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1 otherwise, simply because a surface owner comes before
2 you and says, "This well should not be drilled."

3 And another thing I don't understand is that I
4 don't know anything about this agricultural act we've
5 been talking about, but what I would like to know
6 specifically is if certain lands were taken out of
7 production as a result of oil and gas operations, I never
8 did understand whether this would or would not disallow
9 the qualification of all remaining lands. I didn't hear
10 whether it would or would not.

11 I think that question should be answered. And
12 I suggest to you that if the answer to that is no, then
13 that is not a good reason. If the answer to that is yes,
14 then I think we should look into it further, and I also
15 think we should address the question as to whether under
16 those circumstances some compensation may be due to those
17 persons who wanted to drill the oil and gas well on the
18 property where they had the right to do so.

19 CHAIRMAN ANDERSON: Well, I would hope that if
20 we're setting any precedent--that we're not setting any
21 precedent; we're just following the precedents. And that
22 is to the extent possible, the Commission encourages
23 people who have disagreements and problems to work them
24 out between themselves without involving the Commission
25 hearing the differences, or at least narrowing the

1 differences to the extent possible before the Commission
2 gets involved.

3 So I'm not sure that our suggestion that the
4 parties go away and try to deal with this with the
5 understanding that the applicant--or that Gerrity not
6 drill is any kind of precedent of the kind you're worried
7 about. All we're trying to do, or I'm trying to do, is
8 to encourage the resolution of this problem on a more
9 friendly basis than it feels like has existed in the last
10 two months. I wouldn't read anything more into it than
11 that.

12 MR. THEODORE BUDERUS: Maybe I didn't make
13 myself clear. I did address the issue of damage to the
14 whole by damage to the parts, so to speak. We are--in
15 fact, if any of it is out of compliance, we are out of
16 compliance on everything. We're looking at a potential
17 liability that's in excess of over \$60,000 on one
18 payment, we're looking at liability of \$120,000 loan on
19 another that's in jeopardy, if those go out of
20 compliance. We do have substantial risk involved here.

21 They talk about their liquidated damages
22 clause. We have that same type of scenario in effect in
23 our case right now.

24 CHAIRMAN ANDERSON: Any--anybody from the
25 Commission have any comments or observations?

1 COMMISSIONER MacMILLAN: I have a question.
2 Do we have any paperwork in front of us for these
3 emergency hearings?

4 (Discussion off the record.)

5 COMMISSIONER MacMILLAN: So my next question
6 is what happens with emergency hearings? Is there a
7 specific item in front of the Commission we need to
8 respond to? It's a request to what?

9 CHAIRMAN ANDERSON: Well, it's a request for
10 the Commission, I presume, to hear this on an emergency
11 basis today.

12 MR. EVANS: That's correct.

13 COMMISSIONER LARSON: What's the requested
14 relief? To stop drilling?

15 MR. EVANS: Yes. Temporarily to suspend all
16 drilling until such time as you can have a full hearing
17 on all the evidence presented to you, and then make a
18 decision accordingly.

19 COMMISSIONER LARSON: The evidence that the
20 Highly Erodible Soils Act prevents any drilling?

21 MR. EVANS: That's correct. Or--

22 COMMISSIONER LARSON: Did they think about
23 this when they applied the Highly Erodible Soils Act to
24 land with severed estates?

25 MR. EVANS: I doubt seriously whether the

1 Congress considered that. The Congress has a very
2 interesting agenda sometimes, particularly in the
3 environmental area.

4 But I commend Congress. It's one of the areas
5 we've needed to address for a long time.

6 COMMISSIONER LARSON: But am I correct in
7 understanding from what I heard that there may be some
8 way to drill and mitigate the impacts so that the
9 landowner, the surface owner, could still stay in
10 compliance?

11 MR. THEODORE BUDERUS: We don't know yet at
12 this point.

13 COMMISSIONER LARSON: But you can look into
14 that.

15 MR. EVANS: Yes, we can.

16 MR. THEODORE BUDERUS: That's contingent upon
17 their schedule or how they resolve that.

18 MR. JOHNSON: I've already asked for that.

19 COMMISSIONER MacMILLAN: And I--excuse me.
20 And I question if, in fact, it's the charge of the
21 surface occupants to check into that or if it's the
22 charge of the operating company who wants to drill the
23 well to go to the Soil Conservation Service and find out
24 what the Soil Conservation Service suggests are the
25 methods.

1 So it kind of changes the whole impetus around
2 quite a bit from these people who are responsible for it
3 to the operator and have the operator go to the Soil
4 Service, find out what it takes to comply, and then work
5 that into their schedule when the well needs to be
6 drilled. You're essentially asking people who have no--

7 MR. DANIEL BUDERUS: Benefit--

8 COMMISSIONER MacMILLAN: Well, it's not just
9 benefit, but have no control over what the operations are
10 going to be, the disturbance is going to be, to go in and
11 get all this stuff cleared, when in fact they have no
12 ability to make sure that that happens. Whereas the
13 operating company is in the position to make sure that it
14 happens.

15 CHAIRMAN ANDERSON: What's the date of the
16 December hearing?

17 MS. BEAVER: 21st, 22nd.

18 CHAIRMAN ANDERSON: Yes. You've been wanting
19 to say something. What's your name?

20 MR. WARDELL: My name is Ray Wardell. My
21 experience in the current situation with the Gerrity
22 Company in drilling wells is very relevant to this
23 concern.

24 Gerrity drilled 14 wells on a section of land
25 starting in June and I think were finished by August,

1 maybe early September. 14 wells. Only one of those
2 wells has been reestablished so I could plant it. Even
3 though I'd asked for a guarantee that they would have
4 that finished by the middle of August, I had to delay my
5 planting.

6 I'm on this highly erodible land. Basically
7 these are sand dunes that blew out of the Platte River
8 Valley some thousand years ago. They are sand dunes that
9 have grown vegetation. Okay. And we didn't say that
10 they couldn't drill on them. We're not subject to the
11 federal regulations, because we're not participating in
12 federal programs per se. So that's not exactly an issue
13 of ours.

14 However, they've made it an issue with Gerrity
15 from the very beginning about the issue of wind erosion.
16 We are only very fortunate that this late in the fall
17 we've not had major winds. We've had some winds already,
18 and already there is sand being blown off of those and
19 drifting.

20 And I really invite you to come and see.
21 There's at least ten wells there that have not had any
22 rehabilitation at all. Two of those maybe wouldn't blow;
23 the rest sand dunes.

24 Now, I finally called a week ago as a result
25 of a Caterpillar showing up on my place to push one of

1 these in. He was violating about three regulations when
2 he was doing that. He buried the plastic. I asked the
3 Cat operator if he did that. He said, "Yes, I did."

4 He was pushing the topsoil. There was very
5 little topsoil put back. Some of our well sites got no
6 topsoil put back, which is in violation of regulations.
7 This one had a little bit pushed back. That operator was
8 pushing the topsoil and the other soil all in at the same
9 time on top of the mud, which our contract said you will
10 remove all mud from the well site, from the pits. There
11 had been no mud removed whatsoever, and it was gushing up
12 from being pushed in. So there were at least three
13 violations right in there.

14 So I stopped the Cat. I hadn't seen anything
15 in terms of Gerrity regarding rehab operations until this
16 Cat showed up. I stopped him and said, "I will call the
17 man in charge of this." I told him, "You should not
18 continue." I wanted him to stop there so they see what
19 was happening.

20 And I did call Tom Majors, who's their manager
21 of operations out there, and asked him to come out. He
22 said, "This is very embarrassing. I'm sorry this all
23 happened," et cetera, et cetera. And he said, "I'll try
24 to get this all done in two weeks. And he may. I don't
25 know." They made a slight start by replacing a cattle

1 guard that was falling apart. It was very difficult to
2 drive over.

3 I don't know whether they're gearing up to get
4 anything done in two weeks. The way they've operated, I
5 would be very surprised. I could give you a long list of
6 violations of things that have happened this summer.
7 It's been one hell of a summer with me. I've spent
8 basically half of my time trying to keep some--and I'm a
9 busy man. I have a ranch to try to manage.

10 It was a terrible summer because of Gerrity's
11 operations. I've dealt with three other oil companies in
12 major ways about the same amount I have with Gerrity over
13 the last few years, and I've had very little problem. In
14 fact, for the most part I've considered them my friends.
15 They've been willing to cooperate.

