

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION

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

ORIGINAL

7 JOINT APPLICATION FOR REHEARING OF CASE NO. 15487
8 ORDER NUMBER R-14164-D, APPLICATION ORDER NO. R-14164-D
9 OF THE NEW MEXICO OIL CONSERVATION
10 DIVISION THROUGH THE SUPERVISOR OF
11 DISTRICT II FOR AN EMERGENCY ORDER
12 SUSPENDING CERTAIN APPROVED APPLICATIONS
13 FOR PERMITS TO DRILL, AND FOR ADOPTION
14 OF SPECIAL RULES FOR DRILLING IN CERTAIN
15 AREAS FOR THE PROTECTION OF FRESH WATER,
16 CHAVES AND EDDY COUNTIES, NEW MEXICO.

17 REPORTER'S TRANSCRIPT OF PROCEEDINGS

18 COMMISSIONER HEARING

19 June 13, 2017

20 Santa Fe, New Mexico

21 BEFORE: DAVID R. CATANACH, CHAIRPERSON
22 EDWARD MARTIN, COMMISSIONER
23 DR. ROBERT S. BALCH, COMMISSIONER
24 CHERYL BADA, ESQ.

25 This matter came on for hearing before the
New Mexico Oil Conservation Commission on Thursday,
June 13, 2017, at the New Mexico Energy, Minerals and
Natural Resources Department, Wendell Chino Building,
1220 South St. Francis Drive, Porter Hall, Room 102,
Santa Fe, New Mexico.

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1 (9:03 a.m.)

2 CHAIRMAN CATANACH: Next order of business
3 on today's agenda is Case Number 15487, which, again, is
4 the joint application for rehearing of Order Number
5 14 -- R-14164-D, application of the New Mexico Oil
6 Conservation Division through the supervisor of District
7 II for an emergency order suspending certain approved
8 applications for permits to drill and for adoption of
9 special rules for drilling in certain areas for the
10 protection of fresh water, Chaves and Eddy Counties,
11 New Mexico.

12 Commissioners, you may recall this case was
13 originally heard on December 5th, 6th and 7th, and an
14 order in this case was issued on February 8th, 2017.

15 The joint application for rehearing was
16 heard on May 18th and was continued to this docket to
17 allow the parties time to file written closing
18 statements and corrected proposed amendments to the rule
19 language.

20 At the May 18th hearing, the record was
21 closed. No further evidence or testimony will be
22 accepted at this time.

23 The Commission did receive closing
24 statements and proposed amended language from the
25 parties in this case.

1 And at this time, the Commission will
2 examine the materials presented by the parties and
3 conduct open deliberations.

4 Commissioners, do I hear a motion to go
5 into open deliberations in Case Number 15487?

6 COMMISSIONER BALCH: So moved.

7 COMMISSIONER MARTIN: Second.

8 CHAIRMAN CATANACH: All in favor?

9 (Ayes are unanimous.)

10 CHAIRMAN CATANACH: So there are a couple
11 of issues that I think we need to take care of today,
12 and the first issue is the issue of the designated area
13 that I'd like to talk about.

14 The Division has proposed that the
15 designated area include the whole area that includes
16 both the shallow aquifer and the deep artesian aquifer
17 as the designated area. The opponents to that argue
18 that only the area in which the shallow aquifer and the
19 deeper artesian aquifer, where they're together -- where
20 they're present and together, that that should be
21 limited -- that should be the designated area. And so
22 we can talk about that issue first.

23 I guess I'd like to provide to you guys
24 this is the Division rule that addresses just the normal
25 operations of sealing off strata and casing and tubing

1 requirements. Basically, it says: During the drilling
2 of an oil well, injection well or a service well, the
3 operator shall seal and separate the oil, gas and water
4 strata above the producing and injection interval to
5 prevent their contents from passing into other strata,
6 and the operator shall ensure that fresh waters and
7 waters of present or probable value for domestic
8 commercial or stock purposes are confined to their
9 respective strata and are adequately protected by
10 Division-approved methods.

11 In the next section, Section 19.15.16.10A,
12 it specifies how the wells -- that the wells should be
13 cemented. And in paragraph B, it says, "The operator
14 shall use sufficient cement on surface casing to fill
15 the annular space behind the casing to the top of the
16 hole, provided that authorized division field personnel
17 may allow exceptions to this requirement when known
18 conditions in a given area render compliance
19 impracticable."

20 So I guess the question is: In that area
21 where only the artesian aquifer is present, I guess
22 don't we feel like the Division rule -- the general rule
23 that addresses -- do we feel that's adequate to
24 sufficiently protect the artesian aquifer?

25 COMMISSIONER BALCH: Well, seeings how our

1 primary addition to the language was to have cement
2 circulated to surface, I think that is very consistent
3 with this rule.

4 CHAIRMAN CATANACH: I'm thinking -- there
5 are a couple of things in the draft rule that really
6 aren't addressed in the general rule. One of those
7 issues is "if the cement is not circulated to the
8 surface, the operator shall furnish a cement bond log to
9 the Artesia district office, and shall not proceed with
10 drilling until the division approves the cementing."
11 And there are a couple of other provisions. If you look
12 at (b) and (c) of the current rule, "If the operator
13 encounters significant loss of circulation during
14 drilling within an aquifer, the operator shall
15 immediately notify the division's Artesia district
16 office." And (c), "If the operator observes significant
17 inflow of fresh water into the mud pit, the operator
18 shall immediately notify the division's Artesia district
19 office."

20 So those two things are in addition to what
21 the general rule says, and I guess the question is: Do
22 we think that those extra provisions give us more
23 protection than the statewide rule?

24 COMMISSIONER MARTIN: I think so. I think
25 there are extra safeguards built into the new rule that

1 covers special circumstances, artesian aquifer.

2 CHAIRMAN CATANACH: And I would tend to
3 agree. There is nothing in the statewide rules that I'm
4 aware of that the surface casing wasn't cemented.
5 There's -- I don't believe that there is anything that
6 would require a CDL to be run. So to me, I think it
7 adds a little bit of additional safeguard.

8 One of the arguments that's been brought up
9 by the opponents in this case is that this whole issue
10 about including that area was kind of beyond the scope
11 of the original hearing, because the original hearing
12 was kind of, you know, for the purpose of preventing
13 communication between the two-aquifer system, and -- so
14 that's a concern in that if we -- if we kind of
15 overreach on that issue, I don't know if it's -- that's
16 a challengeable thing in court, if they could cite
17 something.

18 MS. BADA: Always.

19 CHAIRMAN CATANACH: Always (laughter).

20 But that's one of the arguments brought up
21 by the opponents to that.

22 COMMISSIONER BALCH: I want to make sure
23 the record gives us the ability to make that conclusion
24 if we do so.

25 CHAIRMAN CATANACH: They cited -- in their

1 arguments, the opponents cited several areas of
2 testimony where it was pretty clear that the area where
3 only the artesian aquifer was not a big problem area to
4 the Division in terms of really any -- any contamination
5 issues or anything like that. So I think the record
6 kind of supports the opponents' view on that. But,
7 again, personally, I still thinks it adds a little bit
8 of extra protection in those areas.

9 MS. BADA: Given that the original
10 designated area was for the entire Roswell Artesian
11 Basin, though, doesn't that indicate there was some
12 concern for the entire Basin?

