

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

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

APPLICATION OF AGAVE ENERGY COMPANY
FOR AUTHORITY TO INJECT, LEA COUNTY,
NEW MEXICO
(Continuation)

Case No. 14720

DELIBERATIONS ON APPLICATION OF THE
NEW MEXICO OIL CONSERVATION DIVISION
FOR THE AMENDMENTS OF 19.15.14.8 AND
19.15.16 NMAC

~~Case No. 14744~~

COPY

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

BEFORE: JAMI BAILEY, Chairman
DR. ROBERT BALCH, Commissioner
SCOTT DAWSON, Commissioner

December 9, 2011
Santa Fe, New Mexico

This matter came on for hearing before the New
Mexico Oil Conservation Commission, JAMI BAILEY,
Chairman, on Friday, December 9, 2011, at the New Mexico
Energy, Minerals and Natural Resources Department, 1220
South St. Francis Drive, Room 102, Santa Fe, New Mexico.

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A P P E A R A N C E S

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ALSO PRESENT:

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WITNESSES:

PAGE

James Wakefield: (Continued)

Continued direct examination by Mr. Bruce	4
Cross-examination by Mr. Larson	13
Examination by Commissioner Balch	19

Ivan Villa:

Rebuttal examination by Mr. Larson	28
Rebuttal cross-examination by Mr. Bruce	31
Examination by Commissioner Dawson	32
Examination by Commissioner Balch	33

Jennifer Knowlton:

Rebuttal examination by Mr. Larson	34
Examination by Commissioner Dawson	36
Examination by Commissioner Balch	37

1	WITNESSES: (Continued)	PAGE
2	Alberto Gutierrez:	
3	Rebuttal examination by Mr. Larson	38
4	Rebuttal cross-examination by Mr. Bruce	46
5	Examination by Commissioner Dawson	47
5	Examination by Commissioner Balch	51

6	INDEX	PAGE
7		

8 EXHIBITS

9 (No exhibits were admitted.)

10	REPORTER'S CERTIFICATE	155
11		

12

13

14

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16

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1 the concerns of the attorney for Kaiser-Francis, we
2 believe that the calculations that were made concerning
3 this well were made with a 30-year life span.

4 We would require by order that the permit --
5 the approval for this well will expire 30 years from the
6 date of first injection. And then it can come back to
7 the Oil Conservation Commission for re-permitting, if
8 necessary.

9 For this approval, Agave is required to
10 re-enter and drill out and plug correctly the following
11 wells: The Simms Number 1, the Government L Com Number
12 2, the Government L Com Number 1, and the Smith Federal
13 Number 1. If, for any reason, Agave is unable to
14 correctly plug those wells, then they would need to come
15 back to the Commission to discuss that problem.

16 Mechanical integrity tests will be conducted
17 prior to disposal and prior to first injection.
18 Subsurface safety valves will be installed, and the
19 packers and tubing will be corrosion-resistant.

20 The order will be signed at the January
21 Commission hearing, but both attorneys for both sides
22 need to submit their findings of fact and conclusions of
23 law by January 9th. Thank you very much for your time.

24 We are now done with the docket for today,
25 except for deliberations on the rules concerning

1 horizontal well drilling. It is Case 14744, the
2 application of the Oil Conservation Division, Notice of
3 Rulemaking concerning the repeal, adoption and amendments
4 of rules pursuant to the Oil and Gas Act NMSA 1978,
5 Sections 70-2-1 through 70-2-38.

6 Deliberations on rulemaking are performed in
7 public, as a public discussion. And I think that we need
8 to simply go through line by line and take into account
9 comments that were received. However, the record was
10 closed at the conclusion of the hearing, so the
11 Division's supplemental application will not be
12 considered. Neither will the motion to strike by
13 Jalapeno Corporation, which was a response to the
14 Division's supplemental application.

15 There are multiple issues that need to be
16 considered, including definitions of project areas,
17 compulsory pooling and well spacing, the number of wells
18 allowed within the area.

19 So why don't we start with 19.15.14.8? It had
20 to do with the requirement for a permit for an approved
21 permit to drill.

22 Commissioners, are you on the same page as I
23 am?

24 COMMISSIONER BALCH: I believe so.

25 COMMISSIONER DAWSON: I am.

1 CHAIRMAN BAILEY: Okay. Section A of
2 19.15.14.8 had to do with the requirement for an approved
3 application for permit to drill prior to commencing
4 drilling, deepening or re-entry operations, and
5 additional language for commencing an additional lateral,
6 plugging a well back to a different pool, or completing
7 or re-completing the well in an additional pool.

8 Are we in agreement that those suggested
9 changes should be adopted?

10 COMMISSIONER BALCH: Are you referring to
11 15.14.8 A, or A and B?

12 CHAIRMAN BAILEY: We can do A and B at the
13 same time, if you'd like.

14 COMMISSIONER BALCH: I have a question on
15 B(1).

16 CHAIRMAN BAILEY: Let's start with A. Are
17 you okay with Section A?

18 COMMISSIONER BALCH: I am fine with
19 Section A.

20 COMMISSIONER DAWSON: I am also.

21 CHAIRMAN BAILEY: Then we've adopted the
22 recommended changes in Section A.

23 In Section B, Commissioner Balch, what is your
24 concern?

25 COMMISSIONER BALCH: I have a sense that

1 we may have to come back to this after we discuss
2 compulsory pooling in project areas later on.

3 CHAIRMAN BAILEY: So we will hold this at
4 rest until we have to come back to it.

5 Do you have any comment on that, Commissioner
6 Dawson?

7 COMMISSIONER DAWSON: I don't.

8 CHAIRMAN BAILEY: Then we go to 15.16.7,
9 drilling and production, Section B, referring to the
10 definition for a completed interval. Do either of you
11 have any comments on that suggested change?

12 COMMISSIONER BALCH: Just Section B?

13 CHAIRMAN BAILEY: Yes, Items 1, 2 and 3.

14 COMMISSIONER BALCH: The definitions I
15 have no issue with except for that maybe a definition of
16 project area needs to be included.

17 CHAIRMAN BAILEY: Well, why don't we wait
18 until we get to project area definition? We can continue
19 on to 19.15.16.7, having to do with the definition of
20 horizontal well. Do either of you have any comments on
21 that?

22 COMMISSIONER DAWSON: I don't.

23 COMMISSIONER BALCH: Under Section E,
24 "'Horizontal well' means a directional wellbore with one
25 or more laterals that extend a minimum of 100 feet

1 horizontally in the target zone. A well with multiple
2 laterals from a common wellbore in the same or different
3 target zones or formations shall be considered one well,"
4 there are some techniques for re-completion that do drill
5 laterals up to several hundred feet from a wellbore using
6 various techniques. They're generally a general lateral.

7 And in my work with those wells in simulation,
8 we treat those as extra deep perforations, effectively
9 increasing the drainage radius of a well without
10 necessarily it being a lateral.

11 Do we need to -- or do you think that several
12 laterals jetted out into a formation in that manner would
13 qualify as a horizontal well under this rule, or would it
14 be a re-completion technique? And if it is a
15 re-completion technique, do we have to have language in
16 here that differentiates those?

17 CHAIRMAN BAILEY: My off-the-cuff belief
18 is that if a jetted perforation creates an interval to be
19 completed, then it would be a lateral.

20 COMMISSIONER BALCH: Right. These
21 generally do not form an interval to be completed. It
22 would actually be the completion itself.

23 CHAIRMAN BAILEY: In that case, without
24 really thinking about it too hard, I would simply call
25 that, if it's not cased, it is simply a very deep

1 penetration for a perforation. I would not call that
2 horizontal under this definition.

3 Commissioner Dawson, do you have an idea?

4 COMMISSIONER DAWSON: I'm fine with the
5 definition. I think a horizontal well is just -- all
6 it's really saying is it's a well with 100 feet
7 horizontally drilled. I mean that doesn't -- to me, what
8 you're describing is more of multiple perforations within
9 a well or a -- which that's authorized now. I mean you
10 could have two horizontals off the same well in different
11 pools, if necessary.

12 CHAIRMAN BAILEY: But there's no wellbore
13 in what you're describing, either.

14 COMMISSIONER BALCH: No, you would not put
15 any tools down that. You might do an acid job, something
16 like that.

17 I guess my concern is there's a minimum of 100
18 feet horizontally. Does that begin at the bottom of the
19 radius of curvature, and does this impact deviated wells
20 in general if they exceed 100 feet from their surface
21 location?

22 CHAIRMAN BAILEY: If they exceed 100 feet,
23 they become a horizontal well, according to this
24 definition.

25 COMMISSIONER BALCH: So if it's a deviated

1 well, intentional or otherwise, that has a small angle
2 and touches down 100 feet or more from its surface
3 location, it would be a horizontal well?

4 CHAIRMAN BAILEY: Yes.

5 COMMISSIONER BALCH: Is that the intent,
6 do you think, of the rule?

7 CHAIRMAN BAILEY: I think so.

8 COMMISSIONER BALCH: Okay.

9 CHAIRMAN BAILEY: We're okay?

10 COMMISSIONER DAWSON: I'm okay with it.

11 CHAIRMAN BAILEY: So we will adopt this
12 language for the definition of horizontal well. I guess
13 maybe we should read it out as the final.

14 "'Horizontal well' means a directional
15 wellbore with one or more laterals that extend a minimum
16 of 100 feet horizontally in the target zone. A well with
17 multiple laterals from a common wellbore in the same or
18 different target zones or formations shall be considered
19 one well."

20 So now we come to 15.16.7(K), which is the
21 definition for project area.

22 MS. BADA: What about H? Is everyone okay
23 with H?

24 CHAIRMAN BAILEY: Oh, which would be open
25 hole? Okay.

1 "'Open hole' means that portion of a wellbore
2 or lateral that is, 1, not cased, or 2, cased, but the
3 casing is not cemented in place and is not otherwise
4 isolated from the formation."

5 I have no issue with that.

6 COMMISSIONER DAWSON: I don't, either.

7 COMMISSIONER BALCH: No issues.

8 CHAIRMAN BAILEY: So we will adopt it as
9 proposed.

10 Now we can go to the definition of project
11 area. It sounds like you have an opinion on that,
12 Dr. Balch.

13 COMMISSIONER BALCH: I'm still reading
14 Section I.

15 COMMISSIONER DAWSON: What about I and J?

16 CHAIRMAN BAILEY: Those would be deleted
17 and replaced with the new definitions for project area;
18 is that correct?

19 MS. BADA: No.

20 COMMISSIONER DAWSON: The portions that --
21 it used to be F, and now it's I, and portions of I are
22 crossed out.

23 COMMISSIONER BALCH: With additions?

24 COMMISSIONER DAWSON: Yes.

25 CHAIRMAN BAILEY: Okay. So "'Penetration

1 point' means the beginning of the completed interval of a
2 horizontal or other directional well or lateral," is the
3 proposed language.

4 Do either of you have comments about that?

5 COMMISSIONER BALCH: I believe that
6 definition is okay.

7 COMMISSIONER DAWSON: It's fine with me.

8 CHAIRMAN BAILEY: It's fine with me. So
9 we adopt the proposed language for penetration point.

10 "'Producing area' means the portion of a
11 project area that lies within a window formed by plotting
12 the measured distance from the project area's outer
13 boundaries, inside of a which a wellbore can be drilled
14 and produced in conformity with the setback requirements
15 from the outer boundary of a standard spacing unit for
16 the applicable pool."

17 Do either of you have comments on that?

18 COMMISSIONER DAWSON: Looks good to me.

19 COMMISSIONER BALCH: Except for the use of
20 the term, "project area," which we may not have fully
21 defined at this point in the document.

22 CHAIRMAN BAILEY: True.

23 MS. BADA: Project area is already
24 defined. I think the question is whether you modify the
25 definition.

1 COMMISSIONER BALCH: Right.

2 CHAIRMAN BAILEY: So we leave this as
3 proposed until we get to the next portion, which is
4 project area?

5 COMMISSIONER DAWSON: That's fine with me.
6 If he wants to maybe change the project area definition,
7 maybe we should leave that as is until we've covered Item
8 K.

9 COMMISSIONER BALCH: I don't know that it
10 needs to be changed, but I think that due diligence
11 should be given to the findings of both the applicant and
12 opposing counsel that we have in front of us, Jalapeno
13 and NMOCD.

14 CHAIRMAN BAILEY: For the definition of
15 project area?

16 COMMISSIONER BALCH: Yes.

17 CHAIRMAN BAILEY: Yes, absolutely. So the
18 proposed language for "project area" means an area the
19 operator designates on Form C-102, well location and
20 acreage dedication plat, that comprises, 1, one or more
21 complete contiguous spacing units (in one section or in
22 more than one section; or 2, an entire voluntary or
23 statutory unit for an approved enhanced recovery or
24 pressure maintenance project, an approved state
25 exploratory unit, or a participating area in a federal

1 unit."

2 During the hearing I had asked if that
3 definition should read, "one or more complete contiguous
4 spacing units in one section or in more than one section
5 that are developed by the horizontal well," and Mr. Yates
6 said he would be comfortable with that.

7 COMMISSIONER DAWSON: I'm comfortable with
8 that.

9 CHAIRMAN BAILEY: To add that language
10 that would require a project area to have spacing units
11 that are actually developed by the well, there was some
12 question whether or not that term should be "developed"
13 or should be "penetrated by a well."

14 Because with the diagonal wells, sometimes
15 they just cut a corner of the spacing unit and don't
16 actually develop a full spacing unit. So that's a
17 consideration.

18 COMMISSIONER BALCH: And the term -- this
19 is a question for Commission Counsel. The term, "project
20 area," was debated several times during the hearing about
21 whether or not we could actually do something like that,
22 define a new term.

