

1 BEFORE THE OIL AND GAS CONSERVATION COMMISSION

2 PROPOSED WELL LOCATED IN) CAUSE NO. 1
3 LARIMER COUNTY) 1003-GA-06

4

5

6 VOLUME 3

7 PURSUANT TO NOTICE to all parties in

8 interest, the above-entitled matter came duly on

9 for hearing at the Colorado Oil and Gas Conservation

10 Commission, 1120 Lincoln Street, Suite 801, Denver,

11 Colorado, 80203, on March 25, 2010.

12

COMMISSIONERS:

13

CHAIRMAN JOSHUA EPEL

14 COMMISSIONER RICHARD ALWARD

COMMISSIONER TOM COMPTON

15 COMMISSIONER TRÉSI HOUP

COMMISSIONER MARK CUTRIGHT

16 COMMISSIONER MICHAEL DOWLING

COMMISSIONER DEANN CRAIG

COMMISSIONER JAMES MARTIN

17

18 ALSO PRESENT:

19 David Neslin, Director

Carol Harmon, Hearings Manager

20 Matt Lepore, Assistant Attorney General

Sam Niebrugge, Attorney for Magpie Operating Company

21 John Jacus, Attorney for Magpie Operating Company

Phillip D. Barber, Attorney for Wendy Chase/Mike Sutak

22 Ryan Warner

Wendy Chase

23

24

25

1 CHAIRMAN EPEL: We're going to resume our
2 proceedings. We're going to deal now with Cause No. 1,
3 Docket No. 1003-GA-06, Johnson Corner Field, Larimer
4 County, Magpie Operating Company. Where we left it at
5 the last meeting, we requested the parties to get
6 together and see if we could reach a well location.

7 Director Neslin, there was quite a bit of
8 confusion last time on kind of the whole site and with
9 the recommendation. Would you briefly take us through
10 what the staff recommendation is?

11 MR. NESLIN: Certainly. You know, maybe,
12 Carol, you and I could both switch for the purposes of
13 this.

14 Okay. Let me begin by orienting
15 everybody to what we're talking about, okay? We got
16 some new diagrams, hopefully, which will help us
17 simplify what we're talking about.

18 This is Section 36, okay? This is the
19 entire section, and pursuant to the Wattenberg rules,
20 we have got our drilling windows in each quadrant.
21 Now, the quadrant that we're talking about here is down
22 in the southeast quarter section of
23 the area, and the cross-hatched area is the Moqui
24 Meadows property, okay? And these are the drilling
25 windows. It's the northwest southwest drilling windows

1 and the west half of the central drilling window. And
2 this is the county road here, coming along the south of
3 the property. This is some property that is owned --
4 not owned by Chase and Sutak. It's owned by another
5 party.

6 And there's a road that comes up here,
7 along the eastern portion of the property. Down
8 here -- we'll go to the next diagram, yeah. This is a
9 blowup of that southeastern quarter quarter. It will
10 be a little easier to follow. Here, again, are the
11 drilling windows that we're talking about. The area
12 down here is, I think, an irrigated field that's used
13 for parking. Here is -- the facilities begin, around
14 here, this is Ms. Chase's home, is down here.

15 We have got a number of improvements that
16 you've received photographs of and were able to follow
17 along with, at the last hearing, of different jumps and
18 improvements here, in the center of the property, using
19 much of this area. This is an irrigation ditch that
20 cuts through the property here.

21 Now, following the last hearing, the
22 senior staff visited the site on March 3rd, for about
23 an hour and a half, to observe and discuss possible
24 locations for the well and other facilities. That
25 included me; included Ms. Harmon, the hearing manager;

1 our eastern Colorado environmental supervisor, Steve
2 Lindblom, who unfortunately is out this afternoon at
3 the dentist; our enforcement manager, Rob Willis; and
4 our northeastern Colorado inspection supervisor, Ed
5 Binkley. We all went on-site with the parties.

6 I want to commend both parties. Both
7 parties and their counsel joined us for the purposes of
8 this visit, and we were able to have some discussions,
9 I think useful discussions, and observe the property
10 and the area ourselves.

11 Based on our discussions, we asked Magpie
12 to submit a revised proposal that would try to
13 resolve some of the issues that had surfaced regarding
14 the siting of the pad and the battery. And they did
15 respond in writing on March 12th, and you received a
16 copy of that letter. Chase and Sutak responded on
17 March 16th and 17th, and their counsel responded, and
18 you received a copy of that correspondence as well.

19 What happened, then, is the managers, the
20 staff managers, sat down and reviewed all of the
21 correspondence and came up with a recommendation for
22 you. And that included, again, me, Ms. Harmon, Dave
23 Dillon, our engineering manager, Debbie Baldwin, our
24 environmental manager, Thom Kerr, our permitting
25 manager, and I think we were basically all in agreement

1 as to a recommended solution here.

2 Our recommendation is that the well
3 be sited on the eastern boundary of the property line,
4 in the surface owner's preferred location, and that
5 there be eight conditions of approval, to address the
6 drilling period, reclamation of the well site,
7 irrigation, waste disposal, access, gating and
8 subsequent work at the pad. And those are all set
9 forth in Mr. Lindblom's memorandum.

10 Again, during the hearing last month,
11 there had been various discussions about possible
12 locations for the well pad. The original permit
13 applications had sited or proposed two wells in the two
14 drilling windows here. And the concern that the horse
15 farm, Moqui Meadows, had raised, was that these would
16 interfere with their surface use, potentially disturb
17 improvements and the operation of the horse farm.

18 When we got out on the property, it did
19 appear that the optimal location for trying to minimize
20 the disturbance to the surface use would be here, along
21 the eastern boundary of the property, which is away
22 from the horse farm activities, away from the
23 improvements, and it's going to minimize impact to the
24 surface use to the greatest extent possible. And there
25 is access along this road here, to the east of the

1 property, so you don't have to come through the middle
2 of the horse farm improvements or operations.

3 Magpie had proposed a well site here, at
4 the southern portion of the central drilling window.
5 The horse farm, Moqui Meadows, had proposed a drilling
6 location about 120 feet further south, slightly outside
7 of the drilling window, and, in their mind, this would
8 further minimize the potential impacts and disturbance
9 to the horse farm activities.

10 We ended up, as I say, proposing that the
11 well site be located where Moqui Meadows prefers, the
12 southern location. We believe that that is going to
13 best fulfill the legislature's direction to foster the
14 responsible and balanced development of oil and gas,
15 consistent with the protection of public safety and
16 welfare. It's going to minimize the impact to the
17 surface owner, which does provide recreational benefits
18 to the public, and which involves potentially dangerous
19 jumping activities. It's going to help avoid problems
20 before they arise.

21 To our knowledge, the surface owners
22 support this location. We have added, I think, eight
23 additional conditions of approval, as I mentioned
24 earlier, to address different potential impacts
25 associated with the drilling of the well and to try to

1 ensure that any impact to the surface use here,
2 recreational use, is minimized, to the extent feasible.

3 Moqui Meadows, in their response, that
4 you received yesterday, raised opposition to the
5 location and to the condition regarding the 12-foot
6 access road. Excuse me -- Magpie -- excuse me. I
7 misspoke. Regarding the location, the staff believes
8 that moving the well site approximately 120 feet south,
9 and just outside the drilling window, should not
10 materially diminish or interfere with recovery of the
11 oil and gas resource. You'll recall this morning we
12 notified you about a variance that we approved last
13 month, to allow recompletion of a well about 50 feet
14 outside the drilling window.

15 So, while the drilling windows are
16 important, we do sometimes grant exceptions to them,
17 and variances from them, in the interest of resolving
18 issues, and, you know, responsibly providing for the
19 development of the resource. And Mr. Dillon can
20 elaborate on this a little bit more, if you like, here,
21 in a minute.

22 With respect -- let me also note that
23 moving this absolutely to the south should not increase
24 Magpie's costs at all. This will be a vertical well.
25 We're not requiring directional drilling. There will

1 not be directional drilling in conjunction with this
2 well at either site. By moving it to the south, it
3 should shorten up the pipeline and reduce the linear
4 extent of the reclamation that will be required. So,
5 if anything, it should minimally reduce the costs
6 associated with the drilling of the well.

7 With respect to the 12-foot access road,
8 I think the concept was to provide assurance that, for
9 purposes of accessing the well site and drilling the
10 well, the existing road would be used for this purpose
11 and would not be expanded. We're not -- and our
12 understanding, it's a single lane road. And this 12
13 feet should be sufficient for that purpose. If we have
14 got two vehicles, you know, that need to pass on the
15 road, for some reason -- first of all, we think that's
16 very unlikely, but if we do, I think the condition
17 accommodates that happening. And, again, I think
18 Mr. Dillon can speak to this here in a minute, if you
19 wish.

20 So, that's our proposed recommendation
21 regarding the siting of the well. And that's -- so, as
22 we understand it, what the issue is remaining,
23 regarding the siting of the well.

24 Now, with respect to the siting of the
25 tank battery, we're proposing that the tank battery be

1 sited on the southern boundary of the property, along
2 the county road here. That happens to be Magpie's
3 proposed location for the tank battery. My
4 understanding is that Moqui Meadows opposes approval of
5 a tank battery or construction of a tank battery on the
6 property here.

7 We're proposing that this location be
8 approved, if that's what Magpie chooses to do, subject
9 to six conditions of approval: To address the size,
10 type of tanks, fencing, operations and maintenance of
11 the tank battery at that site, and to ensure that it
12 will co-exist with the use of the horse farm.

13 Again, we believe that this site and the
14 conditions best fulfill the legislature's direction to
15 foster responsible and balanced development of the oil
16 and gas, consistent with public safety and welfare.
17 The battery is needed to develop the resource, and
18 according to Moqui -- or not according to Moqui, but
19 according to Magpie, cannot be located off-site, cannot
20 be located to the property either east or west.

21 East, there's a surface use agreement that
22 precludes the construction of tank batteries for oil
23 and gas produced off location. And to the west, this
24 property here is subject to a proposed subdivision and
25 Magpie's not been able to obtain any rights to develop

1 to this point, or reach agreement on any kind of
2 surface use that would allow for development of the
3 tank battery here to the west. But equally important,
4 we believe the tank battery can be constructed at this
5 location in a way that's consistent with public welfare
6 and with the operation of the horse farm.