13 CHAIRMAN CATANACH: Yeah, I think there
14 was. I think the whole issue started with communication
15 between the two-aquifer system, and that's where it
16 originated. And when we did the -- when the Division
17 did the designated area, I think they -- I think they
18 tried to broadly define the area in question, which I
19 think was a good approach at that time.

20 COMMISSIONER MARTIN: It was only the
21 target area where they overlapped. Is that correct? Is
22 that your interpretation?

23 CHAIRMAN CATANACH: Well, I think that's
24 where the whole issue started about communication
25 between the aquifers, was -- was what I recall was one

1 of the main issues that the Pecos Valley folks had.

2 COMMISSIONER MARTIN: To me that's the
3 thing that makes this kind of a special area, but --
4 otherwise, I mean, my opinion is that the statewide rule
5 protects the artesian aquifer.

6 COMMISSIONER BALCH: When we were
7 deliberating this the first time, our conclusion was
8 that only the artesian aquifer cement to surface, which
9 is already in the rule anyway. So we were asked to
10 protect it as the rule already was in those areas. So I
11 kind of agree with Mr. Martin's concerns that we need to
12 talk about the area that we want to designate. Is it
13 the overlapping area, or is it the entire area?

14 CHAIRMAN CATANACH: Well, I think in the --
15 in the area just of the artesian aquifer, where I think
16 that there are requirements to the Division -- as I
17 recall, the surface casing isn't circulated. The
18 Division does have some options to require the operator
19 to make sure it's circulated. So I think there are some
20 safeguards that would allow us to make sure that that
21 casing is being circulated. So I guess I'm not so
22 concerned about that.

23 Can we define just the two-aquifer area
24 adequately? It's not been -- it's not been defined that
25 I know of in anything that we've seen, so we would have

1 to somehow get a definition of what that area is. And I
2 know there are maps that have been submitted and
3 presented, but I don't think -- well, I do have
4 something, actually. This (indicating) was submitted by
5 COG, OXY and Fasken at the May 18th hearing. It's
6 titled "Roswell Basin Legal Description of Overlapping
7 Aquifers." So we do have a description. I have a note
8 here on this that says "a one-mile buffer is not
9 included in this particular description." So if we
10 wanted to go that way, I think we could use this as a
11 base and maybe work on getting, if we want a buffer -- a
12 one-mile buffer on there, we could.

13 COMMISSIONER MARTIN: I am ambivalent about
14 the buffer, but I think we should stick to the
15 overlapping area.

16 COMMISSIONER BALCH: I tend to agree,
17 mainly because what we proposed for the overlap is
18 already -- is basically a lot of the same language
19 that's already in the statute. Circulate to surface
20 provides the greatest protection.

21 CHAIRMAN CATANACH: Okay. So what
22 language -- I guess if we're working off of the original
23 rule that was issued in R-14164-D, then the only place I
24 think we'd have to change is paragraph A, where it
25 actually states the designated area. After that, it

1 would all be -- there are citings of the designated rule
2 in the area, but that's -- so that would be the only --
3 I think that would be the only change. We'd just
4 actually have to change the description in paragraph A.
5 This (indicating) looks like a much longer -- much
6 longer description, in their document. It's much more
7 detailed.

8 So I guess I would move that -- do we want
9 to vote on going with the -- with the smaller designated
10 area? Are we all in favor of that?

11 COMMISSIONER MARTIN: I am.

12 COMMISSIONER BALCH: I believe so.

13 CHAIRMAN CATANACH: Okay. We're going to
14 have to take this document and change the -- change the
15 rule to incorporate this area.

16 COMMISSIONER BALCH: I believe that area
17 came out of the geologic study -- the hydrogeologic
18 study for the area, that all parties relied on in their
19 testimony. I remember the reference name of that.

20 CHAIRMAN CATANACH: And as far as the
21 buffer, is it the pleasure of the Commission to not
22 include any buffer in that area? I think you
23 said you --

24 COMMISSIONER MARTIN: Either way. I don't
25 have any special feelings about it. It's arbitrary.

1 COMMISSIONER BALCH: It is arbitrary.
2 Unfortunately, the nature of the kind of studies that
3 are produced in that area is also a little bit
4 arbitrary. Those values are -- the buffer does provide
5 a little bit of adequate -- that we're capturing,
6 although we may end up with not -- not affected by this
7 rule.

8 CHAIRMAN CATANACH: Again, I think I would
9 feel a little more comfortable with some kind of buffer
10 around this area, because it's not an exact area, and
11 that can be determined at the district office level.
12 Hopefully, they have more data when they approve these
13 APDs, and that would give them more -- more of an area
14 to examine the APDs and make sure that they can drill
15 completely.

16 So I would move the adoption of the
17 designated area as the contracted area, plus the
18 one-mile buffer. Is there agreement on that?

19 COMMISSIONER MARTIN: Yes.

20 COMMISSIONER BALCH: Yes.

21 CHAIRMAN CATANACH: Okay. We'll have to
22 figure somehow how to -- how to interpret that --
23 incorporate that and figure out the one-mile buffer
24 around that and include that in there. So that'll be
25 some work.

1 Are you good at maps and stuff, Cheryl?

2 MS. BADA: No.

3 CHAIRMAN CATANACH: Okay. Well, that was
4 the first issue.

5 The second issue -- and I've -- you've got
6 that. Okay.

7 COMMISSIONER BALCH: Red-line version.

8 CHAIRMAN CATANACH: That should be the
9 same.

10 COMMISSIONER BALCH: That's OCD, Exhibit A.

11 CHAIRMAN CATANACH: That's OCD's -- I
12 think -- and this (indicating) is the modification to
13 the existing rule proposed by the opposing parties. And
14 I think if you -- if we want to just talk about -- it
15 all really boils down to -- to one issue, in my mind.

16 The Division is wanting surface casing -- a
17 single string of surface casing to be set 50 feet -- 50
18 feet below the base of the artesian aquifer in all
19 wells. That's the position of the Division.

20 The position of the opponents to that is
21 that the surface casing should be set 50 feet below the
22 base of the artesian aquifer, except in those areas of
23 known hydrocarbon shows or production from the confining
24 unit or the artesian aquifer. The operator shall set
25 the surface casing string not more than 50 feet above

1 the first show of hydrocarbons on a mud log and
2 circulate cement to surface.

3 That's the main issue between the two
4 parties, and that's -- that's open for discussion at
5 this point. I guess from the Division's standpoint, if
6 you're drilling in an area that has hydrocarbon shows or
7 hydrocarbon production, I think the Division feels safe
8 that in drilling to the artesian aquifer, there's not
9 going to be, at least drilling operations, even if there
10 are some hydrocarbons, that there is not going to be --
11 the time duration of the drilling operations and the
12 nature of the drilling operations itself will not lend
13 itself to communication between -- or contamination of
14 the shallow aquifer or the deeper artesian aquifer. I
15 would tend to agree on that point, that basically
16 drilling operations are not going to see a whole lot of
17 communications during drilling operations, if anything,
18 under normal conditions.

19 I guess from the -- from the opponents'
20 standpoint -- I guess it was a little unclear to me. If
21 you set surface casing 50 feet above the first show of
22 hydrocarbons, that would provide protection to the
23 shallow aquifer, definitely, but then I was concerned
24 about if you're still drilling beyond that point and
25 you're drilling down to, say, the producing horizon,

1 you're still going to have some -- if the artesian
2 aquifer is there and there is a producing horizon below,
3 you're still going to have some possible
4 communication -- even in that instance -- of
5 communication between hydrocarbons and the artesian
6 zone. And I wasn't clear, on the production casing, if
7 that was -- if that would have been cemented to surface.
8 I think it would have been, the production casing. So
9 that's not an issue.