23 If we define it only in these terms as built
24 up of continuous spacing units, are we able to make that
25 definition, do you believe?

1 MS. BADA: I don't see anything that keeps
2 you from adding that definition.

3 COMMISSIONER BALCH: As long as it does
4 not contain statutory authority that supersedes
5 existing --

6 MS. BADA: As long as it's based on your
7 existing authority for non-standard spacing units.

8 COMMISSIONER BALCH: Then in that case,
9 with your addition on it, I'm comfortable with the
10 definition of the term, "project area."

11 CHAIRMAN BAILEY: Do you prefer the term,
12 "developed by the well," or do you prefer the term,
13 "penetrated by the well"? There's a world of difference.

14 It would be difficult, possibly, to determine
15 in a hearing if a spacing unit is fully developed or is
16 simply a little bit developed.

17 COMMISSIONER BALCH: Arguments were made,
18 I think, by both sides that if you could, within
19 setbacks, develop the entire length of the horizontal
20 within the project area, that would be an improvement
21 over the way it is done now, where you can only -- that
22 would allow you to spread your well outside of the area
23 and have the bottom of the radius of curvature be within
24 the setback.

25 CHAIRMAN BAILEY: Yes.

1 COMMISSIONER BALCH: I believe that the
2 term, "developed," would more closely match that intent.

3 COMMISSIONER DAWSON: I would agree.
4 Because if you penetrate that and you're not within the
5 setback area, you cannot develop it.

6 CHAIRMAN BAILEY: That's right.

7 COMMISSIONER DAWSON: "Developed" sounds
8 better to me.

9 CHAIRMAN BAILEY: We are in full agreement
10 that the definition under 19.15.16.7(K), "'Project area'
11 means an area the operator designates on Form C-102, well
12 location and acreage dedication plat that comprises, 1,
13 one or more complete, contiguous spacing units that are
14 developed by a horizontal well in one section or in more
15 than one section; or 2, an entire voluntary or statutory
16 unit for an approved enhanced recovery or pressure
17 maintenance project, an approved state exploratory unit,
18 or a participating area in a federal unit," we are good
19 with that?

20 COMMISSIONER DAWSON: I'm good with it.

21 COMMISSIONER BALCH: Yes. I believe that
22 would meet the rule.

23 CHAIRMAN BAILEY: Okay. Let's go to the
24 next definition, 15.16.7(L).

25 "'Standard project area' means a project area

1 that, 1, is described in Paragraph (2) of Subsection K,"
2 that we just talked about, "of 19.15.16.7 NMAC; 2,
3 consists of a single spacing unit; 3, consists of two or
4 more spacing units within a single section that
5 collectively comprise; (a) the entire section, a half
6 section or half-section equivalent, or a quarter section
7 or quarter-section equivalent; or (b) the north, south,
8 east or west half of a half section or half-section
9 equivalent, or of a quarter section or a quarter-section
10 equivalent; or (4) consists of a combination of two or
11 more otherwise standard project areas, if the resulting
12 area is substantially in the form of a rectangle."

13 I would like to add to Number 4 there,
14 "provided that a project area consists of three 40-acre
15 areas within a single section," and excluding the fourth,
16 "would not be a standard project area."

17 So if three quarter/quarters are part of the
18 proposed project area, that would not be considered a
19 standard project area. They would have to include the
20 fourth, so that we are not leaving an orphan spacing unit
21 in a section.

22 COMMISSIONER DAWSON: I don't know if I
23 like that. What happens if somebody has a standard
24 project area and they are drilling on a 160-acre spacing
25 unit and they encounter drilling difficulties? Does it

1 revert back to just where they had -- maybe they only got
2 across two of the 40-acre portions of that project area
3 and they came to -- they lost their hole or they had
4 difficulties in completing the lateral. Then would it
5 revert back to just those two 40-acre units, or would it
6 still be a 160-acre project area? So if they wanted to
7 drill an infield into all four spacing units --

8 CHAIRMAN BAILEY: A project area is
9 designated on a Form C-102 when a well is -- an
10 application for a permit to drill is submitted, and the
11 APD is approved, but the C-102 is not approved. It's
12 separate. There's neither approval nor disapproval. But
13 a nonstandard project area can be administratively
14 authorized by the Division because they do nonstandard
15 locations all the time.

16 COMMISSIONER DAWSON: So that standard
17 project area would then become a nonstandard project area
18 in the scenario that I'm talking about?

19 CHAIRMAN BAILEY: Yes.

20 COMMISSIONER DAWSON: That's fine.

21 COMMISSIONER BALCH: I have a note based
22 on the testimony of Mr. Brooks that has an addendum to
23 that paragraph such that it reads, "Consists of a
24 combination of two or more otherwise standard project
25 areas if the resulting area is substantially in the form

1 of a rectangle and all spacing units are developed."

2 CHAIRMAN BAILEY: And all spacing units
3 are within the section?

4 COMMISSIONER BALCH: Within the project
5 area, I believe.

6 CHAIRMAN BAILEY: Okay.

7 COMMISSIONER BALCH: We're talking about
8 two project areas or more? Your concern is about leaving
9 orphan --

10 CHAIRMAN BAILEY: Yes.

11 COMMISSIONER BALCH: -- orphan leases
12 within a unit?

13 CHAIRMAN BAILEY: Orphan spacing units
14 within a section.

15 COMMISSIONER BALCH: I believe Mr. Brooks'
16 concern I believe was that the project area would be
17 defined. And then if you include the orphan unit, then
18 it may not have a potential to be drained separately,
19 under a separate --

20 CHAIRMAN BAILEY: Which makes it an
21 orphan.

22 COMMISSIONER BALCH: Right. So including
23 it may not prevent it from becoming an orphan if the
24 development of the project area does not have a wellbore
25 that accesses fluids within that orphan unit.

1 CHAIRMAN BAILEY: Hum?

2 COMMISSIONER DAWSON: That's the same
3 question I asked. I believe that would then go into a
4 nonstandard project area. The proration unit would be --
5 say it went through three quarter/quarters instead of
6 four. Then the proration unit for that well would only
7 be the three quarter/quarters.

8 CHAIRMAN BAILEY: Because the fourth is
9 not developed?

10 COMMISSIONER DAWSON: Yeah.

11 CHAIRMAN BAILEY: And it is a nonstandard
12 project area?

13 COMMISSION: Correct.

14 COMMISSIONER BALCH: If you're both
15 comfortable, I'm going to defer, because I'm not very
16 versed in unitization.

17 CHAIRMAN BAILEY: Okay. So Section 4
18 would read, "consists of a combination of two or more
19 otherwise standard project areas if the resulting area is
20 substantially in the form of a rectangle, provided that a
21 project area of three 40-acre units within a single
22 section and excluding the fourth spacing unit would not
23 be considered a standard project area."

24 So they'd have to go nonstandard or
25 administrative --

1 COMMISSIONER DAWSON: I don't know if you
2 need to add that. Because if you go to M, "'Nonstandard
3 project' means a project area that is not a standard
4 project area."

5 CHAIRMAN BAILEY: Yeah. But we're not
6 saying that leaving that orphan is considered
7 nonstandard. Otherwise, they can say it's standard
8 because we have two or more spacing units here.

9 COMMISSIONER DAWSON: Okay.

10 COMMISSIONER BALCH: The way you explained
11 it make sense.

12 CHAIRMAN BAILEY: Shall we go to Section
13 M, which is the definition of "nonstandard project area"?
14 "Means a project area that is not a standard project
15 area." Good enough?

16 COMMISSIONER DAWSON: I'm going back to
17 your last one on L. I'm sorry. When you add that
18 language, if you look at L(3), it says, "consists of two
19 or more spacing units." So I don't know if you need to
20 add that.

21 CHAIRMAN BAILEY: Yeah. But if you don't,
22 then they'll say, "Three spacing units is a standard
23 project area." And I'm trying to --

24 COMMISSIONER DAWSON: Okay, you're going
25 further. Okay, all right. That's fine with me. That

1 sounds good to me.

2 CHAIRMAN BAILEY: Then we can go to
3 Section M. Do you all have problems with the definition
4 of a nonstandard project area? Are we good with that?

5 COMMISSIONER DAWSON: I'm good with it.

6 COMMISSIONER BALCH: I'm good with it.

7 MS. BADA: Are you okay with the
8 deletions?

9 CHAIRMAN BAILEY: Of "project well spacing
10 unit," yes.

11 MS. BADA: Vertical wells?

12 CHAIRMAN BAILEY: I'm good with those two
13 deletions. What about you two?

14 COMMISSIONER DAWSON: I'm fine with it.

15 COMMISSIONER BALCH: I'm fine, as well.

16 CHAIRMAN BAILEY: All right. Then Section
17 N, "'Terminus' means the farthest point attained along
18 the wellbore or lateral." Are you good with addition of
19 those words, "or lateral"?

20 COMMISSIONER BALCH: Yes.

21 COMMISSIONER DAWSON: I'm fine.

22 CHAIRMAN BAILEY: I am, too. We'll adopt
23 that. And then the deletion of the old definition for
24 vertical well, are you good with deletion?

25 COMMISSIONER BALCH: Do we need to delete

1 that definition for a vertical well?

2 COMMISSIONER DAWSON: I don't think you
3 want to delete it. That's not to say -- I mean most
4 wells being drilled today are horizontals, but there's
5 still people that want vertical wells out there.

6 CHAIRMAN BAILEY: Let's look at the
7 definition. "Means a well that does not have an
8 intentional departure or course deviation from the
9 vertical." I see no harm in going either way with that.

10 COMMISSIONER BALCH: I think I actually
11 like leaving the definition in. Because if you do have a
12 well that deviates unintentionally, it doesn't then fall
13 into the problem of becoming defined as a horizontal well
14 under our definition of horizontal well, whereas the
15 lateral is 100 feet from the surface.

16 CHAIRMAN BAILEY: We have a definition for
17 a deviated well in 16.7.C, which says, "'Deviated well'
18 means a wellbore that is intentionally deviated from
19 vertical but not with an intentional azimuth."

20 COMMISSIONER DAWSON: Well, you know, this
21 is dealing with horizontal wells. It doesn't have
22 anything to do -- now that I think about this, it doesn't
23 have anything to do with vertical wells. We're just
24 addressing horizontal wells in this rule.

25 MS. BADA: Actually, no.

1 CHAIRMAN BAILEY: No. It's all drilling
2 and production.

3 COMMISSIONER BALCH: Since we have a
4 definition for horizontal well, directional well and
5 deviated well, it doesn't hurt to have a definition of
6 vertical well.

7 MS. BADA: Do we know whether "vertical
8 well" is actually used in the rest of the sections?
9 Because if it's not, you don't need to define it.

10 CHAIRMAN BAILEY: Let's go ahead and
11 delete it.

12 COMMISSIONER BALCH: Without an exhaustive
13 reading of all the non-red material, I'm not sure I can
14 answer that question.

15 MS. BADA: Are you comfortable with me
16 doing a search, and if it's not used, taking it out?

17 CHAIRMAN BAILEY: Yes.

18 COMMISSIONER BALCH: I'm fine with that.

19 COMMISSIONER DAWSON: I'm comfortable with
20 that.

21 MS. BADA: I will do that.

22 CHAIRMAN BAILEY: We're leaving the
23 definitions.

24 But I think it would be a good idea, up at the
25 very top, where it says, "15.16.7, definitions," that we

1 include language that says, "In addition to the
2 definitions in 19.15.2.7," so that people who are
3 searching for definitions realize that they could also go
4 to 2.7 to find some definitions that they may be looking
5 for.

6 MS. BADA: Records won't allow you to
7 change your captions. So if you want to add that, you
8 will need to put in a note below that.

9 CHAIRMAN BAILEY: Can we put in a note
10 below that?

11 MS. BADA: Yes. You could say, "The
12 following additions apply to the sections for other
13 definitions."

14 CHAIRMAN BAILEY: So people aren't misled
15 into thinking these are the only definitions that could
16 apply.

17 All right. Then that means that we go to
18 19.15.16.14. Okay. Section B, the title adds the words,
19 "directional or horizontal wellbores." Or we could
20 have -- oh, the title of 19.15.16.14, the title would
21 include some additional language. So it would read,
22 "Deviation tests; deviated, directional and horizontal
23 wells." Are you good with that?

24 COMMISSIONER DAWSON: I'm good with it.

25 COMMISSIONER BALCH: Yes.

1 CHAIRMAN BAILEY: Then we go to Section B,
2 where we have additional language. The title of that
3 would be, "Directional or horizontal wellbores." We're
4 good with that?

5 COMMISSIONER BALCH: Yes.

6 COMMISSIONER DAWSON: I'm fine.

7 CHAIRMAN BAILEY: Okay. And then we go
8 down to Section B(2), which has to do with unorthodox
9 locations. "If all or part of a directional wellbore's
10 completed interval is projected to be outside of the
11 producing area or if any portion of a directional
12 wellbore's completed interval, as drilled, is located
13 more than 50 feet from its projected location as
14 indicated on Form C-102 filed with the application for
15 permit to drill the well and is outside of the producing
16 area, the well's location is considered unorthodox. To
17 obtain approval for the well's location, the operator
18 shall file a written application in the Santa Fe Office
19 of the Division in accordance with Subsection C of
20 19.15.15.13 NMAC."

21 So this is where we get into the deviation of
22 greater than 50 feet. Do either of you have comments
23 about that? This would ensure that unorthodox locations
24 would come through the Santa Fe Office for approval
25 administratively.

1 COMMISSIONER DAWSON: I'm fine with it.

2 COMMISSIONER BALCH: Correct me if I'm
3 wrong. I don't know. This is regarding a horizontal
4 section that is completed with pipe and then enters a pay
5 area some distance down that horizontal or lateral tract?

