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STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

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

COPY
CASE NO. 142⁵15

PROPOSED AMENDMENT OF 19.15.39 NMAC
TO ADD TWO NEW SECTIONS SETTING OUT
SPECIAL PROVISIONS FOR SANTA FE
COUNTY AND THE GALISTEO BASIN;
PROPOSED AMENDMENT 19.15.39.9 NMAC,
AND THE PROPOSED AMENDMENT 19.15.39.10
NMAC.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

CONTINUATION OF
COMMISSION DELIBERATIONS

February 27, 2009
Santa Fe, New Mexico

BEFORE: MARK E. FESMIRE: Commission Chairman
JAMI BAILEY: Commissioner
WILLIAM C. OLSON: Commissioner
CHERYL L. BADA: Assistant General Counsel

REPORTED BY: PEGGY A. SEDILLO, NM CCR NO. 88
Paul Baca Court Reporters
500 Fourth Street, NW, Suite 105
Albuquerque, New Mexico 87102

1 CHAIRMAN FESMIRE: The record should reflect
2 that this is the continuation of Case No. 14255, the
3 Application of the New Mexico Oil Conservation Division
4 through the Environmental Bureau Chief for Adoption of an
5 Amendment to 19.15.39 NMAC, Adding New Sections to be
6 Codified as 19.15.39.9, and 19.15.39.10 NMAC, Addressing
7 Special Provisions for Santa Fe County and Galisteo Basin,
8 Santa Fe, Sandoval, and San Miguel Counties.

9 The record should also reflect that this is a
10 continuation of the case that was last convened on
11 Wednesday, February 25. At that time it was announced
12 that the continuation of the case would be held in the Oil
13 Conservation Division conference room on the third floor
14 of the Wendell Chino Building, 1220 South St. Francis, in
15 Santa Fe, New Mexico.

16 The record should also reflect that that is
17 where the meeting was held. The place of the meeting had
18 been announced at the adjournment of the prior meeting and
19 posted on the door of Porter Hall, because this is a
20 change of meeting place.

21 I guess at this time I'll open up the floor to
22 the commissioners. We're in the midst of deliberations in
23 the rule, and when we ended, we were in a bit of a hurry,
24 so we may need to figure out exactly where we were at and
25 what we were talking about.

1 Commissioner Bailey, do you have anything where
2 you would like to start?

3 COMMISSIONER OLSON: Which document do you want
4 to work with now, that's what I was going to --

5 CHAIRMAN FESMIRE: That's probably the first
6 thing we need to figure out.

7 COMMISSIONER OLSON: Because we've got one that
8 counsel just gave us.

9 CHAIRMAN FESMIRE: Counsel, why don't you tell
10 us exactly what you've done with the document you've put
11 on the --

12 MS. BADA: I put in the changes that you had
13 agreed to on Wednesday. I also made some just to make
14 this consistent.

15 CHAIRMAN FESMIRE: Okay. Some of the changes
16 are in blue --

17 MS. BADA: The red are what were proposed by the
18 Division. They're the only changes to the ones I've made.
19 Essentially what I did was, any place that talked about
20 plan, I -- sometimes we say "plan," sometimes we say
21 "exploration and development plan," so I just made those
22 all the same.

23 Any place that said "must" I made it "shall,"
24 just so it will be consistent throughout our rules.

25 CHAIRMAN FESMIRE: Okay. And we have gone

1 through all but Section E and arrived at, I think, a
2 consensus.

3 MS. BADA: I think the questions were the issues
4 on 9 and Subsection B and then C.

5 COMMISSIONER OLSON: So this is only 9 that you
6 did on the changes, right?

7 MS. BADA: I've done 10, but I need to discuss
8 that with you. I've looked at the proposed rule, and
9 while I certainly don't have any disagreement with what
10 you want to add, I think you have notice problems because
11 there was nothing like that proposed in the initial
12 application.

13 CHAIRMAN FESMIRE: Okay. And you're talking
14 about that on both the changes proposed by Commission
15 Olson and Commissioner Bailey.

16 MS. BADA: And I think you have issues with
17 notice.

18 COMMISSIONER BAILEY: I've looked at the
19 transcription concerning reclamation and I cannot argue
20 with your summary of the --

21 MS. BADA: I think the option -- Well, if you --
22 you know, if you want the stuff on the tanks and the
23 transmission lines that you elect to have a reclamation,
24 that you adopt the rule based on what was presented and
25 reopen it for supplemental language, you know, that I

1 drafted. But I did not -- I just can't recommend that you
2 adopt.

3 COMMISSIONER OLSON: Because even though -- I
4 went through at least the portions -- I saw the same thing
5 that Commissioner Bailey was saying. Commissioner Bailey
6 was saying -- I saw where you were asking questions about
7 the reclamation, but there wasn't really -- about why it
8 wasn't included --

9 MS. BADA: Yes.

10 COMMISSIONER OLSON: -- but there wasn't
11 anything about what should be included.

12 COMMISSIONER BAILEY: That's right.

13 COMMISSIONER OLSON: So I thought maybe on the
14 ones that I had, I did specifically ask them along the
15 lines of would it be appropriate to do this. And there is
16 testimony that they thought it was appropriate for them to
17 be included as part of the rule. But I agree, it wasn't
18 noticed and --

19 MS. BADA: It wasn't noticed and I think that's
20 the first hurdle you need to get over and I would
21 recommend it.

22 CHAIRMAN FESMIRE: Okay.

23 COMMISSIONER OLSON: And actually, one of the
24 witnesses, Will Jones, did state -- at least on the
25 objection provisions -- that that probably should get some

1 discussion and be noticed. So he did even recognize that
2 himself on the record.

3 CHAIRMAN FESMIRE: Okay. Well then, let's start
4 back through at A, make sure that counsel captured what we
5 needed in there. And I've read A. It seems to comport
6 with the will of most of the Commission. Do you all have
7 any problem with A?

8 COMMISSIONER BAILEY: It does reflect that we
9 have removed the other portion of Santa Fe County outside
10 the Galisteo Basin.

11 CHAIRMAN FESMIRE: Right.

12 COMMISSIONER OLSON: So I guess at the moment,
13 under A(1), that's just kind of a blank because of the
14 following --

15 COMMISSIONER BAILEY: Place holder.

16 COMMISSIONER OLSON: A place holder, actually.
17 Okay.

18 CHAIRMAN FESMIRE: And our plan is to, at the
19 conclusion of today's hearing, ask counsel to draft an
20 order ordering the Division to renotice it.

21 MS. BADA: You'll have to notice that it's being
22 reopened.

23 CHAIRMAN FESMIRE: Reopen the record, and
24 specifically order the Division to come forward and show
25 the boundary of the Galisteo Basin within Santa Fe County;

1 is that correct?

2 MS. BADA: Right. We need a legal description.

3 CHAIRMAN FESMIRE: Okay. Okay, so that having
4 been said, we go down to B. It looks like we got a big
5 B(2). The information in red is changes proposed by the
6 Division. And we had no problem with that as drafted; is
7 that correct? I mean, understanding your running
8 objection which we will --

9 COMMISSIONER BAILEY: There's a running
10 objection. And upon further reflection of the
11 requirement, even to have an exploration and development
12 plan specifically for Santa Fe County, seems to run
13 counter to the rest of all of the rules of the Oil
14 Conservation Division and appears to be borderline, if not
15 -- very closely related to land use and -- land use issues
16 and zoning issues that should be handled strictly by the
17 County. So the objection is even to have an exploration
18 and development plan as a requirement of this rule.

19 CHAIRMAN FESMIRE: Okay, Commissioner Bailey's
20 objection is noted for the record. And I understand the
21 arguments. I don't agree with the argument, but we'll
22 proceed having noted your argument.

23 COMMISSIONER OLSON: Well, I'd like to state
24 also that I think I agree with the concept of using
25 exploration and development plans in the state for areas

1 that have not previously had development. I think that
2 was a point that was made through some of the public
3 members that came up.

4 When you come in to a new area, you should try
5 to look at something that's developed through with more of
6 an orderly plan. And I think, you know, as an example,
7 you could look at some of the areas in Lea County that
8 have kind of had -- where the development's been a little
9 bit more haphazard because things have happened over time.

10 And you have a proliferation of roads that
11 necessarily could have been cut back and maybe be more
12 consolidated so you have a smaller impact on the area. So
13 I think there's a lot of merit in having exploration and
14 development plans.

15 I'd almost prefer, really, to see it more
16 applicable on a statewide basis where it's for areas that
17 don't previously have production or development activities
18 that are going on. It seems to make sense if we looked at
19 orderly development of the resources. And I think it fits
20 within the framework of the -- our statutory mandates for
21 protection of the environment, as well, if we do it
22 through orderly plans. So I think that was just a kind of
23 general comment.

24 Overall, I would really like to see it on more
25 of a statewide basis than -- Right now we're having to

1 look at doing this-- we're doing this for Galisteo Basin
2 and, you know, I guess -- Rio Arriba is going to be next,
3 what other counties are going to come. And it makes more
4 sense to do something of a statewide application than
5 having to do it piecemeal each time. Especially for
6 resources of the division and the state and ourselves as
7 well. So.

8 COMMISSIONER BAILEY: But when you're asking for
9 a map that designates state, federal, private or tribal
10 surface ownership, what other purpose is there for that
11 type of map other than land use and zoning issues?

12 CHAIRMAN FESMIRE: I guess I don't understand
13 the question, Commissioner.

14 COMMISSIONER BAILEY: The question is, what use
15 will OCD put for this type of map?

16 CHAIRMAN FESMIRE: Well, one of the major uses
17 would be notification of the owners under the SOPA so that
18 people whose property are going to be involved would have
19 some notice of what was going to occur or what was planned
20 to occur.

21 COMMISSIONER BAILEY: Yes, but isn't that
22 covered under the notice section of this rule?

23 CHAIRMAN FESMIRE: I don't think that's exactly
24 correct.

25 COMMISSIONER BAILEY: Because we're not asking

1 for specific names in (B) (5) (A), we're looking at
2 designation of the ownership.

3 CHAIRMAN FESMIRE: Well, the original proposal
4 was for specific names, but we took that out at your
5 request, didn't we?

6 COMMISSIONER BAILEY: Yes. And I still think we
7 don't even need the map because the use for OCD is not
8 necessary for the purpose of OCD's rules.

9 COMMISSIONER OLSON: I'll have to admit, I think
10 I saw it more as just information that would be used in
11 doing the public notice. Because under public notice,
12 they do have to notify surface interest owners in the
13 area.

14 So it would just be a crosscheck so at least
15 you'd have some way to look and see if you're -- That's my
16 impression of why the map would really be required, not
17 for land use purposes but more for checking on public
18 notice notification.

19 MS. BADA: That (5) (B) is simply an example of
20 the type of information that's being required. That does
21 not form the basis for OCD's decisions. Much of the
22 information required in B is not critical determination
23 for OCD's decision making.

24 CHAIRMAN FESMIRE: So you don't think any map
25 would be necessary for a -- or do you think the

1 topographic map would be sufficient?

2 COMMISSIONER BAILEY: I believe the topographic
3 map is sufficient. And that's required in (B) (4).

4 CHAIRMAN FESMIRE: But I think one of the issues
5 that would be addressed by this map is the jurisdiction of
6 the OCD, you know, state versus federal versus private
7 versus tribal ownership, where the wells are going to
8 fall, you know, where the pipe line's going to be.

9 I think it's a pertinent part of the information
10 necessary for the OCD to make the decisions that they have
11 to make with respect to prevention of waste, protect
12 correlative rights, and the protection of human health and
13 the environment.

14 For instance, who to notify in the case of a
15 spill. You know, they could go to the file, pull up a
16 map, find out that the spill was from a well on private
17 land but it runs on to federal land, runs on to state
18 land, they'd know who to notify and how to address it.

19 COMMISSIONER BAILEY: Which they already know
20 how to do for other parts of the state.

21 CHAIRMAN FESMIRE: I'm not sure that's
22 absolutely correct. A lot of times when we have a spill,
23 we don't have a map on record that accurately depicts who
24 they need to notify and how they need to address those
25 spills. And that's -- you know, I'm not saying that

1 that's the only reason, I'm saying that's an example.

2 COMMISSIONER BAILEY: And I just wanted to
3 register my opinion on this, the Land Office's opinion.

4 CHAIRMAN FESMIRE: Okay. Is there anything else
5 that we have to address in B? It's an awful long section.

6 COMMISSIONER OLSON: I was just checking through
7 it to make sure it reflected -- since we already went
8 through it at the last meeting -- it had accurately
9 reflected what we had proposed as the changes.

10 We went through it, and it looks like, for all
11 the elements that I looked at, it looks like it does
12 reflect what I had in my notes here for the actual changes
13 that we had already reviewed.

14 COMMISSIONER BAILEY: It also reflects my notes
15 that I made.

16 CHAIRMAN FESMIRE: One thing about Counsel Bada,
17 she's accurate.

18 MS. BADA: I try. But if I miss something, let
19 me know.

20 CHAIRMAN FESMIRE: Okay. Anything in C we need
21 to address?

22 COMMISSIONER BAILEY: Not for me.

23 COMMISSIONER OLSON: No.

24 CHAIRMAN FESMIRE: D? Do you guys have
25 anything?

1 COMMISSIONER BAILEY: No.

2 CHAIRMAN FESMIRE: I'm almost afraid to ask this
3 one. Back where we left off. Do you guys want to skip E
4 and come back?

