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STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

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

CASE NO. 14000  
de novo

CONTINUATION OF APPLICATION OF THE  
HARVEY E. YATES COMPANY FOR EXPANSION  
OF UNIT AREA, OTERO COUNTY, NEW MEXICO

AND CASE 14055, continued.

**ORIGINAL**

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
WILLIAM C. OLSON, COMMISSIONER

June 19, 2008

Santa Fe, New Mexico

This matter came on for hearing before the Oil  
Conservation Commission, MARK E. FESMIRE, Chairman, on  
Thursday, June 19, 2008, at the New Mexico Energy, Minerals and  
Natural Resources Department, 1220 South Saint Francis Drive,  
Room 102, Santa Fe, New Mexico.

A P P E A R A N C E S

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FOR THE COMMISSION:

CHERYL BADA  
Assistant General Counsel  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

FOR THE DIVISION:

MIKAL ALTOMARE  
Deputy General Counsel  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

FOR HARVEY E. YATES PETROLEUM:

JAMES G. BRUCE  
Attorney at Law  
P.O. Box 1056  
Santa Fe, New Mexico 87504

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1           CHAIRMAN FESMIRE: Okay. At this time, we'll go  
2 ahead and call the Thursday, June 19, 2008 meeting of the  
3 New Mexico Oil Conservation Commission to order. Let the  
4 record reflect that all three commissioners, Commissioner  
5 Baily, Olson, and Fesmire are present. We, therefore, have a  
6 quorum.

7           The first order of business before the Commission is  
8 the reading and approval of the minutes from the May 9, 2008,  
9 Commission meeting. Have the Commissioners had an opportunity  
10 to read the minutes?

11           COMMISSIONER BAILEY: Yes, I have, and I move we  
12 adopt them.

13           CHAIRMAN FESMIRE: Commissioner Olson, have you had a  
14 chance to read them?

15           COMMISSIONER OLSON: Yes, I have, and I'll second  
16 that.

17           CHAIRMAN FESMIRE: Okay. All those in favor of  
18 adopting the minutes as presented by the secretary signify by  
19 saying aye.

20           COMMISSIONER BAILEY: Aye.

21           COMMISSIONER OLSON: Aye.

22           CHAIRMAN FESMIRE: Aye.

23           Let the record reflect that the minutes were  
24 unanimously adopted and will be signed by the Chair and relayed  
25 to the Secretary.

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CHAIRMAN FESMIRE: The second order of business

before the Commission is the continuation of Case No. 14000,

the de novo application of the Harvey E. Yates Company for

Expansion of Unit Area, Otero County, New Mexico. This case

was continued from the May 9th, 2008, Commission meeting. Are

the attorneys for that case present?

MR. BRUCE: Mr. Chairman, Jim Bruce representing

Harvey E. Yates Company. Yes, I am here.

MS. ALTOMARE: Mikal Altomare here on behalf of the

Oil Conservation Division.

CHAIRMAN FESMIRE: When last we visited this case, we

had raised three questions that needed to be answered or at

least the Commission or the Chair felt that we needed some

guidance in answering, and we asked the parties to brief those

questions for us.

The first is: What is the authority of the Division

and the Commission to approve exploratory units?

The second is: What should be the criteria for

approval under the Oil and Gas Act, if it does have that power?

And third: The contents of an application necessary

for approval.

Have the attorneys had the opportunity to brief those

questions?

MR. BRUCE: Yes, sir.

1 MS. ALTOMARE: Yes, we have.

2 CHAIRMAN FESMIRE: And the briefs were presented both  
3 in a timely manner and represent the results of that research?

4 MR. BRUCE: That is correct.

5 MS. ALTOMARE: Yes, they do.

6 CHAIRMAN FESMIRE: Are you all prepared to discuss  
7 those with us today?

8 MR. BRUCE: I'm prepared. I didn't have any  
9 presentation, but I'm ready for any questions the Commissioners  
10 may have.

11 CHAIRMAN FESMIRE: Ms. Altomare, are you --

12 MS. ALTOMARE: Yes. And I have a couple of things  
13 that I'd like to discuss just in -- basically in regard to what  
14 was addressed in opposing counsel's brief.

15 CHAIRMAN FESMIRE: Okay. Let's break it down and  
16 talk about the questions individually.

17 Let's start with the first question: The authority  
18 of the Division and the Commission to approval exploratory  
19 units.

20 Mr. Bruce, would you like the summarize the results  
21 of your research on that?

22 MR. BRUCE: Well, you can tell I spent several pages  
23 finally getting to the idea that in my opinion, the Division  
24 probably does have jurisdiction to approve exploratory units.  
25 There is nothing specific anywhere in the statutes or the

1 regulations of the Division that I could find that would  
2 approve it.

3 But based on a case I didn't cite, the Santa Fe  
4 Exploration versus Commission case -- and I think Commissioner  
5 Baily may remember that case -- where there was a small  
6 Devonian reservoir where there were two wells, and only one  
7 well was needed. There was one extremely unorthodox location  
8 and in essence, the Division and the Commission forced a  
9 voluntary unit. They restricted production severely until the  
10 people agreed to unitize and allow full allowable production  
11 from the unit. I meant to bring that case along for the  
12 Commission. I apologize.

13 But the supreme court took a fairly expansive view of  
14 the Division's jurisdiction to prevent waste in that instance.  
15 Now, it's not like an exploratory unit because it was a small  
16 reservoir defined by faults and it really involved the original  
17 problem in that case, an unorthodox location of a small  
18 reservoir where only one well was needed and there were two  
19 wells and different ownership, obviously, between tracks.

20 But the fact of the matter is, the courts did say  
21 that the Commission did have authority to prevent waste. And  
22 based on the various -- if nothing else at this point, 60 years  
23 of history approving exploratory units et cetera, et cetera, I  
24 would say the Division does have jurisdiction.

25 On the other hand, I cited the Texas -- have

1 materials regarding Texas exploratory units. I don't see  
2 any -- I think the Division has jurisdiction, but is that  
3 exclusive? Can the parties enter into agreements voluntarily?  
4 Certainly they do. They enter into JOAs voluntarily, working  
5 interest owners enter into working interest units voluntarily  
6 covering a number of sections of land, and there's nothing to  
7 prevent that.

8 So with that, I would turn it over for any questions  
9 or over to Ms. Altomare.

10 CHAIRMAN FESMIRE: Okay. Mr. Bruce, if I understood  
11 your argument correctly, it's that the authority in your  
12 brief -- that the authority to approve exploratory units,  
13 voluntary exploratory units, is based on the fact that we've  
14 done it, like you said, for the last 60 years.

15 And part of Ms. Altomare's argument is that the  
16 authority and some of the things that you stated in the  
17 authority is not there in the rules or the statutes. Do we not  
18 have the ability to change bad habits.

19 MR. BRUCE: I hope we all have that authority. Well,  
20 I suppose I'd have a question in return. I'm not sure what bad  
21 habits you're talking about.

22 CHAIRMAN FESMIRE: Approving units that we are not  
23 statutorily or regulatory capable of approving.

24 MR. BRUCE: You're saying even if you don't have  
25 regulatory authority at this point, why don't you expand your

1 jurisdiction?

2 CHAIRMAN FESMIRE: We've been doing this for  
3 60 years. You've provided several examples that we have been  
4 doing it. And I will grant that we have done that in the past.  
5 But at the same time, you argue that you cannot put your finger  
6 on a statute or regulation that gives the authority to do that.  
7 Now that we've recognized that --

8 MR. BRUCE: Frankly, I don't -- an exploratory unit  
9 is a voluntary contract among the parties, and if the Division  
10 decides that they would not exercise jurisdiction, frankly, I  
11 don't see a problem with that. Certainly in New Mexico, where  
12 virtually every unit contains state and federal land, you know,  
13 the BLM and the Land Office certainly oversee their own land  
14 ownership situation.

15 CHAIRMAN FESMIRE: Yet they appear to have conveyed  
16 upon us the authority to approve those agreements, the Public  
17 State Land Office and the BLM.

18 MR. BRUCE: Well, I would agree with the State Land  
19 Office, although that language is not mandatory. It says the  
20 Commissioner may defer a decision until it's approved by the  
21 Division.

22 With respect to the federal regulations, I believe  
23 that that language really pertains to when there is state land  
24 involved, the BLM won't approve it until the Land Office  
25 approves it. I don't think that language -- because the



1 language was cited by Division counsel in her brief. I  
2 highlighted it.

3 CHAIRMAN FESMIRE: So did I.

4 MR. BRUCE: Page 4 talks generally about if state,  
5 Indian and/or fee lands are involved, the unit agreement should  
6 be approved by the appropriate state agency. Then down at the  
7 very last two lines, it talks about the state or Indian agency  
8 should be given the opportunity to commit its land prior to  
9 authorized officer approval. Obviously, that's the Land Office  
10 and that is not the Division. The Land Office is the owner of  
11 that land and not the Division.

12 So that's why I think there -- while the BLM seems to  
13 go along with Division approval of these exploratory units, I  
14 cannot find anywhere in the federal regs or the statutes where  
15 the state regulatory agency, whether it's the OCD or the  
16 Oklahoma Corporation Commission is required to approve those  
17 units.

18 CHAIRMAN FESMIRE: Okay. Did you look at the draft  
19 document that Ms. Altomare cited?

20 MR. BRUCE: Not the whole document, no, but I did  
21 try. As I said, I've been in Midland too long.

22 CHAIRMAN FESMIRE: And your brain is fried.  
23 Commissioner Bailey, do you have some questions?

24 COMMISSIONER BAILEY: Is one of the issues why the  
25 OCD approval might have been begun because of issues concerning

1 proration units and without OCD recognition of an exploratory  
2 unit, that proration units might not follow the exact state  
3 rules.

4 MR. BRUCE: Well, perhaps in New Mexico. I do know  
5 that -- because in New Mexico the BLM has conceded spacing unit  
6 size. And I don't know how or if it's a memorandum of  
7 understanding or if it's just an informal agreement, spacing  
8 units are set by the Division. But I do know that in other  
9 states, that's not the case. That's not the case in Wyoming  
10 with respect to the federal lands.

11 For instance, in Colorado, I know that long before  
12 the Division approved infill drilling on the Fruitland Coal,  
13 the BLM, on behalf of itself and the Southern Ute Tribe,  
14 approved 160-acre spacing after initially the Colorado Oil and  
15 Gas Conservation Commission had approved 328-acre spacing. And  
16 there is a regulation, and I can get it for the Commission that  
17 talks about well spacing, although it does say in appropriate  
18 circumstances that it would go along with New Mexico well  
19 spacing.

20 So I don't know that that's the issue and  
21 furthermore, at least in this case, even though state spacing,  
22 as pointed out at the hearing, of these gas reservoirs is  
23 160 acres, the BLM and the Land Office is approving PAs based  
24 on whole sections. So I don't know if there's that much of a  
25 connection, is what I'm saying.

1 COMMISSIONER BAILEY: PAs are not always spaced on  
2 whole sections in Land Office approvals.

3 MR. BRUCE: Correct.

4 COMMISSIONER BAILEY: Many times it's just quarter  
5 sections or half sections.

6 MR. BRUCE: That is correct. And I believe up in the  
7 well units in the northwest especially, they generally do PA  
8 approvals on these, you know, the big San Juan units. It  
9 generally does go along with well spacing, 320 acres. If I  
10 could have anticipated that question, I have been in other  
11 situations again -- and this one was probably in Sandoval  
12 County -- where the BLM -- it was federal land and the spacing  
13 unit, I believe -- even though well spacing in an oil pool, one  
14 of the Mancos oil pools was 320 acres, the BLM, it was entirely  
15 federal land approved a PA in excess of 320 acres.

