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BEFORE THE OIL AND GAS CONSERVATION COMMISSION

OF THE STATE OF COLORADO

Denied 0#1-31

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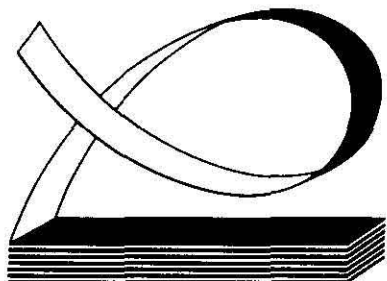
IN THE MATTER OF THE REQUEST TO)
 ISSUE AN EMERGENCY ORDER TO)
 TEMPORARILY SUSPEND ANY AND ALL)
 OIL AND GAS WELL DRILLING PERMITS) EMERGENCY -
 THAT HAVE BEEN ISSUED FOR WELLS) UNNUMBERED CAUSE
 TO BE DRILLED UPON LANDS IN THE)
 SOUTHEAST QUARTER OF SECTION 15,)
 TOWNSHIP 2 NORTH, RANGE 65 WEST)
 OF THE 6th PRINCIPAL MERIDIAN,)
 WELD COUNTY, COLORADO)

PURSUANT TO NOTICE to all parties in interest,
 the above-entitled matter came duly on for hearing at
 1580 Logan Street, Suite 380, Denver, Colorado 80203, on
 Wednesday, December 2, 1992.

RECEIVED

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COLO. OIL & GAS CONS. COMM.



ORIGINAL
Patterson Reporting

BEFORE:

Chairman Truman Anderson

Commissioner Logan MacMillan

Commissioner Mary Larson

Commissioner John A. Campbell

(Participating by Telephone)

Dennis Bicknell, Director

Patricia C. Beaver, Technical Secretary

Tim Monahan, Assistant Attorney General

David E. Smink, Staff

Attorney for Applicant: John M. Evans,
Esq.

Attorneys for Protestant: Keith M.
Crouch, Esq. and Ken Wonstolen, Esq.

Also Present: Theodore Buderus

1 PROCEEDINGS

2 CHAIRMAN ANDERSON: I think we're ready to
3 begin. This hearing of the Oil & Gas Conservation
4 Commission is now in session. We're obviously going to
5 try to do this with one of the members attending by
6 telephone, we hope.

7 While we're trying to get the logistics clear
8 on getting one of our members, there are three members of
9 the commission here. We're going to try to have a fourth
10 by telephone. We need four members of the Commission to
11 take any action.

12 And the one commissioner who can attend by
13 telephone can do so until 5 after 9:00. We then lose him
14 until 10 o'clock. So we're going to have to try to
15 function within those constraints.

16 The--at the last regular hearing of the
17 Oil & Gas Conservation Commission, an application was
18 made for an emergency by a Mr. Johnson.

19 MR. MONAHAN: Mr. Evans.

20 CHAIRMAN ANDERSON: By Mr. Johnson, through
21 Mr. Evans.

22 The application was for an increase in the
23 bonding requirements because of proposed drilling on
24 behalf of Gerrity.

25 Some concerns were raised at that hearing

1 based on some legislation at least I had never heard of,
2 the Highly Erodible Soils Act, I believe. And there was
3 at least the possibility that there might be an emergency
4 that existed, and the Commission felt that it needed to
5 deal with this on a shorter-term basis than it ordinarily
6 does because of these concerns.

7 But it frankly, in my opinion, was functioning
8 a little bit in the fog, because we didn't have the
9 information. It was that very lack of information, I
10 think, that most concerned us.

11 So as soon as we are able to call the roll
12 here and determine that we have a quorum, we'd like
13 to--we will begin.

14 MR. CROUCH: Mr. Chairman, if I might--

15 CHAIRMAN ANDERSON: Yes, Mr. Crouch.

16 MR. CROUCH: I think the application was to
17 suspend the drilling permit that had been issued, and not
18 for an increase in the bond.

19 CHAIRMAN ANDERSON: I'm sorry. It was to
20 suspend the drilling permit.

21 MR. CROUCH: And it stated two grounds for the
22 alleged emergency, which I believe have been satisfied.
23 The initial ground was who has the right to drill,
24 Gerrity or Snyder. And the other--

25 MR. MONAHAN: Mr. Crouch, if we're going to

1 get into your argument on the matter, let's wait until we
2 have a quorum.

3 MR. CROUCH: Okay.

4 (Discussion off the record.)

5 CHAIRMAN ANDERSON: All right. Jack, can you
6 hear us?

7 COMMISSIONER CAMPBELL: Good morning. Yes.

8 CHAIRMAN ANDERSON: All right. We're going to
9 call the roll. As I understand it, Jack, we'll lose you
10 in about 20 minutes?

11 COMMISSIONER CAMPBELL: Yes.

12 CHAIRMAN ANDERSON: All right. Well, we'll
13 try to go fast here.

14 CHAIRMAN ANDERSON: Don't have anybody to call
15 the roll.

16 There are now four Commissioners present:
17 Commissioner Larson, Commissioner MacMillan and
18 Commissioner Campbell by telephone, and I'm Commissioner
19 Anderson, chairman. We have--let's go ahead and take
20 appearances.

21 MR. CROUCH: Keith Crouch and Ken Wonstolen
22 for Gerrity Oil & Gas Corporation.

23 MR. EVANS: Mr. Anderson, it's John M. Evans
24 on behalf of Mr. Johnson. On my immediate left is
25 Mr. Johnson, and on his immediate left is my paralegal,

1 Diane Borene.

2 CHAIRMAN ANDERSON: All right. Well, you just
3 heard the constraints that we have. So if you could deal
4 with this as quickly as possible.

5 I think, Mr. Evans, you should begin.

6 MR. EVANS: Okay. Given the constraints of
7 the Commissioner having to leave, may I briefly outline
8 the issues to you as I see them and then the exhibits we
9 wish to present, and then leave it to the Commission's
10 discretion as to what--how further you would like to get
11 into the issues involved.

12 I think when we left at our last meeting, one
13 of the things we were left considering was, as you
14 pointed out, the impact of the Highly Erodible Soils and
15 Wetlands Conservation Act on the farmers, particularly
16 Mr. Johnson. We have some information on that that we
17 will present to you today.

18 But more than that, I think this Commission
19 needs more information in terms of understanding, first
20 of all, what the Highly Erodible Lands--that's
21 HEL--conservation plans are, what they entail and how
22 detailed they are. And we do have an exhibit, which is
23 Mr. Johnson's conservation plan.

24 The Highly Erodible Soils Act requires all
25 farmers receiving federal funds to comply with the plan.

1 If they become out of compliance on their plan, they risk
2 the loss of all federal funds and supports, including in
3 Mr. Johnson's case and for Mr. Johnson's tenants, the
4 Buderuses, the calling of their federally--their federal
5 loans, which would be substantial losses, particularly to
6 Mr. Johnson and the Buderuses, of hundreds of thousands
7 of dollars. So what we're talking about here is
8 something that is exceptionally important and grave.

9 Now, as I mentioned to you before, I think the
10 first part of this is informational. I'd like to
11 basically tell you a little bit about what we have been
12 doing since our last meeting together, because we have
13 been moving as quickly as possible to find more
14 information about this situation as we could.

15 First of all, I have had an opportunity to
16 meet with most of the people over at the Department of
17 Resources, the Land Commissioners, the Soil
18 Conservation--Dan Parker, State Soil Conservation Agency
19 and Bureau of Mines and Reclamation (sic).

20 In addition, yesterday I had for the first
21 time an opportunity to talk to the State Soil--the State
22 Soil Conservation Director, Dwayne Johnson.

23 With us at that meeting was Gerrity Oil, at my
24 invitation. And I think it was important that they be
25 invited, as well, there, because one of the things that I

1 think was important is that they understand fully what
2 the ramifications to Mr. Johnson were.

3 At that meeting, Mr. Johnson, with a large
4 staff present, had an opportunity to verbally hear our
5 particular situation. While he did not render an opinion
6 specifically on Mr. Johnson, which he cannot render, if
7 you could understand, as a policeman--the Soil
8 Conservation Service under the Highly Erodible Soils Act,
9 are the policemen of the Act. The bureaucrats that do
10 the accounting and the actual cutting off of financial
11 supports is what they call the ASCS. And that particular
12 group is separate from the Conservation Service.

13 I am scheduled, within the next couple days,
14 to meet with the executive director of the ASCS, who is
15 the financial accounting arm. There are some additional
16 questions which we do need to ask on behalf of
17 Mr. Johnson.

18 But at our meeting yesterday--let me just go
19 right to the heart of that meeting and tell you basically
20 what happened at that meeting.

21 Mr. Johnson and his staff went through and
22 discussed the Highly Erodible Soils Act and how it
23 applies. Yes, they said, the Highly Erodible Soils Act
24 does apply to Mr. Johnson. Yes, it--Mr. Johnson would
25 likely be out of compliance, should Gerrity come onto the

1 land.

2 But there are some provisions that he talked
3 about, and he mentioned some other things. And some of
4 the other things that he talked about were as follows.

5 First of all, he mentioned that the likelihood
6 of Mr. Johnson--he mentioned that it was important that
7 Mr. Johnson take a couple of very important steps. First
8 of all, he recommended that Mr. Johnson immediately amend
9 his soil conservation plan, a plan which is Exhibit 1
10 today, and I will be presenting to you, to each one of
11 you. He recommended that they take immediate steps to
12 amend the plan.

13 By taking the immediate steps to amend the
14 plan and by getting the reclamation plan in his
15 conservation plan, as Gerrity will impact on his
16 property, the reclamation plan to resolve the problems
17 around the highly erodible soil and violating the plan,
18 they recommended that he put a reclamation plan in there.

19 If they put that reclamation plan into the
20 plan, he felt that those would be very positive steps and
21 would keep Mr. Johnson in compliance. Okay? I think
22 that's the important thing here, that there is a method
23 to keep him in compliance.

24 He also mentioned that there were two
25 exceptions that he felt to the Highly Erodible Soils and

1 Lands Act. First of all, he said that if the land was
2 classified as nonagricultural and was under 2 acres, the
3 Highly Erodible Soils and Lands Act would not apply.

4 MR. CROUCH: Mr. Chairman, I want to object,
5 just--not to stop it, but just to put an objection on the
6 record. This is all hearsay.

7 MR. EVANS: I think they understand that. I'm
8 just merely summarizing what happened yesterday at the
9 meeting.

10 MR. CROUCH: I mean, if he's offering it for
11 the truth of what happened yesterday--

12 CHAIRMAN ANDERSON: Sounds like it was a
13 report of the meeting he had yesterday.

14 Although I have to say what I'm trying to
15 understand is if all of the things that you're reporting
16 are accurate, why--it sounds like then there are
17 provisions under which Mr. Johnson can protect himself.

