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

ORIGINAL

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

CASE NO. 14784 AND 14785

VOLUME 12

September 24, 2012
9:00 a.m.
Wendell Chino Building
1220 South St. Francis Drive
Porter Hall, Room 102
Santa Fe, New Mexico

2012 OCT 11 P 3:31
RECEIVED OGD

- THE COMMISSION:
- JAMI BAILEY, Chairperson
- GREG BLOOM, Commissioner
- DR. ROBERT BALCH, Commissioner
- MARK SMITH, Esq.
- FLORENE DAVIDSON, COMMISSION CLERK

REPORTED BY: Jan Gibson, CCR, RPR, CRR

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1 (Note: In session at 9:00.)

2 CHAIRWOMAN BAILEY: Good morning. It's
3 9:05 on Monday, September 24th in Porter Hall in
4 Santa Fe, New Mexico. This is a meeting of the Oil
5 Conservation Commission that has come together for
6 the purpose of deliberating Consolidated Cases 14784
7 and 14785, which are the applications of New Mexico
8 Oil and Gas Association and the Independent
9 Petroleum Association of New Mexico for amendment of
10 certain provisions of Title 19 Chapter 15 of the New
11 Mexico Administrative Code Concerning Pits,
12 Closed-loop Systems, Below-grade Tanks, Sumps and
13 Other Alternative Methods Related to the Foregoing,
14 and Amending Other Rules to Conform with Changes
15 State-wide.

16 I am Jami Bailey, Director of the Oil
17 Conservation Division; Greg Bloom is here, who is
18 the designee of the Commissioner of Public Lands;
19 and Dr. Balch, who the designee of the Energy,
20 Minerals and Natural Resources Department. All
21 three commissioners are here. We do have a quorum
22 of the Commission.

23 We are trying something different if it
24 works for the commissioners. It may or may not be
25 helpful. We have taken the amended submittal of New

1 Mexico Oil and Gas Association -- hereafter I will
2 call them NMOGA -- their amended red-line
3 application, consolidated it with the IPANM
4 suggested changes, proposed changes, and it is now
5 up on the screen so we can look at what we are
6 discussing and make our changes or not, but to
7 record our decisions there so we can all be aware of
8 what we have done.

9 In accordance with Rule 19.15.3.12E1, the
10 Commission will make a decision in open session on
11 the proposed rule changes based on the motion that
12 includes reasons for the decision. So at the end of
13 every section we need to vote on the motion for
14 whatever we have decided and reasons for that
15 decision.

16 Upon the Commission's issuance of the
17 order in these cases, the commission clerk shall
18 post the order on the Division's website and mail or
19 E-mail a copy of the order to each person who
20 presented non-technical testimony at the hearing or
21 who filed a prehearing statement or the person's
22 attorney.

23 Before we get started, our commission
24 attorney may have a few words of guidance for us
25 today.

1 MR. SMITH: Just a couple. This is --
2 first of all, let me say this to everyone in the
3 room. This is deliberation. It is public, but that
4 does not mean the public has the opportunity to
5 comment. Regardless of how badly you want to say
6 something, don't. If you don't think that you can
7 avoid it, go outside and say it. But you may not
8 interrupt the deliberations of the Commission.

9 This is a rule-making, not an
10 adjudication. You all are not only able but I think
11 probably encouraged to take into account your own
12 expertise in judging these matters. That's one of
13 the reasons that you are on the Commission. You
14 have a rule that has been in place now for a while.
15 You have proposed amendments. You have heard
16 evidence on the amendments and you want to look for
17 substantial evidence to back up whatever decision
18 you make. Substantial evidence, as I appreciate it,
19 is evidence that would lead a reasonable mind to the
20 conclusion to which you have come, taking into
21 account all of the evidence that's been put before
22 you.

23 You can have substantial evidence on both
24 sides. You can have substantial evidence for A and
25 substantial evidence for not A at the same time.

1 Okay? That's all I have to say unless you have
2 questions.

3 CHAIRWOMAN BAILEY: Do you have any
4 questions?

5 COMMISSIONER BLOOM: I do not.

6 CHAIRWOMAN BAILEY: Commissioner Balch, do
7 you have questions?

8 COMMISSIONER BALCH: Not at this time.

9 CHAIRWOMAN BAILEY: Okay. The screen will
10 hold the consolidated applications. If this does
11 not seem to be helpful or if it seems to be a
12 problem, we are not bound to use it. It was just an
13 idea that could help us in our deliberations.

14 COMMISSIONER BLOOM: I think it will be
15 nice. We will be able to literally be on the same
16 page.

17 COMMISSIONER BALCH: I think it's a great
18 idea to track anything that we change.

19 CHAIRWOMAN BAILEY: I do, too. Okay.
20 Then why don't we get to it. Let's be sure to speak
21 up for the court reporter so she can hear what we
22 are talking about. If we go section by section,
23 then we can take care of this in a reasonably
24 concise way. However, I do expect that there will
25 be some back and forth, because what we decide at

1 one point may not hold true for what's later on in
2 the rule.

3 COMMISSIONER BALCH: I think I may have
4 one question rather than diving straight into the
5 rule. And that is the proposed findings. There are
6 some findings that say we are unable to do this and
7 other findings that say we are not -- I guess I
8 would like clarification.

9 MR. SMITH: I was messing with my
10 computer. I'm sorry.

11 COMMISSIONER BALCH: If we have opposing
12 findings, if somebody says the hearing is not
13 appropriate to move forward, if that's appropriate.

14 MR. SMITH: I think you can move forward.
15 I read them.

16 COMMISSIONER BALCH: So we are fine
17 until --

18 MR. SMITH: This is not a trial, not res
19 judicata.

20 COMMISSIONER BALCH: That's all I need.
21 Thank you.

22 CHAIRWOMAN BAILEY: There may be
23 misrepresentations in several of the submittals.

24 COMMISSIONER BALCH: I understand that. I
25 just wanted to make sure that was brought up.

1 MR. SMITH: That's right. No, you can
2 move forward. What you have a lot here is argument.
3 As I was reading through, what I saw in one is that
4 OCD had supported someone's position in particular.
5 I think it was one of the industry submissions. I
6 didn't recall that anyway. My recollection was OCD
7 was neutral throughout this. So you're going to see
8 a lot of argument in there. If you are persuaded by
9 some of the argument, that's fine. But much of it
10 is argument. Closing arguments are closing
11 arguments. You have to take into account what you
12 know and the evidence that was placed before you.
13 Lawyer argument is not fact unless it's, of course,
14 from me.

15 CHAIRWOMAN BAILEY: The first proposed
16 change is in 19.15.17.5, the effective date. And
17 the industry proposal is to change the old date of
18 the current rule to 30 days after publication of the
19 final rule in the New Mexico Registry. Do you have
20 any opinions on that proposal for the effective
21 date?

22 COMMISSIONER BLOOM: I think that would be
23 fine. Seems like it's in line with the effective
24 dates of other new rules to stand as-is.

25 COMMISSIONER BALCH: And there's the

1 language in there that if we need a later date than
2 that we can come to that in this rule-making, so I
3 think it's flexible enough.

4 CHAIRWOMAN BAILEY: So I move that we
5 accept these proposed changes in 19.15.17.5. All in
6 favor?

7 COMMISSIONER BLOOM: Aye.

8 COMMISSIONER BALCH: Aye.

9 CHAIRWOMAN BAILEY: All opposed? No one.
10 The next section where there are proposed changes
11 are in 19.15.17.7, Definitions. We have quite a few
12 definitions to discuss. The first one is Portion B
13 for below-grade tank. The proposal is "means a
14 vessel with greater than a 500-gallon capacity,
15 excluding sumps and pressurized pipeline drip traps
16 installed within an excavation or buried below the
17 surrounding ground surface's elevation. Below-grade
18 tank does not include an above-ground storage tank
19 that is located above or at the surrounding ground
20 surface's elevation and is surrounded by berms." Do
21 either of you have an opinion on that definition?

22 COMMISSIONER BLOOM: Madam Chair, just a
23 question. What was the capacity again that you
24 read?

25 CHAIRWOMAN BAILEY: The submittal was 500

1 gallons. The testimony said five barrels.

2 COMMISSIONER BLOOM: Yes. I would be
3 comfortable with five barrels there based on the
4 testimony we heard.

5 COMMISSIONER BALCH: And I remember from
6 discussing this in hearing in direct, that my main
7 concerns were that the rule should address function
8 rather than form, at least to some degree. My notes
9 say the tank is for storage, the sump is for fluids
10 that are in transit. You are not going to leave it
11 there for any substantial period of time. It should
12 be a relatively small volume.

13 CHAIRWOMAN BAILEY: So would you like to
14 include language to that effect or are you relying
15 on the later discussion concerning below-grade tanks
16 where it talks about de minimis volumes in the tank?

17 COMMISSIONER BALCH: Where is that
18 definition?

19 CHAIRWOMAN BAILEY: The de minimis?

20 COMMISSIONER BALCH: Was that modified in
21 17.17 where they are talking about sumps?

22 CHAIRWOMAN BAILEY: Section 11. Sump as
23 opposed to below-grade tank. A sump has the de
24 minimis transit but a below-grade tank is a holding
25 tank.

1 COMMISSIONER BALCH: As long as it's clear
2 somewhere else in the rule then I have no problem
3 with the modification to the five barrels.

4 CHAIRWOMAN BAILEY: The OCD suggests that
5 the language says "Below-grade tank means a vessel
6 excluding sumps and pressurized pipeline drip traps
7 where a portion of the tank's sidewall is below the
8 surrounding ground surface elevation. Below-grade
9 tank does not include an above-ground storage tank
10 that is located above or at the surrounding ground
11 surface's elevation and is surrounded by berms."

12 I would like to use the OCD language but
13 insert the five barrel definition, if that's -- if
14 you both would like to have the five barrel
15 description.

16 COMMISSIONER BLOOM: Yeah, I would be in
17 agreement with that. I believe that coincides
18 almost precisely with what NMOGA had except they
19 substituted five barrels. I think that would be
20 fine.

21 COMMISSIONER BALCH: Which exhibit is
22 that?

23 CHAIRWOMAN BAILEY: OCD Exhibit 2, Page 1.
24 So you would like to have "means a vessel with
25 greater than a five barrel"?

1 COMMISSIONER BLOOM: Five barrel, correct.

2 CHAIRWOMAN BAILEY: Commissioner Balch, is
3 that what you would like to have? To change the 500
4 gallon to five barrel?

5 COMMISSIONER BALCH: That would be fine.

6 CHAIRWOMAN BAILEY: And then accept the
7 rest of the language that OCD suggested where it
8 would say, "Below-grade tank means a vessel with
9 greater than a five barrel capacity excluding sumps
10 and pressurized pipeline drip traps," is that
11 correct? Okay.

12 COMMISSIONER BALCH: Do we need to wait
13 for this to be on the screen?

14 CHAIRWOMAN BAILEY: No, I think they will
15 catch up with us as soon as they can. The next
16 change of definitions is in the definition for
17 closed-loop system where the language "without using
18 below-grade tanks or pits" would be deleted. Do
19 either of you have --

20 COMMISSIONER BALCH: I think that depends.
21 Without using below-grade tanks or pits is SO if you
22 have a site on a slope you can still use a
23 closed-loop system, whereas possibly the existing
24 language could disallow that.

25 CHAIRWOMAN BAILEY: I agree with that. I

1 think that it limits the variety of ways the
2 closed-loop system can be used. Do we all agree to
3 delete the language as suggested?

4 COMMISSIONER BALCH: I find that
5 acceptable, yes.

6 COMMISSIONER BLOOM: I do as well.

7 CHAIRWOMAN BAILEY: Okay. Confined
8 groundwater is the next proposed language change.

9 MR. SMITH: I'm sorry, can you go back and
10 let Theresa know what you did on that, the new C?

11 CHAIRWOMAN BAILEY: C does delete the last
12 phrase of that definition. Yes. The next question
13 is do we want to have the definition of confined
14 groundwater as part of the rule? The charge to the
15 Oil Conservation Division is to protect waters
16 designated by the State Engineer. It does not make
17 a distinction between confined or unconfined.

18 COMMISSIONER BALCH: I think there's some
19 challenge to try to determine whether water is
20 confined or not.

21 CHAIRWOMAN BAILEY: Yes, there is.

22 COMMISSIONER BALCH: You would know it
23 would be -- by this definition you would know it
24 would be confined only if the water came to the
25 surface in an Artesian way. But if the head was

1 such that it rose up ten feet from the aquifer or
2 within two feet of the surface, you may not know
3 that necessarily. That condition could change,
4 depending upon other factors, seasonal changes to
5 water flux from rivers. All kinds of things could
6 affect whether the water is confined, so it may not
7 be confined in August but it could be in February.
8 So I think it may be a complicating factor to have a
9 separate definition, especially if the State
10 Engineer's Office does not have multiple definitions
11 of groundwater.

12 CHAIRWOMAN BAILEY: They may, but the
13 charge to the OCD is to protect water designated by
14 the State Engineer. It does not make a distinction
15 between confined and unconfined.

16 COMMISSIONER BLOOM: I would coincide with
17 Commissioner Balch. There is, as Dr. Neeper pointed
18 out, an unsupportable distinction or difficulty in
19 determining if groundwater is confined or
20 unconfined, so I would not include this new
21 definition in the final rule.

22 COMMISSIONER BALCH: As a counterpoint to
23 that, why would we need a definition of confined
24 groundwater?

25 CHAIRWOMAN BAILEY: There are references

1 later in the proposal to distinguish between
2 confined and unconfined as far as some of the
3 proposals are concerned.

4 COMMISSIONER BALCH: I think the concept
5 is if you have confined groundwater, which I take to
6 mean you have something isolated and under pressure,
7 is you have little chance of contaminants spreading
8 from that aquifer. But I think the fact or the
9 difficulty in discerning whether the water is
10 actually confined is what makes me uncomfortable
11 about having the definition in the rule.

12 CHAIRWOMAN BAILEY: All three of us reject
13 the insertion of this definition of confined water;
14 is that correct?

15 COMMISSIONER BLOOM: That's correct.

16 COMMISSIONER BALCH: Yes.

17 CHAIRWOMAN BAILEY: Okay. The next
18 definition is "Continuously flowing watercourse
19 means a river, stream or creek that is named or
20 delineated by a solid blue line on a USGA quadrangle
21 map having a scale factor of one to 24,000 and that
22 typically has water flowing during the majority of
23 the days of the year. This does not include
24 ephemeral washes, arroyos and similar depressions
25 that do not have flowing water during the majority

1 of days during the year."

2 Do either of you have an opinion on
3 insertion of that definition?

4 COMMISSIONER BLOOM: I find that
5 acceptable. It looks like there's agreement between
6 OCD's definition and NMOGA's proposed definition.

7 CHAIRWOMAN BAILEY: I believe so.

8 COMMISSIONER BLOOM: I find that
9 acceptable.

10 COMMISSIONER BALCH: I think in practice
11 that's something that could be enforced.

12 CHAIRWOMAN BAILEY: I agree with both of
13 you.

14 COMMISSIONER BALCH: It's common mapping
15 terms. You know the exact scale and the definition.

16 CHAIRWOMAN BAILEY: So we will accept this
17 proposed definition and include the definition for
18 continuously flowing watercourse.

19 COMMISSIONER BLOOM: Yes.

20 MR. SMITH: Could I just raise an issue
21 here?

22 CHAIRWOMAN BAILEY: Yes.

23 MR. SMITH: I think you want to make sure
24 that you have the definition from the legal
25 perspective that's manageable. You might want to

1 discuss how the determination of flow majority days
2 of the year is going to be determined.

3 COMMISSIONER BLOOM: Half a year plus one?

4 COMMISSIONER BALCH: Surface water in New
5 Mexico is a real interesting thing because, you
6 know, I don't think you are going to find something
7 that's half plus one that's ephemeral. Generally
8 it's usually flowing or generally not usually
9 flowing. How that enters into the definition I'm
10 not completely clear.

11 COMMISSIONER BLOOM: Let me -- so this
12 becomes important in the definition of a
13 continuously flowing watercourse when we start
14 looking at setbacks, so I think we could add
15 something in there where you could have the same
16 sort of setback for an arroyo that we do for the
17 continuously flowing watercourse or something along
18 those lines. The fact that the arroyo can contain
19 water would be respected.

20 COMMISSIONER BALCH: The arroyo can
21 contain water but it would only contain it during
22 the rain event at that location or above. But by
23 that definition, if you were to look at San Antonio,
24 New Mexico and look at the Rio Grande it would be an
25 ephemeral stream many parts of the year when it's

1 not flowing at the surface. However, that would be
2 a solid blue line on the USGS map and that example
3 would not fall into the bin. So I think perhaps the
4 question is whether the solid blue line covers all
5 the cases of surface water flow that we want it to.

6 The other example I would point out is the
7 Rio Salado, which is at about Mile Marker 165. I
8 think that river is a dashed line where it crosses
9 the freeway and you are lucky to see water in there
10 five times a year.

11 MR. SMITH: You guys know this stuff. I
12 don't. I'm only worried about your language and the
13 law. But the way this is drafted, it's a solid blue
14 line on the USGS map and having a scale factor and
15 that typically has water flowing during the majority
16 of days during the year. It's a conjunction. So
17 the fact that it's a blue line isn't going to get
18 you anywhere. It has to have both of the conditions
19 fulfilled, according to your language.

20 CHAIRWOMAN BAILEY: But if we change and
21 and use "or" it would be both what's mapped and --

22 MR. SMITH: Then it would be either. The
23 question is whether that suits you.

24 COMMISSIONER BLOOM: Let me -- I don't
25 know if this is helpful or not, but wasn't NMOGA's

1 original intent here to have something which better
2 delineated watercourse because they felt that a
3 playa or just a public water after rain was
4 sometimes being seen by inspectors as being a body
5 of water? Wasn't that the issue?

6 CHAIRWOMAN BAILEY: Yes, I believe it was.

7 COMMISSIONER BALCH: Really it would
8 depend on -- basically you want to come up with
9 something in the rule, I think, where if the
10 inspector went out, there wouldn't be an ambiguity
11 whether it was a regular watercourse or something
12 ephemeral. The map designation, if you were to
13 scratch everything after the one to 24,000, that
14 would be very simple to enforce.

15 CHAIRWOMAN BAILEY: Yes, it would be,
16 relying simply on those maps.

17 COMMISSIONER BALCH: The problem is the
18 maps or USGS quadrangles are updated every 20 to 30
19 years and things can change in that amount of time,
20 so you do want to leave some flexibility,
21 particularly if someone were to build an irrigation
22 ditch. If it didn't show up on the map for 15 years
23 or so, that would be a continuously flowing
24 watercourse. It would eventually --

25 COMMISSIONER BLOOM: It would appear on

1 the USGS.

2 COMMISSIONER BALCH: It would eventually,
3 but it might take some time to do so. So you want
4 something to cover the changes in water flow that
5 could make something that was regular ephemeral or
6 something that was not there at all or ephemeral
7 into a regular flow.

8 CHAIRWOMAN BAILEY: An irrigation ditch
9 wouldn't qualify by the very first words of the
10 definition because it means a river, stream or
11 creek.

12 COMMISSIONER BALCH: To me the simplest
13 definition, the thing most enforceable, is to really
14 strike everything after the one in 24,000, and if we
15 think that leaves too much leeway we may have to add
16 other language somewhere else or come up with other
17 language that better describes the intent.

18 MR. SMITH: You could make this
19 disjunctive, use the word "or," but it doesn't make
20 it less vague with respect to determining the
21 majority of the days, but if you use the "or" it
22 would give you more flexibility in your rule so it
23 could be "river, stream or creek" that USGS..."or a
24 river, stream or creek that typically has water
25 flowing through it." At least then you have SOME

1 flexibility to make the determination.

2 CHAIRWOMAN BAILEY: And gives an unbiased
3 reference out in the field if it's struck completely
4 for the period after one to 24,000 so that there are
5 no questionable calls for enforcement.

6 MR. SMITH: That's right.

7 COMMISSIONER BALCH: You are saying after
8 the one to 24,000 "or has water continually flowing
9 through it"?

10 MR. SMITH: No. Typically -- you could
11 keep the majority of days. The only reason I bring
12 it up is if you put a period after the one in
13 24,000, that's it. There will be no flexibility in
14 making the determination. The issue is do you want
15 flexibility in making that determination?

16 COMMISSIONER BALCH: It seems to me that
17 the intent of the proposed changes is to remove
18 ambiguity and make things more easily enforced, so
19 in my mind that has to be a consideration. If you
20 leave too many things in there ambiguous, then you
21 could have something that would have varying
22 judgment of whoever goes out there. If you happen
23 to go out on one of the non-majority days and
24 there's flow, the next week you might go out and
25 have exactly the opposite case.

1 CHAIRWOMAN BAILEY: That's right.

2 MR. SMITH: That's a judgment call. You
3 are above my pay grade now.

4 COMMISSIONER BLOOM: Just to summarize, I
5 think we are looking at three different things. One
6 is continuously flowing watercourse. Later it comes
7 up when we are looking at setbacks. We are talking
8 about using the definition to help protect water.
9 We are going to make the change to keep companies
10 from being dinged inappropriately. We also want to
11 use it for enforcement, and then the irrigation or
12 canal was interesting because we have some unlined
13 canals that do have contact with groundwater and
14 that can be recharging in different areas. And a
15 lot of irrigated canals don't have water in them
16 more than half a year.

17 COMMISSIONER BALCH: Sure. They have them
18 irrigation season.

19 COMMISSIONER BLOOM: Exactly.

20 COMMISSIONER BALCH: So I guess the
21 question would be if you were to propose a pit
22 within X distance of perhaps an irrigation canal
23 that Commissioner Bloom mentioned, do you want to
24 write a rule where that's okay in December and not
25 okay in July? Or would you like it to be always not

1 be okay or always be okay?

2 CHAIRWOMAN BAILEY: And that has to be a
3 judgment call.

4 COMMISSIONER BALCH: I think the intent is
5 if there's going to be continuously flowing water at
6 some point in time as a regular watercourse, then
7 you want to protect it. Since you are separating
8 out the arroyos and things like that, you can't
9 predict when those are going to have water, but to
10 me, that irrigation ditch is going to be a regular
11 watercourse, and I do believe a one in 24,000
12 quadrangle will show us the blue line even if they
13 don't have water in them for one month out of the
14 year.

15 So that particular case would be predicted
16 by the one in 24,000 map definition, the blue line.
17 But you want to build in enough flexibility so that
18 if someone builds a new ditch that it would be
19 protected as well. I guess that's the point.

20 MR. SMITH: Remember that you are not
21 stuck with the language being proposed here. You
22 can make whatever adjustments here that you want,
23 including saying "This definition includes
24 irrigation ditches but does not include," and then
25 go on if you have things that you are particularly

1 concerned about.

2 COMMISSIONER BALCH: I don't want to make
3 things overly complicated. I wanted to bring up
4 those issues.

5 CHAIRWOMAN BAILEY: They are important
6 issues.

7 COMMISSIONER BLOOM: They are important.

8 CHAIRWOMAN BAILEY: We need to look at
9 them.

10 COMMISSIONER BLOOM: Yeah.

11 CHAIRWOMAN BAILEY: So what is your
12 proposed language?

13 COMMISSIONER BLOOM: As it stands now, I
14 would be concerned that an irrigation canal would
15 not be considered a continuously flowing watercourse
16 and be protected as such, because a continuously
17 flowing watercourse is only a river, stream or creek
18 that is named, delineated, and not an irrigation
19 ditch or an acequia. So perhaps we add that in
20 there and we could change the "and" to an "or."
21 Maybe that gets us where we need to go.

22 COMMISSIONER BALCH: You are proposing
23 "means a river, stream, creek or irrigation"?

24 COMMISSIONER BLOOM: Channel, canal.

25 COMMISSIONER BALCH: And put in the "or."

1 COMMISSIONER BLOOM: Separate the one in
2 24,000 "or that typically has water flowing during
3 the majority of days of the year."

4 MR. SMITH: I'm sorry, that's not going to
5 get you where you want to go. Unless you might have
6 an irrigation ditch that is a solid blue line on the
7 USGS you're not going to be able to add irrigation
8 ditch at the lead-in. You will have to add it after
9 the "or" if that's what you want to protect.

10 COMMISSIONER BLOOM: So it could be --

11 COMMISSIONER BALCH: You would have to
12 have a period after one to 24,000.

13 MR. SMITH: No. If you put an "or" there
14 it would be a long sentence but it would be
15 grammatically all right.

16 COMMISSIONER BLOOM: It would be "Having a
17 scale factor of one to 24,000 or that typically has
18 water flowing during the majority of the days of the
19 year or is an irrigation channel."

20 COMMISSIONER BALCH: At the risk of
21 complicating things further you could say, "Or
22 typically has water flowing through it for some
23 substantial period of the year." I guess the
24 majority of the days is a little too confined
25 because the irrigation ditch is not going to have

1 water flowing the majority of the days of the year.

2 CHAIRWOMAN BAILEY: Until October 1st?

3 COMMISSIONER BALCH: That's the irrigation
4 season, but just because that's the season doesn't
5 mean there's water always going to be in the ditch.
6 Sometimes in Socorro it comes in in June or July and
7 if you have a drought like we are having now, it may
8 end early. So it may only have water in it for one
9 or two days in the year when it's most crucial for
10 water.

11 MR. SMITH: You can change it to
12 substantial if you want. But if you want to protect
13 irrigation ditches, put irrigation ditches in there
14 is my advice.

15 CHAIRWOMAN BAILEY: So it can read "on a
16 USGS quadrangle map having a scale factor of one to
17 24,000, an irrigation channel, or." What do you
18 think about that?

19 COMMISSIONER BALCH: So replace the "and"
20 with "or an irrigation channel or"?

21 CHAIRWOMAN BAILEY: Put a comma after
22 24,000, an irrigation channel, comma, or.

23 MR. SMITH: Then you are putting
24 irrigation channel in there, which is not a river,
25 stream or creek, so after your irrigation channel

1 or, you are going to have to repeat something that
2 has water flowing during the majority of days,
3 modifies. Do you know what I'm saying?

4 CHAIRWOMAN BAILEY: Or a watercourse that
5 typically has water flowing.

6 MR. SMITH: I think that gets you where
7 you want to go. Do you want to keep majority or do
8 you want to go back to substantial?

9 CHAIRWOMAN BAILEY: I like majority. What
10 do you feel?

11 COMMISSIONER BLOOM: The majority gives us
12 at least an understanding that it would be half the
13 year plus one, and substantial could be a little bit
14 more ambiguous.

15 COMMISSIONER BALCH: As long as we
16 specifically point out irrigation channels, which I
17 think are probably the most likely gray area that
18 will be left out.

19 CHAIRWOMAN BAILEY: So Theresa, could you
20 insert "having a scale factor of one to 24,000 or an
21 irrigation channel." Make a comma after the 24,000.
22 Delete "and" and put "or."

23 COMMISSIONER BALCH: And a comma?

24 CHAIRWOMAN BAILEY: True. A watercourse
25 that typically has water flowing. Does that work

1 for you?

2 COMMISSIONER BLOOM: I think that would
3 work for me, yes.

4 COMMISSIONER BALCH: I'm comfortable with
5 that definition.

6 CHAIRWOMAN BAILEY: Then we can go on to
7 the next definition. Let's go to emergency pit.
8 The OCD made a suggestion that emergency pit means a
9 pit that is constructed in an emergency to contain a
10 spill in the event of a release. Because a
11 precautionary pit is not an emergency.

12 COMMISSIONER BLOOM: How would we change
13 that?

14 CHAIRWOMAN BAILEY: It would read,
15 "Emergency pit means a pit constructed in an
16 emergency to contain a spill in the event of a
17 release." If it's not changed, that precautionary
18 pit that's constructed would not have to have the
19 clearances, the site locations.

20 COMMISSIONER BALCH: Would it be more
21 clear to say, "An emergency pit means a temporary
22 pit that is constructed in an emergency as a
23 precautionary manner"?

