

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

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

AGENDA ITEMS 1 - 8

July 18, 2019

Santa Fe, New Mexico

BEFORE: ADRIENNE SANDOVAL, CHAIRWOMAN  
JORDAN KESSLER, COMMISSIONER  
DR. THOMAS ENGLER, COMMISSIONER  
MIGUEL LOZANO, ESQ.

This matter came on for hearing before the New Mexico Oil Conservation Commission on Thursday, July 18, 2019, at the New Mexico Energy, Minerals and Natural Resources Department, Wendell Chino Building, 1220 South St. Francis Drive, Porter Hall, Room 102, Santa Fe, New Mexico.

REPORTED BY: Mary C. Hankins, CCR, RPR  
New Mexico CCR #20  
Paul Baca Professional Court Reporters  
500 4th Street, Northwest, Suite 105  
Albuquerque, New Mexico 87102  
(505) 843-9241

<p style="text-align: right;"><b>Page 2</b></p> <p>1 (9:07 a.m.)</p> <p>2 CHAIRWOMAN SANDOVAL: Good morning. It is</p> <p>3 9:07 a.m., and is this the meeting of the New Mexico Oil</p> <p>4 Conservation Commission.</p> <p>5 I'm Adrienne Sandoval, Director of the Oil</p> <p>6 Conservation Division and the Chair of the Oil</p> <p>7 Conservation Commission.</p> <p>8 Will the Commissioners introduce themselves</p> <p>9 for the record, please?</p> <p>10 COMMISSIONER KESSLER: Jordan Kessler,</p> <p>11 Assistant Commissioner of Mineral Resources, for the</p> <p>12 State Land Office.</p> <p>13 COMMISSIONER ENGLER: Tom Engler,</p> <p>14 Commissioner Designate from the Secretary of Energy.</p> <p>15 CHAIRWOMAN SANDOVAL: Also with us is</p> <p>16 Florene Davidson, clerk for the Commission, and Miguel</p> <p>17 Lozano, counsel for the Commission.</p> <p>18 There is a list of items on the agenda for</p> <p>19 the docket for today's meeting. Do I hear a motion and</p> <p>20 a second to adopt the previous agenda -- or the agenda</p> <p>21 for today?</p> <p>22 COMMISSIONER KESSLER: So moved.</p> <p>23 COMMISSIONER ENGLER: Second.</p> <p>24 CHAIRWOMAN SANDOVAL: All those in favor</p> <p>25 signify by saying aye.</p>	<p style="text-align: right;"><b>Page 4</b></p> <p>1 to review the proposed order from 3Bear Field Services,</p> <p>2 LLC as amended by Commission counsel, as well as the</p> <p>3 potential alternative to that proposed order with</p> <p>4 language provided by the attorney for 3Bear, which has</p> <p>5 different specific language regarding the 3Bear Libby</p> <p>6 Barry saltwater disposal well conditions?</p> <p>7 Have the Commissioners had an opportunity</p> <p>8 to review these proposed orders?</p> <p>9 COMMISSIONER KESSLER: I have. I also</p> <p>10 agree with the proposed orders.</p> <p>11 COMMISSIONER ENGLER: I have.</p> <p>12 CHAIRWOMAN SANDOVAL: Do the Commissioners</p> <p>13 have any questions for 3Bear regarding the proposed</p> <p>14 orders before we discuss the orders?</p> <p>15 COMMISSIONER ENGLER: No, I do not.</p> <p>16 COMMISSIONER KESSLER: No.</p> <p>17 CHAIRWOMAN SANDOVAL: Is there any</p> <p>18 discussion or suggested changes to either the proposed</p> <p>19 order or the alternative proposed order?</p> <p>20 COMMISSIONER ENGLER: No questions.</p> <p>21 COMMISSIONER KESSLER: No.</p> <p>22 CHAIRWOMAN SANDOVAL: If there is no</p> <p>23 discussion or amendments, I will entertain a motion to</p> <p>24 adopt either the proposed or the alternative order.</p> <p>25 MS. CALLAHAN: Madam Chair, if it please</p>