16 Gerrity has not done that. My basic
17 point--and I talked to Dennis Bicknell an hour on the
18 phone at my cost some time ago, and saying what's really
19 the problem here is that Gerrity is drilling way more
20 wells than they have the resources to follow up and
21 rehab. And I don't really blame the men out in the
22 field. I believe they are trying.

23 But Gerrity, as a company, is not being
24 responsible for doing the work for the number of permits
25 that they've been issued. They do not have the

1 resources, and they're not willing to spend the money.
2 There's all sorts of ways I can show you shoddy
3 operations. I would love for you guys to come and see
4 what my place looks like right now. I think it would be
5 very enlightening.

6 And basically, what I would like to see happen
7 is Gerrity get pulled back a ways and say, "Wait until
8 you can kind of keep up with what you've committed to do.
9 Until then, you don't get any more drilling permits."
10 That's what I would like to see happen. Because--and I
11 think you would agree with me if you see these big sand
12 dunes piled up there with no cover on it.

13 The other thing is we got a 3-inch rain late
14 in August. That moisture is all in those piles. Sand
15 freezes. If we get a cold spell or a windy spell, either
16 one is done. If it freezes still dry outside, it will
17 gradually blow away all winter long. They won't be able
18 to move it.

19 The reason I'm saying all this is because it's
20 very relevant. Gerrity might say just, "Because we did
21 that on Wardell doesn't mean we'll do that on Johnson's.
22 But they have a track record of doing that with most of
23 us out there. Gerrity has a terrible reputation with
24 people out there.

25 CHAIRMAN ANDERSON: All right. I'm getting

1 concerned. We have a number of matters to deal with
2 after this. We don't want to give less time to this than
3 is required.

4 MR. EVANS: We do know that currently Gerrity
5 has 354, I believe, wells listed, and we think that
6 that's--as Mr. Wardell has said, is far too many for them
7 to keep up with.

8 CHAIRMAN ANDERSON: All right. So the
9 specific request is for an emergency order from the
10 Commission preventing drilling?

11 MR. EVANS: That's right.

12 CHAIRMAN ANDERSON: Until such time as this
13 can be heard?

14 MR. CROUCH: Mr. Chairman, your statute only
15 allows you to issue an emergency order for 15 days.

16 CHAIRMAN ANDERSON: We can issue more than
17 one.

18 MR. MONAHAN: You'd have to have another
19 hearing in 15 days.

20 CHAIRMAN ANDERSON: Short of that, is Gerrity
21 willing to agree not to begin operations until the next
22 hearing?

23 MR. CROUCH: We can't, because we have
24 contractual obligations. We will go through the
25 consultation process. We'll address the issues that

1 Mr. MacMillan raised. We'll address any issue that
2 Mr. Johnson and the Buderuses raise in the consultation
3 process. We will do that.

4 And Mr. Wardell is right. I'm not prepared to
5 respond to his accusations. But if you take a tour, you
6 should go see the Charles Warren property, and you should
7 go take a look at Mr. Noffsinger's land that we're trying
8 to be responsive in an effort to have some dialogue and
9 understand the problems. And we're in this forum, which
10 I think is unfortunate.

11 Like I say, we will make whatever commitments
12 we need to make to comply with the law and to reclaim the
13 property and do the consultations, and we'll do what we
14 can to minimize damages to their land. We've got
15 contractual obligations that we must fulfill, or we will
16 lose lots of money. And I don't hear anybody stepping up
17 to say that we'll be indemnified from that, so we can't
18 agree to do that.

19 MR. JOHNSON: They have been unwilling to
20 negotiate. After five hours of telephone conversation
21 and all day Tuesday, they have not been willing to
22 negotiate.

23 MR. CROUCH: That's because of the tape
24 recorder, and only because of the tape recorder.

25 MR. JOHNSON: Obviously, because we need it.

1 MR. CROUCH: Well, we're on record here. I
2 will offer to meet with you, and you can run your tape
3 recorder. But just field people--in the heated context
4 of these exchanges, I just don't want the field people
5 being so afraid to walk on eggshells that nothing gets
6 accomplished.

7 CHAIRMAN ANDERSON: All right. Anybody have
8 an opinion on this?

9 COMMISSIONER JOHNSON: Well, I for one would
10 like to go to the site before we make important
11 decisions. And maybe under the guidance of Dennis or
12 somebody. That's personally. I'm not committing the
13 Board. And I've asked for that previously, because I
14 don't know the specifics, and I think I've got to see
15 them before making my best judgment.

16 CHAIRMAN ANDERSON: What does that mean, then?
17 Do you think that the request for an emergency order
18 preventing any action for the next 15 days--

19 COMMISSIONER JOHNSON: Well, irregardless of
20 that. I just think that's important.

21 CHAIRMAN ANDERSON: I agree with that. I
22 think it would be useful for us to go up there. I don't
23 know. We can talk about that.

24 COMMISSIONER JOHNSON: And for those of you
25 that don't live in an agricultural setting that's your

1 livelihood, you don't realize the severity of these
2 problems. When you look at black and white graphs of
3 what the area is and that type of thing--but if you
4 experience the wind in those conditions, it's, you know,
5 very serious. And I think we should have that
6 background. Their county's different than our county.
7 Or I need that background.

8 CHAIRMAN ANDERSON: Ms. Larson?

9 COMMISSIONER LARSON: If Gerrity drilled the
10 well so that you would stay in compliance with the Highly
11 Erodible Soils Act, would that suffice?

12 MR. JOHNSON: I'm not sure if I understood the
13 question.

14 COMMISSIONER LARSON: If they drilled the well
15 in a manner which would mitigate the impacts of the
16 drilling and so that you would stay in compliance with
17 the Highly Erodible Soils Act, would that satisfy you?

18 MR. JOHNSON: That's one of the big key
19 issues, yes. There's a number of issues that we haven't
20 even begun to address.

21 MS. LARSON: So that wouldn't satisfy you.

22 MR. MONAHAN: But that's the emergency basis,
23 and that's the only matter that's being heard today.

24 MR. EVANS: That's right. But as I said, we
25 have a crop still in the field, too.

1 CHAIRMAN ANDERSON: Isn't it the case that the
2 argument here ultimately, if all of this is a problem, is
3 over damages? The Commission, as I understand it, can't
4 prohibit drilling. I might be--there might be
5 discussions about what the damages are, and they may be
6 significant. But to prohibit drilling--

7 COMMISSIONER LARSON: I don't think we can do
8 that.

9 CHAIRMAN ANDERSON: I don't think we have that
10 ability.

11 MR. MONAHAN: Currently as the statute is
12 written, I believe you cannot outright prohibit drilling.
13 You may condition it, but you may not condition it to
14 such an extent that it creates a prohibition.

15 CHAIRMAN ANDERSON: So it may be that this is
16 an unusual case on what the damages are, but that's it.

17 MR. MONAHAN: The Commission can fashion a
18 remedy that protects the landowner here and allows
19 drilling. But certainly, compliance with the Highly
20 Erodible Soils Act could be a condition that the
21 Commission could impose.

22 But not knowing what that is, it's pretty
23 difficult. You have a party here in front of you who
24 says that they need to remain in compliance with the
25 Highly Erodible Soils Act, but then they aren't providing

1 you information as to what's necessary to remain in
2 compliance.

3 CHAIRMAN ANDERSON: That's what I'm struggling
4 with. Because I don't know that 15 days is going to buy
5 us enough time to deal with that. So, I mean, if the
6 Commission does grant this for 15 days, then we'll just
7 have to have an emergency hearing.

8 MR. MONAHAN: The other issue that I need to
9 tell you about is I don't believe you have presently the
10 ability to prohibit drilling. When you do institute a
11 temporary prohibition, that's as compensable as an
12 outright prohibition under the constitution in present
13 case law. If you cause harm to someone by a temporary
14 prohibition or your temporary taking of the property, the
15 State could become liable for that compensation.

16 COMMISSIONER MacMILLAN: Isn't it arguable,
17 though, whether we're taking the right to drill that well
18 or whether we're asking this specific well here to comply
19 with other surface uses of other governmental agencies?

20 Nobody showed me a map of where the window is
21 of where a well can be drilled to these particular
22 depths, and what that window is, and how that fits in
23 with the areas that have been mapped as highly erodible
24 or not.