5 COMMISSIONER OLSON: Yeah.

6 CHAIRMAN FESMIRE: F, "Shall be written in
7 English and Spanish and shall include." Are there any
8 issues there? We decided to take 9 out, period.

9 COMMISSIONER OLSON: We agreed to take 9 out
10 entirely because of the changes that we made to I. So I
11 don't see anything -- it looks like the changes that I
12 have in my notes.

13 COMMISSIONER BAILEY: Same for me.

14 CHAIRMAN FESMIRE: Okay. G.

15 COMMISSIONER OLSON: Again, looks like it
16 reflects what we had reviewed and any proposed changes.

17 CHAIRMAN FESMIRE: Okay. H?

18 COMMISSIONER BAILEY: I think Counsel Bada
19 captured all of our comments.

20 COMMISSIONER OLSON: I agree.

21 CHAIRMAN FESMIRE: I agree.

22 COMMISSIONER BAILEY: Same.

23 COMMISSIONER OLSON: Here in I, too, is where we
24 have the language that --

25 MS. BADA: I have one question on that. Do you

1 want renewals or replacements to be able to be approved
2 administratively or just the amendments?

3 CHAIRMAN FESMIRE: That's a good question.

4 COMMISSIONER OLSON: Well, it would definitely
5 be the amendments or renewals, but the replacements, do
6 they -- I don't remember how that works.

7 CHAIRMAN FESMIRE: Well, replacement is an
8 expansion, whereas the amendments and renewals should be,
9 correct?

10 COMMISSIONER OLSON: I thought the replacement
11 was the special orders, or do I have that wrong?

12 MS. BADA: Yeah, I think so. So you want to say
13 "may approve an amendment or a renewal"?

14 CHAIRMAN FESMIRE: Well, we already have the
15 ability to approve special pool rules administratively,
16 don't we?

17 COMMISSIONER OLSON: I don't remember.

18 COMMISSIONER BAILEY: Not that I recall.

19 COMMISSIONER OLSON: I don't think so.

20 CHAIRMAN FESMIRE: Well, then we wouldn't want
21 the replacements to be -- you know.

22 COMMISSIONER BAILEY: So if we -- "the Division
23 may approve the amendment or renewal administratively"?

24 MS. BADA: Right, the amendment or renewal.

25 COMMISSIONER OLSON: Say that again, so it would

1 be --

2 MS. BADA: "The Division may approve an
3 amendment or approve a renewal administratively unless the
4 director determines that the amendment or renewal is
5 sufficiently substantial that public notice and public
6 participation are appropriate." Didn't we talk in 3 to
7 deny one administratively, you can deny a replacement
8 administratively?

9 CHAIRMAN FESMIRE: Yeah.

10 COMMISSIONER OLSON: Well, if you deny it,
11 wouldn't there be an opportunity for a hearing, then, if
12 it was denied?

13 CHAIRMAN FESMIRE: That's what we're saying.

14 MS. BADA: It would be for the operator, the way
15 it's written.

16 CHAIRMAN FESMIRE: So we would need to take
17 "replacement" out of 3, wouldn't we?

18 MS. BADA: I suppose you could deny it without
19 approving it administratively.

20 CHAIRMAN FESMIRE: That's true.

21 MS. BADA: But we don't say you have to hold a
22 public hearing on a replacement, it just says you may.

23 COMMISSIONER OLSON: Yeah, because in I(1), the
24 original, the E and D plan requires a hearing.

25 COMMISSIONER BAILEY: But doesn't 3 simply give

1 the operator the right of appeal to the OCC?

2 COMMISSIONER OLSON: Right, that's what I
3 thought the attempt was.

4 CHAIRMAN FESMIRE: But we don't need that right
5 of appeal if the --

6 MS. BADA: It automatically goes to hearing.

7 HEARING EXAMINER: If it automatically goes to a
8 hearing.

9 MS. BADA: Well, what do they say in the public
10 hearing part? Right now it does not say that you have to
11 hold one for a replacement, it says you may.

12 COMMISSIONER BAILEY: I think it's depending on
13 what the pool rule requirements are.

14 COMMISSIONER OLSON: I don't know where to find
15 that quickly.

16 CHAIRMAN FESMIRE: I do. I have it marked in
17 my --

18 MS. BADA: It's under "Special Pool,
19 Adjudicatory," in Part 4.

20 CHAIRMAN FESMIRE: We determined last time that
21 it's not --

22 MS. BADA: Under 4 or 5, "Adjudicatory."

23 CHAIRMAN FESMIRE: Part 7, Section 31 for gas
24 wells.

25 COMMISSIONER OLSON: Is that considered an

1 adjudicatory hearing?

2 MS. BADA: Yes.

3 CHAIRMAN FESMIRE: Part 12. All it says is that
4 "the Division shall determine."

5 MS. BADA: Look in the adjudicatory rule and see
6 what it says. I can't remember if it's Part 4 or Part 5.

7 COMMISSIONER OLSON: It's Part 4. It seems to
8 envision any of these things as hearings. Because it goes
9 into the broad part in 19.15.4.8, which is initiating an
10 adjudicatory hearing.

11 "The division, attorney general, operate or
12 producer or other person withstanding, may file an
13 application with the division for an adjudicatory
14 hearing." That's -- if you say that's adjudication.

15 MS. BADA: Yeah, under the section, more
16 specifically.

17 COMMISSIONER OLSON: But everything in that
18 section, to me, seems to be envisioning a hearing.

19 HEARING EXAMINER: 70-2-13. Do you know,
20 Cheryl?

21 MS. BADA: Let's see. It's just the section
22 saying that the Division is authorized to adopt rules with
23 regard to hearings.

24 CHAIRMAN FESMIRE: Okay. Hang on to that for
25 just a minute, because here's the rule. Adjudicatory

1 hearings, and it's 19.15.4.20, Adjudicatory Hearings. "It
2 shall be heard before of the Commission. Notwithstanding
3 other provisions of 19.15.4, the hearing on the matter
4 shall be held before the Commission if, A, is a hearing
5 pursuant to NMSA 1978, Section 70-2013." So that's rule
6 making?

7 MS. BADA: Yes.

8 CHAIRMAN FESMIRE: Okay. "Or B, the director
9 directs the commission to hear the matter." So, is --
10 doesn't have to be --

11 MS. BADA: I don't see anything at this point
12 saying that your special pool orders automatically go to
13 hearing.

14 CHAIRMAN FESMIRE: I don't think, unless we put
15 it in here, there is a requirement that it does.

16 COMMISSIONER OLSON: Well, maybe the way to do
17 it is just to have it in that new sentence that we added,
18 that the Division may approve the amendment, renewal or
19 replacement administratively unless it's given the power
20 to the director to determine substantial, you know,
21 impacts that could require public participation.

22 COMMISSIONER BAILEY: That would also capture
23 any kind of transfer of the permit to a succeeding
24 operator if we put it in those terms.

25 COMMISSIONER OLSON: Right. Because I could see

1 where if you read through all this public notice that
 2 occurred up above and nobody expressed any concerns as
 3 part of that, why would you have a hearing at that point?
 4 It would be unnecessary.

5 MS. BADA: So you want to add "replacement"?

6 COMMISSIONER OLSON: Yes, amendment, renewal or
 7 replacement.

8 COMMISSIONER BAILEY: While we were researching
 9 that, I was trying to find the provision for the transfer
 10 of the permit to succeeding operators. I know we talked
 11 about it during the hearing, but I can't find it in 9.

12 COMMISSIONER OLSON: I think it's in J, because
 13 transfers are in the title on here.

14 MS. BADA: It looks like it's in Paragraph 8.

15 COMMISSIONER BAILEY: Okay. It wasn't in blue
 16 or red, so...

17 CHAIRMAN FESMIRE: Okay.

18 COMMISSIONER OLSON: But you are right, there
 19 was some questioning about how the transfers work, I
 20 think.

21 CHAIRMAN FESMIRE: Okay, where are we at? We're
 22 at J? Yes, I think, if there are no further questions on
 23 I.

24 COMMISSIONER OLSON: I don't have any questions
 25 on I. And I think the significant change was No. 9, which

1 I had asked to be added. The rest of the changes are the
2 changes that counsel had made to be consistent throughout
3 the document.

4 MS. BADA: Look at Paragraphs 3 and 4. I
5 changed the "and" to an "or." And the reason I did that,
6 is because you can have a provision that might affect one
7 but not all of them.

8 CHAIRMAN FESMIRE: Absolutely.

9 COMMISSIONER OLSON: So you don't need to make
10 similar changes other places where that language occurs?

11 MS. BADA: Normally when you're doing that, you
12 say that to protect all of them, but in this case you're
13 talking about putting a provision in the approval that may
14 only affect one, and if you have an "and," you're saying
15 you can only do it if you're --

16 COMMISSIONER OLSON: Because this is to impose
17 conditions on it?

18 MS. BADA: Right.

19 COMMISSIONER OLSON: Then for any of these
20 items?

21 MS. BADA: Right.

22 COMMISSIONER OLSON: Okay.

23 CHAIRMAN FESMIRE: Okay. I've got nothing on J.

24 COMMISSIONER OLSON: It looks okay to me.

25 CHAIRMAN FESMIRE: Do you all want to tackle 10

1 or go back to E?

2 COMMISSIONER OLSON: Why don't we try 10,
3 because we may have somewhat resolved that.

4 CHAIRMAN FESMIRE: 10(A). "Must" to "shall" is
5 the only change there.

6 COMMISSIONER OLSON: I think the only
7 significant difference is the items.

8 MS. BADA: I added them in so you could look at
9 them --

10 COMMISSIONER OLSON: Right.

11 MS. BADA: -- and see how they would look if you
12 chose to go ahead and do a supplemental rule making.

13 COMMISSIONER OLSON: I think I'd have to say,
14 based upon counsel's advice of whether there was adequate
15 notice of this, I will withdraw my request to include
16 those portions from rule termination but were not noticed
17 as part of this hearing.

18 COMMISSIONER BAILEY: And I will do the same for
19 the revegetation request, but I do ask that the Division
20 consider revegetation as an important facet of protection
21 of the environment in all future rule making.

22 CHAIRMAN FESMIRE: Yes, ma'am. So --

23 COMMISSIONER OLSON: And I don't know, I may
24 want to request that if we're reopening this hearing,
25 maybe for some of these things for consistency, that maybe

1 some of those could be included.

2 It seems to me we should have consistency in
3 application, especially in pollution prevention measures
4 across different areas of the state. In my opinion, some
5 of them should actually be statewide versus looking at
6 these individual areas. So. But I'll think about that.
7 I don't know if that's the appropriate way to do that.

8 MS. BADA: There are one of two ways. You could
9 go ahead and adopt the rule now and then have a
10 supplemental rule making and notice it, propose your own
11 language, essentially, because you'd have to notice it and
12 then have a hearing later to take evidence.

13 CHAIRMAN FESMIRE: Can we notice it to address
14 these two issues when we address the boundaries?

15 MS. BADA: You could, but then you would have to
16 wait and have a hearing, and I don't know that you --
17 Essentially, you're going to do some sort of application
18 to show the changes, which is not something you'd have to
19 do if you're just asking for a legal description.

20 CHAIRMAN FESMIRE: Okay.

21 MS. BADA: It's really up to the Commission how
22 they want to handle it.

23 COMMISSIONER OLSON: And it might be for clarity
24 at the moment in what we're doing with all this to adopt
25 this itself with just the -- maybe defining the

1 boundaries, and then if we have other changes, that maybe
2 should be a separate issue to come after that.

3 CHAIRMAN FESMIRE: Okay.

4 COMMISSIONER OLSON: I'm just -- I think for
5 simplicity in how to apply all of this.

6 MS. BADA: You're talking about -- The
7 Commission's never proposed their own rules, but there's
8 certainly nothing to keep them from doing it.

9 CHAIRMAN FESMIRE: Okay.

10 MS. BADA: Or directing the Division to and
11 telling them what you want.

12 COMMISSIONER BAILEY: Is now an appropriate time
13 to do that?

14 COMMISSIONER OLSON: Or would it be upon the
15 close of the boundaries?

16 MS. BADA: I think you can do it at the hearing
17 since they're not here.

18 COMMISSIONER OLSON: Okay.

19 COMMISSIONER BAILEY: Okay.

20 CHAIRMAN FESMIRE: Well, they're going to -- I
21 mean, they're still subject to an order.

22 MS. BADA: Yes.

23 CHAIRMAN FESMIRE: Okay.

24 COMMISSIONER BAILEY: I would once again like to
25 reiterate -- so I adopt this objection -- to the

1 discrepancy between the order to amend the pit rule and
2 the requirement in here of B(1) and (2) that conflicts
3 with that order and conflicts with the fact that we went
4 through days and hours of testimony to arrive at the pit
5 rule, and these -- B(1) and B(2) are being included in
6 this rule without adequate testimony as to why the current
7 pit rule is not adequate and should not be applied in this
8 area.

9 CHAIRMAN FESMIRE: Commissioner Bailey, your
10 objection is noted. I disagree. I think there's
11 sufficient evidence in the record to support these
12 provisions. But the record will stand for itself.

