

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

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

CASE NO. 12,969

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION, THROUGH THE)
ENVIRONMENTAL BUREAU CHIEF, FOR ADOPTION)
OF A NEW RULE REGULATING PITS AND BELOW-)
GRADE TANKS; AMENDMENT OF 19.15.1.7 NMAC)
AND 19.15.5.313 NMAC; RESCISSION OF)
19.15.1.18 NMAC, 19.5.3.105 NMAC AND)
19.15.2.1 THROUGH 19.15.2.15 NMAC; AND)
RESCISSION OF ORDERS R-3221, R-3221-A,)
R-3221-B, R-3221-B-1, R-3221-C,)
R-3221-D, R-7940, R-7940-A, R-7940-B,)
R-7940-B(1) AND R-7940-C)

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Oil Conservation Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN
JAMI BAILEY, COMMISSIONER
ROBERT LEE, COMMISSIONER

December 11th, 2003
Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Thursday, December 11th, 2003, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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December 11th, 2003
Commission Hearing
CASE NO. 12,969

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A P P E A R A N C E S

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* * *

1 WHEREUPON, the following proceedings were had at
2 9:07 a.m.:

3 CHAIRMAN WROTENBERY: Okay, we'll get started.
4 It's a little after 9:00 on December 11th, 2003. This is a
5 meeting of the Oil Conservation Commission. We're here in
6 Porter Hall in Santa Fe, New Mexico. All three
7 Commissioners are present.

8 I'm Lori Wrotenbery, I serve as Chair of the
9 Commission. To my right is Commissioner Jami Bailey; she
10 represents Land Commissioner Patrick Lyons on the
11 Commission. To my left is Dr. Robert Lee who serves on the
12 Commission as an appointee of the Secretary of the Energy,
13 Minerals and Natural Resources Department.

14 We also have Commission Counsel David Brooks,
15 Commission Secretary Florene Davidson, and Steve Brenner is
16 here to record the meeting for us.

17 We have two rulemaking proceedings on the agenda.

18 First we've got the minutes of the meeting of the
19 Commission held on November 13th and 14th, 2003.
20 Commissioners, have you had a chance to review those
21 minutes?

22 COMMISSIONER BAILEY: Yes, I have, and I move we
23 adopt them.

24 COMMISSIONER LEE: Second.

25 CHAIRMAN WROTENBERY: All in favor say aye.

1 COMMISSIONER BAILEY: Aye.

2 COMMISSIONER LEE: Aye.

3 CHAIRMAN WROTENBERY: Aye. And I'll sign those
4 on behalf of the Commission.

5 * * *

6
7 CHAIRMAN WROTENBERY: And the first rulemaking
8 proceeding we'll take up is Case 12,969. This is the
9 Application of the New Mexico Oil Conservation Division,
10 through the Environmental Bureau Chief, for adoption of a
11 new rule regulating pits and below-grade tanks. This
12 proceeding also involves the amendment or repeal of several
13 other Commission Rules and Orders.

14 The Commission had a lengthy proceeding on this
15 matter in November and took testimony and comments on the
16 Division's proposal on November 13th and 14th.

17 Since then, we have received some additional
18 comments. We kept the record open for additional written
19 comments until December 2nd, and we did get some additional
20 comments in that form.

21 Mr. Brooks has taken that information and
22 reviewed the transcript and the other evidence presented at
23 the hearing, as well as the comments received before the
24 hearing, and has summarized that information in the form of
25 a draft order.

1 We do have a draft order in front of you this
2 morning, and what this represents is basically my
3 recommendation about how we respond to the comments that we
4 received on the proposal.

5 Mr. Brooks, I think you were prepared to
6 highlight for us the major --

7 MR. BROOKS: Yes.

8 CHAIRMAN WROTENBERY: -- changes we're talking
9 about making to the Division's proposal --

10 MR. BROOKS: That's correct.

11 CHAIRMAN WROTENBERY: -- based on the testimony
12 and the comments?

13 MR. BROOKS: I have here copies of proposed
14 language of the Rules and amendments that reflect the
15 Chairman's recommendations, if anyone wants copies.

16 Dr. Lee, I believe you -- Do you have copies? I
17 know -- Commissioner Bailey, I believe, has copies,
18 correct?

19 COMMISSIONER LEE: Thank you.

20 MR. BROOKS: And if anyone else wants copies of
21 these documents --

22 CHAIRMAN WROTENBERY: I do.

23 MR. BROOKS: Oh, you need a copy. All right.

24 CHAIRMAN WROTENBERY: Thank you.

25 MR. BROOKS: You have the original, but you don't

1 mark on mine until we --

2 CHAIRMAN WROTENBERY: Yes.

3 MR. BROOKS: -- get ready for the final markup.

4 Okay, I also have a summary sheet which I should
5 have handed to you at the same time. This is a list, just
6 my summary of the principal substantive revisions. I
7 caution people not to put too much weight on the summary of
8 substantive revisions, because what is substantive versus
9 what is a technical revision can be a matter of judgment,
10 and you might find something that was of interest to you
11 that wasn't -- that I didn't think was substantive.

12 But I will begin by going through the substantive
13 revisions, and this was the Chairman's suggestion, I
14 believe, that I go through the substantive revisions and
15 ask if anyone wanted -- or any of the Commissioners wanted
16 to comment on those? Is that --

17 CHAIRMAN WROTENBERY: Or have any discussion on
18 any of them.

19 MR. BROOKS: Yeah.

20 CHAIRMAN WROTENBERY: Yeah.

21 MR. BROOKS: And then at the end of that, then
22 anything else that any Commissioner wants to raise will be
23 up to the members of the Commission.

24 But the first item that has been changed from the
25 Division's recommendation is in subparagraph C.2.(a) of the

1 Rule, which deals with location of pits. The Rule as
2 recommended by the Division prohibited pits in lakebeds,
3 sinkholes or playa lakes or watercourses, and -- however,
4 it had an exception for drilling and workover pits.

5 The proposal of the Chairman is that the
6 Division's recommendation be adopted but the exception for
7 drilling and workover pits be deleted in that context.

8 CHAIRMAN WROTENBERY: And we did receive at least
9 a couple of comments on this particular point.

10 MR. BROOKS: Yes, several of the landowner
11 witnesses and commenters have requested that change. Some
12 other commenters have requested that the prohibited areas
13 be expanded to include some additional areas, in addition
14 to the watercourses, lakebeds, sinkholes and playa lakes.