18 MR. EVANS: That's correct. And I'm going to
19 get to that just shortly.

20 CHAIRMAN ANDERSON: All right. And that,
21 therefore, there's not a need to continue with this
22 process.

23 MR. EVANS: Yes, there is. There is a very
24 definite need to continue this process. I'm trying to
25 move as fast as I can, but I think it's important to get

1 the highlights of yesterday's meeting. It was a crucial
2 and important meeting. As I said, Gerrity was present at
3 the meeting. So, I mean, I'm not saying anything that is
4 out of school here.

5 There is a second issue, and that is it's an
6 issue of a shelter, safe harbor which Gerrity raised
7 which is within the Act. The safe shelter basically
8 provides that if the circumstances are beyond the
9 farmer's control, such as weather, the Highly Erodible
10 Soils Act--noncompliance would not be an issue.

11 The problem that we have there is the Soil and
12 Conservation Service said that the only exception that
13 they had so far recognized was weather. So we had that
14 particular--but that they did promise that they would get
15 an opinion from legal counsel as to whether that safe
16 harbor would apply to them.

17 So that is basically where we were at with the
18 Highly Erodible Soils and Wetlands Act as of yesterday in
19 terms of finding out for the very, very first time
20 exactly what Mr. Johnson must do.

21 Now, the problem that we have before you is
22 essentially this. What we are asking for is a 15-day
23 stay. The reason were we're asking for that 15-day stay
24 is we want to give Mr. Johnson an opportunity to amend
25 his plan before the Soil and Conservation authorities and

1 at least have an opportunity to be in compliance.

2 If he does not have that plan, the likelihood
3 is that Mr. Johnson--and I'm prepared to present exhibits
4 to show that Mr. Johnson will likely be out of
5 compliance. And I think it's important that the 15-day
6 stay be granted for that reason.

7 As I said, we're not asking all that much from
8 the Commission. We're asking for initially a 15-day stay
9 to give Mr. Johnson an opportunity to talk to his local
10 Soil and Conservation Service representative. In this
11 particular instance, his local service representative is
12 Mr. Norman J. Wells, who is the soil conservationist for
13 the United States Department of Agriculture.

14 I asked Mr. Wells to be present today, but he
15 is under instructions by the State Conservation Service
16 that he works for (sic) that he will not testify at any
17 hearing, even if he is subpoenaed, that he would resist
18 testimony in any hearing. So they feel rather strong
19 about being present for testimony.

20 But I do have Mr. Johnson here, who has
21 received correspondence from them and who has talked to
22 Mr. Wells, and who can discuss Mr. Wells' opinions as to
23 the potential problems on his particular place.

24 Now, the exhibits I would like to present are
25 as follows, and they're four very simple--they're

1 basically, I think, two basic exhibits. And if the
2 Commission wishes to get into the issue of bonds or
3 whatever, we could.

4 The only thing is I would encourage you not to
5 do that at this time, because one of the things we are
6 doing is we are discovering day to day the costs of
7 reclamation. And we're getting better at calculating the
8 costs of reclamation. So what I would ask the Commission
9 to do is to hold over the issue of raising the bond on
10 Gerrity at this particular time, which we requested at
11 our first hearing, simply because we have not had an
12 opportunity to talk to ASCS. We have not completed our
13 talks with Norm Wells as to the exact reclamation plan
14 that's going to have to be put into place, so we do not
15 know ourselves the exact costs.

16 In addition, we've had talks with the Bureau
17 of Mines and Reclamation (sic), who have a wonderful
18 background in computing reclamation costs, and we're
19 learning more about how to do that. So that when we do
20 come before you to raise the bond, what we want to do is
21 come before you with some very accurate figures so that
22 you can just really hit the old nail right on the head as
23 far as understanding what the bonding requirements ought
24 to be in the area of reclamation.

25 For you today, what we'd like you to decide is

1 for a 15-day stay to give Mr. Johnson an opportunity to
2 amend his conservation plan, to give the
3 Conservation--Soil Conservation Service an opportunity to
4 review and approve that particular plan.

5 That is, in a nutshell, what we're doing
6 today. Without your taking that particular plan, I am
7 prepared to present testimony by both Mr. Johnson and Ted
8 and Dan Buderus, who will testify as to the consequences
9 of what it means to come out of compliance on their
10 conservation plan. They will testify as to the amount of
11 federal programs that they do participate in, and they
12 will testify as to the actual economic harm that is--that
13 potentially exists for them.

14 So with that, I conclude my opening remarks
15 and want to thank the Commission and the Commission
16 members for holding this hearing today. And I would like
17 to continue and present my case-in-chief.

18 CHAIRMAN ANDERSON: Okay. I'd like to hear an
19 opening statement from Mr. Crouch first.

20 MR. CROUCH: Well, okay. Thank you.

21 I want to go back to what I started with
22 earlier. The application that was filed was to
23 temporarily suspend any and all oil and gas well drilling
24 permits that have been issued for Mr. Johnson's lands.

25 There were two grounds stated. One was there

1 was some confusion about who had the right to drill,
2 Gerrity or Snyder. At the last hearing, I thought we
3 were basically sent away to see if we could negotiate
4 some resolution to some of the location issues and some
5 of the other monetary damages issues. We were supposed
6 to report back today.

7 During the other hearing, the highly erodible
8 soils issue did come up, and Ken Wonstolen is prepared to
9 give you our understanding of the meeting yesterday. And
10 he'll do that in a minute.

11 But the two issues upon which the application
12 was made have been resolved. Gerrity has the right to
13 farm out, Snyder has agreed to release any interests in
14 the lands they might have, and there's been extensive
15 negotiation about the location of facilities on the
16 property. And I believe an agreement has been reached.

17 In the original application, it was alleged
18 that we were in violation of Rules 304.b., 317.q.,
19 317.r., 802.a., 802.b. and 802.c.

20 304.b. is the bond. There's nothing in the
21 application that would tend to call the bond into
22 question.

23 317.q. is--and 317.r. are interim and final
24 site reclamation requirements. There has been no
25 drilling activity, so there's no interim or final site

1 reclamation to be done. I would suggest that's
2 premature.

3 802.a. is location of drilling sites and
4 production sites, 802.b. deals with roads, and 802.c.
5 deals with the consultation that has to take place with
6 the landowner before operations.

7 We've had the two meetings the Commission has
8 required. They've been on-site meetings, and I believe
9 we have complied with those rules.

10 The application originally was for an
11 emergency. The statutory section governing emergency is
12 806-01-08(3). It says, "When an emergency requiring
13 immediate action is found by the Commission to exist, it
14 is authorized to issue an emergency order without notice
15 of hearing which shall be effective upon promulgation,
16 but no such order shall remain in effect for more than
17 15 days."

18 I submit this morning that we just don't have
19 an issue dealing with an emergency. I brought my
20 dictionary, just so we can define what an emergency is.
21 And this is Webster's New Ideal Dictionary. Defines an
22 emergency as "an unforeseen combination of circumstances
23 or the resulting state that calls for immediate action."

24 Everything that's been alleged, including the
25 Highly Erodible Soils Act issue, isn't unforeseen. And

1 damages are monetary. We have--which I'm prepared to
2 introduce--we have a permit to drill, we've complied with
3 the regulations, we have contractual obligations with
4 Amoco that I can go into with respect to the drilling of
5 this well that need to be met by the end of this year.

6 And if a 15-day stay is issued or the
7 continuance for 15 days, we're at the 17th of December.
8 If they come back seeking an emergency order and it's
9 granted, we're beyond the first of the year, and we lose
10 our rights under the Amoco farmout to drill this well.
11 Doesn't mean the well won't be drilled. Someone else may
12 drill it. The lease will remain in effect.

13 But I submit there is no emergency. The
14 issues raised in the petition have been resolved. We're
15 negotiating on everything including reclamation,
16 operational issues and money.

17 They have asked for \$25,000 up-front money for
18 the location damage and other monetary consideration. We
19 believe that it's going to be very difficult to reach
20 agreement on that issue, and I submit that this is a
21 matter of money and not a matter of an emergency. If we
22 violate the terms of the lease, if we violate or act
23 negligently and unreasonably, they have recourse in the
24 court.

25 And I submit that the Commission deny the

1 motion to stay and deny the order, so we can get on with
2 our lawful business of drilling a well at this location.
3 Thank you.

4 CHAIRMAN ANDERSON: All right.

5 MR. CROUCH: Mr. Wonstolen--

6 CHAIRMAN ANDERSON: We're going to lose a
7 Commissioner in about five minutes or so. I'd like to at
8 least ask a question at this stage.

9 I was in favor of hearing this on an emergency
10 basis at the last hearing because of the ambiguity
11 surrounding the Highly Erodible Soils Act and its impact
12 on what was happening here, because it was news to us,
13 obviously news to some of the participants. And I'd
14 hoped within the two-week period that we'd get a pretty
15 clear definition, and it has been suggested actually to
16 resolve this matter.

17 I'm back--having heard even as much as we
18 have--to wondering whether or not we really have an
19 emergency. I think that there may be some unusual
20 circumstances here which generate an interesting
21 conversation on what the damages are or what they might
22 be ultimately.

23 But that we have an emergency at all, I'm not
24 so sure is the case. And so--

25 MR. WONSTOLEN: Mr. Chairman, I think I can

1 shed some light on that issue, add a counterweight to
2 Mr. Evans' presentation about the meeting yesterday. I
3 think it would be appropriate for you to hear our
4 presentation.

5 CHAIRMAN ANDERSON: Okay. Again, I don't know
6 if we can--my inclination is that--

7 MR. EVANS: Mr. Anderson, I'm fully aware that
8 the crux of your question is essentially does this
9 constitute an emergency.

10 CHAIRMAN ANDERSON: Yes.

11 MR. EVANS: And I think from the point of view
12 of the farmer involved, Mr. Johnson, it is definitely
13 exactly that. What he does need is--he does need time to
14 get his plan amended. That's essentially what he's
15 asking for. Without the amendment of the plan, he is, in
16 effect, in noncompliance. With his being in
17 noncompliance, it threatens not only the farm programs of
18 his chairman, of his family, but also the farm programs
19 of Mr. Buderus.

20 What we want is the opportunity for him to
21 amend his plan, which he can begin to do in the next--as
22 soon as this hearing is over with, and hopefully have the
23 plan on file within the next 15 days. That is
24 essentially the suggestion of SCSC (sic) yesterday. And
25 that the amendment of the plan includes a reclamation

1 plan in there.

2 Why that's also an emergency, why it also is
3 important for us is by amending the plan and by examining
4 the reclamation issues involved, we are able to better
5 understand the bond requirements in which--that we're
6 seeking. We do need to seek a raising of the bond for--

7 MR. CROUCH: Then they should apply for that,
8 and I think Mr. Wonstolen needs an opportunity to give
9 our version of the meeting.