7 This, again, is a large field, irrigated
8 field, that's used for parking, event parking, that's
9 adjacent to the public road. The tank battery would
10 use a small portion of this field. As we understand,
11 the tank battery would probably be on the order of 50
12 by 150 feet or less. The field looks like it's on the
13 order of about 10 acres, so we're talking about a very
14 small portion of that parking area or field being used
15 for the tank battery. We've imposed a number of
16 conditions -- let me back up. That constitutes about
17 2%, to our calculation, of the parking area would be
18 used for the tank battery. And if we were to look at
19 the entire Moqui Meadows property, we're talking about
20 maybe 2/10th of 1% of the entire property, so a very
21 small area would be used for this purpose.

22 There are two other batteries nearby. There's a tank
23 battery up here, less than half a mile away on the
24 county road. Here, to the east of the property, there
25 is another tank battery, up here, to the northwest --

1 northeast of the property. So, there are other tank
2 batteries in proximity.

3 The battery will be required to utilize
4 low profile tanks. We understand that will be on the
5 order of about eight feet in height. No more than two
6 tanks. These would be screened by an 8-foot privacy
7 fence. They would not include compressor/dehydration
8 equipment. Operations and maintenance would be
9 scheduled so that they don't interfere with events and
10 activities at the horse farm.

11 Now, in this case, Magpie opposes the
12 scheduling condition, but we believe the condition is
13 appropriate and reasonable, under the circumstances
14 here. We understand that the tank will be serviced by
15 a contractor. We believe the contractor will be
16 working for Magpie, and Magpie should be able to
17 control their schedule.

18 You'll recall, from last month's hearing,
19 there were about 40 events scheduled last year, over
20 about a six-to-eight-month period. So, we're looking
21 at, you know, a couple of events a week, meaning a
22 majority of the week -- I see some quizzical looks -- a
23 couple of events a week, because they are only running
24 events about half of the year, okay?

25 The events run from maybe March, April,

1 April or May, up through October, November. So, during
2 that period, you know, last year, they had a couple of
3 events which Magpie would need to schedule, you know,
4 visits to the battery, by their servicing company,
5 around, and we think that's doable.

6 In the event that conflict arises due to
7 circumstances beyond Magpie's control, then Magpie's
8 best efforts to avoid such a result, their good faith,
9 their efforts to comply, would all be mitigating
10 factors, under our rules, under Rule 524, okay? So,
11 these are not strict liability requirements -- we're
12 not going to shoot somebody if a truck shows up during
13 an event, but we are going to look at what did Magpie
14 do to prevent that from happening. Were they enforcing
15 this condition in good faith? Did they do everything
16 they reasonably could to try to prevent these kinds of
17 conflicts?

18 And if they have, then those are mitigating
19 considerations, that we would consider, under our
20 rules, in deciding whether any penalty is appropriate.

21 COMMISSIONER DOWLING: I lost my train.
22 Were you talking about trucks for the drilling
23 operation?

24 MR. NESLIN: No. We're talking about the
25 tank battery.

1 COMMISSIONER DOWLING: Kind of repeat
2 your last three or four sentences there. I am so
3 sorry.

4 MR. NESLIN: Certainly. My point is simply,
5 under our rules, if a party has attempted to comply
6 with our requirements in good faith, and the
7 noncompliance results from events beyond their control,
8 and there's a history of compliance, those are
9 mitigating factors that we are to consider in deciding
10 whether any penalty is appropriate or the extent of a
11 penalty.

12 So, anticipating the concern that, look,
13 this is strict liability -- somehow this would be
14 treated as a strict liability requirement, and despite
15 Magpie's best efforts, if their contractor came on a
16 day where they were told not to show up, because there
17 was an event, would Magpie be penalized in that? The
18 answer is not necessarily. It will go to Magpie's good
19 faith efforts to comply with the requirements, and if
20 they were endeavoring to comply with the requirement in
21 good faith, if they are operating responsibly, if they
22 have had a history attempting to comply with this
23 requirement, treating it seriously and taking
24 appropriate responsive action to try to ensure that it
25 does not occur again, those would all be important

1 considerations in deciding whether any penalty is
2 appropriate or the extent of any penalty, okay?

3 We're proposing that the drilling permit
4 be issued for a period of two years. Now, you amended
5 your rules this last November to extend the term of
6 drilling permits issued, under the new rules, to two
7 years. These drilling permit applications have been
8 pending for two years already, okay? So they predate
9 the new rules. And, in theory, because they weren't
10 submitted under the new rules, and they weren't
11 accompanied by the expanded Form 2A, the permit should
12 only be for one year.

13 We're recommending that a variance be
14 granted, and the permit be issued for a period of two
15 years, because the amended permitting process is
16 designed to help us better address environmental
17 concerns, better respond to these kinds of
18 conflicts, and do a better job of siting wells and
19 facilities and imposing appropriate conditions, and
20 that's all occurring here, okay?

21 This has received extensive
22 consideration, not just by this Commission but by the
23 staff as well. We have had multiple visits to the
24 site. So, we don't think going through a 2A
25 process now would add anything. And, so, we would

1 propose that permit be issued for two years.

2 Magpie has proposed that they withdraw
3 their proposed well permit application from the
4 southwestern drilling window, and that they would be
5 moving their current location from the north --
6 northwest window down to this spot along the east. So,
7 we're only dealing with one permit application at this
8 point.

9 Let me just finally respond, briefly, a
10 suggestion was made in Magpie's last letter, all of
11 which you have received now -- you've received a lot of
12 additional correspondence from both sides. Magpie's
13 last letter argues that our recommendation is
14 unprecedented and beyond the Commission's authority and
15 we obviously disagree, okay? The legislature has
16 charged us with ensuring that oil and gas development
17 occurs in a responsible manner that protects public
18 health, safety and welfare. And that requires us to
19 impose appropriate conditions of approval and to ensure
20 that health, safety and welfare are protected in terms
21 of where facilities are being sited. And we have done
22 so here.

23 That's what we have tried to do with
24 these recommendations. I would also note that the
25 Commission has done so in the past. Indeed, one of the

1 cases that Magpie submitted to you, it's a Federal
2 District Court decision from 2002. It's very clear
3 that the Commission went through a similar process in
4 that case, to what you are doing here today, and that
5 the Commission received similar recommendations.

6 CHAIRMAN EPEL: Before you pass on the
7 case, to me, this is really a dispute, factual dispute,
8 it is not a legal issue. So, I mean, why don't you
9 summarize the argument but don't pass the case along.

10 MR. NESLIN: All right. In this case,
11 the location was the result of the surface owners'
12 request that the well be moved slightly to better
13 accommodate their use of the property. In addition, as
14 a result of an on-site inspection and request made by
15 surface owner, the staff attached -- developed a number
16 of special conditions of approval. And the conditions
17 of approval addressed analogous types of situations,
18 such as when subsequent operations would be conducted,
19 during what time of the day, when reclamation would
20 occur, how tall the water tank at the site would be,
21 use of certain types of production equipment, use of
22 certain low profile facilities. So, not identical
23 conditions but analogous conditions.

24 We believe that the conditions that we've
25 outlined, the recommendation that we have made is well

1 within the Commission's authority and is supported by
2 prior Commission precedent.

3 So, I'll stop there. If you would like
4 to hear from Mr. Dillon, in responding to some of the
5 concerns that Magpie has raised, he can do so, or if
6 you want to hear from Magpie and Moqui Meadows first or
7 however you wish to proceed.

8 CHAIRMAN EPEL: Let's see if there's any
9 Commissioner questions. First, I just want to make
10 sure I understand. This is a dispute that has been
11 going on for over two years, and the parties have not
12 been able to resolve, am I am correct, on that?

13 MR. NESLIN: That is correct.

14 CHAIRMAN EPEL: Essentially, where we are
15 is a factual determination of what's the reasonable
16 accommodation, based on -- the staff has been forced to
17 be put in the position of refereeing. It's really your
18 best recommendation.

19 MR. NESLIN: That would be correct. And
20 I would only clarify. It's not necessarily based on a
21 reasonable accommodation so much as balancing the
22 legislative mandate of responsible development of the
23 resource, while protecting public welfare, public
24 safety.

25 CHAIRMAN EPEL: Okay. Commissioner

1 questions? Commissioner Compton.

2 COMMISSIONER COMPTON: Thank you,
3 Mr. Chairman. Mr. Dillon, the location of the well,
4 either of the proposed sites, what's the way -- the
5 effective drainage of the reservoir -- reservoirs or
6 reservoir?

7 MR. DILLON: Well, Commissioner
8 Compton -- I am David Dillon, the engineering manager
9 for the Colorado Oil and Gas Commission. I can't
10 really tell you the effect on the drainage of the
11 reservoir. We have an initial well site, in the
12 southern portion of the central drilling window, that
13 was recommended by Magpie. And we have a site about
14 120 feet south of that that is recommended, at the
15 request of the surface owners. I can tell you, after
16 working at the Commission for about 16 years, it's
17 almost exactly 100 feet from your seat to the men's
18 room. So, it's not a very far distance that we're
19 talking about.

20 The second thing is, Magpie's brought up
21 the issue that this may change their drainage pattern
22 such that they may have to move the well located in
23 this drilling window here. If you use the center of
24 this drilling window as a reference, the site
25 recommended by the surface owners is only about 40 feet

1 closer to that point than the site recommended by
2 Magpie.

3 So, what I am saying is I don't know of
4 any drainage pattern that's really ruined by moving a
5 well 40 feet. Secondly, we would argue that to say
6 where this well goes, based on where this well goes, is
7 a little premature right now. What we recommend is
8 Magpie does drill the well and then calculate their
9 drainage radius. And that would give them a better
10 idea of where they would need to drill here in the
11 future.

12 So, for both of those reasons, staff is
13 in agreement with accepting the location recommended by
14 the surface owner.

15 CHAIRMAN EPEL: Commissioner Houpt --
16 Commissioner Compton, I'm sorry. You need a
17 microphone.

18 COMMISSIONER COMPTON: Another question.
19 I'm sorry.

20 COMMISSIONER HOUPPT: That's okay. You
21 can go first.

22 Could you please point out the
23 established county road that goes up to the well site
24 right now? Is there one?

25 MR. NESLIN: The county, it's private, I

1 guess, it's a private --

2 COMMISSIONER COMPTON: I have a question
3 about that.

4 COMMISSIONER HOUPPT: Do you see, well, I
5 was wondering, whose private road it is and if there's
6 been any concerns from the adjacent property owner?

