 associated permitted well drilling locations."

18 COMMISSIONER BLOOM: I had a note there
19 myself. I might come back to it. I'm not sure what
20 I was thinking.

21 DR. BALCH: By definition, a multi-well
22 fluid management pit would be dealing with multiple
23 wells. I'm not sure if we have to specifically
24 state that.

25 COMMISSIONER BLOOM: I think we're okay.

1 Up above in J, we can make that a little better
2 definition. We're using the word "measurable" to
3 define the word "measurable." We might say
4 "Measurable means a layer of oil greater than a
5 sheen that is indicated by a color cutting."

6 DR. BALCH: Indicating or discernable?
7 You're right, you don't want to use the same word in
8 the definition.

9 CHAIRPERSON BAILEY: How about the word
10 "discernable"?

11 COMMISSIONER BLOOM: Sounds good.

12 CHAIRPERSON BAILEY: Are we okay today
13 with the remainder of the definitions in 19.15.17.7?

14 COMMISSIONER BLOOM: Yes.

15 CHAIRPERSON BAILEY: Then if we go to the
16 next section, which is 17.8, Permit or Registration
17 Required. One sentence bothers me. It says,
18 "Facilities permitted pursuant to 19.15.36 NMAC or
19 WQCC rules are exempt from 19.15.17.8." The
20 problem with that is that facilities that require
21 discharge plans under WQCC rules may also contain
22 structures that are not necessarily covered under
23 WQCC rules but are pits or below-grade tanks that
24 are separately covered under oil and gas rules, so
25 I'm thinking that we should delete "or WQCC rules"

1 to indicate that Rule 17 will apply to those
2 facilities that do require discharge plans under
3 Water Quality Control Commission regulations.

4 DR. BALCH: That rule supersedes 19.15.17,
5 doesn't it?

6 CHAIRPERSON BAILEY: No, it does not. It
7 is a separate act, Water Quality Act, that has
8 developed into the Water Quality Control commission
9 regulations, just as the OCD rules have developed
10 out of the Oil and Gas Act. So both acts, both sets
11 of rules apply to facilities that are required to
12 have discharge plans under WQCC regs.

13 DR. BALCH: So you are recommending
14 leaving the "or WQCC rules" --

15 CHAIRPERSON BAILEY: Yes, to show that
16 WQCC rules would apply and Rule 17 rules would apply
17 to those facilities.

18 COMMISSIONER BLOOM: That would be fine.

19 DR. BALCH: So what it's saying is that
20 facilities permitted pursuant to 19.15.36 -- you can
21 refresh your memory what that is.

22 CHAIRPERSON BAILEY: The surface waste
23 management facilities.

24 DR. BALCH: Okay. Are exempt from the pit
25 rule basically. We don't need to say anything about

1 WQCC because it applies anyway. Actually, this is
2 violating the fact that it applies anyway.

3 CHAIRPERSON BAILEY: Right. That's why I
4 would like to see those words deleted.

5 DR. BALCH: I just wanted to make sure I
6 understand.

7 CHAIRPERSON BAILEY: Right. It's
8 confusing. So please delete, "or WQCC rules." And
9 those are all the suggestions I have for 17.8. Do
10 either of you have ideas on that section?

11 COMMISSIONER BLOOM: I don't have anything
12 there, no.

13 CHAIRPERSON BAILEY: The next area where I
14 have some concerns was in Section 10, 19.15.17.10
15 Siting Requirements, and I know that we worked on
16 this language for quite a long time, but it still
17 didn't make any sense to me. My suggestion is that
18 we would have 1A and then the little one. What was
19 that wonderful term for the little brackets, the
20 curlicue brackets?

21 MR. SMITH: One in the hole? Oh,
22 Romanette.

23 CHAIRPERSON BAILEY: Not a term that I use
24 in my normal vocabulary, so it would say, "Where
25 groundwater is less than 25 feet below the bottom of

1 the pit, if the pit contains only low chloride
2 fluid." Because the beginning of that sentence is,
3 "An operator shall not locate a temporary pit,
4 Romanette 1, where groundwater is less than 25 feet
5 below the bottom of the pit if the pit contains only
6 low chloride fluid." Period.

7 Then Romanette 2, "Where groundwater is
8 less than 50 feet below the bottom of the pit, if
9 the pit contains higher chloride fluid, a variance
10 may be granted for use of the pit."

11 I'm trying to work around some sort of
12 distinction between what's allowed for a low
13 chloride pit and what's allowed for a higher
14 chloride pit, and the way it's written now, it's
15 very confusing.

16 DR. BALCH: I think at one point we
17 discussed, at the risk of becoming more wordy,
18 putting this in two sections, and I think that's
19 where you are going.

20 CHAIRPERSON BAILEY: Yes, it is.

21 DR. BALCH: So we'll have one set of
22 definitions for low chloride fluid and one for the
23 others.

24 CHAIRPERSON BAILEY: I think that's the
25 most coherent, clearest way to have this rule.

1 DR. BALCH: Not the most concise, but I
2 think you're right.

3 CHAIRPERSON BAILEY: I want to be very
4 clear. These restrictions go with low chloride
5 pits; these restrictions go with higher chloride
6 temporary pits.

7 DR. BALCH: So we would copy 1 -- turn 1
8 into a Romanette and have a second Romanette with
9 the same definitions A through I, and one would
10 apply to low chloride fluids and one would apply to
11 the rest.

12 COMMISSIONER BLOOM: "An operator shall
13 not locate a temporary pit that contains only low
14 chloride fluid" and then list all those, and then 2
15 would be, "An operator shall not locate a temporary
16 pit."

17 CHAIRPERSON BAILEY: With higher chloride.

18 COMMISSIONER BLOOM: "With higher chloride
19 levels," and then split them up.

20 CHAIRPERSON BAILEY: That's what we need
21 to do. I think that would greatly clarify.

22 COMMISSIONER BLOOM: It's hard to
23 understand this way.

24 CHAIRPERSON BAILEY: Yeah.

25 DR. BALCH: Actually, since we do go

1 into --

2 COMMISSIONER BLOOM: Before we look down
3 any further, I would like to point out that 2 below
4 should probably be a J.

5 DR. BALCH: I was going to point out that
6 2 was odd.

7 COMMISSIONER BLOOM: And 3 --

8 DR. BALCH: And 4 should become a J also.
9 Actually, put the definition for the two categories
10 of fluids. Also in the next section down where
11 we're talking about multi-well fluid management
12 pits, same thing for what is now No. 4.

13 COMMISSIONER BLOOM: Scrolling down you
14 will see that 4 should be a J and then.

15 DR. BALCH: And 5 will become the new 3.
16 I think that actually should be a separate 3 because
17 it's now talking about materials.

18 CHAIRPERSON BAILEY: Yes. And 6 becomes
19 4.

20 DR. BALCH: I think that makes it easier
21 to sort.

22 CHAIRPERSON BAILEY: Yes, it does. So 1A
23 --

24 DR. BALCH: Do we actually want -- we want
25 a Romanette 1 and 2, right?

1 CHAIRPERSON BAILEY: Uh-huh.

2 COMMISSIONER BLOOM: You can make it

3 Romanette A. Do you have those?

4 DR. BALCH: I think we still want to have

5 A.

6 CHAIRPERSON BAILEY: A, Romanette 1.

7 DR. BALCH: 1 would become Romanette 1.

8 MR. SMITH: No, I think that would be a

9 normal 1.

10 DR. BALCH: We are going to split the
11 definitions in 1 into two completely different sets
12 of definition, one regarding low chloride fluids and
13 one regarding other fluids.

14 COMMISSIONER BLOOM: That could be 1
15 and then 2 would be --

16 DR. BALCH: We can make a determination
17 later. Either 1 or Romanette 1 would be a temporary
18 pit and then 2 or 1 would instead address temporary
19 pits which contain only low chloride fluids.

20 CHAIRPERSON BAILEY: So at the beginning
21 of the line, Theresa, instead of having the little I
22 that you put there, that's a 1. Then we have A,
23 Romanette 1.

24 MR. SMITH: Typically I think the
25 Romanettes are used if you are going to divide up

1 a sentence. But if you are going to use the typical
2 outline form here, I think under your paren 1, the
3 next section should be paint filter, lower case A.

4 COMMISSIONER BLOOM: I agree. I think
5 that should be an A there. 1 should be "An operator
6 shall not locate a temporary pit with low chloride
7 fluids," and 2 would be "a temporary pit with -- or
8 all other pits or all other levels of chlorides."

9 CHAIRPERSON BAILEY: So at the end of "An
10 operator shall not locate a temporary pit," add the
11 words "containing low chloride fluid where
12 groundwater is less than 25 feet below the bottom of
13 the pit."

14 DR. BALCH: Now what we had you turn into
15 Romanette 1 should go back to being an A.

16 MR. SMITH: Right.

17 DR. BALCH: And this whole section you
18 should copy and put below where we address the
19 non-low chloride situation.

20 CHAIRPERSON BAILEY: Yeah, it's a matter
21 of cut and insert it later.

22 DR. BALCH: Everything from 1 down to the
23 end of J.

24 CHAIRPERSON BAILEY: The paragraph that
25 begins "that contains," that's the part that we cut.

1 DR. BALCH: Maybe I have a different
2 perception of what we are trying to do. I thought
3 we were going to have a 1 where we made out all of
4 the definitions A through J for the case of low
5 chloride fluids and then have 2 where we laid out an
6 A through J for all of the other non-low chloride
7 fluid cases.

8 CHAIRPERSON BAILEY: But the phrase that
9 says --

10 DR. BALCH: Well, we would have to edit
11 that. Because right now we have the low chlorides
12 as exceptions in these statements, so when we get to
13 2, we take that out. Most of the language would be
14 the same.

15 CHAIRPERSON BAILEY: Except deleting the
16 words "that contains low chloride fluid."

17 DR. BALCH: Right.

18 CHAIRPERSON BAILEY: "Otherwise where
19 groundwater is less than" --

20 DR. BALCH: So I would copy all of 1 and
21 make it a 2, finish our definition of the new 1 and
22 then edit out the low chlorides fluids in 2.

23 CHAIRPERSON BAILEY: Whatever is easiest.

24 COMMISSIONER BLOOM: Copy 1 all the way
25 down to the bottom.

1 DR. BALCH: All the way down to J. I
2 would put that down below the Section 1.

3 COMMISSIONER BLOOM: That would be 2.

4 DR. BALCH: I suggest we just go through 1
5 and make sure we are okay with the language there
6 and then go straight to 2 and fix the low chlorides.

7 COMMISSIONER BLOOM: Sounds good.

8 CHAIRPERSON BAILEY: Strike the language
9 "that contains only low chloride fluid otherwise."

10 COMMISSIONER BLOOM: Get rid of the whole
11 paragraph? Delete "Where groundwater is less than
12 50 feet" all the way down to the period, correct?

13 DR. BALCH: I don't know about all of the
14 rest of it but we definitely don't need the rest of
15 the part that's in red. That has to do with the
16 other case.