13 COMMISSIONER OLSON: I think I have to agree. I
14 think there was a lot of testimony about the difficulties
15 in looking at some of the water quality protection issues
16 in the Galisteo Basin and I think that demonstrated the
17 need for some changes to the -- for this area to reflect
18 special requirements for this area.

19 CHAIRMAN FESMIRE: That having been said, and,
20 you know, with all respect to Commissioner Bailey's
21 objection, are we otherwise in agreement that this Section
22 B will include down through on this draft Subsection 8?

23 COMMISSIONER BAILEY: Yes.

24 COMMISSIONER OLSON: And I have to say, I really
25 did like the revegetation section.

1 CHAIRMAN FESMIRE: I think we all did.

2 COMMISSIONER BAILEY: During testimony, for
3 exceptions to the rules, there was testimony that the only
4 exception would be applicable in Part 10, but yet, I don't
5 see where there is in either 9 or 10 an opportunity for
6 exceptions.

7 MS. BADA: I believe it's that first phrase in B
8 where it says "unless otherwise specified in the
9 exploration and development plan."

10 COMMISSIONER OLSON: Where are we at?

11 CHAIRMAN FESMIRE: B.

12 MS. BADA: Right, the first sentence that says
13 B.

14 COMMISSIONER BAILEY: Is that clear enough?
15 Does that allow exceptions for the Division in their
16 implementation of this rule?

17 CHAIRMAN FESMIRE: "Unless otherwise specified
18 in an approved exploration and development plan." I think
19 that's broad enough. That gives the Division or the
20 Commission, whichever is making the determination, the
21 ability to specify differently in an exploration and
22 development plan, and of course before they do that, you
23 assume that the operator would make application to do
24 that. Although, I guess that wouldn't always be true,
25 would it?

1 COMMISSIONER BAILEY: In Part 9, it does not
2 discuss exceptions at all.

3 CHAIRMAN FESMIRE: Isn't Part 9 --

4 COMMISSIONER BAILEY: Doesn't show that it would
5 be allowable to have an exception for any portion of the E
6 and D plan.

7 MS. BADA: Actually, it's in B(10).

8 COMMISSIONER BAILEY: In Subsection B, but not
9 in any other portion. So that would be only for the
10 applications.

11 MS. BADA: No, this part.

12 COMMISSIONER OLSON: It would be in
13 19.15.39.9(B).

14 MS. BADA: Section 9 is referring to
15 Section 10(B). So in 9(B), 10.

16 COMMISSIONER BAILEY: Okay, so those would be --

17 MS. BADA: It's an exception to the requirements
18 in 10(B).

19 MS. BADA: Right.

20 COMMISSIONER BAILEY: Which would be --

21 MS. BADA: They're saying if you want an
22 exception, you need to include it in the application for
23 their E and D.

24 COMMISSIONER BAILEY: Okay.

25 COMMISSIONER OLSON: It puts the burden on the

1 operator to show what's being done to prevent
2 waste, protect correlative rights, protect fresh water,
3 and protect human health and the environment. So long as
4 they can show that they're still accomplishing those
5 goals, they can get some changes to that, which would
6 include using the close-loop system.

7 COMMISSIONER BAILEY: That's right.

8 CHAIRMAN FESMIRE: Counsel Bada, on that Page 2
9 of 10, there's some other revegetation requirements.
10 Those were intended to be --

11 MS. BADA: They should have been highlighted in
12 oil and -- And somehow I managed not to.

13 CHAIRMAN FESMIRE: Okay. So I think we're in
14 conditional agreement with everything except B,
15 notwithstanding Commissioner Bailey's running objection.

16 COMMISSIONER BAILEY: I notice that it still
17 says five years because --

18 CHAIRMAN FESMIRE: Right.

19 COMMISSIONER BAILEY: -- we did not make any
20 agreement as to how we would judge when an E and D plan
21 would be eligible for conversion for pool orders.

22 CHAIRMAN FESMIRE: Has anybody had a chance to
23 think about it?

24 COMMISSIONER BAILEY: If we delete 2, 3, and 4,
25 we could simply go straight to 5, because the application

1 for replacement would be determined by the conditions set
2 for the proposed -- by the operator.

3 MS. BADA: The ones that I could find in the
4 plan that I thought might be applicable was information
5 from the monitor welling and the information from the mud
6 logging program.

7 COMMISSIONER BAILEY: But didn't the Division
8 testify that monitor wells would not be a requirement
9 across the board for all wells that are drilled?

10 CHAIRMAN FESMIRE: Do you remember under what
11 context?

12 COMMISSIONER OLSON: I don't remember either.

13 COMMISSIONER BAILEY: The hydrologist
14 consultant Andy --

15 COMMISSIONER OLSON: Or was that Tom Morrison?

16 CHAIRMAN FESMIRE: Tom Morrison on this one,
17 yes.

18 COMMISSIONER BAILEY: Testified that they did
19 not require monitor wells, and I believe the Division
20 testified that they would not require monitor wells for
21 all E and D plans, dependant on the situation. So,
22 Cheryl, would that be an "or" not an "and"?

23 MS. BADA: Yeah. I mean, certainly the way it's
24 written it would -- well, they have to say proposed plan,
25 so I suppose if they have no plan to install wells, they

1 just have to tell you.

2 CHAIRMAN FESMIRE: Yeah.

3 COMMISSIONER OLSON: Because if I come back to,
4 you know, 9(B)(7), it talks about the proposed plans for
5 installing monitor wells, but it doesn't necessarily
6 require that they must be installed. So it's a
7 discretionary issue.

8 CHAIRMAN FESMIRE: Okay.

9 COMMISSIONER OLSON: So where was the "and" that
10 you were talking about?

11 MS. BADA: After 12 in B, that whole list.

12 CHAIRMAN FESMIRE: We're back to B. I don't
13 understand.

14 MS. BADA: Jami's question was, that if it was
15 mandatory, then you wouldn't have an "and" because an and
16 would require, but it's actually just asking for
17 information, it's not mandating that you drill them.

18 CHAIRMAN FESMIRE: Okay.

19 COMMISSIONER BAILEY: So conversion of the E and
20 D plan to a pool rule would be dependent on information
21 provided through monitor wells or --

22 MS. BADA: And my question was, if you have that
23 type of information, if you had enough information of
24 depth of water, saturated thickness, baseline water
25 samples, what type of information do you need from the

1 exploration and development to be comfortable going into a
2 special pool rule. Special pool order, I should say.

3 COMMISSIONER OLSON: I would agree that you're
4 going to have -- you know, it can vary, you can have
5 different information but for different plans, that as you
6 go along, you may even have adjacent plans that are going
7 to provide information that could be used on a subsequent
8 plan.

9 So the information that's going to be used is --
10 I think the intent was that the Division had said that
11 they wanted to have information available to be able to
12 make the decisions on what to be done in the replacements.

13 CHAIRMAN FESMIRE: Right.

14 COMMISSIONER OLSON: But I don't think they
15 specified exactly what that would be.

16 COMMISSIONER BAILEY: So your suggestion earlier
17 had to do with monitor wells or -- what was it --
18 reservoir characteristics, what was the term that you
19 used?

20 MS. BADA: The mud logging.

21 COMMISSIONER BAILEY: Oh, okay.

22 MS. BADA: Essentially -- and it's just an
23 example of, okay, what type of information are you wanting
24 before you convert to a special pool order, what do you
25 need to know before your comfortable doing that.

1 One way of doing that may be adding something
2 to, say, even in what's currently E(5) and adding another
3 paragraph there that says, "Describe the information
4 that's obtained from the exploration and development," and
5 give them examples of the type of information you'd be
6 looking for.

7 CHAIRMAN FESMIRE: Well, I think it's --
8 especially out here where the hydrogeology is so
9 convoluted, and I think there's a lot of testimony to that
10 effect, basically, we're going to want any information
11 that they develop in that -- in response to this rule,
12 aren't we? I mean, we wouldn't want to limit it.

13 MS. BADA: No, but you need examples of what
14 you'd be looking for.

15 COMMISSIONER BAILEY: Which is part of the list,
16 because 5(B) talks about the list of Subsection B, which
17 is --

18 CHAIRMAN FESMIRE: Wait a minute. What are you
19 talking about here?

20 COMMISSIONER BAILEY: I'm thinking out loud
21 right now.

22 CHAIRMAN FESMIRE: Because (5)(B) is the plans
23 that we talked about.

24 COMMISSIONER BAILEY: The application.

25 MS. BADA: When you look at E(5)(B), it refers

1 you back to Subsection B.

2 COMMISSIONER OLSON: B in general, all of B.

3 CHAIRMAN FESMIRE: By proposed -- Subsection B.

4 Okay, I guess I don't -- All it's asking you to do, before
5 you convert, sort of update your -- you know, the
6 predrilling assumptions.

7 MS. BADA: Yeah. So essentially, you update
8 what you provided for your E and D plan.

9 CHAIRMAN FESMIRE: Right.

10 MS. BADA: So that really, you should be
11 updating it with the information you just --

12 CHAIRMAN FESMIRE: Right. So I guess I don't
13 see the problem there.

14 MS. BADA: But if that's what you're doing
15 anyway --

16 COMMISSIONER OLSON: Because part of that is --
17 one of the main issues was looking at the fresh water
18 protection, so you'd now have to update -- you'd have to
19 have a lot of new information, you now have to update your
20 hydrologic and site report of what is your hydrology and
21 geology that's come out of your drilling program that
22 you've already done.

23 COMMISSIONER BAILEY: Really, that's the only
24 new information that's generated.

25 COMMISSIONER OLSON: Yeah. But some of it's

1 going to go along with it, which would be looking at the
2 results or whatever happened with the mud logging program
3 and...

4 CHAIRMAN FESMIRE: I guess I don't understand
5 why that would be the only new information generated.
6 Every time you put a hole in the ground, you're going to
7 generate --

8 COMMISSIONER BAILEY: Geology and hydrology
9 information.

10 CHAIRMAN FESMIRE: Right.

11 COMMISSIONER BAILEY: Which is what the new
12 information would be from any kind of plan. So if they
13 can update the plan with the new information that they've
14 developed, which is the definitive hydrology and geology,
15 then at that point, they should be able to go on to pools.

16 COMMISSIONER OLSON: They might have a different
17 identification of target zones at that point, too.

18 CHAIRMAN FESMIRE: Deja vu all over again. But
19 here we've got -- you know, what we're looking at is the
20 surface manifestation of the pool.

21 What we're trying to -- you know, at this point,
22 you know, you've drilled holes -- enough holes that you've
23 identified your pool. Okay? All we're looking with this
24 is, you know, now we start worrying about -- instead of
25 the surface effects that we worried about and addressed,

1 now we start worrying about the prevention of waste,
2 protection of correlative rights down there, we want to
3 get them into the same pool. Okay? Everybody in the same
4 pool.

5 But what we're trying to get away from is what
6 you had to do on the surface. So, while we're using --
7 you know, you're changing the pool rules, and we probably
8 have the authority to include some surface conditions in
9 the pool rules, but what we're doing is, is saying, you
10 know, since you're not going to step outside of this area
11 that you've already investigated, then you don't need to
12 do this stuff anymore. At least that's my interpretation.
13 Am I making sense?

14 COMMISSIONER BAILEY: You have here area within
15 your plan.

16 CHAIRMAN FESMIRE: Right.

17 COMMISSIONER BAILEY: Okay. That's all part of
18 the permitting application process.

19 CHAIRMAN FESMIRE: Right.

20 COMMISSIONER BAILEY: They drill a well, two
21 wells, however many number of wells --

22 CHAIRMAN FESMIRE: Right. On the first well,
23 they go for a nomenclature. I mean, that's a discovery
24 well in the pool.

25 COMMISSIONER BAILEY: Okay.

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER BAILEY: So let's say they only
3 have one well.

4 CHAIRMAN FESMIRE: Okay.

5 COMMISSIONER BAILEY: All right. They have
6 already completed what they needed to do for the surface
7 issues.

8 CHAIRMAN FESMIRE: Within that area, yes, ma'am.

9 COMMISSIONER BAILEY: Within that area. If they
10 have developed by drilling that one well information on
11 the hydrology and the geology of that particular area, why
12 can't they go to pool rules at that point?

13 CHAIRMAN FESMIRE: They can. I mean, that's --
14 We're not arguing about that.

15 MS. BADA: I guess the question is, is there
16 really anything else that you need or what's required --

17 CHAIRMAN FESMIRE: Right for that area. For the
18 area that -- your hole, that area. Okay? But if you're
19 going to step over here at -- over here, outside of that
20 area, and drill another well, you've got a choice, you can
21 either go through the exploration and development plan
22 again, or you can drill it -- you know, you can drill
23 under this exploration and development plan, get your pool
24 declared, and stay within that pool. You can make an
25 adjustment to your exploration and development plan so

1 that you don't have to go through the whole process again,
2 whereas, if you were to get pool rules, declare this area
3 as your special pool area, then when you drill a
4 development well outside of that, you're going to have to
5 go through it again, aren't you?

