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

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

ORIGINAL

Case No. 15284

APPLICATION OF LINN OPERATING, INC.,
TO AMEND COMMISSION ORDER No.R-11980-A
Regarding the EAST HOBBS SAN ANDRES UNIT
LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

May 7, 2015

Santa Fe, New Mexico

BEFORE: DAVID R. CATANACH, CHAIRPERSON
TERRY WARNELL, COMMISSIONER
ROBERT S. BALCH, COMMISSIONER
BILL BRANCARD, ESQ.

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This matter came on for hearing before the
New Mexico Oil Conservation Commission on Thursday, May
7, 2015, 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.

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6

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1 (Time noted 9:00 a.m.)

2 COMMISSIONER CATANACH: We'll call this
3 meeting to order this morning. It is 9 o'clock on
4 Thursday, May 7th. This is a meeting of the New Mexico
5 Oil Conservation Commission.

6 My name is David Catanach. I'm the director
7 of the Oil Conservation Division and the chairman of the
8 Oil Conservation Commission.

9 And if I could get the commissioners to
10 identify themselves for the record this morning.

11 COMMISSIONER WARNELL: I am Terry Warnell
12 for the State Land Office.

13 COMMISSIONER BALCH: Dr. Robert Balch
14 designated the Sectary of Energy...

15 COMMISSIONER CATANACH: And I might make a
16 note that we have received a letter from the
17 Commissioner of Public Lands. I believe it was to
18 Mr. Brancard -- I'm sorry. Also present this morning is
19 Bill Brancard, our general counsel.

20 And we did receive a letter from Aubrey Dunn
21 designating Mr. Terry Warnell as the Designee
22 Commissioner for this hearing.

23 Commissioners, if you'll look in the book,
24 you will see the agenda for today's meeting.

25 Do I have a motion to approve the agenda for

1 today's meeting?

2 COMMISSIONER WARNELL: I'll make that
3 motion.

4 COMMISSIONER BALCH: I will second the
5 motion.

6 COMMISSIONER CATANACH: All in favor.

7 COMMISSIONER WARNELL: Aye.

8 COMMISSIONER BALCH: Aye.

9 COMMISSIONER CATANACH: Aye.

10 Also in your packet is the minutes from the
11 Commission meeting that was held March 12th.

12 Have you had a chance to review those
13 minutes, Commissioners?

14 COMMISSIONER BALCH: I have.

15 COMMISSIONER WARNELL: I have.

16 COMMISSIONER CATANACH: Okay.

17 Can I hear a motion to adopt the minutes
18 from the March 12th meeting.

19 COMMISSIONER WARNELL: I will make such
20 motion.

21 COMMISSIONER BALCH: And I'll second.

22 COMMISSIONER CATANACH: Okay. All in favor.

23 COMMISSIONER WARNELL: Aye.

24 COMMISSIONER BALCH: Aye.

25 COMMISSIONER CATANACH: Aye.

1 The minutes from the March 12th, 2015,
2 hearing will be approved, and I will sign those on
3 behalf of the Commission.

4 The next order of business is case No.
5 15284, which is the application of Linn Operating, Inc.,
6 to amend Commission Order No. R 11980-A regarding the
7 East Hobbs San Andres unit in Lea County, New Mexico.

8 Call for appearances in this case.

9 MR. BRUCE: Mr. Chairman, Jim Bruce of Santa
10 Fe representing the applicant. I have one witness.

11 COMMISSIONER CATANACH: Are there any
12 additional appearances?

13 (No response.)

14 COMMISSIONER CATANACH: Will the witness
15 please stand to be sworn in.

16 (Whereupon, the witness was administered the
17 oath.)

18 MR. BRUCE: Mr. Chairman, just a very brief
19 introductory statement. I've handed all of you a copy
20 of Commission Order R-11980-A, which approved statutory
21 unitization of the East Hobbs San Andres unit and also
22 approval for a waterflood project for the unit.

23 If you'll look at page ten of the order,
24 there's a single line item order in paragraph nine,
25 which says that no fresh water shall be used as make-up

1 water or otherwise injected.

2 When operating the operator of the unit is
3 here today requesting that that provision be removed
4 from the order. But I will let our witness,
5 Mr. Sutherland, testify as to the reason for that.

6 COMMISSIONER CATANACH: Thank you.

7 ROBERT SUTHERLAND
8 having been first duly sworn, was questioned and
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BRUCE:

12 Q. Would you please state your name and city of
13 residence.

14 A. Robert Sutherland, Argyle, Texas.

15 Q. And what is your profession?

16 A. I'm a petroleum engineer.

17 Q. Who is your employer?

18 A. My employer is Tabula Rasa Partners.

19 Q. And what is their relationship to Linn Operating
20 in this matter?

21 A. We are a joint venture partner with Linn to
22 develop the East Hobbs San Andres unit for Co2.

23 Q. Have you previously testified before the
24 Commission?

25 A. Not New Mexico, no.

1 Q. Would you summarize your educational and
2 employment background for the Commissioners.

3 A. Graduated in 1978 from the Colorado School of
4 Mines in geological engineering.

5 Graduated and completed a master's degree in
6 petroleum engineering in 1982 from the University of
7 Southern California.

8 I have 36 years of experience in the oil
9 business. Twenty years was with Chaplan Union Pacific
10 Railroad Company. I have been with Tabula Rasa for the
11 last two years.

12 Q. And is Tabula Rasa involved in other Co2
13 projects?

14 A. Tabula Rasa is the operator and the developer of
15 the East Seminole San Andres Unit, a Co2 flood which
16 began about a year and a half ago. And we are currently
17 developing another Co2 flood in another small field, the
18 EMA Field near Andrews, Texas. And we are starting work
19 on a third flood in the Slaughter Field Complexes.

20 Q. And is Tabula Rasa working along with Linn
21 Operating to develop the East Hobbs San Andres unit as a
22 Co2 flood?

23 A. Yes, we are.

24 Q. Have you also testified and been recognized as an
25 expert in front of other state regulatory bodies?

1 A. Yes. Colorado, Wyoming, North Dakota, Montana
2 and Texas.

3 Q. And are you familiar with engineering matters
4 related to the development of the unit as a Co2 project?

5 A. Yes.

6 MR. BRUCE: Mr. Chairman, I tender
7 Mr. Sutherland as an expert petroleum engineer.

8 COMMISSIONER CATANACH: Mr. Sutherland is so
9 the qualified.

10 Q. Before we get into the fresh water issues,
11 Mr. Sutherland, could you run through your exhibits,
12 your first few exhibits and discuss the status of the
13 East Hobbs San Andres unit itself?

14 A. In Exhibit 1, I have the waterflood performance
15 of the unit. The green curve refers to the scale on the
16 left, which is logarithmic barrels of oil per month.
17 And the blue curve refers to the right-hand scale, which
18 is the well count.

19 As you can see, the early part of the history we
20 had a fairly constant well count. And then in 1996,
21 1997, the field had an increase in well density, and you
22 can see a corresponding jump in oil rate, which is
23 pointed out with the first call-out, which says,
24 Increased well count.

