



ORIGINAL

#68

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

3

4 REQUEST FOR A HEARING TO WAIVE THE) CAUSE NO. 1
5 BOND REQUIREMENTS IN RULE NO. 1000.c) Docket 4-11
6 FOR THE NELSON NO. 1-10 WELL LOCATED)
7 IN LOGAN COUNTY, COLORADO)

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8 PURSUANT TO NOTICE to all parties in
9 interest, the above-entitled matter came duly on
10 for hearing at the offices of the Colorado Oil and
11 Gas Conservation Commission, Room 801, 1120 Lincoln
12 Street, Denver, Colorado 80203, on Monday,
13 April 21, 1997.

14 BEFORE:

- 15 CHAIRMAN ALLAN HEINLE
- 16 VICE CHAIRMAN MIKE MATHESON
- 17 COMMISSIONER CAROLINE BLACKWELL
- 18 COMMISSIONER BRUCE JOHNSON
- 19 COMMISSIONER CLAUDIA REBNE
- 20 COMMISSIONER MARLA WILLIAMS
- 21 COMMISSIONER LOGAN MacMILLAN

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23 Richard Griebeling, Director

24 Brian Macke, Deputy Director

25 Patricia Beaver, Manager of Commissioner Affairs

1 CHAIRMAN HEINLE: Next item on the
2 agenda is Cause No. 1, Docket 4-11, Logan County. The
3 applicant is Argonex Company, represented by Mr. Earl
4 Griffith, and this is a request for a hearing to waive
5 the bond requirements in Rule No. 101.c for the Nelson
6 No. 1-10, and to obtain the release of the bond on the
7 well. Mr. Griffith, would you care to come forward
8 please, and I think what I would like to do today --
9 and probably have a seat. Going forward here, if we
10 could just swear in all of the witnesses at once. I
11 don't know how many people here anticipate providing
12 testimony. I assume the director will. Loren, are
13 you going to be -- why don't you come up today and
14 Mr. Griffith will be providing testimony. Is there
15 anybody else? Okay. I would swear you all in. If
16 there are any other additional witnesses, I will swear
17 them in at a later date. You guys ready?

18 (Whereupon the witnesses were sworn.)

19 CHAIRMAN HEINLE: Mr. Griffith, I will
20 let you proceed. Why don't you go ahead and state
21 your name and address for the record, and you can go
22 over your brief overview of your application and any
23 evidence you want to present, and then I will give
24 staff or anybody else an opportunity to speak that
25 would like to.

1 MR. GRIFFITH: My name is Earl G.
2 Griffith. I have a natural science degree in mining
3 and engineering from Washington State University, and
4 I have had quite a few years experience with various
5 major companies, including Texaco. First contact I
6 had with eastern Colorado or Colorado at all in the
7 oil business was in 1951, when Texaco sent me to
8 Sterling to find out if there's anything to this
9 Denver Basin, and as it turns out, indeed, that it
10 was. There were only five or six fields at that time
11 and they weren't all developed yet. That includes
12 Western Nebraska and Denver Basin. Some of the early
13 fields, Gurley, Huntman, Walker, Mount Hope, Jenter,
14 this is all to give you a little background and how I
15 happen to feel the way I do.

16 Since that time, I have probably, I
17 don't know how many wells I have drilled out there,
18 but since 1951, got this one and that you're plugging
19 or have plugged, and now there are several score at
20 least. I have never had a problem with surface owners
21 nor with the oil and gas commission. And so I feel as
22 though I have got a little bit of background there. I
23 never filed for bankruptcy. Never run on any legal
24 obligation I have gotten. And I can't get away
25 because I have lived in the same house for 42 years,

1 and I have no intention of moving.

2 So, I am here at your beck and call. As
3 to the cause of -- we drove and ran pipe on a well in
4 Section 33 of 11 North, 54 West, Sterling or Logan
5 County. And that was in 1995. And over the next
6 eighteen months, or so, we attempted to treat the well
7 and make a commercial producer out of it. It didn't
8 work, which wound up with too little oil and too much
9 water.

10 In October of '96, with suitable delays
11 for weather, we have had the -- and one thing and
12 another, we did plug it. We did move the equipment
13 out of there, and we cleaned up the location. And it
14 was inspected by Ed Binkley, who I believe was part of
15 the oil and gas commission here, and I thought they
16 went on. I talked to him on the phone all of the
17 time. He was having a little trouble getting out
18 there because of weather. Do you have kits or
19 packets -- I guess, you all do -- that I provided.
20 You will find Ed's report in there, and I would like
21 to also pass out these copies which I couldn't -- I
22 didn't have them in my file. My landman had them in
23 his file. I have got nine copies of release of
24 damages, which was then signed and notarized by both
25 the surface owner and by me. Would you pass those

1 out?

2 CHAIRMAN HEINLE: Surface owner being
3 Mr. Nelson; is that correct?

4 MR. GRIFFITH: The surface owner is his
5 sister, Jane Culver.

6 CHAIRMAN HEINLE: Could you say that
7 name again?

8 MR. GRIFFITH: Jane Culver. This
9 document testifies -- has her signature on it. I paid
10 her \$2,000 surface damages, and I don't know just what
11 the \$2,000 is for, because I also agreed to reseed the
12 location in appropriate time. The surface damage
13 thing is kind of a moot question anymore, just a kind
14 of a bribe, you might say, that gave me good will of
15 the -- again, the good will of the surface owner.
16 That's the way it's done. Doesn't have much to do
17 with crop damage. In fact, this -- go ahead.

18 CHAIRMAN HEINLE: Can I ask a question?
19 Something I thought I heard you say. It wasn't clear.
20 Did you say part of your agreement was to reseed the
21 surface at a later date?

22 MR. GRIFFITH: That's right.

23 CHAIRMAN HEINLE: Reseed the surface
24 around the Nelson 1-10.

25 MR. GRIFFITH: Correct.

1 CHAIRMAN HEINLE: Which has been P&A'd.

2 MR. GRIFFITH: That's correct. I have
3 been in touch several times. I would -- Dale
4 Troutman, now, the Sterling -- who is kind of a local
5 expert on reseeding and soil treatment and so forth,
6 he cleans up locations and does the replanting of
7 grass seed, and, in this case, anyway, he said he,
8 well, it's too dry out there right now. The wind
9 could blow the seed away. Of course they are drilled
10 into the ground 1/2 inch or so. And but he said we
11 just need to get a little moisture. I will let you
12 know. And I talked to Jim Nelson, who was Jane
13 Culvert's brother, and who runs the cattle on her
14 place. It's kind of a family arrangement. And he
15 said, well, let's wait a while. Let's wait until
16 spring anyway. Well, spring is sprung and it doesn't
17 look very wet out there yet. There are various things
18 that happened, wind could blow the seed away, but it
19 has to be a pretty miserable long stretch of blowing.
20 Dale Troutman told me he had seen seed in the ground
21 there for a year that hadn't germinated, and then when
22 they got some moisture in the next spring, they did
23 germinate. So, we could be waiting out there two or
24 three years, I suppose, if that's what we have to do.
25 It seems kind of like a waste of money

1 to me, and kind of an endless Catch 22 situation. In
2 fact, I talked to quite a number of people in my 40
3 some years in Denver Basin. I know quite a few of
4 them. And several of them said I don't drill in
5 Colorado anymore. And I said, you mean because of all
6 of these regulations? You have to wait for a couple
7 of years on cropland and at least one year for
8 noncropland to illustrate that you have restored the
9 ground the way you find it. That's right. It gets
10 too expensive and too much red tape. And they have --
11 do their drilling in Nebraska in the Denver Basin, not
12 in Colorado, for that reason, at least, that's what
13 they told me.

14 So, I have got all of the documents that
15 I could think of that would pertain to this. And
16 \$2,000 surface damages to Jane Culver and her
17 signature on that agreement is the first document, of
18 course. Then the -- I apologize for having to hand
19 them out here. The notarized statement from Jim
20 Nelson who runs the cattle on the surface and is a
21 very knowledgeable young man, knows how to take care
22 of his land and his animals, he stated that he was
23 perfectly satisfied with the surface restoration. So,
24 I got the reading for about the fifth time, and
25 reclamation regulations -- I think I paid 10 bucks for

1 a dandy looseleaf notebook with all of these things in
2 it. And then it's page 1000-1, it says, paragraph C,
3 "Surface Owner Waiver of 1000 Series Rules." And it
4 says that the commission shall not require compliance
5 with Rule 1002, 1003, 1004, and if the operator can
6 demonstrate to the director's and commission's
7 satisfaction that compliance with such rules was not
8 necessary to protect -- and I have underscored on my
9 copy, the public health, safety and welfare, including
10 prevention of significant adverse environmental
11 impacts, and that the operator has entered into an
12 agreement with the surface owner regarding topsoil
13 protection and reclamation.

14 So, without going ahead and reading
15 things that I know you are more familiar with than I
16 am, probably, I don't have any legal training, but I
17 did get awfully good grades in English in high school
18 and college. And it looks to me like it's pretty
19 unequivocal statement. And I have got five grand
20 that's been tied up in the bank with a magnificent 3
21 percent interest on it, and I need that money. In
22 fact, I need that money to help pay for the reseeding.
23 As a matter of fact, the company, Argonex Company, is
24 owned by my wife and me, and she does the books. I
25 carry on from there. And we know how much money we

1 have got to work with. It bothers me to leave five
2 grand in there, when I am going to follow-through and
3 reseed that piece of ground, because it's as I said I
4 would. And as I say, I can't get away anyhow for six
5 or seven hundred bucks, hardly be worth moving. So, I
6 think I probably stated my case about as briefly as I
7 could.

8 CHAIRMAN HEINLE: What I will do, just
9 to give you an idea of the proceedings we're going to
10 do here today is, I will ask the commissioners if they
11 have any questions of you now and after we complete
12 that process, I will solicit any testimony that staff
13 wants to present, give you an opportunity to question
14 staff, if you want. Certainly the commissioners are
15 going to have questions of the staff, and, then, after
16 that, have you give a closing argument or comment,
17 whatever, if you would like to, then we'll go into
18 deliberations among the commissioners where there may
19 be some additional questions and so forth, hopefully,
20 resolve the matter. So, at this point are there any
21 questions of the commissioners of Mr. Griffith, is it?

22 MR. GRIFFITH: Right.

23 CHAIRMAN HEINLE: Yes. Commissioner
24 MacMillan.

25 COMMISSIONER MacMILLAN: I am sorry.

1 This is not a question. If the record would reflect I
2 came in late, I did not hear the beginning statements.
3 That would be helpful. The second thing that I want
4 to point out for the record is that I have spoken with
5 Mr. Griffith concerning general matters related to
6 situations similar to this in the past. Our
7 discussions have been directed, then, towards my
8 recommendation that he speak with Ms. Beaver about
9 what the proper procedures would be for him, as far as
10 talking with staff and possibly docketing the matter
11 for hearing as it related to a variance request. I
12 don't believe, however, that my interaction with Mr.
13 Griffith would at all prejudice me in this case.