17 COMMISSIONER BLOOM: Right. I guess we
18 have to ask ourselves --

19 DR. BALCH: The intent was, I think, when
20 we first wrote this section or modified this section
21 was to have a different set of criteria for low
22 chloride fluids, whatever that definition ended up
23 being, versus other cases. So for A, it seemed as
24 if low chloride fluids, we were comfortable with the
25 shallower depth than a more brine or

1 hydrocarbon-based drilling mud. The rest of that
2 definition in A, I think, came from the original
3 rule, and nobody asked us to change anything in
4 regards to that.

5 COMMISSIONER BLOOM: So previously, the
6 appropriate division district office approval,
7 somebody could have had a pit somewhere between one
8 and 50 feet to groundwater where they were viewing a
9 coal and methane well cavitation.

10 DR. BALCH: I think so.

11 COMMISSIONER BLOOM: So that language
12 could still remain in there?

13 DR. BALCH: I think we just take out the
14 red tags here since we basically separated out the
15 low chlorides under the definition of 1 and non-low
16 chlorides into the definition of 2, so we don't need
17 to have the specific adjusters within the
18 definitions A through J.

19 CHAIRPERSON BAILEY: So we can delete
20 everything in red that's highlighted there,
21 including the words "unless the operator is going
22 to," and at that point use, "A variance may be
23 granted for use of a pit for a coal bed methane
24 well" based upon --

25 COMMISSIONER BLOOM: The operator?

1 CHAIRPERSON BAILEY: Yes, replace it with,
2 "A variance may be granted for use of a pit."
3 Strike the words "in using the pit." "Used solely
4 to cavitate." What do you think of that?

5 COMMISSIONER BLOOM: Do we need to include
6 in the appropriate division district office?

7 CHAIRPERSON BAILEY: Because the variance
8 is granted by -- let's check that out. It's been a
9 while.

10 DR. BALCH: We have variances at the
11 district level.

12 CHAIRPERSON BAILEY: Yes, I believe we do.
13 Yes. In our definition of variance it's
14 authorization from the appropriate district office.
15 "The variance may be granted for a pit used solely
16 to cavitate a coal bed methane well where the
17 operator's demonstration -- where the operator
18 demonstrates that the proposed operation will
19 protect the groundwater."

20 DR. BALCH: You can probably delete from
21 there all the way down to.

22 CHAIRPERSON BAILEY: During.

23 DR. BALCH: Groundwater.

24 CHAIRPERSON BAILEY: Okay. Not during.

25 Delete groundwater. Yes.

1 MR. SMITH: Pull out the article before
2 the word groundwater the word "the."

3 DR. BALCH: Then pull that sentence back
4 up to the paragraph. That seems to cover it.

5 CHAIRPERSON BAILEY: Going down to B,
6 delete the words in red there at the beginning of B.

7 DR. BALCH: That would be in the second
8 definition. Is that the correct use of the
9 Romanette?

10 MR. SMITH: Yeah, that's where you would
11 use the Romanette, although as you run into these,
12 Theresa, I think you want to change the brackets to
13 parens and just whenever you run into those make
14 that change.

15 DR. BALCH: C is fine.

16 CHAIRPERSON BAILEY: For D we can
17 eliminate the first red words.

18 DR. BALCH: And at the bottom for the
19 second definition.

20 CHAIRPERSON BAILEY: Then for F you can
21 eliminate the words in red after the word "wetland".

22 DR. BALCH: All the way down to the
23 semicolon there, right?

24 CHAIRPERSON BAILEY: So G and H are okay?

25 COMMISSIONER BLOOM: G --

1 DR. BALCH: There are changes there from
2 the previous --

3 COMMISSIONER BLOOM: You can say "in the
4 area overlying a subsurface mine unless a variance."

5 DR. BALCH: Oh, right. You want to change
6 that language.

7 CHAIRPERSON BAILEY: Change "unless a
8 variance specifically proven is granted upon."
9 Scratch "the appropriate division district office."

10 DR. BALCH: You can take out "specifically
11 approves."

12 CHAIRPERSON BAILEY: Approves. Okay. So
13 let's go on down to look at I and J.

14 DR. BALCH: Does H have to have the
15 same -- how is that different from A and G with the
16 variance? You have to show it, right?

17 CHAIRPERSON BAILEY: Right. Within an
18 unstable area, unless a variance.

19 COMMISSIONER BLOOM: Delete "the
20 operator." That the operator has incorporated?

21 DR. BALCH: I think you want to say
22 "unless a variance demonstrating that the operator
23 has incorporated."

24 MR. SMITH: I think that you all are
25 having some problems in terms of what the variance

1 does. First of all, let me ask you, does the word
2 specifically in G, does that really give you
3 anything?

4 DR. BALCH: I don't think so.

5 MR. SMITH: I would strike it then. And a
6 variance doesn't really approve or demonstrate.

7 DR. BALCH: Unless a variance is granted?

8 MR. SMITH: Yeah, "unless a variance is
9 granted that approves the proposed location." Then
10 under H, your variance isn't demonstrating anything,
11 so unless a variance is approved --

12 DR. BALCH: I would use the same language
13 under G to be consistent. "Unless a variance is
14 granted."

15 MR. SMITH: Right. You should be
16 consistent. Then you can put, "Upon a demonstration
17 by the operator that the operator has incorporated."

18 COMMISSIONER BLOOM: Are the definitions
19 for variance and exception at the end of the rule?

20 CHAIRPERSON BAILEY: Yes.

21 COMMISSIONER BLOOM: Would it make sense
22 to put them in Definitions since we are using them
23 throughout the document? Otherwise, someone is
24 reading through this and they look through the
25 definitions and it's not in there.

1 DR. BALCH: I'm not sure we had the
2 discussion before but it certainly makes sense to
3 me.

4 CHAIRPERSON BAILEY: Especially because in
5 17.15, Exceptions and Variances we have A that says
6 Definitions, so why not remove that from Section 15.

7 COMMISSIONER BLOOM: Go down to Page 19.

8 DR. BALCH: 1 and 2 should just be moved
9 to the definition section at the front.

10 COMMISSIONER BLOOM: Cut 1 and 2 and take
11 that up to Definitions at the top. Put it after
12 Emergency Pits. That will become G.

13 DR. BALCH: I notice that they are
14 alphabetized. Variance has to go further down.

15 COMMISSIONER BLOOM: Go back to Page 6.
16 Now we create this category of pits that --

17 DR. BALCH: We still have J, I think.

18 COMMISSIONER BLOOM: Would you say "The
19 operator must obtain an exception"?

20 DR. BALCH: For this particular definition
21 I would still leave in the low chloride fluids
22 because that's what we are talking about but you can
23 take out the "for non-low chloride fluid."

24 CHAIRPERSON BAILEY: We are going to use
25 the same paragraph at the end of the next section.

1 DR. BALCH: Yes, but I would leave the low
2 chloride fluids.

3 COMMISSIONER BLOOM: Delete the word
4 "either" before that.

5 CHAIRPERSON BAILEY: Exception.

6 DR. BALCH: Is it appropriate to reference
7 a section from within another section?

8 MR. SMITH: You can state this section, if
9 that's what you're talking about.

10 CHAIRPERSON BAILEY: That last sentence
11 makes no sense.

12 DR. BALCH: Well, I would take out
13 everything after 19.15.

14 COMMISSIONER BLOOM: The last sentence.

15 DR. BALCH: That applies to the other
16 case, I think, and from there, erase all the
17 reference and put "in this section."

18 CHAIRPERSON BAILEY: These records won't
19 let us do that.

20 DR. BALCH: That's beyond our control.

21 COMMISSIONER BLOOM: We may want -- we
22 didn't have C and E previously.

23 DR. BALCH: Because they didn't have a
24 separate category for low chloride fluids. Yet
25 another reason to separate the definitions, I think.

1 CHAIRPERSON BAILEY: So go ahead and
2 delete --

3 MR. SMITH: Do you need, "Where the
4 operator is using low chloride fluids" at the
5 beginning of that?

6 DR. BALCH: Because we have it in the
7 sentence.

8 COMMISSIONER BLOOM: It's going to say --
9 start off with "An operator shall not locate a
10 temporary pit using low chloride fluids," and it
11 will sort of continue from there.

12 CHAIRPERSON BAILEY: You are saying delete
13 the words, "Where an operator is using low chloride
14 fluids"?

15 COMMISSIONER BLOOM: Yeah. Now it reads,
16 "An operator shall not locate a temporary pit using
17 low chloride fluids. The operator must obtain an
18 exception."

19 DR. BALCH: I think it's okay just the way
20 it is.

21 COMMISSIONER BLOOM: You have to read J
22 after reading the introduction up above?

23 MR. SMITH: The J doesn't go with the
24 lead-in.

25 CHAIRPERSON BAILEY: So J has to become B,

1 1B.

2 COMMISSIONER BLOOM: What if it was "An
3 operator shall not locate a temporary pit within --
4 inside the setbacks stated in this section unless an
5 exception has been granted."

6 DR. BALCH: I think I agree with
7 Commissioner Bailey that this should really be a B,
8 because all of A through I are setbacks and J is an
9 operator on what you do with those setbacks the way
10 it is now.

11 COMMISSIONER BLOOM: I can see that.
12 That's fine.

13 DR. BALCH: 1A is the definition and 1B is
14 what you do if you're not trying to follow that.
15 Now, the language here might be okay now.

16 MR. SMITH: Now you might want to use the
17 actual site instead of "this section." Because it's
18 not perfectly clear what you're talking about.

19 COMMISSIONER BLOOM: So we would say in
20 19.15.17A1.

21 MR. SMITH: What's A2?

22 DR. BALCH: That's where we're going to
23 talk about our fluids and we have a whole new set of
24 definitions.

25 COMMISSIONER BLOOM: I think the B should

1 be a 2. Up above it's a 1.

2 MR. SMITH: Scroll up so they can see
3 where they are. There you go.

4 DR. BALCH: All right.

5 MR. SMITH: I think that's right.

6 CHAIRPERSON BAILEY: So it becomes 2.

7 DR. BALCH: What we just had you label as
8 B is now 2.

9 MR. SMITH: Now your 1A makes sense.

10 COMMISSIONER BLOOM: That becomes a 3.

11 CHAIRPERSON BAILEY: That would become 3.

12 DR. BALCH: Can we say "other temporary
13 pits" or do we have to say "temporary pits that do
14 not contain low chloride fluids"?

15 MR. SMITH: I would say the "do not
16 contain" if you want to be perfectly clear.

17 COMMISSIONER BLOOM: "An operator shall
18 not locate a temporary pit that does not contain low
19 chloride fluids"?

20 MR. SMITH: Actually, you might want to
21 put "that contains only low chloride fluids" up on
22 No. 1, containing only low chloride fluids.

23 DR. BALCH: This could be interpreted --

24 CHAIRPERSON BAILEY: If we have a little
25 mix of high chloride in there, too.

1 DR. BALCH: What if you have low chloride
2 fluids and then you have some drilling mud or
3 whatever?. You have to be careful about use of the
4 word "only" or would that be interpreted correctly?

5 MR. SMITH: Well, what are you thinking
6 about?

7 DR. BALCH: The pit is not only going to
8 contain the low chloride fluid, it's also going to
9 contain -- the fluid is more complex than that.

