

1 BEFORE THE OIL AND GAS CONSERVATION COMMISSION  
OF THE STATE OF COLORADO

2

3 CORSENTINO DAIRY FARMS INC., ) CAUSE NO. 1  
REQUEST FOR FUNDS ) DOCKET NO.  
4 FROM THE ENVIRONMENTAL ) 1003-GA-04  
RESPONSE FUND )

5

6

VOLUME 2

7

8 PURSUANT TO NOTICE to all parties in  
9 interest, the above-entitled matter came duly on  
10 for hearing at the Colorado Oil and Gas Conservation  
11 Commission, 1120 Lincoln Street, Suite 801, Denver,  
12 Colorado, 80203, commencing at 11:00 p.m., on March 25,  
13 2010.

14

15 COMMISSIONERS:

16 CHAIRMAN JOSHUA EPEL  
COMMISSIONER JAMES B. MARTIN  
17 COMMISSIONER RICHARD D. ALWARD  
COMMISSIONER MARK CUTRIGHT  
18 COMMISSIONER TOM COMPTON  
COMMISSIONER MICHAEL P. DOWLING  
19 COMMISSIONER TRÉSI B. HOUP  
COMMISSIONER DEANN CRAIG

20

21 ALSO PRESENT:

22 David Neslin, Director  
Carol Harmon, Hearings Manager  
23 Matt Lepore, Assistant Attorney General  
John D. Faught, Attorney for Corsentino Dairy Farm

24

25

1                   CHAIRMAN EPEL: Mr. Faught, would you  
2 like to join us?

3                   Okay. We are moving onto the Corsentino  
4 matter. There's voluminous documents. Why don't we  
5 take five minutes and let the Commissioners get their  
6 materials organized.

7                   (Discussion off the record.)

8                   CHAIRMAN EPEL: Mr. Faught, we're going  
9 to proceed now. Just for everybody to recall that,  
10 Commissioners, we all have the 510 statement from  
11 Petroglyph Energy also. So, at some point, it may be  
12 appropriate to let them address this. You know, this  
13 Commission, these are the most diligent Commissioners I  
14 ever worked with. Everybody reads every bit of  
15 material.

16                   To me, the key issue here -- and we're  
17 going to give you a little leeway in presenting your  
18 case, but this is really a legal and a policy issue of  
19 the proper use of the Environmental Response Fund. So,  
20 I would urge you to try to confine your discussion --  
21 again, Mr. Corsentino, the last thing we're trying to  
22 do is cut off discussion. But to me, this is a  
23 particularly narrow issue on what the appropriate use  
24 of the Emergency Response Fund is.

25                   So, Mr. Faught, if you would like to

1 proceed?

2 MR. FAUGHT: Thank you, Mr. Chairman, and  
3 members of the Commission. My name is John Faught. I  
4 am counsel to Corsentino Dairy Farms, Inc. With me is  
5 Brett Corsentino. Brett is the vice president and  
6 secretary of the Corsentino Dairy Farms, Inc.

7 What you have before you, I guess, I  
8 mean, I almost feel apologetic, because of the mountain  
9 of paper that each of you have in front of you, but the  
10 documents that you have in front of you are what was  
11 presented, last week, to the administrative hearing  
12 officer, Carol Harmon, and Mr. Lepore was there as  
13 well.

14 What we basically did at that hearing was  
15 to walk through those documents. It's my understanding  
16 that the recording mechanism did not work well, so we  
17 do not have a recorded -- or a full recording of the  
18 hearing, maybe an incomplete one. But what we  
19 intend -- what I intended to do today, we do not intend  
20 to present any more testimony. As you see in the  
21 packet, there's a sworn statement by Mr. Corsentino.  
22 What I did at the hearing was to just walk through the  
23 exhibits and explain what they were and the import of  
24 them. It took about 10 minutes.

25 I would propose to do that today, and

1 with your indulgence, Mr. Chair. If you believe that's  
2 too long, then, I would like to speak briefly about the  
3 underpinning facts for our application and then we can  
4 discuss the legal issue.

5                   CHAIRMAN EPEL: I am going to ask  
6 Mr. Lepore -- I know he had some concerns about how  
7 deep you go into the facts versus -- I realize you are  
8 addressing the policy and legal issues.