15 CHAIRMAN WROTENBERY: Any question or comment?

16 COMMISSIONER BAILEY: Comment.

17 CHAIRMAN WROTENBERY: Okay.

18 COMMISSIONER BAILEY: As you know, I was trying
19 to include wellhead protection areas as part of the list of
20 prohibited locations, and I thought maybe I should just
21 explain today where I was coming from on that.

22 As some of you may or may not know, a long time
23 ago I worked with the OCD Environmental Bureau, and one of
24 the last assignments that I had before I left was a request
25 to go investigate a water well that had gone bad up near

1 Lindrith. And we got up there, and it was a very old
2 retired couple who had retired to this beautiful area in
3 Lindrith, and the previous week their well pumphouse had
4 blown up. And the problem was that the local coalbed
5 methane operator had drilled a well really close to their
6 water well, and methane was showing up in this old folks'
7 water well.

8 Now, this case has nothing to do with
9 contamination of water wells through natural gas frac'ing
10 or anything like that. I understand that. But it just
11 brought home to me that there were no protective measures
12 for those old folks who wanted their water and who had been
13 there before the company had come in and drilled and
14 obviously had frac'd the thunder out of that coalbed
15 methane well.

16 So I was really proud when we did the vulnerable
17 area orders. I was very glad to put my name on those
18 orders, showing that there was importance given to water
19 wells up in the northwest.

20 And now we have this opportunity, which has
21 nothing to do -- I know that -- with frac'ing wells or
22 drilling locations, but which does recognize that we put a
23 great deal of importance on people's drinking-water wells,
24 which in my mind counts more than playa lakes or sinkholes.
25 But I understand that this proceeding may not have gone far

1 enough to be able to put that prohibition for pits within
2 certain distances of water wells. So I'm glad to see at
3 least we have it listed as an area that the OCD could
4 require additional protective measures.

5 CHAIRMAN WROTENBERY: Yeah, I appreciate those
6 comments on this particular issue, and I agree with you
7 that we need to take a very close look anytime that we've
8 got a proposal to put a pit into an area that's close to a
9 water well.

10 What I am recommending here is that we treat the
11 wellhead protection areas like the Division proposed to
12 treat groundwater-sensitive areas, or other groundwater-
13 sensitive areas -- I would consider maybe a wellhead
14 protection area to be a groundwater-sensitive area -- and
15 clarify that the Division may require additional protective
16 measures and ask the Division -- direct the Division to
17 take a very close look at proposals --

18 COMMISSIONER BAILEY: I think that's important.

19 CHAIRMAN WROTENBERY: -- in those circumstances
20 and consider particularly, you know, the liner requirements
21 in that area and then also, more specifically, the closure
22 requirements.

23 COMMISSIONER BAILEY: Which is the key, I do
24 agree, that closure has to be raised in importance in those
25 particular areas.

1 CHAIRMAN WROTENBERY: Okay, thank you.

2 MR. BROOKS: The second change was the one that
3 has already been mentioned in connection with this
4 discussion. That was that the provision of subparagraph
5 C.2.(a) that authorizes the Division to require additional
6 protective measures in groundwater-sensitive areas was
7 amended to add, "and wellhead protection areas".

8 The groundwater-sensitive areas definition was
9 very general, and it was not clear whether it included any
10 wellhead protection concept or not, but -- and it was
11 thought that it ought to make clear that wellhead-
12 protection areas were analogous to groundwater-sensitive
13 areas and that the Division should look at them and
14 determine if specific protections were warranted, and this
15 was in accordance with the recommendations of several of
16 the surface-owner witnesses and commenters.

17 The third substantive provision was one that
18 occupied a significant part of the testimony at the
19 hearing. Subparagraph C.2.(e) dealing with discharge into
20 pits and -- well, no, this was not in subparagraph C.2.(f),
21 only in subparagraph C.2.(e).

22 The Rule as proposed by the Division prohibited
23 discharge into a pit of liquids containing two-tenths
24 percent hydrocarbons or more. The testimony offered at the
25 hearing indicated that this level was not practical to

1 measure, and there was an absence of testimony indicating a
2 scientific or empirical basis for that particular
3 criterion, and accordingly the Chairman's recommendation
4 was that we substitute language prohibiting -- stating that
5 no visible -- no measurable or visible layer of oil may be
6 allowed to accumulate or remain anywhere on the surface of
7 any pit, be substituted for the two-tenths-percent
8 hydrocarbon rule, which would be deleted.

9 Any discussion on that?

10 CHAIRMAN WROTENBERY: I don't hear any

11 MR. BROOKS: Okay, number 4 relates to
12 subparagraph C.2.(f). Subparagraph C.2.(f) deals with
13 fencing and netting of pits, and there are two substantive
14 changes, one dealing with fencing and one dealing with
15 netting. As recommended by the Division, C.2.(f) would
16 have required fencing to prevent access by livestock or
17 wildlife.

18 There was considerable discussion at the hearing
19 as to what was required to prevent access by wildlife, and
20 without there being a definitive resolution as to exactly
21 what the Division thought was appropriate, the Commission
22 -- or rather, the Chairman has determined to recommend to
23 the Commission that livestock be deleted from that, because
24 it wasn't clear what measures would be taken or when they
25 would be required with regard to livestock --

1 CHAIRMAN WROTENBERY: Wildlife.

2 MR. BROOKS: -- with regard to wildlife, I'm
3 sorry. Be sure I'm stating myself correctly here. -- and
4 that instead of requiring fencing to prevent access by
5 wildlife that we add a new provision stating that permit
6 conditions may be imposed to protect wildlife in particular
7 circumstances, in particular areas.

8 CHAIRMAN WROTENBERY: The testimony was that the
9 Division did not intend to require deer fencing, for
10 instance, in every circumstance, and there was a fairly
11 lengthy discussion about what the Division intended would
12 be required in the typical case, and it appeared to be the
13 livestock-type fencing that was envisioned there for the
14 majority of the cases. But Mr. Anderson pointed out that
15 there may be some areas where you have a concern about
16 other types of wildlife, and this provision would enable
17 the Division to consult with the Fish and Game Department
18 or others who are interested in this area and require some
19 additional measures in particular cases.

20 CHAIRMAN WROTENBERY: The next substantive
21 revision, number 5 on list, deals with netting. Again,
22 this was the subject of considerable testimony and
23 discussion at the hearing. The Commission, after the
24 hearing, was somewhat uncertain, I believe, as to exactly
25 what the Division's recommendation was with regard to

1 netting of drilling and workover pits.