10 MR. SMITH: It's mixed together.

11 DR. BALCH: Right. The fluid is going to
12 be water. You are going to add in some mud, but
13 once the drilling starts you can hit different
14 formation water and that could change just about
15 everything.

16 MR. SMITH: Right. You don't want only
17 then or you are going to wind up being too
18 restrictive. You are defining low chloride fluid
19 someplace?

20 CHAIRPERSON BAILEY: It's in the
21 definitions but we don't have a definition for
22 higher chloride or anything other than low chloride.

23 MR. SMITH: In your definition of low
24 chloride fluid then you want to make sure that you
25 account for what Commissioner Balch is talking about

1 right now.

2 DR. BALCH: I think the way it's written
3 is okay, actually, because it's a water-based fluid.
4 It's not saying you can only have water and
5 chloride. It's a water-based fluid. It's really
6 the chloride concentration that causes the
7 definition.

8 COMMISSIONER BLOOM: What happens if
9 during drilling the chlorides increase above 15,000?

10 DR. BALCH: That's impossible to predict.

11 COMMISSIONER BLOOM: Is it still a low
12 chloride fluid pit?

13 DR. BALCH: I think that that's too fine
14 of a hair to split.

15 COMMISSIONER BLOOM: So somebody goes out
16 and samples on Day 20 --

17 DR. BALCH: Well, what will happen --

18 COMMISSIONER BLOOM: -- and the chlorides
19 are 80,000.

20 DR. BALCH: -- when they go to closure --
21 I don't know how much we can talk about closure
22 because of Table 1 and 2, the discussion we
23 finished, but when they go to closure that's a whole
24 different set of requirements, so really this is an
25 operational constraint. It's not really related to

1 closure. This is to minimize the risk for surface
2 release of the water. That's what the setbacks are
3 designed to do. You are protecting a wetland,
4 protecting a lake or a river or a school or
5 whatever.

6 MR. SMITH: The concern that I thought you
7 were voicing and the one that I understood, which
8 may be misplaced, is you could have what you all are
9 thinking of as a pit that has low chloride fluids in
10 it, but if you tested the wrong part of that pit
11 after something high chloride had been put in it,
12 you might come up with a reading higher than 15,000.
13 So in some way or another it seems to me that you
14 need to get in your definition of low chloride
15 fluids that the 15,000, you are talking about the
16 reading you would take if you mixed all of the
17 fluids in the pit up and it came out 15,000
18 regardless of how you measured it.

19 DR. BALCH: I think the way it's written
20 now is you would design your drilling fluid based on
21 what your perception of the geology and the need
22 would be. It would be considered low chloride if
23 the initial mixture, either through analysis or
24 process knowledge, you mixed together the fluid and
25 you know what went into it. If the initial fluid is

1 below 15,000. I don't think you can --

2 MR. SMITH: That's fine, but then you need
3 to put that in your definition so it's clear.
4 You're basing your low chloride fluid on a test of
5 the what, the drilling mud or whatever it is you're
6 worried about?

7 COMMISSIONER BLOOM: Maybe at the end of
8 the definition you can put "determined by analysis
9 or process knowledge at the opening of the pit" or
10 something like that or.

11 DR. BALCH: Onset of drilling.

12 CHAIRPERSON BAILEY: Do we want to limit
13 it to the beginning or have it for the entire time
14 the temporary pit --

15 DR. BALCH: Here is the problem though.
16 The problem is when you are filling out your
17 application and you're filling out your C-144, you
18 are putting this pit closer to a lake or something
19 than you could otherwise based on the design of the
20 fluid being low chloride. If you then go in there
21 and drill and you hit a pocket of very saline water
22 and you go up to 20,000, you can't resite the pit at
23 that point.

24 CHAIRPERSON BAILEY: No, you just add more
25 water.

1 DR. BALCH: Well, you could add more
2 water, I suppose. I think the idea is broadly that
3 the initial water that's in the pit can pose a lower
4 risk and you maybe can't constrain what happens to
5 that water during the other week or two of drilling.
6 But overall, that would still be a lower chloride
7 solution no matter what than if you started with
8 something that was greater than 15,000.

9 CHAIRPERSON BAILEY: I think it would be a
10 good idea to go back to the transcript where that
11 definition was discussed to see if there was a
12 timing connected with that or just when the proposal
13 was made.

14 DR. BALCH: I think the fact that they
15 have the use of the word "process knowledge" means
16 that you are planning ahead, that you're going to
17 make a fluid that has less than 15,000 milligrams
18 per liter.

19 MR. SMITH: But you don't want to just
20 base your approval on what you believe the intent
21 was there. You need to base it on the evidence that
22 you had, and I think going back to the transcript to
23 see what was discussed and how it was discussed is a
24 good idea.

25 DR. BALCH: We can dig out our

1 transcripts.

2 CHAIRPERSON BAILEY: Highlight that in
3 yellow as an area we need to come back to after we
4 have done some homework on that.

5 DR. BALCH: It's not just based on what I
6 think the intent was. It's based on my
7 understanding of the drilling process.

8 MR. SMITH: No, I understand. But when
9 you look at the word "process knowledge" and you
10 say, "Well, I think what they are talking about here
11 indicates that they are planning ahead," even
12 combined with your knowledge, the notion is that you
13 are interpreting this section as contemplating that
14 the low chloride fluid determination will be made at
15 the beginning of the process, right? And what I'm
16 saying is in order to determine the evidence that
17 you have with respect to whether that is something
18 you want to approve, that's why you need to go back.

19 DR. BALCH: I understand that.

20 MR. SMITH: Okay.

21 DR. BALCH: But I am saying that this is
22 by definition, you are doing this before the fact.
23 This is when you are filling out the application and
24 applying for where you can put the pit.

25 CHAIRPERSON BAILEY: Then any way we can

1 make this very clear so it does not become an
2 enforcement issue, because some very dedicated
3 inspector at some point may arrive on-site at the
4 last day of drilling and say, "Whoops, you've got
5 80,000." So let's check the transcript and be very
6 clear in what we need so we don't create an
7 enforcement issue.

8 MR. SMITH: Right.

9 DR. BALCH: So I think highlighting this
10 in yellow, let's go back to Page 6 and continue
11 working through those definitions.

12 CHAIRPERSON BAILEY: We were just
13 beginning that portion that had to do with the
14 higher chloride.

15 DR. BALCH: We were talking about the
16 definition in 1.

17 CHAIRPERSON BAILEY: So 3 becomes B?

18 COMMISSIONER BLOOM: No, it's still 3.

19 DR. BALCH: Do we need to go back and look
20 at 1 real quick though? We may need to highlight
21 that in yellow as well. I think it doesn't matter
22 once we figure out that definition.

23 CHAIRPERSON BAILEY: This should now say,
24 "Containing higher chloride fluid" so we know what
25 we're talking about.

1 COMMISSIONER BLOOM: Containing fluids
2 greater than 15,000 milligrams per liter?

3 DR. BALCH: What happens if you are using
4 a hydrocarbon drilling fluid?

5 COMMISSIONER BLOOM: Containing chloride
6 fluids greater than 15,000 milligrams per liter?

7 MR. SMITH: You can just put "containing
8 fluids that are not low chloride fluids."

9 DR. BALCH: That would be better. Because
10 we have a working definition of low chloride fluids.

11 CHAIRPERSON BAILEY: The first part of 3A
12 can be deleted?

13 DR. BALCH: No, we already deleted the 25
14 feet part. This is the setback for higher
15 chlorides. You may want to change the language
16 ahead of the cavitation to match the -- can you go
17 down to J real quick? So in 1A we changed the
18 language about the exceptional variance to -- I
19 think you can just take all of that second sentence
20 and move it --

21 COMMISSIONER BLOOM: Copy it?

22 DR. BALCH: Yeah, copy it. Put it into 3A
23 after the word "pit," after the first sentence.
24 Then move the rest of it. This gets a little more
25 complicated.

1 COMMISSIONER BLOOM: Could you delete
2 everything from "otherwise" on up?

3 CHAIRPERSON BAILEY: Yes.

4 DR. BALCH: We have to maintain the
5 Romanettes and change the numbers.

6 CHAIRPERSON BAILEY: Where it says "low
7 chlorides." So we need to delete the first part in
8 red.

9 DR. BALCH: Just the very first part
10 there. Change the 100 to a 300.

11 CHAIRPERSON BAILEY: Delete "otherwise"
12 there.

13 COMMISSIONER BLOOM: The otherwise had --

14 DR. BALCH: It had the same 200 feet for
15 lake bed, sinkhole or playa lake. Nobody discussed
16 that. It's a shorter distance because it's not
17 transporting the fluids as far. C is unchanged. I
18 think we can do the same to D that we did to B.

19 CHAIRPERSON BAILEY: Right, because the
20 200 becomes 500 and 300 becomes 1,000.

21 COMMISSIONER BLOOM: Yes.

22 DR. BALCH: Then delete the first part of
23 the sentence and everything after that sentence. We
24 spent a half day on one set of definitions.

25 CHAIRPERSON BAILEY: We spent too much

1 time and just made it confusing.

2 COMMISSIONER BLOOM: I have a question.
3 Why do we give less protection to private domestic
4 freshwater than we would freshwater well that
5 doesn't serve households?

6 DR. BALCH: Let's see. Less protection
7 than what?

8 COMMISSIONER BLOOM: If there's a private
9 domestic freshwater well the setback is 500 feet.
10 The freshwater well that no one is using gets 1,000
11 feet?

12 CHAIRPERSON BAILEY: That really doesn't
13 make sense.

14 DR. BALCH: Part of it may have been the
15 context. These are fluids that are going to be in
16 residence there temporarily, but I think we may
17 have -- I know we talked about this before and there
18 may have just been no discussion of it that we can
19 base anything on. I have a feeling I want to delete
20 the 1,000 as well, but I think Mr. Smith told me I
21 couldn't. I can look it up in the transcript.

22 MR. SMITH: If I said it, it must have
23 been right.

24 DR. BALCH: I know we talked about this.

25 CHAIRPERSON BAILEY: The original rule has

1 siting requirements for temporary pit, "Operators
2 will not locate a temporary pit or below-grade tank
3 within 500 feet of a private domestic freshwater
4 well or stream used by less than five households for
5 domestic stock or within 1,000 feet of any other
6 freshwater well or spring in existence." So the
7 original rule is the one that has that.

8 DR. BALCH: There was no discussion of it
9 so we couldn't change it. I'm pretty sure at least
10 I wanted to.

11 CHAIRPERSON BAILEY: So we leave it in.

12 COMMISSIONER BLOOM: There's a well that's
13 used by eight families then or eight households, the
14 setback is 1,000 feet?

15 DR. BALCH: No, 500.

16 MR. SMITH: No, not if it's eight. If
17 it's eight, it could be 1,000, because it could be
18 you are thinking the cone of depression or whatever
19 it's called would go out further maybe.

20 CHAIRPERSON BAILEY: Good for you, Mark.

21 COMMISSIONER BLOOM: He paid attention.

22 DR. BALCH: We have a budding hydrologist
23 on our hands.

24 CHAIRPERSON BAILEY: So we're down to F.

25 DR. BALCH: Here we can just say within

1 300 feet of a wetland. Delete all that. I think
2 that goes back to the original rule also.