16 So, again, I'm not -- I don't think that, as such,  
17 well spacing is what determines that situation.

18 COMMISSIONER BAILEY: The well spacing is modified by  
19 the unit agreement.

20 MR. BRUCE: Correct.

21 COMMISSIONER BAILEY: And I assumed that that was the  
22 reason why the OCD had to be at least cognizant of the unit  
23 agreement.

24 MR. BRUCE: That could be. Certainly, I mean, you  
25 know, at least insofar as state land and fee land, the Division

1 does exercise broad jurisdiction over those lands. I mean,  
2 federal land in New Mexico, like I said, seems to be -- federal  
3 land in certain other states like Wyoming is, as I understand  
4 it, not under the sway of the state agency so much as it is  
5 here in New Mexico.

6 But, you know, on the other hand, the BLM does  
7 approve APDs with respect to federal quote/unquote "federal  
8 units" which is a nebulous term because it doesn't mean 100  
9 percent federal unit. It exercises quite a bit of operational  
10 authority over those federal units.

11 COMMISSIONER BAILEY: That's all the comments I had.

12 CHAIRMAN FESMIRE: Mr. Olson, do you have any  
13 questions of this witness?

14 COMMISSIONER OLSON: Yeah. Mr. Bruce, you were just  
15 mentioning Oklahoma in here. I don't know that you have that  
16 in your document here. I think I saw you reference Texas.

17 MR. BRUCE: I did not reference it in the brief,  
18 Mr. Commissioner.

19 COMMISSIONER OLSON: So Oklahoma also had specific  
20 statutes dealing with these agreements?

21 MR. BRUCE: I do not know, and I can provide this to  
22 the Commission after the hearing if they so desire, but  
23 Oklahoma does not. I've got a listing. There's probably a  
24 couple of dozen states that do have reference -- that do  
25 reference approval of voluntary units.

1           Now, I can't tell from this listing. I did mention a  
2 couple, the Wyoming and the Utah, that appear to apply to  
3 exploratory units. The Texas one does not. But there are  
4 other states; Alaska, Colorado, Montana, and others out west  
5 that do. But Oklahoma does not.

6           COMMISSIONER OLSON: Those other states, they do have  
7 a statutory authority for approving those?

8           MR. BRUCE: Yes, they do.

9           COMMISSIONER OLSON: So what about states that don't?  
10 Do they still work on approval of those? Do you know?

11           MR. BRUCE: You know, I looked at a couple of  
12 specific states. And this was, I think, the cite I gave in my  
13 brief. These statutes on Page 3 of my brief, the Kramer and  
14 Martin cite, Section 17.03, is what I'm looking at right here.

15           I do not look at -- I did look at the Utah. I did  
16 look at the Texas and I did look at the Colorado -- Utah --  
17 simply because they were close by. But I did not look at those  
18 others.

19           COMMISSIONER OLSON: Okay.

20           MR. BRUCE: And I suppose the other thing I would  
21 point out, as I pointed out in my brief, you know, the  
22 Division -- even though in the last order I included my brief  
23 which was a Yates Petroleum order just earlier this year for  
24 the Thurman State Unit -- the state in ordering paragraph four,  
25 "That all plans of development, all expansion or contractions

1 or PAs and expansions or contractions of the unit area shall be  
2 submitted to the Division director for approval."

3 As I pointed out in my brief, the OCD, for the last  
4 decade, has not approved expansions -- creations or expansions  
5 of participating areas. It also had not approved plans of  
6 development and operations. And I would just simply point to  
7 the file in the original case on this matter resulting in the  
8 original order where those documents were submitted by HEYCO to  
9 the Division, but the Division never acted on them.

10 COMMISSIONER OLSON: So I'll follow up on what  
11 Commissioner Fesmire was asking. So the Division's approval of  
12 these in the past is, from what you're saying, largely based on  
13 history and it's not really on a statutory authority or  
14 regulation.

15 MR. BRUCE: That is correct. And as I said before, I  
16 think, at the original hearing, 100 percent federal units -- I  
17 believe there are a couple of examples of 100 percent federal  
18 units being approved by the Division, but for the most part,  
19 they were not. I think if you went to the Skelly Unit, which  
20 is down in -- an old federal unit in southeast New Mexico and  
21 some others that are 100 percent federal, they were not  
22 approved.

23 And then, of course, when fee lands are involved, I  
24 think -- when fee lands were involved, it was more of the  
25 operator seeking approval of the Division because of that

1 language I quoted in my brief, where the fee lands can't be  
2 unitized -- can be unitized by the working interest owner if he  
3 or she gets Division approval. That was the situation, by the  
4 way, of course, in the Bravo Dome. There was plenty of fee  
5 lands in that -- there are plenty of fee lands in that unit.  
6 And that is why there was the big fight at the Commission  
7 regarding unitization. Because I actually, early in my career,  
8 represented some of those fee owners. And they just did not  
9 want to be part of that unit.

10 So it's almost to the point of a fee lease trying to  
11 confer jurisdiction on the Division.

12 COMMISSIONER OLSON: Well, if we don't have statutory  
13 authority for approving exploratory units, should we be doing  
14 that?

15 MR. BRUCE: Well, again, as I said in my brief, if  
16 it's federal or state -- or federal/state, I believe the BLM  
17 and Land Office, because of how they review these documents,  
18 have the authority to look after their own interests.

19 But when it comes to fee owners, who's going to look  
20 after their interests? And, of course, the logical agency for  
21 that is the Division.

22 But once again, Mr. Commissioner, I couldn't find  
23 anything that granted jurisdiction of the Division to approve a  
24 voluntary agreement.

25 COMMISSIONER OLSON: Okay. That's all I have.

1 CHAIRMAN FESMIRE: Ms. Altomare, with respect to  
2 question one: Do you want -- and if I read your brief  
3 correctly, basically it's your understanding that we do have  
4 that authority.

5 MS. ALTOMARE: Yes. Although, I did do some  
6 additional research after receiving counsel's brief. And I  
7 think that there's a tie-in with the State Land Office and the  
8 statutory authority granted to them. The connection is, as I  
9 see it in particular, the State Land Office is given the  
10 authority basically to modify the model agreement -- unit  
11 agreement -- as it sees fit -- to add whatever language it sees  
12 fit as long as it doesn't basically adversely affect federal or  
13 Indian lands of the authorized officer's authority and  
14 responsibility to protect the State's interests when there are  
15 state lands involved in a unit.

16 What the State Land Office in New Mexico has done has  
17 integrated language that has imposed upon the Oil Conservation  
18 Division certain rights, responsibilities, duties and  
19 obligations. And in this case, I think that that is from where  
20 we are deriving. It's indirectly from the feds, but it is  
21 through this process.

22 The State Land Office is given statutory authority to  
23 give approval on these units and to work with the feds on these  
24 units. There's no denying that the State Land Office is the  
25 one who controls the interest in the land. You know, counsel



1 is very clear that if there's an appropriate State entity --  
2 they're arguing that it is the State Land Office who has the  
3 interest in the land.

4 The State Land Office has published an Oil and Gas  
5 and Minerals Division Manual, which I'm sure Commissioner  
6 Bailey is probably familiar with.

7 CHAIRMAN FESMIRE: She probably wrote it.

8 MS. ALTOMARE: In the manual, there are requirements  
9 for final approval of state, federal fee, and state fee units.  
10 For an exploratory unit it expressly states that an order of  
11 the Oil Conservation Division, the State Land Office will not  
12 approve any units until they receive an order in the State Land  
13 Office.

14 So I would disagree with counsel that it is a  
15 discretionary act on the part of the State Land Office in  
16 statutory form, or regulatory form. It may be -- on its face  
17 it may appear to be discretionary. In practice and policy and  
18 application, the State Land Office has made the decision in  
19 practice to seek the guidance and approval of the Oil  
20 Conservation Division in the process of approving these units.  
21 Which is -- I think this is why this precedent has been set all  
22 these years for approval of these units.

23 CHAIRMAN FESMIRE: So we have to look at the statutes  
24 governing the State Land Office to derive our authority to  
25 approve?

1 MS. ALTOMARE: Right. It's the -- yeah.

2 CHAIRMAN FESMIRE: Okay. Well, assuming for a minute  
3 that is correct, how do we get to the authority to approve  
4 federal participation in these units?

5 MS. ALTOMARE: I'm sorry?

6 CHAIRMAN FESMIRE: How do we get the authority to  
7 approve federal units?

8 MS. ALTOMARE: Federal where there's no state  
9 involved?

10 CHAIRMAN FESMIRE: Right.

11 MS. ALTOMARE: That I'm not sure of, but definitely  
12 where there are fee lands or state lands involved. And I did  
13 print additional copies of the modified State Land Office  
14 version of the unit agreement, if you wanted those. Because  
15 they have -- that is where the specific language designating  
16 the duties on the OCD basically giving the OCD and the  
17 Commission the authority and responsibility, essentially, for  
18 approval of these units, so I have those. But I don't -- I  
19 thought I had printed --

20 CHAIRMAN FESMIRE: Okay. Well --

21 MS. ALTOMARE: -- the statutory stuff but, I don't  
22 know if I have it with me.

23 CHAIRMAN FESMIRE: Let's go to some of the arguments  
24 you've made concerning question one. We're talking about the  
25 first question now. Basically, if I understood it correctly,

1 you were deriving our authority from a draft BLM manual.

2 MS. ALTOMARE: I was basically saying -- because  
3 there wasn't very much out there. I was looking at the history  
4 of what our agency has been doing. And assuming that there's a  
5 reason that we've been doing it all this time, I was looking at  
6 what the expectations of the feds were for what state agencies  
7 should be doing, whether or not we have our own statutory  
8 structure for it.

9 The feds clearly expect that state regulatory  
10 agencies are going to play a role in this process. And from  
11 what I can understand from reading the manual, it seems like  
12 they are trying to preemptively avoid conflicts of law between  
13 state and federal law jurisdictional issues when there are  
14 units involving state and fee lands intertwined -- juxtaposed  
15 with the federal unit stuff. Which seems like it's reasonable  
16 to try and address spacing issues ahead of time, to try and  
17 address things ahead of time that might arise that are going to  
18 conflict when you are combining these parcels of land that have  
19 different laws applicable.

20 I think that the manual actually has a lot of really  
21 informative things to say about -- if nothing else, it's very  
22 revealing about what the BLM expects of state agencies. Now,  
23 whether or not our agency decides to take on those obligations  
24 or argue with the feds as to whether or not they actually are  
25 our obligations is an entirely different issue. But clearly,

1 that is what they are expecting state agencies to be doing  
2 because that's what they've outlined as expectations for  
3 operators in the process -- participating in the process -- to  
4 be doing with regard to their submissions and the process for  
5 these applications.

6 CHAIRMAN FESMIRE: Commissioner Bailey?

7 COMMISSIONER BAILEY: I'd like to point out one small  
8 area where you say the Land Office is expecting guidance from  
9 the OCD. The fact that we now require OCD approval before we  
10 give final approval, that is simply to prevent OCD from being  
11 short-circuited and to prevent any kind of conflict between the  
12 two agencies.