7 MR. NESLIN: Not to my knowledge, but
8 that's a question you can ask the two parties to
9 address as well.

10 CHAIRMAN EPEL: Commissioner Cutright.

11 COMMISSIONER CUTRIGHT: How did you
12 derive -- because I measured from the drainage ditch to
13 the first well placement, inside the drilling window,
14 about 350 feet, and you've chosen a distance another
15 110 feet farther south. How did you determine 110 feet
16 was the number, and not 50 feet, or not 200 feet? How
17 did you derive that the 110 feet is the optimum
18 distance from the proposed well?

19 MR. NESLIN: Believe it or not, we're
20 trying to minimize the difference and the different
21 options here, not add to them. We had the surface
22 owner requesting the site 110, 120 feet south. This
23 was the surface owner's preferred location. The
24 drilling site within the window was Magpie's preferred
25 location. So, we really just looked at these two

1 locations, Commissioner.

2 COMMISSIONER CUTRIGHT: Okay. On the road
3 width, in the -- working in the industry, I can
4 understand why 12 feet would be objectionable,
5 particularly, you have to make two turns there, to get
6 in there. And I can foresee that you have -- you can't
7 do it in 12 feet, with the size trucks; so, it would be
8 beyond the 12 feet recommendation that you proposed as
9 far as the road width. I mean, you can't turn
10 18-wheel trucks in a 12-foot roadway.

11 MR. DILLON: Yes. What the recommended
12 condition of approval states is that access to the well
13 shall be from Weld County Road 14 via a 12-foot wide
14 access road. During drilling and workover operations,
15 access to the well should be along the same road but
16 may be reasonably wide enough for safe maneuvering of
17 the equipment and trucks.

18 If I can go a little farther -- what we're
19 shooting for there is you only want to have a minimum
20 road width to help the landowner. Then, on the other
21 hand, Magpie needs to get in there. They need to get
22 in there to drill. They need to get in there to
23 workover.

24 What we're trying to do is craft a condition of
25 approval that would allow more or less a one-lane road

1 for standard visiting type of operations for the
2 pumper, and that, but if other work occurs, Magpie
3 could go beyond that 12-foot width in order to get
4 their equipment in and out of the well site, so we're
5 trying to have it both ways.

6 COMMISSIONER CUTRIGHT: There's been
7 discussion on the operational constraints, on the tank
8 battery and scheduling loads for pickup. What's the
9 issue for when the trucks, you know, when a tanker
10 truck comes and picks up a load of product from the
11 tank battery? You know, there was testimony presented
12 to us, and documentation, that that's a fairly high use
13 road. What does a truck stopping and picking up a
14 load, what operational problems does that impose?

15 MR. NESLIN: I think the concern is,
16 you've got horses that are tied up down in this area.
17 And simply the concern about having the truck coming up
18 and pumping out the tank while they have got an event
19 going on, and while you have got people here for the
20 horse activity, and possibly horses tied up nearby.
21 Again, this appears to occur an average of about twice
22 a week, at this point, so, it's not a situation where
23 other days simply aren't available. Or it appears, if
24 it would work a particular hardship, to try to
25 accommodate that schedule.

1 I would also note, taking the traffic data
2 that Magpie submitted yesterday, at face value, because
3 I haven't had a chance to research that, or review that
4 myself, that works out to a vehicle going by about
5 every two minutes during the day, which, in my mind, if
6 you just think about standing on a street and having a
7 vehicle go by every two minutes, I don't think any of
8 us would describe it as high volume. Having been out
9 on the site for about an hour and a half a couple weeks
10 ago, it did not strike me as a high volume road. I
11 don't recall many vehicles passing by the road when we
12 were out there, nearby. That would be my response,
13 Commissioner.

14 COMMISSIONER CUTRIGHT: There -- what --
15 there is, looking down the road, Magpie's withdrawing
16 their application for the northern site of that -- I
17 mean they are going to -- part of the agreement, they
18 are going to forego drilling that well ever or --

19 MR. NESLIN: No. They are simply
20 withdrawing their current permit application.

21 COMMISSIONER CUTRIGHT: And they are not
22 applying for the southern drilling window? They are
23 not applying for an application in the southern
24 drilling window at this time?

25 MR. NESLIN: Just, they are -- there's

1 just one well at this time.

2 COMMISSIONER CUTRIGHT: So, this whole
3 agreement is just going to cover one well, that we're
4 making today?

5 MR. NESLIN: It's not an agreement. You
6 are making a permit decision, and it applies only to
7 the one well, and only to the one permit application.

8 COMMISSIONER CUTRIGHT: Okay. On that
9 drilling window, why don't they drill east of the
10 property line?

11 MR. NESLIN: On the adjoining property?

12 COMMISSIONER CUTRIGHT: Yes.

13 MR. NESLIN: I think that's a question
14 better directed to Magpie.

15 CHAIRMAN EPEL: Commissioner Dowling.

16 COMMISSIONER DOWLING: Thank you,
17 Mr. Chair. Does the access road, does it jag over and
18 follow the light blue property boundary or does it go
19 straight down to the county road?

20 MR. NESLIN: Again, I think probably the
21 surface owner or Magpie would be better situated to
22 answer that. I'm not sure. I think it does not jag.
23 I think it goes straight up, but...

24 COMMISSIONER DOWLING: To Magpie, I will
25 address this. I'm just wondering how often, in normal

1 operations, the battery will be visited by an operator
2 to remove liquids, how often it will be visited
3 approximately, and how long will that visit be? I
4 would be interested in that.

5 MR. NESLIN: Sure.

6 CHAIRMAN EPEL: Additional questions by
7 Commissioners? Commissioner Compton.

8 COMMISSIONER COMPTON: Thank you,
9 Mr. Chairman. Are we able to go to -- Magpie
10 or the Moqui representative yet with our questions or
11 stay with staff now?

12 CHAIRMAN EPEL: Let's stay with staff
13 now.

14 COMMISSIONER COMPTON: I am stumped now,
15 then, I will have to wait.

16 CHAIRMAN EPEL: Mr. Dillon, I do have one
17 question. In the e-mail from Steve Lindblom, he says
18 that there will be no compression or dehydration. I
19 thought I recalled, from Magpie, that there would be no
20 compression or dehydration for two years. To me,
21 there's a difference in whether it's an absolute
22 condition or whether it's under the existing proposed
23 one well. Should -- do you want to answer that or
24 should we just wait for --

25 MR. DILLON: I'm sorry. I can't answer

1 the question, so I suggest, of course, talking to
2 Magpie.

3 MR. NESLIN: I think, Commissioner, I can
4 answer that. I think the two years is referring to the
5 permit term, Chairman Epel, I think the two years
6 refers to the permit duration. If the permit is
7 issued for two years, as we're recommending, but,
8 again, they can clarify that.

9 CHAIRMAN EPEL: Okay. Just to clarify,
10 this is not a directionally drilled well?

11 MR. NESLIN: It would be a vertical well
12 in either location. It would be a vertical well.

13 CHAIRMAN EPEL: Thank you very much.
14 Additional questions.

15 MR. NESLIN: Commissioner Houpt.

16 COMMISSIONER HOUP: Thank you. Doesn't
17 work, Tom.

18 When you were walking the property, and
19 talking to the various parties, was there discussion
20 about where the next set of discussions would go in
21 terms of well locations? I mean, it seems to me that
22 by moving the initial well from the northern section --
23 I mean, the northern window, I thought that meant that
24 that was taking the place of that well that they had
25 wanted to site up there originally? I am wrong on

1 that, right?

2 I mean, these questions -- what I heard
3 you say, in one of your responses was that, no, that
4 keeps that open for future development?

5 MR. NESLIN: I think, you know, questions
6 about their future plans are best directed to Magpie.
7 I don't want to try to speak for them. I will say
8 this: That Magpie has had a number of drilling permits
9 in some of these different drilling windows that were
10 issued over the past couple of years, and which have
11 expired. And you saw some correspondence as part of
12 your materials in responding to a question from Hearing
13 Manager Harmon on that issue. So, you know, they've
14 other permits that have expired.

15 These two applications have been pending
16 two years. So, I think, you know, in terms of, again,
17 fulfilling our statutory mandate of providing
18 responsible development of the resource, we should be
19 focusing on what they are proposing and not worrying
20 too much about what might happen in a year or two,
21 because not a lot has happened out there.

22 CHAIRMAN EPEL: Commissioner Dowling.

23 COMMISSIONER DOWLING: Thank you.

24 Director Neslin, if this APD were issued
25 as proposed, would it preclude Magpie, if they so

1 chose, from deviating from going from the surface
2 location that you are proposing right now, deviating
3 the well slightly to the north, so that they bottom
4 holed inside the 800-foot drilling window?

5 MR. NESLIN: I would refer that to
6 Mr. Kerr or Mr. Dillon.

7 MR. DILLON: I think the answer to that
8 is no, it would not. This location is being picked on
9 the basis of the surface owner's wishes. And,
10 certainly, if Magpie wants to do a small amount of
11 directional drilling to bring the bottom hole location
12 to within the center window, that would be just fine.

13 COMMISSIONER DOWLING: Thank you.

14 CHAIRMAN EPEL: Commissioner Compton.

15 COMMISSIONER COMPTON: I did finally
16 think of one for staff. The COAs relative to the tank
17 battery, my understanding is that you're directing the
18 company to direct their contractor to only pick up when
19 there's a nonevent, when there's no event, which you
20 estimate to be, events a couple of times a week.

21 So, you're assuming or you're working on
22 the assumption that the Moqui Meadows will tell the
23 operator, here are the scheduled events for this
24 season. And then, the operator has an opportunity to
25 direct their contractor to come in anytime other than

1 that. And, so, that would preclude Moqui Meadows from
2 scheduling additional events and still have the
3 assurance there wouldn't be any activity there during
4 other times?

5 MR. NESLIN: We've tried to get a little
6 more flexibility than that. We have said that Moqui
7 Meadows needs to provide 15 days prior notice -- maybe
8 it's 14 days prior notice. And if they provide 14 days
9 prior notice, then there's an obligation to schedule
10 the pickups on other days. If they don't provide that
11 notice, then that obligation doesn't arise. Okay?