25 The second point in the history is the waterflood

1 redevelopment, which was in 2002, 2003, you can also see
2 a jump in well count also, but this second bump in
3 production is a result of the waterflood to date. The
4 incremental portion of just that particular increased
5 production is 800,000 barrels.

6 Q. And was the waterflood redevelopment successful?

7 A. It was probably -- well, it was successful. It
8 wasn't wildly successful, but it was successful.

9 Q. And could you move on to Exhibit 2; what does
10 that show you?

11 A. Exhibit 2 is a depiction of our current thoughts
12 on a Co2 flood development plan. We have designed a
13 flood for this field, and we have tried to utilize the
14 maximum number of existing wells and maximize the best
15 parts of the reservoir and develop it in two phases, the
16 first phase being in the green area, and the second
17 phase in the yellow.

18 And what I mean by "phase" is that is what would
19 be developed in a one-year period. So it is a two- to
20 three-year development. The wells come in one-year
21 packages we use at start facilities almost one-year
22 prior to that. So the it takes about three years.

23 There's a legend on the left that shows what is
24 existing and then kind of an overprint of what we are
25 going to do with the wells. So right now around the

1 flank you can see the dark blue well dots, solid well
2 dots, with an arrow in Well W. Those are the existing
3 several water injections -- wells that are there now.
4 But, ultimately, the red triangles are where the Co2
5 injectors will be located.

6 This is about 37 million barrels within the
7 patterned area. The field itself may have upwards of 90
8 million. But this first two phases we're looking at
9 will develop 37 of that about 90 million barrels. So at
10 additional twelve-and-a-half percent recovery, we are
11 looking at 4.4 million barrels of additional oil.

12 Q. Although this is a little bit in the future,
13 because the approval that you are requesting today comes
14 first and foremost. But have Linn and Tabula Rasa begun
15 preparing the C-108, the injection form for a Co2 flood?

16 A. Yes. We completed quite a bit of work on that in
17 preparation for when we would apply for the flood.

18 Q. What does Exhibit 3 show?

19 A. Exhibit 3 is really why we are here today. It is
20 the history of the reservoir pressure and reservoir
21 voidage, and it's a little bit messy. But on the left
22 scale is the reservoir pressure down hole; bottom hole
23 reservoir pressure in red dots.

24 And so the red curve refers to the left side.
25 And you can see that the field was discovered just

1 under 1,800 psi, and pressure dropped rapidly before
2 1960.

3 And then there wasn't a lot of measurements we
4 could come up with until the late '80s when they started
5 doing some more drilling. And then when another
6 pressure point -- well, the mid '90s. And, then,
7 finally, in 2011, Linn drilled some new wells, and we
8 are able to get some inferences of pressure from post
9 perforations.

10 Then finally in 2014, when we were designing the
11 flood, we went and surveyed several wells to see where
12 the pressure was. And this is where we determined we
13 needed more -- additional reservoir pressure.
14 Now, the black curvature, refers to the right-hand side,
15 is voided. It's reservoir barrels out and reservoir
16 barrels in. And as you would expect, until we added
17 some water back in the reservoir, it was declining
18 or the voidage was increasing over time, where we got as
19 much as 18 million barrels behind as far as maintaining
20 the original voidage.

21 And then you can see that the black curve starts
22 coming up and the pressures start coming up a little.
23 And this is due to some oil field waste water being
24 injected to make up some of the volume in the past.
25 Now there's a lot of pressure points at the very end

1 that range, you know, 1,050, 1,170, all the way down to
2 400. Most of them sit to the bottom end of it. The
3 average is around 500, 600 pounds.

4 The problem for a Co2 flood is we need to be mixable
5 with the oil, where we can get Co2 to mix readily with
6 the oil. And the minimum pressure for that we think is
7 about 1,200, 1,225.

8 So you can see -- I have a dotted line on the
9 pressure curve up there at 1,225 pressure, dwelling
10 seated, we're below that, and we have to get the field
11 to that level.

12 And we looked at a black oil model to evaluate
13 this, how much water do we need to put in. We don't
14 have to replace all the voidage, but we need to increase
15 the pressure in the area we are flooding specifically.
16 And the minimum we could get away with is 8,600 barrels
17 a day for about two years. And that should bring us to
18 that -- to just under that 1,200 pounds, and then we
19 should be able to go forward with a Co2 injection.

20 Q. Now, where do you propose to obtain water from to
21 refill the reservoir, so to speak?

22 A. I spent a lot of time the year before looking for
23 water source, mostly inexpensive water field waste
24 water. And we could not find any source that was
25 practical for this short period of time that was

1 available to us.

2 We also looked at some gray water from the City
3 of Hobbs, which had just been sold to Occidental for
4 their south Hobbs unit flood.

5 In talking to the city, they offered to sell us
6 water at a rate, at a water rate -- we are just outside
7 the city limits, so at the higher rate, plus we would
8 have to provide 3,300 feet of new city vein to get the
9 water source to the edge of the unit, which we would
10 then take it from there, pipe it through the unit.

11 But the -- we agreed to supply them with the new
12 main line and hybrids and whatnot for their city.

13 Q. It is not that you were specifically wanting to
14 use fresh water -- or were just simply looking for fresh
15 water, was it?

16 A. Yeah, this is a fairly pricey option for us. But
17 since it's two years -- hopefully, less than two
18 years -- so a temporary basis, it still looked like the
19 most economic option and the most practical.

20 Q. And oil field waste water at these volumes for
21 this period of time were simply not available?

22 A. No.

23 Q. And, again, this will be a short term deal; it
24 won't be going on decade after decade, the injection?

25 A. Correct. We will start injection and monitor the

1 pressures to make sure that we are achieving the fill-up
2 that we had projected.

3 Q. Now, when it comes to the order where it says, No
4 fresh water shall be used, in your review of the order,
5 was there any finding in the order that discussed no use
6 of fresh water?

7 A. No. We couldn't find any discussion concerning
8 that matter, no.

9 Q. And did you look at the hearing transcripts to
10 see if there was anything in the hearing transcripts
11 regarding non-use of fresh water?

12 A. I could not find any discussion concerning that
13 outside of the final order requesting it, I guess.

14 Q. Okay.

15 MR. BRUCE: Mr. Examiner, if I may, I hand
16 you what has been marked as Exhibit 5. I apologize I
17 was late, but I only found it yesterday in a pile of
18 paper on the floor of my office.

19 Q. Mr. Sutherland, when we were discussing this a
20 number of months ago and you said you couldn't find out
21 why this provision was in the order, did I inform you
22 that I remembered at a certain point in time the State
23 Land Office was reluctant to use fresh water in
24 secondary recovery projects?

25 A. Yes.

1 Q. And as a result, did Linn write to the
2 Commissioner of Public Lands regarding this request?

3 A. Yes, I did.

4 Q. Now, I've handed them the letter; it is from Linn
5 Operating, signed by Debra Gordon, they're regulatory
6 compliance manager. Were you involved in the drafting
7 of this letter?

8 A. Yes, I was.

9 Q. And does it simply state the reasons for Linn
10 using the fresh water in this unit for a limited period
11 of time?

