

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

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

COPY

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR A COMPLIANCE
ORDER AGAINST XERIC OIL & GAS CORP. (Continuation) Case No. 14106

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION THROUGH THE ENVIRONMENTAL
BUREAU CHIEF, FOR ADOPTION OF AN AMENDMENT TO
19.15.39 NMAC ADDING NEW SECTIONS TO BE CODIFIED AT
19.15.39.9 AND 19.15.39.10 NMAC ADDRESSING SPECIAL
PROVISIONS FOR SANTA FE COUNTY AND THE GALISTEO BASIN,
SANTA FE, SANDOVAL AND SANTA FE COUNTIES Case No. 14255

APPEALS OF BASS ENTERPRISES PRODUCTION CO. vs. OCC and DEVON
ENERGY PRODUCTION COMPANY D-0101-CV-2006-01935

Case No. 14163; Dismissed

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

BEFORE: MARK E. FESMIRE, Chairman
JAMI BAILEY, Commissioner
WILLIAM C. OLSON, Commissioner

February 25, 2009

Santa Fe, New Mexico

This matter came on for hearing before the New
Mexico Oil Conservation Commission, MARK E. FESMIRE,
Chairman, on Wednesday, February 25, 2009, at the New
Mexico Energy, Minerals and Natural Resources Department,
1220 South Saint Francis Drive, Room 102, Santa Fe, New
Mexico.

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EXHIBITS

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(No exhibits were marked or admitted.)

REPORTER'S CERTIFICATE

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1 CHAIRMAN FESMIRE: Let the record reflect
2 that it is 10:30 on Wednesday, February 25th, 2009. This
3 a continuation of the regularly-scheduled Commission
4 meeting that was originally convened on February 24th,
5 2009.

6 The record should reflect that Commissioner
7 Bailey, Commissioner Olson and Commissioner Fesmire are
8 present. At this time the Chair would entertain a motion
9 to go into executive session to discuss the appeal of
10 Bass Enterprises Production Company vs. OCC and Devon
11 Energy Production Company, Case Number
12 D-0101-CV-2006-01935.

13 COMMISSIONER OLSON: So moved.

14 CHAIRMAN FESMIRE: Is there a second?

15 COMMISSIONER BAILEY: Second.

16 CHAIRMAN FESMIRE: All those in favor
17 signify by saying aye.

18 CHAIRMAN FESMIRE: Let the record reflect
19 that the vote was taken and the Commission decided to go
20 into executive session as of 10:35 a.m., where we will
21 discuss only the aforementioned District Court case,
22 okay?

23 (The Commission went into executive session.)

24 CHAIRMAN FESMIRE: The record should
25 reflect that the Commission met in executive session for

1 approximately five minutes, and during that executive
2 session, the only issue that was discussed was the
3 Commission's participation in the Bass Enterprises
4 Production Company vs. OCC and Devon Energy Production
5 Company, LP, Cases Number D-0101-CV-2006-01935 and 01936.

6 At this time we will reconvene Cause Number
7 14106. As I said, this is a continuation of Cause Number
8 14106. Since we have a new court reporter, we're going
9 to ask for a new entry of appearance by attorneys.

10 MS. ALTOMARE: Mikal Altomare on behalf of
11 the Oil Conservation Division.

12 CHAIRMAN FESMIRE: Since we have a new
13 court reporter, why don't you spell your last name?

14 MS. ALTOMARE: My first name is Mikal,
15 M-i-k-a-l, last name, Altomare, A-l-t-o-m-a-r-e.

16 CHAIRMAN FESMIRE: Ms. Munds-Dry?

17 MS. MUNDS-DRY: Ocean Munds-Dry with the
18 lawfirm of Holland & Hart here representing Xeric Oil &
19 Gas Corporation. My name is spelled O-c-e-a-n
20 M-u-n-d-s-D-r-y.

21 CHAIRMAN FESMIRE: Ms. Munds-Dry, I
22 believe you were ready to call your third witness.

23 MS. MUNDS-DRY: Yes. I'd like to call
24 Kelly Fielder.

25 CHAIRMAN FESMIRE: Mr. Fielder, you

1 remember you have been previously sworn in this case.

2 Just to be kosher, we're going to go ahead and swear you
3 again.

4 (The witness was sworn.)

5 KELLY FIELDER

6 Having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. MUNDS-DRY:

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

11 A. Kelly Fielder.

12 Q. And where do you reside?

13 A. Vancouver, Canada.

14 Q. By whom are you employed?

15 A. Resilient Energy.

16 Q. What is your title with Resilient Energy?

17 A. I am the president and chief executive
18 officer.

19 Q. What do you do for Resilient? What is your
20 title?

21 A. I founded the company in 1998. I'm the
22 principal shareholder by a large majority, and we're an
23 operating energy company.

24 Q. Mr. Fielder, yesterday you were present for
25 the testimony by both the Division and by Xeric?

1 A. Right.

2 Q. And you recall that there were a few questions
3 by the Commission as to relationship between Xeric and
4 Resilient and who is Resilient. Let's start with who is
5 Resilient Energy? What kind of work do you do? Let's
6 first try to explain that. Introduce yourself to the
7 Commission.

8 A. I'll give you the background. My background
9 is corporate finance and compliance. I sign the
10 quarterlies and annual reports with the SEC for a number
11 of public companies. I'm the director of another public
12 company, as well as two other public companies in Canada.
13 I sit on the Board of Directors of a number of other
14 corporations, not all relating to oil and gas. Some are,
15 some are not.

16 Again, my background is compliance. That's
17 what I do on the Board of Directors of two of the other
18 companies is I am Chief Financial Officer, and I do all
19 the regulatory stuff for the Exchange in terms of
20 compliance, as well as other compliance matters,
21 preferably not as heavy as we are here today. But that's
22 generally what I do for these other companies.

23 Resilient Energy is a company that has
24 invested and has some interest in other energy
25 properties. It's got a substantial medical asset not

1 related to this. I understand that. It's just an asset
2 that I invested in which we still get royalty streams on.

3 I have another partner I brought into
4 Resilient. His name is Dan Johnson. He is 59 years of
5 age. He's been in the oil and gas industry since he
6 was -- you know, late teens. He used to own Johnson
7 Energy. The purpose of why I formed a -- I'll call it a
8 partnership with him or a significant interest in the
9 company was because of his field experience. My
10 background in corporate finance does not -- I don't have
11 the background to be an actual on-the-ground operator.
12 That's what Dan does for me.

13 We were introduced to Xeric. Actually, Dan
14 was introduced to them. Dan introduced Xeric to me. We
15 looked at their properties. We liked their assets. They
16 needed capital. The confusion for you was as confusing
17 for me at the onset of this. They were pretty
18 disorganized. I believe in their asset value. We ended
19 up acquiring them. This is where I'll just get right
20 down to the technical, because it was hard for me to keep
21 a lid on it yesterday, because Ron was not able to
22 articulate exactly where we sit.

23 We acquired Xeric in its entirety. Xeric is
24 owned -- it was done by way of a share exchange with our
25 company, so we bought 100 percent of the shares in Xeric

1 in exchange for shares in Resilient. Ron St. John was
2 the principal and sole principal of Xeric. He is the
3 only shareholder of Xeric, so he signed 100 percent of
4 the shares over to Resilient in the acquisition. That
5 was done for the date of January 1st.

6 There was a couple of exhibits in the closure
7 that Xeric was unable to produce at the closing. We had
8 to go chase those down. One of which is an opinion
9 letter from a Texas attorney. They also use Holland &
10 Hart in the Denver office. Holland & Hart was unable to
11 sign that opinion letter, so we were waiting and still
12 waiting for that. But we had -- Ron has actually signed
13 the closing documents of which I brought a copy today in
14 case you needed that. So that, hopefully, alleviates
15 some confusion as to how that went on.

16 In addition to that, Resilient and myself,
17 primarily -- well, both us. It doesn't matter. We're
18 one in the same -- purchased all of the working interests
19 in other properties outside of the State of New Mexico
20 that Xeric had interest in. So they didn't own 100
21 percent working interest in the other properties. I
22 bought the balance of those.

23 CHAIRMAN FESMIRE: In the Montana and
24 Wyoming properties?

25 THE WITNESS: That's correct, yes. And

1 that was for -- I mean, I don't know if -- it doesn't
2 matter, but there was a dollar value attached to that,
3 and it was a high-number value. So we're -- I was more
4 interested -- if I acquired Xeric, I wanted all of the
5 working interests up in Wyoming and Montana, just -- I
6 know it's not relevant here, but just so you know where I
7 was coming from.

8 In terms of the New Mexico assets or what's in
9 the portfolio there, I think there's a huge opportunity.
10 We'd like to see some cash injected. I'd have to take
11 over managements for exactly the reasons of confusion
12 yesterday. They're quite willing to do so. Both Dan and
13 Adam haven't made any misrepresentations to me, and I'm
14 pleased to know that.

15 CHAIRMAN FESMIRE: Time-out. Who's Adam?

16 THE WITNESS: Adam Hirschfeld. They
17 haven't made any misrepresentations to me. There has
18 been a lot of confusion, and I think if I wasn't -- maybe
19 call it an aggressive of investor -- I probably would
20 have ran away and ran fast, because it's just a little
21 bit of chaos in the way they structured things.

22 Anyway, taking over from that point, our
23 primary interest in New Mexico was to appoint Dan
24 Johnson. When I say, "appoint," meaning he will work
25 specifically in the State of New Mexico. He doesn't have

1 the ability or the interest to work up in Wyoming or
2 Montana. The game plan that we had as an organization is
3 to keep on Ron, to keep on Adam as a consultant, but to
4 have Dan specifically work in New Mexico.

5 Ron's skill set is probably better if we
6 had -- amongst the four of us as, you know, interested
7 parties that actually run this ship, as it were, Ron's
8 skill set is better suited in either New Mexico or
9 Wyoming. Dan Johnson's skill set is definitely suited in
10 the State of New Mexico compared to our other portfolio.
11 He resides in Georgia. He works with his wife. He goes
12 to whatever projects we happen to be on. We were looking
13 at a project for a couple of months up in Kansas. He
14 just packs it up and goes over there on my behalf or the
15 company's behalf, as it were. So he's quite prepared to,
16 if not relocate permanently, at least on a semi-permanent
17 basis, or as needed for that property.

18 He will be the one that will be reporting to
19 you folks, and we're hoping to establish a whole lot
20 better dialogue in the way the communication, I believe,
21 has been broken down or been a failure to date, is the
22 easiest way to put it. So there is a change in
23 management to the extent that the issue that we're here
24 about is one that's, obviously, of grave concern for me.
25 You know, that's, obviously, one of the reasons I'm here.

1 But to also get to the bottom of it, because I
2 think between the two of them, meaning Mr. Hirschfeld and
3 Mr. St. John, I think they are -- I know for a fact that
4 Ron is a very capable operator. He's not so good at
5 housekeeping for administrative and corporate due
6 diligence. It's not his -- it's not what he likes to do.
7 Adam is very -- tries to be very good. They've been a
8 little bit understaffed, a little bit undercapitalized,
9 and I don't think they had the best cash flow management
10 in place. And that's what we're here to do and help
11 them. That's probably why we -- where we got to today.

12 And we hope to overcome some hurdles. There
13 isn't anything that I found that is -- the stuff that we
14 got into yesterday, those individuals, I've never even
15 talked to, so I don't know who these people are. I mean,
16 I've heard, obviously, the history outside of this room
17 to some extent. But I don't deal with these people.
18 I've never met Mr. -- is it Collier? Tim is his name.

19 Q. (By Ms. Munds-Dry) That's what I was going to
20 ask you, Mr. Fielder. Did you mean Mr. Collier or Mr.
21 Cook?

22 A. Yeah. I've never met either of them or ever
23 talked to either of them, and they don't have any
24 interest in my company, so that I am sure of. So I just
25 wanted -- there was some confusion. There wasn't any

1 overlap, and I didn't want any overlap with these
2 individuals because I don't know them. They're not part
3 of the scene going forward. And if they're going to be a
4 shareholder, I need to know now, and they're not.

5 So Dan will -- Dan and Ron will be directors
6 of the company. I haven't appointed Ron yet, and we'll
7 keep Adam as a consultant for the time being. I'll maybe
8 get -- I haven't even designed any sort of
9 performance-related package for Adam, but I'll probably
10 give him some stock option or something. I am in the
11 midst of auditing Xeric's financial records so that it's
12 capable -- so that we can continue our listing with the
13 Securities Exchange Commission.

14 A requirement when I acquire a company, I have
15 to have two years of audited financial statements, so I
16 am in the process of auditing Xeric. There's nothing in
17 there that I found, other than they've kind of run out of
18 money. But there's nothing in there that's not
19 auditable. There's no litigation pending or anything
20 like that that I'm aware of so far, so -- and we have --
21 internally within my organization, I also have a fellow
22 by the name of Peter White. He's a full CPA, and he's
23 also doing the books for us internally and will continue
24 to do books internally. He's also capable of dealing
25 with regulatory matters as well as I am. Although I'm

1 chief financial officer by definition, he really does act
2 in that capacity for the company.

3 And also we have external auditors, which is
4 Grewborn Associates out of St. Louis, and our securities
5 and corporate attorney is Bill Hart, out of Denver, which
6 is no relation to Hart & Holland. Different Hart.

7 Q. Mr. Fielder, you explained that you saw value
8 in the asset, and that's why Resilient has chosen to come
9 in and acquire Xeric. Can you expand on what it is that
10 Resilient sees as the -- what is the value in the asset,
11 what you're purchasing in Xeric?

12 A. What I see and what others may see is probably
13 a little different. I think it's a little bit -- I see
14 that there's value in getting some re-work done on these
15 projects and getting some of these wellbores active
16 again. That's where I see the value. That's why I'm
17 here. I'm not here to close them down and walk away.
18 I'm here to get this company and turn it into, hopefully,
19 a successful corporation to the extent it can.

20 I believe that there's a good opportunity
21 here. I know that I've chosen good management in terms
22 of operational management. I won't ask them to balance
23 the books or fill out forms and get them in on time.
24 That's what I will not be doing. So that's the value I
25 see in the state for sure, and I think, you know, there's

1 a good opportunity for all of us.

2 Q. I think you've alluded to this, but just to
3 make it crystal clear, you've been made aware of Xeric's
4 status and compliance issues, all of the issues in New
5 Mexico.

6 A. Yes. Like I said, it was never misrepresented
7 to me in any way. They're good guys. They really are.
8 The way they may articulate things is not the way I would
9 read it or may hear it from your standpoint. They were a
10 little bit confused. They were a little lost with, I
11 guess, where they kind of left the responsibility to
12 their previous partner or associate or whatever Tim was.
13 They were a little bit blind there. I'm not excusing
14 them. That's not how I would allow myself to be
15 conducted but, in any event, it happened, and I am aware
16 that it's an issue.

17 Q. The million-dollar question is how does
18 Resilient Energy's purchase of the acquisition of Xeric
19 help bring Xeric into compliance in New Mexico?

20 A. My job for the company and what I've done in
21 the past is to continue either personally or through --
22 by way of public financing. In fact, I already have a
23 term sheet from Westminster Securities, and that isn't
24 something -- that is not a done deal. There are things
25 to finish. But I do have that in place for \$8 million in

1 capital, and we're hoping to close that within 90 days.

2 Q. One of the other questions that came up
3 yesterday was with the issue of the single well bonding.
4 And the Commission is, obviously, concerned, for good
5 reason, is how do we assure that Xeric will, in fact,
6 bring their wells into compliance?

7 A. We do have a plan. And I think, if I remember
8 correctly, Commissioner Olson asked directly, "Do you
9 have a plan here?" We do have a plan, and it's actually
10 a fairly laid-out plan. And I do, actually, have a draft
11 copy of a plan with me, if you'd like me to leave it with
12 you. If not, I can formally get it to you. What I'm
13 waiting for my in-house accountant to do is just do some
14 factual projections for us. We have them on a very mild
15 basis, but we are building a cash-flow model on the
16 auspices to get at least 40 of those, 80 if possible, up
17 and fully functional.

18 The time frame, capital is very tied up right
19 now. I won't say this is easy. There's a lot of things
20 that are scaring people. This matter that we have at
21 hand is a very, very challenging matter for me to convey
22 to potential investors, very hard. But we're trying to
23 work with it as best we can and explain that our plan is
24 to get things up and running. I've capitalized many
25 companies, and I have already put a lot into Xeric, and

1 buying out the other working interests has been an
2 expensive procedure so far.

3 I took a leap of faith with Xeric. Like I
4 said, there wasn't any misrepresentations. As my
5 attorney put it, "I know how you work, so you're on your
6 own." But I do believe there's good value here, and I
7 think it was a function of mismanagement to date. I
8 can't speak for -- I wasn't there for it, but I know I
9 can say who will be running it going forward or be
10 responsible is me.

11 Our plan within the State of New Mexico -- if
12 you want to get into some vague numbers or if you want me
13 to get as specific as I can -- we're trying to get
14 approximately -- we've called for -- it may be more or
15 may be less, but we've called for approximately 40 of
16 those wellbores to try to get them reactivated, whatever
17 the process it takes. I'm not the technical guy but I
18 can -- it's in my briefcase. I can pull it out -- of
19 what we plan to go about doing that.

20 The cost that we're anticipating for all the
21 projects in New Mexico is around 2.5 to \$3.3 million, is
22 what I feel is the capital needed, so -- and the
23 breakdown of the use of proceeds would be to re-work
24 existing wells, clean up our matters in our own backyard
25 to the best of our ability and get these inactive wells

1 off the list and get them active. The point of -- that I
2 got into this whole thing is to generate revenue,
3 obviously. So I'm hoping that's the case.

4 Q. Would you address how Resilient or Xeric plans
5 to address posting the single well bonds?

6 A. That's a challenge for us. Like I said, the
7 economy is not working in my favor. I'm not using that
8 as an excuse, but it's a practical matter. It's very
9 hard right now. People are -- it is very challenging. I
10 think people are more interested in assisting me
11 financially to re-develop the property, to put the money
12 into the property. Posting it for well bonds is not of
13 interest to most investors. I'll just be frank. Whether
14 it's a necessity or a criteria is something of a hurdle
15 that I'm trying to work around, but it's not -- it is
16 challenging for the company, without a doubt.

17 Q. With the investors that you've talked to, what
18 are the, sort of, requirements that they would have of
19 Resilient to post those kind of bonds?

20 A. They would like to see the money go into
21 development, as opposed to going into the bonds and,
22 therefore, satisfying the matter that we're here about.
23 In conjunction with development, they'd like to know if
24 we have either a timeline or something that -- you know,
25 if we're out of business in the State of New Mexico, then

1 we've got a problem. In other words, I can't put any
2 capital in. So that's a bit of an issue, so we're trying
3 to work around that.

4 Q. Is it possible to post a portion of the bonds
5 or to come up with some sort of flexible plan that would
6 allow for some assurance to the Commission that they're
7 not left holding the bag?

8 A. Yeah. What Ron said yesterday of what he
9 feels, as a man that's going to be doing this work with
10 Dan Johnson -- and it will probably be more -- it will
11 be -- both of them have met several times. I've been out
12 to the property from the first time I went to look out
13 there to what their game plan was to the point of where I
14 finished this acquisition, and they have done a lot. I
15 don't need to get into technical or -- I looked at the
16 bills with Baker. I think I'd manage that differently.
17 But in any event, the bills have been spent and they've
18 been invoiced the company, which I inherited. So I
19 inherited all their assets and their liabilities. So
20 here we are.

21 I think the schedule -- I'm hoping to be a
22 little bit more ambitious than five wells per quarter, is
23 my hope. However, this economy is tough. We may have to
24 do it one brick at a time. I don't want to get over
25 ambitious and fail with you people at the level of

1 seriousness that we're here. I don't want that to
2 happen. But my intention is to fast track it as much as
3 possible, because that's what I need to do for my own
4 benefit and the benefit of the investor, et cetera. They
5 want the timeline.

6 And upon financing, we're hoping to accelerate
7 that timeline as fast as we can, so well under two years
8 is -- we'd like to do this, upon being financed as fast
9 as possible. We've got the manpower to do it and we do
10 have the management in place. We've got all of the other
11 holes pegged. It just needs to be capitalized and done.

12 Q. Does Resilient intend for Xeric to remain the
13 operator in New Mexico?

14 A. For the moment, yes. That's why we're keeping
15 Ron, as well. He's a good guy. I do believe in his
16 abilities. I don't believe in his ability to be on the
17 administrative team.

18 MS. MUNDS-DRY: That's all the questions I
19 have for Mr. Fielder. Pass the witness.

20 CHAIRMAN FESMIRE: Ms. Altomare?

21 MS. ALTOMARE: Thank you.

22 CROSS-EXAMINATION

23 BY MS. ALTOMARE:

24 Q. Mr. Fielder, does Resilient conduct oil and
25 gas operations in any other state in the United States?

1 A. We have interests in properties in -- well, we
2 mentioned Wyoming, Montana, and I have another property
3 in North Dakota.

4 Q. Okay.

5 CHAIRMAN FESMIRE: Wait a minute. Is that
6 Resilient or Xeric?

7 THE WITNESS: Resilient just has an
8 investment in a property in North Dakota.

9 Q. (By Ms. Altomare) Who's the operator for that
10 property in North Dakota?

11 A. I'd have to look it up. I believe it's
12 Heathercrest.

13 CHAIRMAN FESMIRE: Hang on just a second.
14 You have other properties in Montana and Wyoming than the
15 Xeric properties?

16 THE WITNESS: No. Just the Xeric
17 properties.

18 CHAIRMAN FESMIRE: So Resilient, through
19 its ownership of Xeric, has those?

20 THE WITNESS: Correct.

21 CHAIRMAN FESMIRE: And then you have
22 another property in North Dakota?

23 THE WITNESS: That is correct.

24 Q. (By Ms. Altomare) So the property in North
25 Dakota is operated through a different third party?

1 A. Yeah. It's simply a passive investment.

2 Q. Is it a similar arrangement as that that
3 you're engaged in with Xeric at this time?

4 A. No, not at all. Like I said, it's a passive
5 investment. We acquired Xeric.

6 Q. Have you ever had an arrangement like the one
7 that you're entering into with Xeric at this time?

8 A. I've bought several companies this way.

9 Q. That you've had a hands-on management capacity
10 like this?

11 A. Yep.

12 Q. In the oil and gas industry?

13 A. Not to the extent of complete leadership that
14 I have now. I've had other partners in other businesses.
15 Taylor Rigs is one operating company that I was the
16 president of and principal owner of, but I didn't operate
17 it.

18 Q. What states does Taylor Rigs operate in?

19 A. This is going back awhile now, but -- well,
20 they're licensed in several states, but their head office
21 was in Kansas.

22 Q. What other operators has Resilient Energy been
23 affiliated with?

24 A. Under Resilient, none.

25 Q. What about in Canada?

1 A. We have, again, some passive investment in a
2 few properties in Alberta.

3 Q. You made a comment that was interesting to me.
4 You stated that you've inherited their assets and their
5 liabilities. You're clearly very familiar with corporate
6 structures and acquisitions of corporations and that kind
7 of thing. You understand that corporations are treated
8 differently than individuals, for instance?

9 A. Yes.

10 Q. This is a company that -- we treat
11 corporations differently for a reason.

12 A. Is that a question?

13 Q. Yes. That we treat a company as a whole.
14 We're not looking at the specific individuals within it.

15 A. I understand that.

16 Q. Have you looked into possible surety options
17 for posting of the bonds?

18 A. We have. My partner, Dan Johnson, used to own
19 an insurance company, so just by default I asked him to
20 look into this for us. We did come back with, pretty
21 much, not very successful numbers. So in other words,
22 there wasn't a bond that could be posted unless it was
23 pretty much a dollar-for-dollar basis. Also of concern
24 was the bond being exercised would leave a little bit of
25 a black mark for us. If it was a dollar-for-dollar and

1 then just automatically exercised, that kind of defeated
2 the purpose of putting the bond up, not to mention
3 creating a little bit of a legacy. Our company doesn't
4 have a bond cashed. That's not very good historically.

5 Q. Have you looked into the option of letters of
6 credit?

7 A. No. I don't think this is a bankable deal at
8 this point.

9 Q. I'm sorry?

10 A. This corporation is not a bankable deal. In
11 corporate financing terms, you can't walk this deal into
12 Wells Fargo yet.

13 Q. Both you and Mr. St. John -- I believe it was
14 Mr. St. John -- had talked about possibly posting some of
15 the bonds, some kind of a flexible negotiation. Do you
16 understand that under New Mexico law, under New Mexico
17 rules, Xeric/Resilient is required to post all of the
18 bonds?

19 A. I understand that that is the issue, and I
20 don't know what it is we can do about that. But we're
21 willing to work with you guys, whatever way we can.

22 Q. You said that Mr. Johnson is going to be the
23 primary New Mexico contact?

24 A. Correct.

25 Q. And you made some reference to him being

1 willing to relocate on a semi-permanent basis?

2 A. He's indicated to the company that he will be
3 out here as needed. And what that means exactly, I can
4 tell you, is this project certainly, from the starting
5 point, cannot be run remote. It doesn't work.

6 Q. So he understands that he cannot operate from
7 Georgia?

8 A. I understand that. I think he understands
9 that. That's why I have him in the corporation, because
10 I need somebody hands on. That would be in addition to
11 Ron, so it's not -- Ron is not getting singled out here.
12 He needs help.

13 Q. But Ron resides in Montana, correct, or
14 Wyoming?

15 A. No. Ron resides in Midland, Texas, so he
16 commutes to Hobbs on a -- not a daily basis, but on an
17 as-needed basis. He goes to Hobbs all the time.

18 Q. You acknowledge that to date, upon your review
19 of the history of Xeric, there has not been good
20 bookkeeping and cash flow management?