14 CHAIRMAN HEINLE: Okay.

15 COMMISSIONER MacMILLAN: I would be
16 happy to answer any questions that the commissioners
17 may have on the previous conversations that I had with
18 Mr. Griffith, but I think I have accurately reflected
19 what those conversations contained.

20 CHAIRMAN HEINLE: Thank you. Any
21 questions, Mr. Griffith, of the commissioners? I have
22 got a couple, just so -- I want to clarify in my mind,
23 Ms. Culver.

24 MR. GRIFFITH: Yes.

25 CHAIRMAN HEINLE: Owns the minerals and

1 surface rights.

2 MR. GRIFFITH: No. She is the daughter
3 of Mrs. Nelson and the sister to Jim Nelson who runs
4 cattle on there and --

5 CHAIRMAN HEINLE: Did the cattle
6 operations that Mr. Nelson runs, does he, in effect,
7 lease the surface back from her, do you know, or --

8 MR. GRIFFITH: I don't know. Kind of a
9 family arrangement, so maybe he has a formal lease, or
10 maybe just something over the kitchen table, you know.

11 CHAIRMAN HEINLE: But, in any event, you
12 have to get, basically, a release signed by
13 Ms. Culver. I notice that's entitled "Memo of
14 Statement." That was included in our package. It was
15 signed by Mr. Nelson and -- Mr. Jim Nelson.

16 MR. GRIFFITH: Uh-hum.

17 CHAIRMAN HEINLE: Saying that the drill
18 site has been restored to his satisfaction also.

19 MR. GRIFFITH: He would be the most
20 likely person to know of whether it was proper or not.
21 I don't know that J. Culver ever goes out and wanders
22 across her piece of terrain there. Jim is in the
23 daily cattle business and has been, so he would know
24 whether he was satisfied. I think he is the expert in
25 that particular subject.

1 CHAIRMAN HEINLE: Do you feel that this
2 property is reseeded as it calls for in your agreement
3 with Mrs. Culver -- I'm looking for it right now.

4 MR. GRIFFITH: Down at the last
5 paragraph.

6 CHAIRMAN HEINLE: Okay. Including
7 reseeding. That if, for some reason, you reseed it
8 and growth does not occur, for whatever reason, you
9 have any opinion as to whether significant adverse
10 environmental impact would result if the reseeding
11 didn't take place?

12 MR. GRIFFITH: No, I wouldn't. It's not
13 steep or hilly terrain, and, actually, it probably
14 will regrass itself, eventually, neighboring plants.
15 And I am sure that Jim Nelson would be pleased. We
16 didn't put the prickly pears back.

17 CHAIRMAN HEINLE: Thank you.
18 Commissioner Johnson.

19 COMMISSIONER JOHNSON: Yes. I have a
20 question. Is there some specific reason as to why
21 your release is not with Ms. Culver rather than
22 Mr. Nelson, since she is the one that entered into
23 the --

24 MR. GRIFFITH: Well, the Nelson that I
25 have my lease from is the mother of these two. In

1 other words, she retained most of the minerals. And
2 Jane Culver does not have any minerals under this
3 tract and Jim Nelson does not. He may inherit some of
4 them one of these days but --

5 COMMISSIONER JOHNSON: As I understand,
6 Jane Culver owns the property.

7 MR. GRIFFITH: Surface.

8 COMMISSIONER JOHNSON: So, I guess I am
9 back to my second question. Have you asked her for
10 the release?

11 CHAIRMAN HEINLE: Yes. That's what this
12 is, I believe, this document is right here.

13 COMMISSIONER JOHNSON: In that release
14 it says he agrees to reseed.

15 CHAIRMAN HEINLE: Right.

16 COMMISSIONER JOHNSON: So, I mean that's
17 not a release, if he is agreeing to do it. That's
18 where I am confused.

19 COMMISSIONER REBNE: This is also dated
20 back in June of '95, not a recent document, or
21 recent -- the same question, because it would seem
22 that if Jane Culver is the surface owner, then she
23 should be the one providing or signing this document
24 here, not Jim Nelson.

25 MR. GRIFFITH: She was not an authority

1 on what good cattle range would be, whether it was
2 properly restored or not. She's had to take Jim
3 Nelson's word for it. He is the man who's on the
4 ground running the cattle. He is -- they are in the
5 same family, and so it's a --

6 COMMISSIONER JOHNSON: That's the point.
7 I think she needs to consult with him. She's the one
8 that has to sign the document.

9 MR. GRIFFITH: Well, it hadn't been
10 reseeded yet. The reason for that, Dale Troutman is a
11 specialist in this type of activity out there, and all
12 over the Denver Basin for that matter. He says it's
13 too dry. It would be somewhat risky, I guess. Might
14 be a waste of time, until we have a little moisture.
15 Well, it's -- this could go on for a couple of years,
16 I suppose, if we got a recurrence of dust bowl days
17 coming on us. But, I said I would reseed it whenever
18 they want it done. And this guy who does the
19 reseeded has been in touch with Jim Nelson, who is,
20 as I say, is the man on the ground. He's the one that
21 calls the shots.

22 So, all I am saying is, really, I got
23 5,000 bucks tied up there, since it's going to waste,
24 and I need the money to do the reseeded. He may call
25 me next week and say, hey, we got the moisture here

1 and now is the ideal time. So, that's the case. I
2 will check with Jim Nelson to see what kind of grass
3 seed mixture he's going to use or he wants, and then
4 we'll take care of having it done and paying for it.

5 CHAIRMAN HEINLE: Commissioner Rebne.

6 COMMISSIONER REBNE: What do you
7 estimate the cost of reseeding to be?

8 MR. GRIFFITH: He told me over the
9 telephone, last week, it was somewhere in the
10 neighborhood of \$600 or a little more. It may vary a
11 little bit, depending on the mix of seed. No, I am
12 not enough of a plant fellow just to tell you what
13 they will use. I remember he mentioned short broom
14 and some wheat. And this is all carefully worked out
15 by the county agents, I suppose.

16 CHAIRMAN HEINLE: Commissioner
17 MacMillan. I am sorry. I was in deep thought.

18 COMMISSIONER MacMILLAN: Yes. I could
19 tell. Mr. Griffith, could you explain a little bit
20 about -- could you tell me if you have explained to
21 the commission what your background is, how long have
22 you acted as a prospect generator and activity creator
23 and as an operator in the state of Colorado?

24 CHAIRMAN HEINLE: I think, to save time,
25 Mr. Griffith, early on in his testimony, provided

1 that. And I think we have got a pretty good
2 background of his experience in Colorado, and in
3 particularly in the Denver Basin, so that, you know,
4 just to try to keep things moving. I hope you don't
5 mind if we not cover that territory again.

6 COMMISSIONER MacMILLAN: Thank you.

7 CHAIRMAN HEINLE: You bet. Any other
8 questions of Mr. Griffith? Mr. Avis, are you going to
9 be presenting just a staff's view on this thing?

10 MR. AVIS: Just a -- I believe you have
11 the handout in your packet, a brief overview of the
12 site visit on April the 1st.

13 MR. GRIEBLING: Perhaps I could just
14 provide some introductory comments. First of all, I
15 make the point that both myself and Mr. Avis were
16 sworn in at the beginning of the proceedings. I am
17 not sure it was clear who was sworn in.

18 CHAIRMAN HEINLE: Thank you. I don't
19 think it was.

20 MR. GRIEBLING: Okay. First of all, I
21 don't think I have heard much that we would dispute as
22 far as what's occurred, and I just want to clarify
23 what our role has been and what staff has been
24 involved in. Basically, we had a variance request for
25 early bond release, and as we interrupt the bonding

1 rules, bond release rules, 1004.c, we understood that
2 a site specialist was appropriate, and as Mr. Avis
3 begins his testimony, he will be describing a recent
4 site inspection and also he will be describing
5 contacts he had with experts in that area as to what
6 might be appropriate for revegetation. I don't
7 believe that this will be significantly different from
8 what you have heard from the applicant, but you will
9 basically be receiving a staff report of our site
10 inspection.

11 CHAIRMAN HEINLE: If I could just make a
12 comment. It seems to me there's two critical tests
13 here, under this rule, and maybe it will help Mr. Avis
14 focus a little bit. One is that it's not necessary to
15 protect the public health, safety and welfare,
16 including the prevention of significant adverse
17 environmental impacts, and an agreement has been
18 entered into with the surface owner, which seems to be
19 the two important tests in terms of whether a waiver
20 should be granted.

21 MR. GRIEBLING: Let's discuss that for a
22 second.

23 CHAIRMAN HEINLE: Maybe I started down
24 the road I don't want to. Maybe I should just let
25 Mr. Avis go forward with everything. Maybe what the

1 statute means is better dealt with later, after we get
2 the testimony, discuss it among the commissioners, so
3 I will withdraw the statement I just made and let
4 Mr. Avis go ahead with his full testimony.

5 MR. AVIS: Well, the first part of the
6 memo that I wrote to Rich and Trisha and Ed Binkley
7 essentially states the fact that Argonex has requested
8 a variance for reclamation of the Nelson 1-10 well.
9 At the request of the director, I went to the site
10 along with Dave Dillon on April 1. The site is
11 approximately 250 feet by 150 feet, more or less
12 egg-shaped. There doesn't appear to be any
13 vegetation. There is no vegetation, as a matter of
14 fact, on the site. It doesn't look like it's been
15 reseeded. You all have a map of the site in your
16 packet. All of the surface equipment has been removed
17 and the surface is nearly level. There's one small
18 patch of drill mud in one corner of the site, and I
19 believe I attached a photo. I am not sure what you
20 can tell from that xerox photo. When you -- I have
21 the originals here, if you would like to look at
22 those.

23 CHAIRMAN HEINLE: Yes, please circulate.
24 I have just been -- just a second -- just been asked
25 by the assistant attorney general to -- might be a

1 good idea to have you introduce yourself and explain
2 your credentials for the record, which I think is a
3 good idea. Something I overlooked. Let's back up a
4 bit.

5 MR. AVIS: My name is Loren Avis. I am
6 an environmental protection specialist with the oil
7 and gas commission.

8 CHAIRMAN HEINLE: How long have you been
9 employed with the oil and gas commission?

10 MR. AVIS: I have been employed
11 approximately three years with the commission.

12 MR. GRIEBLING: Could you describe your
13 previous experience?

14 MR. AVIS: Previous experience was
15 eighteen years in the oil and gas business, primarily
16 exploration with -- as a geologist in the state of
17 Colorado, Wyoming, Oklahoma, and a small amount in
18 California.

19 MR. GRIEBLING: Describe your
20 educational background.

21 MR. AVIS: My educational background is
22 master of science and geology, bachelor of science in
23 geology also.

24 CHAIRMAN HEINLE: Thank you. Please
25 continue. I am sorry.

1 MR. AVIS: Sure. The photos are going
2 around now, and I think Photo 1 shows the patch of
3 drilling mud. If you can see that, it's a gray patch,
4 pretty much at the southwest end of the site. The
5 next part of my memorandum essentially describes the
6 regular vegetation that is out there. It's primarily
7 buffalo grass, and I do have some additional photos of
8 the native vegetation. I will pass those around now.
9 Approximately 80 percent of the vegetation is native
10 buffalo grass. There's also about 15 percent prickly
11 pear cactus, which I assume is a problem in the area
12 as far as grazing for cattle. There's also a small
13 percentage, 5 percent of blue grama and Russian
14 thistle I did spot in this area, but at the time I
15 visited the site, it had probably -- most of it had
16 probably blown away and no new growth was present of
17 Russian thistle.

