

1 BEFORE THE OIL AND GAS CONSERVATION COMMISSION
OF THE STATE OF COLORADO
2
3 REQUEST FOR AN ORDER TO) Cause No. 1
DESIGNATE PORTIONS OF THE) Docket No. 1001-GA-02
W $\frac{1}{2}$ SE $\frac{1}{4}$ OF SECTION 36,)
4 TOWNSHIP 5 NORTH, RANGE 68)
WEST 6TH P.M., KNOWN AS MOQUI)
5 MEADOWS, AS A DESIGNATED)
OUTSIDE ACTIVITY AREA IN THE)
6 WATTENBERG FIELD, WELD COUNTY)
COLORADO

7

8 VOLUME 2

9 PURSUANT TO NOTICE to all parties in
10 interest, the above-entitled matter came duly on
11 for hearing at the Colorado Oil and Gas Conservation
12 Commission, 1120 Lincoln Street, Suite 801, Denver,
13 Colorado, 80203, on February 22, 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 COMMISSIONER MARTHA RUDOLPH

21 ALSO PRESENT:

22 David Neslin, Director
Carol Harmon, Hearings Manager
23 Matt Lepore, Assistant Attorney General
Sam Niebrugge, Attorney for Magpie Operating Company
24 John Jacus, Attorney for Magpie Operating Company
Phillip D. Barber, Attorney for Wendy Chase/Mike Sutak
25 Heather Warren, Attorney for Colorado State Land Board

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1 CHAIRMAN EPEL: Now we're going to take
2 up the matter, Cause No. 1, Docket No. 1001-GA-02, in
3 the Wattenberg Field, Larimer County. Before we get
4 started, I want to explain to counsel, for both sides,
5 that this is an informal body. We have read all of the
6 matters, except for the most recent motions, which,
7 quite frankly, we do not appreciate receiving motions
8 the day of or the day before the hearing. That's not
9 an appropriate request of this board.

10 We have two motions before we get started
11 on this. I would entertain a motion on the motion to
12 continue.

13 COMMISSIONER MARTIN: Mr. Chairman, I
14 move that we deny the motion to continue.

15 CHAIRMAN EPEL: Do I have a second?

16 UNIDENTIFIED COMMISSIONER: Second.

17 CHAIRMAN EPEL: Discussion.

18 (Whereupon the vote was called.)

19 CHAIRMAN EPEL: The motion passes eight
20 to one. We'll proceed.

21 There's a second motion in front of us,
22 which is to allow a witness to provide testimony
23 telephonically. As the chair, I am just going to
24 approve that. That's perfectly appropriate, especially
25 under the circumstances.

1 First order of business, do any
2 Commission members have a conflict of interest in this
3 matter? Commissioner Cutright.

4 COMMISSIONER CUTRIGHT: I just need to
5 disclose that a sister company has a business
6 relationship with Magpie. To the extent of the
7 business relationship, just to make sure it's all above
8 board, we do, maybe, 10 to \$12,000 worth of business
9 with Magpie annually. And this is coming from a
10 division that generates \$80 million a year. So, it's
11 pretty insignificant, not that we don't appreciate the
12 business, but it's insignificant.

13 CHAIRMAN EPEL: Any other disclosures?

14 Before we proceed with the opening
15 statement by the applicant, having read all of the
16 materials, I noticed that Ms. Harmon had approved two
17 hours for both sides. Quite frankly, the Commission
18 will -- our attention span is directly proximate to the
19 succinctness of your presentations. I guess we're
20 fully aware of the issues, so, I think these are
21 actually fairly narrow issues. So, it would be our
22 preference that you get to the meat of the matter as
23 quickly as possible. So, before we proceed, whoever is
24 going to be called as a witness. . .

25 (Whereupon the witnesses were sworn.)

1 CHAIRMAN EPEL: Now, Mr. Jacus, it's your
2 witness that's going to be on here telephonically. Are
3 you going to call him now, or are we going to wait
4 until --

5 MR. JACUS: It might be more efficient to
6 swear him in when he is on the telephone.

7 CHAIRMAN EPEL: Counsel, if you would,
8 are you ready to proceed?

9 MR. BARBER: I am ready to proceed. May
10 I use a couple of poster boards over here?

11 CHAIRMAN EPEL: Of course.

12 MR. BARBER: Thank you, Mr. Chairman. I
13 agree that the issues here --

14 CHAIRMAN EPEL: Mr. Barber, would you
15 identify yourself.

16 MR. BARBER: Oh, I'm sorry. My name is
17 Phil Barber, Attorney Registration No. 9623. My law
18 firm is Phillip D. Barber, PC. I am appearing today
19 representing applicants.

20 The issue presented in the amended
21 application that is before you is a simple one, which
22 is, does the area that we'll refer to as, "Moqui
23 Meadows," which is , owned by Wendy Chase, one of the
24 people who will testify here today, does it qualify as
25 a designated outside activity area under Rule 603.

1 And just to refresh the Commission's
2 recollection, because I don't think you get too many of
3 these, there are two different ways that an area can
4 qualify as a designated outside activity area. One is
5 if there are 500 people or more on three days during a
6 year. The other is if there are 20 people or more upon
7 40 days during a year. The evidence that we are going
8 to present will go to the 40 days with 20 or more
9 people per year.

10 Just in further sort of context here, I
11 put up before you a copy of Rule 603, and you'll see
12 that we have -- that the Commission has established a
13 statewide setback. We're not really concerned with
14 those. The Commission has established rules for --
15 high density rules for building units. And if you read
16 that rule carefully, it pretty much is limited to
17 structures, hospitals, schools, enclosed buildings.
18 Then we have this third area down here, designated
19 outside activity area. And what Rule 603(d) provides
20 is that if you all determine that Moqui Meadows is a
21 designated outside activity area, you will determine
22 the boundary of that area, and there will be an
23 automatic setback of 350 feet from the boundary of the
24 designated outside activity area.

25 What the applicants intend to prove is

1 that Moqui Meadows, which is pictured in this chart,
2 that has now been put up in front of you, which is a
3 copy of Exhibit 26 in your books, shows an aerial view
4 of Moqui Meadows and Moqui Meadows has been owned by
5 Ms. Chase for approximately 15 years. During that
6 15-year period, Ms. Chase has pursued her passion of
7 what we call, "three-day eventing." You're going to
8 hear some terms you're probably not familiar with.
9 Three-day eventing are a combination of dressage,
10 cross-country and jumping events. And it can happen
11 over three days, or you can have like a mini-triathlon,
12 where the events all happen in one day.

13 But what the three-day eventing is
14 comprised of is, as I said, jumping on fixed jumps that
15 are throughout Moqui Meadows. It also involves riding
16 inside of a small arena, where there is both an inside
17 and outside arena there. There's a horse barn down
18 here. There's a parking area, and there are, you know,
19 mounting and dismounting areas, you'll hear testimony,
20 all around the property, and that the property operates
21 as an entire facility.

22 And that this property is different from
23 other three-day eventing or training courses in that
24 it's smaller. Most three-day-eventing facilities are,
25 perhaps, 150 to 200 acres. Everything has been

1 compressed into -- it's about a 77-acre parcel, and
2 you'll hear that parcel operates as a whole; that
3 somebody who comes and visits Moqui Meadows -- and it
4 is open to the public.

5 You'll hear a lot of testimony. You will
6 have a couple of witnesses who are members of the
7 public who use Moqui Meadows; that when they come
8 there, the expectation is they will be able to ride
9 their horse or conduct training or actually do eventing
10 with access to the entire facility.

11 So, Moqui Meadows, what I'll be referring
12 to, this is, essentially, this 77-acre parcel on
13 Exhibit 26. The evidence will show that Mrs. Chase has
14 devoted about 15 years of her life and almost a million
15 dollars of her capital to develop this property so that
16 it is safe, so that it is user-friendly, and so that it
17 is really one of the very few facilities, in all of
18 Colorado, in fact, maybe in the Western United States,
19 where riders can come from the public and train -- it's
20 called, "schooling." They can come and school and
21 learn how to do jumping and learn how to do
22 cross-country and learn how to do dressage, with no
23 outside interference, from cars and trucks and all of
24 the things that would distract a horse; that this
25 course, over 15 years, has been isolated from the rest

1 of the area through buffers; that the course has
2 literally had rocks taken out by hand, so that the
3 surface is soft, and it is not, you know, chopped up.
4 And that after 15 years, it's a very unique facility.

5 You are going to hear evidence from a
6 number of witnesses that horses are what they call,
7 "flight animals"; that when horses are subject to
8 unusual noises, unanticipated movement, like a truck,
9 like people, like even flags, that they tend to rear up
10 and they can be frightened and they can take off. They
11 are not taught to fight. They are taught to run.
12 That's in their genes. Maybe they were not taught
13 that, but that's in their genes.

14 And that oil and gas would be absolutely
15 incompatible with this property, and, in fact, if oil
16 and gas operations were allowed on this property, it
17 would become so unsafe that it couldn't be used. The
18 kind of injuries that happen, when people ride horses
19 and do jumping, are the kind of injuries that killed
20 Christopher Reeves. You are going to hear testimony
21 that that is what happens out at this facility, not the
22 injuries but that's the type of riding that occurs.

23 And, finally, our evidence is going to
24 show that both Ms. Chase and Mr. Sutak took great care
25 to count the number of people that come out to their

1 facility. And that they will both testify, under oath,
2 is that they personally did those counts, and that
3 between 40 and 50 times, during 2009, there were more
4 than 20 people on the property, which qualifies this
5 property as a designated outside activity area.

6 And, finally, what you are going to hear
7 is that there is a lease on this property, that is the
8 lease under which Magpie operates, that prohibits any
9 activity within 200 feet of any improvement. And I
10 have talked about it in our memorandum. Improvement is
11 not defined in the least, but when you hear the
12 testimony, you are going to hear that, essentially,
13 Ms. Chase and the people who work with her have done so
14 many things to this entire property, in terms of
15 bringing in dirt, changing the elevations of the
16 property, installing water jumps, putting in berms,
17 installing ditches for purposes of jumping, that the
18 whole property has been improved as a training facility
19 and as a cross-country eventing facility, and that the
20 lease itself prohibits Magpie from operating oil and
21 gas wells or other related operations on this property.

22 That's the sum of what we intend to
23 prove. We will do our very best to do it as quickly as
24 possible. Keeping in mind Mr. Epel's admonition.
25 Thank you.

1 CHAIRMAN EPEL: We have two protestants,
2 one being Mr. Jacus but also the attorney's general
3 office. Mr. Jacus, have you worked out, with the
4 attorney's general office, the order of presentation or
5 opening statements?

6 MR. JACUS: We'll go first. Thank you.

7 Thank you, Mr. Chair. My name is John
8 Jacus. I am counsel for Magpie Operating. I am an
9 attorney with Davis, Graham & Stubbs. With me is my
10 associate, Sam Niebrugge, and we are mindful of the
11 chair's admonition at the beginning of this proceeding.

12 This case is not at all about whether the
13 applicants have developed a high-quality riding
14 facility on their property. Magpie does not dispute
15 that. It is about whether their having done so can
16 extinguish Magpie's valid and enforceable lease rights,
17 without compensation, or whether this Commission can
18 require Magpie to incur significant additional expenses
19 to exercise its long, preexisting lease rights, of
20 which Ms. Chase was well aware, according to her own
21 testimony, when she acquired her farm, and to hold
22 harmless the surface owners' after-acquired and
23 later-developed facility from any incidental impacts of
24 oil and gas exploration and development that is only
25 proposed to be performed consistent with the Oil and

1 Gas Conservation Act and the rules of this Commission,
2 and, indeed, for the benefit of the State of Colorado,
3 with its lease with the State Land Board in this
4 Section 36, the state section. She bought property in
5 the state section.

6 Applicants would have you believe that
7 this case is about whether they have established that
8 they have a well-defined area that has had over 20
9 people at their private farm on 40 or more occasions in
10 2009. But that is far from being reliably established
11 in this contested case. In fact, it falls far short of
12 the burden of proof necessary to prevail, for the
13 applicants' claim they use all 78 acres -- 77, 78
14 acres, and they only record 20 plus for most of the
15 days that they claim to add up to meet this definition.
16 That means all we know, from their records, if we
17 assume them to be reliable, is that at least 20 people
18 were present on the property at some time, because
19 Mr. Sutak claims to have personally counted them across
20 80 acres of property.

21 So, it follows that 20 people on 78 acres
22 is one per 3.9 acres. This is hardly a high density
23 usage deserving of a designation of outside activity
24 area status, under the Commission's series 600 safety
25 rules, as is plainly evident from this very

1 Commission's deliberation on the adoption of the DOAA
2 definition and rule in 1996.

3 This is a safety rule. That's why it's
4 in the 600 series. It's a high density rule. The
5 Commission, from its own transcript, which we provided
6 as an exhibit, was concerned with the ability to
7 evacuate high density areas in the event of an
8 explosion or fire. This concern did not and does not
9 extend to hazards from noise, which is plainly
10 regulated elsewhere in your Commission rules, and much
11 more recently amended to do so. And Magpie does not
12 propose to operate in violation of the noise rules of
13 this Commission.

14 The evidence will show that, further, no
15 more than five to six riders are present at any one
16 time, with an instructor, in an improved riding area to
17 the north of the 80-acre parcel -- approximately 80
18 acres north of the irrigation ditch, an area of which
19 comprises itself some 30 acres. More importantly, the
20 evidence will show that the records on which the
21 applicants rely were not kept in the normal course or a
22 legitimate business purpose, and most of the original
23 records kept have been destroyed and not produced as
24 requested, prior to our deposition of the applicants.
25 The records all were compiled after the original

1 application in this proceeding and thus were gathered
2 for purposes of this contested hearing, i.e., for
3 purposes of litigation.

4 This renders them, on their face,
5 unreliable as a matter of law. There is no court in
6 Colorado that would allow these records, created at the
7 time they were created, for the purpose they were
8 created, to be entered into evidence to establish the
9 matters recorded in them. Even if the Commission were
10 to consider the proffered records were reliable, which
11 no court would do, as I mentioned, the areas to be
12 designated on that basis would exclude the improved
13 rider area to the north of the irrigation ditch, the 30
14 some acres, and the hay feed -- it's a hay pasture to
15 the south, at a minimum, based on the applicant's own
16 testimony, regarding numbers of people in those areas.
17 These are exactly the locations of the two windows --
18 drilling windows in the center of these two quarter
19 quarter sections. And I would refer the Commissioners
20 to Magpie Exhibit 2, which shows those drilling windows
21 clearly in the center of the northern half and southern
22 half of the applicants' property.

23 The evidence will also show that in order
24 for Magpie to access and develop the minerals that it's
25 entitled to, under the lease with the State Land Board,

1 from outside the property, that it would have to
2 directionally drill, and that the costs of directional
3 drilling would be significant and unavoidable. The
4 testimony will show that Magpie has made substantial
5 and diligent efforts to accommodate the concerns of the
6 applicants, to no avail. We were very hopeful we would
7 resolve this and avoid a contested hearing, as you
8 know, having moved this from the January hearing.

9 Finally, we would point out that the
10 safety issue concerning riders on the property is, at
11 best, a disputed issue of fact, not central to the
12 applicants' requested rulings of this Commission. This
13 is not an equestrian safety Commission. It's an oil
14 and gas Commission. That hazard exists at lower
15 densities. These riders don't ride in groups of 20
16 riders together and Ms. Chase's testimony confirms
17 that. There are no more than five or six riders in
18 that improved rider area at a time.

19 So, in sum, we would ask that this
20 Commission rule in accordance with the staff
21 recommendation; that Magpie would support staff's
22 recommendation; that it be allowed and be granted APDs
23 to put in the vertical well in the southern half,
24 within the drilling window; and to have an exception
25 location, as recommended by the staff, south of the

1 irrigation ditch, so as not to impact the improved
2 riding area in the northern half of the applicants'
3 property. Thank you.

4 CHAIRMAN EPEL: Ms. Warren.

5 MS. WARREN: Good afternoon. Can
6 everyone hear me okay? My name is Heather Warren. I'm
7 a Colorado Assistant Attorney General, here today on
8 behalf of our client, the Colorado State Land Board.

9 The State Land Board owns the mineral
10 estate underlying the applicants' property and has a
11 lease with Magpie Operating, Inc. for the extraction
12 and development of this mineral estate. The revenue
13 that the State Land Board will receive in royalties
14 from these mineral reserves will go to the School
15 Trust, which is used to provide funding to K through 12
16 public schools in Colorado.

17 The State Land Board was endowed these
18 mineral estates at the time Colorado became a state,
19 and any determination today that impairs the State Land
20 Board's ability to have these mineral reserves
21 developed will, in turn, impair the School Trust and
22 the funding of K through 12 public education.

23 It is our opinion that applicants have
24 not met their burden of proof for establishing the
25 designated outside activity area at their property.

1 Their evidence to establish the required visitors to
2 their property, under the designated outside activity
3 area definition, is inherently unreliable and was
4 prepared solely for the purpose of this hearing.

5 The applicants' property is not open to
6 the general public, but is private property, with very
7 limited and controlled access to invitees and guests
8 only, and it is not a place of public assembly as
9 contemplated by the designated outside activity area
10 definition. The applicants' property is not a
11 well-defined area, as contemplated by the definition,
12 further, for the reason that applicants have not
13 established that the equestrian activities occur
14 consistently in all areas of the property over time.

15 The State Land Board has constitutional,
16 statutory and trustee duties to develop and generate
17 revenue from the mineral reserves at the applicants'
18 property for the benefit of the School Trust. And we
19 ask today that you weigh this important state interest
20 in your determination. We would ask that you deny the
21 designated outside activity area application, and,
22 instead, consider the staff's recommendations for the
23 location for the wells as just mentioned by Mr. Jacus.
24 Thank you.

25 CHAIRMAN EPEL: Mrs. Warren, will you be

1 presenting any witnesses today?

2 MS. WARREN: Yes. We have one witness
3 from the State Land Board, Mark Davis.

4 CHAIRMAN EPEL: Mr. Barber, would you
5 proceed?

6 MR. BARBER: Yes. I wonder if this would
7 be an appropriate time to advise the Commission of the
8 exhibits with which the parties have stipulated to
9 admissibility, and, Mr. Jacus, you can follow me -- or
10 Mr. Niebrugge -- if I get something wrong, you'll just
11 throw something at me or something.

12 MR. JACUS: Oh, no.

13 MR. BARBER: Let me start with the
14 applicants' exhibits, the ones that have been
15 stipulated. I think, in your book of applicants'
16 exhibits, there should be an index. And if it's easier
17 for you just to check it off as I give them to you,
18 that might be advisable.

19 So, the exhibits that have been
20 stipulated between the parties, that are admitted into
21 evidence, are Applicants' Exhibits 1, 2, 3, 6, 8, 9,
22 11, 13, 16, 17, 18, 20, 23, 27, 30, 31, 33, 34, 35, 36,
23 37, and we have one new exhibit today that has been
24 stipulated to, and I could hand the Commission copies
25 of those.

1 CHAIRMAN EPEL: What is this exhibit?

2 MR. BARBER: It's a Rule 510 statement.
3 There are two Rule 510 statements already in your
4 books. This is an extra one.

5 CHAIRMAN EPEL: Why don't you refresh the
6 Commission's recollection of a 510 statement, as you
7 are passing it out.

8 MR. BARBER: Thank you. A Rule 510
9 statement is a statement that allows -- know that there
10 are two 510 statements already in your packet, which
11 are Exhibits 11 and 13. This will be the third Rule
12 510 statement.

13 And, so, 11 and 13, in the applicants'
14 notebook of exhibits, are Rule 510 statements -- and
15 somebody will correct me again if I am wrong -- but
16 under Rule 510, the Commission allows an individual to
17 present written testimony to the Commission, if it's
18 subscribed to and sworn under oath and submitted in a
19 timely fashion. So, what I have given you as Exhibit
20 31 is the third Rule 510 statement. And that's been
21 stipulated into evidence as well.

22 MR. JACUS: Mr. Chair, if I may, in
23 response to Mr. Barber. I would add that we also
24 stipulate to Applicants' Exhibits 4 and 5, after
25 further consideration. Thank you.

1 CHAIRMAN EPEL: Mr. Jacus.

2 MR. JACUS: Yes.

3 CHAIRMAN EPEL: On Exhibit No. 4 -- and I
4 think it's another one that was not designated --
5 regarding the e-mails, I would tell you, in all
6 frankness, this body does not appreciate e-mails which,
7 if you all are corresponding amongst each other, you
8 shouldn't be sending them to us, when you are sparring.
9 So, they are not going to have any probative value and
10 they will not be admitted.

11 MR. JACUS: This is an applicants'
12 exhibit. I understand your comments, sir.

13 CHAIRMAN EPEL: Okay. Mr. Jacus, your
14 exhibits, are you -- that you stipulated to.

15 MR. JACUS: As you know, we sought to
16 withdraw Exhibits 1, 3, 4 and 5, on the basis of our
17 motion to exclude. I gather, from the chair's remarks,
18 that given the late filing of that, that has been
19 denied.