12 A. Yes, it does.

13 Q. Has Linn heard back from -- verbally from the
14 State Land Office regarding this letter?

15 A. Yes, verbally they indicated that they did not at
16 that time see an issue.

17 Q. And, finally, would you refer to your Exhibit 4
18 and discuss the issues, if any, of using fresh water and
19 mixing with the formation water in the --

20 A. Okay. Well, Exhibit 4 is a water compatibility
21 testing summary that we had done. And there are some
22 cryptic numbers there in the left-hand column that talk
23 about mixing of 11859 sample with 57773 sample. And I
24 put at the very top that the unit water of San Andres
25 unit is the 11850 water -- and that should be 859. That

1 is an error there. And the city water is the 5773
2 water.

3 And, basically, on the left hand column, the
4 11859 you can see, if you go to the bottom, that would
5 be the 100 water. That is the water as it is now with
6 not adding any city water. And you could see some
7 calcite scaling tendency and some barite type scaling
8 tendencies.

9 But as we mix city water back in, of course it
10 being low solids, low ions, it actually reduces the
11 scale tendency. So the water is then compatible for
12 injection.

13 Q. Mr. Sutherland, in your opinion, is the granting
14 of this application in the interest of conservation and
15 the prevention of waste?

16 A. Yes.

17 Q. And were Exhibits 1 through 5 either prepared by
18 you or under your supervision?

19 A. Yes, they were.

20 MR. BRUCE: Mr. Chairman, I move the
21 admission of Linn Exhibits 1 through 5.

22 COMMISSIONER CATANACH: Exhibits 1 through 5
23 will be admitted.

24 (Linn Operating, LLC, Exhibits 1 through 5
25 were offered and admitted into the record.)

1 MR. BRUCE: One final matter. Mr. Chairman,
2 for a change, I actually opened up the rule book of the
3 Division and looked at notification requirements. And I
4 couldn't figure out who, if anyone, to notify for this
5 matter. And so I didn't notify anyone.

6 Like I said, I believe that the Commissioner
7 of Public Lands is a party of interest, but they're here
8 and they were put on notice of what was going to happen.
9 Other than that, at this point, it is a preliminary
10 matter, so we didn't notify the working interest owners
11 in the unit, because until this is approved, there is no
12 need for them to really approve anything as far as
13 operations go. So I just wanted you to be aware of
14 that.

15 COMMISSIONER CATANACH: Mr. Bruce, I don't
16 recall a Division case where we did deal specifically
17 with this issue in the past. And so there is no past
18 history to fall back on. But you might get
19 Mr. Brancard's opinion on that.

20 MR. BRANCARD: I can take a look if there is
21 anything in the rules.

22 COMMISSIONER CATANACH: Mr. Balch, do you
23 have questions of the witness?

24 COMMISSIONER BALCH: I do. And remember
25 there are parties in New Mexico that have indicated

1 is a 1 percent water flood success?

2 THE WITNESS: Yes.

3 COMMISSIONER BALCH: That is pretty
4 marginal?

5 THE WITNESS: As you can see from the field
6 itself and the unit outline, that they didn't really
7 pattern flood the field. It was a periphery flood.

8 The major problem technically with the flood
9 was they flooded the lower San Andres under the mistake
10 that they thought it was primary to transitional oil,
11 when, in fact, it's all transitional oil.

12 COMMISSIONER BALCH: Okay.

13 THE WITNESS: And the proof is kind of in
14 the pudding. They lowered all the completions down in
15 the San Andres. And still to this day the majority of
16 the recovery is at the very top. Kind of an advantage
17 for us in the Co2 world because we mobilize that
18 residual oil. So there is a large target for us.

19 COMMISSIONER BALCH: So you'll really be
20 flooding the residual oil zone --

21 THE WITNESS: We'll be injecting in the
22 residual or transitional oil zone. We will produce the
23 entire interval, because it will make its way to the top
24 eventually. But that's the plan.

25 COMMISSIONER BALCH: Okay. Surface owners,

1 I am presuming, are state and private?

2 THE WITNESS: State and private.

3 COMMISSIONER BALCH: Are there any federal
4 leases?

5 THE WITNESS: No federal leases.

6 COMMISSIONER BALCH: There was an
7 implication that there would be additional development
8 based on Phase II, and then perhaps the rest of the
9 field if everything is successful?

10 THE WITNESS: Yes. It would have to prove
11 fairly successful, because, on the map, if you kind of
12 study it, you will see that subsequent patterns as we've
13 spread out, if you will, would require more and more new
14 wells because there's not a lot of wells on the
15 periphery right now.

16 COMMISSIONER BALCH: Okay. I'm going to
17 guess that some of that production would also be make-up
18 water and you are going to be pressuring out the part of
19 the field that you are developing in Phase I and Phase
20 II with the make-up water, and then the Co2 will catch
21 up after a couple of years, but the other parts of the
22 field, Phase III or IV, whatever may come afterwards,
23 may require additional make-up water?

24 THE WITNESS: No. Right now -- that's why
25 we have kind of spread pressures. Those higher

1 pressures are out on the edges where they don't take a
2 lot of volume out. So the pressure is actually larger
3 or higher around the outside.

4 But once we start Co2 injection, that's a
5 closed system, every volume, if you will, or reservoir
6 barrel volume of Co2 that goes in adds to the system.

7 COMMISSIONER BALCH: Do you have structural
8 closure on the reservoir?

9 THE WITNESS: Yes.

10 So, actually, the Co2, that process we will
11 be putting more Co2 in than oil out. Because water and
12 Co2 all go back in, all closed. And so actually the
13 pressure will go up above this 1,200 a little bit.

14 COMMISSIONER BALCH: So you're probably
15 aware of other cases where people have gone directly to
16 the secondaries to flood, when you start out, of course,
17 below admissibility pressure, but you can -- you can
18 pressure up the reservoir with Co2. What's the nature
19 and amount of your Co2 source?

20 THE WITNESS: The Co2, there are actually
21 two possible sources, but they all -- there is actually
22 three sources. Pardon me.

23 There is a major Co2 trunk line that runs
24 along the Texas, New Mexico border. And this field, the
25 right-hand side of that map is Texas. We are just on

1 the east side of Hobbs --

2 COMMISSIONER BALCH: -- of Kinder Morgan

3 or --

4 THE WITNESS: It's Kinder Morgan and Trinity
5 Co2.

6 Ultimately, all Co2 that comes out of Bravo
7 Dome, that comes out of Sheep Mountain and Oakdale and
8 into St. Johns comes into Denver City and is hubbed out.
9 So I guess the physical Co2 could come from any one of
10 those.

11 Tabula Rasa owns a field in La Veta,
12 Colorado, where we have own equity Co2. So on paper
13 it's transported there, the actual molecules --

14 COMMISSIONER BALCH: You swap it with Kinder
15 Morgan?

16 THE WITNESS: We swap it with Kinder Morgan,
17 yes.

18 COMMISSIONER BALCH: My question was -- of
19 all the Co2 that goes into the Permian Basin, 97, 98
20 percent accounted for?

21 THE WITNESS: That's right. And our
22 business model is we develop the smaller reservoirs, so
23 we generally can find contract volumes from Kinder
24 Morgan, because they're small and we get kind of the
25 leftovers on their system. We're not a big -- so we are

1 kind of unique in the industry in what we do.