10 CHAIRMAN ANDERSON: All right. Hold on. I
11 had hoped we might be able to resolve this before five
12 after 9:00--

13 MR. CROUCH: Mr. Chairman, I move that the
14 stay be denied and that the petition be found to be not
15 an emergency, so we can get on with our business. That
16 is what I think we need to do.

17 If there's still concern about the Highly
18 Erodible Soils Act, I think Mr. Wonstolen needs to give
19 his presentation on the meeting yesterday, as well,
20 because the sense that we got from the SCS yesterday was
21 that this was not going to be a problem, and we could
22 work around this and either recognize the safe harbor in
23 the Act or an exemption in the regulations.

24 We did offer, and we continue to offer to put
25 into practice, whatever substitute practices the SCS says

1 are required in order to meet the requirements of the Act
2 and eliminate the erosion possibility while we're out
3 there. We've offered that, and we will do that.

4 COMMISSIONER MacMILLAN: Chairman Anderson,
5 may I ask our Commissioner via phone if they choose,
6 before they leave, to make a motion? This is Logan
7 MacMillan.

8 COMMISSIONER CAMPBELL: Yeah, go on.

9 COMMISSIONER MacMILLAN: What do you have, a
10 few moments left, or--

11 COMMISSIONER CAMPBELL: I have to leave right
12 now, but go ahead.

13 COMMISSIONER MacMILLAN: Having heard what
14 you've heard, is there anything that you'd like to say
15 before you go? Or do you want us to slog into this?

16 COMMISSIONER CAMPBELL: Well, I'd like to ask
17 Mr. Crouch how soon Gerrity plans to drill. What's
18 their--

19 MR. CROUCH: Well, the weather, Mr. Campbell,
20 has had an impact on the drilling operations. The well
21 was originally scheduled to be commenced on the 5th of
22 December. The current drilling scheduled calls for
23 commencement on the 13th of December at this stage, which
24 means we would have to construct a drill site probably no
25 later than the 11th.

1 COMMISSIONER CAMPBELL: Understood.

2 MR. CROUCH: The more time we have to
3 construct a drill site, the more careful we can be, as
4 well. So if we could commence a day or two ahead of the
5 11th, that would be helpful.

6 COMMISSIONER CAMPBELL: Mr. Evans, does that
7 give your client time to get his revisions prepared?

8 MR. EVANS: Basically, what we needed is, as I
9 said, basically two weeks.

10 COMMISSIONER CAMPBELL: You have 11 days.

11 MR. EVANS: I wanted the two weeks. The
12 reason is, once he files his plan today, we have--the
13 Soil Conservation Service has got to have some time to
14 review it and send it on to the State for approval.

15 The additional time, I felt, was required. As
16 a general rule, sometimes these particular things take
17 30 and 60 days to get approval. The State Soil
18 Conservation Service knows our particular problem, and
19 one of the things we'll be doing is trying to expedite
20 the situation. I think what we wanted was the 15 days to
21 ensure us that we had the additional time to get this
22 particular conservation plan approved.

23 In addition, I'd point out it's very important
24 for us, when we get the plan approved, to meet with them,
25 because they're going to have requirements of Mr. Johnson

1 which are going to become part of his reclamation plan
2 which we don't really know about which we want to present
3 to this board, as far as understanding why we want them
4 to raise the bonding requirements. So it's very
5 interlinked.

6 MR. CROUCH: There is no application in a
7 raise in the bonds before the Commission. I think we
8 need to stick to the business that's in the application.

9 COMMISSIONER MacMILLAN: Dr. Campbell, did you
10 get your question answered? Would you like some more
11 questions answered?

12 COMMISSIONER CAMPBELL: I think that clears
13 the air a bit.

14 CHAIRMAN ANDERSON: Well, all right. What do
15 you folks think? We can either take action based on what
16 we've heard, or we can go into recess here for--when
17 would you be back?

18 COMMISSIONER CAMPBELL: I'll be back at five
19 after 10:00, assuming the class hasn't left already.

20 COMMISSIONER LARSON: I think I need to hear
21 more.

22 CHAIRMAN ANDERSON: All right. That's what
23 we'll do. We're going to take a recess here until five
24 minutes after 10:00.

25 COMMISSIONER CAMPBELL: Enjoy your coffee.

1 CHAIRMAN ANDERSON: We'll do it. Talk to you
2 in a moment.

3 All right. We'll just have to go on hold here
4 for an hour. I'm sorry for the inconvenience, but
5 getting a quorum together of the Commissioners is
6 difficult off schedule. And we are, unfortunately--with
7 three, we are--we are without authority to do anything.

8 MR. CROUCH: What is it we're going to want to
9 hear?

10 MR. MONAHAN: Mr. Crouch, let's wait until we
11 get our quorum back. The only thing the Commission can
12 do now is continue the matter until five after 10:00.

13 (Break was taken.)

14 CHAIRMAN ANDERSON: All right. Welcome back.
15 All right. I think we're ready to go back on the record
16 here.

17 We have--all three Commissioners are here
18 before us, plus Commissioner Campbell by telephone again.
19 I think we were about to hear some comments from
20 Mr. Wonstolen on the--his views of the meeting that was
21 held yesterday.

22 MR. CROUCH: That is correct, Mr. Chairman.
23 But just prior to that, I want to seek your indulgence
24 for one thing.

25 I think we need to focus on what we're here

1 about today, and I think it's the application that
2 Mr. Johnson filed on November 7 as an emergency. He says
3 in his application the basis for this application is
4 that, "I am uncertain who has the right to drill upon my
5 land and, therefore, who I am to deal with regarding such
6 drilling."

7 That's the application. The--there's nothing
8 in the application about the Highly Erodible Soils Act.
9 Now, we can go into that, obviously.

10 But I think we need to focus. This has gone
11 far afield of what the application originally asked for
12 back in November, and I'd just submit once again we are
13 wandering off into all kinds of areas that have not been
14 applied for. There are procedural requirements that the
15 regulations call for; I believe we've met those. If
16 there's any dispute about that, we can go into that on
17 drilling this well.

18 But we are far, far afield from what was
19 originally applied for. And I think that we need to
20 follow the rules and regulations. If there's something
21 else that needs to be applied for, they should do that.
22 But I think they need to follow the rules, like everyone
23 else in that regard. So just as we go through this, I
24 would hope we would all remember and would focus on what
25 this hearing was all about.



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1 MR. EVANS: If you'd permit me one moment, I
2 think I can clarify that very easily for the Commission.

3 If you would continue to read on Mr. Johnson's
4 original application, he concludes, "For this reason,
5 none of the requirements of the Rules 304.b., 317.q. and
6 r., and 802.a., b. and c. of the rules and practices and
7 procedures of the Oil & Gas Commission of the State of
8 Colorado, have been met."

9 That is the basis for the emergency. If you
10 were to look at those rules and how they interplay with
11 why we're here today, I think you can easily see why the
12 Highly Erodible Soils Act plays an important part in our
13 discussions today.

14 For example, if you were to look at 304.b., it
15 specifically says, "Prior to the commencement of
16 operations, in instances in which the owner of the
17 surface is not a party to the lease, a party to the
18 surface damage agreement shall require from the lessee a
19 good and sufficient bond payable to the State of
20 Colorado." The issue before you is what constitutes a
21 good and sufficient bond.

22 If it turns out, as our worst fears would
23 apply, that Mr. Johnson is susceptible to the--to
24 noncompliance under the Highly Erodible Soils
25 Conservation Act, that bond requirement ought to include

1 all of the likely damages he is likely to suffer,
2 including--for that nonconservation compliance,
3 including, I would argue, the loans that would be called.

4 In addition, there's a tenant involved: the
5 Buderuses. They also are likely to suffer from
6 noncompliance with the Highly Erodible Soils Act, and
7 they also need to figure into the bonding requirement.

8 That's one basis for the emergency. If you
9 were to look at the--at--

10 COMMISSIONER MacMILLAN: Excuse me, Mr. Evans.
11 I don't think that now is the time to be getting into
12 that. I think we're waiting for comments about what
13 Gerrity's position was for the meeting that you had with
14 the Soil Conservation Service.

15 And then I think the Commissioners will maybe
16 try and help both of you to focus on what we think the
17 issues are and would ask that you direct your comments to
18 what those issues are. So let's get on with it.

19 MR. EVANS: Yeah. I was addressing the issue
20 of the emergency that was--that Commissioner Anderson
21 raised and my colleague Keith Crouch has also raised.
22 And I think it's an important one that I did not want to
23 leave lie. Thank you.

24 CHAIRMAN ANDERSON: Okay. Could we hear from
25 Mr. Wonstolen?

1 MR. CROUCH: Yes.

2 MR. WONSTOLEN: Thank you, Mr. Commissioner,
3 and other Commissioners. In one respect, I'd have to
4 disagree somewhat with Mr. Evans' characterization of the
5 meeting.

6 Mr. Dwayne Johnson, who is the state director
7 of the USDA Soil Conservation Service, convened our
8 meeting by saying that no specific practices would be
9 recommended for the particular lands that were--that are
10 here before you today, and no legal conclusion would be
11 drawn at this meeting. We were just going to have a
12 general discussion about the applicability of the Act and
13 the kinds of practices that might be appropriate. So the
14 suggestion that Mr. Johnson agreed with the assertion
15 made by Mr. Evans that it was likely that our activity
16 would result in noncompliance with the Act is incorrect.

17 I would like to direct your attention
18 specifically to the statute, and I will give you some
19 statutory citations here. Section 3812 of--16-USC-3812
20 provides for exemptions relating to ineligibility for
21 program benefits. The first point is Subsection A-B-2.

22 And just to paraphrase that for you, if a
23 person is actually applying a conservation plan, such
24 person shall have until January 1, 1995 to comply with
25 the plan without being subject to program ineligibility.

1 In carrying out this subsection, the secretary of Soil
2 Conservation Service and local soil conservation
3 districts shall minimize the quantity of documentation a
4 person must submit to comply with this.

5 So as a threshold matter, we have a
6 January 1995 deadline for final plan compliance.
7 Secondly, there is a provision which provides--and I'll
8 quote--"No person shall become ineligible for program
9 loans, payments and benefits as a result of circumstances
10 beyond the control of the person."

11 It would be our position that in a case such
12 as this where the mineral estate is served and the right
13 to develop the minerals resides in Gerrity as lessee,
14 that from a legal standpoint Mr. Johnson has no control
15 over our activities, no ability to prevent us from
16 exercising our rights as mineral owners, and therefore
17 should qualify for this further exemption.