24 CHAIRWOMAN BAILEY: Then we run into the
25 problem with the use of the word "temporary pit"

1 because that's a drilling or workover pit.

2 COMMISSIONER BLOOM: Madam Chair, I
3 remember we discussed this during the hearing and
4 this definition as you proposed would be sufficient.

5 CHAIRWOMAN BAILEY: Commissioner Balch,
6 are you thinking?

7 COMMISSIONER BALCH: I don't know about
8 the lawyer words but I'm wondering if you want to
9 say "during an emergency instead" of "in an
10 emergency."

11 CHAIRWOMAN BAILEY: I think that's an
12 acceptable change. "Emergency pit means a pit that
13 is constructed during an emergency to contain a
14 spill in the event."

15 COMMISSIONER BLOOM: Do we need
16 "precautionary matter" in there still?

17 CHAIRWOMAN BAILEY: No, because that
18 removes it from the realm of the emergency.

19 COMMISSIONER BLOOM: Take that out, right?

20 CHAIRWOMAN BAILEY: Yes, delete it.

21 COMMISSIONER BALCH: This is an attempt to
22 deal with a bad situation. You don't want it to be
23 permanent in any way.

24 CHAIRWOMAN BAILEY: Do we all agree on
25 removing the words "as a precautionary matter" and

1 instead using the words "during an emergency"?

2 COMMISSIONER BALCH: Yes.

3 COMMISSIONER BLOOM: I agree with that,
4 yes.

5 CHAIRWOMAN BAILEY: Okay. The next
6 definition to go to is floodplain. It means U.S.
7 Army Corps of Engineers or FEMA documented 100-year
8 floodplain. Is there any discussion on that?

9 COMMISSIONER BLOOM: Madam Chair, I think
10 this was being inserted because it makes it easy to
11 enforce what a floodplain is. To our friends in
12 industry, I would comment that FEMA has begun
13 remapping floodplains in New Mexico, and oftentimes
14 there's been unbelievable disagreement at the county
15 level doing it county by county, and areas are
16 getting cast in the floodplains that folks imagine
17 is up for serious debate. And I would just caution
18 everyone to keep an eye on this process and make
19 sure you check in with your flood map managers
20 because sometimes things can appear in a floodplain
21 and we can get sheet flows and things like that and
22 it can be very disruptive if you have a lot of
23 floodplain added.

24 COMMISSIONER BALCH: I'm glad to hear you
25 say they are reworking on it on a county-by-county

1 basis. But right now in New Mexico, if you go to
2 FEMA floodplains, most of the state is broadly
3 categorized county by county as the whole county is
4 X risk. So if you want to find more detailed
5 information, it's certainly out there. But
6 enforceable, ultimately the U.S. Army Corps of
7 Engineers or FEMA are the nationally accepted
8 authority.

9 COMMISSIONER BLOOM: That's correct.

10 CHAIRWOMAN BAILEY: So shall we accept
11 this definition?

12 COMMISSIONER BALCH: I don't see any other
13 way to define a floodplain.

14 COMMISSIONER BLOOM: I agree. No other
15 way to do it neatly.

16 COMMISSIONER BALCH: Let me correct that.
17 There's another way to define a floodplain but it
18 requires two years of a master's student's life.
19 Because I had a student do a floodplain analysis for
20 the Pecos River. It took her two years.

21 CHAIRWOMAN BAILEY: I don't think our
22 inspectors have that option, so we will accept this
23 proposed definition and go on to the definition for
24 groundwater. I would like to point out that this
25 definition is not what's recognized by the Water

1 Quality Control Commission in their regulations
2 20.6.2.7. That's the Water Quality Control
3 Commission definition.

4 COMMISSIONER BALCH: So the green text
5 here, that's NMOGA's second modification?

6 COMMISSIONER BLOOM: Does that come in
7 from IPA?

8 CHAIRWOMAN BAILEY: That's IPA. In fact,
9 NMOGA's proposed modifications does not have a
10 definition -- does not have this definition.

11 COMMISSIONER BALCH: What is the other
12 definition that you referred to? Or is there a
13 strict definition?

14 COMMISSIONER BLOOM: WQCC?

15 CHAIRWOMAN BAILEY: For the Water Quality
16 Control Commission? I think I have it somewhere
17 here. I don't seem to be able to put my fingers on
18 it right now. As I recall, it does not require the
19 water to be capable of entering the well in
20 sufficient amounts to be used as a continuous water
21 supply.

22 COMMISSIONER BALCH: So it just says
23 something like "means institial water that occurs in
24 saturated earth material." Something like that.

25 CHAIRWOMAN BAILEY: And is capable of

1 entering the well to be used as a water supply.

2 MR. SMITH: Do you guys want to --

3 CHAIRWOMAN BAILEY: Take a break?

4 MR. SMITH: Well, either take a break or
5 move on and let me see if I can find it here on
6 Westlaw?

7 CHAIRWOMAN BAILEY: That would be good.

8 COMMISSIONER BLOOM: I wasn't tracking
9 this change, and I don't recall the discussion we
10 had on it. So if there would be any way to pull
11 that up here in the transcript, that might be
12 helpful. Maybe search institial.

13 COMMISSIONER BALCH: This brings up a
14 question that I think will come up later. What
15 happens when -- who has precedence on definitions
16 for some of these things?

17 MR. SMITH: I'm sorry?

18 COMMISSIONER BALCH: So later on we will
19 be talking about fluid management pits that have a
20 greater than a ten acre foot capacity. But there's
21 apparently a limitation in other state regulations
22 to impoundments that are greater than ten acre feet.
23 Who has precedent or who can write the rule on that
24 case? Can we write a rule that counters somebody
25 else's definition?

1 MR. SMITH: Well, your definitions don't
2 have to be like other definitions. Now, if an
3 operator who is subject to your regulations is also
4 subject to these other regulations, then probably
5 until there is some sort of resolution in the
6 courts, the operator is probably going to have to
7 comply with the more restrictive of the two. That
8 is to say, I don't think an operator would want to
9 say, "Well, I'm subject to both of these but because
10 OCC says I can do X plus one, that's what I'm going
11 to do even though some other agency says only do X."
12 Do you understand what I'm saying?

13 COMMISSIONER BALCH: Yes.

14 MR. SMITH: You create a problem for the
15 operator that way. If they are not subject to the
16 other agency's regulations you can do whatever you
17 want to do.

18 COMMISSIONER BALCH: When it comes to that
19 point I'm sure we will have an active discussion,
20 but I was curious about what happens when you have
21 conflicting rules.

22 CHAIRWOMAN BAILEY: As in if we allow the
23 insertion of "continuous water supply" rather than
24 just "water supply"?

25 COMMISSIONER BALCH: Right.

1 CHAIRWOMAN BAILEY: I don't believe that
2 we have a good reason to insert "continuous water
3 supply" when Water Quality Control Commission
4 Regulation 20.6.2.7, I believe, says "of entering
5 the well in sufficient amounts to be used as a water
6 supply."

7 COMMISSIONER BALCH: And it sounds like
8 from counsel's perspective if we did change it, you
9 would create a point of litigation.

10 CHAIRWOMAN BAILEY: I believe we would.

11 MR. SMITH: Do you want me, if you guys
12 are going to take a break, do you want me to try to
13 pull up what the WQCC says?

14 COMMISSIONER BLOOM: Sure, that would be
15 helpful.

16 CHAIRWOMAN BAILEY: Yes.

17 COMMISSIONER BLOOM: I would agree that we
18 don't want to have two definitions of groundwater in
19 the state.

20 CHAIRWOMAN BAILEY: Why don't we take a
21 ten-minute break.

22 (Note: The hearing stood in recess at
23 10:00 to 10:15.)

24 CHAIRWOMAN BAILEY: When we broke for the
25 break, there was still the question on the Water

1 Quality Control Commission definition for
2 groundwater. I believe our counsel found that
3 definition during the break, and it is highlighted
4 up on the screen, that it means interstitial water
5 that occurs in saturated earth material and which is
6 capable of entering a well at sufficient amounts to
7 be utilized as a water supply. Commissioners, do
8 you want to replace the proposed definition for
9 groundwater with that definition?

10 COMMISSIONER BLOOM: The only difference
11 is change the spelling of interstitial and drop
12 continuous?

13 CHAIRWOMAN BAILEY: Yes.

14 COMMISSIONER BLOOM: Then I would find the
15 definition from the WQCC to be sufficient.

16 COMMISSIONER BALCH: Seems like an
17 adequate definition.

18 CHAIRWOMAN BAILEY: Then we are in
19 agreement that the proposed definition for
20 groundwater will be replaced with the Water Quality
21 Control Commission definition for groundwater.

22 MR. SMITH: Let me say for the record,
23 that definition is at NMAC 20.6.2.7 Subparagraph Z
24 as in zebra.

25 CHAIRWOMAN BAILEY: The next definition is

1 life form ratio. It is the relative percentage of
2 plants in each of the following classifications:
3 Shrubs, forbs and grasses. Commissioners, do you
4 have opinions on that? I believe that this shows up
5 in the sections concerning reclamation.

6 COMMISSIONER BLOOM: Madam Chair, I prefer
7 the definition proposed by the OCD which is "Life
8 form ratio means the relative percentage of
9 regionally native species in each of the following
10 classifications: Shrubs, forbs and grasses," so we
11 would be adding in "regionally native species."

12 CHAIRWOMAN BAILEY: Commissioner Balch, do
13 you support that?

14 COMMISSIONER BALCH: It certainly sounds
15 better.

16 COMMISSIONER BLOOM: I will say that I
17 like OCD's definition because it does make sure that
18 we are dealing with native species when we are
19 dealing with revegetation. That's important and it
20 should be in there, and I think regionally is good
21 in that it doesn't mean it has to be a site-specific
22 native species, so if there was a particular strain
23 of grass or something on a nearby site but seeds
24 weren't available but something that was regionally
25 appropriate and generally fitting with the area,

1 that it would be well suited for revegetation of the
2 area.

3 COMMISSIONER BALCH: I believe that was
4 Dr. Buchanan's argument was you didn't want to
5 restrict yourself -- if you said only plants native
6 to New Mexico but you had a location that was on the
7 New Mexico/Colorado border and the climate, the
8 elevation, all of that stuff is appropriate for the
9 plant that doesn't usually show up in New Mexico but
10 might, you wouldn't be able to use it if you said
11 regionally.

12 My only concern would be -- and this is
13 actually sort of -- this comes back to the issue of
14 enforceable and vague rules. Because regionally
15 could mean something different to everybody.
16 Somebody could say the Southwest U.S., and that
17 would include Texas and Arizona and maybe New
18 Mexico. But if you are in the northern part of the
19 state, you are more like Colorado or Wyoming type
20 climates. If you are in the Southeast you are much
21 more like Texas.

22 So if it's going to be easily enforceable,
23 I think you want to leave as broad an ability to put
24 in the correct plants that you can. Even just
25 saying a relative percentage of plants, how do you

1 come up with that number?

2 CHAIRWOMAN BAILEY: There are requirements
3 in the current rule concerning comparison with plant
4 species and thickness, volume, in the same general
5 area as the well site. I believe that regionally is
6 specific enough as to eliminate California or New
7 York or any areas clearly outside of the region, no
8 matter if you are talking about the mountainous west
9 or the desert southwest.

10 COMMISSIONER BALCH: Sure. I guess let me
11 restate my concern. It's not that great of a
12 concern necessarily, but if you go down to the Gila
13 Wilderness you will find plants that are unique to
14 that area which are seen nowhere else in New Mexico
15 really. However, they would be in the same region.
16 You could theoretically take that plant and use it
17 in the San Juan Basin or the Permian Basin, which
18 I'm not sure if that's necessarily bad. I just want
19 to point out that you might take a regionally native
20 species from the Permian Basin that may not
21 necessarily be found in the San Juan Basin.

22 COMMISSIONER BLOOM: So maybe you would
23 like to suggest language then that cleans that up a
24 little bit and would be something along the lines of
25 relative percentage of native species to a New

1 Mexico region? Or a region in New Mexico?

2 COMMISSIONER BALCH: I don't think you can
3 clean it up better than it is. The fact is, a plant
4 that can't survive in the new area would not take
5 anyway. Of course, that leaves you without your
6 ground cover. So you are kind of trusting wherever
7 else in the regulations that specify your relative
8 percentage of plants to -- I'm not sure that I'm
9 being clear.

10 CHAIRWOMAN BAILEY: No, I can see where
11 you're trying to define region.

12 COMMISSIONER BALCH: But I don't think you
13 really can.

14 CHAIRWOMAN BAILEY: I don't think you can
15 either, but I think we want to eliminate California
16 and New York.

17 COMMISSIONER BALCH: Right. So what was
18 the OCD definition again that you were reading,
19 please?

20 COMMISSIONER BLOOM: Yes. "Life form
21 ratio means the relative percentage of regionally
22 native species in each of the following
23 classifications: Shrubs, forbs and grasses."

24 COMMISSIONER BALCH: If I recall
25 correctly, I think that Dr. Buchanan actually had a

1 difference of opinion with language that was very
2 similar to that because he thought it would be
3 eliminating.

4 COMMISSIONER BLOOM: I think Dr.
5 Buchanan's concern was that native could be
6 over-enforced and you could end up with somebody
7 saying well, there was a particular strain of blue
8 grama grass on this pad originally and that's what
9 has to be put there, and maybe there's no seed
10 market for that so you couldn't find it. I think
11 that was his concern, that it could be you were
12 causing some issues.

13 COMMISSIONER BALCH: I guess my question
14 is: Is there a list of regionally native plants?
15 If there is, does it include Russian Thistle?
16 That's not native but it's all over the United
17 States.

18 COMMISSIONER BLOOM: I don't think that's
19 considered a native species.

20 CHAIRWOMAN BAILEY: I don't think so. I
21 think that's one of those introduced species that
22 they are trying to eliminate.

23 COMMISSIONER BALCH: You could eliminate
24 it. It's tumbleweeds. You see it everywhere. So
25 there's a place where you could find lists of native

1 plants?

2 CHAIRWOMAN BAILEY: I believe so.

3 COMMISSIONER BALCH: I don't think we can
4 come up with a better definition than the proposed
5 OCD language.

6 CHAIRWOMAN BAILEY: So shall we agree to
7 insert the words "is the relative percentage of
8 regionally native plants in each of the following
9 classifications"?

10 COMMISSIONER BALCH: I would agree to
11 that.

12 COMMISSIONER BLOOM: That would work for
13 me.

14 MR. SMITH: Plants or species?

15 CHAIRWOMAN BAILEY: Plants, because we are
16 talking three different types, shrubs, forbs and
17 grasses.

18 COMMISSIONER BALCH: Should that be plant
19 species?

20 CHAIRWOMAN BAILEY: Native species.

21 COMMISSIONER BALCH: Native plant species?

22 COMMISSIONER BLOOM: Regionally native
23 plant species. Does that help?

24 CHAIRWOMAN BAILEY: Sure.

25 COMMISSIONER BLOOM: Add "plant" between

1 native and species.

2 CHAIRWOMAN BAILEY: Then we come to low
3 chloride fluids. The proposed definition is "means
4 fluids that contain less than 15,000 milligrams per
5 liter of chlorides determined by analysis or process
6 knowledge." Do either of you believe that we need
7 to have this definition first?

8 COMMISSIONER BALCH: It seems kind of an
9 interesting definition to have, because it's not
10 half of sea water but it's half higher than drinking
11 water standards, which is why I think it's in the
12 definition.

13 CHAIRWOMAN BAILEY: Drinking water
14 standards is 250 milligrams per liter.

15 COMMISSIONER BALCH: What's the limit?

16 CHAIRWOMAN BAILEY: TDS, total dissolved
17 solids.

18 MR. SMITH: Low chloride fluids is what
19 you are working on?

20 COMMISSIONER BLOOM: Yes.

21 CHAIRWOMAN BAILEY: Because the way this
22 definition is used, it makes the distinction between
23 siting locations, burial of waste materials and
24 analyses performed for soils. Other states have
25 developed their own definitions for low chloride

1 fluids. It appears to be a useful standard in the
2 industry.

3 COMMISSIONER BALCH: It certainly gives
4 you something to measure against.

5 CHAIRWOMAN BAILEY: Yes, it does.

6 COMMISSIONER BALCH: More or less. It's
7 either less or greater than. What is the typical
8 number for other states that you are aware of?

9 CHAIRWOMAN BAILEY: I think in the
10 transcripts there were some numbers that were given.
11 In some states it may be as low as 5,000 and in
12 others it may be 15,000.

13 COMMISSIONER BALCH: That's what I
14 remember. I think it was pointed out in the hearing
15 that it was a number that basically translated to
16 material being able to be buried on-site when you
17 did your mixes.

18 CHAIRWOMAN BAILEY: And site locations.

19 COMMISSIONER BALCH: Right.

20 CHAIRWOMAN BAILEY: As far as offsets.

21 COMMISSIONER BALCH: So it's not exactly
22 arbitrary, but it does allow you to conclude that if
23 you have a fluid with less than that concentration
24 that you would be able to bury it on-site in many
25 cases.

1 CHAIRWOMAN BAILEY: If we decide that
2 that's an option.

3 COMMISSIONER BALCH: Right. I was just
4 saying I think that's where the number came from.
5 It wasn't pulled out of a hat.

6 COMMISSIONER BLOOM: Madam Chair, I don't
7 support the inclusion of the definition of low
8 chloride fluids. Chlorides are currently used as a
9 marker and if we set the level this high there
10 wouldn't be a cause to look at chloride plumes,
11 which is pretty helpful in terms of finding how a
12 leak is moving.

13 CHAIRWOMAN BAILEY: No, I have to disagree
14 with that statement because we still would be able
15 to mark chloride plumes within groundwater.

16 COMMISSIONER BLOOM: We wouldn't be
17 looking at them over a certain period.

18 CHAIRWOMAN BAILEY: Of course we would.
19 We would be able to analyze any volume of chlorides
20 or any concentration of chlorides, put it that way,
21 in groundwater.

22 COMMISSIONER BLOOM: I think we want to
23 look at that.

24 COMMISSIONER BALCH: Maybe if I can say
25 this briefly, this may be something we have to come

1 back to after we look at the end result, which is
2 why we do have this limitation or this definition.

3 CHAIRWOMAN BAILEY: Shall we come back to
4 it later?

5 COMMISSIONER BLOOM: We could do that.
6 That would be fine.

7 CHAIRWOMAN BAILEY: Okay.

8 COMMISSIONER BALCH: It may turn out that
9 we don't need a definition or that the discussion
10 will be more meaningful in context.

11 CHAIRWOMAN BAILEY: Okay. Why don't we go
12 down to the definition for measurable. It means a
13 layer of oil greater than a sheen that is measurable
14 by color cutting or other acceptable method.

15 COMMISSIONER BALCH: This is another one
16 that's hard to measure.

17 CHAIRWOMAN BAILEY: Unless you have color
18 cut tape.

19 COMMISSIONER BALCH: I think the examples
20 were if you had a windy day it could be blown to one
21 side of the pit and you wouldn't necessarily be able
22 to see it at all. Other days that same amount of
23 oil or whatever could cause a sheen that would cover
24 half the pond. So do you color cut -- if you have
25 that situation and you use your tape, will you see

1 anything if it's all blown to one side of the pond?

2 CHAIRWOMAN BAILEY: Obviously, it's
3 decided by where you put your tape, but on the tank
4 or on the pit under the normal circumstances you
5 would be able to say from an unbiased point of view
6 this is what it shows on the tape as measurable.

7 COMMISSIONER BALCH: Okay. Could you
8 describe what that tape is?

9 CHAIRWOMAN BAILEY: I haven't used it in a
10 very long time.

11 COMMISSIONER BALCH: You have got me beat.
12 I have never used it so I guess I want to understand
13 what it does.

14 CHAIRWOMAN BAILEY: A very long time.
15 There have been other improvements and it's simply a
16 matter of dipping it in and the tape shows the depth
17 of the --

18 COMMISSIONER BALCH: Okay. So it measures
19 the thickness of the oil on top of the water?

20 CHAIRWOMAN BAILEY: Yes.

21 COMMISSIONER BALCH: And then the
22 thickness is translated on a volume across the area
23 of the surface? Okay. And measurable, you know,
24 what kind of limitations are on that? I think you
25 have to be able to see it to be able to measure it.

1 You would see the sheen before you would measure it.
2 CHAIRWOMAN BAILEY: You would see
3 something, yes, obviously. If it's measurable, it's
4 visible, but there is that distinction between
5 visible and measurable because you can see a sheen
6 but it's not going to be measurable.

7 COMMISSIONER BALCH: Right. It's a
8 molecule thing.

9 CHAIRWOMAN BAILEY: Yes.

10 COMMISSIONER BLOOM: I'm wondering, and
11 this just occurred to me, I haven't considered it
12 before, but do we want to look at the definition of
13 visible at the same time? I think these seem to
14 intersect at some point.

15 COMMISSIONER BALCH: That's on the next
16 page.

17 CHAIRWOMAN BAILEY: Page 3.

18 COMMISSIONER BALCH: I guess it would be
19 T. No, it's still S.

20 CHAIRWOMAN BAILEY: So you can see a
21 sheen.

22 COMMISSIONER BLOOM: Then there's a
23 separate OCD definition of visible, which is any oil
24 on the surface of the pit.

25 CHAIRWOMAN BAILEY: Any sheen.

1 COMMISSIONER BLOOM: That's correct.

2 CHAIRWOMAN BAILEY: That's visible, not
3 measurable. You're not going to be able to clean up
4 a sheen as easily or practically as you can a
5 measurable amount.

6 COMMISSIONER BALCH: So I guess what is
7 the purpose of the definition? Where would it come
8 into play for measurable and for visible?

9 CHAIRWOMAN BAILEY: Operations. I think
10 in the chapter on operations there are references to
11 distinguish visible from measurable.

12 COMMISSIONER BLOOM: I'm wondering if we
13 need both.

14 CHAIRWOMAN BAILEY: Do you want to come
15 back to that?

16 COMMISSIONER BLOOM: We should come back
17 to that.

18 COMMISSIONER BALCH: I would like to be
19 clear. Visible is what triggers the measurement
20 perhaps?

21 CHAIRWOMAN BAILEY: Let's come back to
22 that after we look at Section 1107. We come to
23 multi-well fluid management pit, which includes not
24 only the definition but time and size is not
25 attached to the definition. It means a pit used for

1 the storage, treatment and recycling of stimulation
2 fluids and flowback water, not drilling muds, not
3 produced water, during the drilling and completion
4 of multiple wells. They are not governed by the
5 Surface Waste Management Rule and not used for the
6 disposal of drilling or completion waste. Located
7 either on-site or off-site of a well drilling
8 location and may remain in use until all wells
9 identified in the pit are completed. Any freshwater
10 containment structure such as pond, pit or other
11 impoundment is not included in this definition.

12 I think we have a lot of work to do on
13 this paragraph.

14 COMMISSIONER BALCH: So 19.13.36 NMAC, is
15 that where you are limiting your impoundments to
16 less than ten acre feet?

17 CHAIRWOMAN BAILEY: Rule 36 is the Surface
18 Waste Management Rule which has to do with landfills
19 and ponds for disposal or treatment of wastes.
20 Landfills. This would exempt it because it's not a
21 permanent disposal of the stimulation fluids and
22 flowback water, but there's no size limitation and
23 there's no expiration in this definition.

24 COMMISSIONER BALCH: The reason there's no
25 size limitation is because you don't know

1 necessarily how many wells you might want to treat
2 as a single --

3 CHAIRWOMAN BAILEY: Or what volume will be
4 used in the frac job.

5 COMMISSIONER BALCH: It would be
6 determined operationally what the size of the pond
7 would be?

8 CHAIRWOMAN BAILEY: Right.

9 COMMISSIONER BLOOM: I know during
10 testimony, I think it was Mr. Lane, talked about the
11 multi-well fluid management pit and said that the
12 typical multi-well pit would have about 40 acre feet
13 as opposed to a temporary pit, which is about ten.
14 So we're looking usually at about four times the
15 volume.

16 I'm very intrigued by the multi-well fluid
17 management pit. I think we have much less surface
18 disturbance, conservation of water. It works in a
19 lot of ways. But I don't know that it was fleshed
20 out very well throughout the -- or developed here in
21 terms of how it's regulated, and we heard bits and
22 pieces and I don't know if we can cobble something
23 together and make these work but I am very intrigued
24 by it.

25 CHAIRWOMAN BAILEY: I have done some

1 research, because like you, I have been intrigued by
2 it. I think that there are some strong advantages,
3 but yet I believe that there are some regulatory
4 constraints that should be put on them. In fact,
5 during the discussion with Mr. Lane I asked, "When
6 does the regulator step in and say this is no longer
7 a multi-well pit, it's a permanent pit because it
8 has some aspects of a permanent pit." And his
9 testimony was that there may be an inactivation
10 component that needs to be built into this.

11 So looking at that, I checked what's the
12 typical size of a frac job? And I looked at frac
13 focus, which is the national database, and I found
14 everything from less than 2000 gallons of water to
15 six and seven million gallons of water for some of
16 the larger jobs. The six and seven I found in
17 Texas. I didn't find those in New Mexico. But just
18 from my plunking around, it appeared as though a
19 typical water volume was about 3.2 million gallons.

20 I looked specifically at the Devon
21 Snapping 2 State 3H, which used 3.3 rounded up
22 million gallons of water in their report.

23 COMMISSIONER BLOOM: So to make sure we
24 are on the same page, an acre foot is 325,000
25 gallons, ten acre feet is 3.25 million gallons? Is

1 that right?

2 CHAIRWOMAN BAILEY: The way I measured it
3 out, ten acre feet was about 3,350,000 gallons, so
4 the ten acre foot limitation would take care of many
5 of the frac jobs that go on, many of the frac
6 systems. It wouldn't take care of all of them, but
7 would take care of many of them.

8 COMMISSIONER BALCH: It would depend on
9 the operations, too. If you are doing them
10 serially, then I think ten acre feet would be able
11 to cover your typical shale frac jobs of two, three
12 or four million gallons. You do lose water on the
13 frac job. Your flowback is half to 70 percent of
14 the water you put in. It varies, depending upon the
15 formation, compatibility.

16 The idea, I think, and the way these are
17 done in practice, the reason they are large in
18 places like Wyoming and Texas is so they can be
19 rapidly moving their rig. Or you have two rigs
20 operating at once on a sequence of wells. That
21 said, I don't think you want something that's -- if
22 you are starting to look at things that are to the
23 scale of several Olympic swimming pools, you need to
24 probably look at them a little differently than a
25 temporary pit.

1 The petitions, I think, tried to address
2 that primarily by some sort of double liner or liner
3 in play with monitoring for your leakage, and then
4 by describing them as temporary, everything in there
5 would be removed and the site reclaimed and nothing
6 left on the site.

7 Whether that addresses all of the concerns
8 you might have with the large scale impoundment, and
9 then my other concern, I think, is limitation --
10 other limitations by other agencies on the size of
11 ponds and impoundments. We have to figure out
12 jurisdictionally if we can even have something
13 greater than ten acre feet. I don't know for sure
14 and we can probably discuss that later on.

15 CHAIRWOMAN BAILEY: I checked into it. I
16 believe -- and I may be wrong because I'm not an
17 authority on State Engineer regulations. I believe
18 that it's a matter of our determining if we want to
19 have a size limitation and, if we want to have that
20 limitation, what it should be. In my research, it
21 appeared as though the 3.3 million gallon volume
22 would be ten acre feet and would be adequate for
23 many -- maybe the majority of jobs. But if it was
24 inadequate they could always bring trucks, as they
25 apparently are doing now, to supplement.

1 COMMISSIONER BALCH: I guess if the ten
2 acre feet limitation was not for operating under the
3 new paradigm of production, particularly with shales
4 and some of these large commingled plays, and I'm
5 thinking more of what's happening in West Texas
6 right now, if that ten acre feet limit was enough,
7 then they wouldn't be building ponds that are
8 bigger, and they are building ponds that are bigger.