2 COMMISSIONER BALCH: All right. Do you know
3 the source of the City of Hobbs water?

4 THE WITNESS: This particular water is the
5 aquifer that underlays the area which is like Ogalla,
6 which is like 300 feet, I believe, 300 or 400 feet.

7 COMMISSIONER BALCH: And if you can't get
8 the fresh water as make-up, what happens then?

9 THE WITNESS: Well, we really don't have a
10 project then. Basically, the joint venture will
11 dissolve and the field will continue to follow its
12 current depletion.

13 COMMISSIONER BALCH: Are you basing your
14 calculation on incremental recovery from the Co2 flood
15 on other residual oils or on other transitional oil type
16 of projects?

17 THE WITNESS: We have data on those but this
18 is tied to a hybrid model that resembles a lot of north
19 Hobbs and some of the Landrith Goldsmith, which does
20 have the residual.

21 And our Seminole project, East Seminole,
22 another small field, is a copy of the Seminole, Hess
23 Seminole Flood, which is a residual oil which some
24 people call an ROZ zone flood which has been going on
25 for some time.

1 COMMISSIONER BALCH: When you had Oxy in
2 here for another hearing for permitting south Hobbs and
3 the rest of north Hobbs, it was a little hard to get
4 them to say they were going after the ROZ, but there was
5 a little bit of implication there that they might. But
6 you are basing this more on the Seminole?

7 THE WITNESS: The style is Seminole but the
8 recovery, the twelve and a half is reduced from
9 Seminole. It's a little closer to Hobbs. Hobbs is a
10 lower recovery than the Seminole field.

11 COMMISSIONER BALCH: Those are my questions.
12 Thank you, Mr. Sutherland.

13 COMMISSIONER CATANACH: Mr. Warnell.

14 EXAMINATION

15 BY COMMISSIONER WARNELL:

16 COMMISSIONER WARNELL: Good morning,
17 Mr. Sutherland.

18 THE WITNESS: Good morning.

19 COMMISSIONER WARNELL: I have a few
20 questions for you. You did testify that you could see
21 no reason why 12 or 15 years ago you put this paragraph
22 nine in the order?

23 THE WITNESS: No.

24 COMMISSIONER WARNELL: And could you tell me
25 what your present production is, barrels of oil per day

1 and in water production, produced water?

2 THE WITNESS: Let's see. Make it
3 450 barrels of oil per month, which is about -- what is
4 that about? It's 120 barrels a day or so.

5 And the water is around 10,000 barrels of
6 water per day. All reinjected of course.

7 COMMISSIONER WARNELL: So that produced
8 water is reinjected?

9 THE WITNESS: Yes.

10 COMMISSIONER WARNELL: And in addition to
11 that produced water -- how much water a day?

12 THE WITNESS: 8,600 barrels a day.

13 COMMISSIONER WARNELL: 8,600.

14 COMMISSIONER BALCH: 260,000,000 gallons
15 over the two years in case you're curious.

16 COMMISSIONER WARNELL: Thank you.

17 You mentioned produced water, gray water,
18 fresh water. But yet you are testifying that produced
19 water and gray work would not work, you'd have to have
20 fresh water?

21 THE WITNESS: We do not need fresh water.
22 Produced water would be fine. Gray water, we might be
23 able to deal with.

24 But, basically, you understand we take
25 everything out, water, oil, and gas. The oil and gas

1 get sold. Everything goes back in. So if we don't add
2 just what we produce in oil, which is that 120 barrels a
3 day, we have to -- just to stay even in pressure we need
4 that 120 barrels a day extra. To raise the pressure, we
5 need this 86.

6 So if we added 86, it still cycles. It goes
7 around and around. But we need that additional volume
8 to the reservoir. And that is because historically this
9 water, when it was produced, it was disposed of in a
10 different zone. It wasn't put back in the San Andres.

11 COMMISSIONER WARNELL: Have you ever been
12 involved with projects where something other than water
13 was used to increase the pressure?

14 THE WITNESS: Yes.

15 COMMISSIONER WARNELL: And what did that
16 involve?

17 THE WITNESS: When I worked where Danbury
18 Resources, we had some projects. If we didn't have too
19 much pressure gain to create, we actually used all Co2.
20 But we had a very inexpensive Co2 source from Jackson,
21 Mississippi.

22 COMMISSIONER WARNELL: Do you know who the
23 working interest owners are in the unit?

24 THE WITNESS: My attorney has a list.

25 MR. BRUCE: I have handed you what I've

1 marked as Exhibit 6. I didn't intend to use it but
2 since Mr. Warnell asked.

3 Mr. Sutherland, does that reflect all the
4 working interests owners in the unit?

5 THE WITNESS: Yes, it does.

6 COMMISSIONER WARNELL: Thank you, Mr. Bruce.

7 EXAMINATION BY MR. WARNELL (cont'd):

8 COMMISSIONER WARNELL: Mr. Sutherland, you
9 testified that someone at the State Land Office verbally
10 told Linn that they didn't have a problem with the
11 letter, Exhibit No. 5?

12 THE WITNESS: Yes. They said -- yes.
13 However, I don't know exactly who that was that talked
14 to Debra Gordon.

15 MR. BRUCE: We could get that information
16 for you, Mr. Warnell.

17 COMMISSIONER WARNELL: Those are all the
18 questions I have. Thank you.

19 COMMISSIONER CATANACH: Okay.

20 EXAMINATION BY COMMISSIONER CATANACH

21 COMMISSIONER CATANACH: Mr. Sutherland, I
22 was reviewing the prior cases, and I notice that there
23 were different zones in the San Andres. Did you end up
24 injecting water into the P-1 or the upper San Andres
25 portion?

1 THE WITNESS: The majority of this field
2 life was all what we call P-1. And, in fact, until the
3 1995 -- I believe it was 1995 vintage, when they came
4 back in trying to unitize, production was out of the P-1
5 subzone of the San Andres, which is the best zone.

6 Then, you know, there was a fairly lengthy
7 effort to get it unitized for waterflood. And when they
8 did accomplish that and got the injectors and whatnot
9 converted, some new wells drilled, they moved most of
10 the completions to the P-2 through P-4 zones.

11 Currently there's about -- about 20 percent
12 of the wells have the P-1 open still. On the producers,
13 there may be only one, I can think one of P-1 injection
14 well still.

15 The simulation results show that they did
16 communicate -- we thought they communicated fairly well;
17 the simulation indicated that they did communicate
18 fairly well.

19 COMMISSIONER CATANACH: So you did inject
20 into the P-1 zone or --

21 THE WITNESS: Yes.

22 COMMISSIONER CATANACH: You did.

23 And the P-1 is a target for Co2 as well?

24 THE WITNESS: Yes.

25 COMMISSIONER CATANACH: I notice that -- I

1 think you currently have eight injection wells within
2 the unit, and most of them are scattered on the outer
3 edges of what you call Phase I and Phase II area. Is
4 that where most of the injection is occurring at this
5 time?

6 THE WITNESS: That's correct. However,
7 there's a bias to injection in the northwest. There is
8 more water going in the northwest than the southeast.

9 COMMISSIONER CATANACH: Do you plan on
10 converting additional wells to water injection within
11 the central part of the Phase I area?

