

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

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

ORIGINAL

JOINT APPLICATION FOR REHEARING OF CASE NO. 15487  
ORDER NUMBER R-14164-D, APPLICATION ORDER NO. R-14164-D  
OF THE NEW MEXICO OIL CONSERVATION  
DIVISION THROUGH THE SUPERVISOR OF  
DISTRICT II FOR AN EMERGENCY ORDER  
SUSPENDING CERTAIN APPROVED APPLICATIONS  
FOR PERMITS TO DRILL, AND FOR ADOPTION  
OF SPECIAL RULES FOR DRILLING IN CERTAIN  
AREAS FOR THE PROTECTION OF FRESH WATER,  
CHAVES AND EDDY COUNTIES, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSIONER HEARING

June 13, 2017

Santa Fe, New Mexico

BEFORE: DAVID R. CATANACH, CHAIRPERSON  
EDWARD MARTIN, COMMISSIONER  
DR. ROBERT S. BALCH, COMMISSIONER  
CHERYL BADA, ESQ.

This matter came on for hearing before the  
New Mexico Oil Conservation Commission on Thursday,  
June 13, 2017, 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

1 (9:03 a.m.)

2 CHAIRMAN CATANACH: Next order of business  
3 on today's agenda is Case Number 15487, which, again, is  
4 the joint application for rehearing of Order Number  
5 14 -- R-14164-D, application of the New Mexico Oil  
6 Conservation Division through the supervisor of District  
7 II for an emergency order suspending certain approved  
8 applications for permits to drill and for adoption of  
9 special rules for drilling in certain areas for the  
10 protection of fresh water, Chaves and Eddy Counties,  
11 New Mexico.

12 Commissioners, you may recall this case was  
13 originally heard on December 5th, 6th and 7th, and an  
14 order in this case was issued on February 8th, 2017.

15 The joint application for rehearing was  
16 heard on May 18th and was continued to this docket to  
17 allow the parties time to file written closing  
18 statements and corrected proposed amendments to the rule  
19 language.

20 At the May 18th hearing, the record was  
21 closed. No further evidence or testimony will be  
22 accepted at this time.

23 The Commission did receive closing  
24 statements and proposed amended language from the  
25 parties in this case.

1                   And at this time, the Commission will  
2   examine the materials presented by the parties and  
3   conduct open deliberations.

4                   Commissioners, do I hear a motion to go  
5   into open deliberations in Case Number 15487?

6                   COMMISSIONER BALCH:   So moved.

7                   COMMISSIONER MARTIN:   Second.

8                   CHAIRMAN CATANACH:   All in favor?

9                   (Ayes are unanimous.)

10                  CHAIRMAN CATANACH:   So there are a couple  
11   of issues that I think we need to take care of today,  
12   and the first issue is the issue of the designated area  
13   that I'd like to talk about.

14                  The Division has proposed that the  
15   designated area include the whole area that includes  
16   both the shallow aquifer and the deep artesian aquifer  
17   as the designated area. The opponents to that argue  
18   that only the area in which the shallow aquifer and the  
19   deeper artesian aquifer, where they're together -- where  
20   they're present and together, that that should be  
21   limited -- that should be the designated area. And so  
22   we can talk about that issue first.

23                  I guess I'd like to provide to you guys  
24   this is the Division rule that addresses just the normal  
25   operations of sealing off strata and casing and tubing

1 requirements. Basically, it says: During the drilling  
2 of an oil well, injection well or a service well, the  
3 operator shall seal and separate the oil, gas and water  
4 strata above the producing and injection interval to  
5 prevent their contents from passing into other strata,  
6 and the operator shall ensure that fresh waters and  
7 waters of present or probable value for domestic  
8 commercial or stock purposes are confined to their  
9 respective strata and are adequately protected by  
10 Division-approved methods.

11 In the next section, Section 19.15.16.10A,  
12 it specifies how the wells -- that the wells should be  
13 cemented. And in paragraph B, it says, "The operator  
14 shall use sufficient cement on surface casing to fill  
15 the annular space behind the casing to the top of the  
16 hole, provided that authorized division field personnel  
17 may allow exceptions to this requirement when known  
18 conditions in a given area render compliance  
19 impracticable."

20 So I guess the question is: In that area  
21 where only the artesian aquifer is present, I guess  
22 don't we feel like the Division rule -- the general rule  
23 that addresses -- do we feel that's adequate to  
24 sufficiently protect the artesian aquifer?

25 COMMISSIONER BALCH: Well, seeings how our

1 primary addition to the language was to have cement  
2 circulated to surface, I think that is very consistent  
3 with this rule.

4 CHAIRMAN CATANACH: I'm thinking -- there  
5 are a couple of things in the draft rule that really  
6 aren't addressed in the general rule. One of those  
7 issues is "if the cement is not circulated to the  
8 surface, the operator shall furnish a cement bond log to  
9 the Artesia district office, and shall not proceed with  
10 drilling until the division approves the cementing."  
11 And there are a couple of other provisions. If you look  
12 at (b) and (c) of the current rule, "If the operator  
13 encounters significant loss of circulation during  
14 drilling within an aquifer, the operator shall  
15 immediately notify the division's Artesia district  
16 office." And (c), "If the operator observes significant  
17 inflow of fresh water into the mud pit, the operator  
18 shall immediately notify the division's Artesia district  
19 office."

20 So those two things are in addition to what  
21 the general rule says, and I guess the question is: Do  
22 we think that those extra provisions give us more  
23 protection than the statewide rule?

24 COMMISSIONER MARTIN: I think so. I think  
25 there are extra safeguards built into the new rule that

1 covers special circumstances, artesian aquifer.

2 CHAIRMAN CATANACH: And I would tend to  
3 agree. There is nothing in the statewide rules that I'm  
4 aware of that the surface casing wasn't cemented.  
5 There's -- I don't believe that there is anything that  
6 would require a CDL to be run. So to me, I think it  
7 adds a little bit of additional safeguard.

8 One of the arguments that's been brought up  
9 by the opponents in this case is that this whole issue  
10 about including that area was kind of beyond the scope  
11 of the original hearing, because the original hearing  
12 was kind of, you know, for the purpose of preventing  
13 communication between the two-aquifer system, and -- so  
14 that's a concern in that if we -- if we kind of  
15 overreach on that issue, I don't know if it's -- that's  
16 a challengeable thing in court, if they could cite  
17 something.

18 MS. BADA: Always.

19 CHAIRMAN CATANACH: Always (laughter).

20 But that's one of the arguments brought up  
21 by the opponents to that.

22 COMMISSIONER BALCH: I want to make sure  
23 the record gives us the ability to make that conclusion  
24 if we do so.

25 CHAIRMAN CATANACH: They cited -- in their

1 arguments, the opponents cited several areas of  
2 testimony where it was pretty clear that the area where  
3 only the artesian aquifer was not a big problem area to  
4 the Division in terms of really any -- any contamination  
5 issues or anything like that. So I think the record  
6 kind of supports the opponents' view on that. But,  
7 again, personally, I still thinks it adds a little bit  
8 of extra protection in those areas.

9 MS. BADA: Given that the original  
10 designated area was for the entire Roswell Artesian  
11 Basin, though, doesn't that indicate there was some  
12 concern for the entire Basin?

13 CHAIRMAN CATANACH: Yeah, I think there  
14 was. I think the whole issue started with communication  
15 between the two-aquifer system, and that's where it  
16 originated. And when we did the -- when the Division  
17 did the designated area, I think they -- I think they  
18 tried to broadly define the area in question, which I  
19 think was a good approach at that time.

