

1 STATE OF NEW MEXICO
2 ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
3 OIL CONSERVATION DIVISION
4

5 REPORTER'S TRANSCRIPT OF PROCEEDINGS
6 COMMISSIONER SPECIAL MEETING

7 December 4, 2018

8 Santa Fe, New Mexico
9

10 BEFORE: HEATHER RILEY, CHAIRWOMAN
11 AUBREY DUNN, COMMISSIONER
12 DR. ROBERT S. BALCH, COMMISSIONER
13 CHERYL BADA, ESQ.
14
15
16

17 This matter came on for a special meeting
18 before the New Mexico Oil Conservation Commission on
19 Tuesday, December 4, 2018, at the New Mexico Energy,
20 Minerals and Natural Resources Department, Wendell Chino
21 Building, 1220 South St. Francis Drive, Porter Hall,
22 Room 102, Santa Fe, New Mexico.

23 REPORTED BY: Mary C. Hankins, CCR, RPR
24 New Mexico CCR #20
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1 (4:11 p.m.)

2 CHAIRWOMAN RILEY: Good afternoon,
3 everyone. We're going to start this special meeting for
4 the Oil Conservation Commission, and so I'd like to call
5 a roll call first, if I could, please.

6 COMMISSIONER BALCH: Sure. Dr. Robert
7 Balch, designee of the Secretary of Energy, Minerals and
8 Natural Resources.

9 COMMISSIONER DUNN: Aubrey Dunn, New Mexico
10 State Land Commissioner.

11 CHAIRWOMAN RILEY: Heather Riley. I'm the
12 Chair and Director of OCD.

13 Who do we have for counsel?

14 MS. BADA: Cheryl Bada.

15 CHAIRWOMAN RILEY: Thank you.

16 Miss Florene?

17 MS. DAVIDSON: Florene Davidson, Commission
18 clerk.

19 CHAIRWOMAN RILEY: All right. Have you-all
20 had a chance to review the agenda that's before you?

21 COMMISSIONER BALCH: I've reviewed the
22 agenda and move to adopt it.

23 CHAIRWOMAN RILEY: Do I have a second?

24 COMMISSIONER DUNN: I have a question
25 before I second.

1 CHAIRWOMAN RILEY: Sure.

2 COMMISSIONER DUNN: I wasn't able to get a
3 copy of the transcript, so I'll second, but I'm going to
4 defer on the 19th minutes and the vote.

5 CHAIRWOMAN RILEY: Okay. So the agenda is
6 accepted, for the record.

7 And then we also have the minutes from the
8 November 15th and the November 19th Commission meeting,
9 and so --

10 COMMISSIONER BALCH: Yeah. I've reviewed
11 the minutes online -- or in my email, I should say, and
12 I would move to adopt them.

13 CHAIRWOMAN RILEY: Okay.

14 COMMISSIONER DUNN: I'm not going to
15 second.

16 CHAIRWOMAN RILEY: I'll second that.

17 So the minutes from the November 15th and
18 the November 19th are approved by quorum.

19 So the next is: Final action may be taken
20 in Case Number 16403, application of Hilcorp Energy
21 Company to amend the well density and location
22 requirements and administrative exceptions of the
23 special rules for the Blanco-Mesaverde Gas Pool, Rio
24 Arriba and San Juan Counties, New Mexico.

25 MS. ANTILLON: Madam Chair, Commissioners,

1 before this final action is taken, my name is Andrea
2 Antillon, and I am here representing the State Land
3 Office and the Commissioner of Public Lands.

4 Before this order is signed, the State Land
5 Office requests that the order is stayed until the time
6 for all administrative appeals and processes have run.
7 The State Land Office makes this request based on
8 19.15.4.23B. NMAC, which states that a stay may be
9 granted to prevent gross negative consequences to an
10 affected party. The State Land Office is an affected
11 party under the definition of affected persons in
12 19.15.2.79A.(8)(d), due to its ownership of a
13 significant amount of the mineral estate in the
14 Blanco-Mesaverde pool. There are over 71,000 acres of
15 State Trust Land affected by this order, and as Hilcorp
16 noted in its first hearing, the State is one of the
17 largest mineral and surface owners in the
18 Blanco-Mesaverde Pool.

19 We don't see that there would be any harm
20 to Hilcorp in waiting an additional 30 days for the
21 order to take effect. At their September hearing, they
22 said that only 22 of 66 recompletions had been done
23 because of limited frac crews and also capital
24 constraints. And considering that this process has been
25 rushed from the start, a stay would serve the interests

1 of due process and open government. The rush started
2 when Hilcorp's attorney requested to the Director to
3 bypass the OCD and put this matter directly on the OCC
4 docket, which the Director did, and then fast-tracking
5 the application straight to OCC, bypassing a hearing in
6 front of the OCD at which the public and affected
7 parties could have learned valuable information about
8 the application.

9 Instead, not even the parties were notified
10 of that September OCC hearing. The State Land Office
11 and other affected parties never had an opportunity to
12 be heard in this matter. They did not get a chance to
13 review the exhibits or any evidence presented by
14 Hilcorp, question the testimony of Hilcorp's witnesses
15 or present their own witnesses.

16 Originally, Hilcorp discussed only infill
17 drilling. However, at their second hearing, they talked
18 about new wells, with significant increase in surface
19 infrastructure and the possibility of methane venting
20 and flaring, with the associated potential loss of
21 revenue to the State and its beneficiaries.

22 The effects of this application are far
23 reaching. Therefore, in the interest of due process and
24 fairness, the State Land Office requests that this order
25 is stayed until the appeals process is able to run its

1 course.

2 Thank you.

3 MR. SCHLENKER-GOODRICH: Madam Chair,
4 Commissioners, Erik Schlenker-Goodrich with the Western
5 Environmental Law Center --

6 CHAIRWOMAN RILEY: Hang on.

7 MR. SCHLENKER-GOODRICH: -- representing
8 the San Juan Citizens Alliance.

9 CHAIRWOMAN RILEY: Yeah. Hang on just a
10 second. I have a statement I'd like to read, if you
11 guys would just please take a seat.

12 So before we start, I'd like to make a
13 brief statement to clarify the scope and purpose of this
14 public meeting. This is a public meeting pursuant to
15 the Public Meetings Act and was notified pursuant to the
16 Act. This is not a hearing. The sole purpose of this
17 meeting is for the Commissioners to discuss and vote on
18 the proposed order. The Commission will not be taking
19 any evidence or comment today from the parties or the
20 public. All evidence and comment included into the
21 record from the previous hearings was considered by the
22 Commission and voted on. I understand there might be
23 questions from the press or media, but due to the
24 complexity of the issues, we'd like you to email your
25 questions to Beth Wojahn so that we can give a

1 thoughtful and complete answer to those questions.

2 So, again, this isn't a hearing. This is a
3 public meeting, and we can't take additional testimony
4 or take statements or public comment on this. We are
5 strictly here to discuss the order that's been brought
6 before us. The matter has already been decided on at
7 the last hearing.

8 I can have our legal counsel speak to the
9 process as it pertains to the appeal process, but my
10 guess is that once the order is entered, there will be
11 opportunity for you to go through that process at that
12 time.

13 MS. BADA: There will be an opportunity to
14 request a stay and request for hearing if the order is
15 adopted today.

16 COMMISSIONER BALCH: But we do have within
17 our discretion to make the order effective at any time
18 in the future that we'd like; is that not correct?

19 MS. BADA: You could delay the --

20 COMMISSIONER BALCH: So we could put a stay
21 into it if we felt like it or if there was adequate
22 reason.

23 Even though there's been discussion that
24 there was not adequate time for the State Land Office to
25 be involved, they did indeed have a member on this

1 Commission the entire process, and it has been nine
2 months since it was brought originally to the Division
3 back in March. So I don't think that having a chance to
4 be involved by the State Land Office is a reason to do
5 so. However, since I imagine it will be appealed, there
6 is no harm in setting it for 30 days in the future.

7 CHAIRWOMAN RILEY: So the stay -- you're
8 saying do the stay so that they have an opportunity to
9 appeal?

10 COMMISSIONER BALCH: Well, I don't think we
11 need to grant a stay. We can just set the start date of
12 the order to be the 4th of January or something like
13 that.