18 The second page of my memo includes a
19 revegetation plan from the NRCS, which I visited at
20 the Sterling office right after I visited the Nelson
21 site. I spoke with Dawn Jackson, and she suggested
22 the following grasses for revegetation in order to
23 promote the quickest revegetation of the site. As you
24 can see the western wheat grass, blue grama, oat
25 grama, green needle grass and little blue stem. And I

1 also have an attachment of a seed plan from her
2 department. Other recommendations were that the site
3 should be seeded in the essentially Option 1 or Option
4 2, the Option 1 being that, in June, plant a cover
5 crop of sorghum, fence the area to prevent cattle from
6 eating sorghum, and then, in the fall, in November,
7 and before April of next year, drill in native grass
8 as per the plan up above.

9 Second option, minus the sorghum, was to
10 drill in the seed in June and cover the drill site
11 with large chunks of manure and fence the area to
12 prevent cattle from eating the new growth. Then, on
13 the third page, I have a listing of local drillers and
14 some seed source growers and some seed sources, also
15 manure supplier.

16 CHAIRMAN HEINLE: Do you have any other
17 testimony you care to give right now?

18 MR. AVIS: I have no more, no.

19 CHAIRMAN HEINLE: Mr. Griffith, do you
20 have any questions directly that you would care to
21 ask, at this time, of Mr. Avis?

22 MR. GRIFFITH: I don't believe so. Very
23 good, thorough interesting report.

24 CHAIRMAN HEINLE: Any questions from the
25 directors or the commissioners? Commissioner Rebne.

1 COMMISSIONER REBNE: Mr. Avis, the
2 Option No. 1 and Option No. 2 that you have in your
3 memo, do you have an idea about how much that might
4 cost, either of those options?

5 MR. AVIS: I did not ask the price on
6 that, no.

7 COMMISSIONER REBNE: Do you think it's
8 Mr. Griffith's idea of about \$600 is ballpark?

9 MR. AVIS: For the size of the site, it
10 could be, yes.

11 CHAIRMAN HEINLE: Commissioner Matheson.

12 COMMISSIONER MATHESON: Did NRCS people
13 look at this particular location?

14 MR. GRIFFITH: I am sorry. I
15 couldn't --

16 COMMISSIONER MATHESON: I was asking
17 Mr. Avis whether any soil conservation people looked
18 at the location.

19 MR. AVIS: No. They didn't look at the
20 location, but they were very familiar with the area.

21 COMMISSIONER MATHESON: Do you have any
22 opinion on the state of overgrazing in the area?

23 MR. AVIS: They did not mention that,
24 no.

25 COMMISSIONER MATHESON: Okay.

1 CHAIRMAN HEINLE: Mr. Avis, just a quick
2 question. Do you have an opinion, based on your
3 experience, whether, if the property was reseeded and
4 reseeding failed to take hold, whether that would fail
5 to protect the public health, safety and welfare,
6 including prevention of significant adverse
7 environmental impacts?

8 MR. AVIS: My opinion would be, if it
9 failed to reseed, that there might be an erosion on
10 the property which would cause environmental impact
11 adversely to the property.

12 CHAIRMAN HEINLE: Would that erosion, in
13 your mind, be significant?

14 MR. AVIS: I am not sure how to answer
15 that question. I think, in talking to the NRCS
16 people, it's going to take approximately two years to
17 revegetate this site. I believe it could possibly
18 cause blowout, but what I would call a blowout there,
19 that area where it might blow the topsoil away, enough
20 to cause it to be difficult to reseed in the future.

21 CHAIRMAN HEINLE: Director Griebbling.

22 MR. GRIEBLING: I would like to point
23 out that it's hard to keep this in context. I don't
24 know if you had many applications before you for a
25 variance. Often we're in this situation in the

1 enforcement hearing. I just want to clarify that we
2 haven't written any NOAVs. This isn't an enforcement
3 hearing. We're not at odds with the applicant as to
4 the facts as far as what has been done out there. And
5 just keeping Mr. Avis's testimony in context, I would
6 like to point out that this is, basically, a report of
7 the condition of the site and these options that are
8 out here are merely for the convenience of the
9 applicant and reflect the advice of the NRCS people.
10 They are not necessarily proposals from the oil and
11 gas commission or certainly not their recommendations
12 as to how to revegetate this particular site.

13 I believe that leads into the
14 application of our rules, that led to our denial of
15 this variance request, and perhaps I should walk
16 through those to make sure that the commission
17 understands how we're applying the rules. I will
18 refer you to Rule 1001.c, which you referenced, as the
19 conversation began, a little while ago. And I would
20 like to point out that, as I read that rule, that it
21 provides for exactly the situation that we currently
22 have in existence. The applicant is not in compliance
23 with our reclamation rules, as a result of a waiver
24 that's been provided by the surface owner. And, for
25 that reason, we're not issuing NOAVs. We're not

1 trying to enforce against the operator to achieve
2 compliance with our rules. If you will look at the
3 second to last sentence in Rule 1001.c, it says,
4 "Prior to final reclamation approval as to a specific
5 well, the operator shall either comply with the rules
6 or obtain variance under Rule 502.b." So, as I
7 understand it, what the applicant has done here is
8 applied for variance under Rule 502.b so that final
9 reclamation release would follow and he could receive
10 his financial assurance back.

11 Now, I would like to refer you to Rule
12 502.b, and I believe the standard there is that a
13 variance may be granted upon written request by the
14 operator, in a showing by the operator that the
15 requested variance will not violate the basic intent
16 of the Oil and Gas Conservation Act. Now, merely for
17 illustration of how we applied this rule, I would like
18 to refer to the act, and I encourage you to get
19 independent legal advice from the assistant attorney
20 general on this. But, as I outlined in a memo to you
21 a couple of months ago, couple of hearings ago, as we
22 are reading this, the act, in 34-60-106 (13),
23 requires -- that says the commission shall require
24 every operator to provide assurance that he is
25 financially capable of fulfilling any obligation

1 imposed under Sections 11 and 12 of this section. And
2 then Section 11 refers to the protection of health,
3 safety and welfare in the general public. Section 12
4 refers to rules to ensure proper reclamation of the
5 land and soil affected by oil and gas operations, and
6 to insure the protection of the topsoil of said land
7 during such operations. As we understand it, as we
8 have been reading it, Section 12 does not refer to a
9 significant adverse environmental impact but rather
10 refers to proper reclamation and protection of
11 topsoil. And again, you know this is the way we were
12 reading and applying it. So, I encourage you to make
13 further review on interpretation of the statute, but
14 as we understand 13, it requires the provision of
15 financial assurance. That is, we, under 12, that
16 assurance must apply to proper reclamation and
17 protection of topsoil.

18 So, keeping that in mind, when we go
19 back to Rule 502.b and the standard is violation of
20 the basic intent of the oil and gas act, I have a hard
21 time seeing meeting that standard when we would be
22 releasing financial insurance; that, as we read it,
23 the statute requires for proper reclamation and
24 protection of topsoil. And I did outline this in a
25 previous memo. I couldn't find it in the reference,

1 if you would like, but I think I have pretty much
2 covered the same thing in this discussion today. And
3 I hope that this application hearing will help clarify
4 and articulate the commission's position so the staff,
5 if you would like us to be reading the statute
6 differently and applying it differently, we can get
7 that guidance.

8 CHAIRMAN HEINLE: Thank you.
9 Commissioner Johnson.

10 COMMISSIONER JOHNSON: Well, I believe
11 the director has quite clearly and accurately viewed
12 the statute and the rules the way I recall the
13 discussion was when we were writing it.

14 CHAIRMAN HEINLE: Commissioner Matheson.

15 COMMISSIONER MATHESON: Mr. Avis, with
16 regard to 1001.c, the last sentence there where it
17 says this rule should not have the effect of relieving
18 an operator from compliance with the 900 series rules.
19 The drilling mud you found on the location, would you
20 consider that to be at odds with the 900 series rules?

21 MR. AVIS: I don't think I would have a
22 problem with it, if it were spread out to -- instead
23 of concentrated in that one spot, no, no, I don't
24 think it would be a issue. The fact that it was
25 concentrated in one spot, I think, might cause the



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1 reseeding to be difficult in that area.

2 COMMISSIONER MATHESON: So, it just
3 looks like, basically, a mud spill that wasn't pushed
4 around a little bit, basically.

5 MR. AVIS: That's correct.

6 COMMISSIONER MATHESON: Do you have any
7 idea what kind of volume it might have been?

8 MR. AVIS: Volume of mud, I would guess,
9 maybe ten, ten gallons, twenty gallons of mud. It's
10 very small.

11 COMMISSIONER MATHESON: Very small.

12 Very good.

13 CHAIRMAN HEINLE: Commissioner
14 MacMillan.

15 COMMISSIONER MacMILLAN: Also a question
16 for Mr. Avis. When you were out earlier this month, I
17 guess is what it was, did you have a chance to talk
18 with either of the surface owners or any of the
19 parties that were involved in the information that had
20 already been submitted to the oil and gas commission,
21 any of the signatories -- any of the signatures,
22 people behind the signatures on any of this?

23 MR. AVIS: No, I didn't.

24 COMMISSIONER MacMILLAN: Did you plan to
25 talk with them and just were not able to touch base

1 with them while you were out there?

2 MR. AVIS: No, I hadn't talked with
3 them. My main purpose was to visit the site and see
4 what the condition of the site was.

5 CHAIRMAN HEINLE: Director Griebeling.

6 MR. GRIEBLING: Just for clarification,
7 I don't believe that we're disputing that 1004.c.2,
8 that the test that's required there hasn't been met.
9 That's not an issue. Certainly we're not disputing
10 the signatures on the waivers being accurate or
11 anything. We're not arguing that. It's probably fine
12 with the surface owner or tenant, that the applicant
13 proceed as he's been planning to. That hasn't been an
14 issue, so we haven't really been focussed on that
15 area. It's just been a -- whether our rules in the
16 statute allow us the leeway to provide release of
17 financial assurance.

18 COMMISSIONER MacMILLAN: You will hear
19 my perspective when we get to that point on that.

20 CHAIRMAN HEINLE: Commissioner Rebne.

21 COMMISSIONER REBNE: Can we release a
22 portion of the bond or is that release the 5,000?

23 MR. GRIEBLING: That hasn't been
24 requested. That's certainly an option.

25 CHAIRMAN HEINLE: Any other questions?

1 Commissioner Matheson.

2 COMMISSIONER MATHESON: I did come in
3 late, and I apologize for that, but there's one thing
4 in my mind. This Mr. Nelson is not the surface owner;
5 is that correct?

6 MR. GRIFFITH: That's correct. His
7 sister is the surface owner. He is the guy who runs
8 the cattle on there. I don't know what kind of
9 arrangement they have, whether it's formal. I just
10 don't know.