10 So I think one of the issues that came up
11 at the last -- May 18th hearing is that there is no
12 specified depth for setting that casing in the artesian
13 aquifer. And, you know, I think I kind of challenged
14 the Division to come up, maybe, with some language that
15 might address that. I think that it's not going to
16 be -- I mean, since it's not at a set depth, it's not
17 going to be -- really not going to be able to address it
18 in a rule. I think that you would have to leave that
19 flexibility to the -- to the District II office in
20 Artesia to determine -- you know, utilizing other
21 information to determine where the base of that is.

22 COMMISSIONER MARTIN: I think if we try to
23 define it in a rule, we are going to be off in so many
24 different cases. I mean, that's why you have to
25 define -- important structures, such as the base of the

1 artesian.

2 CHAIRMAN CATANACH: Well, I think they are
3 much more equipped at the district office level to make
4 those determinations because they're dealing with this
5 on an everyday type of basis. They're seeing these
6 applications, and they have a lot more geologic data,
7 certainly, than we have here.

8 COMMISSIONER BALCH: Kind of in general, in
9 rulemaking, the more specific you are, the more likely
10 you are to have a conflict later on. You want something
11 that captures the intent.

12 COMMISSIONER MARTIN: I agree.

13 CHAIRMAN CATANACH: So I think -- one of
14 the things that I think they did to kind of help that
15 situation out was the Division's also, in addition --
16 you know, we had talked about revising part C -- only
17 part C at one point. But now the Division -- I did
18 bring it up at the last hearing, whether or not they
19 thought -- the OCD thought that the District II
20 supervisor had the authority to change the casing
21 program if he needed to.

22 And so the Division has now proposed some
23 additional language for paragraph two that they've
24 inserted, that the district supervisor may approve a
25 casing program that allows for the setting of the shoe,

1 for the water-protection casing string at a different
2 depth of that required in paragraph two of Subsection C.
3 "If the district supervisor finds, based on information
4 and data provided by the operator, that the proposed
5 casing program will adequately protect all freshwater
6 formations, the well can reasonably be expected to
7 encounter...." I certainly think that that gives the
8 district office more flexibility in changing the casing
9 program in the well, if they feel like there's a need to
10 do that.

11 So I guess before we get into any specific
12 language, I guess we might want to talk about the
13 general disagreement between the Division and the
14 industry on that one point. I think I feel more
15 comfortable with the Division's approach. It assures
16 there'll be a casing string set through both aquifers
17 and circulated. I think the other proposal is kind of
18 nebulous, to me, as far as how the artesian aquifer is
19 protected adequately.

20 COMMISSIONER MARTIN: Actually, the
21 Movants' change is more clear to me than the Division
22 language.

23 CHAIRMAN CATANACH: So in their language,
24 if you have a hydrocarbon show, that's where you're
25 going to set the surface casing, and that's -- and then

1 you're going to keep drilling down, and you're going to
2 hit the artesian aquifer. And can you kind of elaborate
3 why you think that's a better approach?

4 COMMISSIONER MARTIN: In their language?

5 CHAIRMAN CATANACH: Yeah. Because
6 that's --

7 COMMISSIONER MARTIN: They're still saying
8 set surface casing 50 feet below the base of the
9 artesian. So if you circulate cement to surface on that
10 surface string --

11 CHAIRMAN CATANACH: Right. But they're
12 also saying in areas where there are hydrocarbon shows
13 or production, then you don't have to set that surface
14 casing. All you have to set is that surface casing 50
15 feet above those shows, and those shows are likely to be
16 in between the artesian aquifer and the shallow aquifer.
17 So the surface casing is not going to be set.

18 COMMISSIONER BALCH: Or even in the
19 artesian aquifer.

20 CHAIRMAN CATANACH: Or even in the artesian
21 aquifer. So that surface casing is not likely to be set
22 in the artesian. It's going to be set higher than the
23 artesian aquifer.

24 COMMISSIONER MARTIN: I see what you're
25 saying.

1 I don't remember the rulemaking. I believe
2 we put in for that in this rule. If you do have a
3 surface casing above the base of the artesian aquifer,
4 then your intermediate casing string would also be
5 cemented to surface. That would cover the protection of
6 the aquifer -- artesian aquifer. I don't have the
7 entire rule in front of me. That's my recollection.

8 CHAIRMAN CATANACH: Well, what rule would
9 that have been in, though? I mean, are you talking
10 about the rule that was -- that we did for this case?

11 COMMISSIONER BALCH: Our order on this
12 case.

13 CHAIRMAN CATANACH: I mean, that -- it
14 talks about if the well -- if the well is equipped
15 with -- see, I'm not clear on if you have that
16 situation, where you set the surface casing above the
17 artesian. I'm not clear that we're requiring another
18 intermediate casing string and another production
19 string.

20 COMMISSIONER BALCH: Well, it could be a
21 production string as well.

22 CHAIRMAN CATANACH: That's correct. It
23 could be a production string circulated to surface.

24 COMMISSIONER BALCH: Yes, which I think is
25 protective. The biggest protection that you can provide

1 for the separation of the aquifers is to have layers of
2 cemented steel isolating those formations.

3 CHAIRMAN CATANACH: So you're in favor of
4 the two casing string, the separate casing strings --

5 COMMISSIONER BALCH: Any casing string or
6 combination of casing strings that pass through the
7 protectable artesian aquifer need to be cemented to
8 surface.

9 CHAIRMAN CATANACH: I agree. So what the
10 rule requires, if the well is equipped with an
11 intermediate casing string -- which I don't know in what
12 instance that we would require an intermediate casing
13 string, if, in that particular instance, we would
14 require that. But, nonetheless, that string is required
15 to be cemented to surface.

16 And then the next sentence, "If the well is
17 not equipped with an immediate casing string, the
18 operator shall circulate cement on the production string
19 to the surface."

20 COMMISSIONER BALCH: Which was our intent,
21 and I think that's still the intent. I still think
22 that's the way we can protect the aquifers, and that's
23 supported by evidence in the record. I would hate to
24 deviate too far from that.

25 CHAIRMAN CATANACH: I guess, you know, the

1 only thing -- I mean, does that expose the artesian to a
2 longer drilling period possibly, where it might be
3 subject to more communication with oil-producing
4 formations? I don't know how much longer that might be,
5 but --

6 COMMISSIONER BALCH: I think the idea there
7 is that if you do encounter a hydrocarbon show, you want
8 to make sure you protect that surface -- that shallow
9 aquifer. That's why you cement your surface casing at
10 that time to the surface. And when you're drilling the
11 rest of the way through -- as you mentioned earlier, the
12 aquifers are generally well protected during drilling
13 because of the nature of drilling itself and et cetera,
14 the pressure in the well. So I think that you're
15 looking at minimal exposure of the artesian aquifer at
16 this point, and you've also adequately protected the
17 shallow aquifer.

18 So I really like the original language that
19 we had there for protection, and that's basically if
20 you're in one of the aquifers or both of the aquifers,
21 you're cementing casing string to surface.