<p style="text-align: right;"><b>Page 3</b></p> <p>1 COMMISSIONER KESSLER: Aye.</p> <p>2 COMMISSIONER ENGLER: Aye.</p> <p>3 (Ayes are unanimous.)</p> <p>4 CHAIRWOMAN SANDOVAL: Great.</p> <p>5 In your packet are the draft minutes from</p> <p>6 June 6th, 2019. If you have read the minutes, are there</p> <p>7 any corrections?</p> <p>8 COMMISSIONER KESSLER: I've reviewed the</p> <p>9 minutes and do not have any corrections.</p> <p>10 COMMISSIONER ENGLER: Same. I've reviewed</p> <p>11 them and have no corrections at this time.</p> <p>12 CHAIRWOMAN SANDOVAL: Is there a motion and</p> <p>13 a second to adopt the minutes?</p> <p>14 COMMISSIONER KESSLER: So moved.</p> <p>15 COMMISSIONER ENGLER: And second.</p> <p>16 CHAIRWOMAN SANDOVAL: All those in favor</p> <p>17 signify by saying aye.</p> <p>18 COMMISSIONER KESSLER: Aye.</p> <p>19 COMMISSIONER ENGLER: Aye.</p> <p>20 (Ayes are unanimous.)</p> <p>21 CHAIRWOMAN SANDOVAL: The Board will now</p> <p>22 move to item number four, possible approval of the</p> <p>23 proposed order in Case Number 20409 arising from the</p> <p>24 hearing held on June 6th, 2019.</p> <p>25 Have the Commissioners had an opportunity</p>	<p style="text-align: right;"><b>Page 5</b></p> <p>1 the Chair, 3Bear would like to discuss further a couple</p> <p>2 of the provisions in the proposed orders, and we've</p> <p>3 brought our expert, Mr. Alberto Gutierrez, to assist in</p> <p>4 communicating our concerns.</p> <p>5 So if it's all right, I'd like to enter my</p> <p>6 appearance. Candace Callahan, with Beatty &amp; Wozniak,</p> <p>7 representing the Applicant, 3Bear Field Services, LLC.</p> <p>8 And I have an opening statement, if that is acceptable.</p> <p>9 MR. LOZANO: Madam Chair, it's up to you.</p> <p>10 The record is technically closed for hearing purposes.</p> <p>11 If counsel would like to address concerns with the</p> <p>12 order, it's -- it's at your discretion.</p> <p>13 CHAIRWOMAN SANDOVAL: Counsel may address</p> <p>14 the concerns with the order.</p> <p>15 MS. CALLAHAN: Thank you, Madam Chair.</p> <p>16 Mr. Lozano kindly provided us with a copy</p> <p>17 of both of the orders that he submitted to the</p> <p>18 Commission for consideration, and one of the two</p> <p>19 contains language offered by 3Bear to address the</p> <p>20 concerns regarding possible negative interference</p> <p>21 between the proposed AGI wells and the Libby Barry SWD</p> <p>22 No. 1 well that is existing. We understand the other</p> <p>23 contains language that the Commission's counsel provided</p> <p>24 by a reading of the transcript to address this very same</p> <p>25 concern. And we've asked our expert witness to appear</p>

<p style="text-align: right;"><b>Page 6</b></p> <p>1 today to address two of the reasons that we</p> <p>2 have.</p> <p>3 We're requesting that you adopt our</p> <p>4 proposed language rather than the initial language</p> <p>5 proposed by a reading of the transcript. Mr. Gutierrez</p> <p>6 would testify to support 3Bear's proposed language</p> <p>7 addressing the concerns regarding the possible negative</p> <p>8 influence of the two proposed AGI wells and SWD well and</p> <p>9 also to address 3Bear's concerns regarding ordering</p> <p>10 paragraph number 15 found in both orders relating to the</p> <p>11 proposed redundant AGI well</p> <p>12 For the purposes of the record, I would</p> <p>13 refer to the proposed order based on the Commission</p> <p>14 counsel's reading of the transcript as Order Number 1 or</p> <p>15 as Exhibit 1 and the copy of the proposed order provided</p> <p>16 to you by Mr. Lozano containing language offered by</p> <p>17 3Bear, I'll offer and refer to as Order Number 2 or</p> <p>18 Exhibit 2.</p> <p>19 The credentials of Mr. Gutierrez as an</p> <p>20 expert in petroleum geology, hydrology, acid gas</p> <p>21 injection and groundwater contamination were previously</p> <p>22 accepted by the Commission at the prior hearing. If</p> <p>23 acceptable to the Commission, I'd like to again tender</p> <p>24 Mr. Gutierrez as an expert in those fields and ask that</p> <p>25 he be sworn.</p>	<p style="text-align: right;"><b>Page 8</b></p> <p>1 you want me to read it out. I can give you an</p> <p>2 opportunity to read through it again before I speak to</p> <p>3 it.</p> <p>4 CHAIRWOMAN SANDOVAL: I think we've all</p> <p>5 confirmed we'd read through them and reviewed them.