12 THE WITNESS: Right now we think we can add
13 this additional water into the existing wells. However,
14 we anticipate that later in the year, we may need to
15 convert wells to water. That will ultimately be Co2
16 wells.

17 COMMISSIONER CATANACH: In the central part
18 of the --

19 THE WITNESS: Yes, in the central area, in
20 the green area.

21 COMMISSIONER CATANACH: So the outer edges
22 of the project area, that's where your current reservoir
23 pressures are higher. So you think that injecting into
24 those wells will transfer that pressure to the central
25 part of the unit?

1 THE WITNESS: Yes. And particularly in the
2 northwest, where they -- either by the way they piped it
3 or some bias, they actually put more water up there.

4 The pressure is high on the flank to the
5 northwest, and it reduces to the southeast. And
6 particularly in the middle, in the middle of the green
7 area.

8 COMMISSIONER CATANACH: So at this point, no
9 additional injection wells for water are planned, just
10 using the existing wells?

11 THE WITNESS: That's correct.

12 COMMISSIONER CATANACH: And you think it is
13 about a two-year period to re-pressure the reservoir?

14 THE WITNESS: Yes.

15 COMMISSIONER CATANACH: And at that point,
16 you would drill additional Co2 injectors and -- or
17 additional producers; is that correct?

18 THE WITNESS: Yes. There's like three new
19 Co2 injectors and three or four new -- maybe five new
20 producers. The rest of the injectors will be primarily
21 conversions from oil production to Co2 injection.

22 COMMISSIONER CATANACH: Do you know why
23 there were never any injection wells in that central
24 part of the unit?

25 THE WITNESS: Well, the only one on there is

1 the 409 which is -- you can see it is kind of on the
2 edge of a pattern. It's got that injector, but it will
3 turn back to a producer.

4 I really don't. I don't understand a lot of
5 things they did on the flood, and I think that was
6 probably why there was a lot of objection to the
7 waterflood unit originally, was that there was
8 disagreement among parties of how to do the waterflood.

9 COMMISSIONER CATANACH: I know there was
10 some controversy about participation formula.

11 THE WITNESS: That's correct.

12 COMMISSIONER CATANACH: So the result of
13 underinjection is why we are here today is that...

14 THE WITNESS: Well, no, I -- the waterflood
15 could have been efficient, yes; but the Co2 flood is
16 going to be much more efficient, because of the fact
17 that a lot of oil in place is transitional oil and it
18 can't be recovered via waterflood.

19 COMMISSIONER CATANACH: Mr. Bruce, do you
20 know if this is subject to JOA?

21 MR. BRUCE: Yes. There is a JOA. And I
22 looked on the OCD's website desperately yesterday, and I
23 couldn't find it. But with that many interest owners,
24 there is a JOA.

25 COMMISSIONER CATANACH: Because I am

1 wondering -- I do recall back, as you did, that the land
2 office was concerned about the use of fresh water. And
3 I'm thinking that maybe -- is that requirement in the
4 JOA by any chance?

5 MR. BRUCE: I will tell you what, I will
6 gladly, through Mr. Sutherland, get a copy. And it
7 could be, but I don't remember it. I was involved as an
8 opponent in these hearings 12 years ago, and I don't
9 remember anything in the JOA that really addressed water
10 use through the haze of time.

11 COMMISSIONER CATANACH: I don't know if the
12 land office officially put that into the JOA as part of
13 their approval process. They may have. I just don't
14 remember.

15 MR. BRUCE: I don't think they would have
16 put it into the JOA. They generally don't get involved
17 in that. It would have been in the unit agreement
18 itself. But I don't recall anything in the unit
19 agreement regarding this.

20 COMMISSIONER CATANACH: So you have looked
21 at the unit agreement?

22 MR. BRUCE: I have and I don't have that
23 with me right now.

24 COMMISSIONER CATANACH: I couldn't even find
25 the transcript for the -- they didn't discuss the

1 freshwater issue. I was kind of wondering myself where
2 that came from.

3 But that was I think right around the time
4 period when the land office did have some concerns about
5 it, so maybe that's where that originated.

6 BY COMMISSIONER CATANACH (cont'd):

7 COMMISSIONER CATANACH: The ratio of
8 produced water to fresh water, I presume it the highest
9 at the initial point and then it will drop down as you
10 recycle that fresh water through the reservoir?

11 THE WITNESS: That's correct.

12 COMMISSIONER CATANACH: Do you know what the
13 initial ratio will be? It will it be 10,000 --

14 THE WITNESS: Yeah, 10,000 --

15 COMMISSIONER CATANACH: -- and 8,600.

16 THE WITNESS: That's correct.

17 COMMISSIONER CATANACH: It may be premature
18 to talk about the Co2 project, but is that going to be a
19 water-alternating type situation?

20 THE WITNESS: Yes.

21 COMMISSIONER CATANACH: And is that similar
22 to what you're doing in Seminole?

23 THE WITNESS: Yes. It begins 100 percent
24 Co2; and then, after a certain pour volume of Co2, we
25 switch to alternating with water.

1 COMMISSIONER BALCH: After breakthrough?

2 THE WITNESS: Excuse me.

3 COMMISSIONER BALCH: After breakthrough?

4 THE WITNESS: No. It's usually a set
5 amount, like a third of a pour volume. But if
6 breakthrough happens quicker, then we may go to water
7 quicker.

8 COMMISSIONER CATANACH: Mr. Sutherland, do
9 you have any knowledge about the current status of the
10 Ogalla Aquifer around Hobbs? Are they experiencing
11 any -- I'm sure they experiencing declines, but do you
12 know generally what the status of that freshwater
13 aquifer is?

14 THE WITNESS: No. No, I don't know what it
15 would be.

16 COMMISSIONER CATANACH: Okay. Now you did
17 mention the gray water, and that is being -- is that --
18 is all of that being sold to Oxy at this point?

19 THE WITNESS: I don't know the exact amount.
20 I was just informed by the city that that was what they
21 were doing.

22 COMMISSIONER CATANACH: So was that water --
23 was some of that water available to Linn?

24 THE WITNESS: Again, when I -- when we
25 talked to the city, they had indicated they had already

1 made a deal with south Hobbs, I guess that expansion
2 from north Hobbs to south Hobbs that happened a couple
3 of years ago or --

4 COMMISSIONER CATANACH: --

5 THE WITNESS: -- a year and a half ago.

6 COMMISSIONER CATANACH: -- most of that
7 water you think?

8 THE WITNESS: Yes.

9 COMMISSIONER CATANACH: I think that's all I
10 have. Do you have some more questions. By.

11 COMMISSIONER BALCH: You inspired a lot of
12 questions.

13 FURTHER EXAMINATION BY COMMISSIONER BALCH

14 COMMISSIONER BALCH: The disposal of the
15 original water from the primary production, was that
16 done in field into an injection well or --

17 THE WITNESS: I know one well that it was
18 going into, the Glorieta. The rest of the water, you
19 know, I don't have a lot of history pre- maybe ten or
20 15 years back, maybe a few operators, so I've been
21 through a few operators, and so I don't have really good
22 records of where that water went or I couldn't find them
23 through New Mexico's records.