21 A. Correct.

22 Q. And that Xeric is and has been in violation of
23 multiple New Mexico rules?

24 A. It's my understanding.

25 Q. And you're coming into this company with full

1 knowledge of that?

2 A. I'm coming into this company to get -- to
3 satisfy what needs to be satisfied here and to maximize
4 the potential of the asset.

5 Q. You mentioned that you, basically, represent a
6 change in management, that this is kind of, basically,
7 renewed hope?

8 A. It's a significant change.

9 Q. We've seen this two, three times, at least,
10 with this company. What assurances do we have that this
11 change in management is any different than the last
12 several times that we've gone through this with this
13 company and not seen any changes?

14 A. I think the change certainly from a technical
15 standpoint is we acquired Xeric, so we're not becoming a
16 partner and we're not becoming employees. Although Ron
17 is staying on and will have an equity position in the
18 company, as the chief financial officer of the company, I
19 control the bank book, so I can tell you there's a big
20 change.

21 Q. Didn't Mr. St. John, Mr. Hirschfeld and Mr.
22 Collier also acquire Xeric?

23 A. I believe they did. I only know about as much
24 as you guys heard yesterday. I can only look at Xeric as
25 a corporation as of the day when I acquired it, so I

1 don't know its history.

2 Q. You indicated that for now, Xeric is going to
3 remain the operator in New Mexico.

4 A. We would like that, yes.

5 Q. At some point do you foresee Resilient
6 becoming the operator?

7 A. I don't know that it would be necessary.

8 Q. You understand that in order for that to
9 happen, Resilient would have to become a registered
10 operator in New Mexico?

11 A. I understand that.

12 Q. And then at that point in time, Resilient
13 would have to have all the wells transferred into its
14 name?

15 A. I believe that's correct.

16 Q. At which time, in order for that to happen,
17 every single well bond owed on all of these wells would
18 have to be posted.

19 A. Okay.

20 Q. Do you understand that that's how the rules
21 are structured?

22 A. I understand the rules.

23 Q. So you have reviewed the New Mexico rules?

24 A. I've reviewed them.

25 Q. And you feel like you have a full

1 understanding of what your obligations are coming into
2 New Mexico?

3 A. I do.

4 Q. What kind of investigation did you personally
5 do into Xeric before deciding to become involved in the
6 company?

7 A. Investigation? Like due diligence?

8 Q. Yeah. What kind of research, inquiries did
9 you make? Who did you talk to?

10 A. We, obviously, talked to the principals. We
11 talked with our securities attorney. We've talked with
12 their corporate attorney, the Denver office. We've done
13 a little bit of informal, you know, checking around of
14 where things were at and why they were in the position
15 they're in, but in a tough time. Also, with the
16 commodity price where it is has not been an easy ride for
17 them, either. So I can't really say it's all due to
18 mismanagement. They did do these acquisitions and the
19 commodity prices dramatically changed from where they
20 were for them.

21 Q. At what point in time did Mr. Johnson approach
22 you with the proposal or suggestion that you might be
23 interested in acquiring Xeric?

24 A. I think it was late September, early October.

25 Q. And you might have said this already. How did

1 he come to encounter the principals from Xeric?

2 A. I don't know. I really don't recall. We look
3 at deals all the time, so I don't remember.

4 Q. How did he pitch it to you initially?

5 A. He just said there's some -- I think he speaks
6 a little bit in the same language as Ron. I think he
7 said, "There's some good guys in New Mexico that also
8 have a property up in Wyoming." He said, "They're
9 struggling a little bit. The prices are where they are.
10 They've got great potential. They ran into cash
11 injection, and they're just two great guys running this
12 thing. It's too much. There's a lack of people helping
13 them." He said, "I think there's a good opportunity
14 here," and we met and we liked what we saw.

15 Q. What was it that clinched it for you? What
16 sold it?

17 A. The potential up in Wyoming and the potential
18 here.

19 Q. The potential being the potential for --

20 A. Revenues.

21 Q. Okay. You indicated that there's a basic plan
22 in place for 40 wellbores to be reactivated. You
23 estimated a cost of 2.5 to \$3.3 million, and you're
24 hoping to get an accelerated plan in place to get that
25 accomplished in under two years? Am I summarizing --

1 A. Yes. We're hoping to do that. That would be
2 what our plan is.

3 Q. Okay. Does that plan also include addressing
4 the remaining 81 wells that are out of compliance?

5 A. Yeah. I mean, as a company --

6 Q. I apologize. I misspoke. Forty-one wells.

7 A. I understand what you're saying. The point
8 and how I'll answer that is our company, myself, my
9 reputation, as well as being a fully reporting company
10 with the SEC, we don't want these matters on the books.
11 It just doesn't look good. So we want to satisfy that.
12 We're going to need some time to do it. It's not going
13 to happen magically. But we want to get compliant as
14 much as possible. I'm compliant with my reporting. I'm
15 compliant with my finances. It's what I do in
16 compliance. I sign my name to it. I'd like to be
17 compliant here.

18 Q. But I guess what I'm asking is, during that
19 less than two years or that two-year period, do you plan
20 to simultaneously address the 41 noncompliant wells that
21 you don't plan to bring back on line at the same time
22 that you plan to reactivate the 40?

23 A. We're going to try to address the properties
24 in its entirety.

25 Q. At the same time?

1 A. Yes. That's our hope.

2 Q. Does the 2.5 to 3.3 million that you estimated
3 include the cost of plugging and redoing the surfaces and
4 whatnot of the additional wells that you are not going to
5 be reactivating?

6 A. Some of it does and some of it doesn't. And I
7 don't want to speak to anything too technical, but we're
8 going to come across that as we kind of sweep the whole
9 properties. If you're asking which property first, I
10 don't even have that answer yet. But the idea is to get
11 them all cleaned up.

12 Q. And then does that amount -- does that range
13 include the cost of posting bonds for the -- the single
14 well bonds that are currently owed?

15 A. No. We've got to figure that issue out.

16 Q. So that is solely for the actual development?

17 A. Development and re-development of the
18 property. Again, the reason I say -- and bring up Dan
19 Johnson is it's also one of communication. What I was
20 hearing yesterday was I just don't understand why there
21 wasn't direct communication being done all the way
22 through this. It's not -- it just baffles me why people
23 didn't communicate, problem or no problem. That's one of
24 the things -- I know Dan is extremely thorough. He's run
25 his own energy company aside from me, and he does pay

1 attention to the details. I know what he's like. That's
2 why I want to have him liaisoning with -- whoever it is,
3 it needs to be dealt with as necessary, so that we're not
4 falling through the cracks and end up in a problem again.

5 MS. ALTOMARE: I think at this point I'll
6 pass the witness.

7 COMMISSIONER BAILEY: Can you give me a
8 date certain by which the information with the State
9 Corporation Commission will be updated to reflect the
10 current status and officers of Xeric?

11 THE WITNESS: I can do that. I checked
12 into that -- actually -- pardon me -- Ocean checked into
13 it for me last night, and I can go ahead and do that. I
14 didn't realize it wasn't done. I'm just taking over some
15 of the stuff from them, and I can get that satisfied. I
16 can probably satisfy that by Monday.

17 COMMISSIONER BAILEY: So Monday is the
18 deadline by which --

19 THE WITNESS: Give me a week. I just need
20 to get home and get back to my desk. But I can get that
21 done.

22 COMMISSIONER BAILEY: Obviously, we need
23 to have dates here.

24 THE WITNESS: I'll put that down. Why
25 don't we say within a week, I'll have that done.

1 CHAIRMAN FESMIRE: A week from today is
2 the 4th?

3 MS. MUNDS-DRY: That sounds right.

4 THE WITNESS: Are you okay with that?

5 MS. MUNDS-DRY: Yes.

6 COMMISSIONER BAILEY: That's all I have.

7 CHAIRMAN FESMIRE: Commissioner Olson?

8 COMMISSIONER OLSON: I'm glad you're here
9 giving us some new information, because yesterday was
10 rather confusing. I think this is a little bit clearer
11 as to what's been happening. I guess I'm trying to
12 understand what you're looking at, then, for the plan to
13 come into compliance. You're thinking in two years?

14 THE WITNESS: It won't be at the very end
15 of two years. We're hoping to accelerate as fast as
16 possible. My mandate is to do this as quickly as
17 possible. That's what drives me to work every day. So I
18 don't really have the luxury of not making it happen
19 quickly. I don't want to go through a burn rate by
20 sitting idle. That's not very good for me. I mostly
21 capitalized this company personally, so I kind of have to
22 watch my numbers. But I appreciate what Ron said
23 yesterday and a very practical matter as a timeline. I'd
24 like to go beyond that, but I'll stick with that as a
25 comfort level with Ron. I'll back him up on that. But

1 we anticipate to do this a lot faster, is our intention.

2 COMMISSIONER OLSON: I just think the
3 problem we see is this has been noncompliant for some
4 period of time.

5 THE WITNESS: I wish I was here a year
6 ago. I really do. Because it's very hard, also, to
7 convey that message to investors with the meter running.
8 I don't mind if I commit to the meter now, but I can't
9 make up for lost time. That's like the rock and the hard
10 spot that I'm in.

11 COMMISSIONER OLSON: I guess I can come
12 back to a similar question like Commissioner Bailey.
13 What kind of time frame can we look at for getting this
14 into compliance?

15 THE WITNESS: I mean, if we put a start
16 date of really getting active, say -- I'm going to
17 take -- I need -- I'll tell you what my game plan is,
18 aside from all of this. I've got to finish auditing
19 Xeric's books in order to finish my audit for the SEC.
20 That's going to take me probably a couple of weeks, but I
21 have someone assisting me in house and he's a CPA. We'll
22 get that done as fast as possible. But the books and
23 records I inherited were not up to gap per standing.
24 I'll just put it that way. So I've got to do a little
25 bit of paperwork here.

1 We're planning on getting active within the
2 next 30 days on the property. What that means, I can
3 give you a pretty determined outline that -- I think,
4 after the next -- within the next 30 days as a start
5 date, I think we can probably commit to that five over
6 the next quarter or whatever it is, so -- I'm pretty
7 confident. I'd like some reassurances from my other
8 members, but I'm pretty sure I can commit to that.

9 COMMISSIONER OLSON: I guess one of the
10 problems is there's about 81, roughly, wells. If you're
11 looking at five a quarter, we're looking at something
12 that's four years out.

13 THE WITNESS: Like I said, I'm hoping to
14 do this a lot faster. And as a practical matter, I don't
15 want to do one at a time. It's not really cost effective
16 to do one at time. On the same point, there is just a
17 physical labor conduit to it. It's not just a function
18 of throwing money at it. We need to do work and go
19 through it methodically. We would really like to do this
20 right.

21 It's a significant investment and opportunity
22 for me, I believe. So we -- I don't want to be rushing
23 things. I don't want to be setting goals I can't
24 achieve. But in order to satisfy, not only you, but to
25 satisfy the company and its investors -- of which there's

1 142 odd investors in Resilient, by the way, that are
2 historically, from the past, not involved in Xeric or
3 anything like that, just -- not to create any confusion,
4 but --

5 CHAIRMAN FESMIRE: You've not been
6 successful. I thought you told us that you were by far
7 the majority stockholder --

8 THE WITNESS: I am the majority by far.
9 Resilient does have some small shareholders, very small.
10 In fact, I have a shareholder list with me, if you'd like
11 that. But, yeah. I mean, the idea is to capitalize the
12 company and go as fast as we can on these projects.
13 That's really what we're trying to achieve.

14 And the attention -- just because I don't know
15 if you may ask me or not, but it's something that I would
16 maybe ask -- in terms of attention, we need to get -- in
17 terms of the portfolio of what's under Resilient now, the
18 State of New Mexico is a priority for us, because the
19 potential upside of what we have outside of the State
20 here is a little bit ambitious in these markets. In
21 other words, a 20 or \$30 million drill program is doable
22 and would be quantifiable in Wyoming. It's not going to
23 happen in these economic times. If I did, it would be so
24 diluted that it wouldn't be worthwhile for me. So our
25 intention is going to be to spend a lot on New Mexico.

1 COMMISSIONER OLSON: I guess I'll come
2 back to what would be helpful for the Commission is if we
3 had some kind of committed plan for coming into
4 compliance.

5 THE WITNESS: I'll put it to you this way:
6 Upon financing, which I have to meet some due diligence
7 requirements, one of which is the audit of Xeric. It's
8 not the end of the world. We're not looking for
9 shattering financials here. But I do have some paperwork
10 I've got to do. But upon financing, which we do have a
11 term sheet to -- which I think it's a 50-day closing or
12 something -- that we would be fast-tracking this within
13 the next two years, quite quick, as fast as we could. So
14 it wouldn't be only five and a quarter.

15 COMMISSIONER OLSON: I guess that just
16 doesn't give me quite the certainty that I would like.

17 THE WITNESS: I understand the frustration
18 for you. I also don't want to come back here and fail.
19 You know, I mean, I just don't want to do that. And I'm
20 quite prepared -- if we get financed next week, I'm quite
21 prepared to give you a much tighter commitment. That's
22 something I'm quite prepared to do, to have very regular
23 updates as to how we're plodding along.

24 COMMISSIONER OLSON: So you're saying in
25 the near -- in the short term here, you will be able to

1 have a more definitive plan?

2 THE WITNESS: Yes. And additionally --
3 I'm not trying to push it off. I'm not. I'm just saying
4 what I can practically assure you of. I also -- with or
5 without financing, we have to go by and either internally
6 capitalize it and get it done, in which case we know we
7 can do five a quarter from the time we start work.
8 Because, otherwise, I've got a big mess on my hands.

9 COMMISSIONER OLSON: I think that's all I
10 have.

11 CHAIRMAN FESMIRE: You said within 90 days
12 you're going to have \$8 million worth of financing in
13 place?

14 THE WITNESS: That's what -- we have a
15 term sheet for us now. I do have a term sheet. I did
16 bring it with me in case you need that, as well.

17 CHAIRMAN FESMIRE: Who's that from?

18 THE WITNESS: It's from Westminster
19 Securities. I'm under an obligation not to be using that
20 as some sort of advertisement, as you can appreciate.
21 It's not closed yet. We do have to do some due
22 diligence, but I'm pretty confident we'll satisfy them.

23 CHAIRMAN FESMIRE: In your term sheet,
24 what are you telling them you're going to use this \$8
25 million for?

1 THE WITNESS: For the -- up to 3.3 for the
2 State of New Mexico, and the balance is to be used a
3 little bit for corporate upgrade, and then the balance is
4 for development of our other properties.

5 CHAIRMAN FESMIRE: What's going to be the
6 collateral for that?

7 THE WITNESS: Just the properties that we
8 have.

9 CHAIRMAN FESMIRE: Is it nonrecourse
10 financing?

11 THE WITNESS: It's going to be mixture of
12 both debt and equity financing.

13 CHAIRMAN FESMIRE: So they're, in essence,
14 taking an interest in the company?

15 THE WITNESS: They will be, probably by
16 way of public or private placement, or it will be by way
17 of a convertible note.

18 CHAIRMAN FESMIRE: How much would it cost
19 you to put the \$670,000 worth of single well bonds in
20 place? You're saying that's dollar for dollar?

21 THE WITNESS: Yeah. That's dollar for
22 dollar. Unfortunately, that's where it's at. I haven't
23 found any sourcing that will, say -- will post a bond for
24 less than that.

25 CHAIRMAN FESMIRE: If you've got the

1 collateral for \$8.8 million worth of funding, why can't
2 you fund this bond?

3 THE WITNESS: Like I said, we're not a
4 bankable deal. The investment bank that's helping us,
5 Westminster Securities, appreciates the potential of our
6 properties. They don't appreciate what's book value
7 today.

8 CHAIRMAN FESMIRE: You're not talking junk
9 bonds, are you?

10 THE WITNESS: I hope not.

11 CHAIRMAN FESMIRE: I guess I don't
12 understand. If you can use that collateral to raise \$8.8
13 million, why can't you use that same credit line rating
14 to bond the \$670,000?

15 THE WITNESS: I think what it is is we do
16 need the latitude to use the property to assure our
17 financing. It's not necessarily being leveraged. That
18 is maybe part of it.

19 CHAIRMAN FESMIRE: Are you using other
20 assets to leverage it, then?

21 THE WITNESS: No, not right now. Like I
22 said, they would be taking a blue sky interest in this
23 company. They understand the potential, so they would
24 like to see us develop the property. That's what their
25 interest level is.

1 CHAIRMAN FESMIRE: You said that you
2 expect to return 40 of these wells to production?

3 THE WITNESS: Yes.

4 CHAIRMAN FESMIRE: And you're going to
5 plug another 41?

6 THE WITNESS: Correct.

7 CHAIRMAN FESMIRE: And there's another 22
8 that have already been worked over, seven of which have
9 been returned to production?

10 THE WITNESS: Yes.

11 CHAIRMAN FESMIRE: Fifteen of which have
12 what?

13 THE WITNESS: I think there needs to be
14 more capital put up and cleaned up.

15 CHAIRMAN FESMIRE: But they haven't been
16 plugged?

17 THE WITNESS: No, they have not.

18 CHAIRMAN FESMIRE: You mentioned Mr. Dan
19 Johnson. Is he an oil man or an insurance man?

20 THE WITNESS: He's an oil man, but he did
21 own an insurance company. I think it was called -- I'd
22 have to look up the name for you. But he did have an
23 interest in an insurance company, and it was a mortgage
24 insurance company, I believe. I wasn't related to it.

25 CHAIRMAN FESMIRE: But a mortgage

1 insurance company wouldn't write a bond for the oil
2 field.

3 THE WITNESS: No. He just happened to be
4 out of -- as opposed to what I do with insurance -- he
5 just happened to know some people to talk to that on our
6 behalf. That's all.

7 CHAIRMAN FESMIRE: When did Mr. Johnson
8 bring this prospect to you?

9 THE WITNESS: End of September, early
10 October.

11 CHAIRMAN FESMIRE: When did you decide to
12 invest in it?

13 THE WITNESS: I started to take a hard
14 look. It took me a while to figure out what was in New
15 Mexico and, also, what was happening and figure out for
16 myself what my interest was for the potential. It took
17 me a couple of months. But we, more or less, started
18 going about this to try and close as quickly as we can.
19 But we really couldn't close, even if I -- with all the
20 financing, I couldn't close, because their books and
21 records were not up to date. I had to get those up to
22 date for them.

23 CHAIRMAN FESMIRE: Yesterday we heard some
24 testimony -- I don't remember whether it was Mr.
25 Hirschfeld or Mr. St. John -- that the total cash flow

1 out of this company in a good month is about \$4,000 a
2 month.

3 THE WITNESS: It's a bit higher than that.
4 They have been -- it depends. There was some theft in
5 Hobbs a couple of weeks ago. They had a couple of wells
6 go down and they didn't get them up and running again for
7 a couple of weeks. I don't know what the numbers are for
8 that month. But they're capable of 7, 8,000 in total
9 production of oil and about 7 to 10,000 in MCF gas.

10 CHAIRMAN FESMIRE: Seven to 8,000 in total
11 for what period of time?

12 THE WITNESS: On a monthly basis, roughly.
13 They have really staggering production. One of their big
14 problems with the gas up in -- not related to here, but
15 up in Wyoming -- is they've had some real plunger
16 problems.

17 CHAIRMAN FESMIRE: I thought we were told
18 yesterday that they were making about 700 barrels of oil
19 a month.

20 THE WITNESS: Sorry. Oil. Did I say
21 7,000? I'm sorry. 700.

22 CHAIRMAN FESMIRE: I assume you've done
23 some cash flow projections, haven't you?

24 THE WITNESS: Like I said, the modeling is
25 still to be done, but I do have some models prepared.

1 They're very vague. It's based on what we think we can
2 do. And I really do have to build that model.

3 CHAIRMAN FESMIRE: How did you arrive at
4 the 40 wells -- 40 wells are immediately returned to
5 production?

6 THE WITNESS: Just because I -- well, that
7 was really -- my partner Dan and I kind of determined
8 that that was what we felt we would like to -- not ask
9 for too much money to put virtually everything possible
10 into production. There's some that are not going to be
11 valuable to produce, and we don't really know. We have
12 to go through and get into it. I can't just speculate on
13 what's there. We need to work the property.

14 CHAIRMAN FESMIRE: How much do you have
15 into Xeric so far?

16 THE WITNESS: Into Xeric or into the other
17 balance of working interests that I've purchased?

18 CHAIRMAN FESMIRE: Into Xeric, into the
19 company itself right now.

20 THE WITNESS: Probably about under a half
21 a million.

22 CHAIRMAN FESMIRE: And for that you
23 acquired the entire interest?

24 THE WITNESS: In exchange for equity in
25 Resilient.

1 CHAIRMAN FESMIRE: Let me understand that
2 deal. Mr. St. John gets a certain percentage of
3 Resilient?

4 THE WITNESS: Correct.

5 CHAIRMAN FESMIRE: What is that percent?

6 THE WITNESS: It's about 37 percent.

7 CHAIRMAN FESMIRE: And your 142 other
8 investors have what percentage?

9 THE WITNESS: Probably all under 15
10 percent, total.

11 CHAIRMAN FESMIRE: Total, 15 percent?

12 THE WITNESS: Under that, probably.

13 CHAIRMAN FESMIRE: So that leaves you with
14 55 percent of the controlling interest?

15 THE WITNESS: Correct.

16 CHAIRMAN FESMIRE: I keep coming back to
17 the question if you were to put up a letter of credit for
18 the \$670,000, it just seems to me if you can raise,
19 granted, in equity and borrowing, \$8.8 million --

20 THE WITNESS: Roughly, eight.

21 CHAIRMAN FESMIRE: Okay. Eight million
22 dollars -- shouldn't the first 670 go to bring your wells
23 into compliance? Because, otherwise, the State of New
24 Mexico is taking a pretty significant risk with this.

25 THE WITNESS: I understand that, and

1 that's something I'm trying to work around. It's hard
2 out there to raise that kind of -- I would love to be
3 able to qualify for that letter of credit. That's
4 something we will continue to work towards. In fact,
5 even someone -- a financial -- significant investmest
6 banking partner would probably be able to -- I'm not
7 saying they would -- at least direct us in some avenues
8 that may help us, as well, probably somebody that,
9 historically, I've dealt with with investment banking
10 that -- you tend to be able to get help where it's
11 needed.

12 We understand that we need to minimize our
13 problems here and clean them up. We understand there is
14 a big cleanup here. I'm taking a significant risk
15 getting involved in this, obviously.

16 CHAIRMAN FESMIRE: Pardon me, sir, but it
17 looks to me like you're transferring a significant amount
18 of that risk to the State of New Mexico.

19 THE WITNESS: Well, we're hoping to
20 satisfy that and get that a revenue-producing asset.
21 That's the idea here.

22 CHAIRMAN FESMIRE: What happenss if you
23 don't get the funding in place?

24 THE WITNESS: Like I said, we can still
25 commit to internally doing it at five wellbores a

1 quarter, if we had to. We have other revenue --

2 CHAIRMAN FESMIRE: But the cash flow won't
3 carry five wellbores.

4 THE WITNESS: We'd have to put in more
5 money internally.

6 CHAIRMAN FESMIRE: Is there any contingent
7 plan to do that?

8 THE WITNESS: There's no contingent plan,
9 but I have enough invested here that if I had to, I could
10 figure out a way, but I'm not going to commit to it right
11 now.

12 CHAIRMAN FESMIRE: I believe in this
13 property. I think there's oil to be had down there. But
14 before you can get at it, you're going to have to do an
15 awful lot of work. Most of that work is plugging. The
16 major way to make this thing pay is to water flood it.
17 Before you can do that, you can't leave those open
18 wellbores there.

19 THE WITNESS: Right. I agree.

20 CHAIRMAN FESMIRE: You know, that
21 investment and the single well bonds associated with that
22 investment, looks like the major part of the cost of this
23 project. And if the financing doesn't get into place, if
24 it doesn't work, New Mexico is left holding nearly 100
25 wells that they'll have to address, over 100 wells that

1 they'll have to address; right?

2 THE WITNESS: I understand that.

3 CHAIRMAN FESMIRE: And, you know, New
4 Mexico has been dealing with Xeric for, heck, four years,
5 five years, since I've been here.

6 THE WITNESS: I understand it's probably
7 not a great history. I can appreciate that.

8 CHAIRMAN FESMIRE: You're not the first
9 person that's told us that they've got these plans for it
10 and all they need is the financing and they'll get it
11 done.

12 THE WITNESS: I don't know.

13 CHAIRMAN FESMIRE: I don't mean to lecture
14 you. I apologize. I'm just trying to figure -- I just
15 don't see how this -- you've got -- assuming that all the
16 wells had to be plugged, which would be the cheapest
17 thing to do, because it's going to cost more to put them
18 back in production than to plug them. We're looking at
19 \$4.5 million. If you're going to return them to
20 production, I don't think your 2.3 to 3 -- was it 2.3 to
21 3.2?

22 THE WITNESS: 2.5 to 3.3.

23 CHAIRMAN FESMIRE: I don't think that will
24 plug the 41 wells and put 40 wells back on production.

25 THE WITNESS: Well, I can see what numbers

1 we can work with, but we're hoping that we can make it
2 viable.

3 CHAIRMAN FESMIRE: If you were a new
4 operator coming into New Mexico and wanted to drill out
5 there, I guess you'd have to plug most of those wells
6 before you could drill, but if you wanted to drill out
7 there, we would require a bond of you. I guess what
8 you're asking us for is an exception to the bonding
9 requirement, to the single well bonding requirement.