20 COMMISSIONER MARTIN: It was only the  
21 target area where they overlapped. Is that correct? Is  
22 that your interpretation?

23 CHAIRMAN CATANACH: Well, I think that's  
24 where the whole issue started about communication  
25 between the aquifers, was -- was what I recall was one

1 of the main issues that the Pecos Valley folks had.

2 COMMISSIONER MARTIN: To me that's the  
3 thing that makes this kind of a special area, but --  
4 otherwise, I mean, my opinion is that the statewide rule  
5 protects the artesian aquifer.

6 COMMISSIONER BALCH: When we were  
7 deliberating this the first time, our conclusion was  
8 that only the artesian aquifer cement to surface, which  
9 is already in the rule anyway. So we were asked to  
10 protect it as the rule already was in those areas. So I  
11 kind of agree with Mr. Martin's concerns that we need to  
12 talk about the area that we want to designate. Is it  
13 the overlapping area, or is it the entire area?

14 CHAIRMAN CATANACH: Well, I think in the --  
15 in the area just of the artesian aquifer, where I think  
16 that there are requirements to the Division -- as I  
17 recall, the surface casing isn't circulated. The  
18 Division does have some options to require the operator  
19 to make sure it's circulated. So I think there are some  
20 safeguards that would allow us to make sure that that  
21 casing is being circulated. So I guess I'm not so  
22 concerned about that.

23 Can we define just the two-aquifer area  
24 adequately? It's not been -- it's not been defined that  
25 I know of in anything that we've seen, so we would have



1 to somehow get a definition of what that area is. And I  
2 know there are maps that have been submitted and  
3 presented, but I don't think -- well, I do have  
4 something, actually. This (indicating) was submitted by  
5 COG, OXY and Fasken at the May 18th hearing. It's  
6 titled "Roswell Basin Legal Description of Overlapping  
7 Aquifers." So we do have a description. I have a note  
8 here on this that says "a one-mile buffer is not  
9 included in this particular description." So if we  
10 wanted to go that way, I think we could use this as a  
11 base and maybe work on getting, if we want a buffer -- a  
12 one-mile buffer on there, we could.

13 COMMISSIONER MARTIN: I am ambivalent about  
14 the buffer, but I think we should stick to the  
15 overlapping area.

16 COMMISSIONER BALCH: I tend to agree,  
17 mainly because what we proposed for the overlap is  
18 already -- is basically a lot of the same language  
19 that's already in the statute. Circulate to surface  
20 provides the greatest protection.

21 CHAIRMAN CATANACH: Okay. So what  
22 language -- I guess if we're working off of the original  
23 rule that was issued in R-14164-D, then the only place I  
24 think we'd have to change is paragraph A, where it  
25 actually states the designated area. After that, it

1 would all be -- there are citings of the designated rule  
2 in the area, but that's -- so that would be the only --  
3 I think that would be the only change. We'd just  
4 actually have to change the description in paragraph A.  
5 This (indicating) looks like a much longer -- much  
6 longer description, in their document. It's much more  
7 detailed.

8 So I guess I would move that -- do we want  
9 to vote on going with the -- with the smaller designated  
10 area? Are we all in favor of that?

11 COMMISSIONER MARTIN: I am.

12 COMMISSIONER BALCH: I believe so.

13 CHAIRMAN CATANACH: Okay. We're going to  
14 have to take this document and change the -- change the  
15 rule to incorporate this area.

16 COMMISSIONER BALCH: I believe that area  
17 came out of the geologic study -- the hydrogeologic  
18 study for the area, that all parties relied on in their  
19 testimony. I remember the reference name of that.

20 CHAIRMAN CATANACH: And as far as the  
21 buffer, is it the pleasure of the Commission to not  
22 include any buffer in that area? I think you  
23 said you --

24 COMMISSIONER MARTIN: Either way. I don't  
25 have any special feelings about it. It's arbitrary.

1 COMMISSIONER BALCH: It is arbitrary.

2 Unfortunately, the nature of the kind of studies that  
3 are produced in that area is also a little bit  
4 arbitrary. Those values are -- the buffer does provide  
5 a little bit of adequate -- that we're capturing,  
6 although we may end up with not -- not affected by this  
7 rule.

8 CHAIRMAN CATANACH: Again, I think I would  
9 feel a little more comfortable with some kind of buffer  
10 around this area, because it's not an exact area, and  
11 that can be determined at the district office level.  
12 Hopefully, they have more data when they approve these  
13 APDs, and that would give them more -- more of an area  
14 to examine the APDs and make sure that they can drill  
15 completely.

16 So I would move the adoption of the  
17 designated area as the contracted area, plus the  
18 one-mile buffer. Is there agreement on that?

19 COMMISSIONER MARTIN: Yes.

20 COMMISSIONER BALCH: Yes.

21 CHAIRMAN CATANACH: Okay. We'll have to  
22 figure somehow how to -- how to interpret that --  
23 incorporate that and figure out the one-mile buffer  
24 around that and include that in there. So that'll be  
25 some work.

1 Are you good at maps and stuff, Cheryl?

2 MS. BADA: No.

3 CHAIRMAN CATANACH: Okay. Well, that was  
4 the first issue.

5 The second issue -- and I've -- you've got  
6 that. Okay.

7 COMMISSIONER BALCH: Red-line version.

8 CHAIRMAN CATANACH: That should be the  
9 same.

10 COMMISSIONER BALCH: That's OCD, Exhibit A.

11 CHAIRMAN CATANACH: That's OCD's -- I  
12 think -- and this (indicating) is the modification to  
13 the existing rule proposed by the opposing parties. And  
14 I think if you -- if we want to just talk about -- it  
15 all really boils down to -- to one issue, in my mind.

16 The Division is wanting surface casing -- a  
17 single string of surface casing to be set 50 feet -- 50  
18 feet below the base of the artesian aquifer in all  
19 wells. That's the position of the Division.

20 The position of the opponents to that is  
21 that the surface casing should be set 50 feet below the  
22 base of the artesian aquifer, except in those areas of  
23 known hydrocarbon shows or production from the confining  
24 unit or the artesian aquifer. The operator shall set  
25 the surface casing string not more than 50 feet above

1 the first show of hydrocarbons on a mud log and  
2 circulate cement to surface.

3 That's the main issue between the two  
4 parties, and that's -- that's open for discussion at  
5 this point. I guess from the Division's standpoint, if  
6 you're drilling in an area that has hydrocarbon shows or  
7 hydrocarbon production, I think the Division feels safe  
8 that in drilling to the artesian aquifer, there's not  
9 going to be, at least drilling operations, even if there  
10 are some hydrocarbons, that there is not going to be --  
11 the time duration of the drilling operations and the  
12 nature of the drilling operations itself will not lend  
13 itself to communication between -- or contamination of  
14 the shallow aquifer or the deeper artesian aquifer. I  
15 would tend to agree on that point, that basically  
16 drilling operations are not going to see a whole lot of  
17 communications during drilling operations, if anything,  
18 under normal conditions.

19 I guess from the -- from the opponents'  
20 standpoint -- I guess it was a little unclear to me. If  
21 you set surface casing 50 feet above the first show of  
22 hydrocarbons, that would provide protection to the  
23 shallow aquifer, definitely, but then I was concerned  
24 about if you're still drilling beyond that point and  
25 you're drilling down to, say, the producing horizon,

1 you're still going to have some -- if the artesian  
2 aquifer is there and there is a producing horizon below,  
3 you're still going to have some possible  
4 communication -- even in that instance -- of  
5 communication between hydrocarbons and the artesian  
6 zone. And I wasn't clear, on the production casing, if  
7 that was -- if that would have been cemented to surface.  
8 I think it would have been, the production casing. So  
9 that's not an issue.

