

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

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

7 APPLICATION OF HILCORP ENERGY COMPANY CASE NO. 16403
8 TO AMEND THE WELL DENSITY AND LOCATION
9 REQUIREMENTS AND ADMINISTRATIVE EXCEPTIONS
10 OF THE SPECIAL RULES FOR THE BLANCO-MESAVERDE
11 GAS POOL, RIO ARRIBA AND SAN JUAN COUNTIES,
12 NEW MEXICO.

13

14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 COMMISSIONER HEARING

16 November 19, 2018

17 Santa Fe, New Mexico

18

19 BEFORE: HEATHER RILEY, CHAIRWOMAN
20 ED MARTIN, COMMISSIONER
21 DR. ROBERT S. BALCH, COMMISSIONER
22 BILL BRANCARD, ESQ.

23

24 This matter came on for hearing before the
25 New Mexico Oil Conservation Commission on Monday,
26 November 19, 2018, at the New Mexico Energy, Minerals
27 and Natural Resources Department, Wendell Chino
28 Building, 1220 South St. Francis Drive, Porter Hall,
29 Room 102, Santa Fe, New Mexico.

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1 (9:04 a.m.)

2 CHAIRWOMAN RILEY: Good morning, everyone.
3 We're going to go ahead and get started with today's
4 meeting. This is a special meeting for the Oil
5 Conservation Commission. I'm your Chair, Heather Riley.
6 I'm the Division Director for the OCD.

7 And I'll take roll call from the
8 Commissioners sitting at the table, please.

9 COMMISSIONER MARTIN: Ed Martin, designee
10 of the State Land Office.

11 COMMISSIONER BALCH: Dr. Robert Balch,
12 designee of the Secretary of Energy, Minerals and
13 Natural Resources.

14 CHAIRWOMAN RILEY: Mr. Brancard?

15 MR. BRANCARD: Bill Brancard, counsel for
16 the Commission.

17 MS. DAVIDSON: Florene Davidson.

18 AUDIENCE MEMBER: We can't hear back here.
19 I'm sorry.

20 CHAIRWOMAN RILEY: If we can get the
21 audience to be quiet and still. We have a lot of people
22 in here. We are probably way past our capacity at 65.
23 So we're just going to have to do our best to hear and
24 be quiet in the group.

25 Have you-all had a chance to look at the

1 agenda for today, and, if so, do I have a motion to
2 approve that agenda?

3 COMMISSIONER MARTIN: I have, and I so
4 move.

5 COMMISSIONER BALCH: I've reviewed the
6 agenda, and I second the motion to pass it.

7 CHAIRWOMAN RILEY: All right. So moved.

8 We have a short agenda today in terms of
9 topics to be discussed. Case Number 16403, which is
10 continued from the October 11th Commission meeting, is
11 the application of Hilcorp Energy Company to amend the
12 well density and location requirements and
13 administrative exceptions of the special rules for the
14 Blanco-Mesaverde Gas Pool, Rio Arriba and San Juan
15 Counties, New Mexico.

16 So before we get started, I have a
17 statement I'd like to read, if you-all will bear with
18 me, please.

19 Before we start with today's proceedings, I
20 want to comment on certain concerns that have been
21 raised and outline a few procedural matters pertaining
22 to today's hearing. First I want to thank all of you
23 for your interest in this matter. It's good to see so
24 much interest in what is taking place in our community
25 and that so many are willing to be involved. Having

1 said that, it's important that everyone interested in
2 this proceeding and here today understand the scope and
3 context of the hearing.

4 The Oil Conservation Division classifies
5 wells and establishes well location and well acreage
6 requirements for operators within spacing units,
7 approves unorthodox well locations and approves pooling.
8 The Division's primary statutory obligation is to
9 prevent waste and protect correlative rights. The
10 prevention of waste includes taking actions to ensure
11 the underground resource is efficiently and completely
12 recovered, leaving no waste.

13 Today's hearing considers an application to
14 adjust the prescriptions for the Blanco-Mesaverde Pool
15 in northwest New Mexico. By rule, this matter is an
16 adjudicatory, not a rulemaking proceeding. The
17 distinction is important because different procedural
18 and notice requirements apply depending on the type of
19 proceeding. Adjudicatory hearings before the Division
20 or the Commission are not subject to public comment.
21 Further, a pooling application determines how many wells
22 it takes to effectively recover the minerals from
23 beneath the surface without causing waste or impacting
24 correlative rights. The application before the
25 Commission does not implicate or consider surface

1 impacts. It is entirely a downhole, subsurface matter.

2 To the extent that there are surface
3 considerations, those are considered and regulated by
4 the relevant surface owner or manager, BLM, State Land
5 Office and fee owners and managers. If the Commission
6 were to approve the application being considered today,
7 that would not mean that the Applicant had the necessary
8 approvals and permits to drill any well. Rather, an
9 approval would simply mean that the pool in question is
10 able to effectively drain by the well density approved
11 by the Commission. It is not the jurisdictional charge
12 of the Commission to waive potential surface issues
13 against subsurface resource recovery management
14 considerations. Those considerations are for another
15 day and would be before the relevant surface owner or
16 manager, not the OCD or the OCC.

17 Someone has raised the specter of
18 impropriety regarding certain Commissioners
19 participating in this proceeding alleging conflict of
20 interest. Each Commissioner here takes their role as
21 impartial adjudicator very seriously. The allegation of
22 conflict has been examined by counsel, who determine
23 that there is no conflict of interest for any of us to
24 hear this matter.

25 Concerning public comment, as I mentioned,

1 the rules for this proceeding do not contemplate public
2 comment. Consequently, public comment here -- well, we
3 are going to consider public comment, and it will be
4 part of the record, but we can take into consideration
5 whether or not to use that public comment for our
6 decision-making. These public comments are going to be
7 limited to three minutes per person or per organization,
8 and it will be at the conclusion of the hearing.

9 I expect everyone here today to behave with
10 decorum and to respect each person here today. Anyone
11 engaging in unruly or disruptive behavior will be asked
12 to leave. And during the time of public comment, it's
13 important that you address your public comments to the
14 Commission only and not to the parties here. So if you
15 are coming up to speak, speak to only those of us up
16 front.

17 So that concludes my comments. We can go
18 ahead proceed.

19 MR. BRANCARD: Madam Chair, we have a
20 series of preliminary issues that need to be dealt with,
21 and it's up to the Commission what order you'd like to
22 proceed with them. We have a number of pending motions
23 here before the Commission. We have a motion for
24 continuance. We have a motion to dismiss the
25 proceeding. We have the notice question, which came

1 from the last hearing. And then we have a motion to
2 strike intervention in this proceeding. So the problem
3 is that there is really no good, logical order because
4 they're all sort of intertwined with each other. For
5 instance, some of the motions that have been filed have
6 been filed by a party whose status in the case has been
7 challenged in the motion to strike. So it's up to you
8 how you want to proceed with this.

9 The motion for continuance may be the
10 simplest, if any of the Commissioners want to entertain
11 that motion or not, followed, perhaps, by discussion of
12 the notice that the Commission required from the last
13 hearing, because the only reason we're here today is
14 because we had defective notice at the last hearing, and
15 we had specific requirements of the Applicant to provide
16 notice for this hearing. And so that could be addressed
17 at the beginning also.

18 How would the Commission like to begin?

19 I guess the question is first: Is there
20 anyone willing to entertain a motion to continue this
21 proceeding?

22 CHAIRWOMAN RILEY: No.

23 COMMISSIONER BALCH: I haven't seen
24 anything to warrant a continuance.

25 MR. BRANCARD: Okay. So at this point, we

1 should move on with the other items here, the notice
2 question or the intervention question.

3 CHAIRWOMAN RILEY: What if we take care of
4 notice, since that was an issue and why we continued
5 from last time, just make sure that's been cured? And
6 then I propose we do the intervention, which will then
7 help us to know whether we do the dismissal.

8 COMMISSIONER MARTIN: That sounds good.

9 MR. BRANCARD: Okay.

10 CHAIRWOMAN RILEY: So yeah, if we could get
11 the parties to identify themselves and their counsel.

12 MR. FELDEWERT: Sure. Madam Chair, members
13 of the Commission, Michael Feldewert and Adam Rankin,
14 with the Santa Fe office of Holland & Hart, appearing on
15 behalf of the Applicant, Hilcorp Energy Company.

16 As we noted in our pre-hearing statement,
17 we do have one witness here today to address in part
18 some of the notice affidavits and notice material that
19 you requested.

20 CHAIRWOMAN RILEY: Thank you.

21 MS. KESSLER: Madam Chair, members of the
22 Commission, Jordan Kessler, from the Santa Fe office of
23 Holland & Hart, on behalf of Enduring Resources.

24 MS. ANTILLON: Madam Chair and
25 Commissioners, my name is Andrea Antillon. I am here

1 representing the Commissioner of Public Lands and the
2 State of New Mexico, the State Land Office.

3 CHAIRWOMAN RILEY: Could you state your
4 name again?

5 MS. ANTILLON: Andrea Antillon.

6 CHAIRWOMAN RILEY: Antillon?

7 MS. ANTILLON: Yes.

8 We are here on behalf of the preliminary
9 matter regarding notice, and we're here to object to
10 this hearing going forward because we were not provided
11 with notice as we were supposed to have been based on
12 the testimony from the last hearing.

13 MR. HALL: Madam Chair, Scott Hall,
14 representing LOGOS Resources II, LLC and LOGOS
15 Operating, LLC. I'll have no witnesses.

16 MR. SCHLENKER-GOODRICH: Madam Chair,
17 Commissioners, my name is Erik Schlenker-Goodrich,
18 representing Western Environmental Law Center.

19 I would like to introduce my co-counsel,
20 Julia Guarino and Kyle Tisdell.

21 I would also like to seek permission for
22 Julie Guarino to practice before the Commission today.
23 Julia is licensed in Colorado and the Navajo Nation and
24 is seeking reciprocity for New Mexico, but she has not
25 received that reciprocity at this point.

1 CHAIRWOMAN RILEY: Mr. Brancard, do you see
2 an issue with that?

3 MR. SCHLENKER-GOODRICH: She is working
4 under my supervision as a New Mexico licensed attorney.

5 CHAIRWOMAN RILEY: Could you state her name
6 again?

7 MR. SCHLENKER-GOODRICH: Julia Guarino,
8 G-U-A-R-I-N-O.

9 MR. BRANCARD: And she's a member of the
10 Colorado bar?

11 MR. SCHLENKER-GOODRICH: Yes, an active
12 member of the Colorado bar, Arizona bar -- no, inactive
13 in Arizona and active in the Navajo Nation bar and
14 inactive in Montana as well. I think she's proven her
15 ability to get a license.

16 MR. BRANCARD: I don't have a problem with
17 that.

18 CHAIRWOMAN RILEY: Okay.

19 MR. SCHLENKER-GOODRICH: Thank you.

20 And I also want to introduce my co-counsel,
21 Jon Anderson.

22 MR. ANDERSON: Good morning, Madam Chair,
23 Commissioners. My name is Jon Anderson. And with me is
24 Sabina Gaynor. We are clinical law students at the
25 University of New Mexico School of Law, practicing under

1 the supervision of Professor Gabriel Pacyniak, under the
2 New Mexico Student Practice Rule. And we're here today
3 representing San Juan Citizens Alliance as intervenors
4 in this matter.

5 CHAIRWOMAN RILEY: I thought I saw another
6 entry of appearance from San Juan Citizens Alliance.

7 MR. SCHLENKER-GOODRICH: Yes, Maslyn Locke.
8 Maslyn Locke is in the back. And I'm particularly proud
9 for Maslyn's work with us through the New Mexico Bar
10 Association. I am her mentor as a new attorney, so it's
11 a good experience for her, I am sure, to come to this
12 proceeding today.

13 CHAIRWOMAN RILEY: So does everyone plan on
14 being part of this proceeding? I mean all attorneys
15 here? We've got a lot of attorneys here. I'm just
16 saying.

17 MR. SCHLENKER-GOODRICH: We indeed do. Jon
18 will be handling the motion to intervene. I was going
19 to be handling the motion for continuance. I'd actually
20 like to move for reconsideration. I frankly am a little
21 bit concerned with the dismissive approach given to that
22 contumace given the evidence that was submitted in
23 accord with it. I would also like to seek clarification
24 as an additional primary matter on two areas, one that
25 the motion to deny on the basis that this is, in fact,

1 properly construed as a rulemaking is, in fact,
2 considered. I view that as a threshold matter that
3 should be addressed before intervention.

4 And then also with regard to intervention,
5 I want to ask whether Hilcorp is perhaps -- counsel for
6 Hilcorp can clarify whether or not their witnesses from
7 the original hearing are here today in the event that we
8 are granted intervention such that we can cross-examine
9 them.

10 MR. BRANCARD: Well, as I said, a lot of
11 interlocking issues here, and we can deal with these
12 issues as we move forward.

13 The issue of is this a proper proceeding,
14 proper procedures followed, that's part of the motion to
15 dismiss that we can consider at some point.

16 The issue about the testimony from the last
17 hearing, we made clear at the last hearing that all the
18 witnesses' testimony is part of the record and that for
19 the Applicant at this proceeding, since it's a continued
20 proceeding, if they wanted to supplement their
21 testimony, they would be able to do that today. And so
22 that is really the only burden on the Applicant in terms
23 of the witnesses here.

24 MR. SCHLENKER-GOODRICH: Madam Chair, I'd
25 like to make an objection on that basis. At that

1 September 13th hearing, San Juan Citizens Alliance was
2 expressly invited to present a new notice of
3 intervention. Of course, that is being challenged
4 today. But to the degree that we don't have the ability
5 to cross-examine Hilcorp's witnesses, that renders
6 intervention futile, and it suggests that this
7 Commission's proceedings are predetermined.

8 I'd also note that Madam Chairman's initial
9 statement suggests that it's predetermined that this is
10 an adjudication, not a rulemaking despite the pending
11 motion. So there is a question regarding what is the
12 purpose of the hearing today if none of those issues can
13 actually be heard and the Commission has already made
14 determinations on --

15 MR. BRANCARD: Mr. Schlenker-Goodrich,
16 we're just starting the hearing and we're just starting
17 to get into the issues, and we're trying to find a
18 logical way to work our way through a whole series of
19 issues here. So we will hopefully be able to address a
20 number of your issues.

21 Which issue would the Commission like to
22 proceed with?

23 CHAIRWOMAN RILEY: Notice would be a great
24 place to start.

25 MR. BRANCARD: Okay.

1 CHAIRWOMAN RILEY: So, Mr. Feldewert.

2 MR. FELDEWERT: Madam Chair, members of the
3 Commission, you will note with respect to the BLM and
4 the State Land Office, Exhibit Number 6 was entered at
5 the last hearing, in which both the Bureau of Land
6 Management and the State Land Office were given notice
7 of the September hearing as a courtesy because they are
8 not operators that fall within the notice requirements
9 for this type of downhole adjudicatory reservoir
10 management. Neither the BLM, nor the State Land Office
11 appeared separately from their representative that sits
12 here on the Commission, Mr. Ed Martin. They have been,
13 obviously, fully aware of these proceedings. They not
14 only received formal notice of the last hearing, but
15 they had a representative here on the Commission that
16 was present at the last hearing and is here today, and
17 yet the -- and the State Land Office has now appeared
18 today obviously aware of this hearing.

19 With respect to the Bureau of Land
20 Management, they received formal notice at the last
21 hearing. They were clearly notified of this hearing by
22 three members of our congressional delegation that sent
23 them a letter on December 5th -- or October 5th
24 requesting that they take action in this matter. They
25 were notified -- the BLM was notified by Rio Arriba

1 County resolution that was dated October 25th, again
2 asking the BLM to appear to take action in this matter.
3 The BLM chose not to appear at the September hearing,
4 nor have they appeared at this November hearing. And I
5 surmise that's because they understand exactly what you
6 said, and that is that there is a very limited purpose
7 of this hearing, and surface concerns do not arise until
8 actual development plans are presented to implement
9 whatever density this Commission determines is necessary
10 to prevent underground waste.

11 With respect to the operators who are
12 parties, entities and companies to whom notice is
13 required by this Division rule because of the nature of
14 this case, all operators in the San Juan Basin were
15 provided notice of the September hearing. There were
16 exhibits rendered into evidence at that hearing. In
17 addition, Hilcorp has provided notice again to all of
18 the operators in the San Juan Basin by certified mail of
19 this particular hearing, and, in addition, they have
20 published notice in newspapers of general circulation in
21 Rio Arriba and San Juan Counties of this particular
22 hearing notifying them of this proceeding here today.
23 We have Exhibits 7 and 8 that are in our exhibit package
24 that was provided to you as part of our pre-hearing
25 statement.

1 So all of the notice that is required by
2 the Division's rules have been provided in this matter,
3 and all of the parties who are the entities who are
4 affected by this application, that being the operators,
5 have received notice of this hearing. And both the
6 New Mexico State Land Office and the Bureau of Land
7 Management have been provided notice of these
8 proceedings, and the New Mexico State Land Office has a
9 representative on the Commission. So I don't see any
10 notice defect here that would require any further
11 continuance of this matter because all proper notice
12 under the Division's regulations has been provided, and,
13 in fact, we've gone beyond that and gave notice to the
14 State Land Office and the BLM.

15 CHAIRWOMAN RILEY: Thank you.

16 Any questions for Mr. Feldewert?

17 MR. BRANCARD: Mr. Feldewert, I believe
18 what you're addressing is at the end of the last
19 hearing, where we requested the Applicant file notice
20 with the operator, et cetera and publish notice, there
21 was also a request that the Applicant notify government
22 land managers. And so it's your position that you did
23 not need to notify government land managers?

24 MR. FELDEWERT: By government land
25 managers, do you mean the BLM and the State Land Office?

1 CHAIRWOMAN RILEY: Well, that's two of
2 them.

3 MR. FELDEWERT: Are there others?

4 MR. BRANCARD: Well, I mean, if you look at
5 a lands status map, where your pool goes, you can see
6 several more, United States Forest Service, Jicarilla
7 Tribe. Those are both encompassed within the outlines
8 of this pool. So what is your position on that request
9 from the Commission?

10 MR. FELDEWERT: My position on that request
11 from the Commission is it was not understood that you
12 would be talking about the U.S. Forest Service and the
13 Jicarilla Tribe or any other surface owner out there.
14 These are surface owners. They're not mineral owners.
15 And surface owners have no standing in this proceeding,
16 and there is no requirement to provide them notice
17 anywhere in the regulations. And a request at the last
18 hearing to provide government and land managers -- I
19 can't remember exactly the words that you used. I
20 didn't view it as a demand. I didn't view it as a
21 demand.

22 But no, notice has not been provided to the
23 Forest Service or the Jicarilla Tribe, nor do I see
24 where it's required under your regulations, because I
25 fail to see what impact or what status they would have

1 to offer anything of substance to the limited issues
2 that is being considered by the Commission here today.
3 They are nonmineral surface owners like a lot of other
4 people out there. They have no standing and no input
5 into these kind of downhole reservoir management issues,
6 which is why your regulations do not require notice of
7 them and why you have never required notice of those
8 types of interest owners.

9 MR. SCHLENKER-GOODRICH: Madam Chair,
10 Commissioners, may I offer my perspective on the notice
11 issue?

12 CHAIRWOMAN RILEY: Yes, please.

13 MR. SCHLENKER-GOODRICH: In terms of Forest
14 Service, Forest Service under federal law, while they
15 are the principal surface manager, does have veto
16 authority over the leasing of subsurface minerals.
17 Therefore, they very much do have some measure of
18 authority, in particular to veto whether or not the
19 Bureau of Land Management would, in fact, sell
20 subsurface mineral resources. So the idea that they
21 would have no standing relative to underground reservoir
22 issues is inaccurate.

23 The other point I would make on this front
24 in terms of surface lands owners is, yes, this is a
25 rulemaking dealing with waste. There are two components

1 of waste.

2 COMMISSIONER BALCH: An adjudicatory
3 process.

4 MR. SCHLENKER-GOODRICH: Well, that
5 apparently is in dispute, and I understand the
6 predetermined decision of the Commission on this.

7 The definition of waste is both underground
8 and surface, and so there could be surface waste, which
9 is a product of surface facilities. And surface waste,
10 if you look at the definition in the Oil and Gas Act,
11 can expressly be the product of well spacing, in the Oil
12 and Gas Act. So the idea that surface interests are not
13 part of this proceedings is inaccurate.

14 COMMISSIONER BALCH: State Land Office?

15 MS. ANTILLON: The State Land Office is
16 here today to object because although the Applicant was
17 specifically asked to notify government land managers of
18 this hearing, the State Land Office only found out about
19 it via email last week. The Applicant's attorney sent
20 the State Land Office an e-mail about this hearing on
21 Tuesday, November 13th, stating that notice had not been
22 provided and asking that the Commissioner waive notice,
23 which the Commissioner is not willing to do. Instead,
24 the Commissioner requests that there is a continuance of
25 this hearing so that we have a chance to review the

1 evidence and have an opportunity to determine whether we
2 will make a formal appearance and properly prepare for
3 the hearing.

4 Unlike what the Applicant said at the last
5 hearing, the Commissioner is not supportive of Hilcorp's
6 application for increased well density, and we have
7 never done any actions to suggest to Hilcorp that we
8 support its application.

9 At this time -- well, I have a number of
10 comments that I would like to make for the record at
11 this time.

12 The State Land Office has not had adequate
13 time to review the application and determine if it's in
14 the best interest of the State Trust and its
15 beneficiaries.

16 When we attempted to download the documents
17 online, not all the documents were available. When we
18 tried calling to get a copy of the exhibits, we were
19 told that they were not part of the file, and we had to
20 wait, specifically come to your office and have copies
21 made for us. We didn't get those copies until Friday
22 afternoon.

23 The public interest in this matter is
24 obviously very high, as evidenced from the number of
25 people who are here in attendance, and, therefore,

1 transparency should be of utmost importance to the
2 Commission. And the State Land Office should have an
3 opportunity to be heard. Not only do we have over
4 71,000 acres of trust land that are at issue here, that
5 includes 65,000 acres of surface estate and over 70,000
6 acres of mineral interests that might be affected by
7 these proposed changes.

8 The State Land Office has authority and
9 responsibility for the management, care, custody and
10 control of state trust lands, and the Commissioner has
11 authority and responsibility to carry out those trust
12 responsibilities under the New Mexico Enabling Act,
13 Section 10 and the compact between the state of
14 New Mexico and the United States set forth in the
15 New Mexico Constitution, Article 21, Section 9 and
16 Article 13, Section 2. Those state trust lands were
17 granted to the State of New Mexico by the federal
18 government in trust to generate revenue for public
19 schools and other state institutions.

20 The public education system, grades K
21 through 12, is our largest beneficiary of those state
22 trust lands. It gets 85 percent of the revenue that the
23 State Land Office generates, and that money is generated
24 not only through oil and gas but also rights-of-ways,
25 business leases and grazing leases, all things that can

1 be affected when the surface estate is affected.

2 The additional disturbance contemplated by
3 the requested change in well density will affect over
4 65,000 acres of state trust surface. That's going to
5 significantly reduce the income potential and revenue
6 for our beneficiaries, including the public school
7 children of New Mexico for generations to come.

8 Under NMAC Sections 70-2-3 and 70-2-11, the
9 OCD has a duty to prevent surface waste. The changes
10 proposed by the Applicant would affect over 70,000 acres
11 of state trust property. That's 65,000 acres of surface
12 estate. The additional disturbance from doubling the
13 number of wells in each GPU, together with the
14 infrastructure associated with those new wells will
15 create significant and potentially unnecessary
16 additional surface damage, destroying cultural assets,
17 increasing erosion issues and directly impacting
18 long-term revenue to the state trust and its
19 beneficiaries.

20 As I said previously, we only received
21 notice of this last November -- or last week on Tuesday,
22 November 13th, and we have not had an opportunity to
23 review the application. We are not willing to waive the
24 notice that we were supposed to have received based on
25 the last hearing. And as this application would affect

1 both state trust minerals and surface and potentially
2 result in significant damage and destruction to state
3 trust land, we would ask that you continue this hearing.

4 MR. FELDEWERT: Madam Chair, members of the
5 Commission, the Land Commissioner could be sitting in
6 that chair right there (indicating). The person that is
7 espousing this issue to this attorney could be sitting
8 right there in that chair (indicating). He has a
9 representative on your Commission from day one who was
10 fully aware of this application. They don't need a
11 courtesy notice. They have a vote. Commissioner Dunn,
12 through his representative and his office, can vote
13 however they want to on here. They don't need a
14 courtesy notice, which is why they are not listed in the
15 statute, in your regulations as requiring notice. They
16 got notice, a courtesy notice, of this hearing before it
17 even started back in September. They have been fully
18 aware of this application long before that application
19 was filed. There is testimony in the record that
20 Hilcorp met with the State Land Office and their people
21 to go over the data and information. For them to
22 suggest that they're unaware of this is ridiculous, and
23 for them to suggest that they're not fully aware of this
24 application is likewise ridiculous. And there is no
25 reason to give them another round of courtesy notice

1 when they got notice the first time around, and they
2 have a vote on this body; they have a vote on this
3 issue. They don't need a courtesy notice.

4 MR. SCHLENKER-GOODRICH: Madam Chair,
5 Commissioners, I just want to echo the State Land Office
6 in terms of the notice, that, in particular, Hilcorp's
7 exhibits that were presented at the September 13th
8 testimony were not provided on the website until
9 November 16th. I know I heard from several members of
10 the public that they had no access to those exhibits,
11 which, of course, have all the detail regarding the
12 proposed amendment to the pool spacing rules. So to the
13 degree that there are concerns regarding notice and the
14 public's access to information, I would echo and agree
15 with the State Land Office on this. I find it
16 interesting given that I have not always agreed with the
17 State Land Office under the current administration until
18 this point, but certainly the public was not aware of
19 it, the exhibits, until Friday, when I was only for the
20 first time able to download those exhibits as well.

21 Thank you.

22 MS. ANTILLON: Madam Commissioner, if I may
23 add, the Legal Division is separate from having a
24 representative serving on this Commission. Although it
25 might be very careful, we have a Chinese wall set up

1 between that, so the Legal Division was not aware of
2 this hearing going on until last Tuesday when we
3 received the email.

4 MR. SCHLENKER-GOODRICH: And I would just
5 like to make one final point. My apologies for making
6 repeated points. I'm not sure whether -- and perhaps
7 counsel for Hilcorp could clarify this -- whether any of
8 the Navajo allottees were provided with notice?

9 CHAIRWOMAN RILEY: Mr. Feldewert?

10 MR. FELDEWERT: The Navajo allottees?

11 CHAIRWOMAN RILEY: Uh-huh.

12 MR. FELDEWERT: No. They're not -- they're
13 not parties to this case. They're not required by
14 regulation to be notified. They do not have the
15 technical expertise to provide meaningful input to the
16 limited issues before you. They are no different from
17 any other surface owner out there.

18 CHAIRWOMAN RILEY: I realize we're looking
19 at notice and that's the issue in front of us, but there
20 is the issue we haven't really talked about here, and
21 that is whether or not this is a rulemaking or an
22 adjudicatory proceeding. Do we need to address that
23 first to kind of get past this?

24 MR. BRANCARD: Well, I mean, if you want to
25 try to bring all these issues together, we could hear

1 discussion on that issue at this point, too. It's up to
2 the Commission, or whether you want to just simply focus
3 on the issue of whether Hilcorp responded correctly to
4 the Commission's directions at the end of the last
5 hearing.

6 CHAIRWOMAN RILEY: So I guess we probably
7 need to look at what that direction was. And my
8 recollection of the last hearing was that there was a --
9 at the very end of it, after we had heard testimony and
10 we discovered that there was a notice issue in terms of
11 the date that was noticed. Notice was done properly for
12 the last hearing. It was just an issue with the date.
13 It had been noticed for the 6th, I believe, and it
14 should have been the 13th. So we required that they go
15 back and do proper notice. And then the next statement
16 was: It would be nice to have the -- and I don't recall
17 if it was the BLM, State Land Office specifically
18 identified or surface managing agencies as a whole, but
19 it would be nice for them to receive notice. But I
20 don't believe we went full force and made a strong
21 statement about requirement. That's my issue with this.

22 MR. BRANCARD: I have the language here.
23 We did not follow up with an order directing them to do
24 anything, so all we have is the language from the
25 hearing. And if you'll recall, there was a discussion

1 at the end of the hearing about what notice Hilcorp
2 needed to provide. The discussion encompassed notice to
3 those that are required to give notice to under the
4 adjudicatory rule, which is -- Hilcorp said they had
5 given notice to the operators to fulfill that
6 requirement. And then also they requested whether they
7 needed to provide notice to the newspapers. The
8 Commission agreed. And then I'll give you what I said
9 after that, and I said, "And I think we would prefer you
10 notify the government land managers." And the only
11 other follow-up was Commissioner Balch saying, "Yes."
12 And that's the extent of the direction that we gave
13 Hilcorp.

14 COMMISSIONER BALCH: Falls short of a
15 requirement.

16 CHAIRWOMAN RILEY: It does. It's
17 unfortunate that it didn't happen so we didn't have this
18 to deal with today. We could have moved on from that,
19 but it was not a specified requirement.

20 AUDIENCE MEMBER: Excuse me. We cannot
21 hear, and I am not hearing impaired. Would you please
22 speak up?

23 COMMISSIONER MARTIN: I agree. It was a
24 preference on our part.

25 AUDIENCE MEMBER: Please speak up. Please.

1 COMMISSIONER MARTIN: It was a preference
2 on our part that land managers be notified, and I'll
3 take that as a direct order to be argued that it was.

4 COMMISSIONER BALCH: I'm the one that said
5 yes, and I don't feel like it was. If was a preference,
6 realizing that it did not -- was not required under the
7 regs.

8 CHAIRWOMAN RILEY: It's not a requirement
9 in our rules, and short of us having to put that in a
10 formal order, I'm uncomfortable making that be a lack of
11 notice for today's proceeding.

12 COMMISSIONER MARTIN: Having said that, I'd
13 like to hear some discussion about what type of hearing
14 this is. I personally don't believe it's a rulemaking,
15 but I would like to hear arguments to the contrary.

16 COMMISSIONER BALCH: It was brought to us
17 as an adjudicatory process.

18 MS. GUARINO: Madam Chair, I'm prepared to
19 make that argument on behalf of San Juan Citizens
20 Alliance, if everyone wants to hear it.

21 CHAIRWOMAN RILEY: You are Ms. --

22 MS. GUARINO: Guarino.

23 CHAIRWOMAN RILEY: Thank you.

24 MS. GUARINO: So thank you for giving me
25 the opportunity to argue on behalf of San Juan Citizens

1 Alliance even though I'm not yet barred in New Mexico,
2 although I'm barred basically everywhere else.

3 So the substance of the motion that San
4 Juan Citizens Alliance submitted on this issue is
5 essentially requesting that Hilcorp's motion -- or
6 application be denied and a subsequent similar matter be
7 held as a rulemaking rather than an adjudication.

8 First, this is -- this is echoed in the
9 New Mexico Attorney General's November 2nd letter to the
10 Commission, which raised similar concerns. In that
11 letter, the assistant attorney general who authored it
12 wrote, "Given that this proposal seeks to potentially
13 double the density of wells in proportion to the San
14 Juan Basin, we believe that the Hilcorp proposal merits
15 the meaningful opportunity for input by interested
16 members of the public and other parties." San Juan
17 Citizens Alliance agrees.

18 "In accordance with New Mexico law, the
19 current application should be a rulemaking, not an
20 adjudication. Under New Mexico and federal case law,
21 rulemakings apply prospectively to a class of
22 individuals, whereas adjudications apply to rules
23 already in existence retrospectively to a single
24 individual or a small group. Rules that apply to an
25 entire pool can be analogized to zoning ordinances,

1 which are rulemakings under New Mexico law. Zoning
2 commissions normally have adjudicative authority to
3 enforce those ordinances or create exceptions to those
4 ordinances.

5 "In the case of special pools, this
6 distinction can clearly be seen when you consider the
7 difference between orders that apply or allow for
8 exceptions to special pool rules (which would properly
9 be adjudicatory proceedings) and the creation of special
10 pool rules, which apply the entire pool (in this case
11 for an area that covers 1.3 MILLION ACRES) and should be
12 rulemaking proceedings.

13 "Hilcorp's argument that this proceeding
14 concerns private, individual rights is not a sound
15 reason to treat this as an adjudication.