6 CHAIRMAN BAILEY: That's my understanding.

7 COMMISSIONER BALCH: I think if that --
8 that occurrence would probably be relatively small and
9 would not add additional, excessive burden to be looked
10 at administratively. I'm all right with it.

11 CHAIRMAN BAILEY: Good. So we will adopt
12 B(2).

13 We could look at B(3). "Allowables for
14 project areas with multiple proration units. The
15 Division shall assign to a project area within a prorated
16 pool an allowable equal to the applicable unit allowable
17 for the pool, multiplied by the number of standard
18 spacing units or approved nonstandard spacing units that
19 a horizontal well's or lateral's completed interval
20 penetrates. If a project area includes a spacing unit or
21 smaller project area dedicated to an existing wellbore,
22 unless the operators of all wells in the project area
23 otherwise agree, the project area's allowable shall be
24 computed by deducting the actual production from the
25 existing wellbore or wellbores from the total allowable

1 for the project area."

2 COMMISSIONER BALCH: I have an addendum
3 that would immediately follow the termination of that
4 last sentence, "not to exceed existing allowables for the
5 wellbore or wellbores."

6 CHAIRMAN BAILEY: Okay, which is a better
7 place for putting that thought than I had. So yes, I
8 think that's -- I agree with that. What do you say?

9 COMMISSIONER DAWSON: Where are you
10 looking at now?

11 COMMISSIONER BALCH: Where it reads, "The
12 project area's allowable shall be computed by deducting
13 the actual production from the existing wellbore or
14 wellbores from the total allowable for the project area,
15 not to exceed existing allowables for the wellbore or
16 wellbores."

17 COMMISSIONER DAWSON: I'm fine with that.

18 CHAIRMAN BAILEY: Okay. Because of -- it
19 uses the terminology, right after the crossed-out area,
20 "an allowable equal to the applicable allowable for the
21 pool, multiplied by the number of standard spacing units
22 or approved nonstandard spacing units that a horizontal
23 well's or lateral's completed interval penetrates."
24 Didn't we talk about "develops," instead of "penetrates"?

25 COMMISSIONER BALCH: Yes.

1 CHAIRMAN BAILEY: So that word
2 "penetrates" needs to be changed to "develops."

3 COMMISSIONER BALCH: In the final rule,
4 that may be another term that you need to search on.

5 CHAIRMAN BAILEY: Um-hum. Because I don't
6 believe there is a definition for development of a
7 spacing unit.

8 COMMISSIONER DAWSON: Then I read above
9 it, and it was already crossed out. It goes into saying
10 "the completed interval develops or traverses." So
11 should it be -- on that one and the one before that we
12 were talking about, be "developed or traverses," or --

13 CHAIRMAN BAILEY: If it just cuts the
14 corner -- if a diagonal well just cuts a corner, it's not
15 truly developing the spacing unit.

16 COMMISSIONER DAWSON: Take out
17 "penetrates" and put "develops."

18 COMMISSIONER BALCH: I think "develops"
19 covers the intent.

20 CHAIRMAN BAILEY: So are we clear on B(3)?

21 COMMISSIONER BALCH: I am.

22 COMMISSIONER DAWSON: I'm fine.

23 Then we go to 15.16.15.A, "Special rules for
24 horizontal wells." We do have comments from Jalapeno
25 concerning consent requirements.

1 COMMISSIONER BALCH: It does not appear
2 there's any comments from the OCD on that Section A.

3 CHAIRMAN BAILEY: Well, we can't allow any
4 proposed changes that came in after the hearing.

5 COMMISSIONER BALCH: Right. It doesn't
6 look like there's any.

7 CHAIRMAN BAILEY: I think the comments are
8 only from Jalapeno, as far as this area. I'm looking at
9 the packet that's labeled, "Jalapeno Corporation and
10 Harvey E. Yates Company's proposed findings of fact and
11 conclusions of law." On page 16 he submitted some
12 proposed language that I think we need to discuss before
13 we adopt.

14 His proposed language in A(1) -- the
15 Division's proposed language for A(1) begins,
16 "Directional and horizontal well consent requirement. An
17 operator shall not file an application for permit to
18 drill nor commence drilling of a horizontal or
19 directional well until the operator has either: 1,
20 received the consent of at least one lessee or owner of
21 an unleased mineral interest in each tract (in the target
22 pool or formation) in which any part of the well's
23 completed interval will be located."

24 Jalapeno suggests that we add the language,
25 "and in which each tract is not dedicated to an existing

1 operating agreement or communitization agreement covering
2 a proposed geologic interval."

3 I've thought about that long and hard and
4 realized that the language as presented would prevent the
5 completed interval to include a common unit, even with a
6 common unit agreement of all of the parties. So I don't
7 think it is in anyone's best interest to add language in
8 which it excludes existing communitizations or unit
9 agreements.

10 COMMISSIONER DAWSON: I agree.

11 COMMISSIONER BALCH: I'm not going to
12 imply the intent. I think that the goal of that
13 statement is to prevent someone coming into a project
14 area and overriding the existing agreements.

15 CHAIRMAN BAILEY: Right.

16 COMMISSIONER BALCH: And if you think that
17 the rule, as written, without that addendum, protects
18 that right of the previous interests, then I'm all right
19 with the exclusion of the addendum.

20 CHAIRMAN BAILEY: What causes me a problem
21 is that for a minor owner of a mineral interest in a
22 spacing unit to commit the entire spacing unit that's
23 already under a JOA doesn't seem, to me, to be
24 appropriate.

25 COMMISSIONER BALCH: I agree with that

1 statement.

2 COMMISSIONER DAWSON: I agree.

3 CHAIRMAN BAILEY: So I have problems with
4 at least one lessee or owner within a spacing unit who
5 does not have the authority. Because we still haven't
6 talked about compulsory pooling, but that's something
7 we'll be getting to.

8 COMMISSIONER DAWSON: I agree. Because
9 there could be a minimal interest owner, somebody that
10 has like a half percent there.

11 COMMISSIONER BALCH: It could be somebody
12 in the 25 percent that did not initially agree to the
13 existing pooling for unitization.

14 CHAIRMAN BAILEY: Right, who's force
15 pooled for that spacing unit.

16 COMMISSIONER BALCH: Now they can trigger
17 a forced re-pooling for a project area with that
18 terminology.

19 CHAIRMAN BAILEY: Um-hum.

20 COMMISSIONER BALCH: So I think maybe I'm
21 not correct, but we need to rewrite or rethink that
22 entire Subsection 1.

23 CHAIRMAN BAILEY: I agree. And that's why
24 I think we could borrow language that was proposed in the
25 lower Section 3 that Jalapeno offered in their proposed

1 findings of fact and conclusions of law on page 16.

2 Let's just put Section 1 on hold for a second
3 and look at Section 2.

4 COMMISSIONER DAWSON: I want to go back
5 for a minute. On 1, there is a misspelling. It should
6 be "lessee," not "leesee."

7 CHAIRMAN BAILEY: I see, yes.

8 COMMISSIONER BALCH: It should be
9 l-e-s-s-e-e.

10 CHAIRMAN BAILEY: Okay.

11 COMMISSIONER BALCH: Jalapeno corrects
12 that.

13 CHAIRMAN BAILEY: Yes, they do.

14 If we look at Section 2, the compulsory
15 pooling question does come up. And the Jalapeno language
16 with the proposed language says, "obtain a compulsory
17 pooling order from the Division which shall not be
18 available outside a single proration unit which would be
19 required of a vertical well drilled to be the intended
20 productive horizon at the same location."

21 I do not agree with his proposed additional
22 language.

23 COMMISSIONER BALCH: I think it gives you
24 a case again where a potential minority landowner could
25 control the compulsory pooling process. Whether we agree

1 or disagree with compulsory pooling and the way it's
2 implemented, it's not an effective change.

3 CHAIRMAN BAILEY: Mr. Dawson, do you agree
4 that we should not add the proposed language from
5 Jalapeno?

6 COMMISSIONER DAWSON: I agree.

7 CHAIRMAN BAILEY: Okay. Then let's look
8 at Section 3 of Section A.

9 "If an existing operating agreement or
10 communitization agreement is in place which covers any
11 portion of the target zone which prevents waste and is
12 fair to royalty owners" -- I don't know how you're ever
13 going to enforce that -- "the Division may not issue an
14 order for compulsory pooling without obtaining" -- and
15 this is the language I'm interested in -- "the consent of
16 the working interest owner is required to amend the terms
17 of the agreement. In the absence of language in the
18 existing operating agreement which sets the percentage of
19 ownership required to amend the operating agreement, the
20 Division may consider compulsory pooling with the concept
21 or two or more parties owning 75 percent of more of the
22 working interest ownership governed by an existing
23 operating agreement."

24 What do you all think about that?

25 COMMISSIONER BALCH: Again, I'm not

1 terribly experienced in this area.

2 COMMISSIONER DAWSON: I don't like it.

3 Because some of these leases are so cut up, you may never
4 be able to reach 75 percent of the working interest
5 owners, because there might be 50 people in there that
6 only have 2 percent, to drill the well.

7 COMMISSIONER BALCH: But isn't that how
8 it's already being done for traditional development?
9 Under the current rule, you have to have 75 percent for
10 compulsory pooling?

11 MS. BADA: No.

12 COMMISSIONER DAWSON: You're thinking of
13 unitization. It is of units, but not on a
14 communitization agreement.

15 COMMISSIONER BALCH: What is the
16 difference between --

17 CHAIRMAN BAILEY: A unit and a
18 communitization?

19 COMMISSIONER BALCH: Yes.

20 CHAIRMAN BAILEY: Communitizations
21 traditionally only cover spacing units, well acreage
22 dedicated to a well, where a unit covers a reservoir with
23 possibly multiple wells.

24 COMMISSIONER BALCH: It seems like we have
25 to deal with two cases really, the first case being

1 completely new development, and the second case being a
2 project area where there is existing development under
3 all of it or some of it.

4 CHAIRMAN BAILEY: Yes.

5 COMMISSIONER BALCH: There's really only
6 two cases that we have to understand. Probably some
7 minimal language would be required for the first case
8 that would match existing pooling and unitization,
9 communitization language. Unless that already covers it,
10 we have to specifically point to that.

11 CHAIRMAN BAILEY: That wasn't brought up.

12 MS. BADA: I think it was, because that's
13 why Jalapeno and Harvey Yates had concerns.

14 CHAIRMAN BAILEY: About crossing through
15 spacing units that had existing JOAs?

16 COMMISSIONER BALCH: That case was
17 definitely brought up. I guess my first question was
18 whether, in a completely new development area, which
19 probably there's not very many of --

20 CHAIRMAN BAILEY: There are plenty.

21 COMMISSIONER BALCH: -- do we need to have
22 specific language or point to existing unitization,
23 communitization and compulsory pooling?

24 CHAIRMAN BAILEY: That's what we did in
25 the very first part of our discussion today, which was

1 14.8.B, where a mineral owner's or lessee's consent is
2 required. Oh, this is the one we skipped over, isn't it?
3 Maybe now is the appropriate time.

4 Because you can't get an approved APD until
5 the operator has the consent of at least one lessee or
6 owner of an unleased mineral interest at the bottomhole
7 location or a compulsory pooling order from the Division.

8
9 COMMISSIONER BALCH: That appears like it
10 might cover the first scenario.

11 CHAIRMAN BAILEY: I think it does.

12 COMMISSIONER BALCH: And with our
13 agreement on the definition of project areas, I think
14 that's okay, too.

15 CHAIRMAN BAILEY: To adopt?

16 COMMISSIONER BALCH: Yes.

17 CHAIRMAN BAILEY: Commissioner Dawson, do
18 you adopt the proposed language for 14.8.B, as it was
19 presented to us?

20 COMMISSIONER DAWSON: I do. And I like it
21 the way it's written there. I don't like the 75 percent
22 or more of the working interest ownership, because that's
23 an administrative nightmare, trying to approve those.

24 CHAIRMAN BAILEY: Yes, it is.

25 COMMISSIONER DAWSON: I don't like that.

1 COMMISSIONER BALCH: Then we have to
2 balance that administrative nightmare with the protection
3 of correlative rights.

4 COMMISSIONER DAWSON: Then I think if
5 somebody wants to do a communitization agreement, that's
6 just going to be -- it will become an administrative
7 nightmare for us and an administrative nightmare for the
8 operators applying for a communitization agreement to get
9 all those signatures and do all that.

10 And it will -- it could preclude or it could
11 be -- it will be difficult for somebody, if they have a
12 lease that's getting ready to expire and they have to get
13 all these signatures, 75 percent of the people to agree
14 to it. They will never get their well drilled because
15 they'll never be able to get it in time before their
16 lease expires. I don't like that language at all, to
17 tell you the truth.

18 COMMISSIONER BALCH: For current
19 compulsory pooling, you're just required to have 75
20 percent of the mineral rights?

21 CHAIRMAN BAILEY: No.

22 COMMISSIONER BALCH: What is required?

23 CHAIRMAN BAILEY: For compulsory pooling,
24 it comes to the Division or the Commission for
25 consolidation of those mineral interests in order to

1 drill that well. And then the costs are allocated or
2 penalties are assigned if the company does not then
3 choose to participate in a well.

4 COMMISSIONER DAWSON: You have to have the
5 lessees of record of the leases involved in the proration
6 unit. They have to sign the communitization agreement.
7 That's what you need now, the lessees of record.

8 So if somebody owns a federal lease, say Yates
9 owned a federal lease, and they want to pool 40 acres of
10 that federal lease with 40 acres of a state lease, if
11 it's a state lease, for instance, all they need is the
12 signatures of the people that own the BLM lease, the
13 lessees of record; and the lessees of record of the state
14 lease.