13 MS. ALTOMARE: Okay.

14 COMMISSIONER BAILEY: It's not conferring authority.  
15 It's not conferring or even asking for guidance. It's simply  
16 making sure that we don't have any conflict that can arise.

17 MS. ALTOMARE: Okay. So again, it's the same  
18 dynamic, I think, that the feds are doing by preemptively  
19 trying to make sure that the state agencies are also brought in  
20 at an early stage. I think it's probably a similar dynamic  
21 that they're making sure that everybody is on the same page  
22 early on so that anyone who has any questions early on in the  
23 process can speak their mind and get it flushed out before it  
24 becomes too late to deal with.

25 CHAIRMAN FESMIRE: Right. And because OCD holds

1 public hearings on any kind of action, it prevents having to  
2 have three separate hearings where the BLM would have to have  
3 theirs, the Land Office would have to theirs, and the OCD at  
4 some point maybe having to have theirs. So it's condensing all  
5 that into one public hearing for unit approval.

6 MS. ALTOMARE: Which makes sense. Thank you.

7 CHAIRMAN FESMIRE: Commissioner Olson?

8 COMMISSIONER OLSON: Well, I was just thinking, it  
9 seems, then, that the BLM's manual is pretty much just based on  
10 the historical practice that's gone on, I'm assuming; is that  
11 correct?

12 MR. ALTOMARE: I would presume so, although the BLM's  
13 manual, I would presume, is based on a nation-wide approach.  
14 So it would be the collective approach of those states that do  
15 have statutory structures, frameworks, in place for these kinds  
16 of unit approvals and those that don't. I think that being  
17 said, it's probably just their generic expectations of what  
18 they would see as appropriate to preemptively address these  
19 issues early on in the process that they see that might be of  
20 concern in dealing with state agencies where state and fee  
21 lands are involved in these units. That's my read on it.

22 Again, I mean, the law -- the regs, the federal regs  
23 and the federal law is so vague and has given so little  
24 guidance for so many years that this manual has been like a  
25 watershed. I mean, it's just like all of a sudden there's all

1 this information. I'm not sure from where it's derived. There  
2 isn't a whole lot of information provided, but I would assume  
3 that it's kind of the collective expectation of the BLM on a  
4 nation-wide basis based on the historical approval of these  
5 units.

6 COMMISSIONER OLSON: I guess one other question is I  
7 saw -- maybe this will come up later, I don't know -- but I saw  
8 that Mr. Bruce had given us his brief of a rather large stack  
9 of prior approvals of units.

10 MS. ALTOMARE: One thing I'd like to note about that  
11 stack is that over 75 percent of them are state-only units. So  
12 there is a big distinction there, just for your own  
13 information. So not all of them deal with federal issues. So  
14 just to bear that in mind when we're talking about applying the  
15 standards and the expectations of the federal regulations  
16 versus unit approval just for state purposes.

17 COMMISSIONER OLSON: Other cases of denial of  
18 exploratory units? There's a lot of approvals here.

19 MS. ALTOMARE: That I don't know. I know that  
20 counsel has made the argument that up until this point, the  
21 Division role has basically been -- I believe he used the word  
22 "ministerial" nature. I would submit that regardless of what  
23 the practice has been in the past as far as the rote Commission  
24 submission approval practice, there is a time to change bad  
25 habits, as they were, if that is the case.

1           And the more recent approvals that are in here, there  
2   is a trend where you see a peppering of more fact-specific  
3   things being integrated, references to unorthodox well  
4   locations, references to more environmental issues, references  
5   to more life testimony being given. There's less of the more  
6   rote submission of affidavit, approval; submission of  
7   affidavit, approval as you get more recent. And, in fact, I  
8   think the most recent one that is in here actually makes  
9   reference even to the protection of health and human -- human  
10   health and the environment and provides that additional  
11   information about protection of groundwater and additional  
12   investigation about freshwaters on the unit.

13           CHAIRMAN FESMIRE: That would be 13377 -- Case  
14   No. 13377, the Hueco South one on there?

15           MS. ALTOMARE: Yeah. And again, that one doesn't  
16   happen to be a federal one, but there does seem to be -- as the  
17   regulations have changed, as the OCD rules have changed a  
18   little bit to integrate more environmental concerns in addition  
19   to the traditional waste and correlative rights, there does  
20   seem to be a little bit more of a trend to actually put a  
21   little more thought into the process.

22           And so I don't know if there are denials. But I know  
23   that the approvals have changed a little bit in nature. And I  
24   think that the reason that we're here today is because there's  
25   a recognition, at least by the Chairman, that it's not really

1 clear what direction we're going with these. And perhaps it is  
2 the time to establish once and for all exactly what role the  
3 Division is supposed to be playing, whether it is truly a  
4 ministerial role or whether we should be putting a little more  
5 thought and deliberation into this process.

6 COMMISSIONER OLSON: Well, I noticed the same thing  
7 in looking at more recent orders that they have much more  
8 detail than they had in earlier orders. Thank you.

9 CHAIRMAN FESMIRE: So I think with respect to  
10 question one, we've got both sides arguing that we do have the  
11 authority; one based on bureaucratic inertia, essentially, and  
12 the other one based on the blessing of the BLM, at least with  
13 respect to federal lands. Is that a pretty accurate way to  
14 describe it?

15 MS. ALTOMARE: On thing the BLM and the sister  
16 office --

17 MR. BRUCE: I disagree with respect to the BLM. I  
18 don't think they care. But the Land Office has its -- as I  
19 said in the regulations and in my brief, that they may seek  
20 Division approval. I think it's more inertia.

21 CHAIRMAN FESMIRE: Okay. Does anybody have anything  
22 else they want to add on question one?

23 MS. ALTOMARE: Only that they are, as noted by  
24 counsel in his brief, he did cite one case. I note that there  
25 are a number of cases where there is tacit recognition of the



1 Division's authority to approve these. There are multiple  
2 opportunities for the higher courts to have addressed this and  
3 said no, the Division shouldn't be exercising this authority,  
4 and they've never done that in all of this time. So I think  
5 that, clearly, this authority is being exercised within its  
6 rights.

7 CHAIRMAN FESMIRE: Okay. Question two: The criteria  
8 for approval under the Oil and Gas Act. Judging from the  
9 briefs, we may get kind of into a few more differences between  
10 the parties. Mr. Bruce, you want to start with that?

11 MR. BRUCE: Well, I think both briefs recognize that  
12 really, it's just based on land. In other words, have a  
13 sufficient requisite number of voluntary joinders been obtained  
14 to give what the BLM and, I think, the Land Office has always  
15 referred to "effective control" of the unit? Which -- and I  
16 didn't look it up in any of the documents -- but I've always  
17 for decades gone under the assumption that if the BLM and the  
18 Land Office see 85 to 90 percent voluntary approval of the unit  
19 working interest and royalty interest, they will generally  
20 approve it. They certainly wouldn't approve it if there was 50  
21 or 60 percent approval.

22 And then the other thing is simply geology. Can you  
23 justify the unit outline? That's it. And really, if you go to  
24 the cases I cited -- and I only attached one as Exhibit I, one  
25 hearing transcript -- but if you go to all of the others except

1 where the units involved in unorthodox locations since that was  
2 brought up, really, that's different than approval of a unit.  
3 That really does affect correlative rights of on offset  
4 operator.

5 Other than this case -- and to a certain extent, the  
6 Waco South Unit -- all of the other cases are just dependent on  
7 geology, really. There hasn't been any change, and I've been  
8 doing this for 25 years. All of the evidence has just been  
9 some geology and some land testimony. I could attach -- and  
10 addressing one of Commissioner Olson's questions -- I have  
11 never seen a unit, exploratory unit, denied, period. Never.

12 And I think you could go upstairs to the Byrams  
13 Reporter, you know, as this contains at least the most recent  
14 updates, 680 pages of unit orders, and some of them do involve  
15 waterfloods. But if you went through those 680 pages and  
16 looked at the orders involving those units, every exploratory  
17 unit, they've all been approved, going back -- I don't know  
18 when the earliest ones were. There were some federal  
19 prohibitions against units until the '40s, I believe. And so  
20 if you go back 60 years, every single one of them has been  
21 approved. And really, it's just based on land control and  
22 geology.

23 CHAIRMAN FESMIRE: Mr. Bruce, that's interesting that  
24 federal prohibition on units. Wasn't that changed to  
25 facilitate waterflooding and secondary recovery?

1           MR. BRUCE: Well, there used to be a limitation on  
2 the amount of federal acreage you could lease -- one company  
3 could lease. And there was some legal issues with respect  
4 to -- especially when the large units were being formed up in  
5 the San Juan Basin, you know, it's like the Big A Unit, whether  
6 if other companies joined in on that, if it would violate the  
7 federal restriction on one company's ownership of federal  
8 acreage, control of federal acreage.

9           Now, I don't know about the question you're asking.  
10 I wouldn't be surprised. People tried to form units in the  
11 '30s. If you go over to the BLM, which I've spent too much  
12 time going through those lease files, you see where certain  
13 people tried to form units and there were always legal issues  
14 until the BLM or the General Land Office sometime, I believe,  
15 in the late '40s came to start approving them.

16           CHAIRMAN FESMIRE: So, to sum up your argument, the  
17 only two criteria that we should use are the land situation,  
18 whether it's been a sufficient voluntary joinder and the  
19 geology testimony.

20           Would you refresh my memory? We're talking about --  
21 this is a 1600-acre unit currently, if I remember correctly.

22           MR. BRUCE: It's currently about 8500 acres.

23           CHAIRMAN FESMIRE: And you're seeking to add how much  
24 to it?

25           MS. ALTOMARE: I thought it was bigger than that.

1 MR. BRUCE: The current -- as expanded, it would  
2 contain 11,600 acres-plus. As originally formed, it contained  
3 a little over 800 acres of land, all state and federal.

4 CHAIRMAN FESMIRE: Commissioner Bailey, do you have a  
5 question on that issue?

6 COMMISSIONER BAILEY: Not really.

7 CHAIRMAN FESMIRE: Commissioner Olson?

8 COMMISSIONER OLSON: Just one question: I guess,  
9 what level of -- since you've been involved in a lot of these  
10 before -- what level of geology has been submitted in past  
11 cases?

12 MR. BRUCE: A very minimal amount. I mean, I know  
13 that it's not a -- I can't state the specificity, which is why  
14 I enclosed the -- why I referenced in the brief and enclosed  
15 that one hearing transcript. It's been so minimal that  
16 starting four or five years ago, the Division said, "You know,  
17 this is all routine. We really don't even want a witness to  
18 question."

19 And that is still used today for the most part. I  
20 have the -- you mentioned the Waco South Unit, and of course,  
21 although I attended the hearing, that was Mr. Carr who did that  
22 case, and I believe there were expiring leases.

23 And they brought witnesses up simply because, number  
24 one, the large land area involved, 80-some thousand acres, and  
25 they wanted to make sure they answered all the Division's

1 questions because that unit was approved in November 2007. And  
2 I believe they had leases -- a number of leases expiring  
3 December 1 or thereabouts, in 2007.