</p> <p>6 MS. CALLAHAN: Okay. So in our opinion,</p> <p>7 this language is basically the same provision. It</p> <p>8 requires that -- you know, an analysis to demonstrate</p> <p>9 there is no negative influence be done in conjunction</p> <p>10 with the five-year review. So we just believe that it</p> <p>11 would be premature to require a reduction or a</p> <p>12 limitation on the existing saltwater disposal well</p> <p>13 before you've had the opportunity to review the data at</p> <p>14 the five-year review to determine whether or not there</p> <p>15 is a problem, particularly in light of the fact that</p> <p>16 there is such a need for both types of wells, the AGI</p> <p>17 wells and the saltwater disposal wells. We think it's</p> <p>18 premature, and it may not be necessary. The amount</p> <p>19 of -- the amount of AGI or TAG going into the AGI wells</p> <p>20 is basically only 3,500 barrels of -- barrels per day,</p> <p>21 so it's, we believe, unrealistic to expect that the</p> <p>22 plume from the AGI wells is going to impact in any way</p> <p>23 the saltwater disposal well. It's such a small amount.</p> <p>24 COMMISSIONER KESSLER: Madam Chair, may I</p> <p>25 ask a couple of questions?</p>
<p style="text-align: right;"><b>Page 7</b></p> <p>1 (Consultation off the record.)</p> <p>2 CHAIRWOMAN SANDOVAL: Yes. Since the</p> <p>3 record is closed, we don't want to open it back up</p> <p>4 without the Division counsel here. If you want to</p> <p>5 address some of the changes and why you've written it</p> <p>6 the way you have, then we're open to hearing that, but</p> <p>7 we don't want to go back into --</p> <p>8 MS. CALLAHAN: I'm sorry. Maybe I wasn't</p> <p>9 clear. The only reason that we want to allow</p> <p>10 Mr. Gutierrez to testify is to address the provisions in</p> <p>11 the proposed orders, not to expand on the testimony that</p> <p>12 he provided at the hearing. Just to give clarification</p> <p>13 to the reasons behind our proposed language.</p> <p>14 CHAIRWOMAN SANDOVAL: Can you just provide</p> <p>15 an explanation?</p> <p>16 MS. CALLAHAN: Sure. I guess if you'd like</p> <p>17 to look at the provisions that we're concerned with,</p> <p>18 you'll see on page 6 of both orders there is a paragraph</p> <p>19 O, and if you refer to page 6 on both orders, you'll see</p> <p>20 that they differ. And since they're provided to you as</p> <p>21 exhibits, which I would like to include in the record --</p> <p>22 MR. LOZANO: The Board has both -- both</p> <p>23 orders.</p> <p>24 MS. CALLAHAN: Okay. So the language that</p> <p>25 we're proposing is in my Exhibit 2, and I don't know if</p>	<p style="text-align: right;"><b>Page 9</b></p> <p>1 CHAIRWOMAN SANDOVAL: Yeah.</p> <p>2 COMMISSIONER KESSLER: Counsel, if I</p> <p>3 understand correctly of what you're requesting here is</p> <p>4 to eliminate the last several sentences of paragraph O;</p> <p>5 is that correct?</p> <p>6 MS. CALLAHAN: Yes. And also the -- there</p> <p>7 is a separate paragraph. I believe it's 19 in the</p> <p>8 ordering paragraph.</p> <p>9 MR. LOZANO: So to be clear, Commissioners,</p> <p>10 she is requesting the addition of the sentences in</p> <p>11 paragraph O and the elimination of 19.</p> <p>12 MS. CALLAHAN: Yeah. There are two</p> <p>13 paragraphs in Order Number 1 that relate to this issue,</p> <p>14 and there is just one that relates to this issue in</p> <p>15 Order Number 2, and both of them are paragraph O on page</p> <p>16 6.</p> <p>17 CHAIRWOMAN SANDOVAL: Isn't there also, in</p> <p>18 Exhibit Number 1, an extra --</p> <p>19 MR. LOZANO: Correct. That would be W.</p> <p>20 CHAIRWOMAN SANDOVAL: There is also W</p> <p>21 that's an addition to Exhibit 1.</p> <p>22 MS. CALLAHAN: Yes. Yes. Yes. Yes. That</p> <p>23 relates to its counterpart to 19. Yeah.</p> <p>24 The other provision that we have concerns</p> <p>25 about is found in ordering paragraph number 15. It</p>