25 I've suggested as we've gone through some of

1 these other cases that we ought to be hearing the
2 evidence. I don't know if you're prepared to give that
3 evidence, to show the documentation of where the window
4 is and where the outlines are of the highly erodible
5 soils. But I'm willing to get into it so that we can
6 make a decision that benefits both parties.

7 From my personal perspective, you're not going
8 to be able to exclude somebody from developing the
9 mineral interests underneath your land. But you guys
10 have a hell of a long way to go to do a better job in
11 coordinating your activities with the surface owners.
12 This isn't the first time I've heard specifically that
13 Gerrity is the one that's responsible for this stuff.
14 I've heard it from your trade organizations, months ago.

15 MR. CROUCH: If I might--

16 COMMISSIONER MacMILLAN: If I might finish.

17 These things can be resolved. And I think
18 that in most cases, the people that have requested some
19 kind of relief, the agricultural community, have come in
20 in good faith. They were encouraged to come before the
21 Oil & Gas Commission to try to have these problems
22 addressed by us. And I feel very confident in saying
23 that I carry an industry perspective, an oil and gas
24 industry perspective, to the Commission with my
25 background.

1 But, boy, I'm sad to say that when industry
2 people come before the Commission and they haven't been
3 doing what I consider to be good neighborly practices, it
4 makes my blood boil even more.

5 So can we get this stuff squared away in
6 15 days, an emergency stay here? Rogers, I'd like to go
7 out in the field with you, and I'd like to propose the
8 Friday following Thanksgiving as a time that I would be
9 available to come to the field and see what the concerns
10 of the surface owners are.

11 But I think we can do this in 15 days if, in
12 fact, we have the basis from the operator that they
13 really are interested in getting the well drilled in its
14 optimum location, the best for you geologically and
15 economically and the best for the surface owners.

16 MR. EVANS: There is an expert here from Weld
17 County who is very much involved. He is an agronomist,
18 an individual who is a soils expert, and--go ahead.

19 MR. ALDRICH: Jerry Aldrich, Weld County
20 agronomist. We are very much addressing a lot of these
21 issues that you're talking about today, trying to come
22 up--SCS, though, would probably have the best--if you
23 guys were to come up to Weld County, get SCS to talk
24 about these compliance regulations. You almost need SCS
25 here to address those issues, as well as testify. But we

1 sure need to do that.

2 But it is all true what they're saying from a
3 soils standpoint. We haven't even addressed the water
4 quality issue, Senate Bill 126 out there, that now will
5 make oil companies start complying with water quality
6 issues that are on very shallow aquifers that are all
7 over Weld County. The South Platte Aquifer is probably
8 one of the most controversial, looked-at aquifers in the
9 state right now. There's a lot of drilling going on
10 within that aquifer that is going to be a long-range
11 effect.

12 We're looking totally at all these operations
13 and what's going on with drilling, with the long-term
14 effect it's having on Colorado agriculture, especially in
15 Weld County. We have to look at sustainability.
16 Sustainable means looking down the road 10, 15 years.
17 We've had recorded instances where in 10, 15 years, those
18 sites still have not come back in full production. We
19 have those all over the place. We'll be looking at
20 those.

21 It's a very shallow ecosystem that you've said
22 could be drilled on, and to a large extent we need to
23 manage as agriculturalists as well. But the SCS would be
24 able to tell you some of the things they do on that
25 particular grounds to keep it in compliance so they don't

1 lose their funding, as well.

2 CHAIRMAN ANDERSON: All right. I'm beginning
3 to have sort of a never-never land sense about this.
4 The--there's a potential major threat being alleged, but
5 there's not really a lot of clarity yet as to what the
6 nature of the threat is and whether or not it can be
7 fixed through dealing with the regulators or dealing in
8 negotiations with Gerrity.

9 There does appear to be a danger, but it's
10 difficult for us to understand it. It's outside of our
11 experience, and it--the options simply haven't been laid
12 out clearly.

13 I continue to think this is a matter that
14 could be resolved in discussions between Gerrity and the
15 applicant. I think that ultimately this--there are two
16 issues. One is working to the extent possible in a
17 cooperative way to minimize the damages of getting a well
18 drilled, and dealing with what the real cost of the
19 damages are.

20 I don't think that the Commission, under any
21 outcome that I can envision, is going to prohibit the
22 drilling. It may well be that the drilling will be
23 conditioned under a number of steps. It may well be that
24 because of the unusual circumstances, that the damages
25 are unusual amounts. I don't know.

1 But those ultimately are all things that are
2 ordinarily negotiated, and my preference would still be
3 that that occur. I'd be willing to come back in a couple
4 of weeks and have another hearing just on this matter
5 with those--at least with those Commissioners who are
6 here in Denver, if the negotiations don't lead to
7 anything. I don't think that 15 days would harm Gerrity,
8 if their contractual obligations are to have some action
9 taken by the end of the year.

10 Any comments? Anybody?

11 MR. CROUCH: May I ask a question? During
12 this 15-day period, do you--you obviously envision us in
13 discussions--

14 CHAIRMAN ANDERSON: Yes. I think all I'm
15 suggesting, is--the Commission will meet in 15 days to
16 talk about this, if you haven't resolved it, whatever
17 that means. I guess that's granting an emergency order.

18 And there are two things you're going to
19 resolve. One is whatever issues need to be resolved
20 about where roads are and all the things you typically
21 talk about, plus dealing with the--this unusual issue.
22 Either you'll work them out or you won't. I don't know.
23 I'm speaking--I'm speaking on my own here.

24 MR. CROUCH: Okay. We can do that. I think
25 what we'll also need to do, though, is go back to square

1 one on the regulations and kind of make sure we're
2 following the new regulations, the consultation on the
3 letters, et cetera.

4 If we're not resolving the 15 days, you know,
5 we're not prejudiced beyond that. We have to have our
6 freedom of action, as well.

7 COMMISSIONER CAMPBELL: Can we stipulate,
8 Mr. Chairman, to consultation with the Soil Conservation
9 Service, as well?

10 CHAIRMAN ANDERSON: Oh, yeah.

11 MR. CROUCH: We have spoken with Mr. Aldrich,
12 I might add, and I called him up to initiate discussions
13 after one of these meetings at the task force. And he
14 was to prepare some guidelines for me to look at for our
15 operations. And somehow, that got lost. I don't know
16 what happened to that.

17 MR. ALDRICH: We're still in the process.
18 That's being looked at at SCS.

19 MR. CROUCH: So we're not unmindful. We learn
20 things every day on this. Appreciate Mr. MacMillan's
21 statement. And when you do go on your field trip, go
22 look at Charles Warren's land. I think that's an example
23 of something we've done right. You should also take a
24 look at Mr. Noffsinger. And I'll get you some other
25 examples.

1 COMMISSIONER MacMILLAN: I'd love for both
2 parties to be there.

3 MR. CROUCH: I think it should be required.
4 We'll be there.

5 COMMISSIONER MacMILLAN: I'll look forward to
6 contacting you, once I get something set up.

7 (Discussion off the record.)

8 CHAIRMAN ANDERSON: I'm making possible
9 commitments here for other Commissioners, and I don't
10 know if I can. Two weeks from today is December 1st.

11 MR. CROUCH: November 30.

12 CHAIRMAN ANDERSON: This is particularly for
13 those Denver Commissioners in--the Denver area
14 Commissioners. I believe there's at least four. Could
15 you be in Denver?

16 COMMISSIONER MacMILLAN: There's a strong
17 likelihood I can't November 30th.

18 CHAIRMAN ANDERSON: What about the next day?

19 COMMISSIONER MacMILLAN: Well, Wednesday,
20 better than Tuesday. What about--

21 COMMISSIONER CAMPBELL: Thursday is better
22 than Wednesday.

23 CHAIRMAN ANDERSON: What I'm thinking is
24 perhaps we would just ask the parties to discuss this
25 matter between themselves, even without the issuance of

1 an emergency order, request that they have at least a
2 couple of meetings between then, that some consultation
3 occur with the Soil Conservation people to help define
4 what the issues are, with the objective of defining what
5 the conditions are under which a well might be drilled
6 and defining what the damages are, understanding that the
7 Commission is not likely to prohibit the drilling of a
8 well. And that's with the hope that those matters could
9 be resolved between the two parties prior to that time.