11 COMMISSIONER MATHESON: Well, I would, I
12 guess, at some point, appreciate some advice from the
13 attorney general on, you know, waivers being provided
14 by the family of the surface owner, something to that
15 effect.

16 CHAIRMAN HEINLE: Nothing like the
17 present.

18 MS. McNEILL: How about right now? I
19 think that, again, we're past the initial piece of the
20 puzzle with respect to the initial variance that was
21 granted, and we're looking at a variance under 502.b,
22 and the obligation under 502.b is to make sure that
23 the basic intent of the act has not been violated.
24 That's a pretty broad standard and a lot of things go
25 into it. Certainly having surface owner compliance is

1 a big plus, in that part of what the act does is
2 protects the surface owner and their concerns about
3 how the land is reclaimed. So, it's how all of these
4 things fit into the pieces of the puzzle.

5 Mr. Avis's concerns about whether or not
6 the general environment's protected certainly is part
7 of the overarching goals of the act. So, my response
8 to you is it's more -- is the standard so broad that
9 there really has to be a finding that the basic intent
10 of the act, including all of those factors, isn't
11 violated, giving weight to the fact that he's secured
12 the surface owner's consent to that, is that
13 sufficient, or how does that play into the other
14 obligations under the act to protect and to seek
15 financial assurance.

16 One of the things that Commissioner
17 Rebne brought up -- I will just comment on it -- that
18 the commission has discretion, and particularly while
19 we're dealing in the 502.b situation, to ask for
20 financial assurance in any one of several means. The
21 bond is one means, and you can go through the list as
22 well as I can about a guarantee of performance, where
23 the operator can demonstrate to the commission's
24 satisfaction, he has significant, sufficient net worth
25 to guaranty performance of the obligation imposed, a

1 bond, a letter of credit, which is a, if you want to
2 look through the litany of these things that you can
3 require, with respect to financial assurance, which is
4 part of what I think the staff is dealing with, is
5 that a piece of not violating the basic intent of the
6 act? It might shed some additional light on possibly
7 looking at this. Does that help, Commissioner
8 Matheson?

9 COMMISSIONER MATHESON: Yeah. A little
10 bit. Maybe another thing that I missed was is there
11 any proposed future land use for this site other than
12 cattle grazing?

13 MR. GRIFFITH: I would say it was,
14 unless you want to build a house there, there wouldn't
15 be much other use you could put it to.

16 COMMISSIONER MATHESON: That's basically
17 what those owners of the property plan upon doing with
18 it, is continuing to use it for cattle?

19 MR. GRIFFITH: Oh, yeah, sure.

20 COMMISSIONER MATHESON: Okay.

21 CHAIRMAN HEINLE: Any other questions?
22 I guess what I would like to do now, maybe, is I would
23 just, if you have any type of closing statement you
24 would like to make, Mr. Griffith, go ahead and do
25 that. And then maybe we, as commissioners, can do

1 some dialoguing on this, because I think there's a
2 somewhat philosophical issue here that we need to
3 discuss, perhaps, in terms of application of the
4 rules, that is probably of more urgency than maybe
5 some of the facts themselves. Is there anything else
6 you care to say at this time, Mr. Griffith?

7 MR. GRIFFITH: I would like to invite
8 Ken Wonstolen to make a few comments. Maybe want to
9 ask a question or two.

10 CHAIRMAN HEINLE: Let me turn to the
11 assistant attorney general, see if, procedurally,
12 that's something we can do, because I am not -- did
13 they file as an intervenor or are they representing --

14 MR. WONSTOLEN: This is not a case of
15 that, sir. Go ahead. Get your advice.

16 MS. McNEILL: I am sorry. I want to
17 hear what you say, Mr. Wonstolen.

18 MR. WONSTOLEN: This is not a docketed
19 matter in the sense that you can't -- that you can
20 file an intervention, really. It could have been
21 handled at the director level. I mean, I never would
22 have known about this. This is purely within your
23 discretion as to whether or not you would like to hear
24 some public comments, and I would suggest -- this is
25 kind of a matter of first impression -- that this is

1 the first time you have taken on how to apply the
2 reclamation waiver, which, obviously, there are
3 stakeholders here. I am not the only one. I think
4 Mr. Wright is here also, who was involved in drafting
5 that waiver. It might be appropriate to get our
6 insight as to what we thought was going on at the
7 time.

8 CHAIRMAN HEINLE: I would agree, and I
9 don't have a problem, unless the assistant attorney
10 general does, hearing some additional testimony.

11 MS. McNEILL: Well, I think the goal is
12 to come to full resolution. We're not in a hearing
13 situation nor are we in the rulemaking situation.
14 He's an interested member of the public. As long as
15 he is sworn, I don't think his testimony should be
16 precluded.

17 CHAIRMAN HEINLE: Okay. Mr. Wonstolen.
18 (Whereupon the witness was sworn.)

19 CHAIRMAN HEINLE: Thank you. Would you
20 state your full name and address for the record,
21 please.

22 MR. WONSTOLEN: Ken Wonstolen,
23 representing Patina Oil and Gas, and speaking today on
24 behalf of the Colorado Oil and Gas Association.

25 Mr. Chairman, I think that you started,

1 at one time, to properly frame the issues and withdrew
2 your statement. I wish you had, I think, because I
3 think you had it exactly right. Ever since you
4 withdrew that statement, we never circled back to the
5 points that I am trying to make.

6 CHAIRMAN HEINLE: I think we will in
7 time. We haven't gotten to that point in the
8 discussion.

9 MR. WONSTOLEN: That really was Mr.
10 Griffith's basis for asking -- he read to you, I
11 think, the rule that he's relying on to ask for this
12 variance, and I think it's pertinent. I think,
13 clearly, when we were -- if we don't get back to that
14 surface owner waiver provision, in the discussion, we
15 eviscerate the entire exercise we went through to put
16 that rule in the books. That was one of the more
17 excruciating rules to get done, as you may recall in
18 the reclamation rulemaking.

19 It seems to me, that as Mr. Griffith
20 indicated, just a straightforward legal perspective,
21 just an English perspective, it is very clear. It
22 says the commission shall not require compliance with
23 the relevant rule of your discussion, which is the
24 bond release portion of, shall not require compliance,
25 if two conditions are met. Number one, the operator

1 and surface owner have entered into an agreement
2 relating to these issues. I guess that's the first
3 question. Has the operator and surface owner had
4 the -- had they entered into an agreement relating to
5 these issues, and I haven't seen the release, but,
6 evidently, that's the drift of that; and, No. 2, that
7 absent some overriding public health, safety and
8 welfare concern, we -- let's just agree that the
9 environmental issues are incorporated therein -- that
10 agreement would be honored, and that compliance would
11 not be required. That's what the rule says in the
12 very straightforward fashion.

13 Now, we can go back and talk about the
14 basic intent of the act, and this is the Rule 1001
15 surface owner waiver is the way this commission has
16 established procedure for compliance with the basic
17 intent of the act in this area. Now, I would give you
18 an analogy that I think is relevant here. 106(3.5) of
19 the statute requires that the commission mandate
20 furnishing of reasonable security for surface damages
21 or unreasonable crop loss where the surface owner is
22 not a party to the lease with the operator. This
23 commission has, for probably at least a decade, if not
24 more, allowed a surface use agreement to substitute
25 for that security or to be that security. So, that,

1 you know, that the language of the statute says,
2 "furnishing of reasonable financial security." This
3 commission has interpreted that broadly enough to say
4 that an agreement between the parties, whom the
5 statutory provision is designed to serve, will be
6 sufficient. We're not going to second-guess that. I
7 think it's analogous to this situation, with the
8 overlaying knowledge you have of health, safety and
9 welfare, including environmental.

10 So, it seems to me that the commission
11 took a very consistent approach in the surface owner
12 waiver section of the reclamation rulemaking, and said
13 if you have an agreement between the private parties,
14 you will honor that agreement unless we find some
15 overriding public health, safety and welfare concern.

16 Now, I would remind you, also, that the
17 reclamation rules underwent review at the legislative
18 counsel's office, including this section. The
19 legality of the waiver granted here was reviewed,
20 ultimately, by the members of the General Assembly,
21 and was found to pass muster under the act. So,
22 1001.c, the surface owner waiver provision, has been
23 adjudged by the members of the General Assembly,
24 through process in this state, to suit the purposes of
25 the act. What it does, the balances it sets up are

1 appropriate. If the private parties agree you should
2 defer to that agreement, unless you find some
3 overwhelming public health, safety and welfare issue.
4 That, I believe, is what the industry thought, was it
5 was getting that surface owner waiver section. And I
6 am not hearing that in the discussion today.

7 CHAIRMAN HEINLE: Any questions of
8 Mr. Wonstolen? Director Griebbling.

9 MR. GRIEBLING: Mr. Wonstolen, you
10 referenced 34-60-106(3.5), and I believe you
11 referenced that analogy. Just for clarification, that
12 is an entirely different statutory charge with respect
13 to release of financial reassurance. I am sure some
14 of the discussion you may have had may have gone
15 beyond that.

16 MR. WONSTOLEN: Two different financial
17 instruments.

18 MR. GRIEBLING: That wasn't necessary in
19 this situation, because the surface agreement was in
20 place. As I heard your comments, I found that I
21 agreed with them entirely, as to all activities prior
22 to release of financial assurance or final reclamation
23 approval. Do you read 1001.c as being -- as
24 considering two phases? An example might be if we had
25 a complaint that Mr. Griffith hadn't complied with our

1 rules, let's say a neighbor or somebody, even the
2 surface owner, let's say, the surface owner complains.
3 Well, in this case, that would be difficult. Let's
4 say anybody. We basically would not issue a Notice of
5 Violation, an alleged violation, because we believe
6 that a waiver is in place here. Surface owner has
7 waived our rules during this interim period. We would
8 agree entirely with your reading of the rule in the
9 way we apply it.

10 However, the second and last sentence of
11 the same rule that you referred to goes into a second
12 phase, and that's final reclamation approval. And at
13 that point, the waiver aspect is not referenced in the
14 rule. A variance under 502.b is what's referenced,
15 and I think there's some confusion. I don't believe
16 the waiver rule application is at all relevant at this
17 point. And final reclamation approval, as to the
18 specific well, as we understand it on 502.b, is
19 present, is relevant. How do you answer that?

20 MR. WONSTOLEN: This rule is not the
21 most clear. That's probably why we're here today, but
22 the first sentence says, "shall not require compliance
23 with rules," and specifically mentions 1004.c, which
24 is the rule for final reclamation, threshold for
25 release of financial insurance. So, obviously, it's

1 obvious that first sentence applies, with its explicit
2 terms, to the rule which Mr. Griffith is seeking for
3 variance. And I read it to say that, essentially, he
4 will be entitled to the variance, under Rule 502.b, as
5 long as he meets the conditions described in the first
6 sentence; that he has an agreement relevant, to the
7 issue with the surface owner, and there's no
8 overriding, overarching public health, safety and
9 welfare issue at stake. I read that to say that the
10 commission has reserved to itself the right to
11 essentially override the private agreements between
12 operators and surface owners on these matters if it
13 finds an overarching public health, safety and welfare
14 concern. But absent that finding, the commission has
15 said it will defer to the private agreements. That's
16 the rule. And I know the tie between the two
17 sentences is not the most absolute to be done. I
18 would say, in order to put the entire rule into
19 effect, you have to say, essentially, that the 502.b
20 variance is -- the operator is entitled to it, if he
21 satisfies the conditions of the first sentence.
22 That's the only way to make it all work. That first
23 sentence specifically applies to the rule that's he
24 asking for a variance from.