12 So, it's an obligation to take action if
13 you receive notice from the surface owner as to when
14 the event is scheduled, and if you have received at
15 least 14 days notice. So, you know, if Moqui Meadows
16 gets additional events scheduled in October, that don't
17 end up getting scheduled until August, or September,
18 they can provide the notice to the operator in
19 August or September, when those events are scheduled,
20 and then those events are subject to this condition.

21 COMMISSIONER COMPTON: Could they,
22 in fact, then schedule events that would pretty much
23 cover all times?

24 MR. NESLIN: We would then need to amend
25 the condition. They asked me that question yesterday.

1 They called and said, fine. Maybe it's occurring twice
2 a week now, but what if next year it's seven times a
3 week? Then we're going to have to amend this condition
4 because again we're trying to strike a balance between
5 development of the resource and protection of the
6 public welfare.

7 CHAIRMAN EPEL: Commissioner Cutright.

8 COMMISSIONER CUTRIGHT: But if they could
9 pick up essentially sunset to sunrise, they can
10 schedule their pickup during that portion -- that time
11 of day as well, when -- there is nothing in our rules
12 that prohibits that, is there?

13 MR. NESLIN: No, you are right, correct.

14 COMMISSIONER CUTRIGHT: Okay.

15 CHAIRMAN EPEL: Thank you, Director
16 Neslin. Mr. Niebrugge.

17 MR. NIEBRUGGE: Thank you, Chairman Epel.
18 And to the extent my comments are somewhat redundant --
19 I apologize -- to the staff recommendation, but I will
20 cut back as much as I can.

21 Good afternoon, Mr. Chairman and members
22 of the Commission and Director Neslin. We would like
23 to first thank staff and the director for their hard
24 efforts on this matter, and we understand that staff
25 has spent an incredible amount of time working on this

1 matter, and we appreciate those efforts. My client,
2 Magpie Operating, Inc. has before you an amended APD,
3 we'll call them, which, in all respects, complied with
4 the laws of the state and the regulations of this
5 Commission.

6 Originally, it applied for two APDs, the
7 State Chase 33-36 and State Chase 34-36, which Magpie
8 also believed complies with the laws of this state and
9 the regulations of this Commission. As a result of 20
10 months discussion and negotiation with the surface
11 owner, we have now come with an alternative proposal
12 that puts the State Chase 33-36, which was originally
13 the APD in the northern window, on the eastern
14 boundary, as close as technically feasible. Magpie
15 has -- you will hear testimony that Magpie has
16 obtained a surface waiver from the surface owner to the
17 east, that allows us to put that well -- current rules
18 require that well to be 150 feet from the surface
19 boundary. We have a waiver so that we can put that
20 well closer to the boundary.

21 Magpie was certainly hoping to avoid this
22 outcome, and hoping to avoid ending up before you all
23 at the Commission. Both parties worked very diligently
24 to come to a resolution that was good for both. But,
25 unfortunately, the parties were unable to come to a

1 resolution.

2 We think the Commission -- and we have
3 some issues specifically with some of the surface
4 owners' proposals that would require us to
5 directionally drill wells. We do not feel, in our
6 opinion, that this Commission has the authority to
7 force us to directionally drill. And we appreciate the
8 staff's recommendation for a vertical well. We note
9 that our original proposed location was within the
10 window, and we maintained our desire to have that
11 location within the window, because it allowed us to
12 avoid a variance from the 318(a) rule in the surface
13 location.

14 We also believe that -- and Director
15 Neslin had pointed this out -- that reasonable
16 accommodation is not appropriate before this
17 administrative body. Reasonable accommodation is a
18 private contract -- excuse me -- it's a private dispute
19 between private parties that should be heard before the
20 district court, and the themes of reasonable
21 accommodation are not appropriate before this body.

22 Finally, Magpie believes and understands
23 that the biggest issue that the surface owners have
24 remaining is the location of the tank battery. And we
25 are very sensitive and Magpie is very sensitive to the

1 amount of work and the years that Ms. Chase and
2 Mr. Sutak have put forth on this property. However, we
3 have a valid and enforceable lease, which gives us
4 necessary and convenient access to this property.

5 You'll hear testimony that we are not
6 able to put the tank battery to the east, because of a
7 surface use agreement. We are not -- we do not believe
8 we are able to put it to the west, because of the
9 regulatory and technical considerations. And we can't
10 put it to the south, because we don't own the lease.
11 And we cannot put it to the north, because of various
12 operational concerns. Thank you.

13 CHAIRMAN EPEL: I don't think we were
14 working on opening statements. Put on your case, but I
15 think, at this point, we don't need to have testimony
16 as to whether you have the ability to -- we have
17 already heard from staff that you do not have access to
18 the site on the east, but I really -- there is two
19 issues before us, either approve or deny your APD or
20 approve or deny the staff's recommendations.

21 So, I would recommend that what you do is
22 focus on what issues do you have with the staff
23 recommendation, how can they be cured, because we are
24 going to, you know, as I stated at the very beginning,
25 this is a two-year dispute, and we have been put in the

1 position whether we, like it or not, we're the referees
2 and we are going to make a decision today. So...

3 MR. NIEBRUGGE: Thank you, Chairman Epel.

4 As we pointed out in our letter, then, of a couple of
5 days ago, I would point specifically to those aspects
6 of the staff's recommendation where Magpie still has
7 concerns.

8 I am going to hand the microphone to my
9 client, Ryan Warner, and I will speak loudly so the
10 Commissioners can hear me, and I will have him respond
11 into the microphone.

12 Mr. Warner, why are you unable to have a
13 12-foot access road to the well pads?

14 MR. WARNER: As Commissioner Cutright
15 pointed out, the main concern is the turning radius
16 with large equipment, just physically being unable to
17 stay within that 12-foot boundary.

18 MR. NIEBRUGGE: Even if that 12-foot
19 boundary is expanded, during drilling or reworking
20 operations, you believe that that is too narrow for
21 ongoing well service?

22 MR. WARNER: It would depend on the type
23 up equipment required to service the well. And certain
24 equipment is larger. And, again, it has a lot to do
25 with the turning radius configuration of the road.

1 MR. NIEBRUGGE: Mr. Warner, onto the
2 access to the tank battery. In your mind, can you
3 control when third parties go and access the tank
4 battery?

5 MR. WARNER: To a certain extent, we can.
6 The way it works is we would call dispatch for a -- to
7 pick up and they will generally arrive, say, within 24
8 hours or 48 hours; during the winter, due to weather,
9 due to their log, it varies from time to time, that
10 they will come any number of days later. We have a
11 certain amount of control, but not complete control.

12 MR. NIEBRUGGE: After hearing Director
13 Neslin's comments regarding ongoing access and ongoing
14 display of compliance with that condition, are you
15 opposed to that condition?

16 MR. WARNER: Opposed to the access
17 condition?

18 MR. NIEBRUGGE: Let me rephrase.

19 MR. WARNER: I'm sorry.

20 MR. NIEBRUGGE: I will rephrase that
21 question.

22 MR. WARNER: I'm a little confused.

23 MR. NIEBRUGGE: After Director Neslin's
24 comment, if this condition of approval is approved for
25 this APD, and if Magpie -- excuse me -- if Magpie

1 displays an ongoing compliance with that condition,
2 which would then result in a less than -- smaller
3 likelihood that you would be found to be not in
4 compliance with that condition -- that's a horrible
5 question. Let's move on. I apologize.

6 CHAIRMAN EPEL: Could you live with the
7 condition as described by the director?

8 MR. WARNER: As I understand it, I
9 believe that we could do our best effort, and, yes.

10 CHAIRMAN EPEL: Thank you.

11 MR. NIEBRUGGE: That would be the extent
12 of my questions right now, Mr. Chairman.

13 CHAIRMAN EPEL: Before we move on,
14 Mr. Warner, could you describe for me what type of --
15 what size road would you need for the appropriate
16 access? You said 12 feet is too small. 14? 16? At
17 what point is -- what's appropriate?

18 MR. WARNER: I am not entirely prepared.
19 15 feet, we feel, generally, general pickup traffic
20 would be -- it would be totally acceptable. The
21 concern is, with any larger equipment, if you had any
22 sort of trailer or longer equipment, especially in the
23 turns, you would need to soften the turns or widen the
24 road, at that point, or have the ability to widen the
25 road. And then we could replace it, scale back. It's

1 purely a technical issue for access.

2 CHAIRMAN EPEL: Mr. Jacus.

3 MR. JACUS: Commissioners, John Jacus
4 also for Magpie. I would also underscore the concern
5 about reclamation, moving fence in and out. If we're
6 talking about 12 feet, most of the time, and, then,
7 workover rigs, or drill rigs. I mean, how often does
8 Magpie have to basically shrink its footprint for
9 access. If you got roadbed, you need roadbed, if it
10 needs to be wider, you want that roadbed there when you
11 need it. Or do we need to reclaim the hay meadow or
12 riding surface. And those are real expenses and
13 real problems associated with the 12-foot minimum
14 road.

15 CHAIRMAN EPEL: Commissioner Alward.

16 COMMISSIONER ALWARD: Thank you,
17 Mr. Chair. I guess one of the things I'm trying to
18 work out with the road width right here is that it
19 seems to me that the real issue is the turning radius,
20 the two corners. And I am wondering if there's
21 something that would be workable, of course, the other
22 party would -- might want to be considered, but that,
23 maybe that, in those areas, where you're -- the turns
24 are that, it might be reasonable to have something
25 wider, 15 feet, whereas you mentioned, softening the

1 curve, or something like that, so, that most of it is
2 12 feet. But where you absolutely need it for safety
3 and access, it would be appropriate to permanently make
4 it a little larger. Would that be something you would
5 consider?

6 MR. WARNER: Yes.

7 CHAIRMAN EPEL: Commissioner Cutright.

8 COMMISSIONER CUTRIGHT: And, I mean,
9 most -- aren't most accesses to wells that are pumping
10 or producing, two track is acceptable, isn't it?

11 MR. WARNER: Correct.

12 COMMISSIONER CUTRIGHT: So, your main
13 concern is that, particularly when there's, you know,
14 some animosity between the landowner and the operator,
15 you don't want someone coming out with a tape measure
16 and measuring that this road is 12 feet 6 inches or --
17 at the turn, we went out to 16 feet. I mean, you are
18 going to do -- your goal is to minimize the amount of
19 road, I'm presuming.