6 COMMISSIONER BAILEY: Unless you have an
7 amendment of your E and D plan to include that addition.

8 CHAIRMAN FESMIRE: But if we do it that way --

9 COMMISSIONER OLSON: That's already been
10 replaced, I thought, by the special pool rule.

11 CHAIRMAN FESMIRE: Yeah.

12 COMMISSIONER BAILEY: But we haven't gotten to
13 the special pool rule. We're talking about the timing of
14 when do you get away from an E and D plan and do a special
15 pool rule. So if you you've done away with it --

16 CHAIRMAN FESMIRE: See, if you do your special
17 pool rule, you can't amend your exploration and
18 development plan. You drill out here, you got to do
19 another exploration and development plan. Whereas if you
20 wait until you've delineated your entire pool, you know
21 where that's going to be, then you don't have -- you know,
22 the next well you drill will probably be a second well on
23 a proration unit and you don't have to do the exploration
24 and development plan work again.

25 COMMISSIONER BAILEY: Aren't you making the

1 assumption that the pool's confined within an operator's E
2 and D plan?

3 CHAIRMAN FESMIRE: No. No, I don't think that
4 assumption is apparent, is it?

5 COMMISSIONER BAILEY: No, but No. 4 -- Where is
6 it?

7 COMMISSIONER OLSON: Because that was my
8 impression, you could only really replace an E and D plan
9 with a special pool rule, you couldn't use the special
10 pool rule to expand -- be greater than the E and D plan.
11 Am I correct?

12 CHAIRMAN FESMIRE: That's my interpretation.

13 COMMISSIONER OLSON: That's what I thought it
14 was.

15 MS. BADA: Certainly, that's the way 4 is
16 written.

17 COMMISSIONER OLSON: I thought that's the way
18 the intent was, that you come in and you'll have your E
19 and D plan, once you have completed that, you then just
20 replace that with the special pool rule. That was my
21 understanding of how that would work. It's the same area,
22 though, you're just replacing the permit mechanism for
23 that area but you're keeping the area the same.

24 CHAIRMAN FESMIRE: The way I see it is almost
25 like -- exactly like Bill says, but you operate under --

1 as long as you're identifying it, you operate under
2 exploration and development plan until you're comfortable
3 that you've figured out -- I keep using this phrase and
4 you all look terrible at me -- but the surface
5 manifestation of what you're going to have to disturb to
6 develop that pool.

7 If you call it too early, you drill one well and
8 you miss your designation of your pool and you want end
9 up wanting to drill out here, you're going to have to do
10 another exploration and development plan out here.
11 Whereas if you drill enough to thoroughly identify your
12 pool and that surface manifestation, you go to special
13 pool rules, you don't have to do it again for, you know,
14 for areas that are within that area.

15 COMMISSIONER BAILEY: I think it all goes back
16 to my objection to having an E and D plan that does not
17 appear to be in line with current practices.

18 CHAIRMAN FESMIRE: Okay.

19 MS. BADA: My concern is that it assumes that a
20 pool has been established by the Division. There's
21 nothing that actually says that has to happen first before
22 you go to special pool rules.

23 CHAIRMAN FESMIRE: Can't you do that in the same
24 proceeding, establish a pool and establish special pool
25 rules for it?

1 MS. BADA: But is it really a pool? Are
2 you artificially blocking off an area that isn't --

3 COMMISSIONER BAILEY: That may not be a complete
4 pool.

5 CHAIRMAN FESMIRE: Well, you can always -- I
6 mean, we expand pools all the time. If you do that,
7 though, and you drill another well outside your old pool
8 boundary, you're going to have to do another exploration
9 and development plan.

10 MS. BADA: But this doesn't contemplate the pool
11 being any larger than the operator's E and D plan, and it
12 could be.

13 CHAIRMAN FESMIRE: Yes, but --

14 MS. BADA: And it could be next to another
15 operator's E and D plan.

16 CHAIRMAN FESMIRE: And there are provisions in
17 here for joining them. The -- State your question again,
18 because I --

19 MS. BADA: The special pool orders and the
20 classification of pool order are two different things.

21 CHAIRMAN FESMIRE: Right.

22 MS. BADA: One the Division does, the Division
23 classifies a pool.

24 CHAIRMAN FESMIRE: Right.

25 MS. BADA: For the way it's a special pool order

1 provision in this proposed rule is written, it only views
2 the pool as being that E and D plan.

3 CHAIRMAN FESMIRE: Yes, but after you drill your
4 first well you can expand it.

5 MS. BADA: But you may not have another well,
6 another operator may.

7 CHAIRMAN FESMIRE: In which case, they can
8 expand the -- you know, if --

9 MS. BADA: This --

10 CHAIRMAN FESMIRE: Then the worst thing that
11 happens is they have to file their own E and D plan for
12 their portion of the pool. But when they -- anybody
13 establishes special pool rules... But when anybody
14 establishes special pool rules, you know, what we're
15 looking at is a termination of the E and D plan.

16 MS. BADA: We're almost mixing two concepts.

17 CHAIRMAN FESMIRE: It is mixing two concepts.
18 It's using one concept to truncate --

19 MS. BADA: And I'm not sure that works well.
20 Because a special pool order should really be applying to
21 the pool, but if the E and D plan isn't really the pool --

22 CHAIRMAN FESMIRE: Absolutely. I mean -- We're
23 not expanding the E and D plan.

24 MS. BADA: No, you're not, but your pooling is
25 greater than that, and doesn't normally a special pool

1 order deal with an entire pool?

2 CHAIRMAN FESMIRE: Yes, almost always. Everyone
3 that I've ever seen.

4 MS. BADA: And this doesn't. It's a piece of
5 something potentially. I mean, really, shouldn't it be
6 once the Division thinks it has enough information to
7 define the pool and designate the pool, then they should
8 be able to get out from under the E and D plan?

9 CHAIRMAN FESMIRE: You're timing your -- you're
10 terminating the changes in your E and D plan, because when
11 you -- When you go for special pool rules, you're going to
12 have to present evidence that you know where the pool is
13 and that you know enough of the characteristics of it to
14 officially create rules -- or to create rules to
15 officially produce that pool. So you're going to know
16 where the extent of your drilling and production and
17 operations are going to be on the surface. Isn't that a
18 good time to truncate the exploration and development
19 plan?

20 MS. BADA: If you're truly classifying a pool,
21 but then it may extend beyond the E and D plan, and right
22 now we're saying you can't go beyond it, you have to do
23 another E and D plan. Is that really necessary if you
24 know where your pool is even if it's outside your lease.

25 COMMISSIONER OLSON: But I think then part of

1 the problem comes back is that when you do the E and D
2 plan, you're identifying conditions, whether it's geology,
3 hydrology, surface conditions in that area that are only
4 delineated for that area. So if you want to come outside
5 of that, I think the idea is that you now have to also
6 look at those same issues you had to look at before for
7 that area because it has never been looked at there. But
8 I see what you're saying, too, because you're saying --
9 you're looking at the --

10 MS. BADA: How are they defining a pool --

11 COMMISSIONER OLSON: Right.

12 MS. BADA: -- if they don't have that other
13 information.

14 COMMISSIONER OLSON: Right.

15 MS. BADA: You don't know where your boundaries
16 are, how are you doing a special pool rule?

17 CHAIRMAN FESMIRE: You're not. That's the --
18 that's exactly what I'm saying. I think we're talking
19 circles around the same thing.

20 MS. BADA: No, all I'm saying is, then why don't
21 you say that your E and D plan could be replaced once the
22 pool is classified?

23 CHAIRMAN FESMIRE: Replaced with what? Because
24 you --

25 MS. BADA: You either operate under the same

1 statewide rules or you get a special pool order and change
2 your spacing. But until you actually classify the pool --

3 COMMISSIONER OLSON: And she's thinking of the
4 pool as what you're looking at in -- you know, your
5 reservoir, essentially, your reservoir characteristics,
6 but --

7 CHAIRMAN FESMIRE: That's exactly what it is.

8 COMMISSIONER OLSON: Right. But then what she's
9 saying, if you initially come in and do your E and D plan
10 and you're just staying this is now the pool, the pool
11 might actually really be this area.

12 CHAIRMAN FESMIRE: Uh-huh.

13 COMMISSIONER BAILEY: And special pool rules
14 apply outside the E and D location.

15 COMMISSIONER OLSON: Right.

16 CHAIRMAN FESMIRE: Yeah.

17 MS. BADA: Then why would you be doing a special
18 pool order if all you've got is this and you don't know
19 where your boundaries are?

20 CHAIRMAN FESMIRE: Because if you're going to
21 establish a pool, you have to know where the boundaries of
22 the pool are. If you're going to do a special pool order,
23 you establish the boundaries of the pool.

24 MS. BADA: But this doesn't say that.

25 CHAIRMAN FESMIRE: All this does is time it by

1 that. It says at this point in time, you know enough
2 about the subsurface that you're going to be able to
3 adequately describe what you're going to be doing on the
4 surface. It has nothing to do -- you know. Your pool
5 rule -- you know, there's a reason for pool rules. We've
6 had them. All we're saying is, at that same time, you
7 know enough about the reservoir to establish where you're
8 drilling locations are going to be, how big an area you're
9 going to have to develop, and that's at the point in time
10 when you've already done this information -- this
11 information gathering in your exploration and development
12 planning, and at that point you --

13 MS. BADA: Isn't that what you really should
14 say, that you have enough information that the pool can be
15 classified? We don't say that.

16 CHAIRMAN FESMIRE: It doesn't matter. You know,
17 the exploration and development plan really doesn't
18 have -- except peripherally -- anything to do with the
19 pool and the pool size. What we're saying --

20 MS. BADA: It does if you're getting a special
21 pool rule order because you need to know what your pool
22 is.

23 CHAIRMAN FESMIRE: Okay, what's in the special
24 pool order?

25 MS. BADA: You have to know what your pool is.

1 CHAIRMAN FESMIRE: Uh-huh.

2 MS. BADA: But we don't say that.

3 CHAIRMAN FESMIRE: No, no, no, but the special
4 pool order deals with things like maximum efficient
5 production rates, gas/oil ratios, things like that. And
6 what it also does is establish the area of the pool. It
7 doesn't do anything about the things that are covered in
8 the exploration and development plan. I mean --

9 MS. BADA: Yeah. So why are you tying your E
10 and D to a pool?

11 COMMISSIONER BAILEY: If you have side by side E
12 and D plans, different operators, you're saying that one
13 operator cannot go ahead and go do pool rules unless both
14 of them do. That's what you're saying. You're in effect
15 penalizing the other operators within what would be the
16 boundaries of the pool.

17 CHAIRMAN FESMIRE: Okay, but if you go to -- for
18 special pool rules, if the pool has multiple operators,
19 the special pool rules are not just going to be based on
20 the data that you have on yours, it's going to be based on
21 the data that everybody has. Everybody will be a party to
22 that special pool hearing.

23 MS. BADA: That's not what this says. That's
24 now how it's written. Doesn't contemplate that. Maybe
25 that should have been the intent. The way it's currently

1 written, it doesn't, it's a -- a box. It should say, even
2 if you don't know what your pool is, you can come in and
3 ask for a special pool order --

4 CHAIRMAN FESMIRE: Okay, let's see if I can dig
5 one up.

6 MS. BADA: Especially if it was language that
7 was added, I think it does that even more so, because you
8 can't drill outside of it here or here or here.

9 CHAIRMAN FESMIRE: Okay. So what it should say
10 is that you will operate under an exploration and
11 development plan until you have sufficient information --

12 MS. BADA: For the Division to classify the
13 pool --

14 CHAIRMAN FESMIRE: All we're doing is the pool
15 -- using the pool as a clock. Okay? Perhaps what it
16 should say is that you will operate under an exploration
17 and development plan until you have sufficient information
18 and data developed to identify the surface area or extent
19 of the disturbed area associated with that development,
20 that pool, and then you can go for special pool rules that
21 will also describe any future need. But by this time
22 you've done the archeologist, you've got information on
23 the water, you've developed the information that you need,
24 and you probably shouldn't be burdened by what we've
25 established here in a true development situation where you

1 you're drilling within the boundaries of -- And the only
2 thing that they've done here is to tie that time to the
3 time that you go to seek special pool rules.

4 MS. BADA: It doesn't acknowledge to me to have
5 that information. It really doesn't. They're just
6 putting a five year time, and I don't think --

7 CHAIRMAN FESMIRE: I agree with you on the five
8 years. And remember, this...

9 COMMISSIONER OLSON: So if one operator -- just
10 like Jami said, if one operator's here and one's here,
11 they both -- and they're right next to each other, one
12 does his E and D plan, and the other one's doing the E and
13 D plan, this one comes in and files for a special pool
14 order for just his --

15 CHAIRMAN FESMIRE: No. No, the pool -- if he --

16 COMMISSIONER OLSON: That's the way I'm
17 interpreting --

18 CHAIRMAN FESMIRE: The special pool order will
19 encompass the entire pool and it will involve data from
20 the entire pool. What you're doing is setting the
21 framework for the rules to prevent waste and protect
22 correlative rights.

23 COMMISSIONER OLSON: Right, so you have --

24 MS. BADA: That's what it needs to say and right
25 now it doesn't.

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER OLSON: So you need to define --
3 and, say, both of these pieces made up the whole pool, so
4 until both of these pieces are done, you can't do a
5 special pool?

6 COMMISSIONER BAILEY: Neither one of them can
7 get out from underneath the E and D plan. Is that right?

8 CHAIRMAN FESMIRE: What do you mean is that
9 right?

10 COMMISSIONER BAILEY: Is that right to penalize
11 an operator who is doing everything he can but doesn't --
12 has developed the information but --

13 CHAIRMAN FESMIRE: We go back to the idea,
14 you're not just -- when you go for special pool rules, it
15 won't apply to my half of the pool, it will apply to the
16 pool.