10 If not, then the Commission would be willing
11 to meet again on some date yet to be decided to further
12 the discussion.

13 MR. EVANS: No, we are not going to--the
14 Commission is not going to meet on November the 30th?

15 CHAIRMAN ANDERSON: We're still looking for a
16 date. November 30--you said Wednesday? That would be
17 Wednesday the 2nd.

18 MS. BEAVER: Wednesday is the 3rd.

19 MR. JOHNSON: Monday is the 30th.

20 CHAIRMAN ANDERSON: You're right. Monday is
21 the 30th, so it's got to be Wednesday, the 2nd.

22 MS. BEAVER: Yeah, you're right.

23 COMMISSIONER CAMPBELL: I can't come down.

24 CHAIRMAN ANDERSON: I don't think--as long as
25 we have a quorum here in Denver.

1 (Discussion off the record.)

2 CHAIRMAN ANDERSON: All right. Let's set it
3 for Wednesday, the 2nd, as the date we hope we don't have
4 a meeting.

5 MR. CROUCH: Yes.

6 CHAIRMAN ANDERSON: The Commission is prepared
7 to meet because there's enough of a possibility here that
8 there are some unusual and difficult circumstances that
9 dealing with it on a shorter period is appropriate.

10 But short of issuing an emergency order, we
11 would really just like the parties to try again to
12 resolve the problem. And that meeting, if it does occur,
13 we'll just have in the Commission meeting room. I
14 presume we can get that.

15 MR. CROUCH: What time?

16 CHAIRMAN ANDERSON: 8:30? Is that all right?

17 MR. CROUCH: 8:30?

18 CHAIRMAN ANDERSON: Yes. Okay. Is that all
19 right?

20 MR. MONAHAN: Mr. Chairman, did the parties
21 agree to the arrangement that you set out?

22 CHAIRMAN ANDERSON: Well, I saw some nodding
23 of heads, but I don't think I heard--

24 MR. EVANS: Pardon?

25 CHAIRMAN ANDERSON: The question was, do the

1 parties agree to that?

2 MR. EVANS: Yes. That's fine with us.

3 MR. CROUCH: Yes.

4 MR. MONAHAN: That no drilling will take place
5 until the Commission meets again, that you will meet at
6 least twice to negotiate, and that the Soil Conservation
7 Service will be contacted concerning the regulations
8 applicable to drilling of this sort so that the land
9 remains in compliance with the Highly Erodible Soils Act?

10 MR. EVANS: Okay.

11 MR. CROUCH: I would say we would look into
12 what requires compliance on that, and I think we have to
13 figure out who allocates or who's--

14 MR. MONAHAN: All I'm looking for are the
15 conditions that would be applied to drilling, if any.

16 MR. CROUCH: Okay. So meet at least twice,
17 consult the SCS, and no drilling. I must emphasize,
18 though, again, these contractual commitments. So
19 everyone understands, we will institute the regulatory
20 process to go along with this and follow the regulations
21 as they're currently written.

22 MR. MONAHAN: That's understood.

23 CHAIRMAN ANDERSON: All right. Is that all
24 right?

25 MR. EVANS: And your trip to Weld County is

1 going to be when? Or you've got to coordinate that?

2 COMMISSIONER MacMILLAN: Rogers and I were
3 just talking about that. He can't make it the Friday
4 following Thanksgiving, but suggests the following
5 Monday, which is the 30th of November. That's a day I
6 can't make.

7 CHAIRMAN ANDERSON: I think there is some
8 interest among the Commission members to do this. I
9 don't think we necessarily have to do it as a group. And
10 I don't think we--we don't need to compare calendars
11 here.

12 MR. CROUCH: May I suggest that Mr. Bicknell
13 or Ms. Beaver can find out which of the Commissioners
14 want to go and when, and if they would just notify us, we
15 would make every effort to comply with that.

16 CHAIRMAN ANDERSON: Okay.

17 MR. HOSHIKO: Chairman Anderson, I would like
18 to make the same offer. If any of you decide to come to
19 visit our area, because that's where we are home based,
20 we would like to serve as your host, as well.

21 CHAIRMAN ANDERSON: All right. I guess we
22 have an agreement here. Somebody want to make a motion
23 to do what we're doing?

24 COMMISSIONER MacMILLAN: So moved.

25 COMMISSIONER CAMPBELL: Seconded.

1 CHAIRMAN ANDERSON: It's moved and seconded
2 that an emergency order not be granted, but that--

3 MR. MONAHAN: The parties would appropriately
4 pursue the matter until the meeting.

5 CHAIRMAN ANDERSON: Just continue the matter
6 until the meeting on Wednesday, December 2nd, with the
7 understanding in the interim there are going to be at
8 least two discussions between the parties, that no
9 drilling will occur, and that some contact with the Soil
10 Conservation authorities be undertaken to help clarify
11 the issue.

12 That's been moved. Is it seconded? Moved and
13 seconded.

14 All those in favor, indicate by saying "Aye."

15 COMMISSIONER JOHNSON: Aye.

16 COMMISSIONER MacMILLAN: Aye.

17 CHAIRMAN ANDERSON: Aye.

18 COMMISSIONER LARSON: Aye.

19 COMMISSIONER BUYS: Aye.

20 COMMISSIONER CAMPBELL: Aye.

21 CHAIRMAN ANDERSON: Those opposed, same sign.
22 Motion carries.

23 All right. Dennis?

24 MR. BICKNELL: Mr. Chairman, at the conclusion
25 of that, I'd like to make a couple of comments. The

1 letter of November 7th from Mr. Johnson was furnished to
2 each of the Commission members, as was the letter from
3 Mr. Axelson, as was the letter from Mr. Noffsinger. It
4 was also furnished to the Gerrity Company by fax.

5 These were faxed to us. We in turn acted as
6 secretaries to the world and sent them on to everyone.

7 We would very respectfully suggest that should
8 this be necessary in the future, that the applicants
9 indeed follow the rules of procedure before the
10 Commission, at least try to help it out. Because there
11 are some real questions there as to what went on.

12 I would further advise the Commission in this
13 particular case there is a permit issued for a well on
14 these lands.

15 CHAIRMAN ANDERSON: Despite that, it's our
16 understanding that Gerrity is not going to be moving in.

17 MR. BICKNELL: That hasn't been necessarily
18 the case with the other ones.

19 And finally, I guess we would draw your
20 attention to the notice provisions and requirements for
21 your meeting, at such time as we would assume the
22 parties--

23 MR. MONAHAN: It's a continuation.

24 MR. BICKNELL: --waived, and it's a
25 continuation of, so there will be no more notice.

1 CHAIRMAN ANDERSON: We continued the matter,
2 and all interested parties are in the room.

3 MR. BICKNELL: We assume they are.

4 CHAIRMAN ANDERSON: Mr. Keefe?

5 MR. KEEFE: Actually, that's an interesting
6 question, but I won't take that one up.

7 I just want to suggest to you that I have
8 participated in two emergency hearings in another state
9 by telephone, conference telephone call. I don't know
10 whether you want to even think about doing anything like
11 that, but I would suggest to you that in your long-range
12 planning, you might consider that that might be an
13 alternative available to you.

14 CHAIRMAN ANDERSON: I think there might be. I
15 think this one, if we're going to hear it, might be more
16 elaborate and wouldn't work very well on the phone. As
17 long as we have enough people in the area, I think it
18 would be better to do it face-to-face.

19 COMMISSIONER JOHNSON: I'd like to ask, is the
20 tour--is it a half-day tour, or a day tour? About how
21 long?

22 MR. HOSHIKO: I would suggest, Rogers, it
23 would be a minimum of a half a day, but that probably
24 from Denver, it takes about an hour's travel time from
25 where we are now to just begin to get into the areas that

1 are being drilled quite a bit could be seen. I think a
2 couple of representative sites, you wouldn't need to see
3 them all. There are many, many dozens, if not over a
4 hundred.

5 COMMISSIONER JOHNSON: So I have to--maybe not
6 including travel time, a half day?

7 MR. HOSHIKO: I think leaving, say, 8:00 or
8 9:00 in the morning and visiting some sites, lunch, maybe
9 looking at a couple more and be back by midafternoon
10 would be very easily accomplished.

11 CHAIRMAN ANDERSON: One more?

12 (Thereupon this portion of the proceedings was
13 concluded.)

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2) ss.