20 CHAIRMAN EPEL: Correct.

21 MR. JACUS: We will address our concerns
22 regarding the veracity and reliability of those
23 documents as they are used in this hearing.

24 Do you have a record of what we have
25 stipulated to? Why don't you run down that.

1 MR. BARBER: Now I will give the exhibits
2 where there's been stipulation of admissibility for
3 Magpie's exhibits.

4 CHAIRMAN EPEL: These are Magpie's
5 exhibits?

6 MR. BARBER: These are Magpie's exhibits
7 that have been stipulated into evidence. So, nothing
8 further needs to be done to bring them into evidence.
9 That would be Exhibits 2, 6, 7, 8, 9, 10, 11, 12, 13,
10 15, 20, 21 -- I think that's it. Counsel, do you agree
11 with that?

12 MR. JACUS: I do. I would also add that
13 we have a new exhibit, Exhibit No. 23, to which
14 Mr. Barber has also agreed to stipulate. And
15 Mr. Niebrugge is passing that out right now.

16 CHAIRMAN EPEL: What is Exhibit 23?

17 MR. JACUS: Exhibit 23 is a letter, which
18 we believe was prepared by Ms. Chase, one of the
19 applicants, with respect to the solicitation of letters
20 of support, some of which are attached to these 510
21 forms, one of which you were just handed as applicants'
22 Exhibit 41. We also reserve the right to use certain
23 rebuttal exhibits, if necessary, that we have with us,
24 and we have copies to provide to the Commission, if
25 needed. Thank you.

1 MR. BARBER: Mr. Chair, where do you want
2 our witnesses to sit?

3 CHAIRMAN EPEL: Why don't you have them
4 sit right next to you. Get a chair, have the
5 microphone available.

6 MR. BARBER: I would like Ms. Wendy Chase
7 to step forward and take a seat. And I'm wondering if
8 we can reconfigure that map, just so the witness isn't
9 turning and referring to it, and if we could maybe put
10 it over there, or over there.

11 CHAIRMAN EPEL: I think Ms. -- I think
12 it's difficult for us to see. If you put it back
13 there, we'll be looking over Commissioner Martin's
14 head. I think the best place is to leave it right
15 where it is.

16 COMMISSIONER DOWLING: If you refer to
17 the Exhibit 26, I believe we have all got a good clear
18 hard copy.

19 MR. BARBER: All right. That's fine.
20 Ready to proceed?

21 CHAIRMAN EPEL: Please.

22 DIRECT EXAMINATION

23 BY MR. BARBER:

24 Q Would you introduce yourself to the
25 Commission. Tell them who you are and where you live.

1 A I am Wendy Chase. I am the landowner at
2 8445 East County Road 14, in the southeast corner of
3 Larimer County.

4 Q Ms. Chase, in my opening statement, I
5 referred to Exhibit 26, which is this color map over
6 your left shoulder. Is that your property?

7 A Yes, it is.

8 Q Would you just take a moment to describe
9 your property to the Commission, and advise them about
10 what is done on your property.

11 A I use it to school three-day eventing,
12 which is my sport, and it's why I've developed it --
13 why I bought it and developed it is for a
14 three-day-eventing schooling facility.

15 Q In case the Commission is not like me,
16 would you tell them what three-day eventing is?

17 A Three-day eventing is the triathlon of
18 the equestrian world. We do the three phases. It's
19 the dressage, or similar to -- which is similar to
20 compulsory figures in figure skating. Then there's the
21 endurance phase, which includes cross-country, which is
22 jumping over fixed objects and in varied terrain, which
23 includes water banks and ditches.

24 And the third phase is the show jumping
25 phase, which is similar to what you're probably used to

1 as far as courses, horses jumping over jumps, which can
2 be knocked down, in an arena.

3 Q Ms. Chase, Exhibit 26 there has a lot of
4 sort of icons and shaded areas. Would you just tell
5 the Commission what those represent?

6 A This whole area is our cross-country
7 course. It actually comes down here and goes back up.
8 Most of the -- this ditch delineates between the
9 irrigated area and the dry land. Most of our fixed
10 obstacles are up here, because we only hay this once a
11 year, being dry land, as opposed to this, which is
12 irrigated, and it is not accessible as much of the
13 time, however, it is all integral to the sport. We
14 couldn't do part of it without the rest of it, similar
15 to the fact that a baseball diamond, while only, at the
16 most, six people are ever in the outfield, you could
17 not have the baseball game played without that
18 outfield, even though people do not go out into the
19 outfield, except for the three outfielders from each
20 team.

21 So, this -- our start box is right
22 here --

23 Q Stop there. How many people, when they
24 are -- what riders use that start box?

25 A Everyone that wants to go out and school,

1 or when you start a course, you have a start and a
2 finish. So, if you're just coming out to school, maybe
3 you only want to school banks that day, you may just go
4 out and just school the banks.

5 But if you are running a schooling horse
6 trials, you would do the entire course. You would
7 start in the start and finish at the finish. So,
8 everybody that goes out there -- and they are sent
9 out -- two-minute intervals is typical, two or
10 three-minute intervals, so you never have more than two
11 or three people on the course at one time, because that
12 would be extremely hazardous. So, virtually everyone
13 uses the start box when they start.

14 Q And then, what about the rest of the
15 property? Would you describe, for the Commission, what
16 that is and maybe spend a little time on a couple of
17 jumps that you've got?

18 A The lower area, this is our show jumping
19 area, dressage area, parking. You have to have an area
20 to warm-up. You have to have an area to tack up, to
21 load and unload horses from trailers, which can
22 frequently be dangerous. You need a place to cool off
23 your horse afterwards, apply ice, apply cold water, do
24 whatever it needs for -- any athlete after they have
25 competed.

1 The course -- what was the question?

2 Q What are the blue boxes?

3 A This is our indoor arena. These are just
4 temporary stabling areas for people that bring a horse
5 and need a horse to stay for a short period of time, or
6 even one that's not safe to tie up at a trailer. I
7 have frequently tried to keep some form of pen or
8 something, where you can put a horse if you are there
9 just for the day, or just for an hour, while you go out
10 and watch your daughter ride, or your sibling, or your
11 mother, or whatever. You can put a horse there for --
12 some horses are fine to be tied at the trailer, some
13 horses, it's not safe to leave them tied to the
14 trailer. And I have tried to provide a place for you
15 to put your horse, if you feel it's necessary.

16 Q Now, in this gray area at the bottom,
17 where the white boxes are, what did you say happens
18 there?

19 A That is extra parking and where people
20 are tacking up. They are putting -- they are getting
21 dressed, their horses are getting dressed. They are
22 applying all of their leg wraps. They are, when they
23 are done, they are going to be applying liniments and
24 ice and cold water, just for sponging down their horse,
25 grooming, putting their horses away.

1 Q Now, there are a lot of labels on this
2 map. Can you just give the Commission an idea of what
3 those are?

4 A Okay. Those are just some of the jumps
5 that are out there. We have approximately -- well, we
6 have over 150 jumps out there, and every one of these
7 jumps is a fixed obstacle. The standard in horse
8 design is that a cross-country fence needs to be built
9 so that it's solid enough to support the weight of a
10 horse. If a horse is jumping a table, and it needs to
11 bank it, that table will support the weight of that
12 1200-pound horse.

13 So, every one of these jumps is a fixed
14 obstacle. Some of them up here, we have a water jump
15 area, which is approximately 95 feet by 45 feet. It's
16 a complex where you jump into the water, you gallop
17 across the water. You may jump from water to water
18 over an obstacle. You jump banks in and out of water.
19 You jump a fixed obstacle, take a stride and enter the
20 water.

21 The very lowest levels, all they are
22 required to do is just walk their horse into the water,
23 through the water, and back out of the water. And then
24 it progresses up through the levels where you actually
25 have to jump fairly sizable obstacles within the water,

1 into the water, up out of the water.

2 There are also bank -- there are two bank
3 complexes on the property, which are, well, the one
4 here actually has two banks. It's a (inaudible). It's
5 composed of two banks. They jump up to one bank and
6 then up onto a second. It's like stepping up a stair
7 step, they call it. So, you jump up a three-foot bank,
8 you take one stride and then you have to jump another
9 three-foot bank, or there's options where you can come
10 across it, you jump up and then you jump off.

11 The second bank complex over here is a
12 simpler bank. You either jump up on to it or off of
13 it. However you have, frequently, an obstacle right
14 before or right after. So, you may have to drop off a
15 five or four-foot drop, make a slightly bending
16 left-hand turn and jump quite a narrow coop. So, it
17 shows control and balance of your horse, obedience.

18 Q Let me stop you there to ask a couple of
19 clarifying questions. How long have you owned the
20 property?

21 A Since 1997.

22 Q And how much have you invested in this
23 facility?

24 A Over a million dollars at the -- over
25 that whole length of time, not just at once.

1 Q And what have you done besides installing
2 these jumps and water hazards to make the property
3 suitable for cross-country eventing and training?

4 A Well, besides the jumps, which are
5 themselves permanent fixtures, we have built -- there
6 are two hills on the property that are just small bumps
7 with a jump on top of them, the banks that I mentioned.
8 We have also put in a galloping track around the
9 outside, where people can work on their horse's pace.
10 I have brought in thousands of tons of material to put
11 either on the galloping track or before or after
12 fences, so that the footing is always safe and
13 reasonably soft for the horse taking off and landing.

14 I've further augmented footing in other
15 areas. Colorado, the footing gets very, very hard and
16 dry, as you all know. And I've augmented that footing
17 a lot. If I have to drive out there, I pull a harrow
18 behind my pickup every single time. I drive out onto
19 that course to soften up the grounds behind me, if I
20 have to drive out there to work on a jump or to take
21 building materials out there.

22 Q Let me stop you. Do you allow vehicle
23 traffic on the courses?

24 A I never allow vehicle traffic on the
25 courses. People that come to teach, they have to walk

1 out -- they park where the trailers are and they walk
2 out with their students.

3 Q Why don't you allow vehicle traffic on
4 the course?

5 A Mostly to protect the footing, and also
6 because if there's a vehicle out there, and it wasn't
7 there the day before, or the last time a horse was
8 there, frequently the horse will be scared of it. But
9 mostly the main reason is to protect the footing on
10 that -- the cross-country course.

11 Q Since we're looking at an aerial view, I
12 want to take the Commission maybe to a more close-up
13 view. I want to show you Exhibit 30 in the plaintiffs'
14 exhibit notebook, and once the Commissioners have found
15 Exhibit 30, I want to just have you describe what they
16 are looking at. This would be in the applicants'
17 exhibit book.

18 So, let's start with Exhibit 30, the
19 first page. Just take the Commissioners through what
20 these photographs are.

21 A Okay. You all have it? This is just a
22 picture of people watching other people ride. It's
23 a -- it was taken at a, I believe -- I'm not sure which
24 clinic it was. It was taken at a clinic where we
25 import someone from -- may have been -- I'm guessing

1 that this was at Eric Smiley's clinic. He's an Irish
2 Olympian, who we fly -- or I don't, but Sarah Barnes
3 flies over usually once a year to teach on the course.

4 This is a typical scene from other
5 clinics, however, where there may be only four people
6 riding at one time, there are frequently a lot of
7 people out there to watch and learn from this. And of
8 these people, I only recognize one person. So I'm not
9 sure who they all are, but. . .

10 Q That's good, that's good.

11 A Okay.

12 Q Let's go on.

13 A Okay. Would you all turn the page to the
14 next. There's a horse approaching -- a man with a
15 beard approaching a small drop, teaching a young horse
16 to go down a bank. And the clinician is there,
17 watching, encouraging, making sure that they are safe.

18 You'll notice that he has on a helmet and
19 vest. Everybody that jumps, they have body armor.
20 They are supposed to always have body armor on to
21 protect from head and neck injuries, which are very --
22 and back injuries, which are quite prevalent with horse
23 operations, all horse operations, not just our sport.

24 Q Go to the next page, which, I think, is
25 actually numbered page 3.

1 A Okay. This is a typical scene out there,
2 where you can see, in this picture, there are four
3 people on horses, or maybe some that aren't in the
4 picture right here, but it's typical to have groups
5 from four to six out there, at a time, and, then, there
6 are other people there to watch and learn from those
7 people, and they will probably ride later, either
8 earlier or later in that same day. But they come out
9 to watch and listen to the clinician, who is speaking
10 and is between those two pillars. There is a revetted
11 ditch, which he's trying to explain to them how to
12 negotiate.

13 Q Okay. Page 4.

14 A Okay. This is a more advanced rider,
15 approaching a jump in the water. He is going to jump
16 from water to water and land in the water. But it
17 shows -- it shows at least part of the water jump, and
18 the precision that's required from that rider to get --
19 that particular horse is probably 17'2, and weighs
20 probably 1300 pounds, and she -- she herself is less
21 than 120 pounds.

22 Q Let me interrupt there. What span of
23 ages do you have visiting and participating in your
24 facility?

25 A Oh, all ages. So, we have from -- I

1 don't know if we've ever had anybody younger than
2 five -- well, we've certainly had spectators younger
3 than five, but we have a lot of pony clubbers that come
4 out. The pony club frequently requests to use the
5 facility, because it is probably the only facility in
6 northern Colorado that is available with a water
7 obstacle like this, that can be schooled throughout the
8 show season, throughout the whole season, from April
9 through November, whatever -- the weather season.

10 Q Excuse me. "Schooled," explain to the
11 Commission what you mean by, "schooled"?

12 A Oh, that they come out to train, to learn
13 how to ride their -- the pony clubbers come out to
14 learn all phases of horse management, three-day
15 eventing. They have sessions out there where they just
16 learn to bandage their horse before going out to
17 cross-country or how to bandage them after
18 cross-country, to prevent lower leg injuries.

19 Q Look at page 5. What is that?

20 A Okay. That horse is coming over a fixed
21 jump. It's up on top of one of the hills. It's -- the
22 picture shows it's fairly flat. They are actually
23 learning to jump from a higher point, down lower, which
24 adds a whole different level of danger or hazard to a
25 horse who's trying to learn how to gallop downhill and

1 jump going downhill.

2 This particular jump is 3 1/2 feet high,
3 and the drop on the back side is probably another 6
4 inches or more, or at least where they land. And then
5 they continue down the hill. So, the horse not only
6 has to land off the jump, but it has to learn to
7 balance and be able to gallop downhill, which, as
8 anybody knows who is running downhill, is not the same
9 as running on the flat.

10 Q And was it your testimony that there are
11 approximately 150 jumps, not all like this but of some
12 kind out on the property?

13 A Right. There are at least 150 jumps on
14 the property. It's a dynamic thing. We have to change
15 those anytime one becomes -- degrades over time, or has
16 been hit by a horse and needs to be rebuilt, or the
17 footing becomes bad. It's a dynamic thing. You're
18 never -- the cross-country is never built once and then
19 left to be stagnant. It's a constant, constant chore
20 to maintain this.

21 Q Do you do anything to prevent rocks from
22 creating hazards out on the property?

23 A We try -- I pick up rocks on, oh, at
24 least a weekly basis in the spring, when they grow
25 particularly well. I pick them out almost every single

1 day, I am out there picking rocks. I have workdays
2 where people have come out and volunteered their time.
3 I usually ask for a donation towards the maintenance of
4 the cross-country course, and they can do that either
5 with money or by coming out and contributing their time
6 to help maintain it.

7 So, the little -- the kids, the pony
8 clubbers, can come out with a -- I've an express wagon
9 that I leave, a little red wagon that I leave out there
10 all of the time. They can fill it up with rocks and as
11 many wagonfuls, and that's good for their session of
12 riding out there.

13 Q Now, is this a money-making venture for
14 you?

15 A Absolutely not. This is my passion.
16 It's what I do for my sport, and I have a -- I
17 definitely have some -- call it way more money than I
18 could ever recoup from any kind of contributions that I
19 would get from having it out there.

20 Q Now, there was some indication -- one of
21 the statements made by the lawyers on the other side of
22 me, that this area is not open to the public, that
23 somehow it's just your private farm. Is that true?

24 A That is not true. Anybody that calls me
25 up and wishes to come out -- it's not advertised except

1 for, really, by word of mouth. And if somebody is
2 doing a clinic, they may send out flyers. The local
3 pony club knows about it. They may be sending out
4 things. The local eventing association knows about it,
5 and they list it as one of their schooling facilities.

6 I personally do not advertise it.
7 However, since the very, very first log went out there,
8 I have had people calling up and asking to come out and
9 jump that one log. And as I have built it over the
10 years, I get more and more and more people that want to
11 use it. I would not let somebody come out if they --
12 that I didn't know, or who didn't come with somebody
13 who was properly credentialed to teach or to supervise
14 them. They don't even have to teach them.

15 But I frequently have people I've never
16 ever met call me up and asked to come out and use it.
17 And I've told them to get hold of, you know, one of the
18 people that standardly is out there supervising, and
19 try to get in with one of their sessions, if they wish
20 to come out and school. Because I don't want to be
21 responsible for somebody I don't know. So, it is open
22 to the public.

23 Q And then the very last page of Exhibit 30
24 is page 6. Can you just briefly describe what that is
25 and, then, there is another barrier in the background.

1 Tell the Commission what that is.

2 A Okay. The horse is coming to an -- the
3 edge of the water jump. It's just jumped a little
4 rail, which is set up just for schooling, to teach it
5 to jump something, take a stride and then jump into the
6 water. And it's looking at the water, wondering
7 whether it wants to jump in or not.

8 The stockade looking jump behind there is
9 another fixed cross-country jump. Those are solid,
10 totally immobile jumps.

11 Q I would like you now to just take a quick
12 look at Exhibit 18, and in the plaintiff's notebook,
13 which is entitled, "Mountain States Eventing
14 Association."

15 A Yes.

16 Q And have you seen this document before?

17 A Yes.

18 Q And just, in general, if you -- what is
19 this document?

20 CHAIRMAN EPEL: Mr. Barber, we've gone 25
21 minutes. I suggest that perhaps we get to some of the
22 more -- I understand the foundation you are building,
23 but I think it's time to get to some of the more
24 germane parts.

25 MR. BARBER: Okay. Thank you.

1 THE WITNESS: It is just a list by the
2 Mountain States Eventing Association, that they put out
3 for places that are available to the public to school.
4 And in my case, of these, all of these that are listed
5 here, I would say that I'm the only one that maintains
6 their property for schooling throughout the season.

7 BY MR. BARBER:

8 Q And just very briefly describe to the
9 Commission what are the hazards and risks associated
10 with the sport that would either be increased or
11 decreased by oil and gas operations?

12 A Well, anytime there's an unknown vehicle
13 driving across the cross-country course, or through the
14 area, it's going to cause a potential hazard.
15 Certainly, that's just a moving pickup coming out to
16 check the facility.

17 Any roads are going to be a hazard. I've
18 seen where wells have been put in, and the land has
19 been disturbed in a radius of several -- many acres
20 around the particular wellhead, and it has not been
21 reclaimed. They would be unable to reclaim it to the
22 state I have it in right now.

23 Q I want you to refer to the map behind you
24 and show the Commission approximately where you
25 understand the proposed locations of the well to be?

1 A The ones from staff?

2 Q Yes, ma'am.

3 A They are proposing one here and --

4 COMMISSIONER DOWLING: Do it again. Give
5 us some idea.

6 BY MR. BARBER:

7 Q It says, "Finnish Hanging Log"; is that
8 right?

9 A Right. There's a jump right exactly
10 there. And they are proposing one down here, in the
11 middle, where the staging area is and --

12 COMMISSIONER HOUPT: I'm sorry. I
13 couldn't see where you were pointing.

14 THE WITNESS: Okay. One right here.

15 BY MR. BARBER:

16 Q Just so the record reflects, the first
17 location is right above or north of the hanging log,
18 and the second location is what, south and east, just a
19 little bit, of your indoor arena?

20 A Yes. It's very close to the indoor
21 arena.

22 Q Adjacent to the boarding facility?

23 A Yes.

24 Q You're the owner of the property; is that
25 correct?

1 A Yes, sir.

2 Q In fact, you live on this property.

3 Would you show the Commission where you live, where you
4 have a home?

5 A Down in the southwest corner of the
6 property.

7 Q In 2009, after you had filed your
8 application, did you undertake to determine how many
9 people visited your property?

10 A Yes, yes. When people would come out
11 and -- because I knew -- I had since been told what the
12 criteria was for a designated outdoor activity area, on
13 days when I had more than 20 people out there, I would
14 put a star. When I came in at the end of the day, I
15 would put a star on my calendar, saying this, just to
16 try to keep track of it. The calendar is no different
17 than any calender that I have had in past years, except
18 for, on those days, I would try to say, okay, today we
19 had more than 20 people.