14 CHAIRWOMAN RILEY: Uh-huh.

15 COMMISSIONER BALCH: It has the same basic
16 effect, right?

17 MS. BADA: Yes. And I'm not sure why you
18 would stay the 30 days if you're not re-opening the
19 record, but you can clarify that.

20 COMMISSIONER BALCH: I understand that,
21 too. I understand that, too.

22 COMMISSIONER DUNN: I have a question,
23 Madam Chair. So you're saying the order wouldn't take
24 effect until the 4th?

25 CHAIRWOMAN RILEY: Well, that's what has

1 been suggested.

2 COMMISSIONER DUNN: This is what I'm
3 asking.

4 COMMISSIONER BALCH: We could do that. We
5 could do that. But it would not be appropriate to take
6 or grant a stay right now.

7 CHAIRWOMAN RILEY: Right.

8 My assumption is that once this is signed,
9 then your office has the ability immediately to file and
10 ask for rehearing. So we cannot stop you from doing
11 that.

12 COMMISSIONER DUNN: Right.

13 Well, one of the reasons I think the
14 meeting was moved -- I mean, that's one of the questions
15 I have, why we're having a special meeting, or whether
16 it needs to be an emergency meeting, rather than the
17 13th, was just so that the 20-day rehearing process
18 falls within the Martinez Administration versus going
19 across year-end. That's what it feels like to me.

20 COMMISSIONER BALCH: I think the 20 days
21 plus ten days to decide would fall into the new year.

22 CHAIRWOMAN RILEY: Uh-huh.

23 COMMISSIONER BALCH: So that would not be
24 an issue in either case.

25 COMMISSIONER DUNN: Well, it would be

1 easier if we didn't have -- it's kind of a short -- you
2 only have one day, basically, the way we're talking now.

3 COMMISSIONER BALCH: Right. Well, if you
4 don't want to work on your appeal for rehearing over
5 Christmas, then this is probably the better time to do
6 it. It gives you until the 4th to come up with your
7 argument.

8 CHAIRWOMAN RILEY: But the issue with the
9 December 13th hearing is that we vacated all of the
10 hearings for December just to give my staff time to get
11 all the remaining orders done, everything off their
12 plate, so we didn't have a whole pile of stuff, and the
13 new administration didn't have to deal with all the --
14 so we didn't go through the appropriate notice process
15 for the December 13th hearing. That would have had to
16 have been done a while back.

17 COMMISSIONER DUNN: Yeah. Just my thing is
18 I didn't -- since Ed is no longer in this position and I
19 took it over and since the transcripts weren't ready
20 prior to this emergency hearing, I haven't had an
21 opportunity to review the transcript from the 19th.

22 CHAIRWOMAN RILEY: Sure.

23 COMMISSIONER DUNN: We did ask for them.

24 COMMISSIONER BALCH: Well, if Ed was still
25 there, you could talk to him or could have talked to

1 him.

2 COMMISSIONER DUNN: But I'm the one making
3 the decision now, not Ed.

4 COMMISSIONER BALCH: Well, as you
5 mentioned -- or as you deferred on the minutes, you're
6 also free to defer on the order.

7 COMMISSIONER DUNN: I have comments on the
8 order. I have changes, some grammar and different
9 things.

10 COMMISSIONER BALCH: Well, then perhaps we
11 should move into executive session to discuss that.

12 COMMISSIONER DUNN: I thought that we go
13 through the order in public. Don't we?

14 COMMISSIONER BALCH: No. We deliberated --

15 COMMISSIONER DUNN: Any comments I have on
16 the order grammarwise --

17 CHAIRWOMAN RILEY: This isn't rulemaking.
18 This is just an adjudicatory --

19 MS. BADA: You haven't stated in your
20 minutes that you may go into executive session.

21 COMMISSIONER BALCH: All right.

22 MS. BADA: So your agenda does not reflect
23 that.

24 COMMISSIONER BALCH: Well, we're certainly
25 interested on hearing what you have to say, in any case.

1 COMMISSIONER DUNN: How do you want to
2 proceed?

3 CHAIRWOMAN RILEY: Yeah. We can look
4 through the order.

5 COMMISSIONER DUNN: Well, I guess, you
6 know, if we're going to be addressing the order and its
7 contents, I want to point out the transcript of the 19th
8 wasn't available. It's still not available today, and,
9 therefore, a detailed and thorough review necessary in
10 preparing any order is not possible at this time.
11 Therefore, I believe the meeting should be continued. I
12 make a motion to continue until the transcript is
13 available and reviewed by the Commissioners and a
14 thorough and complete order can be prepared at that
15 time.

16 CHAIRWOMAN RILEY: So is that a motion?

17 COMMISSIONER DUNN: That's a motion.

18 CHAIRWOMAN RILEY: Did you catch that,
19 Mary?

20 (The court reporter indicates.)

21 CHAIRWOMAN RILEY: Is there a second to
22 that motion?

23 I don't hear a second, so we'll go ahead
24 and go through the order.

25 COMMISSIONER DUNN: Okay. Page 3 --

1 paragraph four of page 3, I think Hilcorp provided
2 notice to the -- not to the Commission but to the
3 Division, so I think "Commission" should have been
4 struck and "Division" written in.

5 The transcript from September, on page 60,
6 notes questions from Mr. Brancard that operators were
7 informed of the Division hearing on September 6th, but
8 there was no follow-up notice relating to a Commission
9 hearing. This is important to note that operators
10 didn't receive notice of a Commission hearing. So I
11 think it should say "Division" instead of "Commission."

12 CHAIRWOMAN RILEY: Okay. Tell me where you
13 are at.

14 COMMISSIONER DUNN: On four, right here
15 (indicating): In compliance...Hilcorp provided notice
16 of the "Division" hearing versus "Commission" hearing.
17 Defer to legal.

18 COMMISSIONER BALCH: Ms. Bada?

19 MS. BADA: I have not seen the transcript
20 or the notice, so I cannot advise you.

21 CHAIRWOMAN RILEY: That's actually -- I
22 would agree with that, because that was the issue on the
23 first line.

24 COMMISSIONER DUNN: Number five --

25 COMMISSIONER BALCH: That's why we

1 continued it to November.

2 COMMISSIONER DUNN: Number five, I'd like
3 to add -- after "in addition," add "in a letter dated
4 August 30 and alleged by Hilcorp to be sent first-class
5 mail provided" -- "Hilcorp provided courtesy notice of
6 the September 13th Commission hearing to the Bureau of
7 Land Management and the State Land Office. Neither
8 agency confirmed receipt of the letter, and neither
9 agency filed an entry of appearance at the 'September
10 hearing'" instead of just "hearing."

11 And then strike the last part from
12 "hearing" on, "and the State Land Office did not appear
13 separately from its representative on the Commission."
14 Just saying we didn't get notice. We're not
15 acknowledging notice.

16 CHAIRWOMAN RILEY: Okay. Run through that
17 again.

18 COMMISSIONER DUNN: "In addition, in a
19 letter dated August 30th and alleged by Hilcorp to be
20 sent first-class mail, Hilcorp provided courtesy notice
21 of the September 13th Commission hearing to the Bureau
22 of Land Management and the New Mexico State Land Office.
23 Neither agency" -- I want to add: "Neither agency
24 confirmed receipt of the letter, and neither agency
25 filed an entry of appearance at the September hearing."

1 COMMISSIONER BALCH: Well, we addressed
2 this in the hearing.

3 COMMISSIONER DUNN: I agree.

4 COMMISSIONER BALCH: As a courtesy notice,
5 I think it's not certified email or anything like that.

6 COMMISSIONER DUNN: It just says "first
7 class."

8 COMMISSIONER BALCH: Yeah.

9 COMMISSIONER DUNN: So I'm saying it was
10 sent first class and neither agency has confirmed
11 receipt of the letter.

12 COMMISSIONER BALCH: And how would we
13 verify that either agency confirmed receipt of the
14 letter?

15 COMMISSIONER DUNN: Well, because we're
16 telling you we didn't receive it.

17 COMMISSIONER BALCH: It wasn't sent
18 certified mail, right?

19 COMMISSIONER DUNN: Right.

20 COMMISSIONER BALCH: So if you receive a
21 certified letter, what do you do with it?

22 COMMISSIONER DUNN: We're just saying
23 neither agency confirmed receipt.

24 COMMISSIONER BALCH: You did have a
25 Commissioner on the board.

1 COMMISSIONER DUNN: I understand that, but
2 I'm talking about the letter. Hilcorp said they sent a
3 letter dated August 30th.