10 So I think one of the issues that came up  
11 at the last -- May 18th hearing is that there is no  
12 specified depth for setting that casing in the artesian  
13 aquifer. And, you know, I think I kind of challenged  
14 the Division to come up, maybe, with some language that  
15 might address that. I think that it's not going to  
16 be -- I mean, since it's not at a set depth, it's not  
17 going to be -- really not going to be able to address it  
18 in a rule. I think that you would have to leave that  
19 flexibility to the -- to the District II office in  
20 Artesia to determine -- you know, utilizing other  
21 information to determine where the base of that is.

22 COMMISSIONER MARTIN: I think if we try to  
23 define it in a rule, we are going to be off in so many  
24 different cases. I mean, that's why you have to  
25 define -- important structures, such as the base of the

1     artesian.

2                   CHAIRMAN CATANACH: Well, I think they are  
3 much more equipped at the district office level to make  
4 those determinations because they're dealing with this  
5 on an everyday type of basis. They're seeing these  
6 applications, and they have a lot more geologic data,  
7 certainly, than we have here.

8                   COMMISSIONER BALCH: Kind of in general, in  
9 rulemaking, the more specific you are, the more likely  
10 you are to have a conflict later on. You want something  
11 that captures the intent.

12                   COMMISSIONER MARTIN: I agree.

13                   CHAIRMAN CATANACH: So I think -- one of  
14 the things that I think they did to kind of help that  
15 situation out was the Division's also, in addition --  
16 you know, we had talked about revising part C -- only  
17 part C at one point. But now the Division -- I did  
18 bring it up at the last hearing, whether or not they  
19 thought -- the OCD thought that the District II  
20 supervisor had the authority to change the casing  
21 program if he needed to.

22                   And so the Division has now proposed some  
23 additional language for paragraph two that they've  
24 inserted, that the district supervisor may approve a  
25 casing program that allows for the setting of the shoe,

1 for the water-protection casing string at a different  
2 depth of that required in paragraph two of Subsection C.  
3 "If the district supervisor finds, based on information  
4 and data provided by the operator, that the proposed  
5 casing program will adequately protect all freshwater  
6 formations, the well can reasonably be expected to  
7 encounter...." I certainly think that that gives the  
8 district office more flexibility in changing the casing  
9 program in the well, if they feel like there's a need to  
10 do that.

11 So I guess before we get into any specific  
12 language, I guess we might want to talk about the  
13 general disagreement between the Division and the  
14 industry on that one point. I think I feel more  
15 comfortable with the Division's approach. It assures  
16 there'll be a casing string set through both aquifers  
17 and circulated. I think the other proposal is kind of  
18 nebulous, to me, as far as how the artesian aquifer is  
19 protected adequately.

20 COMMISSIONER MARTIN: Actually, the  
21 Movants' change is more clear to me than the Division  
22 language.

23 CHAIRMAN CATANACH: So in their language,  
24 if you have a hydrocarbon show, that's where you're  
25 going to set the surface casing, and that's -- and then



1 you're going to keep drilling down, and you're going to  
2 hit the artesian aquifer. And can you kind of elaborate  
3 why you think that's a better approach?

4 COMMISSIONER MARTIN: In their language?

5 CHAIRMAN CATANACH: Yeah. Because  
6 that's --

7 COMMISSIONER MARTIN: They're still saying  
8 set surface casing 50 feet below the base of the  
9 artesian. So if you circulate cement to surface on that  
10 surface string --

11 CHAIRMAN CATANACH: Right. But they're  
12 also saying in areas where there are hydrocarbon shows  
13 or production, then you don't have to set that surface  
14 casing. All you have to set is that surface casing 50  
15 feet above those shows, and those shows are likely to be  
16 in between the artesian aquifer and the shallow aquifer.  
17 So the surface casing is not going to be set.

18 COMMISSIONER BALCH: Or even in the  
19 artesian aquifer.

20 CHAIRMAN CATANACH: Or even in the artesian  
21 aquifer. So that surface casing is not likely to be set  
22 in the artesian. It's going to be set higher than the  
23 artesian aquifer.

24 COMMISSIONER MARTIN: I see what you're  
25 saying.

1 I don't remember the rulemaking. I believe  
2 we put in for that in this rule. If you do have a  
3 surface casing above the base of the artesian aquifer,  
4 then your intermediate casing string would also be  
5 cemented to surface. That would cover the protection of  
6 the aquifer -- artesian aquifer. I don't have the  
7 entire rule in front of me. That's my recollection.

8 CHAIRMAN CATANACH: Well, what rule would  
9 that have been in, though? I mean, are you talking  
10 about the rule that was -- that we did for this case?

11 COMMISSIONER BALCH: Our order on this  
12 case.

13 CHAIRMAN CATANACH: I mean, that -- it  
14 talks about if the well -- if the well is equipped  
15 with -- see, I'm not clear on if you have that  
16 situation, where you set the surface casing above the  
17 artesian. I'm not clear that we're requiring another  
18 intermediate casing string and another production  
19 string.

20 COMMISSIONER BALCH: Well, it could be a  
21 production string as well.

22 CHAIRMAN CATANACH: That's correct. It  
23 could be a production string circulated to surface.

24 COMMISSIONER BALCH: Yes, which I think is  
25 protective. The biggest protection that you can provide

1 for the separation of the aquifers is to have layers of  
2 cemented steel isolating those formations.

3 CHAIRMAN CATANACH: So you're in favor of  
4 the two casing string, the separate casing strings --

5 COMMISSIONER BALCH: Any casing string or  
6 combination of casing strings that pass through the  
7 protectable artesian aquifer need to be cemented to  
8 surface.

9 CHAIRMAN CATANACH: I agree. So what the  
10 rule requires, if the well is equipped with an  
11 intermediate casing string -- which I don't know in what  
12 instance that we would require an intermediate casing  
13 string, if, in that particular instance, we would  
14 require that. But, nonetheless, that string is required  
15 to be cemented to surface.

16 And then the next sentence, "If the well is  
17 not equipped with an immediate casing string, the  
18 operator shall circulate cement on the production string  
19 to the surface."

20 COMMISSIONER BALCH: Which was our intent,  
21 and I think that's still the intent. I still think  
22 that's the way we can protect the aquifers, and that's  
23 supported by evidence in the record. I would hate to  
24 deviate too far from that.

25 CHAIRMAN CATANACH: I guess, you know, the

1    only thing -- I mean, does that expose the artesian to a  
2    longer drilling period possibly, where it might be  
3    subject to more communication with oil-producing  
4    formations? I don't know how much longer that might be,  
5    but --

6                    COMMISSIONER BALCH: I think the idea there  
7    is that if you do encounter a hydrocarbon show, you want  
8    to make sure you protect that surface -- that shallow  
9    aquifer. That's why you cement your surface casing at  
10   that time to the surface. And when you're drilling the  
11   rest of the way through -- as you mentioned earlier, the  
12   aquifers are generally well protected during drilling  
13   because of the nature of drilling itself and et cetera,  
14   the pressure in the well. So I think that you're  
15   looking at minimal exposure of the artesian aquifer at  
16   this point, and you've also adequately protected the  
17   shallow aquifer.

18                   So I really like the original language that  
19   we had there for protection, and that's basically if  
20   you're in one of the aquifers or both of the aquifers,  
21   you're cementing casing string to surface.