22 CHAIRMAN CATANACH: Yeah. And also in the
23 original rule that was issued, under paragraph D, "The
24 District Supervisor Discretion," the district supervisor
25 did have the authority to require an additional

1 water-protection casing string under some circumstances,
2 "if the proposed casing program is not reasonably
3 sufficient to protect fluid movement into or out of the
4 wellbore or to aquifers in the designated area." So I
5 guess that would make me feel better, if we adopted
6 Movants' language. The district supervisor could
7 always, under that provision, require possibly an
8 immediate string if they felt it was necessary.

9 COMMISSIONER BALCH: There were really a
10 few major concerns that came up in the original
11 hearing -- these were not discussed in as much detail in
12 the May hearing -- that I think are somewhat important.
13 First of all, if you require the additional casing
14 string in all cases, then you run into logistical issues
15 and also added expense to the operators without really
16 adding any additional protection.

17 And -- well, I forgot my second point.

18 COMMISSIONER MARTIN: That's a good enough
19 point, I think. I agree with that.

20 COMMISSIONER BALCH: So the main thing
21 is -- and we had a lot of testimony that said if you
22 require these casing strings, you're going to be
23 drilling unusual type diameters, something like that.

24 And my second point is if you didn't
25 circulate to surface and were required to wait X number

1 of days for the Artesia office or somebody to get back
2 to you on what to do about your cement, then during that
3 time period, you definitely are exposing the aquifer or
4 aquifers to some sort of risk. So multiple casing
5 strings cemented to surface is the best and fastest
6 protection to both aquifers. That's what we arrived
7 at in the --

8 CHAIRMAN CATANACH: And I guess it gives me
9 a certain level of confidence. If, for some reason, the
10 district office determined that maybe there should be --
11 maybe you should set an intermediate casing at the base
12 of the artesian before you drill out into the producing
13 formation, they do have that authority under that
14 provision. So I think that gives me some added comfort
15 in that regard.

16 COMMISSIONER BALCH: And I'm not certain
17 that was actually up for debate in the request for
18 review anyway. It was primarily confusion in language.

19 COMMISSIONER MARTIN: I think the district
20 office always has the discretion to require that and
21 should.

22 CHAIRMAN CATANACH: So, gentlemen, what
23 would you -- what is your preference on that issue?

24 COMMISSIONER MARTIN: You changed my mind
25 on the language. I prefer the Division's language now.

1 So --

2 COMMISSIONER BALCH: Changed my mind, too.
3 I think I prefer Movants' language now.

4 COMMISSIONER MARTIN: Where do you want to
5 go now?

6 CHAIRMAN CATANACH: So wait. You switched?

7 COMMISSIONER MARTIN: I did.

8 COMMISSIONER BALCH: The main problem I'm
9 having is that I keep reading the Division language, and
10 I want to make sure I understand it. I'm not sure it's
11 completely clear.

12 MS. BADA: Do you have a copy of the rule
13 as proposed in your order?

14 CHAIRMAN CATANACH: Copy of the rule
15 that we --

16 MS. BADA: That's attached to the order.

17 COMMISSIONER BALCH: Yeah.

18 MS. BADA: No. That's not the rule that
19 was attached to the order. That's the modifications.

20 CHAIRMAN CATANACH: The one that was
21 approved in the order?

22 MS. BADA: Uh-huh.

23 CHAIRMAN CATANACH: What are you
24 (indicating) unclear of in the Division's --

25 COMMISSIONER MARTIN: Me? No, I changed.

1 CHAIRMAN CATANACH: Wait a minute. Where
2 you at now?

3 COMMISSIONER MARTIN: No. I think the
4 intent of both -- I think the intent of both is pretty
5 much the same. Now I think the Division language is
6 more clear as to what they want to do, what should be
7 done. I may be wrong about the intent, but it seems to
8 be the same.

9 CHAIRMAN CATANACH: Yeah. The Division's
10 rule doesn't even address the show of hydrocarbons at
11 all anymore. They took that out. And they're basically
12 saying that in all cases, wherever the artesian aquifer
13 is present, we want the surface casing set 50 feet above
14 the --

15 COMMISSIONER MARTIN: But in (a), you're
16 saying -- you're not changing what it says? If the
17 artesian aquifer is not present, then they address the
18 hydrocarbons?

19 CHAIRMAN CATANACH: Oh, yeah. The
20 hydrocarbons issue is in there.

21 I actually think both of the proposals
22 provide a high degree of protection for both aquifers.

23 COMMISSIONER MARTIN: I agree.

24 COMMISSIONER BALCH: I agree.

25 COMMISSIONER MARTIN: Which is more clear?

1 COMMISSIONER BALCH: The Division's
2 language is more specific.

3 CHAIRMAN CATANACH: The Division's?

4 COMMISSIONER BALCH: Yes.

5 COMMISSIONER MARTIN: Oh, you think the
6 Division's is?

7 COMMISSIONER BALCH: The only real
8 difference, if you compare the two, is the Division
9 language requires that extra step of working directly
10 with the Artesia office for the placement of your
11 surface string. I'm not sure if that's a significant
12 administrative burden or not.

13 CHAIRMAN CATANACH: On the Division?

14 COMMISSIONER BALCH: In proposed Section
15 2(b).

16 CHAIRMAN CATANACH: Is that a burden on the
17 Division? Is that your question?

18 COMMISSIONER BALCH: "In areas where the
19 artesian aquifer is present and the well will be drilled
20 through the artesian aquifer, the operator shall
21 determine the depth for setting the surface casing
22 string with the concurrence of the district supervisor
23 of the division's Artesia district office."

24 COMMISSIONER MARTIN: I think that's true
25 in the statewide rule, that the district office sign off

1 on the casing program prior to the -- I think.

2 COMMISSIONER BALCH: Well, why do you need
3 to specify it here?

4 CHAIRMAN CATANACH: Well, I think that one
5 of the reasons is because one of the questions that came
6 up at the last meeting was that it's unknown where that
7 depth is in areas.

8 COMMISSIONER BALCH: And we will define
9 where we think the overlapping area is, but we're not
10 necessarily defining where the aquifer is. So you may
11 not know whether you need to apply 2(b) or not, until
12 after you've started drilling your well.

13 CHAIRMAN CATANACH: Well, if you're in
14 the -- if you're in the area that has the artesian
15 aquifer, both aquifers, then you're going to need to
16 know where to set that surface casing before you drill
17 your well.

18 COMMISSIONER BALCH: Well, you're going to
19 have an idea where to place it.

20 CHAIRMAN CATANACH: You're going to have to
21 get a permit by the Division, and that's why you work
22 with the district office, to use the best information
23 available to determine whether that casing should be
24 set, because it's not -- I think that you're going -- I
25 mean, the APD has to be approved before you start

1 drilling, and so that's where that language came in
2 there, I think, which is fine. I mean, I think it's
3 done all the time with the district offices. They
4 consult with these companies all the time on the casing
5 setting depth and things like that. So it's not a
6 burden on us.

7 COMMISSIONER MARTIN: It's not an
8 additional burden, I don't think.

9 COMMISSIONER BALCH: Not an additional
10 burden.

11 CHAIRMAN CATANACH: And information from
12 companies and the Division can be used to determine that
13 depth.

14 And the other thing I like about the
15 Division's proposal is it does give the flexibility to
16 set that surface casing at a different depth if there is
17 some circumstance where the Division thinks that maybe
18 that the casing should be set at the first hydrocarbon
19 show. I mean, I'm just throwing that out there, but
20 that's -- it appears we would have that flexibility.