3 CHAIRPERSON BAILEY: The original rule has
4 500 feet.

5 DR. BALCH: So when we talked about this,
6 we did change it to 300, and I suppose we could
7 highlight it if you want to discuss it again, but
8 there was certainly a lot of testimony by Dr.
9 Buchanan and others that the 300 feet was
10 protective. I think it was Dr. Thomas also that
11 made this argument. It was his vector argument, the
12 transient fluid that could cause a risk.

13 CHAIRPERSON BAILEY: Why don't we leave it
14 at 300 and we can come back upon rereading to see if
15 we don't have any reference to this?

16 DR. BALCH: We could find in the
17 transcript where we had this initial discussion.

18 CHAIRPERSON BAILEY: If we go up above to
19 1G, we could use the same measure.

20 COMMISSIONER BLOOM: Copy G and H.

21 DR. BALCH: J becomes 4. What was the
22 language we used? Using fluids that are not low
23 chloride fluids --

24 CHAIRPERSON BAILEY: Are you talking 2,
25 "The operator must obtain an exception"?

1 DR. BALCH: Well, I want to have
2 consistency for the way we're talking about low
3 chloride versus not low chloride, so in 3 we said if
4 it doesn't fit low chlorides it means it doesn't
5 have low chloride fluids. From 3 into 4.

6 COMMISSIONER BLOOM: From 3 to 4, you
7 mean?

8 CHAIRPERSON BAILEY: Two.

9 DR. BALCH: That's right. Take 2 and then
10 we just have to change the language around low
11 chloride fluids. The definition is similar. I
12 think we can delete the rest of it.

13 CHAIRPERSON BAILEY: Wait. The rest of
14 the sentence says, "An operator must obtain a
15 variance."

16 COMMISSIONER BLOOM: We set up to have the
17 two levels of setbacks. You get inside the setback
18 for a low chloride because you have to get an
19 exception. Anywhere between the distances for low
20 chloride fluids and other fluids you use a variance.

21 DR. BALCH: I think you can still delete
22 everything and change exception to variance. This
23 is where I think you have to say "temporary pit that
24 contains fluids that are non-low chloride" or you
25 can just say "inside the setbacks indicated in

1 19.15.17.10A3" and take out the 4, low chlorides and
2 change the 1 to a 3 in there, A3.

3 COMMISSIONER BLOOM: Now change what we
4 had before in that if somebody wanted to move 25
5 feet up to a marsh or something like that they could
6 just do it with a variance.

7 DR. BALCH: They would have to get the
8 variance.

9 COMMISSIONER BLOOM: It would require an
10 exception above.

11 MR. SMITH: Is it supposed to be an
12 exception above? Why don't you go up there and look
13 at that.

14 COMMISSIONER BLOOM: Originally we had if
15 we are going to move inside less protected distances
16 and low chloride fluids are granted you need an
17 exception, and then between that outer boundary and
18 the other a variance.

19 MR. SMITH: So you want No. 2 to be an
20 exception, not a variance?

21 DR. BALCH: That's correct.

22 MR. SMITH: Okay.

23 DR. BALCH: This is a variance?

24 COMMISSIONER BLOOM: What if we look the
25 original language from J and just make that 3?

1 DR. BALCH: Can we go back to 4? I might
2 have an idea. "The operator must obtain a variance
3 to locate a temporary pit and site setbacks
4 indicated in 19.15.17.10A3 NMAC not to" -- I don't
5 know if exceed is the right word -- "not to exceed
6 setbacks in 19.15.17.10A1." That's the intent. I
7 don't know if that's the best way to say it.

8 MR. SMITH: I'm not sure -- I missed
9 something here because I was speaking with someone.
10 Do you get where you want if you start at the
11 beginning of this and say, "Subject to the
12 requirement to obtain an exception under blah blah,
13 the operator must obtain a variance"? No?

14 CHAIRPERSON BAILEY: What?

15 MR. SMITH: Nevermind. It doesn't speak
16 to your issue.

17 DR. BALCH: I don't know if it did or not
18 but I couldn't process it.

19 MR. SMITH: Would you go back up to 2,
20 Theresa? All right. So are getting an exception
21 inside the setbacks in A1. Oh, I see. Okay. And
22 then you are going on to higher chloride fluids.

23 DR. BALCH: Greater setbacks.

24 COMMISSIONER BLOOM: Maybe if we want at
25 the end of 4 we could put "inside the setbacks" --

1 DR. BALCH: "Unless an exception is
2 granted."

3 COMMISSIONER BLOOM: Yeah, "unless an
4 exception is granted" at the very end.

5 DR. BALCH: I can't imagine anybody going
6 for an exception on something like this.

7 MR. SMITH: I don't understand the syntax
8 of the addition, Commissioner Balch, that you made
9 with the "not to exceed."

10 DR. BALCH: I didn't say the syntax was
11 good. I said this was the intent.

12 MR. SMITH: I know, but I don't understand
13 the intent.

14 DR. BALCH: The intent is you have a
15 certain number of setbacks for low chloride fluids.
16 They are less than the setbacks for other chlorides.

17 MR. SMITH: Right.

18 DR. BALCH: To get a setback for a low
19 chloride fluid inside of those ranges you have to
20 get an exception. To get --

21 MR. SMITH: But you can't get an exception
22 if it's within the setbacks for low chlorides?

23 COMMISSIONER BLOOM: You have to get an
24 exception.

25 MR. SMITH: But you can't get an exception

1 to go within the setbacks that you have set up for
2 low chlorides. You can't get an exception even for
3 higher chlorides for that setback?

4 DR. BALCH: You could in theory.

5 CHAIRPERSON BAILEY: Let's have a
6 demonstration. This is an occupied house. This is
7 a low chloride pit that has a certain distance from
8 that house. The higher chloride pit has a distance
9 from that house.

10 MR. SMITH: Right.

11 CHAIRPERSON BAILEY: To get closer than
12 this distance you have to have an exception.

13 MR. SMITH: For a low chloride?

14 CHAIRPERSON BAILEY: Yeah.

15 MR. SMITH: Okay.

16 CHAIRPERSON BAILEY: To get closer than
17 this distance you can get a variance.

18 MR. SMITH: Okay. But the point of not to
19 exceed the setbacks in A1 -- oh, I understand.

20 DR. BALCH: Unless the exception is
21 granted.

22 MR. SMITH: Why don't you break that into
23 two sentences. "The operator must obtain a variance
24 to locate a temporary pit inside setbacks indicated
25 in A3. The operator must obtain an exception to

1 locate the temporary pit inside the setbacks
2 indicated in A1."

3 DR. BALCH: That's much better.

4 MR. SMITH: But this 4 pertains to, for
5 want of a better word, high chloride fluids, right?

6 DR. BALCH: Right. For an exception,
7 remember they have to go to Santa Fe and it's a much
8 more involved process. There's notice, et cetera.

9 MR. SMITH: Okay. Even so, for clarity I
10 think you should, even though this is under the
11 section that is dealing with non-low chloride
12 fluids, you might want to put, "The operator must
13 obtain a variance to locate a temporary pit
14 containing non-low chloride fluids" and then I would
15 do the same thing to the other sentence.

16 DR. BALCH: Just to get very specific
17 about what we're talking about.

18 CHAIRPERSON BAILEY: You mean the sentence
19 below?

20 MR. SMITH: I would just make the second
21 sentence exactly like the first sentence. "The
22 operator must obtain an exception to locate a
23 temporary pit containing non-low chloride fluids
24 inside setbacks indicated in 19.15.19.10A1."

25 CHAIRPERSON BAILEY: And delete everything

1 after that.

2 MR. SMITH: Yeah.

3 DR. BALCH: Right after the second set of
4 setbacks there, the word "indicated."

5 MR. SMITH: Actually, instead of the word
6 "indicated" in both of those you should probably
7 say "set forth."

8 DR. BALCH: Okay. Then back in 2 you
9 probably have to make the same change. Indicated as
10 set forth in 2.

11 MR. SMITH: Actually, it should read, "The
12 operator must obtain an exception to locate a
13 temporary pit containing low chloride fluids."

14 DR. BALCH: Just as a point, we don't
15 have --

16 MR. SMITH: After the word "forth" take
17 out "for low chloride fluids" there. That way you
18 have at least mirrored language.

19 DR. BALCH: So 2 becomes 5. I think we
20 have already discussed this at great length. Then
21 No. 4 which will become No. 6 to make the language
22 consistent with what we have been using.

23 COMMISSIONER BLOOM: Theresa, can you go
24 down to J? Make that "set forth."

25 DR. BALCH: That should become --

1 COMMISSIONER BLOOM: 3 becomes 7.

2 DR. BALCH: 3 should be 4, right?

3 COMMISSIONER BLOOM: No, I'm sorry, 6.

4 DR. BALCH: Yes, 3 should become 6. J

5 should become 6 and 6 should become 7. The
6 reference should be to A 5. Is that J there? That
7 should become 6 and J should become 6, and 6 should
8 become 7. This is from the previous rule.

9 CHAIRPERSON BAILEY: We were not allowed
10 to change it. Four becomes 8. I had some language
11 suggestions for the below-grade tank section that is
12 now 8.

13 COMMISSIONER BLOOM: May I request a
14 break?

15 CHAIRPERSON BAILEY: Let's take ten
16 minutes.

17 (Note: The hearing stood in recess at
18 2:35 to 2:45.)

19 CHAIRPERSON BAILEY: I had some comments
20 about the section that deals with "The operator
21 shall not locate a below-grade tank tank," which is
22 on Page 8. There we go. It reads, "An operator
23 shall not locate a below-grade tank within 100 feet
24 of a continuously flowing watercourse or any other
25 significant watercourse." My suggestion was to

1 delete the words "or any other" because when we're
2 talking about significant watercourses --

3 DR. BALCH: I think the "any other"
4 doesn't belong there regardless.

5 CHAIRPERSON BAILEY: We have a 200-foot
6 setback --

7 COMMISSIONER BLOOM: We have a definition
8 for significant watercourse.

9 CHAIRPERSON BAILEY: Yes, we do.

10 DR. BALCH: We also have one for
11 continuously flowing, I think.

12 COMMISSIONER BLOOM: Right. So it would
13 be within 100 feet of continuously flowing
14 watercourse or a significant watercourse or --

15 CHAIRPERSON BAILEY: Scratching the
16 words "or any other," putting a comma after
17 "significant watercourse," scratching "or," you have
18 "lake bed, sinkhole or playa lake." This is making
19 it more efficient that way.

20 COMMISSIONER BLOOM: After significant
21 watercourse --

22 CHAIRPERSON BAILEY: Lake bed, sinkhole,
23 wetland or playa lake and then delete C. Does that
24 make sense?

25 DR. BALCH: Basically 100 feet from

1 natural water.

2 CHAIRPERSON BAILEY: Are we ready to talk
3 about C yet or is that something to hold off on?

4 COMMISSIONER BLOOM: I have one question.
5 We don't have to address it now. I'm wondering if
6 we defined on-site.

7 CHAIRPERSON BAILEY: I think that we
8 should, because we are allowing transportation of
9 drilling fluids from one well site to another well
10 site. We are talking about on-site closure, yet we
11 don't have a definition.