20 MR. WARNER: Correct. We wouldn't
21 need -- we don't want or need more than we really need.

22 COMMISSIONER CUTRIGHT: You don't want to
23 be constrained by somebody? You just don't want to be
24 constrained?

25 MR. WARNER: Exactly.

1 COMMISSIONER CUTRIGHT: Somebody having
2 to measure your roads. It's going to be 12 feet
3 exactly. You are going to try to live within that
4 constraint, that 12 feet?

5 MR. WARNER: Yes, sir.

6 COMMISSIONER CRAIG: I am just -- I am
7 confused. Are you saying that the road is represented
8 by that blue line, or is it a straight shot from the
9 larger road directly up to the well site? Never mind.
10 He showed it to me.

11 (Discussion off the record.)

12 MR. NIEBRUGGE: Commissioners, I would
13 point you to Magpie's exhibit binder, which is bound --

14 MR. WARNER: It would follow the property
15 line here. This is not associated with the Chase
16 property, so it would come up and turn in this fashion.

17 CHAIRMAN EPEL: Commissioner Compton.

18 COMMISSIONER COMPTON: My understanding
19 is you do have a, whatever, landowner agreement,
20 surface use agreement, with this adjacent neighbor to
21 utilize that road?

22 MR. WARNER: If the road is on the Chase
23 property, then it's an issue with Chase.

24 COMMISSIONER COMPTON: As I understand
25 the map, the Chase property is bounded in blue.

1 COMMISSIONER DOWLING: Tom, this is the
2 road. It runs just inside the Chase property boundary.

3 COMMISSIONER COMPTON: This map is not
4 right.

5 MR. NIEBRUGGE: Look at Exhibit A from
6 the March 12th letter from Magpie.

7 COMMISSIONER COMPTON: Oh, sorry. Thank
8 you. No worries.

9 CHAIRMAN EPEL: Commissioner Dowling.

10 COMMISSIONER DOWLING: Given your
11 expected production here, how often would you say your
12 battery is going to be visited for pumping operations,
13 or something like that, or what's a typical duration of
14 such a visit?

15 MR. WARNER: Given the production -- are
16 you asking about trips to the tank battery? Is that
17 okay? Could I have a moment to work up the math? I
18 would hate to give you a wrong answer. We can give an
19 estimate and then, given the volume, you know, I don't
20 have that prepared.

21 MR. JACUS: I would respond that, in the
22 prior hearing, Mr. Dowling, we did talk about the need
23 to visit the well more frequently early on, because of
24 higher production, before you got some significant
25 decline in production. So the first year, I believe

1 you were feeling you would need to be out there more
2 frequently, and perhaps unexpectedly, to deal with well
3 pressures, those sorts of things.

4 And Magpie being a smaller operator, they
5 don't have telemetry to get them real-time data on
6 production and pressures, so they need to go out and
7 check. That's why being adjacent to the road is most
8 appropriate for them.

9 COMMISSIONER DOWLING: I am just trying
10 to get a general feel for whether this is for 15 to 30
11 minutes once or twice a week? Is it everyday? Is it
12 every other week? I am just looking for a very general
13 feel.

14 MR. WARNER: Well, if you have -- just
15 give an idea on volume. If you have 600 barrels of
16 storage, and you -- there is really no way to know how
17 fast you'd come on, say, the initial -- disregarding
18 the initial flush, and after level-off, if you are
19 somewhere between 10 and 15 barrels each day, divide
20 that into 600 barrels capacity. And then there could
21 be a very steep decline. There could be -- it could
22 level off at any rate.

23 COMMISSIONER DOWLING: That would suggest
24 it's a matter of every few weeks, or something like
25 that, that visit is made by the pumper?

1 MR. WARNER: Yeah. We maintain wells
2 that are actually much, much older. And they are
3 sometimes visited once a month or once every two
4 months. More productive wells will be visited once a
5 week.

6 COMMISSIONER DOWLING: It's a long time
7 since I have been in the business, but a pumper might
8 be on-site for 15 minutes, half hour, or something like
9 that? Do you have any idea?

10 MR. WARNER: Yeah. Maybe even less than
11 five minutes, if they -- to run up and gauge the tank.

12 COMMISSIONER DOWLING: Thank you.

13 CHAIRMAN EPEL: Commissioner Cutright.

14 COMMISSIONER CUTRIGHT: Okay. Can I ask
15 this to Director Neslin? Why not drill to the east, if
16 you already have a well in that northeast drilling
17 window, if I am not mistaken; is that correct?

18 MR. WARNER: Yeah.

19 MR. NIEBRUGGE: On the previous map, in
20 the northeast of the northeast corner.

21 COMMISSIONER CUTRIGHT: So, why not
22 drill -- why not avoid all of this and why not drill on
23 the other landowner's property? You would be in the
24 drilling window and why go through this mess?

25 CHAIRMAN EPEL: Well, let me cut you off

1 on that one, because we don't have a right to find the
2 adjacent landowner, and we can only deal with the
3 landowner that is in front of us. And the idea that we
4 can, then, by implication say to the adjacent
5 landowner, accommodate this, I think that's outside of
6 our jurisdiction.

7 COMMISSIONER CUTRIGHT: Yes. By his
8 lease, he has rights -- I mean, they presented evidence
9 that, by virtue of the lease, that they have rights
10 to drill for this asset, and they have rights to
11 access the asset, and there's other access that is
12 available.

13 CHAIRMAN EPEL: Okay. Well, I will tell
14 you, because I am ready to hear from the -- let me
15 finish. The staff, at some point, had to do this, make
16 a recommendation. And this is staff's recommendation.
17 And, in fact, quite honestly, I am surprised because,
18 at this point, we're seeing the single issue between
19 the staff's recommendation and the applicant, which is
20 whether the road is 12 feet or the road is 16 feet or
21 whether we are going to turn into a double thermometer
22 and give turning radius. So, I think that's the issue
23 at hand before us. I think exploring a new option,
24 which was not recommended or applied for, I don't think
25 that's an area where we should pursue.

1 Commissioner Houpt.

2 COMMISSIONER HOUPPT: I can understand
3 your statement in this situation, but I hope that
4 wouldn't be a statement you would make every time that
5 question comes up, because I think that's a really
6 valid question, to be asked, when looking at placement,
7 if there's a real issue about placement of wells.

8 CHAIRMAN EPEL: I agree. I mean, I think
9 this is actually a fairly unique situation, which we're
10 working on a project for two years, and --

11 COMMISSIONER HOUPPT: But it's -- so, I
12 guess I would, you know, if this comes back to us, in
13 the future, that's going to be a question that's asked,
14 I mean. And I -- I don't know. I am going to let you,
15 if you want to pursue it, you can.

16 CHAIRMAN EPEL: Well, perhaps we should
17 pursue the discussion, once we have a motion on the
18 table as opposed to during the testimony.

19 COMMISSIONER HOUPPT: It was just --

20 MR. NIEBRUGGE: Chairman Epel, may I make
21 one more comment, and I will make it quick. One of our
22 remaining concerns, as well as with the access to the
23 tank battery, is putting this Commission and its staff
24 in a position of having to adjudicate on almost a daily
25 basis -- understanding that "daily" is probably the

1 wrong term, because there are only 40 events, but the
2 risk that this could come up and be a more common
3 occurrence, that there are scheduled events, is one of
4 our ongoing concerns.

5 CHAIRMAN EPEL: Thank you. Mr. Barber --
6 wait a minute. I think the State Land Office --
7 please, why don't you come now, because you are
8 supporting -- you are Heather Warren.

9 MS. WARREN: Heather Warren, for the
10 attorney general's office, on behalf of the State Land
11 Board. The State Land Board supports Magpie's proposal
12 in this matter for the location of the well and the
13 tank battery and the access road. There are some
14 concerns about the alternate location proposed. And
15 there's no exception location approval yet for that
16 alternate location, for the well proposed by the
17 surface owner.

18 And the main concern of the land
19 board is essentially that the hydrocarbons will -- some
20 of the hydrocarbons will be stranded in this location.
21 But the land board, since this was just proposed
22 recently, hasn't had time yet to investigate that.

23 The other point I want to make is that
24 it's been our observation, you know, we keep talking
25 about how this has been going on for two years, and

1 it's been our observation that Magpie has really tried,
2 in this case, to be accommodating and reasonable and
3 work with the surface owner and has been met throughout
4 this process, as far as we can --

5 MR. BARBER: Objection.

6 CHAIRMAN EPEL: I agree. I am going to
7 sustain the objection. There's an objection. I am
8 sustaining it.

9 MS. WARREN: Okay. We want to point out
10 that we think they have been very reasonable and
11 their position now is reasonable and accommodating;
12 and that the land board's reserved mineral interest
13 here isn't infringed upon by reasons that we don't
14 think are clearly explained, or facts that we don't
15 think are clearly explained in this case.

16 We don't believe -- we don't really see
17 any reason why any of these structures have to be
18 located off the property. We think that Magpie's
19 proposal has put these structures as far away from the
20 riding events and the other structures as they possibly
21 can. And, you know, a lot of other concerns come up
22 when you start talking about putting the tank battery
23 off the property and other wells off the property, that
24 could potentially make this not economically feasible
25 for the operator, which will, in turn, put additional

1 burdens on the State Land Board.

2 So, again, we just want to say that we
3 support this proposal as made by Magpie. And we think
4 that this is adequately reasonable and adequate to
5 protect public health and safety.

6 CHAIRMAN EPEL: Thank you, Ms. Warren.
7 Any questions for Ms. Warren? Thank you. Mr. Barber.

8 MR. BARBER: Thank you. Your Honor, I,
9 -- Chairman Epel, Your Majesty, Your Holiness, I don't
10 know how to address you, but you got the idea. I'll
11 start our case just by asking a few questions of
12 Mr. Warner.

13 Mr. Warner, you've attached -- you have
14 given the Commission some agreements, one of which is
15 entitled, "Surface Use Agreement," Exhibit D. Could
16 you get that in front of you, sir?

17 CHAIRMAN EPEL: Mr. Barber, before you
18 start to do cross examination, really, the issue here
19 is the APD that's in front of us, and, quite frankly,
20 the recommendation that the staff has been compelled to
21 come up with. I hope your very, very brief inquiry is
22 right on point with those two points.