4 But if you look through each and every one of these,  
5 at least over the last decade -- well, actually, ever since  
6 I've been around the Division, you bring up a geologist who  
7 vaguely justifies the unit boundary. Maybe I shouldn't say  
8 vaguely. But I use that word because these are exploratory  
9 units. You don't always have that much geology. Maybe  
10 nowadays it's a little easier if you do have some seismic to  
11 justify things.

12 But I probably shouldn't say this, but a better  
13 person to answer that question would probably be Mr. Martinez  
14 of the Land Office who's in the audience who looks at these on  
15 the weekly basis. Because these -- he's the one who decides --  
16 and whoever the person is down at the BLM in Roswell -- who  
17 decides these things.

18 But, you know, this isn't like a waterflood unit  
19 where you pretty much have an idea of what the exterior of the  
20 pool is and how you're going to form the boundaries of that  
21 unit. It is exploratory. We don't know exactly what the final  
22 outline of the unit is. And I think that's -- therefore, it is  
23 kind of a loose standard. Because until you really start  
24 drilling, you don't know.

25 And the unit agreement itself takes that into

1 account, because after a certain period, if lands haven't been  
2 developed, the unit starts contracting down. And so there's  
3 already a method in place if you make a unit too large, it's  
4 going too expand down in the long run anyway. Well, not in  
5 that long of a run. I believe there's a five-year period in  
6 which to justify the size of the -- the final size of the unit.

7 So, you know, not being a geologist myself, I can't  
8 give you a hard and fast statement as to what geologically is  
9 required. But if you went back and looked at these affidavits  
10 of the engineers -- I mean, of the geologists -- submitted in  
11 these cases over the last five years, you'd see some structure  
12 maps and some proposed -- or what the geologist thinks is a  
13 reasonable isopach on the Morrow or the Strawn or whatever to  
14 justify the unit boundary.

15 CHAIRMAN FESMIRE: Can I interrupt with a question on  
16 that issue? On Page 9 of your brief, you summarize HEYCO's  
17 evidence in this case. And you just hit on it. You said  
18 there's not enough exploration that has been done to contract  
19 the acreage out of the unit. But has there been enough  
20 exploration done to expand the unit by 2800 acres?

21 MR. BRUCE: Well, I'd say two things about that:  
22 First of all, the reason I say not enough exploration to  
23 contract the unit is because that's what the Division's order  
24 said or suggested that it should be contracted. And my  
25 argument on that is, number one, there hasn't been enough

1 exploration because they have -- HEYCO has been prevented from  
2 further exploration over the last six years. And so how can  
3 you say it should be contracted if they are not allowed to  
4 develop, number one?

5 And insofar as expansion goes, they have drilled two  
6 wells. And just by those two wells, the current participating  
7 areas include 65 or 70 percent of the unit. So obviously  
8 there's not only the geologist for HEYCO, but the Land Office  
9 and the BLM believes that based on subsequent development, it  
10 may -- the final size of the unit as expanded is justified.  
11 And so if the BLM and the Land Office have looked at this  
12 pertinent data under the unit agreement and says yes, why is  
13 the Division now objecting?

14 And again, what is the harm? Because if it's not  
15 prospective, it will be contracted out. And again, looking at  
16 the unit outline -- and this was brought up in the Division  
17 order about expansion -- all of the expansion acreage includes  
18 sections in which there is already unit land in it.

19 And if there is to be a greater -- if participating  
20 areas have been expanded based on 640 acres, in essence, or if  
21 the Division has suggested in its order thinks that spacing  
22 should be increased to 640 acres, then the well units just  
23 including current land within the unit, would encompass the  
24 entire unit as expanded.

25 CHAIRMAN FESMIRE: Commissioner Olson?

1           COMMISSIONER OLSON: Well, I guess to still follow up  
2 on the geologic information, because I see the Division will be  
3 addressing this -- because I see in their brief that the BLM  
4 manual -- I guess, this draft manual -- provides for  
5 submissions of, as they say, detailed geologic data to support  
6 the revision. So it sounds like you're saying you can't  
7 provide detailed geologic data. But that's what they're  
8 requiring. And they even go into greater depth as to what that  
9 is.

10           MR. BRUCE: Well, I mean, I suppose it depends on as  
11 detailed as you can get at this time. Certainly, they  
12 submitted well information, the engineering data on the well,  
13 on the two wells that have been completed insofar as  
14 permeability and porosity. And that type of engineering data,  
15 actually, was submitted to the Division -- excuse me -- to the  
16 BLM, and if these are the regulations, I presume the BLM down  
17 in Roswell was following these regulations. And, obviously,  
18 HEYCO submitted enough data --

19           CHAIRMAN FESMIRE: This is a draft manual. It hasn't  
20 been adopted as --

21           MR. BRUCE: Well, and I think if you look just at the  
22 current regulations themselves, they in essence state the same  
23 thing as Exhibit A to my brief. It just says, "Geologic  
24 information including the results of any geophysical surveys  
25 and any other available information showing unitization as



1 necessary should be furnished."

2 It's basically -- this expands on it. But it's  
3 basically saying the same thing. And what I'm saying is HEYCO  
4 submitted enough data to the BLM and to the Land Office whereby  
5 they looked at it and thought expansion was justified.

6 COMMISSIONER OLSON: I guess, then, if it's coming  
7 for Division approval, shouldn't the same information be  
8 provided to the OCD?

9 MR. BRUCE: All the information that was submitted to  
10 those two agencies was submitted to the Division. It's all in  
11 the case file for the original case. I forgot the case number,  
12 which was incorporated in the record.

13 COMMISSIONER OLSON: Thank you.

14 CHAIRMAN FESMIRE: Ms. Altomare, do you want to  
15 address question number two?

16 MS. ALTOMARE: Yeah. Just to be clear, the State  
17 Land Office has not yet approved the unit expansion. They have  
18 given it preliminary approval. They simply looked at it and  
19 said, okay, it's all right to go to the Oil Conservation  
20 Division -- correct me if I'm wrong -- through their stage.

21 And then once the Oil Conservation Division gives  
22 their approval, the State Land Office will review it in full  
23 for final approval. So just for the record, I wanted to be  
24 clear about that, because there is some confusion in the record  
25 as to that.

1           While it is a draft manual, the manual has been  
2   published for use for guidance for operators, so I don't know  
3   whether or not HEYCO was aware of that or was using it, but it  
4   does provide some pretty instructive information about what is  
5   to be included in these geological reports. In these  
6   applications, it specifically says that the BLM expects  
7   operators to:

8           "Furnish, as part of the application, a geological  
9   report including a public land survey base showing the proposed  
10   unit boundary and detailed geological maps illustrating the  
11   limited mechanism for production of the objective formation  
12   along with structure cross sections and other geologic data as  
13   they relate to the proposed unit. Geologic map and cross  
14   section should show the strike and dip of all pertinent faults.  
15   The map must show the location of all wells drilled in the unit  
16   area and immediate vicinity thereof and should indicate the  
17   status and depth of each well and the lowest formation  
18   penetrated."

19           None of that was provided on any of the information  
20   that was provided by HEYCO in this case.

21           CHAIRMAN FESMIRE: To us, or to the BLM?

22           MS. ALTOMARE: If what was provided to us was  
23   provided to the BLM, then neither; but certainly not to us.

24           "Appropriate cross sections and stratigraphic columns  
25   identifying prospectively productive formations and indicating

1 expected depths." The cross sections that were provided to us  
2 were hand drawn and omitted significant details.

3 "Pertinent geophysical interpretations and the  
4 geologic basis for selecting the proposed unit area boundary  
5 such as closing structural or stratigraphic contour fault or  
6 pinch-out." In addition to the geologic report, seismic data,  
7 schematics, anything else that would be helpful to determining  
8 whether or not the expansion is justified should have been  
9 submitted. And nothing of that nature was submitted.

10 To be clear, the OCD is not opposing the expansion.  
11 The OCD is opposing granting the expansion based on  
12 insufficient information. As far as answering question number  
13 two, I think that opposing counsel has conceded in his brief  
14 that if it's a given that the OCD has the authority to review  
15 and approve these unit applications and revisions, then the  
16 same information should be submitted to the OCD for review and  
17 the Commission for review as it is submitted to the State Land  
18 Office and the BLM. As far as materials that are submitted for  
19 review, that's what I would argue should be submitted to the  
20 Oil Conservation Division for review and consideration.

21 Further, it seems clear from the BLM materials,  
22 including the manual, that the same standard applies for unit  
23 revision applications as it does for initial unit establishment  
24 consideration. So the same stack of materials that is  
25 submitted for a unit application should be submitted for a unit

1 expansion. It shouldn't be a lesser application simply because  
2 they've already gone through the process once.

3           Indeed, I would submit that it should be even more  
4 comprehensive because unlike the initial application where they  
5 have even less geologic information, they should have more at  
6 the time that they're submitting an application for revision.  
7 So the argument that it's less, that it's an exploratory unit,  
8 that they don't have a lot of information to submit to justify  
9 what they're asking for, has less merit at the time that  
10 they're submitting an application for revision than it does at  
11 the initial time of application.

12           And in this case, they submitted less information at  
13 the time of the application for revision than they did at the  
14 initial time of application, which is one of the reasons that  
15 the OCD found the application troublesome.

16           As far as the other issues, as far as the submission  
17 process -- jumping around to other issues -- one thing that's  
18 interesting in the manual is that it specifically says that  
19 when an application is being considered for request for  
20 revision of a participating area and, granted, we're talking  
21 about the unit. But as counsel has indicated, at least  
22 according to the modified State Land Office version of the unit  
23 agreement, OCD is also supposed to be participating in the  
24 revision of the participating area consideration, any doubts  
25 are to be resolved against participation. And I would submit

1 that --

2 CHAIRMAN FESMIRE: How do you cite that?

3 MS. ALTOMARE: That is part of the manual description  
4 and it's in Section 2G(1) and 2G(2) where it's discussing the  
5 initial participating area and revision of participating area.

6 CHAIRMAN FESMIRE: Ms. Altomare, isn't -- I mean, the  
7 question is what criteria we should use. Basically, you're  
8 saying we should use the same criteria that the BLM proposes --

9 MS. ALTOMARE: Right.

10 CHAIRMAN FESMIRE: -- that we use.

11 MS. ALTOMARE: All I'm saying is that the burden is  
12 on the applicant.

13 CHAIRMAN FESMIRE: In that draft BLM manual.

14 MS. ALTOMARE: Correct. And I think that the draft  
15 BLM manual is for the first time giving us a window into what  
16 is being -- what the BLM has all this time really expected of  
17 applicants. It is flushing out what has been underneath all of  
18 the regs and federal law that has been unspoken all this time  
19 and just kind of expected but not actually put into writing in  
20 a way that applicants and operators can look at and say, "Okay.  
21 This is what we're supposed to do."

22 It is actually provided the much-needed guidance to  
23 agencies and to operators in the process.

24 CHAIRMAN FESMIRE: Okay. So assuming that we adopt  
25 the BLM's outlook on burden and the materials need to be

1 submitted to support that, what's the criteria we should base  
2 our decision on?

3 MS. ALTOMARE: I think the criteria is that the  
4 operators should be required to submit sufficient information  
5 to justify what they're asking for. They should submit the  
6 geologic data and the mappings that are outlined in the manual  
7 to the extent possible based on the degree that the unit is an  
8 exploratory unit.