20 And I did it on the day that it happened,
21 as soon as I came in at the end of the day. While
22 people are there, I'm always out on the course. People
23 do not come on the property and jump a cross-country
24 jump unless I am out there to supervise. There's no
25 other way to keep it safe, because I am responsible for

1 the maintenance of those jumps. I know which ones are
2 safe to jump, in which direction, which ones might be
3 in a state of disrepair or where the footing might be
4 bad. I'm the only one that can make that
5 determination.

6 So, if anybody is out there, I am out
7 there on the cross-country course with them all day
8 long.

9 Q Are you able to count, in 2009, on how
10 many days there were 20 or more people on your
11 property?

12 A I will have to look at my calendar, but I
13 counted them this weekend, and there were between 45
14 and 50, where I know there were more than 20 people.
15 There were probably 5 to 10 days that it was close, and
16 I wasn't sure. It was probably right on the cusp
17 there.

18 Q And on days where there were not 20
19 people, would that mean there was nobody out there?

20 A Oh, no. When I had boarders out there --
21 I mean, my boarders are out there every single day,
22 using the property. Even this past weekend, I had six
23 people that just came out, just to use the property,
24 because it's there, and they were walking around. One
25 of them wanted to show her boyfriend where they jump.

1 They were just walking, because the footing is unsafe
2 this time of year, but they come out and they walk
3 their dogs.

4 Q Now, you mentioned a calendar which you
5 kept. And before we look at the exhibit, did you keep
6 calendars to keep track of what was happening out at
7 your property before 2009?

8 A This is -- this calendar is just the
9 calendar besides the phone, that probably everybody in
10 this room keeps next to their phone to regulate their
11 life. It is just my personal by-the-phone calendar.

12 Q Now, Exhibit 28 I have in front of you in
13 the applicants' book. Can you identify Exhibit 28 and
14 tell the Commission what it is?

15 A That is my personal calendar for 2009.

16 Q And you maintain this calendar, kept it
17 yourself?

18 A Yes.

19 Q Did you make entries on this calendar
20 contemporaneously or basically on the same day that the
21 events reflected on the calendar took place?

22 A Yeah.

23 MR. BARBER: Offer, at this point,
24 plaintiffs' Exhibit 28, which is Ms. Chase's calendar.

25 MR. JACUS: We'll renew our objection on

1 grounds of hearsay and unreliability of the document.

2 CHAIRMAN EPEL: Thank you. It will be
3 admitted.

4 (Whereupon Applicants Exhibit No. 28 was
5 admitted.)

6 MR. BARBER: Okay. Thank you.

7 BY MR. BARBER:

8 Q Just briefly take the Commission through
9 your calendar so they know what the various notations
10 on it denote?

11 A Okay. January and February are blank.
12 In March I had people out there using the course on six
13 days.

14 Q How do you know that?

15 A I put a red star on my personal calendar
16 on the day that there were more than 20 people. I
17 would come in, at the end of the day and I would put a
18 red star, which obviously is not red in the copies.

19 On the 4th, the 11th, the 8th, the 15th,
20 the 22nd and the 29th, there were more than 20 people
21 out there on those days.

22 Q In April?

23 A In April, there were more than 20 people
24 on the 1st, the 4th, the 5th, the 8th, the 11th, the
25 10th, there was some question on the 15th. I just put

1 a dot there. The 22nd, there's one of these should be
2 the 23rd. The 18th was not -- that was moved to the
3 23rd, because that was rained out and they all came on
4 the 23rd. It was a group from Wyoming. And the 29th.

5 Q 26th?

6 A And the 26th. You didn't have that
7 highlighted. The 26th also.

8 Q So, you talked about one of the clinics
9 that you have out there. And differentiate, if you
10 would, between just the regular training days and a
11 clinic?

12 A Okay. A clinic is usually set up by a
13 third party, and they have called and asked -- for
14 instance, in April, there was a pony club clinic, since
15 we just looked at that, you saw -- I saw that. On
16 April 11th, there was a pony club clinic. And they had
17 asked me -- well, they have already asked me for the
18 2010 year, so they set those calendars fairly well in
19 advance.

20 And they came out with a group of --
21 quite a large group of small children, to use the
22 cross-country course. It was mostly people on foot,
23 with probably, oh, less than 10 horses involved, but
24 all of the children were out there learning about how
25 that happens.

1 So, that gets set up well beforehand, and
2 it's set up -- a pony club representative will call me
3 and ask me if they can use the facility that day, and
4 then I set-aside that day. And when somebody like that
5 calls, I don't let anybody else come on that day. So,
6 if one of my regular people would come or call, I would
7 say, sorry, you can't come that day, because we already
8 have too many people there with the pony club.

9 Q Could you summarize your calendar? How
10 many days did you count there were more than 40
11 people -- or 20 people on your property in 2009?

12 A I thought it was right close -- right
13 about 50, somewhere between 45 and 50.

14 Q Okay. Ms. Chase, there was some
15 suggestion that, gee, you don't need this whole lot
16 because there might only be four or five or six or
17 seven riders using it at one time. Would you respond
18 to that?

19 A Well, I don't see that that's any
20 different than a baseball field. It's a -- yeah.
21 There are -- you can only have so many people out there
22 at a certain time or it's incredibly unsafe. So, if
23 somebody calls on the day, for instance, that I have
24 pony club scheduled to come, I would tell them to come
25 the next Wednesday, or the next Saturday, because you

1 can only have so many people out there, otherwise it's
2 chaos.

3 And you can easily have, you know, if one
4 person, for instance, if one person has trouble with
5 their horse, they fall off, or their horse runs away
6 with them, it can easily start an epidemic of all of
7 the other horses running away, with the same little
8 bunch of kids. So, we try to limit it to a very small
9 controllable group at one time, to any particular hour
10 of the day.

11 Q On days where you count 20 or more, would
12 all of these people be riding at the same time or how
13 would that work?

14 A No, they would almost never be -- well,
15 very rarely would there be 20 people on horses at the
16 same time. I schedule it throughout the day, starting
17 at usually, say, 9 o'clock in the morning, sometimes
18 earlier in the summer, and going till dark. And I try
19 to spread them out throughout the day as much as I can.

20 Q One final question: Have you ever had
21 any consultation about having a tank battery on your
22 property?

23 A We were specifically told by Robert Cline
24 that we would not have a tank battery on our property.
25 And we were again told, at the on-site inspection,

1 where the Oil and Gas Commission came out, that they
2 never had any plans to place the tank battery on our
3 property.

4 Q Is that significant to you, that there
5 would be no tank battery?

6 A It's extremely significant to us.

7 Q Why is that?

8 A The tank batteries are one of the
9 biggest, noisiest parts of the operation. They also
10 require huge tankers coming in and out to those, to do
11 whatever they do at tank batteries. I don't know about
12 the oil and gas industry, but I've seen it on
13 properties adjacent to us, where those trucks are
14 extremely -- they are big, they are loud, they would
15 destroy our property.

16 Q Do they create any risks to the riders
17 and horses?

18 A Oh, absolutely.

19 Q I mentioned, in my opening, that
20 Christopher Reeves was doing the kind of riding that is
21 out at your property. Was that true?

22 A Yes, it is. As far as -- I believe he
23 had his accident at Fence No. 3, which, as you can see
24 on here, all of the fences down here are very
25 straightforward. You always want to give your riders

1 three straightforward fences before you get into the
2 more difficult questions. And I believe he had his
3 accident on the second or third fence, which was --
4 should have been one of the easier fences.

5 MR. BARBER: Pass the witness. No more
6 questions.

7 CHAIRMAN EPEL: Mr. Jacus, we're going to
8 allow very brief cross examination, at most.

9 MR. JACUS: Thank you, Mr. Chair. I have
10 very limited cross examination questions.

11 CROSS EXAMINATION

12 BY MR. JACUS:

13 Q Mr. Chase, what is Moqui Meadows, LLC?

14 A It's the name of my farm.

15 Q Isn't that a for-profit limited liability
16 company that you established in Colorado?

17 A I established an LLC, just to reserve the
18 name of the farm.

19 Q You charge a fee for people to use your
20 property, don't you?

21 A I ask for either a donation for hauling
22 your trailer in or time spent out on the cross-country
23 course, one or the other.

24 Q I believe your counsel directed the
25 Commission to plaintiffs' Exhibit 18, and that

1 describes your facility, two-thirds of the way down the
2 page. And it says, "The cost is \$25 and the rider must
3 be accompanied by an approved trainer who has
4 insurance." Is that inaccurate?

5 A No, that's correct.

6 Q So, there's a cost to participate. Who
7 approves the trainer?

8 A They just -- I have to approve them.

9 Q So, you control who can use the property
10 through approval of the trainer; is that correct?

11 A That is correct. Well, they can go to a
12 different trainer if I don't approve -- if there's a
13 trainer that I felt has been unsafe in the past, and
14 I've said that they can't come out again, then I would
15 send them to -- I would give them names of other
16 trainers. And the \$25 is only if they haven't done a
17 workday or come out and done something else.

18 CHAIRMAN EPEL: Mr. Jacus.

19 MR. JACUS: I'm sorry.

20 CHAIRMAN EPEL: I don't see how the
21 question, whether it's a for-profit or not for-profit,
22 or who she approves --

23 MR. JACUS: Fine. I will move on.

24 CHAIRMAN EPEL: The issue is really, as I
25 believe you've stated in your briefs, is the

1 reliability of whether there is people out there for --

2 MR. JACUS: I will get to that directly.

3 CHAIRMAN EPEL: Okay.

4 BY MR. JACUS:

5 Q You knew, when you purchased this
6 property, that you were not buying the minerals; isn't
7 that correct?

8 A I knew that they were owned by the state
9 and I was told they would never be developed.

10 Q And you require riders on your property
11 and visitors to sign a release form in order to use the
12 property; isn't that correct?

13 A Correct.

14 Q And that's for purposes of your
15 insurance, isn't it?

16 A It's standard practice, in the whole
17 equine industry, to always have a release form.

18 Q I will take that as a yes. Prior to your
19 deposition, you were asked to provide records of your
20 business and activities related to the issues in this
21 hearing. Do you recall that?

22 A I suppose so.

23 Q And do you recall having posted a letter
24 to the Boulder Valley Equestrian Association asking for
25 people to write letters in support of this application

1 before this Commission?

2 A No.

3 Q I am handing you what's been marked
4 Magpie Exhibit 23, and I ask if you can identify that,
5 or if you have seen that before?

6 A I have not seen this until today, and I
7 did not send that out.

8 Q You have no idea who posted this or --

9 A Oh, I do know who posted it.

10 Q Who posted it?

11 A Someone named Gillian Webster.

12 Q And she's with BVEA, the Boulder Valley
13 Equestrian Association?

14 A Yes.

15 Q Do you see the statement about two-thirds
16 down: "My plan is to open my course to the public by
17 appointment and with an approved trainer on Wednesday
18 and Saturdays"?

19 A She wrote that, but, yes, I see that
20 line.

21 Q Do you know when this was posted?

22 A I do not.

23 Q Would it have been before you were
24 recording or attempting to record the number of people
25 visiting your property?

1 A It was done at least a year ago, because
2 it's -- there is a date that they wanted them by,
3 February 2nd, 2009.

4 Q So, it was prior to that time?

5 A Yeah.

6 Q Thank you. And if you decide, next year,
7 to stop allowing people who have been frequenting your
8 private farm, with your permission, there's nothing to
9 prevent you from closing your private farm to use by
10 those people, is there?

11 A I don't understand.

12 Q You could, tomorrow, stop letting people
13 ride on your property; is that correct?

14 A Yes, I could.

15 Q How is your property zoned?

16 A Agricultural.

17 Q It's not zoned for boarding stable or use
18 as an arena?

19 A I don't use it for a boarding stable.

20 Q I understand that. The question is, it
21 is not zoned that way, is it?

22 A Yes. It is zoned that I could apply for
23 that permit, just as I could apply to have a nursery
24 there.

25 Q Ms. Chase, I want to direct you to

1 Exhibit -- Magpie Exhibit 7. If you could refer to
2 that in your book. And I would like to ask you if you
3 have seen that before. I believe I presented it to you
4 during your deposition.

5 A Yes.

6 Q And that just, if I could briefly
7 summarize, for efficiency, here is an e-mail from
8 Ms. Woods --

9 CHAIRMAN EPEL: Hold on a second. We're
10 going to take a 10-minute recess. I want to talk to
11 counsel.

12 MR. JACUS: Okay.

13 CHAIRMAN EPEL: We're in recess until
14 2:30.

15 (Recess.)

16 MR. BARBER: We have three more
17 witnesses. I can squeeze them in in a half hour.

18 CHAIRMAN EPEL: Let me ask you to
19 reconsider that. I think you should squeeze them in in
20 about 15 minutes. It's time to start to get to the
21 bottom of the issues at hand. And I appreciate, you
22 know, giving us a full complexity, but I will guaranty
23 you, having sat with this Commission for a whole year,
24 going through the entire rules, every Commissioner
25 reads about every lick of paper.

1 MR. BARBER: Okay.

2 CHAIRMAN EPEL: And, so, I think the more
3 succinct we can be, the better.

4 MR. BARBER: Very good. Thank you.

5 CHAIRMAN EPEL: Mr. Jacus, do you have a
6 couple questions more?

7 MR. JACUS: I do.

8 BY MR. JACUS:

9 Q We were addressing Exhibit 7, and I would
10 direct you to the second page of that, Ms. Chase. This
11 is a schedule of some of the students who attended the
12 Staples Clinic on May 25th, 2009, as indicated on the
13 first page, is it not?

14 A I assume so.

15 Q And that calls for riders from 10 a.m.
16 until as late as 3:45 to 5:45, doesn't it?

17 A Yes.

18 Q And isn't it correct that many of the
19 riders in the first group, or the second group,
20 wouldn't necessarily be there when the fourth group is
21 present on the property?

22 A It may be.

23 Q They are not required to stay all day,
24 are they, if they are not --

25 A They are not required to. Most of these

1 people, because they come from south of Denver, all
2 carpool together.

3 Q But you don't have records of that, do
4 you?

5 A I don't have a record of that.

6 Q And referring to your photoexhibits, I
7 believe those were Exhibit 30, of the applicants'
8 exhibits. Those exhibits don't show more than 20
9 people in any photograph, do they?

10 A I don't remember them showing more than
11 20 at one time.

12 Q I think the Commissioners can probably
13 establish that, just looking at them, then. And you
14 don't know for sure what -- that day, when you thought
15 it might be the Smiley clinic, what day that photograph
16 was taken, do you?

17 A I know that on that day there were more
18 than 20 people there.

19 Q The day of the Smiley clinic?

20 A Yes.

21 Q But you don't know if that picture is
22 from the Smiley clinic?

23 A I am quite sure that it was, just from
24 the one person that I recognized.

25 Q Okay. Directing you to applicants'

1 Exhibit 25, your calendar. The stars you put on there,
2 those aren't numbers, are they?

3 A No.

4 MR. BARBER: You said 25.

5 BY MR. JACUS:

6 Q I'm sorry. I meant 28. Exhibit 28, your
7 calendar, you did not record the numbers of people.
8 You simply recorded a red star.

9 A Yes.

10 Q I believe you said you knew there were
11 more than 20 people there, but when we deposed you at
12 the beginning of January, you said you thought there
13 were at least 20 people out there, and you put a star
14 on those days, but that Mike Sutak's records were more
15 accurate, and that you are sitting on a horse, you
16 don't have a little pad of paper; is that correct?

17 A I am sitting on a horse and I don't see
18 everybody that stays back at the trailer areas, parents
19 or siblings. I know that there were more than 20
20 people on those days, because I am out there for the
21 entire day that people are out there and similar to
22 your last exhibit, that you showed us, there are those
23 groups that come out in that order.

24 Q I would direct you to the month of April
25 in your Exhibit 28, your calendar with the red stars

1 that we've been talking about. And I would like you to
2 look at April 4th and April 5th. And do you see the
3 red stars on those days?

4 A Yes.

5 Q And did you count those among the 45 or
6 50 that you think totaled more than 20, as you
7 testified here a moment ago to the Commission?

8 A I think I counted one of those.

9 Q I direct you now to Exhibit 25, and also
10 to April 4th and 5th. And I believe you will see that
11 both of the events were cancelled due to rain, and that
12 you didn't have 20 people on either day, although you
13 do have red stars in your calendar.

14 A No, that's not true. The workday did not
15 affect the rain -- I mean rain does not affect the
16 workday.

17 Q The entry on April 4th, the Frederick
18 Bullard clinic -- I may be mispronouncing that -- was
19 "Cancelled, rain," on your April 4th, Exhibit 25, is it
20 not?

21 MR. BARBER: That's not her exhibit. Her
22 exhibit is 28.

23 CHAIRMAN EPEL: I am going to interrupt
24 you.

25 MR. JACUS: Certainly. I am trying to

1 get to the reliability of these data, and they claim to
2 have met the designation requirements, and I don't
3 believe that it's reliable. And I do apologize for the
4 length of time necessary to do it, but it's, I think,
5 inherent in the nature of the exhibits that have been
6 provided.

7 I am doing my very best to be efficient,
8 Mr. Chair. I will cease my cross examination at this
9 point. I am done with cross and I understand your
10 concerns.

11 CHAIRMAN EPEL: Okay.

12 MR. JACUS: Thank you.

13 CHAIRMAN EPEL: Mr. Barber.

14 REDIRECT EXAMINATION

15 BY MR. BARBER:

16 Q On rebuttal, very quickly, Exhibit 7 from
17 the defendant's notebook, from Magpie's notebook, was
18 an e-mail, second page of which showed four groups of
19 people.

20 A Yes.

21 Q Is that how you typically --

22 A Five.

23 Q Five groups of people. Excuse me. Is
24 that typically, on Exhibit 7, how you grouped people,
25 in other words, four or five at a time?

1 A Yes. I don't do this grouping. This
2 person that sent me the e-mail, Mary Louis, did that
3 grouping. I don't even know most of those people on
4 that list. She organized that, and that was the -- she
5 sent that to me, so I would have an idea, and because I
6 told her I didn't want any more than a certain number
7 out there at a time.

8 Q And just advise the Commission how many
9 people were there on that day?

10 A 24.

11 Q Okay.

12 MR. BARBER: No further questions.

13 CHAIRMAN EPEL: Thank you. Next witness.

14 MS. WARREN: Do you mind if the state
15 asks one question?

16 CHAIRMAN EPEL: One question?

17 MS. WARREN: Yeah.

18 CHAIRMAN EPEL: Really?

19 MS. WARREN: Yes.

20 CHAIRMAN EPEL: Please do.

21 MS. WARREN: I can stand.

22 CHAIRMAN EPEL: For the record, just
23 identify yourself.

24 MS. WARREN: This is Heather Warren with
25 the attorney general's office.

1 CROSS EXAMINATION

2 BY MS. WARREN:

3 Q Ms. Chase, you mentioned there is 150
4 jumps.

5 A At least.

6 Q How many of them are used for the
7 cross-country course?

8 A All of them.

9 MS. WARREN: That's all.

10 MR. BARBER: Thank you. Next witness is
11 Sarah Barnes.

12 DIRECT EXAMINATION

13 BY MR. BARBER:

14 Q Ms. Barnes, you realize you've been sworn
15 and you're under oath?

16 A Yes.

17 Q All right. Identify yourself for the
18 Commission.

19 A My name is Sarah Barnes.

20 Q Ms. Barnes, where do you live?

21 A I live in Boulder, Colorado.

22 Q Do you use Moqui Meadows?

23 A Yes.

24 Q What do you use Moqui Meadows for?

25 A I am a trainer and a --

1 (Discussion off the record.)

2 THE WITNESS: I am a trainer and
3 competitor myself, so, I ride there. I take students
4 out to train. And I'm also a show and clinic
5 organizer, so, I have organized clinics that have been
6 held there.

7 BY MR. BARBER:

8 Q And what kind of age groups do you take
9 out there?

10 A Kids as young as, well, me personally,
11 the youngest I've taken out there is probably a
12 13-year-old, all of the way up, clinic participants as
13 old as 45, 50, 60.

14 Q Ms. Barnes, have you --

15 A We call them, "Fossils Over Fences."

16 Q And what's the age of fossils, 50?

17 COMMISSIONER DOWLING: I remind you of
18 your audience.

19 THE WITNESS: I'm with you guys.

20 BY MR. BARBER:

21 Q Ms. Barnes, you mentioned you have run
22 clinics out of Moqui Meadows. How long have you been
23 going out to Moqui Meadows?

24 A The first time I was there was in August
25 of 2008.

1 Q And when you run clinics, how many people
2 are participating in your clinic?

3 A We have generally between 15 and 20
4 riders anymore, and you can't fit them in safely over
5 the course of the day, but each rider generally comes
6 with one, if not two or three helpers, family members.
7 And then we also have auditors, and any -- particularly
8 Eric Smiley, who's very well-known in the eventing
9 world, he will attract anywhere from 15 to 30 auditors
10 throughout the course of the day.