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1 otherwise, simply because a surface owner comes before
2 you and says, "This well should not be drilled."

3 And another thing I don't understand is that I
4 don't know anything about this agricultural act we've
5 been talking about, but what I would like to know
6 specifically is if certain lands were taken out of
7 production as a result of oil and gas operations, I never
8 did understand whether this would or would not disallow
9 the qualification of all remaining lands. I didn't hear
10 whether it would or would not.

11 I think that question should be answered. And
12 I suggest to you that if the answer to that is no, then
13 that is not a good reason. If the answer to that is yes,
14 then I think we should look into it further, and I also
15 think we should address the question as to whether under
16 those circumstances some compensation may be due to those
17 persons who wanted to drill the oil and gas well on the
18 property where they had the right to do so.

19 CHAIRMAN ANDERSON: Well, I would hope that if
20 we're setting any precedent--that we're not setting any
21 precedent; we're just following the precedents. And that
22 is to the extent possible, the Commission encourages
23 people who have disagreements and problems to work them
24 out between themselves without involving the Commission
25 hearing the differences, or at least narrowing the

1 differences to the extent possible before the Commission
2 gets involved.

3 So I'm not sure that our suggestion that the
4 parties go away and try to deal with this with the
5 understanding that the applicant--or that Gerrity not
6 drill is any kind of precedent of the kind you're worried
7 about. All we're trying to do, or I'm trying to do, is
8 to encourage the resolution of this problem on a more
9 friendly basis than it feels like has existed in the last
10 two months. I wouldn't read anything more into it than
11 that.

12 MR. THEODORE BUDERUS: Maybe I didn't make
13 myself clear. I did address the issue of damage to the
14 whole by damage to the parts, so to speak. We are--in
15 fact, if any of it is out of compliance, we are out of
16 compliance on everything. We're looking at a potential
17 liability that's in excess of over \$60,000 on one
18 payment, we're looking at liability of \$120,000 loan on
19 another that's in jeopardy, if those go out of
20 compliance. We do have substantial risk involved here.

21 They talk about their liquidated damages
22 clause. We have that same type of scenario in effect in
23 our case right now.

24 CHAIRMAN ANDERSON: Any--anybody from the
25 Commission have any comments or observations?

1 COMMISSIONER MacMILLAN: I have a question.
2 Do we have any paperwork in front of us for these
3 emergency hearings?

4 (Discussion off the record.)

5 COMMISSIONER MacMILLAN: So my next question
6 is what happens with emergency hearings? Is there a
7 specific item in front of the Commission we need to
8 respond to? It's a request to what?

9 CHAIRMAN ANDERSON: Well, it's a request for
10 the Commission, I presume, to hear this on an emergency
11 basis today.

12 MR. EVANS: That's correct.

13 COMMISSIONER LARSON: What's the requested
14 relief? To stop drilling?

15 MR. EVANS: Yes. Temporarily to suspend all
16 drilling until such time as you can have a full hearing
17 on all the evidence presented to you, and then make a
18 decision accordingly.

19 COMMISSIONER LARSON: The evidence that the
20 Highly Erodible Soils Act prevents any drilling?

21 MR. EVANS: That's correct. Or--

22 COMMISSIONER LARSON: Did they think about
23 this when they applied the Highly Erodible Soils Act to
24 land with severed estates?

25 MR. EVANS: I doubt seriously whether the

1 Congress considered that. The Congress has a very
2 interesting agenda sometimes, particularly in the
3 environmental area.

4 But I commend Congress. It's one of the areas
5 we've needed to address for a long time.

6 COMMISSIONER LARSON: But am I correct in
7 understanding from what I heard that there may be some
8 way to drill and mitigate the impacts so that the
9 landowner, the surface owner, could still stay in
10 compliance?

11 MR. THEODORE BUDERUS: We don't know yet at
12 this point.

13 COMMISSIONER LARSON: But you can look into
14 that.

15 MR. EVANS: Yes, we can.

16 MR. THEODORE BUDERUS: That's contingent upon
17 their schedule or how they resolve that.

18 MR. JOHNSON: I've already asked for that.

19 COMMISSIONER MacMILLAN: And I--excuse me.
20 And I question if, in fact, it's the charge of the
21 surface occupants to check into that or if it's the
22 charge of the operating company who wants to drill the
23 well to go to the Soil Conservation Service and find out
24 what the Soil Conservation Service suggests are the
25 methods.

1 So it kind of changes the whole impetus around
2 quite a bit from these people who are responsible for it
3 to the operator and have the operator go to the Soil
4 Service, find out what it takes to comply, and then work
5 that into their schedule when the well needs to be
6 drilled. You're essentially asking people who have no--

7 MR. DANIEL BUDERUS: Benefit--

8 COMMISSIONER MacMILLAN: Well, it's not just
9 benefit, but have no control over what the operations are
10 going to be, the disturbance is going to be, to go in and
11 get all this stuff cleared, when in fact they have no
12 ability to make sure that that happens. Whereas the
13 operating company is in the position to make sure that it
14 happens.

15 CHAIRMAN ANDERSON: What's the date of the
16 December hearing?

17 MS. BEAVER: 21st, 22nd.

18 CHAIRMAN ANDERSON: Yes. You've been wanting
19 to say something. What's your name?

20 MR. WARDELL: My name is Ray Wardell. My
21 experience in the current situation with the Gerrity
22 Company in drilling wells is very relevant to this
23 concern.

24 Gerrity drilled 14 wells on a section of land
25 starting in June and I think were finished by August,

1 maybe early September. 14 wells. Only one of those
2 wells has been reestablished so I could plant it. Even
3 though I'd asked for a guarantee that they would have
4 that finished by the middle of August, I had to delay my
5 planting.

6 I'm on this highly erodible land. Basically
7 these are sand dunes that blew out of the Platte River
8 Valley some thousand years ago. They are sand dunes that
9 have grown vegetation. Okay. And we didn't say that
10 they couldn't drill on them. We're not subject to the
11 federal regulations, because we're not participating in
12 federal programs per se. So that's not exactly an issue
13 of ours.

14 However, they've made it an issue with Gerrity
15 from the very beginning about the issue of wind erosion.
16 We are only very fortunate that this late in the fall
17 we've not had major winds. We've had some winds already,
18 and already there is sand being blown off of those and
19 drifting.

20 And I really invite you to come and see.
21 There's at least ten wells there that have not had any
22 rehabilitation at all. Two of those maybe wouldn't blow;
23 the rest sand dunes.

24 Now, I finally called a week ago as a result
25 of a Caterpillar showing up on my place to push one of

1 these in. He was violating about three regulations when
2 he was doing that. He buried the plastic. I asked the
3 Cat operator if he did that. He said, "Yes, I did."

4 He was pushing the topsoil. There was very
5 little topsoil put back. Some of our well sites got no
6 topsoil put back, which is in violation of regulations.
7 This one had a little bit pushed back. That operator was
8 pushing the topsoil and the other soil all in at the same
9 time on top of the mud, which our contract said you will
10 remove all mud from the well site, from the pits. There
11 had been no mud removed whatsoever, and it was gushing up
12 from being pushed in. So there were at least three
13 violations right in there.

14 So I stopped the Cat. I hadn't seen anything
15 in terms of Gerrity regarding rehab operations until this
16 Cat showed up. I stopped him and said, "I will call the
17 man in charge of this." I told him, "You should not
18 continue." I wanted him to stop there so they see what
19 was happening.

20 And I did call Tom Majors, who's their manager
21 of operations out there, and asked him to come out. He
22 said, "This is very embarrassing. I'm sorry this all
23 happened," et cetera, et cetera. And he said, "I'll try
24 to get this all done in two weeks. And he may. I don't
25 know." They made a slight start by replacing a cattle

1 guard that was falling apart. It was very difficult to
2 drive over.

3 I don't know whether they're gearing up to get
4 anything done in two weeks. The way they've operated, I
5 would be very surprised. I could give you a long list of
6 violations of things that have happened this summer.
7 It's been one hell of a summer with me. I've spent
8 basically half of my time trying to keep some--and I'm a
9 busy man. I have a ranch to try to manage.

10 It was a terrible summer because of Gerrity's
11 operations. I've dealt with three other oil companies in
12 major ways about the same amount I have with Gerrity over
13 the last few years, and I've had very little problem. In
14 fact, for the most part I've considered them my friends.
15 They've been willing to cooperate.