23 MR. BARBER: It is. This is an unsigned
24 copy. Are you saying there's a signed copy of this
25 document?

1 MR. WARNER: Yes.

2 MR. BARBER: And would you look at
3 paragraph D -- I guess it's paragraph 7D at page 3 of
4 this document. Are you there? This is your surface
5 use agreement that you say has been signed with the
6 owner to the east; is that right?

7 MR. WARNER: Correct.

8 MR. BARBER: This surface use agreement
9 allows you to put a tank battery on that property, does
10 it not?

11 MR. WARNER: Yes.

12 MR. BARBER: Okay. Now, on the property
13 to the west -- so let's look back at our map. It would
14 be just to the west of the Chase property, where it
15 looks like it's green agricultural, right, now, that's
16 just -- those are just cornfields; is that correct?

17 MR. WARNER: I'm not sure it's in
18 corn, but it's green in that picture.

19 MR. BARBER: You understand that when and
20 if that area is ever developed, you would be entitled
21 to an oil and gas operations area where you could put a
22 tank battery? You understand that, don't you?

23 MR. WARNER: Would you repeat the
24 question, please?

25 MR. BARBER: You could put a tank battery

1 on that property to the southwest?

2 MR. WARNER: I would attempt to put a
3 tank battery there.

4 MR. BARBER: Okay. Have you attempted to
5 put a tank battery there?

6 MR. WARNER: I contacted a representative
7 for the owners and had discussions about a tank
8 battery.

9 MR. BARBER: Okay. And what did they
10 say?

11 MR. WARNER: We didn't get very far. He
12 put up a fair amount of resistance in our negotiations.

13 MR. BARBER: You feel you have the right
14 to put it there, is that right, on that property? You
15 could put a tank battery there, because it's the same
16 lease?

17 MR. WARNER: I would, yes.

18 MR. BARBER: Okay. That's all of the
19 questions I have.

20 CHAIRMAN EPEL: Okay. Direct case?

21 MR. BARBER: Yes, sir, Wendy Chase.

22 Ms. Chase, you have testified previously.
23 Do we need to put the witness under oath or --

24 CHAIRMAN EPEL: No.

25 MR. BARBER: The location that is

1 identified on this map, with a yellow dot, that's a
2 little bit south of the drilling window. Do you see
3 that?

4 MS. CHASE: Yes.

5 MR. BARBER: Now, Ms. Chase, do you
6 actually want the well there?

7 MS. CHASE: No, I don't want the well on
8 the property. Wherever it is on the property is going
9 to impact what I have been developing for the last 15
10 years. I have developed something over 15 years and
11 anything will impact that.

12 MR. BARBER: That's the location you
13 suggested to provide for an accommodation?

14 MS. CHASE: Yes, it is, and it will
15 impact us, but that's the least of our impacts, to have
16 it there.

17 MR. BARBER: How will it impact your use
18 of the property, to have a well at your selective
19 location?

20 MS. CHASE: I will have to restructure my
21 whole cross country course and redo the distances. I
22 will have to screen it somehow, so that people aren't
23 going to be interfered with.

24 MR. BARBER: As far as you know, is there
25 anything that prevents the wells, either of those dots,

1 from being moved to the east side of that property
2 line?

3 MS. CHASE: No, there is nothing that
4 would prevent that, particularly now that they are
5 going as a vertical well, that 800-foot drilling
6 window could easily be moved to the east.

7 MR. BARBER: I want to move now to the
8 tank battery, because, would you say it's fair to say
9 that is really the issue that you have the most
10 problems with in the staff recommendation?

11 MS. CHASE: It is absolutely the crux of
12 the problem and it would close us down. We would not
13 be able to continue operating with any tank battery on
14 that property. Magpie has always said from -- starting
15 with their so-called good faith consultation, that we
16 would never have a tank battery on our property, even
17 when Steve Lindblom and -- the first time, they all
18 came out, Mark Davis, Carol Harmon, when they all
19 came out, they told the staff, at that time, that they
20 were not considering a tank battery on our property and
21 that they were going to place it either on the property
22 to the west or the property to the east. And that is
23 always -- the tank battery is something that they have
24 brought up only in the last couple of weeks.

25 MR. BARBER: And describe for the

1 Commission why you think you would have to shut down if
2 the tank battery is on your property? It just looks
3 like a small area.

4 MS. CHASE: Well, I think it's a --
5 misrepresented in that picture, because any tank
6 battery around where we have to tack up, and things,
7 would close us down. I could not afford the liability
8 on that. We have little kids that are tacking up in
9 there. We had a pony club prep rally, for instance,
10 when -- several times last year, but on one particular
11 occasion, they were out there all day. And this was
12 more than 20 people all day long. We only had probably
13 groups of four at a time out on the cross country
14 course. They had a lunging seminar, they had a show
15 jumping seminar, they had a cross country
16 demonstration. The rest of that time, which was
17 probably 75% of that day, we had 25 to 30 kids gathered
18 around their trailers, learning how to bandage. So,
19 now you have little kids, 8 to 12-year olds, all
20 hunkered down under a 1200-pound animal, trying to
21 learn the idiosyncrasies of doing a stable bandage
22 versus a shipping bandage, versus a hawk wrap, versus
23 bandaging for an abscess. And they are all grouped
24 under this horse, while -- if somebody comes in right
25 then, if the tank hisses or -- what's going to happen?

1 You are going to have some little 8-year-old's
2 head in conflict with a 1200-pound horse, with a piece
3 of steel on its foot.

4 And I personally am not willing to take
5 that liability. I would close down, because, I mean,
6 whether I could get insurance or not, from an ethical
7 point of view, knowing that I was going to be exposing
8 kids to that kind of hazard, that I can't control -- I
9 cannot control when those tank batteries hiss or
10 explode or do whatever they do. I can't control it.
11 And there is no reason why that tank battery, if they
12 are now drilling in that center window, why it's, as
13 has been pointed out, it could be on the east side,
14 which would be a much better flow line, a much better
15 drainage, down to that southeastern corner of that
16 property.

17 There's already, as they already pointed
18 out, there's already a tank battery right across the
19 road there. It would centralize the tank batteries.
20 On the -- to the east of that is a dairy. It would be
21 well away from the three -- where they have it now,
22 they have it centrally located between three houses.
23 There are three residences, all in a fairly small
24 circumference, around that tank battery. So, not only
25 would it close me down, but it would -- there is also a

1 very, very logical and preferable location for them.

2 MR. BARBER: Where are the preferable
3 locations, in your view, for the tank battery?

4 MS. CHASE: Well, for me, they -- I would
5 think, from a drainage point, from -- just from a
6 hydraulic point of view, you would want it down in the
7 corner of East County Road 14 and County Road 13.

8 MR. BARBER: Can you point out --

9 MS. CHASE: Say this corner right here.
10 All this land drains that way. And the flow lines
11 would go that way. It's pretty basically hydraulics.
12 There's already an existing tank battery right here.
13 There -- this is the dairy right here. It would be
14 easy access from any of those -- it would drain this
15 entire area.

16 Mr. Barber pointed out, there is ample
17 room for a tank battery on this site. As Phil -- as
18 Mr. Barber pointed out, they have room on this site for
19 a tank battery. So you could move it that way. If you
20 put their wells here, they obviously -- that's the
21 shortest flowline, the most efficient hydraulics.

22 (Lines 18 to 23 were hard to hear.)

23 MR. BARBER: Stay there just a second.
24 If the well is located on your property, is there a
25 road that goes there right now, or would you basically

1 have to have a road built on your property?

2 MS. CHASE: They would have to build a
3 road on our property. There is no existing road where
4 this blue line is right now.

5 MR. BARBER: Come sit down. Where are
6 the tank batteries proposed -- what's the status of
7 that area of the property, besides being close to this
8 tack up and parking area?

9 MS. CHASE: That is where all of the --
10 that's where introductory people ride and jump. At the
11 moment, I just finished ripping the whole thing up. I
12 had to move a lot of those jumps off of there, for the
13 last year. I was supposed to do it last November. We
14 got an early snowstorm. I haven't been able to drive
15 out there.

16 Last week, I did go out. I have been
17 able to rip that up and start redoing the footing,
18 replanting it, and as soon as it dries out again, I
19 will replace all of the obstacles. But that is where
20 the young -- or not necessarily the youngest, the most
21 beginner -- the most elementary people, when they ride,
22 they don't ever go above the ditch. They stay down,
23 where they are closer to the mom or dad or the other
24 horses, or whatever. It's just a more controlled area.

25 MR. BARBER: That's the area around the

1 tank battery, the proposed tank battery area?

2 MS. CHASE: It's the parking is where the
3 proposed -- but just -- I'll point. The beginner
4 riders, I mean, some of them don't even get out of this
5 little round pen. Beginner course stays right down in
6 here. Right now, it starts here, comes down and
7 makes -- it's a big kidney shape, and it ends up right
8 there.

9 MR. BARBER: Where their proposal is for
10 the tank battery now, what is the property situation
11 there, right there?

12 MS. CHASE: This is where they do their
13 bandaging demonstrations, and that's -- it's a park --
14 it's variegated.

15 MR. BARBER: What do you grow there?

16 MS. CHASE: We have grass, hay, which has
17 just taken me four years to establish, due to our lack
18 of water.

19 MR. BARBER: I don't have any other
20 questions of the witness.

21 CHAIRMAN EPEL: Thank you.

22 MR. NIEBRUGGE: We don't have any
23 questions of Ms. Chase.

24 CHAIRMAN EPEL: Thank you. Commissioner
25 questions of Ms. Chase? Okay. Commissioner Houpt?

1 COMMISSIONER HOUPPT: Can I ask Magpie a
2 question?

3 CHAIRMAN EPEL: Certainly.

4 COMMISSIONER HOUPPT: Okay. It's been
5 suggested that it might be more advantageous to put a
6 tank battery in that southeastern corner. Do you have
7 specific language in this surface use agreement that
8 indicates that that would not be a possibility? I have
9 heard you say it's not a possibility, but I am
10 wondering if there's language in there that indicates
11 that?

12 MR. WARNER: I believe there is. I will
13 have to locate it for you.

14 As I understand it, on page 1, in the
15 operator's oil and gas -- on the lands in Exhibit D.

16 MR. LEPORE: Clarify for us what exhibit
17 you are looking at, please.

18 MR. WARNER: Magpie's exhibit list, Item
19 D, surface use agreement.

20 CHAIRMAN EPEL: Mr. Niebrugge, let me ask
21 you this: Do you really want your client to be doing
22 the legal interpretation for you?