22                   CHAIRMAN CATANACH: Yeah. And also in the  
23   original rule that was issued, under paragraph D, "The  
24   District Supervisor Discretion," the district supervisor  
25   did have the authority to require an additional

1 water-protection casing string under some circumstances,  
2 "if the proposed casing program is not reasonably  
3 sufficient to protect fluid movement into or out of the  
4 wellbore or to aquifers in the designated area." So I  
5 guess that would make me feel better, if we adopted  
6 Movants' language. The district supervisor could  
7 always, under that provision, require possibly an  
8 immediate string if they felt it was necessary.

9 COMMISSIONER BALCH: There were really a  
10 few major concerns that came up in the original  
11 hearing -- these were not discussed in as much detail in  
12 the May hearing -- that I think are somewhat important.  
13 First of all, if you require the additional casing  
14 string in all cases, then you run into logistical issues  
15 and also added expense to the operators without really  
16 adding any additional protection.

17 And -- well, I forgot my second point.

18 COMMISSIONER MARTIN: That's a good enough  
19 point, I think. I agree with that.

20 COMMISSIONER BALCH: So the main thing  
21 is -- and we had a lot of testimony that said if you  
22 require these casing strings, you're going to be  
23 drilling unusual type diameters, something like that.

24 And my second point is if you didn't  
25 circulate to surface and were required to wait X number

1 of days for the Artesia office or somebody to get back  
2 to you on what to do about your cement, then during that  
3 time period, you definitely are exposing the aquifer or  
4 aquifers to some sort of risk. So multiple casing  
5 strings cemented to surface is the best and fastest  
6 protection to both aquifers. That's what we arrived  
7 at in the --

8 CHAIRMAN CATANACH: And I guess it gives me  
9 a certain level of confidence. If, for some reason, the  
10 district office determined that maybe there should be --  
11 maybe you should set an intermediate casing at the base  
12 of the artesian before you drill out into the producing  
13 formation, they do have that authority under that  
14 provision. So I think that gives me some added comfort  
15 in that regard.

16 COMMISSIONER BALCH: And I'm not certain  
17 that was actually up for debate in the request for  
18 review anyway. It was primarily confusion in language.

19 COMMISSIONER MARTIN: I think the district  
20 office always has the discretion to require that and  
21 should.

22 CHAIRMAN CATANACH: So, gentlemen, what  
23 would you -- what is your preference on that issue?

24 COMMISSIONER MARTIN: You changed my mind  
25 on the language. I prefer the Division's language now.

1 So --

2 COMMISSIONER BALCH: Changed my mind, too.

3 I think I prefer Movants' language now.

4 COMMISSIONER MARTIN: Where do you want to  
5 go now?

6 CHAIRMAN CATANACH: So wait. You switched?

7 COMMISSIONER MARTIN: I did.

8 COMMISSIONER BALCH: The main problem I'm  
9 having is that I keep reading the Division language, and  
10 I want to make sure I understand it. I'm not sure it's  
11 completely clear.

12 MS. BADA: Do you have a copy of the rule  
13 as proposed in your order?

14 CHAIRMAN CATANACH: Copy of the rule  
15 that we --

16 MS. BADA: That's attached to the order.

17 COMMISSIONER BALCH: Yeah.

18 MS. BADA: No. That's not the rule that  
19 was attached to the order. That's the modifications.

20 CHAIRMAN CATANACH: The one that was  
21 approved in the order?

22 MS. BADA: Uh-huh.

23 CHAIRMAN CATANACH: What are you  
24 (indicating) unclear of in the Division's --

25 COMMISSIONER MARTIN: Me? No, I changed.

1 CHAIRMAN CATANACH: Wait a minute. Where  
2 you at now?

3 COMMISSIONER MARTIN: No. I think the  
4 intent of both -- I think the intent of both is pretty  
5 much the same. Now I think the Division language is  
6 more clear as to what they want to do, what should be  
7 done. I may be wrong about the intent, but it seems to  
8 be the same.

9 CHAIRMAN CATANACH: Yeah. The Division's  
10 rule doesn't even address the show of hydrocarbons at  
11 all anymore. They took that out. And they're basically  
12 saying that in all cases, wherever the artesian aquifer  
13 is present, we want the surface casing set 50 feet above  
14 the --

15 COMMISSIONER MARTIN: But in (a), you're  
16 saying -- you're not changing what it says? If the  
17 artesian aquifer is not present, then they address the  
18 hydrocarbons?

19 CHAIRMAN CATANACH: Oh, yeah. The  
20 hydrocarbons issue is in there.

21 I actually think both of the proposals  
22 provide a high degree of protection for both aquifers.

23 COMMISSIONER MARTIN: I agree.

24 COMMISSIONER BALCH: I agree.

25 COMMISSIONER MARTIN: Which is more clear?



1 COMMISSIONER BALCH: The Division's  
2 language is more specific.

3 CHAIRMAN CATANACH: The Division's?

4 COMMISSIONER BALCH: Yes.

5 COMMISSIONER MARTIN: Oh, you think the  
6 Division's is?

7 COMMISSIONER BALCH: The only real  
8 difference, if you compare the two, is the Division  
9 language requires that extra step of working directly  
10 with the Artesia office for the placement of your  
11 surface string. I'm not sure if that's a significant  
12 administrative burden or not.

13 CHAIRMAN CATANACH: On the Division?

14 COMMISSIONER BALCH: In proposed Section  
15 2(b).

16 CHAIRMAN CATANACH: Is that a burden on the  
17 Division? Is that your question?

18 COMMISSIONER BALCH: "In areas where the  
19 artesian aquifer is present and the well will be drilled  
20 through the artesian aquifer, the operator shall  
21 determine the depth for setting the surface casing  
22 string with the concurrence of the district supervisor  
23 of the division's Artesia district office."

24 COMMISSIONER MARTIN: I think that's true  
25 in the statewide rule, that the district office sign off

1 on the casing program prior to the -- I think.

2 COMMISSIONER BALCH: Well, why do you need  
3 to specify it here?

4 CHAIRMAN CATANACH: Well, I think that one  
5 of the reasons is because one of the questions that came  
6 up at the last meeting was that it's unknown where that  
7 depth is in areas.

8 COMMISSIONER BALCH: And we will define  
9 where we think the overlapping area is, but we're not  
10 necessarily defining where the aquifer is. So you may  
11 not know whether you need to apply 2(b) or not, until  
12 after you've started drilling your well.

13 CHAIRMAN CATANACH: Well, if you're in  
14 the -- if you're in the area that has the artesian  
15 aquifer, both aquifers, then you're going to need to  
16 know where to set that surface casing before you drill  
17 your well.

18 COMMISSIONER BALCH: Well, you're going to  
19 have an idea where to place it.

20 CHAIRMAN CATANACH: You're going to have to  
21 get a permit by the Division, and that's why you work  
22 with the district office, to use the best information  
23 available to determine whether that casing should be  
24 set, because it's not -- I think that you're going -- I  
25 mean, the APD has to be approved before you start

1 drilling, and so that's where that language came in  
2 there, I think, which is fine. I mean, I think it's  
3 done all the time with the district offices. They  
4 consult with these companies all the time on the casing  
5 setting depth and things like that. So it's not a  
6 burden on us.

7 COMMISSIONER MARTIN: It's not an  
8 additional burden, I don't think.

9 COMMISSIONER BALCH: Not an additional  
10 burden.

11 CHAIRMAN CATANACH: And information from  
12 companies and the Division can be used to determine that  
13 depth.

14 And the other thing I like about the  
15 Division's proposal is it does give the flexibility to  
16 set that surface casing at a different depth if there is  
17 some circumstance where the Division thinks that maybe  
18 that the casing should be set at the first hydrocarbon  
19 show. I mean, I'm just throwing that out there, but  
20 that's -- it appears we would have that flexibility.