24 COMMISSIONER BALCH: Are there any
25 formations in that field that could be drilled to

1 produce prime water?

2 THE WITNESS: There was nothing we saw up
3 hole that we thought we could get the rates out of that
4 we needed outside of the Ogalla; and we do own some land
5 and some water rights there.

6 But, again, for this short period of time,
7 it looked like -- or we'd be taking water from the same
8 place the city was, so it didn't seem like a viable
9 option.

10 COMMISSIONER BALCH: So deepening your
11 drilling in a new water production well would --

12 THE WITNESS: We did not know of any zone
13 that would give us this kind of rate from a well, if you
14 will.

15 COMMISSIONER BALCH: That was my last
16 question.

17 FURTHER EXAMINATION BY COMMISSIONER CATANACH

18 COMMISSIONER CATANACH: Just a followup to
19 that. I know there was a company and they operated some
20 deeper production. And I think it was in between Eunice
21 and Jal, which would be further south than you guys. But
22 they utilized Santa Rosa Formation produced water.

23 THE WITNESS: Uh-huh.

24 COMMISSIONER CATANACH: They actually had
25 some Santa Rosa water supplying wells. And I don't

1 recall what the depth of those wells were. But is that
2 something you guys have looked at at all?

3 THE WITNESS: Yeah. I believe it was around
4 1,000-foot depth. But it was pretty spotty as to
5 producibility in that Santa Rosa is not a very good
6 zone.

7 COMMISSIONER CATANACH: So you probably just
8 couldn't get the volumes that you think you needed?

9 THE WITNESS: Correct.

10 COMMISSIONER CATANACH: Mr. Bruce, did you
11 want to admit Exhibit No. 6?

12 MR. BRUCE: I move to admit number 6 just
13 for information purposes.

14 COMMISSIONER CATANACH: Okay. Exhibit No. 6
15 will be admitted.

16 (Whereupon, Linn Operating, Inc.,
17 Exhibit 6 was offered and admitted into
18 the record.)

19 COMMISSIONER CATANACH: Are there any other
20 questions of this witness?

21 Anything further, Mr. Bruce?

22 MR. BRUCE: No. Mr. Chairman, I ask that --
23 Mr. Chairman, I just ask that the matter be taken under
24 advisement.

25 COMMISSIONER CATANACH: Okay. It is the

1 Commission's pleasure to go into executive closed
2 session at this time. Do I have a motion on that?

3 COMMISSIONER WARNELL: I'll make that
4 motion.

5 COMMISSIONER BALCH: I will second the
6 motion.

7 COMMISSIONER CATANACH: All in favor.

8 COMMISSIONER WARNELL: Aye.

9 COMMISSIONER BALCH: Aye.

10 COMMISSIONER CATANACH: Aye.

11 (Closed Executive session from 9:54 a.m. to
12 10:30 a.m.)

13 COMMISSIONER CATANACH: All right.

14 Do I have a motion from the Commission to go
15 back into public session at this time?

16 COMMISSIONER WARNELL: I will make the
17 motion.

18 COMMISSIONER BALCH: And I second the
19 motion.

20 COMMISSIONER CATANACH: All in favor.

21 COMMISSIONER WARNELL: Aye.

22 COMMISSIONER BALCH: Aye.

23 COMMISSIONER CATANACH: Aye.

24 I would like to state for the record that
25 the only thing that was discussed during our closed

1 deliberation was in fact this case 15284.

2 And, Mr. Bruce, we feel like the applicant
3 didn't quite meet the burden of proof that they needed
4 to in this case. We are therefore going to ask that we
5 continue the case and that Linn provide some additional
6 information, probably continue the case until probably
7 the July 16th Commission hearing.

8 And there are some specific things that we
9 would like to be addressed at the next hearing. If you
10 could further research the unit agreement in the JOA and
11 see if you can actually find those documents and see if
12 there's anything in there that would be applicable or
13 might help us out in this situation.

14 We'd like for you to give specific notice of
15 this case to the City of Hobbs and to the State Land
16 Office. And, in fact, if you can obtain any kind of a
17 statement from those parties with regards to their
18 support of the project, that would certainly be helpful
19 to us.

20 We would also like to see, from the economic
21 standpoint, we'd actually like to see some economics
22 with respect to why it would be uneconomic to utilize
23 produced water from other sources, if you can identify
24 like the closest source that you would be able to use
25 and the economics of having to truck the water, some

1 economics with regard to that, and maybe further explore
2 Glorieta as a source of water in this area, if you can
3 further give us some information on why that's not
4 feasible or why that is not economic.

5 Also, with regards to economics, if you
6 could provide some information on why using Co2 as the
7 re-pressuring fluid is also uneconomic.

8 And did I miss anything, Commissioners?

9 COMMISSIONER WARNELL: No.

10 COMMISSIONER BALCH: You nailed it.

11 MR. BRANCARD: Gray water.

12 COMMISSIONER BALCH: That will probably come
13 with the City of Hobbs.

14 COMMISSIONER CATANACH: But if you can
15 further address those concerns or issues, I think that
16 would certainly be helpful to the Commission.

17 MR. BRUCE: I suppose my only question is
18 why not the June 4th meeting?

19 MR. BRANCARD: It may have already been
20 noticed.

21 COMMISSIONER BALCH: It has been noticed, so
22 you're not on the agenda for that. Notice on the 4th.

23 MR. BRUCE: Okay.

24 COMMISSIONER CATANACH: So anything further,
25 Mr. Brancard?

1 MR. BRANCARD: Not on this matter.

2 COMMISSIONER CATANACH: Okay. We will leave
3 the record open in case 15284 until the July 16th
4 Commission hearing, at which time we will take further
5 evidence and testimony from the applicant.

6 And I think that dispenses with this case
7 for today.

8 Mr. Brancard, on the agenda is noted a
9 discussion of legislative session.

10 Do you still feel it is necessary?

11 MR. BRANCARD: Sure.

12 COMMISSIONER CATANACH: You may proceed.

13 MR. BRANCARD: Members of the Commission,
14 this session of the Legislature considered a number of
15 bills relating to oil and gas and the Oil and Gas Act.
16 I'll first discuss the bills that passed, and, if you
17 want, I can discuss the ones that didn't pass, too.

18 But we actually had two pieces of
19 legislation that passed the Legislature and were signed
20 by the Governor amending the Oil and Gas Act. There is
21 a House bill, House Bill 383, you may have in front of
22 you part of the information on that. There was a Senate
23 duplicate of that which also passed.

24 House Bill 383 focuses on the financial
25 assurance section of the Oil and Gas Act. It was

1 initially attempted to provide for a series of different
2 types of blanket bonds for wells that are in temporary
3 abandonment or in inactive status.

4 The statute right now provides that you
5 could have a blanket bond for your producing wells, but
6 that when a well goes into the inactive or temporary
7 abandonment status -- generally it's inactive for two
8 years -- you have to provide an individual well bond for
9 that well, that your blanket bond does not cover that
10 well.

11 So as initially introduced, the legislation
12 had a series of increased numbers for ranges of wells
13 in inactive status. After various changes in
14 committees, it simply authorized the Commission to adopt
15 rules to create those categories of wells.