18 Now, admittedly, the gentlemen at the meeting
19 yesterday had never seen this section applied directly to
20 oil and gas development. They were familiar with its
21 application to weather events and other acts of God. But
22 there was some general discussion about--well, this was
23 really not a whole lot different from a utility easement
24 situation, where a utility would be crossing these types
25 of lands, and that from their perspective there shouldn't

1 be any negative ramifications for farmers in that
2 situation where there was a disturbance to lands.

3 Specifically, the Act, the Food Security Act,
4 relates both to Highly Erodible Lands and to wetlands.
5 Now, in the wetland situation, Mr. Simpson, who was
6 present yesterday, stated categorically that where a
7 third party drains a wetland subject to the Act, there is
8 no liability to the farmer, to the owner of the land. By
9 analogy, the same thinking should apply to this
10 exemption.

11 So first of all, we have this 1995 final
12 compliance deadline which goes to whether or not this is
13 an emergency. Secondly, we have this probable statutory
14 safe harbor available.

15 Then there is a regulation at 7 CFR 12.5,
16 issued--the final rule under the Act issued on
17 April 23rd, 1991, Federal Register, which provides a
18 de minimus regulatory exception of disturbances of
19 2 acres or less. That is, if the disturbance is 2 acres
20 or less, essentially there is no compliance issue, so
21 long as that disturbance is not designed to circumvent
22 the purposes of the Act, to circumvent the erodible
23 protection of the Act.

24 So clearly, oil and gas development coming in
25 totally independent of the farmers' operations cannot be

1 designed to circumvent the purposes of the Act.

2 So I think there was general agreement
3 yesterday that at a minimum, this 2-acre regulatory
4 exception would provide some comfort to Mr. Johnson and
5 the tenants.

6 MR. MONAHAN: Mr. Chairman, you need to
7 continue the proceedings right now, because you've lost
8 your quorum.

9 CHAIRMAN ANDERSON: We'll have to take a
10 couple-minute recess here. Just hold on.

11 (Break was taken.)

12 CHAIRMAN ANDERSON: All right. I think we're
13 ready to begin again. Mr. Wonstolen?

14 MR. WONSTOLEN: I've covered for you the 1995
15 final compliance date, the probable statutory safe
16 harbor, and the de minimus regulatory exception of
17 2 acres or less disturbance.

18 Even beyond that, as Mr. Lee Hill put it to
19 us, there are many ways to skin this cat, to deal with
20 disturbance issues without looking at noncompliance.

21 For example, there are available what are
22 called substitute practices. And as long as these
23 substitute practices meet the applicable technical
24 guidance for Mr. Johnson's property, they may be
25 substituted for his current requirements which relate to

1 leaving a certain amount of crop residue in the ground.

2 And examples were given to us of temporary
3 windbreaks such as straw bales next to the disturbance,
4 surface roughening, manure application, soil amendments
5 by bringing crop residue onto site and tilling it into
6 the soil, and the possibility of substitute cropping
7 subsequent to the reclamation.

8 Now, those practices may be applied for a
9 one-year period without seeking a plan amendment. So
10 there is no legal requirement now to seek a plan
11 amendment. It may be advisable to do so, and certainly
12 making--initiating a contact with the Soil Conservation
13 Service prior to the disturbance is probably advisable.
14 That contact has already happened. However, there's no
15 legal requirement, if the substitute practice is only
16 going to continue for one year, to have the plan amended.

17 Further, there was discussion about what Soil
18 Conservation looks at when it comes out to test
19 compliance. And we were told that the examination looks
20 at the field and the operation in a totality. They
21 understand that there are turnaround rows, that there are
22 corners where tractors turn around where there will not
23 be crop residue, that there are knolls in fields where
24 the wind may have a greater effect, that there are farm
25 roads and that farm roads, of course, are out in the

1 fields, and these are not issues generally.

2 It was told to us that when crop residue was
3 measured, they don't go to the worst-looking part of the
4 field to find the crop residue. You look at the field as
5 a totality. There are options available to the producer
6 to transfer the crop rights from areas taken out of crop
7 production, such as the permanent access road and the
8 well site, to other areas on the farm and to not lose any
9 base for growing crops and for program benefits.

10 In the particular case we're looking at, it's
11 likely that an existing farm road will no longer be
12 necessary because of the new road we'll construct and
13 that possibly base rights would be transferable to the
14 existing farm road.

15 So I think we found generally a desire to
16 accommodate the needs of the farmers with the Soil
17 Conservation Service. And as I indicate, there are
18 statutory provisions that provide comfort, there is a
19 regulatory de minimus exception which is likely to apply
20 to this case, and there are--as was put to us--many ways
21 to skin this cat.

22 CHAIRMAN ANDERSON: All right. Thank you.

23 MR. EVANS: If I may--

24 CHAIRMAN ANDERSON: Mr. Evans.

25 MR. EVANS: --take a few moments to respond.

1 CHAIRMAN ANDERSON: All right.

2 MR. EVANS: And just a few moments.

3 First of all, the--it is true that the farmers
4 have until 1991 to file a plan.

5 CHAIRMAN ANDERSON: 1995?

6 MR. EVANS: 1995 to file a plan. However,
7 those farmers who have already filed plans which are
8 required--requirements for having such benefits in the
9 commodities program, refund payments and other farm
10 programs, operated--farm loans operated by the Farmers
11 Home Administration, disaster payments, federal crop
12 insurance and farm storage loans, are required to sign
13 and file a plan.

14 So it's true farmers don't have to file until
15 1995. However, if you want to participate in the federal
16 programs, you are required to have this particular plan
17 on file.

18 MR. WONSTOLEN: Sir, the quote I read to you
19 said nothing about filing the plan.

20 MR. MONAHAN: As I recall, it had talked about
21 compliance.

22 Is the 1995 date the date for compliance with
23 the plan as filed?

24 MR. EVANS: It is the date for compliance. It
25 is the date for all farmers to have their plans

1 officially filed. Compliance with the plans are required
2 by--are required right now for you to participate in all
3 other federal programs.

4 MR. WONSTOLEN: Sir, I read you a quote from
5 the statute, and counsel is simply mischaracterizing it.

6 MR. EVANS: Let me read you here from
7 Professor Neil, who has authored the particular plan and
8 is a leading expert in it.

9 As he says, After 1990, SCS provisions require
10 the producer who farms HEL, Highly Erodible Lands, that
11 was in production when Congress passed the Act, who want
12 to remain eligible for federal program benefits--the land
13 must be farmed pursuant to a conservation plan.

14 SCSC develops the conservation plan with the
15 farmer/operator and who agrees to adopt and implement the
16 soil conservation plan and the farm management practices
17 necessary to protect the soil.

18 Penalties for violating the restrictions
19 include not only losing eligibility for farm price and
20 income supports under the commodities programs and fund
21 payments for the year of violation, but also the loss of
22 eligibility for other farm programs including loans from
23 Farmers Home Administration, disaster payments, federal
24 crop insurance and farm storage facility loans.

25 MR. MONAHAN: Who--this was the author of that

1 document?

2 MR. EVANS: Professor Neil.

3 MR. MONAHAN: Is that party an attorney?

4 MR. EVANS: Professor Neil Hamilton. He is a
5 professor of law, and he is the Richard M. And Anna
6 Calkins Professor of Law and director for the
7 Agricultural Law Center, Drake University School of Law
8 and--and one of the leading authors of this particular
9 Act.

10 So what we have here is--

11 MR. MONAHAN: Does that article specifically
12 address the compliance deadline of 1995?

13 MR. EVANS: This article specifically does
14 address the compliance--compliance with the programs.
15 And I believe it also does address the compliance of
16 1995.

17 It basically says that to participate in the
18 farm programs, you must have a plan on file, and the plan
19 must be in compliance with SCSC (sic).

20 You'll note that that's not only my opinion,
21 but if you read the letter from Norm Wells, he
22 specifically references the fact that being out of
23 compliance may cause this farmer to lose benefits. So
24 it's not only my interpretation, not only
25 Professor Neil's interpretation, but you'll also see that

1 the local SCSC agent responsible for implementing the
2 particular program is also of that particular opinion.

3 MR. WONSTOLEN: No conclusion has been drawn
4 by the SCSC--

5 MR. MONAHAN: Gentlemen, just a second.
6 Mr. Evans, please.

7 Let's go to the letter. You're stating that
8 it draws the conclusion that your client will go out of
9 compliance?

10 MR. EVANS: No, it doesn't. It draws the
11 conclusion that the potential--the issue that we are
12 addressing is--as he says here, As you are aware, the
13 1985 Farm Bill requires--the landowner and operators need
14 to meet the requirements of their conservation compliance
15 plan in order to maintain their eligibility for various
16 government programs. If these disturbed areas should
17 start to blow and causes your fields to blow or those of
18 your neighbors, you and them could be placed in a
19 noncompliance situation.

20 If this should happen, government benefits
21 could be reduced or completely withheld.

22 MR. MONAHAN: Isn't that the point? It says
23 "if." It doesn't say they will be withheld. It says
24 "if."

25 MR. EVANS: That's correct, "if." If they're

1 in noncompliance.

2 MR. MONAHAN: And aren't there practices that
3 you can employ to preclude the blowing?

4 MR. EVANS: That's correct. If you'll let me
5 get to that, Mr. Monahan, I'll address that in just a
6 second.

7 MR. MONAHAN: Mr. Crouch, please.
8 Go ahead and address that point.

9 MR. EVANS: Okay. On that particular point,
10 the thing that we learned yesterday from the Soil and
11 Conservation Service (sic) was that substitute practices
12 are available, but that there are a specific list or
13 manual of substitute practices which Mr. Johnson must
14 get--must apply to his particular type of land.

15 One of the things I will be able to present to
16 you is--through Mr. Johnson is a copy of his actual--his
17 actual plan. Those substitute practices must meet the
18 soil types for that particular type of plan.

19 The one thing that they emphasized to us and
20 why it was important for us to work with our local SCSC
21 representative in getting his plan amended was to make
22 sure the substitute practices fit exactly the types of
23 soils on that particular land. Baling and hay may not be
24 the appropriate practice. The appropriate practice may
25 not be the adding of fertilizer.

1 The fact of the matter is we do not know until
2 we have an opportunity to meet with them and to develop
3 as they suggested, get prior approval for those
4 substitute practices and get the plan amended.

5 MR. MONAHAN: Why didn't those meetings take
6 place in the 15-day period that the Commission granted
7 previously for you to get this evaluation of the Highly
8 Erodible Soils Act?

9 MR. EVANS: Well, first of all, the situation
10 was, we did not know at the time until our meeting--and
11 that was the first time we had the opportunity to meet
12 with SCSC--that there was, in fact, a requirement that we
13 check substitute practices.

14 We met with Norm Johnson, and he indicated to
15 us--I mean Norm Wells--he indicated to us primarily that
16 it was--that the potential for these particular farmers
17 going out of compliance existed. What we did not know
18 until we had met with the state agency was that there was
19 opportunities and options open to us to examine
20 substitute practices.