21 COMMISSIONER BALCH: Well, I think that
22 Section D is not -- is not being changed by -- I mean,
23 in the existing order, in Section D, "district
24 supervisor discretion." Yeah. I saw that one over
25 here. It's not like you're removing the discretion of

1 the district supervisor if you do that, if you go with
2 the Movants' language.

3 CHAIRMAN CATANACH: Well, in the existing
4 rule, the district supervisor has the authority to
5 require an additional casing string. He doesn't
6 necessarily have the authority to approve a casing
7 string at a different depth than required. That's
8 what -- so it's a different thing. I mean, it gives
9 them more flexibility, which I was concerned about at
10 the last hearing. It gives us more flexibility. For
11 some reason, maybe we find that we don't want the
12 company to set the surface casing below the artesian
13 aquifer, for some reason. I don't know. But this
14 appears to give us the flexibility to change that.

15 COMMISSIONER BALCH: I see that. Well, I
16 think the addition of D(2) and (3) is advisable,
17 regardless of the change we take for C(2).

18 CHAIRMAN CATANACH: I agree. I think
19 that's absolutely necessary. I think I'm kind of with
20 the Division language at this point. See where you guys
21 are at.

22 COMMISSIONER MARTIN: I agree on that
23 point.

24 COMMISSIONER BALCH: I don't think they're
25 substantially different.

1 COMMISSIONER MARTIN: I still think the
2 intent is the same.

3 CHAIRMAN CATANACH: My understanding is,
4 according to the data that we got, I think Pecos Valley
5 Artesian Conservancy District is also on board with the
6 Division's proposed language. And I think -- well, we
7 did get statements from -- we did get different
8 statements.

9 And I think one of the statements from the
10 opposition was just basically a concern about the
11 designated area. And the other -- the other parties --
12 I think Lime Rock was the one that was more concerned
13 about the casing setting depth language. So I guess I
14 would move for the adoption of the Division's language,
15 and we can -- if you guys want, we can go over it just
16 to make sure that we're comfortable with the language.
17 I guess do we agree that that's the way we want to go on
18 this?

19 MS. BADA: I have a question on (a) and
20 (b), given that the designated area is supposed to
21 include both aquifers, how you want to word those.

22 COMMISSIONER MARTIN: Say that again,
23 Cheryl.

24 MS. BADA: Given that the designated
25 area -- you now define and include both aquifers. How

1 do you want to deal with the language in (a) and (b),
2 where it says, "In areas where the artesian aquifer is
3 not present and the areas where the artesian aquifer is
4 present"?

5 COMMISSIONER BALCH: Yeah.

6 CHAIRMAN CATANACH: It seems to me that we
7 could strike that whole paragraph.

8 COMMISSIONER MARTIN: Or does 2(a) mean to
9 apply to the area as designated? Maybe you want to do
10 that. So if it changes to the overlapped area, then
11 refer to that designated area.

12 CHAIRMAN CATANACH: Well, I guess we could
13 say "in areas where the artesian" -- "in areas where the
14 well will not be drilled through the artesian aquifer."
15 Leave out that first part, where it says "artesian
16 aquifer is present," because it's going to be present in
17 that designated area. We know it's going to be present.
18 It's, by definition, present.

19 COMMISSIONER MARTIN: By definition, right.

20 CHAIRMAN CATANACH: So "in areas where the
21 well will not be drilled through the artesian aquifer,"
22 I guess that would mean, you know, if you're drilling to
23 a shallower formation than you're going to produce from,
24 I guess that would be applicable to that.

25 COMMISSIONER BALCH: I'm wondering if we

1 need to reconsider redefining the designated area from
2 the way we proposed doing it earlier today. The main
3 problem is that some of this language is specific to the
4 greater area in the Roswell Artesia Basin, where the
5 artesian aquifer is present. Can we -- as counsel has
6 mentioned, we have now chosen not to define that area.

7 CHAIRMAN CATANACH: So if we start
8 tinkering with the Division language, we're probably
9 going to get into trouble.

10 COMMISSIONER BALCH: We may have already
11 gotten in trouble by reducing the designated area to
12 that of the portions where there are -- for the shallow
13 and artesian aquifer.

14 COMMISSIONER MARTIN: So you're saying
15 maintain the designated area as it is and not expand it?

16 COMMISSIONER BALCH: I'm just saying we
17 need to be careful what we do with that.

18 CHAIRMAN CATANACH: Well, I guess to me --
19 I mean, if you want to go back and talk about the
20 designated area, to me it doesn't -- it doesn't really
21 place any additional burdens on the operators, you know,
22 in filing drilling permits. I mean, it's -- there are
23 really no additional requirements. It's not a burden.
24 It's just --

25 MS. BADA: I think that's the only place

1 that's an issue, is in C(1) and (2). So if you deal
2 with those -- I mean C(2)(a) and (b), as proposed by the
3 Division. If you address those, you're probably okay.

4 COMMISSIONER BALCH: So this designated
5 area covers both aquifers?

6 MS. BADA: Yeah. Or in some cases, where
7 only the shallow or only the artesian are present.

8 COMMISSIONER BALCH: Right.

9 The main concern with the Division
10 language, if we keep the smaller designated area, is
11 that there is no -- nothing you can point out to say,
12 "Where is the artesian aquifer?"

13 CHAIRMAN CATANACH: The depth or the
14 lateral extent? I mean --

15 COMMISSIONER BALCH: Lateral extent. Where
16 does the rule apply?

17 CHAIRMAN CATANACH: Well, I mean if you
18 guys want to talk about the designated area again and
19 maybe leaving it as is, I guess -- again, my opinion is
20 I don't think it's any more a burden on the operators
21 than -- I don't know the value of taking it out,
22 changing it, if that's going to conflict with the
23 Division's proposal. Maybe we should just leave it as
24 is.

25 COMMISSIONER BALCH: I think one of the

1 concerns of the Movants was that you would end up with
2 situations where a rule applied that it doesn't need to
3 apply.

4 COMMISSIONER MARTIN: I tend to agree with
5 that position. That's why it makes no sense to me that
6 in the long run -- but to only include the area of --

7 COMMISSIONER BALCH: Well, or specify both
8 areas.

9 COMMISSIONER MARTIN: Yeah.

10 COMMISSIONER BALCH: Then you would have to
11 modify language slightly and place two -- both aquifers
12 or shallow aquifer. And this is where we ran into
13 confusion before, the three cases: Only artesian, only
14 shallow, or both. Well, four cases.

15 CHAIRMAN CATANACH: How much modification
16 do you guys think if we just do the overlapping area,
17 which we apparently already agreed to and I guess we're
18 going to have rework?

19 COMMISSIONER BALCH: Well, then the problem
20 comes in in 2(a), where you're talking about whether or
21 not the artesian aquifer is or is not present. We don't
22 have any guidance on that.

23 MS. BADA: How about if you just modify
24 both (a) and (b)? And modify (a) to say, "In areas
25 where the well will not be drilled through the artesian

1 aquifer, the hole shall be drilled to the first show of
2 hydrocarbons on a mud log," et cetera. And then (b),
3 say, "In areas where the well will be drilled through
4 the artesian aquifer." Does that solve that?