23 MR. NIEBRUGGE: I'm happy to respond.

24 CHAIRMAN EPEL: Why don't you do that?

25 MR. NIEBRUGGE: Commissioner Houpt,

1 let me respond to your question.

2 COMMISSIONER DOWLING: Could you repeat the
3 question?

4 MR. NIEBRUGGE: Yes. The question was, in
5 the surface agreement that Magpie has with owners, to
6 the east, what are the limitations to a tank battery
7 there and facilities off of that surface property
8 supporting that tank battery?

9 Commissioners, I'm looking at Magpie's
10 exhibit list, which is a bound exhibit list prepared
11 for this hearing.

12 CHAIRMAN EPEL: Just --

13 MR. NIEBRUGGE: At Exhibit D, about
14 two-thirds of the way down, it says, "Operator's oil
15 and gas operations on the lands. Operator intends to
16 drill or cause to be drilled oil and/or gas wells on
17 the lands. Lands is defined as that property to the
18 southeast, as depicted on Exhibit A, defined as wells."

19 Then, on the fourth line down, where the
20 line picks up, "pipelines, flowlines, separators, tank
21 batteries" -- and this is what can be constructed --
22 "electric lines and any other facilities or property
23 necessary for operator to conduct operations on the
24 well." "Well" is the defined term that limits to
25 those wells on the surface property.

1 CHAIRMAN EPEL: Okay.

2 MR. NIEBRUGGE: Commissioner Houpt, does
3 that answer your question? Thank you.

4 CHAIRMAN EPEL: Commissioner Alward.

5 COMMISSIONER ALWARD: Thank you,
6 Mr. Chair, I got a question for the surface owner. So,
7 we have got two -- go to the less controversial subject
8 matter right now -- with the actual well locations, the
9 two proposed locations.

10 Could you explain why your preferred
11 location is superior to Magpie's preferred location?

12 MS. CHASE: It's just -- it's as far
13 south, as far away from the -- it's the least amount of
14 land. I'm still going to be sacrificing land all of
15 the way up and along to it, and that whole -- I'm going
16 to have to have a boundary between that road, all of
17 the way up
18 there. So, the further south -- the only reason it's
19 where it is, is because of the neighbor in the corner
20 there. There's a limit that you have to have 150 feet
21 from their property boundary. That's what we are
22 trying to get, right to the edge of that. We are
23 acknowledging the 150-foot buffer that you have to
24 leave. And then we were wanting to be right on the
25 edge of that.

1 I mean, we're losing land all of the
2 way -- the further north, the more we lose.

3 CHAIRMAN EPEL: Commissioner Dowling.

4 COMMISSIONER DOWLING: Thank you,
5 Mr. Chair.

6 Ms. Chase, the tank battery, as proposed,
7 it would -- it has no more than two low-profile tanks.
8 There would be a minimum eight-foot privacy fence that,
9 the construction of -- the finish of which should be
10 reasonably acceptable to you. We have heard and there
11 is reason to believe, given other experience in that
12 area, and the productivity of the wells and so on, the
13 battery would likely be visited on a matter of every
14 several weeks as opposed to several times a day or
15 several times a week, even. Those visits would be of
16 relatively short duration. I have to think that, on
17 this road, you occasionally have an unmuffled
18 motorcycle go by, or somebody honks a horn, that
19 there are periodic, unpredictable, loud disruptions
20 there.

21 I am just asking you to really consider,
22 in all seriousness, let's say that we were to approve
23 this location for the well, which is intended to be as
24 minimally disruptive to your life and property as
25 possible, but if this tank battery were to be built as

1 proposed by staff, with all these enclosures, with the
2 infrequency of the visits, and, so on, do you literally
3 mean it that, despite everything that has been done to
4 accommodate you, you would close down your operation?
5 You would shut this down? You would move? You would
6 leave? You've said that, and you say that -- I have to
7 take that in and make that part of my decision
8 calculus.

9 And I just want to ascertain that that
10 is, in fact, your honest belief? It seems an
11 incredible statement to me, but I put it to you to
12 restate it or rethink it.

13 MS. CHASE: No, I didn't say I would
14 leave, because I can't leave. That's where I live
15 and --

16 COMMISSIONER DOWLING: You said you would
17 close your horse operation.

18 MS. CHASE: I would have to close it to
19 the public. I mean, that area there, is not as big as
20 they try to make it look on there. That's a very small
21 buffer between us -- these little kids, as I am talking
22 about, hunkered down, and, you know, that they forget
23 that that horse is a lot bigger. They're intent at
24 looking at something. They are underneath there. That
25 is my buffer between them and the road, that space.

1 I don't know if you even have a dog, but,
2 you know, that truck coming in your yard is different
3 than a truck going by. They react to it. The change
4 of the air brakes come on. They do. And if I have no
5 control over when, even if it's once every two weeks,
6 if it happens to be at the wrong time, it's the wrong
7 time. And I don't think that afterwards is the time to
8 decide, oh, well, whoops, I shouldn't have had that kid
9 out there. I didn't realize that that truck was going
10 to come out.

11 COMMISSIONER DOWLING: Is that concern --
12 you said, if it's the wrong time, it's the wrong time.
13 Is that concern substantially addressed by an
14 arrangement where there's a best effort made not to
15 conduct these operations during your scheduled
16 events --

17 MS. CHASE: Well, I haven't seen the best
18 effort yet.

19 COMMISSIONER DOWLING: I am asking you a
20 forward-looking question. If there was a provision, a
21 condition, actually, of approval, that stated that, as
22 long as you give notice that you're planning an event,
23 that there would be a very low likelihood, indeed,
24 let's assume, that that visit would take place during
25 your event, would that address this concern of yours to

1 a material extent?

2 MS. CHASE: It still doesn't address the
3 fact that tank batteries are noisy. They are, in and
4 of themselves, without the truck traffic, they still
5 hiss, they spew, they do a lot of things that are
6 very detrimental to anybody's peace.

7 COMMISSIONER DOWLING: Is it reasonable
8 to think, though -- and I will end this right now
9 because I don't want to have a debate with you. It's
10 surrounded by an 8-foot high fence. You aren't off in
11 a secluded wilderness area. Is it reasonable to think
12 that the occasional hissing from a tank is truly of a
13 whole different order of disruption from the
14 motorcycles or the trucks or the pickups, and so on,
15 that go by on that road?

16 MS. CHASE: Absolutely. And it's closer.

17 COMMISSIONER DOWLING: Thank you.

18 CHAIRMAN EPEL: Commissioner Houpt.

19 COMMISSIONER HOUP: I am not quite sure
20 who will want to answer this question, if it's staff or
21 if it's Magpie. We're talking about tank batteries,
22 and I'm afraid I am not familiar with the noise
23 concerns of the tank battery. And I do know that, for
24 many ancillary facilities, there's been a great deal of
25 advance made in noise mitigation efforts.

1 And, so, what I would like to know is
2 what kind of noise mitigation technology is out there
3 to address the concern that the landowner has with
4 respect to noise generated from a tank facility?

5 CHAIRMAN EPEL: Mr. Neslin, is this best
6 directed towards Mr. Dillon or -- I don't know if
7 anybody is qualified to talk about --

8 MR. NESLIN: I could ask whether
9 Mr. Dillon and Mr. Kerr, Mr. Ellsworth, feel prepared
10 to answer that, from the staff's standpoint. I see
11 Mr. Dillon reluctantly making his way to a microphone.

12 MR. DILLON: Thank you. Um, I guess the
13 first answer is tank batteries do make some noise, but
14 not a lot of noise. There is hissing going on.
15 There's clicking every once in a while, and things like
16 this. It's not a lot of noise.

17 As far as the direct point of your
18 question, are there any mitigation methods that are
19 possible? Yes, there are. I mean you can put up sound
20 walls. You can do different things. Whether that's an
21 economic necessity, due to the small amount of noise
22 involved, I don't know. But that's really about the
23 best answer I can give you. As far as I know, there's
24 no special type of -- there's no special equipment you
25 can put on a battery.

1 COMMISSIONER HOUP: Mr. Dillon, you and
2 I both worked on the noise regulations several years
3 ago. And out of that, there were many discussions that
4 came up about how one person's noise tolerance is
5 different from another, and sensitivities, and activity
6 around whatever facility it was.

7 I was just wondering, in this type of
8 situation where you have a business that's being
9 conducted, that has some sensitivity towards noise, and
10 towards sudden unfamiliar sounds, if such mitigation
11 might not -- I mean, if there is a product out there,
12 or several products out there, that would allow that to
13 be mitigated. And I think I am hearing you say there
14 are.

15 MR. DILLON: Well, there's the standard
16 noise mitigation equipment that you could put out
17 there. I guess more to the point, my answer is the
18 noise is at such a low decibel level, that I can almost
19 guaranty you, it will be below, probably, the road
20 noise, No. 1, and also below any statute we have
21 concerning noise.

22 CHAIRMAN EPEL: Thank you, Mr. Dillon.
23 Any more questions for Ms. Chase?

24 COMMISSIONER CUTRIGHT: I have just one
25 comment. You have eliminated the dehy, you've

1 eliminated the compressor on-site. Those are two big
2 noise-producing -- or could be two noise-producing
3 pieces of equipment that you've eliminated. I have a
4 question for Magpie. Back to the tank
5 batteries -- you have a tank battery associated with
6 the well you drilled. Why can't you commingle
7 production into that tank battery? Just -- does your
8 surface use agreement include that?

9 MR. WARNER: The well we drill to the
10 north?

11 COMMISSIONER CUTRIGHT: Yes.

12 MR. WARNER: It's located on the
13 northeast of the northeast, which is across this
14 section. Technically, I don't know if we could do
15 that.

16 I think the other concern would be, given
17 the lay of the land, where Ms. Chase has improved her
18 riding area is a large hill. You would lay a flowline,
19 you would actually have to trench her riding area,
20 which we wouldn't want to do, and go up over a hill,
21 and then you would go another, I guess, half mile
22 northeast. It would be difficult.