21 COMMISSIONER BALCH: Well, I think that  
22 Section D is not -- is not being changed by -- I mean,  
23 in the existing order, in Section D, "district  
24 supervisor discretion." Yeah. I saw that one over  
25 here. It's not like you're removing the discretion of

1 the district supervisor if you do that, if you go with  
2 the Movants' language.

3 CHAIRMAN CATANACH: Well, in the existing  
4 rule, the district supervisor has the authority to  
5 require an additional casing string. He doesn't  
6 necessarily have the authority to approve a casing  
7 string at a different depth than required. That's  
8 what -- so it's a different thing. I mean, it gives  
9 them more flexibility, which I was concerned about at  
10 the last hearing. It gives us more flexibility. For  
11 some reason, maybe we find that we don't want the  
12 company to set the surface casing below the artesian  
13 aquifer, for some reason. I don't know. But this  
14 appears to give us the flexibility to change that.

15 COMMISSIONER BALCH: I see that. Well, I  
16 think the addition of D(2) and (3) is advisable,  
17 regardless of the change we take for C(2).

18 CHAIRMAN CATANACH: I agree. I think  
19 that's absolutely necessary. I think I'm kind of with  
20 the Division language at this point. See where you guys  
21 are at.

22 COMMISSIONER MARTIN: I agree on that  
23 point.

24 COMMISSIONER BALCH: I don't think they're  
25 substantially different.

1 COMMISSIONER MARTIN: I still think the  
2 intent is the same.

3 CHAIRMAN CATANACH: My understanding is,  
4 according to the data that we got, I think Pecos Valley  
5 Artesian Conservancy District is also on board with the  
6 Division's proposed language. And I think -- well, we  
7 did get statements from -- we did get different  
8 statements.

9 And I think one of the statements from the  
10 opposition was just basically a concern about the  
11 designated area. And the other -- the other parties --  
12 I think Lime Rock was the one that was more concerned  
13 about the casing setting depth language. So I guess I  
14 would move for the adoption of the Division's language,  
15 and we can -- if you guys want, we can go over it just  
16 to make sure that we're comfortable with the language.  
17 I guess do we agree that that's the way we want to go on  
18 this?

19 MS. BADA: I have a question on (a) and  
20 (b), given that the designated area is supposed to  
21 include both aquifers, how you want to word those.

22 COMMISSIONER MARTIN: Say that again,  
23 Cheryl.

24 MS. BADA: Given that the designated  
25 area -- you now define and include both aquifers. How

1 do you want to deal with the language in (a) and (b),  
2 where it says, "In areas where the artesian aquifer is  
3 not present and the areas where the artesian aquifer is  
4 present"?

5 COMMISSIONER BALCH: Yeah.

6 CHAIRMAN CATANACH: It seems to me that we  
7 could strike that whole paragraph.

8 COMMISSIONER MARTIN: Or does 2(a) mean to  
9 apply to the area as designated? Maybe you want to do  
10 that. So if it changes to the overlapped area, then  
11 refer to that designated area.

12 CHAIRMAN CATANACH: Well, I guess we could  
13 say "in areas where the artesian" -- "in areas where the  
14 well will not be drilled through the artesian aquifer."  
15 Leave out that first part, where it says "artesian  
16 aquifer is present," because it's going to be present in  
17 that designated area. We know it's going to be present.  
18 It's, by definition, present.

19 COMMISSIONER MARTIN: By definition, right.

20 CHAIRMAN CATANACH: So "in areas where the  
21 well will not be drilled through the artesian aquifer,"  
22 I guess that would mean, you know, if you're drilling to  
23 a shallower formation than you're going to produce from,  
24 I guess that would applicable to that.

25 COMMISSIONER BALCH: I'm wondering if we

1 need to reconsider redefining the designated area from  
2 the way we proposed doing it earlier today. The main  
3 problem is that some of this language is specific to the  
4 greater area in the Roswell Artesia Basin, where the  
5 artesian aquifer is present. Can we -- as counsel has  
6 mentioned, we have now chosen not to define that area.

7 CHAIRMAN CATANACH: So if we start  
8 tinkering with the Division language, we're probably  
9 going to get into trouble.

10 COMMISSIONER BALCH: We may have already  
11 gotten in trouble by reducing the designated area to  
12 that of the portions where there are -- for the shallow  
13 and artesian aquifer.

14 COMMISSIONER MARTIN: So you're saying  
15 maintain the designated area as it is and not expand it?

16 COMMISSIONER BALCH: I'm just saying we  
17 need to be careful what we do with that.

18 CHAIRMAN CATANACH: Well, I guess to me --  
19 I mean, if you want to go back and talk about the  
20 designated area, to me it doesn't -- it doesn't really  
21 place any additional burdens on the operators, you know,  
22 in filing drilling permits. I mean, it's -- there are  
23 really no additional requirements. It's not a burden.  
24 It's just --

25 MS. BADA: I think that's the only place

1 that's an issue, is in C(1) and (2). So if you deal  
2 with those -- I mean C(2)(a) and (b), as proposed by the  
3 Division. If you address those, you're probably okay.

4 COMMISSIONER BALCH: So this designated  
5 area covers both aquifers?

6 MS. BADA: Yeah. Or in some cases, where  
7 only the shallow or only the artesian are present.

8 COMMISSIONER BALCH: Right.

9 The main concern with the Division  
10 language, if we keep the smaller designated area, is  
11 that there is no -- nothing you can point out to say,  
12 "Where is the artesian aquifer?"

13 CHAIRMAN CATANACH: The depth or the  
14 lateral extent? I mean --

15 COMMISSIONER BALCH: Lateral extent. Where  
16 does the rule apply?

17 CHAIRMAN CATANACH: Well, I mean if you  
18 guys want to talk about the designated area again and  
19 maybe leaving it as is, I guess -- again, my opinion is  
20 I don't think it's any more a burden on the operators  
21 than -- I don't know the value of taking it out,  
22 changing it, if that's going to conflict with the  
23 Division's proposal. Maybe we should just leave it as  
24 is.

25 COMMISSIONER BALCH: I think one of the



1 concerns of the Movants was that you would end up with  
2 situations where a rule applied that it doesn't need to  
3 apply.

4 COMMISSIONER MARTIN: I tend to agree with  
5 that position. That's why it makes no sense to me that  
6 in the long run -- but to only include the area of --

7 COMMISSIONER BALCH: Well, or specify both  
8 areas.

9 COMMISSIONER MARTIN: Yeah.

10 COMMISSIONER BALCH: Then you would have to  
11 modify language slightly and place two -- both aquifers  
12 or shallow aquifer. And this is where we ran into  
13 confusion before, the three cases: Only artesian, only  
14 shallow, or both. Well, four cases.

15 CHAIRMAN CATANACH: How much modification  
16 do you guys think if we just do the overlapping area,  
17 which we apparently already agreed to and I guess we're  
18 going to have rework?

19 COMMISSIONER BALCH: Well, then the problem  
20 comes in in 2(a), where you're talking about whether or  
21 not the artesian aquifer is or is not present. We don't  
22 have any guidance on that.

23 MS. BADA: How about if you just modify  
24 both (a) and (b)? And modify (a) to say, "In areas  
25 where the well will not be drilled through the artesian

1 aquifer, the hole shall be drilled to the first show of  
2 hydrocarbons on a mud log," et cetera. And then (b),  
3 say, "In areas where the well will be drilled through  
4 the artesian aquifer." Does that solve that?