4 COMMISSIONER BALCH: I believe I saw that
5 letter, and it had a receipt stamp from the State Land
6 Office on it.

7 COMMISSIONER DUNN: I haven't seen that, to
8 my knowledge.

9 COMMISSIONER BALCH: Maybe I'm
10 misrecollecting, but --

11 COMMISSIONER DUNN: That hasn't been shown
12 to me.

13 COMMISSIONER BALCH: Does it matter for a
14 courtesy letter what the paper trail is?

15 MS. BADA: Well, I think it matters what's
16 in the record, if it was certified, whether there was a
17 return receipt.

18 COMMISSIONER BALCH: It wasn't certified.

19 MS. BADA: Otherwise, you have nothing in
20 the record one way or the other.

21 COMMISSIONER DUNN: I'm just saying add
22 that the letter was dated August 30 and allegedly sent
23 first class -- I'm not saying it was certified -- and
24 that neither agency is confirming receipt.

25 MS. BADA: Is there any testimony in the

1 record regarding receipt?

2 COMMISSIONER BALCH: In September, there
3 was. That's why I have a recollection that I saw a
4 letter that had a "received" stamp on it. But I could
5 be --

6 CHAIRWOMAN RILEY: Here it is.

7 COMMISSIONER BALCH: Okay. So that was a
8 different letter.

9 CHAIRWOMAN RILEY: Because this is the
10 August 3rd letter. "This is a courtesy notice to keep
11 you informed of the activity."

12 COMMISSIONER BALCH: That's what's in the
13 record, Exhibit 6.

14 MS. BADA: Was there any testimony
15 regarding whether it was received or not?

16 COMMISSIONER BALCH: I guess my question
17 is: Because it was a courtesy notice and the Commission
18 deemed that that was sufficient, do we really need to
19 modify the language to say things like allegedly and
20 things like that when we don't have that transcript in
21 front of us?

22 MS. BADA: Well, my concern is more if
23 you're going to say it wasn't, is there any testimony in
24 the record supporting it wasn't received.

25 COMMISSIONER BALCH: So what would you

1 advise?

2 MS. BADA: I would advise not to make a
3 statement one way or the other whether it wasn't.

4 COMMISSIONER DUNN: So then take out five?

5 COMMISSIONER BALCH: Strike five.

6 CHAIRWOMAN RILEY: Since it's not a
7 requirement, it's really not necessary, is it?

8 COMMISSIONER BALCH: I would be more
9 comfortable with striking it.

10 COMMISSIONER DUNN: Okay.

11 MS. BADA: I mean, you could say notice
12 was -- the letter was in the record.

13 COMMISSIONER BALCH: Well, it's in the
14 record.

15 MS. BADA: Yeah.

16 COMMISSIONER DUNN: Paragraph seven, page
17 4, "Hilcorp filed a motion to strike SJCA's Notice of
18 Intervention noting that it was untimely, did not
19 provide a legal basis for standing as party to the
20 proceedings and did not 'provided'...." It should be
21 "provide." Strike the D.

22 CHAIRWOMAN RILEY: Okay.

23 COMMISSIONER DUNN: Are you okay with that?

24 CHAIRWOMAN RILEY: Uh-huh.

25 COMMISSIONER DUNN: Paragraph 11, I would

1 like to add the language: "Hilcorp was also directed at
2 the September 13th hearing to correct a deficiency and
3 newspaper notice and renote in the newspaper in both
4 Rio Arriba and San Juan Counties and to notice the
5 government land manager of the continued hearing."

6 In reading this transcript, it appears the
7 case was continued because Hilcorp also failed to put a
8 strong case of notice. Notice wasn't the only reason
9 for the continuance. I think were we should discuss
10 additional reasons for the continuance here. That's why
11 I want to add that part.

12 CHAIRWOMAN RILEY: So my recollection of
13 that, what the Commission had asked for and the reason
14 it was continued, is because they did not properly put
15 the date on the notice to the operator, so they had
16 notice of the September 6th hearing rather than the
17 13th. And so the instruction from the Commission was
18 for them to correct the notice to the operators. And
19 then there was a -- counsel for the Commission just
20 said, We would prefer that. So it was never decided by
21 the Commission and or anything that they did that to the
22 public land agencies.

23 COMMISSIONER DUNN: So they didn't have
24 to -- they weren't asked to do a newspaper notice?

25 COMMISSIONER BALCH: My recollection is the

1 same. Counsel said it would be nice, and I said yeah,
2 and there was no further action.

3 COMMISSIONER DUNN: 12. "Prior to the
4 November 19th hearing, the San Juan Citizens
5 Alliance...." I think that's already been in a
6 definition once, and so it doesn't need to be again. So
7 it should just be "SJCA." Take out "San Juan Citizens
8 Alliance." It's already defined.

9 CHAIRWOMAN RILEY: That's fine.

10 COMMISSIONER DUNN: Okay. Page 6, at the
11 end of the Commission rules, on paragraph 13, I'd like
12 to add: "New findings on November 13th, Michael
13 Feldewert, counsel to Hilcorp, emailed the State Land
14 Office and requested the State Land Office waive the
15 need for any formal notice of the November 19th hearing.
16 The State Land Office, by its counsel, that the
17 Commissioner would require formal notice of the hearing,
18 that we would not waive." I would like to have the
19 order state that. We were requested to waive, and we
20 said we wouldn't. Will you add that part or not?

21 CHAIRWOMAN RILEY: Well, I think we're just
22 taking notes on what you want to add, and then we'll
23 talk about the changes.

24 COMMISSIONER DUNN: Okay.

25 Okay. And then: "Exhibits from the

1 September 13th were not made available for the public to
2 review on the Commission's/Division's public forum and
3 scanned documents until November the 16th, 2018."

4 CHAIRWOMAN RILEY: Is that another finding?

5 COMMISSIONER DUNN: Just a statement,
6 another finding.

7 COMMISSIONER BALCH: Yeah. The problem
8 with that is we can't really -- we don't have a lot of
9 control over when the transcripts are presented, and we
10 have to schedule our meetings well in advance. So -- I
11 mean, that's perhaps unfortunate but not an uncommon
12 occurrence.

13 COMMISSIONER DUNN: Okay. Paragraph 14:
14 "The Commission orally granted Hilcorp's" -- motion is
15 capitalized. Strike is capitalized. Notice is
16 capitalized, and intervention is capitalized.

17 CHAIRWOMAN RILEY: Would you go backwards?

18 COMMISSIONER DUNN: Page 6, paragraph 14.

19 CHAIRWOMAN RILEY: Because we were -- you
20 were on 19 and 20 -- additional findings of 19 and 20.

21 COMMISSIONER DUNN: No. I was on paragraph
22 13, page 6. We did findings under --

23 COMMISSIONER BALCH: It's page 4 on mine.

24 CHAIRWOMAN RILEY: 13 is on page 4. The
25 problem is we've got additional language.

1 COMMISSIONER DUNN: That was 13. Now I'm
2 on paragraph 14, where it says "motion to strike."

3 CHAIRWOMAN RILEY: What do you want?

4 COMMISSIONER DUNN: Those capitals.

5 COMMISSIONER BALCH: You want to add
6 capitals, because I don't see them capitalized?

7 COMMISSIONER DUNN: Motion to strike should
8 be -- and notice and intervention should be capitalized;
9 motion to strike, notice and intervention.

10 COMMISSIONER BALCH: I have no clue.

11 MS. BADA: I would have to see the document
12 to see the actual title.

13 CHAIRWOMAN RILEY: I know. My concern is
14 that if it's not exactly stated that way, then it
15 shouldn't be capitalized. And I don't think I have --
16 So we'll have to look it up.