9 CHAIRWOMAN BAILEY: Because that
10 eliminates the need for additional trucking.

11 MR. SMITH: I just want to caution you all
12 to remember that you need to be able to look to your
13 record in order to justify whatever decisions you
14 make in this matter. I don't know whether there's
15 enough evidence for you to make these kinds of
16 determinations or not. That's up to you all, but
17 you want to look to the record in order to make your
18 decisions.

19 COMMISSIONER BALCH: I think they didn't
20 put a -- in testimony, I don't think Mr. Lane put a
21 limitation on it because he didn't want there to be
22 a limit that was imposed arbitrarily. He would
23 rather it be imposed by the needs of the operation.
24 That said, in a well-formed regulation you would --
25 I think there's a couple things that are important

1 to me in multi-well fluid management pits. I think
2 they have to be substantially temporary. You don't
3 want them sticking around for ten years or five
4 years. You want it to be there for the duration of
5 the operation that's it's being built for. You want
6 to make sure there's something that has some
7 limitation on the time so it is temporary.

8 CHAIRWOMAN BAILEY: I have some
9 suggestions for that, too.

10 COMMISSIONER BALCH: Okay. The other
11 thing is do you want to let them be of any arbitrary
12 size? And I think that one approach that might be
13 viable is to set some limit, and then above that you
14 would have to seek an exception or a variance on a
15 case-by-case basis. What that limit is, I do not
16 know.

17 COMMISSIONER BLOOM: That's a concern I
18 have as well. We don't have a lifespan yet. The
19 lifespan would be, I guess, the --

20 COMMISSIONER BALCH: Until the operations
21 are completed.

22 COMMISSIONER BLOOM: Yes. If you get
23 bigger in size, we haven't really talked about
24 performance of liners and what liners would be
25 adequate, but we do have the permanent pits and they

1 are limited to ten acre feet and then they have
2 their guidelines which I would have to review. But
3 that's out there.

4 CHAIRWOMAN BAILEY: Talking about a time
5 limit that you are concerned about also, and based
6 on Mr. Lane's comment, "So there may be an
7 inactivation component that needs to be built into
8 this," I looked to see where else in the oil and gas
9 industry we have the potential for a reasonable
10 limitation on time. If we use the language that the
11 pit may remain in use -- looking at the third line
12 from the bottom -- until all wells with approved
13 APDs identified in the pit permit are completed --
14 because APDs have a two-year limitation.

15 COMMISSIONER BALCH: That would be the
16 operational period plus two years at the most. It
17 would be two years at the most from the latest filed
18 APD.

19 CHAIRWOMAN BAILEY: There's another
20 approach. I tell you, I was intrigued with the
21 idea. In the template for the standard unit
22 agreements, exploration unit agreements, there is a
23 section on drilling to discovery, and it says that,
24 "An operator shall continue drilling diligently one
25 well at a time allowing not more than six months

1 between the completion of one well and the beginning
2 of the next well," which means that -- or until the
3 production is -- the discovery is made. We don't
4 need to have that, but there's also the limitation
5 that the director could modify the drilling
6 requirements of that section by granting reasonable
7 extensions of time when such action is warranted.

8 So I throw out for discussion, we could
9 either limit it to only those approved APDs and/or
10 we could have this continuous drilling requirement.

11 COMMISSIONER BALCH: I think the active
12 APDs to me sounds a little more easy to enforce and
13 trackable because it's already tracked on the map.
14 Whether you can drill or not -- APDs, can you get an
15 extension on the two years?

16 CHAIRWOMAN BAILEY: They can be renewed.

17 COMMISSIONER BALCH: They can be renewed
18 for another two years?

19 CHAIRWOMAN BAILEY: Yes.

20 COMMISSIONER BALCH: Just another two
21 years? Continuously drilling -- here is my concern.
22 And I think you have heard me say this a lot of
23 times. About 70 percent of all oil comes from the
24 smaller producers and about half our natural gas at
25 this time. Well, last time I checked in 2003. I

1 have no reason to think that's changed
2 substantially. By small, I mean not a major oil
3 company.

4 If some of the scenarios that Mr. Lane
5 described were to occur in the San Juan Basin and be
6 done by a large operator, I would imagine that the
7 pits would only be there for a year because they
8 would get in there, they would do a completion,
9 three weeks later another completion, three weeks
10 later another completion. They would probably spend
11 more time on building and dismantling the pit than
12 they did on operation.

13 On the other hand, if you have a smaller
14 operator or a group of smaller operators, you could
15 run into delays that would extend that time period
16 and you definitely don't want to discourage those
17 people from using a tool like a multi-well fluid
18 management pit which would make things more
19 efficient, use less resources and be more
20 cost-effective. But you also want to make sure it
21 doesn't hang around for four years or two years and
22 another two years and another two years, and you are
23 starting to get to the point where you wonder if the
24 liner is going to be stable for that time period.

25 So something has to be put in there to

1 make sure that these are temporary, that's easily
2 monitored and enforceable but allows the flexibility
3 to make them actually beneficial. Did I pose more
4 questions than I did answers there?

5 CHAIRWOMAN BAILEY: Well, I'm looking for
6 a solution to the proposal.

7 COMMISSIONER BALCH: I like the idea of
8 tying it to APDs and having certain APDs tied to the
9 initial application for the multi-well fluid
10 management pit.

11 COMMISSIONER BLOOM: I think that's a good
12 way to start considering it, putting a lifespan on
13 there, on the multi-well fluid management pit. I'm
14 concerned that ten acre feet might not be enough for
15 industry. It may be where they would need to go
16 bigger. Commissioner Balch talked about some in
17 Texas or some larger pits, and I think one of the
18 things that we like about the multi-well fluid
19 management pits is you reduce a lot of truck traffic
20 which is often a complaint in our oil producing
21 regions. You have less environmental impacts.

22 If we found something that would end a
23 good portion of the truck traffic, I think that
24 would be good. I don't know how -- I haven't heard
25 any testimony of anything over ten acre feet and I

1 don't know how liners perform given various volumes
2 and depths.

3 COMMISSIONER BALCH: I think there was
4 testimony on that, and it particularly came up in
5 regards to hydraulic head, and I think the idea was
6 that the pits would not necessarily be deeper, they
7 would tend to be larger in area. So the point of
8 where you are measuring your hydraulic head on a
9 liner at the bottom of the pit, it doesn't care how
10 much water there is to the side. It only cares how
11 much water is above it.

12 COMMISSIONER BLOOM: I understand it. If
13 we go wider there's more evaporative loss of water
14 and more surface disturbance, too.

15 COMMISSIONER BALCH: Right. Although if
16 you are replacing multiple heads you wash out the
17 increase in the surface area. I don't know what a
18 good average number is. I do know that you want
19 something that can be useful and flexible enough.
20 In other words, if you say ten or you say 20 or you
21 say 30 or 80 or like some of these pits in Texas
22 that are 100 acre feet, I don't know if pinning an
23 exact number on it is the best way to go or having a
24 number over which you have to have a more active
25 involvement by the Division or the Commission.

1 Now, in our work that we have done lately,
2 we look at the acid gas injection wells. The reason
3 is because it's something that's becoming more and
4 more prevalent, and we want to understand the
5 usefulness and the implications of a variety of
6 features and how do you best address them. So it
7 may be a similar time period where we would look at
8 some of these larger pits or pits above a certain
9 size just to see what they are doing and come up
10 with a good understanding of how well they work or
11 what is a size below you don't worry too much and
12 above you want to have extra considerations taken.

13 CHAIRWOMAN BAILEY: Are you suggesting
14 that we put a ten acre feet and approved APD, but
15 say that there exceptions may be for differences in
16 size or length of time?

17 COMMISSIONER BALCH: Well, I guess I am
18 less confident about putting a size limit. I don't
19 know what would be appropriate. I think if you are
20 doing -- I think some of the jobs that Mr. Lane
21 described might be ten wells or 15 wells, and if you
22 have a limitation of ten acre feet and that was one
23 frac job, then I think you are not going to have
24 something that would be efficient for rapidly
25 completing those wells with just ten acre feet.

1 On the other hand, do I want them to be
2 able to arbitrarily build as large of an impoundment
3 as he wants to? I think there has to be someplace
4 where you look at it a little more closely.

5 MR. SMITH: Let me just interject here
6 real quickly. You want to make sure, I think, that
7 the discussions that you are having at this point
8 are matters of how to exercise your judgment as
9 opposed to matters not having enough evidence to
10 make the decision.

11 COMMISSIONER BALCH: Okay. I think --

12 MR. SMITH: I mean, I'm not arguing
13 anything one way or the other. I just, again, want
14 to caution you that you want to make sure that you
15 have enough evidence in the record to make decisions
16 or maybe you do and you are trying to make a
17 judgment call. That's up to you guys.

18 CHAIRWOMAN BAILEY: I believe this is a
19 judgment call based on the information that is in
20 the record.

21 MR. SMITH: Okay.

22 CHAIRWOMAN BAILEY: And the additional
23 research that was done at the time.

24 MR. SMITH: That's fine. I'm just doing
25 my job.

1 CHAIRWOMAN BAILEY: I realize that.

2 COMMISSIONER BALCH: Appreciate it.

3 CHAIRWOMAN BAILEY: There is the
4 possibility of not putting a size limitation but
5 putting a construction requirement that it meets the
6 same standards as a permanent pit with the heavier
7 liner and the double liner?

8 COMMISSIONER BALCH: I think other
9 concerns that were raised was about the nature of
10 the double protective system.

11 CHAIRWOMAN BAILEY: We do have testimony
12 concerning the problem with the construction.

13 COMMISSIONER BLOOM: We heard both things.
14 Somebody said there would be two liners and somebody
15 said it could be one fabric liner and it could be
16 clay as well.

17 COMMISSIONER BALCH: What does the current
18 regulation state for permanent pits?

19 CHAIRWOMAN BAILEY: Unchanged.

20 COMMISSIONER BALCH: Right. I understand.

21 CHAIRWOMAN BAILEY: It's a double liner
22 with a leak detection system.

23 COMMISSIONER BLOOM: You have a choice of
24 a 30 mil flexible PVC or 60 mil HDPE liner.

25 CHAIRWOMAN BAILEY: The 60 mil is the

1 permanent pit.

2 COMMISSIONER BLOOM: It allows both.

3 "Geomembrane liner shall consist of 30 mil flexible
4 PVC or 60 mil HDPE liner."

5 CHAIRWOMAN BAILEY: Oh, okay. Depending
6 on the type?

7 COMMISSIONER BLOOM: Exactly.

8 CHAIRWOMAN BAILEY: It has the upper liner
9 geomembrane and secondary lower liner, geomembrane
10 liners. Geomembrane shall constant of 30 mil or the
11 60 mil.

12 COMMISSIONER BLOOM: I will note, too,
13 that when I was reading OGAP's closing statement
14 that they also shared some concerns about was this
15 fleshed out enough that the permanent pit could be a
16 possible solution here, looking at that for
17 guidance.

18 CHAIRWOMAN BAILEY: Right. I would feel
19 more comfortable if we put the time limitation of
20 the approved APDs for the wells that would be
21 dedicated.

22 COMMISSIONER BALCH: That these would
23 include --

24 CHAIRWOMAN BAILEY: Yes. And the use of
25 the construction standards of a permanent pit

1 without any kind of size limitation.

2 COMMISSIONER BLOOM: Now, I would have
3 some concerns there in that if the pit went higher
4 and bigger, you would have a lot more head, correct?
5 And maybe those liners wouldn't be sufficient in
6 that case. I haven't heard any testimony about the
7 efficacy of those liners if the size would increase
8 above ten acre feet.

9 CHAIRWOMAN BAILEY: So are you proposing
10 the time limitation, the size limitation and the
11 permanent pit construction standards?

12 COMMISSIONER BALCH: I think he is talking
13 more about a depth limitation.

14 COMMISSIONER BLOOM: Depth, yeah.

15 COMMISSIONER BALCH: There was testimony
16 about hydraulic head on a number of occasions. The
17 back of the envelope calculation like I believe
18 Dr. Neeper did in one of his exhibits, he could
19 calculate a rather large amount of water going
20 through a liner with ten feet of hydraulic head, but
21 I don't believe that those equations really work
22 very well for the effusive flow that you are seeing
23 with the liner, so you are really looking more at
24 what's going to come through pinhole leaks and
25 imperfections and things like that.

1 To some extent, if you increase head
2 dramatically you might increase that amount of
3 effusive flow, but I would have to do an awful lot
4 more calculation before I comfortably want to look
5 at that. I think I would rather see these pits be
6 larger aerially than considerably much deeper. Is
7 there a limitation on the depth of permanent pits?

8 CHAIRWOMAN BAILEY: No.

9 COMMISSIONER BLOOM: I don't think so.

10 CHAIRWOMAN BAILEY: Do you have a copy of
11 the current Rule 17?

12 COMMISSIONER BLOOM: I am looking at the
13 NMOGA's Attachment A which had their changes.
14 Permanent pit is on Page 15 of that.

15 COMMISSIONER BALCH: I think, practically
16 speaking, you are probably not going to end be up
17 with a 40-foot deep head. If you have a ten acre
18 foot head, it could be ten acres of area and ten
19 feet of depth or it could be five acres of area and
20 20 feet of depth -- sorry, five acres of 20 feet of
21 depth. But at some point you are going to find it
22 easier to make it wider than deeper with a
23 bulldozer, and being able to meet other construction
24 guidelines such as your edge material and your
25 overlap and things like that. Berm.

1 CHAIRWOMAN BAILEY: And the slope that we
2 still need to talk about.

3 COMMISSIONER BALCH: Right.

4 COMMISSIONER BLOOM: Dr. Balch, is there a
5 way to increase the volume similar to the 20 acre
6 feet that there would be more than enough to do at
7 one average frac job, increase it to 20 acre feet,
8 not get it to a size where it has too much more head
9 on it than you would have in a permanent pit that's
10 ten acre feet?

11 COMMISSIONER BALCH: Well, head is just
12 dependent on the depth of the water so the only
13 thing you would be able to do is put a limitation on
14 the depth of the pond. But there was not, I don't
15 think, any testimony or anything about depth and
16 what would be appropriate --

17 COMMISSIONER BLOOM: We don't have
18 guidance.

19 COMMISSIONER BALCH: Now, these liners
20 have design specifications and I'm going to guess
21 that one of those design specifications would be how
22 much head can it handle, how much pressure. Well,
23 normally what they do is a rod test, poke at it with
24 a rod or something until it breaks and then they
25 know how much pressure in the particular location.

1 So, I mean, some of the things we are
2 discussing may not be important at all because they
3 will already be in the limitations of the materials
4 if they are used correctly, which is a concern.

5 Now, as far as limiting the size of a
6 multi-well fluid management pit, I think if you do
7 that then very likely we will be discussing it again
8 pretty soon because you are not making a design
9 that's based upon operational parameters and needs,
10 you are making one based on some arbitrary number,
11 that probably the three of us individually are not
12 necessarily qualified to determine. We have the
13 evidence that's before us that there's a need for
14 it, and I think it's up to us that makes a
15 regulation that allows for it in a safe and
16 effective way.

17 And I like the stronger requirements of
18 the permanent pit. I don't like ad hoc limitation
19 on size. I have a feeling that I don't want them to
20 be 100 feet deep or 300 acres big, but I don't know
21 how to really limit that. The only limitation I can
22 see is to limit the number of wells that would be
23 allowed on a permanent for multi-well pit, at which
24 point you are looking at effecting what is the most
25 effective operations. But that might be the easiest

1 way to limit the size.

2 If you say ten wells, you are going to be
3 looking at, at most, probably 50 acre feet would be
4 a very large, effective volume that you could use.

5 CHAIRWOMAN BAILEY: But that --

6 COMMISSIONER BALCH: And if they wanted
7 more than that, then they would have to seek an
8 exception.

9 CHAIRWOMAN BAILEY: That disallows use of
10 the pit for large frac jobs if you limit it to the
11 number of wells. A central location within one of
12 the large units in the Northwest may service more
13 than ten wells.

14 COMMISSIONER BALCH: Sure. Well, ten was
15 an arbitrary number. My concern in constructing a
16 useful regulation is that if you put in arbitrary
17 limitations then you defeat the purpose of having
18 the rule in the first place. You create an
19 artificial limit on what it's supposed to remove,
20 which is an inefficiency.

21 COMMISSIONER BLOOM: I agree. You want
22 this to serve the industry's needs and be efficient
23 for them.

24 COMMISSIONER BALCH: Well, and the most
25 efficient they are, the less truck traffic, the less

1 water tanks there are moving down the freeways, the
2 less individual chance for leaks from all the
3 fittings and valves that you have on your thousand
4 tanks. I mean, it makes a lot of sense to reduce
5 your footprint for these large operations, and
6 realistically, the direction that industry is going
7 is towards shales and towards larger frac jobs and
8 that's going to be happening in New Mexico as well.

9 Texas doesn't have a Pit Rule, so they can
10 build a 100 acre multi-well pit if they want to.
11 But because we have a ten acre limit, that's why
12 it's brought up. If industry thought they could do
13 this with a ten acre pit they wouldn't have put it
14 in here. They would just do it under the current
15 rules.

16 CHAIRWOMAN BAILEY: Because the permanent
17 pit is only used for the produced water.

18 COMMISSIONER BALCH: No, I meant using the
19 temporary pit. I guess there's no allowance in the
20 current version of the Pit Rule for using multiple
21 wells from one pit anyway. You have to have one
22 well, one pit, which is an example of what I was
23 just saying. If you -- you have to be careful not
24 to impose limitations that defeat the purpose of the
25 proposed change if we think the proposed change is a

1 good thing.

2 CHAIRWOMAN BAILEY: So what would you like
3 to see?

4 MR. SMITH: Let me remind you about your
5 idea for a variance. Maybe that would give you more
6 flexibility.

7 COMMISSIONER BALCH: The idea is if there
8 was some trigger where like with the acid gas
9 injection wells that have to come before the
10 Commission and not potentially give us more work but
11 it does give an opportunity to put a workable
12 regulation into play now rather than doing ten years
13 of research and then putting the regulation into
14 play. I think this is something that is extremely
15 important.

16 CHAIRWOMAN BAILEY: It is. So do you
17 suggest a ten acre foot limitation with a larger to
18 be an exception to be heard by a hearing examiner or
19 the Commission?

20 COMMISSIONER BALCH: I think I like the
21 idea better of having the larger pits managed by
22 something else, like a number of APDs that are
23 attached to it or something like that. Or the
24 predicted -- you know, at some point it's going to
25 become impractical -- and I think Mr. Lane brought

1 this up -- it's going to become impractical to have
2 more than X number of wells managed by one central
3 management pit because you do have to have temporary
4 pipelines and all kinds of things like that to move
5 the water around.

6 It seems like you would end up with a
7 situation where you would be fracking the 100 wells
8 from one multi-well pit.

9 CHAIRWOMAN BAILEY: So the true limitation
10 would be the number of wells with approved APDs that
11 can be drilled using that pit within two years or
12 extensions thereof.

13 COMMISSIONER BALCH: That would seem to be
14 a practical limit that would be pretty easily
15 monitored. Well, it wouldn't have to be monitored.
16 It would take care of itself.

17 CHAIRWOMAN BAILEY: Takes care of itself.

18 COMMISSIONER BALCH: So if you had an
19 operational plan to do 20 wells and you could do it
20 within two years -- I guess you wouldn't make a plan
21 then if you couldn't do it within three years, so it
22 would be a natural limitation. And if you weren't a
23 large company and you were doing it with a different
24 type of operation, you may not try to put 20 wells
25 on your APD. Maybe that would be the best way to

1 limit it. I really don't like the idea of putting
2 an arbitrary size limit on it.

3 CHAIRWOMAN BAILEY: And we have had no
4 testimony.

5 COMMISSIONER BALCH: That's right. Now,
6 on the other hand, I think if those APDs are put up
7 for renewal, that's when it should come before the
8 Commission, because then they are going to extend
9 the life of the pit.

10 CHAIRWOMAN BAILEY: What is your belief,
11 Commissioner Bloom?

12 COMMISSIONER BLOOM: If we could cobble
13 something together that would be protective of the
14 environment and base it on testimony we heard and
15 what's in the rule currently, I think we could do
16 that. I don't know that -- I'm still wondering if
17 we have heard enough to be able to put together a
18 multi-well pit that works for industry and gets them
19 what they need.

20 COMMISSIONER BALCH: Well, I think that
21 the time limitation on the APDs will self-limit the
22 volume, the size of the volume they need.

23 COMMISSIONER BLOOM: Let me ask you this:
24 What if the frac job requires -- hearing what
25 Commissioner Bailey found was some three million

1 gallons plus for an average frac job, but we are
2 seeing some that go up much larger than that. We
3 could be seeing in the Northwest more shale oil
4 production. If we make something too small we lose
5 some of the environmental benefits.

6 COMMISSIONER BALCH: Here's the thing.
7 The larger the frac job -- your frac job size is
8 going to be dictated by a couple things. The first
9 thing it's going to dictate is how many stages you
10 are going to do. The number of stages is going to
11 be dictated by the length of the section that you
12 are trying to fracture and the rock mechanics that
13 goes into how much fluid is needed within a
14 particular closed-off section to break the rock. So
15 the larger your horizontal wells are, the longer
16 they are, the less wells you are going to need.

17 So as you increase the size of the frac
18 job, you need less wells in the same area. There's
19 also going to be a limitation on how many -- well,
20 there's not really a limitation on horizontal wells,
21 is there?

22 CHAIRWOMAN BAILEY: No.

23 COMMISSIONER BALCH: But basically, I
24 think that's the other side of it. If you are doing
25 a much larger job, you need to do less of them in

1 the same relative area to fracture the rock
2 effectively. So I think it would be self-limiting
3 to some extent. Actually, to a great extent. I
4 really like the automatic use of the APD timeline
5 and then if they want to extend the APD then they
6 have to come show us.

7 COMMISSIONER BLOOM: I think we could work
8 something with that, and if it extended out two
9 years it could still be okay maybe because we were
10 dealing with something originally designed as a
11 permanent pit which would have a longer lifespan.

12 COMMISSIONER BALCH: I think you would
13 want to have a re-evaluation at that point basically
14 and make sure that there's a fixed time. And that's
15 when coming before the Commission would be
16 appropriate.

17 CHAIRWOMAN BAILEY: You want them to come
18 before the Commission or before the Division?

19 COMMISSIONER BALCH: The Division, yeah.
20 Doesn't have to come straight to us. I know with
21 the acid gas it comes straight to us. And since
22 this is a new thing, that might be advisable for a
23 period of time. I don't know how you write
24 something like that.

25 CHAIRWOMAN BAILEY: We can simply say it

1 shall go to hearing, and then --

2 COMMISSIONER BALCH: You can
3 administratively decide --

4 CHAIRWOMAN BAILEY: Then administratively
5 say, like the acid gas comes to the Commission,
6 administratively say that it comes to the Commission
7 for extensions.

8 COMMISSIONER BALCH: APDs for wells tied
9 to a multi-well management pit?

10 CHAIRWOMAN BAILEY: Okay. Then let's do
11 some wordsmithing.

12 COMMISSIONER BLOOM: Excuse me. Have we
13 decided on a ten acre foot size limit on this?

14 COMMISSIONER BALCH: No.

15 CHAIRWOMAN BAILEY: No.

16 COMMISSIONER BALCH: I think the
17 modification will be based on what they can do
18 operationally within two years, which should be a
19 pretty good limitation on size. I think that would
20 be greater than ten acre feet but it won't be a
21 million acre feet or 100 or something like that.
22 Hopefully it gives enough flexibility that they can
23 design operations appropriately, and I think most
24 operations would be designed to be completed by the
25 time the APD expires.

1 COMMISSIONER BLOOM: If it was to go
2 beyond ten acre feet, would there be a way we could
3 craft something where the depth wouldn't be much
4 bigger on average than what you find in the
5 permanent pit so you don't have --

6 COMMISSIONER BALCH: I think it would be
7 more on the design specifications than the liners.

8 COMMISSIONER BLOOM: Not to exceed the
9 design specifications.

10 COMMISSIONER BALCH: Not to exceed. Or
11 actually engineering, they usually have a 200
12 percent factor so you wouldn't go up to a limit of
13 the liner, you would go to half the limit of the
14 liner typically in most engineering designs.

15 COMMISSIONER BLOOM: That could work.

16 CHAIRWOMAN BAILEY: There's one other
17 small detail. Part of this definition says
18 "Multi-well fluid management pits may be located
19 either on-site or off-site of the well drilling
20 location." One of the public comments by R360
21 Environmental Solutions talked about the definition
22 of on-site. On their public comment dated May 2nd,
23 2012 on Page 7 R360 suggests keeping the word
24 "on-site" throughout 19.15.17.11 NMAC and defining
25 it in 19.15.17.7 NMAC to mean within the boundaries

1 of the lease and/or development plan wherein
2 exploration and production waste continues to be
3 under the control and management of the
4 operator/producer.

5 That would prevent a commercial landfill
6 from being developed on an on-site area that allows
7 disposal of the fluids or temporary holding of the
8 fluids in the multi-well fluid management pits. The
9 word -- I'll repeat that. Because we use the term
10 "on-site" in this definition, I believe we need to
11 have a definition of on-site to mean within the
12 boundaries of the lease and/or development plan
13 wherein exploration and production waste continues
14 to be under the control and management of the
15 operator/producer.

16 COMMISSIONER BALCH: Is there ever a
17 situation where it would be off-site by that
18 definition?

19 CHAIRWOMAN BAILEY: When we start allowing
20 fluids from multiple wells to be put into an
21 off-site location?

22 COMMISSIONER BALCH: Right, but I'm
23 guessing by the definition that -- where would it be
24 off-site? Because it would still be -- they would
25 still have to have an agreement for the pit with the

1 surface owner.

2 COMMISSIONER BLOOM: Maybe they are trying
3 to prevent somebody opening multi-well fluid
4 management pits, say, on private land and saying, "I
5 will take the water over to you," or something like
6 that where it's no longer in the control of the
7 owner/operator.

8 COMMISSIONER BALCH: Somebody basically
9 saying you can put it on my ranch?

10 COMMISSIONER BLOOM: Yeah.

11 CHAIRWOMAN BAILEY: Then they become --

12 COMMISSIONER BALCH: They become a partner
13 in the operation. So by definition it would be
14 on-site. Now, the question there might be sort of
15 how do you connect the water to your operations? I
16 think you have to have a continuous surface area to
17 be able to run your temporary pipeline, get the
18 water from the management pit to the site that you
19 need. So I guess off-site, the only thing that
20 would be really off-site is something that was
21 disconnected to that location and you would have to
22 have some other arrangement to move the pipeline or
23 pipe the water. That might be the concern.

24 CHAIRWOMAN BAILEY: Well, if you have
25 multiple leases and multiple well sites and you are

1 using a centralized multi-well pit that's not
2 located on the lease --

3 MR. SMITH: Let me ask you two to keep in
4 mind -- and I don't know whether it's used elsewhere
5 or not -- but if you are going to define on-site for
6 the purpose of making this definition clearer, you
7 want to make sure that however you define it, it
8 does not unintentionally affect uses of the term
9 on-site elsewhere in the regulations.

10 CHAIRWOMAN BAILEY: Then why don't we hold
11 off on debating this definition for on-site until we
12 see where else in the rule it may appear. We will
13 just stay alert.

14 MR. SMITH: Well, not just the use of the
15 word "on-site" where it may appear in the amendments
16 but use of the word "on-site" where it's left
17 completely alone. I mean, you may not notice it
18 there, but what we should probably do is a search
19 for the word "on-site" throughout the whole
20 document, not just looking at it there.

21 COMMISSIONER BALCH: Seems like what the
22 intent of the existing definition is, is you
23 wouldn't necessarily have to put it at a well
24 drilling location.