16 Gerrity has not done that. My basic
17 point--and I talked to Dennis Bicknell an hour on the
18 phone at my cost some time ago, and saying what's really
19 the problem here is that Gerrity is drilling way more
20 wells than they have the resources to follow up and
21 rehab. And I don't really blame the men out in the
22 field. I believe they are trying.

23 But Gerrity, as a company, is not being
24 responsible for doing the work for the number of permits
25 that they've been issued. They do not have the

1 resources, and they're not willing to spend the money.
2 There's all sorts of ways I can show you shoddy
3 operations. I would love for you guys to come and see
4 what my place looks like right now. I think it would be
5 very enlightening.

6 And basically, what I would like to see happen
7 is Gerrity get pulled back a ways and say, "Wait until
8 you can kind of keep up with what you've committed to do.
9 Until then, you don't get any more drilling permits."
10 That's what I would like to see happen. Because--and I
11 think you would agree with me if you see these big sand
12 dunes piled up there with no cover on it.

13 The other thing is we got a 3-inch rain late
14 in August. That moisture is all in those piles. Sand
15 freezes. If we get a cold spell or a windy spell, either
16 one is done. If it freezes still dry outside, it will
17 gradually blow away all winter long. They won't be able
18 to move it.

19 The reason I'm saying all this is because it's
20 very relevant. Gerrity might say just, "Because we did
21 that on Wardell doesn't mean we'll do that on Johnson's.
22 But they have a track record of doing that with most of
23 us out there. Gerrity has a terrible reputation with
24 people out there.

25 CHAIRMAN ANDERSON: All right. I'm getting

1 concerned. We have a number of matters to deal with
2 after this. We don't want to give less time to this than
3 is required.

4 MR. EVANS: We do know that currently Gerrity
5 has 354, I believe, wells listed, and we think that
6 that's--as Mr. Wardell has said, is far too many for them
7 to keep up with.

8 CHAIRMAN ANDERSON: All right. So the
9 specific request is for an emergency order from the
10 Commission preventing drilling?

11 MR. EVANS: That's right.

12 CHAIRMAN ANDERSON: Until such time as this
13 can be heard?

14 MR. CROUCH: Mr. Chairman, your statute only
15 allows you to issue an emergency order for 15 days.

16 CHAIRMAN ANDERSON: We can issue more than
17 one.

18 MR. MONAHAN: You'd have to have another
19 hearing in 15 days.

20 CHAIRMAN ANDERSON: Short of that, is Gerrity
21 willing to agree not to begin operations until the next
22 hearing?

23 MR. CROUCH: We can't, because we have
24 contractual obligations. We will go through the
25 consultation process. We'll address the issues that

1 Mr. MacMillan raised. We'll address any issue that
2 Mr. Johnson and the Buderuses raise in the consultation
3 process. We will do that.

4 And Mr. Wardell is right. I'm not prepared to
5 respond to his accusations. But if you take a tour, you
6 should go see the Charles Warren property, and you should
7 go take a look at Mr. Noffsinger's land that we're trying
8 to be responsive in an effort to have some dialogue and
9 understand the problems. And we're in this forum, which
10 I think is unfortunate.

11 Like I say, we will make whatever commitments
12 we need to make to comply with the law and to reclaim the
13 property and do the consultations, and we'll do what we
14 can to minimize damages to their land. We've got
15 contractual obligations that we must fulfill, or we will
16 lose lots of money. And I don't hear anybody stepping up
17 to say that we'll be indemnified from that, so we can't
18 agree to do that.

19 MR. JOHNSON: They have been unwilling to
20 negotiate. After five hours of telephone conversation
21 and all day Tuesday, they have not been willing to
22 negotiate.

23 MR. CROUCH: That's because of the tape
24 recorder, and only because of the tape recorder.

25 MR. JOHNSON: Obviously, because we need it.

1 MR. CROUCH: Well, we're on record here. I
2 will offer to meet with you, and you can run your tape
3 recorder. But just field people--in the heated context
4 of these exchanges, I just don't want the field people
5 being so afraid to walk on eggshells that nothing gets
6 accomplished.

7 CHAIRMAN ANDERSON: All right. Anybody have
8 an opinion on this?

9 COMMISSIONER JOHNSON: Well, I for one would
10 like to go to the site before we make important
11 decisions. And maybe under the guidance of Dennis or
12 somebody. That's personally. I'm not committing the
13 Board. And I've asked for that previously, because I
14 don't know the specifics, and I think I've got to see
15 them before making my best judgment.

16 CHAIRMAN ANDERSON: What does that mean, then?
17 Do you think that the request for an emergency order
18 preventing any action for the next 15 days--

19 COMMISSIONER JOHNSON: Well, irregardless of
20 that. I just think that's important.

21 CHAIRMAN ANDERSON: I agree with that. I
22 think it would be useful for us to go up there. I don't
23 know. We can talk about that.

24 COMMISSIONER JOHNSON: And for those of you
25 that don't live in an agricultural setting that's your

1 livelihood, you don't realize the severity of these
2 problems. When you look at black and white graphs of
3 what the area is and that type of thing--but if you
4 experience the wind in those conditions, it's, you know,
5 very serious. And I think we should have that
6 background. Their county's different than our county.
7 Or I need that background.

8 CHAIRMAN ANDERSON: Ms. Larson?

9 COMMISSIONER LARSON: If Gerrity drilled the
10 well so that you would stay in compliance with the Highly
11 Erodible Soils Act, would that suffice?

12 MR. JOHNSON: I'm not sure if I understood the
13 question.

14 COMMISSIONER LARSON: If they drilled the well
15 in a manner which would mitigate the impacts of the
16 drilling and so that you would stay in compliance with
17 the Highly Erodible Soils Act, would that satisfy you?

18 MR. JOHNSON: That's one of the big key
19 issues, yes. There's a number of issues that we haven't
20 even begun to address.

21 MS. LARSON: So that wouldn't satisfy you.

22 MR. MONAHAN: But that's the emergency basis,
23 and that's the only matter that's being heard today.

24 MR. EVANS: That's right. But as I said, we
25 have a crop still in the field, too.

1 CHAIRMAN ANDERSON: Isn't it the case that the
2 argument here ultimately, if all of this is a problem, is
3 over damages? The Commission, as I understand it, can't
4 prohibit drilling. I might be--there might be
5 discussions about what the damages are, and they may be
6 significant. But to prohibit drilling--

7 COMMISSIONER LARSON: I don't think we can do
8 that.

9 CHAIRMAN ANDERSON: I don't think we have that
10 ability.

11 MR. MONAHAN: Currently as the statute is
12 written, I believe you cannot outright prohibit drilling.
13 You may condition it, but you may not condition it to
14 such an extent that it creates a prohibition.

15 CHAIRMAN ANDERSON: So it may be that this is
16 an unusual case on what the damages are, but that's it.

17 MR. MONAHAN: The Commission can fashion a
18 remedy that protects the landowner here and allows
19 drilling. But certainly, compliance with the Highly
20 Erodible Soils Act could be a condition that the
21 Commission could impose.

22 But not knowing what that is, it's pretty
23 difficult. You have a party here in front of you who
24 says that they need to remain in compliance with the
25 Highly Erodible Soils Act, but then they aren't providing

1 you information as to what's necessary to remain in
2 compliance.

3 CHAIRMAN ANDERSON: That's what I'm struggling
4 with. Because I don't know that 15 days is going to buy
5 us enough time to deal with that. So, I mean, if the
6 Commission does grant this for 15 days, then we'll just
7 have to have an emergency hearing.

8 MR. MONAHAN: The other issue that I need to
9 tell you about is I don't believe you have presently the
10 ability to prohibit drilling. When you do institute a
11 temporary prohibition, that's as compensable as an
12 outright prohibition under the constitution in present
13 case law. If you cause harm to someone by a temporary
14 prohibition or your temporary taking of the property, the
15 State could become liable for that compensation.

16 COMMISSIONER MacMILLAN: Isn't it arguable,
17 though, whether we're taking the right to drill that well
18 or whether we're asking this specific well here to comply
19 with other surface uses of other governmental agencies?

20 Nobody showed me a map of where the window is
21 of where a well can be drilled to these particular
22 depths, and what that window is, and how that fits in
23 with the areas that have been mapped as highly erodible
24 or not.