9 Obviously, it's going to be a case-by-case basis.  
10 They are exploratory. There's going to be times when there  
11 isn't information known. But certainly, in cases such as this,  
12 there is additional information that has been accrued over the  
13 last decade, and you would expect that a reconvening for an  
14 application for a revision you would have more information. So  
15 in cases like that, on a case-by-case basis, I would think that  
16 you would expect additional evidence to be accrued and present  
17 it.

18 So I think the standard should be that, on a  
19 case-by-case basis, we should expect applicants to submit  
20 sufficient information to justify --

21 CHAIRMAN FESMIRE: So I guess what I'm asking is,  
22 should our decision criteria be, given the geologic information  
23 as presented, should there be a reasonable inference from the  
24 data presented at the time it was presented at hearing that the  
25 area that is to be included in the unit -- or in this case,

1 added to the unit -- can reasonably be expected to be  
2 productive within the zone that the unit is intended to  
3 explore -- zone or zones that the unit is intended to explore?  
4 Is that the --

5 MS. ALTOMARE: Yes. I think that's fair. But I  
6 think that they should be expected to present sufficient,  
7 solid, thorough testimony, through legitimate testimony, to  
8 support what they're asking for. And one of the things --  
9 counsel noted that in the recent case, that the only reason  
10 they had brought witnesses up was because there was so much  
11 land involved et cetera, et cetera. I think that the cases  
12 that I was seeing where they were presenting live testimony and  
13 additional issues were involved, I think that where there are  
14 cases where there are complexities involved, live testimony is  
15 critical.

16 Whether that be because there is excessive acreage  
17 involved or whether that be because we are dealing with a  
18 highly vulnerable area of the State, such as this case, I think  
19 there are cases where it is not unreasonable to expect and  
20 demand live testimony be presented by appropriately qualified  
21 individuals to justify the application approval. And I don't  
22 think that it flies in the face of the precedent as submitted  
23 by counsel.

24 CHAIRMAN FESMIRE: Okay. Anything else?

25 MS. ALTOMARE: No.

1 CHAIRMAN FESMIRE: Commissioner Bailey?

2 COMMISSIONER BAILEY: Is there a reason this is  
3 called a draft manual?

4 MS. ALTOMARE: I would presume it's because it's  
5 still being revised. And maybe it's still being reviewed  
6 and --

7 COMMISSIONER BAILEY: Open to change or modification  
8 and having input from the industry and the public --

9 MS. ALTOMARE: But it has --

10 COMMISSIONER BAILEY: -- and other interested  
11 parties?

12 MS. ALTOMARE: Sure. But I would submit that it is  
13 still an indicator of the intentions of BLM, and it's the only  
14 thing that we have at this point to give us any indication as  
15 to the intentions of -- the underlying expectations. And it  
16 has a disclaimer or a notice at the top of the manual that it  
17 is to be used as guidance in the interim until final approval.

18 COMMISSIONER BAILEY: But it's still subject to  
19 change and modification.

20 MS. ALTOMARE: Yes.

21 COMMISSIONER BAILEY: You're asking for the same  
22 information that's submitted to the Land Office and to the BLM?

23 MS. ALTOMARE: Yes.

24 COMMISSIONER BAILEY: Not additional information?

25 MS. ALTOMARE: No. I think if they meet the



1 expectations once -- I think that if they meet the expectations  
2 that are laid out in the manual, then it should be the same  
3 information that's submitted.

4 COMMISSIONER BAILEY: This information that was asked  
5 for in the order included financial statements and locations of  
6 pipelines. Are those requested in the manual?

7 MS. ALTOMARE: No.

8 COMMISSIONER BAILEY: So that information was not  
9 given to the BLM. It was not given to the Land Office. And so  
10 my question is: On what basis is OCD asking for that  
11 information, if the same information is being requested?

12 MS. ALTOMARE: Well, at this point, I mean -- I'm not  
13 requesting that information. That was the Hearing Examiner  
14 that had prepared that and had suggested that those might be  
15 questions that might be asked.

16 Honestly, there's been limited communication. I  
17 didn't know what had been given to the BLM and the State Land  
18 Office. We were under the impression that we had been given a  
19 partial application. So we were kind of shooting in the dark  
20 and asking for whatever information might help us better  
21 ascertain what the status was.

22 But you are correct that it isn't -- now that we've  
23 located the manual we have a better understanding of what the  
24 intended scope of review is by the BLM.

25 COMMISSIONER BAILEY: If the same information is

1 given to the BLM as is given to the OCD, and there is agreement  
2 between the two management agencies, I'm wondering why the OCD  
3 would look at the same information and come up with a different  
4 determination. On what basis, -- if we're looking at geology  
5 and the unit agreement itself, the number of wells to be  
6 drilled, the locations, that type of information.

7 MS. ALTOMARE: Well, I don't think we've gotten to  
8 that question yet, but I believe there are different mandates  
9 and different standards applicable to the two agencies. That's  
10 my understanding. But the OCD has certain standards that it  
11 applies when it's reviewing applications. I'm not sure what  
12 the State Land Office looks at when it is looking at an  
13 application.

14 COMMISSIONER BAILEY: I'm just wondering if your  
15 geologist is any better than our geologist.

16 MS. ALTOMARE: I don't know. As far as -- the OCD  
17 looks at things in terms of protection of correlative rights,  
18 protection of human health and the environment, and prevention  
19 of waste. And I don't know that those are the three exact same  
20 mandates that the State Land Office is going to be applying --  
21 the same framework that the State Land Office is applying when  
22 they are reviewing the applications.

23 COMMISSIONER BAILEY: That's all the questions I  
24 have.

25 CHAIRMAN FESMIRE: Commissioner Olson?

1           COMMISSIONER OLSON: Just to clarify something; I  
2 think Mr. Bruce had suggested that there's three criteria for  
3 approval. One was the approval of the unit owners, and the  
4 second was geology, and then his other was correlative rights  
5 of offset owners.

6           MS. ALTOMARE: Yeah. I mean to say that I don't -- I  
7 concede that the other two are not in dispute. My one point of  
8 contention was the issue that I raised as far as what should be  
9 submitted.

10          COMMISSIONER OLSON: So at least there's agreement  
11 that those are the three criteria that would be considered,  
12 though.

13          MR. BRUCE: Well, when you say correlative rights of  
14 who?

15          MS. ALTOMARE: Are you talking about the correlative  
16 right of the people within the unit or the people outside the  
17 unit?

18          COMMISSIONER OLSON: I thought Mr. Bruce said the  
19 correlative rights of the offset owner. That's what I thought  
20 you said.

21          MR. BRUCE: No. What I was saying is in one of the  
22 orders that Division counsel mentioned, one of the unit orders  
23 I attached, the initial unit well was going to be at an  
24 unorthodox location and, therefore, the Division looked at the  
25 correlative rights. Obviously, unorthodox locations are

1 something where the Division -- where you're seeking an  
2 exception to the well location and spacing rules, correlative  
3 rights of offsets do apply.

4 But in this case, I vehemently disagree that we have  
5 to look at those outside the unit.

6 COMMISSIONER OLSON: Sorry. I thought that's what  
7 you said.

8 Well, just a question, too, on approval of the unit  
9 owners, then. What if you have a fee owner that doesn't want  
10 to participate in the unit? How does that work?

11 MR. BRUCE: Well, if I can answer that: Unless  
12 there's some provision in his lease, he can't be forced in.  
13 And that's the way it goes. Then if you drill in a spacing  
14 unit that doesn't contain his lease, he gets nothing, whereas  
15 he probably would under a unit agreement. But if you drill on  
16 a spacing unit including his lease, then he would participate  
17 more than somebody else in the unit. That's just a matter of  
18 contract.

19 COMMISSIONER OLSON: And then just a final question  
20 on the geology. So this goes back to the question Commissioner  
21 Bailey had. If we take the same information, the same geologic  
22 information that's presented to the BLM and the Land Office --  
23 and it almost sounded to me like if it's acceptable to them --  
24 and maybe you can clarify this -- it's acceptable to the  
25 Division. So I wonder if why the Division would even have an

1 approval if it's already been through -- the proper information  
2 has been through --

3 MS. ALTOMARE: Because I think --

4 COMMISSIONER OLSON: -- the BLM and the Land Office.

5 MS. ALTOMARE: Because I think we're being asked to  
6 look at it through different lenses. We're looking at it in  
7 terms of our own mandates, our own vision. The State, we're  
8 looking at it, first of all, in terms of the State --

9 CHAIRMAN FESMIRE: You're saying the State Land  
10 Office, for instance, has the authority to basically -- I mean,  
11 the requirement that they protect the surface and otherwise  
12 maximize the value of the land; whereas we're looking at it  
13 with respect to waste, correlative rights, and protection of  
14 human environment. Is that --

15 MS. ALTOMARE: Right. We have particular mandates  
16 that prioritize what we are supposed be doing as an agency that  
17 other agencies don't necessarily prioritize in the same  
18 fashion. So for instance, there are a number of these orders  
19 in here that while they are approved -- he may be correct that  
20 there aren't denials -- they note that they are going to do  
21 additional studies to locate water or locate high risk channels  
22 or do particular things to protect the well bore or things that  
23 might not necessarily be addressed by the State Land Office in  
24 terms of how they review the application.

25 That's my understanding. And like I said, there is

1 very little information out there. But that's my understanding  
2 of how these different agencies intersect. So the BLM is  
3 looking at it in terms of their land and their particular  
4 vision for their agency. And OCD is looking at it in terms of  
5 what we do here.

6 COMMISSIONER OLSON: But then, I guess, doesn't that  
7 acknowledge that those issues on protection of public health  
8 and the environment are part of subsequent activities? They're  
9 not really part of the unit agreement. They're part of the  
10 things that are going to happen that come up with the APDs and  
11 when things actually start occurring, not the actual agreement  
12 itself.

13 MS. ALTOMARE: I think there's a gray area. Because  
14 while -- I mean, as my witness did testify at the hearing on  
15 the 9th, yes, a lot of those issues are issues that would be  
16 best addressed at the time of APDs when more specific  
17 information for a particular well is known and the drilling is  
18 imminent for a particular well. There are more general  
19 formation-specific issues and unit-specific issues that I think  
20 that I exemplified by some of these orders where it comes up at  
21 the unit approval stage that it's known that a particular  
22 reservoir sits near something that creates a risk, an  
23 environmental risk, or that there's a needs for additional  
24 seismic testing.

25 And the Oil Conservation Division Hearing Examiners

1 have seen fit to not specifically order detailed testing, but  
2 to at least put in there that the operators are aware of it and  
3 they're going to conduct additional investigations. So it's at  
4 least referenced in there so it starts the chain of information  
5 so that it can tie in later on when it is later on addressed at  
6 the APD stage.

7 COMMISSIONER OLSON: Because that's kind of the way I  
8 read the -- looking at the Waco South exploratory unit, there  
9 was a provision in the order that said that the wildcat  
10 drilling applications shall be individually reviewed by the  
11 Division to insure prevention of waste, protection of  
12 correlative rights, and then protection of human health and the  
13 environment.

14 So it seemed to me that even in that prior order of  
15 this year -- actually, April of 2008 -- was acknowledging that  
16 you deal with those issues through the APD. And it was just  
17 making sure that it was clear to everyone that those issues  
18 will be addressed in the APD, but not as part of the unit  
19 agreement.