9                   MR. LEPORE: Thank you, Commissioner. I  
10 think, Mr. Faught, that the issue of most sensitivity  
11 are the amount of damages that are put forth in your  
12 papers. And for the benefit of the Commission, I'll  
13 just say that proof of damages and proof of causation  
14 are complicated issues that Petroglyph, in this case,  
15 chose not to challenge, for purposes of your  
16 application. Everybody has your 510 statements, and  
17 they can read the 510 statements again. In the  
18 submission, there's been no proof of damages. These  
19 are Mr. Corsentino's and Mr. Faught's allegations of  
20 those damages, and I will let it go at that.

21                   CHAIRMAN EPEL: Mr. Faught.

22                   MR. FAUGHT: Just very quickly, there are  
23 three components that we presented in terms of damages.  
24 One was milk production loss, a second one was herd  
25 loss and the third one was crop loss.

1           I believe it would be fair to say that  
2 the question of damages related to milk production loss  
3 and herd loss are hotly contested. You know, it would  
4 be my perspective that, with regard to the crop loss,  
5 there may be issues as to the amount of dollars, but  
6 the fact that there has been crop damage, I do not  
7 believe is a disputed issue.

8           One of the exhibits that we have, Exhibit  
9 9, is a series of photographs. And I accept the  
10 chairman at his word, you have a very diligent  
11 Commission, and that you have seen those, but pictures  
12 are worth a thousand words. The impacts on crops from  
13 waters that have high sodium and high SAR values is  
14 certainly evident.

15           And, so, with that piece -- and that,  
16 really, the fact that there is crop damage, that we  
17 believe -- and I don't think it's strongly disputed --  
18 that resulted from an oil and gas operation, is a part  
19 of the legal underpinning as to why we think the  
20 Environmental Response Fund may be available to provide  
21 some relief to the Corsentinos.

22           So, could I, Mr. Chairman, with your  
23 indulgence -- and it won't take long. I will not go  
24 through the exhibits. I trust everybody has looked at  
25 those. I would simply give you sort of a background,

1 which I think you have read too, but it's a part of the  
2 argument that I ultimately would like to make.

3           You know, it's clear that the Petroglyph  
4 Energy, Inc. has a coalbed methane gas operation in  
5 Huerfano County. That operation is upstream of the  
6 Sierra River from the Corsentino Dairy Farm.

7           Petroglyph started operating in --  
8 started its operations in 1999, pursuant to a water  
9 quality control discharge permit. They operated from  
10 1999 through 2007. They were -- they voluntarily shut  
11 down in July of 2007. During that period of time, they  
12 were permitted to discharge up to 6.5 million gallons  
13 of produced water per day.

14           You have, in the exhibits that you saw,  
15 the first -- the public notice from the Colorado Water  
16 Quality Control Division, as to the issuance of a  
17 renewal permit, and then you have the issuance of the  
18 renewal permit itself. And it talks about the impacts  
19 of the high sodium, high SAR water on the Corsentino  
20 farm.

21           You know, what we have in there, the  
22 pictures as to the crop damage, and I will not discuss  
23 the other damages, because I know they are hotly  
24 contested, but you have the pictures as to the crop  
25 damage. And I acknowledged, in the application, and

1 will acknowledge today, that, more recently, Petroglyph  
2 has stepped forward. We're now in a remediation  
3 program that is applying gypsum to the soils. And  
4 hopefully, we can get the soils back to where they can  
5 raise the type of corn that you see in the predischarge  
6 photos, as the kind of corn that Corsentino Dairy was  
7 able to raise.

8                   And there also is a supplement to the  
9 Form 27 order for remediation; that they are providing  
10 funds to supplement the feed that Corsentinos are not  
11 able to raise, because of the remediation. That still  
12 leaves years of the Corsentinos not being able to raise  
13 crops, and the cost associated with that inability to  
14 raise those crops, and because of that. So, there's  
15 still a piece left undone, and, basically, the  
16 Corsentinos have a problem and are looking for a  
17 solution.

18                   And we have looked at all kinds of  
19 avenues of where we can go to find that solution. It  
20 seemed to us an appropriate body would be this  
21 Commission, this Commission that regulates the oil and  
22 gas industry. And when we looked at everything -- and  
23 I would thank, also, Executive Director Neslin, for his  
24 role, in getting the Form 10. It is a positive step.  
25 It's a step forward. But we still have a problem. And

1 when I looked at the Environmental Response Fund, it  
2 seemed to me that the spirit of the fund and what I saw  
3 as the purpose of the funding was met by the  
4 predicament in which the Corsentinos find themselves.