11 Q And how many clinics have you given out
12 at Moqui Meadows?

13 A I have organized four clinics.

14 Q And have you kept track of the numbers of
15 people who have attended your clinics?

16 A Yeah. I have to have a record. These
17 clinics are sponsored by the United States Eventing
18 Association, and for their purposes, I have to keep a
19 very careful records of who is riding. They all have
20 to sign the waiver forms, and then also, because I have
21 to keep track of the finances, the auditors pay to
22 audit, and, so, I have a record of how many people have
23 been there auditing. I don't have records of how many
24 spectators came with the riders. Family members,
25 friends, that kind of thing, but very few people come

1 by themselves, so. . .

2 Q So, would it be your testimony that when
3 you have given clinics, there have been more than 20
4 people at the property?

5 A Definitely.

6 Q When you take people to clinics, out to
7 Moqui Meadows, what's the expectation as to what
8 portion of the property can be used?

9 A I have the assumption that when I'm
10 there, organizing a clinic, that the entire property is
11 going to be available for the use of the riders that
12 are there, and that the entire property is going to be
13 safe for their use. As Wendy's explained, it's not
14 just the cross-country field that's in use, it's the
15 parking area, it's the warm-up areas, people need areas
16 to be able to walk their horses and cool them, walk
17 their horse out and cool them down afterwards.

18 So, my expectation, one of the reasons I
19 run the clinics at Wendy's, is because the entire
20 property is safe for the use of the people that come in
21 for the clinic.

22 Q And when you say, "the entire property,"
23 would the entire property be what's depicted on this
24 large map, Exhibit 26?

25 A Yeah. The only area I haven't been with

1 a horse is right where Wendy's home is.

2 Q And that's in the southwest corner?

3 A Right.

4 MR. BARBER: No further questions. Pass
5 the witness.

6 CHAIRMAN EPEL: Mr. Jacus.

7 CROSS EXAMINATION

8 BY MR. JACUS:

9 Q Ms. Barnes, you indicated that on the
10 four clinics you've organized, that you believe 20 or
11 more people were present. Were they all there at the
12 same time, do you know?

13 A No.

14 Q So, they were there and in staggered
15 groups for the different sessions that the trainees
16 had?

17 A Yeah. Generally, the auditors come for
18 the day. Often the riders stay for the entire day,
19 even when they have finished riding. But I can't say
20 that there wasn't a rider who left at some point during
21 the day. They are not required to be there from the
22 beginning of the clinic to the end. People come and
23 go.

24 Q And you heard Ms. Chase's testimony about
25 150 or so jumps on the property?

1 A Yes.

2 Q And how many of those jumps are used at
3 any given time?

4 A Well, a horse can only jump one jump at a
5 time.

6 Q No, I understand that. If they are going
7 to run a course, the students or whomever is being
8 instructed on going over sequential jumps, they are not
9 doing all 150 jumps, are they?

10 A Again, a horse can only jump one course
11 at a time. If you are out at the cross-country field,
12 the expectation is the clinician can take the rider
13 anywhere on the course and jump any of the jumps.

14 Q Okay.

15 A Based on their ability and what's
16 appropriate for what they are working on.

17 MR. JACUS: No further questions.

18 CHAIRMAN EPEL: Next witness.

19 MR. BARBER: Next witness, Dr. Nancy
20 Carr.

21 DIRECT EXAMINATION

22 BY MR. BARBER:

23 Q Would you identify yourself for the
24 Commissioners?

25 A Yes. My name is Dr. Nancy Carr. I am an

1 equine veterinarian. I have been for 18 years. I am
2 also a competitor and do schooling with event horses at
3 Wendy Chase's.

4 Q Okay. Let's differentiate between what
5 you do as a competitor and what you do -- or, excuse
6 me -- what you do with clinics and what you do as an
7 individual at Moqui Meadows.

8 A Okay. I have attended several clinics,
9 and I also organized one clinic last year, and will
10 organize another clinic there. Professionally, I am a
11 veterinarian.

12 Q And when you organize the clinics, would
13 you describe to the Commission, in general, how many
14 people have been at those clinics, including auditors,
15 riders, parents, et cetera?

16 A The last clinic I organized was in
17 September of 2009. There were someplace between 12 and
18 15 riders, and probably that many spectators there. We
19 schooled horses, Friday afternoon, Saturday and Sunday.

20 Q So, there would have been three days in a
21 row with 20 people or more involved in your clinic?

22 A Yes.

23 Q Now, again, Exhibit 26 is a map of Moqui
24 Meadows. What is your expectation when you bring
25 people for a clinic, as to what portions of the

1 property can be used?

2 A Again, we assume that the whole property
3 is available. Each of these horses comes in, generally
4 in a fairly large trailer with a rig. They need room
5 to turn around. They need places to walk and cool the
6 horses out. Most of the horses warm up in the either
7 indoor or outdoor arena before they go out on the
8 cross-country course, where we school different sets of
9 obstacles at the clinician's discretion.

10 Q Okay. Describe briefly, for the
11 Commission, what the risks are of the kind of riding
12 that takes place out here, and how those risks would be
13 increased or decreased by oil and gas operations?

14 A From the veterinary standpoint, one of
15 the things that's very important for the safety of
16 these horses, is that the footing be level and that
17 there not be ruts and places that are really soft or
18 really hard. So, that's really important. Horses
19 suffer the same sport-type injuries that any athlete
20 does, as far as orthopedic type of injuries, soft
21 tissue injuries, things like that. It's important that
22 footing not be disrupted.

23 These horses are traveling the course,
24 between two and four miles long, at times, and it's at
25 speeds from 300 meters to 500 meters per minute. And,

1 so, they are, at times, moving rapidly, and that's
2 where we need the footing to be as safe as possible,
3 horses being animals that their initial reaction to
4 anything is to flee, if they are surprised, or if
5 something changes, they want to dart or run and then
6 risk injuries to themselves and certainly injuries to
7 the riders.

8 Q Would a truck traveling on the property
9 create additional hazards?

10 A Yes, it would.

11 Q In what way?

12 A Again, if that disrupts the footing
13 itself, which, again, that has been, again, worked on
14 for years, to improve it, certainly that risks more
15 injury to horses, either injuring them, or, again, if
16 they fall with the riders, certainly injuries to the
17 rider that way. And, again, the noise of the trucks --
18 again, horses are fairly fractious and have a tendency
19 to overreact to things. So, the nice thing about this
20 facility, as it is, there is very little traffic around
21 it. And, so, when you are out there, you don't have to
22 worry about them being surprised by cars, or, really,
23 any noise out there. You know what I mean?

24 Q And you live in northern Colorado; is
25 that right?

1 A I live in Brighton.

2 Q In Brighton. Are you familiar with the
3 facilities that might be available besides Moqui
4 Meadows for this type of training?

5 A Um, there is only actually three or four,
6 and certainly the others -- this is one of the few
7 facilities that is open on a daily basis, during the
8 season, that are available to get into, in the State of
9 Colorado.

10 MR. BARBER: No further questions. Pass
11 the witness.

12 CHAIRMAN EPEL: Thank you.

13 MR. JACUS: I have no questions.

14 MR. BARBER: Final witness is Mr. Mike
15 Sutak.

16 DIRECT EXAMINATION

17 BY MR. BARBER:

18 Q All right. Identify yourself for the
19 Commission, if you could.

20 A My name is Mike Sutak. I live at 8445
21 East County Road 14, which is in Larimer County. It's
22 considered Loveland.

23 Q Do you live with Ms. Chase?

24 A Yes.

25 Q Is that your home in the southwest corner

1 of Exhibit 26?

2 A Yes, it is, yes.

3 Q Okay. How long have you lived there?

4 A Since the mid to late '90s.

5 Q And you heard Ms. Chase's testimony about
6 the care that has been taken to create this facility.
7 Do you agree with that testimony?

8 A Yes, I'm well aware of it.

9 Q In 2009, did you attempt to determine how
10 many visitors there were to Moqui Meadows?

11 A I did, yes.

12 Q And advise the Commission what you did to
13 determine those numbers?

14 A I kept my own calendar, and I started
15 later in the year than Wendy did, because she said she
16 was concerned about missing some people. So, in early
17 April, I started, being very careful in the counts that
18 I took of people that came out to the property.

19 Q How did you count the people? I mean,
20 what process did you go through to determine the
21 number?

22 A I visually saw a person and I counted
23 them.

24 Q And once you visually saw a person, at
25 the end of the day, did you do anything to note the

1 number of people that had been on the property that
2 day?

3 A Yes. Everyday I filled in the calendar
4 with the number of people that I had counted that day.

5 Q And in 2009, how many days did you count
6 that there were at least 20 people at Moqui Meadows?

7 A Well, when I added it up at the end of
8 the year, I came up with 43 days that I personally
9 counted over 20 people per day.

10 Q And if could you look at Exhibit 25,
11 Mr. Sutak, would you briefly just describe to the
12 Commission what Exhibit 25 is?

13 A Exhibit 25 is my compilation of what I
14 came up with, looking at every day on the calendar,
15 showing the dates and the months and the total number
16 of days in the middle, on the bottom.

17 Q And you say -- I mean, the first page is
18 the summary and then after that is a copy of the
19 individual months?

20 A Each month of the calendar, yes.

21 Q And you have some, for instance, if we
22 looked at the month of April, 2009, you show 20 plus on
23 April 8th. Did that symbolize to you that there had
24 been at least 20 people out there?

25 A There were at least 20 people, because

1 when I got to more than 20 people, I just put plus.

2 Q You realize that you are under oath at
3 this time?

4 A Yes, I understand.

5 Q Is it your testimony that there were more
6 than 20 people on at least 43 days in 2009?

7 A Yes.

8 MR. BARBER: No further questions.

9 CHAIRMAN EPEL: Mr. Jacus.

10 MR. JACUS: Thank you.

11 CROSS EXAMINATION

12 BY MR. JACUS:

13 Q Mr. Sutak, how did you get across the
14 property to count all of the people each day when you
15 were taking these notes that you just described for
16 Mr. Barber?

17 A Get across the property? I don't
18 understand.

19 Q It's 80 acres, is it not, give or take?
20 How do you go about identifying who is on the property?

21 A They come in on the driveway and park in
22 generally the same area, and a lot of times I park the
23 vehicles, so they are a safe distance apart, and horses
24 wouldn't get hurt, and people wouldn't get hurt. And I
25 visually counted how many people there were there.

1 Q Now, this was the total that you reached
2 by the end of the day?

3 A Each day I counted the number of people.

4 Q Each day. And some of those people, by
5 the end of the day, let's say, by the time you got to
6 20 or 20-plus, had already left, had they not?

7 A Yes, they had.

8 Q So it's not a record of 20 or more people
9 at any given time?

10 A Not at any instance.

11 Q Thank you. Is there a required place to
12 check in and check out of the property?

13 A No, there is not.

14 Q And you're involved some in the release
15 of liability forms being completed, are you not?

16 A I take them if someone hands them to me,
17 because Wendy is usually out on the cross-country
18 course, so. . .

19 Q Is that a requirement of your operation,
20 to fill out the release of the liability form?

21 A Wendy has the requirement that every
22 rider has to fill out a liability release before they
23 go out there.

24 Q So, you can't see if there are riders out
25 on the northern portion, when you are down by the barn

1 or anything, because it's such a large area; is that
2 correct?

3 A I can definitely see them out there
4 unless they are very -- over the very edge of the hill.

5 Q Right.

6 A I don't count them because I've already
7 counted them when they come into the property.

8 Q Okay. I direct your attention to Exhibit
9 25. I believe that's your calendar. And you were just
10 referring to that. That actually is on a base calendar
11 that you printed in November of 2009; is that correct?

12 A It's the same computer program I print
13 out each month, so it has a nice square to put a number
14 in. So, that's what I used to make this calendar, and
15 then to make a clean copy, I put the numbers that I had
16 for each day that was on the original.

17 Q On the bottom -- it's not that legible on
18 the copy, right? At the bottom of every page, it says
19 November or whatever date it was printed. Do you see
20 that some pages are clearer than others?

21 A Yes, it is. I do see that.

22 Q This was transcribed from -- what records
23 did you use to transcribe onto the clean November 2009
24 calendar that is Exhibit 25?

25 A The same type of a computer printout for

1 each month. I printed out a page that looked exactly
2 like that. I didn't even notice that there was a
3 different date at the bottom, so every month would have
4 a different date. And I filled in that date, and this
5 one is my clean copy at the end of the period.

6 Q Now, you produced, at your deposition,
7 this large format calendar that I believe you referred
8 to as your base calendar, from which you would
9 transcribe the written notes you made each day onto
10 that base calendar, that large format calendar.

11 A The large format desktop calendar that I
12 had, we get stacks of them, we did at work, and I had
13 one on my desk. It was not a base calendar. It was a
14 desk calendar, and it was inconvenient to use. I quit
15 using that, and that's when I started using this.

16 Q Okay. But you were only able to provide
17 us with, I think, three months, you say, I think, three
18 months of that larger desktop calendar you referred to;
19 is that correct?

20 A Yes. I have the rest of it. I actually
21 found it because it was in -- well, I store it
22 downstairs, so if you want the rest of it, I do have
23 that. Every other day is blank?

24 Q We asked for that prior to your
25 deposition and I believe that's a continuing

1 obligation.

2 A I'm sorry. Okay.

3 Q We would have benefited from reviewing
4 that prior to today's hearing. I would also like you
5 to look at May 9th on your Exhibit 25, and look at the
6 entry on that date, and then compare it to the entry
7 for May 9th on Exhibit 28, which is Ms. Chase's
8 calendar, and tell me whether those entries agree with
9 one another?

10 A May 9th? No, they do not agree with each
11 other.

12 Q Thank you. Now, what purpose did the
13 stars on Ms. Chase's calendar serve for you in your
14 recordkeeping?

15 A None. I didn't follow her calendar. I
16 didn't know what she was doing with the calendar, so
17 none.

18 Q Okay. But in any case, whether the
19 desktop calendar, the dirty version of Exhibit 25, or
20 the clean version of the Exhibit 25, if I understand
21 your testimony, these were all created after you and
22 Mrs. Chase had filed your application, your original
23 application in this proceeding; is that correct?

24 A That's correct.

25 Q Thank you.

1 MR. JACUS: No further questions.

2 CHAIRMAN EPEL: Okay. Mr. Barber --

3 MR. BARBER: No questions.

4 CHAIRMAN EPEL: That's the conclusion of
5 your Direct Testimony?

6 MR. BARBER: Yes, sir.

7 CHAIRMAN EPEL: Mr. Jacus, how many
8 witnesses are you going to present?

9 MR. JACUS: We have two witnesses,
10 Mr. Chair.

11 CHAIRMAN EPEL: You have worked out with
12 the attorney general's office you'll present your case
13 and then they will present theirs?

14 MR. JACUS: Yes, that's correct.

15 CHAIRMAN EPEL: Please proceed.

16 MR. JACUS: Thank you.

17 (Discussion off the record.)

18 CHAIRMAN EPEL: Are you dialing your
19 witness or --

20 MR. JACUS: Probably should, just so he
21 can hear Ryan's testimony. Dial Mike Power. That
22 would be great.

23 (Discussion off the record.)

24 CHAIRMAN EPEL: Mr. Power, this is Joshua
25 Epel. We are going to administer the oath.

1 (Whereupon Michael Power was sworn.)

2 CHAIRMAN EPEL: Thank you. Please
3 proceed.

4 MR. JACUS: Thank you.

5 DIRECT EXAMINATION

6 BY MR. JACUS:

7 Q Would you please state your name and
8 business address for the record.

9 A Ryan Warner, 2707 South County Road 11,
10 Loveland, Colorado.

11 Q What's your position with Magpie
12 Operating, Mr. Warner?

13 A Vice president.

14 Q How big a company is Magpie?

15 A We have --

16 CHAIRMAN EPEL: Mr. Power.

17 MR. POWER: Yes.

18 CHAIRMAN EPEL: Why don't you put
19 yourself on mute until we call on you. We can hear
20 your kids in the background.

21 COMMISSIONER DOWLING: Mr. Warner -- or
22 Mr. Power, can you hear Mr. Warner? Can you hear him?
23 I'm not sure he can hear.

24 MR. JACUS: Well, we could --

25 MR. POWER: I can hear.

1 MR. JACUS: Excellent. Thank you,
2 Mr. Power.

3 BY MR. JACUS:

4 Q How big is Magpie?

5 A Magpie is 16 salaried employees and two
6 independent contractors.

7 Q So, would you characterize Magpie as a
8 small business?

9 A We are smaller than the majority of oil
10 and gas companies, yes.

11 Q How many active wells do you have
12 currently at Magpie?

13 A 104.

14 Q And under about how many leases?

15 A Um, we have a pooling agreement called
16 the, "Loveland Field Unit," which consolidated several,
17 well, several 10s of leases that probably made up 25,
18 and we have possibly another 15 leases.

19 Q So, maybe 40 leases all together?

20 A About.

21 Q Have you conducted prior drilling under
22 the lease on the Chase property, the property in
23 question in this proceeding?

24 A Yes, we have. We operate three wells
25 now, one of which was drilled late 2008.

1 Q And what well is that?

2 A The State Anderson 41-36.

3 Q Where is that in relationship to the
4 Chase property?

5 A The State Anderson 41 is in the northeast
6 of the northeast corner, whereas the Chase property is
7 the west half of the southeast quarter.

8 COMMISSIONER DOWLING: Mr. Warner, can
9 you say again -- what year did you say this well was
10 drilled?

11 THE WITNESS: That is the Chase property,
12 the well in the northeast northeast was drilled just
13 over a year ago, late 2008.

14 COMMISSIONER CRAIG: Can you point to it
15 on the other map, please?

16 MR. JACUS: Actually, I am going to
17 direct you to Magpie Exhibit 2 in your binders, Madam
18 Commissioner. And if you'll notice, that covers all of
19 Section 36.

20 BY MR. JACUS:

21 Q Do you want to describe, Ryan, where the
22 State Anderson 41-36 well is located on Exhibit 2?

23 A It's the top right square. It is newer
24 than this map. It's inside that box in the drilling
25 window.

1 Q So the uppermost right-side drilling
2 window in the --

3 A Section --

4 Q Northeast quarter section of Section 36
5 on that diagram; is that correct?

6 A That is correct.

7 Q Okay. How successful and productive is
8 the Anderson well?

9 A It satisfied our expectations. It's
10 still producing today. It's profitable and we're happy
11 with it.

12 Q Is there any reason to believe that the
13 State Chase wells that would be located on the Chase
14 property, if the APDs are granted by the Commission,
15 will not be just as productive, once drilled?

16 A No, we have no reason to believe that.

17 Q Those will be in the same producing
18 formation as the State Anderson?

19 A That is correct.

20 Q When were these applications for the
21 Chase property filed relative to the Anderson well
22 applications?

23 A They were all filed as a group on May
24 31st, 2008.

25 Q Did the Andersons oppose your drilling?

1 A No, they did not.

2 Q What did they do with the surface of
3 their property, what kind of activities?

4 A It's all farmed.

5 Q Have there ever been any complaints with
6 your interference with their farming activity?

7 A No.

8 Q How many hours have you devoted to the
9 Anderson surface use agreement that's in place with
10 Magpie?

11 MR. BARBER: Objection. Relevance.

12 CHAIRMAN EPEL: Overruled.

13 MR. JACUS: Go ahead.

14 THE WITNESS: We got it done over the
15 course of a couple of hours a week, maybe three weeks
16 or so.

17 BY MR. JACUS:

18 Q And how much time have you devoted to
19 your efforts to obtain an agreement to access the Chase
20 property for the same purpose?

21 A Over 100 hours, easily.

22 Q Is Magpie prepared to drill one or both
23 wells if the applications are granted?

24 A Yes.

25 Q How will Magpie fund the drilling and

1 development of the wells on the Chase property?

2 A We'll use a combination of cash, credit.
3 We have agreements with service providers, such as
4 extended prepayment terms. And also we've already made
5 significant investment in infrastructure, tubulars,
6 tanks, separators, it's ready to go.

7 Q How would you characterize your dealings
8 with the applicants in attempting to obtain access?

9 A It's been difficult, not very productive.

10 Q And you had a contract landman involved
11 in dealings with the Chase property, did you not?

12 A Yes, we did. His name was Robert Cline.

13 Q And how would you characterize his
14 dealings with the applicants?

15 MR. BARBER: Objection. Calls for
16 speculation. That witness isn't here.

17 CHAIRMAN EPEL: I am going to sustain
18 that one.

19 MR. JACUS: Okay. Don't answer the
20 question.

21 BY MR. JACUS:

22 Q Are you prepared to and have you offered
23 to make accommodations to address some of the property
24 owners' concerns in developing the oil and gas minerals
25 under lease with the State Land Board on their

1 property?