10 THE WITNESS: We're asking for some help.
11 That's for sure.

12 CHAIRMAN FESMIRE: That's kind of put us
13 between a rock and a hard place, because the bonding
14 requirement is intended to keep the State of New Mexico
15 from having to absorb the cost or, in some cases, the
16 risk of water contamination from wellbores that, in some
17 cases, have been inactive for tens of years. I really
18 want to be out there the day they try to pull that Reda
19 pump, because I'm afraid that's going to be a problem.

20 And I guess, sir, given Xeric's history, given
21 the cost of getting at this potential, I just don't see
22 how this project -- well, you know, from the State of New
23 Mexico's standpoint -- would be successful. I see where
24 you could make some money at it, but I don't see how the
25 State is going to benefit, especially if it doesn't work,

1 especially if something goes wrong. So I guess I'm
2 asking for a little reassurance here.

3 THE WITNESS: Well, I know that we -- I
4 can't speak for what I'm inheriting, but I am responsible
5 for what I am inheriting. That much I will tell you. We
6 do need some time to organize ourselves. We are hoping
7 to develop this as fast as we can. The depth of the
8 financial partners that we're looking at, one in
9 particular is Westminster Securities, has the depth to
10 further help us, if needed. I'm not saying they will,
11 but I know that they have the depth to do so, and that's
12 an important thing.

13 I think that if we ran into that problem, I
14 think we can probably overcome it, if needed. But we've
15 got to get from A to B, just as if -- you know, people
16 are -- we're asking you to invest in us, and I know
17 historically it's been a failure. I can't speak to what
18 I wasn't here for. I can only say that I am here and
19 we're prepared to do what we can to work with you.

20 CHAIRMAN FESMIRE: How sure are you of
21 that financing in 90 days?

22 THE WITNESS: I'm quite confident. I
23 don't control the timeclock, because there is -- the
24 principal is Dick Price and he has some trouble, but he
25 has offered the 90 days. We have to get some materials

1 to him. Some of the materials that are requested of me,
2 I have to assemble and put together and get them into
3 audited condition, get my auditor to stamp off on it. My
4 auditor has worked with me on several files and is quite
5 a capable SEC auditor, so I think he will fast track for
6 me. He will probably give me as much time is necessary
7 so I'm hoping I can satisfy the due diligence request for
8 them.

9 CHAIRMAN FESMIRE: What are you doing in
10 that 90 days? What will you do on location?

11 THE WITNESS: I think just maintain it as
12 best as we can. I'm going to get Dan out there hopefully
13 no later than -- the start of April is when I hope to
14 have Dan out there.

15 CHAIRMAN FESMIRE: So if we were to
16 fashion a remedy, say grant the OCD's request but stay it
17 for 90 days pending the placement of the individual well
18 bonds in place, could Xeric do that?

19 THE WITNESS: I don't know if I could
20 confidently put that much money up in 90 days. I don't
21 know if that would be enough time. I'm going to have to
22 figure out a way to come up with -- this additional money
23 is going to be an issue. It's an issue because -- and I
24 know it's not your problem. I can appreciate that. I am
25 facing some challenging economic times to post that bond

1 money on a dollar-for-dollar basis with no productivity
2 attached. It's very challenging.

3 CHAIRMAN FESMIRE: My thinking is if you
4 can raise debt -- some significant portion of \$8 million
5 in debt funding, that you ought to be able to -- in
6 essence, that's what a bond would be, and you'd just have
7 to pay the interest on the bond.

8 THE WITNESS: Right. My guess is the use
9 of capital being used for development is an easier use of
10 capital than to put it up as a bond.

11 CHAIRMAN FESMIRE: And I understand that.
12 But the State of New Mexico requires an individual well
13 bond on wells that have been inactive this long. So if
14 we were to fashion a remedy like that, granting the OCD's
15 requested outcome on this but to stay it for 90 days, and
16 at the end of that 90 days, you would post the required
17 individual well bond and fashion a remedy after that,
18 that would support your development -- but, see, we've
19 got a potential -- like I said, I'm looking at \$4.5
20 million of potential plugging liability out there if you
21 fail. And I would like to see you succeed, because I,
22 too, think there's oil to be produced out there. But how
23 long are you asking the State of New Mexico to bear that
24 risk?

25 THE WITNESS: Like I said, I know we can

1 do what Ron committed to, five a quarter. That, I can
2 confidently commit to. I know that our financing plan
3 and development plan is under two years.

4 CHAIRMAN FESMIRE: In spite of Ron's math,
5 90 days is a quarter.

6 THE WITNESS: I understand that. I can do
7 the math. But I just wanted to tell you that even upon
8 financing, we don't plan on doing it at five a quarter.
9 We plan on doing it much more ambitiously.

10 CHAIRMAN FESMIRE: We're looking at some
11 sort of good-faith effort to justify postponing taking
12 the action. Would that be something that Xeric could
13 live with?

14 THE WITNESS: Yes.

15 CHAIRMAN FESMIRE: A 90-day stay with five
16 wells addressed during that 90 days. And then failure to
17 do it would -- I mean, we wouldn't even have to have
18 another hearing if we drafted it right. We'd just
19 proceed against Xeric to grant the State's requested
20 relief.

21 THE WITNESS: I'm pretty sure I'm
22 understanding what I'm hearing. I'd like to review it
23 with the people that work with me, but I'm pretty sure we
24 can meet that.

25 CHAIRMAN FESMIRE: I'm not dealing. I'm

1 throwing out an idea.

2 THE WITNESS: I understand that.

3 CHAIRMAN FESMIRE: I haven't bought off on
4 this idea yet.

5 THE WITNESS: I understand that. Yes.

6 CHAIRMAN FESMIRE: Ms. Munds-Dry, I have
7 no further questions. Do you have a redirect?

8 MS. MUNDS-DRY: I do not.

9 CHAIRMAN FESMIRE: With that, thank you
10 very much. Ms. Altomare, do you have a close?

11 MS. ALTOMARE: I would like to do a brief
12 one, if that's all right.

13 CHAIRMAN FESMIRE: Okay.

14 MS. ALTOMARE: Not to overly beat a dead
15 horse, but the general approach of Xeric over the years
16 has basically been to pass the blame from one
17 reincarnation of this company to another, and I think
18 that's just been exemplified by this hearing process, as
19 has the general, kind of, process of the new management
20 scenario. I know that you all are familiar with this
21 scenario, as we are.

22 Mr. Fielder was asked specifically what kind
23 of reassurances he could provide that would indicate that
24 the new management would somehow provide us with some
25 kind of assurances that Xeric is going to proceed in the

1 future differently than it has in the past, and I didn't
2 hear anything different than what has been provided in
3 the past.

4 The truth is that Xeric is a corporation.
5 There's a reason that we treat corporations differently
6 than individuals. There has been very clear knowing and
7 willful violation of OCD rules in this case, even since
8 the last hearing. The order that was entered in October,
9 the deadlines have all elapsed, no stay was requested and
10 the obligations imposed by that order have not been
11 complied with.

12 These wells out there impose environmental
13 hazards and pose significant risk financially, as noted
14 by the Commission, to the State just by the sheer
15 numbers. What concerns the Division at this point is the
16 fact that Xeric seems to have kind of a skewed
17 perspective of its priorities. It has chosen to direct
18 its energies and funds to development first, rather than
19 bringing itself into full compliance with the OCD rules
20 before it decides to direct its energies into further
21 development of its company. It also seems to think that
22 it, somehow, deserves special treatment that is not
23 granted to other operators, even those who are in good
24 standing with the department.

25 No operator is given any waiver of the

1 financial assurance obligations. That is something that
2 went into effect at the beginning of this year -- past
3 year of 2008, and it is something that has been enforced
4 and implemented, and operators have all been, one by one,
5 brought -- we are pursuing compliance with that.

6 The idea that somehow Xeric is entitled to
7 flexibility with that, to me, is ridiculous, especially
8 given their past performance in this state. They have
9 just given repeated indications that they are not taking
10 the New Mexico Oil Conservation Division and its rules
11 seriously. They have, twice now, appeared at hearings
12 where they have not come prepared with some kind of
13 concrete plan of action, data, timelines, figures of what
14 kind of money they're looking at spending, what kind of
15 money they have available. They don't seem to come
16 prepared to give us anything to hang our hat on to give
17 us assurances that they are going to be proceeding as
18 good operators in this state.

19 At this point in time, they have, over the
20 course of one year, brought seven of the original 88
21 wells into compliance. These are not good statistics.
22 At the time this application was filed, there were 88
23 wells that were in violation of one or both of the
24 formerly designated rules, 101 and 201, either being
25 inactive for a year plus 90 days, or having additional

1 financial assurance owed. As has been discussed at
2 length, that bonding is still outstanding, and a number
3 of those wells remain inactive.

4 Through the course of these two days, I have
5 not heard testimony indicative that Xeric has any
6 intention of posting those bonds anytime soon, and it
7 looks like it's going to take at least two years and
8 possibly as much as four, before we will see these wells
9 being brought into compliance.

10 At this point in time, given the history of
11 Xeric the corporation and the testimony that's been
12 provided, we do ask that the Commission grant the
13 requests that were specifically articulated in the
14 pre-hearing statement submitted by the Division, that
15 being that they be required to submit, by a date certain,
16 the single well financial assurances that are currently
17 due. I believe the specific total is \$667,137 for 67
18 wells, require that as to each of the 80 wells originally
19 specified in the original application, Xeric be required
20 to plug those wells by a date certain. And if they do
21 not do so, that the Division be permitted, pursuant to
22 Section 72.14(B), to proceed with the plugging of those
23 wells and the forfeiture of the blanket bond that is in
24 existence at this point in time.

25 In order to proceed under that section,

1 however, we would like to note for the Commission that
2 the order does need to specifically say that Xeric be
3 required to plug those wells by a date certain,
4 otherwise, we would not be able to proceed with the
5 alternative remedy upon failure of Xeric to abide by
6 that.

7 The Division is further asking that a monetary
8 penalty assessment be assessed in double the amount of
9 the original assessment of 88,000 at the division level,
10 so the double amount would be 176,000. Again, we're not
11 seeking \$1,000 per day per violation per well. However,
12 we do feel that an elevated penalty assessment in this
13 case is justified given the violations and the amount of
14 time involved.

15 We are also asking that if there are any
16 remaining delinquency 115s, that those be turned in by a
17 date certain and that Xeric be required to reappear
18 before the Commission at the next Commission session in
19 April to report on their process and status for coming
20 into compliance with the order issued by the Commission,
21 and that subsequent to the final deadline set by whatever
22 order this Commission issues, they be required to appear
23 at the following Commission meeting to fully report on
24 their compliance with the Commission's order.

25 I think that the evidence speaks for itself,

1 and we respectfully request that the requests submitted
2 by the Division be granted.

3 CHAIRMAN FESMIRE: Ms. Altomare, Can I ask
4 a quick question? There was some testimony that,
5 perhaps, the \$667,137 was not accurate. Are you
6 comfortable with that number?

7 MS. ALTOMARE: I believe, as of a few
8 days -- a couple of days ago I had Dorothy re-run the
9 figures. Of course those numbers sometimes change.
10 Based on the depths that we have now in our records, that
11 number is accurate. If Xeric has other well depths --
12 and there's been testimony that predecessors to the
13 current management did not keep the best records, so
14 there may be some depth discrepancies. If there's
15 evidence that their depths are not entirely accurate,
16 certainly we can investigate and make sure our depth
17 records are accurate and re-adjust the bonding number
18 accordingly. So that number may change to some extent.

19 So if the Commission would like to phrase the
20 order such that it is, for the 67 wells, whatever the
21 depths, you know, assessed by the bond
22 administrator -- however you would like to phrase it.

23 CHAIRMAN FESMIRE: Or just comply with the
24 rule.

25 MS. ALTOMARE: Yeah. But it is for the 67

1 wells of the original subset that was -- I guess my point
2 being that I understand that I am limited to asking for
3 compliance with the wells that were originally designated
4 in the application, even though Xeric is obligated to
5 comply with all of the wells that they owe bonding on. I
6 think the 67 encompasses all of them, but I'm just trying
7 to be within the limitations of the application.

8 CHAIRMAN FESMIRE: Ms. Munds-Dry?

9 MS. MUNDS-DRY: Thank you. There's no
10 doubt that you heard from all three of our witnesses that
11 Mr. St. John and Mr. Hirschfeld inherited a mess when
12 they came into New Mexico and, perhaps, didn't realize
13 the exact scope of what they had inherited. They had
14 partner issues and various other issues, none of which
15 excuse the fact that Xeric continues to be out of
16 compliance. It was just the reality of their situation.

17 Now with Resilient coming in, there's
18 certainly nothing that Resilient can do to excuse the
19 history that you've seen. We understand your question of
20 how can we be sure that you're any different than what
21 you've seen in the past. There has been a change. It
22 may be to a small degree. But one being that Mr. St.
23 John and Mr. Hirschfeld are still here and continue to
24 plan to be here to continue to remedy this problem,
25 unlike past partners who have simply disappeared or taken

1 what they can out of the property and then got out. They
2 intend to stay.

3 One way, when they realized that they were,
4 frankly, in over their heads, was to take on somebody who
5 could give them the injection of capital and increased
6 people on the ground to actually bring these wells into
7 compliance. That's the major change that I hope you saw
8 with Mr. Fielder's testimony.

9 Resilient will inject the capital needed to
10 bring the wells into compliance. You did see, also,
11 another change and, perhaps, that was part of the
12 frustration or the hesitation that you saw with each of
13 the witnesses. They are not going to over-promise
14 something to you that they can't keep. And because of
15 the tremendous amount of the issues and the wells that
16 are on the list, they are not going to give you a magical
17 solution that we'll get this done in six months. It's
18 just not possible.

19 That's what the testimony and that's what Mr.
20 St. John, in particular, tried to convey since he is the
21 operations person. They want to give you a realistic
22 plan, something that can be achievable so that they
23 don't have to come to you ever again and say, "Guess
24 what. We failed again," or walk away or, you know,
25 something that would be really tragic and leave, again,

1 the liability on the State of New Mexico.

2 So any hesitation that you saw there was
3 because they just don't want to over-promise to you, and
4 that is very important to them that they can give you
5 something that they promise. Hopefully, they go beyond
6 those promises and, in fact, pleasantly surprise all of
7 us, but they're not going to over-promise to you. You
8 heard in the testimony they gave you a two- to a
9 four-year plan, four-year being -- the long part of that
10 two years being what they hoped to do. Mr. Fielder
11 testified about that.

12 The bonding issue is an issue for them. Xeric
13 is not seeking a waiver or a special exception, but they
14 do need to give you the reality of their situation given
15 the economic times, the commodity markets, what they're
16 facing in terms of getting investment and what they're
17 getting it for. It doesn't mean they're not willing to
18 post the single well bond. They're just -- at this time
19 they do not see a way to give you that they can post them
20 all at the same time. Again, it goes back to not wanting
21 to promise something that they can't give you.

22 This Commission does have the discretion to
23 work with Xeric, and at the end of the day, this will
24 prevent waste. You heard the testimony today and
25 yesterday that these properties do have potential and

1 there still is oil in the ground that can be produced.
2 So with the Commission's discretion in coming up with a
3 plan to work out the compliance issues with Xeric on a
4 reasonable time basis will prevent waste, which is, as
5 you know, one of your duties.

6 As the Division suggests -- and we understand
7 the long history that we're facing and the issues that
8 are in front of them. Mr. Fielder told you that he went
9 into this with his eyes wide open but, respectfully,
10 plugging those wells -- charging a civil penalty with an
11 inflexible approach is not the right way to go here and
12 does not get these wells back into compliance. With
13 that, we thank you for your time.

14 CHAIRMAN FESMIRE: Okay. What we're going
15 to do, we are going to go into executive session to
16 consider this case, Case Number 14106 and only this case.
17 We will deliberate for a little while and then break for
18 lunch and reconvene back here at about 1:20, at which
19 time we will make our announcement if we've reached a
20 decision. If not, we will proceed with the deliberations
21 in the other case, in the Santa Fe case. So thank you
22 all very much.

23 (The Commission went into executive session.)

24 (A lunch recess was taken.)

25 CHAIRMAN FESMIRE: At this time the record

1 should reflect that we've returned from the lunch break.
2 It's 1:20 p.m., that prior to the lunch break, the
3 Commission, consisting of Commissioners Bailey, Olson and
4 Fesmire, convened in executive session to consider Case
5 Number 14106. That was the only thing that they
6 discussed during the session. They have come to an
7 agreement.

8 We have directed counsel to draft an order.
9 Counsel, since we've got a short period until the next
10 Commission meeting, February 12th, are you going to be
11 able to get the -- I mean March 12th. She will provide
12 an order. The crux of the order is that Xeric will be
13 required to pay the original fine, the \$88,000 fine,
14 within two weeks. They will be required to post the bond
15 prior to 90 days from the date of the order, and that if
16 that bond is not posted, the Commission order will be
17 that the -- the order will, basically, be what the
18 Commission has proposed.

19 MS. BADA: I believe that what the
20 Commission decided was if the bond was not posted within
21 90 days, that Xeric will have one year to plug up the
22 wells.

23 CHAIRMAN FESMIRE: Right. So the counsel
24 will draft an order to that effect for presentation on
25 March 12th.

1 MS. BADA: If they do post the bonds, then
2 they have two years to bring all the wells into
3 compliance.

4 CHAIRMAN FESMIRE: Anything further in
5 Case Number 14106?

6 MS. ALTOMARE: If I may make a request,
7 when the order is drafted, if we could have some specific
8 dates placed in that order. It's my understanding that
9 the attorney who handles the plugging program, in order
10 to effectuate that, requires specific dates in order to
11 get the ball rolling. It makes it easier for
12 administrative purposes.

13 CHAIRMAN FESMIRE: Right. Counsel has
14 been instructed to do that.

15 MS. ALTOMARE: Thank you.

16 CHAIRMAN FESMIRE: Ms. Munds-Dry?

17 MS. MUNDS-DRY: Could you repeat again --
18 I want to make sure I understand. I thought you said to
19 post the bond prior to 90 -- post it within 90 days of
20 the date of the order?

21 CHAIRMAN FESMIRE: Within 90 days of the
22 date of the order, post the single well bonds that are
23 required.

24 MS. MUNDS-DRY: Okay.

25 CHAIRMAN FESMIRE: That was intended to

1 give Xeric time get their financing in place and post the
2 bond. Is that all there is in Case Number 14106?

3 MS. ALTOMARE: One more clarification,
4 just so that everybody is clear. Even though Xeric has
5 two years to bring the wells into compliance, that they
6 understand that, in the meantime, while they remain out
7 of compliance with what was formerly referred to as Rule
8 40, they still will not be able to get approval for water
9 floods, that kind of thing. Those kinds of limitations
10 will still apply until they bring the requisite number of
11 wells into compliance.

12 CHAIRMAN FESMIRE: Yes. The rules of the
13 Commission will apply. The rules of the Division will
14 apply.

15 MS. ALTOMARE: Right. So just because
16 they've been given a two-year period of time to bring
17 wells into compliance does not waive the other
18 obligations imposed by the Commission rules?

19 CHAIRMAN FESMIRE: Right. Anything
20 further in Case 14106?

21 Okay. With that, we will convene Case Number
22 14255, the Application of the New Mexico Oil Conversation
23 Division through the Environmental Bureau Chief, for
24 Adoption of an Amendment to 19.15.39 NMAC Adding New
25 Sections to be Codified at 19.15.39.9 and 19.15.39.10

1 NMAC Addressing Special Provisions for Santa Fe County
2 and the Galisteo Basin, Santa Fe, Sandoval and Santa Fe
3 Counties. Is there anyone present who wishes to enter an
4 appearance in this case?

5 The deliberations in this case will be open to
6 the public. Have the Commissioners had a chance to look
7 at the documents that were prepared by counsel for the
8 Division and counsel for the Division and Counsel for the
9 Independent Petroleum Association of New Mexico?

10 COMMISSIONER BAILEY: Yes, I have.

11 CHAIRMAN FESMIRE: It's my
12 understanding -- and, Madam Secretary, you may need to
13 verify this -- those are the only two responding to our
14 request for proposed findings and conclusions?

15 MS. DAVIDSON: That is correct.

16 CHAIRMAN FESMIRE: Okay. Does anybody
17 want to start?

18 COMMISSIONER BAILEY: I'll make an opening
19 statement.

20 CHAIRMAN FESMIRE: Okay.

21 COMMISSIONER BAILEY: My opening statement
22 is that I believe local land use restrictions and zoning
23 restrictions should be handled at the county level and
24 not at the state level. Santa Fe County has developed
25 their own set of regulations concerning oil and gas

1 drilling within the county, and I believe that we should
2 recognize those as far as they pertain to local land uses
3 and zoning, and I do not believe it is the role of this
4 Commission to make those determinations. So there's the
5 gauntlet.

6 CHAIRMAN FESMIRE: Has anyone had a chance
7 to read the final version of the Santa Fe regulations?

8 COMMISSIONER BAILEY: No.

9 CHAIRMAN FESMIRE: I have.

10 COMMISSIONER OLSON: You mean of the --

11 CHAIRMAN FESMIRE: No. Of the Santa Fe --

12 COMMISSIONER OLSON: Oh, of the county?

13 No, I have not.

14 CHAIRMAN FESMIRE: Are we allowed to
15 consider that since it's not part of the evidence
16 presented before the hearing?

17 MS. BADA: No.

18 CHAIRMAN FESMIRE: So we have to,
19 basically, consider this in a vacuum; is that correct,
20 Counsel?

21 MS. BADA: Consider yours within your
22 statutory framework.

23 COMMISSIONER OLSON: I think Commissioner
24 Bailey bringing up a point that was brought up by members
25 of the public that we should be somehow incorporating the

1 county's ordinances into what we are doing now. I don't
2 know if that's a problem, either.

3 COMMISSIONER BAILEY: No. That wasn't my
4 intent. My intent was to make them separate and not a
5 part of the state regulations.

6 COMMISSIONER OLSON: Right. I understand.
7 I think that's what some of the public were asking, that
8 we do incorporate it. I would agree with you that it's a
9 separate issue. It's a local land use issue that is
10 appropriately addressed by local governments.

11 COMMISSIONER BAILEY: That's right.

12 COMMISSIONER OLSON: I think -- I mean,
13 for starting it off, too, I guess the only real proposal
14 we have in front of us is the proposed changes that are
15 set out by the Division in their January 29th, 2009
16 post-hearing submittal, outside of -- we have some
17 recommended changes, I guess, from here. But the only
18 actual proposed regulation is the one -- the full
19 proposed regulation is what we have here. I would
20 suggest we maybe use that as our basis or framework for
21 going through this.

22 COMMISSIONER BAILEY: That's a good idea.

23 CHAIRMAN FESMIRE: Commissioner Bailey,
24 you're not proposing that we not adopt any rules? You're
25 just --

1 COMMISSIONER BAILEY: I'm proposing that
2 there are some very wrong precepts with most of this
3 rule, that there may be certain portions of the rule that
4 I can support. But those topics that change current
5 state-wide rules that were developed through the process
6 of hearings and presentation of technical evidence, in my
7 opinion, cannot and should not be overturned for a
8 specific area without having adequate, technical,
9 scientific justification as to why they should not apply.

10 CHAIRMAN FESMIRE: Okay. Do you have
11 specific examples or you just want to bring them up as we
12 go through the rules?

13 COMMISSIONER BAILEY: It would probably
14 easier to bring them up portion by portion, section by
15 section.

16 CHAIRMAN FESMIRE: Then let's start with 9
17 and 10.

18 COMMISSIONER OLSON: Just start with page
19 1 of the proposed rules and just go through them.

20 CHAIRMAN FESMIRE: That starts at 9. Do
21 we have the proposal of the amendment to 39? No. Nine
22 and 10 are the only two.

23 MS. BADA: Right.

24 CHAIRMAN FESMIRE: Is there any discussion
25 on Subsection A?

1 COMMISSIONER OLSON: I guess there seems
2 to be a big issue in the supplying to Santa Fe County, as
3 well. I think that was pointed out throughout the
4 hearing because we didn't have any testimony on -- we had
5 a lot of testimony that came in about the specifics for
6 Galisteo Basin, but the county has got some widely
7 ranging area, besides the Galisteo Basin, including areas
8 along the Rio Grande and other areas that there was no
9 testimony about. I think the Division admitted that at
10 the hearing. They didn't have any testimony to present
11 in those portions of the county. So I'm having a
12 difficult time seeing how we could apply it on a
13 county-wide basis without any evidence as to why that
14 would be necessary.

15 I think also I'll point out, I think there
16 might be some conflicting things even through what was
17 presented in the governor's executive orders. I think
18 the most recent executive order last year, when you came
19 back to the -- I'll pull it up here -- coming from even
20 the directive within the executive order was -- to OCD
21 was for the Galisteo Basin and not Santa Fe County, even
22 though Santa Fe County was mentioned at various times
23 throughout the whereases, et cetera. I don't know that I
24 see anything in what's been presented to us that we could
25 really legally do that without some kind of evidence to

1 show that there was a special need for the rest of the
2 County.

3 CHAIRMAN FESMIRE: Commissioner Bailey?

4 COMMISSIONER BAILEY: I firmly agree with
5 Commissioner Olson.

6 CHAIRMAN FESMIRE: So some of the changes
7 we have to make was, basically, strike "Santa Fe County"
8 where it appears everywhere in the ordinance?

9 MS. BADA: The problem is you don't have a
10 legal description to replace it with.

11 COMMISSIONER BAILEY: I guess that was
12 part of the problem, even for the Galisteo Basin. There
13 is no legal description for the Galisteo Basin. I guess
14 were they going upon the idea since it was wholly
15 included within Santa Fe County?

16 MS. BADA: They didn't define it. They
17 defined the portions of Sandoval and portions of San
18 Miguel, but the portions in Santa Fe were not defined.