17 COMMISSIONER BAILEY: But you're saying that the
18 entire pool has to be defined.

19 CHAIRMAN FESMIRE: And you can't get special
20 pool rules until you have enough data to define the pool.

21 COMMISSIONER BAILEY: But you're saying the
22 entire pool has to be defined. That's not the way pools
23 work now. You can have one wildcat well and develop your
24 pool.

25 CHAIRMAN FESMIRE: Right now it's based on --

1 arbitrarily. It's a mile or two miles, you know --

2 COMMISSIONER BAILEY: Uh-huh, and then it's
3 expanded as further development occurs so that you then
4 begin to understand the boundaries of the pool.

5 CHAIRMAN FESMIRE: I think we're saying exactly
6 the same thing, but you all aren't --

7 COMMISSIONER BAILEY: We're saying step by step
8 is the way it's being done now. You're saying the whole
9 thing has to be done.

10 CHAIRMAN FESMIRE: No, no. When you come in for
11 special pool rules, you have to give a reasonably
12 technically valid definition of the pool, don't you, the
13 size, the distance, the volume.

14 COMMISSIONER OLSON: But you may only know
15 what's on your property. That's just it. What you've
16 done under the E and D plan, that may be all that you
17 know. That's why I was thinking, the intent of what the
18 Division was looking at at that point was, well, if you've
19 done your portion over here, you can get a special pool
20 order just for this. Now, somebody comes in and does an E
21 and D plan here, they're going to have to do some work
22 first, but once they've done their work, that can now be a
23 special pool order, too, or expansion, whatever you want
24 to call it.

25 COMMISSIONER BAILEY: Expansion of the pool

1 rules.

2 COMMISSIONER OLSON: That's the way I had
3 envisioned that when they were testifying. That's the way
4 I thought the --

5 MS. BADA: I think the problem is, frankly, that
6 the Division's rules on how you classify a pool are very
7 limited.

8 CHAIRMAN FESMIRE: That's true.

9 COMMISSIONER OLSON: Right.

10 MS. BADA: Maybe we haven't had many new ones so
11 it hasn't been an issue.

12 CHAIRMAN FESMIRE: We expand pools all the time,
13 and we contract pools all the time. But what -- you know,
14 notwithstanding what is you all's interpretation, I think
15 what they were trying to do here is not tie it to anything
16 more than the pool size.

17 What they're trying to do is keep people from
18 doing an exploration and development plan, drilling one
19 well and saying, okay, I'm going to go for pool rules and
20 get out from under it.

21 MS. BADA: What do you have to know to be
22 satisfied it is used for a special pool order?

23 CHAIRMAN FESMIRE: You would have to know -- be
24 reasonably certain of the extent of that pool, the size of
25 that pool.

1 COMMISSIONER OLSON: But you're not going to
2 know that unless you go and you drill like the whole
3 basin.

4 COMMISSIONER BAILEY: And then there can be
5 multiple operators, multiple leasees right now. I mean,
6 you can't --

7 CHAIRMAN FESMIRE: You don't have to drill every
8 location in the pool to be reasonably certain of what the
9 pool size is.

10 COMMISSIONER BAILEY: But you're pitting
11 leasees, operators, against each other so that one of them
12 cannot fully develop his financial obligations unless
13 another one is doing his exploration at the same time.

14 CHAIRMAN FESMIRE: That's the reason behind pool
15 rules, to protect correlative rights, to give everybody --
16 and the same opportunity to develop their minerals.

17 COMMISSIONER BAILEY: But your expecting
18 everyone to be --

19 CHAIRMAN FESMIRE: I'm not expecting --

20 COMMISSIONER BAILEY: -- defining the pool.

21 CHAIRMAN FESMIRE: No. All we're doing is
22 saying that these two events occur at the same time. You
23 have the pool nailed down -- for lack of a better word,
24 you have the pool identified, reasonably certain of the
25 size, period. At that same time, you ought to have done

1 all the things that are pertinent with respect to the
2 surface. You know, your archeologist, your ground water
3 hydrology, all that stuff should be done at the same time.
4 Once you've established how big that pool is, how much
5 you're going to have to disturb, once you've identified
6 the geology up there --

7 MS. BADA: I think the surface issues and
8 hydrology and reservoir issues are not necessarily tied
9 together.

10 CHAIRMAN FESMIRE: I keep hearing you telling me
11 what I'm telling you.

12 MS. BADA: That has nothing to do with
13 establishing a pool, that has to do with complying with
14 the Cultural Properties Act.

15 CHAIRMAN FESMIRE: That's exactly what I'm
16 saying. All I'm saying is that they are connected by the
17 fact that they occur about the same time and they both
18 define the universe that you're going to be operating in
19 it. In the pool, it defines the reservoir that you're
20 going to be depleting. If it's got a hundred owners, if
21 you're going for special pool rules, you have to show
22 technically that it's going to drain this area, this is
23 the area -- and it just so happens that that's the same
24 information you need to know for -- you know, when you've
25 done enough work in the geology to understand the

1 hydrology, when you've done enough of the archeology work
2 to understand that, to have a good handle on that. All I
3 think that they're trying to do here is give you an out at
4 about the same time. And it -- when you go for pool
5 rules, you don't go for just your half of the pool, you
6 set up pool rules to -- and the specific reason is to
7 protect everybody's rights in that common source of
8 supply.

9 COMMISSIONER BAILEY: I think some of the issue
10 has to do with establishing the pool first and then
11 establishing pool rules. Because you can establish a pool
12 based on one operator's development of his plan.

13 CHAIRMAN FESMIRE: Absolutely. You're
14 absolutely right. One operator's discovery. Because then
15 he wants to name that pool. And when we have determined
16 enough information about the pool, then we can get special
17 pool rules. And that's what I'm talking about, I'm not --

18 COMMISSIONER BAILEY: Okay, you just said it.
19 What determines the information that's needed to make the
20 special pool rules, that's what we should have in this
21 section.

22 CHAIRMAN FESMIRE: Right. What you need -- But
23 the special pool rules don't have a lot to do with what
24 we're trying to cover here. The special pool rules --

25 MS. BADA: Then why do you tie it to this?

1 CHAIRMAN FESMIRE: Because they define the same
2 area, they occur at the same time.

3 COMMISSIONER BAILEY: No, we're looking for what
4 you said of what you need to have in order to have special
5 pool rules.

6 CHAIRMAN FESMIRE: Okay, what you have to have
7 is a reasonable -- expectation is not the right word -- a
8 reasonable description of the size of the reservoir, a
9 reasonable description of the maximum efficient rate of
10 production, a reasonable description of the maximum
11 effective producing GOR, the things that you need to know
12 to protect the correlative rights in that pool.

13 COMMISSIONER BAILEY: And then the pool when it
14 is expanded by additional drilling --

15 CHAIRMAN FESMIRE: Happens all the time.

16 COMMISSIONER BAILEY: -- the special pool rules
17 go and are expanded to cover that area. So --

18 COMMISSIONER OLSON: That's not the way this
19 works.

20 COMMISSIONER BAILEY: That's what this is doing.

21 CHAIRMAN FESMIRE: Okay, that's a later
22 occurrence, and this may not -- you know, this may not
23 cover that adequately. If you do that, then you're still
24 going to have to have another exploration and development
25 plan. But the exploration and development plan you have

1 here for the area that you established the special pool
2 rules for, you shouldn't have to redo all of that work.
3 If you come in to drill an infield well in that area
4 within the original area, you shouldn't -- you know, we
5 got a handle within that area on the hydrology, we got a
6 handle on the archeologist, things like that. That's one
7 deal. You know. You just don't have to have an
8 exploration and development plan for that area. But if
9 you come out here, you have to have an exploration and
10 development plan because you won't have special pool rules
11 when you come out -- I think it's an arbitrary distance
12 now, but a mile. But if you come out here away from that
13 boundary, away from that -- what was a exploration and
14 development plan area but is now a -- you know, defined by
15 special pool rules, okay, when you step out here, you may
16 extend that pool. Happens all the time. But what you
17 don't do until you get down there and know it, is you
18 don't extend the exploration and development plan. You're
19 going to need a new exploration and development plan.

20 COMMISSIONER OLSON: Because you haven't looked
21 at that area.

22 CHAIRMAN FESMIRE: Because you haven't looked at
23 that area. And the two are not -- I mean, they're just
24 peripherally related concepts perfect. But, you know, if
25 you come in, you establish an exploration and development

1 area, you -- just like a pool, you can expand that
2 exploration and development area. But at some point, you
3 have enough information that you can quit doing the
4 archeology reports, that you can quit doing the hydrology
5 report, all the things that are required in here for an
6 exploration and development area, you can quit that. And
7 that just happens to be about the same time you establish
8 the initial special pool rules. Doesn't matter how many
9 owners there are in there, in fact, the reason for special
10 pool rules, generally, is to balance the interests of the
11 owners. When you come out here, step out here outside of
12 that area, this well may end up eventually in this pool.
13 But now you've got to do another exploration and
14 development plan because you stepped out into, you know, a
15 development area or a wildcat area.

16 COMMISSIONER BAILEY: Or an amendment of your
17 current plan.

18 COMMISSIONER OLSON: Right.

19 CHAIRMAN FESMIRE: Okay.

20 COMMISSIONER OLSON: You could be submitting
21 your E and D plan because you haven't got a pool rule yet.

22 CHAIRMAN FESMIRE: Okay. You can do that. But
23 that means that every time you drill a well within this
24 area, you're going to have to comply with your exploration
25 and development plan. Whereas, if you had gotten special

1 pool rules, you wouldn't have to do that every time.

2 COMMISSIONER BAILEY: But if an operator chooses
3 to have only operation units for their exploration and
4 development plan?

5 CHAIRMAN FESMIRE: They're going to have to do
6 another exploration and development plan every time they
7 step out from that proration unit. And until they get
8 special rules that they drill a second well on that
9 proration unit, they're going to have get -- they have to
10 comply with the exploration and development plan.

11 COMMISSIONER BAILEY: But if they establish
12 production in a proration unit, which is the extent of
13 their E and D plan, they want to step out to the next
14 proration unit, they can amend their current plan --

15 CHAIRMAN FESMIRE: Yes.

16 COMMISSIONER BAILEY: Or they can establish pool
17 designation for their proration unit.

18 CHAIRMAN FESMIRE: Uh-huh.

19 COMMISSIONER BAILEY: Expand and even have
20 special pool rules based on that, then expand their
21 proration -- their --

22 CHAIRMAN FESMIRE: Exploration and development
23 area?

24 COMMISSIONER BAILEY: Their E and D plan and
25 have the pool rules expand to cover that proration unit.

1 CHAIRMAN FESMIRE: Except once they've
2 established the special pool rules, they don't have an
3 exploration and development plan to expand under this
4 proposal.

5 COMMISSIONER OLSON: In other words, you're
6 saying essentially it's a new E and D plan every time --

7 CHAIRMAN FESMIRE: Right. So somebody would --
8 I could say --

9 COMMISSIONER OLSON: Which I guess they could do
10 if they wanted to.

11 CHAIRMAN FESMIRE: There could be some reason to
12 do it. But what this proposal is doing, is saying that
13 once you've got a good handle on your area, that you can
14 quit having an exploration and development plan and just
15 develop your wells, and it doesn't have to be, you know,
16 multiple wells in a proration unit as long as you've
17 established this exploration and development area, you're
18 going for special pool rules.

19 COMMISSIONER BAILEY: Do we need to give
20 guidance on exactly what information they need to develop
21 in order establish special pool rules. That's the crux of
22 what this entire afternoon has been. What exactly do we
23 give them as guidance for when they can convert from that
24 E and D plan to the special pool rules? And that should
25 be here instead of what these are.

1 COMMISSIONER OLSON: Versus a straight time
2 frame the way it is now.

3 CHAIRMAN FESMIRE: Right. We can't do that in
4 this rule making. If you want to do that, all we'll do is
5 say, okay, exploration and development plan, you're under
6 for the rest of your life.

7 COMMISSIONER BAILEY: No.

8 CHAIRMAN FESMIRE: That's the alternative.

9 COMMISSIONER BAILEY: No, it would be converted
10 from an E and D plan to special pool rules when this
11 information is developed.

12 CHAIRMAN FESMIRE: Okay, but the -- you don't
13 convert from -- it would be rare occasions when you would
14 put the kind of things in an exploration and development
15 plan in special pool rules. Special pool rules have --
16 for lack of a better phrase -- subsurface objectives.

17 MS. BADA: I think they do currently, but I
18 don't think that's what the Division's proposal is. I
19 think the Division's proposal is to expand the scope of a
20 special pool order.

21 CHAIRMAN FESMIRE: That may be true. That may
22 be true. And that may be what we need to discuss. But I
23 see what they were trying to do, is, you know, when
24 special pool rules become important, an exploration and
25 development plan is less important. Because if you have

1 the information to establish special pool rules, then you
2 probably also have developed the information necessary to
3 comply with the objectives of the exploration and
4 development plan and you probably shouldn't be bound --
5 you know, you shouldn't have to do the archeology and the
6 ground water hydrology and the mud logging and things like
7 that that are required in here after you've developed it
8 enough to have the information available to develop
9 special pool rules.