5 COMMISSIONER MARTIN: So take out "is not  
6 present"?

7 MS. BADA: Yeah.

8 COMMISSIONER MARTIN: "Where the artesian  
9 is not present"?

10 CHAIRMAN CATANACH: Yeah. That's what the  
11 original suggestion was. In (a), take out "the artesian  
12 aquifer is not present" or "if the well" --

13 COMMISSIONER MARTIN: In (a), take out "not  
14 present," and in (b), take out "where present." Does  
15 that solve the problem?

16 COMMISSIONER BALCH: I think it might,  
17 actually.

18 CHAIRMAN CATANACH: So in (a), "in  
19 areas" -- I would take out "the artesian aquifer" --

20 COMMISSIONER BALCH: "Is not present."

21 CHAIRMAN CATANACH: -- "is not present" --

22 COMMISSIONER BALCH: "At depth."

23 CHAIRMAN CATANACH: -- "at depth."

24 "Or if the." Take that out and just insert  
25 "where," "in areas where the well" --

1 COMMISSIONER BALCH: Take out some  
2 language, and you've already got it in (b) as well.  
3 Take out the words "artesian aquifer is present."

4 COMMISSIONER MARTIN: You want to have the  
5 words "in the area where the well will be drilled." Is  
6 that where we bring in the "where"?

7 CHAIRMAN CATANACH: We're still in (a)?  
8 But yeah. In (a): "In areas where the well will not be  
9 drilled to the artesian aquifer, the well shall be  
10 drilled to the first show of hydrocarbons." I think  
11 that solves that.

12 COMMISSIONER MARTIN: In (b), Bob is right.

13 COMMISSIONER BALCH: Take out the  
14 corresponding language in (b)?

15 CHAIRMAN CATANACH: Right. So talk to me.

16 COMMISSIONER BALCH: "In areas where the  
17 well will be drilled through the artesian aquifer, the  
18 operator shall determine the depth for setting the  
19 surface casing string." So take out the words "where  
20 the artesian aquifer is present."

21 CHAIRMAN CATANACH: So take out -- let's be  
22 specific, Dr. Balch. "Where" --

23 COMMISSIONER MARTIN: Leave "where."

24 CHAIRMAN CATANACH: "In areas where" --

25 COMMISSIONER MARTIN: "The well will be

1 drilled through the artesian aquifer."

2 CHAIRMAN CATANACH: So take out "the  
3 artesian aquifer is present"?

4 COMMISSIONER BALCH: Yes.

5 COMMISSIONER MARTIN: Yes.

6 CHAIRMAN CATANACH: "In areas where" -- and  
7 take out "and in areas where the well will be drilled  
8 through the artesian aquifer."

9 COMMISSIONER BALCH: Do you have your map  
10 of the original proposed area?

11 CHAIRMAN CATANACH: I do not. I do not  
12 have that map with me.

13 COMMISSIONER BALCH: The area where there  
14 is a shallow aquifer is the subset of the area where the  
15 artesian aquifer is present.

16 CHAIRMAN CATANACH: Correct. And it was  
17 something like that (indicating).

18 COMMISSIONER BALCH: Yeah, I remember it.  
19 I just wondered if you had a map.

20 CHAIRMAN CATANACH: So within the -- the  
21 question I have is in the smaller designated area, is  
22 the artesian aquifer always present? And I think that's  
23 not the case.

24 COMMISSIONER BALCH: I think we were  
25 presented with some examples where it was not.

1 CHAIRMAN CATANACH: Where it was not or --  
2 I think there was conflicting testimony on that.

3 COMMISSIONER MARTIN: If there is an  
4 overlap, it's got to be present, right?

5 CHAIRMAN CATANACH: But I think there are  
6 some transition zones in there where it may not be --  
7 I'm wondering if we start changing that (a) language, we  
8 get ourselves into trouble again.

9 COMMISSIONER BALCH: That's my concern, if  
10 we want to leave the original selected area, and if  
11 there are places that it doesn't apply, that would be  
12 where you use the discretion of the Artesia District  
13 Office.

14 COMMISSIONER MARTIN: Right. The operator  
15 is going to have to prove that the artesian aquifer is  
16 not present or they're not going to drill through the  
17 artesian.

18 CHAIRMAN CATANACH: So do we need to change  
19 (a) or (b)?

20 MS. BADA: Maybe not, if there are areas  
21 within the smaller area where they're both --

22 CHAIRMAN CATANACH: I think that's true. I  
23 think that's entirely possible.

24 COMMISSIONER BALCH: Yeah. It may be that  
25 if you would like to use the Division language -- and I

1 do like their language in Part D for sure -- with the  
2 changes we just discussed in (a) and (b) of Section 2, I  
3 think that would work if we don't change Section A of  
4 19.15.39.11.

5 CHAIRMAN CATANACH: Run that by me again.  
6 Now you -- I mean, we've worked to change (a) and (b),  
7 but now you want to --

8 COMMISSIONER BALCH: Keep the original  
9 designated area, and then I think we can do this.

10 CHAIRMAN CATANACH: So keep the original  
11 designated -- are we back on that subject?

12 COMMISSIONER MARTIN: (A) and (b)?

13 CHAIRMAN CATANACH: I think so.

14 MS. BADA: I don't know if that solves the  
15 problem.

16 COMMISSIONER MARTIN: I don't know if that  
17 solves your problem that you --

18 MS. BADA: I think what the real issue is  
19 the artesian aquifer is not always present within that  
20 smaller area. I think you can leave the Division's  
21 proposed language --

22 CHAIRMAN CATANACH: In (a) and (b)?

23 MS. BADA: -- and change the designated  
24 area to the smaller area.

25 CHAIRMAN CATANACH: I agree.

1 COMMISSIONER BALCH: Which way do we want  
2 to go with the designated area, I guess?

3 CHAIRMAN CATANACH: I'm real reluctant to  
4 start changing language in the Division's proposal  
5 because it's -- it's really tricky. I mean, it's -- you  
6 change a word or two and it changes the whole intent.  
7 So I think they worked hard to try to get it to where  
8 they think it needs to be. Maybe the best thing to do  
9 is just go strictly with the Division's proposal.

10 COMMISSIONER BALCH: In the original  
11 designated area.

12 I hope that somebody using this doesn't  
13 have to read it five times like I did to make sure I  
14 understood it.

15 CHAIRMAN CATANACH: It's always been pretty  
16 confusing. It's --

17 COMMISSIONER MARTIN: If you used only the  
18 overlapping area, you still leave it up to the  
19 discretion of the district office to make that  
20 determination as to whether the aquifer is present or  
21 not, and the company's going to have to prove it to them  
22 one way or the other.

23 COMMISSIONER BALCH: This is still a subset  
24 area.

25 CHAIRMAN CATANACH: Well, that's the whole

1 area.

2 MS. BADA: That's the old area. That's the  
3 big area, a lot of which only contains the artesian.

4 CHAIRMAN CATANACH: And my point on leaving  
5 that intact is I don't think it's -- I don't think the  
6 rules that we're doing impose any other additional  
7 burdens on the operator. It's --

8 COMMISSIONER BALCH: If the aquifer was not  
9 there, they'd just have to demonstrate that to the  
10 district office.

11 CHAIRMAN CATANACH: Yeah. And we're not  
12 asking them to do more. If they're just drilling in the  
13 artesian area, we're not asking them to do more than  
14 what the statewide rule already says. So for me it's  
15 not any additional burden by including it in the rule.  
16 It may be duplicative, to some extent, but I think there  
17 is some added protection in our rule that maybe would  
18 help us get a little bit more protection.

19 COMMISSIONER BALCH: I think the motion for  
20 rehearing was focused on language that was unclear and  
21 could be interpreted in a number of different ways. So  
22 if we remove that and maintain the original intent of  
23 the Commission hearing, I'd be pretty happy.