19 CHAIRMAN FESMIRE: There was evidence
20 presented of the boundaries of the Galisteo Basin, was
21 there not?

22 COMMISSIONER OLSON: I thought Andy Core
23 presented what the boundaries were for the state
24 engineer's purposes as to what's defined as the basin.

25 COMMISSIONER BAILEY: There were maps

1 offered from which legal descriptions could be extracted.

2 CHAIRMAN FESMIRE: So the Galisteo Basin
3 will be defined as -- we have the legal descriptions for
4 the parts that extend into Sandoval and San Miguel
5 County, but the legal description for the Galisteo Basin
6 is, basically, going to be the state engineer's Galisteo
7 Basin service water drainage boundary?

8 COMMISSIONER BAILEY: Yes.

9 COMMISSIONER OLSON: I think that's what
10 the testimony was -- well, the testimony presented to us
11 was about what was happening inside that boundary. I
12 don't recall any testimony that --

13 CHAIRMAN FESMIRE: With respect to the
14 water.

15 MS. BADA: How is anybody going to know
16 what that is from reading your rule? We can't attach the
17 map.

18 COMMISSIONER BAILEY: Why not?

19 MS. BADA: There's no way you can file it.

20 CHAIRMAN FESMIRE: Can we refer to the
21 state engineer's --

22 COMMISSIONER OLSON: As defined by the
23 state engineer's?

24 MS. BADA: How would anybody find that?

25 COMMISSIONER OLSON: That must be somehow

1 defined by them, especially in order to make this map.

2 That was my thought. I was just doing the basis as
3 defined by the state engineer, but --

4 CHAIRMAN FESMIRE: The state engineer does
5 have a description of the Galisteo Basin. How do we
6 refer to it, though?

7 MS. BADA: The problem is you would be
8 incorporating it by reference. In order to file a rule,
9 you have to file it, and we don't have it. It's not in
10 the record.

11 CHAIRMAN FESMIRE: So what's the solution?

12 MS. BADA: I don't have a good one, unless
13 you reopen the record and have the Division submit
14 something, and then you have to republish.

15 CHAIRMAN FESMIRE: We do have to
16 republish?

17 MS. BADA: You would have to republish
18 because you closed it.

19 CHAIRMAN FESMIRE: There's nothing in Mr.
20 Core's testimony to --

21 MS. BADA: I would not know. I was not
22 here.

23 COMMISSIONER OLSON: I don't remember that
24 there was. He didn't have a pre-filed testimony that I
25 remember.

1 CHAIRMAN FESMIRE: Do we have a copy of
2 the transcript?

3 COMMISSIONER OLSON: I don't.

4 CHAIRMAN FESMIRE: Okay. The state
5 engineer relied on their Galisteo Basin boundary --
6 relied for their Galisteo Basin boundary on the
7 hydrologic maps and data for Santa Fe County, New Mexico.
8 This is in the state engineer's prepared testimony.

9 COMMISSIONER OLSON: Which exhibit?

10 CHAIRMAN FESMIRE: Figure 2 on the state
11 engineer's, on OCD Exhibit 40.

12 MS. BADA: That's not it.

13 CHAIRMAN FESMIRE: What do you mean,
14 that's not it?

15 MS. BADA: I'll tell you I wouldn't want
16 to be the one trying to interpret where that line ran.

17 CHAIRMAN FESMIRE: So we need to -- if we
18 pass anything, we need to reopen the record and get a
19 description of the Galisteo Basin?

20 MS. BADA: Yes.

21 CHAIRMAN FESMIRE: Okay. So we've decided
22 that this will not apply, that there was insufficient
23 evidence to support the rest of Santa Fe County. That it
24 will only apply to the Galisteo Basin, and we need to
25 reopen the record and get the state engineer's definition

1 of the Galisteo Basin; correct?

2 MS. BADA: We need a legal description.

3 CHAIRMAN FESMIRE: Okay. It will include
4 the portions in Sandoval County, this is a sufficient
5 description?

6 MS. BADA: Yeah. So somebody would know
7 what section they were in.

8 CHAIRMAN FESMIRE: Subsection B, the
9 application for exploration & development plans. I
10 didn't see any problem with this, including the OCD's
11 proposed new -- I'm assuming the underlined is the
12 difference between the original proposal and the proposal
13 at the end of the hearing; correct?

14 COMMISSIONER OLSON: I compared them, and
15 I know these are the changes that -- some of them are
16 some things that I suggested, and others were the ones
17 that OCD had made changes on during the hearing, so
18 that's my understanding, that this is the red line
19 strike-out version from their proposal at the hearing.

20 COMMISSIONER BAILEY: I have problems with
21 (5) under Section B.

22 CHAIRMAN FESMIRE: Okay. Any specific
23 subportion of (5) or just all of 5?

24 COMMISSIONER BAILEY: (5)(a), I doubt if
25 even the county has accurate records to support that

1 information that the Division is requiring.

2 CHAIRMAN FESMIRE: "State, federal,
3 private or tribal surface ownership, including for
4 private lands for property boundaries in the name of the
5 property owner at the time of application."

6 COMMISSIONER BAILEY: I don't see that
7 that's necessary for what the Division needs to evaluate
8 a plan.

9 CHAIRMAN FESMIRE: Can we constrain that
10 to be a copy of the -- one-half mile beyond -- for
11 unsurveyed areas. "State, federal, private or tribal
12 surface ownership." You don't think we'll be able to
13 arrive at surface ownership?

14 COMMISSIONER BAILEY: I don't think it's
15 necessary for what the Division -- will be a guideline to
16 make the determination of who the separate surface owners
17 are, other than the notice requirements. But I doubt
18 if --

19 CHAIRMAN FESMIRE: Instead of a map, that
20 should, perhaps, be a list, the surface owners?

21 COMMISSIONER BAILEY: I think this is
22 covered under the notice requirements for people -- the
23 Surface Owner's Protection Act and other portions of this
24 rule for notice.

25 COMMISSIONER OLSON: They still need to

1 have a map of the area covered by the plan. But you're
2 saying -- to make sure I understand, you're saying you
3 don't think we need (5)(a), which -- identifying land
4 ownership, then?

5 COMMISSIONER BAILEY: Right. Each and
6 every private land owner within --

7 CHAIRMAN FESMIRE: -- a mile and a half
8 radius?

9 COMMISSIONER BAILEY: Yeah.

10 CHAIRMAN FESMIRE: One-half mile radius.
11 I'm sorry.

12 COMMISSIONER BAILEY: Particularly
13 depending on the size of their planned area.

14 CHAIRMAN FESMIRE: You just want to strike
15 (a)?

16 COMMISSIONER OLSON: Is it possible just
17 to do it with saying just, "state, federal, private or
18 tribal surface ownership," and strike the rest of it?
19 Because that's something you can find on most maps.

20 COMMISSIONER BAILEY: Yeah.

21 CHAIRMAN FESMIRE: Okay.

22 COMMISSIONER OLSON: I think I agree. If
23 you start looking at the name of property owners, you can
24 only do that through --

25 MS. BADA: You could do a title search.

1 COMMISSIONER OLSON: -- title searches.

2 CHAIRMAN FESMIRE: Okay. And the rest of
3 (5) is okay?

4 COMMISSIONER OLSON: I think I had
5 something. It's on the next page. I don't have anything
6 else there.

7 CHAIRMAN FESMIRE: Six starts on the
8 next --

9 COMMISSIONER OLSON: On (7)(c), I was
10 looking at -- it's more of the way the language is
11 reading. Right now it says, "A mud-logging program,
12 including" -- I think it says, "copy," but I would think,
13 "including submission of." Because I think what they're
14 looking at is mud logs will be submitted at this point.
15 So right after, "including," I'd just put, "submission
16 of."

17 CHAIRMAN FESMIRE: Submission of the mud
18 log sheet? Okay.

19 COMMISSIONER OLSON: Then down on the next
20 line where it says, "which shall include at a minimum," I
21 think what they're looking for is information on the
22 total depth reached. They're looking for different
23 information to be submitted, as well. So right after
24 where it says, "which shall include at a minimum,"
25 information on the total depth reached, et cetera.

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER BAILEY: (f) is impossible.

3 CHAIRMAN FESMIRE: "Developing the area if
4 the exploratory wells are productive, including the
5 operator's best estimate of the number and location" --
6 oh, when they do the economics on this program, they're
7 going to do that as the expected case. They're going to
8 run an expected case economics that includes this.

9 COMMISSIONER BAILEY: But prior to putting
10 a hole in the ground, they're not going to have enough
11 information.

12 CHAIRMAN FESMIRE: All three of the
13 companies that I worked for did it that way. They did an
14 expected case and a risk of the expected case.

15 COMMISSIONER BAILEY: Right. And then the
16 operator would have to come back through for an amendment
17 of the plan. I think that it is expecting too much to
18 have this prior commitment than have to come back for an
19 amendment.

20 CHAIRMAN FESMIRE: I don't see this as an
21 amendment.

22 COMMISSIONER BAILEY: No. But where we
23 get to amendments of the plans. If they change their
24 well locations, then that's called an amendment of the
25 plan and they'd have to come back in for that. And the

1 information is so sketchy in that it's very difficult to
2 have a committed plan with units -- you know, if you have
3 your annual plans of development that are allowed without
4 having all of this up front, because well locations are
5 developed after they have been able to evaluate results
6 of the previous wells.

7 CHAIRMAN FESMIRE: Yeah. But every time
8 when they run the economics on the next well, they're
9 going to have an expected case, an expected development
10 case and a risk --

11 COMMISSIONER BAILEY: Based on evaluations
12 of previous drilling.

13 CHAIRMAN FESMIRE: Right.

14 COMMISSIONER BAILEY: But at this point,
15 they don't have previous drilling.

16 CHAIRMAN FESMIRE: But when they drill
17 that first well, they're going to have what they expect
18 to find, the reservoir they expect to find, the size of
19 the reservoir. What they do is run the -- they run the
20 economics on what they expect to find, and then they risk
21 the case up and -- I mean down and then sometimes up, you
22 know, give the -- you know, the difference in areas,
23 usually they can come up with them in a month. But they
24 have this expected number. They have mapped that --
25 well, you used to do this. They have mapped that area.

1 They know how many wells it takes to develop it. They
2 risk the first well with the dry hole risk, and then they
3 have the development risk on the rest of it. So it's
4 something they would have.

5 COMMISSIONER BAILEY: Except they're
6 penalized if they come back in and have to amend that
7 plan based on the results of their drilling. We had so
8 much testimony showing that it was extremely difficult to
9 correlate any of the geology. And that was part of the
10 justification for monitor wells that the Division was
11 talking about because of the unknown.

12 CHAIRMAN FESMIRE: For the water geology.
13 But the only geology -- if they're drilling for it, they
14 get a much better handle on it. It's not that the water
15 geology won't be understood. That is not part of what
16 people spend their time doing. Before we drill this
17 well, they're going to understand or think they
18 understand the hydrocarbon geology. The water geology is
19 a different situation. That is not of significant
20 interest to an oil and gas company. They want to protect
21 it, but they haven't spent -- their geologists don't
22 spend their time evaluating the shallow geology, the
23 water geology. They spend their time evaluating the
24 potential hydrocarbon geology.

25 COMMISSIONER BAILEY: If the argument that

1 the land is so geologically complex, then that argument
2 has to be applied, not only at the surface depths, but
3 also at deeper depths. Because that was the argument
4 that was given, that the geology was so complex that we
5 have to treat this as a very different area than the rest
6 of the state.

7 CHAIRMAN FESMIRE: But when they come in
8 to drill, there's a much higher degree of uncertainty
9 with respect to the shallow geology than there is to the
10 hydrocarbon geology. The shallow geology, where most of
11 the water is going to be present, they don't have a
12 geologist who spends all this time. They don't have
13 hydrologists, generally, who spend their time looking at
14 that. Whereas they will have a good theoretical
15 understanding or they, at least, believe they do have a
16 good theoretical understanding, of the subsurface, the
17 deeper geology, the hydrocarbon bearing geology, and they
18 will have people who will spend their time doing it, and
19 they will have run this model.

20 COMMISSIONER BAILEY: The Office of the
21 State Engineer spent how many people, how many years, how
22 many reports? And if they don't have a good handle on
23 the geology of this area, then I don't think you can
24 expect an oil and gas company who does not have the
25 experience in Santa Fe County to have any better

1 understanding of what their future plans will be.

2 CHAIRMAN FESMIRE: That makes my point.

3 The state engineer does not understand the water geology,
4 but a geologist -- I mean, an oil and gas company is
5 going to have this well study. They're going to have --
6 at least they're going to believe they have a real good
7 handle on that subsurface geology. And they're going to
8 have run an expected case where they have listed the
9 wells they think they will drill, they risk them
10 according to their understanding of the geology, and they
11 will have this information available to them, won't they?

12 COMMISSIONER BAILEY: Not if the state
13 engineer has not been able to do his job. How can you
14 expect oil and gas companies to do any better?

15 CHAIRMAN FESMIRE: But that's not what
16 we're talking about.

17 COMMISSIONER BAILEY: You're saying that
18 they have to have this plan already developed?

19 CHAIRMAN FESMIRE: No. They have a plan
20 that they think will occur.

21 COMMISSIONER BAILEY: And they are
22 penalized if they have to come in to amend that plan or
23 change locations or do any changes to their original plan
24 when we go back over to the amendments.

25 CHAIRMAN FESMIRE: Maybe that's where we

1 should address it. But when they drill that initial
2 hole, they will have an idea what they're drilling for.
3 They'll have a much better handle on the petroleum
4 geology than they have on the water geology. That's part
5 of the problem we run into in some places like out here.
6 They don't know what they're drilling for in the water,
7 but somebody has spent a lifetime studying the oil and
8 gas potential down there.

9 COMMISSIONER BAILEY: I disagree with you.

10 CHAIRMAN FESMIRE: Okay. Well, when you
11 proposed a prospect, you just said, "Let's drill a hole
12 here and see what's there?"

13 COMMISSIONER BAILEY: No. There's a lot
14 more to it. But it was all based on probabilities that
15 were, then, changed given the results of the wells.

16 CHAIRMAN FESMIRE: But for purposes of
17 this section -- I mean, you know, I don't recall what
18 you're worried about later in the change. You mean in
19 the five-year -- this is -- if I remember correctly, this
20 is for the initial --

21 COMMISSIONER BAILEY: "Increasing the
22 number or changing the locations of proposed wells or
23 related facilities or changing the terms of the proposed
24 plan." That's in (c) --

25 CHAIRMAN FESMIRE: (c) --

1 COMMISSIONER BAILEY: -- on that same page

2 2.

3 CHAIRMAN FESMIRE: Okay. So they
4 shouldn't be required to do this initially? They should
5 only be -- I guess I don't understand.

6 COMMISSIONER BAILEY: I think the Division
7 has so little experience in exploring and developing
8 fields, the Environmental Bureau, particularly. The
9 group of people who will be reviewing this have so little
10 experience, they may not understand that the plan at the
11 beginning is necessarily so vague that amendments will
12 have to come in, and then it's another ordeal, expense,
13 hearing, for a company who wants to continue their
14 exploration based on their findings for the wells that
15 are drilled.

16 CHAIRMAN FESMIRE: Does this require a
17 hearing or is this an administrative application, under
18 (c)?

19 COMMISSIONER BAILEY: It's very vague.

20 COMMISSIONER OLSON: It could go either
21 way..

22 COMMISSIONER BAILEY: It goes either way,
23 depending on who's making that determination and what
24 experience they have.

25 CHAIRMAN FESMIRE: To me, you know, when

1 they drill that first well, they get the information,
2 they change their plan. So your objection is that while
3 they're still in the exploratory phase, we don't want
4 them to have to change --

5 COMMISSIONER BAILEY: Not to have to come
6 back to a hearing, public notice, going through all of
7 the requirements for changing number or location of wells
8 that they cannot know with definition before they ever
9 put the bit to the ground.

10 CHAIRMAN FESMIRE: So they -- I guess
11 we've just got a fundamental difference here. You know,
12 most of the time I didn't develop the geologic prospect.
13 I ran the economics. When we did that, we had a very,
14 very good handle on what we thought was there. Most of
15 the time it changed -- all the time it changed -- but we
16 had the information necessary to do that, and --

17 COMMISSIONER BAILEY: Our division handles
18 plans of development for exploratory drillers. Those
19 plans of development are based on evaluations -- most of
20 the time are based on evaluations of the results of the
21 previous year's drilling so that the geologists have a
22 better handle on X marks the spot for the next one or the
23 next series of wells. But they're not -- they can't lay
24 out the entire location of the field before they ever
25 begin.

1 CHAIRMAN FESMIRE: This entire proposal is
2 based on that analysis and updating that analysis, so --

3 COMMISSIONER BAILEY: I told you I had
4 fundamental problems.

5 CHAIRMAN FESMIRE: How would you propose
6 we change it? Because -- I mean, I don't see it as -- I
7 see it as something -- perhaps we should, you know, be
8 able to make these changes administratively. I see it --
9 you know, it's not laid out. But before they put the bit
10 in the ground, they have an idea. Granted, it's not
11 usually very accurate, but they have an idea. That's all
12 we're asking for here is that they tell us what they
13 think it's going to be.

14 COMMISSIONER BAILEY: And they are held to
15 that by the size of the plan, the expense of amending
16 that plan and the issues involved in exploring whatever
17 reservoir they may find because of the administrative
18 burden of public notice, okays by the tribes, okays by
19 everyone who would be notified. I mean, it's a problem
20 fundamentally. How would I change it? I would not hold
21 a company to the added bureaucracy, added notice, added
22 expense, added harassment, of going through --

23 CHAIRMAN FESMIRE: You mean anything under
24 this rule?

25 COMMISSIONER BAILEY: Yeah.

1 CHAIRMAN FESMIRE: So you object to the
2 rule, in general?

3 COMMISSIONER BAILEY: Well, yeah.

4 CHAIRMAN FESMIRE: Okay.

5 COMMISSIONER BAILEY: It is not in the
6 best interest of the state trust lands and the
7 beneficiaries that we support through oil and gas
8 development and oil production.

9 CHAIRMAN FESMIRE: I understand that. I
10 understand that's your position. Given that, how could
11 we make this rule closer to palatable?

12 COMMISSIONER BAILEY: Maybe your idea of
13 addressing something in C, when we get to that, to
14 clarify whether or not it would go to public hearing or
15 whether or not such development could be handled
16 administratively. So let's look at C after we're done.

17 COMMISSIONER OLSON: One thing that I'd be
18 concerned about is if somebody comes in and all of a
19 sudden puts in a plan for whatever, five wells, puts in a
20 couple of them and things are looking promising, and then
21 decides, oh, I want to do 20 now, or 30, or 50. I guess
22 maybe that comes back as to -- again, then, to at what
23 level would it need to go back -- because I would think
24 there is something that would be significant where it
25 would need to go potentially back to the system if it's

1 very, very significant changes to the plan.

2 But I can see what you're saying. If they
3 have -- say they propose five wells and they decide to
4 move around a little bit, that may really not be
5 significant. They're still working in the same -- but
6 something that's significant. Maybe they decide to add
7 one extra well. Maybe that's not really significant. Or
8 maybe they're going to move the location a little bit.
9 Is or isn't it significant, is an issue that's addressed
10 at the hearing. Because what they have to look at on the
11 considerations for approval are the whole aspects of, you
12 know, preventing waste, protecting correlative rights,
13 human health and the environment.

14 So the argument is also there that if you
15 start moving things around, have you now changed the
16 considerations that went into issuing the approval, too?
17 So you have to have some way -- if you're looking at
18 addressing that in the amendments as to what is
19 significant enough that would require it to go back to
20 hearing.

21 There's provisions like that now in the Water
22 Quality Control Commission regulations, like on discharge
23 permits. They mention it as a significant change in
24 the -- I don't know if it's the volume, location or
25 quality of the discharge, something like that, but there

1 is a qualifier to it. But it is a judgment call at that
2 point on on behalf of the agency. The agency is the one
3 that sits here and decides whether it's significant and
4 needs a modification.

5 If the discharger doesn't think it's
6 significant, they do have a right to appeal that
7 requirement for the modification. What happens is that
8 the agency has to go and say, "Okay. We consider that is
9 significant. That's a modification of your permit and,
10 therefore, it's back to subject to the requirements of
11 the rule again," which is the same as if you're renewing
12 it or getting a new permit. You're going back to the
13 public notice and the potential for hearing.

14 So if you took that approach, I think you have
15 to look at some way as how to define what is significant.
16 Because I think there are going to be cases where
17 amendments would be significant. I can see where
18 somebody would try to misuse it, too, by saying, "I'm
19 going to do five. I've already got my E&D plan and now
20 I'm going to do 20," and there's no opportunity for --
21 which is a pretty significant change.

22 CHAIRMAN FESMIRE: What about tying that
23 to the acquisition of leases? If they -- that this is
24 valid for any leases that they hold prior to spudding.
25 If they require additional leases, then they have to have

1 a different plan. Do you see what I'm saying?

2 COMMISSIONER BAILEY: State leases are 10
3 years in this area. Private fee leases are usually three
4 to five, rarely up to 10. So that would be rather
5 difficult, wouldn't it, for the Division to determine
6 whether or not a lease is near expiration, or --

7 CHAIRMAN FESMIRE: I'm saying as long as
8 they file the original plan, they spud a well, things
9 change, they spud a different well. They're going to
10 acquire the leases that they think are going to be
11 productive. If something changes and they want to start
12 acquiring leases over here, then they need to amend the
13 plan.

14 COMMISSIONER BAILEY: That's an
15 interesting concept, because that would indicate intent.

16 CHAIRMAN FESMIRE: Yeah. The one way that
17 could be --

18 COMMISSIONER BAILEY: Lease up everything
19 to begin with.

20 CHAIRMAN FESMIRE: Lease up everything to
21 begin with.

22 COMMISSIONER BAILEY: And the Division
23 doesn't want to get into title.

24 CHAIRMAN FESMIRE: No. We had a standing
25 rule. If you drilled a well and didn't have the offset

1 lease, you were fired.

2 COMMISSIONER BAILEY: How would you
3 incorporate this?

4 CHAIRMAN FESMIRE: "The operator must
5 obtain an approved amendment to his exploration &
6 development plan prior to expanding the area and prior to
7 drilling on leases not covered under the initial plan,"
8 or something? We'd have to -- I mean, that's not a clean
9 concept.

10 COMMISSIONER BAILEY: Prior to
11 obtaining --

12 CHAIRMAN FESMIRE: No. Prior to
13 drilling -- drilling of leases not covered by the initial
14 plan.

15 COMMISSIONER BAILEY: Then a requirement
16 would have to be in the proposed plan for a corporation,
17 a listing of all leases in areas covered within the plan.
18 Otherwise, you're not going to know if they're getting
19 new leases or not.

20 CHAIRMAN FESMIRE: I think we've got to
21 trust them at some point. I mean, to just say, you know,
22 the plan covers these leases. Any changes to that is
23 administrative. If you include the new leases --

24 MS. BADA: Except they're required to tell
25 you what leases they have in the first place. Not that

1 you couldn't, but you don't now.

2 CHAIRMAN FESMIRE: Do we need to?

3 MS. BADA: If you're going to base it on
4 amending that, yes.

5 CHAIRMAN FESMIRE: So that would be back
6 into the private ownership leases.

7 COMMISSIONER BAILEY: Yes. And if the
8 lease is for the same area covered by a lease that
9 expired for lack of development, then it's the same land.
10 That's what you're concerned with, not anything else.
11 Mining and minerals also has two different types of
12 changes to their permits. There's the significant
13 amendment or something. Do you know what those terms
14 are?

15 MS. BADA: I don't.

16 COMMISSIONER OLSON: I don't know.

17 COMMISSIONER BAILEY: Because it's
18 somewhere in my memory banks and it's not available right
19 now, that if they had significant changes and some other
20 term.

21 CHAIRMAN FESMIRE: You carry the Mining
22 Act?

23 COMMISSIONER OLSON: No.

24 MS. BADA: Didn't we do that with the
25 surface waste rule? How did we define it?

1 CHAIRMAN FESMIRE: Major modification?

2 MS. BADA: Yeah.

3 COMMISSIONER OLSON: So we consider
4 that -- under the discharge permits, we consider major
5 and minor modifications. Minor modifications, we would
6 usually consider that it -- like for volume, it's not
7 more than a 10-percent change in increase in volume,
8 or -- changing the locations, though, of the discharge
9 would trigger a major modification, so -- but let me see
10 what the language is in here.

11 MS. BADA: An increase in the land area.

12 COMMISSIONER BAILEY: That's a major
13 modification.

14 MS. BADA: Change in the design capacity.
15 That wouldn't apply here -- or other modification that
16 the Division determines is sufficiently substantial, but
17 public notice is appropriate.

18 CHAIRMAN FESMIRE: What about in C, just
19 making all of them administrative applications, unless
20 the Division Director determines that it's a major
21 modification?

22 COMMISSIONER OLSON: The definition
23 they've got in here for a discharge permit modification,
24 it says, "Means a change to the requirements of a
25 discharge permit that result from a change in the

1 location of the discharge, a significant increase in the
2 quantity, a significant change in the quality or as
3 required by the secretary," so --

4 CHAIRMAN FESMIRE: Secretary or Division
5 Director, or -- so where would we put that?

6 COMMISSIONER OLSON: I think it would be
7 something that if the Division did say it was
8 significant, I guess the operator has always got the
9 ability to come in front of the Commission and say
10 whether it is or isn't, and the Commission is the
11 ultimate arbitor of that.