2 The Chairman's recommendation on this is that the
3 Rule be kept as it is at present, or in substance the same
4 as existing Rule 105, that -- to the effect that drilling
5 and workover pits are exempt from the netting requirement
6 during operations, and that at the conclusion of operations
7 there may be a fairly long period of time because the Rule
8 allows six months for closure, but during that period of
9 time they remain exempt only if they're kept free of oil.
10 And that is basically our understanding of what the Rule
11 now requires, and it would be what would be required in the
12 Chairman's recommendation for this Rule.

13 CHAIRMAN WROTENBERY: Also, that Rule has been in
14 place for 10 years or more at this point, and I'm not aware
15 that we've had significant problems, any -- I'm not aware
16 of an problems, actually, associated with drilling and
17 workover pits in this regard.

18 MR. BROOKS: Okay. The next requirement, C.6,
19 we're going back to the area of wellhead-protection area.
20 The wellhead-protection area, as it exists under the
21 existing Order 7940-C is in the northwest, an area in which
22 unlined pits are prohibited. The area as defined by Order
23 7940-C is a thousand feet around public wells and 200 feet
24 around private wells.

25 Now, there's a history to that, in that Order

1 7940-B originally defined the wellhead-protection area as a
2 thousand feet around any well. On rehearing, the
3 Commission withdrew Order 7940-B and issued Order 7940-C,
4 which limited it to 200 feet around private wells.

5 The exhibits introduced while the Division
6 proposed reverting to the 7940-B definition that would have
7 been a thousand feet around any well, the exhibits
8 introduced in evidence made it clear that the Division was
9 aware of that distinction and did in fact want to go back
10 to that larger definition. However, no evidence on the
11 issue was introduced other than merely the statement that
12 that was the way it had been. There was no evidence
13 supporting the larger area introduced at hearing, and the
14 Commission apparently heard considerable evidence on the
15 subject at the time they adopted Order 7940-C.

16 Accordingly, the Chairman is recommending that
17 the definition be kept in accordance with Order 7940-C.

18 I will add -- Okay, I'm sorry.

19 CHAIRMAN WROTENBERY: I was just going to say
20 that a change in the definition of wellhead protection area
21 would have effects beyond this particular rulemaking
22 proceeding. For instance, we use that definition in the
23 context of guidelines for cleanup and in determining what
24 the standards will be for cleanup. And I don't believe
25 we've fully considered what the effects would be on that

1 particular process of this change.

2 COMMISSIONER BAILEY: Could we just have some
3 clarification that over here in C.2 the wellhead-protection
4 area that's referenced in paragraph 2.(a) --

5 CHAIRMAN WROTENBERY: Uh-huh.

6 COMMISSIONER BAILEY: -- does apply statewide?
7 The wellhead-protection area mentioned here in -- what is
8 this? G- --

9 CHAIRMAN WROTENBERY: --2, G.3

10 COMMISSIONER BAILEY: -- -3 applies only to the
11 northwest.

12 CHAIRMAN WROTENBERY: Yes.

13 MR. BROOKS: That is correct. Do you believe
14 that the language really needs to be changed to clarify
15 that?

16 COMMISSIONER BAILEY: Well, I just want to be
17 sure I'm reading it correctly, that C.2.(a) does apply
18 statewide, and this second mention of wellhead-protection
19 area is applicable to the northwest.

20 MR. BROOKS: That is correct, that is our
21 understanding of the situation, because in C.2.(g),
22 C.2.(g).(iii) has two sets of categories: those areas in
23 the southeast that are defined by township, range and
24 section, and then the next portion of it starts with that
25 area within San Juan, Rio Arriba, Sandoval and McKinley

1 Counties, and that is where the language about wellhead
2 protection area occurs, in that subparagraph, and
3 consequently it applies only within the areas of San Juan,
4 Rio Arriba, Sandoval and McKinley Counties, whereas the
5 definition of wellhead protection area is not limited to
6 any specific portion of the State.

7 So when the word is used without any
8 qualification, as it is in C.2.(a), it would be, I believe,
9 applicable in all areas of the state.

10 COMMISSIONER BAILEY: So all pits will be lined
11 within wellhead protection areas, no matter where it's
12 located?

13 MR. BROOKS: Well, unless they are located in the
14 defined sections, townships and ranges in the southeast
15 that are identified in the first paragraph -- or the second
16 grammatical paragraph, I guess it is, that lists the
17 specific legal descriptions in C.2.(iii). Since the
18 wellhead-protection area -- in C.2.(g).(iii).

19 Since the wellhead-protection area provision of
20 C.2.(g).(iii) is specifically tied to San Juan, Rio Arriba,
21 Sandoval and McKinley Counties, then there would not be a
22 liner requirement by virtue of it being a wellhead-
23 protection area except in those counties. There would be a
24 liner requirement, however, by virtue of the general
25 requirement at the beginning of C.2.(g), C.2.(g).(i),

1 unless it's taken out of that by the specific-legal-
2 description provision of C.2.(g).(iii).

3 CHAIRMAN WROTENBERY: David, I'm not sure I
4 followed that one. Can we back up just a minute and --
5 What was your question again? I'm sorry. I tried to
6 listen, I just didn't make it.

7 COMMISSIONER BAILEY: The question is, are we
8 assured that all groundwater-protection areas, those areas
9 that surround water wells, wellhead-protection areas, are
10 lined, no matter where they're located?

11 MR. BROOKS: I believe the answer to that is no,
12 because if they are located --

13 CHAIRMAN WROTENBERY: I was going to say yes, so
14 let's talk about this.

15 MR. BROOKS: -- if they are located in the list
16 of townships and ranges specifically set forth in
17 C.2.(g).(iii) --

18 CHAIRMAN WROTENBERY: Oh, I see what you're
19 saying.

20 MR. BROOKS: -- and I believe that would not be
21 the case. I don't know if there are any wells --

22 CHAIRMAN WROTENBERY: No.

23 MR. BROOKS: -- in those areas or not.

24 CHAIRMAN WROTENBERY: Well, it's not just that
25 they're in those townships --

1 MR. BROOKS: Townships, ranges and sections.

2 CHAIRMAN WROTENBERY: -- it's if they have -- if
3 they have --

4 MR. BROOKS: Well, the Division still has --
5 there is still this first sentence, "Unlined pits shall be
6 allowed...provided that the operator has submitted, and the
7 Division has approved, an application for permit as
8 provided in...19.15.2..." So a permit is still required,
9 but the pit may be unlined if it's in one of those defined
10 areas.