25 I've suggested as we've gone through some of

1 these other cases that we ought to be hearing the
2 evidence. I don't know if you're prepared to give that
3 evidence, to show the documentation of where the window
4 is and where the outlines are of the highly erodible
5 soils. But I'm willing to get into it so that we can
6 make a decision that benefits both parties.

7 From my personal perspective, you're not going
8 to be able to exclude somebody from developing the
9 mineral interests underneath your land. But you guys
10 have a hell of a long way to go to do a better job in
11 coordinating your activities with the surface owners.
12 This isn't the first time I've heard specifically that
13 Gerrity is the one that's responsible for this stuff.
14 I've heard it from your trade organizations, months ago.

15 MR. CROUCH: If I might--

16 COMMISSIONER MacMILLAN: If I might finish.

17 These things can be resolved. And I think
18 that in most cases, the people that have requested some
19 kind of relief, the agricultural community, have come in
20 in good faith. They were encouraged to come before the
21 Oil & Gas Commission to try to have these problems
22 addressed by us. And I feel very confident in saying
23 that I carry an industry perspective, an oil and gas
24 industry perspective, to the Commission with my
25 background.

1 But, boy, I'm sad to say that when industry
2 people come before the Commission and they haven't been
3 doing what I consider to be good neighborly practices, it
4 makes my blood boil even more.

5 So can we get this stuff squared away in
6 15 days, an emergency stay here? Rogers, I'd like to go
7 out in the field with you, and I'd like to propose the
8 Friday following Thanksgiving as a time that I would be
9 available to come to the field and see what the concerns
10 of the surface owners are.

11 But I think we can do this in 15 days if, in
12 fact, we have the basis from the operator that they
13 really are interested in getting the well drilled in its
14 optimum location, the best for you geologically and
15 economically and the best for the surface owners.

16 MR. EVANS: There is an expert here from Weld
17 County who is very much involved. He is an agronomist,
18 an individual who is a soils expert, and--go ahead.

19 MR. ALDRICH: Jerry Aldrich, Weld County
20 agronomist. We are very much addressing a lot of these
21 issues that you're talking about today, trying to come
22 up--SCS, though, would probably have the best--if you
23 guys were to come up to Weld County, get SCS to talk
24 about these compliance regulations. You almost need SCS
25 here to address those issues, as well as testify. But we

1 sure need to do that.

2 But it is all true what they're saying from a
3 soils standpoint. We haven't even addressed the water
4 quality issue, Senate Bill 126 out there, that now will
5 make oil companies start complying with water quality
6 issues that are on very shallow aquifers that are all
7 over Weld County. The South Platte Aquifer is probably
8 one of the most controversial, looked-at aquifers in the
9 state right now. There's a lot of drilling going on
10 within that aquifer that is going to be a long-range
11 effect.

12 We're looking totally at all these operations
13 and what's going on with drilling, with the long-term
14 effect it's having on Colorado agriculture, especially in
15 Weld County. We have to look at sustainability.
16 Sustainable means looking down the road 10, 15 years.
17 We've had recorded instances where in 10, 15 years, those
18 sites still have not come back in full production. We
19 have those all over the place. We'll be looking at
20 those.

21 It's a very shallow ecosystem that you've said
22 could be drilled on, and to a large extent we need to
23 manage as agriculturalists as well. But the SCS would be
24 able to tell you some of the things they do on that
25 particular grounds to keep it in compliance so they don't

1 lose their funding, as well.

2 CHAIRMAN ANDERSON: All right. I'm beginning
3 to have sort of a never-never land sense about this.
4 The--there's a potential major threat being alleged, but
5 there's not really a lot of clarity yet as to what the
6 nature of the threat is and whether or not it can be
7 fixed through dealing with the regulators or dealing in
8 negotiations with Gerrity.

9 There does appear to be a danger, but it's
10 difficult for us to understand it. It's outside of our
11 experience, and it--the options simply haven't been laid
12 out clearly.

13 I continue to think this is a matter that
14 could be resolved in discussions between Gerrity and the
15 applicant. I think that ultimately this--there are two
16 issues. One is working to the extent possible in a
17 cooperative way to minimize the damages of getting a well
18 drilled, and dealing with what the real cost of the
19 damages are.

20 I don't think that the Commission, under any
21 outcome that I can envision, is going to prohibit the
22 drilling. It may well be that the drilling will be
23 conditioned under a number of steps. It may well be that
24 because of the unusual circumstances, that the damages
25 are unusual amounts. I don't know.

1 But those ultimately are all things that are
2 ordinarily negotiated, and my preference would still be
3 that that occur. I'd be willing to come back in a couple
4 of weeks and have another hearing just on this matter
5 with those--at least with those Commissioners who are
6 here in Denver, if the negotiations don't lead to
7 anything. I don't think that 15 days would harm Gerrity,
8 if their contractual obligations are to have some action
9 taken by the end of the year.

10 Any comments? Anybody?

11 MR. CROUCH: May I ask a question? During
12 this 15-day period, do you--you obviously envision us in
13 discussions--

14 CHAIRMAN ANDERSON: Yes. I think all I'm
15 suggesting, is--the Commission will meet in 15 days to
16 talk about this, if you haven't resolved it, whatever
17 that means. I guess that's granting an emergency order.

18 And there are two things you're going to
19 resolve. One is whatever issues need to be resolved
20 about where roads are and all the things you typically
21 talk about, plus dealing with the--this unusual issue.
22 Either you'll work them out or you won't. I don't know.
23 I'm speaking--I'm speaking on my own here.

24 MR. CROUCH: Okay. We can do that. I think
25 what we'll also need to do, though, is go back to square

1 one on the regulations and kind of make sure we're
2 following the new regulations, the consultation on the
3 letters, et cetera.

4 If we're not resolving the 15 days, you know,
5 we're not prejudiced beyond that. We have to have our
6 freedom of action, as well.

7 COMMISSIONER CAMPBELL: Can we stipulate,
8 Mr. Chairman, to consultation with the Soil Conservation
9 Service, as well?

10 CHAIRMAN ANDERSON: Oh, yeah.

11 MR. CROUCH: We have spoken with Mr. Aldrich,
12 I might add, and I called him up to initiate discussions
13 after one of these meetings at the task force. And he
14 was to prepare some guidelines for me to look at for our
15 operations. And somehow, that got lost. I don't know
16 what happened to that.

17 MR. ALDRICH: We're still in the process.
18 That's being looked at at SCS.

19 MR. CROUCH: So we're not unmindful. We learn
20 things every day on this. Appreciate Mr. MacMillan's
21 statement. And when you do go on your field trip, go
22 look at Charles Warren's land. I think that's an example
23 of something we've done right. You should also take a
24 look at Mr. Noffsinger. And I'll get you some other
25 examples.

1 COMMISSIONER MacMILLAN: I'd love for both
2 parties to be there.

3 MR. CROUCH: I think it should be required.
4 We'll be there.

5 COMMISSIONER MacMILLAN: I'll look forward to
6 contacting you, once I get something set up.

7 (Discussion off the record.)

8 CHAIRMAN ANDERSON: I'm making possible
9 commitments here for other Commissioners, and I don't
10 know if I can. Two weeks from today is December 1st.

11 MR. CROUCH: November 30.

12 CHAIRMAN ANDERSON: This is particularly for
13 those Denver Commissioners in--the Denver area
14 Commissioners. I believe there's at least four. Could
15 you be in Denver?

16 COMMISSIONER MacMILLAN: There's a strong
17 likelihood I can't November 30th.

18 CHAIRMAN ANDERSON: What about the next day?

19 COMMISSIONER MacMILLAN: Well, Wednesday,
20 better than Tuesday. What about--

21 COMMISSIONER CAMPBELL: Thursday is better
22 than Wednesday.

23 CHAIRMAN ANDERSON: What I'm thinking is
24 perhaps we would just ask the parties to discuss this
25 matter between themselves, even without the issuance of

1 an emergency order, request that they have at least a
2 couple of meetings between then, that some consultation
3 occur with the Soil Conservation people to help define
4 what the issues are, with the objective of defining what
5 the conditions are under which a well might be drilled
6 and defining what the damages are, understanding that the
7 Commission is not likely to prohibit the drilling of a
8 well. And that's with the hope that those matters could
9 be resolved between the two parties prior to that time.