16 "The disposition of this application will
17 affect property rights and values far beyond Hilcorp and
18 other oil and gas company operators." As the State Land
19 Office demonstrates and as this group of the public
20 demonstrates as well, the interest is broad-reaching.

21 "All rulemaking decisions have effects on
22 private or individual rights. The distinction lies in
23 whether the decision applies prospectively to a class of
24 individuals or entities, and has broad public effects,"
25 which makes it a rulemaking. This can be found in case

1 law, including KOB-TV v City of Albuquerque where the
2 Court -- New Mexico Court of Appeals said, "We recognize
3 that a legislative decision may appear adjudicatory when
4 parties focus on the effect of the particular decision
5 on individual rights.

6 "However, policy decisions generally 'begin
7 with the consideration of balancing individual
8 rights.'... If the zoning decision has a general
9 application and reflects public policy in relation to a
10 general nature, such as zoning of a community or area,
11 without consideration to any particular piece of
12 property, the action is a rulemaking [sic]."

13 Finally, "OCC has the discretion, under
14 New Mexico law and its own regulations, to treat this as
15 a rulemaking.

16 "Hilcorp dismisses San Juan Citizens
17 Alliance's argument that OCC has authority to choose to
18 conduct a hearing on a special pool order as a
19 rulemaking rather than an adjudication, pointing to the
20 New Mexico Supreme Court's holding in Uhden, where the
21 court used an Oklahoma court decision to decide, with
22 little analysis, that the special pool rule hearing was
23 adjudicative in nature. This decision did not consider
24 any of the normal factors weighing whether the
25 proceeding should have been a rulemaking instead.

1 "However, NMAC 19.15.3.8(D) provides that
2 the OCC 'may' adopt special rule [sic] orders through
3 adjudicatory proceedings. By using the word 'may,' the
4 rules give OCC the authority to elect to follow
5 rulemaking procedures instead of adjudicatory procedures
6 when changing special pool rules. The plain language of
7 the regulation provides OCC with discretion that cannot
8 be negated by a court decision.

9 "The New Mexico Supreme Court ... made it
10 clear that there is no 'bright line' between rulemakings
11 and adjudications, holding that OCC properly held a
12 public hearing but should have also provided individual
13 notice to affected mineral rights holders," essentially
14 giving OCC the authority to strike a balance where
15 everyone's rights are protected by holding a rulemaking
16 hearing that also has some adjudicatory elements.

17 "As the New Mexico Supreme Court said in
18 *Rayellen v New Mexico Cultural Properties Review*
19 *Commission*, 'Procedural due process is ultimately about
20 fairness, ensuring that the public is notified about a
21 proposed government action and afforded the opportunity
22 to make its voice heard before that action takes
23 effect.'

24 "As a matter of public policy, the broad
25 public interest (including over 300 public comments)" --

1 and those who have arrived here today to make public
2 comment -- "the direct effects this decision will have
3 on individual rights, and public health, and the
4 environment" -- which are part of the OCC authority in
5 addition to preventing waste and correlative rights --
6 "make it plain that OCC should deny Hilcorp's
7 application, and only reconsider this issue as a
8 rulemaking" with public notice.

9 Thank you.

10 MR. RANKIN: Madam Chair, Commissioners,
11 this is Adam Rankin on behalf of the Applicant in this
12 case, Hilcorp Energy Company. I'll be making a response
13 on behalf of Hilcorp to the --

14 AUDIENCE MEMBER: We can't hear in the
15 back.

16 MR. RANKIN: I'm sorry. I'm facing the
17 other direction. I'll try my best.

18 I'll be making a response in opposition to
19 the motion to deny.

20 Your Honor, in their papers, the Alliance
21 makes essentially two arguments, neither of which is
22 supported by fact or law. The first, as, Madam Chair,
23 you alluded to in your opening remarks, relate to
24 whether or not the Commission is permitted to accept
25 public comments in an adjudicatory -- adjudicatory

1 proceeding. The Alliance makes the argument that the
2 Commission is improperly illegally blending its
3 adjudicatory rulemaking rules, and this is not the facts
4 under the -- under the regulations.

5 In their papers, they say, "Public comment
6 is contemplated under the OCC rulemaking procedures" --
7 and they cite to the specific rulemaking law --
8 rulemaking rule -- "but not under its adjudication
9 procedures." Madam Chair, that's just frankly not true.
10 The Alliance's premise is factually incorrect, leaving
11 its conclusion that this application must be subject to
12 a rulemaking procedure without a leg to stand on. The
13 Alliance is wrong when it says the adjudicatory
14 procedures do not permit the Commission to hear public
15 comment.

16 Under 19.15.4.14C NMAC -- this is the
17 adjudicatory rule -- quote, "The Commission shall have
18 the discretion to allow other persons present at the
19 hearing to make a relevant statement but not to present
20 evidence or cross-examine witnesses," end quote. So the
21 Alliance argues that the Commission's adjudicatory rules
22 do not contemplate public statements, but they do, and
23 it is clear as day under the heading of the rules,
24 "Conduct of Adjudicatory Hearings."

25 Now, in fact, Madam Chair, there is a

1 long-standing history of permitting the public to
2 comment on adjudications, and the Commission and the
3 Division have done so in numerous cases from unitization
4 of compulsory pooling applications involving mineral
5 interests in allotted Indians lands, surface waste
6 management applications involving disposal of oil and
7 gas waste and, in the case that you have before you,
8 special rules regarding pools.

9 The most recent example I could find was
10 affecting the Fruitland Coal Gas Pool. In 2002 and
11 2003, operators sought to increase the existing well
12 density for that pool in order to avoid leaving
13 unrecovered gas in place. The Oil and Gas
14 Accountability Project, the San Juan Citizens Alliance
15 and other numerous surface owners, as well as the Navajo
16 Nation, all showed up at the Division hearing or at the
17 Commission hearing to make public statements in
18 opposition to that application. They were not made
19 parties to those proceedings and those parties were not
20 a rulemaking, but they were permitted to make statements
21 on the record and they did.

22 The argument that the Commission has
23 improperly conflated its adjudicatory and rulemaking
24 rules is simply not correct.

25 The second argument that they made in their

1 papers and that were addressed to the Commission this
2 morning is that the Commission can and must decide
3 whether Hilcorp's application should be subject to an
4 adjudicatory or rulemaking proceeding. In support, the
5 Alliance suggests that under the Commission's rules, the
6 Commission somehow has the option to decide whether it
7 may use the adjudicatory or the rulemaking proceeding,
8 you know, that they have some sort of choice because,
9 under the Commission's rules, there is the word "may,"
10 that they "may" employ an adjudicatory proceeding when
11 considering pool rules.

12 Now, they say that given the alleged, you
13 know, future potential impacts and policy considerations
14 and the public interest, this proceeding should be a
15 rulemaking, but that's as if Hilcorp's application could
16 be considered a mere policy decision instead of as a
17 determination of Hilcorp's private right as an operator
18 in the pool to access reserves in the pool that will
19 likely go unrecovered without an increase in well
20 density.

21 Stated differently, this application calls
22 for a determination based on facts regarding Hilcorp's
23 correlative rights to access remaining gas in the pool.
24 That's not a policy question. It's an issue subject to
25 the Commission's -- it's not a policy question. It's

1 not an issue subject to the Commission's legislative
2 discretion of balancing of the pros and cons of
3 potential future impacts, land-use preferences or
4 air-emission concerns, and it's not subject to the input
5 and concerns of surface owners or people who have no
6 interest in the particular reservoir.

7 This application calls for a decision under
8 a specific set of facts within a specific gas reservoir
9 affecting a specific set of operators applied against
10 the Commission's statutory mandate to prevent waste of
11 gas resources and to protect those owners' correlative
12 rights.

13 The New Mexico Supreme Court, in 1991, has
14 already squarely addressed this issue, whether such
15 proceedings are adjudications or rulemakings. In the
16 case involving a Commission order addressing special
17 rules for the Cedar Hill Fruitland Basal Coal Gas Pool
18 in the San Juan Basin, the Supreme Court held that where
19 the issues involve engineering and geological properties
20 of a particular reservoir that pertain to a limited area
21 and the persons affected are limited in number and
22 identifiable, then the matter is an adjudication. That
23 is exactly our situation here. We have a special pool
24 that involves a particular reservoir with limited and
25 identifiable operators.

1 And just like in Uhden, the decision
2 translates to whether Hilcorp has shown through its
3 geologic and engineering data that their request is
4 necessary to prevent waste and to protect their
5 correlative rights and the correlative rights of other
6 operators in the pool. That's a decision on the merits
7 which calls for factual findings set against a specific
8 legal standard, whether waste will result and whether
9 correlative rights are protected. That by definition is
10 an adjudication. It's not a policy decision. Because
11 if Hilcorp meets its burden of proof, then the
12 Commission has a statutory mandate to increase well
13 density because doing so will be necessary to prevent
14 waste and protect correlative rights.

15 Now, San Juan Citizens Alliance makes a
16 hazy argument without any analysis in its papers that
17 amending well density under pool rules is akin to
18 adopting a zoning ordinance. But the Court of Appeals
19 in the case that the Alliance cites itself relies --
20 makes clear that the adoption of a zoning ordinance is,
21 quote, "A policy decision based upon general criteria
22 and not the details of any particular landowner." And
23 that's at paragraph 12 in the Miles case they cite.
24 That zoning ordinance issue is not based on factual
25 findings set against a definite legal standard. It is

1 also not targeted against a specific set of landowners.

2 Conversely, as we have here, changing well
3 density under the special pool rules is based on the
4 specific details of a particular reservoir and specific
5 operators in that pool. It's adjudicatory because it
6 affects the proprietary interests of those specific and
7 identifiable owners and operators. And, most
8 importantly, it's based on factual findings set against
9 a specific definite legal standard, and it's holding
10 that a pool rule case is adjudicatory and not a
11 rulemaking.

12 The Supreme Court -- the New Mexico Supreme
13 Court in the Uhden case relies on the case that was
14 referenced by the Alliance here from Oklahoma, Harry R.
15 Carlile v Cotton Petroleum. Now, the holding in that
16 Oklahoma case, which Uhden relies in its holding, makes
17 clear that when proceedings call for factual findings
18 and the order affects proprietary interests of specific
19 owners, then the proceeding calls for an adjudication.
20 It's not a rulemaking. That basic definition is exactly
21 the type of proceeding that we have here, and it's
22 exactly what is contemplated under the -- by the
23 legislature in the State Rules Act. And I'll quote.
24 Under the Rules Act, quote, "An order or decision or
25 other document issued or promulgated in connection with

1 the disposition of any case or agency decision upon a
2 particular matter as applied to a specific set of facts
3 shall not be deemed such a rule, nor shall it constitute
4 specific adoption thereof by the agency." That's under
5 Section 14-4-2, Subparagraph F.

6 And as cited in our papers that we filed on
7 Friday, the Open Meetings Act defines administrative
8 adjudicatory proceedings as, "A proceeding brought by or
9 against a person before a public body in which
10 individual legal rights, duties or privileges," end
11 quote, are determined after hearing. And that's from
12 Section 10-15-1, Subparagraph 8, Subparagraph 3.

13 In summary, Madam Chair and Commissioners,
14 this proceeding is inescapably an adjudication because
15 it requires factual findings set against a specific
16 legal standard and relates to a particular reservoir
17 affecting identifiable operators and their specific
18 legal rights. It's not a rulemaking. The decision is
19 not subject to the Commission's discretion to enact
20 policy based on general criteria or notions of good or
21 bad. As much as the Alliance and supporters want to
22 make this proceeding about policy, policy considerations
23 are simply beyond the scope of today's proceeding.

24 Madam Chair, I ask that the motion be
25 denied.

1 MS. GUARINO: Madam Chair, I have a few
2 points of rebuttal, if I can.

3 First I want to emphasize again that the
4 issue here is fairness, and the opportunity to allow
5 public comment but not to allow full participation in
6 the hearing or require that the OCC actual consider that
7 comment is not in the interest of fairness. That
8 compromise does not protect public rights to
9 participation.

10 The second, surface rights can't properly
11 be separated from subsurface rights here. As my
12 co-counsel will hopefully have the opportunity to
13 discuss in more detail, not only does the Commission
14 have environmental and public health responsibilities,
15 but those considerations being weighed at this point
16 will not be duplicated at the APD stage. We're talking
17 about this entire pool, 1.3 million acres, and the
18 change to surface rights across those 1.3 million acres
19 as opposed to well-by-well considerations of what the
20 public health and environmental impacts will be, which
21 are not equivalent. And -- and the BLM's current R&P
22 doesn't -- doesn't consider this kind of well density,
23 so there hasn't been any basinwide analysis of the
24 effects of this proposal.

25 And finally, this is not, as opposing

1 counsel argues, simply a rule that's targeted at a
2 specific set of operators, even though those operators
3 can now be defined, because like landowners who own
4 property that are affected by zoning ordinances which
5 apply to an area of land and do have to consider what's
6 happening in that area in order to make those zoning
7 ordinances appropriate, in a similar way, this rule
8 would apply to all future operators across the entire
9 1.3 million acres of this pool, and a zoning
10 ordinance -- as zoning ordinances do, this affects all
11 future operators in that pool.

12 So thank you.

13 MR. RANKIN: Just a point of clarification
14 just to emphasize, under New Mexico law, whether it's
15 New Mexico law or federal law, zoning ordinances are
16 based on a policy and termination. General criteria
17 need not affect specific landowners. There are a
18 plenitude of cases out there, and, unfortunately,
19 because we just were served with this brief on Thursday,
20 I didn't have a chance to do the full research. But
21 there are lots cases out there where zoning is targeting
22 specific blocks, specific landowners. It's no longer,
23 my recollection, considered a -- simply a rulemaking or
24 a zoning issue because they're targeting specific
25 individuals and specific property rights. And so there

1 is a spectrum, even in the zoning context, where if
2 you're looking -- if you're starting to affect specific
3 owners, it's no longer considered a legislative action
4 as a rulemaking.

5 So we are in a totally different situation
6 than a zoning circumstance here. We have Supreme Court
7 law from New Mexico addressing this issue directly.
8 This is an adjudication, not a rulemaking.

9 MS. GUARINO: I agree that under the law
10 those zoning ordinances that apply to only one or two
11 landowners do count as adjudications. Often that's
12 because there's been a mistake in the zoning ordinance,
13 and there is a down-zoning of someone's property which
14 affects that particular person's rights, but that's very
15 different than a rule that applies across a neighborhood
16 or throughout several blocks as opposed to an individual
17 landowner or five landowners or some very small group,
18 which, at least in my estimation, is very different than
19 applying a rule that applies across an entire rule.

20 CHAIRWOMAN RILEY: Mr. Brancard?

21 MR. BRANCARD: We can discuss this right
22 now and go into closed session. I'm ready to discuss
23 this with the Commission.

24 COMMISSIONER BALCH: I would actually
25 suggest that we also hear arguments on the notice of

1 intervention and standing before we go into closed
2 session, because simply filing everybody in and out of
3 the room is going to be a long-term prospect.

4 MR. BRANCARD: Yes. We've been there
5 before.

6 COMMISSIONER BALCH: Is that all right?

7 CHAIRWOMAN RILEY: That's fine. Yeah.

8 MR. BRANCARD: Okay. So I think the issue
9 now is -- is actually Hilcorp's motion to strike the
10 intervention. There was a notice of intervention. They
11 didn't have to -- they simply notified us that they were
12 intervening. But now we have a motion to strike the
13 intervention, so it's Hilcorp's motion to strike that we
14 would go forward on.

15 MR. SCHLENKER-GOODRICH: Madam Chair, I'd
16 like to just renew my motion for reconsideration of the
17 continuance on the basis that if intervention is
18 granted, we would have no ability to cross-examine
19 witnesses, and that suggests there is a sort of
20 bureaucratic momentum that is not in our favor. We are
21 essentially operating at a disadvantage, where my sense
22 is this Commission wants to move fairly expeditiously
23 through this decision-making process. I'm sympathetic
24 to that, but if we have no ability to cross-examine
25 witnesses, then what is the point? And so in this

1 instance, that suggests that there is an additional
2 weight pushing against our ability to successfully argue
3 for intervention on a fair basis. And so I think that
4 suggests a need for a continuance, as echoed by, I
5 believe, virtually every politician I can count in
6 New Mexico. So before the motion to intervene or the
7 notice of intervention is argued, I think we need to
8 continue this proceeding.

9 MR. FELDEWERT: Let me --

10 CHAIRWOMAN RILEY: Okay. Let me ask a
11 question really quick.

12 My understanding is what we're going to
13 talk about is whether or not the motion to strike the
14 intervention -- we're talking about just the
15 intervention itself and whether there is standing; is
16 that correct?

17 MR. BRANCARD: Whether they're a proper
18 intervenor. I mean, if you want to consider all the
19 motions at once, we could also have an argument on the
20 motion for continuance, too, if Hilcorp's prepared to
21 respond to that.

22 COMMISSIONER BALCH: I would think that
23 that would follow whether or not they're granted
24 intervention or the motion to intervene is accepted or
25 stricken.

1 MR. SCHLENKER-GOODRICH: Respectfully,
2 Commissioner, because of the fact that Hilcorp's
3 witnesses are not available for cross-examination, we
4 would at least contend that that is a threshold matter
5 that needs to be addressed because it suggests
6 bureaucratic momentum that the Commission would want to
7 deny our intervention on that basis.

8 MR. FELDEWERT: Wrong. Okay? You don't
9 get to file a motion until you're a party in the case.
10 Okay? The San Juan Citizens Alliance was adjudicated at
11 the last hearing not to be a party in the case, so they
12 have no grounds, no standing in which to file a motion
13 to continue or a motion for --

14 What's the other motion?

15 MR. RANKIN: Denial.

16 MR. FELDEWERT: -- denial. They have no
17 standing. So until they demonstrate they have a basis
18 for standing, they cannot file a motion, and there is
19 nothing that's properly before you. So we have to --

20 MR. SCHLENKER-GOODRICH: With due
21 respect --

22 MR. FELDEWERT: Excuse me.

23 So we have to deal with the standing issue
24 before you can deal with anything else.

25 MR. SCHLENKER-GOODRICH: With due respect,

1 wrong. First, standing is one component in terms of our
2 ability to engage in this case. There is also, as my
3 co-counsel Jon Anderson will argue, an exception for
4 public health and welfare. Moreover, if our [sic]
5 witnesses are not provided for cross-examination, then
6 presumably intervention is futile. So the fact that the
7 witnesses are not provided to us today if we are granted
8 intervention suggests that we should continue so that we
9 have a level playing field to address that motion to
10 intervene.

11 The last thing I would say is that the
12 Commission expressly invited the Alliance to submit a
13 new notice of intervention so is well aware of our
14 opportunity to make our case before this court and then
15 presumably to have the right to cross-examine witnesses.

16 MR. FELDEWERT: The reason that the San
17 Juan Citizens Alliance did not have a chance, as they
18 say, to cross-examine witnesses is because at the last
19 hearing it was determined, despite their best efforts,
20 that they did not have standing. So the fault that they
21 seem to raise here today is their own making, in that
22 they failed to provide a basis at the last hearing when
23 the witnesses were here to give them a basis for
24 standing. That has not changed, and we can argue that.
25 But to sit here and suggest that they are somehow

1 prejudiced by the fact that they didn't cross-examine
2 witnesses is a direct result of their failure at the
3 last hearing to demonstrate standing.

4 MR. SCHLENKER-GOODRICH: I would actually
5 say that the failure here is counsel for Hilcorp by
6 not --

7 MR. BRANCARD: Mr. Goodrich, if I could
8 just --

9 MR. SCHLENKER-GOODRICH: My apologies.

10 MR. BRANCARD: The question is: Does the
11 Commission want to handle all the motions at once?

12 I would just respond for a second here.

13 COMMISSIONER BALCH: I think as many as
14 practicable.

15 MR. BRANCARD: Okay.

16 Yes. It's correct that the Commission
17 expressly offered the opportunity to San Juan Citizens
18 Alliance to raise the question of intervention. And the
19 question here is party status. It's not standing. It's
20 party status, okay, under the Commission's rules. And
21 so any other party that intervene in this process, say,
22 LOGOS over there, they simply file a notice that they
23 are a part of the process and immediately have the
24 ability to file motions. That's what San Juan Citizens
25 Alliance did.

1 Mr. Feldewert is correct that if you
2 determine that they are not properly a party, then you
3 don't have to consider those motions, but what I hear is
4 the Commission's willingness to consider all of the
5 motions, at least have them argued in front of them at
6 first here, and then go into executive session to
7 discuss the Commission's positions on those motions.

8 COMMISSIONER MARTIN: That would be my
9 preference.

10 COMMISSIONER BALCH: That's exactly my
11 feeling.

12 MR. BRANCARD: Okay. So, therefore, we
13 have two other issues here. We have the motion to
14 strike intervention, and we have a motion for
15 continuance.

16 CHAIRWOMAN RILEY: And so the actual
17 intervention would be later, if it were granted?

18 MR. BRANCARD: No. They have intervened,
19 but there is a motion to strike their intervention, so
20 the Commission has to consider that.

21 CHAIRWOMAN RILEY: Okay.

22 MR. BRANCARD: That's one of the motions to
23 consider, is to strike the intervention.

24 So I see the Commission desires to get the
25 arguments on the table about all those motions, so we

1 have two left, the continuance and the motion to strike
2 intervention. Which would you like to hear first?

3 COMMISSIONER MARTIN: Motion to strike.

4 CHAIRWOMAN RILEY: Motion to strike.

5 MR. SCHLENKER-GOODRICH: Before we proceed,
6 may I -- I feel like I'm a second-class citizen standing
7 up here. Would there be the ability, especially given
8 the notice of intervention -- Jon Anderson and I will be
9 arguing -- if we can approach and sit at the table?

10 CHAIRWOMAN RILEY: Sure.

11 MR. SCHLENKER-GOODRICH: Thank you.

12 And I don't know if we can get another
13 chair over there for Jon and myself.

14 MR. BRANCARD: You can carry yours.

15 MR. ANDERSON: Thank you, Commissioners.

16 MR. FELDEWERT: May I approach?

17 AUDIENCE MEMBER: May I ask a quick
18 question while that's happening? Was Hilcorp asked to
19 send out notifications to all landowners in that area or
20 just governmental entities?

21 CHAIRWOMAN RILEY: Can we save that for
22 public comment?

23 AUDIENCE MEMBER: Of course.

24 MR. FELDEWERT: May I approach?

25 MR. BRANCARD: Yes.

1 This is on the motion to strike?

2 MR. FELDEWERT: Yes.

3 Madam Chair, members of the Commission, I'm
4 not going to go through this in any great detail. This
5 is the handout we provided at the last Hearing when you
6 determined that San Juan Citizens Alliance did not have
7 standing -- or determined they could not be a party.

8 As Mr. Brancard points out, the question is
9 whether they have party status. And under your rules
10 and regulations, a party to an adjudicatory proceeding
11 shall include the applicant, which would be Hilcorp; a
12 person to whom the statute, rule or order requires
13 notice, which would be the operators in the San Juan
14 Basin, because that's what this is all about; and a
15 person who properly intervenes in the case. That's how
16 you get party status. They do not fall under one or
17 two, so they tried to fall under three.

18 And so they filed their notice of
19 intervention, and they offer the same arguments for
20 intervention that they offered to you last time in
21 September. And the Commission at that time determined
22 that the fears and concerns that they raise about oil
23 and gas development did not support legal standing or
24 permissive intervention precisely because they do not
25 relate -- and I quote from your decision in September --

1 "their fears and concerns do not relate" -- and I
2 quote -- "in the particular issues in this matter which
3 relate to reservoir and the management of the pool."
4 That decision in September remains correct, and there is
5 nothing new offered to change that decision.

6 Instead there has been much confusion,
7 misunderstanding, I would dare say, misrepresentation
8 about what is being considered under this application.
9 The only issues being considered under this application
10 is the highly technical question of: How many wellbores
11 are eventually going to be needed over time to
12 efficiently and effectively drain this gas pool to avoid
13 underground waste? Let me say it again: How many
14 wellbores are eventually going to be needed over time --
15 we're talking 10, 15, 20 years -- to efficiently and
16 effectively drain this gas pool to avoid underground
17 waste? That's it. We're not addressing any drilling
18 plan, any surface location, any specific surface
19 equipment. That's not before you. We're only
20 addressing a matter that falls within your particular
21 expertise and under your primary statutory duty. How
22 many wellbores do we need to efficiently and effectively
23 drain this pool over time?

24 This raises questions about geology,
25 reservoir engineering. How much gas was originally in

1 this reservoir, original gas in place? How much gas has
2 been recovered after 70 years of production? How much
3 gas will be recovered from this type of reservoir if we
4 maintain the current density? And how much gas is going
5 to be recovered from this reservoir, and how many wells
6 are needed to efficiently and effectively drain that
7 reservoir?

8 This is nothing new. Hilcorp's application
9 is not unique, and it's not unusual, and it's not
10 untimely. This is the fourth time that this Commission
11 has been asked to address well density. It started in
12 1949 when you determined, your predecessors determined,
13 that one well per spacing unit is a good start.

14 It continued in 1974. We looked at 25
15 years of production data, concluded that one well was
16 not working per spacing unit. And dare I say -- I'll
17 use that bad word -- you doubled the well density. You
18 decided that two wells per spacing unit was going to be
19 needed.

20 You again reviewed it in 1998. At that
21 time the Commission looked at 50 years of production
22 data and determined that operators needed to plan on
23 more wells per spacing unit. And, again -- I'll say it
24 again -- in 1998, you doubled the well density from two
25 wells to four wells per spacing unit precisely to avoid

1 underground waste.

2 We're now here 20 years later. Operators
3 have looked at the data for the last 70 years. They've
4 looked at the geology, the formation, the porosity, the
5 permeability, the water saturation, the hydrocarbon
6 height. They've looked at the reservoir
7 characteristics, drainage area calculations, other
8 complex stuff to determine that the well density is
9 adequately draining this reservoir. And Hilcorp now,
10 with the support of the other operators in the area,
11 brought this application and have shown you that after
12 70 years -- this is important. After 70 years of
13 production, many of which was overseen by the people we
14 see on this wall (indicating), okay, we've only produced
15 28 percent of the original gas in place; 28 percent.
16 And under the current density, if you don't change it,
17 you're only going to produce 39 percent of the original
18 gas in place. That means the remaining 61 percent is
19 going to be wasted, underground waste.

20 This application is simply asking you to
21 avoid the underground waste, to continue with your
22 oversight, to again increase the density so that we
23 don't leave over 60 percent of the gas in the ground.

24 Now, what's not at issue? How operators
25 are eventually going to implement this necessary density

1 at the surface over the next 20, 25 years is not an
2 issue before you. Implementation and operation is not
3 before you. Those implementation and operational issues
4 are going to be addressed on a different day when there
5 is planning involved and operators come over the next 20
6 to 25 years with specific development plans based on
7 economics and present to the regulatory agency, the BLM,
8 the State Land Office, the Oil Conservation Division,
9 whoever else they're required to go before, to get
10 approval for specific development plans at specific
11 locations with specific equipment, which gets us to the
12 notice to intervene.

13 They're acting as if you're considering all
14 that now, but that's wrong. That's wrong. How
15 operators in the future will implement the density that
16 you determine is necessary to prevent underground waste
17 is a matter for another day and another forum when we
18 have specific development plans presented over the next
19 20 to 25 years, when they will go before the BLM, the
20 State Land Office and OCD for applications to drill,
21 applications to recomplete. They're going to have to
22 follow SOPA, the Surface Owners Protection Act. It
23 applies to fee and state lands. It's a statute enacted
24 by the legislature specifically to address the concerns
25 they're talking about today. Hence, that's why it's

1 called the Surface Owners Protection Act. They're going
2 to have to follow in the future, one year, five years,
3 ten years, 20 years from now, when they're implementing
4 the density you determine to be appropriate -- they're
5 going to have to follow the regulations dealing with the
6 disposition of oil-field waste. They're going to have
7 to follow the regulations dealing with what surface
8 equipment they have to have to avoid spills, to
9 eliminate or refrain or lower air emissions, whatever
10 regulations are determined to be appropriate. But none
11 of those requirements are before you here today.

12 They've again ignored in their motion to
13 intervene the focus of this case, and they've created
14 the misperception that surface management issues are
15 being addressed here today. And the fears and concerns
16 they cite here again today all relate to surface
17 concerns and do not provide a legal basis for
18 intervention.

19 Now, I thought about the fact that -- they
20 filed an 18-page brief on intervention. We filed a
21 ten-page brief response. And I don't know if you had
22 time to read all of that. You can if you want to. But
23 if I may approach, I have a nice one-page synopsis on
24 the law of standing, if you're interested, that I'd like
25 to go through.

1 CHAIRWOMAN RILEY: Yes.

2 MR. FELDEWERT: Our New Mexico courts over
3 the years have addressed standing, and the ACLU case
4 which was recently decided by our New Mexico Supreme
5 Court did a pretty good job of synthesizing what you
6 have to show if you want to show standing, in this case
7 for purposes of intervention. You've got to show an
8 injury in fact, not something hypothetical, not
9 speculative, but an injury in fact. You've got to show
10 that the injury in fact was caused by the relief
11 requested by the Commission in this matter, causation,
12 and you've got to show that denial of that relief by
13 this Commission will remedy their purported injury in
14 fact, that wonderful word, redressability.

15 Then our courts have said to show an injury
16 in fact, you have to demonstrate that you're being
17 injured in a direct and concrete way by your action.
18 And it cannot be speculative. It cannot be a
19 hypothetical possibility of injury because that will not
20 suffice to establish a threat of direct injury required
21 for standing. That's what the ACLU case said. And I
22 like this from the Alabama federal court because it
23 applies directly here. "When a threatened future injury
24 is dependent upon conjecture about how individuals will
25 intentionally act in the future, that injury will be

1 cast into the realm of conjecture and speculation."

2 What have they brought before you to show
3 an injury in fact, a direct injury from your action?
4 They've brought affidavits from surface owners who raise
5 all these fears and concerns about oil and gas
6 development in general. Okay? Their fears and concerns
7 that they raise would apply to any development anywhere,
8 anytime. It's not specific to any particular project
9 because none are proposed. And they complain that
10 future -- potential harms from future recompletion are
11 drilling actions because they assume that future
12 operators will act contrary to the rules and
13 regulations -- extensive rules and regulations governing
14 the drilling, operation and production of oil and gas
15 wells. It's exactly the type of pure conjecture about
16 how individuals will intentionally act in the future
17 that is not sufficient to show an injury in fact because
18 it's dependent upon conjecture about how operators in
19 this case -- and I'm following the Alabama court
20 language -- will intentionally act, which is nothing
21 more than hypotheticals and conjecture, speculation. So
22 they haven't shown an injury in fact.

23 We get to causation. That's at the bottom
24 part of my handout. Causation and redressability does
25 not exist when their alleged injury is not within the

1 zone of interest sought to be protected or regulated.
2 "Causation and redressability does not exist when it's
3 dependent upon" -- and I'm quoting now from the Lude
4 [phonetic] case; that's the second one from the
5 bottom -- where "it's dependent upon the response of the
6 regulated third party to the government action or
7 inaction and perhaps the response of others as well."
8 That's exactly what they've brought before you.

9 First off, their members are not within the
10 zone of interest here. What are you doing with your
11 application here? You are addressing how -- or how many
12 wells are necessary to efficiently and effectively drain
13 this reservoir. And what are you protecting there?
14 You're protecting the State's interest in avoiding a
15 bunch of -- the avoidance of underground waste, your
16 primary duty. You're protecting the State's interest.
17 And then you're protecting the correlative rights of
18 operators in this pool, your secondary duty. Quite
19 frankly, surface owners are not within the zone of
20 interest that are at issue here under this regulatory
21 matter. Your decision here is not going to cause the
22 fears and concerns that they have raised because it's
23 dependent upon the response of the regulated third
24 party, the response of operators to your governmental
25 action or inaction. It rests on assumption about how

1 operators are going to implement this over the next 10,
2 15, 20 years.

3 Redressability. Their fears and concerns
4 aren't going to be cured by your action here today. The
5 development of this gas reservoir is going to continue
6 at some density independent of your outcome, and their
7 fears and concerns that they raise arise anytime an APD
8 is filed or an application to recomplete is filed or a
9 development plan is proposed. So this has nothing to do
10 with their fears and concerns. There is no cause --
11 there's no injury in fact. There's no causal
12 relationship between their surface fears and what's
13 before you, and there is no redressability, because
14 what's before you is the highly technical downhole
15 reservoir management issues. So we don't have the legal
16 requirements for standing here. They can't show it.
17 It's too hypothetical, too speculative. There is no
18 causation. That's the legal side.