11 CHAIRMAN WROTENBERY: And these are areas where
12 the Division has previously reviewed the groundwater
13 situation --

14 MR. BROOKS: Right.

15 CHAIRMAN WROTENBERY: -- is the way I understand
16 it, and has determined that there is not groundwater to be
17 protected, or if there is, there is not a concern about a
18 threat to that groundwater.

19 MR. BROOKS: That issue was apparently considered
20 at great length by the Commission in the 3221 series of
21 orders, that -- this area is defined in Order 3221-C. I
22 think it was originally defined in Order 3221. I don't
23 remember the exact contents of those orders. I have them
24 here. But in any event, that list of legal descriptions is
25 taken from that area --

1 CHAIRMAN WROTENBERY: Uh-huh.

2 MR. BROOKS: -- from those orders, and it was
3 apparently given considerable study by the Commission at
4 that time. Actually, Order 3221 originally prohibited
5 unlined pits in all areas of the southeast. This list of
6 exceptions originated in Order 3221-B that was issued by
7 the Commission on July 25th, 1968, and it was carried
8 forward in Order 3221-C, which was issued on September
9 10th, 1968.

10 CHAIRMAN WROTENBERY: Well, I suppose we could
11 make doubly sure that there's not a wellhead-protection
12 area in those sections --

13 MR. BROOKS: Well, I have no idea --

14 CHAIRMAN WROTENBERY: -- by --

15 MR. BROOKS: -- whether there is or not. I have
16 not reviewed the record of those proceedings, only the
17 orders and the determinations the Commission made, but --

18 CHAIRMAN WROTENBERY: Well, what I was suggesting
19 -- and I didn't word it well -- is that we could add a
20 provision to this list of sections similar to what -- to
21 the wording that appears in the paragraph concerning the
22 northwest counties, that you don't have to have a liner in
23 these sections, provided that you're not in a wellhead
24 protection area.

25 I mean, I believe the Commission has already

1 looked at these areas and determined that there's not a
2 groundwater-protection issue. But just to make doubly
3 certain, since none of us here have that information at
4 hand at the moment --

5 COMMISSIONER BAILEY: And there have been wells
6 drilled within the last 40 years.

7 CHAIRMAN WROTENBERY: Uh-huh.

8 MR. BROOKS: There's no evidence on that subject
9 in this record.

10 CHAIRMAN WROTENBERY: Uh-huh. But we could make
11 doubly certain --

12 MR. BROOKS: Absolutely.

13 CHAIRMAN WROTENBERY: -- by just adding after
14 Sections 1 through 19 there at the end of that first
15 paragraph in (g).(iii) a clause that says provided that the
16 pit site is not located in a wellhead-protection area.

17 COMMISSIONER BAILEY: Or you could just take that
18 "provided" --

19 CHAIRMAN WROTENBERY: Or --

20 COMMISSIONER BAILEY: -- and put it at the
21 beginning of (iii) and have it apply to everything after
22 that.

23 MR. BROOKS: That's true, you could put it in the
24 first sentence.

25 CHAIRMAN WROTENBERY: That's true.

1 COMMISSIONER BAILEY: Might be the --

2 CHAIRMAN WROTENBERY: Uh-huh. Can you do some
3 quick drafting, David --

4 MR. BROOKS: Yes.

5 CHAIRMAN WROTENBERY: -- tell us what you
6 recommend?

7 MR. BROOKS: Okay. Okay, C.2, clause
8 C.2.(g).(iii), the first sentence presently reads, "Unlined
9 pits shall be allowed in the following areas provided that
10 the operator has submitted, and the Division has approved,
11 an application for permit as provided in Subsection 53 of
12 19.15.2 NMAC." Now that needs, of course -- that reference
13 is going to have to be reworded. But since it will depend
14 on the requirements of the Commission on Public Records,
15 that will be a technical correction that can be made after
16 the Rule is adopted.

17 What we propose to deal with this situation is
18 that after NMAC we add, "; provided that the pit is not
19 located in a wellhead-protection area."

20 COMMISSIONER BAILEY: Okay --

21 (Off the record)

22 MR. BROOKS: Okay, Commissioner Bailey is
23 suggesting that it read "is not located in water-bearing
24 alluvium or within a wellhead-protection area." "Or within
25 a wellhead-protection area." And then put the colon after

1 that, after "area".

2 Then, going over to the next page of the exhibit,
3 the -- what I would characterize as the third grammatical
4 paragraph of clause C.2.(g).(iii), the language, "provided
5 that the pit site is not located in water-bearing alluvium
6 or within a wellhead-protection area" would then be deleted
7 because it would be duplicative of what we put in the first
8 sentence of that clause.

9 COMMISSIONER BAILEY: Do you want to put in
10 "fresh water"?

11 MR. BROOKS: In what context?

12 COMMISSIONER BAILEY: In the context that the pit
13 is not located in freshwater-bearing alluvium?

14 MR. BROOKS: Is that what this says? That's not
15 what the current -- says, but that's fine if that's what
16 the Commission wants. I think --

17 COMMISSIONER BAILEY: Just so there's no
18 confusion that we're trying to protect water that has such
19 a high TDS that it's not considered freshwater protectible
20 anyway.

21 CHAIRMAN WROTENBERY: Of course, my only
22 hesitation there is, the freshwater language was not in
23 the --

24 COMMISSIONER BAILEY: Right, it was just a
25 strikeoff.

1 CHAIRMAN WROTENBERY: Uh-huh. I know in our
2 definition of alluvium we defined alluvium as usually
3 containing freshwater, so we do have --

4 COMMISSIONER BAILEY: Okay.

5 CHAIRMAN WROTENBERY: -- we --

6 MR. BROOKS: Yeah --

7 CHAIRMAN WROTENBERY: But I'm not sure that's a
8 limiting --

9 MR. BROOKS: -- generally carries fresh water.

10 CHAIRMAN WROTENBERY: -- generally carries -- I'm
11 not sure that's a limiting phrase, though. It's just a
12 little bit of extra information. So perhaps, yes, that
13 would be a good addition, freshwater-bearing alluvium.

14 And we did in the definition of wellhead-
15 protection area, I believe, include the concept that it is
16 freshwater wells and freshwater springs that we're
17 protecting --

18 MR. BROOKS: I believe we did, but I'll check.

19 CHAIRMAN WROTENBERY: That would be consistent.

20 MR. BROOKS: Freshwater well or spring.

21 CHAIRMAN WROTENBERY: Uh-huh. Okay.

22 MR. BROOKS: Let me note for the record at this
23 point that I made a mistake here on the definition of
24 wellhead-protection area. The current definition
25 incorporates a provision that -- The definition recommended

1 by the Division includes a sentence that says wellhead
2 protection areas shall not include areas -- it shall not
3 include groundwater wells drilled after an existing oil or
4 natural gas storage treatment or disposal site was
5 established.