17 COMMISSIONER DUNN: Continued on 14, new
18 finding: "The Blanco-Mesaverde Pool spans two counties,
19 2,031 and 25 sections, 1.3 million acres and is the
20 largest gas pool in the state. The size is based off of
21 Hilcorp's Exhibit Number 1." Just asking to see how big
22 it is.

23 COMMISSIONER BALCH: Do you want to add
24 that as a finding or to --

25 COMMISSIONER DUNN: Yes. I want to add it

1 as a finding.

2 COMMISSIONER BALCH: It's already in the
3 record.

4 COMMISSIONER DUNN: The record says that
5 it's not a statewide rulemaking proceeding, but I'm
6 trying to say that it's a very -- based on the size,
7 it's almost a statewide -- I mean, to me it's huge. I'm
8 just trying to show in the order how big this change in
9 the order -- how much it affects sizewise. I mean 2,031
10 sections is big. 1.3 million is big.

11 COMMISSIONER BALCH: Particularly large
12 pools, at least by number of wells, and now spacing in
13 the southeast --

14 COMMISSIONER DUNN: I think the
15 southeast -- I think from an environmental standpoint,
16 the southeast doesn't have -- it's not near as sensitive
17 as what -- as what the southwest -- or northwest is.

18 COMMISSIONER BALCH: Is that another
19 finding?

20 COMMISSIONER DUNN: That's a finding.
21 That's why I'm asking.

22 COMMISSIONER BALCH: You're asking from an
23 environmental -- the northwest versus southeast.

24 COMMISSIONER DUNN: No. You brought up the
25 southeast. I'm just saying that the Blanco Pool spans

1 two counties, is 2,031 sections, just to state that as a
2 finding.

3 COMMISSIONER BALCH: That's a suggestion?

4 COMMISSIONER DUNN: Right.

5 Paragraph 15, C, at the end of "pursuant to
6 19.15.4.14," it should be dot C and not in parentheses.
7 So it shouldn't have parentheses on it.

8 CHAIRWOMAN RILEY: Well, there are lots of
9 places where that's mentioned.

10 COMMISSIONER BALCH: 19.15.4.14C?

11 COMMISSIONER DUNN: I'm just saying C
12 shouldn't have parentheses around it. It should be dot
13 C.

14 MS. BADA: It should have parentheses.

15 COMMISSIONER BALCH: Should have
16 parentheses?

17 MS. BADA: Yes.

18 COMMISSIONER BALCH: Okay. Counsel said it
19 should have parentheses.

20 COMMISSIONER DUNN: My counsel differed.

21 Also, on 15, I think there should be a
22 summary of public comment and request that some summary
23 be included.

24 COMMISSIONER BALCH: How many public
25 comments did we end up with?

1 CHAIRWOMAN RILEY: A lot.

2 COMMISSIONER BALCH: And you realize that a
3 fair number of those are also positive, right?

4 COMMISSIONER DUNN: Well, I understand
5 that, but I think part of the public comment should
6 be summarized.

7 COMMISSIONER BALCH: So some statistics on
8 the public comments? Is that what you're asking for,
9 like for and against, maybe?

10 COMMISSIONER DUNN: Well, yeah. There was
11 public comment. There was a group in favor, groups
12 concerned about flaring. There were groups concerned
13 about the surface damage. I mean, there were groups in
14 favor of it.

15 COMMISSIONER BALCH: Yeah.

16 COMMISSIONER DUNN: But nothing in this
17 order says what was discussed.

18 CHAIRWOMAN RILEY: But that is in the
19 record. I mean, there is an awful lot of --

20 COMMISSIONER DUNN: I didn't get a chance
21 to see the record.

22 COMMISSIONER BALCH: There's plenty of
23 public comment in the record both for and against also.
24 I think it gives a sampling of the sort of comment
25 that's available online anyway.

1 COMMISSIONER DUNN: Paragraph 17, I would
2 like to strike after "Application" -- "comments on the
3 Application and other matters beyond the scope of the
4 proceedings." I think that their comments concerning
5 surface issues, which is where I'm coming down on this
6 order -- and surface issues should have been described,
7 I think. I don't think surface matters are matters
8 beyond the scope of the proceedings.

9 Paragraph 17 continued. Again, without a
10 transcript, that we are potentially missing people who
11 commented, I would like a new finding to add: "Two New
12 Mexico police officers were outside the hearing room,
13 and the Chair Commission stated she would remove
14 individuals from the room if she found them disruptive.
15 The public comment in the case was taken around 3:00 in
16 the afternoon. The Commission attempted to accommodate
17 persons indicating a desire to give public comment.
18 However, at the time that public comment was taken, many
19 individuals who stated they wished to speak were no
20 longer present."

21 CHAIRWOMAN RILEY: Well, I disagree with
22 that. I asked that we be respectful of everyone in the
23 room, which, by the way, did not always happen.

24 COMMISSIONER BALCH: However, we followed
25 the rule for public comment. I don't think there needs

1 to be a specific finding on that.

2 COMMISSIONER DUNN: Okay. Paragraph 18,
3 "Hilcorp presented three witnesses," Charles Creekmore
4 and Andrew Sparks. "Only Ms. Sivadon appeared at the
5 November 19th hearing to provide additional evidence and
6 testimony in support of the Application." And:
7 "Persons present at the November 19th only heard the
8 testimony of Ms. Sivadon."

9 CHAIRWOMAN RILEY: I don't understand.

10 COMMISSIONER DUNN: It says that she only
11 appeared at the 19th hearing to provide evidence and
12 testimony in support of the application and person [sic]
13 present at the November 19th hearing only heard the
14 testimony -- persons of her, no one else.

15 CHAIRWOMAN RILEY: I don't understand what
16 that means.

17 COMMISSIONER BALCH: I think he wants us to
18 find that we didn't re-call all the witnesses?

19 COMMISSIONER DUNN: Right.

20 CHAIRWOMAN RILEY: We didn't ask for the
21 evidence to be re-presented. We asked for any
22 supplemental evidence. If they had it, they could
23 bring, and she just brought supplemental testimony and
24 evidence.

25 COMMISSIONER DUNN: As far as paragraph 18,

1 I'd still like a new finding that the BLM's resource
2 management plan is directly impacted by this order.

3 COMMISSIONER BALCH: We didn't have any
4 testimony for that.

5 COMMISSIONER DUNN: Okay.

6 COMMISSIONER BALCH: Can't be a finding.

7 COMMISSIONER DUNN: 19. "Hilcorp provided
8 notice of the" -- and I think it should say "Division,"
9 not "Commission." "Hearings in this matter to all
10 Division-designated operators in the Blanco-Mesaverde
11 Pool...." Hilcorp supplemented its notice after the
12 September meeting. This is an add, "hearing." And then
13 it says, "The Commission provided notice," but I think
14 Hilcorp provided notice, not the Commission.

15 CHAIRWOMAN RILEY: I'm not sure where
16 you're at.

17 COMMISSIONER BALCH: 19, "Commission Finds
18 and Concludes...."

19 COMMISSIONER DUNN: 19 is Hilcorp provided
20 notice of the Division hearing in this matter to all the
21 Division operators, not the Commission.

22 CHAIRWOMAN RILEY: Well, but it was a
23 Commission hearing. Understand what I'm saying? I
24 mean, the second hearing -- well, they were -- they were
25 both Commission hearings. So I don't see that as being

1 incorrect.

2 COMMISSIONER DUNN: Okay. Hilcorp
3 supplemented its notice after the September Commission
4 hearing, and then the Commission provided notice
5 pursuant to whatever. But Hilcorp's the one that
6 provided notice for the September --

7 COMMISSIONER BALCH: I think they're
8 referring to the Commission meeting.

9 MS. BADA: 9, which is (indicating) --

10 COMMISSIONER BALCH: 9. Yes. And we had
11 to tell people that we were having a hearing on the
12 19th. That's the notice they're referring to.