10 MS. BADA: I think the archeology is really a
11 separate thing, because under the Cultural Properties Act,
12 any time you issue a permit, you have to decide whether
13 there's a register cultural property.

14 CHAIRMAN FESMIRE: Okay.

15 MS. BADA: That can be with an APD.

16 COMMISSIONER BAILEY: Uh-huh.

17 MS. BADA: But I'm not saying that -- I don't
18 think it's accurate to say that you may not have to deal
19 with the Cultural Properties Act, you probably always
20 will.

21 CHAIRMAN FESMIRE: Okay. I stand corrected
22 repeatedly.

23 COMMISSIONER BAILEY: And much of my concept is
24 that a lot of this can be covered in an APD.

25 CHAIRMAN FESMIRE: Okay. Well, what this is, is

1 an attempt to bring an operator out under from under an
2 exploration and development plan. How would you propose
3 to doing it, or do you -- well, you don't think it's
4 necessary.

5 COMMISSIONER BAILEY: Well, number one, I don't
6 think and E and D plan is necessary. Number two, if one
7 has to be put in place --

8 CHAIRMAN FESMIRE: Okay, let's operate under
9 that.

10 COMMISSIONER BAILEY: -- then once an operator
11 has developed sufficient hydrologic and geologic
12 information based on the logging and testing -- Let's say
13 electric logging and the mud logging, then they should be
14 out from under the E and D plan.

15 CHAIRMAN FESMIRE: Okay.

16 COMMISSIONER OLSON: They're in production,
17 though, really.

18 COMMISSIONER BAILEY: Yes.

19 CHAIRMAN FESMIRE: And that's what I'm saying.
20 I agree with you.

21 COMMISSIONER BAILEY: But that's not what this
22 says.

23 CHAIRMAN FESMIRE: This is one way to get at the
24 same thing. Because this is saying that about the time
25 that all of that information becomes perhaps redundant, is

1 about the same time you would have enough information to
2 go for special pool rule. Now, implicit in there is a
3 requirement to go for special pool rules, that you're not
4 going to operate under the statewide rules, and this may
5 be an incentive to do that, but all we're looking at, all
6 we're looking for here is a way -- an admission by the
7 people that proposed this that it's -- you know, you don't
8 always have to do it. There comes a time when you can
9 stop. And they have chosen to tie it to the time that you
10 go for special pool rules. They're not related -- they're
11 not but peripherally related concepts. They're just --
12 you know, applied to measure this. If there's a better
13 way to do it, at what point should you quit having to do
14 the extra logging, the extra mud logging, and -- I didn't
15 say archeologist because you've got a point. But you
16 know, what --

17 COMMISSIONER BAILEY: All wells are going to
18 require electric logging.

19 HEARING EXAMINER: Not if you're in the water
20 zones.

21 COMMISSIONER BAILEY: You can make that a
22 requirement in this section that electric logs will be run
23 from TD to surface. That takes care of the problem.

24 CHAIRMAN FESMIRE: Okay. I surrender.

25 COMMISSIONER OLSON: No, but I think just the

1 difference is, is that right now it's based on this -- our
2 kind of time frame, you know, to set a time frame out
3 there. I was just thinking of that when you guys were
4 just talking now, what about if somebody wanted to -- say
5 they got -- they submit a 3,000 acre E and D plan and they
6 decide their plan is to put in one well, you know. So if
7 they put in -- the way I'm reading this now, if they come
8 in and they put in one well and an E and D plan and
9 operate it for five years, they can convert it and they've
10 never really defined the limits of what's going on inside
11 that pool, what they're calling their pool. Because -- I
12 think it more comes back to defining for the area that
13 you're asking for that you have sufficiently defined the
14 geology, hydrology, reservoir characteristics, everything
15 else that goes along with that. And that seems to me --
16 It's a judgment call that's done through the division
17 staff then at that point.

18 CHAIRMAN FESMIRE: Well, all this does is say,
19 no, it's not a judgment call, it happens at the same time
20 that you go for special pool --

21 MS. BADA: Not right now, it's happening after
22 the fact --

23 COMMISSIONER OLSON: After life years, that's
24 it.

25 MS. BADA: That's what it's saying right now.

1 COMMISSIONER OLSON:

2 MS. BADA: One well and that's it.

3 COMMISSIONER OLSON: I hadn't thought of it that
4 way, but you could have, like I said, a 3,000 acre area,
5 your plan is to put in one well, and then after five
6 years, you can say, "I want a special pool rule now," and
7 you've never really looked at the -- you know, I've looked
8 at this limited piece in the middle, you've never looked
9 at the whole 3,000 acres. And by this, you'd be able to
10 replace it without any qualification of the need to
11 adequately define the hydrology, geology and reservoir
12 characteristics within the 3,000 acres. Do you see what I
13 mean?

14 CHAIRMAN FESMIRE: Right. Okay.

15 COMMISSIONER OLSON: So maybe what we need to do
16 is put that in as a broad language. Instead of saying at
17 least five years, to say that "who has operated under an
18 approved E and D plan and has adequately defined the
19 geology, hydrology, and reservoir characteristics, however
20 you want to say it, within that area. So there is more of
21 a technical issue that comes in for defining what's inside
22 that area versus just the time frame.

23 CHAIRMAN FESMIRE: And that's exactly what I've
24 been saying.

25 COMMISSIONER OLSON: That's what we need to put

1 in there here, then. And so just replace the five years
2 with -- what are the characteristics, then -- I think that
3 comes back to what Cheryl asked earlier. So okay, that's
4 the way you want to go, what do we need to have, then, to
5 be able to convert it?

6 CHAIRMAN FESMIRE: So replace 2, 3, and 4 --

7 COMMISSIONER OLSON: No, no, I wasn't saying
8 anything about that.

9 MS. BADA: Let's go with 1.

10 COMMISSIONER OLSON: I just wanted 1. I wasn't
11 doing anything with 2, 3, or 4 at the moment, I was just
12 looking at 1. So I was thinking of just -- you know,
13 where you come in where it says for at least five years,
14 so you -- it says right now, "An operator who has operated
15 wells under an approved exploration and development plan,"
16 that's okay. And then maybe cross out "for at least five
17 years."

18 And now we need to figure out what are the
19 criteria for replacement. I think it comes back to the
20 whole discussion that we were just having where it might
21 say --

22 CHAIRMAN FESMIRE: Maybe we need to here
23 separate special pool order and a development order or
24 development plan.

25 COMMISSIONER OLSON: I kind of see a special

1 pool order as a development plan.

2 MS. BADA: I think what the Division was
3 proposing was to expand the way special pool orders are
4 used.

5 CHAIRMAN FESMIRE: Because right now they are,
6 they're the mechanism for getting away from statewide
7 allowable -- or statewide production rates, statewide
8 rules, and still protect -- and having some flexibility
9 there. They have little, if anything, to do with surface
10 use, do they? I mean, have you ever come across one with
11 surface provisions in it?

12 COMMISSIONER BAILEY: No, because that's usually
13 covered under unorthodox locations, or something along
14 those lines that would even consider surface --

15 CHAIRMAN FESMIRE: Right. This is, you know,
16 like I said, this is gas-oil ratios. This is maximum
17 efficient rates, things like that.

18 MS. BADA: And the reason I think they want to
19 do that is when you look at (5) (A), their intent was to
20 expand the use -- and the from the testimony on that last
21 day, I think it was to expand the scope of the special
22 pool order. Now, whether the Commission chooses to do
23 that is another question. But I think that was the
24 Division's intent.

25 CHAIRMAN FESMIRE: Well, if we're not going to

1 disturb the concept of special pool rules, special pool
2 orders, how do we -- how do we let them out of the
3 exploration and development -- the requirements of the
4 exploration and development plan?

5 COMMISSIONER OLSON: That's what I was wanting
6 to propose then, that maybe we just replace that "for at
7 least five years" and say "and have adequately defined the
8 geology, hydrology, and reservoir characteristics of the
9 area within the E and D plan. Because really, all you're
10 looking at doing is just replacing this area.

11 CHAIRMAN FESMIRE: Right.

12 COMMISSIONER OLSON: And so -- but you need to
13 have adequate information. Because right now, I'm
14 thinking -- actually, I hadn't thought of that before.
15 When we came to that discussion before, I think that now
16 you would not -- under the way this is written now, you
17 would not have to adequately define the characteristics
18 of that area, you just have to put in one well and wait
19 for five years and now you could qualify for a special
20 pool rule.

21 CHAIRMAN FESMIRE: Absolutely. You're right.

22 COMMISSIONER OLSON: So that's problematic for
23 me. Maybe just -- I'll throw this out as kind of a
24 strawman to start it and maybe we can expand on it, but --
25 "and to have adequately defined the geology, hydrology,

1 and reservoir characteristics of the area within the E and
2 D plan." That way it's saying that had to define -- you
3 had to do something with that -- do your best or good
4 faith effort to defined all those characteristic that are
5 within that area. And now you've done that, oh, now you
6 want to move to production because you've maybe installed
7 five, six wells across that area, you got a good idea of
8 what's going on, and now you want to do some infill
9 drilling or whatever else that goes on from -- that you
10 want to do from there.

11 CHAIRMAN FESMIRE: Okay.

12 COMMISSIONER BAILEY: I think that is either the
13 proration unit or the 3,000 acres.

14 COMMISSIONER OLSON: And that may take them two
15 years, may take five, may take them ten years, you know.
16 Depends on whether -- it's a judgment call on the Division
17 gets to weigh in on the technical characteristics that
18 make up the pool, which seems more consistent with the way
19 the pool rules are done now, because based upon the
20 technical evaluation of that --

21 CHAIRMAN FESMIRE: If they drill two in a 3,000
22 acre area, we find out that the water sand's here, and the
23 water sand's here, and, you know, there's no indication of
24 anything in between, that would be entirely sufficient.

25 COMMISSIONER OLSON: Right.

1 CHAIRMAN FESMIRE: Let them out of it.

2 COMMISSIONER OLSON: There's a possibly that
3 could be okay, or maybe it takes ten wells for them to
4 fully do it. If they start seeing, oh, yeah, well geez,
5 we got this faulting going on between where the zones are
6 changing or --

7 CHAIRMAN FESMIRE: Or we drill out at Bill's
8 house and water sand's here and then --

9 COMMISSIONER OLSON: Right.

10 CHAIRMAN FESMIRE: And I, on the record, have to
11 apologize for being so enthusiastic, I'm just -- I've been
12 in argument for over four months.

13 COMMISSIONER OLSON: No. I think we're talking
14 somewhat on the same thing in different -- We're just not
15 understanding each other here.

16 CHAIRMAN FESMIRE: So, and then what do we do
17 with 2, 3, and 4?

18 COMMISSIONER OLSON: Well, I guess, first of all
19 to me is --

20 MS. BADA: You need to decide whether you want
21 to expand the use of a special pool order, I think is your
22 ultimate decision. If you do, then they may be okay. If
23 you don't, then you're going to need an alternative.

24 CHAIRMAN FESMIRE: I don't think a special pool
25 order -- because, I don't think that most of the things we

1 need in an exploration and development plan would be
2 necessary once we get this information acquired. But I
3 don't know.

4 COMMISSIONER OLSON: I don't think this is
5 saying now that you have to -- It's all the same. I mean,
6 you've done the basic things, you've defined, you know,
7 the geology, the hydrology --

8 MS. BADA: Actually, what it does, it refers you
9 back to Subsection B which lists the whole scope of the
10 thing, and I think it does expand the use of a special
11 pool order.

12 COMMISSIONER OLSON: I'll have to admit, I
13 thought that was their intend was to -- that you would now
14 update the plan based on the new information, which is
15 kind of linking, to me, back to --

16 MS. BADA: Except that you don't have to keep
17 coming in and renewing it.

18 COMMISSIONER OLSON: Right. I thought that was
19 really the whole intent of that, I thought, was just not
20 to have to renew it.

21 CHAIRMAN FESMIRE: The APD review ought to take
22 care of that once the information is developed. Right? I
23 come in, I want to set the water string here. Well, we
24 got other places we can look. We got a determination that
25 that's enough data. So, I think once they have developed

1 it enough that the OCD can evaluate -- and maybe that's
2 the criteria we need to put in there, can evaluate further
3 development within the exploration and development plan --
4 I'm losing the thread here, but what I'm trying to say is
5 --

6 COMMISSIONER BAILEY: Let's take a break.

7 CHAIRMAN FESMIRE: Yeah, let's take a break.

8 (Note: A break was taken.)

9 CHAIRMAN FESMIRE: The record should reflect
10 that this is the continuation of Case No. 14255, the
11 Commissioners Bailey, Olson and Fesmire are all present.
12 We therefore have a quorum, and I believe, Commissioner
13 Olson, you were making a point when we decided to break.

14 COMMISSIONER OLSON: Yeah. I think -- I was
15 talking with our counsel here playing with the language.
16 But it's for replacement on the "at least five years."
17 But I don't know if there's another -- maybe -- that's the
18 other thing, is there a characteristic other than the
19 geology, hydrology, and reservoir characteristics that we
20 need to be concerned with for them to demonstrate within
21 that area. I think those are the three major factors. I
22 was going back to look at B, seeing if there was something
23 else that would be -- because I think a lot of that --
24 it's a very broad statement that incorporates, to me, what
25 I'm seeing, most of the issues that are being addressed in

1 (B). I think that's the intent of what the Division is
2 looking at in moving into more of a production phase.
3 Because I'm not seeing anything else in (B) that really
4 strikes me of not falling within those -- most of those
5 characteristics.