<p style="text-align: right;"><b>Page 10</b></p> <p>1 wasn't 3Bear's intent that there be a requirement to  2 drill both AGI wells. It's possible that the economics  3 and the need may change at the point in time, six years  4 hence, perhaps, so that there may not be a need or the  5 economics may not prove sufficient to support a second  6 AGI well.</p> <p>7 3Bear is well aware of the possibility that  8 they may have to shut down the well and the plant if the  9 AGI -- one AGI well requires maintenance, but they're  10 willing to accept that possibility so that they can have  11 an option rather than a requirement to drill two wells.  12 It may be -- you know, if the need is there and the  13 economics are there, then they plan to proceed with both  14 wells. It's just that it's hard to tell six years from  15 now whether or not there is going to be a need for two  16 wells.</p> <p>17 COMMISSIONER ENGLER: Madam Chair, can I  18 ask questions?</p> <p>19 CHAIRWOMAN SANDOVAL: Yeah.</p> <p>20 COMMISSIONER ENGLER: Okay. So on this  21 question of a redundant well, it was, I thought, fairly  22 well defined in the previous hearing that you were going  23 to drill two wells with the idea that the amount of  24 injection would be either in one or both and that it  25 was -- is a big concern in terms of health and safety,</p>	<p style="text-align: right;"><b>Page 12</b></p> <p>1 down.</p> <p>2 MS. CALLAHAN: They recognize that. And  3 there are, you know, other AGI wells that are drilled as  4 sole wells --</p> <p>5 COMMISSIONER ENGLER: Sole wells.</p> <p>6 MS. CALLAHAN: -- in New Mexico, so this is  7 not an unusual situation.</p> <p>8 CHAIRWOMAN SANDOVAL: Yeah. But I think  9 there are unintended consequences associated with that,  10 and 3Bear is not going to have to take on the liability  11 of that. But if you shut down that gathering system  12 because you shut down the plant, at some place in that  13 system, it has to be flared. It will have to be flared  14 on the production side likely, but it's got to go  15 somewhere. So essentially you're going to place that  16 liability -- you'll take it off of yourself, but you'll  17 put it on the production company? Is that what I'm  18 understanding?</p> <p>19 MS. CALLAHAN: No. I don't believe that is  20 the case.</p> <p>21 CHAIRWOMAN SANDOVAL: Where would it go,  22 though? Unless you shut the well --</p> <p>23 MS. CALLAHAN: Everything would have to be  24 shut in.</p> <p>25 MR. GUTIERREZ: It would be shut in.</p>
<p style="text-align: right;"><b>Page 11</b></p> <p>1 not just shutting down, you know, the entire plant but  2 that you really would have a way of being able to handle  3 that. That was, I thought, fairly clear. And now  4 you're saying that due to economic reasons, you may or  5 may not -- depending on the circumstances, not want to  6 drill the second well, which I do understand will be --  7 that a very good well is a cost factor. But that was  8 not really what I took away from the last hearing. I  9 thought it was a very good plan to have that redundant  10 well. So I guess I would like to hear a better, I  11 guess, explanation as to why I should delay or not even  12 have it.</p> <p>13 MS. CALLAHAN: Well, our expert can address  14 that issue, but I understand that there are no  15 additional safety concerns because there would be no  16 flaring. It would just be a shut-in well, and the plant  17 might have to shut down as well. So it's more in terms  18 of, you know, the producer may or may not be willing to  19 accept the risk of having the plant and the well shut  20 down while things are -- are -- you know, maintenance is  21 done or, you know, there's repair to the well.