19 Now, so it shouldn't be surprising that
20 surface owner groups like the San Juan Citizens Alliance
21 do not -- do not participate in these underground
22 reservoir management issues as parties to the case.
23 They never have. They haven't done it during the entire
24 time that this has been regulated by the people you see
25 up there on the wall. And their general hypothetical

1 fears and concerns about surface impacts from oil and
2 gas development and disposition of oil-field waste,
3 those are addressed at other hearings by existing and
4 future regulations when specific development proposals
5 are put forth to implement the density you determine to
6 eventually be necessary.

7 So we don't in this hearing -- this hearing
8 has no place and it's not the time to present grazing
9 lessees or ranchers or surface owners to discuss fears
10 and concerns over methane emissions, loss of grazing
11 forage, erosion at well pads, noxious gases, handling of
12 oil-field waste. There are other forums that exist.
13 There are other forums available at another time to
14 express their viewpoints on these surface issues but not
15 this one, because this is about underground reservoir
16 management issues.

17 What has the last 70 years of production
18 shown about the current well density? What well density
19 is necessary to efficiently and effectively drain this
20 pool and thereby avoid the waste of gas, which is your
21 primary statutory duty, the number one interest of this
22 state, and surface issues will be addressed when
23 operators begin to implement the density you determine
24 to be necessary over the next year, over the next five
25 years, over the next ten years. This is not something

1 that's going to happen overnight. This is going to take
2 time.

3 And so nothing's changed since the last
4 hearing except maybe politics. Okay? But politics do
5 not control standing. They don't control intervention
6 here. The law controls that. And what is at issue
7 controls that. And their surface concerns have no issue
8 here. It's not a matter before you here. It's a matter
9 for another time.

10 So just like you found at the next hearing,
11 we ask that you strike their second notice of
12 intervention. They filed one, and this is their second
13 one.

14 MR. ANDERSON: Good morning, Commissioners.

15 If I could approach the bench, I have a
16 copy of our argument for you-all, if that's all right.

17 CHAIRWOMAN RILEY: Okay.

18 MR. ANDERSON: Counselor.

19 MR. FELDEWERT: Is that your brief?

20 MR. ANDERSON: Yes, sir, our response, in
21 addition to the exhibits.

22 This is a copy of our brief, our response,
23 as well as our associated exhibits that we filed that I
24 will be referencing this morning.

25 MR. BRANCARD: Madam Chair, can I just ask

1 Mr. Feldewert one question? I may have more questions
2 later.

3 CHAIRWOMAN RILEY: Sure.

4 MR. BRANCARD: What is Hilcorp's position
5 on the ability of the witnesses listed by San Juan
6 Citizens Alliance to testify in this proceeding?

7 MR. FELDEWERT: The pre-hearing statement
8 that they filed indicates they want to call Mike
9 Eisenfeld and Don Schreiber. If you look at their
10 affidavits, Mr. Eisenfeld is -- looking at Exhibit B to
11 what they just handed you.

12 MR. ANDERSON: That's on Tab 3,
13 Commissioners.

14 MR. FELDEWERT: So we go to Tab 3 -- is it
15 Tab 3 in your --

16 MR. ANDERSON: Yes, sir. It's Tab 3 in
17 their handouts.

18 MR. FELDEWERT: That would be Exhibit B,
19 Mr. Eisenfeld's first affidavit?

20 MR. ANDERSON: Yes, sir.

21 MR. FELDEWERT: The first page, he says --
22 down to the second paragraph, "I own 2.5 acres of
23 property over this gas pool located in the foothills
24 area of Farmington, New Mexico." He's adjacent to
25 BLM -- or federal land managed by the Department of the

1 Interior, Bureau of Land Management. Okay?

2 Go to the next page, "Ways in which I fear
3 my property will be further injured as a result." This
4 is fears and concerns. Go to the first clause under
5 Paragraph 1. "I fear that an increase in well density,
6 either by the creation of new wells or recompletion of
7 existing wells, will create more air quality emissions,
8 more exposure to air toxins, including VOCs and VTechs,
9 more land disturbances and sediment transfer, less
10 opportunity for multiple-use management of land and
11 increase in industrialization adjacent to my property."

12 First off, no particular expertise being
13 offered on the matters that are before you. He's not a
14 geologist. He's not an engineer. He's not here to
15 testify about how many wells are eventually going to be
16 needed in order for them to be able to drain this
17 reservoir. He's here to talk about general fears and
18 concerns that arise anytime you have any kind of oil and
19 gas development. It's not specific to this area. This
20 is just general concerns that people have when they see
21 any kind of oil and gas development.

22 Don Schreiber is the same way. If you go
23 through his affidavit, it says the same thing: I'm a
24 rancher. I don't like the fact that they're using well
25 pads to take away some grazing areas. I don't like the

1 emission that I think is going on on my ranch. I don't
2 like the air emissions. I just don't like oil and gas
3 development, period, anytime, anywhere. That's what
4 they want to talk about, which has absolutely nothing to
5 do with the issue that's before you.

6 So they have nothing to offer, no
7 particular expertise. They haven't offered any witness
8 that has any particular expertise on the limited issues
9 before you. They just want to come here and put up a
10 couple of surface owners to talk about all the bad stuff
11 they don't like about oil and gas development, which is
12 something that they can deal with later down the road
13 when we have specific plans to implement the density
14 determined necessary to efficiently and effectively
15 drain this reservoir.

16 MR. BRANCARD: So to answer my question, is
17 Hilcorp opposed to the testimony by the two witnesses?

18 MR. FELDEWERT: Yes. Yes.

19 MR. BRANCARD: You do not want them to
20 testify at all?

21 MR. FELDEWERT: I don't see -- there is no
22 basis for them to testify. They don't have standing.
23 They don't offer any kind of expertise to this body. It
24 wasn't filed until Tuesday. Okay? The deadline was
25 Monday. So even their pre-hearing statement was late.

1 Okay? So it seems to me -- it seems to me that they
2 can -- if they want to make comments, they can make
3 comments. But in terms of sworn testimony at a hearing
4 and participation by the San Juan Citizens Alliance,
5 based on what they put before you to cross-examine
6 witnesses and to be a party, they offer nothing to this
7 proceeding, nothing that's relevant to this proceeding
8 in the limited issues before you.

9 MR. SCHLENKER-GOODRICH: Mr. Brancard, if I
10 could offer not in the way of argument, simply
11 clarification of the prospect of direct testimony.

12 MR. BRANCARD: I guess this could be part
13 of your position right now.

14 MR. SCHLENKER-GOODRICH: Yeah. Simply with
15 respect to the scope of their testimony, notwithstanding
16 counsel's characterization to that, which are
17 inaccurate, we will certainly lay a foundation for their
18 expertise on these issues. At that time the Commission
19 can entertain a motion regarding their expertise. I'd
20 note that federal rules of evidence are not in play in
21 this Commission proceeding, although I acknowledge that
22 they are looked to for basic guidance. In all of my
23 years of practice before commissions in New Mexico,
24 New Mexico, respecting public opinion, has always
25 offered a fairly loose definition of expertise. I'm

1 happy to lay that foundation for that expertise if we
2 are granted intervention status, and then at that time,
3 the Commission, at its discretion, can determine whether
4 or not they can proceed with their more direct testimony
5 and issues. I will also provide an explanation for what
6 we intend to present testimony on.

7 And the final note would be that to the
8 degree this goes to overall intervention status for the
9 parties, it is a product of two elements, one, the
10 ability to put on a direct case, and, two, the ability
11 for counsel to cross-examine Hilcorp's witnesses to
12 identify legal deficiencies and technical deficiencies
13 in their testimony.

14 Thank you.

15 MR. FELDEWERT: Speaking of technical
16 deficiencies, they've got this alleged expertise that
17 they're going to qualify them for. If you look at the
18 requirements for a pre-hearing statement, as they should
19 know if you've appeared here numerous times, your
20 pre-hearing statement must identify the expertise of the
21 witness you intend to offer. They don't offer any
22 expertise in their pre-hearing statement, zero, zip,
23 nada.

24 COMMISSIONER BALCH: So we've heard from
25 Hilcorp about the motion to strike.

1 MR. BRANCARD: So we need a response
2 from --

3 MR. ANDERSON: Yes.

4 Madam Chair, Commissioners, I'd like to
5 just first begin, Madam Chair, about the comments made
6 at the beginning of this hearing today, and we -- excuse
7 me -- respectfully assent that the Oil and Gas Act does,
8 in fact, allow this Commission to consider surface
9 waste, injury to neighboring properties and others in
10 determining whether this application is necessary as
11 proposed. And -- and -- and we'll make some more
12 specific arguments further down the line here.

13 And I want to talk briefly about the zone
14 of interest. That zone of interest referred to by
15 Hilcorp is defined by rights in statute. And, again,
16 going back to the Oil and Gas Act, it is our belief that
17 that Act allows this Commission to consider these
18 impacts, mainly these surface impacts, in rendering a
19 decision on the appropriateness of Hilcorp's application
20 here today.

21 Before I go into my substantive arguments,
22 I will be presenting these arguments on intervention,
23 and then my co-counsel here will offer further
24 explanation as to why it's critical that this Commission
25 hears from the San Juan Citizens Alliance today at this

1 hearing.

2 As this Commission considers Hilcorp's
3 technical testimony about well reservoir management, it
4 has the authority, as I said before, and should hear
5 from those likely to be impacted by increased well
6 density in determining whether Hilcorp has made its case
7 that this broad and not well-tailored doubling of well
8 density is absolutely necessary across the entirety of
9 this massively large gas pool for the efficient use of
10 gas. As Mr. Brancard stated at the September hearing,
11 Hilcorp's requested double well density in the
12 Blanco-Mesaverde was, quote, "pretty dramatic."

13 The bottom line is Hilcorp's application
14 affects real people, and these real effects are things
15 this Commission is allowed to consider.

16 Take Don Schreiber, for instance. We
17 talked about him briefly before. His affidavit can be
18 found in Tab 2, labeled Exhibit A. Don's the owner of
19 the Devil Spring Ranch in Rio Arriba County, one of the
20 two counties affected by this application. He's pointed
21 to very specific harms from drilling operations on and
22 near his ranch. This includes the creation of 86 well
23 pads, over 29 miles of roads and over 33 miles of
24 pipeline in and around his ranch that have caused
25 significant harm to not only his way of life and his

1 health but his ranching operations in general, which are
2 his way of life. He's lost grazing lands. There's been
3 water loss. And in one particular instance in 2008, 933
4 cubic yards of contaminated earth had to be removed from
5 his property due to a -- due to a spill on his property.
6 This is Don's livelihood we're talking about here.
7 Ranching is how Don provides for his family, and Don has
8 a well-based fear that a doubling of density and those
9 GPUs on and around his property will directly result in
10 recompletions and/or new drilling on those GPUs in
11 question and will incrementally further harm his
12 ranching business and livelihood and health.

13 Jack Scott is another Citizens Alliance
14 member who submitted an affidavit here today. His
15 affidavit can be found on Tab 5, which is labeled
16 Exhibit D. He's also a rancher, only he resides in San
17 Juan County and has an 880-acre ranch. Again, very
18 similar harms that Don has experienced, including
19 pipelines on his property that have inhibited his
20 ability to ranch and allow his cattle to graze on that
21 property. Usable acreage, loss of vegetation, so on and
22 so forth has caused harms to his livelihood and his
23 health. He also has a well-based fear that a doubling
24 of density on those GPUs on and around his property will
25 incrementally result in recompletions or new drilling

1 that will incrementally further harm his business and
2 his health.

3 Last, I'd like to talk about Mike
4 Eisenfeld. His affidavit is Tab 3, Exhibit B. There
5 are 36 wells within a one-mile radius of his property.
6 He owns 2-and-a-half acres in San Juan County. This
7 includes one well that is a mere 750 feet from his front
8 door and has impacted him through pollution, noise, dust
9 and the destruction of open space around his property.
10 Again, this is just another example of well-based fears
11 that a doubling of density will continue to
12 incrementally further harm his livelihood.

13 And these harms -- you know, what I really
14 want to get out of this and the point I want to make is
15 these harms do, in fact, fit squarely into the Oil and
16 Gas Act-mandated considerations that this Commission is
17 empowered to consider.

18 There are also a litany of outstanding
19 questions that relate to Hilcorp's application here
20 today that have not been answered and will not be
21 answered today. We will not have answers for them
22 today. And as you can see, there's obviously tremendous
23 public concern over Hilcorp's application and their
24 intentions through this application.

25 As you know -- and excuse me. Tab 2,

1 Exhibit J -- or excuse me -- Tab 11, Exhibit J, we
2 highlighted some of the letters to this Commission from
3 government and public officials in the state of New
4 Mexico. That's not an exhaustive list, and I know that
5 Whelk [phonetic] has provided others. But a litany of
6 government officials have weighed in and are concerned
7 specifically with this application. These include
8 Senators Udall and Heinrich; Representative Lujan;
9 Representative-elect Haaland; Governor-elect
10 Lujan-Grisham; the New Mexico Office of the Attorney
11 General; Land Commissioner-elect Garcia Richard; the
12 mayor of Aztec, which is located in San Juan County; the
13 chairman of the New Mexico Energy, Environment and
14 Natural Resources Committee, Representative McQueen;
15 State Senator Majority Leader Wirth; the Navajo Nation;
16 the Rio Arriba Board of County Commissioners; and a
17 litany of others. They have all expressed concern that
18 a full review of the effects of this application have
19 not yet been conducted, and it would be premature to
20 approve this application before this analysis has been
21 done. And, again, this Commission is empowered to
22 consider these impacts.

23 Some of these many unanswered questions
24 include a request from the EPA and BLM, reports on oil
25 and gas operations in Rio Arriba and San Juan County in

1 order to better inform some of the impacts that drilling
2 operations have already caused in the region. FOIA
3 requests have been submitted. However, a request to
4 expedite those results in time for this hearing have
5 been denied.

6 Additionally, on October 29th -- and this
7 letter is in your binders there -- the EPA submitted a
8 Clean Air Act information request to Hilcorp regarding
9 their production facilities in New Mexico in order to
10 ensure compliance with the Clean Air Act. This
11 information, unfortunately, is not due back to the EPA
12 until after this hearing has commenced. This
13 information is absolutely relevant for the same reasons
14 that the Citizens Alliance information is relevant. It
15 shows this Commission what is at stake here should a
16 not-well-tailored, broadly sweeping well density
17 application be approved unnecessarily.

18 Without answers to these questions and
19 others, it would simply be impossible for this
20 Commission to consider all of the factors mandated by
21 the Oil and Gas Act for you to consider.

22 I would also like to rebut a few -- three
23 specific arguments Hilcorp made in their motion to
24 strike. First, Hilcorp argues that their application
25 does not involve surface, environmental or public health

1 issues, and, therefore, we do not have standing as it
2 relates to the subject matter. This application is, in
3 fact, the sole decision that will lead to increases in
4 permissible well density which are harms alleged by the
5 Citizens Alliance members. In fact, Hilcorp stated
6 during the September hearing just two months ago that
7 they created this application to pursue a larger number
8 of recompletions and to drill new wells. That was the
9 purpose of this application.

10 As Ms. Sivadon -- and I apologize if I
11 pronounced her name incorrectly -- a reservoir engineer
12 with Hilcorp stated when asked by this Commission what
13 Hilcorp is, quote, "looking at getting out of the
14 Mesaverde spacing application," end quote -- and by
15 application, they mean this application we're discussing
16 here today -- she replied, "about 10 TCF of gas."

17 This application is not also just about
18 recompletions. Hilcorp's own experts admitted that in
19 addition to recompletions in the use of existing well
20 pads, new wells would be drilled, along with new well
21 pads to accommodate them. As Mr. Creekmore put it
22 during the September hearing, quote, "We will probably
23 come back and drill new wells once we exhaust the Dakota
24 wells that are available," end quote. Further,
25 Mr. Sparks stated in reference to the use of existing

1 well pads, quote, "There will be an instance where
2 that's not possible," in reference to only using
3 existing well pads.

4 This application is exactly -- is
5 absolutely about drilling additional wells and
6 recompleting existing wells, and those recompletions and
7 the drilling of new wells create substantial surface
8 impacts, including increased production of nondomestic
9 waste, something else this Commission must consider.
10 This Commission is empowered to consider and should
11 consider whether this blunt and not-well-tailored,
12 broadly sweeping application is necessary for the
13 efficient drainage of wells. These harms to Citizens
14 Alliance members are directly related to the subject
15 matter of this application.

16 Next, Hilcorp alleges that their
17 application does not implicate due process rights.
18 Surface owners' rights are impacted because by
19 automatically allowing doubling of well density, without
20 application, the public at large and members of the
21 Citizens Alliance specifically are denied their
22 opportunity to be heard. A process is already in place
23 to allow Hilcorp to request well density amendments on a
24 case-by-case, GPU-by-GPU basis, a process they have
25 already successfully navigated dozens of occasions since

1 January of this year.

2 In these instances, the OCD's own rule,
3 19.15.4.9, require the Division to publish notice of
4 adjudicatory proceedings -- hearings -- excuse me --
5 putting the public at large on notice that they have an
6 opportunity to intervene and to voice their concerns.
7 When Hilcorp wants to increase well density on a
8 particular GPU as it stands now, from four to five, five
9 to six, six to seven, the public is put on notice. If
10 this application is approved, that will no longer be the
11 case. When Hilcorp or any other operator in the
12 Blanco-Mesaverde wants to increase from four to five,
13 four to seven, four to eight, up to eight, they will be
14 able to do so by right without a hearing.

15 Citizens Alliance and members could much
16 more concretely point to direct harms to their surface
17 rights if these applications were adjudicated on a
18 specific GPU-by-GPU basis, and they could point to those
19 harms on the GPUs around their properties. But this
20 sweeping application will not allow them to do that any
21 longer.

22 Third, Hilcorp alleges that the Citizens
23 Alliance has not demonstrated that it has the ability to
24 contribute substantially to the underground waste issues
25 before this Commission. This is simply not the purpose

1 of the public health and environment exception to
2 standing before this Commission. In fact, the public
3 health and environment exception is a discretionary tool
4 that this Commission may invoke for any party who can
5 contribute to the protection of public health and the
6 environment generally. In 19.15.4.11C, where the
7 exception resides, it's clear in omitting the subject
8 matter requirements that are explicitly stated in
9 Section A for standing. And this Commission's rationale
10 for creating this exception supports this idea.

11 In the 2005 hearing where this exception
12 was debated and subsequently created, Chairman Fesmire
13 discussed his reasoning for supporting the public health
14 and environment exception by stating, quote, "If there
15 is a reason, based on the mandates that the legislature
16 has given the Oil Conservation Division, to include
17 people in the process who would not have standing under
18 our definition, then this exception will allow them to
19 participate meaningfully in the process," end quote.
20 And this Commission transcript can be found at Tab 6,
21 labeled Exhibit E.

22 Commissioner Chavez agreed, stating, quote,
23 "It also gives the intervenor the opportunity to show
24 why their intervention is important in relationship to
25 the mandate that this Commission has, not to the

1 specifics of the application but to the mandate this
2 Commission has."

3 The drilling of new wells necessarily
4 requires consideration of surface impacts, and the
5 legislature has granted the Oil Conservation Division
6 the authority to do so. Ultimately, the public health
7 and environment exception to standing was created to
8 allow parties an opportunity to be heard and to better
9 inform this Commission on important matters related to
10 pending applications to assist you in your
11 decision-making process, which is what we'd like to do
12 here today.

13 Moreover, I'd just want to highlight the
14 fact that this regulation itself empowers the Commission
15 to allow intervention on the public health and
16 environment considerations alone. Absolutely nothing in
17 the regulation, as I said before, limits this exception
18 to only certain types of hearings.

19 There is no doubt that Citizens Alliance
20 has a history of making substantial contributions to
21 both public health and the environment. And I should
22 note that the exception only requires -- only requires
23 one of those two.

24 I'm sorry. Before I go there, I'd like to
25 point your attention to Tab 7, Exhibit F. This is

1 also -- this was a 2006 OCC hearing regarding several
2 sort of unrelated rule changes to this. But what I want
3 to note is the task force that the Commission created in
4 order to look into the effects of some proposed rules,
5 and as part of that task force's mandate, they proposed
6 and the Commission adopted a very broad understanding of
7 what protection of public health and the environment
8 means. And I'll quote that here. "Protection of the
9 environment is not limited to protection of fresh water
10 and prevention of human exposure to toxic agents, but it
11 also includes protection of soil stability and
12 productivity, agriculture, wildlife, biodiversity and,
13 in appropriate circumstances, the aesthetic quality of
14 the physical environment." That is the definition of
15 protection of public health and the environment that
16 this Commission adopted in 2006.

17 I'd like to direct your attention now to
18 Tab 4, Exhibit C which is an affidavit filed by the San
19 Juan Citizens Alliance arguing that they do have a
20 history, in fact, of making substantial contributions to
21 public health and the environment and can, in fact,
22 better inform this Commission, and courts and government
23 agencies have agreed in the past and have granted SJCA
24 standing to do just that.

25 San Juan Citizens Alliance was created more

1 than 30 years ago for the specific purpose of protecting
2 public health and the environment. During that time,
3 they have contributed substantially in a litany of ways,
4 only a few of which I'll highlight here.

5 In addition to providing technical comments
6 on public health and the environmental impacts of oil
7 and gas operations to the Department of Interior, BLM,
8 the EPA and the New Mexico Legislature, the Citizens
9 Alliance has participated in the process which created
10 the Surface Owners Protection Act, which, I will
11 highlight, protects surface owners, not everyone
12 residing in a specific area, updating EPA and BLM
13 methane and Clean Air Act rules. They've also been
14 granted membership in the Stakeholder Four Corners Air
15 Quality Working Group, commented on environmental impact
16 statements, including the BLM Mancos Shale-Gallup
17 Formation.

18 The Citizens Alliance has also worked
19 tirelessly to modernize methane waste rules, and, in
20 fact, a Federal Circuit Court recently granted the
21 Citizens Alliance standing to defend methane waste
22 rules. And these are the same methane waste rules that
23 this Commission uses to approve gas capture plans in
24 New Mexico.

25 If the San Juan Citizens Alliance is not

1 granted intervention under this exception, then I simply
2 don't know who could be. You, of course, have
3 discretion in how you administer this exception, but
4 it's hard to imagine an organization better suited to
5 inform this Commission on these considerations that you
6 are empowered to take into account.

7 Lastly, I'd like to briefly talk about
8 standing. The Citizens Alliance does have standing
9 because its members have shown a real risk of
10 incremental further harms that will only result from an
11 increase in well density on and near their properties,
12 which is sufficient to show an injury in fact in
13 grandstanding, as stated in *ACLU v City of Albuquerque*.
14 Through the Citizens Alliance Notice of Intervention,
15 they have adequately shown causation and redressability.
16 Drilling in San Juan and Rio Arriba Counties has already
17 harmed countless individuals, many of whom are Citizens
18 Alliance members, and Citizen Alliance members have
19 attested that there exists a real risk of incremental
20 future harms to their health, their property and to the
21 environment that will only result from an increase in
22 well density.

23 Hilcorp, a Texas company who only recently
24 started operating in New Mexico in 2017, is attempting
25 to stifle our voices and simply does not understand the

1 significant impacts of oil and gas operations in
2 northern New Mexico.

3 The Citizens Alliance, on the other hand,
4 has existed for over 30 years and has been directly
5 involved in oil and gas operations since about 1995.
6 Our members call New Mexico home, and our members,
7 including ranchers and farmers, among others, can
8 articulate to this Commission the surface impacts of
9 Hilcorp's application better than anyone else can.

10 Hilcorp refers to their application and
11 supporting document as highly technical. However, the
12 negative impacts on people's health and the environment
13 is not, and they are felt firsthand every day by our
14 members and the other residents of San Juan and Rio
15 Arriba Counties.

16 In evaluating whether Hilcorp's broad and
17 not-well-tailored application is necessary to efficient
18 drainage, not just convenient but necessary, the OCC is
19 absolutely empowered to hear and consider from people
20 who are really being impacted about the costs of getting
21 this application wrong.

22 Ultimately, we're simply asking for an
23 opportunity to be heard and to better inform this
24 Commission on the negative impacts of Hilcorp's
25 application to the people of Rio Arriba and San Juan

1 Counties, and we respectfully request intervention in
2 this matter so that we can do so.

3 MR. SCHLENKER-GOODRICH: I'd like to offer
4 a couple of pragmatic points that build off my
5 co-counsel's recitation of the law and our right to
6 intervene in this proceeding, four points.

7 The first is that the Oil Conservation
8 Commission's authority isn't compartmentalized.
9 Certainly this decision-making process is about
10 underground reservoir issues, but necessarily, when you
11 drill a well in the ground, the underground reservoir is
12 then connected to the surface. So when you're thinking
13 about management of the underground reservoir through
14 well spacing issues, you're talking about wells, and
15 that requires consideration of intertwined subsurface
16 and surface issues. Even if the decision is about how
17 many straws you're tapping into the ground, that
18 necessarily involves surface waste, as well as public
19 health and the environment, which is precisely why the
20 exception is provided in the rules for intervention on
21 those grounds. That duty doesn't go away when
22 considering well spacing or density. Indeed it's the
23 opposite. It's intrinsically a relevant factor to this
24 Commission's consideration.

25 For example, the Oil and Gas Act expressly

1 states that surface waste can be caused by, quote,
2 unquote, "the manner of spacing of oil and gas wells."
3 That's in the Oil and Gas Act, 70-2-3.B. And on this
4 point, the gas capture plans that have been submitted
5 for the recompletions to date have indicated that there
6 is, in fact, the prospect of surface waste. And I would
7 like to ask the Commission to take administrative notice
8 of all the gas capture plans that Hilcorp has submitted
9 to date for the recompletions where they've asked for
10 increased well density.

11 If I may ask Julia to circulate those gas
12 capture plans.

13 In addition, we have a demonstrative
14 exhibit, and this is -- and forgive me; the printing
15 isn't great, and I can happily share a better version --
16 that aggregates this information. And when you take a
17 look at the aggregate of gas capture plans for the
18 recompletions that have been approved via well density
19 increases to date, it shows that 68.5 percent of the
20 recompletions have been vented, while 31.5 percent of
21 recompletions have been flared for an aggregate total of
22 22,000 Mcf per day.

23 I'd also note that surface issues were
24 expressly at issue in the prior hearing. Chairwoman
25 Riley, on page 107 to 108 of the transcript, asked

1 specific questions about Hilcorp's pipeline capacity and
2 the pressurization of that pipeline capacity and its
3 ability to transmit the natural gas produced as a result
4 of a boost in well density. That's the first point.

5 The second point is that there is a huge
6 question whether Hilcorp's application, as my co-counsel
7 noted, is well tailored, and that's relevant both to
8 underground reservoir management but also to the
9 prevention of surface waste and also the protection of
10 public health and the environment. During the September
11 13th hearing, there were repeated admissions by
12 Hilcorp's experts, in particular Andrew Parks and
13 Michelle -- and apologies to her if I'm mispronouncing
14 her name -- Sivadon that new infill wells are, in fact,
15 contemplated but that recompletions are the, quote,
16 unquote, "main focus." That could be found on page 96
17 to 97 of the September 13th hearing transcript.

18 San Juan Citizens Alliance wants to pursue,
19 in particular through cross-examination, into whether
20 this Commission should constrain the scope of the rule
21 to new completions and to expressly prohibit new wells.
22 That doesn't require a petroleum engineering background.
23 That simply requires common sense.

24 There's also a question of whether a
25 poolwide versus more a targeted approach, which is what

1 Hilcorp has been deploying thus far, on a GPU-by-GPU
2 basis is warranted. The latter, as my co-counsel
3 suggested, allows for public involvement, and that
4 improves the credibility of both Hilcorp's operations to
5 the public -- and I understand they've only been in
6 New Mexico for two years -- but also the credibility of
7 this Commission and the Division's decision-making
8 process. I think we can all agree this has been a very
9 contentious hearing, and we should all do what we can to
10 try to ensure that people are on the same page.

11 A more concentrated approach, say by a
12 GPU-by-GPU basis, also allows for concentrated action to
13 reduce venting and flaring, which is apparently
14 occurring by Hilcorp's own documents at a very high
15 rate.

16 I'd also note that there is an opportunity
17 to cross-examination to tease out whether a more
18 geographic-focused approach is warranted, not just GPU
19 by GPU, perhaps a multi-GPU approach. Hilcorp expert
20 Michelle Sivadon emphasized that Hilcorp has a
21 particular interest in a 200,000-acre area with 102
22 producing Dakota-only wells as a focus for recompletions
23 into the Mesaverde Formation. This is an area that
24 Hilcorp internally refers to as Area 8. That discussion
25 can be found in the September 13th hearing transcript on

1 pages 96 and 97.

2 Second point -- that was the second point.

3 Third point: Hilcorp's argument that this
4 is the wrong forum for addressing either surface waste
5 or public health and environment concerns is, of course,
6 wrong on the law, as my co-counsel noted, but it's also
7 misleading to suggest that we have recourse at the
8 drilling permit stage. San Juan Citizens Alliance can
9 certainly participate at that level. There is no
10 question about that, although I would note that it is
11 unclear what sort of public participation is provided
12 for when OCD is vetting a particular well. There is a
13 measure of public participation in BLM's APD drilling
14 process, although that measure of public participation
15 has been severely constrained, and I would note that the
16 administration has been rolling back public engagement
17 provisions.

18 So there is the prospect that this is the
19 only opportunity to address well spacing and density
20 issues and that subsequent to this point, yes, they may
21 submit applications for a permit to drill, but it will
22 become a fait accompli where the public is written out
23 of the decision-making process. That undermines the
24 credibility of oil and gas development in New Mexico, if
25 you have an absence of public involvement, where

1 drilling essentially becomes subject only to Hilcorp's
2 internal economic decision-making. And that limits
3 surface managers' opportunity to protect public health
4 and the environment. It essentially subordinates
5 protection of public health and the environment, which
6 frankly should be our primary concern, to the economic
7 interests of Hilcorp in maximizing production of the
8 underground reservoir.

9 Now, I'm aware, as a matter of public
10 interest, under the Oil and Gas Act that maximizing
11 production is a factor. There is no doubt about that.
12 But that needs to be balanced, not subordinated, to
13 public health and the environment. And there is a
14 fundamental difference -- and this was alluded to by my
15 co-counsel, Julie Guarino -- between a poolwide
16 assessment of concerns versus a piecemeal well-by-well
17 approach, which again goes to whether or not Hilcorp's
18 application is well tailored.

19 The final point I want to make -- and this
20 was raised earlier -- is that San Juan Citizens Alliance
21 has a legitimate concern that this process, for all of
22 the reasons that we have stated, is at least in part a
23 rulemaking, and that should be heard and resolved by
24 this Commission, and it appears it will, in fact, do so.

25 Thank you.

1 MR. FELDEWERT: Madam Chair, members of the
2 Commission, they suggest they have a statutory basis for
3 standing, and they cite to you 70-2-12.B(7). B(7)
4 reads: "To require wells to be drilled, operated and
5 produced in such a manner as to prevent injury to
6 neighboring leases or properties." You're not
7 interested in how wells are drilled, how they're
8 operated or how they're produced. You're not addressing
9 that here today.

10 They cite 70-2-15.B(15), "to regulate the
11 disposition of produced water and protect against
12 contamination of fresh water." You're not doing that
13 under this application.

14 They cite 70-2-12.B(21), "to regulate the
15 disposition of nondomestic waste to protect public
16 health and the environment." You're not doing that
17 here.

18 In paragraph 22, they cite, "to regulate
19 the disposition of nondomestic waste resulting from oil
20 field surface industry to protect public health and the
21 environment." You're not doing that here.

22 They cite to Mr. Eisenfeld's affidavit
23 where he says, "We, San Juan Citizens Alliance, have a
24 long history of participating in the Four Corners Air
25 Quality Working Group." You're not dealing with air

1 quality issues here under this application.

2 EPA and BLM methane rulemaking. You're not
3 doing that here today. Environmental impact statements
4 involving the BLM. Not at issue here today. Oil and
5 gas lease sales. Not at issue here today. Oil and gas
6 development projects. Not at issue here today.