21 Now, I don't want to get too far astray,
22 because substitute practices are an important part of the
23 issue. But it's also--also an important part of this
24 issue is understanding what the reclamation plan is.
25 Because, remember, what we are asking for is an increase

1 in the bonding requirement. And the bonding requirement
2 is going to require a--

3 MR. MONAHAN: Mr. Evans, you've not asked for
4 that. It's not in the application.

5 MR. EVANS: In 304--the requirements of 304.b.
6 that Mr. Johnson filed, I believe he said there was a
7 violation of 304.b.

8 MR. CROUCH: Based on the identity of the
9 drilling entity. That has been solved. We are in
10 compliance with the bonding requirements of the
11 Commission.

12 CHAIRMAN ANDERSON: Mr. Evans, I'm getting to
13 the point here where the more I hear, the less I
14 understand. I--I remember the hearing of a couple of
15 weeks ago. We granted an emergency order, because we
16 were concerned--

17 MR. CROUCH: You didn't grant the order.

18 CHAIRMAN ANDERSON: I'm sorry. We set this
19 aside for another 15 days, because we were concerned
20 about the ambiguities. We didn't understand, never had
21 heard of the Highly Erodible Soils Act.

22 MR. EVANS: Certainly.

23 CHAIRMAN ANDERSON: What I think I've heard is
24 that there's a variety of mechanisms in which Mr. Johnson
25 can find protection. And while this may be an unusual

1 circumstance in determining what damages are, that's all
2 it is, is an unusual set of circumstances. And those
3 unusual set of circumstances may, I would hope, lead to
4 unusual accommodations with the operator in getting the
5 well drilled, and it may well lead to unusual
6 conversations on what the amount of damages are.

7 But I'm back to where I was, which was
8 hopeful--wishing that this could have been resolved
9 between Mr. Johnson and Gerrity, rather than getting into
10 the interpretation of this law that, obviously, the
11 Commission has no knowledge of.

12 MR. EVANS: I agree with you. We've been
13 moving as fast as we can and as diligently as possible to
14 get this situation turned out.

15 There's one other agency we have to consult
16 with, and that is ASCS. One of the arguments they
17 pointed out, there's what's called a transfer of basis
18 requirement. That is, to maintain eligibility under the
19 commodities programs only, we needed to find out from
20 ASCS what the requirements for that transfer of basis
21 program would be and whether Mr. Johnson would be
22 eligible for the transfer basis in order to maintain his
23 eligibility in the commodities programs only.

24 But, I mean, the situation is unique and
25 different. The situation is that--that we have before us

1 is a situation in which the cost, the potential cost to
2 Mr. Johnson and the Buderuses in terms of their lost
3 benefits, is enormous enough that this Commission ought
4 to at least let us have the additional 15 days.

5 CHAIRMAN ANDERSON: It sounds like there's
6 some potential, but very little, if any, likelihood.

7 Could we go to Mr. Crouch? I'm afraid we're
8 fillibustering past him here.

9 MR. CROUCH: Well, I want everyone to
10 understand, we are willing to cooperate on these issues
11 and implement the substitute practices for these issues.
12 But I don't want there to be any mistake that--that by
13 doing that, that we are assuming that any damage they
14 might suffer is a compensable damage for which we are
15 liable.

16 I mean, we have a right to be on that
17 property, a permit to drill that property, and we intend
18 to exercise those rights. We have obligations under the
19 law and under the lease and under the surface owner's
20 agreement, and we will discharge those obligations. But
21 I don't want any assumption that we're agreeing for all
22 damages that may flow.

23 I think the important point that Mr. Wonstolen
24 raised, number one, is that there's a statutory
25 exemption. And I think that that may provide the safe

1 harbor that Mr. Johnson is looking for.

2 But I don't see that as our burden. I don't
3 see that there's an emergency. The permit to drill was
4 received by the Commission on the 22nd of September. Our
5 original letter to Mr. Johnson and his tenants was the
6 22nd of September.

7 We are now approaching the end of the first
8 week in December, and this issue did not come up until
9 the 19th of November. And given the cooperation and the
10 willingness to work of the SCS that we were informed of
11 yesterday, there simply is no emergency.

12 If you grant the motion to stay, you are in
13 effect granting the order. They want 15 days, and the
14 statute says you can only have an emergency order for
15 15 days. Then if they come back again for an emergency
16 order, we're into January.

17 And I'm telling you, our drilling rights run
18 out. We need to get on with business. There are rigs
19 waiting, trucks in Weld County. The weather has been
20 bad, and we need to get on with our business.

21 Whatever damages we cause, compensation would
22 be paid for under the applicable agreements and the
23 applicable law. If this is one of them, so be it. We're
24 not going to have a compliance problem, in any event.

25 This is just more seeking delay. We need to

1 have a resolution. I would move that the Commission deny
2 the stay and deny the emergency petition, and let us get
3 on with our business.

4 CHAIRMAN ANDERSON: And I don't understand why
5 that isn't satisfactory, Mr. Evans. They're saying that
6 whatever damages are caused, they're compensable, and
7 that--

8 MR. EVANS: We're not asking for damages.
9 We're asking for the bond to be raised. And that is an
10 important issue. That's the issue we addressed to you
11 that we did deal with last time. We did deal with
12 whether the reclamation bond--whether the bond would be
13 adequate or not, as you recall. That was an important
14 issue that we did discuss.

15 And one of the things you instructed us to do
16 was to go back into negotiations to try to see if we
17 could resolve this. We did enter into negotiations, we
18 did put an offer on the table, and that's essentially
19 where it is. We did ask for a bond of \$25,000. We did
20 ask for a one-time payment of \$25,000.

21 We also asked for provisions specifically--

22 MR. MONAHAN: Can we step back for a moment?
23 Who did you ask for an increase in the bond of--to
24 \$25,000?

25 MR. EVANS: In our negotiations with Gerrity.

1 MR. MONAHAN: Have you ever approached the
2 Director of the Commission and requested that he increase
3 the bond, as he has that authority under regulation?

4 MR. EVANS: I discussed the matter with the
5 Commissioner. But to be honest with you, I've not
6 specifically asked him to raise it. The issue was raised
7 at the last meeting of the Commission. And so,
8 therefore, what I was addressing was the Commission's
9 concern about the adequacy of the bond.

10 We're concerned with--the regulations
11 specifically say prior to entering into the drilling that
12 the bond be adequate. It doesn't say after. And I know
13 you don't want me to deal with these issues, and I know
14 you wanted to--

15 MR. CROUCH: We've complied with the bonding
16 requirements.

17 MR. EVANS: The adequacy of the bond is
18 certainly very important to us.

19 In addition--

20 CHAIRMAN ANDERSON: I don't understand. Why
21 aren't you trying to deal with Gerrity, rather
22 than--whatever level the bond is may or may not relate to
23 what the actual damages are.

24 We've heard Gerrity say they're willing to pay
25 for whatever the actual damages are. I don't understand

1 why the argument isn't focused on that, rather than what
2 the bond is. You're probably not going to be calling on
3 the bond anyway. Why--

4 MR. CROUCH: Mr. Chairman, I would submit
5 that's the heart of the issue, that the \$25,000 they're
6 asking for--in an exhibit that will be outlined, we have
7 serious disagreement under the law what is and what is
8 not compensable. We believe the \$25,000 includes many
9 elements under Colorado law that are simply not
10 compensable by an operator to a surface owner.

11 And that's the crux of the disagreement. This
12 is about money.

13 CHAIRMAN ANDERSON: And that's an important
14 issue. But why--

15 MR. CROUCH: It's not an emergency.

16 CHAIRMAN ANDERSON: Why wouldn't we deal with
17 that, rather than what the level of the bond is?

18 MR. EVANS: Because I think it all comes back
19 to the understanding of what the level of the bond ought
20 to be set at.

21 I think if you take a look at what the
22 potential for noncompliance is under the Highly Erodible
23 Soils Act, we're only now beginning to understand the
24 real costs in reclamation. What we're pursuing here is
25 something that must be done prior to the commencement of

1 operations. What we want done is we want it done right.

2 The bond is only a surety: the surety that
3 the land will be restored, the reclamation will be done,
4 and that the damages that result from the drilling, you
5 know, that somebody will be responsible for--

6 MR. CROUCH: They're assuming that the
7 elements of damage that they're trying to secure are
8 compensable damages. We haven't had a trial on that.

9 MR. EVANS: May I also say something else
10 here, too? And that is you have individuals
11 here--Mr. Anderson and Ted Buderus--who can far more
12 eloquently talk to you about how the conservation plan
13 operates, compliance with it, they can talk to you about
14 substitute practices, they've worked with Norm Wells in
15 the field. They can tell you firsthand how those
16 particular exceptions work and whether particular
17 exceptions would or would not be acceptable.

18 Mr. Johnson was a part of the plan when it was
19 initially filed. Mr. Buderus is the tenant on the
20 property. He's responsible for compliance. They can
21 give you some really excellent background on this, as far
22 as the technical aspects of it go.

23 MR. WONSTOLEN: Mr. Chairman, counsel for the
24 other side has not established that there will be
25 noncompliance. And to take this Commission into a

1 long-winded discussion about what substitute practices
2 might be available is unnecessary.

3 I've outlined for you two possible statutory
4 exemptions and a clear regulatory de minimus exception
5 that's applicable here. So noncompliance should not be
6 an issue. And before we get into this discussion, it
7 should be incumbent on counsel to show noncompliance.

8 MR. MONAHAN: Gentlemen--

9 CHAIRMAN ANDERSON: I guess--just, I'd
10 like--maybe I'm getting more impatient than the facts
11 warrant. I'd like to hear from some of the other
12 Commissioners.

13 But I--we put this off for a couple of weeks
14 because of some concerns over the Highly Erodible Soils
15 Act and the ambiguity of its impact. It seems to me
16 that, as I thought was possible, there are reasonable
17 mechanisms for Mr. Johnson to avoid damage, if damage
18 does occur.

19 We've heard that Gerrity accepts that
20 responsibility, and it may well be there's going to be a
21 disagreement as to the amount or what exactly goes into
22 it. But, I mean, on the specific question of continuing
23 the prohibition of drilling, I just don't think that we
24 ought to be doing that.

25 And I'm, matter of fact, concerned that the

1 way that this important issue is being dealt with is not
2 right. There is a genuine issue, an important issue, in
3 dealing with damages and determining whether or not--what
4 the appropriate levels are. And those are things that
5 the Commission should take an active interest in.

6 But I feel like we're coming at it in an
7 oblique way that not only is using more time than is
8 necessary, but is confusing issues.

9 So my inclination is to deny the application
10 from Mr. Johnson and get on with it. But I'd like to
11 hear what the other Commissioners say.