25 CHAIRWOMAN BAILEY: Yes.

1 COMMISSIONER BALCH: But I think that
2 maybe eliminating the words "on-site" or "off-site"
3 and putting in something that is more appropriate
4 would be better than trying to tackle the issue of
5 the definition, which may have cross-purposes in
6 other places. We could better frame the intent
7 using a different set of words.

8 CHAIRWOMAN BAILEY: Why don't we see where
9 else "on-site" and "off-site" are used within the
10 rule.

11 COMMISSIONER BALCH: Okay.

12 CHAIRWOMAN BAILEY: But other than that,
13 do we want to use this definition but insert the
14 words in that next to the last sentence where it
15 says, "Multi-well fluid management pits may be
16 located either on-site or off-site of a well
17 drilling location and may remain in use until all
18 wells with approved applications for permits to
19 drill APDs identified in the pit permit are
20 completed."

21 COMMISSIONER BLOOM: Yes.

22 COMMISSIONER BALCH: That gives it a
23 two-year maximum, and that would self-limit the size
24 of the operation.

25 COMMISSIONER BLOOM: Does that leave some

1 ambiguity in there about whether or not the APD
2 could be extended?

3 COMMISSIONER BALCH: Okay, so now in the
4 next sentence --

5 COMMISSIONER BLOOM: Do we want to say
6 "the original life of the APD" or add something else
7 after that which would say should the APD be
8 extended this would go before --

9 CHAIRWOMAN BAILEY: "Any extensions of
10 approved APDs in the pit permit shall come to
11 hearing."

12 COMMISSIONER BLOOM: Yes.

13 COMMISSIONER BALCH: Yes. Aren't
14 extensions common?

15 CHAIRWOMAN BAILEY: It depends. A lot of
16 times. I can't give you a number.

17 COMMISSIONER BALCH: I think that
18 addresses the time limit.

19 COMMISSIONER BLOOM: The lifespan.

20 COMMISSIONER BALCH: Now we can talk about
21 the other design characteristics when we get to that
22 part of the rule.

23 CHAIRWOMAN BAILEY: Okay. So that brings
24 us to the definition for permanent pit.

25 COMMISSIONER BALCH: No, that hasn't

1 caught up yet.

2 CHAIRWOMAN BAILEY: "Until all wells with
3 approved applications for permit to drill." After
4 that sentence -- no. No, no period there. That's
5 part of the sentence. Go to the end of the sentence
6 and insert another sentence that says, "Any
7 extensions of permits to drill identified in the pit
8 permit shall go to hearing." Identified in the pit
9 permit shall go to hearing.

10 COMMISSIONER BALCH: At the beginning we
11 have until "all wells" twice.

12 MR. SMITH: Just before the language
13 identified in the pit permit, do you want to
14 put "that are" in there?

15 CHAIRWOMAN BAILEY: Okay.

16 COMMISSIONER BALCH: Put an effective
17 three-year lifespan or something on the pit?

18 MR. SMITH: Do you want to discuss the two
19 different definitions and why you are picking one
20 over the other?

21 CHAIRWOMAN BAILEY: What are the
22 differences between the two other than what we
23 inserted?

24 MR. SMITH: Well, I think it's the
25 discussion of the Surface Waste Management Rule in

1 the first one. I don't see that in the second one.

2 I haven't done it word for word.

3 COMMISSIONER BLOOM: Where did the second
4 definition come from?

5 MR. SMITH: I think that's IPANM. Is that
6 IPANM?

7 MS. FOSTER: No.

8 MR. SMITH: You're not supposed to talk.
9 I enjoyed that.

10 CHAIRWOMAN BAILEY: That portion
11 concerning the Surface Waste Management Rule is part
12 of the NMOGA application, so the second paragraph
13 would be the IPANM.

14 COMMISSIONER BALCH: So what's the Surface
15 Waste Management Rule of 1936?

16 CHAIRWOMAN BAILEY: That's the Surface
17 Waste Management Rule.

18 COMMISSIONER BALCH: Basically governs --

19 CHAIRWOMAN BAILEY: Disposal of wastes.

20 COMMISSIONER BLOOM: Since this is not a
21 permanent --

22 COMMISSIONER BALCH: There's no disposal
23 on-site. And if there happened to be a leak you
24 would have to claim it. So there would still be
25 notice.

1 COMMISSIONER BLOOM: Does that clarify the
2 rule by having that in there?

3 CHAIRWOMAN BAILEY: I think so. So we can
4 eliminate the second paragraph, the one in green?

5 COMMISSIONER BLOOM: Let's see if there
6 are any other differences. I don't think there are.

7 COMMISSIONER BALCH: Then we will have to
8 come back. Maybe get her to highlight the
9 on-site/off-site and we will have to come back to
10 that and discuss that later.

11 MR. SMITH: You might want to consider for
12 clarity's sake, instead of saying "not governed
13 under the Surface Waste Management Rule," if what
14 you really want there is to say "may not be used for
15 permanent disposal" as opposed to making some sort
16 of --

17 CHAIRWOMAN BAILEY: So it would read
18 "Multi-well fluid management pits may not be used
19 for the disposal of drilling or completion waste."

20 MR. SMITH: Are there only two kinds of
21 waste? Do you want to put "drilling, completion or
22 other"? I don't know. I'm just a lawyer.

23 CHAIRWOMAN BAILEY: That would ensure that
24 nothing is disposed of.

25 COMMISSIONER BLOOM: Could it be

1 "Multi-well fluid management pits may not be used
2 for the permanent disposal of waste"?

3 COMMISSIONER BALCH: "Or other waste"
4 covers everything.

5 COMMISSIONER BLOOM: Okay.

6 CHAIRWOMAN BAILEY: Good.

7 MR. SMITH: You want to take out the next
8 one; is that correct?

9 CHAIRWOMAN BAILEY: Yes. It's 20 till
10 12:00. Shall we go for a couple more?

11 COMMISSIONER BALCH: Are they smaller?

12 CHAIRWOMAN BAILEY: They are smaller.
13 They should not be nearly as time-consuming. The
14 next definition is for permanent pit. It means a
15 pit, including a pit used for collection, retention
16 or storage of produced water or brine that is
17 constructed with the conditions and/or the duration
18 provided in its permit and is not a temporary pit,
19 and then they have suggested adding the language "or
20 a pit governed under the Surface Waste Management
21 Rule 19.15.36," which is the surface waste
22 management or disposal, permanent disposal or for
23 land farming.

24 COMMISSIONER BALCH: I think the reason we
25 took it out of the other one is because it was

1 temporary. But the permanent pit is, by its very
2 nature, permanent.

3 CHAIRWOMAN BAILEY: But a permanent pit is
4 specifically for produced water or brine. Permanent
5 pit does not include anything other than those two
6 components.

7 COMMISSIONER BALCH: I think that
8 definition is okay.

9 CHAIRWOMAN BAILEY: To include the
10 suggested language or to not?

11 COMMISSIONER BALCH: I'm not a lawyer.

12 CHAIRWOMAN BAILEY: I don't think we need
13 it when we have Rule 36 that says what it covers.

14 COMMISSIONER BLOOM: I'm fine with that.

15 CHAIRWOMAN BAILEY: Shall we eliminate the
16 suggested language?

17 COMMISSIONER BLOOM: I would be fine with
18 that.

19 MR. SMITH: I don't think you need to
20 reference other statutes or make a claim with
21 respect to what is or is not governed as long as you
22 are saying what you mean without reference to the
23 other statute. My fear is it could lead to argument
24 later on. Just say what you mean and stop.

25 CHAIRWOMAN BAILEY: Rule 36 should say

1 what it covers.

2 MR. SMITH: Yeah.

3 CHAIRWOMAN BAILEY: We can go to -- are we
4 all in agreement?

5 COMMISSIONER BALCH: Yes.

6 COMMISSIONER BLOOM: Yes.

7 CHAIRWOMAN BAILEY: Shall we go to playa
8 lake? It means a dry, barren area in the lowest
9 part of an undrained natural desert basin underlain
10 by clay, silt or sand and commonly soluble salt,
11 which the OCD suggests a different definition.

12 COMMISSIONER BALCH: Any relevant state
13 regulations that describe the playa lake?

14 CHAIRWOMAN BAILEY: Not that I'm aware of.

15 COMMISSIONER BLOOM: So the NMOGA
16 definition doesn't mention the formation of the
17 temporary lake. This definition is taken from
18 19.15.2.7.4.

19 CHAIRWOMAN BAILEY: Which is the current
20 definition in the OCD regs.

21 COMMISSIONER BLOOM: Okay.

22 COMMISSIONER BALCH: I don't see that
23 putting the definition in accomplishes anything.

24 CHAIRWOMAN BAILEY: I don't either.

25 COMMISSIONER BALCH: So --

1 COMMISSIONER BLOOM: Let me look for one
2 minute in NMOGA's closing documents to see if they
3 reference that. They may tell why they want to make
4 those changes. It says, "NMOGA proposes the
5 addition of a new definition of playa lake" and
6 gives the definition that should be adopted.
7 There's no further elaboration. If we want to use
8 that over what we currently have --

9 COMMISSIONER BALCH: The OCD definition
10 better fits my dim recollection of geology.

11 CHAIRWOMAN BAILEY: I don't see the need
12 to change the definition for playa lake.

13 COMMISSIONER BLOOM: I would agree with
14 that.

15 CHAIRWOMAN BAILEY: So we will use the OCD
16 definition which is retaining the current definition
17 of 19.15.2.7P4.

18 COMMISSIONER BALCH: Do we have to
19 explicitly state that or just eliminate the
20 definition from the proposed rule?

21 CHAIRWOMAN BAILEY: We can eliminate the
22 definition from the rule because it's already in the
23 rule.

24 COMMISSIONER BALCH: So N can go away?

25 CHAIRWOMAN BAILEY: Then there's the

1 suggested deletion of the term restore, which is
2 found predominantly in the reclamation requirements.
3 So I suggest we come back to this because what we
4 decide in the reclamation area will determine
5 whether or not we need to retain the definition
6 here.

7 COMMISSIONER BALCH: For housekeeping
8 maybe you want to scroll back up. There were a
9 couple other things we want to come back to later
10 before we started highlighting things. Further up.
11 I and J and, I think, S.

12 CHAIRWOMAN BAILEY: Okay. We agreed on
13 the definition for continuously flowing watercourse
14 and now we have a proposed definition for
15 significant watercourse. The proposed language
16 eliminates the words "a first order" and adds "the
17 next lower order tributary with a defined bed and
18 bank of such watercourse." The OCD suggestion is "a
19 watercourse with a defined bed and bank either named
20 or identified by a dashed blue line on a USGS 7.5
21 minute quadrangle map or the next lower order
22 tributary with a defined bed and bank of such
23 watercourse."

24 If we choose to change the definition,
25 then the OCD language is what is suggested. I don't

1 want to imply that the OCD is advocating this, just
2 that if we decide to change the language, their
3 proposed language is better.

4 COMMISSIONER BALCH: I think the OCD
5 definition is a little more clear and definitely
6 states what you're looking for on the map, the
7 dashed blue line. I would prefer that definition.

8 CHAIRWOMAN BAILEY: And it does require
9 defined bed and bank for a significant watercourse
10 or the next lower order tributary.

11 COMMISSIONER BLOOM: Yes.

12 CHAIRWOMAN BAILEY: We are all in
13 agreement to use the OCD language?

14 COMMISSIONER BLOOM: Yes.

15 COMMISSIONER BALCH: Okay. Do you need
16 that language?

17 CHAIRWOMAN BAILEY: All right. We can
18 move on to definition of sump. Shall we do that
19 after lunch?

20 COMMISSIONER BALCH: Looks like a long
21 one.

22 CHAIRWOMAN BAILEY: It's one that could
23 possibly take some time and discussion.

24 COMMISSIONER BLOOM: Yes.

25 CHAIRWOMAN BAILEY: When would you like to

1 come back?

2 COMMISSIONER BLOOM: 1:00 o'clock?

3 CHAIRWOMAN BAILEY: Ten after 1:00 we will
4 reconvene.

5 (Note: The hearing stood in recess at
6 11:52 to 1:10.)

7 CHAIRWOMAN BAILEY: We will go back on the
8 record. Mr. Smith, as commission counsel, you said
9 you wanted to say something?

10 MR. SMITH: Yes. Could we put the
11 document back up on the screen. Go down to
12 closed-loop. Can you all see that? It has been
13 brought to my attention, and I have confirmed, that
14 during the hearing IPANM requested the word "or
15 workover" be pulled from that definition, and I
16 wanted to draw that to your attention so you could
17 consider whether to do so or not.

18 COMMISSIONER BALCH: If I recall, the
19 concern was if you were doing a simple recompletion
20 you have to file a form.

21 CHAIRWOMAN BAILEY: And in the IPANM's
22 proposed Findings of Fact they do reiterate that
23 IPANM deleted the words "workover" before the word
24 "fluids" so that in Section 19.15.17.9 only
25 notification of the use of closed-loop systems

1 during operations would be required.

2 MR. SMITH: I would like to point out that
3 I think it's important that it be a reiteration.
4 Asking for something after the record has been
5 closed and the public has not had the ability to
6 comment, I think would be inappropriate. But this
7 was requested during the hearing so I think you
8 could consider this change.

9 CHAIRWOMAN BAILEY: Okay. So the request
10 is to delete the word "workover" and make it "a
11 system that uses above-ground steel tanks for the
12 management of drilling fluids."

13 MR. SMITH: That's the suggestion. They
14 haven't done it yet.

15 CHAIRWOMAN BAILEY: Commissioner Bloom?

16 COMMISSIONER BLOOM: I'm sorry, would you
17 point me to the IPANM's closing statement? I don't
18 know if there's page numbers.

19 CHAIRWOMAN BAILEY: It's this far back
20 into the Findings of Fact. The section is labeled
21 the IPANM Petition Section --

22 COMMISSIONER BLOOM: I see it. Thank you.

23 CHAIRWOMAN BAILEY: And they reference
24 Mr. Mullins' testimony and Mr. Scott.

25 COMMISSIONER BLOOM: My question to you

1 would be does the OCD want to be notified if the
2 closed-loop system is being used for a workover?

3 COMMISSIONER BALCH: It could be a really
4 simple, small job.

5 COMMISSIONER BLOOM: Are we considering,
6 in terms of notification for closed-loop systems,
7 just turning it into a box that's checked?

8 CHAIRWOMAN BAILEY: I believe that's
9 what's proposed.

10 COMMISSIONER BLOOM: Right. So --

11 CHAIRWOMAN BAILEY: If we go further into
12 that paragraph of IPANM's Findings of Fact, it says,
13 "As noted by Mr. Mullins, the intent of the Pit Rule
14 regulation concerns management of solids or drill
15 cuttings. Mr. Scott defined the closed-loop system
16 as solids removal equipment that is in addition to
17 normal drilling equipment that would be utilized to
18 dewater the solids on location and move them from
19 the location to a central facility. Therefore,
20 closed-loop systems are part of the drilling
21 operation."

22 COMMISSIONER BLOOM: I think it goes on in
23 the next paragraph, too.

24 CHAIRWOMAN BAILEY: Yes.

25 COMMISSIONER BLOOM: Down below it says

1 Mr. Martin for the OCD agreed that "this Pit Rule
2 doesn't pertain to workovers." That's in the
3 transcript, Page 1917. He would not have a problem
4 taking the word "workover" out of the definition if
5 the operator is using a tank and not a full
6 closed-loop system with a shale shaker, et cetera.

7 CHAIRWOMAN BAILEY: Okay. So do you
8 believe that we could delete the words "or workover"
9 and leave it only for drilling cuttings? While you
10 think about it, Dr. Balch?

11 COMMISSIONER BALCH: Well, I can think of
12 wells where they go in every couple months to clean
13 out paraffin so you are potentially creating a flood
14 of forms that don't provide any purpose, and I think
15 the intent as stated was to manage the solids.

16 CHAIRWOMAN BAILEY: I agree.

17 COMMISSIONER BLOOM: Okay. I think I
18 agree with that.

19 CHAIRWOMAN BAILEY: Okay. So we will
20 remove the words "or workover" from the definition
21 of closed-loop systems so it reads "Means a system
22 that uses above-ground steel tanks for the
23 management of drilling fluids." Did you have
24 anything else, Mr. Smith?

25 MR. SMITH: No, ma'am. Except that I do

1 have a search that Theresa did for on-site and
2 off-site whenever you all are ready to go back and
3 consider it.

4 CHAIRWOMAN BAILEY: Well, we can since she
5 has it handy.

6 MR. SMITH: Probably I should just hand it
7 to you guys.

8 COMMISSIONER BALCH: Looks like a good
9 number of instances.

10 COMMISSIONER BLOOM: A lot of those will
11 be to on-site burial.

12 CHAIRWOMAN BAILEY: Right. Why don't we
13 just leave it as-is unless we see a reason to change
14 it when we get farther back into it?

15 COMMISSIONER BLOOM: I think that's wise.

16 COMMISSIONER BALCH: Continue on until we
17 finish the rest of the definitions.

18 COMMISSIONER BLOOM: This was in reference
19 to the multi-well fluid management pits, correct.

20 CHAIRWOMAN BAILEY: Yes. Okay. We can go
21 to sump as our next definition. And the suggested
22 language has been "means a subgrade impermeable
23 vessel that is partially buried into ground. It's
24 in contact with the ground surface or is a
25 collection device incorporated within a secondary

1 containment system with a capacity less than or
2 equal to 500 gallons, which remains predominantly
3 empty, serves as a drain or receptacle for de
4 minimis releases on an intermittent basis, and is
5 not used to store, treat, dispose of or evaporate
6 products of waste." Adding the language "Buckets,
7 pails, drip pans or similar vessels that are not in
8 contact with the ground surface are not sumps."

9 Dr. Neeper, in his testimony, requested
10 that we remove the size so that we have a system
11 which remains predominantly empty. Doesn't matter
12 what size, according to Dr. Neeper.

13 COMMISSIONER BALCH: And 500 gallons is
14 approximately 20 barrels, I guess, between 15 and 20
15 barrels. I can envision a system where you may want
16 to have a larger sump. If you have a limitation on
17 the size, you might have under-engineered a
18 protected response that you are trying to achieve.

19 CHAIRWOMAN BAILEY: That's a point. The
20 OCD has suggested language which says, "A collection
21 device with a capacity less than or equal to 500
22 gallons." That's if we decide we want to use that
23 size, "Which remains predominantly empty and serves
24 as a drain or receptacle for releases on an
25 intermittent basis and is not used to store, treat,

1 dispose of or evaporate products or wastes.
2 Buckets, pails, drip pans, et cetera." So it's just
3 a change of wordsmithing there for the OCD's
4 suggestion.

5 I think the de minimis phrase is an
6 important key to what this is and I believe that
7 inspectors have had problems considering buckets as
8 sumps and so I understand why that last sentence was
9 added to this definition.

10 COMMISSIONER BLOOM: I think that last
11 sentence certainly makes sense in light of that.

12 COMMISSIONER BALCH: The function of the
13 sump is to be an always-present emergency overflow,
14 not a bucket or other catch basin language.

15 CHAIRWOMAN BAILEY: I have no problem with
16 this definition as proposed. And you say that we
17 should leave the volume description in there?

18 COMMISSIONER BALCH: I think so. This is
19 a question of function, and as Dr. Neeper said, the
20 size of it really depends upon what it is you are
21 trying to protect. I may have made that last
22 interpretation myself. The function is to have an
23 emergency overflow that is sufficient for every
24 operation.

25 COMMISSIONER BLOOM: Are sumps subject to

1 inspection?

2 CHAIRWOMAN BAILEY: Yes.

3 COMMISSIONER BLOOM: Okay. How frequent
4 is that?

5 CHAIRWOMAN BAILEY: Whenever the inspector
6 is out at the facility.

7 COMMISSIONER BALCH: If it has fluid in
8 it, it better have been in there a very short period
9 of time. The sump is the catch basin and then they
10 will come and pump it out with a truck or something
11 like that.

12 CHAIRWOMAN BAILEY: On an intermittent
13 basis and not used to store, treat, dispose of or
14 evaporate. So shall we accept Dr. Neeper's
15 modification?

16 COMMISSIONER BLOOM: My concern is these
17 get really big and we are engineering something
18 that's huge and this is sitting on the ground, but
19 if it's inspected and the integrity is checked, I
20 don't think the size particularly matters.

21 COMMISSIONER BALCH: You want them to size
22 it to the job.

23 COMMISSIONER BLOOM: Yeah. Okay.

24 CHAIRWOMAN BAILEY: So we can delete the
25 language "with the capacity less than or equal to."

1 So it would read, "Or is a collection device
2 incorporated within a secondary containment system
3 which remains predominantly empty." Is that
4 correct?

5 COMMISSIONER BLOOM: Yes.

6 CHAIRWOMAN BAILEY: We can go to the next
7 definition, temporary pit? Dr. Neeper also
8 suggested that if we incorporate the words "and
9 solids" that we specify that that's minimal solids
10 and not paint cans.

11 COMMISSIONER BALCH: He suggested "and
12 solids".

13 CHAIRWOMAN BAILEY: Which NMOGA did not
14 have "and solids."

15 COMMISSIONER BLOOM: My only concern is
16 would a paint can be interpreted as a mineral solid?

17 CHAIRWOMAN BAILEY: That would really be
18 pushing it.

19 COMMISSIONER BLOOM: I thought we could
20 include it. There might be a better way to phrase
21 it.

22 COMMISSIONER BALCH: Well, I think
23 Dr. Neeper's concern was people throwing wrenches or
24 a chunk of broken pipe. Some of it may damage the
25 inner liner integrity really. I think that's a

1 valid concern.

2 CHAIRWOMAN BAILEY: Yes. And then IPANM
3 suggested that we add the language, "Will be closed
4 in less than one year from the spud date" so that we
5 have a beginning time to start from when we are
6 talking about closure.

7 COMMISSIONER BLOOM: Can I raise an issue
8 here? There's a lot of things that we may be trying
9 to do with the temporary pit so it would be
10 extending the closure date out six months. You
11 might have that pit serving more than one well. It
12 would then be burying its contents with different
13 concentration of contaminants that are of interest
14 to us.

15 COMMISSIONER BALCH: I think there's
16 actually a separate -- we are addressing multi-well
17 fluid management pits separately from temporary pit,
18 which are just for the drilling phase of the
19 operation, whereas multi-well management pits are
20 more for completion.

21 COMMISSIONER BLOOM: Here I'm talking
22 about the temporary pit being used for more than one
23 wells.

24 COMMISSIONER BALCH: I see, yes. We have
25 the on-site or off-site again.

1 COMMISSIONER BLOOM: One thing I would
2 add, too, is the way we have been asked to deal with
3 the temporary pit is allow the liquids to stay in 60
4 days versus the current 30, so we are going to have
5 more liners out there. It might have liquids in it
6 30 days post-production or 60 days. It could have
7 six months exposure to the elements or now it could
8 be a year.

9 COMMISSIONER BALCH: Not only a year, but
10 if you have multiple wells, when does the spud date
11 start? On the first well or the second well or the
12 third or the fifth?

13 CHAIRWOMAN BAILEY: It's not specific, is
14 it?

15 COMMISSIONER BALCH: No. Again, I think
16 you would like to be able to come up with a way
17 where you could use the pit for more than one well
18 if you have closely spaced completions. You don't
19 want four pits if you can avoid it.

20 CHAIRWOMAN BAILEY: We encourage reuse and
21 recycled and drilling pits can be reused and
22 recycled.

23 COMMISSIONER BALCH: I think if we can
24 come up with a way to ensure that they don't become
25 semi-permanent as we did with multi-well pits that

1 can be transparently regulated, that will be a good
2 idea.

3 CHAIRWOMAN BAILEY: We would be dealing
4 with that under the closure requirement.

5 COMMISSIONER BLOOM: Let me throw one more
6 thing out there, and that is when I believe it was
7 Mr. Gantner was giving his testimony on allowing a
8 temporary pit to serve more than one well, he said
9 that typically there have been periods in the past
10 where they wanted one pit to serve two wells, and it
11 sounded like that's what they wanted to do.

12 Commissioner Balch, when you were cross-examining
13 Mr. Gantner, that came up again, that really what
14 they are looking to do is have that pit serve two
15 wells.

16 COMMISSIONER BALCH: It would become
17 impractical certainly to serve more than a few
18 because of spacing. But if you could use one for
19 two or one for three, that would be efficient.

20 COMMISSIONER BLOOM: I guess my only
21 reservation about -- no, I have a couple
22 reservations about extending the temporary pit to
23 more than one well, and that would be when we
24 see more of a -- I don't know if it's a reservation
25 but we might see more of a concentration of

1 contaminants that we are concerned about, but I
2 guess the pit would be dealt with accordingly.

3 COMMISSIONER BALCH: You have to close the
4 pit if you are above the threshold.

5 COMMISSIONER BLOOM: Right, doesn't matter
6 how many wells fed into it. So maybe I don't have
7 to worry about that. The other one is if the pit is
8 being used for this extended period of time, it
9 might not be an extended period of time but seeing
10 more use, more fluids going through it, will the
11 liner hold up to the same extent?

12 COMMISSIONER BALCH: I'm not sure we heard
13 any direct testimony about how durable pits are,
14 temporary pits.

15 CHAIRWOMAN BAILEY: No, there are
16 specifications for the thickness of the liner and
17 there are specifications for tears in the liner
18 above or below the water line.

19 COMMISSIONER BALCH: So in the definition
20 the way it's written right now, it says "constructed
21 with the intent that it will hold liquids and will
22 be closed in less than one year," so it doesn't
23 matter how many wells you service if you close
24 within one year.

25 CHAIRWOMAN BAILEY: If you add "from the

1 spud date."

2 COMMISSIONER BALCH: It would have to be
3 the first well. That's when you are into operation.

4 CHAIRWOMAN BAILEY: We could say that,
5 from the spud date of the first well.

6 COMMISSIONER BALCH: Would that alleviate
7 your concern, Commissioner Bloom? The time starts
8 when you first start to use the pit basically?

9 COMMISSIONER BLOOM: I think that would be
10 helpful.

11 CHAIRWOMAN BAILEY: So we could insert the
12 words, "And would be closed within one year from the
13 spud date of the first well." Do we need to get
14 more specific than "of the first well"?

15 MR. SMITH: I was just thinking about
16 that. Why don't you leave it that way for now.

17 CHAIRWOMAN BAILEY: Okay. I have some
18 concerns about the last sentence of this definition
19 where it says, "Any freshwater containment structure
20 such as a pond, pit or other impoundment is not a
21 temporary pit." I would like to insert the word,
22 "Any untreated freshwater structure." Or "any
23 containment structure holding untreated freshwater
24 if it does not include produced water or other
25 fluids or contaminants."

1 Because so many times the freshwater
2 containment structure could have biocide or
3 something added to it, and in my mind that's no
4 longer freshwater containment.

5 COMMISSIONER BALCH: Do we have somewhere
6 a definition of freshwater? I don't know if this
7 happens in New Mexico or if it has happened, but
8 when you are trying to find water for frac fluids,
9 people are going to untraditional sources -- city
10 water, which might be treated to make it, obviously,
11 more drinkable.

12 CHAIRWOMAN BAILEY: True.

13 COMMISSIONER BALCH: Swimming pools.

14 CHAIRWOMAN BAILEY: You would have the
15 chlorine. Well, that's an interesting point.

16 COMMISSIONER BALCH: I appreciate the
17 distinction, because this is something that will
18 probably be open to have cattle come up and drink
19 out of it. A kid might swim in it, things like
20 that.

21 CHAIRWOMAN BAILEY: Or we could put it
22 this way: "Any freshwater containment structure
23 such as a pond, pit or other impoundment is not a
24 temporary pit if it does not include produced water
25 or other fluids or mixed contaminants."