7 The subject matter here today controls
8 intervention, whether it's statutory or permissive. And
9 these surface concerns are at a later time when
10 proposals to implement density are put forth, whatever
11 density you determine to be necessary. In other words,
12 when, as they put it, you drill a well, that's when the
13 surface concerns arise. We're not dealing with drilling
14 a well. What we're dealing with here is limited to what
15 is needed over time to efficiently and effectively drain
16 this reservoir. How that's to be done is a matter of
17 the future, a year from now, five years from now, ten
18 years from now, under the regulations.

19 I go back to my handout for standing. They
20 read through Mr. Schreiber's affidavit, who they wanted
21 to testify here today, and they cite to his fears and
22 concerns. Now, that's their language. That's not mine,
23 "fears and concerns." They have fears and concerns
24 about future development of whatever density you
25 determine to be necessary here.

1 What these cases say is that's not an
2 injury in fact. They say when a threatened injury "is
3 dependent upon conjecture, how individuals will
4 intentionally act in the future, that injury will be
5 cast into the realm of conjecture and speculation."
6 It's not an injury in fact. No causation. Again, I'm
7 quoting from the courts here. "No causation when a
8 response of the regulated party, operators, to the
9 government action or inaction is at issue and perhaps
10 the response of others as well." That's not at issue
11 here today. All you're dealing with is how many wells
12 are eventually going to be needed over time to
13 efficiently and effectively drain this reservoir. It
14 does not give rise to surface issues. It does not give
15 rise to their fears and concerns. And that's why their
16 motion to intervene should be stricken.

17 COMMISSIONER BALCH: Should we address the
18 continuance?

19 MR. BRANCARD: Does anybody on the
20 Commission have any questions?

21 CHAIRWOMAN RILEY: I don't have any
22 questions.

23 COMMISSIONER MARTIN: Nor do I.

24 MR. BRANCARD: I have a couple, if that's
25 okay.

1 So let me just start with where
2 Mr. Feldewert left off because that's sort of the
3 question I was going to ask you.

4 You have referred several times, each of
5 you, to how this directly relates to the mandates of the
6 Commission in the Act. Mr. Feldewert gave what he
7 thought what you were arguing. Is that what you're
8 referring to? Are those the sections in the Act that
9 you're referring to, how this -- your concerns relate to
10 the mandates of the Commission?

11 MR. ANDERSON: Yes, sir. And I think
12 moreover and another important point to make on that
13 note is the public health and environment exception
14 within this Commission's rules does not apply only to
15 instances where the words "public health" or
16 "environment" is inserted into the Oil and Gas Act. It
17 is obviously a discretionary tool that this Commission
18 may utilize in any instance where public health or the
19 environment may be affected and where an intervenor may,
20 broadly speaking, better inform this Commission on those
21 impacts.

22 You look at Section A of that same section
23 where this exception exists and it explicitly points to
24 the subject matter as it relates to standing. And you
25 go down to Section C, where the exception exists, and

1 there is no relationship to the subject matter in there.
2 And you look back to the 2006 transcripts, and the
3 intent of this Commission to create that exception was
4 broadly to allow participation from the public in order
5 to better inform this Commission on these impacts.

6 MR. BRANCARD: Okay. So answer the
7 question then. Mr. Feldewert listed four sections --
8 subsections under the Commission's rulemaking authority
9 as being the mandates of the Commission that are
10 relevant to this proceeding. When you refer to your
11 client's participation on the mandates of the
12 Commission, that's what you're referring to? Is that
13 correct? Or is there anything else in the --

14 MR. SCHLENKER-GOODRICH: Yes. But more
15 broadly, I think we would look at general authority in
16 the Oil and Gas Act, and I can recite these.
17 Specifically: 70-2-6.A and B; 70-2-11.A and B;
18 70-2-12.B. Those provisions provide expansive authority
19 and responsibility to prevent waste. That's both
20 underground and surface. And as I alluded to -- or
21 specifically noted, the definition of surface waste
22 expressly includes well spacing, as well as, more
23 broadly, all these provisions deal with -- protect
24 public health and the environment.

25 I'd also note that OCD's rules, 19.15.5.8,

1 provide that the Oil Conservation Division and
2 Commission is, quote, unquote, "charged with the duty
3 and obligation of enforcing the State's rules and
4 statutes relating to the conservation of oil and gas" --
5 that's surface and subsurface, parenthetical --
6 "including the protection of public health and the
7 environment." That makes no distinction. It's not
8 qualified and suggests you can ignore this provision in
9 the context of an underground reservoir decision.

10 And I think that's a key point here, which
11 is yes, this is a decision that very much involves
12 maximizing or preventing the underground waste of the
13 resource, but that decision is necessarily intertwined
14 with surface protection. And by virtue of sequencing,
15 you can't allow one proceeding to go through where you
16 impose blinders on the Commission's broader authorities
17 to protect against surface waste and to protect public
18 health and the environment, and then once it becomes a
19 fait accompli -- and it's pretty clear from this
20 decision-making process that Hilcorp very much wants
21 this, and this constitutes a beachhead that they can
22 raise capital investment to then proceed into the
23 planning phases for implementation. So it does have
24 very real world consequences and, by virtue of the
25 spacing rule, can limit surface managers' legal

1 authority.

2 I very much would assume that if Hilcorp is
3 granted this application, they will assert to BLM that
4 they not only have the opportunity but indeed the right
5 to drill a certain number of wells, whether through
6 target infill or through recompletions in these areas,
7 and that may operate to tie the surface managers' hands.

8 And so these are intertwined issues. Yes,
9 this is a specific decision dealing with underground
10 reservoir issues, but it is intertwined, and to exclude
11 any surface concerns, which are -- by common sense when
12 you drill a well and when you're approving a well;
13 that's the reason it's called well spacing -- you're
14 dealing with surface issues. And to exclude that
15 consideration from the decision-making process strikes
16 me as a textbook example of arbitrary and capricious
17 action.

18 MR. BRANCARD: I'm sorry. The last
19 provision you cited to had the words "public health" and
20 "environment"? Which one were you looking at?

21 MR. SCHLENKER-GOODRICH: 19.15.5.8 NMAC.
22 Apologies if I got that wrong.

23 MR. BRANCARD: Okay. That's the provision
24 about the Commission's enforcement authority of the
25 agency?

1 MR. SCHLENKER-GOODRICH: Correct.

2 MR. BRANCARD: Then maybe if I can ask
3 Mr. Feldewert?

4 CHAIRWOMAN RILEY: Please.

5 MR. BRANCARD: In the beginning of your
6 statement, Mr. Feldewert, you were starting to refer to
7 wellbores. Okay? And by wellbore, do you mean that
8 portion of the well in which the product is being
9 extracted from?

10 MR. FELDEWERT: Yes, sir. So wellbores
11 might be new drills, might be recompletes of shallower
12 wells -- existing shallow wells into the zone. It might
13 be a recompletion of existing deeper wells already
14 through the zone. There would be no new drilling.

15 MR. BRANCARD: All right. So I'm looking
16 at the orders that create this pool and the provisions
17 that are in here.

18 MR. FELDEWERT: The existing order?

19 MR. BRANCARD: The existing order. I'm
20 looking at R-1097-A. I don't know if that's the most
21 recent one.

22 MR. FELDEWERT: I've got 1097-A1, which I
23 think is the most recent one, but it has the pool rules
24 listed in it.

25 MR. BRANCARD: 1097-A has an exhibit that

1 sets out the pool rules. Okay?

2 My question here is, the expression
3 "wellbores" does not appear in here. Instead, it talks
4 about wells. Okay? So there are specific provisions
5 here about where your infill wells are located. Okay?
6 And they actually get down to the quarter-quarter
7 section. Is your interpretation of this order that that
8 requires the drilling of the well, the well pad, to be
9 located in a specific quarter-quarter section or that
10 simply requires the wellbore, the production part of the
11 well, to be located in a specific quarter-quarter
12 section?

13 MR. FELDEWERT: I would say that it
14 requires -- you look at where the completed interval of
15 the well is, not its surface location.

16 MR. BRANCARD: Okay. So in other words,
17 drilling additional numbers of wells does not require,
18 by this order, additional well pads?

19 MR. FELDEWERT: Correct.

20 MR. BRANCARD: So you could have a well pad
21 located in one quarter-quarter section from which
22 several of the wells that are allowed under this order
23 or under the order proposed by your client to be drilled
24 from?

25 MR. FELDEWERT: They can be directionally

1 drilled. Yeah.

2 MR. BRANCARD: It doesn't say that in the
3 order. Do you think we need to clarify that somehow to
4 get that point across?

5 MR. FELDEWERT: Well, I mean, I don't -- I
6 don't believe so. I mean, it has always been
7 interpreted as the -- you look at the -- what used to be
8 known as the bottom-hole location and where it is and
9 not where the surface is. And maybe that's an advent
10 of -- you know, this was enacted back in 1998, right?
11 Okay? So I don't know how much directional drilling was
12 going on back in 1998. It used to be that your
13 surface-hole location was pretty close to your
14 bottom-hole location, but then we got better at moving
15 things around and targeting and utilizing existing well
16 pads. So I don't know if it needs to be clarified or
17 not. Certainly I don't see any harm in it.

18 I think my point is that what you're
19 talking about is exactly what I've tried to point out
20 here and that is -- you know, your step here is to
21 determine what the -- how many wellbores, how many
22 straws do you need to efficiently and effectively drain
23 this. How it's going to be implemented at the surface
24 will be considered a year from now, five years from now
25 or ten years from now based on what's available, what

1 technology is available, what economics is available and
2 what rules and regulations exist at that time. That's
3 when these surface concerns arise, because obviously if
4 I'm recompleting an existing wellbore, I'm not doing a
5 new drill. I'm not creating a new pad. Obviously, if
6 you're directionally drilling from existing well pads,
7 you're not creating a new well pad; you're not creating
8 the surface concerns that they raise.

9 MR. SCHLENKER-GOODRICH: Mr. Brancard, if I
10 may, that seems in many respects -- in some respects, I
11 agree with counsel, and that goes to the concern on
12 whether the rule is well tailored. There is certainly
13 an emphasis on recompletions. Had Hilcorp narrowed its
14 application to recompletions, in particular in a
15 particular geologic area, for example, Area 8, as they
16 called it, I think this would be a very different
17 proceeding.

18 I think what's happening is that -- and
19 what implicates a lot of the significant concerns -- and
20 keep in mind that with surface concerns, it is a
21 function of, say, degradation of Mr. Schreiber's ranch,
22 but it is also the consequences when you have subsurface
23 waste of methane where that does have very distinct
24 public health and environmental implications. But a lot
25 of Hilcorp's application is contingent on speculation

1 about what will happen in the future. We know they want
2 to do the recompletions. There are repeated instances
3 that they want to do infill, so it seems very reasonable
4 to conclude that there will be some combination in the
5 future of recompletions and infill wells. That is a
6 virtual certainty, and it's a question of the
7 combination of those and how many total. So they're
8 seeking carte blanche authority to move across the
9 entire 1.3 million-acre basin and to use all of the -- I
10 can't remember the specific number -- of Dakota-only
11 wells as their focal point. But there is a lot of lack
12 of clarity, and I think that raises very significant
13 concerns by the public that warrant intervention so that
14 through cross-examination, we can tease out how
15 legitimate these issues are, and that's what San Juan
16 Citizens Alliance bring to the table and ideally work
17 with the Commission as a full party to determine whether
18 or not this rule is, in fact, warranted, and, if
19 warranted, whether or not it is properly tailored.

20 MR. BRANCARD: But let me -- but I'm not
21 sure that simply cross-examining Hilcorp's witnesses is
22 going to get you the answer to your questions because
23 doesn't this pool order apply to every operator inside
24 the pool, and every operator may have their own plans?

25 MR. FELDEWERT: Certainly. I mean, that's

1 the whole purpose here. This is a -- that's why
2 operators are provided notice. Okay?

3 I mean -- first off, I mean, he came out
4 and said it. Their fears and concerns are based on a
5 series of hypotheticals. If this operator does this at
6 this location and doesn't use this kind of equipment, we
7 could have injury. Okay? That's exactly what the
8 courts say doesn't give you standing. Okay? And it
9 also indicates that this is not the subject matter of
10 this hearing, all of these potential hypotheticals.

11 The subject matter here is what flexibility
12 do operators need in the San Juan Basin to efficiently
13 and effectively drain this pool? The implementation of
14 that is down the road, and their fears and concerns are
15 all based on a bunch of hypotheticals about how people
16 are going to act in the future, a bunch of assumptions
17 about how people are going to act in the future. And
18 that type of alleged injury does not give rise to
19 standing, and it certainly demonstrates why they have
20 nothing to offer the subject matter here. Their issues
21 arise when Hilcorp or LOGOS or any other operator goes
22 out there to implement the density you determine, you
23 feel is necessary to efficiently and effectively drain
24 so that we don't leave over 60 percent of gas in the
25 ground.

1 MR. SCHLENKER-GOODRICH: Hilcorp can't have
2 it both ways. You know, they can't say that we want
3 carte blanche authority to -- well, we're going to focus
4 on recompletions, but we may also do some targeted
5 infill wells at our direction depending on what
6 internally our company decides and then argue on the
7 basis of a speculative justification for their pool
8 spacing rule that the public is then eviscerated from
9 their ability to question them on that front. It seems
10 that there is a hypocrisy involved in that basic notion.

11 Had Hilcorp come in with a well-tailored
12 rule that was very focused, for example, on specific
13 recompletions in a specific area, I'm sure we could
14 provide very specific arguments about that very specific
15 area and the very specific recompletions that were being
16 pondered, which is what Hilcorp has been doing thus far
17 by moving forward with requests to OCD for exceptions to
18 the existing pool rule to get, on a GPU-by-GPU basis,
19 allowances for increases in well density.

20 I'd also note there is no rush in this
21 entire process. My understanding, based on the
22 September 13th hearing, is that out of the 70 -- and
23 maybe this has changed thus far up until now -- now that
24 it's in November, maybe this has changed. That of the
25 70 applications, only 22 of those recompletions were

1 completed. So what is the rush and what is the -- what
2 is the basis for moving forward with a change to the
3 pool rule that is, frankly, a radical departure from how
4 this pool has been operated, seemingly successfully,
5 thus far and slowing this down a little bit to ensure
6 that we can get that sort of clarity and at least ensure
7 that the public has an opportunity to engage in this
8 decision-making process?

9 AUDIENCE MEMBER: May I speak as a citizen?

10 MR. BRANCARD: Not yet.

11 COMMISSIONER BALCH: During public comment.

12 CHAIRWOMAN RILEY: Correct.

13 MR. BRANCARD: I have one more question.

14 CHAIRWOMAN RILEY: Having to do with this?

15 MR. BRANCARD: Yes.

16 CHAIRWOMAN RILEY: Okay. I'm concerned
17 about a break for Mary.

18 (The court reporter responds.)

19 (Laughter.)

20 MR. SCHLENKER-GOODRICH: I think we should
21 all respect the person who is really in charge here.

22 CHAIRWOMAN RILEY: Yeah. Let's take a
23 ten-minute break, and we'll come back with this
24 question. And we still have one more motion, I believe.

25 MR. BRANCARD: Yes.

1 (Recess, 11:19 a.m. to 11:35 a.m.)

2 CHAIRWOMAN RILEY: Mary, we're back on the
3 record.

4 Mr. Brancard, you had a question you wanted
5 to ask?

6 MR. BRANCARD: Okay. I'm just waiting for
7 Mr. Feldewert.

8 MR. RANKIN: Did someone abduct him?

9 MR. SCHLENKER-GOODRICH: We would never do
10 such a thing.

11 COMMISSIONER BALCH: Is it a question for
12 Mr. Feldewert?

13 MR. BRANCARD: Well, I'd like both sides to
14 respond to the question, and the question is that
15 Citizens Alliance brought up repeatedly the definition
16 of surface waste, which is in 70-2-6.B. It's a rather
17 long sentence, as only those who write statutes can do.
18 And I would just want to get sort of a short response
19 about how that provision applies or does not apply to
20 this proceeding. And I'll just read you the first part
21 of the definition. It says: Surface waste, as those
22 words are generally understood in the oil and gas
23 business, and in any event, to embrace the unnecessary
24 or excessive surface loss or destruction without
25 beneficial use however caused of natural gas of any type

1 or in any form or crude petroleum oil or any product
2 thereof. And then it goes on to list various types of
3 actions that could cause that loss. And so does that
4 provision of surface waste apply to this proceeding?

5 MR. FELDEWERT: No. The subject matter is
6 the surface waste of natural gas of any type or in any
7 form or crude petroleum oil or any product thereof.
8 That's the subject, surface waste of oil or gas. That's
9 your primary duty, to prevent underground waste of oil
10 and gas and to prevent surface waste of oil and gas.
11 Surface waste of oil gas is not at issue here.

12 MR. SCHLENKER-GOODRICH: Our argument would
13 be that they are, first, necessarily intertwined. And
14 by the very definition of surface waste, it expressly
15 says that it may result from the manner of spacing.
16 That logically suggests that even if the decision-making
17 process before the Commission is isolated to how many
18 straws are needed to tap the underground reservoir to
19 meet the definition of underground waste, at the very
20 least, spacing also implicates surface waste.

21 And we submitted Hilcorp's own gas capture
22 plans suggesting that by recompleting these wells, maybe
23 they are optimizing products of the underground
24 reservoir, but then that natural gas is going up a
25 wellbore, and a wellbore isn't isolated under the

1 ground. It goes to the surface, and from there, they're
2 venting and flaring. And 68.5 percent of the natural
3 gas -- or 68.5 percent of those recompletions are
4 directly venting into the atmosphere I think to the tune
5 of the aggregate -- and I may have the number wrong. I
6 believe it's 22,000 Mcf per day. Every single cubic
7 foot of natural gas that goes into the atmosphere that
8 is surface waste that results from an intent to optimize
9 reservoir efficiency is a cubic feet of gas that cannot
10 be sold to market, does not power a single gas-fired
11 power plant, cannot be used by a single home to heat
12 their home or to cook.

13 I use natural gas on my stove. I prefer --
14 I may have concerns about oil and gas development
15 expansively across New Mexico and what that does, for
16 example, with regard to climate change, but you can be
17 sure that to the degree natural gas is produced, I want
18 to be able to put it in my stove, not have it vented to
19 the atmosphere.

20 So underground and surface waste are
21 necessarily intertwined, and the definition of surface
22 waste expressly includes spacing as an issue, which I
23 suggest needs to be considered here. And at the very
24 least, even if it doesn't statutorily dictate what the
25 reservoir pool decides because it's focused on the

1 underground, it is at the very least a relevant factor
2 for consideration by the Commission. And to exclude
3 that is, as I mentioned before, a definition of
4 arbitrary and capricious action. The Supreme Court in
5 Motor Vehicle Manufacturers v State Farm Insurance --
6 I'm tapping into my memory of this; I believe it's a
7 1983 Supreme Court decision -- delineated what the
8 relevant components of a reason-informed decision are.
9 In other words, a decision that's not arbitrary and
10 capricious. And it includes an expansive understanding
11 of all relevant factors. Surface waste is at least a
12 relevant factor, if not a statutorily prescribed mandate
13 for the Commission to consider in this proceeding.

14 MR. FELDEWERT: So I'm confused. There
15 seems to be a lot of stretching of the statute in our
16 discussion about surface waste without actually being
17 focused on the language in the statute.

18 Surface waste of oil and gas. That's what
19 that notes, which is not at issue here because we're not
20 dealing with equipping a well. We're not dealing with
21 operating a well or producing a well. We're not up here
22 (indicating) dealing with avoidance of surface waste.
23 We've got regulations that deal with all that now that
24 they've been involved in in the past.

25 We're down here (indicating) to determine

1 what density is necessary to efficiently and effectively
2 drain the reservoir. That's different from surface
3 waste. We're not dealing with surface waste here.

4 MR. SCHLENKER-GOODRICH: Actually, there is
5 a question that I think the Commission could ask, and
6 it's a question that I, frankly, don't know the answer
7 in terms of Hilcorp's position. Assuming they're
8 granted their proposed amendment to the spacing rule, is
9 it Hilcorp's position that they would then have a legal
10 right to drill wells up to that spacing density? I
11 think it's a simple yes-or-no question, especially if
12 you're an operator.

13 MR. FELDEWERT: Is this cross-examination?
14 I mean, we're sitting here talking -- for somebody
15 sitting here who hasn't even shown that they have a
16 right to intervene in this case, arguing all kinds of
17 motions, when they've been told already they don't have
18 a right to intervene in this case.

19 MR. SCHLENKER-GOODRICH: I think counsel's
20 failure to answer the question speaks volumes.

21 CHAIRWOMAN RILEY: Okay. Do you have any
22 more questions about that?

23 MR. BRANCARD: No, do not.

24 CHAIRWOMAN RILEY: Okay. So the motion to
25 continue was the next one.

1 MR. BRANCARD: Right. And this was filed
2 fairly late, so I don't imagine that we should have a
3 lot of discussion about that.

4 CHAIRWOMAN RILEY: Uh-huh. I think I saw
5 it this morning.

6 MR. BRANCARD: Hilcorp hasn't had a chance
7 to respond in writing to this.

8 MR. FELDEWERT: It was received at 5:00 on
9 Friday, the last business day before this hearing, so
10 no, I haven't had a chance to look at it much. I think
11 we've heard all the basis for their continuance already.
12 I mean, they have essentially --

13 MR. BRANCARD: Why don't we start with the
14 Movant briefly?

15 MR. FELDEWERT: Okay.

16 MR. SCHLENKER-GOODRICH: I will be brief.
17 The Citizens Alliance is well aware that
18 proceeding is contentious. Frankly, Hilcorp's positions
19 haven't done themselves any favor or made themselves
20 many friends in New Mexico, but I've acknowledged that
21 we do need to figure out a way to work together and to
22 strengthen, in particular, the Commission's and the
23 OCD's credibility and the public's confidence in its
24 decision. So our request for a continuance is
25 pragmatic. Let's make sure we do this right. Let's

1 make sure we have all the information we need, in
2 particular from the federal land owners and regulators,
3 and let's remember here that the dominant owner of the
4 mineral estate in the San Juan Basin is the federal
5 government. In other words, the owner is everybody in
6 this room. These are public oil and gas resources that
7 have been leased to Hilcorp to produce in the broad
8 public interest. That, of course, includes optimization
9 of underground reservoir recovery but also surface
10 issues.

11 Three points I want to make in support of
12 this. First, there is no rush. Hilcorp, in the
13 September 13th hearing -- and I alluded to this
14 before -- indicated that of all the recompletions that
15 it's received approval for through a well density
16 increase, that only 22 of them have, in fact, been
17 recompleted because of the limited frac crew
18 availability and capital constraints. I'm not aware of
19 any new evidence that suggests to the contrary. So
20 there is certainly no rush to allow recompletions and
21 potentially new infill development across a 1.3
22 million-acre area involving thousands of oil and gas
23 wells.

24 Second, New Mexico's political leadership
25 at the federal level, at the state level has asked for

1 more time because of the implications to the federal
2 lands and resources and the federal government's
3 responsibility to oversee the protection of those
4 resources and lands. Senator Udall, Senator Heinrich
5 and Representative Ben Ray Lujan have all asked both
6 EPA -- and that's Exhibit A attached to our motion for
7 continuance -- and BLM -- that's Exhibit B -- for
8 additional information about the implications of this
9 spacing decision, if accepted, to public lands and
10 resources. That request for information has been
11 supported by the county -- one of the counties that is
12 dominant in this area, Rio Arriba County. That is
13 Exhibit G.

14 On Friday -- and one of the reasons that
15 our motion for continuance was filed on Friday was
16 because a delegation had specifically asked this
17 Commission for a delay pending that information. As a
18 matter of basic comity between this state regulatory
19 body and the United States senators, who under the
20 Constitution's property clause, are ultimately
21 responsible for these public lands and resources, that
22 suggests that should be respected. That letter is
23 Exhibit L.

24 Governor-elect Lujan-Grisham, who is also
25 one of our congressional representatives, expressly

1 noted, agreeing with Senators Heinrich and Udall and Ben
2 Ray Lujan, that in the absence of information they
3 requested, quote, unquote, "It would be irresponsible to
4 move forward with this hearing as scheduled." That is
5 Exhibit J, submitted on November 15th.

6 And in addition, the following political
7 leaders have requested a delay, effectively a
8 continuance, Exhibit K: New Mexico State Senator and
9 Land Commissioner-elect Stephanie Garcia Richard;

10 Congresswoman-elect Deb Haaland; Navajo
11 Nation Council Delegate-elect Daniel Tso, who is in this
12 audience today, Exhibit N;

13 New Mexico House Majority Leader, Peter
14 Wirth, Exhibit O;

15 Chairman of the New Mexico House Energy,
16 Environment and Natural Resources Committee, Matthew
17 McQueen, Exhibit P;

18 New Mexico United States Senators Michael
19 Padilla, Gerald Ortiz y Pino and Cisco McSorely, Exhibit
20 Q;

21 Aztec Mayor Victor Snover, Exhibit R;

22 And before we run out of letters, Aztec
23 Mayor Pro Tem and City Commissioner Rosalyn Fry.

24 Three, there are substantial questions
25 regarding Hilcorp's compliance with the Clean Air Act.

1 Now, I'm very well aware, as everybody is, that Hilcorp
2 wants to compartmentalize its decision-making process
3 and just put blinders on and ignore the rest of the
4 reality of what oil and gas development operations mean
5 for New Mexico. But Exhibit F is EPA's, under the Trump
6 Administration, Clean Air Act 114 Information Request
7 asking for information regarding compliance with Clean
8 Air Act protection rules that specifically deal with
9 methane and also volatile organic compounds. Methane,
10 of course, is both a pollutant but also a product of
11 waste. We should await the outcome of that as pertinent
12 to tailoring this rule, ensuring that it is right-sized
13 and informing this Commission's responsibility to
14 protect public health and the environment.

15 The final point I want to make is there is
16 a general concern by the public that Hilcorp's
17 exhibits -- and I alluded to this before -- were not
18 made available for public review on the Commission's
19 website until Friday, November 16th. That deprives the
20 public of the ability to meaningfully participate in
21 this process through public comment or otherwise.

22 I would also say and I would extend my
23 appreciation to Hilcorp's engineers. I read that
24 testimony last night until 12:30 at night. It is
25 illuminating. It is interesting. They've done a lot of

1 work in understanding this reservoir. There's a hell of
2 a lot of interesting information in there about the
3 development of the reservoir. I learned a lot. I
4 appreciate their experts. I want to ask them some
5 questions on this front. And I think the public has a
6 right, if they want to comment on this decision-making
7 process, to also take a look at not just the testimony
8 but their supporting exhibits in terms of understanding
9 the location and magnitude and scale of what this change
10 to the pool rule across a 1.3 million-acre area would
11 do.

12 That's all.

13 MR. FELDEWERT: You have to be a party to
14 request a continuance. They requested a continuance at
15 the September hearing, and the Commissioners determined
16 there was no basis for standing at that hearing and
17 denied their request for a continuance at that time.

18 They've filed another request for
19 continuance. It's not timely. It wasn't filed until
20 5:00 on Friday, the last business day before the hearing
21 here today. And they didn't provide any good reason for
22 waiting to file until Friday. They've known about this
23 hearing since September. They've provided no good
24 reason for a continuance.

25 The EPA's examination of compliance under

1 the Clean Air Act, that has nothing to do with the
2 density issues that you're looking at here today, how
3 many wells are going to be necessary to drain this
4 reservoir. This is an application that applies to all
5 operators, not just Hilcorp, and EPA's examination of
6 one company or another about compliance with the Clean
7 Air Act has nothing to do with this case.

8 Questions about how the BLM will increase
9 density and how that will be implemented at the
10 surface -- right -- they don't bear upon or affect how
11 many wells you determine are necessary over time to
12 avoid underground waste. The BLM's implementation or
13 the surface operational issues that are necessary to
14 implement the density you determine is necessary to
15 prevent underground waste is not at issue here, and they
16 don't intend to offer any evidence on the underground
17 waste issue that's before you. They just want to
18 discuss how it's going to be implemented down the road.
19 So they can discuss how it's going to be implemented
20 down the road in the right forum and under the existing
21 regulations. So there is no viable reason offered today
22 for a continuance in this case.

23 CHAIRWOMAN RILEY: Do you-all have any
24 questions?

25 COMMISSIONER MARTIN: I do not.

1 COMMISSIONER BALCH: No questions.

2 CHAIRWOMAN RILEY: Mr. Brancard?

3 MR. BRANCARD: No.

4 CHAIRWOMAN RILEY: Should we break and go
5 into deliberation on these motions?

6 MS. KESSLER: Madam Chair, if I may?

7 CHAIRWOMAN RILEY: I didn't see you. I'm
8 so sorry.

9 MS. KESSLER: Jordan Kessler, and I
10 represent Enduring Resources who is a party to this case
11 and major operator in the San Juan Basin. We want to
12 state on the record that Enduring fully supports
13 Hilcorp's application and concurs that San Juan Citizens
14 Alliance should not be conferred party status.

15 Thank you.

16 CHAIRWOMAN RILEY: Okay. Thank you.

17 MR. HALL: And, Madam Chair --

18 CHAIRWOMAN RILEY: Yes.

19 MR. HALL: -- Scott Hall, on behalf of
20 LOGOS Resources and LOGOS Operating. My company also
21 supports Hilcorp's application. We object to the effort
22 to convert an adjudicatory proceeding into a rulemaking.
23 I think Hilcorp's application is very specifically
24 targeted under the Commission's rules on adjudicatory
25 rulemakings for pools of pre-existing pool rule orders.

1 That rule defines who may be a party. The definition
2 under the rule is operators. They're not operators. So
3 they're left with the arguments under the law to
4 establish themselves as parties through some form of
5 standing. It's my view they have not succeeded in doing
6 that. We agree with Hilcorp.

7 CHAIRWOMAN RILEY: Thank you, Mr. Hall.
8 Have I missed any attorneys?

9 COMMISSIONER BALCH: I would move we go
10 into executive session to deliberate only the motions
11 before us.

12 COMMISSIONER MARTIN: I second.

13 CHAIRWOMAN RILEY: All right. So approved.

14 MR. BRANCARD: You need a roll call.

15 CHAIRWOMAN RILEY: All right. Roll call
16 then, please.

17 COMMISSIONER MARTIN: Aye.

18 CHAIRWOMAN RILEY: Aye.

19 COMMISSIONER BALCH: Aye.

20 (Ayes are unanimous.)

21 CHAIRWOMAN RILEY: So we are no longer on
22 the record.

23 And we're going to leave. You-all are
24 welcome to stay. It's easier to remove this bench than
25 it is everyone in the room, so we'll be back.

1 MR. FELDEWERT: Do you anticipate -- shall
2 we break for lunch?

3 COMMISSIONER BALCH: Yeah. I think break
4 for lunch.

5 COMMISSIONER MARTIN: I totally agree.

6 CHAIRWOMAN RILEY: Yeah. I'm asking for us
7 up here. We can go if you want and do this over lunch.

8 COMMISSIONER MARTIN: Sure.

9 COMMISSIONER BALCH: We can do it over
10 lunch.

11 CHAIRWOMAN RILEY: But as far as you-all
12 are concerned, we can meet back in an hour and 15
13 minutes. If we're not done, we won't be back. But
14 you-all can come back in the room. But we won't start
15 before, say, 1:15.

16 MR. FELDEWERT: Okay. Thank you.

17 (Executive Session, recess, 11:53 a.m. to
18 1:29 p.m.)

19 CHAIRWOMAN RILEY: Let's go ahead and get
20 started again.

21 As we mentioned this morning --

22 And we're back on the record.

23 As we mentioned this morning, we had a
24 number of motions that we needed to take care of first,
25 and so the Commission met and deliberated about those

1 motions and have come up with some conclusions. And I'm
2 going to ask --

3 COMMISSIONER BALCH: Do we need to --

4 CHAIRWOMAN RILEY: Do we need a vote to
5 come back?

6 MR. BRANCARD: Yes.

7 COMMISSIONER BALCH: I make a motion to
8 come back into regular session.

9 COMMISSIONER MARTIN: Second.

10 CHAIRWOMAN RILEY: All right. So moved.

11 Mr. Brancard, would you be so kind as to
12 outline the decisions that were made by the Commission?

13 MR. BRANCARD: Thank you.

14 Madam Chair, I think you also need to
15 explain what was discussed during executive session.

16 CHAIRWOMAN RILEY: Okay. During executive
17 session, the Commission discussed a number of issues.
18 We discussed notice -- the notice issue, whether or not
19 Hilcorp met the notice requirements for this matter. We
20 also discussed the motion to intervene and whether or
21 not San Juan Citizens Alliance had met the
22 qualifications for an intervening party. We discussed
23 the motion to dismiss and whether or not this is a
24 rulemaking or an adjudicatory proceeding, and we
25 discussed the request for continuance.