2 A Yes, we have. We considered altering our
3 time line, the size, the scale, the timing, all of
4 which to accommodate the surface.

5 Q And that was unsuccessful?

6 A Right, right.

7 Q Without going into specifics, can you say
8 why you were unable to reach agreement generally?

9 A We just could not agree to certain
10 restrictions in our operations. We just couldn't come
11 to terms.

12 Q Have you obtained estimates of the cost
13 of drilling your State Chase wells from outside of the
14 property?

15 A Yes, we have.

16 Q Who prepared those estimates?

17 A We received an estimate from Mike Power
18 and another estimate from Steve Grimes, Ensign U.S.
19 Drilling.

20 Q With respect to Mr. Grimes' estimate,
21 what did that include?

22 A It wasn't clear what it included. It was
23 essentially one line with a dollar figure. I assume it
24 was dry hole costs to drill.

25 Q And what's your understanding of

1 Mr. Power's estimates, the elements included in that?

2 A It was a bit more comprehensive in
3 detail. They had listed mud motors, additional
4 supervision, engineering, drilling time, a variety of
5 factors.

6 Q I am going to ask just a few questions of
7 Mr. Warner -- that's really pretty much all his
8 direct -- as a rebuttal witness, on some of the issues
9 raised in the direct testimony of the applicants, so
10 we'll be very brief.

11 What sort of experience do you have with
12 horses, Mr. Warner?

13 A My family's farm has over 30 horses in
14 which we train and ride and breed.

15 Q And what's the proximity of your family's
16 use and care of horses on that property to oil and gas
17 activities?

18 A On the property, there's seven oil and
19 gas wells, two of which were drilled in the last couple
20 of years.

21 Q I'm having Sam Niebrugge hand out what's
22 been marked for identification -- actually, is it
23 marked?

24 MR. NIEBRUGGE: It's not.

25 MS. WARREN: It's not. Maybe --

1 MR. NIEBRUGGE: It's not marked.

2 MR. JACUS: We'll need to mark it Magpie
3 Rebuttal Exhibit 1, and we have some labels. We'll get
4 those on there or you can just make a notation.

5 BY MR. JACUS:

6 Q Mr. Warner, do you recognize that aerial
7 photograph?

8 A Yes, I do.

9 Q Is that your family farm?

10 A Yes, it is.

11 Q And can you identify the wells to which
12 you just referred?

13 A Yeah. There are these wells, Sanford
14 Warner, Sorenson, UCLI.

15 Q And are the riding activities of your
16 family, involving these 30 horses that they keep, at
17 all restricted because of the location of these wells
18 on your property?

19 A No. We ride them all over the property,
20 near the wells, near tank batteries, pretty much use
21 all of the property. And then the two wells are right
22 near the riding arena as well, but we don't have any
23 concern.

24 Q What sort of riding do you and your
25 family engage in on this family farm?

1 A Western pleasure, mainly, roping,
2 reining, steer sopping, and, then, obviously sport
3 riding and just for pleasure.

4 Q Have you ever had any incidents or
5 injuries to a horse or rider that you would attribute
6 to the location or operation of active wells on the
7 family property?

8 A No.

9 MR. JACUS: I have no further questions
10 on direct or rebuttal.

11 MR. BARBER: May I proceed?

12 CHAIRMAN EPEL: Please.

13 MR. BARBER: On the rebuttal exhibit,
14 what was that number?

15 MR. JACUS: That's Rebuttal Exhibit 1,
16 Magpie.

17 CROSS EXAMINATION

18 BY MR. BARBER:

19 Q On Rebuttal Exhibit 1, there are no jumps
20 on that property, are there?

21 A Um, well, if you can see the terrain,
22 there's a ditch and embankments and paths and bridges
23 and rocky terrain, and there are several natural jumps.

24 Q Have you installed any artificial jumps
25 on this property?

1 A No, we don't.

2 Q Do you allow members of the public to
3 conduct clinics on your property?

4 A No.

5 Q Do you allow children to come with adult
6 trainers and ride on your property for training on
7 three-day eventing?

8 A No.

9 Q Mr. Warner, in terms of the estimates for
10 horizontal or directional drilling, would you please
11 turn to Exhibit 32 of the plaintiffs' exhibits.

12 CHAIRMAN EPEL: Plaintiff?

13 MR. BARBER: Applicants.

14 THE WITNESS: Okay.

15 BY MR. BARBER:

16 Q Okay. All right. Mr. Warner, you
17 referred to a quote you got for directional drilling
18 from Mr. Grimes at Ensign Drilling; is that correct?

19 A Yes.

20 Q And this is, in fact, that quote, is it
21 not?

22 A Yes.

23 Q And the quote from -- first of all, is
24 Ensign Drilling a reputable drilling company?

25 A Um --

1 Q As far as you know?

2 A I don't feel they are anymore.

3 Q Well, did you, before you asked for this
4 quote?

5 A I did have some faith in them at that
6 time, yes.

7 Q And in this quote, Mr. Grimes told you
8 that the total cost to drill a directional well, above
9 what it would cost to drill a vertical well, was
10 approximately 16 to \$17,000; is that right?

11 A Yes.

12 Q Okay. You have never attempted to count
13 the number of people who have been at Moqui Meadows on
14 a given day, have you?

15 A Um, I've been on the property when there
16 were riders, and I did not see more than 20 people on
17 the days I was there.

18 Q Okay. And how many days was that?

19 A Um, I've probably been on the property or
20 driven by the property 100 times.

21 Q And have you ever gone on the property
22 with the purpose of trying to count the number of
23 riders?

24 A No.

25 Q Let's see, you said that your company

1 operates a little over 100 wells; is that right?

2 A That's correct.

3 Q And your company has drilled a sum total
4 of one well in the entire history of the company; is
5 that right?

6 A That is correct.

7 Q And that one well is that Anderson well,
8 which is in the northeast corner -- actually, why don't
9 you turn to Exhibit 2 in the Magpie exhibit notebook.

10 MR. JACUS: Sorry. It's right here.

11 BY MR. BARBER:

12 Q Do you have Exhibit 2, sir?

13 A I do.

14 Q And Magpie has been in existence how
15 long?

16 A About 20 years.

17 Q And in the entire existence of Magpie,
18 that's the only well it's ever drilled; isn't that
19 right?

20 A That is correct.

21 Q Directing your attention, if you could,
22 to plaintiffs' Exhibit 1. Mr. Jacus can show you that.
23 That should be in plaintiffs' notebook. I'm sorry
24 Exhibit 1 -- I said, "plaintiffs" -- in the applicants'
25 notebook. We had wrong labels on these too at one

1 point. Blue book.

2 CHAIRMAN EPEL: We're looking at the
3 lease?

4 MR. BARBER: We're looking at the lease.

5 BY MR. BARBER:

6 Q Mr. Warner, do you recognize the lease?

7 A Yes.

8 Q This is a copy of the lease under which
9 Magpie owns a working interest, correct?

10 A Correct.

11 Q And this lease is dated September 21 of
12 1977; isn't that right?

13 A Yes, it is.

14 Q And it covers approximately 640 acres in
15 total?

16 A Yes, it appears to.

17 Q And in the 33 years that this lease has
18 been in effect, there have been three wells drilled on
19 this lease; is that right?

20 A That's correct.

21 Q Would you turn to paragraph 9 of the
22 lease, sir?

23 A Okay.

24 Q I am going to read just the first two
25 sentences -- or the first sentence of paragraph -- two

1 sentences of paragraph 9, and I want you just to follow
2 along and confirm that I have read it correctly.

3 Quoting from paragraph 9, at the third
4 page of the lease, "The lessee agrees to notify the
5 lessor of the location for each well before commencing
6 drilling thereon. No exploration drilling or
7 production operation, including permanent
8 installations, shall be within 200 feet of any building
9 or other improvement, including water well or
10 reservoir, without written permission of the owner of
11 said improvement." Did I read that right?

12 A Yes.

13 Q It is a fact, is it not, that Magpie has
14 never received written permission from Ms. Chase or
15 Moqui Meadows to drill on the property; isn't that
16 correct?

17 A That is correct.

18 Q Then, just finally, you talked about some
19 discussions you had with Ms. Chase, and I think
20 Mr. Sutak, about operations on the property. If you
21 were to drill a well and put a tank battery on the
22 property, you would be bringing in large semi-trucks,
23 wouldn't you?

24 A Yes.

25 Q And those semi-trucks are 68 feet long,

1 aren't they?

2 A I believe the longest Plain's truck that
3 he was able to locate was 65 feet.

4 Q 65 feet. They are big trucks, though,
5 aren't they?

6 A Yes.

7 Q And they come on their own schedule? You
8 don't regulate when those trucks come on the property,
9 do you?

10 A We call dispatch and generally within
11 hours to maybe a day or so they come out to the
12 property.

13 Q But they may have to come out there on an
14 emergency basis, or they have to empty tanks, is that
15 right, if they have a routine schedule?

16 A No, that's not correct.

17 Q If you had wells on this property, you
18 would have a pumper driving out on the property, would
19 you not?

20 A Yes, yes.

21 Q And if you had a tank battery on this
22 property, these large trucks, which I have just
23 mentioned, would be driving on the property, correct?

24 A Yes.

25 MR. BARBER: That's all I have.

1 MR. JACUS: Mr. Chair, if I may, just for
2 clarification, with respect to the demonstrative on the
3 easel, have Mr. Warner identify the original --

4 CHAIRMAN EPEL: Before you do that --

5 MR. JACUS: -- original location.

6 CHAIRMAN EPEL: I have had a lot of
7 counsel testify to things I haven't heard in the
8 record. I haven't heard anybody testify that there
9 would be -- maybe I've just been missing it -- there
10 will be a tank battery on the property itself. I have
11 heard counsel testify to that.

12 MR. JACUS: I would be happy to ask
13 Mr. Warner, if you would like me to elicit that from
14 his testimony, sure.

15 CHAIRMAN EPEL: If you would.

16 REDIRECT EXAMINATION

17 BY MR. JACUS:

18 Q Mr. Warner, as you heard the Commission
19 chair indicate, if these applications for permit to
20 drill are granted, is it your intention to place a tank
21 battery on the property?

22 A That would be our preference.

23 Q And is that how you arranged for the
24 collection of sales oil and produced water at the
25 Anderson 41-36 well that we talked about earlier in

1 your testimony?

2 A Yes, that's correct.

3 Q So, that would be your common and
4 standard approach to the handling of fluids produced
5 from an active oil and gas well?

6 A Right. Generally we would want at least
7 one tank nearby for each well. A twin tank battery
8 could service two wells and it's pretty common
9 practice.

10 Q And if you could just briefly estimate,
11 put these buttons on the foam core board diagram of the
12 Chase property also. And if you'll notice, they're
13 labeled for the original application in the drilling
14 windows, and then the rough estimate of the alternate
15 location recommended by the Commission staff, that's
16 south of the irrigation ditch and therefore outside the
17 improved riding area in the northern portion of the
18 property.

19 And where would your preference be to
20 locate a tank battery or -- in proximity to the two of
21 these locations, whether they are in the drilling
22 windows or the one alternate location recommended by
23 staff?

24 A Ideally, you would have a tank battery on
25 County Road 14 to minimize any conflicts with the

1 surface, and it would just be a quick loop right off
2 the county road.

3 Q So, that would be along the southern
4 boundary of the Chase property, adjacent to the hay
5 pasture?

6 A That's correct.

7 MR. JACUS: No further questions.

8 MR. BARBER: Follow-up on tank battery?

9 CHAIRMAN EPEL: Please.

10 CROSS EXAMINATION

11 BY MR. BARBER:

12 Q Mr. Warner, isn't it a fact that when you
13 consulted with Ms. Chase and Mr. Sutak, that the only
14 discussion about a tank battery was actually to place
15 it on property located in the City of Johnstown, along
16 the southwest corner?

17 A Um, I don't think that's correct. Can
18 you repeat it?

19 Q Yeah. When you discussed the tank
20 battery, for the locations, on the proposed well, isn't
21 it a fact that the tank battery was proposed to be
22 located on City of Johnstown property?

23 A Um, no. I think that the discussions
24 were that, as well as staff recommendation, that the
25 access and tank battery be on County Road 14, south of

1 the wells.

2 Q And that would be on City of Johnstown
3 property as opposed to the Chase property?

4 A No. Directly south of the wells.

5 Q Would you look at Exhibit 14 in the
6 booklet of the Magpie exhibits?

7 CHAIRMAN EPEL: Is this the white one?

8 MS. HARMON: White.

9 BY MR. BARBER:

10 Q Do you have that in front of you, sir?

11 A I do.

12 Q I would like you to turn to a page that's
13 located seven pages from the end. So, we start at the
14 end of the exhibit and go back seven pages.

15 COMMISSIONER DOWLING: What's the page
16 number?

17 MR. BARBER: It's page 2, at the bottom.
18 It's part of a memorandum dated November 6th, 2008.

19 BY MR. BARBER:

20 Q Do you have that in front of you, sir?

21 A Yes, I do.

22 Q This was a memo that Mr. Lindblom
23 provided after a meeting on November 6th, 2008; is that
24 right?

25 A That's correct.

1 Q Would you turn to the second page, at the
2 very top of this? This meeting involved discussions
3 about locations of wells and tank batteries; is that
4 right?

5 A That is right.

6 Q And isn't it a fact -- let me just quote:
7 Mr. Lindblom wrote, "The tank battery for both
8 locations was proposed to be located on City of
9 Johnstown property along Weld County Road 14, near the
10 southwest corner of the Chase property." That's what
11 he said, isn't it?

12 A That is correct.

13 MR. BARBER: No further questions.

14 CHAIRMAN EPEL: Thank you. Next witness.

15 MR. JACUS: Magpie calls Mr. Power.

16 Mr. Power, can you hear me?

17 THE WITNESS: Yes, I can.

18 DIRECT EXAMINATION

19 BY MR. JACUS:

20 Q Would you please -- and once again, I
21 want to thank you for making yourself available, even
22 telephonically, in light of your recovery from your
23 surgery. Would you please state your name and your
24 title and position and employment.

25 A My name is Michael Power. I have a

1 business, Petroleum Power. And I am president of that
2 and also an employee of Delta Petroleum.

3 Q And Mr. Power --

4 MR. BARBER: I'm sorry. I didn't get the
5 company he was employed by. Excuse me for
6 interrupting.

7 CHAIRMAN EPEL: Did you say Delta
8 Petroleum?

9 THE WITNESS: Yes. I am a senior staff
10 drilling engineer for them.

11 MR. BARBER: Thank you.

12 BY MR. JACUS:

13 Q Thank you. Would you briefly tell us
14 your educational background and years of experience
15 very briefly.

16 A Started in the oilfields in 1975, working
17 as a roughneck. I became a petroleum engineer,
18 graduated from the University of Tulsa in 1979. And my
19 primary duty has been to design and drill oil and gas
20 wells all over the world.

21 Q Thank you. Now, you were engaged by
22 Mr. Warner and us, as his counsel, to prepare an
23 estimate for purposes of this hearing, were you not?

24 A Yes, I was.

25 Q And what did you assume for purposes of

1 that estimate?

2 A The purpose of my -- the request I was
3 given was to make additional costs to drill a well that
4 would go 1200 feet from where the surface is to the
5 bottom hole location, to access the land underneath, so
6 that's what I did.

7 Q So, that would, in other words, be what's
8 referred to as a 1200-foot reach, from the surface hole
9 location to the bottom hole location?

10 A Yes.

11 Q Okay. And what was included in the
12 elements of the additional incremental costs that you
13 estimated associated with a 1200-foot reach
14 directionally drilled well?

15 MR. BARBER: May I make an objection,
16 Your Honor?

17 CHAIRMAN EPEL: Yes.

18 MR. BARBER: The objection is that cost
19 is not an element of whether to make something a
20 designated outside activity area.

21 CHAIRMAN EPEL: I am going to deny your
22 motion. Please proceed.

23 THE WITNESS: Once again?

24 CHAIRMAN EPEL: What's the incremental
25 cost of the directionally drilled well?

1 THE WITNESS: Okay. I estimated one and
2 a half to two more days that are required to drill the
3 well. Drilling rig, I estimated to be the rate of
4 \$11,000; mud costs of 1,000; rental equipment of 2000 a
5 day; supervision of \$1500 a day; trailer water and
6 septic, 125 a day; mud logger, 800 a day, for a total
7 of 16,425 a day, times two days would be 32,850.

8 The additional equipment required for the
9 directional work would be a directional -- entails a
10 bit housing and drilling motor, an MWD, and we give the
11 signals of where the bottom of where the directional
12 bit is; directional supervisor, and I quoted that at
13 5250 a day. The estimate, in my opinion, drilled, is
14 \$67,996. I included the additional footage required
15 for the casing, 5 and 1/2 casing, 2 and 7/8th tubing.
16 And the finish work. It's 143 additional length of
17 tubulars.

18 Q And all that adds up to your estimate of
19 roughly \$68,000?

20 A Yes, sir.

21 Q And that's per well?

22 A Yes.

23 Q And what did -- or what was your resource
24 for unit costs for some of these estimates that you've
25 just explained for us?

1 A Well, Delta is currently drilling a well,
2 a "J" Sand well, which is the "J" formation, I believe,
3 that this is targeting, up in Wyoming. And I took
4 those from the direct costs, from the daily reports of
5 our ongoing operations.

6 Q Do you believe those unit costs would be
7 the same for an operator the size of Magpie relative to
8 Delta?

9 A I think so. I think that is correct.

10 Q Okay. And is this the type of
11 information that you rely upon in providing estimates
12 of incremental additional drilling cost in the course
13 of your consulting?

14 A Yes, it is.

15 Q And have you prepared this type of report
16 before?

17 A As an expert witness?

18 Q Yes.

19 A No, I have not.

20 Q But you've estimated additional drilling
21 costs and consulted on directional drilling throughout
22 your career; is that correct?

23 A That's correct. Eleven countries and
24 almost all over the United States.

25 Q Is this indicative of the kind of well

1 MR. BARBER: Okay.

2 CHAIRMAN EPEL: Just ask your questions.

3 BY MR. BARBER:

4 Q How do you know Magpie? How are you
5 familiar with them?

6 A I am not familiar with them, other than
7 his counsel approached me and asked me if I would
8 prepare a cost of what was required to drill a
9 directional well.

10 Q Do you know where the surface location of
11 that hypothetical directional well would be on the
12 Moqui Meadows property?

13 A I have seen the plat of the area that was
14 to be studied, yes.

15 Q And where was the surface location of
16 that directional well?

17 A Directionally -- I'm trying to see the
18 map on -- the map in my head. It was 1200 feet to the,
19 I believe, east.

20 Q Of what?

21 A Of the target areas, of the 660 by 660
22 location from the quarter.

23 Q 660 by 660, what is that refer to, sir?

24 A That would be for your bottom hole -- the
25 bottom hole somewhere in the 660 feet from baseline.

1 Q Are you saying the 660 feet is measured
2 with respect to a property boundary line?

3 A That's -- I assume that they wanted -- I
4 was requested to prepare 12 -- excuse me. I assumed
5 that that 1200 feet would be outside of the property in
6 question, specifically a point at a surface location.

7 Q So, your 1200 feet was sort of without
8 regard to where the surface location was. You just
9 thought that would be the cost of a directional well.

10 A That is what I was requested.

11 Q Are you familiar with Ensign Energy.

12 A Ensign Energy, the drilling company?

13 Q Yes, sir.

14 A Yes, I am.

15 Q They are a reputable company, are they
16 not?

17 A Yes, I do consider them to be reputable.

18 Q Do you know Steven Grimes?

19 A The name?

20 Q Yes, sir.

21 A No.

22 Q Ensign Energy drills directional wells,
23 do they not?

24 A My understanding is Ensign is a
25 directional -- is a drilling contractor.

1 Q So, Ensign would be the company that
2 actually charges for the directional well; is that
3 right?

4 A They are the ones that drill the actual
5 well itself.

6 Q And you would pay a company like Ensign
7 to drill the directional well; is that your testimony?

8 A I would contract Ensign for the drilling
9 rig. They might have a division that I am not familiar
10 with that has directional capabilities.

11 MR. BARBER: No further questions.

12 CHAIRMAN EPEL: Thank you. Any redirect?

13 MR. JACUS: No redirect. Thank you,
14 Mr. Power. I hope you feel better soon. Get well.
15 Thanks for your time.

16 Do we need him on any further questions,
17 Mr. Chair? We could have him stay on, if there are
18 questions that he might answer.

19 CHAIRMAN EPEL: Let's have Mr. Power stay
20 on because I think the Commissioners might like him to
21 answer questions later on, or potentially might.