16 And so that bill was adopted, passed through
17 the House and the Senate and was signed by the Governor.
18 And we now have a proposal by the Division -- that was
19 submitted either early this week or late last week -- to
20 amend our financial assurance rule. And it will have --
21 it will have the catagories -- without sort of giving it
22 away to everybody -- it will have the categories that
23 were in the original legislative proposal that kind of
24 got edited out for the simpler language that's in the
25 act now. So that will be it. So you will see that at

1 the June 4th hearing, dealing with that legislation.

2 The second piece of legislation deals with
3 how rules of the Commission are appealed. There was
4 sort of a quirk that happened about 15 years ago when
5 the Legislature introduced this uniform law for
6 appealing adjudicatory matters. The statute is 39-3-1.1.

7 The Commission statutes -- the OES Act was
8 amended to provide that appeals of orders follow
9 39-3-1.1. The problem that nobody kind of figured out
10 at that point was that that statute only applies to
11 adjudicatory appeals and specifically says it does not
12 apply to rule making appeals.

13 So in the last 15 years, when somebody
14 wanted to appeal a rule of the Commission, there was
15 nothing in the Oil and Gas Act that gave them any
16 guidance. So they would have to go and did go to file a
17 petition for what's called a writ of certiorari with the
18 district court; the district court would have to grant
19 that writ and then hear the appeal of the rule.

20 That's a little awkward. But, perhaps, more
21 importantly what was happening -- and we saw it with the
22 Pit rule appeals in 2008 and 2009, is when the
23 Commission has a hearing on a rule, it is often quite an
24 extensive record.

25 And when that record gets in front of a

1 district court judge who has a long list of trials that
2 they're hearing, they tend to sort of not get around to
3 it. So as a result district courts have never ruled on
4 the appeals of the 2008 and 2009 Pit rule decisions.

5 So we drafted up a new section of the Oil
6 and Gas Act to deal with appeals of rules. What it
7 does is a couple of things -- and this is another sort
8 of interesting thing. In the Oil and Gas Act, it is
9 written that the Division and the Commission have
10 concurrent jurisdiction. So under the Oil and Gas Act
11 anything it says the Division can do -- the Commission
12 can do anything the Division can do.

13 So while we have practice for many years of
14 the Commission being the body that enacts the rules,
15 under the Oil and Gas Act, the Division could be
16 enacting its own rules too, in the same areas, okay.

17 So there is simply a sentence in this new
18 statute that says there is no rule that is effective
19 under the Oil and Gas Act until after a hearing by the
20 Commission. So we deal with that. So now if you want a
21 rule, you got to have a hearing in front of the
22 Commission.

23 The second thing was timing, and this is a
24 problem that we've also had for a period of time, is
25 that the old appeal statute that now only applies to

1 adjudicatory proceedings, like the one we just had, also
2 has in it a rehearing provision. So anytime -- and when
3 we issue an order in this case -- anybody will have
4 twenty days to come back to the Commission and ask for a
5 rehearing.

6 When the rulemaking was sort of
7 inadvertently stripped out of that statute, it was sort
8 of unclear whether that re-hearing provision still
9 applied to rules. In drafting this statute, we went
10 back and forth with the Commission -- sorry -- with the
11 industry folks and other lawyers about, Well, should we
12 keep it there or should we make sure that only applies
13 to rules?

14 And there were folks who thought, Well,
15 there might be a use for having a rehearing on a rule,
16 that there might be a mistake in the Commission's
17 wording or something that somebody catches right away
18 and they quickly ask for a rehearing, and then the
19 Commission can correct that mistake in the rule.

20 But what happens -- and it happens often
21 now -- is that once the Commission issues an order
22 approving a rule, our practice has been to immediately
23 take that rule to the state record center and archives
24 and file it.

25 There were court decisions a couple of years

1 ago when the Martinez administration came in and tried
2 to pull back some rules that had been sent to the
3 records center but not actually published by the records
4 center. And the State Supreme Court said, Once you hand
5 off that rule to the state records center, you, agency,
6 lose control of that rule.

7 So this new statute basically tells the
8 Commission to wait twenty days before it files the rule
9 with the record center, so that in case anybody does ask
10 for a rehearing, you still have jurisdiction to consider
11 that rehearing; you haven't lost jurisdiction.

12 So probably the biggest change in this new
13 statute is that it sends appeals of your rules directly
14 to the Court of Appeals. It skips the district court;
15 goes directly to the Court of Appeals, which is really
16 where every other environmental, mining, all these
17 statutes provide that rules for those cases go directly
18 to the Court of Appeals. So there is nothing unusual.
19 In fact, it was sort of unusual that our rules were
20 going to the district court. So now they go directly to
21 the Court of Appeals.

22 The Court of Appeals has clerks, they
23 have -- they are used to these kinds of large-record
24 review proceedings, so it is better for them to hear
25 them.

1 In fact, right now all three Pit rule
2 appeals are sitting in the Court of Appeals because the
3 District Court finally just did what they call
4 certification, where they, without ruling on them, they
5 send them up to the Court of Appeals.

6 So that's the other statute, Senate Bill 389
7 that you see in front of; it got passed unanimously
8 through both houses and signed by the Governor. So
9 those are the changes.

10 We may need to do some small changes to our
11 rule on rulemaking to comply with this new statute, but
12 it is sort of less urgent that the Financial Assurance
13 Bill which got passed with what's call an emergency
14 clause. And so an emergency clause means as soon as the
15 Governor signs it, it's law and it's in effect. So that
16 is why we are sort of rushing to get this rulemaking in
17 front of you as soon as possible, as soon as possible is
18 next month.

19 The other statute on appeals did not have an
20 emergency clause, so it won't be effective until
21 sometime in June. I think June 19th. We have time
22 to --

23 COMMISSIONER BALCH: They will have to be
24 noticed separately, right?

25 MR. BRANCARD: That will be a separate

1 rulemaking. There's probably not a lot of changes that
2 we need to make in there. One thing that we may look at
3 is -- and this was something that the industry folks got
4 changed in the bill, who can appeal a rule. Okay. And
5 we put in there -- that they wanted in there that a
6 party of record to the proceeding has the right to
7 appeal a rule. Okay. They put that in there because
8 initially the version that I drafted said, Anybody who
9 is or may be affected by the rule can appeal.

10 COMMISSIONER BALCH: That's everybody.

11 MR. BRANCARD: Right.

12 So they narrowed it down to party of record.
13 The environmentalists who actually supported the bill
14 itself got upset with that change and so now it reads,
15 Parties of record and anyone who is substantially
16 adversely affected by the rule.

17 So there is no longer a "may be affected";
18 you have to actually be affected.

19 COMMISSIONER BALCH: You have to demonstrate
20 that. But how do you measure that bar?

21 MR. BRANCARD: Interestingly enough, part of
22 the maneuvering on this is another recent decision by
23 the Court of Appeals in a case where they've had these
24 sort of broad appeal rights and nobody ever challenged
25 anybody who appealed basically.

1 And so we had a case where the Water Quality
2 Control Commission, the Water Quality Act, has a
3 slightly narrower -- it's not a who may be affected, it
4 is who is affected, is the people who can appeal.