20 MS. ALTOMARE: Right. But as I read it, by  
21 addressing it at the time of the unit approval, the unit  
22 agreement approval, they are at least acknowledging those  
23 issues are out there. We're aware of them, there's been  
24 testimony presented, don't forget about them. We're not going  
25 to forget about them. Let's make sure that we come back and

1     revisit them. And it starts the -- it makes a record so that  
2     it starts the process right then and there. That's how I read  
3     it, at least.

4                 COMMISSIONER OLSON: Okay. Well, that's kind of how  
5     I read it, too.

6                 MS. ALTOMARE: Okay. We're on the same page.

7                 COMMISSIONER OLSON: Thanks.

8                 CHAIRMAN FESMIRE: I'm going to have to go back to  
9     Mr. Bruce here.

10                Mr. Bruce, if I understood your argument correctly,  
11     the answer to question two basically is that there are two  
12     criteria; sufficient voluntary joinder and geology. I want to  
13     comment on sufficient voluntary joinder. We have no authority  
14     to force-pool anybody into exploratory units.

15                MR. BRUCE: That's absolutely correct.

16                CHAIRMAN FESMIRE: Voluntary joinder would be 100  
17     percent joinder by the working interest owner, right?

18                MR. BRUCE: No, no.

19                CHAIRMAN FESMIRE: No?

20                MR. BRUCE: I, mean, in this instance --

21                CHAIRMAN FESMIRE: In an exploratory unit?

22                MR. BRUCE: No, no. And as I said before, if you go  
23     through those orders, sometimes it's 100 percent approval. In  
24     this case, it was 100 percent approval in the original unit.  
25     In the unit as expanded, there's one tract outstanding. But if



1 you look at it overall, it's probably 97 percent working  
2 interest approval.

3 But you will see that the Division and the BLM and  
4 the Land Office have approved voluntary units where there's --  
5 and generally in excess of 90 percent voluntary approval  
6 royalty and working interest. Unanimous approval is not  
7 required.

8 As I said, in answer to Commissioner Olson, if  
9 somebody -- I think it was in answer to him -- if somebody  
10 doesn't join, then they just --

11 CHAIRMAN FESMIRE: Are you talking about royalty  
12 interest owners who are forced under the provisions of their  
13 lease to join, or are you talking about working interest  
14 owners?

15 MR. BRUCE: Either/or. I mean, I'm not quite sure  
16 what you're getting at if you're putting it that way. If you  
17 go through the case files for these units just over the last 10  
18 years or eight years, you will see various levels of approval,  
19 but generally well in excess of 85 percent approval of the  
20 working interests.

21 CHAIRMAN FESMIRE: But I guess the question I'm  
22 asking is: How do you force a working interest owner into an  
23 exploratory unit?

24 MR. BRUCE: You cannot. You cannot. He would just  
25 be under his contract. And if you're drilling a well on

1 acreage containing his or her lease, then you force-pool them.

2 CHAIRMAN FESMIRE: Okay. So how can you have less  
3 than 100 percent joinder in an exploratory unit?

4 MR. BRUCE: You mean, why is it allowed? Is that  
5 your question?

6 CHAIRMAN FESMIRE: No, no.

7 MR. BRUCE: I mean, generally -- and this goes back  
8 to historical. Going back, most of the units contain state and  
9 federal land. You cannot force the Land Office or the BLM into  
10 anything. You need their voluntary agreement. They will not  
11 approve the exploratory unit unless you show sufficient  
12 joinder. And that does not mean unanimous joinder of  
13 everybody. General -- as I said, generally well in excess of  
14 85 percent.

15 COMMISSIONER BAILEY: Non-participating --  
16 participate on a lease basis, not on a unit basis.

17 MR. BRUCE: So if, for instance, spacing was 320  
18 acres and -- let's take the unit whether expanded or not  
19 expanded. There was let's say 160-acre spacing -- which it  
20 currently is -- and there was one tract sitting out there, a  
21 fee tract, with 80 acres in that 160-acre well unit, that  
22 working interest owner and that royalty owner would be entitled  
23 to have the revenue from the well. The other half would be  
24 distributed to the unit working interest owners.

25 CHAIRMAN FESMIRE: And they could be force-pooled --

1 MR. BRUCE: They could be force-pooled.

2 CHAIRMAN FESMIRE: -- on a per well basis.

3 MR. BRUCE: That is correct.

4 CHAIRMAN FESMIRE: Or they could be unitized in a  
5 secondary recovery operation.

6 MR. BRUCE: Correct.

7 CHAIRMAN FESMIRE: How, with a -- I may have to get  
8 Commissioner Bailey to explain it to me. How do we come to  
9 them in the exploratory phase and say we are going to force you  
10 into an exploratory unit?

11 MR. BRUCE: No, no.

12 CHAIRMAN FESMIRE: We couldn't.

13 MR. BRUCE: The Land Office -- the only way the Land  
14 Office and the BLM can participate, number one, in oil and gas  
15 activities, is through leasing --

16 CHAIRMAN FESMIRE: Right.

17 MR. BRUCE: -- number one. And number two, you  
18 cannot do anything with their leases absent their voluntary  
19 consent, whether it's an exploratory unit or a waterflood unit.

20 And, for instance, you cannot force-pool unleased  
21 federal or state land into a --

22 CHAIRMAN FESMIRE: Right.

23 MR. BRUCE: -- well unit.

24 CHAIRMAN FESMIRE: Correct.

25 MR. BRUCE: They are not subject to force pooling.

1 CHAIRMAN FESMIRE: I understand that. But if you've  
2 got an operator with a lease -- say it's a fee lease -- within  
3 the boundary of the area that you're trying to create an  
4 exploratory unit with -- out of, you cannot --

5 MR. BRUCE: You cannot force him in under any  
6 circumstances.

7 CHAIRMAN FESMIRE: So when you come to any -- the  
8 State Land Office, the BLM or the OCD -- with a voluntary unit  
9 proposal, don't you have to have 100 percent joinder?

10 MR. BRUCE: No, sir.

11 CHAIRMAN FESMIRE: I've skipped a cog somewhere,  
12 then. I'll get Commissioner Bailey to explain it to me.

13 MR. BRUCE: No. And I would submit that very few  
14 voluntary units have unanimous joinder. If you go through  
15 these -- and, of course, Yates Petroleum, through buying a lot  
16 of frontier areas, have a lot of units involved in state land  
17 where they do have, since it's Yates and it's related  
18 entities -- 100 percent working interest approval.

19 And if it's all state land, and they get the approval  
20 of the Land Office, then it's 100 percent. But when you go  
21 through these unit agreement orders where there's state,  
22 federal, and fee land, you do not always have 100 percent  
23 joinder.

24 And that also goes for -- by the way, if some of  
25 these leases have overriding royalty interests in them,

1 absent -- a lot of the instruments -- if, for instance,  
2 Mr. Examiner, I assign an override to you --

3 CHAIRMAN FESMIRE: But your lease agreement would  
4 require you to join in any unit.

5 MR. BRUCE: Generally, overriding royalty assignments  
6 would say that I could pool or unitize your interest without  
7 your approval, and therefore, they would be subject to -- but  
8 there are people out there, overrides, who are not subject to  
9 that.

10 CHAIRMAN FESMIRE: Okay. So my concern was tracts,  
11 leased tracts, where the operator did not want to join the  
12 exploratory unit. And when you talk about less than 100  
13 percent participation, are you talking about these, for  
14 instance, overrides, assigned overrides, and things like that  
15 where they are essentially forced into it by their original  
16 lease or their assignment out of that lease?

17 MR. BRUCE: Certain people -- I won't say it's forced  
18 in that instance. People aren't forced into it. It's part of  
19 their --

20 CHAIRMAN FESMIRE: But they are required under their  
21 contract.

22 MR. BRUCE: -- contractual arrangement. But again,  
23 getting back to if one of the wells drilled in this unit had an  
24 80-acre fee tract where the working interest owner didn't  
25 voluntarily join in nor the fee royalty owner, they would have

1 gone and force-pooled them into that particular well unit,  
2 160-acre well unit.

3 CHAIRMAN FESMIRE: Okay. And you can be essentially  
4 force-pooled into a well unit that has contributed by the  
5 operator to the exploratory unit.

6 MR. BRUCE: That is correct.

7 CHAIRMAN FESMIRE: Okay. So I think I know -- I  
8 don't think we were disagreeing. I think we were just using a  
9 slightly different terminology there.

10 So do you agree with the idea that the second  
11 criteria, the geology criteria, should be that the proposed  
12 unit area could reasonably be expected to be productive given  
13 the information available at the time of the proposal?

14 MR. BRUCE: I would disagree. I don't know how you  
15 can say it's going to be reasonably deemed to be productive,  
16 because then you're not having an exploratory unit.

17 CHAIRMAN FESMIRE: Reasonably be expected to produce?

18 MR. BRUCE: Well, I don't know about expected. I  
19 would go more that geologic zone or zones may be present --

20 COMMISSIONER BAILEY: It has the potential.

21 MR. BRUCE: -- that have the potential to produce. I  
22 do not think you can say they are reasonably productive.  
23 Again, this is an exploratory unit. If all the lands in an  
24 exploratory unit are deemed reasonably productive, it's not  
25 exploratory.

1 CHAIRMAN FESMIRE: Okay. So have the potential to  
2 produce from the same pool, the same horizon?

3 MR. BRUCE: Well, one or more. Again, the unit  
4 agreement covers all depths. It is not depth restricted. Now,  
5 one or two of the units -- ignore any waterflood units.

6 CHAIRMAN FESMIRE: Right. We're talking about  
7 exploratory units.

8 MR. BRUCE: There are some of the exploratory units  
9 referenced in here, contained in here. The orders do refer --  
10 I think I saw one that really only pertained to the Strawn or  
11 the Cisco/Canyon. I think the Strawn Formation, and some of  
12 them said below the base of the Bone Spring. And there are --  
13 I hate to use this term again -- historical reasons for that.

14 If they're -- under certain circumstances, if there  
15 have already been shallow wells drilled that are productive in  
16 a certain zone or that had been reasonably tested, sometimes  
17 the Land Office and the BLM will not allow you to unitize the  
18 entire strata. And then again, some operators just look at it  
19 and say, no, I just want it to apply to certain depths because  
20 there's nothing above the base of the Bone Spring or something  
21 like that.

22 CHAIRMAN FESMIRE: Okay. If we were to use this case  
23 to essentially establish a criteria, a geologic criteria -- we  
24 started talking about it a minute ago -- but why don't you  
25 elaborate on your idea? A zone? That area which based on the

1 available geologic information can potentially be expected  
2 to -- how would you word that?

3 MR. BRUCE: I would just say that the formation is  
4 present. You know, and I'm not -- I'd rather talk with my  
5 geologist before I say that, but obviously, you have  
6 situations, faulting or pinch-outs, where the zone would not be  
7 prospective.

8 CHAIRMAN FESMIRE: Right. And you wouldn't want to  
9 grant somebody an exploratory unit anywhere the Strawn  
10 Formation existed in that county, would you?

11 MR. BRUCE: Obviously, you wouldn't want to grant an  
12 Eddy County-wide unit covering the Morrow Formation because  
13 it's going to be there in most places.

14 CHAIRMAN FESMIRE: So --

15 MR. BRUCE: And once again, I would say it's not a --  
16 you cannot look at it and say, "Ah-ha. It's going to produce  
17 there."