5 COMMISSIONER MARTIN: So take out "is not
6 present"?

7 MS. BADA: Yeah.

8 COMMISSIONER MARTIN: "Where the artesian
9 is not present"?

10 CHAIRMAN CATANACH: Yeah. That's what the
11 original suggestion was. In (a), take out "the artesian
12 aquifer is not present" or "if the well" --

13 COMMISSIONER MARTIN: In (a), take out "not
14 present," and in (b), take out "where present." Does
15 that solve the problem?

16 COMMISSIONER BALCH: I think it might,
17 actually.

18 CHAIRMAN CATANACH: So in (a), "in
19 areas" -- I would take out "the artesian aquifer" --

20 COMMISSIONER BALCH: "Is not present."

21 CHAIRMAN CATANACH: -- "is not present" --

22 COMMISSIONER BALCH: "At depth."

23 CHAIRMAN CATANACH: -- "at depth."

24 "Or if the." Take that out and just insert
25 "where," "in areas where the well" --

1 COMMISSIONER BALCH: Take out some
2 language, and you've already got it in (b) as well.
3 Take out the words "artesian aquifer is present."

4 COMMISSIONER MARTIN: You want to have the
5 words "in the area where the well will be drilled." Is
6 that where we bring in the "where"?

7 CHAIRMAN CATANACH: We're still in (a)?
8 But yeah. In (a): "In areas where the well will not be
9 drilled to the artesian aquifer, the well shall be
10 drilled to the first show of hydrocarbons." I think
11 that solves that.

12 COMMISSIONER MARTIN: In (b), Bob is right.

13 COMMISSIONER BALCH: Take out the
14 corresponding language in (b)?

15 CHAIRMAN CATANACH: Right. So talk to me.

16 COMMISSIONER BALCH: "In areas where the
17 well will be drilled through the artesian aquifer, the
18 operator shall determine the depth for setting the
19 surface casing string." So take out the words "where
20 the artesian aquifer is present."

21 CHAIRMAN CATANACH: So take out -- let's be
22 specific, Dr. Balch. "Where" --

23 COMMISSIONER MARTIN: Leave "where."

24 CHAIRMAN CATANACH: "In areas where" --

25 COMMISSIONER MARTIN: "The well will be

1 drilled through the artesian aquifer."

2 CHAIRMAN CATANACH: So take out "the
3 artesian aquifer is present"?

4 COMMISSIONER BALCH: Yes.

5 COMMISSIONER MARTIN: Yes.

6 CHAIRMAN CATANACH: "In areas where" -- and
7 take out "and in areas where the well will be drilled
8 through the artesian aquifer."

9 COMMISSIONER BALCH: Do you have your map
10 of the original proposed area?

11 CHAIRMAN CATANACH: I do not. I do not
12 have that map with me.

13 COMMISSIONER BALCH: The area where there
14 is a shallow aquifer is the subset of the area where the
15 artesian aquifer is present.

16 CHAIRMAN CATANACH: Correct. And it was
17 something like that (indicating).

18 COMMISSIONER BALCH: Yeah, I remember it.
19 I just wondered if you had a map.

20 CHAIRMAN CATANACH: So within the -- the
21 question I have is in the smaller designated area, is
22 the artesian aquifer always present? And I think that's
23 not the case.

24 COMMISSIONER BALCH: I think we were
25 presented with some examples where it was not.

1 CHAIRMAN CATANACH: Where it was not or --
2 I think there was conflicting testimony on that.

3 COMMISSIONER MARTIN: If there is an
4 overlap, it's got to be present, right?

5 CHAIRMAN CATANACH: But I think there are
6 some transition zones in there where it may not be --
7 I'm wondering if we start changing that (a) language, we
8 get ourselves into trouble again.

9 COMMISSIONER BALCH: That's my concern, if
10 we want to leave the original selected area, and if
11 there are places that it doesn't apply, that would be
12 where you use the discretion of the Artesia District
13 Office.

14 COMMISSIONER MARTIN: Right. The operator
15 is going to have to prove that the artesian aquifer is
16 not present or they're not going to drill through the
17 artesian.

18 CHAIRMAN CATANACH: So do we need to change
19 (a) or (b)?

20 MS. BADA: Maybe not, if there are areas
21 within the smaller area where they're both --

22 CHAIRMAN CATANACH: I think that's true. I
23 think that's entirely possible.

24 COMMISSIONER BALCH: Yeah. It may be that
25 if you would like to use the Division language -- and I

1 do like their language in Part D for sure -- with the
2 changes we just discussed in (a) and (b) of Section 2, I
3 think that would work if we don't change Section A of
4 19.15.39.11.

5 CHAIRMAN CATANACH: Run that by me again.
6 Now you -- I mean, we've worked to change (a) and (b),
7 but now you want to --

8 COMMISSIONER BALCH: Keep the original
9 designated area, and then I think we can do this.

10 CHAIRMAN CATANACH: So keep the original
11 designated -- are we back on that subject?

12 COMMISSIONER MARTIN: (A) and (b)?

13 CHAIRMAN CATANACH: I think so.

14 MS. BADA: I don't know if that solves the
15 problem.

16 COMMISSIONER MARTIN: I don't know if that
17 solves your problem that you --

18 MS. BADA: I think what the real issue is
19 the artesian aquifer is not always present within that
20 smaller area. I think you can leave the Division's
21 proposed language --

22 CHAIRMAN CATANACH: In (a) and (b)?

23 MS. BADA: -- and change the designated
24 area to the smaller area.

25 CHAIRMAN CATANACH: I agree.

1 COMMISSIONER BALCH: Which way do we want
2 to go with the designated area, I guess?

3 CHAIRMAN CATANACH: I'm real reluctant to
4 start changing language in the Division's proposal
5 because it's -- it's really tricky. I mean, it's -- you
6 change a word or two and it changes the whole intent.
7 So I think they worked hard to try to get it to where
8 they think it needs to be. Maybe the best thing to do
9 is just go strictly with the Division's proposal.

10 COMMISSIONER BALCH: In the original
11 designated area.

12 I hope that somebody using this doesn't
13 have to read it five times like I did to make sure I
14 understood it.

15 CHAIRMAN CATANACH: It's always been pretty
16 confusing. It's --

17 COMMISSIONER MARTIN: If you used only the
18 overlapping area, you still leave it up to the
19 discretion of the district office to make that
20 determination as to whether the aquifer is present or
21 not, and the company's going to have to prove it to them
22 one way or the other.

23 COMMISSIONER BALCH: This is still a subset
24 area.

25 CHAIRMAN CATANACH: Well, that's the whole

1 area.

2 MS. BADA: That's the old area. That's the
3 big area, a lot of which only contains the artesian.

4 CHAIRMAN CATANACH: And my point on leaving
5 that intact is I don't think it's -- I don't think the
6 rules that we're doing impose any other additional
7 burdens on the operator. It's --

8 COMMISSIONER BALCH: If the aquifer was not
9 there, they'd just have to demonstrate that to the
10 district office.

11 CHAIRMAN CATANACH: Yeah. And we're not
12 asking them to do more. If they're just drilling in the
13 artesian area, we're not asking them to do more than
14 what the statewide rule already says. So for me it's
15 not any additional burden by including it in the rule.
16 It may be duplicative, to some extent, but I think there
17 is some added protection in our rule that maybe would
18 help us get a little bit more protection.