</p> <p>22 COMMISSIONER ENGLER: You're going to face  23 that issue of shutting down your plant if this  24 particular well -- if you have only one well and then,  25 for whatever reason, whether it or something else goes</p>	<p style="text-align: right;"><b>Page 13</b></p> <p>1 MS. CALLAHAN: It would just be a shut-in  2 situation. It wouldn't be flared. They fully  3 understand that there would be no opportunity to flare.</p> <p>4 CHAIRWOMAN SANDOVAL: Okay.</p> <p>5 MS. CALLAHAN: They accept that risk. But,  6 I mean, it may well be that they drill both wells. They  7 just don't want to have the requirement. They drill the  8 one, and, you know, we're in a very changing world, and  9 three years after they drill the first one, things --  10 you know, we don't really know. We can't foresee what  11 the circumstances, economic or, you know, whether or not  12 there is still a need for the production. So it's --  13 you know, they just are asking for the option. I mean,  14 you know, certainly if there is an economic need, you  15 know, the circumstances -- the production warrants the  16 second well, they'll go ahead. It's just that it may or  17 may not come to pass because things are changing so  18 rapidly right now.</p> <p>19 CHAIRWOMAN SANDOVAL: Do any of the  20 Commissioners have any more questions regarding the  21 proposed orders?</p> <p>22 COMMISSIONER ENGLER: Yeah, if I may.  23 On the first point, I'd still like to  24 clarify. Okay. I've got two different exhibits here,  25 and you're talking about Section O.</p>

<p style="text-align: right;"><b>Page 14</b></p> <p>1 MS. CALLAHAN: Yes.</p> <p>2 COMMISSIONER ENGLER: Can you clarify for</p> <p>3 me again? What exactly are you asking? I guess it</p> <p>4 wasn't clear to me what you're stating.</p> <p>5 MS. CALLAHAN: Well, we're asking you to</p> <p>6 adopt Order Number 2.</p> <p>7 COMMISSIONER ENGLER: Exhibit 2?</p> <p>8 MS. CALLAHAN: Exhibit 2, yes.</p> <p>9 COMMISSIONER ENGLER: Okay. This one</p> <p>10 (indicating).</p> <p>11 MS. CALLAHAN: And eliminate two</p> <p>12 paragraphs, a finding paragraph and an ordering</p> <p>13 paragraph, in Order Number 1 that relates to putting a</p> <p>14 limit or a cap on the existing saltwater disposal well.</p> <p>15 I mean, it's possible that after the five-year analysis</p> <p>16 is done, that there may be a need to set a limit, but it</p> <p>17 may be something different than 20,000 barrels. It may</p> <p>18 be, you know, 22. It may be -- you know, it's an</p> <p>19 unknown. But the five-year analysis is actually shorter</p> <p>20 than ordinarily done. I mean, it used to be ten years.</p> <p>21 So I think certainly the five-year analysis should be</p> <p>22 well ahead of any need for concern. And the State has a</p> <p>23 protection that there is an MAOP on both wells, all</p> <p>24 wells.</p> <p>25 COMMISSIONER ENGLER: Right. Yeah. I</p>	<p style="text-align: right;"><b>Page 16</b></p> <p>1 that seems to fly in the face of what the application</p> <p>2 was for, which was simply two wells together for the</p> <p>3 purpose of redundancy.</p> <p>4 MS. CALLAHAN: Well, Order Number 1</p> <p>5 actually allows the second well to be drilled three</p> <p>6 years after first injection of the first well. So that</p> <p>7 gives an opportunity to evaluate circumstances and</p> <p>8 see -- you know, evaluate the efficiency of the well and</p> <p>9 evaluate the needs in the producing area for this. I</p> <p>10 mean, it's possible -- I think a lot of it is</p> <p>11 perspective in terms of the oil and gas producers</p> <p>12 looking to the Avalon, which, you know, is -- has a lot</p> <p>13 of sour gas. So if it turns out that, you know, nobody</p> <p>14 actually pursues that Avalon production for one reason</p> <p>15 or another, the need for a second well may not come to</p> <p>16 pass.</p> <p>17 MR. LOZANO: But my point is -- my problem</p> <p>18 with that is that your explanation initially for this</p> <p>19 new Section 15 is that potentially you might need it six</p> <p>20 years from now or eight years from now, but at that</p> <p>21 point, you may not have the authority, which means</p> <p>22 you'll have to come back here and get permission to</p> <p>23 drill another AGI well.</p> <p>24 MS. CALLAHAN: I think they'd be totally</p> <p>25 willing to do that. You know, it's going to be best</p>