22 MR. JACUS: That's fine. Mr. Power, did
23 you hear that? Can you hang on?

24 THE WITNESS: Yes, sir.

25 CHAIRMAN EPEL: Just put on the mute.

1 MR. JACUS: Thank you.

2 THE WITNESS: No problem.

3 CHAIRMAN EPEL: Mr. Jacus, further
4 witnesses?

5 MR. JACUS: No. We have no further
6 witnesses.

7 CHAIRMAN EPEL: Okay. Ms. Warren.

8 MS. WARREN: Yeah. We have Mark Davis.

9 CHAIRMAN EPEL: Please come to the table.

10 MS. WARREN: The State Land Board calls
11 Mark Davis.

12 DIRECT EXAMINATION

13 BY MS. WARREN:

14 Q Mr. Davis, can you identify yourself,
15 please?

16 A My name is Mark Davis. I'm minerals
17 director of the State Land Board and have been in that
18 position since 1991.

19 Q Mr. Davis, can you describe the --
20 (Discussion off the record.)

21 BY MS. WARNER:

22 Q Should I repeat that or did you hear me?
23 Mr. Davis, can you describe the mineral
24 interests the State Land Board owns in regard to the
25 surface estate owned by Wendy Chase?

1 A The Federal government granted the entire
2 mineral package to the state when they became a state,
3 so, the mineral estate includes oil and gas and sand
4 and gravel and metals, geothermal, the entire mineral
5 estate. There was no reservation by the Federal
6 government. They didn't retain any specific minerals.

7 Q And when did the State Land Board obtain
8 this, the estate?

9 A That would be upon statehood.

10 MS. WARREN: And I'll introduce State
11 Exhibit 1. Do you have copies?

12 MR. BARBER: I have got a copy.

13 CHAIRMAN EPEL: Do you want to proceed
14 with him while we get it?

15 MS. WARNER: Sure. Do you want me to go
16 ahead?

17 CHAIRMAN EPEL: Yeah.

18 BY MS. WARREN:

19 Q Mr. Davis, can you identify this
20 document?

21 A This is the State Land Board's standard
22 patent for -- as an instrument for issuing a sale of
23 land.

24 Q Is this similar to other documents kept
25 by the State Land Board?

1 A Yes, it is.

2 Q Is this a valid copy of the original
3 document?

4 A Yes, it is.

5 Q And where are the original documents
6 kept?

7 A The original documents are kept at the
8 land board's office at 1127 Sherman Street in Denver.

9 Q And, in general terms, what rights does
10 the -- this document reserve to the State Land Board,
11 as it relates to this matter?

12 A The state reserves the entire mineral
13 estate and ingress and egress as access to enjoy those
14 rights.

15 Q And can you describe the access rights
16 that the State Land Board retains?

17 A It retains enough of the surface for
18 proper -- for the proper and convenient working of
19 minerals and substances.

20 Q And who is the State Land Board's mineral
21 lessee at this property?

22 A This would be Magpie.

23 Q And is the lease with Magpie in good
24 standing?

25 A Yes, it is.

1 Q Are there other operating wells under
2 this lease?

3 A There are three wells on this lease.
4 Lease is held by production.

5 MS. WARREN: That's all I have on direct.

6 CHAIRMAN EPEL: Thank you. Cross
7 examination?

8 MR. BARBER: Thank you.

9 CROSS EXAMINATION

10 BY MR. BARBER:

11 Q Mr. Davis, you're not able to dispute any
12 of the numbers which Wendy Chase and Mike Sutak
13 testified about as the -- for the visitors at Moqui
14 Meadows, are you?

15 A That's correct.

16 Q And you agree that the State of
17 Colorado's land, including this Section 36, are subject
18 to regulation by the Colorado Oil and Gas Conservation
19 Commission, don't you?

20 A That's correct.

21 MR. BARBER: No further questions.

22 CHAIRMAN EPEL: Mr. Jacus?

23 MR. JACUS: No questions, but. . .

24 (Discussion off the record.)

25 CROSS EXAMINATION

1 BY MR. NIEBRUGGE:

2 Q Mr. Davis, I am Sam Niebrugge with Davis
3 Graham & Stubbs, representing Magpie. Is the state oil
4 and gas lease a private contract between Magpie and the
5 state?

6 A It's a contract -- it's a state contract
7 between Magpie and the state.

8 Q Is Mrs. Chase a party to that lease?

9 A No, she is not.

10 MR. NIEBRUGGE: No further questions.

11 CHAIRMAN EPEL: Thank you.

12 Commissioners, at this time, we can have
13 a presentation of the staff analysis or we can take a
14 break, then have the presentation of staff analysis.
15 Should we take a 10-minute break? We'll resume at 10
16 to 4.

17 (Recess.)

18 CHAIRMAN EPEL: Mr. Neslin.

19 MR. NESLIN: Yes.

20 CHAIRMAN EPEL: Is staff -- staff will
21 present the report and presentation of staff analysis?

22 MR. NESLIN: Yes. Give me the mike.

23 Steve Lindblom, our surface owner on-site
24 inspection coordinator will summarize the staff's
25 report.

1 MR. LINDBLOM: All right. This is great.

2 (Whereupon Steve Lindblom was sworn.)

3 CHAIRMAN EPEL: Please proceed.

4 MR. LINDBLOM: You have all received a
5 copy of the memo that I put together for the last
6 hearing, summarizing staff's analysis and
7 recommendations, resulting from the on-site inspection,
8 and my correspondence with the interested parties. I
9 am not going to go into that in great detail. I just
10 would summarize saying I was contacted by surface
11 owners, I believe it was December of '07, prior to the
12 APDs being submitted. We had a number of conversations
13 by telephone back and forth, clarifying the purpose of
14 the policy and trying to set up an on-site inspection.

15 We were able to get an on-site inspection
16 set up for the 27th of August of '08, I think it was.
17 And based upon that meeting at the site, we first -- we
18 looked at the two locations in question, and based upon
19 being out here -- this is the area on the north side of
20 the property -- oh, sorry, the northern side of the
21 property is what appeared to be developed at that time
22 for equestrian events. And, so, naturally my thinking
23 was, let's minimize surface impact, if we can look at
24 that -- I have requested that Magpie look at an
25 alternate location, south of the irrigation ditch,

1 which would appear to just be an irrigated pastureland
2 or irrigated hay field.

3 So, the intent of that request was, let's
4 see where this alternate location might fit in with the
5 GWA drilling window, which is, obviously, it's outside
6 of the window, but if I recall correctly, Magpie agreed
7 to propose an alternate location outside the window,
8 south of the ditch, and the State Land Board concurred,
9 signed a waiver, saying that that location would be
10 acceptable to them.

11 Based upon my conversation and our
12 meetings at the site, I had come up with some staff
13 analysis and recommendations, basically, that the
14 originally proposed locations were within the GWA
15 window, as specified by the Commission; that Magpie
16 does have a \$25,000 blanket bond, and this would be
17 within their rights to drill within those windows.

18 At the time I was out there, I did not
19 notice any jumps or other facilities pertinent to the
20 riding facility, south, in this area. I mean,
21 obviously, there were buildings and things like that,
22 but I didn't notice anything out here at that time.
23 So, it was my impression at the time that this was just
24 irrigated pastureland.

25 I did not believe, based upon our

1 conversations at the site, and my conversations with
2 Magpie, both at the on-site and over the phone, that it
3 was very likely that an amicable solution would be
4 reached, so, we are urging that you all rule on the
5 applicants' application today.

6 I did recommend some additional alternate
7 locations, as I mentioned, moving this south of the
8 irrigation ditch, but I would say that that is a
9 recommendation pending your decision upon the
10 designated outside activity area. With that, I am
11 available for questions.

12 CHAIRMAN EPEL: Questions from
13 Commissioners? Commissioner Dowling.

14 COMMISSIONER DOWLING: Thank you,
15 Mr. Chair. A few questions, Mr. Lindblom.

16 EXAMINATION

17 BY COMMISSIONER DOWLING:

18 Q The alternative location that you had
19 suggested, to the south of the original -- of the
20 drilling window, was that to have been a vertical hole
21 as well, or would it have been at the same bottom hole
22 location?

23 A A vertical hole, if I am not mistaken
24 there. It's been a little bit since I looked at it, I
25 believe, but I believe they were proposing vertical

1 holes on both this location and this alternate location
2 here.

3 Q Okay. And, so, did you assume, in all
4 cases, then, that you would be only doing vertical
5 holes, because that would have constrained the
6 alternate locations that you would consider, because
7 you would be worried, otherwise, about getting too
8 close to the edge of the --

9 A That's true, but I would probably defer
10 to the mineral interest owner, the State Land Board, to
11 draw that line, not in terms of the engineering aspects
12 but in terms of infringing upon their mineral rights.

13 Q Okay. So say, for instance, instead of
14 going due south of the originally proposed location, if
15 you had gone almost due southwest.

16 A Uh-hum.

17 Q If you had gone almost due southwest,
18 let's say, you would be in that little pie-shaped
19 wedge?

20 A Out here?

21 Q No, southwest.

22 A I'm sorry. Over here?

23 Q Pie-shaped wedge, which, at least on this
24 color-coded map we were given, didn't seem to have any
25 riding facilities on it.

1 A Right.

2 Q That's just as far as I can see on the
3 map.

4 A Uh-hum.

5 Q Let's say, if that were location to be
6 considered, what issues would that present?

7 A Well, as I look at this now, I would say,
8 in terms of distance from this originally proposed
9 location, it's very similar. You are getting close to
10 a property boundary, so there may be setbacks from the
11 property boundary. That's the City of Johnstown
12 property over here. It's not State Land Board or
13 anybody who is here present today.

14 Q For the sake of argument, let's say,
15 either one of those locations, what's the approximate
16 surface distance, the horizontal distance from the
17 original proposed location to either the alternate one
18 that you proposed, or, let us say we were to do one the
19 same distance to the southwest?

20 A I have to refer to my notes.

21 Q If there are 400-foot windows, I'm
22 guessing that's maybe around 5 or 600 feet, 700,
23 something like that?

24 A I'm not sure that this is posted based on
25 a GPS measurement here.

1 Q I am talking about plus or minus. Aren't
2 those drilling windows 400 feet on the side?

3 A Yes, 400 feet.

4 Q Yes. Just laying out --

5 A This is the 800-foot window.

6 Q So, it's like 500 or 6?

7 A I think it was less than that, is what is
8 my recollection, but I would have to look back at my
9 notes, just to --

10 Q Just for the sake of argument, there
11 might be a location that's 5 or 600 feet away from the
12 location that's dead center in the drilling window?

13 A Correct.

14 Q And it might either be drilled
15 vertically, or if it were to be drilled as a
16 horizontal -- as a directional well, it would have a
17 considerably lower reach than the one that was costed
18 out by the applicants, which was 1200 feet?

19 A I'm sorry. Could you repeat that? I'm
20 sorry.

21 Q I'm sorry. Okay. I think I have got all
22 my questions for now answered.

23 A Okay. Just for clarification.

24 Q I was improperly drawing another
25 conclusion.

1 A This is about 160 feet south of the
2 southern boundary of the drilling window.

3 Q 100?

4 A 160 feet south of the southern boundary
5 of the drilling window. So, it's --

6 Q That means it's only 360 feet from the
7 bottom hole --

8 A That's correct.

9 Q -- location in the center of that
10 drilling window?

11 A Yes.

12 Q Okay. So the --

13 A That's why I said it was not GPS'ed up
14 here. It was just staked, so. . .

15 CHAIRMAN EPEL: Commissioner Cutright.

16 COMMISSIONER CUTRIGHT: Commissioner
17 Houpt first.

18 EXAMINATION

19 BY COMMISSIONER HOUPT:

20 Q We're fighting over the opportunity to
21 ask this question. Were there any locations looked at
22 by staff that would have sited a well off of the
23 property?

24 A Off the property?

25 Q Uh-hum.

1 A No.

2 Q Okay. Was there any discussion, during
3 this two-year period, considering that?

4 A There was always the discussion of using
5 directional technology, but as the on-site inspection
6 person out there, as part of my powers, by the
7 Commission, I am not required -- cannot require a
8 operator to directionally drill. So, we looked at this
9 location, thinking it might be within the window. When
10 it didn't turn out to be within the window, it still
11 seemed to be in a similar location. And with the State
12 Land Board's approval of the location, we thought that
13 would be the least amount of surface impact,
14 particularly from a safety consideration, looking at
15 avoiding the area that was improved for the equestrian
16 elements.

17 Q Do you know how many acres per site --
18 per well site would be required?

19 A It was estimated at 1.5 to 3 acres per
20 site --

21 Q I'm sorry --

22 A Is what my notes reflect.

23 BY COMMISSIONER CUTRIGHT:

24 Q Can you give us a brief explanation of
25 the Wattenberg drilling windows and why they were

1 established?

2 A They pre-date me here at the Commission,
3 so, I might ask Carol -- are you available to answer
4 that question? I would say that -- let me take a stab
5 at it, and maybe, if I am wrong, you all can correct
6 me. But the GWA drilling windows were established to
7 promote efficient drainage, while minimizing surface
8 disturbance. So, it was set up with a 400-foot window
9 in each quarter quarter section and 800 feet in each
10 center of each quarter section.

11 Q And they were established during a
12 rulemaking hearing?

13 A I believe so, yeah.

14 Q Did you identify tank battery placement?

15 A At the on-site inspection, one location
16 in my notes shows we talked about locating the
17 properties -- locating the tank battery on City of
18 Johnstown property, adjacent to the southwest corner of
19 the Sutak/Chase property, which would be, from my
20 recollection, would be down over here.

21 Q Okay. The --

22 A I don't -- I have to look back at my
23 notes.

24 Q On your estimate of land use, is that
25 road location disturbance, is that total disturbance,

1 is that maximum disturbance, is that post-reclamation
2 disturbance?

3 A It's my understanding that was the amount
4 of land that would be required to drill the well. I'm
5 not sure if that included access roads or tank
6 batteries or any of those other things, besides the
7 well pad itself. And I do not know if that
8 reflects after interim reclamation.

9 CHAIRMAN EPEL: Additional Commissioner
10 questions?

11 EXAMINATION

12 BY CHAIRMAN EPEL:

13 Q Mr. Lindblom, let me ask you a question.
14 Look at the two circles which are imprecisely placed.

15 A Yes.

16 Q Where do you believe the tank battery --
17 is it a single tank battery?

18 A Uh-hum.

19 Q And where would it be placed?

20 A From my understanding, our notes from our
21 on-site inspection, it was on City of Johnstown
22 property, adjacent -- at the southwest corner of the
23 southwest corner of the Sutak/Chase property, so in
24 this corner down here.

25 Q Has the City of Johnstown approved that

1 location?

2 A No. It was just a preliminary
3 discussion, and if Magpie has reached an agreement with
4 the City of Johnstown, I am not aware of it.

5 CHAIRMAN EPEL: Commissioner Dowling.

6 COMMISSIONER DOWLING: Thank you,
7 Mr. Chair.

8 EXAMINATION

9 BY COMMISSIONER DOWLING:

10 Q Mr. Lindblom, just so we do understand
11 the geometry of this little better, I think you said
12 that the alternative location was 160 feet south of the
13 southern boundary of the drilling window?

14 A That's correct.

15 Q Okay. Well, assuming that drilling
16 window is at all to scale -- I don't know that it is --
17 but it's 400 feet on the side, if it is?

18 A Right.

19 Q So, we can all have it better, that
20 bottom one, I guess, it's just right immediately on the
21 southern side of that ditch; is that right?

22 A That's correct.

23 Q And the other one is pretty much smack
24 dab in the middle -- on the southern one, it should be
25 right in the middle of that?

1 A I would have to look back at my notes,
2 but I believe that is correct.

3 Q And in the one, there is, according to
4 this map, there's stables and arenas and stuff like
5 that around there. Did you try to -- was it -- did you
6 try to put it like 150 feet away from a building, or
7 how did you come up with the particular site there?

8 A On this location?

9 Q Yes.

10 A This was the hole location that was
11 staked when we went out to the on-site, so it didn't
12 adjust that or consider that. It looked to be about
13 well within or well outside of any setbacks from
14 structures.

15 Q It did. Okay. Because there's a few
16 structures, it looks like, on this map, within that
17 window, some stables and things like that?

18 A Uh-hum, no. I mean, this is a couple of
19 hundred feet from this building here to the edge of the
20 window.

21 Q I thought there were blue -- little blue
22 squares here.

23 A I haven't seen that, other than today.

24 Q But when you walked that site, you didn't
25 see buildings there when you walked it?

1 A Correct. But this building was the barn.
2 I don't recall seeing it -- seeing any buildings out
3 here when we walked across the field and --

4 Q Okay. Could I --

5 A I'm sorry.

6 Q Is it appropriate to ask someone from the
7 audience to help us?

8 A Isn't that what this is, or that's -- oh,
9 that's up here.

10 COMMISSIONER CRAIG: Excuse me. When did
11 you walk this site?

12 MR. LINDBLOM: It was August 27 of 2008.

13 CHAIRMAN EPEL: You know, counselors,
14 there's a tremendous amount of confusion here. I am
15 going to request the first exhibit that was put up, was
16 this Exhibit 26, which is a larger view. Is there an
17 objection to having that put up?

18 MR. JACUS: No.

19 CHAIRMAN EPEL: If you would put that up,
20 please?

21 MR. JACUS: I think the contrast is
22 healthy.

23 CHAIRMAN EPEL: One second. I would also
24 ask Mr. Lindblom, why don't you take the circles --
25 because I think we're probably going to want to place

1 those on this Exhibit 26.

2 MR. LINDBLOM: Okay.

3 (Pause.)

4 MR. LINDBLOM: All right. So, based upon
5 where they were placed on this diagram, I have
6 attempted to place them at corresponding locations on
7 the current diagram.

8 CHAIRMAN EPEL: Mr. Barber, Mr. Jacus,
9 does that comport to what accurately -- having no scale
10 as to where these locations are, I will give you a
11 couple of minutes, if you would like to, Mr. Barber,
12 consult with your client, please do. I think the
13 Commission wants to understand where these well
14 locations are proposed.

15 MR. BARBER: So, is the question, are the
16 well locations, now, on tabbed Exhibit 26,
17 approximately where the staff would recommend?

18 CHAIRMAN EPEL: Yes. Approximately
19 what's now on Exhibit 26. Yes.

20 MR. BARBER: May I have a moment with my
21 client?

22 CHAIRMAN EPEL: Please.

23 (Pause.)

24 CHAIRMAN EPEL: Do we have clarity,
25 Mr. Barber?

1 MR. LINDBLOM: Pardon me?

2 CHAIRMAN EPEL: Do we have clarity?

3 MR. LINDBLOM: I think we do. What's
4 missing on this picture -- I'm sorry. I should say
5 what's missing on this original figure was this
6 building here, which I did recognize when I was out
7 there in the field. But given that they both have blue
8 roofs, I got the two confused.

9 COMMISSIONER HOUPT: So, the well at the
10 southern end of the property, is that -- that looks now
11 as if it's very close to a structure that is shown on
12 this map?

13 MR. LINDBLOM: It's about 250 feet south
14 and east.

15 COMMISSIONER HOUPT: But what's just
16 immediately east of it?

17 MR. LINDBLOM: Those structures were not
18 there when I was visiting the site in August of 2008.

19 COMMISSIONER HOUPT: So, I suppose what I
20 would really like is for the property owner to be able
21 to describe to us what is in place, so that we can
22 understand what's being proposed here.

23 CHAIRMAN EPEL: Mr. Jacus, would you
24 mind, if the property owner can give us an
25 explanation. . .

1 MR. JACUS: I don't mind that.

2 Mr. Warner can also respond briefly. Thank you.

3 MR. BARBER: Ms. Chase, would you go up
4 and stand next to Exhibit 26, the blowup here, and
5 identify for the Commission what the various blue roof
6 structures are.

7 MS. CHASE: Okay. This is our indoor
8 arena, which is a permanent structure and was there, as
9 he said, when they were out there. These are the
10 temporary stabling that we have to go with large
11 clinics and things.

12 MR. BARBER: What do you mean when you
13 say, "temporary stabling"?

14 MS. CHASE: We take it down. We irrigate
15 all of this and we try to minimize the impact to our
16 irrigating.

17 MR. BARBER: What is the reason why you
18 put the temporary stabling down there?

19 MS. CHASE: So that it's convenient for
20 the trucks and trailers that are parked there. It's
21 very, very handy to, if you are hauling in with your
22 horse, and you have your hay, and you have your
23 shavings, all that stuff, you can park right close to
24 where your horse is living.

25 MR. BARBER: Any further explanation?

1 COMMISSIONER HOUPT: I do have another
2 question of you. I am a little, you know, we have
3 heard a lot of information this afternoon, so forgive
4 me. I think you already gave this explanation, but
5 could you remind us of what the difference is between
6 the irrigated portion and the nonirrigated portion,
7 because it looks as if you also have structures up for
8 the course in the irrigated section as well. And I am
9 just trying to remember what the difference is on that.

10 MS. CHASE: Okay. That's correct. We
11 have the start boxes right here. And there are five
12 different courses, and they have different tracks. But
13 essentially, all of them loop out here, around, come
14 back, come across here, go around down like this, make
15 an S there, come through the water and come down like
16 that and finish here, roughly.