25 MR. GRIEBLING: It's my recollection

1 that, during the rulemaking that the commission
2 determined to adopt this rule, there was considerable
3 discussion about the variance issue. It's always been
4 a contention, it's my recollection, that it was -- the
5 way it was resolved was sort of a compromise. And the
6 existence of waivers, and the acknowledgment and
7 acceptance of waivers was something that, as I
8 understood it, was intentionally specifically designed
9 by the commission to be allowed up until the release
10 of financial assurance; that this sentence was put in
11 specifically to ensure that at the release of
12 financial assurance or final reclamation approval -- I
13 am using the terms interchangeably -- that either the
14 compliance test or the variance under the 502.b test
15 would be required. But my recollection of that is,
16 perhaps, different than yours or --

17 MR. WONSTOLEN: I don't disagree. I
18 think, essentially, the last sentence was designed to
19 give the commission, basically, a second bite at the
20 apple. In other words, as long as there was a private
21 agreement in place during the operation, there were no
22 compliance issues under the interim reclamation rules,
23 let's say, but, that final stage where the commission
24 was going to eliminate its involvement with the
25 situation, gets a second chance to review it and,

1 presumably, to apply this test of is there some public
2 health, safety and welfare reason why we should not
3 allow this agreement to go forward to the conclusion.
4 To have a second chance to say, okay, we see, you
5 know, whatever happened during interim reclamation, we
6 leave to you. We get to the final stage, there's a
7 public health, safety and welfare reason we can't
8 allow the private agreement to control. Here's why.
9 But absent that finding, then I think the standard set
10 up by the first sentence still applies. If you have a
11 private agreement, we're going to allow that to
12 control the situation. That was -- I think that's not
13 too different from what you were saying.

14 CHAIRMAN HEINLE: I think it's
15 different, but that's all I have got to say.
16 Assistant Attorney General --

17 COMMISSIONER MacMILLAN: As we were
18 reviewing, particularly with the two of you reviewing
19 what you thought our understanding was and what the
20 commission thought their understanding was, when we
21 passed this rule, I want to address one other thing.
22 That is, as part of the first sentence of 1000.c,
23 there was discussion that occurred at the commission
24 level on why we were going to have the director grant
25 the variance or as an appeal to what the director may

1 or may not do, what the commission then may grant. I
2 would suggest that that's exactly why we're here with
3 this case today. The director has interpreted the
4 rules that we passed, and in the context of the
5 statute, this particular operator doesn't necessarily
6 feel that the denial of the request for release of
7 bond is appropriate in this case, so he's come to us
8 to make that judgment. That was, in my understanding
9 of the discussion, very clearly a part of it.

10 MR. WONSTOLEN: Just to summarize, and
11 in one sentence, if you can't get a variance under the
12 last sentence of Rule 1001.c, then the first sentence
13 is ineffective, because then there is no way not to
14 require compliance with 1004.c. I mean, that is the
15 rule. Threshold for final reclamation release. If
16 you can't get a variance at the end, then this is all
17 irrelevant. The waiver as to that rule is irrelevant.

18 CHAIRMAN HEINLE: Assistant Attorney
19 General McNeill.

20 MS. MCNEILL: I agree with most of what
21 Mr. Wonstolen has said. I do think the rule is a bit
22 ambiguous in that if you can get a waiver under
23 1003.c, then, with the showing of those two things,
24 and, really, it moots the second to the last sentence,
25 so I think you can -- that's a flip side to both

1 points. You have to try and give affect to both
2 pieces of that rule, if you want to look at it. And
3 so, to say there's no way you can get one under
4 1003.c, if you use that provision, the second to the
5 last sentence, then, both of the provisions,
6 technically, could cancel each other out, and that
7 aside -- I think the important thing is for the
8 commission to read the entire rule together, and it
9 seems to me that what Mr. Wonstolen is saying is not
10 as far from what the -- how the staff has interpreted
11 it. The only difference I can really see in standards
12 is under 502.b the standard is we'll not violate the
13 basic intent of the oil and gas conservation
14 commission act. I think everybody agrees part of the
15 basic intent is to protect public health, safety and
16 welfare. So the difference comes in including
17 prevention of significant adverse environmental, that
18 modifier. I mean, that, at least, that might be one
19 way to look at what the two differences are between
20 what the parties might be discussing, but I do think
21 you have to try and give credence to both sentences in
22 there.

23 CHAIRMAN HEINLE: Commissioner Johnson.

24 COMMISSIONER JOHNSON: The way I
25 remember our rulemaking process, in the way it was

1 recited in the areas -- I don't remember which rule it
2 fell under -- that if you were doing the variance from
3 the time prior to the final reclamation, that then
4 that particular, for example, and the discussion was
5 quite extensive on pits and roads, for example, that
6 you use during the whole time that the facility is
7 being operated, when it comes to final reclamation,
8 they were -- that was a variance not to reclaim those.
9 But, at the final, then those could still be opted out
10 of final reclamation, because the surface owner is
11 signing off that they want to use those, as opposed to
12 reseeding, was something that was discussed
13 extensively during the whole process, that, under the
14 umbrella of health, safety and welfare, they wanted
15 reseeding done. That's how I remember what took place
16 during the process.

17 CHAIRMAN HEINLE: Commissioner Williams.

18 COMMISSIONER MATHESON: My recollection
19 is similar to Commissioner Johnson, and I am -- I
20 think my interpretation, based on that, is going to
21 come down very similar to Mr. Wonstolen's. That is
22 that when we looked at this issue, we were really
23 looking at sort of a clash in two philosophies, one of
24 which was a private agreement standard that a lot of
25 property right interests were advancing, versus our

1 obligation to protect health, safety and welfare.
2 That would override. That this was a hard-fought
3 compromise on those two philosophies, which basically
4 said that as long as the parties agreed, and this
5 other public interest was not threatened by that
6 agreement, that we would live with that.

7 Now, we come -- have two stages here.
8 We have interim, we have a rule dealing with both
9 interim reclamation and final reclamation. My
10 recollection of why this sentence -- why this is
11 broken down into two sentences. There were times when
12 what this commission decided or what the director
13 decided was not a threat to health, safety welfare on
14 a short-term basis, could, nonetheless, be a threat to
15 health, safety and welfare on a long-term basis. So,
16 what you have is a second look, but the standards are
17 the same, but with different durations in mind. So
18 that the second time what we would be looking at here,
19 it does seem to be to grant the 502 variance. I think
20 the process being used here is correct. You have to
21 come back for final reclamation and seek the variance,
22 what are the standards of the variance.

23 I think we go back, to make this rule
24 make any sense, we have to go back to, is there a
25 private agreement and does it threaten -- does that

1 private agreement need to be set aside notwithstanding
2 all of the considerations of private ownership,
3 because we have issues of public health, safety and
4 welfare. So, I think the inquiry remains the same,
5 but in terms of permanent solution as opposed to
6 interim solution, and, for that reason, I would -- my
7 only concern with the facts here is that we have an
8 agreement that says you shall reseed. We haven't seen
9 the reseeding yet, so, I am not sure we have all of
10 the pieces that we need, but I don't think it's,
11 because of that Mr. Wonstolen's interpretation is
12 different than mine, because I am not sure we have all
13 of the facts, because I haven't seen a waiver of the
14 reseeding obligation.

15 MR. WONSTOLEN: Can I address that just
16 briefly?

17 MR. GRIEBLING: Let me just clarify a
18 couple of things. It's probably pretty clear from the
19 testimony that staff hasn't spent lots of time
20 investigating the waiver that was provided. And it
21 hasn't taken issue with the waiver. Some of the
22 commissioners have asked about some of the details of
23 that. We did not make a determination as to whether
24 or not there was significant adverse environmental
25 impact in denying this waiver request.

1 Let me draw everybody's attention, real
2 quickly -- we have talked about the 502.b reference,
3 the basic intent of the oil and gas act. Let me show
4 what our determination was based on. We look at the
5 statute, 34-60-106(13.) That prescribes the financial
6 assurance that we're talking about releasing, and it
7 says, "The commission shall require every operator to
8 provide assurance that it is financially capable of
9 fulfilling any obligation imposed under subsections 11
10 and 12 of this section."

11 Granted 11 does reference health, safety
12 and welfare, and I tried to find out earlier -- that
13 wasn't what we applied. We applied 12 because it was
14 so specific in 12. You know, we could go back and
15 evaluate 11, or go back and evaluate the waivers, but,
16 our denial of the request for variance was based on
17 12, and because it's so specific, it said, "The
18 commission, in consultation with the state agriculture
19 commission and the commissioner of agriculture shall
20 promulgate rules to consider proper reclamation of the
21 land and soil affected by oil and gas operations to
22 ensure the protection of topsoil of said land during
23 such operations." It was that that we interpreted as
24 the statutory charge, and the basic intent of the oil
25 and gas act, in not granting the 502.b variance using

1 the standard violating the basic oil and gas act.

2 COMMISSIONER WILLIAMS: I guess I
3 understand your thought. I think the error of that,
4 that we did promulgate rules and we promulgated a
5 waiver provision to those rules. So, to say that the
6 statute then overrides that, you basically have to
7 argue that the statute makes the rule meaningless, or
8 the rule we promulgated is unenforceable, because it
9 violates this Section 12.

10 MR. GRIEBLING: We weren't arguing that
11 at all. What we were saying is that the rule says
12 that prior to final reclamation, a variance shall be
13 obtained under 502.b, and that we weren't arguing
14 that, whether there was or wasn't a valid waiver. In
15 fact, that wasn't part of the determination at all.
16 We are simply referring to the provision, prior to
17 final reclamation approval, as to a specific well
18 operator shall either comply with rules or attain
19 variance under 502.b. That's the analysis that we are
20 making.

21 COMMISSIONER MATHESON: Right. You have
22 to keep reading. The part that says upon a showing
23 of -- and takes you back to the --

24 MR. GRIEBLING: No. See, maybe that's
25 where we're having our problem. Maybe we were

1 improperly analyzing.

2 CHAIRMAN HEINLE: Let me interject here.
3 I mean, there's clearly a problem, and I think what we
4 need to do is have the commission come up with a
5 solution to the problem. I think we have, at least, I
6 feel anyway, that I have gotten a pretty good sense of
7 feedback from both the director, and their position,
8 the staff's position, and Mr. Wonstolen's. I guess I
9 would like to get back, maybe, to having the
10 commissioners ask questions and see if we can
11 deliberate the issue and come to some resolution, and
12 before I do that, I do want to let Mr. Wonstolen
13 respond to some of the points that you raised, and
14 just check with the commissioners briefly and see if
15 they are prepared to go into deliberation on this.
16 Have they heard enough evidence at this point to feel
17 comfortable doing that, knowing that you will never
18 hear enough?