<p style="text-align: right;"><b>Page 15</b></p> <p>1 appreciate the five years, willingness to do that. I</p> <p>2 think that's a benefit.</p> <p>3 It seems to me the 20,000 -- that seems</p> <p>4 like -- isn't that a standard rough number that you were</p> <p>5 using for disposal wells? I vaguely recall that number.</p> <p>6 CHAIRWOMAN SANDOVAL: They don't typically</p> <p>7 do it based on like --</p> <p>8 COMMISSIONER ENGLER: Volume and pressure?</p> <p>9 Just pressure, right?</p> <p>10 CHAIRWOMAN SANDOVAL: Yeah.</p> <p>11 COMMISSIONER ENGLER: Thank you.</p> <p>12 MR. LOZANO: Madam Chair, if I might.</p> <p>13 Counselor, the proposed paragraph 15 is new</p> <p>14 to me, so I haven't had a really good chance to review</p> <p>15 that. But it seems to me that if you look at Section 21</p> <p>16 of the order -- the actual ordered language --</p> <p>17 MS. CALLAHAN: Which order? I'm sorry.</p> <p>18 MR. LOZANO: In Section 21. In either</p> <p>19 order, it's the same.</p> <p>20 MS. CALLAHAN: Okay.</p> <p>21 MR. LOZANO: It -- it said that after three</p> <p>22 years, the authority to drill -- to drill would be lost</p> <p>23 by 3Bear. So if there is no drilling that occurs for</p> <p>24 the second AGI well, you'd also have to get the</p> <p>25 Division's permission to drill at a later time. And</p>	<p style="text-align: right;"><b>Page 17</b></p> <p>1 practices, and if -- if need dictates, then they will</p> <p>2 drill the well. It's just that, you know, at this</p> <p>3 point, six years away, you know, there may not be a</p> <p>4 need. So to require both wells -- to drill one well</p> <p>5 that they have determined probably is necessary now I</p> <p>6 think really sends a negative message in terms of, you</p> <p>7 know, a company's willingness to make these really large</p> <p>8 investments. I mean, the plant itself is a huge</p> <p>9 expense, and then the AGI wells are being drilled, you</p> <p>10 know, to 14- to 16,000 feet. So they're also extremely</p> <p>11 expensive. And, you know, the -- the way they are</p> <p>12 drilled and the casing that's required in these wells is</p> <p>13 extremely expensive, so a requirement for two of these</p> <p>14 wells is -- is, I think, not necessary.</p> <p>15 CHAIRWOMAN SANDOVAL: Okay. So do any of</p> <p>16 the Commissioners have any more questions for 3Bear?</p> <p>17 COMMISSIONER KESSLER: I move that we move</p> <p>18 into executive session.</p> <p>19 COMMISSIONER ENGLER: Second.</p> <p>20 CHAIRWOMAN SANDOVAL: All in favor?</p> <p>21 COMMISSIONER KESSLER: Aye.</p> <p>22 COMMISSIONER ENGLER: Aye.</p> <p>23 (Ayes are unanimous.)</p> <p>24 MR. LOZANO: State the reason, Madam Chair,</p> <p>25 for deliberation.</p>