1 Nothing else was talked about. We did not
2 deliberate on the matters at hand for the actual
3 application. We still need to, I believe, take on --
4 listen to a witness on that and accept the exhibits for
5 the notice. So we'll still have deliberation to do on
6 that.

7 If you could outline our results of the
8 discussion.

9 MR. BRANCARD: I'll go through this in the
10 order the Commission reviewed these motions. The first
11 is the motion to strike the intervention of San Juan
12 Citizens Alliance. There are two elements to potential
13 intervention under the Commission's adjudicatory
14 procedures. One involves standing. The Commission
15 reviewed the standing of San Juan Citizens Alliance
16 under the traditional standing rules that apply and
17 found that the potential injuries listed by San Juan
18 Citizens Alliance do not fall within the zone of
19 interest that the OCC is regulating in this matter.

20 The second element of potential
21 intervention comes from the possibility that a
22 participant can contribute substantially to the
23 Commission in the matter at hand. In this matter, we
24 looked at the Commission's decision when it adopted this
25 rule, which was presented by San Juan Citizens Alliance

1 as Exhibit G. And in that, the Commission states that a
2 party, if it does not meet the requirements for
3 standing, may be allowed to intervene in the case if the
4 person requesting the intervention can show that the
5 Commission -- to the Commission that their intervention
6 was important to the mandates of the Commission. To be
7 permitted to intervene, the person must have to show
8 that they have special expertise or interest that the
9 Commission's decision determines would be helpful to its
10 decision-making process.

11 The Commission reviewed the statements of
12 the witnesses proposed by San Juan Citizens Alliance and
13 determined that those witnesses do not provide the
14 special expertise that would be helpful to the
15 Commission in this decision.

16 AUDIENCE MEMBER: Shame.

17 AUDIENCE MEMBER: Boo.

18 CHAIRWOMAN RILEY: No. Please keep order.

19 MR. BRANCARD: The proposed witnesses can
20 provide statements during the public comment period
21 during this. They are not prohibited from testifying in
22 this proceeding.

23 So the motion to strike intervention is
24 granted -- is proposed to be granted by the Commission.

25 I will have the Commission make a motion to

1 adopt all of these at some point, or do you want to go
2 through them one by one?

3 CHAIRWOMAN RILEY: I think probably just
4 finish your explanation, and then we'll take each one
5 and vote.

6 MR. BRANCARD: All right.

7 The Commission reviewed the motion for a
8 continuance. The Commission, at the beginning of this
9 proceeding earlier, decided if they themselves would
10 move to continue the proceeding, and they decided not
11 to. The Commission reviewed this motion, the motion
12 under the Commission adjudicatory rules. The motion for
13 continuance can only be filed by a party. In this case
14 it was filed by San Juan Citizens Alliance, which the
15 Commission has just determined is not a party, and so
16 the Commission will not further consider a motion for
17 continuance.

18 The third motion was the motion to deny the
19 case or basically to dismiss the case on the grounds
20 that this should have been classified as a rulemaking
21 proceeding rather than an adjudicatory proceeding. The
22 Commission reviewed the arguments of the parties and
23 determined that the Uhdén case is directly on point in
24 this matter and determined that special pool orders are
25 adjudicatory cases, not rulemaking. The Commission's

1 rules are clear that special pool orders do not fall
2 under their rulemaking rule. They follow their
3 adjudicatory rule, and special notice is provided for
4 special pool orders. A rulemaking case would have
5 limited direct notice to particular operators in this
6 matter. The motion to deny [sic] is denied.

7 Finally, on the notice question, the
8 Commission earlier stated that what it has required of
9 Hilcorp for this matter is that it provide notice to --
10 under the Commission's adjudicatory rules, which Hilcorp
11 has interpreted as notice to all the operators within
12 the area, plus one mile, and plus publication notice for
13 this hearing. And so in that regard, Hilcorp must put
14 on testimony to show that notice was correctly provided
15 in this proceeding.

16 CHAIRWOMAN RILEY: So we'll need to go
17 through the motion process for each of those; is that
18 correct, Mr. Brancard?

19 MR. BRANCARD: (Indicating.)

20 CHAIRWOMAN RILEY: Starting with the motion
21 for intervention, do we have a -- a motion on the motion
22 to strike the intervention?

23 COMMISSIONER MARTIN: I so move.

24 COMMISSIONER BALCH: Second it.

25 CHAIRWOMAN RILEY: Okay. We probably need

1 to state what our -- that we're denying the motion; is
2 that correct?

3 MR. BRANCARD: Right. Motion to strike the
4 intervention is what was proposed.

5 CHAIRWOMAN RILEY: We're approving the
6 motion to strike the intervention.

7 COMMISSIONER MARTIN: Yes.

8 CHAIRWOMAN RILEY: So moved?

9 COMMISSIONER MARTIN: Yes. I so move.

10 COMMISSIONER BALCH: I second it.

11 CHAIRWOMAN RILEY: All in favor?

12 COMMISSIONER MARTIN: Aye.

13 COMMISSIONER BALCH: Aye.

14 CHAIRWOMAN RILEY: Aye.

15 (Ayes are unanimous.)

16 MS. ANTILLON: Madam Chair, if I may, the
17 State Land Office would like to present a witness, an
18 expert, Anchor Holm, in this matter and is requesting
19 that from you and the Commission.

20 CHAIRWOMAN RILEY: On which -- on what
21 matter?

22 MS. ANTILLON: Geology and petroleum
23 engineering, the exhibits that the Applicant has
24 presented.

25 COMMISSIONER BALCH: That can be done when

1 they present the case.

2 MS. ANTILLON: Okay. I will ask again
3 later.

4 CHAIRWOMAN RILEY: And so the second motion
5 we can talk about is the motion to dismiss and whether
6 to deny that motion to dismiss. Do I have a motion?

7 COMMISSIONER BALCH: I would move to deny
8 the motion to dismiss.

9 COMMISSIONER MARTIN: Second.

10 CHAIRWOMAN RILEY: Okay. All in favor?

11 COMMISSIONER MARTIN: Aye.

12 COMMISSIONER BALCH: Aye.

13 CHAIRWOMAN RILEY: Aye.

14 (Ayes are unanimous.)

15 CHAIRWOMAN RILEY: The motion to dismiss is
16 denied.

17 The third one would be the request for
18 continuance. Do I have a motion denying the request for
19 continuance?

20 COMMISSIONER BALCH: I would move to deny
21 the request for continuance.

22 COMMISSIONER MARTIN: Second.

23 CHAIRWOMAN RILEY: All in favor?

24 COMMISSIONER MARTIN: Aye.

25 COMMISSIONER BALCH: Aye.

1 CHAIRWOMAN RILEY: Aye.

2 (Ayes are unanimous.)

3 CHAIRWOMAN RILEY: So that leaves the
4 notice issue, which we'll go forward with on testimony.
5 Correct, Mr. Brancard?

6 MR. BRANCARD: Yes.

7 Mr. Feldewert.

8 MR. FELDEWERT: Yeah. Madam Chair, members
9 of the Commission, we'd like to call Michelle Sivadon.

10 CHAIRWOMAN RILEY: Can we please have the
11 witness sworn in?

12 MICHELLE M. SIVADON,
13 after having been first duly sworn under oath, was
14 questioned and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. FELDEWERT:

17 Q. Would you please state your name, identify by
18 whom you're employed and in what capacity?

19 A. Yes. My name is Michelle Sivadon. I work for
20 Hilcorp Energy Company as a senior reservoir engineer
21 working the San Juan Basin.

22 Q. And, Ms. Sivadon, did you testify before this
23 Commission in this matter on September 13th?

24 A. Yes, I did.

25 Q. And at that time, were your credentials as an

1 expert in petroleum reservoir engineering accepted and
2 made matter of public record?

3 A. Yes, they were.

4 Q. And I believe, Ms. Sivadon, that you and other
5 witnesses introduced and discussed certain exhibits?

6 A. Yes.

7 Q. Did Hilcorp provide notice of this additional
8 hearing to known operators in the Blanco-Mesaverde Gas
9 Pool?

10 A. Yes, we did.

11 Q. In front of you should be what was sent with
12 our pre-hearing statements.

13 A. That, I do not have.

14 Q. Which you do not have.

15 MR. FELDEWERT: Do you have a copy of the
16 exhibits from our pre-hearing statement?

17 COMMISSIONER BALCH: 1, 7 and 8?

18 MR. FELDEWERT: 1, 7 and 8.

19 Do you have it, Mr. Brancard?

20 MR. BRANCARD: (Indicating.)

21 Q. (BY MR. FELDEWERT) Ms. Sivadon, if I look at --
22 in this package at what's been marked as Hilcorp Exhibit
23 Number 7 --

24 A. Yes, sir.

25 Q. -- is this an affidavit prepared by my office

1 with the attached letters providing notice of this
2 November 19th hearing to all the operators in the San
3 Juan Basin?

4 A. Yes, it is.

5 Q. So in other words, you didn't determine just
6 the operators in this particular pool. Did the company
7 notify all the Division-designated operators in the San
8 Juan Basin?

9 A. Yes, we did.

10 Q. Okay. In addition to that, if I turn to what's
11 been marked as Hilcorp Exhibit Number 8, does this
12 contain affidavits of publication in a local newspaper
13 in both Rio Arriba and in San Juan Counties?

14 A. Yes, it is.

15 Q. And does this reflect that it was a Notice of
16 Publication of this particular hearing on this date
17 before the Division -- before the Commission?

18 A. Yes.

19 MR. FELDEWERT: Madam Chair, at this time I
20 would move the admission of Hilcorp Exhibits 7 and 8.

21 CHAIRWOMAN RILEY: Do we have any
22 objections to these exhibits?

23 MR. HALL: No objection.

24 CHAIRWOMAN RILEY: All right. These
25 exhibits, 7 and 8, are admitted into the record. Please

1 note.

2 (Hilcorp Energy Company Exhibit Numbers 7
3 and 8 are offered and admitted into
4 evidence.)

5 Q. (BY MR. FELDEWERT) Ms. Sivadon, I also now want
6 to move to a new topic, and it's going to involve what
7 was introduced at the last hearing as Hilcorp Exhibit
8 Number 1. Do you have that in front of you?

9 A. I do.

10 MR. FELDEWERT: Madam Chair, members of the
11 Commissioners, I'm going to be referring to both Exhibit
12 Number 1, which was introduced at the first hearing, and
13 then Exhibit 1A, which is in the package that you have
14 before you in the pre-hearing statement. Okay?

15 Q. (BY MR. FELDEWERT) If I turn to what's been
16 marked -- was marked as Exhibit Number 1 at the
17 September 13th hearing, that exhibit, Ms. Sivadon,
18 contained 35 slides; is that correct?

19 A. That is correct.

20 Q. If I turn to what was marked as slide 22 from
21 that particular hearing, Exhibit Number 1 to the first
22 hearing, slide 22 -- it should be in the bottom,
23 right-hand corner of the page numbers.

24 COMMISSIONER BALCH: I have slides starting
25 at number 36.

1 MR. FELDEWERT: So let me step back. So
2 Exhibit Number 1 was introduced at our first hearing,
3 and it has slides 1 to 35. What you have before you in
4 our pre-hearing statement is Exhibit 1A, which starts
5 with slide 36.

6 CHAIRWOMAN RILEY: Okay.

7 MR. FELDEWERT: I'm going back to Exhibit
8 Number 1, slide 22.

9 CHAIRWOMAN RILEY: I'm not sure --

10 MR. FELDEWERT: So this would have been the
11 exhibit package from the last hearing.

12 CHAIRWOMAN RILEY: Oh.

13 MR. FELDEWERT: Sorry.

14 I believe you have it in front of you,
15 Madam Chair. So on the bottom, right-hand side, you'll
16 see -- there should be a 22 down below.

17 Q. (BY MR. FELDEWERT) Ms. Sivadon, is this a slide
18 that you created and discussed at the September 13th
19 hearing?

20 A. Yes, it is.

21 Q. And I note that in this slide you indicate
22 that, if I'm reading it correctly, the original gas in
23 place under Hilcorp's calculations is 55.2 TCF; is that
24 correct?

25 A. That is correct.

1 Q. And you also note on this particular slide on
2 the left-hand side an 80 percent RE. Do you see that?

3 A. Yes, I do.

4 Q. What is that?

5 A. 80 percent RE is 80 percent recovery
6 efficiency.

7 Q. Okay. Have you prepared some additional
8 exhibits to address these two key points?

9 A. I have.

10 Q. And are those additional exhibits comprised --
11 or set forth in Exhibit 1A?

12 A. Yes, they are.

13 Q. Which contains slides 36, correct?

14 A. Correct.

15 Q. Following the numeric sequence all the way to
16 slide 49; is that right?

17 A. That is correct.

18 Q. Okay. When I look at slide 22 from Exhibit 1,
19 I see that you have divided the original oil and gas in
20 place into -- what would you call those? Cliffhouse,
21 Menefee and Point Lookout, what are those?

22 A. Right. I have divided the 55.2 TCF of original
23 gas in place between three members of the Mesaverde
24 interval.

25 Q. So those are separate producing intervals

1 within this reservoir?

2 A. That is correct.

3 Q. And back in September, did Hilcorp present a
4 geologist that discussed the nature of these three
5 intervals?

6 A. Yes, we did.

7 Q. And if we went back to Exhibit Number 1 and
8 looked at slides starting at 17, 18 and 19, is this
9 where the geologist discussed the nature of these three
10 intervals?

11 A. Yes, it is.

12 Q. And what were the key takeaway points about
13 that discussion?

14 A. The key takeaways in these three slides
15 discussing the geology is that there is a significant
16 amount of variability and lateral discontinuity within
17 the Mesaverde and within the individual members of the
18 Mesaverde.

19 Q. Okay. So, for example, if I have a well that
20 is completed in the Menefee, for example, is that well
21 going to produce from the Point Lookout or the
22 Cliffhouse?

23 A. If it's completed in just the Menefee?

24 Q. Just the Menefee.

25 A. No. It will not produce from the Cliffhouse or

1 Point Lookout.

2 Q. Okay. And if it's completed in the Menefee, is
3 there -- is the nature of that particular interval and
4 these other intervals very compartmentalized?

5 A. Yes, they are.

6 Q. What does this particular geologic setting mean
7 to you as a reservoir engineer who is tasked with
8 recovering gas from this reservoir?

9 A. Due to the significant variability and lateral
10 discontinuity within the Mesaverde and within the
11 various members of the Mesaverde, it will take numerous
12 vertical and/or directional wells in order to
13 sufficiently drain the reserves within the Mesaverde.

14 Q. As an expert here looking at the data today
15 that you have, you and other operators have come up
16 with, and given the nature of this geology and these
17 different intervals, what infill development do you
18 predict -- we're talking about predicting now, down the
19 road -- will eventually be needed to achieve the 80
20 percent recovery for this type of pool?

21 A. It will eventually take 20-acre spacing to get
22 to the 80 percent recovery efficiency.

23 Q. And is there an area within this pool that is
24 currently being developed on 20-acre density?

25 A. Yes, there is.

1 Q. Where is that?

2 A. That is located in San Juan 27 and 5 Unit,
3 Section 8.

4 Q. So if I go back to slide 9 from Exhibit Number
5 1 --

6 A. Yes, sir.

7 Q. -- this identifies where that particular
8 project area is ongoing?

9 A. That is correct.

10 Q. That would be the San Juan 27-5 area, Section
11 8?

12 A. That is correct.

13 Q. And that's being examined with 20-acre density?

14 A. That is correct.

15 Q. Looking again at this geology that was
16 discussed at the last hearing, will operators be able to
17 develop this type of gas reservoir with horizontal
18 wells?

19 A. No, we will not.

20 Q. And why is that?

21 A. As I mentioned, the lateral discontinuity and
22 variability -- and it's significant within the
23 Mesaverde -- does not warrant horizontal drilling. With
24 the lateral discontinuity, not enough lateral length can
25 be drilled to recover enough reserves to pay back the

1 cost of a horizontal drill.

2 In addition to that lateral discontinuity,
3 we are not seeing height growth with our hydraulic
4 fracture treatments, and so as we land a horizontal in a
5 particular member of the Mesaverde, we will not
6 vertically connect all the members of the Mesaverde and
7 be able to drill them with a horizontal take point.

8 Horizontal wells are also much more costly
9 than vertical wells, and for the reasons I just
10 mentioned, we won't capture enough in the way of
11 reserves to pay back that capital investment of a
12 horizontal.

13 Q. Are there any horizontal wells drilled within
14 this particular reservoir today?

15 A. Yes, there are.

16 Q. How many?

17 A. There are ten.

18 Q. Ten.

19 Did you examine the success of that
20 horizontal development in this pool?

21 A. Yes, I did.

22 Q. And what did you find?

23 A. We found that only one of those ten recovered a
24 significant amount of reserves. The other nine were
25 subcommercial.

1 Q. Subcommercial.

2 And the one that did develop reserves, have
3 you been able to determine yet whether that's going to
4 be a commercial well?

5 A. No, I have not.

6 Q. So the jury's out on that one, right?

7 A. That is correct.

8 Q. But the other nine, you've examined?

9 A. The other nine, we have looked at. Their cum
10 production to date are so minimal and marginal that
11 their EURs will not be anywhere close to being
12 commercial.

13 Q. So when you look at this particular geology and
14 you look at the results of the limited horizontal
15 drilling that's been tried in this particular reservoir,
16 would you recommend to your company that they develop
17 this using horizontal wells?

18 A. No, I would not.

19 Q. In your opinion as an expert in petroleum
20 reservoir engineering, is this a pool that's going to be
21 developed with vertical wells or horizontal wells?

22 A. Developed with vertical wells.

23 Q. And in your opinion as an expert having
24 examined the data, is additional vertical well density
25 necessary to achieve or get closer to the 80 percent

1 recovery?

2 A. Yes.

3 Q. And in your opinion as an expert in petroleum
4 reservoir engineering, what do you predict that the
5 spacing is eventually going to be needed -- what density
6 is eventually going to be needed to get close to the 80
7 percent recovery?

8 A. Ultimately 20-acre density will be needed to
9 get to the 80 percent recovery efficiency.

10 Q. Okay. Now, is Hilcorp requesting 20-acre
11 density today?

12 A. No, we are not.

13 Q. What are you asking for today?

14 A. We are asking for 40-acre density or eight
15 wells per 320.

16 Q. Moving from 80-acre density down to 40-acre
17 density?

18 A. That is correct.

19 Q. And in your opinion, moving from 80-acre
20 density down to 40-acre density, is that a necessary and
21 logical step moving towards that 80 percent recovery
22 standard that we see in slide 22?

23 A. Yes, it is.

24 Q. Now, I want to look at slide 22 a little bit
25 closer. Okay?

1 A. Okay.

2 Q. What does this indicate -- what has been
3 produced to date from that 55.2 TCF?

4 A. To date, the Mesaverde has produced 15.2 TCF.

5 Q. And did you calculate on there that percentage
6 of recovery efficiency?

7 A. Yes, I did.

8 Q. And what is that?

9 A. To date, 28 percent of the original gas in
10 place has been recovered.

11 Q. Ms. Sivadon, how long have operators been
12 producing gas from this particular pool?

13 A. Approximately 70 years.

14 Q. Before you and I were born?

15 A. Yes, sir.

16 Q. How long have operators been producing under
17 the current 80-acre density?

18 A. Approximately 20 years.

19 Q. And it was 1998 when additional infill
20 development was approved?

21 A. Yes, sir.

22 Q. And after all this time, we've only produced 28
23 percent of the original gas in place?

24 A. That is correct.

25 Q. Now, keeping slide 22 out, I want to focus on

1 that starting point, that 55.2 TCF. Okay?

2 A. Okay.

3 Q. And I want you to turn now to Hilcorp Exhibit
4 1A, and I want you to go to slide 36, the first slide
5 under Exhibit 1A.

6 A. Yes, sir.

7 Q. Does this slide explain how the company
8 determined the original gas in place of 55.2 TCF?

9 A. Yes, sir, it does.

10 Q. And you show that math on the top, right, the
11 formula that was used?

12 A. Yes, sir. That is correct.

13 Q. And is that a standard formula used by experts
14 like you in the industry?

15 A. Yes, sir. That is the volumetric calculation
16 taught in reservoir engineering to calculate original
17 gas in place.

18 Q. Okay. Now, on the left-hand side of this
19 exhibit, we have a column where you've labeled "Typical
20 Volumetrics." Do you see that?

21 A. Yes, sir.

22 Q. What do you mean -- what are you conveying
23 here?

24 A. What we are conveying here is what is typically
25 done to calculate volumetrics across any area. Our

1 standard cutoffs are used to calculate the amount of net
2 pay, as well as porosity and water saturation.

3 Q. And then on the right-hand side, you have
4 another column that says "Hilcorp" --

5 A. Correct.

6 Q. -- "Mesaverde Volumetrics." What are you
7 conveying there?

8 A. What we are showing over here is Hilcorp
9 utilized a much more rigorous process. Instead of using
10 a standard cutoff across the entire basin, we used a
11 variable permeability cutoff that's very area specific
12 and very granular to help us pinpoint exactly where
13 those remaining reserves should be. We've calculated
14 data points for 8,430 quarter sections.

15 Q. 8,430 quarter sections?

16 A. Yes, sir.

17 Q. So that would 8,430 data points?

18 A. That is correct.

19 Q. Why such a rigorous analysis?

20 A. As I mentioned earlier, due to the geologic
21 complexity of the Mesaverde, the lateral discontinuity
22 and the significant variability that we see, it's
23 imperative to use a more rigorous process to help
24 identify where those remaining reserves are located.

25 Q. So then if I keep in mind that 8,430 data

1 points and I keep my finger here and I flip to the next
2 slide, slide 37 --

3 A. Yes, sir.

4 Q. -- this shows -- before we talk about the
5 slide, it shows this symbol in the upper, right-hand
6 corner that has different colors?

7 A. Yes, sir.

8 Q. And then I see that symbol transposed onto the
9 outline of the reservoir?

10 A. Yes, sir.

11 Q. Is that symbol on there -- each time we see
12 that symbol, does that represent each one of your 8,430
13 data points?

14 A. Yes, it does.

15 (Cell phone ringing.)

16 Q. So if I start with this slide, slide 37, at
17 each of these data points, did you determine the net
18 sand thickness?

19 A. Yes, we did.

20 Q. And you show your variation in the upper,
21 left-hand side?

22 A. That is correct.

23 Q. And you took into account the net thickness
24 data at each one of these data points to come up with
25 your volumetric calculations?

1 A. Yes, we did.

2 Q. And if I turn to slide 38, this would relate to
3 the porosity analysis that you did at each of these
4 8,430 data points?

5 A. Yes, it does.

6 Q. If I go to slide 39, this would show the water
7 saturation analysis done at each one of these various
8 data points?

9 A. Yes, it does.

10 Q. If I go to slide 40, it indicates, does it not,
11 the hydrocarbon height thickness analysis that was done
12 at each one of these particular data points?

13 A. Yes, it does.

14 Q. When did -- how long did it take to get this
15 kind of data put together?

16 A. It took several years to put this kind of data
17 together.

18 Q. Did it start with your company, or did your
19 predecessor start with this effort?

20 A. It actually started with our predecessor,
21 ConocoPhillips.

22 Q. And it continued when you acquired the acreage?

23 A. Yes, it did. We have built on from the work
24 ConocoPhillips started.

25 Q. Is this something that's easy to do?

1 A. No, it is not.

2 Q. It's expensive?

3 A. Yes, it is.

4 Q. Takes a lot of time?

5 A. Yes, it does. It takes a lot of time.

6 Q. Is this something that's typically done when
7 you're looking at volumetrics in a reservoir?

8 A. Are you specifically referring to the variable
9 permeability cutoff?

10 Q. Yes.

11 A. No, that's not typically done.

12 Q. Okay. This is something that's above and
13 beyond what most operators do when they're looking at
14 volumetrics?

15 A. That is correct.

16 Q. How confident are you in this particular
17 number, 55.2 original gas in place?

18 A. I'm very confident in this number.

19 Q. And has the company utilized this very rigorous
20 analysis in pinpointing and determining where it makes
21 sense to have additional take points within this pool?

22 A. Yes, we have.

23 Q. And with this available data, how successful
24 have you been in using existing wellbores and
25 ascertaining where additional boreholes are necessary?

1 A. We've been very successful.

2 Q. Okay. Now, slide 22 also talks about an 80
3 percent recovery efficiency, correct?

4 A. Correct.

5 Q. It sounds like a benchmark to me.

6 A. Yes, sir.

7 Q. Is that the benchmark that operators try to
8 achieve in this kind of reservoir?

9 A. Yes, it is.

10 Q. Why 80 percent? Where did that come from?

11 A. 80 percent recovery efficiency is the standard
12 recovery efficiency used for depletion drive or what's
13 also referred to as a volumetric gas reservoir.

14 Q. And is there consensus among the experts that
15 when you have a reservoir like this -- what did you call
16 it?

17 A. Volumetric or depletion drive.

18 Q. -- depletion drive reservoir, that an 80
19 percent recovery efficiency is the target?

20 A. Yes.

21 Q. And has that consensus by the experts been
22 subject to peer review and accepted as a matter of
23 public record?

24 A. Yes.

25 Q. If I turn to slide 41, does this provide the

1 Commission with the type of expertise and peer review
2 analysis that's been done to utilize this 80 percent
3 recovery efficiency?

4 A. Yes, it is.

5 Q. At the bottom, there is a reference to a
6 memorandum that was created -- that was sent in
7 September of 2018 -- do you see that?

8 A. Yes, I do.

9 Q. -- by Cawley, Gillespie & Associates. What is
10 Cawley, Gillespie & Associates?

11 A. Cawley, Gillespie & Associates is a
12 professional licensed consulting firm who audits our
13 internal reserve calculations, and they also prepare our
14 reserve reports.

15 Q. Okay. And when you say that they audit, audit
16 for what?

17 A. They audit our reserve reports for financial
18 backing.

19 Q. Okay. Do they also audit for other operators?

20 A. They do.

21 Q. For what purpose?

22 A. They provide SCC-compliant reserve reports for
23 publicly traded companies.

24 Q. Is this an outfit that's familiar with the San
25 Juan Basin?

1 A. Yes, they are.

2 Q. And how are you familiar with them? Not only
3 do they do your reserve reports, but how did you become
4 familiar with them?

5 A. We became familiar with them specifically with
6 regards to the San Juan Basin in that they provided and
7 prepared the reserve estimates and the data room [sic]
8 for ConocoPhillips divestiture of the San Juan Basin.

9 Q. So this is the entity or the outfit that
10 audited the reserves that Conoco put up for sale?

11 A. That is correct.

12 Q. And it was the auditor of the reserves that
13 Hilcorp eventually purchased?

14 A. Correct.

15 Q. If I turn to what's been marked as slide 42, is
16 this the actual memorandum that was sent by Cawley,
17 Gillespie & Associates on September 27th, 2018?

18 A. Yes, it is.

19 Q. We don't have to read it into the record, but
20 does the last sentence of this letter attest to the
21 accuracy of your recovery factors and, in particular,
22 the application of an 80 percent recovery factor?

23 A. Yes, it does.

24 Q. And one last question. This group that did
25 this analysis, that did this verification, do they have

1 a staff of engineers?

2 A. Yes, they do.

3 Q. Do they have a staff of geologists?

4 A. Yes, they do.

5 Q. All of which look at the kind of data that you
6 utilized as well, correct?

7 A. Correct.

8 Q. Now, in preparation for this hearing, did you
9 ascertain what the recovery rate would be if we remain
10 with the current well density under the current pool
11 rules?

12 A. Yes, I did.

13 Q. And then did you also determine the recovery
14 efficiency if Hilcorp's application is granted for an
15 increase in density?

16 A. Yes, I did.

17 Q. If I turn to what's been marked as slide 43,
18 does this identify the analysis that you went through?

19 A. Yes, it does.

20 Q. Would you please start at the top and explain
21 to us how you went through your analysis and the
22 results?

23 A. Yes. The first bullet point on slide 43 is
24 just reiterating that there are 9,840 current and
25 historic take points in the Mesaverde.

1 I did an analysis, shown in the second
2 point, looking at EUR estimated ultimate recovery by
3 Mesaverde completion since January of 1990. I drew a
4 trend line through those EURs and projected going
5 forward what the estimated ultimate recovery would be
6 per completion point [sic] forward, and that is 700
7 million cubic feet. By drawing that trend line and
8 going forward through time, we're allowing for what we
9 refer to as degradation or some amount of pressure
10 depletion.

11 The third bullet point is the calculated
12 recovery efficiency at the current rules, getting up to
13 full development of four wells per 320, which equals
14 80-acre density. The estimated ultimate recovery across
15 the Mesaverde Pool would 21.8 TCF. That calculates to
16 be a 39 percent recovery efficiency of the 55.2 TCF
17 original gas in place.

18 Q. Okay. Let me stop you right there. Okay?

19 So if we don't change the current density
20 that's been approved out there for this pool, you're
21 saying that only 39 percent of the original gas in place
22 is going to be recovered?

23 A. That's correct.

24 Q. Leaving 61 percent in the ground?

25 A. That is correct.

1 Q. Okay. What did your analysis show would happen
2 if Hilcorp's application was approved to go down to
3 40-acre density?

4 A. At eight wells per 320, which will be the
5 40-acre density, Hilcorp and other operators would be
6 able to ultimately recover 34.1 TCF in the Mesaverde
7 Pool and that equates to a 62 percent recovery
8 efficiency.

9 Q. So we're still not at 80 percent?

10 A. That is correct.

11 Q. We're getting better but still wouldn't get
12 there?

13 A. Correct.

14 Q. Is that why you believe at some point,
15 operators are going to need to come back and seek
16 20-acre density?

17 A. Correct.

18 Q. But at this point, you're asking for the next
19 progression in density to get you closer to that 80
20 percent recovery efficiency? Is that a good way of
21 looking at it?

22 A. Yes, sir, it is.

23 Q. In addition to this, have you taken a look at
24 the drainage areas for wells that have been completed in
25 this particular pool?

1 A. Yes, I have.

2 Q. If I turn to what's been marked as slide 44,
3 what did you find with respect to the average and median
4 calculated drainage area for wells completed in this
5 pool?

6 A. For the 4,928 Mesaverde completions that I
7 evaluated that have come on line since January of 1990,
8 the average drainage area calculates to be 40 acres, and
9 the median drainage area calculates to be 29 acres.

10 Q. Why did you examine wells with production dates
11 starting after 1/1/1990?

12 A. Within the Mesaverde, there have been three
13 major phases of development starting in the early '50s,
14 and then there was another major phase of development in
15 the early '80s, and then again starting in the '90s. So
16 we focused on the most recent tranche of data that gets
17 us with pressures that are more similar to what we're
18 seeing with our current development. This does also
19 include wells that are at the 80-acre density, which was
20 approved in 1998.

21 Q. So this would account for pressure depletion
22 impacts from 70 years of production?

23 A. That is correct.

24 Q. And you're still showing an average drainage
25 area of only 40 acres?

1 A. Correct.

2 Q. Now, when I look at this data set, there's --
3 it kind of meshes together. But are those all
4 individual dots?

5 A. They are.

6 Q. That would be your 4,928 data points?

7 A. Correct.

8 Q. Okay. I see some outliers. Do you see that?

9 A. Yes, I do.

10 Q. Why outliers?

11 A. The outliers are due to what's known to be a
12 natural fracture system that exists within the
13 Mesaverde. So in those particular wells, they are going
14 to recover more in the way of reserves, and, therefore,
15 they calculate to have larger drainage areas.

16 Q. And we only -- not only do we have outliers
17 going up above your average dot -- red dot, but you have
18 outliers below that, right?

19 A. That is correct.

20 Q. Wells with less than a 40-acre drainage?

21 A. Correct.

22 Q. Does that help explain why operators need
23 flexibility when you're dealing with this type of
24 reservoir?

25 A. Yes, it does.

1 Q. And so are there certain areas where you may
2 not need to add additional wells?

3 A. Yes.

4 Q. And then are there certain areas where you're
5 certainly going to need to add additional wells to get
6 closer to that --

7 A. Yes.

8 Q. And that flexibility and that regulatory
9 certainty, is that important when you're looking
10 long-term and planning out your infill development
11 program as a company over the next five, 10, 15 years?