1 COMMISSIONER BALCH: Can we put that up?

2 CHAIRWOMAN BAILEY: "If it does not
3 contain produced water or other fluids or other
4 contaminants."

5 COMMISSIONER BALCH: Other contaminants?

6 MR. SMITH: Is contaminant defined?

7 CHAIRWOMAN BAILEY: No.

8 MR. SMITH: I didn't think so.

9 COMMISSIONER BLOOM: Does not contain
10 produced water or other industry-related fluids?
11 Industry-specific fluids?

12 COMMISSIONER BALCH: Well, the word
13 "treated" is great. The problem is, what if they
14 are using city water? You don't want them to take a
15 non-temporary pit, storage, for water and then start
16 to pretreat it for stimulation fluid.

17 CHAIRWOMAN BAILEY: We could use the word
18 "industry fluids." Scratch the last part "or other
19 contaminants" and just say, "Does not contain
20 produced water or other industry fluids,
21 industry-related fluids." This is going to be an
22 attractive structure for wildlife of any kind.

23 COMMISSIONER BLOOM: If it was treated
24 city water it would still fit in that definition
25 unless there's an issue with chlorine or something.

1 COMMISSIONER BALCH: I wonder if there's a
2 definition for freshwater.

3 CHAIRWOMAN BAILEY: I don't think the WQCC
4 has a definition of freshwater, but I know that
5 IPANM in their Findings of Fact -- was it?

6 MR. SMITH: Commissioner Balch, why does
7 the last sentence need to be in there? Why do we
8 need to exclude these?

9 COMMISSIONER BALCH: Well, okay. So we
10 are going to be permitting temporary pits. This
11 would be a holding pond somewhere where they store
12 freshwater nearby from a farm or some other source
13 and then they will be distributing it to pits
14 through trucking or something like that. That's my
15 interpretation. What you don't want them to do is
16 to take that big pond and start messing with its
17 chemistry prior to it being a production pit, so
18 it's really -- I think this is a form for
19 approaching kind of a discussion. If we go back to
20 what the basic definition is, we might be able to
21 come at this from another direction.

22 CHAIRWOMAN BAILEY: But I don't think we
23 have a definition for freshwater. We have something
24 that's been suggested.

25 MR. SMITH: Would it help if you put

1 instead of any freshwater containment structure, any
2 containment structure that holds freshwater or that
3 is holding freshwater? Because if it's freshwater
4 it's not going to be produced. It's not going to be
5 fresh, is it, if it has industry-related fluids in
6 it? Do you have all you need just by saying
7 freshwater and taking the structure and reversing it
8 so that the structure is defined by that which it
9 holds?

10 COMMISSIONER BALCH: I think that maybe
11 the way to go on this is somehow getting language
12 that it does not have an influx of water from a
13 producing well --

14 CHAIRWOMAN BAILEY: No, we don't want it
15 to be treated with --

16 COMMISSIONER BALCH: Well, other
17 industry-related fluids, I think that covers
18 everything.

19 CHAIRWOMAN BAILEY: It really does.

20 COMMISSIONER BALCH: But in
21 interpretation, what's an industry-related fluid?
22 Well, not all industry-related fluids do not have
23 other uses. You know, there are contexts. For
24 example, chlorine to city water or fluoride or
25 something like that. I'm sure there's probably

1 better examples out there than that. The main thing
2 is this is a source of freshwater and it's never had
3 contact from industry. All they would be doing is
4 drawing fluid from it. That's the bottom line.

5 MR. SMITH: Why not just say, "Can only
6 contain freshwater"?

7 CHAIRWOMAN BAILEY: Let's structure it
8 that way.

9 COMMISSIONER BALCH: Unless somebody wants
10 to argue that the City of Hobbs' water isn't fresh.

11 MR. SMITH: Hobbs will be pleased, I'm
12 sure.

13 CHAIRWOMAN BAILEY: So it should read --
14 how did you have it before?

15 MR. SMITH: So it would be "a containment
16 structure that holds freshwater, such as" -- and
17 then it would go on.

18 CHAIRWOMAN BAILEY: Holds only freshwater.

19 COMMISSIONER BALCH: Holds only
20 freshwater.

21 MR. SMITH: What you want to do is after
22 the word "any" at the beginning --

23 COMMISSIONER BLOOM: Type it out after
24 that sentence and we can compare it. Start over.

25 MR. SMITH: "Any containment structure

1 that holds only freshwater" and then continue on
2 with it just the way it is up there, "such as a
3 pool, pit or other," and just repeat that. I'm
4 sorry, stop. Okay. Go ahead.

5 COMMISSIONER BLOOM: Stop at pit or keep
6 going?

7 COMMISSIONER BALCH: I think you stop at
8 pit.

9 CHAIRWOMAN BAILEY: Are we agreed on that?

10 COMMISSIONER BLOOM: Yes.

11 COMMISSIONER BALCH: Yeah.

12 CHAIRWOMAN BAILEY: Theresa, if you would
13 delete the previous sentence then.

14 MR. SMITH: What you might do after the
15 first well up there, Madam Chair, you remember you
16 asked should we just leave it at that? Spud date of
17 the first well?

18 CHAIRWOMAN BAILEY: Yes.

19 MR. SMITH: You might want to put in there
20 after the first well language like "the liquid from
21 which is placed in the pit."

22 COMMISSIONER BALCH: We want to say
23 basically when the pit first goes into service.

24 MR. SMITH: Right. It would be the spud
25 date from the first well, the liquid of which is

1 placed in the pit. It would still be the spud date.

2 COMMISSIONER BLOOM: We marked spud date,
3 though, right? And I don't know if we marked when
4 the liquid would first come out of the well and into
5 the --

6 COMMISSIONER BALCH: It could be some time
7 later. I don't know.

8 CHAIRWOMAN BAILEY: We have not discussed
9 whether or not it should be open for six months or
10 closed in less than a year.

11 COMMISSIONER BLOOM: We need to talk about
12 that, and one well or more than one well.

13 CHAIRWOMAN BAILEY: We need to have that
14 starting date as to when you are going to require
15 the closure.

16 COMMISSIONER BLOOM: I think I would be
17 okay with spud date of the first well.

18 COMMISSIONER BALCH: Spud date is clearly
19 identifiable in the city records.

20 MR. SMITH: The first well on the lease?
21 The first well in the area?

22 CHAIRWOMAN BAILEY: First well using the
23 pit.

24 COMMISSIONER BLOOM: The shared pit or
25 something.

1 COMMISSIONER BALCH: The problem is you
2 have "Temporary pits may be used for more than one
3 or more wells." I think you want to take the
4 "Temporary pits may be used for on or more wells"
5 and put that in front of -- there's no place to put
6 it. We're talking about the concept of multiple
7 wells before we define the possibility of multiple
8 wells.

9 MR. SMITH: Yeah, I think that makes
10 sense. So what Commissioner Balch is talking about,
11 see the first red that says "temporary pits may be
12 used"? Take that sentence and put it --

13 COMMISSIONER BLOOM: Put it behind "six
14 months."

15 CHAIRWOMAN BAILEY: Why did you want to
16 move that sentence?

17 MR. SMITH: Well, I think the reason
18 Commissioner Balch wanted to move it is because it
19 makes it plain that a temporary pit may be used for
20 more than one wells, because the definition of your
21 spud date implies that there may be more than one
22 well that is used. So the movement of that sentence
23 would be laying the predicate for the implication
24 that more than one well can be used. The problem
25 is, it doesn't make any sense to say "Temporary pit

1 means temporary pits may be used." That's not going
2 to work.

3 COMMISSIONER BALCH: Maybe if you went
4 right up to where it says, "Which is constructed for
5 the use of one or more wells and with the intent" --

6 MR. SMITH: Wait a minute. You can say,
7 "Means a pit including a drilling or workover pit
8 which is constructed with the intent that the pit
9 will hold liquids," period. "Temporary pits may be
10 used for more than one wells," blah blah blah. Then
11 make it temporary pit -- make it mandatory --
12 temporary pits must be closed in less than one --
13 and then move on that way. That way you accomplish
14 what you want to accomplish.

15 COMMISSIONER BALCH: Now we are just
16 adding the time.

17 MR. SMITH: Do you want to see what that
18 looks like? What you want to do, I think, is
19 instead of "and" put "temporary pits must be
20 closed." See if that does what you want.

21 CHAIRWOMAN BAILEY: So the question
22 becomes we have a temporary pit that may be used --
23 that has drilling mud and other fluids that may be
24 used for more than one well. The pit does not have
25 netting but it does have a fence. It is lined. It

1 may be located off-site from where they were reused,
2 recycled, that drilling mud. So the question is,
3 can we leave it open for a year or does it need to
4 be closed in six months?

5 COMMISSIONER BLOOM: No.

6 COMMISSIONER BALCH: What have you been
7 seeing in practice? Do you have a lot of people
8 asking for extensions?

9 CHAIRWOMAN BAILEY: Yeah.

10 COMMISSIONER BLOOM: Very often? Common
11 enough where you are going to increase the paperwork
12 load?

13 CHAIRWOMAN BAILEY: Yes.

14 COMMISSIONER BLOOM: The extension is
15 granted?

16 CHAIRWOMAN BAILEY: Most of the time
17 unless there's reason not to.

18 COMMISSIONER BALCH: All they can do is
19 shut the drilling down and close the bid and open a
20 new one. Okay. So currently it's six months, which
21 appears to at least in some percentage of cases be
22 too short.

23 CHAIRWOMAN BAILEY: Especially if it's
24 during wintertime or something.

25 COMMISSIONER BALCH: What sort of

1 extensions are usually granted?

2 CHAIRWOMAN BAILEY: Six months.

3 COMMISSIONER BALCH: Which makes it a
4 year. So essentially it's automatically granting
5 the extension for six months under the current Rule
6 19.

7 CHAIRWOMAN BAILEY: There was some
8 discussion about that in the transcript.

9 COMMISSIONER BLOOM: Chairman Bailey, do
10 we ever grant a second extension?

11 CHAIRWOMAN BAILEY: Not that I'm aware of.

12 COMMISSIONER BLOOM: Could we --

13 CHAIRWOMAN BAILEY: There would have to be
14 extenuating circumstances?

15 COMMISSIONER BLOOM: Would we put language
16 in there that would say something along the lines
17 of, "Extensions will not be granted after one year."

18 COMMISSIONER BALCH: I think "must be
19 closed" kind of takes care of that. If they don't
20 want to close it, they have to go to hearing.

21 COMMISSIONER BLOOM: True.

22 CHAIRWOMAN BAILEY: Or ask for a variance.

23 COMMISSIONER BALCH: We haven't gotten to
24 that yet.

25 CHAIRWOMAN BAILEY: That's tomorrow.

1 COMMISSIONER BLOOM: With what we heard
2 from testimony, it was the desire to use the
3 temporary pit for two wells? I think I would be
4 more comfortable with that language in that we're
5 not creating a backdoor to a multi-well temporary
6 pit, I guess.

7 COMMISSIONER BALCH: Something like, "As
8 many as two wells" or three wells or something.

9 COMMISSIONER BLOOM: Temporary pits may be
10 used for up to two wells?

11 CHAIRWOMAN BAILEY: Up to two wells?

12 COMMISSIONER BLOOM: One or two wells.

13 COMMISSIONER BALCH: I guess if they want
14 to do three or four they have to ask for an
15 exception or a variance. I would be comfortable
16 with that. I think it becomes impractical to
17 service too many wells with one drilling pit.

18 CHAIRWOMAN BAILEY: Well, the mud
19 itself --

20 COMMISSIONER BALCH: If you have to pump
21 at any distance.

22 COMMISSIONER BLOOM: Help me get a better
23 understanding of on-site/off-site implications
24 because now you typically see the temporary pit
25 there in very, very close proximity to the well.

1 What sort of distances could we be looking at
2 between them? Where would the pit be located
3 between two wells?

4 COMMISSIONER BALCH: What is on-site and
5 what is off-site?

6 COMMISSIONER BLOOM: Yeah.

7 COMMISSIONER BALCH: A drilling pad could
8 be one definition of on-site and it could also be
9 the entire lease.

10 CHAIRWOMAN BAILEY: Uh-huh. If the size
11 of the lease varies depending on what the Land
12 Office and the federal government or the fee lands
13 determine.

14 COMMISSIONER BLOOM: What could the
15 spacing be?

16 COMMISSIONER BALCH: Down to 20 for the --

17 CHAIRWOMAN BAILEY: What, spacing?

18 COMMISSIONER BLOOM: That's the smallest
19 spacing I could think of.

20 CHAIRWOMAN BAILEY: For in-field drilling.
21 But we also have the 320 and 640.

22 COMMISSIONER BALCH: That's where -- it
23 would probably be impractical to use the temporary
24 pit for two wells at the 320 unless you have them
25 near each other with horizontals always going away.

1 CHAIRWOMAN BAILEY: From the same well pad
2 we may have multiple wells because of directional
3 drilling. So the definition that says only two
4 wells, we may have multiple wells coming off of that
5 same well pad.

6 COMMISSIONER BALCH: They have drilling
7 islands in the potash reserve.

8 CHAIRWOMAN BAILEY: Yes. So that would be
9 a real problem because we would like to have as
10 little surface disturbance or as few pits as
11 necessary.

12 COMMISSIONER BLOOM: In that case, I guess
13 then I have renewed concern for the protection
14 offered by the 20 mil liner. I think if we increase
15 the number of wells, horizontal, to share one head,
16 does that --

17 COMMISSIONER BALCH: The problem with
18 liners, you know, within a year it's not going to
19 degrade because of the environment. It will degrade
20 because of people throwing a wrench on it and
21 running over it with bulldozers or something like
22 that. Sharp rocks maybe a little bit? I don't
23 know. The 20 mil liner is pretty thick.

24 CHAIRWOMAN BAILEY: It is.

25 COMMISSIONER BALCH: I think we actually

1 have testimony -- I can't remember who said it but
2 of closing the pit and seeing the outline of a
3 wrench in the bottom of the liner. So it can take a
4 good amount of abuse.

5 COMMISSIONER BLOOM: I don't know if this
6 was during the hearing or elsewhere but I think we
7 have seen pictures, too, of liners that have been
8 torn up by the wind and probably come loose,
9 unanchored, and they don't last long in 50
10 mile-an-hour New Mexico winds.

11 COMMISSIONER BALCH: That's a little hard
12 to predict, because if the wind event happens in
13 August and you drill it in September the previous
14 year, it would take 12 months for it to get to that
15 point. But if you drill it in July, it might happen
16 within 30 days. So that is really up to the good
17 design and good monitoring of the pit during its
18 operation, which I think may fall more appropriately
19 under the Spill Rule.

20 CHAIRWOMAN BAILEY: Well, we do address
21 reporting of torn liners later in the rule.

22 COMMISSIONER BLOOM: We don't need to get
23 too far out. I don't know that a 20 mil liner is
24 going to survive 50 mile-an-hour winds better than a
25 30 mil liner. I hadn't considered that, but we

1 could have multiple wells coming off of one hole and
2 you are protective of the disturbance and not have
3 too much surface disturbance.

4 CHAIRWOMAN BAILEY: We want to allow the
5 drilling pit to be there for all wells that are
6 drilled on-site.

7 COMMISSIONER BALCH: What happens now in
8 case of one of these drilling islands?

9 CHAIRWOMAN BAILEY: Well, we don't have
10 any yet.

11 COMMISSIONER BALCH: I know Bass has
12 drilled wells in the potash reserve. There's
13 drilling islands.

14 CHAIRWOMAN BAILEY: Okay, but not the one
15 that's been proposed by the BLM.

16 COMMISSIONER BALCH: Well, that's somebody
17 else's can of worms.

18 MR. SMITH: If your concern is multiple
19 wells from one pad, isn't that of necessity going to
20 be on-site?

21 CHAIRWOMAN BAILEY: Yes.

22 MR. SMITH: So why would you want to leave
23 off the "or off-site"?

24 COMMISSIONER BALCH: I think the thing we
25 are wrestling with is what is on-site? Is it the

1 entire lease or is it the pad? If it's the entire
2 lease it could be quite a distance away.

3 CHAIRWOMAN BAILEY: But we don't want to
4 limit the number of wells that can use the well pad,
5 as we were discussing a while ago.

6 MR. SMITH: Why don't you say for more
7 than one well?

8 COMMISSIONER BALCH: We have one or more
9 wells was the original language.

10 MR. SMITH: One or are more wells and then
11 tie that to the pad if that's what you are concerned
12 about.

13 COMMISSIONER BALCH: There's two
14 scenarios. There's the scenario where you have a
15 drilling island and there are multiple wells from a
16 relatively larger well than normal for five or six
17 laterals going up. Also in shale drilling now they
18 do a lot of this and if shale drilling becomes big
19 in New Mexico you will see the same thing, where you
20 have multiple laterals and you have a pad that's
21 long and you have the wellheads spaced every 25 to
22 30 feet or something like that. The other scenario
23 is where you have two leases next to each other.
24 Say they're 320, but your pads are close enough to
25 each other where you can share one drilling pad. So

1 there's two scenarios that are addressed by this
2 language.

3 MR. SMITH: Well, maybe it introduces some
4 vagary, but instead of saying either on-site or
5 off-site, do you want to introduce the notion of
6 proximity to the well pad?

7 COMMISSIONER BALCH: I think we need to
8 figure out what on-site and off-site mean, whether
9 it's proximity or lease-wide or something.

10 CHAIRWOMAN BAILEY: Do you want to review
11 the suggested language that came in in the public
12 comment from R360? The word "on-site" to mean
13 within the boundaries of the lease and/or
14 development plan wherein exploration and production
15 waste continues to be under the control and
16 management of the operator/producer.

17 COMMISSIONER BALCH: Yeah.

18 COMMISSIONER BLOOM: What about the
19 scenario where you have a lease, 640 acres, and you
20 have two 320s and they both want to drill from the
21 same corner, so essentially your pit could be a half
22 mile apart. Would this even be feasible?

23 COMMISSIONER BALCH: I think it becomes
24 impractical to pump the mud that distance.

25 COMMISSIONER BLOOM: So it would be more

1 in the case you just described to Mr. Smith of two
2 320s and the wells are being drilled on the line
3 and --

4 COMMISSIONER BALCH: The well pads would
5 have to be fairly close to each other, I think, to
6 make it practical.

7 COMMISSIONER BLOOM: So that really
8 wouldn't be a concern if we have a pit on one corner
9 of a 320 and then a few hundred -- assuming a half
10 mile away you have the other well being drilled and
11 that temporary pit is going to service that well.
12 That would not happen. It's just impractical.

13 COMMISSIONER BALCH: I'm not an expert on
14 that sort of fluid flow, but you have a mud and
15 you're circulating it. That's going to have an
16 awful lot of resistance. I don't think practically
17 that you could have something that was significantly
18 longer. You would use it in a case where you have
19 two very near well pads.

20 COMMISSIONER BLOOM: Perhaps one line of
21 thinking on this could be we want to have different
22 language for a temporary pit that's servicing
23 multiple horizontals off of one pad and other
24 language where we have the separate scenario where
25 it's two 320s on a 640 acre lease? I'm just

1 throwing stuff out.

2 CHAIRWOMAN BAILEY: If it is impractical
3 or too expensive, industry is not going to use the
4 mud, so in that way it is limiting right there. If
5 we allow the language to say "temporary pits may be
6 used for one or more wells," then that takes care of
7 the multi laterals from one lease or one well pad.

8 COMMISSIONER BALCH: Well, I think it
9 really comes down to timing. How long do you want a
10 temporary pit to exist? If you are going to service
11 so many multi laterals it will take you more than a
12 year, you probably ought to do something different
13 with your pit. I think that really boils down your
14 concern.

15 COMMISSIONER BLOOM: It does.

16 COMMISSIONER BALCH: So for the first
17 thing to decide, I think, is how long you would let
18 a temporary pit exist, no matter how many wells are
19 using it. Then if you need a pit for longer than
20 that, there's a solution. It's called a permanent
21 pit.

22 CHAIRWOMAN BAILEY: No, permanent pits are
23 only for producing --

24 COMMISSIONER BALCH: Well, okay, you're
25 right. I think that's where you would have to

1 trigger a variance or --

2 CHAIRWOMAN BAILEY: The automatic renewal.

3 COMMISSIONER BALCH: Well, some sort of
4 oversight. If you want to have a temporary pit more
5 than X time, be it a year or six months or whatever,
6 I think that's a different animal. You have to look
7 for something different. Now, if you do ask for an
8 exception or a variance, then I guess there's a
9 process for that.

10 COMMISSIONER BLOOM: Under Rule 17 we
11 haven't seen much use of the exception, so I don't
12 know that there would be anything out there. But
13 have you seen, Chairman Bailey, any requests for an
14 exception that would allow a temporary pit to go
15 more than a year?

16 CHAIRWOMAN BAILEY: That's handled at the
17 district office, so I would not necessarily become
18 aware of it. It's just handled through the district
19 supervisor.

20 COMMISSIONER BLOOM: Would a more robust
21 liner be required?

22 CHAIRWOMAN BAILEY: No, because you are
23 not going to reline the pit that's already there.

24 COMMISSIONER BLOOM: That's true. I was
25 wondering if the exception occurred from the

1 outside.

2 CHAIRWOMAN BAILEY: We did have
3 discussions about the automatic renewals for the
4 closure of the pits. Remember that? Where they get
5 the six-month extension?

6 COMMISSIONER BLOOM: I don't remember
7 that. I will have to go back and read it. That was
8 a proposal?

9 CHAIRWOMAN BAILEY: Ms. Foster talked or
10 questioned the witnesses about the automatic
11 extensions. And it is regularly given. So if we
12 are having multiple wells using one pit so that we
13 have less disturbance, I don't think that it's out
14 of line to go ahead and have the one-year closure
15 time and then that saves that surface disturbance.

16 COMMISSIONER BALCH: I think if it's more
17 than a year, then apply for an exception or variance
18 and they would go to the district office and/or
19 hearing, and then that hearing or the district
20 office might specify a more stringent liner or
21 something like that.

22 CHAIRWOMAN BAILEY: But the liner is
23 already there. It's not like --

24 COMMISSIONER BALCH: Well, I'm talking
25 about a case where somebody knows they will need it

1 for more than a year, where they are going to drill
2 eight laterals from one well pad. It hasn't
3 happened in New Mexico yet but I think it could
4 happen.

5 CHAIRWOMAN BAILEY: We could always leave
6 that door open for an operator that has that many
7 wells or knows beforehand they'll need it. So can
8 we live with the definition "means a pit including a
9 drilling or workover pit which is constructed with
10 the intent that the pit will hold liquids"? Well,
11 it's also going to hold solids.

12 COMMISSIONER BLOOM: Mineral solids,
13 right?

14 COMMISSIONER BALCH: Liquids and mineral
15 solids.

16 CHAIRWOMAN BAILEY: "Will hold liquids and
17 mineral solids. Temporary pits may be used for one
18 or more wells." Delete that up to two wells, "and
19 located either on-site or off-site of a well
20 drilling location. Temporary pits must be closed in
21 less than one year from the spud date of the first
22 well using the pit. Any containment structure that
23 holds only freshwater, such as a pond, pit or other
24 impoundment, is not a temporary pit." Can we live
25 with that?

1 COMMISSIONER BALCH: I think so for me,
2 although I think the language about on-site might be
3 useful to define somewhere.

4 MR. SMITH: If your concern is to ensure
5 that the temporary pit be somewhere around the pads,
6 as I appreciate it, the way -- I would suggest from
7 the legal standpoint you not rely on practical
8 limitations, that you try to state something that
9 gets at your intent in that regard.

10 COMMISSIONER BALCH: Which is why the
11 definition of on-site versus off-site would be
12 useful.

13 COMMISSIONER BLOOM: Or we go around that
14 and we could say something like, "Temporary pits
15 must be located on a pad."

16 MR. SMITH: That's not going to help you
17 with respect to multiple pads.

18 COMMISSIONER BLOOM: No.

19 MR. SMITH: And even if you define
20 on-site, if you say either on-site or off-site, you
21 haven't done anything to fix your problem with
22 respect to this definition.

23 CHAIRWOMAN BAILEY: Because all this says
24 is that they can move it from one drilling location
25 to another drilling location.

1 MR. SMITH: Right. I mean, to say it can
2 either be on-site or off-site means close to the pad
3 or in my living room. Practical considerations
4 might keep them from a living room, but if what your
5 intent here is to say somewhere in the neighborhood
6 of the wells that are using the pit, then you need
7 to figure out some sort of way to say that if that's
8 what you mean. If that's not what you mean it
9 doesn't make a difference.

10 COMMISSIONER BALCH: Well, the definition
11 of on-site that was proposed by the public commenter
12 basically says on lease. The reason for the on
13 lease definition was that then other waste
14 management is the responsibility of the operator in
15 that area.

16 COMMISSIONER BLOOM: Could we have a
17 situation where you create the temporary pit that
18 serves one or more wells and it's sitting -- the
19 temporary pit is off on its own sort of between the
20 number of drilling locations rather than being on
21 one of the drilling locations?

22 CHAIRWOMAN BAILEY: Not inconceivable.
23 Nothing denies that.

24 COMMISSIONER BALCH: With technology you
25 can do amazing things.

1 COMMISSIONER BLOOM: So I guess I wonder
2 about surface disturbance, if that's creating --
3 would that be ideal?

4 COMMISSIONER BALCH: Every time you drill
5 a pit you are creating a surface disturbance.

6 COMMISSIONER BLOOM: But generally now we
7 see the pit and the drilling equipment --

8 COMMISSIONER BALCH: Localized.

9 COMMISSIONER BLOOM: -- localized, yeah,
10 essentially all in one area. So this could allow
11 something where you have two drilling sites and a
12 temporary pit in the middle and you have an extra
13 road in between them. I don't know.

14 CHAIRWOMAN BAILEY: What I think is
15 probably a more likely scenario is that we have a
16 temporary pit at one well location and they want to
17 drill a well at another location. They go and pump
18 out the fluids from one pit and go put it in another
19 pit and that way they are removing the drilling muds
20 and putting it for reuse/recycle at the other well.
21 I mean, I would believe that would a more likely
22 scenario.

23 MR. SMITH: But if you want to allow what
24 Commissioner Bloom has just described --

25 COMMISSIONER BLOOM: Or not allow.

1 MR. SMITH: Right. But if you want to
2 allow what Commissioner Bloom has described, then
3 saying something about it being within a proximity
4 of the well pad might not get you there.

5 COMMISSIONER BALCH: So I know what the
6 average pad size is. What, if anything, dictates
7 the size of the pad that can be put down?

8 CHAIRWOMAN BAILEY: The number of trucks,
9 the amount of activity, the depth of the well and
10 the proposed --

11 COMMISSIONER BALCH: So there are only
12 operational constraints. No one is going to make a
13 500 by 200 foot pad.

14 CHAIRWOMAN BAILEY: Most leases are for as
15 much of the surface as is necessary for the
16 operation.

17 COMMISSIONER BALCH: So the situation
18 there, compared to what you were talking about where
19 you have Pad 1 and Pad 2 with a circulating fluid
20 pit in the middle. Instead of having Pad 1 and Pad
21 2, they might just make a bigger pad that
22 encompasses all of that. You might actually
23 increase the surface disturbance in that scenario
24 compared to having a single pit between. But I
25 don't know if that entire pad has to be paved

1 over -- not paved over but does the entire pad have
2 to be worked? Flattened? Leveled?

3 CHAIRWOMAN BAILEY: Yes.

4 COMMISSIONER BALCH: Has to be?

5 CHAIRWOMAN BAILEY: Yes.

6 COMMISSIONER BALCH: So if you just limit
7 it to a pad you might end up with the scenario of
8 two wells off of one pit where they put in a bigger
9 pad.

10 COMMISSIONER BLOOM: I'm not trying to
11 find a new things but just look at the unintended
12 consequence.

13 COMMISSIONER BALCH: I understand. That's
14 why I pointed out the unintended consequence.

15 COMMISSIONER BLOOM: Yeah.

16 COMMISSIONER BALCH: The operators have a
17 lot of discretion as far as setbacks and things like
18 that, about where they can place the well within
19 their lease.