12 COMMISSIONER BAILEY: So the first
13 sentence would be --

14 CHAIRMAN FESMIRE: Amendments to
15 exploration & development plans. An operator may obtain
16 an approved amendment to its exploration & development
17 plan prior to -- may administratively obtain --

18 MS. BADA: I guess the first question is
19 do you want that same -- do you want them all to come to
20 you for those reasons or do you want to change the
21 reasons?

22 COMMISSIONER OLSON: I still think you
23 want them to come to you, because then they're just done
24 administratively versus --

25 MS. BADA: Right after that sentence I

1 would just say, "The Division" --

2 COMMISSIONER OLSON: I think the key is
3 maybe farther back. I think it's back in the public
4 hearing. If you go to I on page 4, I(2).

5 MS. BADA: Maybe just say, "The Division
6 shall" --

7 COMMISSIONER OLSON: "The Division shall
8 hold a public hearing on significant changes to an
9 application."

10 MS. BADA: Would you change it in C or
11 just put it in public hearings?

12 CHAIRMAN FESMIRE: I'm leaning towards C.
13 "An operator must obtain an approved amendment to its
14 exploration & development plan prior to expanding the
15 area covered by the plan, increasing the number or
16 changing locations of proposed wells or related
17 facilities or changing the terms of the proposal."

18 MS. BADA: I'm going to say, "The Division
19 shall approve the amendment administratively unless" --

20 CHAIRMAN FESMIRE: How about, "The
21 Division may approve" --

22 MS. BADA: May approve.

23 CHAIRMAN FESMIRE: -- "may approve the
24 amendment administratively" --

25 COMMISSIONER OLSON: Unless the

1 amendment --

2 CHAIRMAN FESMIRE: -- "unless the Director
3 determines that the amendment is a major modification."

4 MS. BADA: They don't define "major
5 modification," so --

6 COMMISSIONER OLSON: Then when you come
7 into this, when you deal with the permit modifications
8 here, it goes back to significant, so it's a judgment
9 call as to what's significant.

10 CHAIRMAN FESMIRE: Maybe we need to put
11 "significant" in there instead of "major" -- or, "would
12 significantly affect additional parties" or --

13 COMMISSIONER BAILEY: "Is significant to
14 the terms of the original plan."

15 COMMISSIONER OLSON: Then the terms of
16 approval of the application is back to prevent waste,
17 protect correlative rights, protect fresh water and
18 protect human health and the environment. That's
19 actually one of the main -- that's really the major focus
20 for approval of the E&D plan.

21 MS. BADA: Couldn't we just say, "If the
22 Director determines that it's sufficiently substantial,
23 that public notice and public participation are
24 appropriate"? Would that --

25 CHAIRMAN FESMIRE: Okay.

1 COMMISSIONER BAILEY: Okay.

2 CHAIRMAN FESMIRE: Yeah. Why not?

3 COMMISSIONER BAILEY: So the Director
4 determines the amendment is --

5 COMMISSIONER OLSON: Yeah.

6 COMMISSIONER BAILEY: -- substantial?

7 COMMISSIONER OLSON: If it's a
8 modification that the Division determines is sufficiently
9 substantial, that public notice and public participation
10 in the application process are appropriate.

11 COMMISSIONER BAILEY: Okay.

12 CHAIRMAN FESMIRE: That gives them the
13 ability to do it.

14 COMMISSIONER OLSON: It also goes both
15 ways. If it's going along and some landowners say, "Hey,
16 this is significant," and they never got a chance to
17 argue it, as well. So both sides get a chance to weigh
18 in on whatever decision that the Division makes at that
19 point.

20 CHAIRMAN FESMIRE: Is that satisfactory?

21 COMMISSIONER BAILEY: Yeah.

22 COMMISSIONER OLSON: If we do that, then
23 we just leave (f) alone?

24 CHAIRMAN FESMIRE: Let's talk about that.

25 COMMISSIONER OLSON: I'm talking about

1 (7) (f) on page -- that's what started the whole thing on
2 this.

3 CHAIRMAN FESMIRE: "Developing the area if
4 the exploratory wells are productive, including the
5 operator's best estimate of the number and location of
6 development wells and related facilities."

7 COMMISSIONER BAILEY: We would leave that
8 alone.

9 COMMISSIONER OLSON: I might take out the
10 word, "best," because I don't know -- it's going to argue
11 about which is best. It's just an estimate.

12 MS. BADA: (f)?

13 COMMISSIONER OLSON: B(7) (f).

14 CHAIRMAN FESMIRE: Okay. (8), "A written
15 contingency plan for all releases, with no exclusion for
16 de minimus amounts."

17 COMMISSIONER BAILEY: Which is a
18 modification of the OCD's rule on spill reporting.
19 (8) (a) is spill reporting.

20 COMMISSIONER OLSON: Eight is really about
21 how you're --

22 CHAIRMAN FESMIRE: I think she's talking
23 about, "with no exclusion for de minimus amounts."

24 COMMISSIONER OLSON: I think that's --
25 usually they're going to have -- what you're going to

1 have is a contingency plan for what you're doing with
2 leaks and spills. It has nothing to do with reporting
3 requirements. That's two different things.

4 COMMISSIONER BAILEY: That's true. This
5 goes back to the SPCC.

6 COMMISSIONER OLSON: It's really the SPCC.
7 That's why I was looking at this as more related -- it's
8 just saying you have to have a plan for dealing with
9 leaks, no matter what the size is. It might be just that
10 you have -- your plan might be, "I've got a shovel. I'll
11 go out and pick up that scoop of dirt," or --

12 COMMISSIONER BAILEY: Which is what a
13 normal SPCC does.

14 COMMISSIONER OLSON: Right.

15 CHAIRMAN FESMIRE: I'm seeing here, "A
16 written contingency plan for all releases, with no
17 exclusion for de minimus amounts." Do we need that in
18 all the leases? Because there is an exclusion for the
19 spill reporting. Do we need to leave that in there?

20 MS. BADA: That's probably why they put it
21 in there, so it would be clear.

22 CHAIRMAN FESMIRE: Okay. (8)(a), "Which
23 shall include the best management practices for the
24 prevention and detection of releases procedures for
25 releases -- procedures for early" -- should there be a

1 coma there -- "procedures for early detection of
2 releases, instructions for notifying appropriate
3 responders, identification of applicable equipment" --

4 COMMISSIONER BAILEY: An "and" is missing.

5 MS. BADA: That doesn't make sense.

6 CHAIRMAN FESMIRE: Where is an "and"
7 missing?

8 COMMISSIONER BAILEY: "Prevention and
9 detection of releases and procedures for early
10 detection."

11 COMMISSIONER OLSON: At the end of that
12 line just put an "and."

13 MS. BADA: It makes more sense than not.

14 CHAIRMAN FESMIRE: Okay. Down to (c),
15 "Identification" -- (d), "Response plans based on the
16 severity and nature of the release." Anything in there
17 that's fortuitous given your running objection? Okay.
18 (9), "The cultural resource is listed in or eligible for
19 listing in either the National Register of Historic
20 Places or the State Register of Cultural Properties,
21 known cemeteries and unmarked human burials are located
22 in the area included in the proposed exploration &
23 development plan or are within one-half mile of the area
24 included in the plan, the information" -- does anybody --

25 MS. BADA: Shouldn't it be, "known

1 cemeteries or unmarked human burial"?

2 CHAIRMAN FESMIRE: Oh, you've got to have
3 both of them. Yeah. It's a known cemetery and I know
4 somebody in there is unmarked.

5 COMMISSIONER BAILEY: Historically, I've
6 been prevented -- the Division and the Commission has not
7 incorporated other agency rules in their rules, in OCD
8 rules. This paragraph is enforcing another agency's
9 rule. I don't believe it is the responsibility of the
10 OCD to single out one other agency's rule for
11 incorporation within its rules.

12 MS. BADA: I don't know about enforcing
13 the rule, but I already know we don't do a very good job
14 of complying with our own requirements under the Cultural
15 Properties Act.

16 COMMISSIONER OLSON: I thought that's what
17 I remembered, based upon what the testimony was, is that
18 this isn't part of the Division matrix for approval of
19 the plans. You come back to the approvals that none of
20 this has even mentioned. But if I remember right, they
21 were saying that they are required under Cultural
22 Properties Act or --

23 MS. BADA: Under the Cultural Properties
24 Act, all state agencies are supposed to review their
25 actions to see if they affect registered cultural

1 properties, and we don't do that now.

2 COMMISSIONER BAILEY: I request that that
3 paragraph be eliminated.

4 CHAIRMAN FESMIRE: That was a big part of
5 the executive order.

6 COMMISSIONER BAILEY: Then define SHPO's.

7 MS. BADA: It's not SHPO's obligation.
8 It's initially our obligation to figure it out. It's not
9 SHPO's obligation. It's the other state agencies.

10 COMMISSIONER BAILEY: 4.10.79 NMAC is the
11 SHPO regulation.

12 MS. BADA: Yeah, I know. But 4.10.79 is
13 dealing with other agency's obligations, not SHPO's.

14 COMMISSIONER OLSON: It's one of the
15 exhibits.

16 CHAIRMAN FESMIRE: Oh, okay.

17 MS. BADA: So in reality, we have an
18 obligation. Whether we've done it is another story. But
19 it's not SHPO's obligation. It's -- by statute, it's the
20 agency issuing the permit.

21 CHAIRMAN FESMIRE: Jami, I don't think I
22 can do it.

23 COMMISSIONER BAILEY: The reference is to
24 the SHPO regulation. It is seen as enforcing other
25 agency regulations.

1 CHAIRMAN FESMIRE: I see your point, but
2 the situation we're in on this, I kind of got to leave it
3 that way.

4 COMMISSIONER OLSON: I have part of a
5 problem with it, but I didn't -- overall, the concept of
6 it, because I think the Division made clear in their
7 testimony when they came back to J, that that is still
8 not a -- it's just so that the information can be
9 provided to SHPO and they do with it, I guess, what they
10 may. That's their responsibility, not the Division's.

11 COMMISSIONER BAILEY: That's their
12 responsibility.

13 MS. BADA: The obligation is for the
14 agency to determine whether there is potentially an
15 impact, and if it is, we have to get SHPO involved.
16 That's the way the Cultural Properties Act is written.

17 COMMISSIONER OLSON: I know it was
18 perceived that way with the hearing with the industry,
19 but that's why I think they tried to make clear that, no,
20 this is not a consideration for approval or denial,
21 because it's not, when you come back into J, just so it's
22 got to be provided so that the agency can, then, give it
23 SHPO.

24 MS. BADA: Right now when we issue a
25 permit we should be checking it.

1 COMMISSIONER OLSON: Right.

2 COMMISSIONER BAILEY: And since it is
3 confidential, it shouldn't even come to this agency. It
4 goes directly to SHPO.

5 MS. BADA: No. The only way to determine
6 is if we look. That's why most agencies have agreements
7 with SHPO.

8 COMMISSIONER BAILEY: But you don't have
9 an archaeologist on staff.

10 MS. BADA: We do it. Our Forestry
11 Division does it. MMB does it. Other divisions check.
12 They have agreements with SHPO to check.

13 CHAIRMAN FESMIRE: But we don't. Does
14 that matter?

15 MS. BADA: I don't know. We may let our
16 archaeologist check. It's not our choice, but they want
17 us to do our job.

18 COMMISSIONER OLSON: Let's talk about
19 something else that's within it, first, which was a point
20 of contention, and that's where it says, "or eligible for
21 listing," because there was a lot of debate over that
22 little provision in the hearing, and -- yeah, if you do
23 look back at SHPO -- that's what I had done -- it only
24 talks about things that are affecting a registered
25 cultural property. Nothing anywhere in here under the

1 review procedures does it talk about sites that are
2 eligible for listing. I know what their problem is, is
3 that they --

4 CHAIRMAN FESMIRE: They want to be
5 proactive.

6 COMMISSIONER OLSON: Yeah. They
7 acknowledge that only, whatever it was, 12 percent or 20
8 percent, of the Galisteo Basin has actually been looked
9 at for listed cultural resources.

10 CHAIRMAN FESMIRE: That requires the OCD
11 to determine what is eligible for listing.

12 COMMISSIONER OLSON: That's right. And
13 the idea is that if you go in, you can look at what's a
14 registered cultural property or a listed, but trying to
15 figure out what is eligible is difficult.

16 CHAIRMAN FESMIRE: Let's strike, "or
17 eligible."

18 "Listed in or eligible for listing in either
19 the National Register of Restored Places or the State
20 Register of Cultural Properties."

21 COMMISSIONER BAILEY: Strike, "or eligible
22 for listing in."

23 CHAIRMAN FESMIRE: Okay. (10).

24 COMMISSIONER OLSON: We didn't deal with
25 the overall issue of (9).

1 CHAIRMAN FESMIRE: I think it's much more
2 palatable this way.

3 COMMISSIONER BAILEY: I still don't like
4 it. I still think it's enforcing a regulation from
5 another agency. When you site 4.10.79 NMAC, that's
6 another agency's regulation.

7 MS. BADA: It's another agency's
8 regulation that already applies to us. They've already
9 been given statutory authority to adopt that rule and
10 apply it to other agencies.

11 COMMISSIONER BAILEY: Shall we go on?

12 CHAIRMAN FESMIRE: It's up to you.

13 COMMISSIONER BAILEY: I'm not going to
14 argue it anymore.

15 CHAIRMAN FESMIRE: Ten, "Any proposed
16 exceptions to the requirement set out in Section B,"
17 which is this section, "and evidence that operating in
18 accordance with the proposed exceptions will prevent
19 waste, protect correlative rights." I think we need that
20 out, sort of a general -- if it does it, as well. Leave
21 it in?

22 COMMISSIONER OLSON: I don't have a
23 problem with it.

24 COMMISSIONER BAILEY: I think it's
25 acknowledging the basic responsibility.

1 CHAIRMAN FESMIRE: Proposed legal notice,
2 complying with Section (9). Any problem?

3 COMMISSIONER BAILEY: No.

4 CHAIRMAN FESMIRE: "Other information that
5 the Division may require to demonstrate that the plan
6 will prevent waste, protect correlative rights, protect
7 fresh water, protect human health and the environment and
8 will assure the Division that operation of the plan will
9 be in compliance with the Division's rules and orders."
10 The Mother Hubbard clause.

11 MS. BADA: What about Commission orders?

12 CHAIRMAN FESMIRE: Um, Division rules and
13 Division and Commission orders? Do we need that?

14 MS. BADA: I think it would be clearer.

15 CHAIRMAN FESMIRE: Division and
16 Commission? (13), "Certification by the operator that
17 the information submitted in the application is true,
18 accurate and complete to the best of the operator's
19 knowledge, after reasonable inquiry." That's something
20 that we put in one of the rules and I can't remember
21 why -- "information submitted in the application is true,
22 accurate and complete to the best of the operator's
23 knowledge, after reasonable inquiry." Is that too big of
24 a burden?

25 COMMISSIONER BAILEY: It's an

1 affirmation --

2 COMMISSIONER OLSON: It's an affirmation
3 of what they want. I don't have a problem. I think some
4 of the forms say that, where they have to sign them, to
5 say, "This is accurate to the best of my knowledge."

6 CHAIRMAN FESMIRE: Okay. "Amendments to
7 exploration & development plans."

8 COMMISSIONER OLSON: Before you go the
9 that, I've got a potential one to look at adding in
10 there. You had a lot of talk about mitigating impacts on
11 wildlife, especially from the Game & Fish and Tesuque
12 Pueblo Wildlife Federation. We do that, to some extent,
13 for our burden, but I think one of the -- that's what, I
14 think, everyone was kind of getting at is that they would
15 implement some type of best management practices. So I
16 would kind of suggest that their plan would include a new
17 bulleted item in here, which would be, "Best management
18 practices for mitigating impacts on wildlife." It
19 doesn't say what they have to do, just that they have to
20 try to mitigate those impacts.

21 COMMISSIONER BAILEY: I have a problem
22 with that broad term, "wildlife." Are you talking T and
23 E, are you talking game animals, are you talking field
24 mice and rock squirrels?

25 CHAIRMAN FESMIRE: What are T and E?

1 COMMISSIONER BAILEY: Threatened and
2 endangered species. If you can be specific and say,
3 "threatened or endangered species," of if you can be
4 specific and say, "migratory birds," or whatever. But
5 when you're talking about field mice and rock squirrels
6 that carry plague and Junta virus, I'm not going to do
7 it. Sorry. I fight those guys in my yard.

8 COMMISSIONER OLSON: I agree. I guess to
9 what extent -- what do you look at? I agree.

10 MS. BADA: What do they look at, their
11 waste or do they look at their entire operations? If
12 it's their entire operations, we need another statute to
13 get there.

14 COMMISSIONER BAILEY: Until it's specific,
15 I don't think that you can do that.

16 COMMISSIONER OLSON: Coming back to the
17 issues brought up by pueblos that this is traditional,
18 cultural areas for them. I have no idea what they do in
19 terms of collecting eagles or whatever they're doing
20 through some of these areas. So how would you take --

21 MS. BADA: You can't collect an eagle
22 without a permit.

23 COMMISSIONER OLSON: I was just taking
24 that as an example.

25 CHAIRMAN FESMIRE: You just ask Stumpy.

1 COMMISSIONER OLSON: But they were the
2 ones that were most adamant about this, was the pueblos,
3 because they were saying this is traditional practices
4 for them out there, so I don't know. A lot is private
5 land, too, so --

6 COMMISSIONER BAILEY: I'm not going to ask
7 an operator how you're going to protect the field mice.

8 COMMISSIONER OLSON: Right. I trap them
9 at my house, too. They've destroyed more things than you
10 can imagine at my house.

11 COMMISSIONER BAILEY: And people have died
12 from the plague.

13 CHAIRMAN FESMIRE: I'll tell Oscar on her.

14 COMMISSIONER BAILEY: Let him go talk to
15 the man who lost both feet from plague.

16 CHAIRMAN FESMIRE: Was that up in Santa
17 Fe?

18 COMMISSIONER OLSON: He lived in Eldorado.

19 CHAIRMAN FESMIRE: How do you want to
20 address it?

21 COMMISSIONER BAILEY: I vote not to put in
22 Bill's suggestion.

23 CHAIRMAN FESMIRE: Bill?

24 COMMISSIONER OLSON: Um, let me think
25 about that and I'll come back to that.

1 CHAIRMAN FESMIRE: That brings us to C,
2 "Amendments to exploration & development plans." We
3 talked about it a little while ago. I think we decided
4 to handle it someplace else; right?

5 COMMISSIONER BAILEY: Well, inserting the
6 sentence, "The Division may approve amendments
7 administratively."

8 MS. BADA: I would make it our second
9 sentence in C.

10 COMMISSIONER BAILEY: That was before the
11 sentence, "An operator applying."

12 CHAIRMAN FESMIRE: For some reason, I
13 didn't catch that.

14 COMMISSIONER OLSON: That's what we talked
15 about.

16 CHAIRMAN FESMIRE: Cheryl, do you have
17 that?

18 COMMISSIONER BAILEY: "Division may
19 approve amendments administratively unless the Director
20 determines the amendment is sufficiently substantial that
21 public notice and public participation is required."

22 CHAIRMAN FESMIRE: Okay. Is that all we
23 had to address on C?

24 COMMISSIONER BAILEY: Um-hum.

25 CHAIRMAN FESMIRE: D, "Renewals of

1 exploration & development plans. An operator applying
2 for renewal of its exploration & development plan shall
3 file two copies of the application with the Division's
4 Santa Fe office and file a copy of the application with
5 the appropriate division district office or offices."
6 Why two copies?

7 MS. BADA: I don't know. I thought they
8 would have told you.

9 CHAIRMAN FESMIRE: Anybody ever remember
10 any evidence about two copies?

11 COMMISSIONER OLSON: There may have been.
12 I just don't remember.

13 COMMISSIONER BAILEY: I don't remember.

14 COMMISSIONER OLSON: I don't remember
15 anybody having a problem with it, either.

16 CHAIRMAN FESMIRE: Okay. "The application
17 shall, (a) update the information provided pursuant to
18 Subsection B and provide a proposed legal notice
19 complying with Section F of 9." Any problem there?

20 COMMISSIONER BAILEY: I lost you. Okay.
21 You're on page 3, the top of the page.

22 CHAIRMAN FESMIRE: Okay. (2), "The
23 operator may combine an application to renew its
24 exploration & development plan with an application to
25 amend the exploration & development plan." Make changes

1 on the fly. Any problem?

2 COMMISSIONER BAILEY: No.

3 COMMISSIONER OLSON: You're still on D(2)?

4 CHAIRMAN FESMIRE: Yes.

5 COMMISSIONER OLSON: No.

6 CHAIRMAN FESMIRE: E, "Replacement of an
7 exploration & development plan with a special pool order.
8 An operator who has operated well under an approved
9 exploration & development plan for at least five years
10 may apply for approval to replace the plan with a
11 special pool order."

12 COMMISSIONER BAILEY: Arbitrary and
13 capricious time.

14 CHAIRMAN FESMIRE: Okay. Why?

15 COMMISSIONER BAILEY: Because there's no
16 justification why a company should have to wait five
17 years. That is not current Division practice.

18 CHAIRMAN FESMIRE: And the current
19 Division practice is?

20 COMMISSIONER BAILEY: Within 30 days for
21 some of them.

22 CHAIRMAN FESMIRE: Criteria for special
23 pool orders. The danger of being too short on this time
24 period is what takes them out of the requirement that
25 they developed.

1 COMMISSIONER OLSON: I think the intent
2 was if they actually get out and do something that would
3 be recognizing something a little bit more final later.
4 I think that's what their intent was.

5 CHAIRMAN FESMIRE: I guess I don't
6 understand. Explain that again.

7 COMMISSIONER OLSON: Well, if they're
8 coming in and they're actually -- they've got something
9 that's a little bit more developed before they come in
10 for their special pool order.

11 CHAIRMAN FESMIRE: Once they acquire the
12 special pool order, they're taken out of the requirement
13 to renew their exploration & development plan.

14 COMMISSIONER OLSON: That's right.

15 CHAIRMAN FESMIRE: How about within 30
16 days of the completion of the last well?

17 COMMISSIONER BAILEY: How are they going
18 to know what is their last well that quickly? It takes a
19 good six months to evaluate some of those wells.

20 CHAIRMAN FESMIRE: How about within six
21 months of the completion of the last -- that sort of
22 implies that there will be no further development.

23 COMMISSIONER BAILEY: Um-hum. And that's
24 based on economics.

25 CHAIRMAN FESMIRE: What other way can we

1 do that that there's evidence to support it?

2 COMMISSIONER OLSON: So you're thinking
3 that once they complete their approved E&D plan, they can
4 go for a special pool order; is that --

5 COMMISSIONER BAILEY: I'm saying that this
6 E(1), (2), (3) and (4) are not necessary. None of that
7 is required under the current practices or the rule for
8 special pools.

9 CHAIRMAN FESMIRE: There's got to be some
10 sort of transition from the exploration & development
11 plan to the production phase. We're back to the argument
12 that none of this is necessary; right? If it were, how
13 would you like to see it?

14 COMMISSIONER BAILEY: Eliminate (1), (2),
15 (3) and (4).

16 CHAIRMAN FESMIRE: That would eliminate
17 the entire -- that's the heart of the rule.

18 COMMISSIONER OLSON: It still has a title.

19 COMMISSIONER BAILEY: No. E(5) would
20 still be okay.

21 COMMISSIONER OLSON: Sorry. I couldn't
22 resist. I guess the way -- I'm just looking at (1), and
23 I was thinking about this and maybe some type -- maybe
24 I'm reading this wrong. You actually have to say in your
25 E&D plan, you just have gone through in your first five

1 years, all you've done is construct the wells, you
2 haven't really operated them. You'd have to operate them
3 for another five years before you can replace it with a
4 special pool order? Did I read that correctly?

5 MS. BADA: Yep.

6 CHAIRMAN FESMIRE: Yes.

7 COMMISSIONER OLSON: So you have to go
8 through potentially 10 years before you could do this
9 special pool order.

10 CHAIRMAN FESMIRE: Not if you -- "an
11 operator who has operated wells" -- how about a well or
12 wells -- "under an approved exploration & development
13 plan" --

14 COMMISSIONER OLSON: Because, most likely,
15 if you come and you drill it, you're going to already get
16 into your expiration term and you need to renew it,
17 instead of just going right to a special pool order. I
18 thought that was kind of their intent that you go through
19 a five-year period, then you'd go to the special pool. I
20 thought that's what the Division's intent was.

21 COMMISSIONER BAILEY: What's the
22 justification for that?

23 CHAIRMAN FESMIRE: Well, the justification
24 is at some point -- I think there was evidence to this
25 effect. At some point you're not going to keep modifying

1 your exploration & development plan. You're going to be
2 able to operate under the pool rules, develop and operate
3 under the pool rules, your development wells. You
4 know -- you've got a good handle on what the surface
5 manifestation of your development is going to be. So you
6 come out of that and just start operating under special
7 pool rules, you know, regarding spacing and things like
8 that.

9 COMMISSIONER BAILEY: Which can be
10 determined after one well, which is what is done for
11 walk-out wells now, within sometimes 30 days. That's
12 what I brought out with that one case that we just heard.

13 COMMISSIONER OLSON: Maybe if you just
14 take out, "for at least five years." So if you operated
15 it under an E&D plan, you can apply for a special pool
16 order.

17 CHAIRMAN FESMIRE: There's got to be some
18 limit on that.

19 COMMISSIONER OLSON: Say they come in and
20 drill and go back to my five wells again within a year,
21 and then they kind of know what they're going to do now,
22 couldn't they just come back and apply for a special pool
23 order? That's kind of a -- I can see that being kind of
24 a burden on the agency just because their -- they just
25 finished having a hearing and they're going to have to

1 have potentially another one.