6 In the process of modifying the definition, I
7 deleted that language. It was not my intention, is my
8 understanding --

9 CHAIRMAN WROTENBERY: Delete it.

10 MR. BROOKS: -- madame Chairman, that it was not
11 your intention to delete that language, and that was an
12 inadvertent error in the draft, and that will need to be
13 corrected before we adopt the Rule.

14 CHAIRMAN WROTENBERY: Okay. So what we've
15 decided to do is, at the very beginning of (g).(iii) we'll
16 add a "provided that" clause that covers pit sites that are
17 located in freshwater-bearing alluvium or within a
18 wellhead-protection area, and it clarifies that those pits
19 will need to be lined.

20 MR. BROOKS: Right, even if they are in the
21 invulnerable area of the southeast.

22 CHAIRMAN WROTENBERY: Okay. And then in the
23 paragraph that addresses the four counties of the
24 northwest, we will still have a "provided that" clause, but
25 it will address whether groundwater is present and, if so,

1 whether it will be adversely affected.

2 MR. BROOKS: Right.

3 CHAIRMAN WROTENBERY: That part of the "provided
4 that" clause will remain --

5 MR. BROOKS: That's right.

6 CHAIRMAN WROTENBERY: -- in that paragraph.

7 Okay. Sounds good.

8 MR. BROOKS: Okay. The next substantive change,
9 C.4, the definition of sump, the maximum size of sump is
10 raised from 110 gallons to 500 gallons in the Chairman's
11 recommendation.

12 CHAIRMAN WROTENBERY: And that's my
13 recommendation based on what's done in at least one other
14 state that I'm aware of, and their exclusion for small
15 sumps, and I will note that we've done some calculations,
16 and that's basically about a four-foot-by-four-foot-by-
17 four-foot-size container, is what we're talking about. So
18 we're not talking about a large sump, even then.

19 And I think that will allow operators the
20 flexibility to install these containment devices -- they
21 really are pollution-prevention devices. So we don't want
22 to discourage them from installing these devices by adding
23 extra requirements.

24 We have at the same time clarified that they do
25 need to test these sumps for integrity on an annual basis

1 and if they can't actually lift the container out of the
2 ground and check it for holes visually, they'll need to use
3 some sort of accepted mechanical test.

4 MR. BROOKS: That is correct, and that's one of
5 those things that was on the borderline between a
6 substantive change and a technical change, and I did not
7 list it. I probably should. The Division's proposal had
8 merely said that sumps would be tested annually for
9 integrity. There was proposed language -- NMOGA/IPANM
10 proposal was that it say by visual or other means.

11 The proposed -- Chairman's proposal is that it
12 says, essentially, in substance, that visual means are
13 acceptable if the sump can be removed from its emplacement.
14 If it cannot be, then it needs to be tested by mechanical
15 means.

16 The next substantive definition deals with the
17 definition of emergency pits, in paragraph D.5. And the
18 concept in paragraph D.5 was emergency pits that required a
19 permit and also required secondary containment and double
20 lining, et cetera.

21 The proposal was that pits required or under the
22 SPCC program could be excluded. The Division filed a post-
23 hearing comment in which they joined in that recommendation
24 with two conditions, one being that the SPCC plan actually
25 be filed with the EPA, and the other that notification be

1 given to the Division.

2 The Chairman's recommendation is along the lines
3 of the Division's post-hearing recommendation, however
4 because it's our understanding that the EPA does not
5 actually require that SPCC plans be filed with EPA, the
6 SPCC pits are excluded from our requirements as long as
7 they are part of a plan that is required by EPA and that a
8 notice is filed with the Division.

9 The next substantive change, Number 9 on my list,
10 is -- and this one is marginal between substantive and
11 technical, because this is in accordance with Roger
12 Anderson's testimony at the hearing as to what was
13 intended. The Division's proposal said in appropriate
14 cases a closure plan will be required. Mr. Anderson
15 testified, I believe, that what he had in mind was that if
16 it was an appropriate case, that requirement would be
17 included in the permit. And therefore we -- the Chairman
18 recommends that the provision be modified to expressly say
19 that that requirement should be in the permit.

20 CHAIRMAN WROTENBERY: I believe, Commissioner
21 Bailey, you had clarified that point on the record, so...

22 MR. BROOKS: Paragraph 10, the final one on my
23 list, there was a lot of confusion, or there was some
24 confusion, as to the burden of proof where an exemption was
25 requested.

1 It was never, I believe, the Division's intention
2 that it should be otherwise than on the operator, but
3 because the burden to request a hearing was put on the
4 notified parties, some of the commenters indicated that
5 they believed the burden of proof was on someone who
6 objected to an exemption, and we proposed modified language
7 to provide that a party requesting -- an operator
8 requesting an exemption would have the burden to prove the
9 basis for that exemption.

10 I would add that this does not go so far as some
11 of the commenters recommended. Some of the commenters had
12 recommended that we require that the operator show a
13 necessity for the exemption. My understanding -- Although
14 that was never clarified, my understanding was that a
15 necessity probably meant something more than merely that
16 the exemption would not jeopardize groundwater, public
17 health or the environment, which is the standard in the
18 Commission's draft.

19 Our understanding of the way we have reworded it,
20 the Chairman and myself, since this is the Chairman's
21 recommendation, is that the burden of proof be imposed on
22 the operator but that the operator only need to show that
23 the exemption meets the standard set forth in the Rule.

24 There are a number of changes that are technical
25 in nature, some of them as little -- as minor as changing

1 fresh waters to fresh water, and so forth. The
2 Commissioners were each provided with a copy of the
3 Chairman's recommendation yesterday, so those were matters
4 that the Chairman had asked me to bring specifically to the
5 Commission's attention in this session.

6 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

7 I did want to go back to the unlined pit issue in
8 the special areas --

9 MR. BROOKS: Okay.

10 CHAIRMAN WROTENBERY: -- because I just noticed
11 that the third category of area where the proposed Rule
12 allowed unlined pits was any area where the discharge into
13 the pit meets New Mexico Water Quality Control Commission
14 groundwater standards.

15 Do we want to put that same, you know, limitation
16 about what protection areas in that circumstance as well?

17 MR. BROOKS: That would be the effect, I believe,
18 of the change, to do that.

19 COMMISSIONER BAILEY: It wouldn't hurt to go
20 ahead and have it, because of the additional contaminants
21 that may be hidden.