19 COMMISSIONER REBNE: Yes.

20 CHAIRMAN HEINLE: Why don't you make
21 your comments. Let's see if we can deliberate this
22 issue.

23 MR. WONSTOLEN: I think Commissioner
24 Williams hits it exactly right. I think the one
25 follow-up to her remarks seemed to indicate that maybe

1 the performance of the obligation contained in the
2 release was relevant to the application of the rule.
3 I guess I say it isn't.

4 COMMISSIONER WILLIAMS: No. My analysis
5 was that this case, the obligation to reseed was not
6 waived. This agreement does not waive. In fact, it
7 expressly said that, in fact, that will occur.

8 MR. WONSTOLEN: It seems to me some
9 private agreements with respect to reclamation
10 obligations, including reseeding and whether or not
11 the private agreement has been performed, would really
12 be irrelevant to your consideration.

13 COMMISSIONER WILLIAMS: No. Because the
14 regulation says, waiver of compliance with the
15 regulations, and I don't think that this particular
16 agreement has waived compliance with the reseeding
17 obligation. I don't read it to have done that.

18 MR. WONSTOLEN: He is not asking for
19 that. He's asking for the waiver of 1004.c, which is
20 the final reclamation threshold. Threshold for
21 release. It's not a compliance issue. And that
22 standard for obtaining that, the waiver of the
23 reclamation release, is the existence of the agreement
24 and nonexistence of the overriding public health,
25 safety and welfare concern.

1 MR. GRIEBLING: C.2 specifically.

2 MR. WONSTOLEN: So, it might be relevant
3 to your consideration as to whether or not the failure
4 to comply with the agreement would result in that
5 public health, safety and welfare concern, but it
6 doesn't seem to me that's relevant to other -- the
7 existence of the reseeding obligation in the release
8 is evidence that the parties have a private agreement
9 related to the topics of the release. And performance
10 of that as between the private parties is now a matter
11 between the private parties. It's only if
12 nonperformance would result in the significant adverse
13 environmental impact that it would be relevant to your
14 consideration.

15 CHAIRMAN HEINLE: Commissioner Rebne.

16 COMMISSIONER REBNE: I move --

17 CHAIRMAN HEINLE: Any other questions of
18 any of the witnesses or people here today? Assistant
19 Attorney General McNeill, anything you want to add at
20 this point?

21 MS. McNEILL: It's all been -- all sides
22 presented, sir.

23 CHAIRMAN HEINLE: Commissioner
24 MacMillan.

25 COMMISSIONER MacMILLAN: A question to

1 you, prior to our deliberations. Are we, as the
2 agenda says, deliberating on whether we will have a
3 hearing on this matter?

4 COMMISSIONER WILLIAMS: Haven't we, in
5 fact, just had a hearing?

6 MS. McNEILL: That's a procedural issue.
7 Excuse me.

8 MR. GRIEBLING: This and any other
9 variance applications.

10 COMMISSIONER MacMILLAN: That's exactly
11 right.

12 CHAIRMAN HEINLE: Isn't the application
13 for a specific release of the bond.

14 MS. McNEILL: The application was really
15 for a -- to hold a hearing on. I would think that --
16 and, certainly, since the applicant is here, and the
17 staff is here, that we can glean from both of these
18 parties whether they think they have been properly
19 heard, but I think this can be the substantive
20 proceeding, not an application that was heard at a
21 later date, provided you feel that everyone has been
22 properly heard. This is one of those procedural
23 things that we'll come back, we'll revisit, but --

24 COMMISSIONER WILLIAMS: The only concern
25 I have is that because of the reading that the

1 director gave to the regulation, he didn't have an
2 occasion to investigate certain things that he
3 otherwise might have been investigating, like are we
4 satisfied that Jane Culver is, in fact, the person who
5 has to sign a release to even bring us under the rule,
6 under an interpretation that he wasn't giving the rule
7 at that time. I mean, so, I guess what I am saying is
8 that while we may proceed, and I think we should go
9 ahead and deliberate -- I am not suggesting we
10 don't -- I think that depending on how much the
11 outcome -- where we go with this, that we may --
12 there, in fact, may be more steps that are needed.
13 So, with that caveat, I think we should go ahead and
14 deliberate.

15 MR. GRIEBLING: I just would suggest, it
16 would be helpful for us, if you do kick it back to us,
17 to give us some guidance as to whether you, as a
18 commission, want us to release financial assurance
19 when the commissioners -- as they are here,
20 basically -- we'll use this as a guidance and
21 precedent and when we get similar applications, with
22 similar circumstances, we would be granting variances
23 you guide us to.

24 MS. McNEILL: Just in response, I guess
25 I think there may be additional work, but the

1 commission certainly can fashion an order conditioned
2 upon securing whatever additional documentation, with
3 the consent of the operator, that might be needed from
4 the surface owner, since it appears that it's a pretty
5 amicable relationship out there. You can probably
6 deliberate away.

7 CHAIRMAN HEINLE: All right. Okay. Why
8 don't we do our old-fashioned go around of the
9 commissioners and see if they have got any perspective
10 on the issue they care to share, and see if that
11 results in some sort of a conclusion, so, start with
12 Commissioner Matheson.

13 COMMISSIONER MATHESON: Okay.
14 Basically, as I recall our discussion on the
15 reclamation rules, is my view of it, that surface
16 owner waivers for interim reclamation were an
17 important thing; that these two parties could cook up
18 whatever deal they wanted to and operate underneath
19 that until such time as final reclamation. But at
20 least, in my view, the reclamation rules, I viewed as
21 minimum standard, and that beyond final reclamation,
22 our bond was gone, the recourse of the surface owner
23 may be limited or may not, depending upon their
24 contractual agreements, but the state's interest in it
25 was basically over with, and that there are some



1 fundamentals about reclamation that the state does 1.68
2 have an interest in, and they're primarily related to 2 of 3
3 the future surface use of the property, but, you know,
4 the environmental impact of one site not being
5 reclaimed properly might be minimal, but if we have
6 hundreds of deflation hollows (sic) out there that
7 were not properly reclaimed, then, in aggregate, we
8 start getting a large environmental impact.

9 So, what I was thinking, at the time,
10 when it came to final reclamation, a variance request
11 would have to be made to not comply with the rules,
12 because the state had a basic interest in seeing that
13 the site is properly reclaimed. That our road,
14 perhaps, is the contractual agreements between the
15 surface owner and the operator. In this instance,
16 what I have heard is although the surface owner is
17 saying he thinks the site has been properly reclaimed,
18 they have a contract surface damage agreement for
19 reseeding, everything else, that the future land use
20 is for cattle grazing, yet the site is new to
21 vegetation and that is not going to really do really
22 well to cattle grazing, so the basic intentions here
23 of reclamation are not being met. If we had another
24 suggested surface use of a corral, of a pond, of a
25 house or something, that would take care of those

1 state basic interests, then, yeah, we could proceed
2 with the variance. I don't see that here at this
3 time. Our basic concern is not being met, and I would
4 suggest that we don't release the bond and we do
5 require that either, you know, an alternative surface
6 use is proposed to us that's credible or they comply
7 with the rules.

8 CHAIRMAN HEINLE: Commissioner Johnson.

9 COMMISSIONER JOHNSON: I concur a lot
10 with what Commissioner Matheson said. My first point
11 is a document that we have, say, that the surface
12 owner entered into a document of which part of it was
13 that the operator must reseed. We haven't been shown
14 anything that says that the surface owner has changed
15 her mind and doesn't want the reseeded to take place,
16 No. 1. Even if that were the case, I think that in
17 number -- my issue No. 2 is that when we were going
18 through this rulemaking, and all of the stakeholders
19 that we had involved, the stakeholders trusted us to
20 do final reclamation, to reclaim finally, the site.
21 And therefore, I think that it must be done.

22 My third point would be that -- and
23 last -- is that in the event -- I mean, I am
24 open-minded enough to say that in the event the
25 surface owner wants to assume that responsibility,

1 then it would be prudent for the operator to enter
2 into some kind of a contractual agreement, or where
3 they assume that responsibility in the event that it
4 runs out of control, and we got blowout damage, or
5 whatever, they have agreed to do so. They all have
6 enough financial insurance to make sure that that
7 happens. In other words, they are assuming the
8 operator's role. That's how I can see some kind of an
9 option growing out of it on the other end.

10 CHAIRMAN HEINLE: Commissioner Rebne.

11 COMMISSIONER REBNE: I think
12 Mr. Griffith is genuinely going to follow through with
13 the reseeded. I think that it appears that he's got
14 a good relationship with the surface owner and has
15 entered into some sort of an agreement. I would feel
16 lots more confident if Jane Culver had signed the memo
17 of statement and that was more explicit, as far as a
18 reseeded and protection of topsoil. Per 1001.c, I
19 don't believe that there's a threat to the public
20 health, safety and welfare, and even if the reseeded
21 doesn't take place, I don't think there's going to be
22 significant adverse environmental impact in this area.

23 As far as 502.b goes, my personal
24 recollection of that, the variance language is that
25 when we talked about violating the basic intent of the

1 Oil and Gas Conservation Act, we were talking about
2 public health, safety and welfare, significant adverse
3 impacts. That, you know, that was a -- my
4 recollection and so, to reference 34-60-106(13) and
5 (12), I am not overly concerned with that, I guess.
6 And I think I might suggest that maybe we can craft a
7 variance where we release a good portion of this bond,
8 and we retain the amount that might be needed for
9 reseeding, as a compromise.

10 MR. GRIEBLING: That can be done without
11 a variance.

12 CHAIRMAN HEINLE: Commissioner
13 MacMillan.

14 COMMISSIONER MacMILLAN: I appreciate
15 the perspective that Commissioner Rebne just offered.
16 I don't agree with the arguments of Commissioner
17 Matheson and Commissioner Johnson entirely, but, in
18 trying to fashion what it is that we can do to help
19 staff gain a better understanding of what we
20 collectively might want to do, as a commission, I
21 would like to focus my comments more on what
22 Commissioner Rebne offered as a possible fix or
23 solution to this specific case, particularly as it may
24 relate to direction for the staff, knowing how the
25 relationships are and how we have heard relationships

1 are between owners of both the surface and the
2 tenants, related either in contract, written or
3 otherwise, with the surface owners. I believe that
4 the documentation that Mr. Griffith provided was
5 pretty close to being accurate. It doesn't meet the
6 letter of the law, if you will, not all the Is are
7 dotted, but the Ts are crossed. So it's doggone close
8 there.

9 Commissioner Johnson suggested that one
10 of the three points that he was concerned about -- I
11 didn't state that properly, Bruce but, one of the
12 third options that he made available was if there was
13 a relationship between the surface owner and the
14 operator to carry out the final reclamation
15 procedures, that would be satisfactory from the intent
16 of our discussions in reclamation. And that hasn't
17 been provided to us here, but the operator may be able
18 to produce that in future cases or given more time in
19 this particular case, an actual arrangement with that
20 surface owner, that's in writing, that says that
21 reseeding will take place as opposed to the operator
22 being responsible for it. And, in my mind, that would
23 satisfy, as Commissioner Rebne stated, the concerns of
24 going through the specific rules and reference to our
25 Rule 502.b, then the reference back to the act itself.