18 I think you just have to look at it and say, "Well,  
19 based on the evidence at hand, it may be productive. It may be  
20 potentially productive. Or the zone is there. It hasn't  
21 pinched out as far as you can tell and it may be there."

22 CHAIRMAN FESMIRE: Can we say that -- how, if we were  
23 setting up a criteria to satisfy the geologic requirement that  
24 you've talked about, how would we word it?

25 MR. BRUCE: Well, again I would rather have the input



1 of a geologist before I risked my life on saying that. But if  
2 the zone is present, you know, it's not faulted out of  
3 something, you know --

4 CHAIRMAN FESMIRE: When we're creating an exploratory  
5 unit, and we're assuming for the minute that we have the  
6 ability to do that, are we looking just for anywhere within  
7 that area that the unit might be productive? I guess what  
8 we're doing is exploration within the unit would help us define  
9 the productive horizon in the unitized area, right?

10 MR. BRUCE: Yes.

11 CHAIRMAN FESMIRE: Okay. So how would we establish  
12 criteria like that for exploratory units?

13 MR. BRUCE: Well, I hate to suggest it, but it would  
14 be easier to put a committee together to look at that -- of  
15 geologists -- to define that, rather than have me speculate.

16 And here's my problem with this case, Mr. Chairman,  
17 and I think I make it abundantly clear in my brief. You know,  
18 it's kind of hard to know what to prove when you don't know  
19 what the standards are that are going to be applied. And I  
20 think that's what was done to HEYCO in this case.

21 And with all due respect to my opposing counsel here,  
22 the order denying the unit relied on affecting the -- adversely  
23 affecting the correlative rights of people outside the unit,  
24 which has never been raised before. It raised the issue of  
25 well spacing. That's never been raised before. It raised the

1 well design issues. That's never been raised. And it raised  
2 economics, which has never been used before. And the order  
3 itself really didn't focus on the geology. It focused on  
4 canyon geology, which is in the southern part of the unit, but  
5 it didn't focus on geology of any other zone.

6 And so this is the first and only time this has been  
7 done. And so to have me here and state a geologic standard  
8 would be geologic malpractice on my part. I won't say legal  
9 malpractice.

10 But, in going back again, the other agencies approved  
11 it. And if you go to the case file for Case No. 11394, there  
12 are hundreds of pages of submittals of documents from HEYCO to  
13 the Division which are sitting in cyberspace somewhere right  
14 now. And those are -- that's essentially what the Land Office  
15 and BLM relied on.

16 So, you know, to out of the blue say, "Hey, you  
17 haven't done items A, B, C, and D," when that had never been  
18 done before in 60 years, or has never been required before in  
19 60 years, it's just unfair.

20 CHAIRMAN FESMIRE: Okay. Let's go back to one thing  
21 that you said. We can't consider the correlative rights of  
22 people outside of the proposed unit?

23 MR. BRUCE: I'm not saying that. I'm saying it had  
24 never been done before. So if it had never been done before  
25 and we come in and make a case, regardless -- ignore this case.

1 Take any case. And, for example, the most recent unit order I  
2 have here issued in February, the approval of the proposed unit  
3 agreement will serve to prevent waist and protect correlative  
4 rights within the lands assigned to the unit area. You go  
5 through all these orders and except for the HEYCO order, that's  
6 what the orders say, "inside the unit area."

7 But if the Division decides that it wants to look at  
8 correlative rights outside the unit, I don't see a problem with  
9 that. But you got to tell us ahead of time. And, furthermore,  
10 that has to do with well spacing. And I think the question to  
11 one of my witnesses by you yourself, said, "Well, isn't that  
12 what well spacing, Division well spacing, rules are supposed to  
13 accomplish, protective correlative rights of people outside a  
14 certain well unit?"

15 The same thing would apply to the Division. But  
16 certainly, correlative rights is an issue the Division can look  
17 at. I don't have a problem with that, but don't use that to  
18 deny it after 60 years of ignoring it.

19 CHAIRMAN FESMIRE: So the argument is we can't change  
20 bad habits?

21 MR. BRUCE: No. I'm not saying that. I'm saying let  
22 us know beforehand and we can make a presentation. But I  
23 really, at this point, as I said in the brief, if you're  
24 looking at correlative rights outside the unit, that's not a  
25 non-issue. That's a non-issue in this instance because the

1 landowners outside the unit have approved the expansion. Every  
2 single party adjoining the unit has approved the expansion. So  
3 obviously, they're not interested or they don't -- it's no  
4 concern to them about their correlative rights -- the BLM, the  
5 Land Office and HEYCO itself which owns one lease adjoining the  
6 unit as expanded.

7 So it's not a concern in this case. And,  
8 furthermore, if the Division thought it was a concern, well, I  
9 think the Division could establish a buffer zone on the outside  
10 of the unit, on the exterior of the unit. That's often done  
11 with pool rules cases where you are asking for leeway within a  
12 unit or within a pool and you say that as to the exterior, you  
13 might have to have a buffer zone so that you don't -- where is  
14 that done? Indian Basin boundary between the Indian Basin and  
15 the Upper Pennsylvania gas pool.

16 And it's not the South Dagger Draws. It's one of the  
17 other -- Indian Basin, Upper Penn associated pools -- there's a  
18 buffer area between the two pools. That can be done. No  
19 problem with that. Go ahead and do it, but don't use it to  
20 deny approval of the expansion or approval of the unit itself.

21 CHAIRMAN FESMIRE: Anything else on the second  
22 question?

23 MS. ALTOMARE: I don't believe so.

24 CHAIRMAN FESMIRE: Mr. Bruce?

25 MR. BRUCE: The only thing I'll mention is again,

1 contrary to what my opposing counsel said, the only other order  
2 of these 100 pages of orders that I have that talks about  
3 water, et cetera, things like that, would be the Waco South.  
4 And that was after the hearing, the original hearing, in this  
5 case.

6 So once again, it's good to be put on notice, but  
7 it's good to be put on notice before you go to a hearing.

8 MS. ALTOMARE: There's actually a number of them that  
9 dealt with environmental issues that aren't necessarily related  
10 to water, but that do deal with -- and there's -- let's see  
11 here. There's one that talks -- let's see here.

12 CHAIRMAN FESMIRE: Ms. Altomare, why don't we take a  
13 10-minute break. When we come back, you can inform us on that.  
14 And then we'll start with the third question.

15 MS. ALTOMARE: Okay.

16 CHAIRMAN FESMIRE: We'll reconvene at 10 minutes to  
17 11:00.

18 [Recess taken from 10:44 to 10:52, and testimony  
19 continued as follows:]

20 CHAIRMAN FESMIRE: Okay. Let's go back on the  
21 record. The record should again reflect that this is a  
22 continuation of Case 14000, in the matter of Application of  
23 Harvey E. Yates Company for the Expansion of a Unit Area in  
24 Otero County.

25 The record should also reflect that all three

1 commissioners are still present. We therefore have a quorum.

2 I believe Ms. Altomare, you were going to make a  
3 point on question two.

4 MS. ALTOMARE: I pulled some, but I don't think I  
5 need to pull them all, just several. I have one, two, three,  
6 four, five, six, seven, I can direct your attention to. And  
7 then there's an additional five or six in there as well. The  
8 first one is the Orbison State Exploratory Unit. It's  
9 Case No. 13333.

10 MR. BRUCE: Ms. Altomare, could you tell me the page  
11 number at the top?

12 MS. ALTOMARE: New Mexico, Page 637, and it is a  
13 Yates Petroleum -- I think they're all Yates, actually. And  
14 the letter F at the very top of column number two of the order,  
15 it's noted that, "Yates is attempting to locate the high-risk  
16 Atoka and Morrow Channel Sands using 3D seismic, log  
17 correlation, and regional mapping."

18 The next one is noted at Page 638, New Mexico. It's  
19 the Boffin State Exploratory Unit, Case No. 13332, the Yates  
20 Petroleum Corporation. This one is not necessarily  
21 environmental in nature, but it's noting a unique  
22 reservoir-specific issue. Again, it's letter F at the top of  
23 column two, "Within the Soloro Devonian, Yates is attempting to  
24 use seismic and well control to locate a productive dolomite  
25 reservoir on a closed structural high."

1           The next one is New Mexico, Page 639, Elvis State  
2     exploratory unit. It's Case No. 13331, Yates Petroleum  
3     Corporation at the same location on the order, "Yates is  
4     attempting to locate the high-risk Atoka and Morrow Channel  
5     Sands using 3D seismic, log correlation, and regional mapping."

6           That particular quote is used in a number of other  
7     ones. I don't know if you want me to go ahead and give you  
8     other examples. My point is that increasingly throughout the  
9     years as these cases have come before the Division and the  
10    orders have been issued, the examiners have seen fit to at  
11    least make a note in the order when there have been unique  
12    circumstances or specific high-risk situations that were  
13    necessitating additional investigation by the operators, such  
14    that they wanted to at least make a record that it was going to  
15    be something that was going to be addressed.

16           COMMISSIONER BAILEY: I think there's a confusion  
17    over risk. It's high risk to the operator in the fact that  
18    it's an exploratory unit that could come to nothing at all. So  
19    it's a monetary exploration risk.

20           MS. ALTOMARE: Okay.

21           COMMISSIONER BAILEY: You're seeing it as something  
22    different, I think, is what you're saying.

23           MS. ALTOMARE: Okay. I was reading it as high-risk  
24    channel sands as environmentally high risk.

25           COMMISSIONER BAILEY: No. This means that the

1 potential for a dry hole --

2 MS. ALTOMARE: Okay.

3 COMMISSIONER BAILEY: -- or a completely dry unit is  
4 a high risk.

5 MS. ALTOMARE: Okay. But regardless, they are at  
6 least giving these units in these applications a more thorough  
7 read. And they are addressing unit-specific,  
8 formation-specific, reservoir-specific issues in their  
9 evaluation. There is the one case where they did specifically  
10 address the water issue that was environmental. I apologize  
11 for my misunderstanding of that.

12 But my point being, that they are not just simply  
13 rubber stamping. They are specifically reading and actually  
14 incorporating things to indicate when further analysis about  
15 the specific unit is going to be done. So that might actually  
16 be an indicator that contraction might occur as to the unit  
17 then later.

18 COMMISSIONER BAILEY: It says contractions will occur  
19 in five years for those lands that have been drilled.

20 MS. ALTOMARE: Right. Right. So my point is, the  
21 Division is making efforts to make a record earlier on about  
22 things that down the road are likely going to come to fruition,  
23 whether it be contraction or issues regarding the environment  
24 or other things that are going to be addressed later on,  
25 whether at the APD stage or at a contraction or expansion



1 stage.

2 COMMISSIONER BAILEY: Because that's part of the unit  
3 agreement, is an enforced contraction.

4 MS. ALTOMARE: Right.

5 CHAIRMAN FESMIRE: Any other issues on question two?

6 MR. BRUCE: Well, I would simply like to put out  
7 really, the only one that had anything to do with water or  
8 anything like that other than the HEYCO unit is that Waco  
9 South. And I would point out that it did raise the water  
10 issue, but it still approved the unit, number one. And again,  
11 that was early after the HEYCO matter.

12 CHAIRMAN FESMIRE: Okay. Proceeding to the third  
13 question, we've touch it on several of the arguments. The  
14 contents of an application necessary for approval.