5           And, again, I have not practiced before  
6 this Commission before, so, I acknowledge a little bit  
7 of inexperience, but when I read the Environmental  
8 Response Fund statute, it seems to basically provide an  
9 insurance pool. It's funded by the industry, based on  
10 certain charges. And then that insurance pool allows  
11 the Commission to be able to have funds to take action,  
12 when there's an activity that needs to be done and they  
13 can't find a responsible party. It's an orphan site,  
14 it's an orphan problem.

15           The Commission can say, okay, we will use  
16 the funds to take care of that. And it also -- the  
17 Commission can go forward and use funds to take care of  
18 a situation where it's -- there may be a responsible  
19 party but the action is not being taken and the  
20 Commission can do that. So, it seems that the intent  
21 of it is to have this pool created by charges to the  
22 industry that cover the kind of situations that we have  
23 here.

24           So, when I looked at it, it seemed to me  
25 that we clearly fell within that purpose. And if you

1 look at a couple of the other provisions -- and I  
2 have -- you will see them in the application. So, I  
3 looked, for example, well, crops, is that covered?

4 Well, when I looked at Section  
5 34-60-106(3.5), there is a concern that, in the oil and  
6 gas industry, that we deal with crop losses. We  
7 recognize, full well, that this specific provision  
8 applies to the surface owner, but when you read that  
9 section, coupled with the following sections, that talk  
10 about protecting the public health and environment, and  
11 protecting the health and safety and welfare of the  
12 general public, it seems that the scope is -- the scope  
13 of the Corsentino problem is within the spirit of what  
14 the Environmental Response Fund was created for.

15 And just to tie it together for you, as I  
16 have in the application, when you look at Rule 710, it  
17 talks about use of the fund for the act, and in Rule  
18 701, 701 refers to Sections 3.5 and 11 of 34-60-106.  
19 So, within that spirit, we believe that the kind of  
20 crop losses that the Corsentinos have suffered here are  
21 eligible for funds from the environmental fund.

22 As you can see, in the proposed order, we  
23 are not asking this Commission to adjudicate an exact  
24 amount of those damages. But what we have, as I  
25 understand, is a problem that needs a solution. So

1 what I proposed was a process by which the executive  
2 director and maybe the administrative hearing officer  
3 would look at this situation, look at the factors, and  
4 then decide what would be an appropriate response on  
5 behalf of the Corsentinos.

6           Even if you look at just what the  
7 Corsentinos think are the damages to crops -- that is  
8 not what's being asked for. It is simply being asked  
9 that we need some help here, and this seemed like the  
10 logical place to go to try to get it. And the  
11 Environmental Response Fund seemed like a possible  
12 source to provide some of that relief, so that's the  
13 basis of our request.

14           CHAIRMAN EPEL: Thank you, Mr. Faught. I  
15 believe I am going to ask Director Neslin to comment,  
16 but, to me, the key issue -- and I understand you are  
17 looking for a forum for some relief. I mean, we had a  
18 discussion already this morning, who has the proper  
19 authority, whether it's the health department or this  
20 agency, on an issue of solid waste. Then, this  
21 afternoon, we're going to have a discussion on the  
22 proper roles for ourselves and the BLM.

23           And it seems to me -- it sounds like what  
24 you have is an issue between, is this the proper venue  
25 or the courts for an integral issue. But when I look

1 at the language of the statute, it says investigate,  
2 prevent, monitor and mitigate conditions. It doesn't  
3 say compensate. And, to me, that's sort of the key  
4 issue. I don't believe the ERF has any -- and I don't  
5 think it's ever been used in that way, to compensate.