15 When you get into this, you're getting into
16 the working interest owners and all that. I mean it
17 would be an administrative nightmare to do it this way.

18 COMMISSIONER BALCH: So I think what we
19 really need to do for Section A would be to come up with
20 a rule that meets the current statute but also protects
21 the existing rights.

22 CHAIRMAN BAILEY: Let's say we consider
23 the language for A(1), "received the consent of at least
24 one lessee or owner of an unleased mineral interest in
25 each tract (in the target pool or formation) in which any

1 part of the well's completed interval will be located;
2 or" -- I lost it. The consent of the working interest --
3 okay.

4 We combine with Number 3, "if an existing
5 operating agreement or communitization agreement is in
6 place which covers any portion of the target zone, the
7 Division may not issue an order for compulsory pooling
8 without" -- may not issue an order for --

9 MS. BADA: One isn't dealing with
10 compulsory pooling. One is dealing with consent.

11 CHAIRMAN BAILEY: Right.

12 COMMISSIONER DAWSON: I think you should
13 just not even think about 2 and 3.

14 CHAIRMAN BAILEY: Okay. So just leave the
15 proposed language of A(1), leave the proposed language
16 for A(2), and not include the proposed A(3) from
17 Jalapeno?

18 COMMISSIONER DAWSON: I agree.

19 CHAIRMAN BAILEY: So leave it as the
20 Division proposed, 15.A(1) and (2)?

21 COMMISSIONER DAWSON: Correct.

22 CHAIRMAN BAILEY: What do you think,
23 Commissioner Balch?

24 COMMISSIONER BALCH: If the two of you are
25 convinced that that would protect the rights of

1 preexisting stakeholders, then I defer to that.

2 COMMISSIONER DAWSON: Whenever you approve
3 a compulsory pooling order, what do you guys do when you
4 approve a compulsory pooling order?

5 CHAIRMAN BAILEY: It comes to hearing.
6 Arguments are given as to why it should be pooled, and
7 normally penalties are assessed for operators who do not
8 participate.

9 COMMISSIONER DAWSON: Okay. That's fine.
10 I like (1) and (2). I don't like (3), though.

11 CHAIRMAN BAILEY: I don't like 3, but I am
12 concerned about quarter/quarters that may already be
13 committed to a communitization agreement that may have
14 been compulsory pooled and the pooled owner is one of
15 these minor interests who agrees to this horizontal well,
16 and the rest of the pooled working interests in that
17 quarter/quarter would then get compulsory pooled. Okay.
18 Forget it. I'm good.

19 We are good for Sections (1) and (2) as
20 proposed by the Division.

21 COMMISSIONER BALCH: The reason this was
22 discussed and why Jalapeno, I presume, added this
23 language is that if you have an existing compulsory pool
24 that underlies or is included in your project area and
25 you're essentially re-pooling with the application for

1 the project area --

2 CHAIRMAN BAILEY: Um-hum.

3 COMMISSIONER BALCH: -- but there may
4 be -- I believe this is from the testimony of Harvey
5 Yates -- existing contracts and operating agreements, et
6 cetera, that would then be superseded.

7 CHAIRMAN BAILEY: Um-hum.

8 COMMISSIONER BALCH: I don't know if we
9 can do that.

10 MS. BADA: You can do it pursuant to an
11 order. The law has changed.

12 COMMISSIONER BALCH: The current law
13 allows you to do that?

14 MS. BADA: So you can do that under
15 compulsory pooling.

16 COMMISSIONER BALCH: If you have two pools
17 side by side, could you make them into one pool?

18 COMMISSIONER DAWSON: You could make the
19 whole thing a project area, if you want to. I've seen
20 some 895-acre project areas.

21 CHAIRMAN BAILEY: But we just changed the
22 definition to say only that spacing unit that is
23 developed can be included in a project area. And that
24 prevents what is in effect unitization, which is being
25 called project areas now. Because with the definition

1 that we have adopted today, it's only that development --

2 COMMISSIONER DAWSON: In that case, it
3 will go to unitization. So the case that I'm describing,
4 the 895-acre project area, would go to a unit?

5 CHAIRMAN BAILEY: They would have to be
6 unitized.

7 COMMISSIONER DAWSON: What if they have
8 a -- let's just not -- maybe say -- we'll make it
9 simpler. They've got 640 acres in that section, and
10 they've got 320, so they have a 960-acre project area.

11 CHAIRMAN BAILEY: No, they don't.

12 COMMISSIONER DAWSON: There's some
13 existing ones out there.

14 CHAIRMAN BAILEY: Yes, there are some out
15 there.

16 COMMISSIONER DAWSON: But if somebody
17 proposes a project area in that scenario, a 960-acre
18 project area, and they propose to drill 660-acre wells in
19 that, couldn't that be a -- I mean that's how the one
20 before was approved.

21 CHAIRMAN BAILEY: With the definition we
22 adopted today --

23 COMMISSIONER DAWSON: That would require a
24 unit?

25 CHAIRMAN BAILEY: -- it would require a

1 unit to go beyond those spacing units that are developed
2 by the well.

3 COMMISSIONER DAWSON: It would be easier
4 that way, too. Okay, that's fine. And plus, the
5 895-acre project area could become a 4,000-acre project
6 area, and it should be a unit.

7 CHAIRMAN BAILEY: Um-hum.

8 COMMISSIONER BALCH: So that I completely
9 understand this, as far as I can understand this, if you
10 have a project area being developed over an existing
11 pool, what happens?

12 CHAIRMAN BAILEY: APD comes in for a well,
13 a horizontal well, as our example. The C-108 comes in
14 indicating a project area of, for example, the west half
15 of the west half of one section. That project area is
16 the west half of the west half.

17 Before that APD is approved, either those four
18 quarter/quarters are consolidated by communitization or
19 by JOA or by compulsory pooling. That's what --

20 COMMISSIONER DAWSON: If it's all one
21 lease, there's no compulsory pooling required. But if
22 it's two or more leases within that proration unit, then
23 you'll have to do compulsory pooling.

24 COMMISSIONER BALCH: So essentially,
25 existing rules will apply?

1 CHAIRMAN BAILEY: Yes.

2 COMMISSIONER BALCH: I'm comfortable with
3 that. If the existing rules will be changed, that's a
4 matter for another hearing.

5 CHAIRMAN BAILEY: Well, we can now adopt
6 15.16.15.A(1) and (2) as proposed by the Division. And
7 none of the comments suggested by Jalapeno are
8 incorporated into this section; correct?

9 COMMISSIONER BALCH: Right.

10 COMMISSIONER DAWSON: Yes.

11 CHAIRMAN BAILEY: Okay. So then we go to
12 proposed Section B, which has to do with well dedication
13 and acreage plat.

14 "If the project area to be dedicated to a
15 horizontal well includes one or more spacing units that
16 the wellbore will not penetrate, the operator shall file
17 with the application for permit to drill two well
18 dedication and acreage plats on Form C-102, one of which
19 shall depict the outer boundaries of the project area,
20 and the other of which shall depict the spacing unit or
21 units the wellbore will penetrate."

22 Because of the definition of project area that
23 we have adopted, I believe that that entire Section B
24 should be not adopted or deleted from our draft here
25 because we are not allowing outer boundaries and inner

1 boundaries. We're saying the project area has to have
2 spacing units actually developed by a well and not
3 including extraneous spacing units.

4 COMMISSIONER DAWSON: I think you can
5 strike that as kind of saying they don't need to file a
6 C-102.

7 COMMISSIONER BALCH: Would this scenario
8 allow you to develop a horizontal well like this, using
9 just those four quarter/quarter sections? And if so,
10 wouldn't you be infringing on the rights for these if
11 they're not necessarily included in the project area?

12 CHAIRMAN BAILEY: You're showing me a
13 depiction of a section -- for the court reporter, I'm
14 saying this out loud -- with a diagonal well which goes
15 from the northeast to the northeast to the southwest of
16 the southwest directionally through the entire section.
17 And you're asking if, for instance, the northwest quarter
18 would be part of a project area.

19 I'm saying no, that -- according to your
20 drawing, which shows the horizontal well going through
21 the northeast of the northeast, the southwest of the
22 northeast, the northeast of the southwest and the
23 southwest of the southwest, that the northwest quarter of
24 that section should not be in this project area because
25 it's not being developed.

1 COMMISSIONER BALCH: What about the
2 northwest of the southeast?

3 COMMISSIONER DAWSON: They don't usually
4 approve diagonally-drilled wells like that. It's usually
5 rectangular.

6 CHAIRMAN BAILEY: And they have come as
7 nonstandard project areas.

8 COMMISSIONER DAWSON: So there have been
9 some that --

10 CHAIRMAN BAILEY: There have been those.

11 COMMISSIONER BALCH: Geologically, it's
12 pretty easy to think of a case where you would want to
13 drill a horizontal well along the azimuth of the
14 structure, and the structure doesn't necessarily fall in
15 the land grid.

16 CHAIRMAN BAILEY: If you're including the
17 northwest of the northeast, that quarter/quarter is not
18 contributing to that well in any way.

19 COMMISSIONER BALCH: Except for the
20 production would be coming --

21 CHAIRMAN BAILEY: But it's not being
22 developed by that well.

23 MS. BADA: Is it being drained by that
24 well?

25 COMMISSIONER BALCH: It's being drained.

1 The northwest of the northeast, the southwest of the
2 northeast, the southeast of the northwest, and the
3 northwest of the southwest, the southeast of the
4 southwest, and the northwest of the southeast would all
5 be potentially drained by that well.

6 CHAIRMAN BAILEY: Which brings us back to
7 whether or not we are saying "developed" or "traversed."
8 Because there is the opportunity for development of that
9 entire north half of the north half to be developed by an
10 additional horizontal well.

11 COMMISSIONER BALCH: What if, however,
12 there's existing vertical wells in those subsections that
13 I've described?

14 CHAIRMAN BAILEY: We are coming to a
15 question that we need to talk about pretty soon
16 concerning the limitation on the number of wells. If we
17 need to talk about pool rules, that's Section D of
18 15.16.15.

19 COMMISSIONER BALCH: Should we perhaps
20 move to that section?

21 CHAIRMAN BAILEY: Okay. The proposed
22 language of 19.15.16.15.E, is, "Pool rules. Provision of
23 statewide rules or special pool orders in effect on the
24 effective date of this amendment that limit the number of
25 wells that may simultaneously produce from the portion of

1 a pool or area underlying a spacing unit, or a particular
2 portion of a spacing unit, do not apply to horizontal
3 wells. Without limitation of any right or remedy, an
4 owner or operator of a tract in the same pool as a
5 project area, that is not included in the project area,
6 who contends that a horizontal well in the project area
7 is impairing or will impair the owner's or operator's
8 correlative rights may file an application with the
9 Division. The Division, after notice and hearing, may
10 grant such relief as it determines to be necessary and
11 appropriate, including, but not limited to, imposing a
12 limitation on the rate or amount of production from the
13 project area."

14 This paragraph does away with limitations on
15 the number of wells within a spacing unit.

16 COMMISSIONER BALCH: Essentially replacing
17 that with proration as a solution.

18 COMMISSIONER DAWSON: The diagram that
19 he's depicting, that would be a nonstandard location
20 anyway, wouldn't it?

21 CHAIRMAN BAILEY: That would be a
22 nonstandard project area.

23 COMMISSIONER DAWSON: Nonstandard
24 proration unit, too; right?

25 CHAIRMAN BAILEY: Yeah, it would.

1 COMMISSIONER DAWSON: They'd have to file
2 for a nonstandard proration unit or nonstandard location.

3 CHAIRMAN BAILEY: Doesn't this paragraph
4 pretty much do away with proration units, without
5 limitation to the number of wells which may be drilled
6 within a section?

7 COMMISSIONER BALCH: And it does away with
8 the number -- a limitation on the number of horizontal
9 wells. Presumably, you can drill an infinite number of
10 horizontal wells. I think the existing rules for
11 vertical wells would still apply.

12 And the relief from an existing or subsequent
13 vertical well in an offset section which is being drained
14 but is not part of a project area would only be a
15 proration. That would help if you already have an
16 existing well and you drilled a new well and you would
17 simply not have the reserves.

18 CHAIRMAN BAILEY: And if you have multiple
19 horizontal wells going through a spacing unit, that's
20 going to affect the vertical well's production.

21 MS. BADA: If it's in the same pool.

22 CHAIRMAN BAILEY: Right.

23 COMMISSIONER BALCH: I think the reason
24 for that inclusion of this paragraph really is that
25 existing rule, or the reason we're looking at this at all

1 is based on the development of vertical wells on regular
2 spacing, whereas horizontal wells have a different logic
3 in spacing and location and direction of those wellbores
4 that do not meet that same criteria.

5 CHAIRMAN BAILEY: Correct.

6 COMMISSIONER BALCH: If we adopt that
7 Section E, what does that do to the existing rules
8 regarding vertical wells and limitations?

9 CHAIRMAN BAILEY: It does not change that.

10 COMMISSIONER BALCH: Are you left with a
11 situation where your preexisting vertical well may get
12 relief either through proration or allowables in a
13 horizontal well, but any subsequent vertical well that
14 you drill in the gap between horizontal wells would be at
15 risk?

16 CHAIRMAN BAILEY: Um-hum.

17 COMMISSIONER BALCH: I have no idea about
18 how future -- if we can consider future production. I
19 think the preexisting production is adequately protected
20 with this, although there may be hearings, too.

21 CHAIRMAN BAILEY: Clearly, production for
22 established vertical wells will be highly impacted by
23 horizontal wells going through the same spacing unit,
24 particularly if there are an unlimited number of
25 horizontal wells going through the same spacing unit.