2 MS. BADA: Could you do it by number of
3 wells, rather than number years?

4 CHAIRMAN FESMIRE: How about -- not this
5 wording, but I'm trying to get this idea out. If you
6 don't need to drill any additional spacing units, you can
7 convert to special pool rules. See what I'm saying?

8 COMMISSIONER BAILEY: But the Division
9 determines spacing units based on the engineering of one
10 well. So one well is all that's necessary for the
11 Division to determine spacing.

12 CHAIRMAN FESMIRE: That's what I'm saying.
13 When you get it drilled and you know that -- that's
14 saying that you come in and drill on those spacing units
15 again, but if you've got it drilled to where you don't
16 need to expand the surface manifestation, then you can
17 convert it to special pool rules, because there's no
18 longer a need for the surface control based on the
19 exploration & development plan.

20 COMMISSIONER BAILEY: You're talking full
21 development of the, in effect, unitized area?

22 CHAIRMAN FESMIRE: No. Because you still
23 can come in and drill multiple wells in a spacing unit,
24 but once you've established the extent of the spacing
25 units that you're going to drill, there's no longer a

1 need to worry about it becoming bigger, so you can go to
2 the special pool rules and not have to worry about the
3 rules that are -- that we put in here.

4 COMMISSIONER BAILEY: Which can be on one
5 well?

6 CHAIRMAN FESMIRE: Yes. If that's the
7 only well you're going to drill, you don't need to
8 develop another spacing unit --

9 COMMISSIONER BAILEY: But they're not
10 going to know if they're going to develop multiple
11 spacing units.

12 CHAIRMAN FESMIRE: But when they do, they
13 can do that.

14 COMMISSIONER BAILEY: You're requiring
15 them to say, "We will not drill any more wells."

16 CHAIRMAN FESMIRE: No. If they do any
17 more wells, then they have to go outside the area that
18 they have special pool rules for. Because, you know,
19 once they converted to special pool rules, that will
20 include the entire area that they've done the exploration
21 & development plan for. We're not saying that they can't
22 step out after that, but if they do, then they have to
23 have an exploration & development plan.

24 COMMISSIONER BAILEY: But it says you
25 can't step out, that the pool rules here go -- a well

1 drilled outside the horizontal limits would not be a
2 development well of that special pool rule.

3 CHAIRMAN FESMIRE: Yeah. Then you'd have
4 to do an exploration & development plan for there.

5 COMMISSIONER BAILEY: To step out?

6 CHAIRMAN FESMIRE: To step out. You can
7 modify your exploration & development plan if your area
8 is expanded, okay? But once you decide that you go for
9 special pool rules and you want to step outside the
10 boundaries of the special pool rules, you have to do
11 another exploration & development plan because you've got
12 a new surface manifestation of your area. See what I'm
13 saying?

14 COMMISSIONER BAILEY: So E(1) --

15 MS. BADA: Surface manifestation or water?

16 CHAIRMAN FESMIRE: She's getting sleepy.

17 COMMISSIONER BAILEY: -- an operator who
18 has operated -- who has developed an approved exploration
19 & development plan may apply?

20 CHAIRMAN FESMIRE: Yeah.

21 COMMISSIONER BAILEY: So scratching, "for
22 at least five years." There would not be any time
23 indication?

24 CHAIRMAN FESMIRE: Right -- may apply for
25 special pool rules. And then if they're going to --

1 because special pool rules should encompass everything
2 that they think is in that pool. If later the
3 circumstances change, they get some pressure data or
4 something that shows that they have to drill out here,
5 then they'll have to do another exploration & development
6 plan for that. That would limit the incentive to stop
7 early.

8 COMMISSIONER BAILEY: But are you
9 impinging on correlative rights when you're saying that
10 they have to develop every spacing unit or creating waste
11 if it's not necessary to develop every spacing unit?

12 CHAIRMAN FESMIRE: We're not saying that
13 they have to develop every spacing unit. We're saying
14 that they have to -- let me make sure. No, they don't
15 have to develop every spacing unit. They have to develop
16 every spacing unit before they apply for special pool
17 rules coming out of the exploration & development plan.

18 COMMISSIONER BAILEY: But if they don't
19 need to develop every spacing unit in order to drain the
20 reservoir --

21 CHAIRMAN FESMIRE: -- then they'll lose
22 the lease.

23 COMMISSIONER BAILEY: Not necessarily, not
24 if we're on 40 acres.

25 CHAIRMAN FESMIRE: If they have a spacing

1 unit that's not developed -- I'm not familiar with any
2 lease --

3 COMMISSIONER BAILEY: They're not going to
4 have any part of the state lease carved out if the state
5 lease covers more than 40 acres.

6 CHAIRMAN FESMIRE: Do they cover more than
7 40 acres?

8 COMMISSIONER BAILEY: State leases cover
9 up to 640 acres.

10 CHAIRMAN FESMIRE: How do you enforce the
11 development rights?

12 COMMISSIONER BAILEY: We do. But if -- we
13 don't require development of every spacing unit within
14 that lease based on drainages. So if they have one well
15 out of that 320, we're not going to expire the rest of
16 the lease.

17 CHAIRMAN FESMIRE: So if you've got a
18 40-acre spacing unit and a 320-acre lease, they drill one
19 well and can hold the entire lease with one well and 40
20 acres? That's the first place we ought to look to
21 stimulate money for the schools.

22 COMMISSIONER BAILEY: We do. And we often
23 write letters to them asking them for justification why
24 they have not drilled, and we also talk to them about
25 compensatory royalty. But any production will hold the

1 entire lease.

2 CHAIRMAN FESMIRE: That's something we
3 ought to change. Because on a private lease -- well, it
4 depends on the lease. On newer leases, people are very
5 savvy about that. I mean, if you don't drill your
6 required poration units, your lease expires, and you've
7 got to come in and drill your offsets. But it doesn't
8 work that way in state leases, huh?

9 COMMISSIONER BAILEY: No.

10 CHAIRMAN FESMIRE: Except on state
11 property. So how would we address that on state
12 property?

13 You guys want to take a break?

14 COMMISSIONER BAILEY: Sure.

15 CHAIRMAN FESMIRE: Ten or 15 minutes?

16 COMMISSIONER OLSON: Ten is fine.

17 (A recess was taken.)

18 COMMISSIONER BAILEY: I have an idea just
19 to throw it out, going back to the cultural resources
20 paragraph. Because this references the SHPO regulation,
21 and Cheryl is saying that it's a state law. Why not
22 reference the state law that is required, instead of the
23 SHPO reg?

24 MS. BADA: I think the SHPO reg is for
25 implementing that law; isn't it? I'm not sure.

1 COMMISSIONER BAILEY: But you're citing an
2 agency reg that --

3 MS. BADA: They're tasked with enforcing
4 it, yeah. It's the rule implementing that one.

5 COMMISSIONER BAILEY: Why not cite the
6 state law?

7 MS. BADA: I think they're just
8 implementing the one section saying what the agency has
9 to look at.

10 COMMISSIONER OLSON: I think it's an
11 informational section.

12 MS. BADA: Yeah.

13 CHAIRMAN FESMIRE: Can we just cite the
14 entire law, make it a little broader?

15 MS. BADA: I think the only reason they
16 did Section (9) is because it actually says what we have
17 to look at.

18 CHAIRMAN FESMIRE: Can't we just --

19 MS. BADA: That rule applies to us. We
20 have to do it anyway, but --

21 CHAIRMAN FESMIRE: But what Jami says is
22 instead of citing the rule, can we cite the law in
23 general?

24 COMMISSIONER BAILEY: Because this isn't
25 where this regulation belongs.

1 MS. BADA: It would be whoever is issuing
2 the permit.

3 COMMISSIONER BAILEY: Which means it needs
4 to be a state-wide rule, instead of one specific Galisteo
5 Basin. I'm just pointing out that you can't do it
6 piecemeal. You shouldn't do it piecemeal.

7 MS. BADA: We should be doing it now on
8 our permits, whether we have a rule or don't have a rule.

9 CHAIRMAN FESMIRE: Can we cite that law
10 instead of this NMAC regulation?

11 COMMISSIONER OLSON: This is requesting
12 specific information.

13 MS. BADA: I mean, we can --

14 COMMISSIONER OLSON: What it's saying here
15 is this is the information you need to --

16 COMMISSIONER BAILEY: But their reg has to
17 be based on some portion of that law, so go to the
18 source, instead of the --

19 MS. BADA: The source says you have to do
20 it. The actual -- what you have to provide is in the
21 rule.

22 COMMISSIONER OLSON: Because the statutes
23 are going be like a general grant of authority which,
24 then, the rules are developed based upon the --

25 MS. BADA: We could just list the

1 information they want and not cite the NMAC. It makes it
2 longer, but certainly it's doable.

3 CHAIRMAN FESMIRE: Would you rather do
4 that?

5 COMMISSIONER BAILEY: If SHPO ever changes
6 their reg, though --

7 MS. BADA: -- then we don't match, but --

8 COMMISSIONER BAILEY: Right.

9 MS. BADA: If we don't want to incorporate
10 the rule, that would be one way of doing it, just list
11 the information we want.

12 COMMISSIONER BAILEY: This is simply a
13 notification they need to comply with SHPO regs.

14 MS. BADA: Well, so we get information, so
15 we know that we're complying. Because the obligation is
16 initially on the agency.

17 COMMISSIONER OLSON: Well, the information
18 is coming in, and it's just getting provided to SHPO, is
19 my understanding.

20 MS. BADA: No. Actually, we have to make
21 a determination, and if we think it's an impact, we have
22 to give it to SHPO.

23 COMMISSIONER BAILEY: Who are you going to
24 have as an archaeologist for that? That takes somebody
25 with special clearance, consultant clearance.

1 COMMISSIONER OLSON: Well, according to
2 this, the archaeologist is the agency head.

3 COMMISSIONER BAILEY: Are you qualified as
4 an archaeologist under SHPO requirements?

5 MS. BADA: At least what Forestry does is
6 they just get the list and look and see where their
7 project is and if there are any that are registered. If
8 not, it's the end of discussion. If there are, then they
9 have to talk to SHPO. Unfortunately, in the Galisteo
10 Basin, they're probably going to run into a lot of them.

11 COMMISSIONER OLSON: Yeah. There's a lot
12 of them. It's all over, except not all of them are going
13 to be registered.

14 COMMISSIONER BAILEY: I think reference to
15 the law and not to the regulations. Because what would
16 you all do if we proposed a rule saying the OCD has to
17 comply with land office regs?

18 MS. BADA: If land office had a statute
19 that said they could do that to us like SHPO has a
20 statute that says they can do that to us, we'd probably
21 be doing it.

22 COMMISSIONER BAILEY: If the legislature
23 put it in our lease, because our lease is statutory.

24 CHAIRMAN FESMIRE: We're still going back
25 to E?

1 COMMISSIONER BAILEY: Back to E.

2 CHAIRMAN FESMIRE: Back to E, the
3 five-year deal. "An operator who has operated wells
4 under an approved exploration & development plan for at
5 least five years." Jami says it's arbitrary.

6 COMMISSIONER BAILEY: And capricious.

7 CHAIRMAN FESMIRE: Nothing we do is
8 capricious. It might be arbitrary but it's not
9 capricious, unless you're confessing some sort of
10 culpable state of mind on the record.

11 COMMISSIONER BAILEY: Not me.

12 MS. BADA: Might be badly explained.
13 How's that?

14 CHAIRMAN FESMIRE: We were looking for an
15 alternative. Why do we convert to special rules? The
16 reason is that they want to operate under the special
17 rules and come out from under the requirements for an
18 exploration & development plan, because at some point
19 we're changing from -- if I remember the testimony
20 correctly -- we're changing from an exploration mode to a
21 producing mode, and there's no need -- and the reason for
22 that is that we're not going to be expanding the area
23 that we're going to disturb with our operations. If we
24 don't put that at five years, how to we require it?

25 COMMISSIONER OLSON: Well, is the idea

1 that -- I thought -- what I understood the idea was is
2 that under the E&D plan, there will be more information
3 available to make the appropriate decisions for what's
4 necessary in the special pool order.

5 CHAIRMAN FESMIRE: Right. That was the
6 reason for the five years.

7 COMMISSIONER OLSON: Would it just maybe
8 be that if you -- instead of who's operated wells or who
9 has completed an approved E&D plan? I mean, you could
10 complete your plan in two years and be operating some
11 wells. You'd have the information from it already, I
12 would think, enough to be able to figure out what needed
13 to be in the special pool order. At least you've
14 completed your plan, your E&D plan.

15 COMMISSIONER BAILEY: But if they
16 originally say they might drill three wells and they only
17 drill one, is that completed?

18 COMMISSIONER OLSON: It probably wouldn't
19 be.

20 CHAIRMAN FESMIRE: What they could do is
21 file an amended E&D plan saying that they're down to
22 one, and then file for the special pool rules.

23 MS. BADA: Why couldn't they just file for
24 a special pool rule and then they have to show that
25 certain information -- certain things have been done, and

1 then the Division evaluates whether it has or hasn't,
2 instead of it being based on time. Isn't that the
3 reality of what we want so we can figure out what's out
4 there?

5 CHAIRMAN FESMIRE: How about, "An operator
6 has operated wells under an approved exploration &
7 development plan and who determines that no further
8 development of the pool is necessary, may apply for a
9 special pool rule"?

10 MS. BADA: What is it we're trying to --

11 CHAIRMAN FESMIRE: What we're trying to do
12 is operate under an exploration & development plan as
13 long as the area is fluent.

14 MS. BADA: And at what point do we know
15 enough that it's no longer needed, I guess?

16 CHAIRMAN FESMIRE: It would be no longer
17 needed if we could comply with the exploration &
18 development plan, as long as we weren't going to extend
19 the area -- or increase the area of extent of the
20 exploration & development area that we did the plan for.

21 MS. BADA: Right now, when do we normally
22 establish a pool? When does somebody come in and ask?

23 CHAIRMAN FESMIRE: Most of the pools are
24 established to set up spacing and poration-type
25 requirements. And they don't have a lot to do with --

1 except for the spacing idea -- they don't have a lot to
2 do with the surface manifestation of your area. What
3 we're trying to establish here is, this isn't going to
4 expand anymore and let them apply for special pool rules
5 so they get out from under the requirement of the
6 exploration & development plan.

7 MS. BADA: Who classifies pools now?

8 CHAIRMAN FESMIRE: We do.

9 MS. BADA: So if they come in and we think
10 they have enough information or don't think they have
11 enough information and they petition to get a pool --

12 CHAIRMAN FESMIRE: They come in and --
13 well, they don't have to come in, I don't think. Well,
14 for special pool rules, they do.

15 MS. BADA: But I mean as far as
16 establishing that this is a pool, we control that; right?

17 CHAIRMAN FESMIRE: Um-hum.

18 COMMISSIONER BAILEY: Beginning with
19 (5)(a) is fine. The rest, I don't see any reason for it,
20 because you haven't defined what you're going to be --
21 what criteria will be used for the special pool rules.
22 The special pool rule itself is extremely vague right
23 now. It doesn't give any guidance as to what can and
24 should go in -- yeah, read it.

25 MS. BADA: It's short, very short.

1 Because the one they refer to, all it tells you is
2 whether a pool has been established. I don't think
3 that's a special pool rule. I think it's just whether
4 the Division has established a pool. There's almost no
5 rules on classifying. We're almost silent on how pools
6 get classified.

7 CHAIRMAN FESMIRE: Where's the -- I know
8 it's just before the section on pooling, but where is the
9 section on pools? Do you remember?

10 MS. BADA: It depends on who's paying for
11 what, is the problem. The actual declaring a pool in the
12 rules is almost nonexistent.

13 COMMISSIONER BAILEY: I gave Mikal
14 yesterday the old index list from the old publication, so
15 that would help them try to find something.

16 COMMISSIONER OLSON: I have an index at
17 home.

18 CHAIRMAN FESMIRE: I've got two good
19 indexes. I'll make sure you guys get a copy. I
20 apologize. Definitions of pool.

21 MS. BADA: Go to 2, Section (7),
22 subparagraph (p).

23 CHAIRMAN FESMIRE: "Pool means an
24 underground reservoir containing a common accumulation of
25 oil and gas. Each zone or general structure that are

1 completely separated from the other zones in the
2 structure is covered by the word pool as used in this
3 section." Okay.

4 MS. BADA: Look at that one. That's about
5 all we ever say about classifying a pool. It's not much.

6 CHAIRMAN FESMIRE: Is there a provision
7 for establishing special pool rules?

8 MS. BADA: About the only provision is how
9 you notice it. I can probably find it in the notice
10 section. It's in the adjudicatory rules.

11 CHAIRMAN FESMIRE: Okay. Do we have a
12 definition of special pool order?

13 MS. BADA: I don't think so. I'll look,
14 but I don't think so. It's another area that's not very
15 well -- um-um. That's about what we have on it. We have
16 a section for notice on compulsory pooling and then for a
17 special pool. That's about it. I mean, that's the
18 problem with referencing special pool orders. They're
19 not very well defined.

20 CHAIRMAN FESMIRE: Okay. So we're going
21 with an ambiguity. We've got an ambiguity, ambiguity
22 that's neither arbitrary nor capricious.

23 COMMISSIONER OLSON: It seems that the
24 intent of what the Division was looking at is you've got
25 to operate something for some length of time before you

1 move into a special pool.

2 CHAIRMAN FESMIRE: My version of the
3 intent was that, you know, you set it up and, as long as
4 you're not going to expand it, you shouldn't have to do
5 any more exploration & development plans. An exploration
6 & development plan is really looking for the surface
7 effects, because all of the things we're dealing with
8 here are on the surface effects, are they not?

9 MS. BADA: No. They're on the water.

10 CHAIRMAN FESMIRE: Right, major exception
11 there, water.

12 MR. OLSON: In defining the geology.

13 CHAIRMAN FESMIRE: Yeah. Okay. So you
14 need to know where you're going to be working, and the
15 idea behind this was to determine where you're going to
16 be working. And after you've done an exploration &
17 development plan that has become settled enough that you
18 don't need to do any further investigation, you've
19 already investigated it, you know what's there, then you
20 can convert to special pool rules and the special pool
21 rules, you know, will govern the production phase.

22 MS. BADA: In my simplistic way of viewing
23 this, and this is as well known as any other area in the
24 state, they do operate that way. And I don't know how to
25 articulate that, but --

1 CHAIRMAN FESMIRE: How do we say that
2 without offending Jami?

3 MS. BADA: You have to ask Jami that
4 question. I don't know that it's so much the five years
5 or the information you have from drilling at that point.
6 But what are you looking for? What information do you
7 need to know by then? Really, if they came in and asked
8 for a special pool rule, what would you want them to know
9 at that point?

10 CHAIRMAN FESMIRE: That they're not going
11 to expand the area that would affect the water or the
12 surface.

13 MS. BADA: But your whole pool is defined
14 by the subsurface.

15 CHAIRMAN FESMIRE: Okay. Let me try this
16 one more time. Yes. Okay? But there is a surface
17 manifestation of that subsurface pool. Once we know,
18 once we've drilled enough wells and produced enough --

19 MS. BADA: In that area.

20 CHAIRMAN FESMIRE: -- that we know the
21 size of that pool, then we don't have to worry about
22 expanding or amending our exploration & development
23 agreement.

24 MS. BADA: So what would you want them to
25 show?

1 CHAIRMAN FESMIRE: That they're not going
2 to expand.

3 MS. BADA: That they know the boundaries
4 of the pool?

5 CHAIRMAN FESMIRE: They know the
6 boundaries of the pool. Once they have enough
7 information to apply for a nomenclature proceeding to get
8 that pool defined --

9 MS. BADA: So does time matter, or is it
10 just enough drilling to have the information?

11 CHAIRMAN FESMIRE: Yes, time does matter,
12 but what we've decided here is that five years is long
13 enough to do that, and Jami objects to that. So what
14 we're trying to do is come up with some other way of
15 defining that they will not --

16 MS. BADA: You might drill one well in
17 five years or you might drill 10, and you've got a lot
18 more information if you drill 10 than if you drill one,
19 wouldn't you? I mean, from my simplistic, nontechnical
20 viewpoint.

21 CHAIRMAN FESMIRE: What you're looking for
22 is that you're not going to change the surface, the
23 surface impact, such that -- I mean, it's not that you're
24 not going to drill additional wells, you're just not
25 going to have to do anything that requires further water

1 investigation, further arch investigation, things like
2 that.

3 MS. BADA: But you already know what your
4 archaeological -- you already know what your aquifers
5 are.

6 CHAIRMAN FESMIRE: Exhactly.

7 MS. BADA: Isn't that what your really
8 looking for, is that information versus set time?

9 CHAIRMAN FESMIRE: Okay. I'm not arguing
10 that.

11 MS. BADA: How do you write that to say
12 you can come in and get a special pool order if you can
13 show X?

14 CHAIRMAN FESMIRE: An easy way to do it is
15 once no further expansion of the exploration &
16 development area is necessary --

17 MS. BADA: -- in order to define the pool,
18 the --

19 CHAIRMAN FESMIRE: The pool. Because the
20 pool -- and you've got to remember, you can have more
21 than one pool.

22 MS. BADA: Right. So whatever area is
23 there.

24 CHAIRMAN FESMIRE: Right. The pool or
25 pools designate the surface area that you're going to

1 have to investigate are things that we're concerned
2 about, water, archaeological, things like that.

3 MS. BADA: So in their plan when they
4 initially come in, do they have to tell you where they're
5 going to be drilling, what level, what formation or
6 what --

7 COMMISSIONER OLSON: They would need an
8 E&D plan.

9 MS. BADA: Could you write, say, come in
10 and request it and then they need to demonstrate this?

11 COMMISSIONER BAILEY: The application
12 consists of a certain number of wells, a certain amount
13 of area, and when the terms of the application have been
14 fulfilled, then they can come in.

15 COMMISSIONER OLSON: That's what I was
16 kind of looking at, upon completion --

17 COMMISSIONER BAILEY: Completion of the
18 terms of the approved E&D plan.

19 COMMISSIONER OLSON: That doesn't deal
20 with the problem you were saying that what if they drill
21 five and maybe even one or two and then decide now that
22 they've got enough information, would the Division agree
23 they have enough information? I guess that's the other
24 part.

25 MS. BADA: Certainly they should be given

1 the opportunity to come in and demonstrate, rather than
2 saying no.

3 CHAIRMAN FESMIRE: Okay. This is not a
4 finished version, but upon a showing by the operator that
5 no further surface -- no expansion of the surface area
6 needed for development, so that you can come in and drill
7 other wells in the spacing unit if you have to -- but
8 upon showing by the operator that no further expansion in
9 the exploration & development plan is necessary --

10 MS. BADA: That's probably easier.

11 COMMISSIONER BAILEY: How about a few
12 horizontal wells?

13 CHAIRMAN FESMIRE: That's something I
14 hadn't thought about. That's another --

15 COMMISSIONER OLSON: What if you just said
16 something like, if an operator --

17 MS. BADA: Could you say that if no
18 further exploration is needed to define the pool or
19 the --

20 COMMISSIONER OLSON: Well, that's what I
21 was thinking. If an operator can demonstrate that
22 there's sufficient information to -- whatever you want to
23 call it -- geologic, mineral, hydrologic, whatever --
24 information is available to demonstrate that a pool can
25 be defined. I don't know. But then they could apply for

1 one. So they're just having to make a demonstration that
2 there's enough information of an area. I think that's
3 one of the things the Division talked about was, as they
4 drill -- of course now we have to define where the fresh
5 water zones are, so now we even have more information on
6 the fresh water zones, just as an example.

7 And once they've done a bunch of that work,
8 now they have some level of confidence about putting
9 additional wells out there under a special pool order.
10 So it seems like it's a demonstration that the operator
11 would need to make if there's sufficient information to
12 be able to move forward. Again, that kind of gets to be
13 one of those discretionary things of the Division, if
14 they could -- sufficient information --

15 MS. BADA: That's true, but at least it's
16 based on what they're providing, rather than number of
17 years, which may have nothing to do with what they've
18 actually done on the ground.

19 COMMISSIONER OLSON: Which could be two or
20 three wells or it could be 10 that they needed to
21 define -- at least there's -- it's like an evaluation,
22 but is this adequate information to start moving forward
23 into a special pool? It puts the burden on the operator
24 to demonstrate it. There's no time frames associated
25 with it.

1 COMMISSIONER BAILEY: To demonstrate
2 sufficient hydrologic engineering and geologic --

3 COMMISSIONER OLSON: Yeah, mineralogic and
4 geologic information to define a pool.

5 CHAIRMAN FESMIRE: You're not going to
6 need hydrologic information to define a pool.

7 MS. BADA: Well, you can say engineering
8 and geologic to define a pool and, also, enough
9 information about the water resources.

10 COMMISSIONER BAILEY: What are we asking
11 them to do for --

12 CHAIRMAN FESMIRE: Guys, that's a
13 different part of the requirements. That's part of the
14 exploration & development plan requirements.

15 MS. BADA: They're not going to know until
16 they drill. At some point don't you have enough wells
17 that you have enough information about what's there? I
18 mean, you would hope so.

19 CHAIRMAN FESMIRE: Yeah. But that's a
20 different requirement. Right now what we're trying to do
21 is -- at least my understanding of the testimony -- was
22 that you -- you're going to have done this work in an
23 area that is sufficient to allow you to continue to
24 develop the pool on --

25 COMMISSIONER OLSON: That's sufficient to

1 define what you have for that surface expression area in
2 the subsurface.

3 CHAIRMAN FESMIRE: Jami has got a point,
4 but I think the rule addresses that about the horizontal
5 drilling. But special pool rules, you know, could
6 establish, you know, your offsets in drilling, things
7 like that.