6 I will ask Director Neslin, and I will  
7 let you address that, before we get to Director Neslin,  
8 but, it's sort of a key issue. We're to remedy a  
9 problem, to mitigate it, to investigate, but never to  
10 compensate, especially in a -- this isn't an orphan  
11 site. This is where you have two disputants. And, so,  
12 that, to me, is what, I think, the assistant attorney  
13 general pointed out. We believe this is really a  
14 narrow legal issue. And I don't know if you want to  
15 address that or want to wait until Director Neslin --

16 MR. FAUGHT: I will wait until Director  
17 Neslin responds.

18 MR. NESLIN: You know, I would like our  
19 hearings manager, Carol Harmon -- because Carol was the  
20 Assistant Attorney General for the Commission before  
21 she became the enforcement officer, and then the  
22 hearing officer. So, I think she's, in many ways,  
23 uniquely situated to give you the institutional history  
24 of how the Environmental Response Fund has been used in  
25 the past.

1 MS. HARMON: Thank you. And I also was  
2 the hearing officer for the administrative hearing of  
3 this particular matter, and shared some of this  
4 institutional history, and with Mr. Faught and  
5 Mr. Corsentino at that administrative hearing.

6 You are correct, Chair Epel, that the ERF  
7 has never been used to compensate for any injuries or  
8 property damages to individual, you know, compensation  
9 to individuals directly. There has historically, to my  
10 knowledge, only been one very informal request to be  
11 compensated from the ERF fund. And that was for an  
12 excess sort of an overage of a turnkey contract, that  
13 someone bid to plug and abandon a well that had not  
14 been properly plugged and abandoned.

15 When development occurs, sometimes the  
16 developer will encounter wells below the grade, where  
17 they are plowing and moving dirt, and that happened, in  
18 one instance -- it's happened in many instances, and in  
19 those instances where the developer wants to move ahead  
20 with the development and not wait for the Oil and Gas  
21 Commission staff to go out and, you know, replug that  
22 well, the developer takes over the operation of that  
23 well, hires a contractor, and the contractor, then,  
24 brings in a rig to cut off the casing, and replug the  
25 well, if that's what's necessary.

1                   That happened in a case where the  
2 contractor did it on a turnkey basis, on the total  
3 project, encountered a well that hadn't been properly  
4 plugged and abandoned, and took a gas kick, and,  
5 therefore, had to spend more time and money to reenter  
6 the well and properly plug and abandon it. And he felt  
7 that, since he had taken over what would normally have  
8 been an orphan well procedure, that Commission staff  
9 would have performed, that he should be reimbursed from  
10 the fund, which the staff would have used for that  
11 orphan well. And the staff declined to. And, again,  
12 this was just informally declined, to consider using  
13 ERF monies to pay for that overage.

14                   Another time that staff wished it could  
15 have used ERF money was when there was an explosion of  
16 a trailer due to gas seeping from a well that had been  
17 plugged and abandoned prior to the existence of the  
18 Commission. It was a well drilled in the 1930s, or  
19 early '40s. And, over time, it eventually leaked and  
20 filled up a trailer with gas. And turning on the oven  
21 in that trailer ignited the gas and exploded the  
22 trailer and injured the person inside. That's another  
23 time when the staff was trying to figure out if it  
24 could use ERF money to compensate for damages, or  
25 possibly buy the property that had been damaged, and

1 was unable to do so. In analyzing the statute that set  
2 up the ERF, our analysis back then, our legal analysis,  
3 when I was the assistant attorney general, was that we  
4 could not use ERF money for that situation.

5 That's just a little bit of the history  
6 of at least a couple of instances where we have tried  
7 to examine how the ERF money would be used for private  
8 damages, and did not see any way to do that, under our  
9 interpretation of the statute.

10 CHAIRMAN EPEL: Thank you, Mrs. Harmon.  
11 Mr. Faught.

12 MR. FAUGHT: Well, I certainly appreciate  
13 the precedent of how the Environmental Response Fund  
14 has been used in the past. But I have been at this  
15 business a long time, and I don't think I have a  
16 reputation of shying away from being first. So, I  
17 guess, as a matter of public policy, if I may.

18 As I indicated -- and this is certainly  
19 not intended to be an affrontage to this Commission,  
20 but this is a situation where we have a problem for a  
21 family operation that's been caused by a member of the  
22 oil and gas industry. And this is the body that  
23 regulates that industry. And it's not a question, in  
24 our coming forward to ask for funds, this is not a  
25 question of saying something is wrong with the permit

1 and we're suing you for a bad decision on the permit  
2 and/or we're not going after the Department of Public  
3 Health and Environment because of the issuance of the  
4 water permit. Here's a fund that we think there is  
5 some discretion on how it can be used.