12 COMMISSIONER MacMILLAN: I share that feeling,
13 Truman. I also agree that these are issues that need to
14 be discussed, but I don't believe that this mechanism is
15 the proper forum for a proper and adequate discussion of
16 the breadth of the issues that I firmly believe the
17 Commission is interested in.

18 And I also share your feeling--I've heard,
19 just from your introductory comments, what I believe is
20 enough so that I'm prepared to make a motion after we
21 hear from Mary and Jack on their feelings.

22 COMMISSIONER CAMPBELL: I agree with you on
23 that. I don't see that belaboring this is going to help
24 any. I would hope that Gerrity would give Mr. Johnson a
25 little time to get his new plan filed as a matter of good

1 feelings, good relationships with him.

2 But I agree, and I would second any motion
3 that might be made.

4 MR. MONAHAN: If I might follow up with that.

5 What is the impact of the filing of a plan
6 amendment on the requirement that you comply with the
7 plan as it's already been submitted? Does it stay
8 compliance with the original plan?

9 MR. EVANS: That's correct.

10 COMMISSIONER LARSON: What is the effect of
11 using substitute practices? Is it the same effect, to
12 stay compliance with the original plan?

13 MR. EVANS: That is correct. But the issue of
14 substitute practices is, what are the appropriate
15 practices on this particular land?

16 COMMISSIONER LARSON: Do substitute practices
17 have to be approved by the SCS?

18 MR. EVANS: They must be in the manual of SCS
19 for this type of soil.

20 COMMISSIONER LARSON: And that manual is
21 fairly broad?

22 MR. EVANS: Well, no. It's rather specific.

23 COMMISSIONER LARSON: Okay.

24 CHAIRMAN ANDERSON: Okay. I think I'd like to
25 finish the conversation here among the Commissioners.



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1 All right. Commissioner Larson, do you have
2 any wisdom to add to this?

3 COMMISSIONER LARSON: I concur with what Logan
4 said. I think there's some really complicated issues,
5 but--and what Jack said. We need to deal with them in
6 the proper forum.

7 CHAIRMAN ANDERSON: Right, okay. Well, I--is
8 anyone prepared to make a motion here, then? Before we
9 vote, we will take some more comments.

10 COMMISSIONER MacMILLAN: I move we deny the
11 motion for a 15-day stay.

12 COMMISSIONER CAMPBELL: I second that.

13 CHAIRMAN ANDERSON: It's been moved and
14 seconded.

15 Before we vote on that, Mr. Johnson and
16 Mr. Evans, you had some final comments you wanted to
17 make.

18 MR. EVANS: Two things, if you don't mind.
19 For Mr. Johnson and Mr. Ted Buderus at least to make a
20 few comments, if you don't mind. Mr. Buderus is the
21 tenant, and I think--I'd like Mr. Johnson first.

22 CHAIRMAN ANDERSON: All right.

23 MR. EVANS: Just a few minutes of your time,
24 that's all.

25 CHAIRMAN ANDERSON: I don't want to ask people

1 not to speak, but I'm going to ask you to please make
2 this brief. I'm concerned about the length of time that
3 these are taking. And as you know, there are a number
4 like this.

5 Yes, all right. If you could do so briefly.

6 MR. JOHNSON: First of all, you're concerned
7 about us--the timeliness of getting responded to. We
8 immediately got ahold of Mr. Wells, and we set up a
9 meeting as quick as we could between Gerrity and
10 ourselves and Mr. Wells.

11 At that meeting, he told us that we had to
12 talk to the State people. Well, the State people were at
13 their state conventions; they wouldn't be back until the
14 following week. We had appointments set up on Monday for
15 us to meet. Well, the storm caused people not to get
16 together for two meetings. So it was postponed again
17 until yesterday. That was the first time we knew about
18 the thing.

19 So as far as the mechanics of it, I think we
20 in good faith tried to get that stuff resolved and find
21 out those issues.

22 But the important thing that I have as far as
23 this compliance business, I have a real fear that the
24 promises are going to be very empty, based on their
25 performance on other people which are my neighbors and

1 people that were in the hearing the other day that voiced
2 concerns.

3 You know, the weather kept you folks from
4 getting out there and looking at the property. And we do
5 have a tape of those properties with the same kind of
6 soil that shows the concern--why my concern is valid.
7 And therefore, Gerrity has not been, in my opinion, in
8 good faith negotiating on these damages or on any
9 assurance, other than verbal, that I am going to be
10 protected.

11 CHAIRMAN ANDERSON: We--

12 MR. CROUCH: I would just object.

13 CHAIRMAN ANDERSON: We hear you, Mr. Crouch.
14 And I think you need to understand that we will take
15 it--this may or may not have an effect on the
16 Commission--

17 MR. CROUCH: Well, okay. I'll be quiet.

18 CHAIRMAN ANDERSON: All right.

19 And Mr. Buderus?

20 MR. BUDERUS: Well, I wanted to bring up a
21 couple of the same points Bruce did about timeliness.
22 That was a question. With Thanksgiving and the storm,
23 essentially the week was not very available.

24 A couple of things on the compliance. And I
25 guess this was our basic concern, was that it be

1 addressed so that we did not go out of compliance.

2 Mr. Crouch talks about the damages, et cetera.
3 We're tenants. We're not a specific party, from that
4 perspective. But we do have liabilities. We were just
5 asking that Soil Conservation approve the plan. They say
6 they'll take care of it. The bonding issue doesn't take
7 care of the liabilities if, in fact, we would be found
8 out of compliance.

9 1990 was--1985 was when that Farm Bill was
10 initially passed with the Soil Conservation. 1990 was
11 when some teeth were put in. Those plans have been filed
12 anywhere from 1985 to 1990. Those plans have to be fully
13 implemented by 1995; not just initially filed. There's a
14 difference. 1995 was the date where full implementation
15 has to occur.

16 The reason they gave that, some areas they
17 have to plant windbreaks, terraces--there was a time
18 period granted for establishment of those. It wasn't
19 just you start in 1995 to comply. It was to be in full
20 compliance by that time. And if the practices that you
21 were going to use could be brought into compliance prior
22 to that time, they were intended to be brought into
23 compliance prior to that time.

24 We're just asking whatever operations, they do
25 not render us out of compliance. Residue cover is a big

1 issue. We're asking if the Soil Conservation says they
2 have to put straw--or whatever the amendments are--even
3 on the pile, that we know that when they do it; not after
4 the fact, not after the erosion has occurred.

5 And the meeting with Soil Conservation and
6 ASCS office, we were just asking, because the bonding
7 issue in terms of--that's a legal channel to go through.
8 But that bond wouldn't cover the harm we would suffer if
9 we were found out of compliance.

10 I guess the second issue is I'm not sure why
11 we, as tenants, should be responsible for their actions
12 in terms of making sure their actions keep us in
13 compliance, when we don't have any say on the techniques
14 they use for pit construction or anything else. I mean,
15 that should be their burden; not ours.

16 This isn't a new law that just got passed last
17 week that--all of a sudden, just because they didn't know
18 about it. It's been out there for a long time. And to
19 say that should have been our burden to prove to them, I
20 think the burden of proof is being put on the wrong
21 parties right now.

22 CHAIRMAN ANDERSON: All right. Well, thank
23 you.

24 Mr. Crouch, do you have any further points?

25 All right. Well, we have a motion which has

1 been seconded that the application for a 15-day stay be
2 denied. Any further conversation on that?

3 All right. All those in favor, indicate by
4 saying "Aye."

5 COMMISSIONER LARSON: Aye.

6 CHAIRMAN ANDERSON: Aye.

7 COMMISSIONER MacMILLAN: Aye.

8 COMMISSIONER CAMPBELL: Aye.

9 CHAIRMAN ANDERSON: Those opposed, same sign.

10 All right. The application is denied.

11 All right. I think that completes our
12 business for today.

13 MR. CROUCH: How about the application for the
14 emergency order? We need to have some resolution of
15 that, as well.

16 CHAIRMAN ANDERSON: All right.

17 MR. EVANS: If it pleases the Commission, I
18 believe that the--some of the basic issues that were
19 raised under the emergency order have not been fully
20 dealt with.

21 What I would request is rather than go through
22 the process of refileing again with this Commission, that
23 we merely have an opportunity to present to this
24 Commission fully a case on the bonding requirement and
25 why that particular bonding requirement should be raised.

1 MR. CROUCH: I'd object to that, without the
2 proper application.

3 MR. MONAHAN: So, Mr. Evans, it would be your
4 intent to forego the claims of violations of regulations
5 that you set forth in the original order?

6 MR. EVANS: No. It is not my intention.
7 Those are basically--those--we maintain that those
8 violations have been and are occurring. There is a
9 violation of 304.b., because the bonding--

10 MR. MONAHAN: What part of 304.b. was violated
11 by the defendants here?

12 MR. EVANS: Okay. Specifically, 304.b., that
13 prior to the commencement of the operation, in instances
14 in which the owner is not a party to the oil and gas
15 lease or a party to the surface damage lease, shall
16 require of the lessee a good and sufficient bond payable
17 to the State of Colorado.

18 That is one area that we feel is being
19 violated, simply because the bond is not sufficient,
20 given the potential liability. We're not talking about
21 actual damages; we're talking about potential liability,
22 which is essentially what the bond is for.

23 MR. MONAHAN: Is this well covered by a
24 blanket bond?

25 MR. CROUCH: Yes.

1 MR. MONAHAN: \$50,000?

2 MR. WONSTOLEN: We're still in negotiation for
3 a surface use agreement. Assuming we don't reach that
4 agreement, it would be covered by the statewide blanket
5 bond.

6 MR. CROUCH: But wait a minute. I want to
7 finish this quote.

8 It says the bond is conditioned--Upon
9 completion of drilling operations, such surface owner
10 shall be paid for unreasonable crop losses or land damage
11 resulting from use of the premises by lessee.

12 The adequacy of the bond assumes certain types
13 of compensable damages, and there has not been a hearing
14 on that matter. I'm just suggesting that we've complied
15 with the regulations. There's been no evidence that upon
16 completion there has been unreasonable crop losses or
17 land damage.

18 So there just is no violation of the bonding
19 requirement.

20 MR. MONAHAN: Mr. Evans, do you have any
21 evidence to present that is going to show that the
22 unreasonable crop losses or land damage that your client
23 might suffer is going to exceed \$50,000?

24 MR. EVANS: I believe the statewide bond is
25 \$25,000, isn't it, not 50-?

1 CHAIRMAN ANDERSON: Yes, it's 25-.

2 MR. MONAHAN: My mistake.

3 Do you have evidence that would indicate it
4 would exceed \$25,000?

5 MR. EVANS: I do have evidence to present to
6 you today that it would exceed \$25,000, if we calculate
7 the potential for the loss of the Highly Erodible Soils
8 Act and its impact on these particular individuals. I
9 can present to you that evidence.