22 CHAIRMAN WROTENBERY: And then we could just take
23 a look at it and --

24 COMMISSIONER BAILEY: Yeah.

25 CHAIRMAN WROTENBERY: -- and there may be a

1 circumstance where the exception is appropriate.

2 COMMISSIONER BAILEY: I think that would be a
3 good way to do it.

4 CHAIRMAN WROTENBERY: Okay. I'm thinking of the
5 one example that came up during the hearing, was the
6 example that the OXY representative made concerning the
7 Bravo Dome area and the pits that they used in that area.
8 And at least his testimony was that that was high quality
9 water going into those pits. They worked very closely with
10 our District Supervisor and had no environmental concerns
11 about that practice, but in that case that would be a
12 circumstance where they would qualify for an exception to
13 the Rule, I suppose, if it's all lined out the way he
14 indicated.

15 MR. BROOKS: Well, if the Commission wanted to
16 make that limitation applicable to only the vulnerable
17 areas and not to pits that were freshwater discharge pits,
18 that could easily be done from a drafting standpoint by
19 making the last grammatical paragraph of C.2.(g).(iii)
20 C.2.(g).(iv), so that the introductory sentence of
21 C.2.(g).(iii) as we've reworded it would not apply thereto.

22 COMMISSIONER BAILEY: We're thinking primarily of
23 produced water. But now it can't forget the drilling
24 fluids that are going to be going into these pits, the frac
25 fluids that go into the pits. I think those types of

1 discharges need to have liners, even within areas where the
2 produced water meets the water quality, groundwater
3 standards. Is that still questionable whether or not the
4 drilling fluids or the frac fluids would --

5 CHAIRMAN WROTENBERY: -- have other constituents
6 that are not --

7 COMMISSIONER BAILEY: -- have other constituents
8 that --

9 CHAIRMAN WROTENBERY: -- addressed by the
10 standards --

11 COMMISSIONER BAILEY: Exactly, that may or may
12 not impact the freshwater wells within 200 feet.

13 CHAIRMAN WROTENBERY: Yeah, I'm fine with that.
14 This requires that we take a closer look at each one of
15 those, that's fine.

16 MR. BROOKS: Very good. Are there any other
17 matters, then, that any of the Commissioners wish to
18 discuss?

19 CHAIRMAN WROTENBERY: Anything in the Rule? What
20 about the Order? Are there any questions about the
21 provisions of the draft order, which I realize you didn't
22 get the final version of until last night.

23 COMMISSIONER BAILEY: Well, I talked to David
24 about a couple of confusing areas or mislabeled areas.

25 MR. BROOKS: The changes that you have requested,

1 I believe, have been made. I have not checked your draft,
2 your final draft. One was on page 5 and one was on page
3 20, as I recall.

4 CHAIRMAN WROTENBERY: Okay, it appears you had a
5 question in paragraph (iv). Here's the latest version of
6 paragraph (iv). Did that --

7 COMMISSIONER BAILEY: Okay. See, part of my
8 confusion this morning was not being able to tell which is
9 Exhibit A, which is Exhibit B and which is Exhibit C.

10 CHAIRMAN WROTENBERY: Oh, have we taken care of
11 that?

12 MR. BROOKS: Well, I hope so. I haven't checked
13 all the references. The one reference that Commissioner
14 Bailey pointed out to me this morning on page 20, where
15 they were reversed --

16 CHAIRMAN WROTENBERY: Uh-huh.

17 MR. BROOKS: -- was correct.

18 CHAIRMAN WROTENBERY: You did correct that?

19 MR. BROOKS: The intention is that Exhibit A is
20 new Rule 313, as it will read after the amendments.

21 Exhibit B is new Rule 7, which is the
22 comprehensive definitions as they will read after the
23 amendment.

24 Exhibit C is the new pit rule, however it may end
25 up being numbered.

1 COMMISSIONER BAILEY: Did the problem with
2 paragraphs 63, 64, get noticed?

3 CHAIRMAN WROTENBERY: This stray 64 here?

4 COMMISSIONER BAILEY: Yes.

5 CHAIRMAN WROTENBERY: Okay. There is in the
6 current draft just a stray number in the middle of the
7 paragraph, so we'll strike that.

8 COMMISSIONER BAILEY: Need to just hit the
9 "enter" there, because that becomes --

10 CHAIRMAN WROTENBERY: Oh, I see, I see, it's
11 not --

12 MR. BROOKS: The next paragraph 65 then?

13 CHAIRMAN WROTENBERY: We just didn't have a
14 return, is what it is. That's --

15 MR. BROOKS: Well, yeah, but is there a
16 duplication of numbers?

17 CHAIRMAN WROTENBERY: No, there's not.

18 MR. BROOKS: Okay. I did not use Mr. Gates's
19 automatic numbering system because it always throws the
20 format. So not using it, sometimes the number sequence is
21 not right.

22 CHAIRMAN WROTENBERY: Did you spot any other
23 problems?

24 COMMISSIONER BAILEY: Those were the only type
25 of -- Should we review it one more time to see if the

1 discussions that we've had this morning --

2 CHAIRMAN WROTENBERY: What --

3 COMMISSIONER BAILEY: -- are reflected in --

4 CHAIRMAN WROTENBERY: What I was going to suggest
5 is, we maybe move on to the other rulemaking, hear the
6 testimony there, and then break for a few minutes. I
7 believe we just talked about one change --

8 MR. BROOKS: I believe that's so, and we probably
9 do --

10 CHAIRMAN WROTENBERY: -- to --

11 MR. BROOKS: -- need to put something in the
12 order to reflect --

13 CHAIRMAN WROTENBERY: -- to the Rule --

14 MR. BROOKS: -- that change.

15 CHAIRMAN WROTENBERY: -- but I believe, having
16 witnessed how quickly he worked on this order since the
17 comment period closed, that Mr. Brooks could probably make
18 that change within a matter of about 15 minutes or so
19 today.

20 COMMISSIONER BAILEY: We have full confidence in
21 you.

22 CHAIRMAN WROTENBERY: So --

23 MR. BROOKS: You have not yet approved my -- Or I
24 have not yet been submitted my request for compensatory
25 time for the work I've put in on this case.