6           And, as a matter of policy, it doesn't  
7 seem congruent to say, well, your recourse is to  
8 litigation, is to file a lawsuit, because that's the  
9 exact problem here, is that Corsentinos have limited  
10 resources. There are attorneys sitting here that know  
11 full well how expensive it is to litigate. My estimate  
12 of the expert witness fees alone for this case would be  
13 between 250 to \$500,000. It's clear. Corsentinos  
14 don't have it. And yet part of that is this is a tough  
15 business. Dairy farming is -- I don't know if it's  
16 fun, it's a tough business. And what has happened is  
17 an additional burden has been placed on top of them to  
18 make it even rougher.

19           And, so, to say that, well, go litigate,  
20 is not very feasible. I guess, if that were the case,  
21 then, public policy says, then, some law firm, some  
22 lawyer takes on the burden of these kinds of costs and  
23 the risk of litigation is the only solution here.  
24 Otherwise, you are simply out of luck.

25           My personal view is that's not good

1 public policy, and, so, we renew our request.

2                   CHAIRMAN EPEL: Mr. Faught,  
3 Mr. Corsentino, I appreciate you being here. I think,  
4 Mr. Faught, you really raised a key issue, but we are a  
5 regulatory body, not a compensatory body and I don't  
6 think the legislature ever gave us that statutory  
7 authority, to use a fund for compensation.

8                   Questions from Commissioners for  
9 Mr. Faught or Mr. Corsentino?

10                   (Discussion off the record.)

11                   COMMISSIONER HOUP: I know there's been  
12 questions in the past, even by the legislators, about  
13 what -- how far the discretion goes for using this  
14 fund. And, you know, questions are often asked, why  
15 don't we use this fund more often? Do you see it so  
16 narrowly worded that we have no discretion in terms of  
17 compensation?

18                   And if that is the case -- and I think  
19 that's what I've heard from you -- do we have  
20 authority, if there's an issue that's uncontested, to  
21 require the culpable party to compensate the injured  
22 party for the damages that was created, as a regulatory  
23 body?

24                   MR. LEPORE: I do read the statute to  
25 preclude paying compensation to a private party.

1 Mitigation is, to some extent, a term-of-art that is  
2 generally used in a different context than damages or  
3 compensation. To give you an example, the legislature  
4 has created many funds, many that pertain to  
5 environmental remediation and/or damages in some sense.  
6 An example is the petroleum storage tank fund. That  
7 fund is funded similarly to our ERF fund, through fees  
8 and penalties and other means. The legislature there  
9 quite clearly said that that fund can be used to pay  
10 damages for personal injury or property damage. It's  
11 as clear as it can be. There's \$25,000 essentially  
12 deductible for that. So, if an operator would access  
13 the fund, it would pay the first \$25,000 and then the  
14 fund would kick in.

15           The legislature knows how to do this if  
16 they want to, and they didn't do it in our fund, in my  
17 opinion, in my assessment. I think Mr. Faught used the  
18 term, "insurance fund." That's what they are asking  
19 for here. If we were to make payments under an  
20 insurance policy, even, again, those issues of  
21 causation and damages would all have to be assessed and  
22 determined.

23           And then, lastly, I think it's worth  
24 pointing out, because you made reference to the  
25 responsible party, there is no responsible party here,

1 in the legal sense, as far as the operator has never  
2 been alleged to have violated any rule or statute, and  
3 they are operating under a permit issued by the  
4 Department of Public Health and Environment.

5           And what our fund rules do say is that if  
6 we access the fund -- if you were to access the fund or  
7 pay damages or mitigation costs, you're obligated to  
8 sue the responsible party to recover those funds. So,  
9 that is a further complication in my mind. There is no  
10 responsible party here to sue, in the legal sense. I  
11 am not disputing the discharges, per se. But in terms  
12 of a person who has violated the rules or statutes,  
13 there is no one in this case.

14           COMMISSIONER HOUPPT: So, as follow-up, if  
15 there's damage to property, how do you end up with a  
16 situation where there's no responsible party, whether  
17 it's the state or the company? I'm just very confused  
18 about that. Is -- it seems to me that is a deficiency  
19 in our laws, if you end up in that situation.