10 The problem we have with Gerrity is that they
11 have over 325 operations currently ongoing. And our
12 concern is whether that one statewide bond would be
13 adequate to cover all those various different operations.

14 MR. WONSTOLEN: There are only two under the
15 bond.

16 MR. CROUCH: Everything else is drilled by
17 agreement, existing agreements.

18 And once again, I go back to the emergency
19 factor. Is there an emergency? The answer is no. We're
20 talking about compensability of damage.

21 CHAIRMAN ANDERSON: What continues to trouble
22 me here, I'm reminded of some of the comments I made a
23 couple of weeks ago.

24 These are important issues, and these are
25 issues that need to be dealt with. But I'm having

1 trouble fathoming them in the context of emergency
2 hearings. I don't like doing it that way.

3 And further, frankly--and I may be the only
4 one on this--I feel like the attack of dealing with this
5 through the bond rather than attacking the issue directly
6 is a confusing factor. There's a genuine issue here, and
7 it's an important issue. But it seems to me that dealing
8 with it through what the bond requirements are are
9 oblique, rather than direct.

10 MR. CROUCH: I submit that's not before the
11 Commission today.

12 CHAIRMAN ANDERSON: I understand that.

13 COMMISSIONER LARSON: I'd sure like to avoid
14 having you come before the Commission and having to give
15 us evidence as to what reasonable or unreasonable damages
16 were.

17 And to the extent that you can use the
18 practices that the Soil Conservation Service suggests to
19 avoid violation--if, indeed, you know, the Erodible Soils
20 Act applies--using those practices and using your
21 absolute best efforts to take care of what is very
22 delicate land out there, then maybe we won't have the
23 problem of unreasonable damages or reasonable damages
24 later.

25 MR. CROUCH: We have offered--I think the

1 meetings that Mr. Johnson and Mr. Evans are going to have
2 with the Soil Conservation people on this issue, I think
3 we should attend. We told them yesterday and we'll tell
4 the Commission that we will implement those practices to
5 avoid any kind of noncompliance problem, assuming there
6 is a noncompliance problem.

7 We need that--

8 COMMISSIONER LARSON: Right. And I think you
9 need to find out from them, too, whether they think one
10 of these safe harbors, or the 2-acre, or the de minimus,
11 and that if not, you should use the practices.

12 MR. CROUCH: We will.

13 MR. WONSTOLEN: We intend to use the
14 practices, regardless of whether the safe harbors are
15 available.

16 COMMISSIONER LARSON: Right, because that will
17 get you away from the damages issue.

18 MR. CROUCH: Absolutely. What's implied in
19 all this is it really makes sense for us--notwithstanding
20 what Mr. Johnson said a moment ago--to take care, because
21 if we don't, we'll just either be back here or before a
22 court defending a lawsuit.

23 MR. EVANS: But the problem is we have
24 evidence to show that the history of Gerrity is that they
25 don't do that.

1 MR. CROUCH: I object to that.

2 MR. EVANS: We have a tape of a farm which
3 they have recently come off of in which we can show you
4 the physical erodible damages that they have done to that
5 particular property.

6 Now, this is--

7 MR. CROUCH: Now, that just assumes we're
8 going to do the same thing again. I'm representing to
9 the Commission that we will not.

10 COMMISSIONER MacMILLAN: Excuse me, gentlemen.
11 I don't believe that's an issue for today. I think
12 you've heard from four Commissioners that we believe that
13 that is an issue, but I don't believe that's an issue for
14 today.

15 I believe that at our last Commission hearing,
16 we heard from Mr. Welborn on his intent to bring before
17 the Commission, at the December hearing, the
18 recommendations of he and his committee that have been
19 involved with this issue for many months now, meeting
20 with a variety of specific and interested parties.

21 And I think that these kinds of issues will be
22 proper at the time that the Commission hears what the
23 recommendation is for--from Mr. Welborn's committee. But
24 I don't believe that they're appropriate at this time.

25 MR. CROUCH: I'd move that the emergency order

1 be denied, the emergency application be denied.

2 MR. MONAHAN: Mr. Chairman, I need to have a
3 brief discussion with Mr. Evans concerning the
4 violations, so that at least the record will be
5 established concerning those alleged violations.

6 CHAIRMAN ANDERSON: All right.

7 MR. MONAHAN: Mr. Evans, would you be prepared
8 to make an offer of proof concerning the amount of
9 damages resulting from unreasonable crop losses or land
10 damage?

11 MR. EVANS: Yes, I will be.

12 MR. MONAHAN: And what would that amount be
13 in?

14 MR. EVANS: The--without the calculation of
15 the Highly Erodible Lands Act, the current damages that
16 we've estimated are \$19,641, plus the growing crop
17 currently in the field.

18 MR. MONAHAN: How much is the growing crop?

19 MR. JOHNSON: Depends on how much acreage they
20 end up taking. We could be looking at 2500 to \$5,000
21 just for that portion. That's assuming what we've talked
22 about.

23 MR. MONAHAN: That total is somewhat less than
24 \$25,000, the amount of statewide blanket bond. And that
25 assumes that you're going to go out of compliance with

1 the Erodible Soils Act?

2 MR. EVANS: No, that doesn't.

3 MR. MONAHAN: What's the damage, if you make
4 that assumption?

5 MR. JOHNSON: It's 100 percent of their loans.
6 In excess of \$150,000 just for that portion.

7 MR. BUDERUS: I can address part of that, just
8 from our liability standpoint. The federal crop
9 insurance policy we've got is right at a \$150,000 policy,
10 which would essentially be rendered--if we're found out
11 of compliance, at that point that policy is no longer in
12 effect.

13 And then we also have federal payments that
14 could be--that won't be, in fact, verified until March.
15 But given current market conditions and trends, that
16 liability would probably be in the 50- to \$60,000 range.

17 And then there would be a liquidation. We've
18 signed contracts on that to participate in that if we're
19 found out of compliance, they have a liquidation clause
20 in there of 25 percent penalty on that above. So it may
21 be up to 60- to \$75,000.

22 I don't have the exact dollar for dollar, but
23 those are real close, close figures.

24 MR. MONAHAN: That's your offer of proof?

25 MR. EVANS: That's correct.

1 MR. MONAHAN: Let's go to the violation of
2 Rules 317.q. and r. What acts has Gerrity taken that
3 have violated that rule?

4 MR. EVANS: The--of course, Gerrity has not
5 yet come onto the property.

6 MR. MONAHAN: Can they, in fact, violate that
7 rule, if they haven't started any development on that
8 property?

9 MR. EVANS: Well, they can, if they haven't
10 had a reclamation plan that has been reviewed and
11 approved by the Soil Conservation Service representative
12 at the site.

13 MR. MONAHAN: Where in Regulation 317 does it
14 say that they have to have a plan that needs to be
15 approved by the Soil Conservation Service?

16 MR. EVANS: In q. and r., if you look at
17 "Final site restoration and restoration shall take place
18 as soon as conditions permit following completion of the
19 operations." Okay?

20 It also talks about--implicit in that final
21 site reclamation and restoration is that the conditions
22 would be to the satisfaction of the Soil and Conservation
23 Service.

24 MR. MONAHAN: Why is that implicit?

25 MR. EVANS: Simply because if the final site

1 reclamation and restoration is not in compliance with
2 SCS, then they are in fact out of compliance, and they
3 are out of participation of the program.

4 MR. CROUCH: We disagree with that.

5 MR. EVANS: Therefore, it would seem to me
6 that final site reclamation and restoration would have to
7 be coterminus with the reclamation recommendations of
8 SCSC.

9 In addition, interim maintenance of the site
10 and soil stabilization. They need to know exactly how
11 deep to dig the pit, the type of cover that they need to
12 have in order to understand what they are going to--to
13 prevent the erosion.

14 If we get a 50-mile-an-hour wind and they
15 don't have the proper soil coverage on there, there is
16 danger of, as Mr. Wells pointed out, blowing and not only
17 putting Mr. Johnson out of compliance, but his neighbor
18 out of compliance. The Soil Conservation Service can
19 make those recommendations, but they have to have done so
20 before they enter onto the premises.

21 MR. MONAHAN: Mr. Evans, has any development
22 taken place on this land yet?

23 MR. EVANS: No. Other than siting, walking
24 the site and drawing the sites out.

25 MR. MONAHAN: Go to Regulation 802. And would

1 you explain how Gerrity has violated 802.a., b. and c.

2 MR. EVANS: Specifically, again, on 802.a., in
3 order to minimize the amount of future reclamation and
4 restoration damages, they talk about existing drainage
5 patterns, and drilling sites shall be constructed so as
6 to avoid unnecessary removal of trees, alteration of
7 other natural features and the removal of excess amounts
8 of surface materials.

9 Again, what we have to have is the SCSC to
10 take a look and approve the plan prior to their entering
11 the property. Without that, there is really no way for
12 them to actually comply with this particular regulation
13 and do so effectively, keeping both Mr. Johnson in
14 compliance and for--with their conservation plan.

15 MR. MONAHAN: Again, where in Regulation 802
16 does it mention the Soil Conservation Service?

17 MR. EVANS: It doesn't mention it. But I
18 think implicit in it is if you talk about reclamation and
19 restoration, you have to talk about the soil conservation
20 plan that Mr. Johnson has on file. You have to talk
21 about the types of soils. You have to do soil testing to
22 ensure that the soil is stacked so that salinity is not a
23 serious problem. All these things have to be done prior
24 to coming onto the property and prior to the actual
25 drilling to begin.

1 Without that, there is really no hope of
2 Mr. Johnson being in compliance. If, for example, they
3 dig the pit and they don't properly stack the soils and
4 salinity is mixed in with the soils, there is no way that
5 that particular land is going to recover.

6 And so it's very important that the soil
7 conservation plan be complied with.

8 On b., as far as existing roads practicable as
9 possible to minimize land areas where feasible, again, in
10 order to understand where the existing site has to be,
11 SCSC has to be brought into the picture for compliance
12 with the plan, because how are you really going to know
13 how to fix the site, if you don't know the plan and what
14 kind of compliance that the SCSC is going to require?

15 Or just take a look at locating roads and
16 production sites and the fact that the operator shall
17 consult with the governmental designee. I would assert
18 that the governmental designee here is SCSC. They are a
19 governmental designee, and they should be the individual
20 that should be consulted with, as well as other county
21 agencies, because there are certainly the local counties'
22 Soil Conservation Districts which is also somebody that's
23 interested in compliance.

24 MR. MONAHAN: Are you claiming that
25 consultation did not take place with any of the listed

1 parties here, the local government designee or the County
2 or the municipal corporation? Are you saying that none
3 took place?

4 MR. EVANS: To my knowledge, I have no
5 evidence to the fact that those conversations have taken
6 place. And I don't maintain that that burden of proof is
7 upon us to present that particular evidence.