8 COMMISSIONER OLSON: I thought a lot of
9 testimony, too, from the Division was about where you
10 need to set your protective streams for aquifer
11 protection and --

12 CHAIRMAN FESMIRE: Yes.

13 MS. BADA: Did anybody say that, that they
14 had done enough that they know where that is? Do you
15 know where that is?

16 CHAIRMAN FESMIRE: Once the operator has
17 established the extent of the disturbed surface -- how
18 would you word that -- impacted surface? Once the
19 operator has established the extent of the impacted
20 surface area necessary to develop the pool, they may
21 apply for special pool rules.

22 MS. BADA: What does that have to do with
23 the water?

24 CHAIRMAN FESMIRE: That's part of the
25 impacted area.

1 MS. BADA: That's not the surface. That's
2 the subsurface. Otherwise, all they're going to do is
3 look at roads and well beds.

4 CHAIRMAN FESMIRE: No. Because the
5 exploration & development program -- whatever it is --
6 exploration & development -- is it program?

7 COMMISSIONER BAILEY: The E&D plan.

8 CHAIRMAN FESMIRE: Plan. That has
9 established the area that you have to look at. You're
10 going to look at the subsurface of the water, also. But
11 once you've established what area you have to look
12 at --

13 MS. BADA: You have enough information for
14 that area.

15 CHAIRMAN FESMIRE: -- to establish what
16 area you're going to have to -- occupy is not the word.
17 Impact is probably the -- once you have determined the
18 extent of the impacted area --

19 COMMISSIONER OLSON: That sounds funny.

20 MS. BADA: It sounds like a surface
21 disturbance. When you say, "impact" --

22 CHAIRMAN FESMIRE: The surface or
23 subsurface impact -- once you've determined the extent of
24 the surface or subsurface impact of your exploration and
25 development, you can apply for special pool rules.

1 COMMISSIONER BAILEY: That's throwing it
2 into the future, because you don't know for 50 years,
3 maybe, what your impact is going to be from the sediment
4 from the road into that particular drainage or whatever,
5 I'm just making something up here. But you're not giving
6 them -- the time limit doesn't make sense to me there.

7 COMMISSIONER OLSON: The five years?

8 COMMISSIONER BAILEY: No. We're throwing
9 out five years.

10 CHAIRMAN FESMIRE: We're trying to avoid
11 using five years.

12 COMMISSIONER OLSON: I think you should
13 avoid using time limits, is what it seems like. But then
14 you'd have to make it based on demonstration. It's back
15 to the operator making a demonstration through sufficient
16 information of the area, is kind of how to word it. I
17 think we seem to be in agreement on that, I thought. But
18 if you can develop enough information to move forward on
19 a special pool rule, then you can do it, but there would
20 be no time limit.

21 It could be you drill three, four wells --
22 maybe your E&D plan was for 10 but you did three or four,
23 you've now got adequate information to move forward into
24 a special pool rule. You have that ability to come to
25 the agency. The agency can say, "We don't think you've

1 got enough information yet. We want to see a couple
2 more -- they can just -- they'll approve it, because it
3 goes forward outside of that, because there's not enough
4 information. But the operator still has that ability to
5 make a demonstration and move forward. Does that make
6 sense, or --

7 COMMISSIONER BAILEY: I think some of the
8 issue right now is what needs to be in the pool rule,
9 because Mark is seeing the pool rule as covering surface
10 and water --

11 CHAIRMAN FESMIRE: Special pool rules,
12 basically, the rules for drilling there, but, you know,
13 they are associated with the pool, but they're not
14 limited to the subsurface pool. I mean, you've got your
15 poration, your drilling units -- not drilling unit --

16 COMMISSIONER BAILEY: Spacing units.

17 CHAIRMAN FESMIRE: Spacing unit size. I'm
18 so tired.

19 COMMISSIONER OLSON: Yeah. I'm kind of
20 the same way.

21 CHAIRMAN FESMIRE: I mean, those are the
22 rules under which you operate that pool, okay? You know,
23 there are surface manifestations, like I keep saying, of
24 those rules.

25 COMMISSIONER BAILEY: So those would be

1 part of the pool rules, not part of the requirements
2 before you get to pool rules?

3 CHAIRMAN FESMIRE: Right. You're
4 under an exploration & development plan until then.

5 COMMISSIONER OLSON: Right. You're
6 developing information that can be used to replace it
7 with a special pool order.

8 COMMISSIONER BAILEY: So if a
9 demonstration is made that there's sufficient information
10 for developing special pool rules and give guidance on
11 what you want to have in those special pool rules. Would
12 that cover it?

13 CHAIRMAN FESMIRE: I don't know. I don't
14 think we have the evidence before us to determine what
15 needs to be in a special pool rule.

16 COMMISSIONER BAILEY: Right. There was no
17 testimony on that, was there?

18 COMMISSIONER OLSON: Well, there's just
19 E(5), and that's -- it says if you're applying for it,
20 you'll describe the provisions for protection of fresh
21 water, human health and the environment, update the
22 information and give any legal notice. That's really all
23 you need to do to file an application for a special pool
24 order.

25 COMMISSIONER BAILEY: There we go.

1 CHAIRMAN FESMIRE: No. I think that skips
2 everything else. No. I'm working on replacing the five
3 years, not the entire provision. Approved exploration &
4 development plan -- how about an operator who has
5 operated wells under an approved exploration &
6 development plan for a sufficient period of time to be
7 able to define the extent of the pool --

8 COMMISSIONER BAILEY: -- may not have the
9 lease for determining boundaries of the pool.

10 COMMISSIONER OLSON: Why don't you just
11 link it back to what's really the condition for approval
12 of the whole thing in the first place, which is if an
13 operator -- maybe just say, "An operator who has operated
14 under an approved exploration & development plan can
15 demonstrate that adequate information is available to
16 demonstrate that a special pool order may be created in
17 order to prevent waste, protect correlative rights,
18 protect fresh water, protect human health and the
19 environment. That's really what they're getting at.
20 That's what the E&D plan is. Even though you expect the
21 special pool rules or order are supposed to do the same
22 thing, that's what it should be doing to be consistent.
23 The real key is -- to me, it's the same thing as an E&D
24 plan. It just doesn't have an expiration on it. Isn't
25 that --

1 CHAIRMAN FESMIRE: No. No. There
2 aren't -- under special pool rules, there are not
3 generally any requirements with respect to archaeological
4 cites and things like that. What we're trying to say is
5 that -- what we're trying to say is that once you have
6 sufficient information that it's sufficiently been
7 producing long enough to establish where the pool is, so
8 you don't have to expand your area, you can just start
9 producing from that pool -- producing that pool, and not
10 worry about the things that we're worried about at the
11 surface. We will know about the water, we will know
12 about the arch, so you don't have to worry about the
13 exploration & development plan and renewing your
14 exploration & development plan and reviewing it, because
15 you've established what the boundaries of that pool are.

16 COMMISSIONER BAILEY: Which is impossible.
17 If you have this lease, the pool extends that area.

18 COMMISSIONER OLSON: That's right.

19 CHAIRMAN FESMIRE: Okay. I have proposed
20 7,312 versions of the same thing. I keep hearing no.

21 COMMISSIONER OLSON: I just keep coming
22 back and I see this stuff in (5) as to what the purpose
23 is, to me, again, is that you're still doing these things
24 to protect fresh water, human health and the environment.

25 MS. BADA: How do you classify a pool now

1 if you don't have a lease that covers it?

2 CHAIRMAN FESMIRE: You would be -- it
3 would be an approved operator who would come in and
4 classify a pool under an unleased section, but if there
5 are other people in the pool, they -- in your pool -- I
6 mean, what you do is you come in and you show this is the
7 boundary of the pool, it should be treated as a common
8 source of supply and regulated as a common source of
9 supply.

10 MS. BADA: How would you have a special
11 pool order if you haven't even established the pool?

12 CHAIRMAN FESMIRE: You don't. You don't
13 have a special pool order. A special pool order takes
14 you outside of the state-wide rules and establishes
15 special pool rules for that pool. It's based on the
16 maximum efficient rates, the extent of the pool, things
17 like that. What the connection is here is that once
18 you've established where your pool is, that you're not
19 going to be changing your exploration & development plan,
20 because you know enough about it to establish that
21 exploration & development plan.

22 COMMISSIONER OLSON: But the idea is
23 you're going and you're converting, then, an existing E&D
24 plan into a special pool order. So if you do anything
25 more than what's in the E&D plan, you couldn't put that

1 into the special pool order; right? You couldn't do a
2 special pool order that expanded, say, the area over what
3 was in the E&D plan.

4 CHAIRMAN FESMIRE: Why would you have to
5 have an exploration & development plan when you -- I
6 mean --

7 MS. BADA: Once you already have your
8 pool?

9 CHAIRMAN FESMIRE: -- when you've already
10 got your pool, you already know about, you already know
11 where you -- you don't -- you're coming in and saying, "I
12 want to establish the boundaries of this pool." You can
13 come in later and change those boundaries, that happens
14 all the time, but you've established the boundaries of
15 your pool. Now it applies -- and you will say, "It
16 applies to this section, this section, this section and
17 this section."

18 MS. BADA: So is it really about once you
19 get a special pool order, is it really about the Division
20 classifying a pool? Are we getting the cart before the
21 horse?

22 CHAIRMAN FESMIRE: We're mixing apples and
23 oranges. The idea behind the special pool rule is that
24 you know where the pool is.

25 MS. BADA: If you don't even have a pool

1 yet, why are we going into special pool rules?

2 COMMISSIONER OLSON: I was looking at this
3 thing that all it's doing is just replacing the E&D plan.

4 CHAIRMAN FESMIRE: Yes. It's just
5 replacing the E&D plan. But there are things, when you
6 get into that mode, you don't have to worry about,
7 because you've already done them under the E&D plan.
8 You've identified where the arch cites are, you've
9 notified so and so, you've discovered and developed your
10 casings design so that you protect the water near the
11 pool or above the pool.

12 COMMISSIONER OLSON: Right. Because you
13 have a defined area --

14 CHAIRMAN FESMIRE: You have a defined
15 area.

16 COMMISSIONER OLSON: -- with defined cite
17 conditions.

18 CHAIRMAN FESMIRE: And it can be expanded.
19 But according to this rule, it can't be expanded with
20 the intent -- there's a provision in there that keeps you
21 from -- what would normally be a development well, now
22 would fall back under the requirement of an exploration &
23 development plan, because it wasn't in the pool that you
24 declared.

25 MS. BADA: But they don't declare the

1 pool, we do; right?

2 CHAIRMAN FESMIRE: They come in and ask
3 for it.

4 MS. BADA: We're the ones that ultimately
5 decide the pools?

6 CHAIRMAN FESMIRE: Yes.

7 MS. BADA: If they never ask for a special
8 pool order, they're still operating under the state-wide
9 rules, so --

10 CHAIRMAN FESMIRE: Well, they're operating
11 under an exploration & development plan for the things
12 that are covered in here. They're operating under
13 state-wide rules for things like spacing and things like
14 that.

15 COMMISSIONER OLSON: I still think you
16 just take out, "for a least five years," and put in
17 something like, they've operated under an approved
18 exploration & development plan and developed sufficient
19 information on some of the characteristics we were
20 mentioning, whether it be the sufficient cite
21 characteristics, identifying the characteristics of the
22 area, can replace it with a special pool order. That's
23 not the best way to say it, but that's the concept.
24 Maybe we could play with it a little bit.

25 MS. BADA: Does everybody ask for a

1 special pool order?

2 CHAIRMAN FESMIRE: Unless they want to
3 operate under state-wide rules.

4 MS. BADA: How often does that happen?

5 CHAIRMAN FESMIRE: Pretty regularly.

6 MS. BADA: They may never want a special
7 pool order.

8 CHAIRMAN FESMIRE: Well, you can ask for a
9 special pool order to get you out of an exploration &
10 development plan that, basically, mirrors the state-wide
11 rules.

12 MS. BADA: Can you just ask to be able to
13 operate the pool under the state-wide rules?

14 COMMISSIONER OLSON: You probably could.

15 CHAIRMAN FESMIRE: Well, you'd have to
16 have an order -- in the limited case where you're
17 operating in the Galisteo Basin, you have to have an
18 order after this to get yourself out of the requirement
19 of an exploration & development plan.

20 COMMISSIONER OLSON: Otherwise, you'd be
21 continually operating under an E&D plan --

22 CHAIRMAN FESMIRE: Right.

23 COMMISSIONER OLSON: -- forever.

24 COMMISSIONER BAILEY: Which is okay.

25 CHAIRMAN FESMIRE: Except that every time

1 the --

2 COMMISSIONER BAILEY: You have to renew it
3 every five years.

4 COMMISSIONER OLSON: Right.

5 CHAIRMAN FESMIRE: Okay. Notwithstanding
6 your running objection --

7 COMMISSIONER BAILEY: I vote that we
8 eliminate E(1), (2), (3) and (4), and E begins with, "An
9 operator applying for approval." Because all of those
10 provisions get to the heart of what we're trying to do.

11 CHAIRMAN FESMIRE: When you say, "we," who
12 are you talking about?

13 COMMISSIONER BAILEY: The Commission
14 should adopt E(5)(a) through (c), but not adopt (1)
15 through (4) of E.

16 CHAIRMAN FESMIRE: Then that would
17 eliminate any ability for an operator to get out from
18 under an exploration & development plan.

19 COMMISSIONER BAILEY: No. "An operator
20 applying for approval to replace the special pool rule
21 shall file two copies of an application that
22 describes" --

23 CHAIRMAN FESMIRE: Where are you reading?

24 COMMISSIONER BAILEY: (5)(a), (b) and (c).

25 COMMISSIONER OLSON: Five --

1 COMMISSIONER BAILEY: This is what Bill
2 was talking about. They would be demonstrating that they
3 are protecting fresh water, human health and the
4 environment. And it probably should be all or part of
5 the area covered by their E&D plan, because if their E&D
6 plan covers a very large area, it could be that they
7 would want only a portion of it to go under special pool
8 rules or whatever and allow the rest of it to be
9 developed as economics dictate.

10 CHAIRMAN FESMIRE: What do you say we come
11 back to Section E, then, because I can't agree to that.

12 COMMISSIONER OLSON: My main part is I
13 think you still need to have some qualifying statement to
14 this as to when you could apply for it. And if you just
15 take it just with five, it seems to me that you could
16 start your E&D plan and immediately replace it with a
17 special pool order without ever even completing, really,
18 the E&D plan. So it seems to me you need to have some of
19 this language above to say when it actually applies, but
20 I agree that the time frame is not an appropriate way to
21 do it, so --

22 COMMISSIONER OLSON: Why don't we come
23 back to that?

24 COMMISSIONER BAILEY: Okay.

25 CHAIRMAN FESMIRE: F, any problem with

1 that?

2 COMMISSIONER BAILEY: Let me find it.

3 CHAIRMAN FESMIRE: Page 3.

4 COMMISSIONER OLSON: I was looking at
 5 F(9), and it talks about instructions for requesting a
 6 public hearing, and I asked about this during the
 7 cross-examination of the Division witnesses. It seems
 8 like there should be some kind of more definitive
 9 information upon when that would be. Instructions for
 10 requesting a public hearing, I'm assuming that's within
 11 30 days of receipt and notice or something like that.
 12 Typically, that's how the public hearing requests come
 13 in. There's some time frame where you actually have to
 14 request a hearing set out in the rule.

15 CHAIRMAN FESMIRE: Instructions for
 16 requesting a public hearing on an application that has
 17 not been set for public hearing and the time limits --

18 MS. BADA: It's using permitting time
 19 limits?

20 COMMISSIONER OLSON: Well, that's what's
 21 in most of -- all the permitting sections we have in the
 22 rules and regs, usually have a 30-day time frame for when
 23 you request a hearing. Otherwise, it's open-ended.
 24 Somebody can request a hearing at any time.

25 CHAIRMAN FESMIRE: Unless we've changed

1 it, this, our standard adjudicatory time requirements are
2 established, aren't they?

3 COMMISSIONER OLSON: Because the only time
4 there would be a request for public hearing would be on
5 an amendment, right, renewal or replacement? Because
6 it's required on a new one. There's no option for a new
7 one. So it really only applies to amending, renewing or
8 replacing an existing E&D plan.

9 CHAIRMAN FESMIRE: What should it say?

10 COMMISSIONER OLSON: Well, it comes back
11 to this issue, again, of what's major and minor. We have
12 to make it consistent with that. Because we were saying
13 that if something is minor, the Division -- there's
14 nothing we request a hearing on at that point, right,
15 because the Division is not going to hold a hearing,
16 because it considers the application --

17 MS. BADA: Where is there anything that
18 says a hearing is optional?

19 COMMISSIONER OLSON: It does over on the
20 next page under public hearings, under I. It says, "The
21 Division may hold a public hearing on an application to
22 amend, renew or replace an existing exploration &
23 development plan." That's where the option comes in for
24 the hearing. Here it's saying -- public notice is going
25 to have instructions for requesting a public hearing.

1 MS. BADA: That doesn't make sense.

2 COMMISSIONER BAILEY: If it's a minor
3 amendment --

4 CHAIRMAN FESMIRE: Did we adopt that or
5 didn't we just say that the Division Director may
6 determine whether or not a hearing --

7 MS. BADA: We said, "The Division Director
8 may," so I'm not sure how that works. Because if it's a
9 new application, you're having a hearing no matter what.

10 COMMISSIONER OLSON: It's required.

11 COMMISSIONER BAILEY: If it's not
12 sufficiently substantive --

13 MS. BADA: We're not having one, so we
14 don't say that you don't request one if you don't like
15 the fact that the Director didn't have one.

16 COMMISSIONER OLSON: Maybe it shouldn't be
17 there at all.

18 MS. BADA: Since you're only going to
19 publish notice if you're having a hearing; right?

20 CHAIRMAN FESMIRE: Right. What we need to
21 do is strike "that has not been set for public hearing,"
22 and, "instructions for requesting a public hearing on an
23 application," period.

24 MS. BADA: Nobody requests one; right?

25 COMMISSIONER OLSON: On a new one, there's

1 nothing to request. It's going to be set anyway.

2 MS. BADA: A new application is going to
3 have a hearing. Otherwise, you're not going to publish
4 legal notice on it anyway; right?

5 CHAIRMAN FESMIRE: Okay. On an
6 application for renewal, what is the --

7 COMMISSIONER OLSON: Maybe it should just
8 be, instructions for requesting a public hearing within
9 30 days of receipt of notice of an application to amend,
10 renew or replace on existing exploration & development
11 plan. I mean, it's giving the ability to request it.
12 The Division at that point, I guess, can determine
13 whether or not the hearing is necessary.

14 CHAIRMAN FESMIRE: Just tell me what we
15 need to put in there.

16 MS. BADA: I guess we are making them have
17 a public notice, so I guess we could.

18 COMMISSIONER OLSON: Yeah. Let me try
19 this. Instructions for requesting a public hearing --

20 COMMISSIONER BAILEY: No. Instructions
21 within 30 days.

22 COMMISSIONER OLSON: That's what I mean.
23 Instructions for requesting a public hearing within 30
24 days.

25 COMMISSIONER BAILEY: No. You're having

1 your hearing within 30 days. We have to request within
2 30 days.

3 COMMISSIONER OLSON: I got you. Okay. So
4 instructions for requesting within 30 days --

5 COMMISSIONER BAILEY: -- of an
6 application.

7 COMMISSIONER OLSON: Right. Usually, it's
8 within 30 days of receipt of the notice.

9 MS. BADA: Yeah. It should be legal
10 notice, because they have to publish legal notice.

11 COMMISSIONER OLSON: Yeah. Instructions
12 for requesting within 30 days of receipt of legal notice.

13 MS. BADA: Or publication of legal notice.
14 Do they mail it to them?

15 COMMISSIONER OLSON: Is that considered
16 publication?

17 MS. BADA: I don't know. It talks about
18 providing a legal notice, complying with Section F. Who
19 do we have to provide it to?

20 COMMISSIONER OLSON: You have to provide
21 it to a lot of people.

22 MS. BADA: You have to mail it to certain
23 people. It could say within 30 days of publication or
24 receipt of --

25 COMMISSIONER OLSON: How about,

1 instructions for requesting within 30 days of publication
2 or receipt of legal notice.

3 MS. BADA: Look at I(3). Maybe we need to
4 have something besides the operator being able to request
5 a hearing. Maybe that's where we need to put something.
6 Otherwise, we'd have to put in notice, which is a little
7 tough. We should add another sentence there that's, you
8 know --

9 COMMISSIONER OLSON: I just want some
10 clarity that you've got to request it within 30 days of
11 getting it, so there's some definitive time.

12 CHAIRMAN FESMIRE: How about, and shall
13 include a statement that the applicant must request a
14 public hearing within 30 days of whatever we decided.

15 MS. BADA: It may not be the applicant,
16 though.

17 CHAIRMAN FESMIRE: But a party.

18 COMMISSIONER OLSON: The way it usually
19 works is anybody can request a hearing, and then it's
20 the --

21 CHAIRMAN FESMIRE: That an individual.
22 That a person. That a --

23 MS. BADA: Yeah.

24 COMMISSIONER OLSON: Maybe you could just
25 say, "a statement that a request for a public hearing" --

1 CHAIRMAN FESMIRE: Must be received?

2 COMMISSIONER OLSON: -- "must be received
3 within 30 days of publication or receipt of notice."

4 MS. BADA: Instructions for requesting a
5 public hearing on an application that has not been set
6 for public hearing that provide -- state that --

7 COMMISSIONER OLSON: Did you want to add
8 this language on amending, renewing or replacing? That's
9 what it applies to; right?

10 MS. BADA: Yeah.

11 COMMISSIONER OLSON: Then say, "for
12 amending, renewing or replacing an existing exploration &
13 development plan, a statement that a request for public
14 hearing" --

15 COMMISSIONER BAILEY: That's in the second
16 line of F. "A development plan or an application to" --

17 MS. BADA: Yep.

18 COMMISSIONER OLSON: But the legal notice
19 applies to both. It applies to a new one and -- out
20 here, you have a special requirement just for the
21 amendments.

22 MS. BADA: Yeah.

23 COMMISSIONER OLSON: Because there is no
24 request for a public hearing on a new permit or a new
25 plan. It's required by rule.

1 COMMISSIONER BAILEY: Why don't we just
2 let Cheryl figure out the best way to do that, and then
3 we can go on?

4 COMMISSIONER OLSON: Yeah. I think we
5 know what we want. We're just muddled.

6 MS. BADA: Right now the only place we say
7 anything will be administratively approved is for
8 amendments. What about renewals or replacements?

9 CHAIRMAN FESMIRE: I think renewals would
10 be okay. Replacements, we're probably talking about a
11 pretty major change, aren't we?

12 COMMISSIONER BAILEY: If we go with
13 substantive as part of our terminology --

14 COMMISSIONER OLSON: Right. We're back
15 to discretionary language for the Director.

16 CHAIRMAN FESMIRE: Make all three subject
17 to that.

18 MS. BADA: So if they request a hearing,
19 do we automatically have one, or is it the Director's
20 discretion?

21 CHAIRMAN FESMIRE: It's the Director's
22 discretion.

23 COMMISSIONER OLSON: That's what it says
24 back here at I. That's where this whole discretion comes
25 in.

1 MS. BADA: That's where we need to say
2 that somebody --

3 COMMISSIONER OLSON: That's where you put
4 that language from (c). If the Director determines
5 that the amendment, renewal or replacement is
6 sufficiently substantial, that public notice or public
7 participation --

8 CHAIRMAN FESMIRE: Okay.

9 COMMISSIONER OLSON: Does that make sense?

10 CHAIRMAN FESMIRE: Yes.

11 MS. BADA: Do we want somebody to be able
12 to request a hearing or just leave it up to the Director?

13 COMMISSIONER OLSON: That's what I was
14 wondering. If you do that, it's fully discretionary, and
15 then maybe just take out the idea that there's a request
16 for hearing. The Director makes a call whether there's
17 sufficiently substantial -- the public notice and public
18 hearing are appropriate.

19 COMMISSIONER BAILEY: So just eliminate --

20 COMMISSIONER OLSON: You might eliminate
21 just the request for hearing and that it's determined by
22 the Director.

23 CHAIRMAN FESMIRE: Put this in I, instead
24 of just (c) and (d).

25 MS. BADA: Put the language talking about,

1 "the Division may approve," in I(2), instead of --

2 COMMISSIONER OLSON: Right, instead of in
3 (c).

4 COMMISSIONER BAILEY: And eliminate F(9).

5 COMMISSIONER OLSON: Yes.

6 COMMISSIONER BAILEY: And I is okay.

7 COMMISSIONER OLSON: Entirely.

8 MS. BADA: That one, I got.

9 CHAIRMAN FESMIRE: Does that work? That
10 brings us to G, doesn't it? With the exception of
11 Section E, we're up to G. "Within 60 days of receiving
12 an application for an exploration & development plan or
13 an application to amend, renew or replace an existing
14 exploration & development plan, the Division shall notify
15 the operator in writing of its determination on whether
16 the application is complete. An application is
17 administratively complete if it contains all the
18 information required by 19.15.39.9 NMAC." That's this
19 whole kit and caboodle.

20 COMMISSIONER OLSON: I don't have any
21 problem with the entire section.

22 CHAIRMAN FESMIRE: How about you?

23 COMMISSIONER BAILEY: Nope.

24 COMMISSIONER OLSON: I do have a
25 correction up on F(11), I just noticed here. I think it

1 says right now, "Instructions for being placed on a
2 Division contact list to receive notice of future
3 applications" -- shouldn't that be, "and legal notices,"
4 instead of, "hearing notices"?

5 MS. BADA: Yeah.

6 COMMISSIONER OLSON: It's under a section
7 on legal notice. It should be legal notice, instead of
8 hearing notice. I'm sorry.