12 DR. BALCH: And we will have other
13 discussion, particularly multi-well fluid management
14 or locating -- or for burying pit waste at a
15 different location than the well. Basically it
16 covers the area of the lease or the application. We
17 do have some guidance on that.

18 MR. SMITH: Was the on-site/off-site
19 distinction contemplated by the amendments?

20 DR. BALCH: Well, it was extensively
21 discussed during multi-well fluid management pits.

22 COMMISSIONER BLOOM: It exists in the
23 current rule but there's -- I don't believe there's
24 a definition for it.

25 CHAIRPERSON BAILEY: And there's testimony

1 on transporting the drilling waste from one well
2 site to another and it talks about on-site closures.

3 MR. SMITH: That's good. Is there any
4 testimony you recall where anyone testified as to
5 what might be on-site or not?

6 DR. BALCH: I'm not sure about direct
7 testimony, but I'm fairly certain that there was
8 cross-examination by the Commission regarding what
9 should constitute a reasonable distance. We really
10 had a pretty good discussion about this when it came
11 to using one temporary drilling pit for, say, two
12 wells.

13 MR. SMITH: Okay. Good. So you could use
14 that as guidance then as you discuss this.

15 CHAIRPERSON BAILEY: And there was
16 discussion about the meaning of on lease or off
17 lease, that the transportation from one well could
18 only be within the lease itself, the movement of the
19 drilling waste.

20 DR. BALCH: Right. You can't haul it off
21 to your other well two miles away.

22 CHAIRPERSON BAILEY: It had to be on
23 lease.

24 MR. SMITH: Right, but do you contemplate
25 that being a definition of on-site?

1 CHAIRPERSON BAILEY: I hadn't thought
2 about it. Had you thought about it?

3 COMMISSIONER BLOOM: No.

4 DR. BALCH: Well, I think when you --
5 maybe you can clarify this if we just talk a little
6 bit about what happens if he fills out a C-144.
7 They have a plat that locates the pit and if there
8 are a lot of circumstances for an on-site closure
9 they would be closing it right there. But there
10 would be other cases where they have a closed-loop
11 system or some other reason why they want to move it
12 elsewhere on the same site. What would they do now
13 besides the fact that they can't do it right now?

14 CHAIRPERSON BAILEY: They can't do it
15 right now.

16 DR. BALCH: But has this situation
17 occurred before?

18 CHAIRPERSON BAILEY: Yes, it has in Otero
19 basin, Otero County, I believe, where there was --
20 and this is only anecdotal -- that one operator
21 moved the pit contents to another location and there
22 was some controversy about -- I can't recall the
23 details. It may even have been across the state
24 line or something, but there was a general
25 discussion.

1 DR. BALCH: Right now all pit contents are
2 essentially removed off-site.

3 CHAIRPERSON BAILEY: Either buried on-site
4 within the confines --

5 DR. BALCH: With the current Rule 17 you
6 haul all your drilling waste away pretty much,
7 right?

8 CHAIRPERSON BAILEY: No, you can bury some
9 on-site or you can dig a trench.

10 DR. BALCH: Current Rule 17.

11 CHAIRPERSON BAILEY: Current rule allows
12 for trench burial on your well site. It also
13 contemplates on-site burial if contents meet certain
14 criteria.

15 DR. BALCH: Right. It's just hard to meet
16 the criteria. Okay. So considering current
17 practices, what would you consider on-site to be?
18 On lease?

19 CHAIRPERSON BAILEY: On well pad.

20 DR. BALCH: On well pad?

21 CHAIRPERSON BAILEY: Yes.

22 DR. BALCH: Now, the case that we
23 discussed, circumstances we have discussed I think
24 in deliberation and also in direct and
25 cross-examination of witnesses had to do with the

1 situation where you might have two well pads on the
2 same lease and you were looking at the lease on one
3 of them. I recall thinking that was a good idea
4 because you have less waste sites, but that would
5 violate the current --

6 CHAIRPERSON BAILEY: It violates the
7 current rule.

8 DR. BALCH: On-site. Also might be better
9 to put it somewhere else on the lease than where the
10 well pad is.

11 CHAIRPERSON BAILEY: Then you have gone
12 into surface waste management, and the problem with
13 using the term "on lease" is some of the old leases
14 for State Land Office cover thousands of acres all
15 over the state.

16 DR. BALCH: What if we limited it to
17 say -- okay. So right now there's no way to bury
18 waste off pad. Is it the intent that we leave that
19 or otherwise violate surface waste management? Is
20 that right?

21 CHAIRPERSON BAILEY: Uh-huh.

22 DR. BALCH: So if we wanted to contemplate
23 a situation where you may have two pads on the
24 same -- two adjacent pads servicing one pit -- we
25 talked about this before, because where is the pit?

1 Is it between pads? Is it on one of the pads?

2 CHAIRPERSON BAILEY: And there are pros
3 and cons?

4 DR. BALCH: The extension of the pad? I
5 don't know.

6 CHAIRPERSON BAILEY: And does it make
7 sense to ensure that we have less surface
8 disturbance?

9 DR. BALCH: That was one of the main
10 arguments for multi-well fluid management. Less
11 surface disturbance than one single fluid pit that
12 would replace hundreds of surface water tanks at
13 multiple locations.

14 CHAIRPERSON BAILEY: Yes.

15 DR. BALCH: And I do want to reduce
16 surface impact personally.

17 CHAIRPERSON BAILEY: I think all of us are
18 in agreement.

19 COMMISSIONER BLOOM: Yes.

20 DR. BALCH: The question is how do you get
21 the language so it doesn't have somebody going 50
22 miles across the lease.

23 CHAIRPERSON BAILEY: Seems like we went
24 through this to talk about only one operator on one
25 lease. I mean, the language is in here somewhere.

1 Probably in closure.

2 DR. BALCH: We have gone to the question
3 there, took out all the on-sites. Now, it was
4 recommended that we remove all of the on-sites. I'm
5 looking at Section 17.11 on Page 15. Now I've lost
6 it. Page 17. This is on closure.

7 CHAIRPERSON BAILEY: 17 of our draft?

8 DR. BALCH: Our draft.

9 CHAIRPERSON BAILEY: What number?

10 DR. BALCH: A, Page 17. This may not
11 really address anything. Because here the
12 recommendation from NMOGA and IPANM is remove
13 off-site from all of these in K.

14 CHAIRPERSON BAILEY: Which leaves it
15 pretty much in the air?

16 DR. BALCH: I guess I don't understand
17 surface waste management but --

18 CHAIRPERSON BAILEY: We will probably see
19 it at the Commission.

20 DR. BALCH: Where does the OCD's ability
21 to say "put waste here" end? Is there anything that
22 specifically says on pad or is that just practice?

23 CHAIRPERSON BAILEY: On-site is one of
24 those general terms that means in proximity to.

25 DR. BALCH: How about this? And I don't

1 know if this is really a solution, but I think it
2 sounds like making a definition for off-site would
3 be bad because it's generally used in a lot of
4 different language that would cause confusion, but
5 if you specify for closure where the trenches could
6 be and then variances for other locations --

7 CHAIRPERSON BAILEY: Exceptions, because
8 we could be straying into that surface waste
9 management.

10 DR. BALCH: Variance or exception,
11 whatever is more appropriate. So if you wanted to
12 locate it off pad you have to get an exception, and
13 then somebody can presumably determine where one
14 rule ended and the other began.

15 MR. SMITH: Defining on or off-site, I
16 think, is risky for the reasons that you pointed
17 out. I'm somewhat concerned about how you go about
18 defining it. I have little doubt that your
19 expertise in the oil and gas area would allow you to
20 make a reasoned judgment in terms of what on-site
21 is, but unless you have taken evidence for it, I'm
22 not sure where you go, how you get to where you want
23 to be.

24 DR. BALCH: I think where we are running
25 into some confusion is normally now and in the past

1 practice has been to have your temporary pit located
2 on your pad. You close it if you're closing it
3 on-site right there. You drain the contents, mix in
4 your three to one ratio of soil, do the paint test,
5 all that stuff, close it up, bury it, recontour,
6 revegetate.

7 CHAIRPERSON BAILEY: Or you have the
8 trench burial.

9 DR. BALCH: So trench burial can be
10 off-pad?

11 CHAIRPERSON BAILEY: No, trench burial is
12 right there in proximity.

13 DR. BALCH: So that's just moving it
14 somewhere on the pad. The question that came up in
15 testimony was the desire, particularly, I think, in
16 the context of the Yeso wells moving down to
17 ten-acre spacing if you are doing vertical
18 completion, that you could run into a situation
19 where you could have two adjacent pads using one
20 pit. Now, how would that pit be permanent? How
21 would that come in on the pad? Would it be assigned
22 to the pad of one of the wells?

23 COMMISSIONER BLOOM: Right now temporary
24 pit means that the temporary pit can serve more than
25 one well but it has to be on the pad of one of them,

1 I believe. It says, "Temporary pits may be used for
2 one or more well and must be located at one of the
3 associated" --

4 CHAIRPERSON BAILEY: That's it.

5 DR. BALCH: So it's not an issue with the
6 on-site/off-site.

7 MR. SMITH: The other thing you might want
8 to consider, and I don't know how you would address
9 this, I recall seeing a dispute -- I think it might
10 have been between OCD and an operator -- where there
11 was a well pad here and a well pad here quite some
12 distance from it, and I think that the operator
13 wanted to take something from this well and dispose
14 of it or store it in this well over here, and the
15 argument was well, where they want to dispose of the
16 stuff over here is on-site. It's on-site for this
17 well.

18 So to the extent that you're going to run
19 into that kind of problem here, you might want to
20 take cognizance of that as you are crafting your
21 language because on-site refers to a subject -- or I
22 would think would refer to a subject well, but this
23 operator wanted to say on-site, on any well site, so
24 here is the site, I can take my stuff here.

25 CHAIRPERSON BAILEY: That has been the

1 case that I remembered.

2 MR. SMITH: Is that it?

3 CHAIRPERSON BAILEY: I believe so.

4 DR. BALCH: I think we actually talked
5 about this and I think there was cross-examination
6 about this, because if you could -- if you have a
7 lease and you're putting in 12 Yeso wells on the
8 lease and you can bury all the waste at one
9 location, that sounds like a benefit.

10 CHAIRPERSON BAILEY: And with horizontal
11 wells that have multiple well bores on one large
12 well pad you would, rather than have individual
13 drilling pits for each of those wells, you would
14 have the one central drilling pit, temporary pit
15 that would service all of those multiple wells,
16 which is why we had the system set up earlier in
17 this rule.

18 DR. BALCH: That's what we were talking
19 about with the multi-well fluid management. But
20 below the level where you're going to be fracturing
21 20 wells within a year and a half with the
22 multi-well fluid, there's the case you were talking
23 about where you have one long pad and five wells on
24 it. A drilling island, for example.

25 So I know this is maybe a little bit of a

1 prelude to our discussion on closure because we got
2 to the very first sentence and said on-site and we
3 maybe have to -- I don't know if we have to try to
4 define that, but we want to maybe --

5 COMMISSIONER BLOOM: We are just talking
6 siting now and the tables aren't involved at this
7 point of the conversation.