12 A. Yes, it is.

13 Q. With that in mind, why wouldn't Hilcorp just
14 come before the Commission and ask for just two
15 additional wells for 320-acre spacing? Why four?

16 A. Two additional wells don't get us significantly
17 closer to the 80 percent recovery efficiency that one
18 would expect from this kind of reservoir, and it also
19 puts us in a predicament of having two quarter-quarter
20 sections that would not be drained and creating waste.

21 Q. You talk about the data. Okay? Does the data
22 clearly show that we're going to need at least four
23 additional wells per spacing unit?

24 A. Yes. There is no doubt the data shows we need
25 four additional wells.

1 Q. Again, the doubling of the density, is that
2 consistent with the management of this reservoir since
3 1949?

4 A. Yes, it is.

5 Q. And in your opinion, is that a logical and
6 prudent approach to increasing the density?

7 A. Yes, it is.

8 Q. And does the -- going from four -- four
9 wellbores to eight wellbores within a spacing unit, does
10 that provide operators with the flexibility and
11 regulatory certainty that they need to plan going
12 forward --

13 A. Yes.

14 Q. -- for implementing that additional infill
15 development?

16 A. Yes, it does.

17 Q. Okay. Let's talk about the first point, the
18 prudent management practice. Okay?

19 A. Okay.

20 Q. If I turn to what's been marked as Hilcorp
21 Exhibit 45, is this a depiction of how things were
22 started in 1949?

23 A. Yes, it does.

24 Q. What are you showing here? What are your
25 spacing units?

1 A. What's shown on the right are two 320-acre
2 spacing units that are stand-ups.

3 Q. These would be stand-ups, side-by-side 320s?

4 A. Yes, sir.

5 Q. Okay. And then you show, in this schematic, a
6 green circle with a 1 in it?

7 A. Correct.

8 Q. Okay. What does that reflect?

9 A. That reflects the one well that was allowed per
10 320.

11 Q. Okay. And then you have a little ellipse
12 around here?

13 A. Yes, sir.

14 Q. And you've got an asterisk down below that
15 says, "Ellipse size and orientation will vary due to
16 geology, local fracture network and stimulation and
17 design"?

18 A. Correct.

19 Q. So that's just an estimate of the drainage
20 area, right?

21 A. Correct.

22 Q. So it might be like tilted to the right, might
23 be straight up, might be tilted to the left, depending
24 where you're at?

25 A. Correct. Yes, sir.

1 Q. Now, this scenario is what existed from 1949
2 through 1974; is that right?

3 A. That is correct.

4 Q. If I go slide 46 --

5 A. Yes, sir.

6 Q. -- there are some additional circles colored in
7 yellow with a 2 in there. What do they reflect?

8 A. Those circles with the number 2 in them are the
9 second wells that were approved when the density was
10 doubled from one well from per 320 to two wells per 320
11 or 160-acre density.

12 Q. Okay. So in 1974, the Commission looked at
13 this and doubled the density per spacing unit?

14 A. That is correct.

15 Q. And from one well to two wells?

16 A. Correct.

17 Q. And that density was in place from 1974 through
18 when?

19 A. Until 1998.

20 Q. Okay. And if I turn to what's been marked as
21 slide 47 --

22 A. Yes, sir.

23 Q. -- you've added some additional take points
24 colored in blue?

25 A. Correct.

1 Q. With a 3 and 4 in them?

2 A. Yes, sir.

3 Q. What does that represent?

4 A. The blue circles with the numbers 3 and 4 in
5 them are the third and fourth wells that were allowed
6 per revised pools in 1998, which were four wells per 320
7 or 80-acre density.

8 Q. Okay. And that's what we've been working
9 through until today?

10 A. Correct.

11 Q. And with all this initial density and twice
12 doubling the density, we're still not even producing
13 half of the original gas in place, correct?

14 A. That is correct.

15 Q. And we're not projected to produce at least
16 half?

17 A. Correct.

18 Q. If I turn to what's been marked as slide 48, is
19 this the depiction of the development that would occur
20 over time if Hilcorp's application is granted?

21 A. Yes, it does.

22 Q. And what have you shown here? You've added
23 some gray circles?

24 A. We have. The gray circles are what we would
25 propose as wells five, six, seven and eight, which would

1 get us to eight wells per 320 or 40-acre density.

2 Q. And if we didn't follow the pattern that was
3 put in place by the prior Commission and only, for
4 example, added two additional wells per spacing unit,
5 looking at this depiction, what would that mean?

6 A. What that would mean is that any combination of
7 two of those wells would not be allowed, and we would
8 have two quarter-quarter sections that would not be
9 drained.

10 Q. So you may not, for example, be able to put in
11 wells five and seven?

12 A. Correct.

13 Q. Or six and eight?

14 A. Correct.

15 Q. Or five and six?

16 A. Yes, sir.

17 Q. Or any combination thereof?

18 A. Yes, sir.

19 Q. Leaving substantial acreage undrained?

20 A. Correct.

21 Q. Okay. Now, will allowing only -- let's go to
22 the next topic and that is flexibility here. Okay?

23 A. Okay.

24 Q. Will allowing only two additional wells per
25 spacing unit provide Hilcorp and other operators the

1 flexibility that they need to utilize existing wellbores
2 and existing well sites for adding these other take
3 points?

4 A. No, it will not.

5 Q. After the last hearing, did you take a quick
6 look at the number of available Dakota wellbores that
7 already exist out there that would not -- that Hilcorp
8 would not be able to use if the density didn't follow
9 the past pattern and we only added two additional wells
10 per spacing unit?

11 A. Yes, we did.

12 Q. And how many Dakota wellbores would the company
13 be unable to use if this application is not granted?

14 A. There would be approximately 200 Dakota
15 wellbores that Hilcorp and other operators would not be
16 allowed to access.

17 Q. And you just looked at Dakota wellbores, right?

18 A. Correct.

19 Q. And, Ms. Sivadon, isn't it true that there are
20 numerous existing wellbores out there in the San Juan
21 Basin?

22 A. Yes.

23 Q. And that there are numerous existing wellbores
24 in the San Juan Basin that currently do not produce from
25 the Blanco-Mesaverde Gas Pool?

1 A. Correct.

2 Q. And is it true that some of those wells are
3 shallower wells --

4 A. Yes, sir.

5 Q. -- if this is my target (demonstrating)?
6 And some of them are deeper wells?

7 A. Yes, sir.

8 Q. And does the company and other operators plan
9 to analyze whether they can use, for example, shallower
10 wellbores to recomplete in the Mesaverde?

11 A. Yes.

12 Q. And also look at deeper wells in other
13 formations to see if they could recomplete in the
14 Mesaverde?

15 A. Yes.

16 Q. Okay. Do you need the flexibility and
17 regulatory certainty that is requested by this
18 application to efficiently and effectively do that kind
19 of analysis?

20 A. Yes, we do.

21 Q. How long does it take to plan this type of
22 infill development?

23 A. It takes several years, if not decades to
24 actually then execute.

25 Q. So I think you may have answered. Even if this

1 is granted, okay, what time frame are we looking at over
2 which this additional development at this increased
3 density will occur?

4 A. At a minimum, several years, if not decades.

5 Q. And when companies are out there, given this
6 flexibility and analyzing these existing wellbores and
7 ascertaining what needs to be done for this density,
8 that is going to occur over the next year, five years,
9 ten years, 20 years?

10 A. Can you repeat the question, please?

11 Q. When you're looking at this analysis and
12 implementing this density, you're going to be looking a
13 year out, five years out and further, correct?

14 A. Correct.

15 Q. And when operators get around to implementing
16 this density, you would agree, that they're going to
17 have to comply with the regulatory requirements in place
18 to address whatever surface issues exist out there,
19 correct?

20 A. Correct.

21 Q. If I go to slide 49 --

22 A. Yes, sir.

23 Q. -- have you taken a look at the revenue benefit
24 for the State of New Mexico from the requested increase
25 in density?

1 A. Yes, I have.

2 Q. Okay. And I want to stop you right there
3 because I want to make sure it's very clear.

4 When you talk about this additional
5 production that you've utilized on slide 49, is this
6 incremental production or accelerated production?

7 A. It is incremental production.

8 Q. This is production of additional gas that will
9 not otherwise be produced?

10 A. That is correct.

11 Q. And this infill drilling, in your opinion, is
12 it going to do any damage to the reservoir?

13 A. No, it will not.

14 Q. Is it negatively going to impact the reservoir
15 energy?

16 A. No, it will not.

17 Q. Now, on this particular slide at the top,
18 you've carried forward your analysis of what is going to
19 be produced if we maintain at the current density,
20 correct?

21 A. Correct.

22 Q. And you've done a calculation here of 21.8 TCF;
23 is that right?

24 A. That is right.

25 Q. Then I see a number of 15.2 TCF. Where did

1 that come from?

2 A. That is how much has been produced to date out
3 of the Mesaverde.

4 Q. And that's shown on slide 22 of the initial
5 package, correct?

6 A. Correct.

7 Q. And you come up with an additional 6.6 TCF?

8 A. Correct.

9 Q. Okay. Now, what is that number?

10 A. The 6.6 TCF is what is remaining to be produced
11 between what's been produced to date and then at full
12 development of four wells per 320.

13 Q. So we'd only produce another 6.6 TCF?

14 A. Correct.

15 Q. Which would then get to your number of -- what
16 was the percentage number you came up with in the prior
17 slide?

18 A. The 21.8 TCF equates to 39 percent recovery
19 efficiency.

20 Q. And if we stop there, there would be some
21 additional revenue to the State of New Mexico, correct?

22 A. Correct.

23 Q. Okay. But it would only produce 39 percent of
24 the original gas in place?

25 A. Correct.

1 Q. If we go to the density of -- 40-acre density,
2 eight wells per 320, how much additional gas is going to
3 be produced?

4 A. I'm calculating an incremental 12.3 TCF.

5 Q. Which would equate with a 62 percent recovery?

6 A. That is correct.

7 Q. And what did you estimate to be the financial
8 benefit to the State of New Mexico for the recovery of
9 that additional TCF over time?

10 A. The additional 12.3 TCF at 40-acre density will
11 generate approximately \$3 billion in additional ad
12 valorem and severance tax revenue for the State of New
13 Mexico.

14 Q. 3 billion, with a B?

15 A. Yes, sir, with nine zeros.

16 Q. Okay. And 35 percent, you point out here, of
17 New Mexico's annual budget comes from oil and gas taxes?

18 A. Correct.

19 Q. And 50 percent -- 50 percent of New Mexico's
20 public education spending comes from oil and gas taxes,
21 correct?

22 A. Correct.

23 Q. Ms. Sivadon, over the last year, you have
24 traveled to Santa Fe and testified as an expert before
25 this Division in individual examiner cases seeking an

1 increase in density, correct?

2 A. Correct.

3 Q. And during that time, you've presented evidence
4 demonstrating a need to increase the density and recover
5 stranded reserves, correct?

6 A. Correct.

7 Q. And have those applications that are not still
8 pending been approved by the Division?

9 A. They have.

10 Q. And in some cases, have those applications --
11 those applications, have they approved a certain number
12 of wells per quarter section?

13 A. Yes, they have.

14 Q. Some of those applications have approved as
15 many as how many wells per quarter section?

16 A. Four wells per quarter section.

17 Q. Which would equate with the eight wells that
18 you seek for the spacing unit?

19 A. Correct.

20 Q. Did any operator appear before this Division in
21 opposition to the addition of these additional take
22 points?

23 A. No, they have not.

24 Q. And in preparation of this hearing, have you
25 also visited with operators about increasing the density

1 in this pool through pool rule changes?

2 A. Yes, I have.

3 Q. And did you discuss specifically with operators
4 in the San Juan Basin the application to allow four
5 additional wells per spacing unit?

6 A. Yes, I did.

7 Q. And after reviewing and analyzing your data,
8 has any operator expressed disagreement with the
9 technical data supporting this request?

10 A. No, they have not.

11 Q. If I look at slides 47 and 48, the progression
12 in density that you seek here --

13 A. Yes, sir.

14 Q. -- based on your discussion with operators in
15 the San Juan Basin, is there a consensus that this
16 density progression reflected on these slides is
17 necessary and appropriate?

18 A. Yes.

19 Q. And is there any question that eight wells per
20 320-acre spacing unit is necessary to bring the recovery
21 factor closer to the 80 percent that should be expected
22 from this type of reservoir?

23 A. There is no doubt that the data shows and
24 supports that 40-acre density is needed to get closer to
25 the 80 percent recovery efficiency.

1 Q. And is the increased density that's proposed by
2 Hilcorp and reflected on Exhibits 47 and 48, is that
3 consistent with proper reservoir management?

4 A. Yes, it is.

5 Q. And is it consistent with how the Commission
6 has approached the increase in density in this pool
7 since 1949?

8 A. Yes, it is.

9 Q. And will the proposed increase in density
10 provide Hilcorp and other operators the flexibility that
11 they need to utilize existing wellbores and well sites
12 over time to drain this pool?

13 A. Yes, it will.

14 Q. And will the proposed increase in density
15 afford operators the opportunity to produce without
16 waste their just and equitable share of the gas in this
17 pool?

18 A. Yes, it will.

19 Q. And more importantly here, with the
20 Commission's primary duty in mind, will this proposed
21 increase in density result in the recovery of reserves
22 that will otherwise be left in the ground?

23 A. Yes, it will.

24 MR. FELDEWERT: Madam Chair, members of the
25 Commission, I would move the admission into evidence of

1 Hilcorp Exhibit 1A, which comprises slides 36 through
2 49.

3 CHAIRWOMAN RILEY: Are there any objections
4 to this?

5 MR. HALL: No objection.

6 (Hilcorp Exhibit Number 1A is offered into
7 evidence.)

8 MR. FELDEWERT: And that concludes my
9 examination of this witness.

10 MS. ANTILLON: Madam Chair, the State Land
11 Office would like to enter an appearance at this time
12 and have the opportunity to ask the witness a few
13 questions.

14 CHAIRWOMAN RILEY: Is this the appropriate
15 procedure?

16 MR. BRANCARD: We are way past the deadline
17 for party intervention at this point.

18 MS. ANTILLON: Well, I did speak at the
19 beginning regarding notice, and at that time you guys
20 wanted to discuss only preliminary matters.

21 MR. FELDEWERT: Madam Chair, the State Land
22 Office received notice of this hearing back on September
23 13th when all the witnesses were here, and they chose
24 not to appear, and they chose not to cross-examine
25 witnesses. Nothing has changed since then. And so this

1 late request now to intervene in this case and now
2 cross-examine these witnesses is untimely and improper.

3 MS. ANTILLON: At the last hearing, you
4 guys -- the Commission did ask for the State Land Office
5 to be notified. We are here at this time, and the
6 notification wouldn't do us any good if we didn't have
7 the opportunity to ask the witness questions.

8 MR. BRANCARD: We have a process for
9 pre-filing statements.

10 COMMISSIONER BALCH: The difficulty is that
11 Mr. Feldewert would not have an opportunity to review
12 your witness and your proposed testimony, because I
13 believe it was a week or so ago that that should have
14 been filed.

15 MS. ANTILLON: The State Land Office -- the
16 legal department of the State Land Office did not
17 receive notice of this until after a pre-hearing notice
18 would have been required. And as I stated earlier, we
19 didn't get the exhibits to review until Friday
20 afternoon, so it would have been impossible for us to
21 have prepared something for today with having not
22 received any of the exhibits or notice until after the
23 fact -- or after our deadline.

24 MR. FELDEWERT: I have never been aware of
25 this sudden Chinese wall between the legal department

1 and the State Land Office. And certainly the notice
2 that was provided back in September went to the State
3 Land Office as a courtesy. So they are fully aware of
4 what's been going on in these proceedings, and they
5 chose, for whatever reason, until now -- they chose, for
6 whatever reason, until now to suddenly appear in the
7 second hearing, after this case was continued for
8 months, and decide to try to seek to intervene. And I
9 would submit that that is improper and untimely.

10 CHAIRWOMAN RILEY: So it's my understanding
11 that they were given notice, then, in September?

12 MR. FELDEWERT: Yes.

13 MS. ANTILLON: I am not aware of -- I found
14 out about this last Tuesday when we received an email
15 from the Applicant's attorney. And at that point, the
16 attorney mentioned that we had not been provided with
17 notice in his e-mail, and he asked us -- asked the
18 Commissioner to waive that notice, which we said we
19 would not do. Based on that email, I am here to
20 represent the State Land Office.

21 MR. FELDEWERT: Hilcorp Exhibit Number 6
22 that was entered at the last hearing clearly gave the
23 State Land Office a courtesy notice of this hearing. I
24 have another copy, Madam Chair, if you want me to
25 approach.

1 COMMISSIONER BALCH: I recall seeing the
2 letter.

3 Letter dated August 30th?

4 MR. FELDEWERT: Yes, sir.

5 MS. ANTILLON: I do have a copy of the
6 email that specifically says, "It has come to my
7 attention that the New Mexico State Land Office did not
8 receive formal notice of this additional hearing."

9 COMMISSIONER BALCH: I think we were
10 talking about the courtesy notice of August 30th.

11 MR. FELDEWERT: Yes, sir.

12 MS. ANTILLON: And I was referring to the
13 Tuesday, November 13th email of which -- which is the
14 notice that I am aware of that the State Land Office
15 received regarding this hearing.

16 CHAIRWOMAN RILEY: Do you want to see a
17 copy of this?

18 MR. BRANCARD: No. I have a copy of that,
19 Madam Chair.

20 Again, we have a provision for when a party
21 can intervene in this matter, and that passed a while
22 ago. The land office could certainly present witnesses
23 as part of the public comment period, provide
24 information.

25 CHAIRWOMAN RILEY: That would probably be

1 the most appropriate in this, would be for your witness
2 to sign up for the public comment.

3 COMMISSIONER BALCH: And for the record, I
4 would say that if this had been a little more timely, I
5 would be inclined to have the State Land Office --
6 particularly since you have a geologist that could give
7 valuable information, but, I mean, it's really very,
8 very late in the game.

9 MS. ANTILLON: Well, if we had been
10 provided with previous notice, we would have responded
11 quicker.

12 COMMISSIONER BALCH: Well, I think August
13 30th might be sufficient notice.

14 CHAIRWOMAN RILEY: Mr. Hall, do you have
15 questions for this witness?

16 CROSS-EXAMINATION

17 BY MR. HALL:

18 Q. Briefly about your Exhibit 49 --

19 A. Yes, sir.

20 Q. -- that speaks to tax revenues only, correct?

21 A. Correct.

22 Q. And those are direct flow-through revenues to
23 the State of New Mexico, correct?

24 A. Correct.

25 Q. The exhibit does not address the State's

1 severance tax volume capacity, which is another number,
2 isn't it?

3 A. Correct. I'm not familiar with the severance
4 tax bonding.

5 Q. Okay. And the exhibit doesn't address royalty
6 revenues that the State of New Mexico receives from
7 state-owned land, neither does it address royalty
8 revenues that share -- taxes share it receives from
9 federal production lands, correct?

10 A. Correct.

11 Q. Those are big numbers, is it safe to assume?

12 A. Yes.

13 MR. HALL: That's all I have.

14 CHAIRWOMAN RILEY: Thank you.

15 Ms. Kessler?

16 MS. KESSLER: No questions.

17 CHAIRWOMAN RILEY: Commissioners, do you
18 have questions for this witness?

19 COMMISSIONER MARTIN: I do not.

20 COMMISSIONER BALCH: I have a couple of
21 questions.

22 CHAIRWOMAN RILEY: Go ahead.

23 CROSS-EXAMINATION

24 BY COMMISSIONER BALCH:

25 Q. Good afternoon, Ms. Sivadon.

1 A. Yes, sir.

2 Q. There was a lot of debate about the
3 pronunciation of your name earlier. I hope I got that
4 right.

5 A. Sivadon is correct. Yes.

6 Q. Thank you, first of all, for bringing in the
7 additional testimony. That answers some of the
8 questions I had about the downspacing as being
9 requested.

10 It sounds like you went back also and
11 looked at not just the Dakota completions but also some
12 shallower completions?

13 A. Yes, sir.

14 Q. And I believe I asked you in the last hearing
15 kind of order of magnitude what percentage of this new
16 development you would see through recompletions or
17 deepening of wells and order of magnitude?

18 A. On a percentage basis, I would be purely
19 speculating right now as to what that would be.

20 Q. A significant number? A small number? Ten
21 percent? Fifty percent? Thirty percent?

22 A. Dr. Balch, I really -- I would be purely
23 speculating right now. I mean, it takes a lot of work
24 vetting individual wellbores --

25 Q. Sure.

1 A. -- to make sure that there is mechanical
2 integrity, et cetera.

3 Q. Let me ask you a little bit differently. How
4 many opportunities are there for that type of
5 recompletion? Without vetting them, just how many
6 potential locations already exist that could be either
7 deepened or recompleted?

8 A. There are thousands. Hundreds -- at least
9 hundreds, if not thousands of wellbores that we could
10 potentially do.

11 Q. Directional drilling has really taken off,
12 especially in -- in horizontals. And I think you made a
13 case that horizontals really don't apply to this type of
14 formation.

15 A. Correct.

16 Q. But the directional aspect does allow a lot of
17 development from a single pad.

18 A. Correct.

19 Q. And right now I think the record for southeast
20 New Mexico is 46 wells off one pad. I mean, what's been
21 the potential for not adding too many more pads, just
22 directionally drilling to get your downspacing?

23 A. There's a lot of potential to do that. In
24 northwest New Mexico, there is a lot of topography that
25 also dictates where surface locations are. So in a lot

1 of those cases, the topography is going to dictate that
2 we drill multiple wells from the same pad. There is
3 also a cost benefit to us drilling multiple wells from
4 the same pad.

5 Q. One set of surface infrastructure, et cetera?

6 A. Correct.

7 Q. The ten horizontal wells that have been tried
8 in the Mesaverde --

9 A. Yes, sir.

10 Q. -- what's the vintage on those?

11 A. The first was around the 1990 time frame and
12 then as recent as 2010, 2011.

13 Q. So still a little bit before kind of the most
14 recent set of evolution in horizontal drilling and
15 completion?

16 A. Yes, sir.

17 Q. So those would be a relatively small number of
18 frac stages and completions?

19 A. I'm not familiar with how many frac stages were
20 done in those particular wells.

21 Q. Now, certainly if you could figure out a
22 regional stress direction, which I think you know very
23 well, you could perhaps -- I mean, I guess I wouldn't
24 throw out horizontal development completely without
25 evaluating with the most modern technology.

1 A. Correct. Where horizontals have been most
2 successful, however, are in shale plays or
3 unconventional resource plays where you're able to get a
4 lot of fracture height and connect significant --
5 volume.

6 Q. Where there is not a lot of variability in the
7 reservoir --

8 A. Correct.

9 Q. -- I guess?

10 I guess I still won't rule it out
11 completely.

12 A. Yes, sir.

13 Q. So your volumetric study, is that primarily
14 well log and production based, or is that also based on
15 seismic data or any other mud-sensing data?

16 A. It's primarily well log data and production
17 data, getting volumes to match what has been produced or
18 is forecasted to be produced.

19 Q. So you're filling in gaps between
20 quarter-quarter sections that have a well in them, for
21 example. How are you doing that?

22 A. Well, so we take the log data and then we
23 actually grid it to give us interpretations between
24 individual well locations.

25 Q. So nearest mapping, things like that?

1 A. Yes, sir.

2 Q. Kind of looking at your slide 44 --

3 A. Yes, sir.

4 Q. -- it seems like a particular well could -- can
5 drill about 40 acres, maybe 29 or so, on average. So it
6 looks like, based off of that and natural decline of --
7 reservoir, this may be the last request for downspacing
8 in this pool?

9 A. I wouldn't say that conclusively --

10 Q. Sure.

11 A. -- in that in order to get to the 80 percent
12 recovery efficiency, as we've shown with the
13 calculations, we're still well shy of that with 40-acre
14 density. That combined with -- we do have some analogs
15 that we discussed at the last hearing in the Piceance
16 and the Green River Basin that are down to 10-acre and
17 5-acre spacing. So I wouldn't say for sure that this
18 will be the last time that we would be asking for an
19 increase in density.

20 Q. And refresh my memory. This will get you to
21 60- --

22 A. 62 percent.

23 Q. 62 percent?

24 A. Yes, sir.

25 Q. I saw that, elliptical drainage patterns. I

1 appreciate that because it does reflect a lot of the --
2 production up there.

3 A. Yes, sir.

4 Q. Kind of in general for Hilcorp's acreage -- I
5 imagine that's what you're most capable to speak to --
6 what are kind of the dimensions of those ellipsis?

7 A. The -- the exact dimensions are, you know,
8 still up for interpretation, but we do know there is a
9 preferential frac orientation about -- call it 10 to 20
10 degrees east of north.

11 Q. Okay. And then the length to width of the
12 ellipse?

13 A. That's something that we're still evaluating
14 and working on.

15 Q. Still working on?

16 A. Yes, sir. We're trying to ascertain that.

17 Q. For Hilcorp in particular, in the next couple
18 of years, where is this development likely to take you?
19 Is it going to be drilling new wells? Recompletions?
20 Deepening other wells?

21 A. Sure. So as our initial focus has been, we'll
22 continue to focus on recompletions initially. Those are
23 very cost beneficial to us versus new drills. But for
24 some locations, we may not have a wellbore available to
25 do a recompletion or add to. And in that case, it will

1 take a new drill.

2 Q. So I would imagine you'll fill out a few
3 drilling requests.

4 What's a typical Mesaverde new well going
5 to cost right now in 2018, assuming you could find a
6 rig?

7 A. Right. Order magnitude probably around
8 million, million and a half.

9 Q. And a recompletion?

10 A. A recompletion is costing us approximately
11 \$350,000.

12 Q. So you do six recompletions for one new well?

13 A. Correct.

14 Q. Okay. Thank you.

15 A. Yes, sir.

16 CHAIRWOMAN RILEY: Mr. Brancard?

17 MR. BRANCARD: Sure.

18 CROSS-EXAMINATION

19 BY MR. BRANCARD:

20 Q. So I'm looking at your proposal. It's in your
21 exhibit. I just looked at the one attached to Exhibit
22 7.

23 A. Okay.

24 MR. FELDEWERT: Are you looking at the
25 application?

1 MR. BRANCARD: Yes. Well, I guess it's
2 attached to the notice.

3 MR. FELDEWERT: Yeah.

4 Q. (BY MR. BRANCARD) So under well density, you're
5 deleting a lot of language? Why is that true?

6 MR. FELDEWERT: So you're looking at the
7 application, page 5?

8 MR. BRANCARD: Page 5, yes. There are a
9 whole bunch of requirements that are being deleted.

10 THE WITNESS: Go ahead and answer, Counsel?

11 MR. FELDEWERT: Well, the -- the -- the
12 aspect of this application is these first optional
13 infill well, second optional infill well and third and
14 fourth are really no longer necessary up there in the
15 San Juan Basin in this pool.

16 Q. (BY MR. BRANCARD) I thought your testimony was
17 that there are a lot of these GPUs that don't have four
18 wells yet.

19 A. There are several GPUs, yes, that are not fully
20 developed at the current rules.

21 MR. FELDEWERT: The question would be would
22 they have the flexibility needed if you had to stick,
23 for example, your third well in a specific location?

24 THE WITNESS: Correct.

25 MR. FELDEWERT: Would you have the

1 flexibility?

2 THE WITNESS: With the current rules?

3 MR. FELDEWERT: Yeah.

4 THE WITNESS: No.

5 MR. BRANCARD: So we have a program for the
6 first four wells. You're eliminating that. But you
7 have a lot of areas that don't have four wells yet, so
8 they could be done wherever.

9 MR. FELDEWERT: No, not wherever. If you
10 look at the second page, page 6, no more than four in a
11 quarter-quarter -- or a quarter section.

12 MR. BRANCARD: Right. So if you had a 320,
13 you could do your first four wells all in one-quarter
14 section.

15 MR. FELDEWERT: Theoretically, yes.

16 MR. BRANCARD: So then on Section 2, on
17 page 6, it says, "The Division Director, in accordance
18 with Subsection C of 19.15.15.11, may grant an exception
19 to the well location requirements upon application." So
20 that means that even though now the Commission is saying
21 the maximum of eight wells, you could come back in for a
22 hearing to get nine, ten, 11 wells?

23 THE WITNESS: Yes, sir.

24 COMMISSIONER BALCH: They've already done
25 so in some places.

1 THE WITNESS: Yes.

2 CHAIRWOMAN RILEY: Say that again.

3 MR. BRANCARD: We're going from four to
4 eight wells here, but then we're allowing an exception
5 to go beyond eight wells.

6 MR. FELDEWERT: Well, it would be the well
7 location requirements. But that administrative
8 exception would be limited to well location
9 requirements.

10 MR. BRANCARD: Okay. Eight wells in a GPU
11 is not a location requirement?

12 MR. FELDEWERT: The location requirement
13 would be more than four wells would be located within
14 either quarter section of a GPU. Any exception to that
15 would have to go through the administrative process.

16 MR. BRANCARD: Okay. So you're saying you
17 can't go beyond eight wells?

18 MR. FELDEWERT: We have to come to hearing
19 and seek an exception to the individual pool rules like
20 you would anytime. I mean, if I have current pool rules
21 and I want to do something different than what the
22 special pool rules require, I have to come to hearing.
23 That's correct. Yes, sir.

24 MR. BRANCARD: So the only thing you're
25 varying here is not just 1B. It's 1B(2), correct?

1 MR. FELDEWERT: In terms of what? I'm
2 sorry.

3 MR. BRANCARD: Of your administrative
4 exception. Without going to hearing --

5 MR. FELDEWERT: Effectively it would be
6 1B(2). That is correct. Yes.

7 MR. BRANCARD: Right. So you could put all
8 eight wells into one quarter section with an
9 administrative exception.

10 MR. FELDEWERT: No. You'd have to get an
11 administrative exception.

12 MR. BRANCARD: Right.

13 MR. FELDEWERT: But in a most extreme case.
14 But let's think about this. Okay? Why would you do
15 that? You're going to leave the other quarter section
16 undeveloped? Makes no sense.

17 MR. BRANCARD: I don't know how you-all get
18 along with each other out there.

19 MR. FELDEWERT: Well, no, no.

20 MR. BRANCARD: You have some other operator
21 you want to leave in the dust perhaps.

22 MR. FELDEWERT: No. We're talking about a
23 320-acre spacing unit. Okay? And this is talking about
24 locations within the 320-acre spacing unit. And what
25 it's saying is you have no more than four in each

1 quarter section of that 320. And you're not going to
2 put eight in a quarter section because then you wouldn't
3 have any left to put in the other quarter section of the
4 320. That's my point.

5 Q. (BY MR. BRANCARD) So for these recompletions,
6 in looking at your page 48 --

7 A. Yes, sir.

8 Q. -- this is -- this is the fifth well that
9 you're dealing with now, right, under today's rule
10 without -- assuming that we're just dealing with what
11 the rule is today? Okay? When you go in for a
12 recompletion, you're often asking for a fifth well in a
13 320?

14 A. When we've come for density exception?

15 Q. Yes.

16 A. Yes, sir.

17 Q. Okay. Do these recompletions fit within the
18 pattern you're talking here?

19 A. Yes.

20 Q. Okay. Because it's somebody else's well you're
21 deepening, right? It's not your well. It's not a new
22 well you're putting in. You have no control over where
23 that well is located?

24 A. The existing well?

25 Q. Yes.

1 A. Correct.

2 Q. So they sometimes end up in the same
3 quarter-quarter section?

4 A. Sometimes they could, yes.

5 COMMISSIONER BALCH: In which case you
6 probably wouldn't recomplete.

7 THE WITNESS: Correct.

8 CHAIRWOMAN RILEY: Do you have any other
9 questions?

10 MR. BRANCARD: No, I don't.

11 CHAIRWOMAN RILEY: Do we have any redirect,
12 Mr. Feldewert?

13 REDIRECT EXAMINATION

14 BY MR. FELDEWERT:

15 Q. Just to make clear, Ms. Sivadon, when you look
16 at these candidates for recompletions --

17 A. Yes.

18 Q. -- you're looking at each individual spacing
19 unit?

20 A. Yes, sir.

21 Q. And you're looking to see what well stock is
22 available within that spacing unit to assist in
23 developing that spacing unit more effectively?