17 Now, the reason that they have to do that
18 is because we need to have at least 3,000 meters -- I
19 think, in your packet, there's something that someone
20 printed off the Internet, that said that you need two
21 and a half miles, or something, for a course. So,
22 obviously, which, for the lower levels, is not
23 necessary. But, essentially, we have to do a lot of
24 zigging and zagging to get the required distance that
25 is needed for our -- for this phase of the sport.

1 CHAIRMAN EPEL: Commissioner Alward.

2 COMMISSIONER ALWARD: Thank you,
3 Mr. Chair. I'm at a loss right now for what it is
4 we're trying to do. It seems to me that we're trying
5 to problem solve something that we may not have to
6 solve. That, first, we need to resolve whether or not
7 this is -- meets the criteria for a designated outdoor
8 activity area. If it does, all of the rest of this
9 fine-tuning, where things may or may not go, is moot.

10 So, that, I think, we really need to
11 address that question before we try to either direct --
12 or so that all of the parties, then, would know what it
13 is they have to resolve, and whether they would be able
14 to resolve it on their own, or whether we need to,
15 then, I mean we are not qualified to decide where the
16 wells go.

17 CHAIRMAN EPEL: I will contradict you on
18 that second remark, but, basically, pursuant to our --
19 the procedural rules, it's really the applicants and
20 the protestants put on their case, and, really, we --
21 the ultimate question of whether this is a designated
22 area, outdoor area, is up to us, and in our
23 deliberations and our discussion.

24 So, frankly, editorializing, I think we
25 could have gotten to this point two hours ago, if we

1 had a stipulation to this map, but you are right. We
2 have not gotten to the ultimate issue yet. And I think
3 that's where we're about to go to, when we go through
4 the next steps, rebuttals and then closing statements,
5 and then we'll go into deliberation. But I think
6 that's ultimately where this issue lies, and where I
7 think the focus should be.

8 MR. JACUS: If I may ask a few questions
9 of Mr. Warner?

10 CHAIRMAN EPEL: Yes.

11 MR. JACUS: I am going to go over to the
12 easel. Ryan, would you join me?

13 EXAMINATION

14 BY MR. JACUS:

15 Q Mr. Warner, you have seen where Mr.
16 Lindblom of the staff placed these dots, if you will,
17 indicating the recommended and surveyed locations.
18 Would you agree with their placement first?

19 A Roughly, yes.

20 Q And do you see the blue, gray and white
21 squares here around the proposed Chase 34-36 well,
22 location in the southern half of the property?

23 A Yes.

24 Q And other than this blue square I'm
25 pointing to in the upper left of that area, are you

1 aware of any of those being permanent structures?

2 A No. This is the -- this is an arena
3 here. The well has an adequate setback. And, then,
4 other than that, you know, from here down, there is no
5 other permanent structures.

6 Q And when these locations were surveyed
7 for purposes of your application, when you finally
8 obtained access for that, is it your recollection that
9 the surveyor took 360 degree view photographs of these
10 locations?

11 A He did. He took several photos, and in
12 all directions from here and all directions down here.

13 Q And were there any buildings or visible
14 structures, other than the arena, in close proximity to
15 this southern well -- proposed well location 34-36?

16 A No, there wasn't, and I have been by the
17 property more times than I can count, and there never
18 has been.

19 MR. JACUS: Any questions of Mr. Warner?
20 I have no further questions of him. Thank you.

21 CHAIRMAN EPEL: Commissioner Rudolph.

22 COMMISSIONER RUDOLPH: This is a couple
23 of questions for staff, and I am not really sure who
24 can answer this, but this goes to the designated
25 outdoor activity area.

1 I'm wondering if the staff could talk
2 about how many of these have been designated and
3 describe briefly what they are and generally what's gone
4 into that decision?

5 MS. HARMON: Well, I think this is on --
6 is it on? I know of one other application for a
7 designated outside activity area. And, so, these
8 matters are rare. And it was an area that was near
9 a -- it included baseball fields in it.

10 And the application for the designated
11 outside activity area included a much larger area. It
12 may have even be an exhibit to -- okay. Okay. So,
13 it's Exhibit 22 to the application, and it shows the
14 application boundary, as requested, and then what the
15 Commission ultimately ended up deciding was the
16 designated outside activity area was a smaller area.

17 COMMISSIONER CRAIG: Is something
18 designated an outside activity area, let's say and
19 after a period of time, it's no longer used for that.
20 Is there a period of time, you know, a requirement that
21 it continue to be used for those purposes per, you
22 know, the designation and does it get removed?

23 MS. HARMON: I don't think it gets
24 removed automatically. I think somebody has to come
25 back and request that that order be modified, and

1 provide evidence to the Commission that it doesn't meet
2 the definition. It's a, you know, it's pretty specific
3 about the frequency of use.

4 CHAIRMAN EPEL: Commissioner Rudolph, you
5 had a second question?

6 COMMISSIONER RUDOLPH: Yes. I did see
7 this in the Magpie exhibit, but it was unclear to me
8 what -- the original argument was for the 400 acres,
9 and, then, what was COGCC's staff/Commission's
10 rationale for bringing it back down to 40?

11 MS. HARMON: It's been a little while. I
12 did attend that hearing -- this is totally from memory.
13 I did not review the file but it's my recollection that
14 it was originally requested for the entire area,
15 because there were walking paths and bridle paths
16 through the property. And it was being used -- the
17 property all over was being used by various people, for
18 various activities, but it was the baseball diamonds
19 that had the concentrated number of people, or were
20 going to have the concentrated number of people.

21 MR. LEPORE: I can elaborate a little
22 bit, Commissioner. I did review the record a month
23 ago, so it's that long ago, but the original proposal
24 asked -- excuse me -- for the designation to include
25 proposed future development, not just what had already

1 been developed. And, ultimately, what was designated
2 as the outside activity area was what had already been
3 developed and was in use. That's a generalization
4 but --

5 CHAIRMAN EPEL: Commissioner Dowling.

6 COMMISSIONER DOWLING: Thank you,
7 Mr. Chair. I have couple of questions. They are not,
8 I apologize, Commissioner Alward, directly relevant to
9 the determination of the designated outdoor activity
10 area, but I think it would only take a couple of
11 minutes to answer them, and they are of great interest
12 to me.

13 The first, Ms. Chase, could you -- just
14 back to the surface uses here. Can you say what the
15 green triangle is and can you say what you use that
16 other wedge-shaped piece of pie there, to the left of
17 the green triangle, what that's used for?

18 MS. CHASE: The green triangle is a
19 warm-up area for people about to go out into the start
20 gate for cross-country.

21 COMMISSIONER DOWLING: Uh-hum.

22 MS. CHASE: So, they have a chance to
23 jump a log, or something, that's similar to what they
24 will see on cross country, before they go out. So
25 that's set-aside, and it's usually roped off before a

1 competition, so that it would be -- or schooling
2 activity, it would be roped off. So, they are out
3 there, as opposed to the outdoor arena, which would
4 also have warm-up jumps in it, but they are the
5 knockdown kind of standard -- this is -- I don't know
6 if you can hear me. Anyway, this is the outdoor arena
7 right here.

8 This is where the dressage phase would
9 take place. This is the warm-up area, and, actually,
10 it's also -- depending upon the size of what's going on
11 out there, it may just need to be a buffer between
12 people walking back, after they have finished, and the
13 people that are out there galloping. But what it has
14 been used for in the past is just a warm-up kind of an
15 area, where there's one or two fixed obstacles.

16 COMMISSIONER DOWLING: Okay. That's good
17 enough for me on that part. How about that wedge shape
18 to the left of it?

19 MS. CHASE: This is a horse pasture.
20 There's a loafing shed there. And it's -- this is
21 fenced in. That's a -- we also hay it. It's
22 irrigated, but it is all fenced in, and it has all of
23 the babies in it, or it had -- had young horses turned
24 out in there.

25 COMMISSIONER DOWLING: Okay. It's not

1 used -- you don't have jumps constructed in that area
2 and it's not part of your training course and facility?

3 MS. CHASE: I do not have any jumps
4 inside there. I do have valuable horses in there.

5 COMMISSIONER DOWLING: Yes, of course.

6 Mr. Warner, I'm trying get at a few more
7 drilling costs. You said you drilled one well in late
8 2008, the State Anderson 41-36, to the same formation
9 and at approximately the same depth presumably. What
10 is the total drilling and completed cost of that well?

11 MR. WARNER: Um, considering that, in
12 late 2008, the price of oil was approximately \$140,
13 cost may have been a little bit higher, service cost,
14 service company costs, but I imagine we spent,
15 including constructing the tank battery, buying
16 tubulars for more than that one particular well, around
17 a million dollars.

18 COMMISSIONER DOWLING: Okay. Around a
19 million to drill and complete and set it up for
20 production?

21 MR. WARNER: Correct. And some of that
22 would be to accommodate the drilling program, not
23 necessarily that one well.

24 COMMISSIONER DOWLING: A lot of it? A
25 few percent of it.?

1 MR. WARNER: I would say 10% additional.

2 COMMISSIONER DOWLING: Um, okay. You
3 said that you were very satisfied with the production
4 of that well, and presumably with the economics on that
5 well. Do you have an estimate on what the ultimate
6 recovery is going to be, what your economics look like,
7 you know, what kind of return on investment you are
8 looking at on that?

9 MR. WARNER: We do. It's highly price
10 dependent.

11 COMMISSIONER DOWLING: Of course.

12 MR. WARNER: But today's -- pardon. I
13 mean, it would really depend on pricing on a given day.

14 COMMISSIONER DOWLING: Just give your
15 EUR.

16 MR. WARNER: Roughly 5 to 1, ultimate.

17 COMMISSIONER DOWLING: So, roughly 5-to-1
18 ROI, return on investment. That's what you are saying?

19 MR. WARNER: Um, yeah.

20 COMMISSIONER DOWLING: You said it's
21 price dependent. But you're expecting the total -- the
22 sum of your oil and gas revenue --

23 (Discussion off the record.)

24 CHAIRMAN EPEL: I am going to stop this
25 right now, because, quite frankly, this has been,

1 Michael -- Commissioner Dowling, a couple of questions.
2 You have gone beyond that. Let's take a break,
3 10-minute break, because we have gone -- Commissioner
4 Alward did a fine job, really, of pulling together what
5 we have before us. We have gone far afield from the
6 issue, which is is this a properly designated outdoor
7 activity, and all decisions flow from that. And I
8 think we need to get back on track. We actually have
9 just one commissioner who's going to catch a plane this
10 evening.

11 COMMISSIONER DOWLING: Excuse me,
12 Mr. Chair. If we are restricted -- I thought it was
13 also part of the job of this Commission to see if we
14 can reconcile the interests of mineral and surface
15 owners, and if there is, in fact, a satisfactory and
16 mutually beneficial direction that this can be moved
17 in, that may or may not include the designation of this
18 as a designated outdoor activity area. And if our
19 scope is strictly limited to that determination, then,
20 I'm making the mistake of construing our mission a bit
21 more broadly than that.

22 MR. JACUS: Before we take a break,
23 Mr. Chair, if I may just ask one clarifying question,
24 in light of Commissioner Dowling --

25 CHAIRMAN EPEL: I would like to take a

1 break, five-minute break, then we will resume and then
2 we'll focus on the issue at hand.

3 MR. JACUS: Fine. Very good. Thank you.

4 (Recess.)

5 CHAIRMAN EPEL: I'm going to move
6 immediately into rebuttal and closing statements. They
7 are going to be very, very brief. I will tell counsel,
8 we had more information than we needed. We had
9 information that took us away from what is really the
10 germane topic, as provided by Mr. Alward, so you have
11 each two minutes for actually just closing statements.
12 We don't need rebuttal. We have heard sufficient
13 information. I'm going to start with the applicants.
14 Sir.

15 MR. HAMRIK: Ed Hamrik, with the Attorney
16 General's office. When you say two minutes, would that
17 include an opportunity for the State Land Board to make
18 a two-minute closing as well?

19 CHAIRMAN EPEL: Certainly.

20 MR. HAMRIK: Thank you.

21 CHAIRMAN EPEL: So, two minutes each.

22 So, we're at a total of eight minutes.

23 MR. JACUS: Six.

24 CHAIRMAN EPEL: We thought we had three
25 parties, I thought. Okay. So, I was wondering --

1 MR. JACUS: I will take the extra two.

2 CHAIRMAN EPEL: Proceed. Mr. Barber.

3 MR. BARBER: Thank you. I will be two
4 minutes or less. What the Commission is here about is
5 to decide on an application which has been filed by
6 Ms. Chase, to have her property identified as a
7 designated outside activity area. The definition of
8 designated outside activity area on this chart is
9 what's in the Series 100 rules, and it gives a very
10 clear definition. It means a well-defined outside area
11 that is occupied by 20 or more persons on at least 40
12 days in any twelve-month period. The testimony on that
13 is unrebutted. There is overwhelming testimony from
14 Mr. Sutak and Ms. Chase that Moqui Meadows, which is a
15 well-defined facility, used by many people, is occupied
16 by more than 40 -- by more than 20 people on 40 days or
17 more. This is not a situation where, at Moqui Meadows,
18 the rule requires that 20 people be sitting on the
19 property for 24 hours in order to get to your number.
20 You may have a playground. Kids may be using the
21 monkey bars. Kids may be using the swings. Kids may
22 be using the sandbox. The definition, I think, is
23 pretty straightforward. If there are 20 of them in
24 that playground on 40 days in a year, it can be a
25 designated outside activity area.

1 Once the Commission makes the
2 determination that we have a designated outside
3 activity area, then it simply needs to set a minimum
4 setback of 350 feet. The boundary for the designated
5 activity area here is the, essentially, all of the
6 property, with the possible exception of this buffer,
7 which is 100 feet from the highway. It's meant to
8 guard against traffic, but the 350 feet would make this
9 entire property off limits for drilling. Thank you.

10 CHAIRMAN EPEL: Mr. Jacus.

11 MR. JACUS: Mr. Chair, Commissioners,
12 staff, this is a private farm. Ms. Chase controls who
13 can and can't come on it. It's not a well-defined
14 outdoor place of public assembly, like a playground,
15 picnic area or soccer field or even a ballpark. Ball
16 fields, by the way, are 1.7 acres. This would be 40
17 ball fields, and it is not attended by those kinds of
18 numbers of people. It's an 80-acre private farm, that
19 even when it has 20 people plus on it, still has almost
20 four acres per person, and those people aren't
21 necessarily all there at the same time. And we can't
22 know that they are, because of the manner in which the
23 records that they had made for the very purpose of this
24 hearing were kept.

25 Additionally, the applicants' records

1 simply are not adequate or reliable; and, therefore,
2 are hearsay and should be disregarded. The applicants
3 seek to apply those incomplete numbers to their entire
4 80 acres, when their own testimony has revealed that
5 many areas seem much less dense, or frequent use, for
6 example, irrigated hay has to be cut, there's more than
7 one growing. Nonirrigated has one growing. You can't
8 have people in there when you are cutting, when you are
9 harvesting, when you are irrigating. Common sense
10 dictates that we can't be using those areas for all of
11 the activities that were asserted by the applicants.

12 All of that said, Magpie does not wish to
13 unnecessarily interfere with the applicants' use of her
14 property. We simply want reasonable access to the
15 surface to exercise our valid and enforceable lease
16 rights. Magpie, therefore, supports the staff
17 recommendation, and I would add that the reasonable
18 access that we seek is actually a tighter standard than
19 that which should apply in a state section where
20 convenient access is assured the state, our lessor.
21 Thank you.

22 CHAIRMAN EPEL: Thank you. Ms. Warren.

23 MS. WARREN: The definition of,
24 "designated outside activity area," doesn't really have
25 any clear standards on how it's applied, but we look at

1 it as having three elements. The area needs to be
2 well-defined, and we don't believe, in this instance,
3 that it's a well-defined area. Ms. Chase said herself
4 that the course is dynamic. It's never static. It
5 looks like the jumps are always changing.

6 The other element is that it needs to be
7 a place of public gathering. And it's very clear, from
8 the evidence in this case, that this isn't a place like
9 a playground or public park or some type of community
10 area where people can just go out at any time.
11 Permission is always required. Ms. Chase carefully
12 filters who she lets on the property and she's always
13 out there supervising.

14 As far as meeting the third element,
15 which is, there has to be 20 or more people on at least
16 40 days in a 12-month period, I just want to point out,
17 on the calendars that were used for evidence -- this
18 would be applicants' Exhibit No. 28, and I'm also
19 looking at their Exhibit No. 25. On applicants'
20 Exhibit 28, there are several days on April 4th, April
21 5th, April 18th, where Ms. Chase noted that she's
22 marked her calendar with a star because there were 20
23 or more people out there and on Mr. Sutak's calendar,
24 it's noted that those events were cancelled.

25 This is also true in May. On May 9th,

1 Ms. Chase notes a star on her calendar, indicating that
2 there were 20 or more people and Mr. Sutak's calendar
3 notes that that event was cancelled. On May 23rd,
4 Ms. Chase indicates a star that there were 20 or more
5 people and Mr. Sutak's calendar has no notation at all
6 on that day.

7 It's our opinion that the evidence
8 provided is unreliable and doesn't provide a basis for
9 you to be able to make a decision designating this area
10 as an outside activity area. It's also our opinion
11 that this designation isn't necessary for its purpose,
12 which is to protect public health and safety. We think
13 that if you can order that the applicants and Magpie
14 agree on a proper well location, that this can
15 adequately deal with any public health and safety
16 issues, making the designation unnecessary. Thank you.

17 CHAIRMAN EPEL: Thank you. At this
18 point, we're going to close the record. Assistant
19 Attorney General Lepore was going to give us a little
20 direction on his interpretation of the regulations and
21 then we'll -- I will ask for a motion.

22 MR. LEPORE: Partly in response to
23 Commissioner Rudolph's question, I do want to say just
24 a little bit about the history of the designated
25 outside activity area rule.

1 It was originally adopted as part of the
2 rules in 1996. The definition has remained unchanged
3 in that time, so it is -- you've seen the language in
4 the exhibits. It has always been a part of the 600
5 series rules, which are the public health, safety and
6 welfare rules. However, in 2001, the designated
7 outside activity area was carved out from the high
8 density areas, so there was some recognition that this
9 is not strictly a high density activity designation.

10 I want to focus a little bit on a word
11 that counsel didn't, with respect to 603 (d). It says,
12 "The Commission, upon application in the hearings,
13 shall determine the appropriate boundary and setbacks
14 for the DOAA."

15 So, you've heard lots of evidence about
16 what the applicant is seeking, their interpretation of
17 the outside activity area. My opinion is that the
18 Commission has a fair amount of discretion here with
19 respect to the boundaries of a designated outside
20 activity area, if it is inclined to so designate.

21 That discretion, in my opinion, also
22 should be exercised with an eye towards the legislative
23 declaration that guides this Commission, which is the
24 balanced and responsible development of the mineral
25 resources, and with the obligation this Commission has

1 to see that those resources are produced without waste.

2 So, I just -- that's what I would like to
3 say with respect to DOAAs. There's another application
4 for DOAA pending, so be aware of that. And I think
5 Ms. Harmon is correct, that there's only one, the one
6 that we discussed, is the only prior outside activity
7 area designated.

8 COMMISSIONER HOUPT: Can I ask a
9 question?

10 CHAIRMAN EPEL: Only of the attorney
11 general, for the record. Commissioner Houpt.

12 COMMISSIONER HOUPT: You said that we had
13 a lot of discretion, but there's language in here that
14 states that the minimum setback, from the boundary of
15 the designated outside activity area, shall be 350
16 feet. So, beyond that, we have -- were you keeping
17 that in mind when you said that?

18 MR. LEPORE: Correct. As to what that
19 boundary is determined to be, that's where I see your
20 discretion lies.

21 CHAIRMAN EPEL: Commissioner Alward.

22 COMMISSIONER ALWARD: Thank you,
23 Mr. Chair, and AAG Lepore. My question, with the
24 definition here, of what it is, is that if we find that
25 there's 20 or more people using it for 40 or more days,

1 must we find it to be a designated outdoor activity
2 area, and, then, what our task is, then, is to define
3 the boundaries? I mean that -- or can we even, if we
4 find it to be occupied by 20 or more people, for 40 or
5 more days, can we choose to not call it a designated
6 outdoor activity area? Is this, you know, how much
7 leeway do we have there?

8 MR. LEPORE: The leeway, in my opinion,
9 comes in the purpose -- the underlying purpose of the
10 designated outside activity area. So, again, keep in
11 mind, this arises in the 600 series rules. It's
12 clearly intended to protect public health, safety and
13 welfare in some regard.

14 We have not gone in depth today as to how
15 broad that mandate or scope is, but I -- I am going to
16 leave it at that. I hope that satisfies you for now.