13 COMMISSIONER DUNN: 20. "As a courtesy
14 notice...Application and the initial Commission
15 hearing" -- "Hilcorp contends," I'd like to add that in
16 this matter also. "Hilcorp contends it provided notice
17 to the Bureau of Land Management and the New Mexico
18 State Land Office."

19 "Commission...Hilcorp formally noticed both
20 government landowners at the September hearing but
21 Hilcorp did not."

22 "Under Commission rules, neither agency is
23 entitled to formal notice of every pool and neither of
24 these agencies appeared at the Commission at the
25 September meeting."

1 Hilcorp -- I'd still like to put in here:
2 "Hilcorp, on November 13th, requested the State Land
3 Office waive formal notice" -- "formal notice. The
4 Commission requested" by sent -- "be sent to the land
5 office. The State Land Office declined to waive such
6 notice."

7 So I guess what I'm trying to say is that
8 Hilcorp asked for us to waive notice, and we refused.

9 MS. BADA: Is that in the record?

10 CHAIRWOMAN RILEY: I believe it is, but it
11 kind of goes back to the same thing, that what was
12 requested at that first hearing was that they correct
13 their notice to the operators that's required by rule.
14 And then it was -- it was just -- it wasn't an order.
15 It was a request that they do that, but not by the
16 Commission. It was by counsel.

17 COMMISSIONER DUNN: I'm trying to get in
18 here that Hilcorp did ask the land office to waive
19 notice, and the land office declined. And that is what
20 happened.

21 COMMISSIONER BALCH: I'm not sure if we
22 have testimony to both sides of that.

23 COMMISSIONER DUNN: We have emails.

24 COMMISSIONER BALCH: I don't really mind
25 putting it in, but I don't think we need to go into as

1 much detail as you went there. Maybe make it its own
2 bullet point and simply state that Hilcorp asked the
3 land office for a waiver of --

4 COMMISSIONER DUNN: That's fine.

5 COMMISSIONER BALCH: -- notification and
6 did not receive it.

7 COMMISSIONER DUNN: But they were told no.

8 COMMISSIONER BALCH: That means the same as
9 not receiving it, right?

10 COMMISSIONER DUNN: Right.

11 COMMISSIONER BALCH: That might be
12 somewhere in the record, but trying to put dates on
13 it -- or super close to that.

14 COMMISSIONER DUNN: That's fine.

15 Paragraph 21. "The drilling, operator and
16 production of oil...wells and the disposition of oil
17 field waste not are at issue in this Application." I'd
18 like that stricken. "The drilling, operator and
19 production of oil and gas wells and the disposition of
20 oil field waste are not at issue in this Application."

21 CHAIRWOMAN RILEY: I think it should say:
22 "The drilling, operation and production" --

23 COMMISSIONER BALCH: "Operator."

24 CHAIRWOMAN RILEY: -- of production of oil
25 and gas wells and the disposition" --

1 COMMISSIONER DUNN: Strike the whole thing.

2 COMMISSIONER BALCH: I actually agree with
3 the finding as it is, with the correction of "operator."

4 COMMISSIONER DUNN: I disagree.

5 22. I'd like to strike "potential injuries
6 alleged by SJCA are outside the zone of interest to be
7 protected by the statutes...." I'd like to strike
8 "statutes and." Just have "protected by the regulations
9 at issue," instead of "statutes at issue."

10 COMMISSIONER BALCH: The statute is the Oil
11 and Gas Act, right?

12 COMMISSIONER DUNN: Right. But we're
13 talking about a pooling right and additional wells.

14 CHAIRWOMAN RILEY: But they both apply. We
15 have pooling mentioned in the statutes, and then we have
16 rules that tell us how to do it.

17 COMMISSIONER DUNN: Right. I don't think
18 this is a statute. I think it's a regulation that we're
19 dealing with.

20 COMMISSIONER BALCH: I think it's the Oil
21 and Gas Act.

22 CHAIRWOMAN RILEY: Yeah. The Oil and Gas
23 Act is what applies, and then the rules tell us how to
24 do it.

25 COMMISSIONER BALCH: Almost every objection

1 to this application moving forward was on the basis that
2 essentially the Oil and Gas Act probably should be
3 corrected in some way, which is beyond the power of the
4 Commission to do.

5 COMMISSIONER DUNN: I agree.

6 COMMISSIONER BALCH: There needs to be a
7 rulemaking brought to us by a party that has damages,
8 perhaps the State Land Office, or the legislature can
9 change the Oil and Gas Act, but we can't change it.

10 COMMISSIONER DUNN: I understand.

11 I'd like to -- further on paragraph 22, I
12 think there is an extra "to" there.

13 I would like to add still on the end of
14 paragraph 13: "Therefore, SJCA did not have an
15 opportunity to testify or discuss any issues other than
16 the prevention of underground waste or correlative
17 rights, as the Commission determined the Hilcorp
18 application was limited to just these two issues."

19 And this goes back to, in 23, "potential
20 injuries and harm alleged by the SJCA are limited to
21 surface-related and air issues." And "air" is an
22 addition.

23 At the end: "However, well density is
24 directly related to the pool rule case at hand, and well
25 density can directly affect surface-related issues."

1 And that is where I have an issue with this Hilcorp
2 deal, is that -- I mean, we can talk about you only --
3 OCD only regulates what's underground, but the
4 underground also affects surface-related issues, and
5 those should be considered, in my opinion.

6 COMMISSIONER BALCH: The OCD certainly
7 administers surface issues and waste issues. In the
8 case of pooling, it's really a geologic and engineering
9 understanding of how many wells are needed to extract
10 the resource from the pool. That was the interpretation
11 of the Commission. And so it would be improper to add
12 the language that you want to add.

13 COMMISSIONER DUNN: Okay.

14 CHAIRWOMAN RILEY: The State Land Office
15 has the ability to control that through their leasing.
16 There is a different place to look at that, but it can't
17 be after the fact.

18 COMMISSIONER BALCH: There are many
19 places that -- there are other places in the statute and
20 the Surface Owners Protection Act and --

21 COMMISSIONER DUNN: SOPA does not cover
22 state land, though.

23 COMMISSIONER BALCH: But you have a State
24 Land Office, and they do control leasing on their land.

25 COMMISSIONER DUNN: No. No. On-lease

1 activities are controlled solely by OCD.

2 CHAIRWOMAN RILEY: But they're already
3 leased.

4 COMMISSIONER DUNN: They're already
5 leased --

6 CHAIRWOMAN RILEY: So later leased, you can
7 control that.

8 COMMISSIONER DUNN: No. But when
9 you're doubling from, you know, 5,000 wells to 10,000
10 wells, you're doubling the surface damage on State Trust
11 Lands.

12 COMMISSIONER BALCH: But you're assuming
13 all 5,000 of those additional wells are going to be
14 drilled. That's under the assumption that the pool
15 order -- the pool order just says that's what's needed
16 to drain that.

17 COMMISSIONER DUNN: But that's what we're
18 allowing without any oversight or any application
19 process to go through to look at how the environmental
20 concerns are going to affect the surface of the land.

21 COMMISSIONER BALCH: Do you agree that
22 there are other surface waste and surface management
23 statutes and regulations that could be used to control
24 the number of wells that are drilled by four?

25 COMMISSIONER DUNN: No, I do not, not from

1 a State Land Office standpoint because we don't have
2 SOPA.

3 COMMISSIONER BALCH: I think from the OCD
4 point of view, we felt that there were adequate
5 protections already in there, and if there are not, it
6 wasn't our place to change the Oil and Gas Act to
7 reflect that.

8 COMMISSIONER DUNN: But I think we
9 should -- I guess my problem with the whole issue is I
10 think the surface damages should be considered in this.

11 COMMISSIONER BALCH: You had a
12 representative on the Commission in September.

13 COMMISSIONER DUNN: But he's no longer on
14 the Commission.

15 COMMISSIONER BALCH: Yes, but he was on the
16 Commission. So you had a chance to be aware of what was
17 happening. You had a chance to intervene timely in
18 November. The State Land Office had plenty of
19 opportunity to get in here and give us these issues.