24 CHAIRMAN CATANACH: So the original intent  
25 being the area --



1 COMMISSIONER BALCH: Just to circulate  
2 things to surface would cover most of the problems. So  
3 I think it's all right. It does remove -- the Division  
4 language does remove some of the specific language that  
5 was causing issues.

6 MS. BADA: If you leave the larger area,  
7 though, and they're only drilling through the artesian,  
8 aren't you requiring them to provide a cement bond log  
9 if they don't circulate to surface, which is an  
10 additional requirement?

11 CHAIRMAN CATANACH: Yes, that is correct.  
12 But I think that's not a bad thing.

13 COMMISSIONER MARTIN: I guess I would ask:  
14 What was the original intent? Was it only to include  
15 this -- include the area of overlap, or is it not? And  
16 is the inclusion of the larger area overkill?

17 COMMISSIONER BALCH: The original intent  
18 was to try and clarify that, because there was,  
19 basically, a stay on APDs, and the concern was  
20 overlapping aquifers. And because of that overlapping,  
21 the Division was getting very specific, and in that  
22 area, operators were being asked to do the same thing  
23 outside of the subset area, which doesn't make a lot of  
24 sense, to put three casings strings on an 1,800-foot  
25 well.

1 COMMISSIONER MARTIN: Right. Right.

2 COMMISSIONER BALCH: The ultimate goal, of  
3 course, is to be protective of groundwater.

4 CHAIRMAN CATANACH: Correct.

5 I guess I'm kind of in favor of leaving the  
6 area as originally defined in the previous -- in the  
7 previous order.

8 COMMISSIONER BALCH: The Division language  
9 does mirror our suggestion and discussion during  
10 testimony, the language that we requested and the  
11 language that we want to clarify. I'm relatively happy  
12 that it captures the way the Commission was discussing  
13 it at that time and also the testimony that was given to  
14 us in regards to those issues.

15 CHAIRMAN CATANACH: So you're in favor of  
16 the Division language?

17 COMMISSIONER BALCH: I think we can go with  
18 the Division language if we keep the broader area.

19 CHAIRMAN CATANACH: I would agree.

20 COMMISSIONER MARTIN: I'm not sure -- I'm  
21 still not sure I see the point. We're keeping the  
22 Division language, which I'm in favor of, and reducing  
23 the area to the overlap. But maybe it's just a  
24 language-barrier problem that I have.

25 COMMISSIONER BALCH: The main problem is

1 the operators didn't want to have to change their  
2 drilling programs in areas where there was just the one  
3 aquifer.

4 At least the way I was viewing it, in  
5 November when we were looking at this, was how can you  
6 ensure the protection of the groundwater without adding  
7 undue burden to operators? You don't want to do that.  
8 And at that time, a typical completion would not  
9 necessarily circulate cement to surface. It would stop  
10 somewhere. And then because of that, you wanted to make  
11 sure you had top of cement defined, and that would  
12 require a bond log or some other method to determine  
13 that.

14 The solution was you add a relatively small  
15 expense to the operators, adding, you know, 20, 30, 40  
16 bags of cement, more than you would have done prior,  
17 circulate to surface. Then you know you have cement all  
18 the way through that section, if you don't do the bond  
19 log. So the only case there that you would have to deal  
20 with is if you didn't have circulation to surface. So  
21 it's a relatively small additional expense.

22 The operators, without giving them the  
23 additional administrative burden having to go to the  
24 district office, wait about 20 days for a bond log.  
25 First of all, you have to wait for the bond log to be

1 done, which is several days of cement curing, first of  
2 all.

3 COMMISSIONER MARTIN: Right.

4 COMMISSIONER BALCH: Then you wait for the  
5 Division office. And during that time, I think you're  
6 actually increasing the risk to the aquifers because you  
7 have a potential open hole at the bottom.

8 COMMISSIONER MARTIN: Right.

9 COMMISSIONER BALCH: So I think the  
10 original intent was that --

11 COMMISSIONER MARTIN: Okay.

12 COMMISSIONER BALCH: -- how to safely --  
13 ensure the safety of those water resources without  
14 stacking development.

15 CHAIRMAN CATANACH: Does that help your --  
16 any of your concerns?

17 COMMISSIONER MARTIN: Some.

18 COMMISSIONER BALCH: So keeping the larger  
19 designated area -- getting back to the point --

20 COMMISSIONER MARTINE: Yes.

21 COMMISSIONER BALCH: -- keeping the larger  
22 designated area, what you're really doing is requiring a  
23 few more bags of cement for that surface string -- first  
24 surface string.

25 COMMISSIONER MARTIN: In areas where it's,

1 admittedly, not necessary, I guess is my --

2 COMMISSIONER BALCH: In areas where it may  
3 not be necessary.

4 COMMISSIONER MARTIN: Okay.

5 CHAIRMAN CATANACH: Wouldn't it be  
6 necessary?

7 COMMISSIONER MARTIN: If the overlap -- if  
8 there is no overlap, I say increase the overlap. If  
9 there is no overlap, then there is -- but cement --  
10 circulate cement is a different point, but -- I think it  
11 is. Maybe it's not.

12 COMMISSIONER BALCH: Some of the testimony  
13 that came is that the shallow aquifer can come and go  
14 not just in space but also in time, if you have a really  
15 wet year, for example. And the testimony from, -- you  
16 know, from Maxey and other petroleum engineers, their  
17 typical cement job is a few bags shy of circulating to  
18 surface anyway. I don't think it's an undue large  
19 burden in this area, which is very important for  
20 agriculture and other concerns --

21 COMMISSIONER MARTIN: Right.

22 COMMISSIONER BALCH: -- to have that. You  
23 can have added safety by adding a few bags of cement. I  
24 I think that's a good trade-off. I believe that's what  
25 the Commission came to in November. The problem came in

1 in May. Some of the language was unclear as to how to  
2 implement that.

3 COMMISSIONER MARTIN: But only the part in  
4 2(a) and (b)? That's the only disputed language, right?

5 CHAIRMAN CATANACH: Yeah. I think -- I  
6 think it was Part C in the original -- Part C in the  
7 original record that was disputed.

8 Do you guys want to take a break for a  
9 couple of minutes?

10 COMMISSIONER MARTIN: Sure.

11 CHAIRMAN CATANACH: Why don't we take a  
12 ten-minute break?

13 COMMISSIONER BALCH: Sure.

14 (Recess, 10:23 a.m. to 10:31 a.m.)

15 CHAIRMAN CATANACH: Okay. We're back on  
16 the record, and let's continue with these deliberations.

17 So I guess I'm still in favor of keeping  
18 the original designated area and not tinkering too much  
19 with the Division language. You guys want to argue with  
20 that?

21 COMMISSIONER BALCH: Well, I'm trying to  
22 remember now, because it was proposed to change the  
23 designated area as part of the -- part of the motion.

24 CHAIRMAN CATANACH: Right. I mean, that  
25 was part of the re-opened case.

1 COMMISSIONER BALCH: But the bigger concern  
2 was the language.

3 CHAIRMAN CATANACH: I think that's a fair  
4 statement.

5 COMMISSIONER MARTIN: And my position is to  
6 keep the language -- or to keep the language of the --  
7 the Division language but contract the area. And if  
8 that causes problems with the language, then I guess I  
9 don't see that point.

10 COMMISSIONER BALCH: I think that anywhere  
11 there is the artesian aquifer, I'd like to see cement to  
12 surface. That's just common sense.