5 And you had a party, the Cattle Growers
6 Association who appeared in the rulemaking, put on
7 testimony, appealed the rule. And then the court on its
8 own looked at the record said, you know, we don't think
9 they are affected by this rule. And they threw them
10 out, even though they actually participated in the
11 rulemaking.

12 So the party of record provision that's now
13 in there, make sure that anybody who actually appears
14 before the Commission has the right to appeal it. Okay.

15 And then if you didn't appeal, you have that
16 burden of proving that you were affected. And you
17 probably have to -- at the time you filed an appeal,
18 you'd probably have to file, you know, affidavits or
19 whatever.

20 COMMISSIONER BALCH: Showing how they are
21 affected by this?

22 MR. BRANCARD: Yes. Which is kind of the
23 way it works in federal court. People often have to
24 file a whole, big thing showing they have standing.

25 COMMISSIONER BALCH: So the appeal court

1 would look at that and say yes or no right away.

2 MR. BRANCARD: Right.

3 But we may want to define what is a party of
4 record, help define that so it is clear; you
5 participated in the rulemaking, you showed up, you are a
6 party of record, you are now automatically have the
7 right to appeal it if you want to because you
8 participated in this process.

9 COMMISSIONER BALCH: But you may want to
10 draw a line somewhere for the person that comes in and
11 gives a one-minute statement.

12 MR. BRANCARD: Yes, you may. And, again,
13 the court -- there is a flip side case, which is the
14 really odd thing about the Cattle Growers' decision, was
15 that prior to the Cattle Growers' decision, in that same
16 appeal, some of the other parties who participated in it
17 sought to intervene in the Cattle Growers' appeal.

18 And the Court of Appeals said, Nah, sorry,
19 you don't get to intervene. And it went up then to the
20 Supreme Court. And the Supreme Court then turned around
21 and said basically, Anybody who shows up at a rulemaking
22 proceeding, if one of those parties appeals it,
23 everybody else gets to come in.

24 So that was the incredible irony of the
25 Cattle Growers case, first the Court of Appeals allows

1 everybody else to come into the case -- I mean the
2 Supreme Court allows everybody else to come into the
3 case, and then when it goes back to the Court of
4 Appeals, the Court of Appeals said, the original party
5 who appealed didn't have the right to appeal, and threw
6 the whole case out.

7 So there is -- we have sort of these two
8 standards that we have to kind of juggle a bit there in
9 these recent cases.

10 So I think we can easily -- we just need to
11 add a few words maybe to our rule to help clarify things
12 for folks, you know, and then courts figure out who
13 really should be appealing it, and who really can
14 intervene.

15 So, in other words, there's not a huge
16 emergency to move ahead with any kind of changes to that
17 rule.

18 So, anyway, I don't know if you're
19 interested in any of the other bills that were
20 introduced relating to oil and gas. Probably the big
21 issue is the preemption issue and the local government
22 issue.

23 There were a whole series of bills, some
24 which directly amended the Oil and Gas Act, some of
25 which amended authority of local county and

1 municipalities. And the big issue was whether they
2 could place limits on the abilities of county and
3 municipalities to pass ordinances that affect oil and
4 gas.

5 One bill did, in fact, make it through the
6 state house at a fairly divided vote. And then there
7 was a senate committee that held hearings on other
8 versions of these bills and basically rejected every
9 version of it. And they basically didn't even hear the
10 bill that came through the house.

11 So at this point nothing has moved through
12 trying to place limits on local governments in their
13 ability to pass -- other than the court decision in the
14 Mora County case that came out a few months ago,
15 pointing out the Mora County ordinance.

16 And really the only sort of lesson from the
17 Mora County ordinance decision is it's probably
18 impossible to ban oil and gas drilling. But beyond
19 that, where a regulation of oil and gas drilling is too
20 much, it's still unknown at this point.

21 So the Legislature tried to deal with the
22 issue but it was unable to do that. Texas in the last
23 week has passed legislation limiting local government
24 authorities.

25 COMMISSIONER BALCH: So the quandary arises

1 where Mora County can't ban oil and gas drilling, but
2 they can put a 500 percent tax on it which effectively
3 bans it.

4 MR. BRANCARD: Yeah. Or they can adopt
5 ordinances like Santa Fe County has and San Miguel
6 County has which creates all these steps that an oil and
7 gas operation has to go through, all this planning,
8 whatever.

9 COMMISSIONER CATANACH: So it effectively
10 bans drilling.

11 MR. BRANCARD: And those ordinances have not
12 been challenged, so we don't really know whether they
13 would stand up or not. But in the federal court case,
14 the judge sort of said, even though he threw out the
15 Mora County ordinance, he said that he thought there was
16 room for local government regulation of oil and gas
17 along with state regulation of oil and gas.

18 COMMISSIONER BALCH: It seems like that
19 would be good just as long as it didn't effectively
20 ban --

21 MR. BRANCARD: Yeah.

22 COMMISSIONER CATANACH: Was that Texas
23 legislation signed into law?

24 MR. BRANCARD: I think it's before the
25 Governor now. I think it passed both houses. It sort

1 of allows local government to do sort of reasonable
2 regulation of, you know, noise, dust, siding or
3 something, and I think setbacks.

4 COMMISSIONER BALCH: Not putting a drill and
5 pit in the middle of a Wendy's parking lot.

6 MR. BRANCARD: Yeah. Apparently, there's a
7 whole series -- Dallas -- there's cities that have real
8 serious setbacks for oil and gas.

9 COMMISSIONER BALCH: Well, of course, you
10 have the burned out shells underneath Dallas and Fort
11 Worth so...

12 MR. BRANCARD: Uh-huh. But it was the
13 Denton vote to ban it that sort of set off this latest
14 round. Denton became the first city in Texas to just
15 ban it.

16 COMMISSIONER BALCH: We'll stay tuned.

17 MR. BRANCARD: Yes.

18 COMMISSIONER CATANACH: Do we have any other
19 business at this time?

20 (No response.)

21 COMMISSIONER CATANACH: If not, can I get a
22 motion to adjourn this meeting?

23 COMMISSIONER WARNELL: I will make that
24 motion.

25 COMMISSIONER BALCH: And I'll second it.

1 COMMISSIONER CATANACH: All in favor.

2 COMMISSIONER WARNELL: Aye.

3 COMMISSIONER BALCH: Aye.

4 COMMISSIONER CATANACH: Aye.

5 And this meeting is adjourned.

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7 (Time noted 10:51 a.m.)

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1 STATE OF NEW MEXICO)
2 COUNTY OF BERNALILLO) ss.
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6 REPORTER'S CERTIFICATE

7 I, ELLEN H. ALLANIC, New Mexico Reporter CCR
8 No. 100, DO HEREBY CERTIFY that on Thursday, May 7,
9 2015, the proceedings in the above-captioned matter were
10 taken before me, that I did report in stenographic
11 shorthand the proceedings set forth herein, and the
12 foregoing pages are a true and correct transcription to
13 the best of my ability and control.

14 I FURTHER CERTIFY that I am neither employed by
15 nor related to nor contracted with (unless excepted by
16 the rules) any of the parties or attorneys in this case,
17 and that I have no interest whatsoever in the final
18 disposition of this case in any court.

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