20           MR. LEPORE: There may have been a  
21 deficiency here, but the deficiency was, perhaps, in  
22 the science and the understanding at the time this  
23 permit, this water discharge permit was issued. The  
24 water discharge permit, as I understand it, did not  
25 have a criteria for the sodium content of the

1 discharge. And now they are, by the way, CDPHE is  
2 imposing limits on those numbers. And I think there  
3 was more than a pure quantity factor. There was also a  
4 dilution factor and some more factors I frankly don't  
5 know the details of. So, there was a deficiency in  
6 that regard.

7                   So, Petroglyph operated consistent with  
8 the permit issued by the state. So, that's why I see  
9 there is no responsible party in that sense.

10                   Go ahead.

11                   CHAIRMAN EPEL: Additional questions from  
12 commissioners? Mr. Faught.

13                   MR. FAUGHT: Just one comment in response  
14 to Mr. Lepore's response. As I understood it, from  
15 listening to the recitation of the precedents, and what  
16 was said at the administrative hearing, that there are  
17 occasions when funds will be used from the  
18 Environmental Response Fund and, then, the Commission  
19 will go against the responsible party to recover those.  
20 In fact, he just said, it's an obligation. So, in  
21 those cases, I would assume there is no  
22 predetermination and that that is a responsible party.

23                   The Commission makes the decision to  
24 expend the funds and said, you know, in this case, I  
25 think we have a responsible party and then they go seek

1 it. At least that's the way I understood it. And I  
2 don't think -- that precedent is not different than  
3 this situation.

4 CHAIRMAN EPEL: Mr. Faught, we're not  
5 going to step into your shoes. I don't think that's  
6 our charge from the legislature.

7 I guess, at this point, I would ask  
8 whether the Commission would like to make a motion?  
9 Quite frankly, I think this is a narrow legal issue and  
10 whether we need to hear from Petroglyph or we have  
11 their 510 statement, I don't think -- that's the extent  
12 of their testimony. But if the Commission prefers to  
13 hear from Petroglyph -- I think we're really faced with  
14 a very difficult and frustrating situation and -- any  
15 more frustrating than it is to Mr. Corsentino.

16 Commissioner Dowling.

17 COMMISSIONER DOWLING: Thank you,  
18 Mr. Chair. You know, this Commission visited your  
19 farm, Mr. Corsentino, last summer and it is regrettable  
20 that some additional burden has been placed on you.  
21 You are trying to make a living in what's already a  
22 difficult business. And I am personally dismayed you  
23 have to shoulder this additional burden. And I wish  
24 there was an easy solution and an easy way to provide  
25 some compensation. My understanding is that there is

1 some remediation taking place now, and I hope it is  
2 successful, and, in the future, your farm is to be  
3 returned to its historic productivity.

4           And I wish to express personally my  
5 empathy for your situation. However, that will not  
6 prevent me from making a motion right now, because I  
7 believe that the compensation that has been requested  
8 is outside of our purview to grant; and, therefore, I  
9 move that we reject this application for a grant from  
10 the Environmental Response Fund.

11           CHAIRMAN EPEL: Do we have a second?

12           UNIDENTIFIED SPEAKER: Second.

13           CHAIRMAN EPEL: Further discussion by  
14 Commissioners? Commissioner Compton.

15           COMMISSIONER COMPTON: Thank you,  
16 Mr. Chairman. This is quite a conundrum, because it  
17 appears, I guess, no one is arguing that  
18 Mr. Corsentino's family has not suffered serious  
19 damages as a result of, well, I suspect as a result of  
20 the sodium in the water. And the water quality folks,  
21 to the best of their ability at the time, set standards  
22 that this just simply doesn't address.

23           But that's not Mr. Corsentino's fault.  
24 Somewhere along the way, we both -- "we," that is the  
25 citizens of the state and the state -- and I just, for

1 the life of me, can't figure out how we can assist him.  
2 I understand the attorney general's analysis. I  
3 understand the history that Ms. Harmon has provided us.  
4 But it just gives -- it bothers me.

5           And, of course, obviously, I have, as a  
6 rancher, I have a great deal of empathy for what he is  
7 going through. It's hard enough to make a living  
8 without having things happen that you have no -- make  
9 plenty of mistakes on my own without having somebody  
10 else make one that I have to deal with. But I guess  
11 I'm compelled to vote for this motion, based upon the  
12 legal advice that we have been given, and based upon  
13 the history of this fund and its use.