6 CHAIRMAN FESMIRE: What were the three,
7 hydrology --

8 COMMISSIONER OLSON: Geology, hydrology and
9 reservoir characteristics.

10 CHAIRMAN FESMIRE: You mean reservoir as in
11 water reservoir or reservoir as in the oil and gas?

12 COMMISSIONER OLSON: I was thinking in terms of
13 oil and gas at that point, covering hydrology, should be
14 covering water characteristics.

15 CHAIRMAN FESMIRE: In spite of what we've done
16 here, that kind of information would be necessary for pool
17 rules or special pool rules.

18 COMMISSIONER OLSON: Right. It seemed to me to
19 be consistent with -- The way pool rules are done now,
20 you're having to characterize a reservoir. So.

21 CHAIRMAN FESMIRE: So perhaps all we're looking
22 at is the geology and the -- because as Counsel Bada
23 pointed out, some of the other requirements, the
24 archeological requirements, are going to have to be done
25 whether it's -- whether or not we're operating under an

1 exploration and development plan or not.

2 COMMISSIONER OLSON: Right.

3 CHAIRMAN FESMIRE: So what we're trying to do,
4 instead of replacement of an exploration and development
5 plan with a special pool order, what we're trying to do is
6 terminate the exploration and development plan upon a
7 showing -- and you had the wording. Do you want to --

8 COMMISSIONER OLSON: Yeah, I -- I mean, if you
9 want to drop the reservoir characteristics, that's fine.
10 E(1) would now read, "An operator --" and maybe Cheryl can
11 help me out here.

12 MS. BADA: An operator who has operated wells
13 under and approved exploration and development plan and
14 demonstrates to the Division's satisfaction that the
15 hydrology, geology, and reservoir characteristics within
16 the area that the exploration and development plan covers
17 have been adequately defined or sufficiently defined may
18 apply for approval to replace the exploration and
19 development plan with a special pool order.

20 COMMISSIONER BAILEY: Fine by me.

21 COMMISSIONER OLSON: That sounds good.

22 COMMISSIONER OLSON: We're dropping reservoir,
23 right?

24 CHAIRMAN FESMIRE: Yeah. And I don't think that
25 special pool rules would be a -- What I think we ought to

1 do is just terminate the exploration and development plan
2 then.

3 MS. BADA: I think it depends whether you still
4 want those type -- the types of issues that are addressed
5 in the exploration and development plan to continue to be
6 able to be addressed.

7 COMMISSIONER OLSON: Well, that's what I thought
8 the intent was.

9 MS. BADA: That's certainly the Division's
10 intent.

11 COMMISSIONER OLSON: Yeah.

12 MS. BADA: Whether that is something the
13 Division wants to do is their decision. But that's
14 certainly their intent, that those type of things would
15 still be --

16 CHAIRMAN FESMIRE: The application for an
17 exploration and development plan has the operator's name,
18 address and telephone number, a legal description of the
19 area covered, identification of the target zone or zones,
20 a topographic map of the area, you know, other maps,
21 farms, things like that. That's -- you know, once they've
22 drilled enough wells and they've not changed the
23 exploration or development plan area --

24 MS. BADA: Then I would think the things that
25 are more likely they would be looking at are facilities,

1 gathering lines.

2 COMMISSIONER OLSON: Yeah. Because now you're
3 moving into some different things. That was the intent of
4 what the Division proposed.

5 MS. BADA: Those type of things, I think, is
6 probably what they were focusing on.

7 COMMISSIONER OLSON: So I think it's that idea
8 that the -- you know, working through an orderly
9 exploration plan and now you're moving into an orderly
10 production plan for your facility, at least that's my
11 understand of the intent of what the Division was looking
12 at. So I think if you got rid of it entirely, then you're
13 not meeting that intent for the production development
14 plan, if you want to call it more of what it is.

15 So I don't have a problem with leaving it with
16 the special pool order as long as we clarify how it's --
17 these mechanisms that allow for that change to occur.
18 Because it could be -- like I said, it could be two years,
19 could be five, could be ten years, depends on what they do
20 and what scale of actual work they actually perform out
21 there. Because maybe they don't have enough money to do
22 it all at once, they might just do a couple of them at
23 then come back and do some more another year. It's
24 possible.

25 CHAIRMAN FESMIRE: So -- and then next part, "A

1 special pool order shall --"

2 COMMISSIONER OLSON: Where are you at?

3 CHAIRMAN FESMIRE: Well, I'm thinking here.

4 Because, you know, there's some things that we would like
5 to have.

6 COMMISSIONER OLSON: Are you talking about in --

7 MS. BADA: B(2).

8 COMMISSIONER OLSON: I don't have a problem with
9 2, 3, and 4 myself.

10 CHAIRMAN FESMIRE: About "A special pool order
11 shall include those portions of B(1) through (13) that the
12 Division deems necessary" or something.

13 COMMISSIONER OLSON: Well, they already have to
14 do it up to 5, update the information. If nothing else --
15 if they've already done their arc surveys, they're done
16 all their other stuff, the only thing they really have to
17 change is the hyrogeologic report. It's a backup, that if
18 something else changes in these other things, then they'll
19 have to do that. But I can't really see it really
20 happening.

21 CHAIRMAN FESMIRE: So we just change your
22 wording and then strike 2, 3 and 4?

23 COMMISSIONER OLSON: I wasn't striking it, I was
24 leaving it, but is there some reason why we struck it
25 then?

1 CHAIRMAN FESMIRE: Because I'm feeling guilty, I
2 just --

3 COMMISSIONER BAILEY: I particularly do not
4 understand the need for the second sentence of 2, "The
5 horizontal limits of the pool shall not be extended except
6 to combine special pool orders applying to adjacent areas.

7 CHAIRMAN FESMIRE: That was an attempt so that
8 an operator would not deliberately make too small an
9 exploration and area, an area covered by the exploration
10 and development plan.

11 COMMISSIONER BAILEY: Which I think is not the
12 role of the Division. Their testimony over and over again
13 was that they would not limit a minimum size or would not
14 designate a minimum size for an E and D plan.

15 CHAIRMAN FESMIRE: Well, if somebody comes in
16 and they make the E and D plan too small, they drill one
17 well, the only advantage to them is they don't have to
18 incur the cost of doing some of these things for the
19 larger area; if they come in and want to drill a second
20 well, then they've got to.

21 COMMISSIONER BAILEY: Then it's their choice,
22 the operator's choice. I don't think it's the Division's
23 role.

24 CHAIRMAN FESMIRE: It's not their choice, it has
25 to be based on their good faith estimate of the productive

1 area. I wouldn't be adverse to striking that sentence,
2 then, because it's going to be -- as long as they plan to
3 drill more than one well, then -- you know, nobody goes
4 into a project expecting to drill just the one well.

5 COMMISSIONER OLSON: Yeah. I mean, I think it
6 was -- it seemed like it was -- maybe I've got this wrong,
7 that that was kind of intending to say that you're just
8 not going to be expanding your pool order without having
9 it part of an E and D plan. Is that what -- or am I
10 reading that wrong? I don't have a problem just striking
11 it from what I see.

12 MS. BADA: Doesn't 4 say that, thought?

13 COMMISSIONER OLSON: That's what I thought.
14 Right. That's right.

15 CHAIRMAN FESMIRE: Okay, I'll just strike that
16 sentence. And the rest of it is satisfactory? I mean, as
17 satisfactory as it can get. Okay.

18 COMMISSIONER OLSON: I'm looking at the rest of
19 it. Now they can at least figured out how to apply for
20 it.

21 CHAIRMAN FESMIRE: Okay. So we've nearly got a
22 rule for Santa Fe County, but what we need to do is order
23 the Oil Conservation Division to set a date and notice out
24 our reopening of the record solely for the purpose of
25 establishing the boundaries of the Galisteo Basin and

1 order the OCD to appear and show cause --

2 MS. BADA: Just to appear and present a legal
3 description for the Galisteo Basin in Santa Fe County.

4 CHAIRMAN FESMIRE: Okay. And that will probably
5 occur, when, on the March 12 --

6 MS. BADA: No, that would be --

7 CHAIRMAN FESMIRE: I mean, not the March, the
8 April --

9 COMMISSIONER BAILEY: April 9th.

10 CHAIRMAN FESMIRE: That's right, April 9th. Can
11 we get it noticed out? Okay. Does the Commission need to
12 take any other action?

13 MS. BADA: When do you want the Division to
14 submit a proposed legal description? Do you want to have
15 them do that prior to the hearing and then distribute it
16 to the other parties?

17 CHAIRMAN FESMIRE: The rules require them to do
18 that ten days prior to any hearing.

19 COMMISSIONER OLSON: But don't other parties
20 need to be able to file if they've got an objection to the
21 boundaries?

22 CHAIRMAN FESMIRE: Yeah, the rules provide for
23 that.

24 COMMISSIONER OLSON: When would they file that?

25 CHAIRMAN FESMIRE: Four days before that.

1 MS. BADA: I mean -- because the rule making
2 is -- I don't think that quite works. Because normally,
3 you file a application and they have to file proposed
4 modifications.

5 COMMISSIONER BAILEY: Right.

6 COMMISSIONER OLSON: Do they make it available
7 to at least the parties here sometime in advance of the --
8 electronically filing it?

9 COMMISSIONER BAILEY: Post it in the Register.

10 COMMISSIONER OLSON: Right.

11 CHAIRMAN FESMIRE: The rules cover it. I just
12 can't remember specifically what they are.

13 MS. BADA: Essentially, it will be offering technical
14 testimony.

15 CHAIRMAN FESMIRE: Yes.

16 MS. BADA: No later than five business days
17 before the scheduled hearing date. So I think you could
18 do something similar for this type of thing.

19 COMMISSIONER OLSON: Because if somebody's
20 having to check some legal descriptions, it might take
21 them a little while to do that, so the more time they got
22 the better.

23 MS. BADA: And this is an application, that's us
24 that reopens the record. So I think we should have the
25 Division provide one ten days before the hearing, and then

1 anybody that has any alternative should submit those five
2 days. I just hope they have the notice before they come
3 in.

4 COMMISSIONER OLSON: Is it possible 20 days
5 before the hearing they can provide it to the parties just
6 -- anyway? Is that possible, is that too short of time?

7 CHAIRMAN FESMIRE: Well, I know the state
8 engineer's got one.

9 MS. BADA: Depends how long it takes them.

10 COMMISSIONER OLSON: To cover a legal
11 description.

12 CHAIRMAN FESMIRE: I think we ought to comply
13 with the rule.

14 MS. BADA: Well, the rule doesn't address it
15 because it's not a new application.

16 CHAIRMAN FESMIRE: But it's -- I'm sure the
17 courts would -- if we complied with the rule, the courts
18 would find that acceptable notice.

19 MS. BADA: Because normally, they have the
20 application, what, 20 days before the hearing, and
21 modifications in ten, but without a calendar, I'm not sure
22 when that will land, how long that gives the Division
23 to...

24 COMMISSIONER OLSON: I got a calendar.

25 CHAIRMAN FESMIRE: If you were to draft that

1 order, I can sign it without permission.

2 MS. BADA: Yes. Or they can authorize you to
3 now.

4 COMMISSIONER BAILEY: I authorize you to sign.

5 COMMISSIONER OLSON: You have my authorization

6 CHAIRMAN FESMIRE: There's a motion. Is there a
7 second?

8 COMMISSIONER OLSON: There's a second.

9 CHAIRMAN FESMIRE: To authorize the chairman to
10 sign and implement the order -- the order we discussed and
11 the OCD to appear and provide technical testimony
12 concerning the boundaries of the Galisteo Basin within
13 Santa Fe County. Right?

14 COMMISSIONER BAILEY: The legal land
15 descriptions.

16 COMMISSIONER OLSON: Limited to the --

17 CHAIRMAN FESMIRE: And that's the only reason
18 we're opening the record.

19 COMMISSIONER OLSON: Yes. Because 20 days puts
20 it out about the 19th of March if you did that.

21 MS. BADA: The 27th of February.

22 CHAIRMAN FESMIRE: So we've got three weeks.

23 COMMISSIONER OLSON: Not quite three weeks.
24 That's kind of tight.

25 CHAIRMAN FESMIRE: I think the ten days to get

1 that converted. There are GIS programs that will convert
2 it, a hand-drawn boundary.

3 COMMISSIONER OLSON: In you do it at ten days,
4 it gives them a month to get that together. Just whether
5 somebody might object that they didn't have enough time to
6 look at the boundaries to see if -- I don't know if that's
7 accurate or -- I would think it would be pretty
8 straightforward off what the state engineer's already
9 defined. I mean, they don't have a legal description of
10 the basin since then, or they just have maps?

11 CHAIRMAN FESMIRE: I think they do. But we'll
12 have to get somebody who's done it to testify to it and
13 testified that it's accurate.