8 DR. BALCH: I think we can separate the
9 discussion and still talk about closure. Because
10 closure talks about if you can do it or not. We can
11 still talk about the process of closure without
12 citing the limits. I think that works that way.

13 COMMISSIONER BLOOM: We could backtrack,
14 too. I just threw out giving the definition to
15 on-site. We didn't have one previously in the rule.
16 I don't know, maybe just define it as on-site is on
17 pad.

18 DR. BALCH: We may want to use a different
19 word than on-site, because apparently on-site is
20 used generally in the vernacular and a lot of other
21 places. So putting a definition to it could be
22 problematic.

23 CHAIRPERSON BAILEY: Why don't we mull
24 this one around?

25 DR. BALCH: The answer may come to us as

1 we're going through it as long as we have it in the
2 back of our minds.

3 MR. SMITH: And let me caution you all.
4 It isn't that I'm not a fan of common sense, but you
5 want to -- in most situations you want the changes
6 that you make or the resolutions to issues that you
7 have to be a function of that which is in the record
8 as opposed to --

9 DR. BALCH: What makes the most sense?

10 MR. SMITH: Yeah. Although it's not like
11 you have to abandon sense when you are doing this,
12 but you don't want to just depart whole hog into new
13 areas.

14 DR. BALCH: I think we are okay on this
15 particular issue in regards to closure because there
16 was testimony in cross-examination.

17 MR. SMITH: Okay.

18 CHAIRPERSON BAILEY: And because we are
19 asked to remove the words "on-site" in certain
20 sections, so it would be useful to know what we're
21 talking about when we delete the words "on-site" in
22 certain sections.

23 DR. BALCH: Right.

24 MR. SMITH: Well, you have been asked to
25 remove it, but remember, the issue before you is are

1 you going to amend the current rule and do you have
2 enough in front of you to amend the current rule.
3 So in this instance if someone wishes to have
4 "on-site" removed and there isn't enough evidence in
5 the record to support removal of on-site, then you
6 probably don't remove it. Now, what it sounds to me
7 like is you think there may be enough in the record
8 to remove it if you knew for certain what it was you
9 were removing.

10 DR. BALCH: This takes us all the way back
11 to May, but the very first thing NMOGA did when they
12 presented their Exhibit 3 was go through and talk
13 about things like this. So there may be very, very
14 early on in the record them saying, "Removing
15 on-site here because so-and-so witness is going to
16 discuss it in the testimony."

17 MR. SMITH: I think it's probably a good
18 idea to go back and look at those.

19 DR. BALCH: That's sort of a memory but
20 that's eight months ago.

21 CHAIRPERSON BAILEY: So Theresa, why not
22 go back to the definitions section, put in on-site,
23 and highlight it in yellow so it's just a marker
24 showing that's under discussion.

25 DR. BALCH: I don't think we have to

1 renumber everything.

2 CHAIRPERSON BAILEY: Just put it in
3 quotation marks.

4 COMMISSIONER BLOOM: Life form ratio needs
5 to go above --

6 DR. BALCH: That's okay. I wouldn't
7 bother yet.

8 CHAIRPERSON BAILEY: But life form ratio
9 is in the wrong place. It needs to go above that.

10 DR. BALCH: Oh.

11 CHAIRPERSON BAILEY: For people who like
12 order. Okay. That's just a tickler that we need to
13 look at.

14 DR. BALCH: My copy -- I think we just
15 worked through 17.7 which is Definitions and 17.10,
16 which was Siting. I had a couple of -- in my
17 version there's a couple of highlighted paragraphs
18 in A under Permit for Registration Required. I
19 don't know if that's something you want to look at
20 now. We already resolved the sections ahead and
21 behind it.

22 CHAIRPERSON BAILEY: Let's go to A because
23 I was thinking about removal of WQCC from there.

24 DR. BALCH: That starts on Page 3. I
25 didn't look at it, I just noticed we had two

1 highlighted paragraphs, B2 and -- no, just B2 which
2 had to do with Temporary Pits, Planning and Design.

3 CHAIRPERSON BAILEY: I don't. We're on
4 the next page. Oh, okay. That's Page 4.

5 DR. BALCH: I think since we were just
6 talking about permitting and requirements or maybe a
7 loose definition of on-site, this might be a good
8 place to start thinking about that, because that's
9 where it's going to be defined for a particular
10 operation. It's going to be in their permit.

11 CHAIRPERSON BAILEY: Okay. I don't
12 remember why we did not deal with it at the time we
13 were in this section.

14 DR. BALCH: I think we have resolved that
15 situation, and we were in B talking about permanent
16 pits, and apparently there wasn't any problem there.
17 When we got temporary pits we highlighted pretty
18 much the whole paragraph.

19 COMMISSIONER BLOOM: So you're wondering
20 why we highlighted that?

21 DR. BALCH: Yes.

22 COMMISSIONER BLOOM: The only note I had,
23 and I think it was more a note to myself, is how
24 does the section that reads, "The operator may
25 utilize essentially a standardized plan," how does

1 that work in practice?

2 CHAIRPERSON BAILEY: They submit a plan
3 that is appropriate for a general area or a general
4 plan for certain formations and then that plan,
5 rather than submitting it each and every time over
6 and over, is simply referenced as the plan for this
7 particular pool or this particular area or something
8 along those lines.

9 DR. BALCH: You might have a drilling plan
10 for 60 wells in the Yeso and you're going to do them
11 over the next 18 months and they are within a mile
12 of each other and have the same characteristics.

13 CHAIRPERSON BAILEY: The same submitting
14 programs, the same --

15 COMMISSIONER BLOOM: That application
16 still has to be approved even though the plan has
17 already been approved?

18 CHAIRPERSON BAILEY: Definitely.

19 COMMISSIONER BLOOM: It says, "The plan
20 will remain approved until the subsequent plan."
21 There's not going to be -- the OCD is not going to
22 question the temporary pit?

23 CHAIRPERSON BAILEY: No, it would be the
24 reference plan that's used for multiple or
25 subsequent drilling permits.

1 COMMISSIONER BLOOM: Are we all in
2 agreement -- I can't remember if we were in
3 agreement on the language about the absence of
4 site-specific groundwater data.

5 DR. BALCH: That's probably why we
6 highlighted it, because we were having a discussion
7 about it.

8 CHAIRPERSON BAILEY: Well methodology,
9 published information, the Gotex website?

10 DR. BALCH: Office of the State Engineer,
11 I think, was the only previously accepted form of
12 data, right? And that data in large portions of the
13 state was extremely sparse. I think that they also
14 allowed USGS data.

15 CHAIRPERSON BAILEY: But even sparser.

16 DR. BALCH: That was even sparser, yes.
17 So you get out into portions of Northwest New Mexico
18 in particular for the extremely arid and very large
19 tracts of empty land where you don't have wells for
20 miles, so the nearest well is off the map.

21 CHAIRPERSON BAILEY: Or a cathodic well
22 two miles down the road with the other well site.

23 DR. BALCH: It's not telling you a whole
24 lot about the depth of water there. The original --
25 I can tell you this: The original -- some of those

1 original constraints were very hard for operators to
2 comply with. Basically the answer is you don't
3 know, but I think the intent in the red text here
4 was to open up a broader category of potential
5 information sources that could give you the
6 information. The idea is you want to make sure you
7 are well above groundwater.

8 CHAIRPERSON BAILEY: I would like to see
9 all of that red section in B2 concerning temporary
10 pits that would allow --

11 DR. BALCH: Now, where a model might come
12 in -- I want to think about this for a second. One
13 thing that I thought would be a neat thing to do
14 when I was building a website of maps of this kind
15 of data was to take the existing data and use some
16 sort of algorithm to account for water levels across
17 other areas. The problem is you are estimating the
18 modeling.

19 CHAIRPERSON BAILEY: Which is what
20 geologists do.

21 DR. BALCH: But just because you have a
22 contour line doesn't mean the water is really at 123
23 feet or whatever. The concern that was voiced from
24 the Division at that point was exactly that, you
25 don't know what's happening between those two data

1 points. You don't have enough information to say
2 that. That comes into reasonable determination,
3 right?

4 So hopefully, looking at a map and you
5 have data points that are eight miles apart you give
6 that less weight than if you had data points that
7 were a few hundred feet apart. But even so, you
8 still have no real knowledge of what's going on.
9 You have a guess.

10 CHAIRPERSON BAILEY: You won't until you
11 start drilling.

12 DR. BALCH: Yep. Cathodic well lithology,
13 that's going to be something that you could do
14 from -- is that only a water well thing or is that
15 something you can do for a production well? Can you
16 do that from a mud well?

17 CHAIRPERSON BAILEY: I think once you have
18 the production well in place is where you have the
19 cathodic well.

20 DR. BALCH: So a production well?

21 CHAIRPERSON BAILEY: Yes.

22 DR. BALCH: So if you didn't have the
23 information about the depth of the water table until
24 after drilling the well, what does that really stop
25 you from doing necessarily? It would stop you from

1 constructing a temporary pit and drilling fluids,
2 either low chloride or non-low chloride fluids,
3 right?

4 CHAIRPERSON BAILEY: If it's within -- it
5 would affect the siting. It would affect the siting
6 of any kind of temporary pit.

7 DR. BALCH: After the fact it would affect
8 closure.

9 CHAIRPERSON BAILEY: Right.

10 COMMISSIONER BLOOM: What I might do
11 tonight is go home and look for this in the record
12 and spend a little bit of time reviewing that.

13 DR. BALCH: Might not be a bad idea. I
14 mean, it's pretty complicated. Like I said, there's
15 vast areas where you don't have enough water data.

16 COMMISSIONER BLOOM: My concern would be
17 somebody would try to model it and just be off, but
18 I understand that if there's no data out there, this
19 would be a good way to get it.

20 DR. BALCH: The only problem with like the
21 cathodic well lithology is you get it after you
22 drill the well. So in a sense you have already
23 bypassed the risk of a surface release because you
24 are already done drilling no matter where the water
25 table ends up being.

1 CHAIRPERSON BAILEY: This is for siting of
2 the temporary pit. It's not a multi-well management
3 pit, it's not a permanent pit, it's a temporary pit.

4 DR. BALCH: Essentially by the time you
5 have the data you don't need it anymore.

6 CHAIRPERSON BAILEY: It's time to go away.

7 DR. BALCH: However, if there's a place --
8 I don't know if this is appropriate -- you know I
9 like data, but if you could collect the data
10 somehow, somebody else might use it later on if they
11 were on the adjacent lease.

12 CHAIRPERSON BAILEY: The problem with that
13 is we don't have that requirement in our rules now
14 for approval.

15 DR. BALCH: It would be up to the operator
16 to go approach the friendly next-door operator if
17 they could have that data.

18 CHAIRPERSON BAILEY: Because often it's
19 not even going to be logged.

20 DR. BALCH: I think in a situation where
21 you don't have good water data they may have to go
22 log it, because if they want to close on-site they
23 would have to know that they were greater than 25 or
24 50 feet above the groundwater. So that would be a
25 stipulation for closure.