20 COMMISSIONER DUNN: When the State Land
21 Office -- when the Commissioner became aware of it, it
22 was too late. And so if it was our person's fault that
23 didn't tell us, I don't think that the environment
24 should suffer forever because somebody didn't tell the
25 Commissioner what was going on. And we're trying to

1 correct the activity now.

2 CHAIRWOMAN RILEY: You have to go back and
3 look at what the OCD is tasked to do, and they are
4 tasked to look at what does it take to get that resource
5 out of the ground so that we prevent waste and we're
6 protecting correlative rights. And so those are the two
7 tasks that we're supposed to do. It doesn't say, And go
8 out and look at what environmental damage. We don't
9 even have an avenue or a way to do that. That's not
10 part of our process.

11 COMMISSIONER DUNN: Well, Madam Chair, I
12 think that, you know, a horizontal well in this area
13 would have been a better way to go. And the way I
14 understand it -- or the Applicant said that that was too
15 expensive.

16 COMMISSIONER BALCH: I cross-examined
17 Ms. Sivadon twice, both in September and November, about
18 being able to use horizontal wells to tap these
19 resources, and they convinced me that that was not the
20 best way to drill these resources. It's too fragmented.
21 The reservoirs are not connected up. It's not like a
22 resource play.

23 So we have testimony in the record that
24 says horizontal wells right now, with present
25 technology, are not a viable option. That does not mean

1 in the future that that may not change. But we can --
2 we can hope that that's the case.

3 And I think there is other testimony in the
4 record that shows that there is very good reason for
5 Hilcorp to do a very large portion of these, maybe 25
6 percent of them, through re-drills or other consistent
7 holds. There's a long ways before you're starting to
8 get 5,000 new holes in the ground. And that was -- that
9 was what convinced me that it was safe to pass this
10 forward.

11 And you are correct. I mean, we do have
12 things in our statute that say we have to prevent damage
13 to human health, water, things like that.

14 COMMISSIONER DUNN: Right, and surface
15 waste.

16 COMMISSIONER BALCH: Right. But there are
17 other OCD regulations that, in fact, address those
18 issues, and we have to trust that those do that. If
19 they don't do that, there is plenty of avenue for people
20 to come in and change those by rulemaking, change them
21 statutory change at the legislature. But we're still
22 going back to the same position, where we can't change
23 our rules ad hoc. We have to change them because we
24 have a request to change them or because the legislature
25 tells us to change them. We have a fairly narrow

1 interpretation that if we want our orders to stand up to
2 appeal, for example, we can't be very wide-reaching on
3 how we interpret these things. That's why we listen to
4 counsel. That's why we trust the statutes are going to
5 do their jobs.

6 So I believe the State Land Office could go
7 to the legislature, or they could appeal to the OCC for
8 a rulemaking if they want to change some of these
9 things. It's not like there is no avenue to do it, but
10 we can't do it.

11 It would be like someone coming to you and
12 telling you you have to change the way you distribute
13 money gathered by royalties; you have to give some money
14 somewhere else where you're not supposed to. You have
15 rules about where your money is supposed to go to, and
16 you can't change those rules without someone from the
17 outside causing that change to be occurred through a
18 legislature or rulemaking change. We're in that same
19 position.

20 I understand your frustration, but I also
21 believe you also had plenty of opportunity to be
22 involved. Whether you were informed or not, it's your
23 responsibility to know what's happening.

24 COMMISSIONER DUNN: I agree.

25 But I guess I still go back to this is a

1 rushed deal from a political standpoint on Hilcorp's
2 part not -- so this doesn't enter the next
3 administration. That's -- that's what it looks like,
4 and I --

5 COMMISSIONER BALCH: Why do you think it
6 looks like that?

7 COMMISSIONER DUNN: Because you moved
8 the -- the hearing was going to be on the 13th. It was
9 moved to the 4th, which pushes the 20 days.

10 CHAIRWOMAN RILEY: We discussed that at the
11 other hearing.

12 COMMISSIONER DUNN: I wasn't able to see
13 that in the minutes because I wasn't able to see the
14 transcript.

15 COMMISSIONER BALCH: Well, you had every
16 opportunity to have a discussion with Commissioner
17 Martin before you fired him.

18 COMMISSIONER DUNN: Well, I didn't fire
19 Commissioner Martin. He still works for the Land
20 Commission. I just removed him from the Commission.

21 COMMISSIONER BALCH: I understand you can't
22 fire somebody who is going to retire in 30 days.

23 But still, you had opportunity and you have
24 a resource. I'm sure Ed would have been happy to tell
25 you what went on and his thinking --

1 COMMISSIONER DUNN: Yeah.

2 COMMISSIONER BALCH: -- just because I
3 think he's a very stand-up gentleman, very
4 straightforward.

5 COMMISSIONER DUNN: Yeah. I'm not trying
6 to disparage Mr. Martin.

7 COMMISSIONER BALCH: Well, that's been done
8 anyway.

9 However, the bottom line is I, at least, am
10 not making this a political statement. It's just the
11 timing of it that comes before me. To me they proved
12 their case. I'll sign the order whenever the order is
13 ready. If the next administration doesn't like it, they
14 have other ways that they can deal with it, either
15 through a rehearing, which may or may not occur. But
16 even without a rehearing, you have the legislative
17 process; you have rulemaking. Something will probably
18 occur.

19 COMMISSIONER DUNN: Paragraph 29. We need
20 to take out "the" after "reservoir due to," middle of
21 the paragraph. "Properly drain the reservoir due to the
22 its." Remove "the." It should be "to its
23 low-permeability."

24 Did you get that one?

25 CHAIRWOMAN RILEY: Yes.

1 COMMISSIONER DUNN: Paragraph 31. "Three
2 current operators." It would be nice to have who the
3 operators are listed.

4 CHAIRWOMAN RILEY: Again, that's in the
5 record. I mean, there are entries of appearance by each
6 of those.

7 COMMISSIONER DUNN: Okay. I just thought
8 it would be nice to have it in the order.

9 Number two under "it is therefore ordered
10 pursuant to the Hilcorp's." It should probably just be
11 "pursuant to Hilcorp's."

12 COMMISSIONER BALCH: The version that I
13 have doesn't have that typo. I noticed that on a couple
14 of the comments made by the Commissioner.

15 CHAIRWOMAN RILEY: I think that -- and
16 Cheryl, you can speak to this -- that we had gotten a
17 version of the order and that's what was sent and that
18 you might have made a typo or two corrections.

19 MS. BADA: I fixed the typos, but probably
20 not anything else. This is what I have.

21 COMMISSIONER BALCH: That's what I have
22 here. I don't have that typo on mine. Mine appears to
23 be the most recent version of the order.

24 COMMISSIONER DUNN: "Allocation in granting
25 allowables," where it lists the pages -- or the pages I

1 got under "legal description," it goes 16, 17 and 21.

2 And 22 is -- maybe that's the way it was printed.

3 CHAIRWOMAN RILEY: Any other changes?

4 COMMISSIONER DUNN: No.

5 CHAIRWOMAN RILEY: I want to look at if you
6 have the copy of the --

7 COMMISSIONER DUNN: So we're going to
8 strike five?

9 CHAIRWOMAN RILEY: Yeah.

10 COMMISSIONER BALCH: I'm comfortable with
11 that.

12 COMMISSIONER DUNN: We're going to change,
13 in four, "Commissioner" to "Division hearing"?

14 CHAIRWOMAN RILEY: I'm just trying to
15 figure out -- okay. That is the September 13th.

16 COMMISSIONER BALCH: I'm not sure that you
17 need to change four because three states that it was
18 moved to the Commission's docket, and then Hilcorp
19 provided notice of the Commission hearing. However,
20 they screwed it up. That's why --

21 CHAIRWOMAN RILEY: Right. Because they had
22 it still with the Division. But they did provide notice
23 of the Division hearing, but not the Commission.