14 MS. BADA: So when do you want to submit it?

15 CHAIRMAN FESMIRE: Bill seems to think 20 days
16 prior.

17 COMMISSIONER OLSON: Well, that's the end of
18 session again. So. I'd be adverse to things inside the
19 session.

20 CHAIRMAN FESMIRE: Ten days prior.

21 COMMISSIONER OLSON: Ten days prior.

22 CHAIRMAN FESMIRE: You know, pursuant to
23 the applicable rule.

24 MS. BADA: That's a modification, but... The
25 reason they don't quite apply, is normally you have a rule

1 application. They have the 20 days prior. Anybody has a
2 modification submits it ten days prior. This isn't a
3 rule, it's us asking for information.

4 CHAIRMAN FESMIRE: Right.

5 COMMISSIONER OLSON: It's a limited type of
6 information that we're looking for. So.

7 CHAIRMAN FESMIRE: Okay. Any other business
8 before the Commission?

9 COMMISSIONER OLSON: So what's the next process
10 that -- Counsel will also put this into a final -- I guess
11 we can't have a final order until we've reopened the
12 record.

13 MS. BADA: I can have it ready, but until the
14 legal description --

15 COMMISSIONER OLSON: That's the place holder.

16 MS. BADA: The other thing you still need to
17 address is the small business regulatory impacts.

18 CHAIRMAN FESMIRE: Okay. And according to that
19 law, we're required to consider the economic impacts of
20 this rule on small businesses.

21 MS. BADA: And whether there are any
22 alternatives that are less burdensome to accomplish the
23 intent of the rule or meet the rule.

24 CHAIRMAN FESMIRE: Okay. What exactly would be
25 the burdens? They're going to have to prepare everything

1 in B, or have it prepared prior to submitting an
2 exploration plan, right.

3 A legal description of the area. That should be
4 easy enough. Identification of target zone or zones.
5 They should know that before they spud. The costs will be
6 simply accumulating that data, and those two are
7 relatively easy.

8 Topographic map of the area to be covered by the
9 proposal. Computer programs. Although there may be a
10 slight cost in acquiring the computer programs. A map or
11 maps of the areas. They may have to go out -- The GPS
12 global positioning system requirements, those that can't
13 be handled in the office can probably be done by field
14 work.

15 And the sixth decimal point in unsurveyed areas,
16 they may require a surveyor to go in there for that kind
17 of accuracy. So that would be a cost that they would have
18 to cover.

19 Surface ownership should be readily
20 ascertainable. Municipal and county boundaries, farms.
21 Again, there may be some requirement for field surveying.
22 That is a cost that they will have to bear. All buildings
23 and infrastructure, that can be generally done by a GPS
24 and a site visit.

25 Water courses, sinkholes, and unstable areas,

1 again, the same GPS and as supplemented by a site visit.
2 Municipal fresh water oil fields covered under municipal
3 ordinance adopted pursuant to NMSA 1978 Section 3-27-3 as
4 amended. That will require some communication with the
5 city and state engineer's office. There is a cost
6 associated with that.

7 Water wells and wellhead protection areas.
8 That's available from the state engineer and the
9 environment department, is it not?

10 COMMISSIONER OLSON: Wellhead protection areas
11 -- well, at least for public supply wells are identified.

12 CHAIRMAN FESMIRE: All existing oil and gas
13 wells. That's available from the OCD, but it also should
14 be an integral part of their project prospect development.
15 Location of proposed exploratory wells. That's available.

16 A hydrologic site report. That's going to be an
17 expense, and that's going to be a pretty significant
18 expense. But I think it's necessary to protect the
19 surface and ground water, which is one of the major
20 purposes of this rule.

21 Proposed plans for installing monitor wells to
22 determine depth of water and saturated thickness, and
23 obtain baseline water samples and tech releases. This is
24 just a plan at this point. When it comes to the actual
25 implementation, that will be a significant expense. A

1 drilling program description.

2 Mud logging. Again, at this point in the deal,
3 it is a proposal, description, but to do the mud
4 logging -- this does not require any more mud logging than
5 what ordinarily would be done on an exploration well, does
6 it Commissioner Bailey?

7 COMMISSIONER BAILEY: No, I don't believe so.

8 CHAIRMAN FESMIRE: Okay. Most of the time, that
9 cost would be -- the operator would plan to incur that
10 cost. There are some people that don't drill with mud
11 loggers. But I would not expect that in a wildcat area.
12 Plans for addressing the waste generated during drilling
13 and production processes. They're going to have to comply
14 with OCD rules. All we're asking for here is a plan to
15 address it. So I don't think that would be an increased
16 cost.

17 Minimizing pad sallys and consolidating
18 facilities, there could be some cost associated there. It
19 certainly would require a little more precedential
20 planning. So there could be a cost associated that
21 wouldn't ordinarily -- that wouldn't otherwise be
22 incurred.

23 Making the best estimate of the number of
24 location and development wells and related facilities,
25 that would be relatively inexpensive. A written

1 contingency plan for all releases with no exclusion for
2 deminimis. There is a cost to that. But again, most
3 prudent operators are doing that now.

4 Best management -- well, the things that need to
5 be included in the plan are covered here. A search for
6 cultural resources and listed cultural resources, that
7 will be a cost to an operator.

8 COMMISSIONER OLSON: But it's a cost that they
9 already have to incur anyway.

10 COMMISSIONER BAILEY: These are separate and
11 apart of what would be required under the exploration and
12 development plan.

13 COMMISSIONER OLSON: Right.

14 CHAIRMAN FESMIRE: A posted legal notice. There
15 would be a slight cost associated with that. And other
16 information that the Division may require. There's the
17 potential for cost there. Operator certification. That
18 would cost them a notary fee. Are there any other
19 potential costs?

20 COMMISSIONER BAILEY: Yes.

21 CHAIRMAN FESMIRE: What?

22 COMMISSIONER BAILEY: From the public notice
23 requirements and public hearings.

24 CHAIRMAN FESMIRE: And the public hearings,
25 there will be a cost for representation and transportation

1 and --

2 COMMISSIONER BAILEY: Considerable, as we know.

3 CHAIRMAN FESMIRE: Yeah. Translator. They're
4 going to have to have it in Spanish and in English. The
5 cost of preparing an application. Again, parts of which
6 must be published in English and Spanish.

7 COMMISSIONER BAILEY: And the additional groups
8 and agencies for public notice.

9 CHAIRMAN FESMIRE: Right. Publishing notice in
10 a newspaper of general circulation will have a cost
11 associated with it.

12 COMMISSIONER BAILEY: Which is not
13 insignificant.

14 CHAIRMAN FESMIRE: Is there anything in 10 that
15 will require additional costs? Of course, the cost to
16 create an application, but that's not new to them, and I
17 don't think there are any additional costs that are new to
18 this rule making.

19 They do have some requirements of global
20 positioning coordinates to the sixth decimal point that
21 may require a surveyor to visit the well location. But
22 that will probably -- that's a traditional cost. It will
23 probably not increase.

24 Commissioner Bailey, do you want to cover B(1)?

25 COMMISSIONER BAILEY: Yes. There are going to

1 be additional costs for the closed loop system and for the
2 removal of the waste products, because onsite closure is
3 not allowed.

4 CHAIRMAN FESMIRE: And there was extensive
5 evidence in the record in other cases concerning that.

6 COMMISSIONER BAILEY: To have mud logger on site
7 at all times.

8 CHAIRMAN FESMIRE: From surface to total depth.
9 That is probably an increase over what they would normally
10 have. So that is a cost. Isolation of all fresh water
11 zones is required anyhow. Two cemented casing strings.
12 That might not ordinarily be required. Circulate cement
13 at the surface and all the casing strings, that would not
14 originally be required and will be an expense. Cement
15 bond logs. And to this extent, normally wouldn't be
16 required. So that would be an expense. Okay.

17 COMMISSIONER BAILEY: Before we leave that area,
18 though, I'd like to just comment that this rule with the
19 added expense will impact the support of schools, prevent
20 development of the natural resources and revenues
21 generated for the common schools' beneficiaries of the
22 state trust.

23 CHAIRMAN FESMIRE: Okay. Counsel, is there
24 anything else we need to cover on this?

25 MS. BADA: I think we've addressed the expenses.

1 Do you feel that there are ways to mitigate the rule as
2 written or...

3 CHAIRMAN FESMIRE: I think that the operators
4 will figure ways to mitigate the costs and the cost will
5 decrease over time. But I think that as presented now,
6 they're necessary to accomplish the objective of
7 protecting fresh water, human health and the environment,
8 and to a lesser extent, to protect correlative rights and
9 prevent waste.

10 COMMISSIONER OLSON: I might add, the intent of
11 this is looking at the protection of fresh waters. As
12 evidenced in other areas of the state, we have extensive
13 contamination in some areas that has extreme costs that go
14 with it. So pollution prevention has been demonstrated
15 over time to be the most effective mechanism for costs in
16 the long run.

17 COMMISSIONER BAILEY: And the land office
18 believes that Executive Order 2008-4, which directed that
19 rules be developed to ensure that no oil and gas drilling
20 activity occurs in Santa Fe County in the Galisteo Basin
21 that would be contrary to the interests of the State of
22 New Mexico and its citizens, which is a highly debatable
23 caveat.

24 CHAIRMAN FESMIRE: With respect to efforts to
25 mitigate, I think we spent an extensive amount of time,

1 especially with respect to the proposed 19.15.39.9E,
2 trying to figure out how to minimize the burden on the
3 operator to perform these tasks and how to allow the
4 operator to get out from under the more onerous
5 requirements once the information that is sought to be
6 developed by this rule has been developed and is available
7 for use in the efforts to protect -- to accomplish
8 objectives of the rule. Anything else?

9 COMMISSIONER OLSON: I might just point out that
10 there was no testimony presented at the hearing of any
11 adverse impacts from the industry. And the only technical
12 evidence that was presented to us was that submitted on
13 behalf of the Division after public notice was issued on
14 this, and the only participation we had was in
15 cross-examination of witnesses and not any direct
16 technical testimony of the impacts of this rule on
17 --contrary to what was presented by the Division. I'll
18 just leave it at that.

19 CHAIRMAN FESMIRE: Commissioner Bailey, do you
20 have anything to add?

21 COMMISSIONER OLSON: I'll leave it at that.

22 CHAIRMAN FESMIRE: Okay. At this point in time
23 we will temporarily adjourn Cause No. 14255 to reconvene
24 on --

25 MS. BADA: Before we do that, have you reviewed

1 the proposed findings that the parties submitted and are
2 there any that you agree with that you would want to
3 include in an order?

4 CHAIRMAN FESMIRE: I personally reviewed the
5 findings presented by the Independent Petroleum
6 Association -- the proposed findings and conclusions
7 presented by the Independent Petroleum Association of New
8 Mexico. While I reviewed and considered each and every
9 one of the findings as evidenced by the distinctive
10 highlighting, I did not find it to be generally useful in
11 the conclusions that I reached in this case. There were
12 some ideas that had been incorporated into our discussions
13 in the last two days, but I was not overly swayed by the
14 arguments and the positions presented.

15 MS. BADA: And with regard to the Division's
16 proposed findings?

17 CHAIRMAN FESMIRE: Most of the things that we've
18 done today have been associated with the Division's
19 findings. We've used that as a workplace -- or I, at
20 least in my thinking, used that as a place to start -- and
21 reviewed it and changed some of them. I found them to be
22 generally supported by the record. And where they aren't,
23 I believe that we have proposed changes and asked counsel
24 to draft and make the changes necessary.

25 MS. BADA: Okay.

1 CHAIRMAN FESMIRE: With that, the Chair would
2 entertain a motion to adjourn until April 12th at the
3 regularly scheduled ICC meeting, at which point we will
4 again address this case. And we've asked counsel to draft
5 the orders and do what needs to be done to prepare to
6 consider this for what we hope to be the last time at the
7 regularly scheduled April OCC meeting.

8 MS. BADA: I'll attempt to draft the order and
9 get the rule as close to finished as I can without the
10 legal description.

11 CHAIRMAN FESMIRE: Okay. At this time --
12 Commissioner Bailey, anything else?

13 COMMISSIONER BAILEY: I have nothing else.

14 CHAIRMAN FESMIRE: Commissioner Olson?

15 COMMISSIONER OLSON: I have nothing else.

16 CHAIRMAN FESMIRE: The Chair would entertain a
17 motion to adjourn.

18 COMMISSIONER BAILEY: I so move.

19 COMMISSIONER OLSON: Second.

20 CHAIRMAN FESMIRE: All those in favor, signify
21 by saying yea. Let the record reflect that the Commission
22 adjourned the meeting at 10 minutes till four on February
23 27th.

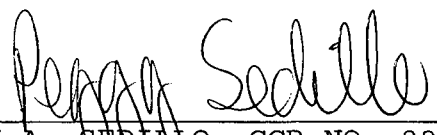
24 (Whereupon, the proceedings concluded.)
25

1 STATE OF NEW MEXICO)
 2 COUNTY OF BERNALILLO) ss.

3
 4
 5 REPORTER'S CERTIFICATE

6
 7 I, PEGGY A. SEDILLO, Certified Court
 8 Reporter of the firm Paul Baca Professional
 9 Court Reporters do hereby certify that the
 10 foregoing transcript is a complete and accurate
 11 record of said proceedings as the same were
 12 recorded by me or under my supervision.

13 Dated at Albuquerque, New Mexico this
 14 9th day of March, 2009.

15
 16
 17
 18 
 19 _____
 20 PEGGY A. SEDILLO, CCR NO. 88
 21 License Expires 12/31/09
 22
 23
 24
 25