13 CHAIRMAN CATANACH: Well, I think that's in  
14 the rules. I mean, that's in the statewide rules.

15 COMMISSIONER MARTIN: Let me clarify  
16 something first. We keep coming back to this  
17 circulating cement. Was that ever in dispute?

18 COMMISSIONER BALCH: It was a matter of  
19 intense discussion in the room.

20 COMMISSIONER MARTIN: Was it?

21 COMMISSIONER BALCH: Yes.

22 So the surface casing string to surface --

23 COMMISSIONER MARTIN: Yes.

24 COMMISSIONER BALCH: -- how do you want --  
25 but the immediate casing string is circulated into some

1 point on the base of the cement surface casing, for  
2 example.

3 COMMISSIONER MARTIN: Which is sometimes  
4 done outside of the --

5 COMMISSIONER BALCH: Yeah.

6 CHAIRMAN CATANACH: I think the bigger  
7 concern is circulating of the surface casing was where  
8 the two aquifers were present. We wanted to make sure  
9 it was definitely circulating in those areas --

10 COMMISSIONER BALCH: Right.

11 CHAIRMAN CATANACH: -- in the two-aquifer  
12 system. So I think that was a big part of it.

13 COMMISSIONER MARTIN: And I agree with  
14 that.

15 CHAIRMAN CATANACH: I guess I still feel  
16 like -- keeping the original designated area gives me a  
17 little more comfort in making sure that cement is  
18 circulated, you know.

19 COMMISSIONER BALCH: I think I'm kind of  
20 there. A few bags of cement per well is not -- not  
21 undue burden, I don't think. And because the Division  
22 did add in the language there that casing programs could  
23 be, you know, modified by the district office, then if  
24 you run into a repetitive scenario, where you've  
25 demonstrated in an area that you can do something



1 different, they're going to let you do that. It's not  
2 going to be that every time you have to go there and  
3 make the same argument. You'll just -- they'll come  
4 with an arrangement in the APD and the district office,  
5 those small areas that are an exception. So I think  
6 that's important language, the addition to Section D.

7 CHAIRMAN CATANACH: Oh, on the flexibility?

8 COMMISSIONER BALCH: Yeah, the flexibility.  
9 And the flexibility goes both ways. I mean, there could  
10 be places where you feel like you need to be more  
11 protective, but areas where less concern is needed, less  
12 focus is needed.

13 So I concur with David on this. I'll go  
14 with the proposed language by the Division, keep the  
15 original language.

16 CHAIRMAN CATANACH: I believe that's what I  
17 want to do. I mean, you don't have to -- you don't have  
18 to go along.

19 COMMISSIONER MARTIN: I can't get off of  
20 the overlapped area. I agree with you on two of three  
21 of those points, but on that, I don't I think the area  
22 should be contract.

23 COMMISSIONER BALCH: We can vote on the  
24 components of it and then --

25 COMMISSIONER MARTIN: Sure.

1                   COMMISSIONER BALCH:  -- if you feel like  
2   it, you can support the overall conclusion and voice  
3   your opinion on the designated area.  That way you're  
4   having a "no" vote on that part.

5                   COMMISSIONER MARTIN:  I can do that.

6                   CHAIRMAN CATANACH:  So I guess with regards  
7   to the designated area, do we want to just vote on that?

8                   COMMISSIONER BALCH:  I think so.  So I  
9   would move that we keep the original designated area as  
10  formulated in the November rule.

11                  CHAIRMAN CATANACH:  I would second that and  
12  vote for that.

13                   So all in favor?

14                   (Ayes by Chairman Catanach and  
15   Commissioner Balch.)

16                  CHAIRMAN CATANACH:  All opposed?

17                  COMMISSIONER MARTIN:  Nay.

18                  CHAIRMAN CATANACH:  So now we're talking  
19  about the language of the Division rule.  Is there any  
20  reason to change any of this language that has been  
21  proposed?  Does anybody have any suggestions for  
22  changing any of the proposed language?

23                  COMMISSIONER MARTIN:  I do not.

24                  COMMISSIONER BALCH:  I think -- keeping the  
25  larger designated area.  I'm comfortable with the

1 language I've proposed.

2 CHAIRMAN CATANACH: All right. So we'll  
3 put that up to a vote.

4 All in favor of adopting the Division's  
5 proposed language? All in favor?

6 (Ayes are unanimous.)

7 CHAIRMAN CATANACH: So there is concurrence  
8 on that.

9 And so how do we proceed at this point,  
10 counselor?

11 MS. BADA: Just have to do an amended  
12 order -- supplemental order and revise the rule.

13 CHAIRMAN CATANACH: Would you (indicating)  
14 like to make any statements or anything with regards  
15 to your --

16 COMMISSIONER MARTIN: No. I think I've  
17 covered it.

18 CHAIRMAN CATANACH: Okay. I don't know how  
19 that works in terms of the final order with the  
20 descending vote. Would the Commission not sign the  
21 order?

22 COMMISSIONER BALCH: You could basically  
23 let it show that he disagrees with that part of it, but  
24 he may agree with the overall rule. We don't know how  
25 that would go until we vote on it. That has been the

1 case before with prior rulemaking, you know, when one  
2 party dissents. The entire rule doesn't get thrown out  
3 because one part is not agreed to.

4 CHAIRMAN CATANACH: So how would that be  
5 reflected in terms of the final order if he's -- well,  
6 I'm not exactly sure how one would vote on the final  
7 rule in the affirmative if you disagree with half of  
8 that. I mean, I don't know how you would vote yes if  
9 you disagree with part of what we're voting on.

10 COMMISSIONER BALCH: It's been done before,  
11 particularly in the Pit Rule. There were probably 10 or  
12 12 items that Commissioner Bloom disagreed with from the  
13 point of view of the Land Office, and those were put  
14 into the record, as to him disagreeing with them. But  
15 at the end of day, he did agree with and sign the final  
16 rule, while recognizing that parts of it he didn't agree  
17 with.

18 COMMISSIONER MARTIN: And that's acceptable  
19 to me.

20 CHAIRMAN CATANACH: Just recognizing that  
21 on the record is sufficient?

22 COMMISSIONER BALCH: That's what  
23 Commissioner Bloom was looking for --

24 CHAIRMAN CATANACH: Okay.

25 COMMISSIONER BALCH: -- and, presumably,

1 the Land Office.

2 CHAIRMAN CATANACH: So do we vote on the  
3 final rule? Is that where we're at?

4 COMMISSIONER BALCH: Or we wait until we  
5 have it in front of us.

6 COMMISSIONER MARTIN: If we all sign it,  
7 then we agree, right?

8 MS. BADA: Yeah. So you can vote on the  
9 order when it --

10 COMMISSIONER BALCH: So we'll vote on it  
11 when we have it in front of us?

12 CHAIRMAN CATANACH: Okay. Let's do that.  
13 Let's make the necessary revisions to the -- to the  
14 order. And I think it would be -- we would need a new  
15 order, right?

16 MS. BADA: Yes.

17 CHAIRMAN CATANACH: I don't think it would  
18 be very long.

19 So can we have that done by the next  
20 Commission hearing, July 13th?

21 MS. BADA: (Indicating.)

22 CHAIRMAN CATANACH: So I guess we would  
23 just move that that be voted on in its final form at the  
24 July 13th hearing? Is that acceptable to the  
25 Commission?

1 COMMISSIONER BALCH: Yes.

2 COMMISSIONER MARTIN: Yes.

3 CHAIRMAN CATANACH: I think we're done with  
4 that particular case then.

5 (Case Number 15487 concludes, 10:42 a.m.)  
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1 STATE OF NEW MEXICO  
2 COUNTY OF BERNALILLO  
3

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