1 COMMISSIONER BALCH: We say, "unlimited."
2 Practicality would provide a limitation.

3 CHAIRMAN BAILEY: Practicality?

4 COMMISSIONER BALCH: Economics.

5 CHAIRMAN BAILEY: What I'm seeing is that
6 operators can run two horizontal wells within a stand-up
7 or lay-down 160 800 feet apart from each other, more or
8 less.

9 COMMISSIONER BALCH: Replacing the
10 potential for eight vertical wells?

11 CHAIRMAN BAILEY: Um-hum.

12 COMMISSIONER BALCH: Which is more
13 efficient, of course --

14 CHAIRMAN BAILEY: Of course.

15 COMMISSIONER BALCH: -- and may prevent
16 waste because of that efficiency.

17 CHAIRMAN BAILEY: That's right.

18 COMMISSIONER BALCH: Do you think we can
19 do that?

20 MS. BADA: I don't know. That's not the
21 issue that's being raised.

22 COMMISSIONER BALCH: Are we allowed to
23 bring up our own issues?

24 MS. BADA: If you have enough evidence on
25 the record to do something about it.

1 COMMISSIONER BALCH: I believe this sort
2 of drawing was presented as testimony.

3 CHAIRMAN BAILEY: It's one of the exhibits
4 from David Brooks.

5 COMMISSIONER BALCH: So in that sense, we
6 do have some evidence.

7 MS. BADA: It's whether you have enough
8 evidence, if you choose to rewrite it.

9 COMMISSIONER BALCH: If we chose to
10 rewrite it, how would that be approached?

11 CHAIRMAN BAILEY: What is your concern?
12 Want do you want to rewrite?

13 COMMISSIONER BALCH: I want to make sure
14 we don't write something that's not -- that will violate
15 preexisting rules.

16 CHAIRMAN BAILEY: I think adoption of this
17 paragraph would not violate preexisting rules which were
18 developed for vertical wells.

19 MS. BADA: I think the real question is,
20 do you think the Division is going to adequately protect
21 wells that are there if they're in the same pool?

22 CHAIRMAN BAILEY: Does it adequately
23 protect, is that what you were saying?

24 MS. BADA: Yeah.

25 CHAIRMAN BAILEY: Scott, what do you

1 think?

2 COMMISSIONER BALCH: Maybe I should phrase
3 it one more way. If you develop in this fashion, you
4 could, in theory, with that section and some of the
5 previous discussion we've had, have mineral leases for
6 four quarter/quarter sections, again, draining those four
7 quarter/quarter sections and portions of the six other
8 ones.

9 CHAIRMAN BAILEY: Which provides an
10 opportunity for protection of correlative rights by
11 operators to drill their own wells.

12 COMMISSIONER BALCH: Vertical and/or
13 horizontal?

14 CHAIRMAN BAILEY: Either way.

15 COMMISSIONER BALCH: This paragraph does
16 defend existing vertical wells. Whether a new vertical
17 well is drilled in defense of their mineral rights, how
18 would that be affected by proration, or would it be
19 affected by proration?

20 CHAIRMAN BAILEY: It would go under the
21 pool rules, and the pool rules determine the spacing
22 acreage for vertical wells.

23 COMMISSIONER BALCH: I don't think there's
24 anything particularly in this section on unlimited number
25 of horizontal wells in any direction or azimuth to allow

1 this sort of development. If there were existing
2 vertical wells, you could basically drill through them,
3 through all those sections.

4 CHAIRMAN BAILEY: Um-hum. And we could
5 approve a project area for those spacing units that
6 are -- and here we go back to traversed or developed.

7 COMMISSIONER BALCH: I think traversed,
8 you're talking about allowing them only to complete
9 certain intervals of their horizontal?

10 CHAIRMAN BAILEY: No. They would complete
11 the entire thing. It's just what acreage is dedicated to
12 a project area?

13 COMMISSIONER BALCH: I see. And that's
14 the information that would be used for proration or
15 allotment for a preexisting vertical well?

16 CHAIRMAN BAILEY: Right.

17 COMMISSIONER BALCH: For a subsequent
18 vertical well -- I'm sorry if this is taking me a while
19 to understand.

20 CHAIRMAN BAILEY: This is not very simple.
21 It's extremely complex.

22 COMMISSIONER BALCH: I do think the
23 existing vertical wells are protected. I wonder about
24 subsequent vertical wells developed near horizontals that
25 are not along standard spacing units. And maybe to most

1 effectively drain the reservoir that is contained within
2 this section, that you would want to have a combination
3 of horizontal and vertical wells.

4 CHAIRMAN BAILEY: Um-hum.

5 COMMISSIONER BALCH: They may not all have
6 the same -- I guess they would all have to be in the same
7 pool. But we come back to what if there's an existing
8 pool covering the southeast quarter?

9 Or in this case, then you add in a horizontal
10 well that passes by the northwest quarter -- northwest
11 quarter section of the southeast quarter, you'd have to
12 re-pool.

13 COMMISSIONER DAWSON: If the lessee of
14 record or the operator in that southeast quarter has a
15 problem with it, they can come to hearing.

16 MS. BADA: I think your future vertical
17 wells are covered by D(2).

18 COMMISSIONER DAWSON: Plus they can't
19 produce over the allowable in any of those
20 quarter/quarters.

21 COMMISSIONER BALCH: Maybe it comes back
22 down to compulsory re-pooling?

23 CHAIRMAN BAILEY: And then we have
24 overlapping dedication for wells, which is a nightmare
25 for databases to deal with.

1 COMMISSIONER DAWSON: That's going to
2 be -- something that he's describing will probably not be
3 approved in a nonstandard location or a nonstandard
4 proration unit if they come across the problems you're
5 explaining.

6 COMMISSIONER BALCH: That may contribute
7 to waste.

8 CHAIRMAN BAILEY: You bring up a very
9 important point for guidelines on when to not approve a
10 nonstandard proration unit -- a nonstandard project area,
11 that's what I mean.

12 COMMISSIONER DAWSON: What you're
13 explaining there will come to argument when they apply
14 for a nonstandard location or a nonstandard proration
15 unit. If the OCD feels that that's not fair and
16 equitable to both operators, it won't be approved.

17 CHAIRMAN BAILEY: And that should be
18 included as part of our deliberation here today with
19 direction to the Division that in this circumstance, a
20 nonstandard project area should not be approved if it
21 comes to an administrative application. That's what
22 you're saying?

23 COMMISSIONER DAWSON: Only if it impairs
24 the correlative rights of the offset operators or offset
25 wells.

1 CHAIRMAN BAILEY: Okay. So have we
2 resolved proposed Paragraph E concerning pool rules and
3 the number of wells or the unlimited number of horizontal
4 wells within a project area?

5 COMMISSIONER DAWSON: That's fine with me
6 because they can only produce up to the allowable within
7 the 40 acres or within that proration unit anyway.

8 They're not going to drill -- you can kind of
9 read this as an unlimited number of wells that they can
10 put into that project area. But once they get to the
11 allowable, they can't drill any more wells anyway.

12 COMMISSIONER BALCH: Or produce the
13 horizontal wells.

14 COMMISSIONER DAWSON: They may have to
15 curtail production on the horizontals if they're
16 producing above the allowable.

17 CHAIRMAN BAILEY: So we're in agreement to
18 adopt this paragraph on pool rules?

19 COMMISSIONER BALCH: I'm not convinced
20 that it's perfect. But I think if we try to impose
21 limitations on horizontals wells, then we will impact the
22 waste. We may produce waste.

23 CHAIRMAN BAILEY: I agree.

24 Commissioner Dawson, do you want to approve?

25 COMMISSIONER DAWSON: I think the way it's

1 written, as I review it further, they have the right to
2 file an application of opposition with the Division if
3 they feel their correlative rights are impaired.

4 CHAIRMAN BAILEY: That takes us back now
5 to proposed portion Number B, which talks about a project
6 area which would have outer boundaries and inner
7 boundaries and spacing units that are not penetrated by a
8 wellbore.

9 I think by the adoption of the definition that
10 we have for project area, that we would not have two well
11 dedication and acreage plats for Form C-102 for outer
12 boundaries and other -- which would depict the spacing
13 unit or units the well could penetrate, because that's
14 not part of the project area.

15 COMMISSIONER BALCH: Is this paragraph
16 addressing the situation where you would have your
17 surface location on one lease -- or not on the lease that
18 they're actually going to produce, but your horizontal
19 portion of the wellbore is entirely contained within the
20 project area?

21 CHAIRMAN BAILEY: No. I think this goes
22 back to what their original definition of project area
23 was that did not include the limitation that we imposed
24 by saying that a project area had to mean -- that it
25 included an area of one or more complete, contiguous

1 spacing units that are developed by the horizontal well.

2 Without the language that we adopt, does this
3 paragraph make sense? Because without the language we
4 adopted, project areas can be 870 acres. Well, they can
5 be 870 acres if you have one well now.

6 MS. BADA: Essentially, it's addressing
7 what's shown in OCD Exhibit 9.

8 CHAIRMAN BAILEY: Commissioner Balch?

9 COMMISSIONER BALCH: I think that's what
10 we discussed. So with our change to the definition of
11 project area, then Section B would no longer be
12 necessary.

13 CHAIRMAN BAILEY: Right. So shall we
14 strike proposed Section B? Because it's not necessary,
15 given that we have limited the definition of "project
16 area."

17 COMMISSIONER DAWSON: I think you can
18 strike it. It's the same thing to me. They sound the
19 same to me.

20 CHAIRMAN BAILEY: I think this was based
21 on the original definition. And we have, by limiting the
22 definition, removed the necessity of this paragraph.

23 COMMISSIONER DAWSON: I think you're
24 right. The definition does eliminate that paragraph.

25 CHAIRMAN BAILEY: All right. Let's take a

1 10-minute break.

2 (A recess was taken.)

3 CHAIRMAN BAILEY: We're back on the record
4 now. We have just deleted proposed Paragraph B of
5 19.15.16.15, and so obviously all succeeding paragraphs
6 will need to be re-numbered.

7 Shall we go to the next section, which is
8 setbacks? Which says, "Horizontal wells drilled in
9 project areas as defined in Subsection I of 19.15.16.15
10 NMAC shall have setbacks from the outer boundaries of the
11 project area the same as if the well were drilled in a
12 single spacing unit for the pool. Subject to the
13 provisions of Paragraph 2 of Subsection A" -- is what I'm
14 having put in here; let's see if that's correct -- "of
15 19.15.16.14, Paragraph 2, every point of the completed
16 interval must meet the minimum setback requirements from
17 the outer boundaries of the project area, or an exception
18 must be approved for a nonstandard location."

19 Subject to the provisions of Paragraph A or B?

20 MS. BADA: That's like 14, so 14 B(2) is
21 unorthodox locations.

22 CHAIRMAN BAILEY: It talks about minimum
23 setbacks.

24 MS. BADA: A(2) was excessive deviation.

25 CHAIRMAN BAILEY: It seems like it should

1 be B then, correct, "of 19.15.16.14 NMAC, every point of
2 the completed interval must meet the minimum setback
3 requirements from the outer boundaries of the project
4 area," which we have now deleted "from the outer
5 boundaries" -- no, we haven't -- "or an exception must be
6 approved for a nonstandard location; 3, no internal
7 setbacks are required within the project area; 4, a
8 horizontal well's surface location may be outside the
9 setbacks or outside the project area, provided that the
10 completed interval is entirely within the project area
11 and complies with the applicable setback requirements."

12 Do you have concerns there?

13 COMMISSIONER BALCH: For a change, I do
14 not have any concerns.

15 CHAIRMAN BAILEY: Commissioner Dawson, do
16 you have any concerns there?

17 COMMISSIONER DAWSON: No.

18 CHAIRMAN BAILEY: Okay. The only thing to
19 suggest there is that this paragraph is re-numbered to B,
20 and then the following section is re-numbered to C:
21 "Existing and subsequent wells in project areas.
22 Existing wells in spacing units or project areas that are
23 included in a newly designated project area remain
24 dedicated to their existing spacing units or project
25 areas and are not part of the new project area unless

1 otherwise agreed by all working interest owners in the
2 new project area.

3 "Subject to the terms of any applicable joint
4 operating agreement, subsequent wells with a completed
5 interval in a horizontal well's project area may be
6 drilled only with the approval of all working interest
7 owners in the project area, or by order of the Division
8 after notice to all working interest owners in the
9 project area and opportunity for a hearing."

10 Do you have any issues with this section?

11 COMMISSIONER BALCH: Does the use of
12 "approval of all working interest owners in the project
13 area" give rise to the same issues that Commissioner
14 Dawson was concerned about earlier with it becoming
15 impossible in some cases to achieve that agreement?

16 CHAIRMAN BAILEY: If it does, then it can
17 go by order of the Division after notice and hearing. So
18 there is a process here if it becomes impossible to get
19 all working interest owners.

20 COMMISSIONER BALCH: Potentially
21 compulsory project areas?

22 CHAIRMAN BAILEY: Yes.

23 COMMISSIONER BALCH: It seems to cover the
24 need.

25 CHAIRMAN BAILEY: So are you okay with

1 that?

2 COMMISSIONER BALCH: I believe I'm all
3 right with it.

4 CHAIRMAN BAILEY: Commissioner Dawson?

5 COMMISSIONER DAWSON: "C(1), Existing
6 wells, spacing units or project areas are included in a
7 newly-designated project area remain dedicated to their
8 existing spacing units or project areas and are not part
9 of the new project area." And then you go on to say,
10 "unless otherwise agreed by all working interest owners
11 in the new project area."