19 COMMISSIONER BALCH: I think the motion for
20 rehearing was focused on language that was unclear and
21 could be interpreted in a number of different ways. So
22 if we remove that and maintain the original intent of
23 the Commission hearing, I'd be pretty happy.

24 CHAIRMAN CATANACH: So the original intent
25 being the area --

1 COMMISSIONER BALCH: Just to circulate
2 things to surface would cover most of the problems. So
3 I think it's all right. It does remove -- the Division
4 language does remove some of the specific language that
5 was causing issues.

6 MS. BADA: If you leave the larger area,
7 though, and they're only drilling through the artesian,
8 aren't you requiring them to provide a cement bond log
9 if they don't circulate to surface, which is an
10 additional requirement?

11 CHAIRMAN CATANACH: Yes, that is correct.
12 But I think that's not a bad thing.

13 COMMISSIONER MARTIN: I guess I would ask:
14 What was the original intent? Was it only to include
15 this -- include the area of overlap, or is it not? And
16 is the inclusion of the larger area overkill?

17 COMMISSIONER BALCH: The original intent
18 was to try and clarify that, because there was,
19 basically, a stay on APDs, and the concern was
20 overlapping aquifers. And because of that overlapping,
21 the Division was getting very specific, and in that
22 area, operators were being asked to do the same thing
23 outside of the subset area, which doesn't make a lot of
24 sense, to put three casings strings on an 1,800-foot
25 well.

1 COMMISSIONER MARTIN: Right. Right.

2 COMMISSIONER BALCH: The ultimate goal, of
3 course, is to be protective of groundwater.

4 CHAIRMAN CATANACH: Correct.

5 I guess I'm kind of in favor of leaving the
6 area as originally defined in the previous -- in the
7 previous order.

8 COMMISSIONER BALCH: The Division language
9 does mirror our suggestion and discussion during
10 testimony, the language that we requested and the
11 language that we want to clarify. I'm relatively happy
12 that it captures the way the Commission was discussing
13 it at that time and also the testimony that was given to
14 us in regards to those issues.

15 CHAIRMAN CATANACH: So you're in favor of
16 the Division language?

17 COMMISSIONER BALCH: I think we can go with
18 the Division language if we keep the broader area.

19 CHAIRMAN CATANACH: I would agree.

20 COMMISSIONER MARTIN: I'm not sure -- I'm
21 still not sure I see the point. We're keeping the
22 Division language, which I'm in favor of, and reducing
23 the area to the overlap. But maybe it's just a
24 language-barrier problem that I have.

25 COMMISSIONER BALCH: The main problem is

1 the operators didn't want to have to change their
2 drilling programs in areas where there was just the one
3 aquifer.

4 At least the way I was viewing it, in
5 November when we were looking at this, was how can you
6 ensure the protection of the groundwater without adding
7 undue burden to operators? You don't want to do that.
8 And at that time, a typical completion would not
9 necessarily circulate cement to surface. It would stop
10 somewhere. And then because of that, you wanted to make
11 sure you had top of cement defined, and that would
12 require a bond log or some other method to determine
13 that.

14 The solution was you add a relatively small
15 expense to the operators, adding, you know, 20, 30, 40
16 bags of cement, more than you would have done prior,
17 circulate to surface. Then you know you have cement all
18 the way through that section, if you don't do the bond
19 log. So the only case there that you would have to deal
20 with is if you didn't have circulation to surface. So
21 it's a relatively small additional expense.

22 The operators, without giving them the
23 additional administrative burden having to go to the
24 district office, wait about 20 days for a bond log.
25 First of all, you have to wait for the bond log to be

1 done, which is several days of cement curing, first of
2 all.

3 COMMISSIONER MARTIN: Right.

4 COMMISSIONER BALCH: Then you wait for the
5 Division office. And during that time, I think you're
6 actually increasing the risk to the aquifers because you
7 have a potential open hole at the bottom.

8 COMMISSIONER MARTIN: Right.

9 COMMISSIONER BALCH: So I think the
10 original intent was that --

11 COMMISSIONER MARTIN: Okay.

12 COMMISSIONER BALCH: -- how to safely --
13 ensure the safety of those water resources without
14 stacking development.

15 CHAIRMAN CATANACH: Does that help your --
16 any of your concerns?

17 COMMISSIONER MARTIN: Some.

18 COMMISSIONER BALCH: So keeping the larger
19 designated area -- getting back to the point --

20 COMMISSIONER MARTINE: Yes.

21 COMMISSIONER BALCH: -- keeping the larger
22 designated area, what you're really doing is requiring a
23 few more bags of cement for that surface string -- first
24 surface string.

25 COMMISSIONER MARTIN: In areas where it's,

1 admittedly, not necessary, I guess is my --

2 COMMISSIONER BALCH: In areas where it may
3 not be necessary.

4 COMMISSIONER MARTIN: Okay.

5 CHAIRMAN CATANACH: Wouldn't it be
6 necessary?

7 COMMISSIONER MARTIN: If the overlap -- if
8 there is no overlap, I say increase the overlap. If
9 there is no overlap, then there is -- but cement --
10 circulate cement is a different point, but -- I think it
11 is. Maybe it's not.

12 COMMISSIONER BALCH: Some of the testimony
13 that came is that the shallow aquifer can come and go
14 not just in space but also in time, if you have a really
15 wet year, for example. And the testimony from, -- you
16 know, from Maxey and other petroleum engineers, their
17 typical cement job is a few bags shy of circulating to
18 surface anyway. I don't think it's an undue large
19 burden in this area, which is very important for
20 agriculture and other concerns --

21 COMMISSIONER MARTIN: Right.

22 COMMISSIONER BALCH: -- to have that. You
23 can have added safety by adding a few bags of cement. I
24 I think that's a good trade-off. I believe that's what
25 the Commission came to in November. The problem came in

1 in May. Some of the language was unclear as to how to
2 implement that.

3 COMMISSIONER MARTIN: But only the part in
4 2(a) and (b)? That's the only disputed language, right?

5 CHAIRMAN CATANACH: Yeah. I think -- I
6 think it was Part C in the original -- Part C in the
7 original record that was disputed.

8 Do you guys want to take a break for a
9 couple of minutes?

10 COMMISSIONER MARTIN: Sure.

11 CHAIRMAN CATANACH: Why don't we take a
12 ten-minute break?

13 COMMISSIONER BALCH: Sure.

14 (Recess, 10:23 a.m. to 10:31 a.m.)

15 CHAIRMAN CATANACH: Okay. We're back on
16 the record, and let's continue with these deliberations.

17 So I guess I'm still in favor of keeping
18 the original designated area and not tinkering too much
19 with the Division language. You guys want to argue with
20 that?

21 COMMISSIONER BALCH: Well, I'm trying to
22 remember now, because it was proposed to change the
23 designated area as part of the -- part of the motion.

24 CHAIRMAN CATANACH: Right. I mean, that
25 was part of the re-opened case.

1 COMMISSIONER BALCH: But the bigger concern
2 was the language.

3 CHAIRMAN CATANACH: I think that's a fair
4 statement.

5 COMMISSIONER MARTIN: And my position is to
6 keep the language -- or to keep the language of the --
7 the Division language but contract the area. And if
8 that causes problems with the language, then I guess I
9 don't see that point.

10 COMMISSIONER BALCH: I think that anywhere
11 there is the artesian aquifer, I'd like to see cement to
12 surface. That's just common sense.