24 A. Yes, sir.

25 Q. Okay. And in doing so at that point in time,

1 you would have contractual arrangements in place that
2 would allow you to utilize an existing wellbore if it
3 fit the criteria, correct?

4 A. Correct.

5 Q. Okay.

6 CHAIRWOMAN RILEY: Anything further for
7 this witness?

8 MR. FELDEWERT: No, Madam Chair.

9 CHAIRWOMAN RILEY: You may be excused.
10 Thank you.

11 THE WITNESS: Thank you, Madam Chair and
12 Commissioners.

13 MR. FELDEWERT: And that concludes our
14 presentation -- our additional presentation.

15 CHAIRWOMAN RILEY: Do we want to take a
16 break?

17 How are you doing, Mary? Do you need a
18 break?

19 (The court reporter responds.)

20 CHAIRWOMAN RILEY: Do we have anything else
21 procedurally we need to deal with before we take a break
22 and then public comment?

23 MR. BRANCARD: No.

24 COMMISSIONER BALCH: How many commenters do
25 we have signed up?

1 MR. BRANCARD: I don't know.

2 MR. HALL: Did you move the exhibits?

3 MR. FELDEWERT: Yes, I did. Thank you,
4 Scott.

5 CHAIRWOMAN RILEY: On the public comment
6 sheet, I show 20. The rest of this, I think, is just a
7 sign-in sheet.

8 Let's take a quick break right now, so
9 3:00.

10 (Recess, 2:48 p.m. to 3:00 p.m.)

11 CHAIRWOMAN RILEY: We're going to start
12 with our public comment period, and I want to just
13 reiterate to you-all a couple of ground rules. We're
14 going to limit these to three minutes apiece. And I do
15 have a sign-in sheet that has approximately 20, 21
16 people signed in. I would request -- actually, require
17 that you-all address your concerns, your comments here
18 to the Commission and face us. In fact, if you'll come
19 forward right in this area (indicating) so that our
20 court reporter can hear you and just to be certain that
21 you're speaking directly to us. And please -- just
22 please be respectful, if you would.

23 MR. FELDEWERT: Madam Chair, if I may, I
24 have one statement I need to make for the record that
25 there was an error I noted during the break, number one.

1 And number two, we can certainly yield the
2 table, if you would like to have them sit up here for
3 public comment.

4 If you look at Division Order R-1097-A1,
5 which was entered in December of 2002, it contains the
6 current language in the pool rules. And when you look
7 at those under Subsection 1, there is a Subsection A; a
8 Subsection B, which is what we've been talking about
9 here; a Subsection C, which deals with setback
10 requirements; and then Subsection 2, administrative
11 exceptions.

12 In looking at that and in thinking about
13 Mr. Brancard's questions earlier, when you look at our
14 application, it reflects the changes that were being
15 made to the pool rules. And our application lists
16 Subsections A -- Subsection 1(a)(b) [sic] is Subpart 2,
17 administrative exceptions. Because there are no changes
18 to Subsection C, there is no language in their
19 application, which led to some confusion about what
20 Subsection 2, administrative exceptions, means when
21 Mr. Brancard asked his question.

22 It turns out, when you look at the
23 application, there was some language change that was put
24 together for the purpose of just cleaning up the
25 language in Subsection 2, administrative exceptions.

1 And it should remain administratively that the exception
2 would be to the well location requirements of 1C, which
3 is the setbacks, not 1B, which is the density.

4 So to answer Mr. Brancard's question, there
5 would not be an opportunity to seek an exception to the
6 density with an administrative process. It would have
7 to be by order. The only thing that would remain, as in
8 the current rule, is that you can seek an exception to
9 the setback requirements in Subsection 1C.

10 CHAIRWOMAN RILEY: So then the correction
11 you're making is where the C is stricken, you want
12 to unstrike --

13 MR. FELDEWERT: It should have stayed. It
14 should have stayed. Yes, that should have stayed. And
15 that was a mistake made when they were trying to clean
16 up the language of the rule.

17 CHAIRWOMAN RILEY: Okay.

18 MR. FELDEWERT: With that, I'd be happy to
19 step back.

20 CHAIRWOMAN RILEY: That would be great if
21 the public commenters could use those seats.

22 The first one on the list is Thomas
23 Letterwood. Nope. I'm sorry. Wrong list.

24 Daniel Tso.

25 And, Mr. Tso.

1 And if everyone would, when you come
2 forward, please state your name for the record.

3 MR. TSO: Can I sit next to you? That way
4 you can hear me.

5 (The court reporter responds.)

6 COMMISSIONER BALCH: You should hear her
7 complain about me.

8 MR. TSO: Oh, it's going to be directed at
9 you, yes.

10 (Laughter.)

11 MR. TSO: Ya'at'eeh.

12 (Speaking in the Navajo language; no
13 translation.)

14 Daniel Tso.

15 (Speaking in the Navajo language; no
16 translation.)

17 Thank you for this opportunity. I won't
18 translate, and that'll be to your -- I guess the minus
19 part.

20 But what I do see is the fact that we have
21 a lame duck administration. We have elected
22 congressional folks asking for a continuance, but that
23 falls on deaf ears. You've got one foot out the door,
24 and it just seems like you want to stay as long as
25 possible.

1 But in respect to that, Navajo people,
2 traditional people, have their own L-A-W-S. The land
3 that's being discussed is our indigenous homelands for
4 the Navajo people. Some of the earliest home structures
5 exist in the area, and yet there is no mention about the
6 Navajo people. Have they been given notice? Counsel
7 has said and stated: Jicarilla is only a surface owner.
8 Allotment owners are only surface owners. But I wonder
9 why I get a royalty check. I wonder. Does that give me
10 mineral rights? Does that give me a say on what will
11 happen to what's under the ground? I think so.

12 The other is part of our laws regard the
13 air. You're talking about bringing something from
14 underground that is emitted, that is purposely leaked,
15 purposely vented, purposely flared. And for me that's a
16 waste. Right now what's under the ground, in some
17 terms, has been called a pool, but in other terms has
18 been called, if we leave it in the ground, as a waste.
19 And so those words just don't have the meaning of what
20 they're supposed to mean. If we leave it in the ground,
21 it's not a waste. It's a resource for the future. And
22 why do we have to get it out ASAP?

23 The other is there is no mention about
24 water. No mention about water. But when you go to a
25 well site, produced water. There is a tank. That water

1 has value, but in this case when it's contaminated, the
2 value is zero. Zero. And that's the part that the
3 subsurface owners are not getting paid for.

4 I realize some of this stuff is outside the
5 purview of the Commission, and what I'm trying to say is
6 those L-A-W-S are interconnected. You can't silo those
7 issues as the law and the rules and the regulations
8 you've put together.

9 The other is the sacredness of the land, S,
10 the sacredness of the land. We have ancestral artifacts
11 that tourists come to go see, buildings, petroglyphs.
12 The other aspect is the ancestors. The ancestors are
13 still there, and they're the ones that are telling us,
14 "Hey, you better say something."

15 And in that regard, notice. The allotment
16 owners of the area never got notice. Why? Because
17 there is a perception that they're only surface owners.
18 They have mineral rights. The Supreme Court of the
19 United States defined it.

20 The other is the fact that, as I stated,
21 it's all connected. Your decision will not only rest
22 here. It goes and pervades out there. You haven't had
23 the experience of the environmental impacts. You
24 haven't experienced the other cancer-causing compounds
25 that come with the venting of the methane.

1 I'm part of a citizen science group,
2 Counselor HIA Committee -- we're endorsed by the Navajo
3 Nation Human Research Review Board -- to collect air
4 samples, to collect water, to do a survey among the Dine
5 people of the impacted areas. But I tell you what, some
6 of the stuff that we're finding, you wouldn't want to
7 live there. You wouldn't want to smell the hydrogen
8 sulfite and the other compounds that are complex to even
9 pronounce.

10 The other part is we already are enduring
11 heavy road traffic on Highway 550, on 64, and with the
12 approval -- what you approve impacts to our safety, will
13 be -- increase -- I don't know -- exponentially. But
14 they have to come down 550, go right beside Counselor
15 Chapter, to get into some of the areas that Hilcorp is
16 applying for. You have to consider the health of the
17 people, the safety of the people and the environmental
18 impacts.

19 I really -- in a lot of ways, sitting
20 through this hearing, part of it is frustration, part of
21 it is just dismay that this aspect of notice wasn't
22 given to the subunits of the Navajo Nation government.
23 And there is the aspect of governmental relations within
24 the laws of New Mexico, as well as the U.S. Government,
25 tribal consultation. That hasn't happened.

1 Code talker, Samuel Sandoval, would call
2 the Hilcorp Corporation Johnny-come-lately's. Why are
3 they the ones that are starting to dictate to the State
4 of New Mexico how they are going to be?

5 Thank you.

6 (Applause.)

7 CHAIRWOMAN RILEY: Don Schreiber.

8 Three minutes goes really quickly. I
9 understand that.

10 MR. SCHREIBER: I think that, Madam Chair,
11 there were many people that were unable to stay, and
12 they have ceded their three minutes to the rest of us.
13 I would not ever say that Daniel Tso should not be able
14 to speak at his will, nor Sam Sage. Being ignored as
15 they have been through the history of this country,
16 let's not let that happen at this hearing.

17 The second thing I'd like to say is the
18 worst thing in the world is to speak after Daniel Tso.
19 This is a huge strategic error of mine. You never want
20 to follow Daniel when you speak.

21 And I have a chest full of emotion, mostly
22 outrage at what has happened here today, so excuse me if
23 I'm not as clear as I wish, but please let my intent be
24 clear.

25 Madam Chair, Commissioners, how can you ask

1 us to be respectful when you dishonor the mission that
2 the OCD has to protect public health and environment?

3 When you disrespect the elected
4 representatives of the very people that are affected in
5 the area when they ask you to wait to gather all the
6 information, which they asked for on October 5th,
7 created -- demanded a deadline of November 1st, were
8 unanswered by the surface people that we must have
9 answers from, that Hilcorp said those are surface
10 issues; the surface owners, managers need to do that.
11 We asked those questions -- how will you manage this
12 double density? -- and they have not answered. We must
13 have those answers.

14 And your senators, representatives
15 governor-elect, all of you, how can you dishonor them
16 and ask us to respect you?

17 And when you disregard your sister agency,
18 State Land Office, when they say the same thing. This
19 is your closest working agency dealing with oil and gas
20 in this state government, yet you tell them -- and they
21 asked clearly and repeatedly and with much preparation
22 to be considered, to let the information come forward.

23 What is the rush? That gas has been in the
24 ground 60 million years. Hilcorp said, "We've been
25 working on these plans for years." What is a few more

1 weeks to be able to receive the information from the EPA
2 114 that's coming on January 15th, 2019? Why do we want
3 to look at that while we make this decision?

4 Hilcorp says that there is no specific
5 development plan to recomplete. There are no plans.
6 We're just building a bomb, and what happens to that
7 afterwards is not us. We're just putting bullets in the
8 gun. We're not shooting. There is no plan.

9 Well, I am a resident of 28-6 in Rio Arriba
10 County, and you're drilling -- Hilcorp's drilling
11 recompletions on me now, exactly as they wish to
12 continue to do. They're drilling by exceptions that you
13 granted. So don't tell me that there is some
14 hypothetical element of what we're talking about. There
15 is no hypothetical in the harms that we suffer as
16 ranchers on the ground. They are now from this exact
17 process that you are intending to double.

18 And now -- I thought it would take a little
19 longer, but Hilcorp is here at this proceeding saying 20
20 acres, not 40. And in their presentation, they said
21 ten, at the Piceance, and then they said five at the
22 Green River. And your agency manager, Charlie Perrin,
23 told me verbatim. He said exactly this, "Don, it's a
24 process. We start with one well. We get two, four,
25 eight, until the resource is gone, until we have

1 recovered that entire resource." At what point is there
2 no resource left other than oil and gas as we have in
3 the Permian?

4 Madam Chair, Commissioner Balch, after the
5 September 13th hearing was postponed, you made a
6 statement which was reported in the "New Mexican" that
7 the wells in the area of the San Juan Basin and these
8 wells, in particular the Blanco-Mesaverde wells, were
9 not drilled with fresh water, that they were drilled
10 with salt water. And that is not correct, and I believe
11 you know that. Those wells were drilled by El Paso
12 Natural Gas for drilling water 60 years ago. They're on
13 or near our ranch or federal grazing permit. We watch
14 them take the water out of there. They bring it across
15 our ranch. They put it in a 400-barrel frac tank, and
16 we count the gallons. That is fresh water. That is a
17 direct harm to me. It is not hypothetical. And that
18 water is contaminated forever. We lose it out of the
19 Ogallala Aquifer where our drilling wells and our
20 domestic livestock wells are and those of our neighbors.
21 The state nod that I'm here speaking for myself or that
22 there is something special about the Devil's Spring
23 Ranch, that is absolutely not true. We are entirely
24 representative of all the people that don't have a voice
25 here. How could they, 9:00 on a Monday morning?

1 And Hilcorp's counsel says that the surface
2 concerns are those of BLM and EPA, yet you issue the gas
3 capture plans. I've sat in your office here and in
4 Aztec. I have copies of those. Seventy times you've
5 issued gas capture plans that capture no gas. So when
6 that gas is emitted and escaped, we work in it. We work
7 in the benzene, toluene and xylene because we're going
8 to work on that fence, and we can't move the fence.

9 One of the poorest counties in the nation
10 is at 22,000 MCF, goes up in smoke, that you permitted
11 in a gas capture plan that captures no gas. That
12 revenue, how important do you think -- that's in one
13 day. How important is that to the residents of Rio
14 Arriba County? What could they do with the state
15 revenues that are being wasted off of that, what they
16 receive, because it's easier or a little uneconomical,
17 you say Hilcorp says and you allow in each of your plans
18 that it's a little economic -- uneconomical for them to
19 capture that gas?

20 When plan after plan -- the Colorado,
21 Wyoming plans show that gas capture is a moneymaking
22 proposition for the gas company in a fairly short period
23 of time. It may be as fast as a few months if the
24 pressure is high. It may be as long as three years if
25 the pressure is low. And that is a well that is 30

1 years on my ranch. And you can't wait three years to
2 make your money back? I do not have a cow that makes
3 money back that fast.

4 So don't tell me these harms are
5 hypothetical, that you don't have a specific plan to
6 drill. You're doing it. You're recompleting there now.
7 We suffer these, and my family suffers them daily.

8 Finally, I appreciate my colleagues being
9 here today, but mostly I appreciate those that can't get
10 here because of the way this hearing is set up, not to
11 serve the public but to serve the oil and gas companies.
12 The fact that you ignore the wishes and dishonor the
13 entire delegation of the State of New Mexico,
14 particularly the elected officials of those people like
15 me who live on that ground, is an outrage. I'm terribly
16 disappointed in all of you.

17 (Applause.)

18 CHAIRWOMAN RILEY: Mike Eisenfeld.

19 MR. EISENFELD: Madam Chair, Commissioners,
20 I'm Mike Eisenfeld. I live in Farmington. I'm the
21 Energy and Climate Program manager for the San Juan
22 Citizens Alliance.

23 First off, on behalf of San Juan Citizens
24 Alliance members, I would like to state that I'm deeply
25 disappointed by how this has transpired today, the fact

1 that we're denied standing. This should have -- we
2 should have had rulemaking hearings in northwest
3 New Mexico where the activities are taking place, with
4 impacted individuals being able to state how this would
5 affect their lives.

6 What has transpired today would set the
7 course for northwest New Mexico to continue to be an
8 energy sacrifice zone at northwest New Mexico citizens'
9 expense. We're a region trying to diversify our economy
10 while wallowing in a current methane hotspot, a stigma
11 we haven't been able to overcome.

12 Let's talk about this hearing procedurally.
13 One, Hilcorp's exhibits were not up on the website until
14 Friday afternoon, November 16th. The public did not
15 have access to the info. That's not acceptable.

16 Two, Hilcorp has been pulling a
17 bait-and-switch. Through this whole process in the
18 media, they have said this is all about recompletions,
19 but it is clear today that it is very much the intention
20 to drill new infill wells.

21 Earlier in the hearing, Dr. Brancard [sic]
22 asked Hilcorp counsel if they would be directionally
23 drilling on existing pads, and Hilcorp counsel said yes.
24 However, in one question by Hilcorp counsel, Ms. Sivadon
25 said that horizontal drilling is not viable in the

1 Blanco-Mesaverde Formation. The new wells will be
2 vertical and will likely require new well pads. This
3 information is contradictory.

4 And then to add outrage to that, we hear
5 that eight wells could be drilled -- eight new wells
6 could be drilled to a quarter section. If each well is
7 five acres, that's 40 new acres of disturbance. That's
8 what we heard.

9 And then we're hearing about 20-acre
10 spacing. 20-acre spacing, to treat us like there is
11 nothing up where we live except Hilcorp drilling? It's
12 just completely out of control.

13 I don't believe that this hearing was
14 legally proficient. I feel like public health and the
15 environment has been short-circuited to give Hilcorp
16 whatever they want, and for the citizens of New Mexico,
17 such little intellectual curiosity doesn't bode well.

18 Thank you for the opportunity to comment.

19 (Applause.)

20 CHAIRWOMAN RILEY: Carla Sonntag.

21 MS. SONNTAG: Is this okay (indicating)?

22 CHAIRWOMAN RILEY: That's perfect. Thank
23 you.

24 MS. SONNTAG: Madam Chair, Commissioners,
25 I'm Carla Sonntag, president and founder of the New

1 Mexico Business Coalition. The coalition is a statewide
2 nonpartisan association that promotes business practices
3 that are good for the state and support the pursuit of
4 economic prosperity. We represent hundreds of
5 businesses and thousands of individuals throughout the
6 state.

7 Thank you for the opportunity to allow me
8 to speak to you today.

9 As you consider the merits of this rule
10 change, I hope you will consider the significant
11 benefits it will produce for our state's economy. Over
12 the past year, Hilcorp has invested over \$100 million in
13 the San Juan Basin. If this change is approved, it
14 could mean an additional 50 million per year of
15 investments in the area. That means more jobs in all of
16 the related oil and gas services and in hospitality,
17 including hotels and restaurants, to name a few. When
18 you increase these types of jobs, you increase demand
19 for housing and retail space and put more money in the
20 local economy where everyone benefits.

21 Farmington and San Juan County support this
22 rule change because they have lost somewhere in the area
23 of 17,000 jobs due to various issues over the past few
24 years. They need to get their people back to work or
25 face a continuing dwindling population. When people

1 have jobs, their kids have better education and health
2 outcomes.

3 We can start building the foundation for
4 the positive change our state needs in these areas.
5 While the state might have a historic surplus from other
6 operations, we need to maximize opportunities in that
7 area because it has been hard hit over the past few
8 years. This change could mean \$29 billion in new tax
9 revenue. That would be huge for the state, but also
10 translates into millions of dollars in investment and
11 hundreds of jobs.

12 The other huge win for the people in the
13 Four Corners and the state as a whole is the fact that
14 operators of older wells in the area will be
15 incentivized to retrofit them. Plus, we can have all of
16 these economic gains without drilling new wells.

17 We respectfully urge your support of this
18 change without delay. The State has approved over 70
19 exceptions to this rule because this practice of
20 recompletions makes sense for everyone concerned. It is
21 a sound practice with a precedent, and we ask that you
22 not support any further delay but approve the rule
23 change now so that New Mexico can create more jobs and
24 increase tax revenues.

25 Thank you.

1 CHAIRWOMAN RILEY: Thank you.

2 Bob Graham.

3 MR. GRAHAM: Good afternoon.

4 CHAIRWOMAN RILEY: Good afternoon.

5 MR. GRAHAM: Madam Chairman, fellow
6 Commissioners, I want to thank you for the opportunity
7 as a mere citizen to speak today.

8 Let me give you a little background about
9 myself. I've only been here about 12 years. I hail
10 from the state of Louisiana originally. I have chosen
11 to make New Mexico my home for my retirement, which I am
12 recently retired as a financial advisor from the Edward
13 Jones Company, which I worked for for 22 years helping
14 individuals save their money and prepare for retirement.

15 Let me begin by thanking you for the work
16 that you've diligently taken on in this hearing and
17 trying to make it a fact-based hearing and not a hearing
18 of hyperbole and emotion. Your efforts to educate the
19 people in this room about your role in this process is
20 very much appreciated by myself and a lot of my
21 colleagues.

22 As commissioners, you-all know full well
23 that an affirmative decision concerning this application
24 to amend the current pool rule does not mean that
25 Hilcorp or any other operator can get around the Clean

1 Air Act, the Clean Water Act and every other law and
2 regulation on the books in the state of New Mexico or in
3 the United States Department of Interior.

4 I had the privilege in the early '90s of
5 being a special affairs specialist in Washington D.C. I
6 worked on legislation on the Clean Water Act, and I
7 applaud the work that you folks have done here today and
8 have done in the past.

9 It is truly dishonest and baseless to say
10 that you can give a license to an operator to violate
11 the law. However, that is the accusation that has been
12 made by many. It is unfortunate that the
13 environmentally elite are once again engaging in mass
14 misrepresentation on the facts.

15 If the density is doubled by the approval
16 of this application and anyone decides to drill a new
17 well, an application to drill, archeological studies,
18 wildlife studies, public protest periods, rights-of-way
19 and everything required of energy producers drilling new
20 wells will have to happen at that time.

21 Hilcorp has provided data and studies that
22 prove it can take existing wells currently drawing from
23 other pools and, without drilling a new well, tap into
24 the Blanco-Mesaverde Pool, thus bringing affordable
25 energy to us all, not to mention the revenue that will

1 be brought to the state in the future and also benefit
2 our students in school greatly.

3 Let me repeat what I've just said. The
4 proposed application to amend the current pool rule
5 would allow the operator to use existing infrastructure
6 and reduce the need for new pads and new wells. The
7 political environmentalists' opposition to the proposed
8 change is, in fact, opposition to responsible policies
9 that accomplish everything they claim to support. There
10 can be only one reason as to why they would take such a
11 position. The political environmentalists, despite
12 their rhetoric, have as their overarching goal to end
13 oil and gas development in New Mexico. And having been
14 from Louisiana, an oil and gas state, I can tell you it
15 goes on there, too.

16 Honorable Commissioners, I am an active
17 member of the citizenry of this state, county and city.
18 It's my request that you approve the applications for
19 changes to the pool rule as soon as possible.

20 Thank you again for everything you-all do.

21 CHAIRWOMAN RILEY: Thank you, Mr. Graham.

22 Jessica Pace.

23 MR. SCHREIBER: Ms. Pace had to return to
24 Farmington, Madam Chair.

25 Jack Bent.

1 MR. BENT: Well, now it's good afternoon,
2 Madam Chairman and fellow Commissioners.

3 I'm Jack Bent, and I'm an advocate of the
4 state Land Grant Permanent Fund. This last election,
5 education was the main theme in this state. Well,
6 education depends on the Land Grant Permanent Fund, and
7 the Land Grant Permanent Fund depends on the production
8 of oil and gas, and that's why I'm here.

9 Recompletion does not mean having to drill
10 more wells, not thousands of wells. For example,
11 Hilcorp must open up the Mesaverde zone with existing
12 Dakota wells. Now, environmentalist groups say pool
13 rule changes charges [sic] up to possibly creating 8,000
14 new wells. That's simply not the case.

15 The economists say about companies that
16 want more access to oil and gas is that the math doesn't
17 work for thousands of new wells. The economics don't
18 allow it. In fact, the topography in San Juan County
19 does not allow it. This rule change has been under
20 consideration for months. I've heard today, "What's the
21 rush? What's the rush?" It's been under, as you well
22 painfully know, for months. The rule change has been
23 supported by the state and the City of Farmington and
24 the mayor of Farmington.

25 Please approve this rule change and do not

1 delay the process. This area needs more jobs. They're
2 hurting. They need a shot in the arm.

3 Thank you.

4 CHAIRWOMAN RILEY: Thank you.

5 Larry Sonntag.

6 MR. SONNTAG: Good afternoon, Madam
7 Chairman, Commissioners. I'm Larry Sonntag. I'm here
8 because I have friends and business associates trying to
9 make a living in San Juan County and have been deeply
10 concerned about this community and the loss of jobs and
11 stamina for several years ago.

12 The pool rule change that you're
13 considering would provide a significant boost to the
14 economic opportunities in this community. That's why
15 I'm here, specifically to request that you do not
16 politicize this issue by delaying the passage of this
17 rule.

18 Consideration of this rule hasn't been a
19 rushed process. We started hearing about it back in May
20 with a full day of hearings covered by the media.
21 Delaying this is not about getting all the facts. It's
22 about making it so painful and ugly to get anything done
23 in this state that companies stop trying. The fact is
24 this process has already been delayed twice by what
25 appear to me to be subservience to activists who would

1 be very happy to leave our state's most valuable
2 resource in the ground. The requests you are hearing
3 now for delay are being made by those that don't
4 understand the rule, how it works and how it will
5 benefit our entire state. To give consideration to
6 further delays is a disservice to the community, local
7 businesses, oil and gas operators and all the people of
8 this state.

9 Hilcorp and other operators have submitted
10 all that has been requested, and that has been evaluated
11 under the statutory obligation of this Commission. And
12 nothing requested by the BLM or the EPA has anything to
13 do with the downhole spacing and drainage patterns. I
14 believe that whatever those agencies are working on is
15 not relative to your work as a commission.

16 Commissioners, I urge you not to delay this
17 process and, once again, tell the world that New Mexico
18 is just not a good place to do business.

19 Thank you.

20 CHAIRWOMAN RILEY: Thank you.

21 Marilyn Gruebel.

22 I don't see her here.

23 John -- is it Clemal?

24 MR. CLEMA: John Clema.

25 CHAIRWOMAN RILEY: Clema. John Clema.

1 MR. CLEMA: A friend of mine asked me to
2 come around here today in part for my own education.
3 I'm very disappointed in what I hear from you, my fellow
4 citizens, and the behavior of the Commission. To me
5 what seemed like a pretty simple problem as to whether a
6 rule was going to be modified or not, I have heard all
7 sorts of propaganda, so I have to engage in some.

8 CHAIRWOMAN RILEY: Okay. Address us.
9 Okay?

10 MR. CLEMA: I apologize.
11 How's that (indicating)?

12 CHAIRWOMAN RILEY: That's okay.

13 MR. CLEMA: I'm a scientist, and as a
14 scientist, we believe in certain things. One of the
15 things that I've always believed in, because I'm also a
16 paleontologist, is there is climate change, but it
17 doesn't have anything to do with us. Nothing to do with
18 us. And as I said to the good lady (indicating), if I
19 had had my marker, I would have put a marker on her cup
20 there because she still has some ice in it, and by the
21 time we're all through today, the ice will be melted,
22 and the water level will not have changed. So, as I
23 explained, we will not be having an influx of people
24 from Florida coming here.

25 The important thing, I think, in science is

1 that we're the only things that move things along. If
2 you think about us as a people, regardless of race,
3 creed, color or time, there are only miners and farmers.
4 First a full belly, and then everything you see here,
5 everything, has been mined or farmed from somewhere. A
6 trillion little pieces of paper for things works for a
7 while, but you have to have something to back that up
8 with, or you have to have something else to trade.

9 The only thing that makes part of that work
10 is science, engineering and technology. My words will
11 have little effect falling on dead ears, for all of the
12 lawyers that we heard today or this morning that went on
13 and on, or our university, that I read an interesting
14 article about Friday, that it ain't doing good. We're
15 turning out a bad product. We need to do better. To do
16 that, we need better people, and to do that, as things
17 go right now, at least in my view, you're going to have
18 to pay better teachers. And those that don't do so
19 well, well, maybe we'll have to let them go. They'll
20 have to find something else to do, as was suggested by
21 coal miners.

22 And I guess I should read into the record
23 that coal and natural gas are the two cheapest that make
24 this room run, which is a badly designed room. There
25 are no windows. You have to have electricity.

1 So it's up to you how you view these things
2 and how much time you take talking about them, being
3 emotional about them or being logical. I fail to see
4 what's the matter with these people extending a few
5 holes now or doing them later. I think you've wasted
6 half of my day anyway. I hope you don't feel that way
7 about yourself.

8 My time in New Guinea, I was asked to join
9 a couple of tribes, no more than that. A couple of them
10 I knocked back for various reasons. If you kill in New
11 Guinea and a lot of places -- if you kill somebody who
12 was a person of particular valor, you ate part of them
13 because their spirit then becomes part of you. You've
14 heard it, you know: What you eat is what you are.
15 Right? We can't eat each other. We've got to work
16 together.

17 The people who want to drill holes for oil
18 and gas, we need them. The people we don't need are the
19 people who want to charge me more. And when you go home
20 today, turn your bill over. You'll see a one-liner for
21 renewables. That's a political economic war that we're
22 in, in my opinion.

23 If you charge more for, as I call them,
24 whirligigs -- we heard a little while ago about
25 reclamation, putting things back the way they were.

1 They're not doing that with whirligigs. The bottom of
2 those whirligigs have several hundreds, if not thousands
3 of tons of cement to hold them up. There's no deal for
4 those companies to do it. More than that, those
5 companies do not work here. They do not live here.
6 Most of them are in California. The latest one is up in
7 Minnesota. That doesn't help New Mexico, who I hope
8 we're all sort of thinking about and working for here.

9 I could rant on for however long you want,
10 and I feel maybe I'd take maybe half an hour, beings how
11 I listened to those lawyers this morning.

12 I thank you for your time, Commission, for
13 your learning experience for me.

14 And, fellow citizens, work together.
15 Forget all of this: Oh, they're going to drill holes;
16 they're hurting Mother Earth. The only ones that hurt
17 Mother Earth are when we make big mistakes and we burn
18 down big places.

19 Oh, and by the way, there are more
20 particles and CO2 with all those trees we burnt down
21 here a couple of years ago, instead of our places -- and
22 it was up to the state, not the federal government who
23 was calling the shots at the time to fix.

24 Thank you.

25 CHAIRWOMAN RILEY: Thank you.

1 Bill Midcap.

2 MR. MIDCAP: Hi. And thank you for
3 indulging me, Commission.

4 Thank you, Madam Chair.

5 My name is Bill Midcap. I'm a senior
6 policy advisor for Rocky Mountain Farmers Union. Rocky
7 Mountain Farmers Union advocates for family farmers and
8 ranchers. We're about 22,000 members in three states,
9 members much like Don Schreiber and his neighbors.

10 Our members will be very disappointed to
11 hear how this hearing went down today. It's just kind
12 of a -- I made some notes here. It seems to me like you
13 have given oil and gas oil companies the upper hand over
14 your citizens and your civic leaders. Increasing the
15 density on -- will really impact these public lands that
16 we're talking about. We have -- public lands are
17 multiuse project areas. And as I hear late in the day
18 about a wellhead being every 20 acres, roughly doing the
19 math in my head, that's every 1,000 feet. I don't think
20 there is much more room for multiuse projects like
21 recreation ranching, what little bit of farming that
22 does go on on public lands. I think oil and gas has
23 more or less absorbed all the public use.

24 Hilcorp's counsel argued that the gas left
25 in the ground -- and I hate to be repetitive because I

1 heard Daniel talk about this. But Hilcorp's counsel
2 argued the gas left in the ground will be wasted and
3 argues that surface and pore gas are not related. I
4 don't know a lot about oil and gas, but to me it's
5 confusing and somewhat insulting. I think they're very
6 much related.

7 So I'd like to thank you for your time.
8 I'd really like to have you reconsider and delay this at
9 least until the public -- the EPA statistics are out.
10 So thank you.

11 CHAIRWOMAN RILEY: Thank you.

12 Warren Unsicker.

13 MR. UNSICKER: Good afternoon, Madam Chair,
14 Commissioners.

15 If I may, I'm here on behalf of both the
16 City of Farmington and San Juan County, and they have
17 resolutions that were passed. Can I approach to offer
18 up copies of that?

19 COMMISSIONER BALCH: I know that Mary would
20 like a copy.

21 MR. UNSICKER: My name is Warren Unsicker.
22 I am the director of economic development for the City
23 of Farmington, and as I mentioned, I'm here representing
24 both San Juan County and the City of Farmington and the
25 unanimous resolutions that were passed in support of

1 this pool rule amendment. I'd like to briefly read that
2 resolution. They're very similar with some minor
3 differences, so I won't read both.