1 If an operator were to provide those, that written
2 documentation, first of all, that the -- as
3 Mr. Griffith has done here, that he's gotten a signed
4 letter dated -- letter, from, in this case, an agent
5 of the surface.

6 COMMISSIONER JOHNSON: We don't know
7 that.

8 COMMISSIONER MacMILLAN: That's right.
9 We don't know that, but it's fair to presume that
10 since they were all part of the same family, that's
11 part, I guess, of what it is that we're dealing with.
12 That in addition to an agreement between the operator
13 and surface owner, that the surface owner will take
14 care of reclamation, final reclamation, i.e., the
15 reseeding, and that's brought in front of the
16 commission. I would suggest that the staff then use
17 that as a release, total release, for the bond.
18 Absent that, I think, as Commissioner Rebne was
19 suggesting, a significant portion of the bond can be
20 released, less that portion, the estimate by staff, to
21 be necessary to make sure that revegetation takes
22 place, absent the agreement that Commissioner Johnson
23 offered up as an example.

24 CHAIRMAN HEINLE: Commissioner Williams.

25 COMMISSIONER WILLIAMS: I like

1 Commissioner Rebne's notion of a partial release. I
2 guess I get to the same spot, maybe, by a somewhat
3 different route, and that is I do find myself agreeing
4 with Mr. Wonstolen's interpretation, up to a point.
5 And where I vary is that I do not read the private
6 agreement so broadly as to constitute a waiver of
7 compliance with their reseeding requirement to reseed.
8 So, I see that as an obligation still outstanding,
9 both under the law and under your private agreement.
10 But I do think a \$5,000 bond in that context is -- we
11 asked too much, particularly since we have all
12 indications that you paid your \$2,000, and with that
13 exception of reseeding, you're at peace with your
14 landowner.

15 I want to also just state, Mr. Griffith,
16 that we do appreciate the fact that you have been a
17 responsible operator here, and I would like to echo
18 the other commissioners who said before -- I don't
19 have any personal doubt whatsoever that you're good
20 for that promise. I don't have any reason to
21 question --

22 MR. GRIFFITH: Thank you.

23 COMMISSIONER WILLIAMS: -- your
24 integrity on that. We do have legal requirements we
25 have to satisfy. We do have an obligation to

1 taxpayers to make sure, at the end of the day, it's
2 not their dollars that reseed or reclaim anything.
3 For that reason, I would recommend going with a
4 retention of the bond, to the extent we need to have
5 it, in case reseeding is required, but that all of the
6 other funds be disbursed.

7 I do want to take issue with part of
8 Commissioner Matheson's analysis when you talked about
9 the use after the fact, and I don't see a state
10 interest in, if this whole decision is -- has said --
11 I understood your analysis to say if this agreement
12 said. I am going to use it for a corral, you would be
13 comfortable. I don't see the state's interest in this
14 process coming in and out quite so easily. I see the
15 state's interest as being protecting the neighbors
16 from a real health risk, and whether this land gets
17 used as a corral or the licensed owner has some other
18 use for it, and, to me, that's really what the private
19 agreement is about, that's why that standard is in
20 there; that if we -- that if this commission thinks
21 there's a risk to that broader community, then we can
22 override these private agreements. I don't think
23 there's been -- I certainly agree with Commissioner
24 Rebne, this is not such a case, or at least there's
25 been no indication today that this is such a case.

1 The one other thing I think we do need
2 to confirm for our own notion that we're doing the
3 right thing is to confirm that, in fact, Ms. Culver
4 does own the property. She is the proper person to
5 authorize the waiver, if you will, that we have used
6 for our regulatory -- at least I have used for my
7 regulatory analysis. I think we all do get there
8 perhaps by somewhat different route. So, what I would
9 like is confirmation and whatever confirmation you
10 might formally look for in this case, Director
11 Griebeling, whether it's the assessor's record or
12 something more complicated than that, but once we know
13 that Jane Culver is the landowner here, then I am
14 satisfied this bond request, at minimum, be reduced,
15 until the reseeding has occurred. That should help
16 free up some funds for you toward that reseeding.

17 CHAIRMAN HEINLE: Thank you. I think I
18 agree with Commissioner Williams and Commissioner
19 Rebne. To me, there's two important issues here
20 today. One is how do you apply a variance rule, and,
21 then, two, did Mr. Griffith meet the requirements of
22 that application. And my recollection --
23 understanding of what the intent was is that if a
24 valid release is obtained from the owner, it can be
25 demonstrated, and if there isn't an issue of public

1 health, safety and welfare, including significant
2 adverse environmental impact, then a variance would
3 could be granted. That was the test for 101.c. And,
4 in this case, well, before I go into that, and I don't
5 see the reading of the variances, 502.b, where it
6 talks about does not violate the basic intent of the
7 Oil and Gas Conservation Act to refer back to
8 34-60-106 (13), (11) and (12), especially 12, to me,
9 speaks more about promulgation and the act of
10 promulgating rules, and I just don't -- I don't see
11 the tie back to -- how granting a variance at 502.b
12 would be a violation of the intent of the act, and I
13 am in concurrence with Commissioner Rebne on that.

14 So, I think one of the things I would
15 like to be able to do today is be able to give the
16 staff a clear indication how we see, mechanically, the
17 variance rule being operated, as something that they
18 can go away with. And then, in regard to the second
19 aspect of it, as to whether Mr. Griffith met that
20 test, I think it is important that we establish that
21 the waiver that was signed was, indeed, the surface
22 owner of the property. In regard to the issue of
23 public health, safety and welfare, and significant
24 adverse environmental impact, based on the testimony
25 that I heard today, and photos that were circulated, I

1 don't believe that failure or a failure to reseed in
2 and of itself, necessarily, would constitute an issue
3 for public health, safety and welfare. I don't see --
4 or a significant adverse environmental impact. I
5 don't see any finding based on the testimony today
6 that that would lead you to, you know, conclude that
7 the waiver -- the variance, excuse me, could not be
8 granted. I think the important thing is to
9 demonstrate that the surface owner did indeed sign the
10 waiver.

11 So, having said that, and having gotten
12 an opinion from six of the commissioners, or a slant
13 on it from the commissioners, I guess I would ask if
14 any commissioner is prepared to propose a motion that
15 we could discuss and move forward on.

16 COMMISSIONER WILLIAMS: I move that upon
17 confirmation satisfactory to the director, that Jane
18 Culver is the owner of the surface in question, that
19 the bond be reduced to a \$1,000 bond, and that the
20 remainder be released upon completion of the reseedling
21 process.

22 CHAIRMAN HEINLE: Is there any second to
23 that motion?

24 COMMISSIONER REBNE: Second.

25 CHAIRMAN HEINLE: Okay. Any discussion

1 of the motion? Commissioner Johnson. Commissioner
2 MacMillan.

3 COMMISSIONER MacMILLAN: Point of
4 clarification. What might be, in your mind, proper
5 verification of the surface ownership for, in this
6 case, Ms. Culver.

7 COMMISSIONER WILLIAMS: County
8 assessor's record.

9 COMMISSIONER MacMILLAN: A photocopy
10 that shows the page number, and I am wondering how
11 specific you can be on that.

12 COMMISSIONER WILLIAMS: If --

13 CHAIRMAN HEINLE: How about the property
14 tax notice?

15 COMMISSIONER WILLIAMS: Property tax
16 notice would work.

17 MS. McNEILL: You call the assessor,
18 shows the tax for that ownership of that surface.

19 COMMISSIONER WILLIAMS: No, that parcel.

20 COMMISSIONER MacMILLAN: Phone call
21 would be sufficient.

22 COMMISSIONER WILLIAMS: I was going to
23 leave that to the director's discretion, what he would
24 normally ask for for verification in situations like
25 this. If there's no standard procedure, then I would

1 think that if Mr. Griffith could obtain something in
2 writing from the county assessor's, that would be a
3 nice thing to have in the file, that would be the
4 appropriate starting point. In fact, I think it would
5 be an appropriate ending point. I don't think the
6 inquiry would need to go beyond that. I don't think
7 we would need to require multiple thousand dollars
8 title opinions to verify that Ms. Culver is the owner
9 of the surface.

10 COMMISSIONER MacMILLAN: One point of
11 clarification for your motion. Is it your intent that
12 the \$1,000 that remains of the bond stay in place
13 until the reseeding has taken place, and even if there
14 is a written agreement by the surface owner, as
15 documented, and the operator, that that responsibility
16 is transferred to the surface owner --

17 COMMISSIONER WILLIAMS: I am not going
18 to speculate about what the parties might put in
19 place, because it's not in place. I am not going to
20 modify my motion to what might happen that hasn't
21 happen. My motion is based on the facts we have
22 before us. If they are going to go out and change
23 their agreement in anticipation, because my motion has
24 invited them to, I am not going to offer that
25 invitation.

1 COMMISSIONER MacMILLAN: Okay. Thank
2 you.

3 CHAIRMAN HEINLE: Commissioner Johnson.

4 COMMISSIONER JOHNSON: First of all, I
5 am going to start with other business. To me, I think
6 two things need to take place. One is some kind of
7 public record, and the assessor would be a good place
8 to start with -- or the tax notice, either one of
9 those two issues. But, furthermore, what I think is
10 most important is to have some kind of owner attest
11 that they are the owner. I mean, this gives you
12 records that the owner --

13 COMMISSIONER WILLIAMS: She presumably
14 took his \$2,000.

15 COMMISSIONER JOHNSON: I have a
16 different interpretation of this letter, "release of
17 damage caused by operations," than what has been
18 presented here. I am not the attorney, but, where I
19 am coming from on this is I think that the public
20 interest has not been a point of discussion here,
21 other than we have assumed that it's a safe situation
22 out there for the public health. We had no testimony
23 one way or the other, as to leaving this site
24 unreclaimed is a damage. Personal experience, it can
25 be. And I think, as far as direction to the staff,

1 down the road, is that can be handled quite easily as
2 some kind of a documentation from the county, as in
3 Weld County. They have the ability to control that,
4 or the NRCS office, who would be the most
5 knowledgeable people or extension agent who has tilled
6 in those areas, as to whether that would be a damage
7 or not a damage by leaving it unreclaimed.

8 CHAIRMAN HEINLE: Commissioner Matheson.

9 COMMISSIONER MATHESON: I am going to
10 hold in favor of the motion. I think it's a really
11 good solution for this particular case, and, in fact,
12 could be used as model in the future for similar
13 situations where reduction in the bond would be
14 appropriate to just sort of deal with the, say, the
15 final surface reclamation issues of reseeding and
16 whatnot.