20 CHAIRWOMAN BAILEY: There are drilling
21 windows for location of wells, but there's a lot of
22 discretion within that general window.

23 COMMISSIONER BALCH: Right. So if you
24 could encourage people to locate the drilling pads
25 closer to one another, you are going to overall

1 decrease the number of roads that are necessary to
2 access the same resource. One way to encourage them
3 is to allow them to use the drilling pits for more
4 than one well. Practically speaking, you will have
5 a hard time using it for more than two, except for
6 the case of drilling islands where you could be
7 using any number in theory.

8 Now, you could limit it to two and then
9 have specific exceptions for drilling islands.

10 CHAIRWOMAN BAILEY: I think that's a
11 mistake.

12 COMMISSIONER BLOOM: How come?

13 CHAIRWOMAN BAILEY: Because we will have
14 many wellbores coming from one well pad with the
15 laterals and they are not necessarily drilling
16 islands.

17 COMMISSIONER BALCH: Just a really long
18 pad.

19 CHAIRWOMAN BAILEY: I think we can just
20 leave the language as it is and allow variances if
21 they are needed.

22 COMMISSIONER BALCH: I think if it's
23 clearly stated "must be closed within a year," it's
24 in their operation plan and it's going to take them
25 18 months, then they have to come and get a variance

1 or an exception.

2 CHAIRWOMAN BAILEY: Uh-huh.

3 COMMISSIONER BALCH: And possibly beef up
4 their design.

5 CHAIRWOMAN BAILEY: Right.

6 COMMISSIONER BLOOM: If it's okay with you
7 all, I would like to sleep on this and think about
8 on-site/off-site a little bit more. I think we are
9 moving towards still considering whether or not to
10 remove the language about only having fluids in the
11 pit for six months. I think these pits are going to
12 see more activity than they would have previously.

13 CHAIRWOMAN BAILEY: We can come back to
14 this.

15 COMMISSIONER BALCH: This is highlighted.

16 CHAIRWOMAN BAILEY: I think we will be
17 able to make better progress by just coming back to
18 something after we think about it some more.

19 COMMISSIONER BALCH: We will get to the
20 place where we have to have a definition of
21 temporary pits and we will come back to it.

22 CHAIRWOMAN BAILEY: The next definition is
23 unconfined groundwater. We deleted the definition
24 for confined groundwater, seeing that we did not
25 want to make that distinction between confined and

1 unconfined, so if we hold with that justification,
2 we could go ahead and delete this definition. Are
3 we all agreed to delete the definition for
4 unconfined?

5 COMMISSIONER BLOOM: Agreed.

6 COMMISSIONER BALCH: Yes.

7 CHAIRWOMAN BAILEY: And then we come to
8 the definition for visible, which we touched on
9 lightly when we talked about measurable.

10 COMMISSIONER BLOOM: We put off talking
11 about measurable.

12 COMMISSIONER BALCH: We wanted to talk
13 about visible before. It's one of those things
14 where you have two issues that are intertwined. You
15 can see the well before you can measure it. You
16 have a molecule thick level of oil that you can't
17 measure but you can see.

18 COMMISSIONER BLOOM: I think if this helps
19 any, I appreciated OCD's recommendations on visible.
20 I think the concern with NMOGA's proposal was that
21 how and when do you have 30 percent if it's a windy
22 day and the sheen would be swept to one side of the
23 pit. So I prefer OCD's.

24 COMMISSIONER BALCH: Sounds like the
25 measuring is not a complicated task, so if someone

1 goes out and they see oil, they should make a make a
2 note of it.

3 CHAIRWOMAN BAILEY: So what we can do is
4 delete the language that says, "means any sheen that
5 occupies 30 percent or more of the total pit liquid
6 surface area," and simply use the OCD suggested
7 language of, "any sheen on the pit liquid surface
8 area." Are we all in agreement with that?

9 COMMISSIONER BALCH: I think so. Then we
10 go back and look at measurable, I suppose.

11 CHAIRWOMAN BAILEY: "Measurable means a
12 layer of oil greater than a sheen that is measurable
13 by color cutting or other acceptable method," which
14 gives us our contrast between visible and
15 measurable.

16 COMMISSIONER BLOOM: OCD coincides with
17 that.

18 COMMISSIONER BALCH: Color cutting, see
19 how much it reacts. That makes sense.

20 CHAIRWOMAN BAILEY: Okay. So we are
21 accepting the definition for measurable as "means a
22 layer of oil greater than a sheen measurable by
23 color cutting or other acceptable method."

24 COMMISSIONER BALCH: So when the OCD
25 inspector goes out there, they have the means to do

1 that with them in their truck?

2 CHAIRWOMAN BAILEY: Right.

3 COMMISSIONER BALCH: Okay. And when they
4 make the measurement, then they would calculate some
5 area as the thickness and see if it triggers a
6 response or not?

7 CHAIRWOMAN BAILEY: Right.

8 COMMISSIONER BALCH: Seems appropriate.

9 CHAIRWOMAN BAILEY: Now we come to the
10 definition for wetlands. "Means those areas that
11 are inundated or saturated by surface or groundwater
12 of a frequency and duration sufficient to support
13 and under normal circumstances to support a
14 prevalence of vegetation typically adapted for life
15 in saturated soil conditions in New Mexico. This
16 definition does not constructed wetlands used for
17 wastewater purposes." Do you have an opinion on
18 that definition?

19 COMMISSIONER BALCH: Are there any other
20 definitions of wetlands that we need to deal with?

21 COMMISSIONER BLOOM: Who did the proposal
22 come from?

23 CHAIRWOMAN BAILEY: Must be IPANM. No,
24 that's not OCD, that would be IPANM.

25 COMMISSIONER BALCH: All the modifications

1 are in green.

2 CHAIRWOMAN BAILEY: Green means IPANM.

3 The red was NMOGA.

4 COMMISSIONER BALCH: Some of the green was
5 OCD.

6 CHAIRWOMAN BAILEY: I think the question
7 here is whether or not constructed wetlands used for
8 wastewater purposes falls under the definition of
9 wetlands, which would be natural wetlands.

10 COMMISSIONER BLOOM: IPANM in its closing
11 says, "Wetlands definition added by IPANM to
12 highlight the last sentence proposed as this
13 definition does not include constructed wetlands
14 used for wastewater purposes. The IPANM concern
15 revolves around building a retention pond and
16 avoiding classification of the wetland.

17 COMMISSIONER BALCH: So why use the word
18 wastewater? Wouldn't this apply to any fresh water
19 storage? If you leave it there long enough ducks
20 will land on it.

21 CHAIRWOMAN BAILEY: They will. And we
22 have no authority for closing dates for freshwater
23 impoundments, so it's a matter of do we determine
24 that man-made wetlands --

25 COMMISSIONER BLOOM: Are there other

1 definitions of wetlands used in Fish & wildlife?
2 Game & Fish?

3 CHAIRWOMAN BAILEY: I don't know.

4 COMMISSIONER BLOOM: I'm sure there are.
5 And maybe what we could do is in order to look at
6 that we could skirt it and just say, "Wetlands do
7 not include constructed wetlands or constructed
8 areas used for wastewater purposes" or something
9 like that?

10 MR. SMITH: Why don't you let me look and
11 see if I can find another definition of wetlands and
12 you can come back to it.

13 CHAIRWOMAN BAILEY: Okay. We could take a
14 break.

15 COMMISSIONER BALCH: That's the last
16 definition.

17 CHAIRWOMAN BAILEY: Let's take a
18 ten-minute break.

19 (Note: The hearing stood in recess at
20 2:30 to 2:45.)

21 CHAIRWOMAN BAILEY: All right. Mr. Smith?
22 I believe during the break you were checking to find
23 a definition for wetlands that would already be
24 established in New Mexico?

25 MR. SMITH: Yes. It's on the screen here.

1 It's from NMAC 20.6.4.7(W)(4) which is under Chapter
2 6, Water Quality, Standards for Interstate and
3 Intrastate Surface Water.

4 COMMISSIONER BALCH: That's substantially
5 the same.

6 CHAIRWOMAN BAILEY: It is. The only
7 difference is the very last sentence. The proposed
8 language that IPANM gave us was "This definition
9 does not include constructed wetlands used for
10 wastewater purposes," and that definition has the
11 last sentence saying "That brings in surface waters
12 of the state and wastewater treatment," which I
13 think may not be correct, but I think wastewater
14 treatment has to do with city sewage ponds and that
15 type of activity rather than what we have here,
16 which is waste water, two words.

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

18 CHAIRWOMAN BAILEY: The distinction is
19 that one deals with treatment facilities for cities
20 and counties and people, and this one has to do with
21 waste water that is part of the oil and gas
22 activity?

23 COMMISSIONER BLOOM: So what we are trying
24 to prevent is pit or other body of water that the
25 industry would use or create from being seen as a

1 wetlands, correct?

2 COMMISSIONER BALCH: Evaporation ponds,
3 things like that.

4 CHAIRWOMAN BAILEY: Right.

5 COMMISSIONER BALCH: But in that case
6 couldn't we just adopt the previous definition with
7 the last sentence as a caveat?

8 CHAIRWOMAN BAILEY: I'm not sure I
9 understand what you just said. Adopt the proposed
10 language by IPANM or the --

11 COMMISSIONER BALCH: No, I think you want
12 to use the existing regulatory language, and then if
13 you want to be specific about not including
14 constructed wetlands used for wastewater purposes,
15 you would add that off. I don't think you have to
16 have a definition of wetlands in there. You could
17 say "wetlands, as defined by NMAC" whatever.

18 MR. SMITH: Well, the question there would
19 be, though, if you are going to allow something
20 constructed for wastewater purposes under the Oil
21 and Gas Act to come within the definition of the
22 WQCC wetlands, does that require -- I mean, are
23 there regulations that are going to apply to that
24 that you don't know about? Now, this is pursuant to
25 the Water Quality Act, and you all are a constituent

1 agency, correct?

2 CHAIRWOMAN BAILEY: Yes.

3 MR. SMITH: Which as I appreciate it means
4 that you enforce the Water Quality Act. So the
5 question is, if you're going to include wastewater
6 wetlands that have been constructed by the oil and
7 gas industry in the definition of wetlands, what
8 does that mean with respect to your regulation of
9 them under the water quality?

10 CHAIRWOMAN BAILEY: That we should not
11 include this definition in our rule.

12 MR. SMITH: I'm not saying that you
13 shouldn't, I'm saying that you may be in a situation
14 where you need to enforce regulations, the scope of
15 which I'm unable to tell you right now, though I can
16 find it out.

17 CHAIRWOMAN BAILEY: Well, discharge plans
18 are an example of where we use and enforce the water
19 quality control regulations and there could be
20 wetlands that would be developing outside of their
21 evaporation ponds, for example, at a facility. This
22 would be changing or creating -- not changing but
23 creating a question of which act is being -- or
24 which regulations are being enforced?

25 MR. SMITH: It would be creating that

1 question. That's right.

2 COMMISSIONER BALCH: Okay. So if we don't
3 have this definition and the last sentence as a
4 caveat, is that a better way to do this?

5 CHAIRWOMAN BAILEY: Yes. Not to have this
6 definition.

7 COMMISSIONER BALCH: What happens now for
8 these constructing wetlands? Do we have a life
9 cycle defined by permit?

10 CHAIRWOMAN BAILEY: No.

11 COMMISSIONER BALCH: So just created --

12 MR. SMITH: You already have the
13 definition of wetlands.

14 CHAIRWOMAN BAILEY: Under the Water
15 Quality Control regulations.

16 MR. SMITH: No, I think under your
17 regulations. I think that's right. Hang on.

18 CHAIRWOMAN BAILEY: Here it is. It means
19 "Those areas that are inundated and saturated by
20 surface to groundwater at a frequency and duration
21 sufficient to support and under normal circumstances
22 do support a prevalence of vegetation typically
23 adapted for life and saturated soil conditions in
24 New Mexico. This definition does not include
25 constructed wetlands used for wastewater treatment

1 purposes."

2 COMMISSIONER BALCH: So essentially we
3 already have a definition.

4 CHAIRWOMAN BAILEY: We already have a
5 definition and it exempts --

6 COMMISSIONER BALCH: Wastewater.

7 CHAIRWOMAN BAILEY: Wastewater treatment,
8 not waste water purposes.

9 MR. SMITH: And wastewater treatment would
10 be consistent with the WQCC definition.

11 CHAIRWOMAN BAILEY: Yes.

12 COMMISSIONER BALCH: Is there a situation
13 where you construct a wetland and not treat it?
14 What is the definition of treatment? Is allowing it
15 to evaporate a treatment?

16 CHAIRWOMAN BAILEY: Yes.

17 COMMISSIONER BALCH: Okay. This is a
18 question that has -- that I have thought about a
19 couple of times in regards to coal bed methane
20 produced water in the Raton Basin that is cleaner
21 than the Pecos River water yet it's industrial waste
22 and we can't do anything with it.

23 CHAIRWOMAN BAILEY: It's produced water.

24 COMMISSIONER BALCH: Yes.

25 CHAIRWOMAN BAILEY: I don't see a need to

1 change our current definition. I don't think we had
2 sufficient testimony to change our current
3 definition.

4 COMMISSIONER BLOOM: The change would only
5 be wastewater would be adding treatment there.

6 COMMISSIONER BALCH: Essentially.

7 MR. SMITH: The change would be --

8 COMMISSIONER BLOOM: Change would be two
9 purposes.

10 MR. SMITH: Change would be the delete the
11 word "treatment," right?

12 CHAIRWOMAN BAILEY: And combine
13 waste water into one word, which has a different
14 meaning than waste water?

15 MR. SMITH: Wastewater purposes is
16 certainly a very different phrase from waste water
17 treatment purposes. That's not an inconsequential
18 change.

19 CHAIRWOMAN BAILEY: Right.

20 COMMISSIONER BLOOM: I agree that we
21 didn't.

22 COMMISSIONER BALCH: If the existing
23 definition already in the regulation covers this
24 area, then I don't see why it needs to be addressed.

25 COMMISSIONER BLOOM: I agree with that.

1 CHAIRWOMAN BAILEY: Okay. That conclusion
2 our discussion about definitions, except for those
3 definitions that we will come back to, one of them
4 having to do with low chloride, one of them having
5 to do with on-site and off-site designations, and
6 one of them having to do with temporary pits. Other
7 than that, we have reached agreement with the other
8 definitions. Do I hear a motion to adopt --

9 MR. SMITH: I'm sorry, before you do that,
10 Madam Chair, you want this wetlands definition
11 deleted then, correct?

12 CHAIRWOMAN BAILEY: Yes.

13 MR. SMITH: Okay.

14 CHAIRWOMAN BAILEY: Do I hear a motion to
15 adopt those definitions that we have agreed on and
16 to come back to deal with low chloride, on-site and
17 off-site and temporary pits?

18 COMMISSIONER BALCH: At a later time.

19 COMMISSIONER BLOOM: I would so move.

20 COMMISSIONER BALCH: I would second.

21 CHAIRWOMAN BAILEY: All in favor? Aye.

22 COMMISSIONER BLOOM: Aye.

23 COMMISSIONER BALCH: Aye.

24 CHAIRWOMAN BAILEY: Okay. We can move to
25 19.15.17.8, Permit or Registration Required, where

1 the words "or registration" are inserted in the
2 title. Below-grade tanks are removed from the
3 requirement for a division-issued permit and
4 closed-loop systems are something that we need to
5 talk about and just registration of below-grade
6 tanks. We will go line by line. I agree we need to
7 put in "or registration" in the title. Do you both
8 agree with that?

9 COMMISSIONER BALCH: If the idea as to
10 eliminate 5,000 below-grade tanks.

11 CHAIRWOMAN BAILEY: Ten thousand.

12 COMMISSIONER BALCH: I underestimated it.
13 Then that would certainly be the case.

14 COMMISSIONER BLOOM: Yes.

15 CHAIRWOMAN BAILEY: We have agreed to
16 include "or registration" in the title.

17 COMMISSIONER BLOOM: Yes.

18 CHAIRWOMAN BAILEY: First line, "A person
19 shall not construct or use a pit," and the
20 suggestion is to delete the words "or below-grade
21 tank except in accordance with the division-issued
22 permit." I believe that makes sense if we are going
23 to have registration of the below-grade tanks rather
24 than the permitting of the below-grade tanks. We
25 had quite a bit of discussion on that.

1 COMMISSIONER BLOOM: We did.

2 COMMISSIONER BALCH: Well, I think it was
3 demonstrated pretty conclusively that those existing
4 tanks are never going to be processed using the
5 current system, and the registration would at least
6 give you most of the relevant information that you
7 need, how long it's been in operation and the
8 maintenance schedule, if necessary, by examining the
9 records of the operator. If I recall correctly.

10 CHAIRWOMAN BAILEY: And registration would
11 still be protective of groundwater. It would not
12 harm or cause any additional potential threat to
13 groundwater.

14 COMMISSIONER BLOOM: Because of the
15 regular inspection and testing.

16 CHAIRWOMAN BAILEY: Right.

17 COMMISSIONER BLOOM: Yeah.

18 CHAIRWOMAN BAILEY: So we agree to delete
19 the words "or below-grade tank" in section A?

20 COMMISSIONER BLOOM: Agreed.

21 COMMISSIONER BALCH: Agreed.

22 CHAIRWOMAN BAILEY: The suggestion is made
23 to delete all of the current B and instead have
24 additional paragraphs below, but we would then skip
25 to "issuing a single permit for all pits," deleting

1 "below-grade tanks, closed-loop systems or division
2 approved" -- and also include "or division-approved
3 alternative methods associated with a single
4 application for a permit to drill." That removes
5 the permit required for a below-grade tank and the
6 closed-loop system.

7 COMMISSIONER BALCH: And allows the
8 inclusion at some future date of the provision of
9 other approved methods.

10 CHAIRWOMAN BAILEY: Right.

11 COMMISSIONER BALCH: Right now an
12 application for closed-loop system is a single page
13 and it's treated pretty much as a rubber stamp at
14 the division level?

15 CHAIRWOMAN BAILEY: Yes.

16 COMMISSIONER BALCH: So all it does is
17 create paperwork and doesn't serve a real purpose.
18 But to register them much like the tanks, you know
19 when and where they were operated.

20 CHAIRWOMAN BAILEY: Well, the last
21 paragraph of this says that closed-loop systems and
22 sumps don't require either a permit or a
23 registration, that they are simply used as part of a
24 drilling system and neither a registration nor a
25 permit are required. I believe we had sufficient

1 testimony on that.

2 COMMISSIONER BLOOM: Looking at OCD's
3 language here. I guess that's the next section
4 where we see notification required, correct? So we
5 are getting away from permitting or registration to
6 notification, correct? So essentially the addition
7 of D isn't complicated by the notification
8 requirement that comes in the next section, correct?

9 CHAIRWOMAN BAILEY: Yes.

10 COMMISSIONER BLOOM: Okay.

11 COMMISSIONER BALCH: And it simplifies
12 operations because they don't have to file another
13 application with the BLM or other related agencies.

14 CHAIRWOMAN BAILEY: Right. These also
15 introduce the notion of a single registration for
16 all below-grade tanks as part of the APD system.

17 COMMISSIONER BALCH: Single registration
18 for all below-grade tanks. So they file something
19 with a list?

20 CHAIRWOMAN BAILEY: Yes.

21 COMMISSIONER BALCH: For all the
22 below-grade tanks including the location and all
23 that?

24 COMMISSIONER BLOOM: So Company A could
25 register all their below-grade tanks in New Mexico

1 with one list?

2 CHAIRWOMAN BAILEY: Right.

3 COMMISSIONER BALCH: If they add a tank,
4 how does it get added to the list?

5 CHAIRWOMAN BAILEY: They do an additional.

6 COMMISSIONER BALCH: If they remove one do
7 they send a revised list every so often?

8 CHAIRWOMAN BAILEY: That comes in the next
9 section of 17.9, Permit Application and
10 Registration. There's a whole portion to go to
11 below-grade tanks, so at this point we are simply
12 saying that we will not require the permitting or
13 registration of closed-loop systems and sumps, that
14 below-grade tanks may be registered and single
15 registration is good for all of their below-grade
16 tanks at that location.

17 COMMISSIONER BLOOM: But I think
18 Commissioner Balch's question might still be of
19 interest. Operationally would this allow, as it
20 stands -- we might need to take the two sections
21 together. I don't know if they are related, but
22 would it allow for updates or require an annual
23 update or require somebody to --

24 CHAIRWOMAN BAILEY: No. It requires
25 inspections. Below-grade tanks are inspected.

1 COMMISSIONER BLOOM: Right. But would the
2 list be updated or would the company notify OCD when
3 a tank is removed or a tank is sold?

4 CHAIRWOMAN BAILEY: Or closed out?

5 COMMISSIONER BLOOM: Closed, yeah.

6 COMMISSIONER BALCH: Transferred.

7 COMMISSIONER BLOOM: I'm just wondering
8 about the logistics of OCD keeping updated paperwork
9 and compliance.

10 COMMISSIONER BALCH: I think the initial
11 round of looking at this page is to see if the
12 language is appropriate. I think the language is
13 appropriate, assuming we work our way through the
14 registration page as well, so I think we can look at
15 the language and say right now it looks fine and
16 then go back and rewrite it after we are done with
17 Section 17.9.

18 COMMISSIONER BLOOM: I agree with that.

19 CHAIRWOMAN BAILEY: So we will have a
20 conditional approval of the suggested language in
21 17.8?

22 COMMISSIONER BLOOM: Yeah, I think we can
23 all agree on all that language. Yes.

24 COMMISSIONER BALCH: The language that the
25 operator may file a single registration for all

1 below-grade tanks.

2 COMMISSIONER BLOOM: Shall?

3 COMMISSIONER BALCH: I think "shall" is
4 better than "may," because you have "must be
5 registered" in the first sentence and then may file
6 the list. Is that to allow them to have multiple
7 lists if they want?

8 COMMISSIONER BLOOM: Maybe "The operator
9 shall register all below-grade tanks" and they can
10 decide if it's one list or numerous lists?

11 CHAIRWOMAN BAILEY: This is all related to
12 a single application for a permit to drill, if you
13 will look at the last sentence of the paragraph
14 above. "The division may issue a single permit for
15 all pits or division-approved alternative methods
16 associated with a single application for permit to
17 drill."

18 COMMISSIONER BALCH: Similar language in
19 C.

20 CHAIRWOMAN BAILEY: Okay. Shall file a
21 single registration for all below-grade tanks
22 associated with --

23 COMMISSIONER BALCH: But is the intent --
24 okay. Is that the intent or is it the intent to
25 have one master list for their entire operation is a

1 possibility?

2 CHAIRWOMAN BAILEY: I think that would
3 create more chaos than anything else.

4 COMMISSIONER BALCH: So it's better to
5 associate it with an indexable APD number.

6 CHAIRWOMAN BAILEY: Right.

7 COMMISSIONER BLOOM: But what about the
8 backlog that's out there?

9 CHAIRWOMAN BAILEY: That's permitting, not
10 registration. That's a laborious process of going
11 through and analyzing each and every tank that's
12 operating.

13 COMMISSIONER BALCH: Basically you file a
14 C 144 for each tank, which takes a week or so of
15 processing time on OCD's side?

16 CHAIRWOMAN BAILEY: Well, it's only being
17 looked at upon request of specific tanks for when
18 operators are selling the facility or transferring
19 the tanks. So for No. C should we have the last
20 sentence, "The operator shall file a single
21 registration for all below-grade tanks associated
22 with a single application for a permit to drill" and
23 that way we are not talking about the entire list of
24 every below-grade tank they have in the state?

25 COMMISSIONER BLOOM: Yes.

1 COMMISSIONER BALCH: That will be easily
2 and transparently regulated?

3 CHAIRWOMAN BAILEY: Through the API
4 number.

5 COMMISSIONER BALCH: If they have three
6 tanks associated with an operation they could just
7 send a list of three tanks with the application?

8 CHAIRWOMAN BAILEY: Yes.

9 COMMISSIONER BALCH: Or have it attached
10 to the application? If they changed it when then
11 they would modify it?

12 CHAIRWOMAN BAILEY: So did you pick that
13 up, Theresa? C, the very last sentence of C should
14 read, "The operator shall file a single registration
15 for all below-grade tanks associated with a single
16 application for permit to drill."

17 So now we go to 17.9, Permit Application
18 and Registration. And do we want to include "and
19 registration" in the title of this section?

20 COMMISSIONER BLOOM: Yes.

21 COMMISSIONER BALCH: Yes, we do.

22 CHAIRWOMAN BAILEY: The first line, "An
23 operator shall use the appropriate Form C144? Does
24 that make sense to y'all?

25 COMMISSIONER BLOOM: Yes.

1 CHAIRWOMAN BAILEY: To apply to the
2 Division for a permit to construct or use a pit or
3 proposed alternative method." Does that make sense?
4 Do you agree?

5 COMMISSIONER BLOOM: Yes.

6 COMMISSIONER BALCH: Yes.

7 CHAIRWOMAN BAILEY: Deleting the
8 words "closed-loop system or" and then "to register
9 a below-grade tank" to which 19.15.17 NMAC applies.
10 Do we agree with the first sentence?

11 COMMISSIONER BLOOM: Yes.

12 COMMISSIONER BALCH: Yes.

13 CHAIRWOMAN BAILEY: "Operator shall submit
14 the Form C144 used separately or as an attachment to
15 a permit application for a facility with which the
16 pit," deleting the words closed-loop system,
17 "below-grade tank or proposed alternative method
18 shall be associated." Do we agree with the deletion
19 of closed-loop system?

20 COMMISSIONER BALCH: If they will be dealt
21 with by registration.

22 CHAIRWOMAN BAILEY: "For upstream
23 facilities the operator may submit Form C144
24 separately or as an attachment to an application for
25 well permit." Then to include the words "An

1 operator shall use a C101, C103 or applicable BLM
2 form to notify the appropriate division district
3 office of construction or use of a closed-loop
4 system," so that reduces closed-loop systems from
5 permitting or registration to simply a notification
6 on the C101 or C103.

7 COMMISSIONER BALCH: Okay. And I think
8 this version only strikes the last sentence.
9 Otherwise it leaves it the same.

10 CHAIRWOMAN BAILEY: So do you want to
11 include the language "requiring appropriate
12 engineering principles and practices and following
13 applicable manufacturer's requirements?" We had
14 testimony showing that would be limited for all of
15 the different types of systems that some of the
16 operators have come up with.

17 COMMISSIONER BALCH: I think the concern
18 was ambiguity. What is appropriate practices, and
19 those will change over time, and they may change
20 depending on how deep your well is, your pressure
21 and a variety of other things that were brought out
22 in testimony. So this would remove the ambiguity.
23 It says the purpose of the closed-loop system is
24 merely to manage the solids and the liquids.
25 Ultimately it doesn't really matter how they do it

1 as long as it works, right?

2 CHAIRWOMAN BAILEY: Right. So do we agree
3 with elimination of the last sentence concerning --

4 COMMISSIONER BLOOM: I am trying to think,
5 are there any other instances where we have language
6 that a system shall use appropriate engineering
7 principles?