24 COMMISSIONER BALCH: So actually they
25 really didn't comply with notice in September.

1 MS. BADA: So did you say -- shall we just
2 say Hilcorp provided notice of the November -- of the
3 September 6th? Is that what --

4 COMMISSIONER BALCH: But, I mean, the
5 problem is they didn't actually comply.

6 MS. BADA: That's what I'm saying. Do you
7 want to strike that portion --

8 COMMISSIONER BALCH: Yeah.

9 MS. BADA: -- clause?

10 COMMISSIONER BALCH: Would that fix your
11 issue with it, strike the first sentence?

12 COMMISSIONER DUNN: Sure.

13 MS. BADA: "Scheduled September 6th" --

14 COMMISSIONER BALCH: Yeah.

15 MS. BADA: -- "Division hearing"?

16 CHAIRWOMAN RILEY: Yeah, "of the Division
17 hearing scheduled September 6th."

18 Number seven has already been removed.

19 COMMISSIONER DUNN: I see that.

20 And paragraph 12, "San Juan Citizens
21 Alliance" was already removed.

22 CHAIRWOMAN RILEY: And I saw you were
23 looking up the motion.

24 MS. BADA: It's the November 15th motion.
25 It's actually called "Hilcorp's Motion to Strike SJCA

1 Second Notice of Intervention."

2 CHAIRWOMAN RILEY: So really it's probably
3 accurate to keep that as lowercase since we're not
4 directly quoting the title.

5 COMMISSIONER DUNN: All right.

6 In 14, I don't know why it would hurt not
7 to put in the size of the pool.

8 COMMISSIONER BALCH: I'm not sure what it
9 would add. It's already in the record.

10 COMMISSIONER DUNN: I think people are
11 going to look at the order more generally than they're
12 going to go through the whole record. I don't know
13 where it hurts. It just shows the size of it.

14 COMMISSIONER BALCH: I mean, it doesn't
15 call for a conclusion on our part to state that it's the
16 largest pool in the state or something like that?

17 MS. BADA: It's up to the Commission if
18 they want to include that.

19 COMMISSIONER BALCH: I'm not familiar with
20 the size of all the pools in the state. I know a number
21 of pools in the southeast are pretty good size.

22 COMMISSIONER DUNN: This is based on their
23 Exhibit 1.

24 COMMISSIONER BALCH: I don't know what the
25 largest pool in the San Juan is. I agree it's a large

1 pool, but I don't know how it compares to other pools.
2 So I personally wouldn't want to --

3 COMMISSIONER DUNN: Let's just take out
4 "largest pool" and just put what the size is, "2,031
5 sections, 1.3 million acres."

6 COMMISSIONER BALCH: Hang on. Where is
7 that language you're suggesting?

8 COMMISSIONER DUNN: At the end of paragraph
9 14. We would just be putting the size of the basin in
10 there.

11 COMMISSIONER BALCH: I really don't know
12 what it adds. It's all in the record.

13 CHAIRWOMAN RILEY: I'm looking through
14 Exhibit 1. I'm not finding that information.

15 COMMISSIONER BALCH: If you want to get a
16 conclusion in there that speaks to the size of it, I
17 would want information that speaks to the resource
18 availability with and without the spacing unit. I think
19 we already have something like that in our conclusions.
20 If you want to talk about the size, I think I want to
21 talk about the size of the price.

22 CHAIRWOMAN RILEY: I don't find it.

23 COMMISSIONER BALCH: There is also -- if
24 you look at the very back, there is a listing of all the
25 townships and sections, which does already give an

1 indication of the size of the pool.

2 COMMISSIONER DUNN: Okay.

3 CHAIRWOMAN RILEY: Do you want to change
4 paragraph 15? Is that your next one?

5 COMMISSIONER DUNN: Yeah. She said that --

6 CHAIRWOMAN RILEY: Yeah.

7 COMMISSIONER BALCH: The other two -- two
8 of the parties that you wanted to have mentioned are in
9 16, LOGOS and Enduring Resources. They made
10 appearances.

11 COMMISSIONER DUNN: I guess really what I
12 would like to get in is that the notice -- Hilcorp
13 provided -- or requested the State Land Office waive
14 formal notice of the Commission, and we declined to
15 waive notice. So I want some statement in, say, 20 that
16 we were asked to waive notice and we declined it.

17 COMMISSIONER BALCH: I think that's maybe
18 something that's better for your request for rehearing.

19 COMMISSIONER DUNN: Well, I'd kind of like
20 it in the order so it's in the record.

21 COMMISSIONER BALCH: It is in the record.

22 COMMISSIONER DUNN: Well, I understand,
23 but --

24 COMMISSIONER BALCH: And since we don't
25 have time to go look it up and refer to the exact line

1 number, that might be the better place for it.

2 CHAIRWOMAN RILEY: Yeah, because the issue
3 is that that was in the record as part of the motion,
4 the motions that you filed. Those motions were denied.
5 And so I don't know that we really need to put that
6 information in because it's not relevant to this
7 application.

8 COMMISSIONER DUNN: Okay.

9 CHAIRWOMAN RILEY: But I do think, you
10 know, just to Dr. Balch's point, you can put that in a
11 request.

12 Anything else?

13 COMMISSIONER DUNN: I don't think it's
14 going to matter, so -- I don't think you're going to
15 agree.

16 COMMISSIONER BALCH: Commissioner, our
17 finding in conclusion number 26 states that "Hilcorp is
18 the operator of approximately 5,329 wells currently
19 producing from the Blanco-Mesaverde Pool, which covers a
20 large portion of the San Juan Basin across Rio Arriba
21 and San Juan Counties." I think that establishes the
22 size of the pool.

23 COMMISSIONER DUNN: Okay.

24 COMMISSIONER BALCH: Hopefully that
25 satisfies the concerns of yours.

1 COMMISSIONER DUNN: Well, I guess we could
2 add into that that the new rule would allow them to
3 drill an additional 5,000 acres to a total of 10,000.

4 COMMISSIONER BALCH: I think that's
5 inherent on the downspacing.

6 CHAIRWOMAN RILEY: Anything else? Any
7 other changes that we need to talk about?

8 COMMISSIONER BALCH: I think we might have
9 missed a few.

10 COMMISSIONER DUNN: I don't think you're
11 going to agree, so I don't have a reason to talk.

12 COMMISSIONER BALCH: I think there is
13 always a reason for debate.

14 COMMISSIONER DUNN: Excuse me?

15 COMMISSIONER BALCH: I think there is
16 always reason for debate if one of the Commissioners
17 disagrees. However --

18 COMMISSIONER DUNN: I don't.

19 COMMISSIONER BALCH: -- if you're drawing a
20 conclusion that we won't vote your way which is a
21 priority to asking us, I think it's disparaging to say
22 it the way you said it.

23 COMMISSIONER DUNN: I apologize.

24 I don't have any other changes I wish to
25 discuss.

1 CHAIRWOMAN RILEY: On 21, the point about
2 drilling -- it says: "Drilling, operator and
3 production." It should be "operation."

4 And then 29 -- and then in the order,
5 number two -- Okay.

6 Well, I think we're -- unless there is any
7 further discussion on the content of the order, our next
8 order of business would be to see if there is a motion
9 to accept the changes.

10 Is that correct, Cheryl?

11 MS. BADA: Yes.

12 COMMISSIONER BALCH: Close?

13 CHAIRWOMAN RILEY: Do we have a motion --
14 does anyone have a motion to accept the order?

15 COMMISSIONER BALCH: Well, it goes against
16 my better judgment to make a comment, but I'm going to
17 make a comment anyway, particularly because this was
18 accused of being a political move. And I'm not a
19 political person. I'm actually not registered with any
20 party.

21 I've been appointed to this position in
22 sequence by three energy secretaries, John Bemis,
23 Mr. Martin and the most recent one, and in each of those
24 cases, I told them the same thing, that I'm a scientist;
25 I'll use my judgment; if you tell me how to vote, the

1 first thing I will do is resign. So since I'm sitting
2 here today, I haven't resigned because nobody has told
3 me how to vote.

4 COMMISSIONER DUNN: Okay.

5 COMMISSIONER BALCH: I vote my opinion of
6 the evidence that's put before me under the
7 interpretation that's been given to me by several
8 different legal counsels over the years about the
9 limitations and constraints of the Oil and Gas Act, how
10 I'm supposed to consider these things.