8 MR. MONAHAN: Aren't you the moveant here?

9 MR. EVANS: Yes, we are the moveant. But they
10 have not formally discussed with Norm Wells how he's
11 going to comply with the soil provisions.

12 And I know for a fact they have not discussed
13 with the governmental designee the impact of soil erosion
14 on this particular area, because, simply, the fact is
15 that they didn't know about what the impact would be
16 until yesterday, or until we met initially with Norm
17 Wells.

18 So, in fact--if, in fact, this implies that
19 they shall consult with the local government designee on
20 the impact of the conservation plan and whether that
21 conservation plan is adequate, the answer is no, they
22 have not.

23 MR. WONSTOLEN: Mr. Chairman, the local
24 government designee is defined in the regulation and
25 certainly is not identified as the Soil Conservation

1 Service.

2 COMMISSIONER LARSON: Aren't you planning to
3 consult with Norman Wells?

4 MR. CROUCH: Yes, we are. Well, this is his
5 offer of proof.

6 Yes, we'll make the offer once again to sit
7 down with Mr. Wells or the SCS people, Mr. Johnson, and
8 work out whatever's required for compliance, assuming
9 compliance is a problem. And if it's not, we'll still
10 work out what's required to provide cover of the soils.

11 MR. EVANS: I would maintain it's important to
12 consult with the local government designee on the soil
13 conservation plan, simply because of the impact
14 Mr. Johnson's plan may have on his neighbors.

15 CHAIRMAN ANDERSON: I think we understand.

16 MR. MONAHAN: I have a problem. Didn't
17 Gerrity sit in on the meetings you've had with the Soil
18 Conservation Service?

19 MR. EVANS: They have sat in on every meeting.

20 MR. MONAHAN: Didn't you talk about these
21 kinds of issues?

22 MR. EVANS: We talked about them, but they
23 have not consulted with Mr. Wells.

24 MR. CROUCH: I object to the assumption that
25 Mr. Wells is the local government designee. I think it's

1 the Weld County Board of Commissioners. And we have sent
2 the proper letters to them.

3 MR. EVANS: I think the Weld County Board of
4 Commissioners certainly needs to know about the
5 conservation plans, and they certainly need to know how
6 those plans are going to impact the neighbors, but--

7 COMMISSIONER LARSON: Isn't the Soil
8 Conservation Service going to take care of that?

9 MR. EVANS: Well, the Soil Conservation
10 Service is one. But I think the fact that this is highly
11 erodible soils and is a countywide problem out there, the
12 local government designee should certainly be aware that
13 a variance in the particular soil conservation plan is
14 going to have to be filed. They should be aware--they
15 should make the neighbors aware of that particular
16 variance.

17 MR. MONAHAN: Mr. Evans, have you made the
18 County aware of the soil conservation plan?

19 MR. EVANS: I have not made the County aware
20 of the soil conservation plan, because we've just
21 ourselves become aware of these requirements.

22 MR. CROUCH: If I might, you just raised an
23 important point. This is a countywide problem, and he's
24 not here today with any proof that any person has been
25 put out of compliance with a plan, with several hundred

1 wells being drilled in Weld County since 1985. I mean,
2 it just is not an emergency.

3 MR. EVANS: You've asked me to address the
4 specific areas of the statute and state specifically how
5 I feel that they are being put out of compliance.

6 I maintain that the spirit of the statutes is
7 to anticipate, is to try to do preventive maintenance.
8 And in the spirit of preventive maintenance is why we are
9 here, is because we're concerned about establishing
10 relationships before they happen, about making sure that
11 the liability for these particular farmers is reduced to
12 the absolute minimum.

13 I mean, that's essentially what we're here
14 about.

15 CHAIRMAN ANDERSON: All right. So do we
16 have--we have a motion, then, for an emergency hearing or
17 an emergency order on this?

18 MR. CROUCH: The application originally, as I
19 understand it, was for an emergency order to suspend the
20 drilling permit.

21 COMMISSIONER LARSON: That's been denied.

22 MR. WONSTOLEN: That was continued, I believe,
23 until this hearing.

24 MR. CROUCH: You didn't issue it last time
25 pending--then we had the motion for a stay.

1 CHAIRMAN ANDERSON: So we've dealt with the
2 motion for the stay. But then the status was we'd
3 continued it, so we need to deal with that.

4 MR. CROUCH: Yes, I believe so.

5 CHAIRMAN ANDERSON: All right. So what we
6 have is an application which was continued for an
7 emergency hearing on this matter. And I've heard a lot
8 of conversation on this.

9 I keep saying this is an important matter. I
10 think the Commission has a role here. I don't see an
11 emergency here. So I think we need to get in back into
12 the normal processes of the Commission.

13 COMMISSIONER MacMILLAN: I agree. I don't see
14 an emergency here. It is an important issue. I think
15 that it needs to be part of--if you and your clients,
16 Mr. Johnson, Mr. Buderus, if it's possible that you can
17 again come down and participate in the process that the
18 Commission will take on at their next regular hearing to
19 deal specifically with the surface issues and the Oil &
20 Gas Commission's role in handling issues like yours,
21 that's the proper avenue.

22 The whole business here for emergency hearings
23 and all of that I think has only gone to serve that you
24 and representatives from Gerrity have had an
25 opportunity--have had an opportunity to meet with the

1 Soil Conservation Service, and you have a much better
2 idea now of what the plans can be and hopefully will be
3 to minimize any damage.

4 Obviously, it's nobody's intent that anybody
5 go out of compliance with the uses that you have. But
6 that's the appropriate mechanism, in my mind. That's the
7 appropriate place. That's when the Commission is going
8 to be focused specifically on dealing with those issues,
9 hopefully with a number of expert witnesses that come in,
10 agronomists and so on, to help deal with the whole
11 spectrum involving the impact on surface and surface
12 ownership.

13 But I don't see it here.

14 MR. EVANS: Mr. MacMillan, are you referring
15 to the Jeff Welborn hearings?

16 COMMISSIONER MacMILLAN: Yes.

17 MR. EVANS: Okay. The thing that we're
18 concerned about is the being out of compliance,
19 obviously.

20 Do I hear you saying--and please correct me if
21 I'm wrong--if SCSC makes a determination that because of
22 the operations or the lack of whatever they're doing or
23 the fact that they're doing the wrong things they do come
24 out of compliance, am I hearing you correct in saying
25 then it would be an appropriate forum for us to come back

1 to you in some sort of forum?

2 It seems to us that the agency here is the
3 best forum for--not the courts--for resolving these
4 issues, and particularly for the Buderuses who, as I've
5 already testified, are not a party to any of these
6 issues.

7 So I guess what I'm looking for is some
8 direction here from all of you. We can file a claim
9 under the bond, but the issue is that is obviously not
10 going to be adequate. So give us some direction as to
11 how you would see us proceeding, rather than waiting and
12 applying for the bond, if we detect individuals being out
13 of compliance.

14 Would it be an appropriate forum for us to so
15 notify the Commission and request an immediate hearing?
16 You know, I'd like some direction. This is--the whole
17 Highly Erodible Soils Act is a very new area for all of
18 us. And so I think what I'm looking for is some
19 direction here in helping see to it that the particular
20 Act is properly enforced.

21 CHAIRMAN ANDERSON: What we've heard is
22 there's a possibility that there might be some damages
23 that arise out of Gerrity's actions under the Highly
24 Erodible Soils Act. But we don't know that, because it
25 sounds like there are a number of intermediate steps that

1 can be taken to prevent loss.

2 If it does occur, I thought I heard
3 Mr. Crouch say that was one of the elements that would
4 have to be taken into consideration in determining what
5 the damages were. If there's a disagreement in
6 quantifying that, I suppose the Commission can become
7 involved at that stage.

8 But, I mean, you're talking about damages that
9 might or might not occur in amounts that can't be
10 specified.

11 MR. WONSTOLEN: Mr. Chairman, there's one
12 further point. The bond clearly covers unreasonable crop
13 loss and land damages. It does not cover loan
14 guarantees, these other elements. They may be
15 compensable and outside of the Commission regulations
16 through a court proceeding or through negotiation, but
17 they're not subject to the bond, period.

18 MR. EVANS: I would maintain that's subject to
19 the Commission's interpretation.

20 CHAIRMAN ANDERSON: That's right.

21 MR. CROUCH: What is unreasonable crop loss or
22 land damage? I think that's the forum in which that
23 discussion should take place.

24 COMMISSIONER LARSON: But we have to have some
25 damage first, don't we?

1 MR. CROUCH: I would think so.

2 CHAIRMAN ANDERSON: Yes.

3 MR. CROUCH: I think that's the crux of the
4 problem, is we're really dealing with hypotheticals here.

5 MR. MONAHAN: Otherwise, it's just a request
6 for an advisory opinion, which I'd tell the Commission
7 not to give.

8 CHAIRMAN ANDERSON: I've been trying to think
9 this through. And if the Commission is going to be
10 involved in determining the amount of damages, we need to
11 look at damages; not people's guesses as to what they
12 might be.

13 COMMISSIONER LARSON: I would just prefer that
14 everybody take steps so there aren't damages. That would
15 be my first choice.

16 MR. CROUCH: That's what we'll do.

17 CHAIRMAN ANDERSON: That's right.

18 COMMISSIONER CAMPBELL: Ladies and gentlemen,
19 I hate to interrupt, but it's time for me to go back to
20 work.

21 CHAIRMAN ANDERSON: All right. I think we're
22 ready here. We've got more than one Commissioner here
23 who has to leave.

24 COMMISSIONER LARSON: Do we need to make a
25 motion?

1 CHAIRMAN ANDERSON: I think so.

2 COMMISSIONER LARSON: What shall it be?

3 COMMISSIONER MacMILLAN: Maybe something along
4 the lines of denying the emergency order.

5 COMMISSIONER CAMPBELL: Yeah. I so move.

6 COMMISSIONER LARSON: I second.

7 CHAIRMAN ANDERSON: It was moved and seconded
8 that the request for an emergency order be denied. All
9 those in favor indicate by saying "Aye."

10 COMMISSIONER LARSON: Aye.

11 CHAIRMAN ANDERSON: Aye.

12 COMMISSIONER MacMILLAN: Aye.

13 COMMISSIONER CAMPBELL: Aye.

14 CHAIRMAN ANDERSON: Those opposed, same sign.
15 All right. The application, that request is
16 denied.

17 All right. I think we're done on this.

18 MR. CROUCH: Thank you, Mr. Chairman. Thank
19 you, Commissioners.

20 (Thereupon this portion of the proceedings was
21 concluded.)

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2) ss. REPORTER'S CERTIFICATE

3 COUNTY OF DENVER)

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15 In witness whereof, I have affixed my
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