10 If not, then the Commission would be willing
11 to meet again on some date yet to be decided to further
12 the discussion.

13 MR. EVANS: No, we are not going to--the
14 Commission is not going to meet on November the 30th?

15 CHAIRMAN ANDERSON: We're still looking for a
16 date. November 30--you said Wednesday? That would be
17 Wednesday the 2nd.

18 MS. BEAVER: Wednesday is the 3rd.

19 MR. JOHNSON: Monday is the 30th.

20 CHAIRMAN ANDERSON: You're right. Monday is
21 the 30th, so it's got to be Wednesday, the 2nd.

22 MS. BEAVER: Yeah, you're right.

23 COMMISSIONER CAMPBELL: I can't come down.

24 CHAIRMAN ANDERSON: I don't think--as long as
25 we have a quorum here in Denver.

1 (Discussion off the record.)

2 CHAIRMAN ANDERSON: All right. Let's set it
3 for Wednesday, the 2nd, as the date we hope we don't have
4 a meeting.

5 MR. CROUCH: Yes.

6 CHAIRMAN ANDERSON: The Commission is prepared
7 to meet because there's enough of a possibility here that
8 there are some unusual and difficult circumstances that
9 dealing with it on a shorter period is appropriate.

10 But short of issuing an emergency order, we
11 would really just like the parties to try again to
12 resolve the problem. And that meeting, if it does occur,
13 we'll just have in the Commission meeting room. I
14 presume we can get that.

15 MR. CROUCH: What time?

16 CHAIRMAN ANDERSON: 8:30? Is that all right?

17 MR. CROUCH: 8:30?

18 CHAIRMAN ANDERSON: Yes. Okay. Is that all
19 right?

20 MR. MONAHAN: Mr. Chairman, did the parties
21 agree to the arrangement that you set out?

22 CHAIRMAN ANDERSON: Well, I saw some nodding
23 of heads, but I don't think I heard--

24 MR. EVANS: Pardon?

25 CHAIRMAN ANDERSON: The question was, do the

1 parties agree to that?

2 MR. EVANS: Yes. That's fine with us.

3 MR. CROUCH: Yes.

4 MR. MONAHAN: That no drilling will take place
5 until the Commission meets again, that you will meet at
6 least twice to negotiate, and that the Soil Conservation
7 Service will be contacted concerning the regulations
8 applicable to drilling of this sort so that the land
9 remains in compliance with the Highly Erodible Soils Act?

10 MR. EVANS: Okay.

11 MR. CROUCH: I would say we would look into
12 what requires compliance on that, and I think we have to
13 figure out who allocates or who's--

14 MR. MONAHAN: All I'm looking for are the
15 conditions that would be applied to drilling, if any.

16 MR. CROUCH: Okay. So meet at least twice,
17 consult the SCS, and no drilling. I must emphasize,
18 though, again, these contractual commitments. So
19 everyone understands, we will institute the regulatory
20 process to go along with this and follow the regulations
21 as they're currently written.

22 MR. MONAHAN: That's understood.

23 CHAIRMAN ANDERSON: All right. Is that all
24 right?

25 MR. EVANS: And your trip to Weld County is

1 going to be when? Or you've got to coordinate that?

2 COMMISSIONER MacMILLAN: Rogers and I were
3 just talking about that. He can't make it the Friday
4 following Thanksgiving, but suggests the following
5 Monday, which is the 30th of November. That's a day I
6 can't make.

7 CHAIRMAN ANDERSON: I think there is some
8 interest among the Commission members to do this. I
9 don't think we necessarily have to do it as a group. And
10 I don't think we--we don't need to compare calendars
11 here.

12 MR. CROUCH: May I suggest that Mr. Bicknell
13 or Ms. Beaver can find out which of the Commissioners
14 want to go and when, and if they would just notify us, we
15 would make every effort to comply with that.

16 CHAIRMAN ANDERSON: Okay.

17 MR. HOSHIKO: Chairman Anderson, I would like
18 to make the same offer. If any of you decide to come to
19 visit our area, because that's where we are home based,
20 we would like to serve as your host, as well.

21 CHAIRMAN ANDERSON: All right. I guess we
22 have an agreement here. Somebody want to make a motion
23 to do what we're doing?

24 COMMISSIONER MacMILLAN: So moved.

25 COMMISSIONER CAMPBELL: Seconded.

1 CHAIRMAN ANDERSON: It's moved and seconded
2 that an emergency order not be granted, but that--

3 MR. MONAHAN: The parties would appropriately
4 pursue the matter until the meeting.

5 CHAIRMAN ANDERSON: Just continue the matter
6 until the meeting on Wednesday, December 2nd, with the
7 understanding in the interim there are going to be at
8 least two discussions between the parties, that no
9 drilling will occur, and that some contact with the Soil
10 Conservation authorities be undertaken to help clarify
11 the issue.

12 That's been moved. Is it seconded? Moved and
13 seconded.

14 All those in favor, indicate by saying "Aye."

15 COMMISSIONER JOHNSON: Aye.

16 COMMISSIONER MacMILLAN: Aye.

17 CHAIRMAN ANDERSON: Aye.

18 COMMISSIONER LARSON: Aye.

19 COMMISSIONER BUYS: Aye.

20 COMMISSIONER CAMPBELL: Aye.

21 CHAIRMAN ANDERSON: Those opposed, same sign.

22 Motion carries.

23 All right. Dennis?

24 MR. BICKNELL: Mr. Chairman, at the conclusion
25 of that, I'd like to make a couple of comments. The

1 letter of November 7th from Mr. Johnson was furnished to
2 each of the Commission members, as was the letter from
3 Mr. Axelson, as was the letter from Mr. Noffsinger. It
4 was also furnished to the Gerrity Company by fax.

5 These were faxed to us. We in turn acted as
6 secretaries to the world and sent them on to everyone.

7 We would very respectfully suggest that should
8 this be necessary in the future, that the applicants
9 indeed follow the rules of procedure before the
10 Commission, at least try to help it out. Because there
11 are some real questions there as to what went on.

12 I would further advise the Commission in this
13 particular case there is a permit issued for a well on
14 these lands.

15 CHAIRMAN ANDERSON: Despite that, it's our
16 understanding that Gerrity is not going to be moving in.

17 MR. BICKNELL: That hasn't been necessarily
18 the case with the other ones.

19 And finally, I guess we would draw your
20 attention to the notice provisions and requirements for
21 your meeting, at such time as we would assume the
22 parties--

23 MR. MONAHAN: It's a continuation.

24 MR. BICKNELL: --waived, and it's a
25 continuation of, so there will be no more notice.

1 CHAIRMAN ANDERSON: We continued the matter,
2 and all interested parties are in the room.

3 MR. BICKNELL: We assume they are.

4 CHAIRMAN ANDERSON: Mr. Keefe?

5 MR. KEEFE: Actually, that's an interesting
6 question, but I won't take that one up.

7 I just want to suggest to you that I have
8 participated in two emergency hearings in another state
9 by telephone, conference telephone call. I don't know
10 whether you want to even think about doing anything like
11 that, but I would suggest to you that in your long-range
12 planning, you might consider that that might be an
13 alternative available to you.

14 CHAIRMAN ANDERSON: I think there might be. I
15 think this one, if we're going to hear it, might be more
16 elaborate and wouldn't work very well on the phone. As
17 long as we have enough people in the area, I think it
18 would be better to do it face-to-face.

19 COMMISSIONER JOHNSON: I'd like to ask, is the
20 tour--is it a half-day tour, or a day tour? About how
21 long?

22 MR. HOSHIKO: I would suggest, Rogers, it
23 would be a minimum of a half a day, but that probably
24 from Denver, it takes about an hour's travel time from
25 where we are now to just begin to get into the areas that

1 are being drilled quite a bit could be seen. I think a
2 couple of representative sites, you wouldn't need to see
3 them all. There are many, many dozens, if not over a
4 hundred.

5 COMMISSIONER JOHNSON: So I have to--maybe not
6 including travel time, a half day?

7 MR. HOSHIKO: I think leaving, say, 8:00 or
8 9:00 in the morning and visiting some sites, lunch, maybe
9 looking at a couple more and be back by midafternoon
10 would be very easily accomplished.

11 CHAIRMAN ANDERSON: One more?

12 (Thereupon this portion of the proceedings was
13 concluded.)

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1 STATE OF COLORADO)

2) ss.

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