11 So like I said, I don't feel it's
12 necessarily a good idea for the Commissioner to make a
13 statement like that, but a lot of people have said some
14 pretty mean things about this Commission. And we're
15 hard-working people. Most of us do this as volunteer
16 work. We don't get paid for it. There is no real
17 benefit to it except to hopefully generate more income
18 for the state of New Mexico. That's why I'm sitting
19 here today.

20 So with that, I would make a motion to pass
21 this order.

22 CHAIRWOMAN RILEY: I'll follow up with that
23 to say -- make a couple of comments myself, and one is
24 an allegation that because I formerly worked for oil and
25 gas, that I'm somehow obliged to approve this, and that

1 is also not the case. And I don't think that it should
2 be against me because I used to work for the oil and
3 gas. The reason I was even asked to fill this position
4 and be on this Commission is my experience in oil and
5 gas and my understanding of things such as how these
6 pool rules are applied, and so I take exception to that
7 as well.

8 I feel like we were given a very difficult
9 task with this considering all of the interest in both
10 directions on this particular application, and we did
11 our very best to follow what is in our Oil and Gas Act
12 and what is in the rules. And I guarantee you that had
13 we made exceptions, some of the exceptions that were
14 being asked of us, that this probably wouldn't go very
15 well on appeal. So I don't have any -- any regrets on
16 how this has been handled other than I wish it hadn't
17 come to this level of debate and concern because I don't
18 think it really needed to be there.

19 Now, I do want to acknowledge that there
20 are people that do have worries about what's going to
21 happen after this, and as Dr. Balch has mentioned, there
22 are places for you to take your concerns, which is to
23 your legislators, to your elective body, and they can
24 make changes. But our hands are tied. We were given a
25 task to do and we did it.

1 So I would second that motion.

2 And so now, at this point, I'd like to take
3 a verbal vote on this, so if you would please signify by
4 saying aye if you're in support of the motion.

5 COMMISSIONER BALCH: Aye.

6 CHAIRWOMAN RILEY: Aye.

7 COMMISSIONER DUNN: Nay.

8 CHAIRWOMAN RILEY: All right. So noted for
9 the record.

10 So this is passed. The order with the
11 changes that we've identified is accepted.

12 And how do we do that, Cheryl?

13 MS. BADA: Well, I don't know if everybody
14 wants to wait around while Florene tries to make those
15 changes or --

16 COMMISSIONER BALCH: I'd like to get to
17 Socorro tomorrow so I can go back to my real job, so I
18 would rather sit around and wait.

19 CHAIRWOMAN RILEY: I can wait.

20 Florene, are you the one that --

21 MS. DAVIDSON: It came from Cheryl Bada.

22 MS. BADA: She printed it. So the changes
23 you want to make, give to her, and we can --

24 CHAIRWOMAN RILEY: Okay. Let's adjourn --
25 or not adjourn but take a break, and we should be able

1 to be back in probably 15 minutes, more or less.

2 COMMISSIONER BALCH: As long as you catch
3 the elevator.

4 MR. SCHLENKER-GOODRICH: Madam Chair, if I
5 may, it's just an informal request: Given that motions
6 for rehearing are contemplated by our client, we would
7 like to ensure that both the order is provided to the
8 public, as well as transcripts for the November 19th
9 hearing and for tonight as soon as possible. Given that
10 we're under a limited 20-day window, it is very
11 difficult to file a motion for rehearing in the absence
12 of that information. So I would hopefully and
13 respectfully ask the Commission to accommodate that, and
14 hopefully we can get those transcripts completed and
15 provided to the public as soon as possible.

16 COMMISSIONER BALCH: I think the November
17 19th hearing is available already.

18 MR. SCHLENKER-GOODRICH: It is not.

19 COMMISSIONER BALCH: Okay. That's a little
20 bit out of our control.

21 What do you say?

22 (The court reporter responds.)

23 COMMISSIONER BALCH: The order, we put
24 online.

25 MR. SCHLENKER-GOODRICH: Okay.

1 (Recess, 5:11 p.m. to 5:24 p.m.)

2 CHAIRWOMAN RILEY: Back on the record,
3 Mary.

4 We went upstairs and made the corrections
5 that we discussed, so now we have an order that we can
6 sign.

7 COMMISSIONER BALCH: Would you like me to
8 sign? I'm not going to read it right now.

9 MS. ANTILLON: Madam Chair, Commissioners,
10 pursuant to Commissioner Balch's request, the State Land
11 Office, now that the order is signed, would like to
12 renew its objection to the order taking effect
13 immediately and would make a motion to stay the order
14 until the time for all administrative processes have
15 passed.

16 COMMISSIONER BALCH: I think we would have
17 had to have put a 30-day into the order.

18 MS. ANTILLON: I'm sorry? What did you
19 say?

20 COMMISSIONER DUNN: I think what was
21 requested is that we -- that they not start drilling
22 wells immediately, that the 20 days --

23 MS. ANTILLON: And ten days.

24 COMMISSIONER DUNN: -- expire prior to them
25 getting new APDs in relation to this well density.

1 COMMISSIONER BALCH: That can be done
2 administratively, right? I mean, the reality is there
3 is one rig in the San Juan Basin, so I doubt that that
4 rig will be available.

5 COMMISSIONER DUNN: Bunch of APDs right
6 now. We're asking that APDs be not issued until the 20
7 days are up or the appeals process has gone through.

8 That's what you're asking, correct?

9 MS. ANTILLON: Yes. No. We're asking for
10 a stay on this order to take effect for 30 days to allow
11 the appeals process to run.

12 MS. BADA: Do you plan on filing a written
13 motion for stay?

14 MS. ANTILLON: I am happy to follow up my
15 oral motion with a written motion.

16 MS. BADA: Thank you.

17 COMMISSIONER BALCH: That's your job,
18 right?

19 MS. BADA: Yes.

20 COMMISSIONER BALCH: For the record, I'm
21 comfortable delaying 30 days. I don't think it'll make
22 a difference either way.

23 COMMISSIONER DUNN: I second that.

24 CHAIRWOMAN RILEY: All right. Well, I
25 don't know where my agenda is, but it doesn't really

1 matter. I believe we're done.

2 Is any other business that needs to be
3 dealt with?

4 COMMISSIONER DUNN: You have here the next
5 meeting is the 13th. That's not correct?

6 CHAIRWOMAN RILEY: That's not correct.
7 That's been vacated. We didn't get notice out, and as I
8 stated earlier, we're trying to wrap up everything so
9 there is not a lot of outstanding issues that crosses
10 over to the new administration. So yeah.

11 So do I have a motion to adjourn?

12 COMMISSIONER BALCH: Florene knows when the
13 next meeting is as well as anybody.

14 MS. DAVIDSON: January 17th.

15 CHAIRWOMAN RILEY: Do I have a motion to
16 adjourn?

17 COMMISSIONER DUNN: Moved.

18 COMMISSIONER BALCH: Seconded.

19 CHAIRWOMAN RILEY: We're adjourned.

20 Thank you, everybody.

21 (The proceedings conclude, 5:27 p.m.)

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1 STATE OF NEW MEXICO
2 COUNTY OF BERNALILLO

3

4 CERTIFICATE OF COURT REPORTER

5 I, MARY C. HANKINS, Certified Court
6 Reporter, New Mexico Certified Court Reporter No. 20,
7 and Registered Professional Reporter, do hereby certify
8 that I reported the foregoing proceedings in
9 stenographic shorthand and that the foregoing pages are
10 a true and correct transcript of those proceedings that
11 were reduced to printed form by me to the best of my
12 ability.

13 I FURTHER CERTIFY that the Reporter's
14 Record of the proceedings truly and accurately reflects
15 the exhibits, if any, offered by the respective parties.

16 I FURTHER CERTIFY that I am neither
17 employed by nor related to any of the parties or
18 attorneys in this case and that I have no interest in
19 the final disposition of this case.

20 DATED THIS 11th day of December 2018.

21

22

23 MARY C. HANKINS, CCR, RPR
24 Certified Court Reporter
25 New Mexico CCR No. 20
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