1 CHAIRPERSON BAILEY: We don't have a
2 requirement to log it. That may just be in the
3 drilling log.

4 DR. BALCH: But if they were going to
5 close on-site, wouldn't they have to --

6 CHAIRPERSON BAILEY: Hold that thought
7 until we get to closure.

8 DR. BALCH: No, I'm just saying. They are
9 asking here for us to add this language, okay?
10 You're going to maybe trust their best guess for the
11 drilling component, which to many of the witnesses
12 was actually the most risky part of the operation.
13 That's where you have your greatest chance of a
14 release. However, the risk goes more to surface
15 area than to the groundwater in that case.

16 Now, at closure the issue becomes more of
17 groundwater because you are leaving something in
18 place for a long period of time, infiltration will
19 go through, et cetera. Also the transient nature of
20 the risk is something to consider. It's the bus is
21 three blocks away, it's not going to hit you, right?
22 But if they want to go from using the temporary pit
23 to burial on-site you might want to ask them the
24 cathodic well lithology if they don't otherwise have
25 adequate water.

1 CHAIRPERSON BAILEY: We have nothing in
2 the record as having that as a requirement for
3 closure.

4 DR. BALCH: Except there's a closure
5 requirement at depth. If there's not enough
6 confidence in their depth, then maybe you can't
7 allow it. The problem there is we have to wrestle
8 with the reasonableness of this.

9 CHAIRPERSON BAILEY: As deemed appropriate
10 by the division district office.

11 DR. BALCH: I think that's the appropriate
12 place to make the decision.

13 CHAIRPERSON BAILEY: Yes, because they are
14 much more knowledgeable.

15 DR. BALCH: They might know more about the
16 local geology.

17 CHAIRPERSON BAILEY: They will.

18 DR. BALCH: Things like that. I don't
19 think it's -- I used the example of the Northwest
20 but largely the water table would beep up there, so
21 it doesn't matter per se, but, you know, every time
22 you make a rule someone is going to find the one
23 place where it's going to be an issue.

24 CHAIRPERSON BAILEY: I think this opens up
25 other sources of information rather than just the

1 State Engineer's Office or USGS.

2 DR. BALCH: This is just for the permit,
3 so I think I agree with you that leaving it in would
4 be a good thing. The rest of what I have been
5 discussing would apply really to things we have to
6 talk about later on.

7 CHAIRPERSON BAILEY: Closure.

8 DR. BALCH: Now, I guess getting back
9 there is when you're putting in your permit, aren't
10 you also going to need a closure plan? Not closure
11 plan but more like a contingency also, I presume.

12 COMMISSIONER BLOOM: Say that again.

13 DR. BALCH: At the same time as you're
14 applying for the temporary pit you are telling the
15 division what you're going to do at the end of the
16 closure of the pit.

17 CHAIRPERSON BAILEY: As required in the
18 paragraph above. "The permit application shall
19 include a detailed plan as follows," which does
20 include a closure plan.

21 DR. BALCH: Well, we have two different
22 categories here. You have permanent pits where you
23 have a pretty good, long laundry list of
24 requirements, and then you go to Section 2,
25 Temporary Pits, and you pretty much just have a

1 paragraph. You have, "Below-grade tanks in a
2 paragraph and the multi-well fluid management pits
3 paragraph. Permanent pit is obviously a different
4 animal than all of those and you want to have the
5 most assurance it's there.

6 COMMISSIONER BLOOM: A lot of those things
7 under B are actually defined in different areas for
8 temporary pits such as freeboard.

9 DR. BALCH: That's under construction.

10 COMMISSIONER BLOOM: Yeah, something you
11 could find elsewhere.

12 DR. BALCH: Maybe that's the appropriate
13 place to discuss it. Am I gathering you would like
14 to just look at this overnight and then we can have
15 a final discussion?

16 COMMISSIONER BLOOM: Yes, I will look at
17 that tonight. I think if we go back to 8 where we
18 were on on-site closure method.

19 DR. BALCH: That's Page 8, which is also
20 No. 8. B and C, which is "An operator shall not
21 implement an on-site closure method."

22 COMMISSIONER BLOOM: On this, I think No.
23 1, groundwater less than 25 feet, I think we parted
24 ways right there, correct?

25 CHAIRPERSON BAILEY: I think so.

1 DR. BALCH: This had to do with the siting
2 criteria.

3 COMMISSIONER BLOOM: Mr. Mullins.

4 DR. BALCH: The discussion on modeling.
5 This one essentially replaced 2, 3 and 4.

6 CHAIRPERSON BAILEY: I have in my notes
7 not to delete the first Paragraph 2 but simply to
8 change that first line to where it says where
9 groundwater is between 50 and 100, to change that to
10 where groundwater is greater than 25 feet.

11 COMMISSIONER BLOOM: Maybe what happens
12 with that language is it ends up being covered in
13 Section 13 under Closure?

14 DR. BALCH: I think that's what happened.

15 CHAIRPERSON BAILEY: That's probably where
16 it should be.

17 DR. BALCH: No. 1 is absolute. You can't
18 bury waste if the groundwater is shallower than X,
19 and all the other cases are covered by closure,
20 which is greater than. However, looking at this
21 gray text it just reminded me that we have a
22 modified Exhibit 3. At some point we have to go
23 through and make sure that all of the material that
24 is in there for deletion includes the material that
25 was missing on the modification.

1 CHAIRPERSON BAILEY: So.

2 DR. BALCH: I don't know when the best
3 time to do that is.

4 CHAIRPERSON BAILEY: You're realizing that
5 all of the draft that we have here needs to be
6 transferred somehow into Exhibit 20, which includes
7 the current rule for deletions and not the previous
8 rule for deletions?

9 DR. BALCH: But I think that the issue
10 with missing material in Exhibit 3 primarily
11 occurred when material was excluded from materials
12 slated for removal, the page of gray material. I
13 wanted to make sure there wasn't anything else. I
14 don't think there was much. We made an attempt in
15 November to reconcile the two.

16 CHAIRPERSON BAILEY: But we quit half-way
17 through.

18 DR. BALCH: We quit when we realized that
19 it was entangled with closure and that's where we
20 were at, and also No. 1 and 2. So I think that this
21 draft is still fine, and as a whole we may want to
22 make sure there's not places we overlooked
23 something.

24 CHAIRPERSON BAILEY: Particularly when we
25 go through and talk about deleting previous

1 language.

2 DR. BALCH: What would you recommend would
3 be a way to go through that would be? What process?

4 CHAIRPERSON BAILEY: Theresa, do you have
5 any suggestions on that? Because it's a matter of
6 using a different face and superimposing all of the
7 decisions that we made in our deliberations.

8 MS. DURAN-SAENZ: We would probably have
9 to do a side-by-side comparison.

10 DR. BALCH: Let me ask if this would be
11 sufficient. We take Exhibit 20 and have it in front
12 of each of us and we read through that line by line
13 and every place there's a difference we -- in the
14 version that we have now -- we make sure it's not an
15 issue.

16 MR. SMITH: You're going to have to -- for
17 what you attach to the order and for what you submit
18 to -- is it records -- have --

19 DR. BALCH: All the strikeouts and all
20 that.

21 MR. SMITH: Actually, you really don't.
22 Probably with as much changing as you are doing
23 here, probably what you should do is submit it to
24 Records as a repeal and substitution or something
25 like that. That way you don't even have to bother

1 with all the strikeouts. You can just submit this
2 changed rule.

3 DR. BALCH: Then we can just go back to
4 Exhibit 20 and look at the additional text and
5 determine if it's applicable and we don't have to go
6 line by line through the whole thing? NMOGA Exhibit
7 20 is a revised version of their modifications to
8 the rule, including the missing, stricken-out text
9 or missing text that is in stricken-out sections in
10 their modification.

11 CHAIRPERSON BAILEY: But with the repeal
12 and new, we are not amending, so we don't have to go
13 through and talk about struck out.

14 DR. BALCH: And you have already made a
15 determination there's nothing substantial so we
16 can --

17 MR. SMITH: But I'll tell you, in terms of
18 drafting the order for this and for our records and
19 so forth, I really think that you ought to have the
20 changes you're making put on the current rule.

21 CHAIRPERSON BAILEY: So you are saying not
22 to do the repeal?

23 MR. SMITH: No, I do think when you submit
24 it, you should submit it as a repeal. I'm talking
25 for in-house use, in-house records and for use in

1 drafting the order, it really --

2 DR. BALCH: You want us to discuss the
3 additional strikeout areas?

4 MR. SMITH: I think you should discuss the
5 additional strikeouts certainly. But what I'm
6 talking about now is the piece of paper that will be
7 produced at the end of this. Not for submission to
8 Records or anything like that, but when Theresa is
9 finished she is going to have a document. It will
10 be showing strike-throughs. Once it's formatted and
11 so forth, I will take that to draft the order. I
12 think that that document that I'm talking about that
13 Theresa will have ought to be, before it's over
14 with, the current rule showing all of the changes on
15 the current rule.

16 DR. BALCH: What we are --

17 COMMISSIONER BLOOM: Let me suggest one
18 thing, and that is the changes are quite limited. I
19 think you brought us this on October 5th, this
20 version which was not the entire rule. It's
21 Sections 11 on through to the end that shows the few
22 additions and deletions between '07 and '09. I
23 don't think it would take too long. It may be a
24 little painstaking but perhaps Theresa could add
25 those into our working document and then we proceed

1 from there?

2 MR. SMITH: Sure, as long as whatever
3 process you use produces the current rule on the
4 screen. If that's what you want to do, that would
5 work, although you have to shut off your track
6 changes when you do that or it will show that you
7 are adding language. It will look like you have
8 revised the rule to add language that's already
9 there.

10 COMMISSIONER BLOOM: Perhaps we could do
11 it in a purple font or something like that where we
12 can see it and know when we get to it.

13 DR. BALCH: Not to put you on the spot,
14 Theresa, about the nature of this version, because
15 we have black, red, gray, and at least one place
16 green text. Is it your intention in this to leave
17 in all the strikeouts or basically have the new
18 version of the rule? Is that what we are working on
19 now is the new version of the rule?

20 MS. DURAN-SAENZ: The original purpose of
21 this was to provide records of archives with a
22 strike-through of old language and the underlining
23 of new language. If we do what Mr. Smith suggested
24 in repealing and replacing, we can go ahead and just
25 provide the underlined new language.

1 DR. BALCH: I think we already deleted
2 large sections of material from here.

3 MS. DURAN-SAENZ: Yes.

4 DR. BALCH: It would make it very hard to
5 do the strikeouts from this version.

6 COMMISSIONER BLOOM: There would be a
7 record --

8 DR. BALCH: There's a record of us
9 deleting things, of course.

10 COMMISSIONER BLOOM: We have a daily
11 record of what we have done so if we added in the
12 '09 amendments and then started working off of that
13 at some point, we would at least have that record on
14 file here. I think it's the proper way to go. It
15 would be essentially one of the proper ways of going
16 about working from the correct version.

17 DR. BALCH: I guess I'm wondering if at
18 this point it's easier for us to make what we think
19 the new rule should look like and make the
20 reconciled strikeout version separately off the
21 record as a job of Theresa. I don't know if that's
22 in your job description.