<p style="text-align: right;"><b>Page 18</b></p> <p>1 CHAIRWOMAN SANDOVAL: We will go into a</p> <p>2 closed session to discuss the differences between the</p> <p>3 two proposed exhibits and decide on which we should move</p> <p>4 forward with.</p> <p>5 MR. LOZANO: You also need a roll call as</p> <p>6 well, so just ask Florene to call the roll.</p> <p>7 CHAIRWOMAN SANDOVAL: Florene, would you</p> <p>8 take a roll call, please?</p> <p>9 MS. DAVIDSON: To go into closed session,</p> <p>10 Chair Sandoval?</p> <p>11 CHAIRWOMAN SANDOVAL: Yes.</p> <p>12 MS. DAVIDSON: Commissioner Kessler?</p> <p>13 COMMISSIONER KESSLER: Yes.</p> <p>14 MS. DAVIDSON: Commissioner Engler?</p> <p>15 COMMISSIONER ENGLER: Yes.</p> <p>16 CHAIRWOMAN SANDOVAL: We will go into</p> <p>17 closed session to deliberate on the two exhibits.</p> <p>18 Thank you.</p> <p>19 (Recess; executive session, 9:30 a.m. to</p> <p>20 10:00 a.m.)</p> <p>21 CHAIRWOMAN SANDOVAL: All right. So we'll</p> <p>22 go back into open session.</p> <p>23 During closed session, we only discussed</p> <p>24 items that were on the agenda today.</p> <p>25 So in taking into account some of your</p>	<p style="text-align: right;"><b>Page 20</b></p> <p>1 discussed -- I mean, the application only discussed</p> <p>2 doing two wells -- two injection wells concurrently,</p> <p>3 essentially, and it was never discussed in testimony why</p> <p>4 there would be only a need for one instead of two. All</p> <p>5 of the testimony previously provided was discussing that</p> <p>6 there would be two drilled.</p> <p>7 In addition, I mean, this has been a</p> <p>8 long-standing practice of the Commission in the orders</p> <p>9 that have been granted from it, to do two injection</p> <p>10 wells. In case there is a maintenance issue with one,</p> <p>11 there is a redundant one to, you know, kind of provide</p> <p>12 protections for health and environment and any other</p> <p>13 issues that may come up from one well not functioning.</p> <p>14 So that will be -- that language will be maintained in</p> <p>15 the order and will not be changed.</p> <p>16 MS. CALLAHAN: Understood.</p> <p>17 CHAIRWOMAN SANDOVAL: So can we adopt it</p> <p>18 here?</p> <p>19 MR. LOZANO: Sure.</p> <p>20 CHAIRWOMAN SANDOVAL: Okay. If there is no</p> <p>21 further discussion about the amendments, I will</p> <p>22 entertain a motion to adopt this proposed order that we</p> <p>23 just discussed.</p> <p>24 COMMISSIONER KESSLER: I move to adopt the</p> <p>25 proposed order as modified.</p>
<p style="text-align: right;"><b>Page 19</b></p> <p>1 requests for proposals, in regard to the saltwater</p> <p>2 disposal well, SWD 1728, we will be adding some language</p> <p>3 to that, which will state "so at least 90 days prior to</p> <p>4 commencing injection or before Division approval in any</p> <p>5 transfer of ownership, 3Bear will submit a request with</p> <p>6 OCD to amend Administrative Order SWD 1728A to include a</p> <p>7 condition that the amount of salt water injected per day</p> <p>8 into the Libby Barry Fee Saltwater Disposal Well No. 1</p> <p>9 is not to exceed 20,000 barrels. Concurrent with the</p> <p>10 five-year report to be provided to the Division above,</p> <p>11 the operator may seek approval of the Division to</p> <p>12 increase the SWD injection limits by sufficiently</p> <p>13 demonstrating that the AGI wells are not negatively</p> <p>14 influencing adjacent saltwater disposal wells."</p> <p>15 So we are still requiring that you, within</p> <p>16 90 days, request a limit on the Libby Barry Fee</p> <p>17 Saltwater Disposal Well No. 1 for 20,000 barrels, but in</p> <p>18 that five-year report, you can request that that be</p> <p>19 increased by providing necessary information that they</p> <p>20 are not impacting each other.</p> <p>21 Regarding the request to only drill one</p> <p>22 salt water -- or I'm sorry -- injection well, we are</p> <p>23 keeping the language that was currently in the order</p> <p>24 that requires you to drill two wells. There was -- in</p> <p>25 the application for these injection wells, there was</p>	<p style="text-align: right;"><b>Page 21</b></p> <p>1 COMMISSIONER ENGLER: I'll second.</p> <p>2 CHAIRWOMAN SANDOVAL: All in favor?</p> <p>3 COMMISSIONER KESSLER: Aye.</p> <p>4 COMMISSIONER ENGLER: Aye.</p> <p>5 (Ayes are unanimous.)</p> <p>6 CHAIRWOMAN SANDOVAL: All right. So</p> <p>7 adopted.