9 CHAIRMAN FESMIRE: Okay. H, Public
10 Notice. Any problems with that?

11 COMMISSIONER BAILEY: (c).

12 CHAIRMAN FESMIRE: I don't know whether
13 you're being a smart aleck.

14 COMMISSIONER BAILEY: No. Because I know
15 that that area was important to a large number of people,
16 Native Americans, and there's no one that has more
17 sympathy than me, but I don't understand --

18 CHAIRMAN FESMIRE: I thought you were
19 referring that it had been to be in Spanish, too.

20 COMMISSIONER BAILEY: No. H(c), I don't
21 understand --

22 CHAIRMAN FESMIRE: Okay. H(2)(c).

23 COMMISSIONER BAILEY: Yes. I don't
24 understand why a tribe, pueblo or nation that has no
25 cultural or anthropological history to that area should

1 have any input into whether or not a plan is allowed.

2 They have no cultural or anthropological history, so why
3 should they receive special notice?

4 COMMISSIONER OLSON: I can speak just from
5 what we've heard. We've been doing a lot of tribal
6 consultations on some of the uranium activities, and some
7 of the tribes and pueblos have connections to places we
8 don't know about. That's what's happened. So that's why
9 the notices have gone that way to all of them, and then
10 they let us know if they've got an issue with a certain
11 area. And usually it's because it's a traditional
12 cultural area. Like stuff with Mt. Taylor, we had to do
13 tribal consultations with -- this is on the homestake
14 mill -- with Acoma, Laguna, Zuni and then Navajo Nation,
15 as well.

16 COMMISSIONER BAILEY: Because those tribes
17 or groups that were in that area. But the Mescalero
18 Apaches had nothing to do with it, so why should they
19 have anything to do with decisions that are made?

20 COMMISSIONER OLSON: They don't
21 necessarily. It's just that they're getting notice of
22 it. So -- I mean, we've done these. That's the
23 mechanism that was set out. I think we set that out
24 through the public notice in the --

25 MS. BADA: Another option is to make some

1 staff member go look at the cultural affairs --

2 COMMISSIONER OLSON: But he doesn't know,
3 necessarily --

4 MS. BADA: They've told them to just go
5 look at the website, then go look at the county and see
6 which ones they've said they want notice on.

7 COMMISSIONER OLSON: Because we looked at
8 this as just an informational thing. It goes to them
9 all, they let us know if they've got an issue with that
10 area because of some cultural -- it's a cultural resource
11 for them of some sort.

12 COMMISSIONER BAILEY: But do they have a
13 friend who has a cousin who has a primo who lives there
14 that they want to support or whatever? It just seems
15 bizarre to me that a group who has no tie should have the
16 power to say -- to have input into this.

17 COMMISSIONER OLSON: Well, anybody could
18 have input into it.

19 CHAIRMAN FESMIRE: Yeah. The general
20 public would have input into it. All this does is notify
21 them and facilitate that.

22 COMMISSIONER BAILEY: What weight would
23 the Division give to a response to a group who had no
24 ties?

25 CHAIRMAN FESMIRE: I think that would be

1 part of what we have to determine. I think we have to be
2 able to do that, as opposed to determining what group has
3 ties in that particular area.

4 COMMISSIONER BAILEY: Or to have them
5 send in information as to, "We have special interest into
6 these particular counties or these particular areas."

7 CHAIRMAN FESMIRE: Set it up in advance?

8 COMMISSIONER BAILEY: Yeah. So that it's
9 the responsibility of the tribe or pueblo to say, "We
10 have interest in these areas."

11 COMMISSIONER OLSON: I can tell you right
12 now from experience, the tribes and pueblos already have
13 problems with dealing with the notices that they get,
14 because they get a whole bunch of notices and a lot of
15 times, they're not getting -- either from the Governor
16 down to the actual environmental people in the pueblo --
17 and a lot of times there's a lot of miscommunication even
18 within the tribes and pueblos as to what goes on with
19 these notices once they come in.

20 COMMISSIONER BAILEY: That's not your
21 problem.

22 COMMISSIONER OLSON: That's not our
23 problem. We recognize that. But it could possibly
24 trigger things like we've gotten -- even with the
25 homestake cite, we've got other people like the Indian

1 Pueblo Council coming in and saying, "Oh, we want to
2 support the Acomas and the Zunis and the Navajos." It's
3 just additional information that goes as part of the
4 whole process. It's given the weight that it's deemed
5 due based on the information they provide to you as to
6 why it's a problem. If somebody is just sending
7 something that's like a letter of support for somebody
8 else's cause, they've got to support their own cause.
9 Right now that's the language that comes directly out of
10 the executive order on --

11 CHAIRMAN FESMIRE: You're not an executive
12 agency.

13 COMMISSIONER BAILEY: That's right.

14 CHAIRMAN FESMIRE: We are.

15 MS. BADA: We're going to be doing it one
16 way or the other.

17 COMMISSIONER BAILEY: Then let's go on.

18 COMMISSIONER OLSON: I'll admit the change
19 that was done there was done because of me, because I was
20 asking that that wasn't consistent, the way it was
21 written before, so they changed the language.

22 CHAIRMAN FESMIRE: Anything else in H we
23 need to cover?

24 COMMISSIONER BAILEY: Nope.

25 CHAIRMAN FESMIRE: I?

1 MS. BADA: I have one. Can we please
2 correct Game & Fish as named to the Department of Game &
3 Fish.

4 CHAIRMAN FESMIRE: Where?

5 COMMISSIONER OLSON: Under H(f).

6 MS. BADA: Yeah

7 COMMISSIONER OLSON: H(2)(f).

8 MS. BADA: The Department of Game & Fish.

9 CHAIRMAN FESMIRE: Oh. Like the Office of
10 the State Engineer as opposed to the state engineer's
11 office.

12 MS. BADA: Yeah.

13 CHAIRMAN FESMIRE: Okay. I, we've talked
14 a lot about. Did we cover it enough?

15 COMMISSIONER OLSON: I don't have anything
16 else, other than our changes to (2).

17 CHAIRMAN FESMIRE: How about you?

18 COMMISSIONER BAILEY: No. I'm fine.

19 CHAIRMAN FESMIRE: J.

20 COMMISSIONER OLSON: The only thing I had
21 was maybe a suggestion to add a bullet at the end. I
22 think it's kind of consistent with a little bit of what
23 Jami mentioned earlier, which was like a standard
24 disclaimer, that would maybe read -- my suggestion would
25 be that, "Approval of an exploration & development plan

1 or an application to amend, renew or replace an
2 exploration & development plan, does not relieve an
3 operator of the responsibility for compliance with any
4 other applicable federal, state or local laws,
5 regulations or ordinances." Make it clear that what
6 we're doing is just what's under our authority, that it's
7 their own responsibility for other ordinances, laws,
8 State Land Office, BLM, whoever.

9 CHAIRMAN FESMIRE: Is that acceptable to
10 you, Jami?

11 COMMISSIONER BAILEY: Yes.

12 CHAIRMAN FESMIRE: Okay. 19.15.39.10.
13 This is a little technical, but -- any problem with 10?
14 I said that very broadly.

15 COMMISSIONER OLSON: Well, I think there
16 was a few things I've asked about and was not -- was
17 thinking that they should have been included, and this
18 was in -- let me find it here -- because there was some
19 similar provisions we were looking at, especially
20 protections in new areas, that we put into the Otero Mesa
21 order that were not reflected in here, and I was
22 wondering -- I asked, at least of the Division witnesses,
23 first, why they weren't, and someone said, "Well, it
24 seemed like they might be reasonable."

25 And that was for some of the provisions in

1 19.15.39.8 under C. And this, actually -- and here it
2 was applying to produced water injection wells. But it's
3 the idea that, "The operator shall construct produced
4 water transportation lines of corrosion-resistant
5 materials acceptable to the Division, and pressure test
6 the water transportation lines to one and one-half times
7 the maximum operating pressure prior to operation, and
8 annually thereafter."

9 Then there's Item (7) which was, "The operator
10 shall place tanks on impermeable pads and surround the
11 tanks with lined berms or other impermeable secondary
12 containment device having a capacity at least equal to
13 one and one-third times the capacity of the largest tank,
14 or, if the tanks are interconnected, of all
15 interconnected tanks."

16 And then for -- I think this would be a
17 separate bullet, then, for produced water-injection
18 wells. "The operator shall" -- then you'd have a subset
19 that would read, "The operator shall record injection
20 pressures and volumes daily or in a manner acceptable to
21 the Division, and make the record available to the
22 Division upon request."

23 And the second one would be, "The operator
24 shall perform mechanical integrity tests as described in
25 Paragraph (2) of Subsection A of 19.15.26.11 NMAC

1 annually, shall advise the appropriate division district
2 office of the date and time the operator is commencing a
3 mechanical integrity test so that the Division may
4 witness the test and shall file the pressure chart with
5 the appropriate division district office."

6 These are some kind of -- some of the basic
7 prevention measures that were put into our special rule
8 on Otero Mesa. It seems like we would just have the same
9 thing here.

10 CHAIRMAN FESMIRE: Do you have a problem
11 with that?

12 COMMISSIONER BAILEY: Yes. There was no
13 testimony on that. There was nothing in the record.

14 COMMISSIONER OLSON: I seem to recall that
15 I asked the witnesses about having consistency between
16 these requirements. And I'd have to look at the
17 transcripts, but I know I asked about that, I think,
18 of --

19 MS. BADA: I remember you asking.

20 COMMISSIONER OLSON: -- of Will Jones on
21 the injection and, I think, of Brad Jones on the other
22 two, about the tanks and produced water lines, because
23 that was an issue I brought up. I can look at my notes.
24 I know I asked about that, if that was appropriate. I
25 don't know where that would be in the transcripts,

1 though. I believe it's reflected in the transcripts.

2 COMMISSIONER BAILEY: But there was no
3 opportunity for cross-examination on that. There was
4 just the request or the question, but the Division did
5 not present any testimony on it, why it was needed here,
6 as opposed to being confined to Otero County.

7 COMMISSIONER OLSON: I think it's
8 something that should be done on all types of those
9 lines. There are things that are done for pollution
10 prevention.

11 COMMISSIONER BAILEY: Then it should a
12 state wide --

13 COMMISSIONER OLSON: I agree it should be
14 state wide. But I was looking in this case, since we're
15 doing it for a new area, it should -- has the same type
16 of considerations that go with Otero Mesa. For
17 consistency in the rules, we'd apply the same things for
18 a special rule for this area, the same pollution
19 prevention measures, with the exception of -- there are
20 some other things in there, but these are some basic
21 ones. I think they included a lot of the rest of this,
22 but, for some reason, they didn't include those. That's
23 why I questioned about that.

24 COMMISSIONER BAILEY: They also didn't
25 include any concern of reclamation of roads, closure of

1 sites, reclamation of sites. All of those have always
2 been my concerns, particularly when laypeople, who really
3 don't know much about hydrology or oil and gas
4 exploration, look out on the mesa and they see that
5 there's not been a requirement specific to closure and
6 revegetation and reclamation of those areas. So I think
7 this rule is inadequate in those ways, but also revokes
8 without scientific testimony, other OCD rules that were
9 developed and based on reasoned determinations from the
10 testimony and the science behind those rules.

11 I will object strongly to 10B and -- well, to
12 (1) and (2), because we just got through going through
13 Pit Rules and there was no explanation why those rules
14 were inadequate, why -- if there was no indication of
15 contamination from past exploration, why these incredibly
16 expensive, difficult requirements that were not
17 developed, they revoke rules that were agreed upon by
18 this Commission based on technical scientific testimony.

19 COMMISSIONER OLSON: I guess maybe I see
20 it a little differently. The Division did provide
21 evidence that there is a sole source aquifer here that
22 needs special protections, so that's --

23 COMMISSIONER BAILEY: To me, it's no
24 more -- the aquifer in every single other part of the
25 state is no less important to the people who live there.

1 CHAIRMAN FESMIRE: Commissioner Bailey, I
2 agree that it's no less important, but here, due to the
3 fracturing and the very points that you raised earlier
4 today, the lack of knowledge of the systems out there,
5 the geologic and hydrologic systems, and the fact that
6 this is the sole source of water for a significant
7 population, is -- and I think there's testimony to
8 corroborate the fact that these provisions are necessary.

9 I understand what you're saying, and maybe
10 there will come a point where they will no longer be
11 necessary, but at least, initially, they are necessary,
12 and, I think, supported by the evidence.

13 COMMISSIONER BAILEY: Particularly because
14 of the recent newspaper articles concerning the revision
15 of the Pit Rule, I believe 10B(1) and (2) should not be
16 adopted.

17 CHAIRMAN FESMIRE: I would argue, because
18 of the concessions that are being proposed to be brought
19 before the Commission concerning -- that it make it even
20 more important in an area like this that this needs to be
21 provided. I mean, we're aware that, given recent events,
22 that there may -- and we always know that the Pit Rule is
23 continually under attack, it can be revised and can be
24 appealed, is being appealed, and that if we rely on that,
25 that would leave this area without the protection.

1 I understand your point. It may be a little
2 bit redundant. But the fact is that redundancy,
3 especially in engineering, leads to success, and there is
4 always the potential to have those -- the Pit Rules
5 repealed or appealed or ruled against. So if we want to
6 make sure this area is -- this special area, for the very
7 reasons that we talked about earlier today, is protected,
8 then we need B(1) and (2).

9 COMMISSIONER BAILEY: We've each said what
10 we needed to say.

11 COMMISSIONER OLSON: I'll just add the
12 long-standing sore point of mine from the Pit Rules is
13 that to even have on-site closure methods being conducted
14 on a site where they don't receive land owner approval,
15 because I don't believe that's necessary for development
16 of the minerals, the landfill waste on somebody's
17 property without their permission. This is where they
18 split estates. It's a sore point of mine, the Pit Rule,
19 which I lost on.

20 But I would propose -- and you may not accept
21 it -- but I still would like to propose those other
22 measures as pollution prevention measures that are
23 consistent with special rules that we developed for
24 similar-type considerations for protection of groundwater
25 quality, and that's from 19.15.39 C(6), (7), (8) and (9).

1 COMMISSIONER BAILEY: Then can we add the
2 reclamation requirements that I asked about that we had
3 in the special surface waste management facility rule,
4 too?

5 COMMISSIONER OLSON: I don't have a
6 problem with that, looking at reclamation requirements.

7 CHAIRMAN FESMIRE: I don't, either.
8 Counsel, is there -- since the --

9 MS. BADA: I'm hesitant about both, just
10 because I wasn't here to listen to what was in the
11 record.

12 CHAIRMAN FESMIRE: Especially on the
13 latter, can we not take notice of prior testimony?

14 MS. BADA: Except that it's dealing
15 with -- right now our reclamation requirements only deal
16 with waste disposal, so for truly dealing with roads and
17 the rest of the well beds, we don't have any evidence to
18 develop that rule making or this one in the record. I
19 certainly think it's important, but --

20 COMMISSIONER BAILEY: In the record we
21 have concerning the roads in the closed-loop system
22 portions for the roads that go between the closed-loop
23 system and the --

24 COMMISSIONER OLSON: I recall he'd asked
25 about that during this hearing on proper reclamation of

1 well paths, et cetera.

2 COMMISSIONER BAILEY: I think that's an
3 extremely important aspect of environmental protection.

4 CHAIRMAN FESMIRE: I wouldn't be opposed
5 to it if Counsel thinks we can --

6 MS. BADA: I don't know. You guys heard
7 the testimony. I did not. So I'd have to rely on you
8 for what's in the record.

9 COMMISSIONER OLSON: I would like for
10 myself, maybe is it possible that we could -- right now
11 we're going to have to redraft this to look at because
12 we've got a lot of changes; right? So could we redraft
13 it with that in mind, that you look at the transcript
14 just to check to see if it's supported, or -- I mean, I
15 can do it, as well, myself. I think we can do that
16 ourselves.

17 MS. BADA: Could you tell me who testified
18 about the roads, about the well beds? Did anyone? I'm
19 not saying it's not important.

20 COMMISSIONER OLSON: I expect it should be
21 in the testimony from Brad Jones. He's the one that
22 covered the bulk of the rule.

23 MS. BADA: Since they didn't propose them,
24 did somebody talk about it?

25 COMMISSIONER BAILEY: I asked about it.

1 COMMISSIONER OLSON: I believe you asked
2 about it a number of times.

3 COMMISSIONER BAILEY: You can just go
4 through and find every place that I asked questions.

5 MS. BADA: Not likely before March.

6 COMMISSIONER OLSON: Because I agree that
7 that's an important part of what goes on in a lot of the
8 sites. Especially if you look at some of the areas
9 around --

10 MS. BADA: I will tell you I'm a little
11 concerned about adding those in because they were not in
12 the original notice, and that's one place you have been
13 attacked is adding things in that weren't noticed.

14 COMMISSIONER OLSON: I'll bet I was
15 looking at consistency between our rules.

16 MS. BADA: I will tell you that is one
17 place -- usually on appeal, that's one of their gripes
18 is, "We didn't have notice of that." I will say that for
19 both Bill's and yours.

20 COMMISSIONER BAILEY: I see it as both
21 areas are important. Because as I recall --

22 MS. BADA: I'm not saying they're not
23 important.

24 COMMISSIONER BAILEY: -- I did not object
25 in that Otero County rule. I know there were quite a few

1 sections where it was the majority of the Commission that
2 did something, but I don't believe that there were -- I
3 objected to any of those.

4 COMMISSIONER OLSON: I don't recall that
5 that was a problem. I know that's a basic thing -- I
6 know the Division does a lot of that through the
7 discharge permits and things that go on, class-one wells,
8 as well as their basic pollution preventions through
9 discharge permits and activities that are going on.

10 But, I mean, I also agree with Commissioner
11 Bailey that some of these things, especially on
12 reclamation and a lot of the pollution prevention
13 measures, should be more of a state-wide application for
14 future construction that's going on, not as much -- I
15 mean, as things are replaced and going on, they should be
16 installing things to the highest standard possible. But
17 what's practicable is probably -- if we're going to be
18 implementing best management practices, whether it's for
19 reclamation or for pollution prevention.

20 Can we include those at the moment? And then
21 maybe I'll look at it -- look back and see where I asked
22 those questions.

23 CHAIRMAN FESMIRE: Why don't we ask
24 Counsel to include it in the draft.

25 MS. BADA: Do think about the notice

1 issue, because it was not within the original draft, and
2 think about how they have adequate notice, because that's
3 the concern. Not only is there evidence in the record,
4 but did they have notice. I think we need to worry about
5 that or think about that.

6 COMMISSIONER OLSON: What portions of the
7 notice?

8 MS. BADA: The rule, itself, when an
9 application is filed.

10 COMMISSIONER OLSON: Oh, for these --

11 CHAIRMAN FESMIRE: -- these changes.

12 MS. BADA: I mean, I really do think these
13 are something that somebody that had notice of the
14 proposed rule would have thought they needed to put
15 testimony on about, given that they weren't in the draft
16 or in the application, so --

17 COMMISSIONER OLSON: I think along those
18 same lines. I don't remember on those -- at least on
19 these provisions here or even Otero Mesa -- that there
20 was even any contest from industry. It was over the idea
21 that there won't be any pits. That was the issue. I
22 don't recall any opposition to this even out of industry
23 at that point, so --

24 MS. BADA: That's the same with the
25 reclamation, if you're going to do that, too.

1 CHAIRMAN FESMIRE: How about a couple of
2 hours Friday to finish?

3 COMMISSIONER OLSON: Yeah. The ones I was
4 talking about, the additions would be under B.

5 CHAIRMAN FESMIRE: What I was thinking
6 is --

7 MS. BADA: What do you want to add as far
8 as reclamation, I guess I should ask? As far as the
9 reclamation stuff in the Pit Rule, that wouldn't apply,
10 so what addition would you like?

11 COMMISSIONER BAILEY: Back to the surface
12 waste facility, everything we have in there.

13 MS. BADA: Then they really don't deal
14 with roads.

15 COMMISSIONER BAILEY: The Pit Rule does
16 talk about roads.

17 MS. BADA: It talks about roads associated
18 with the waste facilities and the closed-loop systems, so
19 those would apply. I guess what I'm asking is what else
20 would you want covered?

21 COMMISSIONER BAILEY: Those two, we have
22 testimony and questions on.

23 MS. BADA: But they would apply. If you
24 have a pit or a closed-loop system, those would already
25 apply, whether we put them in this rule or not. So are

1 you looking at well pads or access roads?

2 COMMISSIONER BAILEY: I talked about
3 everything that the BLM had in the gold book when we were
4 talking about the Pit Rule, and that was all on the
5 record.

6 MS. BADA: We did that in terms of the
7 pits themselves, the closed-loop systems and access roads
8 to those.

9 COMMISSIONER BAILEY: I had asked for it
10 to apply to well sites and roads and partial reclamation
11 according to use of the well pads.

12 MS. BADA: We limited it to the waste
13 facilities because that's what we were dealing with. I
14 guess what I'm asking in this context, do we want it to
15 be for everything and do we have enough in the record?

16 COMMISSIONER BAILEY: Yes.

17 MS. BADA: Because while I agree with you,
18 I think we may be stretching it.

19 COMMISSIONER BAILEY: Which is a problem I
20 keep bringing up, and I don't understand why the Division
21 doesn't pick up on it at some point. Because if you're
22 saying that it can't be done, then why not, is my
23 question. Why doesn't the Division cooperate?

24 CHAIRMAN FESMIRE: Cooperate in?

25 COMMISSIONER BAILEY: In drafting rules

1 that incorporate reclamation as one of the priorities.

2 CHAIRMAN FESMIRE: Okay. Why don't we
3 ask -- can you make these drafts by Friday?

4 MS. BADA: No, probably not. I could try,
5 but I don't have -- I don't even have an electronic copy.

6 CHAIRMAN FESMIRE: Can we get an
7 electronic copy?

8 MS. BADA: Yeah, but I'd have tomorrow to
9 do them, but I don't know what would happen
10 legislatively. I can't promise it will be ready. It's
11 one day.

12 CHAIRMAN FESMIRE: Okay.

13 MS. BADA: I mean the small stuff. But
14 the reclamation, I can't promise that I can even figure
15 out how to draft that.

16 CHAIRMAN FESMIRE: The reclamation stuff,
17 we still haven't decided how that's going to -- you're
18 talking about the stuff in Part E --

19 MS. BADA: Yeah.

20 CHAIRMAN FESMIRE: -- of 9?

21 MS. BADA: Ten. I think that's what Jami
22 wanted was in 10; right?

23 COMMISSIONER BAILEY: Um-hum.

24 MS. BADA: You're asking for --

25 COMMISSIONER BAILEY: That's where Bill

1 wanted the other requirements, and I'm talking
2 reclamation in 10B.

3 CHAIRMAN FESMIRE: Why don't you -- if you
4 can get an electronic copy, draft what you can, and we'll
5 meet Friday afternoon. Is that okay with you?

6 COMMISSIONER OLSON: I think so.

7 COMMISSIONER BAILEY: Okay.

8 COMMISSIONER OLSON: Yep.

9 CHAIRMAN FESMIRE: Okay. We still have to
10 resolve the issues that we were just talking about, and
11 we have to resolve E and --

12 COMMISSIONER OLSON: I had an issue, too,
13 left on 39.9, B(7). Well, I guess it would be a new
14 bullet to be added to B. I think after thinking about
15 something, I think I'll withdraw that proposal, just
16 because I think Commissioner Bailey is right. Without
17 any definition of how we're going to define wildlife --
18 we don't have any of that evidence in front of us -- I
19 think that would be difficult to do. Because there would
20 be -- some limits need to be placed on that.

21 I think Tesuque Pueblo was talking about
22 protection of the antelope and deer throughout the basin
23 is what they historically hunted. Just putting it down
24 as something -- as mitigating impacts on wildlife is
25 rather broad, and I don't think we probably have adequate

1 testimony about that at this point, so I'll drop that
2 proposal.

3 CHAIRMAN FESMIRE: Why don't we continue
4 this case until Friday afternoon at 1:00 in the OCD
5 conference room, where we will address the remaining
6 issues and hopefully finish?

7 COMMISSIONER OLSON: What time?

8 CHAIRMAN FESMIRE: 1:00 in the afternoon.

9 COMMISSIONER BAILEY: That's on the third
10 floor?

11 CHAIRMAN FESMIRE: It's across from my
12 office. And with that, we will continue Case Number
13 14255 until Friday the 27th of February in the Oil
14 Conservation Division conference room on the third floor
15 of the Wendell Chino Building, 1220 St. Francis, Santa
16 Fe, New Mexico.

17 We have one other piece of business that we
18 need to address today. That's the announcement that Case
19 Number 14163, the De Novo Application of Merrion Oil and
20 Gas Corporation for compulsory pooling in San Juan
21 County, New Mexico, has been dismissed by Order Number
22 R13000-A. With that, the Chair would entertain a motion
23 for adjournment.

24 COMMISSIONER BAILEY: I so move.

25 COMMISSIONER OLSON: Second.

1 CHAIRMAN FESMIRE: All so signify by
2 saying aye.

3 Let the record reflect that the February 25th,
4 2009 meeting of the Oil Conversation Commission was
5 adjourned at 4:50 p.m., and that we will reconvene in
6 case Number 14255 on Friday in the OCD conference room.

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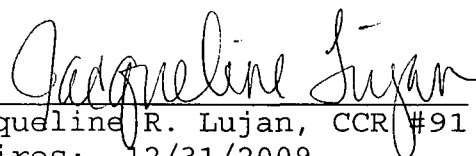
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on February 25, 2009, proceedings in
the above captioned case were taken before me and that I
did report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

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

WITNESS MY HAND this 2nd day of March, 2009.



Jacqueline R. Lujan, CCR #91
Expires: 12/31/2009