23 MR. SMITH: I think that that would be
24 fine. Certainly you can have staff help you out on
25 this, but once you have done that --

1 DR. BALCH: Go back through it?

2 MR. SMITH: I think you need to get back
3 together and look at it and confirm that it's what
4 you want.

5 DR. BALCH: Because I think getting to the
6 strikeout version from here would be very
7 challenging. I think it would be -- if I was doing
8 it, I would make a complete version of what we
9 perceive it to be and then take this back side by
10 side on the computer and make the strikeout version
11 that way. If you can cut and paste it's a lot more
12 convenient than on the laptop.

13 CHAIRPERSON BAILEY: Then we could get
14 together and compare.

15 MR. SMITH: Actually, you could do a
16 compare write. Have you done that in Word? It's
17 easy. If you have a document that is the current
18 version of the rule and then you have a new version
19 of the rule that isn't even black-lined or anything
20 else, then you do a compare write and you will get
21 strikeouts and additions and everything else on it.

22 DR. BALCH: So we could really treat the
23 issue of the missing text separately, as Greg
24 suggested, just go down through the list, and treat
25 this as a stand-alone new version of the rule.

1 COMMISSIONER BLOOM: You lost me there.

2 DR. BALCH: I don't think we have to
3 reconcile the missing text in this version.

4 MR. SMITH: Yeah. I think what you can do
5 is make absolutely certain that you have gone
6 through and discussed whatever differences there may
7 be between the rule that was submitted originally
8 and the rule that was recently submitted in Exhibit
9 20 so you know that you have considered all of the
10 current changes, all of the changes to the current
11 rule.

12 Once you have done that, you could go
13 through this document that you're working on, accept
14 all changes. Then you would have the rule as you
15 perceive it to have been changed by you. Then you
16 take that document which is clean, compare it
17 against a Word version of the current rule, do a
18 compare write and you will get your strike-throughs
19 and additions and you can go through that and make
20 sure it's exactly what you want. That's an easy
21 process.

22 COMMISSIONER BLOOM: That would be pretty
23 easy. We almost got there back on the 5th.

24 DR. BALCH: We were that close.

25 COMMISSIONER BLOOM: We were very close.

1 As I recall, it was below-grade tanks.

2 DR. BALCH: It wouldn't hurt to go back
3 through it now that we have the official Exhibit 20,
4 so I think it would be worth going through the
5 entire process again. I don't think we spent a lot
6 of time on it the first time. That would be
7 something that would help me to go back and see what
8 I said the first time so I don't contradict myself
9 the second time.

10 MR. SMITH: Theresa, let me suggest to you
11 that whenever you go through that process you save
12 the document that you're editing on screen now.
13 Then save it as something else and then accept all
14 the changes on that second one so we will always
15 have this in case we run into problems.

16 DR. BALCH: When do we want to have the
17 discussion about stricken out? Tomorrow morning
18 maybe?

19 CHAIRPERSON BAILEY: Yes, I'm pretty much
20 done for deep analytical discussion. Let's just
21 continue deliberations tomorrow morning at 9:00
22 o'clock.

23 MR. SMITH: So I'm lost. Are we leaving
24 now?

25 CHAIRPERSON BAILEY: Pretty quick here.

1 DR. BALCH: The only thing we could do
2 that would be low thought process is go to the front
3 of the document and clean it up from there.

4 CHAIRPERSON BAILEY: I have some more
5 comments and suggestions. Let's go to Page 9, which
6 is 19.15.17.11A, General Specifications.

7 COMMISSIONER BLOOM: I had one just a
8 little above that. It might go up to 3. The
9 deletion of 200 feet of any watercourse or lake bed.
10 We have that language elsewhere in the rule and we
11 suggested deletion.

12 DR. BALCH: I remember discussing this.

13 CHAIRPERSON BAILEY: This still has to do
14 with on-site closure methods.

15 DR. BALCH: Which we really haven't talked
16 about yet.

17 COMMISSIONER BLOOM: We can certainly come
18 back to that. I was thinking no matter what we
19 decide to do with regard to on-site closure methods,
20 would it make sense to allow that burial to be
21 within 100 feet of a -- has to be 100 feet of a
22 continuously flowing watercourse but it could be
23 immediately adjacent to a single.

24 DR. BALCH: So you are thinking 100 feet
25 of a continuously flowing watercourse or sinkhole

1 and all that stuff?

2 COMMISSIONER BLOOM: Correct. Along those
3 lines.

4 CHAIRPERSON BAILEY: I think the list is
5 taken from the siting criteria all the way back.
6 I'm looking at it on the previous page for
7 below-grade tanks. It says, "An operator shall not
8 locate a below-grade tank within 100 feet of a
9 continuously flowing watercourse, significant
10 watercourse, lake bed, sinkhole, wetland." So I
11 think that list has been repeated throughout in the
12 siting criteria.

13 COMMISSIONER BLOOM: So do you agree it
14 should remain here?

15 DR. BALCH: That's fine. It falls in the
16 category of deep analytical thought. Can we talk
17 about this tomorrow?

18 COMMISSIONER BLOOM: Sure.

19 CHAIRPERSON BAILEY: I'm looking at other
20 suggestions that are just simply typos.

21 COMMISSIONER BLOOM: We can look at typos.

22 CHAIRPERSON BAILEY: Scroll down to 17.11,
23 Design and Construction, A. It reads, "An operator
24 shall design and construct a pit, closed-loop
25 system, below-grade tank or sump to contain liquids

1 and solids," semicolon, "prevent contamination of
2 freshwater," semicolon, "and protect public health
3 and the environment." It was a matter of making
4 that list apparent as to what that was supposed to
5 be.

6 COMMISSIONER BLOOM: I agree.

7 CHAIRPERSON BAILEY: Then on Page 10 under
8 Netting. We have netting and then at the bottom of
9 Paragraph 2 under F, I just have question marks on
10 the two to one, whether or not we had decided on
11 that. That may be -- yes. Had we decided on that?

12 COMMISSIONER BLOOM: I thought we agreed
13 we would keep the two to one.

14 DR. BALCH: I think we fixed the problem
15 of a merit of a system that had a different ratio by
16 adding in the next sentence.

17 COMMISSIONER BLOOM: In case the temporary
18 pit would be situated in very hard rock, for
19 instance.

20 DR. BALCH: No way to get to the one.
21 Basically, I don't know if it's a variance or
22 something that they would approve.

23 CHAIRPERSON BAILEY: I think it's
24 something we can approve.

25 DR. BALCH: I think we fixed it with the

1 next sentence.

2 CHAIRPERSON BAILEY: Okay. Scrolling down
3 to Paragraph 4 under Temporary Pits, we had
4 discussed in that very last line, "Qualified
5 personnel shall field-weld and test liner seams,"
6 and on Page 12 on the bottom of G5, the very last
7 portion where it says, "Qualified personnel shall
8 perform field-seaming and testing." Then I have
9 additional comments on Page 15 under Paragraph 6.
10 It says, "The operator shall equip or retrofit the
11 below-grade tank to comply with Paragraphs 1 through
12 4 of Subsection I of 19.15.17.11 NMAC or close it by
13 June 16, 2013." Scratch the words, "If the tank
14 does not demonstrate integrity."

15 COMMISSIONER BLOOM: I have that as well.

16 DR. BALCH: Also, we put in June 16, 2013.

17 COMMISSIONER BLOOM: Theresa, I think we
18 would delete after June 16, 2013, delete that. Just
19 the red.

20 DR. BALCH: Do you want to change the "by
21 June 16, 2013" to "six months following the closing
22 of the rule" or --

23 COMMISSIONER BLOOM: No, that was set
24 originally.

25 DR. BALCH: That was in the rule. Okay.

1 CHAIRPERSON BAILEY: Scrolling down the
2 same page, J1. "The operator shall design and
3 construct the pit to ensure the confinement of
4 liquids to prevent unauthorized releases and to
5 prevent overtopping." I think that was just
6 grammar.

7 COMMISSIONER BLOOM: In the section prior
8 to this, Design and Specifications for Temporary
9 Pits, did we decide to leave in the very detailed
10 language on 11 -- I'm sorry, Page 11, things like
11 factory weld seams.

12 CHAIRPERSON BAILEY: We decided to
13 eliminate that because it created more confusion.

14 DR. BALCH: Also I think the discussion
15 also went around best practices, and if you are too
16 specific it might preclude best practice. You want
17 them to meet the manufacturer's specifications, not
18 what the regulation necessarily is saying.

19 CHAIRPERSON BAILEY: Well, plus the
20 phrase "and not sideways or not up and down," that
21 simply was so specific that it caused more confusion
22 as to what are you talking about there.

23 COMMISSIONER BLOOM: I saw some of that
24 under temporary pits, and it seems like --

25 CHAIRPERSON BAILEY: I think we were

1 trying to eliminate the unnecessary language in each
2 one of these.

3 COMMISSIONER BLOOM: Going back and
4 looking at it.

5 DR. BALCH: I have a suspicion we will be
6 going through the whole thing at least two more
7 times.

8 COMMISSIONER BLOOM: We can look at that
9 another time, I guess, if you want to move forward.

10 CHAIRPERSON BAILEY: Page 17. I know this
11 is a yellow highlighted area, but it was just a
12 matter of inserting "and testing" after K5 at the
13 end of the paragraph. Scroll down to Paragraph 5.
14 At the very end where it says, "Qualified personnel
15 shall perform field seaming and testing."

16 MR. SMITH: Is field seaming the same as
17 field welding?

18 CHAIRPERSON BAILEY: Pretty much.

19 MR. SMITH: You used welding before. You
20 might want to use consistent language throughout.

21 CHAIRPERSON BAILEY: Maybe that's a search
22 and replace?

23 MR. SMITH: Not a global. You will just
24 want to check each one.

25 MS. DURAN-SAENZ: What is the preference?

1 CHAIRPERSON BAILEY: Field welding.

2 MR. SMITH: If you have that, do you need
3 to take out that last sentence?

4 DR. BALCH: It looks unnecessary to me at
5 this point. However, we have to discuss the entire
6 section. There's other stuff at the beginning.

7 MR. SMITH: Okay.

8 CHAIRPERSON BAILEY: Page 18, 19.15.17.12,
9 Operational Requirements, A2 has the word "or"
10 before reclaim. That should be deleted there
11 because it's recycle, reuse, reclaim or dispose.
12 Page 22. This one has deep analytical thought
13 involved so I will put that off until tomorrow.

14 DR. BALCH: Can we still work from this
15 for one more day?

16 CHAIRPERSON BAILEY: If we quit right now
17 could you E-mail us copies of what we have done
18 today.

19 MS. DURAN-SAENZ: As soon as we are done.

20 DR. BALCH: I have no access to my office.
21 Can someone print me a copy?

22 CHAIRPERSON BAILEY: A color copy. You
23 bet.

24 DR. BALCH: We can retire this version.

25 CHAIRPERSON BAILEY: We will continue this

1 discussion tomorrow at 9:00 o'clock.

2 (Note: The hearing stood in recess at

3 4:00)

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REPORTER'S CERTIFICATE

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I, JAN GIBSON, Certified Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this case.



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