</p> <p>8 Discussion of pending litigation.</p> <p>9 Mr. Lozano, is there anything to report on</p> <p>10 the Commission's pending litigation?</p> <p>11 MR. LOZANO: Yes, Madam Chair. Thank you.</p> <p>12 There's been some recent activity in the</p> <p>13 Larry Marker cases. Those are mostly in regards to some</p> <p>14 recent statutory language regarding financial</p> <p>15 assurances. The RMD, the Risk Management Division, is</p> <p>16 handling one of the cases. They had an emergency motion</p> <p>17 to stay the Division order because of the lack of</p> <p>18 financial assurances that Mr. Marker provided. They</p> <p>19 will go to hearing on July 31st on that order -- or on</p> <p>20 that motion.</p> <p>21 The second case, which is being handled by</p> <p>22 our litigation division at the Attorney General's</p> <p>23 Office, they recently had a hearing out of Roswell where</p> <p>24 they dismissed the AG's motion to dismiss for failure to</p> <p>25 properly serve the Attorney General's Office, and they</p>

<p style="text-align: right;"><b>Page 22</b></p> <p>1 denied Mr. Marker's motion for default judgment for lack  2 of response to his initial complaint. So that case is  3 moving forward. He will be -- or the AG's Office will  4 be providing a statement in response to his complaint in  5 August.</p> <p>6 And then the last one, AmeriCulture, which  7 has been hanging around for almost four years, the judge  8 recently denied the Commission's motion to dismiss. It  9 triggered a deadline for AmeriCulture to issue their  10 statement of the appellant issues, and they didn't --  11 they untimely filed that. So the Commission will file a  12 motion to dismiss on that basis. And in that case,  13 AmeriCulture is seeking to change some language of an  14 order previously, not necessarily to reverse the  15 decision. So the Commission's attorneys in that case  16 will be filing that statement in the near future.</p> <p>17 And then finally, Delaware Energy, which is  18 the most recent case. Delaware Energy and Alpha SWD was  19 intervened, are in the middle of settlement  20 negotiations. They've extended their timelines for a  21 statement of appellant issues by August 9th. I'm told  22 that they are close to settlement, which is why we  23 agreed to the extension, and they will be, hopefully,  24 filing a motion to -- stipulate a motion to dismiss  25 within 30 days.</p>	<p style="text-align: right;"><b>Page 24</b></p> <p>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.</p> <p>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.</p> <p>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.</p> <p>20 DATED THIS 29th day of July 2019.  21  22  23 MARY C. HANKINS, CCR, RPR  24 Certified Court Reporter  25 New Mexico CCR No. 20  Date of CCR Expiration: 12/31/2019  Paul Baca Professional Court Reporters</p>
<p style="text-align: right;"><b>Page 23</b></p> <p>1 That's all I have today.</p> <p>2 COMMISSIONER KESSLER: Mr. Lozano, in the  3 second Larry Marker case, was there a written order from  4 the judge's denial of the motion to dismiss?</p> <p>5 MR. LOZANO: If there was, it was not  6 posted yet. I looked just yesterday. I talked to the  7 attorney in our office, and he did not indicate that  8 there was.</p> <p>9 COMMISSIONER KESSLER: Okay. If there is  10 one posted, would you mind circulating it?</p> <p>11 MR. LOZANO: Absolutely.</p> <p>12 COMMISSIONER KESSLER: Thank you.</p> <p>13 CHAIRWOMAN SANDOVAL: Is there any other  14 business or announcements?</p> <p>15 COMMISSIONER KESSLER: No.</p> <p>16 CHAIRWOMAN SANDOVAL: The next meeting is  17 scheduled for August 15th, 2019.</p> <p>18 If there is no other business of the  19 Commission, this meeting is adjourned.</p> <p>20 (The proceedings conclude, 10:06.)  21  22  23  24  25</p>	