23 COMMISSIONER CUTRIGHT: Okay. And the
24 flow line to the tank battery -- to this tank battery
25 is a three-phase flowline you are going to separate at

1 the tank battery; is that --

2 MR. WARNER: That is correct.

3 COMMISSIONER CUTRIGHT: So, distance on
4 a flowline, a three-phased flowline is very difficult
5 technology, to go over a hill or to go to an adjacent
6 tank battery.

7 MR. WARNER: Right. You would almost
8 have to compress and boost at this point.

9 COMMISSIONER CUTRIGHT: Okay.

10 CHAIRMAN EPEL: Commissioner Dowling.

11 COMMISSIONER DOWLING: Thank you,
12 Mr. Chair. May I -- is it appropriate if I ask staff
13 to share any additional thoughts they had in their
14 evaluation of the tank battery issue?

15 CHAIRMAN EPEL: Sure.

16 MR. NESLIN: Yeah, certainly. And this
17 will, I think, repeat some of what I said previously.
18 But we did talk to Magpie about the option of trying to
19 relocate the tank battery off of the property to
20 accommodate the surface owner. And what we heard is
21 what you've heard today; that Magpie's interpretation
22 of their surface use agreement with the property to the
23 east would preclude the development of a tank battery
24 there, for liquid produced on the Moqui Meadows
25 property.

1 To the west, they were unable to resolve
2 this issue with the surface owner, during the period of
3 time that we were talking to them earlier this month.
4 They propose locating the tank battery here, along the
5 road. We believe that with the conditions that we have
6 proposed, the location of the tank battery along the
7 road is consistent with the public welfare and with the
8 current use of Moqui Meadows.

9 I understand this is not a preferred
10 outcome for Ms. Chase or Moqui Meadows. I wish we
11 could find an outcome here that would satisfy everyone.
12 We've been unable to do so. I think, if people were
13 going to agree, we wouldn't be having this discussion
14 here today. We're having this discussion because
15 people can't agree.

16 We have proposed and developed a number
17 of conditions in terms of the size of the facility,
18 screening of the facility, the operation of the
19 facility, when it's going to be visited, and we think,
20 in total, these conditions responsibly and adequately
21 mitigate the surface owner's concerns. And I
22 understand that -- I acknowledge the surface owner
23 doesn't agree with that. This is just a situation
24 where we disagree with the surface owner.

25 CHAIRMAN EPEL: Okay. Thank you,

1 Commissioner Dowling.

2 COMMISSIONER DOWLING: Thank you,
3 Mr. Chair. I would like to make a motion on this
4 matter. My motion is going to be substantially to
5 accept and approve the staff's recommendation. I have
6 two very minor changes that I would like to propose to
7 the staff's recommendation, and they are responsive to
8 various things we have heard today.

9 I'm looking at the staff's March 23rd
10 memorandum, on the second page down, near the bottom.
11 You said, "Staff Analysis: The Staff has proposed a
12 12-foot wide access road." I am going to propose
13 language which makes that standard a bit more
14 qualitative and less quantitative. And the basic gist
15 of it would be that the road shall be no wider than is
16 reasonably necessary.

17 What I propose is, at the beginning of
18 that bullet point language, we delete, "other than
19 during drilling and workover operations." And then the
20 sentence begins, "Access to the well location shall be
21 from WCR 14 via" -- I would eliminate "12-foot wide,"
22 "via an access road along the eastern property boundary
23 as proposed in Magpie's sketch." And then I'd
24 delete, "during drilling workover operations access to
25 the well shall be along the same road." And then,

1 let's just say, "that the road shall be no wider than
2 is reasonably necessary for safe maneuvering of
3 equipment and trucks." So the second sentence is just,
4 "The road shall be no wider than is reasonably
5 necessary for the safe maneuvering of equipment and
6 trucks."

7 My other minor change that I would like
8 to propose is in the -- I'm looking now at the e-mail
9 from staff, dated March 23rd, that modified and updated
10 the COAs on the tank battery. And I'm looking at the
11 very last bullet point there. I am a bit concerned of
12 a -- being overly restrictive of the operator here. I
13 think that, given the frequency of the equestrian
14 events, and the frequency of the operational visits,
15 that the likelihood of head-on conflicts there is
16 relatively small. But, I would like to just propose
17 that we say that the operator shall use best efforts to
18 ensure that operations and maintenance activities --
19 and I would leave the rest of it as is.

20 So, with those modest changes, I would
21 move acceptance of the staff's recommendation on this
22 matter.

23 COMMISSIONER CRAIG: Second.

24 CHAIRMAN EPEL: Discussions.

25 Commissioner Houpt.

1 COMMISSIONER HOUPPT: I am a little
2 disappointed that we have suggested language that would
3 not be more defining for these folks, because it's
4 taken two years to get to this point. And I think you
5 can look at the new language and try to wonder who is
6 going to define, "reasonably wide enough to travel." I
7 think that's why staff probably came up with a certain
8 width and best efforts.

9 I -- I am not quite sure that I would
10 agree that these parties are at the point where they
11 have worked with each other, with best efforts in
12 mind, without being more specific about what those
13 requirements will be...

14 Those are my comments on the amendments.
15 What I would ask, if we could have a friendly amendment
16 that would require noise mitigation walls around the
17 tank battery, so that the landowner's concern about
18 sudden foreign noises, when people are working under
19 horses or with horses, could be mitigated. I think
20 that would make me feel better about the location of
21 that activity. Do you see that as a friendly
22 amendment?

23 COMMISSIONER DOWLING: Well, I know you
24 to be a friendly person, but...

25 COMMISSIONER HOUPPT: I am.

1 COMMISSIONER DOWLING: I'm not sure what
2 a noise mitigation fence is. I think the fact there's
3 an 8-foot high privacy fence around --

4 COMMISSIONER HOUPPT: May I explain it to
5 you?

6 COMMISSIONER DOWLING: Yes.

7 COMMISSIONER HOUPPT: A noise mitigation
8 wall is made out of special material that absorbs the
9 noise. And it's very effective in most situations.
10 That's why I was asking Mr. Dillon if he had seen that
11 in this type of situation.

12 COMMISSIONER DOWLING: I guess,
13 Commissioner Houpt, given Mr. Dillon's response that
14 this noise, in his opinion, is quite low, I have to
15 admit I'm reluctant to ask for that requirement. I
16 don't know what the expense is, but I'm not sure that,
17 even if it's a relatively modest expense, if it has a
18 reasonable cost/benefit and if we should impose that
19 requirement.

20 COMMISSIONER HOUPPT: My only point in
21 making this recommendation is that if we're talking
22 about sudden noise changes in a tank battery, that's a
23 foreign sound. When you have a road going by your
24 property, I think animals can become accustomed to that
25 and that doesn't create a sudden jolt. But if you have

1 a piece of machinery that has a sudden spew or a
2 sudden noise, I think that that could be a concern.

3 COMMISSIONER DOWLING: May I ask for the
4 engineering manager's thoughts on that before accepting
5 that friendly amendment? Mr. Dillon.

6 CHAIRMAN EPEL: Before we do this, before
7 we now basically ask for testimony, now that we have a
8 motion -- I mean, I am concerned because we don't have
9 any pricing on this. To me, it's a prospective issue.
10 If we have a problem, that's something to come back to,
11 the Commission, but we have no testimony on the cost of
12 one of these noise barriers.

13 I guess we're at the point of
14 deliberation, and I would rather have it discussed
15 inside -- and instead of taking extraneous testimony,
16 because I think we're then compelled to ask Magpie
17 their opinions. I just -- I think we're in the
18 deliberation part and we got a motion.

19 COMMISSIONER HOUPPT: Do you want to
20 accept my amendment?

21 COMMISSIONER DOWLING: I cannot without
22 some assurance that I think it's a cost-effective
23 measure to impose.

24 COMMISSIONER HOUPPT: I understand that.
25 I will not be able to support your motion, and I do

1 have huge concerns over the amendments you made.

2 CHAIRMAN EPEL: Commissioner Craig.

3 COMMISSIONER CRAIG: You know, again,
4 we're getting into issues about fairness which we had
5 to deal with this morning, and they were just as tough
6 this morning. But we have a mineral owner who has the
7 right to develop this property. We have a state who
8 has the right to go ahead and receive its royalties,
9 and we have a surface owner who has the right to be
10 minimally impacted. And what we're trying to do is
11 optimize it, so that -- it's not perfect for anybody
12 but at least it's the best that can possibly be done.

13 From the perspective of noise, I just
14 heard David, in one of his last comments to us, say,
15 that there's no evaporation and dehy, so there is going
16 to be a little hissing and whatever. I do have to say,
17 I am scared of horses. If a horse goes ahead and kicks
18 a trailer, I jump. So, those things do happen and they
19 work around that.

20 I don't know if you can ever legislate or
21 regulate people getting along. All we can do is the
22 best that we can, and I think staff has come forward
23 with the best that they can to try and go ahead and
24 come up with a fair proposal. Now, it's time to go
25 ahead and move forward, and I think we need to do that.

1 CHAIRMAN EPEL: Commissioner Alward.

2 COMMISSIONER ALWARD: Thank you
3 Mr. Chair. Without taking a position for or against
4 Commissioner Houpt's suggested amendment, I would like
5 to bring to the Commission's attention the difficulty
6 we faced in this morning's decision about the state not
7 having taken actions for a -- that have led to a
8 foreseeable conclusion, in terms of the water quality
9 release sorts of things. And, so, here, I am not sure
10 whether or not I would support Commissioner Houpt's
11 amendment, but that being prospective is not
12 necessarily a bad thing.

13 CHAIRMAN EPEL: Well, to clarify, we're
14 not going to be voting on Commissioner Houpt's
15 amendment. Basically, what we have is a motion on the
16 table, which, if it passed, we will conclude the
17 matter. If it fails, then we're open for another
18 motion. Additional comments? We have a motion and a
19 second.

20 (Whereupon the vote was called.)

21 CHAIRMAN EPEL: Passes 6 to 1. This
22 matter is concluded.

23 (Recess.)

24 CERTIFICATE

25 STATE OF COLORADO) ss

1 CITY AND COUNTY OF DENVER)

2

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

7

8 That the foregoing is a true
transcript of the proceedings had; that I am
neither attorney nor counsel, nor in any way
9 connected with any attorney or counsel for any
of the parties to said action or otherwise
10 interested in the event;

11

12

13

14

Harriet S. Weisenthal

15

16

17

18

19

20

21

22

23

24

25