4 "Whereas, pool rules exist to ensure that
5 reserves of oil and gas are effectively developed; and

6 "Whereas, pool rules apply to operators'
7 development of resources below the ground; and

8 "Whereas, all operators, regardless of
9 density requirements in a pool, must gain proper
10 environmental and archeological approvals prior to
11 drilling any new wells; and

12 "Whereas, oil and gas production is an
13 important source of revenue and pride to the City of
14 Farmington and San Juan County and the State of New
15 Mexico; and

16 "Whereas, the current Blanco-Mesaverde Pool
17 Rule has not been amended in nearly twenty years; and

18 "Whereas, over sixty exceptions to the pool
19 rule have already been granted and three more are
20 pending review this month alone; and

21 "Whereas, developments in technology and a
22 greater understanding of the geology in the San Juan
23 warrant the updating of the existing pool rule; and

24 "Whereas, the New Mexico Oil Conservation
25 Commission will consider an application to increase the

1 well density of the Blanco-Mesaverde Pool to ensure the
2 resources are developed; and

3 "Whereas, the San Juan County Board of
4 County Commissioners [sic] and the Farmington City
5 Council are appreciative of the efforts and measures
6 taken by the operators in San Juan County to cleanly and
7 efficiently produce oil and gas; and

8 "Whereas, the applications will lead to
9 greater investment in the San Juan Basin, an area of
10 New Mexico where greater investment is needed; and --
11 this is per the City of Farmington;

12 "Whereas, this investment will encourage
13 additional job growth in the region; and

14 "Whereas, the strategy to use as many
15 existing wells as possible to simultaneously develop
16 resources from multiple pools is in the benefit of the
17 general public.

18 "NOW, THEREFORE, BE IT RESOLVED BY THE
19 GOVERNING BODY OF FARMINGTON, NEW MEXICO" and the San
20 Juan County Board of Commissioners, "THAT:

21 "We, as members of" those councils,
22 "support Case Number 16403 currently before the New
23 Mexico Oil Conservation Commission and direct that a
24 copy of this resolution be provided to" you-all.

25 So thank you very much for your time today,

1 and thank you for your consideration and patience with
2 all of us. And we appreciate your considerations and
3 hope that you help benefit our community there in
4 Farmington and in San Juan County.

5 Thank you.

6 CHAIRWOMAN RILEY: Thank you.

7 Andrea Antillon.

8 COMMISSIONER MARTIN: She's already gone.

9 CHAIRWOMAN RILEY: Samuel Sage.

10 MR. SAGE: (Speaking in the Navajo
11 language; no translation.)

12 Ya'at'eeh.

13 (Speaking in the Navajo language; no
14 translation.)

15 Understand that? It's the same language
16 that helped win World War II. My father, the late U.S.
17 Marine Corporal Andy Sage, Navajo Code Talker, told us:
18 Never did I ever think about picking up arms and
19 fighting for the U.S. abroad against people that I was
20 told that were my enemies to then come back here and
21 have to fight my own government and state government to
22 protect my homeland.

23 All I want for me, for my five-year-old
24 grandson when he grows up is to have clean air, clean
25 water and clean land to live on. But I have been

1 labeled an activist for expressing that.

2 These people here (indicating), Hilcorp,
3 how come they're not terrorists or labeled as
4 terrorists?

5 It's sad the things that you-all did here
6 today as I watched for my first time, because the
7 exemption that you have granted in the past in the
8 approvals that you-all have made is impacting my
9 community members of Counselor, New Mexico, all the
10 negative impacts. And guess what? Industry has come
11 and gone. We don't get nothing back. We are having to
12 spend our own money to do our air quality and water
13 testing in which we will be completing at the end of
14 December. Those have been endorsed by the Navajo Nation
15 and the University of New Mexico.

16 So as I look on this Commission, you-all
17 used to work for industry. Something's wrong. Just
18 like I told Senator Tom Udall, "You have been bought and
19 paid for by the industry."

20 I live in Farmington. What these people
21 are saying about jobs, creating more jobs, every day I
22 see less and less companies' doors open. I just live
23 there. I work out of town. So -- but what I see in my
24 community of Counselor, when you talk about jobs and
25 economics, I see a lot of -- hired by the industry.

1 There's one thing that they have in mind for all of
2 this. It's greed, money. That's it. You-all talk
3 about how much money goes into education. I look at the
4 schools. We are at the bottom. Sometimes it's at 50,
5 49, 47 in the United States. Where does all the
6 millions go? Who gets them?

7 During the weather changes, storms, you
8 always hear about some school's roof caving in. Where's
9 the millions that the industry says they're giving for
10 the school? Where is it? It's the same question I
11 posed to New Mexico Department of Indian Affairs
12 Committee. They were telling me, "Well, we get millions
13 for the schools." Where is it? Why is New Mexico down
14 at the bottom? The infrastructure, the highways,
15 there's no change. So I don't know who gets all the
16 money, when you say industry gives millions upon
17 million; 100 million, 50 million, I hear.

18 So now, my community people, as I stated,
19 are heavily impacted, negatively impacted by all the
20 development, and this is just going to increase it.

21 Also, the majority of my community members
22 are limited to non-English-speakers. A lot of them do
23 not have the means to come up here to address you.

24 The makeup of this Commission needs to be
25 reconsidered. The place you-all meet needs to be

1 reconsidered. You want public? Take it out there
2 (indicating).

3 When I came in here, I saw two state
4 police. What makes you more important and your safety
5 more important than mine? Answer that for me.

6 So a lot of things that you proved here
7 probably needs to be reconsidered, delayed. Give more
8 people more time, because these things I found out about
9 through social network. I didn't know about this until
10 last week. Just things like that where we can express
11 our views of how it impacts us. I know you guys live
12 here within the area and all the benefits that you guys
13 are collecting while we're suffering from it. My people
14 are suffering from it. My relatives are suffering from
15 it. We have an increase in cancer, respiratory problems
16 and our own tribal government is not even doing a damn
17 thing about it, so we have to do it.

18 Those are just a few things I'd like to let
19 you know, and thank you for your time.

20 (Applause.)

21 CHAIRWOMAN RILEY: Joe Mumley.

22 MR. MUMLEY: My name is Joe Mumley. I'm
23 just a citizen of New Mexico. My wife saw there was
24 going to be an ordinance in Sandoval County to regulate
25 the production of oil and gas in the county, so we just

1 went out of curiosity. How can you develop an oil and
2 gas ordinance that would protect the public and the
3 environment, the air and the water? So it was quite an
4 education.

5 A couple of days ago, I was thinking about
6 the last meeting concerning the ordinances, the 29th of
7 this month, what -- what the year-and-a-half process I
8 witnessed was about. And the main thing I thought of
9 was the word "respect." It was just one side and the
10 other when it started at odds, and people couldn't see
11 or hear or listen to one another.

12 I came here today -- I'm not an expert --
13 just to ask for a delay because I was concerned about
14 the adverse effects of gas and oil and how people get
15 money in one area and then people have their house
16 destroyed by tornados and harmed by hail or hurricanes.
17 I saw the price of coal now is eight times that of
18 renewables if you consider the damage to the environment
19 and the health of the people living in the areas where
20 they mine the coal. So I just, at this point, ask you
21 to do a little work.

22 At Sandoval County, the experts that were
23 called, the hydrologists, some of them had different
24 facts and totally different results. So to only hear
25 from an employee of the oil company would be a

1 disservice to everyone in the state.

2 So please do a little more work and find
3 out if this increase in the number of wells is actually
4 needed.

5 Thank you.

6 (Applause.)

7 CHAIRWOMAN RILEY: Melissa -- and I'm not
8 sure of your last name, Melissa.

9 MS. HOMAN: Thank you, Commissioners, Madam
10 Commissioner.

11 My name is Melissa Homan. It's H-O-M-A-N.
12 I'm one of those ones who are emotional, who conjects
13 [sic]. I've been sitting here listening to today's
14 hearing. And I must say that I went on your website
15 after being here the last time, and I -- and I saw that
16 was there a change. So maybe -- I have a quote from
17 Director Heather Riley, and this is cut short because of
18 time. It says: The OCC states it regulates oil and
19 gas, geothermal activity in New Mexico to enforce the
20 Division rules and to ensure lands are responsibly
21 restored. Our staff is here ready to serve you.

22 And then the EMNRD states its vision and
23 mission: A New Mexico where individuals, agencies and
24 organizations work collaboratively on energy and natural
25 resource management to ensure a sustainable environment

1 and economic future.

2 Now, I think there is some common-sense
3 things here that you should truly consider: Benzene in
4 the air, what methane does, too. I understand that -- I
5 don't understand this stuff. Okay? I'll be totally
6 honest with you. I've been sitting at the -- at the
7 ordinance meetings in -- in -- Sandoval County for over
8 two years, going there, 11:00 at night, listening to
9 people both from the industry and non-industry people.
10 The industry people, they had a whole bunch of students
11 from New Mexico Tech, and they said, "We want jobs."
12 Then I'm hearing that the jobs are really outside the
13 state. They come in and then they'll leave. So I'm not
14 sure how many jobs are really going to be made in
15 Farmington with these double wells -- excuse my
16 expression -- of the double wells.

17 I don't understand what happened here
18 today, but how is this ensuring a sustainable, economic
19 future? That's from your own website.

20 And I'm begging you to think about people's
21 lives and health. The study I stated before the last
22 time I was here was a Pennsylvania study of a lot of
23 mothers studied, and the prenatal effects of the
24 children is a real study. It's not fake news. It was a
25 huge study and what this methane does to infants,

1 prenatal. So I'm begging you to take some time, yes, a
2 little bit more time to do research about the effects
3 even though it's underground, all this stuff I don't
4 understand, but there are effects.

5 Thank you so much for your time.

6 (Applause.)

7 CHAIRWOMAN RILEY: Thank you.

8 Nelson Denman.

9 John Massopost.

10 Justin Friedman.

11 COMMISSIONER MARTIN: He left a statement.

12 COMMISSIONER BALCH: He's not here. Should
13 we just submit it for the record?

14 MR. BRANCARD: Oh, absolutely.

15 (The court reporter receives the
16 typewritten statement of Justin Friedman.)

17 CHAIRWOMAN RILEY: Valerie Gremillion.
18 Marie Morgan.

19 MS. MORGAN: Yes.

20 I'm Marie Morgan. I'm a citizen of
21 New Mexico. I want to make just three brief points
22 today that directly address the downhill [sic] concerns.
23 The first is, I'll call, new facts. Since last we met
24 in September, some significant new facts have come to
25 light. These facts require and I quote, "Rapid

1 far-reaching and unprecedented changes in all aspects of
2 society," unquote. I'm quoting from the
3 Intergovernmental Panel on Climate Change Report of
4 October 8th, 2018. These worldwide scientists delineate
5 in gruesome detail, I'm afraid, what it will take to
6 keep the world's temperature rise under 1.5 degrees
7 centigrade and thus avoid catastrophic consequences.
8 This temperature rise is already creating direct injury
9 to the citizens of New Mexico and the world.

10 Second, over-extraction. It is now widely
11 understood that if we burn just the fossil fuels that
12 are already developed worldwide, with no new drilling
13 and no recompletions, that burning would take us beyond
14 the 1.5-degree centigrade level. We do not need to
15 double the extraction capability of the lands here under
16 consideration in the San Juan Basin. We already have
17 available more gas and oil than we can afford to burn.
18 The global temperature crisis simply must supersede any
19 now antiquated concern for 80 percent recovery for
20 draining reservoirs and avoiding underground waste.

21 The only reason for this hearing today is
22 that a privately held, out-of-state company wants an
23 exception so that they can get in and get out as quickly
24 as possible with the highest profits they can before all
25 of these irreversible consequences hit the fan.

1 The argument that once the exception is
2 granted, the company will be subject to all the
3 environmental rules that we think we know about, this is
4 simply not the reality on the ground. The paper this
5 morning on the front page has an extensive story
6 describing how the BLM is totally unable to cover the
7 enforcement that's already on the books. One quote from
8 the BLM official, Jim Stovall, has admitted his team
9 doesn't have the resources to enforce all the rules on
10 the books. So we mustn't delude ourselves that if we
11 grant this, all the rules about the environment will be
12 followed.

13 Third, responsibility. Before the October
14 8th report that I spoke of, each of us in the room could
15 still argue that climate change was for someone else to
16 deal with, someone whose job it is specifically to worry
17 about such things, or it was only for the people who
18 were specifically statutorily directed to do so, or
19 someone where it was in their own economic self-interest
20 to do so. But now since the October 8th global report,
21 it is everyone's responsibility to find our own area of
22 greatest influence where we personally have the most
23 leverage to help to stay this 1.5-degree centigrade
24 rise.

25 In summary, at the very least, this

1 Commission should continue this matter until further
2 considerations of fact and consequences can be brought
3 to light.

4 Thank you.

5 (Applause.)

6 CHAIRWOMAN RILEY: Jim Winchester.

7 MR. WINCHESTER: Thank you, Madam Chair,
8 members of the Commission.

9 My name is Jim Winchester, Executive
10 Director of the Independent Petroleum Association of New
11 Mexico.

12 It occurred to me while listening here
13 today that it's been almost exactly ten years since I
14 first visited New Mexico, and my entry into New Mexico
15 was coming from the west and through the City of
16 Farmington. And it was right around sunset in the
17 afternoon and into the evening hours, and we stopped and
18 had dinner, my brother and I. And I recognized how neat
19 of a place Farmington was between the beautiful
20 geography that was there, as well as the energy in the
21 city with the people, and then later learning more about
22 the development that was going on with oil and gas.
23 And, of course, ten years ago, that was in the heyday,
24 when we were looking at \$10 or more for gas. Since
25 then, we've seen some real dramatic decreases in the

1 price of gas.

2 And as a result of that now, having lived
3 here for almost the past ten years, it's become quite
4 apparent that the human condition in one of the most
5 beautiful areas of our state is suffering right now, and
6 it's suffering because of those low gas prices. Gas
7 producers, over the course of the past decade, have had
8 to reduce their own number of employees, and in some
9 cases have gone out of business, and that has affected
10 hard-working people who have put their lives and their
11 livelihood in trying to stay in that area. And we know
12 and we hear that the hits keep coming with what's going
13 on with the San Juan Generating Station.

14 Amidst all of this, it just strikes me that
15 along comes a company like Hilcorp, a company that has
16 chosen against all odds to invest in the San Juan Basin.
17 And what they have come up with here is a plan to give
18 the area a much needed win. And what they bring will be
19 economic success that will lead to socioeconomic
20 improvements that will improve the human condition in an
21 area that really does need a win.

22 And on top of that, consider that what they
23 are proposing here, drilling on existing well pads, is
24 an idea and a concept for recompletion that protects
25 surface area by not creating additional new well pads

1 that would otherwise disturb new service areas to
2 extract the same amount of gas resource. Also consider
3 that on these recompletions that they are upgrading
4 equipment and further reducing resource waste.

5 Now, from IPANM's perspective, we strongly
6 believe that this can be a win for everyone. And I say
7 that so as long as Hilcorp respects the correlative
8 rights of independents, and we believe that they will.
9 But it's a win for innovation. It's a win for technical
10 advances led by industry that eventually will benefit
11 all. And on top of that, from the proven geologic
12 research that has been performed by Hilcorp, increasing
13 well density as suggested here today increases the
14 amount of resource recovered beneath the basin, reducing
15 resource waste. And as we know, that is a goal of the
16 Commission.

17 Finally, it goes without saying and it's
18 been brought up before, but it cannot be overemphasized
19 enough, the economic benefit over time by increasing
20 this density, \$3 billion to the State of New Mexico.
21 And that is money, though it's hard to see sometimes on
22 the ground, it does go to improving all walks of life in
23 the state for years to come, including funds that
24 directly improve the human condition, money that leads
25 to innovations that improve human health, that protect

1 fresh water and that protect the environment.

2 Thank you.

3 CHAIRWOMAN RILEY: Okay. That's the end of
4 the list for public comments.

5 MS. WATERS: I'm on the list. Caren
6 Waters.

7 CHAIRWOMAN RILEY: There were two lists,
8 one to just sign in for the meeting and one for public
9 comment.

10 MS. WATERS: Well, then I was given the
11 wrong one. I have prepared something.

12 CHAIRWOMAN RILEY: Will you please come and
13 sign the sign-in sheet, ma'am?

14 MS. WATERS: Sure.

15 MS. GRANT: May I add my name to the list?

16 CHAIRWOMAN RILEY: Uh-huh.

17 MS. GRANT: Thank you. I appreciate it.

18 MS. WATERS: Greetings, Madam Chairman and
19 members of the Commission. My name is Caren Waters, and
20 I've been a citizen of New Mexico for 30 years.

21 New Mexico has spoken, and we have gone
22 blue. As a fully democratic state, our people and our
23 environment need to come first, and we really need for
24 you to reflect our wishes. There are three of you who
25 are voting on this, and there is Hilcorp. And what has

1 happened to -- our power has been taken away. In years
2 past, the people of San Juan County made the decisions
3 for the water of the San Juan Basin, and -- and that has
4 been taken away.

5 As the third biggest source of oil in the
6 world behind Russia and Saudi Arabia, we need to step up
7 and take charge back of our state. New Mexico needs to
8 stop being the poor victim and take charge of its
9 credible resources. It's okay to be abundant and
10 successful. I come from 15 years of business, working
11 as controller for Mesa Mental Health. The very best
12 businesses have mission statements, and our
13 mission -- we need to create a mission statement for
14 New Mexico. We need to join together and create a
15 mission statement saying that the people and our
16 resources come first.

17 Taking charge of those resources, we demand
18 the following from Hilcorp: That the methane be capped
19 as per the regs set by the Obama Administration and
20 taken down by the Trump Administration. Taking them
21 down does not work for New Mexico, and we demand that
22 Hilcorp take the high road and protect our people and
23 also generate money from that methane for our state.

24 We demand to know how the brine water laced
25 with chemicals -- now we're finding out that actually

1 it's clear water -- is disposed. Millions and millions
2 of gallons of water, how is that disposed? And if it's
3 disposed back into our water table, that is not
4 acceptable. That is not acceptable.

5 Hilcorp needs to be responsible for
6 repaving roads that are damaged from all the heavy truck
7 traffic and make suggestions for how we can deal with
8 the traffic and fatalities caused by the heavy traffic.

9 Hilcorp needs to hire more people to
10 maintain the wells. From what we found out from the
11 last meeting, there are only five people taking care of
12 thousands of wells, and the wells are in disrepair. We
13 demand that they be maintained.

14 The citizens of New Mexico need to take our
15 state back. How can we do this? With regularly
16 scheduled town meetings where we're not limited by the
17 amount of time we get to speak, and we take note of the
18 actual damage that's been done in the last 72 years. We
19 need to be doing scientific studies to measure the
20 health effects. And at the last meeting, we had folks
21 talking about higher rates of miscarriage -- sorry --
22 more cancer. A farmer talked about his water being the
23 cleanest water in the area, the cleanest well, and now
24 everything on his property smells like oil.

25 Did Hilcorp go running to talk to him about

1 how they can take care of this issue?

2 CHAIRWOMAN RILEY: Ma'am --

3 COMMISSIONER BALCH: You have to address
4 us, not Hilcorp or anybody else, just the Commission,
5 please.

6 MS. WATERS: Sorry.

7 We need to wake up. We need to wake up.
8 The damage has already been done. Seventy-two years of
9 drilling, and we're still 50 at everything, so obviously
10 the money is not going where it's supposed to go.

11 Commissioners, we need to postpone and have
12 the next meeting in Rio Arriba County where the people
13 who are being most affected by Hilcorp can speak. We
14 need to hear their voices. Look at the census. The
15 average family income in that area is \$36,000 a year,
16 family income. Can those people afford to take off work
17 on a Monday and spend gas money for four hours' worth of
18 driving -- no, they can't -- so that they can speak here
19 today? It's up to you, the three of you, the stewards,
20 that have been elected to be responsible for our health,
21 our water, our housing. Why you get to make that
22 decision for all of us, I just don't get it. It's time
23 for New Mexico to step into its power and demand that
24 the people and the resources be first on the list of our
25 mission statement.

1 Finally, to the people of New Mexico, we
2 need to step up and hold our politicians accountable.
3 We elect them, and from now on, we hold their fingers to
4 the fire. They will honor our wishes and protect our
5 health and resources.

6 Thank you.

7 (Applause.)

8 CHAIRWOMAN RILEY: Sonia.

9 MS. GRANT: Hi. Good afternoon. Thanks
10 for the opportunity to speak.

11 My name is Sonia Grant. I live in
12 Santa Fe. I'm a Ph.D. candidate at the University of
13 Chicago where I'm currently in the late stages of
14 pursuing a Ph.D. in anthropology. And my research looks
15 at the impacts of oil and gas development in the San
16 Juan Basin. My work is especially about questions of
17 land management and jurisdiction. I've been -- over the
18 past five years, I've been researching these issues, and
19 I've spent considerable time in the region. I've been
20 living here for about a year, and I have another year of
21 long-term field work to complete before I begin writing.

22 Today I am not going to talk about the
23 impacts of oil and gas development that I've learned
24 about because I think that Daniel Tso and Sam Sage and
25 Don Schreiber and Mike Eisenfeld have really laid those

1 out, but I do want to amplify four points that have been
2 made at various times today that I think the Commission
3 has both the responsibility and the authority to
4 consider.

5 First, I think it's unacceptable that
6 Navajo allottees within the Blanco-Mesaverde Pool were
7 not notified of this application like other mineral
8 owners were. Along those same lines, I think that
9 impacted tribes in the area, including Counselor
10 Chapter, other chapters, as well as tribes with cultural
11 resources on surface lands in the Blanco-Mesaverde area
12 should have been notified of this application because of
13 its broad scope.

14 As counsel for San Juan Citizens Alliance
15 emphasized, this is an application that can affect 1.3
16 million acres. This is really a large area, and we know
17 that cultural resources for dozens of tribes extend
18 throughout this area. And the fact that they were not
19 notified, I think, is really unacceptable, and it would
20 be irresponsible to move forward with a decision on this
21 case without, you know, full notification and
22 opportunity for participation.

23 Secondly, I wanted to point out, as has
24 been pointed out, that Hilcorp's exhibits for this case
25 were not posted online until sometime Friday afternoon.

1 I check the docket regularly because I'm very interested
2 in these matters. I had obtained a copy of the exhibits
3 from the last hearing through a contact, and they still
4 hadn't been posted on the docket. But I noticed on
5 Friday that the exhibits that were posted also presented
6 new evidence. So I think the exhibits from last time
7 were like 30 or 40 pages, and then those posted on
8 Friday were like 70 pages. So this is more information
9 and evidence that was filed and to be presented here
10 today as the witness was examined, and the public had no
11 opportunity to see that information.

12 Third, I was at the last hearing and I know
13 that the Commission decided to continue this matter
14 because of a notice issue regarding the operator. And I
15 would just ask that you consider giving the State Land
16 Commission office the same weight as you do the
17 operators in this case. They have expressed that they
18 did not receive notice of this issue in a timely manner
19 in order to present an intervention. You know, in order
20 to intervene in a case like this, you have to file
21 documents like a week beforehand, so there really is a
22 tight timeline. So I would urge you to continue this
23 case so the State Land Office and other parties that are
24 interested may have an opportunity to participate.

25 And finally, I wanted to express that I

1 understand that the Commission is not in the business of
2 land management, that, for the most part, that is
3 something that the BLM does in the San Juan Basin. But
4 I do sort of want to -- echoing what Daniel Tso said, I
5 think it is kind of irresponsible to look at these laws
6 as if they're in a silo.

7 I know that Hilcorp expressed in its
8 arguments today that this is only a question of the
9 downhole reservoir, this is a downhole issue and that
10 environmental, cultural resource impacts, other impacts
11 will be addressed at the APD or application to drill
12 stage. And I guess I just want to express the
13 inadequacy of the APD stage for really looking into
14 environmental impacts at a landscape scale when we are
15 considering a pool or an area, a surface area, that is
16 1.3 million acres. I regularly participate in on-site
17 inspections for APDs that the BLM hosts, and these are
18 not very accessible to the public. It's difficult to
19 get on the list to be notified of these inspections, and
20 afterwards, the process for the environmental assessment
21 for each APD is not very transparent, and it's very
22 constrained to the specific well pad or specific site at
23 issue. And I think that the public here has expressed a
24 greater concern for the landscape and the 1.3 million
25 acres that are at stake in this Blanco-Mesaverde Gas

1 Pool.

2 So I would urge, again, for a continuance
3 until the Commission and members of the public can hear
4 from the BLM how it would consider, you know,
5 landscape-level effects of a by right doubling of wells
6 in this gas pool because I think that, if granted, this
7 application would in a sense give the operator a right
8 to pursue these wells even though that's not yet
9 determined. In my experience and my years of doing work
10 on this issue, APDs are granted in this field office,
11 and they are granted with not very much environmental
12 review. So this is really the opportunity for the
13 public to intervene because of the way this
14 application's being presented. And so I urge you to
15 expand this process to allow more public voices and --
16 yeah.

17 Thank you for your time.

18 (Applause.)

19 CHAIRWOMAN RILEY: Did we capture everybody
20 that may or may not have been on the list?

21 This concludes the public comment period
22 then.

23 I think procedurally -- we're at 4:30. We
24 can have deliberation of the actual hearing.

25 MR. BRANCARD: I think that's it with the

1 application.

2 CHAIRWOMAN RILEY: Okay. Well --

3 COMMISSIONER BALCH: Close the record
4 first?

5 MR. BRANCARD: And go into deliberation.

6 COMMISSIONER BALCH: I move we go into
7 deliberation to discuss this issue and only the issue of
8 Hilcorp's application before us today.

9 COMMISSIONER MARTIN: Second.

10 AUDIENCE MEMBER: Do we remain in the room?

11 COMMISSIONER BALCH: You can. We're going
12 to go upstairs.

13 CHAIRWOMAN RILEY: Do we need an aye vote
14 on this?

15 MR. BRANCARD: Yes.

16 CHAIRWOMAN RILEY: All those in favor,
17 please signify by saying aye.

18 COMMISSIONER MARTIN: Aye.

19 COMMISSIONER BALCH: Aye.

20 CHAIRWOMAN RILEY: Aye.

21 (Ayes are unanimous.)

22 CHAIRWOMAN RILEY: The record is closed,
23 and we'll go into deliberation.

24 (Executive Session, recess, 4:27 p.m. to
25 5:09 p.m.)

1 CHAIRWOMAN RILEY: Do I have a motion to go
2 back on the record?

3 COMMISSIONER BALCH: So moved.

4 COMMISSIONER MARTIN: Second.

5 CHAIRWOMAN RILEY: All in favor?

6 COMMISSIONER BALCH: Aye.

7 COMMISSIONER MARTIN: Aye.

8 CHAIRWOMAN RILEY: Aye.

9 (Ayes are unanimous.)

10 CHAIRWOMAN RILEY: So we are back on the
11 record. We were just in deliberation, and the only
12 thing we discussed was this case and whether or not to
13 grant Hilcorp's application. And so we've made a
14 decision on that and have determined that it's
15 appropriate to increase spacing from four per
16 320-acre -- or increase density from four to 320-acre to
17 the eight, as requested.

18 So we will need an order drafted.

19 Mr. Feldewert, can you get us an order?

20 MR. FELDEWERT: Yes, after Thanksgiving, if
21 that's okay.

22 CHAIRWOMAN RILEY: The week after
23 Thanksgiving?

24 MR. FELDEWERT: Actually, I can -- let me
25 step back. I have some personal things I have to deal

1 with in St. Louis immediately after Thanksgiving, and
2 it's going to take me into the week after Thanksgiving,
3 but I think I can have one online.

4 Any ideas on how you want it structured?

5 MR. BRANCARD: Well, one thing that all the
6 previous orders on pool spacing have done is sort of
7 attach an appendix to that order which shows what the
8 current form of those pool rules are, so not just the
9 changes that was in your language, but all the language
10 that was in there.

11 MR. FELDEWERT: So attach the current --
12 the existing --

13 MR. BRANCARD: Well, what it looks like
14 after the order.

15 MR. FELDEWERT: Okay. I'm with you. In
16 other words, with the changes?

17 MR. BRANCARD: Yeah.

18 MR. FELDEWERT: I got it.

19 MR. BRANCARD: Right. So that way any
20 operator would have a clear set of pool rules.

21 MR. FELDEWERT: And I believe that -- is
22 there an order sequencing here? In other words, I think
23 we ought to keep the same order.

24 MR. BRANCARD: Yeah. Well, don't worry
25 about the order numbers. I don't know what we're doing

1 with order numbers anymore. We've changed our computer
2 system, and we may not do the ABCs anymore. I'm not
3 sure. So just leave it blank, and Florene will insert
4 the order number.

5 MR. FELDEWERT: I do know that in
6 researching something like this that was done 20 or 25
7 years ago, it's always easier when you have the A, B, C,
8 D, E and F. I do know that, so that's why I ask.

9 MR. BRANCARD: Right. We've been battling
10 our I.T. people to keep that concept alive, but they
11 don't want to do that.

12 MR. FELDEWERT: Really? Where's Kathleen?

13 MR. BRANCARD: So yes. I mean, if you
14 could reference the previous orders that have been
15 handed down, and then I think we'll need to have a
16 section of each of the motions that were presented and
17 the decisions on those and the evidence presented on
18 behalf of the application, and then, at minimum, a list
19 of all the people who testified. And we can probably
20 get that from somebody. We can scan the sign-in sheet
21 and send that to you.

22 MR. FELDEWERT: I'll just have a list of
23 the witnesses who testified.

24 MR. BRANCARD: Yeah. I noticed that's what
25 you -- in the previous order that you showed us, where

1 there was a debate over one of the motions, they listed
2 all the public commenters.

3 MR. FELDEWERT: Oh, the Fruitland Coal.

4 MR. BRANCARD: Yes.

5 MR. FELDEWERT: Commenters at the hearing?

6 MR. BRANCARD: Yes.

7 MR. FELDEWERT: Okay.

8 MR. BRANCARD: Yes. And I think you should
9 note that in our records -- and you can go on our
10 website -- that there are significant numbers of written
11 comments that have been submitted, both pro and con.

12 COMMISSIONER BALCH: Hundreds. I think 200
13 just on Friday.

14 MR. BRANCARD: Florene is trying very hard
15 to get them posted on the website.

16 MR. SCHREIBER: Madam Chair, I just didn't
17 hear, again, when the order is coming back to you from
18 Hilcorp. I missed that. Week after Thanksgiving?

19 MR. BRANCARD: While we're waiting to hear
20 from Michael.

21 MR. SCHREIBER: Okay.

22 MR. FELDEWERT: Can I be given some leeway
23 so I can visit with people?

24 MR. BRANCARD: I think the Commission has
25 another order that's pending from the financial

1 assurance rulemaking that it really wants to get that
2 order out, too, so I think what the Commission is
3 looking at is the possibility of a special meeting late
4 November, early December just to approve orders. Okay?

5 MR. FELDEWERT: Okay.

6 MR. SCHREIBER: And this order would be
7 part of that special meeting?

8 MR. BRANCARD: If -- if it was gotten back
9 to us in a timely fashion.

10 COMMISSIONER BALCH: We add it to that
11 docket.

12 MR. FELDEWERT: Has that docket been set
13 yet?

14 MR. BRANCARD: No. It would be a special
15 meeting. I mean, the Commissioners would have to figure
16 out what's the best time for them. It would be a very
17 short meeting. Some may appear telephonically. But
18 it's a way of getting these orders done.

19 MR. SCHREIBER: And it's a meeting or a
20 hearing?

21 MR. BRANCARD: It's a meeting, yes,
22 Mr. Scheiber. It's just a meeting, not a hearing. It's
23 a special meeting.

24 Seventy-two hours' notice; is that right,
25 Florene?

1 MS. DAVIDSON: Yes.

2 MR. BRANCARD: So that's what it will be.

3 I really need to get that financial
4 assurance order signed. That's my problem. I have to
5 get that written.

6 COMMISSIONER BALCH: Yes. The legislature
7 told us to do it. I think they wanted it done about
8 five months ago.

9 MR. BRANCARD: Yes.

10 MR. FELDEWERT: Okay.

11 MR. BRANCARD: Okay.

12 CHAIRWOMAN RILEY: I think we're done, if
13 somebody wants to make a motion.

14 COMMISSIONER MARTIN: I move we adjourn.

15 COMMISSIONER BALCH: I second the motion.

16 CHAIRWOMAN RILEY: We're adjourned.

17 (Case Number 16403 concludes, 5:16 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

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

20 DATED THIS 10th day of December 2018.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
25 New Mexico CCR No. 20
Date of CCR Expiration: 12/31/2019
Paul Baca Professional Court Reporters