8 CHAIRWOMAN BAILEY: When we come to the
9 lining, I believe, of the different kinds of pits.

10 COMMISSIONER BLOOM: That's right.

11 COMMISSIONER BALCH: We will probably
12 replace that with language that has more to do with
13 specifications.

14 MR. SMITH: Are there BMPs that link to
15 this?

16 CHAIRWOMAN BAILEY: Possibly.

17 MR. SMITH: That's something you could
18 reference, the best management principles.

19 COMMISSIONER BALCH: Whether you say it or
20 not, that's what will be applied.

21 COMMISSIONER BLOOM: I am wondering if
22 generally we do not put such language -- I mean, I
23 guess I could see an instance where you could put
24 that language after everything and that would be
25 redundant. You know, sump, below-grade tank, a

1 boom --

2 CHAIRWOMAN BAILEY: Any operation.

3 COMMISSIONER BLOOM: Yeah. I think it's
4 presumed.

5 COMMISSIONER BALCH: I think that was the
6 primary concern in the testimony, it stifles
7 innovation.

8 CHAIRWOMAN BAILEY: So we agree to delete
9 that last sentence?

10 COMMISSIONER BALCH: Yes.

11 COMMISSIONER BLOOM: Yes.

12 CHAIRWOMAN BAILEY: Theresa, we are
13 deleting the last sentence.

14 MR. SMITH: Are you all comfortable with
15 whatever the applicable BLM form is?

16 CHAIRWOMAN BAILEY: Yes.

17 COMMISSIONER BALCH: No control over BLM,
18 right? I think that was the only difference between
19 those two paragraphs but we can doublecheck.

20 CHAIRWOMAN BAILEY: So we come to the
21 section having to do with the permit application for
22 permanent pits and there have not been any
23 suggestions to change the permit application for
24 permanent pits. However, multi-well fluid
25 management pits are an issue that we might want to

1 consider as including in this list and treating a
2 multi-well fluid management pit in a manner similar
3 to permanent pits because we had deleted any kind of
4 size restriction.

5 COMMISSIONER BALCH: If you had a
6 multi-well management pit that was under ten acre
7 feet or above ten acre feet, you may want to apply a
8 more stricter regulation to. Ten acre feet you may
9 be willing to go with existing temporary pit
10 specifications. Already they're allowed to have
11 temporary pits of up to ten acre feet.

12 CHAIRWOMAN BAILEY: Permanent pits are
13 also restricted to ten acre feet. It's a matter of
14 how long the pit is going to be up. We have imposed
15 essentially a two-year limitation, which is double
16 the time of the temporary pit.

17 COMMISSIONER BALCH: There's a section
18 where we address multi-well fluid management pits
19 and their specifications.

20 CHAIRWOMAN BAILEY: Yes.

21 COMMISSIONER BALCH: Maybe that's where we
22 have to tackle that.

23 CHAIRWOMAN BAILEY: Save the discussion
24 for that time?

25 COMMISSIONER BLOOM: It's coming up fast

1 in the permit application registration as well.

2 COMMISSIONER BALCH: Regardless, permanent
3 pits -- nobody has requested a modification of
4 permanent pits.

5 CHAIRWOMAN BAILEY: Nobody, no.

6 COMMISSIONER BALCH: There's not a lot to
7 discuss there then.

8 CHAIRWOMAN BAILEY: Then we can move along
9 to temporary pits. The suggested change for
10 temporary pits is 17.9B2C, to delete "the actual and
11 potential effects on soil, surface water and
12 groundwater."

13 COMMISSIONER BALCH: If I may interject,
14 Commissioner Bloom had just a few minutes ago
15 mentioned the possibilities of other places where we
16 had appropriate engineering principles. There's
17 appropriate engineering principles in the beginning
18 description of B2, Temporary Pits. "The plan for a
19 temporary pit shall use appropriate engineering
20 principles and practices and follow all applicable
21 liner manufacturing requirements."

22 COMMISSIONER BLOOM: I think it's
23 important to have in there at least the part that
24 says "follow applicable liner manufacturer
25 requirements." Particularly -- not so much in this

1 case but as we're moving forward and looking at
2 liner requirements for multi-well fluid management
3 pits.

4 COMMISSIONER BALCH: I am actually
5 interested that nobody suggested a change to this
6 during testimony, because there was an awful lot of
7 discussion about appropriate engineering principles
8 when it came to the design of temporary pits. I
9 don't know if that's more of a footnote. Later on
10 we will most certainly be discussing these
11 applicable or appropriate engineering principles and
12 practices.

13 CHAIRWOMAN BAILEY: When it comes to
14 liners, yes.

15 MR. SMITH: Well, you have taken it out of
16 the one area though. If you leave it in here the
17 question, of course, is why? Do you intend not to
18 require the appropriate engineering principles and
19 practices for the former but you do for the latter?

20 COMMISSIONER BALCH: No. I think I don't
21 want to misquote Mr. Bloom, but it's an add-on. If
22 doesn't necessarily add anything.

23 CHAIRWOMAN BAILEY: So you are suggesting
24 that we have that line be, "Temporary Pits. The
25 plan for a temporary pit shall follow applicable

1 liner manufacturer requirements"?

2 COMMISSIONER BLOOM: I didn't make a
3 proposal. I was thinking if we were going to be
4 consistent we might remove, "Use appropriate
5 engineering principles and practices" but we leave
6 in "following applicable liner manufacturer's
7 requirements."

8 CHAIRWOMAN BAILEY: We would keep that
9 portion and delete the language "use appropriate
10 engineering principles and practices."

11 COMMISSIONER BLOOM: Okay.

12 COMMISSIONER BALCH: We may have to do a
13 search through the document to see if there's
14 something else in the black text.

15 MR. SMITH: Yeah. I think -- do you want
16 this language highlighted?

17 CHAIRWOMAN BAILEY: Deleted.

18 MR. SMITH: Right. Now, that still
19 differs from what you had previously, right? In the
20 prior section? I think you deleted "follow the
21 applicable manufacturer's requirements," didn't you?

22 COMMISSIONER BLOOM: Up above in A we
23 deleted the last line. "The closed-loop system
24 shall use appropriate engineering principles and
25 practices and follow applicable manufacturer's

1 requirements or equivalent thereto."

2 COMMISSIONER BALCH: We might want to put
3 the last part of the sentence back in.

4 CHAIRWOMAN BAILEY: So it would say, "A
5 closed-loop system shall follow applicable
6 manufacturing requirements or equivalent"?

7 COMMISSIONER BALCH: I think we are
8 talking apples and oranges here. They are not the
9 same thing. But I think it's appropriate to strike
10 it here.

11 COMMISSIONER BLOOM: We can't imagine that
12 someone would go out and think that they could use
13 the equipment outside the requirements or something.

14 COMMISSIONER BALCH: We can certainly
15 imagine it.

16 COMMISSIONER BLOOM: We can imagine it.

17 CHAIRWOMAN BAILEY: So we will leave the
18 entire sentence deleted in A and only delete those
19 words "use appropriate engineering principles and
20 practices" under temporary pits, under the section
21 of temporary pits. Is that what we agreed to?

22 COMMISSIONER BALCH: I think I am
23 proposing that.

24 COMMISSIONER BLOOM: I'm sorry, what did
25 you propose?

1 COMMISSIONER BALCH: Just to strike --
2 it's been stricken.

3 CHAIRWOMAN BAILEY: So "use appropriate
4 engineering principles and practices."

5 COMMISSIONER BLOOM: Delete that, yes. I
6 would agree with that.

7 COMMISSIONER BALCH: It doesn't add
8 anything.

9 COMMISSIONER BLOOM: No.

10 CHAIRWOMAN BAILEY: Okay. Then we will go
11 to Subparagraph C.

12 COMMISSIONER BLOOM: I'm sorry, continuing
13 on with 2 --

14 COMMISSIONER BALCH: There's a lot more.

15 COMMISSIONER BLOOM: I propose the
16 deletion of "the actual and potential effects on
17 soil surface water and groundwater."

18 CHAIRWOMAN BAILEY: Yes.

19 COMMISSIONER BLOOM: Okay.

20 CHAIRWOMAN BAILEY: The operator still
21 needs to provide information on soil geology,
22 hydrology, and those --

23 COMMISSIONER BLOOM: That's a pretty major
24 change.

25 CHAIRWOMAN BAILEY: Those factors have to

1 do with the siting criteria. One of them is the
2 enforceability of at this point is the district --
3 are the district personnel capable of evaluating
4 actual effects on water?

5 COMMISSIONER BALCH: Or even potential
6 effects.

7 CHAIRWOMAN BAILEY: Or even potential
8 effects at this point.

9 COMMISSIONER BLOOM: So as it stands now,
10 this permit application comes in and includes
11 operating and maintenance procedures, closure plan,
12 climatological data, detailed on topography and
13 soils, and now I'm just worried that compliance with
14 the siting criteria of 19.15.17.10 NMAC, we would
15 just get down to is the pit going to be within 300
16 feet of a continuously flowing water or something
17 like that. And this would be instructing the
18 district office to also evaluate effects on soil
19 surface water and groundwater.

20 CHAIRWOMAN BAILEY: Which is difficult in
21 this application.

22 COMMISSIONER BALCH: I think they are
23 asking for somebody with the appropriate amount of
24 skill to determine the data after the fact, the
25 actual effects, and predict to some extent the

1 potential effects. That's out of the specialty, I
2 think, of the person approving this at the division
3 level.

4 CHAIRWOMAN BAILEY: And we can't have
5 every APD come to Santa Fe for a hydrologist's
6 evaluation.

7 COMMISSIONER BALCH: I think the idea is
8 that -- I think the reason they struck it -- I'm
9 sorry, I didn't mean to interrupt you.

10 COMMISSIONER BLOOM: I was just going to
11 say that then begs the question whether over the
12 years that Rule 17 has been in effect have we not
13 been looking at potential effects on soil surface
14 water and groundwater when we are siting the pit?

15 CHAIRWOMAN BAILEY: They have been going
16 by what the Rule 17 specifies. They have been
17 enforcing the rule as it was written.

18 COMMISSIONER BALCH: I guess the question
19 may be -- in fact, if I could try to rephrase the
20 question a little bit. When the application comes
21 in you have a checklist of the geology, topography,
22 surface hydrology, all that stuff. When that comes
23 in, is it just checked off on a list or is somebody
24 taking it and interpreting it for actual and
25 potential effects on soil, surface water and

1 groundwater or is it even possible to do that?

2 CHAIRWOMAN BAILEY: I don't think it's
3 possible to do that. So I would be greatly
4 surprised if the skills of the district supervisors
5 or the people who are evaluating the APDs run to the
6 hydrology for the potential effects or the actual
7 effects. I think that they look at what is required
8 under 17 to see if that information is given.

9 COMMISSIONER BALCH: So it's given and
10 they read it, they read through it and check it off
11 on a list essentially?

12 CHAIRWOMAN BAILEY: I think so.

13 COMMISSIONER BLOOM: Let me add this. If
14 we look at 19.15.17.10, the siting requirements
15 under A, it doesn't look like -- that's sort of a
16 checklist of depth to groundwater and its
17 relationship to siting, horizontal distance to other
18 bodies of water. It can't be in a 100-year
19 floodplain and if it's in an unstable area the
20 operator has to demonstrate that it's incorporated
21 the measures into the design, but that would not
22 require any analysis of effects on soil, surface
23 water and groundwater.

24 So I guess my concern is, are we
25 essentially saying that these decisions are made in

1 the district office, and we don't care what the
2 effects of soil, surface water and groundwater are?

3 COMMISSIONER BALCH: I don't think it's so
4 much that we don't care, but it sounds like it's
5 impossible to determine with current technology.

6 CHAIRWOMAN BAILEY: The current rule says
7 that an operator shall not locate a temporary pit in
8 these certain conditions, which includes depth to
9 water. That is one of the things that is looked at.
10 As I say, the rule is enforced as it is currently
11 written. So if you want to say that groundwater
12 that is less than 50 feet below the bottom of the
13 temporary pit is grounds for analyzing
14 hydrologically whether or not there is a potential
15 threat to groundwater, the people who look at the
16 APDs say this is what the rule says, this is whether
17 or not we can approve this APD.

18 COMMISSIONER BALCH: So it seems like,
19 Commissioner, that the stricken-out part would most
20 likely only apply to exceptions. That's where you
21 would do the analysis -- that's where you might try
22 to convince somebody that you're not in endangering
23 water or health, groundwater, surface water or what
24 not, and that the main protective feature is the
25 siting requirements and implementation.

1 CHAIRWOMAN BAILEY: And depth to
2 groundwater.

3 COMMISSIONER BALCH: Siting requirements.

4 MR. SMITH: I would like to ask a question
5 here to make sure that you avoid ambiguity. This
6 requires the submission of operating maintenance
7 procedures, closure plan, hydrogeologic data that
8 provides, and then it goes on to list a variety of
9 detail on topography, soil, geology, blah blah blah,
10 right? If you make this change it will say, "To
11 allow the district office to evaluate compliance
12 with siting criteria."

13 Now, do you need all that stuff to
14 evaluate the siting criteria? And if you don't and
15 you want to limit this district office's evaluation
16 to complying with siting criteria, I think you
17 should get rid of everything in that sentence before
18 that that isn't useful to evaluating siting
19 criteria. Otherwise, you are asking for a lot of
20 useless information.

21 I'm assuming that some of that information
22 or the information that's listed there would be
23 useful to what I understand to be the impossible
24 task of evaluating effects on soils and water. But
25 if you're going to take that out, the stuff up prior

1 to that that you were asking to have submitted that
2 doesn't really have anything to do with siting
3 criteria, you should take that out, I think.

4 COMMISSIONER BALCH: Everything that leads
5 up to the to "evaluate the actual effects on soils,
6 surface water and groundwater."

7 MR. SMITH: So what I am saying is you
8 look at everything after the word "include" where it
9 says "operating and maintenance procedures," and
10 then go down to "to enable the appropriate
11 division," everything in between there, evaluate
12 what you need for what you want the district office
13 to do.

14 I don't know, maybe you wind up taking out
15 the whole thing. I don't know. But there's no
16 point in requiring the submission of information
17 that you're not going to use. It just creates
18 confusion as to the purpose of the character.

19 COMMISSIONER BLOOM: Let me add that we
20 may need a good bit of the information, geology,
21 maybe some of the hydrology, if we are going to --
22 if we expect OCD to work with this language in
23 Section 10, which is talking about unstable areas.
24 Then that information would still be useful.

25 COMMISSIONER BALCH: Unstable areas is

1 very interesting because it's another one of those
2 ambiguous terms. I think in practice what people
3 submit for unstable areas is a map of potential --
4 obviously, a sinkhole would be a unstable area. But
5 what if you had a slope above a certain degree or
6 you were in an area that had --

7 CHAIRWOMAN BAILEY: A mine?

8 COMMISSIONER BALCH: -- a mine. They also
9 submit maps of mine locations as part of another
10 requirement, but I think that Mr. Smith has a really
11 good point; that -- you know, a lot of this stuff,
12 the specific information they are asking for right
13 here is stuff you would use if you were trying to
14 get an exception to whatever siting criteria we end
15 up with, and then you would try to say, "Well, this
16 is still safe because the soil characteristics are
17 like this. You won't have the flow, we have 30
18 percent loam, 70 percent sand."

19 COMMISSIONER BLOOM: So when I read this,
20 I guess that sentence, I'm thinking that the data
21 that's requested is to help with the determination
22 on actual potential effects on soil, surface water
23 and groundwater and that it's about something more
24 than just giving enough information so you can
25 understand the siting criteria, which might be

1 something along the lines of well, the groundwater
2 is at 48 feet and there's no surface water within a
3 half mile and neither are there any residences,
4 wells, missile boundaries or some of the other
5 things. I think the language that there is now goes
6 beyond just addressing siting.

7 COMMISSIONER BALCH: It does go beyond
8 addressing siting, but I think the problem is it's
9 not --

10 CHAIRWOMAN BAILEY: It's not doable.

11 COMMISSIONER BLOOM: Did we hear any
12 testimony to that?

13 COMMISSIONER BALCH: We had a lot of
14 testimony about the length of time it takes to
15 prepare and process all this information, and to me,
16 the conclusion is if you want -- if you don't have
17 some siting criteria -- the siting criteria is
18 designed, I think, to say if you are above this
19 limit you are not really causing a risk. If you are
20 below the limit that's set, then there's a potential
21 for risk and you want to do a further evaluation.

22 That's where you need a lot of the
23 additional information, when you're trying to say
24 that groundwater is at 48 feet but I still think
25 it's safe because of this, and then somebody would

1 make an evaluation using the data you gave them on
2 whether they thought you are correct on that.

3 MR. SMITH: You all can require this
4 information in whatever context you want. My
5 suggestion is largely simply to divorce it from an
6 evaluation of siting criteria. If you want that
7 information you can require it someplace, but to say
8 that you want it in order for the district office to
9 evaluate the siting criteria, I don't know -- I
10 think people are going to be confused about why am I
11 giving this for siting criteria?

12 CHAIRWOMAN BAILEY: Okay.

13 MR. SMITH: But if you take this out, is
14 this the only place -- and I'm sorry, I don't know
15 this -- is this the only place, for instance, that a
16 closure plan is required?

17 COMMISSIONER BALCH: No, I don't think a
18 closure plan is required anyway.

19 CHAIRWOMAN BAILEY: Every facility has a
20 closure plan. Permanent pits, below-grade tanks,
21 temporary pits, multi-well fluid management pits all
22 have a closure plan.

23 COMMISSIONER BALCH: I may go off on a
24 slight tangent to try to work this through in my own
25 mind. As was pointed out in some of the prehearing

1 statements, I worked with developing software to
2 address siting criteria in particular. It's really
3 nice to say that we are going to precisely identify
4 depth to groundwater, distance to surface stream,
5 soil geomorphology, all that stuff. It's really
6 nice to say and you wish in a perfect world that you
7 have that information to the accuracy you desire.

8 But in reality, you are working with
9 elevation models that have an accuracy of plus or
10 minus 20 feet. You are working with soil maps that
11 are drawn for entire regions of the state. You are
12 working with water maps and topography that are
13 updated every 25 or 30 years. So you could go out
14 there for every single site, have a surveyor come
15 in, pinpoint every single point of elevation at as
16 fine a scale as you want. People could go out there
17 and sample 100 locations for soil characteristics.
18 You could drill test wells for depth to water and
19 get a better value than what you're going to
20 estimate from the OSC water well database.

21 You could do all that stuff, but I think
22 it's not particularly practical and it comes down to
23 two of the strongest arguments I think in the
24 findings. And on the one hand, you have the
25 petitioners that are saying you have to reasonably

1 protect; and the other side, I think they want a
2 much more strong affirmation that you are actually
3 protecting. And this question of balance is
4 something that I think we have to address at some
5 point.

6 MR. SMITH: One thing you might want to
7 note is the language in your current rule is
8 evaluating the effects as opposed to determining,
9 for instance.

10 COMMISSIONER BLOOM: Chairman Bailey, I
11 guess I'm trying to think of anywhere in the rule
12 that would -- I'm trying to think here -- that would
13 give the district office personnel the ability to
14 make a decision that would change siting or
15 something else based on what they thought the actual
16 potential effects on surface, soil water and
17 groundwater is.

18 COMMISSIONER BALCH: I think that comes
19 back to the result of the rule and the way it's
20 applied. I'm sorry, I don't want to --

21 CHAIRWOMAN BAILEY: No, go ahead.

22 COMMISSIONER BALCH: Is that the result is
23 or the implementation is they have a checklist for
24 the siting criteria. If it meets the siting
25 criteria it's okay. If it doesn't it's not okay and

1 then you have to get an exception.

2 CHAIRWOMAN BAILEY: Which is a very
3 practical process.

4 COMMISSIONER BALCH: Yes.

5 CHAIRWOMAN BAILEY: Determining the four
6 wells ever drilled, what the actual effect is on
7 groundwater that may be a certain depth below the
8 surface of the temporary pit is an impossibility
9 unless you have a pipe that goes directly down and
10 pouring contaminants down that pipe, which the OCD
11 is very careful to ensure that drilling does not
12 delay during penetration of the surface until after
13 they have gone beyond the aquifer and cementing
14 practices ensure that we do not have contamination
15 of the aquifer because of cement issues.

16 So the practical ability to determine the
17 actual effects on surface and groundwater is not
18 something that can be done without, as I say, an
19 intent to actually affect the groundwater.

20 The question is, as Commissioner Balch
21 brings out, if the district office is given the
22 site's topography, soils, geology and surface and
23 groundwater hydrology along with the siting
24 requirements that we will incorporate into any kind
25 of rule that comes out of this, is that sufficient

1 to provide reasonable protection for groundwater? I
2 have mulled this over for quite a few years. This
3 is not a brand new since April or May this year, and
4 I liken it very much to a gate. You can close the
5 gate to deter access to a location. You can put a
6 padlock on the gate. You can put an electronic lock
7 along with that padlock on the closed gate. Then
8 you can electrify that gate along with the
9 electronic lock and padlock and the closed gate, and
10 then you can put barbed wire.

11 Is all that sufficient to deter access?
12 Or is maybe a closed gate and maybe a padlock all
13 that's necessary to deter a problem? If we have the
14 information for the topography, the soils, the
15 geology, the surface and groundwater hydrology and
16 the site requirements that we will determine here,
17 it seems to me that a layperson who is not a doctor
18 in hydrology would be able to determine whether or
19 not there is reasonable protection of that
20 groundwater.

21 COMMISSIONER BALCH: There's an awful lot
22 of testimony given about siting criteria.

23 CHAIRWOMAN BAILEY: An awful lot. And we
24 will make that decision on what that siting criteria
25 should be, which includes depth to groundwater. It

1 includes horizontal and vertical distances to areas
2 that may be more vulnerable. So at this point I
3 will have to agree with the suggestions that have
4 been made that at this point we can delete "actual
5 and potential effects on soil, surface water and
6 groundwater" and require the detail on the site's
7 topography, soil geology, surface hydrology and
8 groundwater hydrology to enable the appropriate
9 division district office to evaluate compliance with
10 the siting criteria that we will determine, and in
11 the absence of site-specific groundwater data, that
12 the operator can provide reasonable determination of
13 probable groundwater depth using data generated by
14 models, cathodic well lithology, published
15 information or other tools as approved by the
16 appropriate district office.

17 COMMISSIONER BALCH: Maybe I can
18 interpret, Mr. Bloom, what I think the data are.
19 For topography, what I think people will submit is a
20 topographic map. That's from the USGS. Accuracy,
21 like I said, not perfect. Soils, there's a map of
22 surface soils generated by the New Mexico Bureau of
23 Minerals -- they changed the name a couple years
24 ago -- New Mexico Bureau of Geology and Mineral
25 Resources. They have a state geological map which

1 tells you what the surface geologic unit is in a
2 particular area. Again, that's state-wide.
3 Accuracy, not super precise when you get down to
4 where is the boundary between the Pennsylvania and
5 the Permian in a specific site.

6 Surface hydrology is going to be again a
7 USGS map of surface streams. Groundwater hydrology
8 is going to be usually taken from the Office of the
9 State Engineer's groundwater well data, which in
10 some areas is dense and other areas is sparse.
11 There's also some USGS groundwater data that people
12 can obtain. So unless you have a groundwater well
13 right near your site, you are making a guess as to
14 groundwater.

15 These are things that are listed here that
16 someone can evaluate and say yes, the site is
17 greater than X feet from a river. It appears that
18 groundwater in the area is greater than 350 feet so
19 it's okay. But it does not, I think, allow them to
20 evaluate the actual potential effects on the soils,
21 surface water and groundwater. You need much more
22 detailed information. You need soil sampling
23 specific to the site and you have to have test holes
24 drilling at a minimum to the water table to see
25 where it is.

1 COMMISSIONER BLOOM: So you would end up
2 with a month's long study.

3 COMMISSIONER BALCH: More than that.

4 COMMISSIONER BLOOM: A master's thesis.

5 COMMISSIONER BALCH: For every well that
6 you are going to drill.

7 COMMISSIONER BLOOM: Does this evaluation
8 ever meet any determinations different from what
9 compliance with the siting criteria is?

10 COMMISSIONER BALCH: Well, there's
11 testimony that not many or any exceptions have ever
12 been made.

13 COMMISSIONER BLOOM: No, I mean I just
14 wondered if it's in practices, evaluation and actual
15 and potential effects of the soil surface water and
16 groundwater.

17 COMMISSIONER BALCH: I think the
18 evaluation is going through the checklist and making
19 sure it matches the siting criteria, from what I
20 understand.

21 CHAIRWOMAN BAILEY: I think that we need
22 to address the sources of information if we accept
23 that data generated by models, cathodic well
24 lithology, published information or other tools as
25 approved is appropriate for determining depth to

1 groundwater. Is modeling something that --

2 COMMISSIONER BALCH: Well, I mean, in this
3 case what is modeling? I think early on when we
4 were developing our software we wanted to take the
5 depth to groundwater from the ORC and create contour
6 maps. That requires a model. You are applying an
7 algorithm to the data to create some contours. The
8 problem there is that becomes interpretative.
9 Somebody else might draw the contours differently.

10 Models have some value. I think what you
11 are looking for is that the model is consistent with
12 the actual data that you have in any case, which is
13 brought up in multiple people's findings as well.
14 You may not always be able to match the real world
15 but you would like to see some consistency.
16 Cathodic well lithology, I'm taking that to be some
17 kind of a simple electrical log taken from the water
18 well? I don't know.

19 CHAIRWOMAN BAILEY: Cathodic wells are
20 regularly installed near other --

21 COMMISSIONER BALCH: So they are
22 permanently monitoring the characteristics of --

23 CHAIRWOMAN BAILEY: Well, they determine
24 corrosion.

25 COMMISSIONER BALCH: Oh, okay.

1 CHAIRWOMAN BAILEY: They determine
2 corrosion of the oil and gas well.

3 COMMISSIONER BALCH: They drill a well for
4 that?

5 CHAIRWOMAN BAILEY: It's a shallow -- just
6 to the groundwater.

7 COMMISSIONER BALCH: Just to the
8 groundwater?

9 CHAIRWOMAN BAILEY: But it's not drilled
10 before a well is drilled, it's drilled after.

11 COMMISSIONER BALCH: You are drilling your
12 well, you find groundwater at this depth and the
13 characteristics of the water require you to deal
14 with whether your casing is going to corrode.

15 CHAIRWOMAN BAILEY: Yes.

16 COMMISSIONER BALCH: Again, after the
17 fact.

18 CHAIRWOMAN BAILEY: I just question
19 whether or not the average operator out there is
20 capable of using modeling.

21 COMMISSIONER BALCH: You know, I think a
22 lot of the alternative stuff comes into play or
23 should only come into play if you have -- and this
24 happens a lot up in the Northwest -- you go to look
25 for your groundwater data and your nearest water

1 well is ten miles from your site. How do you
2 determine what the groundwater depth is? You submit
3 at this time a map that has a ten-mile scale that
4 shows your one point of data. At that point if they
5 have other information, the farmer next-door has a
6 undocumented water well or something like that, they
7 can put that in there. That's when somebody ought
8 to take a look at it, I suppose. That's where your
9 evaluation comes in.

10 But it still comes back to they are
11 essentially evaluating the siting criteria which is
12 supposed to be the protective feature, but actually
13 coming up with a full-blown evaluation of everything
14 that could possibly go wrong is impractical. If you
15 always look at every worst case scenario you will
16 never do anything because if you wait long enough,
17 anything will happen, which is why I tie the preface
18 to this discussion to the closing arguments from
19 various parties, some of which favored a reasonable
20 protection and some of which favored a much more
21 active and restricted environment to achieve a
22 different level of protection. It's something that
23 I think we have to come to grips with.

24 CHAIRWOMAN BAILEY: So do we choose to
25 accept this proposed sentence on "in the absence of

1 site specific"?

2 COMMISSIONER BLOOM: How is the absence of
3 site specific groundwater data dealt with now at
4 OCD?

5 CHAIRWOMAN BAILEY: With just knowledge of
6 the closest water wells, with what the operator has
7 submitted as part of their APD that they have
8 attested to.

9 COMMISSIONER BLOOM: So you are concerned
10 that modeling is impractical. The cathodic well
11 lithology will be after the fact?

12 COMMISSIONER BALCH: We are talking here
13 about cathodic well lithology will probably be from
14 the offset location which will probably give you
15 maybe a better idea. Still, it's not site-specific.
16 You don't know site-specific until you drill.