14           But that doesn't make me feel very good.  
15 I will guaranty that. And unless we want to try to  
16 plow new ground, so to speak, it's just going to get us  
17 into a lot of work for the attorney general's office.  
18 I suspect I will go ahead and vote in the affirmative,  
19 but it's not going to be an easy vote.

20           CHAIRMAN EPEL: Additional Commissioner  
21 comments?

22           COMMISSIONER COMPTON: I've got to thank  
23 you for that, because, quite frankly, what you and  
24 Commissioner Dowling said, this is true. This is not  
25 an easy vote. I feel I have no choice but to vote that

1 way, but a lot of times, in my company, when people  
2 come to me with a conundrum, I say to them, what would  
3 your mother say to you? And I think there are issues  
4 of fairness and I -- I hope, you know, in your quest  
5 for fairness, you achieve it. But, I'm sorry, that  
6 this just isn't the venue to achieve that.

7 CHAIRMAN EPEL: Commissioner Houpt.

8 COMMISSIONER HOUPT: I have another  
9 question for staff. The mitigation that's occurring,  
10 is that mitigating the conditions to the extent that  
11 will bring this business back to where it was  
12 previously, because, if not, and if what we're using  
13 the word, "compensation," for today would assist in  
14 accomplishing that, then, I think you could read in  
15 here that what's being requested, simply in terms of  
16 crop damage may be covered, I mean, if they took out  
17 the other two damages. That's why I am looking at  
18 that.

19 MR. NESLIN: I will try to answer your  
20 question.

21 COMMISSIONER HOUPT: Okay.

22 MR. NESLIN: The intent of the  
23 mitigation, the plan that is underway, is to restore  
24 the soil conditions, to improve the soil conditions and  
25 to rectify the damage that has occurred to the soil.

1 In addition, Petroglyph is providing payment for  
2 supplemental feed this year, to essentially provide  
3 additional feed or compensate for the reduction in feed  
4 that the Corsentinos have attributed to the sodium load  
5 in the soils. So, that is the intent of the mitigation  
6 that's occurring.

7 I think it's fair to note that certainly  
8 the Corsentinos have been very cooperative in terms of  
9 implementing this program, this remedial program, and  
10 Petroglyph has been very cooperative in implementing  
11 this remedial program. And this is being done  
12 voluntarily at this point by Petroglyph, but they have  
13 committed to do it, okay? They have executed the Form  
14 27 and by doing so, have committed to following through  
15 with this.

16 CHAIRMAN EPEL: We have a motion.  
17 Commissioner Compton.

18 COMMISSIONER COMPTON: I'm not sure I am  
19 going to add much to this discussion, but I understand,  
20 Commissioner Houpt, me and the rest of the Commission  
21 understands that this is a very complex issue. The  
22 genetics of a herd of cattle, whether a dairy herd or  
23 beef cattle, are something that a producer works on for  
24 years in order to get a set of cattle that fits that  
25 environment, this particular management style. And,

1 you know, to have to rebuild those is a big deal. It's  
2 a very, very complex, complicated process.

3           So, even though, again, I am assuming --  
4 I know they are am using the absolute, most current  
5 best science available, that's going to restore these  
6 soils to a condition whereby they will produce corn of  
7 a quality that the Corsentino family is used to  
8 producing. And I'm sure -- I feel very confident that  
9 a year from now, they are going to get a good valuable  
10 nutritious crop of corn.

11           But there is nothing -- I am going to use  
12 that word, I'm sorry -- to compensate for the loss of  
13 the genetics in that herd over that period of time when  
14 they couldn't -- you know, in terms of production of  
15 milk, I am totally ignorant. So, I can't really  
16 comment much on that. I would certainly assume that  
17 over that period of years, when this corn crop was in  
18 the decline, that there had to be some impact to milk  
19 production. That's just totally an assumption on my  
20 part. Not totally an assumption. I do know that  
21 nutrition does impact milk production. But there's  
22 nothing relative to the mitigation in place now that  
23 will compensate what's been lost. There's nothing -- I  
24 mean, it won't happen.