17 CHAIRMAN EPEL: Commissioner Alward, I
18 think, for the second time today, you asked the
19 perfectly astute question, because I think one of the
20 contradictions we have to face, as a Commission, is,
21 the way this is phrased for us, is, we could be, if it
22 was mandatory as opposed to permissive, we could be
23 forced to commit waste, and I think that's a statutory
24 contradiction that we have to avoid. Commissioner
25 Craig.

1 COMMISSIONER CRAIG: If we go ahead and
2 vote today that it is a designated opportunity area, do
3 we have to today state the boundaries of that, or can
4 we wait to get more information about that, about
5 specifying that?

6 MR. LEPORE: I am not sure how you could
7 designate the outside activity area without designating
8 the boundary. So, if you feel you need more
9 information, you have time to -- I would have to look
10 at the rule. I think you have 30 days, or 45 days,
11 after this hearing, to reach your final order. But it
12 seems to me that the boundary is integral to the
13 designation.

14 CHAIRMAN EPEL: Commissioner Dowling.

15 COMMISSIONER DOWLING: Thank you,
16 Mr. Chair. Question for you Mr. Lepore. I don't know
17 whether there is any guidance as to the legal meaning
18 of the word, "occupied." I have a sidewalk in front of
19 my house -- I live right across the street from
20 Washington Park. People pass by singly and in groups
21 of two or three. I'm sure a few hundred people pass by
22 every single day of the week, 365 days of the year. On
23 the other hand, I have never seen the sidewalk occupied
24 by more than, perhaps, five or six people who are going
25 by my house at any point in time. That is my

1 colloquial or casual use of the term, "occupied." Can
2 you help us out as a matter of legal interpretation?

3 MR. LEPORE: I will be succinct. No.

4 CHAIRMAN EPEL: Commissioners, the
5 responsibility is ours. I would entertain a motion.
6 Commissioner Craig.

7 COMMISSIONER CRAIG: I move that Moqui
8 Meadows Farms be designated as a designated outdoor
9 activity area.

10 CHAIRMAN EPEL: Do I hear a second?

11 COMMISSIONER HOUPPT: Second.

12 CHAIRMAN EPEL: Discussion. I'm going to
13 start the discussion. I, quite frankly, I am very
14 concerned about this designation, because we're setting
15 a precedent now. And I think we all have to look at
16 this and, say, if we set this precedent, if this is a
17 standard for -- it becomes a designated outdoor
18 activity area, how many other properties do not become
19 a designated outdoor activity. I think, frankly, this
20 is a low threshold that we're setting today. I think
21 it's a very unique circumstance, for a very unique
22 property.

23 The second concern I have is this issue
24 of waste if we designate this property. Then, from
25 what -- the testimony I have ascertained, those two

1 wells cannot be drilled on the property. It has impact
2 on the State Land Board. But I think, first and
3 foremost, my concern is this is one which a regulation
4 has been used once, and we have to be very circumspect
5 on the next time it's going to be used. Commissioner
6 Houpt.

7 COMMISSIONER HOUPT: I think the way the
8 rule has been worded gives us pretty precise direction
9 today. And I do think that it's also brought to light
10 the fact that perhaps this rule needs to be looked at
11 and updated and better clarified. But with respect to
12 the use and the number of years that it has been used
13 in this manner, and the precise preparation for that
14 use, I would have a difficult time not viewing it in
15 the manner that has been suggested.

16 And, you know, I think it is this
17 Commission's responsibility to take another look at
18 rules that perhaps needs to be reviewed and updated,
19 but you can't do that in the middle of a hearing.

20 CHAIRMAN EPEL: Commissioner Cutright.

21 COMMISSIONER CUTRIGHT: Yes. I am going
22 to oppose the motion for several reasons. And the
23 documentation we received, the land was not zoned for
24 any public use. It was zoned for a farm. That
25 wasn't -- they didn't deny that she could -- the

1 applicant can apply for zoning to turn this into
2 something else besides a farm or a riding stable.

3 I believe the attendance numbers were in
4 question, and I think the purpose of the designated
5 outside activity area, going back through the testimony
6 that was presented, and the documentation that was
7 presented to us, was that it was basically for safe
8 evacuation of people. It's not due to health setbacks,
9 it's not due to any other reason besides a safe
10 evacuation. And I don't think this falls within that
11 standard, particularly since I think it was pointed out
12 several times that, yes, there may have been 20 people
13 on the property that day, but not necessarily at one
14 time.

15 On the other note, that the trucks and
16 trailers may disturb the horses, well, Ms. Chase
17 testified that trucks and trailers bring the horses
18 into the property. So, that argument is not valid.

19 You know, that said, I am opposed to this
20 application, but there is recourse by the landowner.
21 If there is damage done by an oil and gas company,
22 there is legal recourse to pursue damages on your
23 property. If they -- and denial of use on a property
24 is damage. So, I mean, there's recourse down the road.
25 And that's it.

1 CHAIRMAN EPEL: Additional Commissioner
2 comments? Commissioner Compton.

3 COMMISSIONER COMPTON: Thank you.
4 Mr. Chair, this is a tough call for me. I have a
5 daughter-in-law that runs a facility that's similar to
6 this. Of course, you know why I limp around here all
7 of the time. So, I do understand that. I think I
8 understand the concerns of the landowner, the horse
9 community, especially this kind of a facility.

10 I am going to oppose the motion, however.
11 I am going to oppose it because it just appears to me
12 this is not what that regulation was intended to
13 accomplish. And I'm not looking now, but I have looked
14 at the calendars that we have seen. There are three
15 months of the year when there apparently is no one
16 there, December -- I don't mean no one, but not very
17 many -- December, January, February. In addition to
18 that, on the calendars I saw, October and November were
19 not high use times as well. So, there is a pretty good
20 period of time there.

21 In addition, it does seem to me that if
22 we have an irrigated hay meadow with whatever, two,
23 three cuttings, it's going to take that area out of
24 operation at least during that period of time, where,
25 in fact, the horses are accustomed to haying

1 operations, which generally require machinery, noises,
2 et cetera, et cetera, et cetera. So, it would seem to
3 me that sort of negates the argument that, in fact, it
4 is a high use area for most of the year. I think there
5 are some months of the year where it gets a lot of high
6 use. And I don't know that this regulation is really
7 intended to address that specific kind of outdoor
8 activity use.

9 And it really seems to me that the
10 company and the surface owner ought to be able to
11 figure out a couple of places on that property where,
12 during these time periods, like December, January and
13 February, you can get in and get drilling done and get
14 out and, then, if it's not working out, as Commissioner
15 Cutright said, there are other opportunities for
16 redress. So, I'm going to oppose the motion on that
17 basis.

18 CHAIRMAN EPEL: Commissioner Dowling.

19 COMMISSIONER DOWLING: Thank you,
20 Mr. Chair. Everyone in my family rides and enjoys
21 riding, and I have respect for, and even admiration for
22 what Ms. Chase has done on her property. And I think
23 that the doctrine of accommodation alone, accommodation
24 of the surface user, would suggest that there may be
25 superior alternatives to one or both of the locations

1 recommended by staff, that would better reconcile the
2 interests of the mineral owners and the surface owners.
3 And I dearly hope to see that done.

4 That said, I think it is an overreach to
5 suggest that this 77-acre property should be designated
6 a designated outside activity area. I am not convinced
7 that 20 people passing through a property, over a
8 period of 12 hours or more, is the same thing as 20
9 people occupying the property. I used my sidewalk
10 metaphor in front of my own house. I think it is a
11 stretch that, to have 20 people passing through an area
12 over a period of, perhaps, 12 hours sterilize 77 acres.
13 I don't think it's fair in this instance. I would be
14 even more concerned about precedential value of that.

15 So, with all respect for the surface
16 owner here, saying -- not passing through. I don't
17 mean to say, "passing through." I realize they are
18 staying for hours. They are engaging in an intense and
19 dangerous activity and a beautiful activity. And I
20 don't take issue with any of that. I nonetheless think
21 this is an overreach and to sterilize the 77 acres for
22 that reason, I don't think is appropriate, and I don't
23 think it was intended by this regulation.

24 So, with the hope that we can work
25 something out ultimately, that accommodates the surface

1 use owner and allows the extraction of the minerals, I
2 too will oppose this motion.

3 CHAIRMAN EPEL: Commissioner Alward.

4 COMMISSIONER ALWARD: Thank you,
5 Mr. Chair. I don't think there is a fair outcome to --
6 either way. I think a lot is going to be lost by at
7 least one party, if not both.

8 However, when I -- as I read and reread
9 the definition for, "designated outside activity area,"
10 I see some real short -- some real problems with the
11 definition, because there is nothing in there about
12 density. There is nothing in there about how something
13 is well-defined. When I look at these maps and there's
14 a property boundary, that seems pretty well-defined to
15 me. There are various types of activities that are
16 promoted in different areas. That seems pretty
17 well-defined. It doesn't require a certain number of
18 months in which people are there. It doesn't require
19 20 people to be there all at the same time.

20 And I don't think that, even though we
21 may question as to how accurate some of those days are,
22 it seems that most of the testimony was about, that it
23 wasn't more than 43 days -- that there were some things
24 that didn't match up, but we never got down to there
25 being fewer than 43 days with 20 or more people. So it

1 seems to me that, based on at least, A, one possible
2 straightforward reading of the definition, this meets
3 the definition.

4 I would argue, at a later date that we
5 may have trouble -- you may want to redefine this. So,
6 I am going to wait until I hear if any of my fellow
7 Commissioners have anything else to say before I decide
8 how I am going to vote. I'm currently leaning toward
9 voting for it. Just that -- it seems there are quite a
10 few straightforward ways of reading the definition that
11 this meets.

12 CHAIRMAN EPEL: Further Commission
13 questions? Commissioner Rudolph.

14 COMMISSIONER RUDOLPH: Not a question,
15 but I'll give you my thoughts on this. I'm really
16 struggling with this, and, in large part, because of
17 this definition, which I find very confounding.

18 Well-defined outside area, I think this
19 is -- I mean, there is a well-defined boundary to this
20 area. Whether it's a well-defined area for purposes of
21 this designation, I'm not sure. It does appear that
22 there are people, throughout this internal boundary, on
23 any given day, doing, you know, the riding.

24 But I think that there's a well-defined
25 boundary, the size of Rocky Mountain National Park.

1 And yet, again, I'm sure it's got 500 or more people
2 three days a year, yet I can't imagine that we would
3 ever look at Rocky Mountain National Park, assuming we
4 could, and say that's a designated area, outside area.

5 Public assembly, you know, the evidence
6 is mixed on that. I don't have any reason to
7 disbelieve that there's 20 or more people there 40 days
8 a year or more. I think the definitions that include
9 these numbers is the most confounding of all. What
10 happens if I have 18 people there, 300 days a year? Or
11 I have -- I mean you could make any kind of
12 combination. So why did the Commission pick those two
13 numerical values? It makes no sense to me.

14 And if it's a safety issue, you know, 500
15 people, it's a lot of people, but three days? I mean
16 certainly you could drill a well and avoid a safety
17 issue, on three days, but maybe not. And given what
18 this activity is, I don't see this as being just riding
19 out in Western saddle in the outback. This is pretty
20 complicated stuff.

21 And I don't know this riding very well.
22 I only know what I read. And my sense is that this is
23 much more dangerous, I mean, just given the fact that
24 you are jumping, and going through water, it's much
25 more dangerous than just riding, western riding, which

1 is what I am familiar with. So, and, you know, where
2 you got safety issues with your spooking horses,
3 et cetera.

4 But I'm also seeing that the issue here,
5 the safety issue here is the evacuation piece. It's
6 not -- I mean I hate to say this, but I don't see it as
7 really being scaring horses. And I wonder if we could
8 not figure out locations for the wells, timing when you
9 actually drill, so that you're not bringing in heavy
10 equipment during the actual season when you are going
11 to have riders out there.

12 And if you can keep the tanks off the
13 property, that's -- I'm concerned about that, because I
14 know you've got noise and commotion from that that
15 potentially could disturb the riders. And I think that
16 would be an issue. And I would be concerned about
17 that. So -- and the, you know, that sort of goes to
18 the accommodation piece.

19 So, I'm very torn with this. I think
20 this designated outside activity area needs to be
21 rethought, obviously, at some future time, but I would
22 like to think there's some way of accommodating all of
23 the parties here. I am going to leave it at that for
24 the moment.

25 CHAIRMAN EPEL: Commissioner Craig.

1 COMMISSIONER CRAIG: I would just like to
2 make a comment, because, normally, I think every single
3 thing that has been discussed here is valid. I think
4 this rule is to loosey goosey. We need to tighten it
5 up. Of course, now is not the time and place to do it.
6 But the way I thought about this was, one, is there a
7 way -- I mean the safety of the rider is what I was
8 thinking about. And gosh knows, my training has always
9 been about the safety of the individual involved. And
10 I don't see how you take a small piece out of this and
11 put it intact because of the improvements that, at
12 least according to this, what I am seeing, has been
13 made.

14 I'm a little frustrated, in fact, it's
15 not a little. I am greatly frustrated because there
16 should have been some resolution on both sides before
17 it came here. I mean, that's the whole part of the oil
18 and gas business nowadays, is to go ahead and try --
19 for all of us to go ahead and work together.

20 I am going to go ahead and still support
21 this with all of the problems, but I urge this
22 Commission that we go ahead and get this designation a
23 lot tighter, because we are going to be seeing it in
24 the future.

25 CHAIRMAN EPEL: I am going to call the

1 question, but I am going to make my comments. There's
2 been a lot of the discussion of reasonable
3 accommodation. The way I understand it, if we vote for
4 this designation, then we don't have the ability for
5 reasonable accommodation. There will be no wells
6 produced. Whereas, to the contrast, if the motion is
7 defeated, at this point, I think that forces
8 negotiation, but there still has to be accommodation
9 with the surface owner. I guess that's -- if we deny
10 the motion, then there will be, the way I interpret it,
11 there will be accommodation, but if we approve the
12 motion as is, then there can be no placement of wells
13 on this property.

14 Commissioner Alward.

15 COMMISSIONER ALWARD: If we decide this
16 is DOAA, we still have to decide what the boundaries
17 are, and the boundaries may be less than 77 acres. So,
18 it doesn't preclude the possibility of -- I just,
19 whether or not I agree with that, how we define the
20 boundaries and what the options are, I don't think it
21 precludes that.

22 CHAIRMAN EPEL: Commissioner Houpt.

23 COMMISSIONER HOUPT: I also have to say
24 that directional drilling is a reasonable alternative
25 across this state. And I think it's not very fair to

1 say that there can't be some reasonable accommodation
2 if we rule on what we've been asked to rule on. And in
3 a certain manner, that we're taking that opportunity
4 away. I still think there is an opportunity to reach
5 these -- this resource, and, you know, I kind of have a
6 difficult time with your statement.

7 CHAIRMAN EPEL: Commissioner Martin and
8 then Commissioner Dowling.

9 COMMISSIONER MARTIN: Mr. Chairman, I am
10 as conflicted as is my counterpart, Commissioner
11 Rudolph, deeply conflicted. I am not going to repeat
12 the comments that others have made. It would be
13 redundant. I am merely going to say, if we decide to
14 deny the motion, reject the motion that's on the table,
15 I would seek permission to then immediately offer a
16 motion to reject the applications for permit to drill
17 to force the parties back to the table.

18 CHAIRMAN EPEL: Okay. Commissioner
19 Dowling.

20 COMMISSIONER DOWLING: Yes. I was
21 assuming we would not be taking any action today on the
22 APD, so I also would not vote to approve APDs today.
23 It seems to me that if this were denied, there's
24 nothing to keep the applicants from coming back -- the
25 applicant has applied to have this 77 acres designated

1 a DOAA. They can come back the next month, or the
2 month after and, say, okay, let's try this again, these
3 33 acres, or something like that. I don't know that it
4 is up to us today to say that we are designating the
5 DOAA here, but with different boundaries than the
6 applicant has applied for.

7 CHAIRMAN EPEL: Would you, Ms. Harmon,
8 would you take the roll call vote, please?

9 MS. HARMON: Commissioner Rudolph.

10 COMMISSIONER RUDOLPH: No.

11 MS. HARMON: Commissioner Compton.

12 COMMISSIONER COMPTON: No.

13 MS. HARMON: Commissioner Houpt.

14 COMMISSIONER HOUPT: Yes.

15 MS. HARMON: Commissioner Cutright.

16 COMMISSIONER CUTRIGHT: No.

17 MS. HARMON: Commissioner Epel.

18 CHAIRMAN EPEL: No.

19 MS. HARMON: Commissioner Dowling.

20 COMMISSIONER DOWLING: No.

21 MS. HARMON: Commissioner Alward.

22 COMMISSIONER ALWARD: Yes.

23 MS. HARMON: Commissioner Craig.

24 COMMISSIONER CRAIG: Yes.

25 MS. HARMON: Commissioner Martin.

1 COMMISSIONER MARTIN: No.

2 CHAIRMAN EPEL: The motion fails.

3 Commissioner Martin, did you have a motion you would
4 like --

5 COMMISSIONER MARTIN: Mr. Chairman, I
6 move that we deny the application for permits to drill
7 that are contained within the four corners of Moqui
8 Meadows, of Moqui Farms.

9 UNIDENTIFIED COMMISSIONER: Second.

10 CHAIRMAN EPEL: Do we have discussion?
11 Commissioner Cutright.

12 COMMISSIONER CUTRIGHT: I guess this is
13 addressed generally -- may I address this generally to
14 the landowner; that even -- I think the Commission
15 feels for the landowner, and by rejecting this
16 application, or by this motion to reject APDs, it is
17 saying that parties need to go back to the table and
18 come to a better conclusion than what's been presented,
19 on any of the options we've seen today.

20 COMMISSIONER MARTIN: Mr. Chairman, if I
21 could recall my motion. I think it was inaccurately
22 framed. I think the appropriate motion would be to
23 direct the staff to deny the application and permit to
24 drill.

25 COMMISSIONER HOUPPT: Could you say that

1 again?

2 COMMISSIONER MARTIN: My motion is to
3 direct staff to deny the application for permits to
4 drill that are pending today.

5 COMMISSIONER HOUPT: Second. Do you want
6 a second?

7 CHAIRMAN EPEL: Commissioner Martin, I'm
8 a little confused. I thought your original motion we
9 were going to change the motion, or is the motion
10 stand, which is to deny the APDs on this particular
11 Moqui Farms?

12 COMMISSIONER MARTIN: It's a very subtle
13 distinction. I apologize. It's late in the day.
14 Rather than directly denying, my motion would be to
15 direct the staff to deny --

16 MR. LEPORE: I am going to go out on a
17 limb, Commissioner Martin. I think, procedurally, the
18 appropriate thing to do would be, on the Commission's
19 own motion, to ask for a hearing on the pending APDs.

20 COMMISSIONER MARTIN: I think our
21 attorney is right, as always.

22 MR. LEPORE: I hope that's on the record.

23 COMMISSIONER CUTRIGHT: Second that
24 motion.

25 CHAIRMAN EPEL: Further discussion?

1 Commissioner Rudolph.

2 COMMISSIONER RUDOLPH: Yeah. I guess I
3 voted against the motion because of what Commissioner
4 Martin said, and because I think that there may be an
5 ability to either reduce the acreage for the designated
6 area or -- and, by that, accommodate the wells or not
7 have the designated area at all and have an ability to
8 place the wells to minimize both when they are drilled
9 and when they are operated, any kind of an impact on
10 this facility. And that's what I would be looking for
11 including, any kind of noise issue, which would mean
12 probably placement of the tank batteries off-site.

13 CHAIRMAN EPEL: Commissioner Martin,
14 would a friendly amendment be to have staff and the
15 parties report back to the Commission at our next
16 scheduled meeting in March, or is that too soon?

17 COMMISSIONER MARTIN: I would have
18 thought your friendly amendment would have to been to
19 request a public hearing on these applications for
20 permits to drill.

21 CHAIRMAN EPEL: That's a friendly
22 amendment.

23 COMMISSIONER MARTIN: I would accept that
24 friendly amendment.

25 CHAIRMAN EPEL: Further discussion?

1 Commissioner Houpt.

2 COMMISSIONER HOUPT: I don't have
3 anything. I know there's a reason. I know there's a
4 reason. I think it's really important, and what
5 Commissioner Rudolph said is taken pretty seriously.
6 And I have a really difficult time seeing how seriously
7 the discussions have gone, when I see an application
8 for a designated outside area coming along with a
9 recommendation for wells that split that area in half.
10 So, with that in mind, I hope that you'll think out of
11 the box.

12 CHAIRMAN EPEL: We have a motion and a
13 second.

14 (Whereupon the vote was called.)

15 CHAIRMAN EPEL: The motion passes. We'll
16 see all of you at our next regularly scheduled hearing.
17 And any further business, Director? We're adjourned.

18 (Whereupon these proceedings were
19 concluded.)

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