12 Doesn't that go back to having them all agree
13 to the new project area again?

14 COMMISSIONER BALCH: I think it's the "by
15 the order of the Division" part that fixes it. If they
16 can't agree, the Division can re-assign the project area.

17 CHAIRMAN BAILEY: We can go back to the
18 notice and the opportunity for hearing.

19 MS. BADA: That's dealing with subsequent
20 wells. That's not dealing with existing wells. Because
21 (1) deals with existing wells, (2) deals with --

22 CHAIRMAN BAILEY: And the new project area
23 does not disturb existing wells.

24 MS. BADA: And I don't think that you
25 would want to.

1 COMMISSIONER DAWSON: But are the working
2 interest owners going to be -- they may be different in
3 both project areas.

4 CHAIRMAN BAILEY: And the new project area
5 working interest owners are the ones who need to approve
6 changing the project area in accordance with existing --
7 so old ones are not incorporated into new ones unless the
8 new owners agree to it.

9 COMMISSIONER BALCH: That makes less sense
10 when I read it.

11 CHAIRMAN BAILEY: So you have a vertical
12 well dedicated to 40 acres. You have a new project area
13 for the west half of the west half. The existing
14 vertical well is not automatically included into the new
15 160-acre project area unless the new project area working
16 interest owners agree to it.

17 COMMISSIONER BALCH: Unless all of the
18 working interest owners agree to it. All of the new --

19 CHAIRMAN BAILEY: All of the new project
20 area working interest owners agree to it.

21 COMMISSIONER BALCH: What if they don't
22 agree?

23 COMMISSIONER DAWSON: Shouldn't it go back
24 to the lessee, instead of the working interest owners,
25 the consent of at least one lessee or owner in the new

1 project area? I think "all working interest owners,"
2 anywhere you put that in there, that's going to create
3 administrative nightmares.

4 COMMISSIONER BALCH: I guess I'm trying to
5 determine the intent of this.

6 MS. BADA: Basically, it lets existing
7 wells be.

8 COMMISSIONER BALCH: Not necessarily. It
9 lets existing wells be, unless the new project area and
10 people want the existing well included in their new
11 project area, which seems backwards, unless I'm reading
12 that completely wrong.

13 MS. BADA: I think it could use some
14 clarification on whether you want all working interests
15 in the existing spacing unit or project area and the new
16 ones, also. So essentially everybody, which would make
17 more sense.

18 COMMISSIONER DAWSON: What if part of the
19 working interest owners don't want to be involved with
20 the new wells?

21 COMMISSIONER BALCH: Then it would stand
22 as a preexisting unit or project area.

23 CHAIRMAN BAILEY: Which then brings up the
24 compulsory pooling question.

25 COMMISSIONER BALCH: Which is not included

1 in that paragraph. It's included in the second
2 paragraph. And I think also, it comes to the crux of the
3 issue for Jalapeno and if they don't want to be force
4 pool into somebody's project area, necessarily.

5 I think if you want to go in the direction of
6 completely protecting existing agreements and operations,
7 you would change what is now C(1) to say, "unless
8 otherwise agreed by all working interest owners in the
9 preexisting" --

10 MS. BADA: And new. Because what if the
11 new ones don't want --

12 COMMISSIONER BALCH: And new. And if they
13 can't agree, then it just stays. But --

14 COMMISSIONER DAWSON: It already says,
15 "existing," above it.

16 MS. BADA: Couldn't we say, "in both"?

17 COMMISSIONER BALCH: "Both" would be less
18 wordy.

19 CHAIRMAN BAILEY: So it would say, "unless
20 otherwise agreed to by all working interest owners in
21 both project areas"?

22 COMMISSIONER BALCH: Does that read more
23 sensibly from a defensibly legal position?

24 MS. BADA: I think the question is if you
25 understand it, it probably reads better, as long as it's

1 clear.

2 COMMISSIONER BALCH: So my interpretation
3 of the way it now reads is preexisting units or project
4 areas would have the ability to preserve their
5 preexisting units' or project areas' impact.

6 CHAIRMAN BAILEY: Unless they're
7 compulsory pooled.

8 MS. BADA: Which that does not address.

9 CHAIRMAN BAILEY: No. But that would come
10 into play in the later paragraph.

11 MS. BADA: Assuming that it could be under
12 the statute.

13 CHAIRMAN BAILEY: Within the section?

14 MS. BADA: Right.

15 CHAIRMAN BAILEY: Are you comfortable with
16 including, "unless otherwise agreed to by all working
17 interest owners in both project areas"?

18 COMMISSIONER DAWSON: What if there are
19 different interest owners in both project areas?

20 COMMISSIONER BALCH: You would have two
21 separate groups of people that would have to come to an
22 agreement.

23 COMMISSIONER DAWSON: But I think instead
24 of "both," put "existing and new." Same thing, I guess,
25 either way.

1 COMMISSIONER BALCH: We already described
2 in the paragraph the two separate project areas, so we
3 can say "both."

4 CHAIRMAN BAILEY: Okay. So we go to
5 Section 2 of --

6 MS. BADA: Unless you think there might be
7 three.

8 COMMISSIONER BALCH: Then I guess you
9 should say, "in new and existing project areas."

10 CHAIRMAN BAILEY: Um-hum. Then we go to
11 Paragraph 2 of Section C, "Subject to the terms of any
12 applicable joint operating agreement, subsequent wells
13 with a completed interval in a horizontal well's project
14 area may be drilled only with the approval of all working
15 interest owners in the project area, or by order of the
16 Division after notice to all working interest owners in
17 the project area and opportunity for hearing," which
18 takes care of --

19 COMMISSIONER DAWSON: The one above it,
20 I'm still having trouble with that "existing." Because
21 the "existing," I mean you're -- they could be different
22 owners.

23 MS. BADA: They could.

24 COMMISSIONER DAWSON: So I think I'd just
25 take off "both," or, "existing and new." I would just

1 keep it as it is written, "owners in the new project
2 area,"

3 COMMISSIONER BALCH: Then you can
4 potentially violate the correlative right of the existing
5 project area or unit that was there before by forcing
6 them to be a part of the new project area or not, at the
7 whims of the new project area or interest owners.

8 COMMISSIONER DAWSON: They may be totally
9 different, though.

10 COMMISSIONER BALCH: They probably will
11 be.

12 MS. BADA: They're likely to be.

13 COMMISSIONER DAWSON: So how is somebody
14 that's in an existing project area going to be able to
15 agree to a new project area that's being proposed when
16 they don't have any interest in it?

17 CHAIRMAN BAILEY: They would -- okay. I
18 think it's easier if we talk about west half/west half.
19 Somebody owns the third quarter of the stand-up project
20 area. Okay? The new owners want to drill a horizontal
21 well that goes south to north through the entire west
22 half of the west half. The working interest owner in
23 Unit Letter E, the southwest of the northwest, already
24 has a vertical well.

25 So this paragraph is saying that unless he

1 agrees to joining this project area, then this horizontal
2 well project area would have to compulsory pool him, I
3 think. That's my interpretation of this. So if he
4 does -- if the new project area wants to go the full 160
5 acres, the working interest owners -- the new working
6 interest owners in that project area -- it's a very
7 confusing paragraph.

8 MS. BADA: So the rest are allowable?

9 COMMISSIONER BALCH: If they opted out of
10 the new project area, then the allowables or proration
11 would come into play. It must be confusing, because I
12 think I finally understand it.

13 CHAIRMAN BAILEY: I thought I knew what it
14 said a while ago. What's your interpretation?

15 COMMISSIONER BALCH: I think what it does,
16 with our addition of "new and existing project area" at
17 the end, it allows the existing units and/or project
18 areas to opt out. And then the remedy for impairment of
19 their rights would be in proration or allowables, as we
20 defined elsewhere.

21 However, they do have the option to opt in,
22 but only if both existing and new parties or project
23 areas want to have that relationship. I think without
24 that sort of language -- and maybe it can be clarified a
25 little bit -- we run the risk of intruding on preexisting

1 contracts and agreements.

2 CHAIRMAN BAILEY: So this makes sense to
3 you, and you see it as a necessary paragraph?

4 COMMISSIONER BALCH: Let's see if Cheryl
5 can convince me.

6 MS. BADA: I agree with you. So I think
7 what might help is if you look at the exhibit.

8 COMMISSIONER BALCH: We're looking at OCD
9 Exhibit 10, the Effect of Applying Simultaneous
10 Dedication of the Rules, Basin Fruitland Coal. Here's
11 our existing well in the southeast quarter.

12 COMMISSIONER DAWSON: That doesn't
13 penetrate the southeast quarter.

14 CHAIRMAN BAILEY: Okay. So this has to do
15 with the simultaneous dedication that an existing
16 vertical well would not be impaired, and the maximum
17 length of a horizontal well would have to have
18 simultaneous dedication in order to enter into the
19 existing --

20 COMMISSIONER BALCH: Basically, this
21 operator, owner or unit would not have to join this
22 project area unless they wanted to. And then in that
23 case, both this party -- all interest owners in this
24 party and all interest owners in the project area would
25 have to agree that that is the best solution.

1 I think that that preserves or protects us
2 from inadvertently violating preexisting contracts and
3 agreements.

4 CHAIRMAN BAILEY: Do we add "new and
5 existing"?

6 MS. BADA: I think you would clarify that
7 you don't need both of their agreement.

8 COMMISSIONER BALCH: So "new and
9 existing"?

10 MS. BADA: I think it would clarify it.

11 CHAIRMAN BAILEY: Okay.

12 MS. BADA: I think the intent was by
13 saying, "all," they meant everyone.

14 COMMISSIONER BALCH: And there could be
15 more. There could be several different units or project
16 areas involved, so --

17 COMMISSIONER DAWSON: I think just leave
18 it "new project area," the more I think about it.
19 Because it's kind of like Harvey Yates' argument. They'd
20 have to come to him to get permission.

21 COMMISSIONER BALCH: This doesn't prevent
22 the formation of a new project area at all.

23 COMMISSIONER DAWSON: But you have to have
24 agreement from the existing --

25 COMMISSIONER BALCH: Only if you want to

1 combine the existing unit or project area into the new
2 project area, you need permission from all parties, with
3 the way this is written.

4 MS. BADA: All Commissioner Balch is
5 suggesting is that we clarify that when we're talking
6 about working interest owners. It's the working interest
7 owners out of both of those project areas, the new one
8 and the one that's existing.

9 CHAIRMAN BAILEY: Especially Paragraph 2
10 that says, "Subject to the terms of any applicable joint
11 operating agreement, subsequent wells with a completed
12 interval in a horizontal well's project area may be
13 drilled only with the approval of all working interest
14 owners in the project area or by order of the Division
15 after notice to all working interest owners in the
16 project area and opportunity for hearing."

17 COMMISSIONER BALCH: So if you don't have
18 Paragraph 1, you could impair the rights of the owner to
19 subsequently go after their minerals.

20 CHAIRMAN BAILEY: So we should leave it as
21 written, "in the new project area"?

22 COMMISSIONER BALCH: I still read that as
23 potentially having the new project area able to override
24 the existing unit or old project area, effectively force
25 pooling, compulsory pooling, without the Division's

1 involvement.

2 If all the -- I think the intent is the same,
3 but I think we have to have language in there
4 that --

5 CHAIRMAN BAILEY: That protects --

6 COMMISSIONER BALCH: -- that protects the
7 existing owners. I think that can be accomplished by
8 saying, "all working interest owners in the new and any
9 existing project area(s)." Because Number 2 is really
10 where the new project area would gain that power.

11 CHAIRMAN BAILEY: Okay. It's very
12 confusing.

13 COMMISSIONER BALCH: Can you suggest less
14 confusing terminology?

15 MS. BADA: I would suggest what you've
16 suggested, so --

17 CHAIRMAN BAILEY: To include the language,
18 "new and existing project areas"?

19 MS. BADA: The only other thing you might
20 do is just stop at "working interest owners." But then
21 that begs the question of which ones.

22 COMMISSIONER DAWSON: To me, it's wording
23 that says if they have an existing spacing unit and
24 somebody comes in there and they want to drill through
25 their spacing unit, the person that's drilling through

1 their spacing unit has to have agreement with all the
2 interest owners to do so. And if you put, "existing,"
3 then they have to have an agreement of the person of the
4 spacing unit that they're penetrating.

5 COMMISSIONER BALCH: Which I think is
6 actually the intent. You want to have permission of the
7 existing --

8 COMMISSIONER DAWSON: What if they say, "I
9 don't want you to drill on my unit"?

10 COMMISSIONER BALCH: They already have an
11 existing operating agreement and unit and have the first
12 right.

13 CHAIRMAN BAILEY: Unless they then go to
14 compulsory pooling.

15 MS. BADA: Then there's the question of
16 whether you can compulsory pool and have two wells in the
17 same --

18 COMMISSIONER BALCH: Hopefully, that will
19 be resolved at a Division hearing.

20 CHAIRMAN BAILEY: And Paragraph 2 doesn't
21 even say, "compulsory pooling." It just says, "go to
22 hearing."

23 COMMISSIONER BALCH: Which reserves the
24 right of compulsory pooling for the Division, which is
25 where it belongs.

1 CHAIRMAN BAILEY: Right, or not.

2 COMMISSIONER BALCH: Or not.

3 COMMISSIONER DAWSON: So why don't you
4 just strike 1 and leave 2?

5 MS. BADA: No. Because then you have
6 nothing saying what you do about existing wells.

7 COMMISSIONER DAWSON: If you go down to F,
8 "Compulsory pooling, the provisions," blah, blah, blah,
9 "regarding compulsory pooling and the proposal of
10 additional wells in compulsory pooling units shall apply
11 to horizontal wells and compulsory pooled project areas."