13 CHAIRMAN CATANACH: Well, I think that's in
14 the rules. I mean, that's in the statewide rules.

15 COMMISSIONER MARTIN: Let me clarify
16 something first. We keep coming back to this
17 circulating cement. Was that ever in dispute?

18 COMMISSIONER BALCH: It was a matter of
19 intense discussion in the room.

20 COMMISSIONER MARTIN: Was it?

21 COMMISSIONER BALCH: Yes.

22 So the surface casing string to surface --

23 COMMISSIONER MARTIN: Yes.

24 COMMISSIONER BALCH: -- how do you want --
25 but the immediate casing string is circulated into some

1 point on the base of the cement surface casing, for
2 example.

3 COMMISSIONER MARTIN: Which is sometimes
4 done outside of the --

5 COMMISSIONER BALCH: Yeah.

6 CHAIRMAN CATANACH: I think the bigger
7 concern is circulating of the surface casing was where
8 the two aquifers were present. We wanted to make sure
9 it was definitely circulating in those areas --

10 COMMISSIONER BALCH: Right.

11 CHAIRMAN CATANACH: -- in the two-aquifer
12 system. So I think that was a big part of it.

13 COMMISSIONER MARTIN: And I agree with
14 that.

15 CHAIRMAN CATANACH: I guess I still feel
16 like -- keeping the original designated area gives me a
17 little more comfort in making sure that cement is
18 circulated, you know.

19 COMMISSIONER BALCH: I think I'm kind of
20 there. A few bags of cement per well is not -- not
21 undue burden, I don't think. And because the Division
22 did add in the language there that casing programs could
23 be, you know, modified by the district office, then if
24 you run into a repetitive scenario, where you've
25 demonstrated in an area that you can do something

1 different, they're going to let you do that. It's not
2 going to be that every time you have to go there and
3 make the same argument. You'll just -- they'll come
4 with an arrangement in the APD and the district office,
5 those small areas that are an exception. So I think
6 that's important language, the addition to Section D.

7 CHAIRMAN CATANACH: Oh, on the flexibility?

8 COMMISSIONER BALCH: Yeah, the flexibility.
9 And the flexibility goes both ways. I mean, there could
10 be places where you feel like you need to be more
11 protective, but areas where less concern is needed, less
12 focus is needed.

13 So I concur with David on this. I'll go
14 with the proposed language by the Division, keep the
15 original language.

16 CHAIRMAN CATANACH: I believe that's what I
17 want to do. I mean, you don't have to -- you don't have
18 to go along.

19 COMMISSIONER MARTIN: I can't get off of
20 the overlapped area. I agree with you on two of three
21 of those points, but on that, I don't I think the area
22 should be contract.

23 COMMISSIONER BALCH: We can vote on the
24 components of it and then --

25 COMMISSIONER MARTIN: Sure.

1 COMMISSIONER BALCH: -- if you feel like
2 it, you can support the overall conclusion and voice
3 your opinion on the designated area. That way you're
4 having a "no" vote on that part.

5 COMMISSIONER MARTIN: I can do that.

6 CHAIRMAN CATANACH: So I guess with regards
7 to the designated area, do we want to just vote on that?

8 COMMISSIONER BALCH: I think so. So I
9 would move that we keep the original designated area as
10 formulated in the November rule.

11 CHAIRMAN CATANACH: I would second that and
12 vote for that.

13 So all in favor?

14 (Ayes by Chairman Catanach and
15 Commissioner Balch.)

16 CHAIRMAN CATANACH: All opposed?

17 COMMISSIONER MARTIN: Nay.

18 CHAIRMAN CATANACH: So now we're talking
19 about the language of the Division rule. Is there any
20 reason to change any of this language that has been
21 proposed? Does anybody have any suggestions for
22 changing any of the proposed language?

23 COMMISSIONER MARTIN: I do not.

24 COMMISSIONER BALCH: I think -- keeping the
25 larger designated area. I'm comfortable with the

1 language I've proposed.

2 CHAIRMAN CATANACH: All right. So we'll
3 put that up to a vote.

4 All in favor of adopting the Division's
5 proposed language? All in favor?

6 (Ayes are unanimous.)

7 CHAIRMAN CATANACH: So there is concurrence
8 on that.

9 And so how do we proceed at this point,
10 counselor?

11 MS. BADA: Just have to do an amended
12 order -- supplemental order and revise the rule.

13 CHAIRMAN CATANACH: Would you (indicating)
14 like to make any statements or anything with regards
15 to your --

16 COMMISSIONER MARTIN: No. I think I've
17 covered it.

18 CHAIRMAN CATANACH: Okay. I don't know how
19 that works in terms of the final order with the
20 descending vote. Would the Commission not sign the
21 order?

22 COMMISSIONER BALCH: You could basically
23 let it show that he disagrees with that part of it, but
24 he may agree with the overall rule. We don't know how
25 that would go until we vote on it. That has been the

1 case before with prior rulemaking, you know, when one
2 party dissents. The entire rule doesn't get thrown out
3 because one part is not agreed to.

4 CHAIRMAN CATANACH: So how would that be
5 reflected in terms of the final order if he's -- well,
6 I'm not exactly sure how one would vote on the final
7 rule in the affirmative if you disagree with half of
8 that. I mean, I don't know how you would vote yes if
9 you disagree with part of what we're voting on.

10 COMMISSIONER BALCH: It's been done before,
11 particularly in the Pit Rule. There were probably 10 or
12 12 items that Commissioner Bloom disagreed with from the
13 point of view of the Land Office, and those were put
14 into the record, as to him disagreeing with them. But
15 at the end of day, he did agree with and sign the final
16 rule, while recognizing that parts of it he didn't agree
17 with.

18 COMMISSIONER MARTIN: And that's acceptable
19 to me.

20 CHAIRMAN CATANACH: Just recognizing that
21 on the record is sufficient?

22 COMMISSIONER BALCH: That's what
23 Commissioner Bloom was looking for --

24 CHAIRMAN CATANACH: Okay.

25 COMMISSIONER BALCH: -- and, presumably,

1 the Land Office.

2 CHAIRMAN CATANACH: So do we vote on the
3 final rule? Is that where we're at?

4 COMMISSIONER BALCH: Or we wait until we
5 have it in front of us.

6 COMMISSIONER MARTIN: If we all sign it,
7 then we agree, right?

8 MS. BADA: Yeah. So you can vote on the
9 order when it --

10 COMMISSIONER BALCH: So we'll vote on it
11 when we have it in front of us?

12 CHAIRMAN CATANACH: Okay. Let's do that.
13 Let's make the necessary revisions to the -- to the
14 order. And I think it would be -- we would need a new
15 order, right?

16 MS. BADA: Yes.

17 CHAIRMAN CATANACH: I don't think it would
18 be very long.

19 So can we have that done by the next
20 Commission hearing, July 13th?

21 MS. BADA: (Indicating.)

22 CHAIRMAN CATANACH: So I guess we would
23 just move that that be voted on in its final form at the
24 July 13th hearing? Is that acceptable to the
25 Commission?

1 COMMISSIONER BALCH: Yes.

2 COMMISSIONER MARTIN: Yes.

3 CHAIRMAN CATANACH: I think we're done with
4 that particular case then.

5 (Case Number 15487 concludes, 10:42 a.m.)
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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

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