25           I'm sure -- I feel very confident that,

1 going forward, you know, it will be a good dairy farm,  
2 but it's going to take them a lot of time to dig out of  
3 a very large hole. And I, you know, I feel like my  
4 hands are tied. And I don't -- I really don't know  
5 where to turn. I don't know if I need to go to the  
6 legislature tomorrow and tell them they need to address  
7 this or what I need to do, but I think I do need to do  
8 something, but I don't know what.

9 CHAIRMAN EPEL: Commissioner Craig.

10 COMMISSIONER CRAIG: I just want to go  
11 ahead and echo what's being said. I think a lot of  
12 issues that come before this Commission had to do with  
13 fairness. There are many people involved in oil and  
14 gas operations. There are many stakeholders  
15 participants. And what the Commission is trying to do  
16 is use regulations, that are so large, when fairness  
17 often is nuanced.

18 And it's frustrating, it's very  
19 frustrating, because, years ago, they didn't have  
20 enough of a technical understanding about this. But  
21 we've got the regs as they are. And it is unfortunate.  
22 I am also going to be voting with the recommendation,  
23 but it's sure tough.

24 CHAIRMAN EPEL: Commissioner Houpt.

25 COMMISSIONER HOUPT: You know, I think

1 that what I am clearly seeing today is a gap that needs  
2 to be filled. And, you know, Commissioner Compton, I  
3 think that you have raised some really important  
4 points. I think that gap that's missing is what do  
5 people do who have lost so much that they have to  
6 rebuild and find the capacity to be able to do that.  
7 And there doesn't seem to be language in the statute  
8 that allows us to reach into what's been referred to as  
9 an, "insurance policy," because there was a permit in  
10 place. It's an even more complex discussion.

11 I think, perhaps, if you and I walk into  
12 the legislature together, maybe we can propose some  
13 language together that would move through. But, you  
14 know, I feel as if there needs to be something in place  
15 that protects other businesses that are impacted. And  
16 I'm not sure that -- I am not saying that that's the  
17 right avenue for that right now, but there has to be  
18 some resolution.

19 CHAIRMAN EPEL: Commissioner Compton.

20 COMMISSIONER COMPTON: One final comment,  
21 I promise. My last. See, this is not Petroglyph's  
22 fault. This is certainly not the Corsentinos' family  
23 fault. It's not even the Water Quality Control  
24 Commission's fault. It's no one's fault, except that  
25 we haven't had the foresight, again, as citizens of

1 Colorado, to figure out when things like this happen,  
2 that no one foresees and it's no one's fault, how do we  
3 deal with that to help our fellow citizens.

4 CHAIRMAN EPEL: We have a motion and a  
5 second to deny the request for an order to grant funds  
6 from the Environmental Response Fund.

7 (Whereupon the vote was called.)

8 COMMISSIONER COMPTON: If I do need to go  
9 to the legislature, as an individual, you know --

10 CHAIRMAN EPEL: That's seven in favor and  
11 one opposed. Mr. Corsentino, I'm sorry.

12 MR. FAUGHT: We appreciate your time.

13 CHAIRMAN EPEL: We are going to -- I have  
14 been advised we do not need to go into executive  
15 session today. We're going break for lunch for half an  
16 hour. Ms. Harmon, do you know if the Magpie matter  
17 will be met and ready to go at 12:30?

18 MS. HARMON: We're working on it. It's  
19 been difficult to get in touch with everybody at such  
20 short notice.

21 CHAIRMAN EPEL: If not, we'll go with the  
22 original schedule. If they are not available, we'll  
23 take a more leisurely lunch. We're adjourned.

24 (Recess.)

25

## 1 CERTIFICATE

2 STATE OF COLORADO ) ss

3 CITY AND COUNTY OF DENVER )

4

5 I, Harriet S. Weisenthal, Certified  
6 Shorthand Reporter and Notary Public for the  
7 City and County of Denver, State of Colorado,  
8 do hereby certify that the foregoing proceedings  
9 were transcribed from tape in shorthand by me and  
10 was reduced to computer-aided typewritten form under my  
11 supervision;

12 That the foregoing is a true  
13 transcript of the proceedings had; that I am  
14 neither attorney nor counsel, nor in any way  
15 connected with any attorney or counsel for any  
16 of the parties to said action or otherwise  
17 interested in the event;

12

13

14

15 Harriet S. Weisenthal

16

17

18

19

20

21

22

23

24

25