12 CHAIRMAN BAILEY: Unless we strike that
13 altogether.

14 COMMISSIONER BALCH: Which has been
15 suggested by the OCD, but not by Jalapeno. It's really
16 just a statement. I think the removal of that statement
17 does not remove the effect of that statement.

18 CHAIRMAN BAILEY: I would like to see
19 removal of that paragraph on compulsory pooling, which
20 was proposed Section F, to remove compulsory pooling
21 language at this point.

22 COMMISSIONER BALCH: I don't think it's
23 necessary.

24 CHAIRMAN BAILEY: Scott, how do you feel
25 about removing that compulsory pooling paragraph?

1 COMMISSIONER DAWSON: I think we maybe
2 ought to leave it, maybe leave all of C the way it is.
3 That's what I think.

4 CHAIRMAN BAILEY: So you do not want to
5 add "new and existing"?

6 COMMISSIONER DAWSON: No.

7 MS. BADA: As much as I like consensus, if
8 you can't agree, you can the make motions to decide which
9 way to go.

10 CHAIRMAN BAILEY: At this point we can say
11 that the majority of the Commission?

12 COMMISSIONER BALCH: We would have to make
13 a motion. Someone would have to make a motion to adopt
14 paragraph --

15 MS. BADA: To adopt or amend whatever
16 you're proposing.

17 COMMISSIONER BALCH: I would prefer that I
18 have another round at trying to convince Scott that.

19 CHAIRMAN BAILEY: Okay. Shall we come
20 back to it then, after we've had a chance for it to gel
21 around in our head?

22 COMMISSIONER BALCH: I'm okay with that.

23 CHAIRMAN BAILEY: Let's come back to this
24 paragraph.

25 COMMISSIONER DAWSON: That's fine.

1 CHAIRMAN BAILEY: Then we go down to the
2 compulsory pooling paragraph. "The provisions of
3 19.15.13 NMAC regarding compulsory pooling and proposal
4 of additional wells in compulsory pooled units shall
5 apply to horizontal wells and compulsory pooled project
6 areas."

7 That is amending 19.15.13 NMAC -- no,
8 it's not. It's just stating that that provision of Rule
9 13 does apply. I think we should delete that paragraph.

10 COMMISSIONER BALCH: The OCD's findings
11 say, "The proposed Rule 19.15.16.15.F, compulsory
12 pooling, shall be deleted or amended to remove any
13 suggestion that all project areas are subject to
14 compulsory pooling."

15 COMMISSIONER DAWSON: Do you have that in
16 front of you?

17 CHAIRMAN BAILEY: And that was the
18 Division's proposed findings of facts and conclusions of
19 law, page 5 --

20 COMMISSIONER BALCH: Paragraph 27.

21 CHAIRMAN BAILEY: -- should be deleted to
22 remove any suggestion that all project areas are subject
23 to compulsory pooling. I agree with that.

24 COMMISSIONER BALCH: I think removing it
25 doesn't remove the fact that they are subject to
compulsory pooling. It doesn't add anything and may add

1 confusion.

2 MS. BADA: Some may be subject to
3 compulsory pooling, some may not be.

4 COMMISSIONER DAWSON: To me, that sounds
5 like compulsory pooling should apply to horizontal wells.

6 MS. BADA: If all the other requirements
7 of compulsory pooling are met.

8 COMMISSIONER BALCH: If we don't strike
9 it, we somehow add some clarifying language.

10 CHAIRMAN BAILEY: But not all project
11 areas are subject to compulsory pooling. And the way
12 this is written, that applies to all horizontal wells.

13 COMMISSIONER DAWSON: The compulsory
14 pooling rules must not be amended whatsoever.

15 COMMISSIONER BALCH: Does that paragraph
16 bother you?

17 MS. BADA: I think that paragraph is
18 unnecessary.

19 CHAIRMAN BAILEY: Commissioner Dawson, if
20 we keep the last paragraph of this section, which was
21 originally numbered as Section H, "Consolidation of
22 project area," I think that paragraph removes the
23 necessity of having this paragraph on compulsory pooling.

24 COMMISSIONER DAWSON: You think that
25 covers this one?

1 CHAIRMAN BAILEY: I think it covers it
2 very well.

3 COMMISSIONER BALCH: That's much of the
4 language I would have suggested adding. So I guess I'm
5 in agreement, as well, with the fixing of the typo in
6 that Paragraph H.

7 COMMISSIONER DAWSON: I guess you could
8 strike that, yeah.

9 CHAIRMAN BAILEY: So we'll strike
10 originally proposed Paragraph F, "compulsory pooling"; is
11 that correct?

12 COMMISSIONER DAWSON: Yeah, because the
13 heading is "Existing and subsequent wells."

14 CHAIRMAN BAILEY: Which then re-numbers
15 the subsequent paragraph, which was originally G,
16 "Formation of project areas" now becomes E, because we
17 have eliminated two paragraphs up above it.

18 So looking at the newly numbered Paragraph E,
19 "Formation of project areas: (1) Except as provided in
20 paragraphs (2) and (3) of Subsection G," which now
21 becomes E, "of 19.15.16.15 NMAC, a project area may be
22 formed by filing a Form C-102 designating the proposed
23 project area, and simultaneously mailing or delivering a
24 copy thereof to the New Mexico State Land Office if" --
25 there's the typo, "if the proposed project area includes

1 state trust lands. Before designating a nonstandard
2 project area, the operator shall give 20 days' notice by
3 Certified Mail, return receipt requested, to affected
4 persons as defined in Subparagraph (a) of Paragraph (2)
5 of Subsection A of 19.15.4.12 NMAC in all spacing units
6 that, (a) are excluded from the project area, if the
7 project area would be a standard project area, except for
8 the exclusion of one spacing unit; or (b) adjoin the
9 project area in all other cases."

10 Are you good with paragraphs (1) and (2) of
11 newly re-numbered Section E, formation of project areas?

12 COMMISSIONER BALCH: My only note is to
13 repair the typo that you already observed.

14 COMMISSIONER DAWSON: You might want to
15 put, in "New Mexico state land office, put the "state
16 land office" in capital letters.

17 MS. BADA: It won't allow you, when you go
18 file it in the state records and archives.

19 COMMISSIONER BALCH: Why is that?

20 MS. BADA: All names, unless they're a
21 name of an individual, are lower case. It's their
22 drafting standards.

23 COMMISSIONER BALCH: Clear as mud.

24 CHAIRMAN BAILEY: I would suggest that
25 because we are requiring notice, that we actually say

1 what that notice should include and adding a paragraph 3
2 that says, "The notice shall state that affected persons
3 may protest the designation of a nonstandard project area
4 by mailing a protest to the operator within 20 days after
5 receipt of the notice."

6 That gives a time limit for protest. It
7 provides information to affected persons to explain how
8 to go about protesting the designation.

9 COMMISSIONER BALCH: Are you striking the
10 existing (3) and replacing it with what you just
11 described?

12 CHAIRMAN BAILEY: Yes. And adding --
13 striking the first complete sentence, adding what I just
14 read, and then saying, "The Division shall promptly set
15 the matter for hearing. Unless otherwise authorized by
16 the Division, the operator shall not commence drilling in
17 the proposed nonstandard project area until the protest
18 has been determined by Division order."

19 So I'm maintaining the 20-day time limit for
20 protest, but adding language that indicates what that
21 notice to affected persons should say so that they are
22 better made aware of how to protest.

23 COMMISSIONER BALCH: Repeat it.

24 CHAIRMAN BAILEY: "(3), The notice shall
25 state that affected persons may protest the designation

1 of a nonstandard project area by mailing a protest to the
2 operator within 20 days after receipt of the notice. The
3 Division shall promptly set the matter for hearing.
4 Unless otherwise authorized by the Division, the operator
5 shall not commence drilling in the proposed nonstandard
6 project area until the protest has been determined by
7 Division order."

8 COMMISSIONER BALCH: So promptly --

9 CHAIRMAN BAILEY: -- is a very vague term.

10 COMMISSIONER BALCH: If the Division is
11 very busy, promptly could be a long period of time.

12 CHAIRMAN BAILEY: True. Just as we had to
13 delay the docketing of so many cases to be heard
14 yesterday and today because the dockets were already
15 full. And this would take into account that kind of
16 situation where dockets may already be full.

17 COMMISSIONER BALCH: Does "promptly"
18 legally bind in any way to a specific time period?

19 MS. BADA: I guess my question is that
20 the rule doesn't say what happens if they don't.

21 COMMISSIONER BALCH: You can't say,
22 "should promptly."

23 CHAIRMAN BAILEY: "Shall promptly."

24 COMMISSIONER DAWSON: "May."

25 MS. BADA: It one of those things where

1 it's a direction with no penalty.

2 CHAIRMAN BAILEY: So we could just say,
3 "The Division shall set the matter for hearing."

4 MS. BADA: Yes.

5 CHAIRMAN BAILEY: Okay. Cool.

6 COMMISSIONER BALCH: I think we're in
7 agreement with all of Section E, except (4).

8 Scott, that that's your section.

9 COMMISSIONER DAWSON: We're going to (4)?
10 Is that where you are?

11 CHAIRMAN BAILEY: Sure. Four says, "No
12 project area may be designated that lies partly within
13 and partly outside of a state exploratory unit or a
14 federal exploratory unit or participating area if the
15 project area includes state trust lands without the
16 consent of the Commissioner of Public Lands."

17 MS. BADA: I have one question. Do we
18 want to say within 20 days after receipt of the notice or
19 20 days after the mailing of the notice? What if
20 somebody doesn't go pick it up for three months?

21 CHAIRMAN BAILEY: Within 20 days of the
22 mailing of the notice.

23 So Scott, are you okay with paragraph (4)?

24 COMMISSIONER DAWSON: I'm fine with it.

25 CHAIRMAN BAILEY: All right. We can adopt

1 Paragraph (4).

2 That takes us to "Consolidation of project
3 area. If a horizontal well is dedicated to a project
4 area in which there is more than one owner of any
5 interest in the mineral estate, the operator of the
6 horizontal well shall cause the project area to be
7 consolidated by voluntary agreement," and I would like to
8 add, "or if applicable, compulsory pooling before the
9 Division may approve a request for Form C-104 for the
10 horizontal well."

11 COMMISSIONER BALCH: There was language
12 suggested by both the OCD and the Jalapeno findings also
13 on this section.

14 MS. BADA: Do we want the person
15 protesting notifying the operator, or do we want them
16 notifying the Division?

17 CHAIRMAN BAILEY: That was a question.
18 But I don't think the Division needs to be burdened with
19 the additional keeping track of green cards and
20 everything else.

21 MS. BADA: Should we then say -- shouldn't
22 we leave the language that says, "the operator shall
23 promptly notify the Division of the protest, and the
24 Division shall" --

25 CHAIRMAN BAILEY: Oh, yes.

1 COMMISSIONER BALCH: No vagueness about
2 that promptness.

3 MS. BADA: We could give them a time
4 limit, if you want.

5 CHAIRMAN BAILEY: Because it is vague,
6 within what, seven days?

7 MS. BADA: Business days?

8 CHAIRMAN BAILEY: Yes. How does that
9 sound to you?

10 COMMISSIONER DAWSON: That's fine.

11 CHAIRMAN BAILEY: Okay. Now the OCD
12 findings of fact and conclusions of law on page 5, number
13 28 suggest the addition of the language, "if applicable,
14 before "compulsory pooling," and then Statute 70-2-18,
15 which was referenced in Jalapeno's.

16 Commissioner Balch?

17 COMMISSIONER BALCH: That was Section 4
18 that had the Jalapeno modification. It looks like it's
19 an addendum. It appears to be out of place. Page 18 of
20 Jalapeno's findings -- I'm sorry. This is something we
21 already agreed on. I was trying to keep track of
22 Jalapeno's modifications and lost track of the lettering.

23 COMMISSIONER DAWSON: Page 18?

24 COMMISSIONER BALCH: Yes.

25 CHAIRMAN BAILEY: And we agreed not to use

1 their language on Paragraph (4) on page 18 of Jalapeno
2 and Yates' proposed findings of fact and conclusions of
3 law.

4 COMMISSIONER DAWSON: We decided not to do
5 that?

6 CHAIRMAN BAILEY: Yes.

7 COMMISSIONER DAWSON: That 75 percent?

8 CHAIRMAN BAILEY: Yes.

9 COMMISSIONER BALCH: That's the same
10 language they use in another section, as well. I agree
11 that that language does not add to that section.

12 CHAIRMAN BAILEY: So 15.16.15, which used
13 to be H, but now becomes F, do we agree with that
14 language? Or do we want to include the language, "or, if
15 applicable, for compulsory pooling"?

16 COMMISSIONER BALCH: I like the addition
17 of "or, if applicable," for the same reason that we
18 argued that Section F should be struck.

19 CHAIRMAN BAILEY: I agree with you there.

20 Commissioner Dawson, do you agree?

21 COMMISSIONER DAWSON: Yes, that's fine.

22 CHAIRMAN BAILEY: Then we have now adopted
23 that paragraph. We need to go back -- because the rest
24 of the subsequent paragraphs in my copy here are just
25 re-numbering of topics. There doesn't appear to be

1 additional language or deletion of language.