17 But as far as my initial discussion, I
18 am going to stick to my guns. I think it's a -- that
19 the director very, very appropriately denied this
20 request for variance and brought it to us. I think
21 his analysis of the rules, at least in my mind, is
22 correct, that, you know, you look at the waiver
23 request, you look at the variance request, 502, and
24 back to the basic intent of the act, which does
25 discuss proper reclamation of the land and protection

1 of the public health, safety and welfare. Frankly, I
2 do not want us to get into a mode where we see a
3 couple of pieces of paper, we start approving
4 variances that does not follow through with
5 reclamation, because, in time, we will see cumulative
6 effects, even if we don't necessarily see them with
7 one particular site. And I do believe that the future
8 land uses that are proposed for an old oil and gas
9 well location are pertinent, and if they are basically
10 telling us we're going to return it to rangeland or
11 cropland, and it's going, in its current condition, it
12 cannot support most land uses, then we need to follow
13 through with enforcing our rules, and it may be we can
14 get into some creative things, like reducing bonds,
15 and whatnot but, I do believe that, at least in our
16 direction to the staff, we should be clear on this
17 before we leave here. That what we did hear
18 Mr. Griffith say today was right. He should continue
19 to do that, and we should evaluate these things on a
20 case-by-case basis, and my personal view, I want to
21 see the land reclaimed to its proper condition, unless
22 there is some other compelling reason.

23 CHAIRMAN HEINLE: Commissioner

24 MacMillan.

25 COMMISSIONER MacMILLAN: Just a point of

1 clarification. I don't believe that this case was
2 brought to us by staff. I think that the process
3 was --

4 CHAIRMAN HEINLE: Okay.

5 COMMISSIONER MacMILLAN: -- that the
6 operator asked for a variance. That variance was
7 denied, then it was brought by the operator.

8 COMMISSIONER MATHESON: That's fine.
9 Either circumstance works for me.

10 COMMISSIONER MacMILLAN: If I can
11 continue, then, just from my perspective. I would
12 also support the motion, because I think it's the best
13 thing we're going to get out of it. I would like to
14 see a little bit better tie to what were the actual
15 estimated costs for reclamation. And the only figure
16 that we heard thrown out here were offers by
17 applicant, not heavily supported by any documentation,
18 but that number was \$600 for reclamation.

19 The concern I have about partial release
20 for the bond is I think this has big importance for
21 the, quote, small operator in Colorado, and it is my
22 concern that Colorado remains friendly to those small
23 operators, the people that can put deals together and
24 get wells drilled, and find oil and gas. And I think,
25 so long as the significant amount of money for a small

1 operator is tied up in a two-year bond, waiting for
2 reclamation, on things that the surface owner has
3 agreed are fine right now -- the documentation that
4 was provided by Mr. Griffith was that the
5 reclamation -- was that Argonex, the operator, has
6 cleaned up and restored the drill site to their
7 satisfaction. And by keeping even \$400 more than is
8 necessary, for the reseeding, to me, is not the
9 appropriate use of that operator's money being tied
10 up. And I think we, as a commission, need to be very,
11 very sensitive towards that.

12 CHAIRMAN HEINLE: Just a quick point,
13 and I would like a vote on it, because I know
14 Commissioner Williams has to leave shortly.

15 MR. GRIEBLING: I have an important
16 point to add before you vote.

17 CHAIRMAN HEINLE: First of all, I am
18 going to vote for it, also, myself, because I don't
19 believe partial release is a good practice to set up.
20 I think, if the two tests are met, one, demonstration
21 of a waiver by the owner, and, two, that compliance
22 with the rules is not necessary to protect public
23 health, safety and welfare, including significant
24 adverse environmental impacts, the entire bond should
25 be released and the variance granted.

1 In regard to that last point, I am just
2 wondering whether you would, Commissioner Rebne, an
3 amendment to your motion to -- through a finding that
4 compliance with 1004.c is not necessary to protect the
5 public health, safety and welfare, including
6 prevention of significant adverse environmental
7 impact.

8 COMMISSIONER WILLIAMS: I appreciate
9 what you are doing, but I think we're going off into
10 the realm of advisory opinions. What my analysis was,
11 and my motion was based on that analysis, we did not
12 have waiver of compliance with the reseeding
13 requirements, because of the way that that release was
14 drafted. So, I don't have to ask the question had
15 they waived that, whether we would enforce it, because
16 that's not the agreement that the parties have.

17 CHAIRMAN HEINLE: Rich, can you keep it
18 brief?

19 MR. GRIEBLING: Yes, I would like to ask
20 if the order should reflect findings in two areas.
21 First area basically ties in with your comments, is
22 does the order reflect the finding that's there's no
23 significant adverse environmental impact. The second
24 question, does the order reflect the finding that
25 compliance is not necessary in order to protect public

1 health, safety and welfare. I ask that for
2 clarification and for precedent value.

3 CHAIRMAN HEINLE: Care to respond?

4 COMMISSIONER WILLIAMS: I have a problem
5 with making precedent where you don't have the folks
6 that compel that precedent. We do not have a
7 situation here where the landowner has waived the
8 reseeding requirement. We have a letter here where
9 the landowner said you will reclaim the surface and
10 reseed it. Those are the facts before us. Now, if we
11 want to go off on advisory opinions, we can do that.
12 We're going to have a whole different discussion than
13 what we just had. My discussion and my philosophies
14 were limited to the facts of this case. If you want
15 my broad opinion on how I would rule on some case
16 that's not before us, we can do it. That's not what
17 we have done. I don't think our order should reflect
18 that.

19 MR. GRIEBLING: Specifically finding --
20 does the finding reflect significant adverse
21 environmental impact, and is it necessary to -- it's
22 not necessary to protect public health safety and
23 welfare, it doesn't -- I am wondering whether the
24 order should reflect that or not. I have heard
25 comments on both sides. It could lead us to bring an

1 order the commission felt there was no significant
2 adverse environmental impact. I also heard the
3 comment that the commission --

4 COMMISSIONER WILLIAMS: I can certainly
5 say, upon Mr. Griffith's compliance with the agreement
6 with his landowner, I see no basis for adverse impact
7 to the environment.

8 MR. GRIEBLING: The statutory, you know,
9 reference, no significant adverse impact.

10 COMMISSIONER WILLIAMS: I see no
11 significant adverse environmental impact.

12 COMMISSIONER MATHESON: We don't have
13 any testimony to that effect one way or the other.
14 Perhaps that's -- we're going to get into that and I
15 am probably going to change my vote. What I would
16 suggest is --

17 COMMISSIONER WILLIAMS: I didn't want to
18 get into that.

19 MR. GRIEBLING: It's valuable for us,
20 and directly to the staff --

21 COMMISSIONER MATHESON: This might not
22 be the best indication for you to be setting up
23 precedents as to how you are going to proceed on these
24 things in the future. We got -- actually, this is a
25 tough one. But, perhaps what we best might do here

1 may not even require an order of the commission, is
2 just authorize -- what we're getting at is authorizing
3 the director to reduce the bonding requirements to
4 deal with this particular situation. We're not
5 granting the variance. We're letting him reduce the
6 bonding, and let's just leave it at that point.

7 CHAIRMAN HEINLE: How can you -- at some
8 point, doesn't the operator have to come back in for
9 the release of the bond, the remaining \$400?

10 COMMISSIONER MATHESON: Correct.

11 CHAIRMAN HEINLE: The operator is going
12 to have to come back.

13 COMMISSIONER WILLIAMS: The operator is
14 going to come back and ask for \$1,000 back.

15 CHAIRMAN HEINLE: Whatever the amount
16 was at that time, he is going to have to demonstrate
17 that he's got the surface owner waiver, correct? And
18 that there's no -- it's not necessary to comply with
19 1004.c, and that there's no significant adverse
20 environmental impact.

21 COMMISSIONER MATHESON: We don't have
22 testimony concerning those items. We have gray areas
23 of whether there's actual waiver. We really don't
24 know about significant environmental impact. What I
25 would suggest, that we're denying the variance

1 requests, but we're authorizing the director to
2 determine a proper bonding amount for this situation,
3 which may be less than \$1,000, and perhaps we ought to
4 leave that to the discretion of the director, based on
5 more solid estimates.

6 MR. GRIEBLING: I should also just point
7 out, it's not uncommon to have reseeding not be
8 successful, and, you know, we've all had experiences
9 with that. We have the conditions, and that's a good
10 reason for timing the reseeding, as applicant has
11 pointed out. You want to time it as well as you can.
12 Even with your best efforts and intention, you don't
13 always get successful reseeds, so do we hold a bond
14 that's just the cost of one reseeding, you know.

15 COMMISSIONER MATHESON: We're talking.

16 COMMISSIONER MacMILLAN: I will call the
17 question.

18 CHAIRMAN HEINLE: Call the motion?

19 COMMISSIONER MacMILLAN: Call the
20 question on the motion, yes.

21 COMMISSIONER JOHNSON: Means he's ready
22 to vote, whether the rest of us are or not.

23 CHAIRMAN HEINLE: All right. Would you
24 care to restate the motion one more time before we
25 vote, just to make sure we're all clear on what it is

1 we're voting on.

2 COMMISSIONER WILLIAMS: I move that
3 Mr. Griffith's bond be reduced \$1,000.

4 CHAIRMAN HEINLE: To \$1,000.

5 COMMISSIONER WILLIAMS: To \$1,000, and
6 that the bond remain in place until there's
7 satisfactory reclamation, reseeding, I guess, is the
8 issue. That's the only issue we have raised, is it's
9 not been, and your inspection was passed with that
10 exception.

11 MR. GRIEBLING: Sufficient revegetation.

12 COMMISSIONER WILLIAMS: Sufficient
13 revegetation.

14 MR. GRIEBLING: Under rule 1004.c 2.

15 (Whereupon the vote was called.)

16 CHAIRMAN HEINLE: Motion carries, except
17 for one.

18 COMMISSIONER WILLIAMS: If we could go
19 off the record.

20 (Discussion off the record.)

21 CHAIRMAN HEINLE: Let's go back on
22 record.

23 COMMISSIONER WILLIAMS: I wanted, if we
24 need to take the vote all over again, I was asked to
25 restate the motion and in the process of doing --

1 being asked to restate it, apparently it did not bear
2 my exact language. So, I would just refer to the
3 record, and that my motion was intended in the manner
4 it was first stated.

5 COMMISSIONER REBNE: My second is as
6 such too.

7 MS. BEAVER: Let me clarify, that's with
8 respect to receiving confirmation from the landowner?

9 COMMISSIONER MATHESON: Correct.

10 CHAIRMAN HEINLE: Okay. Thanks. Great.
11 Thank you. We can go off the record.

12 (Recess.)

13 (Whereupon this portion of the
14 proceedings were concluded.)

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STATE OF COLORADO) ss
CITY AND COUNTY OF DENVER)

I, Harriet S. Weisenthal, Certified Shorthand Reporter and Notary Public for the City and County of Denver, State of Colorado, do hereby certify that the foregoing proceedings were taken in shorthand by me at 1120 Lincoln Street, Denver, Colorado on the 21st day of April, 1997, and was reduced to computer-aided typewritten form under my supervision;

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 3rd day of November, 1997.
My Commission expires October 15, 2001.

Harriet S. Weisenthal