15 Mr. Bruce, do you have anything to say on that?

16 MR. BRUCE: Probably nothing much useful,  
17 Mr. Examiner -- Mr. Chairman. I apologize.

18 CHAIRMAN FESMIRE: So you don't want to commit  
19 geological malpractice?

20 MR. BRUCE: As you well -- I think if you went back  
21 and looked at all the applications, they were pretty bare  
22 bones, just on the lines of here's what we want. I mean, the  
23 Division does not require at this time that you attach every  
24 exhibit you are going to use for your application, so the  
25 exhibits are pretty bare bones to say here it is. This is what

1 we want and it's in the interest of conservation and the  
2 prevention of waste. Kind of like the district court notice  
3 pleadings if you file a complaint and what the answers are  
4 like.

5 Certainly, the Division could request more. That's  
6 certainly within the bounds of its rule-making authority. But  
7 if you look at all of the applications, including the one in  
8 this case and the one in the original application in Case  
9 No. 11394, they just say this is the unit. It's been  
10 preliminarily approved by the BLM and the State Land Office,  
11 and it's in the interest of conservation and then you make your  
12 presentation. So certainly, if the Division wants more, we can  
13 give it more. That's about all I have to say on that.

14 CHAIRMAN FESMIRE: Ms. Altomare?

15 MS. ALTOMARE: I think I spoke to that kind of  
16 jumbled up with my discussion about what the criteria should be  
17 regarding the geology. So unless the Commission has additional  
18 questions, I think I probably pretty well addressed that.

19 CHAIRMAN FESMIRE: Commissioner Bailey, do you have  
20 any questions?

21 COMMISSIONER BAILEY: No, not really.

22 CHAIRMAN FESMIRE: Commissioner Olson?

23 COMMISSIONER OLSON: No.

24 CHAIRMAN FESMIRE: Nor do I. Counsel, thank you very  
25 much. I think at this time, we will go into closed session to

1 deliberate on the case.

2 MS. ALTOMARE: Do we want to address the standard? I  
3 think that was the remaining question.

4 CHAIRMAN FESMIRE: Wasn't that question two?

5 MS. ALTOMARE: No. I think question two --

6 MR. BRUCE: I thought we had.

7 MS. ALTOMARE: Maybe I misunderstood how you were  
8 phrasing them. I thought we were walking about the standard of  
9 review as to whether or not to apply protection of public  
10 health and the environment.

11 CHAIRMAN FESMIRE: Did we ask that that be --

12 MS. ALTOMARE: I thought the questions that we were  
13 being asked to discuss were -- well, I guess that would have  
14 been part of the criteria for approval. My mistake. I just  
15 assumed that rolled into part of that discussion would have  
16 been what standard the Division would apply and whether or  
17 not -- because it was addressed in both of our briefs --  
18 whether protection of human health and the environment would be  
19 included in that. Seeing as it -- or it does seem to be a  
20 point of contention.

21 CHAIRMAN FESMIRE: Well, Mr. Bruce, with your  
22 approval, we'll give everybody a chance to -- one last chance  
23 to wrap up their arguments if they so desire.

24 COMMISSIONER OLSON: So to clarify, you then see that  
25 as an additional criteria that needs to be considered as part

1 of making the unit?

2 MS. ALTOMARE: Yeah. I think that it's -- given the  
3 trend that is exemplified by these orders, especially the most  
4 recent order that has come down where there's an indication  
5 that the Division is taking a serious interest in addressing  
6 groundwater issues and protecting human health and the  
7 environment.

8 I think that statutorily, the legislature has given  
9 the OCD the authority to do what it needs to do to address oil  
10 and gas issues within the State, and included within that is  
11 the protection of human health and the environment. And I  
12 think that that should be included as part of the review in  
13 addition to the protection of correlative rights and the  
14 prevention of waste, that they're all part of the mandate of  
15 this agency, and that it has been an increasing trend to apply  
16 all three as part of the review process.

17 CHAIRMAN FESMIRE: Okay. Mr. Bruce, do you have  
18 anything to add?

19 MR. BRUCE: Well, since she addressed that, that is  
20 the issue I will address. I would like to state one thing,  
21 although I could not find my copy regarding this BLM handbook,  
22 and if they finalize this, this will be quite nice to have.

23 I would submit that in the past there have been  
24 various BLM guidelines addressing specific issues regarding  
25 unitization. If you went and looked at various unitization

1 seminars at the Rocky Mountain Mineral Foundation over the last  
2 20 years, you would find those BLM guidelines, which it looks  
3 like the BLM is trying to incorporate in one document. But  
4 there have been -- what I'm trying to say is the BLM wasn't  
5 flying by the seat of its pants before the adoption or before  
6 the promulgation of this draft guideline.

7 Now, regarding protecting health and human  
8 environment, in looking at the Division's brief, it was based  
9 solely on OCD Rules 11 and 12, but I didn't see any specific  
10 statutory authority. And if Mr. Carr was here, as he always  
11 lectures me, the OCD is a creature of statute and its authority  
12 must be found in the statutes. And I don't see any for that.

13 Now, the OCD can say in a regulation like Rule 11  
14 that they're going to prevent human hunger, but if it doesn't  
15 have any authority to do so, it doesn't have any authority to  
16 do so. The fact is, outside of making sure wells are properly  
17 drilled and operated, I don't see the authority.

18 It does have certified related authority with respect  
19 to its specific statutory duties, but I assert that that's left  
20 to other agencies. In fact, the Resource Management Plan, the  
21 RMP, which is the subject of litigation, is the BLM's document  
22 that is designed to protect the health and human environment.

23 Plus, we have in this State the Environment  
24 Department. I think that's its statutory mandate. In federal,  
25 you have the EPA. What other agencies look at land use and

1 protecting of the environment? Army Corps of Engineers, Bureau  
2 of Reclamation -- I'm not saying in this specific case, but  
3 that's what they're there for.

4 Furthermore, if you go to the regulations, the BLM  
5 has tons of surface use regulations for oil and gas drilling on  
6 its land. The Land Office has its Rules 66 and 67 that deal  
7 with surface use and reclamation on state owned surface. If  
8 you're looking at fee owners, obviously, they have the right to  
9 protect their surface.

10 But I don't see where that one fits in so much. And  
11 besides, what is human health and the environment? Yeah, you  
12 know, you want to protect the health, you want to protect the  
13 environment, but how does that relate to this unit? I submit  
14 that it doesn't.

15 I mean, that's a pretty vague standard. If the  
16 Division can come up with some guidelines on what the operators  
17 are supposed to do to protect that, I would go along with it.  
18 But I think those regulations are already in there with respect  
19 to well design, well drilling, well operations, and that's  
20 about as far as you can go on that issue.

21 Insofar as unit formation or unit expansion, I don't  
22 think those issues have anything to do with this case.

23 CHAIRMAN FESMIRE: Okay.

24 MS. ALTOMARE: If I might just --

25 CHAIRMAN FESMIRE: A short rebuttal?

1 MS. ALTOMARE: Yeah. New Mexico Statute 70-2-6A is  
2 what grants the Division jurisdiction and authority over all  
3 matters relating to the conservation of oil and gas in this  
4 State. And the statute goes on to say that the Division may do  
5 whatever may be reasonably necessary to carry out the purpose  
6 of the Act, whether or not indicated or specific in any section  
7 hereof.

8 And it is out of that statute that the regulations  
9 are -- the OCD rules are written. From there, there's a rule  
10 written that charges the OCD the obligation of enforcing all  
11 rules -- I'm sorry -- that charged the OCD with the obligation  
12 of protecting human health and the environment.

13 I see that as a direct correlation, and I think that  
14 that statutory authority -- I think that there's a direct  
15 statutory authority mandating that as part of OCD obligations  
16 and rolled in with the protection of correlative rights and the  
17 prevention of waste, we are also supposed to protect human  
18 health and the environment. I think that that is all rolled  
19 into one standard.

20 CHAIRMAN FESMIRE: Anything else? Okay. With that,  
21 the Oil Conservation Commission will go into executive session  
22 for the sole purpose of considering their decision in Case  
23 No. 14000, the Application of Harvey E. Yates for Unit  
24 Expansion in Otero County. Thank you all.

25 [Executive session from 11:09 a.m. to 11:31 a.m., and

1 testimony continued as follows:]

2 CHAIRMAN FESMIRE: Okay. Let's go back on the  
3 record. The record should reflect that it is 11:30 a.m. on  
4 Thursday, June 19th, 2008. The Commission is going back into  
5 regular session after having met in executive session for the  
6 sole purpose of deliberating Case No. 14000, the Application of  
7 Harvey E. Yates Company for Expansion of a Unit Area in Otero  
8 County, New Mexico.

9 During those deliberations, the council reached a  
10 decision. The council has determined that it shall go ahead  
11 and grant the unit expansion pursuant to some conditions. They  
12 have instructed counsel to draft an order to that effect and  
13 that order shall be drafted and circulated to the Commissioners  
14 prior to the next regularly scheduled Commission meeting, at  
15 which time the case will again be called for the purpose of  
16 finalizing the order, and hopefully, signing the order as  
17 drafted by counsel.

18 Is there anything else with respect to  
19 Case No. 14000?

20 COMMISSIONER BAILEY: No.

21 COMMISSIONER OLSON: No.

22 \* \* \*

23 CHAIRMAN FESMIRE: Seeing none, the Chair will call  
24 the final case on the docket today.

25 It's Case No. 14055, the de novo application of the



1 New Mexico Oil Conservation Division for a Compliance Order  
2 Against C&D Management Company, doing business as Freedom  
3 Ventures Company.

4 At the request of counsel for the Division, the Chair  
5 has granted a continuance in this case due to a family  
6 emergency of Division's counsel. It has been continued to the  
7 July 30th regularly scheduled meeting.

8 With that, the Chair would ask if is there anything  
9 else before the Commission today?

10 COMMISSIONER BAILEY: No.

11 COMMISSIONER OLSON: No.

12 CHAIRMAN FESMIRE: The Chair would entertain a motion  
13 for adjournment.

14 COMMISSIONER BAILEY: I so move.

15 COMMISSIONER OLSON: Second.

16 CHAIRMAN FESMIRE: All those in favor of adjourning,  
17 signify by saying aye.

18 COMMISSIONER BAILEY: Aye.

19 COMMISSIONER OLSON: Aye.

20 CHAIRMAN FESMIRE: Let the record reflect that the  
21 counsel adjourned its regularly scheduled meeting at 11:34 a.m.

22 Thank you.

23 [Thereupon, these proceedings were concluded at  
24 11:34 a.m.]

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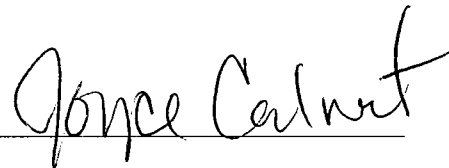
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I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this proceeding.

Signed this 19th day of June, 2008.



JOYCE D. CALVERT  
New Mexico P-03  
License Expires: 7/31/08

1 STATE OF NEW MEXICO )  
2 COUNTY OF BERNALILLO )

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9 stenographic notes. On the date I reported these proceedings,  
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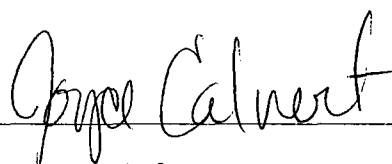
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