2 So I believe it's time to go back and catch up
3 with things that we skipped before.

4 Commissioner Balch, you wanted to skip
5 19.15.14.8.B?

6 COMMISSIONER BALCH: Yes, until we had
7 clarified the chronology regarding project areas.

8 CHAIRMAN BAILEY: Yes. So how do you feel
9 about that language now?

10 COMMISSIONER BALCH: I believe it is fine.
11 It's OCD Exhibit 3, page 1, if you're looking for that
12 one.

13 COMMISSIONER DAWSON: That's fine.

14 CHAIRMAN BAILEY: So we have adopted
15 Sections A and B as proposed for 19.15.14.8.

16 We then go to the definition for completed
17 interval that we skipped a while ago, which was
18 19.15.16.7.B.

19 Commissioner Balch, you had some questions or
20 you wanted to think about that?

21 COMMISSIONER BALCH: I believe the
22 inclusion of "the unintentional," then the vertical well
23 definition that we left repairs my problem with that
24 section. So I'm okay with it now.

25 CHAIRMAN BAILEY: Commissioner Dawson?

1 COMMISSIONER DAWSON: That's fine.

2 CHAIRMAN BAILEY: With that, we have now
3 adopted 19.15.16.7.B as proposed.

4 Were we in agreement for 19.15.16.7.E, the
5 definition for horizontal well?

6 COMMISSIONER DAWSON: Can we go back up a
7 little bit? Didn't you have something to add underneath
8 the definitions, in addition to the --

9 CHAIRMAN BAILEY: Yes. To put in under
10 the heading definitions, "in addition to the definitions
11 in 19.15.2.7."

12 COMMISSIONER BALCH: That was going to be
13 added as a note.

14 MS. BADA: I think we would probably want
15 to put it right above A. Say, "These definitions apply
16 to this part if there are other additions in 19.15.2.7
17 that also apply."

18 CHAIRMAN BAILEY: Okay. So back to
19 Section E, the definition of horizontal well. Were we in
20 agreement with that?

21 COMMISSIONER DAWSON: Yes.

22 COMMISSIONER BALCH: Yes.

23 CHAIRMAN BAILEY: Okay. On to
24 19.15.16.7.K. We changed that to include the language
25 K(1) to read, "One or more complete, contiguous spacing

1 units that are developed by the horizontal well in one
2 section or in more than one section."

3 Are we in agreement with that addition to the
4 proposed language?

5 COMMISSIONER BALCH: Yes.

6 COMMISSIONER DAWSON: Yes.

7 CHAIRMAN BAILEY: Okay. 19.15.16.7.L, the
8 definition for standard project area. We included the
9 language in Number 4 so that it would read, "consists of
10 a combination of two or more otherwise standard project
11 areas if the resulting area is substantially in the form
12 of a rectangle, provided that a project area of three
13 40-acre spacing units within a single section, and
14 excluding the fourth, would not be a standard project
15 area."

16 And we agreed to adopt that modified Section
17 L; correct?

18 COMMISSIONER BALCH: Yes.

19 COMMISSIONER DAWSON: Yes.

20 CHAIRMAN BAILEY: 19.15.16.14.B(2).

21 Before we leave the definitions, we are not going to
22 delete the definition for vertical well that was
23 proposed. We will leave that definition in; correct?

24 MS. BADA: Do you want to leave it in that
25 if it's not used elsewhere, the term "vertical well" is

1 not used?

2 CHAIRMAN BAILEY: No, I don't think it's
3 necessary. So you will do a search?

4 MS. BADA: Yes.

5 CHAIRMAN BAILEY: Okay. Back to
6 19.15.16.14.

7 MS. BADA: I have one question before we
8 leave definitions. You're okay with deleting H, 7.H?

9 CHAIRMAN BAILEY: Oh, yes. Because we
10 have replaced it, and deleting the old definition of
11 "project area" and replacing it with the language we just
12 discussed.

13 Now to 15.16.14.B. And we agreed with the
14 language in that proposed section?

15 COMMISSIONER DAWSON: Yes.

16 COMMISSIONER BALCH: Yes.

17 CHAIRMAN BAILEY: Okay. B(3) we did
18 change that to read, "Allowables for project areas with
19 multiple proration units. The Division shall assign a
20 project area within a prorated pool an allowable equal to
21 the applicable unit allowance for the pool multiplied by
22 the number of standard spacing units or approved
23 nonstandard spacing units that a horizontal well's or
24 lateral's completed interval develops."

25 COMMISSIONER DAWSON: Yes.

1 COMMISSIONER BALCH: You were going to do
2 a search on "penetrates"?

3 MS. BADA: Right.

4 CHAIRMAN BAILEY: "If a project area
5 includes a spacing unit or smaller project area dedicated
6 to an existing wellbore, unless the operators of all
7 wells in the project area otherwise agree, the project
8 area's allowable shall be computed by deducting the
9 actual production from the existing wellbore or wellbores
10 from the total allowable for the project area, not to
11 exceed existing allowables for the wellbore or
12 wellbores."

13 MS. BADA: We say, "or above," so I'll do
14 it consistently.

15 CHAIRMAN BAILEY: Okay. Are we okay with
16 that section now?

17 COMMISSIONER DAWSON: Wellbore or
18 wellbores?

19 MS. BADA: Yes.

20 COMMISSIONER BALCH: Yes.

21 CHAIRMAN BAILEY: Then we go to
22 19.15.16.15.A. I believe we agreed to maintain -- to
23 adopt the language of that proposed Section A(1) and (2)?

24 COMMISSIONER BALCH: Yes.

25 COMMISSIONER DAWSON: Yes. Except for

1 just correct that lessee, instead of leesees.

2 CHAIRMAN BAILEY: Correct the typo. But
3 to delete proposed Paragraph B concerning well dedication
4 and acreage plat, to re-number "setbacks" to become
5 paragraph B, which may necessitate a change in the
6 citation of the regulations in Paragraph 2.

7 MS. BADA: No, because they're referring
8 to Section 14.

9 CHAIRMAN BAILEY: Okay. Then for
10 re-numbered paragraph C, "Existing and subsequent wells
11 in project areas," Commissioner Dawson, I think this is
12 where we needed to --

13 COMMISSIONER DAWSON: I still don't think
14 we should put "existing" in there. But you guys can
15 override me, if you want, if you guys want "existing."

16 Because I think you're going back to asking
17 approval of somebody that has a vertical well on your
18 project area on maybe a 40-acre proration unit.

19 COMMISSIONER BALCH: I think that's
20 exactly what it's intended to do. Maybe thinking about
21 it vertically, instead of aurally, might help. Because
22 you may have a portion of a preexisting pool that's being
23 produced vertically that's not going to be produced by
24 the new project area, and that owner may want to isolate
25 that production from that new project area.

1 And the way the language is written now, I
2 think it implies that the new project area can force the
3 old unit or project area to join theirs without going
4 through an OCD hearing or process. I think if we do
5 that, we run afoul of the Fifth Amendment, according to
6 Mr. Yates, who's probably more well versed on law than I
7 am.

8 Because you may have existing contracts or
9 agreements that are involved with that preexisting unit
10 or project area that would then be negated by a non-OCD
11 forced pooling. In fact, I'm not even sure if the OCD
12 could go back and force pool it anyway.

13 MS. BADA: I'm not sure if they could,
14 because you already have an existing well. Essentially
15 there's the potential if you force that well in there,
16 they may not -- you're taking something from them.

17 COMMISSIONER DAWSON: Should we put some
18 language in there that they can be compulsory pooled or
19 something or --

20 MS. BADA: I don't think you want to say
21 that.

22 COMMISSIONER BALCH: There's already an
23 implication of that in the compulsory pooling statute;
24 right?

25 MS. BADA: Yes.

1 COMMISSIONER BALCH: Same reason we took
2 out section -- what used to be F. Basically, it's
3 already covered. And if there's something wrong with
4 that statute, that would have to be addressed elsewhere.

5 I think what we're doing with the change of
6 the language is saying if there's already an existing
7 unit, everybody has to agree to basically dissolve that
8 unit and make it part of the new unit or the new project
9 area.

10 MS. BADA: If you have an existing well,
11 then you can't force them in unless they agree.

12 CHAIRMAN BAILEY: I'm in favor of that.
13 So I move that we add the language to read, "Existing
14 wells in spacing units or project areas that are included
15 in a newly-designated project area remain dedicated to
16 their existing spacing units or project areas and are not
17 part of the new project area, unless otherwise agreed to
18 by all working interest owners in the new and existing
19 project areas."

20 COMMISSIONER BALCH: I second that
21 inclusion as worded.

22 CHAIRMAN BAILEY: All those in favor, say
23 aye. All those opposed, say nay.

24 COMMISSIONER DAWSON: Nay.

25 CHAIRMAN BAILEY: So the majority of the

1 Commission adopts newly re-numbered Section C(1) and (2).

2 Then re-numbered Section D, "pool rules," I
3 believe we all agreed to adopt that; is that correct?

4 COMMISSIONER BALCH: Yes.

5 COMMISSIONER DAWSON: Um-hum.

6 CHAIRMAN BAILEY: Then we discussed and
7 agreed to delete the proposed Paragraph F, "compulsory
8 pooling," because it's covered in other another area that
9 we feel better about.

10 So are we agreeing that we are deleting the
11 originally proposed Number F compulsory pooling
12 paragraph?

13 COMMISSIONER BALCH: Yes.

14 COMMISSIONER DAWSON: Yes, because it was
15 addressed under --

16 COMMISSIONER BALCH: Newly labeled F.

17 COMMISSIONER DAWSON: Yeah, okay.

18 CHAIRMAN BAILEY: So Formation of Project
19 Areas is re-numbered as Paragraph E. And Paragraph E(1),
20 the citation may need to be corrected.

21 MS. BADA: Yes.

22 CHAIRMAN BAILEY: And then Paragraph (3)
23 would say, "The notice shall state that affected persons
24 may protest the designation of a nonstandard project area
25 by mailing a protest to the operator within 20 days after

1 receipt of the notice. The Division shall set the matter
2 for hearing. Unless authorized by the Division, the
3 operator shall not commence drilling in the proposed
4 nonstandard project area until the protest has been
5 determined by Division order."

6 And then Section 4, we kept as proposed. So
7 for Section E, "Formation of Project Areas," do we adopt
8 that language as modified?

9 MS. BADA: I have questions on (3). One,
10 do you want it to be 20 days after receipt, and is there
11 going to be some way to confirm that, or do you want it
12 to be 20 days after mailing?

13 CHAIRMAN BAILEY: Twenty days after
14 mailing.

15 MS. BADA: And you also want to keep that
16 the operator shall notify the Division if they receive a
17 protest?

18 COMMISSIONER BALCH: In a case like that,
19 is it typical for people to use Certified Mail?

20 MS. BADA: It is, but some people refuse
21 it.

22 COMMISSIONER BALCH: So you can't really
23 stipulate that.

24 MS. BADA: But you can say it has to be
25 certified, but you need to give them an out if somebody

1 won't sign for it.

2 CHAIRMAN BAILEY: Then paragraph
3 re-numbered to F, "Consolidation of Project Area," we
4 agreed to insert the language, "or, if applicable,"
5 before "for compulsory pooling before the Division"; is
6 that correct?

7 COMMISSIONER DAWSON: Yes.

8 COMMISSIONER BALCH: Yes.

9 CHAIRMAN BAILEY: And then that
10 necessitates re-numbering of the following sections of
11 the rule. And I believe that completes our deliberations
12 for amendment of regulations proposed in Case 14744.

13 Is there other business before the Commission?

14 Yes? I see someone in the audience. Please
15 identify yourself.

16 MR. FORT: Patrick Fort, and I represent
17 Jalapeno Corporation. The only thing that I'm not too --
18 in terms of your deliberations, you did not cover page 18
19 of our findings of fact. We had another proposal that we
20 submitted.

21 COMMISSIONER DAWSON: We did cover that.

22 MR. FORT: You did?

23 COMMISSIONER BALCH: Yes, we did.

24 MS. BADA: I think he may be referring to
25 page 19.

1 CHAIRMAN BAILEY: In response to your
2 statement --

3 COMMISSIONER BALCH: The inclusion of
4 Section I.

5 CHAIRMAN BAILEY: Right. I believe that
6 this case does not address compulsory pooling, and that
7 this language proposed in Jalapeno's proposed findings of
8 fact and conclusions of law on page 19 is not properly
9 addressed in this hearing.

10 COMMISSIONER BALCH: I would agree that
11 compulsory pooling and risk charges probably ought to be
12 looked at. But this is not the venue, and evidence was
13 not specifically asked for or received in regard to that.

14 CHAIRMAN BAILEY: If and when -- or when
15 we review the compulsory pooling regulations, we can take
16 that into account at that time.

17 Is that your agreement, too?

18 COMMISSIONER DAWSON: Yes.

19 CHAIRMAN BAILEY: Then that does conclude
20 our deliberations. Is there any other business before
21 the Commission? Then do I hear a motion to adjourn?

22 COMMISSIONER BALCH: Do we need to allow
23 public comment?

24 MS. BADA: No.

25 CHAIRMAN BAILEY: Do I hear a motion to

1 adjourn the hearing?

2 COMMISSIONER DAWSON: I will motion to
3 adjourn.

4 COMMISSIONER BALCH: I'll second.

5 CHAIRMAN BAILEY: All those in favor, say
6 aye.

7 Thank you very much.

8 (The hearing was adjourned at 4:35 p.m.)

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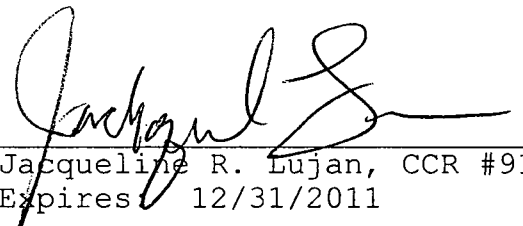
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on December 9, 2011, proceedings in
the above captioned case were taken before me and that I
did report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

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

WITNESS MY HAND this 26th day of December,
2011.


Jacqueline R. Lujan, CCR #91
Expires 12/31/2011