1 CHAIRMAN WROTENBERY: So anyway, we will ask Mr.
2 Brooks, after we take up the next matter and complete it,
3 if he will go upstairs and make these final changes and
4 corrections --

5 MR. BROOKS: I will --

6 CHAIRMAN WROTENBERY: -- to the Order and Rule,
7 and then we can take final action, I hope, this morning on
8 it.

9 COMMISSIONER BAILEY: That would be great.

10 CHAIRMAN WROTENBERY: Great. Anything else on
11 the pit rules, then, this morning?

12 COMMISSIONER BAILEY: Not from me.

13 CHAIRMAN WROTENBERY: Okay. Then I'm going to
14 ask for just a five-minute break, then we'll come back and
15 get started on the other rulemaking proceeding. Thank you.

16 (Thereupon, a recess was taken at 10:00 a.m.)

17 (The following proceedings had at 10:15 a.m.)

18 CHAIRMAN WROTENBERY: Okay, we'll go back on the
19 record. Everybody's back in the room.

20 During the break we had one other question come
21 up on the changes to the pit rule proposal. And Mr.
22 Brooks, if you'd like to explain that issue?

23 MR. BROOKS: Okay. In paragraph -- or
24 subparagraph C.2.(f), the language that has given us
25 probably as much trouble as anything in this whole rule is

1 defining the circumstances in which a pit, a drilling or
2 workover pit, is exempt from the netting requirements.

3 The language that is in the current proposal
4 reads as follows: "Drilling and workover pits are exempt
5 from the netting requirement during drilling or workover
6 operations, provided that immediately after cessation of
7 these operations such pits shall have any visible or
8 measurable layer of oil removed from the surface."

9 The present Rule 105, which we are repealing,
10 reads, "To protect migratory birds, pits used for drilling,
11 completion, blowdown, workover or an emergency, immediately
12 after cessation of the activity must have oil removed from
13 their surface or be screened, netted or covered."

14 Now our intention, I believe, or the Chairman's
15 intention in these recommendations, and the reason it got
16 where it -- the language got where it was, if you read Rule
17 105 as it currently exists, during the period of time that
18 operations are in progress drilling or workover pits are
19 not required to be netted and are not required to be
20 necessarily kept free of oil at all times. After drilling
21 or workover operations have concluded, then the pit is not
22 required to be netted if it is kept free of oil. The "or"
23 would say that it is not required to be kept free of oil if
24 it is netted. That's under the existing Rule.

25 I believe the Chairman's intention was to make no

1 change in the netting requirements but to make clear in
2 accordance with another rule -- Rule 310 was it? Did you
3 find out?

4 CHAIRMAN WROTENBERY: Yes.

5 MR. BROOKS: -- that the pit should be kept free
6 of oil regardless of whether it's netted or not, after the
7 conclusion of operations.

8 CHAIRMAN WROTENBERY: We had some discussion
9 about that particular Rule during the hearing, and Mr.
10 Anderson read the Rule into the record. And I don't have
11 the Rule itself in front of me, but what the record says is
12 that the Rule reads, "Oil shall not be stored or retained
13 in earthen reservoirs or in open receptacles."

14 MR. BROOKS: Okay, the intention, I believe, in
15 the Chairman's recommendation is that during operations the
16 pit -- a drilling or workover pit need not be netted, and
17 it -- not necessarily at all times be kept free of oil,
18 because it would be circulating fluid through, but after
19 the conclusion of operations, then it should be -- it
20 should be kept free of oil, but it still does not have to
21 be netted.

22 Of course, the reason that we think it does not
23 have to be netted is that if it's kept free of oil it
24 should not present a hazard to birds. But as I understand
25 the Chairman's intention, is that there be no suggestion

1 that it does not have to be kept free of oil if it is
2 netted, and does have to be kept free of oil regardless of
3 whether it's netted or not. Does that make -- Is that my
4 understanding of what you intended --

5 CHAIRMAN WROTENBERY: Well, that was my thinking,
6 yes, that --

7 MR. BROOKS: Okay.

8 CHAIRMAN WROTENBERY: -- after the cessation of
9 operations, if there is a layer of oil it should be
10 removed.

11 MR. BROOKS: Okay. My suggestion, then, would be
12 that the sentence should be reworded to say "drilling and
13 workover pits are exempt from the netting requirement",
14 period. Then delete the words, "during drilling or
15 workover operations, provided that..." and start a new
16 sentence, capitalize "immediately": "Immediately after
17 cessation of these operations such pits shall have any
18 visible or measurable layer of oil removed from the
19 surface."

20 COMMISSIONER BAILEY: And those pits are going to
21 be closed within six months anyway.

22 CHAIRMAN WROTENBERY: Yes.

23 MR. BROOKS: Correct.

24 COMMISSIONER BAILEY: I have no problem with
25 that.

1 MR. BROOKS: Okay.

2 CHAIRMAN WROTENBERY: Thank you for the
3 clarification. And so you will make that change --

4 MR. BROOKS: I will make that change, yes.

5 CHAIRMAN WROTENBERY: -- as well as the change to
6 the unlined pit provisions of the Rule. And then we will
7 take final action once we've had those changes
8 incorporated.

9 Okay, now let me move us to Case 13,187.

10 (Off the record at 10:21 a.m.)

11 (The following proceedings had at 11:05 a.m.):

12 CHAIRMAN WROTENBERY: We will take just a short
13 break so we can make the changes to the pit proposal that
14 we have already discussed.

15 MR. BROOKS: I trust I will have the invaluable
16 assistance of Ms. Davidson in doing that.

17 COMMISSIONER BAILEY: When would the pit order be
18 effective?

19 MR. BROOKS: It will be effective when published
20 in the *New Mexico Register*, which is probably going to be
21 six weeks to 12 weeks, somewhere in that range.

22 COMMISSIONER BAILEY: Okay, I thought the
23 *Register* was published every month.

24 MR. BROOKS: It is, but -- Ms. MacQuesten, do you
25 want to address that? Go ahead.

1 MS. MacQUESTEN: My understanding is, it's
2 published twice a month.

3 MR. BROOKS: That is correct, yeah, I'm sorry, I
4 misspoke. It is published twice a month. And it should be
5 possible to get it done in less than that period of time,
6 but our experience has been that the time that is required
7 to get it edited by the Department of Records and Archives
8 is such that we seldom get one published in less than about
9 six to eight weeks after its enactment.

10 COMMISSIONER BAILEY: And then is there an
11 additional 30 days after publication in the *Register*, or --

12 MR. BROOKS: No --

13 COMMISSIONER BAILEY: -- is it affected --

14 MR. BROOKS: -- no, it should -- it can be made
15 effective on the date that -- in one instance, one of our
16 rules was 30 days after, but that was because we had so
17 provided, and it can be made effective as of the date of
18 publication, and that's when it goes into effect, unless
19 the rule or the order otherwise provides.