17 CHAIRWOMAN BAILEY: But it's the best
18 available information.

19 COMMISSIONER BALCH: Right. The current
20 rule doesn't allow anything except for OSC and USGS
21 water well data, I believe. It's specifically
22 listed what and where you can get your data or
23 comply.

24 COMMISSIONER BLOOM: If anything, this
25 should get us a look at more data.

1 COMMISSIONER BALCH: This gives you more
2 data.

3 CHAIRWOMAN BAILEY: More and better
4 probably. USGS hasn't been updated for a long time.

5 COMMISSIONER BLOOM: I was going to
6 express my support for that as it stood.

7 COMMISSIONER BALCH: I think in 200 years
8 the way the computers go, we will have all the
9 information that everybody wants now. The problem
10 is you can't wait to do the development 200 years.

11 CHAIRWOMAN BAILEY: So we will accept this
12 proposed sentence, which is the last sentence of C.

13 COMMISSIONER BLOOM: I think it was the --
14 I'm sorry.

15 COMMISSIONER BALCH: The second
16 sentence -- are we talking now about the
17 standardized plans?

18 CHAIRWOMAN BAILEY: "In the absence of
19 site-specific groundwater data."

20 COMMISSIONER BALCH: Oh, okay. I think
21 opening the door for any additional data is a good
22 thing.

23 CHAIRWOMAN BAILEY: Yes.

24 COMMISSIONER BLOOM: Yeah.

25 COMMISSIONER BALCH: The more you have,

1 the better -- the more data you have, the better
2 your model or any prediction. So that's what you
3 will likely see from the producer.

4 COMMISSIONER BLOOM: So we accept the
5 sentence in the absence of -- okay.

6 CHAIRWOMAN BAILEY: All I have done is put
7 off that discussion.

8 COMMISSIONER BLOOM: I know.

9 CHAIRWOMAN BAILEY: Letting it settle for
10 just a little bit.

11 COMMISSIONER BLOOM: That's fine.

12 CHAIRWOMAN BAILEY: Then the next area is
13 E, "The operator may utilize, with the approval of
14 the appropriate division district office,
15 standardized plans for pit closure and other plans
16 which will remain approved until a subsequent plan
17 is either required by the appropriate division
18 district office or is submitted by the operator and
19 approved by the appropriate division district
20 office."

21 COMMISSIONER BALCH: So in practice now,
22 are you getting a lot of basically repeat plans?

23 CHAIRWOMAN BAILEY: Over and over again.

24 COMMISSIONER BALCH: So once it's
25 accepted, they submit it with all their other

1 applications. This just cuts out the paperwork and
2 documents.

3 COMMISSIONER BLOOM: Are there instances
4 where -- can you picture instances where the
5 standardized plan wouldn't be sufficient and we turn
6 back? Does that happen?

7 CHAIRWOMAN BAILEY: Standardized plan for
8 pit construction, pit closure and other plans. Yes,
9 there would be a denial of approval for certain
10 aspects of pit closure and pit construction. That
11 is looked at and approved.

12 COMMISSIONER BALCH: So I think maybe your
13 concern, Mr. Bloom, is that if we allow the
14 standardized plans that there may not be sufficient
15 oversight on things that we need a variation from
16 that?

17 COMMISSIONER BLOOM: Yeah, that's the
18 concern. I was wondering when a standardized plan
19 wouldn't be sufficient.

20 COMMISSIONER BALCH: Shifts the burden
21 from the division to the operator -- or the operator
22 to the division.

23 COMMISSIONER BLOOM: I understand that
24 currently people pound these out and use the same
25 plan over and over again anyhow. Would that

1 standardized plan then be on file?

2 COMMISSIONER BALCH: It would be part of
3 the searchable documents, wouldn't it?

4 CHAIRWOMAN BAILEY: It would be associated
5 with the well probably, the online system.

6 COMMISSIONER BALCH: What would get a
7 district officer to look at something and say,
8 "Wait, I don't think you can use your standardized
9 plan here"?

10 COMMISSIONER BLOOM: That was my question.

11 CHAIRWOMAN BAILEY: Okay. If a pit would
12 be constructed in violation of the siting criteria
13 and some amendment of that standard plan would
14 enable it to meet the criteria if it were amended,
15 that would be one way that it would be necessary.

16 COMMISSIONER BLOOM: Fencing could be
17 something? Proximity to a residence or something?

18 CHAIRWOMAN BAILEY: Yes.

19 COMMISSIONER BLOOM: Go back and show me
20 the plan with a fence.

21 CHAIRWOMAN BAILEY: Or if it's next to a
22 school or something.

23 COMMISSIONER BALCH: Right. I know on
24 other siting criteria do have proximity to
25 residences and other things like that.

1 COMMISSIONER BLOOM: Just pragmatically,
2 would this be a plan that's on file with OCD and the
3 operator would simply say, "I'm going to use my
4 standardized plan" or would it still be attached to
5 the permit application?

6 CHAIRWOMAN BAILEY: I think we could make
7 that very clear that that would be an APD would
8 require that, and I believe our rule on APDs --
9 let's look at that.

10 COMMISSIONER BLOOM: Seems like there
11 would be a question about that.

12 COMMISSIONER BALCH: Seems like tying
13 things to APD is --

14 CHAIRWOMAN BAILEY: The division may
15 impose conditions on approval to drill, and the
16 question is --

17 COMMISSIONER BLOOM: Maybe I answered my
18 own question by re-reading the sentence above it.
19 "The plan for a temporary pit may incorporate by
20 reference a standard design for multiple temporary
21 pits. The operator files with the application" --

22 COMMISSIONER BALCH: So you could say this
23 temporary pit -- they would put it in the file. In
24 their filing you would say this will incorporate the
25 standard design associated with APD No." -- and it

1 would be traceable.

2 CHAIRWOMAN BAILEY: I think so.

3 COMMISSIONER BLOOM: Yeah. Does that make
4 the last sentence actually irrelevant or does it
5 still help?

6 COMMISSIONER BALCH: I think the last
7 sentence lists everything that they use in the plan
8 that's not in the above sentence.

9 COMMISSIONER BLOOM: Maybe provides a
10 little more clarity?

11 COMMISSIONER BALCH: Yeah.

12 COMMISSIONER BLOOM: I'm fine with that
13 language.

14 CHAIRWOMAN BAILEY: So we can accept the
15 proposed language for Paragraph E, "The operator may
16 utilize with the approval of the appropriate
17 division"? Are we okay with that?

18 COMMISSIONER BALCH: I think so.

19 COMMISSIONER BLOOM: Yes.

20 CHAIRWOMAN BAILEY: Okay. And then we
21 come to the paragraph that has been deleted on
22 closed-loop systems.

23 MR. SMITH: May I interrupt? I already
24 have. I'm sorry. I had forgotten now. Are you
25 voting on each paragraph as you go or are you going

1 to wait and vote for this whole section?

2 CHAIRWOMAN BAILEY: The section.

3 COMMISSIONER BALCH: We are just trying to
4 make sure we have gotten through each point
5 individually.

6 MR. SMITH: Okay.

7 CHAIRWOMAN BAILEY: Okay. There was a
8 finding by Dr. Neeper in his facts and conclusions
9 that we should not delete this portion of the
10 closed-loop systems paragraph because of that
11 sentence, "If the operator proposes" -- it's about
12 half-way through the deleted paragraph. "If the
13 operator proposes to bury the contents of a drying
14 pad associated with the closed-loop system in an
15 on-site trench, the operator shall provide
16 sufficient information in detail on the site's
17 topography, soils, etc."

18 If this paragraph is deleted, he points
19 out that chlorides would be left on the surface from
20 drying pads and that burial would not be -- or
21 removal would not be required for the drying pads of
22 closed-loop systems.

23 COMMISSIONER BALCH: Is burial on-site in
24 general covered elsewhere?

25 CHAIRWOMAN BAILEY: We will get to burial

1 on-site at a later session.

2 COMMISSIONER BALCH: So I think you can
3 address that concern in that section. That would be
4 most appropriate to do so.

5 CHAIRWOMAN BAILEY: Right, but we need to
6 be aware that there has been a comment concerning
7 burial of drying pads.

8 COMMISSIONER BALCH: I already had it
9 tabbed.

10 CHAIRWOMAN BAILEY: Okay. So something
11 for us to keep in mind along with everything else.
12 Do we want to delete that entire paragraph on
13 closed-loop systems since closed-loop systems don't
14 require registration or permitting, just simply
15 notification of use?

16 COMMISSIONER BALCH: It seems redundant.

17 COMMISSIONER BLOOM: I think we could do
18 that, and then later on deal with -- I think
19 actually a more appropriate place than it is now is
20 the question of burying contents.

21 CHAIRWOMAN BAILEY: Yeah, I wanted to
22 bring it out that this is where he talked about it.

23 MR. SMITH: I'm sorry?

24 CHAIRWOMAN BAILEY: So we are deleting
25 that entire Paragraph 3.

1 MR. SMITH: What was the section that you
2 want to reserve to talk about in another section?

3 CHAIRWOMAN BAILEY: "If the operator
4 proposes to bury the contents of a drying pad
5 associated with the closed-loop system in an on-site
6 trench."

7 MR. SMITH: From there on?

8 CHAIRWOMAN BAILEY: Yes. His concern was
9 leaving chlorides on the surface.

10 COMMISSIONER BALCH: Right.

11 CHAIRWOMAN BAILEY: Then we go to
12 below-grade tanks. We have registration for
13 below-grade tanks for the first proposal and the
14 second proposal.

15 COMMISSIONER BALCH: Appropriate
16 engineering principles and practices.

17 CHAIRWOMAN BAILEY: Okay. Are you
18 proposing that we delete that language and say, "A
19 registered below-grade tank shall follow applicable
20 manufacturer's requirements" or just delete that
21 entire section?

22 COMMISSIONER BALCH: That's what we have
23 been doing.

24 COMMISSIONER BLOOM: We could just say
25 with the first sentence and then say, "The

1 registration of below-grade tanks shall include
2 operating and maintenance procedures and closure
3 plan and" --

4 COMMISSIONER BALCH: Doesn't seem like
5 this adds anything.

6 CHAIRWOMAN BAILEY: I agree.

7 COMMISSIONER BALCH: Striking the second
8 sentence in that section. No, the sentence above
9 it. "A registered below-grade tank shall use."
10 There you go.

11 CHAIRWOMAN BAILEY: That introduction
12 needs to change to "The registration of a
13 below-grade tank shall include operating and
14 maintenance procedures, a closure plan and a
15 hydrologic report that demonstrates compliance with
16 the siting criteria of 19.15.17.10" and deleting the
17 language regarding information and detail on site
18 topography, soil geology, et cetera because we are
19 not permitting a below-grade tank. We are simply
20 registering. Do you agree with that?

21 COMMISSIONER BALCH: Yeah, I think so. I
22 mean, that should --

23 COMMISSIONER BLOOM: It's the same
24 language that I had a question about above. In this
25 case we are registering but not permitting. So yes,

1 that's fine with me.

2 CHAIRWOMAN BAILEY: So Theresa, the
3 crossed-out language can be deleted. Then the next
4 suggestion is "The operator may utilize, with
5 approval of the appropriate division district
6 office, standardized plans for below-grade tank
7 construction and other plans which will remain
8 approved." So that is the same general language as
9 the temporary pit standardized plans as a registered
10 below-grade tank. Do you agree with using that
11 sentence?

12 COMMISSIONER BLOOM: I agree with that.

13 COMMISSIONER BALCH: I think so, yes.

14 CHAIRWOMAN BAILEY: Yes. Okay. Then we
15 get to multi-well fluid management pits.

16 COMMISSIONER BLOOM: May I request a
17 break?

18 CHAIRWOMAN BAILEY: Let's take a break.

19 (Note: The hearing stood in recess at
20 4:11 to 4:25.)

21 CHAIRWOMAN BAILEY: Back on the record.
22 We were about to go to Section Paragraph 4 on
23 multi-well fluid management pits. Right off the bat
24 we come across the appropriate engineering
25 principles and practices again. Do we want to

1 delete that language as we have for the other
2 facilities and have it read, "The plan for a
3 multi-well fluid management pit shall follow
4 applicable liner manufacturer's requirements"?

5 COMMISSIONER BLOOM: I would agree to
6 that.

7 COMMISSIONER BALCH: Yeah.

8 CHAIRWOMAN BAILEY: Okay, Theresa? You
9 got it? "The plan shall include operating and
10 maintenance procedures, closure, hydrologic data,
11 information in detail on topography, soils, geology,
12 hydrology to enable the appropriate division
13 district office to evaluate compliance."

14 COMMISSIONER BALCH: Essentially to where
15 it says NMAC is what we have for temporary pits?

16 CHAIRWOMAN BAILEY: Yes. And the next
17 sentence, "In the absence of site-specific
18 groundwater data" is essentially the same that we
19 used there also.

20 COMMISSIONER BALCH: The language is
21 essentially the same. Standardized plans.

22 CHAIRWOMAN BAILEY: Okay. So the very
23 last sentence there is a slight change that I think
24 we need to be aware of. The paragraph previously,
25 we had the plans approved until a subsequent plan is

1 either required by the division district office or
2 is submitted and approved. This language at the
3 very end doesn't talk about requirement by the
4 division district office that may be necessary. See
5 what I'm saying?

6 COMMISSIONER BALCH: Yes, I do. I think
7 you want to adopt the language from Section 3.

8 CHAIRWOMAN BAILEY: So it would read, "The
9 operator may utilize, with approval by the
10 appropriate district office, standardized plans for
11 pit construction, pit closure and other plans which
12 will remain approved until a subsequent plan is
13 either required by the appropriate division district
14 office or is submitted," so we would be inserting,
15 Theresa, language -- the words "until a subsequent
16 plan is either required by the appropriate division
17 district office." So the "either" goes
18 before "submitting." "Either required by the
19 appropriate division district office or is
20 submitted."

21 COMMISSIONER BALCH: Change the
22 appropriate -- right there, "either required by the
23 appropriate division district office," not just
24 district office. Right there. Insert "division."
25 That's essentially the same language we adopted.

1 CHAIRWOMAN BAILEY: Commissioner, Bloom,
2 do you agree with this?

3 COMMISSIONER BLOOM: Yes, I agree with
4 that.

5 CHAIRWOMAN BAILEY: Now, the implication
6 is that multi-well fluid management pits are
7 approved at the district office level, not at the
8 Santa Fe office level. Just pointing it out.

9 COMMISSIONER BLOOM: Yes.

10 CHAIRWOMAN BAILEY: So do we go to closure
11 plans? "A closure plan that an operator submits in
12 an application or a registration." Do you agree
13 with that addition?

14 COMMISSIONER BLOOM: Application or
15 registration?

16 CHAIRWOMAN BAILEY: Yes. Because it's
17 saying that we require closure plans for registered
18 facilities, which would include below-grade tanks.

19 COMMISSIONER BLOOM: I thought we were
20 still dealing with the --

21 CHAIRWOMAN BAILEY: Do we want to go back?

22 COMMISSIONER BLOOM: No, I still have my
23 head wrapped around the multi-well fluid management
24 pits. I'm sorry. That sounds good, yes.

25 CHAIRWOMAN BAILEY: Well, as you are still

1 mulling multi-well fluid management pits, do we want
2 a list of wells that are associated with those
3 multi-well fluid management pits as part of the
4 permit?

5 COMMISSIONER BALCH: We have already
6 decided that they have to have -- well, I'm not sure
7 if we decided, but we were talking about having it
8 tied to APDs so there's already a list of APDs.
9 Most of those will turn into wells. Do you think
10 it's important to track which ones actually were
11 drilled?

12 CHAIRWOMAN BAILEY: Well, we will do that
13 with the well reports, but it's a matter of do we
14 know at this plan, the permit application the list
15 of wells associated?

16 COMMISSIONER BALCH: I see.

17 COMMISSIONER BLOOM: Look at our working
18 definition of multi-well fluid management pits. Up
19 in the definitions, almost up to the very top.

20 CHAIRWOMAN BAILEY: So we say that the pit
21 permit has to list all the wells, but we don't put
22 that in this section concerning permitting.

23 COMMISSIONER BLOOM: Yes. I think that's
24 a point well taken there.

25 CHAIRWOMAN BAILEY: So we do need to

1 include that sentence that says that the permit
2 application.

3 COMMISSIONER BALCH: You might want to
4 just copy that sentence from the definition. I
5 would start with "all wells with approved
6 applications."

7 CHAIRWOMAN BAILEY: We can say it slowly
8 for her so she can write it.

9 COMMISSIONER BALCH: We will do it fresh.
10 It's in C.

11 CHAIRWOMAN BAILEY: At the top where it
12 says, "The plan shall include operating and
13 maintenance procedures, a closure plan and
14 hydrogeologic data that provides sufficient
15 information in detail," what we will insert in there
16 is, "The plan shall include operating and
17 maintenance procedures, a list of wells associated
18 with the pit" --

19 COMMISSIONER BALCH: Were we doing this in
20 the context of the closure plan?

21 CHAIRWOMAN BAILEY: No, but the closure
22 plan needs to be included as part of the permit
23 application. "A list of wells associated with" --
24 okay. "The closure plan and hydrogeologic data."
25 Is that where it needs to go? Is that the language

1 that we should use?

2 COMMISSIONER BLOOM: Do we want to
3 reference the APD as we did previously?

4 CHAIRWOMAN BAILEY: A list of the wells
5 with approved APDs.

6 COMMISSIONER BALCH: Wells with approved
7 APDs.

8 CHAIRWOMAN BAILEY: Associated with the
9 pit.

10 COMMISSIONER BALCH: With approved
11 applications for permits to drill.

12 COMMISSIONER BLOOM: Then that creates a
13 limit of two years; is that right?

14 CHAIRWOMAN BAILEY: An APD is approved for
15 two years. There's an expiration date.

16 COMMISSIONER BLOOM: And the associated
17 plan.

18 CHAIRWOMAN BAILEY: Yes.

19 COMMISSIONER BALCH: And if they want to
20 extend that they have to go to hearing. So
21 effectively there's a two-year limit without
22 oversight, without direct oversight.

23 COMMISSIONER BLOOM: Yes.

24 CHAIRWOMAN BAILEY: So are we good with
25 that whole paragraph?

1 COMMISSIONER BLOOM: They will still get
2 the APD approved and then file the application for
3 the multi-well fluid management pits. Do we have
4 any sort of guesstimate of what timeline would look
5 like for that?

6 COMMISSIONER BALCH: How long would it
7 take the process?

8 COMMISSIONER BLOOM: If it takes six
9 months to a year or something like that, it cuts
10 into the two years pretty hard.

11 CHAIRWOMAN BAILEY: It sure does.

12 COMMISSIONER BLOOM: I was wondering if
13 there's a way to -- if you want to do something
14 related to two years of the spud date of the first
15 well?

16 COMMISSIONER BALCH: No, regardless --
17 well, I think regardless we are looking at that
18 two-year time of the APD without some sort of
19 oversight. If you try and tie it to that, then you
20 have a situation where they have to be able to build
21 this pit.

22 COMMISSIONER BLOOM: Yes, they will have
23 to apply, get the APD, apply and build it.

24 COMMISSIONER BALCH: But I think the idea
25 is this is not a semi-permanent thing. It's

1 temporary for stimulation, for example, on X number
2 of wells in an area that can benefit from a single
3 large location of water. I think two years is still
4 quite reasonable even if it takes them six months to
5 get it going. Because every year has that two-year
6 window, and you still have to do stuff before you
7 can drill it. You are never going to start on day
8 one of the APD. You are never going to be drilling.

9 CHAIRWOMAN BAILEY: One of the things that
10 we will have to address in closure plans is how long
11 after the last well is spudded do they have to close
12 the pit. That comes later when we deal with closure
13 plans so we can give them an additional six months
14 or whatever. I mean, whatever we come up with for
15 the time when do they have to begin closure of the
16 pit.

17 COMMISSIONER BALCH: I think in the
18 definition we said "must be closed within the APD of
19 the last -- within the APD associated with it."

20 CHAIRWOMAN BAILEY: No, we say "may not be
21 used -- and remain in use until all wells with
22 approved APDs identified in the pit permit are
23 completed." That doesn't give a deadline of
24 closure.

25 COMMISSIONER BALCH: Okay.

1 CHAIRWOMAN BAILEY: Which we will deal
2 with in a later section.

3 COMMISSIONER BLOOM: I just don't want to
4 add some language here which would burn the time
5 that the operator has, burn up some of their two
6 years. I don't know if there's any other way to do
7 it though.

8 COMMISSIONER BALCH: As far as operating
9 the pit, I don't know if there is. If we want to
10 use the APD timeline, which is easily regulated, and
11 I think two years is still generous even if it turns
12 into a year and a half. Now, telling them it must
13 be closed at that date -- like with the closure plan
14 you can add some time after the last well is
15 stimulated.

16 CHAIRWOMAN BAILEY: Okay. So we have
17 accepted that whole Paragraph 4?

18 COMMISSIONER BALCH: For the second time.

19 COMMISSIONER BLOOM: Yes.

20 CHAIRWOMAN BAILEY: Okay. C, Closure
21 Plans. Closure plan that an operator submits in an
22 application or registration? We agree that that is
23 necessary language?

24 COMMISSIONER BLOOM: Yes.

25 CHAIRWOMAN BAILEY: Okay. Paragraph 1,

1 "Closure plans for multi-well fluid management pits
2 shall describe the proposed procedures and protocols
3 for the removal of all unused stimulation liquids
4 and the disposition of liner materials and other
5 contents." Do we accept that?

6 COMMISSIONER BLOOM: That looks good.

7 CHAIRWOMAN BAILEY: Okay.

8 COMMISSIONER BALCH: Yes.

9 CHAIRWOMAN BAILEY: The next section,
10 "Closure plans shall be filed with the appropriate
11 division district office and in accordance with
12 19.15.17.13." On Page 26 that's the closure and
13 site reclamation requirements.

14 COMMISSIONER BALCH: Okay.

15 CHAIRWOMAN BAILEY: So we are all good
16 with that? Okay.

17 COMMISSIONER BLOOM: I was just wondering
18 for the sake of consistency -- I don't know if it's
19 worth the time, but we are looking at permanent
20 pits, for example. It has the closure plan
21 underneath it and then temporary pits. I don't know
22 if they have a closure plan specified. Actually,
23 that does mention pit closure. So is C really only
24 addressing multi-well fluid management pits?

25 CHAIRWOMAN BAILEY: Yes. Required in

1 Subsection B. Subsection B deals with all permit
2 applications.

3 COMMISSIONER BLOOM: Okay. Most of the
4 other ones have -- I think maybe except for
5 below-grade tank mention a closure plan. I was
6 wondering why C exists because permanent pit and
7 temporary pit are already mentioned there on closure
8 plans, right?

9 CHAIRWOMAN BAILEY: Well, we get into the
10 details of closure in Section 13.

11 COMMISSIONER BALCH: Before that we are
12 just saying you need a closure plan. Now we are
13 telling you what has to be in it.

14 COMMISSIONER BLOOM: That's fine.

15 CHAIRWOMAN BAILEY: Okay. Then there's
16 the suggestion deletion of paragraph, "If the
17 operator proposes an on-site closure."

18 COMMISSIONER BALCH: This is being
19 scratched because on-site disposal is being
20 addressed in a separate section?

21 CHAIRWOMAN BAILEY: That's right. So do
22 we want to reserve discussion or do we want to --

23 COMMISSIONER BALCH: We can reserve
24 discussion.

25 COMMISSIONER BLOOM: I think reserve

1 discussion there.

2 CHAIRWOMAN BAILEY: We will come back to
3 this one.

4 COMMISSIONER BALCH: We only have 15
5 minutes.

6 CHAIRWOMAN BAILEY: Yeah.

7 COMMISSIONER BLOOM: No. 2, I don't know
8 if we can agree to delete that now. It's
9 unnecessary.

10 COMMISSIONER BALCH: If all of the unlined
11 pits have been resolved.

12 CHAIRWOMAN BAILEY: They should have been.

13 COMMISSIONER BALCH: 2008 I think was the
14 deadline.

15 CHAIRWOMAN BAILEY: So we can agree to go
16 ahead and delete Paragraphs 2 and 3 completely?

17 COMMISSIONER BLOOM: Yes. Unlined
18 temporary pits have to be terminated by 2008?

19 COMMISSIONER BALCH: Six months or a year
20 after the --

21 COMMISSIONER BLOOM: Same with unlined
22 permanent pits?

23 COMMISSIONER BALCH: Therefore no unlined
24 permanent pits.

25 CHAIRWOMAN BAILEY: So that leaves us with

1 filing of permit application that we can talk about
2 tomorrow along with coming back to C1, whether or
3 not to delete it and coming back to the language
4 under temporary pits, which is B2, whether or not to
5 delete the language "actual or potential effects of
6 soil and surface water," etc. So other than those
7 three areas do we have a motion to --

8 COMMISSIONER BALCH: I think 1 and 2
9 should be highlighted. And then D2.

10 CHAIRWOMAN BAILEY: Under temporary pits,
11 2C. Next page. Yes, up above.

12 COMMISSIONER BALCH: I don't have a 2C. I
13 just have a 2. It's that paragraph that you are
14 scrolling through right now.

15 CHAIRWOMAN BAILEY: We will come back and
16 discuss that. So other than those three, is there a
17 motion to approve the agreements that we reached in
18 the other paragraphs?

19 COMMISSIONER BLOOM: I got lost. We have
20 a number of things pending.

21 CHAIRWOMAN BAILEY: We have the language
22 in temporary pits.

23 COMMISSIONER BALCH: That was the --

24 COMMISSIONER BLOOM: Low chloride fluids.

25 CHAIRWOMAN BAILEY: That goes back to

1 the --

2 COMMISSIONER BLOOM: I'm sorry, we are
3 talking about this current --

4 CHAIRWOMAN BAILEY: Talking about this
5 section, Section 8 and Section 9. We are going to
6 work those together. So we made agreements for
7 19.15.17.8 and 19.15.17.9 reserving certain sections
8 for further discussion, particularly concerning
9 language in Section 9B2C. In C --

10 COMMISSIONER BLOOM: I don't have that.

11 COMMISSIONER BALCH: I think I am working
12 from a different version than you. Maybe Mr. Bloom
13 is as well.

14 COMMISSIONER BLOOM: Yeah.

15 COMMISSIONER BALCH: For us it's just
16 Section 2 and D1 and 2.

17 COMMISSIONER BLOOM: Section 2 is the one
18 phrase, right?

19 CHAIRWOMAN BAILEY: Yes. Then the
20 paragraph --

21 COMMISSIONER BALCH: The paragraph above
22 Section D.

23 CHAIRWOMAN BAILEY: So we have highlighted
24 those that we need to come back to.

25 COMMISSIONER BLOOM: Correct.

1 CHAIRWOMAN BAILEY: Do we have a motion to
2 accept the other portions that we made agreements
3 on?

4 COMMISSIONER BLOOM: I would so move.

5 COMMISSIONER BALCH: I would second.

6 CHAIRWOMAN BAILEY: All in favor?

7 COMMISSIONER BLOOM: Aye.

8 COMMISSIONER BALCH: Aye.

9 CHAIRWOMAN BAILEY: Aye. No one opposed.
10 We will resume tomorrow at 9:00 o'clock. Mr. Smith,
11 you look like you are about to say something.

12 MR. SMITH: Just to Theresa.

13 COMMISSIONER BLOOM: I have one request.
14 If you could E-mail us our progress to date on this?
15 Thank you.

16 (Note: The hearing was adjourned for the
17 day at 4:50).

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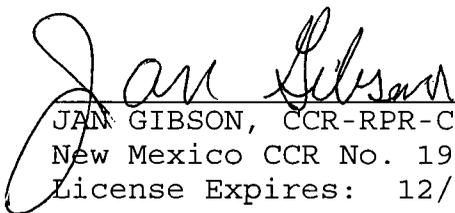
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REPORTER'S CERTIFICATE

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

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



JAN GIBSON, CCR-RPR-CRR
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