20 COMMISSIONER BAILEY: Okay, because we've already
21 had questions of when it would become effective because of
22 issues between a surface owner and an operator.

23 CHAIRMAN WROTENBERY: And in the case of the pit
24 rule we've got some specific language --

25 MR. BROOKS: Yeah.

1 CHAIRMAN WROTENBERY: -- in the Rule itself that
2 makes the effective date for the key provisions April
3 15th --

4 MR. BROOKS: Right, and we --

5 CHAIRMAN WROTENBERY: -- 2004.

6 MR. BROOKS: -- do have that specifically because
7 we do not want to leave it uncertain, but we felt confident
8 that by April the 15th it would be effective. So many of
9 the same provisions that in earlier drafts had said that
10 they begin on the effective date of the Rule were changed
11 to read April 15th, 2004.

12 CHAIRMAN WROTENBERY: Okay, short break here.

13 (Thereupon, a recess was taken at 11:08 a.m.)

14 (The following proceedings had at 11:34 a.m.)

15 CHAIRMAN WROTENBERY: We'll go back on the record
16 then. Mr. Brooks has made the corrections to the Order
17 that we discussed. And also did you --

18 MR. BROOKS: I also --

19 CHAIRMAN WROTENBERY: -- make some additions?

20 MR. BROOKS: I also added short sentences
21 referring to the changes that were made in C.2.(f) and
22 C.2.(g).

23 CHAIRMAN WROTENBERY: Okay, and could you point
24 me to those?

25 MR. BROOKS: Let me look at the Order. I didn't

1 bring a copy with me.

2 Well, the change in paragraph 67 is actually a
3 deletion. I had stated in there that the present Rule 105
4 should be -- the substantive provisions of present Rule 105
5 should be adopted without change. I deleted that provision
6 and just left the general statement that the Rule as set
7 forth in Exhibit C should be adopted in lieu of the
8 Division's proposal, and the change was made on Exhibit C.

9 CHAIRMAN WROTENBERY: Okay.

10 MR. BROOKS: 74.(b), that was reworded to reflect
11 the change that was made in the wellhead-protection area.

12 CHAIRMAN WROTENBERY: And it now reads, "the
13 Commission concludes that the evidence presented in this
14 proceeding was insufficient to justify revisiting those
15 determinations, except that the prohibition of unlined pits
16 and wellhead protection areas, currently applicable only in
17 the northwest, should be made statewide."

18 MR. BROOKS: Okay, I believe those were the only
19 substantive changes. The paragraph 64 was set out from the
20 text, as was requested.

21 CHAIRMAN WROTENBERY: Right that was just --

22 MR. BROOKS: Yeah.

23 CHAIRMAN WROTENBERY: -- a formatting --

24 MR. BROOKS: Okay.

25 CHAIRMAN WROTENBERY: -- problem. Okay. And

1 then you made the changes to Exhibit C --

2 MR. BROOKS: Right --

3 CHAIRMAN WROTENBERY: -- that we discussed, in --

4 MR. BROOKS: -- C.2.(f) and C.2.(g).

5 CHAIRMAN WROTENBERY: And in C.2.(f) we now
6 say --

7 MR. BROOKS: The changed portion is where it
8 begins "Drilling and workover pits", the sentence beginning
9 "Drilling and workover pits".

10 CHAIRMAN WROTENBERY: "Drilling and workover pits
11 are exempt from the netting requirement...immediately after
12 cessation of these operations such pits shall have any
13 visible or measurable layer of oil removed from the
14 surface."

15 MR. BROOKS: And in C.2.(g), C.2.(g).(i), there
16 was an insertion. Yeah, C.2.(g), clause (i).

17 CHAIRMAN WROTENBERY: Is it in (i) or (iii)?

18 MR. BROOKS: Oh, it's in (iii), the first
19 grammatical paragraph of 3 --

20 CHAIRMAN WROTENBERY: Right --

21 MR. BROOKS: -- clause --

22 CHAIRMAN WROTENBERY: -- and we added "and
23 provided that the pit site is not located in freshwater-
24 bearing alluvium or in a wellhead-protection area."

25 MR. BROOKS: Right.

1 CHAIRMAN WROTENBERY: Okay.

2 MR. BROOKS: That same language was deleted from
3 the third grammatical paragraph where it formerly been.

4 CHAIRMAN WROTENBERY: Okay, thank you very much.

5 In that case, I believe we have an Order and a
6 Rule that reflect the Commission's discussions this
7 morning, and I'll entertain a motion to adopt the proposed
8 Order and Rule.

9 COMMISSIONER BAILEY: I so move.

10 COMMISSIONER LEE: Second.

11 CHAIRMAN WROTENBERY: All in favor say aye.

12 COMMISSIONER BAILEY: Aye.

13 COMMISSIONER LEE: Aye.

14 CHAIRMAN WROTENBERY: Aye. Congratulations to
15 everybody involved. I think this was a long process.

16 And thank you, David, for working so hard the
17 last --

18 MR. BROOKS: You're welcome.

19 CHAIRMAN WROTENBERY: -- couple of weeks to --

20 MR. BROOKS: I think everybody --

21 CHAIRMAN WROTENBERY: -- put it all together.

22 MR. BROOKS: -- that's been involved in this has
23 put a lot of work into it. Of course Roger and Ed and
24 Wayne and Willie and Gail. Too bad Roger couldn't be here
25 to witness the --

1 CHAIRMAN WROTENBERY: I know.

2 (Off the record)

3 CHAIRMAN WROTENBERY: Okay, we've completed our
4 work on that rulemaking that rulemaking proceeding. Thank
5 you everybody.

6 And I believe that takes care of all of our
7 business for today, so I'll entertain a motion to adjourn.

8 COMMISSIONER BAILEY: I so move.

9 COMMISSIONER LEE: Second.

10 CHAIRMAN WROTENBERY: All in favor say aye.

11 COMMISSIONER BAILEY: Aye.

12 COMMISSIONER LEE: Aye.

13 CHAIRMAN WROTENBERY: Aye.

14 (Thereupon, these proceedings were concluded at
15 11:40 a.m.)

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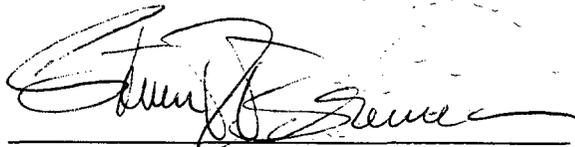
CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
 COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL December 12th, 2003.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 16th, 2006